

## Is Presence Or Absence Of Good Faith A Genuine Issue for Trial

<b>Reported Case:</b>	<b>Zurich v. Paveco Road Builders</b>
<b>Citation:</b>	2009 CarswellOnt 1543
<b>At Issue:</b>	Whether the presence or absence of good faith is a genuine issue for trial.
<b>The Court:</b>	Ontario Superior Court of Justice
<b>Judgment Rendered:</b>	March 23, 2009

**Factual Summary:** The defendants, Paveco and Sanan, were contractors who bid on and carried out contracts for a variety of municipalities around and including the City of Toronto. The principal of both corporations was the defendant, Michael Crupi. Some of the contracts that Sanan and Paveco entered into required they provide bonds to protect municipalities from claims of subcontractors, suppliers and relevant trade unions for labour and material costs. In certain cases, performance bonds were required to protect municipalities from any direct costs that would arise in circumstances where the contracts were not completed. The plaintiff, Zurich, was the surety of the bonds. To protect itself should there be successful claims on any of the bonds, Zurich required an indemnity agreement under which Sanan, Paveco, and Michael Crupi agreed to indemnify Zurich for any payments it was required to make under the bonds. Zurich made payments under the bonds and brought an action against the defendants to recover. When the action was defended, Zurich then brought a motion for summary judgment. The defendants fought back alleging Zurich or its adjuster “acted with an absence of good faith in processing claims made when bonds it had executed where called on”.

**Decision:** Motion denied. Good faith is, at its core, a subjective concept. Ultimately, it resides in the mind of the individual. It is unlikely that its absence will be freely acknowledged. An inquiry into the presence or absence of good faith can encompass objective considerations, but the subjective nature of the question underscores the care that needs to be taken in deciding that there is no genuine issue for trial.