

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DAVID GODWIN,

Plaintiff-Appellee/Cross-Appellant,

v

SANDRA BAGGETT and WILLIE BAGGETT,

Defendants,

and

FARM BUREAU GENERAL INSURANCE  
COMPANY OF MICHIGAN,

Defendant-Appellant/Cross-Appellee.

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UNPUBLISHED

October 6, 2000

No. 211896

Wayne Circuit Court

LC No. 95-504250-NI

Before: Murphy, P.J., and Collins and Owens, JJ.

MURPHY, P.J. (dissenting).

I respectfully dissent and would affirm the judgment of the trial court. Although I agree that a reasonable inference to be drawn from the key language of the trust agreement, which provides for defendant's designation of an attorney to conduct an action against potentially liable parties, is that defendant sought to control the course and expense of such litigation, under the circumstances I am reluctant to conclude that plaintiff's instant non-compliance renders ineffective the subsequent language of the agreement providing that defendant is liable for the costs of such proceedings.

The \$4,635.63 costs at issue were not unreasonable, and there is no reason to believe that had defendant designated an attorney, as provided by the agreement, the costs would have been significantly less. In ordering reimbursement of the benefit previously paid by defendant the trial court reached an equitable result. I find no reason to disturb that result.

As for plaintiff's arguments on cross appeal, I agree with the majority that the collateral source rule, MCL 600.6303; MSA 27A.6303, is inapplicable. Plaintiff had no right to the payment of \$20,000 where another driver was liable and plaintiff failed to comply with the notice requirement of

MCL 600.6303(3); MSA 27A.6303(3). Further, interpretation of "costs and expenses" to include attorney fees would be unreasonable. Had inclusion of such fees been defendant's intent, they could easily have been provided for by the agreement.

I would affirm.

/s/ William B. Murphy