

Jeremiah Bindrum, Plaintiff	v. American Home Assurance Company, Inc., Charis Claims, Inc., and NuQuest Bridge Pointe, Defendants
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Decision on Motions to Dismiss

Factual Background

Plaintiff, Jeremiah Bindrum, sues Defendants, American Home Assurance Company, Charis Claims, and NuQuest Bridge Pointe, for breach of contract (Count I), bad faith denial of an insurance claim (Count II), and breach of the covenant of good faith and fair dealing (Count III), and negligent preparation of a settlement agreement in breach of contract (Count IV).¹ In 2003, Defendant was injured at his place of employment. Defendants settled Plaintiff's claim, paid him \$225,000, and worked out agreements with the Plaintiff, the Centers for Medicare and Medicaid Services (CMS), and the Vermont Department of Labor (DOL). The current suit stems from Defendants' handling of Plaintiff's workers' compensation settlement.

Plaintiff alleges the parties came to a settlement agreement in June 2008 using a Form 15 Settlement Agreement and Addendum. American Home and Charis agreed to prepare the Medicare set-aside for CMS. American Home and Charis selected NuQuest to prepare the form. American Home signed the agreement on July 24, 2008. Plaintiff signed the agreement on August 6, 2008. CMS approved the agreement on December 8, 2008. Plaintiff signed two addendums to the agreement on March 11, 2009. The first addendum referenced the original agreement. American Home signed the addendums on March 13, 2008. The Vermont Commissioner of Labor approved the agreement on March 18, 2009.

¹ The distinction between Counts I and IV is somewhat nebulous. In both counts, Plaintiff appears to claim Defendants breached his contract by negligently preparing the Medicare set-aside agreement. From the pleadings, the Court cannot determine if Count IV is a breach of contract claim under the Defendant's agreement with American Home, a negligence claim, or a breach of contract claim as a third-party beneficiary for the contract between American Home and NuQuest.

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The agreement contains several clauses that are relevant for consideration on a motion to dismiss.² First, the agreement indicates it does not become effective until approved by the Vermont Commissioner of Labor. Second, the agreement settles all claims related to Plaintiff's 2003 work-related injury. Third, the agreement allowed American Home to select a third-party to prepare the Medicare set-aside Agreement. Fourth, American Home agreed to pay Plaintiff \$7,000 per month on advance from the settlement. Plaintiff used this money to pay both medical and living expenses. Plaintiff alleges Defendants improperly prepared his settlement agreement and delayed getting approval. As a result, Plaintiff asserts he unnecessarily paid for medical expenses.

Procedural History

On November 19, 2012, American Home and Charis filed a motion to dismiss under V.R.C.P. 8, 9, and 12(b)(6). On November 26, 2012, NuQuest filed a separate motion for judgment on the pleadings and joined in American Home's and Charis' motion to dismiss. Plaintiff opposed the motions on January 4, 2013.

Standard of Review

The Court disfavors and rarely grants motions to dismiss. See *Bock v. Gold*, 2008 VT 81, ¶ 4, 184 Vt. 575. The Court uses motions to dismiss to evaluate the law in a pleading. *Powers v. Office of Child Support*, 173 Vt. 390, 395 (2002). Accordingly, the Court will only grant a motion to dismiss when there are "no facts or circumstances, consistent with the complaint that would entitle Plaintiff to relief." *Bock*, 2008 VT 81, ¶ 4. "[T]he threshold a Plaintiff must cross in order to meet our notice-pleading standard is 'exceeding low.'" *Id.* (quoting *Henninger v. Pinellas County*, 7 F. Supp. 2d 1334, 1336 (M.D. Fla. 1998)). For this motion, the Court will therefore assume the truth of all facts offered by the non-moving party. *Id.*

Discussion

1. *Primary Jurisdiction*

As a preliminary matter, the Court must decide if it has jurisdiction. Defendants argue this Court lacks primary jurisdiction to hear the case and should dismiss the case for review with DOL. Defendants correctly note "[t]he doctrine of primary jurisdiction cautions courts against exercising jurisdiction when an alternative tribunal with expertise in the subject matter is available to decide the dispute." *Travelers Indem. Co. v. Wallis*, 2003 VT 103, ¶ 13, 176 Vt. 167. Further, the doctrine of primary jurisdiction applies in workers' compensation cases. *Id.* ¶ 14.

² The Court may rely on exhibits included in a complaint in deciding a motion to dismiss. *Kaplan v. Morgan Stanley & Co.*, 2009 VT 78, ¶ 10 fn. 4, 186 Vt. 605. Although the Court did not receive exhibits referenced in Plaintiff's complaints, it received copies as attachments to Plaintiff's filing opposing the motion to dismiss on January 4, 2013.

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The courts are fit to decide pure question of law relating to workers' compensation cases. *Smith v. Desautels*, 2008 VT 17, ¶ 10, 183 Vt. 255.

The Court has jurisdiction to hear this case because the Court may decide the current case without infringing on the expertise of DOL. The doctrine of primary jurisdiction suggests courts should be careful in accepting workers' compensation cases, but it does not bar courts from hearing workers' compensation cases. None of the filings demonstrate Plaintiff initiated a parallel procedure within DOL. Moreover, the statutes indicate DOL's particular specialty is approving workers' compensation settlement agreements, not necessarily enforcing them. See 21 V.S.A. § 662(a). The Court may be able to decide this case as a matter of law. Therefore, the Court will hear this case.

2. *Effective Date of the Settlement Agreement and the Breach of Contract Claims (Counts I and IV)*

The next issue is whether Defendants could have breached the settlement agreement. Defendants argue they could not have breached the settlement agreement between August 2008 and March 2009 because the agreement did not become effective until the Commissioner of Labor approved it on March 18, 2009. Interpretation of a contract requires the Court to determine the intentions of the parties. *Hall v. State*, 2012 VT 43, ¶ 21. To determine the intent of the parties, the Court considers the entire document. *Id.* Where the language of a contract is unambiguous, the Court will determine the intent of the parties from the plain meaning of the language as a matter of law. See *id.* Where a contract is ambiguous, interpretation becomes a question of fact. See *id.*

In this case, the Court cannot interpret the settlement agreement on a motion to dismiss because the effective date of the contract is ambiguous. The original agreement states it does not become effective until approval by the Commissioner of Labor. However, the rest of the documents make this clause ambiguous. See *id.* The parties signed the agreement in July and August of 2008. Defendants then acted on the agreement by paying Plaintiff \$7,000 per month while waiting for approval. The language of the contract and the actions of the parties create a question of fact on when the contract became effective. See *id.* Under these circumstances, the Court cannot now decide the breach of contract claim. See *Bock*, 2008 VT 81, ¶ 4.

3. *Effect of the General Release*

The next issue is whether the release blocks Plaintiff's suit. A release is a contract. *Inv. Props., Inc. v. Lyttle*, 169 Vt. 487, 498 (1999). When the language of a release is clear, a court will enforce the plain meaning of the agreement. *Lamoille Grain Co. v. St. Johnsbury and Lamoille Cnty. R.R.*, 135 Vt. 5, 8 (1976). A court may only enforce releases that are specific to the situation. See *Inv. Props.*, 169 Vt. at 497. Thus, the Court may enforce a specific release

³ Even the addendums contribute to the ambiguity. Addendums modify contracts and establish a new agreement that supplants the affected portions of the original contract but leaves the remainder of the original contract unaltered. See *New England P'Ship, Inc. v. Rutland City Sch. Dist.*, 173 Vt. 69, 79 (2001). Although the first addendum references the original contract, it is unclear if the addendum would alter the provisions of the settlement. **FILED**

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provision in a workers' compensation settlement agreement if it is clear and specific. See *Holiday v. Talk of the Town, Inc.*, 697 P.2d 959, 962 (N.M. Ct. App. 1985) (enforcing a workers' compensation release against future benefits); see also *Aetna Casualty & Surety Co. v. Marshall*, 699 S.W.2d 896, 904-05 (Tex. App. 1985) (affirming judgment against an insurance company for the handling of a workers' compensation settlement agreement for actions after the agreement).

The release does not prevent Plaintiff from pleading a breach of contract. The release protects Defendants from suits over how it handled Plaintiff's workers' compensation claim. Although this language appears clear, the effective date of the entire contract is ambiguous and therefore the effective date of the release is also ambiguous. See *Lamoille Grain Co.*, 135 Vt. at 8. Furthermore, the general release may not be specific enough to protect Defendants because it does not indicate if applies prospectively. See *Inv. Props.*, 169 Vt. at 497. If the Court later determines as a factual matter that the contract became enforceable on August 6, 2008, then it may also find the release only applied to conduct before August 6, 2008. Accordingly, the release does not entitle Defendants to dismissal at this point.

4. *Breach of the Covenant of Good Faith and Fair Dealing (Count II)*

Plaintiff alleges Defendants violated the covenant of good faith and fair dealing. Parties to an insurance contract owe each other a duty of good faith. *Peerless Ins. Co. v. Frederick*, 2004 VT 126, ¶ 15, 177 Vt. 441. Whether a defendant violated the duty of good faith is usually a question of fact for a jury to decide. *Monahan v. GMAC Mortg. Corp.*, 2005 VT 110, ¶ 50, 179 Vt. 167. Nevertheless, a plaintiff must allege some violation of the duty of good faith based on separate conduct from the breach of contract claim. *Id.* ¶ 54, fn. 5. In this case, Plaintiff only alleges Defendants failure to submit his settlement in a timely manner violated their duty of good faith. The alleged delay in filing is the same conduct as the breach of contract claim and therefore not available for an alleged violation of the covenant of good faith.⁴

5. *Bad Faith (Count III)*

Next, the Court considers whether Plaintiff successfully plead its claim that Defendants acted in bad faith by denying his insurance claim. "To establish a claim for bad faith, a plaintiff must show that (1) the insurer had no reasonable basis to deny the insured the benefits of the policy, and (2) the company knew or recklessly disregarded the fact that it had no reasonable basis for denying the insured's claim." *Peerless*, 2004 VT 126, ¶ 13. The pleadings do not suggest Defendants failed to pay Plaintiff, or even delayed paying Plaintiff. Rather, the pleadings

⁴ Plaintiff seeks attorney's fees on his claims for breach of the covenant of good faith and bad faith denial. Normally, Vermont follows the American Rule for litigation and will not award attorney's fees unless a statute or contract requires them. *Concord Gen. Mut. Ins. Co. v. Woods*, 2003 VT 33, ¶ 18, 175 Vt. 212. Absent a finding of bad faith or outrageous conduct, plaintiffs suing an insurance company for declining to pay a claim may not recover attorney's fees. *Id.* Plaintiff's pleadings do not indicate Defendants acted in bad faith. At worst, Defendants breached a contract. Even if Plaintiff had valid pleadings for a bad faith rejection and a violation of the duty of good faith, Plaintiff would not be entitled to attorney's fees.

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allege Defendants did not finalize the settlement in a timely manner. These claims are suited to remedy through a breach of contract action but not a bad faith claim.⁵

6. Punitive Damages

Plaintiff also claims a right to punitive damages. The Second Circuit addressed this issue in a case involving the same parties and the same facts. *Bindrum v. Am. Home Assurance Co.*, 441 Fed. Appx. 780, 782 (2d Cir. 2011). The Second Circuit reasoned under Vermont law a plaintiff must allege actual malice by the corporation's managers. Further, Plaintiff's complaint in federal court did not raise a claim of any involvement or ratification of by Defendants' managers. Similarly, the complaint in this case does not allege actual malice by Defendants' managers. The Court finds the Second Circuit's analysis persuasive and does not observe the required factual pleadings in the amended complaint to support punitive damages.

7. Application of the Economic Loss Rule to Count IV for American Home

Count IV indicates Plaintiff seeks to recover for negligent preparation of Medicare set-aside Agreement in breach of the contract. The claim raises the issue of whether Plaintiff pleads a claim for negligence or breach of contract. In these circumstances, a claim for negligence would be blocked by the economic loss rule. "[T]he economic-loss rule serves to maintain the boundary between contract law, which is designed to enforce parties' contractual expectations, and tort law, which is designed to protect citizens... by imposing a general duty of reasonable care." *Hamill v. Pawtucket Mut. Ins. Co.*, 2005 VT 133, ¶ 7, 179 Vt. 250. Generally, tort law allows plaintiffs to recover for actual physical injuries. See *Long Trail House Condo. Ass'n v. Engelberth Constr., Inc.*, 2012 VT 80, ¶ 26. In contrast, contract law protects parties bargained for rights. Tort law would not be an appropriate method to grant Plaintiff relief in this case because all of actions relate to a contract.

The Court interprets Count IV as a breach of contract claim and allows it go forward on those grounds. To the extent Count IV alleges a breach of the settlement agreement, Count IV is similar to Count I. To the extent Count IV alleges a breach of the contract between American Home and NuQuest as a third-party beneficiary, the Court cannot dismiss the claim. Plaintiff may be a third-party beneficiary in American Home's contract with NuQuest. The Court looks to the intent of the parties to determine if Plaintiff was a third-party beneficiary. See *McMurphy v. State*, 171 Vt. 9, 16 (2000). The Court has insufficient information to determine if Defendant was a third-party beneficiary for NuQuest contract on the pleadings and must deny the motion to dismiss at this point. See *Bock*, 2008 VT 81, ¶ 4.

8. NuQuest's Separate Motion to Dismiss

NuQuest filed a separate motion for judgment on the pleadings based on its lack of contractual privity with Plaintiff and the economic loss rule. NuQuest correctly notes that

⁵ Defendant cites *Racine v. American International Adjustment Co.* to argue he could be entitled to a bad faith claim. 980 F. Supp. 745, 747 (D. Vt. 1997). Although *Racine* suggests plaintiffs may sue for bad faith handling of a worker's compensation claim, it does not negate the requirement that plaintiffs show a failure to pay to recover or a bad faith denial of insurance coverage. *Racine* does not save Plaintiff's bad faith claim.

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Harold E. Eaton, Jr.
Superior Court Judge

Dated at Woodstock, Vermont on January 17, 2013.

The Court grants *in part* and *denies in part* NuQuest's motion for judgment on the pleadings filed on November 26, 2012. The Court grants the motion in regard to Counts I-III. Further, the Court grants NuQuest's motion to dismiss in regard to Count IV for all claims other than a third-party beneficiary claim. The Court *denies* NuQuest's motion in regard to Count IV to the extent it is a third-party beneficiary claim. The Court also finds that Plaintiff is not entitled to punitive damages on the breach of contract claims.

The Court grants *in part* and *denies in part* American Home's motion to dismiss filed on November 19, 2012. The Court *denies* the motion in regard to the breach of contract claims listed in Counts I and IV. The Court grants the motion in regard to the bad faith and violation of the covenant of good faith in Counts II and III. The Court also finds that Plaintiff is not entitled to punitive damages on the breach of contract claims.

Order

NuQuest had no contract with Plaintiff. Plaintiff cannot sue NuQuest based on his contract with American Home. Counts I-III, which all relate to contractual duties, do not apply to NuQuest. As explained, above, to the extent Count IV is a claim for negligence rather than breach of contract, the economic loss rule protects NuQuest. See *Hamill*, 2005 VT 133, ¶ 7. Generally, contractors of insurance companies are not liable to beneficiaries for negligent handling of a claim because they owe no duty to the beneficiary. See *id.* ¶ 5. A plaintiff's remedy for negligent handling of an insurance claim is a breach of contract claim against the insurer. See *id.* Plaintiff can maintain neither a breach of contract claim nor a tort claim against NuQuest in regard to the settlement agreement. As discussed above, Plaintiff may have a claim against NuQuest as a third-party beneficiary. See *Bock*, 2008 VT 81, ¶ 4.

Finally, the Court considered the other arguments raised by the parties and does not find them relevant to this order. The Court does not believe Plaintiff has tried to plead causes of action for fraud or breach of a fiduciary duty. Rather, the Court interprets these allegations as part of the wrongdoing underlying Plaintiff's breach of contract claims.