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# Stacy v. The Bar Plan Ins. Co.: Summary Judgment for the Insurer

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After being injured in a motor vehicle accident, plaintiffs Jessica and Brian Stacy ("Stacys") signed separate representation agreements to retain Jeffrey Witt ("Witt") and his law office to represent them in pursuing personal injury claims. Unbeknownst to the Stacys, the "attorney" assigned to represent them had been disbarred. The Stacys filed a legal malpractice action against Witt and his law office, alleging multiple acts of negligence in Witt's representation of them. The Bar Plan Mutual Insurance Company ("Insurer") issued a professional liability policy to Witt, subject to $500,000 per claim and $1,500,000 aggregate limits of liability.

The Stacys and Witt mediated their dispute shortly before trial but failed to reach a resolution. During mediation, Insurer notified Witt the Stacys' demands constituted only a single claim. After mediation, Witt – without Insurer's consent – entered into an agreement with the Stacys pursuant to R.S.Mo. § 537.065 (2016), limiting recovery of any judgment by the Stacys against Witt to Insurer's policy. After an uncontested bench trial, judgment was entered in favor of the Stacys, with Witt found to be liable for multiple acts of malpractice. The Stacys were awarded damages against Witt above the $500,000 per claim limit of liability.

Thereafter, the Stacys filed an equitable garnishment claim against Insurer to satisfy their judgment against Witt. The trial court entered summary judgment in the Stacys' favor, finding the term "related" in the policy's limits of liability to be ambiguous, such that the Stacys' claims did not constitute a single claim, and Insurer breached the policy when it communicated its single-claim position. The trial court also held Witt was free to execute a § 537.065 agreement with the Stacys due to Insurer's breach of the policy, with Insurer liable for the full judgment against Witt. Insurer appealed.

The Court of Appeals agreed with Insurer the term "related" in the phrase "[t]wo or more demands arising out of a single act or omission or a series of related acts or omissions shall be treated as a single Claim" was unambiguous. Relying on the definition and common understanding of the term "related," the court concluded a reasonable attorney would understand multiple acts of negligence committed in the course of representing the Stacys in their personal injury claims arising from a single motor vehicle accident was "a series of related acts or omissions," and was a single claim under the policy. The court rejected the Stacys' interpretation of "related" because it rendered the limits of liability provision meaningless.

The appellate court also addressed whether Insurer breached the policy by not informing Witt earlier in the malpractice lawsuit that it viewed the Stacys' demands as being subject to the single claim limit of liability so as to permit the Stacys to enter into a § 537.065 agreement without Insurer's consent. The appellate court explained "Missouri law recognizes a critical distinction between the assessment of what conduct is covered under the policy and the assessment of the financial limit of the insurer's liability for conduct that is covered under the Policy." An insurer does not have a duty to reserve its rights as to the applicably limits of liability under a policy, and therefore does not breach the policy by later communicating the limits of liability to the policyholder. Because Insurer's explanation to Witt the Stacys' demand was limited to coverage for a single claim was not an assessment of whether his conduct was covered under the policy, but rather an assessment on the extent of its liability, the trial court erred in finding Insurer breached the policy. As such, Witt was required to comply with the policy's cooperation provision and was barred from entering into a § 537.065 agreement with the Stacys without Insurer's consent. Consequently, the Court of Appeals found Insurer was released from any liability for the underlying judgment by Witt's unilateral rejection of Insurer's defense without just cause or excuse, in violation of the policy's cooperation clause, which warranted summary judgment in Insurer's favor.