

IN THE SUPREME COURT OF MISSISSIPPI

BAGGETT TRANSPORTATION COMPANY

APPELLANT

VS.

NO. 2006-TS-00679

**MISSISSIPPI INSURANCE GUARANTY
ASSOCIATION**

APPELLEE

**APPEAL FROM THE CIRCUIT COURT OF
MADISON COUNTY, MISSISSIPPI**

**REPLY BRIEF OF THE APPELLANT
BAGGETT TRANSPORTATION COMPANY**

ORAL ARGUMENT REQUESTED

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TABLE OF CASES, STATUTES, OTHER AUTHORITIES

CASES

<i>Mississippi Ins. Guar. Ass'n. v. Byars</i> 614 So.2d 949 (Miss. 1993)	1, 2, 3, 5
<i>Mississippi Ins. Guar. Ass'n. v. MS Casualty Ins. Co.</i> 947 So.2d 865 (Miss. 2006).....	2, 3, 4, 5
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INTRODUCTION

This case involves the separate tort claims of three Mississippi residents (the “Bowlins”) against Baggett Transportation Company following a trucking accident in south Mississippi. The Bowlins brought their claims against Baggett in federal court. Baggett’s insurer, which covered the claims at issue, became insolvent. Thereafter, MIGA was made a third party defendant, and the Bowlins’ claims against Baggett became directed at MIGA. In an effort to expedite the relief to the plaintiffs, Baggett entered into a consent judgment totalling \$905,000.01, split evenly among the residents. Following the entry of the judgment, the federal court declined to exercise supplemental jurisdiction over MIGA’s responsibility under the Guaranty Act. This case followed.

The Mississippi Guaranty Act calls for MIGA to pay Mississippi claimants for covered claims which would have been otherwise insured but for the insolvency of an insurer. The Bowlins’ claims are covered claims. The Bowlins expressly agreed in their consent judgment to let Baggett seek recovery for their damages from MIGA, requiring Baggett to direct whatever money collected to their judgment. Although the Guaranty Act was expressly written to avoid excessive delays in payment of claims due to insolvent insurers, the Bowlins continue to wait for MIGA to honor its duty and pay their claims.

Since the initial briefing, this Court has entered two decisions that directly speak to the issue of whether the subject claims in this case are “covered claims.” As will be discussed below, these cases support the finding that MIGA is responsible for the claims at issue.

ARGUMENT

The Bowlins are “claimants” under the Mississippi Guaranty Act. As discussed in Baggett’s initial argument, this Court made clear in *Mississippi Ins. Guar. Ass’n. v. Byars* that

Miss. Code Ann. § 83-23-109 provides coverage for claims where **either** the insured **or** the claimant is a Mississippi resident. *Mississippi Ins. Guar. Ass'n. v. Byars*, 614 So.2d 959 (Miss. 1993). MIGA argues in its response brief that despite this explicit language, Mississippi claimants should not be paid under the Guaranty Act if the insured is an out-of-state resident.

Recently, this Court again relied on the Guaranty Act's explicit language allowing coverage for either Mississippi policy holders or Mississippi claimants. In *Mississippi Ins. Guar. Ass'n. v. MS Casualty Ins. Co.*, this Court followed the *Byars* analysis and required MIGA to reimburse plaintiffs for claims paid to Mississippi residents and policy holders following the insolvency of the workers' compensation insurer. *Mississippi Ins. Guar. Ass'n. v. MS Casualty Ins. Co.*, 947 So.2d 865 (Miss. 2006). In that case, MS Casualty Insurance Company and American Reliable Insurance Company had issued policies for workers' compensation coverage for many years. *MS Casualty*, 947 So.2d at 868. They exited the workers' compensation business in 2000 and entered into a reinsurance agreement with Legion Insurance Company to cover claims under their workers' compensation policies. *Id.*, at 868. When Legion became insolvent, MIGA "stepped into the shoes of Legion to protect the interests of Legion's Mississippi policy holders and claimants." *Id.*, at 869. MIGA later determined that the claims were not covered claims because, among other reasons, many of the claimants – those individuals seeking recovery of workers' compensation benefits – were from out of state. *Id.* However, "[r]ather than having to deal with [181] lawsuits from the claimants," MIGA told MS Casualty and American Reliable to pay the claimants, then they could litigate the coverage issue directly with MIGA. *Id.* MS Casualty and American Reliable paid the claims and filed suit against MIGA in chancery court to recover these payments. *Id.* Like in the present case, the "claimants" were not parties in the coverage litigation.

After losing on an argument regarding whether the insurance policies at issue were “direct insurance” policies covered by the statute, “MIGA argued before the chancellor that some of the claims were from claimants who did not live in Mississippi and, thus, MIGA was not liable for those claims.” *Id.*, at 870. The chancellor, applying the *Byars* ruling and the express language of the statute, found that so long as any of the claimants or the policyholders were Mississippi residents, the claims brought by MS Casualty and American Reliable against MIGA were covered claims. *Id.*

MIGA argued on appeal in that case, like it does here, that “it can only pay policyholders or claimants,” not others who have paid their claims. *Id.*, at 874. This Court found MIGA’s argument “misplaced.” *Id.* “The chancellor correctly perceived the issue as being *whether the claims made to Legion were covered claims.*” *Id.* (emphasis added). Finding the claims covered because the claimants were Mississippi residents, the Court upheld the chancellor, ruling “that MIGA was responsible for *reimbursing* MS Casualty and American Reliable for the claims it would have owed under the statute because it was liable for the claims to Legion.” *Id.* (emphasis in original).

MIGA also argued, like it does here, that “it is not liable for any claim where the claimant is not a resident of Mississippi.” *Id.* Citing its decision in *Byars*, this Court flatly rejected this argument. “The statute [Miss. Code Ann. § 83-23-109] clearly states that either the claimant or the policyholder must be a resident of Mississippi.” *Id.*, at 874-5. Based on the chancellor’s detailed findings with respect to the residency of the claimants, this Court ordered MIGA to reimburse MS Casualty and American Reliable for the claims they each paid to the Mississippi residents. *Id.*

In its response brief, MIGA completely ignores this Court's decision in *MS Casualty* to avoid this Court's outright rejection of the arguments they currently make. Here, MIGA asserts that Baggett is the "claimant" for purposes of determining whether the claims at issue are "covered claims." (Appellee's Brief, p. 8). The *MS Casualty* decision called this very argument "misplaced," finding that the plaintiffs bringing the claim against MIGA had "nothing to do" with the covered claim issue. *Id.*, at 874. The Bowlins' claims have simply been assigned to Baggett through their consent judgment, which is exactly what MIGA required of MS Casualty and American Reliable before litigating the coverage claims in *MS Casualty*. Baggett is bringing the Bowlins claims against MIGA so that the Bowlins do not have to incur this needless expense. Just like in *MS Casualty*, Baggett's presence as the plaintiff in this case "has nothing to do with" the issue of whether a claim is covered under the Guaranty Act. Had the federal court exercised supplemental jurisdiction, MIGA would have been responsible for payment. MIGA is no less responsible for payment of these claims now that the action is in state court.

MIGA's response relies almost entirely on *Owens Corning v. Miss. Ins. Guar. Ass'n.*, 947 So. 2d 944 (Miss. 2007). In *Owens Corning*, a non-resident company sought recovery from MIGA following settlement payments to hundreds of Mississippi residents for otherwise insured claims. *Owens Corning*, 947 So.2d 944, 945. This Court did not allow Owens Corning to recover from MIGA because it found Owens Corning to be the "claimant" in the case. *Id.*, at 948. To reconcile the holding with *Byars* which required coverage for either resident policyholders or claimants, the Court distinguished the facts in *Byars* from *Owens Corning*, noting that in *Byars* the claim against MIGA had been assigned to the plaintiff. *Id.*, at 947. In *Owens Corning*, the Court found no such assignment nor any connection between MIGA and the individuals who had been paid. *Id.*, at 948. The Court ultimately found that based on these facts,

Owens Corning was the claimant for purposes of the Guaranty Act and as a non-resident was therefore not allowed to collect from MIGA. *Id.*

The *Owens Corning* decision does not cite *MS Casualty*, which was decided just a few months prior and specifically held that the residency of the party bringing the claim had nothing to do with determining coverage because the tort claimants' residency controlled that issue.

While *Owens Corning* seems to contradict the holding in *MS Casualty*, Baggett's position can be reconciled with both. Like in *MS Casualty*, the claimants rights to recovery from MIGA have been assigned. In *MS Casualty*, the assignment was made from the claimants to an insurer at MIGA's request. Here, the assignment was made to the policyholder through a judicially approved consent judgment from litigation in which MIGA was a third party defendant. Contrary to the holdings in both *Byars* and *MS Casualty* which both supported coverage by this Court, there was no assignment of claims in *Owens Corning*. Indeed, there was no mention of whether any recovery in *Owens Corning* would be applied to the hundreds of tort claimants. Here, the judgment from the preceding federal litigation requires all funds recovered from MIGA by Baggett to be applied to the three family members equally.

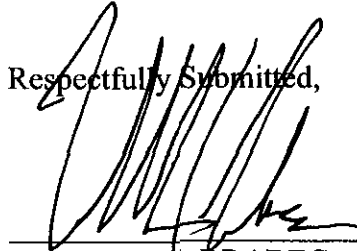
Given the direct connection between the Bowlins and MIGA in the federal court litigation, which is wholly absent in the *Owens Corning* facts, and this Court's precedent in *Byars* and *MS Casualty* supporting assignments of claims, Baggett's position can fit squarely within the decisions relating to Miss. Code Ann. §83-23-109. The federal court's decision not to exercise supplemental jurisdiction over the Guaranty Act coverage issue and Baggett's agreement to incur the expense to litigate the issue with MIGA did not extinguish the Bowlins' right to recovery from MIGA.

CONCLUSION

For the reasons set forth above and as detailed in its initial brief, Baggett respectfully requests this Court to reverse the decision of the lower court and award it the \$755,100.01 to be paid directly to the Mississippi residents pursuant to the Guaranty Act and the federal judgment.

Dated this the 28th day of June 2007.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I certify that I have this day mailed, postage prepaid, a true and correct copy of the above document to the following counsel of record:

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This the 28th day of June 2007.



William C. Brabec