

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

ROSLYN PORTER,	:	CIVIL ACTION
Plaintiff	:	NO. 03-03768
	:	
v.	:	
	:	
NATIONSCREDIT CONSUMER	:	
DISCOUNT COMPANY <i>et al.</i> ,	:	
Defendants,	:	
	:	

**ORDER AND MEMORANDUM**

NEWCOMER, S.J.

August 1, 2005

Presently before the Court is the Motion for Summary Judgment of Defendant Protective Life Insurance Company ("Protective"), Plaintiff's Response, and the Parties' Replies and Sur-Replies. For the reasons stated below, the Court grants in part and denies in part Protective's Motion.

**I. BACKGROUND**

Plaintiff brings suit against Defendant Protective Life Insurance Company ("Protective") alleging three violations of Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 Pa. Con. Stat. § 201-1 *et seq.* ("UTPCPL"). Specifically, Plaintiff claims that Protective violated three provisions of the UTPCPL when it (1) "conceal[ed] from [Plaintiff] the true nature of the credit insurance transactions which were insider transactions between affiliated entities, (2) "falsely claim[ed] that certain 'premiums' were paid to Protective Life", (3) "overcharg[ed] for credit insurance," (4) "fail[ed] to disclose the contracts with [Protective]," (5) overcharg[ed] for

'commissions' and otherwise viol[ated] Pennsylvania's limits on compensation for credit life insurance," and (6) mis[led] [Plaintiff] about the 'voluntary nature' of credit life insurance." Third Am. Compl. at ¶ 50. Protective has filed a Motion for Summary Judgment and Plaintiff has responded by drowning this Court in a sea of papers and filing an overly lengthy and rambling series of briefs. Plaintiff's Counsel apparently seeks to prevail by confusing the Court, as she has certainly made no effort to aid this Court's determinations.

The Court writes only for the Parties, who are by now intimately familiar with the facts of this case. Briefly, Plaintiff, a college-educated healthcare professional, sought a mortgage on her home. During conversations with Defendant NationsCredit's agents, Plaintiff allegedly stated that she did not want credit life insurance on her loan. Her purported reason for this is that she already had insurance from two other sources. When Plaintiff arrived at the closing, she received documentation and disclosures that had a space for her to sign if she wanted credit life insurance. In bold print, these disclosures stated that credit life insurance was not required to obtain credit, and that the insurance would not be provided unless Plaintiff requested it by signing in a space provided. Plaintiff signed in the space provided, and was given a copy of the forms. The copy Plaintiff was given did not have her

signature on it - that is, Defendants apparently made photocopies of the loan documentation before, rather than after, Plaintiff signed them. According to Plaintiff's version of events, she arrived home and, for the first time, read the documents that she had earlier signed. Concerned for some reason that she had inadvertently purchased credit life insurance, Plaintiff turned to the TILA disclosure page and found that her signature was absent on the line requesting insurance. Satisfied that she had not purchased credit life insurance, Plaintiff ended her inquiry.

Since the outset of this litigation, Plaintiff has been clear that she (1) never wanted credit life insurance and that she (2) would have canceled it if she knew she had it. At some point of time later, possibly during Plaintiff's bankruptcy proceeding, it became apparent that Plaintiff had, in fact, purchased credit life insurance. Plaintiff brought suit under Pennsylvania's unfair trade practices laws, and after several years of unbelievably and unnecessarily contentious litigation, countless discovery disputes, and likely extraordinary legal expenses, Defendant has moved for summary judgment (for the second time).

Defendant seeks judgment on each of Plaintiff's three UTPCPL claims. Plaintiff seeks relief under 73 P.S. § 201-2(4)(ii), (iii), and (xxi). These sections deal with confusion in the identity of the source or certification of a product, and conduct

that causes a likelihood of confusion or misunderstanding. In order to prevail under any and all of these UTPCPL sections, Plaintiff must prove that she suffered damage due to her justifiable reliance on Protective's statements or conduct. For the reasons stated below, the Court must grant Protective's Motion. The Court grants in part, and denies in part, Protective's Motion.

## **II. LEGAL STANDARD**

Summary judgment is proper when "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. A fact is material if it could change the outcome of the suit under applicable law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). An issue over the facts is genuine only if there is a sufficient basis that would allow a reasonable fact-finder to rule for the non-moving party. Id. at 249. The non-moving party receives the benefit of all reasonable inferences. Sempier v. Johnson & Higgins, 45 F.3d 724, 727 (3d Cir. 1995). A party defending against a motion for summary judgment must set forth specific facts showing that there is a genuine issue of material fact, and may not rely on mere allegations or denials. FED. R. Civ. P. 56(e).

### III. ANALYSIS

Protective has levied an impressive and broad attack on many facets of Plaintiff's case, but the Court need deal only with a small portion of Protective's arguments to resolve the instant claims. When the Court first addressed the issue of reliance under the UTPCPL, an important issue was not settled in the state of Pennsylvania and the Third Circuit. Since that point, the law has changed. It is now clear that, for Plaintiff to succeed on any of her UTPCPL claims, she must prove that she justifiably relied on Protective's fraudulent or deceptive conduct, and that such reliance caused her harm. See *Huu Nam Tran v. Metro. Life Ins. Co.*, 408 F.3d 130, 139-41 (3d Cir. 2005) (surveying recent developments in Pennsylvania law and concluding that a UTPCPL plaintiff must always demonstrate justifiable reliance to prevail); *Yocca v. Pittsburgh Steelers Sports, Inc.*, 854 A.2d 425, 438-39 (Pa. 2004) ("To bring a private cause of action under the UTPCPL, a plaintiff must show that he justifiably relied on the defendant's wrongful conduct or representation and that he suffered harm as a result of that reliance.") (internal citations omitted).

Plaintiff's 73 P.S. § 201-2(4)(ii) and (iii) claims fail because, under the facts of the case, there is no way for her to prove that she justifiably relied on any conduct covered under these two sections to her detriment. 73 P.S. § 201-2(4)(ii)

deals with conduct causing a "likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services." 73 P.S. § 201-2(4)(ii). 73 P.S. § 201-2(4)(iii) deals with conduct causing a "likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another." 73 P.S. § 201-2(4)(iii). Plaintiff's theory of the case, in her own words, is that she was tricked into purchasing credit life insurance by Protective because, when NationsCredit gave her photocopies of disclosures and forms, those photocopies did not contain copies of her signature. Although Plaintiff makes an enormous number of completely meritless claims regarding such myriad topics as insurance term, risk-shifting, and insurance rates, she has consistently argued that she (1) never wanted credit life insurance, and that she (2) would have cancelled it within the ten days allowed by the agreement, as was her right, had she realized that she had purchased it. It logically and necessarily follows, therefore, that no amount of confusing conduct regarding insurance risk, term, or pricing would have had any effect on Plaintiff's desire not to have insurance.

It is completely undisputed that it is Plaintiff's claim that she never wanted insurance, and purchased it only due to her alleged failure to read the contract before she signed it, and

her failure to exercise her right to cancel it.<sup>1</sup> It is completely and utterly immaterial for UTPCPL purposes, therefore, that the insurance that Plaintiff never wanted may have been otherwise legally problematic. This proposition is self-evident; Plaintiff cannot, on one hand, claim that Protective's deceptive tactics tricked her into buying insurance that she never wanted, while with the other arguing that it was in fact her justifiable reliance on Protective's pricing and terms that compelled her to buy insurance.

The UTPCPL requires a plaintiff to show that she was harmed by her justifiable reliance on a defendant's fraudulent or deceptive conduct; here, Plaintiff concedes that much of the allegedly deceptive conduct Plaintiff complains of is not the conduct that caused her the harm for which she seeks redress. Because the only issue is whether Protective tricked Plaintiff into buying insurance that she did not want, Plaintiff's 73 P.S. § 201-2(4)(ii) and (iii) claims fail. This is for a simple reason: even if Defendants had conspired to confuse Plaintiff as to the identity of the actual insurer (be it one of the NationsCredit entities or Protective), Plaintiff admits that she did not purchase the insurance as a result of these actions - a

---

<sup>1</sup>Defendants do, the Court notes, challenge Plaintiff's contention that she did not want insurance, relying on her signed request for insurance to support their position. The Court certainly respects this position, and will allow it to reach the Jury. However, there can be no dispute that it is Plaintiff's *claim* that she never wanted insurance.

requirement of 73 P.S. § 201-9.2(a). Rather, as stated above, Plaintiff only claims that she did not exercise her right to cancel her insurance as a result of the allegation that she did not know she had purchased it. This allegation, that Protective did not provide her with a copy of her signed affirmative request, has absolutely nothing to do with confusion or misunderstanding of the source of the insurance. Judgment is entered in favor of Defendant Protective Life, and against Plaintiff, on Plaintiff's 73 P.S. §201-2(4)(ii) and (iii) claims.

Plaintiff's Counsel makes much hay over how Protective conducts its business. But Plaintiff's Counsel has not explained how Protective's seemingly peculiar business and bookkeeping practices have any consequences in the instant case. Perhaps the State Attorney General might have some interest in Protective's books, but it is none of Plaintiff's or this Court's concern, and none of Plaintiff's causes of action against Protective bring these concerns into the Court's purview. Plaintiff herself testified that she did not read the documents presented to her at the closing. Porter Dep. at 73 ("Q: Did you read the papers before you signed them? A: No."). And Plaintiff has testified that she never wanted credit life insurance. Porter Dep. at 219 (Plaintiff testifying that she did not want credit life insurance because she already had it). It is crystal clear, then, that even if Plaintiff had been appraised of the strange scheme

imagined by her Counsel, it would not have mattered. Plaintiff did not want credit life insurance, and the existence or non-existence of any scheme imagined by Plaintiff's Counsel (and unsupported by the evidence) had, and clearly would have had, absolutely no impact on Plaintiff's desire to not have credit life insurance. Viewing the facts most favorable to Plaintiff, it is clear that the sole reason supported by the evidence that Plaintiff received credit life insurance is that she did not read the forms she signed before signing them, and then did not realize that she had asked for credit life insurance. All of Plaintiff's other arguments, therefore, must fall away, because it did not matter how corrupt or unconscionable Protective's insurance product may have theoretically been. The only question before this Court then, is whether NationsCredit's failure to photocopy Plaintiff's signature on the affirmative request constitutes a violation of the UTPCPL (as distinct from TILA) by Protective.

In Plaintiff's Response to Protective's Motion, she raises several arguments, many for the first time in this case. The only relevant argument is that, because NationsCredit did not give Plaintiff a photocopy of her signed affirmative request for credit life insurance, a per se violation of TILA has occurred, and that this automatically gives rise to a violation of UTPCPL. The Court has scoured TILA, and examined the relevant commentary,

and determined that, in its view, Protective's (and NationsCredit's) conduct does not constitute a per se violation of TILA, at least so far as Plaintiff's arguments concerning her receipt of an unsigned form are concerned. Briefly, the dispute between the Parties boils down to one statutory citation: 12 C.F.R. § 226.18(n). Section 226.18(n) requires a creditor to disclose, amongst other things, the "items required by section 226.4(d) in order to exclude certain insurance premiums from the finance charge." 12 C.F.R. § 226.4(d)(1) allows premiums for credit life insurance to be excluded from a consumer's finance charge if:

(i) The insurance coverage is not required by the creditor, and this fact is disclosed in writing.

(ii) The premium for the initial term of insurance coverage is disclosed. If the term of insurance is less than the term of the transaction, the term of insurance also shall be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(iii) The consumer signs or initials an affirmative written request for the insurance after receiving the disclosures specified in this paragraph. Any consumer in the transaction may sign or initial the request.

12 C.F.R. § 226.4(d)(1).

Plaintiff contends that Section 226.4(d)'s "items" include a copy of the signed affirmative request for insurance discussed in

Section 226.4(d)(1)(iii), while Defendants contend that there is no such requirement. The Court agrees with Defendants. In short, the "items" discussed in Sections 226.4(d)(1)(I)-(ii) are couched in terms of "disclosures," while section (iii) speaks only of an affirmative written request made after receipt of the disclosures. It is this Court's understanding of the regulations that the "items" of which Section 226.18(n) speaks do not include a signed copy of a consumer's written request for insurance. For UTPCPL purposes in this case, however, this conclusion does not have any real consequence.

As discussed above, the Court finds that TILA was not violated. But whether Protective needed to provide Plaintiff with a signed copy of her affirmative request for insurance is a question for the jury. The Court will not stop the Parties from proceeding to trial. Of course, the only damages allowable in this case, against Protective, are the \$3,281.98 charged to Plaintiff for credit life insurance.<sup>2</sup> This is because Plaintiff

---

<sup>2</sup>Plaintiff Counsel's assertion that the actual damages in this case could be any more than this figure is absurd, particularly in light of Plaintiff's own deposition testimony. During her deposition, Plaintiff testified that she would have canceled her loan only if she had been required to purchase credit life insurance - and there is absolutely no evidence of any such requirement. Porter Dep. at 267-77. In order to save the Parties the trouble of briefing the issue later, the Court holds that it will not grant any additional damages or relief, beyond \$100.00, as it has the discretion to do under 73 P.S. § 201-9.2. Protective's conduct is simply not outrageous or unconscionable, by any definition. See McClelland v. Hyundai Motor of America, 851 F.Supp. 680, 681 (E.D. Pa. 1994) (standard for treble damages is outrageous and/or unconscionable conduct) (internal citations omitted). This section also allows a court to award a successful plaintiff costs and attorneys fees. The Court holds that, if Plaintiff is successful, it will not award any costs or fees in this case, based on its judgment of (1) the merits of Plaintiff's case, (2) the non-outrageous nature of Defendant's conduct, (3)

has focused her attack on Protective's alleged obfuscation of, and interference with, Plaintiff's contractual right to cancel and receive a refund for her insurance. The UTPCPL allows for up to treble damages at the Court's discretion, but the Court will not award any additional damages or relief (including attorneys' fees). The behavior of Protective, at its worst, does not justify any additional damages. This is especially true in light of the explicit disclosures made on the TILA disclosure statement. The Court seriously doubts that a jury would find that Ms. Porter, a college-educated healthcare specialist, was confused in light of her multiple signatures on the relevant disclosure forms, or much less that this reliance was justified, but the Court will not deprive Plaintiff of her opportunity to try her case. Whether the Parties wish to go to trial over such a (relatively) small sum is, of course, not a question for the Court to answer.

It is relatively settled law that, under circumstances such as these, the question of whether reliance is justifiable is a question of fact for the jury. See Huu Nam Tran, 408 F.3d, at 139. The Court will, therefore, allow Plaintiff to proceed to trial. Defendant's Motion for Summary Judgment on Plaintiff's 73

---

Plaintiff's conduct throughout the course of this litigation, and (4) its conclusion that an award of fees and costs would not further, under the circumstances of this particular litigation, the public policy driving the damages section of the UTPCPL. Of course, this holding will have little practical effect - "reasonable" attorney's fees in a case of this small magnitude would likely amount to very little.

P.S. § 201-2(xxi) claim is denied.

**IV. CONCLUSION**

For the reasons stated above, Protective's Motion is granted in part and denied in part. An appropriate Order follows.

/s Clarence C. Newcomer

United States District Judge

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

ROSLYN PORTER,	:	CIVIL ACTION
Plaintiff,	:	NO. 03-03768
	:	
v.	:	
	:	
NATIONSCREDIT CONSUMER	:	
DISCOUNT COMPANY <i>et al.</i> ,	:	
Defendants.	:	

**O R D E R**

AND NOW, this 1<sup>st</sup> day of August, 2005, upon consideration of Defendant Protective Life Insurance Company's Motion for Summary Judgment (Doc. 100), Plaintiff's Response, and the Parties' Replies and Sur-Replies, it is hereby ORDERED that said Motion is GRANTED in part and DENIED in part. It is further ORDERED that all Motions to file Reply Briefs, and to Exceed Page Limits, are GRANTED.

AND IT IS SO ORDERED.

/s Clarence C. Newcomer

United States District Judge