

Nebraska Supreme Court Rules That Assignee Of Policy Benefits May Not Bring First-Party Bad Faith Claims Against Property Insurer (Insurance Law Alert)

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The Nebraska Supreme Court ruled that a contractor, as assignee of insurance benefits, may not assert first-party bad faith claims against a property insurer. *Millard Gutter Co. v. Shelter Mutual Ins. Co.*, 312 Neb. 606 (2022).

Millard Gutter, as assignee of various insured property owners who had sustained storm-related losses, sued Shelter Mutual Insurance. The complaint alleged breach of contract and bad faith claims. Shelter Mutual argued that Millard Gutter lacked standing to bring the bad faith claim. A district court agreed and dismissed the suit.

Addressing this matter of first impression under Nebraska law, the Nebraska Supreme Court ruled that a policyholder cannot validly assign to a non-policyholder an existing tort claim of first-party bad faith. The court noted that while “the law generally supports the assignability of rights, it does not permit assignments for matters of personal trust or confidence, or for personal services,” such as legal malpractice claims. The court concluded that these same limitations apply to first-party bad faith claims, holding that while “the proceeds from such an action are assignable absent a statute to the contrary, . . . the right to prosecute or control such an action cannot be validly assigned.”

The court also rejected Millard Gutter’s alternative argument that it had standing because it was asserting its own claim for first-party bad faith against Shelter Mutual Insurance. The court explained that no duty of good faith and fair dealing was owed to Millard Gutter because such duties are dependent upon a contractual relationship between a policyholder and insurer.

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