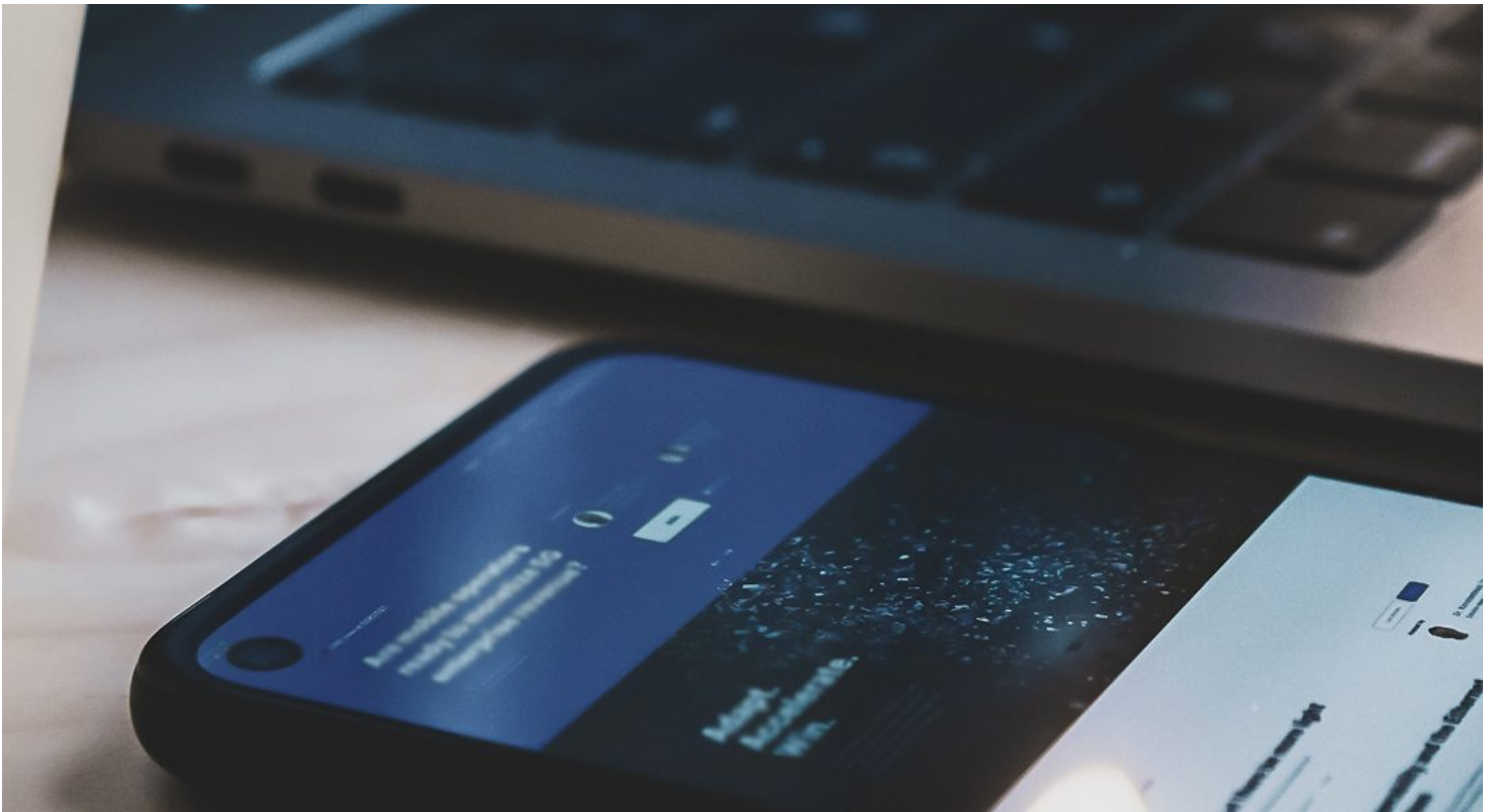


NEWS & INSIGHTS

Pennsylvania appellate court overturns \$21 million Plaintiff's Verdict in an Insurance Bad Faith Action

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APRIL 12, 2018



On April 9, 2018, the Pennsylvania Superior Court threw out a trial court's \$21 million plaintiff's verdict (\$18 million for punitive damages and \$3 million for attorney's fees) in an insurance bad faith action and sent the case back to the trial court with instructions to enter judgment in favor of the insurance company. *Berg v. Nationwide Mut. Ins. Co., Inc.*, ___A.3d___, 2018 Pa. Super. LEXIS 317 (Pa. Super. 2018). The majority opinion was critical of the trial court's reliance on selective facts. However, there are a number of important takeaways for insurers to consider

when it comes to bad faith claims:

- An insurer may look to its own economic considerations when determining the fair value of an insured's claim under certain circumstances. In *Berg*, the insurer utilized a recognized formula to determine whether a damaged automobile, based on its actual cash value, was a total loss. The Superior Court clarified prior precedent and concluded that the insurer in this matter could consider costs in determining whether to total or repair an automobile. As a result, there is no blanket prohibition against an insurer considering costs.
- Absent any legal authority, courts should be reluctant to impose new duties within an insurer's duty of good faith and fair dealing. The Superior Court disapproved of the trial court's legally unsupported finding that the insurer's duty of good faith and fair dealing encompassed a duty to conduct an inspection of the vehicle's repairs before returning the vehicle to the insured. Although one of plaintiff's experts testified that such a duty existed, the Superior Court was still unwilling to pronounce a new duty based on the testimony of a single expert witness.
- Do not be afraid to litigate! While bad faith claims can be premised on an insurer's conduct before, during, or after litigation, the Superior Court reaffirmed prior precedent that actions during the discovery process are not grounds for a bad faith claim unless the insurer uses the discovery process to conduct an improper investigation. In defending bad faith claims, just as plaintiffs have the right to zealously pursue their claims within the bounds of the law, so too do insurers who believe that they did not act in bad faith. Accordingly, the Superior Court found that it "cannot arbitrarily impose a limit on the time and resources an insurer spends in defending a bad faith action."

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