No Such Thing as "Institutional Bad Faith," Pennsylvania Superior Court Concludes

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Insurance Coverage and Bad Faith Alert
2.10.20

"[T]here is no separate cause of action of institutional bad faith," the Pennsylvania Superior Court recently concluded, referencing Pennsylvania's bad-faith statute, 42 Pa.C.S. § 8731, in an action by two homeowners against their property insurer. *Wenk v. State Farm Fire & Cas. Co.*, 2020 PA Super 26 (Feb. 7, 2020). Section 8731, the Superior Court explained, authorizes certain actions if a court finds an insurer acted in bad faith "toward the insured"—not toward "the world at large." A published Pennsylvania decision favorable to insurance companies, the *Wenk* case would apply to future claims in both the first- and third-party contexts.

In *Wenk*, homeowners sued their insurer for bad faith arising out of the insurer's handling of a first-party property-damage claim the homeowners filed following a botched remodeling of their home. "[I]n an attempt to destroy a bee's nest," the homeowners' remodeling contractor "poured gasoline within the framework of [their] home," necessitating remediation. The homeowners filed a claim, and the insurer agreed to remediate the homeowners' property using a contractor of its choice. After deficiencies with the remediation-contractor's work, the homeowners complained to the insurer, which initially declined to review its contractors' work. "[A]s complaints and concerns continued to escalate," however, the insurer hired an engineer to review its contractor's work and ultimately confirmed that some of the work was deficient. During this process, the homeowners relocated to different housing and sought reimbursement of those costs from the insurer, which initially declined to pay the costs, but eventually paid them "as a good will gesture." Later, the homeowners refused to allow the insurer's contractor to continue its remediation work, and retained another contractor—a company owned by one of the homeowner's parents—to do the work. Suspicious of the "close relationship" between the homeowners and their new contractor, the insurer questioned the fairness and reasonableness of that new contractor's remediation estimate. Based on these facts, the homeowners sued their insurer for breach of contract, bad faith, and violation of Pennsylvania's Unfair Trade Practices And Consumer Protection Law (UTPCPL), among other related claims. The trial court conducted a bench trial, and ultimately entered judgment for the insurer on the homeowners' bad-faith and UTPCPL claims, leading to the appeal in *Wenk*.

On appeal, the Pennsylvania Superior Court affirmed the trial court's judgment for the insurer, concluding that the homeowners "failed to present clear and convincing evidence that [the insurer] acted in bad faith under 42 Pa.C.S. § 8731." The homeowners were required to, but did not, show that the insurer "lacked a reasonable basis for denying [the homeowners] benefits" under the policy, and that it "knew or recklessly disregarded its lack of a reasonable basis," the court explained. The Superior Court also affirmed the trial court's rejection of the homeowners' claim for "institutional bad faith" against the insurer, concluding that no such claim exists under Pennsylvania law. The trial court considered evidence of the insurer's claims-handling policies and procedures, the Superior Court observed, but the homeowners "failed to establish a nexus between [those] business policies and the specific claims the [homeowners] asserted in support of bad faith." The Superior Court found no error in the trial court concluding that the insurer's policies and procedures, "when applied to the [homeowners] claim," were not improper and could not be used to support a nonexistent claim for "institutional bad faith" under Section 8731. Notably, the Superior Court also affirmed the trial court's holding that the homeowners' UTPCPL claim against the insurer was legally insufficient, as the UTPCPL applies to "the sale of an insurance policy"—one type of statutorily defined "consumer transaction"—and not to "the handling of an insurance claim." Pennsylvania's bad faith statute, the Superior Court noted, "provides the exclusive statutory remedy applicable to claims handling."

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