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

AMERICAN HOME ASSURANCE CO.	**:**	**CIVIL ACTION**
v.	**:**	
	:	**NO. 03-6052**
THE CHURCH OF BIBLE UNDERSTANDING d/b/a OLDE GOOD THINGS and GAYLE TRAILL	**:**	

MEMORANDUM AND ORDER

Kauffman, J. **September 6 , 2006**

Plaintiff American Home Assurance Company ("American Home" or "Plaintiff") brings this declaratory judgment action against the Church of Bible Understanding ("COBU" or "Defendant") and Gayle Traill, a missionary for COBU (collectively, "Defendants"). American Home issued a worker's compensation insurance policy to COBU for the period running from August 8, 2001 through August 8, 2002 (the "Policy"). Traill was injured on February 7, 2002 and sought worker's compensation coverage for her injuries. American Home seeks a declaration that (1) Gayle Traill was not an employee of COBU at the time of her accident, and thus is not entitled to coverage under the Policy ("Count I"); (2) Gayle Traill was not acting in the course and scope of her employment with COBU at the time of her accident, and thus is not entitled to coverage under the Policy ("Count II"); and (3) COBU made material misrepresentations to American Home, entitling American Home to rescind the Policy ("Count III"). COBU and Mrs. Traill counterclaim that American Home's attempt to rescind the Policy constitutes bad faith in violation of 42 Pa.C.S.A. § 8371 ("Counterclaim").[1]

[1] The Court has jurisdiction pursuant to 28 U.S.C. §1332(a). Amer. Home Assurance Co. v. The Church of Bible Understanding, 2004 WL 1964906, at *1 (E.D. Pa. Aug. 16, 2004). Neither party contests the application of Pennsylvania law.

Now before the Court are the cross-motions for summary judgment of American Home and COBU as to Count III and the Counterclaim.[2] For the reasons that follow, American Home's motion for summary judgment will be granted, and COBU's motion for summary judgment will be denied.

I. BACKGROUND

The following facts are undisputed. On February 7, 2002, Gayle Traill was injured in a car accident in Exuma, Bahamas. Compl. ¶ 5. At the time of the accident, Mrs. Traill was a passenger in a rental car operated by her husband, Pastor Stewart Traill. Id. The Traills were in the Bahamas due to airplane trouble they experienced on their way to Haiti to work at an orphanage owned by COBU. See Defendant COBU's Brief Statement of Material Facts ("Def.'s Statement") ¶¶ 3, 4. Following the accident, Mrs. Traill filed a worker's compensation claim with American Home seeking coverage for her injuries. See id. ¶ 7; see also Plaintiff American Home Assurance Company's Statement of Material Facts ("Pl.'s Statement") ¶ 4. American Home denied Mrs. Traill's worker's compensation claim on March 1, 2002. See Def.'s Statement ¶ 8; Pl.'s Statement ¶ 5. Following the denial of her claim, Mrs. Traill filed a claim petition with the Pennsylvania Department of Labor and Industry's Bureau of Worker's Compensation. See Def.'s Statement ¶ 9; Pl.'s Statement ¶ 6.

COBU first applied for worker's compensation insurance from American Home on July 11, 2000. See Def.'s Statement ¶ 14. The application was submitted by Mark Miller of Biddle & Company Insurance Agency to a company called Via-Comp for processing and eventual placement with American Home. See Def.'s Statement ¶¶ 15, 18. The July 11, 2000 application included a number of pre-printed questions that are used routinely by American Home to

[2] Defendant Gayle Traill did not move for summary judgment.

evaluate the risk involved in issuing a policy. See Pl.'s Statement ¶ 12; Deposition of Eva Hoffman ("Hoffman Dep.") at 65-66, attached to American Home Assurance Company's Motion for Summary Judgment ("Pl.'s Mot.") at Exhibit 10. In response to the first pre-printed question, "Does applicant own, operate, or lease aircraft/watercraft," COBU's application stated "NO." See Pl.'s Statement ¶ 12. In response to Question 14, "Do employees travel out of state," COBU's application stated "NO." See id. The application was not signed. See id.

Based on the July 11, 2000 application, a policy was issued to COBU for the term August 8, 2000 through August 8, 2001. See Pl.'s Statement ¶ 13. This policy was terminated on November 4, 2000 due to non-payment of premiums. See Def.'s Statement ¶ 24; Pl.'s Statement ¶ 14.

On January 31, 2001, COBU submitted a second application for worker's compensation insurance from American Home. See Def.'s Statement ¶ 25; Pl.'s Statement ¶ 15. The January 31, 2001 application, like the July 11, 2000 application, contained a list of pre-printed questions. See Pl.'s Statement ¶ 16. In response to the first pre-printed question, "Does applicant own, operate, or lease aircraft/watercraft," COBU's application again stated "NO." See id. In response to Question 14, "Do employees travel out of state," COBU's application again stated "NO." See id. The second application was submitted and signed by Mark Miller, not by an employee or principal of COBU. See Def.'s Statement ¶¶ 27, 28; Pl.'s Statement ¶ 17

Based on the January 31, 2001 application, a new policy was issued to COBU for the term February 1, 2001 through August 8, 2001. See Pl.'s Statement ¶ 19. This policy was renewed on August 8, 2001 for a one year term, through August 8, 2002, and was the policy in effect at the time of Mrs. Traill's accident. See Pl.'s Statement ¶¶ 20, 21. Contrary to its representations in the application, COBU, during the relevant time period, owned and operated at

least one aircraft, and its employees regularly traveled out of the country to orphanages operated by COBU in Haiti. See Exhibit C to Compl. at 25, 62.

American Home filed the instant declaratory judgment action on November 3, 2003. On August 16, 2004, this Court stayed Counts I and II of the Complaint pending resolution of the claims before the Bureau of Worker's Compensation. Judge Susan Kelley of the Pennsylvania Worker's Compensation Office of Adjudication issued an opinion in that case on October 26, 2005, finding that Mrs. Traill failed to establish either (1) that she had an employer-employee relationship with COBU or (2) that she was on COBU's premises or was furthering COBU activities at the time of her accident. See Decision of Worker's Compensation Office of Adjudication, Bureau Claim No. 2373564 (Oct. 26, 2005).

II. LEGAL STANDARD

In deciding a motion for summary judgment pursuant to Fed. R. Civ. P. 56, the test is "whether there is a genuine issue of material fact and, if not, whether the moving party is entitled to judgment as a matter of law." Med. Protective Co. v. Watkins, 198 F.3d 100, 103 (3d Cir. 1999) (quoting Armbruster v. Unisys Corp., 32 F.3d 768, 777 (3d Cir. 1994)). "[S]ummary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The Court must examine the evidence in the light most favorable to the non-moving party and resolve all reasonable inferences in that party's favor. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). However, "there can be 'no genuine issue as to any material fact' . . . [where the non-moving party's] complete failure of proof concerning an essential element of [its] case necessarily renders all other facts immaterial." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

The party moving for summary judgment bears the initial burden of showing the basis for its motion. See Shields v. Zuccarini, 254 F.3d 476, 481 (3d Cir. 2001). If the movant meets that burden, the onus then "shifts to the non-moving party to set forth specific facts showing the existence of [a genuine issue of material fact] for trial." Id.

III. ANALYSIS

A. Count III (Rescission)

Count III of the Complaint alleges that COBU made material misrepresentations in its applications for worker's compensation insurance. Specifically, American Home contends that COBU represented on its applications that it did not own any aircraft when, in fact, it owned at least one. Compl. ¶¶ 57, 58. American Home also contends that COBU did not reveal on its applications that it sent employees out of state or out of the country when, in fact, it did so on a regular basis. Id. at ¶¶ 59-62. American Home asserts that had it known that COBU owned aircraft and sent employees out of state and out of the country, it would not have issued the Policy or would not have issued the Policy at the premium for which it was issued. Id. at ¶¶ 63-65. American Home seeks to rescind the Policy on the basis of the alleged material misrepresentations.

As this Court noted in its August 14, 2004 Opinion denying Defendants' motion to dismiss Count III, Pennsylvania law regarding rescission of worker's compensation insurance is sparse and inconsistent. In Pennsylvania National Mutual Casualty Insurance Co. v. Powers Trucking Co., 1989 WL 205327, at *3 (Pa. Com. Pl. Feb. 10, 1989), the Court of Common Pleas of Clinton County held that an insurer was statutorily precluded from rescinding its reinstatement of a worker's compensation policy on the grounds of fraudulent misrepresentation by the employer, pursuant to 40 Pa.Cons.Stat. § 813. However, the Pennsylvania Commonwealth Court

recently applied Pennsylvania's three-prong test for rescission of an insurance policy to evaluate an insurer's attempt to rescind a worker's compensation policy, thereby establishing that there are circumstances in which an insurer may rescind such a policy. See SWIF v. W.C.A.B., 833 A.2d 343, 346 (Pa. Cmwlth. Ct. 2003).

1. Applicability of 40 Pa. Cons. Stat. § 813 to Count III

40 Pa. Cons. Stat. § 813 provides that "[e]xcept for nonpayment of premiums, no policy of insurance issued or renewed against liability…may be cancelled or terminated by an insurer during the term of the policy." 40 Pa. Cons. Stat. § 813 (emphasis added). COBU argues that rescission is encompassed within Section 813's language prohibiting the cancellation or termination of a worker's compensation policy during the term of the policy, and therefore that American Home is statutorily precluded from rescinding the Policy. See Defendant's Motion for Summary Judgment ("Def.'s Mot.") at 9-11; Opposition to Plaintiff's Motion for Summary Judgment and In Reply to Plaintiff's Opposition to Defendant's Motion for Summary Judgment ("Def.'s Opp.") at 8-10. Moreover, COBU contends, the policy reason for Section 813 is that an innocent employee should not be deprived of worker's compensation due to actions by an employer. See Def.'s Mot. at 11. Thus, rescission based on fraudulent misrepresentations should be included within Section 813's prohibitions so that an employee is not left without worker's compensation due to an employer's misdeeds. See id.

"In interpreting any statute, we begin with the statute's plain language." Wastak v. Lehigh Valley Health Network, 342 F.3d 281, 289 (3d Cir. 2003) (citations omitted). Section 813 contains no explicit reference to rescission, a legal concept distinct from cancellation or termination. In fact, an insurer's ability to rescind an insurance policy upon a finding that the insured has fraudulently misrepresented material information is a longstanding common law right

in Pennsylvania. See, e.g., Prudential Ins. Co. v. Pagano, 181 A.2d 319, 321 (Pa. 1962); Allstate Ins. Co. v. Stinger, 163 A.2d 74, 76-77 (Pa. 1960). In the absence of an explicit prohibition in Section 813, the Court finds no basis to conclude that the Commonwealth intended Section 813 to foreclose a longstanding distinct common law right providing a remedy against policy holders who defraud an insurance company in the inception of the policy. See Metro. Prop. & Liab. Ins. Co. v. Ins. Comm'r of Pa., 580 A.2d 300, 303 (Pa. 1990) (expressly reaffirming the longstanding common law right to rescind an insurance policy procured through fraudulent means).

2. Common Law Test for Rescission

Under longstanding Pennsylvania law, an insurer may rescind an insurance policy if: (1) the application contained a representation that was false; (2) the false representation was material to the risk being insured; and (3) the insured knew when making the representation that the representation was false, or made the representation in bad faith. See, e.g., N.Y. Life Ins. Co. v. Johnson, 923 F.2d 279, 281 (3d Cir. 1991); see also, SWIF, 833 A.2d at 346 (applying three-part test to worker's compensation policy). COBU does not contest that its July 11, 2000 and January 31, 2001 applications falsely represented that it did not own aircraft during the relevant time period. Nor does COBU contest that the applications falsely represented that it did not send employees out of the state and out of the country. Accordingly, the Court must examine whether COBU's misrepresentations were (1) material and (2) made knowingly or in bad faith.

"Materiality is generally considered a mixed question of fact and law for the jury, but if 'reasonable minds cannot differ on the question of materiality,' the court may resolve the issue at the summary judgment stage." Jung v. Nationwide Mutual Fire Ins. Co., 949 F.Supp. 353, 357 (E.D. Pa. 1997) (quoting Parasco v. Pacific Indem. Co., 920 F.Supp. 647, 654 (E.D. Pa. 1996)). "Information on an insurance application is material if knowledge or ignorance of it would

influence the decision of the issuing insurer to issue the policy, or the ability of the insurer to evaluate the degree and character of risk, or the determination of the premium rate." American Franklin Life Ins. Co. v. Galati, 776 F.Supp. 1054, 1060 (E.D. Pa. 1991) (citations omitted); see also, Luber v. Underwriters at Lloyd's, 1992 U.S. Dist. LEXIS 18376, at *13 (3d Cir. Nov. 17, 1992) ("The Third Circuit Court of Appeals instructs that a misrepresented fact in an insurance application is material if on being disclosed to the insurer it would have caused it to refuse the risk altogether or to demand a higher premium"). "It is not necessary that the alleged misrepresentation be related to the [claim] for which benefits are sought. A statement is material if it is relevant to the risk assumed, even if it is unrelated to the loss actually incurred." Id.

Under this standard, the misrepresentations in COBU's applications for a worker's compensation policy are material. Eva Hoffman, the Director of Underwriting for American Home, testified that if an application for worker's compensation insurance reveals that the applicant owns aircraft, American Home would "automatically decline" the application. See Hoffman Dep., Pl.'s Mot. Ex. 10 at 66, 76. Ms. Hoffman further testified that American Home would not write coverage for employee trips to and from Haiti "without issuing a separate coverage part, charging additional premiums. And depending on what country somebody was flying to, [American Home] may or may not write the policy altogether." Id. at 77.

Susan Pinto, the American Home underwriter who actually processed COBU's application, confirmed the testimony of Ms. Hoffman. According to Ms. Pinto, the computerized application system would have declined COBU's application if there had been any indication that it owned, operated, or leased an aircraft because "[American Home does] not want to cover" entities that own aircraft, even if the entity is not attempting to insure the aircraft exposure. Deposition of Susan Pinto ("Pinto Dep.") at 51, attached to Pl.'s Mot. at Exhibit 11. Ms. Pinto

also testified that an application indicating that an entity had employees who traveled out of the country would "bring up a red flag" and that "[i]t's not something that [American Home] would want to take on, going to outside the country. There is additional coverages that need to be endorsed on the policy that [American Home doesn't] normally do in the smaller workers' comp area." Id. at 149.

COBU has failed to produce any evidence to contradict American Home's assertions that the information COBU provided on its applications regarding aircraft ownership and travel outside the country by employees materially influenced both the decision to issue the Policy to COBU in the first place and its premium calculation. Therefore, under the governing materiality standard, there is no genuine issue of material fact that COBU's misrepresentations were material to the risks being insured.

The third element of the rescission test requires the Court to determine whether COBU knew that the misrepresentations on the applications were false when they were made, or made the misrepresentations in bad faith. It is undisputed that Mark Miller rather than an employee of COBU signed the January 31, 2001 application. See Pl.'s Statement. at ¶ 17; Def.'s Statement at ¶ 28. However, American Home argues that Miller was acting as COBU's agent when he completed the application and procured the Policy. See Pl.'s Mot. at 44-45; Plaintiff, American Home Insurance Company's, Answer to Defendant, Church of Bible Understanding's, Motion for Summary Judgment ("Pl.'s Opp.") at 6-11.

COBU, on the other hand, disputes that American Home has provided any evidence demonstrating that it knowingly made the misrepresentations on the application or made them in bad faith. COBU contends that it could not have "knowingly" made the misrepresentations on the January 31, 2001 insurance application since it was not signed by a COBU representative.

See Def.'s Mot. at 7. COBU further contends that Miller was not its agent, and any misrepresentations made on the application signed by him should not be imputed to COBU. Id.

"[T]he general rule of Pennsylvania law is that when an insured enlists an insurance broker to procure insurance without specifying an insurer, the broker is an agent of the insured, not the insurer." Nationwide Mut. Ins. Co. v. Starlight Ballroom Dance Club, Inc., 2004 WL 29669922, at *2 (E.D. Pa. Dec. 21, 2004), aff'd on other grounds, 175 Fed.Appx. 519 (3d Cir. 2006); see also, Luber, 1992 U.S. Dist. LEXIS 18736, at *9 ("where a person desiring to have his property insured applies not to any particular company or its known agent but to an insurance broker, permitting him to choose which company shall become the insurer, a long line of decisions has declared the broker to be the agent of the insured; not of the insurer").

American Home cites the testimony of Barbara McRae in support of its position that Miller was COBU's agent. She testified that Miller was COBU's insurance broker and that she would call him to let him know the type of insurance coverage needed. See Deposition of Barbara McRae ("McRae Dep.") at 32-34, attached to Pl.'s Mot. at Exhibit 8. She also testified that Miller was the person who submitted applications for insurance coverage on behalf of COBU. Id. at 71. COBU does not contest these facts. Thus, the Court finds that there is no genuine issue of fact that Miller was acting as the agent of COBU, not American Home.

COBU argues that even if Miller was acting as its agent, statements made by him cannot be considered "knowing misrepresentations" by COBU. See Def.'s Mot. at 8; Def.'s Opp. at 6-7. However, under Pennsylvania law, an insured is not relieved from responsibility for misstatements in an insurance application that are made by an insurance broker, rather than the insured. See Luber, 1992 U.S. Dist. LEXIS 18376, at *14; see also, Bird v. Penn Central Co., 341 F.Supp. 291, 295 (E.D. Pa. 1972) ("Where the agent of the insured, in effecting an insurance,

makes a false and unauthorized representation, the policy is void") (quoting Mundorff v. Wickersham, 63 Pa. 87, 89 (Pa. 1870)).

Moreover, under the third element of the Pennsylvania test, rescission is appropriate if material misrepresentations are made either knowingly or in bad faith. "[I]f the insured does not review the application, but instead relies on the broker to provide appropriate answers, then the signing of the application [by the insured] containing the misrepresentations constitutes bad faith." Luber, 1992 U.S. Dist. LEXIS 18376, at *14-15; see also, Jung, 949 F.Supp. at 358 ("Even if the applicant provides correct information to the individual entrusted to complete the form, the subsequent failure to review and correct the information which was improperly recorded constitutes bad faith").

COBU argues that the holdings of cases such as Luber and Jung are not applicable in the instant case because an employee of COBU did not actually sign the applications. See Def.'s Opp. at 4. The Court disagrees. COBU failed to review and correct the information on the applications before accepting the benefits conferred under the Policy. The Court finds that under these circumstances, American Home has the right under Pennsylvania law to rescind the Policy.

B. Defendants' Counterclaim (Violation of 42 Pa. Cons. Stat. § 8371)

In the Counterclaim, Defendants allege that American Home has "attempted to terminate a policy" in bad faith, thereby breaching 42 Pa. Cons. Stat. § 8371. Defs' Answer to Compl., Counterclaim ¶¶ 1-4. COBU argues that American Home filed the present action seeking rescission of the Policy despite "clear and convincing evidence" that such an action was impermissible under statutory and common law, and therefore that such an action constitutes bad faith under Section 8371. See Def.'s Mot. at 11.

However, since the Court has found in favor of American Home on its rescission claim,

COBU cannot demonstrate by clear and convincing evidence that American Home did not have a reasonable basis for bringing that claim. Accordingly, COBU's motion for summary judgment on the Counterclaim will be denied, and American Home's motion for summary judgment will be granted.

IV. CONCLUSION

For the foregoing reasons, American Home's Motion for Summary Judgment on Count III and the Counterclaim will be granted, and COBU's Cross-Motion for Summary Judgment on Count III and the Counterclaim will be denied. Counts I and II of the Complaint, which were stayed by the Court's August 16, 2004 order, will be dismissed as moot.[3]

An appropriate order follows.

[3] "The district court may on its own initiative enter an order dismissing [an] action provided that the complaint affords a sufficient basis for the court's action." Bryson v. Brand Insulations, Inc., 621 F.2d 556, 559 (3d Cir. 1980). The effect of the Court's ruling on the cross-motions for summary judgment is that the Policy is rescinded.

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	:	
THE CHURCH OF BIBLE UNDERSTANDING d/b/a OLDE GOOD THINGS and GAYLE TRAILL	:	

ORDER

AND NOW, this 6th day of September, 2006, upon consideration of Defendant COBU's Motion for Summary Judgment (docket no. 29), Plaintiff's Opposition thereto (docket no. 32), Plaintiff's Motion for Summary Judgment (docket no. 30), and COBU's Opposition thereto (docket no. 33), and for the reasons stated in the accompanying Memorandum, it is

ORDERED that:

(1) Defendant's Motion for Summary Judgment on Count III and the Counterclaim is **DENIED**;

(2) Plaintiff's Motion for Summary Judgment on Count III and the Counterclaim is **GRANTED**; and

(3) Counts I and II are **DISMISSED** as moot.

Accordingly, the Clerk of the Court shall mark this case **CLOSED**.

BY THE COURT:

/s/ Bruce W. Kauffman

BRUCE W. KAUFFMAN, J.