

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

JAMES MCCARTHY,

Plaintiff,

vs.

CASE NO. 8:13-CIV-2018-T-EAK-MAP

LIBERTY MUTUAL FIRE
INSURANCE COMPANY,

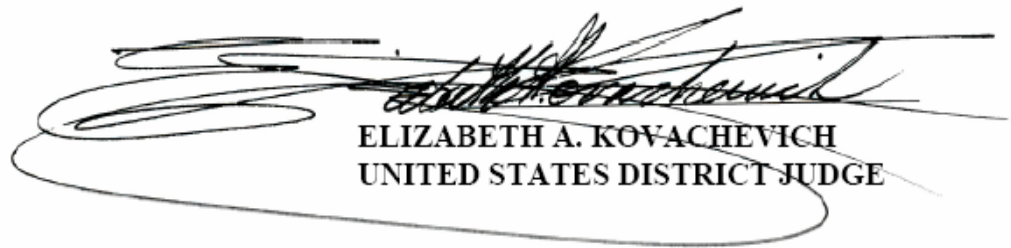
Defendant.

ORDER GRANTING MOTION

This cause is before the Court on the defendant's motion to dismiss Count II of the complaint (Doc. 5); the response thereto (Doc. 7); and the reply to the response (Doc. 10). The question is whether or not Count II of the complaint should be dismissed or abated. The Court agrees with the defendant that it should be dismissed. The Court finds that the plaintiff's interpretation of *Safeco Insurance Co. v Fridman*, 117 So.3d 16 (Fla. 5th DCA 2013) is not well-taken. In fact, the Safeco case supports the defendant's position that the bad faith claim is a "separate and distinct cause of action." pg. 19. Accordingly, it is

ORDERED that the joint motion to dismiss (Doc. 53) be **granted without prejudice to assert at an appropriate time** and Count II be dismissed from this action. The defendant has ten (10) days from this date to answer the remainder of the complaint.

DONE and ORDERED in Chambers, in Tampa, Florida, this 8th day of October,
2013.



ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

Copies to: All parties and counsel of record