

Missouri Lawyers

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WEEKLY

■ \$2 MILLION SETTLEMENT

Insurance companies fight over payment of \$2 million settlement

Case involved issue of first impression on rule

LEGAL MALPRACTICE

- **Venue:** St. Louis Circuit Court
- **Case Number/Date:** 22052-06955/July 10, 2012
- **Mediator:** Richard P. Sher
- **Caption:** American Alternative Insurance Corp. v. Howard Becker, Sandberg, Phoenix & von Gontard and James Broshot
- **Plaintiffs' Attorney:** William K. Meehan, William K. Meehan PC, University City
- **Defendant's Attorney:** Ted F. Frapolli, The Law Offices of Ted F. Frapolli, St. Louis County, for Broshot; Gerard T. Noce and Justin L. Assouad, HeplerBroom, St. Louis, for Becker and Sandberg, Phoenix & von Gontard

BY DONNA WALTER

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A legal malpractice lawsuit against Sandberg, Phoenix & von Gontard and two lawyers has been settled.

Terms of the settlement are confidential, lawyers for both sides said.

The lawsuit, filed in June 2005 in St. Louis Circuit Court, stemmed from a \$2 million settlement of a medical malpractice case that had been pending in Phelps County. The underlying suit, according to court documents, was settled in February 2004.

Steville lawyer James Broshot, of Mazzei & Broshot, was hired to defend Thomas Seabolt, Forest City Emergency Medical Services and James Michael Bono in a medical malpractice lawsuit filed by Marie Renner as an individual and as the plaintiff ad litem for Stephanie Renner. Court documents in the legal malpractice suit present few details about the underlying case, and no information about the prior lawsuit is available through Casenet.

St. Louis lawyer Howard Becker was with the defense firm of Evans & Dixon when he was hired as co-counsel for the defendants. While the suit was pending, Becker joined Sandberg, Phoenix & von Gontard as a shareholder, where he practiced for two years, according to his LinkedIn profile.

American Alternative Insurance Corp. is the plaintiff in the legal malpractice case.

According to AAIC's petition, the medical malpractice plaintiffs' attorney, Mary Coffey, in November 2002 made a \$1 million demand, believing that amount to be the policy limits. At the end of that December, Steven Forry, an employee of AAIC claim administrator Glatfelter, asked the defendants in an email whether they had disclosed

to the plaintiffs the existence of an excess insurance policy totaling \$1 million. Broshot and Becker both assured Forry that the additional policy didn't need to be disclosed because the plaintiffs' attorney hadn't properly asked about its existence, the legal malpractice lawsuit alleged.

On Feb. 26, 2003, after four days of trial, Broshot and Becker advised Forry to pay the \$1 million policy limits. Following approval of the settlement, Becker told Coffey there was an additional insurance policy, despite having said in court the defendants had only \$1 million available to pay the claims, AAIC alleged.

Coffey filed a motion for sanctions, and the trial judge, in two separate orders, entered a default judgment against the defendants on liability and ordered a new trial on damages, according to the petition.

The defendants in the medical malpractice case hired Bryan Cave lawyers to mitigate their damages, but in 2004 they settled the medical malpractice case for the \$2 million policy limits.

AAIC alleged Broshot, Becker and the law firm failed to disclose all insurance policies during discovery, made misrepresentations to the court during the 2003 settlement hearing, allowed sanctions to be imposed against the insureds, which exposed the clients to a verdict in excess of the policy limits, and failed to preserve the legal defenses of causation, liability and other economic defenses.

Because of the lawyer defendants' negligence, AAIC alleged that it was forced to pay the full \$2 million policy limits to settle the case, plus \$90,000 in fees to Broshot, Becker and Sandberg, Phoenix & von Gontard and \$200,000 in fees to Bryan Cave.

But the lawyer defendants argued in court documents that AAIC admitted, through its expert, that it was only seeking damages in connection with the \$1 million paid under the umbrella policy. In addition, Bryan Cave advised AAIC that under Missouri law, insurance policies do not cover aggravating circumstances and that the verdict range for compensatory damages in the Renner litigation was roughly \$600,000 to \$700,000. Anything over \$700,000 would have been for aggravating damages, the defense argued, so the \$1 million paid under the umbrella policy was not recoverable.

Broshot, Becker and the Sandberg, Phoenix firm also argued that AAIC lacked standing to sue because it had no damages. Three reinsurers indemnified AAIC for the \$1 million in excess coverage, the defendants argued in court documents. The reinsurers were not parties in the legal malpractice case.

The lawyer defendants also asserted they had no attorney-client relationship with AAIC. The fact that AAIC paid the legal bills for the medical malpractice defendants does not create an attorney-client

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relationship, the defendants argued. And there was no evidence that AAIC received legal advice from the lawyers or that the lawyers intended to advise AAIC, they argued.

St. Louis Circuit Judge Mark H. Neill rejected these arguments in a Dec. 29, 2010, order denying the defendants' motion for summary judgment.

The issue of standing implicated the collateral source rule, and the question of whether the rule applied to a legal malpractice claim is one of first impression in Missouri, the judge said. He concluded it would be up to the trial judge to determine whether the collateral source rule applied in this case. The collateral source rule bars introduction of evidence that a plaintiff's damages were paid by another source.

But the parties dismissed the legal malpractice suit on July 10.

William K. Meehan, of William K. Meehan PC in University City, who represented the insurer, and Ted F. Frapolli, of The Law Offices of Ted F. Frapolli in St. Louis County, who represented Broshot, both declined to comment due to a confidentiality provision in the settlement.

Gerard T. Noce and Justin L. Assouad, of HeplerBroom's St. Louis office, represented defendants Becker and Sandberg, Phoenix & von Gontard. They were out of town and unavailable for comment by deadline. **MO**