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## The Genuine Dispute Doctrine Is Alive and Well in California

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Plaintiffs' lawyers have been celebrating the California Supreme Court's decision in *Wilson v. 21st Century Ins. Co.*, 42 Cal. 4th 713 (2007), which clarified how courts should apply California's "genuine dispute doctrine" on summary judgment. Some practitioners have gone so far as to claim that, after *Wilson*, the doctrine is dead. Not so. As the saying goes, reports of the genuine dispute doctrine's death have been greatly exaggerated.

The "genuine dispute doctrine" is a creation of California case law. It holds that insurers do not act in bad faith as a matter of law if there is a genuine dispute regarding whether the insured's claim is payable. Insurers most often invoke this doctrine on summary judgment, arguing that the insured's bad faith claim fails as a matter of law where there is no triable issue of fact that the insurer's claim decision was reasonable—even if the decision is ultimately found to be mistaken.

Some plaintiffs' lawyers incorrectly claim that the California Supreme Court's decision in *Wilson* narrowed the doctrine's scope. Not only is *Wilson* consistent with decades of opinions by the California Court of Appeal and federal district courts applying the genuine dispute doctrine, but it is the first time that the doctrine has been definitively endorsed by the California Supreme Court. Perhaps it is the insurers who should

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be celebrating.

## **A BRIEF HISTORY OF THE GENUINE DISPUTE DOCTRINE**

Bad faith in California has always been dependent on insurers acting unreasonably or without proper cause. As the California Supreme Court noted over 30 years ago in *Gruenberg v. Aetna Ins. Co.*, 9 Cal. 3d 566 (1973):

[I]n the case before us we consider the duty of an insurer to act in good faith and fairly in handling the claim of an insured, namely a duty not to withhold *unreasonably* payments due under a policy. . . . Where in so doing, it fails to deal fairly and in good faith with its insured by refusing, *without proper cause*, to compensate its insured for a loss covered by the policy, such conduct may give rise to a cause of action in tort for breach of an implied covenant of good faith and fair dealing.

*Id.* at 573-74 (emphasis added).

But oddly enough, it appears that the genuine dispute doctrine may have been conceived in California's federal courts. In 1982 the Ninth Circuit decided *Safeco Ins. Co. v. Guyton*, 962 F.2d 551 (9th Cir. 1982). In *Guyton*, the Ninth Circuit affirmed a district court's order dismissing policyholders' counterclaims for bad faith refusal to pay flood insurance benefits. In doing so, it applied the genuine dispute doctrine—though not by name, and without citation:

Although the district court did not specify the grounds on which it entered judgment for Safeco on this cause of action, it may have concluded that *since the policy in dispute involved a genuine issue concerning legal liability, Safeco could not, as a matter of law, have been acting in bad faith by refusing to pay on the Policyholders' claims.* Although we conclude that Policyholders' losses are covered by the policy if third-party negligence is established, we agree that there existed a genuine issue as to Safeco's liability under California law.

*Id.* at 551 (emphasis added).

Nearly a decade later the California Court of Appeal examined a judgment of bad faith liability against a homeowner's insurer. The court reversed the judgment on the ground that an ambiguity in a recent California Supreme Court decision provided the insurer with an argument that its claim denial had been reasonable, even though the court ultimately held that

the denial had been incorrect. Citing *Guyton*, the court held: "As the Ninth Circuit Court of Appeals has explained in a similar context, bad faith liability cannot be imposed where there 'exist[s] a genuine issue as to [the insurer's] liability under California law.'" *Opsal v. United Services Auto. Assn.*, 2 Cal. App. 4th 1197, 1205-06 (1991).

Between 1991 and 2001 the body of published case law applying the genuine dispute doctrine grew rapidly. By 2000 the doctrine as framed by *Guyton* and *Opsal* was "well established." *Fraley v. Allstate Ins. Co.*, 81 Cal. App. 4th 1282, 1292 (2000) (quoting *Opsal* and citing *Guyton*). In general, California state courts tended to apply the doctrine where there was a genuine dispute over an issue of law, whereas federal district courts were more willing to expand the doctrine to cover factual disputes.

But any such distinction ended with the California Court of Appeal's seminal 2001 decision in *Chateau Chamberay Homeowners Assn. v. Associated Internal. Ins. Co.*, 90 Cal. App. 4th 335, 345 (2001). That case involved a condominium homeowners association's claim to its insurer for damage following the 1994 Northridge earthquake. The insurer paid \$1,949,161, which was less than the \$5,771,522 claimed by the insured. The trial court granted summary judgment in favor of the insurer on the insured's bad faith claim, holding that the insurer's valuation was reasonable as a matter of law. *Id.* at 343.

The Court of Appeal affirmed. Relying on *Fraley*, it held: "It is now settled law in California that an insurer denying or delaying the payment of policy benefits due to the existence of a genuine dispute with its insured as to the existence of coverage liability or the amount of the insured's coverage claim is not liable in bad faith even though it might be liable for breach of contract. [¶] It is equally clear that this issue may be resolved as a matter of law in a proper case." *Chateau Chamberay*, 90 Cal. App. 4th at 347.

Significantly, the court resolved any prior doubts about whether the genuine dispute doctrine applies to disputes over *facts*: "While many, if not most, of the cases finding a genuine dispute over an insurer's coverage liability have involved *legal* rather than *factual* disputes, we see no reason why the genuine dispute doctrine should be limited to legal issues." *Id.* at 348 (citing federal cases). The court illustrated its reasoning:

For example, a coverage dispute involving the proper construction and application of policy language would be a *legal* dispute, while one involving a disagreement as to the reasonable value of an insured's claim would be a *factual* one. Provided there is no dispute as to the *underlying facts* (e.g., what the parties did and said), then the trial court can determine, *as a matter of law*, whether such dispute is "genuine." In making that decision, the court does not decide which party is "right" as to the disputed matter, but only that a reasonable and legitimate dispute actually existed.

*Id.* at 348 n.7 (emphasis in original).

At the same time, the court observed the doctrine's limitations: "That does not mean, however, that the genuine dispute doctrine may properly be applied in every case involving purely a factual dispute between an insurer and its insured. This is an issue which should be decided on a case-by-case basis." *Id.* at 348. For example, while an insurer's reliance on expert opinions may evidence a genuine dispute over the facts affecting coverage, "an expert's testimony will not automatically insulate an insurer from a bad faith claim based on a biased investigation." *Id.* (emphasis in original).

Since 2001, *Chateau Chamberay* has guided the application of the genuine dispute doctrine by California state and federal courts, including the Ninth Circuit. But, surprisingly, the California Supreme Court did not analyze the doctrine until 2007, when it decided *Wilson*.

### **THE CALIFORNIA SUPREME COURT AFFIRMED THE GENUINE DISPUTE DOCTRINE IN WILSON**

In *Wilson*, 21-year old Reagan Wilson was injured in an automobile accident caused by a drunk driver. She was treated in the emergency room for bruises and a wrist injury, but she also complained of pain in her chest and neck. Several days later her physician, Dr. Jackson, conducted a "limited" spine X-ray and evaluated Wilson as "normal" with "no fracture, degenerative change or soft tissue swelling."

A few months later Wilson saw a different physician, Dr. Southern, complaining of continued neck, back and arm pain. Dr. Southern ordered another spine X-ray—but this one came back abnormal. He concluded that Wilson's spine abnormalities "are atypical for a patient of her age and are almost certainly due to the history of trauma. She probably has degenerative

disk changes as a result of occult disk injury at the levels in the neck from her high-speed motor vehicle accident." Dr. Southern also ordered an MRI, which showed several mildly desiccated and bulging disks, as well as mild curvature of Wilson's spine.

Wilson settled with the other driver's insurer for his \$15,000 policy limits and then made a claim for \$85,000 under her own uninsured motorist ("UIM") coverage. The insurer denied Wilson's claim on the ground that she had sustained only "soft tissue injury superimposed by a preexisting degenerative disk disease." It did not contact Dr. Southern or any other physician before denying Wilson's claim. Soon after the denial, Wilson began arbitration proceedings against the insurer.

Wilson continued to be treated for neck pain. One surgeon recommended spinal fusion surgery, although Wilson elected to pursue pain management therapy. After learning of the surgery recommendation during Wilson's deposition, the insurer retained an independent physician to review her medical records. The independent physician confirmed that Wilson's neck pain was caused by disk injuries, which were in turn caused by her automobile accident. Based on that opinion, the insurer reversed its decision and paid Wilson's \$85,000 claim.

Wilson subsequently sued for bad faith. The insurer moved for summary judgment and invoked the genuine dispute doctrine, arguing that its original claims denial was reasonable as a matter of law at the time it was made because there was a genuine dispute over whether the claim was covered. The trial court granted summary judgment, but the Court of Appeal subsequently reversed, finding triable issues of fact regarding whether the insurer had thoroughly investigated and objectively evaluated Wilson's claim before denying it.

The California Supreme Court granted review. On review, it agreed with the Court of Appeal that there were triable issues of fact regarding the reasonableness of the insurer's claim handling. But the Supreme Court also examined the insurer's claim that it did not act in bad faith as a matter of law because there was a genuine dispute as to the existence of coverage.

Quoting *Chateau Chamberay*, the Supreme Court—or the first time ever—articulated the genuine dispute doctrine: "[A]n insurer denying or delaying the payment of policy benefits due to the existence of a genuine dispute with its insured as to the existence of coverage liability or the amount of the insured's

coverage claim is not liable in bad faith even though it might be liable for breach of contract." *Wilson*, 42 Cal. 4th at 754 (quoting *Chateau Chamberay*). The court noted that "this 'genuine dispute' or 'genuine issue' rule was originally invoked in cases involving disputes over policy interpretation, but in recent years courts have applied it to factual disputes as well." *Id.*

While the court implicitly agreed that the genuine dispute doctrine applied to both legal and factual disputes, it clarified that "[t]he genuine dispute rule does not relieve an insurer from its obligation to thoroughly and fairly investigate, process and evaluate the insured's claim. A *genuine* dispute exists only where the insurer's position is maintained in good faith and on reasonable grounds." *Id.* at 723 (emphasis in original). Observing that certain lower court decisions contained "potentially misleading" holdings suggesting that a claims denial need only be reasonable *or* based on a legitimate dispute, the court also clarified that, "[i]n the insurance bad faith context, a dispute is not 'legitimate' unless it is founded on a basis that is reasonable under all the circumstances." *Id.* at 724 n.7.

According to the *Wilson* court, "an insurer is entitled to summary judgment based on a genuine dispute over coverage or the value of the insured's claim only where the summary judgment record demonstrates the absence of triable issues as to whether the disputed position upon which the insurer denied the claim was reached reasonably and in good faith." *Id.* at 724.

The insurer identified three different factual disputes and argued that each created a genuine dispute over coverage. The court found that none did, and affirmed the appellate court's ruling.

### **THE GENUINE DISPUTE DOCTRINE LIVES ON**

Plaintiffs' lawyers have seized upon *Wilson* to suggest that the genuine dispute doctrine has been limited, if not effectively eliminated. To the extent that an insurer might try to obtain summary judgment on bad faith based solely on the fact that it disagreed with the insured over the existence or amount of coverage, such an attempt will surely be more difficult under *Wilson*. But such an attempt would have been equally difficult under *Chateau Chamberay*.

*Wilson* is significant not because it may have trimmed a few tattered fringes from the genuine dispute doctrine, but because California's highest court has now definitively confirmed that the doctrine exists. And there is no longer any question that bad faith may be determined in an insurer's favor on summary judgment as a matter of law "where the summary judgment record demonstrates the absence of triable issues as to whether the disputed position upon which the insurer denied the claim was reached reasonably and in good faith." *Wilson*, 42 Cal. 4th at 724.

State and federal courts in California have been quick to recognize this. See, e.g., *Brehm v. 21st Century Ins. Co.*, 166 Cal. App. 4th 1225, 1237 (2008) (citing to *Wilson* for the existence of the genuine dispute doctrine); *Hailey v. Cal. Physicians' Serv.*, 158 Cal. App. 4th 452, 472–73 (2007) (same); *Callil v. Cal. Physicians' Serv.*, 2008 Cal. App. Unpub. LEXIS 8957, \*24–25 (Nov. 18, 2008) (same); *Wong v. Prudential Prop. & Cas. Ins. Co.*, 2008 Cal. App. Unpub. LEXIS 8214, \*18 (Oct. 16, 2008) (same); see also *Origel v. Northwestern Mut. Life Ins. Co.*, 2008 U.S. Dist. LEXIS 95172, \*32 (N.D. Cal. Nov. 14, 2008) ("the California Supreme Court has approved the 'genuine dispute' doctrine").

Indeed, since *Wilson*, at least four California district court judges have applied the genuine dispute doctrine and granted summary judgment on bad faith in favor of insurers. See *Dougherty v. Amco Ins. Co.*, 2008 U.S. Dist. LEXIS 61973, \*25–29 (N.D. Cal. June 20, 2008) (citing *Wilson* and granting summary judgment for insurer in automobile insurance case); *Anderson v. State Farm Mut. Auto. Ins. Co.*, 2008 U.S. Dist. LEXIS 50432, \*18–26 (E.D. Cal. June 13, 2008) (same; automobile insurance case); *Anderson v. USAA Cas. Ins. Co.*, 2008 U.S. Dist. LEXIS 16514, \*22–26 (N.D. Cal. Mar. 4, 2008) (same; property insurance case); *Herbert v. State Farm Mut. Auto. Ins. Co.*, 2008 U.S. Dist. LEXIS 11138, \*18–23 (N.D. Cal. Feb. 14, 2008) (same; automobile insurance case).

Thus, after *Wilson*, just as before it, courts are willing to grant summary judgment on bad faith in favor of insurers when they acted reasonably—and can prove it. The genuine dispute doctrine is alive and well.

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