

## Pennsylvania Supreme Court Rules Statutory Bad Faith Claims are Assignable

On December 15, 2014, the Supreme Court of Pennsylvania held, in a 5-1 decision, that bad faith claims brought pursuant to 42 Pa. C.S. § 8371 may be assigned by an insured to an injured third party under Pennsylvania law. *See Allstate Prop. & Cas. Ins. Co. v. Wolfe*, No. 39 MAP 2014 (Pa. Dec. 15, 2014).

Section 8371, enacted in 1990, created a statutory right of action for insurer bad faith and authorized recovery of punitive damages. While it is well-settled that common law bad faith claims (which permit recovery of compensatory damages) are assignable under Pennsylvania law, *Gray v. Nationwide Mut. Ins. Co.*, 223 A.2d 8 (Pa. 1966), § 8371 is silent on the assignability of bad faith claims. Additionally, the Pennsylvania District Courts in the 3rd Circuit split on whether bad faith claims under § 8371 were assignable. In *Wolfe*, the Supreme Court of Pennsylvania accepted certification of the issue from the U.S. Court of Appeals for the 3rd Circuit.

The underlying action in *Wolfe* arose out of a motor vehicle accident in which Jared Wolfe was rear-ended by a drunk driver, Karl Zierle. Wolfe filed suit against Zierle seeking to recover for injuries he allegedly sustained in the accident. Zierle tendered the defense of the suit to his insurer, Allstate. Allstate offered \$1,200 in response to Wolfe's \$25,000 demand. The suit proceeded to trial and the jury awarded Wolfe \$15,000 in compensatory damages and \$50,000 in punitive damages. Allstate only paid the full compensatory award. Zierle assigned his bad faith claim against Allstate to Wolfe in exchange for Wolfe's agreement not to enforce the punitive damages award.

Wolfe then filed suit against Allstate in Pennsylvania state court alleging common law bad faith, breach of the 42 Pa. C.S. § 8371, and breach of Pennsylvania's Uniform Trade Practices and Consumer Protection Law. Allstate removed the case to the U.S. District Court for the Middle District of Pennsylvania and filed a motion to dismiss, in relevant part, on the basis that the statutory bad faith claims are not assignable. The district court denied the motion. *See Wolfe v. Allstate Prop. & Cas. Ins. Co.*, 877 F.Supp.2d 228 (M.D. Pa. 2012). At trial, the jury ruled in favor of Wolfe on the common law and statutory bad faith claims and awarded Wolfe \$50,000 in punitive damages authorized under § 8371. Allstate appealed to the 3rd Circuit.

In its brief before the Supreme Court of Pennsylvania, Allstate argued that because § 8371 claims are personal to the insured and punitive in nature, assignment of such claims would promote champerty (the involvement of intermeddlers pursuing litigation for profit) and violate public policy. Allstate also relied on *Ash v. Continental Insurance Co.*, 922 A.2d 877 (Pa. 2007), which held that a statutory bad faith claim is a tort claim. Given that Pennsylvania prohibits the assignment of unliquidated tort claims, Allstate argued that the insured may not assign his rights under § 8371 to the injured claimant. Allstate distinguished the Pennsylvania authority permitting assignment of § 8371 claims on the basis that those cases pre-dated *Ash* and failed to distinguish between statutory and common law bad faith claims, or addressed this issue only in dicta. *See, e.g., Brown v. Candelora*, 708 A.2d 104 (Pa. Super. 1998). Allstate cautioned that "sanctioning assignments of punitive-damages claims under Section 8371 would foster mischief by encouraging plaintiffs to pursue unreasonable settlement demands and advance bad-faith claims which otherwise never would have been initiated."

An *amici curiae* brief was filed by the Pennsylvania Defense Institute, the Philadelphia Association of Defense Counsel, the Insurance Federation of Pennsylvania, Inc., the American Insurance Association, the Property Casualty Insurers Association of America, and the Pennsylvania Association of Mutual Insurance Companies. Among other points, the *amici* argued that permitting an assignee to pursue a statutory bad faith claim would create a windfall for the injured claimant and enable the injured claimant to interfere with the insurer and insured's rights and obligations.



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### Related Practice Areas

- Bad Faith
- Insurance Coverage

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- Insurance

In response to Allstate's arguments, Wolfe and its *amicus*, United Policyholders, argued that logic and a "rule of reason" suggested that an insured should be permitted to assign its common law and statutory bad faith claims so that such claims may be tried together in a single judicial proceeding. Along these same lines, Wolfe argued that a contrary result may encourage insurance carrier abuse and prevent meaningful access to the courts because the insured would have little motivation to litigate a statutory claim for the benefit of the injured claimant. Both Wolfe and its *amicus* supported the application of a uniform approach to common law and bad faith claims. The *amicus* brief further suggested that the legislature would have explicitly addressed assignability in § 8371 had it intended to disturb the case law permitting assignability of bad faith claims.

The Supreme Court of Pennsylvania ruled that "the most appropriate way to approach the assignability issue is as a matter of statutory construction" and noted the importance "of considering the extant common law at the time of a statute's enactment." The court held that the legislative intent in enacting § 8371 permits the assignability of statutory bad faith claims:

We recognize that the policy considerations (which are ably developed in the arguments of the litigants and their amici) are mixed in character. On balance, however, we find that consideration of the occasion and necessity for Section 8371, the object to be attained, the previous legal landscape, as well as the consequences of our interpretation, favor Wolfe's position. Centrally, we simply do not believe the General Assembly contemplated that the supplementation of the redress available for bad faith on the part of insurance carriers [under 8371] in relation to their insureds would result either in a curtailment of assignments of pre-existing causes of action in connection with settlements or the splitting of actions.

The court also noted that if its assessment is incorrect, the legislature "may seek to implement curative measures pertaining to future cases, subject to constitutional limitations."

Barring any further pronouncements from the Pennsylvania General Assembly, this ruling potentially signifies an increase in bad faith litigation in Pennsylvania as third-party claimants may pursue claims based on a carrier's failure to settle even where there is no judgment in excess of policy limits.

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**To discuss any questions you may have regarding the issues discussed in this Alert, or how they may apply to your particular circumstances, please contact Charles J. Jesuit, Jr., at (215) 665-6967 or [cjesuit@cozen.com](mailto:cjesuit@cozen.com) or Abby J. Sher at (215) 665- 2761 or [asher@cozen.com](mailto:asher@cozen.com).**