

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
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***Re: Edward F. Price, III v. State Farm Mutual Automobile Insurance
Company***
C.A. No. 11C-07-069 RRC

Submitted: July 17, 2012
Decided: September 13, 2012

On Plaintiff's Motion for Leave to Amend the Complaint
GRANTED.

Dear Counsel:

Plaintiff, Edward F. Price, III (“Plaintiff”), moves to amend his complaint in this uninsured motorist case to add a bad faith claim against Defendant, State Farm Mutual Automobile Insurance Company (“Defendant”).¹ Plaintiff contends Defendant took advantage of Plaintiff’s *pro se* status, using its superior knowledge and standing to settle Plaintiff’s claim for far less than it was worth. Defendant contends the settlement was voluntary and there was no bad faith. This Court finds that Plaintiff’s amending his complaint does not prejudice Defendant and that Superior Court Civil Rule 15(a)’s liberal requirements have been met. Therefore, Plaintiff’s Motion to Amend his Complaint is **GRANTED**. It follows that Defendant’s pending motion for summary judgment is **DENIED**, without prejudice for its potential refile after the close of discovery.

I. FACTUAL AND PROCEDURAL HISTORY

On or about July 31, 2008, Plaintiff was injured at a gas station. While putting windshield wiper fluid into his car, a “phantom” car backed into Plaintiff, pinning him between the “phantom” car and his. Plaintiff repeatedly hit the car and yelled, hoping to get the driver’s attention. The “phantom” driver sped off, freeing Plaintiff, but causing knee injuries.

In February 2009, Plaintiff reported his accident to Defendant, his uninsured motorist coverage insurer. Defendant investigated Plaintiff’s complaint, submitting medical documents for review, and unsuccessfully attempted to recreate the accident. Plaintiff attempted conservative treatment on his knee, which ultimately proved unsuccessful. Eventually, Plaintiff had a full knee replacement.

On May 18, 2010, after investigating the claim for fifteen months, Defendant offered Plaintiff, at that time unrepresented by counsel, \$50,000 to settle, stating it “would be a lump sum to compensate Plaintiff for his injuries.”² On May 21, 2010, Plaintiff deposited the settlement check. Defendant did not hear from Plaintiff regarding the settlement until Plaintiff, represented by counsel, filed this complaint in July 2011. In the original complaint, Plaintiff argues that Defendant “failed to compensate or commit itself to compensate Plaintiff pursuant

¹ Super. Ct. Civ. R. 15(a).

² Def.’s Op. Br. in Supp. of Summ. J. at 5.

to Plaintiff's uninsured motorist policy."³ Defendant then filed a motion for summary judgment in April 2012.

Before the Court decided Defendant's summary judgment motion, Plaintiff moved for leave to amend his complaint on June 22, 2012.⁴ Defendant opposes the motion.

II. THE PARTIES' CONTENTIONS

A. Plaintiff's Contentions

Plaintiff contends Defendant unfairly dealt with him, settling his claim for far less than it was actually worth. Plaintiff also contends Defendant breached the implied covenant of good faith and fair dealing⁵ and engaged in unfair practices.⁶ Thus, Plaintiff seeks to add a bad faith claim. Plaintiff contends amendment is allowed because leave to amend should be "freely given when justice so requires"⁷ and Defendant cannot claim prejudice "with discovery still ongoing."⁸

B. Defendant's Contentions

Defendant contends Plaintiff should not be allowed to amend his complaint for three reasons. First, Defendant argues the parties already settled the case, Delaware favors cases being voluntarily settled, and a settlement agreement is enforceable as a contract.⁹ As stated above, Defendant paid Plaintiff a \$50,000 settlement on May 18, 2010, and then did not hear from Plaintiff until July 12, 2011, some fifteen months later. Second, Plaintiff did not take the position, as far as Defendant knew, that the settlement was unfair until May 23, 2012. Thus, Defendant contends the settlement should not be overturned solely because Plaintiff thinks he should have received more money. Third, Defendant contends that the

³ Pl.'s Complaint at 2.

⁴ Defendant's Motion for Summary Judgment is **DENIED**, without prejudice. Defendant may renew its motion for summary judgment upon the completion of discovery.

⁵ See, e.g., *Pierce v. International Ins. Co. of Ill.*, 671 A.2d 1361, 1366 (Del. 1996) (holding that "a duty of good faith and fair dealing attaches to every contract and cannot be disclaimed.").

⁶ See 18 Del. C. § 2304(16)(f) ("No person shall . . . not attempt[] in good faith to effectuate prompt, fair and equitable settlement of claims in which liability has become reasonably clear.").

⁷ Super. Ct. Civ. R. 15(a).

⁸ Pl.'s Op. Br. in Supp. of Mot. to Amend at 4.

⁹ *Williams v. Chancellor Care Ctr. Of Delmar*, 2009 WL 1101620, at *3 (Del. Super. Apr. 22, 2009).

proposed amendment should not be granted because trial is scheduled for April 2013, and “Plaintiff is not only seeking to avoid the settlement, but he is seeking to punish Defendant for effecting the settlement and seeks an amount in excess of the policy settlements.”¹⁰

III. STANDARD OF REVIEW

Superior Court Civil Rule 15(a) allows a party to amend its pleading once as a matter of course any time before a responsive pleading is filed, or by leave of court.¹¹ Leave should be freely given when justice so requires.¹²

Ordinarily, amendment is permitted because the court prefers to give parties the opportunity to be heard. That preference, however, is tempered somewhat if there is delay in presentation, or the amendment is broad, adds to the trial’s complexity, substantially changes a cause of action or defense, or is legally insufficient.¹³ Additionally, a motion to amend should be denied if it seriously prejudices the opposing party.¹⁴

IV. DISCUSSION

A. Defendant Offers no Evidence Supporting Prejudice in Connection with Plaintiff’s Proposed Amendment of his Complaint.

While leave to amend should be freely given unless it prejudices the other side, Defendant has not offered any reason why Plaintiff’s amending his complaint is prejudicial. Instead, Defendant mainly relies on its summary judgment argument that the parties voluntarily settled the case. Defendant also attacks Plaintiff’s motion as “an odd amalgam of unrelated legal contentions not connected to the facts of the case in any reasonable manner.”¹⁵ These arguments do not support prejudice. Instead, Defendant’s argument supports the idea that Plaintiff’s proposed amendment seeks to broaden the case or add to its complexity, factors the court may consider in deciding a

¹⁰ Def.’s Resp. to Pl.’s Mot. to Amend at 5.

¹¹ Super. Ct. Civ. R. 15(a).

¹² *Id.*

¹³ See *Timblin v. Kent Gen. Hosp.*, 1995 WL 44250, at *1 (Del. Super. Feb. 1, 1995) (citing *Itek Corp. v. Chicago Aerial Industries, Inc.*, 257 A.2d 232 (Del. Super. 1969), *aff’d*, 274 A.2d 141 (Del. 1971)).

¹⁴ *Hess v. Carmine*, 396 A.2d 173 (Del. Super. 1973).

¹⁵ Def.’s Resp. to Pl.’s Mot. to Amend at 3.

Superior Court Civil Rule 15 motion.¹⁶ Here, Plaintiff seeks to add a bad faith claim arising out of Defendant's allegedly settling Plaintiff's claim for far less than it is worth. While this broadens the case, it does not prejudice Defendant.¹⁷

Defendant also mentions the parties' upcoming trial, currently scheduled for April 2013. Defendant, however, fails to state how amendment several months from the trial date prejudices it. From context, it appears having to litigate a bad faith claim inconveniences Defendant, but not necessarily prejudices it. But, this is not a case where Plaintiff is seeking to amend his complaint on the eve of trial.¹⁸ Defendant has sufficient time to respond to Plaintiff's amended complaint.

V. CONCLUSION

As noted above, leave to amend should be freely granted when justice so requires, unless it prejudices the other side. Here, Defendant has not offered any evidence supporting prejudice. Instead, Defendant references the parties' April 2013 trial date. Trial is still several months away, and Defendant may renew its summary judgment motion after discovery ends. Therefore, Plaintiff's Motion for Leave to Amend his Complaint to add a bad faith claim is **GRANTED**.

IT IS SO ORDERED.

Richard R. Cooch, R.J.

cc: Prothonotary

¹⁶ *Timblin*, 1995 WL 44250, at *1 (citing *Itek Corp. v. Chicago Aerial Industries, Inc.*, 257 A.2d 232 (Del. Super. 1969), *aff'd*, 274 A.2d 141 (Del. 1971)).

¹⁷ *See, e.g., Timblin*, 1995 WL 44250 (denying the plaintiff's motion to amend his complaint to substitute recklessness for negligence as it would unfairly add to Defendant's evidentiary burden).

¹⁸ *See, e.g., Taylor v. Christiana Care Health Services*, 2012 WL 1415779 (Del. Super. Feb. 27, 2012) (denying Plaintiff's motion to amend for, *inter alia*, presenting it one month before trial).