

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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

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BONNIE SUE GIBBLE and JOHN A.	:	NO. 01-01,640
GIBBLE, a minor, by BONNIE SUE	:	
GIBBLE, his Guardian,	:	CIVIL ACTION – LAW
Counterclaim Plaintiff:	:	

vs.

EVERETT CASH MUTUAL	:	
INSURANCE COMPANY,	:	
Counterclaim Defendant	:	

vs.

DENNIS A. PERRY and KERRY L.	:	
PERRY, t/a PERRY & PERRY,	:	
Additional Defendants	:	Motion for Post Trial Relief

OPINION AND ORDER

Before the court is Defendant’s Motion for Post Trial Relief, filed July 19, 2004, after the Court entered a Verdict in favor of Plaintiff and against Defendant on July 6, 2004. Argument on the motion was scheduled for September 16, 2004. At the time of argument, counsel requested the Court issue its decision based on the motion, Plaintiff’s response filed on July 29, 2004, and the brief submitted by Defendant on August 23, 2004.

First, Defendant contends the Court erred in precluding the expert testimony of Patrick Cassidy. The reasons for the Court’s ruling may be found in this Court’s Opinion issued May 14, 2004, and the Court finds it unnecessary to address the matter further herein.

Next, Defendant contends the Court erred in precluding the expert testimony of Edward Adams. Mr. Adams was offered by Defendant as an expert with respect to insurance practices and indicated he had worked for Nationwide for thirty-five years, was now retired and currently works as a consultant to attorneys. Defendant planned to have Mr. Edwards testify that Plaintiff had not followed “best claims practices”, in support of her bad faith claim. Mr. Edwards indicated, however, in response to questioning by the Court, that “best claims practices” was not a standard generally accepted in the insurance industry. The Court therefore determined his opinion in that regard would be irrelevant to the actions taken by Plaintiff in the instant matter, and excluded his testimony on that basis. See Checchio by & Through Checchio v. Frankford Hospital-Torresdale Division, et al., 717 A.2d 1058 (Pa. Super. 1998)(expert testimony must relate to deviation from accepted standards). Upon further review, the Court sees no error in that regard.

Next, Defendant contends the Court erred in determining there is no common law tort remedy in Pennsylvania for bad faith on the part of an insurer, and in consequently refusing to address her claim of negligence in the carrying out of a duty of good faith and fair dealing. The Court is simply following recent Pennsylvania appellate authority, however, and cannot determine otherwise. See Mishoe v. Erie Insurance Company, 762 A.2d 369 (Pa. Super. 2000).

Next, Defendant contends the Court erred in determining that in order to recover under a claim of bad faith, an insured must show 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. Again, the Court is simply following Pennsylvania appellate authority in so determining. See Terletsky v. Prudential Property and Casualty Insurance Company, 649 A.2d 680 (Pa. Super. 1994); Booze v. Allstate Insurance Company, 750 A.2d 877 (Pa. Super. 2000).

Next, Defendant contends the Court erred in determining that standards imposed by the Pennsylvania Unfair Insurance Practices Act “cannot be considered” in a statutory bad faith action against an insurance company. The Court notes it did not determine that such standards could not be considered but, rather, simply noted the federal courts’ indication that (1) a violation of the UIPA is not a per se violation of the bad faith standard, Dinner v. United States

Automobile Association Casualty Insurance Company, 29 Fed.Appx. 823 (3rd Cir. Pa. 2002), and (2) the relevance of 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 nevertheless proceeded to discuss the alleged UIPA violations in the context of Defendant's bad faith claim. If by the instant contention of error Defendant means to say the Court should have found violations of the UIPA to be per se violations of the bad faith standard, such is simply not in accordance with appellate authority.

Finally, in the remaining contentions of error, Defendant challenges the factual findings made by the Court and the conclusions drawn therefrom. The Court will not address each of these individually but will merely note its belief that (1) the factual findings made were supported by the evidence and (2) those findings which Defendant seeks to have the Court make were not so supported. With respect to the conclusions drawn from the facts as found, the Court believes the reasons therefor are adequately set forth in the Opinion in support of the verdict and will not comment further.

ORDER

And now, this 29th day of September 2004, for the foregoing reasons, Defendant's Motion for Post Trial Relief is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

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