

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**JOHN SHIDDELL, ET AL.,
APPELLANT
vs.**

**THE BAR PLAN MUTUAL, ET AL.,
RESPONDENT**

DOCKET NUMBER WD74462

DATE: JULY 31, 2012

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable Justine E. Del Muro, Judge

Appellate Judges:

Division Two: Joseph M. Ellis, P.J., Alok Ahuja and Mark D. Pfeiffer, JJ.

Attorneys:

Scott A. McCreight, for Appellants

Brent W. Baldwin, for Respondents

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

JOHN SHIDDELL, ET AL., APPELLANT

v.

THE BAR PLAN MUTUAL, ET AL., RESPONDENT

WD74462

Jackson County, Missouri

Before Division Two Judges: Joseph M. Ellis, P.J., Alok Ahuja and Mark D. Pfeiffer, JJ.

John E. Shiddell, John G. Shiddell, Rosalie Shiddell, and Anchor Insurance Agency Inc. ("Appellants") appeal from a judgment entered in the Circuit Court of Jackson County granting summary judgment in favor of The Bar Plan Mutual Insurance Company ("The Bar Plan") in an equitable garnishment action filed by Appellants. Pursuant to a section 537.065 settlement agreement, Appellants had obtained a \$4,500,000.00 judgment against The Bar Plan's insured, Dysart Taylor Lay Cotter & McMonigle, P.C. ("Dysart Taylor"), in an action for malicious prosecution. Appellants challenged The Bar Plan's denial of coverage to Dysart Taylor for that judgment based upon a policy exclusion.

AFFIRMED.

Division Two holds:

- (1) To support a claim of malicious prosecution against an attorney where, as here, the attorney has performed his or her own investigation, the plaintiff must prove that the attorney pursued a lawsuit, knowing it to be unsupported by probable cause, for a primary purpose other than securing a proper adjudication of the claim.
- (2) The "deliberately wrongful acts" language in the legal malpractice policy is unambiguous, and an attorney's actions in pursuing a lawsuit, known to be unsupported by probable cause, for a purpose other than securing the proper adjudication of the claim is clearly a deliberately wrongful act. Thus, as a matter of law, Appellants' claim of malicious prosecution was clearly excluded under the policy language.
- (3) Dysart Taylor did not qualify under the waiver of the exclusion of deliberately wrongful acts "with respect to each Insured who did not know of, or

participate or acquiesce in, the act or omission.” The knowledge of an agent of the corporation with reference to a matter within the scope of his or her authority and employment and to which his authority of employment extends is imputed to the corporation as a whole.

Opinion by: Joseph M. Ellis, Judge

Date: July 31, 2012

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