

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

CAROL B. DEPUE WOOD : CIVIL ACTION  
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: :  
v. : :  
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: :  
ALLSTATE INSURANCE COMPANY : NO. 96-4574

M E M O R A N D U M

**Padova, J.**

September 19, 1997

Before the Court is Defendant's Motion for Judgment as a Matter of Law Pursuant to Fed.R.Civ.P. 50(b), or in the Alternative, Motion for New Trial. For the reasons set forth below, the Court will deny Defendant's Motion.

I. BACKGROUND

Plaintiff Carol B. DePue Wood ("Plaintiff") had an automobile insurance policy with Defendant Allstate Insurance Company ("Defendant" or "Allstate"). On June 26, 1994, the car that Plaintiff was driving was rear-ended by a vehicle driven by Chad Matys. Plaintiff suffered injuries in the accident. With the permission of Defendant, Plaintiff settled with Chad Matys for \$15,000, his policy limit. Plaintiff made a claim for and received wage reimbursement (i.e., disability) benefits from Allstate because the injuries she sustained in the accident

rendered her unable to return to work. As a result of the accident, Plaintiff also filed a claim with Allstate for underinsured motorist benefits.

Plaintiff brought this suit against Defendant for its bad faith refusal to pay her \$15,000 claim for underinsured motorist benefits. The issue of compensatory damages was settled before trial. Therefore, the only issue that was tried was whether Defendant acted in bad faith and if so, whether punitive damages would be awarded to Plaintiff and the amount of such award. The jury returned a verdict that Defendant had acted in bad faith towards Plaintiff and awarded her \$150,000 in punitive damages.

In its Motion, Defendant argues the following: (1) that the evidence was legally insufficient to support the jury's finding of bad faith on the part of Defendant and therefore judgment as a matter of law should be entered in favor of Defendant or in the alternative a new trial should be granted or (2) that a new trial should be granted because (a) Defendant was not allowed to take the deposition of Plaintiff's counsel, (b) the Court's supplemental instruction to the jury on bad faith confused and misled the jury and prejudiced Defendant, and (c) Plaintiff's expert violated the Court's order by testifying about Pennsylvania's Unfair Insurance Practices Act and Unfair Claims Practices Act. If the Court denies its Motions, Defendant requests that the Court order a remittitur of the jury's verdict.

## II. LEGAL STANDARD

Rule 50(b) of the Federal Rules of Civil Procedure provides in relevant part:

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)(1).

### 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). 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)). Although a scintilla of evidence is not

enough to sustain a verdict of liability, Walter v. Holiday Inns, 985 F.2d at 1238, the question is "whether there is evidence upon which a jury could properly find a verdict for [the prevailing] party.'" Lightning Lube v. Witco, 4 F.3d at 1166 (quoting Patzig v. O'Neil, 577 F.2d 841, 846 (3d Cir. 1978)).

B. Motion for New Trial

Defendant has moved in the alternative for a new trial, pursuant to Rule 59 of the Federal Rules of Civil Procedure. 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 latitude in ruling on the motion. Griffiths v. CIGNA Corp., 857 F. Supp. 399, 410 (E.D. Pa. 1994) (citing Link v. Mercedes-Benz of North America, Inc., 788 F.2d 918, 921-22 (3d Cir 1986); Lind v. Schenley Indus., Inc., 278 F.2d 79, 90 (3d Cir.), cert. denied, 364 U.S. 835, 81 S. Ct. 58 (1960); Lightning Lube v. Witco Corp., 802 F. Supp. 1180, 1185 (D.N.J. 1992), aff'd, 4 F.3d 1153 (3d

Cir. 1993)), aff'd without opinion, 60 F.3d 814 (3d Cir. 1995).

The trial court's discretion to grant a new trial, however, is more limited when the asserted ground is that the verdict is against the weight of the evidence. In that instance, the motion should be granted only where permitting the verdict to stand would result in a miscarriage of justice. Sandrow, 832 F. Supp. at 918 (citing Klein v. Hollins, 992 F.2d 1285, 1290 (3d Cir. 1993); Griffiths, 857 F. Supp. at 411 (citing Williamson v. Conrail, 926 F.2d 1344, 1353 (3d Cir. 1991); Lind, 278 F.2d at 90; Lightning Lube, 802 F. Supp. at 1185-86)). 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

#### A. The Sufficiency of the Evidence Supporting the Jury's Verdict

Viewing the evidence and the inferences to be drawn from the evidence in the light most favorable to Plaintiff, as the Court must, the Court finds that the jury's verdict that Defendant acted in bad faith was supported by sufficient evidence adduced at trial. For example, after being handled by two different

claims representatives,<sup>1</sup> Plaintiff's file was transferred on December 20, 1994 to Andrew Cassidy, an underinsured and uninsured motorist specialist at Allstate. (Tr. on June 18, 1997 at 73:20-21 and 103:8-10.) He had authority to evaluate a claim for settlement (Id. at 104:13-21), and he had responsibility for Plaintiff's underinsured claim until February 1996. (Id. at 110:3-4.) Throughout the entire period that Mr. Cassidy handled Plaintiff's underinsured claim, Mr. Cassidy testified that he could not value Plaintiff's claim because the file did not contain adequate medical records relating to the injuries Plaintiff suffered in the car accident. (Id. at 123:22-124:10, 125:25-126:6, 146:5-18, 147:7-16, 156:13-157:19, 170:12-172:7.) He never placed a value on Plaintiff's claim. (Tr. of June 19, 1997 at 9:18-23.)

Mr. Cassidy's testimony stood in stark contrast to the testimony of Louise Cunningham, the Allstate claims representative who in February 1996 took over Mr. Cassidy's position as the underinsured and uninsured motorist specialist and assumed responsibility for Plaintiff's underinsured claim. (Id. at 12:4-6.) Plaintiff's file was first brought to Ms. Cunningham's attention in the early part of June 1996. (Id. at

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<sup>1</sup>Neither of these representatives had authority to determine whether Plaintiff's underinsured claim should be paid and how much the claim should be valued. (Tr. of June 18, 1997 at 80:9-14.)

12:12-13.) Five days after the file was first brought to her attention, she made an offer on the file. (Id. at 12:9-16.) During that five day period, she did not receive any additional medical records relating to Plaintiff's file. (Id. at 12:17-19.) She was able to evaluate the file and to make an offer based on the contents that were already in the file. (Id. at 12:20-13:22.) In making an offer of \$15,000, she determined that Plaintiff's claim had a value of at least \$30,000 -- \$15,000 of which was paid by the insurance company for the driver who rear-ended Plaintiff's car and \$15,000 of which was the policy limit of the underinsured motorist provision of Plaintiff's Allstate policy. (Id. at 15:3-8). Based on this evidence, the jury could have reasonably drawn the inference that Allstate was acting in bad faith for refusing to pay Plaintiff underinsured motorist benefits until nearly two years after Plaintiff's car accident.

In addition, at the same time that Allstate was refusing to pay Plaintiff underinsured benefits, Plaintiff was receiving wage loss payments from Allstate for the injuries she had sustained in the car accident. (Tr. of June 18, 1997 at 143:6-8, 162:17-23, 191:13-23; Tr. of June 19, 1997 at 112:4-6.) In April of 1996, Allstate had paid Plaintiff \$32,213.01 in wage loss payments due to her disability. (Tr. of June 18, 1997 at 186:7-19.) Nevertheless, Allstate representatives handling Plaintiff's underinsured claim continued to refuse to value Plaintiff's claim

and to pay Plaintiff underinsured motorist benefits. By comparing the actions of Howard Frazier, the Allstate representative handling Plaintiff's wage loss claim, with the actions of the Allstate representatives handling Plaintiff's underinsured claim, the jury could have reasonably drawn the inference that Defendant acted in bad faith with respect to Plaintiff's underinsured claim.

For these reasons, the Court will deny Defendant's Motion for Judgment as a Matter of Law, or in the Alternative, for a New Trial on the grounds that the evidence was legally insufficient.

B. Alleged Trial Errors

1. The Court's Denial of Defendant's Motion to Compel the Deposition of Plaintiff's Counsel

Defendant argues that a new trial should be granted because it was not permitted to take the deposition of Plaintiff's counsel, Ronald Ashby, during discovery, which "severely prejudiced Defendant Allstate's ability to properly defend this case." (Deft's Motion for Judgment as a Matter of Law, or in the Alternative, Motion for New Trial at 15.) Defendant's argument is fatally flawed in the following three ways.

First, putting to one side the obvious problems in allowing Defendant to depose Plaintiff's counsel, Defendant waited until after the discovery deadline had passed to move to compel Mr.

Ashby's deposition. The discovery deadline in this case was originally March 31, 1997. (Order dated December 23, 1996.) Upon Defendant's Motion to Extend Time to Conduct Discovery, the Court extended the discovery deadline to April 30, 1997. (Order dated March 24, 1997.) Despite the additional time that Defendant was granted to conduct discovery, Defendant failed to provide any reason why it had waited until after the extended discovery deadline had passed to file its motion to compel. (Tr. of May 29, 1997 Hearing on Defendant's Motion to Compel at 2-8.) Therefore, the Court denied Defendant's Motion as untimely. (Tr. of May 29, 1997 at 9-10 and Order dated May 30, 1997.)

In addition, the Court had scheduled the trial in this matter to begin on June 17, 1997, a date certain. In denying Defendant's Motion to Compel, the Court also found that if it were to allow Defendant's untimely Motion, and it appeared that Mr. Ashby was a material witness, Mr. Ashby would be disqualified from representing Plaintiff in the case. This turn of events would have seriously disrupted the Court's calendar because the trial could not have gone forward as scheduled. (Id.)

Second, although the Court denied Defendant's pre-trial motion to compel the deposition of Mr. Ashby, during the trial the Court offered Defendant the opportunity to depose Mr. Ashby. After the close of Plaintiff's case, counsel for Defendant argued that Allstate may have wanted to call Mr. Ashby as a fact witness

at trial because of inferences that had arisen during Plaintiff's case relating to Mr. Ashby's handling of Plaintiff's claim during the claims process. (Tr. of June 20, 1997 at 17-21.) Counsel for Defendant argued that because he was not permitted to depose Mr. Ashby, Defendant was "prevented from putting [Mr. Ashby] on the witness stand effectively." (Id. at 17:21-22.)

In response, the Court gave Defendant the option of moving for a recess in the trial so that Defendant could depose Mr. Ashby or moving for the withdrawal of a juror, which would result in a mistrial. (Id. at 22-25.) The Court made clear that it would seriously consider granting either of these motions. Counsel for Defendant neither requested an opportunity to depose Mr. Ashby nor moved for the withdrawal of a juror. Because counsel for Defendant declined the options offered by the Court -- either of which would have provided Defendant the opportunity to depose Mr. Ashby during the trial under circumstances that eliminated any prejudice to Defendant -- Defendant cannot complain now that it was not allowed to depose Mr. Ashby.

Third, Defendant has failed to offer any support whatsoever for its contention that the Court's refusal to permit the deposition of Mr. Ashby before the beginning of the trial prejudiced Defendant's ability to defend itself at trial. As explained above, Defendant was given the opportunity to depose Mr. Ashby during the trial, but declined to do so. In addition,

during the trial the Court admitted into evidence the correspondence from Mr. Ashby to Defendant concerning Plaintiff's underinsured claim. Moreover, Defendant's representatives handling Plaintiff's underinsured claim testified to the conversations they had had with Mr. Ashby during the claims process. Finally, Defendant did effectively present its defense that Plaintiff's claim could not be processed because of Mr. Ashby's failure to provide necessary documentation on Plaintiff's claim. In light of the above, the Court finds that Defendant's argument that it was prejudiced is completely without merit. Therefore, the Court will deny Defendant's Motion for a New Trial on this ground.

## 2. The Court's Instructions on Bad Faith

When the jury was originally charged on the issue of bad faith, the Court based its charge on language taken directly from Terletsky v. Prudential Property and Cas. Ins. Co., 437 Pa. Super. 108, 125, 649 A.2d 680, 688 (1994), appeal denied, 540 Pa. 641, 659 A.2d 650 (1995). (Tr. of June 20, 1997 at 103-107.) In that charge, the Court set forth the two-part test under Pennsylvania law to determine whether Defendant acted in bad faith. The Court also instructed the jury on the types of conduct identified in Terletsky that can constitute bad faith conduct (e.g., "conduct occasioned through some motive of self-

interest or ill will") and the types of conduct that cannot constitute bad faith (e.g., "mere negligence or bad judgment"). (Id. at 105-106.)

In response to a question posed by the jurors while they were deliberating, the Court gave a supplemental charge to the jury on bad faith, simply reiterating the two-part Terletsky test that was contained in the original charge. (Id. at 128-130.) There was nothing confusing or inconsistent in the Court's charges to the jury on bad faith. In fact, both charges were based directly on language contained in the Terletsky opinion.<sup>2</sup> In addition, the Court charged the jurors that they must find the facts "in accordance with all the instructions that we've given you." (Id. at 132.) Taken as a whole, the Court's charges on bad faith were not confusing or misleading. There was no error in the jury instructions given by the Court. Therefore,

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<sup>2</sup>Defendant argues that the Court's supplemental charge was in error because the it did not include the language from Terletsky concerning "motive of self interest or ill will." In essence, Defendant argues that the Terletsky test for bad faith is a three-part, not a two-part test. Defendant is mistaken. The Third Circuit rejected this exact argument in Klinger v. State Farm Mut. Auto. Ins. Co., 115 F.3d 230, 233-34 (3d Cir. 1997). In accordance with both Terletsky and Klinger, the Court correctly instructed the jury in its original and supplemental charges on the two-part bad faith test under Pennsylvania law. In the original charge, the Court also gave the jury illustrative examples, drawn directly from the Terletsky opinion, on types of conduct that either would or would not constitute bad faith. These illustrative examples did not alter in any way the clear statement of the two-part bad faith test contained in both the original and supplemental charges.

Defendant's Motion on this ground will be denied.

3. The Testimony of Plaintiff's Expert

During trial, Defendant objected to any testimony by Plaintiff's expert, Barbara Sciotti, that Defendant violated the Unfair Claims Practices Act or the Unfair Insurance Practices Act. The Court granted Defendant's Motion. (Order dated June 23, 1997; Tr. of June 19, 1997 at 107:18-23.) The Court made clear in its ruling, however, that although Ms. Sciotti was prohibited from testifying that Allstate violated the Acts and thereby acted in bad faith, she could testify concerning the laundry list of practices set forth in the Acts, which can be taken into consideration as standards in the industry. (Tr. of June 19, 1997 at 103-106, 109-110). Ms. Sciotti never testified that Defendant violated the Acts and therefore her testimony was in conformance with the Court's order. Because no error occurred, there is no basis for Defendant's Motion for New Trial on this ground.

C. The Issuance of a Remittitur

Defendant argues that the jury's verdict is far in excess of what the facts warrant, that the verdict should be no more than \$15,000, and that the Court should order Plaintiff to remit that portion of the verdict in excess of \$15,000. (Defendant's Motion

at 25-31.) The Court will deny Defendant's request.

The issuance of a remittitur of a jury's verdict is warranted in those cases "where the verdict is so large as to shock the conscience of the court." Kazan v. Wolinski, 721 F.2d 911, 914 (3d Cir. 1983). The jury's verdict awarding Plaintiff \$150,000 in punitive damages is not so large that it shocks the conscience of the Court. It is well within the acceptable range for a punitive damages award. The Third Circuit has endorsed a ratio of around one per cent of a defendant's net worth for a punitive damage award. Dunn v. HOVIC, 1 F.3d 1371, 1383 (3d Cir.), cert. denied, 510 U.S. 1031, 114 S. Ct. 650 (1993). At trial it was stipulated that Defendant's net worth was \$13.2 billion. The jury's award, therefore, was far less than one per cent of Defendant's net worth.

The verdict also withstands Defendant's challenge when viewed under the principles set forth in BMW of America, Inc. v. Gore, \_\_\_ U.S. \_\_\_, 116 S. Ct. 1589 (1996), cited by Defendant. BMW dealt with the issue of whether a punitive damages award was so "grossly excessive" as to violate due process. In BMW, the punitive damages award was 500 times the compensatory damages award. Here, the issue of compensatory damages was settled before trial and so was not before the jury. Nevertheless, even if the Court were to compare the \$15,000 settlement of Plaintiff's underinsured claim with the \$150,000 punitive damages

award, the jury's verdict was just 10 times the amount of Plaintiff's claim. The Court finds that the amount of the jury's verdict does not shock the Court's conscience and is consistent with the guidelines approved by the Supreme Court in BMW and TXO Production Corp. v. Alliance Resources Corp., 509 U.S. 443, 113 S. Ct. 2711 (1993).

For the foregoing reasons, the jury's verdict will stand and Defendant's Motion will be denied in its entirety. An appropriate Order follows.