IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL SARACCO and CAROL ANN SARACCO, h/w	:	CIVIL ACTION
v.	:	
VIGILANT INSURANCE CO.	:	NO. 99-3502

MEMORANDUM

Dalzell, J. February 22, 2000

When Vigilant Insurance Company refused to pay insurance benefits for a fire that destroyed the home of Michael and Carol Ann Saracco, they sued. Now before us are the parties' cross-motions for summary judgment. For the reasons that follow, we will grant summary judgment to Vigilant on both counts of the Saraccos' complaint and grant plaintiffs leave to move for summary judgment on Vigilant's counterclaim.

Facts

On the afternoon of New Year's Eve, 1998, fire consumed the Saraccos'[1] home in Albrightsville, Pennsylvania. Neighbors discovered the fire twenty minutes after the Saraccos left for the airport for a flight to Florida. See Def.'s Ex. 3, at 59-63.[2] Trooper David P. Cusatis of the Pennsylvania State Police

[1] Although both Michael and Carol Ann Saracco are named as plaintiffs, the primary actor is Michael Saracco. We therefore will refer to him as "Saracco".

[2] Jennifer Wnuk, the Saraccos' neighbor, stated that at about 3:10 on the afternoon of the fire, her dog's barks woke her from a nap. She went to the window and saw two men, "Tony" and "Razz", running through her front yard. She also saw flames shooting out of the Saraccos' house. See Def.'s Ex. 3, at 63.

examined the house the next day and concluded that the fire had been intentionally set. See Def.'s Ex. 5.

The Saraccos promptly notified Vigilant, their insurance carrier, of the loss and submitted a claim for $630,000 (representing $405,000 in damage to the dwelling and $225,000 in damage to its contents). See Pls.' Ex. 1. Vigilant immediately began an investigation[3] and retained a "cause and origin" expert, Alex Proftka, who inspected the house on January 4, 1999 and thereafter interviewed various witnesses. See Def.'s Ex. 6, at 21-24. Also, Vigilant immediately issued the Saraccos a $5,000 check to cover their living expenses.

On March 5, 1999, Vigilant conducted an examination under oath ("examination") of Saracco. See Def.'s Ex. 4. Later that month, it obtained recorded statements from the Saraccos' neighbors, the Wnuks. Vigilant's attorney asked the Saraccos to sign authorizations for the release of information because they had failed to produce any receipts or financial documentation to support their claim.[4] Apparently, the Saraccos did not sign the authorizations until June and did not provide sworn statements in proof of their loss until more than four months after the fire. See Def.'s Exs. 13-14.

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[3] Because the Saraccos claim that Vigilant acted in bad faith in delaying its decision on their claim for nearly one year, we will rehearse Vigilant's investigative efforts at some length.

[4] According to Vigilant's brief, the only document that the Saraccos happened to have salvaged from the fire was their insurance policy.

In July, while Vigilant's investigation was still in progress, the Saraccos filed the instant suit, alleging that Vigilant breached the insurance contract and acted in bad faith. At that point, Vigilant still had not made a decision on the claim. After discovery, including a second examination of Saracco, Vigilant on December 22, 1999 denied the claim, stating that Saracco had voided the policy by violating its "Intentional Acts" exclusion and "Concealment or Fraud" condition. See Pls.' Ex. 12.

Vigilant has asserted a counterclaim under the Pennsylvania Insurance Fraud Act. As noted at the outset, the parties have filed cross-motions for summary judgment.[5]

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[5] Under Fed. R. Civ. P. 56(c), a motion for summary judgment should be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." The moving party bears the burden of proving that there is no genuine issue of material fact in dispute, see Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986), and we view all evidence in the light most favorable to the nonmoving party, see id. at 587. When responding to a motion for summary judgment, the nonmoving party "must come forward with specific facts showing there is a genuine issue for trial." Id.; see also Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986) (holding that the nonmoving party must go beyond the pleadings to show that there is a genuine issue for trial).

We regret to note that we found Vigilant's briefs to be most unhelpful. They were filled with (1) incorrect and at times incomprehensible case citations, (2) references to deposition transcript pages not included as exhibits, (3) citations to incorrect exhibit numbers, and (4) mistaken dates. Vigilant's exhibits were so shoddily bound that they fell apart the moment we attempted to look at them, and we therefore had to rebind them ourselves.

Count I: Breach of Insurance Contract

Count I of the complaint alleges that Vigilant breached the insurance policy. In their summary judgment motion, the Saraccos argue that we should estop Vigilant from denying coverage under the policy because it allegedly (1) conducted its investigation in bad faith, and (2) unreasonably waited nearly one year to make a coverage decision. They also argue that Vigilant had no basis on which to deny the claim, arguing that its expert's testimony is inadmissable under Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), and that it has no evidence of any material misrepresentations or fraud. Vigilant argues that there is sufficient evidence to support both of its defenses. For the reasons that follow, we reject Vigilant's arson defense but will grant summary judgment in its favor based on its "concealment or fraud" defense.

A. The Arson Defense

The insurance policy contains the following exclusion:

> **Intentional Acts.** We do not cover any loss caused intentionally by you or a family member, or by a person directed by you or a family member to cause a loss where the covered person intending to cause the loss will benefit from this insurance. An intentional act is one whose consequences could have been foreseen by a reasonable person.

Def.'s Ex. 29, at B-7.

Under Pennsylvania law,[6] an insurance company that asserts an arson defense must prove, by a preponderance of the evidence, that (1) there was an incendiary fire; (2) the insured had a motive to destroy the property; and (3) there is circumstantial evidence linking the insured to the fire. See, e.g., Mele v. All-Star Ins. Corp., 453 F. Supp. 1338, 1341 (E.D. Pa. 1978).

There is a disputed issue of material fact with respect to the first element, the incendiary nature of the fire. The Pennsylvania State Police and Vigilant's expert, Alex Profka, both determined that the fire was incendiary. However, the Saraccos have produced an expert, Paul Kaczmarczik, who concluded that the fire was accidental. See Pls.' Ex. 22. This disputed issue of fact precludes summary judgment based on the arson defense.

B. The "Concealment or Fraud" Defense

The policy also contains the following condition:

> **Concealment or fraud**
> Except for vehicle coverage, this policy is void if you or any covered person has intentionally concealed or misrepresented any material fact relating to this policy before or after a loss.

Def.'s Ex. 29, at Y-1.

[6] As we are sitting pursuant to our diversity of citizenship jurisdiction, we apply Pennsylvania law. See Erie R.R. v. Tompkins, 304 U.S. 64 (1938), and its progeny.

Under Pennsylvania law, an insurance contract is void for fraud if the insurer can show that: (1) a representation that the insured made was false; (2) the insured knew it to be false; and (3) the representation was material to the risk being insured. See Matinchek v. John Alden Life Ins. Co., 93 F.3d 96, 102 (3d Cir. 1996); New York Life Ins. Co. v. Johnson, 923 F.2d 279, 281 (3d Cir. 1991);[7] see also Parasco v. Pacific Indem. Co., 920 F. Supp. 647, 652 (E.D. Pa. 1996); Savadove v. Vigilant Ins. Co., 1999 WL 236602, at *7 (E.D. Pa. Apr. 21, 1999). Viewing the evidence in the light most favorable to the Saraccos, we find that there are no material facts in dispute and that Vigilant is entitled to summary judgment on Count I of the complaint based on this defense.

1. Saracco's Knowing Misrepresentations and Concealment

Saracco made at least four material misrepresentations or omissions during Vigilant's investigation.

First, he lied about whether his mortgage lender had ever threatened to foreclose on his house. At his examination on March 5, 1999, he testified that the UFCW Federal Credit Union ("UFCW") had never threatened him with foreclosure proceedings. See Def.'s Ex. 4, at 63. In reality, however, UFCW had sent him

[7] These cases involve "fraud in the inducement," i.e., cases in which the insured lied on an application for insurance. Courts in this circuit have, however, applied this test to concealment or misrepresentation during an insurance company's investigation of a claim. See, e.g., Parasco v. Pacific Indem. Co., 920 F. Supp. 647, 652 (E.D. Pa. 1996); Sphere Drake Ins. Co. v. Zakloul Corp., 1997 WL 312217 (E.D. Pa. June 3, 1997).

a "Notice of Intention to Foreclose Mortgage" on August 21, 1998, four months before the fire. See Def.'s Ex. 22. A certified mail receipt dated August 24, 1998 and signed by "Carolann Saracco" proves that plaintiffs received the notice. See Def.'s Ex. 23. As receipt of a notice of foreclosure is hardly like receiving notice of an overdue library book, Saracco undoubtably was aware during his examination that his statement was untrue. Also, Jean Fulkerson, UFCW's representative, testified that during the month of July, 1998, she "probably called [Saracco] once a week, sometimes twice a week" to discuss his delinquent payments. See Def.'s Ex. 21, at 36. Thus, there is no doubt that Saracco was aware of the threatened foreclosure and thus knew that his statement was false.

Saracco also testified that he was not having any financial difficulties in the year or so before the fire. See Def.'s Ex. 4, at 188. However, plaintiffs' income tax return for 1997 showed total income of only $752. Carolann Saracco testified that, during 1997, she sent a student loan collection agency more than $2,500 and had a $12,600 car loan. See Def.'s Ex. 24, at 53-54. Plaintiffs also had an $80,000 first mortgage on their home and a home equity loan, requiring monthly mortgage payments of $1,230. They had less than $7 in bank accounts to supplement their meager 1997 income. See Def.'s Ex. 25, at 4-7. In 1998, they reported total income of $34,828.[8] See Def.'s Ex.

[8] There is some dispute over the accuracy of this (continued...)

12. The unrebutted statement of an accountant Vigilant retained to analyze the Saraccos' finances reported that:

> At the time of the fire, the financial condition of the Saraccos was poor. In 1998, even when Mr. Saracco was working, they were late on mortgage and credit card payments. As of the date of the fire, they were still late, and Mr. Saracco was not actively employed.
>
> The personal property claim submitted by the Saraccos included a number of items of household contents that were acquired within approximately one year of the fire. Four of these items is a large television ($3395), a set of living room furniture ($8000), upholstered sofa with queen size sleeper ($1999), and a 150 Watt per channel rack system ($1398). The claimed value of these items is approximately $14,800. Since they were all purchased within approximately one year of the loss, we would believe that the claim value should be close to the purchase cost. When you consider that the Saraccos had little income in 1997 along with the cost of their debt service, the money spent on these four items would have consumed most of their 1998 earnings and the Saraccos' savings, if any, would have decreased.
>
> The total known funds available was approximately $4000 ($1600 in the home and a couple of thousand with Mr. Saracco). Mrs. Saracco stated that she had obtained a part time job at a day care center, working 15-20 hours per week and earning $4.50 to $5.00 per hour. Based on Mrs. Saracco's statement, her income would be approximately $70 to $100 per week. The monthly fixed costs are approximately $1720. When the need to service credit card debts, student loans, food, and other living expenses are considered, the total monthly living costs would exceed $2000. Based on the known

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[8](...continued)
figure. Vigilant alleges that the Saraccos exaggerated their income to hide their financial difficulties.

> available resources, including the income earned by Mrs. Saracco, without another source of funds, the Saraccos would exhaust their resources in two months. If they were required to bring their past due obligations current, they would exhaust their resources even sooner.

Def.'s Ex. 25, at 7. Thus, Saracco lied when he said that he had "no financial difficulties", and it is inconceivable that he did not know of his many and varied financial burdens.

Third, in his sworn statements in support of his insurance claim, Saracco included items that were not damaged in the fire or that he did own. For example, he included a "one and a half karat diamond tennis bracelet, 14 karat gold" valued at $499.99, averring that it was destroyed in the fire. See Def.'s Ex. 14, at 22. However, at his second examination on November 18, 1999, he admitted that he had lost the bracelet "a couple months before" the fire. See Def.'s Ex. 11, at 173.

He also included in the sworn statement one "Chickering 1910 from Boston, MA Baby Grand Piano (Mint Condition)," which he priced at $17,500. See Def.'s Ex. 14, at 6. The piano, however, actually belonged to Henry LeClair, an "older fella" who lived with the Saraccos for about sixty days in the fall of 1998. See Def.'s Ex. 4, at 170. Saracco testified that LeClair, who did not sign a lease, "didn't have much money," so he "let him slide" on the rent, which was supposed to be one hundred dollars per week. See id. at 171-72.

When LeClair moved out of plaintiffs' home several weeks[9] before the fire, he did not immediately take his piano with him. Saracco says he regarded this as a forfeiture of the $17,500 piano. See Def.'s Ex. 11, at 120. After the fire, Saracco telephoned his stepfather, Timothy Angland, who was in Florida with LeClair. He told Angland that because LeClair owed him money for unpaid rent, he was going to keep (and therefore submit an insurance claim for) the piano and all of the other items LeClair had left in the house. See Def.'s Ex. 15, at 64-65. He even faxed a letter, dated January 11, 1999, to LeClair for him to sign and notarize. It read:

> I Henry A. LeClair hereby give notice to Mr & Mrs Saracco of my vacating their home . . . as of December 20, 1998. I further agree to forfeit any and all monies held as security for my stay in their home and further agree that any and all personal property that I have left behind will become the sole property of Mr. & Mrs. Saracco as of my date of departure (December 20, 1998). With a 3 day grace period not to exceed December 23, 1998. After such time **I withdraw any and all claims** to the mentioned personal [illegible] that have [illegible] been removed and [illegible] my permission for them to do what they wish with the above [illegible] at their [illegible] discretion.
>
> I affirm that the statement above is true and binding, not to be changed for any unexpected circumstances. That may arise after my departure date stated above.

Def.'s Ex. 16 (emphasis in original).

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[9] There is conflicting testimony about when LeClair actually vacated the Saracco house. These conflicts are irrelevant to the issues at hand.

LeClair refused to sign Saracco's letter. Indeed, two days later LeClair prepared one of his own, which read:

> I Henry A LeClair hereby gives [sic] notice to Mr & Mrs Saracco of my claiming my Personal Items, Furniture, Computers, Stereos, and all other house hold goods. And a Piano with unreplaceable value to me I further do not agree to forfeit any and all monies held as security for my stay in your home. furthermore that any and all personal property that I [HAVE] in your house is the sole property of Henry A LeClair and as per advanced payment of rent on Dec 20 1998 check #176 marked Rent/Exp for the period ending Jan 19 1999 for the amount of $300.00 upon arrangements by you giving me Permission to retrieve the above mentioned property. Please be advised that if in TEN DAYS after receipt of this demand I will have no alternative but to proceed with legal action against you. My personal property is not yours and I should have all legal rights to my property.
>
> HUGS and KISSES
> HENRY

Def.'s Ex. 17. Apparently, LeClair did not send this letter to Saracco, because a lawyer advised him that it could implicate him in a fraud. See Def.'s Ex. 15, at 67. However, based on his conversations with Angland and LeClair's refusal to return his letter, Saracco was on notice that LeClair was unwilling to "forfeit" his property.[10] Furthermore, LeClair's obligation to

[10] The Saraccos point to a statement Angland made during his deposition to argue that LeClair agreed to forfeit the piano. When asked directly if LeClair ever forfeited his interest in his property, Angland responded: "He walked away from it. He decided not to pursue with the attorney." Pl.'s Ex. 18, at 73. But Angland's answer is not responsive to the question, because he testified earlier in the deposition that LeClair was (continued...)

the Saraccos was at most $900 ($100 per week multiplied by nine weeks), an amount significantly less than the $17,500 Saracco claimed the piano was worth.

Finally, Saracco knowingly attempted to conceal Angland's identity and LeClair's location. Both men could have assisted (and, later on, actually did assist) Vigilant's investigation. During the November, 1999 examination, when asked where LeClair resided before moving in with him, Saracco said that he lived with the "Angelands", a family "around the corner". He did not reveal that the Anglands were his mother and stepfather until Vigilant pressed him on that point later in the examination. See Def.'s Ex. 11, at 122-23 and 141-47. During his March, 1999 examination, Saracco stated that LeClair had been staying with "some other folks" two blocks away, not revealing that the "folks" were in fact his mother and stepfather. See Def.'s Ex. 4, at 175-76. Also during that examination, he misspelled his mother and stepfather's name:

> Q. Who was [LeClair] staying with two blocks away?
>
> A. He was staying . . . with some other folks. I think he was living in a garage.
>
> Q. Do you know those other folks' names?
>
> A. Yeah.

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[10](...continued)
unwilling to sign anything because his attorney advised him it could implicate him in a fraud. In any event, the piano is merely one instance of Saracco's misrepresentations, and we would grant summary judgment to Vigilant even without this fact.

Q. What is their name?

A. Carol and Tim Anglin.

Q. A-n-g-

A. -l-i-n.

Def.'s Ex. 4, at 174-76.

When asked during the March examination where LeClair currently lived, Saracco stated that he didn't speak to him anymore. Id. at 172. However, Saracco knew LeClair's address as late as January 11, 1999, less than two months before the examination, because he sent LeClair the letter asking him to disclaim his interest in the piano and other property. Thus, the only conclusion is that Saracco tried to prevent Vigilant from contacting LeClair.

2. Materiality

The question of materiality is generally a mixed one of fact and law. If, however, the facts misrepresented are so obviously important that "reasonable minds cannot differ on the question of materiality," then the question becomes one of law that the Court can decide on summary judgment. Parasco, 920 F. Supp at 654, quoting Gould v. American-Hawaiian S.S. Co., 535 F.2d 761, 771 (3d Cir. 1976). "In the context of an insurer's post-loss investigation, 'the materiality requirement is satisfied if the false statement concerns a subject relevant and germane to the insurer's investigation as it was then proceeding.'" Id., quoting Fine v. Bellefonte Underwriters Ins.

Co., 725 F.2d 179, 183 (2d Cir. 1984). See also Long v. Insurance Co. of N. Am., 670 F.2d 930, 934 (10th Cir. 1982) ("[A] misrepresentation will be considered material if a reasonable insurance company, in determining its course of action, would attach importance to the fact misrepresented.").

Again drawing all inferences in the Saraccos' favor, we easily conclude that Michael Saracco's misrepresentations were material to Vigilant' investigation, and that no reasonable jury could find otherwise.

In an affidavit, Christopher Bender, Vigilant's Regional Property Manager, avers that Saracco's concealment and misrepresentation of UFCW's threatened foreclosure was material to Vigilant's investigation "because it showed that the Saracco's had significant financial difficulties in 1998 which gave them a motive to burn the house and collect the insurance payout." Def.'s Ex. 28 ¶ 3. Indeed, one of the elements an insurer must prove to make out an arson defense is the insured's motive to commit arson. See, e.g., Mele, 453 F. Supp. at 1341. Thus, the misrepresentation concerns a subject "relevant and germane" to Vigilant's investigation.

Bender also states that Saracco's submission of a claim for the diamond tennis bracelet was material to the investigation because it was an attempt to collect for property not damaged in the fire and therefore not covered under the policy. Id. ¶ 4. Similarly, his submission of a claim for Henry LeClair's property was "a knowing and intentional attempt to recover for property

which was not covered under the policy." Id. We agree that a reasonable insurance company would attach importance to an insured's attempts to recover for property not included in a policy.

Finally, Bender notes that Saracco's concealment of Timothy Angland's location was material to Vigilant's investigation because Angland later provided information about Saracco's failed business attempts that, "in combination with . . . Saracco's other financial problems, gave him a motive to burn his house." Id. ¶ 1. Also, Bender states that "Angland also produced evidence that Henry LeClair did not forfeit his interest in his property . . . and that [Saracco] knew that he (Michael Saracco) did not own the property. This information . . . was material to Vigilant because it showed that Michael Saracco[] knowingly and intentionally attempted to claim the property which was not covered under the policy." Id.

Saracco has produced nothing to demonstrate that his misrepresentations and concealments were not material, and we therefore will grant summary judgment to Vigilant on Count I of the Saraccos' complaint, as no reasonable jury could find the statements immaterial. The Saraccos therefore have breached the Fraud and Concealment condition in the insurance policy.

Count II: Bad Faith

In Count II of the complaint, the Saraccos allege that Vigilant's one-year delay in making a decision on their claim

amounts to bad faith under Pennsylvania law. In their summary judgment motion, they also claim that Vigilant conducted the investigation in bad faith. Vigilant argues that its actions were reasonable, timely, and in good faith, and that the Saraccos acted dishonestly and maliciously. Based on our discussion above, we can make short work of the Saraccos' bad faith allegations.

Under 42 Pa. Cons. Stat. Ann. § 8471, we may grant relief to the Saraccos if we find that Vigilant acted in bad faith in handling their claim. In Polselli v. Nationwide Mut. Fire Ins. Co., 23 F.3d 747, 751 (3d Cir. 1994), our Court of Appeals, quoting Black's Law Dictionary 139 (6th ed. 1990), stated that:

> "'Bad faith' on part of insurer is any frivolous or unfounded refusal to pay proceeds of a policy; it is not necessary that such refusal be fraudulent. For purposes of an action against an insurer for failure to pay a claim, such conduct imports a dishonest purpose and means a breach of a known duty (i.e., good faith and fair dealing), through some motive of self-interest or ill will; mere negligence or bad judgment is not bad faith."

To recover under a claim of bad faith, a plaintiff must demonstrate by clear and convincing evidence that the insurer did not have a reasonable basis for denying a claim and that it knowingly or recklessly disregarded the lack of such reasonable basis. See Klinger v. State Farm Mut. Auto. Ins. Co., 115 F.3d 230, 233 (3d Cir. 1997); Savadove, 1999 WL 236602, at *10.

On this record, it is clear that the Saraccos cannot make out a bad faith claim. Any delay in Vigilant's investigation was caused, in large part, by the plaintiffs' own concealments, misrepresentations, and refusal to cooperate. Almost immediately after the fire, Vigilant learned of Officer Cusatis's report that the fire had been intentionally set. Vigilant therefore knew (or at least had reason to suspect strongly) that this was at best a suspicious fire, and this justified Vigilant's extensive investigation into its cause. Furthermore, Vigilant had a reasonable basis on which to deny plaintiffs' claim, thus precluding a bad faith claim under Klinger. We therefore will award summary judgment to Vigilant on Count II of the complaint.

Vigilant's Counterclaim

In its amended answer, Vigilant asserted a counterclaim for violation of the Pennsylvania Insurance Fraud Act, 18 Pa. Cons. Stat. Ann. § 4117, a criminal statute. It has moved for partial summary judgment on this counterclaim. Plaintiffs have not responded to this argument and have not moved for summary judgment on the counterclaim.

Section 4117 provides that:

> (a) **Offense defined.**-- A person commits an offense if the person does any of the following:
>
> . . . .
>
> (2) Knowingly and with the intent to defraud any insurer or self-

> insured, presents or causes to be presented to any insurer or self-insured any statement forming a part of, or in support of, a claim that contains any false, incomplete, or misleading information concerning any fact or thing material to the claim.
>
> (g) **Civil Action.**-- An insurer damaged as a result of a violation of this section may sue therefor in any court of competent jurisdiction to recover compensatory damages, which may include reasonable investigation expenses, costs of suit and attorney fees. An insurer may recover treble damages if the court determines that the defendant has engaged in a pattern of violating this section.

Courts in this Circuit have held that this statute is aimed at criminal offenders who engage in a pattern of conduct, and that misrepresentations regarding the same subject matter or claim generally do not constitute a "pattern". See Parasco, 920 F. Supp. at 657; Savadove, 1999 WL 236602, at *11 n.18; Royal Indemnity Co. v. Deli by Foodarama, Inc. 1999 WL 178543, at *6 (E.D. Pa. Mar. 31, 1999) ("The act is aimed at serial offenders. Several misrepresentations regarding the same subject matter or made in connection with a single transaction or claim generally do not constitute a "pattern" within the meaning of § 4117."); Ferrino v. Pacific Indemnity Co., 1996 WL 32146, at *4 (E.D. Pa. Jan. 24, 1996); Peer v. Minnesota Mut. Fire & Cas. Co., 1995 WL 141899, at *13 (E.D. Pa. Mar. 27, 1995).

It appears rather clear, under the cases cited above, that Vigilant cannot make out a "pattern" of conduct entitling it

to treble damages, and may not be able to make out a § 4117 claim at all. See, e.g., Parasco, 920 F. Supp. at 657. We therefore will give Vigilant seven days to withdraw its counterclaim. If Vigilant elects to pursue this claim, the Saraccos are afforded leave to move for summary judgment on it.

An Order follows.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL SARACCO and	:	CIVIL ACTION
CAROL ANN SARACCO, h/w	:	
	:	
v.	:	
	:	
VIGILANT INSURANCE CO.	:	NO. 99-3502

ORDER

AND NOW, this 22nd day of February, 2000, upon consideration of the parties' cross-motions for summary judgment and all responses thereto, and for the reasons stated in the accompanying Memorandum, it is hereby ORDERED that:

1. Defendant's motion for summary judgment is GRANTED IN PART and DENIED IN PART;

2. Plaintiffs' motion for summary judgment is DENIED;

3. JUDGMENT IS ENTERED in favor of defendant Vigilant Insurance Company and against plaintiffs Michael and Carol Ann Saracco on Counts I and II of plaintiffs' complaint;

4. In all other respects, defendant's motion is DENIED;

5. By February 29, 2000, defendant shall advise the Court in writing about whether it intends to pursue its counterclaim; and

6. If defendant decides to pursue its counterclaim, plaintiffs are granted leave to move for summary judgment on the

counterclaim if they do so by March 14, 2000, and defendant shall respond to any motion for summary judgment by March 21, 2000.

BY THE COURT:

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Stewart Dalzell, J.