

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)
)
 Billy Oswald, Oswald & Burnside, LLC;)
 and Oswald Law Firm, LLC,)
)
 Plaintiff,)
 vs.)
)
 Robert M. Rice, Robert Rice Agency,)
 Inc., American Auto Club Ins Agency,)
 LLC, Sentinel Insurance Company,)
 Limited, and the Hartford Insurance)
 Group,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 ELEVENTH JUDICIAL CIRCUIT

Civil Action No. 2025-CP-32-03806

**ORDER GRANTING DEFENDANTS
 ROBERT M. RICE AND ROBERT RICE
 AGENCY, INC.’S MOTION FOR
 SUMMARY JUDGMENT**

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 SC Court of Appeals

This matter came before this Court on Defendants Robert M. Rice and Robert Rice Agency, Inc.’s (“Rice Defendants”) Motion for Summary Judgment (“Motion”).¹ A hearing on this matter was held on March 31, 2026 (“Hearing”) where the Plaintiff was represented by Frank Barton, Esquire, and the Defendants were represented by Benjamin Bruner, Esquire. For the reasons set forth herein, this Court hereby **GRANTS** the Motion.

BACKGROUND

This case arises out of a coverage dispute between Plaintiffs Billy Oswald, Oswald & Burnside, LLC, and Oswald Law Firm, LLC (“Plaintiffs”) and their insurers. Plaintiffs filed a claim for defense and indemnity after they were sued in an underlying lawsuit by a former employee, Sharon Ross. In that lawsuit, Ms. Ross asserted five causes of action: (i) sexual

¹ This motion was originally styled as a motion to dismiss or in the alternative a motion for summary judgment. Throughout the life of this motion, extrinsic evidence has been introduced by both parties through both written motions and oral arguments. Consequently, this Court will analyze this motion under a motion for summary judgment standard pursuant to SCRCF Rule 12(b).

harassment, (ii) retaliation, (iii) intentional infliction of emotional distress, (iv) violation of the South Payment of Wages Act, and (v) battery. *See* Complaint filed in Underlying Lawsuit at 3-11. That underlying case was settled in April 2024, and Mr. Oswald permanently surrendered his law license.

In this case, Plaintiffs contend the underlying action was presented to the defendants to defend and indemnify, but the defendants “wrongfully and in breach of their insurance contract denied coverage and failed to provide any legal defense or acknowledge any responsibility to pay any damages resulting from the civil action.” Compl. ¶ 11. The Hartford first denied coverage on December 15, 2022, because, among other things:

- “the Policies exclude coverage for any obligation of the insured under a workers’ compensation, disability benefits or unemployment compensation law or any similar law or ‘bodily injury’ to an ‘employee’ of the insured arising out of and in the course of their employment,”
- “[t]he Policies also exclude ‘bodily injury’ expected or intended from the standpoint of the insured, and exclude ‘personal and advertising injury’ arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting “personal and advertising injury,” and
- “the Policies exclude ‘bodily injury’ or ‘personal and advertising injury’ to a person arising out of termination of that person’s employment or employment-related practices, policies, acts or omissions.”

Letter from Hartford, December 15, 2022, at 4-5.

After the plaintiff in the underlying lawsuit filed an amended complaint, the Hartford subsequently reaffirmed its denial of coverage based on the same grounds: “Since the allegations of the Lawsuit fall within the scope of the exclusions cited above, The Hartford denies coverage under the Policies.” Letter from Hartford, March 14, 2023, at 4-5.

It is important to note that during a February 24, 2026, hearing, the Plaintiffs withdrew their breach of contract and bad faith claims against the Rice Defendants on the record. The sole claim before this Court, therefore, is whether Plaintiffs’ negligence claim against the Rice Defendants should survive summary judgment.

STANDARD OF REVIEW

“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Summary judgment is permissible when the moving party demonstrates “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.” Rule 56(c), SCRC; *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (S.C. 2023). In determining whether summary judgment is appropriate, evidence and reasonable inferences must be viewed in the light most favorable to the nonmoving party. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). The Supreme Court has disavowed the old “mere scintilla” standard and made clear “it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *Kitchen Planners* 440 S.C. at 464, 892 S.E.2d at 301.

DISCUSSION

To establish a cause of action for negligence, Plaintiffs must prove three elements: (1) a

duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty. *Bloom v. Ravoira*, 339 S.C. 417, 422, 529 S.E.2d 710, 712 (2000). The absence of any one of these three elements makes the cause of action insufficient. *S.C. State Ports Auth. v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 376, 346 S.E.2d 324, 325 (1986). More recent cases expand on these three elements by adding in fourth separate element – proof of causation, both factual and proximate. *See Burnett v. Family Kingdom, Inc.*, 387 S.C. 183, 691 S.C. 183 (Ct. App. 2010).

Plaintiffs’ main opposition to the Rice Defendants’ motion is that the Rice Defendants breached their duty by failing to secure Employment Practices Liability Insurance coverage (“EPLI”) as part of the insurance plan that was sold to Plaintiffs, even if Plaintiffs never requested the EPLI coverage.² In an affidavit submitted by Plaintiffs, Mr. Oswald asserts:

The law firms were of the understanding Employment Practices Liability Insurance (EPLI) coverage was provided under the policies issued to Oswald and Burnside and Billy R Oswald Law Firm at the times relevant to the allegations of the Ross complaint. The firms purchased the Hartford's Spectrum Business Owners Policy which purported to provide and include EPLI coverage. The firms never opted out of the EPLI coverage or waived the coverage.

Oswald Aff. ¶ 7. This is the only portion of the affidavit that addresses the issue of EPLI coverage.

South Carolina law is clear that insurance agents owe no general duty to advise an insured about coverage absent an express or implied undertaking to do so. *See Trotter v. State Farm Mut.*

² It is important to note that the Rice Defendants are simply the insurance brokers who secured the policy for the Plaintiffs. The Rice Defendants did not construct the policy or make the ultimate decision as to what coverages were included in the Plaintiffs’ policy.

Auto. Ins. Co., 297 S.C. 465, 471, 377 S.E.2d 343, 347 (Ct. App. 1988). A duty to advise may arise in only two ways: (1) an express undertaking by the agent to provide advice; or (2) an implied undertaking. *Id.* An implied undertaking may be shown only where, for example: (i) the agent received consideration beyond mere premium payment; (ii) the insured made a clear request for advice; or (iii) there was a course of dealing over an extended period that would put an objectively reasonable agent on notice that advice was being sought and relied upon. *Id.*

There has been no evidence offered to suggest that the Rice Defendants expressly or impliedly undertook a duty to advise on coverages outside of the normal business insurance plans – coverages such as EPLI coverage – offered by the providers. The Rice Defendants flat out deny that they expressly undertook any kind of duty to advise and there has been no evidence offered to the contrary. As for impliedly assuming the duty, no evidence provided to this Court by either side would suggest that the Rice Defendants received any kind of special consideration, that the Plaintiffs requested EPLI coverage, or that a course of dealing had given rise to an implied duty. In fact, Plaintiffs had purchased their business insurance through the Rice Defendants for approximately twenty years before the underlying suit happened. There has been nothing to suggest that over those twenty years Plaintiffs once requested the Rice Defendants to investigate or advise on any other kind of business owner’s insurance other than that which was included in their plan.

This Court understands Plaintiffs’ assertions that they relied on the Rice Defendants to ensure the EPLI coverage was included in the insurance plan. However, the evidence indicates that this reliance was never expressed to the Rice Defendants before this lawsuit commenced. Furthermore, this Court finds the fact that the insurance policy expressly disclaimed EPLI coverage along with other similar kinds of insurance to be highly persuasive. The Plaintiff, Mr.

Oswald, was a South Carolina attorney for decades and clearly had the obligation to read and review his own policy which would have indicated what coverage was applicable or not, including EPLI coverage.

CONCLUSION

Accordingly, this Court hereby **GRANTS** Defendants Robert M. Rice and Robert Rice Agency, Inc.'s Motion for Summary Judgment as to Plaintiffs' negligence claims.

IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]



Lexington Common Pleas

Case Caption: Billy Oswald , plaintiff, et al VS Robert M Rice , defendant, et al

Case Number: 2025CP3203806

Type: Order/Summary Judgment

It Is So Ordered

s/ Walton J. McLeod

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