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## Pennsylvania Supreme Court Rules Self-Interest or Ill-Will Not Required For Bad Faith Claim

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On September 28, 2017, the Pennsylvania Supreme Court considered, as an issue of first impression, the requirements for proving a bad faith claim under the Pennsylvania bad faith statute. In *Rancosky v. Washington National Ins. Co.*, No. 28 WAP 2016 (Pa. Sept. 28, 2017), the Court held that to prevail on a statutory bad faith claim the plaintiff must present clear and convincing evidence that: (1) an insurer did not have a reasonable basis for denying benefits under the policy; and (2) an insurer knew of or recklessly disregarded its lack of a reasonable basis. The Supreme Court held that the first prong is an objective inquiry into whether a reasonable insurer would have denied payment of the claim under the facts and circumstances presented. As to the second prong, the Court noted that proof of the insurer's subjective motive is not necessarily required. Lastly, the Supreme Court ruled that the statute permits an award of punitive damages upon showing nothing more than knowledge or reckless disregard.

By way of background, LeAnne Rancosky ("Rancosky") purchased a cancer insurance policy in 1992 from Conseco Health Insurance Company ("Conseco"). The Conseco policy contained a waiver-of-premium provision that excused premium payments after 90 days if Rancosky became disabled due to cancer. Rancosky was diagnosed with ovarian cancer in February 2003 and was unable to work from that point on. Although she made premium payments for the 90 days after her diagnosis, her physician put down the incorrect date for her diagnosis and disability on her application for waiver of premium. Conseco made several benefit payments under the cancer policy from 2003 to 2005 but began denying claims when Rancosky relapsed in 2006, based on Rancosky's failure to pay premiums for 90 days after the erroneous date of disability provided by her physician.

Rancosky and her husband sued Conseco for breach of contract and statutory bad faith. Her estate eventually won a \$31,000 jury verdict on the breach of contract claims while the bad faith claims proceeded to a bench trial. The trial court found in favor of Conseco on the bad faith claims. In December 2015, the appellate court vacated the trial court's decision that in order to sustain a bad faith claim Rancosky had to prove self-interest or ill-will on the part of Conseco under the reasonable

basis prong.

On appeal to the Supreme Court, the Pennsylvania justices adopted the two-prong test for bad faith and held that although an insurer's motive of self-interest or ill will can be a factor to be considered in determining bad faith, it is not a requirement. The Supreme Court rejected the argument that evidence of self-interest or ill intent was required because the bad faith statute authorizes an award of punitive damages. The Supreme Court ultimately held that the statutory language placed punitive damages "on the same footing" as other damages categories and did not require a higher level of culpability.

Despite the Court's rejection of a self-interest or ill intent requirement, Pennsylvania's standard for proving bad faith remains high. Policyholders must not only meet the objective test of proving that the insurer had no reasonable basis for denying the claim, they must also prove that the insurer either knew that it had no reasonable basis for denying the claim or that it recklessly disregarded the fact that it had no such basis for denying the claim, and they must prove both prongs by clear and convincing evidence.