

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

IN RE:)	
)	
DAMIEN R. VEAZEY,)	Case No. 99-14709
ALETHEA K. JOHNSON-VEAZEY,)	Chapter 7
)	
Debtors.)	
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)	
EDWARD J. NAZAR, Trustee,)	
)	
Plaintiff,)	
)	
v.)	Adversary No. 01-5057
)	
ALLSTATE INSURANCE COMPANY;)	
AFFILIATED ATTORNEYS of PISTONIK)	
LAW OFFICES, P.A., a Kansas)	
Professional Association; and DRISKO, FEE)	
& PARKINS, P.C., a Missouri Domestic)	
Professional Corporation,)	
)	
Defendants.)	
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JUDGMENT ON DECISION

The Trustee moves for summary judgment on his complaint to determine lien rights and to avoid the liens of Affiliated Attorneys of Pistotnik Law Offices, P.A. (“Pistotnik”) and Allstate Insurance Company (“Allstate”).¹ At the time of debtor’s bankruptcy filing, debtor was represented by Pistotnik in a suit for damages caused by an automobile accident. The suit was not resolved at the time of debtor’s filing and the trustee rejected debtor’s contract with Pistotnik,

¹Defendant Drisko, Fee & Parkins did not file an answer to the trustee’s complaint. As a result, an order granting default judgment against defendant Drisko, Fee & Parkins, P.C., in favor of the Chapter 7 trustee was entered on July 10, 2001.

electing to pursue the claim on behalf of the bankruptcy estate. The trustee's law firm, Redmond & Nazar, L.L.P., proceeded with the case. The trustee filed suit against Laura Marciallas, the alleged tortfeasor, in Sedgwick County District Court, Wichita, Kansas, and the matter was settled for \$25,000. Pistotnik claims an attorney's lien for \$1,000.00 in attorney's fees and \$67.66 in expenses against the settlement proceeds. See Kan. Stat. Ann. § 7-108. Additionally, Allstate claims a lien against the settlement proceeds in the amount of \$44,520.05 for personal injury protection (PIP) payments made to the debtor and her medical providers under her automobile insurance policy. See Kan. Stat. Ann. § 40-3113a. The trustee seeks to avoid these liens, arguing that the assertion of both liens post-petition violates the 11 U.S.C. § 362(a)² stay, rendering the liens void. Pistotnik argues that its lien does not violate § 362(a) and is not void because it had a pre-petition interest in the debtor's property which it could perfect by filing notice of its attorney's lien post-petition. Allstate contends that the settlement proceeds obtained by the trustee are duplicative of Allstate's PIP payments to the debtor and that it has a right to reimbursement of its payments under Kan. Stat. Ann. § 40-3113a. The Court concludes that both liens are void as violating the stay and that summary judgment should be granted to the Trustee.

The Trustee's Motion For Summary Judgment is GRANTED and judgment entered for the Trustee on the complaint.

IT IS SO ORDERED.

Dated this 28th day of January, 2002.

ROBERT E. NUGENT, BANKRUPTCY JUDGE
UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS

CERTIFICATE OF SERVICE

²All references are to the Bankruptcy Code, Title 11, United States Code, unless otherwise noted.

The undersigned certifies that a copy of the **Judgment on Decision** was deposited in the United States mail, postage prepaid on this 28th day of January, 2002, to the following:

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