



Amy's Auto Alert

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Topic: Statute of Limitations in Bad Faith Action

Ash v. Continental Insurance Company

932 A.2d 877, 2007 Pa. LEXIS 2139 (2007)

Date of Decision: October 11, 2007

We finally have a Supreme Court decision that has decided once and for all the applicable statute of limitations in a bad faith action. Prior decisions left us very unclear as to whether a two-year, four-year or six-year statute of limitations applies.

In Ash, Brent and Kathy Ash [hereinafter "Ash"] purchased an insurance policy from Continental Insurance Company [hereinafter "Continental"] on a parcel of real property in Lawrence County, Pennsylvania. The property was damaged by fire in July, 2000, and Ash filed a notice of loss. Continental denied Ash's claim on November 21, 2000, on the basis of concealment or fraud. On May 3, 2002, Ash filed a complaint against Continental alleging breach of contract. Continental responded by filing a motion for summary judgment, asserting that Ash's breach of contract claim was barred by the one-year statute of limitations period set forth in the policy. On June 23, 2003, Ash filed a motion for leave to amend the complaint to include a claim against Continental under Pennsylvania's bad faith insurance statute, 42 Pa.C.S. §8371. Continental opposed the motion, arguing the bad faith claim was untimely since it was subject to the two-year statute of limitations applicable to tort actions. See 42 Pa.C.S. §5524(7). Ash contended this was a contract action with a six-year statute of limitations. On September 15, 2003, the trial court granted Continental's motion for summary judgment with regard to the breach of contract claim, and denied Ash's

request to amend the complaint, having determined that a §8371 bad faith claim is a "statutorily created tort action and is therefore subject to the two-year statute of limitations of §5524(7)." Ash, 932 A.2d at 878. It thus held Ash's bad faith claim was time-barred.

On appeal, the Superior Court agreed with the trial court's analysis, stating "[w]e find the reasoning supporting those decisions to be persuasive and thus hold that a bad faith action under §8371 is subject to a two-year statute of limitations." Ash, 932 A.2d at 878. The Supreme Court granted allowance of appeal to determine the appropriate statute of limitations period for a cause of action under Pennsylvania's bad faith insurance statute, and whether the trial court erred in denying Ash's request to amend. As discussed by the Superior Court in its opinion, since the enactment of §8371, a number of conflicting decisions have been issued regarding the applicable statute of limitations for an action under §8371. Ash, 932 A.2d at 880. Pennsylvania courts have stated the key difference between tort actions and contract actions is this: "[t]ort actions lie for breaches of duties imposed by law as a matter of social policy, while contract actions lie only for breaches of duties imposed by mutual consensus agreements between particular individuals." Ash, 932 A.2d at 884, citing Koken v. Steinberg, 825 A.2d 723, 729 (Pa. Cmwlth. 2003). With this distinction in mind, we note the legislature apparently determined the protections afforded by the Unfair Insurance Practices Act were insufficient to curtail certain bad faith acts by insurers and that it was in the public interest to enact §8371 as an additional protection. As the Supreme Court stated in D'Ambrosio v. Pennsylvania National Mut. Cas. Ins. Co., 494 Pa. 501, 431 A.2d 966, 970 (Pa. 1981), "it is for the legislature to announce and implement the Commonwealth's public policy governing the regulation of insurance carriers." The legislature did precisely this when it enacted §8371, thereby formally imposing a duty of good faith on insurers based on its apparent determination that such a provision was necessary to deter bad faith. Ash, 932 A.2d at 885. Therefore, the duty under §8371 is one imposed by law as a matter of social policy, rather than one imposed by mutual consensus, and an action to recover damages for a breach of that duty derives primarily from the law of torts. Id. Consequently, the Supreme Court concluded that the Superior Court properly determined that an action under §8371 is a statutorily-created tort action and is subject to the two-year statute of limitations under 42 Pa.C.S. §5524.

As clearly established by the Supreme Court in Ash, the applicable statute of limitations in a bad faith case is two years.

Topic: Waivers of Stacked UM/UIM Coverage

Sackett v. Nationwide Mutual Insurance Company

2007 Pa. LEXIS 2878

Date of Decision: December 27, 2007

The Pennsylvania Supreme Court modified its earlier decision in *Sackett v. Nationwide Mutual Insurance Company*, 591 Pa. 416, 919 A.2d 194 (2007). The question before the Supreme Court in the earlier case was whether the Pennsylvania Motor Vehicle Financial Responsibility Law ["MVFRL"] required automobile insurers to provide first named insureds the opportunity to waive the stacked limits of UM/UIM coverage for each instance an insured purchased UM/UIM coverage by adding a vehicle to an existing policy. The Supreme Court responded in the affirmative in the earlier case, ruling that when a new car is added to an existing policy and

UM/UIM coverage is purchased, insurers must provide new Section 1738(d) stacking waivers in order to permit the insured to waive the increased amount of available UM/UIM coverage. In the December 27, 2007 decision, the Supreme Court ruled that the addition of a new car to an existing insurance policy does not *require* the insurer to obtain a new waiver of stacked UM/UIM coverage. In contrast to its original ruling, the Court ruled that two types of insurance coverage exist when a consumer purchases a new vehicle, depending on the "after acquired" clause contained in the policy. In the first type, the new vehicle is automatically covered for a limited period of time under exactly the same terms as the insured enjoyed before the new vehicle purchase. When the automatic coverage period expires, a new policy is issued and a new waiver is required. In the second, the new vehicle is automatically covered indefinitely - subject to the insured's notification to the insurer - under the same terms as the insured enjoyed before the new vehicle was purchased, although at a higher overall premium. In that case, no waiver is required.

Accordingly, it is very important to review your policies to determine how your "after acquired" clause is written.

Topic: Stacking of Commercial Fleet Policies

Everhart v. PMA Insurance Group

938 A.2d 301, 2007 Pa. LEXIS 2881 (2007)

Date of Decision: December 27, 2007

In *Everhart*, Robert D. Everhart, president and CEO of Russell Standard, died in an automobile accident. Everhart was in a company car at the time. After exhausting the tortfeasor's coverage, Everhart sought UIM coverage from the PMA Insurance Group. The company had a fleet of 323 vehicles, including 33 passenger vehicles. The UM/UIM coverage was only \$35,000, despite a \$1 million liability limit. PMA did not normally offer stacked UM/UIM coverage to commercial insureds, and there was no waiver of such coverage made by Russell Standard. The trial court granted summary judgment to PMA, finding no stacking of UIM coverage. The Superior Court affirmed the decision of the trial court on the grounds that, absent agreement otherwise, coverages under a fleet policy cannot be stacked.

The Supreme Court found that the MVFRL was silent on whether fleet policy coverages are stacked. However, it found that the statute does suggest a legislative intent to exclude fleet policies, as the language required for waiver of stacking refers to the insured "and members of my household." Stacking of fleet policies seems to contravene the cost-containment purpose of the MVFRL. Further, stacking of fleet policies would be inconsistent with the reasonable intent of the contracting parties.

Accordingly, the Supreme Court found that the MVFRL does not provide for stacking of UM/UIM coverage for commercial fleet policies.

Topic: Affect of Decision to Reduce Liability Coverage on Previous UM/UIM Election

Blood v. Old Guard Insurance Company

934 A.2d 1218, 2007 Pa. LEXIS 2408 (2007)

Date of Decision: November 20, 2007

In Blood, when Michael and Sharon Blood, Jay Blood's parents, applied to Old Guard Insurance Company [hereinafter "Old Guard"] for automobile insurance in 1986, they requested \$500,000 in liability coverage. The Bloods elected to reduce their UM/UIM coverage to only \$35,000, albeit with the stacking option. There was no dispute that execution of the sign-down waivers was proper. The Bloods later decided to lower their liability coverage limits from \$500,000 to \$300,000. To this end, on June 16, 2000, the Blood executed a "coverage selection form," and indicated their desire for \$300,000 in liability coverage with an "X" in the space next to that amount. The only other marks on the form included a similar "X" indicating rejection of income loss benefits coverage, and the Bloods' signatures, which they dated. Although the form included choices to select UM/UIM coverage options, the Bloods indicated no selections.

On August 19, 2000, Jay Blood was injured in a motor vehicle accident and suffered serious injuries. The vehicle he occupied was driven by the owner, Jay Soltis, who was insured with State Farm. Jay Blood was paid the liability limit of the Soltis policy in the amount of \$25,000. Jay Blood then sought UIM coverage under the policy issued to his parents by Old Guard. Old Guard paid \$105,000 to Jay Blood, which, according to Old Guard's interpretation of the policy, represented the limit of stacked UIM coverage available (i.e., \$35,000 multiplied by the Bloods' three vehicles). Jay Blood then filed a declaratory judgment action in which he claimed that the limit of coverage was \$900,000 (i.e., \$300,000 multiplied by the Bloods' three vehicles). The basis of the declaratory judgment action was that the MVFRL required Old Guard to secure a new written sign-down of UIM coverage following the Bloods' reduction of liability coverage and that the Bloods at no time signed down the \$300,000 limits of UM/UIM coverage that was available upon their reduction of liability coverage from \$500,000 to \$300,000. Old Guard moved for summary judgment at the close of pleadings and discovery, insisting that the Bloods' changes to the policy in 2000 were motivated by a desire to reduce premiums, and that the \$35,000 UM/UIM election made in 1986 remained in effect because the Bloods never sought to change their UM/UIM coverage following the issuance of the original policy.

The trial court found in favor of Old Guard. Jay Blood then appealed to the Superior Court, which, in a split *en banc* decision, reversed the trial court. The Supreme Court noted in its decision that it had never addressed the narrow issue involved in the case. As a general proposition, the Supreme Court agreed with the characterization of Sections 1731 and 1734 offered by the Third Circuit in Nationwide v. Resseguie, 980 F.2d 226, 230 (3d Cir. 1992). Tasked with interpreting the requirements for an effective Section 1734 reduction, the Third Circuit began its statutory construction analysis as follows:

Section 1731 is a simple statement whose plain meaning is apparent from its language. It mandates that an insurance company cannot issue a policy in the Commonwealth of Pennsylvania unless it

provides UM/UIM coverage equal to the bodily injury liability coverage, except as provided in Section 1734 ...

We also agreed that Section 1734's language is plain and the Pennsylvania General Assembly's intention is clear. By its terms, a named insured may lower her statutorily provided UIM coverage limits by requesting in writing of her insurer to do so. The insurance company's obligation to *issue* a policy with UM/UIM coverage in an amount equal to the policy's bodily injury liability coverage is not relieved unless it has received such a written request [emphasis added].

Similarly, the Supreme Court found no ambiguity in these Sections and agreed with Jay Blood's insistence that the decision in the instant case did not call for an inquiry into the subjective intent of the Bloods and their desire to reduce their insurance costs. This matter was one resolved by application of the unambiguous language of Sections 1731 and 1734. The Supreme Court found it fatal that Jay Blood did not and could not direct the Court to a provision in the MVFRL that required an insurer to re-comply with the relevant sections of the MVFRL under facts such as these.

The operative facts of the case are that in 1986 the Bloods executed a written request for UM/UIM coverage of \$35,000 stacked, the policy was issued, and for the following fourteen years, Old Guard provided the desired coverage. There were no facts in the record to indicate the insureds ever desired to alter this election. Indeed, the MVFRL does not provide any support for Jay Blood's position that the Bloods' change of liability coverage had an effect on the otherwise valid Section 1734 reduction. Jay Blood would have the Court import into its reading of the language of the relevant portions of the MVFRL his argument that the change was a delivery or issuance of a policy. The Supreme Court was without authority to write new requirements into the MVFRL where the statutory language is without ambiguity.

To summarize, an insured's decision to reduce the limits of his or her liability coverage does not affect a previous election of UM/UIM coverage at a level less than the liability limits established prior to the reduction.

Topic: Medical Providers Have Private Cause of Action for Statutorily Prescribed Interest

Schappell v. Motorists Mutual Insurance Company

934 A.2d 1184, 2007 Pa. LEXIS 2444 (2007)

Date of Decision: November 20, 2007

In Schappell, Edward Schappell, D.C., a well-known chiropractor who treats patients *allegedly* injured in automobile accidents, challenged the Superior Court's determination that there is no private cause of action for interest accrued under 75 Pa.C.S. § 1716. Pursuant to the MVFRL, Dr. Schappell timely submitted bills for payment to insurers, Motorist Mutual Insurance Company, State Farm Mutual Automobile Insurance Company and GEICO. The three insurance carriers paid the bills outside of the thirty-day window established for payment of benefits by 75 Pa.C.S. § 1716. The insurance carriers, however, did not remit the twelve percent interest prescribed by Section 1716. Dr. Schappell filed three class action complaints in the Court of Common Pleas of Dauphin County against the three insurers. The complaints asserted claims of unjust enrichment

and violation of the MVFRL and sought to compel the payment of interest due under 75 Pa.C.S. § 1716.

The insurers brought motions for judgment on the pleadings, arguing that there is no private cause of action for interest alone provided by 75 Pa.C.S. § 1716, or any other section of the MVFRL. The court denied the motions, holding that the MVFRL does provide a private cause of action for interest only. The insurers petitioned the Superior Court for permission to file an interlocutory appeal and permission was granted. A majority of the Superior Court reversed, holding that the MVFRL does not provide a private right of action for interest.

On appeal to the Supreme Court, the Court used the three-prong test to determine whether the statute provided for a private remedy where the statutory language was not explicit. According to the test, to determine whether a statute creates a private cause of action, a court must investigate (1) whether the plaintiff is one of the class for whose especial benefit the statute was enacted; (2) whether there is any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one; and (3) whether it is consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff.

The Supreme Court stated that while the language of Section 1716 does not explicitly set forth a private cause of action for interest, when other extrinsic factors are considered through the application of the three-prong test, the intent of the General Assembly to provide a private cause of action for interest on untimely bills was revealed. In addition, the construction of Section 1716 giving a private cause of action for untimely payment of benefits is in concert with the presumptions outlined by the Statutory Construction Act that the General Assembly does not intend a result that is impossible of execution and that it intends that all of the language of a statute is to be given effect. Affording the private cause of action is the only outcome that achieved the mandates of both these presumptions.

Accordingly, the Supreme Court held that 75 Pa.C.S. § 1716 provides a private cause of action to medical providers for interest accrued on untimely payment of benefits.