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

MICHAEL MITCHELL, ET AL.	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 17-0737
STATE FARM FIRE AND CASUALTY INSURANCE COMPANY	:	

MEMORANDUM

SURRICK, J. **JULY 18, 2017**

Presently before the Court is Plaintiffs' Motion to Amend the Amended Complaint. (ECF No. 14.) For the following reasons, Plaintiffs' Motion will be granted.

I. BACKGROUND

Plaintiffs Michael Mitchell and Molly Conlon purchased a Homeowners Insurance Policy from Defendant State Farm Fire and Casualty Insurance Company. This action arises as a result of Defendant's partial denial of Plaintiffs' claims under the Policy.

A. Factual Background

Plaintiffs' Amended Complaint alleges that Plaintiffs purchased a Homeowners Insurance Policy from Defendant on or before January 2016. (Am. Compl. ¶ 4, ECF No. 6.) On January 23, 2016, Plaintiffs' property suffered damage due to a snow storm. (*Id.* ¶ 6.) The interior, exterior, and roof of the main residence were damaged as a result of the ice and snow. (*Id.*) The roof of the detached garage was also severely damaged. (*Id.*) Plaintiffs' policy with Defendant covered storm, ice, and snow damage. (*Id.* ¶ 7.)

Defendant determined that the interior damage to the main residence totaled $7,717.83. (*Id.* ¶ 8.) After subtracting the deductible and depreciation, Defendant provided Plaintiffs with a

payment in the amount of $5,801.77. (*Id*.) Plaintiffs allege that Defendant failed to provide adequate payment for the interior damage. (*Id.* ¶ 9.) The exterior damage totaled $54,180.76. (*Id*.) Defendant failed to provide any payment for the exterior damage, which included the roof of the main residence, the exterior fascia and stucco, and the roof of the detached garage. (*Id*.)

Plaintiffs allege that Defendant did not contact Plaintiff to inspect the damaged property in a timely manner. (Pls.' Mot., Ex. A, "SAC" ¶ 21.) Plaintiffs allege that they provided the following documents to Defendant: "photographs and statements regarding the damage to the detached garage;" an expert report detailing the condition of the garage prior to the storm; and an expert report, which determined that the snow storm caused the damage to the exterior property. (*Id*. ¶ 23.) Plaintiffs allege that Defendant did not properly investigate the claim, and that Defendant did not provide a good faith reason for denying the claim. (*Id*. ¶ 15.) Rather, Defendant "simply refused coverage based upon its inability to inspect dangerous and inconvenient debris that was removed from the property," despite the "overwhelming evidence" that Plaintiffs provided to Defendant. (*Id*. ¶¶ 15, 24.)

B. Procedural History

On January 5, 2017, Plaintiffs filed a Complaint in the Court of Common Pleas of Philadelphia County, Pennsylvania. (ECF No. 1.) On February 16, 2017, Defendant filed a Notice of Removal. (*Id*.) On February 23, 2017, Defendant filed a Motion to Dismiss Count II of the Complaint. (ECF No. 4.) On March 8, 2017, Plaintiffs filed an Amended Complaint, rendering Defendant's Motion moot. (ECF No. 6.) Plaintiffs' Amended Complaint asserts two claims against Defendant: breach of contract (Count I); and violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa. Stat. Ann. § 201-2(4)(xxi) ("UTPCPL") (Count II).

On April 26, 2017, Plaintiffs filed the instant Motion to Amend the Amended Complaint. (Pls.' Mot., ECF No. 14.) Plaintiffs seek to add a bad faith claim to the Amended Complaint. On May 5, 2017, Defendant filed a Response in Opposition to Plaintiffs' Motion. (Def.'s Resp., ECF No. 15.)

II. LEGAL STANDARD

Federal Rule of Civil Procedure 15(a) requires that leave to amend the pleadings be granted freely "when justice so requires." Fed. R. Civ. P. 15(a)(2); *see also Long v. Wilson*, 393 F.3d 390, 400 (3d Cir. 2004). However, "[t]he policy favoring liberal amendment of pleadings is not . . . unbounded." *Dole v. Arco Chem. Co.*, 921 F.2d 484, 487 (3d Cir. 1990). A district court may deny leave to amend a complaint where "it is apparent from the record that (1) the moving party has demonstrated undue delay, bad faith or dilatory motives, (2) the amendment would be futile, or (3) the amendment would prejudice the other party." *Lake v. Arnold*, 232 F.3d 360, 373 (3d Cir. 2000) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

III. DISCUSSION

Defendant argues that Plaintiffs' Motion should be denied because their proposed amendment would be futile. "'Futility' means that the complaint, as amended, would fail to state a claim upon which relief could be granted." *In re Burlington Coat Factory*, 114 F.3d 1410, 1434 (3d Cir. 1997). "In assessing futility, the district court applies the same standard of legal sufficiency as applies under Rule 12(b)(6)." *Id*. (citation and internal quotation marks omitted). "Given the liberal standard for the amendment of pleadings, however, courts place a heavy burden on opponents who wish to declare a proposed amendment futile." *Synthes, Inc. v. Marotta*, 281 F.R.D. 217, 229 (E.D. Pa. 2012) (citation and internal quotation marks omitted). "If a proposed amendment is not *clearly* futile, then denial of leave to amend is improper." *Id*.

(citation omitted) (emphasis in original); *see also Huffman v. Prudential Ins. Co. of Am.*, No. 10-5135, 2015 WL 4486676, at *6 (E.D. Pa. July 22, 2015) (allowing leave to amend because "the amended complaint is not clearly futile"); *Harris v. Steadman*, 160 F. Supp. 3d 814, 817 (E.D. Pa. 2016) (same); *Cardone Indus., Inc. v. Honeywell Int'l, Inc.*, No. 13-4484, 2014 WL 3389112, at *6 (E.D. Pa. July 11, 2014) (granting the motion because the claims are not "obviously futile"). "[I]n determining whether the proposed amendment states a plausible claim, the court must accept the facts alleged in the complaint as true and draw logical inferences in favor of the plaintiff." *Harris*, 160 F. Supp. 3d at 817 (citing *ALA, Inc. v. CCAIR, Inc.*, 29 F.3d 855, 859 (3d Cir. 1994)).

Plaintiffs seek to add a bad faith claim against Defendant pursuant to 42 Pa. Cons. Stat. Ann. § 8371. "To recover under section 8371," a plaintiff must allege that "the insurer did not have a reasonable basis for denying benefits under the policy and [] the insurer knew or recklessly disregarded its lack of reasonable basis in denying the claim." *Wolfe v. Allstate Prop. & Cas. Ins. Co.*, 790 F.3d 487, 498 (3d Cir. 2015) (citation omitted); *see also Toy v. Metro. Life Ins. Co.*, 928 A.2d 186, 193 (Pa. 2007). Bad faith in insurance cases is defined as "any frivolous or unfounded refusal to pay proceeds of a policy." *Mirarchi v. Seneca Specialty Ins. Co.*, 564 F. App'x 652, 655 (3d Cir. 2014) (citations omitted). Moreover, "an action for bad faith may extend to the insurer's investigative practices." *Condio v. Erie Ins. Exch.*, 899 A.2d 1136, 1142 (Pa. Super. Ct. 2006) (citations omitted); *see also Dagit v. Allstate Prop. and Cas. Ins. Co.*, No. 16-3843, 2017 WL 395489, at *5 (E.D. Pa. Jan. 30, 2017).

Here, Plaintiffs allege that Defendant: (1) did not provide a good faith reason for denying Plaintiffs coverage, and (2) did not properly investigate Plaintiffs' claim. In support, Plaintiffs allege that Defendant simply refused to provide coverage for the damage to the detached garage

without providing any justification for its denial. In addition, Plaintiffs allege that they provided Defendant with two expert reports, statements related to the damage caused to the detached garage, and photographic evidence of the damage. Plaintiffs contend that one of the expert reports determined that the detached garage was damaged by the ice and snow from the storm. Plaintiffs allege that Defendant ignored this evidence, and failed to properly investigate the claim.

Plaintiffs also argue that Defendant acted in bad faith by failing to provide reasons for its denial, despite "overwhelming evidence that it was a covered loss." (SAC ¶ 14.) Plaintiffs allege that the only justification Defendant provided for denying coverage was that Defendant was unable to inspect debris from the garage. Plaintiffs allege a bad faith denial because they provided Defendant with pictures of the damaged property and two separate expert reports. Moreover, Plaintiffs allege that their actions were in compliance with the insurance policy, which requires homeowners to make the necessary repairs needed in order to protect the property.

Defendant makes several factual allegations to support its argument that Plaintiffs' bad faith claim would be futile. Defendant refers to several exhibits that it attached to its Response, which include letters that Defendant sent to Plaintiffs. (*See* Def.'s Resp. Exs. D, E, F, G.) For example, Defendant argues that it "provided detailed and explicit reasons for the denial of coverage for the garage roof." (Def.'s Resp. 15.) Defendant also argues that it offered to re-inspect the property, but that Plaintiffs refused this offer. The Third Circuit has noted that "[t]o evaluate futility, we apply the 'same standard of legal sufficiency' as would be applied to a motion to dismiss under Rule 12(b)(6)." *Maiden Creek Assocs., L.P. v. U.S. Dep't of Transp.*, 823 F.3d 184, 189 (3d Cir. 2016) (quoting *Shane v. Fauver*, 213 F.3d 113, 115 (3d Cir. 2000)).

Applying this standard, the *Maiden Creek* Court held that "[a]s with [a] motion to dismiss," courts evaluating a motion to amend are able to "consider only the allegations contained in the complaint, exhibits attached to the complaint, and matters of public record." *Id*. (citation omitted); *see also Yah'Torah v. Hicks*, No. 15-5501, 2016 WL 6909103, at *2 (D.N.J. Nov. 23, 2016) ("To evaluate futility, the Court uses the same standard of legal sufficiency as applied to a motion to dismiss under Rule 12(b)(6), and considers only the pleading, exhibits attached to the pleading, matters of public record, and undisputedly authentic documents if the party's claims are based upon same." (citations and internal quotation marks omitted)). In the case of *Pension Benefit Guaranty Corporation v. White Consolidated Industries, Incorporated*, 998 F.2d 1192, 1196 (3d Cir. 1993), the Third Circuit determined that "a court may consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff's claims are based on the document." Subsequent to the decision in *Pension Benefit*, the Third Circuit also recognized that, in evaluating a motion to amend, district courts may consider "the allegations of the [proposed amended complaint] along with the indisputably authentic documents upon which the complaint was based." *Shine v. Bayonne Bd. of Educ.*, 633 F. App'x 820, 822-23 (3d Cir. 2015) (citing *Pension Benefit*, 998 F.3d at 1196). Defendant's exhibits were not attached to the Amended Complaint, and they are not matters of public record. Furthermore, these documents are not undisputedly authentic. Therefore, we are unable to consider the letters that Defendant refers to in the Response, and we cannot accept Defendant's disputed factual allegations in our analysis.

Accepting Plaintiffs' allegations as true, we conclude that Plaintiffs' bad faith claim would not be completely futile. "The post-*Twombly* pleading standard 'simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of the necessary

element[s].'" *Connelly v. Lane Constr. Corp.*, 809 F.3d 780, 789 (3d Cir. 2016) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). Plaintiffs have alleged that Defendant provided no reasonable justification for denying their claim, despite overwhelming evidence that the claim should have been covered. Accordingly, at this juncture, the claim is not clearly futile, and Plaintiffs' Motion to Amend the Amended Complaint will be granted.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs' Motion to Amend the Amended Complaint will be granted. An appropriate Order follows.

BY THE COURT:

R. BARCLAY SURRICK, J.

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O R D E R

AND NOW, this 18th day of July, 2017, upon consideration of Plaintiffs' Motion to Amend the Amended Complaint (ECF No. 14), and all documents submitted in support thereof and in opposition thereto, it is **ORDERED** that the Motion is **GRANTED**.

IT IS SO ORDERED.

BY THE COURT:

R. BARCLAY SURRICK, J.