

“Voluntary Payments” Doctrine Inapplicable Where Parties Reserved Rights

November 2012

An Alabama federal court has held that the voluntary payments doctrine does not bar an insurer's suit to recoup a settlement payment if the insurer and policyholder agreed that each reserved rights against the other. *Scottsdale Ins. Co. v. Alabama Municipal Ins. Co.*, No., 2012 WL 4477656 (M.D. Ala. Sept. 28, 2012).

The policyholder, itself an insurer, faced an underlying bad faith suit. The policyholder's carrier agreed to defend the policyholder, but took the position that any judgment would not be covered. Pursuant to its rights under the policy, the carrier directed the policyholder to accept a settlement offer made by the underlying claimants. According to the carrier, the policyholder and carrier agreed that each would contribute toward the settlement, while reserving the right to later seek reimbursement from the other. In addition, the policy provided that the carrier could seek reimbursement for any claim expenses paid if it were determined by a judgment, settlement, or arbitration decision that the policy provided no coverage for the claim. Promptly after consummation of the underlying settlement, the carrier filed a declaratory judgment action. The policyholder answered and filed a motion for judgment on the pleadings, arguing that, under Alabama law, the carrier's contribution to the settlement was a voluntary payment.

The court denied the motion. The court distinguished the principal case upon which the policyholder relied because in that case, the policyholder resisting recoupment had rejected a non-waiver agreement offered by the insurer before the insurer nonetheless paid to settle the claim. The court instead relied on authority holding that an agreement between the parties to litigate for the recovery of money paid under protest renders the payment involuntary for purposes of Alabama's common law voluntary payments doctrine. The court accordingly held that, because the carrier's complaint alleged that the parties had agreed to reserve their rights against each other regarding the propriety of the payment, and because the policy specifically provided for a right to reimbursement, judgment on the pleadings was inappropriate.