

**BLOGS**

Insurance Recovery Litigation

Risky Business

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Last week's GEICO decision drew national attention for its salacious facts – a Missouri woman secured a \$5.2 million judgment for a sexually transmitted disease she caught while having unprotected sex in her boyfriend's car, and GEICO, the boyfriend's auto insurer, may ultimately be on the hook. While it is a case that highlights the perils of unprotected sex, it is also a case that highlights the perils, for liability insurers, when they deny insurance claims rather than defend their insureds under reservation of rights. In that case, the boyfriend tendered the defense of his case to GEICO, who insured claims for bodily injury arising out of the insured's ownership, maintenance or use of the auto. The woman demanded settlement for \$1 million, GEICO's policy limit, but GEICO refused coverage, refused to defend and refused to settle. The claimant and her boyfriend then entered into a 537.065 agreement under Missouri law, which generally allows an injured party and the defendant to limit the plaintiff's recovery to available insurance once an insurer has refused to defend.

With this agreement in place, the claimant and the boyfriend proceeded to arbitrate, which led to an arbitration award of \$5.2 million in damages against the boyfriend. The plaintiff then filed an action in Missouri state court to confirm the arbitration award, and GEICO moved to intervene. The trial court allowed GEICO to intervene the same day it confirmed the arbitration award. GEICO complained it did not have a meaningful opportunity to defend its interests, but, the trial court, and the Missouri Court of Appeals, both disagreed. GEICO had an opportunity to participate and defend its interests by agreeing to defend the insured – it simply chose not to seize the opportunity, and now it should live with the consequences, which includes having potential exposure that is five times the original policy limit, without being able to relitigate underlying liability and damages. A separate coverage action filed by GEICO remains pending in federal court in the Western District of Missouri to decide GEICO's ultimate liability.

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