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Message from the Chair

Recent Rulings Shed Light On S.O.L In Bad Faith Cases

by Joseph Roda, Esq.

The law on the statute of limitations continues to develop. Two very recent decisions add to the growing body of case law: *CRS Auto Parts, Inc. v. National Grange Mut. Ins. Co.*, No. 08-2022, 2009 WL 249776 (E.D. Pa. Feb. 3, 2009) and *Butler v. Scottsdale Ins. Co.*, No. 08-CV-4597, 2009 WL 278959 (E.D. Pa. Feb. 5, 2009).

Judge Buckwalter's opinion in *CRS Auto Parts* is a veritable history of the law on the statute of limitations in bad faith cases, both statutory and common law, and is worth reading for this reason alone. Among the points it reiterates are that a statutory bad faith claim has a statute of limitations of two years, while a common law bad faith claim has the contract statute of limitations of

four years; the discovery rule applies, on the right facts, to a bad faith claim; and the statute begins to run, in a denial of coverage claim, with the denial. 2009 WL 249776 at *5-6, 8. The case then goes on to hold that, under its facts, a complaint alleging breach of contract, but not bad faith, filed before the separate complaint for bad faith was filed, did not put the defendant insurer on notice of a bad faith claim, and could not save the plaintiff's later bad faith complaint if it was outside the statute of limitations. *Id.* at *9.11.

The second case noted above, *Butler*, is more limited in scope, but reaffirms the application of a four-year statute to a common law bad faith claim. 2009 WL 278959, at *3.

Neither of these cases, however, addresses what remains perhaps the issue that practitioners would most like to have resolved, since it affects perhaps the most frequent type of case: when the statute of limitations begins to run in a "delay" case, rather than a denial one. Judge Padova held, in 1999, in *Thomas v. State Farm Ins. Co.*, No. 99-CV-2268, 1999 WL 1018279, at *4 (E.D. Pa. Nov. 5, 1999) that the statute of limitations in such a case begins to run with the date of payment. See also *Estate of Schoch v. Amerisure Ins. Co.*, No. 99-6254, 2000 WL 502700, at *2 (E.D. Pa. Apr. 25, 2000) (a claim for bad faith delay in payment accrues when payment is made).

There has been precious little on this issue since then, however, leaving everyone to feel

nervous about whether the courts will hold that the statute begins to run before the date of payment, where the insured has reason to believe that the insurer has acted in bad faith. At least one not-for-publication decision of the Pennsylvania Superior Court has so held. Practitioners are well-advised to be on guard: when in doubt, it may be best to file. ■

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