

# Delaware Bad Faith Claims Accrue When Excess Judgment Becomes Final and Unappealable

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Summary: State Farm rejected an injured car driver's \$35,000 offer to settle against State Farm's insured who admitted negligence. The trial resulted in a judgment for nearly \$225,000, well above the \$100,000 per person limit. The Delaware trial court dismissed the resulting bad faith claim on statute of limitations grounds, relying on an earlier unpublished superior court opinion. In a case of first impression, the Supreme Court of Delaware abrogated the unpublished decision and held that the bad faith action accrued when the excess judgment against the insured became final and unappealable.

*Connelly v. State Farm Mutual Automobile Insurance Company*

The Delaware Supreme Court stated that the majority rule is that bad faith failure to settle claims against insurance companies accrue only when there has been a final and unappealable judgment. The majority rule advanced several important policy objectives which would be subverted if the court accepted State Farm's argument and the superior court's earlier holding that the bad faith claim accrued "when the insurer allegedly acts in bad faith and breaches its duty to the insured." The court found the majority rule "conserves litigants and judicial resources. Also, properly aligns the incentives of the insurer and its insured by allowing them to join efforts in defending the underlying third party insurance claim without a stayed breach of contract claim causing a conflict of interest between them. Further, to state a claim that the insurer breached its implied duty to act in good faith, the insured must plead damages, which he cannot do before there is a final excess judgment against her." Finally, the court held the majority rule is consistent with Delaware's traditional approach regarding indemnity claims which the court noted were analogous to insurance claims. Because this approach was widely adopted in Delaware years earlier, and because that approach avoided premature suits that might never need to be brought, the Supreme Court of Delaware adopted the majority rule and reversed the superior court's ruling. The decision allowed the underlying plaintiff, to whom the insured had assigned his bad faith rights, to pursue her bad faith claims against State Farm.

This opinion cites to many cases from other jurisdictions and to numerous secondary authorities. It could be useful to anyone researching this issue for purposes of determining bad faith statute of limitations accrual issues in other jurisdictions.