

# **Court reverses record \$21 million bad faith verdict**

By Andrew Kennedy

In case that we have been following for several years, the Superior Court of Pennsylvania has reversed a record \$21 million insurance bad faith verdict that had been handed down following a trial by court. The case, *Berg v. Nationwide Mutual Insurance Company*, involved an alleged scheme where the insurance carrier allowed a vehicle to be repaired and sent back to the insured to drive, even though it was not safe, instead of totaling the vehicle. In reversing the verdict, the Superior Court specifically held that there was no evidence of record to substantiate key facts, including that the insurer had actual knowledge that the vehicle was not safe to drive. As a result, the Superior Court held, 2-1, vacated the lower court's verdict and ordered judgment in favor of the insurance carrier.

The Court was split, however, and in a dissenting opinion Judge Stevens took the majority to task for replacing its view of the evidence for the trial court's. The dissent reasoned that even the majority found that there is substantial evidence for many of the trial court's findings, and, it reasoned, vacating the judgment was improper.

While the decision wipes out a massive \$21 million judgment for policyholder, it does not necessarily signal a shift in the law. By basing its opinion on the evidence of record in the case, the majority was not trying to carve out new space in Pennsylvania insurance bad faith jurisprudence. Even so, the smart money would be that this is not the last word in this case. It is obviously divisive. This three judge panel was given the case because the previous panel had not been able to reach a decision. That is a rarity indeed. Given that, this observer expects to see a motion to have the case heard by the whole Superior Court or an appeal to the Supreme Court.

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