

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

NEIL BRUNNER, et al.	:	CIVIL ACTION
	:	
v.	:	
	:	
ALLSTATE VEHICLE AND PROPERTY	:	NO. 24-1293
INSURANCE COMPANY	:	

MEMORANDUM

Bartle, J.

June 4, 2024

This diversity action concerns a dispute over coverage under a homeowners insurance policy. Plaintiffs Neil Brunner and Julie Brunner originally filed this action against their property insurer, Defendant Allstate Vehicle and Property Insurance Company ("Allstate"), in the Court of Common Pleas of Philadelphia County. Allstate timely removed the action to this court. Plaintiffs claim that Allstate's refusal to pay for damages caused by a hailstorm is a breach of their insurance policy and constitutes bad faith under Pennsylvania law. Before the court is the motion of Allstate to dismiss the bad faith claim for failure to meet the plausibility standard for pleadings under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

For present purposes, the court must accept as true all well-pleaded facts in Plaintiffs' Amended Complaint. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). The court may also consider "exhibits attached to the complaint and matters of public record." Pension Benefit Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993) (citing 5A Charles Allen Wright & Arthur R. Miller, Federal Practice and Procedure § 1357 (2d ed. 1990)). When there is a document "integral to or explicitly relied upon in the complaint," it may also be considered as there is no concern of lack of notice to the plaintiff. See Schmidt v. Skolas, 770 F.3d 241, 249 (3d Cir. 2014) (quoting In re Burlington Coat Factory Secs. Litig., 114 F.3d 1410, 1426 (3d Cir. 1993) (quotation marks omitted)).

The complaint must plead more than "labels and conclusions." Twombly, 550 U.S. 545. It must plead more than "a formulaic recitation of the elements of a cause of action" or "naked assertions devoid of further factual enhancement." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 555) (internal quotations and alterations omitted). Instead, it must contain sufficient factual content to state a claim that is plausible on its face. Id. at 678.

II

Sometime prior to the events at issue, Plaintiffs executed a "House & Home Policy" (the "Policy") with Allstate. Plaintiffs attached to their Amended Complaint a document titled "Amended House & Home Policy Declarations."¹ According to this document, the Policy included "Dwelling Protection," "Other Structures Protection," and "Roof Surfaces Extended Coverage." Furthermore, the document lists deductibles for "Windstorm and Hail" and "All other perils."

According to the Amended Complaint, on April 1, 2023, while the policy was in effect, a hailstorm caused damage to the roof and interior of Plaintiffs' home and damage to their shed. Plaintiffs timely notified Allstate of their loss.

Allstate sent Plaintiffs a letter on May 31, 2023. The letter at the outset denied coverage for all of Plaintiffs claims:

As part of [Plaintiffs'] claim, [they] have requested Allstate Vehicle and Property Insurance Company to provide coverage for [their] Dwelling roof, Interior and [their] shed. [Allstate] [is] unable to provide coverage for these damages because of the following provision in [Plaintiffs'] policy.

1. That document states that the Policy "consists of the Policy Declarations, any Policy Declarations Addendum," and ten additional documents. Plaintiffs did not attach an addendum or any of these additional documents.

The letter goes on to include excerpts from the Policy:

Under Dwelling Protection-Coverage A and Other Structures Protection-Coverage B of this policy, we do not cover any loss consisting of or caused by one or more of the following excluded events, perils or conditions. Such loss is excluded regardless of whether the excluded event, peril or condition involves isolated or widespread damage, arises from natural, man-made or other forces, or arises as a result of any combination of these forces

5. a) Wear and tear, aging, marring, scratching, deterioration, inherent vice, or latent defect;

. . . .

e) settling, cracking, shrinking, bulging or expansion of pavements, patios, foundations, walls, floors, roofs or ceilings;

. . . .

Losses We Cover Under Coverage C:

. . . .

2. Windstorm or hail.

We do not cover:

a) loss to covered property inside a building structure, caused by rain, snow, sleet, sand or dust unless the wind or hail first damages the roof or walls and the wind forces rain, snow, sleet, sand or dust through the damaged roof or wall;

Allstate then confusingly states that "[t]his letter only applies to the dwelling roof and shed that contains damages due to wear and tear which includes granular loss, blistering and

cracking.” (emphasis in original). Thereafter, Allstate goes on to say that “[f]or the above stated reasons, and any other exclusions or conditions contained in the policy applicable, we are unable to provide coverage for the Interior due to the wind driven water is only covered under your coverage C.” The letter does not suggest any prior investigation by Allstate as the basis for its determination to deny payment.

Upon receiving this letter, Plaintiffs engaged a third-party contractor, The Exterior Company, to evaluate the damage to their home. They attached to their Amended Complaint a document dated July 20, 2023 that appears to be an estimate of repair costs. The document includes detailed pictures of a slate shingle roof. The pictures show several broken or cracked shingles and several shingles with what appear to be deep, circular depressions. The document contains an estimate of the total repair cost of \$66,978.01. The document does not reference the interior of Plaintiffs’ home or their shed. The Amended Complaint does not state whether Plaintiffs provided Allstate with this document.

Plaintiffs also obtained a Storm Impact Report dated September 14, 2023 from The Exterior Company. This report states that on April 1, 2023, hail of 1.25 inches fell for 5 minutes at Plaintiffs’ home. The report further notes that there was wind reaching 73 miles per hour for 6 minutes.

Plaintiffs provided a copy of the Storm Impact Report to Allstate.

Allstate thereafter conducted an inspection at Plaintiffs' property. It sent Plaintiffs another letter on November 15, 2023. In this letter, Allstate explained that during the inspection, it was "unable to find physical damage, or additional damages, sustained from the loss date . . . to [Plaintiffs'] dwelling roof and shed roof." Allstate concluded that it would not pay for Plaintiffs' insurance claim.

Plaintiffs filed this suit in the Court of Common Pleas on February 14, 2024. Allstate removed the action to this court on March 27, 2024. Shortly thereafter, Plaintiffs amended their complaint. Allstate moved to dismiss Plaintiffs' bad faith claim.

III

The Pennsylvania bad faith statute, 42 Pa. Cons. Stat. § 8371, provides that "[i]n an action arising under an insurance policy, if the court finds that the insurer acted in bad faith toward the insured," the court may award interest in the amount equal to the prime rate of interest plus 3%, award punitive damages, and assess court costs and attorneys' fees. The statute does not define bad faith. The Superior Court of Pennsylvania, in Terletsky v. Prudential Property and Cas. Ins. Co., explained that bad faith "is any frivolous or unfounded

refusal to pay proceeds of a policy.” 649 A.2d 680, 688 (Pa. Super. Ct. 1994) (quoting Black’s Law Dictionary 139 (6th ed. 1990)).

To prevail on a bad faith claim under § 8371, a plaintiff must prove by clear and convincing evidence that the insurer: (1) did not have a reasonable basis for denying benefits under the policy; and (2) knew or recklessly disregarded its lack of reasonable basis in denying the claim. Terletsky v. Prudential Property and Cas. Ins. Co., 649 A.2d 680, 688 (Pa. Super. Ct. 1994). Id. The statute protects against any instances of bad faith by an insurer occurring during its handling of the claim. O’Donnell ex rel. Mitro v. Allstate Ins. Co., 734 A.2d 901, 906 (Pa. Super. 1999). It also encompasses a broad range of insurer conduct, including unreasonable delay in evaluating claims, failure to communicate with the insured, frivolous refusal to pay, inadequate investigation into the factual basis of the insurance claim, and failure to conduct legal research concerning coverage. Smith v. Allstate Ins. Co., 904 F. Supp. 2d 515, 524 (W.D. Pa. 2012).

An insurer can defeat a claim of bad faith by showing that it had a reasonable basis for its decision to deny payment or that it lacked the required intent. Id. Regarding the requisite intent, it is not necessary that the insured’s refusal

to pay rises to the level of fraud. Terletsky, 649 A.2d at 688. However, mere negligence or bad judgment is not bad faith. Id.

Plaintiffs here allege that Allstate acted in bad faith by engaging in the following conduct:

- (a) by sending correspondence falsely representing that Plaintiff[s'] loss caused by wind-driven rain was not entitled to benefits due and owing under the Policy;
- (b) in failing to complete a prompt and thorough investigation of Plaintiff[s'] claim before representing that such claim is not covered under the Policy;
- (c) in failing to pay Plaintiff[s'] covered loss in a prompt and timely manner;
- (d) in failing to objectively and fairly evaluate Plaintiff[s'] claim;
- (e) in conducting an unfair and unreasonable investigation of Plaintiff's claim;
- (f) in asserting Policy defenses without a reasonable basis of fact, including, but not limited to, "wear and tear" and "sudden and accidental direct physical loss";
- (g) by misrepresenting pertinent facts and Policy provisions and placing unduly restrictive interpretations on the Policy, including, but not limited to "wear and tear";
- (h) in failing to keep Plaintiff[s] or their representatives fairly and adequately advised as to the status of the claim;
- (i) in unreasonably valuing the loss and failing to fairly negotiate the amount of the loss with Plaintiff[s] or their representatives;

(j) in failing to promptly provide a reasonable factual explanation of the basis for the denial of Plaintiffs['] claim, including, but not limited to, originally claiming that damage was from wear and tear and later, once wear and tear was disproved as the cause of loss, claiming that there was no damage at all;

(k) by unreasonably withholding Policy benefits;

(l) in acting unreasonably and unfairly in response to Plaintiffs['] claim;

(m) by unnecessarily and unreasonably compelling Plaintiffs to institute this action to obtain benefits for a covered loss.

Allstate argues that its motion should be granted because Plaintiffs have pleaded only conclusory allegations. The Amended Complaint, according to Allstate, lacks a factual basis to make out a claim for bad faith.

Allstate cites three district court cases that dismissed bad faith claims on the ground that they contained only conclusory allegations. See Ream v. Nationwide Prop. & Cas. Ins. Co., NAIC, No. 2:19-CV-00768, 2019 WL 4254059 (W.D. Pa. Sept. 9, 2019); Krantz v. Peerless Indem. Ins. Co., No. 18-CV-3450, 2019 WL 1123150 (E.D. Pa. Mar. 12, 2019); Hwang v. State Farm Mut. Automobile Ins. Co., No. CV 19-927, 2019 WL 1765938 (E.D. Pa. Apr. 22, 2019). In each of these cases the only supporting fact was that the plaintiff had an outstanding

claim. In Hwang, our colleague Judge Mark Kearney highlighted the dearth of factual support in the plaintiff's complaint:

Ms. Hwang does not allege how State Farm failed to investigate and evaluate her claim in an objective and fair manner, subordinated her interest to its own, or violated its fiduciary duty owed to her. She does not plead her communications with State Farm or State Farm's conduct even though a claim for bad faith is based on State Farm's conduct in handling her claim. She does not plead calls or communications since the February 7, 2019 verbal offer of \$7,000.

Hwang, 2019 WL 1765938, at *3 (emphasis added).

Conversely, Plaintiffs here supported their allegations with correspondence from Allstate. In its letter dated May 31, 2023, Allstate determined that it was "unable to provide coverage" for Plaintiffs' roof, interior, and shed because the Policy contained exceptions for "wind driven water" and "wear and tear." It quoted only portions of the policy containing exceptions to coverage. As previously discussed, Plaintiffs had a deductible for "windstorm and hail." The letter never states that Allstate had conducted any investigation into Plaintiffs' claim of windstorm and hail damage before declining coverage on May 31, 2023. Moreover, Allstate never states that it considered the portions of the policy that cover windstorm and hail damage. In sum, the letter makes plausible the allegation in Paragraph 28(b) of the Amended

Complaint that Allstate “fail[ed] to complete a prompt and thorough investigation of Plaintiff[s’] claim before representing that such claim is not covered under the Policy.”

Plaintiffs further contend that Allstate acted in bad faith once it conducted an investigation of Plaintiffs’ property. They submit Allstate’s November 15, 2023 letter, which stated that Allstate was “unable to find physical damage, or additional damages, sustained from the loss date . . . to [Plaintiffs’] dwelling and shed roof.” They also submit the report of the third-party contractor dated July 20, 2023 which contained pictures of damaged shingles on Plaintiffs’ roof. These factual allegations are insufficient to support a plausible claim that Allstate’s investigation was unreasonable or that it frivolously denied coverage on November 15, 2023. “An insurer does not act in bad faith by investigating . . . legitimate issues of coverage.” Hyde Athletic Industries, Inc. v. Contl. Cas. Co., 969 F. Supp. 289, 307 (E.D. Pa. 1997). Further, Plaintiffs allege no facts showing “recklessness or ill will” by Allstate once it conducted its investigation. See id. at 309.

Plaintiffs remaining allegations are merely conclusory. The bad faith claim will be dismissed except as to the allegation that Allstate denied coverage on May 31, 2024 without any prior investigation into Plaintiffs’ claim (Doc. #6

at ¶ 28(b)). Whether Plaintiffs will be able to prove bad faith must await another day.