NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

CDL, INC., Appellant/Cross-Appellee v. CERTAIN UNDERWRITERS AT LLOYDS OF LONDON, ET AL., Appellee/Cross-Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA Nos. 2860 & 3004 EDA 2013

Appeal from the Judgment Entered November 13, 2013
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): 090700758

BEFORE: PANELLA, LAZARUS AND JENKINS, JJ.

MEMORANDUM BY JENKINS, J. **FILED JULY 22, 2014**

This is an insurance coverage dispute. CDL, Inc. filed an action against Certain Underwriters At Lloyd's of London ("LOL") for breach of contract, tortious interference with contract and bad faith[1] based on LOL's refusal to defend or provide insurance coverage to CDL in a personal injury action. The trial court entered summary judgment in favor of LOL on CDL's tortious interference action. Subsequently, the trial court, sitting non-jury, entered a verdict in CDL's favor for breach of contract in the amount of $73,130.24. The court entered a verdict in LOL's favor on CDL's bad faith claim.

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[1] 42 Pa.C.S. § 8371.

CDL filed post-trial motions seeking judgment n.o.v. on the bad faith claim. LOL filed post-trial motions seeking judgment n.o.v. on the contract claim. The trial court denied both motions.

CDL filed a notice of appeal without first entering judgment in the trial court. CDL subsequently perfected the appeal under Pa.R.A.P. 905(a)(5)[2] by entering judgment in its favor (which, with interest, amounted to $100,647). LOL filed a cross-appeal prior to the entry of judgment. This appeal also was perfected by CDL's entry of judgment. Both parties and the trial court have complied with Pa.R.A.P. 1925. We affirm the judgment.

In this appeal, both parties continue to advance the positions that they articulated below: CDL asks us to rule that the trial court erred in denying its motion for judgment n.o.v. on the bad faith claim[3], and LOL asks us to hold that the trial court erred in denying its motion for judgment n.o.v. on the breach of contract claim[4]. The logical place to begin is with LOL's cross-appeal relating to the breach of contract claim, because as a practical

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[2] Pa.R.A.P. 905(a)(5) provides: "A notice of appeal filed after the announcement of a determination but before the entry of an appealable order shall be treated as filed after such entry and on the day thereof." ***See also Jones v. Rivera***, 866 A.2d 1148, 1149 n.1 (Pa.Super.2005) (appellate court would consider appeal from order denying motorist's post-trial motions, although order had not been reduced to judgment when notice of appeal was filed, where judgment was subsequently entered).

[3] Brief for CDL, pp. 11-49.

[4] Brief for LOL, pp. 37-53 (claiming that "the trial court erred as a matter of law in its interpretation of the Richards' complaint and policy when ruling in favor of CDL on its breach of contract claim").

matter, the question of whether LOL breached the insurance contract is fundamental to the question of whether LOL acted in bad faith.

Since this appeal is from an order following a nonjury trial, the following general principles apply:

> Our review in a nonjury case is limited to whether the findings of the trial court are supported by competent evidence and whether the trial court committed error in the application of law. We must grant the court's findings of fact the same weight and effect as the verdict of a jury and, accordingly, may disturb the nonjury verdict only if the court's findings are unsupported by competent evidence or the court committed legal error that affected the outcome of the trial. It is not the role of an appellate court to pass on the credibility of witnesses; hence we will not substitute our judgment for that of the factfinder. Thus, the test we apply is not whether we would have reached the same result on the evidence presented, but rather, after due consideration of the evidence which the trial court found credible, whether the trial court could have reasonably reached its conclusion.

Hollock v. Erie Insurance Exchange, 842 A.2d 409, 413–14 (Pa.Super.2004) (en banc) (quotation marks and citations omitted).

Moreover, because both parties sought but were denied judgment notwithstanding the verdict, our standard of review is well-settled:

> [W]e must consider the evidence, together with all favorable inferences drawn therefrom, in a light most favorable to the verdict winner. Our standard of review when considering motions for a directed verdict and judgment notwithstanding the verdict are identical. We will reverse a trial court's grant or denial of a judgment notwithstanding the verdict only when we find an abuse of discretion or an error of law that controlled the outcome of the case.

> Further, the standard of review for an appellate court is the same as that for a trial court.
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> There are two bases upon which a judgment N.O.V. can be entered: one, the movant is entitled to judgment as a matter of law and/or two, the evidence is such that no two reasonable minds could disagree that the outcome should have been rendered in favor of the movant. With the first, the court reviews the record and concludes that even with all factual inferences decided adverse to the movant the law nonetheless requires a verdict in his favor, whereas with the second, the court reviews the evidentiary record and concludes that the evidence was such that a verdict for the movant was beyond peradventure.

Polett v. Public Communications, Inc., 83 A.3d 205, 211-12 (Pa.Super.2013) (en banc) (internal citations omitted).

Construed in the light most favorable to CDL, the verdict winner in the contract claim, the record demonstrates the following. CDL is in the business of leasing commercial truck drivers to its clients on a temporary basis[5]. LOL insured CDL with a commercial general liability policy effective September 29, 2006 through September 29, 2007[6]. The policy did not include automotive or professional liability coverage[7]. During the policy period, CDL leased a driver named David Martin to a client, Ready Pac

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[5] N.T., 12/17/12 (AM), pp. 54-55 (testimony of Todd Hoener, CDL's president).
[6] ***Id***., pp. 55-57; exhibit P-1 (CDL commercial general liability policy).
[7] Exhibit P-1 (CDL commercial general liability policy).

Produce, Inc. ("Ready Pac")[8]. Penske Truck Leasing ("Penske") leased a truck to Ready Pac that Martin was driving[9]. Martin was involved in a motor vehicle accident with a school bus driven by Vicki Richards[10]. Ms. Richards and her husband sued CDL, Martin, Ready Pac and Penske[11].

The Richards alleged in their complaint:

> 7. At all times pertinent hereto, defendant David Martin was the agent, servant, workman and/or employee of defendants [Ready Pac], [CDL], and [Penske] and was acting within the course and scope of his employment.
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> 8. At all times pertinent hereto, defendant [CDL] provided driver placement services on behalf of or at the request of [Ready Pac] and [CDL] placed defendant David Martin as a driver with [Ready Pac] . . .

Count 5 of the complaint alleged that the accident was solely because of CDL's negligence on the basis of vicarious liability for Martin's acts and/or negligent entrustment of the truck to Martin[12]. In a separate count, the complaint made identical allegations of negligence against Penske (vicarious liability for Martin's acts, and negligent entrustment of the truck to Martin)[13]. In another separate count, the complaint made identical allegations of negligence against Ready Pac (vicarious liability for Martin's acts, and

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[8] Exhibit P-4 (Richards Complaint), ¶ 11.
[9] ***Id***., ¶ 10.
[10] ***Id***., ¶ 13.
[11] N.T., 12/17/12, pp. 58-59.
[12] Exhibit P-4 (Richards Complaint), ¶¶ 37-38.
[13] ***Id***., ¶¶ 45-46.

negligent entrustment of the truck to Martin)[14]. Thus, the complaint covered all bases by claiming that (1) CDL is liable if Martin is an employee of CDL; (2) Penske is liable if Martin is an employee of Penske; and (3) Ready Pac is liable if Martin is an employee of Ready Pac.

CDL reported the lawsuit to LOL[15]. LOL denied coverage and refused to defend the Richards' lawsuit based on two exclusions in CDL's commercial general liability policy, the auto exclusion and the professional liability exclusion[16]. On July 9, 2009, CDL filed a writ of summons in the trial court against LOL[17]. On July 20, 2009, Lloyd's ruled upon CDL to file a complaint within 20 days[18]. Four days later, Lloyd's issued a notice of nonrenewal of CDL's commercial general liability policy, claiming: "Company is no longer writing this class of business."[19]

> The auto exclusion in CDL's policy provides:
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> This insurance does not apply to. . . 'Bodily injury' or 'property damage' *arising out of the ownership, maintenance, use or entrustment* to others of any

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[14] ***Id***., ¶¶ 29-30.
[15] N.T., 12/17/12, pp. 58-59; exhibit P-5 (e-mail from CDL's attorney reporting Richards' action against CDL).
[16] Exhibit P-9 (letter from LOL's claims adjuster, Nancy Haag, denying coverage).
[17] Docket entries, July Term, 2009, No. 758.
[18] ***Id***.
[19] Exhibit P-33 (notice of nonrenewal of coverage dated July 24, 2009).

> aircraft, *'auto'*[20] or watercraft *owned or operated by or rented or loaned to any Insured*. Use includes operation and 'loading or unloading.'
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> This exclusion applies even if the claims against any Insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that Insured, if the 'occurrence' which caused the 'bodily Injury' or 'property damage' involved the *ownership, maintenance, use or entrustment to others* of any aircraft, *'auto'* or watercraft that is *owned or operated by or rented or loaned to any Insured*.

The professional liability exclusion provides:

> It is agreed that this policy shall not apply to liability arising out of the rendering of or failure to render professional services, or any error or omission, malpractice or mistake of a professional nature committed by or on behalf of the 'Insured' in the conduct of any of the 'Insured's' business activities.

According to LOL's claims examiner, Nancy Haag, the Richards' complaint alleged that at the time of the accident, Martin was operating the truck as an employee of CDL, and CDL negligently performed its driver placement services[21]. Haag, however, failed to take into account the complaint's alternative allegations that at the time of the accident, Martin was operating the truck as an employee of Ready Pac or Penske[22].

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[20] We are unable to locate a definition of "auto" in the policy. Neither party disputes, however, that the truck driven by Martin was an "auto".
[21] N.T., 12/17/12 (PM), pp. 41-91.
[22] ***Id***.

Due to LOL's refusal to defend CDL, CDL retained its own private counsel to represent it in the Richards' action. Ultimately, CDL was found not liable to the Richards. It then contacted LOL and demanded payment of the attorney fees it expended in the Richards case. LOL again denied coverage.

Based on this evidence, the trial court correctly denied judgment n.o.v. to LOL on CDL's action for breach of contract.

An insurer's duty to defend its insured

> is broader than its duty to indemnify. ***Kvaerner Metals Div. of Kvaerner U.S., Inc. v. Commercial Union Ins. Co.,*** 589 Pa. 317, 908 A.2d 888 (2006); ***General Acc. Inc. Co. of America v. Allen,*** 547 Pa. 693, 692 A.2d 1089, 1095 (1997); ***J.H. France Refractories v. Allstate Ins. Co.,*** 534 Pa. 29, 626 A.2d 502, 510 (1993). It is a distinct obligation, separate and apart from the insurer's duty to provide coverage. ***Erie Ins. Exch. v. Transamerica Ins. Co.,*** 516 Pa. 574, 533 A.2d 1363 (1987). An insurer is obligated to defend its insured if the factual allegations of the complaint on its face encompass an injury that is actually or potentially within the scope of the policy. ***Id.*** at 1368 (describing the duty to defend as arising "whenever the complaint filed by the injured party may *potentially* come within the coverage of the policy." (emphasis in original)); ***Gedeon v. State Farm Mut. Auto. Ins. Co.,*** 410 Pa. 55, 188 A.2d 320 (1963) (same); ***Cadwallader v. New Amsterdam Cas. Co.,*** 396 Pa. 582, 152 A.2d 484, 488 (1959) ("It is clear that where a claim potentially may become one which is within the scope of the policy, the insurance company's refusal to defend at the outset of the controversy is a decision it makes at its own peril."). As long as the complaint "might or might not" fall within the policy's coverage, the insurance company is obliged to

defend. ***Casper,*** 408 Pa. 426, 184 A.2d 247 (quoting Judge Learned Hand's assertion in ***Lee v. Aetna Casualty & Surety Company,*** 178 F.2d 750, 752 (2d Cir.1949)); ***Cadwallader,*** 152 A.2d at 488 (same). Accordingly, it is the potential, rather than the certainty, of a claim falling within the insurance policy that triggers the insurer's duty to defend.

The question of whether a claim against an insured is potentially covered is answered by comparing the four corners of the insurance contract to the four corners of the complaint. ***See Donegal Mut. Ins. Co. v. Baumhammers,*** 595 Pa. 147, 938 A.2d 286, 290 (2007) ("The language of the policy and the allegations of the complaint must be construed together to determine the insurers' obligation."). An insurer may not justifiably refuse to defend a claim against its insured unless it is clear from an examination of the allegations in the complaint and the language of the policy that the claim does not potentially come within the coverage of the policy. ***See Allen,*** 692 A.2d at 1094 ("[T]he obligation to defend an action brought against the insured is to be determined solely by the allegations of the complaint in the action...."); ***Gene's Restaurant, Inc. v. Nationwide Ins. Co.,*** 519 Pa. 306, 548 A.2d 246, 246–47 (1988) ("[I]n determining the duty to defend, the complaint claiming damages must be compared to the policy... the language of the policy and the allegations of the complaint must be construed together to determine the insurer's obligation."); ***Springfield Tp. et al. v. Indemnity Ins. Co. of North America,*** 361 Pa. 461, 64 A.2d 761 (1949) ("It is not the actual details of the injury, but the nature of the claim which determines whether the insurer is required to defend."). In making this determination, the "factual allegations of the underlying complaint against the insured are to be taken as true and liberally construed in favor of the insured." ***Frog, Switch & Mfg. Co., Inc. v. Travelers Ins. Co.,*** 193 F.3d 742 (3d Cir.1999) (citing ***Biborosch v. Transamerica Ins. Co.,*** 412 Pa.Super. 505, 603 A.2d 1050, 1052 (1992)). Indeed, the duty to defend is not limited to

> meritorious actions; it even extends to actions that are "groundless, false, or fraudulent" as long as there exists the possibility that the allegations implicate coverage. ***Transamerica,*** 533 A.2d at 1368; ***Gedeon,*** 188 A.2d at 321. . . .
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> In some circumstances, an insurance company may face a difficult decision as to whether a claim falls, or potentially falls, within the scope of the insurance policy. However, it is a decision the insurer must make. If it believes there is no possibility of coverage, then it should deny its insured a defense because the insurer will never be liable for any settlement or judgment. ***See Shoshone,*** 2 P.3d at 510 (stating that where an insurer believes there is no coverage, it should deny a defense at the beginning). This would allow the insured to control its own defense without breaching its contractual obligation to be defended by the insurer. If, on the other hand, the insurer is uncertain about coverage, then it should provide a defense and seek declaratory judgment about coverage. ***Id.***

American and Foreign Ins. Co. v. Jerry's Sport Center, Inc., 2 A.3d 526, 540-42 (Pa.2010) (emphasis added).

Under these standards, LOL had a duty to defend CDL in the Richards action. LOL was required to liberally construe the allegations of the Richards' complaint in a manner favorable to the insured, CDL. ***Id***. LOL had the duty to defend CDL if the allegations of the complaint created the possibility of coverage. ***Id.*** Construed in this manner, the Richards' complaint potentially fell outside of the auto and professional liability exclusions in CDL's policy, thus triggering LOL's duty to provide a defense.

In order for the auto exclusion to apply, the auto involved in the accident must be "*owned or operated by or rented or loaned to any Insured*." Thus, the auto exclusion applies only if Martin was an employee of CDL at the time of the accident with Ms. Richards. It does not apply if Martin was an employee, agent, etc. of Penske or Ready Pac at the time of the accident. While the Richards' complaint alleges in one count that Martin was an employee of CDL at the time of the accident, the complaint alleges in other counts that Martin was an employee or agent of Penske or Ready Pac at the time of the accident. The allegations that Martin was employed by, or an agent of, Penske or Ready Pac fall outside the auto exclusion and create the potential for coverage. Thus, the auto exclusion did not absolve LOL of its duty to defend CDL. ***Cf***. ***Biborosch v. Transamerica Ins. Co.***, 603 A.2d 1050, (Pa.Super.1992) (insurers had duty to defend their insured, a general insurance agent and manager of general insurance agency, against claims arising out of insured's discharge of soliciting agent working in the insured's agency, despite exclusion in policy for dishonest, fraudulent, criminal or malicious acts; even though certain allegations by soliciting agent might have fallen within this exclusion, other allegations merely claimed negligence, which fell outside exclusion).

Nor does the professional liability exclusion absolve LOL of its duty to defend. Since CDL's policy does not define "professional services", the trial court defined this term[23] by consulting the definition of "profession" in the Corporations and Unincorporated Associations Code[24], the Rules of Civil Procedure used in civil actions against professionals[25], and the definition of

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[23] Trial Court Opinion, p. 6. n. 12.

[24] ***See*** 15 Pa.C.S. § 102 (defining "profession" as "includ[ing] the performance of any type of personal service to the public that requires as a condition precedent to the performance of the service the obtaining of a license or admission to practice or other legal authorization from the Supreme Court of Pennsylvania or a licensing board or commission under the Bureau of Professional and Occupational Affairs in the Department of State").

[25] ***See*** Pa.R.Civ.P. 1042.1(c), which defines "licensed professional" as:

> (1) any person who is licensed pursuant to an Act of Assembly as
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> (i) a health care provider as defined by Section 503 of the Medical Care Availability and Reduction of Error (MCARE) Act, 40 P.S. § 1303.503;
> (ii) an accountant;
> (iii) an architect;
> (iv) a chiropractor;
> (v) a dentist;
> (vi) an engineer or land surveyor;
> (vii) a nurse;
> (viii) an optometrist;
> (ix) a pharmacist;
> (x) a physical therapist;
> (xi) a psychologist; and
> (xii) a veterinarian.
>
> (2) an attorney at law; and
>
> (3) any professional described in paragraphs (1) and (2) who is licensed by another state.

(Footnote Continued Next Page)

"professional service" in a Third Circuit decision[26]. Based on these sources, the trial court construed the meaning of "professional services" in CDL's policy to be "services rendered by a recognized professional in the fields of medicine, law, accounting, or architecture. Such professionals are distinguished by specialized training or education, state licenses, and legal liability for professional negligence or malpractice." ***Id***., p. 6. The trial court's methodology was logical, given the presumption that "insurance contracts are. . .made with reference to substantive law, including applicable statutes in force, and such laws enter into and form a part of the contractual obligation as if actually incorporated into the contract." ***Frey v. State Farm Mutual Automobile Insurance Co.,*** 632 A.2d 930, 933 (Pa.Super.1993).

Applying this definition of "professional services," the trial court credited the testimony of CDL's president that while truck driver placement requires compliance with certain state and federal safety regulations, it does not require specialized training or licensing[27]. Based on this evidence, the court concluded that the professional services exclusion does not apply.

(Footnote Continued) ———————————

Id. (citations to explanatory notes omitted).

[26] ***See Visiting Nurse Ass'n of Greater Philadelphia v. St. Paul Fire & Marine Ins. Co.***, 65 F.3d 1097, 1101 (3d Cir. 1995) (noting "the generally held view that a 'professional service' must be such as exacts the use or application of special learning or attainments of some kind. A 'professional' act or service is one arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill").

[27] Trial Court Opinion, p. 6.

Once again, we agree with the trial court. The record demonstrates that placement of truck drivers merely entails checking whether the driver possesses a driver's license[28], passes a background check[29] and complies with certain federal regulations relating to commercial drivers[30]. This comes nowhere close to the level of training required of professionals such as physicians, attorneys, accountants or architects.

The cases relied upon by LOL do not change our opinion. For example, LOL cites to ***American Rehabilitation and Physical Therapy, Inc. v. American Motorists Ins. Co.***, 829 A.2d 1173 (Pa.Super.2003), which merely holds that "that the rendering of medical services falls within the scope of the 'professional services' exclusion and that the training, supervision, and monitoring of employees who assist in providing medical treatment to patients is an integral component of providing medical services." This certainly is consistent with the trial court's statement that medical providers require specialized training, but it falls far short of convincing us that the type of service provided by CDL is a "professional service".

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[28] Tr., 12/19/12, p. 8.
[29] CDL performs the background check through a company CDL located on Google. Tr., 12/19/12, p. 9.
[30] ***Id.***., pp. 10-11. The parties did not provide any citation to these federal regulations.

In short, the exclusions relied upon by LOL did not entitle it to deny a defense to CDL in the Richards case. While LOL could have protected itself by filing a declaratory judgment action relating to coverage, it neglected to take this prophylactic measure and simply refused to tender a defense. By taking this course of action, LOL breached the insurance contract with CDL. The trial court properly denied LOL's motion for judgment n.o.v. on CDL's contract action.

We turn now to the trial court's decision to deny judgment n.o.v. to CDL on its action against LOL for bad faith. Our standard of review is the same standard as recited on page 3 above.

Construed in the light most favorable to LOL, the verdict winner in the bad faith claim, the evidence is as follows. CDL contended that LOL acted in bad faith both for denying a defense in the Richards case and for terminating CDL's policy four days after CDL filed this lawsuit against LOL. As stated above, LOL asserted that it denied a defense in the Richards case because its claims examiner, Haag, determined that the auto and professional liability exclusions applied to the Richards' complaint[31]. The trial court found Haag's testimony credible[32].

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[31] ***See*** n. 6, ***supra***.
[32] Trial Court Opinion, p. 3.

With regard to LOL's termination notice, Kermit Shaulis, branch manager of LOL's underwriting agent, Burns & Wilcox, testified that he ordered the issuance of the nonrenewal notice four days after CDL's lawsuit not to retaliate against CDL but because LOL was "no longer writing this class of business[33]," i.e., it no longer insured businesses that leased truck drivers[34]. Shaulis explained that CDL only had a commercial general liability policy instead of an automotive policy, and LOL wanted to prevent additional claims for auto accidents under commercial general liability policies[35]. Counsel for CDL attempted to prove that Shaulis' explanation was pretextual by demonstrating that for over one year after CDL filed suit, LOL continued to provide commercial general liability coverage to Total Drivers Solutions, an entity engaged in the same business as CDL[36]. Shaulis countered that LOL continued to cover Total Drivers Solutions in 2009-10 because (1) at the time it decided to "non-renew" CDL, LOL did not realize that other insureds were in the same business as CDL, and (2) when LOL realized that Total Drivers Solutions was in the same business, it was too late to "non-renew" Total Drivers Solutions for the 2009-10 term[37]. Shaulis testified that LOL

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[33] Exhibit P-33.
[34] N.T., 12/18/12 (PM), pp. 33-35.
[35] ***Id***., pp. 30-38, 73-76, 83-85, 95-98.
[36] ***Id***., pp. 49-73, 77-82.
[37] ***Id***. Pennsylvania law requires a minimum of sixty days advance notice of nonrenewal in advance of the expiration date of the insured's current policy. N.T., 12/18/12 (PM), pp. 62, 80; ***see also*** 40 P.S. § 3403(a)(2). Shaulis
(Footnote Continued Next Page)

issued a notice of non-renewal to Total Drivers Solution as soon as it was able to do so (August 2010)[38]. The trial court found Shaulis' testimony credible[39].

Based on this evidence, the trial court correctly denied judgment n.o.v. to CDL on its claim for bad faith.

Pennsylvania's bad faith statute, 42 Pa.C.S. § 8371, provides:

> In an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith toward the insured, the court may take all of the following actions:
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> (1) Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%.
>
> (2) Award punitive damages against the insurer.
>
> (3) Assess court costs and attorney fees against the insurer.

To prevail on a claim under section 8371, the insured must show 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." ***Berg v. Nationwide Mut. Ins. Co., Inc.***, 44

(Footnote Continued) ———————————

testified that LOL did not realize that Total Drivers Solution was in the truck driver leasing business until less than sixty days before the expiration date of Total Drivers Solution's 2008-09 policy. N.T., 12/18/12 (PM), pp. 62, 80.

[38] N.T., 12/18/12 (PM), pp. 66-68.

[39] Trial Court Opinion, p. 4.

A.3d 1164, 1171 (Pa.Super.2012) (citations omitted). Mere negligence or bad judgment is not bad faith. ***Id***. (citations omitted). The insured must also show that the insurer breached a known duty (*i.e.,* the duty of good faith and fair dealing) through a motive of self-interest or ill will. ***Id***.

The trial court denied judgment n.o.v. to CDL on its bad faith claim for the following reasons:

> CDL has made no showing that [LOL] was motivated by self-interest or ill-will in denying coverage for the defense of the Richards' claims. At most, [LOL's] representatives involved in the decision to deny coverage to CDL were negligent or exercised bad judgment in finding the Auto and Professional Liability Exclusions applicable to the Richards' claims. There is no evidence that they acted with malice in misreading the claims.
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> Likewise, CDL failed to show that the decision not to renew CDL's [commercial general liability] Policy was made in bad faith. The representative of [LOL] involved in that decision exercised his business judgment not to continue to insure truck driver placement companies because they could give rise to claims, such as the Richards', that did not fit neatly into the separate [commercial general liability], auto and professional liability insurance categories. Making a reasonable business decision is not the same thing as being motivated by improper self-interest, and does not constitute bad faith[40].

We see no error in this reasoning. The trial court, as factfinder, was free to accept all, part, or none of the evidence and was free to find LOL's

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[40] Trial Court Opinion, p. 7.

witnesses credible. Having observed Haag and Shaulis testify, the court found that their judgment was faulty but that they still acted reasonably and without malice. This finding led inexorably to the trial court's conclusion that CDL failed to prove its claim of bad faith.

The trial court's assessment of Haag's and Shaulis' state of mind is a credibility determination that we, as an appellate court, are not permitted to second-guess. This credibility determination provides a sturdy foundation for the trial court's conclusion LOL did not act in bad faith. Therefore, the trial court correctly denied judgment n.o.v. to CDL on its bad faith claim.

For these reasons, the trial court properly denied both motions for judgment n.o.v. in this case.

Judgment affirmed[41].

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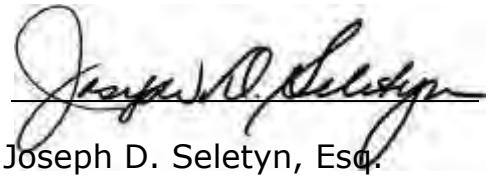
[41] Several ancillary issues warrant brief comment. First, CDL stated, in its notice of appeal to this Court, that it was appealing the entry of summary judgment in LOL's favor on CDL's action for tortious interference with contract. CDL did not brief the tortious interference claim on appeal and therefore waived this issue. ***Commonwealth v. Spotz***, 716 A.2d 580, 585 n. 5 (1998) ("[T]his Court has held that an issue will be deemed waived when an appellant fails to properly explain or develop it in his brief").

Second, LOL argued at length in its appellate brief that the trial court improperly denied its motion for summary judgment on CDL's bad faith claim for non-renewal of its general commercial liability policy. This argument is moot in light of our decision to affirm the trial court's order denying CDL's motion for judgment n.o.v. on the bad faith claim.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/22/2014