

BAD FAITH BLOG

Thirty-day limit to intervene in a case after notification of a rollover agreement was found to apply even when no case was pending.

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One of Missouri's statutes aimed at curbing abusive tactics used to "set up" extra-contractual claims in Missouri was construed as providing thirty days to intervene even when there was no pending lawsuit. RSMo. §537.065.2 requires an insurer be provided written notice of a contract to limit recovery to an insurance contract (commonly referred to as a "rollover agreement"), and grants the insurer thirty days after receiving the notice to intervene as a matter of right in any pending lawsuit regarding damages. The Western District previously held intervention sought more than thirty days after receiving notice of the rollover agreement in a lawsuit was untimely because the insurer was aware of the arbitration proceeding and had been invited to participate within 30 days of receiving notice but declined. See *Britt v. Otto*, 577 S.W.3d 133 (Mo.App. W.D. 2019).

Last week the same court extended *Britt's* holding and held an insurer was not required to have knowledge that an arbitration or lawsuit had been filed against its insured for the thirty-day clock to run. In *Aguilar v. Geico Casualty Co.*, 2019 WL 4145019 (Mo.App. W.D.), Geico offered to defend its insured under a reservation of rights, but that offer was rejected by the insured. The insured and underlying plaintiff then entered into a rollover agreement and provided the statutory notice to the insurer. Geico responded by seeking to intervene, which led the underlying plaintiff to dismiss the lawsuit without prejudice. Three months after notice had been provided to the insurer of the rollover agreement, Plaintiff and the insured agreed to arbitrate. The arbitration resulted in a \$35 million award. Geico did not know about the arbitration and, unlike the insurer in *Britt*, was not invited to participate. When plaintiff sought to have the arbitration award confirmed by a circuit court, Geico sought to intervene under Section 537.065.2. Geico's motion was denied and it appealed.

The Western District affirmed the circuit court's denial of intervention, concluding the insurer's motion to intervene in the action to confirm the arbitration award was not timely because it was filed more than thirty days after receiving the notice of the rollover agreement. The Court found it was irrelevant that Geico did not know about the arbitration proceeding because, even if it had, the arbitration proceeding was not filed until more than thirty days after Geico received notice of the rollover agreement. Thus, Geico's motion to intervene in the arbitration action would have also been untimely just like its motion to intervene in the action to confirm the arbitration award was found untimely.

Case citation: *Aguilar v. Geico Casualty Co.*, 2019 WL 4145019 (Mo.App. W.D.).