STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
THERESE HOOD,	)	Case No. 2018-CP-10-00666
Plaintiff,	)	
vs.	)	**ORDER GRANTING USAA'S MOTION FOR JNOV AND DENYING BOTH PARTIES' OTHER POST-TRIAL MOTIONS**
UNITED SERVICES AUTOMOBILE ASSOCIATION,	)	
Defendant.	)	

Before the Court are the Defendant's Motions for Judgment Notwithstanding the Verdict, New Trial Absolute, New Trial Nisi Remittitur, and New Trial under the Thirteenth Juror Doctrine, and the Plaintiff's Motion for New Trial Nisi Additur, for Attorney Fees, and Motion on her Offer of Judgment. Having fully considered all of the parties' arguments raised in their respective motions, memoranda, and at the post-trial motions hearing, as well as the applicable case law, the Court grants the Defendant's Motion for Judgment Notwithstanding the Verdict and denies the remaining motions.

Therese Hood alleged that USAA was liable to her for taking disparate factual positions under liability coverage and underinsured motorist coverage within an automobile insurance policy issued to Hood by USAA. Hood sued USAA for bad faith and negligence.[1] After a trial, the jury found that USAA did not breach the duty of good faith and fair dealing, but did find USAA liable to Hood for negligence. USAA argues that judgment notwithstanding the verdict should be granted

[1] Hood also alleged causes of action for breach of contract, barratry, intentional infliction of emotional distress, and negligence per se. The court granted USAA's motion for summary judgment as to these causes of action before trial.

because the duty in tort arising from the contract of insurance is the duty of good faith and fair dealing, and no separate cause of action for negligence exists under these facts.[2]

The Court agrees. Under South Carolina law, although parties to a contract generally have no duty in tort to one another, an exception to this rule exists where there is a "special relationship" between the parties. *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 55, 463 S.E.2d 85, 88 (1995). South Carolina has recognized such a special relationship in the insurance context arising from the duty of good faith and fair dealing implied in the contract of insurance. *See, e.g., Tadlock Painting Co. v. Maryland Cas. Co.*, 322 S.C. 498, 500, 473 S.E.2d 52, 53 (1996). Here, Hood's allegations concerned actions of the defendant arising from the insurance contract and the duty of good faith and fair dealing. Accordingly, the plaintiff stated a cause of action for breach of the duty of good faith and fair dealing. The Court finds, however, that no duty independent of the duty of good faith and fair dealing exists under these facts.

Several federal cases examining this issue under South Carolina law have ruled similarly and dismissed stand-alone negligence causes of action in suits concerning the breach of the duty of good faith and fair dealing. In *Skinner v. Horace Mann Ins. Co.*, 369 F. Supp. 3d 649 (D.S.C. 2019), the Insured sued for breach of contract, bad faith, and for negligence. The *Skinner* court upheld the causes of action for bad faith and breach of contract, but dismissed the negligence causes of action, stating, "The negligence/gross negligence claim is duplicative of the bad faith claim, and as other judges in this District have recognized, a freestanding claim of negligence is improper under these specific circumstances." Id. at 654. See also: *Maranto v. State Farm Mutual Automobile Insurance Co.*, No. 2:98-3131-23-PMD, at 1 (D.S.C. Aug. 11, 1999) (an insurer's

[2] Defendant made this argument in a pre-trial motion for summary judgment, in a motion for directed verdict at the close of the Plaintiff's case, and again in renewing its motion for a directed verdict at the end of the trial.

negligence can be considered in a bad faith claim, but "no authority support[s] the existence of a separate, freestanding claim of negligence in such circumstances"); *Kraemer v. Massachusetts Mut. Life Ins. Co.*, No. CV 2:15-04571-CWH, 2017 WL 5635469, at *6 (D.S.C. Apr. 28, 2017), *aff'd*, 701 F. App'x 268 (4th Cir. 2017)("Based on the South Carolina elements of bad faith and *Maranto*, it appears that [Plaintiff's] negligence claim is better suited as a bad faith claim.").

Plaintiff argues that, even though the jury found on a special verdict form that USAA did not breach its duty of good faith and fair dealing to Plaintiff, the jury could still have found that USAA breached a separate duty to act reasonably which would support a negligence cause of action. Plaintiff points to language in the case law that states, "If an insured can demonstrate bad faith *or unreasonable action* by the insurer in processing a claim under their mutually binding insurance contract, he can recover consequential damages in a tort action." Plaintiff argues that the "bad faith" *or* "unreasonable action" language indicates two separate and distinct duties on the part of the insurer, and that breach of this duty to act "reasonably" will support a cause of action for negligence, separate and apart from a cause of action for bad faith. The court disagrees.

The case law is clear that there is only one duty – the duty of good faith and fair dealing. Breach of the implied covenant of good faith and fair dealing can be proven by showing either bad faith or unreasonable action on the part of the insurer. South Carolina courts have consistently expressed the elements of a bad faith cause of action as: (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 damages to the insured. (emphasis added). *Cock-N-Bull Steak House v. Generali Ins.*, 321 S.C. 1, 466 S.E.2d 727 (1996); *Howard v. State Farm Mut. Auto Ins.*, 316 S.C. 445, 450 S.E.2d 582

(1994); *Crossley v. State Farm Mut. Auto. Ins.*, 307 S.C. 354, 415 S.E.2d 393 (1992); *Varnadore v. Nationwide Mut. Ins.*, 289 S.C. 155, 345 S.E.2d 711 (1986); *Mixson, Inc. v. American Loyalty Ins.*, 349 S.C. 394, 562 S.E.2d 659 (Ct. App. 2002). Bad faith on the part of the insurer can be proven by unreasonable action, but it is not a separate duty from the duty of good faith and fair dealing.

Accordingly, USAA is entitled to judgment as a matter of law with respect to the plaintiff's cause of action for negligence. Because the jury found in USAA's favor on the only remaining cause of action, the Court **GRANTS** USAA's Motion for JNOV and directs that judgment for USAA should be entered. The parties' other motions, listed above, are denied as moot.

IT IS SO ORDERED.

Kristi F. Curtis, Circuit Court Judge

Sumter, SC
October 30, 2019

Charleston Common Pleas

Case Caption: Therese Hood VS United Services Automobile Association GIC , defendant, et al

Case Number: 2018CP1000666

Type: Order/JNOV

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762