

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

JUDITH A. CAIN & JAMES P. CAIN : CIVIL ACTION
 :
 v. :
 :
 :
 NATIONWIDE MUTUAL FIRE INSURANCE :
 COMPANY, a corporation a/k/a :
 NATIONWIDE MUTUAL INSURANCE COMPANY, :
 a/k/a NATIONWIDE INSURANCE COMPANY : NO. 00-1913

MEMORANDUM AND ORDER

Fullam, Sr. J.

May , 2000

Plaintiffs allege that their house was damaged as a result of an automobile accident. They are suing the defendant insurance company for failure to pay for their losses. Defendant has filed a Motion to Dismiss the Complaint, on the ground that plaintiffs' complaint shows on its face that their claims are time-barred, because of a one-year limitations period specified in the governing policy. Plaintiffs argue that the limitations issue should not be resolved on a Rule 12(b)(6) motion to dismiss, and that, in any event, their claims are not time-barred.

It is clear that the auto accident alleged in the complaint did occur more than one year before this suit was filed. The complaint refers to other items of damage which allegedly developed later, within the one-year limitations period of the policy. But there is nothing in the complaint which

supports the view that these later developments were within any of the coverages of the insurance policy. On that subject the complaint is silent.

I find it impossible to reach any firm conclusions, on the present state of the record. The case was originally filed in state court, and is now in this court by virtue of having been removed. The copy of the state court complaint now of record in this court does not include a copy of the insurance policy in question; the only purported copy of the insurance policy is the one which is attached to defendant's Motion to Dismiss, and that appears to be only a copy of a "specimen" policy, presumably similar to the operative one.

Although plaintiffs' complaint alleges that the insurance policy was in effect "during the entire year of 1996 and continuing up to and at least through April 7, 1999," plaintiffs' complaint appears to trace the claimed losses to an auto accident which occurred on November 26, 1995. And even if one or more of these dates is in error, and there was coverage for the original auto accident, the complaint does not relate any of the (allegedly continuing) damages to any policy coverage. Although plaintiffs apparently contend that the "continuing" losses were an aftermath of harm to electrical wiring caused by the original auto accident, it is possible they are also claiming that these later losses are, independently, within some policy

coverage. Defendant, and this Court, are entitled to clarification of the plaintiffs' theory of the case. The solution is to require the plaintiffs' to file an amended complaint, which sufficiently alleges claims covered by the policy language and not barred by the limitations period of the policy.

An Order follows.

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ORDER

AND NOW, this day of May, 2000, IT IS ORDERED:

1. Defendant's Motion to Dismiss the Complaint is GRANTED.
2. Plaintiffs' complaint is DISMISSED WITH LEAVE TO FILE AN AMENDED COMPLAINT within 30 days.

John P. Fullam, Sr. J.