Ohio Supreme Court Restricts Discovery of Insurer Claim Files in Bad-Faith Cases

Blog Avoiding Insurance Bad Faith

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The Ohio Supreme Court recently issued an important decision addressing the discoverability of attorney-client communications and work-product materials in insurer bad-faith litigation, holding that attorney-client communications contained within an insurer's claim file are not automatically discoverable simply because an insured alleges bad faith. In *Eddy v. Farmers Property Casualty Insurance Co.*, the Court holds that Ohio Revised Code § 2317.02(A)(2) governs disclosure of attorney-client communications in insurer bad-faith cases, supplanting the broader discovery standard many courts had applied under *Boone v. Vanliner Insurance Co.*

The Dispute

The case arose from a bad-faith suit filed after Farmers settled an underinsured motorist claim. During discovery, the insureds sought production of portions of Farmers' claim file that had been withheld as attorney-client privileged and work product, alleging that the insurer delayed resolution of the claim in bad faith. The trial court ordered production of the entire claim file through the date Farmers paid the claim.

The appellate court affirmed, relying largely on *Boone*. In *Boone*, the court held that in a bad-faith coverage action, insureds could obtain claims-file materials containing attorney-client communications related to coverage that were created before a coverage denial.

The Ohio Supreme Court reversed.

The End of *Boone*'s Broad Discovery Rule

For more than two decades, the *Boone* approach controlled for the issue of claim file discovery in the state of Ohio. The Ohio Supreme Court now rejected this approach, holding that *Boone*'s attorney-client privilege analysis has been superseded by statute.

According to the Court, the legislature's 2007 amendment to Ohio Revised Code § 2317.02(A)(2) created the governing statutory framework for determining whether attorney-client communications may be discovered in a bad-faith action and "completely abrogated" *Boone* as it relates to attorney-client privilege. As a result, whether a communication was created before or after a coverage decision is no longer the dispositive inquiry. Instead, courts must follow the statutory procedure established by § 2317.02(A)(2).

A Higher Bar for Obtaining Privileged Communications

Under the Court's interpretation of § 2317.02(A)(2), attorney-client communications may be disclosed only if the insured first makes a prima facie showing of bad faith, fraud, or criminal misconduct. Even then, disclosure is not automatic. The trial court must conduct an in camera inspection and determine that the communications are related to the attorney's "aiding or furthering an ongoing or future commission of bad faith" by the insurer.

The Court emphasized that allegations of bad faith alone are insufficient. Rather, the statute imposes both a threshold evidentiary showing and judicial review before protected communications can be produced.

Work Product Remains Separately Protected

The Court also drew a sharp distinction between attorney-client privilege and the work-product doctrine, rejecting efforts to extend similar disclosure principles to materials protected by the work-product doctrine.

While § 2317.02(A)(2) governs attorney-client communications, work-product protection remains governed by Ohio Civil Rule 26(B)(4). The Court specifically rejected the notion that *Boone* or other caselaw created a broad bad-faith exception to work-product protection. Instead, materials prepared in anticipation of litigation remain presumptively protected and may be discovered only upon a showing of "good cause." The Court further explained that disclosure of work product requires an independent analysis and that trial courts should not simply order production of an insurer's claim file based on allegations of bad faith.

Why It Matters: Practical Implications for Bad-Faith Litigation

After more than two decades of the *Boone* approach, *Eddy v. Farmers Property Casualty Insurance Co.* significantly strengthens insurers' ability to resist broad claim-file discovery in bad-faith litigation. Rather than allowing discovery based largely on the existence of a bad-faith allegation, *Eddy* requires trial courts to carefully evaluate whether the insured has made the required prima facie showing and to conduct an in camera review before ordering disclosure of privileged communications. The decision also confirms that work-product protections remain fully available absent a showing of good cause

For insurers and coverage counsel, *Eddy* provides a powerful tool to resist routine disclosure of privileged advise and other broad claim-file discovery requests based solely on the filing of a bad-faith claim, reinforcing the confidentiality of communications between claims professionals and coverage counsel during the claim-handling process.

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