

# Eighth Circuit Affirms Decision that Insurance Company Did Not Violate the Terms of its Policy by Requesting Reimbursement from an Adverse Insurer.

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## **Baker Sterchi Cowden & Rice LLC**

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**ABSTRACT:** The Eighth Circuit Court of Appeals, applying Missouri Law, affirmed an Order granting summary judgment in favor of Owners Insurance Company, finding that a request for reimbursement from an adverse party did not breach the applicable insurance policy or duty of good-faith.

Plaintiffs/Appellants, White Knight Diner, LLC, Larry Lee Hinds and Karen Freiner (collectively “White Knight”) brought suit against their insurer, Owners Insurance Company (“Owners”), seeking a declaration that the practice of settling subrogation claims directly with other insurance providers violated Missouri’s subrogation law. [1] The Eighth Circuit affirmed the Eastern District of Missouri – St. Louis’ grant of summary judgment in favor of Owners.

On March 15, 2015, Ambar Arango and Dzemaal Omervic were involved in a car accident, that included one of the cars crashing into the White Knight Diner causing property damage to the restaurant. At the time of the accident, White Knight had an insurance policy issued by Owners that included coverage for property damage and loss of business income. White Knight submitted a claim to Owners, and Owners paid policy proceeds in the amount of \$66,366.27.

White Knight subsequently brought suit against Arango and Omervic for lost income during the time the restaurant was closed for repairs; Arango had an insurance policy with State Farm, with \$50,000 policy limits, and Omervic had a policy issued by Progressive, with a with a \$25,000.00 per occurrence limit. Before White Knight initiated litigation against the drivers, Owners sought to recoup payment of policy proceeds from State Farm and Progressive by sending a “Request for Payment” with instructions to “CONTACT OWNERS PRIOR TO SETTLEMENT.” State Farm made a payment to Owners in the amount of \$33,668.14, which represented half of the policy payment to White Knight plus half of the \$1,000 deductible; Progressive declined to pay. Owners told White Knight about its efforts to recoup policy proceeds from State Farm and Progressive, and White Knight did not object.

After paying Owners, State Farm sought a setoff in White Knight’s state court litigation against Arango, which the court denied. Ultimately, White Knight settled the state court action, receiving \$25,000 from Omervic and \$16,331.86 from Arango.

White Knight filed a complaint against Owners alleging a breach of contract and a breach of the implied covenant of good faith and fair dealing.

Missouri gives an insurance company, who pays a property damage claim, a subrogated interest in the insured's rights against the third party who caused the property damage but does not provide the insurer with a direct right to pursue subrogation against the adverse party. Under Missouri law, an insurance company may not sue or formally settle with a tortfeasor or their insurer absent an assignment of the right to pursue that claim from the insured. White Knight contended that Owners' conduct, in seeking direct repayment from State Farm and Progressive, violated Missouri subrogation law. The District Court, and Eighth Circuit, refused to find that it was illegal under Missouri law for Owners to informally seek reimbursement for policy proceeds paid, even though the subrogation efforts were premature.

The District Court also found that White Knight could not establish that it suffered damages as a result of Owners efforts to recoup policy proceeds, and therefore could not prevail on the breach of contract claim asserted. White Knight did not suffer damages, because the state court refused to give Arango a setoff for the payment made by State Farm to Owners. Specifically, the court found that nothing prevented White Knight from recovering the full policy amount in its claim against Arango. Moreover, White Knight would have only been able to keep what it recovered in the Arango litigation to the extent it could prove uninsured damages or damages in excess of Owners' policy payment.

White Knight also contended that Owners violated its duty of good faith and fair dealing by asking State Farm for its pro rata share of policy proceeds paid by Owners. Missouri law implies a covenant of good faith and fair dealing in every contract; in the insurance context, a breach of the covenant of good faith occurs when the insurer acts in a manner as to evade the spirit of the transaction or in a manner that would deny the insured of the benefit of the agreement. The District Court granted summary judgment in favor of Owners, which the Eighth Circuit affirmed, for the same reasons that the breach of contract claim failed.

Missouri does not give an insurer a direct right to pursue its subrogation claims absent an assignment from the insured. However, State and Federal courts have refused to find that informal requests for repayment constitute a violation of Missouri subrogation law.

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