

# Missouri Appellate Court Holds Rental Car Company Is Not an Insurer and Not Liable for Bad Faith

AUTHOR: AARON FRENCH

A motorist, who was injured in an automobile accident with a rental car, brought a garnishment action against the renter and car rental company, seeking the \$25,000.00 limit provided by the Motor Vehicle Responsibility Law (MVFRL). The renter filed a cross-claim against the car rental company alleging bad faith failure to settle and breach of contractual duty to defend. The trial court granted summary judgment for the car rental company and the renter appealed. On appeal, the Missouri Court of Appeals, Eastern District, found the rental car company did not have a duty to defend the renter and the rental car company did not commit bad faith in refusing to settle.

*Clayborne v. Enterprise Leasing Company of St. Louis, et al.*

The renter entered into a written rental agreement with the car rental company. The renter declined to purchase insurance coverage from the car rental company when he rented the car. The renter also declined the option to purchase supplemental liability protection, which included excess insurance from a third-party insurance company when he entered into the rental agreement.

Under the rental agreement, the rental car company indicated it complied with the applicable MVFRL as a state certified self-insurer. The rental agreement specifically stated, except to the extent required by the MVFRL, the rental car company did not provide insurance coverage to the renter.

After signing the rental agreement, the renter was involved in an automobile accident when he ran a stop sign and collided with plaintiff's car. At the time of the accident, the renter maintained his own liability insurance policy, which provided insurance coverage for the accident.

Following the accident, the renter's attorney sent a letter to the rental car company indicating the renter was willing to settle within the policy limit of \$25,000.00.

The renter and the plaintiff entered into a Covenant Not to Execute under Missouri Statute 537.065, which provided that in return for \$15,000.00 from the renter's own automobile liability insurer, the plaintiff would not pursue the renter's personal assets and enforce any judgment by execution or garnishment against the renter's insurance policies. The renter agreed to waive his right to contest venue and trial by jury, and agreed to a bench trial. He also agreed he would not accept a defense from the rental car company.

Soon thereafter, the plaintiff filed a lawsuit alleging he was injured by the renter's negligent operation of the rental car. After suit was filed, the renter's attorney again contacted the rental car company and advised that suit had been filed. The rental car company denied it had a duty to defend and indemnify the renter. As agreed, the lawsuit proceeded to a bench trial and judgment on liability and damages was entered against the renter in the amount of \$575,000.00 and post-judgment interest.

A subsequent garnishment action was filed by the plaintiff for the MVFRL \$25,000.00 limit owed by the rental car company. In the same garnishment action, the renter filed a cross-claim against the rental car company for bad faith failure to settle and breach of the contractual duty to defend. The rental car company satisfied the garnishment claim by paying \$25,000.00 and the plaintiff voluntarily dismissed the rental company from the garnishment action.

The rental car company subsequently filed a motion for summary judgment on the renter's claims for breach of duty to defend and bad faith failure to settle asserting the rental car company did not have a contractual duty under the rental agreement or a statutory duty under the MVFRL to defend the renter and neither the rental agreement nor the MVFRL gave the rental car company the exclusive right to contest or settle any claims. The trial court entered summary judgment for the rental car company on both the contractual duty to defend and the bad faith failure to settle claims finding the rental car company was not an insurer, the renter paid no premium for insurance coverage, and the rental car company did not have any duty to defend or settle claims against the renter under the rental agreement or the MVFRL.

The appellate court affirmed the decision of the trial court finding the rental car company's obligation was to pay \$25,000.00, which it had. The appellate court also analyzed the rental agreement and found the renter had explicitly declined the option given to him to purchase insurance coverage directly from the rental car company and also explicitly declined the option to purchase supplemental liability protection. The rental car company was a self-insured car rental company and not an insurance company, according to the appellate court. Therefore, it had no duty to pay third parties injured by renters of its vehicles and no separate and independent duty to provide renter a defense or settle claims brought against him unless the renter so chose, which he had not.

Under Missouri law, the renter could not prove the elements of a bad faith refusal to settle claim because a condition precedent to proving such a claim is it must be made against a "liability insurer." Because the rental car company was found not to be a "liability insurer" the bad faith failure to settle claim could not stand.

The appellate court also did not agree with the renter's argument that if the rental car company would have paid the plaintiff the \$25,000.00 prior to filing suit, then the plaintiff would not have sued the renter and no judgment would have resulted from that suit in the amount of \$575,000.00. The appellate court was not moved by this argument because the rental car company was not the renter's liability insurer and the renter's liability insurer already had settled with the plaintiff. Because the rental car company satisfied its only duty to pay the \$25,000.00 it was entitled to summary judgment as a matter of law.

Despite the attempt in this case to expand the bad faith failure to settle law to entities other than liability insurers, the Missouri Appellate Court clarified that bad faith failure to settle claims are limited only to "liability insurers."