

**This is an excerpt of a presentation by Sanford (Sandy) Goffstein, J.D. to E&O insurance professionals in May 2015 in St. Louis, Missouri. Mr. Goffstein has represented Missouri Swiss Re Corporate Solutions' insured insurance agents in errors and omissions matters for more than 30 years. A graduate of Washington University Law School, Mr. Goffstein, along with his partner, Lori R. Koch, and his law firm of Goffstein, Raskas, Pomerantz, Kraus & Sherman, LLC, are actively involved in protecting the interests of insurance agents in Missouri and southern Illinois.**

## **THE RELATIONSHIP BETWEEN INSURANCE AGENTS AND BROKERS, DEFENSE COUNSEL AND CLAIMS HANDLERS**

**Prepared and Presented by Sanford Goffstein with the assistance of Lori R. Koch**

### **HOW DEFENSE COUNSEL WORKS WITH YOUR E&O INSURANCE COMPANY'S CLAIMS DEPARTMENT**

When it becomes necessary for defense counsel to become involved in an insurance agent's errors and omissions claim, from the time defense counsel is selected, there is an ongoing discussion between the claims handler, the defense counsel, and the agent regarding the issues of liability and damages. It is important to note that although the insurer selects the defense counsel, the attorney selected represents the agent and not the insurance carrier.

Defense counsel will provide the agent and claims handler an assessment of liability within a reasonable time after receiving the file. The assessment of liability will be based on:

- a. The interview with the agent (for purposes of this outline “agent” refers to both agents and brokers) and any other employees or witnesses with knowledge of the events alleged in the lawsuit;
- b. Documents reviewed by defense counsel;
- c. The case law or statutes that may be pertinent to the case;
- d. The venue where the case is pending;
- e. The ability of the adverse attorney; and
- f. The background of the plaintiff who has sued the agent.

Defense counsel will also provide an analysis of plaintiff’s damages which will be based on a review of the documents received either directly from the plaintiff or obtained by subpoena from a third party. Defense counsel will also at the proper time advise the claims handler of the chances of a successful defense in percentages, as well as a dollar range of a potential verdict against the agent, if liability is determined against the agent. This same information will also be discussed with the agent and the agent will be kept fully informed by defense counsel at all times. If required by the court or if the parties and the claims handler agree to attempt to settle a case, the case will be sent to mediation. If the case will be mediated, the claims handler will discuss the mediation strategy with defense counsel prior to attending the mediation to determine the range of settlement; the agent may also be consulted with respect to mediation strategy.

If the case is not resolved at mediation and the case is set for trial, defense counsel will prepare a detailed report for the claims handler which outlines all of the facts, legal issues, damages claimed by plaintiff and chances of successfully defending the case with a potential verdict range in the case. The claims handler and defense counsel are working together for the benefit of the agent from the start to the completion of each lawsuit.

### **WHY JUST ANY LAWYER WON'T DO**

The handling of an E&O case against an agent is very specialized. The parameters of the duties required of an agent are defined for the most part by case law, which changes rapidly as new cases are decided. For example, new theories of the expanded duty of an agent may be imposed by developing case law. The attorney who has the responsibility of representing the agent must keep abreast of developments in the law and should also be familiar with the way an insurance risk is marketed, insurance proposals, certificates of insurance, endorsement to an insurance policy, and how to read an insurance policy. These are just a few examples of the information necessary to represent agents.

Sometimes an agent may have a friend, a relative, or their own corporate attorney who they would like to have represent them in an E&O case. Although they may

be good attorneys in their field of law, they will not have the expertise of the defense counsel who spends the majority of his practice representing insurance agents and is knowledgeable about the insurance industry. The benefit of having an experienced professional liability lawyer representing the agent is that he can save much unnecessary time and expense, as he can quickly assess the liability issues. Experienced defense counsel will be better equipped to convince the other attorney and, if necessary, the court that the case against the agent has little or no merit and bring the matter to a close more quickly and in most cases obtain a more successful resolution of the lawsuit.

# Goffstein, Raskas, Pomerantz, Kraus & Sherman, L.L.C.

## **Sanford Goffstein**

### **SwissRe Panel Counsel**

Phone: (314) 721-7171

Fax: (314) 721-7765

Email: [sgoffstein@grlawstl.com](mailto:sgoffstein@grlawstl.com)

### **Practice Areas**

Business Practice

Litigation Practice

Insurance Defense Practice

### **Education**

Juris Doctoris

Washington University, 1960

Bachelor of Arts Bachelor of Science

Washington University, 1959

### **Bar and Court Admissions**

Missouri

U.S. District Courts

Eastern & Western Districts of Missouri

### **Professional and Civic Activities**

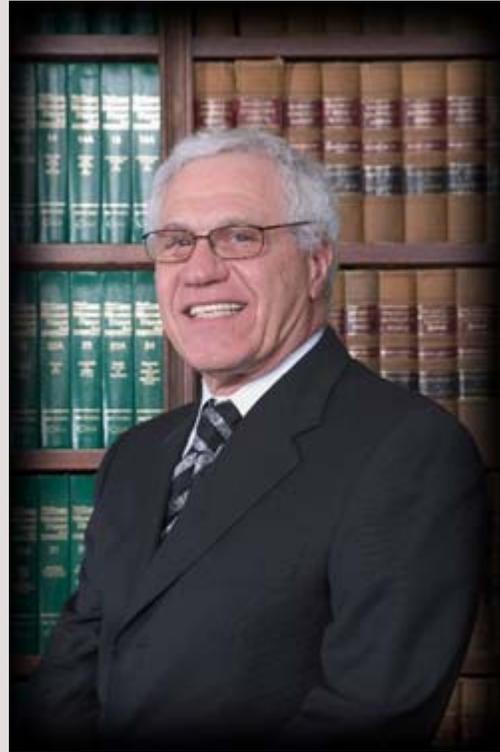
United States Arbitration and Mediation

Mediator

Claims & Litigation Management Alliance

Member

Missouri Organization of Defense Lawyers



**Lori R. Koch**

**SwissRe Panel Counsel**

Phone: (314) 721-7171

Fax: (314) 721-7765

Email: [lkoch@grlawstl.com](mailto:lkoch@grlawstl.com)



**Practice Areas**

Litigation Practice  
Insurance Defense Practice

**Education**

Juris Doctoris  
Washington University, 1985  
Bachelor of Science  
University of Missouri-St. Louis, 1981

**Bar and Court Admissions**

Missouri  
Illinois  
U.S. District Courts  
Eastern District of Missouri  
Southern District of Illinois  
U.S. Court of Appeals  
Eighth Circuit

**Professional and Civic Activities**

Missouri Bar Association  
Illinois Bar Association  
Missouri Organization of Defense Lawyers  
Defense Research Institute  
Claims & Litigation Management Alliance  
Member



