

Neb. Justices Say Gutter Co. Can't Bring Bad Faith Claims

By **Ben Zigterman**

Law360 (October 14, 2022, 7:15 PM EDT) -- The Nebraska Supreme Court affirmed the dismissal of bad-faith claims from a roofing and gutter company, finding that a policyholder can't assign such claims to a nonpolicyholder.

In two separate suits over storm damage from 2013, Millard Gutter Co. accused Shelter Mutual Insurance Co. and Farm Bureau Property & Casualty Insurance Co. of breach of contract and acting in bad faith. Millard filed the suits as assignees of various property owners who had purchased insurance from the carriers, according to the Nebraska Supreme Court's Friday decisions.

In unanimous decisions, the court found that Millard Gutter doesn't have standing to file the bad faith claims.

"The implied covenant of good faith and fair dealing that Nebraska law imposes on insurers 'is dependent upon a contractual relationship between the [policyholder] and the insurer,'" Justice Stephanie F. Stacy wrote in the **Shelter decision**. "There is no contractual relationship between Shelter and Millard Gutter, and the post-loss assignments did not create one."

The court also pointed to a 2012 decision it made establishing that the proceeds from personal injury actions can be assigned, but not the right to prosecute or control the action.

"We conclude it is appropriate to apply the same assignability rules to actions for first-party bad faith as are applied to other strictly personal torts," the Shelter ruling said. "And under that rule, the proceeds from such an action are assignable absent a statute to the contrary, but the right to prosecute or control such an action cannot be validly assigned."

In Millard Gutter's suit against Farm Bureau, the Nebraska Supreme Court said the same principles apply.

"Here, just as in Shelter, regardless of their validity for other purposes, the assignments from Farm Bureau's policyholders could not, as a matter of law, give Millard Gutter standing to prosecute any tort actions for first-party bad faith against Farm Bureau," Justice Stacy wrote in the **Farm Bureau ruling**.

Michael T. Gibbons of Woodke & Gibbons PC, who represented the insurers, praised the decisions.

They "demonstrate that privity of contract remains alive and well in Nebraska," he told Law360.

"The high court's decisions reaffirm Nebraska's conservative view of first-party bad faith by limiting such claims between the parties in contract with one another and by preventing the use of post-loss assignments to escalate claims beyond the rights and obligations in the contract between the insurer and the insured property owner," he said. "These decisions will help to control premiums and benefit homeowners across the state."

Representatives of Millard declined to comment.

Millard is represented by Theodore R. Boecker Jr. of Boecker Law PC.

Shelter is represented by Michael T. Gibbons, Raymond E. Walden and Christopher D. Jerram of Woodke & Gibbons PC.

Farm Bureau is represented by Michael T. Gibbons and Raymond E. Walden of Woodke & Gibbons PC.

The cases are Millard Gutter Co. v. Shelter Mutual Insurance Co., case number S-20-907, and Millard Gutter Co. v. Farm Bureau Property & Casualty Insurance Co., case number S-19-1089, in the Nebraska Supreme Court.

--Editing by Emma Brauer. Editing by Amy Rowe.