

Trade Creditor Lacks Standing to Sue Judgment Debtor's Insurer for Deceptive Trade Practices

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On February 20, 2018, the North Carolina Court of Appeals upheld a ruling of the North Carolina Business Court that provided further clarification on whether a judgment creditor may sue the debtor's insurer for deceptive trade practices. *USA Trouser, S.A. de C.V. v. Williams*, 2018 WL 943639 (N.C.App. 2018). In *Williams Navigators Insurance Co.* issued a directors and officers liability policy to International Legwear Group, Inc. ("ILG"). Plaintiff, a trade creditor of the insured, sold socks on credit to the insured. Plaintiff sued ILG and three of its directors/officers in federal district court in Charlotte for failing to disclose ILG's worsening financial condition while continuing to obtain products from ILG on credit. Plaintiff obtained a default judgment for \$2,000,000. Plaintiff later filed the instant action in state court against Navigators asserting claims for, among other things, bad faith settlement practices and unfair trade practices pursuant to N.C. Gen. Stat. § 75-1.1. Navigators moved to dismiss. In opposition, Plaintiff argued it became a third-party beneficiary to the insurance policy upon entry of the default judgment thereby establishing its right to sue directly ILG's insurer in order to collect its judgment. The motion to dismiss was granted and the case is before the court on Plaintiff's appeal.

The court started its analysis of this case by noting the general rule that a plaintiff generally cannot sue an adverse party's carrier under G.S. § 75-1.1. However, if a plaintiff achieves the status of an *intended third-party beneficiary* of the insurance contract the plaintiff may then have standing to assert a claim against the insurer for violating the unfair and deceptive practices statute.

In support of its position, Plaintiff, relying on earlier authority, argued that securing a judgment, *ipso facto* raises the judgment creditor to a retroactive intended third-party beneficiary of an insurance policy thereby placing the judgment creditor in privity of contract with the

insurer. The court disagreed. The authority upon which Plaintiff's argument relied was based in the context of a claim pursuant to an automobile policy. In such context, an injured party is recognized as a third-party beneficiary to the policy, because the statutorily required insurance is intended to compensate innocent victims who have been injured by financially irresponsible motorists. The court, finding the authority upon which Plaintiff relied did not create a general rule and finding that Plaintiff failed to provide any binding authority establishing support for its position as a trade creditor, rejected Plaintiff's argument. Plaintiff failed to establish the requisite privity for standing in order to maintain a claim for unfair or deceptive trade practices and bad faith claims settlement, and the insurer prevailed.

Jim Bryan is the leader of Nexsen Pruet's Torts, Insurance and Products group, and is based in the firm's Greensboro office. His litigation practice concentrates on insurance coverage/bad faith, trucking industry defense, commercial disputes, lender liability, premises liability, environmental disputes and fiduciary trust litigation.