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

ARIF ATIYEH, trading as WOW Outlet; and GEORGE ATIYEH,	)	
Plaintiffs	)	Civil Action No. 07-cv-04798
vs.	)	
NATIONAL FIRE INSURANCE COMPANY OF HARTFORD; and CNA,	)	
Defendants[1]	)	

* * *

APPEARANCES:

JOHN P. KAROLY, JR., ESQUIRE
On behalf of Plaintiffs

MICHAEL F. HENRY, ESQUIRE and
LAUREN A. TULLI, ESQUIRE
On behalf of Defendants

* * *

M E M O R A N D U M

JAMES KNOLL GARDNER,
United States District Judge

This matter is before the court on National Fire Insurance Company of Hartford's Motion to Dismiss Plaintiffs'

[1] The within motion avers that the caption of this case improperly designates "CNA" as a defendant. Defendants indicate that CNA is a non-legal entity trade name. The parties have not moved or stipulated to amend the caption. Accordingly, throughout the remainder of this Memorandum, I shall refer to defendants collectively as National Fire and as "defendant" in the singular.

Complaint, which motion was filed on November 21, 2007.[2] For the following reasons, I grant National Fire Insurance Company of Hartford's Motion to Dismiss Plaintiffs' Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Specifically, I grant National Fire Insurance Company of Hartford's ("National Fire") motion to dismiss plaintiffs' breach of contract claim because I conclude that it was untimely filed under the applicable insurance policy. In addition, I grant National Fire's motion to dismiss plaintiffs' Bad Faith claim because I conclude that plaintiffs have not pled sufficient facts to establish the claim. That count is dismissed without prejudice for plaintiff Arif Atiyeh to re-plead that cause of action with more specificity. Finally, I dismiss plaintiff George Atiyeh as a party to this action for lack of standing.

JURISDICTION

Jurisdiction is based upon diversity of citizenship pursuant to 28 U.S.C. § 1332. Plaintiffs Arif Atiyeh, trading as WOW Outlet, and George Atiyeh are each Pennsylvania citizens. Defendant National Fire Insurance Company of Hartford is an Illinois corporation. The amount in controversy exceeds $75,000.

[2] Plaintiffs' Answer to Defendants' Motion to Dismiss Plaintiffs' Complaint was filed on January 25, 2008. National Fire Insurance Company of Hartford's Reply to Plaintiffs' Response to the Motion to Dismiss Plaintiffs' Complaint was filed on February 4, 2008.

VENUE

Venue is proper pursuant to 28 U.S.C. § 1391(a)(2) because the events giving rise to plaintiffs' claims allegedly occurred in Allentown, Lehigh County, Pennsylvania, which is located within this judicial district.

PROCEDURAL HISTORY

Plaintiffs initiated this action on September 4, 2007 by filing a Praecipe for Writ of Summons in the Court of Common Pleas of Lehigh County, Pennsylvania. Plaintiffs subsequently filed a two-count Complaint against National Fire Insurance Company of Hartford and CNA on October 18, 2007.

On November 13, 2007, defendant removed the case to federal court by filing a Notice of Removal of Action Under 28 U.S.C. Section 1441.

In their Complaint, plaintiffs allege that they obtained a commercial insurance policy from National Fire insuring their real estate business. Furthermore, plaintiffs allege that they paid all premiums under the policy and suffered a covered loss within the meaning of the contract. Count I of plaintiffs' Complaint alleges breach of contract against National Fire for its refusal to indemnify plaintiffs' loss. Count II sues defendants for acting in bad faith in their handling of plaintiffs' claim. Finally, plaintiffs seek damages in excess of $700,000.

On November 21, 2007, National Fire filed a motion to dismiss this action pursuant to Rule 12(b)(6), which is presently before the court for disposition. In its motion, defendant claims that plaintiffs (1) breached the suit-limitation clause of the insurance policy; (2) have no individual cause of action under the Unfair Insurance Practices Act; and (3) did not sufficiently state a claim for bad faith pursuant to 41 Pa.C.S.A. § 8371. Finally, defendant claims (4) that plaintiff George Atiyeh does not have standing to bring suit because he was not a "named insured" on the insurance policy.

On January 25, 2008, plaintiffs filed their answer to National Fire's motion to dismiss plaintiffs' Complaint. Plaintiffs' response avers that (1) their suit is not barred by the limitations provision of the policy; (2) the claim for bad faith satisfies the notice pleading standard under the Federal Rules of Civil Procedure; and (3) plaintiff George Atiyeh has standing to bring suit as a "potential loss payee".

On April 24, 2008, with leave of court, defendant filed a reply brief to plaintiffs' response.

STANDARD OF REVIEW

A claim may be dismissed under Federal Rule of Civil Procedure 12(b)(6) for "failure to state a claim upon which relief can be granted". A 12(b)(6) motion requires the court to examine the sufficiency of the complaint. Conley v. Gibson,

355 U.S. 41, 45, 78 S.Ct. 99, 102, 2 L.Ed.2d 80, 84 (1957) (abrogated in other respects by Bell Atlantic Corporation v. Twombly, ___ U.S. ___, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)).

Ordinarily, a court's review of a motion to dismiss is limited to the contents of the complaint, including any attached exhibits. See Kulwicki v. Dawson, 969 F.2d 1454, 1462 (3d Cir. 1992). However, evidence beyond a complaint which the court may consider in deciding a 12(b)(6) motion to dismiss includes public records (including court files, orders, records and letters of official actions or decisions of government agencies and administrative bodies), documents essential to plaintiff's claim which are attached to defendant's motion, and items appearing in the record of the case. Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384 n.1 and n.2 (3d Cir. 1995).

Except as provided in Federal Rule of Civil Procedure 9, a complaint is sufficient if it complies with Rule 8(a)(2). That rule requires only "a short and plain statement of the claim showing that the pleader is entitled to relief" in order to give the defendant fair notice of what the claim is and the grounds upon which it rests. Twombly, ___ U.S. at ___, 127 S.Ct. at 1964, 167 L.Ed.2d at 940.

Additionally, in determining the sufficiency of a complaint, the court must accept as true all well-pled factual allegations and draw all reasonable inferences therefrom in the

light most favorable to the non-moving party. Worldcom, Inc. v. Graphnet, Inc., 343 F.3d 651, 653 (3d Cir. 2003). Nevertheless, a court need not credit "bald assertions" or "legal conclusions" when deciding a motion to dismiss. In re Burlington Coat Factory Securities Litigation, 114 F.3d 1410, 1429-1430 (3d Cir. 1997).

In considering whether the complaint survives a motion to dismiss, both the District Court and the Court of Appeals review whether it "contain[s] either direct or inferential allegations respecting all the material elements necessary to sustain recovery under *some* viable legal theory." Twombly, ___ U.S. at ___, 127 S.Ct. at 1969, 167 L.Ed.2d at 945 (quoting Car Carriers, Inc. v. Ford Motor Company, 745 F.2d 1101, 1106 (7th Cir. 1984)(emphasis in original)); Maspel v. State Farm Mutual Auto Insurance Company, 2007 WL 2030272, at *1 (3d Cir. July 16, 2007).

FACTS

Based upon the averments in plaintiffs' Complaint, which I must accept as true under the foregoing standard of review, the pertinent facts are as follows. At the time of the action giving rise to these claims, plaintiff Arif Atiyeh was the owner of WOW Outlet, a sole proprietorship real estate business, located in a building owned by George Atiyeh at 727 Meadow Street, Allentown, Pennsylvania.

In October 2003 plaintiffs purchased a commercial insurance policy from defendant National Fire covering the real estate business.[3] Plaintiffs have paid all premiums and performed all requirements under the insurance policy.

On February 16, 2004, the pipes in plaintiffs' building froze, which caused water damage to the building and to plaintiffs' personal property. Additionally, Arif Atiyeh suffered a loss from the interruption of his business. Immediately after becoming aware of the damage, plaintiffs notified defendant of their claim. After receipt of plaintiffs' claim, defendant initiated an investigation and inspection of plaintiffs' real estate and personal property. On March 28, 2007[4], defendant denied coverage of plaintiffs' loss.

The insurance policy issued to plaintiff Arif Atiyeh contains a suit-limitation clause stating that any legal action against defendant must be brought within two years after the date on which the direct physical loss or damage occurred.[5] In order to preserve their right to bring action under the suit-limitation

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[3] Under Pennsylvania's choice of law principles, a claim arising under an insurance policy is governed by the law of the state in which the policy was delivered. CAT Internet Services, Inc. v. Providence Washington Insurance Company, 333 F.3d 138, 141 (2003). The parties do not dispute that Pennsylvania law applies to this action.

[4] Plaintiffs' Complaint alleged that defendant denied coverage of plaintiffs' claim on May 23, 2007. However, in their response to National Fire's motion to dismiss, plaintiffs admitted that defendant denied coverage of plaintiffs' claim on March 28, 2007.

[5] Plaintiffs' Answer to Defendants' Motion to Dismiss Plaintiffs' Complaint ("Plaintiffs' Answer") ¶ 7.

clause, plaintiffs filed a Praecipe for Writ of Summons in the Court of Common Pleas of Philadelphia County, Pennsylvania on January 27, 2006.[6] Subsequently, the lawsuit was withdrawn without prejudice, and defendant National Fire agreed not to assert the suit-limitation clause as a defense for a period of four months after rendering its decision on plaintiffs' claim.[7]

PARTIES' CONTENTIONS

Defendant's Contentions

Defendant contends that a formal agreement was reached between plaintiffs and defendant whereby plaintiffs agreed to withdraw their action and defendant agreed to extend the suit limitation clause for a period of four months after issuing its decision on plaintiffs' claim.[8] Defendant avers that because the decision to deny plaintiffs' claim was rendered on March 28, 2007, plaintiffs had until July 28, 2007 to initiate suit under the extended suit-limitation clause.

Thus, defendant claims that plaintiffs' current suit, instituted on September 4, 2007, is in breach of the agreement to extend the limitation period. Defendant alleges that the Praecipe for Writ of Summons, which was voluntarily withdrawn by plaintiffs, has no legal effect and does not satisfy the

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[6] Plaintiffs' Answer ¶ 8.

[7] Plaintiffs' Answer ¶ 9; Defendant's motion, Exhibit B.

[8] Defendant's motion, Exhibit D.

limitation clause. Accordingly, defendant seeks to dismiss plaintiffs' breach of contract claim.

Next, defendant National Fire argues that plaintiffs' conclusory allegations are legally insufficient to state a claim for bad faith. Specifically, defendant avers that there is no individual cause of action under the Unfair Insurance Practices Act[9] ("UIPA") and that an alleged violation of the UIPA is not equivalent to a violation of 42 Pa.C.S.A. § 8371, which establishes a cause of action for bad faith. Additionally, defendant contends that plaintiffs' Complaint does not allege any facts to establish a claim for bad faith under 42 Pa.C.S.A. § 8371.

Finally, defendant contends that George Atiyeh is not a "named insured" on the insurance policy and therefore does not have standing to bring this suit. Specifically, defendant argues that pursuant to the policy, a party must be named on the contract in order to receive insurance proceeds.

Defendant asserts that mere ownership of the property is not determinative. Furthermore, defendant avers that George Atiyeh cannot recover as a beneficiary or as a third party because the contracting parties did not affirmatively express that intention in the contract.

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[9] Act of July 22, 1974, P.L. 589, No. 205, §§ 1-15, as amended, 40 P.S. §§ 1171.1 to 1171.15.

Plaintiffs' Contentions

Plaintiffs contend that Pennsylvania's four-year statute of limitations on contract claims should apply in this case rather than the policy's suit-limitation clause as amended by the parties' extension agreement. Plaintiffs allege that they initiated suit within the two-year limitations period by filing a Praecipe for Writ of Summons in the Court of Common Pleas of Philadelphia County, Pennsylvania on January 27, 2006, before the original limitation provision's expiration on February 16, 2006.

According to plaintiffs, the action was withdrawn without prejudice for plaintiffs to refile, in exchange for defendant's agreement to extend the suit-limitation period for an additional four months after rendering its decision on plaintiffs' claim. However, plaintiffs aver that defendant's promise was illusory and that there was no consideration to support the alleged agreement to extend the suit-limitation provision.

Therefore, plaintiffs contend that because they performed all obligations under the policy and their September 4, 2007 action was filed within the applicable four-year limitation period, the action is timely.

Next, plaintiffs argue that the Complaint states a viable bad faith claim under federal notice pleading requirements. Plaintiffs allege that they do not need to support

their claim with extensive facts because the Complaint sufficiently places defendant on notice of their Bad Faith claim.

Finally, plaintiffs contend that George Atiyeh has standing to bring suit because, as property owner, he is a potential loss payee. Specifically, plaintiffs allege that damage to the building, owned by George Atiyeh, was included in the loss claimed.

DISCUSSION

Suit-Limitation

Under Pennsylvania law, breach of contract claims are generally subject to a four-year statute of limitations. 42 Pa.C.S.A. § 5525(a). However, it is well settled in Pennsylvania that a contract provision limiting the time for commencement of a suit to a period that is shorter than the applicable statute of limitations is valid and enforceable unless it is "manifestly unreasonable." 42 Pa.C.S.A. § 5501(a); see Hospital Support Services, Ltd. v. Kemper Group, Inc., 889 F.2d 1311, 1315 (3d Cir. 1989); Marshall v. Aetna Casualty & Surety Company, 643 F.2d 151, 152 (3d Cir. 1981); Lardas v. Nationwide Insurance Company, 426 Pa. 47, 51, 231 A.2d 740, 741 (1967).

Pennsylvania courts have held that one- and two-year suit-limitation clauses are valid and reasonable. See Caln Village Associates, L.P. v. Home Indemnity Company,

75 F.Supp.2d 404, 410 (E.D.Pa. 1999), which holds that a two-year limitations period is not manifestly unreasonable; McElhiney v. Allstate Insurance Company, 33 F.Supp.2d 405, 406 (E.D.Pa. 1999), which states that a one-year period is reasonable; and Lardas, 426 Pa. at 50, 231 A.2d at 741, which also states that a one-year limitations provision is valid and reasonable.

A policy's limitations period begins to run "from the date of the occurrence of the destructive event insured against." Bostick v. ITT Hartford Group, Inc., 56 F.Supp.2d 580, 586 (E.D.Pa. 1999)(citing General State Authority v. Planet Insurance Company, 464 Pa. 162, 1666, 346 A.2d 265, 267 (1975)).

In this case, plaintiffs purchased a commercial insurance policy from National Fire in October 2003. The original policy included a suit-limitation clause, which states:

> 4. Legal Action Against Us
>
> No one may bring legal action against us under this insurance unless:
>
> a. There has been full compliance with all of the terms of this insurance; and
>
> b. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.[10]

[10] See the commercial insurance policy which is attached to defendant's motion as Exhibit A.

The validity of this original limitations clause is not at issue. Plaintiffs do not contend, as an initial matter, that the clause is manifestly unreasonable, nor do they present evidence to suggest it. Therefore, in light of the foregoing law, I presume that National Fire's original suit-limitation provision was valid and enforceable. Rather, the issue in this matter concerns the four-month extension of the suit-limitation clause.

Pennsylvania courts have held that parties to an insurance contract may modify a suit-limitations clause. Hospital Support Services, Ltd., 889 F.2d at 1315. A limitations period will be altered when the conduct of an insurer constitutes waiver or estoppel. Petraglia v. American Motorists Insurance Company, 284 Pa.Super. 1, 8, 424 A.2d 1360, 1364 (1981).

Waiver refers to an express decision by the insurer not to raise the suit-limitation clause as a defense, while estoppel refers to the insurer's affirmative actions which mislead the insured from filing suit within the limitations period. Conway v. State Farm Fire and Casualty Company, 1999 WL 545009, at *3 (E.D.Pa. July 27, 1999)(R. Kelly, J.)(quoting Jackson v. Chubb Group of Insurance Companies, 1987 WL 8556, at *3 (E.D.Pa. March 26, 1987)(Lord, S.J.).

However, a suit-limitation clause will not be deemed waived where sufficient time remains for an insured to commence

action before the limitation period expires. In Davidson v. Brethren Mutual Insurance Company, 2007 WL 2007997, at *6-7 (M.D.Pa. July 5, 2007), the district court held that the insurer did not waive or extend the limitation period, even though the insurer's conduct in handling the claim continued to the end of the limitations period, because the plaintiff had sufficient time to commence an action before the limitations period ended.

In the case before me, the parties expressly negotiated an extension of the limitation period and came to an agreement in which defendant waived its right to assert the suit-limitation clause as a defense for a period of four months after a decision was made on plaintiffs' claim.

Plaintiffs aver that the four-month extension is invalid because the agreement lacked consideration. Plaintiffs cite no legal authority in support of this argument.

Rule 7.1(c) of the Rules of Civil Procedure for the United States District Court for the Eastern District of Pennsylvania requires that every motion "shall be accompanied by a brief containing a concise statement of the legal contentions and authorities relied upon in support of the motion." E.D.Pa.R.Civ.P. 7.1(c).

This standard applies to briefs in opposition as well as briefs in support of a motion. See Anthony v. Small Tube Manufacturing Corporation, 535 F.Supp.2d 506, 511, n.8

(E.D.Pa. 2007)(Gardner, J). Additionally, plaintiffs contend that the extension fails because it is an illusory promise.

Because plaintiffs fail to adequately brief their arguments as required by Local Rule 7.1(c), defendant's motion to dismiss the breach of contract claim could be granted as unopposed. Nevertheless, I briefly address plaintiffs' arguments on the merits.

It is clear that consideration does exist in this case. Pennsylvania courts have stated that "consideration consists of a benefit to the promisor or a detriment to the promisee" and "must be bargained for as the exchange of the promise." Stelmack v. Glen Alden Coal Company, 339 Pa. 410, 414, 14 A.2d 127, 128 (1940). Here, the parties expressly exchanged promises: plaintiffs agreed to voluntary withdraw their Praecipe for Writ of Summons and defendant agreed to waive the suit limitation clause until four months after issuing its decision on plaintiffs' claim.

Moreover, the agreement is not illusory. A promise is illusory and unenforceable if the promise is completely optional with the promisor. Geisinger Clinic v. DiCuccio, 414 Pa.Super. 85, 91, 606 A.2d 509, 512 (1992). National Fire agrees to waive the limitation clause for four months after it renders its decision on plaintiffs' claim. This promise is not

illusory because National Fire's obligations under the extension agreement are not optional.

Because suit-limitation clauses in general, and this one in particular, are enforceable, I conclude that Pennsylvania's four-year statute of limitations is inapplicable, and plaintiffs were required to comply with the modified suit-limitation provision.[11]

National Fire denied plaintiffs' insurance claim on March 28, 2007. Therefore, according to the parties' express agreement, plaintiffs' right to file suit expired on July 28, 2007. Plaintiffs instituted the current action 38 days late on September 4, 2007. Plaintiffs do not allege that they were precluded from filing a second Praecipe for Writ of Summons in

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[11] Plaintiffs contend that they fulfilled their obligations under the suit-limitation clause when they originally filed a Praecipe for Writ of Summons within the two-year limitations period. Defendant argues that plaintiffs' voluntary withdrawal of their January 27, 2006 action does not act to toll the limitations period and is treated as if it was never filed.

While defendant cites case law to support the proposition that an action which is dismissed without prejudice does not act to toll the statute of limitations, I am unaware of any case law which states that the voluntary withdrawal of an action does not act to toll an applicable suit-limitation clause. Rather, the Supreme Court of Pennsylvania has held that suit-limitation clauses are contractual provisions imposed by the contracting parties which modify the statute of limitation. See Lardas, 426 Pa. at 51, 231 A.2d at 741-742.

As previously discussed, I conclude that the parties' agreement to extend the limitation period is valid and enforceable in part because plaintiffs' consideration for the modified limitation provision was to withdraw their action without prejudice to refile, if necessary, once defendant concluded its investigation and issued a decision on plaintiffs' claim. The benefit or consideration plaintiffs received was the possibility that defendant would pay the claim in whole or in part and that litigation would then be unnecessary.

state court prior to the expiration of the four-month extension. See Davidson, 2007 WL 2007997, at *6-7.

Accordingly, I conclude that Count I, plaintiffs' breach of contract claim, is untimely. Therefore, National Fire Insurance Company of Hartford's Motion to Dismiss Plaintiffs' Complaint is granted to the extent that it seeks dismissal of Count I.

Bad Faith Claim

Count II of plaintiffs' Complaint alleges that defendant's actions constitute violations of UIPA and 42 Pa.C.S.A. § 8371.

UIPA prohibits a person from engaging in an unfair method of competition or an unfair or deceptive act or practice in the insurance business. 40 P.S. § 1171.4. The United States Court of Appeals for the Third Circuit has interpreted Pennsylvania law as providing no private cause of action under UIPA. Sabo v. Metropolitan Life Insurance Company, 137 F.3d 185, 192 (3d Cir. 1998).

Furthermore, violations of UIPA do not establish per se bad faith conduct because most of the acts defined as "unfair methods of competition" and "unfair or deceptive acts or practices" are not relevant to the question of whether the elements of a bad faith claim are satisfied. Dinner v. United

Services Automobile Association Casualty Insurance Company, 29 Fed.Appx. 823, 827 (3d Cir. 2002).

The Pennsylvania Legislature promulgated 42 Pa.C.S.A. § 8371 creating a cause of action in Pennsylvania insurance law for "bad faith."[12] March v. Paradise Mutual Insurance Company, 435 Pa.Super. 597, 600, 646 A.2d 1254, 1256 (1994).

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 the interest plus 3%.
>
> (2) Award punitive damages against the insurer.
>
> (3) Assess court costs and attorney fees against the insurer.

42 Pa.C.S.A. § 8371.

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[12] The statute does not define bad faith, but has acquired a universally accepted meaning in the insurance context:

> Insurance. "Bad Faith" on the 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.

Terletsky v. Prudential Property and Casualty Insurance Company, 437 Pa.Super. 108, 125, 649 A.2d 680, 688 (1994).

An insured's claim for bad faith brought under § 8371 is independent of an underlying contract claim, because the language of the statute does not indicate that success on the contract claim is a prerequisite for success on the Bad Faith claim.[13] March, 435 Pa.Super. at 602, 646 A.2d at 1256. Accordingly, a claim for bad faith can survive even if a plaintiff's breach of contract claim is barred by the policy's limitation provision. Id.; see also Margolies v. State Farm Fire and Casualty Company, 810 F.Supp. 637, 642 (E.D.Pa. 1992).

Citing Pennsylvania case law, defendant contends that plaintiffs have insufficiently pled their Bad Faith claim because they have not alleged detailed facts. Under Pennsylvania's fact-pleading standard, "the pleader must define the issues; every act or performance essential to that end must be set forth in the complaint." Santiago v. Pennsylvania National Mutual Casualty Insurance Company, 418 Pa.Super. 178, 185, 613 A.2d 1235, 1238 (1992).

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[13] The Supreme Court of Pennsylvania has held that claims brought under 42 Pa.C.S.A. § 8371 are subject to a two-year statute of limitations pursuant to 42 Pa.C.S.A. § 5524, but the court did not specify when the cause of action accrues. Ash v. Continental Insurance Company, 593 Pa. 523, 536, 932 A.2d 877, 884 (2007).

The Third Circuit Court of Appeals has predicted that the Pennsylvania Supreme Court would find that the limitations period beings to run when coverage is denied. Sikirica v. Nationwide Insurance Company, 416 F.3d 214, 224-225 (3d Cir. 2005).

National Fire does not contend that plaintiffs' Bad Faith claim is untimely. I note that National Fire denied plaintiffs' claim on March 28, 2007 and plaintiffs instituted the current action on September 4, 2007. Therefore, plaintiffs' § 8371 cause of action was filed well within the two-year limitations period.

However, in federal court, state pleading requirements do not apply. See Stroud v. Abington Memorial Hospital, 546 F.Supp.2d 238, 246 (E.D.Pa. 2008). Under the notice pleading standard of the Federal Rules of Civil Procedure, a complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a). A complaint alleges sufficient facts if it puts the defendant on notice of the essential elements of the plaintiff's cause of action. Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996).

To establish a claim of bad faith, a plaintiff must demonstrate that the insurer (1) lacked a reasonable basis for denying benefits and (2) knew or recklessly disregarded its lack of a reasonable basis. Toy v. Metropolitan Life Insurance Company, 593 Pa. 20, 31, 928 A.2d 186, 193 (2007); Terletsky, 437 Pa.Super. at 125, 649 A.2d at 688.

In federal court, a plaintiff states a sufficient claim if the complaint avers basic facts regarding the insurance policy, loss, and denial of claim as well as allegations that the insurer acted unreasonably. See Scarpato v. Allstate Insurance Company, 2007 WL 172341, at *5 (E.D.Pa. January 23, 2007)(Yohn, S.J.), which held that the complaint sufficiently pled a bad faith claim under the federal notice pleading requirement because the court could infer from plaintiff's allegations that the insurance company was unreasonable in denying plaintiff's claim.

The allegations included that the insurance company failed to conduct a reasonable investigation and asserted policy defenses without a reasonable basis.

In Mezzacappa v. State Farm Insurance Company, 2004 WL 2900729, at *1-2 (E.D.Pa. December 14, 2004)(Sanchez, J.), the district court held that plaintiff was not required to plead detailed facts and that plaintiff's averments were sufficient to state a Bad Faith claim. The averments were that the insurer's denial was unreasonable, lacked sufficient basis, and violated the terms of the insurance contract.

National Fire contends that plaintiffs have not sufficiently pled a Bad Faith claim under § 8371 because an alleged violation of UIPA is not equivalent to a claim of bad faith and because plaintiffs have not alleged detailed facts to support their claim.

While violations or alleged violations of UIPA do not constitute bad faith conduct per se, see Dinner, supra, plaintiffs are not required to state facts in sufficient detail to prove the claim in their Complaint under the Federal Rules of Civil Procedure. Even under the less stringent notice pleading requirement, however, I conclude that plaintiffs have not sufficiently alleged facts to establish a claim of bad faith.

Plaintiffs aver that they entered into an insurance contract with defendant, that they suffered a covered loss from

water damage, and that defendant is required to indemnify their loss. However, unlike the insureds in Scarpato and Mezzacappa, plaintiffs have not made any allegations that defendant's investigation was unreasonable, that the denial of the claim was unreasonable, or that defendant lacked a sufficient basis for denying the claim. See Scarpato, 2007 WL 172341, at *5; Mezzacappa, 2004 WL 2900729, at *1-2.

For the forgoing reasons, I conclude that Count II, plaintiffs' Bad Faith claim, is insufficient to state a claim on which relief can be granted. Accordingly, I dismiss Count II of plaintiffs' Complaint without prejudice for plaintiff Arif Atiyeh to file an amended complaint more specifically pleading the Bad Faith claim under 42 Pa.C.S.A. § 8371.

Standing of plaintiff George Atiyeh

Finally, defendant contends that George Atiyeh does not have standing to bring suit because he is not a "named insured" on the insurance policy. Plaintiffs argue that George Atiyeh is the owner of the building, which is part of the claimed loss, and that as the property owner he is a potential loss payee.[14]

[14] Plaintiffs rely on Gallatin Fuels, Inc. v. Westchester Fire Insurance Company, where the court denied Defendant's Motion to Dismiss because the defendant did not cite any persuasive authority to support its position that the plaintiff, as a loss payee with rights independent of the insured, did not have standing to sue. 2006 U.S. Dist. LEXIS 36027, at *11-12 (W.D.Pa. June 2, 2006)(Ambrose, C.J.), reversed in part on other grounds, Gallatin Fuels, Inc. v. Westchester Fire Insurance Company, 244 Fed.Appx. 424 (3d Cir. 2007).

However, in Gallatin Fuels, Inc., the Third Circuit stated that the plaintiff was named as a loss payee in the insurance policy.

Under Pennsylvania law, an insurance policy only benefits the parties to the contract or the named insured. Banos v. State Farm Insurance Company, 2007 WL 2972600, at *3 (E.D.Pa. October 10, 2007)(Sanchez, J.). Furthermore, the terms of the contract, not ownership, determine whether an insurer is obligated to an individual. McDivitt v. Pymatuning Mutual Fire Insurance Company, 303 Pa.Super. 130, 134-135, 449 A.2d 612, 614-615 (1982). Moreover, Pennsylvania's Bad Faith statute limits recovery to insureds under the insurance policy. In Banos, 2007 WL 2972600, at *5, District Judge Sanchez interpreted 42 Pa.C.S.A. § 8371 as being restricted to cases in which "the insurer has acted in bad faith toward the insured".

Additionally, in order for a third party beneficiary to have standing to recover on a contract, both contracting parties must have expressed an intention that the third party be a beneficiary, and that intention must have affirmatively appeared in the contract itself. Scarpitti v. Weborg, 530 Pa. 366, 370, 609 A.2d 147, 149 (1992)(citing Spires v. Hanover Fire Insurance Company, 364 Pa. 52, 57, 70 A.2d 828, 830-831 (1950)).

The insurance policy lists WOW Outlet as the only named insured. Plaintiffs allege that Arif Atiyeh was the owner of the sole proprietorship real estate business trading as WOW Outlet.

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244 Fed.Appx. at 427. Here, the insurance policy does not name George Atiyeh as a loss payee.

Plaintiffs do not allege that George Atiyeh is the owner or operator of WOW Outlet. George Atiyeh is not a party to the insurance contract; he is not included in the policy as a named insured; and the contract does not express the parties' mutual intention to make George Atiyeh a third party beneficiary.

Additionally, the insurance policy does not name George Atiyeh as a loss payee. See Banos, 2007 WL 2972600, at *5. As a result, George Atiyeh cannot recover on a bad faith claim. Therefore, I conclude that George Atiyeh does not have standing, and I dismiss him as a party to this action.

CONCLUSION

For all the foregoing reasons, I grant National Fire Insurance Company of Hartford's Motion to Dismiss Plaintiffs' Complaint without prejudice for plaintiff Arif Atiyeh to re-plead his bad faith claim with more specificity under 42 Pa.C.S.A. § 8371.

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

ARIF ATIYEH, trading as WOW Outlet; and GEORGE ATIYEH,	)	
Plaintiffs	)	Civil Action No. 07-cv-04798
vs.	)	
NATIONAL FIRE INSURANCE COMPANY OF HARTFORD; and CNA,	)	
Defendants	)	

O R D E R

NOW, this 30th day of September 2008, upon consideration of National Fire Insurance Company of Hartford's Motion to Dismiss Plaintiffs' Complaint, which motion was filed on November 21, 2007; upon consideration of plaintiffs' Answer to Defendants' Motion to Dismiss Plaintiffs' Complaint, which response was filed on January 25, 2008; upon consideration of National Fire Insurance Company of Hartford's Reply to Plaintiffs' Response to the Motion to Dismiss Plaintiffs' Complaint, which reply was filed on February 4, 2008; upon consideration of the briefs of the parties; and for the reasons articulated in the accompanying Memorandum,

IT IS ORDERED that National Fire Insurance Company of Hartford's Motion to Dismiss Plaintiffs' Complaint is granted.

IT IS FURTHER ORDERED that Count I alleging Breach of Contract is dismissed from plaintiffs' Complaint.

IT IS FURTHER ORDERED that Count II alleging a Bad Faith claim is dismissed from plaintiffs' Complaint without prejudice for plaintiff Arif Atiyeh to amend his Bad Faith claim.

IT IS FURTHER ORDERED that plaintiff George Atiyeh is dismissed as a party to this action, and the Clerk of Court shall mark the docket accordingly.

IT IS FURTHER ORDERED that plaintiff Arif Atiyeh, trading as WOW Outlet, shall have until on or before October 31, 2008 to file an amended complaint more specifically alleging his Bad Faith claim in Count II, consistent with the accompanying Memorandum. Failure to file an amended complaint by October 31, 2008 may result in dismissal of this action for lack of prosecution.

BY THE COURT:

/s/ James Knoll Gardner
James Knoll Gardner
United States District Judge