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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.