NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

RICHARD AND MARIA DAVIS Appellee v. FIDELITY NATIONAL TITLE INSURANCE COMPANY D/B/A FIDELITY NATIONAL TITLE INSURANCE COMPANY OF NEW YORK Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 672 MDA 2014

Appeal from the Judgment Entered May 28, 2014
In the Court of Common Pleas of Lackawanna County
Civil Division at No(s): 10-00-8868

BEFORE: BOWES, J., OTT, J., and STABILE, J.

MEMORANDUM BY OTT, J.: **FILED MARCH 18, 2015**

Fidelity National Title Insurance Company d/b/a Fidelity National Title Insurance Company of New York (Fidelity) appeals from the judgment entered on May 28, 2014, in the Court of Common Pleas of Lackawanna County. Plaintiffs, Richard and Maria Davis (collectively Davis), filed a complaint against Fidelity alleging breach of contract and bad faith regarding a dispute over ownership of a 1.86 acre parcel of land. The parties proceeded to a bench trial before the Honorable Carmen D. Minora who found in favor of Davis on both counts and awarded an aggregate verdict of $2,062,746.89. Fidelity raises five issues in this timely appeal. After a thorough review of the submissions by the parties, relevant law, and the certified record, we affirm.

The factual history of this matter is complex and we rely upon the Final Memorandum and Order on [Fidelity's] Motion for Past-Trial Relief, 3/28/2014, Memorandum and Order, 8/15/2013 (including findings of fact), and Stipulated Undisputed Facts, Joint Pre-Trial Order, 12/17/2012.

For brevity's sake, we simply recount that this matter concerned Davis' claim against his Fidelity Title Insurance policy regarding disputed title to 1.86 acres of land Davis sought to develop as part of a housing project. Davis purchased the property as part of a 15-acre acquisition in 2004. In 2007, as Davis attempted to obtain a zoning exception at a public hearing, Louis Norella objected, claiming to be the rightful owner. Davis filed his claim against the policy in October 2007. In June 2009, Fidelity acknowledged a problem with the title and promised resolution of the matter. Although Norella demanded $40,000.00 for the disputed property in 2010, Fidelity did not resolve the issue until it purchased the property from Norella for $50,000.00 in August 2012. Davis claimed the delay in resolution of the matter caused him to delay his development project, costing him lost profits. Additionally, Davis argued the delay represented unconscionable behavior and bad faith.

Fidelity's first three claims address the trial court's determination of lost profits. Fidelity argues the award was based upon speculation, lacked evidentiary support, and lacked proof of causal connection to any Fidelity action. The trial court awarded compensatory damages of $224,760.00, consisting of $89,760.00 for increased building costs and $135,000.00 in lost

profits. Davis' claim of lost profits was based on the expert testimony of Jean Black, a licensed real estate appraiser. She based her calculations on the relative value of the proposed townhomes in December 2008 as compared to January 2012. Based upon these dates, Black calculated lost profits of $272,000.00.[1]

Fidelity argues that (1) the housing development was nothing more than "hypothetical", (2) the trial judge called Black's testimony futuristic, lacking credibility and unpersuasive,[2] (3) there was no historic basis of sales upon which to determine profitability, and (4) the award was lacking in evidentiary support and speculative. We disagree.

First, the trial judge clearly rejected Fidelity's position that the development project was nothing more than hypothetical.[3] The evidentiary record demonstrated Davis had taken several steps to realize the project. He had purchased plans, engaged engineers, conducted surveys and was only stopped when he sought a zoning exception and the problem with the

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[1] Davis did not claim damages from the total inability to proceed with the development project. Rather, Davis claimed the diminution in value (DIV) between the ability to proceed with the project in a timely fashion and the delayed project.

[2] ***See*** Memorandum and Order, 8/15/2013, at 20, ¶ 22.

[3] ***See*** Appellant's Brief, Statement of Questions Involved, at 4, Questions 1-2.

title was discovered. Accordingly, the underlying basis for the award of lost profits is supported by the record.

As noted, the actual calculation of lost profits was based upon the testimony of Jean Black. Black testified that she chose December 2008 as a starting point for calculating lost profits because it was a little over one year after Davis filed the claim against Fidelity (October 2007). This estimate gave Davis one year to build the townhomes. She further testified, "If we needed a more specific time, the reason we don't have it is because they [Fidelity] didn't resolve this claim." ***See*** N.T. trial, 1/29/2013, at 230. Despite accepting Davis' underlying premise of the existence of damages and Black's method of calculation thereof, the trial court rejected Black's presumptive starting date. Fidelity argues this rejection essentially recognizes the claim for damages was speculative.

While we agree that selection of a starting date to calculate damages necessarily includes an estimation, that necessity is largely the result of Fidelity's actions. Our Supreme Court has stated:

> [T]here should be no doubt that recovery will not be precluded simply because there is some uncertainty as to the precise amount of damages incurred. It is well established that mere uncertainty as to the amount of damages will not bar recovery where it is clear that damages were the certain result of the defendant's conduct. ... The basis for this rule is that the breaching party should not be allowed to shift the loss to the injured party when damages, even if uncertain in amount, were certainly the responsibility of the party in breach.

Spang v. United States Steel Corporation, 545 A.2d 861, 866 (Pa. 1988), *quoting* ***Pugh v. Holmes***, 405 A.2d 897 (Pa. 1979).

Additionally,

> While damages cannot be based on a mere guess or speculation, yet where the amount may be fairly estimated from the evidence, a recovery will be sustained even though such amount cannot be determined with entire accuracy.[4]
>
> > "Williston on Contracts, Revised Edition, Vol. 5, lays down these principles in respect to measuring damages: Section 1345, p. 3776. ... 'though there must be evidence of substantial damage in order to justify recovery of more than a nominal sum, *the exact amount need not be shown. Where substantial damage has been suffered, the impossibility of proving its precise limits is no reason for denying substantial damages altogether.*'
> >
> > * * *
> >
> > The essence of the legal principles above cited is that *compensation for breach of contract cannot be justly refused because proof of the exact amount of loss is not produced,* for there is judicial recognition of the difficulty or even impossibility of the production of such proof. What the law does require in cases of this character is that the evidence shall with a fair degree of probability establish a basis for the assessment of damages."
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> 477 Pa. at 41-42, 383 A.2d at 812 (Opinion in support of affirmance and modification; further citations omitted). *See also* comment (a) to Restatement (Second) of Contracts, § 352 ("Doubts are generally resolved against the party in breach. A party who has, by his breach, forced the injured party to seek compensation in damages should not be allowed to profit from his breach where it is established that a significant loss has occurred.") and ***Delahanty v. First Pennsylvania Bank***, 318 Pa. Super. 90, 464 A.2d 1243 (1983) ("justice and public policy

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[4] *Quoting* ***Osterling v. Frick***, 131 A. 205 (Pa. 1925).

> require that the wrongdoer bear the risk of uncertainty which his own wrong has created and which prevents the precise computation of damages").

Spang, 545 A.2d at 866-867.

Accordingly, Pennsylvania law has long recognized that where the existence of damages is certain and due to defendant's actions, the defendant will not be able to benefit from the lack of complete certainty in assessing those damages. Here, Black provided adequate methodology to calculate lost profits and the trial court, acknowledging the uncertainty in assigning a starting point, used its discretion to move the starting date forward two years to provide extra time to accomplish the development.[5] The evidence of record, therefore, provides reasonable certainty for the calculation of damages.

Fidelity's final argument regarding compensatory damages is an allegation that there is no evidentiary causal connection between its actions and the damages claimed. It is undisputed that Fidelity took approximately five years to resolve this title claim. It is also undisputed that Davis intended to put the townhome portion of the development on the disputed property. It cannot be credibly maintained that Davis could have built on the disputed portion of land prior to the resolution of the title dispute. Davis

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[5] We note that the trial court could have simply accepted Black's starting point as reasonable, and such would have been supported by the record. By exercising his discretion, the trial judge relieved Fidelity of substantial additional liability to Davis.

faced the choice of going forward with his project without the townhomes, which would have required new plans to accommodate shifting of roads and the like, or waiting to resolve the dispute and moving forward as planned. As will be more fully discussed in the bad faith discussion, Fidelity had two options in resolving the problem: Fidelity could purchase the disputed property for Davis or pay Davis the value of the land. Yet, Fidelity dithered for years, unwilling to make a decision regarding how it was going to proceed. Fidelity's delay directly led to Davis' inability to go forward with the project.[6] Accordingly, the trial court did not err in finding a causal connection between Fidelity's actions and Davis' harm.

Because the proposed development project was not illusory, Fidelity's delays caused Davis to delay the project, and expert testimony provided the sound basis for the determination of damages, we find no error in the award of lost profits. Even though precise calculation of damages was not possible due to the forced estimation of the starting point for those damages, the uncertainty was caused by Fidelity's actions. Accordingly, Fidelity cannot claim refuge from damages based on the uncertainty it created. The trial court's award of lost profits are based upon reasonable certainty and will not be disturbed.

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[6] Fidelity's position on lack of causality would essentially require Davis to ignore Fidelity's delays in the resolution of the claim and to proceed with only a fraction of the original project, to Davis' detriment, while exonerating Fidelity from the financial consequences of its actions.

Next, Fidelity raises two issues regarding the award of punitive damages. First, it claims the award is excessive under the due process clause, and second, attorney's fees were incorrectly included in the multiplied compensatory damages award. Neither issue has merit.

We begin by noting that Fidelity is not challenging the determination it acted in bad faith toward Davis. Rather, both issues challenge the amount of punitive damages awarded pursuant to that finding of bad faith.

In reviewing a challenge to the amount of an award of punitive damages, we are cognizant that:

> Under Pennsylvania law the size of a punitive damages award must be reasonably related to the State's interest in punishing and deterring the particular behavior of the defendant and not the product of arbitrariness or unfettered discretion. In accordance with this limitation, [t]he standard under which punitive damages are measured in Pennsylvania requires analysis of the following factors: (1) the character of the act; (2) the nature and extent of the harm; and (3) the wealth of the defendant.

Hollock, ***supra*** at 419 (internal quotation marks and citations omitted). We review such an award for an abuse of discretion. ***Id***. at 420. In addition, in the face of a constitutional challenge, we conduct a de novo review "to determine whether it comports with the Due Process Clause of the Fourteenth Amendment to the United States Constitution." ***Id***.

> "Because punitive damages pose an acute danger of arbitrary deprivation of property, due process requires judicial review of the size of punitive damage awards." [***Pioneer Commercial Funding Corp. v. American Financial Mortg. Corp.***, 794 A.2d [269] at 292 [(Pa. Super. 2002), *reversed on other grounds*, 855 A.2d 818 (Pa. 2004)].]

> In ***State Farm v. Campbell***, 538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed.2d 585 [2003], the United States Supreme Court reviewed a $145 million punitive damages award. Finding that the award was excessive and disproportionate to the wrong committed, the Court ruled it constituted an unconstitutional deprivation of the insurer's property. The Court noted that, although states possess discretion over the imposition of punitive damages, there are procedural and substantive constitutional limitations on these awards. ***Id***. at 1519. The Court cautioned that the due process clause of the Fourteenth Amendment prohibits the imposition of grossly excessive or arbitrary punishments. ***Id***. at 1520. While finding that punitive damages are aimed at deterrence and retribution, ***id***. at 1519, the United States Supreme Court advised reviewing courts to consider three guideposts: "(1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases." ***Id***. at 1520, (*citing* ***BMW of North America, Inc. v. Gore***, 517 U.S. 559, 560-61, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996)).
>
> The Court in ***Campbell*** reiterated that the "most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct." ***Campbell***, 123 S.Ct. at 1521.

Grossi v. Travelers Personal Insurance Company, 79 A.3d 1141, 1157 (Pa. Super. 2013) *quoting* ***Hollock v. Erie Ins. Exch.***, 842 A.2d 409 (Pa. Super. 2004) (*en banc*).

Here, Fidelity does not challenge the application of the ***Hollock*** factors, but rather claims the award is excessive under the ***Campbell*** factors.

Initially, we note the trial court awarded Davis $393,227.31 in compensatory damages and $1,572,909.24 in punitive damages. This represents a 4:1 ratio of punitive to compensatory damages. The United States Supreme Court stated:

> We decline again to impose a bright-line ratio which a punitive damages award cannot exceed. Our jurisprudence and the principles it has now established demonstrate, however, that, in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process. In [***Pacific Mut. Life Ins. Co. v.***] ***Haslip***, [499 U.S. 1, 111 S.Ct. 1032, 113 L.Ed.2d 1 (1991)] in upholding a punitive damages award, we concluded that an award of more than four times the amount of compensatory damages might be close to the line of constitutional impropriety. 499 U.S., at 23-24. 111 S.Ct. 1032. We cited that 4–to–1 ratio again in ***Gore***, 517 U.S., at 581, 116 S.Ct. 1589. The Court further referenced a long legislative history, dating back over 700 years and going forward to today, providing for sanctions of double, treble, or quadruple damages to deter and punish. ***Id***., at 581, and n. 33, 116 S.Ct. 1589. While these ratios are not binding, they are instructive. They demonstrate what should be obvious: Single-digit multipliers are more likely to comport with due process, while still achieving the State's goals of deterrence and retribution, than awards with ratios in range of 500 to 1, ***id***., at 582, 116 S.Ct. 1589, or, in this case, of 145 to 1.

State Farm Mutual Automobile Insurance Company v. Campbell, 538 U.S. 408, 425-26, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003). Accordingly, at 4:1, there is nothing facially improper with the ratio between punitive and compensatory damages.

The degree of reprehensibility is the most important of the factors in assessing the appropriateness of punitive damages. Here, it can fairly be said, the trial court was appalled by Fidelity's conduct. The trial court found

Fidelity was aware of both the delay it caused Davis and likely consequences thereof. Final Memorandum and Order, 3/28/2014, at 11. In December 2007, shortly after Davis filed the claim, Fidelity notified Davis it was evaluating the claim and hoped to get back to him shortly. Memorandum and Order, 8/15/2013, Finding of Fact 14, at 4.[7] Approximately one year later, Fidelity notified Davis that Norella may have a valid claim to the 1.86 acres. FF. 15, at 4. Six months later, 20 months after the claim had been filed, Fidelity accepted Davis' claim and again stated it would contact Davis shortly regarding resolution of the claim. FF. 17, at 4. Fidelity waited another three months to hire counsel. FF. 18, at 4. Fidelity investigated the possibility of filing a quiet title action against Norella, but admitted there was scant chance of success. FF. 23, at 5. Nonetheless, Fidelity threatened Norella with filing the suit. CL. 22, at 14.

By August 2010, counsel for Fidelity was warning Fidelity of the possibility of bad faith. FF. 24, at 5. Davis repeatedly made inquiry about the status of his claim. CL. 24, at 14. Fidelity breached its own contract by failing to act diligently, failing to pay the loss within 30 days of fixing the

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[7] All citations to findings of facts (FF) or conclusions of law (CL) are taken from the August 15, 2013 Memorandum and Order. Additionally, the trial court did not issue omnibus findings of fact and conclusions of law, rather, they were broken down into sub-categories, not always specifically labeled as findings or conclusions. For ease we refer to all citations as either FF or CL. Rather than clutter this memo with sub-category titles, we will cite to the FF or CL number and the page on which it is found.

amount and failing to act in good faith and fair dealing. FF. 8, at 17. It failed to follow its own internal claims handling procedures. FF. 13, at 18. Fidelity violated 31 Pa. Code 146.6 and 146.5(c) regarding prompt investigations of claims and communications with clients, as well as Pennsylvania Statutes 40 P.S. 1171.5(a)(10)(ii),(v) regarding communications with clients and failure to affirm or deny claims promptly. FF. 15, 16, 17, at 18-19. Fidelity made no offer to either Norella or Davis until after Davis filed the instant bad faith claim. FF. 36, at 7. Indeed, it is difficult to find an area in which Fidelity acted in conformance with accepted statutory, regulatory or internal standards.

As stated, reprehensibility of actions is the "most important indicium", ***Campbell***, ***supra***, in determining reasonableness of the punitive damage award. Degree of reprehensibility is determined by examination of several factors. ***See Campbell***, ***supra***; ***Gore***, ***supra***.[8] Fidelity is correct that some of the factors to consider in determining reprehensibility are inapplicable here. The harm was economically rather than physically injurious and there is no indication that such behavior is part of a greater pattern of indifference to its policyholders. Although the parties agreed Fidelity did not intentionally

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[8] Factors include: physical or economic harm; indifference or reckless disregard to health or safety; affirmative acts; financially vulnerable victim; repeated actions. Case law provides no instructions regarding the application of these factors. Therefore, we conclude the weight given to each factor is case specific and based upon the discretion of the fact-finder.

harm Davis, the record clearly demonstrates a reckless indifference to the rights of Davis, and a five-year pattern of inaction, characterized by repeatedly ignoring the warnings of counsel and requests by its insured. In light of the overwhelming evidence against Fidelity, we find the trial court's determination of a high degree of reprehensible behavior to be supported by the record and therefore represents no abuse of discretion.

We believe the factual scenario of the instant matter is similar to that found in ***Grossi v. Travelers***, ***supra***, wherein the insurer's bad faith was limited to the claim at issue, as opposed to being part of a larger scale pattern of bad faith behavior toward multiple insureds. However, the bad faith consisted of repeated failings in addressing the insured's underinsured motorist claim. The reprehensibility of Travelers' actions outweighed other considerations and supported a $1,252,325.00 punitive damage award. This award represented a punitive damage to compensatory damage ratio of between 4:1 and 5:1.

Finally, Fidelity argues the trial court improperly included attorney's fees in the compensatory damage award that was quadrupled to arrive at the punitive damages amount. Fidelity has provided no authority for this position.[9] Additionally, we note that attorney's fees are specifically included

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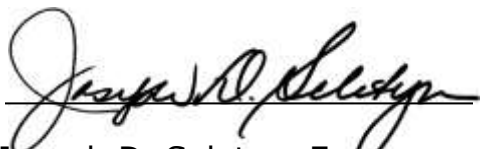
[9] Fidelity cited ***Hollock v. Erie Insurance Exchange***, 842 A.2d 409, 421 (Pa. Super. 2004)(*en banc*). However, all judges in the *en banc* panel,
(Footnote Continued Next Page)

as compensatory damages in the bad faith statute. ***See*** 42 Pa.C.S. § 8371(3). Multiple cases have included attorney's fees in compensatory damages. ***See Hollock***, ***supra***; ***Birth Center v. St. Paul Companies, Inc.***, 787 A.2d 376 (Pa. 2001); ***Willow Inn, Inc. v. Public Service Mut. Ins. Co.***, 399 F.3d 224 (CA3 2005). Accordingly, we reject Fidelity's statement that attorney's fees must be removed from the punitive damages calculation. Fidelity has provided no other indication of how the trial court abused its discretion in including attorney's fees as compensatory damages, and our independent review finds no abuse of discretion.

Because the trial court's decision is supported by the certified record and free from abuse of discretion or error of law, we affirm.

Judgment affirmed.[10]

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 3/18/2015

(Footnote Continued) ———————————

including the two dissenting judges, agreed that attorney's fees were appropriately included in the compensatory award.

[10] In the event of future proceedings, the parties are directed to attach copies of Final Memorandum and Order on [Fidelity's] Motion for Post-Trial Relief, 3/28/2014, Memorandum and Order, 8/15/2013 (including findings of fact), and Stipulated Undisputed Facts, Joint Pre-Trial Order, 12/17/2012.

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RICHARD DAVIS and MARIA DAVIS,	:	IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY
Plaintiffs	:	CIVIL ACTION - LAW
-vs-	:	
FIDELITY NATIONAL TITLE INSURANCE COMPANY,	:	JURY TRIAL DEMANDED
Defendant	:	10 CIV 8868

JOINT PRE-TRIAL ORDER

1. Lacka.Co. R.C.P. 212(g) Conference of Counsel:

   a. Date of Conference: November 30, 2012 Mediation before Thomas Helbig, Esq. Mediation discussions continue

   b. Names of counsel participating:

   Attorney for Plaintiff
   Carl J. Guagliardo. Plaintiffs, Richard and Maria Davis also attended

   Attorney for Defendant/Additional Defendant
   Scott M. Rothman. Defendant representative Cyntia Baines also attended

2. Lacka. Co. R.C.P. 238 Confirmation of Settlement Offer and Response

   a. Date and amount of settlement offer(s):
   N/A - Breach of Contract and Bad Faith Action. Rule 238 does not apply

   b. Date and substance of response to settlement offer(s)

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3. Comprehensive Written Stipulation of All Uncontested Facts:
(To be read to the jury at the outset of trial).

SEE ATTACHED

4. Witnesses to be Called at Trial (NOTE: Only those witnesses identified in the pre-trial order will be permitted to testify at trial):

For the Plaintiff(s): 1. Richard Davis; 2. Maria Davis; 3. Ben Bartek; 4. Ray Abrams; 5. Michael Coughlin; 6. David Tomaine; 7. Daniel Penetar; 8. Keith Weller; 9. William Rebar; 10. Jean Black; 11. Owen Girard; 12. Defendant Corporate Designee; 13. E.P.Mancinelli

(Attach additional sheets if necessary.)

For the Defendant(s): SEE ATTACHED.

(Attach additional sheets if necessary.)

5. Schedule of Exhibits: (NOTE: Only those exhibits which are identified in the pre-trial order may be used or admitted into evidence at trial):

For the Plaintiff(s) (Indicate whether the parties' stipulate to its admissibility, and if not, state the grounds for objection):

#1: SEE ATTACHED LIST
#2:
#3:
#4:
#5:
#6:
#7:
#8:
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#11: _____
#12: _____

For the Defendant(s) (Indicate whether the parties' stipulate to its admissibility, and if not, state the grounds for objection):

#1: _____
#2: _____
#3: _____
#4: _____
#5: _____
#6: _____
#7: _____
#8: _____
#9: _____
#10: _____
#11: _____
#12: _____

6. Statement of Facts and Legal Issues:
   a. Plaintiff's version of the facts and statement of legal issues
   On October 15, 2007 Plaintiffs filed a title insurance claim with Defendant related to a 1.86 acre parcel of land plaintiffs purchased in 2004. Plaintiffs learned they were not the true owners of the land shortly before filing the claim. Defendant acknowledged the claim on October 24, 2007 and notified Plaintiffs on June 18, 2009 that it had completed its investigation and accepted the claim. Thereafter, Defendant took no reasonable measures to resolve the claim and engaged in a course of conduct that was self-serving and dishonest. Plaintiffs filed the subject bad faith/breach of contract suit on December 14, 2010. Defendant ultimately resolved the title insurance claim by securing title to the property in the name of the Plaintiffs on August 14, 2012, nearly 5 years after the claim was opened.
   Legal issues have been briefed via Motion in Limine and Plaintiff will file trial brief
   b. Defendant's version of facts and statement of legal issues (continued, see attached

SEE ATTACHED.

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7. Trial Deposition

Name of Witness	*Date of Deposition*	*Length of Deposition*	*Party offering Deposition Testimony*

8. Estimated Number of Trial Days (NOTE: The Court will strictly enforce the parties' estimated trial time): Three Day(s).

9. Any Additional Issues Which Should be Considered to Facilitate the Settlement or Trial of this Matter:

SCOTT ROTHMAN
Attorney for ~~Plaintiff(s)~~ Defendant

Attorney for ~~Defendant(s)~~ PLAINTIFFS

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AND NOW, this _____ day of _____, _____, the Parties' jointly submitted Pre-Trial Order is hereby approved and shall govern the Trial of this case.

BY THE COURT:

_____J.
JUDGE CARMEN D. MINORA

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RICHARD DAVIS and MARIA DAVIS, Plaintiffs,	:	IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY
vs.	:	CIVIL ACTION – LAW JURY TRIAL DEMANDED
FIDELITY NATIONAL TITLE INSURANCE COMPANY, d/b/a FIDELITY NATIONAL TITLE INSURANCE COMPANY OF NEW YORK Defendant.	:	No. 10 – CV - 8868

STIPULATED UNDISPUTED FACTS

1. Defendant, through its authorized agent, Daniel Penetar, Esq., issued a title insurance policy to Plaintiffs on October 29, 2004. (*Complaint/Answer ¶4, 5, and policy).*

2. The policy insured an approximate 15 acre parcel of land in Carbondale Twp., Lackawanna County, Pennsylvania (*Policy*).

3. Plaintiffs planned to develop the 15 acre parcel of land for residential housing, in the nature of both one-half acre parcels for individual homes and a "garden section" containing three, four-unit townhouses which would be offered for sale to the public. (*R. Davis dep. p. 31-32*).

4. Daniel L. Penetar, Jr., Esquire, counter-signed the policy as the authorized agent of Defendant and also served as counsel for Plaintiffs with respect to the subject purchase of land.

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5. The "garden section" containing the townhouses was to be developed on a 1.86 acre portion of the property. (*R. Davis dep. p. 13).*

6. Prior to 2007, Mr. Davis purchased construction plans for the townhouses and hired an engineering firm to draft plans and drawings for the development (*R. Davis dep. p. 38-40).*

7. In 2007, Plaintiff, Rick Davis, attended a Carbondale Twp. Zoning board meeting to request a zoning special exception that would accommodate the townhouse development. (*R. Davis dep. p. 13).*

8. At the zoning hearing, a neighboring property owner, Louis Norella, objected on the basis that he was the owner of record of the 1.86 acre parcel. (*Id.).*

9. On October 15, 2007 Mr. Davis filed a title insurance claim with Defendant as related to a possible defect in his title to the 1.86 acre parcel of land. (*Davis letter dated Oct. 15, 2007).*

10. The handbook for adjustment of claims provided by Defendant to Plaintiff during discovery in this matter applied to adjustment of the Davis claim.

11. On June 18, 2009) Defendant completed its coverage investigation of the Davis claim. *(Def. letters dated Oct. 24, 2007 and June 18, 2009).*

12. On September 15, 2009, Defendant hired Michael Coughlin, Esquire to evaluate the merits of filing a Quiet Title Action. *(Discovery docs. 297-298; 220-221; 300; and 280-281).*

13. On January 20, 2010, Defendant obtained a legal research memo related to its options to resolve the claim as well as the merits of a quiet title action. *(Discovery doc. 163-164).*

14. Defendant obtained DIV appraisals on March 20, 2010. *(Defendant DIV appraisals).*

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