IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARIA MOLLURA, an individual
and administrator of the estate of
JOSEPH MOLLURA,

Plaintiffs,

v.

AFLAC INSURANCE,

Defendant.

GD 18-010119
1695 WDA 2018

OPINION
ALAN HERTZBERG,
JUDGE

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Judge: Alan Hertzberg **Date Filed:** January 23, 2019

I am writing this Opinion in support of my November 2, 2018 Order of Court which granted Defendant's Preliminary Objections. Plaintiff has appealed this Order to the Superior Court of Pennsylvania. The facts of this case are unfortunate, but straightforward. Decedent Joseph Mollura worked as a physician for Correct Care Solutions providing health care for the Pennsylvania State Prison System. As a benefit of his employment, Decedent purchased an accidental injury insurance policy through Continental American Insurance Company ("Continental," improperly named AFLAC in the caption of the case.) In the summer of 2016 Decedent contracted legionella

pneumonia from the water source at his place of employment. Decedent died from complications of legionella pneumonia on August 8, 2016. Plaintiff, Decedent's widow, sought the death benefit payment from the accident policy issued by Continental. Continental denied the claim and Plaintiff brought this litigation. On September 27, 2018 Continental filed Preliminary Objections which I granted on November 2, 2018, dismissing Plaintiff's Complaint. Plaintiff filed her appeal on November 30, 2018 and filed her Concise Statement of Errors Complained of on Appeal ("Concise Statement") on December 21, 2018. This Opinion addresses the Concise Statement.

Plaintiff alleges that I erred by finding that the insurance policy did not cover Decedent's death. Preliminary Objections may be granted when, even accepting all the factors averred in a Complaint as true, no legal basis for recovery exists. Weily v. Albert Einstein Medical Center, 51 A.3d 202, 207 (Pa.Super. 2012). Plaintiff's complaint avers the following: that the Decedent's death certificate lists legionella pneumonia as the cause of death, that Decedent contracted the disease from the water source at his place of employment, that his death was the result of an "accident." Presumably, the "accident" was the contraction of legionella pneumonia. The plain, unambiguous language of the accident-based policy does not cover illness. The insurance policy, in capital letters, clarifies that the policy is for "accident only coverage and does not pay benefits for loss from sickness." (pg. 1 of Continental policy) Further, the policy lists as an exclusion "loss, injury, total disability or death contributed to, caused by, or resulting from...sickness." (pg. 9 of Continental policy). "Sickness" is defined in the policy as "any disease or bodily/mental illness or degenerative process." (pg. 9 of Continental

policy). The Centers for Disease Control and Prevention, a federal agency, describes Legionnaires' Disease as "a very serious type of pneumonia (lung infection) caused by bacteria called Legionella." (www.cdc.gov/legionella/index/html). The Merriam-Webster's Medical Dictionary defines pneumonia as "a disease of the lungs…cause chiefly by infection." Further, the Oxford Dictionary defines disease as a "disorder…not simply the result of physical injury." Pennsylvania courts have defined an "accident" as a "sudden and unexpected event," with the sudden event implying "a distinct happening or occurrence at a particular time" and where "the employee is almost invariably aware" of the event. USX Corp. v. Liberty Mutual Insurance Company, 444 F.3d 192, 199-200 (3rd Cir. 2006), *citing* Pawlosky v. Workman's Comp. Appeal Board 525 A.2d 1204 (Pa. 1987) and Ciabattoni v. Birdsboro Steel Foundry & Mach. Co., 125 A.2d 365 (Pa. 1956). An accident is distinguished from a disease, which "is latent and insidious…." Id. at 200. Therefore, by very definition, the legionella pneumonia is a disease encompassed by the term "sickness" and is excluded by the insurance policy. The language of the insurance policy is clear that death from sickness is not covered under this policy. Beyond the clear language of the insurance policy, Pennsylvania courts have held that when a disease is contracted in the workplace, and "the absorption is incidental to a bodily process both natural and normal, their action presents itself to the mind as a disease and not an accident. Loudon v. H.W. Shaull & Sons, 13 A.2d 129, 114 (Pa.Super. 1940) (holding that contracting typhoid from the drinking water in the workplace does not constitute an accident.) Finally, while not binding, a more recent holding from the Southern District of New York is instructive. In that case, the federal court held that a

death from a respiratory illness was not the result of an "accidental injury" for insurance purposes. The federal court acknowledges that most diseases are "unintended" and brought about from "a combination of unhappy circumstances." The federal court reinforced that germs absorbed through a "body process both natural and normal," are a disease and not an accident. *See* Svensson v. Securian Life Insurance Company, 706 F.Supp.2d 521 (SDNY 2010). Therefore, Decedent's cause of death is specifically excluded from coverage and I committed no error by granting Defendant's Preliminary Objections.

Plaintiff also argues that I erred because "one court has already decided that Joseph Mollura died as a result of a workplace accident (worker's compensation judge)." While it is true that an agency adjudication, such as at the Workers Compensation Board, can have a preclusive effect on a subsequent judicial proceeding, the focus will be on whether the party against whom the claim is made had a full and fair opportunity to litigate before the agency. Commonwealth of Pennsylvania, Department of Corrections v. Workers' Compensation Appeal Board, 6 A.3d 603, 611 (Cmwth.Ct. 2010). Here, the answer is clear that Defendant did not have a full and fair opportunity to litigate at the agency hearing, as Plaintiff avers in Paragraph 7 of her Complaint that Decedent's "employer conceded" that his death was accidental. Defendant cannot be bound to the admissions of another party in a proceeding to which it was unlikely even a party. Therefore, I committed no error.

Finally, Plaintiff argues that I erred by granting Defendant's Preliminary Objections without granting Plaintiff leave to amend her Complaint to add details on Dr.

Mollura's death. However, I accepted as true that the Decedent did not intentionally contract legionella pneumonia, that he contracted it at his place of employment, that it was the cause of his death, and that his employer was negligent in allowing the water source to become contaminated with the bacteria. Even accepting as true these detailed allegations, there was no basis for recovery under the insurance policy. Therefore, granting Plaintiff leave to amend could not have cured the legal deficiency and I committed no error by not granting leave to amend.

Therefore, there is no basis for recovery and it was appropriate for me to grant Continental's Preliminary Objections and I committed no error.

BY THE COURT:

__________________, J.