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Case Bulletin: Insurance Law

West Virginia Supreme Court of Appeals Rules that Insurer Is Not Required to Pay Excess Verdict Where Insured Is Not Exposed to Personal Liability

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Daniel R. Strahin v. Earl Sullivan and Farmers & Mechanics Mutual Insurance Company
West Virginia Supreme Court of Appeals — No. 33091
Opinion Dated February 21, 2007

The West Virginia Supreme Court held that in order for an insured or an assignee of an insured to recover the amount of a verdict in excess of the applicable insurance policy limits from an insurer pursuant to the Court's decision in Shamblin v. Nationwide Mutual Insurance Co., 183 W.Va. 585, 396 S.E. 2d 766 (1990), the insured must be actually exposed to personal liability in excess of the policy limits at the time the excess verdict is rendered.

This case was before the Supreme Court of West Virginia two times. The Plaintiff, Daniel Strahin was shot in the arm by Robert Cleavenger while he was on property owned by Earl Sullivan. Subsequently, in February 1999, The Plaintiff filed a Complaint naming Strahin and Cleavenger as Defendants. A jury found in favor of the Plaintiff in the amount of \$1,060,556.000, which was upheld by the West Virginia Supreme Court.

After the jury verdict, but prior to the West Virginia Supreme Court's opinion on the trial, the Plaintiff amended his Complaint to assert a claim against Earl Sullivan's homeowner's insurer, Farmer & Mechanics Mutual Insurance Company, pursuant to Shamblin v. Nationwide Mutual Insurance Co., 183 W.Va. 585, 396 S.E.2d 766 (1990). The Farmer and Mechanics policy had liability limits of \$100,000.00. The claim against Farmer & Mechanics Mutual Insurance Company was assigned to the Plaintiff by Earl Sullivan prior to trial. The assignment contained a covenant not to execute prior to trial.

Farmer & Mechanic Mutual Insurance Company answered the amended complaint and moved for summary judgment with regard to Plaintiff's claim under Shamblin. The Circuit Court granted the motion for summary judgment and the Plaintiff appealed.

In its opinion the West Virginia Supreme Court stated recognized that the assignment of a Shamblin claim is permissible, but the mere assignment of rights does not translate into automatic recovery. The Assignee must satisfy all of the elements of the cause of action. The Court decided that in this case by coupling the assignment with a covenant not to execute prior to trial and thus prior to an excess verdict, the Shamblin claim was automatically extinguished.

The Court felt that holding an insurer liable for a judgment even when the insured is not legally liable for the same promoted collusion between the insured and the Plaintiff to raid insurance proceeds because an insured who is protected by a covenant not to execute loses the incentive to contest liability. According to the Court, public policy as well as case law dictates that when an insured's personal assets are not at stake at the time a verdict in excess of the applicable insurance policy limits is rendered; there is not cause of action pursuant to Shamblin.