

BAD FAITH BLOG

# Montana Supreme Court Reverses to Allow Insurer to Intervene and Challenge Reasonableness

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**Summary:** A landowner brought an action against the general contractor and subcontractors involving the construction of a home. General contractor's insurer moved to intervene to challenge reasonableness of a \$12M Judgment to which contractor confessed judgment. The lower court entered Judgment in favor of general contractor. The insurer appealed arguing it had a right to intervene to challenge the reasonableness of the confessed judgment. The Montana Supreme Court reversed and remanded holding the insurer was entitled to intervene.

*AbbeyLand LLC v. Interstate Mechanical Inc.*

An individual named Donald Abbey formed Abbey/Land LLC as its sole member to purchase land in Montana. When Abbey/Land got into disputes with contractors who were working to build a large house on the land purchased, Donald Abbey formed Glacier Construction Partners LLC to handle the contracting for construction of the house. Donald Abbey was also the sole member of the Glacier Construction Partners LLC.

Glacier entered into a \$1.4M contract with Interstate Mechanical, Inc. for construction of the house. Later, disputes arose between Interstate and Glacier. Initially, Abbey/Land and Glacier as plaintiffs filed an action for damages against Interstate and other entities involved in the house project. However, Abbey/Land later filed an amended complaint dismissing its sister entity, Glacier as the plaintiff and naming Glacier as a defendant. Glacier then tendered the Abbey/Land claim to its CGL insurer, James River Insurance Company. James River refused to provide a defense or indemnity and asserted the claims made policy issued to Glacier did not provide coverage.

Eventually, after James River refused to provide coverage, Glacier and Abbey/Land settled and Glacier confessed to a \$12M Judgment in favor of Abbey/Land and to assign to Abbey/Land all of its rights against James River. James River timely moved to intervene for the limited purpose of challenging the reasonableness of the \$12M confessed judgment. James River argued impermissible collusion between Abbey/Land and Glacier who were both owned and controlled by the same person. The lower court never ruled on James River's motion to intervene and never ruled upon the issues that James River raised concerning the reasonableness of the confessed judgment. Instead, the lower court entered a Judgment against Glacier and in favor of Abbey/Land for \$12M plus interest.

James River appealed contending the lower court could not properly enter Final Judgment based upon Glacier's confession of judgment, without considering the merits of James River's motion to intervene. In the seminal case of *Tidyman's Management Services v. Davis*, 330 P.3d 1139 (Mont. 2014), the Montana court recognized that an insured's settlement must be reasonable even if its insurer had denied coverage. The insurer is entitled to have the lower court make a determination of reasonableness of the settlement. The insurer bears the burden to establish that the insured settlement was unreasonable. Intervention is allowed as a matter of right : (1) if the intervenor applicant has an interest in the subject matter of the action; (2) if the intervenor applicant's interest may be impaired by the disposition of the action; and (3) if the intervenor applicant's interest is not adequately represented by an existing party.

The Montana Supreme Court found that James River had an interest in the subject matter of the litigation between Abbey/Land and its sister entity Glacier, and it was equally clear to the Montana Supreme Court that the entry of the Judgment on Glacier's confession without affording James River the opportunity to be heard impaired James River's interests. Finally, while the Montana Supreme Court noted that initially other insurers were seeking to intervene and challenge the reasonableness of the confession, by the time the case had concluded, those other insurers had withdrawn their motions to intervene. Therefore, there was no other person or entity in the case representing James Rivers' interests.

Therefore, the Montana Supreme Court reversed and remanded the lower court's decision to enter the confessed judgment because James River should have an opportunity to challenge the reasonableness in that action. The reversal came even though there was a simultaneous coverage action moving forward in another court. However, the court indicated it was clear under *Tidyman* that James River should have an opportunity to intervene in the underlying action where the issue of coverage was not involved.

Thus, insurers who insure risk in Montana should be cognizant of the rights to intervene to challenge reasonableness in underlying litigation even if they have already denied coverage. Unlike Montana, other jurisdictions around the country, including Missouri, severely restrict insurers from intervening in the underlying litigation in almost all circumstances.

By Aaron D. French

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