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MAINTAINING THE FAITH:
NEW JERSEY SUPREME COURT UPHOLDS BAD FAITH STANDARD

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The New Jersey Supreme Court recently declined to alter the burden required for policyholders to bring bad faith claims against their insurers. In *Badiali v. New Jersey Manufacturers Insurance Group*, 220 N.J. 544, 107 A.3d 1281 (2015), the Supreme Court re-affirmed the "fairly debatable" standard for determining whether or not an insurer denied a claim in bad faith.

In *Badiali*, the plaintiff was injured in an automobile accident with an uninsured motorist. The plaintiff obtained an arbitration award totaling $29,148.62, payment of which was to be divided equally between the plaintiff's two UMI insurers. One UMI policy was with New Jersey Manufacturers ("NJM"). NJM refused coverage, citing a policy provision prohibiting payouts on awards in excess of $15,000. Notably, both the trial and appellate courts ruled against NJM, holding the policy's $15,000 upper limit applied to only to NJM's share of the liability (which was less than $15,000).

Subsequent to NJM's refusal to honor the arbitration award, the policyholder brought claims against the insurer for breach of contract, bad faith, and consumer fraud. NJM moved for summary judgment on the grounds that, *inter alia*, a claim of bad faith could not be sustained, because an unpublished appellate opinion to which NJM was a party, involving similar facts, supported the insurer's position in refusing to pay. The trial court ruled in favor of NJM, and the Appellate Division affirmed, holding that "as a matter of law, the mere existence of unpublished case law supporting NJM's rejection of the arbitration award precluded a finding of bad faith against NJM, regardless of whether NJM relied on or was aware of that unpublished case." *Badiali v. N.J. Mfrs. Ins. Grp.*, 429

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N.J. Super. 121, 57 A.3d 37 (App. Div. 2012).

Upon review, the Supreme Court once again strictly adhered to its "fairly debatable" standard applied to bad faith insurance claims, first established in *Pickett v. Lloyd's*, 131 N.J. 457, 621 A.2d 445 (1993). The Court stated in *Pickett* that "a finding of bad faith against an insurer in denying an insurance claim cannot be established through simple negligence." *Id.* at 481. In fact, in order to establish a first party bad faith claim for denial of benefits under New Jersey law, a plaintiff must show "that no debatable reasons existed for denial of benefits." *Id.* Simply put, the "mere failure to settle a debatable claim does not constitute bad faith." *Id.* at 473.

Although the *Badiali* court acknowledged plaintiff's argument that the "fairly debatable" standard should include the individual investigation and valuation performed by the claims handler responsible, the court ultimately rejected it. The Court, in declining to expand the investigation necessary to meet the proposed amended standard, reasoned that the potential for discovery complications associated with such an expansive but individualized approach would be far too great.

Having re-affirmed the "fairly debatable" standard, the Court then addressed NJM's arguments that it did not act in bad faith. First, the court considered NJM's argument that its reliance upon an unpublished appellate opinion, to which is was a party, must serve as a reasonable basis for its denial of a claim. Although New Jersey Rule 1:36-3 provides that "no unpublished opinion shall constitute precedent or be binding upon any court", the *Badiali* court carved out a limited exception, which now allows certain parties to rely upon specific unpublished opinions. Relevant here is the unpublished opinion *Geiger v. N.J. Mfrs. Ins. Co.*, No. A-5135-02 (App. Div. Mar. 22, 2004), which presented similar circumstances in which the court held that the insurer (also NJM) was entitled to reject the arbitration award at issue and demand a trial de novo.

The Supreme Court, while certainly not invalidating that rule of reliable precedent, deemed it illogical to suggest that NJM, nor any other entity, should be forced

to ignore even unpublished court decisions, particularly ones to which they are actual parties. It is only sensible, wrote Justice Fernandez-Vina, that parties be permitted to make business decisions, based upon court rulings of which they are aware. Thus, given the existence of a court holding favoring NJM, the insurer's actions certainly were well within the "fairly debatable" standard and its protections against a claim of bad faith.

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Furthermore, the Court held that, even without being able to point to the unpublished opinion, the insurer, NJM, would still have been able to demonstrate "fairly debatable" grounds for its denial of coverage based on the policy language itself. Following a review of the policy, and affording the language its plain meaning, the Court found that it was reasonable to interpret the relevant passages as prohibiting payment of any award in excess of the stipulated limit. As the language of the policy provides no further guidance beyond "any award", it is "fairly debatable" if the policy prohibits payment if the total award is beyond the limit, or if the prescribed portion of the award assigned to the insurer is beyond the limit. Such language provides the insurer grounds whereby it could invoke the "fairly debatable" defense to the bad faith claim.

In sum, the New Jersey Supreme Court has preserved the *status quo* with regard to an insurer's available defenses to a claim of bad faith. *Badiali* makes clear that the basis of a "fairly debatable" defense can certainly include non-precedential case law, provided that the insurer has good reason to know of the existence of that case law, in particular because it was involved in that unpublished case. In all, the *Badiali* decision seeks to maintain consistency and predictability with respect to bad faith claims under New Jersey law.

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