

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

Case Number: 1:14-22818-CIV-MORENO

TRANSCAPITAL BANK,

Plaintiff,

vs.

SCOTTSDALE INSURANCE COMPANY,

Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS COUNT III

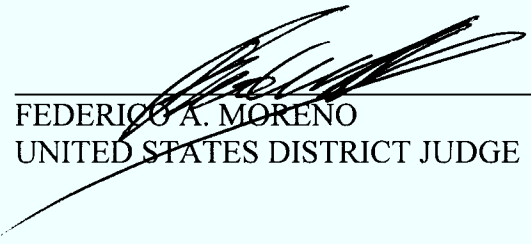
THIS CAUSE came before the Court upon Defendant's Motion to Dismiss Count III (**D.E. No. 4**), filed on **August 7, 2014**. Defendant moves to dismiss Plaintiff's bad faith claim (Count III of Plaintiff's Complaint) because Plaintiff did not allege that it provided written notice of the violation before instituting the present action. Plaintiff instead asks the Court to abate Count III pending the resolution of its breach of contract claim.

THE COURT has considered the motion and the pertinent portions of the record, and being otherwise fully advised in the premises, it is

ADJUDGED that the motion is **GRANTED**.

In accordance with Florida's bad faith statute, Plaintiff must provide sixty days' written notice of the bad faith violation before pursuing the claim in court. F.S.A. § 624.155(3)(a). Plaintiff first claims that it filed written notice in its Opposition to Defendant's Motion to Dismiss, and Plaintiff does not specify when it did so. (D.E. 10 at 3.) Because Plaintiff failed to plead a necessary element of its bad faith claim, Count III is **DISMISSED** without prejudice.

DONE AND ORDERED in Chambers at Miami, Florida, this 6th day of October, 2014.



FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies provided to:

Counsel of Record