

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY**

| | | |
|--|---|---------------------------------|
| DONNA S. STRIMEL, | : | |
| | : | C.A. No: K13C-11-020 RBY |
| <u>Plaintiff,</u> | : | |
| | : | |
| v. | : | |
| | : | |
| WESTFIELD INSURANCE | : | |
| COMPANY, a foreign corporation, | : | |
| | : | |
| Defendant. | : | |

*Submitted: February 19, 2014
Decided: April 9, 2014*

*Upon Consideration of
Defendant's Motion to Dismiss
DENIED*

ORDER

I. Barry Guerke, Esquire, Parkowski, Guerke & Swayze, P.A., Dover, Delaware for Plaintiff.

Wali W. Rushdan, II, Esquire, Fox Rothschild, LLP, Wilmington, Delaware for Defendant.

Young, J.

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SUMMARY

Westfield Insurance Company (“Defendant”) moves to dismiss a Complaint filed by Donna S. Strimel (“Plaintiff”) pursuant to Sup. Ct. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. Plaintiff’s Complaint involves personal injury protection benefits (“PIP benefits”) related to an automobile collision that Plaintiff claims were wrongfully denied by Defendant. Plaintiff also contends that Defendant denied her benefits in bad faith, therefore, entitling her to punitive damages and attorney’s fees. In this matter, discovery has not been completed. Therefore, it does not appear to a certainty that Plaintiff is not able to recover under any reasonably conceivable set of circumstances susceptible of proof. Accordingly, Defendant’s Motion to Dismiss is **DENIED**.

FACTS/PROCEDURAL POSTURE

Allegedly, on May 10, 2010, Plaintiff sustained injuries resulting from an automobile accident on U.S. Route 13 southbound, near Dover, Delaware, while operating a 2008 Honda Element (the “Accident”). At the time of the Accident, Plaintiff was insured by Defendant’s policy, which provided no-fault PIP benefits (the “policy”). The policy provided that Defendant would pay PIP benefits in accordance with *Del. Code Ann.* Tit. 21, Chapter 21, Subchapter 1, for the benefit of a person who sustained bodily injury caused by an accident “arising out of the ownership, maintenance or use of a motor vehicle and incurred within two years from the date of the accident.” On December 2, 2010, in an Independent Medical Examination (the “IME”), the examining physician found that the treatments for which Plaintiff sought compensation were not causally related to injuries sustained

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in the Accident. On December 20, 2010, Defendant informed Plaintiff by letter that, based on the results of the IME, Defendant would not pay for Plaintiff's treatments.

On November 13, 2013, Plaintiff filed a Complaint. On January 20, 2014, Plaintiff's counsel sent a Demand Letter for PIP benefits to Defendant. On January 31, 2014, Defendant filed a Motion to Dismiss. On February 17, 2014, Plaintiff filed its Opposition to Defendant's Motion to Dismiss.

STANDARD OF REVIEW

"A motion to dismiss under [Superior Court Civil] Rule 12(b)(6) presents the question of 'whether a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint.'"¹ "When considering a motion to dismiss, the Court must read the complaint generously, accept all well-[pled] allegations as true, and construe them in a light most favorable to the plaintiff."² "A complaint is 'well-plead' if it puts the opposing party on notice of the claim being brought against it. Dismissal is warranted only when 'under no reasonable interpretation of the facts alleged could the complaint state a claim for which relief might be granted.'"³

DISCUSSION

First, Defendant argues that Plaintiff's Complaint lacks sufficient facts to

¹ *Precision Air, Inc v. Standard Chlorine of Del., Inc.*, 654 A.2d 403, 406 (Del. 1995).

² *Klein v. Sunbeam Corp.*, 94 A.2d 385, 391 (Del. 1952).

³ *Boyce Thompson Inst. for Plant Research v. MedImmune, Inc.*, 2009 WL 1482237, at *4 (Del. Super. Ct. May 19, 2009).

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support its conclusion that Defendant wrongfully denied PIP benefits. 21 Del. Code § 2218(a)(2)(a), which governs automobile insurance requirements, states that insurers must pay “compensation to injured persons for reasonable and necessary expenses incurred within two years from the date of the accident.” Defendant contends that, in Plaintiff’s pursuit of obtaining reimbursement for medical expenses and lost income, Plaintiff fails to state what the “reasonable and necessary” alleged expenses are, or how they are causally related to the Accident under 21 Del. Code § 2218(a)(2)(a).

Second, Defendant asserts that Plaintiff’s Complaint contains no facts to support Plaintiff’s claim that Defendant acted in bad faith. In order to plead a cognizable claim for bad faith, Plaintiff must show that Defendant’s denial of PIP benefits was “clearly without any reasonable justification.”⁴

Plaintiff asserts that she clearly complied with the requirements of Civil Rule 8(a), which requires that a complaint contain: 1) a short and plain statement of the claim showing that the pleader is entitled to relief, and 2) a demand for judgment for the relief to which the party deems itself entitled. Further, Plaintiff argues that no evidentiary support for her claims is required in the initial pleadings, but is left for development during discovery. Therefore, according to Plaintiff, it is premature at this stage in the proceedings to rule as a matter of law that Plaintiff’s claims are not supported properly.

Defendant relies on *Kraus v. State Farm Mut. Auto. Ins. Co.*, 2004 WL

⁴ *Kraus v. State Farm Mut. Auto. Ins. Co.*, 2004 WL 2830889 at *8 (Del. Super. Ct. April 23, 2004).

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2830889 at *8 (Del. Super. Ct. April 23, 2004) (herein “*Kraus*”) for the proposition that, in order to plead a cognizable claim for bad faith and punitive damages, Plaintiff must show that a denial of benefits was “clearly without any reasonable justification.” However, *Kraus* is inapposite because, in that case, the defendant’s motion to dismiss the plaintiff’s PIP suit for failure to state a claim was granted on the basis that the plaintiff was a member of the co-plaintiff’s household, and was, therefore, disqualified from receiving PIP benefits under the “owned motor vehicle” exclusion in the policy. Such is not the case in this matter.

A complaint will be dismissed for failure to state a claim upon which relief can be granted only if it appears with certainty that the plaintiff could not recover under any reasonably conceivable set of circumstances susceptible to proof.⁵ Typically, once discovery has been conducted, a defendant may file a motion for summary judgment if the plaintiff has not provided sufficient factual evidentiary support of allegations and claims stated in the complaint.⁶ Civil Rule 12(b)(6) provides that all parties shall be given a reasonable opportunity to present all material made pertinent to such a motion under Rule 56. Plaintiff still seeks to obtain the PIP claims file, communications between the IME physician and Defendant, as well as depositions of Defendant’s employees that were involved in adjusting the PIP claim and denying benefits. That has not occurred. Therefore, it does not appear to a certainty that Plaintiff is not able to recover under any

⁵ *Klein v. Sunbeam Corp.*, 94 A.2d 385, 391.

⁶ *Id.*

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reasonably conceivable set of circumstances susceptible of proof.

CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss is **DENIED**.

IT IS SO ORDERED.

/s/ Robert B. Young

J.

RBY/lmc

oc: Prothonotary
cc: Counsel
Opinion Distribution
File