

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

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MARGARET AUTO BODY, INC., et al.	:	May Term 2002
	:	
Plaintiffs,	:	No. 01750
	:	
v.	:	Commerce Program
	:	
UNIVERSAL UNDERWRITERS GROUP, et al.	:	Control No. 121068
	:	121215
	:	
Defendants.	:	

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**ORDER and MEMORANDUM**

**AND NOW**, this 12th day of April, 2004, upon consideration of the Motions for Summary Judgment of Defendants Universal Underwriters Group (“Universal”) (Control No. 121068) and Crawford & Company and Edward Passamonti (collectively, the “Crawford Defendants”)(Control No. 121215), 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** that said Motions are **GRANTED** and that Plaintiffs’ complaint is **DISMISSED** in its entirety as to Universal and the Crawford Defendants.

**BY THE COURT:**

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*C. DARNELL JONES, J.*

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**MEMORANDUM OPINION**

***C. DARNELL JONES, J.***

Before the Court are the Motions for Summary Judgment of Defendants Universal Underwriters Group (“Universal”) (Control No. 121068) and Crawford & Company and Edward Passamonti (collectively, the “Crawford Defendants”) (Control No. 121215). For the reasons fully set forth below, Defendants’ Motions are **granted**.

**DISCUSSION**<sup>1</sup>

**I. Counts I and II Against Universal Are Barred By the Statute of Limitations Provision Contained Within the Policy**

Universal seeks summary judgment as to Plaintiffs’ claims for breach of contract (Count I) and declaratory judgment (Count II), arguing that such claims are barred by the statute of limitations provision contained within the Plaintiffs’ policy with Universal (the “Policy”), which states:

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<sup>1</sup> Pursuant to the agreement of counsel, summary judgment is granted as to Counts III (unjust enrichment) and VIII (violation of Unfair Trade Practices and Consumer Protection Law, 73 Pa. C.S. § 201-1, *et seq*).

ACTIONS AGAINST US – No one may bring legal action against US for any reason, to recover under this policy, unless they have complied with all of its terms.

A legal action for LOSS to YOUR property must be brought within 12 months from the date YOU discover the LOSS, but no sooner than 90 days after YOU file a sworn proof of LOSS.

Def. Mtn., Exh. E at 6. This court finds that the foregoing limitations provision is valid and enforceable and serves as a bar to Plaintiffs' claims against Universal for breach of contract and declaratory judgment.

The law is clear that clauses setting time limits for the commencement of suits to recover on an insurance policy are valid. General State Auth. v. Planet Ins. Co., 464 Pa. 162, 346 A.2d 265 (1975); Kramer v. State Farm Fire and Casualty Ins. Co., 412 Pa. Super. 227, 603 A.2d 192 (1992). The building in question was demolished on December 4, 1998, which arguably is the date of loss. However, even when viewing the facts in a light most favorable to Plaintiffs, as this court is required to do, the claim is still time-barred even if it is assumed that the date of loss is May 29, 1999, the date when Plaintiffs were notified that Universal was denying their claim. Thus, under the clear language of the Policy, at the very latest, Plaintiffs' claim accrued on or about May 29, 2000. Plaintiffs did not file their lawsuit until almost two years after the time to bring suit under the Policy had expired.<sup>2</sup>

Plaintiffs argue that Universal is estopped from enforcing the Policy's one year limitations period as a result of its "bad conduct" in the investigation and handling of Plaintiffs' claim. It is true that a contractual limitations period may be waived if the insurer leads the insured to believe that the contractual period will not be enforced or induces the actions of the

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<sup>2</sup> Plaintiffs filed a Praecipe for Writ of Summons on May 16, 2002 and thereafter filed a civil action complaint on July 29, 2002.

insurer. See e.g., Kramer, 603 A.2d at 192. In the instant case, there is no indication from the facts as they appear in the record that Universal misled Plaintiffs or induced them to refrain from commencing suit. Furthermore, Universal advised Plaintiffs of the one year statute of limitations period for bringing suit in the same letter in which it advised them that it was not going to pay their claim, which was dated May 29, 1999. Def. Mtn., Exh. K at Exh 6.

This court likewise finds Plaintiffs' argument that Universal waived the Policy's statute of limitations because it referred Mr. Aspite's claim to the Attorney General's Office to be unpersuasive and insufficient to withstand summary judgment. A contractual limitations clause is tolled where criminal charges are filed against the insured, who is thereby induced to refrain from bringing suit. Diamon v. Penn Mutual Fire Ins. Co., 247 Pa. Super. 534, 542, 372 A.2d 1218, 1222 (1977). However, the record contains no evidence to support Plaintiffs' contention that they were so induced here. Moreover, it is undisputed that Universal denied coverage before it referred the case to the Attorney General's Office, which did not file its criminal complaint against Mr. Aspite until March 27, 2001, more than a year after the statute of limitations had already expired. Clearly, there has been no evidence presented which demonstrates that Mr. Aspite's decision not to file its lawsuit in a timely fashion had anything to do with the criminal charges against him, since those charges had not even been filed at the time the claims under the Policy expired.

Accordingly, Universal's Motion for Summary Judgment is granted as to Counts I and II.

## II. Plaintiffs' Bad Faith Claim (Count IV) Is Also Time-Barred

Universal also seeks summary judgment as to Plaintiffs' bad faith claim (Count IV), arguing that this claim is also time-barred. Because Plaintiffs' bad faith claim is separate and distinct from the claims arising under the Policy itself, the one-year limitations provision within the Policy does not apply. Adamski v. Allstate Ins. Co., 1999 Pa. Super. 241, 738 A.2d 1033 (1999); March v. Paradise Mutual Ins. Co., 435 Pa. Super. 597, 646 A.2d 1254 (1994). Although the limitations period in the Policy is inapplicable to Plaintiffs' bad faith claim, Count IV is still time-barred because Plaintiffs failed to bring their action within the two year statute of limitations period for such claims. See Ash v. Continental Ins. Co., 64 Pa. D&C.4<sup>th</sup> 37 (Pa. Com. Pl. 2003).<sup>3</sup> Generally, the statute of limitations on a cause of action for bad faith begins to run when plaintiff receives notice that its claim is denied, which in this case was May 29, 1999. See Adamsky, 738 A.2d at 1039. Thus, at the very latest, Plaintiffs' bad faith claim accrued on or about May 29, 2001, close to a year before Plaintiffs commenced their lawsuit.

Plaintiffs argue that the statute of limitations should be tolled as a result of Universal's allegedly wrongful conduct in investigating and handling Plaintiffs' claim. However, the court finds this argument to be unpersuasive and unsupported by the record. Pennsylvania law recognizes that, although the right to institute suit may arise, under some circumstances a party may not reasonably discover that he has been injured despite the exercise of due diligence. Crouse v. Cyclops Industries, 560 Pa. 394, 745 A.2d 606, 611 (2000). Under this rule, known as the discovery rule, the limitations period begins to run when the injured party possesses "sufficient critical facts to notify him that a wrong has been committed and that he needs to

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<sup>3</sup> Although not binding upon it, this court agrees with and adopts the court's reasoning in Ash. in support of the

investigate to determine whether he is entitled to redress.” Melley v. Pioneer Bank, 2003 Pa. Super 389, 834 A.2d 1191, 1201 (2003).

Where the facts are so clear that reasonable minds cannot differ, as here, the commencement of the limitations period under the discovery rule may be determined as a matter of law. Id. Based on the foregoing, this court concludes that, upon receipt of the letter, Plaintiffs were clearly in possession of enough critical facts to put them on notice that a wrong had been committed and that further investigation was needed to determine whether they were entitled to redress. It can hardly be said that Universal’s assertion as to why it refused to pay Plaintiffs’ claim constituted a fraudulent communication or means of duress or coercion which forced Plaintiffs to forbear bringing suit until after the limitations period had expired. No facts have been produced which support such an allegation.

It is undisputed that the letter sent to Plaintiffs on May 29, 1999 clearly stated that Universal had decided to deny the claim because Mr. Aspite “willfully and intentionally failed to cooperate with the insurance company’s investigation, made material misrepresentations and false statements in the presentation of the claim, and that [Mr. Aspite] breached the terms and conditions of the policy of insurance.” Def. Mtn., Exh. K at Exh 6. It is also beyond dispute that, upon receipt of the letter, Plaintiffs clearly were in possession of significant information concerning the grounds for the denial of their claim, as Universal expanded upon the proffered reasons in great detail in its three-page correspondence, citing further reasons such as, *inter alia*, Mr. Aspite’s failure to sit for an examination under oath and Plaintiffs’ alleged failure to submit a complete Proof of Loss within 60 days as required by the Policy. Id.

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proposition that a two-year statute of limitations applies to bad faith actions.

Plaintiffs argue that they did not have the opportunity to “discover” Universal’s bad faith until the preliminary hearing of the criminal matter against Mr. Aspote, which took place on May 17, 2001. However, the law is well-settled in Pennsylvania that, for purposes of the statute of limitations, a claim accrues when a plaintiff is harmed and not when the precise amount or extent of damages is determined. See Adamsky, 738 A.2d at 1039 (*citing* Manzi v. H.K. Porter Co., 402 Pa. Super. 595, 587 A.2d 778 (1991); Liberty Bank v. Ruder, 402 Pa. Super. 561, 587 A.2d 761, 765 (1991)). Although plaintiffs did not learn all the facts about Universal’s investigation until the preliminary hearing, they clearly were in possession of enough information to put them on notice that Mr. Aspote was suspected of making “material misrepresentations and false statements” on May 29, 1999 and that such allegations were part of the reason for the denial of coverage. Furthermore, the alleged misstatements by Mr. Aspote were not the sole basis for the denial of the claim. Rather, the denial letter also cited Mr. Aspote’s failure to sit for an examination under oath and Plaintiffs’ alleged failure to submit a complete Proof of Loss within 60 days (as required by the Policy) as bases for the denial of coverage, facts of which Plaintiffs were clearly aware prior to the preliminary hearing.

Based on the foregoing, this Court finds that Plaintiffs’ bad faith claim is time-barred and that Universal’s Motion for Summary Judgment as to Count IV is granted.

### **III. Plaintiff’s Malicious Prosecution Claim Fails Because Plaintiff Has Failed To Demonstrate That Universal Instituted Proceedings Against Him**

Count V of the complaint purports to state a claim for malicious prosecution. In support of his claim, Mr. Aspote alleges that Universal “caused criminal proceedings to be instituted against him” to “harass, intimidate and deny a valid claim.” Am. Compl. ¶ 55-59. A claim for malicious prosecution arises when a party institutes a lawsuit with a malicious motive and

without probable cause. Werner v. J. Plater-Zyberk, 2002 Pa. Super. 42, 799 A.2d 776 (2002); Hart v. O'Malley, 2001 Pa. Super. 221, 781 A.2d 1211, 1219 (2001); Al Hamilton Contracting Co. v. Cowder, 434 Pa. Super. 491, 644 A.2d 188, 191 (1994). A private individual, or in this case an insurance company, may be subject to liability for malicious prosecution if: (a) he initiates or procures the institution of criminal proceedings without probable cause and primarily for a purpose other than that of bringing the offender to justice, and (b) the proceedings have terminated in favor of the accused. Gallucci v. Phillips & Jacovs, Inc., 418 Pa. Super. 306, 614 A.2d 284, 290 (1992). Before a court determines whether a plaintiff has demonstrated the absence of probable cause and the presence of malice for purposes of a malicious prosecution claim, it is appropriate for the court to determine whether the defendant either directly instituted the proceedings against the plaintiff or can be charged with responsibility for institution of the proceedings. Bradley v. General Accident Ins. Co., 2001 Pa. Super. 172, 778 A.2d 707, 710 (2001).

According to the complaint, Mr. Aspite's malicious prosecution claim is based upon Universal's referral of the underlying matter to the Attorney General's Office. A private person who gives information of another's supposed criminal misconduct to a public official does not constitute a procurement of the proceedings for purposes of a malicious prosecution claim if it is left entirely to official's discretion to initiate the proceedings. Id. (citing Restatement (Second) of Torts § 653m, cmt. g). Moreover, when a private person gives a prosecuting officer information that he believes to be true, and the officer in the exercise of his uncontrolled discretion initiates criminal proceedings based upon that information, the informer is not liable even though the information proves to be false and his belief was one that a reasonable man

would not entertain. Id.

In this case, Universal provided information regarding the suspected insurance fraud to the Office of the Attorney General, which it is required to do by law. See 40 Pa. C.S. § 325.44. From the record, it appears that Universal provided information that it believed to be true; Plaintiffs do not assert that Universal provided knowingly false information to the Attorney General's Office, withheld any information or undertook any action which influenced the Attorney General's decision to prosecute. The Attorney General's Office had the discretion to determine whether charges should be pursued. The duty falls on the Attorney General's office, not on the insurance company supplying information, to determine what are the significant facts in an investigation. See 40 Pa. C.S. §§ 325.42 (4). Based on the foregoing, this court concludes that Universal was not responsible for initiating the criminal proceedings against Mr. Aspite. Thus, Plaintiff's malicious prosecution claim fails as a matter of law and summary judgment is granted as to Count V.

#### **IV. Plaintiff's Claims Against the Crawford Defendants Fail As A Matter of Law**

The sole claims remaining against the Crawford Defendants are malicious prosecution (Count V) and "tortiously inducing a breach of contract" (Count VII).<sup>4</sup> This court finds that each of these claims necessarily fails as a matter of law and are therefore dismissed in their entirety. "Summary judgment is proper when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits demonstrate that there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Pa.R.C.P. 1035.2; Horne v. Haladay, 1999 Pa. Super. 64, 728 A.2d 954 (1999). Such is the case at bar.

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<sup>4</sup> It appears from the docket that Plaintiffs did not file a response to the Crawford Defendants' Motion for Summary

The record clearly demonstrates that the Crawford Defendants, at all times relevant hereto, acted as agents for Universal. The record includes no facts which would support a direct or independent cause of action against the Crawford Defendants for either of the counts presented against them. Accordingly, Counts V and VII are dismissed as to the Crawford Defendants.

### **CONCLUSION**

For the above-stated reasons, Defendants' Motions for Summary Judgment are **granted** and Plaintiffs' complaint is **dismissed** in its entirety as to Universal and the Crawford Defendants.

This Court will enter a contemporaneous Order consistent with this Opinion.

**BY THE COURT:**

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**C. DARNELL JONES, J.**

Dated: April 12, 2004