

BRYAN D. MANEVAL  
and NICOLE L. MANEVAL  
Plaintiffs

vs.

NATIONWIDE MUTUAL FIRE  
INSURANCE COMPANY

Defendant

: IN THE COURT OF COMMON PLEAS  
: OF LYCOMING COUNTY, PENNSYLVANIA

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: NO. 01-00,946

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: CIVIL ACTION - LAW

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: MOTION FOR SUMMARY JUDGMENT

*Date: December 10, 2002*

**OPINION and ORDER**

Before the Court is Defendant's Motion for Partial Summary Judgment filed November 4, 2002, in which Defendant seeks to have Plaintiffs' claims of bad faith and punitive damages dismissed. Plaintiff filed a response to the summary judgment motion on November 6, 2002. Both parties have briefed the matter and argument was held December 4, 2002.

Upon reviewing all of the exhibits submitted in support of and opposing the Motion for Summary Judgment, this Court finds that there are many material facts necessary to resolve the issues between the parties, which are in great dispute.

The parties agree that Defendant insured Plaintiffs' home and that it was damaged by fire which was a covered loss under the policy. There is also not much dispute as to when Plaintiffs submitted estimates and proof of loss and when Defendant made various communications to Plaintiffs or Plaintiffs' representatives concerning Defendant's position of rejecting Plaintiffs' proof of loss.

Beyond agreement as to dates and amounts stated in the exchange of documents there is great disagreement between the parties as to whether or not communications were timely

made and made in compliance with Pennsylvania Unfair Insurance Practices Act, 40 P.S. §1171.1 *et seq.* and the various regulations promulgated hereunder. In addition, there is a great dispute as to whether or not the asserted violations of that Act do or do not form the basis for the fact finder to determine whether or not Defendant has acted in bad faith toward Plaintiffs under the Pennsylvania Bad Faith statute, 42 Pa. C.S. §3371. To the extent such violation occurred and bad faith may be established by Plaintiffs various facts will need to be resolved at trial to determine whether or not an award of punitive damages under the Bad Faith statute is appropriate.

The Court also notes that many of the asserted uncontested facts and reasons advanced by Defendant for this Court to conclude at this stage that Defendant is entitled to summary judgment rely upon representations and oral testimony of Defendant's representatives, agents and employees. The documentary evidence and Plaintiffs' actions not in dispute do not form a basis of undisputed facts sufficient for this Court to grant the motion. This is particularly true where Plaintiffs contend that the guiding intent behind the timing and nature of the documents was an effort by the insurance company to improperly force Plaintiffs to accept a greatly reduced structure damage payment. The agreed on facts include that the fire had occurred on February 16, 2001. The loss was to a degree that Plaintiffs had to relocate and undertake extensive repairs as well as replacement of significant amount of their contents. The facts produced by Plaintiffs would establish that within four days of the fire Defendants assigned claims agent had noted Plaintiffs had suffered heavy smoke and heat damage, that very few contents would be saved and that the structure needed to be gutted to the framing including removal of the finished floors. This agent supposedly calculated an exposure for structure damage at approximately the same amount as

Plaintiffs' estimate for repairs to the structure of \$85,000. The agent made this on February 19, 2001, according to Plaintiffs' submission on the summary judgment motion.

Plaintiffs subsequently submitted a sworn proof of loss with two estimates indicating a structure repair cost of \$82,365 on March 31, 2001. This was within 33 days after Defendant had requested proof of loss, which was to be accompanied by two estimates. Defendant issued a structure payment of \$24,955.02 based upon its subsequent modified estimate of damages to the structure on a depreciated value basis and also on May 25, 2001 an additional \$9,246 supplemental structure repair payment based upon actual cash value estimate was issued.

Plaintiffs had also submitted a contents' loss proof on March 21, 2001 of approximately \$50,000. Defendant made contents claim payments of \$6,000 on March 2, 2001; \$397.50 on April 23, 2001; \$3,602.50 on May 17, 2001 for a total of \$10,000, and made an additional payment on contents of \$32,835.45 on May 25, 2001. Defendant determined on or about May 25<sup>th</sup> that it only disagreed as to the actual cash value of contents from the actual cash value submitted by Plaintiffs in the amount of \$6,251.40.

This Court does not believe it is appropriate from the foregoing facts to make the determination as to whether or not the actions constitute bad faith and/or entitle Plaintiffs to punitive damages until the determination as to credibility of the witnesses is made and the proof as to the intent of Defendant is ascertained.

**ORDER**

It is herein DIRECTED that the summary judgment motion of Defendant, Nationwide Mutual Insurance filed November 4, 2002 be DENIED. The parties shall appear for a pretrial conference with trial to be scheduled in the Court's January Civil Trial Term as previously indicated.

Based upon the non-jury nature of the substantial claims in this case a non-jury pretrial conference will be held on December 12, 2002 at 8:30 a.m. in Courtroom No. 2 (Judge Brown) of the Lycoming County Courthouse. The conference scheduled before the undersigned Judge on December 10, 2002 is hereby cancelled.

BY THE COURT:

William S. Kieser, Judge

cc: Scott Grenoble, Esquire  
Buzgon Davis; 515 South 8<sup>th</sup> Street; P. O. Box 49; Lebanon, PA 17042  
Richard A. Vanderlin, Esquire  
Honorable Kenneth D. Brown  
Eileen A. Grimes, DCA  
Judges  
Christian J. Kalas, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)