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Erie Insurance Exchange v. Scalia

ERIE INSURANCE EXCHANGE, Plaintiff,
v. RICHARD T. SCALIA and SERENA M. SCALIA, his wife,

Defendants
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action - Law, No. 2004-2420

Homeowners' insurance; Breach of contract; Fraud; Ambiguous jury verdict; Motion for summary judgment; Res judicata/collateral estoppel

1. The purpose of the doctrines of res judicata and/or collateral estoppel is to minimize the judicial energy diverted to individual cases, to establish certainty and respect for court judgments, and to protect the party relying on the prior adjudication from vexatious litigation.

2. In deciding whether the doctrines apply, the essential inquiry is whether the ultimate and controlling issues have been decided in a prior proceeding in which the present parties actually had the reasonable opportunity to appear and assert their rights.

3. Of key importance is whether the judgment reached was final on the merits, and this is determined by examining the entire record, the pleadings and the evidence presented, with an eye toward establishing exactly what the fact-finder decided.

4. Where it is impossible to discern what the jury's decision was based on, such as where a general verdict is rendered and the court has instructed on several issues, the prior litigation does not clearly resolve the critical issue and collateral estoppel cannot be applied.

5. An ambiguous jury verdict in a prior trial between the parties cannot serve as grounds for granting a motion for summary judgment in a later action involving the same parties.

Appearances:

Stephen L. Banko Jr., Esq., *Counsel for Plaintiff*

James J. West, Esq., *Counsel for Defendants*

OPINION

Herman, J., May 15, 2007

Introduction

Before the court is the plaintiff's (hereinafter "Erie") motion for summary judgment. The defendants (hereinafter "the Scalias") answered the motion, the parties submitted legal memoranda and the court heard oral argument. After considering the record, the parties' respective positions and the relevant authority, the court will deny the motion in part and grant the motion in part.

Background and Procedural History

The Scalias had homeowners' insurance coverage with Erie.[1] Section III(4) of the homeowner's policy entitled "Concealment, Fraud or Misrepresentation" stated as follows: "This entire policy is void as to you and anyone we protect if, whether before or after a loss: (a) you or anyone we protect have intentionally concealed or misrepresented any material fact or circumstance concerning this insurance; or (b) there has been fraud or false swearing by you or anyone we protect as to any matter that relates to this insurance or the subject thereof. In the event of (a) or (b) above, we will not pay for any loss." The policy also states: "We do not pay for a loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss: ...16. By intentional acts, meaning any loss arising from an act committed by or at the direction of anyone we protect with the intent to cause a loss."

A fire occurred at the Scalia home on July 1, 1998 causing damage to the structure and its contents. Erie's representatives began an investigation upon obvious signs the fire had been intentionally set. Erie hired a fire investigator who determined the fire was the result of arson. The Scalias made recorded statements during the investigation denying they were involved in starting the fire and representing their personal and business finances as sound. Erie hired a forensic accountant to analyze the Scalias' financial situation.

During the course of Erie's investigation, the Scalias made a claim for certain coverages available under the policy, including damage to the structure, loss of personal property and living expenses. As mandated by the policy, Erie made payment to the Scalias' mortgagee, Allfirst Bank, in the amount of $171,920.17 and Allfirst executed a release of the mortgage on October 23, 2000. This was done pursuant to paragraph 10 of the policy wherein Erie agreed to "protect the mortgagee's interests in an insured building. This protection will not be invalidated by an act or neglect of anyone we protect, any breach of warranty, increase in hazard, change of ownership, or foreclosure if the mortgagee has no knowledge of these conditions." In other words, Erie was required to pay the mortgage company regardless of the fire's cause. This is a standard mortgagee clause in an insurance policy. Also, Erie directly paid the Scalias $17,166.69 in living expenses. At the conclusion of its investigation, Erie sent a letter to the Scalias dated June 18, 1999 denying them benefits under the policy for two reasons. First, Erie concluded the Scalias deliberately set the fire. Second, Erie concluded the Scalias had deliberately concealed their poor financial condition so as to mislead Erie into believing they lacked a motive to set the fire.

The Scalias filed a complaint against Erie on June 24, 1999.[2] The complaint alleged Erie breached its contract with them and acted in bad faith. Erie hired counsel to defend against this claim and the parties engaged in extensive discovery and other pretrial preparations. The parties entered into a stipulation during this period whereby the bad faith claim would be stayed pending the ultimate resolution of the contract claim.

The 1999 contract action was tried before a jury over the course of five days in June of 2003 with the undersigned presiding. The Scalias stipulated at trial the fire had been deliberately set but denied they were the ones who were responsible for setting it. During trial, the evidence presented three issues of fact to be resolved by the jury: (1) whether the Scalias deliberately lied by telling investigators their business and personal finances were solid; (2) whether the Scalias intentionally padded their repair claim by including costs associated with their business and costs incurred in upgrading the home beyond its original condition at the time of the fire; and (3) whether the Scalias or someone at their direction set fire to their home.

As to the first issue, Erie presented extensive evidence of the Scalias' poor finances during the months leading up to the July 1, 1998 fire. Mr. Scalia's business had severe cash flow problems, was the target of an I.R.S. levy for back taxes, interest and penalties, and lost one of its major customers only weeks before the fire. The Scalias' personal finances were also in dire straits. They were behind on their mortgage, had credit card debt and had long been living far beyond their means. The Scalias built the home in 1996 and 1997 but it remained unfinished and their attempts to sell it in early 1998 met with no results. Mrs. Scalia was newly pregnant with the couple's third child at the time of the fire and Mr. Scalia had developed a taste for gambling. Erie's investigation revealed the Scalias had approximately $320,000 in pre-fire debts. Nevertheless, the Scalias told investigators their business was thriving and they denied being behind on their mortgage. Erie presented this evidence to show the jury the Scalias had a strong financial motive to set the fire.

As to the second issue placed before the jury, Erie presented evidence of the Scalias' attempts to have Erie reimburse them for certain repair costs which were unrelated to restoring the home to its pre-fire condition. For example, the Scalias submitted bills for the installation of a swimming pool which they added to their property after the fire and which was not part of the original construction. Also, they requested payment of bills associated with their business which had no connection with their residence. Erie

presented this evidence to show the Scalias committed insurance fraud, a ground for relieving Erie of its obligation to pay under the policy.

Regarding the third issue, Erie presented evidence to show Mrs. Scalia had the opportunity to set the fire. She left the house at approximately 8:00 a.m., locking the doors behind her. Smoke was seen coming from the home at approximately 8:15 a.m. Investigators found no sign of forced entry. In addition, there had been a smaller fire in the basement of the Scalia home one week before the July 1, 1998 fire. Mr. Scalia told investigators looking into the July 1st fire he had accidentally ignited the insulation with a space heater while doing repairs but investigators found the basement fire had also been intentionally set. Erie presented this evidence to show the Scalias had the personal determination to set fire to their home.

The jury was presented with a verdict slip in the form of separate interrogatories. ***The verdict slip was crafted by agreement of counsel***. Special interrogatory #1 was "Do you find...Erie Insurance Exchange breached its contract to [the Scalias]? The jury checked "no" which ended their need to answer the remaining interrogatories. The jury did not reach the next interrogatories which posed specific questions about the Scalias' conduct with regard to the fire and the subsequent insurance claim.

By arriving at its answer to interrogatory #1, the jury indicated its determination that Erie had not breached its contract with the Scalias and was therefore not obligated to pay them in essence because the Scalias themselves had failed to abide by one or more of the policy's conditions as quoted above. Based on the evidence presented at trial, the jury's answer to this interrogatory was attributable to any or all of the following grounds: (1) Mr. or Mrs. Scalia committed arson by setting the fire or having someone set it for them; (2) the Scalias intentionally lied to Erie's investigators when they claimed their finances were solid; and/or (3) the Scalias acted fraudulently in submitting repair bills to Erie which had nothing to do with restoring the home to its pre-fire condition. Any one of these grounds was sufficient for the jury to find Erie was justified in refusing to pay insurance proceeds and therefore had not breached its contract with the Scalias.

The Scalias filed a post-trial motion for relief which we denied by Opinion and Order of October 7, 2003. The Scalias did not appeal that ruling. They filed a praecipe on December 8, 2003 voluntarily discontinuing the 1999 action as to their claim for bad faith damages.

In a criminal action arising from the same insurance claim underlying the 1999 lawsuit, Mrs. Scalia pled guilty on February 18, 2004 to one count of insurance fraud, a felony of the third degree. She admitted over-billing Erie by approximately $14,000 for home repair costs unrelated to the fire damage and was sentenced that same day to 84 months probation. Her plea constituted an admission of fraudulent conduct in the filing of the insurance claim. The oral plea colloquy with the court was transcribed and is part of the record in the criminal case. The court ordered Mrs. Scalia to perform community service but did not require her to pay any restitution.[3] Neither Mr. nor Mrs. Scalia was ever criminally prosecuted for arson.

Erie filed a motion for counsel fees which we granted on August 18, 2004 in the amount of $48,455 pursuant to 42 Pa.C.S.A. §2503(7) and (9) and interpretive case law. Those statutory provisions state:

> The following participants shall be entitled to a reasonable counsel fee as part of the taxable costs of the matter:
> ...(7) Any participant who is awarded counsel fees as a sanction against another participant for dilatory, obdurate or vexatious conduct during the pendency of the matter.
> ...(9) Any participant who is awarded counsel fees because the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith.

As we wrote in our August 18, 2004 Opinion, these provisions are not meant to punish all those who initiate legal actions which are not ultimately successful but to prevent the filing and continuation of suits for the sole purpose of fraud, dishonesty or corruption. Thunberg v. Strause, 682 A.2d 295 (Pa. 1996). In awarding attorney fees to Erie, we considered Erie was compelled during trial preparation to analyze an extensive amount of information (400 pages of billing documents) about the Scalias' personal and financial situation in the months leading up to the fire. We also considered Mr. Scalia's admission under Erie's pointed cross-examination at trial that multiple repair bills submitted to Erie for payment were unrelated to restoring the home to its pre-fire condition and were actually expenses connected with his failing business. In addition, Mrs. Scalia's guilty plea several months after the civil trial arising out of this deliberate over-billing constituted an admission that the suit she and her husband brought against Erie was filed and pursued solely for the purpose of fraud, dishonesty or corruption. This conduct was clearly vexatious and obdurate in the sense the Scalias must have known when they commenced and continued the civil suit that Erie was completely justified in denying their insurance claim and had not in fact breached its contract with them.

The Scalias appealed our award of attorney fees, arguing it constituted an abuse of discretion. They stressed that the jury, in indicating "no" to interrogatory #1 which asked whether Erie had breached the contract, failed to make any specific finding the Scalias had committed fraud, misrepresentation or dishonesty. Our ruling was affirmed by the Superior Court on June 17, 2005 in a published Opinion. Scalia v. Erie Insurance Exchange, 878 A.2d 114 (Pa.Super. 2005). The Superior Court reasoned there were two bases for the jury to have found in Erie's favor: that the Scalias committed arson, and/or that they intentionally misrepresented a material fact during the fire investigation as to their claim for coverage. If either of these were proven, Erie was absolved of any responsibility to provide coverage for the claimed damage. In finding Erie did not breach its contract, the jury must have accepted one or both of the grounds which Erie put forth. The impossibility of discerning the precise rationale for the jury's finding did not insulate the Scalias from having to pay attorney fees under section 2503(7) and (9) because

> to find that Erie did not breach its contract, the jury of necessity was required to find that the Scalias engaged in arson and/or in misrepresentation/concealment...The Scalias knew that they had no legal or factual grounds on which to bring their suit and the only result of the suit was annoyance; therefore, the Scalias' conduct was vexatious. The Scalias stubbornly persisted in this litigation, through rounds of discovery and several days of trial, knowing all the while that Erie was fully justified in denying their claims; therefore, their conduct was obdurate. Because the Scalias based their lawsuit on dishonest claims, we also agree with the trial court that their actions were not in good faith.

Id at 117-119.

Erie filed the instant action against the Scalias on September 14, 2004 for damages under the theories of breach of contract, fraud, unjust enrichment and indemnification. Erie seeks $171,920.17, the amount it paid to the Scalias' mortgagee; $17,166.69 in living expenses paid directly to the Scalias shortly after their home and its contents were damaged by the fire; and $55,139.63 in investigation and expert costs incurred by Erie between the July 1, 1998 fire and the June 18, 1999 denial of benefits.[4] The total damages now sought by Erie are $292,726.49.

Erie's instant complaint alleges the Scalias engaged in concealment, fraud and misrepresentation in the following respects:

> a. they denied involvement in the fire when the evidence clearly and unequivocally demonstrates they had opportunity and financial motive to start the fire or had the fire started at their direction;
> b. they willfully and intentionally misrepresented their financial condition so as to mislead Erie in its investigation of the cause and origin of the fire and to determine responsibility therefor;
> c. they intentionally misrepresented the nature and extent of their claims for repairs to the home;
> d. they falsely swore, misrepresented, or engaged in other fraudulent conduct at a time when they gave recorded statements to representatives of Erie, statements under oath to counsel for Erie, depositions to counsel for Erie in the underlying action and trial testimony before this court;
> e. they continued to perpetrate fraud upon Erie by the filing of a frivolous lawsuit which had no basis in law or fact, all to the great detriment and loss of Erie which was compelled to retain necessary personnel, including counsel and experts, and incur expense to defend such frivolous claims; and
> f. they submitted false and fraudulent documents, pursuant to the penalties of Pennsylvania law regarding unsworn falsification to authorities, which overstated the costs associated with the repairs of the home, as well as intentionally false and fraudulent testimony before the jury and the trial court at trial in June of 2003.

(Complaint filed September 14, 2004, ¶27). The Scalias filed an answer to Erie's complaint on October 21, 2005 denying all claims for relief and raising in their new matter the affirmative defenses of estoppel, statute of limitations and waiver, among others.[5] Erie then filed this motion for summary judgment.

Discussion

Pennsylvania Rule of Civil Procedure 1035.2 provides:

> After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law
> 1. whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or
> 2. if, after completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

The court in considering Erie's motion must view the record in the light most favorable to the Scalias as the nonmoving party and all doubts as to the existence of a genuine issue of material fact must be resolved against Erie. Albright v. Albington Memorial Hospital, 696 A.2d 1159 (Pa. 1997).

It is Erie's position that all its current theories of recovery and claims for damages were fully litigated in its favor on the merits in the first case when the jury, by relieving Erie of its duty to pay under the policy, in effect found the Scalias themselves had breached the contract. Erie contends that all facts relevant to its current claims have been conclusively determined by the verdict, this court's two earlier Opinions and the Superior Court's 2005 Opinion, leaving no remaining factual disputes which require a trial as to either liability or damages under any of the four counts in the instant complaint.

In support of the contention that it is entitled through this motion to the $171,920.17 it paid to the mortgagee after the July 1, 1998 fire, Erie points to paragraph 10 of the policy entitled "Mortgage Clause" which states Erie will "protect the mortgagee's interests in an insured building. This protection will not be invalidated by any act or neglect of anyone we protect, any breach of warranty, increase in hazard, change of ownership, or foreclosure if the mortgagee has no knowledge of these conditions..." The import of this provision, which is a standard mortgagee clause, is that regardless of who set the July 1, 1998 fire, Erie was bound to pay the amount of the property damage to the mortgagee so long as the mortgagee had no knowledge of nor was involved in the fire. Erie paid Allfirst Bank $171,920.17 in accordance with this provision. "An insurer who denies liability to the insured that pays the mortgagee pursuant to the mortgagee clause of a fire policy may bring an action against the insured to cover the debt...An insurer is also entitled to recover the money it paid to the insured under the policy, if it is later determined that the insured violated the fraud and concealment provision of the insurance contract." Parasco v. Pacific Indemnity Co., 920 F.Supp. 647, 657 (E.D.Pa. 1996); Taylor v. Seckinger, 184 A.2d 317, 319 (Pa.Super. 1962).

Although we agree with Erie about the purpose and effect of a standard mortgagee clause, this does not end our analysis. The existence of such a clause merely furnishes the basis for Erie to bring this suit. It does not resolve the question of whether Erie is entitled to summary judgment as to all theories of recovery and damages sought in the complaint.

The Scalias concede the jury found they failed to prove Erie breached its obligation to pay their full claims under the policy. However, they maintain that since it is impossible to discern from the verdict slip the specific basis or bases for the jury's decision, the damages now sought by Erie pursuant to its four theories of recovery cannot be awarded by way of a motion for summary judgment. When, how and why the Scalias voided the policy is an issue of fact and is key to determining what if any damages were incurred by Erie after that point.

It is possible the jury found the Scalias were responsible for the fire. If so, they first breached the contract on July 1, 1998 and Erie would be entitled to recover the costs of the investigation aimed at proving the fire was intentionally set. Erie would also be entitled to recover the living expenses it paid to the Scalias up until the June 18, 1999 denial-of-benefits letter, as well as forensic accounting fees during that 11-month period and during trial defense preparations. Furthermore, Erie might also be entitled to recover from the Scalias the balance remaining on the mortgage at the time of the fire by way of the claim of unjust enrichment under the theory the Scalias should not be allowed to benefit from setting the fire by being relieved of their obligation to Allfirst Bank. Assuming the jury would find the Scalias set the fire, none of these costs would have been incurred by Erie had the home not been damaged by arson. However, in order to recover these costs by way of summary judgment, Erie must show there is no factual dispute about who set the fire. The problem this presents for Erie is that this court cannot assume the jury found the Scalias committed arson. Neither Mr. nor Mrs. Scalia were later prosecuted for arson even though fire investigators determined the fire was intentionally set, a fact stipulated to by the Scalias in the first civil case.

It is also possible the jury found the Scalias committed fraud beginning on the date of the fire through their deliberately false statements about their finances. Those statements required Erie to incur

costs to further investigate this matter between July 1, 1998 and the June 18, 1999 denial letter. Because the Scalias then filed suit, any continuing fraud they committed required Erie to hire accounting experts to testify at the trial in order to show they deliberately lied and/or concealed their poor financial condition and continued to do so up through the time of trial. None of those costs would have been necessary absent this conduct, which constituted both fraud and breach of the contract by way of fraud.

It is further possible the jury found the Scalias knowingly submitted improper repair bills shortly before trial. This conduct constituted fraud and breach of contract by way of fraud. The Scalias argue that if this conduct alone was the basis for the verdict, they did nothing to void the policy until they submitted these bills to Erie in discovery shortly before the trial. While this scenario may limit the Scalias' liability to these bills, the fact is that Mrs. Scalia pled guilty to fraud in connection with those bills amounting to approximately $14,000. Her conviction now precludes her from re-litigating the issue of whether she committed this fraud and is grounds for this court to grant in part Erie's motion for summary judgment. Harter v. Reliance Insurance Co., 562 A.2d 330 (Pa.Super. 1989). The only question for a jury on this point is the amount of damages Erie is entitled to recover stemming from this particular fraud. Using a verdict slip with a special interrogatory, a jury can decide how much of Erie's investigation costs in the first civil suit were devoted to determining that $14,000 was the amount improperly billed and the counsel fees expended to present this issue to that jury.

We have examined the case of Parasco v. Pacific Indemnity Co., supra, and find it instructive as to whether Erie is otherwise entitled to summary judgment. In that case, the insured's home was destroyed by fire and he made a claim under his homeowners' policy. The insurer's investigation revealed the fire had been intentionally set by the insured and his claim was denied. The insured filed suit alleging, among other claims, breach of contract and bad faith. The insurer filed a counterclaim for all benefits payments already made and also for its investigation costs. The insurer then moved for summary judgment as to the insured's claims and the counterclaims. The court granted the motion (in part) because the record developed in discovery unequivocally showed the insured intentionally and under oath misrepresented the state of his finances before the fire by forging documents and by other conduct, thereby voiding the policy and relieving the insurer of its obligation to pay his claim. The policy stated the insurer was not obligated to pay where the insured intentionally concealed or misrepresented any material fact relating to the policy before or after a loss.

The record before the Parasco court was clear that the insured obtained the home and insurance coverage by using fraudulent financial statements and engaged in other such conduct even before the fire occurred and also afterward. Parasco differs from the instant case because how and when the Scalias breached the contract and/or voided the policy cannot be conclusively known from the jury's verdict. Therefore a material, factual question remains as to the Scalias' liability under each theory of recovery and, by extension, the damages which may be rightfully recovered by Erie.

It occurred to the court at oral argument that the doctrines of res judicata and/or collateral estoppel may be relevant to this matter even though neither counsel addressed those doctrines in written argument on this motion.[6] Under res judicata, "an existing final judgment rendered on the merits, is conclusive of causes of action and of facts and issues thereby litigated, and also of those issues that could have been litigated in the first suit but were not, between parties of the first suit and their privies." Harter v. Reliance Insurance Co., 562 A.2d 330, 335 (Pa.Super. 1989), citing Day v. Volkswagenwerk, 464 A.2d 1313 (Pa.Super. 1983). Collateral estoppel bars an issue from being raised where: (1) the issue is identical to one which was presented in a prior case; (2) there has been a final judgment on the merits of the issue in the prior case; (3) the party against whom collateral estoppel is asserted was a party in, or in privity with a party in, the prior action; (4) the party against whom the doctrine is asserted, or one in privity with the party, had a full and fair opportunity to litigate the issue in the prior proceeding, and (5) the determination in the prior proceeding was essential to the judgment. Hopewell Estates, Inc. v. Kent, 646 A.2d 1192 (Pa.Super. 1994).

The purpose of these doctrines is to minimize the judicial energy diverted to individual cases, establish certainty and respect for court judgments, and protect the party relying on the prior adjudication from vexatious litigation. Dempsey v. Cessna Aircraft Co., 653 A.2d 679 (Pa.Super. 1995). In deciding whether the doctrines apply, the essential inquiry is whether the ultimate and controlling issues have been decided in a prior proceeding in which the present parties actually had the reasonable opportunity to appear and assert their rights. Id. Of key importance is whether the judgment reached was final on the merits and this is determined by examining the entire record, the pleadings and the evidence presented with a view toward establishing exactly what the fact-finder decided. Where it is impossible to discern what the jury's decision was based on, such as where a general verdict is rendered and the court has instructed on several issues, the prior litigation does not clearly resolve the critical issue and collateral estoppel cannot be applied. Harter, supra; Black Top Paving v. Equimark Commercial Finance, 35 D&C 3d 462 (1985).

In Harter, the insured owned a property which was destroyed by fire. She was indicted in federal court for two counts mail fraud (and three other counts). Included in the mail fraud charges was an allegation she had caused the fire to be set. However, she was never charged with arson in Pennsylvania and arson was not an element of any of the federal charges. The jury returned a general verdict of guilty on all five charges. The insured then filed a civil action to recover proceeds under the policy. The trial court in a non-jury trial, granting a directed verdict in the insurer's favor, held the general verdict of guilty in the criminal case established conclusively the insured was responsible for setting the fire and barred her from recovering under the policy. The court also found the jury verdict conclusively established her liability to the insurer on its counterclaim for the balance of the outstanding mortgage and interest.

The Superior Court reversed. Pennsylvania law prohibits an insured who has been convicted of arson from recovering under any policy related to the fire. However, the mail fraud indictment did not include a charge of arson and alleged several theories upon which the jury could properly have found her guilty of mail fraud and still conclude she had no role in causing the fire. The jury's return of a general verdict on all five counts required the trial court to examine the entire record of the criminal case to discern what precise facts had been proven which supported her conviction. The burden was on the insurer to present the court with the record of the criminal case in order show that part of Harter's conviction was a finding she was guilty of arson.

The Superior Court found after reviewing the record of the criminal case that the arson allegation was not a necessary condition to the jury's verdict of guilty on the mail fraud charge and therefore the insurer could not rely on the mail fraud conviction as conclusive evidence of Harter's involvement in causing the fire. On the other hand, the insurer was free to present at the new civil trial any evidence it had showing Harter's responsibility for the fire.

Harter is instructive here because this court is likewise unable to discern the basis or bases for the jury's verdict. Applying res judicata as that court did, the "facts and issues" pertaining to the July 1, 1998 arson were "litigated" in the first civil action only in the sense that Erie presented evidence to the jury in its effort to prove the Scalias set the fire. However, the ultimate outcome of that presentation was inconclusive because of the wording of the verdict slip. Likewise with regard to collateral estoppel, there was a final judgment in the first civil action only in the sense that the jury found Erie did not breach the contract, but there was no final judgment as to whether or not the Scalias committed arson. This is significant because it was an act of arson which damaged the property and triggered Erie's duty to pay Allfirst the balance of the mortgage. Without the arson, Erie would not have incurred that cost and would not now be trying to recoup it from the Scalias. The ambiguity in the verdict means that, with the exception of the fraudulent claim for home repair costs and expenses unrelated to the fire, Erie cannot rely on either res judicata or collateral estoppel to prevail on this motion for summary judgment.

ORDER OF COURT

Now this 15th day of May 2007, upon review and consideration of the plaintiff's motion for summary judgment, the defendants' answer, the record of the prior litigation between the parties docketed to A.D. No. 1999-20339, the written and oral arguments of counsel and the relevant law, the court hereby grants the motion in part and denies the motion in part. The court grants the motion to the extent that there is no genuine issue of material fact as to whether Serena Scalia committed insurance fraud by over-billing the plaintiff by approximately $14,000 insofar as she was convicted of insurance fraud on February 18, 2004. The court denies the motion with regard to the plaintiff's remaining claims against the defendants.

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[1] Policy #Q580704176H, attached as exhibit A to the instant complaint filed by Erie on September 14, 2004.

[2] Franklin County Docket No. A.D. 1999 - 20339.

[3] The Honorable John R. Walker, President Judge of this Judicial District, presided over Mrs. Scalia's plea and sentencing hearings.

[4] Erie's 2004 complaint also sought $48,455 in attorney fees incurred in defending the 1999

suit in the event the Superior Court reversed this court's award of such fees. This claim has become moot since the appellate court affirmed the award.

[5] The Scalias filed their answer following a decision issued on September 29, 2005 in which we overruled their preliminary objections.

[6] We note "estoppel" was listed by the Scalias as an affirmative defenses to the complaint, though this was done only in general terms with no factual details or reasoning provided. Pa.R.C.P. 1030, 1032.