

**Summary of SC93026, *Columbia Casualty Company v. HIAR Holding LLC and HMA Riverport LLC, and Karen S. Little LLC***

Appeal from the St. Louis County circuit court, Judge Mark D. Seigel

Argued and submitted May 22, 2013; opinion issued July 16, 2013

**Attorneys:** Columbia Casualty was represented during arguments by James F. Bennett, Edward L. Dowd, Jennifer S. Kingston and Selena L. Evans of Dowd Bennett LLP in St. Louis, (314) 889-7300; and Christopher R. Carroll, Kristin V. Gallagher and Jonathan A. Messier of Carroll, McNulty & Kull LLC in Basking Ridge, NJ, (908) 848-6300. The class and Hiar Holding were represented by Alan S. Mandel of Mandel & Mandel LLP in St. Louis, (314) 621-1701; John S. Steward of Steward Law Firm LLC in St. Louis, (314) 571-7134; Max G. Margulis of Margulis Law Group in St. Louis, (636) 536-7022; J. Vincent Keady Jr of Stinson, Morrison, Hecker LLP in St. Louis, (816) 691-3478; Brian J. Wanca and David Oppenheim of Anderson + Wanca in Rolling Meadows, IL, (847) 368-1500; and Phillip A. Bock and Robert M. Hatch of Bock & Hatch LLC in Chicago, IL, (312) 658-5500.

*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:** An insurance company appeals the circuit court’s judgment that the company wrongly refused to defend its insured against a class-action lawsuit and was liable to indemnify the insured by paying the settlement amount plus interest. In a unanimous decision written by Chief Justice Mary R. Russell, the Supreme Court of Missouri affirms the judgment.

**Facts:** Hotel proprietor HIAR Holding LLC sent unsolicited advertising facsimiles, and the recipients brought a class action lawsuit alleging HIAR violated the federal telephone consumer protection act. Columbia Casualty Company, HIAR’s insurer, refused to defend HIAR, claiming the class’ allegations were outside its policy provisions. HIAR defended the suit, settled with the class, and assigned the class’ claims against Columbia Casualty and any other insurer. The class filed a garnishment action against Columbia Casualty, which sought a declaratory judgment clarifying its duties to defend and to indemnify the class claims. The trial court found that Columbia Casualty owed HIAR a duty to defend and that it acted unreasonably and in bad faith in refusing to defend HIAR. The trial court granted the class’ motion for summary judgment, finding Columbia Casualty had a duty to indemnify for the full settlement amount plus interest. Columbia Casualty appeals.

**AFFIRMED.**

**Court en banc holds:** Columbia Casualty’s wrongful failure to defend HIAR precludes its complaints that it is not liable to indemnify HIAR for the settlement amount. An insurer that wrongly refuses to defend its insured against a lawsuit is liable for the underlying judgment as damages flowing from the breach of that duty. Statutory damages under the federal act are not in the nature of fines or penalties and, therefore, are not outside the scope of coverage. HIAR’s insurance policy provisions included coverage for advertising injury, which includes offenses committed in the course of advertising materials that violate a person’s privacy rights – the basis

for the class' claims. The trial court correctly found that HIAR did not send the junk faxes intending to injure the recipients or violate the TCPA, which would make the policy's coverage inapplicable. The trial court did not err in holding that HIAR's policy limits did not matter and that Columbia Casualty is not entitled to a reassessment of the reasonableness of the settlement because the underlying judgment in the class action specifically found, after a hearing, that the settlement was fair, adequate and reasonable.