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Key: differences

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Highlights

☐ 1.

✦ Potential mischaracterization

The statement is potentially inaccurate because it contains a misquote. The quotation changes "UIM claim" in the excerpt to "UM claim," which alters the type of insurance claim being discussed. Additionally, the quotation omits "even though the award is substantially below the insured's demand," which is relevant context from the excerpt and could change the meaning or import of the statement.

Quotation from the analyzed document

Differences

reaffirmed five years later in [Johnson v. Progressive Ins. Co., 987 A.2d 781 \(Pa. Super. 2009\)](#), where the Court reiterated its prior holdings that bad faith is not present merely because an insurer makes a low but reasonable estimate of an insured's damages. In [Johnson](#), the court explained,

“The underlying facts [\[here\]](#) involve nothing more than a normal dispute between an insured and insurer over the value of [a UM](#) claim. The scenario under consideration occurs routinely in the processing of an insurance claim. To permit this action to proceed under these facts would invite a floodgate of litigation any time an award is more than an insurer's offer to settle.[...](#)”

Johnson v. Progressive Ins. Co.

Superior Court of Pennsylvania. • December 28, 2009 • 987 A.2d 781

...consent to Mr. Gordon as arbitrator occurred four and one-half months after the arbitration demand and a mere three and one-half months after Appellant's statement under oath and release of his medical records. The arbitration occurred less than nine months after the demand for arbitration.¶ 18

“The underlying facts involve nothing more than a normal dispute between an insured and insurer over the value of [an UIM](#) claim. The scenario under consideration occurs routinely in the processing of an insurance claim. To permit this action to proceed under these facts would invite a floodgate of litigation any time an [arbitration award](#) is more than an insurer's offer to settle, [even though the award is substantially below the insured's demand](#). ”

Any finding that Appellee operated in bad faith is unfounded. Thus, there is no genuine issue of material fact that Appellee did not display bad faith either in the processing of the underlying UIM claim or in defending the action at issue herein. We therefore affirm the trial court's...

☐ 2.

✦ Potential mischaracterization

The statement is potentially inaccurate because it constitutes selective quoting. The quotation omits key allegations from the excerpt, such as "presented a low offer of settlement," "failed to engage in good faith negotiations," and "presented an offer of less than the amount due in an attempt to compel him to institute litigation." These omissions could change the meaning or import of the plaintiff's allegations as described in the cited case.

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Quotation from the analyzed document

Differences

...to state a plausible bad faith claim because he had not alleged any factual content indicating that State Farm lacked a reasonable basis for its decision, or that it knew or recklessly disregarded a lack of a reasonable basis. The plaintiff's conclusory statements argued only that defendant had

“unreasonably withheld payment of underinsured motorist benefits under the policy, failed to make a reasonable offer of settlement, [...](#) [\[and\]](#) failed to perform an adequate investigation of the value of his claim.”

Kiessling v. State Farm Mutual Automobile In...

United States District Court, E.D. Pennsylvania. • February 14, 2019 • 2019 WL 634639

...to state a plausible statutory bad faith claim. He alleges no factual content indicating that State Farm lacked a reasonable basis for its tendered offer or that it knew or recklessly disregarded a lack of reasonable basis for the offer. Rather, McDonough makes conclusory statements that State Farm

“unreasonably withheld [the](#) payment of underinsured motorist benefits under the policy, failed to make a reasonable offer of settlement, [presented a low offer of settlement](#), failed to engage in good faith negotiations, presented an offer of less than the amount due in an attempt to compel him to institute litigation, and failed to perform an adequate investigation of the value of his

claim

These were the very type of bare-bones allegations that the Court found insufficient for purposes of stating a viable, statutory bad faith claim. In [Kiessling v. State Farm Mut. Auto Ins. Co.](#), supra, this Court noted that bad faith claims are fact specific, and that in order to survive a...

for underinsured motorist benefits.No. 18-2247, 2019 WL 480139, at *3 (E.D. Pa. Feb. 7, 2019).Finally, the court in *Kosmalski v. Progressive Preferred Ins.* dismissed the plaintiff's statutory bad faith claim premised on allegations like the ones asserted by *Kiessling* and *Fegley* in this case. No....

3. Quotation from the analyzed document Differences

...courts' interpretation of pleading requirements with regard to insurance bad faith allegations. The pivotal case on this issue is the United States Supreme Court's decision in [Ashcroft v. Iqbal](#), 556 U.S. 662 (2009). The Supreme Court provided the following relevant analysis of Rule 8(a)(2):

“ [T]he pleading standard Rule 8 announces does not require ‘detailed factual allegations’ but it demands more than an unadorned, the defendant-unlawfully-harmed-me accusation. A pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’ Nor does a complaint suffice if it tenders ‘naked assertions[s]’ devoid of further factual enhancement.

[Id.](#) at 678 (citing *Bell Atlantic Corp. V. Twombly*, 550 U.S. 544, 557 (2007)) (internal citations omitted and emphasis supplied). In order to survive a motion to dismiss, a complaint must contain sufficient factual matter which, if accepted as true, states “a claim for relief that is plausible...

Ashcroft v. Iqbal

Supreme Court of the United States • May 18, 2009 • 556 U.S. 662

...responsibilities. We turn to respondent's complaint. Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” As the Court held in *Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929,

“ the pleading standard Rule 8 announces does not require ‘detailed factual allegations,’ but it demands more than an unadorned, the defendant-unlawfully-harmed-me accusation. *Id.*, at 555, 127 S.Ct. 1955 (citing *Papasan v. Allain*, 478 U.S. 265, 286, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986)). A pleading that offers “labels and conclusions” or “a formulaic recitation of the elements of a cause of action will not do.” 550 U.S., at 555, 127 S.Ct. 1955. Nor does a complaint suffice if it tenders “naked assertion[s]” devoid of “further factual enhancement.”

Id., at 557, 127 S.Ct. 1955. To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” *Id.*, at 570, 127 S.Ct. 1955. A claim has facial plausibility when the plaintiff pleads factual content that...

4. Quotation from the analyzed document Differences

...of further factual enhancement. [Id.](#) at 678 (citing *Bell Atlantic Corp. V. Twombly*, 550 U.S. 544, 557 (2007)) (internal citations omitted and emphasis supplied). In order to survive a motion to dismiss, a complaint must contain sufficient factual matter which, if accepted as true, states

“ a claim for relief that is plausible on its face.”

[Ashcroft](#), 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556). A claim is facially plausible when the plaintiff pleads factual averments that allow the court to draw reasonable inferences that the defendant is liable for the alleged misconduct. [Ashcroft](#), 556 U.S. at 678 (citing *Twombly*, 550...

Ashcroft v. Iqbal

Supreme Court of the United States • May 18, 2009 • 556 U.S. 662

...will not do.” 550 U.S., at 555, 127 S.Ct. 1955. Nor does a complaint suffice if it tenders “naked assertion[s]” devoid of “further factual enhancement.” *Id.*, at 557, 127 S.Ct. 1955. To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to “state

“ a claim to relief that is plausible on its face.”

Id., at 570, 127 S.Ct. 1955. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.*, at 556, 127 S.Ct. 1955. The plausibility standard is not akin to a...

5. Quotation from the analyzed document Differences

...that critical pleading threshold. This court has consistently dismissed bad faith counts at the preliminary stage, where, as here, the Complaint failed to include sufficient factual averments. See, e.g., *Kosmalski v. Progressive Preferred Ins.*, 2018 U.S. Dist. LEXIS 74124 (E.D. Pa. 2018) (

“ Absent additional facts regarding Kosmalski's insurance claim and the accompanying investigation, negotiations, or communications in support of the contention that Progressive's conduct was unreasonable and reckless, the Court is unable to infer bad faith on the part of Progressive.”

Kosmalski v. Progressive Preferred Insurance

United States District Court, E.D. Pennsylvania. • May 02, 2018 • 2018 WL 2045827 [27](#)

...Life Ins. Co. v. Babayan, 430 F.3d 121, 137 n.22 (3d Cir. 2005) (internal citation omitted); see also *Camp*, 2016 WL 3181743, at *6 (“[F]ailure of an insurer to ‘immediately accede to a demand for the policy limit cannot, without more, amount to bad faith.’ ” (quoting *Smith*, 506 Fed.Appx. at 136)).

“ Absent additional facts regarding Kosmalski's insurance claim and the accompanying investigation, negotiations, or communications in support of the contention that Progressive's conduct was unreasonable and reckless, the Court is unable to infer bad faith on the part of Progressive.

); Pasqualino v. State Farm Mut. Auto. Ins. Co., 2015 U.S. Dist. LEXIS 69318 (E.D. Pa. 2015) (Motion to dismiss granted and bad faith claim dismissed). The allegations in Plaintiff's Complaint do not show that she is entitled to relief, with respect to Count II for alleged Bad Faith. The...

See Mattia v. Allstate Ins. Co., No. 14-2099, 2014 WL 2880302, at *4 (E.D. Pa. June 24, 2014) (Plaintiffs must "describe who, what, where, when, and how the alleged bad faith conduct occurred." (citation omitted)). The Court therefore grants Progressive's motion with leave to file an amended...

□ 6. Quotation from the analyzed document

📄 **McTernan v. City of York, PA**
United States Court of Appeals, Third Circuit. • April 27, 2009 • 564 F.3d 636

... Complaint for failure to state a claim upon which relief can be granted. **Fed. R. Civ. P. 12(b)(6)**. A motion to dismiss pursuant to **Rule 12(b)(6)** challenges the legal sufficiency of a complaint. In deciding a motion to dismiss, the court must accept all well-pleaded factual allegations as true,

...restriction was not content-neutral, requiring submission of the issue to a jury). We review the District Court's grant of Defendants' motion to dismiss de novo. *Omnipoint Commc'ns Enters., L.P. v. Newtown Twp.*, 219 F.3d 240, 242 (3d Cir.2000). We must "accept all factual allegations as true,

“construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief.”

“construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief.”

McTernan v. City of York, 564 F.3d 636, 646 (3d. Cir. 2009) (citations omitted). **Federal Rule of Civil Procedure 8** sets forth the mandatory pleading standard for complaints filed in federal courts and provides, in relevant part, as follows: (a) Claim for Relief. A pleading that...

Phillips v. County of Allegheny, 515 F.3d 224, 233 (3d Cir.2008) (quoting *Pinker v. Roche Holdings Ltd.*, 292 F.3d 361, 374 n. 7 (3d Cir.2002)). In *Bell Atlantic Corp. v. Twombly*, the Supreme Court confirmed that Fed.R.Civ.P. 8(a)(2) "requires only a short and plain statement of the claim showing...

□ 7. Quotation from the analyzed document

📄 **Ashcroft v. Iqbal**
Supreme Court of the United States • May 18, 2009 • 556 U.S. 662

... factual averments that allow the court to draw reasonable inferences that the defendant is liable for the alleged misconduct. **Ashcroft**, 556 U.S. at 678 (citing **Twombly**, 550 U.S. at 556). While the plausibility standard is not equivalent to a "probability requirement," it requires more than a

...plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.*, at 556, 127 S.Ct. 1955. The plausibility standard is not akin to a "probability requirement," but it asks for more than a

“sheer possibility that a defendant has acted unlawfully.”

“sheer possibility that a defendant has acted unlawfully.

Id. The mere recital of the elements of a cause of action, supported by mere conclusory statements, does not meet the required pleading standard. **Ashcroft**, 556 U.S. at 678 (citing **Twombly**, 550 U.S. at 557). Only a complaint that sets forth a plausible claim for relief survives a motion to...

Ibid. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.*, at 557, 127 S.Ct. 1955 (brackets omitted). Two working principles underlie our decision in *Twombly*...

□ 8. Quotation from the analyzed document

📄 **Jones v. Allstate Insurance Co.**
United States District Court, E.D. Pennsylvania. • June 19, 2017 • 2017 WL 2633472

...the plaintiff sued his insurer for bad faith and breach of contract following a disagreement between the parties as to the value of plaintiff's underinsured motorist claim. 2017 U.S. Dist. LEXIS 93673, at *1 (E.D. Pa. 2017). Jones alleged that defendant had acted in bad faith by failing to:

...exceed the \$15,000 policy limit. (*Id.*) Though Jones "has fully complied with the terms of the policy," he and Allstate "have failed to agree on the amount of underinsured motorist benefits that [he] is entitled to recover." (Compl. ¶¶ 11–12.) Jones claims Allstate acted in bad faith by failing to

“(1) act with reasonable promptness in evaluating and responding to his claim and reasonable fairness in paying the claim, (2) negotiate his claim, (3) properly investigate and evaluate his claim and (4) request a defense medical examination of him.

“(1) act with reasonable promptness in evaluating and responding to his claim and reasonable fairness in paying the claim, (2) negotiate his claim, (3) properly investigate and evaluate his claim and (4) request a defense medical examination of him.

Id. In that case, Judge Pappert dismissed the bad faith claim, holding that plaintiff's allegations were insufficient to "raise the claim to a level of plausibility required to survive a **Rule 12(b)(6)** motion to dismiss. *Id.* at *2-3. In *McDonough v. State Farm Fire & Cas. Co.*, supra., the court...

(*Id.* ¶ 17.) Though Jones's Complaint lacks facts regarding Allstate's investigation, responses or offer(s) of payment, he claims that Allstate lacked a reasonable basis for its conduct in handling his claim since there "is no dispute in this case that the accident was the fault of the underinsured...

☐ 9. Quotation from the analyzed document

...court must consider the elements a plaintiff is required to plead for a particular claim. Id. Second, it is the District Court's responsibility to identify all factual allegations that constitute nothing more than "legal conclusions" or "naked assertions," since such allegations are

“not entitled to the assumption of truth and must be disregarded for purposes of resolving a 12(b)(6) motion to dismiss.”

Id. Third, the District Court must identify the well-pleaded, non-conclusory factual allegations, and determine whether the complaint states a plausible claim for relief. Id. In the instant matter, Plaintiff has failed to meet the pleading requirements of Federal Rule of Civil...



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☐ 10. Quotation from the analyzed document

...in order to survive a motion to dismiss, a plaintiff must plead specific facts. 2019 U.S. Dist. LEXIS 24085, at *8 (E.D. Pa. 2019). A plaintiff cannot merely say that an insurer acted unfairly, but must specify what acts were unfair. Id. But allegations that, at their core, say no more than

“insurer negotiated unfairly because it negotiated unfairly,”

or “insurer acted in bad faith by acting in bad faith,” fall far short of meeting that critical pleading threshold. This court has consistently dismissed bad faith counts at the preliminary stage, where, as here, the Complaint failed to include sufficient factual averments. See, e.g., ...



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☐ 11. Quotation from the analyzed document

...specific facts. 2019 U.S. Dist. LEXIS 24085, at *8 (E.D. Pa. 2019). A plaintiff cannot merely say that an insurer acted unfairly, but must specify what acts were unfair. Id. But allegations that, at their core, say no more than “insurer negotiated unfairly because it negotiated unfairly,” or

“insurer acted in bad faith by acting in bad faith,”

fall far short of meeting that critical pleading threshold. This court has consistently dismissed bad faith counts at the preliminary stage, where, as here, the Complaint failed to include sufficient factual averments. See, e.g., Kosmalski v. Progressive Preferred Ins., 2018 U.S. Dist....



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☐ 12. Quotation from the analyzed document

...contract claim to recover UIM benefits. The question arose in the context of the insured's motion to compel the deposition of the claim adjuster, but the issues and rationale used by the court to resolve them are applicable here as well. The court precluded the deposition and held, in part:

“The Court finds that Defendant has demonstrated good cause for the issuance of a protective order. Plaintiff seeks to depose named personnel to gather information about the evaluation of his UIM claim. However, information about claims handling is not relevant to a breach of contract claim... (Emphasis added.)



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In *Schwendinger-Roy v. State Farm*, *supra*, the plaintiff filed suit for UIM benefits – a contract claim like the one at issue here. State Farm filed a motion in limine to preclude evidence regarding its alleged breach of the insurance contract and improper claims handling. The Court granted...

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