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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GOVERNMENT EMPLOYEES INSURANCE
COMPANY,

Plaintiff,

-against-

MEMORANDUM & ORDER

12-CV-5633 (NGG) (CLP)

DIANE SACO and SUZANNE KUSULAS,

Defendants.

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SUZANNE KUSULAS, as assignee of the rights
of DIANE SACO,

Plaintiff,

-against-

15-CV-634 (NGG) (CLP)

GOVERNMENT EMPLOYEES INSURANCE
COMPANY,

Defendant.

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NICHOLAS G. GARAUFGIS, United States District Judge.

The parties in these two related cases seek the court’s determination as to the Government Employees Insurance Company’s (“GEICO”) obligation to pay certain costs under its insurance policy issued to Diane Saco (“Saco”). Underlying the actions is a prior state court trial, in which a jury adjudged Saco to be liable to Suzanne Kusulas (“Kusulas”) for injuries sustained in an automobile accident.

Before the court are GEICO’s Motion for Summary Judgment as to all claims in both actions (see GEICO’s Mot. for Summ. J. (“GEICO Summ. J. Mot.”) (Dkt. 115),

No. 12-CV-5633),¹ and Kusulas's Motion for Partial Summary Judgment as to her counterclaim for breach of contract (see Kusulas Summ. J. Mot. (Dkt. 117), No. 12-CV-5633).

For the following reasons, the court DENIES Kusulas's Motion for Partial Summary Judgment and GRANTS IN PART and DENIES IN PART GEICO's Motion for Summary Judgment.

I. BACKGROUND

A. The Parties' Statements of Undisputed Facts

The facts in this opinion are drawn, where possible, from the parties' statements of undisputed facts, submitted pursuant to Local Rule 56.1. (See Kusulas Rule 56.1 Statement (Dkt. 117-1); GEICO Rule 56.1 Statement (Dkt. 115-1).) See also Holtz v. Rockefeller & Co., 258 F.3d 62, 73 (2d Cir. 2001) (The court "is not required to consider what the parties fail to point out in their Local Rule 56.1 statements." (internal quotation marks and citations omitted)).

In addition to submitting their initial statements of "undisputed" facts, the parties both submitted counterstatements to each other's statements, and GEICO additionally submitted a reply to Kusulas's counterstatement. (See GEICO 56.1 Counterstatement (Dkt. 123-1); Kusulas Rule 56.1 Counterstatement (Dkt. 121); GEICO Rule 56.1 Reply (Dkt. 128)). This opinion relies only on facts in the parties' Rule 56.1 statements that are truly undisputed and notes any apparent disagreement over any material allegation.

B. Factual Background

At issue in both of these cases is a car accident and subsequent state court case, the facts of which are undisputed. On February 23, 2006, Saco collided with a car in which Kusulas was

¹ Unless otherwise noted, all docket citations in this opinion are to the first of the two cases filed, No. 12-CV-5633. The summary judgment motions also appear on the docket in Kusulas's parallel proceeding, No. 15-CV-634. (GEICO Summ. J. Mot. (Dkt. 26), No. 15-CV-634; Kusulas Summ. J. Mot. (Dkt. 28), No. 15-CV-634.)

a passenger. (Kusulas Rule 56.1 Statement ¶ 2.) At the time of the accident, Saco held two insurance policies issued by GEICO: an automobile policy with a policy limit of \$300,000 (the “Automobile Policy”) and a personal umbrella policy, with a policy limit of \$1,000,000 (the “Umbrella Policy;” collectively, the “Policies”). (See GEICO Rule 56.1 Statement ¶¶ 1, 5.) The Umbrella Policy provided cumulative “excess coverage” to the Automobile policy, and so Saco’s coverage as to the accident in question had a combined limit of \$1,300,000 (the “Policy Limits”). (Id.)

In January 2007, Kusulas instituted an action against Saco in the Supreme Court of the State of New York, Kings County (the “Underlying Action”). (Id. ¶ 3.) On June 16, 2010, the state court granted Kusulas’s motion for summary judgment as to liability, holding that Saco was fully liable for Kusulas’s injuries resulting from the accident. (See *id.* ¶ 16; *see also* Kusulas Rule 56.1 Statement ¶ 5.) On March 5, 2012, a jury considering only the issue of damages returned a verdict of \$3,369,066.75. (GEICO Rule 56.1 Statement ¶ 100; Kusulas Rule 56.1 Statement ¶ 8.) Following further proceedings, the state court entered judgment entered judgment for Kusulas in the amount of \$2,857,900.55 on October 10, 2014. (GEICO Rule 56.1 Statement ¶ 106; Kusulas Rule 56.1 Statement ¶ 10.) Significantly for the motions considered here, this judgment included \$779,273.26 in interest, calculated at the statutory rate of nine percent per annum from the date of the June 16, 2010, judgment as to Saco’s liability for Kusulas’s injury. (Kusulas Rule 56.1 Statement ¶ 10.)²

² On May 12, 2012, GEICO paid Kusulas \$1,283,500. (Kusulas Rule 56.1 Statement ¶ 9.) Kusulas characterizes this amount as “partial satisfaction” of the judgment, a characterization which GEICO disputes based on the claims at issue in the present case. (See GEICO 56.1 Counterstatement ¶ 9.) The court declines to characterize the payment at this point and only notes that this payment represented the remaining policy coverage amount not in dispute as between GEICO and Saco at the time of the payment.

From October 2007 through return of the jury verdict, the parties engaged in off-and-on settlement discussions and GEICO developed internal case valuations, reviewed in greater detail below. (See Section II.C.1, *infra*.)

C. Procedural History

GEICO filed the first of the two captioned cases in this court on November 15, 2012, and named both Saco and Kusulas as defendants. (Compl. (Dkt. 1).) That complaint seeks declaratory judgment that (1) GEICO is not required to make any payments in excess of the Policy Limits; (2) the Policies do not require payment for Saco's personal attorney's fees; and (3) GEICO is not subject to any claim for bad faith in relation to its obligations to Saco. (*Id.* ¶ 41.) In her answer, Kusulas included two counterclaims: (1) GEICO breached its contract in failing to tender to Saco the full Policy Limits plus prejudgment interest³ on that amount; and (2) GEICO acted in bad faith towards Saco in its failure to settle the Underlying Action.⁴ (See Kusulas Answer & Countercl. (Dkt. 51) ¶¶ 21-28; *id.* ¶¶ 29-63.) While, as noted, Saco originally appeared as a defendant in the case, she assigned her rights against GEICO to Kusulas on December 23, 2014. (GEICO Rule 56.1 Statement ¶ 107.)

II. DISCUSSION

Pending before the court are the parties' cross-motions for summary judgment. GEICO seeks summary judgment as to all claims in both actions. (See Mem. in Supp. of GEICO's Mot. for Summ. J. ("GEICO Summ. J. Mem.") (Dkt. 116) at 1.) Kusulas moves for summary

³ The phrase "prejudgment interest" as it is used in the parties' submissions and this order refers to interest accruing from the time that liability was determined (June 16, 2010) to the time that the jury returned its verdict (March 5, 2012), as this is the relief requested by Kusulas in her Motion. (See Kusulas Summ. J. Mem. (Dkt. 120) at 10.)

⁴ On November 19, 2014, Kusulas withdrew her bad faith claim (Nov. 19, 2014, Min. Entry), which she subsequently brought as a separate action in New York state court (see Kusulas Rule 56.1 Statement ¶¶ 23). GEICO removed the separate action to this court (see Not. of Removal (Dkt. 1), No. 15-CV-634, ¶¶ 3-4), and the court consolidated the two actions (Aug. 4, 2015, Order (Dkt. 99)).

judgment only as to her claim for breach of contract based on GEICO's failure to pay prejudgment interest on the Policy Limits. (See Mem. in Supp. of Kusulas's Mot. for Partial Summ. J. ("Kusulas Summ. J. Mem.") (Dkt. 120) at 1.) The court concludes that GEICO is entitled to summary judgment as to its liability for prejudgment interest in excess of the Policy Limits, as extrinsic evidence demonstrates that the parties to the Policies lacked intent for GEICO to be liable for those payments. Kusulas's Motion for Partial Summary Judgment must therefore be denied. The court also denies GEICO's request for summary judgment as to whether it discharged its duty of good faith to Saco in the Underlying Action, as conflicting evidence presented by the parties gives rise to a genuine dispute of material fact.

A. Legal Standard

A court must grant summary judgment where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A 'material' fact is one capable of influencing the case's outcome under governing substantive law, and a 'genuine' dispute is one as to which the evidence would permit a reasonable juror to find for the party opposing the motion." Figueroa v. Mazza, 825 F.3d 89, 98 (2d Cir. 2016) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). "The movant may discharge this burden by showing that the non-moving party has 'fail[ed] to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.'" Lantheus Med. Imaging, Inc. v. Zurich Am. Ins. Co., — F. Supp. 3d —, No. 10-CV-9371 (KPF), 2015 WL 1914319, at *6 (S.D.N.Y. Apr. 28, 2015) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)).

"In determining whether an issue is genuine, '[t]he inferences to be drawn from the underlying affidavits, exhibits, interrogatory answers, and depositions must be viewed in the light most favorable to the party opposing the motion.'" SCW West LLC v. Westport Ins. Corp.,

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