

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CYNTHIA LOCKHART**

**CIVIL ACTION**

:

:

**v.**

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**FEDERAL INSURANCE CO.**

:

**and CHUBB & SON, INC. : NO. 96-5330**

**MEMORANDUM and ORDER**

This is a breach of insurance contract and bad faith action. Plaintiff alleges that defendants Federal Insurance Company ("Federal") and Chubb & Son Inc. ("Chubb") issued a renters insurance policy to her and later failed to pay a claim covered by that policy. She also alleges that the lengthy investigation and unreasonable denial of her claim constitute bad faith conduct. See 42 Pa. C.S.A. 8371.

Presently before the court is defendants' Motion for Partial Summary Judgment in which Chubb seeks summary judgment on plaintiff's claims against it and Federal seeks summary judgment on plaintiff's bad faith claim. The pertinent facts as uncontested or otherwise viewed most favorably to plaintiff are as follow.

Plaintiff purchased a Chubb Masterpiece Deluxe Renters insurance policy through the David M. Frees Insurance Agency in July 1994. The policy covered the house plaintiff rented at 807 Byers Road in Chester Springs, Pennsylvania and was effective from July 25, 1994 until July 25, 1995. It provided plaintiff with \$120,000 coverage for personal property loss.

The "Agreement" section states "We agree to provide the insurance described in this policy in return for your premium and compliance with the policy provisions." The policy defines "We" as "the insurance company named in the Coverage Summary." The Coverage Summary names defendant Federal as the company issuing the policy. The policy defines "You" as "the person named in the Coverage Summary,

and a spouse who lives with that person." Plaintiff is named as the insured. Defendant Chubb is not mentioned in the text of the Coverage Summary, although its name does appear in a copyright notation at the bottom of the page. Mr. Frees avers that the policy was "purchased from Federal."

On August 3, 1994 plaintiff returned home from a two-week vacation and discovered that the basement was flooded by water approximately ten inches deep. Plaintiff used the basement primarily to store personal property, including furniture, housewares, clothing and books. Most of the property was saturated by the water.

Plaintiff immediately informed her landlord's property manager of the flooded basement. The property manager's plumber inspected the basement the next day and was unable to pinpoint the source of the water. He did find that the two basement sump pumps were not working because they had been unplugged, and he immediately began draining the thousands of gallons of water from the basement.

On August 8, 1994 plaintiff reported the water damage to the Frees Agency which relayed the claim to Federal. It then engaged an independent insurance adjustor who visited plaintiff's property on August 15, 1994. The adjustor spoke with plaintiff, examined the damaged property and began a preliminary investigation.

Within three days the adjustor determined and reported that the source of the water remained unclear, plaintiff was engaged in eviction proceedings with her landlord and had done little to protect her wet property from further damage after the water was drained. The adjustor recommended that Federal retain an attorney to investigate plaintiff's claim and take her sworn statement. Federal did so.

It retained an attorney, Eric Freed. He wrote to the plaintiff on September 30, 1994 to advise her that on behalf of Federal he was pursuing an investigation of her claim, and requiring her to produce numerous records and documents. Mr. Freed apprised plaintiff that Federal could not assess its liability for her claim until it examined these records and documents. These included all of plaintiff's credit card statements and other records reflecting any debts, writings reflecting insurance claims "of any kind" made by her "at any time," her tax returns for the prior three years, evidence of all income received by her over the prior three and a half years, and all bank account statements for the past three and a half years.

In late August or early September the adjustor arranged for a property salvage company to assist plaintiff in inventorying her loss and protecting her property from further damage. Despite differences between plaintiff and salvage company employees over the manner in which the work was to proceed, most of the inventorying and clean-up was finished by mid-October 1994.

In December 1994, the adjustor estimated the total property loss in plaintiff's basement at \$200,000. In August 1995, plaintiff completed her sworn statement in proof of loss. She demanded the \$120,000 policy limit based on her estimate of damages of \$325,000.

The investigation of plaintiff's claim lasted from August 1994 to April 1996. Federal attributes much of the delay to plaintiff's inability or failure timely to provide the company with the requested records and documents and her failure to appear prepared for scheduled depositions. As noted, however, the records and documents demanded by Federal were substantial in scope and time-frame. Federal ultimately deposed plaintiff, obtained information from several witnesses about the circumstances surrounding the discovery of water in plaintiff's basement, the condition of plaintiff's personal property before the flood and plaintiff's financial situation in the Summer of 1994.

Two witnesses said they saw boxes with mildew when plaintiff moved from her prior residence to the Byers Road house. These witnesses had an obvious antipathy for plaintiff. Plaintiff acknowledged that some items stored in the basement of the prior residence had sustained water damage but averred that these were not among the items for which she presented a claim to Federal. The basement at the Byers Road house was full of personal property which physically could not have fit into the basement of plaintiff's prior residence. Federal also obtained information that plaintiff's income had fallen around the time of the flood which it viewed as a possible motive to commit insurance fraud.

On April 5, 1996, Federal informed plaintiff through her attorney that her claim was denied. The reasons given by Federal were that a majority of the property damage occurred before the coverage period, that plaintiff intentionally concealed or misrepresented material facts regarding the extent and cause of her loss, that plaintiff failed promptly to notify Federal of the cause and extent of damage, and that she interfered with the salvage company's attempts to mitigate her damages which constituted neglect sufficient to void the policy.

The reasons were set forth in a letter written and signed by a Federal claims adjustor for "Federal Insurance Company." The letterhead read "Chubb Group of Insurance Companies." Federal is one of eight companies identified on several exhibits as members of the "Chubb Group." Chubb provides loss adjustment services for Federal and other affiliated companies.

In June 1996 Federal canceled plaintiff's renewed insurance policy effective June 18, 1996 based on her alleged misrepresentations. Shortly thereafter plaintiff received a premium refund check for \$110.00. Defendant Chubb's name appears over the signature. The top of the check has the Chubb Group logo and the names of eight companies including Federal.

Defendant Chubb contends that it was not a party to the insurance contract and thus cannot be liable for a breaching it or for bad faith conduct under 8371.

Clearly "one cannot be liable for a breach of contract unless one is a party to that contract." Electron Energy Corp. v. Short, 597 A.2d 175, 177 (Pa. Super. Ct. 1991) (citing Viso v. Werner, 369 A.2d 1185 (Pa. 1977)), aff'd, 618 A.2d 395 (Pa. 1993). It is fundamental that "one cannot breach a contract that one is not a party to." Id. at 178.

From the evidence of record one cannot reasonably conclude that defendant Chubb was a party to the insurance policy purchased for plaintiff by the Frees Insurance Agency. The plain language of the policy categorically identifies Federal as the party which agreed to provide plaintiff with coverage. Mr. Frees avers that the policy was purchased from Federal. Federal readily admits that it issued the subject policy and denied plaintiff's claim under it. Defendant Chubb is mentioned nowhere in the substantive terms of the contract.

That Federal and other affiliated companies use stationery with a common Chubb Group letterhead or forms copyrighted by defendant Chubb does not make that defendant a party to plaintiff's insurance contract. That defendant provides loss adjustment services for Federal and other affiliates also does not make them a party to each underlying insurance contract.

Defendants offer no explanation regarding the \$110 refund check. It is unclear whether the Chubb Group companies have certain common accounts or pool premiums or for some oblique accounting purpose pay refunds for all from a designated account. Perhaps these was a Federal account and a Chubb check was used because a processing or administrative error. The point is that one is left to speculate. Plaintiff

apparently never inquired during discovery about the reason or otherwise about the precise relationship of the defendants, and certainly presented no evidence regarding these matters.

Plaintiff makes no allegation or showing of alter ego status. To conclude that defendants generally commingling funds, let alone disregarded corporate formalities and independence of function, from one payment of a nominal refund for one from an account of the other would be pure conjecture. Plaintiff could have elicited details about the handling of premiums, payments and claims processing by defendants and the extent to which one may dominate or control the actions of the other. Plaintiff either failed to do so or elected not to present any such evidence which was obtained in discovery.<sup>(1)</sup>

Evidence may exist to show that defendant Chubb was the de facto insurer of plaintiff and that it was actually responsible for the decision to deny her claim. No such evidence, however, has been presented by plaintiff or otherwise appears of record.

Plaintiff contends that Chubb was an "agent" of Federal. It may have been for some purposes but for none which appear of record that would make Chubb the insurer under plaintiff's policy. While Federal may be liable for conduct undertaken on its behalf by Chubb as its agent, this would not make Chubb liable for breaching a contract to which it was not a party or for bad faith toward someone who was not its insured.

In short, one cannot reasonably find from the evidence of record that Chubb was a party to the insurance contract at issue, conducted the investigation of plaintiff's claim or made the decision to deny coverage to her. In the absence of such evidence, plaintiff cannot sustain a claim against Chubb for breaching an insurance contract or for bad faith conduct "toward the insured" by "the insurer." See 42 Pa. C. S. A. 8371. A defendant who is not legally obligated to pay a claim and who does not make the decision to deny a claim cannot be liable for knowingly or recklessly denying a claim under a policy without a reasonable basis. See Klinger v. State Farm Mut. Auto Ins. Co., 649 A.2d 680, 688 (Pa. Super. 1994), app. denied, 659 A. 2d 560 (Pa. 1995). Defendant Chubb is entitled to summary judgment on the record presented in this case.

A determination of bad faith does not require proof that the insurer was motivated by a dishonest or improper purpose. See Klinger, 115 F.3d at 233-34. Recklessness or acts undertaken by the insurer with a reckless indifference to the interests of the insured can support a finding of bad faith. Id. At 235; Poselli v. Nationwide Mut. Fire Ins. Co., 23 F.3d 747, 751 (3d Cir. 1994).

Federal admits that material issues of fact preclude summary judgment on plaintiff's breach of contract claim. Viewing and construing the record in a light most favorable to plaintiff, one cannot say that no reasonable juror could find by clear and convincing evidence that Federal handled or denied plaintiff's claim in bad faith.<sup>(2)</sup> A jury could find that Federal had a reasonable basis to suspect fraud and that this justified its demand for extensive personal financial information from plaintiff. A jury, however, also could find that Federal acted unreasonably or recklessly in raising the specter of fraud and, in any event, in refusing to determine plaintiff's claim without demanding extensive personal information which exceeded that necessary to identify any prior water damage claim or to assess her economic situation in July 1994.<sup>(3)</sup>

**ACCORDINGLY**, this day of March, 1998, upon consideration of defendants' Motion for Partial Summary Judgment (Doc. #7) and plaintiff's response thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** in part in that plaintiff's claims against defendant Chubb & Son are **DISMISSED** and this Motion is otherwise **DENIED**.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**

1. There is no showing or suggestion that defendant Chubb or Chubb Group operated with regard to Federal in a fraudulent manner which deprived plaintiff of a legal remedy. Federal has assets of \$9.1 billion and a \$2.5 billion surplus.
2. The failure of a plaintiff's claim for coverage does not preclude relief under 8371 for the bad faith handling of the claim. See March v. Paradise Mut. Ins. Co., 646 A.2d 1254, 1256 (Pa. Super. Ct. 1994), app. denied, 656 A.2d 118 (Pa. 1995).
3. Tax returns and bank books, for example, can reflect private information about charitable gifts, health treatment and personal affiliations. Also, for example, the pertinence of a five or ten year old automobile accident or health insurance claim is difficult to discern.