

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

BRADFORD CHARLES,

Respondent,

v.

CONSUMERS INSURANCE,

Appellant.

DOCKET NUMBER WD73315
(Consolidated with WD73363)

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: May 29, 2012

APPEAL FROM

The Circuit Court of Clay County, Missouri
The Honorable Anthony Rex Gabbert, Judge

JUDGES

Division One: Howard, P.J., and Ahuja and Mitchell, JJ.

CONCURRING.

ATTORNEYS

Paul Hasty, Jr.
Overland Park, KS

Attorney for Respondent,

John L. Mullen, Timothy P. Price, and Nikki Cannezzaro
Kansas City, MO

Attorneys for Appellant.



MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

BRADFORD CHARLES,)
)
) **Respondent,**)
v.) **OPINION FILED:**
) **May 29, 2012**
CONSUMERS INSURANCE,)
)
) **Appellant.**)

WD73315 (Consolidated with WD73363)

Clay County

Before Division One Judges: Victor C. Howard, Presiding Judge, and Alok Ahuja and Karen King Mitchell, Judges

This is an underinsured motorist case. The issue is whether the plaintiff’s underinsured motor vehicle (“UIM”) insurer has a right to intervene in plaintiff’s liability action against the underinsured motorist when the UIM insurer first denied that underinsured motorist coverage applied, but later determined that such coverage may apply, conceding such at the time of the relevant intervention ruling and prior to trial in the liability action against the underinsured motorist. We hold that, under these facts, the UIM insurer does have a right to intervene to contest the underinsured motorist’s liability and/or damages. Therefore, we reverse.

REVERSED AND REMANDED.

Division One holds:

A party seeking intervention under this rule must show “1) an interest relating to the property or transaction which is the subject of the action; 2) that the applicant’s ability to protect such interest is impaired or impeded; and 3) that the existing parties are inadequately representing the applicant’s interest.” *Stafford v. Kite*, 26 S.W.3d 277, 279 (Mo. App. W.D. 2000).

Generally, when an insured files suit against an uninsured motorist (“UM”) or an underinsured motorist (“UIM”), there is no debate under Missouri law that the insured’s UM/UIM insurance carrier has an interest that may be impaired or impeded if the UM/UIM

carrier is not allowed to intervene to contest the issues of liability and/or damages. *Pollock v. Searcy*, 816 S.W.2d 276, 278 (Mo. App. S.D. 1991).

As the terms of Rule 52.12(a) make clear, an intervenor, at the time of its intervention, need not *concede* that it will be bound by the judgment. *Beard v. Jackson*, 502 S.W.2d 416, 418-19 (Mo. App. 1973). Rather, it is the potential for liability under an underinsurance clause that triggers the “interest” recognized by Rule 52.12(a). *See id.*

The initial denial of coverage made by Appellant Consumers Insurance (“Consumers”) did not prevent Consumers from changing its position at the time of intervention. Consumers is not attempting to assert any contractual right. Its right to intervene in *this* situation springs—not from the insurance contract—but from Rule 52.12(a). Thus, the cases cited by Respondent Bradford Charles, which hold that an insurer cannot rely on its contractual rights after having itself breached the contract, do not apply here.

The only issues are whether Consumers claimed an interest in the subject of Charles’s lawsuit; whether that interest may be impeded or impaired by the litigation’s outcome; and whether the tortfeasor adequately represents the interest. Each of those issues are resolved in a manner that requires that Consumers be permitted to intervene. Since the circuit court denied Consumers the right to intervene, the judgment must be reversed.

Opinion by: Karen King Mitchell, Judge

May 29, 2012

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