DESTINY FERTIG, Plaintiff vs. NICHOLAS KELLEY, HOWARD KELLEY, AL PAPADA, HORACE MANN INSURANCE COMPANY and/or HORACE MANN PROPERTY & CASUALTY INSURANCE COMPANY, Defendants	:	IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY CIVIL ACTION – LAW NO. 16 CV 4801

MEMORANDUM AND ORDER

NEALON, J.

Following an automobile accident, plaintiff commenced this litigation asserting claims for negligence, negligent entrustment, breach of contract, and statutory bad faith against the other driver, the family member who entrusted his vehicle to that motorist, plaintiff's insurer, and an insurance agent. Upon the close of the pleadings, the agent filed a motion for judgment on the pleadings with regard to plaintiff's four causes of action. Even if the factual allegations of the complaint are accepted as true, plaintiff has failed to state cognizable claims against the agent for negligence, negligent entrustment, breach of contract, or bad faith liability under 42 Pa.C.S. § 8371. Furthermore, the bad faith statute only governs the conduct of an "insurer" and does not apply to an insurance agent. Based

upon the plaintiff's admissions in her pleadings, the agent is entitled to judgment in his favor as a matter of law, and his motion for judgment on the pleadings will be granted.

I. FACTUAL BACKGROUND

A single plaintiff, Destiny Fertig ("Fertig"), has instituted this action against a motorist, Nicholas Kelley ("Nicholas"), the owner of the vehicle that was operated by Nicholas, Howard Kelley ("Howard"), Fertig's automobile insurance carrier, Horace Mann Insurance Company and/or Horace Mann Property & Casualty Insurance Company ("Horace Mann"), and an insurance agent, Al Papada ("Papada"). (Docket Entry No. 11 at ¶¶ 1-4, 6-8). Fertig's lawsuit arises from a motor vehicle accident involving Fertig and Nicholas that occurred on August 27, 2014, in Lehigh County. (Id. at ¶ 5). Regrettably, the complaint filed by Fertig is rife with undefined and confusing references to "defendant" and "defendants," often times using the singular and plural versions interchangeably within the same sentence, thereby making it exceedingly difficult to comprehend which defendant allegedly committed what acts that serve as the bases for the four causes of action averred in the complaint.[1] In an earlier lawsuit that was filed by

[1]Fertig's complaint is verified by her counsel, rather than Fertig. (Docket Entry No. 11 at p. 58). Pennsylvania Rule of Civil Procedure 1024 requires every pleading containing an averment of fact not appearing of record to be verified by a party unless the party lacks "sufficient knowledge or information," or is "outside the jurisdiction of the court" and that party's verification cannot "be obtained within the time allowed for filing the pleading." Pa.R.C.P. 1024(c). "In such cases, the verification may be made by any person having sufficient knowledge or information and belief and shall set forth the source of the person's information as to matters not stated upon his or her own knowledge and the reason why the verification is not made by a party." Id. An attorney may verify a pleading, but "only in those cases in which the conditions delineated in Rule 1024 are present." Monroe Contract Corp. v. Harrison Square, Inc., 266 Pa. Super. 549, 555-556, 405 A.2d 954, 958 (1979); Gonzalez v. City of Lancaster, 2002 WL 34584731, at *3-4 (Lanc. Co. 2002). The "Attorney Verification" attached to Fertig's complaint states "that Plaintiff, Destiny Fertig, were (*sic*) outside the jurisdiction of the court and the verification could not be obtained within the time allowed for filing of this pleading." (Docket Entry No. 11 at p. 58). The verification does not state whether Fertig's counsel has "sufficient knowledge or information and belief" of the facts averred in the complaint, nor does it alternatively identify "the source of the person's information as to matters not stated upon his or her own knowledge." *See* Pa.R.C.P. 1024(c).

Fertig's counsel stemming from a fatal shooting incident, we condemned this pleading practice in sustaining a defendant's demurrer, and stated:

> The recurring use of the ubiquitous term "defendants" or phrase "all defendants," coupled with the grammatical inconsistencies present throughout the complaint, make it virtually impossible to decipher the underlying factual assertions and to determine what averments apply to which defendants.

Rogers v. Thomas, 29 Pa. D. & C. 5th 544, 572 (Lacka. Co. 2013).

In Count I of the complaint, Fertig asserts a negligence claim against unnamed defendants based upon the alleged reckless and careless operation of a motor vehicle on August 27, 2014. (Docket Entry No. 11 at ¶¶ 17-27). Paragraphs 19, 21 and 22 allege duties on the part of "Defendant" to "have the vehicle under such control that it could have been stopped before doing injury," "to operate his vehicle in accordance with the rules of the road," and to comply with "75 Pa.C.S.A. § 3112 which requires the driver of a vehicle facing a steady red signal to stop at a clearly marked stop line." (Id. at ¶¶ 19, 21-22). However, in paragraphs 17-18, 20, and 23-29, she makes similar allegations concerning unidentified "Defendants" and the operation of a motor vehicle, including the alleged failure to comply with Sections 3361, 3714 and 3736 of the Motor Vehicle Code. (Id. at ¶¶ 17-18, 20, 23-29). Even those paragraphs of Count I that address the conduct of unspecified "Defendants" contain inconsistent references to a singular "Defendant" or the operation of "his vehicle." (Id. at ¶¶ 23, 26-28). Paragraph 36 sets forth redundant allegations regarding "Defendants" and the operation of an automobile in violation of the foregoing provisions of the Vehicle Code, but again includes grammatically incompatible averments concerning "Defendant's actions" and "his vehicle." (Id. at ¶¶ 36(c), (j), (l), (n), (q)-(w), (z)-(bb)). The prayer for relief at the conclusion of Count I demands

judgment "against the Defendants" in excess of the compulsory arbitration limits. (Id. at p. 10).

Fertig advances a cause of action for "negligent entrustment" in Count II of the complaint. She avers that Howard owned the vehicle that was operated by Nicholas on August 27, 2014, and that Howard "entrusted said vehicle" to Nicholas. (Id. at ¶¶ 46-47). Paragraph 49 identifies the "negligence and carelessness of Howard Kelley and/or all other Defendants" in entrusting the vehicle to Nicholas who purportedly "was an incompetent driver" and "an unsafe driver," "was incapable of operating the vehicle," and "was suffering from medical conditions that would severely impede" his ability to safely drive the vehicle. (Id. at ¶¶ 49(a)-(f)). Although Count II only alleges that Howard owned and entrusted the vehicle to Nicholas, the accompanying prayer for relief seeks judgment "against the Defendants." (Id. at p. 12).

Count III, entitled "Breach of Contract," avers the existence of an insurance "contract between Defendant, Horace Mann Insurance Company[,] and [Fertig]," which imposed a duty upon Horace Mann to pay underinsured motorist ("UIM") benefits to Fertig. (Id. at ¶¶ 51-55). Fertig contends that "Horace Mann has violated its obligations under the policy of insurance and/or insurance regulations" by failing "to offer prompt payment" of UIM benefits to Fertig and "to objectively, fairly, and reasonably investigate/evaluate [Fertig's] claim." (Id. at ¶¶ 56-58). Despite the fact that Count III merely alleges the existence of a contractual relationship between Fertig and Horace Mann, as well as Horace Mann's supposed breach of the duties created by that insurance contract, the prayer for relief at the conclusion of Count III again demands judgment "against the Defendants." (Id. at p. 13).

Count IV of the complaint ostensibly sets forth a claim for first party bad faith liability under 42 Pa.C.S.A. §8371. Twenty of the paragraphs in Count IV reference the singular "Defendant" or "Horace Mann Insurance Company" and its obligations under the insurance policy, and that insurer's alleged bad faith conduct relative to Fertig's UIM claim. (Id. at ¶¶ 65, 70, 75-84, 87-89, 91, 94-95). Although Fertig is the only named plaintiff in this case, twelve of the paragraphs in Count IV contain averments about plural "Plaintiffs," "Plaintiffs' underinsured motorist claim," "Plaintiffs' interests," "Plaintiffs' claim" and "Plaintiffs' injuries." (Id. at ¶¶ 64-65, 68, 72, 79-83, 87-89). Compounding the confusion, four paragraphs in the bad faith count generically reference "Defendants" and "the conduct of the Defendants." (Id. at ¶¶ 73-74, 92-93). To cause even further obfuscation, the prayer for relief following Count IV states that "Plaintiff, Destiny Fertig, respectfully demand (*sic*) that judgment be entered in her favor and against Defendants (*sic*), Horace Mann Insurance Company, in an amount in excess of $50,000.00 exclusive of interest, costs of suit, punitive damages, attorneys fees, court costs, and any other damages allowed by law." (Id. at pp. 23-24).

The caption of Fertig's complaint originally named "Deborah Jones-Tew" as a defendant, but since the complaint did not contain a single reference to her, she filed preliminary objections in the nature of a demurrer. Horace Mann also demurred to Fertig's causes of action against it for negligence and negligent entrustment due to the absence of any averment that Horace Mann operated or entrusted the vehicle in question. (Docket Entry Nos. 26, 36). Fertig filed briefs in opposition to those preliminary objections, but the demurrers were later sustained by Order dated June 2, 2017. (Docket Entry Nos. 37, 44). Papada filed a responsive pleading to the complaint, and in his new

matter pursuant to Pa.R.C.P. 1030, asserted, *inter alia*, that Fertig "has failed to state a cause of action upon which relief may be granted with respect to Defendant, Al Papada," and that "[b]ad faith claims against insurance agents and claims representatives are not actionable under 42 Pa.C.S.A. § 8371 in the Commonwealth of Pennsylvania." (Docket Entry No. 42 at p. 20).

Following the close of the pleadings, Papada filed a motion for judgment on the pleadings. (Docket Entry No. 47). Papada notes that besides an introductory paragraph identifying his Hazleton, Luzerne County, address, the entire complaint only mentions Papada in two paragraphs. Specifically, paragraph 8 avers that "Defendant, Al Papada, was an employee and/or agent of Defendant, Horace Mann Insurance Company," while paragraph 67 states that "[o]n or about September 26, 2014, Al Papada, on behalf of Defendant, Horace Mann Insurance Company, met and/or communicated with its insureds requesting that additional documentation be completed and directed how to complete the same." (Id. at ¶¶ 13, 35-36). The complaint contains no other factual allegation with regard to Papada.

In his motion for judgment on the pleadings, Papada submits that even if the factual allegations of the complaint are accepted as true, they fail to state a cause of action against him for negligence, negligent entrustment, breach of contract, or statutory bad faith. (Id. at ¶¶ 20, 23, 29, 40, 42-44). He further maintains that as an agent, as opposed to an insurer, he cannot be found liable for bad faith under 42 Pa.C.S. § 8371. (Id. at ¶¶ 41, 46). Papada's accompanying brief cites case law and statutory authority in support of his request to dismiss all four counts of the complaint against him. (Docket Entry No. 56 at pp. 6-10).

In her eight page brief in opposition, Fertig fails to cite a single case in opposing Papada's requested dismissal. Rather than attempting to explain how the complaint ostensibly articulates a viable cause of action against Papada, she merely states that "[s]ince Your Court is extremely busy, the Plaintiff will not go through each paragraph of the complaint and apply it to Defendant Insurance Agent and then give reasonable inferences." (Docket Entry No. 62 at p. 4). Fertig baldly claims, without reference to any supporting authority, that "[a]ny time the word Defendant is used it is directed to any and all applicable Defendant (*sic*)," and that "reading the complaint placing the Defendant Insurance Agent in every place where the term or variation of the word Defendant is stated clearly and unequivocally demonstrates that the Motion on the Pleading (*sic*) must be denied." (Id. at p. 3). As for Papada's argument that an agent cannot be held liable for bad faith under Section 8371, Fertig contends that "[m]ost of the decisions Defendant cite (*sic*) to concern federal court cases" which are allegedly not applicable "since in federal court a jury not a judge decides the bad faith issue" and "in state court the trial judge will decide the bad faith issue." (Id. at p. 7).

Oral argument on Papada's motion for judgment on the pleadings was conducted on September 19, 2017, at the conclusion of which that motion was submitted for a decision.

II. DISCUSSION

(A) STANDARD OF REVIEW

Entry of judgment on the pleadings is permitted under Pennsylvania Rule of Civil Procedure 1034, which provides that "[a]fter the relevant pleadings are closed, but within

such time as not to unreasonably delay the trial, any party may move for judgment on the pleadings." Pa.R.C.P. 1034(a). "A motion for judgment on the pleadings is similar to a demurrer," and "may be entered when there are no disputed issues of fact and the moving party is entitled to judgment as a matter of law." Rubin v. CBS Broadcasting, Inc., 2017 WL 3941037, at *2 (Pa. Super. 2017); McLafferty v. Council for the Association of Owners of Condominium No. One, Inc., 148 A.3d 802, 806 (Pa. Super. 2016). In making that determination, "the court must confine its consideration to the pleadings and relevant documents." Donaldson v. Davidson Bros., Inc., 144 A.3d 93, 101 (Pa. Super. 2016), *app. denied*, 2017 WL 1015483 (Pa. 2017). The reviewing court "must accept as true all well pleaded statements of fact, admissions, and any documents properly attached to the pleadings presented by the party against whom the motion is filed, considering only those facts which were specifically admitted." Kote v. Bank of New York Mellon, 2017 WL 3667551, at *2 (Pa. Super. 2017) (quoting Coleman v. Duane Morris, LLP, 58 A.3d 833, 836 (Pa. Super. 2012)). However, "[n]either party can be deemed to have admitted either conclusions of law or unjustified inferences. Rubin, supra (quoting Altoona Regional Health System v. Schutt, 100 A.3d 260, 265 (Pa. Super. 2014)).

(B) NEGLIGENCE

Count I of the complaint purports to state a cause of action for negligence, albeit without identifying in the heading for Count I or in the paragraphs set forth therein, which

"Defendant" or "Defendants" is/are the subject of that negligence claim.[2] For a defendant to be found liable for negligence, the plaintiff must prove that: (1) defendant owed a legally recognized duty to conform to a certain standard of care; (2) defendant breached that duty; (3) defendant's breach was a factual cause of the resulting harm; and (4) plaintiff suffered actual damage as a result. Newell v. Montana West, Inc., 154 A.3d 819, 822 (Pa. Super. 2017); Brown v. Leger, 40 Pa. D. & C. 5th 569, 574 (Lacka. Co. 2014). If the factual allegations set forth in the plaintiff's complaint, or as admitted by the plaintiff in a reply to new matter, fail to state a cause of action for negligence, the negligence claim may be dismissed based upon a motion for judgment on the pleadings. *See* Bowman v. Sunoco, Inc., 620 Pa. 28, 31-32, 65 A.3d 901, 903 (2013).

Despite the fact that Count I does not identify in its heading the defendant(s) against whom the negligence claim is asserted, *but see*, General State Authority, supra, the averments contained in Count I only address the operation of a motor vehicle on August 27, 2014, and the injuries allegedly suffered by Fertig as a result of that accident. (Docket Entry No. 11 at ¶¶ 17-44). Accepting as true the few well pleaded statements of facts in the complaint, Nicholas was the sole operator of a vehicle that collided with Fertig's automobile on August 27, 2014, and allegedly caused her to suffer injuries. There is no allegation set forth in Count I, or any other paragraph in the complaint, which can serve as

[2]Pennsylvania Rule of Civil Procedure 1020 governs the pleading of more than one cause of action in a case. Rule 1020(a) states that "[t]he plaintiff may state in the complaint more than one cause of action cognizable in a civil action against the same defendant," while Rule 1020(d) allows a plaintiff to file more than one cause of action against the same defendant if the underlying occurrence or transaction gives rise to more than one cause of action. *See* Pa.R.C.P. 1020(a), (d). "Each claim, however, must be presented in a self-sufficient separate count, which includes averments of facts pertaining to the particular claim and relief sought." Com. v. Parisi, 873 A.2d 3, 9 (Pa. Cmwlth. 2005). Moreover, "[t]he requirement that the plaintiff set forth each cause of action against each defendant in a separate count under a separate heading is mandatory, and the complaint will be stricken for failure to comply with this requirement." General State Authority v. Lawrie and Green, 24 Pa. Cmwlth. 407, 410, 356 A.2d 851, 853 (1976). "Failure to join a cause of action as required by [Rule 1020(d)] shall be deemed a waiver of that cause of action as against all parties to the action." Pa.R.C.P. 1029(d).

the basis for a negligence claim against Papada. Therefore, it is free and clear from doubt that Papada is entitled to judgment in his favor as a matter of law with respect to Count I of the complaint.

(C) NEGLIGENT ENTRUSTMENT

Count II advances a claim for negligent entrustment, but does not indicate in its heading the defendant(s) against whom that claim is asserted. *See* General State Authority, supra. Under the theory of negligent entrustment, "[i]t is negligence to permit a third person to use a thing or to engage in an activity which is under the control of the actor, if the actor knows or should know that such person intends or is likely to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others." Phillips v. Lock, 86 A.3d 906, 912 (Pa. Super. 2014) (citing Restatement (Second) of Torts § 308). Section 308 of the Restatement "imposes liability on a defendant because of her own acts in relation to an instrumentality or activity under her control," and "an entrustor's liability is not dependent on, derivative of, or imputed from the entrustee's actual liability for damages." Donegal Mut. Ins. Co. v. Fackler, 835 A.2d 712, 720 (Pa. Super. 2003) *app. denied*, 579 Pa. 703, 857 A.2d 679 (2004). Nevertheless, "our cases do require that the entrustee be causally negligent before the entrustor may be held liable through negligent entrustment." Phillips, supra (quoting Christiansen v. Silfies, 446 Pa. Super. 464, 473, 667 A.2d 396, 400 (1995), *app. denied*, 546 Pa. 674, 686 A.2d 1307 (1996)).

Count II of the complaint merely references the conduct of Howard in entrusting his vehicle to Nicholas. (Docket Entry No. 11 at ¶¶ 46-49). There is no allegation that Papada allowed Nicholas to operate his vehicle or otherwise entrusted some

instrumentality to him. Thus, based upon the factual averments of the complaint, Papada's "right to succeed is certain and the [negligent entrustment] case is so free from doubt that the trial would clearly be a fruitless exercise." Kote, supra, at *2 (quoting Coleman, 58 A.3d at 836). As a result, Papada is entitled to judgment on the pleadings with respect to Fertig's negligent entrustment claim.

(D) BREACH OF CONTRACT

In Count III of the complaint, Fertig asserts a breach of contract claim, but does not state in the heading of Count III which defendant(s) allegedly breached a contractual obligation. *See* Goodrich-Amram 2d § 1020(a):2. To plead a cause of action for breach of contract, the plaintiff must aver facts demonstrating: (1) the existence of a contract, including its essential terms; (2) a breach of the contract; and (3) resultant damages. McCabe v. Marywood University, 2017 WL 3032193, at *3 (Pa. Super. 2017); Wells Fargo Equipment Finance, Inc. v. Knitney Lines, Inc., 34 Pa. D. & C. 5th 46, 53 (Lacka. Co. 2013). When a party fails to perform any duty imposed by the parties' agreement, the lack of performance is deemed a breach of the agreement creating that obligation. John B. Conomos, Inc. v. Sun Co., Inc., 831 A.2d 696, 707-708 (Pa. Super. 2003), *app. denied*, 577 Pa. 697, 845 A.2d 818 (2004); Rizzo v. MSA, Inc., 18 Pa. D. & C. 5th 233, 245 (Lacka. Co. 2010), *aff'd*, 32 A.3d 830 (Pa. Super. 2011).

Count III merely references the existence of a contract between Fertig and Horace Mann, the duties that their insurance contract imposed upon Horace Mann, and the alleged breach of those contractual obligations by Horace Mann. (Docket Entry No. 11 at ¶¶ 52-58). There is no allegation whatsoever that a contractual relationship existed between

Fertig and Papada, or that Papada allegedly breached that agreement. As such, Fertig has failed to state a cause of action against Papada for breach of contract, and for that reason, Papada's motion for judgment on the pleadings will also be granted as to Count III of the complaint.

(E) STATUTORY BAD FAITH

Count IV of the complaint seeks to recover statutory interest, counsel fees and costs, and punitive damages "[p]ursuant to 42 Pa.C.S. § 8371...as a result of Defendant's bad faith conduct." (Docket Entry No. 11 at ¶¶ 95). Section 8371 enables an insured to recover interest on the amount of the claim at the prime rate of interest plus 3%, court costs and attorney's fees, and punitive damages "if the court finds that the insurer has acted in bad faith toward the insured." 42 Pa.C.S. § 8371. "Specifically, the statute authorizes courts, which find that an insurer has acted in bad faith toward its insured, to award punitive damages, attorneys' fees, interest and costs." Birth Center v. St. Paul Companies, Inc., 567 Pa. 386, 402-403, 787 A.2d 376, 386 (2001); Brogan v. Rosenn, Jenkins & Greenwald, LLP, 35 Pa. D. & C. 5th 500, 526-527 (Lacka. Co. 2014). To succeed with a bad faith claim, the insured must present clear and convincing evidence that: (1) the insurer did not have a reasonable basis for denying benefits under the policy; and (2) the insurer knew of or recklessly disregarded its lack of reasonable basis in denying the claim. Mohney v. American General Life Ins. Co., 116 A.3d 1123, 1131 (Pa. Super. 2015), *app. denied*, 634 Pa. 749, 130 A.3d 1291 (2015); Sharp v. Travelers Personal Sec. Ins. Co., 36 Pa. D. & C. 5th 521, 534 (Lacka. Co. 2014).

Throughout Count IV of the complaint, Fertig only alleges bad faith conduct by the insurer, Horace Mann, in investigating and evaluating Fertig's UIM claim,

notwithstanding the occasional reference to unnamed "Defendants." (Docket Entry No. 11 at ¶¶ 65-66, 68-70, 75-89, 94-95). The sole reference to Papada is contained in the first paragraph 67 of the complaint in which Fertig avers that "[o]n or about September 26, 2014, Al Papada on behalf of Defendant, Horace Mann Insurance Company, met and/or communicated with its insured requesting that additional documentation be completed and directed how to complete the same."[3] (Id. at ¶ 67). Papada's actions in meeting with Fertig, requesting the completion of additional documentation, and explaining how to complete that documentation do not "import a dishonest purpose" or evince "some motive of self-interest or ill-will" so as to arguably constitute bad faith. *See* Mohney, 116 A.2d at 1131 (quoting Condio v. Erie Insurance Exchange, 899 A.2d 1136, 1142 (Pa. Super. 2006), *app. denied*, 590 Pa. 668, 912 A.2d 838 (2006)). Therefore, even if Fertig's factual allegations are admitted as true, they are insufficient as a matter of law to establish bad faith conduct on the part of Papada in contravention of Section 8371.

Assuming *arguendo* that Fertig had alleged facts indicating bad faith activity by Papada, he would nonetheless be entitled to judgment in his favor with regard to Count IV. The plain language of Section 8371 applies only to the bad faith conduct of an "insurer" which is defined by 40 P.S. §§ 221.3 as any entity or person "who is doing, has done, purports to do, or is licensed to do an insurance business, and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization or conservation by any insurance commissioner." Southeastern Pennsylvania Transportation Authority v. Holmes, 835 A.2d 851, 856-857 (Pa. Cmwlth. 2003) (bad faith statute applies only to

[3]Fertig's complaint contains two separate paragraphs that are both numbered as paragraph 67. (Id. at p. 15).

insurance companies that have assumed the liability of others by the issuance of an insurance policy, and has no application to a self-insured that "is not licensed as an insurer" and "does not issue policies, collect premiums, or agree to accept the liability of others in exchange for consideration."), *app. denied*, 577 Pa. 738, 848 A.2d 930 (2004). Relying upon Margaret Auto Body, Inc. v. Universal Writers Group, 2003 WL 1848560, at *1-2 (Phila. Co. 2003) and Ihnat v. Pover, 35 Pa. D. & C. 4th 120, 125 (Alleg. Co. 1997) (Wettick, J.), we previously held that 42 Pa. C.S. § 8371 only governs the conduct of insurers and does not apply to insurance agents, brokers, or claims investigation agencies. Smalanskas v. Indian Harbor Ins. Co., 2008 WL 3889290, at *9 n.3 (Lacka. Co. 2008), *aff'd*, 970 A.2d 490 (Pa. Super. 2009). *Accord* Kofsky v. UNUM Life Ins. Co. of America, 2014 WL 4375725, at *5 (E.D. Pa. 2014); Lindsey v. Chase Home Finance, LLC, 2006 WL 2524227, at *4 (M.D. Pa. 2006) (Vanaskie, J.); Dresdner v. State Farm Mut. Auto Ins. Co., 1995 WL 468427, at *1 (E.D. Pa. 1995).

More importantly, the Superior Court of Pennsylvania has expressly concluded "that a statutory action for bad faith can only be brought against an insurer," and that a bad faith claim against an "agent and/or employee" of an insurer is not actionable under Section 8371. Brown v. Everett Cash Mutual Insurance Company, 157 A.3d 958, 968 (Pa. Super. 2017). Fertig has not cited a single case in support of her claim that Papada may be found liable for bad faith. Consequently, it is clear and free from doubt that Papada is also entitled to judgment in his favor relative to Count IV of the complaint. An appropriate Order follows.

DESTINY FERTIG, Plaintiff vs. NICHOLAS KELLEY, HOWARD KELLEY, AL PAPADA, HORACE MANN INSURANCE COMPANY and/or HORACE MANN PROPERTY & CASUALTY INSURANCE COMPANY, Defendants	:	IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY CIVIL ACTION – LAW NO. 16 CV 4801

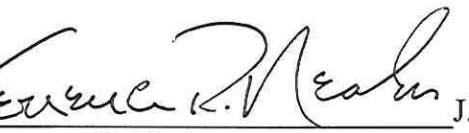
ORDER

AND NOW, this 27th day of September, 2017, upon consideration of "Defendant Al Papada's Motion for Judgment on the Pleadings," the memoranda of law submitted by the parties, and the oral argument of counsel on September 19, 2017, and based upon the reasoning set forth in the foregoing Memorandum, it is hereby ORDERED and DECREED that:

1. The motion for judgment on the pleadings of defendant, Al Papada, is GRANTED; and

2. The Clerk of Judicial Records is directed to enter judgment in favor of defendant, Al Papada, in this matter and to remove the name of defendant, Al Papada, from the caption of this case.

BY THE COURT:



J.

Terrence R. Nealon

cc: *Written notice of the entry of the foregoing Memorandum and Order has been provided to each party pursuant to Pa. R. C. P. 236 (a)(2) and (d) by transmitting time-stamped copies via electronic mail to:*

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