Why is there a genuine-dispute doctrine?
The differences between an insurer’s genuine-dispute defense and bad faith

BY ARNOLD LEVINSON

The recent case of Zubillaga v. Allstate Ins. Co., (2017) 12 Cal.App.5th 1017 is the latest example of a case which turned on a Court’s interpretation of the genuine-dispute doctrine. Insurance companies often argue that they cannot be in bad faith because there was a “genuine dispute” – which raises the question of what exactly is a “genuine dispute” and why would that mean that an insurer did not act in bad faith?

In Zubillaga, the insured was in an automobile accident. She had $50,000 of UIM coverage, and she settled with the responsible party for $15,000. She therefore had $35,000 available to her from her UIM coverage. She repeatedly demanded the $35,000. Allstate offered many different amounts, but never offered the entire $35,000. The arbitrator awarded the plaintiff $35,000.

The insured then sued Allstate for bad faith and Allstate moved for summary judgment on the grounds that there was a genuine dispute as to the value of the UIM claim and, thus, it could not be in bad faith. Allstate argued that it reasonably relied on the opinion of its medical expert in reviewing the medical information. The trial court agreed and granted summary judgment for Allstate. The Court of Appeal reversed, holding that there was an issue of fact as to whether Allstate breached its duty of good faith and fair dealing.

The discussion in Zubillaga of the genuine-dispute doctrine is a good one. To understand how the courts use this doctrine, it is worth recalling its genesis. Originally the genuine-dispute doctrine was confined to legal issues. Thus, when an insurer denied a claim based on a reasonable – though erroneous – interpretation of the law, it could not be held in bad faith. The object was that an insurer should not be held in bad faith simply for arriving at the wrong conclusion about what the law was when there was not a controlling case or statute.

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THIN in Chateau Chamberay Homeowners Ass'n v. Associated Continental Ins. Co., (2001) 90 Cal.App.4th 335, the Court of...
Appeal held, for the first time, that the
genuine-dispute doctrine could apply to a
factual dispute. Significantly, in Chateau
Chamberay, the only issue in dispute be-
 tween the insured and the insurance com-
 pany was whether the insurance company’s
expert or the insured’s expert was correct.
The Court held that, like a reasonable dis-
pute over the law, an insurer should not be
held in bad faith where its only sin was rea-
sonably relying on a third-party expert to
adjust the claim. The Court said:

[We see no reason why the genuine
dispute doctrine should be limited to
legal issues. [cites omitted]]. That does
not mean, however, that the genuine
dispute doctrine may properly be ap-
plied 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. [cite omitted]

[Where an insurer, for example, is
relying on the advice and opinions
of independent experts, then a basis
may exist for invoking the doctrine
and summarily adjudicating a bad faith
claim in the insurer’s favor. [cite omit-
ted. Emphasis in original]]
(12 Cal.App.5th at _____, citing Wilson v.
21st Century, supra.)

So, why is there a genuine-
dispute doctrine?

The question then, is: If bad faith is
the failure to act reasonably and in good
faith and a genuine dispute only exists
where the insurer did not act reasonably
and in good faith, why is there a genuine-
dispute doctrine? Why isn’t the question
always whether it is bad faith or not?
What does genuine dispute add to the
mix? Is there a difference between
genuine dispute and bad faith?

The answer is that a genuine dispute
generally refers to a specific type of
conduct, which the courts can conclude
is not bad faith. Recall that it began in
the context of the isolated question of whether
there was a good faith dispute over what
the law provided. In my experience, the
genuine-dispute doctrine in the factual
context is generally applied where the only
dispute between the parties is a good faith
dispute between experts. In other words, if
all that is at issue is a genuine difference of
opinion between experts on each side,
then, in a proper case, a court can con-
 clude that the insurance company did not
act in bad faith. When the dispute goes be-
 yond the dispute between experts, courts
will generally find the genuine-dispute
doctrine not to be helpful, which is what
happened in Zubillaga.

The insurance carrier there con-
tended that it relied in good faith on a
medical expert. The appellate court, how-
ever, found that there was an issue of fact
as to whether the insurer asked the expert
to consider all of the pertinent and avail-
able medical evidence. Failure to do so,
would be a failure to investigate, which is
a fundamental duty under the duty of
good faith and fair dealing. Thus it could
not include as a matter of law that there
was a genuine dispute. On the other
hand, the Court in *Paslay v. State Farm General Ins. Co.* (2016) 248 Cal.App.4th 639 found that there was no evidence of a failure to investigate and that the only dispute between the parties was a difference of opinion between the experts. It therefore held that there was a genuine issue and, accordingly no bad faith.

For over 30 years, Arnie Levinson has assisted over 1,000 clients in coming to resolution. He has been routinely involved in shaping state and national legislation in insurance law. He was a founding partner at Pillsbury & Levinson, leaving after 20 years to bring his skills to the field of mediation. He has been a member of ABOTA; served as President of the San Francisco Trial Lawyers Association; and is a three-time recipient of the Presidential Award of Merit from Consumer Attorneys of California.