

BACKGROUND

This action stems from defendant insurer's decision not to renew several commercial insurance policies it had issued to plaintiff. According to plaintiff's amended complaint, the facts are as follows.³

Plaintiff, as the insured, entered into three commercial insurance policies with defendant insurer. Amend. Compl. ¶ 4. The policies were for a one-year period and were set to expire on May 1, 2001 unless defendant chose to renew the policies. Amend. Compl., Exh. A ("Commercial Property," "Commercial Automobile," and "Garage Coverage" insurance policies). During the year, plaintiff alleges that defendant engaged in numerous wrongful actions.

Plaintiff's initial complaint is that defendant wrongfully disputed an automobile claim. Amend. Compl. ¶ 6-9. In April or May 2000, a motor vehicle, owned by plaintiff and insured by defendant, sustained severe damages such that it was found to be beyond repair. *Id.* at ¶ 6. Plaintiff promptly reported a claim under its policy. *Id.* at ¶ 6. An independent appraiser, hired by defendant, assessed the value of the claim to be \$3,500. *Id.* at ¶ 7. Defendant offered to pay plaintiff \$3,000. *Id.* at ¶ 8. Plaintiff protested the value and two months later, defendant agreed to pay the full \$3,500. *Id.* at ¶ 9.

Plaintiff's second complaint is that defendant wrongfully issued a credit delinquency report against plaintiff. Soon after the dispute over the automobile claim, defendant informed plaintiff that it wanted to conduct a composite audit of plaintiff's business. *Id.* at ¶ 10. Although the audit

³ Because this is a motion to dismiss, the facts alleged in plaintiff's complaint are to be believed. See *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996) (citation omitted) (when ruling on a motion to dismiss for failure to state a claim upon which relief may be granted, the court must accept as true all well-pleaded allegations of fact in the plaintiff's complaint, and any reasonable inferences that may be drawn therefrom, and must determine whether "under any reasonable reading of the pleadings, the plaintiff may be entitled to relief").

indicated that defendant actually owed plaintiff \$730, defendant reported plaintiff as a delinquent payor to the credit reporting agency of Dun & Bradstreet Receivable Management Services. Id. at ¶ 11-12. This reporting resulted in an unfavorable credit score for plaintiff and the initiation of collection remedies against plaintiff. Id. at ¶ 13; Amend. Compl., Exh. B (Sept. 11, 2000 letter from Dun & Bradstreet Receivable Management Services to plaintiff seeking collection). As soon as plaintiff was notified of the unfavorable credit rating, it contacted defendant in order to make defendant aware of its error. Amend. Compl. ¶ 15. Defendant eventually acknowledged the error both orally and in a letter to plaintiff dated October 13, 2000. Id. at ¶ 16; Amend. Compl., Exh. C (Oct. 13, 2000 letter from Michael Kronander of defendant corporation to plaintiff). Defendant also contacted the collection agency and told it to cease its collection efforts against plaintiff. Id. at ¶ 17; Amend. Compl., Exh. D (Sept. 27, 2000 letter from Danny Garvin of defendant corporation to plaintiff).

Plaintiff's third complaint is that defendant falsely accused it of refusing to submit to a business inspection. According to plaintiff, as a justification for its decision not to renew the insurance policies, defendant stated that plaintiff refused to submit to a business audit. Plaintiff, however, was never informed by defendant of its desire to conduct an inspection. Id. at ¶ 20. Plaintiff also asserts that defendant acknowledged it had never attempted to contact plaintiff about the inspection. Id. at ¶ 21. Furthermore, plaintiff claims that defendant did not contact the inspection service until after it issued its notice of non-renewal to plaintiff. Id. at ¶ 22.

On February 19 and 20, 2001, defendant notified plaintiff, in writing, of its decision not to renew the insurance policies. Id. at ¶ 18; Amend. Compl., Exh. E (Notices of Non-Renewal). The reason given in the notice for the decision not to renew was "material failure to comply with policy terms, provisions or contractual duties." Id. Plaintiff, however, indicates that the unspoken reason

underlying defendant's decision not to renew was the unfavorable credit rating and the refusal to submit to a business inspection.

Based on the aforementioned events, plaintiff filed the instant complaint against defendant in the Court of Common Pleas in Berks County, which defendant properly removed to federal court. In this action, plaintiff alleges that defendant breached its contractual duty of good faith and fair dealing and acted in bad faith in violation of 42 PA. CONS. STAT. § 8371 (West 1998). Presently before the court is defendant's motion to dismiss both of plaintiff's claims pursuant to Rule 12(b)(6).

STANDARD OF REVIEW

In ruling on a motion to dismiss for failure to state a claim upon which relief may be granted, the court must accept as true all well-pleaded allegations of fact in the plaintiff's complaint, and any reasonable inferences that may be drawn therefrom, and must determine whether "under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996) (citations omitted). Claims should be dismissed under Rule 12(b)(6) only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). But a court need not credit a complaint's "bald assertions" or "legal conclusions" when deciding a motion to dismiss. In re Burlington Coat Factory Securities Litigation, 114 F.3d 1410, 1429-30 (3d Cir.1997) (citations omitted).

DISCUSSION

Defendant argues that the allegations set forth in plaintiff's complaint--*i.e.*, for breach of the contractual duty of good faith and fair dealing and for statutory bad faith--should be dismissed pursuant to Rule 12(b)(6). The court will review each claim separately.

I. Breach of the Implied Covenant of Good Faith and Fair Dealing

In Count I of its amended complaint, plaintiff asserts a claim for breach of the implied covenant of good faith and fair dealing, also known as the contractual duty of good faith.⁴

Pennsylvania courts have long recognized that an insurer owes a contractual duty of good faith and fair dealing to its insured. Fedas v. Insurance Co. of State of Pennsylvania, 151 A. 285, 286 (Pa. 1930); see also Dercoli v. Pennsylvania National Mutual Ins. Co., 554 A.2d 906, 909 (Pa. 1989); Gray v. Nationwide Mutual Ins. Co., 223 A.2d 8, 11 (Pa. 1966); RESTATEMENT (SECOND) OF CONTRACTS § 205 (1981). An insurance company breaches the covenant of good faith if it fails to investigate claims in a fair and objective manner such that it may deny an insured's claim only if good cause exists. Parasco v. Pacific Indemnity Co., 920 F. Supp. 647, 656 n. 6 (E.D. Pa. 1996) (citing Diamon v. Penn Mutual Fire Ins. Co., 372 A.2d 1218, 1226 (Pa. Super. Ct. 1977)); Romano v. Nationwide Mutual Fire Ins. Co., 646 A.2d 1228, 1231 (Pa. Super. Ct. 1994). It also breaches the covenant if it fails to inform the insured, in certain circumstances,⁵ of all benefits and coverage

⁴ Noting that plaintiff has already amended its complaint once, defendant argues that plaintiff cannot use a brief in response to a motion to dismiss to amend its complaint again. Mot. to Dis. Pl.'s Amend. Compl. of Def. Pursuant to Rule 12(b)(6) at 2. Defendant is correct in stating that plaintiff altered its articulation of its breach of contract claim. While the complaint alleged a claim for breach of contract, Amend. Compl. ¶¶ 1-27, plaintiff's response to defendant's motion to dismiss re-characterized the breach of contract claim in terms of the implied covenant of good faith and fair dealing, Memo. of Berks Mutual Leasing. Corp., *Contra* Def.'s Mot. to Dis. Pl.'s Amend. Compl. Pursuant to Rule 12(b)(6) at 2-3. There is, however, no need to amend plaintiff's complaint as "the implied covenant of good faith is a principle of contract interpretation typically used in a breach of contract claim and is not a separate cause of action." Academy Industries, Inc. v. PNC Bank, N.A., 2002 WL 1472342, at * 9 (Pa. Ct. Com. Pl. May 20, 2002) (citation omitted). Thus, I find no merit to defendant's objection. Moreover, any dismissal on this basis would be without prejudice to the right to amend and thus, a needless exercise.

⁵ The Pennsylvania Supreme Court has held that an insurer only has a good faith duty to inform an insured of all benefits and coverage that may be available when two conditions are present: (1) when there has been some type of purposeful misrepresentation; and (2) when the insurer voluntarily assumes to act as the insured's counsel. Miller v. Keystone Ins. Co., 636 A.2d

that may be available and of any potential adverse interest pertaining to the insurer's liability under the applicable policy. Miller v. Keystone Ins. Co., 636 A.2d 1109, 1112-1113 (Pa. 1994). In addition, any party to a contract, whether an insurance company or not, breaches the covenant of good faith if it evades the spirit of the bargain, acts with a lack of diligence, willfully renders imperfect performance, abuses the power to specify terms, interferes with or fails to cooperate in the other party's performance, or exercises contractually authorized discretion in an unreasonable manner. Somers v. Somers, 613 A.2d 1211, 1213 (Pa. Super. Ct. 1992) (citing RESTATEMENT (SECOND) OF CONTRACTS § 205 cmt. d (1981)); Burke v. Daughters of the Most Holy Redeemer, Inc., 26 A.2d 460, 461 (Pa. 1942).

Applying the above principles to the instant case, I find that plaintiff's allegations are sufficient to survive a motion to dismiss. Plaintiff alleges that defendant breached its covenant of good faith in several ways: by failing to negotiate in good faith with plaintiff with regard to the April/May 2000 automobile claim; by failing to cooperate with plaintiff in correcting the credit reporting error; by alleging falsely that plaintiff refused to accommodate defendant's request for a business audit; and, ultimately, by not renewing the insurance policy. Amend. Compl. ¶¶ 1-27; Memo. of Berks Mutual Leasing. Corp., *Contra* Def.'s Mot. to Dis. Pl's Amend. Compl. Pursuant to Rule 12(b)(6) 3-4. Such conduct, if proved, may reflect a lack of diligence, a possible willful rendering of imperfect performance, and a claim for the exercise of contractually authorized discretion in an unreasonable manner. Thus, I find defendant's alleged conduct in the instant case to be factually similar to the examples of conduct found to be a breach of the covenant of good faith. Accordingly, I conclude that defendant fails to show beyond doubt that plaintiff could prove

1109, 1112-1113 (Pa. 1994).

no set of facts in support of its claim which would entitle it to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). As such, I will deny defendant's motion to dismiss this claim.⁶

II. Bad Faith

In Count II of its amended complaint, plaintiff alleges that defendant acted in bad faith in violation of 42 PA. CONS. STAT. ANN. § 8371. Specifically, plaintiff asserts that defendant acted in bad faith by using “*its own wrongdoing* as a pretext for refusing to renew Plaintiff's [insurance] policies.” Memo. of Berks Mutual Leasing. Corp., *Contra* Def.'s Mot. to Dis. Pl.'s Amend. Compl. Pursuant to FRCP 12(b)(6) at 5. By wrongdoing, plaintiff appears to mean that defendant acted in bad faith by failing to cooperate with plaintiff in correcting the credit reporting error; by

⁶ Alternatively, defendant asserts that plaintiff's claim for breach of the covenant of good faith must fail because “Pennsylvania law does not allow for a separate cause of action for breach of an implied duty of good faith absent a breach of the underlying contract.” Mot. to Dis. Pl.'s Amend. Compl. of Def. Pursuant to Rule 12(b)(6) at 2 (citing Donahue v. Federal Express Corp., 753 A.2d 238, 242 (Pa. Super. Ct. 2000), Kaplan v. Cablevision of Pennsylvania, Inc., 671 A.2d 716, 721-722 (Pa. Super. Ct. 1996), and Pennsylvania Chiropractic Assoc. v. Independence Blue Cross, 2001 WL 1807781 at *7 (Pa. Ct. Com. Pl. Jul. 16, 2001)).

While it is not entirely clear to me that this proposition is an accurate statement of the law, I conclude that, if it is, plaintiff satisfies it. The purpose of an insurance contract is to provide insurance. More broadly, an insured contracts with an insurance company to provide insurance coverage to it in the event of injury or damage. The expectation in such an arrangement is that the insurance company will act in the insured's best interest at all times. Keefe v. Prudential Property and Casualty Ins. Co., 203 F.3d 218, 227 (3d Cir. 2000) (citing United States Fire Ins. Co. v. Royal Ins. Co., 759 F.2d 306, 311 (3d Cir. 1985) which was citing Pennsylvania Supreme Court case of Cowden v. Aetna Casualty and Surety Co., 134 A.2d 223 (1957)). As such, any conduct by the insurance company that interferes with its service to or protection of the insured constitutes a breach of the underlying contract. This is true regardless of whether the insurance company breaches any express provision of the insurance agreement.

Applying these principles to the allegations in the complaint, it becomes apparent that, if they are proved, defendant may have breached the underlying insurance contract by failing to negotiate in good faith with plaintiff with regard to an automobile claim, by failing to cooperate with plaintiff in correcting the credit reporting error, and by alleging falsely that plaintiff refused to accommodate defendant's request for a business audit. These actions interfered with defendant's ability to provide service and/or protection to plaintiff. These actions also gutted plaintiff's expectation that defendant was acting in plaintiff's best interest. Based on these principles, I conclude that plaintiff adequately alleges a breach of the underlying contract.

falsely accusing plaintiff of refusing to submit to a business audit; and, ultimately, by basing its decision not to renew plaintiff's insurance policy on the false credit report and refusal to submit to a business audit. See Amend. Compl. ¶¶ 1-27, 30 (describing conduct by defendant). Defendant argues that Section 8371 does not protect against such conduct because it only proscribes bad faith conduct by the insured that arises out of the denial of a claim or benefit. Defendant, thus, concludes, that because plaintiff does not allege any denial of benefits, plaintiff has no cause of action under Section 8371. In response, plaintiff urges the court to adopt a broader interpretation of the statute. Plaintiff believes that Section 8371 applies whenever an insurer acts in bad faith during any part of the insurance relationship. Thus, the issue is one of statutory interpretation. After reviewing the party's briefs, the statute's plain language, its legislative history and Pennsylvania case law interpreting the statute, I agree with defendant that Section 8371 is limited to causes of action arising out of the denial of a claim or benefit.

Section 8371 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.

42 PA. CONS. STAT. ANN. § 8371. Read as a whole, the statute appears to focus on the handling and payment of claims. Kurtz v. American Motorists Ins. Co., 1997 WL 117008, at *3 (E.D. Pa. Mar. 12, 1997) (stating that statute's plain language "underscores the conclusion that the statute's provisions make sense only in the claim handling and payment context"). Furthermore, while the

statute does not define the term “bad faith,” the term has acquired a peculiar⁷ and universally-accepted meaning in the insurance context:

Insurance. "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.

Polselli v. Nationwide Mutual Fire Ins. Co., 23 F.3d 747, 751 (3d Cir.1994) (citing to Black's Law Dictionary 139 (6th ed. 1990)) (emphasis added); see also Terletsky v. Prudential Prop. & Casualty Ins. Co., 649 A.2d 680, 688 (Pa. Super. Ct. 1994) (citing also to Black's Law Dictionary 139 (6th ed.1990)). Adoption of this definition by the federal and state courts interpreting the statute indicates that Section 8371 is limited to those instances where an insurer wrongfully denies a claim or refuses to pay a benefit.

In addition, courts have found that the statute’s legislative history and its underlying objectives support the interpretation that Section 8371 is limited to causes of action arising out of the denial or improper handling of a claim. The Pennsylvania legislature enacted Section 8371 in response to the Pennsylvania Supreme Court’s decision in D’Ambrosio v. Pennsylvania Nat’l Mutual Casualty Ins. Co., 431 A.2d 966 (Pa. 1981). In that case, the plaintiff filed a claim against his insurance company for bad faith conduct in failing to pay a claim for damage to his property. Id. at 968. The state high court ruled that Pennsylvania common law did not provide a tort cause of action for bad faith. Id. at 970. In response, the Pennsylvania legislature enacted Section 8371 in

⁷ The Pennsylvania rules of statutory construction provide that “words and phrases . . . [that] have acquired a peculiar and appropriate meaning . . . shall be construed according to such peculiar and appropriate meaning or definition.” 1 PA. CONS. STAT. ANN. § 1903 (West 1995). Thus, because the term “bad faith” has acquired a peculiar meaning in the insurance context, courts have adopted this meaning.

1990. PolSELLI, 23 F.3d at 750. Given this history, courts have found that the “Pennsylvania legislature intended this section to protect an insured from *bad faith denials of coverage*.” General Accident Ins. Co. v. Federal Kemper Ins. Co., 682 A.2d 819, 822 (Pa. Super. Ct. 1996) (emphasis added). Furthermore, courts have stated that the purpose underlying Section 8371 “was to provide a statutory remedy to an insured when the insurer *denied benefits* in bad faith.” Id. (emphasis added); see also Kurtz, 1997 WL 117008, at *3 (“It is reasonable to infer that in enacting section 8371, the legislature intended to protect policy-holders from bad faith conduct associated with the handling and payment of claims.”). The historical circumstances surrounding enactment of Section 8371 and the stated goals of the statute support the proposition that Section 8371 is limited to causes of action arising out of the denial of a claim or benefit.

In further support of this proposition is the test adopted by the Pennsylvania Superior Court to determine what constitutes bad faith under the statute. In Terletsky v. Prudential Prop. & Cas. Ins. Co., a Pennsylvania appellate court set out the prima facie case for bad faith causes of action. 649 A.2d at 688. It held that to state a claim under Section 8371, a plaintiff must “show that defendant did not have a reasonable basis for *denying benefits* under the policy and that defendant knew or recklessly disregarded its lack of reasonable basis in *denying the claim*.” Id. at 688 (emphasis added); see also Klinger v. State Farm Mutual Automobile Ins. Co., 115 F.3d 230, 233 (3d Cir. 1997) (recognizing that Terletsky established the test for Section 8371 causes of action). The language chosen by the court in Terletsky “plainly focuses upon a denial of benefits under an insurance policy.” Belmont Holding Corp. v. Unicare Life & Health Ins. Co., 1999 WL 124389, at *2 (E.D. Pa. Feb. 5, 1999). Both elements require that a claim or benefit payment of some sort be in dispute. This focus on the denial of claims further indicates that Pennsylvania courts construe Section 8371 to be limited to bad faith conduct in the claims handling context.

Based on the above review of the parties' arguments, the statute's plain language, its legislative history and federal and state court interpretations of the statute, I am persuaded that Section 8371 is limited to causes of actions arising out of the bad faith handling or payment of claims and does not apply to conduct unrelated to the denial of a claim.⁸ Applying this

⁸ Despite the strong support, as demonstrated above, for the proposition that Section 8371 is limited to causes of action arising out of the denial of a claim, plaintiff urges the court to adopt a broader definition of the statute. Under plaintiff's view, Section 8371 would prohibit any bad faith conduct, whether claims-related or otherwise, on the part of the insurer. Plaintiff relies primarily on Coyne v. Allstate Ins. Co., 771 F. Supp. 673 (E.D. Pa. 1991) and The Frog, Switch & Manufacturing Co., Inc. v. The Travelers Ins. Co., 193 F.3d 742 (3d Cir. 1999) for this proposition.

There are several problems, however, with plaintiff's reliance on these cases. First, plaintiff fails to note that the language it attributes to the court in Coyne is actually text from the Pennsylvania Unfair Insurance Practices Act ("UIPA"), being quoted by the court. Furthermore, the relevance of the UIPA to bad faith claims under Section 8371 has been questioned in our circuit. See Dinner v. United Services Auto. Assoc. Casualty Ins. Co., 2002 WL 336959 at *4 (3d Cir. Feb. 27, 2002) ("[A] violation of the UIPA . . . is not a per se violation of the bad faith standard and that it is only the Terletsky standard itself that allows one to determine whether a violation of the former is of any relevance in a case . . ."). Second, despite plaintiff's claim that Coyne stands for a broader interpretation of Section 8371, the basis of the bad faith cause of action in that case was a denial of claim. See id. at 675 (stating in fact section that defendant denied coverage of a claim made by plaintiff for property damage). Third, the court in Coyne adopted the same claims-oriented definition of bad faith as the Third Circuit did in PolSELLI. See id. at 677 (adopting definition of insurance bad faith from sixth edition of Black's Law Dictionary). Fourth, Coyne was decided without the benefit of the Third Circuit's decision in PolSELLI and without the benefit of the Pennsylvania appellate court's decision in Terletsky. As such, Coyne is a fragile basis on which to go against the weight of the authority supporting the proposition that Section 8371 is limited to claims-oriented causes of action. Finally, I find plaintiff's reliance on Frog, Switch to be misplaced. The reference to the scope of Section 8371 in Frog, Switch is located in a footnote and thus is dictum. Furthermore, the footnote in Frog, Switch cites to Coyne for support. As shown above, Coyne is unconvincing. For the same reasons, plaintiff's reliance on Frog, Switch is unconvincing.

Accordingly, I find plaintiff's interpretation of the statute unpersuasive. Instead, I conclude that Section 8371 is limited to causes of actions arising out of the bad faith handling or payment of claims and does not apply to conduct unrelated to the denial of a claim. In so holding, I join other courts that have expressly embraced this interpretation of Section 8371. See Ridgeway v. U.S. Life Credit Life Insurance Co., 793 A.2d 972, 977 (Pa. Super. Ct. 2002) (holding that Section 8371 does not apply to post-judgment or post-settlement conduct of an insurer); General Accident Ins. Co. v. Federal Kemper Ins. Co., 682 A.2d 819, 822 (Pa. Super. Ct. 1996) ("The purpose of Section 8371 was to provide a statutory remedy to an insured when the insurer denied

interpretation to the instant case does not produce an outcome favorable to the plaintiff. In the complaint, plaintiff makes no allegation that defendant refused to pay a claim or that defendant denied payment of any claim. Nor does plaintiff point to any conduct on behalf of the defendant that is in any way related to the denial of a claim. Rather, plaintiff alleges that defendant acted in bad faith by failing to cooperate with plaintiff in correcting the credit reporting error; by falsely accusing plaintiff of refusing to submit to a business audit; and, ultimately, by basing its decision not to renew plaintiff's insurance policy on the false credit report and refusal to submit to a business audit. As plaintiff fails to assert any claims-related conduct in its Section 8371 cause of action,⁹ I, thus, conclude that "it appears beyond doubt that the plaintiff can prove no set of facts in

benefits in bad faith. . . . Upon review of the express language and purpose of section 8371, it appears clear that the Pennsylvania legislature intended this section to protect an insured from bad faith denials of coverage."); Seiss v. Sherman, 49 Pa. D. & C. 4th 367, 372 (Pa. Ct. Com. Pl. 2000) (holding that a plaintiff does not have a cause of action under Section 8371 where his claims relate to defendant insurer's conduct in inducing plaintiff to purchase an insurance policy rather than defendant's failure to pay a claim arising out under the insurance policy).

⁹ Despite the court's finding that Section 8371 is limited to actions arising out of the denial of claims or benefits, the court must address one other aspect of plaintiff's cause of action under Section 8371. Although unclear from plaintiff's pleadings, the court believes plaintiff may also be alleging that defendant violated Section 8371 by engaging in wrongful conduct during the dispute over the spring 2000 automobile claim. While plaintiff describes the dispute in his amended complaint, he never expressly identifies this conduct as violative of Section 8371 nor did either party brief the issue. Nonetheless, I address this potential theory for the sake of completeness and conclude that plaintiff's Section 8371 cause of action based on the denial of the automobile claim must fail because it alleges no more than mere negligence.

Courts interpreting the meaning of bad faith under Section 8371 have repeatedly said that the statute does not protect against mere negligence or bad decision-making. Keefe v. Prudential Prop. and Casualty Ins. Co., 203 F.3d 218, 225 (3d Cir. 2000) ("[M]ere negligence or bad judgment is not bad faith."); Lawson v. Fortis Ins. Co., 146 F. Supp. 2d 737, 746 (E.D. Pa. 2001) ("Mere negligence on part of insurer is insufficient to sustain as bad faith claim.") (citation omitted); Williams v. Hartford Casualty Ins. Co., 83 F. Supp. 2d 567, 575 n. 15 (E.D. Pa. 2000) ("While Hartford's failure to take a sworn statement from Mrs. Williams in support of her loss of consortium claim may be negligent, a reasonable jury could not find that it amounted to the reckless behavior necessary to sustain a claim of bad faith."). Furthermore, courts have held that mere delay alone is not enough to establish bad faith. See Williams, 83 F. Supp. at 572, aff'd, 261

support of [its statutory bad faith] claim which would entitle [it] to relief.” Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Accordingly, I grant defendant’s motion to dismiss plaintiff’s Section 8371 claim.

CONCLUSION

For the reasons set forth above, defendant’s motion to dismiss plaintiff’s breach of contract claim will be denied but its motion to dismiss plaintiff’s Section 8371 claim will be granted. An appropriate order follows.

F.3d 495 (3d Cir. 2001) (finding that delay of fifteen months in resolving claim for uninsured motorist benefits, although possibly longer than necessary and even negligent, was not bad faith under Section 8371 given the uncertainty of the claim’s value); Kosierowski v. Allstate Ins. Co., 51 F. Supp. 2d 583, 589 (E.D. Pa. 1999) (“[I]f delay is attributable to the need to investigate further or even to simple negligence, no bad faith has occurred.”); Quaciari v. Allstate Ins. Co., 998 F. Supp. 578, 583 (E.D. Pa. 1998), aff’d, 172 F.3d 860 (3d Cir. 1998) (noting that delay, without more, is insufficient to establish bad faith).

Applying these principles to the instant case, I conclude that defendant did not act in bad faith when it disputed the value of plaintiff’s automobile insurance claim. Although plaintiff and defendant initially contested the value of the claim, the dispute was settled within a matter of months for the full amount desired by plaintiff. While such conduct on behalf of defendant may indicate bad judgment or even negligence, it does not rise to the level of reckless bad faith required to assert a cause of action under Section 8371. Thus, I find “it appears beyond doubt that the plaintiff can prove no set of facts in support of [its] claim which would entitle [it] to relief.” Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

