**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

NORTH AMERICAN ON-SITE, LLC, Plaintiff, v. ZURICH AMERICAN INSURANCE CO., Defendants.	Civil Action No. 1:20-CV-03741-VMC

ORDER

This matter is before the Court on the Motion for Summary Judgment ("Motion" or "Mot.," Doc. 40) filed by Defendant Zurich American Insurance Co. ("Zurich"). Plaintiff North American On-Site, LLC ("NAOS") filed a Response in Opposition to the Motion (Doc. 44). Zurich filed a Reply in Support of the Motion ("Reply," Doc. 49).

The parties also filed statements of facts under Local Rule 56.1(B). Zurich filed a Statement of Material Facts in Support of Motion for Summary Judgment (Doc. 40-2, "SOMF"). NAOS filed a Response to Zurich's SOMF (Doc. 44-1, "RSOMF"). NAOS also filed a Statement of Additional Facts (Doc. 44-2, "SAMF"). Zurich did not respond to the SAMF, but instead purported to file a "Supplemental Statement of Material Facts in Support of Its Reply." (Doc. 49-1). However, the Local Rules require that the movant's statement of material facts be

included "with the [initial] motion and brief." LR 56.1(B)(1), NDGa. As such, the Court will not consider the purported supplemental statement in ruling on the Motion.

Having reviewed these briefs and statements (except as noted above), and all other matters properly of record in this case, the Court finds that Zurich has met its burden on summary judgment and will grant the Motion.

BACKGROUND

NAOS is a Florida limited liability company. (Compl. ¶ 4, Doc. 1-1). Zurich is an Illinois insurance company. (*Id.* ¶ 5). NAOS filed this insurance coverage case in the Superior Court of Gwinnett County on August 5, 2020. (*Id.*). Zurich removed the case to this Court on September 10, 2020. (Not. of Removal, Doc. 1). On September 13, 2021, Zurich filed the present Motion. The following facts are not disputed by the parties unless otherwise indicated.

I. The Policies

Zurich issued commercial liability policies to NAOS on a year-to-year basis spanning all relevant periods (2015-2020), specifically policy numbers PRA 5854106-03, PRA 5854106-04, PRA 5854106-05, PRA 5854106-06, and PRA 5854106-07 (the "Policies") (SOMF ¶ 1, *admitted,* RSOMF ¶ 1). Each of the Policies provides Employee Benefits Liability coverage (subject to the applicable terms, conditions,

and exclusions) with $1,000,000 limits for each act, error, or omission, $2,000,000 aggregate limits, and a $25,000 deductible. (SOMF ¶ 2, RSOMF ¶ 2).[1]

The Policies have the following insuring agreement:

> We will pay those sums that the "insured" becomes legally obligated to pay as damages because of any act, error, or omission of the "insured" in the "administration" of the "insured's" "employee benefit programs". We will have the right and duty to defend the "insured" against any suit seeking those damages.

(SOMF ¶ 3, RSOMF ¶ 3). The Policies each contain the following condition to coverage:

> No insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

(SOMF ¶ 4, RSOMF ¶ 4). The Policies each provide that they do not apply to:

> H. Any "claim or "suit" arising out of an "Insured's" liability as a fiduciary under:
>
> a. The Employee Retirement Income Security Act of 1974 (PL93- 406) and its amendments; or
>
> b. The Internal Revenue Code of 1986 (including the Internal Revenue Code of 1954) and its amendments.

(SOMF ¶ 5, RSOMF ¶ 5). Each of the Policies contains the following conditions specifying NAOS's duties in the event of an act, error, omission, claim or suit:

[1] NAOS admits this statement but also purports to object to the statement on materiality grounds. NAOS's objection is overruled.

> B. Duties in the Event of an Act, Error, Omission, Claim or Suit
>
> 1. Regardless of whether the loss exceeds any applicable deductible amount, you must see to it that we are notified as soon as practicable of any act, error, or omission which may result in a claim. To the extent possible, notice should include:
>
> a. How, when, and where the act, error, or omission took place;
>
> b. The names and addresses of any injured "employee", dependents, or beneficiaries of any "employee" and witnesses.
>
> 2. If a claim is received by any "insured", you must:
>
> a. Immediately record the specifics of the claim and the date received; and
>
> b. Notify us as soon as practicable.
>
> You must see to it that we receive written notice of the claim as soon as practicable.

An Endorsement to the Policies further provides:

> You will not be considered to have knowledge of an act, error or omission which may result in a claim until your Corporate Officer or your Risk Manager is aware of such act, error or omission.

(SOMF ¶ 6, RSOMF ¶ 6). Each of the Policies provide, in relevant part, "[n]o person or organization has a right . . . to sue us on this Coverage Part unless [all] of its terms have been fully complied with." (SOMF ¶ 7, RSOMF ¶ 7).

II. NAOS's Mistakes and Remedial Actions

NAOS administered an employee benefits plan (the "Plan"). NAOS's Chief Financial Officer, James Riley, administered the Plan on behalf of Plaintiff. (SOMF ¶ 8, RSOMF ¶ 8).[2] During 2015–2018, while Mr. Riley was Plan Administrator, NAOS discovered certain errors had occurred. (SOMF ¶ 9, RSOMF ¶ 9).[3] According to the Complaint, these errors included, "among other things," (1) failure to enter the required pre-tax deferrals as elected by each employee from "off- cycle" checks; (2) failure to include certain Ohio employees in reports to the Plan's service provider resulting in the improper exclusion of the Ohio employees from the Plan; and (3) failure to download and provide the Plan's service provider with a deferral change report each payroll period which would reflect changes to employee deferrals and eligibility. (SOMF ¶ 10, RSOMF ¶ 10).

On September 24, 2018, NAOS's broker, Andrew Blankenship, notified the Plan Administrator that the Plan has several previous and ongoing operational failures that would likely need assistance from a qualified ERISA attorney to

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[2] NAOS admits this statement but also purports to object to the statement on materiality grounds. NAOS's objection is overruled.

[3] NAOS admits that "errors occurred during the years of 2015–2018" but "disputes any implication that James Riley made the errors." The Court has rephrased Paragraph 9 of Zurich's SOMF to avoid any such implication.

correct. (Def.'s Mot. Ex. C, NOAS_002106-2108, Doc. 40-5).[4] NAOS did not notify Zurich at this time of a potential claim because, according to NAOS, it did not realize there were employee errors committed. (SOMF ¶ 12, RSOMF ¶ 12).

On October 12, 2018, Standard Retirement Services notified Mr. Riley of the "breach of your fiduciary responsibility", stating the Plan was not being administered properly with respect to auto enrolling newly eligible participants. It further stated that NAOS could self-correct this error by adopting a reasonable correction method placing affected participants in the same position they would

[4] NAOS objects to Paragraph 11 of Zurich's SOMF on the grounds that Defendant's Exhibit C, the email from Andrew Blankenship to James Riley, is unauthenticated and inadmissible hearsay. As to authenticity, the exhibit bears NAOS's own Bates stamp, and "[c]ourts have often held that the circumstances of producing a document to an opposing party is sufficient to meet the minimal standards required for the opposing party to authenticate the document." *Thornton v. El-Amin*, No. 1:10-CV-474-WSD, 2012 WL 529998, at *15 (N.D. Ga. Feb. 17, 2012) (collecting cases). As to hearsay, the Court "may consider a hearsay statement in passing on a motion for summary judgment if the statement could be 'reduced to admissible evidence at trial' or 'reduced to admissible form.'" The email itself, which was produced by NAOS, can likely be offered as a business record at trial. As to the contents of the email (the conversation between Mr. Blankship and Mr. Riley), this statement is not being offered for the truth of the matter asserted, that "the plan has several previous and ongoing operation failures," as this matter is not in dispute. (SOMF ¶ 9, RSOMF ¶ 9). Zurich is presumably offering the statement to show its effect on (and notice to) NAOS. NAOS's objection is therefore overruled.

have been in had this mistake not occurred. (Def.'s Mot. Ex. D, NAOS 002118, Doc. 40-6).[5]

NAOS engaged the Ferenczy law firm in October of 2018 to review the Plan and recommend appropriate corrections. The ERISA attorney's firm was paid $122,782.50 by NAOS to investigate the plan errors, determine the amount of corrective payment, and negotiate penalties levied by the Department of Labor. (SOMF ¶ 14, RSOMF ¶ 14). On November 2, 2018, NAOS hired CRI CPAs and Advisors to audit the Plan for the years 2016 and 2017 in connection with its ERISA reporting requirements. (Def.'s Mot. Ex. F, NAOS_000268-273, Doc. 40-8; Def.'s Mot. Ex. G, NAOS_000274-279, Doc. 40-9).[6]

On November 26, 2018, NAOS received Notice from the U.S. Department of Labor/Employee Benefits Security Administration to Plaintiff's Plan Administrator of intent to assess a penalty of $50,000 for NAOS's failure to submit an adequate form 5500 annual report for the year ending December 31,

[5] NAOS's objection to Paragraph 13 of Zurich's SOMF is overruled for the reasons the Court gave in footnote 4 of this Order, *supra*.

[6] NAOS's objection to Paragraph 15 of Zurich's SOMF is overruled for the reasons the Court gave in footnote 4 of this Order, *supra*. Moreover, NAOS's objection on materiality grounds is overruled as the fact is relevant to Zurich's grounds to deny coverage.

2016. (Def.'s Mot. Ex. H, NAOS_002061-2071, Doc. 40-10).[7]

NAOS filed an Answer on March 12, 2019 with the Office of Administrative Law Judges. (Def.'s Mot. Ex. I, NAOS_2077- 2080 8/5/2019).[8] The Answer stated that "[t]he audits for the 2016 and 2017 Plan years were further complicated by Respondent's[NAOS's] prior Human Resources Manager failing to administer the Plan properly." (*Id.* ¶ 8).

On July 11, 2019, the U.S. Department of Labor, Office of Solicitor notified Plaintiff's ERISA counsel that payment by the Plan Administrator for NAOS 401(k) in the amount of $14,800.00 would settle all penalties asserted against NAOS. (Def.'s Mot. Ex. M, NAOS_002090-2095, Doc. 40-15).[9] NAOS made payments in 2019 to correct all of the aforementioned Plan errors. (SOMF ¶ 19, *admitted in part*, RSOMF ¶ 19).

III. NAOS's Claim Against the Polices

NAOS purchased the Policies from its then broker, Brown & Brown, Inc. ("B&B"). (NAOS's SAMF ¶ 7 (citing Declaration of Cherie Pritchard ("Pritchard

[7] NAOS's objection to Paragraph 16 of Zurich's SOMF is overruled for the reasons the Court gave in footnote 4 of this Order, *supra*.

[8] NAOS's objection to Paragraph 17 of Zurich's SOMF is overruled to the extent that NAOS's March 12, 2019 Answer is a statement of an opposing party.

[9] NAOS's objection to Paragraph 22 of Zurich's SOMF is overruled for the reasons the Court gave in footnote 4 of this Order, *supra*.

Decl.") at ¶ 2). B&B was NAOS' primary contact regarding the Policies. (SAMF ¶ 12 (citing Pritchard Decl. at ¶¶ 3–6)). Prior to this case, when NAOS had claims under the Policies, it would provide notice of the claims to B&B. (SAMF ¶ 14 (citing Rule 30(b)(6) Deposition of North American On-Site, LLC by Cherie Pritchard ("Pritchard Dep.") at 99:23–101:1, Doc. 40-4)).

Sometime around June of 2019, NAOS's Director of Human Resources, Cherie Pritchard, had a phone call with Lee Shannon of B&B, who informed her that "there was no coverage for this kind of an error." (Prichard Dep. at 50:14–53:3; Doc. 40-4). Specifically, NAOS was informed by B&B that no coverage existed under the Policies. (SOMF ¶ 19, *admitted in part*, RSOMF ¶ 19).

NAOS testified through Ms. Pritchard that the first time Zurich was directly notified by NAOS about the potential claim was January 7, 2020. (Pritchard Dep. at 14:15–15:1, 56:12-18, Doc. 40-4). On January 17, 2020, Plaintiff's ERISA counsel provided a letter to Zurich setting forth details regarding errors affecting the plan. This letter addresses the years the errors occurred with the Plan and the payments made to correct those errors to make its employees whole. (SOMF ¶ 24, RSOMF ¶ 24).

On March 31, 2020, Zurich issued a letter to NAOS denying the claim. (Def.'s Mot. Ex. P ("Denial Letter"), Doc. 40-18). The Denial Letter described the claim as follows:

> The Insured discovered that beginning in 2015, there were some discrepancies in tax deductions for off-cycle payments to its employees and failure to enroll Ohio based employees in the eligible 401(k) plan. These problems persisted through 2016. In 2017 and 2018, the problems persisted and there was an additional issue of automatic enrollment of all employees in the 401(k) plan after a certain period of employment. These issues were discovered in October 2018, and the Insured resolved them by paying the affected employees what was owed. The Insured notified Zurich of this Claim in January 2020.

(the "Claim") (Denial Letter at 2). The Denial Letter cited two primary grounds for denying the Claim: First, because NAOS "made payments and incurred expenses related to this this Claim prior to notifying Zurich and without Zurich's consent," and second because "[t]he Claim is for failure to adequately administer ERISA related programs and accordingly, is excluded from coverage under the policy." (*Id.* at 4).

The Denial Letter also contained a section entitled "Reservation of Rights" which purported to reserve other alternative grounds to deny the Claim. Specifically, Zurich reserved its right to deny the claim because "[t]he definition of Employee Benefit Programs does not include payment of off-cycle payments or the administration of 401(k) plans," and due to late notice because "[t]he Claim was discovered sometime in 2018, but was not reported to Zurich until 2020."

On June 5, 2020, NAOS submitted a response letter to Zurich. (Compl. ¶ 41, Ex. H, *admitted in part,* Ans. ¶ 41). In the response letter, NAOS laid out four

responses to Zurich's denial letter. First it stated that the Claim was covered because it was for "losses it suffered 'because of [an] act, error or omission of the 'insured' in the 'administration of the 'insured's' 'employee benefit programs.'" (*Id.* (quoting Policies, Employee Benefits Liability, § I.1.A.) (alterations in original)). Next, it argued that its notice to Zurich was timely because NAOS did not have notice of the Claim based on its broker's advice that there was no coverage. (*Id.*) Then, it contended that the Claim was not excluded under the ERISA exclusion because it arose from a ministerial, not a fiduciary act. (*Id.*) Finally, not related to the instant motion, NAOS set forth why the Plan was an employee benefit program under the Policies.

LEGAL STANDARD

Federal Rule of Civil Procedure 56(a) provides "[t]he court shall grant summary judgment if 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."

A factual dispute is genuine if the evidence would allow a reasonable jury to find for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is "material" if it is "a legal element of the claim under the applicable substantive law which might affect the outcome of the case." *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997).

The moving party bears the initial burden of showing the court, by reference to materials in the record, that there is no genuine dispute as to any material fact that should be decided at trial. *Hickson Corp. v. N. Crossarm Co.*, 357 F.3d 1256, 1260 (11th Cir. 2004) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)). The moving party's burden is discharged merely by "'showing'—that is, pointing out to the district court—that there is an absence of evidence to support [an essential element of] the nonmoving party's case." *Celotex*, 477 U.S. at 325. In determining whether the moving party has met this burden, the district court must view the evidence and all factual inferences in the light most favorable to the party opposing the motion. *Johnson v. Clifton*, 74 F.3d 1087, 1090 (11th Cir. 1996). Once the moving party has adequately supported its motion, the non-movant then has the burden of showing that summary judgment is improper by coming forward with specific facts showing a genuine dispute. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). All reasonable doubts should be resolved in the favor of the non-movant. *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115 (11th Cir. 1993). In addition, the court must "avoid weighing conflicting evidence or making credibility determinations." *Stewart v. Booker T. Washington Ins.*, 232 F.3d 844, 848 (11th Cir. 2000). When the record as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine dispute for trial. *Fitzpatrick*, 2 F.3d at 1115 (citations omitted).

DISCUSSION

NAOS's Complaint raises two counts: Count I for Breach of Contract for failure to pay the Claim and Count II for Bad Faith Damages under O.C.G.A. § 33-4-6.[10] The Complaint alleges that Plaintiff incurred no less than $500,839.51 in losses as a result of the errors, which is comprised of $309,253.11 in "corrective contributions" to the Plan, $122,782.50 in legal fees and $54,003.09 in accounting fees to investigate and address the errors, and $14,800 in late payments to the U.S. Department of Labor (collectively, the "Payments"). Zurich moves for summary judgment on both counts for five reasons:

1. First, no coverage exists under the Policies for Plaintiff's claims because the Plaintiff had no obligation to pay liability damages to a third-party and thus the Policies' "Insuring Agreement" was never triggered.

2. Second, Plaintiff made voluntary payments without Zurich's consent in violation of the Policies' condition to coverage.

3. Third, coverage under the Polices is barred by the Policies' exclusion of claims arising out of an Insured's liability under ERISA.

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[10] That statute provides that, "[i]n the event of a loss which is covered by a policy of insurance and the refusal of the insurer to pay the same within 60 days after a demand has been made by the holder of the policy and a finding has been made that such refusal was in bad faith, the insurer shall be liable to pay such holder, in addition to the loss, not more than 50 percent of the liability of the insurer for the loss or $5,000.00, whichever is greater, and all reasonable attorney's fees for the prosecution of the action against the insurer." O.C.G.A. § 33-4-6(a).

4. Fourth, coverage is barred under the Policies by the Plaintiff's failure to provide timely notice of a claim to Zurich.

5. Finally, Plaintiff's claims for bad faith fail because Zurich had a reasonable, good faith basis for its denial of Plaintiff's claims.

(Def.'s Br. Supp. Mot. at 9–10 (Doc. 40-1)).

For the reasons that follow, the Court agrees with Zurich that there is no coverage for the Claim under the Policies, and as such, summary judgment is appropriate. The Court therefore need not reach Zurich's remaining contentions as to coverage.

I. The Payments did not trigger the insuring agreement under the Policies.

Zurich's primary contention is that the Payments were not covered under the Policies because the Policies' insuring agreement was not triggered. Zurich specifically cites the portion of the Policies (excerpted above) which provide that it "will pay those sums that the 'insured' becomes *legally obligated to pay as damages*." (Def.'s Br. Supp. Mot. at 11, Doc. 40-1) (emphasis in original). Zurich argues that the Payments are not for "damages" because NAOS was not required to compensate any employee or plan participant for any injury it caused, but rather for a loss that it itself incurred. Holding otherwise, Zurich explains, would convert the Policies from third-party coverage (which compensates injuries to third parties caused by the insured) to first-party coverage (which covers losses to an insured

directly such as theft or fire), which was not contracted to by the parties. (*Id.* at 11–12). Before the Court considers this argument, the Court must first consider whether Zurich waived it.

A. Zurich did not waive its insuring agreement defense.

As an initial matter, NAOS asserts that Zurich waived this argument by failing to raise it in its March 2020 Denial Letter. NAOS points to Judge Story's decision in *Philadelphia Indemnity Insurance Company v. First Multiple Listing Services, Inc.*, which explained that "[u]nder Georgia law, '[a]n insurer cannot both deny a claim outright and attempt to reserve the right to assert a different defense in the future.'" 173 F. Supp. 3d 1314, 1321 (N.D. Ga. 2016) (quoting *Hoover v. Maxum Indem. Co.*, 730 S.E.2d 413, 416 (Ga. 2012)). However, that case did not entail an in-depth discussion of the waiver argument because Judge Story found that the loss would have been covered even if the coverage defense had been raised in the original denial. *Id.*

More instructive is Judge Evans's extensive discussion of the waiver principle in *Century Communities of Georgia, LLC v. Selective Way Insurance Company*, No. 1:18-CV-5267-ODE, 2019 WL 7491504 (N.D. Ga. Oct. 25, 2019). In that case, Judge Evans cited extensive authority for the proposition that the "longstanding general rule in Georgia law [is] that neither waiver nor estoppel can be used to create liability not created by an insurance contract and not assumed by the insurer

under the terms of the policy." Id. at *4 (quoting *Langdale Co. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 110 F. Supp. 3d 1285, 1297 (N.D. Ga. 2014) (Jones, J.) and collecting cases). Reviewing the relevant case law, Judge Evans distilled the waiver principle as follows: "[a] party may not both deny a claim and attempt to reserve the right to assert new defenses. A party may, however, assert a defense not listed in its denial letter, subject to the doctrines of waiver and estoppel." *Id.* at *5.

Here, there is no question that under the ordinary principals of waiver and estoppel, Zurich has preserved the defense of lack of coverage due to failure to trigger the insuring agreement, asserting it as its Third Affirmative Defense in its Answer. (Doc. 3). Moreover, Zurich's coverage argument is not that it has a policy defense for failure to comply with some condition, but that liability for the Payments is not created by the Policies and was never assumed by Zurich.[11] Therefore, the Court finds that under the facts of this case, the insuring agreement defense was not waived.

[11] The Court also notes that the insuring agreement was prominently discussed in other parts of the Denial Letter, including in the section on the voluntary payment condition. Both parties spend a great deal of their discussion about the voluntary payment condition discussing whether NAOS was "legally obligated" to make the Payments, which dovetails with the insuring agreement's coverage for sums NAOS was legally obligated to pay as damages. In many ways, therefore, the defenses are two sides of the same coin, and there is no dispute the voluntary payment condition was raised in the Denial Letter.

B. The insuring agreement was not triggered because no third party made a claim for damages.

Having found no waiver, the Court holds that Zurich is correct that no coverage exists for the Payments because they did not trigger the insuring agreement. As Zurich points out in its opening brief:

> no one has sued or threatened to sue the Plaintiff seeking damages because of Plaintiff's alleged mismanagement of the Plan, as confirmed by Plaintiff's corporate representative and its ERISA lawyer. None of the employees who were not automatically enrolled in the Plan made a claim or filed suit against Plaintiff. No government agency made a third-party claim seeking damages against Plaintiff.

(Def.'s Br. Supp. Mot. at 13, Doc. 40-1). While the Department of Labor brought suit against NAOS, it was for penalties, not to recover amounts due to participants. (Def.'s Mot. Ex. H, NAOS_002061-2071, Doc. 40-10).

NAOS did make payments to the Plan for the benefit of participants, but these were not "damages" because they were not "[m]oney claimed by, or ordered to be paid to, a person as compensation for loss or injury." DAMAGES, BLACK'S LAW DICTIONARY (11th ed. 2019). Rather, they were sums that NAOS would have already paid into the Plan under the terms of the Plan.

Absent a suit for damages, the insuring agreement does not cover defense costs such as attorney's fees. As such, none of the Payments were pursuant to a legal obligation to pay damages or under a duty to defend.

While primarily a voluntary payments case, *Hathaway Development Company v. Illinois Union Insurance Company*, 274 F. App'x 787, 791 (11th Cir. 2008) is instructive. There, a contractor "undert[ook] to fix defects" in construction on its own initiative. The Eleventh Circuit affirmed the denial of coverage. While that court noted that the contractor had made repairs "[p]ursuant [to its] warranty to the owner," no facts indicated that a claim for damages had been made by the owner against the contractor. *Id.* at 789. In fact, as the trial court in that case observed, "liability polices like the one at issue here do not cover insureds for the cost of complying with their contractual obligations." *Hathaway Dev. Co., Inc. v. Illinois Union Ins. Co.*, No. 1:07-CV-118-MHS, 2007 WL 9710492, at *4 (N.D. Ga. Oct. 4, 2007), *aff'd,* 274 F. App'x 787 (11th Cir. 2008) (citing *McDonald Const. Co. v. Bituminous Cas. Corp.*, 632 S.E.2d 420, 422 (Ga. Ct. App. 2006)).

Similarly, the Policies here do not cover NAOS's ordinary contractual duties under the Plan, but only those breaches which cause an injury to a participant leading to a claim against NAOS. Absent a third-party claim for damages, there is no coverage. Zurich is entitled to summary judgment.

II. Zurich is entitled to summary judgment on NAOS's bad faith claim.

Because Zurich has shown there is no coverage for the Claim, there can be no bad faith under O.C.G.A. § 33-4-6. *Langdale Co. v. Nat'l Union Fire Ins. Co.*, 110

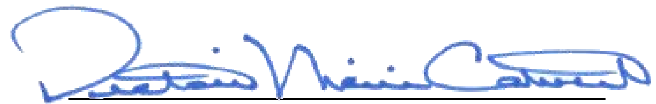
F. Supp. 3d 1285, 1318 (N.D. Ga. 2014). Zurich is entitled to summary judgment as to this claim as well.

CONCLUSION

For the above reasons, it is

ORDERED that Zurich's Motion for Summary Judgment (Doc. 40) is **GRANTED**. The Clerk is directed to enter judgment in favor of Defendant and against Plaintiff and to close this case.

SO ORDERED this 24th day of June, 2022.



Victoria Marie Calvert
United States District Judge