

## New Jersey Appellate Division Rules that Injured Plaintiff May Sue His Insurance Carrier for Bad Faith Damages Due to Delay in Approving Medical Test and Surgery

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Plaintiff Miguel Vera injured his right shoulder in a September 10, 2016 automobile accident. Thereafter, he submitted a personal injury protection (“PIP”) claim to his automobile insurance company, State Farm Indemnity Company (“State Farm”), to pay for his medical expenses incurred by his injuries suffered from his accident. In *Vera v. State Farm Indem. Co.*, 2022 N.J. Super. Unpub. LEXIS 1081 (App. Div. June 16, 2022), the issue was whether the plaintiff could sue State Farm for his damages claimed by State Farm’s delay in approving needed shoulder surgery or if he was limited to the statutory damages of attorneys’ fees and interest under the PIP statute.

Plaintiff began treatment on September 16, 2016 with Dr. Gregory Gallick, an orthopedic surgeon, for his right shoulder injury suffered in the auto accident. Dr. Gallick recommended that Plaintiff undergo an MRI of his right shoulder to assess his injuries. He submitted a request for authorization for the MRI to State Farm, which was initially denied, but, later, approved on November 19, 2016.

Plaintiff treated with Dr. Gallick on two subsequent dates in December 2016 and January 2017, and his doctor recommended shoulder surgery both times. On January 20, 2017, Plaintiff was examined by a State Farm IME doctor who conducted his own evaluation. Thereafter, State Farm approved the surgery and it was performed on February 23, 2017.

In performing the surgery, Dr. Gallick found a complete tear of the bicep tendon of plaintiff’s right shoulder. Dr. Gallick opined that State Farm’s delay in authorizing the MRI and authorizing the surgery, resulted in a more significant injury to Plaintiff’s right shoulder, than would have occurred if State Farm had given appropriate authorization at the appropriate time. Dr. Gallick stated that the delay prevented him from repairing Plaintiff’s bicep tendon had left him with a significant injury to his right shoulder and permanent damage to the bicep tendon.

In 2018, Plaintiff sued State Farm, claiming that it “arbitrarily and capriciously breached its contractual obligations” by delaying the approval of his MRI and surgery. He sought compensatory and punitive damages, as well as attorneys’ fees and costs.

At the trial court level, State Farm was granted a summary judgment dismissal of the complaint. The trial court judge found that Plaintiff’s claims for the wrongful denial of PIP benefits were subject to the PIP statute, N.J.S.A. 39:6A-5(h), which only permitted the recovery of interest and attorneys’ fees for a successful claim. Thus, the court concluded that the Plaintiff’s claims for compensatory and punitive damages were barred.

This decision was appealed to the Appellate Division. The Plaintiff argued that his claims do not involve the denial of coverage but, rather, were claims for the delay in authorizing testing and treatment. He contended that these claims were not barred by the PIP statute.

Upon appeal, State Farm argued that Plaintiff's exclusive remedies were limited to the statutory remedy when an insurer fails to issue payments in a timely manner. However, the Court noted that, while the statute addressed payment of PIP claims, it did not address authorization or precertification. Thus, the Appellate Division concluded that the PIP statute did not expressly preclude plaintiff's claim.

The Court then examined whether Plaintiff asserted a viable claim against State Farm. Plaintiff's claim was based upon an alleged breach of State Farm's obligations under its insurance policy. The Appellate Division noted that, under New Jersey law, the obligation to act in good faith is "an implied term in every contract," including insurance policies. Further, the Court pointed to a Supreme Court decision that recognized "an insurance company's duty of good faith and fair dealing in the processing of insurance claims."

The Appellate Division found that an insurer's duty of good faith "can apply to matters such as timely authorization and precertification decisions." Because this type of claim is governed by contract principles, punitive damages would only be available in egregious circumstances. The Plaintiff would need to "show something other than a breach of the good-faith obligation" to obtain this type of damages.

However, the Court ruled that New Jersey law does permit claims for damages caused by delayed authorization where a plaintiff can prove a breach of contract. The Appellate Division set forth the elements that Plaintiff must show to pursue a claim for damages in State Farm's delay in authorizing testing and treatment as follows:

1. State Farm had a good-faith obligation in its policy to authorize the MRI and surgery;
2. State Farm unreasonably delayed that authorization, and those decisions were not 'fairly debatable,' thus failing to fulfill its contractual obligations;
3. and that the unreasonable delay caused him damages.

Under the fact as presented on appeal, the Court found that Plaintiff had not established the elements necessary to prove his claim. For example, he did not provide a copy of his insurance policy, present proofs that Dr. Gallick needed preauthorization to conduct the MRI, nor that State Farm acted unreasonably in having its own doctor examine Plaintiff before it would approve the surgery.

But, the Appellate Division also found that the record did not show that Plaintiff cannot prove his claim. Thus, it reversed the summary judgment order granted to State Farm and remanded the case back to the trial court to permit Plaintiff to continue to pursue his claim against State Farm. The Court took no position whether Plaintiff can prove his claim or that his claimed damages were "consequential economic losses that are fairly within the contemplation of the insurance company." Those issues would need to be examined by the trial court upon remand.

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