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Miami Attorney Negotiates \$4.7M Settlement With Insurance Broker in Negligence Suit

Cimo Mazer Mark shareholder Jason Mazer represented trustees of the shuttered Rothstein Rosenfeldt Adler law firm and Banyon Income Fund, two entities that closed in the fallout of disbarred attorney Scott Rothstein's \$1.2 billion Ponzi scheme.

By Zach Schlein | April 08, 2019

Liquidation trustees for the defunct Rothstein Rosenfeldt Adler law firm and Banyon Income Fund have reached a \$4.7 million settlement with insurance broker Aon Risk Services in a negligence suit.

The Jan. 2 settlement was the latest development in a decadelong saga involving former litigator Scott



Jason Mazer, Cimo Mazer Mark.
Courtesy photo

Rothstein's \$1.2 billion Ponzi scheme, and Gibraltar, the Coral Gables private bank used by Rothstein to launder money. The trustees of Rothstein's shuttered law firm and Banyon, a South Florida hedge fund used by Rothstein as a feeder to pump money into his scheme, filed a complaint against Aon in September 2017.

The lawsuit followed an Eleventh Circuit ruling, which found the insurance companies used by Gibraltar — National Union Fire Insurance Co. and Twin City Fire Insurance Co. — did not have to cover \$25 million of the bank's \$50 million settlement with creditors. The court held that under the "professional services exemption" detailed in the National Union policy, "there is no coverage under the policy for any of the insureds," if the plan "for which the Insureds seek coverage arises from any Insured's performance or failure to perform professional services for others."

According to the plaintiffs attorney, Cimo Mazer Mark shareholder Jason Mazer, the ensuing lawsuit against Aon contended the company was negligent in providing the National Union and Twin City Fire insurance policies to Gibraltar.

"The argument in the case was that [Aon] should not have permitted the private bank to be insured under what turned out to be a public company form that included a very broad professional services exclusion," the Miami-based attorney said. As outlined in the two-count complaint filed against Aon in the Southern District of Florida, the plaintiffs charged the company with failing to procure adequate director and officer liability coverage for their client.

"Because of the professional services exclusion, the Policies failed to cover any managerial or regulatory misconduct by any director or officer of Gibraltar if the misconduct had any relation to the business of banking," the complaint said. "Aon procured the policies and allowed the professional services

exclusion to be included even though it knew Gibraltar was in the business of banking.” As a result of purchasing these policies, Gibraltar and its executives were left without coverage in the preceding litigation and settlement.

“Aon engages in the business of procuring insurance products for its clients, and has held itself out as an experienced insurance broker while actively seeking Gibraltar’s business,” the suit said. “As Gibraltar’s agent, Aon owed Gibraltar and the D&O Defendants a duty to procure a policy that in fact covered the acts and omissions committed or allegedly committed by the D&O Defendants in their capacities as directors and officers of Gibraltar.”

Read the

Case 1:13-cv-21653-KMW Document 130 Entered on FLSD Docket 09/25/2017 Page 1 of

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(MIAMI DIVISION)**

MICHAEL I. GOLDBERG, not individually but
as Liquidating Trustee of the Rothstein Rosenfeldt
Adler, P.A. Liquidating Trust,

CASE NO.: 1:13-cv-21653-KMW

ROBERT C. FURR, not individually but as
Chapter 7 Trustee of the estate of Banyon 1030-32,
LLC, and as the Chapter 7 Trustee of the estate of
Banyon Income Fund, LP,

Plaintiffs,

v.

AON RISK SERVICES NORTHEAST, INC.,

Defendant.

SECOND AMENDED COMPLAINT FOR DAMAGES

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The Plaintiffs, Michael I. Goldberg (“Liquidating Trustee”), not individually but as

complaint:

Aon moved for summary judgment in August 2018

(<https://drive.google.com/file/d/0ByGmJRV5lbovbV8xYnRiOXctVGRvOXdQcmIXVusp=sharing>), arguing in their motion the company was not responsible for Gibraltar's damages and "did not breach any duty owed" to the private bank.

"No standard of care exists requiring a broker to procure double coverage under two separate insurance policies," the filing said. "There is no evidence that Gibraltar would have purchased any policy other than the D&O runoff policy that Aon procured ... there is also no evidence that an alternative D&O runoff policy existed that would have provided Gibraltar double coverage for the claims in the Underlying Litigation."

In September 2018, U.S. District Judge Kathleen Williams denied the motion (<https://drive.google.com/file/d/0ByGmJRV5lbovZINSYjdPak1OcmFNUDIMNkZITusp=sharing>). Williams' order adopted the report and recommendation entered by Magistrate Judge Edwin Torres (<https://drive.google.com/file/d/0ByGmJRV5lbovdnZwTXNZa0g1N09vdnIESnRjNusp=sharing>), who concluded the plaintiffs "provided enough evidence from which a jury could infer that Defendant's actions were negligent."

Aon's legal counsel, Foley & Lardner litigators William Davis and Laura Ganoza, did not respond to requests for comment by press time.

Mazer said proceedings regarding a settlement began two weeks before the case was scheduled to go to trial. He described the \$4.7 million sum as a middle ground between what was at stake for the respective parties, noting if Aon lost the case "it could have been for \$25 million, and if the trustees didn't prevail it would be \$0."

In light of their long-term involvement in Rothstein-related litigation, Mazer and his clients are pleased with the outcome.

“I’ve been in this case for a long time,” he said. “It was hard-fought litigation with very sophisticated lawyers who both did a very good job for their clients, at least in my opinion.”

Case: Michael Goldberg and Robert Furr vs. Aon Risk Services Northeast, Inc.

Case No.: 1:13-cv-21653-KMW

Description: Negligence and breach of fiduciary duty

Filing date: Sept. 25, 2017

Settlement date: Jan. 2, 2019

Judge: Kathleen Williams

Plaintiffs attorneys: Jason Mazer and Joshua Alhalel, Cimo Mazer Mark, Miami

Defense attorneys: William Davis and Laura Ganoza, Foley & Lardner, Miami

Settlement amount: \$4,700,000

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