## MONTANA SUPREME COURT

# Draggin' Y Cattle Co. v. Junkermier, Clark, Campanella, Stevens, P.C.

439 P.3d 935 (Mont. 2019) · Decided April 24, 2019

### SUMMARY

The Montana Supreme Court considers whether an insurer that defended its insured under a reservation of rights nevertheless abandoned the insured by failing to confirm coverage, declining a policy-limits settlement, and allegedly misrepresenting policy limits. The Court holds that alleged breaches of duties to affirm coverage and settle in good faith, distinct from a breach of the duty to defend, do not permit the insured to enter into a unilateral stipulated settlement that is presumptively enforceable against the insurer. The Court reverses and remands the district court's approval of the $10 million stipulated settlement.

### CASE DETAILS

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| COURT | Montana Supreme Court |
| WRITING FOR THE COURT | Beth Baker, J.; Mike McGrath, C.J.; Laurie McKinnon, J.; James Jeremiah Shea, J.; Jim Rice, J.; Dirk M. Sandefur, J.; Ingrid Gustafson, J. |
| JURISDICTION | Montana |
| DECIDED | April 24, 2019 |
| DISPOSITION | reversed_and_remanded |
| PROCEDURAL POSTURE | The insurer appealed from an order and judgment of the Eighteenth Judicial District Court, Gallatin County, approving a stipulated settlement as fair and reasonable and entering a $10 million judgment against its insured. |
| STANDARD OF REVIEW | Findings of fact are reviewed for clear error, conclusions of law for correctness, and the legal standard applied in assessing the reasonableness of a stipulated judgment is reviewed de novo. |
| PRECEDENTIAL VALUE | Published Montana Supreme Court opinion; precedential. |
| PARTIES | New York Marine and General Insurance Company v. Draggin' Y Cattle Co., Roger Peters, Carrie Peters, Junkermier, Clark, Campanella, Stevens, P.C. |

## TOPICS

duty to defend · insurance bad faith · insurance coverage · declaratory relief insurance · appellate procedure

## PRACTICE AREAS

insurance · insurance bad faith · duty to defend · duty to indemnify · commercial litigation

## QUESTIONS PRESENTED

1. Whether an insurer that provides a defense under a reservation of rights but allegedly fails to affirm coverage, fails to file a declaratory judgment action, refuses to settle within policy limits, or misrepresents policy limits has thereby improperly abandoned its insured.
2. Whether an insured may obtain a stipulated judgment and covenant not to execute that is presumed reasonable against a defending insurer when the settlement was entered without the insurer's consent or participation.
3. Whether the District Court properly applied the presumption of reasonableness associated with an insurer's breach of the duty to defend.

## HOLDINGS

1. An insurer's alleged failure to affirm coverage, failure to file a declaratory judgment action, refusal to settle within policy limits, or misrepresentation of policy limits does not constitute abandonment of the insured in the underlying liability action when the insurer is providing a defense.
2. When an insurer has provided a defense, a court may not approve a stipulated agreement entered without the insurer's consent or participation as presumptively reasonable against that insurer. The insured or assignee must prove all elements of a separate breach-of-contract or UTPA claim, including damages.
3. The District Court improperly applied a presumption of reasonableness and could not enter the stipulated judgment against the defending insurer on that basis.

## KEY QUOTATIONS

> *"It is the failure to provide a defense—which is not addressed in the UTPA—that constitutes improper abandonment, justifying an insured to take steps limiting its personal liability through a settlement that the law recognizes as presumptively reasonable."* (¶ 32)

> *"When an insurer has provided a defense to its insured, a District Court may not approve a stipulated agreement entered into without the consent or participation of the insurer that will be deemed presumptively reasonable against the defending insurer."* (¶ 39)

> *"In such cases, the insured must pursue its separate breach of contract or UTPA claims against the insurer and will bear the burden of proving all elements of those claims, including damages."* (¶ 39)

## FACTUAL BACKGROUND

Junkermier's accounting advice led the Peterses and Draggin' Y to structure a real-estate transaction that failed to qualify as a tax-deferred exchange, resulting in substantial tax liability and claimed business losses. New York Marine provided Junkermier a defense throughout the underlying litigation under a reservation of rights, rejected a $2 million policy-limits settlement demand, and maintained that the case was worth substantially less. The insured and plaintiffs then entered into a $10 million stipulated judgment, covenant not to execute, and assignment arrangement without the insurer's consent. The District Court approved the settlement and entered judgment against Junkermier.

### PROCEDURAL HISTORY

The underlying plaintiffs sued Junkermier and Addink for professional negligence and related claims arising from tax advice. New York Marine defended Junkermier under a reservation of rights, rejected a $2 million policy-limits settlement demand, and later intervened to challenge a $10 million stipulated settlement and covenant not to execute entered into by the plaintiffs and the insured. After a reasonableness hearing, the District Court found the settlement reasonable and entered judgment against Junkermier. The Montana Supreme Court reversed and remanded.

### DISPOSITION

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reversed_and_remanded
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### REMAND INSTRUCTIONS

Remand for further proceedings consistent with the Opinion. The District Court may not treat the stipulated settlement as presumptively reasonable against the defending insurer; any separate breach-of-contract or UTPA claim must be pursued under the applicable framework, with the insured or assignee bearing the burden to prove all elements, including damages.

### CASES CITED

- Draggin' Y Cattle Co. v. Addink, 2013 MT 319, 372 Mont. 334, 312 P.3d 451
- Draggin' Y Cattle Co. v. Addink, 2016 MT 98, 383 Mont. 243, 371 P.3d 970
- Draggin' Y Cattle Co. v. Junkermier, Clark, Campanella, Stevens, P.C., 2017 MT 125, 387 Mont. 430, 395 P.3d 497
- Tidyman's Mgmt. Servs. Inc. v. Davis, 2014 MT 205, 376 Mont. 80, 330 P.3d 1139
- Tidyman's Mgmt. Servs. Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 2016 MT 201, 384 Mont. 335, 378 P.3d 1182
- State Farm Mut. Auto. Ins. Co. v. Freyer, 2013 MT 301, 372 Mont. 191, 312 P.3d 403
- Farmers Union Mut. Ins. Co. v. Staples, 2004 MT 108, 321 Mont. 99, 90 P.3d 381
- Abbey/Land, LLC v. Glacier Constr. Partners, LLC, 2019 MT 19, 394 Mont. 135, 433 P.3d 1230
- Mountain W. Farm Bureau Mut. Ins. Co. v. Brewer, 2003 MT 98, 315 Mont. 231, 69 P.3d 652
- Shilhanek v. D-2 Trucking, Inc., 2003 MT 122A, 79 P.3d 1094
- Estate of Gleason v. Central United Life Insurance Co., 2015 MT 140, 379 Mont. 219, 350 P.3d 349

- Redies v. Attorneys' Liability Protection Society, 2007 MT 9, 335 Mont. 233, 150 P.3d 930
- Peris v. Safeco Insurance Co., 276 Mont. 486, 916 P.2d 780 (1996)
- Gibson v. Western Fire Insurance Co., 210 Mont. 267, 682 P.2d 725 (1984)
- Westchester Surplus Lines Insurance Co. v. Keller Transportation, Inc., 2016 MT 6, 382 Mont. 72, 365 P.3d 465
- Hamilton v. Maryland Casualty Co., 27 Cal. 4th 718, 117 Cal. Rptr. 2d 318, 41 P.3d 128 (2002)
- Farmers Group, Inc. v. Trimble, 658 P.2d 1370 (Colo. Ct. App. 1982)
- Earth Scientists (Petro Services), Ltd. v. United States Fidelity & Guaranty Co., 619 F. Supp. 1465 (D. Kan. 1985)
- Bates v. Allied Mutual Insurance Co., 467 N.W.2d 255 (Iowa 1991)
- Morris v. American Family Mutual Insurance Co., 386 N.W.2d 233 (Minn. 1986)
- Herrig v. Herrig, 844 P.2d 487 (Wyo. 1992)

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