

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

KATHLEEN ANN CALANDRO,

Plaintiff,

v.

Case No: 8:14-cv-383-T-30MAP

21ST CENTURY CENTENNIAL
INSURANCE COMPANY,

Defendant.

ORDER

THIS CAUSE comes before the Court upon the Defendant's Motion to Dismiss Count II of Plaintiff's Complaint (Dkt. #3). Plaintiff did not file a response in opposition as of the date of this Order. Upon review and consideration, it is the Court's conclusion that the Motion should be granted.

This cause of action is based on an auto accident involving an uninsured motorist. Plaintiff sues the Defendant for breach of contract and recovery under the uninsured/underinsured motorist benefits available under her automobile insurance policy (Count I) and alleges bad faith on the part of the Defendant for failure to provide these benefits as required by statute (Count II).

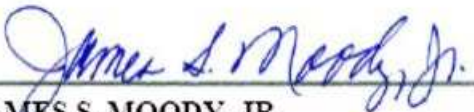
In Florida, "an insured's underlying first-party action for insurance benefits against the insurer necessarily must be resolved favorably to the insured before the cause of action for bad faith in settlement negotiations can accrue." *Blanchard v. State Farm Mut. Auto.*

Ins. Co., 575 So. 2d 1289, 1291 (Fla. 1991). See also *Trianon Condominium Association, Inc., v. QBE Ins. Corp.*, 741 F.Supp.2d 1327 (S.D.Fla. 2010) (statutory bad faith claim was premature since coverage litigation had not yet been adjudicated.) Therefore, the Court concludes that Count II of the Complaint is premature as a matter of law and should be dismissed without prejudice.

It is therefore ORDERED AND ADJUDGED that:

1. Defendant's Motion to Dismiss Count II of Plaintiff's Complaint (Dkt. #3) is GRANTED.
2. Count II of Plaintiff's complaint is dismissed without prejudice as premature.

DONE and **ORDERED** in Tampa, Florida, this 13th day of March, 2014.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record

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