

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FINANCIAL RESOURCES NETWORK, INC.,
FINANCIAL FAMILY HOLDINGS LLC,
ROSALIND HERMAN and GREGG D. CAPLITZ,
Plaintiffs,

v.

CIVIL ACTION NO.
09-11315-MBB

BROWN & BROWN, INC., BROWN & BROWN OF
CALIFORNIA, INC., AMERICAN GUARANTEE
AND LIABILITY INSURANCE COMPANY, ZURICH
NORTH AMERICA COMPANY and CALSURANCE,
Defendants.

PROCEDURAL ORDER

April 3, 2012

BOWLER, U.S.M.J.

On March 30, 2012, this court issued a Memorandum and Order on three summary judgment motions and two motions to strike. (Docket Entry # 107). Through oversight, the opinion did not note that a case on page 67, Bartlett v. Nationwide Mutual Fire Insurance Co., 348 S.E.2d 530 (S.C.Ct.App. 1986), was overruled on other grounds by Charleston County School District v. State Budget and Control Board, 437 S.E.2d 6 (S.C. 1993) (overruling Bartlett to the extent it suggests a bad faith action was one in contract as opposed to tort). The citation to Bartlett was not necessary because it was cited in the context of this court *assuming* the correctness of an argument, specifically the correctness that breach of an implied covenant of good faith and fair dealing requires a breach causing damages to the insured. It was not

necessary to cite a case to make this assumption. The substance of the ruling that there was sufficient evidence of damages for plaintiffs to survive summary judgment remains and serves as the basis to deny this aspect of defendants' summary judgment motion (Docket Entry # 85). Accordingly, Bartlett was not necessary to the decision.

/s/ Marianne B. Bowler
MARIANNE B. BOWLER
United States Magistrate Judge