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BAD FAITH UPDATE

Judge Geroulo of the Court of Common Pleas of Lackawanna County partially granted the preliminary objections filed by a tortfeasor's insurer, finding that plaintiffs could not pursue a third party bad faith claim against the tortfeasor's insurer. The court also partially granted the preliminary objections filed by the plaintiffs' UIM insurer and ruled that plaintiffs' bad faith claim should be severed and stayed pending resolution of the underlying claims. Bouselli v. Vincente Yanez Sanchez, et al., No. 2010CIV-8804 (Lackawanna C.C.P. Oct. 4, 2011).

The plaintiff-wife alleged that she was injured when her vehicle was struck in the rear and sought to recover \$100,000 in liability coverage from the tortfeasor's insurer and \$300,000 in available UIM coverage. When the tortfeasor's insurer and plaintiff's UIM insurer offered less than their respective policy limits to resolve the pending claims, the plaintiffs initiated a lawsuit against the tortfeasor, the owner of the vehicle operated by the tortfeasor, the tortfeasor's insurer and the plaintiffs' UIM insurer. The plaintiffs asserted claims against both insurers for, among other things, bad faith. Both the tortfeasor's insurer and plaintiffs' UIM insurer filed preliminary objections.

Citing several precedential decisions including the Pennsylvania Supreme Court decision of Johnson v. Beane, the court held that "Pennsylvania law prohibits a plaintiff from maintaining a bad faith action against the tortfeasor's insurer." The court agreed that "[t]he obligation of the insurer to act in good faith in dealing with its insured is not intended to benefit one injured by the insured." Because the tortfeasor's insurer owed no duty to the plaintiffs, the court dismissed the third party bad faith claim asserted against the tortfeasor's insurer.

With respect to the bad faith claim asserted against the plaintiff's UIM insurer, the court considered the UIM insurer's position that the kind of evidence that would establish the plaintiffs' right to recover on the negligence and UIM claims was distinct from the kind of evidence that would establish the plaintiffs' right to recover in the bad faith claim. The court observed that although courts have permitted joinder of third party claims and UIM claims, "a bad faith claim involves discovery of privileged, confidential and protected information that is separate from a plaintiff's negligence and UIM claims." As a result, the court ruled that it was appropriate to sever and stay all bad faith claims until the underlying claims were fully litigated.

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