

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 13-cv-01673-RPM

DONNA D. JEWKES,

Plaintiff,

v.

USAA CASUALTY INSURANCE COMPANY,

Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

The defendant USAA Casualty Insurance Company ("USAA") filed a motion for partial summary judgment seeking dismissal of the plaintiff's First and Third Claims for Relief in her First Amended Complaint. These are, respectively, common law bad faith and statutory bad faith claims alleging that the amount of the payment for damages to her home was unreasonable and resulted from a failure to investigate and assess the extent of damage caused by the Waldo Canyon Fire burning around the home on June 26, 2012.

Recognizing that there are legitimate factual disputes requiring trial of the amount of damages and cost of repair requiring trial of the breach of contract claim, USAA contends that because its claims adjuster, Kathy Wright, relied on expert reports from an engineering firm and an environmental and industrial hygiene service company, there is no basis for claiming that its denial of additional payment was without a reasonable basis.

The briefing on this motion has been extensive with multiple exhibits. The plaintiff filed a response (Doc. 16) and the defendant filed a motion to strike inadmissible evidence submitted with that response (Doc. 17). The plaintiff filed a motion for leave to file a supplement to her response and tendered additional exhibits and factual allegations (Doc. 19).

That motion is denied. It is not necessary. The questions raised by the motion to strike need not be addressed either because the defendant has failed to show that its motion for summary judgment should be granted.

To grant the motion this Court must find that an insurance company's reliance on expert reports is itself a sufficient showing of a reasonable basis for denial of benefits claimed by the insured. USAA raised hearsay objections to the plaintiff's exhibits attached to her response and in its brief included the following footnote:

USAA is not using any of the reports that Ms. Wright relied on in making her decisions regarding Plaintiff's claim for the truth of the matter asserted; rather, the reports are offered to show the effect on Ms. Wright and her subsequent actions. Fed. R. Evid. 801(c); see also *United States v. Smalls*, 605 F.3d 765, 785 n.18 (10th Cir. 2010) ("[S]tatements offered for their effect on the listener are not hearsay.")

In essence, USAA relies on Ms. Wright's subjective evaluation of the plaintiff's claim. The issue is the reasonableness of the company's action, an objective standard. The veracity of the opinions expressed in those expert reports, the quality of the investigations done and the competence of the investigators are relevant issues and the plaintiff's initial response demonstrates that these questions should be answered by a jury. It is

ORDERED, that the defendant's motion for partial summary judgment of dismissal of the First and Third Claims for Relief in the First Amended Complaint (Doc. 12) is denied. It is

FURTHER ORDERED that the defendant's motion to strike (Doc. 17) and the plaintiff's motion for leave to file supplement to her response (Doc. 19) are denied.

DATED: June 26th, 2014

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior District Judge