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BAD FAITH UPDATE

On October 24, 2011, Judge Robreno of the United States District Court for the Eastern District of Pennsylvania denied an insurer's motion for summary judgment as to plaintiff's breach of contract claim after finding that an insurance policy was ambiguous as to the documentation and proof required to pay recoverable depreciation for property damage. But the court granted summary judgment to the insurer on the §8371 bad faith claim because (1) Pennsylvania law does not recognize a bad faith action for an insurer's drafting of allegedly confusing, contradictory or unreasonable policy provisions, (2) the insurer's interpretation of the policy was reasonable, and (3) the insurer did not unreasonably delay payment. See Mitch's Auto Service Center, Inc. v. State Automobile Mut. Ins. Co., 2011 WL 5042480 (E.D.Pa. Oct. 24, 2011).

In Mitch's Auto, the insured submitted claims as a result of fire damage. The insurer paid all of the claims except for \$64,118, which represented depreciation. The insurer's position was based upon a policy provision that the insurer interpreted to require the insured to effectuate repairs and submit receipts before it would pay depreciation. The insured admitted that it had no documentation that the repairs exceeded the actual cash value paid by the insurer because much of the repair work was performed by the insured himself.

The court denied the insurer's request for summary judgment as to the breach of contract claim. The court observed that the policy stated only that it "limits recovery to the 'amount actually spent that is necessary to repair or replace the lost or damaged property.'" The policy also permitted the insurer to inspect the insured's records. But there was no explicit provision requiring the insured to provide written proof of the money actually spent on repairs. Because the court found that the policy provisions were ambiguous, the court reasoned that the breach of contract claim should proceed to trial as to the amount actually spent for the replacement of property.

While the insured asserted that the insurer's policy language was drafted in bad faith, the court noted that no Pennsylvania court has ever held that a confusing and/or contradictory policy is actionable under the bad faith statute as bad faith for the purposes of § 8371 is an unfounded refusal to pay policy proceeds. Furthermore, while the court held that the policy was ambiguous, it also noted that "an ambiguous contract term is one that is subject to more than one *reasonable* interpretation" and the insurer's interpretation of the policy was reasonable. The court also noted that the insurer issued initial payments within 30 days of receipt of sworn proofs of loss from the insured, as required by the policy, and there was no record evidence to indicate that any other delays were knowing or reckless to support plaintiff's theory of bad faith.

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