

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

INDEPENDENT BANK,

Plaintiff,

v.

KOLEASECO, INC. and JOHN P. KOOP
and JOHN P. KOOP TRUST DATED
JULY 7, 1992,

Defendant,

Case No. 25-02377-CBB

Hon. Curt A. Benson

OPINION AND ORDER

REC'D & FILED

AUG 12 2025

HON. CURT A. BENSON

Introduction

On March 14, 2025, Independent Bank filed a verified complaint against the defendants. Among other relief, Independent Bank asked this court to appoint a receiver over Kolesteco, Inc.

On March 20, 2025, this court appointed John Polderman receiver over Kolesteco, Inc.

On July 14, 2025, Attorney David T. Linn entered an appearance on behalf of Attorney Thomas Behm. According to the appearance, Thomas Behm is acting as chairperson and point person for various plaintiffs' attorneys collectively known as the "Injured Claimants' Counsel." Although details are not yet reflected in the court file, the parties have informed the court that, on November 2, 2024, a Kolesteco truck was involved in a catastrophic truck/automobile accident on I-96 near Webberville, MI. Four individuals died. Many individuals were injured, some very seriously.

On May 28, 2025, Great West Casualty Company ("Great West"), an insurance company who had issued a liability insurance policy in favor of Kolesteco, filed a motion to lift the stay found in the court's March 20, 2025, receivership order and for permission to file an interpleader action in Ingham County Circuit Court. Great West points to MCR 3.603(A)(3) and argues that the Court Rule requires that it file its action in Ingham County.

The receiver, Kolesteco and Independent Bank respectfully disagree. They argue that the receivership act, MCL 554.1011, et. seq., grants this court "exclusive jurisdiction to direct the receiver and determine any controversy related to the receivership or receivership property." See MCL 554.1015. As the interpleader action constitutes a controversy related to receivership property, the action belongs in Kent County Circuit Court. They claim that the insurance proceeds should be tendered to the receiver or interpleaded with this court.

The court entertained oral argument on August 7, 2025 and took the matter under advisement.

The Questions Presented

In resolving the immediate controversy, the court must answer the following three questions:

1. Is the liability policy issued by Great West property of the receivership estate?
2. Does MCR 3.603(A)(3) irreconcilably conflict with MCL 554.1015?
3. If the Court Rule conflicts with the statute, which controls?

The court finds that the liability policy is the property of the receivership estate. The court further finds that MCR 3.603(A)(3) does indeed irreconcilably conflict with MCL 554.1015. Finally, after analyzing the specific facts and law presented here, using the framework established by the Supreme Court in *McDougall v. Schanz*, 461 Mich. 15, 30, 597 N.W.2d 148, 156 (1999), the court concludes that the statute takes precedence.

Receiverships in general

Two eminent scholars on receiverships in Michigan (one of whom has appeared in this case) describes a receiver and a receivership generally as follows:

A receiver is an officer of the court that appoints them to take possession, custody, and control of specified real estate and/or personal property, commonly referred to as the “receivership estate,” and to dispose of that property through its sale, abandonment, or other means. *See, e.g., Fidelity Tr Co v Saginaw Hotels Co*, 259 Mich 254, 242 NW 906 (1932); *Cohen v Cohen*, 125 Mich App 206, 335 NW2d 661 (1983). *See also* MCR 2.622(A), defining the term *receivership estate* as “the entity, person, or property subject to the receivership,” and MCR 2.622(E)(1), (2), recognizing a receiver’s general power “to sue for and collect all debts, demands, and rents of the receivership estate” and to liquidate its real and personal property. On collection of the property by the receiver, it is then held *in custodia legis* by the appointing court, with the trustee stepping into the shoes of the owner of that property. *See, e.g., Livingston v Southern Surety Co*, 262 Mich 438, 247 NW 712 (1933); *HG Vogel Co v Original Cabinet Corp*, 252 Mich 129, 233 NW 200 (1930).

Patrick E. Mears, Michael David Almassian, *Receiverships in Michigan* ch 1 (ICLE 2013), at <https://www.icle.org/modules/books/chapter.aspx?lib=creditor&book=2013551730&chapter=1> (last updated 08/01/2025).

The liability policy is property of the receivership estate.

The Michigan legislature defines the property of a receivership as follows:

“Receivership property” means the property of an owner that is described in the order appointing a receiver or a subsequent order. The term includes any proceeds, products, offspring, rents, or profits of or from the property.

MCL 554.1012(q)

Moreover, a Circuit Judge appoints receivers with reference to MCR 2.622. Subpart (C) reads as follows:

Order of Appointment. The order of appointment shall include provisions related to the following:

(2) identification of real and personal property of the receivership estate;

Thus, by virtue of both the statute and Court Rule, “[t]he substantive rights, duties, and liabilities of the receiver are granted, defined, and limited by the order of the court appointing the receiver.” See § 13:9. Operation and effect of receivership—Rights and responsibilities—Order appointing receiver, Strat. Alt. Dis. Bus. § 13:9

The March 20, 2025, order defines property very broadly. It includes “all present and future revenues, income, issues, profits, and other benefits derived from such personal property.” Such a definition encompasses an insurance liability policy.

In this case, it worth remembering that the claimants represented by the “Injured Claimants’ Counsel” have brought their actions against Koleaseco, not Great West. Although Great West did not attach a copy of the relevant insurance policy, nor did it quote from it, presumably it is a contract whereby Great West promises to defend and indemnify Koleaseco from the claims arising from the November 2, 2024, accident. In other words, absent the stay ordered by this court, Great West would be obligated to pay attorneys and associated legal costs in defending Koleaseco in the Ingham County Circuit Court action. And, in the event of an adverse judgment, Great West would have to pay to Koleaseco all sums that Koleaseco becomes legally obligated to pay as damages, up to its policy limits. This is clearly a benefit to Koleaseco derived from the policy. The benefits derived from an insurance liability policy are many, not the least of which is a “bargain for peace of mind, or comfort, of knowing that they will be protected in the event of a catastrophe.” *Zicherman v. State Farm Fire & Cas. Co.*, 698 F. Supp. 3d 564, 568–69 (E.D.N.Y. 2023)(Citation omitted).

Thus, the Great West liability policy is property of the estate as that term is defined in the March 20, 2025, order.

MCR 3.603(A)(3) irreconcilably conflicts with MCL 554.1015.

MCR 3.603(A)(3) demands that if one or more actions concerning the subject matter of the interpleader action have already been filed, the interpleader action *must* be filed in the court where the first action was filed. “‘Must’ indicates a mandatory directive.” *Beydoun v. Bd. of State Canvassers*, No. 371167, 2024 WL 2884712, slip op. at 3 (Mich. Ct. App. June 7, 2024)(Published). It is a command from the Supreme Court. It is an obligation of the interpleading plaintiff. As it is undisputed that the first civil action filed by a party injured in the

2024 accident was filed in Ingham County, Great West reasonably argues that it *must* file its action in the Ingham County Circuit Court.

This contradicts the receivership act, MCL 554.1011, et. seq. That act provides as follows:

The court that appoints a receiver under this act has exclusive jurisdiction to direct the receiver and determine any controversy related to the receivership or receivership property.

MCL 554.1015(2)

In the statute, “exclusive” is an adjective modifying the noun, “jurisdiction.” The word “exclusive” is not defined in the statute.

When terms are not expressly defined anywhere in the statute, they must be interpreted on the basis of their ordinary meaning and the context in which they are used. A dictionary may be consulted as one tool in the interpreter's toolbox; however, recourse to dictionary definitions is unnecessary when the Legislature's intent can be determined from reading the statute itself. In other words, if the meaning of a statutory term is plain from the text and context of the statute itself, resort to a dictionary is unnecessary.

Bartalsky v. Osborn, 337 Mich. App. 378, 387, 977 N.W.2d 574, 579 (2021)(Cleaned up)

In this case, it hardly seems necessary to look up the word “exclusive” in the dictionary. It means “excluding or having the power to exclude.” It also means, “limiting or limited to possession, control, or use by a single individual or group.” Merriam-Webster <<https://www.merriam-webster.com/dictionary/esclusive>> (accessed August 11, 2025).

As the court noted during oral argument, the legislature’s use of the word, “jurisdiction,” is a little loose. This provision of the receivership act is more akin to venue than jurisdiction. But its meaning is not reasonably in doubt. It states that the court that issued the receivership order has the *power* to determine the issue to the exclusion of other circuit courts throughout the State.

The claims pending in the Ingham County Circuit Court, which, of course, names as defendant Koleaseco, not Great West, is a controversy related to this receivership and receivership property. Thus, as the court that ordered Koleaseco into receivership, by statute, it is the Kent County Circuit Court that has the exclusive jurisdiction to determine the controversies arising from the accident and the insurance policy.

The Court Rule must give way to the statute.

The state Constitution divides the powers of government among its three branches to preserve their independence. *In re 1976 PA 267*, 400 Mich. 660, 662, 255 N.W.2d 635 (1977). The separation-of-powers provision of the Michigan Constitution explains: “The powers of government are divided into three branches: legislative, executive and judicial. No person

exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.” Const. 1963, art. 3, § 2.

At issue here is the Supreme Court’s responsibility to promulgate court rules. The Michigan Constitution provides, “The supreme court shall by general rules establish, modify, amend and simplify the practice and procedure in all courts of this state.” See Const. 1963, art. 6, § 5. By virtue of the separation of powers doctrine, the legislature may not pass laws that purely regulate the practice and procedure of state courts. *McDougall*, supra, 461 Mich. at 27, 597 N.W.2d 148, 154

At the same time, the Supreme Court is “not authorized to enact court rules that establish, abrogate, or modify the substantive law,” as the Supreme Court’s constitutional rule-making authority extends only to matters of practice and procedure.” *McDougall*, supra, 461 Mich. at 30, 597 N.W.2d 148, 156.

It can be difficult to draw the line between a rule that establishes “practice and procedure” and substantive law. *Id.* at 36, 597 N.W.2d 148. And while this line-drawing must be performed “on a case-by-case basis,” *Id.*, “if a particular court rule contravenes a legislatively declared principle of public policy, having as its basis something other than court administration[,] the court rule should yield,” *Id.* at 30-31, 597 N.W.2d 148 (cleaned up). See also, *Carter v. DTN Mgmt. Co.*, No. 165425, 2024 WL 3573516, at 14 (Mich. July 29, 2024)(Viviano, J., Dissenting.)

The receivership act establishes a comprehensive system for appointing receivers who oversee the management, preservation, and potential sale of property while safeguarding the rights of all affected parties - creditors, property owners, and other stakeholders. The legislation prioritizes fair asset distribution, property conservation, and works in harmony with established legal and equitable doctrines, supplementing rather than replacing them unless the act explicitly requires otherwise.

The underlying legislative intent of the receivership act is to create a balanced, fair, and streamlined process for property management under court oversight. This framework ensures comprehensive protection for creditors, owners, and stakeholders by integrating statutory requirements with equitable principles and allowing for appropriate judicial discretion in decision-making.

The legislature has decreed that all controversies related to the receivership or receivership property must remain in the circuit that established the receivership. That is the declared public policy of this State. MCR 3.603(A)(3) contravenes this legislatively declared principle of public policy. Accordingly, the Court Rule must give way to the statute.

Great West must tender the insurance proceeds to the receiver.

A court-appointed receiver is an officer or agent of the court. *Howard & Howard Att’ys P.L.L.C. v. Jabbour*, 311 Mich. App. 524, 526, 880 N.W.2d 1, 2 (2015), citing, *In re Kennison Sales & Engineering Co., Inc.*, 363 Mich. 612, 617–618, 110 N.W.2d 579 (1961). In this

capacity, the receiver serves as the administrative arm or officer of the authority exercising the power of appointment. *Mays v. Snyder*, 323 Mich. App. 1, 54, 916 N.W.2d 227, 258–59 (2018), *aff'd sub nom. Mays v. Governor of Michigan*, 506 Mich. 157, 954 N.W.2d 139 (2020).

It has long been recognized that money is “deposited in court” so long as it is subject to the court’s control. *Wells Fargo Bank, N.A. v. Mesh Suture, Inc.*, 31 F.4th 1300, 1310–11 (10th Cir. 2022):

More than 200 years ago Justice Story wrote in an admiralty case that “[m]oney deposited in court” means “money, which is deposited subject to the order of the court, be it in whose actual possession it may, whether of a bank or of an officer of the court.” *Ex parte Prescott*, 19 F. Cas. 1283, 1285–86 (Story, Circuit Justice, C.C.D.N.H. 1814) (No. 11,388).

By ordering Great West to tender the funds to the receiver, this court will secure possession of, and exclusive control over, the funds through its receiver. *Wells Fargo Bank, N.A.*, *supra*.

CONCLUSION

Great West’s motion for leave to file an interpleader action in Ingham County Circuit Court is DENIED.

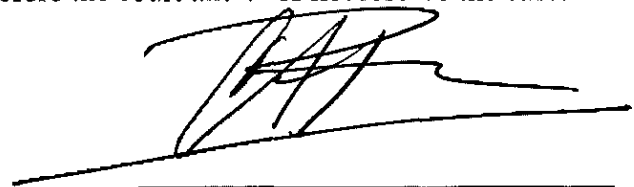
The court will, under a separate order, direct Great West to deposit the proceeds of its liability policy with the receiver.

Counsel for Defendant Koleaseco will prepare a proposed order directing Great West to deposit the proceeds of its liability policy with the receiver. The order should include certain safeguards, such as those suggested by Mr. Linn during oral argument. If the proposed order meets the approval of all interested parties, the court will enter it by stipulation. If the interested parties cannot agree, defense counsel should contact the court and schedule an informal status conference to discuss it, followed by a formal hearing if necessary.

IT IS ORDERED.

This order does not resolve all pending matters before the court and does not resolve the case.

Dated: August 12, 2025
at Grand Rapids, Michigan.



Honorable Curt A. Benson