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

JAVIER PANAMENO AND DAVID A. THOMAS, D.O., Ph.D	:	CIVIL ACTION
v.	:	
STATE FARM MUTUAL AUTOMOBILE INS. CO.	:	No. 99-1490

ORDER-MEMORANDUM

AND NOW, this ___ day of May, 1999, defendant State Farm Mutual Automobile Insurance Company's motion to dismiss count IV of the complaint (bad faith) is granted in part and denied in part. Fed. R. Civ. P. 12(b)(6).

Plaintiff Javier Panameno may not pursue a bad faith claim under 42 Pa. C.S.A. § 8371 on the basis that the peer review association selected by defendant wrongfully denied plaintiff first-party benefits. This claim is preempted by the Pennsylvania Motor Vehicle Financial Responsibility Act. 75 Pa. C.S.A. §§ 1701 et seq. See Gemini Physical Therapy and Rehabilitation, Inc. v. State Farm Mutual Automobile Ins. Co., 40 F.3d 63, 67 (3d Cir. 1994); Bennett v. State Farm Fire & Casualty Ins. Co., 890 F. Supp. 440, 443 (E.D. Pa. 1995); Mahnke v. Maryland Casualty Co., 1995 WL 574371, *2 (E.D. Pa. Sept. 25, 1995); Serubo v. Home Ins. Co., 1995 WL 461274, *2 (E.D. Pa. Aug. 3, 1995).

However, plaintiff may pursue a bad faith claim under 75 Pa. C.S.A. § 8371 to the extent that claim is based on defendant's "not having properly followed or invoked the statutory procedure" governing peer review organizations, 75 C.S.A. § 1797. Schwartz v.

State Farm Ins. Co., 1996 WL 189839, *4 (E.D. Pa. April 18, 1996). Compl., ¶¶ 45-48. See also Gringeri v. Maryland Casualty Co., 1998 WL 211762, *4 (E.D. Pa. April 29, 1998); Neun v. State Farm Ins. Co., 1996 WL 220980, *3 (E.D. Pa. May 2, 1996).

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Edmund V. Ludwig, J.