

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

SUSAN MALONE, individually and as Administratrix of the Estate of Michael Malone	:	
	:	
	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 03-CV-6009
GUARANTEE TRUST LIFE INSURANCE CO., <u>et al.</u>	:	
	:	

MEMORANDUM AND ORDER

Kauffman, J.

April 15, 2005

Plaintiff Susan Malone, acting individually and as Administratrix of the estate of her late husband, Michael Malone (“Decedent”), brings this action against Defendants Guarantee Trust Life Insurance Company (“Guarantee Trust”) and First Jersey Insurance Agency (“First Jersey”) for breach of contract (Count One), breach of the Covenant of Utmost Fair Dealing (Count Two), bad faith (Count Three), violations of the Unfair Trade Practices and Consumer Protection Law (Count Four), and negligence (Count Five). Now before the Court is Plaintiff’s Motion for Summary Judgment as to Count One. For the reasons that follow, the Motion will be granted.

I. BACKGROUND

This case arises out of a dispute as to whether life insurance coverage of Decedent ever became effective. Guarantee Trust first approached Decedent about the policy through its authorized agent, First Jersey. The initial contact was made via telephone by Joyce Martin (“Martin”), who, at the time, was working as a sub-agent for First Jersey. Plaintiff’s Motion for Summary Judgment (“Motion”) at 3; Martin Dep. at 62. Martin arranged an appointment with

Decedent to explain the policy and solicit his application. Id.

On November 27, 2002, after listening to Martin's presentation and reviewing various literature, Decedent stated that he wanted to obtain a policy in the amount of \$150,000 for a term of fifteen years. Martin then filled out an application for Decedent. Martin Dep. II at 61 - 63, attached as Exhibit E to Plaintiff's Motion. When Martin had finished filling out the application, Decedent signed it and gave Martin a premium check in the amount of \$867. Martin Dep. II at 86:3 - 87:23. It is undisputed that Guarantee Trust cashed Decedent's premium check in late November or early December, 2002. See Michael Malone Bank Statement, attached as Exhibit B to Plaintiff's Complaint. Martin never explicitly told Decedent that he would not receive immediate temporary coverage in return for his premium payment.

Guarantee Trust issued the life insurance policy on March 5, 2003 – over three months after Decedent had submitted his application and premium payment. Zivkovic Dep. 143:17 - 143:23, attached as Exhibit L to Motion. On March 25, 2003, Martin traveled to Decedent's home to deliver the policy. Decedent's wife advised her that he had passed away two days before. See Martin Dep. II at 151.

Plaintiff, the beneficiary under the policy, subsequently filed a claim for \$150,000. Guarantee Trust denied that claim on May 29, 2003. Plaintiff then filed this action, alleging among other things that Guarantee Trust is contractually obligated to pay her \$150,000 under the policy.

II. LEGAL STANDARD

In deciding a motion for summary judgment pursuant to Fed. R. Civ. P. 56, the test is “whether there is a genuine issue of material fact and, if not, whether the moving party is entitled

to judgment as a matter of law.” Med. Protective Co. v. Watkins, 198 F.3d 100, 103 (3d Cir. 1999) (quoting Armbruster v. Unisys Corp., 32 F.3d 768, 777 (3d Cir. 1994)). “[S]ummary judgment will not lie if the dispute about a material fact is ‘genuine,’ that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The Court must examine the evidence in the light most favorable to the non-moving party and resolve all reasonable inferences in that party’s favor. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). However, “there can be ‘no genuine issue as to any material fact’ . . . [where the non-moving party's] complete failure of proof concerning an essential element of [its] case necessarily renders all other facts immaterial.” Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

III. ANALYSIS

In Collister v. Nationwide Ins. Co., the Pennsylvania Supreme Court defined the legal standard governing an insured’s coverage following the submission of an application and payment of the first premium:

In situations where the circumstances of the transaction do not indicate that the insurer intended to provide interim insurance, but nevertheless show that the insurer accepted payment of the first premium at the time it took the application, it is then up to the insurer to establish by clear and convincing evidence that the consumer had no reasonable basis for believing that he or she was purchasing immediate insurance coverage.

479 Pa. 579, 594 (1978). Absent such a showing, the court held, the insurer will be liable for temporary coverage during the application period. Id.

The Collister Court explained its holding as follows: “Regardless of the ambiguity, or lack thereof, inherent in a given set of insurance documents (whether they be applications,

conditional receipts, riders, policies, or whatever), the public has a right to expect that they will receive something of comparable value in return for the premium paid.” Id. The Court went on to state that “if insurers wish to protect themselves from liability during the interim period between the taking of the application and approval ... all that need be done is to delay the acceptance of the applicant’s money until that time.” Id. at 597.

Guarantee Trust cashed Decedent’s premium check within two weeks of receiving his application, thereby enjoying “the advantages derived from the customer’s payment of a premium deposit upon application[.]” Id. Under Pennsylvania law, this provided Decedent a reasonable expectation that he was covered under an interim policy. Neither the application nor any of Martin’s statements to Decedent provide clear and convincing evidence sufficient to undermine that expectation. Id. (finding that the insured would lack a reasonable expectation of coverage only if the insurer informed him “before any money changes hands, that it does not intend to give the customer anything in return for advance payment, and that the customer is actually paying money now for nothing because no insurance will take effect until approval.”).

IV. CONCLUSION

As the Pennsylvania Supreme Court stated in Collister, “the public has a right to expect that they will receive something of comparable value in return for the premium paid.” Because Guarantee Trust’s acceptance of Decedent’s application and premium payment gave Decedent a reasonable expectation that he was immediately covered under a temporary policy, Plaintiff’s Summary Judgment Motion will be granted.

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GUARANTEE TRUST LIFE	:	
INSURANCE CO., <u>et al.</u>	:	

ORDER

AND NOW, this 15th day of April, 2005 upon consideration Plaintiff's Motion for Summary Judgment (docket no. 18), and the response thereto, it is **ORDERED** that the Motion is **GRANTED**. Accordingly, the Clerk shall enter Judgment for the Plaintiff on Count One.

BY THE COURT:

S/Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.