

IN THE SUPREME COURT OF MISSISSIPPI

NO. 89-R -99001 SCT

**IN RE: MISSISSIPPI RULES OF CIVIL PROCEDURE IN ALL
CHANCERY, CIRCUIT AND COUNTY COURTS OF THE STATE**

ORDER

This matter has come before the Court en banc, on its own motion, for amendment of Rule 57(b) of the Mississippi Rules of Civil Procedure. The Court finds that such amendment will promote the fair and efficient administration of justice and that it should be adopted.

NOW, THEREFORE, IT IS ORDERED that Rule 57(b) of the Mississippi Rules of Civil Procedure shall be is hereby amended as set out in Exhibit "A" hereto.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this order upon the minutes of the Court and shall forthwith forward a true certified copy hereof to West Publishing Company for publication as soon as practical in the advance sheets of *Southern Reporter, Second Series (Mississippi Edition)* and in the next edition of *Mississippi Rules of Court*.

SO ORDERED, this, the 24th day of July, 2000.

/s/ William L. Waller, Jr.

WILLIAM L. WALLER, JR., JUSTICE

FOR THE COURT

MILLS, J. NOT PARTICIPATING

EXHIBIT "A" TO ORDER

AMENDMENT TO M.R.C.P. 57(b)(2)

[Added language indicated by underscore; deletion by strikeout.]

Rule 57. Declaratory judgments.

....

(b) *When available.*

....

(2) A contract may be construed either before or after there has been a breach thereof. Where an insurer has denied or indicated that it may deny that a contract covers a party's claim against an insured, that party may seek a declaratory judgment construing the contract to cover the claim.

....

[Amended effective July 27, 2000.]

COMMENT

....

Rule 57(b) was amended in 2000 to authorize an injured party, where an insurer has indicated that it may deny coverage of the injured party's claim, to seek a declaratory judgment establishing coverage. The traditional rule in Mississippi barred any type of direct action by an injured party against an insurer. *Crum*

v. Mississippi Mun. Serv. Co., Inc., 1998 WL 378333 (N.D. Miss. 1998), citing Hunt v. Preferred Risk Mut. Ins. Co. 568 So. 2d 253; Westmorland v. Raper, 511 So. 2d 884 (Miss. 1987); and Clark v. City of Pascagoula, 507 So. 2d 70 (Miss. 1987). The amendment modifies the traditional rule in the interest of judicial economy by allowing a direct action for the limited purpose of a declaratory judgment.

Allowing the injured party to seek a declaration that the injured party's claim is covered by the defendant's policy may reduce litigation costs. First, it may avoid unnecessary litigation when the policy is the only asset that might satisfy the injured party's claim, because a determination of non-coverage would avoid the need of trial of the claim against the insured. In addition, if the injured party brings the claim for declaratory judgment together with the claim against the insured, the rule may allow all of the issues growing out of an incident to be resolved in a single judgment.

As emphasized elsewhere in this Comment, whether the insured may or should be joined in the declaratory judgment action, and what other claims may be asserted, are issues to be determined under the existing rules governing joinder of claims and parties. Where such joinder is appropriate or necessary, the court retains discretion under Rule 42(b) to order separate trials in whichever sequence the court finds most appropriate. Absent extraordinary circumstances, the failure to order separate trials in order to avoid putting the issue of insurance before the jury which tries liability and damages as between the insured and the injured party will be deemed an abuse of discretion.

The amended rule does not affect the long-recognized right of an insurer to bring an action for a declaratory judgment that a policy does not cover a particular claim. See, e.g., Coleman v. Mississippi Farm Bureau Ins. Co., 708 So. 2d 6 (Miss. 1998). Nor does it affect the right of the insured to bring suit to establish coverage.

Allowing the injured party to assert a claim for declaratory judgment does not alter M.R.E. 411, which limits the admissibility of evidence of insurance coverage in an action by the injured party against an insured for damages.

[Amended effective July 27, 2000.]