

Insurer Fights Law Firm's Bid For Malpractice Case Coverage

By **Daniel Connolly**

Law360 (January 12, 2023, 4:18 PM EST) -- An insurance company has told a Tennessee federal court it shouldn't have to honor the \$1 million liability policy it sold to a law firm because when the firm president renewed the policy, he didn't disclose that a malpractice claim could be coming.

Berkley Assurance Co. **sued** The Adams Law Firm and related parties Tuesday. The firm, which according to its website lists two attorneys and operates out of Knoxville and Nashville, now uses the name Adams Law.

Berkley says that when Terry Adams renewed the liability policy in January 2022, he didn't disclose that a legal malpractice claim might be filed by a construction contractor who'd lost a breach of contract jury trial a few weeks earlier.

"The policy is void due to a misrepresentation in the policy's renewal application because Adams checked the 'NO' box in response to the question: 'Is applicant, or any other person for whom insurance is being requested, aware of any circumstance or incident which may reasonably be expected to result in a claim?'" the complaint said.

The malpractice claim involves the law firm's representation of contractor Robert E. Sparks.

Mark W. Russell of east Tennessee had hired Sparks to build a log home. He alleged that Sparks botched the construction, citing delays, cracks in a foundation wall, sagging floors and many other problems, according to court records.

Russell canceled the project before its completion, and Sparks hired Adams Law to protect his interests.

According to court records, Russell sued the contractor in state court, claiming breach of contract, violations of the Tennessee Consumer Protection Act and other violations.

At trial in December 2021, the jury ruled against Sparks, finding his actions were "unfair and deceptive" and "willful and knowing," according to the records. The court doubled the \$700,000 jury award under the state consumer protection law, to \$1.4 million.

The court ultimately ordered Sparks and a related company to pay nearly \$2 million in judgment, interest, attorney fees and sanctions, according to court documents.

Sparks filed for Chapter 7 bankruptcy days after the jury verdict.

In September, the trustee handling Sparks' bankruptcy estate, F. Scott Milligan, filed an adversary action against Adams Law, arguing that the main reason Sparks lost the jury trial was that the firm had put on an incompetent defense.

Milligan alleges that attorneys with Adams Law repeatedly failed to communicate with the client and made numerous legal mistakes.

For instance, in November 2021, shortly before the case went to trial, the state court hit Sparks with \$9,000 in sanctions for failing to respond to interrogatories and requests for production. The

sanctions order also limited the evidence he could introduce at trial.

Milligan claims that the Adams Law attorneys didn't tell Sparks about the sanctions or the restrictions on evidence.

The bankruptcy complaint also alleges the attorneys with Adams Law failed to appear at a February hearing to discuss the motion that opposition counsel had filed for discretionary costs and attorney fees and expenses.

The bankruptcy trustee is asking for millions of dollars in damages from Adams Law.

In the complaint filed this week, Berkley is asking the court for a declaratory judgment that the malpractice policy is void.

A representative of Adams Law didn't immediately respond to requests for comment. An attorney for Berkley declined to comment.

Berkley Assurance Co. is represented by Jeremy R. Goolsby of Frost Brown Todd LLP.

Counsel information for Adams Law and the other defendants wasn't immediately available Thursday.

The case is Berkley Assurance Co. v. The Adams Law Firm et al., case number 3:23-cv-00014, in the U.S. District Court for the Eastern District of Tennessee.

--Editing by Orlando Lorenzo.