

The Louisiana Supreme Court Clarifies the Time Limit for Bad Faith Claims against Insurers

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Overview

How much time does an insured have to make a bad faith claim against an insurer – ten years, or just one? In 2015, the United States Fifth Circuit Court of Appeals deemed Louisiana's state court jurisprudence on the question "uncertain." As recently as last year, the question was deemed "unsettled" by the United States District Court for the Eastern District of Louisiana.

On October 22, 2019, the Louisiana Supreme Court issued an opinion to provide a definitive answer. In *Smith v. Citadel Insurance Co. as Successor to Gramercy Insurance Co. and GoAuto Insurance Co.*, No. 2019-CC-00052, the Supreme Court held that an insured has ten years – not just one – to bring a bad faith claim against an insurer.

Louisiana Revised Statute 22:1973 ("Section 1973") provides that an insurer "owes to his insured a duty of good faith and fair dealing." Encompassed in this duty is another, affirmative duty to adjust claims fairly and promptly and to make a reasonable effort to settle claims. "Any insurer who breaches these duties shall be liable for any damages sustained as a result of the breach[,] and a successful claimant may also be awarded penalties of up to two times the amount of those damages on a "bad faith" claim brought under Section 1973.

Prior to the issuance of the Louisiana Supreme Court's *Smith v. Citadel* opinion, the United States Eastern District issued several opinions applying a one-year prescriptive period to bad faith claims against insurers. According to the Eastern District, such claims were "delictual," or sounding in tort, and therefore subject to the one-year prescriptive period set forth in the Louisiana Civil Code.

Several of Louisiana's appellate courts, as well as the United States Western District of Louisiana, however, had held otherwise. According to these courts, a bad faith claim arises out of the relationship created by the contract between the insurer and the insured, and therefore is subject to the ten-year prescriptive period set forth in the Louisiana Civil Code.

In *Smith v. Citadel*, the Louisiana Supreme Court determined that the federal cases applying the one-year prescriptive period for bad faith claims had repeatedly relied on a distinguishable Louisiana First Circuit Court of Appeal case, *Zidan v. USAA Property and Casualty Insurance Co.*, 622 So. 2d 265 (La. App. 1 Cir. 1993), *writ denied*, 629 So. 2d 1138 (La. 1993). More particularly, *Zidan* involved a third-party claim against an insurer – rather than a direct claim made by the insured – and therefore no contractual relationship had existed between the third-party claimant and the insurer.

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The *Smith v. Citadel* Court then held that Section 1973 does not exist "separate and apart from an insurer's contractual obligations." Rather, while the insurer's duty of good faith is codified in Section 1973, "this duty is an outgrowth of the contractual and fiduciary relationship between the insured and the insurer, and the duty of good faith and fair dealing emanates from the contract between the parties." Contractual claims are personal actions under Louisiana law that are subject to a ten-year prescriptive period. Therefore, "first-party bad faith claims against an insurer are governed by the ten-year prescriptive period set forth in [Louisiana Civil Code article] 3499."

Key Takeaway

Insureds seeking to make bad faith claims against insurers under Louisiana law now definitively have up to ten years to file such a claim. Bad faith actions relating to property claims, life insurance claims, personal injury claims, and wrongful denials that an insured or insurer may have believed were long dead may instead be alive and well.