

WV Supreme Court of Appeals Holds Personal Liability for An Excess Judgment Is an Essential Element in a Shamblin Claim



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The Supreme Court of Appeals of West Virginia in [West Virginia Mutual Insurance v. Covelli](#) recently held that (1) insurers in West Virginia will not be liable for an insured's damages in a Shamblin action where the insured has no personal exposure for an excess judgment and (2) insured plaintiffs do not have standing to sue an insurer under sections 33-11-4(9)(b)-(d) and (f) of the Unfair Trade Practices Act (UTPA).

The Court granted West Virginia Mutual Insurance's (Mutual) petition for a writ of

prohibition from the Circuit Court of Kanawha County's order denying summary judgment as to Dr. Covelli's claim for common law bad faith under *Shamblin v. Nationwide Mutual Insurance Company* and claims under the UTPA for unfair claim settlement practices. The Court granted Mutual's petition for a writ of prohibition and directed the circuit court to enter judgment for Mutual on the two counts.

Prior to the immediate action, Dr. Covelli was sued for medical malpractice by a former patient. Mutual provided medical malpractice insurance to Dr. Covelli, with a policy limit of up to \$2 million for each claim. When Mutual and the former patient were unable to settle, the case went to trial. The jury returned a verdict of almost \$5.8 million against Dr. Covelli. Ultimately, Mutual settled the case for \$950,000 before the circuit court entered the judgment order. However, during such time the *Charleston Gazette* and *West Virginia Record* reported the verdict amount. As a result of the verdict's publicity, a second former patient retained the same trial counsel and sued Dr. Covelli for medical malpractice. Mutual settled the second suit for \$300,000.

While both cases settled within policy limits, Dr. Covelli, the insured, filed suit alleging that Mutual caused him approximately \$1.2 to \$1.5 million in actual damages by failing to settle sooner. Furthermore, Dr. Covelli alleged the damages resulted from having to report the \$1.25 million in settlements to the National Practitioner's Data Bank, the adverse publicity from the jury verdict, and withdrawing an employment application with CAMC. Dr. Covelli alleged two counts: (1) he asserted a *Shamblin* common law bad faith claim for Mutual's alleged failure to settle the two suits and (2) he alleged that Mutual violated portions of the UTPA by engaging in unfair claim settlement practices. The circuit court denied Mutual's motion for summary judgment on both counts.

In evaluating Mutual's writ of prohibition, the Court analyzed two legal inquiries: whether a *Shamblin* claim exists when a plaintiff has no personal exposure for an excess judgment and whether an insured has standing to sue for violations of sections 33-11-4(9)(b)-(d) and (f) of the UTPA. The Court held that the circuit court clearly erred in failing to grant summary judgment, concluding that personal liability for an excess judgment is an essential element of a *Shamblin* claim and Dr. Covelli never had any personal liability for an excess judgment because both lawsuits were ultimately settled within policy limits. Further, the Court held that the circuit court clearly erred by denying summary judgment as to the second count because an insured plaintiff does not have standing to pursue such claims under the UTPA, as laid out by the Court in *State Auto Property Insurance Companies v. Stucky*. The Court concluded that sections 33-11-4(9) (b), (c), (d), and (f) do not create duties for liability insurers toward their insureds. The provisions are meant to protect plaintiffs who seek liability-related damages from an insured and are not designed to protect the insured.

The Court thus directed the circuit court to grant Mutual's motion and enter judgment for Mutual on both counts.

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