UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

TRUONG SON MARKET, INC. and
4 STAR GENERAL CONTRACTING, INC.   PLAINTIFFS

v.   No. 2:21-CV-02058

STATE AUTO PROPERTY AND
CASUALTY INSURANCE COMPANY   DEFENDANT

OPINION AND ORDER

Defendant filed a motion (Doc. 23) to dismiss and brief (Doc. 24) in support. Plaintiffs filed a response (Doc. 26) in opposition. The motion will be denied.

The response clarifies that Plaintiff 4 Star General Contracting, Inc. is the only party raising a breach of contract against Defendant, and that each Plaintiff is also raising the tort of bad faith based on separate alleged misconduct by Defendant before and after assignment of the insurance claim.

The tort of bad faith in Arkansas is a "separate tort action" that arises out of "affirmative misconduct by the insurance company, without a good faith defense." *Aetna Cas. and Sur. Co. v. Broadway Arms Corp.*, 664 S.W.2d 463, 465 (Ark. 1984). "Arkansas law is clear that a cause of action accrues the moment the right to commence an action comes into existence." *Shelter Mut. Ins. Co. v. Nash*, 184 S.W.3d 425, 428 (Ark. 2004). If Defendant committed the tort of bad faith against Plaintiff Truong Son Market, Inc. before assignment of the insurance claim to Plaintiff 4 Star General Contracting, Inc., and if the former did not assign its bad faith claim to the latter (all fact-based issues more appropriately considered at the summary judgment stage, or at trial), then the accrued claim belongs to Plaintiff Truong Son Market, Inc. If Plaintiff Truong Son Market, Inc. "actually possess[es], under the substantive law, the right sought to be enforced," then that

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plaintiff is the real party in interest under Federal Rule of Civil Procedure 17. *United Healthcare Corp. v. Am. Trade Ins. Co., Ltd.*, 88 F.3d 563, 569 (8th Cir. 1996).

IT IS THEREFORE ORDERED that the motion to dismiss (Doc. 23) is DENIED.

IT IS SO ORDERED this 17th day of September, 2021.

/s/ P. K. Holmes, III

P.K. HOLMES, III
U.S. DISTRICT JUDGE