

SB 683_MAMIC_UNF.pdf

Uploaded by: Bryson Popham

Position: UNF



191 Main Street, Suite 310 – Annapolis MD 21401 – 410-268-6871

March 13, 2023

The Honorable William C. Smith, Jr.
Chair, Senate Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, Maryland 21401

RE: Senate Bill 683 - Courts – Wrongful Acts by Deceased Individuals – Actions In Rem UNFAVORABLE

Dear Chairman Smith and Members of the Committee,

I am writing on behalf of the Maryland Association of Mutual Insurance Companies (MAMIC) in opposition to Senate Bill 683.

MAMIC is comprised of 12 mutual insurance companies that are headquartered both in Maryland and in neighboring states. Together, MAMIC members offer a wide variety of homeowners and other insurance products, both personal and commercial, for thousands of Maryland citizens. MAMIC members are a key component of the property and casualty insurance industry that serves Maryland.

The bill provides that a legal action *in rem* may be brought against an insurance policy that was held by a deceased person who, allegedly, was responsible for damages arising from a motor vehicle accident.

In rem actions are typically brought against property itself, when there is a dispute related to a property title and other rights that are related to the title. It is often used by a debtor seeking recovery of monies owed. Other reasons for using an *in rem* proceeding include partitioning real property or foreclosing on a mortgage for which the property is held as security. *In rem* proceedings are also commonly used in admiralty law matters.

By contrast, insurance policies are contracts between an insurer and a policyholder. They are subject to standard provisions of contract law, with a long history of judicial interpretation. A legal action cannot be brought “against” an insurance policy in the same sense that it can be brought against, for example, real property. In the latter case, the property may be used to satisfy a plaintiff’s claim. In the former, the insurance policy serves as a bundle of rights and obligations that are interpreted according to contract law and also, often, the law of negligence as set forth on page 1, line 20 of Senate Bill 683.

In discussing Senate Bill 683, MAMIC and its members are unaware of any specific instance of the factual situation presented in the bill and we are not aware that any claimant has been disadvantaged due to the fact that an otherwise valid insurance policy is, at the time of claim, held by a deceased individual. We recommend that any party making a claim under this situation may submit the matter to the office of the Maryland Insurance Commissioner, which is charged with enforcing the provisions of the Maryland Unfair Claim Settlement Practices Act (Insurance Article, Title 27, Subtitle 3).

Accordingly, MAMIC respectfully requests an unfavorable report on Senate Bill 683.

Very truly yours,

A handwritten signature in cursive script that reads "Jane A. Peltus". The signature is written in black ink and is positioned to the left of the typed name.

President, MAMIC

cc: Bryson Popham

State Farm Testimony_Opp SB683.pdf

Uploaded by: Marta Harting

Position: UNF

STATE FARM INSURANCE COMPANIES

TESTIMONY IN OPPOSITION TO SENATE BILL 683 (COURTS – WRONGFUL ACTS BY DECEASED INDIVIDUALS – ACTIONS IN REM)

Senate Bill 683 would allow a direct in rem action against a deceased individual's auto insurance policy for personal injury or death resulting from a motor vehicle accident, and provides that the "policy" is liable to the same extent as the policy would have been liable in the deceased individual was still living. The bill would also make the insurer under the policy the resident agent for the policy.

State Farm opposes SB 683. Personal injury actions are actions against an individual, not against a policy or an insurance company. Only if there is a final judgment against the insured does the insurance policy come into play to pay the judgment in accordance with the insurance policy. This does not change if the insured is deceased, because the injured party can pursue the claim against the insured's estate.

SB 683 would allow the injured person to assert a claim against the insurer before there is a final judgment against the insured. This is contrary to the longstanding rule recognized by the Maryland Supreme Court that third party tort claimants are "strangers" to the insurance policy and have no rights thereunder unless and until there is a final judgment or settlement against the insured. It is also against the firmly settled rule recognized by the Maryland Supreme Court that the existence of liability insurance is inadmissible to the issue of the insured's liability or damages because it is both irrelevant and highly prejudicial.

For these reasons, State Farm urges an unfavorable report.

MD 2023 NAMIC letter SB 683 Actions In Rem.pdf

Uploaded by: Matt Overturf

Position: UNF

SENATE JUDICIAL PROCEEDINGS

SB 683: Courts—Wrongful Acts by Deceased Individuals—Action *In Rem*

UNFAVORABLE

March 1, 2023

Chairman Smith and Members of the Committee,

I am writing on behalf of the National Association of Mutual Insurance Companies¹ (NAMIC) in opposition to Senate Bill 683 and request an unfavorable report.

NAMIC consists of more than 1,500 member companies, including seven of the top 10 property/casualty insurers in the United States. The association supports local and regional mutual insurance companies on main streets across America as well as many of the country's largest national insurers.

Senate Bill 683 provides that a legal action *in rem* may be brought against an insurance policy that was held by a deceased person who was responsible for damages arising from a motor vehicle accident. The U.S. Supreme Court opined in *Rush v. Savchuk*, 444 U.S. 320, 100 S. Ct. 571 (1980) and determined each case must be analyzed on its particular facts and merit. The Supreme Court held a state may not constitutionally exercise *in rem* jurisdiction over a defendant who has no forum contacts by attaching the contractual obligation of an insurer licensed to do business in the state to defend and indemnify in connection with a suit.

Additionally, Senate Bill 683 allows a direct action against insurance companies. Insurance policies are contracts between the insurer and policyholder. These contracts are subject to the standard provisions of contract law and have a history of judicial analysis. Insurance policies serve as a package of rights and responsibilities that are interpreted according to the contract—legal action cannot be brought against an insurance policy in the same sense that it can be brought real property.

For these reasons, NAMIC opposes Senate Bill 683 and respectfully requests an unfavorable report of the bill.

Sincerely,



Matt Overturf, NAMIC Regional Vice President
Ohio Valley/Mid-Atlantic Region

¹ NAMIC member companies write \$357 billion in annual premiums and represent 69 percent of homeowners, 56 percent of automobile, and 31 percent of the business insurance markets. Through its advocacy programs NAMIC promotes public policy solutions that benefit member companies and the policyholders they serve and fosters greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

SB 683 APCIA Opposes 03152023.pdf

Uploaded by: Nancy Egan

Position: UNF



Testimony of

American Property Casualty Insurance Association (APCIA)

Senate Judicial Proceedings Committee

Senate Bill 683 - Courts – Wrongful Acts by Deceased Individuals – Actions In Rem

March 15, 2023

Letter of Opposition

The American Property Casualty Insurance Association (APCIA) is a national trade organization whose members write approximately 65% of the U.S. property-casualty insurance market, including nearly 60% percent of Maryland's automobile insurance market. APCIA appreciates the opportunity to provide written comments in opposition to Senate Bill 683.

The bill would authorize individuals who were injured in a motor vehicle accident by a deceased individual for whom no estate has been opened to bring an action *in rem* against the deceased individual's insurance policy for personal injury or death arising from the accident.

This legislation will permit third-party tort claimants to bring direct actions against insurers before final judgment has been entered against the policyholder or his or her estate, and to make the jury aware of the existence and amount of insurance in a manner widely understood to be highly prejudicial. The vast majority of states prohibit such direct actions for good reason, and the Maryland Legislature has previously rejected numerous efforts to permit them.

The intended beneficiaries of insurance policies are the policyholders who enter into contractual agreements with insurers, not third-party tort claimants whom the law considers "strangers" to the policy. Just two years ago, the Maryland Court of Appeals affirmed in *CX Reinsurance Co. Ltd. v. Johnson, et al.* that the state has no public policy that overrides the terms of liability policies to make third-party claimants who have neither obtained a judgment against nor reached a settlement with a policyholder the intended beneficiaries of policies.

Permitting direct actions against insurers by third-party claimants who have not established a policyholder's liability in a separate action, either against the individual or his or her estate, would overturn Maryland's longstanding and well-founded general prohibition against referring to insurance in front of a jury because it may prejudice the issue of damages. As the Court of Appeals explained in 1990 in *Allstate Insurance Co. v. Atwood, et al.*, "the policy of the law is firmly against the injection in tort trials of liability insurance. The matter of liability insurance is irrelevant to the issue of the defendant's liability and is highly prejudicial."

For these reasons, APCIA urges the Committee to provide an unfavorable report on Senate Bill 683.

Nancy J. Egan,

State Government Relations Counsel, DC, DE, MD, VA, WV

Nancy.egan@APCIA.org Cell: 443-841-4174