**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**
**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**
**CIVIL TRIAL DIVISION**

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| FREDERICK I. WEINSTEIN | : JULY TERM, 2008 |
| v. | : No. 1404 |
| JAMES GRIFFITH, SR.,<br>FOX ROTHSCHILD LLP, and<br>KLETT ROONEY LIEBER & SCHORLING | : |

**ORDER AND BRIEF MEMORANDUM**
**SUR FINDING OF BENCH TRIAL**

AND NOW, this 2nd day of June 2010, upon consideration of plaintiff's breach of contract claim against the defendants, all matters of record and following a comprehensive bench trial it is **ORDERED** that a **Finding** be entered in favor of defendants and against plaintiff.

In essence, plaintiff has failed to meet his burden to prove that a contract existed; that is, that there was a meeting of the minds between Weinstein and Griffith as to a fee for Weinstein on the bad faith claim. Indeed, the bad faith claim did **not** exist at the time of the alleged contract.

The court further notes that this was **not** a referral as that term of art is used in a legal - - fee sharing context. The plaintiff had been discharged by his clients at a time when there was **no** reasonable basis for bad faith claim. In this latter regard, the court found the defendant, Griffith, a credible and effective witness. Tellingly, the court accepts Griffith's testimony that it was not until the weekend before the arbitration that he determined that a bad faith claim was present,

based on Nationwide finally acknowledging that stacking would apply, and this in the face of Nationwide's continued disingenuous position over the years that stacking did not apply.

This court further concludes that the October 8, 1998 letter did **not** result in an agreement. It was later that Griffith agreed to a 1/3 fee for only the UIM case - - instead of *quantum merit* considerations. (Exhibit "P-6").

Finally, since plaintiff did **no** work on a bad faith claim, the plaintiff would not have had a right to *quantum merit* in that regard. In summary, the plaintiff has failed to demonstrate a right to recover from the defendant, Griffith.

Since Griffith is not liable, the law firm of Klett Rooney Lieber & Schorling cannot be vicariously liable. The court notes that plaintiff did not demonstrate that any pertinent contract existed between himself and the law firm. Further, the cadence of events shows that Griffith left the Klett firm in May 2004; but, the bad faith claim did not settle until December 2004. This was at a time that Klett had no contact with or control over Mr. Griffith. There is no basis to find liability as to the Klett firm.

**BY THE COURT,**

**ALBERT W. SHEPPARD, JR., J.**