

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

JULIETTA THOMAS,	:	CIVIL ACTION
as administratrix of the estate of	:	
SOLOMON WEBB, et al.	:	
v.	:	
	:	
STATE FARM INSURANCE	:	
COMPANY	:	NO. 99-CV-2268

**MEMORANDUM**

**Padova, J.**

November , 1999

Plaintiffs, Myrtle Webb and Julietta Thomas on behalf of her decedent, Solomon Webb, allege that Defendant State Farm Mutual Automobile Insurance Company (State Farm) acted in bad faith in the handling of Plaintiffs' uninsured motorist claims by not promptly settling these claims. Plaintiffs bring this action for monetary damages pursuant to 42 Pa. Cons. Stat. Ann. § 8371.

Before the Court is a Motion for Summary Judgment filed by Defendant. Because the question of whether Defendant acted in bad faith is a question about which genuine issues of material fact remain, the Court will deny the Motion. For the reasons discussed below, the Court also will deny Defendant's Motion for Partial Summary Judgment with respect to liability for punitive damages, as well as Defendant's Motion to Amend its Answer to plead the statute of limitations as an affirmative defense.

I. **FACTUAL BACKGROUND**

In April 1995, Solomon and Myrtle Webb were involved in a three car accident in Philadelphia. Solomon Webb was driving, and his wife Myrtle and two other individuals, Miranda Nemard and Lamont Sessoms, were passengers in the Webbs' car. The Webbs were owners of three vehicles insured with State Farm, and each policy contained uninsured/underinsured motorist coverage. The uninsured driver of one of the other vehicles in the accident was determined to be entirely at fault. Plaintiffs allege that Defendant State Farm unreasonably delayed for more than two years and four months before making an offer to settle Plaintiffs' uninsured motorist claims. State Farm contends that it could not settle these claims until it received medical information on one of the passengers, Lamont Sessoms. Defendant further states that once this information was received, it proceeded to promptly settle all claims.

## II. LEGAL STANDARD

Summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). An issue is “genuine” only if there is sufficient evidence with which a reasonable jury could find for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986). Furthermore, bearing in mind that all uncertainties are to be resolved in favor of the nonmoving party, a factual dispute is only “material” if it might affect the outcome of the case. Id. A party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine

issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552 (1986).

Where the non-moving party bears the burden of proof on a particular issue at trial, the movant's initial Celotex burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325, 106 S. Ct. at 2554.

After the moving party has met its initial burden, summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish an element essential to that party's case, and on which that party will bear the burden of proof at trial." Id. at 322, 106 S. Ct. at 2552.

### III. DISCUSSION

Defendant State Farm seeks summary judgment on the ground that there is no evidence to suggest that it acted unreasonably in settling Plaintiffs' uninsured motorist claims. Defendant further contends that in order to establish a *prima facie* case for bad faith under § 8371, Plaintiffs must show that State Farm acted with improper motive. The Court disagrees both with Defendant's conclusion about the lack of evidence of unreasonable behavior, and with Defendant's conclusion about the requirement of showing an improper motive in order to establish a bad faith claim.

#### A. The Standard for "Bad Faith" Claims

If a court finds that an insurer has acted in bad faith toward its insured, a court may take all of the following actions:

1. Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%.
2. Award punitive damages against the insurer.

3. Assess court costs and attorney fees against the insurer.

42 Pa. Cons. Stat. Ann. § 8371. The standard for bad faith claims under § 8371 was recently reviewed by the United States Court of Appeals for the Third Circuit (“Third Circuit”). Klinger v. State Farm Mut. Auto. Ins. Co., 115 F.3d 230, 233-34 (3d Cir. 1997). The Klinger Court approved of the two-part test for establishing bad faith set forth in Terletsky v. Prudential Property & Cas. Ins. Co., 649 A.2d 680, 688 (Pa. Super. Ct. 1994), appeal denied, 659 A.2d 560 (1995). To establish a bad faith claim, plaintiff must show by clear and convincing evidence that: (1) that the insurer lacked a reasonable basis for denying benefits; and (2) that the insurer knew or recklessly disregarded its lack of reasonable basis. Klinger, 115 F.3d at 233.

In defining the limits of the above test, the Klinger Court explicitly declined to read Terletsky dicta as adding a third element of improper purpose of the insurer to the two required elements in a bad faith claim. The court pointed out that the Terletsky decision actually applied the two-part test without requiring Plaintiffs to demonstrate improper motive in order to recover. Id. at 233-34. The Third Circuit predicted that the Pennsylvania Supreme Court similarly would not expand the test by which bad faith claims are measured. Id. at 234. Thus, this Court rejects Defendant’s contention that Plaintiffs must show that State Farm acted with improper motive in order to establish a bad faith claim.

The Court further finds that Plaintiffs’ submissions provide sufficient evidence to show genuine issues of material fact regarding the two elements required to establish a bad faith claim. Plaintiffs contend that there is adequate evidence to show that State Farm acted unreasonably in delaying payment of Plaintiffs’ claims for more than two and one half years because of an alleged inadequacy in information on one of the four claimants. State Farm justifies its delay by insisting

that it had to settle all four claims at one time, and thus three claims were delayed contingent on receiving medical reports on the fourth claimant. Plaintiffs counter, however, with the report of their insurance expert, Herbert Frank, to show that it was simply unnecessary for State Farm to delay payment on the first three claims until the fourth was completed. Plaintiffs further submit the deposition of State Farm “team manager” Susan Graham in which she states that there is no State Farm policy that would have prevented payment from the second and third stacked policies before the first was exhausted. Plaintiff also submits the deposition of the claims adjuster’s supervisor indicating that he would have negotiated the other three claims without the missing information about the fourth claim. There also is dispute about whether any necessary information about the fourth individual really was lacking. Plaintiffs’ submissions indeed show genuine issues of material fact about whether State Farm had a reasonable basis to delay payment, and about whether State Farm recklessly disregarded this lack of a reasonable basis. The Court therefore denies Defendant’s Motion for Summary Judgment.<sup>1</sup>

B. Punitive Damages

Defendant requests summary judgment with respect to the issue of punitive damages, stating that “outrageous conduct” on the part of the Defendant is necessary in order to warrant such an award, and that there is no evidence to support such a characterization of Defendant’s conduct. (Mtn. at 23). However, Plaintiffs correctly counter that in a § 8371 bad faith case, reckless behavior by the Defendant is enough for the case to go to the jury on punitive damages.

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<sup>1</sup>Defendant also asks for summary judgment regarding Plaintiffs’ breach of contract and misrepresentation claims. However, Plaintiffs state that these claims were not included in their complaint, and were merely included in support of the bad faith claim. (Plf. Mem. Resp. at 8, n 2). Summary judgment regarding these claims therefore is moot.

PolSELLI v. Nationwide Mut. Fire Ins. Co., 23 F. 3d 747, 751 (3d. Cir. 1994). The PolSELLI court's finding certainly is consistent with the statute itself, which specifically enumerates punitive damages as a possible action that may be taken against an insurer found to have acted in bad faith. Reckless behavior sufficient to support a finding of bad faith under the TerletsKY test is thus also sufficient to impose punitive damages. Id. Therefore, this Court finds that for the same reasons that genuine issues of material fact exist on the issue of whether Plaintiffs have a § 8371 bad faith claim, the issue of punitive damages also survives Defendant's Motion for Summary Judgment.

C. Leave to Amend

Defendant moves, pursuant to Federal Rule 15(a), to amend its answer to plead the statute of limitations as an affirmative defense. Defendant then further moves for partial summary judgment with respect to conduct that occurred more than two years before the initiation of this lawsuit, because Defendant contends that two years is the statute of limitations applicable to this bad faith cause of action. For the reasons explained below, the Court denies Defendant's Motion to Amend its answer.

It is well established that an applicant seeking leave to amend a pleading has the burden of showing that justice requires the amendment. Harrison Beverage Co. v. Dribeck Importers, Inc., 133 F.R.D. 463, \*467 (D.N.J. 1990). Pennsylvania courts, however, liberally allow amendments to pleadings pursuant to Rule 15(a) when "justice so requires," and when the non-moving party is not prejudiced by the allowance of the amendment. George McArthur and Sons, Inc. v. Safe-Play Mfg. Co., 32 F.R.D. 229, \*230 (E.D. Pa. 1962).

Leave to amend may be denied where there is "undue delay, . . . undue prejudice to the

opposing party by virtue of the allowance of the amendment, [or] futility of the amendment.”

Lorenz v. CSX Corp., 1 F.3d 1406, 1413 (3d Cir. 1993) (citing Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 230 (1962)). In the absence of “substantial” prejudice, “denial instead must be based on . . . truly undue or unexplained delay . . . or futility of amendment.” Id. at 1414; see also In re Burlington Coat Factory Securities Litigation, 114 F.3d 1410, 1434-35 (3d Cir. 1997) (citing Lorenz as correctly enumerating the grounds that could justify denial of leave to amend and noting that a delay of four months between initial and revised complaint could constitute “undue delay”).

In the instant case, Plaintiffs claim that their case would be “severely” prejudiced by allowing Defendant to assert the statute of limitations for the first time one month before trial. (Plf. Resp. at 9). While Plaintiffs fail to specify the nature of the prejudice, the Court finds that Defendant has not offered any explanation of the reasons for the delay, and concludes that sufficient reason does not exist. Under such circumstances, Defendant’s delay until one month before trial in requesting leave to amend constitutes “truly undue or unexplained delay,” and should be denied.

It also appears that amendment may be futile because despite Defendant’s contention that a two-year statute of limitations applies to this case,<sup>2</sup> Defendant has not shown that this action

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<sup>2</sup>The Court notes the split in this jurisdiction regarding the applicable statute of limitations in a § 8371 bad faith claim. The Pennsylvania Supreme Court has not decided this issue. Consequently, between 1997 and 1999 at least seven United States District Court for the Eastern District of Pennsylvania (Eastern District) opinions have attempted to predict whether the Pennsylvania Supreme Court would apply the two year statute applicable to tort cases or the six year “catchall” statute applicable to cases that do not sound entirely in tort or contract law. See Mantakounis v. Aetna Casualty & Surety Co., No. 98-4392, 1999 WL 600535 (E.D. Pa. Aug. 10, 1999) (citing two Eastern District cases supporting the two-year limitation and two cases supporting six years, and siding with the two-year faction); McCarthy v. Scottsdale Ins. Co., No.

would be time-barred by such a limitations period. Defendant claims that “most of the conduct encompassed in plaintiffs’ complaint occurred more than two years before institution of this lawsuit.” (Mtn. at 23). However, Defendant neglects to address the crucial inquiry of precisely when the statute of limitations begins to run in a bad faith cause of action about delay in payment of a claim. While Pennsylvania case law does not directly address the issue, a recent United States District Court for the Eastern District of Pennsylvania case implies that the statute begins to run in situations of delay from the point in time when the payment is finally made. See Federated Life Ins. Co. v. Walker, No. 96-3387, 1997 WL 33264 (E.D. Pa. Jan. 21, 1997). In the instant case, State Farm first made offers to the claimants in March, 1998, and after some negotiation, claimants accepted offers in April, 1998. The bad faith action was commenced April 1, 1999, one year after the parties agreed on payment of the claims, and thus well before even a two-year statute of limitations had run.

For the foregoing reasons, the Defendant’s Motion for Summary Judgment and Motion to Amend Answer are denied. An appropriate Order follows.

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99-978, 1999 WL 672642 (E.D. Pa. Aug. 16, 1999) (also favoring a two-year statute of limitations); Miller v. Cincinnati Ins. Co., No. 97-1223 (E.D. Pa. July 9, 1997) (favoring a six-year statute of limitations). Because a two-year statute would not bar Plaintiffs’ cause of action, this Court need not offer its prediction on the issue.

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v.	:	
	:	
STATE FARM INSURANCE	:	
COMPANY	:	NO. 99-CV-2268

**ORDER**

**AND NOW**, this        day of November, 1999, upon consideration of Defendant's Motion for Summary Judgment and Plaintiffs' Response thereto, **IT IS HEREBY ORDERED THAT:**

1. Defendant's Motion for Summary Judgment is **DENIED**;
2. Defendant's Motion for Partial Summary Judgment on the issue of punitive damages is **DENIED**; and
3. **IT IS FURTHER ORDERED**, upon consideration of Defendant's Motion to Amend Answer and Plaintiffs' Response thereto, that Defendant's Motion is **DENIED**.

BY THE COURT:

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John R. Padova, J.