

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

MARTHE BADET AND : CIVIL ACTION
NELIE LOUIS :
 :
v. :
 :
STATE FARM MUTUAL AUTOMOBILE :
INSURANCE COMPANY : NO. 96-3938

M E M O R A N D U M

WALDMAN, J.

February 23, 1998

I. INTRODUCTION

This is an insurance bad faith action pursuant to 42 Pa.C.S.A. § 8371. Plaintiffs allege that defendant failed promptly to settle their insurance claims for injuries arising from a 1994 automobile accident.

Presently before the court is defendant's motion for summary judgment. Defendant contends that plaintiffs were not insureds under its policy to whom a duty of good faith was owing and that plaintiff executed releases which relieve defendant of liability in any event.

II. LEGAL STANDARD

In considering a motion for summary judgment, the court must determine whether "the pleadings, depositions, answers to interrogatories, and admission on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment

as a matter of law." Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Arnold Pontiac-GMC, Inc. v. General Motors Corp., 786 F.2d 564, 568 (3d Cir. 1986). Only facts that may affect the outcome of a case under applicable law are "material." Anderson, 477 U.S. at 248. All reasonable inferences from the record are drawn in favor of the non-movant. Id. at 256. Although the movant has the initial burden of demonstrating the absence of genuine issues of material fact, the non-movant must then establish the existence of each element on which it bears the burden of proof. J.F. Feeser, Inc. v. Serv-A-Portion, Inc., 909 F.2d 1524, 1531 (3d Cir. 1990), cert. denied, 499 U.S. 921 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)).

III. FACTUAL BACKGROUND

The pertinent facts as uncontested or otherwise viewed most favorably to plaintiffs are as follow.

On January 24, 1994, plaintiffs were injured in an automobile accident in Hatfield, Pennsylvania. Plaintiffs were passengers in a 1989 Toyota Corrola driven by Jean Bernard when that car was struck by another vehicle. The Corrola was owned by Mr. Bernard's wife, Paulard Civil, and insured under policy #B171-756-D29-38 issued to Ms. Civil by defendant.

Between January 1995 and September 1995, plaintiffs made demands upon defendant to compensate them for personal

injuries allegedly caused by Mr. Bernard's negligence. Defendant denied liability and directed plaintiffs to seek relief from the insurer of the other vehicle involved in the accident. The claim file was closed in February 1995.

In October 1995, defendant reopened the file and offered to negotiate a settlement of plaintiffs' claims.

In December 1995, plaintiffs entered into an independent joint tortfeasor settlement with the insurer of the other vehicle involved in the accident. Plaintiffs each received \$3,000.

On January 4, 1996, the parties agreed to settle plaintiffs' claims for \$11,000 each in exchange for a general release. Defendant claimed to have sent plaintiffs the general releases on January 15 or January 16, 1996. As of January 24, 1996, however, plaintiffs had not received the releases. Because the statute of limitations was about to expire, plaintiffs commenced a lawsuit against Mr. Bernard to recover for their injuries. Plaintiffs received and signed the general releases on January 25, 1996. Plaintiff accepted and negotiated checks from defendant for \$11,000 each. Plaintiffs released not only the insured but "all other persons, firms or corporations" from liability for "any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever."

In May 1996, plaintiffs commenced the current action

against defendant in the Court of Common Pleas of Philadelphia. Plaintiffs alleged that defendant breached a duty of good faith when it denied their claims despite evidence and its own representative's finding of negligence on the part of Mr. Bernard, when it failed to settle promptly with plaintiffs, when it failed to mail promptly the general releases to plaintiffs and when it generally misled plaintiffs about the findings of its investigation and attempts at a negotiated settlement.¹

Defendant timely removed the action to federal court. The court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a).

IV. DISCUSSION

To sustain a claim for "bad faith" against an insurer, a plaintiff must be an "insured" as that term is defined in the insurance policy. See Apalucci v. Agora Syndicate, Inc., 1997 WL 20867, *2 (E.D. Pa. Jan. 17, 1997); Seasor v. Liberty Mut. Ins. Co., 941 F. Supp. 488, 491 (E.D. Pa. 1996), aff'd, 116 F.3d 469 (3d Cir. 1997); Klinger v. State Farm Mut. Auto. Ins. Co., 895 F.

¹ Plaintiffs also alleged that defendant violated unspecified Pennsylvania insurance laws which they identified in their brief as the Unfair Insurance Practices Act, specifically 40 Pa. Cons. Stat. Ann. § 1171.5(10)(v)-(vii), (xiv) (West 1992 & Supp. 1997). There is no private cause of action under the UIPA. See Smith v. Nationwide Mut. Fire Ins. Co., 935 F. Supp. 616, 620 (W.D. Pa. 1996); MacFarland v. United States Fidelity & Guar. Co., 818 F. Supp. 108, 110 (E.D. Pa. 1993); Britamco Underwriters, Inc. v. C.J.H., Inc., 845 F. Supp. 1090, 1096 (E.D. Pa. 1994) aff'd, 37 F.3d 1485 (3d Cir. 1994). In a sur-reply brief, plaintiffs withdraw their claims under the UIPA.

Supp. 709, 715 (M.D. Pa. 1995), aff'd, 115 F.3d 230 (3d Cir. 1997). An insurer's duty to negotiate a settlement in good faith is owed only to its insureds and not to third-party claimants. Seasor, 941 F. Supp. at 490; Klinger, 895 F. Supp. at 715; Dercoli v. Pennsylvania Nat'l Mut. Ins. Co., 554 A.2d 906, 909 (Pa. 1989); Strutz v. State Farm Mut. Ins. Co., 609 A.2d 569, 571 (Pa. Super. 1992) (liability claimant may not bring a cause of action for "bad faith" pursuant to § 8371), appeal denied, 615 A.2d 1313 (Pa. 1992).

Defendant argues that plaintiffs were not "insureds" as that term is defined in Ms. Civil's policy. Plaintiffs argue that as passengers they were "insureds" as defined by Part A -- Liability Coverage subsection B.3 of Ms. Civil's policy.²

The court must examine subsection B.3 in the context of the policy as a whole and construe it according to the plain meaning of its terms. See Britamco Underwriters, 845 F. Supp. at 1092; Bateman v. Motorist Mut. Ins. Co., 590 A.2d 281, 283 (Pa. 1991); O'Brien Energy Systems, Inc. v. American Employers' Ins.

² Plaintiffs make no argument that any definition of "insureds" other than that in subsection B.3 is applicable. Plaintiffs' general argument that injured passengers may assert bad faith claims against a negligent driver's insurer is beside the point and their reliance on Klinger and Dercoli misplaced. A given passenger may or may not be an insured depending upon the definitions in a particular policy. The Court in Klinger found that the particular plaintiff passenger was an insured as the term was defined in the policy at issue in that case. Klinger, 895 F. Supp. at 715-16. Similarly, the Court in Dercoli found that as a spouse and household member the particular plaintiff passenger was an insured under the applicable policy in that case. Dercoli, 554 A.2d at 476-77.

Co., 629 A.2d 957, 960 (Pa. Super. 1993), app. denied, 642 A.2d 487 (Pa. 1994). An ambiguous provision is construed against the insurer. Standard Venetian Blind Co. v. Empire Ins. Co., 469 A.2d 563, 566 (Pa. 1983). A provision is ambiguous only if persons of reasonable intelligence considering it in the context of the pertinent policy would honestly differ as to its meaning. Niagara Fire Ins. Co. v. Pepicelli, Pepicelli, Watts and Young, P.C., 821 F.2d 216, 220 (3d Cir. 1987). A court, however, should read policy provisions to avoid ambiguities wherever possible and should not torture the language to create them. Id. Even where an ambiguity exists, of course, for a plaintiff to sustain his claim there must be some reasonable interpretation of the pertinent language under which he might prevail. See Federal Insurance Co. v. McAnally, 1991 WL 245871, *3 (E.D. Pa. Sept. 22, 1992), aff'd, 993 F.2d 876 (3d Cir. 1993).

The liability coverage section of the subject insurance contract states in pertinent part:

B. "Insured" as used in this Part means:

1. You or any family member for the ownership, maintenance or use of any auto or trailer.
2. Any person using your covered auto.
3. For your covered auto, any person or organization but only with respect to legal responsibility for acts or omission of a person for whom coverage is afforded under this Part.
4. For any auto or trailer, other than your covered auto, any other person or

organization but only with respect to legal responsibility for acts or omission of you or any family member for whom coverage is afforded under this Part. This provision (B.4.) applies only if the person or organization does not own or hire the auto or trailer.

(emphasis in original).

Defendant contends with force that subsection B.3 is clearly and unambiguously limited to a person who has "legal responsibility for acts or omissions of a person to whom coverage is afforded under" that section. Such provisions are intended to cover employers for the actions of an insured employee involved in an automobile accident during the course and scope of his employment or others who may be vicariously liable by operation of law for the negligence of an insured driver. Courts have applied identical language in such situations. See, e.g., Aetna Life and Cas. v. Federal Ins. Co., 1997 WL 746189, *3 (E.D. Pa. Nov. 26, 1997); State Farm Mut. Auto. Ins. Co. v. Martinez-Lozano, 916 F. Supp. 996, 1003-04 (E.D. Ca. 1996); Scott v. Salerno, 688 A.2d 614, 619 (N.J. Super. Ct. App. Div. 1997), cert. denied, 694 A.2d 194 (N.J. 1997).³

Plaintiffs admit that defendant's reading of subsection

³ Defendant does not argue and the court does not suggest that subsection B.3 is limited to liability which arises out of the employer-employee relationship. See, e.g., Agency Rent-A-Car v. ITT Hartford Accident and Indem. Co., 1997 WL 684916, *3 (Conn. Super. Oct. 23, 1997) (finding such language applicable to a party made responsible by state statute for the insured's negligence).

B.3 is "reasonable," but contend that another reasonable reading is that "any person" inside the covered vehicle is an "insured." They argue that "the any person refers to passengers with respect to legal responsibility for the acts or omissions under the liability coverage part, to wit, the insured Jean Bernard."

Plaintiffs appear to confuse liability "for" the conduct of an insured and an insured's liability to another because of his conduct. Plaintiffs' suggested interpretation of subsection B.3 is untenable. The "Liability Coverage" section provides that the insurer will pay for damages for which an insured becomes "legally responsible" because of an automobile accident. Subsection B.3 is limited by its terms to "legal responsibility" for the conduct of a person who is an "insured." There is no allegation or showing that plaintiffs had any legal responsibility for the acts of Mr. Bernard or asked the insurer to defend them in any liability action. Rather, plaintiffs have made liability claims against the insured. See Seasor, 941 F. Supp. at 492 ("It would require a great stretch of judicial imagination to conclude that Plaintiffs who brought a negligence action against . . . the 'insured' under the policy, should also be considered 'insureds' under the liability coverage section of the policy.")

Plaintiffs' suggested reading of subsection B.3 would lead to the absurd result that any person injured in an

automobile accident caused by an insured becomes an "insured." Plaintiffs appear to recognize the absurdity of their suggested facial interpretation as they also propose that the court construe the word "for" in the phrase "for your covered auto" to mean that only passengers "inside the covered auto" are insureds. Plaintiffs' proposal is without textual support, and a court may not rewrite or torture the policy language.⁴

V. CONCLUSION

The definition of "insured" in Subsection B.3 is clear and unambiguous and simply does not include otherwise uninsured persons who are injured while riding as passengers in the covered vehicle. Accordingly, plaintiffs cannot sustain a bad faith claim against defendant under § 8371.⁵

Defendant's motion will be granted. An appropriate order will be entered.

⁴ Throughout the subject insurance contract, the term "occupying" is used to mean "in, upon, getting in, or out or off" and is used repeatedly to refer to persons including passengers. The absence of the term "occupying" in subsection B.3 underscores how strained plaintiffs' proposed interpretation of the subsection is.

⁵ For that reason the court will not address the various contentions of the parties regarding the releases. The court does note, however, that the language of the standardized general releases in question is extremely broad and that assertions in a brief that fact questions exist is not a substitute for competent evidence. In relying on the court's assessment of what conceivably might be provable from the face of the pleadings in addressing defendant's motion to dismiss, plaintiffs ignore the critical distinction between what is required to resist a Rule 12(b)(6) motion and one for summary judgment.

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O R D E R

AND NOW, this day of February, 1998, upon
consideration of defendant's Motion for Summary Judgment and
plaintiffs' response thereto, consistent with the accompanying
Memorandum, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and
accordingly **JUDGMENT** is **ENTERED** in the above action for the
defendant and against the plaintiffs.

BY THE COURT:

JAY C. WALDMAN, J.