Summary of SC94250, *Jimmie Lee Taylor v. The Bar Plan Mutual Insurance Company*
Appeal from the Jackson County circuit court, Judge Sandra Midkiff
Argued and submitted November 5, 2014; opinion issued March 10, 2015

Attorneys: Taylor was represented by Jonathan Sternberg of Jonathan Sternberg, Attorney, PC in Kansas City, (816) 292-7000; and the Bar Plan was represented by Brent W. Baldwin and M. Brendham Flynn of The Baldwin Law Group in St. Louis, (314) 720-6190.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: An attorney's client appeals a judgment in favor of his attorney's legal malpractice insurer. In a 7-0 decision written by Chief Justice Mary R. Russell, the Supreme Court of Missouri affirms the judgment. A reasonable lawyer purchasing the policy would understand the policy to exclude the investment activity encompassed in the client's loans to the law firm in which the attorney owned all the equity and to another client of the attorney, for which the attorney received a commission.

Judge Peggy Richardson, an associate circuit judge in Moniteau County (in the 26th circuit), sat in this case by special designation in place of Judge Paul C. Wilson. Judge Rick Zerr, presiding judge of the 11th circuit (St. Charles County), sat in this case by special designation in place of Judge Zel M. Fischer.

Facts: Jimmie Lee Taylor retained attorney James Wirken to handle various legal claims pertaining to management of a trust; later, Wirken also represented Taylor and his wife in their own estate planning and administration matters. On Wirken's advice, Taylor made three loans totaling $250,000 to Wirken's law firm, of which Wirken was the sole equity owner. All three promissory notes securing these loans, drafted and personally guaranteed by Wirken, bore interest and provided for attorney fees in the event of default. At Wirken's suggestion, Taylor also made three additional loans totaling $261,740 to Longview Village Development Company, another of Wirken's clients. The promissory notes securing these loans likewise bore interest and provided for attorney fees in the event of default. Wirken received a commission for delivering Taylor to Longiew as a lender, but he did not advise Taylor of this. Wirken also did not advise Taylor of the law firm's financial straits, did not disclose his ethical obligations to Taylor and did not advise Taylor to seek outside counsel before making any of the loans. The loans never were repaid, Taylor was awarded judgment in his subsequent lawsuit against Wirken and his law firm, and Wirken ultimately was disbarred. Taylor then sought to collect his judgment by suing Wirken's malpractice insurer, The Bar Plan Mutual Insurance Company. The circuit court granted summary judgment (judgment on the court filings, without a trial) to the Bar Plan, finding its policy excluded coverage. Taylor appeals.

AFFIRMED.

Court en banc holds: The circuit court correctly held that Wirken's policy unambiguously excluded coverage for Taylor's loans. The policy excludes claims arising out of an insured's capacity as a legal representative of investors regarding either an investment in which the insured owns an equity interest or for which the insured receives a fee or commission from an entity other than the investor. A legal malpractice insurance policy is given the meaning that would be attached by a reasonably attorney purchasing the policy. A reasonable lawyer would conclude that “investment” as described in the exclusion clause broadly encompassed Taylor’s loans, which involved an expenditure of money for income or profit. The clause unambiguously excludes transactions when the attorney is paid a commission from an entity other than the attorney’s client – as with Taylor’s loans to Longview – or the client invests in an enterprise the attorney owns – as with Taylor’s loans to Wirken’s law firm. The “concurrent proximate cause” rule – which may allow recovery despite an exclusion if the plaintiff points to a cause that is covered under the policy but wholly separate from the excluded clause – does not apply because there is no readily identifiable independent cause of the injury to Taylor other than Wirken’s decision to engage in self-interested investment transactions with Taylor, which is excluded. Further, the use of the word “and” in the exclusion clause cannot be construed as requiring four factors to be present at once for the exclusion to apply. A reasonable attorney purchasing the policy would understand the clause to contain four separately numbered exclusions.