

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

WILSON CHAU and YVETTE CARR, Plaintiffs,	: JANUARY TERM, 2003
	: No. 0692
v.	: Commerce Program
RCA INSURANCE GROUP, SCOTT M. HARTZELL, HARTZELL INSURANCE ASSOCIATES, INC., CHAY CHAN RUTH, and CERTAIN UNDERWRITERS AT LLOYD'S, Defendants.	: : : Control No. 010761

**O R D E R**

**AND NOW**, this 23<sup>rd</sup> day of March 2004, upon consideration of plaintiffs' Motion to Amend the Complaint, defendants' responses in opposition, the respective memoranda, all matters of record, and in accord with the contemporaneous Opinion, it is **ORDERED** that:

1. Plaintiffs' Motion to Amend to add a Count for Bad Faith under Pa. R. Civ. P. § 8371 against RCA Insurance Group is **DENIED**;
2. Plaintiffs' Motion to Amend to add a Count for Bad Faith under Pa. R. Civ. P. § 8371 against Certain Underwriters at Lloyd's is **DENIED**; and,
3. Plaintiffs' Motion to Amend to clarify the description of RCA and to remove the Count against Chay Chan Ruth is **GRANTED**.

**BY THE COURT,**

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**ALBERT W. SHEPPARD, JR., J.**

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**O P I N I O N**

**Albert W. Sheppard, Jr., J. .... March 23, 2004**

Before the court is plaintiffs’ Motion to Amend the Complaint to add claims for Bad Faith pursuant to 42 Pa. C. S. § 8371 against both defendants RCA Insurance Group (“RCA”) and Certain Underwriters at Lloyd’s (“Lloyd’s”). For the reasons discussed the Motion is **Denied**.<sup>1</sup>

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<sup>1</sup> Plaintiffs also move to amend to complaint to clarify the description of RCA and to remove the Count against Chay Chan Ruth. This aspect of this motion is granted.

## DISCUSSION

### A. Standard of Review

Leave to amend a complaint lies within the sound discretion of the trial court Feingold v. Hill, 360 Pa. Super. 539, 550, 521 A.2d 33 (Pa. Super. 1987), and should not be withheld where some reasonable possibility exists that the amendment can be accomplished successfully. Roach v. Port Authority of Allegheny County, 380 Pa. Super. 28, 550 A.2d 1346, 1347 (Pa. Super. 1988). However, leave to amend will be withheld where the initial pleadings reveal that the prima facie element of the claim cannot be established and the complaint's defects are so substantial that amendment is not likely to cure them. Id.

Plaintiffs' proposed amended complaint seeks leave to allege bad faith claims under 42 Pa. C. S. § 8371 against both RCA and Lloyd's. This court concludes that leave to file the proposed amended complaint should not be granted.

### B. The Proposed Amended Complaint Against RCA is Denied because RCA is not an "insurer" for purposes of 42 Pa. C. S. § 8371.

Count V of plaintiffs' proposed amended complaint purports to state a claim for bad faith against RCA. Bad faith actions against an insurance company in Pennsylvania are governed by 42 Pa. C.S. § 8371, which establishes a cause of action for claims "...arising under an insurance policy, if the court finds that **the insurer** has acted in bad faith toward the insured..." 42 Pa. C.S. § 8371 (emphasis added).

By its terms, section 8371 applies only to the conduct of an "insurer" toward an insured. This statute contains no definition of the term "insurer" and the Pennsylvania Superior Court and Supreme Court have not yet addressed the issue. Cicero v.

Cominsky, 25 Pa. D. & C. 4<sup>th</sup> 422 (1995); Margaret Auto Body, Inc. v. Universal Underwriters Group, 2003 WL 1848560 (2003) (Jones). Although our Pennsylvania appellate courts have not yet addressed the issue, it is generally recognized that an “insurer issues policies, collects premiums and in exchange assumes certain risks and contractual obligations.” Innat v. Pover, 35 Pa. D. & C. 4<sup>th</sup> 120 (1997); see also, T & N PLC v. Pennsylvania Ins. Guar. Ass’n, 800 F. Supp. 1259, 1261 (E.D. Pa. 1992), Peer v. Minnesota Mut.Fire & Cas. Co., 1993 WL 533283 (E.D. Pa. 1993), Cipriani v. Fed. Ins. Co. Div. of Chubb Group of Ins., 1999 WL 554601 (E.D. Pa. 1999), Powell v. Crawford & Co., 2003 WL 22657187 (E.D. Pa. 2003).

Based upon a review of the pleadings, plaintiffs proposed amended complaint and the exhibits attached to the parties’ briefs, RCA cannot be deemed an insurer under the act. RCA is identified as an agent and general managing agent for Lloyd’s. (Plts. proposed amended complaint ¶ 8, 119, 120). The agreement between Lloyd’s and RCA provides that RCA is to act as Lloyd’s agent and issue certificates of insurance on Lloyd’s behalf. (Defendant’s brief pg. 2 Exhibit “G”). Additionally, under the agreement, RCA collects premiums from the insured on Lloyd’s behalf and then pays over the premiums to Lloyd’s within thirty days from receipt. (Id. p. 18). Moreover, plaintiffs acknowledge that RCA does not incur or assume any contractual obligations or risks under the policy. (Plts letter brief dated February 17, 2004). As such, RCA is not an insurer under § 8371, and the Motion to Amend to include a claim for bad faith as to RCA is **Denied**.

**C. The Proposed Bad Faith Amendments against Lloyd's Based Upon the Agent's Failure to Investigate the Insurance Application is Denied.**

Generally, success in bringing a claim for bad faith requires the insured to present clear and convincing evidence that “the insurer did not have a reasonable basis for denying benefits under the policy and that the insurer knew of or recklessly disregarded its lack of reasonable basis in denying the claim.” MGA Ins. Co. v. Bakos, 699 A.2d 751, 754 (Pa. Super. 1997). Though left undefined by the statute, “bad faith toward the insured” normally involves the handling of claims or denial of benefits. Adamski v. Allstate Ins. Co., 738 A.2d 1033, 1036-40 (Pa. Super. 1999); Romano v. Nationwide Mut. Fire Ins. Co., 435 Pa. Super. 545, 551-55, 646 A.2d at 1218, 1231-33 (Pa. Super. 1994). Section 8371 is not restricted to an insurer’s bad faith in denying a claim. An insurer may be liable for bad faith conduct if the insurer has violated the Unfair Insurance Practices Act. O’Donnell ex. rel. Mitro v. Allstate Ins. Co., 734 A.2d 901, 906 (Pa. Super. 1999).

In the proposed amended complaint, plaintiffs assert a bad faith claim against Lloyd's based upon RCA's failure to investigate the responses provided on the application submitted for insurance. An insurer should be entitled to rely on the representations made by an insured. American Guardian Life Ass. Co. v. Levy, 13 Pa. D. & C. 4<sup>th</sup> 371, 375 (1992). An insurer or an insurer’s agent’s failure to investigate the responses provided by an insured on an insurance application does not constitute bad faith under the statute. An insurer has no general obligation to investigate the accuracy of an insurance application. Justofin v. Metropolitan Life Ins. Co., 2002 WL 31375779, \* 5 (E.D. Pa. 2002); see also, Kizirian v. United Ben. Life Ins. Co., 383 Pa. 515, 119 A.2d 47 (Pa. 1956) (life insurer had no duty to investigate and determine the truth or falsity of a

material statement made by the insured); Underwood v. Prudential Ins. Co. of America, 241 Pa. Super. 27, 359 A.2d 422 (Pa. Super. 1976) (an insurer has no duty to investigate a material representation despite the insured's possible falsity). Insurers have a duty to investigate only in cases where inconsistencies on the face of the insurance application place the insurer on notice that the answers in the application are incomplete or inaccurate. Id. Here, no such evidence exists.

Since Lloyd's or Lloyd's agent did not have a duty to investigate the responses provided by the insured on the insurance application, plaintiffs proposed amendment for bad faith is denied.

#### **CONCLUSION**

For these reasons, plaintiffs' Motion to Amend the Complaint to add claims of bad faith against RCA and Lloyd's is Denied. Plaintiffs' Motion to Amend to clarify the description of RCA within the Complaint and to remove the Count against Chay Chan Ruth is Granted. The court will enter a contemporaneous Order consistent with this Opinion.

**BY THE COURT,**

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**ALBERT W. SHEPPARD, JR., J.**