IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PRECISION DOOR COMPANY, INC.	:	CIVIL ACTION
	:	
Plaintiff,	:	
v.	:	NO. 04-CV-1194
	:	
MERIDIAN MUTUAL INSURANCE COMPANY,	:	
	:	
Defendant.	:	
	:	

EXPLANATION AND ORDER

Anita B. Brody, J. August 23, 2005

Plaintiff Precision Door Company, Inc. ("Precision Door") has brought this action against defendant Meridian Mutual Insurance Company ("Meridian") for breach of contract and bad faith conduct in denying insurance coverage. Before me is Meridian's motion for judgment on the pleadings,[1] which seeks to dismiss Precision Door's bad faith claim as barred by the statute of limitations.

[1] Meridian's motion is a motion for judgment on the pleadings notwithstanding the docket entry labeling the motion a motion for partial summary judgment. Meridian titled its memorandum of law "Memorandum of Law of Defendant, Meridian Mutual Insurance Company, in Support of its Motion for Judgment on the Pleadings." Meridian's proposed order suggests that "Defendant's Motion for Judgment on the Pleadings" be granted. The only document, aside from the docket sheet, referring to Meridian's motion as a motion for summary judgment is Meridian's one-line motion titled "Defendant, Meridian Mutual Insurance Company's, Motion for Partial Summary Judgment on Plaintiff's Claim for Bad Faith." However, Meridian, in its memorandum, refers to the pleadings alone and no facts outside of the pleadings.

Furthermore, Precision Door's response explicitly refers to this discrepancy and treats Meridian's motion as a motion for judgment on the pleadings. Meridian's reply to this response refers to its original motion as a motion for judgment on the pleadings. Therefore, Meridian seems to acknowledge that its original motion was a motion for judgment on the pleadings.

I. BACKGROUND[2]

In its complaint, Precision Door alleges that "Meridian refused to tender [the proceeds of the insurance policy] on or about September 5, 2001." (Compl. ¶ 19.) The complaint also alleges that "Meridian issued a reservation of rights letter on September 5, 2001 to Precision [Door], a copy of which is attached as Exhibit E." (Id. at ¶ 21.)[3] The letter acknowledges receipt of the writ that was filed in the Court of Common Pleas in the Naulty Action[4] and states in relevant part:

> The purpose of this letter is to inform you that, with respect to its investigation of this matter or claims arising out of it, the negotiation or settlement of any claims, or in undertaking the defense of a lawsuit, Meridian . . . reserves the right to assert any and all defenses it may have under [the insurance] policy as to the claims alleged against [Precision Door] in this matter.

(Id.) In addition, the letter lists the sections of the policy that Meridian suggested would restrict or eliminate coverage. (Id. at 1-2.) Precision Door also alleges that "Meridian knew and/or should have known that the asserted bases for the reservation of rights in the September 5, 2001

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[2] I also adopt the facts as set forth in my January 13, 2005 memorandum and order granting in part and denying in part Precision Door's motion for partial summary judgment.

[3] That letter, which is attached to Precision Door's complaint, is written on Meridian Insurance letterhead and is addressed to the president of Precision Door. (Compl. Ex. E at 1.) Above Precision Door's address, there are two lines that state, "CERTIFIED MAIL / RETURN RECEIPT REQUESTED." (Id.) A note below the September 5, 2001 date indicates that this letter is a "Corrected copy per insured request sent via regular post 9/19/01." (Id.) The word "received" with a box below it has been stamped in the top right-hand corner of the letter. (Id.) The date written in the box below the word "received" is "9-24-01." (Id.)

[4] "The Naulty Action," as described in my January 13, 2005 memorandum and order, was the personal injury action filed in the Philadelphia Court of Common Pleas on June 29, 2001 by Thomas Naulty. Thomas Naulty was the Precision Door employee who was injured while working at a construction site governed by Precision Door's contract with Driscoll. Naulty v. L.F. Driscoll Co., No. 1552, May Term 2001 (Pa. Ct. Com. Pl. Aug. 5, 2004).

and [subsequent] letters were wholly and/or partially without any reasonable basis and inapplicable." (Compl. ¶ 24.)

Precision Door's complaint also alleges that "Driscoll filed a Joinder Complaint in the Naulty Action against Precision [Door] on October 23, 2001, a copy of which is attached as Exhibit G," and "[i]n the Joinder Complaint . . . [a]t Counts II and III, Driscoll pled causes of action for breach of contract and indemnification against Precision [Door]." (Compl. ¶¶ 25 & 26.) Count III of the joinder complaint in the Naulty Action alleges that Precision Door was required by contract to obtain insurance for Driscoll and "Precision Door's insurance carrier has not responded to a demand by defendant, Driscoll, for coverage as an additional insured under Precision Door's insurance policy." (Compl. Ex. G ¶¶ 28 & 29.)

The present action was filed on March 19, 2004. Jurisdiction is based upon diversity under 28 U.S.C. § 1332 and the parties agree that Pennsylvania law applies.

Meridian's motion for judgment on the pleadings filed under Federal Rule of Civil Procedure 12(c), seeks to bar Precision Door's bad faith claim as untimely under the statute of limitations. The standard of review for a Rule 12(c) motion for failure to state a claim upon which relief can be granted is the same as the standard of review that applies to a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Turbe v. Gov't of the Virgin Islands, 938 F.2d 427, 428 (3d Cir. 1991). Accordingly, "[j]udgment will not be granted unless the movant clearly establishes there are no material issues of fact, and he is entitled to judgment as a matter of law." Sikirica v. Nationwide Ins. Co., — F.3d —, No. 04-2035, 2005 WL 1837010, at *3, 2005 U.S. App. LEXIS 16077, *8-9 (3d Cir. Aug. 4, 2005) (citation omitted). The court "must view the facts presented in the pleadings and the inferences to be

drawn therefrom in the light most favorable to the nonmoving party." Id. A 12(c) motion seeking to bar a claim based on a statute of limitations may be granted if the facts presented in the pleadings and inferences drawn in the light most favorable to the non-moving party demonstrate that the complaint was not filed within the statute of limitations. See Id.

Although a Rule 12(c) motion for judgment on the pleadings shall be treated as a motion for summary judgment if matters outside the pleadings are presented, documents are not considered "outside the pleadings" if those documents are "integral to or explicitly relied upon in the complaint." Mele v. Fed. Reserve Bank of New York, 359 F.3d 251, 256 n.5 (3d Cir. 2004); see also In re Burlington Coat Factory Securities Litigation, 114 F.3d 1410, 1426 (3d Cir. 1997).

II. DISCUSSION

The claim at issue in the complaint alleges that Meridian conducted itself in bad faith in violation of 42 Pa. Cons. Stat. Ann. § 8371 (West 1998). Section 8371 provides that courts may award interest, costs and damages in actions "arising under an insurance policy, if the court finds that the insurer has acted in bad faith toward the insured . . . ." 42 Pa. Cons. Stat. Ann. § 8371. The Third Circuit predicted that the "Supreme Court of Pennsylvania would hold that an action under section 8371 . . . is subject to a two-year statute of limitations . . . ." Haugh v. Allstate Ins. Co., 322 F.3d 227, 236 (3d Cir. 2003); see also Ash v. Continental Ins. Co., 861 A.2d 979, 984 (Pa. Super. Ct. 2004); Sikirica, — F.3d —, 2005 WL 1837010, at *7, 2005 U.S. App. LEXIS 16077, *22 (supporting the two-year limitations period in dicta). Therefore, I will apply a two-year statute of limitations.

Precision Door and Meridian dispute the date on which the statute of limitations began to

run. Meridian contends that Precision Door's cause of action for bad faith arose on September 5, 2001, when Meridian refused to tender a defense to Driscoll in the personal injury action. Thus when Precision Door filed this suit on March 19, 2004, the statute of limitations had expired. Precision Door contends that its bad faith claim is timely because: (1) Precision Door was not aware of any injury and, in fact, was not injured until July 21, 2003, when the judge in the personal injury action decided that the provision requiring Precision Door to procure insurance coverage for Driscoll in the contract between Precision Door and Driscoll was enforceable; and (2) there were other independent factual bases for Precision Door's bad faith claim.

A. Calculating the Running of the Statute of Limitations

Precision Door argues that the statute of limitations did not begin to run on September 5, 2001, or, if September 5, 2001 were the applicable date, then the statute of limitations should be tolled until Precision Door discovered the injury arising from Meridian's bad faith. The Third Circuit summarized Pennsylvania state law regarding the date on which the statute of limitations for bad faith claims begins to run:

> In general, the statute of limitations begins to run when a right to institute and maintain suit arises. Crouse v. Cyclops Indus., 745 A.2d 606, 611 (Pa. 2000). A bad faith claim arises upon a "frivolous or unfounded refusal to pay proceeds of policy." Adamski [v. . Allstate Ins. Co., 738 A.2d 1033, 1036 (Pa. Super. Ct. 1999)] (quoting Black's Law Dictionary 139 (9th ed. 1990)). See also Rottmund v. Cont'l Assurance Co., 813 F. Supp. 1104, 1108-09 (E.D. Pa. 1992).

Sikirica, — F.3d —, 2005 WL 1837010, at *8, 2005 U.S. App. LEXIS 16077, *24-25. In addition to determining the date the statute of limitations begins to run, the court must also determine whether the statute of limitations should be tolled. Earlier, the Third Circuit

summarized Pennsylvania state law regarding the discovery rule:

> Pennsylvania law recognizes that "in some circumstances, although the right to institute suit may arise, a party may not, despite the exercise of diligence, reasonably discover that he has been injured." Crouse, 745 A.2d at 611. In such cases, the discovery rule applies. Id. As the Pennsylvania Supreme Court explained in Crouse, "[t]he discovery rule is a judicially created device which tolls the running of the applicable statute of limitations until the point where the complaining party knows or reasonably should know that he has been injured and that his injury has been caused by another party's conduct." Id.

Haugh, 322 F.3d at 231. Therefore, a court must first determine the date on which the right to institute and maintain suit arose and then determine whether a party was unable to reasonably discover that he or she had been injured such that the statute of limitations should be tolled.

1. Date on Which the Statute of Limitations Begins to Run

The right to institute suit for a bad faith action arises when there is a "frivolous or unfounded refusal to pay proceeds of a policy." Sikirica, — F.3d —, 2005 WL 1837010, at *8, 2005 U.S. App. LEXIS 16077, *24-25; (quoting Adamski v. Allstate Ins. Co., 738 A.2d 1033, 1040 (Pa. Super. Ct. 1999)); see also Simon Wrecking Co., Inc., 350 F. Supp. 2d at 632. "It is not necessary that such refusal be fraudulent." Adamski, 738 A.2d at 1036 (quoting Black's Law Dictionary 139 (9th ed. 1990)).[5]

In addressing the question of when bad faith claims arise, the Third Circuit in Sikirica looked to the Pennsylvania Superior Court decision in Adamski. Sikirica, — F.3d —, 2005 WL 1837010, at *8, 2005 U.S. App. LEXIS 16077, *24-25. Adamski involved an accident between

[5] In order to establish bad faith under section 8371, two elements "must be established by clear and convincing evidence: (1) the insurer lacked a reasonable basis for denying coverage; and (2) the insurer reasonably knew or recklessly disregarded its lack of a reasonable basis." Adamski, 738 A.2d at 1036.

a car and a motorcycle in which the driver of the car was the friend of the car owner's daughter. Adamski, 738 A.2d at 1034. The owner's insurance company sent a letter to the driver informing him that it refused to provide any liability protection for the driver because he was not a permissive driver under the policy. Id. In the bad faith claim that followed, the Pennsylvania Superior Court determined that the letter explaining that the insurance company would not provide liability protection for the driver made it obvious that the insurance company would not provide coverage, and the driver "could have commenced an action against [the insurance company] based on its denial of coverage at any point after the . . . letter." Id. at 1039.

According to the complaint in the present case, "Meridian refused to tender on or about September 5, 2001." (Compl. ¶ 19.) In addition, on September 5, 2001 when Meridian wrote a reservation of rights letter to Precision Door, "Meridian knew and/or should have known that the asserted bases for the reservation of rights . . . were wholly and/or partially without any reasonable basis and inapplicable." (Compl. ¶ 24.) Therefore, without tolling, the two-year statute of limitations would begin to run on September 5, 2001 when Meridian first denied Driscoll's claim in bad faith.

Precision Door argues that, notwithstanding Meridian's September 5, 2001 denial of coverage to Driscoll, the statute of limitations did not begin to run at that time because Precision Door was not yet injured. Precision Door argues that it was not injured until the judge in the personal injury action decided that the provision requiring Precision Door to procure insurance coverage for Driscoll in the contract between Precision Door and Driscoll was enforceable. This is not supported by the case law. The Pennsylvania Superior Court in Adamski specifically held that the timeliness of the bad faith claim did not depend on the Pennsylvania Supreme Court's

ruling requiring the insurance company's obligation to pay the policy limits because "[a] bad faith action under section 8371 is neither related to nor dependent on the underlying contract claim against the insurer." 738 A.2d at 1039 n.5 (citations omitted). I predict that the Pennsylvania Supreme Court will follow the same reasoning. Therefore, unless the statute of limitations was tolled, Precision Door did not have the liberty of waiting to bring suit until two years after the Court of Common Pleas decided that the provision requiring Precision Door to procure insurance coverage for Driscoll in the contract between Precision Door and Driscoll was enforceable. To the extent that Precision Door could sue Meridian for bad faith refusal to pay the proceeds of the policy to Driscoll, that right existed as of Meridian's failure to tender on September 5, 2001, and the statute of limitations began to run on that date.

2. Applicability of the Discovery Rule

Precision Door then argues that even if it were injured on September 5, 2001, the statute of limitations must be tolled by the discovery rule until Precision Door learned of its injury. The Pennsylvania Supreme Court explained that "[t]he discovery rule is a judicially created device which tolls the running of the applicable statute of limitations until the point where the complaining party knows or reasonably should know that he has been injured and that his injury has been caused by another party's conduct." Crouse, 745 A.2d at 611, cited in Haugh, 322 F.3d at 231.

Precision Door admits in the complaint that "Meridian refused to tender [the proceeds of the insurance policy] on or about September 5, 2001." (Compl. ¶ 19.) Nonetheless, in its response to Meridian's motion for judgment on the pleadings, Precision Door argues that

"nothing in the Complaint establishes that Precision Door even knew about Meridian's rejection of Driscoll's tender in 2001." (Pl.'s Answer Opp'n Def.'s Mot. J. Pleadings at 4.) It is clear that Precision Door had notice of the September 5, 2001 letter.[6] Therefore, to find that Precision Door did not know of Meridian's rejection, the letter must have lacked a clear refusal to tender.[7]

A reservation of rights letter is not necessarily a refusal to tender. Simon Wrecking Co., Inc., 350 F. Supp. 2d at 632 (reaching different results as to whether various reservation of rights letters placed the defendants on notice based on whether the language in the letters constituted a denial of coverage). In the present case, the September 5, 2001 letter acknowledged receipt of the writ that was filed in the Court of Common Pleas in the Naulty Action and stated that Meridian "reserves the right to assert any and all defenses it may have under [the insurance] policy as to the claims alleged against [Precision Door] in this matter." (Compl. Ex. E at 1.) In addition, the letter lists the sections of the policy that Meridian suggested would restrict or eliminate coverage. (Id. at 1-2.) Because the letter did not explicitly deny coverage, the letter may not have given Precision Door sufficient notice of Meridian's refusal to tender on September 5, 2001. See Simon Wrecking Co., Inc., 350 F. Supp. 2d at 632 (finding that a letter was not a denial of coverage when it did not actually deny benefits but requested an update from the

[6] The letter was addressed to Precision Door, a stamp on the letter along with a written date indicated that it was received on September 24, 2001, the letter itself indicates that it was sent by certified mail with return receipt requested, and the letter was attached to the complaint by Precision Door. Precision Door was on notice of the contents of the letter as of September 24, 2001.

[7] In addition, because the complaint states that Meridian did, in fact, refuse to tender on or about September 5, 2001, one must assume that the refusal was communicated to Driscoll through some means separate and distinct from the September 5, 2001 letter attached to the complaint.

addressee and notified the addressee of "potential bases" for the denial of coverage). I need not decide whether the letter provided notice to Precision Door, however, because even if the statute of limitations is tolled by the discovery rule, Precision Door's complaint is still untimely.

Assuming that Meridian's reservation of rights letter on September 5, 2001 was not a clear refusal to tender and that the statute of limitations should be tolled, the statute of limitations would only be tolled from September 5, 2001 until October 23, 2001, the date on which Driscoll filed a joinder complaint against Precision Door in the Naulty Action. On that date Precision Door definitely knew or reasonably should have known of the refusal to tender.

Precision Door was joined as a party to the Naulty Action on October 23, 2001. The third claim in the joinder complaint against Precision Door alleges that Precision Door was required by contract to obtain insurance for Driscoll and "Precision Door's insurance carrier has not responded to a demand by defendant, Driscoll, for coverage as an additional insured under Precision Door's insurance policy." (Compl. Ex. G ¶¶ 28 & 29.) Even drawing all inferences in the light most favorable to Precision Door, the facts presented in the pleadings demonstrate that Precision Door knew or reasonably should have known of Meridian's failure to tender as of October 23, 2001, and, therefore, the statute of limitations was only tolled until that date. Precision Door had two years after October 23, 2001 to bring a bad faith action against Meridian for its refusal to defend and indemnify Driscoll. Because Precision Door filed the complaint in the present action on March 19, 2004, more than four months after October 23, 2003, this claim is barred by the statute of limitations.[8]

[8] There is some question as to whether Precision Door can bring a bad faith claim for Meridian's refusal to defend and indemnify Driscoll when Driscoll has not assigned the right to sue for bad faith to Precision Door. See Marks v. Nationwide Ins. Co., 762 A.2d 1098 (Pa.

B. Independent Factual Bases for Precision Door's Bad Faith Claim

Furthermore, Precision Door argues that, even if the statute of limitations has run on Meridian's first act of bad faith, there were additional independent factual bases for Precision Door's bad faith claim. Adamski speaks to this issue. In Adamski, the Pennsylvania Superior Court refused to "separate initial and continuing refusals to provide coverage into distinct acts of bad faith." 738 A.2d at 1042. The plaintiff alleged that the insurance company's failure to defend or indemnify was a distinct act from several others including the failure to conduct a diligent investigation. Id. at 1037-38. The court found that all of the conduct underlying the plaintiff's allegations of bad faith was apparent when the insurance company made its position clear, and the claimant could have commenced a bad faith action against the insurance company at any point after that time. Id. at 1039; see also Sikirica, — F.3d —, 2005 WL 1837010, at *8, 2005 U.S. App. LEXIS 16077, *25-26.

The court in Adamski distinguished a federal district court decision holding that there were separate acts of bad faith. Adamski, 738 A.2d at 1040 (distinguishing Rottmund v. Continental Assurance Co., 813 F. Supp. 1104, 1109 (E.D. Pa. 1992)). The district court in Rottmund held that after the initial denial of benefits, there were two acts of bad faith: (1) "the intentional misdesignation of a corporate deponent" and (2) "concealment of the absence of new facts and circumstances which would justify the defendant's denial of its own prior allegations." Rottmund, 813 F. Supp. at 1109. The court held that these acts of bad faith were distinct from the initial denial of benefits. Id. The court in Adamski distinguished the holding in Rottmund as inapplicable to the facts before it because, in the facts before the court in Adamski, the plaintiff

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Super. Ct. 2000). However, Meridian has not raised this issue, and it is not currently before me.

had not alleged acts of bad faith that were "unrelated to and separate from the initial denial of coverage . . ." Adamski, 738 A.2d at 1040.

In the present case, Precision Door lists the following "additional" acts of bad faith by Meridian:

> (1) breaching its duty to defend Precision Door in the Declaratory Judgement [sic] Action; (2) necessitating the filing of the Joinder Complaint in the Naulty Action; (3) necessitating the filing of the Declaratory Judgment Action; (4) necessitating the filing of this lawsuit; asserting policy limitations and exclusions as the reason(s) to deny coverage to Precision Door without any basis in fact and/or in law, (5) relying on the Employer Liability Exclusion when its own coverage supervisor admitted the exclusion had no applicability to the claims; (6) refusing to review the PMA competing excess insurance provision despite admitting that it could not apply the Additional Insured Endorsement without comparing the two policies; and (7) misconduct during the pendency of the Naulty Action and Declaratory Judgment Action. . . . Moreover, Meridian continues to engage in bad faith conduct during the course of this litigation, which provides a further basis for Precision Door's claim.

(Pl.'s Answer Opp'n Def.'s Mot. J. Pleadings at 5-6.) I will look at each of these in turn.

Only the first "additional" act of bad faith alleged by Precision Door, "[Meridian] breaching its duty to defend Precision Door in the Declaratory Judgement [sic] Action," is a distinct act from the initial denial of coverage to Driscoll discussed in the previous section. "The Declaratory Judgment Action," as described in my January 13, 2005 memorandum and order, was filed on June 19, 2003 while the Naulty Action was pending.[9] Pa. Mfr.s' Ass'n Ins. Co., v. Precision Door Co., Inc., No. 0024228, June Term 2003 (Pa. Ct. Com. Pl. May 28, 2004). Meridian initially hired counsel to represent Precision Door. Six months into the Declaratory Judgment Action, approximately December 2003, counsel withdrew from representing Precision

[9] In the Declaratory Judgment Action, Driscoll brought claims against Precision Door and Meridian for failure to defend and indemnify Driscoll and for breach of contract.

Door. Precision Door then hired current counsel at its own expense. The present action was filed approximately three months later on March 19, 2004. Therefore, to the extent that Meridian's failure to defend Precision Door in the Declaratory Judgment Action is a viable bad faith claim, it is not barred by the two-year statute of limitations. The remaining "additional" acts of bad faith are not distinct acts of bad faith for purposes of calculating the statute of limitations.

The second, and third "additional" acts of bad faith alleged by Precision Door, "[Meridian] necessitating the filing of the Joinder Complaint in the Naulty Action," and "necessitating the filing of the Declaratory Judgment Action," do not describe separate conduct by Meridian. Rather, these allegations describe the consequences of Meridian's failure to tender coverage to Driscoll. Precision Door argues that if Meridian had tendered coverage to Driscoll, Driscoll would not have needed to join Precision Door in the original personal injury action, nor would Driscoll have needed to file the Declaratory Judgment Action. These "additional" acts are not "unrelated to and separate from the initial denial of coverage," and, along with the denial of coverage to Driscoll, are barred by the statute of limitations.

The fourth "additional" act of bad faith alleged by Precision Door, "[Meridian] necessitating the filing of this lawsuit; asserting policy limitations and exclusions as the reason(s) to deny coverage to Precision Door without any basis in fact and/or in law," is a confusing combination of allegations related to the first "additional" act of bad faith alleged, "[Meridian] breaching its duty to defend Precision Door in the Declaratory Judgement [sic] Action." Meridian necessitating the filing of the present lawsuit is the alleged result of Meridian's failure to pay attorney's fees and costs to Precision Door in the Declaratory Judgment Action. Asserting

policy limitations to deny coverage to Precision Door can only describe the failure to defend Precision Door in the Declaratory Judgment Action because Meridian defended Precision Door in the Naulty Action. Therefore, the fourth "additional" act of bad faith alleged by Precision Door is subsumed by the first "additional" allegation of bad faith.

The fifth and sixth "additional" acts of bad faith alleged by Precision Door, "[Meridian] relying on the Employer Liability Exclusion when its own coverage supervisor admitted the exclusion had no applicability to the claims," and "refusing to review the PMA competing excess insurance provision despite admitting that it could not apply the Additional Insured Endorsement without comparing the two policies" describe the reasons that Precision Door alleges that Meridian's refusal to tender coverage to Driscoll was in bad faith. These "additional" acts are not "unrelated to and separate from the initial denial of coverage," and are barred by the statute of limitations along with the original denial of coverage to Driscoll.

The seventh "additional" act of bad faith alleged by Precision Door, "[Meridian's] misconduct during the pendency of the Naulty Action and Declaratory Judgment Action," without further specific allegations, is subsumed by the bad faith claim arising from the denial of coverage to Driscoll, which is time-barred, and the bad faith claim arising from the denial of attorney's fees and costs to Precision Door, which is a part of the first "additional" act of bad faith alleged by Precision Door.

Lastly, Precision Door asserts that Meridian continues to engage in bad faith conduct during the course of this litigation. The Pennsylvania Superior Court held that "the conduct of an insurer during the pendency of litigation may be considered as evidence of bad faith under section 8371." O'Donnell v. Allstate Ins. Co., 734 A.2d 901, 907 (Pa. Super. Ct. 1999). To the

extent that Precision Door seeks to introduce bad faith conduct during the course of this litigation as support for its first additional act of bad faith, that evidence is admissible. To the extent that Precision Door seeks to amend its complaint to add a separate claim of bad faith, that claim is dismissed.

Therefore, all of the acts stemming from Meridian's original denial of coverage to Driscoll are time-barred. However, to the extent that Precision Door has a viable bad faith claim against Meridian for failure to tender attorney's fees and costs to Precision Door in the Declaratory Judgment Action,[10] that claim is not barred by the statute of limitations.

III. CONCLUSION

Meridian's motion for judgment on the pleadings is granted in part and denied in part. It is granted as to any part of Precision Door's bad faith claim that stems from Meridian's refusal to defend and indemnify Driscoll. It is denied as to any part of Precision Door's bad faith claim that stems from Meridian's refusal to tender attorney's fees and costs to Precision Door in the Declaratory Judgment Action.

[10] Meridian's reply to Precision Door's response indicates that an insurer has no duty to defend an insured in a declaratory judgment action, but that argument is not before me because Meridian's motion for judgment on the pleadings was limited to the issue of timeliness under the statute of limitations.

ORDER

AND NOW, this _____ day of August, 2005, it is **ORDERED** that defendant's motion for judgment on the pleadings (Docket # 46) is **GRANTED IN PART** and **DENIED IN PART** as more fully set forth in the accompanying explanation.

It is **GRANTED** as to Precision Door's bad faith claims arising from Meridian's failure to defend and indemnify Driscoll.

It is **DENIED** as to Precision Door's bad faith claims arising from Meridian's failure to tender attorney's fees and costs to Precision Door in the Declaratory Judgment Action.

_____
ANITA B. BRODY, J.

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