

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

JOAN P. BRODSKY : CIVIL ACTION  
 :  
 v. :  
 :  
 THE EQUITABLE LIFE ASSURANCE :  
 SOCIETY OF THE U.S. : NO. 99-1218

ORDER - MEMORANDUM

AND NOW, this 17th day of September, 1999, plaintiff Joan P. Brodsky's motion for reconsideration of order of August 19, 1999 is granted; and the action is reinstated.<sup>1</sup> Fed. R. Civ. P. 59(e).

On August 19, 1999 defendant's motion for summary judgment was granted, and this action was dismissed. This ruling was based on the arguments made by the parties, which related entirely to defendant's alleged breach of its insurance policy contract.

Plaintiff now moves for reconsideration, citing three of the four theories asserted in the complaint – breach of contract, promissory estoppel, and negligence. Her motion represents that she did not believe the negligence count was being challenged, and her response briefs to defendant's motion to dismiss, which was overruled, and to defendant's motion for summary judgment support that position. Pl. br., May 25, 1999, at 2; pl. br., Jul. 1, 1999, at 8. In these

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<sup>1</sup>A motion for reconsideration under Fed. R. Civ. P. 59(e) must rely on one of three grounds: (1) an intervening change in law; (2) the availability of new evidence, not previously available; or (3) the need to correct clear error of law or prevent manifest injustice. See North River Ins. Co. v. Cigna Reinsurance Co., 52 F.3d 1194, 1218 (3d Cir. 1995).

circumstances, the complaint will be re-opened and re-instated as to the negligence claim. The claims for breach of contract and promissory estoppel will not be re-instated in that no new argument has been made as to them, and they were ruled on in the prior order.

Accordingly:

1. The order of August 19, 1999 is vacated.
2. The Clerk shall mark this case re-opened.
3. Count I (breach of contract), Count II (bad faith),<sup>2</sup> and Count III (promissory estoppel) are dismissed.
4. Count IV (negligence) is reinstated.
5. A Rule 16 Conference will be held on Thursday, September 23, 1999 at 11 a.m. – trial scheduling/resolution to be discussed.

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Edmund V. Ludwig, J.

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<sup>2</sup>Plaintiff appears to have abandoned this claim and does not ask for its reinstatement.