

**IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

---

**COMPLETE TITLE OF CASE**

STANLEY BRAND, M.D., and BRADLEY L. FREILICH, M.D.,

Appellants,

v.

KANSAS CITY GASTROENTEROLOGY & HEPATOLOGY, LLC,

Appellant,

and

TRAVELERS INDEMNITY COMPANY OF AMERICA,

Respondent.

---

**DOCKET NUMBER WD75901**  
(Consolidated with WD75902)

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** September 17, 2013

---

**APPEAL FROM**

The Circuit Court of Jackson County, Missouri  
The Honorable Peggy Stevens McGraw, Judge

---

**JUDGES**

Division Two: Mitchell, P.J., and Martin and Witt, JJ.

CONCURRING.

---

**ATTORNEYS**

Kirk R. Presley  
Kansas City, MO

Attorney for Appellants Brand and Freilich

Arthur A. Benson II  
Kansas City, MO

Attorney for Appellant Kansas City  
Gastroenterology & Hepatology, LLC,

Wm. Clayton Crawford and Abbigale A. Gentle  
Kansas City, MO

Attorneys for Respondent.

---



**MISSOURI APPELLATE COURT OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**STANLEY BRAND, M.D., and BRADLEY )**  
**L. FREILICH, M.D., )**  
**)**  
**Appellants, )**  
**v. )**  
**)**  
**KANSAS CITY GASTROENTEROLOGY )**  
**& HEPATOLOGY, LLC, )**  
**Appellant, )**  
**and )**  
**)**  
**TRAVELERS INDEMNITY COMPANY )**  
**OF AMERICA, )**  
**)**  
**Respondent. )**

**OPINION FILED:**  
**September 17, 2013**

**WD75901 (Consolidated with WD75902)**

**Jackson County**

**Before Division Two Judges:**

Karen King Mitchell, Presiding Judge, and  
Cynthia L. Martin and Gary D. Witt, Judges

Drs. Stanley Brand and Bradley Freilich, along with Dr. Freilich’s practice, Kansas City Gastroenterology & Hepatology, LLC (KCGH), appeal the grant of summary judgment in favor of Travelers Indemnity Company of America (Travelers) on a collection action, filed pursuant to section 379.200 by Drs. Brand and Freilich and against KCGH and Travelers. The collection action sought reimbursement, under an insurance policy issued by Travelers to Dr. Freilich and KCGH, for damages awarded pursuant to a judgment obtained by Dr. Brand against Dr. Freilich and KCGH. The trial court found that Travelers had no duty to defend Dr. Freilich or KCGH under their liability policy against Dr. Brand’s tort suit, and, therefore, Travelers also had no duty to indemnify either Dr. Freilich or KCGH on the resulting monetary judgment.

**AFFIRMED.**

**Division Two holds:**

1. An insurer's duty to defend is examined at the outset of the case, or upon notice of an amended pleading, based upon facts known or reasonably ascertained through a review of pleadings and reasonable investigation; the insurer's duty to defend is not dependent on facts ascertained through trial.
2. The mere mention of the word, "negligence," within a petition does not trigger a duty to defend pursuant to a provision granting coverage for "negligent acts, errors, or omissions," where the facts underlying the petition are based upon intentional conduct.
3. It is a violation of public policy to allow insureds to insure themselves against their own wanton, reckless, or willful acts.
4. Where the insured fails to notify the insurer at any point of factual circumstances that the insured subsequently claims triggered coverage, the insurer has no duty to defend.
5. Here, although Dr. Brand ultimately obtained a judgment sounding in general negligence, neither Dr. Freilich nor KCGH ever advised Travelers of any facts that would have supported a general negligence judgment. Thus, Travelers was under no obligation to defend Dr. Freilich or KCGH against Dr. Brand's claims and resulting judgment. Here, where there was no duty to defend, there was no duty to indemnify.

**Opinion by: Karen King Mitchell, Judge**

September 17, 2013

\* \* \* \* \*

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