IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

JOANN ENRIQUE,	:	
	:	C.A. No. K12C-10-028 WLW
Plaintiff,	:	
	:	
v.	:	
	:	
STATE FARM MUTUAL AUTO-MOBILE INSURANCE CO.,	:	
	:	
Defendant.	:	

Submitted: September 11, 2015
Decided: October 14, 2015

OPINION

Upon Defendant's Motion for Summary Judgment.
Granted.

William D. Fletcher, Esquire of Schmittinger & Rodriguez, Dover, Delaware; attorney for Plaintiff.

Jeffrey A. Young, Esquire of Young & McNelis, Dover, Delaware; attorney for Defendant.

WITHAM, R.J.

The issue before the Court is whether the Plaintiff, Joanne Enrique ("Enrique"), has established a prima facie case of bad faith by the Defendant, State Farm Mutual Insurance Co. ("State Farm"), for failure to pay the policy limit for uninsured motorist protection. For the following reasons, the Defendant's motion for summary judgment is GRANTED.

FACTS

On September 26, 2005, Enrique was involved in a motor vehicle accident with Bridgett Roy ("Roy"), an uninsured motorist. State Farm provided a motor vehicle insurance policy to Jason Garber, the owner of the vehicle Enrique was driving. The policy provided uninsured motorist ("UM") protection with a policy limit of $100,000. Enrique suffered injuries resulting in permanent impairment to both knees and a fractured rib, and was unable to work for nine months. As a permissive driver of the Garber vehicle, Enrique made a claim under the policy's UM benefit for the policy limit of $100,000. State Farm disputed the damages, and Enrique filed a complaint ("Damages Action") against State Farm that sought the UM policy limits of $100,000 as well as punitive damages for Roy's alleged reckless conduct in causing the accident. In July 2009, State Farm was granted a partial motion for summary judgment relating to punitive damages. After trial, a jury awarded Enrique $260,000 for damages arising out of the automobile accident. In October 2012, Enrique file the current action claiming State Farm acted in bad faith when negotiating a settlement offer, thus forcing Enrique to go to trial in order to obtain a fair and reasonable award for her injuries and damages.

Initial negotiations between Enrique and State Farm prior to the Damages Action resulted in a demand by Enrique for a $165,000 settlement and offer by State Farm to settle for $35,000.[1] State Farm log entries for Enrique's claim show they were aware of damage consistent with grade 2 chondromalacia[2] in the right knee as early as December 2005.[3] In August 2006, State Farm questioned whether the chondromalacia was a condition present before the motor vehicle accident because it was present in both knees.[4] In January 2008, Richard M. Roach ("Roach"), the State Farm Claims examiner assigned to Enrique's claim, requested authority to settle with Enrique for $50,080, but was told by his supervisor, Mary Adkins ("Adkins"), the request would be reviewed after further clarification of the causation issues.[5] It was also noted that an independent medical examination ("IME") or records review might be necessary to resolve the causation issue. In April 2008, State Farm decided to retain Dr. Lawrence Piccioni ("Dr. Piccioni") to perform an IME. The IME was scheduled and completed in July 2008.

In August 2008, Roach received the IME report and noted that per the IME the treatments were reasonable and necessary and that the described injuries were caused

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[1] Def. Mot. Summ. J. Ex. B at 108, activity log numbers 281-82.

[2] Chondromalacia is defined as "softening of any cartilage." *Stedman's Medical Dictionary* 369 (28th ed. 2006).

[3] Def. Mot. Summ. J. Ex. B at 138, activity log number 109.

[4] *Id.* at 128, activity log number 171.

[5] *Id.* at 108, activity log numbers 281-82.

by the motor vehicle accident.[6] Roach valued Enrique's damages at between $62,080 and $94,960 based on the following breakdown: (1) future treatments between $2,000 and $17,880; (2) general damages between $50,000 and $65,000; (3) impairment between $10,000 and $12,000; and an orthopedic bill of $80.[7] Later that month, Adkins noted that she and Roach had reviewed the IME results with attorney Colin Shalk ("Shalk") and that Shalk indicated a valuation of between $35,000 and $50,000 may be warranted.[8] Adkins still had questions about causation because State Farm had yet to receive a complete prior records set from Enrique.

Betsy Hanson ("Hanson"), a State Farm claim section manager, also reviewed the claim and disagreed with Roach's valuation. Hanson noted that Enrique had denied any previous medical history involving her knees despite multiple scars on her right knee. Hanson further noted Enrique had reported leg swelling before the accident, and that her preexisting conditions, which included Lyme's disease and obesity, may be partially responsible for her current knee condition. In addition, Hanson noted that Dr. Piccioni had specified in his report that he had not received prior records or x-ray/MRI films to review, and had opined that the chondromalacia changes pre-existed the accident.[9]

Subsequent valuations performed by Roach in August and November of 2008

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[6] Def. Mot. Summ. J. Ex. B at 94, activity log number 329.

[7] *Id.*

[8] *Id.* at 88, activity log number 357.

[9] *Id.* at 86-87, activity log number 363.

valued Enrique's damages between $25,000 and $35,000.[10] Neither evaluation contained amounts for future treatments or for impairment. The total amount of the valuation was listed as general damages. Although no amount was listed in future treatments, a preceding line in each log entry contained calculations for future treatments, but noted there would be further evaluation when a complete copy of prior records was received.

In February 2009, Shalk revised his estimate slightly to between $45,000 and $50,000. Shalk's estimate was based on Enrique's right knee injury, future treatment for left knee pain, and the fact that Enrique would make a good witness.[11] In March 2009, Adkins authorized payment of up to $50,000,[12] and Roach then revised his valuation of Enrique's damages to between $45,000 and $50,000.[13] By November 2009, Enrique had adjusted her demand to a total of $90,000, and State Farm had adjusted their offer to $45,000.[14] Mediation failed to resolve the impasse, and based on Dr. Piccioni's findings that chondromalacia changes pre-existed the motor vehicle accident,[15] Roach recommended proceeding to trial. It seems clear that if anything

[10] *Id.* at 79, 86, activity log numbers 398, 365. The August evaluation was between $24,950 and $34,920, and the November evaluation was between $24,217.85 and $34.217.85.

[11] Def. Mot. Summ. J. Ex. B at 74, activity log number 429.

[12] *Id.* at 71, activity log number 445.

[13] *Id.* at 71, activity log number 446.

[14] *Id.* at 55, activity log number 548.

[15] The IME initially stated that Enrique's injuries were caused by the motor vehicle accident, but could not be certain she sustained a reported meniscus tear. Def. Mot. Summ. J. Ex. B at 94, activity log number 329. He later specified that he did not have prior history medical records or x-ray/MRI films to review, and opined the chondromalacic changes may have preexisted the accident.

is true, this claim was heavily examined by State Farm. After trial, a jury awarded Enrique $260,000 in damages.

Enrique subsequently filed the current action seeking exemplary damages. She claims the jury verdict far exceeded State Farm's final offer, thus showing State Farm was guilty of bad faith in handling her claim. Enrique claims State Farm had no reasonable justification to refuse her $90,000 pretrial demand, and thus forced her to go to trial in order to receive a fair and reasonable recovery. State Farm claims Enrique has failed to state a prima facie showing of bad faith and requests summary judgment under Superior Court Civil Rule 56.

STANDARD OF REVIEW

Summary judgment will be granted when, viewing all of the evidence in the light most favorable to the nonmoving party, the moving party demonstrates that "there are no material issues of fact in dispute and that the moving party is entitled to judgment as a matter of law."[16] This Court shall consider the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any" in determining whether to grant summary judgment.[17] When material facts are in dispute, or "it seems desirable to inquire more thoroughly into the facts, to clarify the application of the law to the circumstances," summary

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Id. at 55, 86-87, activity log numbers 548, 363.

[16] *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991) (citing *Benge v. Davis*, 553 A.2d 1180, 1182 (Del. 1989)); *see also* Super. Ct. Civ. R. 56c.

[17] Super. Ct. Civ. R. 56c.

judgment will not be appropriate.[18] However, when the facts permit a reasonable person to draw but one inference, the question becomes one for decision as a matter of law.[19]

DISCUSSION

A claim against an insurer for a "bad faith denial or delay in claim payments sounds in contract and arises from the implied covenant of good faith and fair dealing."[20] To establish bad faith, "the plaintiff must show that the insurer's refusal to honor its contractual obligation was clearly without any reasonable justification."[21] However, an action lacking a reasonable justification, standing alone, will not justify punitive damages.[22] Punitive damages require that the bad faith actions of an insurer be taken with a reckless indifference or malice towards the plight of the insured.[23] Thus, the question of bad faith is a two part conjunctive test. The first element questions "whether at the time the insurer denied liability, there existed a set of facts or circumstances known to the insurer which created a bona fide dispute and therefore

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[18] *Ebersole v. Lowengrub,* 180 A.2d 467, 468-69 (Del. 1962) (citing *Knapp v. Kinsey*, 249 F.2d 797, 802 (6th Cir. 1957)).

[19] *Wootten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).

[20] *Dunlap v. State Farm Fire & Cas. Co.*, 878 A.2d 434, 440 (Del. 2005) (citing *Tackett v. State Farm Fire & Cas. Co.*, 653 A.2d 254, 264 (Del. 1995)).

[21] *Casson v. Nationwide Ins. Co.*, 455 A.2d 361, 369 (Del. Super. 1982) (citing *Nobel v. National Amer. Life Ins. Co.*, 624 P.2d 874 (Ariz. Ct. App. 1979)). *See also Tackett*, 653 A.2d at 266 (stating mere delay is not evidence of bad faith provided a reasonable justification exists).

[22] *Pierce v. International Ins. Co. of Ill.*, 671 A.2d 1361, 1367 (Del. 1996).

[23] *Id.*

a meritorious defense to the insurer's liability."[24] If the answer is yes, then there is no bad faith on the part of the insurer. However, if the answer is no, then the second element of this test questions whether the actions of the insurer were taken with a reckless indifference or malice towards the plight of the insured. If there is no reckless indifference or malice, then there is no bad faith on the part of the insurer.

In *Tackett v. State Farm Fire and Casualty Insurance Co.*,[25] the plaintiff had purchased an automobile insurance policy through State Farm Fire and Casualty Insurance Co. ("State Farm") which included underinsured motorist ("UIM") coverage with a policy limit of $50,000. The plaintiff was involved in an automobile accident, and after finding the tortfeasor's policy limit of $25,000 did not cover the full extent of the plaintiff's damages, she made a demand on State Farm for the UIM policy limit of $50,000. The demand was based solely on a lost wage calculation of $110,000, and did not include future medical expenses or pain and suffering. State Farm's initial internal evaluation valued the claim between $45,000 and $50,000. Outside counsel advised State Farm that an arbitrator would probably award $50,000 in damages, and that the benefit of an IME was questionable, but an IME was still ordered. The IME report stated that Tackett was capable of gainful employment in some kind of career requiring only sedentary work.

Despite an initial evaluation that reached the policy limits and a confirmation by outside counsel that valued the claim at $50,000, a State Farm claim

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[24] *Casson*, 455 A.2d at 369.

[25] 653 A.2d 254 (Del. 1995).

superintendent authorized payment of only $30,000, with an initial offer of $20,000. The claim was later transferred to a new claim superintendent who determined the claim had been undervalued and, seven months after the claim had been filed, extended an offer of policy limits. The Tacketts claimed the delay was due to a "get tough" policy instituted by State Farm and filed a complaint seeking damages for a bad faith delay in payment. The Delaware Supreme Court held "[w]hile a delay of seven months in paying policy limits in the face of full documentation and recommendations of the claim agent and outside counsel may well constitute bad faith, we agree with the Superior Court that the Tacketts were not singled out for malicious treatment," and therefore there was no basis for a bad faith claim.[26]

In the case at bar, Enrique states that "bad faith through inadequate offers and economic coercion are claims that are dragged out for several years, low balled, grossly disproportionate to the verdict and well below the policy limits paid for by the insured."[27] She argues that the passing of five years between the accident and the trial, the low initial offer followed by a final offer of $45,000, and the fact that the jury awarded more than five times the final offer are indicative of bad faith by State Farm. Enrique's argument is unavailing. Delaware case law states that bad faith is shown when an insurer refuses to honor its contractual obligation without any clear and reasonable justification and does so with a reckless indifference or malice

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[26] *Tackett*, 653 A.2d at 266.

[27] These elements for a bad faith claim are found in 18 Am. Jur. 3d *Proof of Facts* §§ 27-28 (1992).

towards the plight of the insured.

Just as the defendant in *Tackett* relied on an IME report to show the plaintiff was capable of sedentary work, State Farm relied on an IME in the current case for proof that the damages suffered by Enrique may have been related to a preexisting condition. However, the comparison ends there. In this case, State Farm was not told by counsel that the benefit of an IME would be questionable, they were not given a valuation by outside counsel that approached the policy limits, and no State Farm representative admitted the claim was undervalued just prior to settlement. In this case, State Farm noted that Enrique had scars on her right knee despite denying any preexisting condition, suffered swollen joints due to Lyme's disease, and was obese. Each of these could have contributed to Enrique's condition, thus providing State Farm with a set of facts from which to present a meritorious defense. Based on the information available, State Farm could argue that if they had paid the amount demanded by Enrique, they may have paid for damages not related to the accident.

Moreover, the claim was evaluated for State Farm by Shalk, a respected Delaware attorney with years of experience with these types of claims. Shalk's initial evaluation of the claim was between $35,00 and $50,000, and was later raised to between $45,000 and $50,000. Thus, whether based on concerns regarding preexisting condition, or based on an evaluation by Shalk that did not consider preexisting conditions, State Farm had a reasonable justification for offering less than policy limits despite Roach's initial evaluation, and the bad faith claim would fail on the first element of the test.

But, even if State Farm lacked a reasonable justification, Enrique has failed to show the reckless indifference or malice towards the plight of the insured required to show bad faith under the second prong of the test. Enrique relies on the fact that the jury verdict was substantially higher than the offer made by State Farm in order to show bad faith, but makes no specific allegations of reckless indifference or malice. In *Tackett*, the initial valuation of $50,000 was confirmed by outside counsel and later confirmed by the second claim superintendent who agreed the claim had been undervalued. In this case, Roach's supervisor determined the claim was worth substantially less than his initial evaluation, and this lower evaluation was confirmed by outside counsel. Just as State Farm's conduct in *Tackett* did not constitute reckless indifference or maliciousness, neither does State Farm's conduct in this case.

CONCLUSION

For the foregoing reasons, the Defendant's motion for summary judgment is **GRANTED.**

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh