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Pennsylvania Insurers Must Remain Steadfast in Handling Claims: Demonstrating Ill Will or Self-Interest No Longer Can be Required of Policyholders to Prove Bad Faith

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Pennsylvania insurance bad faith law is governed by statute – 42 Pa. Cons. Stat. Ann. § 8371. The plain language of § 8371 provides little guidance about required proof of a bad faith claim, especially considering that "bad faith" was not defined by the Pennsylvania legislature. Thus, for 13 years, federal and state trial courts in Pennsylvania have applied the legal standard announced by the Pennsylvania Superior Court's "preeminent ruling" in Terletsky v. Prudential Prop. & Cas. Ins. Co., 649 A.2d 680 (Pa. Super. Ct. 1994). Namely, "to prevail in a bad faith insurance claim pursuant to § 8371, a plaintiff must demonstrate, by clear and convincing evidence, (1) that the insurer did not have a reasonable basis for denying benefits under the policy and (2) that the insurer knew or recklessly disregarded its lack of a reasonable basis in denying the claim." A unanimous Pennsylvania Supreme Court chose to exercise its discretion to once and for all confirm the legal standard set forth in Terletskey. See Rancosky v. Washington Nat. Ins. Co., Docket No. J-27-2017, decided September 28, 2017, a copy of which is attached. Critically - the Rancosky decision *does not alter or disturb the Terletskey legal standard.*

However, what the Rancosky decision did was foreclose the need for policyholders to establish proof of an insurer's motive or self-interest or ill-will in order to succeed in a bad faith action. Since Terletsky, numerous federal and state trial courts at times have added a third element to a bad faith claim seeking imposition of punitive damages. Namely, many trial courts required a policy holder to demonstrate clear and convincing evidence that the insurer was motivated by self-interest or ill-will. This "third element" was in line with longstanding Pennsylvania law where the imposition of punitive damages required such a showing.

Now, however, policyholders need not show ill-will or self-interest in order to obtain bad faith punitive damages. Rather, policyholders are only required to establish two elements to prove bad faith. The first element "is an objective inquiry into whether a reasonable insurer would have denied payment of the claim under the facts and circumstances presented." Under the second element, mere negligence by an insurer is insufficient to establish bad faith, and instead there must be a showing of "knowledge or reckless disregard of the lack of a reasonable basis for denying the claim" by an insurer. In deciding Rancosky, the Pennsylvania Supreme Court held "that proof of an insurer's motive or self-interest or ill-will, while potentially probative of the second prong, is not a mandatory prerequisite to bad faith recovery under Section 8371." Damages under § 8371 include: punitive damages, attorneys' fees and costs, and prime interest plus 3% from when the claim was made.

Accordingly, insurers must remain steadfast in their claims handling process, denying claims where appropriate, and engaging counsel when necessary. In first and third party claims, alike, insurers should consider filling declaratory judgment actions in order to determine coverage obligations, which is not evidence of bad faith. *See, e.g., Am. Legacy Found., RP v Nat'l Union Fire Ins. Co., 623 F3d 135 (3d Cir 2010).*