

**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

MARGARET AUTO BODY, INC. and	:	
GERMINO ASPITE and MARIE ASPITE	:	May Term, 2002
	:	
Plaintiffs,	:	No. 01750
v.	:	
	:	Commerce Program
UNIVERSAL UNDERWRITERS GROUP and	:	
EDWARD PASSOMONTI and CRAWFORD	:	
& COMPANY and ANTHONY GALDI	:	Control No. 091193
	:	
Defendants.	:	

ORDER and MEMORANDUM

AND NOW, this 10th day of January 2003, upon consideration of the separate Preliminary Objections of Defendants Universal Underwriters Group (“Universal”), Crawford & Company and Edward Passomonti (collectively “Crawford Defendants”), all responses in opposition, the respective memoranda, all matters of record, and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it hereby is **ORDERED** and **DECREED** as follows:

1. The Crawford Defendants’ Preliminary Objection to Count IV is **SUSTAINED** and the Crawford Defendants are dismissed from Count IV of the Complaint.
2. Defendants’ Preliminary Objections to Count VIII are **SUSTAINED** as to Plaintiff Margaret Auto Body, Inc. and **OVERRULED** as to Plaintiffs Geromino and Maria Aspite.
3. The remainder of Defendants’ Preliminary Objections are **OVERRULED**.

Defendants are directed to file an answer to Plaintiffs' Complaint within twenty (20) days from the date of entry of this Order.

BY THE COURT:

C. DARNELL JONES, J.

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Defendants.	:	

MEMORANDUM OPINION

C. DARNELL JONES, J.

Before the Court are the Preliminary Objections of Universal Underwriters Group (“Universal”), Crawford & Company and Edward Passomonti (collectively “Crawford Defendants”). For the reasons fully set forth below, Defendants’ Preliminary Objections are **sustained in part and overruled in part.**

DISCUSSION

A. Plaintiffs Have Failed to State A Claim For Bad Faith Against the Crawford Defendants Upon Which Relief May Be Granted

Count IV of Plaintiffs’ Amended Complaint (the “Complaint”) purports to state a claim for bad faith against Universal and the Crawford Defendants. Bad faith actions against an insurance company in Pennsylvania are governed by 42 Pa.C.S.A. § 8371, which establishes a cause of action for claims “...arising under an insurance policy, if the court finds that *the insurer* has acted in bad faith toward the insured...” 42 Pa.C.S.A. § 8371 (emphasis added). The Crawford Defendants argue that, because they are adjusters and not an “insurer” under §8371, Plaintiffs’ bad faith claim

against them fails as a matter of law.

Section 8371, upon which Count IV is based, contains no definition of the term "insurer," and the courts of this Commonwealth have yet to clearly address the issue. However, it is generally recognized that an insurer "...issues policies, collects premiums, and in exchange assumes certain risks and contractual obligations." Ihnat v. Pover, 35 Pa. D. & C.4th 120 (1997); Cicero v. Cominsky, 25 Pa. D. & C.4th 422 (1995); T & N P.L.C. v. Pennsylvania Ins. Guar. Assoc., 800 F. Supp. 1259 (E.D. Pa. 1992). In the Complaint, Universal is described as "a commercial insurance company which writes commercial insurance policies," including those issued to Plaintiffs. Compl. ¶¶ 7,8. Plaintiffs define the Crawford Defendants' role as follows:

Universal hired Passamonti and Crawford to investigate the claim, and at all times relevant hereto, Passamonti and Crawford were acting as agents of Universal, under and subject to the exclusive control and direction of Universal and at all times acting within the course of their employment and/or scope of their authority.

Id. at ¶ 18.

Based on the language of the Complaint, there is no question that Universal is an insurer under § 8371. However, it is equally clear that the Crawford Defendants are not such insurers. The Complaint identifies the Crawford Defendants as "agents" of Universal. In that capacity, assuming the accuracy of said pleadings as this Court must do for the purpose of this Opinion, it is clear that the Crawford Defendants did not issue the policies in question nor did they assume any risks or contractual obligations in exchange for the payment of the premiums on such policies. As such, the Crawford Defendants can not properly be found liable under § 8371. As Judge Wettick aptly explained in Ihnat:

If an insurance agent and an insurer are one and the same, the actions of the insurance agent toward the insured will subject the insurance company to liability

under § 8371. Thus, there would be no reason to extend § 8371 to an insurance agent. If, on the other hand, the insurance agent and the insurance company are not one and the same, I have no reason to believe that the legislature intended to provide a remedy against insurance agents under a statutory provision that is limited to the situation in which a court finds that the "insurer" has acted in bad faith toward the insured.

Ihnat, 35 Pa. D. & C.4th at 125. This Court agrees.

Accordingly, the Crawford Defendants' Preliminary Objection to Count IV is sustained and the Crawford Defendants dismissed from Count IV of the Complaint.

B. Plaintiff Margaret Auto Body, Inc. Has Failed To State A Claim Under The UTPCL Upon Which Relief May Be Granted

Count VIII of the Complaint purports to state a claim under the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCL"), 73 Pa. C.S.A. § 201-9.2. Count VIII was brought against Defendants by Plaintiffs Margaret Auto Body, Inc. ("MAB") and also by Plaintiffs Geromino and Maria Aspite as individuals.

The UTPCL protects "any person who purchases or leases goods or services primarily for personal, family or household purposes..." Id. The obvious intent of this language is to restrict claims brought under the UTPCL to those which are legitimately of a consumer nature. Waldo v. North Am. Van Lines, Inc., 669 F.Supp. 722, 725-26 (W.D. Pa.1987). An improper investigation by an insurer is generally actionable under the UTPCL. See e.g. Smith v. Nationwide Mut. Fire Ins. Co., 935 F.Supp. 616, 621 (W.D. Pa.1996); Parasco v. Pacific Indem. Co., 870 F.Supp. 644, 648 (E.D. Pa.1994). However, where the insurance is purchased for commercial purposes, as here, the UTPCL is inapplicable. Mantakounis v. Aetna Cas. & Sur. Co., 1999 WL 600535 (E.D. Pa. 1999), *aff'd*, 254 F.3d 1078 (3d Cir. 2001); Waldo, 669 F.Supp. at 722. Clearly, any insurance policy purchased by MAB can not be the basis of a UTPCL claim, as such policy was

admittedly purchased for commercial purposes. See Compl. ¶¶ 8, 11. Therefore, MAB's UTPCL claim necessarily fails as a matter of law. Accordingly, Defendants' preliminary objections hereby are sustained as to Count VIII, as respects MAB only. The Aspites individual claims under the UTPCL remain part of this litigation, at least through this pleading stage.¹

In the event that MAB is able to make allegations supporting a claim that it did not purchase its policy for commercial purposes, MAB hereby is granted leave to amend Count VIII of the Complaint within ten (10) days from the date of entry of this Order.

CONCLUSION

For the above-stated reasons, this Court hereby finds as follows:

1. The Crawford Defendants' Preliminary Objection to Count IV is **SUSTAINED**.
2. Defendants' Preliminary Objection to Count VIII is **SUSTAINED** as to Plaintiff Margaret Auto Body, Inc. ("MAB") and **OVERRULED** as to Plaintiffs Geromino and Maria Aspite.
3. The remainder of Defendants' Preliminary Objections are **OVERRULED**.

Defendants are directed to file an answer to the remainder Plaintiffs' Complaint within twenty (20) days from the date of entry of this Order.

This Court will enter an Order consistent with this Opinion contemporaneously.

BY THE COURT:

C. DARNELL JONES, J.

Dated: January 10, 2003

¹Obviously, the Aspites must produce evidence to support their UTPCL claim in order to survive summary judgment.

