FILED: October 29, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-1266
(8:16-cv-03138-TMC)

NIKOLE MARIE HUNTER; ANDREW BENEDICT WEBER

Plaintiffs - Appellants

v.

GOVERNMENT EMPLOYEES INSURANCE COMPANY

Defendant - Appellee

ORDER

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Harris, Judge Rushing, and Senior Judge Traxler.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX 'A'

UNPUBLISHED

UNITED STATES COURT OF APPEALS
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No. 19-1266

NIKOLE MARIE HUNTER; ANDREW BENEDICT WEBER,

Plaintiffs - Appellants,

v.

GOVERNMENT EMPLOYEES INSURANCE COMPANY,

Defendant - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Anderson. Timothy M. Cain, District Judge. (8:16-cv-03138-TMC)

Submitted: September 11, 2019 Decided: September 27, 2019

Before HARRIS and RUSHING, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed in part, vacated in part, and remanded by unpublished per curiam opinion.

Nikole Marie Hunter; Andrew Benedict Weber, Appellants Pro Se. David L. Moore, Jr., TURNER, PADGET, GRAHAM & LANEY, PA, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

APPENDIX 'B'

PER CURIAM:

Nikole Marie Hunter and Andrew Benedict Weber appeal the district court's order granting Appellee's motion for summary judgment on their civil action arising out of an insurance dispute. Because the amended complaint did not allege any redressable injury suffered by Weber, we conclude that Weber lacked standing in the district court. *See Hollingsworth v. Perry*, 570 U.S. 693, 704 (2013). Thus, although we grant Appellants' application to proceed in forma pauperis, we vacate the district court's order as to Weber and remand with instructions to dismiss this part of the amended complaint for lack of jurisdiction. *Id.* at 715. Turning to Hunter, we have reviewed the record and find no reversible error. Accordingly, we affirm the district court's order as to Hunter. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED IN PART,
VACATED IN PART,
AND REMANDED

APPENDIX 'B'

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Nikole Marie Hunter and Andrew Benedict Weber, Plaintiffs, v. Government Employees Insurance Company, Defendant.	Case No. 8:16-CV-3138-TMC **ORDER**

Plaintiff Nikole Marie Hunter ("Hunter") and her husband, Plaintiff Andrew Benedict Weber ("Weber"), brought this action against Defendant Government Employees Insurance Company ("GEICO") asserting causes of action for breach of insurance contract, bad faith claims handling, and "Bad Faith Litigation—Withholding of Service of Process evidence." (ECF No. 35 at 4). GEICO moved for summary judgment as to each claim pursuant to Rule 56 of the Federal Rules of Civil Procedure. (ECF Nos. 51 and 51-1).[1] For the reasons set forth below, the court grants summary judgment in favor of GEICO as to each of Plaintiffs' claims.

[1]GEICO also contends that Plaintiff Weber lacks standing to assert the claims set forth in the amended complaint. (ECF No. 51-1 at 2-3). In light of the court's

I. Background

On April 20, 2012, Hunter sustained injuries from a motor vehicle accident for which she was not at fault. Hunter was the driver and sole occupant of her vehicle. (ECF No. 51-2). The insurance carrier for the at-fault driver was State Farm Mutual Automobile Insurance Company ("State Farm"). Following the accident, State Farm paid Hunter the policy limits of $25,000. (ECF No. 51-1 at 1).

Hunter's vehicle was insured under Policy Number 4194-73-98-86 ("the Policy"), which was issued to Plaintiffs by GEICO and included underinsured motorist (UIM) coverage in the amount of $25,000. (ECF No. 51-9 at 1). The parties agree that because Plaintiffs insured two vehicles under the policy, South Carolina law permitted Hunter to stack the UIM coverage for each vehicle for a total of $50,000 in UIM benefits under the Policy. (ECF No. 51-3 at 14). In November 2014, Hunter and Weber demanded that GEICO pay the UIM policy limits of $50,000. (ECF No. 59-6). GEICO declined to do so but offered to pay $19,000 in UIM benefits based on its internal evaluation of Hunter's claim. (ECF No. 59-7).

In December 2014, Plaintiffs filed a complaint in South Carolina state court against Ashley Thomley, a GEICO claims adjuster who was assigned to Hunter's case, alleging bad faith and improper claims practices. (ECF No. 51-7). Weber,

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disposition of this motion, however, the court declines to address GEICO's standing argument.

who is not a licensed attorney, filed the action not only on his own behalf but also on behalf of Hunter as her de facto attorney. (ECF No. 51-7 at 6). The action was dismissed in February 2015, as Thomley, an individual GEICO employee, was not a party to the insurance contract between GEICO and Plaintiffs. (ECF No. 59-23).

Shortly thereafter, Hunter, through legal counsel, filed another complaint in South Carolina state court against Thomley and Pace Bailey, another GEICO employee assigned to evaluate Hunter's case. The complaint sought relief against Thomley and Bailey individually for breach of the implied covenant of good faith and fair dealing that arose under the policy. The 2015 state case was removed to this court, and Thomley and Bailey filed a motion to dismiss. This court dismissed the action, concluding that South Carolina law did not permit Hunter to maintain a cause of action for bad faith refusal to pay benefits against individual GEICO employees who were not parties to the insurance contract. *Hunter v. Thomley*, 8:15-cv-2929-TMC, ECF No. 45 (D.S.C. March 21, 2016).

On March 27, 2015, Hunter, proceeding pro se, filed a negligence action in South Carolina state court against the alleged at-fault driver. (ECF No. 51-4). Notice of this action was served on GEICO as the UIM carrier. (ECF No. 59-23). Weber did not participate as a party in this action or assert any claims against the at-fault driver.

GEICO tendered the $50,000 limits of UIM coverage, and Hunter and Weber executed a "Policy Release" that released GEICO from all claims to UIM benefits under the Policy arising from injuries sustained by Hunter in the April 20, 2012, accident. (ECF No. 51-5).

In July 2016, Plaintiffs filed the instant action against GEICO in South Carolina state court, alleging that GEICO (1) breached the terms of the insurance policy and (2) acted in bad faith and engaged in unreasonable claims handling by not tendering the full UIM policy limits sooner and failing to explain why it initially offered less than the full UIM limits. (ECF No. 1-1). After the case was removed to federal court, Plaintiffs amended the complaint to add a third cause of action styled "Bad Faith Litigation—Withholding of Service of Process evidence," (ECF No. 35 at 4-7), apparently based on litigation events in Hunter's previous bad faith action against the individual claims handlers that this court dismissed for failure to state a viable claim. *See Hunter v. Thomley*, 8:15-cv-2929-TMC, ECF No. 45 (D.S.C. March 21, 2016).

GEICO moved for summary judgment (ECF No. 51). Plaintiffs filed a brief in opposition to summary judgment (ECF No. 59), and GEICO filed a brief in reply (ECF No. 61). The matter is now ripe for review. The court concludes that a hearing is unnecessary in this matter.

II. Legal Standard

Summary judgment is appropriate if a party "shows that there is no genuine dispute as to any material fact" and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The court should grant summary judgment "only when it is clear that there is no dispute concerning either the facts of the controversy or the inferences to be drawn from those facts." *Pulliam Inv. Co. v. Cameo Props.*, 810 F.2d 1282, 1286 (4th Cir. 1987). "In determining whether a genuine issue has been raised, the court must construe all inferences and ambiguities in favor of the nonmoving party." *HealthSouth Rehab. Hosp. v. Am. Nat'l Red Cross*, 101 F.3d 1005, 1008 (4th Cir. 1996). The party seeking summary judgment bears the initial burden of establishing that there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

Once the moving party has carried this initial burden, the non-moving party, to survive summary judgment, must "go beyond" the allegations in the pleadings. *Id.* at 324. The non-moving party must instead demonstrate that specific, material facts exist that give rise to a genuine issue. *Id.* Under this standard, "[c]onclusory or speculative allegations do not suffice, nor does a mere scintilla of evidence" in support of the non-moving party's case. *Thompson v. Potomac Elec. Power Co.*, 312 F.3d 645, 649 (4th Cir. 2002) (internal quotation marks omitted).

III. Discussion

A. Breach of contract and statutory damages

Plaintiffs' first cause of action is for breach of contract. Plaintiffs contend that GEICO breached the terms of the Policy by not immediately agreeing to pay the full UIM limits, and by delaying payment until "after counsel was retained and [a bad faith action] was threatened." (ECF No. 35 at 2). For this alleged breach, Plaintiffs seek to recover damages, including attorneys' fees under S.C. Code § 38-59-40.

Under the terms of the Policy, GEICO agreed to pay damages for bodily injury and property damage caused by an accident for which its insured—in this case Hunter—is legally entitled to recover from the operator of an "underinsured motor vehicle." (ECF No. 51-9 at 3). An "underinsured motor vehicle" is defined as a vehicle with liability insurance coverage in an amount that is "less than the amount of the insured's damages." *Id.*

GEICO contends that when it paid the $50,000 limits of UIM coverage, it discharged its obligations under the Policy. GEICO points out that both Plaintiff Weber and Plaintiffs' expert witness, Maurice Kraut, acknowledged during their depositions that GEICO satisfied its obligation to pay UIM benefits under the Policy and could not identify any other policy provision GEICO violated. (ECF Nos. 51-3 at 15; 51-10 at 16).[2] Nonetheless, Plaintiffs argue that GEICO's payment of the

[2] Plaintiff Weber admitted that "by paying the $50,000 policy limits, there's no breach" of the policy by GEICO. (ECF No. 51-3 at 15). Kraut, Plaintiffs' expert

UIM limits under the Policy does not absolve them of liability under S.C. Code Ann. § 38-59-40(1) for delaying payment without a reasonable basis for doing so. (ECF No. 59 at 4-5).

Plaintiffs' argument that GEICO can still be liable for bad faith despite having fulfilled its contractual obligations by paying the UIM policy limits is a *tort theory* that applies to its second cause of action. Indeed, the authority cited by Plaintiffs in support of this argument involved tort claims, not contract claims. (ECF No. 59 at 4). As discussed below, South Carolina in fact recognizes a tort cause of action for an insurance carrier's bad faith in exercising duties owed to policyholders which does not require breach of an express contractual provision as a prerequisite. *See Tadlock Painting Co. v. Maryland Cas. Co.*, 473 S.E.2d 52, 54 (S.C. 1996). But, this is a claim sounding in tort, not contract.[3]

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witness on insurance practices was likewise unable to identify any "direct violations" of the Policy by GEICO. (ECF No. 51-10 at 16).

[3] Despite its characterization as a tort, a cause of action for bad faith claims handling or processing in South Carolina arises from the implied covenant and fair dealing in every insurance policy. *See Nichols v. State Farm Mut. Auto. Ins. Co.*, 306 S.E.2d 616, 618 (S.C. 1983). Therefore, to the extent Plaintiffs suggest that GEICO's claims practices breached the Policy's implied covenant of good faith and fair dealing, they are alleging a tort claim, not of a breach of contract claim that renders relief under S.C. Code § 38-59-40 available.

Plaintiffs' argument that full payment of benefits is not a defense to bad faith conflates their first and second causes of action. Plaintiffs' first cause of action expressly alleges breach of contract and seeks statutory damages under S.C. Code Ann. § 38-59-40(1) for GEICO's alleged bad faith refusal to pay benefits. (ECF No. 35 at 2-3). That provision provides, in relevant part, as follows:

> In the event of a claim, loss, or damage which is covered by a policy of insurance . . . and the refusal of the insurer . . . to pay the claim within ninety days after a demand has been made by the holder of the policy . . . and a finding on suit of the contract made by the trial judge that the refusal was without reasonable cause or in bad faith, the insurer . . . is liable to pay the holder, in addition to any sum or any amount otherwise recoverable, all reasonable attorneys' fees for the prosecution of the case against the insurer . . . .

S.C. Code Ann. § 38-59-40(1). Critically, this provision applies only to breach of contract claims and not tort claims. *See Nichols v. State Farm Mut. Auto. Ins. Co.*, 306 S.E.2d 616, 620 (S.C. 1983) (holding that identical predecessor provision "applies only to a breach of contract cause of action and is therefore inapplicable to a tort action"), *partial abrogation on separate grounds recognized by Duncan v. Provident Mut. Life Ins. Co. of Philadelphia*, 427 S.E.2d 657, 659 (S.C. 1993) (discussing ERISA preemption); *Rush v. Zurich Am. Ins. Co.*, No. 4:15-CV-04367-RBH, 2016 WL 3913704, at *3 (D.S.C. July 20, 2016). Therefore, damages under this provision are available only when an insurance carrier's breach of contract has been established. *See Nichols*, 306 S.E.2d at 620 (vacating award of attorneys' fees under S.C. Code § 38–9–320(1) (1976) where verdict against insurance carrier on

contract cause of action was vacated). Plaintiffs have failed to create a triable issue of fact on its contract claim as to whether GEICO violated any of the provisions of the contract. Thus, Plaintiffs are not entitled to recover under S.C. Code § 38-59-40.

Accordingly, the court concludes that Plaintiffs have failed to raise an issue of material fact as to their first cause of action for breach of contract and that GEICO is therefore entitled to judgment as a matter of law on this claim.

B. Bad faith refusal to pay/Unreasonable claims handling

In their second cause of action, Plaintiffs allege that, despite having paid the policy limits, GEICO breached its duty of good faith by, among other things, "fail[ing] and refus[ing] to make an adequate investigation before withholding benefits" under the Policy; by "unreasonably delaying payment of the Plaintiffs' claims"; and by "failing to communicate to the Plaintiffs any reasonable justification" for not paying the policy limits right away. (ECF No. 35 at 3-4).

South Carolina recognizes a common law tort action for an insurer's bad faith in exercising duties owed to policyholders. *Nichols*, 306 S.E.2d at 619. Thus, under South Carolina law, an insurer that unreasonably refuses to settle a claim with an insured within policy limits is subject to liability in tort. *Id.* at 618. This tort is rooted in the implied covenant of good faith and fair dealing in every insurance contract. *See id.* "[T]here is an implied covenant of good faith and fair dealing in

every insurance contract that neither party will do anything to impair the other's rights to receive benefits under the contract." *Tadlock Painting*, 473 S.E.2d at 53 (internal citations and quotation marks omitted).

The elements of an action for bad faith refusal to pay benefits under an insurance contract include: "(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." *Crossley v. State Farm Mut. Auto. Ins. Co.*, 415 S.E.2d 393, 396–97 (S.C. 1992). In this case, it is undisputed that a mutually binding insurance contract existed between GEICO and Plaintiffs and that GEICO paid Plaintiffs the UIM limits under the Policy.

The fact that GEICO discharged its obligation to pay UIM benefits, however, does not fully resolve the bad faith claim. Because a bad faith action lies in tort and not in contract, a bad faith claim may exist even in the absence of any violation of an insurance contract provision. *Tadlock Painting*, 473 S.E.2d at 55. South Carolina courts have made clear that "the benefits due an insured are not limited solely by those expressly set out in the contract," *id.* at 55, as "the covenant of good faith and fair dealing extends not just to the payment of a legitimate claim, but also to the manner in which it is processed," *Mixson, Inc. v. American Loyalty Ins. Co.*, 562

S.E.2d 659, 662 (S.C. Ct. App. 2002). "[I]f 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." *Tadlock Painting*, 473 S.E.2d at 53 (internal quotation marks omitted).

1. Unreasonable processing of Plaintiffs' UIM demand

Plaintiffs claim that GEICO dealt with them in bad faith by unreasonably delaying payment of the UIM policy limits after Plaintiffs first demanded them. (ECF No. 59 at 4-5). Generally, "once a UIM insured commences a claim for liability against the allegedly at-fault driver, the UIM insurer has a duty to act in good faith towards the insured." *Snyder v. State Farm Mut. Auto. Ins. Co.*, 586 F. Supp. 2d 453, 459 (D.S.C. 2008). Good faith, of course, typically does not require the UIM carrier to immediately pay a claim or, for that matter, even "make a settlement offer" at all. *Id.* Federal courts in this district applying South Carolina law have only recognized one narrow instance in which good faith *might* require a UIM insurance carrier to immediately settle a claim—"if it was *clear* that the insured suffered damages greatly in excess of the liability limits of the at-fault party, the insurer could not in bad faith delay or withhold benefits to which it was *certain that the insured was entitled.*" *Snyder*, 586 F. Supp. 2d at 459 (internal quotation marks omitted) (emphasis added). In such a case, a UIM insurance carrier's delay in paying

benefits could constitute bad faith. *See Myers v. State Farm Mut. Auto. Ins. Co.*, 950 F. Supp. 148, 151 (D.S.C. 1997); *Snyder*, 586 F. Supp. 2d at 459.

The court concludes that GEICO's handling of Plaintiffs' claims and payment of the policy limits in May 2016 did not constitute unreasonable action on its part. GEICO began attempts to investigate and settle Plaintiffs claims well *before* its duty to act in good faith arose when Plaintiffs filed Hunter's action against the at-fault driver in March 2015. On November 5, 2014, Plaintiffs demanded that GEICO pay the UIM policy limits. (ECF No. 59-7). Prior to that time, GEICO made several offers to settle the claim, eventually going as high as $19,000. (ECF No. 59-7 at 13). Moreover, "the fact that the parties ha[ve] different estimations of the value of a claim is not, under South Carolina law, evidence of bad faith on the part of the party offering the lower amount." *Collins v. Auto-Owners Ins. Co.*, 438 F. App'x 247, 249 (4th Cir. 2011). UIM carriers have the right and duty to negotiate an insured's claim in view of their obligation "to protect their own interests (and, by extension, the interests of their other premium-paying customers)." *Snyder*, 586 F. Supp. 2d at 458-59. Plaintiffs' expert conceded that it is not improper for an insurer to negotiate the value of a claim with its insured and that it is not an indication of

bad faith for the insurer to begin negotiations with lower offers. (ECF No. 61-1 at 3).[4]

Moreover, GEICO had reasonable grounds for initially offering less than the full UIM limits demanded by Plaintiffs before they had even filed suit against the at-fault driver. On the day of the accident, Hunter went to the hospital complaining of head and neck pain. (ECF No. 61-2 at 4). Hunter did not have broken bones or lacerations; she was diagnosed with soft tissue injuries in the neck and shoulders and was treated and released. *Id.* Hunter did not receive further medical treatment for ten days, at which time she began complaining of lower back problems for the first time following the accident. (ECF No. 61-2 at 6). Hunter also began complaining of pain in her wrist that was eventually diagnosed as carpal tunnel syndrome. *Id.* Finally, in June 2013, more than a year after the accident, Hunter was examined for new symptoms related to TMJ. (ECF No. 61-2 at 7).

The timing of the initial appearance of some of Hunter's injuries gave GEICO a reasonable basis to question the existence of any causal connection to the accident. Plaintiffs' expert conceded that a substantial gap in time between an accident and the appearance of additional symptoms is a standard, relevant consideration for

[4] The court notes that negotiations may have been complicated somewhat by Weber's inserting himself into the process as quasi-legal advisor for Hunter. For example, Weber kept demanding the UIM policy limits based on the "Tyger River Doctrine," (ECF No. 59-7 at 11 and 17), which has no application here.

claims adjusters with regard to the value of a claim. (ECF No. 61-2 at 5-6). Although Plaintiffs presented a letter from the treating physician indicating that the TMJ symptoms were related to the accident, the letter was drafted two years after he completed treatment for Hunter's TMJ symptoms and was provided *during* Plaintiffs' unsuccessful bad faith litigation against the individual adjusters. (ECF No. 59-2). In light of these circumstances, GEICO had no duty to accept at face value Plaintiffs' assertions that all of Hunter's medical problems were caused by the accident and had every right to use the discovery process to examine how Hunter's doctors determined causation.[5]

Thus, because GEICO had a reasonable ground for questioning whether all of Hunter's medical issues were proximately caused by the accident, it did not act in bad faith by investigating Plaintiffs' claims and negotiating with Plaintiffs prior to tendering the UIM policy limits. See *Snyder*, 586 F. Supp. 2d at 458 (noting that "[i]f there is reasonable ground for contesting a claim, there is no bad faith").

2. Consequential Damages

Alternatively, Plaintiffs' claim fails as a matter of law because Plaintiffs have not been able to show consequential damages flowing from GEICO's alleged acts

[5] Plaintiffs' expert witness suggested that GEICO's failure, during the process of negotiation, to expressly set forth in writing that it did not accept all of Hunter's medical expenses amounted to bad faith. However, he conceded that he knew of no treatise, publication, written industry standard or "any cases within the United States" establishing such a duty. (ECF No. 51-10 at 12).

of bad faith as opposed to the underlying accident. "Damages are a critical element of a first-party insurance bad faith action." *See Jordan v. Allstate Ins. Co.*, No. 4:14-CV-03007-RBH, 2016 WL 4367080, at *9 (D.S.C. Aug. 16, 2016), *aff'd*, 678 F. App'x 171 (4th Cir. 2017). Plaintiffs claim consequential damages related to the following: tooth abscesses; loss of permanent teeth; loss of self-employment acting opportunities in television and film as a result of her missing teeth; loss of her full-time employment and income; emotional distress; and "anti-depressant dependence." (ECF No. 59 at 5-6).

To the extent that Plaintiffs seek consequential damages related to Hunter's bodily injuries, Plaintiffs' claim is infirm. Consequential damages in a first-party bad faith action must flow from the alleged acts of bad faith by the insurance carrier. *See State Farm Fire & Cas. Co. v. Barton*, 897 F.2d 729, 733 (4th Cir. 1990) (explaining that under South Carolina law insurer cannot be liable for consequential damages unless the acts of bad faith were the proximate cause of such damages). Hunter's dental problems and the related expenses she incurred would have been caused, if at all, by the accident, not GEICO's delay in tendering the UIM policy limits. Likewise, Plaintiffs' claim for loss of employment and income in December 2015 was based on Hunter's significant back pain which would flow, if at all, from the accident, not the alleged acts of bad faith by GEICO. (ECF Nos. 59 at 6; 59-17).

Plaintiffs also claim emotional distress as consequential damages. (ECF No. 59 at 6). As a general matter, emotional distress damages are recoverable in an action for bad faith under South Carolina law if the acts of bad faith are the proximate cause of the emotional distress. *See Barton*, 897 F.2d at 732-33; *Wright v. UNUM Life Ins. Co.*, No. 2:99-2394-23, 2001 WL 34907077, at *11-12 (D.S.C. Aug. 31, 2001). In the instant case, however, Plaintiffs claim Hunter had "to leave a full time salaried job in December 2015" which resulted in "a loss of household income" and "further emotional distress." (ECF No. 59 at 6). This claim is part and parcel of Plaintiffs' attempt to collect damages for lost employment and income as a result of Hunter's inability to work because of back pain. (ECF No. 59-17).[6] Hunter's emotional distress would have been caused, if at all, by the accident, not GEICO's alleged acts of bad faith.

Accordingly, the court concludes that Plaintiffs have failed to raise an issue of material fact with respect to their second cause of action for bad faith and that GEICO is therefore entitled to judgment as a matter of law on this claim.

C. "Bad Faith Litigation – Withholding of Service of Process Evidence"

Plaintiffs' third and final cause of action appears to arise from Plaintiff Hunter's prior lawsuit against the individual claims handlers that this court

[6] To the extent Plaintiffs present Weber's loss of consortium claim as consequential damages, his claim relates to and arises from Hunter's injuries in the accident, not GEICO's alleged acts of bad faith.

dismissed because it failed to allege a viable claim with any merit. *See Hunter v. Thomley*, 8:15-cv-2929-TMC, ECF No. 45 (D.S.C. March 21, 2016). Specifically, Plaintiffs' allegations concern the alleged conduct in the above-referenced case of defense counsel who is no longer involved in the instant case.[7] As the basis for this claim, Plaintiffs are complaining that counsel for the individual defendants in the prior case—who are not parties to the instant action—did not acknowledge or accept service of process on those defendants and made it difficult for Weber, a pro se litigant who was also at the time representing Hunter without a license, to perfect service. Weber attempted to personally serve the individual defendants via certified mail by leaving a copy of the pleadings with workers in GEICO's mailroom. (ECF No. 35 at 5). According to Plaintiffs, defense counsel did not respond to their requests for proof that employees in GEICO's mailroom had the authority to generally accept service of process on behalf of other individual employees at GEICO. (ECF No. 59 at 4). Plaintiffs also assert that defense counsel misled them into believing that they could perfect service by sending the pleadings to him. Plaintiffs assert that these actions caused them to incur attorney's fees, face litigation delays and incur additional costs to effect service. (ECF No. 35 at 6-7).

[7] Counsel for the individual defendants in *Hunter v. Thomley*, 8:15-cv-2929-TMC, also began the instant action as attorney of record for GEICO but has now been replaced by substitute counsel. (ECF No. 19).

The court concludes this claim is wholly without merit. To the extent that Plaintiffs wish to address original counsel's conduct in a previous case, they should have done so during the prior case in which the conduct allegedly occurred. Moreover, Plaintiffs allege that the purported bad-faith conduct was committed by an attorney who is not before the court in the instant case on behalf of individual employees who are not before the court as parties in the instant case. As none of the alleged offenders are currently before the court, the court is unable to grant relief as to this particular claim. Finally, in view of the fact that this court dismissed Plaintiffs' complaint in the prior case for failure to state a viable claim for relief, Plaintiffs did not suffer prejudice from any litigation delays or other consequences flowing from the failure to effect service of process on their first two tries.

IV. Conclusion

For the foregoing reasons, the court concludes that GEICO is entitled to judgment as a matter of law on all of Plaintiffs' claims. The court therefore **GRANTS** GEICO's motion for summary judgment. (ECF No. 51).

IT IS SO ORDERED.

s/ Timothy M. Cain
United States District Judge

February 19, 2019
Anderson, South Carolina