STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG Rommel McCants, Plaintiff, vs. Allstate Insurance Company, Nettie Gass, and Unknown Managers, Administrators and Adjusters of Defendant Allstate Insurance Company (Collectively referred to as Defendants Doe), Defendants.	IN THE COURT OF COMMON PLEAS FIRST JUDICIAL CIRCUIT C.A. No.: 2023-CP-38-01227 **ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

This matter comes before me upon motion by the Defendants for an Order pursuant to Rule 56 SCRCP granting their motion for summary judgment on various grounds. A hearing was held in this matter on September 4, 2024. Johnston Cox appeared for the Defendants. Virginia Williams appeared for the Plaintiff. After considering the depositions, other materials timely submitted and oral arguments presented by the parties, the Defendants' motion for summary judgment is granted.

This case involves a difference of opinion about the valuation of an underinsured motorist ("UIM") claim. Plaintiff has brought the instant lawsuit contending that she is entitled to recover the amount of the verdict awarded by the jury in excess of the policy limits and other actual and punitive damages. Plaintiff contends that Allstate acted in bad faith or breached the policy because they reached an impasse in settlement negotiations and Allstate defended the underinsured motorist pursuant to S.C. Code Ann. § 38-77-160.

COMPLAINT ALLEGATIONS

Plaintiff was involved in a motor vehicle accident on June 7, 2015, in which the underinsured motorist Wanda Keitt ("Keitt") struck Plaintiff's vehicle. Keitt's liability carrier,

State Farm Mutual Automobile Insurance Company ("State Farm"), paid the minimum limits of $25,000 to Plaintiff in exchange for a covenant not to execute with respect to Keitt.

Allstate issued two automobile insurance policies to Plaintiff. Policy number 035297550 ("first policy") listed four vehicles, including the vehicle McCants was driving at the time of the accident, with UIM limits of $25,000 each vehicle. Policy number 090883295 ("second policy") listed three more vehicles, each with UIM coverage in the amount of $25,000 per person. (Compl. ¶¶7-8).

According to the Complaint, Plaintiff demanded Allstate pay the total available UIM limits of $175,000, Allstate refused and Plaintiff filed suit and proceeded with discovery. Allstate participated in the defense of Keitt as permitted under § 38-77-160 to protect its interests. The case against Keitt proceeded to a jury trial. The jury found in favor of McCants and awarded her $300,000 in actual damages and no punitive damages. Allstate paid the entirety of its $175,000 UIM to McCants following the verdict. McCants recovered a total of $200,000 for her damages between the liability and UIM coverages.

SUMMARY JUDGMENT STANDARD

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that the moving party is entitled to summary judgment 'the [evidence before the court shows 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. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 459, 892 S.E.2d 297, 299 (2023) (quoting Rule 56(c), SCRCP). "[T]he 'mere scintilla' standard does not apply under Rule 56(c)." *Id*. at 463, 892 S.E.2d at 301. "Rather, the proper standard is the 'genuine issue of material fact' standard set forth in the text of the Rule." *Id*. "The plain language of Rule 56(c) mandates the entry of summary judgment ... against a party who fails to make a showing sufficient to establish the existence of an

element essential to the party's case, and on which that party will bear the burden of proof." *Baughman v. Amer. Tel. & Tel. Co.*, 306 S.C. 101, 116, 410 S.E.2d 537, 545–46 (1991) (*quoting Celotex Corp. v. Catre*tt, 477 U.S. 317, 322–23, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 357–58, 650 S.E.2d 68, 71 (2007).

I. Plaintiff failed to prove facts sufficient to constitute a cause of action for breach of contract against Allstate.

Plaintiff cannot demonstrate that Allstate breached the terms of the policy and as such, her breach of contract claim must be dismissed as a matter of law. Under South Carolina law, "[t]he elements for a breach of contract are the existence of the contract, its breach, and the damage caused by such breach." *South Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 492, 732 S.E.2d 205, 209 (Ct. App. 2012). Here, McCants cannot maintain her cause of action for breach of contract because she cannot provide any evidence demonstrating that Allstate breached the terms of the policies.

There is no dispute that Allstate issued the policies to Plaintiff and that she was insured thereunder. Further, there is no dispute that the policy provided for underinsured limits of $25,000 for each vehicle listed with the potential to stack coverages for insured vehicles. It is undisputed that Plaintiff had seven vehicles, for a total of $175,000 in underinsured motorist coverage. Finally, it is undisputed that after the jury verdict Allstate paid all the applicable UIM limits available to McCants.

Numerous courts across the country have expressly stated that an insurer does not contractually owe its insured more than the limits of the policy. *See, e.g., Stewart v. Allstate Indemnity Company*, Case No. 5:12-cv-03644-HGD, 2014 U.S. Dist. LEXIS 46012, *20 (N.D. Ala. Apr. 3, 2014) (explaining that an insurer "cannot be obligated to pay more than the policy requires it to pay") (citing *Farr v. Gulf Agency*, 74 So.3d 393 (Ala. 2011) (finding no breach of

contract where insurer paid policy limits in absence of any evidence that policy limits had been increased)); *Holenda v. Infinity Select Ins. Co.*, Case No. CV13-07128R, 2014 U.S. Dist. LEXIS 18632, *6 (C.D. Cal. Feb. 13, 2014) (determining that "there can be no breach of contract where an insurer pays an arbitration award or the applicable policy limit") (citing *Paulson v. State Farm Mut. Auto. Ins. Co.*, 867 F. Supp. 911, 917 (C.D. Cal. 1994) ("Paulson's claim is not viable. State Farm has paid Paulson the limits of liability under his policy.")); *and S.R. Residence, LLC v. Lexington Ins. Co.*, Civil Action No. H-10-4178, 2013 U.S. Dist. LEXIS 41628, *6-7 (S.D. Tex. Mar. 25, 2013) ("Under Texas law, an insurer is entitled to summary judgment on a breach of contract claim when it presents evidence that if fulfilled its obligations under the policy by paying the insured up to the stated policy liability limits.") (citing *Vest v. Gulf Ins. Co.*, 809 S.W.2d 531, 534 (Tex. App. 1991)).

Consistent with South Carolina's general contract law, the South Carolina Court of Appeals also reached this same determination in an unpublished decision, *Quick v. Markel Ins. Co.*, No. 2008-UP-545, 2008 WL 9846506 (Ct. App. Oct. 3, 2008). In *Quick*, the insureds brought suit against the insurer for a number of causes of action, including breach of contract. One of the insureds was injured in a car accident and suffered significant injuries, including the loss of an eye and a broken femur and incurred medical bills in excess of $55,000. *Quick*, 2008 S.C. App. Unpub. LEXIS 52 at *2-3. The policy had a limit of $2,500 for medical bills and $5,000 for the loss of the eye. The insurer paid the $7,500 policy limits to the insureds.

Despite the payment of the applicable policy limits, the insureds brought suit and sought $75,000 in damages and attorney's fees. The insurer filed a motion for summary judgment on the claim for breach of contract, among other things, and the trial court granted the motion. In upholding the grant of summary judgment, the Court of Appeals explained the undisputed terms

of the contract provided that the insured was entitled to a certain amount for the accident and it was undisputed that the insurer had paid that full amount. *Id.* at 11-12. Further, the *Quick* court explained that "[t]he [trial] court viewed the insurance policy as written and found no breach of contract" and on appeal it "f[ound] no error in this ruling."

Here, there is no dispute that once the jury verdict was returned, Allstate paid Plaintiff $175,000 representing the total, stacked policy limits for bodily injury coverage on the vehicle involved in the accident. Allstate has fulfilled any obligation it may have had to Plaintiff resulting from the injuries she sustained in the 2015 accident. This is consistent with the allegations as pled by Plaintiff. "An insurer does not owe its insured more than the limits of the policy." *McCray v. Allstate Ins. Co.*, No. 3:14-2623-TLW, 2017 WL 6731594, at *10 (D.S.C. Oct. 11, 2017) (citing *Quirk, supra*).

Therefore, Allstate is entitled to summary judgment on the breach of contract claim as a matter of law.

II. South Carolina law does not recognize an independent negligence cause of action against an insurance carrier separate and distinct from a bad faith cause of action.

The South Carolina Court of Appeals has recently held that South Carolina law does not recognize a negligence cause of action separate and apart from a bad faith cause of action. In *Hood v. USAA*, 2023 WL 155073 (S.C. App. 2023), the Court of Appeals examined the seminal bad faith case in South Carolina, *Nichols v. State Farm Mut. Auto. Ins. Co.*, 279 S.C. 336, 340, 306 S.E.2d 616, 619 (1983) and stated,

> As we read *Nichols*, it recognizes a single tort encompassing bad faith and negligence, not separately viable claims for bad faith and negligence. The claim in these cases is that the insurance company has breached the covenant of good faith and fair dealing that is implied in every insurance contract. *See Tadlock Painting Co. v. Md. Cas. Co.*, 322 S.C. 498, 504, 473 S.E.2d 52, 55 (1996) (stating that proposition). Indeed, precedent explains an insurance company commits "bad faith" when (among other elements) there is "bad faith or unreasonable action *in*

> *breach of* an implied covenant of good faith and fair dealing arising on the contract." *Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 359, 415 S.E.2d 393, 396-97 (1992) (emphasis added).

Id.

Federal cases in the United States District Court for the State of South Carolina also support this position. *See Skinner v. Horace Mann Ins. Co.*, 369 F. Supp. 3d 649, 654 (D.S.C. 2019) (finding an insured's negligence claim was duplicative of her bad faith claim, and explaining that freestanding negligence claims against insurers are generally improper in the District of South Carolina); *Kraemer v. Mass. Mut. Life Ins. Co.*, No. 2:15-04571-CWH, 2017 WL 5635469, at *6 (D.S.C. Apr. 28, 2017) (relying on the South Carolina elements of bad faith and an unpublished federal case stating no authority supports a freestanding negligence claim separate from a bad faith claim); *Maranto v. State Farm*, No. 2:98-cv-03131-PMD, ECF No. 19 at pp. 3–4 (filed Aug. 11, 1999) (citing *Nichols* and explaining that while an insurer's negligence can be considered in a bad faith claim, "no authority support[s] the existence of a separate, free-standing claim of negligence in such circumstances").

The crux of McCant's negligence cause of action is that Allstate's actions in evaluating Plaintiff's case was unreasonable and unsupported by a reasonable basis and that Defendant's conduct was a breach of the "covenant and duty of good faith and fair dealing implied as a matter of law in contracts for insurance[.]" *See* Compl. at ¶¶ 33-34. Thus, under the allegations of Plaintiff's own Complaint and pursuant to South Carolina precedent in *Hood*, *Nichols* and *Maranto, supra,* a stand-alone negligence cause of action cannot exist, as one has never been created by our Supreme Court or the General Assembly and it is duplicative of the bad faith cause of action. Thus, Plaintiff's negligence cause of action is dismissed.

III. Defendant Nettie Gass is entitled to summary judgment because South Carolina does not recognize a negligence cause of action against an insurance adjuster.

Because South Carolina courts have not recognized a negligence cause of action against an insurance carrier, there can be no negligence cause of action against an adjuster employed by the insurance carrier. South Carolina does not recognize a separate cause of action against an insurance adjuster separate from an insurance carrier and as such, Defendant Nettie Gass should be dismissed with prejudice from this lawsuit.

In *Carolina Bank and Trust Co. v. St Paul Fire and Marine Co.*, the South Carolina Court of Appeals stated that "the duty of good faith in the performance of obligations based on or arising under the contract does not extend to a person who is not a party to the insurance contract. 279 S.C. 576, 581, 310 S.E.2d 163, 166 (Ct. App. 1983). The court held that the plaintiff's complaint alleging breach of the duty of good faith against the insurer's agent failed to state a cause of action where the agent was not a party to the insurance contract. *Id.*

Here, it is undisputed that Gass was an employee of Allstate and not a party to the insurance contract. There can also be no dispute that the alleged duty to properly handle Plaintiff's UIM claim as well as "the covenant and duty of good faith and fair dealing implied as a matter of law in contracts of insurance" arose under the insurance contract. Therefore, no "duty of good faith in the performance of obligations based on or arising under the contract" is applicable to insurance adjuster Gass who was not a party to the contract. *See Charleston Dry Cleaners & Laundry, Inc. v. Zurich Am. Ins. Co.*, 355 S.C. 614, 617-18, 586 S.E.2d 586, 588 (2003) (stating that no bad faith claims could be brought against an independent adjuster because "the duty of good faith arising under the contract does not extend to a person who is not a party to the insurance contract") (citing *Carolina Bank and Trust Co.*, 279 S.C. 576, 310 S.E.2d 163)).

By certified question, the *Charleston Dry Cleaners* court declined to recognize a general duty of care from an independent insurance adjuster to the insured in the adjustment of a claim. 355 S.C. at 619, 586 S.E.2d at 589. In reaching this decision, the Supreme Court stated that it was not enough that an adjuster was "fully aware that the insureds could be harmed financially if they performed their investigation in a negligent manner and rendered a report to the insurer that would cause the company to refuse payment" because "foreseeability of injury is an insufficient basis for recognizing a duty." *Id.* at 619, 586 S.E.2d at 588 (citations omitted). The reasoning behind the Supreme Court's decision is agency. *Id.* at 616, 586 S.E.2d at 587 (framing the certified question in the context of "where the adjuster is acting as an agent of the adjusting company and both the adjuster and the adjusting company are agents of the disclosed insurance carrier").[1] In *Charleston Dry Cleaners*, the Court noted that the majority of jurisdictions do not allow this cause of action for the same reason of agency. Where, as here, the adjuster is merely an agent of the insurer, the adjuster's duty is owed to the insurer, and no negligence action may be brought against the adjuster by the insured under South Carolina law premised on an agent's adjustment of a claim. If there is an improperly handled claim, the insured's recourse is against the insurer.

Without the necessary element of duty, Plaintiff has failed to state a claim against Gass. Therefore, Gass is entitled to summary judgment.

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[1] Immediately after its holding, the Supreme Court stated in its decision that agency principles remain available to the plaintiff:

> We note, however, that the authorized acts of an agent are the acts of the principal. In addition, a bad faith claim against the insurer remains available as a source of recovery for a plaintiff such as [the insured]. Therefore, in a bad faith action against the insurer, the acts of the adjuster or adjusting company (agent) may be imputed to the insurer (principal).

Charleston Dry Cleaners, 355 S.C. at 619, 586 S.E.2d at 589 (citations omitted).

IV. The Plaintiff has failed to prove facts sufficient to constitute a bad faith cause of action.

The Plaintiff's cause of action for bad faith alleges only the following:

> Defendant Allstate's failure to pay UIM benefits to Plaintiff violated its Policy.
>
> Under the Policy, Defendant Allstate owed to Plaintiff a duty to act in good faith and to deal fairly; Defendant Allstate breached this duty when it negligently, willfully, recklessly, unreasonably, without just cause, and/or in bad faith refused to pay UIM benefits due under the Policy; when it failed to make any offer to settle within the policy limits when Defendant Allstate knew the severity of Plaintiff's injuries, her medical bills, the aggravating circumstances surrounding the wreck, and the full amount of coverage available to her; and by the fact that after the verdict it tendered the $175,000.00 coverage limits without contest of the verdict.

Under South Carolina law, in order to prove a cause of action for bad faith a policyholder must show: (1) the existence of a mutually binding contract of insurance between the plaintiff and the defendant; (2) refusal by the insurer to pay benefits due under the contract; (3) resulting from the insurer's bad faith or unreasonable action in breach of an implied covenant of good faith and fair dealing arising on the contract; (4) causing damage to the insured. *Crossley v. State Farm Mut. Auto. Ins. Co.*, 415 S.E.2d 393, 396–397 (S.C. 1992). An insurer has a good faith duty to investigate a claim. *Flynn v. Nationwide Mut. Ins. Co.*, 315 S.E.2d 817, 820 (S.C. Ct. App. 1984). A dispute concerning the value of an insurance claim does not automatically constitute bad faith under South Carolina law. *See Collins v. Auto-Owners Ins. Co.*, 438 Fed.Appx. 247, 249 (4th Cir. 2011) (applying *Crossley*, 415 S.E.2d at 397). If "there was an objectively reasonable ground for contesting an insurance claim, there is no bad faith in the denial of it." *Shiftlet v. Allstate Ins. Co.*, 451 F. Supp. 2d 763, 772 (D.S.C. 2006). "If there is a reasonable ground for offering less than the full amount demanded on a claim, then there is no bad faith negotiations." *Jordan v. Allstate Ins. Co.*, No. 4:14-cv-3007-RBH, 2016 WL 4367080, at *6 (D.S.C. Aug. 16, 2016), *aff'd* 678 Fed. Appx. 171 (4th Cir. 2017); *Wilkins v. State Farm Mutual Ins. Co.*, No. 3:06-cv-334-CMC, 2008

WL 2690240, at *9 (D.S.C. July 1, 2008); *see also Collins v. Auto-Owners Ins. Co.*, 759 F. Supp. 2d 728, 740 (D.S.C. 2010) (finding no bad faith where the value of the plaintiff's claim could reasonably be debated).

Whether an offer is reasonable and made in good faith must be evaluated in light of what was known to the insurer at the time and the nature of the negotiations. *See, Collins*, 759 F. Supp. 2d at 740. Additionally, an offer is to be evaluated in light of the nature of negotiations. *Id*. ("It is not the role of the courts to impose rigid rules and guidelines upon the conduct of parties in the settlement process." (*quoting Snyder*, 586 F. Supp. 2d at 460)).

On the other hand, if it is "clear" that the insured suffered damages "greatly in excess" of the liability limits, an insurer cannot in bad faith delay or withhold benefits to which it is certain that the insured is entitled. *Snyder v. State Farm Mut. Auto. Ins. Co.*, 586 F. Supp. 2d 453, 459 (D.S.C. 2008) *(citing Myers v. State Farm Mut. Auto. Ins. Co.*, 950 F. Supp. 148, 151 (D.S.C. 1997)). This standard for examining disputed value cases was clarified by Judge Gergel in *Henry v. Government Employees Insurance Co.*, No. 2:15-cv-3560-RMG, 2017 WL 3328229 (D.S.C. Aug. 3, 2017).

In *Henry*, the parties were unable to reach an agreement as to the settlement value of the case, the insured filed a lawsuit and obtained an excess verdict against the at-fault driver, and the insurer thereafter tendered the insured his policy limits. In granting the insurer's motion for summary judgment in the subsequent bad faith case, Judge Gergel observed:

> Clearly, reasonable minds have differed on the appropriate calculation of damages in this case, but the question before the Court is limited to whether GEICO acted in bad faith when it refused Plaintiff's settlement offer. Plaintiff has not offered facts sufficient to create a genuine dispute of material fact about whether GEICO was certain Henry suffered damages that were greatly in excess of the [ ] coverage limit and withheld those benefits in bad faith.

Therefore, to prove bad faith in a UIM "failure to settle" case, the plaintiff "must offer facts sufficient to create a genuine dispute of material fact as to whether the insurer *was certain* the claimant suffered damages that were greatly in excess of the coverage limit and withheld those benefits in bad faith." *Wood v. Trumble Ins. Co.*, 2021 WL 9968873 (D.S.C. December 8, 2021)(emphasis added); *Henry v. Gov. Employees Ins. Co.*, No. 2:15-cv-3560-RMG, 2017 WL 3328229, at *4 (D.S.C. Aug. 3, 2017); *McCray v. Allstate Insurance Company*, 2017 WL 6731594, at *6 (D.S.C. Oct. 11, 2017).

Plaintiff has produced no competent evidence that Allstate was certain that McCants suffered damages related to this accident that were greatly in excess of the coverage limit and withheld those benefits in bad faith. Rather, the only competent evidence in this case is that Allstate employees reviewed all the information available at various different times during the life of the claim and evaluated the damages as being less than the total amount of $175,000 UIM coverage available.

Nettie Gass was the original adjuster involved in the claim before the matter went into litigation. When the claim was opened and sent to her, it was opened under policy number 035297550 that provided up to $100,000 of stackable liability limits ($25,000 for four cars, including the car involved in the accident). At that time, she knew that McCants had already been paid $25,000 by the liability carrier entitling Allstate to a $25,000 offset before paying any UIM. McCants was claiming approximately $39,000 in medical bills related to the accident. McCants demanded payment of the full $175,000 in available UIM limits.

Gass reviewed all the information provided by McCants' counsel and determined that most of the medical treatment and bills presented were not related to the accident, but to a pre-existing medical condition. She noted that McCants was treating for the same pain and receiving the same

treatment, including rhizotomies, for years prior to the 2015 accident. A settlement value range was established between $37,000 and $47,000 (in addition to the $25,000 already paid for a total settlement range of $62,000 - $72,000). Gass initially offered $40,000 in UIM coverage to resolve the claim. McCants countered at $150,000. Gass offered $45,000 before Plaintiff rejected the offer and filed suit.

Gass had no involvement in the claim after February 14, 2017. Plaintiff filed a tort UIM lawsuit on February 14, 2017. The next time that settlement of the matter was discussed, Paul Johnson ("Johnson") was the adjuster for Allstate. Johnson had been employed with Allstate for over 25 years and had been evaluating and settling bodily injuries claims since 2005-2006. The only evidence in the case is that Johnson also appropriately reviewed the available liability and damage information. He also believed that most of her medical treatment and bills were related to her pre-existing condition as opposed to the accident. He noted that she treated for 9 years for the same complaints before accident and continued to get the same treatment she had before the accident after the accident. He evaluated the settlement value between $85,000 and $100,000 and gave defense counsel authority to offer up to $100,000 to resolve the claim.

Later, Johnson was made aware of the possibility of a second auto policy in the household that provided an additional $75,000. He explained that it was a very unusual circumstance that there is more than one Allstate auto policy in a household. He opened a claim under the second policy on November 15, 2018. Although his evaluation of the settlement value did not change ($85,000 - $100,000), he sought and received additional authority of $10,000 from the second policy in an effort to settle the case. He believed this settlement evaluation was fair and reasonable under circumstances and included information from the treating physician's deposition that McCants was in fact receiving the same treatment before and after the accident and that she would

have continued receiving the treatment even if the accident had never occurred. Plaintiff rejected this offer and the case proceeded to trial on September 2, 2019.

Allstate retained Senator Shane Massey to defend the UIM litigation. During the litigation, he learned that McCants had been injured in an accident in 2005 and had been treating regularly with various doctors for neck, lower back, and tailbone pain during the 10 years between the 2005 and 2015 motor vehicle accidents. McCants had epidural steroid injections and rhizotomies to her neck and lower back during that 10-year period. In fact, Ms. McCants had rhizotomies to her neck and lower back just days before the 2015 motor vehicle accident. Additionally, McCants already had yet another rhizotomy scheduled when the 2015 motor vehicle accident occurred. The regular treatment, recently performed procedures, and the procedure that was scheduled at the time of the 2015 accident were clear indications to Massey that McCants, in 2015, was still treating for the injuries she sustained in 2005.

The treatment McCants received after the 2015 motor vehicle accident was the same treatment she received prior to that accident, and medical records indicated McCants would have continued having that treatment even if she had not been involved in the 2015 accident.

McCants' attorneys took the deposition of Dr. Blaine Richardson for use at the trial of the case on August 23, 2019. Dr. Richardson agreed that Ms. McCants had rhizotomies to her neck and lower back every year from 2009 until 2015, and she continued to have yearly rhizotomies after the 2015 motor vehicle accident. In fact, she had a rhizotomy 4 days before the accident and was already scheduled to have another one a few days after the accident occurred. Dr. Richardson also admitted that McCants most likely would have continued having rhizotomies even if the 2015 accident had never happened.

Massey states that the offer of $110,000 in UIM (plus the $25,000 in liability) was a reasonable offer under the circumstances of the case, because it was reasonably debatable whether the medical treatment she had after the accident was due to her pre-existing condition or the 2015 accident.

Plaintiff also apparently claims that Allstate's failure to open a claim under the second policy (policy number) until several months before the trial is somehow bad faith. However, as explained by Allstate employees, the UIM exposure was never evaluated above the UIM limits of policy number 035297550 ($100,000). Johnson opened a claim under the second policy, 090883295, and received $10,000 in settlement authority under that policy in an effort to resolve the case. Plaintiff presents no competent evidence that it was unreasonable for Allstate to open a claim under the second policy when it did or that McCants suffered any damages from Allstate's failure to open a claim under the second policy earlier. McCants rejected the offer of the $10,000 from the second policy and there is no evidence in the record that she would have accepted that offer if it had been made at an earlier time.

Further, the Plaintiff always knew that she had purchased two policies with a total of $175,000 in UIM coverage potentially available to her as shown by the correspondence written by her attorneys to Allstate. The entire $175,000 in UIM limits was ultimately paid to Plaintiff. She received payment of all the coverage for which she paid. McCants provided no competent testimony or evidence to the Court to dispute these facts. The Plaintiff has failed to prove any bad faith or damages related to coverage under the second policy. Therefore, Allstate is entitled to summary judgment on the bad faith claim as a matter of law.

V. The Plaintiff voluntarily withdrew her cause of action for Intentional Infliction of Emotional Distress.

McCants' Complaint includes a cause of action for intentional infliction of emotional distress. However, her counsel voluntarily withdrew that cause of action at the hearing. The civil conspiracy cause of action was previously dismissed as well.

WHEREFORE, IT IS ORDERED that the claims against Defendant Nettie Gass are dismissed with prejudice as a matter of law.

IT IS ALSO ORDERED THAT the breach of contract, bad faith, negligence and intentional infliction of emotional distress causes of action are dismissed against Defendant Allstate with prejudice as a matter of law. The only remaining cause of action at this time against Defendant Allstate is the barratry cause of action. Allstate may pursue a motion for summary judgment as to that cause of action prior to trial.

AND IT IS SO ORDERED.

Orangeburg Common Pleas

Case Caption: Rommel Mccants VS Allstate Insurance Company , defendant, et al

Case Number: 2023CP3801227

Type: Order/Summary Judgment

So Ordered

s/ Thomas W. McGee III, Judge Code 2786