

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

AGNES LANDRY AND KEVIN LANDRY,

RESPONDENTS,

v.

INTERMED INSURANCE COMPANY, ET AL.,

APPELLANT.

DOCKET NUMBER WD69076

DATE: JUNE 16, 2009

Appeal From:
JACKSON COUNTY CIRCUIT COURT
THE HONORABLE JAY A. DAUGHERTY, JUDGE

Appellate Judges:
**Division Two: JOSEPH P. DANDURAND,¹ P.J., HAROLD L. LOWENSTEIN
and JAMES M. SMART, JJ.**

Attorneys:
JARED J. ROBERTSON, ESQ., and CO-COUNSEL BRIAN D. MALKMUS,
ESQ., SPRINGFIELD, MO, **for appellant.**
MATTHEW E. BIRCH, ESQ., KANSAS CITY, MO, **for respondent.**

¹ Judge Dandurand was a member of the court when this case was submitted; however, he has since resigned from the court.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

AGNES LANDRY AND KEVIN LANDRY,

RESPONDENTS,

v.

INTERMED INSURANCE COMPANY, ET AL.,

APPELLANT.

WD69076

Jackson County

Before Division Two Judges: DANDURAND¹, P.J., LOWENSTEIN and SMART, JJ

Agnes and Kevin Landry brought a medical malpractice lawsuit against Dr. Gary Gaddis and his employer, Metro Emergency Physicians, L.L.C. Gaddis and Metro made a demand on their medical malpractice insurer to provide a defense and pay all sums for which they might be liable. The insurer denied coverage. Gaddis and Metro settled the Landrys' lawsuit for \$2,000,000, and the trial court entered a judgment for the amount agreed upon by the parties. Thereafter, Landry brought an equitable garnishment action against the insurer, pursuant to section 379.200 RSMo (2000), to satisfy the judgment entered against defendants. Both parties filed motions for summary judgment. The trial court denied the insurer's motion, and

¹ Judge Dandurand was a member of the court when this case was submitted, but has since left the court.

granted summary judgment in Landry's favor. The insurer appealed, arguing that Gaddis and Metro failed to provide sufficient notice of Landry's incident before the policy period expired, and thus, coverage of Landry's incident was not triggered under the "claims made" insurance policy.

Affirmed.

Division Two holds:

With "claims made" insurance policies, coverage of a claim is triggered once the insurer is put on notice of an incident, together with the essential facts upon which liability of the insurer depends. Because the insurer in this case was put on notice of Landry's incident during the policy period, and the notice apprised the insurer of the essential facts upon which liability depends, Landry's claim was covered by the claims made insurance policy. Therefore, summary judgment was properly granted in Landry's favor. The trial court's judgment is affirmed.

Opinion by: Harold L. Lowenstein, Judge

June 16, 2009

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.