IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

NATHAN KEELER and COURTNEY KEELER, *husband and wife*,	)	
	)	Civil Action No. 20-271
Plaintiffs,	)	Chief District Judge Mark R. Hornak
	)	Magistrate Judge Maureen P. Kelly
v.	)	
	)	Re: ECF Nos. 34 and 38
ESURANCE INSURANCE SERVICES, INC. ESURANCE INSURANCE COMPANY, ESURANCE, and ESURANCE, INC.,	)	
	)	
Defendants.	)	

REPORT AND RECOMMENDATION

I. RECOMMENDATION

Presently before the Court are the parties' cross-motions for summary judgment seeking to resolve breach of contract and insurance bad faith claims asserted by Plaintiffs Nathan Keeler and Courtney Keeler (the "Keelers") against Defendant Esurance Insurance Services, Inc. ("Esurance") for failing to pay underinsured motorist coverage ("UIM") benefits. For the following reasons, it is respectfully recommended that the Court grant the Motion for Summary Judgment filed on behalf of Esurance, ECF No. 38, and deny the Motion for Partial Summary Judgment filed by the Keelers, ECF No. 34.

II. REPORT

A. FACTUAL BACKGROUND

This lawsuit arises out of an accident that occurred on June 6, 2019, when Nathan Keeler was riding his motorcycle on Route 910 in West Deer Township, Pennsylvania, and another driver failed to yield the right of way and struck him. ECF No. 32 ¶ 1. It is undisputed that Nathan Keeler sustained serious injuries and that the other driver was solely at fault for causing the accident. Id.

¶¶ 5, 6. It is also undisputed that at the time of the accident, Nathan Keeler was insured under a motor vehicle insurance policy issued by Esurance. Id. ¶ 21. Because the tortfeasor's bodily injury liability coverage did not fully compensate the Keelers, they presented a UIM claim to Esurance. Id. ¶ 14. Esurance denied coverage, claiming that Nathan Keeler did not purchase UIM benefits when he first obtained the policy and did not add UIM coverage with any subsequent renewal. Id. ¶ 15 – 18. Esurance also disputed the application of the Pennsylvania's Motor Vehicle Financial Responsibility Law ("MVFRL"), 75 Pa. C.S.A. § 1701 *et seq.* to motorcycles. Id. ¶ 24-27.

The Keelers contend that Esurance's UIM rejection form does not comply with the MVFRL because statutorily required language is not printed in a prominent font or location in their policy. ECF No. 35 at 8. Thus, they argue, in accordance with the MVFRL, the rejection form is void and UIM benefits must be provided in an amount equal to their bodily injury liability coverage. Separately, the Keelers assert that Esurance's policy renewal forms omit a required reminder notice that the policy does not provide UIM benefits. The Keelers contend that because of this lapse, Esurance must provide UIM coverage. Id. at 12.

Esurance no longer challenges whether the MVFRL applies to motorcycles but contends that its UIM rejection form complies with Pennsylvania law. Thus, when Nathan Keeler signed the form, he validly rejected UIM protection and cannot reform the policy to recover the disputed coverage. ECF No. 39 at 2, 4. As to policy renewals, Esurance concedes that its form lacks language required by the MVFRL to inform policyholders that UIM coverage is not provided. Id. at 6. Esurance asserts that despite this lapse, the Keelers may not recover damages because "the legislature has not provided any remedy." Id. at 11. Esurance also seeks judgment in its favor as to the Keelers' bad faith claim because it acted reasonably and in good faith given Nathan Keeler's affirmative rejection of UIM benefits. Id. at 7-11.

B. PROCEDURAL HISTORY

On February 6, 2020, the Keelers commenced this action in the Court of Common Pleas of Allegheny County with the filing of a two-count Complaint alleging claims for breach of contract and insurance bad faith pursuant to 42 Pa. C.S.A. § 8371. Based on diversity jurisdiction, Esurance removed the action to this Court and filed a Motion to Dismiss for failure to state a claim. ECF Nos. 1, 4. The Motion to Dismiss was denied because Esurance acknowledged that its policy renewal notices did not include language expressly required by 75 Pa. C. S. § 1731(c.1), and because Esurance prematurely placed at issue a factual dispute as to whether "a 'reasonable person' reading the renewal notice would have figured out that the renewed policy did not include UIM coverage." ECF No. 12. Discovery has concluded, and the parties have filed a Joint Concise Statement of Material Facts, as well motions for summary judgment, briefs in support and in opposition thereto, and reply briefs, ECF Nos. 32, 34, 35, 36, 38, 39, and 41-44. Esurance also filed an expert report as to the issue of bad faith, and both parties have filed appendices with discovery materials. ECF Nos. 33, 37, and 40. The cross-motions are now ripe for disposition.

C. STANDARD OF REVIEW

Rule 56 of the Federal Rules of Civil Procedure provides that: "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). An issue of material fact is in genuine dispute if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); see also Doe v. Abington Friends Sch., 480 F.3d 252, 256 (3d Cir. 2007) ("A genuine issue is present when a reasonable trier of fact, viewing all of the record evidence, could rationally find in favor of the non-moving party in light of his burden of proof"). Thus, summary judgment is

warranted where, "after adequate time for discovery and upon motion ... a party ... fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Marten v. Godwin, 499 F.3d 290, 295 (3d Cir. 2007) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986)).

The moving party bears the initial burden of demonstrating to the court that there is an absence of evidence to support the non-moving party's case. Celotex, 477 U.S. at 322; see also Conoshenti v. Pub. Serv. Elec. & Gas Co., 364 F.3d 135, 140 (3d Cir. 2004). "[W]hen the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.... Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." Scott v. Harris, 550 U.S. 372, 380 (2007) (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986)) (internal quotations omitted). When presented with cross-motions for summary judgment, "the court construes facts and draws inferences in favor of the party against whom the motion under consideration is made." J.S. ex rel. Snyder v. Blue Mountain Sch. Dist., 650 F.3d 915, 925 (3d Cir. 2011)(internal quotation marks omitted).

C. DISCUSSION

The MVFRL requires insurance companies issuing a policy in Pennsylvania to provide to uninsured motorist ("UM") and UIM coverage in an amount equal to the policy's bodily injury limit coverage. 75 Pa. C.S.A. § 1731(a). "The MVFRL explains that UIM coverage 'must provide protection for persons who suffer injury arising out of the maintenance or use of a motor vehicle and are legally entitled to recover damages therefor from owners or operators of underinsured motor vehicles." Ford v. American States Ins. Co., 154 A.3d 237, 244 (Pa. 2017). Policyholders may reject this coverage; however, the first named insured must sign a written rejection form using

specific language set forth in §1731(c) of the MVFRL "to demonstrate a knowing and voluntary waiver." Gibson v. State Farm Mutual Auto. Ins. Co., 994 F.3d 182, 186-87 (3d Cir. 2021). To that end, the MVFRL provides that:

> Insurers shall print the rejection forms required by §§ 1731(b) [relating to uninsured motorist protection coverage] and (c) [relating to underinsured motorist protection coverage] on separate sheets in prominent type and location. The forms must be signed by the first named insured and dated to be valid. The signatures on the forms may be witnessed by an insurance agent or broker. Any rejection form that does not specifically comply with this section is void. If the insurer fails to produce a valid rejection form, uninsured or underinsured coverage, or both, as the case may be, under that policy shall be equal to the bodily injury liability limits. On policies in which either uninsured or underinsured coverage has been rejected, the policy renewals must contain notice in prominent type that the policy does not provide protection against damages caused by uninsured or underinsured motorists. Any person who executes a waiver under subsection (b) or (c) shall be precluded from claiming liability of any person based upon inadequate information.

75 Pa. C.S.A. § 1731(c.1). Through the pending motions, the parties dispute the validity of Esurance's UIM rejection form and the availability of a remedy for a noncompliant policy renewal notice. In addition, the parties dispute whether Esurance is entitled to judgment in its favor as a matter of law as to the Keeler's claim for bad faith. The Court addresses each argument in order.

1. Breach of Contract – Invalid Rejection of UIM Coverage

"In order to prevail on a breach of contract claim pursuant to Pennsylvania law, a plaintiff must establish: (1) the existence of a contract; (2) a breach of a duty imposed by the contract; and (3) damages caused by the breach." Ins. Co. of Greater New York v. Fire Fighter Sales & Serv. Co., 120 F. Supp. 3d 449, 456–57 (W.D. Pa. 2015). As relevant here, applicable statutory provisions of insurance law are deemed incorporated into insurance contracts. Coolspring Stone Supply, Inc. v. Am. States Life Ins. Co., 10 F.3d 144, 148 (3d Cir. 1993) (citing Neel v. Williams, 45 A.2d 375, 377 (Pa. Super. 1946) ("statutory requirements, whether imposed specifically or by necessary implication, become part of the assumed contractual liability"); Santos v. Ins. Placement

Facility of Pa., 626 A.2d 1177, 1179 (1993) ("pertinent statutory provisions of Pennsylvania insurance law are deemed incorporated into insurance policies")). Thus, the requirements of Section 1731(c) of the MVFRL are incorporated as terms of the Keelers' Esurance policy. The Keelers argue that pursuant to Section 1731(c.1), the issuance of an invalid rejection form entitles them to UIM protection. Because Esurance denied the Keelers' UIM claim, it has breached the insurance contract. ECF No. 1-1 (Count I) .

Esurance counters that it is entitled to judgment as a matter of law as to the Keelers' breach of contract claim because Nathan Keeler clearly and unambiguously rejected UIM coverage in accordance with § 1731(c). ECF No. 39. The Esurance policy includes a separate "Pennsylvania Underinsured Motorist Coverage Selection/Rejection" form dated May 10, 2017, and e-signed by Nathan Keeler. ECF No. 37-1. The parties do not dispute that the paragraph setting forth Nathan Keeler's rejection of UIM protection tracks the language required by the MVFRL and that a separate signature line appears directly below to document a specific intentional rejection of UIM coverage.

To avoid an apparent rejection of UIM protection, the Keelers ask the Court to conclude that the Esurance form is void due to the placement, font, and type size of the UIM rejection language. ECF No. 35 at 8-9; ECF No. 44 at 4-5. The Keelers point to the sandwiching of the rejection provision on a page between three other options related to (1) the affirmative selection of UIM protection, (2) the acceptance or rejection of stacking UIM coverage, and (3) an acknowledgment that the insured's coverage elections will apply to future policies unless the insured notifies Esurance in writing that a change is desired. Id., and see ECF No. 32-2. The Keelers contend that Esurance has thus obscured the visibility and minimized the importance of

rejecting UIM coverage and thus violated the MVFRL. Under these circumstances, UIM coverage must be provided in an amount equal to the Keelers' bodily injury liability limits. Id.

The Pennsylvania Supreme Court has rejected claims predicated upon either the presence of additional paragraphs related to stacking UIM benefits or *de minimis* deviations from statutorily mandated language, so long as any provision for the rejection of UIM coverage is immediately followed by the insured's signature. See Winslow-Quattlebaum v. Maryland Ins. Group, 752 A.2d 878, 882 (Pa. 2000); Ford v. American States Ins. Co., 154 A.3d at 245-46; see also Robinson v. Travelers Indem. Co., 520 F. App'x. 85, 89 (3d Cir. 2013) (finding additional language allowed where it does not come between the language specified in § 1731(c) and a signature and date line); *cf.* Jones v. Unitrin Auto and Home Ins. Co., 40 A.3d 125, 131 (Pa. Super. 2012) (holding waiver void where the additional language is placed after the mandatory language, but before the signature and date line).

In Winslow-Quattlebaum, the insurer's UIM rejection form included language related to selecting or rejecting stacking UIM coverage limits. The Pennsylvania Supreme Court determined that beyond mandating a separate form for the rejection of UM coverage, the MVFRL does not also require that UIM rejection language stand alone on a separate piece of paper from any other election or rejection of coverage. Rather, to be valid, "the UIM rejection must appear on a sheet separate from the UM rejection; the first named insured must sign the rejection; and the rejection must be dated." Winslow-Quattlebaum, 752 A.2d 882. The Pennsylvania Supreme Court's conclusion of the validity of the insured's rejection of UIM protection was buttressed because she "specifically signed in the two designated blanks on the form thereby rejecting *both* UIM coverage and UIM stacking coverage. Thus, there can be no mistake that she signed off on both." Id. at 882 *n.* 8 (emphasis in original).

The Keelers argue that this otherwise compelling state court decision hinged on guidance since rescinded by the Pennsylvania Insurance Department. ECF No. 35 at 12. Thus, they contend, Winslow-Quattlebaum has little bearing on their claim. The Court is not so persuaded.

Through 31 Pa. Code § 68.103(b), the Insurance Department mandated the use of specific language to reject UIM coverage. Winslow-Quattlebaum, 752 A.2d at 882. This regulation also provided that UM coverage must be sold separately from UIM coverage and required that an insured "be given an opportunity to waive UM coverage *separately from waiver of UIM* coverage." Id. (emphasis in original).

> [T]he Insurance Department explained its later deletion of Chapter 68 as follows:
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> > The original intent of the statements of policy was to notify the insurance industry of the Department's position regarding changes to 75 Pa.C.S. Chapter 17 (relating to the Motor Vehicle Financial Responsibility Law) (act). Both the passage of time and examination of market practices have led to the adoption of the statements of policy as standard industry practice, thereby making the statements of policy obsolete. Additionally, significant portions of the statements of policy are now moot as they related to rate and form filings to be made with the Department by 1990.
> >
> > * * *
> >
> > Chapter 68, Subchapter B is being deleted because these provisions are redundant and unnecessary as they are sufficiently addressed within the act....
>
> 29 Pa. B. 4076. Therefore, upon reserving the relevant portions of Chapter 68, the Insurance Department notes that all pertinent information is contained within the MVFRL. See id.

Am. Int'l Ins. Co. v. Vaxmonsky, 916 A.2d 1106, 1110 n.7 (Pa. Super. 2006). Thus, the deletion of former 31 Pa. Code § 68.103 does not impact the holding in Winslow-Quattlebaum, and a rejection form is not invalidated because it includes other UIM-related coverage provisions. Nearly two decades later, the Pennsylvania Supreme Court in Ford confirmed that a UIM rejection form

that "differs from the statutory form in an inconsequential manner ... will be construed to specifically comply with Section 1731 of the MVFRL." 154 A.3d at 245. It is only where the form modifies coverage or injects ambiguity into the statutory form that a rejection form will be void. Id.

This brings us to the Esurance form and the Keelers' contention that the UIM rejection is not "in prominent type and location," and thus is ambiguous. ECF No. 35 at 14-15. In Catania v. Zurich Am. Ins. Co., No. CV 13-1278, 2015 WL 11112058, at *2 (W.D. Pa. Mar. 24, 2015), United States District Judge Cathy Bissoon held that where rejection of UIM coverage appeared on the same page as the rejection of UIM-related stacking, "[d]efendant's failure to capitalize the rejection notice caption did not void the rejection. The caption was in bold print and located at the top of the page, and thus satisfied the requirement in § 1731(c.1) that the rejection forms be 'in prominent type and location.'" Id. (citing Estate of Franks v. Allstate Ins. Co., 895 F. Supp. 77, 81 (M.D. Pa. 1995) (when the caption was at the top of the page in bold print and set forth in easily legible print, the rejection form complied with the "prominent type and location" language of § 1731(c.1)).

Here, the Esurance rejection form is titled "**UNDERINSURED MOTORIST COVERAGE SELECTION/REJECTION**" and the language related to rejection of UIM coverage follows the caption "**REJECTION OF UNDERINSURED MOTORIST PROTECTION**." ECF No. 32-2 (bold and underlined type in original). While the statutorily required language below the title of each paragraph is printed in the same type as the other, non-capitalized language on the form, this does not render the rejection ambiguous nor establish that the rejection is not "in prominent type and location." There may be instances when the inclusion of other contract provisions may violate the requirement that the rejection of UIM coverage appear

in a prominent location, but that is not the case here. The form at issue, with bold uppercase headings, underlining, and separate signature lines for each UIM-related coverage option, eliminates any doubt that Nathan Keeler knowingly rejected UIM coverage, that consistent with his rejection of UIM coverage, he did not elect stacking, and that he confirmed his understanding that any later decision to change coverage must be made in writing. Id. Under these circumstances, reformation of the contract to provide UIM benefits is not warranted and the Keeler's breach of contract claim fails as a matter of law.

2. Policy Renewal

The Keelers separately claim that they are entitled to judgment as a matter of law because Esurance's annual renewal forms did not set forth a notice required by Section 1731(c.1) that the Keelers' policy does not provide UIM coverage. ECF No. 35 at 15. Esurance concedes that its renewal forms omit required language but contends that judgment in its favor is warranted because no remedy exists for violating this particular provision of the MVFRL. ECF No. 39 at 5.

Upon review, the Court finds that the absence of a remedy for renewal form violations has long been recognized by Pennsylvania state and federal courts as a bar to recovery. In Franks, *supra*, it was "beyond dispute" that the insurer's renewal forms violated § 1731(c.1) because no notice was provided that there was no UIM coverage under the policy. Franks, 895 F. Supp. at 81. The district court found that § 1731(c.1) expressly sets forth a remedy when a UIM coverage rejection form is void but "nowhere does the subsection provide that failure to print the renewal notice as described renders the rejection void, nor does it state that when the insurer fails to print the renewal notice as described, the insured is deemed to have uninsured or underinsured motorist coverage in any amount. In other words, the subsection provides a specific remedy for an invalid rejection form, but does not provide for a remedy for an improper renewal notice." Id. at 82. The

district court found that this result was intended by the Pennsylvania legislature, given that it "provided a specific remedy to the insured in one instance and, in the same subsection, failed to provide any remedy…." Id. Further, the required renewal language was not "mere surplusage" as argued by the insured but, under 75 Pa. C.S.A. § 1705(b), was a "regulatory provision to be enforced by the Insurance Department," and "does not provide a remedy to a private litigant." Id.

Similarly, in Maksymiuk v. Maryland Cas. Ins. Co., 946 F. Supp. 379, 382 (E.D. Pa. 1996), the district court held that "[s]ince neither renewal forms nor their required notice are 'rejection forms,' they are not covered by the remedial provision of § 1731(c.1) by its plain language. It is also quite telling that the remedial provision, referring to 'rejection forms,' comes after the provisions stating requirements for these forms themselves, but before the requirement that notice be contained on renewal policies. This also tends to show that, by the plain language of the statute, the remedial provision refers to the former but not the latter." Id.

In Salazar v. Allstate Ins. Co., 702 A.2d 1038 (Pa. 1997), the Pennsylvania Supreme Court cited Franks and Maksymiuk favorably for the proposition that the Pennsylvania legislature opted not to afford a remedy for certain violations of the MVFRL:

> We find persuasive the argument raised by Appellee that under the reasoning employed by the federal district court in Franks and Maksymiuk, there is no remedy provided by the MVFRL for the Appellants here.
>
> The issue in these federal district court cases was not the same issue which we address herein, but was a related issue. The insured in Franks was killed in an automobile accident, and his estate subsequently sought to recover UIM benefits under his policy. The insured in Franks had executed waivers of underinsured motorist (UIM) protection in his original policy application, but the insurer failed to comply with the requirements of section 1731(c.1) when it failed to provide the insured with a notice at the time of renewal that there was no UIM coverage under his policy. The federal district court for the Middle District of Pennsylvania concluded in Franks that the insurer had unquestionably violated the requirements of section 1731(c.1); in so concluding, the Franks court did not discuss the insured's knowledge at the time of renewal, but only that the insurer failed to comply with the mandates of the MVFRL. The federal district court then turned to the remedy,

> if any, which was provided by the MVFRL to the insured's estate for the insurer's failure to comply with the requirements of section 1731(c.1) at the time of renewal. The Franks court concluded that there was no remedy for the insured's estate provided under the MVFRL, and that to provide UIM benefits under the policy would be to create a remedy by improperly reforming the contract.
>
> The federal district court for the Eastern District of Pennsylvania in Maksymiuk addressed the question of whether an insured who had signed a valid waiver of UM benefits at the time of application for original coverage, and whose insurer failed to provide notice of the absence of UM coverage in the policy renewal forms in compliance with section 1731(c.1), could receive UM benefits coverage by operation of law because of the insurer's failure to comply with section 1731(c.1). Relying upon Franks, the Maksymiuk court concluded that the insured could not recover UM benefits, as the MVFRL provides no remedy for insureds in such a situation.
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> We find the analysis of whether there exists a remedy for an insurer's failure to comply with the requirements of section 1731(c.1) regarding renewal of insurance policies in Franks and Maksymiuk is equally persuasive as to an insurer's failure to comply with the requirements of section 1791.1 regarding the renewal of such policies. While we recognize that section 1791.1 requires that an insurer must provide specific information to the insured at the time of renewal, the legislature has not provided in the MVFRL any enforcement mechanism regarding this requirement.

Salazar, 702 A.2d at 1044. Thus, the Court is compelled to find that although Esurance violated § 1731(c.1) by issuing a noncompliant renewal notice, no remedy exists. Resort to reformation of the insurance policy may not provide unauthorized relief in the form of UIM coverage or otherwise. See, e.g., Franks, 895 F. Supp. at 82. In the absence of "damages" stemming from an alleged breach of contract, entry of judgment as matter of law in favor of Esurance as to Count I of the Complaint is warranted.

3. Bad Faith

The Keelers allege that Esurance has violated Pennsylvania's insurer bad faith statute, 42 Pa. C.S.A. § 8371, by denying coverage and otherwise failing to timely and properly resolve their UIM claim. ECF No. 1-1 at 17-21. Under § 8371, an insurer that acts in bad faith is liable for:

(1) "interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%"; (2) "punitive damages against the insurer"; and (3) "court costs and attorney fees against the insurer."

"To prevail on a bad faith claim, the insured must demonstrate 'by clear and convincing evidence, (1) that the insurer did not have a reasonable basis for denying benefits under the policy and (2) that the insurer knew or recklessly disregarded its lack of a reasonable basis in denying the claim.'" Gibson, 994 F.3d at 191 (quoting Rancosky v. Wash. Nat'l Ins. Co., 170 A.3d 364, 377 (Pa. 2017)). "The evidentiary burden on a plaintiff opposing a summary judgment motion is 'commensurately high.' By contrast, all that is needed to defeat a claim of bad faith under § 8371 is evidence of a reasonable basis for the insurer's actions or inaction." Id. (internal citation omitted). This hurdle proves insurmountable for the Keelers.

Esurance contends that it is entitled to the entry of summary judgment because it had an objectively reasonable basis to deny coverage based on Nathan Keeler's valid rejection of UIM benefits. ECF No. 39 at 8-9. Esurance points to evidence of its consistent and frequent communication with the Keelers or their counsel that UIM coverage was unavailable, as well as evidence that it took the added precaution of confirming its position through independent coverage counsel. Id. at 9-10. Thus, despite what Esurance characterizes as imperfect claims handling or its claims adjustor's initial bad judgment in interpreting the law, Esurance contends that its conduct does not amount to bad faith as defined by Pennsylvania law because the result was reasonable and correct. Id.

The Keelers respond that summary judgment is not warranted given evidence demonstrating the lack of care and disregard shown by Esurance's claim adjustor. ECF No. 42 at 7-16. The Keelers point to the adjustor's immediate denial of coverage based solely on his cursory

review of the policy declarations page which (correctly) reflected that the policy did not provide UIM protection. The Keelers contend this is evidence of recklessness because the adjustor was unaware of Pennsylvania's MVFRL requirements, had limited experience with UIM claims, and was not authorized to make a coverage decision on his own given the amount at issue. Id. at 7-10. He also failed to timely provide requested copies of the policy, signed Esurance Rejection Form, and policy renewal documentation, and did not directly respond to requests three and four months after the accident that Esurance waive any subrogation rights and consent to the Keelers' settlement with the tortfeasor. Much of this conduct is alleged to have violated Esurance's Best Practice Manual. Id. at 7-16.

The Court is not persuaded that this evidence, construed in the light most favorable to the plaintiffs as the non-moving parties, supports a bad faith claim given that Nathan Keeler executed a valid form rejecting UIM benefits and Esurance acted upon that rejection by consistently denying coverage. This result is unaltered by the concededly noncomplying renewal forms because applicable Pennsylvania law precludes reformation of the policy to provide coverage in this case. Esurance therefore had an objectively reasonable basis to deny coverage.

Under similar circumstances in Catania, this Court dismissed with prejudice the plaintiff's bad faith claim. 2015 WL 11112058, at *2 ("Given that Defendant secured valid rejections from Schwebel under the MVFRL, it did not have a contractual obligation to provide UM or UIM benefits under the Zurich Policy. As such, Catania cannot state a claim ... for breach of contract based on Defendant's failure to pay such benefits. Likewise, [the] valid rejection forms preclude Catania from stating a claim ... for bad faith based on Defendant's failure to pay the same benefits. See Keefe v. Prudential Prop. & Cas. Ins. Co., 203 F.3d 218, 225 (3d Cir. 2000) ("[I]n order to recover under a bad faith claim, a plaintiff must show ... that the defendant did not have a

reasonable basis for denying benefits under the policy.")). Accordingly, Esurance is entitled to summary judgment in its favor as to the Keelers' bad faith claim.

D. CONCLUSION

For the foregoing reasons, it is respectfully recommended that the Court grant the Motion for Summary Judgment filed on behalf of Esurance, ECF No. 38, and deny the Motion for Partial Summary Judgment filed by Keller, ECF No. 34.

In accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Local Rule 72.D.2, the parties are permitted to file written objections in accordance with the schedule established in the docket entry reflecting the filing of this Report and Recommendation. Failure to timely file objections will waive the right to appeal. Brightwell v. Lehman, 637 F.3d 187, 193 n. 7 (3d Cir. 2011). Any party opposing objections may respond to the objections within fourteen (14) days thereafter in accordance with Local Civil Rule 72.D.2.

Respectfully submitted,

Dated: July 12, 2021

/s/ Maureen P. Kelly
MAUREEN P. KELLY
UNITED STATES MAGISTRATE JUDGE

cc: The Honorable Mark R. Hornak
United States District Judge

All counsel of record by Notice of Electronic Filing