

**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

CHARLES KITTL,)	
Plaintiff,)	
)	
v.)	C.A. No. CPU4-11-000874
)	
STATE FARM MUTUAL AUTOMOBILE)	
INSURANCE COMPANY,)	
Defendant.)	

Submitted: January 27, 2012
Decided: January 30, 2012

**On Defendant's Motion for Summary Judgment
DENIED**

**On Plaintiff's Motion for Partial Summary Judgment
DENIED**

Michael J. Hood, Esquire, 1701 Shallcross Avenue, Suite C-1, P.O. Box 1471, Wilmington, Delaware, 19899, Attorney for Plaintiff.

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ROCANELLI, J.

Plaintiff Charles Kittl filed this action against State Farm Mutual Automobile Insurance Company to recover money damages based on breach of an alleged insurance contract between the parties, and Defendant's alleged bad faith failure to provide payment under this contract. The Complaint, filed on January 31, 2011 demands relief under two causes of action: (1) breach of contract and (2) denial of insurance benefits in bad faith.

On March 31, 2011, Defendant filed an Answer, arguing that the lumbar epidural injection did not qualify as a "surgical procedure" pursuant to the terms of the insurance contract between the parties, and therefore State Farm did not breach the terms of the insurance contract or deny coverage for this procedure in bad faith.

On July 18, 2011, the parties filed a Stipulation of Dismissal, dismissing only the claim for breach of contract, with prejudice.

On January 9, 2012, Defendant filed a Motion for Summary Judgment, arguing that there is no genuine issue of material fact and Defendant is entitled to judgment as a matter of law because Defendant did not act without any reasonable justification when it denied coverage for the lumbar epidural injection procedure.

On January 13, 2012, Plaintiff filed a Motion for Partial Summary Judgment, arguing that there is no genuine issue of material fact and Plaintiff is entitled to judgment as a matter of law on the narrow issue of whether the lumbar epidural injection procedure qualified as a "surgical procedure" pursuant to the admitted insurance contract between the parties.

I. STANDARD FOR SUMMARY JUDGMENT

A motion for summary judgment requires the Court to examine the record to determine whether any genuine issues of material fact exist or whether one party should prevail as a matter of law.¹ If, after viewing the record in a light most favorable to the non-moving party, the Court finds no genuine issue of material fact exists, then summary judgment is appropriate.² However, summary judgment may not be granted when the record indicates a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances.³

II. DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

Bad faith claims require a two step analysis: (1) whether the Defendant is liable for bad faith; and (2) the appropriate amount of damages, including punitive damages.⁴ “[T]he presence of bad faith is actionable where the insured can show that the insurer’s denial of benefits was ‘clearly without any reasonable justification.’”⁵ Assuming Plaintiff can establish liability for bad faith, the analysis then shifts to damages.⁶ Punitive damages may be available where the Court finds that a defendant’s conduct was outrageous, because of evil motive or reckless indifference to the rights of others.⁷

¹ *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991).

² *CCP Civ. R. 56(c)*; *Hammond v. Cold Industries Operating Corp.*, 565 A.2d 558, 560 (Del. 1989); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

³ *Wilson v. Triangle Oil Co*, 566 A.2d 1016, 1018 (Del. 1989).

⁴ *Tackett v. State Farm*, 653 A.2d 254, 264-66 (Del. 1995).

⁵ *Id.*

⁶ *Tackett*, 653 A.2d at 264-66.

⁷ *Id.* at 265.

Defendant argues that in 2009, when Defendant denied coverage for the lumbar epidural injection procedure, the term “surgical procedure” was not defined by the Delaware No Fault Insurance Act, 21 *Del. C.* § 2118, *et seq.* at that time. Therefore, Defendant argues that there is no evidence that Defendant denied coverage without any reasonable justification because it was not sure whether the lumbar epidural injection procedure was a covered procedure.

Plaintiff argues that it is common practice in the insurance industry to rely on Current Procedural Terminology (“CPT”) Codes, and that the CPT codes define lumbar epidural injections as a “surgical procedure.” Therefore, according to Plaintiff, because Defendant probably used the CPT Codes that defined the injection at issue as covered under the terms of the insurance policy between the parties, Defendant had no reasonable justification for denying the insurance claim in this case. Plaintiff argues further that testimony of witnesses at trial will establish that Defendant did not perform any due diligence to determine whether the injection qualified as a “surgical procedure” further strengthening the claim that the denial of the claim was made in bad faith.

The Court finds that there are genuine issues of material fact with regard to the bad faith claim, and thus the case must proceed to trial. Specifically, there are genuine issues of material fact regarding Defendant’s decision to deny the insurance claim at issue in this case. Therefore, summary judgment is not appropriate.

III. PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff argues that it is entitled to summary judgment on the narrow issue of whether the lumbar epidural injection procedure qualified as a "surgical procedure" pursuant to the admitted insurance contract between the parties.

It should be noted that this issue must be addressed within the issue of liability in this case. Moreover, even assuming the lumbar injection procedure was a "surgical procedure," that fact alone does not conclusively establish liability. Stated differently, if the Court granted Plaintiff's Motion for Partial Summary Judgment, Plaintiff would still need to prove beyond a preponderance of the evidence that Defendant denied the claim without any reasonable justification in order to prevail on its bad faith claim at trial. Therefore, procedurally this is not an issue ripe for summary judgment because it is not dispositive with respect to any one element of the bad faith claim.

The Court finds that there is a genuine issue of material fact with respect to whether the injection qualified as a surgical procedure under the terms of the admitted insurance contract. Defendant has never conceded in its responses to discovery, nor in any of its numerous filings in this case that the injection qualified as a "surgical procedure." Rather, it is Defendant's position that, at the time the insurance claim was filed, Defendant was unsure of whether the injection qualified as a surgical procedure. Further, Defendant argues that while recent case law provides guidance on the issue of whether the injection qualifies as a surgical procedure, there still is no controlling case

law or statute in Delaware on this issue.⁸ Plaintiff has failed to provide the Court with any case law, statute, or response to discovery establishing that there is no genuine issue of material fact as to the interpretation of this contract term. In other words, there is a genuine issue of material fact concerning whether the injection qualified as a “surgical procedure” as defined by the terms of the contract between the parties. Therefore, summary judgment is not appropriate.

IV. ORDER

THEREFORE, IT IS HEREBY ORDERED:

1. Defendant’s Motion for Summary Judgment is **DENIED**, because material issues of fact remain and Defendant is not entitled to judgment as a matter of law.

2. Plaintiff’s Motion for Partial Summary Judgment is **DENIED**, because material issues of fact remain and Plaintiff is not entitled to judgment as a matter of law.

3. This Judicial Officer will retain jurisdiction over this matter.

THIS 30th DAY OF JANUARY, 2011.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli

⁸ *Freeman v. X-Ray Assoc.*, 3 A.3d 224, 228 (Del. 2010).