Ohio Supreme Court's Eddy v. Farmers Decision Clarifies Disclosure Standards in Bad Faith Litigation

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Earlier this year, the Supreme Court of Ohio re-examined what claim file contents are potentially discoverable in an insurance bad faith lawsuit with its decision in *Eddy et al. v. Farmers Property Casualty Insurance Company*, 2026 WL 530293 (Ohio). This update examines how *Eddy* confirmed that *Boone v. Vanliner*, 92 Ohio St.3d 209 (2001) has been abrogated by the Ohio statute governing attorney-client communications and *Eddy*'s suggestion that coverage opinions provided before a coverage denial may be documents protected by privilege.

I. Procedural Background

In 2020, Melissa and Alexis Eddy were involved in a car accident. The Eddys were not at fault and the other driver's insurer ultimately paid the policy limits of the liability auto policy. The Eddys sought additional recovery of $150,000 from their own underinsured motorist (UIM) policy issued by Farmers Property Casualty Insurance Company. Farmers countered with a lower offer. The negotiations stalled, and the Eddys sued Farmers for breach of contract in August 2021. The coverage suit did not assert a claim for bad faith. Ultimately, Farmers paid the Eddys the $150,000 in UIM benefits and issued the payment on April 11, 2022. The coverage suit was dismissed in May 2022.

Later in 2022, the Eddys filed a new lawsuit against Farmers alleging bad faith in the handling of the UIM claim. They alleged that Farmers delayed the resolution of their claim in bad faith, purportedly causing financial burdens and "emotional and mental pain and distress." The bad faith suit also sought punitive damages claiming that Farmers acted recklessly, maliciously, knowingly or intentionally in the delay of the claim payment.

During discovery in the new bad faith suit, the Eddys sought to obtain Farmers' entire claim file. Farmers refused to produce

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documents created after August 27, 2021, the date on which the Eddys filed the initial coverage suit, claiming attorney-client and work-product privilege with respect to defense of the coverage suit. With its objections, Farmers produced a privilege log. The Eddys moved to compel production of the entire file.

The trial court granted the Eddys' motion to compel, requiring that Farmers produce the unredacted claim file up to the UIM payment date. During the hearing, the trial court indicated that it believed an in camera review of the claims-file materials was required, but such inspection never occurred. Following an appeal, the First District Court of Appeals affirmed the trial court's decision on the basis that the Eddys' assertion that Farmers delayed payments in bad faith was a sufficient basis to remove the attorney-client and work-product privilege protections.

Farmers objected to the ruling, arguing that this case is different from *Boone* and that *Boone* has been superseded by O.R.C. § 2317.02.

II. Legal Analysis

In its 2001 ruling in *Boone v. Vanliner*, the Ohio Supreme Court created a common law exception to the attorney-client privilege for insurance bad faith cases. *Boone v. Vanliner,* 91 Ohio St. 3d 209 (2001). *Boone* marked a departure from the traditional protection of attorney-client privilege and work-product doctrine by permitting discovery related to coverage issues and determinations that were created prior to the denial of coverage when an insured alleges a bad faith denial. *Id.* After 2001, courts extended *Boone* in ordering production of all claim file materials created prior to the constructive denial date rather than analyzing each document individually. In response to this expansion of *Boone*, Ohio enacted O.R.C. § 2317.02 to modify the common law. The statute required that parties seeking the waiver of privilege must make a prima facie showing of bad faith and the court should conduct an in camera inspection of any disputed communications. *Eddy* analyzes the statute, *Boone* and both attorney-client and work-product privileges holistically to provide an updated roadmap as to discovery of claim materials where bad faith is alleged.

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Eddy analyzes both the attorney-client communications privilege and the work-product privilege with respect to production of a claim file in a bad faith action. In Ohio, attorney-client privilege is governed by statute O.R.C. § 2317.02. That statute provides an attorney:

> shall not testify … concerning a communication made to the attorney by a client in that relationship or the attorney's advice to a client, *except that if the client is an insurance company*, the attorney may be compelled to testify, subject to an in camera inspection by a court, about communications made by the client to the attorney or by the attorney to the client that are related to the attorney's aiding or furthering an ongoing or future commission of bad faith by the client, if the party seeking disclosure of the communications has made a prima-facie showing of bad faith, fraud, or criminal misconduct by the client.
>
> O.R.C. § 2317.02(A)(2).

In 2007, at the same time the Ohio General Assembly enacted the above, it also made clear that the above provision was to modify existing case law and apply to all communications between an attorney and a client. Contrary to the insureds' argument that the statute solely applies to attorney testimony, *Eddy* reinforces that the statute applies to both documentary and testimonial evidence. Additionally, the statute requires an in camera inspection before attorney-client communications related to a bad faith claim may be disclosed. Therefore, the statute supersedes *Boone* when applying attorney-client privilege.

Pursuant to the statute, an insured seeking privileged communications must first make a prima facie showing of bad faith. The trial court must then conduct an in camera review to determine if the documents relate to the attorney aiding the insurer's alleged misconduct. This replaces the more lenient *Boone* standard.

As far as the work-product doctrine privilege, the Ohio Supreme Court's ruling reinforces that such materials may be disclosed only upon a showing of "good cause" per Civ. R. 26(B)(4). The "good cause" requirement is met only when the work product is directly at

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issue in the case, the need for the information is compelling, and the evidence cannot be obtained elsewhere. *Eddy*, ¶ 34.

Here, the Ohio Supreme Court provides a straightforward analysis. Questions of attorney-client privilege are to be resolved under O.R.C. § 2317.92(A)(2). Privileged documents may only be disclosed upon a prima facie showing of bad faith and then *only* if they are related to the attorney's aiding or furthering an ongoing or future commission of bad faith. This is to be determined by an in camera inspection by the court. This is narrower than *Boone*. Questions of privileged work-product documents are only disclosed upon a showing of "good cause" as dictated by Civ R. 26(B)(4).

III. Impact Going Forward

The *Eddy* decision aligns with advice that FBT Gibbons has historically provided its insurance clients with respect to bad faith discovery. In sum, any documents to or from an insurer's attorney prior to a coverage denial or bad faith litigation are potentially discoverable. However, coverage opinions rendered prior to a denial fall within the scope of attorney-client privilege and the attorney work-product doctrine. *Eddy* provides insurers with a narrower analysis of these issues and makes clear that *Boone* is no longer applicable.

Eddy is clear. An insured must make a prima facie showing of bad faith or misconduct before an in camera review will even be considered. Without such a prima facie showing, any documents containing attorney-client communications are not subject to disclosure. And even if the insured makes a prima facie showing of bad faith, then an in camera review with the court must take place before any production. Documents protected by the work-product privilege can only be disclosed upon a showing of good cause.

Eddy does not require any change to the status quo with respect to bad faith discovery, but provides insurers with a strong argument to protect privileged documents.

If you have concerns or need further clarification, our team is ready to assist. Please contact the authors or an attorney with FBT

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Gibbons' Insurance Coverage and Bad Faith practice.

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