

Missouri Protects Subrogation Rights

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The point at which an insurance carrier possesses the equitable right of subrogation is an issue on which the states have differed. Some allow carriers to pursue rights of subrogation immediately upon payment and some have taken stricter approaches. Missouri falls into the latter group. By not allowing the carrier the right to file suit against third-party tortfeasors until the insured provides its carrier with an assignment of all its rights, Missouri's approach has opened the door for challenges to subrogation rights.

In *Megown v. Auto Club Fam. Ins. Co.*, 2024 Mo. App. LEXIS 82, the plaintiff-insureds Michael and Jane Megown (the Megowns) suffered a house fire on February 8, 2016. Their insurance carrier, Auto Club Family Insurance Company (Auto Club) reimbursed the Megowns for their property damage in the amount of \$722,433.56. Subsequently, the Megowns sued Auto Club for breach of contract and later amended their complaint to add claims against Tyberius Enterprises, LLC d/b/a Crag Electric (Craig Electric), the third-party tortfeasor, for direct negligence, alleging both property damage and personal injuries. Auto Club intervened in the Megowns' claim against Craig Electric to protect its interest as subrogee for its property damage payment to the Megowns. Craig Electric settled prior to trial, paying \$1,000,000.00 to both the Megowns and Auto Club, to be allocated at a later date. After a bench trial that apportioned the settlement with \$722,433.56 paid to Auto Club and \$277,566.44 paid to Megowns - and a jury trial awarding no further damages - the Megowns appealed.

The Megowns argued that the trial court erred in allowing Auto Club to subrogate its property damage claim because the Megowns still had legal title to all underlying rights since they alleged a personal injury loss and did not provide an assignment of rights to Auto Club. Furthermore, the Megowns alleged that since public policy forbids the assignment or subrogation of personal injury claims, such an assignment was not even possible.

This appellate court affirmed the lower court's ruling, holding that the trial court did not err in awarding Auto Club \$722,433.56, thus allowing the carrier to assert its subrogation rights. It rationalized its holding by stating that to find otherwise would allow an insured to prevent a carrier from asserting subrogation rights for property damage claims any time the insured alleged a personal injury claim. In such a scenario, simply pleading personal injuries would prevent any potential subrogation claim since an assignment of rights is not possible for personal injury claims. The court found that such a situation would be an unintended consequence of Missouri's subrogation laws and, thus, against public policy.

The holding in this case is notable for two reasons. The first is that this case highlights the importance of understanding each state's legal position on equitable rights and real parties in interest. If a subrogation professional is practicing in a state such as Missouri, properly lining up the carrier's rights by obtaining an assignment of the insured's claim is crucial to avoiding challenges down the road. As seen in this case, challenges may come not only from defendants, but from the carrier's own insureds looking to take advantage of beneficial caselaw.

Additionally, this case looks at the important considerations associated with personal injury claims that stem from the same incident as a property subrogation claim. While public policy can often prioritize personal injury claims over property damage claims – subrogation claims in particular – there are scenarios in which these public policy mandates can be misconstrued or overstated. Knowing when to respect the priority of personal injury claims and when to fight what may be pretense is an important role for the subrogation professional.

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