PLUNKETT COONEY

Garnishment Proceedings, Bad Faith Failure to Settle Coverage Update

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Garnishment Proceedings and Bad Faith Failure to Settle – Michigan

Hairston v. LKU
--- N.W.3d ---, 2025 WL 1014229 (Mich. April 4, 2025)

The Michigan Supreme Court held that a bad faith failure-to-settle claim against an insurer cannot be litigated through a garnishment proceeding in the underlying case but must be brought as a new lawsuit. The Supreme Court reversed the lower court's opinion holding to the contrary, and, in doing so, overruled a 50-year-old Michigan Court of Appeals decision. The Supreme Court also criticized the lower court for rotely applying the decision because it was rendered prior to 1990.

In 2016, Darnell Hairston (plaintiff), sustained serious injuries while operating machinery as an employee at a soybean processing facility owned and operated by defendant Zeeland Farm Services, Inc. (ZFS). The plaintiff sued ZFS, the team leader at the facility, and Specialty Industries, Inc. (Specialty), the contractor hired to assist ZFS in the design, installation and maintenance of the soybean processing machinery. After case evaluation, ZFS and the team leader were dismissed from the litigation, but the plaintiff's claims against Specialty remained. After a seven-day trial, the jury rendered a decision in favor of the plaintiff, and the trial court entered a judgment against Specialty, totaling more than $13 million.

Specialty was insured through Burlington Insurance Company and Evanston Insurance Company. The parties stipulated that the insurers would provide coverage up to their respective limits, plus interest, as partial satisfaction of the judgment. Specialty then agreed to pay the plaintiff $1 million and assigned to him any and all possible actions against the insurers, including claims of bad-faith refusal to settle. Despite these payments, nearly $3 million remained to satisfy the judgment. The plaintiff and Specialty jointly moved for proceedings supplemental to the judgment and asserted that before trial, the plaintiff had made demands as low as $1.5 million, but Burlington failed to provide an amount that it would pay to facilitate settlement and Evanston offered nothing, both of which constituted a bad-faith refusal to settle.

The plaintiff and Specialty asked the trial court to exercise its discretion to permit additional discovery

to facilitate the collection of the outstanding judgment. However, the trial court denied the request and held that a different lawsuit was required because there remained questions about whether the insurers had engaged in bad faith and that a different forum might be required to litigate the claim. The plaintiff then served writs of garnishment against the insurers for the amount of the judgment yet to be satisfied. The insurers separately moved to quash and dismiss the writs of garnishment, which the trial court granted.

The appellate court affirmed in part, reversed in part, and remanded to the trial court. The appellate court held that even though the Michigan Court Rules had evolved, the appellate court in *Rutter v. King*, 57 Mich. App. 152 (1974), held, as a matter of law, that a plaintiff who had been assigned a claim of bad-faith refusal to settle could litigate the insurer's liability through a garnishment proceeding. Burlington sought leave to appeal in the Supreme Court, which was granted so that the parties could address "whether a claim of bad-faith refusal to settle by an insurer can be litigated in a writ of garnishment."

The Supreme Court held that the claim of bad-faith refusal to settle against the insurer was not sufficiently liquidated to be litigated through the garnishment proceedings and, therefore, had to be brought in a new lawsuit. The Supreme Court first addressed MCR 3.101(G)(1)(a), which permits garnishment for "all ... property belonging to the defendant in the garnishee's possession or control when the writ is served on the garnishee, unless the property is represented by a negotiable document of title held by a bona fide purchaser for value other than the defendant[.]" Given that the insurers had already paid out their policy limits, it could not be said that either insurer was in possession of monetary insurance proceeds owed when the writs of garnishment were served. Until the bad-faith claim could be litigated to conclusion, there was no determination that the insurers owed any damages to the plaintiff or Specialty. Therefore, the plaintiff and Specialty could not establish that the amount they sought to garnish was property in possession of the insurers that was owned by Specialty.

The Supreme Court also addressed MCR 3.101(G)(1)(d), which permits garnishment for "all debts, whether or not due, owing by the garnishee to the defendant when the writ is served on the garnishee, except for debts evidenced by negotiable instruments or representing the earnings of the defendant[.]" The Supreme Court again concluded that at the time the writs were served, it was premature to conclude that either insurer owed any debt to Specialty. For the debt to be subject to garnishment, the general rule is that the debt "must be due absolutely, and without contingency" unless specifically authorized by statute or court rule, and no statutes or rules permitted securing the uncertain, contingent debt at issue through a garnishment proceeding.

Lastly, the Supreme Court addressed MCR 3.101(G)(1)(g), which permits garnishment for "all judgments in favor of the defendant against the garnishee in force when the writ is served on the garnishee[.]" Because neither the plaintiff nor Specialty had a judgment against the insurers, this Supreme Court rule did not permit the trial court to take jurisdiction to resolve the matter in a

garnishment proceeding.

In so holding, the Supreme Court overturned *Rutter*, noting first that it was decided in 1974 and was not binding on a subsequent panel of the appellate court. It further held that *Rutter* was no longer valid because it was decided before the adoption of MCR 3.101(G)(1). Under the court rules, the plaintiff and Specialty's bad faith failure-to-settle claim was a potential claim not sufficiently liquidated to be suitably resolved through garnishment proceedings. Therefore, the Supreme Court reversed and remanded to the trial court for further proceedings consistent with its opinion.

Plunkett Cooney attorney Briana Combs was the primary author of an amicus brief filed on behalf of several insurer organizations that asserted the bad-faith claims had to be litigated in a new lawsuit. Not only was this opinion unanimous, but the Supreme Court also denied a stipulation between the parties to dismiss the appeal, reflecting the significance of this legal issue as was emphasized in Combs' amicus brief.

By Joshua LaBar