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IN THE
COURT OF APPEALS OF INDIANA

ESTATE OF JEROME MINTZ,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 49A05-0609-CV-532
	)	
CONNECTICUT GENERAL LIFE INSURANCE COMPANY and WAYNE E. GRUBER,	)	
	)	
Appellees-Defendants.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patrick L. McCarty, Judge
Cause No. 49D03-9704-CP-571

November 29, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

The Estate of Jerome Mintz ("Estate") appeals from the entry of summary judgment in favor of Wayne E. Gruber ("Gruber") and Connecticut General Life Insurance Company ("Connecticut General"). We affirm.

Issues

The Estate raises two issues, which we restate as:

I. Whether the trial court erred in granting summary judgment in favor of Gruber on the Estate's negligence claim; and

II. Whether the trial court erred in granting summary judgment in favor of Connecticut General as to the Estate's claims of vicarious liability, negligence, and bad faith.

Facts and Procedural History

The pertinent facts, as delineated in a previous appeal of this case, are as follows:

> In March 1995, sixty-four year old [Dr. Jerome] Mintz had been a professor at IU [Indiana University] for over thirty years. As part of his employment, he received full basic and supplemental life insurance coverage under a group term life insurance policy issued by Connecticut General to IU in connection with its employee benefits plan. This coverage included two policies: a basic term policy with a death benefit of $50,000, the premiums for which were paid by IU; and a supplemental term policy with a death benefit of $128,000, the premium for which was paid by Mintz. Pursuant to the Indiana University Group Life Insurance Plan for Faculty and Staff ("Plan"), the coverage provided under these policies would be reduced upon Mintz turning sixty-five on March 29, 1995, and again upon him retiring on June 1, 1995, unless Mintz converted the group coverage into individual policies. To convert the policies,

Mintz was required to complete an application and submit a premium payment upon each reduction.

On March 22, 1995, IU sent Mintz a letter advising him that his total life insurance coverage would be reduced from $178,000 to $115,000 upon him turning sixty-five later that month. The letter also noted that a conversion option was available to replace the amount of coverage lost by the reduction and instructed Mintz to contact Wayne Gruber with any questions regarding the conversion option.

Shortly thereafter, Mintz contacted Gruber to make arrangements to convert his group coverage to individual policies. Mintz told Gruber his health was failing and indicated his desire to convert the entire value of the group coverage to individual policies. Gruber told Mintz he would take care of "everything."

On March 28, 1995, Gruber sent a letter to Mintz advising him that "[o]n April 29, 1995, your group life insurance reduces from $178,000 to $115,700, a loss of $62,300. Your personal-pay, quarterly premium to replace that $62,300 is $1,160.75." Appellant's App. p. 158. Gruber's letter also stated:

> Then, upon your retirement at the end of this spring semester, your group plan further reduces to $6,000, which remains for the rest of your life. This last reduction represents an additional loss of $109,700. Your personal-pay, quarterly premium to replace this amount is $2,013.63.

Id.

In April 1995, Gruber mailed an application to Mintz to convert the $62,300 lost by the first reduction of group coverage into an individual policy. Gruber had completed a significant portion of the application, listing the coverage amount as $62,300. Mintz signed the application and timely submitted the premium payment of $1,160.75. He mistakenly believed that the application would convert the entire value of his group coverage to individual policies.

Estate of Mintz v. Conn. Gen. Life Ins. Co., No. 49A05-0402-CV-91, slip op. at 2-4 (Ind. Ct. App. June 6, 2005).

A couple weeks later, Dr. Mintz received a letter from Connecticut General that read as follows:

> Dear Mr. Mintz:
> We would like to issue your new Life Conversion Policy as soon as possible. In order to do so, we will need the following.
> Your premium check was insufficient. The correct quarterly premium for $62,300 based on age 65 is $1204.55.
> Therefore, we are returning your check.

Appellant's Appendix at 681. Subsequently, Dr. Mintz's wife, Betty, spoke with Gruber about the returned check. Betty then sent a check to Connecticut General for $1204.55.

> In June 1995, IU sent a letter to Mintz concerning the second policy reduction to $6,000 as a result of his retirement that month. The letter provided in part:
>
> > You may purchase replacement insurance for the amount being terminated, without medical examination, if application is made within 31 days of your separation and/or notice by letter. You also have the conversion option for supplemental life (employee-paid portion). If you wish to exercise this conversion privilege, you should contact Mr. Wayne Gruber . . . .
>
> App. p. 114. Mintz did not contact Gruber regarding the second conversion, believing everything had been taken care of.
>
> In February 1996, Mintz's wife discovered that the entire value of the group coverage had not been converted into individual policies. Only coverage worth $62,300 had been converted.[1] The Mintzes contacted Connecticut General and demanded full conversion. Connecticut General refused the conversion on the basis that there had not been a timely application and tender of premium to effectuate the second conversion.
>
> On April 21, 1997, Mintz filed a complaint against Connecticut General, Gruber, and other defendants. In that complaint, Mintz alleged negligence, breach of contract, and intentional infliction of emotional distress against the defendants. Mintz also sought punitive damages for bad faith. A few months later, Mintz passed away. The Estate was later substituted as the party to this action.
>
> In December 2004, Connecticut General filed a motion for partial summary judgment and accompanying documents on the breach of contract and bad faith claims. The basis for the motion was that Mintz had failed to meet

[1] Those funds were paid by Connecticut General after Mintz's death and are not at issue in this litigation.

> certain contractual conditions precedent and, as a result, there was no insurance contract upon which it was obligated. In response, the Estate filed a memorandum in opposition and accompanying documents.
>
> Thereafter, the trial court conducted a hearing on the summary judgment motion. The trial court granted the motion for partial summary judgment in favor of Connecticut General on the issue of breach of contract on the basis that Mintz failed to complete the proper form for conversion of the life insurance benefits in the required time period.
>
> A few days later, the trial court conducted a jury trial on the remaining claims. During the trial, the trial court granted a motion for judgment on the evidence, filed by Connecticut General and joined by Gruber, as to the intentional infliction of emotional distress claim and as to the bad faith claim against Gruber. At the conclusion of the trial, the jury returned a verdict in favor of Connecticut General and Gruber on all remaining claims.

Estate of Mintz, No. 49A05-0402-CV-91, slip op. at 4-6.

The Estate appealed, raising issues challenging the partial summary judgment in favor of Connecticut General, three jury instructions, and the exclusion of an offer of settlement given to Mintz by Connecticut General in 1996. Id. at 2. This Court affirmed the partial summary judgment, the exclusion of the settlement agreement, two of the jury instructions, but reversed and remanded the case based on an erroneous jury instruction involving the determination of negligence. Id. at 15, 23.

On remand, both Gruber and Connecticut General filed motions for summary judgment on the remaining negligence, vicarious liability, and bad faith claims, both supporting their arguments in part with language from this Court's June 6, 2005 opinion ("Estate of Mintz"). Gruber argued that Estate of Mintz established that the Mintzes failed to take the necessary steps to convert the second insurance policy and that it was unreasonable for the Mintzes to rely on prior statements made by Gruber. Based on these findings, Gruber

contended that the Mintzes could not establish that Gruber's actions were the proximate cause of the claimed injuries, and thus, the claim of negligence could not stand.

Connecticut General requested summary judgment on the Estate's bad faith claim because Estate of Mintz held that the Mintzes failed to complete the second insurance conversion process to make a contract and without a contract, a bad faith claim cannot be raised. As to the negligence claim, Connecticut General asserted that summary judgment should be granted because it did not have a duty to the Mintzes, the Estate failed to raise a genuine issue of material fact as to damages being proximately caused by the actions of the alleged agent, Gruber, and because Connecticut General was not vicariously liable for any alleged negligence by Gruber.

After a hearing on the motions on September 8, 2006, the trial court granted both motions in separate orders. In its order as to Gruber's motion for summary judgment, the trial court found that Estate of Mintz:

> rejected the Plaintiff's theory that [Mintz's] failure to act on the June 15, 1995 letter from Indiana University was caused by the statement made by Gruber that he would take care of everything and ruled to the contrary that the proximate cause of such failure was his own actions.

Appellant's Appendix at 19. The order concluded, in part:

> 5. In order to recover against an insurance agent his/her customer must prove, among other things, that the acts of the agent were the proximate cause of the customer's loss.
>
> 6. The finding of the Court of Appeals constitutes the Law of the Case.
>
> 7. Gruber's acts or omissions were not the proximate cause of the estate's claimed injuries.

Id.

The order of the trial court in regards to Connecticut General's motion for summary judgment granted the motion without explanation. The Estate now appeals from both orders.

Discussion and Decision

Standard of Review

Pursuant to Rule 56(C) of the Indiana Rules of Trial Procedure, summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. A genuine issue of material fact exists where facts concerning an issue that would dispose of the litigation are in dispute or where the undisputed material facts are capable of supporting conflicting inferences on such an issue. Bilimoria Computer Systems, LLC v. America Online, Inc., 829 N.E.2d 150, 155 (Ind. Ct. App. 2005). Our standard of review for summary judgment is the same as that used in the trial court. Harco, Inc. v. Plainfield Interstate Family Dining Assoc., 758 N.E.2d 931, 937 (Ind. Ct. App. 2001).

Neither the trial court nor the reviewing court may look beyond the evidence specifically designated to the trial court. Id. We do not reweigh the evidence. Allen v. First Nat. Bank of Monterey, 845 N.E.2d 1082, 1084 (Ind. Ct. App. 2006). Instead, we consider the facts in the light most favorable to the nonmovant. Id. We will affirm the denial of summary judgment if it is sustainable on any legal theory or basis found in the evidentiary matter designated to the trial court. Ford v. Culp Custom Homes, Inc., 731 N.E.2d 468, 472 (Ind. Ct. App. 2000), trans. denied.

I. Summary Judgment as to Gruber

On appeal, the Estate argues that Gruber is not entitled to summary judgment because the trial court erred in its application of the law of the case to proximate cause and because genuine issues of material fact exist.

A. Law of the Case

First, the Estate argues that the trial court erred in its application of the law of the case doctrine, because in Estate of Mintz this Court addressed the issue of breach of contract, not proximate cause. Under the law of the case doctrine, an appellate court's determination of a legal issue is binding both on the trial court on remand and on the appellate court on a subsequent appeal, given the same case with substantially the same facts. Boonville Convalescent Center, Inc. v. Cloverleaf Healthcare Servs., Inc., 834 N.E.2d 1116, 1125 (Ind. Ct. App. 2005), reh'g denied, trans. denied. To invoke the law of the case doctrine, the matters decided in the prior appeal clearly must appear to be the only possible construction of an opinion, and questions not conclusively decided in the prior appeal do not become the law of the case. Hanson v. Valma M. Hanson Revocable Trust, 855 N.E.2d 655, 662 (Ind. Ct. App. 2006). The purpose of the doctrine is to minimize unnecessary relitigation of legal issues once an appellate court has resolved them. Rothberg v. Hershberger, 832 N.E.2d 593, 598 (Ind. Ct. App. 2005), trans. denied. Accordingly, under the law of the case doctrine, relitigation is generally barred for all issues decided "directly or by implication in a prior decision." Id.

In the portion of Estate of Mintz addressing the issue of partial summary judgment on the breach of contract claim, this Court held in relevant part:

Because we have concluded the Mintzes could not reasonably rely on Gruber's

> statement to not complete the application for the second conversion in light of the letters sent to them after that conversation with Gruber, we are left with the undisputed fact that the Mintzes failed to complete the application for the second conversion and failed to tender the premium associated with that conversion. Because Mintz failed to satisfy the condition precedent by completing the application and tendering the premium payment for the second conversion, there is no contract upon which to base a breach of contract claim. The trial court properly entered partial summary judgment as to that claim.

Estate of Mintz, slip op. at 7-10. This opinion addressed the legal issue of breach of contract. It did not address or resolve the outstanding legal issue of whether Gruber was negligent. Therefore, the language in the prior opinion is not the law of the case as to the negligence claim against Gruber. However, the trial court's entry of summary judgment is sustainable on other grounds.

B. Proximate Cause

For Gruber to succeed on his motion for summary judgment as to the Estate's negligence claim, he must establish that the undisputed facts negate at least one element of the Estate's claim or that the claim is barred by an affirmative defense. See Precedent Partners I, L.P. v. Hulen, 863 N.E.2d 328, 331 (Ind. Ct. App. 2007). A claim of negligence is comprised of three elements: (1) a duty on the part of defendant in relation to the plaintiff; (2) a failure by defendant to conform his conduct to the requisite standard of care; and (3) the injury to the plaintiff was proximately caused by the failure. Id.

Proximate cause is that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the result complained of and without which the result would not have occurred. Hassan v. Begley, 836 N.E.2d 303, 307 (Ind. Ct. App. 2005), reh'g denied. A party's act is the proximate cause of an injury if it is the natural and

probable consequence of the act and should have been reasonably foreseen and anticipated in light of the circumstances. Id. In other words, proximate cause requires, at a minimum, that the harm would not have occurred but for the defendant's conduct. Id. Although the trier of fact often determines the issue of proximate cause, where it is clear that the injury was not foreseeable under the circumstances and the imposition of liability upon the original negligent actor would not be justified, the determination of proximate cause may be made as a matter of law. Id.

This is such a case where the determination of proximate cause can be made as a matter of law. First, we look to the foreseeability of the injury under the circumstances. In determining proximate cause, foreseeability is determined based on hindsight and accounts for the circumstances that actually occurred. Goldsberry v. Grubbs, 672 N.E.2d 475, 479 (Ind. Ct. App. 1996), trans. denied. The injury incurred was the loss of life insurance coverage due to Dr. Mintz's retirement and the failure to convert the policy. The Estate alleges that this injury was proximately caused by Gruber's statement that he would "take care of everything," leading the Mintzes to believe that the entire policy had been converted, and Gruber's subsequent inaction in converting the second portion of Dr. Mintz's insurance policy. Looking back at the circumstances, the coverage loss injury resulting from the failure to convert the insurance policy was clearly not foreseeable because the Mintzes received numerous indicators, including a direct notice from IU that the conversion of the second policy had not taken place.

First, Gruber sent a letter ("Gruber's Letter") to the Mintzes, detailing the two events that would trigger a reduction in coverage, the amount of coverage lost at each event, and the

quarterly premium needed to obtain replacement coverage after each reduction. Although Gruber's Letter did not spell out in detail the exact steps that the Mintzes needed to take to effectuate conversion of both policies, it contained dates and dollar figures relevant to the conversion process. Second, the two-page application for the first conversion listed the amount of lost insurance being replaced and the required quarterly premium, both identical to the numbers quoted in Gruber's Letter for the first conversion. Third, the Mintzes received a letter from Connecticut General informing them that their check was insufficient for the quarterly premium for the first conversion for $62,300. Again, the conversion amount corresponded with the first conversion figure in Gruber's Letter. Finally, IU sent a letter informing Dr. Mintz that his life insurance coverage would reduce to $6,000 and replacement coverage could be obtained if an application was submitted within thirty-one days of "separation and/or notice by letter." App. at 65.

The Mintzes were provided with information as to the timing of each conversion and other indicators that the first application only converted part of their insurance coverage. Prior to the deadline for the conversion of the second policy, the Mintzes were given specific instructions on what actions they were required to take and when to effectuate the conversion of the second policy. In light of these circumstances, it was clearly not foreseeable that the second conversion would not occur because the Mintzes would take no action in light of the information they received, instead purportedly relying solely on Gruber's one, general statement.

Second, placing liability for the loss of coverage on Gruber for making a general statement that he would "take care of everything" would not be justified. This statement was

allegedly made in the first conversation between Gruber and Mintz. After this conversation, Gruber sent the detailed letter and requested a response as to what action the Mintzes wanted him to take. There is no claim by the Estate that when Dr. Mintz's wife, Betty, subsequently called Gruber to instruct him as to what they wanted him to do that she told him specifically to convert both polices or all of their coverage. Furthermore, the record does not reflect that Betty asked any questions regarding the detailed letter. Without more, there is no justification to hold Gruber liable for the coverage loss based on his initial general statement to offer the Mintzes help through the process of conversion. He made a one-time, general statement, not a specific promise that he repeated throughout the process. Moreover, the Mintzes were given notice by IU of the reduction of coverage due to Dr. Mintz's retirement and took absolutely no action.

Because Gruber's actions were not the proximate cause of the Mintzes' loss of insurance coverage, Gruber is entitled to the summary judgment granted by the trial court.

II. Summary Judgment as to Connecticut General

The Estate also appeals the grant of summary judgment in favor of Connecticut General on the remaining claims of vicarious liability, negligence, and bad faith. In regards to the claim that Connecticut General was vicariously liable for Gruber's negligence, we conclude that the trial court properly granted summary judgment because Gruber's general statement that he would "take care of everything" was not the proximate cause of the injury, as explained above.

As to the negligence claim, the Estate alleges that Connecticut General breached a duty to Dr. Mintz in refusing to permit him to submit an application for the second conversion after the thirty-one day deadline. After Betty discovered that the second conversion had not occurred, she called Gruber, who confirmed Betty's discovery. Subsequently, Gruber sent a letter to the Conversion Unit of Connecticut General explaining the Mintzes' situation and suggested that the circumstances warranted consideration of an exception to the conversion time limits. Betty also contacted Connecticut General about the situation. Eventually, Betty was directed to Gail Kenyon ("Kenyon"), the then director of Connecticut General's Life Underwriting Department.

In response to Betty's request to allow an exception to apply so that the second conversion could take place, Kenyon conducted an investigation of the circumstances. Kenyon spoke with Gruber, Betty, employees of IU, reviewed the correspondence between the Mintzes and Connecticut General, Gruber, and IU, reviewed the application for the first conversion, and conferred with Connecticut General's legal counsel. Kenyon concluded that the IU notice of reduction in coverage due to Dr. Mintz's retirement gave the Mintzes clear instructions as to what they had to do to convert the second policy. Accordingly, Kenyon informed Betty that Connecticut General declined her request for an exception to the thirty-one day rule for the second conversion.

Without citation to authority or explanation of the scope, the Estate alleges that Connecticut General had a duty to Dr. Mintz based on the previous policies it had issued to Dr. Mintz. From the other cases cited in the Estate's argument, it appears that the Estate's negligence claim is based on an insurer's duty to deal in good faith with its insured. See

Appellant's Br. at 24; Cain v. Griffith, 849 N.E.2d 507, 510 (Ind. 2006). However, the Estate also argues on a separate claim labeled as bad faith. In actuality, these claims are one and the same. Therefore, the only remaining claim to address is that of bad faith.

Indiana law has long recognized an implied duty for an insurer to deal in good faith with its insured. Id. When recognizing the relevant tort claim of bad faith, our Supreme Court did not determine the precise extent of the good faith duty, but made general observations that violations of the duty of good faith and fair dealing in an insurer's discharge of its contractual obligations include: (1) making an unfounded refusal to pay policy proceeds; (2) causing an unfounded delay in making payment; (3) deceiving the insured; and (4) exercising any unfair advantage to pressure an insured into a settlement of his claim. Erie Ins. Co. v. Hickman by Smith, 622 N.E.2d 515, 519 (Ind. 1993).

The Estate and Connecticut General disagree as to whether this duty only arises as to each individual insurance contract. However, even assuming Connecticut General was obligated to deal with the Mintzes in good faith, there is no basis for a bad faith claim in the circumstances at hand. The alleged action constituting bad faith is that Connecticut General refused to allow an exception to their conversion rules where the Mintzes failed to submit their conversion application in a timely manner. Simply put, the Estate claims that an insurer's refusal to break its own rules, the same rule communicated to the potential insured, amounts to bad faith. We cannot agree. Moreover, the Estate does not contend that the insurer had a system for determining exceptions from which it departed in denying their appeal for an exception. Without some evidence that the insurer's actions departed from their normal routine or were deceitful, unfounded or fraudulent, a bad faith claim will not

survive summary judgment.

The trial court did not err in granting summary judgment in favor of Connecticut General.

Conclusion

Gruber's actions were not the proximate cause of the Estate's injuries and Gruber and Connecticut General were properly granted summary judgment on the Estate's claims of negligence and vicarious liability. Connecticut General was also entitled to summary judgment for the remaining claim of bad faith because the Estate's claim was essentially based on Connecticut General's unwillingness to depart from its stated procedure and make an exception.

Affirmed.

MAY, J., concurs.

SHARPNACK, J., concurs in part and dissents in part with opinion.

IN THE
COURT OF APPEALS OF INDIANA

ESTATE OF JEROME MINTZ,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 49A05-0609-CV-532
	)	
CONNECTICUT GENERAL LIFE INSURANCE COMPANY and WAYNE E.GRUBER,	)	
	)	
Appellees-Defendants.	)	

SHARPNACK, JUDGE concurring in part and dissenting in part

I respectfully concur in part and dissent in part. I agree with the majority's conclusions in I.A. and II; however, I disagree with the majority on the question of whether Gruber's actions were a proximate cause of the injuries.

Even if the Mintzes' actions were a proximate cause of their injuries, Gruber's actions could also be a proximate cause of the injuries. "[I]t is not necessary for a defendant's act or omission to be *the* proximate cause of the plaintiff's injury, so long as the conduct is *a* proximate cause of the injury." Hassan v. Begley, 836 N.E.2d 303, 308 (Ind. Ct. App. 2005) (emphasis added).

The majority concludes that "it was clearly not foreseeable that the second conversion

would not occur because the Mintzes would take no action in light of the information they received, instead purportedly relying solely on Gruber's one, general statement." Slip op. at 12. The majority also states that Gruber "made a one-time, general statement, not a specific promise that he repeated throughout the process" and reliance on this statement would not be justified. Id. However, the Estate designated evidence that Gruber reassured Mrs. Mintz that everything was fine after Connecticut General returned the check because it was insufficient. Specifically, the Estate designated the following portion of Mrs. Mintz's deposition:

> Q. When you talked to Mr. Gruber, did you talk only about the check?
>
> A. When I called him about this?
>
> Q. Yes.
>
> A. No. I called him and I told him, you know, the check was returned. And I was somewhat embarrassed for him, because he had made a mistake on the premium and I told him, you know, there was a mistake on the premium. And he said, yes, he knew about it. He then told me that-- And, of course, he had never called me to tell me, be alerted to the fact that you're going to have to send another check.
>
> I told him in that conversation that I was beginning to feel very uneasy about all of this. Was he certain he had done everything, was everything correct, because I didn't want to have any other problems. And he just laughed and just said, Oh, don't you worry, just send your check in, everything is fine.
>
> I said, do I have the policy, is everything in check? And I even recall that I was – I was nervous about the whole thing, and I repeated myself, and he said, everything is fine, you have nothing to worry about. Talked with him about the policy in general, in other words. Are you sure everything's okay, because this makes me think that there can be other errors and I've really had enough with this thing. I don't want to have any more trouble.
>
> Q. And, yet, you had in your hand a letter that told you that the amount of coverage wasn't what you thought it should be. You didn't raise that

question with him?

A. I don't think I even noticed it.

Q. You seem very meticulous to me about most things?

A. About some things, I'm not that meticulous. Now, when I sent my first check in, I did not send a postcard. I only sent a postcard when I became worried. I was feeling very worried.

Q. Well, if you're very worried, I would think you would have scoured the letter very carefully to see if there was any other problem on the horizon?

A I had no idea that a problem of that magnitude could possibly exist after our conversations. I hadn't the slightest inclination to believe that that could happen.

Q. To the extent that the conversion that was taking place here related to your husband attaining the age of 65 and you asked Mr. Gruber whether everything that needed to be done had been done, would it be reasonable for him to think you were asking him a question about the age 65 conversion?

A Are you aware of when he got this letter? This letter was received by – My phone call to him was around April 21st.

Q. Right.

A. So I was supposed to be applying the second – According to the theory that he's functioning under, I was supposed to be applying for the second leg of this insurance policy, which was a very large sum of money. And then I said, is everything all right, are there any errors out there or any problems out there that I should know about, I cannot imagine that if he knew that there was no application when there should have been one that he would not have said, are you going to do your second application, especially, when he knew my husband was so sick and that it applied to us, that kind of policy.

Appellant's Appendix at 593-594. The Estate also designated the following testimony of Mrs. Mintz:

Q . . . . I'm going to hand you what's been marked for identification as Plaintiff's Exhibit 4 and ask you if you can identify that letter.

A Yes. That's the letter that we're talking about, that they sent me April 18th, where they said they didn't open the conversion policy because my premium check wasn't enough, and it was about $40 short.

* * * * *

Q Did you talk to Mr. Gruber again, after receiving this letter?

A Immediately. They didn't say anything in the letter about why my check was sufficient or how it happened, so I called [Gruber] and I told him how upset I was, and I was worried about something going wrong with these policies, and that something bad could have happened if I hadn't caught that letter. Excuse me. I spoke to CIGNA first . . . to Stacy Lambert, I think, first.

Q And thereafter, you contacted [Gruber]?

A Yeah – because she told me that it was because of a mistake [Gruber] made.

Q And so you called [Gruber] and . . .

A Then I called him and I told him I was upset, and he said yes, he knew that the amount was insufficient, that he had made a mistake on the premium. I thought it was kind of strange that he didn't call it to my attention so at least I'd be on the alert for all this. But he hadn't called me. And I said, 'Well, is everything all right with our work with Connecticut General, because this gives me a feeling that something bad is going to happen' and he said 'No, no. You're fine. Just send the letter back . . . the check back . . . everything's fine.' And we talked about it quite a bit, I got a lot of reassurance from him that he was doing everything as we had originally agreed, that it was all going to be fine. 'Just calm down, let it go, and send it back.'

Q And how did you feel after talking with [Gruber]?

A I was reassured. He was a very reassuring person. He was very friendly, very personable, and kind of made you feel that he had your interests in mind. So I was reassured.

Id. at 616-619.

A review of the facts most favorable to the Estate reveals that "Mintz told Gruber his health was failing and indicated his desire to convert the entire value of the group coverage to individual policies. Gruber told Mintz he would take care of 'everything.'" Estate of Mintz, No. 49A05-0402-CV-91, slip op. at 3. In April 1995, Gruber mailed an application to Mintz to convert the $62,300 lost by the first reduction of group coverage into an individual policy. Id. at 4. When Connecticut General informed Mr. Mintz that the check for the premium was incorrect, Mrs. Mintz spoke with Gruber who informed her that everything was fine and that she did not need to worry about anything. Gruber never sent the Mintzes an application for the second conversion nor did anything else to "take care of everything." Based on the designated evidence, I cannot conclude, as a matter of law, that Gruber's actions were not a proximate cause of the Mintzes' injuries.

Because the Mintzes' actions and Gruber's actions could both be proximate causes of the injury, the apportionment principles of comparative fault are triggered. "Fault apportionment under the Indiana Comparative Fault Act is uniquely a question of fact to be decided by the jury." McKinney v. Pub. Serv. Co. of Ind., Inc., 597 N.E.2d 1001, 1008 (Ind. Ct. App. 1992), trans. denied. See also Paragon Family Restaurant v. Bartolini, 799 N.E.2d 1048, 1056 (Ind. 2003) ("The Comparative Fault Act entrusts the allocation of fault to the sound judgment of the fact-finder."). "[A]t some point the apportionment of fault may become a question of law for the court. But that point is reached only when there is no dispute in the evidence and the factfinder is able to come to only one logical conclusion." Robbins v. McCarthy, 581 N.E.2d 929, 934 (Ind. Ct. App. 1991), reh'g denied, trans. denied.

Because there is a dispute in the evidence, the apportionment of fault should be left for the jury. See, e.g., City of Crawfordsville v. Price, 778 N.E.2d 459, 463 (Ind. Ct. App. 2002) (holding that the apportionment of fault should be left to the factfinder because different inferences could be drawn from the facts); Robbins, 581 N.E.2d at 934-935 (holding that the apportionment of fault should be left for the jury). Consequently, I would reverse the trial court's entry of summary judgment in favor of Gruber. See, e.g., Harris v. Traini, 759 N.E.2d 215, 224 (Ind. Ct. App. 2001) (holding that the trial court erred when it found, as a matter of law, that defendant did not breach any duty to victim), reh'g denied, trans. denied.

For the foregoing reasons, I would reverse the trial court's grant of summary judgment to Gruber.