



NOVEMBER 27, 2011

G. Keith Phoenix and Tim O'Leary Granted Summary Judgment

NEWS & EVENTS: CLIENT WINS

RELATED ATTORNEYS: G. KEITH PHOENIX

Sandberg Phoenix attorneys G. Keith Phoenix and Tim O'Leary were granted summary judgment in a vexatious refusal to pay lawsuit filed in the United States District Court for the Eastern District of Missouri.

The plaintiff was an over-the-road truck driver who had a stroke while delivering a load. Plaintiff's stroke was generally caused by smoking and hypertension and was proximately caused by a blood clot. Plaintiff made a claim for accidental injury benefits pursuant to an accidental injury policy issued by defendant-insurer. The defendant-insurer argued, as a matter of first impression in Missouri, that a stroke is not an accident within the meaning of the term as used in the accidental injury policy. The defendant-insurer also argued that based on the testimony of plaintiff's treating physician a stroke is a disease within the meaning of the term as used in the disease exclusion. Defendant-insurer filed a motion for summary judgment on these grounds.

The Honorable Magistrate Judge David Noce granted summary judgment in favor of the defendant-insurer holding that a stroke is a disease and that plaintiff's claim fell within the exclusionary language of the policy. Judge Noce declined to rule on the matter of first impression in Missouri because resolution was proper on other grounds.