

# Bad Faith, Cancellation Notice Coverage Update

October 2, 2017

**Pennsylvania, Nevada Coverage Cases**

*The e-POST*

## **Bad Faith – Pennsylvania**

***Rancosky v. Washington Nat'l Ins. Co.***

--- A.3d ---, J-27-2017 (Pa. Sept. 28, 2017)

The Pennsylvania Supreme Court affirmed that there is a two-part test for determining whether an insurer acted in bad faith under Pennsylvania's bad faith statute. In this case, the policyholder sued her insurer, alleging breach of contract and bad faith based upon the allegedly improper handling of her claim and wrongful denial of insurance benefits. The Supreme Court examined whether, under Pennsylvania's bad faith statute, 42 Pa.C.S. § 8371, an insured must establish that its insurer acted with self-interest and ill-will in order to prevail on a claim for bad faith. The Supreme Court held that "to prevail in a bad faith insurance claim pursuant to Section 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. We further hold that proof of the insurer's subjective motive of self-interest or ill-will, while perhaps probative of the second prong of the above test, is not a necessary prerequisite to succeeding in a bad faith claim. Rather, proof of the insurer's knowledge or reckless disregard for its lack of reasonable basis in denying the claim is sufficient for demonstrating bad faith under the second prong." Accordingly, the Supreme Court affirmed in part, reversed in part and remanded for further proceedings consistent with its opinion on the policyholder's bad faith claim.

---

## **Cancellation Notice – Nevada**

***O.P.H. of Las Vegas, Inc. v. Oregon Mut. Ins. Co.***

--- P.3d ---, 2017 WL 4077376 (Nev. Sept. 14, 2017)

The Nevada Supreme Court ruled that an insurer must strictly comply with a Nevada statute for a notice of cancellation to be effective. O.P.H. of Las Vegas, Inc. (OPH) operated an Original Pancake House restaurant in Las Vegas. OPH obtained insurance for the restaurant from Oregon Mutual Insurance Co. (Oregon Mutual), but OPH defaulted on its obligation to pay the premium. Five days after OPH defaulted on its obligation to pay the premium, Oregon Mutual issued OPH a cancellation notice that stated Oregon Mutual would cancel the policy on a specified date in the future if payment of the

BAD FAITH, CANCELLATION NOTICE COVERAGE UPDATE Cont.

premium was not received, but the cancellation notice did not inform OPH of its right to request and receive additional information regarding the decision to cancel the policy, pursuant to NRS 387B.360. Advising the insured that it could contact its broker and providing a telephone number to contact the insurer was not enough. The Supreme Court of Nevada determined that because the Nevada statute required strict (not substantial) compliance, Oregon Mutual's cancellation notice was insufficient because it did not advise the insured of its right to additional information. The case was then remanded for further proceedings.

---

Plunkett Cooney's insurance coverage update, The e-Post, is published bi-monthly via email. To receive your copy when it is issued, simply email - [subscribe@plunkettcooney.com](mailto:subscribe@plunkettcooney.com).