

MISSOURI COURT OF APPEALS EASTERN DISTRICT
OPINION SUMMARY

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|---------------------------------|-------------------------------|
| THE BAR PLAN MUTUAL INSURANCE) | No. ED98826 |
| COMPANY,) | |
|) | |
| Plaintiff/Respondent,) | Appeal from the Circuit Court |
|) | of St. Louis County |
| vs.) | |
|) | |
| CHESTERFIELD MANAGEMENT) | |
| ASSOCIATES, D/B/A PEACHTREE) | |
| PROPERTY INVESTMENTS, L.P.,) | |
|) | |
| Defendant,) | |
|) | |
| and) | |
|) | |
| SAUERWEIN, SIMON, AND) | |
| BLANCHARD, P.C.,) | Hon. Robert D. Cohen |
|) | |
| Defendant/Respondent,) | |
|) | |
| and) | |
|) | |
| MICHAEL D. KIM,) | |
|) | |
| Defendant/Appellant) | FILED: April 23, 2013 |

Michael Kime appeals the trial court’s final judgment on its separate orders granting partial summary judgment in favor of The Bar Plan Mutual Insurance Company (“The Bar Plan”) and the order sustaining Sauerwein, Simon & Blanchard’s (“SSB”) motion to quash his notice of deposition and subpoena

AFFIRMED.

DIVISION ONE HOLDS:

(1) The trial court did not err in granting partial summary judgment in favor of The Bar Plan declaring that all of the causes of action in Chesterfield Management Associates’ malpractice action against Kime and SSB were one claim under the 2008 malpractice insurance policy (“2008 Policy”) issued by The Bar Plan, which was effective from July 15, 2008 through July 15, 2009. CMA’s claim for inadequate insurance coverage, while made on February 25, 2010, was a demand arising out of a series of related acts and/or omissions, where the earliest demand based on that series or related act and/or omissions was made during the coverage period of the 2008 Policy. Under the Multiple Insured,

Claims and Claimants Provision of the 2009 malpractice insurance policy (“2009 Policy”) issued by The Bar Plan, CMA’s claim for inadequate insurance coverage related back to its earliest demand made under the 2008 Policy and constituted a single claim.

(2) The Bar Plan did not act in bad faith in refusing to settle Counts I through III of CMA’s malpractice action for the \$250,000 limit of the 2008 Policy. Count I through IV of CMA’s malpractice action constituted one claim under the 2008 Policy; the 2009 Policy did not provide coverage, and The Bar Plan offered to settle all of CMA’s causes of action and claims for the 2008 Policy limits of \$250,000 in return for a full and complete release in favor of Kime and SSB. In offering the entire policy limits of the 2008 Policy, The Bar Plan did not intentionally disregard the financial interests of the insureds in the hope of avoiding full responsibility under the policy.

(3) Kime was not prejudiced by the trial court granting SSB’s motion to quash the notice of deposition and subpoena of the lawyer representing SSB and Kime in the malpractice action.

Opinion by: Clifford H. Ahrens, Presiding Judge Sherri B. Sullivan, J., and Glenn A. Norton, J., concur.

Attorney for Appellant: John S. Sandberg

Attorney for Respondent: Brent Baldwin and John Gianoulakis

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT.
IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND
SHOULD NOT BE QUOTED OR CITED.**