

# Missouri Lawyers WEEKLY

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## Trustee settles over fat-treatment company's collapse

*Go Fig. went bankrupt, leaving creditors, others out \$50M*



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The biggest settlement in litigation over fat-treatment company Go Fig. Inc.'s collapse weighed in at \$4.5 million and involved months of dicker over insurance coverage.

Go Fig. trustee Bruce Strauss reached the settlement with Robert and Lynda Semaan, the company's former chief

executive and his wife. Robert Semaan was at the helm when the company, which sold a series of "lipodissolve" injections advertised as dissolving problem fat, expanded rapidly before collapsing into bankruptcy in 2007. Creditors, patients and medical treatment lenders lost more than \$50 million, according to the lawsuit.

Attorneys for Strauss alleged the company was poorly run and had an unsustainable business model. Lynda Semaan was included as a defendant because the company allegedly paid some credit card and car loan bills for the couple.

Rapid expansion made sense as the best way to protect the product because the lipodissolve solution wasn't patented, said Matt Koehler, a Brown & James attorney who represents the Semaans.

"The first thing that goes in any kind of economic downturn will be your luxury items, such as cosmetic surgery," Koehler said. "It was just a couple of factors that crossed paths that caused the company to go down."

Under a contingency fee agreement, \$1.8 million of the settlement was to be paid to attorneys with Kansas City firm Rouse Hendricks German May who represented trustee Bruce Strauss.

Among other terms, the agreement called for the Semaans to drop any claims or potential claims against the company or in bankruptcy court and for Strauss to drop claims against the Semaans, the insurance companies, former officers and employees and "certain third party companies" in which the Semaans

had an interest and might have been insured under the applicable policies.

The settlement is a far cry from the \$90 million initially sought by trustee Strauss. In a court filing, Strauss and plaintiffs' attorneys said the settlement amount is about 95 percent of available insurance limits and pursuing a judgment would have been difficult as the Semaans live in Fiji.

"That would be a good way to put it," Strauss said when asked if the deal with insurers was as good a result as possible.

When the business closed, the Semaans needed to leave, Koehler said. Robert Semaan, who is from Australia, was here on a work visa, he said. Lynda Semaan was pregnant and it was important to get back to her native Fiji before

### \$4.5 Million Settlement

#### FRAUDULENT TRANSFER / BREACH OF FIDUCIARY DUTY

- **Venue:** U.S. Bankruptcy Court for the Eastern District of Missouri
- **Case Number/Date:** Adversary proceeding 10-4084 in 08-40116 bankruptcy/Aug. 20, 2012
- **Judge:** Charles E. Rendlen III
- **Special Damages:** \$1.8 million in attorneys' fees
- **Insurance Carrier:** Admiral Insurance Co. and RSUI Indemnity Co.
- **Caption:** In re: Go Fig. Inc. et al., Bruce E. Strauss, trustee v. Robert Semaan and Lynda Semaan, a/k/a Lynda Tabuya
- **Plaintiff's Attorneys:** Jason Hans and William Beil, Rouse Hendricks German May, Kansas City; Eric Johnson, Spencer Fane Britt & Browne, Kansas City
- **Defendants' Attorneys:** Matt Koehler and Steve Schwartz, Brown & James, St. Louis

the baby was born for health care reasons, he said.

Among the claims to be dropped by Robert Semaan is \$1 million he loaned to the company and claimed as a creditor in bankruptcy court. Plaintiffs' attorneys contended a "substantial portion" of the money was routed from the company to Semaan and then Semaan sent it back.

That was not the case, Koehler said.

"He loaned the company \$1 million before it went out of business," Koehler said. "Had he not done that it would have

gone out of business three or four weeks earlier."

Lawyers for both sides said the parties reached a settlement after months of negotiations following the end of unsuccessful mediation. Attorneys for the two insurance companies that paid the settlement contended that directors' and officers' liability policies excluded coverage for lawsuits a corporation brought against its own officers.

The policies typically are used to pay to defend executives and officers against outside lawsuits, such as share-

holder class actions, said Jason Hans, an attorney with Rouse Hendricks who represented Strauss.

"Had the company still been in business, you can't sue your own officer and get money under the policy," Hans said. "You don't want to have collusion."

Primary insurer Admiral Insurance Co. paid \$1.78 million, said Raymond Jast, an attorney with Chicago firm Wilson Elser Moscowitz Edelman & Dicker who represented Admiral. Excess insurer RSUI Indemnity Co. paid about \$250,000 less than its

\$3 million policy limits, Hans and Jast said.

Thomas Hanekamp, an attorney with Chicago firm Tressler LLP representing RSUI, didn't return a phone call seeking comment by press time.

One of the insurers' principal defenses was an exclusion that insurance company attorneys felt would preclude coverage of the trustee's claim, Jast explained.

But there are no guarantees, Jast noted.

"The downside exposure was too substantial," he said.

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