

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2006-CA-00679

BAGGETT TRANSPORTATION COMPANY

APPELLANT

v.

MISSISSIPPI INSURANCE GUARANTY ASSOCIATION

APPELLEE

Appeal from the Circuit Court of Madison County, Mississippi

APPELLEE'S BRIEF

ORAL ARGUMENT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Baggett Transportation Company, Appellant.
2. Mississippi Insurance Guaranty Association, Appellee.
3. William C. Brabec and David W. Donnell, ADAMS AND REESE, LLP, attorneys for Appellant.
4. L. Clark Hicks, Jr., Lawrence C. Gunn, Jr., and L. Grant Bennett, GUNN & HICKS PLLC, attorneys for Appellee.

Clark Hicks
L. CLARK HICKS, JR., attorney of record
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Association, Appellee

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STATEMENT REGARDING ORAL ARGUMENT

Baggett Transportation Company, a nonresident corporation, seeks to invoke coverage of the Mississippi Insurance Guaranty Law even though the act covers Mississippi claimants and insureds. Baggett's attempt to obtain coverage is contrary to the clear and unambiguous language of the statute and would place in peril the limited funds of the Association. This Court recently rejected Baggett's argument in Owens Corning v. Mississippi Insurance Guaranty Association, 947 So. 2d 944 (Miss. 2007). The Association seeks oral argument to prevent the disastrous consequences of allowing coverage for nonresidents of Mississippi.

STATEMENT OF THE ISSUES

Is a nonresident claimant and insured covered under the Mississippi Insurance Guaranty Association Law?

STATEMENT OF THE CASE

1. Nature of the case.

Baggett Transportation Company (Baggett) is an Alabama trucking enterprise. (R. Vol. 1, p. 3). One of its drivers was involved in a trucking accident with another motorist. The heirs of the motorist filed suit against Baggett and its driver, and the litigation resulted in a settlement which was documented as a consent judgment between the heirs of the motorist and Baggett. (R. Vol. 1, p. 8-9). The Mississippi Insurance Guaranty Association (MIGA) was not a participant in the settlement. After entry of the judgment, Baggett sued the MIGA in Madison County Circuit Court alleging the MIGA owed Baggett all sums due under the judgment. Baggett's liability insurance carrier, Reliance National Indemnity Company, had declared insolvency and as a result, Baggett attempted to call upon the MIGA to satisfy the judgment. (R. Vol. 1, p. 5-6).

The MIGA defended the complaint and raised the statutory protections of the MIGA Law including Miss. Code Ann. §83-23-109(f). MIGA is a non-profit association created by statute. The rights and obligations of the MIGA are set forth in the statute. The Association Law is to be liberally construed and is a mechanism for the payment of "covered claims." In the event of a liability insurance carrier's insolvency, the MIGA is obligated to satisfy certain claims to the extent they are deemed "covered claims." Miss. Code Ann. §83-23-103 and 107.

In this case, the MIGA raised the residency requirement of the Association Law which provides that in order to be a "covered claim," the claimant or insured pursuing the claim must be

a “resident of this state at the time of the insured event, provided that for entities other than an individual, the residence of a claimant or insured is the state in which its principal place of business is located at the time of the insured event.” Miss. Code Ann. §83-23-109(f).

2. Course of proceedings and disposition in court below.

On August 5, 2004, the MIGA filed its motion for summary judgment. (Supp. R. Vol. 1, Exh. A). An agreed order was entered staying all proceedings on September 28, 2004. (R. Vol. 1, p. 21). On October 5, 2005, Baggett filed its response to MIGA’s motion for summary judgment and submitted its own cross-motion for summary judgment. (Supp. R. Vol. 1, Exh. B). On January 27, 2006, MIGA timely submitted its consolidated response to Baggett’s cross-motion for summary judgment and replied to Baggett’s cross-motion. (Supp. R. Vol. 3, Exh. C). After final submission of additional briefs by all parties, the Court heard oral argument on March 13, 2006.

After reviewing the law, the briefs and after having oral argument, the Court entered its order granting the MIGA’s motion for summary judgment and entered final judgment. The final judgment was filed on March 31, 2006. (R. Vol. 1, p. 110-112).

Baggett timely filed its notice of appeal on April 24, 2006. (R. Vol. 1, p. 113-114).

3. Statement of the Facts.

The facts are undisputed. The issue before the Court involves statutory construction.

The heirs of James Bowlin filed suit against Baggett and its driver as a result of a truck/car accident. Baggett is a Delaware corporation with its principal place of business in Alabama. By stipulation, Baggett is not, and has never been, a resident of Mississippi. (R. Vol. 1, p. 111). During the course of the litigation, the liability insurance carrier defending and protecting Baggett became insolvent. Following the insolvency, the parties to the litigation

entered into the settlement whereby Baggett consented to a judgment. Subsequently, Baggett has made payments on the judgment to the heirs. This suit represents Baggetts attempt to get reimbursement for the consent judgment it reached with the heirs of the motorist. (R. Vol. 1, p. 5-6).

The MIGA is a non-profit association created by statute and is in existence to provide limited proceeds to resident claimants or insureds. Miss. Code Ann. §83-23-109(f) and 111. Alabama has an analogous association operating to pay Alabama residents. Baggett, an Alabama and Delaware resident, invoked the protections of the analogous Alabama Guaranty Association Law and obtained reimbursement from the Alabama Guaranty Association. Baggett, however, entered into a sizable consent judgment, and the reimbursement available under Alabama law did not fully satisfy Baggett. Thus, Baggett has journeyed into Mississippi to double dip under the MIGA Law.

The MIGA Law specifically limits “covered claims” of this type to Mississippi residents. Because Baggett is not a Mississippi resident, it may not pursue this claim. This Court recently decided this exact issue in the case of Owens Corning v. Mississippi Insurance Guaranty Association, 947 So. 2d 944 (Miss. 2007).

SUMMARY OF THE ARGUMENT

The MIGA Law pays “covered claims” which is limited by definition to claimants or insureds who are residents of this state at the time of the insured event.

The parties agree that the principal place of business of Baggett is in Alabama, and it is incorporated in Delaware. Baggett is not, nor has it ever been, a Mississippi resident.

Because the claim of Baggett is not a “covered claim” as defined by statute, Baggett may not seek coverage under the MIGA Law.

STANDARD OF REVIEW

The grant of summary judgment is reviewed *de novo*. Simpson v. Boyd, 880 So. 2d 1047, 1050 (Miss. 2004).

ARGUMENT

Is a nonresident claimant and insured covered under the Mississippi Insurance Guaranty Association Law? ¹

There is no need for this Court to write another lengthy decision on this issue, as this exact question was decided in Owens Corning v. Mississippi Insurance Guaranty Association, 947 So. 2d 944 (Miss. 2007). Ironically, the appeal in Owens Corning came out of the same circuit court. Judge Chapman ruled that the MIGA Law imposes a Mississippi residency requirement, and this Court on appeal affirmed his decision. Judge Samac Richardson, in this case, agreed with Judge Chapman and found that the MIGA Law imposes a Mississippi residency requirement. (See Judge Richardson's order attached as Tab "1.") This Court need only affirm the decision of Judge Richardson by referencing the Owens Corning decision.

To recap. James Bowlin was killed in an automobile accident with a truck driver who was driving for Baggett. The heirs of the motorist filed suit against the driver and Baggett alleging negligence and other claims. During the litigation, Baggett and the truck driver were defended by and insured by Reliance National Indemnity Company. Reliance subsequently became insolvent. After the insolvency, the heirs of the driver reached a settlement with Baggett which was documented via a consent judgment. Under the consent judgment, Baggett has made

¹ Baggett raises other issues on appeal which were not addressed by Judge Richardson. A reversal of his decision should include a remand for the trial court to decide these issues, not an appellate court. Alternatively, the MIGA requests permission to address these additional issues if this Court elects to reverse the Owens Corning decision or Judge Richardson, or both.

payments to the Bowlin heirs. Baggett submitted a claim with the Alabama Insurance Guaranty Association and received reimbursement for a portion of the judgment. Baggett is a Delaware corporation with its principal place of business in Alabama. Baggett is not, nor has it ever been, a resident of Mississippi.

The MIGA Law establishes an association which is a non-profit entity. The Association Law is to be liberally construed to provide a mechanism of payment for Mississippians, under certain circumstances, when there has been an insurance insolvency.

In order for there to be coverage under the Law, the claim must be a “covered claim.” The definition of covered claim is contained within Miss. Code Ann. §83-23-109(f) which states as follows:

. . . an unpaid claim, including one of unearned premiums, which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this article applies issued by an insurer, if such insurer becomes an insolvent insurer and (1) the claimant or insured is a resident of this state at the time of the insured event, provided that for entities other than an individual, the residence of a claimant or insured is the state in which its principal place of business is located at the time of the insured event.

Baggett was the insured under the Reliance policy and is the claimant suing the MIGA in this case. The clear and unambiguous language of the statute provides that in order for there to be a covered claim, the claimant or insured must be a resident of Mississippi at the time of the insured event. Baggett has no standing in Mississippi because the company is not a Mississippi resident. Baggett, who is the claimant and insured, is a nonresident, and the claim is not a “covered claim” as defined by statute.

This exact issue was decided in the Owens Corning case, 947 So. 2d 944 (Miss. 2007). The facts of the Owens Corning decision are remarkably similar to this case. Owens Corning,

like Baggett, is a Delaware corporation. Owens Corning's principal place of business is in Ohio, while Baggett's is in Alabama. Owens Corning was sued in Mississippi by a number of persons who claimed asbestos injury. The liability carrier for Owens Corning was declared insolvent just as the liability carrier for Baggett was declared insolvent. Id. at 945.

Owens Corning incurred substantial monies in liability and defense costs as a result of the claims. So too, Baggett entered into a settlement and sustained liabilities in defense of its case. Owens Corning, as Baggett, filed suit in Madison County Circuit Court seeking coverage under the MIGA Law. Owens Corning, as Baggett, admitted that it was not a resident of Mississippi for purposes of the Law. This Court, in a well reasoned decision, discussed the language of the MIGA Law and held that the MIGA was prohibited by statute from paying anything other than a "covered claim." Id. at 947-948.

Owens Corning attempted to argue that it could step into the shoes of the underlying tort claimants who were residents of Mississippi. This is the exact argument being made by Baggett in this case. The heirs of the motorist injured by the Baggett truck driver were Mississippi residents. Baggett, though a nonresident, seeks to step into the shoes of the underlying tort claimant and adopt their Mississippi residency as its own. This ridiculous, but understandable, argument by Baggett was soundly rejected by this Court in the Owens Corning decision. This Court sided with approval two decisions on this identical point from other states, one from the Massachusetts Supreme Court and the other from the Third Circuit Court of Appeals. Id. at 947-948. See Clark Equipment Company v. Massachusetts Insurers Insolvency Fund, 423 Mass. 165, 666 N.E. 2d 1304 (Mass. 1996); T&N v. Pennsylvania Insurance Guaranty Association, 33 F. 3d 174 (3rd Cir. 1994).

This Court, referencing analogous insurance guaranty association statutes, held:

Their insurance guaranty associations, just like MIGA, are only authorized to pay “covered claims;” therefore, the relevant party is the one actually bringing the claim. To adopt Owens Corning’s analysis, which emphasizes the “or” in our decision in *Byars*, would make the terms “insured” and “claimant” mutually exclusive, which these other courts refused to do. See *Clark Equip.*, 666 N.E. 2d at 1306.

The underlying tort claimants are not currently asserting claims. Therefore, they are not “claimants” within the meaning of §83-23-109(f). Owens Corning is asserting a claim and therefore it is the statutory “claimant” and “insured” but is not a resident. Thus, the residency requirement is not satisfied and Owens Corning’s claim is not a “covered claim.”

Owens Corning, 947 So. 2d at 948.

Baggett, just like Owens Corning, may not adopt the residency of the underlying tort claimants, i.e., the Bowlin heirs. Baggett is the relevant party actually bringing the claim, and it is the statutory “claimant” and “insured” in this case. Baggett is an Alabama and Delaware resident, not a Mississippi resident. Therefore, the residency requirement of the MIGA Law is not satisfied, and Baggett’s claim is not a “covered claim.”

Baggett disingenuously argues the Bowlin heirs “stand at risk of losing their award for damages” if the MIGA Law does not cover Baggett’s claim. (Appellant’s Brief, p. 4). Notwithstanding the clear statutory language, Baggett is a rich company and has been making installment payments on the judgment.

Baggett references at length the *Byars* decision. Mississippi Insurance Guaranty Association v. Byars, 614 So. 2d 959 (Miss. 1993). The *Byars* decision supports the conclusion reached by Judge Richardson in this case and by this Court in the Owens Corning decision. The key fact of *Byars* overlooked by Baggett in its brief is that *Byars* was a Mississippi resident and, therefore, met the residency requirement of Miss. Code. Ann. §83-23-109(f). *Byars*, 614 So. 2d at 947.

Similarly, Baggett provided this Court with only a partial recitation of the definition of “claimant” as stated under the act. Baggett fits squarely within the definition as this term includes “any insured making a first-party claim.” Miss. Code Ann. §83-23-109(c). Baggett seeks to convince this Court that the terms “claimant” and “insured” are mutually exclusive, an argument which this Court expressly rejected in the Owens Corning case. Owens Corning, 947 So. 2d at 948.

Just as in the Owens Corning decision, Baggett’s argument in this case is not consistent with the stated purpose of the Mississippi Insurance Guaranty Association Law. The purpose of the act is to protect Mississippi residents.

CONCLUSION

The MIGA Law is in existence to protect Mississippi residents, not Alabama or Delaware residents.

THIS the 11 day of May, 2007.

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CERTIFICATE OF SERVICE

I, L. Clark Hicks, Jr., do hereby certify that I have this day mailed, postage prepaid, via United States mail, a true and correct copy of the above and foregoing **Appellee's Brief** to the following:

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THIS, the 11 day of May, 2007.

Clark Hicks

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

BAGGETT TRANSPORTATION COMPANY

PLAINTIFF

VERSUS

CAUSE NO.: CI 20030265

MISSISSIPPI INSURANCE GUARANTY
ASSOCIATION

DEFENDANT

ORDER GRANTING MIGA'S MOTION FOR
SUMMARY JUDGMENT AND FINAL JUDGMENT

Before the Court are a motion and amended motion for summary judgment filed by the Mississippi Insurance Guaranty Association (MIGA). The plaintiff, Baggett Transportation Company, filed a cross-motion for summary judgment. Both parties fully briefed the motions and presented applicable authorities, and the motions were orally argued before this Court on March 13, 2006.

After having reviewed all the pleadings in this file including briefs and applicable authorities including statutes and case law, and after having heard oral argument, the Court finds that MIGA's motion for summary judgment is well-taken and is **granted**. The cross-motion for summary judgment filed by Baggett is denied.

MIGA is a non-profit association created by statute. Miss. Code Ann. §83-23-101, et seq. The rights and obligations of MIGA are set forth in the statute. The statute provides that it is to be liberally construed and is a mechanism for the payment of "covered claims." Miss. Code Ann. §83-23-103. The obligation of MIGA is only to the extent of "covered claims" which is defined in Miss. Code Ann. §83-23-109(f) as follows:

"Covered claim" means an unpaid claim, including one of unearned premiums, which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this article applies issued by an insurer, if

such insurer becomes an insolvent insurer and (1) the claimant or insured is a resident of this state at the time of the insured event, provided that for entities other than an individual, the residence of a claimant or insured is the state in which its principal place of business is located at the time of the insured event . . .

While the statute is to be liberally construed, the Court finds that the claim of Baggett in this case is not a "covered claim" as defined by statute. The statute is clear and unambiguous and requires that in order for Baggett to proceed, Baggett must establish that it is a resident of Mississippi. Because Baggett is a corporation, residency may be decided by its principal place of business. The parties stipulated that the principal place of business of Baggett is in Alabama, and it is incorporated in Delaware. Baggett is not nor has it ever been a Mississippi resident.

Judge Chapman was presented with the same issue in a similar case, *Owens Corning v. MIGA*, Cause No. CI-99-0160(C), and concluded that a similarly situated non-resident, Owens Corning, did not have standing to recover under the MIGA Act.

Because Baggett Transportation in this case has no standing as the claim is not a "covered claim" as defined by statute, the Court finds it unnecessary to address the other issues presented to this Court by the parties.

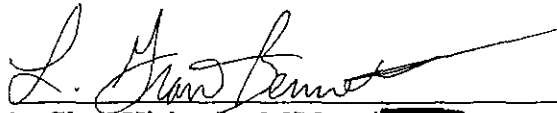
Finding that there is no coverage under the MIGA Act for the claims of Baggett Transportation Company, the Court finds that the motion for summary judgment of MIGA must be granted.

All claims of Baggett Transportation Company against MIGA are dismissed with prejudice, and all costs incurred in defending this suit are assessed to the plaintiff.

SO ORDERED AND ADJUDGED this the 27th day of MARCH, 2006.


CIRCUIT COURT JUDGE

SUBMITTED BY:


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