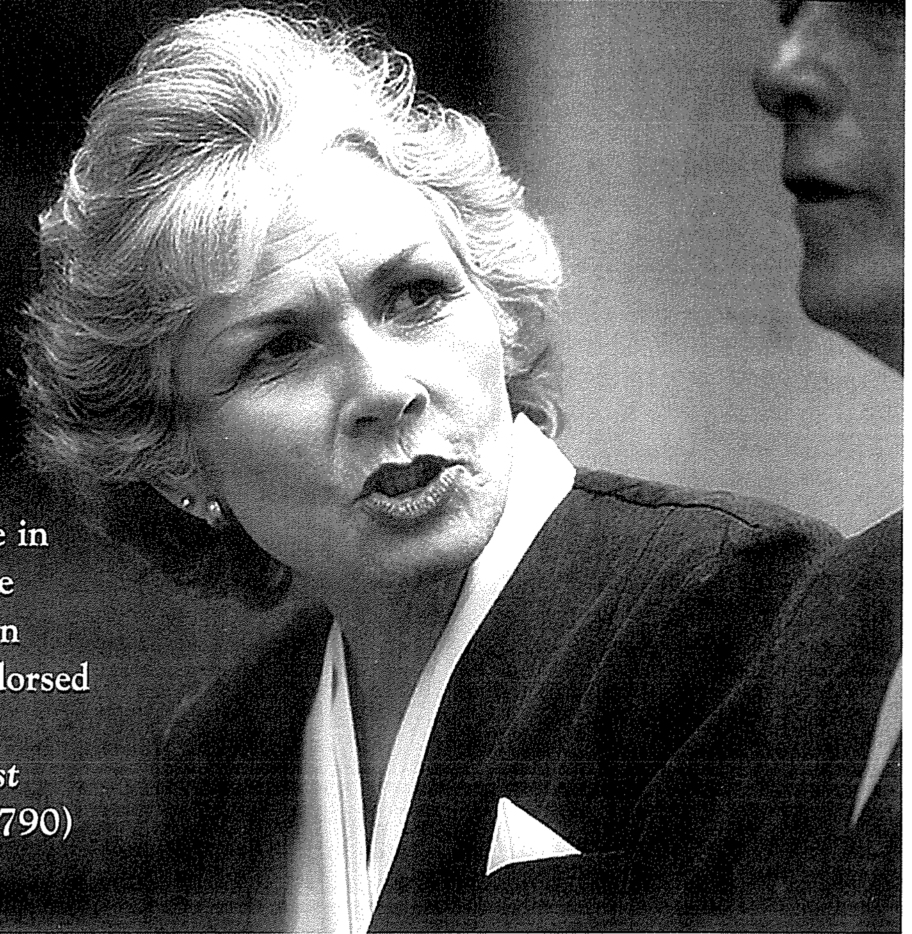
Alive and Well

The "Genuine Dispute" Doctrine in First-Party "Bad Faith" Insurance Coverage Disputes

by James R. Robie, Kyle Kveton and Steven S. Fleischman



The "genuine dispute" doctrine in first-party "bad faith" insurance actions remains alive and well in California and was recently endorsed and approved by the California *Supreme Court in Wilson v. 21st Century* (Nov. 29, 2007, S141790) __ Cal.4th __ (Wilson).

The "genuine dispute" doctrine has its origins in the California Supreme Court's seminal decision in *Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566 (*Gruenberg*), which extended the "bad faith" cause of action to first-party cases:

> It is manifest that a common legal principle underlies all of the foregoing decisions; namely, that in every insurance contract there is an implied covenant of good faith and fair dealing. The duty to so act is immanent in the contract whether the company is attending to the claims of third persons against the insured or the claims of the insured itself. Accordingly, *when the insurer unreasonably and in bad faith* withholds payment of the claim of its insured, it is subject to liability in tort.

(*Id.* at p. 575, italics added.) Currently at least 27 states have followed *Gruenberg* and permit first-party "bad faith" actions. (*See* Douglas G. Houser, et al., "Good Faith As A Matter of Law – An Update on the Insurance Company's 'Right to Be Wrong'" (Fall 2004) 39 Tort & Ins. L.J. 1045 fn. 13.)

One of the operative words in *Gruenberg* is that the insurer must act "unreasonably" to give rise to tort liability. Thus, the key to a bad faith claim is whether or not the insurer's denial of coverage was "reasonable." The insurer's conduct is not "unreasonable" if a "genuine dispute" existed as to whether the claimed benefits were due under the policy. Under what has become known as the "genuine dispute" doctrine, a "bad faith" claim can be decided as a matter of law on summary judgment if the defendant insurer can establish that there was a genuine dispute as to coverage. The "genuine dispute" doctrine is not an affirmative defense, but instead, simply negates an element of the plaintiff's claim, *i.e.*, that the insurer acted unreasonably. (*See* Croskey, et al., California Practice Guide: Insurance Litigation (The Rutter Group 2005) ¶ 12:837.)

Although implicit in prior decisions, *Wilson* was the first time the California Supreme Court explicitly addressed the "genuine dispute" doctrine. However, prior to *Wilson*, numerous lower courts and federal courts have already established a substantial body of law under this doctrine.

The basis of the "genuine dispute" doctrine is that even if ultimately found to be in error in evaluating a claim, an insurer may still have acted reasonably. Simply being "wrong," does not mean that the insurer acted in "bad faith." The "genuine dispute" doctrine turns on whether there was a good faith basis for the insurer's denial of coverage or decision to limit benefits payable under a policy. This "good faith basis" raises a question which, given the facts of a particular case, courts can and do decide on summary judgment as a matter of law.

Justice Walter Croskey's opinion in *Chateau Chamberay Homeowners Assn. v. Associated Internat. Ins. Co.* (2001) 90 Cal.App.4th 335, 347 [Croskey, J.] (*Chateau Chamberay*) is generally regarded as the leading case on the doctrine. In that case, the court held that "an insurer denying or delaying the payment of policy benefits due to the existence of a genuine dispute with its insured as to. . . the amount of the insured's coverage claim is not liable in bad faith. . . ." (*Ibid.*)

Chateau Chamberay also established two key points regarding the "genuine dispute" doctrine. First, although the reasonableness of an insurer's claims handling can, in some cases, be a question of fact, whether an insurer acted reasonably, or whether a reasonable basis exists for the insurer's denial of coverage, is a question of law that courts can and should decide on summary judgment when the underlying historical facts are not disputed. (*Chateau Chamberay, supra,* at p. 346; see also William T. Barker and Paul E.B. Glad (Fall 1994) "Use of Summary Judgment in Defense of Bad Faith Actions Involving First-party Insurance," 30 Tort & Ins. L.J. 49.) Second, the "genuine dispute" doctrine applies whether the dispute involves a dispute over an issue of fact, such as the amount of the insured's loss, or to a question of law, such as whether the insurer's denial of coverage (a question of law) was reasonable. (*Id.* at p. 348 & fn.7.)

The doctrine has been articulated by courts in many different ways, but all expressions of the rule reflect the same legal principle: if undisputed historical facts establish that there was a good faith dispute, then the insurer cannot be held liable for "bad faith" denial of benefits.

> [A] court can conclude as a matter of law that an insurer's denial of a claim is not unreasonable, so long as there existed a genuine issue as to the insurer's liability. An insurer is liable for breach of the implied covenant of good faith and fair dealing if it acted unreasonably in denying coverage.

(*Guebara v. Allstate Ins. Co.* (9th Cir. 2001) 237 F.3d 987, 992 [applying California law]; *see also Lunsford v. American Guarantee & Liability Ins. Co.* (9th Cir. 1994) 18 F.3d 653, 656, *citing Gruenberg v. Aetna Ins. Co., supra,* 9 Cal.3d 566; *Dalrymple v. United Servs. Auto. Ass'n* (1995) 40 Cal.App.4th 497, 523 ["an insurer can erroneously dispute coverage without acting in bad faith"].)

One of the keys to the "genuine dispute" doctrine is that the insurer must conduct a reasonable investigation into the *bona fides* of the insured's claim. (*Chateau Chamberay, supra,* 90 Cal.App.4th at p. 348.) The adequacy of the insurer's investigation was the primary issue in *Wilson. Wilson* involved an underinsured motorist claim in which the insured was injured. The insured and the insurer initially disagreed as to the extent of the insured's injuries - a classic factual disagreement. Eventually, after the insured submitted an additional medical opinion favoring surgery and the insurer retained its own physicians to evaluate the plaintiff, the insurer paid the insured full policy limits. (There was never an issue that the insured had coverage and that the car accident was a covered loss.) The trial court granted summary judgment in favor the insurer, holding that the insurer had a reasonable, good faith basis for the initial rejection of the insured's demand for payment of full policy benefits. Division Seven of the Second Appellate District reversed and in doing so held that the insurer should have retained an

outside doctor to examine the insured at the outset, or at least should have consulted the insured's treating physician, and should have also consulted an outside lawyer as to the value of the underinsured motorist claim.

The Supreme Court affirmed the Court of Appeal's reversal of the granting of summary judgment in favor of the insured, but did so for different reasons. The Supreme Court held that the insurer's investigation was inadequate because the insurer did not have a reasonable basis, given the information in the insurer's file, to preliminarily reject the insured's doctor's medical opinion. (*Wilson, supra,* typed opn. at pp. 7-11.) In doing so, the court held that insurers were not required to obtain outside medical opinions in all personal injury cases. The court held that it is difficult to state "a general rule as to how much or what type of investigation is needed to meet the insurer's obligations under the implied covenant." "In some cases, review of the insured's submitted medical records might reveal an indisputably reasonable basis to deny the claim without further investigation." The court did not endorse the Court of Appeal's suggestion that a claims adjuster should obtain the opinion of outside counsel concerning the value of the claim, and there is no other authority for that proposition now that the Court of Appeal decision, having been taken up on review, is no longer citable under the Rules of Court.

However, although the *Wilson* court ruled in favor of the insured, for the first time it explicitly adopted the "genuine dispute" doctrine. (*Wilson, supra* typed opn. at pp. 11-13.) In doing so, the court followed the *Chateau Chamberay* line of cases and held that the "genuine dispute" doctrine applies to both factual and legal disputes and that the legal issue of the reasonableness of the insurer's conduct can be decided on summary judgment. (*Ibid.*) The court simply held that given the facts of *Wilson,* summary judgment was not appropriate. Justices Chin and Baxter dissented from this holding and would have granted summary judgment in favor of the insurer.

Therefore, in light of *Wilson* courts can, and should, continue to decide the reasonableness of an insurance carrier's conduct under the "genuine dispute" doctrine on summary judgment.

James R. Robie, Kyle Kveton and Steven S. Fleischman are attorneys with Robie & Matthai, A Professional Corporation. The authors filed an amici curiae *brief on behalf of State Farm, USAA, Infinity and Farmers related insurance companies in* Wilson v. 21st Century *and Mr. Robie presented oral argument to the California Supreme Court in that case.*

Don't play the waiting game!
Get the right answers when you need them.

Forensic investigations for:
- Transportation
- Injury
- Product
- Property & Premises
- Aviation

MEA Forensic Engineeers & Scientists Inc.
23281 Vista Grande Drive, Suite A
Laguna Hills, CA 92653
t: 949.855.4632 877.855.5322
f: 949.855.3340
www.meaforensic.com

mea
FORENSIC ENGINEERS & SCIENTISTS
Let the evidence speak™