

IT'S NOT WHO YOU PAID, IT'S WHY YOU PAID IT

Middle District analyzes Alabama law regarding the voluntary payment defense

By J. Craig Campbell¹

Alabama's Voluntary Payment Doctrine

Alabama has long recognized the voluntary payment doctrine as a defense to a claim for damages. Specifically, Alabama courts have held that "where one party, with full knowledge of all the facts, voluntarily pays money to satisfy a colorable legal demand of another, no action will lie to recover such a voluntary payment, in the absence of fraud, duress, or extortion."² In Alabama, a voluntary payment is defined as "a payment made by a person of his own motion, without compulsion; a payment made without a mistake of fact or fraud, duress, coercion, or extortion, on a demand which is not enforceable against the payor."³ The mere fact that a payment was made under protest will not render it involuntary.⁴ In addition, neither the mere threat of legal proceedings nor a claim of significant business interest is sufficient to constitute the duress needed to make a payment of money involuntary.⁵

Recent Confusion

As described above, the voluntary payment doctrine would appear to serve as a powerful defense in any situation when a plaintiff seeks to recover from a defendant the amounts the plaintiff paid to settle claims made by third parties. However, in recent years some confusion has arisen concerning whether the doctrine applied only when the plaintiff's voluntary payments were made directly to the defendant itself. This confusion is apparent in two federal court decisions interpreting Alabama law.

In *Home Insurance Co. v. Hartford Fire Insurance Co.*, the Middle District of Alabama implied in *dicta* that the defense would apply even when the plaintiff made voluntary payments to a third party rather than to the defendant.⁶ In *Home Insurance Co.*, the joint plaintiffs sued joint defendants seeking reimbursement for a voluntary settlement payment one plaintiff made to a third party.⁷ The Middle District of Alabama found the defendants not liable to the plaintiff for these claims under the insurance contract provisions in question.⁸ Although the parties did not completely brief the issue, and the Middle District therefore declined to rule on it, the *Home Insurance Co.* Court hypothesized that the voluntary payment doctrine precluded plaintiff's recovery in this situation.⁹

In *RUSI Group, Inc. v. Willis of Alabama, Inc.*, the Southern District of Alabama reached a different conclusion. In *RSUI Group*, the defendant insurance company issued a binder for commercial property coverage to the insured.¹⁰ Despite the plaintiff insurer's repeated instructions to include in the binder an exclusion for a particular building, the defendant insurance company issued the binder without the exclusion.¹¹ The building was eventu-

ally destroyed by fire and, due to the defendant's mistake in omitting the exclusion of coverage, the plaintiff had to pay approximately \$210,000 to fix the building.¹² The Southern District of Alabama rejected the defendant's voluntary payment doctrine defense in part because the authorities cited by the defendant (including *Mt. Airy Insurance Co. v. Doe Law Firm*) involved a plaintiff's suit to recover money the plaintiff paid to the defendant rather than to a third party.¹³

Consider the following hypothetical under the approaches set forth in *Home Insurance Co.* and *RSUI Group*.: After dining on raw oysters at Peggy Plaintiff's restaurant, a patron becomes ill. Without investigating the incident and without notifying his oyster supplier, Danny Defendant, Peggy Plaintiff pays the ill patron \$2,000 for a release of liability. After paying for and receiving this release, Peggy Plaintiff then seeks reimbursement from Danny Defendant for the amounts paid to the ill patron. Under this hypothetical, the voluntary payment doctrine would apply to bar Peggy Plaintiff's recovery according to *Home Insurance Co.* However, according to *RSUI Group*, the voluntary payment doctrine arguably would not bar Peggy Plaintiff's recovery because Peggy Plaintiff made her payments directly to the ill patron rather than having the payment filtered to the ill patron through Danny Defendant. Obviously, an interpretation limiting the voluntary payment doctrine's applicability by foreclosing its operation when a plaintiff makes a voluntary payment directly to an allegedly injured third party rather than to the defendant would blunt the effectiveness of the defense. As a result, it was simply a matter of time before litigants sought clarification regarding the doctrine's applicability.

Greyhound Lines Inc. v. Goodyear Tire & Rubber Co.

Recently, in *Greyhound Lines, Inc. v. Goodyear Tire & Rubber Co.*,¹⁴ the Middle District of Alabama again analyzed Alabama law concerning the voluntary payment doctrine, sharpening the teeth of the defense by applying it even when the plaintiff made voluntary payments directly to third parties rather than to the defendant itself. In *Greyhound*, a bus owned by Greyhound was involved in an accident on Interstate 85 in Opelika Alabama on June 29, 2006.¹⁵ Greyhound alleged that a defective tire manufactured by Goodyear caused the accident, which injured several passengers.¹⁶ Thereafter, Greyhound paid the medical expenses of several of the injured passengers, and also paid several passengers various sums of money in consideration of the passengers signing a form releasing Greyhound of any future liability for any injuries resulting from the bus accident.¹⁷ Greyhound made these voluntary payments without notifying Goodyear

of the accident, the injuries, or the settlement agreements.¹⁸ Greyhound then filed suit seeking to recover from Goodyear the payments it made to and on behalf of the passengers.¹⁹

Goodyear moved for partial summary judgment on the passenger payment claims, arguing, among other things,²⁰ that Greyhound's claims were barred by the voluntary payment doctrine.²¹ In support of this argument, Goodyear cited *Mt. Airy Insurance Co. v. Doe Law Firm*, in which the Alabama Supreme Court concluded that the voluntary payment doctrine precluded a professional liability insurer from recovering from its insured amounts it paid a third party to settle a potential malpractice claim against its insured.²² Greyhound attempted to distinguish *Mt. Airy* by arguing that, in *Mt. Airy*, money was paid directly to the defendant, while in Greyhound the money was paid to a third party, allegedly as a consequence of the defendant's wrongdoing.²³ In support of this argument, Greyhound cited *RSUI Group*.²⁴

After considering both arguments, the Middle District held that the voluntary payment doctrine applied to Greyhound's passenger payments, and therefore Greyhound could not seek reimbursement for those payments from Goodyear.²⁵ The *Greyhound* Court determined that Goodyear, unlike the defendant insurance company from *RSUI Group*, did nothing that legally bound Greyhound to make settlement payments to the passengers, and that no legal judgment or contract bound Greyhound to make the passenger payments.²⁶ Rather, the Court found that Greyhound entered into a bargained-for-exchange with the passengers in order to limit its own liability in the accident.²⁷

Conclusion

Though the *Greyhound* ruling is not binding on the Alabama state courts, the Middle District's analysis provides valuable guidance concerning the applicability of the voluntary payment doctrine under Alabama law. According to the *Greyhound* decision, the voluntary payment doctrine applies not only in situations when a plaintiff makes voluntary payments to a defendant which then pays the money forward to an allegedly injured third party, but also to the much more common situation when a plaintiff makes a voluntary payment directly to a third party, allegedly as a consequence of the defendant's wrongdoing. In short, the *Greyhound* decision found that the crux of the voluntary payment doctrine defense is whether the payment made by the plaintiff was voluntary, not the identity of the party (or third party) to whom plaintiff made the payment. While seemingly simple and straightforward, this analysis of the voluntary payment doctrine signals applicability of the defense to a far wider range of cases. As a result, defense counsel should keep this potentially powerful defense in mind whenever a plaintiff seeks recovery of payments it voluntarily made to settle a claim brought by a third party. In addition, when deciding whether to settle potential claims against them, would-be plaintiffs (including decision makers and in-house counsel for would-be corporate plaintiffs) should be wary of the pos-

sibility of waiving a right of recovery against other possibly responsible parties.



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² *Mt. Airy Ins. Co. v. Doe Law Firm*, 668 So. 2d 534, 537 (Ala. 1995) (citing *Weaver v. Am. Nat'l Bank*, 452 So. 2d 469 (Ala. 1984); *H.A. Edwards Ins. Agency v. Jones*, 7 So. 2d 567 (Ala. 1942); *Nat'l Bank of Boaz v. Marshall County*, 157 So. 444 (Ala. 1934); *Town Council of Cahaba v. Burnett*, 34 Ala. 400 (1859); *Jones v. Watkins*, 1 Stew. 81 (Ala. 1827); *Clifton v. Curry*, 10 So. 2d 51 (Ala. Ct. App. 1942); *Thornton v. Singer Sewing Mach. Co.*, 37 So. 2d 239 (Ala. Ct. App. 1948)).

³ *Id.* at 538 (quoting 70 C.J.S. *Payment* § 100 (1987)).

⁴ *Id.*

⁵ *See id.* at 538-39.

⁶ *Home Ins. Co. v. Hartford Fire Ins. Co.*, 379 F. Supp. 2d 1282, 1290 n.8 (M.D. Ala. 2005).

⁷ *Id.* at 1288.

⁸ *Id.* at 1289.

⁹ *Id.* at 1290 n.8.

¹⁰ *RSUI Group, Inc. v. Willis of Ala., Inc.*, Case No. 07-0142-WS-B, 2007 WL 2469571, *1 (S.D. Ala. Aug. 29, 2007).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* The *RSUI Group* Court went on to state that it saw no obvious reason to apply the *Mt. Airy* rule because "the defendant's blunder legally obligated the plaintiff to honor the insured's claim; it would make little sense to hold that a party with an inescapable obligation, wrongfully created by another, to pay an innocent third party forfeits all right to be made whole by the wrongdoer if he honors that obligation." *Id.*

¹⁴ *Greyhound Lines, Inc. v. Goodyear Tire & Rubber Co.*, Case No. 3:08cv00516-WHA, 2009 WL 3079198 (M.D. Ala. Sept. 23, 2009).

¹⁵ *Id.* at *2.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ In addition to its voluntary payment doctrine argument, Goodyear also argued that it was entitled to summary judgment because there was no assignment of the passengers' claims to Greyhound; because such assignments, if they had been made, would not be enforceable as a matter of Alabama law; and because there was no subrogation clause in the passenger release documents, and the doctrine of subrogation was not applicable under the circumstances of the case. *See id.* at *2-5. Though these additional arguments are not relevant to this article, the Middle District of Alabama found for Goodyear on each of these arguments. *See id.*

²¹ *Id.* at *2, 6-7.

²² *Mt. Airy*, 668 So. 2d at 535-36, 539.

²³ *Greyhound*, 2009 WL 3079198 at *6.

²⁴ *Id.* For a description of the facts and holding of *RSUI Group*, please see the third paragraph of this article and the accompanying endnotes.

²⁵ *Id.* at *6-7.

²⁶ *Id.* at *7.

²⁷ *Id.*