

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

DEANNA MICOCCI : CIVIL ACTION
: :
v. : :
: :
ALLSTATE INSURANCE COMPANY : :
d/b/a ALLSTATE, et al. : NO. 03-5376

MEMORANDUM AND ORDER

Fullam, Sr. J.

April , 2004

Plaintiff was involved in a two-car accident in 1999. She was sued by the other driver. Neither of the two liability insurance companies which, at least arguably, provided coverage to plaintiff saw fit to defend the action, and a default judgment was entered against her. Allegedly, she lost her operating privileges as a result of nonpayment of the judgment. Plaintiff brought this action against both of the insurance companies allegedly involved.

The automobile which plaintiff was operating was owned by a gentleman named Louis Santoleri, whose step-father had obtained a liability policy from Allstate Insurance Company which covered the automobile in question. Plaintiff also allegedly had liability coverage as a family member, under a policy issued by GEICO Insurance Company to her father. Plaintiff's claims against GEICO have now been settled, so we are concerned only with plaintiff's claims against Allstate.

Plaintiff filed an unusually prolix complaint, alleging claims for breach of contract, bad faith, misrepresentation, etc., contending, not only that Allstate had breached the terms of its insurance policy by not providing a defense to the state court action, but also that Allstate had led plaintiff to believe that it was defending the action. It was not until after the state court judgment had been rendered that Allstate, for the first time, asserted a right to disclaim coverage. The grounds ultimately asserted by Allstate, in 2003, were (1) that plaintiff had failed to give prompt notice of the accident, and (2) that plaintiff did not have permission to operate the vehicle.

In addition to its prolixity (113 paragraphs), plaintiff's amended complaint suffered from the inclusion as defendants of not only Allstate Insurance Company which issued the policy in question, but also three other Allstate entities (Allstate Indemnity Company, Allstate Property and Casualty Company, and Allstate Auto Insurance Company), alleging merely that these three entities all did business as "Allstate."

Defendant filed a motion to dismiss the complaint, invoking Rule 12(b)(6). Plaintiff thereupon filed a second amended complaint, not significantly different from its first amended complaint; Allstate filed another motion to dismiss (21 pages, plus numerous attached exhibits). Plaintiff filed a

response to the motion, defendant filed a rebuttal, and plaintiff filed a reply to the rebuttal.

It seems reasonably apparent that plaintiff has no conceivable claims against any of the defendants other than Allstate Insurance Company, but that is a matter for summary judgment, rather than a Rule 12(b)(6) motion: the complaint alleges actionable conduct on the part of all of the named defendants.

The parties devote a great deal of time and energy to the question of whether the "gist of the action" doctrine precludes plaintiff from asserting claims for misrepresentation and the like. I conclude that, on the basis of the facts alleged in the complaint, plaintiff may have claims not only for breach of contract, but for bad faith handling of the entire problem under 42 Pa. C.S.A. § 8371. If successful, plaintiff would be entitled to recover damages for breach of contract and also under the bad faith statute, and whatever other claims she is asserting are mere surplusage and can now be ignored.

Since defendant has not moved to strike off the complaint as in violation of Fed. R. Civ. P. 8, and since the complaint cannot now be dismissed under Fed. R. Civ. P. 12(b)(6), the defense motions will be denied, without prejudice to a properly supported motion for summary judgment.

Counsel would be well advised to develop, without further delay and wheel-spinning, a record as to the only significant liability issues, namely, whether the defendant Allstate Insurance Company did, or did not, receive timely notice of the state court litigation, and whether plaintiff had permission to operate the car she was driving at the time of the accident.

An Order follows.

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ORDER

AND NOW, this day of April 2004, IT IS ORDERED:

1. That all of the defense motions to dismiss the second amended complaint are DENIED, without prejudice to a properly supported motion for summary judgment.

John P. Fullam, Sr. J.