UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-7241
Summary Calendar

HENRY CARL MARTIN,

Plaintiff-Appellant,

versus

FIRST CONTINENTAL LIFE & ACCIDENT
INSURANCE COMPANY, ETC. and
CRUMBLEY INSURANCE ENTERPRISES, INC.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
(1:92 CV 71)

(October 22, 1993)

Before SMITH, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant Henry Carl Martin (Martin) appeals (1) the district court's dismissal of Defendant-Appellee Crumbley Insurance Enterprises, Inc. (Crumbley Insurance) for fraudulent joinder, (2)

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

the court's grant of summary judgment dismissing all of Martin's claims against Defendant-Appellee First Continental Life & Accident Insurance Co. (First Continental), and (3) the magistrate judge's denial of a discovery request made by Martin. Finding no reversible error, we affirm.

I.

FACTS AND PROCEEDINGS

Martin's cousin, Carnell Martin (Carnell), obtained life insurance from Consolidated American Life Insurance Company, Inc. (Consolidated), as one aspect of an employee welfare benefit plan (as defined under ERISA), sponsored by Carnell's then-employer, Bush Construction Company (Bush).[1] Carnell named his sons Richard A. Martin and Joseph E. Collins (the sons) as his primary beneficiaries. Ownership of the policy was transferred to Carnell in late October 1984 when he left his employment due to disability.

In November 1984, Crumbley Insurance, an agent of Consolidated,[2] discovered that Carnell's name was misspelled on his policy. Crumbley Insurance sent a letter to Bush, as Carnell's former employer, enclosing an Application for Name Change and/or

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[1]Carnell had actually worked for Laurel Hotmix, Inc., which formed some part of Bush Construction Co. For ease of reference, we will refer to Bush as his employer.

[2]It is disputed whether Crumbley Insurance was the general agent of Consolidated. Martin claims that Charlie Crumbley, owner of Crumbley Insurance, admitted in deposition that Crumbley Insurance was the general agent of Consolidated:

Q. What was your relationship with Consolidated American; were you a general agent?
A. I was an Executive Sales Director, yeah.

Beneficiary and requested that Carnell be asked to execute the form to correct the spelling of his name.

In early 1985, Carnell began to reside with Martin and his wife, Bessie. When Carnell's updated address was received by Crumbley Insurance, it sent another Application for Name Change and/or Beneficiary, identical to the first one, directly to Carnell in care of Martin. The second form was transmitted by a letter dated February 26, 1985, which contained instructions for completion of the form enclosed therein.

On March 15, 1985, Crumbley Insurance received a completed Application for Name Change and/or Beneficiary signed by Carnell. Crumbley Insurance did not know whether the signed form had been returned by Bush or Carnell.[3]

The form, which had been sent to Carnell to correct his misspelled name, had apparently been used by Carnell to change his beneficiary designations as well as to correct the spelling of his name. The new primary beneficiary listed was Martin; his wife, "Mrs. Henry Carl Martin" was named first contingent beneficiary. Bessie Martin signed the form as a witness. The form was "[s]igned at 3:30 p.m. this 2 day of March 1, 19 85."

Crumbley Insurance believed that the form contained irregularities that rendered it unacceptable: (1) the designation of "Mrs. Henry Carl Martin" as first contingent beneficiary was ineffective because the first name and initial should have been

[3]Martin had sent the original form to Bush, which we may assume forwarded it to Crumbley.

listed, not the social title; and (2) the form did not reflect the geographic location where it was signed but improperly reflected the time ("[s]igned at 3:30 p.m. "). Crumbley Insurance communicated its concerns to Consolidated's home office by telephone. Consolidated confirmed Crumbley Insurance's belief that the form was unacceptable as executed. For this reason, Crumbley Insurance did not forward the change of beneficiary form to Consolidated's home office. Instead, Crumbley Insurance attempted to have yet another change of beneficiary form executed correctly.

The method employed by Crumbley Insurance in attempting to contact Carnell about the perceived irregularitiesSQwhether by phone or by lettersQis disputed. Martin claims that he was never informed of any problem with the change of beneficiary form.[4] Crumbley Insurance asserts that it mailed the change of beneficiary form to Carnell for correction but concedes that it never received a response. Crumbley Insurance also insists that it made several follow up efforts to contact Carnell by phone but was unsuccessful, presumably because he did not have a telephone. About six weeks after receiving the "irregular" beneficiary change form from Carnell, Crumbley Insurance sent another Application for Name Change And/or Beneficiary to Bush, seeking its aid in contacting Carnell. The letter to Bush explained that Carnell needed to list the first name and middle initial of Mrs. Henry Carl Martin.

None among Crumbley Insurance, Consolidated, and Bush ever

[4]Martin does not claimSQand offers no evidenceSQthat Carnell was never informed of the problems with the change of beneficiary form.

received anything further from Carnell. No written change of beneficiary under Carnell's policy was ever received by the home offices of either Consolidated or First Continental, as required by the policy:

> How To Change The BeneficiarySQUnless an irrevocable beneficiary has been named, you have the right to change the beneficiary. Any change must be in writing and filed with us at our Home Office. When we receive it, the change will relate back and take effect as of the date it was signed by you.

No further action was taken by Crumbley Insurance or Consolidated to correct the perceived irregularities on the change of beneficiary form.

First Continental subsequently assumed the contractual obligations of Consolidated. Among the obligations thus assumed was the policy insuring Carnell.

Carnell died on April 9, 1991. On April 27, 1991, Martin made his initial claim to the insurance policy proceeds by sending First Continental a certificate of death and an enrollment card that named him as the beneficiary. The enrollment card, however, was for a different policy, one that had been issued by a different company, Pilot Life. On May 28, 1991, Martin filed an "Individual Death Claim Notice" with First Continental. He acknowledged in a letter to First Continental dated May 29th that he had sent the original change of beneficiary form to Bush. On June 25th First Continental notified Martin that the sons were the named beneficiaries under the policy. First Continental also sent a letter to Martin apprising him of its efforts to locate the sons as

the named beneficiaries.

After finally locating the sons in July, First Continental offered them the opportunity to submit a claim for benefits. The sons did so on August 18th, asserting their rights to the insurance proceeds. Late that month, First Continental for the first time receivedSQfrom Martin's attorneySQa copy of the defective March 15, 1985 change of beneficiary form, which designated Martin as the primary beneficiary. By letter dated October 3rd, First Continental informed the sons that it had received a change of beneficiary form naming Martin as the primary beneficiary. In that letter First Continental gave the sons the opportunity to contest the payment of the proceeds to Martin. First Continental asked for a response within thirty days, explaining that without a timely response the proceeds would be paid to Martin. The sons responded timely that same month, contesting payment of the proceeds to Martin.

On November 6th, the claim representative at First Continental who was investigating Martin's claim called Crumbley Insurance. This conversation was recorded and later transcribed. The agency owner, Charlie Crumbley, told the claim representative that Crumbley Insurance had no information on Carnell in its files.

Late in November, First Continental informed Martin that the sons were contesting payment of the proceeds to him. First Continental offered the competing claimants the opportunity to settle the dispute by sharing the proceeds.

In January or February of 1992 Charlie Crumbley discovered

information on Carnell in his research of Bush's correspondence files.[5] He so informed First Continental promptly.

In January 1992, Martin sued First Continental and Crumbley Insurance (hereafter collectively, Defendants) for breach of contract as well as for tort damages under theories of negligence, gross negligence, and bad faith. Defendants removed to federal court on the basis of diversity,[6] and Crumbley Insurance filed a motion to have itself dismissed from the complaint, asserting that it had been fraudulently joined to defeat diversity jurisdiction. Martin countered by filing a motion to remand for lack of diversity.

In February 1992, First Continental interpleaded the life insurance proceeds at issue and filed a motion to join the sons as the originally named beneficiaries. The district court granted Crumbley Insurance's motion to dismiss, finding that it had been fraudulently joined. The court denied Martin's motion to remand, and ordered that the sons be joined as parties to First Continental's counterclaim for interpleader.

Next, First Continental filed a motion for summary judgment. Martin cross-filed a motion for summary judgment recognizing his entitlement to the insurance proceeds. The district court found that First Continental had an arguable reason for denying payment

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[5]The record does not clearly reflect the location of Bush's correspondence files or for what reason Charlie Crumbley was researching the correspondence files.

[6]For diversity purposes, it is undisputed that Martin and Crumbley Insurance are citizens of Mississippi, and that First Continental is a citizen of Utah.

of benefits to Martin, so that he was not entitled to punitive damages. The court partially granted First Continental's motion for summary judgment, rejecting Martin's punitive damages claim. Also, the district court denied Martin's summary judgment motion on his breach of contract claim.

Martin then sought to require First Continental to produce the transcript of the taped telephone conversation between First Continental's claim representative and Charlie Crumbley. Martin hoped that the transcript would help defeat First Continental's motion for summary judgment with respect to Martin's claims for extra-contractual damages. The magistrate judge denied Martin's motion for discovery of the transcript.[7] First Continental's motion for summary judgment on Martin's claims for extra-contractual damages was subsequently granted by the district court.

On Martin's Motion for Reconsideration of the denial of his Motion for Summary Judgment, the court awarded the insurance policy proceeds to him. We note that Martin could have obtained such a favorable result simply by taking a default judgment, as the two adverse claimantsSQthe sonsSQnever made an appearance in the case. But Martin chose to file for summary judgment instead, presumably in an effort to obtain an adjudication on the merits as a predicate for extra-contractual damages. The district court awarded Martin the proceeds, finding that Carnell's signature was not disputed by First Continental and that the designation of Martin as primary

[7]Martin questions the magistrate judge's ruling for the first time on appeal, having failed to complain to the district judge about it.

beneficiary was not defective.[8] First Continental does not appeal the district court's grant of summary judgment in favor of Martin on his breach of contract claim.

II.

ANALYSIS

A. Fraudulent Joinder

This court reviews de novo a trial court's dismissal for failure to state a claim upon which relief can be granted.[9] A district court's decision to grant a Rule 12(b)(6) motion may be upheld "only if it appears that no relief could be granted under any set of facts that could be proved consistent with the allegations."[10] Although we accept the well-pleaded allegations in the complaint as true,[11] the contents of the complaint must amount to more than "mere conclusory [sic] allegations."[12]

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[8]The district court assumed that Crumbley Insurance was the general agent of Consolidated and therefore that receipt by Crumbley Insurance was effectively receipt by Consolidated's home office as required under the policy. This assumption is based on the representation of Martin's counsel at the hearing on his motion for reconsideration that Charlie Crumbley admitted when deposed that he was general agent for First Continental. See supra note 2.

[9]FDIC v. Ernst & Young, 967 F.2d 166 (5th Cir. 1992); Barrientos v. Reliance Standard Life Ins. Co., 911 F.2d 1115 (5th Cir. 1990), cert. denied, 498 U.S. 1072, 111 S. Ct. 795, 112 L. Ed. 2d 857 (1991).

[10]Baton Rouge Bldg. & Construction Trades Council v. Jacobs Constructors, Inc., 804 F.2d 879, 881 (5th Cir. 1986).

[11]O'Quinn v. Manuel, 773 F.2d 605, 608 (5th Cir. 1985).

[12]Guidry v. Bank of LaPlace, 954 F.2d 278, 281 (5th Cir. 1992) (quoting Elliot v. Foufas, 867 F.2d 877, 881 (5th Cir. 1989)).

A defendant alleging fraudulent joinder must establish that the plaintiff has alleged nothing that presents a possibility of recovery against the resident defendant.[13] Federal courts determine whether a claim has been stated against a resident defendant by analyzing the allegations of the complaint to see if there is "even a possibility that a state court would find a cause of action stated . . . on the facts alleged by the plaintiff."[14] The court is to resolve all issues of substantive fact in favor of the plaintiff and determine whether there could possibly be a valid cause of action under state law.[15]

A fraudulent joinder claim may also be disposed of by summary judgment: when determined in such a proceeding, some evidence outside the pleadings may be considered.[16] To decide whether a plaintiff has stated a valid cause of action under state law, the court may review (1) the factual allegations on the face of the plaintiff's complaint, (2) the defendant's removal petition and the plaintiff's motion to remand, and (3) affidavits and deposition transcripts submitted in support of the removal petition and the motion to remand.[17] The court may examine facts established by summary judgment type evidence to prevent a plaintiff from

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[13]Doe v. Cloverleaf Mall, No. CIV.A.J92-0462(L)(N), 1993 WL 304648, at *1-2 (S.D. Miss. June 8, 1993).

[14]Doe at *2 (citing B., Inc. v. Miller Brewing Co., 663 F.2d 545, 549-50 (5th Cir. 1981)).

[15]B., Inc. at 550.

[16]B., Inc. at 549, 549 n.9.

[17]Id. at 549.

depriving diverse defendants of a federal forum by mere conclusionary allegations that have no basis in fact.[18]

Under Mississippi law, an agent who acts within his authority for a disclosed principal and who is not a party to the contract is not liable for a breach of duty or contract committed by the principal.[19] An agent of an insurance company may be held independently liable only when the agent commits a separate and independent tort that rises to the level of gross negligence, malice, or reckless disregard for the rights of the insured.[20] Simple negligence does not constitute a separate and independent cause of action for which an insurance agent may be held liable.[21] Moreover, the tort must be committed separate from and independent of the alleged breach of contract.[22]

We agree with the district court that there is no possibility that Martin has stated a valid cause of action against Crumbley Insurance for breach of contract. His complaint alleges that at

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[18]Doe at *3.

[19]Columbus v. Reliance Ins. Co., 626 F. Supp. 1147, 1148 (S.D. Miss. 1986); Patton v. Aetna Ins. Co., 595 F. Supp. 533, 534 (N.D. Miss. 1984); Mid-Continent Tele. Corp v. Home Tele. Co., 319 F. Supp. 1176, 1199 (N.D. Miss. 1970).

[20]Bass v. California Life Ins. Co., 581 So. 2d 1087, 1090 (Miss. 1991); Dunn v. State Farm Fire & Casualty Co., 711 F. Supp. 1359, 1361 (N.D. Miss. 1987).

[21]See Bass, 581 So. 2d at 1090 (stating that the court was unwilling to hold insurance agents to standard of ordinary negligence).

[22]Moore v. Interstate Fire Ins. Co., 717 F. Supp. 1193, 1196 (S.D. Miss. 1989); Gray v. United States Fidelity & Guar. Co., 646 F. Supp. 27, 29 (S.D. Miss. 1986).

all relevant times Crumbley Insurance was the "general agent" of First Continental, acting within the course and scope of its authority. None disputes that Crumbley Insurance was an agent of a disclosed principal acting with authority of its principal and was not a party to the insurance contract. Thus, Crumbley Insurance cannot be liable for damages caused by an alleged breach of that contract by First Continental.

We also conclude that Martin has no possibility of recovery against Crumbley Insurance for simple negligence.[23] We need only reiterate that mere negligence does not constitute a separate and independent cause of action for which an agent to a disclosed principal may be held liable.

Even though a claim of gross negligence against an agent is cognizable under Mississippi substantive law, Martin did not allege facts in his complaint that would give rise to such liability. He alleged that (1) at all relevant times Crumbley Insurance was the general agent of First Continental acting within the course and scope of its authority; (2) Carnell's signed change of beneficiary form was delivered to Charlie Crumbley, an employee of Defendant Crumbley Insurance Enterprises, Inc., which itself was a general agent for Consolidated American Life Insurance Company, Inc.; and

[23]Although on appeal Martin asserts that Crumbley Insurance was grossly negligent, in his Opposition to Defendant Crumbley Insurance's Motion to Dismiss Martin asserted that Crumbley Insurance was negligent in its handling of the change of beneficiary form and characterized his claim against Crumbley Insurance as a negligence claim. Martin admits in his Memorandum Brief in support of his Motion to Remand that his claim against Crumbley Insurance is one of negligence.

(3) "Defendants' failure to properly maintain its [sic] records in order to properly reflect Plaintiff's status as the current beneficiary . . . constitutes gross negligence which evidences a willful disregard of the rights of Plaintiff." Martin alleged that as a direct and proximate result of the grossly negligent conduct of "Defendants" (plural, without specifically identifying Crumbley Insurance), he incurred legal expenses, related expenses and suffered substantial aggravation, anxiety, worry, concern and mental distress.

The contents of Martin's complaint do not amount to more than mere conclusionary allegations. He did not seek to amend his complaint and did not support his motion to remand by submitting affidavits and depositions that could have been considered by the court in deciding the motion to dismiss.[24] The district court correctly granted Defendants' motion to dismiss for Martin's failure to state a gross negligence cause of action under state law against Crumbley Insurance.

B. Summary Judgment

The grant of a motion for summary judgment is reviewed de novo, using the same criteria employed by the district court.[25] In determining whether the grant was proper, we view all fact questions in the light most favorable to the nonmovant; questions

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[24]Martin had the opportunity to amend and engage in discovery: the order dismissing Crumbley Insurance was signed approximately 45 days after the filing of the motion to dismiss.

[25]United States Fidelity & Guar. Co. v. Wigginton, 964 F.2d 487, 489 (5th Cir. 1992); Walker v. Sears, Roebuck & Co., 853 F.2d 355, 358 (5th Cir. 1988).

of law are reviewed de novo.[26]

A motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[27] A material fact is one "that might affect the outcome of the suit under the governing law."[28] A dispute about a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party."[29] When a properly supported motion for summary judgment is made, the adverse party may not rest upon the mere allegations or denials of its pleadings, but must set forth specific facts showing that there is a genuine issue for trial to avoid the granting of the motion for summary judgment.[30] Unsubstantiated assertions are not competent summary judgment evidence.[31]

Martin alleged that First Continental is liable for negligence, gross negligence, and bad faith for its failure

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[26]Walker, 853 F.2d at 358.

[27]Fed. R. Civ. P. 56(c); see Celotex Corp. v. Catrett, 477 U.S. 317, 323-25, 106 S. Ct. 2548, 2552-54, 91 L. Ed. 2d 265 (1986).

[28]Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

[29]Id.

[30]FED. R. CIV. P. 56(e); Anderson, 477 U.S. at 250.

[31]Celotex Corp., 477 U.S. at 324, 106 S. Ct. at 2553, 91 L. Ed. 2d at 272.

properly to maintain its records and for its failure promptly and fully to investigate Martin's claim, thus entitling Martin to punitive damages and extra-contractual damages. We shall consider each theory of recovery separately.

1. Punitive Damages

"[P]unitive damages may be assessed against an insurer only when the insurer denies a claim (1) without an arguable or legitimate basis, either in fact or law, and (2) with malice or gross negligence in disregard of the insured's rights."[32]

Whether First Continental had an arguable reason to deny Martin's claim is a question of law to be resolved by the court.[33] First, the phrase "arguable reason" indicates that the act or acts of the alleged tortfeasor do not rise to the heightened level of an independent tort.[34] The general rule in Mississippi is that unless the insured would be entitled to a summary judgment or directed verdict on the underlying insurance claim, an arguable reason to deny an insurance claim exists.[35] The mere fact that an insurance

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[32]Dunn v. State Farm & Casualty Co., 927 F.2d 869, 872 (5th Cir. 1991); Andrew Jackson Life Ins. Co. v. Williams, 566 So. 2d 1172, 1184 (Miss. 1990).

The test for awarding punitive damages is the same in a bad faith failure to pay case. Weems v. American Sec. Ins. Co., 486 So. 2d 1222, 1226-27 (Miss. 1986).

[33]Dunn, 927 F.2d at 873 (citing Banker's Life & Casualty Co. v. Crenshaw, 483 So. 2d 254, 269 (Miss. 1985), aff'd, 486 U.S. 71, 108 S. Ct. 1645, 100 L. Ed. 2d 62 (1988).

[34]Pioneer Life Ins. Co. v. Moss, 513 So. 2d 927, 930 (Miss. 1987).

[35]See Aetna Casualty & Sur. Co. v. Day, 487 So. 2d 830, 833 (Miss. 1986); State Farm Fire & Casualty Co. v. Simpson, 477 So. 2d 242, 254 (Miss 1985), modified on other grounds, 564 So. 2d

company rejects a claim under the provisions of a policy, then defends a suit but loses, does not mean that the insurance company did not have an arguable reason to deny the claim, thereby justifying an award of punitive damages.[36]

Second, even if First Continental had not had an arguable reason to deny the claim, it does not follow that punitives must necessarily be awarded.[37] Martin must also show that First Continental acted with (1) malice or (2) gross negligence or reckless disregard for the insured's rights.[38] If simple negligence, such as clerical error or mere inadvertence, were the cause of an improper denial of the claim, punitive damages would not be warranted.[39]

Martin, in his response to First Continental's motion for summary judgment, asserted that First Continental did not have an arguable reason for denying his claim.[40] Without any factual

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1374 (Miss. 1990); Blue Cross & Blue Shield, Inc. v. Campbell, 466 So. 2d 833, 843 (Miss. 1984).

[36]State Farm Fire & Casualty Co. v. Simpson, 477 So. 2d 242, 250 (Miss. 1985) (quoting Lincoln Nat'l Life Ins. Co. v. Crews, 341 So. 2d 1321, 1322 (Miss. 1977)), modified on other grounds, 564 So. 2d 1374 (Miss. 1990)).

[37]Universal Life Ins. Co. v. Veasley, 610 So. 2d 290, 293 (Miss. 1992) (citing Pioneer Life, 513 So. 2d at 930); Blue Cross & Blue Shield v. Maas, 516 So. 2d 495, 497 (Miss. 1987); Day, 487 So. 2d at 833.

[38]Dunn v. State Farm & Casualty Co., 927 F.2d 869, 872 (5th Cir. 1991).

[39]Veasley, 601 So. 2d at 293 (citations omitted).

[40]Although Martin eventually succeeded on his motion for summary judgment for breach of contract and was awarded the

support, Martin made the conclusionary allegation that First Continental had received the change of beneficiary form listing him as the primary beneficiary. He also asserted that First Continental "manufactured" an arguable reason to deny Martin's claim to the $3000 in insurance proceeds.

We agree with the district court's conclusion that as a matter of law First Continental had an arguable reason to deny Martin's claim to the policy proceeds. Contrary to Martin's bald allegation, First Continental received only one beneficiary form: the original that named the sons as primary beneficiaries. Martin points to a letter written by Crumbley Insurance to Bush in support of his position that First Continental received the change of beneficiary form from Crumbley Insurance. But that letter suggests that Crumbley Insurance only spoke to the home office about the irregularities in Carnell's form, not that it ever sent the form itself to the home office. In fact, Martin admits that the change of beneficiary form was not sent either to First Continental's home office or to Crumbley Insurance: "We sent the original copy in to the company Bush Construction." Crumbley Insurance asserted that it returned the form containing "irregularities" to Carnell. First

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insurance proceeds, it does not follow that First Continental did not have an arguable reason to deny his claim to the insurance proceeds. Martin deliberately bypassed the default judgment stage to receive an adjudication on the merits of his breach of contract claim through a summary judgment motion to thereby demonstrate that First Continental did not have an arguable reason to deny his claim to the insurance proceeds, but instead Martin was awarded the insurance proceeds because the adverse claimants did not appear in court to contest his motion for summary judgment.

Continental never received a copy of the change of beneficiary form until after it had notified the sons, as record beneficiaries, of their potential claim. Martin has presented no summary judgment evidence to support his contention that First Continental received the change of beneficiary form before denying his claim.

Unlike First Continental, however, Crumbley Insurance had received the change of beneficiary form. Whether Crumbley Insurance was the general agent of Consolidated, thus equating delivery to Crumbley Insurance with delivery to the home office of Consolidated, is disputed. Martin offers only the following deposition statement by Charlie Crumbley in support of his claim that Crumbley Insurance was the general agent of Consolidated:

> Q. What was your relationship with Consolidated American; were you a general agent?
> A. I was an Executive Sales Director, yeah.

First Continental concedes only that Crumbley Insurance was an agent of Consolidated, not a general agent. While this is a genuine issue of fact, it is not material. Even if Crumbley Insurance were the general agent of Consolidated, thus making receipt by Crumbley Insurance the equivalent of receipt by Consolidated, the evidence shows that the Application for Name Change and/or Beneficiary was not properly completed and executed. Consolidated's home office informed Crumbley Insurance that the form as executed was unacceptable. So, even if the form in question had been physically received directly by the home office, First Continental would still have had an arguable reason to deny Martin's claim.

As noted, Martin suggests that First Continental "manufactured" an arguable reason to deny his claim to the insurance proceeds when it contacted the two originally listed beneficiaries and informed them that Carnell had died while insured under the subject policy. Martin insists that such action created conflicting claims to the proceeds. First Continental, however, did not "manufacture" the original beneficiary designations. Neither did First Continental create adverse claimants merely to avoid paying Martin the policy proceeds. First Continental never denied that it owed the proceeds of the policy in question to someone. First Continental did not receive a copy of the relevant change of beneficiary form until after it had contacted the originally named beneficiaries. First Continental is not required to choose at its peril between conflicting claims to the proceeds. Moreover, an insurer having information of possible competing claims would be courting disaster to ignore any one of those. The summary judgment evidence in this case clearly establishes that First Continental had a legitimate, arguable basis for its election to interplead the proceeds of the policy rather than accede to Martin's demand that the funds be paid to him in preference to other persons who claimed entitlement to the funds.

Having decided that First Continental had an arguable reason to deny Martin's claim as a matter of law, we conclude that the district court's grant of summary judgment on the punitive damages claim was proper.

2. Extra-contractual Damages

A principal is liable both for its own torts and for the torts of its agent acting within the course and scope of the agent's authority.[41] Nonetheless, extra-contractual damages are not warranted absent a finding of an independent intentional tort separate from the breach of contract, such as bad faith.[42] If a defendant insurer has an arguable reason to deny a claim, however, the insurer is shielded from a tort judgment for extra-contractual damages.[43]

Having decided that First Continental had an arguable reason to deny Martin's claim as a matter of law, we concludesQas we did in connection with punitive damagessQthat the district court's grant of summary judgment denying the claims for extra-contractual damages was proper.

Martin's response to the motion for summary judgment did not set forth specific facts showing that there was a genuine and material factual issue for trial. In the total absence of effective rebuttal, the defendant's summary judgment evidence was

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[41]Laughlin v. Prudential Ins. Co., 882 F.2d 187, 191 (5th Cir. 1989); Fruchter v. Lynch Oil Co., 522 So. 2d 195, 199 (Miss. 1988); Bolivar v. R & H Oil & Gas Co., 789 F. Supp. 1374, 1382 (S.D. Miss. 1991).

[42]Universal Life Ins. Co. v. Veasley, 610 So. 2d 290, 295 (Miss. 1992).

[43]Hans Constr. Co. v. Phoenix Assurance Co., 995 F.2d 53, 56 (5th Cir. 1993) (holding that "Mississippi will allow extra-contractual damages for failure to pay on an insurance policy only when there is no arguable reason for such failure"); Blue Cross & Blue Shield v. Maas, 516 So. 2d 495, 497 (Miss. 1987) (citing Standard Life Ins. Co. v. Veal, 354 So. 2d 239, 248 (Miss. 1977)) (holding that insurer with arguable reason to deny claim is insulated from bad faith tort judgment).

sufficient to justify the district court's grant of summary judgment on the punitive damages claim and the claims for extra-contractual damages as well. We therefore reject Martin's second and third points of error.

C. Discovery

Martin argues that the magistrate judge improperly denied his request for discovery of a recording or transcript of a telephone conversation between an employee of Crumbley Insurance and an employee of First Continental. Unfortunately for Martin, however, he did not object to the district court about the ruling of the magistrate judge as required by Federal Rule of Civil Procedure 72(a). "The law is settled that appellate courts are without jurisdiction to hear appeals directly from federal magistrates."[44] We decline to consider this issue.

III.

CONCLUSION

For the foregoing reasons, we conclude that the district court properly granted Crumbley Insurance's motion to dismiss for fraudulent joinder and First Continental's motion for summary judgment. Consistent with Federal Rule of Civil Procedure 72(a), we shall not consider Martin's assignment of error regarding the magistrate judge's ruling on Martin's discovery request. In all respects, the rulings of the district court are

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[44] Singletary v. B.R.X., Inc., 828 F.2d 1135, 1137 (5th Cir. 1987) (quoting United States v. Renfro, 620 F.2d 497, 500 (5th Cir. 1978), cert. denied, 449 U.S. 921, 101 S. Ct. 321, 66 L. Ed. 2d 149 (1980)).

AFFIRMED.