

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

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JOHN AND CAROLYN DUFFY, h/w	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	NO. 97-6668
	:	
ALLSTATE INSURANCE COMPANY	:	
Defendant.	:	

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MEMORANDUM

R.F. KELLY, J.

AUGUST 11, 1998

This action was brought by John and Carolyn Duffy ("Plaintiffs") against their insurer, Allstate Insurance Company ("Allstate"), to recover for damages to their home after a fire. Presently before the Court is Allstate's Motion for Summary Judgment. For the reasons that follow that Motion is granted in part and denied in part.

**I. FACTS.**

On April 21, 1995, a fire broke out at Plaintiffs' home. At the time of the fire, Plaintiffs were insured by Allstate. Plaintiffs promptly notified Allstate of their loss and Terry Thomas ("Thomas"), a claims analyst, was assigned to adjust Plaintiffs' claim. After an on-site inspection, Plaintiffs and Allstate agreed to the scope of loss and repairs were undertaken. In August of 1995, the repairs were completed and Plaintiffs returned to their home.

In October, after the heating system in the home was

turned on, Plaintiffs noticed additional damages in various areas of the house. Specifically, wood within the house began shrinking and shifting. In November, Plaintiffs contacted Terry Thomas and Margaret Kelly ("Kelly") of Allstate and reported the additional damage. In response to Plaintiffs' report, Thomas and Kelly conducted an on-site inspection on January 15, 1996. Thomas suggested, and Plaintiffs agreed, that an inspection be performed by a structural engineer. At Plaintiffs' request, this inspection was postponed until the house finished settling.

When Plaintiffs felt the house had settled they contacted Allstate. On February 23, 1996, Russell E. Daniels ("Daniels"), a structural engineer inspected Plaintiffs' house. As a result of this inspection, Daniels issued a report in which he concluded: "It is my professional opinion with a reasonable degree of engineering certainty that shrinkage of the wood as it dried out after the repairs were done caused many of the items now claimed by the insured." (App. to Pls.' Mot. for Summ. J., Ex. D at 6; Def.'s Mot. for Summ. J., Ex. H at 6.)

Allstate interpreted Daniels' report as finding that the additional damage was not the result of the fire, but was the result of the repair process. Based on this interpretation of the report, Allstate denied Plaintiffs' claim for additional damage. Plaintiffs interpret Daniels' report as finding that the additional damage was caused by shrinkage of wood as it dried out

after the repairs were made due to the excessive moisture in the wood after the fire. Plaintiffs have brought this action to recover for additional damages alleging that Allstate breached its duty of good faith and fair dealing (Count I), breached its fiduciary duties (Count II), acted in bad faith by denying their insurance claim in violation of 42 Pa.C.S.A. § 8371 (Count III), and acted unfairly and deceptively in their insurance practices in violation of 42 Pa.C.S.A. § 1171 et seq. (Count IV). Allstate has moved for Summary Judgment on all Counts.

## **II. STANDARD.**

Summary Judgment is proper "if there is no genuine issue of material fact and 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). Allstate, as the moving party, has the initial burden of identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). Then, the nonmoving party must go beyond the pleadings and present "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(c). If the court, in viewing all reasonable inferences in favor of the nonmoving party, determines that there is no genuine issue of material fact, then summary judgment is proper. Celotex, 477 U.S. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81,83 (3d Cir.

1987).

### III. DISCUSSION.

Allstate moves for Summary Judgment on Counts I and II of the Complaint based on the one-year suit limitation clause contained in the insurance policy issued to Plaintiffs. The Allstate policy provides:

No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within twelve months next after inception of the loss.

(App. to Pls.' Mot. for Summ. J., Ex. F at 34.)

Allstate contends that because this action was filed over one year after Plaintiff's sustained their loss, their claims are time barred. Plaintiffs argue that because Allstate paid the original claim without objection, they were led to believe that the additional damages would also be paid. Plaintiffs stress that they did not receive a check for the original damages until May, 1996, one month and one year after the original loss. Plaintiffs contend that this conduct amounts to a waiver or estoppel of the limitations period in the policy.

The one-year limitation of suit clause at issue is mandated by Pennsylvania law. 40 Pa.C.S.A. § 636. As such, the limitation is valid and reasonable. Schreiber v. Pa. Lumberman's Mut. Ins. Co., 444 A.2d 647, 649 (Pa. 1982). The year begins to run on the date of the destructive event, regardless of the date

the loss is actually discovered. General State Auth. v. Planet Ins. Co., 346 A.2d 265, 267-68. The limitation is disregarded only "when the conduct of insurer constitutes a waiver or estoppel." Petraaglia v. Am. Motorists Ins. Co., 424 A.2d 1360, 1362 (Pa. Super. 1981), aff'd mem., 444 A.2d 653 (Pa. 1982). Both parties agree that April 21, 1995, is the date of Plaintiffs' loss. Both parties agree that suit was brought on February 13, 1997, twenty-two months later. The issue presented is whether Allstate's conduct amounts to a waiver or estoppel of the limitations period.

Waiver and estoppel are distinct concepts. "Waiver is an express decision by the insurer not to rely on the suit limitation clause." Jackson v. Chubb Group of Ins. Cos., No. 85-3466, 1987 WL 8556, at \*3 (E.D. Pa. Mar. 26, 1987). "Estoppel, on the other hand, refers to acts by the insurer which excuse the insured's failure to act timely." Id. There is no evidence that an express waiver of the limitations period occurred, therefore, Plaintiffs claims are timely only if Allstate's conduct is sufficient to estop their reliance on the limitations period.

Estoppel requires "an affirmative act by the insurer by which the insured was misled and prejudiced." Jackson, 1987 WL 8556, at \*3. Plaintiffs contend that they were misled when (1) Thomas and Kelly visited their home in January of 1996 and

received, without objection, an estimate for the additional damages and (2) when Allstate paid for the original damages in May of 1996. Neither of these acts are sufficient to estop Allstate.

Further, Plaintiffs fail to mention a pivotal piece of evidence. On March 25, 1997, Allstate denied Plaintiffs' claim for additional damages in writing. This letter unequivocally states that "your claim for damages occurring after the fire repairs were completed are not covered under your homeowner policy." After receiving this letter, which references an earlier telephone conversation, Plaintiffs knew their claim was being denied and had sufficient time to file suit within the limitations period. O'Connor v. Allemannia Fire Ins. Co. of Pittsburgh, 194 A. 217, 221 (Pa. Super. 1937)(holding that between six weeks and two months is sufficient time to file suit); Toledo v. State Farm Fire & Cas. Co., 810 F. Supp. 156, 161 (E.D. Pa. 1992)(holding that six months is sufficient time to file suit); Pini v. Allstate Ins. Co., 499 F. Supp. 1003, 1005 (E.D. Pa. 1980)(holding that between one and five weeks is sufficient time to file suit), aff'd, 659 F. Supp. 1070 (3d Cir. 1981). Their failure to do so requires that Summary Judgment be granted as to Counts I and II of the Complaint.

In Count III, Plaintiffs allege that Allstate acted in bad faith in denying their claim for additional damages. 42

Pa.C.S.A. § 8371. To succeed on this claim, Plaintiffs must show, by clear and convincing evidence, that Allstate (1) lacked a reasonable basis for denying the claim and (2) knew or recklessly disregarded its lack of a reasonable basis. Klinger v. State Farm Mut. Auto. Ins. Co., 115 F.3d 230, 233 (3d Cir. 1997)(quoting Terletsky v. Prudential Property & Cas. Ins. Co., 649 A.2d 680, 688 (Pa. Super. 1994), appeal denied, 659 A.2d 560(Pa. 1995)).

Allstate argues that Count III of the Complaint must be dismissed because there was a reasonable basis for denying Plaintiffs' claim for additional damages. Plaintiffs contend that Allstate's denial was unreasonable. These arguments create a genuine issue of material fact, thus, Allstate's Motion for Summary Judgment as to Count III is denied.

In Count IV, Plaintiffs seek to recover under the Unfair Insurance Practices Act ("UIPA"). 42 Pa.C.S.A. § 1171 et seq. Several Courts have held that there is no private cause of action under the UIPA. See, Romano v. Nationwide Mut. Fire Ins. Co., 646 A.2d 1228, 1232 (Pa. Super. 1994); Wright v. N. Am. Life Assurance Co., 539 A.2d 434, 477 (Pa. Super. 1988); Sabo v. Metropolitan Life Ins. Co., 137 F.3d 185, 192 (3d Cir. 1998), petition for cert. filed, 67 USLW 3024 (U.S. Jun. 29, 1998)(No. 98-2); D'Ambrosio v. Pa. Nat'l Mut. Cas. Ins. Co., 431 A.2d 966, 969-70 (Pa.1981), aff'd, 431 A.2d 966 (Pa. 1981); Lombardo v.

State Farm Mut. Ins. Co., 800 F. Supp. 208, 212 (E.D. Pa. 1992).

For this reason, Summary Judgment as to Count IV is granted.

An Order follows.

