

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

YERA, INC.,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
TRAVELERS CASUALTY INSURANCE	:	
COMPANY OF AMERICA,	:	
	:	
Appellee	:	No. 1398 EDA 2013

Appeal from the Order April 30, 2013
in the Court of Common Pleas of Philadelphia County
Civil Division at No(s): 002141

BEFORE: FORD ELLIOTT, P.J.E, OTT and STRASSBURGER,* JJ.

CONCURRING AND DISSENTING MEMORANDUM BY STRASSBURGER, J.:

FILED APRIL 22, 2014

I agree with the Majority that the PSE is not ambiguous and is enforceable. I further agree with the Majority’s determinations that the doctrine of equitable estoppel does not prevent Travelers from enforcing the PSE and that Yera’s reliance on **Brakeman v. Potomac**, 371 A.2d 193 (Pa. 1977), is misplaced. I, however, disagree with the Majority’s decision to affirm the dismissal of Yera’s bad faith claim.

Citing generally to **Condio v. Erie Ins. Exchange**, 899 A.2d 1136 (Pa. Super. 2006), the Majority asserts, “The definition of bad faith has been expanded to include those instances in which an insurer’s investigative practices caused an improper delay in the payment of a claim.” Majority

* Retired Senior Judge assigned to the Superior Court.

Memorandum at 11. I have found no language in **Condio** or elsewhere that suggests that an insurer's investigative practices are only relevant to a bad faith claim when those practices improperly delay payment of an insured's claim.

Rather, **Condio** specifically states the bad faith statute, 42 Pa.C.S. § 8371, "is not restricted to an insurer's bad faith in denying a claim. An action for bad faith may extend to the insurer's investigative practices." **Condio v. Erie Ins. Exchange**, 899 A.2d 1136, 1142 (Pa. Super. 2006) (citation and quotation marks omitted). Moreover, the length of time an insurer takes to investigate a claim is a factor for a trial court to consider when looking at all the circumstances of the case. **See Grossi v. Travelers Personal Ins. Co.**, 79 A.3d 1141, 1153-54 (Pa. Super. 2013) ("While the length of time Travelers took to investigate is not *per se* bad faith, it is a factor for the trial court to consider when looking at all the circumstances of the case.").

Here, Yera has produced evidence in opposition to summary judgment which, if credited, could establish that Travelers' investigative practices constituted bad faith. In particular, Yera highlights the fact that Travelers took six months to reject its claim and that even Travelers' claims adjuster expressed frustration with the amount of time that it took Travelers to make a decision regarding Yera's claim. **See, e.g.**, Yera's Brief in Opposition to Motion for Summary Judgment, 4/18/2013, Exhibit T (Deposition Testimony

of Donald Giordano), at 100 (“I believe I discussed that with the agent. I think - - you know, I think it came up and, yeah, I felt that, maybe it may be - - a decision could have or should have been made sooner.”).

Travelers, on the other hand, has taken the position, and cited evidence in support thereof, that the length of its investigation was a result of its diligence in reviewing and investigating Yera’s claim. Travelers’ Memorandum of Law in Support of its Motion for Summary Judgment, 3/18/2013, at 14-15. The parties’ competing arguments and evidence create a genuine issue of material fact regarding whether Travelers’ investigative practices constituted bad faith.

For these reasons, I would affirm the portion of the trial court’s order wherein the court granted summary judgment in favor of Travelers, ruling that the policy in question does not require Travelers to cover the damages caused by the fire in Yera’s building. I would reverse the portion of the order that granted summary judgment in favor of Travelers with respect to Yera’s bad faith claim and remand the case to the trial court for further proceedings.