

**Summary of SC89663, MSEJ, LLC v. Transit Casualty Company in receivership**  
Appeal from the Cole County circuit court, Judge Richard G. Callahan

**Attorneys:** MSEJ was represented by Nicholas M. Monaco of English & Monaco PC in Jefferson City, (573) 634-2522; and Transit Casualty was represented by Thomas W. McCarthy III, James C. Owen and Katherine S. Walsh of McCarthy, Leonard & Kaemmerer LC in Chesterfield, (314) 392-5200. The CBS Corporation, which filed a brief as a friend of the Court, was represented by Daniel G. Donahue and Lawrence S. Denk of Foley & Mansfield PLLP in St. Louis, (314) 645-7788, and David J. Strasser of Eckert Seamans Cherin & Mellott LLC in Pittsburgh, (412) 566-6175. PricewaterhouseCoopers LLP, which also filed a brief as a friend of the Court, was represented by J. Kent Lowry and Matthew D. Turner of Armstrong Teasdale LLP in Jefferson City, (573) 636-8394, and Edward M. Joyce and Lisa M. Cirando of Orrick, Herrington & Sutcliffe LLP in New York, (212) 506-5000.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A company that bought one insured's claims against an insolvent insurance company in receivership challenges the circuit court's denial of claims of which it failed to provide sufficient proof before the deadline the court set had passed. In a unanimous decision written by Judge Michael A. Wolff, the Supreme Court of Missouri affirms the circuit court's decision. The deadline was set pursuant to a statute intended to expedite closure of receiverships, and the company failed to provide sufficient evidence of its claims before that deadline passed.

**Facts:** In December 1985, the circuit court declared insolvent Transit Casualty Company, an insurance company; all its policies were canceled; it entered receivership under the court's supervision; a "special deputy receiver" was appointed to represent the director of insurance as the nominal receiver; and the receiver was charged with handling outstanding claims against the insolvent company and winding down its business. The court set a deadline of December 31, 1987, for filing claims against the company's receivership estate. In 1987, the court issued an administrative order adopting Rule 75, which provided a process by which claims filed after the deadline could be allowed if the special deputy receiver determined the claims passed the test prescribed in Rule 75(b). The court subsequently adopted another administrative order, No. 49, establishing a final deadline for the filing of claims by requiring all claimants to file evidence of their current unresolved claims by March 15, 2001. This order also provided that the special deputy receiver shall not accept any new claims or evidence of claims after that date.

Johns-Manville Corporation, which had purchased six umbrella liability policies from Transit, timely filed proof of claims against Transit. In 1998, MSEJ LLC purchased from Manville all of its outstanding claims against Transit. In March 2001, MSEJ filed \$19 million in additional claims but did not submit any additional proof of these claims beyond a one-page letter stating MSEJ's position that it was entitled to payment of the new, unsupported claims. MSEJ failed to provide the names of policyholders or the dates or details of any alleged injuries the policyholders incurred before the March 15 final deadline. After the special deputy receiver notified MSEJ that there was insufficient evidence to support its March 2001 claim, MSEJ

appealed to a referee under section 375.1214, RSMo 2000. In September 2005, MSEJ attempted to submit supplemental evidence to the referee, who refused to consider evidence not submitted previously to the special deputy receiver. The referee upheld the receiver's denial of the March 2001 claim and determined that MSEJ should be prevented from making any further claims because it previously had told the receiver it would be making no further claims against the Transit estate. MSEJ moved for reconsideration in the circuit court. Because the court failed to rule on the motion within 90 days, the motion was deemed overruled. MSEJ appeals.

**AFFIRMED.**

**Court en banc holds:** (1) The circuit court did not err in holding that MSEJ failed to present sufficient evidence of its claim before the March 15, 2001, deadline. Under local Rule 75.19(c), MSEJ had the burden of proving the claim, but the only evidence MSEJ submitted as proof was a one-page statement that it held \$19 million in claims. The evidence included only Transit policy numbers and dollar amounts without any additional supporting information, including the names and injuries of the policyholders or the dates of the alleged injuries. As such, the evidence was insufficient to support MSEJ's claims.

(2) The circuit court correctly held that administrative order No. 49 set an absolute bar to the filing of additional evidence or proof after March 15, 2001. This order was enacted pursuant to section 375.670, RSMo, which empowers the court to limit and extend the time for presenting claims against an insurance receivership estate and mandates that any creditor failing to present his claim within that time limit "shall be debarred of all right" to share in the insurer's assets. This statute trumps section 375.1214, RSMo, which provides a procedure by which the referee's findings may be appealed and which provides the standards justifying reconsideration of a claim. Section 375.670 is intended to expedite the closure of a receivership, and the procedure of section 375.1214 cannot redeem failure to meet the administrative order's deadline set pursuant to section 375.670.

(3) It is worth noting that MSEJ purchased its claims in 1998 from Manville, which did not purchase any new policies from Transit after 1987. The claims MSEJ filed in March 2001, therefore, pertained to policies that were purchased 14 years earlier. MSEJ had more than three years between 1998 and the March 2001 deadline to gather evidence and research the outstanding liability on the policies it purchased from Manville. It presents no compelling reason why it could supply that proof between 2001 and 2005 but not between 1998 and 2001.