

## [Blank Rome Facing Trial for Legal Malpractice, Attorney Deceit Claims](#)

New York Law Journal (Online)

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### **New York Law Journal**

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#### **Body**

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A \$33 million legal malpractice and attorney deceit case against **Blank Rome** is teed up for trial, after a New York judge denied the law firm's latest bid to dismiss the case.

The judge's [decision this week](#) on **Blank Rome**'s summary judgment motion is the latest development in the long-running case stemming from the law firm's former representation of Kristina **Armstrong**, the wife of a bank executive, in a divorce.

**Armstrong** claims the firm never told her it was also representing her husband's employer, **Morgan Stanley**, in lucrative transactions—even when the husband was on the company's management committee—and the firm did not act in her best interests during the divorce.

Manhattan Supreme Court Justice David B. Cohen, in a decision posted Wednesday, said **Blank Rome** failed to demonstrate that **Armstrong**'s claims under Judiciary Law Section 487, claiming attorney deceit, have no merit. He also said the parties' conflicting evidence on the legal malpractice claim raises "issues of fact."

Now **Armstrong** and her attorneys are asking for a trial date. When asked about the possibility of settlement, **Armstrong**'s lawyer, Jonathan Sack of Sack & Sack, said in an interview that the defense's settlement proposals, after a court-ordered mediation, have been "insulting." He added, "I'm looking to try the case. I think they need to be exposed for exactly what they did."

Sack said Cohen's decision "speaks to the potency and the level of proof" his client has.

The law firm's attorney in the malpractice case, Philip Toutou, a partner of Hinshaw & Culbertson, and a spokeswoman for **Blank Rome** did not immediately return messages seeking comment Friday about whether they would appeal. **Blank Rome** [unsuccessfully appealed](#) a 2014 [decision from Justice Anil Singh](#) denying a motion to dismiss.

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The case stems from Armstrong's 2009 divorce petition against her then-husband, Michael Armstrong. Years earlier, Michael Armstrong had become global head of Morgan Stanley's private wealth management department and a member of its management committee.

Shortly after filing for divorce, she retained Norman Heller and Dylan Mitchell, partners of Blank Rome. The following year, she signed a stipulation in which she waived her right to have her husband's securities licenses valued.

In May 2010, she and her husband entered into a written settlement agreement in which she received about \$9.1 million, according to Cohen's decision. (Armstrong's ex-husband now leads Royal Bank of Canada's wealth management division in the U.S.)

In her 2013 legal malpractice lawsuit against Blank Rome, Kristina Armstrong claimed the law firm never informed her that the securities license her husband earned during their marriage had boosted his earning capacity, meaning she could have received more from him in the divorce.

Armstrong alleged the firm concealed the value of the enhanced earning capacity and deceived her into waiving her right to value the license because Blank Rome was operating under an undisclosed conflict of interest. She said that, at the time she retained the law firm to represent her in the matrimonial action, Blank Rome was simultaneously representing the husband's employer, Morgan Stanley, in various matters.

The firm never informed her that Blank Rome represented Morgan Stanley in matters dating to 1982, even though, when she retained the firm, her husband sat on Morgan Stanley's management committee. She pointed to Blank Rome's representation of Morgan Stanley in a \$400 million public finance matter and argued Blank Rome was more interested in protecting the husband and its relationship with Morgan Stanley than being a zealous advocate for her. She's claiming about \$33 million in damages.

In response to the malpractice suit, Blank Rome counterclaimed for about \$99,000 in unpaid legal fees, plus interest.

According to Cohen's decision, Blank Rome argued that its failure to inform Armstrong that the firm represented the husband's employer, Morgan Stanley, does not constitute malpractice. The firm said there was no conflict of interest, because the underlying matrimonial action was entirely unrelated to any matters in which it represented Morgan Stanley. The firm also contended that Morgan Stanley was not a multimillion-dollar client, and in 2009 and 2010 the bank accounted for less than 0.2 percent of the firm's gross income.

Blank Rome argued that the bank's management committee did not control the assignment of legal work to law firms, and the husband had no knowledge of Blank Rome's existence until the firm was initially retained to represent the wife in the divorce.

In his Wednesday decision, Cohen said the parties' conflicting affidavits, deposition testimony and expert opinions "raise issues of fact as to whether [Blank Rome and its lawyers] acted under an undisclosed conflict of interest, and, as a result, their professional judgment was impaired causing them not to seek a valuation" of the enhanced earning capacity and to pressure the wife to waive her right to a valuation without sufficient explanation.

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"The competing expert affidavits also raise issues of fact as to whether plaintiff suffered damages as a result," the judge said.

The ruling found that **Armstrong's** Section 487 claim-which allows a plaintiff to recover treble damages for attorney deceit on any party or the court-was not duplicative of the malpractice claim. **Blank Rome** "failed to demonstrate" that **Armstrong's** attorney deceit claim had no merit, Cohen said.

While **Blank Rome** submitted affidavits denying that its decisions were influenced by a conflict of interest and that it did not intend to deceive **Armstrong**, **Blank Rome's** "assertions are insufficient to warrant judgment" in its favor, the judge said, adding "they merely raise an issue of fact."

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