



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



D. JERE' WEBB et al. v. VICTORIA GITTLEN, et al., CV-07-0127-PR

Parties and Counsel: Petitioner D. Jere' Webb is represented by Matthew L. Riggs and Respondents Victoria Gittlen, G & G Insurance Services, Inc., and CDS Insurance Agency are represented by Greg S. Como of Lewis Brisbois Bisgaard & Smith.

FACTS:

Neal and Gail Berliant own a liquor store called The Liquor Vault. Insurance agent Victoria Gittlen sold them a business liability insurance policy and an umbrella policy but did not advise them about the possibility of purchasing separate liquor liability coverage which protects sellers of alcohol in dram shop related liability claims. Thus, there was no dram shop coverage when a lawsuit for wrongful death was brought against The Liquor Vault, alleging that it was liable because it sold a keg of beer to a minor who shared it with another minor who subsequently drove drunk and got into the accident which resulted in the death of the passenger.

The deceased boy's father, D. Jere' Webb, agreed with the Berliants to allow a \$3 million judgment to be entered against them and to assign to Mr. Webb their rights to sue Ms. Gittlen and Harford, in exchange for Mr. Webb's covenant not to execute the judgment against the Berliants.

Mr. Webb subsequently sued Ms. Gittlen, alleging she was negligent and breached a fiduciary duty by failing to advise the Berliants about liquor liability insurance. The trial court dismissed those claims with prejudice, finding (1) professional negligence claims against insurance agents cannot be assigned, and (2) no fiduciary relationship exists between insurance agents and their clients. [*Premium Cigars International, Ltd. v. Farmer-Butler-Leavitt Ins. Agency*, 208 Ariz. 557, 567 \(App. 2004\)](#); [*Darner Motor Sales, Inc. v. Universal Underwriters Ins. Co.*, 140 Ariz. 383, 397 \(1984\)](#).

Mr. Webb appealed, unsuccessfully. The court declined his request to overturn *Premium Cigars*, rejecting his contention that the case adversely affects the policy of protecting tort victims and insurance consumers. This court subsequently granted Mr. Webb's petition for review.

Questions of Law Presented:

1. Whether professional negligence claims against insurance agents may be assigned to third parties.
2. [*Whether Premium Cigars International, Ltd v. Farmer-Butler-Leavitt Ins. Agency*, 208 Ariz. 557, 96 P.3d 555 \(App. 2004\)](#) should be overturned, thus validating the assignment by the owners of the Liquor Vault to Mr. Webb of their claim for professional negligence against their insurance agent.

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