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## Pa. Supreme Court Rules Ill Will/Malice Not Required To Establish Bad Faith

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The Pennsylvania Supreme Court declined to require a showing of intentional ill will or malice to establish bad faith claims against insurers in Pennsylvania, calling such ill will merely a factor in the analysis.

In *Rancosky v. Washington National Insurance Co.*, No. 28 WAP 2016, the Court affirmed the state's Superior Court which held that an insurer's motive of self-interest or ill will is only one factor that can be considered in an analysis of potential bad faith conduct under Pennsylvania's bad faith statute. The Superior Court held that Washington's predecessor, Consec Health Insurance Co., did not have a reasonable basis to deny medical benefits to LeAnn Rancosky for the treatment of her ovarian cancer, or to refuse to honor a waiver of premium provision in her health insurance policy following her diagnosis.

Rancosky sued the insurer in the Pennsylvania Court of Common Pleas in 2008, and her estate later won a \$31,000 jury verdict on breach-of-contract claims. Consec won the bench trial at that level on the bad faith claims however after the trial judge ruled that Rancosky demonstrated no ill will or actual malice on the part of Consec in the handling of her claim.

In affirming the Superior Court and sending the case back to the trial court under the clarified bad faith test, Justice Max Baer noted:

We do not believe that the General Assembly intended to create a standard so stringent that it would be highly unlikely that any plaintiff could prevail thereunder when it created the remedy for bad faith. Such a construction could functionally write bad faith under Section 8371 out of the law altogether.

The Supreme Court confirmed a long standing two-part bad faith test first announced in a prior Superior Court ruling in 1994 in the case of *Terletsky v. Prudential*. In *Terletsky*, the Court held that an insurance company's bad faith was established when the insured demonstrates that (1) the insurer lacked a reasonable basis for denying benefits under the policy and (2) the insurer knew or recklessly disregarded its lack of a reasonable basis in denying the claim.

The Supreme Court affirmed the intermediate appeals court finding that dishonest purpose or motive of self-interest was not a third element of the *Terletsky* standard but rather an element that could be considered as part of the second prong of the *Terletsky* test.



Charles E. Haddick, Jr.  
717-731-4800  
[chaddick@dmclaw.com](mailto:chaddick@dmclaw.com)  
[@cjhinsurancelaw](#)  
[blog: badfaithadvisor.com](http://blog.badfaithadvisor.com)