

SEPTEMBER 2017

AUTHOR
SAMUEL E. BORDONI-COWLEY

PA Supreme Court: Malice Not A Prerequisite to Bad Faith

SUMMARY

In a much anticipated decision, the Pennsylvania Supreme Court cemented and clarified the test for bad faith set out in the 1994 Superior Court decision *Terletsky v. Prudential*—that an insurer's bad faith is established by demonstrating it (1) lacked a reasonable basis for denying the policy's benefits, and (2) knew of or recklessly disregarded its inadequate basis for denial. Policyholders asserting an insurance bad faith claim need not show a dishonest purpose or motive of self-interest or ill will to prove their claim against insurers under Pennsylvania's insurance bad faith statute, 42 Pa. C.S.A. § 8371. *Rancosky v. Washington Nat'l Ins. Co.*, No. 28 WAP 2016 (Pa. Sept. 28, 2017).

In the underlying case, the Pennsylvania Superior Court held that Consec Health Insurance Co. did not have a reasonable basis for denying waiver of premium benefits to LeAnn Rancosky, who suffered from ovarian cancer. The Superior Court, based upon its reading of *Terletsky*, partially vacated the trial court's judgment and held that bad faith is established by demonstrating the insurer's lack of a reasonable basis for denying the claim. The Court further held that, instead of constituting a third element, dishonest purpose and motive of self-interest or ill will are probative factors in determining the second prong of the *Terletsky* test, i.e. that the insurer knew of or recklessly disregarded its inadequate basis for denial.

The Pennsylvania Supreme Court upheld the Superior Court's decision, examining closely the General Assembly's intent in enacting Section 8371. The Supreme Court noted that the case law on bad faith was instructive in laying out an overview of bad faith, but that no case had squarely addressed the legal test of Section 8371. The Court analyzed whether an award for punitive damages under Section 8371 must meet a higher evidentiary standard than that for bad faith generally, concluding that Section 8371 *does not* distinguish between the standards for finding bad faith generally and for imposing punitive and other categories of damages. Consequently, while mere negligence is insufficient to establish bad faith, claimants must only show recklessness on the part of the insurer to prove bad faith and potentially get the attendant punitive damages provided for by Section 8371.

The Pennsylvania Supreme Court's opinion in *Rancosky* sets a clear path for plaintiffs to prove bad faith based on recklessness, and without any evidence of self-interest or ill will. While this appears to be largely a continu-

ation of the longstanding Superior Court precedent established in *Terletsky*, it may also signal that the Pennsylvania Supreme Court, which has seen a significant shift in its Justices over the past several years, is becoming increasingly friendly to policyholders. Saul Ewing Arnstein & Lehr's team of insurance attorneys have a broad range of experience in litigating such matters in Pennsylvania courts, and will continue to monitor and report on developments in the law of bad faith.

This Alert was written by Samuel E. Bordoni-Cowley, a member of the firm's Insurance Practice. Samuel can be reached at 215.972.7825 or samuel.bordoni-cowley@saul.com. This publication has been prepared by the Insurance Practice for information purposes only.

The provision and receipt of the information in this publication (a) should not be considered legal advice, (b) does not create a lawyer-client relationship, and (c) should not be acted on without seeking professional counsel who have been informed of the specific facts. Under the rules of certain jurisdictions, this communication may constitute "Attorney Advertising."