

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

DORIS B. KINSLEY,)
)
Plaintiff,)
)
v.) C.A. NO. N14C-12-191 CEB
)
NATIONAL UNION FIRE INS.)
CO. OF PITTSBURGH, PA,)
)
Defendant.)

Date Submitted: May 18, 2015

Date Decided: June 16, 2015

OPINION.

*Upon Consideration of Defendant 's Motion to Dismiss
Count II of Plaintiff's Complaint.*

GRANTED.

Paul A. Bradley, Esquire, MARON MARVEL BRADLEY & ANDERSON, LLC,
Wilmington, Delaware. Attorney for Plaintiff.

Robert J. Cahall, Esquire, and Donald Kinsley, Esquire, MCCORMICK &
PRIORE, P.C., Wilmington, Delaware. Attorneys for Defendant.

BUTLER, J.

INTRODUCTION

In 2010, Daniel Kinsley (“the Insured”) purchased a Blanket Accident Insurance Policy (“the Policy”) under which the Plaintiff, Daniel’s mother, would receive \$100,000 upon the accidental death of Daniel Kinsley. Daniel passed away, and the Defendant, National Union Fire Insurance Company of Pittsburgh, (“the Insurance Company”) has denied the payment of benefits under the accidental death provision, asserting that Daniel’s death was not the result of an accident. Plaintiff, Doris Kinsley, has sued the Defendant alleging breach of contract and bad faith. Defendants have moved to dismiss or to stay the bad faith claim.

FACTS

The following facts are taken from the Plaintiff’s Complaint and the ten exhibits attached thereto. The Insured fell at his home on or about December 8, 2012. He died on January 4, 2013. Plaintiff filed a claim under the policy on or about January 15, 2013. Plaintiff thereafter filed the claim forms, the death certificate, and medical records.

In a letter dated April 9, 2013, the Insurance Company denied the claim on grounds that the death was not related to an accident or injury, noting that the manner of death listed on the Insured’s death certificate was “natural.” Plaintiff filed an internal appeal of the claim denial and submitted additional medical

records to the Insurance Company. In a letter dated April 3, 2014, Defendant affirmed the denial of the claim but gave a more elaborate explanation for the denial. That letter explained that the Insurance Company had considered: a New Jersey Department of Health Certificate of Death, the EMS reports, correspondence with one of the Insured's Medical Doctors, the Plaintiff's letter appealing the denial, the Insured's medical records, a medical opinion from a board certified forensic pathologist, and a review by in house counsel.

The letter went on to explain: (1) that a review of those items revealed a finding that Mr. Kinsley had a past medical history including morbid obesity, hyperlipidemia, gastroesophageal reflux, esophogitis and prior left foot surgery; (2) that the emergency room records show that, when he presented to the emergency room, the Insured indicated that he fell one week prior and has had increased pain and swelling in his leg; (3) that the death certificate lists the immediate cause of death as arrhythmia due to electrolyte imbalance due to acute renal failure on renal replacement therapy, and it lists the manner of death as "natural;" (4) that the Insurance Company consulted a board certified forensic pathologist who, while recognizing that a case could be made for either a natural or accidental cause of death, opined that there is little reason to believe that the leg injury would have caused death if it was not for the Insured's significant morbid obesity and its associated pulmonary complications.

In turn, Plaintiff retained her own forensic pathologist who produced a report containing opinions that directly contradict the opinions reached by the Defendant's expert. After Plaintiff's expert report was provided to Defendant, Defendant denied the claim in writing for a third time. In that denial letter, Defendant quoted the policy language:

Injury- means bodily injury: (1) which is sustained as a direct result of an unintended, unanticipated accident that is external to the body and that occurs while the injured person's coverage under the Policy is in force; (2) which occurs while such person is participating in a Covered Activity; and (3) which directly (independent of sickness, disease, mental incapacity, bodily infirmity or any other cause) causes a covered loss. . . .

No coverage shall be provided under this Policy and no payment shall be made for any loss resulting in whole or in part from, or contributed to by, or as a natural and probable consequence of any of the following excluded risks even if the proximate or precipitating cause of the loss is an accidental bodily injury . . . 2 sickness, disease, mental incapacity or bodily infirmity whether the loss results directly or indirectly from any of these . . .¹

Defendant has filed a Rule 12(b)(6) motion to dismiss the Plaintiff's bad faith claim, arguing that Plaintiff's Complaint and the exhibits attached thereto show on their face that there is a dispute between the parties as to whether the Insured died as a result of an accident or from natural causes and, therefore, whether coverage applies is "fairly debatable" under New Jersey law. In response, Plaintiff argues that the complaint alleges that the Insurance Company took an

¹See Exhibit J to Plaintiff's Complaint.

unreasonable amount of time to accept or deny the claim. Oral argument was held on May 18, 2015. The parties agree that New Jersey law applies to this claim.

STANDARD OF REVIEW

“A motion to dismiss for failure to state a claim upon which relief can be granted made pursuant to Superior Court Rule 12(b)(6) will not be granted if the plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint.”² All well-pled allegations in the complaint must be accepted as true.³

DISCUSSION

The New Jersey Supreme Court recently considered claims of bad faith in the context of the denial of insurance benefits. In *Badiali v. New Jersey Mfrs. Ins. Grp.*,⁴ the court wrote:

One inherent fiduciary obligation of every insurer is the duty to settle claims. Whether an insurer has acted in bad faith and thereby breached its fiduciary obligation in connection with the settlement of claims must depend upon the circumstances of the particular case. A finding of bad faith against an insurer in denying an insurance claim cannot be established through simple negligence. Moreover, mere failure to settle a debatable claim does not constitute bad faith. Rather, *to establish a first-party bad faith claim for denial of benefits in New Jersey, a plaintiff must show that no debatable reasons existed for*

² *Martin v. Widener Univ. Sch. of Law*, 1992 WL 153540, at *2 (Del. Super. Ct. June 4, 1992).

³ *Id.*

⁴ *Badiali v. New Jersey Mfrs. Ins. Grp.*, 107 A.3d 1281 (2015).

denial of the benefits. Under the salutary “fairly debatable” standard enunciated in *Pickett*, a claimant who could not have established as a matter of law a right to summary judgment on the substantive claim would not be entitled to assert a claim for an insurer's bad faith refusal to pay the claim.⁵

Plaintiff's Complaint alleges that the Insurance Company took an unreasonably long time to deny the Plaintiff's claim “without any foundation in law or in fact” and without fulfilling the “obligations to conduct a reasonable investigation of Plaintiff's claim.” But the correspondence between Plaintiff's counsel and Defendant that is attached to the Complaint as exhibits directly contradicts those arguments. The exhibits show that Defendant: (1) initially denied the claim on April 9, 2013, less than three weeks after receiving all the necessary documentation from Plaintiff; (2) took steps to investigate the claim, including a review of the Insured's medical records and the retention of a forensic pathologist to review the claim; and (3) had reasons for denying the payment of benefits, including the Insured's poor health history, the death certificate listing the manner of death as natural, the policy language, and the pathologist's conclusion that there is little reason to believe death would have resulted if it was not for the Insured's poor health. Therefore, the exhibits attached to the Complaint show that, at least, debatable reasons existed to deny the claim.

⁵ *Id.* at 1287 (internal citations and quotation marks omitted) (emphasis added).

Further, Plaintiff's Complaint and its exhibits make it clear that Plaintiff will not be able to establish a right to summary judgment on the substantive claim because the cause and manner of death is clearly in dispute. The exhibits also show that both parties have already consulted expert pathologists who have provided competing opinions about whether the death was natural or the result of an accident. Indeed, at oral argument both parties agreed that the breach of contract claim is one that must be considered by a jury. Given the clear, *bona fide* dispute as to the cause of death, Plaintiff's claim of bad faith must be dismissed.

IT IS SO ORDERED.

/s/ Charles E. Butler
Judge Charles E. Butler