

IN THE SUPREME COURT OF MISSISSIPPI

BAGGETT TRANSPORTATION COMPANY

APPELLANT

VERSUS

NO. 2006-CA-00679

MISSISSIPPI INSURANCE GUARANTY ASSOCIATION

APPELLEE

SUR-REBUTTAL BRIEF OF APPELLEE

L. Clark Hicks, Jr., MS Bar # [REDACTED]
L. Grant Bennett, MS Bar # [REDACTED]
GUNN & HICKS PLLC
Post Office Box 1588
Hattiesburg, MS 39403-1588
T: (601) 544-6770
F: (601) 544-6775
E-mail: clark@gunnandhicks.com
grant@gunnandhicks.com

Attorneys for Appellee, Mississippi Insurance Guaranty Association

TABLE OF CONTENTS

TABLE OF CONTENTS	-ii-
TABLE OF AUTHORITIES	-iii-
INTRODUCTION	-1-
ARGUMENT	-1-
CONCLUSION	-3-
CERTIFICATE OF SERVICE	-4-

TABLE OF AUTHORITIES

CASES

<u>Mississippi Ins. Guaranty Assoc. v. Mississippi Casualty Ins. Co.</u> , 947 So.2d 865 (Miss. 2006) .	-1-
<u>Owens Corning v. Mississippi Ins. Guaranty Assoc.</u> , 947 So.2d 944 (Miss. 2007)	-1-, -2-

STATUTES

Mississippi Code Annotated § 83-23-109(f)(1) (Supp. 2003)	-1-, -3-
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INTRODUCTION

Baggett, an Alabama resident, has misconstrued the Mississippi Casualty decision and stretched facts to gain coverage intended for Mississippi residents. This Court's prior Owens Corning decision has already addressed the position Baggett now argues and the lower court's decision granting summary judgment to the MIGA should be affirmed.

ARGUMENT

I. MISSISSIPPI CASUALTY ADOPTS THE MISSISSIPPI RESIDENCY REQUIREMENT OF *MISSISSIPPI CODE ANNOTATED* § 83-23-109(f)(1).

The MIGA statute limits coverage to residents of Mississippi. The statute applies if "the claimant or insured is a resident of this state at the time of the insured event," *Miss. Code Ann.* § 83-23-109(f)(1).

In Mississippi Casualty, some of the workers' compensation "claimants" were non-residents. However, there is a critical distinction from Baggett. The employers of the injured workers were Mississippi residents and "insureds" of the insolvent carrier. MIGA was liable to claimants whose "policyholders were located in Mississippi at the time of the insured event." Mississippi Casualty, 947 So.2d 865, 875 (Miss. 2006). This Court quoted with approval the Chancellor's findings that all of the worker's compensation insureds were Mississippi businesses. Mississippi Casualty, 947 So. 2d at 875.

The residency of the plaintiffs in Mississippi Casualty was irrelevant as MIGA agreed to allow the Chancellor to decide the issues and agreed to reimburse the plaintiff insurance carriers if the Chancellor ruled in their favor. Mississippi Casualty, 947 So.2d at 869, ¶ 8 and 874, ¶ 26.

MIGA has no agreement with Baggett in this case. Baggett is the only party to this suit. Baggett is an Alabama business and was sued for the fault of its truck driver. A judgment has been entered against Baggett, not MIGA, and the heirs of the Mississippi decedent have been paid by Baggett, a rich Alabama enterprise. In fact, a quick calculation discloses a lump-sum, plus nineteen

(19) quarterly payments will have been paid to the Bowlins by Baggett once this case is heard on oral argument. (R. Vol. I, pp. 8-9). Baggett received reimbursement from the Alabama Guaranty Association and wants to double dip in Mississippi. This effort is contrary to Mississippi's statutory scheme and would place in peril the limited funds of the Association intended to pay Mississippians.

II. THE OWENS CORNING¹ DECISION IS ON "ALL FOURS."

Baggett's entire reply brief makes the same argument rejected by this Court in the Owens Corning decision. Baggett seeks to adopt the residency of the underlying Bowlin tort claimants and suggests those Mississippi citizens are pursuing this case, have an interest in it, and stand to suffer financial loss. This is nonsense. This suit is about an Alabama company trying to get reimbursement from the Mississippi Guaranty Association.

Owens Corning was a non-resident plaintiff. Owens Corning was liable to Mississippi residents for asbestos exposure. Owens Corning sued MIGA after its carrier went insolvent and argued that the residence of the underlying tort claimants permitted its claim for reimbursement. Baggett has taken the same position and did so before this Court issued its Owens Corning decision. Owens Corning and Baggett both emanate from Madison County Circuit Court. Judge Chapman and Judge Richardson rejected the non-resident claims in these two cases. This Court should issue a one sentence decision citing Owens Corning and affirming Judge Richardson.

Any decision to the contrary would reverse Owens Corning and expose the Mississippi Guaranty Association to claims of residents from all over the country.

III. THE UNDERLYING TORT CLAIMANTS DID NOT ASSIGN THEIR CLAIMS TO BAGGETT.

Baggett erroneously argues the heirs of the Mississippi decedent assigned their claims to Baggett. (*Appellant Reply Brief*, p. 4). Nowhere in the record before this court exists any

¹ Owens Corning v. Mississippi Insurance Guaranty Association, 947 So.2d 944 (Miss.2007)

assignment from the Bowlin heirs, to Baggett. Subsection (f) of the federal court's entitled Order states:

This judgment is without prejudice to the right of plaintiffs [i.e. Bowlin heirs] and (emphasis added) Baggett Transportation Company to recover any sums due them from the Mississippi or Alabama Insurance Guaranty Associations. (R. Vol. I., p. 9).

The judgment does not support an assignment by the underlying tort claimants to Baggett, rather, it conclusively demonstrates both could choose to pursue MIGA. Baggett sued MIGA - the underlying tort claimants did not - and for good reason. The Bowlin heirs, as underlying tort claimants, were assured of payment by terms in the judgment and have been paid all along by Baggett. In light of the Owens Corning decision, Baggett cannot use the underlying tort claimants' residency status to seek reimbursement of payments it has made, and as a result, Baggett clearly lacks a covered claim under the MIGA statute due its own non-resident status.

CONCLUSION

For the reasons set forth above and as detailed in Appellee's Brief, MIGA respectfully requests this Court to affirm the decision of the lower court that held Baggett's claim against MIGA is not a "covered claim" as defined by Mississippi Code Annotated § 83-23-109(f) and accordingly lacks standing to seek coverage of a claim from the MIGA.

Respectfully submitted this 24th day of August, 2007.

MISSISSIPPI INSURANCE GUARANTY ASSOCIATION

By: Clark Hicks
L. Clark Hicks, Jr.
L. Grant Bennett
Attorneys for Appellee

L. Clark Hicks, Jr., MS Bar # [REDACTED]
L. Grant Bennett, MS Bar # [REDACTED]
GUNN & HICKS PLLC
Post Office Box 1588
Hattiesburg, MS 39403-1588
T: (601) 544-6770

CERTIFICATE OF SERVICE

I do hereby certify that I have this day mailed, postage prepaid, via United States mail, a true and correct copy of **Sur-Rebuttal Brief of Appellee** to each of the following:

William C. Brabec, Esq.
David W. Donnell, Esq.
Adams and Reese, LLP
Post Office Box 24297
Jackson, MS 39225

Henry E. Simpson, Esq.
Lange, Simpson, Robinson
& Somerville, LLP
2100 3rd Avenue North, Suite 1100
Birmingham, AL 35203

Honorable Samac S. Richardson
Circuit Court Judge
Post Office Box 1599
Brandon, MS 39043

THIS 24th day of August, 2007.

Clark Hicks