

# Pennsylvania Requires Clear and Convincing Evidence of Bad Faith

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State Farm provided automobile insurance to Barry and Kimberly Shaffer which provided medical payments and UIM coverage. Barry was involved in a head-on collision which resulted in multiple serious injuries to his neck, back, eyes, and knees. At that time, Barry was on Social Security and military disability for several physical ailments. Shaffer underwent back surgery and six months later asked State Farm to assign a UIM adjuster. The Shaffers settled their liability claim with the adverse driver for roughly \$28,000 below that driver's liability limit. After a \$250,000 UIM settlement demand was met with a \$10,000 settlement offer, the Shaffers filed suit more than four years after the accident. The District Court granted State Farm's motion for summary judgment on the bad faith claim and thereafter the UIM breach of contract claim was tried, which resulted in a \$250,000 award in favor of the Shaffers. The Shaffers appealed the bad faith summary judgment, which was affirmed by the Third Circuit.

## *Shaffer v. State Farm Mutual Automobile Insurance Company*

The Shaffers pursued their bad faith claim under Pennsylvania Statute § 8371. Such a claim could prevail only by proving by "clear and convincing evidence" the defendant insurance company "did not have a reasonable basis for denying benefits under the policy and that [the] defendant knew or recklessly disregarded its lack of reasonable basis in denying the claim." In addition, the "evidence must be so clear, direct, weighty and convincing as to enable a clear conviction, without hesitation, about whether or not the defendant acted in bad faith." Bad faith claims could be premised on a failure to conduct a good faith investigation or upon a delay between the time a demand is made and the insurance company decides whether to pay the claim, but a delay by itself does not constitute bad faith.

The Shaffers primarily contended there was a delay in investigating, evaluating, and deciding the UIM claim. The Third Circuit pointed out the Shaffers did not present evidence showing State Farm's insistence on obtaining a complete medical file was purposely undertaken to delay resolution of the claim. Nor was State Farm's retention of a consulting physician to review the claim pre-textual. Rather, the Shaffers presented no evidence showing that State Farm's delay was caused by anything other than its attempt to properly investigate Shaffer's medical history to determine the value of the UIM claim. The fact that later there was a substantial jury verdict did not necessarily rebut the reasonableness of State Farm's earlier reliance on the medical expert's review.

The Third Circuit also rejected the Shaffers' claim that State Farm itself should have initiated a UIM claim. The undisputed evidence showed Shaffer's own attorney was unsure whether a UIM claim would be needed roughly two years after the accident. The Shaffers also suggested State Farm's payment of the medical bills undercut its contention it needed to investigate a causal relationship between the accident and his medical conditions. The Third Circuit noted the physician's review was to determine which of the injuries were due to the accident as opposed to which were due to pre-existing conditions.

In essence, the Third Circuit rejected all of the Shaffers' arguments supporting their claim for bad faith, most likely because they could not present evidence approaching the required standard--clear and convincing evidence.