

Delaware Supreme Court Rules Insured's Claim Too Late, Reverses Bad Faith Judgment

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Insurance Coverage and Bad Faith Alert

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In *Homeland Insurance Company of New York v. CorVel Corporation*, the Delaware Supreme Court addressed whether a bad faith claim accrues under the Louisiana Bad Faith Statute^[1] once the insured could plead damages or not until a later adjudication of coverage. A *prima facie* claim under the Louisiana Bad Faith Statute (the "Statute") requires the following elements: 1) the insured has "a valid, underlying, substantive claim upon which insurance coverage is based"; 2) the insurer knowingly misrepresented pertinent facts or insurance policy provisions relating to that coverage; and 3) the insured suffered damages "as a result of" that misrepresentation. The court held that CorVel's bad faith claim was untimely because it awaited an adjudication of coverage, even though it could have made a *prima facie* claim under the Statute once it could plead damages resulting from Homeland's alleged misrepresentation.

The court also rejected CorVel's argument that Homeland was estopped from raising a statute of limitations defense because it did not provide the insured with notice of the statute of limitations deadline pursuant to Delaware statute.^[2] The court noted that the Delaware statute requires notice only with respect to claims for damages recoverable *pursuant to* an insurance contract, but penalties under the Louisiana Bad Faith Statute are separate and distinct from the damages recoverable under the insurance contract itself. Delaware's statute of limitations notice requirement was therefore never triggered.

The Road to Delaware

Medical providers in Louisiana filed suit in late 2004 and early 2005 alleging that CorVel's Preferred Provider Organization (PPO) national program underpaid them in violation of Louisiana law. CorVel sought defense and indemnification for the PPO claims, which were denied by Homeland. The PPO claims were directed to arbitration on November 6, 2006, and ultimately were designated as a class-wide arbitration. CorVel informed Homeland of the arbitration proceeding on March 28, 2007. Homeland issued a coverage denial letter on June 4, 2007. On September 24, 2010, CorVel informed Homeland that the arbitration would proceed as a class-wide arbitration. In response, Homeland filed a declaratory judgment complaint in Delaware on January 10, 2011, seeking a declaration that it had no obligation to provide defense or indemnity coverage to CorVel for the PPO claims. On June 23, 2011, CorVel self-funded a settlement of the PPO claims, including partial assignment of its Homeland policy.

The PPO class plaintiffs brought a coverage action against Homeland in Louisiana, ultimately securing a judgment for full policy limits on January 21, 2016, which was affirmed on appeal. The judgment in the coverage action essentially mooted Homeland's declaratory judgment action. CorVel filed its own complaint against Homeland in Delaware on May 8, 2015, alleging breach of the Louisiana Bad Faith Statute because Homeland allegedly misrepresented in its declaratory judgment complaint that CorVel had not provided timely notice of the arbitration proceeding for the PPO claims.

The parties agreed that a three-year statute of limitations applied to CorVel's claim for breach of the Louisiana Bad Faith Statute. Agreeing with CorVel, the trial court held that the statute of limitations did not begin to accrue until the Louisiana court determined coverage was available on January 21, 2016, and therefore, CorVel's bad faith lawsuit was timely. On appeal, the court disagreed, and held that the statute of limitation began to accrue when CorVel self-funded the settlement on June 23, 2011. As such, the court reversed the entry of judgment against Homeland because CorVel's bad faith claim was filed too late.^[3]

The Takeaways

Although *Homeland* turned on the interpretation of the Louisiana Bad Faith Statute, there are several components of the decision that are applicable to insurance coverage disputes generally. First, the decision stands for the proposition that an insurer may be subjected to a bad faith claim before there is a determination of coverage, at least under Louisiana law. In this regard, the court seemingly interpreted “valid” and “substantive” in the Statute to mean “a merely possible” coverage claim, thereby greatly expanding when a claim for bad faith denial of coverage might accrue. Following *Homeland*, there could be an increase in premature bad faith complaints because insureds may be uncertain regarding whether a bad faith claim accrues before there is a determination of coverage.

Second, the bad faith claim in *Homeland* originated from an alleged misrepresentation in the insurer’s complaint seeking a declaratory judgment on the underlying coverage (*i.e.*, a dispute over the timeliness of notice of the underlying claim). The court did not address whether an insurer’s litigation position set forth in its declaratory judgment complaint can serve as the basis for a bad faith claim. Allowing such a claim arguably runs afoul of the litigation privilege normally granted to pleading content. The court missed a prime opportunity to clarify that a disagreement over a counterparty’s litigation posture does not beget a claim for bad faith.

Lastly, the court suggested in a footnote that neither parties’ choice of law was correct, but this was immaterial to the instant decision. The insured – a Delaware corporation with a principal place of business in California, from which it operates a national program – argued for application of Louisiana law because that is where the underlying claims were filed. The insurer – incorporated in New York with a principal place of business in Massachusetts – argued for application of New York law. Citing its recent decisions on the subject, [4] the court reiterated that the law applicable to a nationwide insurance relationship is typically the insured’s principal place of business – in this instance California. Despite being relegated to a footnote, the import of the court’s choice of law views should not be overlooked by insurers when determining coverage positions and venue of a declaratory judgment action.

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[1] La. R.S. 22:1973(B)(1).

[2] 18 *Del. C.* § 3914 (requiring an insurer “during the pendency of any claim received pursuant to a casualty insurance policy to give ... timely written notice to claimant ... of the applicable state statute of limitations regarding action for his or her damages”).

[3] The insurer also argued that the trial court erroneously concluded that presentation of a coverage position in a declaratory judgment action could give rise to a claim under the statute and that there was a causal connection between the alleged misrepresentation and the insured’s decision to settle an underlying claim. These arguments were not addressed because the judgment was reversed on the timeliness issue.

[4] *Certain Underwriters at Lloyds, London v. Chemtura Corp.*, 160 A.3d 457, 459-60 (Del. 2017); *Travelers Indem. Co. v. CNH Indus. Am., LLC*, 191 A.3d 288, 2018 WL 3434562, at *6-10 (Del. 2018).

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