

BRYAN D. MANEVAL	: IN THE COURT OF COMMON PLEAS
and NICOLE L. MANEVAL	: OF LYCOMING COUNTY, PENNSYLVANIA
Plaintiffs	:
	:
vs.	: NO. 01-00,946
	:
NATIONWIDE MUTUAL FIRE	: CIVIL ACTION - LAW
INSURANCE COMPANY	:
	:
Defendant	: NON-JURY TRIAL ADJUDICATION

Date: June 24, 2003

A. Findings of Fact

1. Plaintiffs Bryan D. Maneval and Nicole L. Maneval are adult individuals currently residing at 812 Stoney Batter Road, Muncy, Lycoming County, Pennsylvania. Plaintiff Nicole L. Maneval is the wife of Plaintiff Bryan D. Maneval (collectively "Manevals").
2. Defendant Nationwide Mutual Fire Insurance Company ("Nationwide"), is a qualified insurer within the Commonwealth of Pennsylvania and regularly engages in the sale of insurance within Pennsylvania, with principal offices located at One Nationwide Plaza, Columbus, Ohio.
3. Maneval is the owners of certain real premises and personal property located at 40 German Road, Unityville, Lycoming County, Pennsylvania (hereinafter "The Property"). The Property was Maneval's main residence.
4. On or about May 28, 2000, Maneval had purchased a homeowner's insurance policy from Nationwide covering the Property, bearing policy no. 5837HO760612 with a policy

- period of May 28, 2000 to May 28, 2001. ("The Policy"). This policy is known as Nationwide's Elite II Homeowners Policy. (Maneval Exhibit #200)
5. On February 16, 2001, Manevals suffered a fire loss at the Property (the "Fire Loss"). The Fire Loss was to the degree and extent that Manevals were forced to temporarily relocate to live with Mrs. Maneval's parents at 812 Stoney Batter Road, Muncy, Pennsylvania. They have remained there through trial.
 6. The direct fire damage, which occurred in Manevals' residence was limited to the kitchen area, including kitchen floor joists. All the remaining areas of the house suffered heavy and extensive smoke and heat damage.
 7. At the time of the fire on February 16, 2001, Nicole Maneval was pregnant with her second child, with an expected due date in October 2001.
 8. On February 16, 2001, Tom Baker, a representative of Nationwide, met with Manevals and delivered Nationwide check no. 58-141907, in the sum of \$1,000 for emergency expenses. (Maneval Exhibit #90).
 9. Steven Fedder is and was an employee of Nationwide, with his local office located at 999 North Loyalsock Avenue, Parkview Center, Montoursville, Lycoming County, Pennsylvania ("Agent Fedder").
 10. Agent Fedder, prior to employment with Nationwide, owned his own construction business for eleven (11) years, and has several years of experience in estimating the cost to repair fire damaged structures. He had worked in the field of construction estimation

and actual repair and construction work for a total of approximately 21 years before joining Nationwide.

11. Agent Fedder was assigned by Nationwide to adjust and handle the Fire Loss on behalf of Nationwide.
12. Agent Fedder's immediate supervisor during the pendency of Manevals' claim was Nationwide Claims Manager, Charles Maynard, who had worked in the field of residential construction for approximately five meaningful years before joining Nationwide.
13. Agent Fedder and Charles Maynard, at all times relevant hereto, were familiar with the provisions of Nationwide's Elite II Homeowners Policy, the policy owned by Manevals, as well as Nationwide's claim procedures and the laws and regulations of the Commonwealth of Pennsylvania relating to processing of insurance claims. They were also familiar with construction practices involved in building and repairing homes.
14. Throughout the period between February 16, 2001 and October 2002, Agent Fedder consulted with Charles Maynard, Nationwide's claim supervisor, regarding the evaluation, handling, and adjustment of Manevals' claim.
15. On February 19, 2001, prior to meeting with Manevals, Agent Fedder determined Nationwide's maximum exposure for this loss, a procedure undertaken only in large losses. Agent Fedder calculated the policy limits at \$85, 729.12 for the structure, \$50,008.65 for contents and \$71,440.93 for additional living expenses. (Maneval Exhibit 221).

16. On February 19, 2001, Manevals met with Agent Fedder. Agent Fedder gave Manevals various documents including additional living expense forms, a sworn Proof of Loss form, a records release, a Permission Granted form and Non-Waiver form, (Defendant's Exhibit #1). Manevals executed a receipt for the sworn Proof of Loss (Defendant's Exhibit #25) and signed the other documents. Agent Fedder was aware Manevals would need to temporarily relocate, due to the extent of the Fire Loss. Nationwide gave Manevals the option of renting alternate living accommodations pending the repair of the fire damage.
17. At the time of Manevals' initial meeting with Agent Fedder, Manevals advised Agent Fedder of Nicole Maneval's pregnant condition.
18. During Agent Fedder's meeting with Manevals on February 19, 2001, Agent Fedder advised Manevals they would probably be contacted by a public adjuster. Agent Fedder stated that usually his insurance claims are resolved quickly, except when a public adjuster is involved. In that conversation one or more of the participants referred to public adjusters as "fire engine chasers." The conversation overall was demeaning to public adjusters and suggested such individuals could not be trusted. The court finds that Agent Fedder sought in this conversation to dissuade Manevals from using the services of a public adjuster. Nevertheless, Manevals shortly thereafter, on February 21st, obtained the services of Patrick Cassidy, a public adjuster.
19. On February 19, 2001, Agent Fedder requested that the Proof of Loss form given to Manevals be completed and returned to Nationwide. A proof of loss is not required to

- be completed unless requested by Nationwide. The policy obligated Manevals, within sixty (60) days of receipt, to prepare and submit a completed and sworn proof of loss to the best of their knowledge and belief, including "detailed estimates for repair of damage."
20. On February 19, 2001 Agent Fedder visited and inspected the fire loss to determine the exterior and interior dimensions of the residence and details of existing construction for the purpose of preparing an estimate of damage to the structure. On this date, Agent Fedder was at the premises approximately two hours. He photographed the loss and gathered all damage information necessary to prepare his structure loss estimates.
 21. On February 20, 2001, Agent Fedder acknowledged by journal entry that Maneval's residence (1) suffered heavy smoke and heat damage; (2) very few contents would be saved; and (3) the structure needed to be gutted to the framing, including removal of the finished floors. (Maneval Exhibit #223). *See also*, Defendant's Exhibit #24, entry of 2/21/02 by Agent Fedder acknowledging the extent of damage.
 22. Patrick Cassidy ("Cassidy") is a licensed public adjuster, incorporated and doing business as Cassidy Public Adjustment, P .C. with principal offices located at 23 Scenic View Lane, Williamsport, Lycoming County, Pennsylvania.
 23. On February 21, 2001 Manevals retained Cassidy on a contingent fee basis to represent their interests with Nationwide. The agreement provided for the payment of an 8% contingent fee on any and all claims payments received from Nationwide, except Additional Living Expense. (Maneval Exhibit #100). (Defendant's Exhibit #4) Cassidy immediately forwarded to Agent Fedder notice of his representation and advised Agent

- Fedder of (1) Manevals' intent to make claim for the replacement cost loss and (2) Nationwide's obligation to complete investigation of this claim within thirty (30) days or communicate in accordance with 30 Pa. Code §146. (Maneval Exhibit #32).
24. On February 22, 2002, Agent Fedder acknowledged Cassidy's representation of Manevals. (Defendant's Exhibit #3).
 25. After receiving Cassidy's letter of representation, Agent Fedder canceled his scheduled February 23, 2001 appointment to inspect the damaged contents. No reason for delaying this meeting was given at trial.
 26. Agent Fedder did meet Cassidy on March 2, 2001 at the site and reviewed the scope of loss to the structure and contents. Cassidy had hoped to reach an agreement as to the scope of loss, but no agreement was reached. At the same time, Nationwide made a six thousand (\$6,000) dollar advance payment on the contents portion of this claim. (Maneval Exhibit #91). Payment of \$6,000 was hand-delivered to Patrick Cassidy with a verbal explanation that it represented an advance on Manevals' contents claim. Manevals had not yet indicated that they had replaced any personal property items or were in need of additional monies.
 27. On March 21, 2001, Cassidy submitted a detailed contents inventory list to Nationwide. This list identified, in detail, over 800 categories of contents lost, their age, replacement cost, and depreciated actual cash value ("ACV"). (Maneval Exhibit #73). This list was submitted within one (1) month of Cassidy's representation.

28. Cassidy calculated Manevals' contents replacement cost at \$66,358.22 with an actual cash value of \$49,737.07. The submitted loss exceeded the contents coverage of \$50,008.65 provided by the Policy, by almost one-third.
29. On March 21, 2001, Cassidy also requested an additional advance for the ACV of contents if Nationwide was not immediately making payment on the submitted ACV. (Maneval Exhibit #39).
30. On March 21, 2001, Agent Fedder had completed his initial draft estimate of the insureds' structure repair damages. (Defendant's Exhibit #43) The total repair cost was \$23,955.74 plus 10% overhead plus 10% profit or a total of \$28,496.68.
31. On or about March 23, 2001 Agent Fedder received Manevals' contents inventory. (Defendant's Exhibit #54) He undertook no additional investigation of the contents loss for over thirty days, not starting a review of this claim until after April 26, 2001. (*See* Defendant's Exhibit #12)
32. On or about March 29, 2001, Manevals' contractor, Dan Gardner, of Gardner Construction ("Gardner") had completed a proposal for the repair of the structure damages. (Defendant's Exhibit #50) The total repair cost was \$72,491 plus 15% profit and overhead of \$10,874 for a total proposed contract cost to repair of \$83,365.
33. During March, Cassidy had also prepared his own estimate of the cost of making the structure repairs (Defendant's Exhibit #47). This estimate utilized the information and measurements from the inspection of damages that Cassidy had personally made to determine the extent of the scope of work and necessary materials. Cassidy's

information was utilized by a local contractor, Mr. German, to prepare a computer generated repair cost estimate. The total repair cost was \$66,633.10 plus 10% overhead and 10% profit for a total of \$80,626.06.

34. By letter dated March 31, 2001, Cassidy submitted to Nationwide the completed Proof of Loss form with two (2) estimates to repair the structure and two (2) receipts for expenses incurred to complete the proof of loss, totaling \$385. (Maneval Exhibit #40). These costs were incurred to comply with the insured's contractual obligation to provide detailed estimates of repair.
35. The proof of loss documents were delivered by Cassidy to Agent Fedder's Nationwide office on April 2, 2001. The total claimed on the proof of loss was \$161,350.00. (Maneval Exhibit #106; Defendant's Exhibit #8).
36. The estimate and proof of loss indicated structure loss of \$83,365 cost to repair the structure, with an ACV of \$70,000.00 (16% depreciation). Cassidy had utilized Gardner's contract proposal in preparing and submitting the proof of loss to Nationwide.
37. The proof of loss also stated a total contents loss of \$68,000 replacement value and actual cash value of \$52,509; \$9,600 for additional living expenses; \$385 for completion of the Proof of Loss expenses. This resulted in a total whole loss damage claim of \$161,350 with an actual cash value claim of \$132,494. The Proof of Loss also noted that the total insurance available was \$224,324.52.

38. The Proof of Loss form that was submitted was appropriately completed as required by the terms of the policy and was received by Nationwide on Monday, April 2, 2001. (Defendant's Exhibit #59).
39. Under applicable law and regulations, the Proof of Loss form should have been responded to within fifteen business days. The Proof of Loss should have been responded to no later than Monday, April 23, 2001.
40. On April 12, 2001, eight weeks after the fire loss, Agent Fedder created a journal entry that opined the structure damage was "cosmetic," in contrast to his entry immediately after his inspection that the structure was to be "guttled." (Maneval Exhibit #223). At trial, Agent Fedder testified that by this entry he still meant that the structure would need to be gutted. This testimony is not credible. The Court believes the journal entry portrays an unjustified change of position made on or about April 12, 2001 by Agent Fedder and Nationwide to minimize the structure loss in their records. It indicates an unjustified decision to strongly oppose the claim documentation submitted by Manevals through Cassidy. Agent Fedder's April 12, 2001 journal entry also indicated all contents were beyond repair with the exception of silverware and glassware in the kitchen. (Maneval Exhibit #223). Agent Fedder had visited Manevals' property on at least three occasions before this date.
41. Contemporaneously with this journal entry, Agent Fedder did a revised estimate, dated April 12, 2001, and valued the structure cost of repairs at \$30,063.35. This is a first

- revision of his original March 21st estimate and increases the cost by \$1,566.67. This is \$53,000 lower than the two estimates submitted by Manevals. (Maneval Exhibit #84)
42. Agent Fedder's revised draft estimate of April 12th was based on repair costs of \$25,261.55, plus 10% each for overhead and profit or a total structure loss of \$30,063.85. (Defendant's Exhibit #44)
 43. On April 16, 2001, Agent Fedder again revised his structure estimate arriving at a repair cost of \$25,200.55 plus overhead and profit equating a total of \$29,870.65 replacement cost, a reduction of \$193.20. After deducting depreciation of 16.5%, he arrived at \$24,955.32 as the actual cash value of the loss. (Defendant's Exhibit #45)
 44. Agent Fedder acknowledged that he had never had such a wide discrepancy in the calculation of an estimated repair as existed between his structure estimate loss and that of Cassidy.
 45. Agent Fedder took no action in the face of this discrepancy. He did not call to consult Cassidy or arrange with Cassidy and Manevals to review the differences. No on-sight inspection followed by Agent Fedder in order to verify whether the scope of work was accurate on his part or on the part of Cassidy. Nor did Agent Fedder contact Cassidy and ask for an extension of time to reply to the Proof of Loss. Agent Fedder did not seek the advice of a contractor experienced in these types of repair in this locality to investigate the difference, although this course of action was readily available to him. Between March 21, 2001 and April 16, 2001, Agent Fedder had consulted with his supervisor, Charles Maynard, regarding the scope of repairs and repair costs and

estimate for the structure loss. His supervisor did not instruct him as to resolving the discrepancy. This failure to act on Manevals' claim persisted.

46. Nationwide failed to appropriately respond to Manevals' Proof of Loss within fifteen (15) business days after receiving it. Nationwide had the final revised estimate of Agent Fedder completed on April 16th, within the fifteen-day time interval but did not respond at that time, nor furnish this estimate to Manevals.
47. The Court finds that on or about April 20, 2001, Agent Fedder did not leave a voice mail message on Patrick Cassidy's answering machine advising him that the Manevals' Proof of Loss was being rejected based on a disagreement on the repair cost.
48. By letter dated April 23, 2001, Nationwide communicated to Manevals its objection to payment of Manevals' costs associated with preparation of the proof of loss. (Maneval Exhibit #41). This letter was sent directly to Manevals, as was all of Nationwide's correspondence, rather than being a response directly to Cassidy. Although the correspondence does "cc" Cassidy, this failure to directly respond to Cassidy clearly indicates Nationwide's disdain and dislike either for Cassidy or public adjusters in general and was designed to undermine Manevals' confidence in Cassidy and interfere in the relationship between them.
49. Nationwide's April 23, 2001 letter was issued on the 15th business day after submission of the proof of loss, yet failed to address its acceptance, rejection or partial payment. It also did not mention, nor provide, Agent Fedder's estimates as to the structure loss.

50. There was no reason the information subsequently supplied by correspondence from Agent Fedder dated April 26, 2001 and May 7, 2001 together with the May 7th payments (see below) could not have been sent to Manevals with this letter of April 23rd. This delay is “bad faith.” The only conceivable reasons for the delay would be to retaliate for Manevals use of Cassidy, a public adjuster, and/or to put pressure on Manevals and Cassidy to accept Nationwide’s position, and/or require Cassidy to do more work on behalf of his clients, and/or to further demean Cassidy’s work and disrupt Cassidy’s relationship with Manevals.
51. Nationwide’s failure to take action to resolve the discrepancy as to the extent of the structure loss and failure to respond timely to the proof of loss violated Nationwide’s own “Best Claim Practices.” (Defendant’s Exhibit #55) The failure included: failing to provide management guidance; failing to apply appropriate expertise; not giving a final repair estimate to the insured (which where possible is to be done upon completion of the initial inspection); failing to seek agreement with the insured consistent with local industry practices and pricing; failing to use appropriate experts; and failure to develop a strategy to arrive at an accurate settlement value, analyzing strengths and weaknesses of the case.
52. Nationwide's April 23, 2001 letter included a \$1,397 payment, representing \$1,000 for additional living expenses (2 months rent) and \$397 for photo restoration by Vanucci Photo.

53. By letter dated April 24, 2001, Cassidy reminded Nationwide of their obligations under the Unfair Insurance Practices Act and requested prompt communication. (Maneval Exhibit #42).
54. Agent Fedder sent Manevals a letter dated April 26, 2001 rejecting the proof of loss submitted on March 31, 2001 and requested the submission of a second proof of loss. (Maneval Exhibit #45) (Defendant's Exhibit #12)
55. The reasons stated for Nationwide's rejection was (1) Nationwide's unexplained structure loss estimate of \$29,870.00. (This apparently was based on Agent Fedder's revised estimate of April 16th, which still was not provided) and (2) the contents inventory was not yet reviewed.
56. While Nationwide did not explicitly require Manevals to execute or submit an additional Proof of Loss document or similar document as a pre-requisite to payment by Nationwide of its repair cost estimate, this is the impression the April 26, 2001 letter created and would have been foreseen by Nationwide to create. In fact, Nationwide did not explain its basis for the structure loss estimate or tender its actual cash value estimate until a letter dated May 7, 2001. (Defendant's Exhibit #14) There is no reason this payment and supporting estimate could not have been sent on April 26, 2001, except to put pressure on Manevals and Cassidy to accept Nationwide's position by withholding payment and the supporting explanation of its rejection. This pressure was enhanced as Manevals had a contractor ready and willing to proceed to do the repairs. It was also enhanced by Mrs. Maneval's pregnancy and Manevals residing with her parents.

57. Nationwide's request to require Manevals to submit an additional Proof of Loss was in order to delay payment of Plaintiffs' claim, as no other reason was in existence at that time.
58. Nationwide's request for a revised Proof of Loss delayed the payment of the claim, despite a prompt reply by Cassidy.
59. Cassidy immediately replied to the proof of loss rejection by letter of April 26, 2001 requesting immediate communication to satisfy this claim. He also reminded Nationwide of Nicole Maneval's pregnant condition and the inherent stress associated with not resolving this loss in a timely and amicable manner. (Maneval Exhibit #43).
60. Nationwide failed to timely and reasonably responded to all pertinent communications from Manevals through their public adjuster.
61. It was not until April 30, 2001 that Agent Fedder contacted Strayer Construction to request that Strayer undertake an independent evaluation of Manevals' structure damage and to prepare a repair estimate. This could have been done at the outset of the investigation. It should have been done as soon as Agent Fedder had received the detailed proof of loss supported by the estimate of Gardner on April 2, 2001. Certainly not later than April 12, 2001 when Agent Fedder's new calculations clearly revealed the extreme discrepancy. Both Agent Fedder and his supervisor Charles Maynard had sufficient knowledge of construction practices to determine that major work would need to be done to repair the structure and that reasonable minds were likely to disagree on the extent and cost of work. They should have recognized the need to obtain a full and

complete estimate from a reputable local contractor who would have been willing to do the work for the stated price at the outset of their investigation. This was made more obvious with Cassidy's representation and his subsequent structure loss submission. Instead, Nationwide responded with their own unfounded low-ball estimate of \$29,870.65. This Nationwide figure was \$16,129.35 less than their first estimate of \$46,000 they eventually received from their chosen contractor, Strayer; that is, the contractor's estimate was initially 153% above Nationwide's position. This delay and type of response not only violated the insurance law regulations (as found below) but also violated Nationwide's claim processing published practices (as found above) but clearly demonstrates Nationwide's delay and manner of handling this claim as "bad faith."

62. From April 30, 2001 through May 4, 2001, Agent Fedder was on vacation.
63. By another letter dated May 7, 2001, Cassidy advised Nationwide that the demand for a second proof of loss violated the Unfair Insurance Practices Act, as did Nationwide's failure to respond to the original proof of loss within fifteen (15) days. This letter reminded Nationwide of the March 21, 2001, request to reimburse the contents loss or explain any delay, a request made six (6) weeks previously. Cassidy advised if the claim were not resolved in fifteen (15) days, Manevals would seek judicial relief. (Maneval Exhibit #46).
64. By letter dated May 7, 2001, from Agent Fedder to Manevals again with a "cc" to Cassidy, Nationwide responded to Cassidy's letter of April 26, 2001. In the letter, Nationwide finally forwarded a copy of their estimate and repair costs for the structure

- based upon figures revised by Agent Fedder on April 16th for labor and material costs and the scope of work. This estimate was based on his February 29, 2001 site inspection. (Maneval Exhibit #47).
65. The May 7, 2001 letter that Agent Fedder forwarded to Manevals advised them that Nationwide had retained Strayer Construction for a second opinion on the structure evaluation. This was five weeks after Nationwide had possession of Manevals' estimates. Agent Fedder's explanation at trial of the May 7, 2001 letter also stated that once the cost of repair was confirmed by Strayer he would also be able to estimate the time needed to complete repairs. Agent Fedder also admitted the pricing and review of the insured's contents inventory was not completed, although received eight (8) weeks earlier. (Maneval Exhibit #50).
 66. Nationwide's May 7, 2001 letter, in addition to Agent Fedder's estimate, enclosed payment of \$24,955.32, his estimate of the actual cash value (83.5% of his \$29,870.65 structure repair estimate). Agent Fedder also issued an additional personal property advance payment of \$3,602.50 (bringing the total to \$10,000) and an additional living expense payment of \$500 to Manevals. (Defendant's Exhibit #14)
 67. As of May 7, 2001, Manevals had never advised Nationwide that they had replaced any personal property items and had not provided any documentation to substantiate any such purchases to Nationwide.
 68. On May 9th, Cassidy replied to the May 7th letter of Agent Fedder. (Defendant's Exhibit #15) This letter points out that Nationwide had not yet made any settlement offer.

Cassidy noted Manevals' disagreement with Agent Fedder's structure estimate and repeated the deadline for settlement within the 15 days of Cassidy's May 7th letter to avoid litigation. Cassidy also indicated that he had responded to Strayer's contact and had inspected the property on the morning of May 9th with Mr. Strayer. Cassidy expressed concern that Nationwide's continued delays would prevent Manevals' chosen contractor from timely starting and completing the repairs. Cassidy requested he be contacted to "discuss the immediate resolution" of the matters.

69. On or about May 10, 2001, Nationwide received Strayer Construction's estimate for the repairs to the Manevals' property, which indicated an estimated repair of \$41,267.23. (Defendant's Exhibits #48 and #49)
70. Strayer Construction is a local contractor experienced in the field of residential fire damage repair and rehabilitation. At least half of Strayer's business is derived from work done for or referred by insurance companies and agents. Strayer is regularly contacted by several agents to submit proposals for fire loss repair and often is hired to do the work. Strayer also did personal work for Agent Fedder.
71. Manevals' public adjuster, Patrick Cassidy, acknowledged that Strayer Construction was a reputable firm with whom he had worked in the past and which had performed adequate construction services.
72. The original estimate that Strayer Contracting submitted to Nationwide was \$46,000, but upon Agent Fedder's request to reduce the scope and pricing, a reduction to \$41,267

was made. (*See*, Defendant's Exhibit #40) The basis of this reduction was not testified to at trial.

73. On or about May 23, 2001, Agent Fedder prepared a summary of his claim handling called "Property Large Loss Report," (Defendant's Exhibit #40) for submission to his superiors, including Mr. Maynard. It makes no reference to analyzing the differences in the structure loss estimates nor does it indicate any desire or intent to negotiate. This again contravenes the Best Claims Practice guidelines of Nationwide as to Evaluation and Negotiation. (*See* Defendant's Exhibit #55)
74. Nationwide's third-party structure repair estimate, prepared by Strayer Contracting, was sent to Manevals by Nationwide's May 25, 2001 correspondence. (Maneval Exhibit #87)
75. The May 25, 2001 correspondence also issued a supplemental Actual Cash Value (ACV) structure repair payment of \$9,246.68 to Manevals. (Defendant's Exhibits #19 and #20) This brought the total structure loss payment to \$34,202 or 82.8% of Strayer's estimate. This was less than one-half of the estimate to repair the structure as provided by Cassidy and Gardner Construction.
76. By the May 25, 2001 correspondence, Agent Fedder also finally advised Manevals of his evaluation of their contents claim and issued a supplemental payment to them in the amount of \$32,835.45 as the actual cash value of the contents claim. (Defendant's Exhibits #19 and #35)

77. Agent Fedder agreed to the list of contents submitted by Cassidy as being destroyed, except as to the garage contents. (*See* Defendant's Exhibit #40) The rejection of the garage contents claim was a reasonable and well-explained rejection.
78. Agent Fedder's contents evaluation resulted in Nationwide and Manevals' failing to agree on values for less than 40 items of the more than 900 personal property items claimed. Agent Fedder picked out 43 items to dispute pricing.
79. Between April 21, 2001 and May 25, 2001, Agent Fedder had made an effort to determine a reasonable replacement value for 43 items, which were claimed in Manevals' contents claim. (Defendant's Exhibit #40 and #52) He was able to find lower prices for 34 of the items as of May 23rd. He did not testify that the items he found lower prices for (such as dressers, TVs and a waffle iron) were of the same quality as the loss. This effort to pick apart the personal property claim by Agent Fedder was not justified. Cassidy's submission clearly was based on a reasonable statement of the nature, age and quality of the items to be replaced. Cassidy's estimate of actual cash value is valid except for the garage contents. Agent Fedder's disagreement seems based only on the need to disagree. Agent Fedder never said that Cassidy's valuation as to the nature, age and condition of the contents was wrong, only that he, Agent Fedder, had found an article of a generally same nature at a cheaper price. This was done even though Agent Fedder recognized the extent of the personal property loss would likely exceed policy limits as Manevals would eventually replace the majority of the items at a higher cost.

Nevertheless, he sought to oppose Cassidy's estimate, saving \$6,901.12 from Cassidy's request, for the time until replacement would be made.

80. The total disagreement between the parties regarding the personal property contents claim totals approximately \$6,521.40 (replacement cost). Agent Fedder's Large Loss Report acknowledges the need to have authority to settle the contents claim at the policy limits of \$51,008.65. (Defendant's Exhibit #40) This is clearly justified even using Nationwide's loss estimates. An offer to pay the limits upon the actual replacement of the items by Manevals has not been made by Nationwide. Cassidy's total for contents without the garage items is an actual cash value of \$48,026.13. This amount should have been offered by Nationwide, as of April 23, 2001. Failing to do so at that time and continuing that failure through the eventual response of May 25th contributed to the need to litigate this claim. This action by Nationwide on the contents' claim can only be seen as an effort to force agreement by Manevals as to the structure loss.
81. By the May 25, 2001 correspondence Agent Fedder also issued an additional living expense payment in the amount of \$1,500 to Manevals. (Defendant's Exhibit #35)
82. If Nationwide had pursued a reasonable investigation and attempt to resolve this claim all of the information and payments contained in the letter of May 25, 2001 could have been forwarded to Manevals on or about April 23rd and, as such, would have been a proper response to the proof of loss submitted by Manevals. This delay of a month was intentional. No reasonable explanation for the delay was offered at trial. Agent Fedder and his supervisor, Maynard, knew the scope of this loss at the outset but did not choose

to diligently investigate and establish a reasonable position as to payment for the loss. At the least, it shows a reckless indifference to Manevals need to be assured the loss would be treated fairly and promptly. The delay certainly fostered the idea that Manevals would be compelled to seek litigation to obtain satisfactory payment. Mr. Strayer of Strayer Construction testified that he often did work for Nationwide and would usually make an agreement that if, in the course of repairs, his estimate was shown to be in error that Nationwide would adjust and increase the scope of work to be done. This was never communicated to Manevals. Certainly Nationwide could have offered Strayer to do the work on this basis or could have offered to have Gardner reduce his scope of work on the condition that if future expansion of the work was warranted, as repairs progressed, Nationwide would reconsider and make additional allowances where appropriate. This was never done. Nationwide's attempt at some kind of reconciliation of the structure loss discrepancy intentionally pushed Manevals into litigation.

83. On June 6, 2001, nearly four (4) months after the loss, Cassidy advised litigation was imminent and communicated his preference to reach an amicable settlement.
84. Despite Cassidy's offer, Nationwide made no attempt to resolve the differences between Maneval and Nationwide estimates on the Fire Loss. Nationwide's response to Cassidy was to terminate all discussion and communication.
85. Manevals' conduct had created neither delays nor time lags in the evaluation and processing of Manevals' claim.
86. Manevals felt compelled to commence litigation on June 19, 2001.

87. On October 12, 2001, Manevals gave birth to their second child, Justin Maneval.
88. On January 9, 2002, Manevals, through their representative, Patrick Cassidy, demanded supplemental additional living expense payments based on a representation that they were renting one-half of a double home. Their decision to remain with Mrs. Maneval's parents was not communicated to Nationwide. However, Nationwide was not impacted by this decision.
89. By letter dated January 24, 2002, Nationwide responded and communicated its decision to unilaterally terminate the additional living expense at eight (8) months, retroactive to October 16, 2001, claiming the structure could have been rebuilt within this time frame. (Maneval Exhibit #54) Agent Fedder had made the determination by May 23rd that additional living expenses should be paid through the end of September. (*See*, Defendant's Exhibit #40) This would have allowed approximately four months from that time for Manevals to repair their home. Nationwide's intent to actually terminate ALE as of the end of September was never communicated to Manevals.
90. In January 2002, at the time the additional living expense was terminated by Nationwide, no consensus had been reached on the extent and nature of repairs required.
91. On or about October 17, 2002, Donald Karaffa of Karaffa Construction, Inc. inspected Manevals' residence at the request of Nationwide and prepared an estimate for the repair of the residence. (Defendant's Trial Exhibit #51) Donald Karaffa's estimate was in the form of a proposal for the repair of Manevals' structure for a total contract price of \$44,856.21. (Defendant's Exhibit #51) Mr. Karaffa noted the structure's siding now

had moss and mildew covering it. He made no roof inspection. The Karaffa estimate contained no exterior work. Karaffa, as had Strayer, found the garage windows did not need replaced. Otherwise, the general scope of work to repair the structure damage found necessary by Karaffa in October 2002 was similar to that of Gardner and Strayer, which had been completed in March and May of 2001. There had been no increase in the scope of work due to the delay in completing the repairs.

92. Manevals' insurance policy provides that structure and contents claims will be paid on an actual cash value basis pending actual repair or replacement of the claimed damage. (Defendant's Exhibit # 66)

93. Under the terms of Manevals' insurance policy, Manevals are not entitled to the actual cost of repair or replacement for any of their damages unless and until the actual repairs or replacements are completed. (Defendant's Exhibit # 66)

94. Manevals' insurance policy defines actual cash value as:

Actual cash value means the amount it would cost to repair or replace covered property with material of like kind and quality, less allowance for physical deterioration and depreciation, including obsolescence.

(Defendant's Exhibit # 66)

95. The loss settlement provisions of Manevals' insurance policy provides as follows:

3. Loss settlement. Covered losses are entitled, up to the limit of liability applicable, as follows:
 - a. personal property and structures that are not buildings.
 - b. carpeting and cloth awnings.

- c. outdoor antennas, whether or not attached to the building.
- d. home appliances; unless built in as part of the dwelling; at actual cash value at the time of loss, up to the amount needed to repair or replace.
- e. buildings in coverage A or B replacement cost without deduction for depreciation, subject to the following:
 - 1. When the cost to repair or replace the damage is more than \$1,000 or more than 5 percent of the amount of insurance in this policy on the building, whichever is less, we will pay no more than the actual cash value of the damage until repair or replacement is made.
 - 2. You may claim loss or damage to buildings on an actual cash value basis. You may make claim within 180 days after loss for any added loss on a replacement cost basis. (Defendant's Exhibit #66)

96. The Policy (Exhibit #200), Nationwide Amendatory Endorsement 3358-A, only requires Manevals to notify Nationwide of their intent to make claim for the replacement cost loss within 180 days of the date of loss. This was accomplished with Cassidy's letter dated February 21, 2001.

97. Endorsement 3358-A does not require Manevals to repair or replace the damaged property within 180 days of the date of loss.

98. The policy provides the following concerning additional living expense:

- 1. Additional Living Expense. If a covered loss requires you to leave the residence premises, we cover the required increase in living expenses you incur to maintain your normal standard of living. Payment will be for the shortest time required to repair or replace the premises; or, if

you permanently relocate, for the shortest time required for your household to settle elsewhere. This period of time is not limited by the end of this policy term: and

99. The "shortest time required to repair or replace the premises" as provided in the Additional Living Expense coverage is not defined in the policy. It does not commence until an agreement is formally reached between Nationwide and Manevals on the amount of the structure loss or until after Nationwide has reasonably put Manevals in a position to make such repairs and notifies them of their intent to terminate such payments in advance. The first that Manevals were put in a position to make the repairs on a reasonable basis was May 25, 2001. It is reasonable to expect at that time of year most contractors would be extremely busy and unable to take on such a large scale project until several months after being notified to begin. This would no doubt mean construction may not begin until late September or October, especially since this was mostly interior work that could be done in inclement and cold weather. Therefore, a reasonable completion date would have been the end of February 2002.
100. At no time prior to October 28, 2002 did Manevals submit documentation to Nationwide for items, which they had replaced and for which they were seeking replacement cost coverage for any contents items.
101. Manevals refused and failed to cash the payment checks received from Nationwide of approximately \$34,251.68 in structure ACV payments issued as of May 25,2001.
102. On or about December 12, 2002, Nationwide voluntarily re-issued the structure repair actual cash value payments to Manevals without condition. (Defendant's Exhibit #36)

103. Agent Fedder's initial personal property evaluation/settlement omitted approximately \$591 in contents items; however, Nationwide has corrected this error and has paid Manevals the actual cash value of those omitted contents items. (Defendant's Exhibit #37)
104. On or about December 12, 2002, Nationwide paid Manevals \$462 in actual cash value coverage for the inadvertently omitted contents items. (Defendant's Exhibit #37)
105. On or about December 12, 2002, Nationwide issued payment to Manevals in the amount of \$1,273.52, which represented the depreciation holdback for the personal property items, which had been replaced. Manevals' actual replacement cost for several items was less than their estimate.
106. Manevals acknowledged that they used a small amount of the monies received as actual cash value payments for their contents claim at trial to purchase items, which they had not lost in the fire. They were free to expend their monies in this manner. They are not in a position to replace many of their contents items until they have repaired or replaced their home.
107. Plaintiffs acknowledge that all payments made by Nationwide to Manevals were made without condition.
108. Nationwide did not request or seek a release of any claim from Manevals in exchange for any claim payment at any time during the pendency of the claim or this litigation.
109. As of the date of trial Manevals have failed to make any effort to repair their home or mitigate their claimed damages, but this failure has not resulted in any increase of loss.

110. The testimony of Nationwide representative, Agent Fedder was not credible as to many items. This lack of credibility was reflected in his testimony as to damages being cosmetic and as to his April 20th telephone call to Cassidy's answering machine.
111. Nationwide was not in timely contact with Manevals and their public adjuster, Patrick Cassidy, throughout the handling of the claim.
112. Nationwide's responses to Manevals' inquiries and requests were not timely and reasonable. This untimeliness under the circumstances presented constitutes evidence of malicious and reckless conduct on the part of Nationwide.
113. Nationwide has not reasonably fulfilled all of its obligations under the terms and conditions of the insurance contract.
114. Manevals' expert, Patrick Cassidy, is not totally an objective independent expert witness in that his compensation is based upon the outcome of this trial. Nevertheless, his view of the scope of work and damages is overall credible.
115. Manevals' public adjuster and "expert", Patrick Cassidy, is a former Nationwide employee. There is no showing that he is biased against Nationwide. However, in this case, there is an obvious bias and prejudice by Nationwide against Cassidy.
116. Manevals suffered prejudice as a result of the timing of Nationwide's evaluation and actual cash value payments. They felt forced into litigation. They have incurred litigation expenses. Nationwide's actions made Manevals uncertain as to their ability to repair their home. The atmosphere of uncertainty created by Nationwide is evidenced by Manevals'

- refusal to cash the structure payment checks and their failure to replace the overwhelming majority of any of their personal property contents claims.
117. Nationwide's evaluation of Manevals' contents claim was not reasonable, in that they found a few items to dispute despite recognizing the extent of the loss would require payment of the policy limits. This nit picking of items to raise a dispute as to actual cash value had the effect of creating uncertainty in the minds of Manevals as to the merits of their claim and acted as pressure upon them to accept Nationwide's overall loss estimate or litigate.
 118. As of the time that Manevals initiated this litigation, if Nationwide was willing to consider paying additional necessary repair costs once the actual construction was started, this willingness was not communicated to Manevals.
 119. Nationwide never closed Manevals' claim file.
 120. Nationwide is not legally responsible for any deterioration, which has occurred to the residence, which may result from Manevals' failure to initiate repairs and undertake efforts to prevent further deterioration, damage, or other negative impact to the structure. Therefore, Nationwide is not responsible for any moss on the roof or mold or mildew that has accumulated on the siding.
 121. Manevals never submitted a revised or supplemental Proof of Loss document to Nationwide.

122. Manevals and Nationwide failed and/or refused to take advantage of the appraisal provisions of the policy to address the differences of opinion regarding the claimed damages.
123. At the time of the fire, Manevals' residence was, for the most part, constructed using a good grade of construction and finish material for the year it was built, 1955; it had been updated with sheet rock; the kitchen was at least fair in condition and the bath was virtually brand new. The house had a good roof and good vinyl siding and insulation. (*See*, Defendant's Exhibit #40, Nationwide's Large Loss Report) The Large Loss Report does not indicate that any aspects of the home were found inferior upon Agent Fedder's inspection.
124. Under the terms and conditions of Manevals' insurance policy, Manevals are entitled to the repair of their structure using material of similar kind and quality to that that was in the house at the time of the fire.
125. The substantial dispute between the parties results from differences in determining the actual loss to the structure (extent of damage and cost to repair).
126. To resolve this dispute and other issues in this litigation the Court has examined closely the written estimates of the loss as well as the testimony.
127. There are essentially five different estimates of the structure loss in written form:
 - a. Agent Fedder has four estimates (*see also*, his drawings, Defendant's Exhibit #41) -- #42-a summary, #43-the first detailed estimate (3/21/01), and revisions,

#44 (4/12/01), #45 (4/16/01), #46 (5/4/01). Agent Fedder's final figure is \$29,870.65.

- b. Cassidy's Estimate – Defendant's Exhibit #47. The total is \$80,626.06.
 - c. Gardner's contract proposal, Defendant's Exhibit #50, is a total of \$83,365.
 - d. Strayer Contract, Inc.'s Estimate, Defendant's Exhibit #48 (general work) and #49 (details of work), is a total of \$41,266.98.
 - e. Karaffa Construction, Inc., contract proposal, Defendant's Exhibit #51, is a total contract proposal of \$44,856.21.
128. The contractors' differences are often hard to reconcile because of the manner in which the bids were submitted.
129. Agent Fedder's estimates using his view of the scope of work to be done are based upon an unexplained computer program and are unreliable estimates.
130. Through the use of an estimate prepared by the contractor, Mr. German, Cassidy arrived at a total repair of \$80,626.06.
131. Cassidy's estimate itemized each item of work to be done and combined a material and labor cost for most items. This estimate is included as Defendant's Exhibit #47. It is also referred to as Plaintiffs' Exhibit #83. This estimate was based upon Cassidy's inspection of the damages, and the utilization of a computer-cost

estimator program furnished and used by Richard German, a friend of Cassidy's who was a local contractor. Mr. German, Plaintiff's third witness, testified extensively as to how he had used this program to prepare his estimates competitively in the usual course of his business. He testified the costs for the material depicted in the computer program was found by him to be reliable and available locally at the prices estimated. He testified how he had the computer program updated so it would be reliable.

132. Cassidy's estimate is based upon a detailed investigation as to the scope of work and is believed accurate except as to the necessity of garage windows and sill replacement. His view that the siding and roofing could not be matched for repair purposes was not significantly contradicted. The investigation Cassidy conducted substantiates that the exterior work consisting of re-siding and partial roofing are required. His estimates for this work represent the use of material similar in quality to that on Manevals' house.
133. The Court finds the scope of work necessary to have been accurately evaluated by Cassidy. For instance, it is obvious the gables and part of the siding are damaged and need to be replaced and that a portion of the roof was damaged. Cassidy justified that the originals could not be matched. Mr. Strayer asserted, unconvincingly, that this vinyl siding, like any vinyl siding, could be cleaned. Mr. Strayer offered no explanation as to how he would match up the damaged areas, except perhaps by painting. Similarly, while the roof could be made sound by replacing a few shingles, Mr. Strayer did not indicate how he could avoid color differences.

134. The total repair cost of Gardner Construction was \$72,491 plus 15% profit and overhead of \$10,874 for a total proposed contract cost to repair of \$83,365. Gardner acknowledged that his estimate constitutes a "worst case scenario" and that many of the identified repair costs may never be incurred depending upon the extent and necessity of the actual repairs.
135. Dan Gardner is a personal friend of Manevals; Mrs. Maneval's uncle works for Gardner Construction.
136. In general, the Gardner estimate was prepared on the basis that Cassidy had advised Mr. Gardner to do an estimate to replace everything. Gardner was not instructed to make an investigation to determine if items needed to be replaced, such as the roof or siding. Gardner generally builds homes that are of a substantially better quality than the Maneval home. Gardner's estimate for material uses a higher quality material for replacement of the carpet, roofing and siding than existed in Maneval's home. Also, the scope of work envisioned in Gardner's estimate was too large. The scope of work that should not have been included in these estimates related to the entire replacement of all the wiring in the electrical system, entire replacement of the roof, and all windows in the garage. However, Gardner's estimate (Defendant's Exhibit #50) is credible insofar as labor costs for the work needed to restore the home. Gardner's estimate is also reasonable as it used a 15% profit and overhead total versus 10% for overhead and then 10% of material, labor and overhead as used in Cassidy and Strayer's estimates.

137. Nevertheless, Gardner's estimate is a solid proposal contract price to do the work and is reliable as to the work and material included; however, the work exceeds the scope necessary to repair the fire loss. The material prices quoted also represent upgrades.
138. Strayer's estimate is also computer based as used by Strayer Contracting, Inc. in its business. It was not clear that Strayer was actually offering to do the work for the price indicated. The program's reliability was not demonstrated to the Court, as was the program used by Mr. German. There was no testimony the material prices reflected available local prices. It was not explained as to how the Strayer computer program was developed, but it appears to be the computer program used for Strayer to calculate all of his estimates. The testimony did not establish that the prices indicated are Strayer's actual costs based upon pricing that he obtained for both material and labor. It appears Nationwide expects the Court to assume Strayer actually is able to purchase the materials at the cost indicated in the estimate. Karaffa and Gardner, on the other hand, testified to the effect that their material expenses were based upon their pricing out of material costs and their estimates were actually bids for the work at the prices stated. However, some material prices are similar to those of Mr. German, such as the vinyl windows.
139. Overall, the Court does not believe the Strayer program adequately reflects the amount of labor required to do the work. Strayer, on cross-examination when called in rebuttal acknowledged if he had to do the work he would use five men to work the first week to strip out the house interior. This is similar to Gardner and Karaffa. Thereafter, according to his testimony, Strayer would use only two, sometimes five men, or an average of at

least three, to do the repairs, for two months of work. This is substantially less than both Gardner and Karaffa. Strayer's estimate has a total labor cost of \$20,558.76. (Defendant's Exhibit #48, page #4) The labor rate is \$27 per hour, as with 20% overhead and profit the rate for Strayer is given at \$32.40 per hour in Defendant's Exhibit #76. Strayer's estimate therefore envisions 761 man hours. This is in conflict with Mr. Strayer's testimony which indicates 200 hours would be used the first week. At an average of three men doing repairs the repair work would need 120 hours a week or 960 hours for the two months. This totals 1,160 hours or more than one and one-half the labor of Strayer's estimate. The Court finds at least twelve weeks of repair, a total of 1,140 hours, would be necessary to repair Manevals' home. The total work hours of 1,640 would result in a total labor expense for Strayer of \$38,880. When added to Strayer's material cost of \$13,546, Strayer's realistic estimate is \$52,426, plus overhead of 10% (\$57,668) plus 10% profit or a total of \$63,435.

140. Karaffa's estimate is a contract proposal to do the work. The labor rates appear unrealistically low. Many material items are quoted in the way of an allowance. It is not certain that the necessary work can be completed for the cost stated. It does not include any exterior work, apparently on the instruction of Agent Fedder and/or Maynard.
141. Karaffa's estimate was presented in such a way that it was very difficult to make allocations between the cost of material and cost of labor. Karaffa's labor rate of approximately \$23/hour is somewhat low. Karaffa's estimate was also presented in such a way as to make it difficult to verify a specific total cost and a specific cost for many

items as it often provides for an “allowance” instead of a specific price for a specific item or grade of material. The Court also was not satisfied that Karaffa’s bid necessarily includes all the work needed in order to restore the house to the pre-fire condition.

142. Agent Fedder’s initial draft estimate of the insureds’ structure repair damages is dated March 21, 2001. (Defendant’s Exhibit #43) The total repair cost was \$23,955.74 plus 10% overhead plus 10% profit or a total of \$28,496.68. The basis and source for the cost calculations included in this estimate were not explained but upon a review it appears to have been prepared from a Nationwide computer program. There was no testimony as to the reliability or reasonableness of the costs utilized in the program. The costs used were unrealistically low when compared to actual estimates Nationwide subsequently obtained. For instance, under Kitchen Costs, two doors are to be replaced at a unit cost of \$243.60 or \$487.32 in total. This apparently includes material and labor. The estimate for Nationwide by Strayer Construction dated May 10, 2001 (Defendant’s Exhibit #49) listed the same doors at a material cost of \$258.41 and \$363.17 (\$621.58 total) plus \$59.62 each labor to install or a total of \$740.80 for the doors, more than 50% above Agent Fedder’s estimate. Similarly, the estimate Nationwide obtained from Karaffa Construction Company dated October 17, 2002 (Defendant’s Exhibit #51) is more than a third higher than Agent Fedder’s calculation. Karaffa indicates a replacement installation expense of \$281.75 for each door plus \$112 for two locksets being installed. The estimate also states an allowance of \$180 for each door and \$30 for each lockset. This estimate is not clear if the applicable total is the \$675.50 or possibly

\$1,095.50 with allowance. However, the Court believes the correct interpretation of Karaffa's door estimate is a labor total of \$255.50 and material allowance total of \$420. This is \$675.50 total, if the doors do not exceed \$180 each and the locksets do not exceed \$30 each. However, Strayer's doors would each be \$60 more than Karaffa's. Karaffa did not really testify as to the door quality. Strayer indicated the doors would be equivalent to the existing Maneval doors.

143. The substantial difference in these and other items demonstrates that Agent Fedder's estimate is unreliable and was made without a factual basis. Based upon the experience that both he and his supervisor Charles Maynard had in construction practices and insurance adjusting of fire losses, both they and Nationwide knew this estimate was unrealistically low. The lack of factual basis for Agent Fedder's estimate is also demonstrable in other items. For example, the kitchen sink replacement cost stated by Agent Fedder is \$68.19. (Defendant's Exhibit #43). The Strayer Construction estimate would allow \$190 for material (almost three times Agent Fedder's total) plus \$174 for labor or a total of \$364.27. (Defendant's Exhibit #49). Karaffa's estimate (Defendant's Exhibit #51) provides for a total, including a trap, of \$459.91, "allowing" \$295.75 for material and installation labor of \$164.16. This is similar to Strayer's labor charge with each being about \$100 more for labor alone than Agent Fedder's total.
144. The Court's findings concerning Gardner's estimate being reasonable can also be demonstrated through reference to the kitchen doors and sink. (*See* #26 above). The cost of material for replacement of the doors including locksets and other necessary items

is calculated by Gardner at \$695 plus a labor cost of \$240. The material cost is approximately \$70 or 10% higher than Strayer's estimate for Nationwide. Gardner's labor cost of \$240 is \$15.50 (6%) less than Karaffa's labor estimate.

145. Examining the kitchen sink replacement costs, Gardner's estimate provides a total for material of \$425, being \$235 above the material cost of Strayer and \$130 above Karaffa. Gardner's labor cost is estimated at \$180, \$6 more than Strayer and \$15 more than Karaffa. However, in looking at the total labor cost by adding overhead and profit calculated by each contractor Gardner's labor costs becomes \$207, with Strayer being at \$208 and Karaffa at \$198.
146. As demonstrated on Defendant's Exhibit #76, Gardner's hourly labor rate appears to be higher than Karaffa and Strayer. However, when an actual analysis of many significant work items is performed the difference in the overall labor expense is negligible for similar work.
147. What does differ between the three contractor estimates is the cost of material.
148. The contractors also disagree as to whether re-painting requires primer plus one coat or a primer plus two coats. The Court finds, given the extent of damage, a primer plus two coats is required. Agent Fedder's estimates seemed to envision this as well.
149. There are some items in each of the estimates from the contractors, which can be made to appear to be significantly higher than the other contractors' estimates for the same item or work. Defendant's Exhibit #76 attempts to demonstrate this, showing Gardner to be much higher than Karaffa and Strayer.

150. The overall irrelevance of Agent Fedder's estimate may be supported through Defendant's Exhibit #76 which did not attempt to include or compare Agent Fedder's estimate with the estimates of the three contractors and Cassidy, which are depicted on Defendant's Exhibit #76. The absence of Agent Fedder's estimate from that Exhibit for comparison purposes reinforces this Court's view that its formulation is without any appropriate basis.
151. Much of the difference between the contractors also has to do with interpretation. For example, Gardner in Defendant's Exhibit #50 at page 2, calls for eight sheets of ¼" luan underlayment for the kitchen and both ends of the stairway at a total cost of \$125. Strayer's estimate (Defendant's Exhibit #49, p. 5) would provide for 183.7 square feet of this underlayment at \$0.85 a square foot or \$156.25. This difference is only \$31 in one respect but in another respect is a material cost that is 25% higher for Strayer than for Gardner. Karaffa's estimate (Defendant's Exhibit #51) does not appear to provide for any luan underlayment but has a lump sum figure of ¼ plywood underlayment of 612 square feet for a total of \$1,285.20. This is \$2.10 a square foot for underlayment, labor and material, which would be significantly higher than the total per square foot of Strayer of \$1.34. Gardner calculated the total as \$305 for labor and material for 143.7 square foot for this underlayment in the kitchen is a square foot price of \$1.66, essentially in the middle of Strayer and Karaffa.
152. The discrepancies in the bid format made it was very difficult to compare the cost of replacement for the various windows. Testimony of all the witnesses agreed that all

windows in the house did need to be replaced. Specifically, there was a dispute as to the need to replace the garage windows. Manevals did not sustain their burden of proof to show that the six windows in the garage area required replacement.

153. Gardner's estimate for the material and labor for the window replacement was a lump sum of \$5,300 to replace eight house windows, a slider and six garage windows (\$3,050 for material and \$2,250 for labor). There was no separate allocation for the garage windows. Evidence of Gardner's charge for garage windows was not presented at trial. Strayer's estimate provides total labor and material for window replacement at \$2,471.06. Strayer's estimate includes the slider in the kitchen at \$265.50. Strayer estimated nine windows, including the slider. Karaffa's window estimate allows for \$2,657.38. Karaffa estimated ten windows. Karaffa also added a slider at \$475 bringing a total under his window category to \$3,058.13. Interestingly, Agent Fedder's estimate (Defendant's Exhibit #43) provided for replacing twelve windows at an average size at a unit cost of \$248.64 or a total of \$2,983.68.
154. Cassidy also did an estimate, as to the window cost, which seems to have used more exact measurements. His prices vary from \$338.18 to \$281.79 per window. Strayer's are priced at \$273.31 to \$264.19 and \$319.74. Both called for eight such windows to be replaced. The average replacement cost by Cassidy was \$288.81, a total of \$2,310.51. Strayer's total was \$2,205.56 or an average of \$275.70. Both referenced one of the windows as a twin. By further comparison, Karaffa allowed \$185 for each window, but had a total labor and material for ten windows at \$2,657.38 or \$265.70

each. Gardner's bid, as referenced earlier, is not readily comparable on a per-unit basis. Also, Gardner would have provided for one of the eight windows to be of new construction rather than vinyl replacement.

155. Cassidy's window totals as referred to above do not include the six windows in the garage, which Cassidy asserted should be replaced at a cost of \$251.63 each or an additional \$1,509.78.
156. The Court acknowledges that there are many examples from each estimate that could be used to demonstrate either reinforcement of the foregoing showing Gardner being in the middle of Strayer and Karaffa or could be utilized that another of the three contractors was in the middle of the other two quotes.
157. The Court finds the following to be the necessary and reasonable costs of repair to the structure. This statement of loss follows Gardner's estimate outline as to the scope of necessary work. A labor rate of \$30 is used. An explanation of the Court's finding appears in [] or ().

<u>Item/Work Description</u>	<u>Labor Hours</u>	<u>Labor Cost</u>	<u>Material Cost</u>	<u>Total</u>
1. Gutting and removal [5 men for one week consistent with Gardner and Strayer who, on being recalled, testified 5 men to tear out in first week] (Karaffa \$4,218.54)	200	\$6,000	-0-	\$6,000.00
2. Dumpster fee [not itemized by Strayer] (Karaffa \$985; Cassidy \$2,103)			2,000	-0- \$2,000.00
3. Insulation				\$1,351.00

[Less than Karaffa \$1,433.88]

4.	Dry wall installed (Karaffa \$3,595.20)				\$5,286.00
5.	Painting Drywall [Less ceiling tile area of 456 square feet @ \$.85] (Karaffa \$2,039)				\$2,996.00
6.	Cleaning and Sealing (Karaffa \$3,500 allowance)				\$6,300.00
7.	Ceiling Tile Downstairs (Karaffa did not include)	25	750	375	\$1,125.00
8.	Replace Sill (Karaffa \$431.55, Strayer no price - indicates it is difficult, "\$221.18 for joists p. 16 of #49. Floor framing \$504, p. 5, #48.)	8	240	30	\$ 274.00
9.	Replace kitchen floor joists	44	1,320	1,126	\$2,546.00
10.	Kitchen/Stairway Underlayment	6	180	125	\$ 305.00
11.	Kitchen Linoleum				\$1,050.00
12.	Kitchen Cabinets 11' Countertops (Karaffa \$3,619-10' C'top \$609-9.0 labor same #hrs. as Gardner) (Strayer \$1,850.05-10-1/2' C'top \$299 \$475 labor)	38	1,140	1,845	\$2,985.00
13.	Range Hood	3	90	210	\$ 300.00
14.	Sink and Plumbing	6	180	425	\$ 605.00
15.	Ceiling Fan	3	90	260	\$ 350.00
16.	2 Doors and Locksets	8	240	695	\$ 935.00

17.	Doorbell	1	30	50	\$	80.00
18.	L R Carpet [\$30 yd. Instead \$35 yd. used by Gardner]				\$	720.00
19.	Stairway [without risers And treads, which Cassidy and Strayer agree not needed; based on work and material cost of Strayer which exceeded Cassidy Plus \$81.07 clean, \$287.64 millwork, \$72.36 paint, \$20.45 paint]				\$	461.52
20.	Master Bedroom Carpet [\$30 yd. instead of \$35 yd.]				\$	570.00
21.	Light in foyer				\$	60.00
22.	Foyer Carpet [at \$30 yd.]				\$	180.00
23.	Bedroom #2 Flooring	12	360	181	\$	541.00
24.	Bathroom [Gardner's materials within Karaffa's materials estimate and is \$328.66 (10%) below Strayer's total]					\$3,635.00
25.	Windows [Based on Gardner's estimate but deduct for garage windows; Cassidy window removal (\$132) and replacement (6 @ \$251.63 = \$1,509.78) expense total of \$1,641.78. Note Strayer's lowest window replacement cost is \$264.19.]					\$3,658.00
26.	Casings, woodwork [Based on Gardner's total Noting Karaffa estimate					\$2,900.00

For similar finish carpentry
Work is \$3,505.95]

27. Electrical				\$1,805.00
[Based on Karaffa's total \$1,804.25 without wiring, Gardner's total \$1,970.00 with wiring, Karaffa-each outlet switch \$45.50 each, Strayer-\$17.54 each installed is unrealistic; Cassidy total was \$3,600.00]				
28. Baseboard Heat	40	1,200	720	\$1,920.00
[Karaffa total \$1,117.20 Not clear, Strayer estimate of cleaning w/o replacing not credible given extent of smoke damage and sealing required on other remaining items is not practical on baseboard heat.]				
29. Siding, Gable Vents				\$6,000.00
Gardner estimate for entire House is \$8,875. Cassidy estimated \$4,900 but without insulation damaged siding and vents clearly need to be replaced. Strayer would acknowledge painting is necessary and said gable and vent siding to be repaired but gave no cost.				
30. Exterior Soffit and Fascia				\$ 1,000.00
[Gardner \$1,782, Cassidy \$6;41.28]				
31. Soffit on porch ceiling				\$1,344.00
32. Roof Repair				\$ 824.80
[Based on Cassidy estimate]				
33. Attic and Basement Clean and Seal				\$2,588.00
34. Garage - Clean seal, Paint and stain door				<u>\$2,777.00</u>

Total Repair	\$65,472.32
Overhead and Profit 15%	<u>9,821.00</u>
TOTAL STRUCTURE LOSS	\$75,293.32 =====

158. Based on the foregoing the Court has found the total structure loss to be \$75,294. Applying depreciation of 15% (\$11,294), the actual cash value of the structure loss is \$64,000.

159. The actual cash value of the Manevals' contents that were lost in the Fire Loss is \$48,026.13. This is based upon \$49,737.07, as set forth in the Cassidy Contents Inventory (Manevals' Exhibit #73), less \$1,710.94 the ACV of the garage contents.

160. The replacement value of Manevals' contents that were lost in the Fire Loss is \$64,460.13. This is based on \$66,358.22, as set forth in the Cassidy Contents Inventory (Exhibit #72), less \$1,898.09 the replacement cost of the garage contents.

161. At the time of the Fire Loss, Manevals' coverages with Nationwide, excluding detached structure coverage not applicable to the Fire Loss, was as follows:

Structure	\$ 85,729.12
Contents	\$ 50,008.65
Additional Living Expense	\$ 71,440.93
Debris Removal	\$ 6,072.43
Total	\$213,251.18

162. To date, Nationwide has made the following payments to Manevals:

Structure	\$ 34,252.00
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Contents	\$ 42,385.95
Additional Living Expense	\$ 4,000.00
Debris Removal	-0-
Total	\$ 80,637.95

163. Nationwide's evaluation and payment of Manevals' additional living expenses was reasonable initially but became unreasonable.
164. Manevals are not entitled to any further additional living expense coverages after February 2002 because they have failed to undertake to mitigate their loss by initiating repairs on the structure. As Nationwide has paid Additional Living Expenses through September 2001, Manevals are owed five additional months or \$2,500 for ADV.

Discussion

This is a two-part action. Manevals first ask this Court to determine the amount of their recoverable loss under their Nationwide fire insurance policy. Secondly, they ask this Court to hold that Nationwide has acted in bad faith, rendering it liable for payment of interest on their claims, punitive damages and court costs and attorneys' fees.

The amount payable under the policy as found by this Court is based upon the extent of damages, which this Court believes Manevals have established, by a preponderance of the evidence. As to the contents claim it appears to this Court that the amount was credibly established as set forth in the calculations of the public adjuster, Patrick Cassidy. The structure loss was such that the entire interior of the home needs to be gutted and rebuilt, a time-consuming and labor-intensive process. The best estimate and proof of the labor required is reflected in the proposal of Gardner Construction. Although Gardner's

proposal exceeded the limits of necessary work, when adjusted for the excess, it fairly represents the nature and time required to complete the repairs.

Manevals' claim for additional living expenses must be limited because they failed to mitigate their damages by commencing repairs when they had a reasonable ability to do so.

The law relating to Maneval's recovery for the "bad faith" actions of Nationwide can be summarized by reference to the decision of our Superior Court in *MGA Insurance Co. v. Bakos*, 699 A.2d 751 (Pa. Super. 1997). The *Bakos* court stated:

In Pennsylvania, there is no common law remedy for bad faith on the part of an insurer, but there is a statutory remedy, which provides:

In an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith toward the insured, the court may take all of the following actions:

- (1) Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%.
- (2) Award punitive damages against the insurer.
- (3) Assess court costs and attorney fees against the insurer.

42 Pa. C.S. §8371; *Terletsky v. Prudential Property and Casualty Ins. Co.*, 437 Pa. Super. 1089, 124, 649 A.2d 680, 688 (1994). Our legislature has not defined the term "bad faith" within this statute, but this Court has recognized [**11] that "bad faith" has a particular meaning in the insurance context:

Insurance. "Bad faith" on [the] part of [an] insurer is any frivolous or unfounded refusal to pay proceeds of a policy; it is not necessary that such refusal be fraudulent.

For purposes of an action against an insurer for failure to pay a claim, such conduct imports a dishonest purpose and means a breach of a known duty (i.e., good faith and fair dealing), through some motive of self-interest or ill will; mere negligence or bad judgment is not bad faith.

Terletsky, supra at 124-125, 649 A.2d at 688 (quoting Black's Law Dictionary 139 (6th ed. 1990)); *Romano v. Nationwide Mut. Fire Ins. Co.*, 435 Pa. Super, 545, 553, 646 A.2d 1228, 1232 (1994). A recovery for bad faith requires clear and convincing evidence of bad faith, rather than mere insinuation, and a showing by the insured that the insurer did not have a reasonable basis for denying benefits under the policy and that the insurer knew of or recklessly disregarded its lack of a reasonable basis in denying the claim.

Id., at 754.

Although courts may look to the requirements of the Unfair Insurance Practices Act, 40 P.S. §1171 *et seq.*, and other statutes and regulations governing insurance matters in determining whether bad faith exists, a violation of the UIPA does not constitute bad faith *per se*. *Parasco v. Pacific Indemnity Co.*, 920 F.Supp. 647 (E.D. Pa. 1996). The UIPA proscribes certain conduct “if committed or performed with such frequency as to indicate a business practice.” 40 P.S. §1171.1 *et seq.*, which enabled the insurance commissioner to impose sanctions. The frequency of conduct is not a measure of conduct involving the dealings between an insurer and its insured in a bad faith situation.

Manevals have established that Nationwide violated several provisions of the UIPA in its dealings with them on their claim sufficient to give rise to a finding of bad faith. As a result, Manevals suffered prejudice as a result of Nationwide's alleged delay in evaluating and paying the reasonable value of Manevals' claim. Most significantly: Nationwide failed to acknowledge or act promptly upon written communications from Manevals or their representatives in violation of 40 P.S. §1171.5(a)(10);

Nationwide refused to pay Manevals' claim without conducting a reasonable investigation in violation of 40 P.S. §1171.5(a)(10); Nationwide failed to attempt to effectuate a prompt, fair and equitable settlement in violation of 40 P.S. §1171.5(a)(10); Nationwide attempted to settle Manevals' claim for less than the amount to which a reasonable person would believe he/she was entitled offering no explanation or reasons for the differences in evaluation in violation of 40 P.S. §1171.5(a)(10).

Nationwide's actions compelled Manevals to institute litigation to recover amounts due under the policy by offering substantially less than the amounts due in violation of 40 P.S. §1171.5(a)(10).

Specifically, Nationwide failed to provide a reasonable explanation of the basis for rejecting the proof of loss, failing to explain its differences and not doing so timely, in violation of 40 P.S. §1171.5(a)(10). Nationwide did not accept or deny Manevals' proof of loss within fifteen days or timely explain reasons for any delay in violation of 31 Pa. Code §146.7. Nationwide also attempted to delay the investigation or payment of Manevals' claim by requiring Manevals to submit two proofs of loss and in delaying the hiring of an independent contractor in violation of 40 P.S. §1171.5(a)(10). Nationwide failed to promptly settle Manevals' claim under one portion of the insurance policy coverage, the contents loss, in order to influence settlements under other portions of the policy coverage, the structure loss, in violation of 40 P.S. §1171.5(a)(10).

Nationwide failed to reply within ten working days on pertinent communications in violation of 31 Pa. Code §146.5(c). Nationwide did fail to complete its investigation of the claim within thirty days or provide a reasonable written explanation for the delay in violation of 31 Pa. Code §146.6.

Nationwide's violations and/or deviations from the UIPA and supporting regulations rise to the level of bad faith conduct. Nationwide did engage in conduct, which delayed the claim resolution

with the intent to force Manevals to accept a settlement for an amount, which was substantially less than they were entitled. Nationwide unfairly discriminated against Manevals because they were represented by a public adjuster. Manevals have established, by clear and convincing evidence that Nationwide was improperly motivated by self-interest or ill will in the handling of Manevals' claim. Manevals have sustained their burden of proving by clear and convincing evidence that Nationwide lacked a reasonable basis for its actions in handling Manevals' insurance claim. Nationwide's conduct has demonstrated a reckless disregard of a reasonable handling and evaluation of Manevals' claim.

The Court finds persuasive, the argument in the trial brief submitted by Plaintiffs' counsel.

Those arguments are adopted by the Court, including the following:

Unreasonable delay by an insurer may be one of the more covert methods by which an insurer's duty of fair dealing is breached. Delay, on its surface, may be more susceptible to the defense by the insurer that the delay is attributable to negligence and not bad faith. However, an insurer may have an improper financial motive to cause delay, as the Pennsylvania Superior Court in *Johnson v. Pilgrim Mutual Ins. Co.*, 425 A. 2d 1119 (Pa. Super. 1981) acknowledged:

Poor people, who have no resources to make repairs and other living arrangements, are especially unfortunate. In dealing with companies they have paid to insure their properties against fire, they are in a very poor bargaining position. They are often forced, by the emergency of the circumstances, to accept whatever money is offered by the insurer, rather than insist upon a fair figure.

425 A. 2d at 1123. An unreasonable delay in payment can constitute bad faith, if the insurer knows of or recklessly disregards the lack of any reasonable basis for the delay. *Aniav. Allstate Ins. Co.*, 161 F. Supp.2d 424 (E.D. Pa. 2001). . . .

Pennsylvania's Unfair Insurance Practices Act ("UIPA") 40 P.S. §1171.1 *et seq.*, was enacted to create objective and time-based standards to evaluate an insurance company's handling of losses with its insureds.

Nationwide violated the UIPA by not attempting in good faith to effectuate a prompt, fair and equitable settlement, when liability is reasonably clear. 40 P.S. §1171.5(a)(10)(vi). Nationwide's liability to cover this loss was never at issue. Otherwise stated, liability was reasonably clear, yet Nationwide, for the reasons stated in this brief, never attempted a prompt, fair or equitable settlement. Nationwide also compelled Manevals to institute litigation to recover amounts due under the insurance policy by offering substantially less than the amounts due and ultimately recovered in violation of 40 P.S. §1171.5(a)(10)(vii). The record will demonstrate Nationwide's lack of good faith and fair dealing in handling and making payment on the Manevals' fire loss under the UIPA as set forth above.

Plaintiffs' Trial Memorandum, filed 5/2/2003, pp. 15-24 (unnumbered).

Conclusions of Law

1. The February 16, 2001 fire loss suffered by Manevals was a loss covered by Nationwide Elite Homeowner Policy No. 5837H0760612 (the "Policy"), the policy owned by Manevals at the time of their fire loss.
2. Manevals have satisfied all conditions and covenants required of them under the Policy.
3. Under the terms of Manevals' insurance policy, Manevals are not entitled to the actual cost of repair or replacement for any of their damages unless and until the actual repairs or replacements are completed.
4. Nationwide had a duty to expeditiously investigate, adjust and settle the loss suffered by Manevals.
5. Nationwide's utilization of an independent contractor to assist in the evaluation of the structure repair costs was unreasonably delayed.

6. Strayer's estimate of repair costs did not fairly, reasonably, and accurately reflect the reasonable scope of Plaintiffs' damages as Nationwide requested and obtained limits on its scope and pricing.
7. Nationwide has breached the Policy by delaying the investigation, adjustment and settlement of the loss suffered by Manevals.
8. Nationwide has not complied with its duty of good faith and fair dealing in indemnifying Manevals for their February 16, 2001 fire loss.
9. Nationwide has committed bad faith in its conduct in dealing with Manevals concerning the February 16, 2001 fire loss.
10. Nationwide has violated 42 Pa. C. S. §8371.
11. Nationwide is obligated to pay Manevals the sum of \$48,026.13, representing the actual cash of contents lost by Manevals, less credit for \$42,385.95 previously paid by Nationwide, or \$5,640.18 upon the entry of this adjudication..
12. Nationwide is obligated to pay Manevals the replacement cost value of their contents up to the limits of the policy, as those contents are replaced, excepting the garage contents, using the replacement costs values set forth in Manevals' Exhibit 72, hereby adopted by this Court, less payments previously made on the actual cash value of those contents replaced.
13. Nationwide is obligated to pay Manevals the sum of \$64,000, representing the actual cash value of the structure loss, less credit for \$34,252.00 previously paid by Nationwide, or \$29,748 upon the entry of this adjudication.

14. Nationwide is obligated to pay Manevals up to the sum of \$75,294 upon repairs being completed to Manevals' residence, less payments previously made on its actual cash value as determined above.
15. Upon the entry of this adjudication Nationwide shall also pay to Manevals \$385 representing the cost of submission of the proof of loss as the policy limits will not be exceeded.
16. Nationwide is obligated to pay Manevals' additional living expenses of \$500 per month through February 2002, a total of an additional \$2,500, upon the entry of this adjudication.
17. The total to be paid by Nationwide to Manevals upon entry of this adjudication is \$38,273.18. A partial verdict in that amount will be entered.
18. Manevals are also entitled to receive interest, attorney fees and costs as permitted under 42 Pa. C. S. §8371. The fees claimed shall be based upon counsel's contract with Manevals and the amounts awarded by this adjudication. Interest at the rate set by 42 Pa. C.S. §8731 shall be calculated from the date of April 25, 2001 until the date of payment of the amounts paid after that date and shall also include interest on the amounts due under this adjudication as actual cash value from April 25, 2001 until date of payment. Interest shall not be paid on the difference between actual cash value and the replacement values eventually paid due to Manevals' delay in replacement.
19. Nationwide is sanctioned with punitive damages as a result of the finding of bad faith by this Court. The punitive damages to be assessed shall be three times the total of the fees

and expenses due to Patrick Cassidy/Cassidy Public Adjustment due under the terms of the contract with Manevals.

20. Manevals' counsel shall submit a written claim for interest, counsel fees and punitive damages to the Court for approval within ten days of notice of the entry of this Order and serve a copy upon Nationwide's counsel. The request shall show the basis of the calculations in detail. Nationwide shall have ten days thereafter to file written objections as to the manner of calculation of the counsel fees and punitive damages, if any.
21. Thereafter the Court will issue an additional order and verdict as to these remaining items of damage.

VERDICT

Verdict is entered in favor of Plaintiffs and against Defendant in the amount of \$38,273.18, as set forth in the foregoing adjudication under conclusions of law. A subsequent verdict shall be entered as to the amount of Attorneys' fees, interest and punitive damages, upon submission of the required documentation and calculations required in the foregoing adjudication.

BY THE COURT,

William S. Kieser, Judge

cc: Richard A. Vanderlin, Esquire
Scott L. Grenoble, Esquire
525 South Eighth Street; P. O. Box 49; Lebanon, PA 17042-0049
Judges
Christian J. Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)