

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

SUPERIOR FUELS, INC.,

Plaintiff,

vs.

NATIONWIDE AGRIBUSINESS
INSURANCE COMPANY,

Defendant.

Case No. 14-cv-1420-SMY-PMF

MEMORANDUM AND ORDER

This matter comes before the Court on Defendant's Motion to Dismiss (Doc. 27). In its Amended Complaint for Declaratory Judgment (Doc. 20) Plaintiff asks the Court to "enter an order specifically finding that [Defendant]'s refusal to defend and indemnify was vexatious, unreasonable and reflected improper claim practices as defined in section 5/154.6 and 5/155 of the Illinois Insurance Code" (Doc. 20, p. 6). Defendant moves to dismiss Plaintiff's claim of bad faith under 215 ILCS 5/155 pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. Specifically, Defendant argues Plaintiff failed to plead sufficient facts to support its bad faith allegations. Plaintiff failed to timely respond to Defendant's Motion to Dismiss. Pursuant to Local Rule 7.1(c), the Court construes Plaintiff's failure to timely respond as an admission of the merits of the motion. Accordingly, the Court **GRANTS** Defendant's Motion to Dismiss (Doc. 27) and **DISMISSES without prejudice** Plaintiff's request for entry of an order that Defendant be ordered to pay penalties pursuant to 215 ILCS 5/155.

IT IS SO ORDERED.**DATED:** May 7, 2015

s/ Staci M. Yandle
STACI M. YANDLE
DISTRICT JUDGE