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WEEKLY

■ \$1,025,000 SETTLEMENT

Company officers get settlement after being held personally responsible in lawsuit

**PERSONAL INJURY
(INSURER BROKER
NEGLIGENCE)**

- **Venue:** Jackson County Circuit Court
- **Case Number/Date:** 1616-CV03974/
Aug. 29, 2017
- **Caption:** Wayne Kindrick, Lindsay Olsen, Branden Banks, Anita Larson, Barbara Davison, Derrol D. Hubbard, Joe L. Barnes, John L. Allen, Shawn T. Lowry, Chad S. Maxwell, Dane Devlin and Mitchell G. Holthus v. Midwestern General Brokerage LLC, Kathryn M. Gustafson, Donald C. Daniels, CJD & Associates LLC, Davidson-Babcock Inc., VGM Brokerage Inc.; VGM Group, Inc.; NCMIC Finance Corporation; NCMIC Insurance Co.; and NCMIC Group Inc.
- **Plaintiff's Attorneys:** Stephen J. Torline, Ben T. Friesen and Michael T. Crabb; Kuckelman Torline Kirkland, Overland Park, Kansas
- **Defendant's Attorney:** Paul Sinclair, Brendan McPherson and Jason Bush; Polsinelli, Kansas City



Ben Friesen



Steve Torline



Mike Crabb

BY ALAN SCHER ZAGIER

A Kansas City area law firm representing directors and officers of a bankrupt franchise of insurance brokerages has won a \$1.025 million settlement of a lawsuit filed after the 12 plaintiffs say they were improperly exposed to personal liability for the company's unpaid debts.

The firm is now pursuing millions in additional damages against another defendant.

The February 2016 suit in Jackson County Circuit Court was settled in late August,

with defendants from two brokerages and several other corporate affiliates agreeing to pay the plaintiffs, all former directors and officers of Brooke Corp. and its lending subsidiary, Aleritas Capital.

Brooke was a publicly-traded company that oversaw a national network of insurance agencies, selling franchises and providing financing and support services. The plaintiffs were represented by Kuckelman Torline Kirkland of Overland Park, Kansas.

The agreement, reached at mediation, will help defray the costs of a \$16 million settlement reached in 2012 after the former Brooke directors and officers were sued by the bankruptcy trustee, who alleged they were liable for "negligently and/or willfully declaring and paying numerous cash dividends" on company stock over the five years preceding a series of voluntary Chapter 11 bankruptcy filings in the fall of 2008.

The trustee said the direc-

tors and officers should have known the company was insolvent and alleged they breached their fiduciary duties.

According to the more recent suit, Brooke and subsidiary Aleritas Capital grew to 370 franchises – but were propped up on an unsustainable business model that relied on recruiting franchise buyers whose six-figure franchise fees kept the Kansas-based company afloat.

In October 2013, company founder Robert Orr pleaded guilty in federal court to filing a misleading 2007 annual report with the Securities and Exchange Commission while he was chairman. He was sentenced to three years' probation and fined \$48,000.

The Jackson County suit describes how the directors sought \$15 million in liability coverage for Brooke and its affiliates and another \$5 million for Aleritas but were instead provided with a policy that capped coverage at \$5 million.

Those limits, discovered after the fact, were the driving factor in the directors' decision to settle the trustees' suit, said lead attorney Steve Torline.

"The directors and officers claimed the insurance brokers agreed to obtain the requested coverage and represented that they in fact procured it," Torline said. "After the lawsuit was filed, the liability insurer informed them that the coverage was significantly less than what they requested."

Torline added that his legal team is "actively pursuing further recovery of an approximately \$13 million settlement balance from another insurance-broker defendant that plaintiffs claim agreed to procure the coverages they requested." An attorney representing the 10 defendants declined comment.

Even with the diminished coverage paying nearly \$2.5 million, the individual plaintiffs' personal obligations ranged from about \$454,000 to \$1.17 million, the suit states.