

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
 BRITTANY MOORE, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 BEN MOSLEY, OMNI INDEMNITY )  
 COMPANY AND STATE FARM )  
 MUTUAL AUTOMOBILE COMPANY, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-CP-02-01469

**ORDER GRANTING DEFENDANT  
 OMNI INDEMNITY COMPANY'S  
 MOTION FOR SUMMARY  
 JUDGMENT**

**RECEIVED**

MAY 02 2016

**SC Court of Appeals**

This matter comes before the undersigned on Defendant Omni's Motion to Alter or Amend the Order Denying Defendant Omni's Motion for Summary Judgment filed on February 8, 2016. Defendant received the Order on February 19, 2016. Defendant timely filed the underlying motion on February 22, 2016. After a review of the arguments, pleadings, and filings in this matter, I now find that summary judgment is proper and hereby GRANT Omni's Motion for Summary Judgment against Plaintiff for the reasons set out below.

**FACTUAL BACKGROUND**

Plaintiff's lawsuit arises out of an April 15, 2015, automobile accident in Florida. Defendant Mosley was operating a vehicle owned by Plaintiff when he got into a single car accident and totaled the vehicle. Plaintiff was not in the car and was not present on the scene. Plaintiff's car was a 2012 Chevrolet Cruze LS with approximately 65,000 miles. This is not disputed.

Following the accident, Plaintiff notified Omni of the collision claim on April 20, 2015, but informed Omni she wanted to attempt to recover her property damage from State Farm as a liability claim. When State Farm refused to provide liability coverage, Plaintiff sought

FILED 4.4.16  
 Shari Hodard  
 JUDGE  
 State Farm 12/4/15  
 COURT OF COMMON PLEAS

compensation from Omni. Because she was not with the car at the time of the accident, Omni informed Plaintiff she was entitled to seek compensation only from her collision coverage. This is not disputed.

Following notice of the claim, Omni contracted with a company to appraise the vehicle and made an offer to Plaintiff for the full actual cash value in accordance with the policy language and statutory law as reflected on the appraisal. This full actual cash value offer was made on April 27, 2015—just 12 days after the accident and 7 days after Plaintiff notified Omni of her claim. This amount, as reflected in the appraisal obtained by Omni, totaled \$9,940.00 less Plaintiff's \$500.00 deductible in accordance with Plaintiff's policy of insurance. Plaintiff rejected the full actual cash value via telephone call on April 27, 2015. Plaintiff did not provide any receipts, appraisals or price reports. Plaintiff's counsel then contacted Omni on May 26 to inform Omni that he had been retained on the matter.

While Omni worked to settle this claim between April 20 (the first date of notice) and May 26 (the first date of contact by Plaintiff's counsel), Plaintiff's counsel informed Omni that his client had again chosen to attempt to pursue recovery exclusively through State Farm. When State Farm again refused to provide coverage, Plaintiff's counsel returned to Omni on June 2, 2015, seeking to obtain compensation for her vehicle. Plaintiff's counsel was informed the loss was payable under the collision coverage on the policy. On that same day, the same \$9,940.00 full actual cash value offer to settle was again offered to Plaintiff. Plaintiff's counsel was asked, as Plaintiff was in April, to submit any documentation supporting an increase in the actual cash value. No documentation, report, appraisal, price comparison, or any other materials were ever submitted prior to the filing of this lawsuit. Omni has never denied benefits in this claim and represented that the full actual cash value offer previously extended is still available to Plaintiff.

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## 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 appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002); Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Koester v. Carolina Rental Ctr., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994).

Additionally, Rule 56(e), SCRCP, requires a party opposing summary judgment to come forward with affidavits or other supporting documents demonstrating the existence of a genuine issue for trial. The rule governing summary judgment provides that “[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.” Rule 56(e), SCRCP.

## ANALYSIS OF LAW RELEVANT TO THE PLAINTIFF V. OMNI CLAIMS

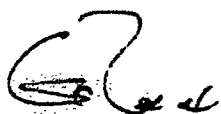
In South Carolina, as in most states, insurance policy contracts are subject to normal rules of contract construction. Standard Fire Co. v. Marine Contracting & Towing Co., 301 S.C. 418, 392 S.E.2d 460, 461-62 (1990) (citing Gambrell v. Travelers Ins. Companies, 280 S.C. 69, 310 S.E.2d 814 (1983)); see also Sloan Const. Co., Inc. v. Cent. Nat. Ins. Co. of Omaha, 269 S.C. 183, 236 S.E.2d 818, 819-20 (1977). Though the terms of the insurance policy are to be interpreted liberally in favor of the insured and against the insurer, Id.; see also McCracken v.

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Government Employees Ins. Co., 284 S.C. 66, 325 S.E.2d 62 (S.C. 1985), if the intent of the parties is clear by the plain language of the policy, the courts may not change the policy to include a provision "not contemplated either by the law or by the contract between the parties." Standard Fire Co., 301 S.C. 418, 392 S.E.2d. at 460 accord 236 S.E.2d 819 ("Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary and popular meaning.").

In South Carolina, the lynchpin of any bad faith case is whether or not the insurer acted reasonably or unreasonably. *See, e.g.,* Mixson v. American Loyalty Ins. Co., 349 S.C. 394, 562 S.E.2d 659, 662 (S.C. Ct. App. 2002). An insured may recover damages for bad faith denial of coverage **only** if he or she proves that the insurer had no reasonable basis to support its decision to deny benefits. Mixson, 562 S.E.2d at 661 (*citing* Cock-N-Bull Steak House v. Generali Ins., 321 S.C. 1, 466 S.E.2d 727 (1996) and Crossley v. State Farm Mut. Auto. Ins. Co., 307 S.C. 354, 415 S.E.2d 393 (1992)) (emphasis added). An insured may also recover consequential bad faith damages **only** if the insured can show bad faith or unreasonable action by the insurer in its handling of the claim. Ocean Winds Council of Co-Owners, Inc. v. Auto-Owners Ins. Co., 241 F. Supp. 2d 576 (D.S.C. 2002) (*citing* Tadlock Painting Co. v. Maryland Cas. Co., 322 S.C. 498, 473 S.E.2d 52 (1996)); *see also* Mixson, 562 S.E. at 662 (advancing a novel theory to deny a claim); *and* Varnadore v. Nationwide Mut. Ins. Co., 289 S.C. 155, 345 S.E.2d 711 (1986).

In determining whether an insurer has a reasonable basis for supporting its decision to deny benefits, South Carolina courts will evaluate the insurer's conduct **only by the evidence the insurer had** before it at the time it denied the claim or **before suit was filed if there has been no denial.** Howard v. State Farm Mut. Auto. Ins. Co., 316 S.C. 445, 450 S.E.2d 582 (1994).



In Howard, the court specifically stated:

“Whether an insurance company is liable for bad faith must be judged by the evidence before it at the time it denied the claim or if the insurance company did not specifically deny the claim by the evidence it had before it at the time the suit was filed. See *Nationwide Mutual Insurance Co. v. Clay*, 525 So.2d 1339, 1342 (Ala.1987). Evidence that arises after the denial of the claim is not relevant to the propriety of the conduct of the insurer at the time of its refusal. See *id.* Likewise, if the insurance company did not specifically deny the claim evidence that arises after the filing of the bad faith claim is not relevant...See *Associate Management, Inc. v. E.D. Sauls Constr. Co.*, 279 S.C. 219, 305 S.E.2d 236 (1983) (evidence that does not tend to establish or to make more or less probable some matter in issue and does not bear directly or indirectly thereon is irrelevant).

Id. at 584. (emphasis added)

As set out above, and discussed below, Plaintiff did not provide any evidence, documentation, appraisal, or other material to Omni *prior* to filing her Complaint. Howard is clear that, for purposes of this summary judgment motion (and the case at large), the only evidence which may be considered is the evidence available to Omni prior to June 17, 2015—the date Plaintiff filed her Complaint. Therefore, I must evaluate the Motion for Summary Judgment based only on the evidence available prior to June 17, 2015—not any evidence produced, acquired, or obtained after June 17, 2015.

### POLICY LANGUAGE

Because the majority of Plaintiff's allegations require an analysis of the plain policy language, the pertinent sections of her policy are set out below. Specifically, Plaintiff's policy states:

“Actual Cash Value means the fair and reasonable market value at the time of the loss based on vehicle mileage, age, condition, original optional equipment, and comparable vehicles available for sale within a reasonable geographic radius as documented in an electronic database of publications and dealerships, less

depreciation and/or betterment.”

Plaintiff's Policy of Insurance p. 3

“Your covered auto means:

1. Any auto that you or an insured driver own and is shown in the Declarations unless you have asked us to delete that vehicle from the policy.”

Plaintiff's Policy of Insurance p. 5

“Class I Insured is defined as the named insured(s) shown in the Declarations, the resident spouse of any named insured(s) and resident relatives of either the named insured(s) or resident spouse.

Class II Insured is defined as any person who uses with the consent, expressed or implied, of the named insured the motor vehicle(s) to which this policy applies and a guest in the motor vehicle to which this policy applies.”

Plaintiff's Policy of Insurance, p. 7

#### “PART D – COVERAGE FOR DAMAGE TO YOUR AUTO

##### INSURING AGREEMENT

A. We will pay for direct and accidental loss to your covered auto...minus any applicable deductible shown in the Declarations...We will pay for loss to your covered auto caused by...

1. Collision only if the Declarations indicate that Collision coverage is provided for the auto.

...

B. Collision means the upset of your covered auto...or their impact with another vehicle or object.”

Plaintiff's Policy of Insurance p. 35

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**"LIMIT OF LIABILITY**

A. Our limit of liability for the loss will be the lesser of the:

1. Actual cash value of the...damaged property at the time of the loss; or
2. Amount necessary to repair or replace your covered auto...with other property of like kind and quality...

B. In the event of a total loss, an adjustment for:

1. Depreciation and physical condition; and
2. Retained salvage value;

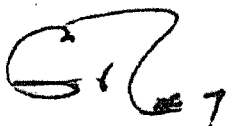
will be made in determining actual cash value."

Plaintiff's Policy of Insurance p. 41

**LEGAL ANALYSIS AND FINDINGS**

As set out above, based on a review of the Complaint, Plaintiff has raised six (6) separate causes of action against Omni allegedly sounding in "bad faith." A reading of the Complaint yields the following basic allegations raised by Plaintiff:

1. Omni acted in bad faith by colluding with State Farm to adjust the claim under Omni's collision policy. (Paragraphs 7, 8, and 11 of the Complaint).
2. Omni acted in bad faith by charging Plaintiff's \$500 deductible against her collision claim recovery. (Paragraphs 8 and 11 of the Complaint).
3. Omni acted in bad faith by adjusting Plaintiff's claim as a collision claim under her policy which may result in a premium increase in the future. (Paragraphs 8 and 11 of the Complaint).
4. Omni acted in "the utmost of bad faith" by "throwing Plaintiff a lowball offer and then arguing...that a low ball offer was justified." (Paragraph 12 of the Complaint).



**1. Omni did not act in bad faith by adjusting Plaintiff's claim as a collision claim pursuant to her policy language.**

Plaintiff first alleges in Paragraphs 7, 8, and 11 of the Complaint that Omni acted in bad faith because Plaintiff's claim was adjusted as a collision claim instead of a liability claim. However, the language in Plaintiff's policy is clear that her claim falls under the "Collision" portion of her policy (and not the liability portion of her policy). Specifically, Plaintiff's policy of insurance states the following:

**"PART D - COVERAGE FOR DAMAGE TO YOUR AUTO  
INSURING AGREEMENT**

C. We will pay for direct and accidental loss to your covered auto...minus any applicable deductible shown in the Declarations...We will pay for loss to your covered auto caused by...

2. Collision only if the Declarations indicate that Collision coverage is provided for the auto.

...

D. Collision means the upset of your covered auto...or their impact with another vehicle or object."

Plaintiff's Policy of Insurance p. 35

Because Plaintiff was not with her car at the time of the accident, and it was a single car accident, Plaintiff has not incurred any liability for bodily injury and/or property damage. Therefore, her claim is one that is payable under "Part D - Coverage for Damage to Your Auto" (commonly referred to as "collision coverage").

Plaintiff notified Omni of the collision claim on April 20, 2015, but informed Omni she wanted to attempt to recover her property damage from State Farm as a liability claim. When State Farm refused to provide liability coverage, Plaintiff sought compensation from Omni.



Following notice of the claim, Omni contracted with Celtic Adjusting Services, Inc. to appraise the vehicle. Following receipt of the appraisal, Omni obtained a Market Valuation Report from CCC One. Omni made an offer to Plaintiff for the full actual cash value in accordance with the appraisal report,<sup>1</sup> policy language, and statutory law. This full actual cash value offer was made on April 27, 2015—just 12 days after the accident and 7 days after Plaintiff notified Omni of her claim. This amount totaled \$9,940.00 less Plaintiff's \$500.00 deductible in accordance with Plaintiff's policy of insurance.

Plaintiff has presented no evidence, through affidavit or otherwise, of any "collusion" as alleged in the Complaint. That allegation, boiled down to its bare bones, is that State Farm was required to pay for this loss under some policy of insurance but that Omni decided it wanted to voluntarily pay for a loss and refused to let State Farm pay for the loss. Plaintiff has not presented a scintilla of legal or factual basis, through affidavit or at the hearing, which would subject her claim to recovery under the liability, rather than collision, portion of her policy. The uncontested policy language is, in fact, quite clear that this claim is adjusted as a primary claim under the collision portion of the policy. Therefore, the evidence before this court requires a grant of Summary Judgment on all of Plaintiff's allegations related to Omni's course of action in adjusting the claim as a collision claim.

**2. Omni did not act in bad faith by applying Plaintiff's deductible to her collision claim pursuant to her policy language.**

Plaintiff next alleges in Paragraphs 8 and 11 of the Complaint that Omni acted in bad faith by applying Plaintiff's deductible to her collision claim and/or that Omni acted in bad faith by adjusting the claim as a collision claim instead of a liability claim in order to collect the

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<sup>1</sup> The Market Valuation Summary actually sets out that the total value of the vehicle was \$9,625.00. Omni offered \$9,940.00—an increase of \$315.00. This amount is to account for taxes and registration costs incurred by Plaintiff.



deductible. Plaintiff's policy is clear that her deductible is payable on any collision claim made under the policy—this is uncontested by Plaintiff. Specifically, the policy states:

**“PART D – COVERAGE FOR DAMAGE TO YOUR AUTO  
INSURING AGREEMENT**

**A. We will pay for direct and accidental loss to your covered auto...minus any applicable deductible shown in the Declarations...We will pay for loss to your covered auto caused by...**

**1. Collision only if the Declarations indicate that Collision coverage is provided for the auto.**

**B. Collision means the upset of your covered auto...or their impact with another vehicle or object.”**

Plaintiff's Policy of Insurance p. 35 (emphasis added)

Plaintiff's policy has a \$500.00 deductible. This deductible was selected by Plaintiff when she purchased the policy. Plaintiff's allegations are, functionally, that it is unfair she has to pay the deductible she contracted for when she purchased her policy. Nevertheless, the policy language is clear on this point: collision claims are subject to the deductible. In this case, Omni offered the full actual cash value as shown in the Market Valuation Report less Plaintiff's deductible. At the hearing in this matter, Plaintiff did not dispute that her policy contains this provision nor did Plaintiff contest the validity of the provision. Therefore, the evidence before this court requires a grant of Summary Judgment on all of Plaintiff's allegations related to Omni applying Plaintiff's deductible to her collision claim.



3. **Omni did not act in bad faith by adjusting Plaintiff's claim as a collision claim pursuant to her policy language simply because her premiums might increase in the future.**

Plaintiff raises this allegation in Paragraphs 8 and 11 of the Complaint. This allegation is based purely on speculation and, even if true, creates no cause of action against Omni. The setting of auto insurance rates and premiums is not grounds for a "bad faith" cause of action as alleged in the Complaint. Further, Plaintiff has presented no evidence to this court that her premiums have increased due to her voluntary collision claim under the Omni policy. Therefore, the evidence before this court requires a grant of Summary Judgment on all of Plaintiff's allegations related to Omni's course of action in adjusting the claim as a collision claim.

4. **Omni did not act in bad faith by offering the full actual cash value of the vehicle as set out in the Market Valuation Report pursuant to Plaintiff's policy language.**

Finally, Plaintiff alleges in Paragraph 12 of the Complaint that Omni "lowballed" an offer to Plaintiff for the value of her vehicle. For the purposes of analyzing this allegation, the undersigned need only look at the relevant case law related to bad faith, Plaintiff's policy language, and the CCC One Market Valuation Report. However, Plaintiff has not submitted any admissible evidence, testimony, or affidavit which supports this position. Plaintiff's own hopes about the valuation of her car are not enough to create an issue of material fact—Plaintiff was required at this stage of the litigation to submit *some* piece of admissible evidence to show the value of the car submitted to Omni prior to June 17, 2015.

This court acknowledges documents—including an affidavit of Plaintiff—were submitted by Plaintiff in support of her own motion for summary judgment related to valuation of her vehicle. However, these documents are irrelevant for purposes of Omni's motion because it is undisputed that none of these documents were prepared, obtained, or produced to Omni prior to

June 17, 2015.<sup>2</sup> Therefore, pursuant to established case law set out above they are irrelevant and inadmissible for a determination of bad faith and consideration of Defendant Omni's motion.

In determining whether an insurer has a reasonable basis for supporting its decision to deny benefits, South Carolina courts will evaluate the insurer's conduct by the evidence the insurer had **before** suit was filed if there has been no denial. Howard v. State Farm Mut. Auto. Ins. Co., 316 S.C. 445, 450 S.E.2d 582 (S.C. 1994). In Howard, the court specifically stated:

"Whether an insurance company is liable for bad faith must be judged by the evidence before it at the time it denied the claim or if the insurance company did not specifically deny the claim by the evidence it had before it at the time the suit was filed. See Nationwide Mutual Insurance Co. v. Clay, 525 So.2d 1339, 1342 (Ala.1987). Evidence that arises after the denial of the claim is not relevant to the propriety of the conduct of the insurer at the time of its refusal. See *id.* Likewise, **if the insurance company did not specifically deny the claim evidence that arises after the filing of the bad faith claim is not relevant...** See Associate Management, Inc. v. E.D. Sauls Constr. Co., 279 S.C. 219, 305 S.E.2d 236 (1983) (evidence that does not tend to establish or to make more or less probable some matter in issue and does not bear directly or indirectly thereon is irrelevant).

Id. at 584. (emphasis added).

As set out above, Plaintiff did not provide any evidence, documentation, appraisal, or other material to Omni prior to filing her "Complaint." Plaintiff admits in her own memorandum and affidavit that she did not obtain her valuation "evidence" until, at the earliest, July 27, 2015. Howard is clear that, for purposes of this summary judgment motion, the only evidence which may be considered is the evidence available to Omni prior to June 17, 2015. Without these pieces of evidence, which are barred, Plaintiff has not only failed to present a "scintilla" of evidence to support her claim, Plaintiff has presented no evidence to support her claim.

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<sup>2</sup> Plaintiff's affidavit is dated August 19, 2015. Plaintiff admits in her memorandum that she obtained the pricing reports and valuations from CarMax on July 27, 2015.

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Therefore, the question for this court related to the bad faith allegation on valuation of Plaintiff's vehicle is "did Omni's conduct in valuation of the vehicle constitute bad faith based on the evidence available to Omni at, or before, the time the Complaint was filed?" The answer to this question is clearly "no" as both a matter of both law and policy interpretation. There is no issue of material fact related to the valuation because Plaintiff did not present any valuation report, appraisal, or other evidence to Omni prior to filing the Complaint. The only evidence this court is permitted to consider is the CCC One Market Valuation Report because that is the only valuation evidence available to Omni at, or before, June 17, 2015.

To further resolve this matter, it is helpful to look both at the policy language and the Market Valuation Report obtained by Omni. Plaintiff's policy states:

**"LIMIT OF LIABILITY**

A. Our limit of liability for the loss will be the lesser of the:

1. Actual cash value of the...damaged property at the time of the loss; or
2. Amount necessary to repair or replace your covered auto...with other property of like kind and quality...

B. In the event of a total loss, an adjustment for:

1. Depreciation and physical condition; and
2. Retained salvage value;

will be made in determining actual cash value."

Plaintiff's Policy of Insurance p. 41 (emphasis added).

The policy defines "actual cash value" as:

"Actual Cash Value means the fair and reasonable market value at

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the time of the loss based on vehicle mileage, age, condition, original optional equipment, and comparable vehicles available for sale within a reasonable geographic radius as documented in an electronic database of publications and dealerships, less depreciation and/or betterment.”

Plaintiff's Policy of Insurance p. 3.

The Market Valuation Report clearly sets out a valuation for Plaintiff's vehicle as \$9,625.00.

More importantly, this report clearly complies with the policy language related to obtaining the “actual cash value” of Plaintiff's vehicle. Specifically, the Market Valuation Report from CCC

One states:

“...CCC searches its databases to find comparable vehicles in these markets. CCC's database includes vehicles for sale at dealerships that CCC has physically inspected, as well as dealer and private party advertised vehicle information from numerous sources including AutoTrader.com... Vehicles located are compared to the loss vehicle, and adjustments are made for differences such as model/trim, equipment, and odometer. The comparable vehicles are also adjusted for condition to a common condition baseline. Using the adjusted values of the comparable vehicles, CCC calculates the Base Vehicle Value.

The Base Vehicle Value is derived from comparable vehicle(s) available or recently sold in the marketplace at the time of valuation, with adjustments made to reflect the loss vehicle configuration.

24 comparable vehicle(s) were utilized in this report.

The loss vehicle has been valued in the region where it was garaged as a newer passenger car with 48% greater than average mileage of 44,300.

The Adjusted Vehicle Value is determined by adjusting the Base Vehicle Value to account for the actual condition of the loss vehicle and its other reported attributes, if any, such as refurbishments, after factory equipment, and unrelated prior damage.”<sup>3</sup>

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<sup>3</sup> No adjusted valuation was made as Plaintiff's vehicle did not have any deductions for prior damage or poor condition. CCC One determined the car was worth the full Base Value.

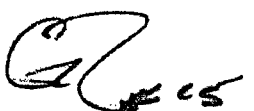
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See Exhibit C.

Plaintiff's Policy requires Omni offer a "fair and reasonable market value at the time of the loss." This value is to be based on "vehicle mileage, age, condition, original optional equipment, and comparable vehicles available for sale...as documented in an electronic database of publications and dealerships." Omni contracted with CCC One to perform a valuation search based on these criteria. As set out in the CCC One Market Valuation Report, CCC One took into consideration mileage, age, condition, equipment, and comparable vehicles for sale—each and every criterion listed in the policy language. Additionally, CCC One notes they canvassed physical dealerships and online listings, including AutoTrader.com, for price and value comparisons—exactly as stated in the policy language. CCC One then produced a Market Valuation report based on comparable sales and listings with similar mileage, age, condition, and equipment. This report clearly constitutes an opinion of the fair and reasonable market value at the time of the loss—as contemplated in Plaintiff's policy.

The question for this court is not what is the value of Plaintiff's car. Rather, the only question for this court is whether or not Omni acted reasonably in adjusting the claim and presenting an offer to Plaintiff. The only evidence of valuation presented to Omni prior to filing this suit is the CCC One Market Valuation Report. It is uncontested that Omni offered Plaintiff the full value immediately (there was no offer made below the full value report) upon receipt of the report. It is further uncontested that Plaintiff was asked on several occasions prior to suit to provide documentation, reports, and/or appraisals to support a different valuation and she refused to do so.

Howard dictates that this court can only consider the Market Valuation Report in determining whether or not Omni acted reasonably in adjusting the claim (because it was the



only evidence available to Omni prior to Plaintiff's Complaint). The factual sequence of events is undisputed: Plaintiff notified Omni of a collision claim on April 20, 2015, Omni immediately opened a claim, Omni ordered an appraisal of the vehicle on April 22, 2015, Omni received the actual cash value of the vehicle in a Market Valuation Report around April 26, 2015, and then Omni offered the full actual cash value in accordance with Plaintiff's policy language on April 27, 2015. Omni opened, adjusted, and offered 100% actual cash value to Plaintiff in a total of seven (7) days.

There is no issue of material fact surrounding the final allegation of Plaintiff's Complaint related to "lowballing the value." The only evidence which this court can consider is the Market Valuation Report which placed a comprehensive valuation on Plaintiff's car at \$9,625.00. Upon receipt, Omni immediately offered Plaintiff \$9,940.00.<sup>4</sup> Even in the light most favorable to Plaintiff, Plaintiff has not presented any evidence predating her Complaint that Omni acted in bad faith and/or was unreasonable in adjusting the claim. The evidence before this court requires a grant of Summary Judgment on all of Plaintiff's allegations related to Omni's course of action in adjusting the claim.

#### **5. Plaintiff's Arguments in Opposition**

Plaintiff raised several issues in opposition to summary judgment. For the reasons set forth below, each of these is without merit and does not create an issue of material fact sufficient to deny Defendant Omni's Motion for Summary Judgment.

##### **a. The Appraisal Clause**

Plaintiff asserts an appraisal clause in the policy somehow creates an issue of material fact as to valuation. The appraisal clause merely provides that if there is a disagreement on the amount of loss, either party may request a third party, impartial appraiser. Plaintiff's argument is

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that because Defendant Omni did not invoke this clause, summary judgment is improper. This clause has no bearing on the issues before the court for summary judgment. Additionally, I would note that Plaintiff herself also did not invoke the provisions of the appraisal clause. Finally, I would note that the appraisal clause, as written, required Plaintiff to obtain her own appraisal of the value of the vehicle. As noted throughout, Plaintiff admits she did not obtain any valuation evidence prior to June 17, 2015. More importantly, the record is devoid of evidence that Plaintiff has ever obtained an appraisal of the subject vehicle. Therefore, summary judgment is proper. NO

b. Plaintiff's Discovery Responses

Plaintiff next quotes her own discovery responses as evidence of an issue of material fact. These two discovery responses are recounts of conversations Plaintiff and her attorney had with Omni. However, noticeably absent from these discovery responses is any indication or statement that Plaintiff or her attorney provided Omni with valuation evidence prior to June 17, 2015. If anything, these two discovery responses show that Plaintiff did not provide this evidence to Omni. Therefore, summary judgment is proper.

c. Plaintiff's Personal Valuation

Plaintiff next argued that her own "thoughts" about value in the form of "negotiation" create a genuine issue of material fact. They do not. The case law cited herein required that Plaintiff submit actual evidence of valuation to Omni prior to June 17, 2015. Plaintiff's own affidavit is proof she did not submit such evidence. Therefore, summary judgment is proper.

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<sup>1</sup>The additional \$315.00 was represented to account for registration fees and taxes.

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### CONCLUSION AND HOLDING

For all the foregoing reasons, Omni has established that, even in the light most favorable to Plaintiff, there is no genuine issue of material fact surrounding the allegations made against Omni.

Each allegation made against Omni is resolved either as a matter of law or policy interpretation. Additionally, Plaintiff has admitted all evidence she presented was obtained after filing of her Complaint. Accordingly, this court is required to disregard all evidence presented by Plaintiff. In following Howard, the only evidence remaining is the evidence presented by Omni related to adjusting the claim. The Market Valuation Report clearly sets out that Omni obtained a valuation opinion directly in line with the requirements as set out in Plaintiff's policy language. Even when viewed in the light most favorable to Plaintiff, this evidence necessitates a grant of summary judgment on all allegations against Omni. Therefore, Defendant Omni's Motion for Summary Judgment is GRANTED and, pursuant to Rule 59(e), this court accordingly alters its prior Order denying summary judgment.

IT IS SO ORDERED!



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G. Thomas Cooper, Jr., Judge

March 30, 2016

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF AIKEN  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2015CP0201469

Brittany Moore	Ben Mosley  Omni Indemnity Company
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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**DISPOSITION TYPE (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.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order; (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge	Judge Code	Date
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**For Clerk of Court Office Use Only**

This judgment was entered on 4-4-16, and a copy mailed first class or placed in the appropriate attorney's box on 4-4-16, to attorneys of record or to parties (when appearing pro se) as follows:

Allen W. Johnson PO Box 1162 Augusta, GA 30903

Judge G Thomas Cooper Jr  
Charles Collins Mayers 515 Fifth St. Augusta, GA 30901  
Brett Harris Bayne 1320 Main Street Meridian, 10Th Floor  
Columbia, SC 29201

\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

*Liz Godard by [Signature]*

**Court Reporter**

**Liz Godard - Clerk of Court**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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\_\_\_\_\_  
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