

# Suit was all in the family

## Investment adviser's in-laws win damages of \$1.78 million

By **BETH MOSZKOWICZ**

[Beth.Moszkowicz@TheDailyRecord.com](mailto:Beth.Moszkowicz@TheDailyRecord.com)

A Baltimore jury awarded \$1.48 million in damages against UBS Financial Services Inc. and \$300,000 in punitive damages on Monday against one of its financial advisers, who was the brother-in-law of the plaintiffs.

The plaintiffs, Nancy Lee Kathryn Thompson and Barbara Ann Clements, alleged that their brother-in-law, Gordon H. Witherspoon, led his mother- and father-in-law to believe that they did not need to keep paying \$105,000 per year in premiums for the \$4 million life insurance policy they had purchased from him in 1990.

Rather, the complaint alleged, he allowed the money to be used for family expenses, including his children's education.

Andrew G. Slutkin, Alex J. Brown and Amanda M. Schwartzkopf of **SilvermanThompsonSlutkinWhite** LLC in Baltimore represented Thompson and Clements.

Slutkin said the jury's award of punitive damages sent an important deterring message to others.

"There was financial misconduct and the jury understood that," Slutkin said. "The award of punitive damages sends an important message to others: Don't do this."

Attorneys for Witherspoon and UBS said they will contest the jury's award, which came Monday in **Baltimore City Circuit Court**.

The elder Thompsons paid the premiums as gifts to their children, the named policy owners and beneficiaries, until 1996. When the Thompsons stopped making the premiums, the insurer funded them with loans against the policy's cash value, the plaintiffs said.

"Witherspoon intended that the Plaintiffs rely on his actions, which included having premium notices sent to Witherspoon rather than the respective policy owners, and his continuing misrepresentations that the premiums were being paid as required, so that the Plaintiffs would not inquire into the status of the policy," Thompson and Clements said in their complaint.

They said that this allowed for the loans to be taken against the policy and payments to be made to Witherspoon "for the benefit of his children's education and otherwise for his personal benefit."

The loans were discovered only after the death of the elder Thompson in September 2005, the complaint said.

The jury deliberated for about a day and a half after a two-and-a-half-week trial before Judge Jeffrey M. Geller before finding UBS and Witherspoon negligent. The jury also found Witherspoon, who worked for UBS from 1995 to 2005, liable for negligent misrepresentation, nondisclosure or concealment, constructive fraud, conversion and actual malice.

Slutkin said UBS had an obligation to closely supervise Witherspoon.

Michael Hayes, a professor of law at the

**University of Baltimore School of Law** who was not involved in the case, said the award of punitive damages was significant.

He said that extensive evidence had to be presented to meet the clear and convincing threshold, which was the required level of proof.

"The jury must have believed that [Witherspoon] kept the money for his own benefit rather than just messing up," Hayes said. Hayes said. "It will be interesting to see the post-trial motions."

Timothy C. Bass, an attorney in Greenberg Traurig LLP's Washington office, represented UBS. A spokeswoman for UBS said in an emailed statement that the firm "strongly disagrees with the jury's decision and is exploring its options for reversal of the award."

Matthew E. Kiely, an attorney with **The Law Offices of Matthew E. Kiely** LLC in Baltimore, represented Witherspoon.

"We believe the verdict is not supported by the evidence that was presented to the jury," Kiely said. "The parents decided to stop paying the policy and Gordon maintained his duty of confidentiality to the parents, who were his clients, by not discussing this with the children."

Kiely said he plans on filing a post-trial motion for a judgment notwithstanding the verdict. Pending on the outcome of the post-trial motion, he said he may appeal the verdict.

---

*Reprinted with permission of  
The Daily Record Co. ©2012*