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

JOSEPH HOLLINGSWORTH AND DONNA M. HOLLINGSWORTH	:	CIVIL ACTION
v.	:	
STATE FARM FIRE & CASUALTY CO.	:	NO. 04-3733

MEMORANDUM

Padova, J. **March 9, 2005**

Plaintiffs, Joseph and Donna Hollingsworth, have brought this action for breach of a rental dwelling insurance contract and bad faith against State Farm Fire and Casualty Company. Presently before the Court is Defendant's Motion for Summary Judgment. For the reasons that follow, Defendant's Motion is granted in part and denied in part.

I. BACKGROUND

Defendant issued a rental dwelling policy, Policy No. 98-GC-5659-5, to Plaintiffs with a policy period running from September 19, 2002 to September 19, 2003 ("the Policy"). (Def.'s Ex. A.) The Policy generally insured Plaintiffs against direct physical loss or damage to their rental dwelling located at 3068 Alford Court, Lehman Township, Bushkill, Pennsylvania ("the Property"). (Def.'s Ex. D.) On or about January 20, 2003, Ms. Hollingsworth "discovered extensive damage to [the Property,] consisting of: holes in walls; appliances thrown out of the [Property]; broken windows; doors kicked in; cabinet doors and drawer fronts ripped

off the cabinets; writing on walls; and feces and urine throughout." (D. Hollingsworth Aff. ¶ 2.) Ms. Hollingsworth thereafter informed Defendant of the loss and independently retained the services of James M. Wagner, a public adjuster employed by Alliance Adjustment Group, Inc. (Id. ¶¶ 3, 8.) Wagner notified Defendant in a written report that Plaintiffs' loss was attributable to vandalism and that he had estimated the repair costs at $31,643.61. (Wagner Aff. ¶¶ 7-8; Pl.'s Ex. D.) On or about March 19, 2003, an agent for Defendant completed a claim service record which indicated that the "probable cause" of the January 20, 2003 loss was vandalism. (Def.'s Ex. E.)

On or about April 16, 2003, Wagner and James McDonnell, a claims representative employed by Defendant, inspected and photographed the damage to the Property. (Def.'s Ex. F.) By letter dated May 8, 2003, McDonnell advised Wagner that much of the damage to the Property resulted from causes of loss (namely, domestic animals and wear and tear) for which coverage is excluded under the Policy. (Def.'s Ex. I.) McDonnell also enclosed an estimate "for the repair of what appears to be vandalism damage." (Id.) McDonnell estimated that the actual cash value of the loss was $1,248.78 and stated that any payment for the loss would be subject to the Policy's $500 deductible. (Id.) McDonnell also noted in his May 8, 2003 letter that Defendant would not consider paying the loss until Wagner submitted "a copy of the relevant

police report" for the January 20, 2003 loss. (Id.)

On August 11, 2003, McDonnell sent Wagner a letter stating that "we still have not received the police report relevant to the [January 20, 2003] claim . . . [d]espite repeated requests and repeated assurances from you that it would be supplied." (Def.'s Ex. J.) McDonnell's letter asserted that "this claim has lingered due to your lack of cooperation" and requested that Wagner "give immediate attention to this matter." (Id.) On August 29, 2003, McDonnell again wrote Wagner concerning the January 20, 2003 loss. (Def.'s Ex. K.) In the letter, McDonnell stated that "after numerous attempts, I have been unable to reach you by phone and have not received a return call from you." (Id.) McDonnell's letter also included an offer to settle Plaintiffs' claim for $4,342.87 and noted that Plaintiffs "would also be entitled to additional payments up to $1,637.42 in accordance with the Replacement Cost Coverage provisions of [the Policy]," (id.), for a total recovery of approximately $6,000.

Approximately two months later, on October 22, 2003, McDonnell again wrote Wagner concerning the January 20, 2003 loss. In the letter, McDonnell stated that "[w]e have repeatedly informed you that the figure of $4,342.87 represents a compromise of the [January 20, 2003] claim. You have not had your clients execute and return the Proof of Loss reflecting this agreement. As such, we will assume that you have rejected this offer." (Def.'s Ex. L.)

McDonnell enclosed a check in the amount of $748.78, "representing the original assessment of damages [, less the Policy's $500 deductible,] which had been previously supplied to you." (Id.)

On June 5, 2003, while Plaintiffs' January 20, 2003 claim was still pending, Wagner advised Defendant that Plaintiffs had suffered further damage to the Property on June 4, 2003. (Wagner Aff. ¶¶ 7-8.) The claim service record prepared by Defendant's agent noted that the "probable cause" of the loss was vandalism. (Def.'s Ex. M.) On June 19, 2003, Laura Stachnik, a claims representative employed by Defendant, sent Mr. Hollingsworth a letter concerning the June 4, 2003 loss. (Def.'s Ex. N.) In the letter, Stachnik noted that Mr. Hollingsworth "had indicated that th[e] [P]roperty had been vacant since January 2003." (Id.) Stachnik advised Mr. Hollingsworth that Defendant would not "be able to assist you with the[ ] repairs" because Section I.1.g of the Policy (hereinafter, "the Vandalism Exclusion") excludes coverage for losses caused by "vandalism . . . if the dwelling has been vacant for more than 30 consecutive days immediately before the loss." (Id.) On or about July 30, 2003, Stachnik and Wagner inspected the damage to the Property. (Def.'s Ex. A.) On August 5, 2003, Stachnik sent Wagner a letter confirming that coverage for the June 4, 2003 loss was excluded under the Vandalism Exclusion since the Property "has been vacant since January 2003." (Id.) Stachnik also stated that Section I.2.d of the Policy, which

excludes coverage for losses caused by "[n]eglect, meaning neglect of the insured to use all reasonable means to save and preserve property at and after the time of a loss, or when property is endangered by a Loss Insured," applied to the June 4, 2003 loss because "several incidents of vandalism [had] occur[red] since [the Property became] vacant." (Id.)

On or about May 26, 2004, Plaintiffs commenced the instant action by filing a Writ of Summons in the Court of Common Pleas of Philadelphia County. Plaintiffs thereafter filed a Complaint asserting two counts against Defendant. In Count One, Plaintiffs allege a breach of contract claim based on Defendant's failure to pay Plaintiffs full benefits under the Policy for the January 20, 2003 and June 4, 2003 losses. In Count Two, Plaintiffs allege claims for bad faith pursuant to 42 Pa. Cons. Stat. Ann. § 8371. Defendant removed the instant action to this Court on August 6, 2004.

II. LEGAL STANDARD

Summary Judgment is appropriate "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) ("Rule 56(c)"). An issue is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is "material" if it might affect the outcome of the case under governing law. Id.

A party seeking summary judgment always bears the initial responsibility for 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 (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. After the moving party has met its initial burden, "the adverse party's response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). That is, summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322. Under Rule 56, the Court must view the evidence presented on the motion in the light most favorable to the opposing party. Anderson, 477 U.S. at 255. "If the opponent [of summary judgment] has exceeded the 'mere scintilla' [of evidence] threshold and has

offered a genuine issue of material fact, then the court cannot credit the movant's version of events against the opponent, even if the quantity of the movant's evidence far outweighs that of its opponent. Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

III. DISCUSSION

This Court has diversity jurisdiction over this action pursuant 28 U.S.C. § 1332. In diversity actions, the Court must apply the choice of law rules of the forum state. Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487, 496 (1941). Under Pennsylvania's choice of law principles, an action arising on an insurance policy is governed by the law of the state in which the policy was delivered. CAT Internet Servs., Inc. v. Internet Supply, Inc., 333 F.3d 138, 141 (3d Cir. 2003). The parties do not dispute that Pennsylvania law applies to this action because the Policy was delivered to Plaintiffs in Pennsylvania.

A. Breach of Contract

1. January 20, 2003 loss

Defendant argues that Plaintiffs' breach of contract claim for the January 20, 2003 loss is barred by the Policy's suit limitations provision, which provides that any action against Defendant must be "started within one year after the date of loss or damage." (Def.'s Ex. D at 8.) Defendant notes that Plaintiffs did not commence the instant action until on or about May 26, 2004,

over four months after the running of the one-year limitations period with respect to the January 20, 2003 loss.

Under Pennsylvania law, breach of contract claims are generally subject to a four-year statute of limitations. See 42 Pa. Cons. Stat. Ann. § 5525(a). However, "[i]t has long been settled in Pennsylvania that a contractual provision limiting the time for commencement of a suit on an insurance contract to a period shorter than that provided by an otherwise applicable statute of limitations is valid if reasonable." Marshall v. Aetna Cas. & Sur. Co., 643 F.2d 151, 152 (3d Cir. 1981); see also 42 Pa. C.S.A. § 5501(a). Pennsylvania courts have held that one-year suit limitation provisions are reasonable. See McElhiney v. Allstate Ins. Co., 33 F. Supp. 2d 405, 406 (E.D. Pa. 1999) (citing cases). It is also well-settled that a contractual limitations period "may be extended or waived where the actions of the insurer lead the insured to believe that the contractual limitation period will not be enforced." Esbrandt v. Provident Life & Acc. Ins. Co., 559 F. Supp. 23, 25 (E.D. Pa. 1983) (quoting Schreiber v. Pa. Lumberman's Mut. Ins. Co., 444 A.2d 647, 649 (Pa. 1982)).

Plaintiffs do not dispute that they commenced the instant action more than one year after the January 20, 2003 loss. Plaintiffs instead contend that Defendant led them to believe that the one-year limitations period for the January 20, 2003 loss had been extended until June 4, 2004, the date on which the one-year

limitations period for the June 4, 2003 loss was set to expire. Plaintiffs have submitted the Affidavit of James M. Wagner, the public adjuster who pursued their insurance claims in this case. Wagner's Affidavit states as follows:

> On July 31, 2003, I met Defendant's representative, Laura Stachnik[,] at the Plaintiffs' property to discuss the damages and the Plaintiffs' claims. During the meeting, Ms. Stachnik advised me that Defendant would be denying coverage for the June loss. At that time, we also discussed the January claim, which was still pending, and that due to the disagreements in both claims, Plaintiffs' only recourse would be to file a lawsuit. At my request, Ms. Stachnik specifically agreed to allow Plaintiffs' one-year suit limitation to run from the June date of loss for both the January and June, 2003, dates of loss. Therefore, Ms. Stachnik, Defendant's representative[,] allowed Plaintiffs to file a lawsuit for both claims within one (1) year of June 4, 2003. Based upon Ms. Stachnik's representations, I advised the Plaintiffs' attorney of the deadline to file suit . . . .
>
> Because it is customary in the insurance industry for insurance companies to often allow extensions of their suit limitation provisions, I relied on the representations of Ms. Stachnik stated above. My reliance also would have impacted Plaintiffs' attorney's decision as to when to file the lawsuit.

(Wagner Aff. ¶¶ 11-12.) Based on Wagner's Affidavit, the Court concludes that there is a genuine issue of material fact as to whether Defendant extended the limitations period for the January 20, 2003 loss until June 4, 2004. Accordingly, Defendant's Motion is denied with respect to Plaintiffs' breach of contract claim for the January 20, 2003 loss.

2. June 4, 2003 loss

Defendant contends that it is entitled to judgment in its favor with respect to Plaintiffs' breach of contract claim for the June 4, 2003 loss because coverage for this loss is barred under the Policy's Vandalism Exclusion. As noted above, the Policy's Vandalism Exclusion excludes coverage for losses caused by "vandalism . . . if the dwelling has been vacant for more than 30 consecutive days immediately before the loss." (Def.'s Ex. D at 5.) Although it is undisputed that the June 4, 2003 loss was caused by vandalism, the parties contest whether the Property was "vacant" for the requisite time period prior to the loss.

Under Pennsylvania law, interpretation of a policy exclusion is a question of law for the court, Allstate Ins. Co. v. Davis, 977 F. Supp. 705, 711 (E.D. Pa. 1997), and "the goal . . . is to ascertain the intent of the parties as manifested by the language of the written instrument." Standard Venetian Blind Co. v. Am. Empire Ins. Co., 469 A.2d 563, 566 (Pa. 1983). A court is required to give effect to a policy exclusion if the exclusion is clearly worded and conspicuously displayed in the policy. Giangreco v. United States Life Ins. Co., 168 F. Supp. 2d 417, 421 (E.D. Pa. 2001). However, ambiguous policy exclusions are "always strictly construed against the insurer and in favor of the insured." Nationwide Mut. Ins. Co. v. Cosenza, 258 F.3d 197, 206-07 (3d Cir. 2001) (citing Selko v. Home Ins. Co., 139 F.3d 146, 152 n.3 (3d

Cir. 1998)). A policy exclusion is ambiguous if "reasonably intelligent [persons] on considering it in the context of the entire policy would honestly differ as to its meaning, and if more precise language could have eliminated the ambiguity." Coregis Ins. Co. v. Larocca, 80 F. Supp. 2d 452, 455 (E.D. Pa. 1999) (internal citations omitted). The insurer bears the burden of establishing the applicability of an exclusion under an insurance policy. Cosenza, 258 F.3d at 206.[1]

Although the Policy states that "[a] dwelling being constructed is not considered vacant," (Def.'s Ex. D at 5), the term "vacant" is not affirmatively defined in the Policy. Defendant contends that the term "vacant" should be defined in accordance with its ordinary meaning. See, e.g., Webster's Ninth New Collegiate Dictionary 1301 (1990) (defining "vacant" as "being without content or occupant"). Defendant maintains that Ms. Hollingsworth's deposition testimony conclusively establishes that the Property was "vacant," as the term is commonly understood. Mrs. Hollingsworth testified at her deposition that no one lived at the Property from January 2003 until December 2003. (Def.'s Ex. O.) Mrs. Hollingsworth also testified that she only visited the Property on two occasions between January 2003 and June 2003.

[1] Although the insured bears the initial burden of establishing coverage under an insurance policy, Cosenza, 258 F.3d at 206, there is no dispute that Plaintiffs' claimed loss is covered under the all-risk provision in Section I of the Policy.

(Id.) On one occasion, she "went through [the Property] and saw the damage" related to the January 20, 2003 loss. On the other occasion, she "scrubb[ed] and seal[ed] the floors." (Id.) Mrs. Hollingsworth also testified that she did not recall any other work being done to the Property between January 2003 and December 2003. (Id.)

In response, Plaintiffs argue that the term "vacant" should not be interpreted to bar coverage under the facts of this case. Plaintiffs contend that the January 20, 2003 loss rendered the Property uninhabitable, (see D. Hollingsworth Aff. ¶¶ 6-7, Wagner Aff. ¶¶ 5-6), and note that, at the time of June 4, 2003 loss, the parties were still negotiating over Plaintiffs' claim for the January 20, 2003 loss and no repairs to the Property had yet been performed. Plaintiffs argue that it would be unreasonable to require them to occupy a dwelling rendered uninhabitable by a prior, unresolved loss in order to prevent Defendant from denying coverage for future losses under the Vandalism Exclusion. In essence, Plaintiffs maintain that the term "vacant" must be interpreted by considering not only the *fact* of vacancy, as Defendant suggests, but also the *cause* of vacancy.

At the outset, the Court notes that the parties have not cited, and the Court's independent research has not uncovered, any Pennsylvania decisions which definitively interpret the meaning of the term "vacant" in the context of an insurance policy which

denies coverage for vandalism on insured property if the property is "vacant" for 30 days prior to the incident of vandalism. However, the United States Court of Appeals for the Third Circuit ("Third Circuit") has, in interpreting an analogous provision in a fire insurance policy, predicted that the Pennsylvania Supreme Court would adopt an interpretation of the term "vacant" that takes into account the cause of vacancy. In Am. Cent. Ins. Co. of St. Louis v. McHose, 66 F.2d 749 (3d Cir. 1933), the insured building was partially damaged by a fire. Id. at 750. The insurer directed the insured to leave the building unoccupied until the insurer decided whether to repair the damage or to pay the loss. Id. While the parties were still negotiating over the loss caused by the fire, the building sustained further damage from a second fire. Id. The insurer invoked the policy's vacancy provision, which excluded coverage if the building "is vacant or unoccupied beyond a period of [forty] days," to deny coverage for the damage caused by the second fire. Id. In a 2-1 decision, the Third Circuit rejected the insurer's position and found that "it was the intention of the parties that the building should and would be inhabitable and could be occupied during [the forty-day vacancy] period." Id. at 751. The court held that "after a partial loss under a fire policy, which renders the building untenantable, the insured is not guilty of a breach of the vacancy clause of the contract, where he permits the property to remain unoccupied

pending the period during which the insurer is authorized to exercise its option to repair the damaged building." Id. at 752 (citation omitted).[2] A number of state courts have reached the same conclusion. See, e.g., DeVanzo v. Newark Ins. Co., 353 N.Y.S.2d 29 (N.Y. App. Div. 1974) (holding that vacancy clause in fire insurance policy is suspended during period in which insurer is deciding its course of action with respect to a prior loss that has rendered the insured property uninhabitable), aff'd, 337 N.E.2d 131 (N.Y. 1975); Aetna Cas. & Sur. Co. v. Transamerica Title Ins. Co. of Col., 480 P.2d 585 (Colo. Ct. App. 1970) (same).

However, Defendant's interpretation of the term "vacant" also has some support in case law from other jurisdictions. In Kupfersmith v. Delaware Ins. Co., 86 A. 399 (N.J. 1913), the fire insurance policy at issue included a provision which permitted the insurer to void the policy if the insured property remained vacant

---

[2] Because the Third Circuit's decision in McHole is not directly on point with the facts of the instant case, the Court need not consider the debatable question of whether a federal district court is strictly bound by its court of appeals' prediction of state law. Compare Carrasquilla v. Mazda Motor Corp., 197 F. Supp. 2d 169, 173 (M.D. Pa. 2002) ("The Third Circuit has not given very much guidance on the subject, but has suggested that the only law binding on a federal court is the jurisprudence of the state supreme court, and that even a decision by a federal court of appeals does not bind a district court.") with Stepanuk v. State Farm Mut. Auto. Ins. Co., Civ. A. No. 92-6095, 1995 WL 553010, at *2 (E.D. Pa. Sept. 19, 1995) (holding that district court is bound by its court of appeals' prediction of state law unless "later state court decisions indicate that the Court of Appeals' earlier prediction was in error"). In any event, the Court would reach the same result in this case even if McHose were binding.

for ten days. Id. at 400. The insured's building was damaged in a fire on October 15, 1908. Id. The building remained vacant between that date and February 16, 1909, the date on which the building sustained additional damage from another fire. Id. The insurer denied coverage under the vacancy provision for the damage caused by second fire. Id. The insured argued that the vacancy provision had been suspended by the first fire because the first fire had rendered the building uninhabitable and the insurer had not yet resolved insured's claim for that loss. Id. In rejecting the insured's argument, the New Jersey Court of Errors and Appeals stated that "[t]here is no suggestion in th[e] language [of the vacancy provision] that the provision shall be applicable only when the insured *voluntarily* leaves the premises unoccupied for the specified period. It is the fact of vacancy, not its cause, which makes the provision operative." Id. at 400-01 (emphasis in original); see also McHose, 66 F.2d at 753 (Woolley, J., dissenting) ("I subscribe fully to the reasoning of [Kupfersmith]."). Nearly one-hundred years later, New Jersey courts continue to adhere to Kupfersmith's holding. See, e.g., City Nat. Bank of N.J. v. Selective Ins. Co. of Am., 751 A.2d 1063, 1065-66 (N.J. Super. Ct. App. Div. 2000), cert. denied, 760 A.2d 782 (N.J. 2000).

The conflicting rulings of courts that have interpreted similar vacancy clauses demonstrates that the term "vacant," as

used in the Policy's Vandalism Exclusion, may be reasonably interpreted to support the positions of both parties in this case. See Lawson ex. rel. Lawson v. Fortis Ins. Co., 301 F.3d 159, 167 (3d Cir. 2002) ("The mere fact that several appellate courts have ruled in favor of a construction denying coverage, and several others have reached directly contrary conclusions, viewing almost identical policy provisions, itself creates an inescapable conclusion that the provision in issue is susceptible to more than one interpretation.") (quoting Cohen v. Erie Indem. Co., 432 A.2d 596, 599 (Pa. Super. Ct. 1981)). If Defendant intended for its interpretation to control, it could have expressly stated in the Vandalism Exclusion that the term "vacant" includes any vacancy which results from an insured loss that has rendered the Property uninhabitable. See McHose, 66 F.2d at 751-52. Because reasonably intelligent persons would honestly differ as to the meaning of the term "vacant," and the use of more precise language by Defendant would have "put the matter beyond reasonable question," Little v. MGIC Indem. Corp., 836 F.2d 789, 795 (3d Cir. 1987), the Court finds that the term "vacant," as used in the Policy's Vandalism Exclusion, is ambiguous in meaning. Strictly construing this ambiguity in favor of Plaintiffs and against Defendant, the Court further concludes, as a matter of law, that where the Property has been rendered uninhabitable by an insured loss, the vacancy clause in the Vandalism Exclusion is suspended until Defendant elects to

either pay the loss or repair the damage caused by the loss.[3] Based on the record before the Court, there are genuine issues of material fact as to whether the Property was rendered uninhabitable by the January 20, 2003 loss, thereby suspending the application of the Vandalism Exclusion until Defendant exercised its option to pay the January 20, 2003 loss.[4] Accordingly, Defendant's Motion is denied with respect to Plaintiffs' breach of contract claim for the June 4, 2003 loss.

B. Bad Faith

Defendant has also moved for summary judgment on Plaintiffs' bad faith claims in Count Two of the Complaint. To establish a claim for bad faith against an insurer under Pennsylvania law, the insured must prove by clear and convincing evidence that: (1) the insurer lacked a reasonable basis for denying benefits; and (2) the insurer knew or recklessly disregarded its lack of reasonable basis for denying benefits. J.C. Penney Life Ins. Co. v. Pilosi, 393 F.3d 356, 367 (3d Cir. 2004). Pennsylvania courts define "bad faith" as "any frivolous or unfounded refusal to pay proceeds of a

[3] Under the Policy, Defendant has the "option" of either paying losses or "repair[ing] or replac[ing] any part of the property damaged or stolen with equivalent property." (Def.'s Ex. D at 8.)

[4] In determining whether the January 20, 2003 loss rendered the Property uninhabitable, the finder of fact may only consider the damages which resulted from an insured (i.e., non-excluded) cause of loss under the Policy. In this case, there are genuine issues of material fact regarding the extent to which the January 20, 2003 damage to the Property resulted from an insured cause of the loss under the Policy.

policy." Terletsky v. Prudential Prop. & Cas. Ins. Co., 649 A.2d 680, 688 (Pa. Super. Ct. 1994). The clear and convincing standard requires that the insured show that "the evidence is so clear, direct, weighty and convincing as to enable a clear conviction, without hesitation, about whether or not [the insurer] acted in bad faith." Pilosi, 393 F.3d at 367 (citation omitted). "Thus, the [insured's] burden in opposing a summary judgment motion is commensurately high in light of the substantive evidentiary burden at trial." Id. (citation omitted).

Plaintiffs argue that Defendant acted in bad faith by offering to settle the January 20, 2003 claim for approximately $6,000. In support of this claim, Plaintiffs merely cite Wagner's initial estimate that repairing the damage to the Property would cost $31,643.61. However, there is no evidence in the record that Plaintiffs ever acknowledged, much less responded to, Defendant's compromise settlement offer. Thus, Plaintiffs "cannot effectively argue that the offer was anything but a starting point for negotiation." Segall v. Liberty Mut. Ins. Co., Civ. A. No. 99-6400, 2000 WL 1694026, at *3 (E.D. Pa. Nov. 9, 2000). As Plaintiffs have offered insufficient evidence that Defendant acted in bad faith by offering to settle the January 20, 2003 claim for approximately $6,000, the Court grants Defendant's Motion in this respect.

Plaintiffs also argue that Defendant acted in bad faith by

unreasonably interpreting the term "vacant," as used in the Policy's Vandalism Exclusion, to bar coverage for the June 4, 2003 loss. The Court has already concluded, however, that Defendant's interpretation of the term "vacant" was reasonable, although unavailing, as matter of law. Under Pennsylvania law, "[b]ad faith cannot be found where the insurer's conduct is in accordance with a reasonable but incorrect interpretation of the insurance policy." Bostick v. ITT Hartford Group, Inc., 56 F. Supp. 2d 580, 587 (E.D. Pa. 1999) (citations omitted); see also Livornese v. Med. Protective Group, 219 F. Supp. 2d 645, 648-49 (E.D. Pa. 2002) (rejecting bad faith claim where relevant state law was unsettled). Accordingly, Defendant's Motion is granted with respect to Plaintiffs' claim that Defendant acted in bad faith in denying benefits for the June 4, 2003 loss.

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion for Summary Judgment is granted in part and denied in part.

An appropriate Order follows.

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

JOSEPH HOLLINGSWORTH AND DONNA M. HOLLINGSWORTH	:	CIVIL ACTION
v.	:	
STATE FARM FIRE & CASUALTY CO.	:	NO. 04-3733

O R D E R

AND NOW, this 9th day of March, 2005, upon consideration of Defendant's Motion for Summary Judgment (Doc. No. 6), and Plaintiffs' Response thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED IN PART** and **DENIED IN PART** as follows:

1. Defendant's Motion is **GRANTED** with respect to Plaintiffs' claims for bad faith in Count Two of the Complaint. Judgment is entered in favor of Defendant and against Plaintiff with respect to Plaintiffs' claims for bad faith in Count Two of the Complaint.
2. Defendant's Motion is **DENIED** with respect to Plaintiffs' claims for breach of contract in Count One of the Complaint.

BY THE COURT:

s/ John R. Padova
John R. Padova, J.