STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2013 JAN -3 A 10:57

JUDGMENT IN A CIVIL CASE

CASE NO: 2011CP3900694

Stephen L Perkins *vs.* Government Employees Insurance Company

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Pickens, South Carolina, this .

Court Reporter:

_____

PRESIDING JUDGE -

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

Gregory Alan Morton 4 Arboriand Way Greenville, SC 29615 ✓ MB

ATTORNEY(S) FOR THE PLAINTIFF(S)

✓ **John Elliott Rogers II** PO Box 5663 Spartanburg, SC 29304

ATTORNEY(S) FOR THE DEFENDANT(S)

Harold P Welborn, Jr. - Clerk of Court

MB

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS)	
)	
Steven L. Perkins,)	
)	
Plaintiff,)	**ORDER**
)	
v.)	
)	
Government Employees Insurance)	
Company, A/K/A GEICO,)	
)	**CA NO.: 2011-CP-39-694**
Defendant.)	
)	

Date of Hearing:	November 15, 2012
Presiding Judge:	D. Garrison Hill
Attorney for Plaintiff:	Gregory A. Morton
Attorney for Defendant:	John E. Rogers, II

THIS MATTER came before the Court on Defendant's Motion for Summary Judgment pursuant to Rule 56 of The South Carolina Rules of Civil Procedure.

FACTS

On or about November 19, 2006, Plaintiff Steven L. Perkins (hereinafter "Plaintiff" or "Perkins") rented a Kia Amanti rental car (hereinafter "rental vehicle") from Budget Rent-A-Car (hereinafter "Budget"). Plaintiff entered into a rental agreement/contract with Budget (hereinafter "Budget Rental Contract") with the agreement being in effect from November 19, 2006 through November 26, 2006. On November 20, 2006, Plaintiff, while driving the rental vehicle, was involved in an automobile collision in Missouri. The collision occurred when Plaintiff's rental vehicle was struck in the rear by a truck driven by a Missouri Department of Transportation employee. The Missouri DOT driver was found to be at-fault for the accident.

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While renting the rental vehicle from Budget, Budget offered Plaintiff insurance (or "Loss Damage Waiver") to insure the rental vehicle for any and all damages done to the rental vehicle during the rental period, which Plaintiff expressly declined. At the time of the accident, Plaintiff was one of the named insureds on Policy Number 2002125983 (hereinafter "Policy") issued by GEICO. The Policy period of the Policy was July 4, 2006 to June 4, 2007. The Policy was effective at the time of the accident.

Perkins called Budget and GEICO from the scene of the accident to report the collision. Budget then sent Perkins a replacement rental car to utilize for the remainder of his trip.

Prior to obtaining the rental vehicle from Budget, Perkins testified that he conducted internet research pertaining to rental car insurance coverage (see: Perkins Dep. 20:18 – 21:10). The first website that Perkins consulted was not a GEICO related website, it was a "consumer reports" website which informed Perkins that most automobile insurance companies would cover the insured under the automobile policy while driving a rental car and that the rental car insurance which is sold by the rental car companies are set at "exhaustive prices" and your own automobile insurance coverage is "adequate" (see: Perkins Dep. 20:18-23).

Perkins testified that he also called GEICO to ask a GEICO customer service representative whether his GEICO Policy would cover him while driving a rental car (see: Perkins Dep. 21:11-17). According to Perkins, the GEICO representative told him that the GEICO Policy would cover Perkins while he was driving a rental car under the terms and provisions of his GEICO Automobile Insurance Policy (see: Perkins Dep. 22:19-24).

In his deposition, Perkins admitted that he never discussed the Budget Rental Contract with GEICO and that he never conveyed a copy of the Budget Rental Contract to GEICO to

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discuss automobile insurance issues applicable to the Budget Rental Contract before renting the rental vehicle (see: Perkins Dep. 55:6-16).

Following the accident, Budget contacted GEICO seeking settlement for damages incurred to the Budget rental vehicle rented by Perkins. Specifically, on January 10, 2007, Budget wrote GEICO and alleged a $15,935.26 claim. Budget's "Vehicle Loss Disclosure" provides the following in reference to Budget's calculation of its claim:

1. Actual Loss:

a. Actual Cash Value:	$21,993.26
b. Actual Disposal Proceeds (auction proceeds):	$6,880.00
i. Sub-Total:	**$15,113.26**
c. Damage Claim Amount:	$15,113.26
d. Loss of Revenue/Use:	$672.00
e. Appraisal Costs:	$150.00
f. Total Damage Claim Amount:	**$15,935.26**

According to the Vehicle Loss Disclosure above, Budget sold the damaged rental vehicle with an "Actual Cash Value" of $21,993.26 for $6,880.00 when the **estimated cost of repair was only $7,891.97**.

According to the property damage estimate submitted to GEICO, the cost of repair estimate pertaining to the rental vehicle was $7,891.97. In response, GEICO informed Budget that the rental vehicle was not a total loss and therefore, GEICO would pay the cost to repair the rental vehicle, but it would not pay damages to Budget based on the vehicle being treated as a total loss.

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In response, after deducting the amount of Perkins' deductible ($250.00) in accordance with the terms of the Policy, GEICO issued a check to Budget for $7,641.97 as payment for damages incurred to the Budget rental vehicle. Upon paying Budget the repair cost, GEICO informed Budget that it was not a party to the Budget Rental Contract between Budget and Perkins and that the terms of GEICO's Policy with Perkins differed from the terms of the Budget Rental Contract between Budget and Perkins.

When Budget sued Perkins for the additional amount of damages in excess of the cost to repair the rental vehicle due pursuant to the Budget Rental Contract entered into between Budget and Perkins, for which GEICO was not a party, Budget took the position that under the Budget Rental Contract, Budget could seek additional damages from Perkins. Thus, Budget was seeking additional damages from Perkins based upon Perkins' alleged breach of the Budget Rental Contract. Breach of a rental vehicle contract is not covered under the GEICO Policy.

Once GEICO paid Budget the cost to repair the rental vehicle, Budget wrote Plaintiff and informed Plaintiff that Budget was seeking to recover $8,293.29 over and above the cost to repair the rental vehicle (paid by GEICO) pursuant to the terms of the Budget Rental Contract that Plaintiff executed with Budget. Budget filed a lawsuit against Perkins alleging that Perkins breached the Budget Rental Contract by failing to pay Budget the amount of money over and above the cost to repair the rental vehicle as was purportedly required under the terms of the Budget Rental Contract.

Perkins filed the Budget claim with GEICO after Perkins was sued for breach of contract by Budget. In response to Budget's lawsuit filed against Perkins, GEICO hired and paid attorney Kyle Thompson to defend Plaintiff in the Budget lawsuit while GEICO analyzed insurance coverage issues related to the Budget lawsuit. In a letter dated April 7, 2008, GEICO informed

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Perkins that, "This defense is subject to all the terms, conditions and provisions of the policy contract." GEICO further informed Perkins via letter dated May 14, 2008, that "Defendant does not waive any of its rights or admit any obligations under the policy." GEICO further informed Perkins in the May 14, 2008 letter that GEICO was "making this reservation of rights because...it appears we (GEICO) have already paid all claims owed under the collision coverage of your auto policy with GEICO and any additional payments of verdicts from this lawsuit against you will be your obligation to pay."

After analyzing the coverage issues related to the Budget lawsuit, GEICO determined that Perkins was not afforded coverage under the GEICO Policy for any of the claims and damages that Budget was seeking to recover from Perkins in the Budget lawsuit (breach of contract was the only cause of action in Budget lawsuit). GEICO informed Perkins of its coverage determination and the reasons for GEICO's coverage determination via letter dated August 21, 2008.

Once GEICO determined that no coverage was available to Perkins under the Policy, GEICO instructed the attorney previously hired and paid by GEICO to represent Perkins in the Budget lawsuit under a reservation of rights, to file a motion to be relieved as counsel for Perkins unless Perkins agreed to pay him personally because GEICO determined that no coverage was available to Perkins regarding the Budget lawsuit. Thus, the attorney hired by GEICO was relieved as counsel and Perkins hired Greg Morton to represent him in the Budget lawsuit.

Once GEICO denied coverage to Perkins concerning the Budget lawsuit, Perkins paid Budget $500 to settle the lawsuit. Perkins incurred legal fees to Greg Morton in defending the Budget lawsuit.

STANDARD OF REVIEW

Summary Judgment is appropriate "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 judgment as a matter of law." S.C. R. Civ. P. 56(c). In determining whether any triable issues of material fact exist, the Court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 860 (2002).

POLICY LANGUAGE

GEICO issued an automobile insurance policy to Perkins under Policy Number 2002125983. The pertinent Policy provisions are set forth below.

DEFINITIONS

9. ***"Temporary substitute auto"*** means an automobile or ***trailer,*** not owned by ***you,*** temporarily used with the permission of the owner. This vehicle must be used as a substitute for the ***owned auto*** or ***trailer*** when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction.

SECTION III

Physical Damages Coverages
***Your* Protection For *Loss* or Damage To *Your* Car**

DEFINITIONS

The definitions of the terms ***"auto business", "farm auto", "private passenger auto", "relative", "temporary substitute auto", "utility auto", "you"*** and ***"war"*** under Section I apply to Section III also. Under this Section, the following special definitions apply:

3. ***"Collision"*** means *loss* caused by upset of the covered auto or its collision with another object, including an attached vehicle.

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5. ***"Insured"*** means:

(a) regarding the ***owned auto:***

(i) ***you*** and ***your relatives;***
(ii) a person or organization maintaining, using or having custody of the auto with ***your*** permission, if his use is within the scope of that permission.

(b) regarding a ***non-owned auto; you*** and ***your relatives,*** using the auto, if the actual operation or use is with the permission or reasonably believed to be with the permission of the owner and within the scope of that permission.

6. ***"Loss"*** means direct and accidental loss of or damage to:

(a) the auto, including the equipment; or
(b) other insured property.

7. ***"Non-owned auto"*** means a ***private passenger auto, farm auto*** or ***utility auto*** or ***trailer*** not owned by or furnished for the regular use of either ***you*** or ***your relatives,*** except a ***temporary substitute auto. You*** or ***your relative*** must be using the auto or trailer within the scope of permission given by its owner. An auto rented or leased for more than 30 days will be considered as furnished for regular use.

8. ***"Owned auto"*** means:

(a) any vehicle described in this policy for which a specific premium charge indicates there is coverage;

(b) a ***private passenger, farm*** or ***utility auto*** or a ***trailer,*** ownership of which is acquired by ***you*** during the policy period or for which ***you*** enter into a lease during the policy period for a term of six months or more; if

(i) it replaces an ***owned auto*** as described in (a) above, or

(ii) we insure all ***private passenger, farm, utility autos*** and ***trailers*** owned or leased by ***you*** on the date of such acquisition and ***you*** request us to add it to the policy within 30 days afterward;

(c) a ***temporary substitute auto.***

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LOSSES WE WILL PAY FOR *YOU*

Collision

1. We will pay for ***collision loss*** to the ***owned*** or ***non-owned auto*** for the amount of each ***loss*** less the applicable deductible. No deductible will apply to ***loss*** to the safety glass of an ***owned*** or ***non-owned auto.***

LIMIT OF LIABILITY

The limit of our liability for ***loss:***

2. will not exceed the cost to repair or replace the property, or any of its parts, with other of like kind and quality and will not include compensation for any diminution in the property's value that is claimed to result from the ***loss;***

CONCLUSIONS OF LAW

Plaintiff's Complaint alleges causes of action against GEICO for (1) breach of contract and (2) unreasonable claims handling and bad faith. Based upon the Policy language, deposition testimony of Perkins and oral argument of counsel of both parties, the Court grants GEICO's Motion for Summary Judgment as to both causes of action.

I. BREACH OF CONTRACT

Plaintiff cannot establish that GEICO breached the insurance contract. In order to prove breach of contract, the burden is on the Plaintiff to prove a contract, the breach of the contract, and damages caused by the breach. *Fuller v. Eastern Fire and Casualty Ins. Co.*, 240 S.C. 75, 124 S.E.2d 602 (1962). "The foremost rule in interpreting an insurance contract is to give effect to the intent of the parties as shown by the language of the contract itself. When the contract language is clear and unambiguous, the language alone determines the contract's force, and terms must be construed to give effect to their plain, ordinary, and popular meaning." *Dorman v. Allstate Ins. Co.*, 332 S.C. 176, 504 S.E.2d 127 (Ct. App. 1998). Thus, "the judicial function of a court of law is to enforce an insurance contract as made by the parties, and not to rewrite or to

distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous. *Stewart v. State Farm Mut. Auto. Ins. Co.*, 341 S.C. 143, 151, 533 S.E.2d 597, 601 (Ct. App. 2000).

South Carolina recognizes an insurer's right to limit their liability and to impose whatever condition they desire upon coverage, so long as these limitations or conditions are not in contravention of some statutory prohibition or public policy. *Universal Underwriters v. Metro Property and Life Ins. Co.*, 298 S.C. 404, 380 S.E.2d 858 (Ct. App. 1989).

A. GEICO's duties to defend and indemnify were not triggered by the allegations of the underlying Budget lawsuit, and therefore, there was no breach of contract.

The allegation that Perkins breached the Budget Rental Contract he entered into with Budget when Perkins failed to pay damages in excess of the rental vehicle repair cost, does not constitute an insured claim against Perkins pursuant to the terms of the Policy.

Under the Policy (this insurance claim is governed under Section III of the Policy because the property damages claim is related to the rental vehicle that Perkins was driving at the time of the accident), GEICO was responsible to pay for "collision loss" to the rental vehicle which is considered a "temporary substitute auto" or a "non-owned auto" (coverage for the claim(s) at issue is identical for a "non-owned auto" and a "temporary substitute auto"), with regard to the automobile accident at issue in the Budget lawsuit. GEICO adhered the provisions of the Policy by paying for the amount of the "collision loss" (rental vehicle repair estimate) less the applicable $250.00 deductible (GEICO paid $7,641.97 in property damages). Upon making payment to Budget in accordance with the terms of the Policy for the "collision loss" to the rental vehicle (property damages repair estimate less the applicable deductible), GEICO fulfilled its obligations pursuant to the terms of the Policy.

In the Budget lawsuit, Budget sought to require Perkins to pay damages over and above the repair cost to the rental vehicle, which Budget alleged was required under the terms of the Budget Rental Contract. Based upon Budget's allegation(s), Budget claimed that Perkins breached the Budget Rental Contract by failing to pay Budget damages caused to the rental vehicle which were over and above the property damages repair cost.

The Policy does not provide coverage for Perkins with regard to the claims and damages at issue in the Budget lawsuit. Since GEICO already paid for the "collision loss" to the rental vehicle before the Budget lawsuit was filed, GEICO had no duty to defend or indemnify Perkins in the Budget lawsuit. The Budget lawsuit merely makes a claim for damages over and above the repair cost(s) for the rental car that Perkins allegedly contractually obligated himself to pay in the event of an accident involving the rental vehicle. GEICO was not a party to the Budget contract that Perkins entered into and GEICO has no obligation to pay any claims or damages associated with the Budget lawsuit because all claims and damages associated with the Budget lawsuit are not covered claims or damages pursuant to the terms of the Policy.

Therefore, Defendant's Motion for Summary Judgment as to the breach of contract cause of action is hereby granted.

II. BAD FAITH

In order to prove bad faith refusal to pay benefits under an insurance contract, Plaintiff must prove the existence of a mutually binding contract, refusal by the insurer to pay benefits due under the contract resulting from insurer's bad faith or unreasonable action, causing damage to the insured. *Cock-n-Bull Steak House, Inc. v. Generali Ins. Co.*, 321 S.C. 1, 6, 466 S.E.2d 727, 730 (1996). An insured may "recover damages if he or she proves that there was no reasonable basis to support the insurer's decision to deny benefits under a mutually binding insurance

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contract." *Id.* (citing *Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 360, 415 S.E.2d 393, 397 (1992). Generally, "if there is a reasonable ground for contesting a claim, the denial of the claim does not constitute bad faith." *Hansen v. United Services Automobile Assoc.*, 350 S.C. 62, 565 S.E.2d 114 (Ct. App. 2002). Further, "as long as an insurance company exercises that degree of ordinary and reasonable care in the adjustment of claims which it is already, in fact, held to under the statutory law of South Carolina, it need not be coerced into paying questionable or extortionate claims which it deems unreasonable or ill-founded....Resort to a judicial forum is not per se bad faith or unfair dealing on the part of the insurer ... rather, tort liability may be imposed only where there is a clear showing that the insurer unreasonably, and in bad faith, withholds payment." *Trimper v. Nationwide Ins. Co.*, 540 F. Supp. 1188, 1194 (D.S.C. 1982); *See also, Varnadore v. Nationwide Mut. Ins. Co.*, 289 S.C. 155, 160, 345 S.E.2d 711, 714-715 (1986).

A necessary element of a claim for bad faith is "a refusal by the insurer to pay benefits due under the contract." *Walters v. Canal Ins. Co.*, 294 S.C. 150, 151, 363 S.E.2d 120, 121 (Ct. App. 1987). When the insurer's refusal to pay benefits is justified as a matter of law, this necessary element of a bad faith claim is missing and judgment in favor of the insurer is warranted. *Id.*; *See also, Laidlaw Environmental Services v. Aetna Cas. & Surety Co.*, 338 S.C. at 51, 524 S.E.2d at 851 ("Because we hold Aetna's decision to deny coverage comported with the policy, Laidlaw's bad faith claim is moot"). Similarly, the insurer has not breached the implied covenant of good faith if it contests the claim on a reasonable ground. *State Farm Casualty Ins. Co. v. Barton*, 887 F.2d 724 (4th Cir. 1990) (construing South Carolina law) (The determination of whether or not there was an objectively reasonable basis for denying the insured's claim depends on the circumstances existing at the time of the denial).

As discussed above, GEICO's coverage denial at issue was based upon the clear and unambiguous terms, conditions and exclusions contained in the Policy. Moreover, GEICO's conclusion that there were no benefits due to Perkins under the Policy was fully consistent with, and supported by, applicable legal precedent. Where, as here, GEICO's coverage denial was both reasonable and justified, Plaintiff's claim of bad faith must fail as a matter of law.

Therefore, Defendant's Motion for Summary Judgment as to the unreasonable claims handling and bad faith cause(s) of action is hereby granted.

IT IS SO ORDERED.

Date: 12/20/12

D. Garrison Hill
Presiding Judge Thirteenth Judicial Circuit
Pickens County, South Carolina