

# Insured's Repeated Refusal to Attend a Reasonably Requested IME Defeated His Bad Faith Claim

AUTHOR: SANDBERG PHOENIX

**Summary:** The insured filed suit against his insurer for breach of contract and bad faith after repeatedly failing to attend an independent medical examination ("IME") scheduled by his insurer. On appeal, the Third Circuit held the insured materially breached the insurance contract by failing to appear for the IME. The court further held the insurer had a reasonable basis for the IME and its subsequent denial of the claim. Because there was a reasonable basis for its actions, the insurer did not commit bad faith.

*Feingold v. State Farm Mut. Auto. Ins. Co.*

State Farm's insured, Phillip Goddard, was involved in a motor vehicle accident with multiple vehicles in which he sustained injury. He filed a personal injury protection ("PIP") claim. State Farm made multiple attempts to schedule an IME, but Goddard never attended these appointments. Thereafter, State Farm obtained a peer review of Goddard's medical records that concluded he was at maximum medical improvement and needed no further treatment.

Two years later Goddard filed a petition to appoint arbitrators for a UM/UIM claim. This petition was denied. Three years later, Goddard filed another similar petition. This time State Farm attempted unsuccessfully to again schedule Goddard for an IME. When Goddard did not attend the IME this time, State Farm closed its file claiming Goddard's failure to submit to the IME indicated he did not intend to pursue his claim. State Farm refused to proceed to arbitration.

Thirteen years after the motor vehicle accident, Goddard filed a lawsuit for breach of contract and bad faith against State Farm. The trial court granted State Farm's motion for summary judgment. On appeal, the Third Circuit affirmed.

The court first found Goddard's failure to submit to an IME was a material breach of his duty to cooperate under the insurance policy and deprived State Farm of the opportunity to evaluate Goddard's health around the time of the motor vehicle accident. The court held summary judgment was properly granted in State Farm's favor on the breach of contract claim.

The court then addressed the bad faith claim and explained "an insurer may defeat a claim of bad faith by showing that it had a reasonable basis for its actions." Quoting *Amica Mut. Ins. Co. v. Fogel*, 656 F.3d 167, 179 (3d Cir. 2011). The court found that State Farm had a reasonable basis for requesting the IME to determine causation and clarify inconsistencies in prognosis, including when Goddard reached maximum medical improvement. The court also found State Farm had a reasonable basis for refusing to proceed to arbitration without an IME and denying the claim. The court also affirmed summary judgment in State Farm's favor on the bad faith claim.

By Katrina Smeltzer

Katrina Smeltzer  
Katrina Smeltzer type unknown