

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

GERALDINE HOWARD and
LESTER HOWARD,

Plaintiffs,

v.

CIVIL ACTION NO. 2:09-1027

PROPERTY & CASUALTY INSURANCE
COMPANY OF HARTFORD,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending before the court is defendant's Motion for Partial Judgment on the Pleadings. (Doc. No. 14.) By Order entered July 21, 2010, the court informed the parties that defendant's Motion for Partial Judgment on the Pleadings might be converted to one for summary judgment. In response to the court's Order, on July 29, 2010, defendant filed a motion for partial summary judgment asking that the court grant "summary judgment as to Plaintiffs' inappropriate, third-party extracontractual allegations." (Doc. No. 26).

The basis of defendant's request for judgment on the pleadings and/or summary judgment is that West Virginia has abolished a third-party bad faith cause of action against insurers. See W. Va. Code § 33-11-4a (2005); State ex rel. Nationwide Mutual Ins. Co. v. Kaufman, 658 S.E.2d 728, 735 n.8 (W. Va. 2008). The statute could not be more clear:

A third-party claimant may not bring a private cause of action or any other action against any person for an unfair claims settlement practice. A third-party claimant's sole remedy against a person for an unfair claims settlement practice or the bad faith settlement of a claim is the filing of an administrative complaint with the Commissioner in accordance with subsection (b) of this section.

W. Va. Code § 33-11-4a. Accordingly, defendant is entitled to judgment in its favor on plaintiffs' third-party bad faith claim and the motion for judgment on the pleadings is hereby GRANTED. The motion for partial summary judgment is DENIED as moot.

Still pending is plaintiffs' attempt to amend their complaint to assert a first-party bad faith claim. (Doc. # 28). In order to allow the court to better decide the motion to amend, plaintiffs are directed to file a copy of their proposed amended complaint.

The Clerk is directed to send copies of this Memorandum Opinion and Order to counsel of record.

It is **SO ORDERED** this 22nd day of September, 2010.

ENTER:



David A. Faber

Senior United States District Judge