

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ADAM M. CORTER and BECKY S. CORTER,	:	NO. 14 – 00,191
Plaintiffs	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
JOSEPH O. SMITH, t/d/b/a Gleghorn & Smith	:	
Insurance Agency,	:	
Defendant	:	Motion in Limine

**OPINION AND ORDER**

Before the court is Defendant’s motion in limine, filed May 14, 2015. Argument was originally scheduled for August 4, 2015, but was heard at the time of the pre-trial conference on June 12, 2015. Plaintiffs were given the opportunity to file a responsive brief and such was filed June 29, 2015. The matter is now ripe for decision.

In October 2012, Plaintiffs entered an article of agreement with a seller to purchase a house and, pursuant to that agreement’s requirement that they do so, attempted to obtain from Defendant “fire and extended coverage insurance for the premises in an amount of at least replacement coverage”.<sup>1</sup> According to their Amended Complaint, they were offered only renter’s insurance on their personal property. A fire subsequently destroyed the house, to which Plaintiffs had made substantial improvements, and Plaintiffs now make a claim against Defendant for replacement cost coverage, on the basis that Defendant breached a duty to offer such.

In the instant motion in limine, Defendant seeks to exclude the testimony of two witnesses offered by Plaintiffs: Patrick Cassidy, who is being offered as an expert witness on liability and damages, and Brennan Glantz, P.E., who is being offered as an expert witness on damages. Defendant claims that Mr. Cassidy does not possess the requisite qualifications and also that he has a financial interest in the outcome of the case. As for Mr. Glantz, his opinion is not relevant, Defendant suggests, and therefore should be excluded.

---

<sup>1</sup> See Article of Agreement, Paragraph 2, attached as Exhibit A to Defendant’s motion.

Patrick Cassidy, a licensed public adjuster, does not hold an insurance producer's license and Defendant therefore posits that he is not qualified to render an opinion as to the standard of care of an insurance agent. Plaintiffs suggest that his experience as a claims adjuster investigating in excess of fifty thousand homeowner property insurance claims qualifies him to "render opinions on minimum replacement cost value and the existence of insurance that could have covered the Corters' interest."<sup>2</sup> The court finds it unnecessary to decide whether such experience is sufficient, however, as Mr. Cassidy's pecuniary interest in the matter disqualifies him as an expert witness.

Plaintiffs entered a contingent fee agreement with Mr. Cassidy whereby, in exchange for his services advising and assisting in the adjustment of their claim, Mr. Cassidy will receive 10 per cent of any amounts recovered. As this court noted in Everett Cash Mutual Insurance Co. v. Gibble, Lycoming County No. 01-01,640 (Anderson, J., May 14, 2004), which also addressed a motion to exclude Mr. Cassidy's testimony for the same reason,

"The testimony of interested lay witnesses about historical facts generally does not pose a risk of the same proportion as that of an expert with a contingent financial interest. The concealment of a contingent financial arrangement with a witness would be unconscionable. With the disclosure of such an arrangement, an opinion proffered by an expert would likely be so undermined as to be deprived of any substantial value."

*Quoting* Creative Dimensions in Management, Inc. v. Thomas Group, Inc., 1999 U.S. Dist. LEXIS 2757 (E.D. Pa. Mar. 11, 1999). Since in this case, as in Everett Cash Mutual, Mr. Cassidy will be entitled under the contingent fee agreement to a percentage of any damages awarded for Plaintiffs' loss, the Court cannot help but conclude that any opinion offered by Mr. Cassidy would be "so undermined as to be deprived of any substantial value". Thus, similar to the ruling in Everett Cash Mutual, Mr. Cassidy will not be permitted to offer expert opinions at trial in this matter.

Brennan Glantz is a registered professional engineer who is being offered as an expert on the matter of the cost of reconstructing the home. Defendant objects that his opinion,

---

<sup>2</sup> See Plaintiffs' Brief in Opposition, on the fourth (unnumbered) page.

contained in a report dated April 15, 2015,<sup>3</sup> is not relevant as it speaks to the cost of construction *today*, contending that the relevant figure is the cost of construction in the fall of 2012 (when the insurance was sought). Defendant also notes the lack of a discussion of “replacement cost value from an insurance writing standpoint”.<sup>4</sup>

Plaintiff has addressed the first issue by the filing of a supplemental report, which addresses the cost of construction in the fall of 2012.<sup>5</sup>

With respect to the second issue, the court believes the relevance of the proffered opinion depends on whether that type of information (the opinion of a construction expert) would have been used by the agent in determining the appropriate amount of the coverage. Plaintiffs’ expert Gary Miller “determined that the rebuild cost to replace the subject property was in excess of \$1 million dollars (sic)”, including in his report “2 replacement cost samples, that were prepared using 2 insurance carriers’s (sic) ‘Replacement Cost Estimating’ software”.<sup>6</sup> He opines that Defendant was negligent in failing to “determine and establish an appropriate ‘Replacement Cost’ employing a Rebuild Cost Estimating Software program, which gives consideration to the concept and loss settlement provision of ‘Like Kind and Quality’ – the necessary labor and material to rebuild the unique and older subject property”<sup>7</sup>, suggesting that such software would have been used. He also states, however, that he would have recommended to Plaintiffs “that they consulted with an architect and engineer to understand what it would have cost to rebuild the subject property in 2012, as the Replacement Cost Estimating Tools available to insurance agencies are not always thorough and accurate in determining the appropriate limit”.<sup>8</sup> In light of this evidence that a construction expert’s opinion would have been an appropriate resource in establishing the limit of coverage in this matter, Mr. Glantz’s opinion is relevant. Therefore, such will not be precluded.

---

<sup>3</sup> See Report of Brennan Glantz, P.E., attached as Exhibit E to Defendant’s motion.

<sup>4</sup> See Defendant’s Brief in Support, page 8.

<sup>5</sup> See Addendum to Report of Brennan Glantz, P.E., attached as Exhibit A to Plaintiff’s Motion to File Supplemental Expert Report..

<sup>6</sup> See Report of Gary Miller, attached as Exhibit A to Plaintiffs’ Pre-Trial Statement.

<sup>7</sup> Id.

<sup>8</sup> Id.

**ORDER**

AND NOW, this        day of July 2015, for the foregoing reasons, Defendant's motion in limine is granted in part: Mr. Cassidy shall not be permitted to offer expert opinions at trial in this matter. The remainder of the motion is denied.

BY THE COURT,

Richard A. Gray, Judge

cc: Bernard F. Cantorna, Esq.  
Bryant & Cantorna, P.C.  
1901 East College Avenue  
State College, PA 16801  
Christopher J. Conrad, Esq.  
Marshall Dennehey  
100 Corporate Center Drive, Suite 201  
Camp Hill, PA 17011  
Gary Weber, Esq.  
Hon. Richard Gray