

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

VICTOR CUEVAS, :
Plaintiff :
 :
 :
v. : 3:02-CV-00586 (EBB)
 :
 :
PREFERRED MUTUAL INSURANCE :
COMPANY and MELANIE BENJAMIN, :
Defendants :

RULING ON MOTION FOR SUMMARY JUDGMENT

Plaintiff Victor Cuevas ("Plaintiff" or "Cuevas") brings this diversity action against Defendants Preferred Mutual Insurance Company ("Preferred") and Melanie Benjamin ("Benjamin"), asserting that Defendants: breached Plaintiff's contract of insurance; acted in bad faith; violated the Connecticut Unfair Trade Practices Act; engaged in willful and wanton misconduct; and were negligent. Defendants now move for summary judgment, contending that the lawsuit was not brought within a timely manner.

Decision on a summary judgment motion requires the Court to pierce the pleadings and to assess the proof, reviewing same in the non-movant's favor, in order to see if there is a genuine need for trial. After review of the thorough memoranda of law, exhibits thereto, and the parties' Local Rule 9(c) Statements, the Court holds that there are no genuine issues of material fact regarding the

running of the statute of limitations prior to the commencement of this lawsuit. Accordingly, the Motion for Summary Judgment [Doc. No. 17] is hereby GRANTED.

Conn.Gen.Stat. Section 38a-336 governs uninsured and underinsured motorist coverage in the State of Connecticut. This statute specifically authorizes an insurance company to limit the time in which suit may be brought regarding uninsured and underinsured motorist coverage, as long as the limitations period imposed by the insurer is not less than three years from the date of the accident. The policy at issue in this case contained the three year limitation, in compliance with the statute.

The accident which is at issue occurred on March 4, 1999. Thus, Plaintiff had until March 4, 2002 in which to commence this lawsuit. In a letter offering settlement, dated March 11, 2002, Benjamin, as claims adjustor, noted that the policy which she had provided to plaintiff's counsel specifically had the three year limitations period in it and her company intended to rely on this date. On March 19, 2002, Plaintiff's counsel rejected the settlement offer, seeking arbitration, which was also called for by the insurance policy. However, the arbitration language was not mandatory, reading the party's "may" go to arbitration, but only if both parties agreed to the procedure. The insurance company rejected arbitration, sub silentio. On March 20, 2002, Benjamin agreed to

hold the settlement amount open "in fairness" to the Plaintiff until March 28, 2002. The letter reiterated that if Plaintiff did not accept this offer, "the offer will be withdrawn and we will proceed with the statute of limitations defense." Plaintiff did not accept the settlement and commenced the present lawsuit on April 11, 2002 by serving same upon the State of Connecticut Insurance Commissioner.

Plaintiff argues that the Defendant should be estopped from relying on the statute of limitations defense, because it took so long to respond to his claim, that it "lulled him into a false sense of security." In Boyce v. Allstate Ins., 236 Conn. 375, 387 (1996), an identical claim was rejected. The Court held that the company was under no duty to inform the plaintiff in that case that it intended to rely on the statute of limitations defense. Accord Hanover Ins. Co. v. Fireman's Fund Ins. Co., 217 Conn. 340, 350 (1991). "[I]t is the burden of the person claiming estoppel to show that he exercised due diligence to ascertain the truth and that he not only lacked knowledge of the true state of things, but had no convenient way of acquiring that knowledge" Bauer v. Waste Management of Connecticut, Inc., 234 Conn. 221, 247 (1995)(citation omitted).

Defendant sent a certified copy of Plaintiff's insurance policy, with the very clear limitations defense therein, to Plaintiff in the fall of 2001. Accordingly, Plaintiff had no reason to believe that the insurance company would not rely on its rights, especially

when Benjamin never responded to his request for arbitration. For these reasons, then, the lawsuit is time-barred and judgment shall be entered for Defendant. The Clerk is

directed to
close this case.

SO ORDERED

ELLEN BREE BURNS

SENIOR UNITED STATES DISTRICT JUDGE

Dated at New Haven, Connecticut this ____ day of April, 2003.