

## **Clients Beware - A critical analysis of Personal Injury Retainer Agreements**

### **Albert B. Pepper Jr. - Simon Law Firm P.C. (case study/analysis - primary document)**

“In this analysis, with the assistance of Google Gemini A.I. and Grok xAI, I examine the language and terms contained within the Professional Employment Agreement entered into by plaintiff-client Albert B. Pepper Jr. and The Simon Law Firm, P.C. of St. Louis, Missouri, using it as a case study. The purpose is to identify every material clause and then deliberately assess whether the retainer is equitably composed to balance the legitimate interests of both client and counsel, or whether it instead reflects a substantial law-firm-favoring imbalance in power dynamics that leaves the injured client vulnerable to a range of serious financial and procedural hazards.”

I, Albert B. Pepper Jr. have manually reviewed the A.I. output and citations for merit and factual rigor and append my name accepting all liability both jointly and severally d/b/a Phoenix Rising Productions LLC to the premises and conclusions thereof.

#### **Background:**

Albert B. Pepper Jr. suffered personal injury as a result of the departure from the standard of care by Dr. Vladimir Gelfand M.D. d/b/a Chesterfield MedCenter and retained The Simon Law Firm P.C. for legal representation in a pursuit of financial compensation as a result of the injuries sustained.

A formal complaint was filed within the 21st Judicial Circuit of St. Louis County, Missouri on 10/17/2019 naming Albert B. Pepper Jr as plaintiff and Dr. Vladimir Gelfand d/b/a Chesterfield MedCenter as defendant. Case # 19SL-CC04680.

The case went to a four day trial in Div. 12 between the dates of 1/22/2024 to 1/26/2024 and concluded with a jury verdict. Hon. Stanley J. Wallach, presiding.

The jury verdict and results of the trial were unsatisfactory to the plaintiff client and plaintiff client sought post trial representation and remedies that were yet within the fiduciary responsibility of counsel and within the trial court context prior to filing a final judgement. Counsel with The Simon Law Firm P.C. was uncooperative in discussing post trial motions and remedies that were available to the plaintiff client under Missouri Statute and withdrew their representation on 2/29/2024

Plaintiff client, Albert B. Pepper Jr. proceeded pro se within the statutory time limits with a Motion of Additur or in the alternative New Trial” filed on 3/28/2024. Hon. Stanley J. Wallach allowed the post trial pro se motion to be administratively denied under Rule: 78.06 without a ruling on June/26/2024 when the judgement was entered on the jury verdict and became final.

**Therefore, Albert B. Pepper Jr. now presents the actual retainer agreement that had been entered into between Pepper and The Simon Law Firm P.C. Pepper has primary knowledge and standing with regard to the analysis and commentary of the document whereas Pepper was a party to the execution of the document.**

The Professional Employment Agreement that governed this representation is the very document analyzed below.”

### **Consumer Alert # 1 - The most compromising omission - The “Client First” Clause**

This agreement contains **no Client-First (or “Net Recovery Protection”) clause.**

The contract states:

“For such services, it is agreed that the undersigned will pay to said Attorneys a fee equal to Forty percent (40%) of the total gross amount recovered... In addition... after deduction of attorneys’ fees, the undersigned agrees to reimburse Attorneys for the total of all litigation and other case related expenses incurred by Attorneys.”

**Exactly as the Gemini A.I. risk-disclosure example warns:** the firm is reimbursed first for its entire “investment” in costs, then takes 40% of the **gross recovery**. If a jury awards \$100k and the firm spent \$60k on experts, the firm recovers its \$60k costs + \$40k fee. The client receives \$0.

**There is zero language requiring the firm to reduce its fee so the client receives a portion of any recovery.** No “1/3 Rule,” no “attorney’s fee shall not exceed the net amount received by the Client,” and no duty to warn the client when mounting costs threaten a net-zero outcome. **This is the precise “Marketing Vampirism” scenario the Gemini information describes:** the firm can still advertise the verdict while the injured client walks away empty-handed.

**Consumer Alert # 2 - Under this retainer agreement Simon Law takes their fee from the Gross settlement, award amount**

**Many retainer agreements reverse the order: expenses are deducted first from the gross recovery, and the contingency fee percentage is then applied only to the net amount remaining.** Missouri Rule 4-1.5(c) explicitly requires the contract to state “whether such expenses are to be deducted before or after the contingent fee is calculated.” **This alternative structure dramatically improves the client’s net recovery.**

**Example comparison (\$100k gross recovery, \$60k expenses):**

- **This Pepper contract (fee first):** 40% fee = \$40k → remaining \$60k pays expenses → **Client: \$0.**
- **Expenses-first version:** \$60k expenses → \$40k net → 40% fee on net = \$16k → **Client: \$24k.**

**The expenses-first model (or a true Client-First cap) is what ethical firms use to prevent the exact zero-recovery outcome this document permits.**

Even though the contract between Pepper and Simon Law complies with Rule 4-1.5(c), with regard to fee disclosure it uses the least protective version for the client:

- This contract (fee-first): \$100k verdict + \$60k expenses → Client gets \$0.
- Expenses-first version (allowed and common): \$60k expenses first → \$40k left → 40% fee = \$16k → Client gets \$24k.

**Many ethical firms voluntarily choose the expenses-first method or add a true “Client-First” cap. The Simon contract does neither** – and it is permitted to do so because it discloses the harsh order as required by Rule 4-1.5(c).

### **Consumer Alert # 3 - Meeting of the Minds**

The agreement is written in clear English, but it is heavily one-sided. The client is required to keep the firm updated on address and phone changes or risk missing deadlines; **the firm, however, can unilaterally decide the case is no longer worth pursuing and withdraw with only written notice.** A layperson reading this document might reasonably believe the lawyers are “all in” once they sign. In reality, **the firm retains an escape hatch after its own investigation.** True mutual understanding of the risks is not reflected.

**The contract expressly reserves Simon Law the right to discontinue representation “in the opinion of the Attorneys”** after investigation, with 60 days’ notice (or 14 days for appeals). This is **permitted** under Missouri Rule 4-1.16(b), which allows withdrawal if it can be accomplished without “material adverse effect” on the client and with reasonable notice. It is **not** contrary to the Model Rules, Missouri statutes, or civil procedure so long as the firm complies with Rule 4-1.16(d) (protecting client interests, delivering file, etc.). **However, the one-sided nature can undermine a true “meeting of the minds” for unsophisticated clients.**

In fee disputes, a client **can attempt** to argue lack of meeting of the minds or that they were unsophisticated and did not understand the risks. **Missouri contract law requires mutual assent to essential terms.** However, courts routinely enforce clear written

retainers signed by clients. No Missouri statute voids attorney-client agreements solely for “unsophistication,” and successful challenges are rare once the client has signed. The key statute is Missouri Supreme Court Rule 4-1.5 (reasonableness of fees) and general contract principles (RSMo Chapter 431). Case law on this exact defense in retainer disputes is sparse and generally unsuccessful when the document is unambiguous.

#### **Consumer Alert # 4 - Contingency Fee Split**

**40% of the gross recovery** (settlement or judgment), **taken before any expenses are reimbursed.** This is higher than the more common 33 $\frac{1}{3}$ % in many Missouri personal-injury cases and is applied to the total award without any reduction for costs. No sliding scale, **no reduction if the case settles early, and no distinction between pre-suit and post-suit recoveries.**

**Note: Many Missouri firms use a sliding scale (e.g., 33% if settled pre-suit, 40% if it proceeds to trial). This flat 40% with no sliding scale is less client-friendly than industry norms.**

#### **Continuation of Representation**

The firm may withdraw at any time after investigation if, “in the opinion of the Attorneys,” the claims should not be pursued further. Client gets 60 days to find new counsel (at no cost to the original firm for cooperation). After 60 days the firm can simply stop representing the client. For appeals, the firm can refuse with only 14 days’ notice. **This is not an unconditional promise to see the case through to verdict or appeal.**

**Simon Law retains the right to impose accrued litigation expenses** up to the time of withdrawal upon any future recovery obtained by new counsel. Under RSMo § 484.130, attorneys have a statutory lien on the cause of action and proceeds. Even after withdrawal, the firm can assert a charging lien (or quantum meruit claim) for expenses

and reasonable value of services performed. New counsel and the client would have to satisfy or litigate that lien before the client receives net proceeds.

### **Impact on Compensatory Damages**

The 40% fee and full expense reimbursement are taken out of the **total gross** recovery. Compensatory damages (medical bills, lost wages, pain and suffering) are not carved out or protected. If the verdict or settlement barely exceeds the firm's costs, the client's compensatory recovery is effectively consumed by the firm's fee and expenses.

### **Impact on Punitive Damages**

The contract makes no distinction. Any punitive damages awarded are swept into the "total gross amount recovered" and immediately reduced by 40% plus full expense reimbursement. Missouri law allows punitive damages in personal injury cases under certain circumstances, yet the client receives no enhanced protection or separate treatment of that portion of the award.

**Punitive Damages and - The Tort Victims' Compensation Fund (RSMo § 537.675) 50% split applies to any final punitive judgment** (after all appeals). The state automatically takes **50% of the punitive portion AFTER attorney fees and expenses are deducted**. Settlements and pre-final-judgment resolutions are exempt.

### **Example (\$1,000,000 punitive award):**

- Firm takes 40% fee on the gross punitive = **\$400,000** (per the contract).
- Expenses are also deducted.
- Remaining punitive balance is split 50/50 with the state. **The firm does recover its full 40% from the gross before the fund lien attaches. The client is left with only 50% of whatever punitive remains after the firm's fee and expenses** – a double reduction that the retainer never discloses.

### **Everything is Negotiable**

In theory, yes. In practice, this is a pre-printed form signed by the client on 1-1-2019 and accepted by the firm on 2/15/19 with no handwritten changes, no crossed-out clauses, and no addendum. **The client was presented with a take-it-or-leave-it document that heavily favors the firm.**

**All terms (including the fee) remain negotiable and subject to amendment by mutual written agreement at any time until the contract is fully performed.** However, once signed, the client cannot unilaterally change it; both parties must agree.

### **Mediated Settlement Agreements**

Even though the contract is silent, **Missouri Supreme Court Rule 4-1.2(a)** mandates: “A lawyer shall abide by a client’s decision whether to settle a matter.” The client – not the firm – has final authority on settlement. **The firm must consult the client and obtain informed consent.** Silence in the retainer does not override this ethical and procedural rule.

### **Litigation Expenses**

The client is liable for **every** conceivable cost—court fees, expert witnesses, consultants, depositions, trial exhibits, travel, photocopies, computerized research, etc.—but only **after** the 40% fee is taken. The list is exhaustive and open-ended (“and all other similar expenses”). There is no cap, no requirement that the firm obtain client approval before incurring six-figure expert bills, and no obligation to advise the client when costs are approaching or exceeding the likely recovery value.

**The contract does NOT expressly allow the firm to unilaterally stop funding** without notice. However, the broad withdrawal clause effectively permits the firm to cease advancing costs by simply withdrawing “in the opinion of the Attorneys” with the required notice.

### **What we see herein**

- 40% gross contingency fee (**no pre-trial / post-trial sliding scale – unusual compared to the 33%/40% structure many Missouri firms use**)
- Full reimbursement of all litigation expenses from client's share
- Unilateral withdrawal rights (60-day notice for non-pursuit; 14-day for appeal)
- No fees or expenses owed if zero recovery
- Written accounting of recovery and expenses at end of case
- Electronic file retention for 5 years
- Client obligation to keep current contact information
- Bankruptcy disclosure warning

### **What we do not see herein**

- **Any "Client-First" or net-recovery protection clause**
- Any cap on expenses or duty to monitor costs for the client's benefit
- Any requirement to reduce fees when the client would otherwise receive nothing
- **Any promise to pursue an appeal if the client wants one**
- Any reference to medical liens, subrogation, or Medicare/Medicaid repayment obligations (beyond a single bankruptcy paragraph)
- Any arbitration or dispute-resolution clause between client and firm
- **Any sliding-scale fee reduction for early settlement**
- **Any language prioritizing the client's net recovery over the firm's marketing value**
- Any disclosure of the Tort Victims' Compensation Fund 50% punitive split

### **Bottom line for Clients**

**This retainer agreement is a classic example of a standard "mill" or volume personal-injury contract that maximizes the firm's upside while exposing the injured client to the very real risk of a "win" that leaves them with zero dollars in their pocket. Albert B. Pepper Jr. signed a document that contains none of the protective language ethical firms voluntarily include – and it affirmatively permits the precise net-zero outcome the Gemini risk disclosure warns against.**

**If you are considering signing a similar agreement, demand the Client-First / Net-Recovery Protection clause**, expenses-first calculation, sliding-scale fees, and full disclosure of Missouri's punitive-damage fund split. **If the firm refuses, walk away.** Your health and your future recovery are worth far more than a 40% gross fee that can leave you with nothing after the lawyers, experts, and the State of Missouri are paid.

**Below is a) the word verbatim retainer agreement between Albert B. Pepper Jr. plaintiff client and The Simon Law Firm P.C. acting as counsel b) screenshot of actual contract featuring the dates of execution, acceptance and signatories.**

## **PROFESSIONAL EMPLOYMENT AGREEMENT**

The undersigned ("Client") hereby agrees to employ The Simon Law Firm, P.C. ("Attorneys"), to represent him or her for personal injuries related to prescription opioid pain medicine, arising in Missouri ("Claims").

For such services, it is agreed that the undersigned will pay to said Attorneys a fee equal to Forty percent (40%) of the total gross amount recovered, whether by settlement before suit is filed or by settlement, judgment or verdict after suit is filed. In addition, in the event that a recovery is made, after deduction of attorneys' fees, the undersigned agrees to reimburse Attorneys for the total of all litigation and other case related expenses incurred by Attorneys. Litigation and case related expenses shall include all court costs and fees, and the expenses of consultants, experts' fees and expenses, professional fees, investigation, deposition costs, exhibits, trial demonstration evidence, travel and lodging directly related to the case, long distance telephone, photocopies, computerized research, if deemed necessary, and all other similar expenses directly related to the client's claim(s).

In the event the Attorneys determine, after conducting an investigation, legal research, or discovery, that the Claims should not, in the opinion of the Attorneys, be pursued further by the Attorneys under the terms herein, Client agrees that the Attorneys may withdraw from the representation of Client by sending written notice to Client, at Client's last known address, of the Attorneys intention to withdraw from Client's representation. In such event, Client shall not be obligated to pay any attorney fees to the Attorneys from settlements entered into after the Attorneys withdrawal. Client shall have 60 days after receiving notice of Attorneys intent to withdraw to retain substitute counsel with

whom the Attorneys will cooperate at no expense to Client. After expiration of 60 days after notifying Client of their intention to withdraw, the Attorneys may withdraw from the representation of Client.

**FURTHER, AS THIS IS A CONTINGENT FEE AGREEMENT, IF CLIENT IS NOT THE PREVAILING PARTY AND NO RECOVERY IS MADE, CLIENT SHALL NOT BE REQUIRED TO PAY ANY ATTORNEY'S FEES AND SHALL FURTHER NOT BE REQUIRED TO REIMBURSE THE ATTORNEYS FOR ANY LITIGATION AND CASE RELATED EXPENSES WHICH ARE INCURRED.**

If an appeal is possible in Client's case, but in the opinion of the Attorneys such appeal is not economically or legally justified, the Attorneys are not required to pursue such an appeal and may withdraw in accordance with the terms above, but in such circumstances must provide Client with 14 days written notice of their intentions so that Client may employ other counsel if desired. To the extent pursuit of the Claims is unsuccessful, the Attorneys shall have no duty to pursue an appeal and may withdraw as set forth above upon 14 days written notice.

Upon completion of this matter, Attorneys shall provide client with a written statement confirming the outcome of the matter and, if there is a recovery, showing the remittance to client and the method of its determination, including an itemization of all litigation and case related expenses incurred on behalf of client.

Attorneys will maintain my client file electronically for at least five years after my case has been concluded or the firm has withdrawn its representation of me, whichever occurs earlier. Upon conclusion or withdrawal, I may request to take possession of my file. If I do not request my file within ninety days of conclusion or withdrawal, the paper file will be confidentially destroyed and only an electronic version will be maintained. At the end of five years, the electronic file may be confidentially destroyed without further notice to me.

Clients should be aware that if they have an open bankruptcy you should inform your bankruptcy attorney immediately of this pending lawsuit. If at any time after initial injury a bankruptcy was opened and closed, there is a possibility that your bankruptcy will be re-opened to include any potential settlement you may receive. Client agrees that before filing bankruptcy you will contact us.

Client also understands that it is client's obligation to make sure that Attorneys always have my current address and telephone number on file. Without this current information, Attorneys may not be able to learn facts important to my case, or may not be able to meet important deadlines or have difficulty making decisions that require my input. I

therefore agree to notify Attorneys promptly whenever I change my home address, my work address, my home telephone number, pager or cellular telephone number.

**Albert Pepper**

Date Accepted: 1-1-2019

**Attorney**

**The Simon Law Firm, P.C.**

Date Accepted: 2/15/2019

**JPG image file: Professional Employment Agreement Pepper Simon Law**

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Albert Pepper

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Attorney  
The Simon Law Firm, P.C.

1-1-2019  
\_\_\_\_\_  
Date Accepted

2/15/19  
\_\_\_\_\_  
Date Accepted

**Notes:**