

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

ERIC SMITH,)
) Civil Action
Plaintiff,)
) No. 02-CV-01915
vs.)
)
CONTINENTAL CASUALTY COMPANY,)
)
Defendant.)

* * *

MEMORANDUM OPINION

JAMES KNOLL GARDNER,
United States District Judge

This Memorandum Opinion is filed in response to the Notice of Appeal filed by plaintiff on December 16, 2003 from an Order of the undersigned dated November 17, 2003 and filed November 20, 2003 granting the Joint Motion to Amend the Verdict and Declaratory Judgment of October 21, 2003, which joint motion was filed by the parties on November 10, 2003.

By Order of the undersigned dated November 17, 2003 we granted the parties' joint motion to amend the court's Verdict and Adjudication dated October 21, 2003 and filed October 22, 2003. That Order amended the Verdict and Adjudication pursuant to an agreement by the parties set forth in the joint motion to include cost-of-living adjustments and to adjust the court's award of pre-judgment interest to a compromised amount. The court awarded plaintiff precisely what he requested in the joint motion.

Plaintiff's Notice of Appeal declares that he specifically appeals the court's dismissal of his claim under 42 Pa. C.S.A. § 8371. The undersigned did not dismiss plaintiff's claim under 42 Pa. C.S.A. § 8371 by Order dated November 17, 2003 Order.¹

Because plaintiff moved the court to take exactly the action taken in the November 17, 2003 Order and because the November 17, 2003 Order did not take the action from which plaintiff specifically appeals, we respectfully suggest to the United States Court of Appeals for the Third Circuit that plaintiff's appeal be denied and our November 17, 2003 Order affirmed.

BY THE COURT:

James Knoll Gardner
United States District Judge

December 18, 2003

¹ The Order of the Honorable Jay C. Waldman dated September 13, 2002 and filed September 16, 2002 dismissed Count II of plaintiff's Complaint alleging a claim of bad faith under 42 Pa. C.S.A. § 8371. This Civil Action was originally assigned to the calendar of Judge Waldman upon the filing of plaintiff's Complaint on April 8, 2002. By Order dated February 14, 2003, this action was reassigned to the calendar of the undersigned.

Plaintiff may actually be attempting to appeal from Judge Waldman's September 13, 2002 Order. Because Judge Waldman included a Memorandum setting forth the reasons for that Order, the undersigned does not attempt to explain that Order herein and limits this Memorandum Opinion to that part of plaintiff's appeal addressing the November 17, 2003 Order.