

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**KEYEN BRAUGHTON, A MINOR,
AND KONNOR BRAUGHTON, A
MINOR, BY AND THROUGH
CONSERVATORS, DAVID AND
MICHELLE BRAUGHTON**

**v.
ESURANCE INSURANCE COMPANY**

RESPONDENTS,

APPELLANT.

DOCKET NUMBER WD77686

DATE: March 17, 2015

Appeal From:

Clay County Circuit Court
The Honorable Larry D. Harman, Judge

Appellate Judges:

Division One: Cynthia L. Martin, Presiding Judge, Thomas H. Newton, Judge and Mark D. Pfeiffer, Judge

Attorneys:

James S. Manning, Harrisonville, MO, for respondents.

Mark D. Chuning, Kansas City, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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AND KONNOR BRAUGHTON, A
MINOR, BY AND THROUGH
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RESPONDENTS,

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APPELLANT.

No. WD77686

Clay County

Before Division One: Cynthia L. Martin, Presiding Judge, Thomas H. Newton, Judge and Mark D. Pfeiffer, Judge

Esurance Insurance Company appeals a judgment in favor of minors Keyen Braughton and Konnor Braughton for breach of an insurance contract following the wrongful death of their mother, the named insured on the insurance contract. The judgment found that Esurance breached the insurance contract with the minors by failing to pay uninsured motorist proceeds as directed by an earlier judgment approving a wrongful death settlement. Esurance argues that the judgment allocating proceeds to the minors followed an even earlier judgment which allocated proceeds to the minors' father and which authorized their father to sign a release individually and on behalf of all wrongful death beneficiaries. Esurance thus argues that it was released from all liability to the minors under the insurance contract.

Affirmed in part and reversed in part.

Division One holds:

The trial court did not err in finding that Esurance breached its insurance contract with the minors though for a reason other than that expressed in the judgment. The release signed by father did not bind the minors and Esurance was liable to them as first-party insureds under the insurance contract.

The trial court properly rejected Esurance's affirmative defenses that would negate a payment obligation to the minors. There was no evidence that Esurance substantially complied with the insurance contract because the contract was not admitted into evidence. Esurance also did not meet its burden to prove that the first judgment approving settlement was binding on the minors since the minors were not represented by a duly-appointed next friend, guardian, or conservator as required by law, and given the trial court's later determination that their interests had not been adequately represented by father.

The parties and the trial court have mistakenly treated the underlying settlement proceedings as wrongful death settlement proceedings. Though mother's wrongful death triggered Esurance's obligation to pay uninsured motorist benefits to mother's statutory wrongful death beneficiaries, that obligation sounded in contract. First-party contract claims under an insurance policy are not substantively transformed into statutory wrongful death claims merely because the first-party payment obligation is triggered by the wrongful death of a named insured. Procedures for settling wrongful death claims set forth in section 537.095 do not apply to the settlement of first-party insurance claims.

The trial court's judgment in the principal amount of \$70,000 to each of the minors is supported by the record. The award of post-judgment interest dating back to an earlier judgment that did not impose a payment obligation on Esurance is reversed.

Opinion by Cynthia L. Martin, Judge

March 17, 2015

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