

8th Circ. Ruling Limits Receiver Insurance Recovery Rights

By **Stephanie Pierce and Alex Besharat** (October 8, 2026)

On July 30, the U.S. Court of Appeals for the Eighth Circuit affirmed dismissal in *King v. Texas Insurance Co.*, holding that a receiver's demands for directors and officers insurance coverage did not satisfy the policy's definition of "claim" and "loss."

The decision illustrates a practical limit on receivership powers: A receiver may marshal insurance proceeds belonging to the estate but cannot expand the insured's contractual rights or make policy proceeds collectible unless the policy coverage triggers are satisfied.

Background

In late 2023, Enterprise Bank and Trust Co. filed a petition in Missouri's Jackson County Circuit Court seeking, among other things, appointment of a receiver for Empirical Prime LLC as a result of Empirical's alleged violation of a loan agreement by and between Enterprise and Empirical.[1]

Specifically, pursuant to the terms of the loan agreement, Empirical was prohibited from borrowing funds from any other bank during the loan's pendency.[2]

According to court documents, the violation of the loan agreement was purportedly caused, in part, by Empirical's officers borrowing "millions of dollars" from other banks by "allegedly submit[ing] false, incomplete, and inaccurate financial statements to the new lenders ... [and by allegedly] manipulat[ing] QuickBooks entries and Income Statements to reflect that Empirical was in a substantially better financial position than it actually was." [3]

Empirical's alleged default on the loan agreement prompted Enterprise to file its petition, which resulted in the appointment of a receiver.[4]

Pursuant to the order appointing the receiver, the receiver is authorized to "operate the business of the Borrowers and manage the Receivership Property." [5] "Receivership Property" is defined broadly, and includes, without limitation, "insurance proceeds." [6]

Prior to the purported violation of the loan agreement, Empirical had maintained a directors and officers liability insurance policy, which was underwritten by Texas Insurance Co.

The Policy's Coverage Framework

The interpretation of the policy's terms was the main issue for the case at hand. The U.S. District Court for the Western District of Missouri noted three key provisions from the policy that would require payment from Texas Insurance in the event of a loss:

1. "Loss on behalf of the [Officers] resulting from a Claim first made against the Team Members ... for a Wrongful Act by the [Officers]";
2. "Loss on behalf of the Insured Organization that such Insured Organization has



Stephanie Pierce



Alex Besharat

indemnified the [Officers] resulting from a Claim first made against the [Officers] ... for a Wrongful Act by the [Officers]"; and

3. "Loss on behalf of the Insured Organization resulting from a Claim first made against such Insured Organization ... for a Wrongful Act by the Insured Organization."

The policy defines a "claim" as a "written demand against the Insured for monetary damages or non-monetary or injunctive relief, including a written request to toll or waive a statute of limitations or engage in any alternative dispute resolution," and "loss" as "the amount that an Insured is legally obligated to pay resulting from a Claim, including damages, settlements, judgments, pre-and post-judgment interest, Defense Costs, and Investigation Costs."

The Courts' Analysis of Claim and Loss

The Western District of Missouri dismissed the case in November for failure to plead a covered claim or loss under the policy and denied the receiver's motion to amend the complaint. The receiver appealed to the Eighth Circuit, which affirmed. In short, the receiver did not find greater success in proving a covered claim or loss with the Eighth Circuit.

The Western District of Missouri and the Eighth Circuit's opinion and subsequent dismissal treated the policy language as controlling rather than the receiver's characterization of the letters sent to Texas Insurance.[7] With respect to failure to bring a valid claim, the courts highlighted that a claim must be a "written demand against the insured." [8]

Here, the Eighth Circuit stated that the letters sent by the receiver to Texas Insurance requesting coverage were at best demands to the insurer — not the insured.[9] In order for there to be a claim pursuant to the policy's terms, the appropriate recipient of a claim under the policy would be the officers (or Empirical) — i.e., the insured.

The courts also briefly considered whether the receivership action itself could constitute a claim, but found that even if it was, there was no cognizable loss pursuant to such a claim. Specifically, according to the courts, the receiver's "only allegations against TIC were that TIC was obligated to pay," but pursuant to the definition of "loss," the receiver must demonstrate that Empirical or the officers were "legally obligated to pay." [10]

Limits of Receiver Authority

In light of these findings, and considering how this action was initially triggered, it is clear that the terms of the policy are understandably controlling in the opinion of these courts.

A receiver may have broad authority to marshal assets and pursue the rights belonging to the receivership estate, including rights associated with insurance proceeds, but an order appointing a receiver does not itself circumvent the need for a claim to qualify as a covered claim pursuant to the terms of a policy (e.g., by such claim meeting a policy's definitions for "claim" and "loss").

Similarly, a receiver's assertion that an insurer pay a creditor's economic injury or an enterprise's financial shortfall does not inherently constitute a covered claim pursuant to a policy's terms. In short, a receiver does not appear to acquire the independent rights of an injured third party against the insurer by virtue of their appointment by a court. Rather, the terms of a policy appear to remain the source of the right to payment.

Here, and as discussed above, Enterprise filed the Jackson County petition and requested appointment of a receiver. The receiver is charged with "receive[iving], recover[ing] and tak[ing] complete, entire, and exclusive possession and control of the Receivership Property until further Order of the Court." [11]

That authority, while significant for administration, did not transform the insurance proceeds into cash presently owed by Texas Insurance.

Although a receiver may step into Empirical's shoes for purposes of operating its business, that authority does not extend to filing claims directly against a carrier for a loss that the covered insured has not yet sustained.

As the Western District of Missouri explained, "an injured person cannot directly sue the insurance company indemnifying the person who caused the injury, because the injured party is neither a party to the contract or third-party beneficiary." [12]

The same principle applies here: The receiver is not the injured party. Unfortunately for Enterprise, it appears that even though it took the proactive steps of filing the petition that, in part, requested the appointment of a receiver, its goals of being made whole are far from being accomplished.

Based on the opinion of the Eighth Circuit, it does not appear that it would be feasible for the receiver to ever bring a claim for a loss against Texas Insurance in the manner described herein.

Practical Takeaways

For practitioners, the takeaway is straightforward: Understand the type of policy at issue and tailor any claims to satisfy its specific provisions, as the manner and form in which a claim is brought under a policy is critical. A receiver's authority to marshal insurance-related assets does not circumvent a policy's requirements for a covered claim and loss.

Coverage counsel and creditors alike should map the pled facts to the policy's definitions before asserting that proceeds are owed — otherwise, they risk the same outcome as the receiver in King.

Conclusion

The practical lesson in King is clear-cut: A receivership can collect and administer assets, but it cannot enlarge the contract that defines those assets.

For receivers and creditors, the practical sequence is to establish covered liability first and then pursue the proceeds; for insurers and coverage counsel, King reinforces the importance of testing the pled facts against the policy's precise triggers. This requires an understanding of the types of policies at issue and the specific conditions that must be satisfied before coverage obligations arise.

Stephanie L. Pierce is a partner at Kutak Rock LLP. She previously served as counsel for the Missouri Department of Commerce and Insurance.

Alex Besharat is an associate at Kutak Rock.

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[1] Verified Pet. for Appointment of Receiver and Other Relief, Enterprise Bank & Trust v. Mulungas II LLC et al., Case No. 2316-CV28464, (Mo. Cir. Ct. Jackson Cnty. Oct. 24, 2023).

[2] King v. Tex. Ins. Co., No. 25-00150-CV-W-BP, 2025 WL 5145820, at *1 (W.D. Mo. July 22, 2025), aff'd sub nom. King v. Texas Ins. Co., 185 F.4th 798 (8th Cir. 2026) (internal citations omitted) (hereinafter referred to as "King I").

[3] Id.

[4] Limited Order for Appointment of Receiver, Enterprise Bank & Trust v. Mulungas II LLC et al., Case No. 2316-CV28464 (Mo. Cir. Ct. Jackson Cnty. Nov. 3, 2023).

[5] Id.

[6] Id.

[7] See generally King I, 2025 WL 5145820; King v. Tex. Ins. Co., 185 F.4th 798 (8th Cir. 2026) (internal citations omitted) (hereinafter referred to as "King II").

[8] King II, 185 F.4th at 803 (8th Cir. 2026).

[9] Id.

[10] Id.; see King I, 2025 WL 5145820 at *4.

[11] Limited Order for Appointment of Receiver, Enterprise Bank & Trust v. Mulungas II LLC et al., Case No. 2316-CV28464 (Mo. Cir. Ct. Jackson Cnty. Nov. 3, 2023).

[12] King I, 2025 WL 5145820, at *3.