

Stone v. Paul Revere Insurance CV-98-659-M 09/10/99
UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

David M. Stone,
Plaintiff

v.

Civil No. 98-659-M

Paul Revere Life Insurance Company,
Defendant

O R D E R

Plaintiff's renewed demand for jury trial is granted as to his declaratory judgment claim under N.H. Rev. Stat. Ann. Ch. 491:22, since it appears the claim is essentially one of breach of contract. American Employers' Insurance Co. v. Liberi, 161 N.H. 480 (1958). The court will reserve judgment until the final pretrial conference on whether the Consumer Protection Act claim will be submitted to the jury as it is not at all clear that CPA claims are triable to a jury. See, e.g., N.H. Automobile Dealers Assn. Inc., et al. v. General Motors Corporation, 620 F.Supp. 1150 (D.N.H. 1985) ("And in construing RSA 358-A, the New Hampshire Supreme Court has not hesitated to follow the lead of Massachusetts courts in their construction of M.G.L. c. 93A." (citation omitted)) and Guity v. Commerce Insurance Company, 36 Mass. App. Ct. 339, 631 N.E. 2d 75 (1994) (There is no right to trial by jury on an action under the Consumer Protection Act,

M.G.L. c. 3A.). In any event, however, if the CPA claim survives it will at the very least be submitted to a jury for an advisory verdict.

SO ORDERED.

Steven J. McAuliffe
United States District Judge

September 10, 1999

cc: Peter N. Tamposi, Esq.
Lisa S. Wade, Esq.