

5/30/2017 | Articles

## Pa. Judge: Bad Faith Case Severed, Jury To Hear Common Law Bad Faith Claims

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Pennsylvania's Westmoreland County Court of Common Pleas has denied a motion to stay of discovery in a bad faith case pending completion of a UIM case but has also ordered severance of trial of the bad faith claims under which common law bad faith claims will be tried by a jury, and statutory bad faith claims will be tried by the judge.

In *Madeja v. State Farm Mutual Automobile Ins. Co.*, No. 5493 of 2016 (C.P. Westmoreland Co. April 11, 2017 Scherer, J.), the plaintiffs advanced both common law bad faith claims and statutory bad faith claims. The trial court ordered those claims severed from the underlying UIM claim. In a bit of a quirk, however, the court ruled that depending on the verdict returned on the UIM claim the common law bad faith claims would be heard with the same jury that determined the UIM claim while the court would hear the statutory bad faith claim on a non-jury basis.

### *Editor's Note:*

*The trial court order in this case points out the somewhat unique nature of bad faith law in Pennsylvania — it is a two-headed creature with both a common law component and a statutory law component. In this writer's experience, trials of both statutory and common law bad faith claims are not the norm — statutory bad faith claims are usually singly tried to the bench in state court. The court order in question sets up for a potentially unruly and cumbersome bad faith trail, given the likelihood of overlapping evidence presented on the common law and statutory bad faith claims. The Court might streamline the process by simply taking evidence in a single bad faith proceeding and then letting the jury render a verdict on the common law claims, with the Court issuing a decision on the statutory bad faith claims.*

*The ruling could serve as an incentive to the plaintiffs' bar to not only plead common law bad faith claims but seek trial of those claims in an effort to work around what has traditionally been the province of the trial judge in bad faith cases.*



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