

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

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KATHLEEN RUGGERIO,      :
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      Plaintiff,        :
                          :
v.                        :      Civ. No. 3:11CV760 (AWT)
                          :
HARLEYSVILLE PREFERRED :
INSURANCE COMPANY       :
                          :
      Defendant.       :
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**ORDER RE MOTION FOR SUMMARY JUDGMENT**

For the reasons that follow, the Motion for Summary Judgment (Doc. No. 40) is hereby DENIED.

The defendant moves for summary judgment on the basis that there is no genuine issue of material fact regarding the plaintiff's alleged failure to comply with the cooperation provision of the insurance contract. The plaintiff argues that the language of the contract is ambiguous as to what amount of cooperation was required, that she materially and substantially complied with the cooperation provision, and that the defendant was not prejudiced by the existence of any delay caused by non-compliance.

"The purpose of [a] cooperation provision is 'to protect the interests of the insurer.'" Arton v. Liberty Mutual Ins. Co., 163 Conn. 127, 134 (1972). "[I]n the absence of estoppel, waiver or other excuse cooperation by the assured in accordance with the

provision of the policy is a condition the breach of which puts an end to the insurer's obligation." Id. at 133. However, the court recognizes the potential "cruelty of enforced adherence" to an insured. Taricani v. Nationwide Mutual Ins. Co., 77 Conn. App. 139, 148 (Conn. App. 2003) Therefore, "the condition of cooperation with an insurer is not broken by the failure of the insured in an immaterial or unsubstantial matter." Arton, 163 Conn. at 133.

In addition, noncompliance with a cooperation clause is excusable where an insurer has not been prejudiced. Taricani, 77 Conn. App. at 148-50. In Taricani the Appellate Court of Connecticut articulated three reasons for requiring that an insurer be prejudiced before denying coverage to an insured:

First, because insurance policies are "contracts of adhesion," purchasers of such policies have no opportunity to bargain about the consequences of [strict compliance with the cooperation provision]. Second, because cancellation of an insurance policy for failure to give timely notice takes no account of past payments of premiums, possibly extending many years back, enforcement of these [cooperation] provisions may operate as a forfeiture. Third, although an insurer has a legitimate interest in guaranteeing itself a fair opportunity to investigate accidents, that interest can be protected without an irrebuttable presumption that [less than perfect cooperation] is always prejudicial to the insurer.

Taricani, 77 Conn. App. at 149.

There are genuine issues of material fact as to whether the plaintiff materially and substantially complied with the cooperation provision of the insurance contract, including

