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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: S&B SURGERY CENTER,

Debtor,

**LFMG-S&B, LLC, a California Limited
Liability Company,**

Appellant,

v.

**BUCHALTER NEMER, a California
Professional Law; BENJAMIN S.
SEIGEL,**

Appellees.

No. 16-55879

D.C. No. 2:15-cv-06964-CJC

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Cormac J. Carney, District Judge, Presiding

Argued and Submitted November 13, 2017
Pasadena, California

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Before: **KOZINSKI**,** **HAWKINS** and **PARKER**,*** Circuit Judges.

1. In California, legal malpractice claims may be assigned only under narrow circumstances. See White Mountains Reinsurance Co. of Am. v. Borton Petrini, LLP, 221 Cal. App. 4th 890, 892 (2013). LFMG’s acquisition didn’t include other “assets, rights, obligations, [or] liabilities,” so the malpractice claim wasn’t assigned as an “incidental part of a larger commercial transfer.” Id. The transfer was also functionally “analogous to the assignment of a bare [malpractice] cause of action” because the claims against Fortress were time-barred. Id. at 909. The original client was not an insurance company. Id. at 892. Nor did Buchalter and the Trust communicate through third parties. Id. The assignment here comes nowhere close to satisfying the White Mountains test.

2. The district court didn’t err in affirming the bankruptcy court’s refusal to grant leave to amend. Even if LFMG were a third-party beneficiary, the statute of limitations would have run on the malpractice claim. See Cal. Code Civ. Proc. § 340.6(a).

** Prior to his retirement, Judge Kozinski fully participated in this case and concurred in this disposition after deliberations were complete.

*** The Honorable Barrington D. Parker, Jr., United States Circuit Judge for the U.S. Court of Appeals for the Second Circuit, sitting by designation.

AFFIRMED.