

# Bad Faith Settlement Claim Rebutted Where Policyholder Had Good Defenses and Insurer Promptly Settled

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In an unreported decision, the Appeals Court of Massachusetts has held that the existence of affirmative defenses with some factual and legal support and a relatively speedy settlement within seven to eight months is sufficient to rebut a bad faith claim for failure to settle. *McMillan v. Westport Ins. Corp.*, 2005 WL 3149551 (Mass. App. Ct. Nov. 23, 2005).

The insurer issued a professional liability policy to the defendant law firm with a \$500,000 limit that included defense costs. The law firm represented clients in the underlying lawsuit alleging wrongful death against contractors who built their bathroom. The contractors completed the bathroom by December 1989. In June 1993, faulty electrical wiring resulted in the death of the wife and mother of the clients. The law firm, told by clients that the contractors completed their work in April 1990, commenced suit on March 26, 1996. During the litigation, however, the contractors proved that they had completed work in 1989. Accordingly, the court dismissed the suit against the contractors based on the six-year statute of repose in January 2000.

The clients then brought a legal malpractice action against the law firm on August 25, 2003, and followed this with a suit against the insurer on December 30, 2003 alleging failure to settle the malpractice claim despite clear liability. The insurer raised the defenses of statute of limitations regarding the legal malpractice action. It also noted that the law firm had a good defense to the malpractice claim based on the law firm's reasonable reliance on the information obtained from the clients. Before a ruling on this action, the insurer settled with the clients for \$370,000, representing the full policy limit less defense costs. Following this settlement, summary judgment was entered in favor of the insurer as to the allegation that it acted in bad faith by refusing to settle.

The court held that in order to be successful in their unfair settlement practices claim, the plaintiff "must show that the defendant insurance company failed to effectuate prompt, fair and equitable settlement of a claim in which liability had become reasonably clear," and "that the insurer acted in bad faith or was unreasonable in believing that the insured was not liable." The court concluded that it was never reasonably clear as a matter of law that liability had been established because both the defense of statute of limitations and the defense of reasonable reliance had factual and legal support in the record. Further, the court held that the case was in fact settled within a reasonable amount of time, seven to eight months, for a reasonable amount, the full

policy limit less defense costs. The court, therefore, affirmed the lower court's summary judgment in favor of the insurer.

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