IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

BRIAN HUBER, Plaintiff, v. AMERICAN STATES INSURANCE COMPANY, VERRICO INSURANCE AGENCY, INC., and US CASUALTY CORPORATION, Defendants.	)	CIVIL DIVISION GD 14-017534 (Consolidated) GD 16-12745 **OPINION IN SUPPORT OF VERDICT** JUDGE PATRICK M. CONNELLY
JANINE HUBER, Plaintiff, v. AMERICAN STATES INSURANCE COMPANY, VERRICO INSURANCE AGENCY, INC., and US CASUALTY CORPORATION, Defendants.		Copies Served by First Class Mail upon: **Counsel for Plaintiffs:** Peter D. Friday, Esquire FRIDAY & COX, LLC 1405 McFarland Road Pittsburgh, PA 15216 **Counsel for Defendants Verrico Insurance Agency, Inc., and US Casualty Corporation:** Jason G. Wehrle, Esquire MINTZER, SAROWITZ, ZERIS, LEDVA & MEYERS, LLP 2605 Nicholson Road Building V, Suite 5100 Sewickley, PA 15143 **Counsel for Defendant American States Insurance Company:** Edward A. Schenck, Esquire CIPRIANI & WERNER, P.C. 650 Washington Road – Suite 700 Pittsburgh, PA 15228

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

BRIAN HUBER and JANINE HUBER,	)	CIVIL DIVISION
	)	
Plaintiffs,	)	GD 14-017534
	)	
v.	)	
	)	
AMERICAN STATES INSURANCE COMPANY, VERRICO INSURANCE AGENCY, INC., and US CASUALTY CORPORATION,	)	
	)	
Defendants.	)	

OPINION

This matter was heard by the court sitting without a jury. Following trial, we entered an interim order, finding in favor of Plaintiffs in their claims against American States Insurance Company, and in favor of Defendants Verrico Insurance Agency and US Casualty Corporation. The court requested the Plaintiffs to submit a petition for attorneys' fees and Defendant American States Insurance Company to submit its response to said petition. Having received all necessary pleadings and briefs, we enter this opinion in support of our non-jury verdicts, also entered on this day.

FACTUAL BACKGROUND

These consolidated actions originated as claims for Underinsured Motorist ("UIM") benefits, after the Plaintiffs sustained injuries in a motor vehicle accident that took place on July 18th, 2014. At that time the Plaintiff, Brian Huber, was a named insured under a policy of motor vehicle insurance issued by the Defendant, American States Insurance Company ("American States"), said policy having been purchased through the Defendant, Verrico Insurance Agency, Inc. ("Verrico"). A dispute arose as to the amount of UIM coverage available under the policy to

both Brian Huber ("Brian") as well as Janine Huber ("Janine"), who was also entitled to UIM benefits based on her status as a passenger in Brian's car at the time of the accident.[1]

Plaintiffs initiated separate actions with this court, which were consolidated at this docket number. In addition to a breach of contract claim for UIM benefits, Brian also filed claims for 1) bad faith damages under 42 Pa.C.S.A. §8371, 2) violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL") and 3) fraud. Janine filed a separate action, which included counts for breach of contract, bad faith, and UTPCPL violations.

The underlying coverage dispute involves a question as to whether Brian Huber was required to execute a new writing electing UIM limits lower than his liability limits, after increasing his liability limits under the policy through the purchase of an umbrella policy that afforded liability coverage up to $500,000. At the time he originally purchased the policy, the policy included liability limits of $100,000 per person, $300,000 per accident. At that time, a form was executed, purportedly by Brian, in which UIM limits of $100,000 per person, $300,000 per accident, were specifically requested. The policy insured three vehicles and included the stacking option.

The coverage dispute involved an interpretation of 75 Pa.C.S.A. § 1734, which generally requires that an insured must request, *in writing*, UIM limits that are equal to or less than the liability limits. The Hubers took the position that a new writing was required when Brian purchased the umbrella policy and increased the liability limits to $500,000, and therefore entitled him to $500,000 in stacked UIM benefits. American States took the position that the form executed by Brian at the inception of the policy, which specifically requested UIM limits in

[1] Although since married, Brian and Janine were not married at the time of the accident.

the amount of $100,000 per person, $300,000 per accident, was sufficient to satisfy the §1734 writing requirement, and therefore his UIM limits remained at $100,000/$300,000.

Due to American States' refusal to pay the additional UIM coverage, the Hubers brought these respective actions. The coverage issue was ultimately resolved by the Honorable Robert Colville, by way of a Memorandum and Order of Court dated October 10th, 2018, in which he ruled that American States *was* required to obtain a new, written request for lower UIM limits at the time the umbrella policy was purchased. He therefore ordered American States to provide UIM benefits under the policy in the amount of "$500,000 combined single limit, stacked on three vehicle[s], for a total of $1,500,000." American States attempted to have the order declared final pursuant to Pa.R.A.P. 341, in order to have Judge Colville's decision reviewed by the Superior Court, however that request was denied. Thereafter, the parties engaged in settlement negotiations, including mediation, at which time a settlement of the underlying UIM claim was reached, with the balance of the available UIM benefits divided between the Hubers. Although the underlying UIM claims were settled, the Hubers' remaining claims proceeded to be heard by this court.

ANALYSIS AND DISCUSION

Bad faith claim against American States

Claims of bad faith on the part of insurance companies in the claims handling process are governed by 42 Pa. C.S.A. 8371. In order to recover in a bad faith action, the plaintiff must present clear and convincing evidence (1) that the insurer did not have a reasonable basis for denying benefits under the policy and (2) that the insurer knew of or recklessly disregarded its lack of a reasonable basis. Proof of an insurance company's motive of self-interest or ill-will is not a prerequisite to prevailing in a bad faith claim under Section 8371, although such evidence

is probative of reckless disregard. *Rankosky v. Washington National Insurance Company*, 170 A.3d 364 (Pa. 2017). Bad faith conduct also includes "lack of good faith investigation into facts, and failure to communicate with the claimant." *Romano v. Nationwide Mut. Fire Ins. Co.*, 646 A.2d 1228, 1232 (Pa. Super. 1994), cited in *Mohney v. American General Life Ins. Co.*, 116 A.3d 1123,1131 (Pa. Super. 2015). Bad faith claims are fact specific and depend on the conduct of the insurer *vis à vis* the insured. *Mohney*, supra.

A Bad Faith analysis in the instant matter must necessarily begin with the actions, or inactions, of the representative of American States. In this case, claims representative Elizabeth Honeycutt testified on behalf of American States at trial. She was assigned to handle the UIM portion of the claim (TT 306), and her testimony is clear that she had initial questions and concerns regarding the amount of UIM coverage that was available to Mr. Huber, based upon the fact that the UIM limits were lower that the liability limits. To address her concerns, she 1) requested additional information from Gold Services (TT 308, 309), 2) contacted the insurance agent to determine if any sign-down forms existed (TT 312), and 3) recognized there were "questions" with the forms provided by the agency (TT 323).

Although not an attorney, Ms. Honeycutt did have some personal knowledge and opinions on Pennsylvania law as it pertains to the requirements for an insured to request UIM limits lower than the liability limits of the policy. ("[I]f he wanted to change to those limits for any reason, he needed to request those in writing himself." TT 299; "What I'm saying is whatever election he makes monetarily on that form, the monetary request that he made on that form was $100,000/$300,000, and the form contained a statement that said that selection of $100,000/$300,000 would remain in effect until requested in writing to be changed." TT 300; "The initial form was completed at the inception of the policy. If we made changes to

accommodate his request for a quote on the umbrella policy, there are no forms required at that time." TT 310.) It is obvious that Ms. Honeycutt has a general understanding and working knowledge of the MVFRL in general, and on sections 1731 and 1734 in particular. However, she is not a lawyer, and despite that knowledge, Ms. Honeycutt thought it prudent to request a legal opinion, based on the known facts that she had at the time, to assist in determining what coverage Mr. Huber was entitled to under the facts as presented. Ms. Honeycutt identified the coverage issue, and on September 2nd, 2014, presented the following legal question to John Baginski, Esq., in-house counsel for American States:

> Auto policy was originally written with $100,000/$300,000 liability limits and the same for UM/UIM. Later the insured requested an umbrella policy, and the liability limits were increased to 500K as required for underlying coverage. There is no specific requirement for UM/UIM limits when an umbrella was written, so they remained at $100,000/$300,000. Is there any statutory requirement for [us to] offer matching UM/UIM limits when the liability limits are increased to more than umbrella? Can you provide a copy, if so, please.

TT 324-325.

The question generally summed up the coverage issue facing American States at that point. Although Ms. Honeycutt had an understanding of what she thought the answer was, she wanted to make sure that she was correct. ("Is there anything required of UIM to support the umbrella? I didn't think so obviously, because umbrella has nothing to do with UIM, at least not in Pennsylvania. But I was making sure that was the case." TT 325). Ms. Honeycutt obviously recognized the coverage issue that she faced and she summarized the same for counsel. Presumably, she would await a response, and act accordingly.

Unfortunately, for reasons that were never explained at trial, counsel never responded to her query, despite two separate inquiries. (Q: Do you know if Mr. Baginski ever provided you with an answer to your question? A: To my recollection, no, I did not get a final answer from

John. TT 326). Despite her admitted uncertainty as to what affect the umbrella purchase had on the UM/UIM limits, she never received an answer from counsel, and proceeded to deny the balance of the Hubers' claim, without legal opinion, advice or counsel.

It wasn't until October 12, 2018, that Ms. Honeycutt received an answer to her question, when The Honorable Robert Colville answered in the affirmative, finding that there was a statutory requirement to offer matching UM/UIM limits when liability limits were increased due to the purchase of the umbrella policy.[2] Unfortunately, the answer came over four years after it was first posed.[3] Again, the court finds that Ms. Honeycutt recognized the coverage issue that she was facing at the time, and because she was not sure of the answer, requested an opinion from counsel. Despite never receiving that legal opinion, the additional coverage was denied to the Hubers for over four years.

As noted above, bad faith can be found when an insured demonstrates by clear and convincing evidence that an insurer lacked a reasonable basis for its denial of coverage, and that the insurer knew or recklessly disregarded its lack of reasonable basis in denying the claim. *Rankosky, supra.* Here, the court finds that the Hubers have met their burden. Initially, it should be noted that no reasonable basis for the denial of the claim was presented at trial. It seems that Ms. Honeycutt simply relied on the initial request for UIM benefits of $100,000/$300,000, and accepted that as being the coverage, despite the numerous questions surrounding the claim. In fact, she acknowledged the questions surrounding the claim by reaching out to both Gold

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[2] Ms. Honeycutt's query to Attorney Baginski in 2014 was essentially the identical question that Judge Colville was called upon to answer in 2018: "[W]hether American States was required to have Brian Huber sign a new selection of UIM coverage form at the time that he increased his liability coverage limit on his policy to $500,000."

[3] The court is not commenting on whether or not Judge Colville's answer to the question was correct, and understands that American States attempted to appeal the decision. The court is simply recognizing that Ms. Honeycutt asked the question, and without ever receiving the formal opinion that she requested, proceeded to deny the additional coverage to Mr. Huber for over four years.

Services and to Attorney Baginski. However, the record is completely void of any answers to those questions, which may have provided a reasonable basis to deny the claim. Therefore, the court finds that the Hubers have shown by clear and convincing evidence that American States had no reasonable basis to initially deny the claim.

Next, the Hubers must show that American States knew or recklessly disregarded its lack of reasonable basis for denying the claim. The court finds by clear and convincing evidence that Ms. Honeycutt recklessly disregarded her lack of reasonable basis to deny the claim when she continued to deny the claim, after never receiving an answer to the question posed to Attorney Baginski. The testimony showed that she posed the initial question, and after not getting an initial response, followed up by email but never received an answer. Despite never receiving an answer to her question, American States continued to deny the claim for the next four years, until Judge Colville's opinion in October of 2018. Continuing to deny the claim, knowing that the coverage questions that she had were never answered, was a reckless disregard for any lack of reasonable basis to deny the claim. Therefore, the court finds the Plaintiffs have met their burden in proving Bad Faith conduct on the part of American States.

We next consider the damages available under the Bad Faith statute.

DAMAGES

Under the bad faith statute, 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.A. § 8371. With this guidance, the court awards the following:

Interest: The court awards interest to the Hubers from the date that the initial, undisputed portion of the UIM benefits were offered, as the court finds those payments were offered in a timely manner, through the date that that the balance of the UIM benefits were ultimately paid. The evidence established that the initial payment of $300,000 was offered to Brian Huber on June 30, 2015, and the initial payment of $100,000 was offered to Janine Huber also on June 30, 2015. Final payment of $950,000 was made to Brian on February 7, 2019, and $150,000 to Janine on the same date. Utilizing an interest rate of 6.25% (current prime rate + 3%), from July 1, 2015 through February 7, 2019, provides the following interest awards:

Brian Huber: **$213,993.44**

Janine Huber: **$33,787.50**

Punitive Damages: In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant. *Feld v. Merriam*, 485 A.2d 742 (Pa. 1984), citing Restatement (Second) of Torts, § 908(2). Taking all of those elements into consideration, the court makes the following Punitive Damages Award:

Brian Huber: **$25,000.00**

Janine Huber: **$10,000.00**

Attorney's Fees: The court has the discretion to award attorney's fees, and does so here. It is obvious that the additional coverage amount would not have been paid absent the zealous representation of the Plaintiffs' capable attorneys. After a review of the Plaintiffs' Petition for

Attorney's fees, all responses thereto, including the most recent stipulation of the parties, the court makes the following joint award of attorney's fees:

Brian Huber claim: **$147,960.00** to Friday & Cox for attorney's fees;

$378 to Friday & Cox for court costs.

Janine Huber claim: **$16,427.50** to Friday & Cox for attorney's fees;

$16,493.75 to Goldblum Sablowsky for attorney's fees

$222.00 to Goldblum Sablowski for court costs.

As to the remaining claims against American States, we decline to award damages for fraud as we find the Plaintiffs have not met their burden of proving the same. As to the UTPCPL claims, the statute does not apply to the claims handling process. *Wenk v. State Farm Fire and Casualty Company*, 228 A.3d 540 (Pa. Super. 2020).

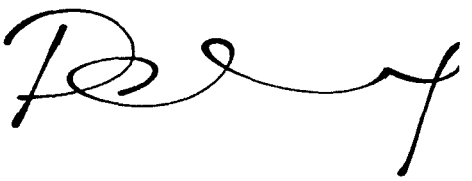
Claims against Verrico Insurance Agency and US Casualty Corporation

The claims against Verrico, Insurance Agency and US Casualty Corporation ("Agency Defendants") stem from the initial purchase of the policy in 2012. Specifically, there were allegations of the original UIM forms being missing at one point, and once they were found, were thought to have been somehow fabricated or forged by the Agency Defendants. However, the court finds the Plaintiff's did not meet their burden of proving those claims. Furthermore, the Agency Defendants were not involved with the subsequent purchase of the umbrella policy, and the coverage issue arising therefrom that was the real issue in this case. Simply put, there is no causal connection between any actions, or inactions, of the Agency Defendants, and the amount of UIM coverage that was available to the Huber's, which was the real controversy in this case.

Accordingly, we enter the attached verdicts.

December 30, 2020

BY THE COURT:



Patrick M. Connelly, Judge