

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

JULIE CHARBONNEAU,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 13-4323
CHARTIS PROPERTY CASUALTY CO.,	:	
	:	
Defendant.	:	

**FINDINGS OF FACT & CONCLUSIONS OF LAW**

YOHN, J. September 21, 2015

On April 4, 2012, plaintiff Julie Charbonneau was residing as a tenant at Bloomfield, a historic home in Villanova, Pennsylvania, when a fire destroyed the property. On August 7, 2012 Charbonneau attempted to exercise the option under her lease to purchase Bloomfield from Jerald Batoff, the property's owner. On October 1, 2012 Batoff negotiated a settlement of his homeowner's policy claim with his insurer, defendant Chartis Property Casualty Company. Chartis ultimately agreed to pay Batoff \$18.5 million plus additional payments already made—an agreement on which Charbonneau was not consulted. Litigation ensued between Batoff and Charbonneau, leading to a settlement under which Charbonneau received \$11 million of the \$18.5 million and title to Bloomfield. Charbonneau then brought this action against Chartis for breach of contract, breach of the implied duty of good faith and fair dealing, intentional interference with contract, bad faith in violation of 42 Pa. Cons. Stat. Ann. § 8371, and declaratory relief. The parties proceeded to trial only on the intentional interference claim. Now having considered all of the testimony and exhibits offered during the 7-day bench trial, and pursuant to Fed. R. Civ. P. 52(a), I make the following findings of fact and conclusions of law.

## **I. FINDINGS OF FACT**

### **A. The Bloomfield Homeowner's Policy**

1. From September 9, 2011 through September 9, 2012, the property known as Bloomfield—located at 200 South Ithan Avenue in Villanova, Pennsylvania and then owned by Jerald Batoff—was covered by a homeowner's insurance policy issued by defendant Chartis Property Casualty Company. (Pl.'s Ex. 3-1; Charbonneau 34-39, Aug. 5, 2015.)
2. The homeowner's policy provided for two types of coverage in the event of a qualifying loss to Bloomfield: "Replacement Cost" coverage and "Guaranteed Rebuilding Cost" coverage. (Pl.'s Ex. 3-7.)
3. Replacement Cost coverage provided that Chartis "will pay the reconstruction cost of [Bloomfield], up to the coverage limit shown for that location on your Declarations Page." The insured was not required to rebuild the property to obtain the Replacement Cost. (Pl.'s Ex. 3-7.)
4. The coverage limit for Bloomfield, as listed on the Declarations Page of the homeowner's policy, was \$22,372,762. (Pl.'s Ex. 3-1.)
5. Guaranteed Rebuilding Cost coverage provided that Chartis "will pay the reconstruction cost of [Bloomfield] . . . even if this amount is greater than the amount of coverage shown on the Declarations Page." The insured was required to "repair or rebuild . . . at the same location" to obtain the property's Guaranteed Rebuilding Cost. (Pl.'s Ex. 3-7.)
6. The homeowner's policy further provided that, following a covered loss, the insured was required to "[s]end to [Chartis] within sixty (60) days of [its] request, your signed sworn proof of loss," which sets out, among other information, "[t]he dollar amount being claimed as your loss." (Pl.'s Ex. 3-17.)

## **B. The Lease-Option Agreement**

7. Plaintiff Julie Charbonneau and Batoff entered into a lease-option agreement (“LOA”) for Bloomfield, effective November 3, 2011, with Charbonneau as tenant and Batoff as landlord. (Pl.’s Ex. 2.)
8. The LOA provided that Charbonneau had the option to purchase Bloomfield at any time during the term of the LOA. (Pl.’s Ex. 2-2.)
9. The LOA provided that upon receiving notice of Charbonneau’s exercising the option, Batoff must set a closing date within 60 days. In the event that Batoff terminated the agreement, Charbonneau could still exercise her option within 45 days so long as she cured all monetary defaults. (Pl.’s Ex. 2-2.)
10. The LOA provided that if Bloomfield were to suffer a casualty causing more than \$1 million in damage during the term of the LOA, Charbonneau could exercise her option and “shall be entitled to receive at closing a credit in the amount of any insurance proceeds paid to [Batoff], and an assignment of [his] rights to receive any unpaid proceeds.” (Pl.’s Ex. 2-7.)
11. The same provision of the LOA stated that, in the event of such a casualty, Batoff “may make proof of loss; provided, however, that any adjustment of a proof of loss shall require the prior written consent of [Charbonneau], which shall not be unreasonably withheld or delayed.” (Pl.’s Ex. 2-7.)
12. Dean Topolinski, Charbonneau’s co-tenant and significant other, joined the LOA as a guarantor. (Pl.’s Ex. 2-21.)
13. Charbonneau held insurance policies with Chartis, covering her personal property and her artwork at Bloomfield. Topolinski also held a policy with Chartis for his personal property at Bloomfield. (Pl.’s Ex. 4, 5, 6.)

**C. The Fire at Bloomfield**

14. On April 4, 2012, Bloomfield was severely damaged by fire. (Charbonneau 60-64, Aug. 5, 2015.)
15. On April 5, 2012, Charbonneau and Topolinski agreed that the public adjusting firm Clarke & Cohen would handle their respective contents and her arts insurance claims. (Charbonneau 69-73, Aug. 5, 2015; Topolinski 236-38, Aug. 5, 2015.)
16. On April 5, 2012, Charbonneau told Herb Bailey of Chartis about their retaining Clarke & Cohen. (Charbonneau 71, Aug. 5, 2015; Topolinski 237-38, Aug. 5, 2015.)
17. On April 6, 2012, Batoff retained Clarke & Cohen to represent him regarding his claim for Bloomfield under the homeowner's policy. (Pl.'s Ex. 13.)
18. Richard Cohen, president of Clarke & Cohen, had known Batoff socially for at least 25 years before the fire at Bloomfield. (Cohen Dep. 38:14-17; 56:5-18, Nov. 13, 2014.)
19. Cohen became aware of the LOA as of, at the latest, April 10, 2012. (Cohen Dep. 140:3-8.)
20. On or around April 6, 2012, Chartis assigned James O'Keefe to handle all four claims arising out of the Bloomfield fire: Batoff's homeowner's claim, Charbonneau's contents claim, Charbonneau's arts claim, and Topolinski's contents claim. (O'Keefe 5-6, Aug. 7, 2015.)
21. On April 13, 2012, O'Keefe emailed Cohen to ask for copies of various relevant documents, including the LOA. (Pl.'s Ex. 25; O'Keefe 97-98, Aug. 7, 2015.)
22. O'Keefe received from Cohen, among other records, a copy of the LOA and information about deposits made toward the purchase of Bloomfield. (Pl.'s Ex. 31, 39.)
23. In his April 27, 2012 claim notes, O'Keefe recorded his understanding of Charbonneau's rights under the LOA. (Pl.'s Ex. 40-3; O'Keefe 14-16, Aug. 7, 2015.)

24. During April 2012, Chartis retained Wakelee Associates, LLC, to document fire damage, oversee salvage work, and estimate the cost of repairing Bloomfield. (O’Keefe 77-78, Aug. 7, 2015; Segedin 11-13, 16-17, Aug. 12, 2015.)

**D. The July 6, 2012 Meeting<sup>1</sup>**

25. O’Keefe met with Cohen and Damon Faunce, also of Clarke & Cohen, at Clarke & Cohen’s offices on July 6, 2012. The purpose of this meeting was to discuss possible settlement of the homeowner’s claim. (Def.’s Ex. 97; O’Keefe 24-25, 117-19, Aug. 7, 2015.)

26. At the July 6 meeting, Cohen suggested that Bloomfield was a total loss and would require approximately \$35 million to repair. O’Keefe asserted that it would cost less than the policy limit of \$22,372,762 to repair. (Def.’s Ex. 97-2; O’Keefe 126-29, Aug. 7, 2015.)

27. Cohen’s figure of approximately \$35 million was based on information from CDF Construction, Inc., which Clarke & Cohen had retained to estimate the cost of repairing Bloomfield. (Pl.’s Ex. 128; Cohen Dep. 252:7-253:5.)

28. Cohen has stated that his use of the \$35 million figure could be characterized as “posturing” with Chartis. (Cohen Dep. 385:1-386:4.) Batoff testified that he told Cohen he did not think

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<sup>1</sup> Faunce testified that Cohen told him the Lease-Option Agreement had to be broken so that Batoff got all of the insurance money. He stated that Cohen said the way to break the Lease-Option Agreement was to accuse Charbonneau and Topolinski of arson. Faunce also testified that O’Keefe later said to him that Batoff “must be bummed out about the deal” and that Batoff should “give her \$1,000,000 and kick her to the curb.” O’Keefe testified that he never said anything about kicking Charbonneau to the curb for \$1,000,000 or accusing Charbonneau and Topolinski of arson in order to breach the LOA.

The court finds that Faunce’s testimony regarding the July 6 meeting is not credible. First, his account is uncorroborated, whereas the accounts of O’Keefe and Cohen largely align with one another. Second, O’Keefe’s contrary testimony is supported by his notes in Chartis’s internal system, in which O’Keefe contemporaneously recorded his interactions and observations. Third, Faunce’s testimony at trial materially differed from the statements he made in his affidavit on April 4, 2013, and at his deposition on October 14, 2014. (Faunce 225-27, 258-59, Aug. 6, 2015.) Fourth, Cohen testified that at the end of October 2012 Faunce was “having a very hard time . . . he was basically scared . . . he was very emotional . . . it seemed like he was scared for his life . . . for his family . . . he was concerned that people were watching him.” Batoff confirmed that at the meeting in his apartment with Cohen and Faunce in October or November of 2012, Faunce was extremely upset because he felt that Topolinski had planted drugs in his car and he started crying hysterically. Subsequently, Faunce was institutionalized for treatment of alcohol abuse.

they had enough information for Cohen to tell Chartis that the claim was worth \$34-35,000,000, but Cohen told him that this “is the way it is done.”

29. O’Keefe disagreed with Cohen’s figure, based on O’Keefe’s view that Bloomfield was not a total loss and on Chartis’s internal, pre-fire estimates of the cost to replace Bloomfield.

(Def.’s Ex. 97-2; O’Keefe 128-29, Aug. 7, 2015.)

30. At the same July 6 meeting, the contents and arts claims of Charbonneau and Topolinski were also discussed. (Def.’s Ex. 97-3; O’Keefe 135-37, Aug. 7, 2015.)

31. Also at the July 6 meeting, Cohen told O’Keefe that Batoff’s attorneys were addressing Charbonneau’s option under the LOA. (Def.’s Ex. 97-2; O’Keefe 131-32, Aug. 7, 2015.)

#### **E. The Batoff-Charbonneau Dispute**

32. On July 25, 2012, Batoff delivered a letter to Charbonneau, stating that the purchase option provision of the LOA was void. (Pl.’s Ex. 65; Charbonneau 79-82, Aug. 5, 2015.)

33. Batoff wrote that Charbonneau breached the LOA on nine different grounds. (Pl.’s Ex. 65.)

34. Batoff wrote that “the cause of the fire is still under investigation. If the cause is something for which you bear legal responsibility, that would serve as an additional basis requiring you to replace the property.” (Pl.’s Ex. 65-2.)

35. Batoff also stated that he had no obligation to rebuild Bloomfield. (Pl.’s Ex. 65-2.)

36. After reading the July 25 letter, Charbonneau “knew that [Batoff] was no longer going to present a claim to Chartis for building loss on [her] behalf under the [LOA].” (Charbonneau 131-32, Aug. 5, 2015.)

37. Even after receiving this letter, Charbonneau did not revoke whatever authority she felt Clarke & Cohen had to represent her in negotiations with Chartis on the Bloomfield claim. (Charbonneau 132, Aug. 5, 2015.)

38. Charbonneau contends that Chartis was obligated to involve her in the Bloomfield claim by obtaining her consent before resolving it. However, she never interjected herself in the claim by notifying Chartis that she contended she had a right to consent to any settlement. The LOA, in fact, conditions her right to consent on an adjustment of the proof of loss. The parties agree that a proof of loss was never submitted to Chartis
39. Also on July 25, 2012, Batoff filed a writ of summons against Charbonneau in the Delaware County Court of Common Pleas. On August 15, 2012, Batoff filed a complaint seeking declaratory relief against Charbonneau, and the case was later removed to this court. (Pl.'s Ex. 179; *Batoff v. Charbonneau (Batoff I)*, No. 12-cv-5397-WY (E.D. Pa. Sept. 21, 2012).)
40. Among other relief sought in *Batoff I*, Batoff asked the court to declare that Charbonneau had no valid option to purchase Bloomfield, no claim to proceeds under the homeowner's policy, and no right to participate in or consent to any adjustment of any insurance claim arising under the homeowner's policy. (Pl.'s Ex. 179 at 26.)
41. That same day, on July 25, 2012, Batoff emailed Cohen, stating:
- I understand that Julie Charbonneau and Dean Topolinski may ask to have access to the storage area in which elements of the finishes from Bloomfield are currently stored. Those finishes are germane only to my insurance claim regarding destruction of the real property. Accordingly, there is no reason for them to have access to the storage area and they are not permitted to have access.
- (Pl.'s Ex. 66.)
42. On July 26, 2012, Batoff emailed Cohen again, stating:
- With regard to my insurance claim with Chartis for the destruction of Bloomfield, I am directing that you refrain from any discussion with Julie Charbonneau or Dean Topolinski. They were not insured under my policy, and they have no legal interest in my claim. If they have any inquiries with regard to my claim, you should simply tell them that any inquiries should be directed to me.
- (Pl.'s Ex. 67.)

43. Charbonneau’s counsel sent a letter to Batoff on August 7, 2012, attempting to exercise her option to purchase Bloomfield and proposing a closing date of September 7, 2012. (Pl.’s Ex. 69.)
44. On August 15, 2012, Batoff’s counsel sent a letter to Charbonneau’s counsel, stating that Charbonneau “has no legal right to participate in, approve, or share in the adjustment or proceeds of [the homeowner’s policy].” (Pl.’s Ex. 71.)
45. Although Batoff received the August 7, 2012 letter from Charbonneau’s counsel attempting to exercise the option, Batoff never received any title documents or settlement sheets or proposed deed or any other information at all concerning the proposed settlement on September 7, 2012.
46. On August 30, 2012, counsel for Charbonneau asked Batoff’s attorney if Batoff would be willing to enter into a “‘standstill agreement’ with regard to developments at [Bloomfield] and the insurance claim.” (Pl.’s Ex. 80.)
47. On September 24, 2012, Batoff’s attorney informed Charbonneau’s attorney that Batoff “sees no reason to enter into any agreement restricting his freedom of action with regard to his property or with regard to his claim under his insurance policy. Accordingly, Mr. Batoff will not enter into any standstill agreement.” (Pl.’s Ex. 85.)

#### **F. The Batoff-Chartis Negotiations**

48. Wakelee produced an estimate for Chartis, dated August 17, 2012, stating that the projected cost to repair Bloomfield would be \$16,042,126.50. (Def.’s Ex. 43.)
49. O’Keefe found this figure slightly low, because the estimate provided for 5% overhead, not the 10% figure generally used by Chartis, and it did not include the costs of landscaping or upgrades to Bloomfield to comply with building codes. (O’Keefe 146-48, Aug. 7, 2015.)

50. On August 24, 2012, in an email to colleagues at Chartis, O’Keefe stated that the cost to repair Bloomfield would be at least \$16 million. O’Keefe also noted that Clarke & Cohen had not yet submitted a formal claim as to the Bloomfield homeowner’s policy. (Pl.’s Ex. 75; O’Keefe 150-53, Aug. 7, 2015.)

51. On September 4, 2012, O’Keefe and Cohen met to discuss possible settlement of the Bloomfield homeowner’s policy claim. (Def.’s Ex. 118; O’Keefe 153-55, Aug. 7, 2015.)

52. At the September 4 meeting, Cohen stated that Clarke & Cohen would submit a final claim within the month. (Def.’s Ex. 118; O’Keefe 154-55, Aug. 7, 2015.)

53. On September 16, 2012, Cohen sent an email to O’Keefe, stating:

I think it is important to remind you that we are quickly coming to the end of the window Mr. Batoff has allowed me to continue discussing a negotiated deal. If we are not able to come to an agreed figure by the end of this week, I am being directed to proceed with submitting our claim.

As I also told you when we spoke on Monday of last week, I had no room to negotiate from the figure I expressed would get this done. Frankly, I am a little surprised by your most recent offer based on the potential exposure to Chartis if we do not get a deal done. The figure I gave you is a significant savings to Chartis and I think we both agree we will get to the total policy limits as well as far into the guaranteed replacement cost provision the longer this continues. During that time, Mr. Batoff will be in possession of a significant amount of undisputed proceeds to finance our ongoing negotiations.

Although we do not have an agreed figure at this point, I am attaching a letter from counsel which responds to your request for a legal position with regards to any potential insurable interest of any party other than Mr. Batoff.

(Pl.’s Ex. 79; O’Keefe 158-63, Aug. 7, 2015.)

54. Cohen’s September 16 email to O’Keefe enclosed a letter from Batoff’s attorney stating that “Charbonneau is a stranger to the [homeowner’s p]olicy purchased by and for the sole benefit of Mr. Batoff. Strangers to policies of insurance have no right to receive or control in any manner the proceeds of policies belonging to others.” (Pl.’s Ex. 78.)

### **G. The Chartis-Batoff Settlement Agreement**

55. In late September 2012, Chartis negotiated with Batoff's counsel to resolve the homeowner's claim through a settlement and release agreement. (O'Keefe 167-69, Aug. 7, 2015.)
56. It was not an unusual practice for Chartis to resolve large property claims through settlement and release agreements, rather than proofs of loss, because when a claim is resolved by proof of loss, the insured may seek additional payments in the future by submitting an amended proof of loss. (Piotrowski 213, 215-17 Aug. 7, 2015; O'Keefe 174-75, Aug. 7, 2015.)
57. At Batoff's request, the settlement agreement required Chartis to pay \$18.5 million to Batoff by wire transfer. (Pl.'s Ex. 92-2; O'Keefe 173-74, Aug. 7, 2015.)
58. At Batoff's request, the settlement agreement included a waiver of Chartis's subrogation rights and an assignment of those rights to Batoff, which potentially could give him a claim against Charbonneau and Topolinski for arson. (Pl.'s Ex. 92-3; Batoff Dep. 158:5-159:13, May 13, 2015.)
59. Batoff signed the final settlement agreement on October 1, 2012. Peter Piotrowski, Senior Vice President of Claims, signed the agreement for Chartis. (Pl.'s Ex. 92.)
60. From all of the evidence, I find that Batoff was the moving force in settling the claim for a release and cash payment and that he was neither induced nor otherwise caused by Chartis to breach the LOA, if, indeed, there was a breach of the LOA.
61. In mid-October 2012, Charbonneau learned that the Bloomfield homeowner's claim had been settled. (Charbonneau 90-91, Aug. 5, 2015.)
62. On October 22, 2012, the court granted Charbonneau's motion for a temporary restraining order, freezing \$17.4 million of the remaining insurance proceeds paid to Batoff by Chartis. (*Batoff I* at Doc. No. 17.)

63. On November 15, 2012, Charbonneau's counsel put Clarke & Cohen on notice of possible claims that Charbonneau may have had against the firm for allegedly working with Batoff in secret to settle the homeowner's claim. (Pl.'s Ex.105; Charbonneau 197-99, Aug. 5, 2015.)

64. Charbonneau and Batoff entered into a settlement agreement and mutual release, effective April 5, 2013. (Pl.'s Ex. 115.)

65. Through the April 5 settlement agreement, Charbonneau received \$11 million from the frozen funds, Batoff retained the balance, and Batoff agreed to convey title to Bloomfield to Charbonneau. (Pl.'s Ex. 115; Charbonneau 89-92, Aug. 5, 2015.)

66. Charbonneau received title to Bloomfield in May 2013. (Charbonneau 205, Aug. 5, 2015.)

## **II. CONCLUSIONS OF LAW**

67. Under Pennsylvania law, a plaintiff claiming intentional interference with contract must prove four elements: "(1) the existence of a contractual . . . relation between the complainant and a third party; (2) purposeful action on the part of the defendant, specifically intended to harm the existing relation . . . ; (3) the absence of privilege or justification on the part of the defendant; and (4) the occasioning of actual legal damage as a result of the defendant's conduct." *Ira G. Steffy & Son, Inc. v. Citizens Bank of Penn.*, 7 A.3d 278, 288-89 (Pa. Super. Ct. 2010). These elements do not explicitly require that the third party breached the contract, but such a showing is still necessary to prevail on the claim, because "[t]he Pennsylvania Supreme Court has explicitly adopted the standard of the Restatement (Second) of Torts § 766 (1979) for determining the elements for tortious interference with existing contractual relationships." *Nathanson v. Med. Coll. of Penn.*, 926 F.2d 1368, 1388 (3d Cir. 1991). Section 766, in turn, does specify that the defendant must cause the third party to breach the contract in question:

One who intentionally and improperly interferes with the performance of a contract (except a contract to marry) between another and a third person by

inducing or otherwise causing the third person not to perform the contract, is subject to liability to the other for the pecuniary loss resulting to the other from the failure of the third person to perform the contract.

Restatement (Second) of Torts § 766. The Third Circuit has likewise explained that “Section 766 addresses disruptions caused by an act directed not at the plaintiff, but at a third person: the defendant causes the promisor to breach its contract with the plaintiff.” *Windsor Sec., Inc. v. Hartford Life Ins. Co.*, 986 F.2d 655, 660 (3d Cir. 1993).

**A. Existence of a Contract**

68. The parties do not dispute the existence of a contract—the LOA—between Charbonneau and Batoff. The first element of intentional interference is therefore satisfied.

**B. Purposeful Action by Chartis Specifically Intended to Harm the Contractual Relationship between Charbonneau and Batoff**

69. A defendant is liable for intentional interference with contract only if he “induc[es] or otherwise caus[es] the third party [Batoff] not to perform the contract.”

Restatement (Second) of Torts § 766. Comment H to § 766 sheds light on that requirement:

The word “inducing” refers to the situations in which A causes B to choose one course of conduct rather than another. Whether A causes the choice by persuasion or by intimidation, B is free to choose the other course if he is willing to suffer the consequences. Inducement operates on the mind of the person induced. The phrase “otherwise causing” refers to the situations in which A leaves B no choice, as, for example, when A imprisons or commits such a battery upon B that he cannot perform his contract with C, or when A destroys the goods that B is about to deliver to C. . . . The rule stated in this Section applies to any intentional causation whether by inducement or otherwise. The essential thing is the intent to cause the result. If the actor does not have this intent, his conduct does not subject him to liability under this rule even if it has the unintended effect of deterring the third person from dealing with the other.

§ 766 cmt. h. The “otherwise causing” language is not at issue here, so the relevant inquiry is whether Charbonneau has proven that Chartis “induced” Batoff not to perform under the LOA.

70. Inducement is “[t]he act or process of enticing or persuading another person to take a certain course of action.” Inducement, *Black’s Law Dictionary* (10th ed. 2014). Pennsylvania Suggested Standard Jury Instructions state that “inducing” refers to a situation where a defendant forces [a third party] to choose one course of conduct rather than another. Pa. S.S.J.I. (Civ.) § 17.280.

71. Assuming that a breach of the LOA occurred in the first place, Chartis argues that it could not have “induced” Batoff to breach because Batoff himself independently desired to prevent Charbonneau from having any input in his settlement of the homeowner’s policy claim and from receiving any funds ultimately paid out under that claim. *See* Def.’s Proposed Findings of Fact & Conclusions of Law (“Def.’s PFFCL”) at 49-50. Charbonneau disagrees, stating that “[u]nder Pennsylvania law, the defendant can possess the requisite intent or knowledge for tortious interference with contract even if the breaching party independently wanted to breach the contract.” Pl.’s Proposed Findings of Fact & Conclusions of Law (Pl.’s PFFCL) at 29. Charbonneau cites only two cases in support of this point: *Odyssey Waste Services, LLC v. BFI Waste Systems of North America, Inc.*, No. CIV.A. 05-CV-1929, 2005 WL 3110826 (E.D. Pa. Nov. 18, 2005), and *Reliable Tire Distributors, Inc. v. Kelly Springfield Tire Company*, 592 F. Supp. 127 (E.D. Pa. 1984). Charbonneau characterizes *Odyssey Waste* as “up[holding]” a claim of intentional interference “even though [the] breaching party conspired with [defendants] to develop a strategy to allow [the breaching party] to get out of its contract with [plaintiff].” Pl.’s PFFCL at 29 (internal quotation marks omitted). It is true that, in the decision cited by plaintiff, the court allowed an intentional interference claim to survive a motion to dismiss. *Odyssey Waste*, 2005 WL 3110826 at \*5-7. But on a subsequent motion under Rule

56, the court entered judgment for defendant on that intentional interference claim precisely because of the breaching party's clear intent to breach. As the court explained:

A contrary holding here risks saddling third parties with the responsibility of policing the current contracts of their prospective business partners and exercising a kind of *in loco parentis* conscience for those potential partners for the protection of the very party sought to be replaced. Not only would such a duty be unrealistic, the Court gravely doubts it could ever be workable, much less successful.

*Odyssey Waste Servs., LLC v. BFI Waste Sys. of N. Am., Inc.*, No. 05-CV-1929, 2007 WL 674594, at \*12 (E.D. Pa. Feb. 28, 2007). In other words, the court in *Odyssey Waste* ultimately concluded that the third party's independent desire to breach its contract with plaintiff did undermine plaintiff's intentional interference claim. *Odyssey Waste*, therefore, provides persuasive support for Chartis's argument that it cannot be found to have induced breach because Batoff wanted to breach already. Likewise, plaintiff cites *Reliable Tire* for the proposition that intentional interference can be found "even though [the] breaching party affirmatively contacted defendant to discuss conduct that would result in breach of contract, rather than vice versa." Pl.'s PFFCL at 29. But one Pennsylvania state court criticized *Reliable Tire* as "present[ing] an incomplete picture" of § 766 in terms of what plaintiff's intent must be to give rise to liability for intentional interference. See *Amico v. Radius Commc'ns*, No. 1793, 2001 WL 1807391, at \*5 n.8 (Pa. Com. Pl. Oct. 29, 2001).<sup>2</sup> *Reliable Tire* is, moreover, not binding here, and for the reasons stated in *Amico*, I further decline to follow its reasoning on this point.

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<sup>2</sup> Specifically, *Reliable Tire* stated that plaintiff "need not show express evidence of [defendant's] intent [to interfere]; it is enough that the interference is certain or substantially certain to occur as a result of the action." *Reliable Tire*, 592 F. Supp. at 139 (citing Restatement (Second) of Torts § 766 cmt. j (1979)). But as noted in *Amico*, Comment J offers an important caveat not reflected in *Reliable Tire*, namely:

If the actor is not acting criminally nor with fraud or violence or other means wrongful in themselves but is endeavoring to advance some interest of his own, the fact that he is aware that he will cause interference with the plaintiff's contract may be regarded as such a minor and incidental consequence and so far removed from the defendant's objective that as against the plaintiff the interference may be found to be not improper.

72. In sum, Charbonneau provides no persuasive authority—let alone binding precedent—for the proposition that a defendant can be found to have “induced” breach even where the third party independently intended to breach the contract all along. Yet it is clear that Charbonneau has premised her case on such a theory of liability. Indeed, at the close of trial, plaintiff’s counsel acknowledged that Batoff intended to keep Charbonneau from participating in the adjustment of the homeowner’s claim and from receiving any funds under that claim:

MR. MCMULLEN: No proof of loss was ever filed. . . . [A]nd there’s testimony from Mr. Cohen to this effect, Mr. Cohen who was clearly adverse to Ms. Charbonneau, that Mr. Batoff did not want to file a proof of loss. Mr. Batoff admits that himself, because he did not want Ms. Charbonneau to have to participate in --

THE COURT: Well, yeah, it’s his idea.

MR. MCMULLEN: It was his idea, but Chartis allowed that to happen . . . .

\* \* \*

MR. MCMULLEN: The plaintiff’s case here is not predicated on the RICO claim. It is predicated on Chartis’s actions that induced Mr. Batoff to settle that claim, one component of which was giving him the subrogation rights so that he could go after Ms. Charbonneau in an effort to nullify the lease, the same effort to nullify the lease he had thought about from day one right after the fire, they gave him the ability to do it, but there’s more than that, it’s about the settlement.

THE COURT: But that’s his request, not their request.

MR. MCMULLEN: But they enabled him to do that. They gave him the means to sue her and accuse her of arson.

THE COURT: Well is enabling the same as inducing?

MR. MCMULLEN: It is. In this context it is.

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*Amico*, 2001 WL 1807391, at \*5 n.8 (quoting Restatement (Second) of Torts § 766 cmt. j). Thus, defendant’s intent to interfere, or lack thereof, is indeed relevant to the court’s analysis of whether defendant’s actions were privileged or justified—that is, the third element of an intentional interference with contract claim.

Trial Tr. 15, 37-38, Aug. 13, 2015. Charbonneau’s core argument here—that Chartis can and should be found liable for intentionally enabling Batoff’s breach—is supported neither by Pennsylvania case law nor by the ordinary and accepted definition of inducement.<sup>3</sup> Even assuming that Batoff breached the LOA in the first place, therefore, Charbonneau has not proven by a preponderance of the evidence that Chartis induced Batoff to engage in such a breach. To the contrary, the evidence proves that Batoff did not intend to comply with, and in fact, disavowed, his obligations under the LOA long before Chartis settled the Bloomfield claim and regardless of anything Chartis did along the way. Indeed, I have found as a fact that based on all of the evidence it was Batoff who was the moving force in settling the claim for a cash payment.

73. Moreover, Charbonneau has failed to prove that Batoff even breached the LOA by settling his homeowner’s claim with Chartis. Again, the relevant text of the contract provides:

If the cost to repair any damage is more than \$1,000,000, [Charbonneau] may elect to exercise [her] Option, and shall be entitled to receive at closing a credit in the amount of any insurance proceeds paid to [Batoff], and an assignment [of] all of [Batoff]’s rights to receive any unpaid proceeds. [Batoff] may make proof of loss; provided, however, that any adjustment of a proof of loss shall require the prior written consent of [Charbonneau], which shall not be unreasonably withheld or delayed.

Pl.’s Ex. 2-7.<sup>4</sup> Charbonneau broadly characterizes this clause as providing her with a “Right to Consent.” Pl.’s PFFCL ¶¶ 11-13. However, Charbonneau only had the right to consent to adjustment of a proof of loss, and plaintiff admits that Batoff resolved his homeowner’s claim without filing any proof of loss. *See* Pl.’s PFFCL ¶ 91. Plaintiff offers three reasons why Batoff

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<sup>3</sup> Charbonneau argues at length about the level of intent required to prove her claim, primarily asserting that Chartis can be found liable if it “desire[d] to cause consequences of [its] act, or . . . believe[d] that the consequences [we]re substantially certain to result from it.” Pl.’s PFFCL at 23 (quoting Restatement (Second) of Torts § 8A). Even assuming (1) that plaintiff is correct on this point, and (2) that settling the homeowner’s claim without proof of loss breached the LOA, Charbonneau has at most proven Chartis’s intent to enable breach, not its intent to induce breach.

<sup>4</sup> Charbonneau never requested or received an assignment of Batoff’s rights to receive any unpaid insurance proceeds.

still breached the LOA in spite of this apparent compliance with its terms. First, Charbonneau argues that “Batoff subsequently agreed to give the majority of the Chartis-Batoff Settlement amount, as well as title to Bloomfield, to [her]—clear indication that he had breached the LOA.” Pl.’s PFFCL at 23. This argument ignores the settlement agreement’s “denial of liability” clause, however, which states that “the giving of said consideration” shall not be “construed as an admission by any party to this Agreement . . . of the validity of the claims of any other party to this Agreement.” Pl.’s Ex. 115 at ¶ 8.<sup>5</sup> Second, Charbonneau states that “Chartis has never contended that Batoff *did not* breach the LOA.” Pl.’s PFFCL at 23 (emphasis added). Yet it is hornbook law that Charbonneau, as plaintiff, not Chartis, as defendant, bears the burden of proof on this point. Finally, Charbonneau asserts that Batoff’s “refusal to schedule a closing after [she] exercised her option[] constituted an anticipatory breach.” *Id.* at 22. Even if I do not deem this argument waived for having been raised so belatedly, for all the same reasons stated above regarding the original theory of breach, plaintiff has also failed to prove that Chartis “induced” Batoff to commit an anticipatory breach.<sup>6</sup>

74. In sum, Charbonneau was required to prove at trial both that Batoff breached the LOA and that Chartis induced Batoff to breach. Charbonneau proved neither. Therefore, plaintiff has not met her burden, and judgment must be entered for defendant.

### **C. Absence of Privilege or Justification on the Part of Chartis**

75. Pennsylvania courts look to Restatement (Second) of Torts § 767 “[i]n determining whether a particular course of conduct is improper for purposes of setting forth a

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<sup>5</sup> Prior to entering the settlement agreement, Charbonneau had claimed that Batoff breached the LOA. *See* Verified & Amended Answer, Affirmative Defenses, & Counterclaims of Defs. Julie Charbonneau & Dean Topolinski (Doc. No. 14), *Batoff I*, No. 12-cv-5397-WY (E.D. Pa. Oct. 22, 2012), at ¶¶ 132-33.

<sup>6</sup> Plaintiff’s proposed findings of fact and conclusions of law appear to be the first filing in which Charbonneau argues that Chartis induced Batoff to breach the LOA prior to his settling of the Bloomfield homeowner’s claim without her consent.

cause of action for intentional interference with contractual relationships.” *Strickland v. Univ. of Scranton*, 700 A.2d 979, 985 (Pa. Super. Ct. 1997). “This section provides the following factors for consideration: 1) the nature of the actor’s conduct; 2) the actor’s motive; 3) the interests of the other with which the actor’s conduct interferes; 4) the interests sought to be advanced by the actor; 5) the proximity or remoteness of the actor’s conduct to interference, and 6) the relationship between the parties.” *Id.* “Although this evaluation of interests is not always susceptible of ‘precise definition,’ it is clear that the central inquiry [in determining privilege or justification] is whether the defendant’s conduct is ‘sanctioned by the rules of the game which society has adopted.’” *Phillips v. Selig*, 959 A.2d 420, 430 (Pa. Super. Ct. 2008) (quoting *Glenn v. Point Park Coll.*, 272 A.2d 895, 899 (Pa. 1971)).

76. As Chartis correctly notes, under Pennsylvania’s Unfair Insurance Practices Act (“UIPA”), an insurer is prohibited from engaging in “an unfair method of competition” or “an unfair or deceptive act or practice.” 40 Pa. Stat. § 1171.4. Those terms are set out in the UIPA to encompass “unfair claim settlement or compromise practices,” which specifically include “[n]ot attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which the company’s liability under the policy has become reasonably clear.” *Id.* § 1171.5. The facts adduced at trial show that Chartis (acting through O’Keefe) retained Wakelee to estimate the cost of repairing Bloomfield, and that on August 17, 2012, Wakelee provided O’Keefe with a cost estimate for repairing Bloomfield amounting to \$16,042,126.50. *See* Facts 46. O’Keefe also credibly testified that he found this estimate slightly low in certain areas. *Id.* 47. Chartis therefore could have concluded that its liability under the Bloomfield homeowner’s policy had become reasonably clear, totaling to slightly above Wakelee’s estimated figure. Thus, at the point thereafter when Batoff was willing to resolve his homeowner’s claim for \$18.5 million, it

may well have amounted to an unfair claim settlement practice for Chartis to have refused to settle. Indeed, as Chartis further notes, such a refusal could have bolstered a claim of bad faith against the insurer under 42 Pa. Cons. Stat. Ann. § 8371. *See Parasco v. Pac. Indem. Co.*, 920 F. Supp. 647, 655 & n.5 (E.D. Pa. 1996) (noting that “a violation of the UIPA does not constitute bad faith *per se*; rather, the UIPA serves as a reference from which a court may determine whether an insurer has acted in bad faith in a given case”). It cannot be the case that Chartis violated “the rules of the game” when it avoided acting in bad faith toward Batoff, its homeowner’s policyholder, as it did in settling his claim.

77. Charbonneau responds that none of these obligations “prevent[ed] Chartis from asking Clarke & Cohen or Batoff to secure from [her] a written representation that she consented to the settlement in keeping with her Right to Consent under the LOA.” Pl.’s PFFCL at 33. However, the Pennsylvania Supreme Court has stated that, in an analogous situation where an insured property is destroyed by fire after a contract for sale has been signed but before closing has occurred, the insurer has “no equitable right to intermeddle between the [seller] and the [buyer]. Under such circumstances they must be content to respond to the party with whom they made the contract of insurance.” *State Mut. Fire Ins. Co. v. Updegraff*, 9 Harris 513, 521 (Pa. 1853). Moreover, Batoff’s attorney wrote in a September 14, 2012 letter to O’Keefe that “Charbonneau is a stranger to the [homeowner’s p]olicy purchased by and for the sole benefit of Mr. Batoff. Strangers to policies of insurance have no right to receive or control in any manner the proceeds of policies belonging to others.” Facts 52. Having received that message from Batoff—the named insured under the homeowner’s policy—and being in a situation where it likely had no “right to intermeddle” between Batoff and Charbonneau, Chartis again did not

violate the “rules of the game” by negotiating solely with Batoff to settle the Bloomfield homeowner’s claim.

78. Charbonneau further finds fault with Chartis’s allowing Batoff not to file a proof of loss, paying Batoff via wire transfer, and waiving its subrogation rights. Pl.’s PFFCL at 32-33. But the credible evidence adduced at trial showed that it was a matter of common practice for Chartis to settle similarly large claims by way of release, rather than by proof of loss, and that this practice was reasonably based on Chartis’s desire for finality in such a resolution. Facts 54. The credible evidence also showed that Batoff, not Chartis, requested both that payment be made by wire transfer and that Chartis waive its subrogation rights. *Id.* 55-56. Consequently, Charbonneau did not prove that Chartis violated the “rules of the game” with any of these acts.

79. Even if Charbonneau had proven at trial that Batoff breached the LOA and that Chartis induced the breach, therefore, Charbonneau failed to show that Chartis acted without justification in doing so—that is, that Chartis violated by “the rules of the game which society has adopted.” *Phillips*, 959 A.2d at 430 (internal quotation marks omitted). This constitutes another independently sufficient basis to enter judgment for defendant.

#### **D. Actual Legal Damage as a Result of Defendant’s Conduct**

80. Because plaintiff has failed to prove the second and third elements of her intentional interference claim, I need not address the fourth element of damage. I note, however, that in *Odyssey Waste*—specifically, in the summary judgment opinion not cited by plaintiff—the court concluded that, where defendant did not induce breach but merely may have enabled breach, “[defendant]’s conduct lacks proximity to [plaintiff]’s alleged loss,” and that “[w]hile [plaintiff] may have suffered damages due to [third party’s breach], there is nothing in the record demonstrating that [plaintiff]’s alleged losses occurred as a result of [defendant]’s actions.”

*Odyssey Waste Servs.*, 2007 WL 674594, at \*12-13. By the same token, even if Batoff breached the LOA and Charbonneau suffered damages, Chartis's conduct lacks proximity to this loss, and no evidence adduced at trial proved that Charbonneau's loss came as a result of Chartis's actions.

### **III. CONCLUSION**

For the reasons set forth above, I will enter judgment for defendant Chartis Property Casualty Company on the claim of intentional interference with contract. An appropriate order follows.

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

JULIE CHARBONNEAU,

Plaintiff,

v.

CHARTIS PROPERTY CASUALTY CO.,

Defendant.

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CIVIL ACTION

NO. 13-4323

**ORDER**

**AND NOW** this 21<sup>st</sup> day of September, 2015, upon consideration of the evidence presented at the trial of this matter and the foregoing findings of fact and conclusions of law, **IT IS HEREBY ORDERED** that judgment is entered in favor of the defendant, Chartis Property Casualty Company, and against the plaintiff, Julie Charbonneau.

The clerk shall mark this case **CLOSED FOR STATISTICAL PURPOSES**.

s/William H. Yohn Jr.  
William H. Yohn Jr., Judge