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

MOTORIST MUTUAL INSURANCE CO.,	:	
Plaintiff	:	
	:	**CIVIL ACTION**
v.	:	**NO. 04-3232**
	:	
DALE E. CONKLIN DURNEY,	:	
Defendant	:	

Memorandum Opinion and Order

RUFE, J. **December 20, 2005**

Motorist Mutual Insurance Company ("MMIC") filed this declaratory judgment action on July 6, 2004, asking the Court to find that the statute of limitations on Dale E. Conklin Durney's uninsured motorist ("UIM") claim has expired. Specifically, MMIC seeks a declaration that it is not obligated to provide its insured, Durney, with UIM, due to Durney's failure to file any petition or action to toll the statute of limitations on her UIM claim by August 3, 2003. The parties have filed cross-motions for summary judgment on this issue.

Durney has filed a counterclaim alleging that MMIC has acted in bad faith in the handling of this UIM claim, and MMIC's motion for summary judgment on this counterclaim is also before the Court.

I. Background Information

This action arises out of a motor vehicle accident that occurred on September 10, 1997. Durney was driving a motor vehicle which was struck by a vehicle operated by Kimberly Poate. Durney suffered severe injuries, for which she is still undergoing treatment. Poate was insured through CGU Insurance at the time, and Durney was insured by MMIC. Durney's MMIC policy insured her for $1 million in UIM coverage ($500,000 in stacked coverage on two vehicles).

On June 14, 1999, Durney received information about the liability policy limits of Poate's insurance ($35,000),[1] and, knowing that her medical treatment would cost in excess of that, she notified MMIC of her UIM motorist claim. MMIC opened a file and assigned an adjuster to investigate Durney's UIM claim. MMIC employees continued to correspond with Durney's attorney through September 20, 2004 about her UIM claims, and Durney's attorney continued to send medical records, up through the time this case was filed. A final request for coverage has not been made by Durney, as Durney continues to receive treatment for the injuries incurred in the accident. MMIC never denied coverage, never advised Durney that she needed to file a legal action or petition for arbitration in order to receive UIM coverage, and never made an offer of coverage that Durney rejected. Durney's file was open and active at the time this suit was filed. Durney was never informed that MMIC intended to raise the statute of limitations defense to her UIM claims prior to the filing of this suit. Subsequent to the filing of this suit, Durney did file a petition for arbitration, as arbitration is the required forum for resolving disputes over UIM coverage under her policy.

According to Durney, the parties agree that Poate was 100% liable for the accident; that Durney's injuries were caused by the accident; that Poate was underinsured; thatDurney had $500,000 in UIM coverage per vehicle, stacked on two vehicles; and that MMIC and Durney agreed to postpone valuing Durney's claim until she was nearing the end of her medical treatments. MMIC's own examining doctor verified that Durney's treatment cost of $100,000 as of October 26, 1999 was reasonable, necessary and related to the accident. Furthermore, MMIC engaged a private investigator, who also found that Durney's injuries were real and related to the accident. MMIC

[1] On July 29, 1999, Durney advised MMIC that Poate's insurance carrier had offered its policy limits ($35,000) to settle the claim, and asked MMIC to provide written consent to that settlement. MMIC sent a letter of consent on August 2, 1999.

does not dispute these facts.

II. Standard of Review

Under Federal Rule of Civil Procedure 56(c), the Court may grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the 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."[2] To avoid summary judgment, the non-moving party must come forth with admissible factual evidence establishing a genuine issue of material fact.[3] In deciding a motion for summary judgment, the Court must construe the facts and inferences in a light most favorable to the non-moving party,[4] but need not consider unsupported assertions, speculation or conclusory allegations.[5] The Court must determine whether there are any genuine issues for trial.[6]

III. Discussion

A. Cross Motions for Summary Judgment on the State of Limitations Issue

The issue before the Court on the cross-motions for summary judgment is whether the statute of limitations for a UIM claim begins to run when the claim against the uninsured motorist is settled, as MMIC argues, or when a dispute arises regarding the UIM claim, as Durney argues. Neither the Pennsylvania Supreme Court nor the Third Circuit interpreting Pennsylvania law has directly addressed the question of when a cause of action for UIM benefits accrues. Accordingly,

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[2] Celotex Corp. v. Catrett, 447 U.S. 317, 322 (1986).

[3] Id.

[4] EEOC v. Westinghouse Elec. Corp., 725 F.2d 211, 216 (3d Cir. 1983).

[5] Easton v. Bristol-Meyers Squibb Co., 289 F. Supp. 2d 604, 609 (E.D. Pa. 2003)

[6] Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986).

this Court must predict how the Pennsylvania Supreme Court would rule;[7] i.e., whether it will follow well-settled rules of contract law and find that the statute of limitations begins when there is a breach of contract,[8] or find that the statute of limitations on an UIM claim begins at the time the right to UIM benefits vests.[9]

MMIC argues that the statute of limitations on Durney's UIM started to run on August 2, 1999 when MMIC consented to settlement with Poate's insurance company. MMIC therefore asserts that the statute of limitations expired on August 2, 2003.[10] Durney filed her petition to compel arbitration on December 20, 2004, about six months after MMIC filed this lawsuit. MMIC believes it is entitled to summary judgment because Durney failed to commence litigation or request arbitration before August 2, 2003, and believes she is now time-barred from pursuing her UIM claim. MMIC relies largely upon Wheeler to support its Motion. Wheeler found that the date on which an insured's contractual rights to UIM coverage vest is the date on which the statute of limitations for filing suit for breach of those contractual right begins to run.[11] MMIC further suggests that it was up to Durney and her counsel to track the statute of limitations, and it was not MMIC's

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[7] Amber-Messick v. Progressive Insur., 2005 U.S. Dist. Lexis 13100, * 10 (E.D. Pa. 2005).

[8] E.g., Berkshire Mutual Insurance Co. v. Burbank, 664 N.E.2d 1188, 1190-1191 (Mass. 1996) (adopting view that statute of limitations for commencing an action for UIM begins to run when insurer violates the insurance contract, and citing cases from thirteen state appellate and supreme courts in support of this view).

[9] See Wheeler v. Nationwide Mutual Insurance Co., 749 F. Supp. 660, 662 (E.D. Pa. 1990)(statute of limitations on UIM claim beings to run when insured's right to UIM benefits vest. Rights to UIM benefits vest when: (1) the accident has occurred; (2) the insured has been injured; (3) the insured knows that the tortfeasor was an uninsured or underinsured motorist.); Boyle v. State Farm Mutual Automobile Insurance Co., 456 A.2d 156, 162 (Pa. Super. Ct. 1983).

[10] 42 Pa. C.S.A. § 5525(a)(8) (actions in contract must be filed within four years).

[11] In the Wheeler case, this interpretation did not negatively impact the insured, as the court found the insured did timely petition for arbitration despite using the date contractual rights vested as the start of the statute of limitations period.

responsibility to inform her that she needed to make a settlement demand and petition for arbitration within four years or lose her right to do so.

Durney argues that the statute of limitations on a breach of contract claim, such as her petition for arbitration, does not begin to run until the contract is breached (or when the insured first had reason to discover that the contract was breached).[12] Durney claims that under her insurance contract with MMIC, she had no right to petition for arbitration before a dispute arose, and therefore she believes that the statute of limitations period began only when she became aware of the dispute. Durney received no notice from MMIC that there would be a coverage dispute prior to her notification that MMIC had filed its lawsuit on July 8, 2004, and was seeking to bar her claim altogether.

Durney further argues that an "actual controversy" does not arise until the carrier denies a claim for UIM coverage.[13] Therefore, a case will not be dismissed on statute of limitations grounds until four years after the denial is issued. In this case, MMIC does not claim that it ever issued a denial of coverage, nor did it otherwise indicate that coverage would be denied in whole or in part.

Under Pennsylvania law, a statute of limitations begins to run from the time a cause of action accrues.[14] Generally speaking, accrual occurs when a significant event takes place that

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[12] Simon Wrecking Co. v. AIV Insurance Co., 350 F. Supp. 2d 629 (E.D. Pa. 2005).

[13] Zourelias v. Erie Insurance Group, 691 A.2d 963 (Pa. Super. Ct. 1997) (explaining that the general rule is that the statute of limitations begins to run when the plaintiff's cause of action arises or accrues and that a cause of action for a declaratory judgment does not arise or accrue until an "actual controversy"exists, and holding that an "actual controversy" surrounding the interpretation of the insurance policy at issue did not arise until Erie denied appellant's request for coverage); citing Wagner v. Apollo Gas Co., 582 A.2d 364 (Pa. Super. Ct. 1990); Downingtown Industrial & Agricultural School v. Com., Dept. of Education, 172 B.R. 813 (Bankr.E.D.Pa.1994).

[14] 42 Pa. C.S.A. § 5502.

makes a legal suit possible.[15] In contracts disputes generally, the statute of limitations does not begin to run when the contractual rights vest, but when the contract is breached.[16] By this reasoning, a statute of limitations will not start to run in the UIM context when the insured's rights to UIM under the insurance contract vest (i.e., when the insured settles with the other motorist), but when the cause of action against her insurer accrues.[17]

The contractual language of an insured's insurance policy determines when a cause of action accrues against a party to the contract. In this case, Durney argues that the statute of limitations clock should start to run when the insurance company denied coverage or refused to pay what Durney thought she was owed under her UIM claim, as the insurance policy provides for arbitration *only when the parties manifest a disagreement* about the amount owed under the UIM. MMIC has not offered any evidence that there was a disagreement about the amount owed on the UIM claim.[18] MMIC never notified Durney that it was denying coverage or refusing to pay, nor did it issue any reservation of rights letter. Rather, MMIC indicated that it was continuing to assess the extent of Durney's injuries before offering a claim settlement amount. Therefore, Durney was unaware of any disagreement between the parties, and had no legal right under the insurance contract to petition to compel arbitration. MMIC's Motion for Summary Judgment does not assert or show

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[15] Ross v. Johns-Manville Corp., 766 F.2d 823 (3d Cir. 1985).

[16] A. J. Aberman, Inc. v. Funk Building Corp., 278 Pa.Super. 385, 420 A.2d 594 (1980) (noting that at common law, the statute of limitations in an action for breach of contract does not begin to run until the occurrence of the breach.).

[17] See Berkshire Mutual Insur. Co., 664 N.E.2d at 1190 (finding that this is the majority view across jurisdictions, and explicitly rejecting the minority view set forth in Wheeler and Boyle).

[18] MMIC suggests that it asked Durney to make a demand, and she failed to do so. Even if true, Durney had provided MMIC with the records of her treatment so MMIC was able to value her claim. If MMIC wanted to resolve the claim, it could have made Durney an offer at any time; and if Durney refused the offer, either party could have petitioned for arbitration of the claim.

that there was a disagreement between the parties which could prompt a demand for arbitration under the terms of the contract. Therefore, Durney argues, the statute of limitations began to run when she first learned of a disagreement, which was upon notice that the Complaint in this case was filed in July 2004. The Court agrees with this reasoning, and finds that Durney's petition for arbitration was timely filed. Therefore, the Court will grant Durney's partial motion for summary judgment, and dismiss MMIC's claims.[19]

B. MMIC's Motion for Summary Judgment on Durney's Bad Faith Counterclaim

MMIC asserts that it is entitled to summary judgment on Count I of Durney's Counterclaim of bad faith. MMIC states that Durney cannot establish by clear and convincing evidence that MMIC acted in bad faith, and that it will succeed on summary judgment if it can show that it had a reasonable basis for its actions. The basis of their argument is that Durney was represented by counsel, and MMIC's non-attorney claims adjuster had no obligation to advise Durney's attorney of the applicable statute of limitations.

MMIC further argues that Durney's counterclaims for denial of benefits for lost income should be dismissed, as they were not denied without a reasonable basis; they were denied because Plaintiff had not submitted the proper information.

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[19] In the alternative, Durney argues that MMIC should be estopped from asserting a statute of limitations defense, or the statute of limitations should be equitably tolled during the four years MMIC was reviewing her medical condition and ongoing medical costs, because MMIC acted in bad faith by giving the false impression that it was continuing to evaluate the claim with a view towards settling the claim as Durney's treatment neared its conclusion. For example, MMIC repeatedly asked for additional information to use in valuing Durney's claim. MMIC never suggested a deadline for submissions, nor did it suggest that it intended to deny coverage. MMIC understood that Durney would not make a settlement demand while her client was still undergoing treatment, and did not inform her that in doing so she might waive her rights under the policy. Neither side ever arrived at a final evaluation of the case for settlement purposes. Plaintiff argues that MMIC gave the impression that it was seriously and continuously evaluating the claim, when, in fact, it was merely waiting for four years to pass so it could deny the claim based on a statute of limitations defense. Having found that Durney's motion can be granted and MMIC's motion denied on other grounds, the Court need not reach this issue.

Durney argues that contractual policy language requires "candor" to the insured and her representatives, and MMIC's conduct violates this contractual obligation. She alleges that MMIC acted in bad faith when it led Durney to believe it delayed evaluation of the claim until she completed medical treatment, when it really delayed evaluation of the claim until after it believed the statute of limitations had run.

The parties' respective positions raise genuine issues of material fact. Therefore, MMIC's motion for summary judgment on Durney's counterclaims must be denied.

An appropriate order follows.

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	:	
DALE E. CONKLIN DURNEY,	:	
Defendant	:	

ORDER

AND NOW, this 16th day of December, 2005, upon review of Plaintiff's Motion for Summary Judgment on Plaintiff's Declaratory Judgment Action [Doc. #33], Plaintiff's Motion for Summary Judgment on Defendant's Counterclaims [Doc. #32], and Defendant's Motion for Partial Summary Judgment [Doc. #34], and all responses thereto, it is hereby **ORDERED** as follows:

1. Defendant's Motion for Partial Summary Judgment [Doc. #34] is **GRANTED**;
2. Plaintiff's Motion for Summary Judgment on Plaintiff's Declaratory Judgment Action [Doc. #33] is **DENIED**;
3. Plaintiff's declaratory judgment action against Defendant is **DISMISSED** with prejudice and judgment is entered in favor of Defendant;
4. Plaintiff's Motion for Summary Judgment on Defendant's Counterclaim in Bad Faith [Doc. #32] is **DENIED** as there are genuine issues of material fact for trial.

It is so **ORDERED.**

BY THE COURT:

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CYNTHIA M. RUFE, J.