

STATE OF SOUTH CAROLINA  
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO.: 2016-CP-43-414

Charlie L. Jones,

PLAINTIFF,

vs.

Certain Interested Underwriters at Lloyd's,  
London Subscribing to Policy Number  
TMASHO144229, Tapco Underwriters,  
Inc., Creech, Roddey & Watson, and  
Crawford & Company,

DEFENDANT(s).

ORDER GRANTING SUMMARY  
JUDGMENT TO THE DEFENDANT  
CREECH, RODDEY & WATSON

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**SC Court of Appeals**

This matter came before this Court on the Monday, June 5, 2017 for a hearing on the Defendant Creech, Roddey & Watson's Motion for Summary Judgment on all causes of action asserted by the Plaintiff, Charlie L. Jones, against the Defendant, Creech, Roddey & Watson.

Present at the hearing were the Plaintiff, Charlie L. Jones, Kirby D. Shealy, III, attorney for the Defendants Certain Interested Underwriters at Lloyd's, London Subscribing to Policy Number TMASHO144229, Tapco Underwriters, Inc., and Crawford & Company, and John R. Moorman, attorney for the Defendant, Creech, Roddey & Watson.

On October 5, 2016, South Carolina experienced a severe rain storm that caused significant flooding across South Carolina. In the late afternoon of Friday, October 9, 2015, the Plaintiff, Charlie L. Jones, came to the Defendant Creech, Roddey & Watson's office located at 25 E. Calhoun Street to file an insurance claim relating to damage allegedly sustained to a

building located at 901 Manning Avenue in Sumter, South Carolina on October 5, 2015. On Monday morning, October 12, 2015, the Plaintiff's claim was reported to the Defendant, Tapco Underwriters, Inc., by the Defendant Creech, Roddey & Watson's employees. The Plaintiff claimed that "rain caused roof ceiling, wall, damage" to his property located at 901 Manning Road in Sumter, South Carolina. The Plaintiff's claim was ultimately denied by the Defendant, Tapco.

In his Complaint, the Plaintiff alleged general allegations of bad faith against the Defendant, Creech, Roddey & Watson, for not paying a claim form for damages to his residence located at 901 Manning Avenue in Sumter, South Carolina. The Plaintiff also alleged that the Defendant, Creech, Roddey & Watson, acted in bad faith by not providing him with a claim form pursuant to South Carolina Code Annotated §38-59-10.

Summary judgment should be granted where there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. S.C.R.Civ.P. 56(c). Walters v. Canal Ins. Co., 294 S.C. 150, 151, 363 S.E.2d 120, 121 (Ct. App. 1987).

In the present case, the Defendant, Creech, Roddey & Watson, did not act in bad faith. The elements of a cause of action for bad faith refusal to pay first party benefits under a contract of insurance are: (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. Bartlett v. Nationwide Mutual Fire Insurance Co., 290 S.C. 154, 348 S.E.2d 530 (Ct.App.1986).

First, no contract of insurance existed between the Plaintiff, Charlie L. Jones, and the Defendant, Creech, Roddey & Watson. Furthermore, in his deposition, the Plaintiff, Charlie L. Jones, testified that the Defendant, Creech, Roddey & Watson, did not handle the adjustment of his claim, did not deny his claim, was not responsible for the adjustment of his claim, and was not responsible for paying his claim. Based upon the Plaintiff's deposition testimony, it is clear that no genuine issue of material fact exists to show that the Defendant, Creech, Roddey & Watson acted in bad faith. It is undisputed that the Defendant, Creech, Roddey & Watson, had no role in the adjustment or handling of the Plaintiff's insurance claim other than submitting a claim form on the Plaintiff's behalf.

While the Plaintiff states that the failure to provide a claim form was bad faith on the part of the Defendant, Creech, Roddey & Watson, this is not the case. The Defendant Creech, Roddey & Watson's employees submitted the Plaintiff's claim to the Defendant, Tapco, on Monday, October 12, 2015 after the claim was reported on Friday, October 9, 2015. The affidavit of S. Lathan Roddey, III submitted by the Defendant, Creech, Roddey & Watson, with its Motion for Summary Judgment detailed the role of the Defendant, Creech, Roddey & Watson, in the Plaintiff's claim.

Additionally, South Carolina Code Annotated §38-59-10 does not create a private right of action. South Carolina Code Annotated §38-59-10 states that in event that a claim form is "not furnished within twenty days after the receipt of the notice, the claimant is considered to have complied with the requirements of the policy as to proof of loss upon submitting within the time fixed in the policy for filing proofs of loss written proof covering the occurrence, character, and extent of the loss for which claim is made." The Plaintiff's claim in the present case was clearly submitted to the Defendant, Tapco, in a timely manner and was adjusted by the other Defendants

in this action. The decision to accept or deny the Plaintiff's claim rested solely with a Defendant, other than the Defendant, Creech, Roddey & Watson.

Therefore, it is the order of this Court, for the reasons set forth above, that summary judgment be granted to the Defendant, Creech, Roddey & Watson, as to all causes of action set forth in Plaintiff's Complaint pursuant to Rule 56(c), SCRPC.

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The Honorable R. Ferrell Cothran, Jr.

Sumter, South Carolina  
June \_\_\_\_\_, 2017