

BAD FAITH BLOG

# In a Missouri “Traditional Garnishment,” Recovery Limited to Policy Limits Absent Bad Faith

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**Summary:** In a traditional garnishment case against the liability insurer, the Missouri Supreme Court held recovery against the insurer was limited to the policy limits. The court held absent a finding of bad faith by the insurer, no extra-contractual damages were awardable.

*Allen v. Bryers*

Plaintiff Allen was rendered paraplegic when the handgun of security guard Defendant Bryers, went off while Bryers ejected Allen from an apartment complex. Allen sued Bryers and the apartment complex for negligence. The apartment complex’s insurer, Atain Specialty Insurance Co., agreed to defend the apartment complex and Bryers under a reservation of rights. Bryers rejected the reservation of rights defense and entered into a 537.065 agreement wherein Bryers allowed an uncontested judgment to be entered against him with the condition Allen would only collect from Atain. Atain attempted to intervene. The trial court denied the motion, but Atain did not appeal that ruling. Following a bench trial, judgment was entered against Bryers for \$16 million.

Allen then filed a Rule 90 traditional garnishment against Atain in the same action. The same judge who presided over the tort action’s bench trial entered summary judgment in favor of Allen and found Atain liable for the entire \$16 million judgment against Bryers. Atain appealed.

On appeal, the Missouri Supreme Court first determined Atain had abandoned its attempt to intervene in the underlying action by not appealing the ruling or its request to do so was properly denied as untimely. The court also held non-party Atain’s motion to set aside the underlying judgment was properly denied. Only a party can move to set aside a judgment.

In addressing the garnishment issues, the court explained there are two different types of garnishment: (1) a traditional, Rule 90 garnishment where the plaintiff files the garnishment in the same action as the tort action and (2) an equitable garnishment where the plaintiff can bring a direct action against the insurer under section 379.200. Allen chose the first option.

The court found Atain wrongfully refused to defend Bryers, and while it had the “opportunity to manage and control the underlying tort action [it] declined to do so.” As a result of this finding, the court held Atain was precluded from “relitigating any facts that actually were determined in the underlying case and were necessary to the judgment.” As a result, many of Atain’s affirmative defenses did not preclude summary judgment for Allen. The Missouri Supreme Court affirmed the summary judgment in favor of Allen.

The court then addressed Atain’s argument that it could not be held liable for extra-contractual damages. The court agreed this case was distinguishable from other cases in the past because unlike in those previous cases, the garnishment court found Atain refused to defend and refused to settle, but did not find Atain did so in bad faith. As a result, the court found the garnishment court exceeded its authority in awarding Allen the full amount of the underlying tort judgment because he was only entitled to the policy limits. The court modified the judgment against Atain to award Allen \$1 million, the policy limits, plus interest.

By Katrina Smeltzer

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