

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

PASQUALE COLLETTI	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 98-5886
LIFE INVESTORS INSURANCE	:	
COMPANY OF AMERICA, et al.	:	
Defendant.	:	

**MEMORANDUM**

BUCKWALTER, J.

April 6, 2000

Presently before this Court in this breach of contract/bad faith action is Defendants Life Investors Insurance Company of America, et al's ("Defendants") Motion for Summary Judgment. For the reasons set forth below, Defendants' Motion will be granted in part, and denied in part.

**I. BACKGROUND**<sup>1</sup>

Plaintiff Pasquale A. Colletti ("Plaintiff") and his wife, Alma Colletti ("Decedent"), now deceased, entered into a contract for accidental death benefits (the "Policy") with Defendant Amex Life Assurance Company in 1988. Since then, Plaintiff has met all of the obligations as required by the Policy. Prior to the accident, Life Investors Insurance Company of America ("Insurer") assumed the obligations owed to Plaintiff and Decedent under the Policy.

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1. The following facts are based on the evidence of record viewed in the light most favorable to Plaintiff, the non-moving party, as required when considering a motion for summary judgment. Carnegie Mellon Univ. v. Schwartz, 105 F.3d 863, 865 (3d Cir. 1997).

On September 9, 1997, Plaintiff drove Decedent home from her renal dialysis treatment. When they returned home, Decedent accidentally tripped and fell on the doorstep and suffered a severe, eight-inch laceration on her right knee. She did not lose consciousness and did not complain of dizziness or chest pain prior to or after the fall. Decedent was transported to Montgomery Hospital and remained conscious when she arrived the Emergency Room.

At the Emergency Room, it was decided that the severity of the laceration required a surgical procedure to irrigate, debride and suture the wound. Decedent was brought to an operating room where Dr. John Nevulis performed the surgery to her right knee. As part of the surgery procedure, drains were sutured under Decedent's skin to allow for draining after the surgery.

Prior to Decedent's being brought to the surgery recovery room, she suffered myocardial and respiratory problems. In the transfer from the operating room to the surgery recovery room, Decedent began to suffer from cardiac arrest and doctors were called to the recovery room to perform a cardiac code on her.

Over the next two days, Decedent suffered multiple cardiac arrests starting with the cardiac problems in the transfer from surgery to the recovery room. She was treated for the initial respiratory and cardiac arrest in the surgery room recovery room, but was later transferred to the Cardiac Care Unit. Decedent was never fully awake and alert after surgery, nor did she ever fully recover from the knee surgery. Only two days after her fall, Decedent died as doctors were attempting to resolve the cardiac arrest problem.

After his wife's death, Plaintiff contacted Insurer to make a claim for accidental death benefits under the Policy. The Policy states, in pertinent part, that "If, as a result of injury,

a covered person dies within 120 days from the date of the accident which caused the injury and the accident occurs while the person is insured under this Benefit, we will pay . . . the Loss of Life Indemnity . . . .”

The Insurer investigated the claim, the claims representative assigned the file to Kirsten Braun (“Braun”), who in turn, requested and received Decedent’s medical records. After a review of the medical records, and the terms and exclusions in the Policy, Braun denied Decedent’s accidental death benefits claim because she believed that Decedent was excluded under Subparagraph 3 of the General Exclusions of the Policy and under Subparagraph 3 of the “Injury” definition. Subparagraph 3 of the General Exclusions states that “[t]he Policy does not insure for any loss resulting from any injury caused or contributed to by, or as a consequence of any of the following causes: . . . (3) any sickness or infirmity unless the treatment of such is required as the direct result of an accidental bodily injury . . . .” Subparagraph 3 of the Injury definition states that “‘Injury’ means bodily injury of a Covered Person which: . . . (3) is due directly and independently of all other causes . . . .”

## **II. STANDARD**

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). The moving party has the burden of demonstrating the absence of any genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). A factual dispute is “material” if it might affect the outcome of the case under the

governing substantive law. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

Additionally, an issue is “genuine” “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Id.

On summary judgment, it is not the court’s role to weigh the disputed evidence and decide which is more probative; rather, the court must consider the evidence of the non-moving party as true, drawing all justifiable inferences arising from the evidence in favor of the non-moving party. See id. at 255. If a conflict arises between the evidence presented by both sides, the court must accept as true the allegations of the non-moving party. See id.

If the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party to “set forth specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). In doing so, the non-moving party must “do more than simply show that there is some metaphysical doubt as to the material facts.” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). If the evidence of the non-moving party is “merely colorable,” or is “not significantly probative,” summary judgment may be granted. Anderson, 477 U.S. at 249-50.

### **III. DISCUSSION**

The rules regarding the interpretation of insurance policies are well established. See Gatti v. Hanover Ins. Co., 601 F.Supp. 210, 211 (E.D.Pa.), aff’d, 774 F.2d 1151 (3d Cir.1985). Since the policy is a contract, the court must ascertain the intent of the policy as manifested in the language of the agreement. Standard Venetian Blind Co. v. American Empire Ins. Co., 503 Pa. 300, 469 A.2d 563, 566 (Pa.1983). The policy is to be viewed in its entirety,

with terms given their plain and ordinary meaning. Gatti, 601 F.Supp. at 211. See also Curbee, Ltd. v. Rhubart, 406 Pa.Super. 505, 594 A.2d 733, 735 (Pa.Super.Ct.1991) (language of the policy should not be tortured to create an ambiguity). Since the policy is normally drafted by the insurer, any ambiguities must be resolved in favor of the insured. Gatti, 601 F.Supp. at 211; Standard Venetian Blind, 496 A.2d at 566.

Defendants contend that Plaintiff's claim must fail for the following reasons: (1) Plaintiff has not offered any evidence to show that Decedent's leg injury caused her death; (2) Decedent's death was not caused by her leg injury; and (3) Decedent's death was excluded from the coverage. Each argument will be addressed seriatim.

**A. Counts I - III -- Breach of Contract:**

Defendants base their Motion on the premise that Plaintiff has failed to provide evidence to support his claim that Decedent's death was caused by the laceration to her leg.<sup>2</sup> However, Plaintiff provided excerpts from the deposition testimony of Dr. William Kettelkamp which states, in pertinent part, the following:

Q: So is it fair to say that the right knee laceration and the stress of the surgery were at least a contributing factor to her cardiac arrest, sir?

A: They may have been.

Q: Doctor, it's certainly fair to say that Mrs. Colletti's right knee laceration was the cause for her to undergo the surgery and the anaesthesia that day, is that true, sir?

A: That is true.

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2. There is a dispute as to whether or not the Policy requires that Decedent's fall be the sole cause of her death, however, that dispute is resolved infra. Therefore, at this stage in the discussion, Plaintiff's burden is only to provide evidence disputing Defendant's claim that the fall was not the cause of death.

Therefore, it seems apparent that Plaintiff has provided this Court with medical testimony that Decedent's death was, at least partially, caused by her knee laceration.

Defendants contend that Plaintiff may not recover accidental death benefits because the Policy only provides coverage for deaths caused by accidental injury. The Policy explicitly states that “[i]f, as a result of injury, a Covered Person dies within 120 days from the date of the accident . . . we will pay . . .” benefits. There is no dispute that the accident that Decedent suffered was the fall that caused her knee laceration. The dispute between the parties is whether or not that accident caused her death. Defendants strongly contend that it did not, and claim that Plaintiff failed to provide evidence that Decedent's death was caused solely by her fall. As stated above, Plaintiff has provided medical deposition testimony that suggests that the cause of death may have been caused, at least in part, by the fall.

Finally, and most importantly, Defendants contend that Decedent's death was excluded from the coverage. In order to rule on this issue, it is necessary to revisit the language contained within the policy.

The language of the Policy at issue unambiguously defines injury as a bodily injury of a Covered Person which “is due, directly and independently of all other causes, to such accidental bodily injury.”<sup>3</sup> Clearly, the bodily injury that is attributed to Decedent is the

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3. Neither party addresses the applicability of the wording “to such accidental bodily injury.” Again, the Policy defines “injury” as “bodily injury of a Covered Person which: (1) is caused by accident . . . ; and (2) results in loss insured by the Policy; and (3) is due, directly and independently of all other causes, to such accidental injury.” The parties dispute the meaning of the third element of the definition. As the dispute focuses on whether or not the definition requires that the injury be the sole cause of the loss, that too will be the Court's focus. Furthermore, while there seems to exist an ambiguity in the “to such accidental injury” wording, I must construe that ambiguity in favor of the Plaintiff, and therefore, will disregard it for purposes of this analysis.

laceration to her leg, and her laceration was the direct and independent result of her fall.

Therefore, unless the Policy explicitly excludes Plaintiff's type of claim, his claim must survive.

The General Exclusions section of the Policy provides that the Policy does not insure for any injury "caused or contributed to by, as a consequence of . . . any sickness or infirmity unless the treatment of such is required as the direct result of an accidental bodily injury." It is undisputed that Decedent's injury (i.e., the laceration) was not caused or contributed to by anything other than a loss of footing while walking on the steps. Therefore, this exclusion cannot possibly apply. Defendants cite to Weiner v. Metropolitan Life Ins. Co., 416 F.Supp. 551 (E.D.Pa. 1976), where there benefits were not provided where the evidence showed that the insured's death was caused, not only by a fall, but by continued heart disease. However, the policy at issue in Weiner did not contain the same provision as that in the Policy at issue. In Weiner, the policy contained language that excluded coverage for death that was caused or contributed to by "[d]isease, or bodily or mental infirmity." Plaintiff's Policy contains language that differs from the Weiner policy in that it excludes coverage for any loss (death) resulting from any injury (Decedent's laceration) caused or contributed to by, or as a consequence of "any sickness or infirmity unless the treatment of such is required as the direct result of an accidental bodily injury." Clearly, the wording of the Policy at issue here is different from that in Weiner, in that, it requires that the injury, and not the death be caused or contributed to by a sickness or infirmity. In Weiner, the exclusion applied because the death was caused or contributed to by the plaintiff's heart problems, and thus the court found in favor of the insurance carrier. However, because Decedent's leg injury was not caused by any sickness or infirmity, Defendants' Policy does not provide the same exclusion and therefore, Plaintiff must prevail.

## **B. Count IV -- Bad Faith**

A statutory remedy exists for bad faith on the part of insurers pursuant to 42 Pa.

C.S.A. § 8371. The section provides:

In an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith toward the insured, the court may take all of the following actions:

- (1) Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%.
- (2) Award punitive damages against the insurer.
- (3) Assess court costs and attorney fees against the insurer.

In the insurance context, the term bad faith has acquired a particular meaning:

"Bad faith" on part of insurer is any frivolous or unfounded refusal to pay proceeds of a policy; it is not necessary that such refusal be fraudulent. For purposes of an action against an insurer for failure to pay a claim, such conduct imports a dishonest purpose and means a breach of a known duty (i.e., good faith and fair dealing), through some motive of self-interest or ill will; mere negligence or bad judgment is not bad faith. See Terletsky v. Prudential Property and Cas. Ins. Co., 649 A.2d 680, 688.

In order to prevail, the plaintiff must demonstrate "(1) that the insurer lacked a reasonable basis for denying benefits; and (2) that the insurer knew or recklessly disregarded its lack of reasonable basis." Klinger v. State Farm Mut. Auto. Ins. Co., 115 F.3d 230, 233 (3d Cir.1997). The plaintiff must demonstrate bad faith by the clear and convincing standard. See Quaciari v. Allstate Ins. Co., 998 F.Supp. 578, 581 (E.D. Pa. 1998).

Defendants contend that Plaintiff has failed to provide any evidence of his bad faith claim. Defendants assert that the basis for denying Plaintiff's claim was a determination that the insured's life-long kidney and heart diseases caused and/or contributed to her death.

Furthermore, Defendants contend that Plaintiff has failed to provide any evidence to the contrary, and therefore, cannot recover bad faith damages.

Plaintiff's bad faith claim stems from his belief that Defendants did not simply misinterpret the Policy, but rather understood it and disregarded its meaning and maliciously denied Plaintiff's claim. This, however, does not seem to be the case. Defendants interpreted the Policy to mean that if Decedent's death was not solely caused by her accident, then she did not qualify for accidental death benefits. Plaintiff provides nothing more than evidence of a possible misinterpretation of the Policy. However, as with any bad faith claim, Plaintiff must provide evidence that goes beyond mere negligence or bad judgment. Notwithstanding, in light of the facts of this case, this Court believes that Defendants also had a reasonable basis for denying Plaintiff's claim.<sup>4</sup> As such, Defendants' Motion, as it pertains to Plaintiff's bad faith claim must fail.

An appropriate order follows.

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4. Plaintiff acknowledges that Decedent's pre-existing conditions played a role in her ultimate death.

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**ORDER**

AND NOW, this 6th day of April, 2000, upon consideration of Defendants Life Investors Insurance Company of America, et al.'s Motion for Summary Judgment, and Plaintiff Pasquale Colletti's response thereto, it is hereby ORDERED and DECREED that said Motion is DENIED in part, and GRANTED in part.

It is further ORDERED and DECREED that Plaintiff's Breach of Contract claims (Counts One, Two and Three) survive this Motion, however, Plaintiff's Bad Faith claim (Count Four) is DISMISSED.

BY THE COURT:

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RONALD L. BUCKWALTER, J.