



**MISSOURI INSURED'S BANKRUPTCY FILINGS SINKS
SUBSEQUENT CLAIM PRESENTATION**

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Missouri courts recently affirmed the importance and usefulness of an insured's prior bankruptcy as evidence that an insured has misrepresented the nature and extent of his or her personal property claim. Both the Missouri Court of Appeals for the Eastern District and the United States District Court for the Eastern District of Missouri have ruled that an insured's prior bankruptcy was highly relevant and, in one case, entitled the insurer to summary judgment.

In *Eckerd v. Country Mut. Ins. Co.*, 289 S.W. 3d 738 (Mo. App. E.D. 2009), the Eckers filed a breach of contract action against Country Mutual arising out of an October 2005 fire loss. The insureds claimed Country Mutual had wrongfully denied their personal property claim. In its answer, Country Mutual asserted the insured had acted fraudulently and made material misrepresentations.

At trial, in support of its defenses, Country Mutual cited the discrepancies between the personal property that the insureds claimed was damaged in the fire compared to the proposal property they claimed to have in their April 2005 bankruptcy. For example, the insureds claimed a \$25,000 Jesse James poster was damaged in the fire. However, no such poster was listed on their bankruptcy schedules only six months before the fire.

After the jury returned a verdict for Country Mutual, the Eckers appealed, claiming, in part, the trial court had improperly admitted the evidence of the prior bankruptcy. Specifically, they argued the evidence was not relevant and raised collateral issues that unnecessarily confused the jury.

The appellate court rejected these arguments. The court held the bankruptcy evidence was admissible and directly relevant to the material issue in the case, whether or not the insureds had made material misrepresentations in the presentation of their personal property claim. The court further held the jury could have deemed the insureds' differing statements to the bankruptcy court and their insurer to be fraudulent or material misrepresentations. In the end, the court characterized the bankruptcy proceedings to be "highly relevant."

Again, in *Mathes v. Mid-Century Ins. Co.*, 2008 WL 2439744 (E.D. Mo.), the Honorable Stephen Limbaugh of the United States District Court for the Eastern District of Missouri addressed the issue of an insured's prior bankruptcy. In that case, the insured had made a \$93,166.70 personal property claim after a fire. Six months before the loss, the insured declared bankruptcy and, under the penalty of perjury, claimed that he owned \$800.00 in personal property. Based on the vast discrepancy, the insurer denied the insured's claim.

The insured then brought a breach of contract action against Mid-Century, claiming the company had wrongfully denied his personal property claim. Mid-Century filed a summary judgment motion seeking a ruling that the discrepancy between the bankruptcy pleadings and the personal property claim was a material misrepresentation as a matter of law.

In response to the motion, the insured made several arguments. First, he argued that he listed "resale value" on his bankruptcy pleading and "replacement cost" on his insurance claim, which accounted for the discrepancy. The court rejected this argument, stating it could not reconcile the large divergence between the two numbers.

The insured also argued that he relied on his attorney to calculate the bankruptcy values and his public adjuster to calculate the personal property claim. He claimed he should not be held accountable for his good faith reliance on these individuals. The court rejected this argument as well, citing the fact that the insured had affirmed the accuracy of both numbers with his signature. The court further observed that, absent extraordinary circumstance, an individual's failure to read or understand a document he signs will not relieve him of a mistake.

Ultimately, Judge Limbaugh ruled there was insufficient evidence for a jury to find that the insured did not "knowingly and/or willfully" conceal material facts relating to the claimed loss.

Based on these two cases, it is clear that an insurer can use discrepancies in prior bankruptcy pleadings against an insured. Additionally, if the discrepancy is patently obvious, the insurer may be entitled to summary judgment on the issue of an insured's material misrepresentations. In all claims investigations in which an insured's property claims presentation raises questions, any bankruptcy records need to be obtained. These documents and representation made in the Bankruptcy Court provide fertile and useful information in determining whether the insured's claim for the value and numbers of items is believable and verifiable.