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Assign Away: Pennsylvania Supreme Court Says Bad Faith Claims May be Assigned

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SUMMARY

On December 15, 2014, in the case of *Allstate Prop. & Cas. Ins. Co. v. Wolfe*, No. 39 MAP 2014, slip op. at 1 (Pa. Dec. 15, 2014), the Pennsylvania Supreme Court ruled that an insured may assign a statutory bad faith claim under Pennsylvania's insurance bad faith statute, 42 Pa. C.S.A. § 8371. The United States Court of Appeals for the Third Circuit had certified the question to the Pennsylvania Supreme Court, garnering significant interest from the industry for what could have been a major victory for insurers to change the landscape of insurance litigation.

While there has been a regular practice of assigning bad faith claims, two relatively recent decisions from the United States District Court for the Eastern District of Pennsylvania cast doubt on the practice. In the Supreme Court, the parties and *amici curiae* advanced numerous public policy and social considerations supporting their respective positions. In the end, the Court focused its resolution on simple statutory construction.

The bad faith statute provides in relevant part that "[i]n an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith toward the insured, the court may … [a]ward punitive damages against the insurer." 42 Pa. C.S.A. § 8371. Because the statute is silent as to assignability of claims, the court reviewed the legislation's history, concluding that section 8371 was intended to supplement available remedies, and not to change an insured's ability to assign claims. The Court articulated that "we simply do not believe the General Assembly contemplated that the supplementation of the redress available for bad faith on the part of insurance carriers in relation to their insureds would result either in a curtailment of assignments of pre-existing causes of action in connection with settlements or the splitting of actions." *Wolfe*, slip op at 12. The Court noted that the General Assembly was free to amend the statute it if disagreed with the court's interpretation.

This significant decision from the high court came from a relatively small dispute. Wolfe was injured in 2007 when his car was struck by an intoxicated driver, Zierle, who was an Allstate insured. Wolfe demanded $25,000 and Allstate counteroffered at $1,200. Wolfe obtained a jury verdict of $15,000 for compensatory damages and $50,000 in punitive damages. Allstate paid the compensatory judgment only. Zierle then assigned his bad faith claim against Allstate to Wolfe in exchange for an agreement not to execute on the punitive damages award against Zierle. Wolfe then filed a claim against Allstate in Pennsylvania state court, which Allstate removed to federal district court in Pennsylvania's Eastern District. Allstate argued that Wolfe did not have standing to pursue Zierle's bad faith claim because such claims cannot be assigned, and the trial court rejected that argument. In relevant part, the trial court awarded Wolfe $50,000 in punitive damages in reliance on Section 8371. Allstate appealed the decision to the Third Circuit, which certified the question regarding Allstate's argument about assignability to the Pennsylvania Supreme Court.

In some respects the Pennsylvania Supreme Court's decision returns the insurance landscape to business as usual, as for years it was largely accepted that such assignments were permitted. Had the Court ruled otherwise there would have been a significant change in insurance litigation in Pennsylvania. Insurers can take from this decision that bad faith litigation in Pennsylvania will continue to be hotly contested, and will serve as the proving grounds where many claims handling and institutional practices will be judged. Further, given the relative size of the dispute (approximately $65,000), the case is a reminder that the potential for bad faith litigation exists in nearly all levels of claims.

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