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### Thanks, But No Thanks

An appeals court's flip-flop has added \$1.1 million to a former client's malpractice settlement demand of Hackensack solo **Stephen Roth**. In August, a three-judge panel agreed to hear Roth's appeal of a ruling that he violated his duty to client Barbara Crews by walking out of a 1994 alimony and equitable distribution trial against her husband.

The appeals court was poised to decide whether the walk-out — for which Roth says he had legitimate strategic reasons — violated professional standards. But on Nov. 19, in *Crews v. Roth*, the appeals court said whoops, it didn't want to review the liability ruling against Roth.

That left only damages to be decided at trial and prompted the defense to accept a demand for the \$1 million policy

limits made three years ago and repeated in August by Crews' lawyer, **Glenn Bergenfield** of Princeton.

Now Bergenfield is saying it's too late, according to correspondence in the case. He told defense lawyer **Thomas Flinn** of Montclair's **Garrity, Graham, Favetta & Flinn** that Crews now wants \$2.1 million, half his experts' value of the case. Flinn didn't return a call for comment on Friday, but his view is on the record. "It is our position that the matter is settled," he wrote to Bergenfield.

As the parties squabble, the appeals court will be busy. Though it won't hear the liability issue, it is reviewing whether the damages trial — if there is one — should be heard by a judge or a jury.

*By Henry Gottlieb*

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