

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION**

NICOLE REVELIOTIS,	)	
Plaintiff,	)	
	)	
v.	)	CAUSE NO. 2:02-CV-310 PS
	)	
STATE FARM INSURANCE	)	
COMPANIES,	)	
Defendant.	)	

**MEMORANDUM OPINION AND ORDER**

Plaintiff Nicole Reveliotis claims that her apartment was burglarized and that a number of items were stolen. Plaintiff had renter’s insurance through the Defendant State Farm, and when she tried to collect on the policy, State Farm denied the claim. A year and a half after the loss occurred, Plaintiff filed this lawsuit for breach of contract (Count 1) and for breach of the duty of good faith because of State Farm’s refusal to pay the claim (Count 2). This matter is before the Court on two motions for summary judgment filed by Defendant State Farm Insurance Companies [Docs. 29 and 31]. Because the insurance policy required Plaintiff to bring her claim within one year of the loss and she failed to do so, and for other reasons stated below, summary judgment is granted.

**FACTUAL BACKGROUND**

The facts as set forth below come exclusively from the statement of material facts submitted by the Defendant State Farm. Plaintiff has not complied with Local Rule 56.1 by setting forth those factual matters that are in dispute and has not provided any affidavits or other factual data for the Court’s consideration. Indeed, Plaintiff’s Response to Defendant’s partial motion for summary judgment [Doc. 31] is less than three pages in length and does not cite to anything in the record. Worse yet, Plaintiff’s Response to State Farm’s other motion for

summary judgment [Doc. 29] is one page in length and merely incorporates by reference its earlier response to State Farm's motion to dismiss. When a plaintiff fails to abide by the Local Rules governing summary judgment practice, all statements of undisputed facts that are properly supported by the defendant are deemed admitted. *See Ammons v. Aramark Unif. Servs., Inc.*, 368 F.3d 809 (7th Cir. 2004). This is because, as the Seventh Circuit has repeatedly emphasized, a district court need not "scour the record looking for factual disputes and may adopt local rules reasonably designed to streamline the resolution of summary judgment motions." *Waldrige v. Am. Hoechst Corp.*, 24 F.3d 918, 922 (7th Cir. 1994).

### **Facts Relating to the Burglary**

On January 5, 2001, Plaintiff obtained renter's insurance from State Farm paying a premium of \$140 and receiving \$20,000 worth of coverage for loss of personal property. Ten days later, Plaintiff claims that she was burglarized and sustained a loss of approximately \$22,000. According to the Hammond Police Report, Plaintiff reported that sometime between 3:00 am and 6:15 am on January 15, 2001, an unknown person entered her apartment and stole a variety of personal items including televisions, a DVD player, a bicycle, a stereo, a cordless phone and several other items. But, the investigating officer found no evidence of forced entry.

After reporting the theft to State Farm, the Defendant made several attempts to contact Plaintiff but without success. Eventually, a State Farm representative spoke with Plaintiff. She said that the door and window to her apartment had been broken, evidently so that entry could be made. As mentioned above, this statement by Plaintiff to State Farm was in direct conflict with what the investigating officer stated in his report – that there was no evidence of forced entry. Moreover, according to the State Farm adjuster who was handling the claim, Plaintiff could not

describe many of the items that she said were stolen and the receipts that she provided were illegible.

One of the officers who investigated the alleged burglary, found circumstances surrounding the burglary very unusual. For example, when he arrived on the scene that morning, there was a large amount of money on the kitchen counter. If the apartment had in fact been burglarized, one would have expected the burglars to have taken the money sitting in plain view on the counter. Also, according to the officer, some items that Plaintiff reported as stolen were actually seen in the apartment that morning. Finally, the officer found it unusual that the Plaintiff later told State Farm that many other things were missing – \$2500 in cash, two additional televisions and various auto parts – that Plaintiff did not mention to him on the scene. This was especially odd because the officer had spent a long time in the apartment with Plaintiff that morning and had gone through the entire house with her.

Another officer who was on the scene, Officer Coulter, stated that when Plaintiff saw that there was no evidence of a forced entry, she told Coulter that perhaps the burglar entered through an unlocked side entry. But to Coulter, this seemed unlikely since there was snow on the ground that morning and there was no evidence of any foot prints in the snow outside the side window.

### **Facts Relating to the Policy of Insurance**

On January 5, 2001, Plaintiff obtained renter's insurance from State Farm paying a premium of \$140 and receiving \$20,000 worth of coverage for loss of personal property. The policy contained a limitations period requiring Plaintiff to file *any* lawsuit within one year of the date of loss. The policy stated: "**Suit Against Us**. No action shall be brought unless there has

been compliance with the policy provisions. The action must be brought within one year after the date of the loss or damage.” (See Policy at 12).

On January 14, 2001, nine days after the policy became effective, Plaintiff claimed that her apartment was burglarized and that a number of items were stolen. The total amount of the claim was approximately \$22,000. State Farm began to investigate the claim, and Plaintiff hired counsel on March 30, 2001.

A series of letters was sent by counsel for State Farm to Plaintiff and her lawyer the substance of which stated that although State Farm was continuing to investigate the claim, it was specifically reserving its rights under the policy including the one year limitations period quoted above. In at least six letters, State Farm told Plaintiff that it was reserving its rights under the policy. In at least four additional letters, State Farm specifically directed Plaintiff to the provision in the policy that required lawsuits to be filed within one year of the date of the loss. For example, on July 16, 2001, State Farm wrote to Plaintiff’s counsel and advised him that it was continuing to investigate the claim and that State Farm was reserving its rights under the policy including its rights “to the one year ‘suit against us’ provision” of the policy. Even more directly, on November 21, 2001, State Farm denied coverage of Plaintiff’s claim and sent Plaintiff a letter to that effect. In that letter, State Farm stated that “you are required to pursue any legal proceedings you might contemplate against us within one year of the date of the loss.” (Defendant’s Ex. L).

Despite the ten letters where Plaintiff was warned that State Farm was reserving its rights under the policy – including four letters where Plaintiff was specifically warned that the

limitations period was one year from the date of the loss – Plaintiff waited until July 19, 2001 to file this action, 18 months after the loss.

## **DISCUSSION**

Summary judgment is proper “if 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.” Fed. R. Civ. P. 56(c). The party seeking summary judgment carries the initial burden of demonstrating an absence of evidence to support the position of the non-moving party. *Doe v. R.R. Donnelley & Sons Co.*, 42 F.3d 439, 443 (7th Cir. 1994). The non-moving party must then set forth specific facts showing there is a genuine issue of material fact and that the moving party is not entitled to judgment as a matter of law. *Anderson v. Liberty Lobby*, 477 U.S. 242, 252 (1986). A genuine dispute about a material fact exists only if the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986).

In making this determination, the Court must draw every reasonable inference from the record in the light most favorable to the non-moving party. *Dyrek v. Garvey*, 334 F.3d 590, 598 (7th Cir. 2003). However, the non-moving party must support its contentions with admissible evidence and may not rest upon mere allegations in the pleadings or conclusory statements in affidavits. *Celotex*, 477 U.S. at 324. The plain language of Rule 56(c) mandates the entry of summary judgment against a party who fails to establish the existence of an element essential to its case and on which that party will bear the burden of proof at trial.

## **I. Limitations in the Policy**

### **A. Plaintiff's Claim for Breach of Contract**

Plaintiff Nicole Reveliotis was insured under a renter's policy issued by State Farm. That policy clearly and unambiguously states that any lawsuit must be brought within one year of the date of loss. As the policy notes:

7. **Suit Against Us.** No action shall be brought unless there has been compliance with the policy provisions. The action must be started within one year after the date of loss or damage.

Under Indiana law, an insurance contract is subject to the same rules of interpretation as other contracts. *Town of Orland v. Nat'l Fire & Cas. Co.*, 726 N.E.2d 364, 370 (Ind. Ct. App. 2000). By statute, Indiana has a ten year statute of limitations for breach of contract actions. *See* I.C. § 34-1-2-2(6). Thus, this limitations period applies to insurance contracts just like any other contract. *See e.g., Wood v. Allstate Ins. Co.*, 21 F.3d 741, 743 (7th Cir. 1993). However, the law in Indiana is abundantly clear that the parties to an insurance contract may agree to a shorter limitations period than that provided by statute and that such agreements are generally enforceable. *Id.*; *see also Brunner v. Econ. Preferred Ins. Co.*, 597 N.E.2d 1317, 1318-19 (Ind. Ct. App. 1992) (enforcing insurance policy limitation that suit be brought within 12 months); *Meridian Mut. Ins. Co. v. Caveletto*, 553 N.E.2d 1269 (Ind. Ct. App. 1990) (same).

In this case, it is undisputed that Plaintiff did not bring her lawsuit against State Farm until 18 months after the loss, and therefore Plaintiff's breach of contract claim was untimely. Plaintiff, however, argues that the policy is ambiguous, and that she did take action within 12 months. Plaintiff may be correct in stating that Indiana has long accepted the canon of construction that ambiguous insurance policies are interpreted in the light most favorable to the

insured. See *Town of Orland*, 726 N.E.2d at 370; *Tate v. Secura Ins.*, 587 N.E.2d 665 (Ind. Ct. App. 1992). But, when policy language is clear and unambiguous, it should be given its plain and ordinary meaning. *Eli Lilly & Co. v. Home Ins. Co.*, 482 N.E.2d 467, 470 (Ind.1985).

“Under Indiana law, an insurance policy is ambiguous if reasonable persons may honestly differ as to the meaning of the policy language.” *Travelers Indem. Co. v. Summit Corp. of Am.*, 715 N.E.2d 926, 936 (Ind. Ct. App. 1999). Policy terms are interpreted from the perspective of an ordinary policyholder of average intelligence. *Asbury v. Ind. Union Mut. Ins. Co.*, 441 N.E.2d 232, 237 (Ind. Ct. App. 1982).

In this case, the phrase “no action shall be brought” against State Farm unless it is done so within one year of the loss could not be any more clear. Plaintiff attempts to create an ambiguity by alleging that the term “action” is unclear and since Plaintiff took “action” – that is, she pursued the claim by negotiating with State Farm within one year – this amounts to taking “action” and thus she has timely pursued this matter under the terms of the policy. This is a strained reading of the policy especially in light of the heading of the section in the policy wherein the disputed term is used. The reference to “no action shall be brought” is in the section of the policy entitled “**Suits Against Us.**” (emphasis in original). Any person of average intelligence would understand that the reference to “action” is obviously a reference to a lawsuit.

Moreover, State Farm has not waived its rights under the limitations provision of the policy. While it is true that an insurer may waive its rights under a policy provision by engaging in conduct that would lead the insured to believe that the insurer is no longer relying on the particular provision at issue, that plainly did not occur here. See e.g., *Gallant Ins. Co. v. Wilkerson*, 720 N.E.2d 1223, 1227 (Ind. Ct. App. 1999). In fact, State Farm could not have been

any more clear that it always intended to hold Plaintiff to the one year limitations period in the policy. Indeed, on no less than nine occasions did State Farm specifically notify and warn Plaintiff that the policy contained a one year limitations period and that State Farm was reserving its rights under that provision and the policy in general.

Moreover, this is not a case where State Farm tried to “run out the clock” and lure Plaintiff into believing that it was going to pay on the claim only to pull the rug out from under her after the limitations period had run. On the contrary, State Farm formally completed its investigation and denied the claim on November 21, 2001. Plaintiff and her counsel were specifically notified of the decision leaving her ample time – until January 15, 2002 or fifty-five days – within which to bring this lawsuit. For reasons that are not entirely clear, she waited until July, 2002 to file the case. This was roughly six months too late.

Accordingly, because Plaintiff did not bring her breach of contract claim in a timely manner as required by the express terms of the policy, summary judgment is granted as to Plaintiff’s breach of contract claim.

### **B. Breach of the Duty of Good Faith**

Plaintiff’s claim for bad faith or breach of the duty of good faith presents a more difficult question. The issue is whether the one year limitations provision in the policy applies to actions for breach of the duty of good faith, which is an action in tort. For the reasons stated below, we find that it does.

An independent cause of action for breach of an insurer’s duty to exercise good faith in handling insurance claims was recognized by the Indiana Supreme Court in *Erie Insurance Co.*

*v. Hickman*, 622 N.E.2d 515 (Ind. 1993).<sup>1</sup> The court in *Erie* reasoned that because of the special relationship between an insurer and the insured “it is in society’s interest that there be fair play between” the two and thus insurers owe a duty to their customers to use good faith when making claims decisions. *Id.* at 519. Thus, while a cause of action for bad faith handling of an insurance claim is a tort, the only reason a tort duty is imposed on insurance companies in the first instance is because of the contract between the insurer and the insured, and the “special relationship” that these types of arrangements entail. *Id.* at 518.

Courts in Indiana have long held that although an action may be brought in tort when a contract exists between the parties, “the nature of the duty owed and the consequences of its breach must be determined by reference to the contract which created that duty.” *Orkin Exterminating Co., Inc. v. Walters*, 466 N.E.2d 55, 58 (Ind. Ct. App. 1984), abrogated on other grounds in *Mitchell v. Mitchell*, 695 N.E.2d 920, 922 (Ind. 1998). For example, in *Troxell v. American States Insurance Co.*, 596 N.E.2d 921 (Ind. Ct. App. 1992), a case involving the breach by an insurer of the duty to act in good faith, the court recognized that while “there is a line of cases which state that an action may be brought in contract or tort for the negligent performance of a contractual duty,” a “contractual limitation is applicable even if the [plaintiff’s] complaint does allege a cognizable negligence action against [defendant].” *Id.* at 925. Because the true nature of the Troxell’s claim was the breach of a contractual duty, i.e. the failure to pay the Troxell’s claim, the court in *Troxell* held that the plaintiff’s “claims regarding the bad faith of

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<sup>1</sup> However, the Indiana Supreme Court in *Erie* stopped short of fully defining the parameters of the tort. *Erie*, 622 N.E.2d at 519 n.2.

[the insurer] are therefore governed by the contractual limitation.” *Id.* We find the reasoning of *Troxell* dispositive and supported by post-*Erie* decisions in Indiana.

Fore example, in *Young v. Tri-etch, Inc.*, 790 N.E.2d 456 (Ind. 2003), the Indiana Supreme Court held that a contractual limitations provision did not apply where a tort lawsuit was filed between one of the original parties to a contract and a nonparty who never agreed to the terms of the contract. 790 N.E.2d at 458. The *Young* court distinguished the case before it from *Orkin*, a case similar to this one, on the basis that *Orkin* involved a tort lawsuit between two parties to a contract, where both parties agreed to the liability limitation provision. Therefore, in Indiana, if the tort claim involves only the parties to the contract, as it does here, the limitations provision should apply.

Moreover, the Seventh Circuit came to the same conclusion in *Lewis v. Methodist Hospital, Inc.*, 326 F.3d 851, 854 (7th Cir. 2003). In that case, the Seventh Circuit, after canvassing Indiana state law, concluded that “Indiana courts . . . [hold] that where a contract contains a limiting or qualifying provision, that provision may not be avoided by casting a suit for breach of the contract as a tort.” Thus, in Indiana, claims made against insurers for breach of the duty of good faith, while sounding in tort, are nonetheless subject to contractually agreed upon limitations provisions if brought by the insured. Accordingly, Plaintiffs claim for bad faith should have been brought within a year of the loss.

This position also finds supports in *Wood v. Allstate Insurance Co.*, 815 F. Supp. 1185, 1189 (N.D. Ind. 1993), *rev'd on other grounds*, 21 F.3d 741 (7th Cir. 1994). In *Wood*, the plaintiff was suing for breach of the insurers duty to act in good faith in the handling of a claim resulting from a fire. There was a limitation in the insurance contract that all claims were to be

brought within one year of the loss. In that case, the loss resulted from a fire that began on one day and was extinguished the next. The lawsuit was filed within a year of the date the fire was extinguished but not from when the fire began. Although the Seventh Circuit disagreed with the district court's analysis of whether the claim was timely filed – the Seventh Circuit believed that the day the fire was extinguished was the date of the loss – it did not disagree with the more fundamental point that the one-year limitation period applied to claims of breach of the duty of good faith. *Id.*; see also *Travelers Cas. & Sur. Co. v. Elkins Constructors, Inc.*, 2000 WL 724006, at \*11 (S.D. Ind. May 18, 2000) (holding that “phrasing a claim as contractual or tortious will not permit a party to avoid an applicable contractual provision . . .”).

In addition, the limitations provision in this case is worded to cover *all* claims – including Plaintiff's tort claim. The policy specifically provides that “[t]he action must be started within one year after the date of loss of damage.” Notably, it does not contain limiting words like “on the policy” or specify what type of action, e.g. tort or contract. See *Troxell*, 596 N.E.2d at 925. As a result, the limitation clause is broad enough to cover the Plaintiff's claims regardless of whether that claim is phrased in the language of contract or tort.

In sum, Plaintiff's claim for breach of the duty of good faith had to be brought within one year of the loss as expressly required by the terms of the policy. After being repeatedly warned that State Farm was reserving its rights under the policy – including its right to a one year limitation period – Plaintiff nonetheless waited 18 months to bring this claim. That was six months too late, and summary judgment is proper on Plaintiff's bad faith claim.

## II. There is No Clear and Convincing Evidence of Bad Faith

Finally, summary judgment is also appropriate on Plaintiff's bad faith claim for an additional reason – Plaintiff failed to provide the Court with any evidence of bad faith.

The obligation of good faith and fair dealing which an insurer owes to an insured includes the obligation to refrain from (1) making an unfounded refusal to pay policy proceeds; (2) causing an unfounded delay in payment; (3) deceiving the insured; and (4) exercising an unfair advantage to pressure an insured into settlement of her claim. *Masonic Temple Ass'n of Crawfordsville v. Ind. Farmers Mut. Ins.*, 779 N.E.2d 21, 26 (Ind. Ct. App. 2003) (citing *Erie*, 622 N.E.2d at 519). In a case like this one, to prove bad faith the plaintiff must establish, with clear and convincing evidence, that the insurer had knowledge that there was no legitimate basis for denying liability. *Id.*

The Indiana Supreme Court in *Erie*, made clear that a cause of action for bad faith does not arise every time an insurance claim is denied, even if it is erroneously denied. 622 N.E.2d at 520. This is true even if it is ultimately determined that the insurer breached its contract. *Id.* The law in Indiana remains that “insurance companies may, in good faith, dispute claims.” *Id.*

Instead, “a finding of bad faith requires evidence of a state of mind reflecting a dishonest purpose, moral obliquity, furtive design, or ill will.” *Spencer v. Bridgewater*, 757 N.E.2d 208, 212 (Ind. Ct. App. 2001) (citations omitted). Poor judgment and negligence do not amount to bad faith. Rather, it requires the additional element of conscious wrongdoing. *Id.*; *Hoosier Ins. Co. v. Audiology Found. of Am.*, 745 N.E.2d 300, 310 (Ind. Ct. App. 2001).

Here, Plaintiff has supplied the Court with absolutely no evidence of bad faith. In contrast, Defendant State Farm has provided its entire claim file which includes documentation

of the investigation it conducted into Plaintiff's claim for coverage. State Farm provides evidence that during its investigation into Plaintiff's claim it repeatedly contacted Plaintiff to discuss her claim, met with Plaintiff in-person and recorded a formal statement, inspected her apartment, reviewed the police incident report, contacted the Hammond Police Department and spoke directly with the investigating officers that were on the scene, interviewed Plaintiff's neighbors regarding neighborhood break-ins, interviewed Plaintiff's friends with whom she was with the morning of the alleged burglary, secured Plaintiff's credit and financial information, and secured records related to Plaintiff's criminal arrests. The claims file supplied to the Court is no less than an inch thick. All of this information regarding State Farm's investigation into Plaintiff's claim is indicia of its good faith investigation and subsequent decision to deny her claim.

Plaintiff, on the other hand, has done nothing to contest these facts. Plaintiff's 2 ½ page Response contains no citations to the record. For example, Plaintiff does not attach or designate affidavits, declarations, or documentary evidence of any kind to her Response. Plaintiff also failed to provide the Court with a Statement of Genuine Issues setting forth "all material facts as to which it is contended there exists a genuine issue necessary to be litigated" as required by Local Rule 56.1. All Plaintiff did was make conclusory statements about State Farm's investigation and allege that much of the information in the claim file is hearsay. But, in a bad faith claim the contents of an insurer's claim file is admissible to establish the insurer's state of mind. *Colley v. Ind. Farmers Mut. Ins. Group*, 691 N.E.2d 1259, 1261 (Ind. Ct. App. 1998). Therefore, because Plaintiff has designated no evidence of conscious wrongdoing on the part of

State Farm, no reasonable juror could find by clear and convincing evidence that State Farm had knowledge that there was no legitimate basis for denying liability.

In fact, the Plaintiff's sole contention in support of finding bad faith is the fact that State Farm allegedly wrongfully denied her claim for coverage. In her complaint, Plaintiff's sole allegation of bad faith is "[t]hat such duty was violated in that defendant exercise [*sic*] bad faith in their [*sic*] refusal to honor plaintiff's claim for damages ... That such bad faith refusal was an intentional act in trying to avoid its legal allegations [*sic*] as an insurance company." (Compl. ¶¶ 3-4.) State Farm's improper denial of coverage, however, without more, does not amount to bad faith. Rather, Plaintiff would be required to show that State Farm acted with the requisite culpability in denying her coverage. *See Hoosier*, 745 N.E.2d at 310. Plaintiff has failed to demonstrate that State Farm had ill will or engaged in conscious wrongdoing in denying her claim. Indeed, State Farm had the right to dispute the Plaintiff's coverage in good faith. Accordingly, State Farm is entitled to summary judgment on Plaintiff's bad faith claim.

## CONCLUSION

For the foregoing reasons, Plaintiff's Motion to Adapt Response [Doc. 41] is hereby **GRANTED**. The Defendant State Farm Insurance Companies' (whose true name is State Farm Fire & Casualty Company) Motions for Summary Judgment [Docs. 29 and 31] are hereby **GRANTED**; the clerk shall **ENTER FINAL JUDGMENT** in favor of Defendant State Farm Insurance Companies stating that the Plaintiff Nicole Reveliotis is entitled to no relief.

**SO ORDERED.**

ENTERED: June 16, 2004

s/ Philip P. Simon  
PHILIP P. SIMON, JUDGE  
UNITED STATES DISTRICT COURT