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## Court denies shareholders' profit effort

### 1st District limits bus company's claim in accident

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A state appeals panel rejected an attempt by shareholders of a defendant company to collect more insurance money than the company paid to settle a wrongful-death lawsuit.

The 1st District Appellate Court said ruling otherwise would run afoul of public policy and could have allowed shareholders of Barrington Transportation Co. to collect a \$4.5 million windfall profit.

"This scenario is anathema to the (Illinois Insurance Code) and such dealing stands the code on its head," Justice John B. Simon wrote in the 14-page opinion.

The dispute stems from a lawsuit filed against Barrington by the family of 10-year-old Kristie Talley, who was struck and killed by a company school bus in 1998.

Prior to trial, Barrington's primary and excess insurer, Legion Indemnity Co., was declared insolvent and placed into liquidation. As a result, Barrington lost its coverage and had insufficient resources to reach a settlement with the Talleys.

Barrington then filed for bankruptcy. The Talleys filed a claim in Barrington's bankruptcy proceeding for \$7.5 million and

the bankruptcy judge entered a stipulated judgment against Barrington in that amount.

As part of the settlement agreement, the Talleys received \$1.2 million from Barrington and, in return, the Talleys assigned their rights for any payment from Legion to Barrington's shareholders.

The shareholders then submitted a claim in Legion's liquidation proceedings for not just the \$1.2 million that Barrington had paid the Talleys, but also an additional \$4.5 million — or the remaining limits on Barrington's two policies with Legion.

"Most normal human beings would look at this and shake their head and be disgusted that some lawyer could create a situation where a company runs over a little girl with a school bus and they make \$4.5 million," said Todd A. Rowden, a partner at Thompson, Coburn LLP, who represented Legion's liquidator.

The liquidator, who handled the liquidation proceedings for Legion, recommended that the claim only be approved for \$1.2 million, or the amount that Barrington paid to the Talleys.

The shareholders objected and the liquidator then filed a petition in Cook County Circuit Court to approve the \$1.2 million recommendation.

Cook County Circuit Judge Mary Lane Mikva did so, ruling that the assignment of rights between the Talleys and Barrington was void because long-standing case law in Illinois prohibits the assignment of



John B. Simon

personal-injury claims.

She denied the shareholders' motion for reconsideration.

The shareholders appealed, arguing that the assignment did not concern a personal-injury claim but was a contractual claim based on the \$7.5 million stipulated judgment in bankruptcy court.

The shareholders argued that the assignment of rights was freely bargained for and they could pursue the remainder of the policy limits.

In affirming the trial court, the appeals panel determined that the shareholders' arguments run afoul of state insurance law policy, which is "meant to indemnify the insured for loss, not to provide a windfall profit." The panel affirmed the precedent that a personal-injury claim cannot be assigned.

Simon noted a statement made by the shareholders' lawyer during oral argument, in



Todd A. Rowden

which the attorney said the situation does "give you kind of a funny feeling," but an open secondary market for claims is the soundest public policy.

"It is more akin to speculating in future interests or the common-law offense of barratry, maintenance and champerty than sound public policy in assuring maximization of a liquidated insurer's assets," Simon wrote.

Rowden represented the liquidator with his colleagues, Joel A. Haber and Timothy L. Binetti.

The shareholders were represented by Mary Cannon Veed of Arnstein & Lehr LLP. She couldn't be reached for comment.

Justices Sheldon A. Harris and Patrick J. Quinn concurred in the ruling, which was issued last week and is *In re Liquidation of Legion Indemnity Corporation*, No. 2013 IL App (1st) 120980.