IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

EVERETT CASH MUTUAL INSURANCE COMPANY, Plaintiff	: NO. 01-01,640 : CIVIL ACTION - LAW
vs.	:
BONNIE SUE GIBBLE, Defendant	:

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BONNIE SUE GIBBLE and JOHN A. GIBBLE, a minor, by BONNIE SUE GIBBLE, his Guardian, Counterclaim Plaintiff:	: NO. 01-01,640 : CIVIL ACTION – LAW
vs.	:
EVERETT CASH MUTUAL INSURANCE COMPANY, Counterclaim Defendant	:
vs.	:
DENNIS A. PERRY and KERRY L. PERRY, t/a PERRY & PERRY, Additional Defendants	:

FINDINGS OF FACT, CONCLUSIONS OF LAW AND VERDICT

A non-jury trial in this matter, a dispute arising out of a claim made by Defendant against her homeowner's insurance policy, was held June 9, 10, 11, 14 and 15, 2004. The claim was based on a furnace mishap that deposited soot throughout Defendant's home on or about February 1, 2001. Although arrangements to clean the home were made in February and March 2001, the home was never cleaned. During the trial, the parties agreed to make arrangements for the home to be cleaned at this time, and thereafter, to each hire an appraiser in order to attempt to resolve the personal property and structural damage claims through the

appraisal process under the policy. Although the action was originally initiated by Plaintiff as a declaratory judgment, Plaintiff seeking a declaration that it has no further obligations under the policy, Plaintiff now agrees this course of action will obviate the need to address its request. Therefore, remaining for decision are Defendant's claims that (1) Everett Cash Mutual's "refusal to indemnify the Gibbles' loss constitutes a breach of the policy", (2) Everett Cash Mutual and Perry & Perry were negligent in carrying out their duty of good faith and fair dealing, and (3) Everett Cash Mutual's actions in handling the claim show bad faith.[1]

FINDINGS OF FACT

1. Defendant Bonnie Sue Gibble is the owner of certain property located at 3893 Eleven Mile Road in Genesee, Pennsylvania. She and her youngest son, John, reside at the property.
2. During the relevant time period, the property was covered by a farmowner's insurance policy, Number FO801254, issued by Plaintiff Everett Cash Mutual.
3. On or about February 1, 2001, Defendant's gas furnace emitted soot into her home.
4. Defendant immediately contacted her insurance agent, Merle Graves, and reported a loss.
5. Mr. Graves went to Defendant's residence, viewed the damage, obtained some information from Defendant, and filled out a Property Loss Notice, a copy of which was faxed to Plaintiff. Mr. Graves wrote "Local cleaning service: Master Clean" in the remarks section of the form.
6. The "Person to Contact" listed on the notice was "Matthew Gibble". A telephone number was also listed on the notice. Defendant gave this information to Mr. Graves when he visited the home on February 1, 2001. Defendant's telephone had been disconnected due to non-payment.
7. The faxed Property Loss Notice received by Plaintiff from Mr. Graves was directed to the attention of Matt Thomas, a claims manager with Everett Cash Mutual. Mr.

[1] At trial, Defendant withdrew her claim under the Unfair Trade Practices and Consumer Protection Law. Further, the claim for intentional infliction of emotional distress is being deferred, to be heard in conjunction with the issue of non-property damages, in the event liability is found.

Thomas attempted to contact Defendant on February 2, 2001 (a Friday), by calling the telephone number listed on the Property Loss Notice, and when he was unsuccessful, he called Mr. Graves to obtain a different telephone number. The call was not answered and Mr. Thomas left a message on Mr. Graves' answering machine.

8. Defendant and her son, John, left the residence at some point and went to stay at her parents' residence near Lancaster, Pennsylvania. Three of Defendant's sons (other than John) live within ten miles of her residence. One of the three transported Defendant and John to Lancaster as Defendant's car was inoperable at the time. Defendant left the four burners on her gas kitchen stove burning to provide heat in the home.
9. Mr. Graves returned Mr. Thomas' call on February 5, 2001 (a Monday) and provided Defendant's parents' telephone number, which had not been included on the Property Loss Notice faxed to Plaintiff.
10. Mr. Thomas attempted to contact Defendant that same day, February 5, 2001, at her parents' residence by calling the number provided by Mr. Graves, but the call was not answered and Mr. Thomas left a message on the answering machine.
11. Defendant returned Mr. Thomas' call on February 9, 2001 (a Friday), and that same date Mr. Thomas contacted Dennis Perry, an independent adjustor. Mr. Perry agreed to handle the claim and Mr. Thomas immediately thereafter faxed to him a copy of the Property Loss Notice filed by Mr. Graves.
12. Mr. Perry called Defendant at her parents' residence that same date, February 9, 2001, and when Defendant indicated she did not want to use Master Clean to clean the home, Mr. Perry suggested ServiceMaster as he had prior experience with that company. Defendant indicated agreement with the use of ServiceMaster. Arrangements for Mr. Perry and a representative of ServiceMaster to inspect the home were made for the following Monday, February 12, 2001.
13. On February 12, 2001, Defendant, Mr. Perry and David Patterson of ServiceMaster met at Defendant's residence. Mr. Perry and Mr. Patterson inspected the residence and Mr. Patterson made notes to prepare an estimate for cleaning. Mr. Patterson told Defendant they wouldn't know what items needed to be replaced until after the cleaning was

completed. Mr. Perry gave Defendant a check for $1,000.00 and had her sign a Statement of Loss form on which it was indicated the $1,000.00 was an advance toward her claim for personal property and that the money would be deducted from the final payment. Mr. Perry informed Defendant she needed to keep receipts for any expenditures in order to be reimbursed, expecting her to use the money for personal items (such as toiletries), food and motel expense.

14. Mr. Perry suggested to Defendant she find a local motel in which to stay and asked her to give his card to the manager and have him call Mr. Perry so arrangements could be made to reimburse the motel for the expense as it was incurred. Defendant indicated she preferred to stay with her parents in Lancaster.
15. Mr. Perry looked at the furnace and then asked Defendant to call a technician to repair it. He explained to her that if poor maintenance had caused the problem, the cost of repair would not be covered,[2] but if something else had caused the problem, it might be. Defendant was also informed the house needed to be at least 60 degrees for the cleaning to take place. Mr. Perry observed the gas kitchen stove being used to heat the home and informed Defendant such was quite dangerous.
16. The cleaning was scheduled for February 21, 2001.
17. ServiceMaster's estimate was faxed to Mr. Perry on February 13, 2001. The estimate totaled $5,513.48.
18. On February 19, 2001, Defendant canceled the cleaning scheduled for February 21, 2001.
19. At some point between February 12 and February 21, Defendant informed Mr. Perry that she did not want to have the furnace repaired, that she was afraid of it and wanted to install wall units instead.
20. On February 21, 2001, Mr. Perry sent Defendant a check for $2,825.66, made out to her and First Citizens National Bank as mortgagee. The Loss Report and Statement of Loss accompanying the check indicated the payment was an additional advance payment and

[2] The cost to clean the furnace, as opposed to repairing it, is considered part of the "ensuing loss", that is, the damage to the home and contents, all of which is covered under the policy even if the problem resulted from poor maintenance.

that the claim was still open pending further inspection after cleaning. The amount of payment was based on the estimate prepared by Service Master, allowing 2/3 of that estimate, plus $400.00 for additional living expenses, less the deductible of $250.00 and the $1,000.00 advance payment previously issued. Mr. Perry also called Defendant that date and explained to her that he was sending the check and how he arrived at the amount.

21. On February 22, 2001, Mr. Perry wrote to Defendant to explain the $400.00 payment for additional living expense as representing the average rent in her area for a one-month period. Mr. Perry indicated in the letter that usually, the company pays the reasonable cost in excess of usual expense based upon receipts provided by the insured. Defendant had not provided any receipts. Mr. Perry informed Defendant he believed the $400.00 payment to be "sufficient to conclude the additional living expense portion" of her claim, indicating to her that "the entire matter should have been concluded within two weeks of the loss, but the complication of your delay is responsible for this taking longer." Mr. Perry informed Defendant that before the company would make any additional payments, she must (1) have the furnace repaired at her expense; (2) have the cleaning company clean the residence; (3) produce receipts for any contents items damaged beyond repair; and (4) produce receipts for any additional building repairs. Mr. Perry informed Defendant she might be entitled to further payments but that the burden of proving such entitlement rested with her.
22. Also on February 22, 2001, Mr. Perry wrote a letter to Mr. Thomas to report his handling of the claim thus far. In that letter he informs Mr. Thomas that Defendant "is allowing the four burner gas range to burn in order to avoid having the pipes freeze" and that the residence is "vacant for days on end." He asks Mr. Thomas to review the matter as an "increase in hazard."
23. Apparently in response to Mr. Perry's February 22, 2001, letter to Mr. Thomas, on February 28, 2001, the insurance company sent Defendant a letter noting their receipt of information that she was heating her home with the four burner gas stove and was not living there. The letter stated: "[w]hile we understand that you cannot live there until

such time as the soot is cleaned up, we must insist that you have the furnace repaired immediately." Defendant was informed that a 60-day notice of cancellation would be mailed March 1, 2001, but if she provided a copy of a receipt for repair of the furnace, the cancellation might be rescinded.

24. On February 28, 2001, Mr. Perry again called Defendant and discussed the claim with her in a conversation lasting approximately 53 minutes.
25. On March 5, 2001, the $2,825.66 check was deposited to Defendant's checking account at First Citizens National Bank.
26. On March 7, 2001, Defendant sent Mr. Perry a letter in which she outlined, but did not provide any receipt for, a living expense of $1280.00 for staying at her parents' house, calculated at $40.00 per day for 32 days. She stated "it was impossible to find any living arrangements other than going to my parents' house".
27. On March 9, 2001, Defendant wrote a letter to the insurance company in response to their letter of February 28, 2001, advising them that she had had a wall heater installed rather than having the furnace repaired, and that Mr. Perry had been advised of such on February 28, 2001. She indicated the home was now of suitable temperature for cleaning and that as soon as the bank released the check issued on February 21, she would call ServiceMaster to reschedule the cleaning.[3]
28. On March 12, 2001, Defendant sent Mr. Perry a letter and "partial list of personal property damaged beyond repair." She also states: "additional damaged personal property will be summited (sic) as I finish going through them." The itemized list is very detailed, contains many items that seem to be quite capable of cleaning, and appears to list replacement cost for each item. The total of cost listed is $11,482.34. Defendant asks Mr. Perry to "send a check for these items".
29. On March 14, 2001, Defendant withdrew $2,098.51 from her checking account by writing a check for "cash".

[3] The insurance company did respond to this letter, in the form of a notice dated March 23, 2001, nullifying any notice of cancellation based on the information provided by Defendant.

30. On March 16, 2001, Defendant contacted ServiceMaster and rescheduled the cleaning for March 21, 2001. Defendant was aware she would be asked for partial payment at the time of the cleaning.
31. On March 17, 2001, Defendant purchased a wall heater.
32. On March 19, 2001, an employee of ServiceMaster contacted Mr. Perry and informed him Defendant had rescheduled the cleaning for March 21. Mr. Perry told the employee Defendant had been paid 2/3 of the estimate to put toward the cleaning.
33. On March 21, 2001, a crew from ServiceMaster arrived at Defendant's home to perform the cleaning. Defendant was requested to sign a Statement of Authorization, which she did, and to remit $250.00, representing the deductible under her insurance policy. Defendant objected to paying the $250.00, stating that Mr. Perry had already accounted for the deductible in sending her the check on February 21, 2001. One of the crew members called the ServiceMaster office for direction and was informed that $2,500.00, not $250.00, needed to be collected. The Daily Job Sheet also notes "Please collect down payment $2500". This information was relayed to Defendant and she indicated that she did not have the money. The crew member then called the office again, and the Office Manager at ServiceMaster called Mr. Perry to inform him that Defendant was indicating she could not make the down payment and that they planned to leave without doing the cleaning, seeking further direction. Mr. Perry advised the employee that if Defendant was not going to make the down payment, he agreed they should leave.
34. On March 27, 2001, Defendant contacted Patrick Cassidy, a public adjustor, and on that date Mr. Cassidy wrote a letter to Mr. Perry informing him that Cassidy Public Adjustment had been retained by Defendant and that all checks issued on the loss should contain his name. Mr. Cassidy requested copies of Defendant's insurance policy, all payments made as of that time, and any information on contents or structural loss that had been provided by Defendant. Mr. Cassidy also notified Mr. Perry of Defendant's intent to make a claim for replacement cost.
35. On March 30, 2001, Mr. Cassidy and a contractor, Rick German, went to Defendant's home. Defendant signed a Public Adjustor Contract, retaining Mr. Cassidy to "advise

and assist" in the adjustment of her insurance claim. Mr. German inspected the home and took notes from which he then prepared an estimate of "structural damage" in the total amount of $62,799.54. This estimate was not provided to Mr. Perry or Everett Cash Mutual.

36. On March 31, 2001, Mr. Cassidy wrote a letter to the President of Everett Cash Mutual to notify the company of his representation of Defendant and make the same requests for copies as had been made in the March 27 letter to Mr. Perry. He again notified the company of Defendant's intent to make a claim for replacement value.
37. On April 4, 2001, Mr. Perry wrote to Mr. Cassidy, acknowledging receipt of his letter to the insurance company, and requesting a copy of his license and a copy of his contract with Defendant.
38. On April 5, 2001, Mr. Cassidy sent a copy of his license and a copy of his contract with Defendant to Mr. Perry.
39. On April 9, 2001, Mr. Perry sent Defendant a check for $3,299.17 and a Property Loss Worksheet detailing an allowance of $1,495.52 for painting, $1,403.65 for replacement of personal property, and $400.00 for dry cleaning. The check was marked "full & final payment" on the memo line. Also on April 9, 2001, Mr. Perry sent ServiceMaster a check for $499.00, comprising a $175.00 estimate fee and $324.00 service charge (incurred for travel time to and from Defendant's home on March 21, 2001).
40. On April 17, 2001, Mr. Cassidy wrote to Mr. Perry acknowledging Defendant's receipt of the April 9, 2001, check and expressing "total disagreement with your estimate on the damages." Mr. Cassidy informs Mr. Perry that he is "preparing estimates for both the Structure and Contents and will be forwarding these" as Defendant's claim for damages. No estimates were sent, however.
41. On April 26, 2001, Mr. Perry wrote to Mr. Cassidy, indicating the company's position that Defendant's lack of cooperation had been responsible for any delay, and that under ordinary circumstances, the claim could have been resolved within a week, supporting their position that no further payments for additional living expenses would be considered. He also stated that the items on Defendant's list of personal property were,

for the most part, included in the cleaning company's estimate or could have been sent to a drycleaner. He informed Mr. Cassidy that the company considered the claim to have been paid in full and the file closed.

42. On May 1, 2001, Mr. Cassidy wrote to Mr. Perry that he was not in agreement with the company's position, and indicated he was enclosing a "formal demand for the amount of damages to be determined by Appraisal as outlined in the policy."[4]
43. On May 7, 2001, Mr. Perry wrote to Mr. Thomas, sending him a copy of Mr. Cassidy's May 1, 2001, letter and informing Mr. Thomas of Defendant's demand for appraisal. He stated that he had not received "anything from him as to what is contested ." Mr. Perry asked Mr. Thomas for advice as to how to proceed.
44. On May 10, 2001, Mr. Perry wrote to Mr. Cassidy to inform him that Defendant's request for appraisal had been discussed with the company and rejected. Mr. Perry informs Mr. Cassidy that the request for appraisal is being rejected as no estimates of damages have been provided and without such, there is nothing to negotiate, and further, Defendant should have the home cleaned first if she is really interested in negotiating a settlement of the claim. Mr. Perry states: "I cannot pay on an ambiguous claim when I know that applied procedure would have corrected this condition within days of the loss. You and your client are not cooperating and therefore, not complying with the terms of the policy." Mr. Perry relates the company's continued position that the claim is considered to have been paid in full.
45. Defendant's estimates for personal property damages and structural damages had been prepared by the time of the May 10, 2001, letter from Mr. Perry to Mr. Cassidy but were not sent to Mr. Perry.
46. On August 7, 2001, Defendant's attorney, Richard Vanderlin, wrote a letter to the President of Everett Cash Mutual, informing him of Mr. Vanderlin's representation of Defendant, her position that Mr. Perry's handling of the claim had been "outrageous" and her request that the claim be reopened, that the company provide her with

[4] It does not appear the suggested enclosure was actually enclosed, as the "Agreement for Submission to Appraisal" is dated the next day, May 2, 2001, and in his response letter, Mr. Perry indicates such was not enclosed.

alternative living arrangements and proceed toward a resolution of the loss. Mr. Vanderlin indicates Defendant will be filing a lawsuit within thirty days if the matter is not immediately rectified.

47. Plaintiff filed the instant declaratory judgment action on October 2, 2001, seeking a declaration that the company had fulfilled its obligations under the contract. Defendant counterclaimed for damages on the basis of several theories, alleging a complete loss, and joined Perry & Perry as an additional defendant.
48. Soot claims are common, and the typical procedure followed by insurance companies is to have the residence and personal property cleaned by a professional cleaning company and then replace those items that cannot be cleaned, and repair (such as painting) structural damage that is not remedied by cleaning. Further, the furnace must be repaired before cleaning is undertaken so that after cleaning, the same malfunction will not be repeated.
49. There is nothing to indicate Defendant's soot claim should have been handled differently; that is, that the usual approach, cleaning and then review and repair, would have been inappropriate.
50. Soot claims are usually resolved within two weeks, and the insured incurs only the deductible, all other expenses being reimbursed upon provision of receipts.
51. Under the policy, the company does not pay for "loss which results from wear and tear, marring, deterioration, inherent vice, latent defect, mechanical breakdown, rust, wet or dry rot, corrosion, mold, contamination, or smog."
52. Under the policy, the insured must cooperate with the company in investigating and settling the claim.
53. Under the policy, the company must pay an insured loss within thirty days after an acceptable proof of loss is received and the amount of the loss is agreed to in writing.
54. Under the policy, when requested to do so by the company, the insured must provide within sixty days of the request a signed, sworn proof of loss which includes detailed estimates for repair and detailed statements of the personal property involved in the loss.

55. Under the policy, the insured must provide receipts for additional living costs.
56. Under the policy, if the insured and the company do not agree "as to the value of the property or the amount of the loss", each will select a competent appraiser within twenty days after receiving a written request from the other. An umpire will be selected and the decision of two out of three of these will be binding as to the amount of the loss.
57. Under the policy, the insurance company was entitled to have the loss mitigated through cleaning.
58. Defendant never provided any receipts for additional living expenses, and in fact did not pay her parents $1280.00.[5] Defendant has submitted as an exhibit, copies of receipts for various purchases made over a period of time and Plaintiff has agreed to reimburse Defendant in the amount of $830.00 based on these receipts.[6]
59. Defendant did not provide the company with a detailed estimate for structural repair or a detailed statement of the personal property involved in the loss, except through the discovery phase of litigation.
60. The $1000.00 advance was not required under the policy.
61. The $400.00 allowance toward living expenses was not required under the policy, as no receipts had been provided.
62. The $1,495.52 allowance toward painting was not required under the policy, as prior cleaning had not been performed.

CONCLUSIONS OF LAW

1. Plaintiff did not breach the contract of insurance.
2. There is no common law action for negligence in carrying out the duty of good faith and fair dealing.
3. Plaintiff's actions in handling the claim do not support a finding of bad faith.

[5] According to Defendant's testimony, she paid them "what she could".

DISCUSSION

Breach of Contract

In her counter-claim, Defendant claims Everett Cash Mutual breached the insurance contract by "refusing to indemnify" the loss. In her closing statement, she argues the breach resulted from the company's refusal to participate in the appraisal process and in sending her a check without her agreement. She also claims to have fulfilled all of her obligations under the insurance contract. The Court does not agree with these claims.

The policy clearly sets forth the insured's obligations in making a claim: provide receipts for additional living expenses, cooperate with the insurance company and take all reasonable steps to protect covered property to avoid further loss. As was explained to Defendant by Mr. Perry, what this means with respect to the instant claim is that she must have the furnace repaired and make arrangements to have the structure and personal property cleaned before the replacement value coverage is called into play. Further, with respect to the cost of living elsewhere while the property is being cleaned, she must make reasonable arrangements and then provide receipts for the cost of such. Finally, the furnace repair and cleaning should be arranged for promptly in order to minimize the cost of additional living expenses, as well as reduce the chance of further property damage.

Without even considering the delay occasioned by Defendant's choice to stay with her parents some distance away rather than finding a local motel, and her choice to replace the furnace with wall units rather than having it repaired,[7] the Court believes Defendant's failure to have the property cleaned put a roadblock in the insurance company's ability to resolve the claim. Defendant immediately sought replacement value of every item in her house, and much of the structure as well, without giving the company the benefit of mitigating the damage by cleaning those items which could be cleaned. She was provided with funds with which to make the required down-payment for cleaning but apparently chose to use the money for something else. She did not provide receipts for living expenses so her claim that she had to use the

[6] These receipts were not provided to Plaintiff except as an exhibit during the course of litigation.
[7] The Court is also not considering the delay in initiating communications between Defendant and Plaintiff, although it is determined Defendant was responsible for such delay.

money for living expenses rings hollow: had she provided receipts and promptly paid for cleaning, only her deductible would have been incurred.

With respect to the company's refusal to participate in the appraisal process, while Defendant makes much of the company's failure to specifically tell Mr. Cassidy it would participate in the appraisal process if he would only send the promised estimates, she misses the point: the company was entitled to have the property cleaned before proceeding to estimation of damages and appraisal in the event of a disagreement.

Finally, as far as the check sent to Defendant which was marked "full and final payment" even though Defendant had not agreed to the amount or that the claim was complete, the Court cannot ignore the fact that Mr. Perry need not have even sent the check in the first place. While it may have been intended to send Defendant a message that the company was not willing to consider simply replacing all of her personal property and much of the structure of her house without proof such was necessary, which indeed was explained to Mr. Cassidy in Mr. Perry's letter of May 10, 2001, and while it perhaps could have been handled differently, the Court cannot find such to constitute a breach of contract, in light of the surrounding circumstances and Defendant's own breach.

Negligence

Defendant claims Everett Cash Mutual and Dennis Perry were negligent in carrying out their duty of good faith and fair dealing. There is no common law tort remedy in Pennsylvania for bad faith on the part of insurers, however. Mishoe v. Erie Insurance Company, 762 A.2d 369 (Pa. Super. 2000). Therefore, the Court will simply consider Defendant's bad faith claim under Section 8371.

Bad Faith

Defendant claims Everett Cash Mutual "acted in bad faith" and seeks relief under Section 8371 of Title 42, which provides as follows:

> **Section 8371. Actions on insurance policies**
>
> In an action arising under an insurance policy, if the court finds that the insurer 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. Section 8371. While not defined in the statute, the term "bad faith" has been attributed a particular meaning for purposes of Section 8371:

> "Bad faith" on part of 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 v. Prudential Property and Casualty Insurance Company, 649 A.2d 680 (Pa. Super. 1994)(quoting Black's Law Dictionary at 139 (6th ed. 1990)). Thus, to recover under a claim of bad faith, an insured must show by clear and convincing evidence that the insurer did not have a reasonable basis for denying benefits under the policy and that the insurer knew or recklessly disregarded its lack of reasonable basis in denying the claim. Id.; Booze v. Allstate Insurance Company, 750 A.2d 877 (Pa. Super. 2000).

Just as this Court cannot find a breach of the insurance contract, the Court also cannot find that Everett Cash Mutual did not have a reasonable basis for denying Defendant's requests for payments in the instant matter. To the contrary, Mr. Perry explained to Defendant

numerous times that the furnace needed to be repaired, that it was her obligation under the policy to have the furnace repaired, that the home and contents needed to be cleaned, that it was her responsibility as the homeowner to make the arrangements for such, and that she needed to provide receipts for additional living expenses in order to be reimbursed for such, all of which was in accordance with the terms of the policy. Mr. Perry provided Defendant with the funds needed to have the home cleaned and to purchase items which might be needed before the cleaning could be performed. In response, Defendant did not have the furnace repaired, delayed the process several times, failed to pay for the cleaning, and instead presented Mr. Perry with a list of personal property for which she sought replacement value, totaling over $11,000.00, and a demand for reimbursement of an alleged rent expense for staying at her parents for 32 days, totaling $1280.00. The Court finds the company's unwillingness to simply pay what Defendant asked for, without providing receipts or having the property cleaned, a reasonable position.

The Court also finds reasonable the company's position it was not willing to participate in the appraisal process without the benefit of having the property cleaned first. Even Mr. Cassidy admitted the company was entitled to such. With respect to the check marked as "full and final payment", such was apparently issued when it became obvious Defendant was not planning to have the property cleaned. Defendant seeks to support a finding of bad faith on the issuance of such check without her agreement, and on the tone of Mr. Perry's letters. While things do seem to have broken down somewhat once Mr. Cassidy entered the picture, and it appears to the Court that communications became more difficult because of the poor working relationship between Mr. Perry and Mr. Cassidy, the Court cannot find any actions on the part of the company which would support a finding of bad faith. The fact remains the company had a reasonable basis for its course of action, even if it did not pursue that course of action in the most congenial way.

Defendant also asks this Court to base a finding of bad faith on alleged violations of the Unfair Insurance Practices Act. 40 Pa.C.S. Section1171.1 et seq. The federal courts have indicated that a violation of the UIPA is not a per se violation of the bad faith standard and that it is only the Terletsky standard itself that allows one to determine whether a violation of the

former is of any relevance, Dinner v. United States Automobile Association Casualty Insurance Company, 29 Fed.Appx. 823 (3rd Cir. Pa. 2002), and, referencing Dinner, that the relevance of the UIPA to bad faith claims under Section 8371 has been questioned in our circuit. Berks Mutual Leasing Corp. v. Travelers Property Casualty, 2002 U.S. Dist. LEXIS (E.D. Pa. 2002). The Court will nevertheless review the alleged violations with the Terletsky standard in mind.

First, Defendant alleges a failure to complete investigation of the claim within thirty days, referring to the furnace malfunction. The Court assumes Defendant is looking to the company's failure to itself conduct an investigation into the cause of the malfunction. Mr. Perry viewed the furnace and was not able to himself determine the cause of the soot, and therefore instructed Defendant to call a technician to do so.[8] Since the policy does not provide coverage for poor maintenance or mechanical breakdown, and does require an insured to support a claim with a detailed estimate for repair (which would show that the loss was due to a covered event, if in fact that were true), the Court finds the company's position that Defendant was responsible to have the furnace looked at by a technician, a reasonable one under the terms of the policy.

Next, Defendant alleges a refusal to pay claims without conducting a reasonable investigation based upon all available information. The Court finds Mr. Perry did conduct a reasonable investigation based on all available information, and to the extent there was other information, it was not the company's responsibility to obtain such. Defendant did not provide the company with any relevant information upon which any further payments could have been based.

Next, Defendant alleges a failure to promptly provide a reasonable explanation of the basis for the offer of a compromise settlement, referring to the company's refusal to participate in the appraisal process. As explained above, however, since the company was entitled under the policy to have the property cleaned before proceeding to appraisal, and since Defendant was provided with the funds for cleaning but did not follow through on her obligation in that regard, Mr. Perry's explanation to that effect, in his May 10, 2001, letter to Mr. Cassidy, was a "reasonable explanation of the basis for the offer."

[8] He explained to her that if poor maintenance had caused the problem, the cost of repair would not be covered, but if something else had caused the problem, it might be.

Next, Defendant alleges the company did not attempt in good faith to effectuate a prompt, fair and equitable settlement when liability is reasonably clear. The Court finds this particular alleged violation of the Act to be stated in terms so vague as to encompass Defendant's entire counterclaim for bad faith. In any event, liability was not reasonably clear, and in fact, Defendant's non-cooperation prevented a final determination of liability.

Finally, Defendant alleges a violation by "compelling persons to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts due and ultimately recovered in actions brought by such persons." Defendant apparently has overlooked the "ultimately recovered" language in this particular provision, as the instant action has not provided Defendant with any more than what has been offered by the company.

In sum, the Court finds no bad faith. The insurance company may not have taken Defendant under its wing, so to speak, in the manner Defendant argues it should have, by making arrangements for her or paying for services directly rather than taking the chance she might misuse funds provided, and Mr. Perry may have shown a poor attitude toward Mr. Cassidy, but such does not constitute bad faith. The company treated Defendant like an adult, and it was perfectly reasonable to do so.

VERDICT

AND NOW, this 6th day of July 2004, for the foregoing reasons, the Court finds in favor of Plaintiff and against Defendant with respect to Counts I, II and V of Defendant's counter-claim, and in favor of Additional Defendant and against Defendant with respect to Count I of the Complaint Against Additional Defendant. Count IV of Defendant's Counter-claim and Count III of the Complaint Against Additional Defendant (the Unfair Trade Practices and Consumer Protection Law claims) are dismissed as having been withdrawn. Finally, Count III of Defendant's counter-claim and Count II of the Complaint Against Additional Defendant (the Intentional Infliction of Emotional Distress claims) are dismissed in light of the Court's

disposition of the other claims. Any further payments[9] and credit for payments thus far shall be determined through the Appraisal Process.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Tammy Weber, Esq.
Richard Vanderlin, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

[9] This includes the company's agreement to pay Defendant an additional $830.00 based on the receipts provided at trial.