

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

STRATFORD LAND DEVELOPMENT CO.,	:	
	:	
Plaintiff,	:	No. 3:04cv1384(MRK)
	:	
v.	:	
	:	
AMERICAN MANUFACTURERS MUTUAL	:	
INSURANCE CO.,	:	
	:	
Defendant.	:	

RULING

This is an insurance coverage action. The Complaint [doc. # 1] alleges four causes of action – (1) breach of the insurance contract; (2) declaratory judgment for recovery of repair and replacement of alleged physical damage to Plaintiff's properties; (3) declaratory judgment for recovery of business income loss allegedly suffered by Plaintiff; and (4) breach of the implied covenants of good faith and fair dealing. Presently pending before the Court is Defendant's Motion to Dismiss Plaintiff's Fourth Claim for Relief [doc. # 8]. Defendant argues that it cannot be liable for breach of the covenants of good faith and fair dealing as a matter of law because an arbitration panel previously concluded that there was no coverage for Plaintiff's claim as it was presented and argued to the arbitration panel. *See* Def.'s Mem. in Supp. of Mot. to Dismiss Pl.'s Fourth Claim for Relief [doc. # 9].

On a motion to dismiss for failure to state a claim under Rule 12(b)(6) of the *Federal Rules of Civil Procedure*, the Court should "construe the complaint in the light most favorable to the plaintiff, accepting the complaint's allegations as true." *Todd v. Exxon Corp.*, 275 F.3d 191,

197 (2d Cir. 2001). "A complaint should not be dismissed for failure to state a claim 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' " *Id.* at 197-98 (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). Thus, "[t]he issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *Bernheim v. Litt*, 79 F.3d 318, 321 (2d Cir. 1996) (internal quotation marks omitted).

Viewing the allegations in the Complaint in the light most favorable to the Plaintiff, the Court cannot say with certainty that the Plaintiff can prove no set of facts that would entitle it to relief. *See, e.g., Swierkiewicz v. Sorema, N.A.*, 534 U.S. 506, 511-14 (2002). First, even the Defendant acknowledges that the arbitration panel's decision is not binding upon Plaintiff or this Court and that it is limited in any event to the arguments presented to the panel. Yet, in arguing that the panel's decision insulates it from liability *as a matter of law*, Defendant is essentially seeking to ascribe to the panel's decision a binding effect that both parties agree it does not have. If the Court were to accept Defendant's argument, then whenever an insured fails to prevail in what the insurance contract deems a non-binding arbitration, the arbitration decision would bar a claim of breach of the covenant of good faith and fair dealing as a matter of law. The Court is not aware of any decision so holding, and Defendant cites none.

Second, Plaintiff argues that its Complaint is broad enough to include claims of procedural bad faith, and that the arbitration panel only dealt with the substantive argument under the policy and did not address any procedural unfairness. *See* Mem. of Law in Opp'n to Def.'s Mot. to Dismiss Pl.'s Fourth Claim for Relief [doc. # 14], at 7-9. The Court agrees with Plaintiff that its Complaint is broad enough to include claims of procedural bad faith, which the Court

cannot possibly dismiss as a matter of law on the basis of the arbitration panel's decision. *See, e.g.*, Complaint [doc. #1] at ¶ 8 (alleging "hard-ball tactics"); *id.* at ¶ 70 (alleging vindictive, reckless and careless conduct).

Therefore, Defendant's Motion to Dismiss Plaintiff's Fourth Claim for Relief [doc. # 8] is DENIED. Plaintiff is entitled to offer evidence in support of its Fourth Claim for Relief. Whether Plaintiff will ultimately be able to prevail on its good faith and fair dealing claim (particularly since Plaintiff has previously failed to persuade two experienced arbitrators of its interpretation of the insurance policy) is an issue for another day.

IT IS SO ORDERED.

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut: December 29, 2004.