



FOLAND, WICKENS, ROPER, HOFER & CRAWFORD, P.C.

As of March 15, 2017, the Southern District of the Missouri Court of Appeals has affirmed a favorable judgment obtained by **Scott Hofer** and **Jim Maloney** in an equitable garnishment seeking more than \$1.8 million from their client. The appellate court agreed that the insurer's reservation of rights was effective and did not waive its coverage defenses. The court also agreed it was required to defer to the trial court's extensive findings of fact on the coverage issues following a bench trial and that the law had been correctly applied. More information about the case can be found below. The court of appeals issued its ruling just one week after oral argument. Scott and Jim handled both the briefing and bench trial before the circuit court as well as briefing and argument on appeal.

The win affirms a November 16, 2015 decision. There, a liability insurer represented by **Scott Hofer** and **Jim Maloney** was absolved of coverage for a \$1,800,000 judgment in an underlying lawsuit. The plaintiff and defendant were door-to-door vacuum cleaner salesmen. They were traveling together for sales calls and involved in an accident. The insurer had issued a commercial auto policy to the vacuum distributor with a \$2,000,000 limit. The insurer initially provided a defense under reservation of rights but was discharged by the defendant, who entered a Section 537.065 agreement with the plaintiff. Facing no defense, the plaintiff obtained \$1,800,000 judgment against the defendant, and he then sought coverage under distributor's policy. On briefing and evidence during a bench trial, the court found the insurer's reservation of rights was proper and effective and, therefore, the insurer had not waived its coverage defenses. The court further found no coverage because the named insured distributor did not own, hire, or borrow the vehicle defendant was driving at the time of the accident. The plaintiff argued the distributor and defendant were operating as a joint venture or that the defendant was an agent of the distributor for purposes of borrowing the accident vehicle from the defendant's parents. The court rejected both of those theories following the bench trial. The suit was litigated in Laclede County, Missouri, and the ruling is subject to appeal.