

Missouri Unfair Claims Settlement Practices Act Created No Rights For Fire Loss Caused By Suicidal Insured

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Summary: American Modern insured James and Ruth Roller when Mr. Roller set fire to the garage in a failed suicide attempt. American Modern investigated the loss, denied their claim, and then the Rollers filed a declaratory judgment action. The trial court denied coverage which the appellate court affirmed on all grounds.

Roller v. American Modern Home Insurance Co.

After James Roller's failed suicide attempt, he awakened his wife and told her about the fire. She in turn notified the authorities. Mr. Roller was provided with care and treatment, including mental health treatment. Mrs. Roller submitted an insurance claim to the insurance company, which in turn investigated to determine whether the Innocent Spouse Doctrine applied. American Modern demanded examinations under oath (EUOs) of the Rollers multiple times and also requested the production of documents. The Rollers' attorney also requested documents from American Modern. When neither side complied with the request of the other, the Rollers filed a declaratory judgment action, which proceeded to trial and resulted in a judgment for American Modern.

The Rollers argued on appeal that American Modern's adjuster's statement that the company "would be making a payment of the claim as to the garage" resulted in a binding contract for American Modern to pay the \$10,500 policy limits. The appellate court disagreed that the adjuster's "unilateral statement over the phone... create[d] a valid contract because the payment would not be given in consideration for anything." In addition to lacking valid consideration, the court concluded the statement "was not sufficiently definite to support creation of an oral contract."

The appellate court also disagreed that American Modern's demands for EUOs were unreasonable. Because the insurance policy excluded coverage for intentionally damaging insured property, American Modern had the right to invoke policy conditions allowing examinations under oath and requiring the production of certain documents. The appellate court also noted, "Missouri courts have consistently acknowledged an insurer's right to a complete investigation of the claim, including examinations, and have found that the insured's failure to assist in the investigation precludes any coverage."

To prove a material breach of the cooperation clause an insurance company must prove “(1) the existence of substantial prejudice and (2) the exercise of reasonable diligence to secure the insured’s cooperation.” An insurance company can prove prejudice when it shows that the “insured fails to comply with a reasonable examination request because the insured has ‘perhaps the greatest knowledge of the circumstances[.]’” “[C]ompliance with the policy’s examination requirement is not contingent on document submission; instead [American Modern] is prejudiced by the inability to fully investigate the incident.” Because American Modern had “established the Rollers’ material breach of the cooperation clause with respect to their obligation to submit to an examination [under oath]” to American Modern’s prejudice, the trial court properly entered judgment in American Modern’s favor.

The Rollers also argued that Mr. Roller’s mental health problems leading to his suicide attempt, prevented formation of the requisite intent to act intentionally. The appellate court noted there was no finding Mr. Roller was insane or had been adjudicated insane. Therefore, the appellate court concluded it “must presume that Mr. Roller was sane when he intentionally set the fire in his attempt to commit suicide.” Because the policy expressly excluded coverage for intentional losses caused by insured persons and because Mr. Roller was “presumed to be sane during his suicide attempt, it is clear that the [h]omeowners’ policy does not cover the damages from the fire.”

The Rollers also argued the Missouri Unfair Claims Settlement Practices Act (“Act”) creates duties (in addition to an insurer’s duties of good faith and fair dealing) which prevented American Modern from denying coverage. They argued the Act created “an implied covenant of good faith and fair dealing which should be remedied by a forfeiture of the insurer’s right to deny liability.” The appellate court disagreed because the Act expressly stated it is not to “be construed to create or imply a private cause of action.” Section 375.1000.1. Furthermore, only the Director of Insurance is authorized to impose penalties for violations of the Act. In addition, the Act “does not establish a method of the waiver of the insurer’s right to deny coverage or any private enforcement.”

Moreover, the Rollers’ reliance on *Stark Liquidation Co. v. Florists’ Mutual Insurance Co.*, 243 S.W.3d 385, 400-01 (Mo.App. E.D. 2007) was misplaced because the issue in that case was “whether an insurer’s violation of the Act could provide a basis for a vexatious refusal to pay claim,” not that such a violation resulted in a waiver and forfeiture of the right to deny a claim. Other Missouri case law had rejected “the argument that an alleged Unfair Claims Settlement Practices Act violation, unsupported by express or implied intent, waives the insurer’s right to deny coverage.” Accordingly the appellate court rejected their argument that American Modern had “breached its implied duties of good faith and fair dealing created by the [Act].”

The *Roller* case demonstrates that Missouri insurers have the right to reasonably require insureds to comply with EUO demands and production requests allowed by the insurance policy to enable the insurer to complete its investigation. An insured’s prejudicial refusal to cooperate with such provisions can be a proper basis for claim denial. Furthermore, the Act cannot be interpreted “to create or imply a private cause of action.” Nor can it be claimed that an alleged violation of the statute is a basis for demonstrating that the insurer breached its contract and thereby forfeited its right to deny coverage. However, violations of the Act can “provide a basis for a vexatious refusal to pay claim.”

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