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Case Bulletin: Insurance Law

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Pennsylvania Supreme Court declines review in Superior Court case holding that, an insurer's conduct during the course of bad faith litigation may, under certain circumstances, be considered to determine whether the insurer acted in bad faith. Court also held that a finding of bad faith justifies an award of punitive damages without additional showing of aggravating circumstances.

Jean A. Hollock, Appellee, v. Erie Insurance Exchange, Appellant
842 A.2d 409 (Pa. Super. 2004), appeal dismissed as improvidently granted, *Hollock v. Erie Ins. Exchange*, --- A.2d ---, 2006 WL 2418935 (Pa. Aug 22, 2006) (No. 67 MAP 2005).

The Pennsylvania Supreme Court declined to review the Superior Court's decision in *Hollock v. Erie Insurance*, which addressed the scope of conduct upon which a bad faith claim can be based, and the requisite showing for an award of punitive damages in a bad faith case. The court held that an insurer's conduct during the course of bad faith litigation may, under certain circumstances, be considered to determine whether the insurer acted in bad faith. In so holding, the court relied in part and distinguished in part its prior decision in *O'Donnell v. Allstate Insurance Co.*, 734 A.2d 901 (Pa. Super. 1999). In *O'Donnell*, the court recognized that the plain language of Pennsylvania's Bad Faith Act, 42 Pa.C.S. § 8371, "clearly reveals the lack of any restrictive language limiting the scope of bad faith conduct to that which occurred prior to the filing of a lawsuit." The *O'Donnell* court opined that, "the broad language of section 8371 was designed to remedy all instances of bad faith conduct by an insurer, whether occurring before, during or after litigation." However, the *O'Donnell* court refused to consider the insurer's conduct during discovery in the bad faith case as coming within the scope of conduct to be considered in the bad faith action, and observed that "a party who believes it has been subject to improper discovery should pursue the exclusive remedy provided in the Pennsylvania Rules of Civil Procedure and file a motion for protective order." Therefore, the court refused to recognize the insurer's discovery practices as grounds for a bad faith claim under section 8371.

The court in *Hollock* distinguished *O'Donnell* by noting that "this case involves conduct engaged in during the litigation of the bad faith claim that far exceeded mere discovery matters. The trial court has characterized these actions as 'an intentional attempt to conceal, hide or otherwise cover-up the conduct of Erie employees.' Because the Rules of Civil Procedure provide no remedy if, as the trial court concluded here, an insurer's witnesses engage in a 'blatant attempt to undermine the truth finding process,' we do not find *O'Donnell* controlling."

The *Hollock* court also distinguished *Ridgeway v. United States Life Credit Life Insurance Co.*, 793 A.2d 972 (Pa. Super. 2002), where it considered whether an action the plaintiff commenced to enforce a judgment on a bad faith claim was itself an "action arising under an insurance policy" such as to avail the plaintiff of the remedies prescribed by section 8371. The court there concluded that the judgment creditor's attempt to collect after the insured refused to pay the judgment in the underlying bad faith action was not an "action arising under an insurance policy," and therefore could not form the basis of a bad faith action.

The *Hollock* court distinguished *Ridgeway* from the case before it, which did not concern conduct of an insurer following the conclusion of the litigation of a bad faith claim, but was instead a claim seeking recovery based upon Erie's bad faith conduct in relation to payment under the insurance contract. Therefore, the court held that, "this claim of bad faith, unlike the claim made in *Ridgeway*, is based upon a breach of the underlying insurance contract. Therefore it was appropriate for the court to consider Erie's continued conduct in relation to its insured."

Another question raised in *Hollock* concerned the award of \$2.8 million on a compensatory award of \$278,825. The court rejected Erie's argument that punitive damages can only be awarded in a bad faith claim if the trier of fact finds aggravating circumstances beyond those that justify an award of bad faith. The court held:



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Section 8371 ... specifically empowers the trial court to award punitive damages “if the court finds that the insurer has acted in bad faith toward the insured.” The statute provides no other language suggesting a pre-condition for the award of punitive damages. Thus, by statutory mandate, a finding of bad faith is the only prerequisite to a punitive damages award under section 8371.

The court also upheld the amount of the punitive award as reasonable. Because the Pennsylvania Supreme Court declined to review the *Hollock* case (with two Justices dissenting), the Superior Court’s rulings on these points stands as the current law in Pennsylvania.