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

SUSAN C. LIEBMAN, DONALD A. BERG, RICHARD L. GERSON, Trustees Under Deed of Trust Dated May 11, 1984 of Samuel A. Liebman, and HAROLD C. WRIGHT, JR.,	:	
Plaintiffs	:	**CIVIL ACTION**
	:	**NO. 02-2566**
v.	:	
PRUDENTIAL FINANCIAL, INC.,	:	
Defendant	:	

MEMORANDUM OPINION AND ORDER

RUFE, J. **May 12, 2004**

Presently before the Court is Defendant Prudential Financial, Inc.'s Motion for Summary Judgment on Plaintiffs' claims of equitable estoppel and negligent misrepresentation. For the reasons below, the Motion is granted in part and denied in part.

I. BACKGROUND

Prior to December 2001, Defendant Prudential Financial, Inc. ("Prudential") was a mutual life insurance company owned by its policyholders. In February 1998, Prudential announced its proposal to "demutualize" and convert to a publicly traded stock company owned by shareholders. Shortly thereafter Prudential established a telephone "hotline" to respond to inquiries regarding the proposed demutualization. To ensure that its hotline operators provided callers with complete and accurate information, Prudential created a fifty-four page script setting forth detailed responses to anticipated questions. Prudential also established a website containing information about the proposed demutualization. Meanwhile, Prudential began the process of finalizing the proposed

demutualization by drafting and adopting a formal Plan of Reorganization, obtaining policyholder approval of the Plan of Reorganization, and obtaining regulatory approval from the New Jersey Department of Banking and Insurance.

Susan C. Liebman, Donald A. Berg and Richard L. Gerson, Jr. (collectively, "Trustees") are plaintiffs in their capacities as trustees under a Deed of Trust of Samuel A. Liebman ("Trust"). Samuel A. Liebman created the Trust for the benefit of his two children and served as the Settlor of, and financial advisor to, the Trust. Liebman is a Senior Vice President of Investments at UBS Financial Services, Inc., known previously as UBS-PaineWebber. The Trust owned two insurance policies issued by Pruco Life Insurance Company ("Pruco"), a wholly-owned subsidiary of Prudential.

Plaintiff Harold C. Wright is an insurance agent with over thirty years' experience in the insurance industry. In 1994, Wright exchanged a Prudential insurance policy he had purchased in 1990 for what he believed was a Pruco policy, although in fact he received a policy issued by Prudential. Wright served as the insurance agent on the 1994 transaction, so he sold the Prudential policy to himself.

In the spring of 2000, Liebman contemplated advising the Trust to exchange its Pruco policies for policies issued by another company that could provide greater death benefits. At the same time, Liebman knew from reading the financial press that when other insurance companies had demutualized, their policyholders had received "a decent amount of stock."[1] Accordingly, to ensure that nothing he recommended would result in reducing the Trust's assets, Liebman began investigating the terms of the Prudential demutualization to determine the beneficial impact, if any,

[1] Liebman Dep. at 82.

on Pruco policies.

Liebman called Prudential's hotline twice in the late-spring/early-summer of 2000. Liebman testified at his deposition that he does not recall the specific questions he asked, but that he has "a general recollection of the questions and the result."[2] During the first call Liebman asked if Prudential knew what the terms of the demutualization were, explained that he had Pruco policies, and asked whether Pruco policies would receive shares of Prudential stock or other compensation in a demutualization. Liebman testified that the "general bottom line of what I concluded from what they told me" was that "Pruco was a subsidiary company and that it would not receive shares on the demutualization."[3]

The script provided to hotline operators follows a question-and-answer format. Under the heading "Eligibility," it states:

> Will I be able to receive shares when Prudential converts to a stock company?
>
> Generally, we expect owners of insurance policies and annuity contracts issued by Prudential to be eligible if their policy is in effect on the date our Board of Directors approves the plan of reorganization, which has not been developed. On the other hand, policies sold by subsidiary companies would generally not be eligible. Subsidiaries include the Pruco Life insurance companies. . . . *We do not know whether any exceptions to this general rule will be made.*[4]

Liebman testified that the operator with whom he spoke did not read the above italicized language or otherwise inform him of the tentative nature of Pruco policyholders' eligibility for demutualization compensation. Based on what he heard during the call, Liebman did not believe the

---

[2] Id. at 86.

[3] Id.

[4] Def.'s Mot. App. at DA236 (emphasis added).

operator was reading from a script. Liebman testified that if any operator had informed him at any time that Pruco policyholders' eligibility had not yet been determined, he would not have exchanged his Pruco policies.[5] After this first call, Liebman "had an understanding that the Pruco policies definitely were not going to get consideration in the demutualization."[6]

Several weeks later, Liebman again called the Prudential hotline to ensure that he "had a proper interpretation of what [he] had heard," to check if a second inquiry would produce "consistent" information, and "just in case anything changed."[7] Liebman asked the same questions, told the operator he was thinking about exchanging his Pruco policies, and said he just wanted to make sure nothing about the demutualization had changed. Although Liebman could not recall the operator's exact words, he described the "net result" of the operator's response as, "[W]hatever you're planning to do, go ahead and do, because you're not getting anything on these [Pruco] policies anyway."[8] The operator's statement "sounded very certain" to Liebman.[9]

After the second call, Liebman was satisfied that the Pruco policies were ineligible for stock distribution in a demutualization. Nonetheless, motivated by his "general desire to check out everything [he] . . . possibly could" to ensure that the Trust "wouldn't be deprived of any shares," Liebman consulted a colleague at UBS-PaineWebber whom he believed had "superior knowledge"

---

[5] Liebman Dep. at 88:3-7 ("Had anybody . . . in any call told me that it had not been determined, I wouldn't have gone forward with it [the exchange] at all. I mean, I knew enough to ask the question, and that is not an answer I got."); id. at 220-23.

[6] Id. at 88.

[7] Id. at 94.

[8] Id. at 96-97.

[9] Id. at 100.

about the subject.[10] Liebman asked William Dougherty, UBS-PaineWebber's branch office manager where Liebman worked, to ask John Mulhall, UBS-PaineWebber's National Sales Manager for Insurance Products, about the terms of the Prudential demutualization and its impact on Pruco policyholders. Liebman also wanted to know how UBS-PaineWebber planned to advise its clients holding Pruco policies.

After receiving a call from Dougherty, Mulhall called Prudential and asked whether Pruco policies would be eligible for stock in the demutualization. (Mulhall could not remember whether he called Prudential's customer service desk, annuity service desk or some other department.) Sometime thereafter, Dougherty left in Liebman's office a note memorializing Mulhall's conclusions. The note stated, in part, "FYI, any contract issued by Pruco not eligible since this is a stock subsidiary of Prudential."[11]

Around the same time, Liebman also contacted Plaintiff Wright, whom Liebman believed possessed superior experience with insurance products. Prior to this conversation with Liebman, Wright had called the hotline and viewed Prudential's website. Based on these inquiries, Wright had concluded that Pruco policies would not be eligible for demutualization compensation, and had exchanged his policy (mistakenly believing it was issued by Pruco) in April 2000. When Liebman asked Wright in the summer of 2000 if Pruco policies would be eligible for demutualization compensation, Wright told Liebman "he had checked it out and no, they weren't."[12]

Based on the information he received from the Prudential hotline, Mulhall and

---

[10] Id. at 108-09.

[11] Pls.' Opp. at Ex. E.

[12] Liebman Dep. at 126.

Wright, Liebman decided that the Trust should surrender the Pruco policies. In October 2000, the Trustees exchanged the Pruco policies for policies issued by another insurance company.

On December 15, 2000, Prudential's Board of Directors adopted a Plan of Reorganization ("Plan"). In general, the Plan provided that Prudential subsidiary policyholders were ineligible to receive demutualization compensation. However, Pruco policyholders were eligible, provided their policies were in effect as of December 15, 2000. Having surrendered its Pruco policies prior to December 15, 2000, the Trust was not eligible for any demutualization compensation. Similarly, because Wright had surrendered his Prudential policy prior to December 15, 2000, he was also ineligible for compensation. Following policyholder approval and a public hearing, the Plan received regulatory approval on October 15, 2001.

Plaintiffs filed the instant action on April 29, 2002, alleging claims of equitable estoppel, fraud and negligent misrepresentation.[13] On December 30, 2002, the Court granted in part and denied in part Defendant's Motion to Dismiss, dismissing the fraud count for failure to state a claim upon which relief could be granted, denying the balance of the Motion, and inviting further briefing on the appropriate choice of law.[14] After a period of discovery and on the parties' cross-motions on the choice of law issue, on November 14, 2003, the Court ruled that New Jersey law governs Plaintiffs' equitable estoppel and negligent misrepresentation claims.[15] Thereafter,

---

[13] Jurisdiction is proper due to diversity of citizenship. See 28 U.S.C. § 1332.

[14] 2002 WL 31928443, 2002 U.S. Dist. LEXIS 25045.

[15] 2003 WL 22999217, 2003 U.S. Dist. LEXIS 21048.

Prudential filed the instant Motion for Summary Judgment.[16] The familiar summary judgment standard governs.[17]

II. DISCUSSION

Under New Jersey law, equitable estoppel requires proof of "a misrepresentation or concealment of facts (1) by the party allegedly estopped and unknown to the party asserting estoppel; (2) done with the intention or expectation that it will be acted upon by the other party; and (3) on which the other party relies to his detriment."[18] The reliance must be reasonable and justifiable.[19] The tort of negligent misrepresentation requires a showing of an incorrect statement that is negligently made and justifiably relied upon.[20] Thus, both causes of action require proof of (1) a

---

[16] Throughout this litigation counsel for both parties have submitted excellent memoranda in support of their respective positions. Such high quality advocacy greatly aids the Court in discharging its duties.

[17] Under Federal Rule of Civil Procedure 56(c), summary judgment is appropriate "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." A party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the movant adequately supports its motion under Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. See id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the nonmovant. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992). A court may not consider the weight or credibility of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. Id. But a party opposing summary judgment must do more than just rest upon mere allegations, general denials, or vague statements. Saldana v. Kmart Corp., 260 F.3d 228, 232 (3d Cir. 2001).

[18] First Union Nat'l Bank v. Nelkin, 808 A.2d 856, 862-63 (N.J. Super. Ct. App. Div. 2000) (citing Carlsen v. Masters, Mates & Pilots Pension Plan Trust, 403 A.2d 880, 882-83 (N.J. 1979)).

[19] Id. at 863; Foley Mach. Co. v. Amland Contractors, Inc., 506 A.2d 1263, 1266 (N.J. Super. Ct. App. Div. 1986).

[20] H. Rosenblum, Inc. v. Adler, 461 A.2d 138, 142-43 (N.J. 1983) ("An incorrect statement, negligently made and justifiably relied upon, may be the basis for recovery of damages for economic loss or injury sustained as a consequence of that reliance.").

misrepresentation and (2) reasonable or justifiable reliance on the alleged misrepresentation.

A. Wright's Claims

Prudential argues that Wright cannot demonstrate reasonable or justifiable reliance. As noted supra, Wright actually owned a Prudential policy, although he surrendered it because he mistakenly believed it was a Pruco policy that would be ineligible for demutualization compensation. It is undisputed that if Wright had owned his Prudential policy on December 15, 2000, he would have received such compensation. His claims proceed on the same theory advanced by the Trustees: that upon his inquiries of the hotline and website, Prudential provided false information or omitted material information, and that he reasonably relied on this information to his detriment.

Prudential argues that it cannot be held liable for Wright's unjustified mistake. Wright's Prudential policy states on its face that it was issued by "The Prudential Insurance Company of America, a mutual life insurance company" to "Harold C. Wright, Jr."[21] Acting as his own insurance agent, Wright sold the Prudential policy to himself. He testified that when he sells an insurance policy to a client, he informs his clients as a matter of course which insurance company will be issuing the policy: "[T]hey must know . . . it's not a matter of my decision . . . You must tell them what company it is. So I never thought about it, because I - - it's so routine."[22] Based on these facts, Prudential argues that Wright is presumptively charged with the knowledge that he was buying and received a Prudential policy. If this is the case, it follows that Wright cannot demonstrate

[21] Def.'s Mot. App. at DA305. Prudential's familiar commercial logo, which resembles the Rock of Gibraltar, also appears prominently on the front of Wright's Prudential policy. There is nothing in the record regarding whether Pruco, as a Prudential subsidiary, also used the Prudential logo.

[22] Wright Dep. at 19. Wright contends there is no evidence he ever signed the Prudential policy, as opposed to an application. Yet, the authenticity of the Prudential policy bearing his name is not in dispute, and he identified it as his during his deposition. Id. at 27. Accordingly, his receipt and acceptance of the policy is not a material issue of disputed fact.

justifiable reliance upon Prudential's alleged misrepresentations concerning Pruco policies.

In opposing Prudential's argument, Wright posits that Pennsylvania law refuses to entertain a presumption that a policyholder read and understood the policy.[23] He claims that the 1994 exchange application that he signed referred to Pruco and Prudential interchangeably, and that a supplement to the application shows he specifically requested a Pruco policy.[24] Therefore, so the argument goes, even if Wright's failure to examine the policy he actually received prevented him from discovering that he was issued a Prudential policy, he reasonably believed ab initio that he owned a Pruco policy, and thus he was entitled to rely on Prudential's alleged misrepresentations concerning Pruco policyholders' eligibility for demutualization compensation.

In support of his position, Wright relies on Rempel v. Nationwide Life Insurance Co., 370 A.2d 366 (Pa. 1977) and Tonkovic v. State Farm Mutual Automobile Insurance Co., 521 A.2d 920 (Pa. 1987), both of which involved questions of benefits due under insurance policies. In Rempel, the insured purchased mortgage life insurance and specifically requested a $5,000 death benefit above his mortgage balance. The insurer issued a policy without the $5,000 benefit, but subsequently the insurance agent verbally assured the policyholder that the benefit was included. The insured never read the policy, but even if he had "nothing on the face of the policy . . . would have alerted [the insured] that the policy did not contain the coverage expected," for "[o]nly by examining a rider attached to the policy, and making mathematical computations could one ascertain

---

[23] Although New Jersey law governs Plaintiffs' substantive claims, determining whether a reasonable jury could infer from the evidence that Wright's mistake was reasonable implicates Pennsylvania law because the law of the forum state governs the presumptions and inferences to be drawn from the evidence. See Int'l Derrick & Equip. Co. v. Buxbaum, 210 F.2d 384, 386 (3d Cir. 1954).

[24] See Pls.' Opp. at Ex. G.

the extent of the coverage provided."[25] When the insurer later denied a claim for the $5,000 benefit, the beneficiary sued for tortious misrepresentation. The Supreme Court of Pennsylvania affirmed a jury verdict against the insurer, concluding an insurance policyholder "has no duty to read the policy unless under the circumstances it is unreasonable not to read it."[26]

In Tonkovic, the insured specifically requested disability insurance coverage that would enable him to make his mortgage payments in the event of his injury, without regard to where such injury might occur, or whether he might be eligible for worker's compensation.[27] The insurer issued the policy, but the insured never received a copy. The insured was later injured and made a claim for disability benefits, but the insurer denied coverage under an exclusion for injuries sustained in the workplace for which worker's compensation benefits were available. The insured sued on a theory of assumpsit and a jury returned a verdict in his favor. On appeal, the court found Rempel controlling and concluded that "[w]hen the insurer elects to issue a policy differing from what the insured requested and paid for, there is clearly a duty to advise the insured of the changes so made."[28] Because the insurer had unilaterally excluded the pertinent coverage and then failed to so notify the insured, the Supreme Court of Pennsylvania affirmed the jury's verdict.

Wright cites these cases to dispute that he had any obligation to read the Prudential policy and thereby discover which company issued it. Yet, the policy rationales driving Rempel and Tonkovic have no application to the case at bar. In both cases, the court examined the particular

---

[25] 370 A.2d at 369.

[26] Id.

[27] 521 A.2d at 921.

[28] Id. at 925.

factual context to determine whether enforcement of the policy as written was acceptable given the insured's reasonable expectations. Rempel and Tonkovic both represent the Supreme Court of Pennsylvania's efforts to protect the insurance purchasing public from the detrimental effects of unequal bargaining power and knowledge, which are naturally attendant to most insurance transactions. So in Rempel, where the insured viewed the insurance agent "as one possessing expertise in a complicated subject," and where the documents contained "specialized language" having "no meaning to the consumer except the meaning attributed to the words by the representations of the agent," the insured was not accountable for a failure to read the insurance policy because "it is not unreasonable for consumers to rely on the representations of the [insurance] expert rather than on the contents of the insurance policy itself."[29] Similarly, recognizing "the adhesionary nature of insurance transactions," the Tonkovic court sought to protect consumers against the inevitable confusion associated with the dizzying tools of the insurance industry by permitting reliance on the insurer's oral representations in certain circumstances: "Through the use of lengthy, complex, and cumbersomely written applications, conditional receipts, riders, and policies, to name just a few, the insurance industry forces the consumer to rely upon the oral representations of the insurance agent."[30]

These concerns are not present in the case at bar. When Wright sold the Prudential policy to himself, buyer and seller were literally and figuratively on equal footing. There is no allegation that Wright received any less coverage or value from the Prudential policy than from any Pruco policy he claims to have expected. Nor does Wright advance any allegation of wrongdoing

---

[29] 370 A.2d at 368.

[30] 521 A.2d at 925-26 (quoting Collister v. Nationwide Life Ins. Co., 388 A.2d 1346, 1353-54 (Pa. 1978)).

by Prudential when it issued the policy, and it goes without saying that Wright does not allege that as the insurance agent he misled himself during the transaction. Finally, this is not a case crying out for the Court to protect an unassuming consumer from the harsh effects of arcane terms of art, hidden exclusions or any other matter requiring an insurance expert's translation. Rather it involves a simple question of who issued the policy, an exceedingly undissembling mystery. Accordingly, Pennsylvania law cannot protect Wright from the consequences of his failure to examine the Prudential policy. To the contrary, the Supreme Court of Pennsylvania's statement in Standard Venetian Blind Co. v. American Empire Insurance Co. controls here: where policy terms are "clearly worded and conspicuously displayed," an insured may not avoid policy terms based on her failure to read or understand the policy.[31]

No reasonable juror could conclude that an experienced insurance agent who sold to himself a policy with Prudential's name emblazoned across the front of it could reasonably believe he had purchased a Pruco policy. Accordingly, Wright is charged with a presumption that he was buying a policy issued by Prudential, and thus Wright cannot demonstrate reasonable or justifiable reliance as a matter of law. Prudential is entitled to summary judgment on Wright's equitable estoppel and negligent misrepresentation claims.

B. The Trustees' Claims

Prudential argues that the Trustees cannot establish any misrepresentation by Prudential because the hotline operator's alleged representations were mere forward-looking

[31] 469 A.2d 563, 567 (Pa. 1983). The same result would attach under New Jersey law. See Botti v. CNA Ins. Co., 824 A.2d 1120, 1124 (N.J. Super. Ct. App. Div. 2003) ("[A]n insured is chargeable with knowledge of the contents of the [insurance] policy, in the absence of fraud or unconscionable conduct on the part of the insurer."); see also Fleming Cos. v. Thriftway Medfordlakes, Inc., 913 F. Supp. 837, 842-43 (D.N.J. 1995) ("[I]t is well settled that affixing a signature to a contract creates a conclusive presumption that the signer read, understood, and assented to its terms.") (citations omitted).

statements or predictions as opposed to misrepresentations of existing fact. "Statements as to future or contingent events, to expectations or probabilities, or as to what will or will not be done in the future, do not constitute misrepresentations, even though they may turn out to be wrong."[32] To be actionable, the content of any misrepresentation "must be susceptible of 'exact knowledge' at the time it is made."[33]

On the record before the Court, there exists a genuine issue of material fact as to whether the hotline operator's alleged statements to Liebman constitute misrepresentations. Prudential maintains that at all times prior to December 15, 2000, when its Board of Directors adopted the Plan, Prudential considered the Plan "to be in the development stage and [it] could not even say for certain that a demutualization would take place."[34] This position stands in stark contrast to Liebman's testimony. He contends that on two occasions a Prudential hotline operator informed him in "definite" and "certain" terms that Pruco policyholders would not receive demutualization compensation under the Plan. During his second call, the hotline operator allegedly went so far as to recommend that Liebman proceed with his plans to surrender the Pruco policies because he would not be "getting anything" in a demutualization. Taken in the light most favorable to the Trustees, this could be construed as a statement of exact knowledge regarding the terms of the Plan as those terms existed when the statement was made. This is very different from a statement as to a future or contingent event. Accordingly, on this record a reasonable jury could conclude that Prudential conveyed the impression that the terms of the Plan were fixed at the time of Liebman's inquiry.

---

[32] Alexander v. CIGNA Corp., 991 F. Supp. 427, 435 (D.N.J.), aff'd, 172 F.3d 859 (3d Cir. 1998) (Table).

[33] Id. (quoting Vaughn v. Gen. Foods Corp., 797 F.2d 1403, 1411 (7th Cir. 1986)).

[34] Def.'s Reply at 5.

Prudential's Motion is denied on this ground.

Next, Prudential argues that the Trustees cannot establish justifiable, reasonable reliance. Under New Jersey law, reliance is justifiable when facts to the contrary "were not obvious" or "did not provide a warning making it patently unreasonable" to forego further investigation.[35] Prudential contends that Liebman's testimony about the hotline calls and his subsequent actions establish that he knew no demutualization plan had been adopted, so it was unreasonable and unjustifiable as a matter of law for him to rely on any hotline operator's alleged statements to the contrary.

The parties' memoranda engage in a line-by-line battle over Liebman's testimony, which is sometimes less than mellifluous, each seeking to draw out opposite inferences. However, accepting as true Liebman's version of the conversations, it appears the hotline operator misled Liebman into believing that the terms of the demutualization plan would not change before it was submitted for final approval. This is the sum and substance of Liebman's testimony.[36] Liebman acknowledged that the Plan would not be finalized until it received approvals. However, the Trustees do not contend that they relied on any representations as to whether the demutualization Plan would be approved. Rather, they argue that the hotline operator represented that the terms of the Plan to be submitted were fixed, and that those terms did not provide for Pruco policyholder demutualization compensation. Therefore, whether Liebman knew that the demutualization Plan

---

[35] Int'l Minerals and Mining Corp. v. Citicorp N. Am., Inc., 736 F. Supp. 587, 598 (D.N.J. 1998) (quoting Nappe v. Anschelewitz, Barr, Ansell & Bonello, 460 A.2d 161, 165 (N.J. Super. Ct. App. Div. 1983), rev'd on other grounds, 477 A.2d 1224 (N.J. 1984)).

[36] See, e.g., Liebman Dep. at 115:5-17 ("[T]here was no plan that I knew of . . . [e]ither approved by the board or the insurance commission or any of that. But my impression was, from the calls that I had made, that the plan that they were going to propose was - - was already made up, that they had a plan . . . [and] it was the plan that they were going to take to get approved from the board and the insurance commissioner.").

would ultimately require further approvals does not affect whether it was reasonable or justifiable to rely on the operator's statements.

Prudential also points to Liebman's further inquiries of Dougherty and Wright as evidence that Liebman had not interpreted the operator's statements as a "guarantee," so he could not have justifiably relied on those statements. However, as the Trustees rightly note, a reasonable jury could conclude that Liebman's subsequent actions evidence his cautious approach to financial matters affecting his own children, who were the Trust's beneficiaries. Liebman specifically testified that nothing about the calls raised questions in his mind about the Pruco policies' eligibility for demutualization consideration; rather, he made additional inquiries because he is a "thorough guy" and had a "general desire to check out everything I could."[37] The Court cannot conclude, as Prudential would have it, that Liebman's duplicative inquiries give rise to a conclusive inference that Liebman harbored serious doubts concerning the validity of the hotline operator's statements, and thus foreclose the possibility of any reasonable jury finding reasonable or justifiable reliance. To the contrary, taking all the relevant circumstances into account, a jury could conclude that the Trustees reasonably relied on the hotline operator's statements.[38] Accordingly, Prudential's Motion is denied on this ground.

Prudential seeks summary judgment on the Trustees' negligent misrepresentation claim, arguing that it was not foreseeable that the Trustees would rely on the hotline operator's statement to Liebman. For liability to attach, the "aggrieved party must be a reasonably foreseeable

---

[37] Id. at 108:14-15, 108:22-23.

[38] Cf. Williams Controls, Inc. v. Parente, Randolph, Orlando, Carey & Assocs., 39 F. Supp. 2d 517, 534 (M.D. Pa. 1999) ("[T]he question of justifiable reliance is most appropriately left to the jury. Reasonableness of reliance involves all of the elements of the transaction, and is rarely susceptible of summary disposition.").

recipient of the company's statements. . . ."[39] Here, the Trust itself, as opposed to the Trustees (who are mere nominal parties), suffered the injury and is thus the "aggrieved party." Needless to say, the Trust cannot act but through its agents, and thus cannot receive information but through its agents. Accepting as true Liebman's uncontroverted factual assertion that he was an authorized agent of the Trust, a reasonable jury could conclude that he was a reasonably foreseeable recipient of the hotline operator's statements. It strains common sense to suggest he was not. Prudential's Motion is denied on this ground.[40]

Lastly, Prudential argues that the Trustees cannot satisfy New Jersey's high standard for invoking equitable estoppel, a doctrine founded on fundamental principles of justice and fair dealing.[41] "The doctrine is only applied in compelling circumstances where the interests of justice, morality and common fairness dictate."[42] Prudential contends that the facts of this case do not present the requisite compelling circumstances. It notes that the Trust garnered certain benefits by surrendering its Pruco policies when it did, such as avoiding a decrease in the value of the Pruco policies due to falling stock market prices, obtaining lower premiums on the new policies, and avoiding the insureds having to undergo an additional physical examination because Liebman and his wife (the other insured) were within the window of time in which they could use exams taken in connection with another insurance application. Thus, it contends, the Trustees' decision to

---

[39] Karu v. Feldman, 574 A.2d 420, 425 (N.J. 1990).

[40] Prudential also argues that there is no proof Liebman ever communicated the alleged misrepresentations to the Trustees, but there is no dispute that Liebman told the Trustees he was planning to investigate the eligibility of Pruco policies and that he "probably" communicated the results of his investigation. Liebman Dep. at 83, 93. At most, this presents a disputed issue of material fact, thus precluding summary judgment.

[41] See Knorr v. Smeal, 836 A.2d 794, 800 (N.J. 2003).

[42] First Union Nat'l Bank v. Nelkin, 808 A.2d 856, 862 (N.J. Super. Ct. App. Div. 2002).

surrender the Pruco policies was a gamble between these known advantages of surrendering the Pruco policies and the unknowable prospect of demutualization.

The Trustees counter that the interests of justice and fairness clearly support an estoppel. Although on this record it is perhaps hyperbolic for the Trustees to assert that Prudential "poisoned the well of information at each turn,"[43] the Court cannot conclude that no reasonable jury could find the circumstances of this case sufficiently compelling. Except in obvious cases, it is distinctly not the province of the Court to enter summary judgment merely because it might singularly opine that the circumstances are not sufficiently compelling or unfair.[44] Rather, summary judgment is only appropriate where a trial would be pointless and could lead only to one inexorable conclusion. Where, as here, it is debatable and facts are in dispute, such questions are left to the finder of fact.[45] Prudential's Motion is denied on this ground.

An appropriate Order follows.

---

[43] Pls.' Reply at 24.

[44] Cf. Carter v. Exxon Co. USA, 177 F.3d 197, 202 (3d Cir. 1999) ("The judge's function [on summary judgment] is not to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial.").

[45] Neither party raises the issue of whether Plaintiffs are entitled to a trial by jury on their equitable estoppel claim, so the Court will leave this question for another day. In general, under the Seventh Amendment, a trial by jury is only available in federal court if the state law cause of action is legal, as opposed to equitable, in nature. See, e.g., Hatco Corp. v. W.R. Grace & Co., 59 F.3d 400, 411 (3d Cir. 1995). Although at first blush whether "equitable estoppel" is legal or equitable in nature might seem obvious, the Court declines to decide the issue sua sponte, especially where it has no bearing on today's decision.

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

SUSAN C. LIEBMAN, DONALD A. BERG, RICHARD L. GERSON, Trustees Under Deed of Trust Dated May 11, 1984 of Samuel A. Liebman, and HAROLD C. WRIGHT, JR.,	:	
Plaintiffs	:	**CIVIL ACTION**
	:	**NO. 02-2566**
v.	:	
PRUDENTIAL FINANCIAL, INC.,	:	
Defendant	:	

ORDER

AND NOW, this _____ day of May, 2004, upon consideration of Defendant's Motion for Summary Judgment [Doc. # 31], Plaintiffs' Memorandum in Opposition thereto [Doc. # 33], and Defendant's Reply Memorandum [Doc. # 36], and for the reasons set forth in the attached Memorandum Opinion, it is hereby **ORDERED** that Defendant's Motion is **GRANTED IN PART** and **DENIED IN PART** as follows:

1. Judgment is hereby entered in favor of Defendant Prudential Financial, Inc. and against Plaintiff Harold C. Wright on Count One and Count Three of the Complaint.

2. The Motion is otherwise **DENIED**.

It is so **ORDERED**.

BY THE COURT:

_____
CYNTHIA M. RUFE, J.