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Insurer's intervention fails to abate \$8M judgment

By: Scott Lauck

A Clay County judge awarded an \$8 million judgment to a woman severely injured by a drunken driver, despite the intervention of the defendant's insurer.

Judge Janet Sutton on Feb. 25 found in favor of Melissa Rasmussen in her claims against SRJS Inc. and a server at a bar the company owns. Attorneys for Rasmussen now must seek to collect the \$6 million in actual damages and \$2 million in punitive damages from the defendants' insurer, Illinois Casualty.

Although the insurer has denied coverage for its policyholders' admitted negligence, a recent law change allowed Illinois Casualty to take part in the bench trial where the damages were determined. The case appears to be among the first in the state in which an insurer has successfully intervened.

But Derek MacKay of Knight Nicastro MacKay in Kansas City, an attorney for the insurer, said his presence did little to change the outcome.

"I'd call it fake participation," he said. He said he plans to appeal.

The case stems from an Oct. 26, 2013, crash in Clay County. Melissa Rasmussen was driving home from a movie with a friend when she was hit head-on by Rebecca Milner. Rasmussen was knocked unconscious from the impact and suffered a traumatic brain injury, as well as multiple facial contusions, chest bruising and injuries to her arms, legs and hands.

During the next several years, Rasmussen was treated for her brain injury and physical symptoms by her primary care physicians, a psychiatrist and a treating neurologist, with multiple trips to the emergency room. She received cognitive and vestibular therapy. According to her expert, she will suffer permanently from traumatic post-concussive migraine headaches.

In a lawsuit filed in 2016, Rasmussen alleged that Milner was overserved alcohol at Bojo's Bar and Grill. The suit named the northern Kansas City bar's owner, SRJS Inc., and Tyler Rivera, the bartender who served Milner.

Illinois Casualty denied coverage, citing an exclusion in its policy that it says bars coverage for injuries arising from the sale of alcoholic beverages to an intoxicated person. As a result, the defendants entered into a

537.065 agreement with Rasmussen.

Under section 537.065 of the Revised Statutes of Missouri, a defendant whose insurer has declined to provide coverage or offers to defend the case under a reservation of rights can agree to allow the plaintiff to obtain a judgment against it at a bench trial. The plaintiff then must seek to collect the money from the defendant's insurer in a separate action, the success of which depends on whether the policy provides coverage or not.

Lawmakers passed a bill in 2017 that requires the parties to alert insurance companies that they are entering into an '065 agreement. The insurer then has 30 days to seek to intervene before the judgment can be rendered. Prior to the 2017 law, the insurer was barred from participating at the trial, leaving no one to contest the case or the plaintiff's measure of the damages.

Annette Griggs of Griggs Injury Law, an attorney for Rasmussen, said the insurer put the bar's owners in a tough position by denying coverage and then litigating the case anyway.

"Now they get the benefits of that," she said.

It's not clear, however, what benefit Illinois Casualty gained by taking part in the bench trial held on Feb. 19. The judge ultimately awarded \$1 million more than the plaintiff's attorneys requested.

"I think it was worth it in the sense that we kept any and all coverage determinations out of the underlying judgment," MacKay said. "But as far as damages are concerned or liability is concerned? No."

Larry D. Wright of Criterion Law, an attorney for Rasmussen, said it's hard to say how the insurer's participation affected the case, other than producing a number of motions that had to be litigated.

"I know it created more work and delayed the process significantly," he said. Ultimately, he said, they achieved a good outcome.

"I think we were trying to be conservative in what we asked for," Wright said. "I think the damages in this case absolutely support the judgment the court ultimately entered."

Illinois Casualty separately filed a declaratory judgment action in federal court in Kansas City seeking to validate its interpretation of the insurance policy. Griggs and Wright are working with Andrew LeRoy of Bautista LeRoy, who represents Rasmussen in that suit.



Annette Griggs

Motor-Vehicle Collision, Insurance

Breakdown: Actual damages: \$5 million against SRJS, \$1 million against Rivera; \$2 million in punitive damages

Venue: Clay County Circuit Court

Case Number/Date: 16CY-CV01437/Feb. 25, 2020

Judge: Janet Sutton

Insurer: Illinois Casualty

Plaintiff's Experts: Dr. Steven M. Arkin, Dayton, Ohio (neurologist); Cori Ingram, Basehor, Kansas (life-care planning)

Special Damages: Future medical care of \$424,853 to \$914,175. \$36,320 billed medical, \$22,666 paid medical

Caption: Melissa Rasmussen v. SRJS Inc. and Tyler Rivera

Plaintiff's Attorneys: Larry D. Wright, Criterion Law, Kansas City; Annette Griggs, Griggs Injury Law, Kansas City; Andrew LeRoy, Bautista LeRoy, Kansas City

Defendants' Attorneys: Derek MacKay, Knight Nicastro MacKay, Kansas City (for Illinois Casualty); Kyle Sanford, Peterson & Associates, Kansas City (for SRJS)