

Trust the Process – A Process That Develops Reasonable Justification for a Coverage Determination Will Disarm a Bad Faith Claim

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Accusation that an insurer has acted in bad faith has unfortunately become a commonplace response whenever an insured is denied coverage. This reactionary position ignores that parties can, in good faith, reach differing conclusions about the terms and conditions of an insurance policy vis-à-vis the facts underlying the demand for coverage. Under Delaware law, the insured bears the burden of proving its bad faith claim. As recently ratified by a combination of Superior Court decisions, this requires the insured to do more than accuse the insurer of being incorrect. Indeed, so long as the insurers' decision-making process was well-reasoned, an incorrect coverage position does not sustain a claim for bad faith.

*Arch Insurance Company v. Murdock*¹, decided May 1, 2019, denied summary judgment on the parties' respective coverage positions because there were genuine disputes of material fact. According to the court, this precluded a finding that the insurers' bases for its coverage denial were unreasonable. After all, since the court believed that the insurers raised triable coverage issues, the insurers' position had a reasonable justification at the time it was reached—even if it remains possible they will ultimately be proven wrong at trial.

*WSFS Financial Corporation v. Great American Insurance Company*², decided May 31, 2019, dismissed the insured's claim that the insurer had, in bad faith, denied indemnification for six demands under a fidelity bond. The insurer requested more information from the insured in order to address one of the demands. The insurer outright denied coverage under the bond for the other demands. The court dismissed two of the demands, and held that genuine disputes of fact required trial on the remaining demands.

The court's focus when addressing a bad faith claim is whether, at the time the insurer evaluated a coverage demand, there existed facts or circumstances creating a *bona fide* coverage dispute. Since certain demands were dismissed, and the remaining demands raised triable coverage issues, the court held that the insured's bad faith claim could not be presented to a jury. In other words, even if ultimately proven incorrect, the insurers' conclusions had reasonable justification at the time they were rendered, thereby negating the bad faith claim.

All too often, an insured's reaction to an unfavorable coverage analysis is to accuse the insurer of acting in bad faith. Bad faith accusations are accordingly weaponized for leverage in litigation over the coverage dispute. While no one appreciates being accused of bad faith conduct, there is solace in knowing that Delaware courts will give no credence to bad faith accusations where the insurer has engaged in an appropriate coverage analysis process. Ideally, the insurer's coverage position will be correct. It is, however, the insurer's decision-making process on which the court will focus when evaluating a bad faith accusation. Thus, even coverage decisions that are ultimately rejected by the court will still disarm a bad faith accusation so long as the insurer can demonstrate a decision-making process that substantiates reasonable justification for its position.

If you have questions or would like additional information, please contact Marc Casarino (casarinom@whiteandwilliams.com; 302.467.4520) or Erica Kerstein (kersteine@whiteandwilliams.com; 212.868.4837).

[1] C.A. No. N16C-01-104 EMD (CCLD) (Del. Super. May 1, 2019).

[2] C.A. No. N18C-09-088 EMD (CCLD) (Del. Super. May 31, 2019).

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