

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

TIMOTHY DOLAN, *et al.*,

Plaintiffs,

v.

PHL VARIABLE INSURANCE CO., *et al.*,

Defendants.

CIVIL ACTION NO. 3:15-cv-01987

(JUDGE CAPUTO)

ORDER

NOW, this 22nd day of November, 2016, **IT IS HEREBY ORDERED** that:

- (1) Defendants' Motions to Dismiss (Docs. 15, 33, 45) Plaintiffs' Complaint (Doc. 1) are **GRANTED in part and DENIED in part** as follows:
 - (a) Count I alleging a violation of Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 P.S. § 201 is **DISMISSED without prejudice** as failing to meet the particularity requirement of Fed. R. Civ. P. 9(b).
 - (b) Count II alleging a breach of fiduciary duty claim is **DISMISSED without prejudice** as failing to meet the particularity requirement of Fed. R. Civ. P. 9(b).
 - (c) Count III alleging a negligence claim is **DISMISSED without prejudice** as failing to comply with Fed. R. Civ. P. 8(a).
- (2) Plaintiffs have **twenty-one (21) days** from the date of entry of this Order to file a an Amended Complaint to properly plead their negligence, breach of fiduciary duty, and UTPCPL claims and to state their claims with respect to each Defendant insurance company with the requisite specificity; otherwise, those claims, and the Complaint, will be **dismissed with prejudice**.

/s/ A. Richard Caputo _____
A. Richard Caputo
United States District Judge