Legal Update Article

Georgia Supreme Court Clarifies Insurance Company is Not 'Financial Institution' in Garnishment Law

By Todd Van Dyke & Justin R. Barnes

February 20, 2018

Meet the Authors

Todd Van Dyke
(He/Him)
Principal
(404) 586-1814
Todd.VanDyke@jacksonlewis.com

Justin R. Barnes
(He/Him)
Office Managing Principal
(404) 586-1809
Justin.Barnes@jacksonlewis.com

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An insurance company named as a garnishee in a garnishment action is not a "financial institution" under Georgia's garnishment statute when the garnishment is seeking earnings owed to its current or former employees.

May 2016 Amendment

Apparently responding to a federal judge's 2015 ruling that portions of Georgia's post-judgment garnishment statute (O.C.G.A. § 18-4-1 *et seq.)* were unconstitutional, the state legislature amended the garnishment statute effective May 12, 2016. Under the amended statute, a different form is required for general garnishments, which provide for a 29-day garnishment period, than for garnishments on a financial institution, which provide for a five-day garnishment period. O.C.G.A. § 18-4-4(c)(2) and (4); *see also* O.C.G.A. §§ 18-4-71, 18-4-74 through 18-4-77. The apparent aim of the amendment was to provide added protections to garnishment actions directed at garnishing bank accounts.

Case Background

In October 2015, Harold Blach filed a garnishment action against Aflac in the U.S. District Court for the Middle District of Georgia, seeking to collect a judgment of nearly $160,000 that he had obtained against Sal Diaz-Verson, a former Aflac employee.

Blach was seeking to garnish funds that the company periodically pays to Diaz-Verson based on his former employment with the company. Blach used the garnishment form applicable to general garnishments, but Diaz-Verson had argued that he should have used the form applicable to "financial institutions."

The judge in the case then certified the following question to the Georgia Supreme Court: "[w]hether an insurance company is a 'financial institution' under the Georgia garnishment statute when the insurance company is garnished based on earnings that it owes the defendant as the defendant's employer."

Georgia Supreme Court Decision

On February 5, 2018, the Georgia Supreme Court answered the question in the negative. A plain meaning interpretation of the amended statute, the Court said, suggests that an insurance company is a financial institution for the purposes of Georgia's garnishment statute and that the garnishment period for any action against it is five, instead of 29, days.

In answering this question, however, the Court regarded the definition of a "financial institution" in the context of the garnishment statutory scheme as a whole. The Court concluded that the plain meaning interpretation of the amended statute was not the legislature's intent. Rather, the Court determined it is clear that a "financial institution" as defined in O.C.G.A. § 18-4-1(4) is limited to entities that are "held out to the public as a

place of deposit of funds or medium of savings or collective investment" and are garnished in that capacity.

Therefore, the Court ruled, an insurance company is not a "financial institution" for purposes of O.C.G.A. § 18-4-4(c)(2) when the insurance company is a garnishee based on earnings that it owes to a current or former employee.

Accordingly, financial institutions should treat garnishment actions against their employees as regular wage garnishments that are not subject to the special "financial institution" restrictions.

If you have any questions about garnishment law in Georgia or other developments affecting employers, please contact the Jackson Lewis attorney with whom you regularly work.