

BAD FAITH BLOG

# Louisiana Plaintiff Not Permitted to Bring a Bad Faith Failure to-Settle Suit Because of Lack of Proper Assignment

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**Summary:** Dana Johno brought a suit against Leon Duplessis & Sons, Inc. ("Duplessis") alleging it demolished his home without consent following Hurricane Katrina. Johno also named as parties to the suit Duplessis's two subcontractors (Hard Rock Construction and Pro Tree Services), its insurer (Scottsdale Insurance Company) and the local parish government which hired Duplessis.

*Dana Johno v. John Doe et al.*

During settlement negotiations with Duplessis, Johno discovered that Scottsdale refused to negotiate a settlement. Eventually, the parish and Duplessis settled with Johno leaving the subcontractors and Scottsdale in the suit. As part of the settlement agreement with Duplessis, Johno released all claims he had against it and received an assignment of some—but not all—of Duplessis's contractual rights against Hard Rock and Scottsdale. Johno initiated a bad faith suit against Scottsdale which was dismissed by the trial court based on lack of a proper assignment.

The court addressed whether Duplessis properly assigned its bad faith failure to settle claim against Scottsdale to Johno. The court began its analysis by discussing the release between Johno and Duplessis. It concluded that under the law of contracts the release unambiguously did not expressly assign a bad faith claim to Johno. The court explained under Louisiana law a bad faith claim is a statutory violation of an insurer's duty under the Louisiana Civil Code as opposed to a breach of the insurance contract. The significance of this distinction is that the release included provisions that assigned only breach of contract claims for failure to indemnity, but it did not assign any statutory violation claims. In short, Johno released Duplessis from all claims he had against it, but Duplessis did not assign all its potential claims, including statutory violations, against Scottsdale to Johno. The court ultimately held Johno could not pursue a bad faith claim against Scottsdale because the express language of the release and settlement agreement did not provide for an assignment.

A rather lengthy dissent was also filed by Judge Tobias (with Judge Bagneris joining). The dissent took issue with whether the judgment rendered by the trial court was improperly designated as final and therefore should not have been appealable. Scottsdale's argument, according to the dissent, was misplaced because Scottsdale asserted an unexercised right to file a suit cannot be assigned under any circumstances. The dissent also stressed that the Louisiana Code of Civil Procedure does not even recognize a "partial" exception for no right to action which was the mechanism the majority erroneously applied. The dissent suggested the proper course of action was to convert the appeal to a writ, vacate the judgment, and remand for the presentation of evidence as to what, if anything, was actually assigned to Johnno. It was unclear from the record whether Duplessis' unexercised right to file a bad faith claim was assigned to Mr. Johnno due to the ambiguous nature of the settlement agreement and the definition of "CLAIM" therein.

By Aaron French & Tamar Hodges

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