

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

RICHARD J. SCHINDLER : CIVIL ACTION
v. :
BERKSHIRE LIFE INSURANCE CO. : No. 98-5049

ORDER-MEMORANDUM

AND NOW, this 8th day of July, 1999, the cross-motions for summary judgment of plaintiff Richard J. Schindler and defendant Berkshire Life Insurance Company are denied. Fed. R. Civ. P. 56.¹

Court Two of the complaint alleges a bad faith claim under 42 Pa. C.S.A. § 8371. A genuine issue of material fact exists as to whether (1) defendant lacked a reasonable basis for denying plaintiff disability benefits from April 1997 to June 1999 and (2) knew or recklessly disregarded its lack of reasonable basis. See Klinger v. State Farm Mut. Auto. Ins. Co., 115 F.3d 230, 233 (3d

¹Plaintiff's argument that Count One - breach of contract - must be adjudicated as a predicate to bad faith is rejected. Bad faith claims necessarily are based on an underlying contractual cause of action. See PolSELLI v. Nationwide Mut. Fire Ins. Co., 126 F.3d 524, 529-30 (3d Cir. 1997). However, bad faith claims, while arising from the insurance contract, are separate and independent and may be actionable even when the contract claim is barred by technical defenses, settled, or otherwise not litigated. Id., at 530. Here, as of last month, defendant re-instated the disability benefits and paid the back amounts in question. Plaintiff's position that Count One is now not moot is without merit.

It is correct that the issue of the sufficiency of notice and proofs of loss are for the court's determination. See Fishel v. Yorktowne Mutual Ins. Co., 254 Pa. Super. 136, 139, 385 A.2d 562, 564 (1978) (citing Wuerfel v. Metropolitan Life Ins., 343 Pa. 291, 298, 22 A.2d 747, 751 (1941)). However, defendant has not challenged plaintiff's technical compliance with the claim requirements of the insurance policy, and those issues are not part of this case.

Cir. 1997).

An insurer is not precluded by its payment of disability benefits from subsequently requesting information from the insured as part of its investigation of the insured's claim. See Zakeosian v. Provident Life and Accident Ins. Co., 1999 WL 269942, *2 (E.D. Pa. April 26, 1999) (refusal to continue benefit payments after insured's refusal to submit medical records was not bad faith). Whether or not the insurer's investigation and, in turn, its decision to suspend or terminate benefits have been made in bad faith is a question for the fact-finder. Even if an insurer is not entitled to obtain the requested information, a finding of bad faith requires a showing that it had no reasonable basis for discontinuing payments and knew or recklessly disregarded its lack of a reasonable basis. See Jung v. Nationwide Mut. Fire Ins. Co., 949 F. Supp. 353, 356 (E.D. Pa. 1997) (negligence or incorrect analysis of law is not sufficient to establish bad faith).

Edmund V. Ludwig, J.