

Jack Burch and Randy Bryant Obtain Summary Judgment for Workers' Compensation Insurer in Premium Dispute Against Insured Asserting Fraud, Conversion, Negligence, and Breach of Contract Claims.

By December 20, 2016

Our client issued workers' compensation policies over several years to a professional employer organization ("PEO I"). PEO I was the principal named insured under the policies, which also provided workers' compensation insurance to hundreds of client companies in Florida and Georgia. PEO I failed to pay the premiums due, and the insurer sued PEO I in Florida.

While that was pending, a sister company/alter ego of PEO I ("PEO II") sued the insurer in Federal District Court in South Georgia, asserting claims for negligence, breach of contract, fraud, conversion, and racketeering. PEO II claimed that it had paid premiums and that the insurer had overbilled premiums and asked for damages in excess of \$1,000,000.00. The insurer asserted counterclaims.

The insurer obtained a judgment in Florida against PEO I. BKBM attorneys **Jack Burch** and **Randy Bryant** and Florida counsel Mary Morris filed a motion for summary judgment in the Georgia case, arguing that the doctrines of res judicata and collateral estoppel precluded PEO II from continuing to litigate and that the insurer was entitled to summary judgment on both PEO II's claims and the insurer's counterclaims. **Mr. Burch** and **Mr. Bryant** showed that the claims and issues in the Georgia lawsuit were essentially connected to those resolved by the Florida court and that PEO II was identical to PEO I or, at a minimum, in privity with PEO I, as the same individual owned, operated, and controlled both companies and participated in both lawsuits.

District Court Judge Wood agreed and granted summary judgment to the insurer, holding that PEO I and II were the same party, the lawsuits featured the same causes of action, and the Florida suit resulted in a judgment on the merits. Answering Shakespeare's famous question voiced by Juliet—"What's in a name?"—the Court answered, "As this [PEO]-saturated story shows, 'several years and multiple lawsuits.'" But despite PEO II's best efforts to avoid being bound by the Florida judgment entered against its alter ego, the Court concluded that PEO I could call itself PEO II all it liked, but that did not diminish the preclusive effect of the Florida judgment against it.