

BAD FAITH BLOG

Missouri Supreme Court Reverses \$5.2M Judgment Entered Before Insurer Permitted to Intervene

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In *M.O. v. GEICO*, No. SC99732, -- S.W.3d -- (Jan. 10, 2023), the Supreme Court of Missouri enforced an insurer's right to intervene in a suit against its insured under Section 537.065.2 (2017). The claimant sought damages resulting from her contracting HPV, a sexually transmitted infection when she had sexual relations with the insured in his vehicle. The insurer denied coverage of the claim under the insured's automobile liability policy. Thereafter, the claimant and the insured entered into a Section 537.065 agreement, where they agreed the claims against the insured would be submitted to arbitration, with recovery of any judgment limited to insurance. After arbitration resulted in a \$5.2 million award against the insured, the insurer was informed of the Section 537.065 agreement. The insurer timely moved to intervene in the resulting lawsuit pursuant to a statutory right granted by the 2017 version of Section 537.065.2. The trial court entered judgment confirming the arbitration award in favor of the claimant before ruling on the insurer's motion to intervene. Only after the judgment was entered against the insured did the trial court permit the insurer's intervention.

The insurer appealed to the Missouri Court of Appeals, Western District, which affirmed the trial court's judgment in June 2022. Subsequently, the insurer's application for transfer to the Supreme Court of Missouri was granted.

The Supreme Court ultimately vacated the trial court's judgment and remanded the case, concluding the insurer was entitled, but denied the opportunity, to intervene in the suit before judgment was entered. The Supreme Court declined to address what the insurer could or should have been permitted to do if the trial court properly allowed intervention before entry of judgment, noting doing so "would be purely advisory."

The 2017 amendment to Section 537.065 added new provisions which required an insurer to be provided written notice of the execution of a Section 537.065 contract, and granted the insurer a right to intervene in any pending lawsuit involving the claim for damages. However, the 2017 amendment did not expressly state what procedural or substantive rights an insurer has after intervening. In 2021, the Missouri legislature made numerous amendments to Section 537.065, including specifying the rights an insurer has upon intervention. Read [here](#) for details on the 2021 amendment.