



October 3, 2011

The Supreme Court of Appeals of West Virginia recently addressed the issue of bad faith in the context of an insured making a claim under his own policy for injuries sustained while working on a vehicle with the assistance of his brother. The claim was made by the insured for bodily injury coverage due to his brother being a permissive user of the vehicle. The insurance carrier denied liability coverage but did defend the brother in the subsequent lawsuit filed by the insured for his damages. The case was eventually settled and the insured then filed an amended complaint for common law bad faith, violations of the Unfair Trade Practices Act, breach of the implied duty of good faith and breach of contract. The circuit court granted summary judgment in favor of the insurer on the grounds that under the facts of the case the insured was actually a third party claimant and West Virginia no longer recognizes third party bad faith.

The Supreme Court followed the 2002 case from the appellate court in Pennsylvania in *Bonenberger v Nationwide Mutual Ins. Co.* 791 A.2d 378 (Pa. Super. Ct. 2002) which determined in the context of a UIM claim the duty of good faith arises out of the contractual nature of the parties' relationship despite the fact the claim would be handled like a third party claim for valuation purposes. The Supreme Court of Appeals of West Virginia reversed and remanded the grant of summary judgment by the Circuit Court, finding the claims of the insured had the indicia of both a first party claim and a third party claim and as a result the heightened standard of good faith for first party claims applied in those circumstances. The Supreme Court specifically held "when a named policyholder files a claim with his/her insurer, alleging that a non-named insured under the same policy caused him/her injury, the policyholder is a first party claimant in any subsequent bad faith action against the insurer arising from the handling of the policyholder's claim." In addition the Supreme Court held the circuit court could not grant summary judgment *sua sponte* on grounds not requested by the moving party due to lack of notice to the opposing party.

Very truly yours,

A handwritten signature in black ink that reads "Patricia J. Trombetta". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Patricia J. Trombetta