

# **Missouri Court Refuses to Extend the Ability of a Non-Client Third-Party to Maintain a Professional Negligence Action Against an Accounting Firm**

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The Missouri Court of Appeals for the Eastern District of Missouri ruled in favor of an accounting firm (Respondent), upholding Summary Judgment entered in its favor. The case was filed by a trust and a limited partnership which were wholly controlled by Christopher Jackson (collectively, Appellants). Lyndon Sommer, a Sandberg Phoenix shareholder, represented the accounting firm.

Respondent reviewed the financial statements of non-party AMS Investment, LP (“AMS”) and performed Agreed Upon Procedures to calculate the purchase price of Appellants’ interest in AMS in accordance with the limited partnership agreement. AMS was a client of Respondent, but Appellants were not.

Respondent calculated the amount of Appellants’ ownership interest to be approximately \$1.3 million, and AMS offered Appellants that amount. Appellants rejected the offer and Jackson provided specific reasons why he thought the amount was incorrect. Negotiations between AMS and Appellants ensued. AMS ultimately offered Appellants about \$3 million, which Appellants rejected. Subsequently, AMS and Appellants engaged in litigation and ultimately reached settlement.

Appellants separately filed a negligence action against Respondent claiming it was negligent in reviewing the AMS financial statements. Appellants further alleged the amount calculated for their ownership interest should have been significantly higher. After substantial discovery was conducted, Respondent filed a Motion for Summary Judgment arguing Appellants could not meet their burden of proving they relied on any representation made by Respondent because Appellants rejected the offer which was based on Respondent's calculation. Appellants claimed Summary Judgment was not proper because Respondent owed them a duty to satisfy the standards of care governing Agreed Upon Procedures. Essentially, Appellants asked the Court to allow third-party non clients to maintain an action against an accounting firm based solely on the fact the accounting firm owed a duty to the third party.

The Appellate Court refused to extend potential liability against an accounting firm to a claim by third parties who do not rely on representations made by the accounting firm. The court stated Appellants did not have an accountant-client relationship with Respondent and, therefore, their ability to maintain a cause of action was governed by *Aluma Kraft Mfg. v. Elmer Fox & Co*, 493 S.W.2d 378 (Mo. Ct. App. 1973). *Aluma Kraft* provides a two-part test to determine if a third party is allowed to maintain a cause of action against an accounting firm. First, the accounting firm must be aware that its representations will be used by a third party. In this case, the representation was the calculated amount of Appellant's ownership interest. Second, the third party must rely on the accounting firm's representation.

The Court held Appellants did not rely on any representation made by Respondent. The Court found Appellants did not rely on the amount calculated by Respondent but, in fact, did the exact opposite – they rejected it. Consequently, as a matter of law, Appellants could not show Respondent caused them any injury.

This decision is not only important for the accounting profession but may extend to protect other professionals. Often, third parties focus on the duty element of a negligence claim but completely ignore the causation factor. Even if a professional is found to breach the standard of care – which did not occur in this case – third-party plaintiffs must still establish how they relied on representations made by a professional.

Case citation: *Christopher A. Jackson Revocable Inter Vivos Trust of 19 July 1995 v. Abeles & Hoffman, P.C.*, 595 S.W.3d 156 (Mo.App. E.D. 2020)