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Garnishment of Stipulated Judgments

The next frontier in
Insurance Coverage Law.

"Calm in the Face of Panic."

- The Garnishment Basics
- The Intersect Point of Insurance Law and Debtor/Creditor Law
- Appreciating the Opportunities
- Understanding the Options
- Riding the Curve to New Business
  - Policyholders
  - Insurers

Does This Ever Really Happen?

- in the paper, 16 states with court opinions where garnishment of insurance policies have occurred
- Maryland, Missouri, Pennsylvania, Florida, Illinois, Colorado, Washington, Georgia, Alabama, Hawaii, New York, Oregon, Kansas, North Dakota, Nebraska, Arizona

Disclaimers

- Much is undecided
- Cutting edge / evolving area of the law
- Courts are making up as they go
- Plaintiff's attorneys are training on it
- Preparation involves staying ahead of the curve where the direction of the law is pointing

Back to Law School

- What is a Garnishment?

Garnishments Are Intended to Enforce Judgments.

- "Garnishment is a remedy created and controlled by [state] statute. . . . It is a statutory proceeding whereby a [judgment debtor's] money or property in possession of another [i.e., the garnishee] are applied to payment of the former's debt to a [a judgment creditor]." *Mayor and City of Baltimore v. Utica Mut. Ins. Co.*, 802 A.2d 1070, 1081 (Md. Ct. Spec. App. 2002).
- "[G]arnishment is a well-settled, viable remedy available to a judgment creditor to collect on a judgment from the judgment debtor's insurer." Butterfield v. Giuntoli, 670 A.2d 646, 651 (Pa. Super. Ct. 1995).

Back to Law School

- What is a Garnishment?
- Like Insurance, Garnishments vary from state to state.

FOOTNOTE: Because Garnishments Are Governed by State Statute, the Specific Rules Governing Them Vary from State to State.

Expertise is a must –

- state specific
- garnishment law
- insurance law
- judge
- policy specific
- plans are a premium

Garnishments Statutes Must Be Strictly Followed.

- "Garnishment is a statutory remedy in derogation of the common law and is not to be extended beyond the provisions of the statute which must be strictly followed."

  Thompson v. Commercial Union Ins. Co. of New York, 267 So. 2d 18, 20 (Fla. 1st DCA 1972).

Garnishment/Subrogation

- "A garnishment proceeding entitles a [judgment creditor] to be subrogated to the [judgment] debtor's right against the garnishee. The [judgment creditor] gets no greater right than that of the [judgment] debtor."

  Pippen v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pennsylvania, 845 F. Supp. 849, 851 (M.D. Fla. 1994).

Back to Law School

- What is a Garnishment
- Like Insurance, Garnishments vary from state to state
- The Players
  - Debtor (Policyholder)
  - Creditor (Claimant)
  - Garnishee (Insurer)

The Procedure

- Predicates
  - Final Judgment
  - An Asset including an Obligation
- The Writ
  - Completion of a form
  - Filing Fee
  - Affidavit

Back to Law School

- What is a Garnishment
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  - Debtor (Policyholder)
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  - Garnishee (Insurer)
- Predicates

The Predicates

- Predicates
  - Final Judgment
  - An Asset including an Obligation

The Predicates

- Claim
- Policy
- Suit
- Stipulated Judgment
- Garnishment

The Procedure

- The Writ
  - Completion of a form
  - Filing Fee
  - Affidavit
- Service
  - Debtor
  - Creditor
- Response
  - time specific
  - procedural defenses
  - substantive defenses

The Procedure

- Traverse / Reply
- Status Conference / Summary Proceeding
- Discovery in aid of collection of a judgment
- Hearing / Trial
- Appeal

Garnishment Actions Present Potentially Significant Exposure for Insurers

- Policyholders have responded recently with a new strategy aimed at shifting and lessening burdens of proof that would otherwise apply. Specifically, the strategy involves the garnishment of insurance policies on behalf of the claimant (as a judgment creditor) of the insured (as the judgment debtor) against the insurer (as a garnishee).

In Most States, Garnishment Requires a Liquidated Debt.

- For example, under Florida law, “[b]efore a writ of garnishment can be effective there must be an 'indebtedness due‘ . . . or which may become due absolutely by the lapse of time only. This excludes an indebtedness that may never become due according to circumstances yet to occur, or which is not determinable by a fixed and certain method of calculation. If there is anything contingent or to be done by a person before the liability of another becomes fixed, there is not such an 'indebtedness due' as contemplated by the statute."

  Pippen v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pennsylvania, 845 F. Supp. 849, 851 (M.D. Fla. 1994).

A Denial of a Debt Due Is Not a Contingency.

- "When the garnishee denies liability, one of the objects of the garnishment suit is to ascertain whether there is a debt due from the garnishee to the judgment debtor. Thus, the denial of liability by the garnishee does not create a contingency which will prevent garnishment."

  Pippen v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pennsylvania, 845 F. Supp. 849, 852 (M.D. Fla. 1994).

In Some States, a Garnishment Constitutes a Separate Suit.

- For example, under Maryland law, garnishment proceedings are separate cases, even though filed in the underlying action.

  Mayor and City of Baltimore v. Utica Mut. Ins. Co., 802 A.2d 1070, 1081 (Md. Ct. Spec. App. 2002).

The Risks Or Opportunities -

Depending on Your Frame of Reference.

Potentially Significant Exposure for Insurers Include:

- Litigating Coverage Issues More Than Once

Litigating Coverage Issues More Than Once

Connecticut Gen. Life Ins. Co. v. A.A.A. Waterproofing, Inc., 911 P.2d 684 (Colo. Ct. App. 1995), aff'd and remanded, Constitution Assocs. v. New Hampshire Ins. Co., 930 P.2d 556 (Colo. 1996) (*en banc*).

- Although the Colorado Supreme Court disagreed, the Colorado Court of Appeals concluded that the previously mentioned trial court's "no coverage" ruling in the insurer's declaratory judgment action was not binding on the judgment creditor because the declaratory judgment action was decided before the claimant's tort action against the insured was decided, and, therefore, was premature.
- This ruling also would have required the insurer to relitigate coverage with the judgment creditor and could be followed by other states that address the issue.

Litigating Coverage Issues More Than Once

Constitution Associates v. New Hampshire Ins. Co., 930 P.2d 556 (Colo. 1996) (*en banc*).

- Holding in one of two cases consolidated for appeal that the trial court's ruling, in the insurer's declaratory judgment action, that the liability policy did not provide coverage was not binding on the judgment creditor because the insurer did not join the judgment creditor as a defendant in that action.
- Consequently, the insurer had to relitigate coverage with the judgment creditor.

Potentially Significant Exposure for Insurers Include:

- Litigating Coverage Issues More Than Once
- Paying Policy Benefits More Than Once

Paying Or Collecting Policy Benefits More Than Once

Am. Ins. Co. v. Black, 168 S.E. 85 (Ga. Ct. App. 1933).

- The judgment creditor served insurer with garnishment action summons after the occurrence of a property loss but before proofs of loss had been made. The insurer paid the insured upon receipt of proofs of loss.
- The court ordered the insurer to pay the amount of the loss to the judgment creditor, which was the insurer's second payment of the loss.
- The court held that the interest of insured under fire policy after occurrence of the loss, and before proofs had been made, but within period for making proofs, was subject to garnishment.

Paying Policy Benefits More Than Once

Fleming v. Pan Am. Fire & Cas. Co., 495 F.2d 535 (Ala. 1974).

- Claimant had a direct claim against debtor's insurer on bases that (1) the claimant had a right to proceed in equity against insurer to collect on judgment against the debtor under Alabama statutes, and (2) the claimant had become a third-party beneficiary under terms of the policy itself.
- The claimant having acquired such a lien or vested interest, the insurer could not defeat his right of action by its settlement with the named insured.

Potentially Significant Exposure for Insurers Include:

- Litigating Coverage Issues More Than Once
- Paying Policy Benefits More Than Once
- Losing Federal Court Diversity Jurisdiction
  - Appearing Before Less Sophisticated Judges
  - Being Restricted to Summary Proceedings

Losing Federal Court Diversity Jurisdiction

Liberty Mut. Ins. Co. v. Wheelwright Trucking Co., 851 So. 2d 466 (Ala. 2002).

- A federal district court in Alabama rejected the insurers' attempt to remove the garnishment action from state court to federal court because the insurers stood in the shoes of the insured, which was a non-diverse party in relation to the claimant/judgment creditor.

Some States Preserve Federal Court Diversity Jurisdiction

Scanlin v. Utica First Ins. Co., 426 F. Supp. 2d 243, 248-50 (M.D. Pa. 2006).

- A garnishment action can be a distinct "civil action" subject to removal if it presents separate issues and separate defendants not involved in the state court tort action and all other statutory requirements for diversity are met
  - "[A] suit which is merely ancillary or supplemental to another action cannot be removed from state to federal court."
- Bad faith claim may be considered distinct issue for purposes of removal because state court suit only established negligence of insured.

Potentially Significant Exposure for Insurers Include:

- Litigating Coverage Issues More Than Once
- Paying Policy Benefits More Than Once
- Losing Federal Court Diversity Jurisdiction
  - Appearing Before Less Sophisticated Judges
  - Being Restricted to Summary Proceedings
- Shifting of the Burden of Proof

Shifting of the Burden of Proof

Liberty Mut. Ins. Co. v. Wheelwright Trucking Co., 851 So. 2d 466 (Ala. 2002).

- Under Alabama and Georgia law, the burden of proof in a garnishment proceeding on the issue of whether a consent judgment was collusive shifted from the judgment creditor to the insurers because the insurers were informed of the consent settlement and its terms and had ample opportunity to contest them before approval by a bankruptcy court.

Potentially Significant Exposure for Insurers Include:

- Litigating Coverage Issues More Than Once
- Paying Policy Benefits More Than Once
- Losing Federal Court Diversity Jurisdiction
  - Appearing Before Less Sophisticated Judges
  - Being Restricted to Summary Proceedings
- Shifting of the Burden of Proof
- Expedited Discovery

Expedited Discovery

Employees' Ret. Sys. of the State of Haw. v. Real Estate Fin. Corp., 793 P.2d 170, 172 (Haw. 1990).

- Hawaii Revised Statute Section 652-1 "clearly and explicitly provides a right, on the part of the garnishor, to examine a garnishee, who has denied an indebtedness to the judgment creditor, and we see nothing in the statutes that prohibits appropriate discovery, under the rules of civil procedure, in preparation for such an examination."

Potentially Significant Exposure for Insurers Include:

- Litigating Coverage Issues More Than Once
- Paying Policy Benefits More Than Once
- Losing Federal Court Diversity Jurisdiction
  - Appearing Before Less Sophisticated Judges
  - Being Restricted to Summary Proceedings
- Shifting of the Burden of Proof
- Expedited Discovery
- Enforcement of *Coblentz* Agreements.

Enforcement of *Coblentz* Agreements

Gallagher v. Dupont, 918 So. 2d 342 (Fla. 5th 2005).

- A judgment creditor that has settled a case by entering a *Coblentz* agreement and that shows that the amount of the agreement was reasonable and that the agreement was not tainted by bad faith or collusion can bring a garnishment action to collect the judgment from the insurer.

Potentially Significant Exposure for Insurers Include:

- Litigating Coverage Issues More Than Once
- Paying Policy Benefits More Than Once
- Losing Federal Court Diversity Jurisdiction
  - Appearing Before Less Sophisticated Judges
  - Being Restricted to Summary Proceedings
- Shifting of the Burden of Proof
- Expedited Discovery
- Enforcement of *Coblentz* Agreements.
- Litigating Coverage Action in One Forum and the Garnishment Action in Another

Litigating Coverage Action in One Forum and the Garnishment Action in Another

Pippen v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pennsylvania, 845 F. Supp. 849 (M.D. Fla. 1994).

- The fact that the insurer and insured were litigating insurer's liability in separate action did not render insurer's obligation to insured "contingent," and thus did not preclude judgment creditor's garnishment action against insurer in separate forum following consent settlement of tort claim.

Potentially Significant Exposure for Insurers Include:

- Litigating Coverage Issues More Than Once
- Paying Policy Benefits More Than Once
- Losing Federal Court Diversity Jurisdiction
  - Appearing Before Less Sophisticated Judges
  - Being Restricted to Summary Proceedings
- Shifting of the Burden of Proof
- Expedited Discovery
- Enforcement of *Coblentz* Agreements.
- Litigating Coverage Action in One Forum and the Garnishment Action in Another
- Bad Faith Claims

Bad Faith Claims

- *Some States Permit Garnishment Actions Involving Bad Faith Claims, Others Do Not*.
  - Yes.
    - *Moses v. Halstead*, 477 F. Supp.2d 1119 (D. Kan. 2007).
    - *Atlantic Cas. Ins. Co. v. Oregon Mut. Ins. Co., 153 P.3d 21 (Wash. Ct. App. 2007).*
    - *Rutter v. King*, 226 N.W.2d 152 (Mich. Ct. App. 1974).
    - *Scanlin v. Utica First Ins. Co.*, 426 F.Supp.2d 243 (M.D. Pa. 2006)
  - No.
    - *Ross v. St. Paul Reinsurance Co.*, 610 So. 2d 57 (Ga. 2005).
    - *Chandeler v. Doherty*, 731 N.E.2d 1007 (Ill. App. Ct. 2000).
    - *Hoar v. Aetna Cas. & Sur. Co., 968 P.2d 1219 (Okla. 1998).*

Bad Faith Claims Allowed

Moses v. Halstead, 477 F. Supp.2d 1119 (D. Kan. 2007).

- Plaintiff sustained injuries in car operated by Insured. Automobile liability Insurer refused to settle, within the policy limits, all of Plaintiff's claims. In response, Plaintiff sued Insured in state court and received a jury verdict that exceeded the policy limits.
- Plaintiff attempted to collect the entire judgment by requesting an order of garnishment, alleging that Insurer had negligently and in bad faith refused to accept her offer to settle within the policy limits.
- After removal the District Court denied Insurer's Motion for Summary Judgment. The District Court found there was a question of fact regarding Insurer's bad faith. "A judgment creditor may proceed by garnishment against a tortfeasor's insurer for the unpaid balance of the judgment which is in excess of the policy limits where the insurer refused to settle within policy limits by virtue of negligence or bad faith."

Bad Faith Claims Allowed

Atlantic Cas. Ins. Co. v. Oregon Mut. Ins. Co., 153 P.3d 21 (Wash. Ct. App. 2007).

- Injured Third party raised issues of bad faith to refute judgment debtor's coverage defenses.
- Court held that, while a third party has no cause of action against an insurance company's breach of the duty of good faith to its insured, a third party may raise bad faith issues to prove coverage.

Bad Faith Claims Allowed

Rutter v. King, 226 N.W.2d 79 (Mich. Ct. App. 1974).

- The judgment creditor was not required to receive an assignment of the bad faith claim before proceeding in a suit against the insurer.
- The Court ruled that garnishment would be an appropriate action because all the actions that would create bad faith had already occurred.
- A separate action to determine bad faith of the insurer would be an inefficient use of judicial resources.

Bad Faith Claims Not Allowed

Ross v. St. Paul Reinsurance Co., 610 So. 2d 57 (Ga. 2005).

- Injured parties could bring garnishment action against insurer after their claim against the insured was reduced to judgment notwithstanding the fact that the insurer denied coverage based on the assault and battery exclusion.
- In dicta, the court suggested that a third-party claimant may not bring a bad faith suit against the insurer in a garnishment action.

Bad Faith Claims Not Allowed

Chandeler v. Doherty, 731 N.E.2d 1007 (Ill. App. Ct. 2000).

- After obtaining a judgment against insured, injured third party file a garnishment claim for the policy limits on the full underlying judgment and a claim for bad faith damages.
- The court held that to be subject to garnishment, the indebteness must constitute a liquidated sum due without contingency. Claims beyond the policy limits for an unknown amount of bad faith damages are not liquidated. Therefore, bad faith claims may not be brought in a garnishment action.

Bad Faith Claims Not Allowed

Hoar v. Aetna Cas. & Sur. Co., 968 P.2d 1219 (Okla. 1998).

- The court held that a member of the public was not a third party beneficiary of a public liability insurance contract.
- The insurer's duty of good faith "arises from the contractual relationship" with the insured.
- There is no duty of good faith owed to a stranger to the contract.

Potentially Significant Exposure for Insurers Include:

- Litigating Coverage Issues More Than Once
- Paying Policy Benefits More Than Once
- Losing Federal Court Diversity Jurisdiction
  - Appearing Before Less Sophisticated Judges
  - Being Restricted to Summary Proceedings
- Shifting of the Burden of Proof
- Expedited Discovery
- Enforcement of *Coblentz* Agreements.
- Litigating Coverage Action in One Forum and the Garnishment Action in Another
- Bad Faith Claims
- Successors in Interest

Successor-In-Interest as Judgment Creditor

Hoang v. Assurance Co. of Am., 149 P.3d 798, 800 (Colo. 2007) (en banc).

- "[T]he proceeds of the CGL insurance policy were available through garnishment to satisfy the judgment of a subsequent purchaser of a damaged home against the homebuilder because (1) the builder insured itself against liability for damage occurring during the policy period, (2) the damage to the home occurred during the policy period, (3) no exclusion to the policy rendered the insured's policy coverage inapplicable because of a change in the home's ownership, and (4) the builder of the home was liable for the damage to the home."

Potentially Significant Exposure for Insurers Include:

- Litigating Coverage Issues More Than Once
- Paying Policy Benefits More Than Once
- Losing Federal Court Diversity Jurisdiction
  - Appearing Before Less Sophisticated Judges
  - Being Restricted to Summary Proceedings
- Shifting of the Burden of Proof
- Expedited Discovery
- Enforcement of *Coblentz* Agreements.
- Litigating Coverage Action in One Forum and the Garnishment Action in Another
- Bad Faith Claims
- Successors in Interest
- Different Appellate Review

Different Appellate Review

- Appeals from Garnishments
- Appeals from Declaratory Judgments
- Appeals from Bad Faith Actions

McKenna Long & Aldridge LLP
Attorneys at Law
STAY AHEAD OF THE CURVE

Defending the Insurance Company Against Garnishment Actions

Strategies that Work.

Strategies that Work.

- Respond to the Garnishment Action in a Timely & Appropriate Manner
- Challenge the Judgment Creditor's Right to Bring the Garnishment Action
- Limit the Scope of Discovery to Coverage Only

Respond to the Garnishment Action in a Timely & Appropriate Manner

- The Garnishment Procedures typically dictate that a garnishee must respond to a garnishment action in an expedited time frame (e.g., 20 days) and in a particular manner (e.g., using special forms or procedures).
  - Default vs. Garnishment Default Judgment
- If the insurer/garnishee disputes the alleged indebtedness, care should be taken to deny the debt in the garnishee's answer/traverse while complying with these time requirements and procedural hurdles.
- Determine if the action can be removed to federal court.

Challenge the Judgment Creditor's Right to Bring the Garnishment Action

- Verify that the Judgment Creditor is entitled to bring the garnishment action
  - Is there, at least arguably, an "indebtedness due" to the insured?
  - Has the creditor complied with the relevant statutory requirements?
  - If the action seeks damages for bad faith, are such actions allowed in the relevant jurisdiction?

Challenge the Judgment Creditor's Right to Bring the Garnishment Action

- It may be permissible to challenge the propriety of the Action with a Motion to Dismiss.
- *See Stumpf v. Eidemiller*, 767 P.2d 77 (Or. App. 1989).
  - Held that rules of civil procedure apply to a garnishment answer since the relevant garnishment statute did not specify a different procedure.
  - Allowed insurance company garnishee to raise a question of law at the outset of the proceeding.

Limit the Scope of Discovery to Coverage Only

- Even in states which allow bad faith claims to proceed in a garnishment action, an Insurer may be able to restrict discovery until a final determination is made regarding coverage.
- For instance, Florida courts have held as follows:

  "For both first-party and third-party bad faith claims against insurers, recent case law has clarified the point that coverage and liability issues must be determined before a bad faith cause can be prosecuted. Failure to follow this procedure would, in effect, reverse the established case law that discovery of an insured's claim file is not permissible until the insurer's obligation to provide coverage has been established." *General Star Indem. Co. v. Anheuser-Busch Cos., Inc.,* 741 So. 2d 1259, 1261 (Fla. 5th DCA 1999) (*internal citations omitted*).

Due Process

- Right to a Trial by Jury
- Right to Cross-examine Witnesses
- Due Process - deprivation of substantive rights
  - appellate review
  - discovery

Outside the Box Options

- Forcing waiver of Jury Trial
- Triggering the Posting of a Bond
- Payment Pursuant to an Election of Remedies strategy
- Creating Legal Exhaustion of Limits
- Binding the Insured

Substantive Defenses

If the garnishment action is procedurally appropriate, then the following substantive defenses should be considered.

Insurer Defenses

- Proof of Judgment

Proof of Judgment

Peninsula Ins. Co. v. Houser, 238 A.2d 95 (Md. 1968).

- The general rule is that the right of the judgment creditor to recover against the garnishee depends upon the subsisting rights between the garnishee and the judgment debtor.
- The claimant must provide proof of entry of judgment in the underlying case.

Insurer Defenses

- Proof of Judgment
- Coverage Defenses

Coverage Defenses

- Insuring Agreement Provides No Coverage
- Coverage Exclusion Applies
- Breach of Material Policy Condition
  - Untimely Notice of Claim or Suit
  - Lack of Cooperation
  - Known Loss (Misrepresentation/Concealment)
  - Etc.

Coverage Defenses

- Insuring Agreement Provides No Coverage
  - *South Central Kansas Health Ins. Group v. Harden & Company Ins. Serv., Inc.*, 278 Kan. 347 (2004).

    Insurer has no duty to defend and owed nothing to the insured or creditor in the absence of coverage.

Coverage Defenses

- Coverage Exclusion Applies
  - *Medd v. Fonder*, 543 N.W.2d 483 (N.D. 1996).

    The policy specifically excluded coverage for intentional acts and injuries to co-employees.
  - *Dyas v. Morris*, 235 N.W.2d 636 (Neb. 1975).

    Garage insurance policy excluded coverage for purchasers of automobiles.
  - *Kepner v. Western Fire Ins. Co.*, 109 Ariz. 329 (1973).

    Home Insurance policy contained exclusion for any liability caused by business activities conducted within the home.

Coverage Defenses

- Breach of Material Policy Condition
  - Untimely Notice of Claim or Suit
    - *Hardware Mut. Cas. Co. v. Scott, 158 S.E.2d 275 (Ga. Ct. App. 1967).*
      - Automobile garage liability policy insurer was not liable to judgment creditor who had obtained a judgment against insured as result of occurrence within coverage of policy where only evidence showed that insured had not complied with terms of policy requiring that it immediately forward to company every demand, notice, summons or other process received and that therefore insurer was not indebted to insured on contract.

Coverage Defenses

- Breach of Material Policy Condition
  - Lack of Cooperation
    - *DeRosa v. Aetna Ins. Co.*, 346 F,2d 245 (7th Cir. 1965).
      - Under insurance policy, insured was required to cooperate in the litigation of any suit. Insured's lack of cooperation in underlying suit breached the condition of the policy and precluded judgment creditor from recovering from insurer by way of garnishment.

Coverage Defenses

- Breach of Material Policy Condition
  - Known Loss (Misrepresentation/Concealment)
    - *Am. Special Risk Mgmt. Corp. v. Cahow*, Case No. 06-95942-A (Kan. Ct. App. argued Apr. 11, 2007).
      - Garnishee argued that D&O policy did not provide coverage because the judgment debtor allegedly knew about the claim at issue before it applied for the policy.

Insurer Defenses

- Proof of Judgment
- Coverage Defenses
- Payment Obligation Limited to Reimbursement

Payment Obligation Limited to Reimbursement

- Indemnity Policy v. Liability Policy
  - Indemnity Policies Are Not Subject to Garnishment
    - Under indemnity policies, an insurer does not become liable until the insured has suffered a proven loss. A judgment against the insured is not a proven loss until insured pays the judgment. *Fireman's Fund Ins. Co. v. Puget Sound Escrow Closers, Inc.*, 979 P.2d 872 (Wash. App. Ct. 1999); *Ronnau v. Caravan Int'l Corp.*, 205 Kan. 154 (1970). *Contra Dairyland Mut. Ins. Co. v. Andersen*, 102 Ariz. 515 (1967).

Indemnity Policy v. Liability Policy

- Indemnity Policy Language
  - The Company will indemnify You against loss with respect to Injury or Damage happening during the Period of Insurance and caused by an event in connection with Your Business.
- Liability Policy Language
  - The company shall pay all sums that the insured shall become legally obligated to pay by reason of liability imposed on him by law for damages.

Insurer Defenses

- Proof of Judgment
- Coverage Defenses
- Payment Obligation Limited to Reimbursement
- Garnished Amount Limited to Insured's Legal Obligation to Pay

Garnished Amount Limited by Insured's Legal Obligation to Pay Damages

St. Paul Fire & Marine Ins. Co. v. Nowlin, 542 So. 2d 1190, 1194 (Ala. 1988).

- Insured government entity's statutory limited liability obligated it to pay only $100,000 of a $500,000 judgment to the plaintiff/judgment creditor.
- Because of insured's statutory limited liability, the insurer did not have to pay the remaining $400,000 of the judgment.

Insurer Defenses

- Proof of Judgment
- Coverage Defenses
- Payment Obligation Limited to Reimbursement
- Garnished Amount Limited to Insured's Legal Obligation to Pay
- Policy Exhaustion

Policy Exhaustion

- *Hathaway v. McMillian*, 859 F. Supp. 560 (N.D. Fla. 1994).
  - The $100,000 limit of liability provided to the County Sherriff by the Florida Sheriffs' Self Insurance Fund was exhausted by the payment of attorneys' fees and defense costs.
- *Booker T. Washington Burial Ins. Co. v. Roberts*, 153 So. 409 (Ala. 1934).
  - The insurer had no liability to garnishees if the insurer exhausted the funds paying expected bona fide claims.

Insurer Defenses

- Proof of Judgment
- Coverage Defenses
- Payment Obligation Limited to Reimbursement
- Garnished Amount Limited to Insured's Legal Obligation to Pay
- Policy Exhaustion
- Release of Liability

Release of Liability

- *Sapp v. Greif*, 961 F. Supp. 243 (D. Kan. 1997).
  - The insured, to settle a declaratory judgment action regarding coverage under a D&O policy, released Insurer from any and all claims by any person against the Insured in their capacity as directors and officers. Because Insured could not make a claim under the policy, a judgment creditor standing in Insured's shoes could not garnish policy.
- *Hathaway v. McMillian*, 859 F. Supp. 560 (N.D. Fla. 1994).
  - The claimant released the excess insurers after collecting more than $700,000 from them but before realizing that the primary policy's $100,000 limits were reduced by attorneys' fees and defense costs. The release precluded the claimant from seeking additional sums from the excess insurers.

Insurer Defenses

- Proof of Judgment
- Coverage Defenses
- Payment Obligation Limited to Reimbursement
- Garnished Amount Limited to Insured's Legal Obligation to Pay
- Policy Exhaustion
- Release of Liability
- Premiums Not Subject to Garnishment

Premiums Not Subject to Garnishment

Pinkerton & Laws Co. v. Ins. Co. of N. Am., 172 So. 2d 465 (Ga. Ct. App. 1970).

- Insurance premiums paid in advance at inception of insurance year and possible refund of portion of premium paid after an audit at end of policy year were not assets capable of seizure by service of summons of garnishment against insurer and mere issuance of liability policy by insurer to defendant in attachment did not.

Insurer Defenses

- Proof of Judgment
- Coverage Defenses
- Payment Obligation Limited to Reimbursement
- Garnished Amount Limited to Insured's Legal Obligation to Pay
- Policy Exhaustion
- Release of Liability
- Premiums Not Subject to Garnishment
- Assignment By Judgment Debtor Required

Assignment By Judgment Debtor Required

T.A. v. Allen, 868 A.2d 594 (Pa. Super. 2005).

- Deceased grandfather sexually abused grandchildren
- Grandmother originally found to have failed to exercise due care to protect her grandchildren (Appellants) from sexual abuse
  - Court reversed the judgment in previous case and entered judgment n.o.v. in grandmother's favor.
- Appellants instituted garnishment action claiming the deceased owed them a debt and that Appellee grandmother held money which she owed to deceased because she breached her obligations of good faith.
- Held: Insurer not liable in the absence of coverage. Duty to defend did not extend to grandfather's intentional acts.
- Held: Insurer not liable for claim against co-insured who was found not liable for her husband's conduct because the right to sue for bad faith not specifically assigned.

Questions?

Thank You!

The End.