

# VERDICTS & SETTLEMENTS

FRIDAY, DECEMBER 29, 2023

## — BENCH DECISION — \$4,367,736

### INSURANCE

#### PROFESSIONAL MALPRACTICE Negligent Misrepresentation

BENCH DECISION: \$4,367,736

CASE/NUMBER: Clean & Sober Media, LLC;  
Richard Taite v. HUB International Insurance  
Services, Inc., and Does 1 through 10, inclusive /  
21STCV20391

COURT: Los Angeles Superior, Aug. 14, 2023

JUDGE: Maren E. Nelson

#### ATTORNEYS:

**Plaintiff** – David B. Parker, Shawn Shaffie, Joel A.  
Osman, Arian Kevin Kayhanian (Parker Shaffie LLP)

Defendant – Kelly A. Johnson, Rebecca R. Nelson,  
Caitlin Rabiyan, Holly A. Rice, Jeremiah M. Welch  
(Saxe, Doernberger & Vita PC)

#### FACTS:

The matter arose from a federal action brought in 2018 against Plaintiffs and certain of their affiliated entities, by Grasshopper House, LLC, the proprietor of a drug and alcohol abuse rehabilitation center called Passages Malibu. That lawsuit was entitled: \*Grasshopper House, LLC v. Clean and Sober Media LLC et al.\* (Case No. 2:2018cv00923).

After receipt of the complaint for the federal action, Plaintiffs' then counsel tendered the action to certain of their then-in-place insurance carriers, one of which provided independent counsel to defend Plaintiffs under a reservation of rights. Plaintiffs' then counsel also turned to their insurance brokerage company HUB to tender the complaint to Plaintiffs' historic insurers given that the allegations in the complaint went back several years. HUB failed to tender notice of the fed-

eral action to one of Plaintiffs' historic insurers: Hiscox. After failing to tender notice of the federal action, HUB negligently represented to Plaintiffs that Hiscox had denied the claim when in fact HUB never contacted Hiscox regarding the federal action at all. HUB further misled and falsely let Plaintiffs believe that the basis of the alleged denial was that the claim was not made within the policy period and the allegations in the federal action were outside the retroactive date. In reality Hiscox never had any notice of the underlying complaint because HUB did not send any notice of the federal action, contrary to what it had promised Plaintiffs. As a result of HUB's failure to tender, Plaintiffs were not reimbursed for the fees paid to outside counsel to represent them in the federal action which was a bet-the-company, multimillion dollar litigation against a powerhouse law firm.

As a result of HUB's actions and the necessity for the Plaintiffs to hire outside counsel, the Plaintiffs spent million in litigation fees in the federal action. Six months after the lawsuit ended, HUB's failure to tender notice of the federal action, and subsequent fraudulent cover-up were discovered. After Plaintiffs were sued in federal court by one of their insurers, USIC, in March 2020, Plaintiffs filed a thirdparty complaint against all of its carriers, including Hiscox, and against HUB for professional negligence. Once Plaintiffs settled with all of their insurers, Plaintiffs filed suit against HUB for several causes of action for negligent misrepresentation, professional negligence, intentional misrepresentation, concealment, and constructive fraud.

#### PLAINTIFF'S CONTENTIONS:

Plaintiffs contended that HUB failed to uphold their duties when they failed to tender notice of the fed-

eral lawsuit to Plaintiffs' historic insurance carrier Hiscox. As a direct result of HUB's failure and subsequent concealment Plaintiffs incurred millions of dollars of damages by having to hire outside counsel to defend them in a bet the company case.

#### DEFENDANT'S CONTENTIONS:

Defendant contended that their failure to tender the complaint to Hiscox, even if HUB agreed to do so and represented that it had done so when in fact it had not, and fabricated reasoning for Hiscox's non-existent denial, was negligent at most and did not arise to the level of intentional fraud. Defendant further contended that there was no alleged concealment because HUB was actively investigating the failure for a mere seven weeks before disclosing the facts to Plaintiffs. Defendant consistently prior to, and during, trial contended that there was no evidence that Plaintiffs ever requested for HUB to tender the complaint to Hiscox, while alternatively contending that if there was a duty there was causal connection between HUB's breach and Plaintiffs' claimed damages because Plaintiffs could not prove that Hiscox would have rejected coverage on the issue which would have entitled Plaintiffs to recover its unreimbursed defense fees in a breach of contract lawsuit against Hiscox.

#### RESULT:

The court found that HUB was professionally negligent and that it engaged in fraud by concealment and negligent representation towards plaintiffs Richard Taite and Clean & Sober Media, LLC. The court awarded \$4,367,735 plus simple interest thereon at 7% from July 21, 2021 to the date of the entry of the judgment.

FILING DATE: Jun. 1, 2021

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