IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ROD & REEL, INC., et. al.	*	
	*	
Plaintiffs,		
v.	*	Case No.: 8:20-cv-03388-DLB Judge Deborah L. Boardman
STATE AUTOMOBILE MUTUAL INSURANCE COMPANY	*	
	*	
Defendant.		
	*	

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PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules and Statutes

Other Authorities

Plaintiffs, Rod & Reel, Inc., Chesapeake Beach Resort and Spa, Chesapeake Beach Hotel and Spa, Smokey Joe's Grill and Boardwalk Café, Chesapeake Amusement, Inc. t/a Rod-N-Reel Bingo (collectively "Insureds" or "Plaintiffs"), by and through their undersigned counsel, respectfully submits this Reply Memorandum in Support of their Motion for Summary Judgment, and in Opposition to the Cross-Motion for Summary Judgment filed by the Defendant State Automobile Mutual Insurance Company (collectively "State Auto," "Defendant," or "Insurer").

PRELIMINARY STATEMENT

The Plaintiffs operate a business located at 4160 Mears Ave., Chesapeake Beach, Md. 20732 (the "Property"). The Plaintiffs purchased a policy of insurance issued by State Auto. The Cross-Motions for Summary Judgment raise only two (2) discrete issues: First, what is the amount owed for the business interruption? That amount is easily determined based upon this Court's prior adoption of a month-to-month matrix. Second, whether State Auto acted in good faith in adjusting this loss. Given the undisputed facts of this case, it is clear that the Plaintiffs are entitled to summary judgment.

I. THE MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE DISPUTE.

State Auto has not disputed the Plaintiffs' Statement of Facts. Those undisputed facts make clear that summary judgment is appropriate as to the additional amount owed by State Auto on the Business Interruption and Extra Expense claim and further lead to the inescapable conclusion that State Auto has failed to act in good faith as is required by Md. Ins. § 27-1001 and Md. Code Ann., Cts. & Jud. Proc. § 3-1701 and under the caselaw applicable to both.[1]

A. The Period of Restoration and Amount Owed on the Business Interruption claim.

A fire occurred on February 8, 2015, at the Smokey Joe's Grill and Boardwalk Café, located

[1] In Jerry v. Allstate Ins. Co., 553 F. Supp. 3d 287, 293 n.4 (D. Md. 2021) the Court noted that "Technically, Maryland only recognizes a claim for an insurer's "failure to act in good faith." However, the Court went on to note that "regardless of whether there is a difference between acting in bad faith and failing to act in good faith, the Court will use the terms interchangeably in this opinion." Under the statute, the burden is on the insurer to show that it acted in good faith.

at the Insureds' Property.[2] In connection with the loss, Rod & Reel hired Goodman-Gable-Gould Company ("GGG"), licensed public adjusters in Maryland.[3] GGG appointed Neal Charkatz, a licensed public adjuster to the claim.[4] A claim was made which included a claim for business interruption and extra expense ("BI"). State Auto assigned a senior adjuster Scott Terra to the loss and later reassigned the loss to Caroline Veahman. In April 2015 there was concern that the sight and smell of the damaged building would interfere with the weddings scheduled to occur at a waterfront location directly adjacent to the burned building. Scott Terra on behalf of State Auto agreed that (1) State Auto would pay to have the entire burned building "shrink wrapped" to reduce the offensive view and smells, during which time repair work could not occur, and (2) State Auto agreed that the period of restoration would include time for the shrink wrapping during which time work could not occur. He further agreed the shrink wrapping would continue until the end of the wedding season in mid-October to November when the shrink wrapping could be removed. The shrink wrapping would benefit State Auto by reducing the BI claim. The time for determination of the period of restoration as agreed to by State Auto are as follows:

- *February 8, 2015 Fire.*
- *Shrink Wrap Agreement to run through the wedding season.*
- *Wedding season ends October 15 - November 1, 2015 after which work could commence.*
- *6 months of work from the end of the wedding season ends the period of restoration in April/May 2016.*

The period of restoration would run through April/May 2016, and the amount of the loss is established by reference to the monthly matrix which was adopted by Judge Grimm when he modified the appraisal award. Judge Grimm did so to "enable ready calculation of the amount due

[2] Deposition of Neal Charkatz Exhibit 9, pg. 11. (Exhibits previously filed are not refiled, except for Exhibit 1)
[3] Deposition of Neal Charkatz Exhibit 9, pg. 10.
[4] Deposition of Neal Charkatz Exhibit 9, pg. 10.

under the Policy" (the "Modification Action")[5] Judge Grimm in the Modification Action ruled that "The Award is modified … to include only the month-to-month calculations" explaining that:

> the month-to-month calculations enable ready calculation of the amount due under the Policy, once the period of restoration has been determined.

Since it is undisputed that the period of restoration runs through April 2016, "the amount due under the Policy and the monthly matrix will be $671,639." Id. at 26-27. State Auto has paid $436,363[6] to date, and so the amount to which the Plaintiffs are entitled to judgment is $235,275.

B. State Auto Failed to Act in Good Faith in Adjusting the Loss.

State Auto failed to act in good faith in adjusting this claim pursuant to Maryland Code § 27-1001and Md. Code Ann., Cts. & Jud. Proc. § 3-1701, because State Auto undisputedly took the following acts in adjusting this case:

- When the adjusters familiar with the case sought to settle the business income claim, the insurer's management said no, and did so for the express purpose of leveraging this case against other cases in which the third-party public adjuster was involved and for the purpose of teaching the public adjuster a less; and
- The insurer replaced the adjusters familiar with the case further delaying the resolution and payment of this case and subsequently engaged in communications in which State Auto's replacement adjuster misrepresented the amounts of payments made under the claim;
- The insurer further delayed determination and payment of the business income loss despite the fact that there was no coverage dispute, despite the fact that this loss is now over 8 years old;
- Finally, the insurer continues to argue that the period of restoration should exclude the time that the building was shrink-wrapped, despite State Auto's agreement to shrink wrap the building during the adjustment of the claim, and the agreement of its adjuster that the period of shrink wrapping would extend the period of restoration and was paid for by State Auto to reduce the BI claim.[7]

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[5] State Auto. Mut. Ins. Co. v. Rod & Reel, Inc., Case No. 8:18-cv-00340-PWG ("Modification Action"). This Court has previously referred to the matter as the modification action. See Rod & Reel, Inc. v. State Auto. Mut. Ins. Co., No. 8:20-cv-03388-PWG, 2022 U.S. Dist. LEXIS 32957, at *5 (D. Md. Feb. 24, 2022).

[6] The business interruption payments made by State Auto as to the 2-8-2015 fire were made in 2 payments: (1) payment on 5-30-17 (2 years and 3 months after the fire) in the amount of $71,639 at Ex. 15; and (2) payment on 2-6-2018 (3 years after the fire) in the amount of $364,725 at Ex. 28 filed herewith.

[7] See King (State Auto designee) at Ex. 2, pg. 23 in which she conceded that State Auto approved the shrink wrapping of the building. King pg. 22 that the period of restoration takes into account the shrink wrapping delay

As a result of the lack of good faith of State Auto, it is liable for the expenses and litigation costs incurred by the Plaintiffs, interest on all actual damages, and attorney's fees incurred by the Plaintiffs.

II. PROCEDURAL POSTURE

State Auto is attempting to capitalize on the fact that this case was transferred from Judge Grimm to Judge Boardman and urges the Court to ignore the prior rulings of this Court by failing to highlight Judge Grimm's prior rulings in the case where those rulings are germane. The relevant portions of the Court's prior rulings are summarized below.

A. Litigation 1 - The Modification Action: The first litigation between the parties was filed by State Auto who sued to set aside an appraisal award as to the business interruption claim. While Judge Grimm modified the appraisal award to remove the amount, he expressly adopted the month-by-month matrix (hereinafter the "Monthly Matrix") attached to the appraisal award to limit the subsequent issues to be decided by litigation. Judge Grimm ruled that "Notably, if the Award is modified to include only the month-to-month calculations, and **if it is determined that the period of restoration is February 2015 through April 2016, then the amount due under the Policy, according to the modified Award, will be $671,639.**" Id. at 26-27 (emphasis supplied). The parties were left to resolve the issue as to the period of restoration.

B. MIA Complaint: Following the decision above, the Plaintiffs filed a complaint with the Maryland Insurance Administration ("MIA") pursuant to Md. Insurance Art. § 27-1001. Judge Grimm ruled that the bad faith issue was not before him in the prior suit and that the Plaintiff's MIA complaint, "complied with the preliminary administrative procedure that is outlined

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in repair. King at pg. 24-25 that the shrink wrapping was tied to the wedding season. King at 20-21 that Terra determined the period of restoration. See also Terra deposition, Ex. 3 at 27-28 that the shrink wrapping was done to reduce the BI claim and was done for the wedding season which was to run through September, October or November.

in Insurance Article § 27-1001" to bring the bad faith issue in the present litigation. He further ruled, consistent with Maryland law, that in this action, the determination of the MIA is a nullity.

C. Litigation 2 - The Instant Action: Rod & Reel filed its complaint and State Auto moved to dismiss[8] this action in its entirety contending that the Plaintiffs' claims were barred by the doctrines of res judicata and collateral estoppel effect of both the Modification Action and the MIA complaint. The Court denied State Auto's Motion to Dismiss on both issues, holding:

(i) The Modification Action was Not Claim Preclusive

The Court held that the ruling in the modification action did not address the "same issues of law and fact" as the instant action and that it had no preclusive effect in the Instant Action. Judge Grimm stated that in the Modification action he had:

> … concluded only that the Appraisal Panel had exceeded its authority by establishing a period of restoration, and modified the Appraisal Award to eliminate reference to that period. Mem. Op. at 16-19. I was not asked in the Modification Action, as I am now, to determine the appropriate period of restoration or total award owed to Rod & Reel under the Policy, and I was presented with no factual evidence that could have supported such a determination. Id. at 13.

As to State Auto's request to dismiss the bad faith count based on the Modification Action Judge Grimm held that the bad faith issue was never before the Court in the Modification Action, and that "This action is the first I am hearing of any of those allegations, and it will be the first time that I assess whether State Auto acted in bad faith during the claims handling process." Id. at *15. Accordingly, the Court held that the Modification Action had no preclusive effect on this action: Judge Grimm went on to hold that:

> For those reasons, I conclude that Rod & Reel's present claims against State Auto are not barred by the Modification Action under the doctrine of res judicata or under Fed.R.Civ.P. 13(a). And because the present action concerns an entirely different set of facts, they also are not collaterally estopped. Id. at *17-18

[8] Pursuant to FRCP 15(a)(1)(B), the plaintiff filed an Amended Complaint and an opposition to State Auto's Rule 12 Motion to Dismiss.

The Court also held that the decision of the Maryland Insurance Administration had no preclusive effect on this action whatsoever because it was merely an administrative precondition to suit.

(ii) The Decision of the Maryland Insurance Administration is a nullity.

Rod & Reel filed a complaint with the MIA in accordance with § 27-1001(d)(1) on January 28, 2020. Id. at *20 "The MIA issued a decision within the 90 day window prescribed by the statute" Id. at *20-21. Significantly there is no discovery permitted in an MIA complaint under § 27-1001, and this claim, along with discovery, followed. In its Motion to Dismiss, State Auto moved to dismiss the Instant Action, arguing that the decision of the MIA was binding on the parties and that this action was barred by Res judicata and Collateral Estoppel by both the Modification Action and the MIA decision. The Court denied the motion correctly holding that there was no preclusive effect to the MIA decision. Despite losing the argument, State Auto now attempts to make the same argument again to this Court hoping for a different decision. However, Judge Grimm's determination was in accordance with settled Maryland authority that the prior action is not a bar to this case, and further that the MIA's "decision appears to be a nullity once appellant has filed [a] civil action under CJP § 3-1701." Citing Thompson v. State Farm Mut. Auto Ins. Co., 196 Md. App. 235, 9 A.3d 112 (Md. Ct. App. 2010). As to the bad faith issue, Judge Grimm determined that res judicata and collateral estoppel did not apply to the bad faith claims and that "[t]his action is the first I am hearing of any of those allegations, and it will be the first time that I assess whether State Auto acted in bad faith during the claims handling process." Id. at *15. The Court further ruled that the MIA decision does not bar the claims in the instant action. "CJP § 3-1701 and Insurance Article § 27-1001 mandate that claims against an insurer for failing to act in good faith must be brought in the MIA before an insured may file such claims in the Maryland Circuit Court." Id. at *16.[9] Judge

[9] Citing CJP § 3-1701 and Insurance Article § 27-1001 which require that the MIA issue a final decision before the insured may file suit seeking damages for lack of good faith.

Grimm noted that "Rod & Reel filed a complaint with the MIA in accordance with § 27-1001(d)(1) on January 28, 2020" and that "the MIA issued a decision within the 90 day window prescribed by the statute, Id. at 20-21. The Court went on to find that:

> Rod & Reel complied with the preliminary administrative procedure that is outlined in Insurance Article § 27-1001. Because those procedures are statutorily prerequisite to filing an action in the Maryland Circuit Court under CJP § 3-1701, to find that the MIA proceedings have preclusive effect on the subsequent bad faith action in the Maryland Circuit Court would require interpreting CJP 3-1701 to reach an absurd result—one that cannot be squared with the plain language of the statute. Maryland case law supports that conclusion. In *Thompson v. State Farm Mut. Auto Ins. Co.*, 196 Md. App. 235, 9 A.3d 112 (Md. Ct. App. 2010), the Maryland Court of Special Appeals recognized that "the damage remedy/jury [*22] trial rights authorized by CJP § 3-1701 is independent from a true de novo review of the MIA administrative determination, which is more appropriately characterized as a precondition to the civil suit." (emphasis added). The *Thompson* Court went on to note that the MIA's "decision appears to be a nullity once appellant has filed [a] civil action under CJP § 3-1701." *Id.* **6** This Court has likewise concluded that the MIA decision under Insurance Article § 27-1001 does not bar a subsequent civil action under CJP § 3-1701. *See Unitrin Auto & Home Ins. Co. v. Karp*, 481 F. Supp. 3d 514, 525-26 (D. Md. 2020) Id. at 21-22.

As to State Auto's argument that Rod & Reel did not have to follow the statutory requirements above because the "action falls under an exception to the administrative prerequisites" the Court stated "Nonsense." State Auto's invitation to this Court to overrule Judge Grimm should be rejected.

ARGUMENT

I. STATE AUTO DOES NOT DISPUTE THE PLAINTIFFS' STATEMENT OF MATERIAL FACTS.

Rod & Reel in its motion for summary judgment sets out 27 facts not in dispute with citations to depositions, documents, and discovery in this matter. In its opposition, State Auto does not dispute any of the material facts as set out by Plaintiff in its motion for summary judgment, and those facts are there for admitted and established in this matter. Under Rule 56(c) of the Federal Rules of Civil Procedure, the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no "genuine" issue of "material" fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 244, 106 S. Ct.

2505, 2508 (1986). "Only disputes over facts that might affect the outcome of the suit under the governing substantive law will properly preclude the entry of summary judgment under Rule 56(c) of the Federal Rules of Civil Procedure." Id at 244. State Auto does not establish any genuine issue as to any material fact and the Plaintiffs are entitled to Summary judgment as to the period of restoration and amount, and as to the failure of State Auto to act in good faith as required by Ins. Art. 27-1001.

II. PLAINTIFFS ARE ENTITLED TO SUMMARY JUDGMENT AS TO BOTH THE AMOUNT DUE FOR BUSINESS INTERRUPTION INSURANCE AND AS TO STATE AUTO'S LACK OF GOOD FAITH.

There are only 2 issues for this Court to consider in the Cross-Motions for Summary Judgment. Those 2 issues inform the Court as to what facts are material. The first issue is determining the period of restoration for purposes of applying the month-to-month table established in the Modification Action. The second issue is whether State Auto has established that it acted in good faith when senior management at State Auto removed the senior knowledgeable adjusters who were close to resolving the case for the express purpose of using their own insured to teach a third party public adjuster a lesson. In doing so, they ignored their contractual obligations to their insured, made misrepresentations as to what had been paid, and then delayed the adjustment period for years. Indeed it is now 8 years after the loss and State Auto has yet to fully pay this claim. It is against these facts that materiality is determined. Many of the facts recited by State Auto are simply not material.

A. THE POLICY.

State Auto's recitation of the policy provisions are not statements of fact. The policy is addressed below in Plaintiffs' argument. Those portions of the policy which Plaintiffs believe are relevant are highlighted below.

B. THE LOSS AND ADJUSTMENT OF PLAINTIFFS' CLAIMS.

(i) Adjustment and Payment of Plaintiffs' Building Claim and State Auto's Lack of good faith.

State Auto recites various facts as to the building claim. Since that claim is not now in dispute most of those facts are simply not material. What is material, however, is that after senior management rejected the efforts by Scott Terra and Caroline Veahman's attempts to settle[10] and instead sought to use the Plaintiffs claim as "leverage" other claims being handled by the Public Adjusters,[11] and to use this claim adjustment to "teach the public adjuster a lesson".[12] Terra and Vehamann were replaced by Sheri King, who then made misrepresentations as to what had been paid, and what was due and owing on the business income claim and the building[13] claim.[14] The fact of those misrepresentations is not in dispute.

State Auto's representative Scott Terra (as Claims Manager[15]) and Caroline Veahman (the adjuster for State Auto[16]) met with the Insureds and its public adjuster on December 12, 2016[17] in an attempt to reach a global resolution[18] on the claim.[19] Although no agreement on the BI claim was reached at the meeting, Veahman and Terra discussed settlement at that meeting and felt that the claim was able to be settled.[20] Following the meeting State Auto Claim adjuster Caroline Veahman sought settlement authority because the case had no coverage issues, and the only issues were related

[10] Deposition of Scott Terra Ex. 3, pg. 32-33, 44-45, deposition of Caroline Veahman Ex. 27, pgs. 33-35, 39-40.
[11] Deposition of Caroline Veahman, Exhibit 27 pgs. 43-44
[12] See Deposition of Scott Terra Exhibit 3, pg. 41.
[13] The payments were not made before the January 20, 2017 letter and were not paid until May 30, 2017. See Exhibit 16. See Deposition of Sherri King, Exhibit 2, pgs. 79-80.
[14] Deposition of Neal Charkatz Exhibit 9, pg. 110. Deposition of Sherri King Exhibit 2, pgs. 68-69, 77-78. While the check says "undisputed ACV" above the signature, that was incorrect. See deposition of Sherri King, Exhibit 2, pgs. 80-82. See Exhibit 15.
[15] Deposition of Scott Terra Exhibit 3, pg. 31.
[16] Deposition of Scott Terra Exhibit 3, pg. 31.
[17] The December 12, 2016 meeting was confirmed in an email at Ex. 25, and in the log note entry by Ms. Veahman on pg. 8 of the log notes attached as Ex. 26. See also Veahman deposition Ex. 27, pgs. 26-28.
[18] Deposition of Veahman Exhibit 27 at 30-31.
[19] Deposition of Scott Terra, Exhibit 3, pgs. 31-32 and Ms. Veahman's deposition at Exhibit 27, pg. 28-30
[20] Deposition of Caroline Veahman Exhibit 27, pgs. 30 and 31.

to the amount of damages.[21] Ms. Veahman was also clear that no coverage issues were involved. [22] Ms. Veahman and Mr. Terra left the meeting in the same vehicle[23] and made a call to Mark Chenetski, Director of Claims for large loss with State Auto, to go over the numbers and to seek settlement authority on a resolution Terra and Veahman had come up with in an effort to resolve the BI claim.[24] During that call, Ms. Veahman requested authority to settle the case with Rod & Reel.[25] Terra and Veahman believe that, once authority was given, they had a resolution of the claim.[26] While Mr. Chenetski cannot recall the conversation, he testified that he had no reason to believe it did not occur.[27] In connection with the meeting, Ms. Veahman prepared a write-up of the meeting which she sent to Mr. Chenetski which included settlement recommendations.[28] Ms. Veahman prepared a table and notes and either texted or sent the same to Mr. Chenetski.[29] In her December 21, 2016, Ms. Veahman references the attached email.[30] Ms. Veahman is positive that she prepared and sent the same to Mr. Chenetski.[31] State Auto has failed to produce that document and has either failed to preserve evidence or has secreted the same from discovery.[32] In his conversation with Ms. Veahman who was requesting authority to settle, Mr. Chenetski told her he needed to think about it.[33] But for what happened next, this case would have been resolved over six years ago.

On December 22, 2016, Mr. Chenetski sent an email to Ms. Veahman telling her he was not

[21] See testimony of Scott Terra Ex. 3, pg. 36 in which he stated, "with all due respect to Bill (State Auto's attorney), it was a damages claim, not a coverage claim…". See also Deposition of Veahman, Exhibit 27 at pg. 22 and 42.
[22] Deposition of Caroline Veahman Exhibit 27, pg. 22.
[23] Deposition of Scott Terra, Exhibit 3 pgs. 32-33
[24] Deposition of Scott Terra Exhibit 3, pg. 32-33, deposition of Caroline Veahman Exhibit 27, pgs. 33-35.
[25] Deposition of Caroline Veahman Exhibit 27, pgs. 39-40.
[26] Deposition of Scott Terra Exhibit 3 at pgs. 44-45.
[27] Deposition of Mark Chenetski Exhibit 10, at pg. 21, line 22 – page 22, line 15.
[28] Deposition of Caroline Veahman, Exhibit 27 pgs. 34-37 and pgs. 38-40.
[29] Deposition of Caroline Veahman, Exhibit 27 pgs. 35-37, and 40.
[30] Exhibit 19. Deposition of Caroline Veahman Exhibit 27, pg. 40.
[31] Deposition of Caroline Veahman, Exhibit 27 pg. 37.
[32] A description of the document was given by Ms. Veahman who was positive she sent this chart to Mr. Chenetski and discussed it with him. Deposition of Caroline Veahman, Exhibit 27, pgs. 35-37.
[33] Deposition of Caroline Veahman, Exhibit 27 pgs. 40-42.

ready to compromise the claim and was bringing in a coverage claims examiner Sherri [King], and State Auto's attorney Bill Krekstein, both of whom were on the email, to review the claim.[34] Ms. Veahman had a conversation with Mr. Chenetski following that email in which she told him that he was owed an explanation as to why he was taking the file and giving it to an examiner when there was no coverage issue and Ms. Veahman believed she could get the claim resolved.[35] Mr. Chenetski told her that "this claim was bigger or the issues surrounding this claim were bigger than just [her] loss"[36] and "**that there were other claims that they could use to leverage their claims against, try to get them resolved**."[37] That undisputed statement is prima facie evidence of a lack of good faith towards the Insured – the Insurer undisputedly breached its duty of good faith claims adjusting it owed to this Insured as leverage against other insureds represented by the same public adjusting firm.

This undisputed fact is further supported because shortly after the claim had been reassigned to Ms. King and Mr. Krekstein, Terra attended a supervisor's meeting for State Auto along with all other managers and supervisors.[38] At that meeting, State Auto's management (Mark Chenetski) told Scott Terra that he was not settling the Rod & Reel claim because "It's not about this one claim. **There's a bigger overall issue," and that he wanted to teach the three G's a lesson.**" See Deposition of Scott Terra Exhibit 3 at pgs. 38-39. Mr. Chenetski assigned Sheri King to the claim, who wrote her first letter to the insured which was riddled with misrepresentations and who delayed payment of the undisputed amount of the loss, all as part of the stated plan of State Auto in using Plaintiffs' claim to teach their public adjuster a less. It is not disputed that State Auto had a duty to

[34] Exhibit 19 and Deposition of Caroline Veahman Exhibit 27, pgs. 40-41.
[35] Deposition of Caroline Veahman Exhibit 27, pg. 42.
[36] Deposition of Caroline Veahman, Exhibit 27, pg. 43.
[37] Deposition of Caroline Veahman, Exhibit 27 pgs. 43-44
[38] Deposition of Scott Terra, Exhibit 3, pg. 38.

pay at a minimum the undisputed portion of the Business Interruption and Extra Expense claim.[39] By July 15, 2016, State Auto's forensic accountant had provided the insurer with the portion of the Business Interruption loss which the insurer did not dispute. See Exhibit 14. The accountant's letter concluded on pages 5 and 6 the following: "Based on the above information we have calculated the Insured's business income loss to be $71,639 for the period of February 8, 2015 through February 7, 2016."[40]

As part of their declared scheme to pressure other, unrelated insureds on other unrelated claims handled by the public adjuster, the State Farm withheld this payment from the Plaintiff. While this amount should have been paid in July 2016, State Auto did not make the payment then. Sherri King, as the representative of State Auto, within a month after taking over the case from Ms. Veahman, by letter dated January 20, 2017, sent the Plaintiffs a letter that stated "As you are aware we have determined the period of restoration from February 8, 2015 from February 7, 2016. We have evaluated the business income loss for this period **and have paid that amount**."[41] This was over 6 months after State Auto had made its determination of the undisputed amount of Business Income.[42] State Auto's statement that the business interruption had been paid in its January 20, 2017 letter was false[43] since as of January 20, 2017, not a penny had been paid on the BI claim.[44] The amount of the BI claim at $71,639 was not paid until May of 2017 ten months after the accountant determined the figure and only after the Public Adjuster made a demand.[45] While State Auto claims

[39] Deposition of Sherri King Exhibit 2, pg. 69.
[40] Exhibit 14. Deposition of Sherri King Exhibit 2, pg. 75 (referencing "the amount 71,639" Ms. King responded, "I believe that is what Christian Fox calculated a 12 month business income interruption loss at, yes.").
[41] Exhibit 13.
[42] In response, Mr. Charkatz sent an email referencing the December meeting with Ms. Veahman and Mr. Terra and stating that State Auto had said State Auto had made representations about a global settlement at that time. See Exhibit 17.
[43] Deposition of Neal Charkatz Exhibit 9, pg. 110
[44] Deposition of Sherri King Exhibit 2, pgs. 68-69.
[45] Deposition of Sherri King, Exhibit 2, pgs. 69-70.

that Ms. King made a mistake, good faith requires an insurer to act in accordance with facts it knows or should know. See Md. Code Ann., Ins. § 27-1001 "'good faith' means an informed judgment based on honesty and diligence supported by evidence the insurer knew or should have known at the time the insurer made a decision on a claim." Here Ms. King either knew or should have known the amount she told the insured had been paid, in fact was not paid. In that same January 2017 letter, Ms. King stated that "… we have paid the actual cash value of the building repairs…".[46] This statement made was also false and the actual cash value of the building repairs was not paid until May 30, 2017.[47] Accordingly, even as to the undisputed amounts owed by State Auto, as part of its plan to ignore its duty of good faith owed to Plaintiff, it did not make even these minimum payments until May 30, 2017 – over 2 years after the loss. These misrepresentations should be viewed in light of the undisputed fact that the insurer was refusing to settle this claim for the express purpose of creating leverage against other unrelated insured and claims.

(ii) The Period of Restoration is Undisputed and runs through Mid-April 2016 to May 2016

State Auto includes various statements which are simply not material to the determination of the period of restoration. It is not disputed that the period of restoration runs through April 2016 making the payment due $671,638. Since State Auto paid $436,363[48], the amount to which the Plaintiffs are entitled to judgment is $235,275 bringing the business interruption payment to $671,638. First, the relevant portion of the policy as to payment of the loss of Business Income is found at the policy at bates page 82, as follows under Section A Coverage:

1. Business Income

Business Income means the:

[46] Exhibit 13.
[47] See Exhibit 16. See Deposition of Sherri King, Exhibit 2, pgs. 79-80.
[48] The business interruption payments made by State Auto as to the 2-8-2015 fire were made in 2 payments: (1) payment on 5-30-17 (2 years and 3 months after the fire) in the amount of $71,639 at Ex. 15; and (2) payment on 2-6-2018 (3 years after the fire) in the amount of $364,725 at Ex. 28 filed herewith.

> *(a.) Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and (b). Continuing normal operating expenses incurred, including payroll.*
>
> ***
>
> *We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss. ... (See Policy at Ex. 1 at bates pg. 82)* (Exhibit 1 is refiled to show highlights)

The Policy further provides that "*The amount of Business Income loss will be determined based on: (1) The Net Income of the business before the direct physical loss or damage occurred; and (2) The likely Net Income of the business if no physical loss or damage had occurred, ...". (See Policy at ex. 1 at bates page 86).* Accordingly the insurance provides for the payment of the "actual loss of business income [Rod & Reel] you sustain…." The only qualification is that the suspension of operations must be caused by physical loss of or damage to the property. Here State Auto has paid part of this amount so there is no question coverage is triggered. The only coverage question is what the actual loss of business income was. This in part relies upon the "period of restoration". The Policy provides as follows:

> 3. "Period of Restoration" means the period of time that:
>
> a. Begins:
>
> (1) 72 hours[49] after the time of direct physical loss or damage for Business Income coverage; or
>
> (2) Immediately after the time of direct physical loss or damage for Extra Expense coverage; caused by or r**esulting from any Covered Cause of Loss** at the described premises; and
>
> b. Ends on the earlier of :
>
> (1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or

[49] The waiting period was changed by endorsement from 72 hours to no waiting period. See Policy at Ex. 1, bates pg. 91.

> (2) The date when business is resumed at a new permanent location. (See Policy at Ex. 1 bates pg. 89).

In this case, it is undisputed that State Auto agreed that the Period of Restoration would include a time when the building was shrink wrapped and no work could occur at the property. It is not disputed that the shrink wrapping was necessary to reduce the loss of wedding business which would have resulted from damage "*caused by direct physical loss of or damage to property at premises."* It is not disputed that the shrink wrapping this shrink wrapping was expressly agreed to by State Auto and Rod & Reel to minimize the business interruption from loss of weddings to the benefit of State Auto, and it is further not disputed that repair work could not occur while the building was shrink wrapped. This reduced the business interruption claim amounts incurred but increased the period of restoration. It is not disputed that the shrink wrap phase of the loss was the wedding season, running from the date of loss in February 2015 through mid-October to November, and that repairs and construction would begin after this period ran. State Auto agrees that the construction occurring after the shrink wrapping was removed would take at least 6 months from the end of the wedding season. Accordingly, it is not disputed that the period of restoration would run through April 15, 2016 to May 1, 2016. The entire purpose of this agreement was to preserve wedding income for the season immediately following the loss, with the knowledge that it would cause the period of restoration to extend into the off-season. The goal of shrink-wrapping was to reduce the net business income loss, which was to the benefit of State Auto. State Auto wants to have its cake and eat it too and the Court should reject that attempt.

(iii) Undisputed facts and testimony and Facts as to the Period of Restoration.

Scott Terra, the claims manager for State Auto who first adjusted the loss, was the one who

determined the period of restoration for the loss for the Insurance Company.[50] Mr. Terra determined the period along with State Auto's consultant Kevin Collier from Wakelee Construction and opined that it would be a six month rebuild.[51] State Auto agreed that a six month period of construction would run from the end of the wedding season. Mr. Charkatz discussed shrink-wrapping the building with Mr. Terra and testified that Rod & Reel

> was about to enter into its wedding season and how it had an unsightly and smelly building that was going to A. pose challenges for its business, but B. potentially ruin their wedding season out there over the course of the spring, summer and fall and so we discussed putting together … a shrink wrapping of the building so that we could maintain that building, mitigate our lost business interruption claim for the summer and start the reconstruction sometime in the fall or late fall or winter….See Deposition of Neal Charkatz at Exhibit 9, pgs. 20-21.

On April 13, 2015, Mr. Charkatz sent an email[52] to State Auto's adjuster Scott Terra which stated as follows:

> Attached is the proposal for the work [shrink wrapping] the insured urgently wants to perform. … It took some time for the CM to get this agreed with the city… we need your approval urgently. They need to get this work completed before the wedding season starts shortly.

State Auto agreed.[53] The shrink-wrapping is "covering a building in plastic and using heat to . . . constrict or contract the plastic around the building."[54] Restoration work could not go on during the time the building was encapsulated or shrink wrapped.[55] State Auto took into account the shrink-wrapping of the building and then doing repairs to put the building back into like kind and quality condition in determining the period of restoration.[56] Mr. Terra for State Auto agreed to the proposal to shrink-wrapping the building in April 2015, which starts as soon as possible, and

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[50] Deposition of Sherri King Exhibit 2, pgs. 20-21.
[51] Deposition of Sherri King Exhibit 2, pg. 21.
[52] See Exhibit 7 for the email. The shrink wrapping building proposal attached to the email is Exhibit 4 and the time sheets for doing the work is Exhibit 5.
[53] Deposition of Neal Charkatz Exhibit 9, pg. 22. See also Exhibit 8 in which Mr. Charkatz noted State Auto's approval of the shrink wrapping on April 14, 2015.
[54] Deposition of Kevin Collier State, State Auto's expert, Exhibit 6, pg. 21.
[55] Deposition of Kevin Collier State, Exhibit 6, pg. 23.
[56] Deposition of Sherri King Exhibit 2, pg. 22.

would remain shrink-wrapped through the wedding season.[57] Mr. Terra agreed to the shrink wrapping of the building to protect against losing any further business income with regard to the wedding venue[58] and the hotel revenues.[59] State Auto agreed to pay for the shrink-wrapping in part because of the weddings and to reduce the BI loss which would have occurred.[60] It is undisputed that the building would remain shrink wrapped for the wedding season and that the wedding season ran from early spring through late Fall.[61] Mr. Terra for State Auto believed the time would run through November at the latest.[62] Mr. Donovan believed the wedding season was mid-October.[63]

State Auto's consultant believed the rebuild time would be 6 months[64] starting after the wedding season and after the removal of the shrink wrap.[65] According to State Auto's corporate designee, the period of time necessary to rebuild the building was determined by Scott Terra in conjunction with Kevin Collier the Insurer's consultant.[66] Kevin Collier determined that from the time the shrink wrap was removed until the time the period of restoration was over 6 months.[67]

State Auto agrees that the period of restoration would conclude 6 months after the shrink

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[57]Deposition of Neal Charkatz Exhibit 9, pg. 22. See also Exhibit 8 in which Mr. Charkatz noted State Auto's approval of the shrink wrapping on April 14, 2015.
[58]Deposition of Terra Exhibit 3, pgs. 25-26
[59]Deposition of Terra Exhibit 3, pg. 27-28
[60]Deposition of Terra Exhibit 3, pg. 28.
[61]Deposition of Neal Charkatz Exhibit 9, pg. 21. See also deposition of Terra at Exhibit 3, pgs. 27-28. Deposition of Wesley Donovan, Exhibit 12, pgs. 27-28.
[62] Deposition of Scott Terra Exhibit 3, pgs. 27-28.
[63] See Deposition of Wesley Donovan Exhibit 12, pg. 41 (To me when we remove the shrink wrap, you know, everyone agreed that the shrink wrap of the building had to go through the wedding season of 2015 which to me is October you know. After that is when the period of restoration to me started); Deposition of Wesley Donovan Exhibit 12, pg. 44 (the end of the wedding season was "the second or third week of October.").
[64] Prior to being retained as an expert, State Auto's consultant Kevin Collier had not given an opinion on the time needed to reconstruct the building. See Exhibit 6 Collier at 19.
[65] Deposition of Kevin Collier Exhibit 6, pg. 32.
[66] Deposition of Sherri King Exhibit 2, pg. 21.
[67] Deposition of Kevin Collier Exhibit 6, pg. 32. See also Kevin Collier's report Exhibit 20, pg. 3.

wrap was removed from Mid-October, which would result in the period of restoration running through mid-April/May 2016. Per the policy, the period of restoration per the policy ends at the hypothetical period "when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality."[68] Accordingly, the policy looks to a reasonable time to rebuild. Here the "reasonable" time to rebuild would certainly include the time that State Auto agreed to pay when the building was shrink-wrapped. Indeed by shrink-wrapping the building, State Auto benefited because the wedding season revenue was not impacted by the burned-out building. It is bad faith for an insurer to agree to extend the period of restoration, for the insurer's benefit to reduce a claim, and then argue to the Court that the insured should not have trusted State Auto and that no time for the agreed shrink wrapping should be allowed. The Policy anticipates that the insurer and insured may reach an agreement on the loss including business interruption. The Policy Business Interruption endorsement contains the following under (4) Loss Payment:

> *We will pay for covered loss within 30 days after we receive the sworn proof of loss, … and:(a.)* ***We have reached agreement with you on the amount of loss****…*

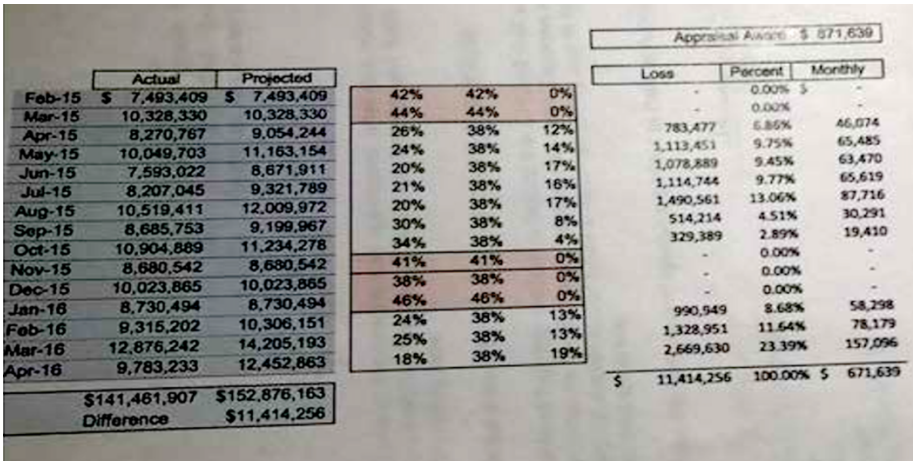
The parties reached an agreement to extend the period of restoration for the time the building was shrink wrapped. That shrink wrapping decreased the loss of income to the wedding business. Having agreed to pay for the time period to shrink wrap the building as part of the period of restoration, it is bad faith for the insurer to now argue to the contrary.

(iv) Plugging the Period of Restoration into the month-by-month appraisal matrix.

An appraisal award was agreed to. The form of the Appraisal Award[69] sets out the amount of the award on the first page, and a matrix setting out a monthly amount for the period concluding April 2017. In the matrix depicted below (which is page 2 of the Award), the

[68] See Policy at Ex. 1 bates page 89.
[69] See Plaintiffs' Summary Judgment Exhibit 22.

period of restoration is set between the date of loss on February 8, 2015. State Auto contends that the period for which business interruption is owed runs for 12 months from February 2015 through February 2016, an amount which State Auto has now paid. The matrix provides:



	Actual	Projected
Feb-15	$ 7,493,409	$ 7,493,409
Mar-15	10,328,330	10,328,330
Apr-15	8,270,767	9,054,244
May-15	10,049,703	11,163,154
Jun-15	7,593,022	8,671,911
Jul-15	8,207,045	9,321,789
Aug-15	10,519,411	12,009,972
Sep-15	8,685,753	9,199,967
Oct-15	10,904,889	11,234,278
Nov-15	8,680,542	8,680,542
Dec-15	10,023,865	10,023,865
Jan-16	8,730,494	8,730,494
Feb-16	9,315,202	10,306,151
Mar-16	12,876,242	14,205,193
Apr-16	9,783,233	12,452,863
	$141,461,907	$152,876,163
	Difference	$11,414,256

42%	42%	0%
44%	44%	0%
26%	38%	12%
24%	38%	14%
20%	38%	17%
21%	38%	16%
20%	38%	17%
30%	38%	8%
34%	38%	4%
41%	41%	0%
38%	38%	0%
46%	46%	0%
24%	38%	13%
25%	38%	13%
18%	38%	19%

Appraisal Award: $ 671,639

Loss	Percent	Monthly
-	0.00%	$ -
-	0.00%	-
783,477	6.86%	46,074
1,113,451	9.75%	65,485
1,078,889	9.45%	63,470
1,114,744	9.77%	65,619
1,490,561	13.06%	87,716
514,214	4.51%	30,291
329,389	2.89%	19,410
-	0.00%	-
-	0.00%	-
-	0.00%	-
990,549	8.68%	58,298
1,328,951	11.64%	78,179
2,669,630	23.39%	157,096
$ 11,414,256	100.00%	$ 671,639

It is undisputed that the period runs through April 2016 making the amount for which compensation is sought, an additional $235,275.[70] As can be seen, the amount of the award of $671,638, is an amount which corresponds to a period of restoration running from the date of the loss through April 2016.

(v) There is no duty to repair the premises and the period of restoration based on a hypothetical period.

At various areas in its brief, State Auto now states that "Plaintiffs never made any repairs to the Property which State Auto paid $803,963.94 for under the building loss claim" and "instead rebuilding the restaurant after it was damaged by the fire, Plaintiffs chose to demolish the property." This is simply not material as the Policy gives the insured the choice as to whether and where it will replace the building, it has no bearing on the period of restoration which is the hypothetical period it would take to repair the building at the site of the loss and State Auto knew that the building was

[70] See Exhibit 22 (Award) and Exhibit 22A (demonstrative calculation). See also Exhibit 23, the Plaintiffs' filing with this Court as to "Disclosure of Damage Claims and Relief Sought."

going to be demolished.[71] Indeed the policy permits the rebuilding of a different building at a completely different site.[72] It is well established that a different building can be rebuilt in a different location. See Conway v. Farmers Home Mut. Ins. Co., 26 Cal. App. 4th 1185, 1189, 31 Cal. Rptr. 2d 883, 884 (1994) and cases digested therein. The fact that the insured razed the fire damaged building, and built a different building on the site is simply not material to any determination in this matter as it is permitted by the Policy and does not bear on the period of restoration which is a hypothetical period being the time it would have taken to repair the building to its pre-loss condition.

(vi) Other Facts recited by State Auto which are disputed.

State Auto contends that "It is undisputed that State Auto has promptly paid Plaintiffs' business income loss for a thirteen (13) month period, [73] which exceeds the 12-month period of restoration supported by the undisputed facts of record and expert testimony in this case.[74] This is disputed as payments were not promptly made by State Auto. Whether State Auto's earlier payment was prompt is both disputed and not material. First, State Auto paid for the period from the date of loss through February 2016, the amount of which is determined by the monthly matrix established by appraisal and confirmed in the Modification Action. Second, that payment was not made in a timely manner. The business interruption payments made by State Auto were made in 2 payments, neither of which was prompt: (1) payment on 5-30-17 (2 years and 3 months after the fire) in the amount of $71,639 at Ex. 15; and (2) payment on 2-6-2018 (3 years after the fire) in the amount of $364,725 at Ex. 28 filed herewith. It is now undisputed, however, that the period of restoration ran through mid-April 2016

[71] Indeed Scott Terra discussed this very issue with the insured who stated they may demolish the building and rebuild elsewhere on the property. See Terra at pgs. 69 and 97.

[72] See Policy at bates pgs. 121-122 Replacement cost, which provides the insured owes coverage even "If a building is rebuilt at a new premises" but restricting the payment as being "limited to the cost which would have been incurred if the building had been rebuilt at the original premises."

[73] Apparently, State Auto claims that payment was made for the month of February 2016. Whether they want to argue that 13 months or 12 months is immaterial. The month-to-month matrix has been adopted based upon the date the period of restoration runs through, not the number of months.

[74] See Ex. 10 at 78:11-14. PG 12.

which will require further payment by the insurer. Looking at the month-by-month chart the amount corresponding to April 2016 is the full payment. As Judge Grimm noted:

> … the month-to-month calculations enable ready calculation of the amount due under the Policy, once the period of restoration has been determined. **Notably, if the Award is modified to include only the month-to-month calculations, and it is determined that the period of restoration is February 2015 through April 2016, then the amount due under the Policy, according to the modified Award, will be $671,639**. If the period of restoration is determined to be a lesser time frame, then the monthly calculations determined by the appraisers will allow the appropriate calculation of the total amount of the covered loss. State Auto. Mut. Ins. Co. v. Rod & Reel, Inc., No. PWG-18-340, 2018 U.S. Dist. LEXIS 190290, at *26-27 (D. Md. Nov. 7, 2018)

Here it is undisputed that the period of restoration is "February 2015 through April 2016, and so the amount due under the Policy, according to the modified Award, will be $671,639." Id at 27. State Auto has paid $436,363[75] to date, and so the amount to which the Plaintiffs are entitled to judgment is $235,275. State Auto's arguments to the contrary are simply not supported by the facts or the prior rulings of this Court.

C. STATE AUTO'S LACK OF GOOD FAITH.

State Auto presents no facts to dispute those recited by Plaintiffs as to the insurer's lack of good faith. While State Auto argues that the bad faith must result from a "failure to settle" this is not true with respect to bad faith by a first party property insurer. "Failure to settle" bad faith is where a liability insurer fails to settle a third party suit against their insured in bad faith and as a result, the insured has a judgment rendered against them in excess of policy limits. In contrast, first party property insurance bad faith is a breach of the statutory duty of good faith and fair dealing imposed by Md. Code Ann. Cts. & Jud. § 3-1701. State Auto asks this Court to conflate two different kinds of insurance and therefore two different kinds of lack of good faith. Lack of good faith in the first party property insurance context has been addressed by the Maryland federal bench in a few cases.

[75] The business interruption payments made by State Auto as to the 2-8-2015 fire were made in 2 payments: (1) payment on 5-30-17 (2 years and 3 months after the fire) in the amount of $71,639 at Ex. 15; and (2) payment on 2-6-2018 (3 years after the fire) in the amount of $364,725 at Ex. 28 filed herewith.

In Mt. Hawley Ins. Co. v. Adell Plastics, Inc., No. JKB-17-252, 2018 U.S. Dist. LEXIS 203818, at *4-5 (D. Md. Dec. 3, 2018) Judge Bredar addressed the issue as follows:

> "Good faith" is defined in the statute as "an informed judgment based on honesty and diligence supported by evidence the insurer knew or should have known at the time [*5] the insurer made a decision on a claim." Md. Code Ann. Cts. & Jud. § 3-1701(a)(4); *see, e.g., Barry v. Nationwide Mut. Ins. Co.*, 298 F. Supp. 3d 826, 831 (D. Md. 2018) (holding insured stated lack of good faith claim by alleging insurer's delay, failure to dispute nature or cost of injury, and unwillingness to negotiate). "Cases construing [this] good-faith standard are sparse." *All Class Const., LLC v. Mut. Benefit Ins. Co.*, 3 F. Supp. 3d 409, 416 (D. Md. 2014). These cases have settled on a totality-of-the-circumstances approach, looking to: (1) "measures taken by the insurer to resolve the coverage dispute promptly or in such a way as to limit any potential prejudice to the insureds"; (2) "the substance of the coverage dispute or the weight of legal authority on the coverage issue"; and (3) "the insurer's diligence and thoroughness in investigating the facts specifically pertinent to coverage."

Adopting each of these standards demonstrates State Auto's lack of good faith. First, it "measures taken by the insurer to resolve the coverage dispute promptly or in such a way as to limit any potential prejudice to the insureds." In this case, for example, State Auto acted in good faith when it agreed to shrink wrap the building to reduce the wedding business interruption. However, the following actions show demonstrable bad faith in this matter. First, when upper management took the case away from the adjusters Terra and Veahmann, who were seeking authority to settle the claim, for the purpose of leveraging this claim against other claims handled by the Public Adjuster and "teaching the public adjuster a lesson." Since an insurer must act in good faith towards its insured, it is clear that refusing to conclude a case and make a payment to teach a public adjuster a lesson is not good faith. An insured's claim should be adjusted in good faith as to the insured, and not used as a bargaining chip in some dispute with a third party to the insuring agreement. The actions in removing Terra and Veahman as adjusters delayed the claim, which is now 8 years old, and failed to "resolve the coverage dispute promptly" and further failed to "limit the potential prejudice to the insured." The second wing of the test is whether "the substance of the coverage dispute or the weight of legal authority on the coverage issue." Here State Auto also fails to meet

the good faith standard. As Terra and Veahmann both confirmed there was no coverage issue related to the claim at all.[76] Moreover the fact that State Auto paid the undisputed business interruption claim, and the balance of the building claim,[77] also establish the lack of any coverage issue. Refusing to settle the claim when there were no coverage issues and when the adjuster's recommended settlement, is certainly bad faith when coupled with the reasons for State Auto's refusal to settle. Those reasons were to leverage the plaintiffs' claim against other claims being handled by the public adjuster and to use this claim to teach the public adjuster a lesson. The third prong tests "the insurer's diligence and thoroughness in investigating the facts specifically pertinent to coverage." Again, there were no coverage issues involved in this case. Moreover, here the actions taken by State Auto after it withdrew from the settlement table at the time it removed the case from Terra and Veahman further demonstrate a demonstrable lack of good faith. Md. Code Ann., Cts. & Jud. Proc. § 3-1701 and Md. Ins. § 27-1001 carry the following definition:

> "Good faith" means an informed judgment based on honesty and diligence supported by evidence the insurer knew or should have known at the time the insurer made a decision on a claim.

State Auto's undisputed actions in refusing to settle, removing the adjusters from the claim, the making of misrepresentations as to what was paid, and the failure to make timely payments, when coupled with State Auto's motivation being to "leverage" this claim against other claims handled by the public adjuster and to teach the public adjuster a lesson demonstrates a lack of good faith. Indeed there is no explanation for these facts which leads to any other conclusion. At the time that State Auto decided not to offer to settle as recommended by Terra and Veahman, State Auto knew or should have known there was no coverage dispute and further knew that delaying payment on the

[76] See testimony of Scott Terra Exhibit 3, pg. 36 in which he stated, "with all due respect to Bill (State Auto's attorney), it was a damages claim, not a coverage claim…". See also Deposition of Veahman, Exhibit 27 at page 22 and 42.

[77] The claims were paid years after the loss.

claim to teach a public adjuster a lesson was not a "good faith" decision based on honesty and diligence. The Plaintiffs are entitled to summary judgment on the issue of State Auto's lack of good faith.

CHESAPEAKE BEACH RESORT AND SPA, CHESAPEAKE BEACH HOTEL AND SPA SMOKEY JOE'S GRILL AND BOARDWALK CAFÉ, AND CHESAPEAKE AMUSEMENT, INC. T/A ROD-N-REEL BINGO
By Counsel

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of April 2023, I electronically filed the *Reply* with the Clerk of Court using CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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