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Catherine Conrad,

Plaintiff,

**DECISION AND ORDER  
(Defendant Amica's Motion for  
Summary Judgment filed 9/12/14)**

v.

Amica Mutual Insurance Company, *et al.*,

Case No. 14CV2006

Defendants.

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**PROCEDURAL SUMMARY**

This matter is before the Court on Defendant Amica Mutual Insurance Company's (hereafter, "Amica") Motion for Summary Judgment filed on September 12, 2014. Amica filed an Amended Motion for Summary Judgment (hereafter, "Motion") on September 19, 2014 which was substantively identical<sup>1</sup> to the original filing. On September 26, 2014, Amica supplemented its Motion with Plaintiff's Answers to Amica's Requests for Admissions, in which she admitted all requests. Plaintiff responded to the Motion on October 20, 2014, and Amica filed its reply on November 3, 2014.

For the reasons summarized below, Amica's Motion is **GRANTED**.

**FACTUAL SUMMARY**

A motor vehicle accident occurred in Madison on June 18, 2008, involving Plaintiff and now-dismissed<sup>2</sup> Defendant Curt Neuhauser (hereafter, "Neuhauser"). Neuhauser at that

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<sup>1</sup> Amica's September 19, 2014 filing varies from the September 12, 2014 filing in that the original submission incorrectly identified the county and courtroom of this Court.

<sup>2</sup> Neuhauser and Progressive were dismissed from the lawsuit via this Court's Decision and Order dated September 19, 2014, which was reaffirmed by this Court's Decision and Order dated December 29, 2014.

time was insured by now-dismissed<sup>3</sup> Defendant Progressive Casualty Insurance Company (hereafter, "Progressive"). Neuhauser's policy carried a \$300,000 coverage limit for bodily injury and property damage. (Sosnay Aff. at para. 8 and Exh. F.) Amica had an auto insurance policy in force with Plaintiff at the time of the accident, containing specific terms as to coverage, which do not included losses related to Plaintiff's business. (Sosnay Aff. at para. 9 and Exh. G.)

After the accident, Plaintiff claimed property damage and bodily injury. She settled her claims against Neuhauser and Progressive in 2008 for \$2,500 plus \$2,752 for medical expenses, signed a liability release and cashed the settlement checks. Plaintiff's settlement was substantially less than Neuhauser's \$300,000 coverage limit. (Sosnay Aff. at paras. 5, 6, 7 and 8, and Exhs. C, D, E and F, Plaintiff's Responses to Amica's Request for Admissions<sup>4</sup>.) In accordance with its policy with Plaintiff, Amica compensated Plaintiff for the net loss of Plaintiff's vehicle, paid off the remaining lien on Plaintiff's vehicle, paid for rental car fees, and paid for Plaintiff's chiropractic care. (Sosnay Aff. at paras. 4, 12, 13 and 14 and Exhs. B, J, K and L.)

Plaintiff has now sued Amica, claiming *inter alia* that Amica has breached its contract with her and has engaged in bad faith. Plaintiff alleges various business and income losses. Amica denies all of Plaintiff's claims.

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<sup>3</sup> See fn 2.

<sup>4</sup> Amica's Request for Admissions and Plaintiff's responses thereto are date-stamped as received by the court on September 26, 2014.

## SUMMARY JUDGMENT METHODOLOGY

Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show 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.” Wis. Stat. §802.08(2). All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *Kraemer Bros., Inc. v. U.S. Fire Ins. Co.*, 89 Wis. 2d 555, 566, 278 N.W.2d 857 (1979). The “inferences to be drawn from the underlying facts contained in the moving party’s material must be viewed in the light most favorable to the party opposing the motion.” *Id.* at 567 (citation omitted).

If the pleadings are sufficient, the court considers the moving party’s proof to determine whether that party presents a *prima facie* case for summary judgment. *Id.* If the moving party so presents, the opposing party must show, by affidavit or other proof, the existence of disputed material facts, or undisputed material facts that allow for reasonable conflicting inferences. *Id.* “Supporting and opposing affidavits shall be made on personal knowledge and shall set forth such evidentiary facts as would be admissible in evidence.” Wis. Stat. §802.08(3). *See also Palisades Collection LLC v. Kalal*, 2010 WI App 38, 324 Wis. 2d 180, 781 N.W.2d 503.

## DISCUSSION

The Court has reviewed the Amended Complaint and Amica’s Answer to the Amended Complaint. The Court concludes that the pleadings in this case are adequate for summary judgment analysis purposes, as Plaintiff alleges claims against Amica in her

establish any duty created by the contract or otherwise for Amica to defend her in the context of this case.

Plaintiff also claims that Amica was responsible for “making her whole,”<sup>5</sup> presumably a comment related to Plaintiff’s settlement with Neuhauser/Progressive. Although Amica’s contract with Plaintiff included underinsured motorist and uninsured motorist coverage which conceptually might be used in certain circumstances to make a policy-holder “whole”, it is evident that Neuhauser was neither underinsured or uninsured, given the settlement which Plaintiff accepted. Plaintiff settled with Neuhauser/Progressive for substantially below Neuhauser’s \$300,000 coverage limit. Therefore, Amica’s policy with Plaintiff did not require Amica to make Plaintiff “whole” by way of uninsured or underinsured motorist coverage.

The Court pauses here to comment on Plaintiff’s summary judgment submissions. Plaintiff makes wide-ranging claims in her Response Brief, makes numerous remarks about opposing counsel, and offers her personal perspectives on public policy matters in the insurance context; however, she offers little by way of relevant and/or admissible evidence to counter Amica’s *prima facie* case for summary judgment. The Court also notes that some materials<sup>6</sup> offered by Plaintiff in her submission do not appear to meet admissibility standards required by Wis. Stat. §802.08.

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<sup>5</sup> Sosnay Aff. paras. 10-11 and Exhs. H and I.

<sup>6</sup> For example, Plaintiff offers federal PACER and state CCAP screenshots without authentication, her own out-of-court statements to others which likely constitute inadmissible hearsay if offered as evidence by Plaintiff, etc. As noted above, Wis. Stat. §802.08(3) and the Palisades case require summary judgment submissions to meet minimal admissibility standards before those materials can be considered.

Because Amica has established its *prima facie* entitlement to summary judgment on Plaintiff's contract breach claim and because Plaintiff has failed to set forth evidence or inferences to the contrary, Amica is entitled to summary judgment on this claim.

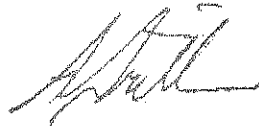
Amica also has established its entitlement to summary judgment on Plaintiff's claim of bad faith. In order for bad faith to be shown, a breach of contract must first be established. See Brethorst v. Allstate Property & Cas. Ins. Co., 2011 WI 41, 334 Wis. 2d 23, 798 N.W.2d 467. As noted above, Plaintiff has failed to adequately counter Amica's evidence that it fully honored its contract with Plaintiff. Plaintiff has further failed to establish bad faith by Amica in its dealings with her. As so aptly put in the summary judgment materials provided by Amica, the summary judgment stage is the "put up or shut up" phase of the proceedings in this case. While Plaintiff's allegations are far-ranging, she has offered insufficient evidence to defeat Amica's *prima facie* showing. Therefore, Amica is entitled to summary judgment on this claim.

Plaintiff's wide ranging claims are all predicated upon her unproven assertions that Amica failed to honor its contractual obligations to her. Amica, however, has sufficiently established by its submissions that it in fact has met its contractual obligations to Plaintiff. Plaintiff has failed to present evidence sufficient to refute Amica's *prima facie* proof that it is entitled to summary judgment on all of Plaintiff's claims against it. Therefore, Amica's motion must be granted as to all of Plaintiff's claims.

**CONCLUSION**

For the reasons summarized above, Amica's Motion for Summary Judgment is  
**GRANTED. SO ORDERED.**

Dated this 28th day of January, 2015.      BY THE COURT:



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Hon. Amy R. Smith  
Circuit Court Judge, Branch 4

c: Ms. Catherine Conrad ✓  
Attorney Jacob Sosnay ✓  
Attorney Ward Richter (courtesy copy)