

However, following an investigation which was triggered by Loretta Justofin's death within two years of the increase in the face amount of the Policy, Defendant paid only the original \$100,000 policy limit. Defendant informed Plaintiffs that it voided the increase in the face amount of the policy because Loretta Justofin had failed to disclose that she had Lupus, and had therefore made a material misrepresentation on the 1999 Change Application.

Plaintiffs filed the instant lawsuit against Defendant for breach of contract, bad faith, and negligence. Defendant, in turn, filed a counterclaim for rescission seeking a declaration that the policy increase was void *ab initio* on the basis of Loretta Justofin's failure to disclose her Lupus condition. Defendant moved for summary judgment on all claims, and this Court granted Defendant's Motion for Summary Judgment on Plaintiffs' claim for negligence, but denied it in all other respects. After having discovered new evidence, which showed that Loretta Justofin had taken Predisone, a serious steroidal drug used to treat Lupus, Defendant filed a Motion for Reconsideration, which was granted by the Court. Defendant then further investigated Loretta Justofin's use of Prednisone and, in the course of this investigation, deposed Dr. Christopher Justofin, one of Loretta Justofin's sons. Dr. Justofin testified that he had treated Loretta Justofin weekly from 1994 until at least 1997, and had prescribed Prednisone for her arthritis.

On the basis of this new evidence, Defendant filed a supplemental counterclaim for rescission seeking a declaration that the 1999 increase in the face amount of the Policy was void *ab initio* because Loretta Justofin had failed to disclose that Dr. Justofin had treated her with Prenisone during the period from 1994 to 1997. Defendant then moved for summary judgment on its new counterclaim and on Plaintiffs' claims for breach of contract and bad faith. This Court granted Defendant's Motion and entered judgment in favor of Defendant on all claims. Plaintiffs appealed the Court's decision to the United States Court of Appeals for the Third Circuit (the "Third Circuit"), which vacated the judgment and remanded the case for further proceedings. See Justofin v. Metropolitan Life Ins. Co., 372 F.3d 517 (3d Cir. 2004).

Upon remand, neither party filed dispositive motions and the case proceeded to trial on Plaintiffs' claims for breach of contract and bad faith as well as Defendant's counterclaim for rescission. The parties agreed that, if Defendant was found liable for breach of contract, the amount of compensatory damages would be \$200,000 plus pre-judgment interest. The jury returned a verdict against Defendant on Plaintiffs' breach of contract claim and Defendant's counterclaim for rescission, and in favor of Defendant on Plaintiffs' bad faith claim. Accordingly, compensatory damages were awarded in the amount of \$237,775.52. In the instant Motion, Defendant argues that the evidence introduced during the trial was

legally insufficient to support the jury's finding against it on Plaintiffs' breach of contract claim and Defendant's counterclaim for rescission.

II. LEGAL STANDARD

Defendant moves pursuant to Federal Rule of Civil Procedure 50(b) for judgment as a matter of law or, in the alternative, a new trial. Rule 50(b) provides, in relevant part, as follows:

If, for any reason, the court does not grant a motion for judgment as a matter of law made at the close of all the evidence, the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law by filing a motion no later than 10 days after entry of judgment - and may alternatively request a new trial or join a motion for a new trial under Rule 59. In ruling on a renewed motion, the court may:

- (1) if a verdict was returned:
 - (A) allow the judgment to stand,
 - (B) order a new trial, or
 - (C) direct entry of judgment as a matter of law.

Fed. R. Civ. P. 50(b).

A. Motion for Judgment as a Matter of Law

Defendant has moved for the entry of judgment in its favor as a matter of law. "[J]udgment as a matter of law should be granted sparingly." Walter v. Holiday Inns, Inc., 985 F.2d 1232, 1238 (3d Cir. 1993). Thus, a motion for judgment as a matter of law "should be granted only if, viewing the evidence in the light most favorable to the nonmovant and giving it the advantage of every

fair and reasonable inference, there is insufficient evidence from which a jury could reasonably find liability." Lightning Lube, Inc. v. Witco Corp., 4 F.3d 1153, 1166 (3d Cir. 1993) (citing Wittekamp v. Gulf & Western Inc., 991 F.2d 1137, 1141 (3d Cir. 1993)). In deciding a motion for judgment as a matter of law, the court may not weigh the parties' evidence or determine the credibility of the witnesses. Reeves v. Sanderson Plumbing Prods., 530 U.S. 133, 150 (2000). In addition, the court must disregard all evidence favorable to the nonmoving party that the jury is not required to believe. Id. Though "judgment as a matter of law should be granted sparingly, a scintilla of evidence will not enable the non-movant to survive a Rule 50 motion." Goodman v. Pa. Turnpike Comm'n, 293 F.3d 655, 665 (3d Cir. 2002).

B. Motion for New Trial

Defendant has moved in the alternative for a new trial pursuant to Federal Rule of Civil Procedure 59. Rule 59 provides, in relevant part, as follows:

A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States.

Fed. R. Civ. P. 59(a). Under the law of this circuit, "[a] new trial is appropriate only when the verdict is contrary to the great weight of the evidence or errors at trial produce a result

inconsistent with substantial justice." Sandrow v. United States, 832 F. Supp. 918, 918 (E.D. Pa. 1993) (citing Roebuck v. Drexel Univ., 852 F.2d 715, 735-36 (3d Cir. 1988)). When the basis of the motion for a new trial is an alleged error involving a matter within the sound discretion of the trial court, such as the court's evidentiary rulings or points of charge to the jury, the trial court has wide discretion in ruling on the motion. Griffiths v. CIGNA Corp., 857 F. Supp. 399, 410 (E.D. Pa. 1994) (citing Link v. Mercedes-Benz of N. America, Inc., 788 F.2d 918, 921-22 (3d Cir. 1986)).

However, the trial court's discretion to grant a new trial is more limited when, as here, the asserted ground is that the verdict is against the weight of the evidence. In that instance, the motion should only be granted "when the record shows that the jury's verdict resulted in a miscarriage of justice or where the verdict, on the record, cries out to be overturned or shocks [the court's] conscience." Greenleaf v. Garlock, Inc., 174 F.3d 352, 366 (3d Cir. 1999) (quoting Williamson v. Consol. Rail Corp., 926 F.2d 1344, 1353 (3d Cir. 1991)). Where, as in the instant case, "the subject matter of the litigation is simple and within a layman's understanding, the district court is given less freedom to scrutinize the jury's verdict than in a case that deals with complex factual determinations" Williamson, 926 F.2d at 1352. In reviewing a motion for a new trial, the court must "view

all the evidence and inferences reasonably drawn therefrom in the light most favorable to the party with the verdict." Marino v. Ballestas, 749 F.2d 162, 167 (3d Cir. 1984) (citation omitted).

III. DISCUSSION

The Court has diversity jurisdiction over this action pursuant 28 U.S.C. § 1332. In diversity actions, the Court must apply the choice of law rules of the forum state. Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487, 496 (1941). Under Pennsylvania's choice of law principles, an action arising on an insurance policy is governed by the law of the state in which the policy was delivered. CAT Internet Servs., Inc. v. Provident Washington Ins. Co., 333 F.3d 138, 141 (3d Cir. 2003) (citation omitted). The parties do not dispute that Pennsylvania law applies to this action.

Defendant argues that judgment should be entered in its favor, or that a new trial should be granted, because the jury's verdict that Defendant was not entitled to rescind the increase in the face amount of the Policy was against the weight of the evidence. Under Pennsylvania law, in order to establish that an insurance policy is void and that the insurer is entitled to rescind the contract, the insurer has the burden of demonstrating that: "(1) the insured made a false representation; (2) the insured knew the representation was false when it was made or the insured made the representation in bad faith; and (3) the representation was material to the risk

being insured.” Justofin, 372 F.3d at 521 (citing Coolspring Stone Supply, Inc. v. American States Life Ins. Co., 10 F.3d 144, 148 (3d Cir. 1993)). The insurer has the burden of proving all three elements of a claim for rescission by clear and convincing evidence. Id. (citing Batka v. Liberty Mut. Fire Ins. Co., 704 F.2d 684, 687 (3d Cir. 1983)).

Defendant asserted, at trial, that the increase in the face amount of Loretta Justofin’s insurance policy was void, and that the new policy should be rescinded, because Loretta Justofin failed to disclose her treatment by Dr. Justofin, her self-medication with Prednisone, and her Lupus condition on the 1999 Change Application. The jury, however, found that Defendant had not proven “by clear and convincing evidence that Loretta Justofin failed to disclose medical information on her application knowingly or in bad faith.” (Jury Verdict, Question No. 1.) In the instant Motion, Defendant argues that the jury’s verdict should be set aside because the evidence presented at trial established that Loretta Justofin knowingly or in bad faith failed to disclose on the 1999 Change Application (1) that she had been treated by Dr. Justofin; (2) that she was taking Prednisone; and (3) that she believed she had Lupus.

A. Disclosure of Treatment by Dr. Justofin

Defendant contends that the only reasonable inference the jury could have reached based upon all the evidence was that Loretta Justofin had knowingly or in bad faith failed to disclose her

treatment by Dr. Justofin on the 1999 Change Application, because Loretta Justofin's treatment by her son on a weekly basis was so extensive that it could not have easily been forgotten by her.¹ The trial record establishes that Loretta Justofin discontinued her treatment by Dr. Justofin six months prior to her completion of the 1999 Change Application. (See N.T. 1/20/05 at 23, 33, 39.) The record also shows that Loretta Justofin disclosed that Dr. Justofin was her personal physician on the 1994 Application. (Pls.' Ex. P-27.) The 1994 Application, in turn, was expressly incorporated into the 1999 Change Application, which stated that "[n]o information about any person to be insured will be considered to have been given to the company unless it is stated in this application or the application for the original [policy]." (Pls.' Ex. P-28) (emphasis added).

The Court finds that there was sufficient evidence for the jury to conclude that Loretta Justofin did not knowingly or in bad faith fail to disclose Dr. Justofin on the 1999 Change Application because Loretta Justofin may have found this information insignificant in light of the fact that she had discontinued treatment with Dr. Justofin prior to her completion of the 1999 Change Application. Moreover, the jury could have determined that

¹ The parties do not dispute that Loretta Justofin failed to disclose on the 1999 Change Application that her son, Dr. Justofin, had been her personal physician from June 1994 through October 1998.

Loretta Justofin did not knowingly or in bad faith fail to disclose her treatment by Dr. Justofin because she had disclosed him as a treating physician on the 1994 Application, and believed that this information was automatically incorporated into the 1999 Change Application. Accordingly, viewing the evidence and the inferences to be drawn therefrom in the light most favorable to Plaintiffs, the Court concludes that there was sufficient evidence upon which the jury could find that Loretta Justofin did not knowingly or in bad faith misrepresent her treatment by Dr. Justofin on the 1999 Change Application.

B. Disclosure of Lupus

Defendant also contends that the only reasonable inference the jury could have reached based upon all the evidence was that Loretta Justofin had knowingly or in bad faith had failed to disclose her Lupus condition on the 1999 Change Application, because she had related her belief that she was suffering from Lupus to numerous persons.² Defendant further argues that the jury should have made an inference that Loretta Justofin in bad faith failed to disclose her Lupus condition because she was actively taking Prednisone to treat what she believed was Lupus. The trial record establishes that Loretta Justofin informed Dr. Jacobs, her personal physician, during an initial visit with him on October 15,

² The parties do not dispute that Loretta Justofin failed to disclose her belief that she was suffering from Lupus on the 1999 Change Application.

1999, that she had had Lupus since 1985, and that she was treating her Lupus with Prednisone. (N.T. 01/20/05 at 56-57.) In addition, the record shows that Loretta Justofin told several other people of her belief that she had Lupus, including Robert and Ivan Justofin and other doctors of hers. (See N.T. 1/19/05 at 121-22, 143; N.T. 1/20/05 at 5.) The trial record also contains evidence that Loretta Justofin verbally disclosed her Lupus condition to Defendant's agent, Debra Stellfox. (N.T. 1/19/05 at 34-35.) Specifically, Ivan and Robert Justofin both testified that their mother had told Stelfox ". . . [a]nd of course, there's my Lupus. My hands are like boxing gloves. I've been dealing with this for years" (Id. at 35; N.T. 1/20/05 at 5.) According to Robert and Ivan Justofin, Stelfox responded "[w]e already know about that, Loretta." (N.T. 1/19/05 at 35.) The uncontradicted record further establishes that Stelfox did not know, at the time, what Lupus was, or whether the disease was significant for insurance purposes. (N.T. 1/21/05 at 36, 38.)

The Court finds that there was sufficient evidence for the jury to conclude that Loretta Justofin did not knowingly or in bad faith fail to disclose her Lupus condition on the 1999 Change Application because the jury could have found that Loretta Justofin believed that she had informed Defendant of her Lupus condition by verbally disclosing it to Stelfox. (See N.T. 1/19/05 at 35; N.T. 1/20/05 at 5.) The jury could also have concluded that Loretta

Justofin believed that she was not required to disclose her Lupus condition on the 1999 Change Application, because, while she was completing that application, Stelfox informed her that Defendant already was aware of the Lupus. (See N.T. 1/19/05 at 35.) Moreover, the jury could have found that Loretta Justofin did not disclose her Lupus condition on the 1999 Change Application because Stelfox led her to believe that Lupus was not significant for insurance purposes. Accordingly, viewing the evidence and the inferences to be drawn therefrom in the light most favorable to Plaintiffs, the Court concludes that there was sufficient evidence upon which the jury could find that Loretta Justofin did not knowingly or in bad faith misrepresent her Lupus condition on the 1999 Change Application.

C. Disclosure of Medication with Prednisone

Defendant further contends that the only reasonable inference the jury could have reached based upon all the evidence was that Loretta Justofin had knowingly or in bad faith failed to disclose her more recent use of Prednisone, because the uncontradicted evidence establishes that Loretta Justofin was aware that she was receiving Prednisone from Dr. Justofin.³ Defendant also argues

³ Plaintiffs argue that a reasonable jury could have found that Loretta Justofin did not fail to disclose her more recent use of Prednisone. However, in hearing Plaintiffs' appeal from this Court's grant of Defendant's Motion for Summary Judgment, the Third Circuit determined that "no genuine dispute exists as to whether [Loretta Justofin's] representations [regarding Prednisone] were false." Justofin, 372 F.3d at 522. This Court, therefore, instructed the jury that it was undisputed that Loretta Justofin

that the record established that Loretta Justofin must have been aware of her use of Prednisone because she had been taking Prednisone for six months prior to her completion of the 1999 Change Application. Finally, Defendant argues that it would have been impossible for a rational factfinder to conclude that Loretta Justofin was unaware of her treatment with Prednisone at the time she completed the 1999 Change Application, because she disclosed her Prednisone use to Dr. Jacobs on October 15, 1998, and to Dr. Magargal on March 6, 1999.

Although Loretta Justofin failed to disclose her more recent use of Prednisone, the trial record demonstrates that Prednisone was mentioned on Part B of the 1999 Change Application. (Pls.' Ex. 51 Part B.) Specifically, Loretta Justofin disclosed that she had taken Prednisone in 1969 as treatment for arthritis on her hands and feet on the 1999 Change Application. (Id.) Moreover, the reference to Prednisone is followed by the letters "PRN," which indicated that the drug was taken as needed. (Id.) At trial, Plaintiffs also noted that, right below the disclosure of Loretta Justofin's use of Prednisone in 1969, Loretta Justofin had disclosed that she received glasses in 1979. (Id.; N.T. 1/21/05 at 9-10.) This disclosure, just as the reference to Prednisone, does not mention an end date. (See Pls.' Ex. 51 Part B.) Jeffrey

had misrepresented her more recent use of Prednisone on the 1999 Change Application. Accordingly, Plaintiffs assertion that the jury could have found that Loretta Justofin did not misrepresent her more recent use of Prednisone is incorrect.

Justofin testified that the fact that no end date was included on the 1999 Change Application does not indicate that Loretta Justofin stopped wearing glasses in 1979. (N.T. 1/21/05 at 10.) Rather, Jeffrey Justofin testified that no end date was included because Loretta Justofin continued to wear glasses until her death on December 7, 1999. (N.T. 1/21/05 at 10.)

The Court finds that there was sufficient evidence for the jury to conclude that Loretta Justofin did not knowingly or in bad faith fail to disclose her more recent use of Prednisone on the 1999 Change Application. Based on the evidence adduced at trial, the jury could have determined that Loretta Justofin thought she had disclosed her use of Prednisone by mentioning the drug with reference to her 1969 treatment for arthritis, when she first began to take Prednisone. Moreover, the jury could have concluded that, by referencing only the year in which she first began to use Prednisone, Loretta Justofin incorrectly believed that she had automatically indicated that she was still using the drug at the time she completed the 1999 Change Application. Accordingly, viewing the evidence and the inferences to be drawn therefrom in the light most favorable to Plaintiffs, the Court finds that there was sufficient evidence upon which the jury could determine that Loretta Justofin did not knowingly or in bad faith misrepresent her more recent use of Prednisone on the 1999 Change Application. On the basis of this trial record, the Court further concludes that

permitting the verdict to stand will not result in a miscarriage of justice. See Sandrow, 832 F.2d at 918.

III. CONCLUSION

Defendant has failed to persuade the Court that, viewing the evidence in the light most favorable to Plaintiffs, there was insufficient evidence from which the jury could reasonably find that Defendant had breached its contract with Plaintiffs when it failed to pay them \$300,000 under the policy, or that permitting the verdict to stand would result in a miscarriage of justice. Accordingly, Defendant's Motion for Judgment as a Matter of Law or in the Alternative New Trial is denied.

An appropriate Order follows.

