

MEMO



DEC 09 2010

Senate of Pennsylvania

December 7, 2010

TO: ALL SENATORS
FROM: Stewart J. Greenleaf *STEWART*
SUBJECT: Cosponsorship -- **Bad faith actions on insurance policies**

I am reintroducing **Senate Bill 433**, amending section 8371 of the Judicial Code, Title 42 of the Pennsylvania Consolidated Statutes, allowing the trier of fact (judge or jury) to make a finding that an insurance company acted in bad faith toward an insured and to award punitive damages.

Under section 8371, if the court finds that the insurer has acted in bad faith, the court may award interest on the amount of the claim from the date the claim was made, award punitive damages, and assess court costs and attorney fees against the insurer.

In Mishoe v. Erie Insurance Company, 824 A.2d 1153 (2003), the Pennsylvania Supreme Court held that in section 8371 cases there is no right to a jury trial. The judge determines whether there was bad faith and awards punitive damages. Justice Nigro, writing for the majority, noted that in section 8371 “the General Assembly is silent regarding the right to a jury trial” and “the legislature chose to use the term ‘court’ in section 8371, rather than ‘jury’.”

In his dissent, Chief Justice Cappy wrote: “Finally, and most importantly, the conclusion reached by the majority, that it is for a judge, and not a jury, to award punitive damages under section 8371, is sharply at odds with the intent of the legislature. Simply stated, one hundred and fifty years of law establishes that the award of punitive damages is entrusted to a jury.”

Chief Justice Cappy noted that the definition of “court” is broad enough to encompass the right to a jury trial. Furthermore, “the tradition of the award of punitive damages being within the province of the jury is unmistakable evidence that the legislature intended to permit a jury to determine bad faith and to award punitive damages in an action brought pursuant to section 8371.”

The Supreme Court’s decision in Mishoe is also inconsistent with federal law. Federal courts have held that the insured has a right to a jury trial in federal court cases interpreting section 8371.

My legislation overturns Mishoe, making it clear that the legislative intent is to permit jury trials in section 8371 cases. The legislation also makes the procedure consistent in state and federal courts. By providing for a jury trial in state court cases, it will discourage an insurance company or an insured from seeking a federal or state court venue because one forum allows for a jury trial and the other does not.

While the Senate Judiciary Committee did not consider Senate Bill 433 specifically last session, the judiciary committee did amend the substance of Senate Bill 433 into Senate Bill 746. The judiciary committee reported Senate Bill 746 from committee as amended.

If you are interested in cosponsoring this legislation, please contact Pat Snively of my office by e-mailing her at psnively@pasen.gov.