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Pa. Supreme Court Watch: Is Ill Will Required to Establish Bad Faith?

This week, the Pennsylvania Supreme Court heard oral argument on whether intentional ill will or malice was a required element to make out a claim for insurance bad faith in Pennsylvania, exposing insurers to punitive damages.

In *Rancosky v. Conseco*, the Pennsylvania Superior Court reversed a trial court ruling in favor of an insurer on bad faith claims following a bench trial. The Superior Court held that the insurer did not have a reasonable basis to deny benefits to LeAnn Rancosky following her diagnosis of ovarian cancer in 2003. The intermediate appeals court relied on its 1994 ruling in *Terletsky v. Prudential* and held that, while it was a consideration, ill will and malice was not a stand-alone requirement to establish insurer bad faith.

Ms. Rancosky and her husband sued Conseco in the Washington County Court of Common Pleas in 2008 and eventually won a \$31,000 jury verdict on breach-of-contract claims. Conseco prevailed, however, on the bad faith claims.

During argument this week, Conseco argued to the state Supreme Court that Pennsylvania's bad faith statute does not contemplate punitive damage awards against carriers without evidence of a malicious motive. In response, Rancosky's estate argued that proving ill will was exceptionally difficult, and that making bad motive a requisite element would allow insurers to handle claims recklessly and carelessly without fear of penalty.

Law360.com reported that, during argument earlier this week, Justice Max Baer saw the appeal of Rancosky's arguments, stating "It's hard to prove that kind of motive, and if you're going to hold the insured to that burden then you tend to put the rabbit in the hat and the insurance company wins because they say, 'We're the most incompetent organization in the world. We were dead wrong, but we had no motive of ill will.'"

A ruling is anticipated later this year.

Editor's Note:

Justice Baer's comments during oral argument this week are emblematic of a trending misconception that the Pennsylvania Bad Faith Statute created anything beyond an intentional tort cause of action. There is a large body of case law in both Pennsylvania state and federal courts holding that mere negligence is not bad faith, and that an insurer has the legal right to be wrong on claims decisions, as long as the decision can be supported by a reasonable basis.

There should be no real dispute that reasonable but negligent claims decisions are not actionable, and that intentionally malicious claims decisions are actionable, under the bad faith statute. The current battleground in Pennsylvania appears to be the class of claims decisions which lie in the twilight between these two signposts, i.e., claims decisions made recklessly and wanton disregard to the insured's rights. Rancosky is an attempt to find clarity in this twilight.



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