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Third Circuit Affirms Summary Judgment for Nationwide in Bad Faith Case

Dickie, McCamey & Chilcote lawyers **Charles E. Haddick, Jr.** and **Bryon R. Kaster** have won affirmance of a summary judgment in favor of Nationwide Insurance in a bad faith case before the U.S. Court of Appeals for the Third Circuit.

In *Bodnar, et al. v. Nationwide Mutual Insurance Company*, No. 15-3485 (3d Cir., October 4, 2016), the Plaintiffs alleged that Nationwide was guilty of bad faith in the investigation of whether or not the work-related death of an employee of its insured was covered or barred by the terms of the insured's CGL policy, which included an Employers' Liability Exclusion. During the investigation of the claim, Nationwide filed a declaratory judgment action because of conflicting information on the employment status of the deceased employee. Nationwide later dismissed the declaratory judgment action and settled with the estate of the deceased employee's estate, ultimately agreeing to indemnify its insured.

The decedent's estate took an assignment of rights from the insured as part of the settlement and filed a bad faith action against Nationwide in the U.S. District Court for the Middle District of Pennsylvania. Nationwide requested and obtained summary judgment in its favor in the district court, U.S. District Judge Robert Mariani finding:

The claims file reflects information that indicates that Berry [decedent] variously could have been an employee, a temporary worker, or independent contractor. . . . Plaintiffs may not like how the claim was handled, but it cannot be said that Nationwide breached any duty under these facts.

In affirming summary judgment, U.S. Third Circuit Judge Thomas Hardiman agreed, finding that Nationwide's filing of a declaratory judgment, and subsequent decision to indemnify its insured in the underlying wrongful death action, reflected both an ongoing investigation and open minds on the part of Nationwide's claims personnel:

[G]iven the ambiguities surrounding Berry's employment status, it was reasonable for Nationwide to seek declaratory relief. . . . Appellants failed to show by clear and convincing evidence that Nationwide acted unreasonably in the manner [in which] it handled Bodnar's claim.

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