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## When Does Bad Faith Three Year Statute Of Limitations In Delaware Begin?

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The question as to when the statute of limitations begins for a bad faith failure to settle a third-party lawsuit claim in Delaware remained unanswered until Friday, March 4, 2016.

In an opinion of first impression, the Delaware Supreme Court delivered the answer. Delaware has adopted the view of the majority of states that the statute of limitations does not begin to run until a final, non-appealable judgment has been entered against an insured. *Connelly v. State Farm Mutual Automobile Insurance Company*, No. 426, 2015 (Supreme Court of Delaware decided March 4, 2016).

The case arose from the refusal of the defendant insurance company to accept a settlement offer in the underlying third-party case from plaintiff in the amount of \$35,000. The demand was within the insured's \$100,000 policy limits. Instead, the demand was rejected, and the matter proceeded to trial. The insured/defendant admitted to liability in the two-car rear-end accident. At the conclusion of the trial, the jury awarded the plaintiff \$224,271.41. The insured/defendant's post-trial motions were denied, and the judgment became final and non-appealable.

The plaintiff then brought an action against both the defendant and the insurer as a judgment creditor. After accepting an assignment of rights from the insured/defendant for the bad faith action, she filed an amended complaint to include a count for bad faith failure to settle the underlying bodily injury action within the insured/defendant's policy limits. The insurer filed a motion to dismiss the bad faith claim arguing that the statute of limitations had expired. The trial court agreed, and the plaintiff filed an appeal. The Delaware Supreme Court agreed to hear the case and issued its opinion on March 4, 2016.

Delaware has a three year statute of limitations when the lawsuit involves a contract. 10 *Del. C.* § 8106. The plaintiff argued that the statute of limitations did not begin to run until the underlying excess judgment was final and non-appealable. The insurer however argued that, like other tort, contract and breach of fiduciary duty cases, the cause of action arose (and therefore the statute of limitations began to run) when the alleged act of bad faith occurred. In other words, the bad faith arose either when plaintiff made her settlement demand or approximately one month later when the demand expired, and thus the three year statute of limitations started then. In either case, the demand or ultimate rejection occurred more than three years from the date the plaintiff filed her amended complaint for bad faith.

The Delaware Supreme Court disagreed that the statute of limitations began to run when the alleged bad faith conduct occurred. Instead, the Court stated unequivocally that the bad faith cause of action could not begin until a final and non-appealable excess judgment had been entered against the insured/defendant. In reaching its decision, the Delaware Supreme Court cited several reasons for its decision.

First, the Court argued that such a ruling prevented conflict between an insurer and its insured during the pendency of a third-party claim and allowed both parties to properly focus on defending the claim.

Second, a decision that the cause of action does not accrue until a final judgment is entered actually protects insurance companies from a flood of bad faith actions being filed while defending third-party damage claims, including those that would have to be filed in the event of an insurer rejecting a demand within the policy limits of one of its insureds when the third-party claim is frivolous.

Third, it prevents the filing of bad faith actions when an important element of claimed damages—the amount of the excess judgment—is unknown. Filing before that key element of damages is known unnecessarily induces additional motions and litigation in the bad faith claim.

Fourth, the Court noted its ruling would preserve judicial resources by avoiding premature lawsuits.

Additionally, the Delaware Supreme Court concluded that a majority of states who had reached a conclusion on this issue also determined that the cause of action is not created until a final judgment is entered.<sup>1</sup> Hence, Delaware's three year statute of limitations could not begin to run until a final, non-appealable excess judgment was entered.

If you have questions or would like additional information regarding the *Connelly v. State Farm Mutual Automobile Insurance Company* case specifically, or concerning bad faith actions in Delaware in general, please contact William R. Adams at 302-428-6133 or wadams@dmclaw.com

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<sup>1</sup>Cases from Alabama, Arizona, California, Florida, and Wyoming among others were cited in the Delaware Supreme Court decision.