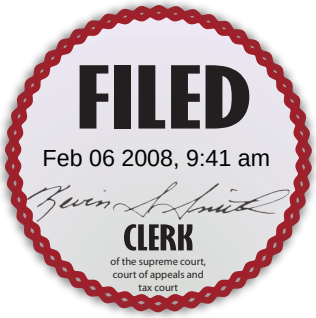

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IN THE
COURT OF APPEALS OF INDIANA

DESI G. JONES and RICHARD A. JONES, Appellants-Plaintiffs, vs. INDIANA INSURANCE COMPANY, Appellee-Defendant.	))))))))))	No. 49A02-0704-CV-363

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Cynthia J. Ayers, Judge
Cause No. 49D04-0603-CT-11180

February 6, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Desi and Richard Jones, pro se, appeal from the trial court's order dismissing their claims against Indiana Insurance Company ("Insurance"). The Joneses raise several issues, one of which we find dispositive: whether the trial court properly dismissed the Joneses' complaint based on the ground that it was brought beyond the expiration of a limitation clause in their insurance contract. We also address whether the Joneses' claims for interference with economic relations, intentional infliction of emotional distress, and negligence state claims on which relief can be granted. We conclude the Joneses' claims for interference with economic relations and negligence fail to state cognizable claims. However, we also conclude the trial court improperly dismissed the action on its stated ground and remand for further proceedings on the remaining claims.

Facts and Procedural History

Desi Jones entered into a contract with Insurance for insurance coverage on her home and garage (the "Policy"). In March 2004, Jones filed two claims, one alleging that her garage had been burglarized on March 19, 2004, and another alleging that her home had been burglarized on March 23, 2004. The parties settled the garage burglary claim without dispute, but Insurance ultimately denied the home burglary claim (the "Claim") in August 2005.

On March 17, 2006, Jones filed a complaint alleging two counts of breach of contract, tortious interference with economic relations, intentional infliction of emotional distress, and negligence. Richard Jones was later joined as a party, as he claimed that he had lost property during the burglary. On May 26, 2006, Insurance filed a response and affirmative defenses,

and on June 26, 2006, Insurance filed a motion to dismiss. Unfortunately, neither party has included this motion in its appendix. See Ind. Appellate Rule 50(A)(2)(f) (indicating that the appellant's appendix shall contain "pleadings and other documents . . . that are necessary for resolution of the issues raised on appeal"); Ind. Appellate Rule 50(A)(3) (indicating that the appellee's appendix is also governed by section (A)(2) of this rule). However, we are able to glean from the record that Insurance argued that the Joneses' claims were barred by a clause in the Policy indicating, "No action can be brought unless the policy provisions have been complied with and the action is started within one year after the date of loss." Appellant's Appendix at 70.

On September 13, 2006, the Joneses filed a motion for summary judgment. On January 29, 2007, the trial court held a hearing on the motion to dismiss. On March 7, 2007, the trial court held a hearing on the motion for summary judgment.[1] On March 27, 2007, the trial court issued an order granting Insurance's motion to dismiss, "as the claim was brought beyond the expiration of the policy suit limitation." Appellant's App. at 75. The Joneses now appeal.

Discussion and Decision

I. Standard of Review

We review de novo a trial court's grant of a motion to dismiss pursuant to Indiana Trial Rule 12(B)(6), as "we stand in the shoes of the trial court and must determine if the trial

[1] It appears that the trial court also may have held a second hearing on the motion to dismiss on this date. The transcript of the summary judgment hearing begins with the trial court stating, "We had a hearing on a motion to dismiss about five minutes ago in this case, I think." Summary Judgment Transcript at 3. If such a hearing took place, we do not have the transcript, and have no indication from the parties as to what transpired at this hearing.

court erred in its application of the law." Ameritech Pub., Inc. v. Strachan, 783 N.E.2d 378, 380 (Ind. Ct. App. 2003), trans. denied. A motion to dismiss made under Indiana Trial Rule 12(B)(6) "tests the legal sufficiency of the claim, not the facts which support it." State v. Classic Pool & Patio, Inc., 777 N.E.2d 1162, 1164 (Ind. Ct. App. 2002). When reviewing a ruling on a motion to dismiss under Rule 12(B)(6), we will take as true all the allegations and statements in the plaintiff's complaint. City of Fort Wayne v. Pierce Mfg., Inc., 853 N.E.2d 508, 511 (Ind. Ct. App. 2006), trans. denied. We will review the pleadings in the manner most favorable to the non-moving party and draw all reasonable inferences in favor of that party. Classic Pool & Patio, 777 N.E.2d at 1164. "A complaint is not subject to dismissal unless it appears to a certainty that the plaintiff would not be entitled to relief under any set of facts." Bentz Metal Prods. Co., Inc. v. Stephans, 657 N.E.2d 1245, 1247 (Ind. Ct. App. 1995).

II. Policy Limitation Period

Insurance argues that as the Joneses filed their claim more than one year after the burglary, the suit is barred by the Policy's limitation period. We conclude that although Insurance's argument may ultimately prove to be valid on the merits, this argument is not sufficient to sustain a dismissal pursuant to Rule 12(B)(6).

"Indiana law generally holds that 'contractual limitations shortening the time to commence suit are valid, at least so long as a reasonable time is afforded.'" New Welton Homes v. Eckman, 830 N.E.2d 32, 35 (Ind. 2005). A party's failure to discover a loss does not toll a contract's limitation period; instead, "a policy's period of limitation begins to run at the time the loss occurs, regardless of whether the insured knew of it." United Techs. Auto.

Sys., Inc. v. Affiliated FM Ins. Co., 725 N.E.2d 871, 875 (Ind. Ct. App. 2005), trans. denied. We have previously held that one-year limitation clauses in insurance policies are reasonable. Burress v. Ind. Farmers Mut. Ins. Group, 626 N.E.2d 501, 504 (Ind. Ct. App. 1993), trans. denied; Meridian Mut. Ins. Co. v. Caveletto, 553 N.E.2d 1269, 1270 (Ind. Ct. App. 1990) ("One year contractual limitation periods in insurance contracts are valid and enforceable.").

Although valid, "such provisions may be waived or the insurer may embark upon a course of conduct which results in an estoppel to assert the provision as a defense." Stateman Ins. Co. v. Reibly, 175 Ind. App. 317, 320, 371 N.E.2d 414, 416 (1978). In order to conclude an insurance company waived a contractual limitation period, the insured "must show that conduct or acts of the insurer were sufficient to justify a reasonable belief on the part of the insured that the company would not insist on compliance with the policy terms." Interstate Auction, Inc. v. Cent. Nat'l Ins. Group, Inc., 448 N.E.2d 1094, 1102 (Ind. Ct. App. 1983). In order to successfully raise estoppel, "the insurer's acts or statements must be of a caliber calculated to mislead the insured to its prejudice." Id. In determining whether waiver or estoppel exists, the insurance company's words and acts are relevant as "the inquiry is whether anything has been done in the relationship between the insurer and the insured which would cause the insured to reasonably believe the limitation period will not be insisted upon." Huff v. Travelers Indem. Co., 266 Ind. 414, 423, 363 N.E.2d 985, 991 (1977). We will not "allow an insurer to lull an insured into not pressing his rights and to then deny liability on the basis of the limitation period." Id. at 266 Ind. at 425, 336 N.E.2d at 992.

As these authorities make clear, "whether an insurer has waived reliance on a

limitations provision is usually a question of fact." Dunaway v. Allstate Ins. Co., 813 N.E.2d 376, 381 (Ind. Ct. App. 2004); see also id. ("[T]he jury, not the trial court, should decide whether the insurer had waived reliance on the limitations provision."). Importantly, this case comes before us on the grant of a motion to dismiss. Therefore, as long as the Joneses' complaint is sustainable by any set of facts, we must reverse. The Joneses' complaint alleges that although they filed a timely claim, Insurance failed to handle the claim timely, mishandled the claim, and engaged in "negligent, outrageous, illegal, intentional, and reckless conduct." Appellant's App. at 30-32. These allegations sufficiently raise the possibility that Insurance either waived or is estopped from asserting the Policy's limitation clause as a defense. See Huff, 266 Ind. at 425, 336 N.E.2d at 992 ("Once notice was given and no objection was raised to the mode of documentation and liability was not denied until long after the twelve-month period, then the insurer has waived his right to insist on either provision [including limitation period]."); Dunaway, 813 N.E.2d at 384-85 (holding summary judgment inappropriate, as "given the fact that Allstate failed to comply with certain time provisions in the policy, whether it was reasonable for the Dunaways to believe that Allstate would not require strict compliance with the one-year limitations provision is a question of fact"); Auto-Owners Ins. Co. v. Cox, 731 N.E.2d 465, 468 (Ind. Ct. App. 2000) (holding summary judgment in favor of insurance company improper where evidence indicated that the insured had filed a claim shortly after the loss, the insurance company's agent failed to make the necessary repairs, and negotiations had continued past the limitation period); Wingenroth v. Am. States Ins. Co., 455 N.E.2d 968, 970 (Ind. Ct. App. 1983) (holding summary judgment improper where issues of fact existed as to whether insurance company's

conduct created a reasonable belief that it would not enforce a limitation clause).

We make no statement as to the ultimate question of whether Insurance in fact waived the Policy's limitation clause or what would happen were this case before us following the trial court's ruling on a motion for summary judgment. However, we cannot say with certainty that under any set of facts, the Joneses' claim is barred by the Policy's limitation clause. Cf. Parsley v. Waverly Concrete & Gravel Co., 427 N.E.2d 1, 2 (Ind. Ct. App. 1981) (reversing dismissal based on statute of limitations where, although an amended complaint revealed that it was filed more than the statutory limit of three years after the occurrence, "facts could exist under which the amended complaint would relate back, tolling the statute of limitations").

III. Other Grounds On Which To Sustain Motion to Dismiss

The trial court explicitly dismissed the actions because of its finding that the claims were barred by the Policy's limitation clause. However, it appears that Insurance also moved to dismiss three of the claims on other grounds as well. Again, our review is hampered as both parties failed to include Insurance's motion to dismiss. However, we will address these issues as completely as we can, as we will affirm a trial court's dismissal if it is sustainable on any basis found in the record. City of New Haven v. Reichart, 748 N.E.2d 374, 378 (Ind. 2001).

A. Tortious Interference With Economic Relations

Count III of the Joneses' complaint alleges:

TORTIOUS INTERFERENCE WITH ECONOMIC RELATIONS

> That the defendant caused harm to the plaintiff by interfering with the plaintiff's ability to establish a relationship with another company to obtain homeowner's insurance when the defendant cancelled the plaintiff's insurance policy # PLPM233368 well before making a decision on settling the plaintiff's claims, leaving the plaintiff uninsured and unable to acquire other insurance coverage while the claims remained open.

Appellant's App. at 31.

Insurance apparently argues that this claim could properly have been dismissed under Indiana Trial Rule 12(B)(6) for failure to state a claim upon which relief can be granted. It is difficult to determine precisely what the Joneses' theory of recovery is.[2] If the Joneses are alleging tortious interference with prospective advantage,[3] "a breach by the defendant of his own contract with the plaintiff is not actionable." Kiyose, 166 Ind. App. at 43, 333 N.E.2d 886, 891. "The tort contemplates a relationship, prospective or existing, of some substance, some particularity, before an inference can arise as to its value to the plaintiff and the defendant's responsibility for its loss." Hoffman v. Roberto, 578 N.E.2d 701, 710 (Ind. Ct. App. 1991) (quoting Schipani v. Ford Motor Co., 302 N.E.2d 307, 314 (Mich. Ct. App. 1981)) (applying Michigan law), trans. denied. Moreover, the interference must be accomplished through "violence or intimidation, defamation, injurious falsehood[,] other fraud, [or] violation of the criminal law." Helvey v. O'Neil, 153 Ind. App. 635, 647, 288

[2] We recognize that in order to avoid a motion to dismiss under Rule 12(B)(6), a plaintiff's complaint need not set forth the elements of a cause of action, but must include the operative facts and a description of the tortious conduct. Kiyose v. Trustees of Ind. Univ., 166 Ind. App. 34, 44-45, 333 N.E.2d 886, 891 (1975).

[3] In its appellate brief, Insurance apparently attempts to discredit this cause of action by stating that it is "a tort (contrary to Plaintiffs' assertion) cited in only two Indiana state cases." Appellee's Brief at 6. If Insurance is attempting to insinuate that this cause of action itself is invalid, it is incorrect. See Brazauskas v. Fort Wayne-South Bend Diocese, Inc., 796 N.E.2d 286, 289 n.2 (Ind. 2003) (indicating that the plaintiff's claim would be "more appropriately styled [as] interference with prospective advantage"), cert. denied, 541 U.S. 902 (2004); id. at 294 (Sullivan J., concurring in part and dissenting in part) ("The Indiana blacklisting statute and common law tort of interference with prospective advantage at issue here are neutral laws of

N.E.2d 553, 561 (1972) (citing Prosser, Law of Torts 977 (3d ed. 1964)); see also Johnson v. Hickman, 507 N.E.2d 1014, 1019 (Ind. Ct. App. 1987) (reversing the trial court's finding that the defendant interfered with the plaintiff's prospective advantage based on the court's recognition that in order to recover based on interference with a business relationship, "it is critical that the defendant acted illegally in achieving his end"), trans. denied. The substance of the Joneses' claim is that Insurance cancelled the Policy before settling its claim. They allege no tortious or illegal act, and identify no concrete relationship with which Insurance interfered. Therefore, the complaint fails to state a claim of tortious interference with prospective advantage. See Kiyose, 166 Ind. App. at 44-45, 333 N.E.2d at 891-92.

The Joneses' complaint could also be interpreted to allege a claim of tortious interference with a business or contractual relationship. The tort of interference with a business relationship has the following elements:

> (1) the existence of a valid relationship; (2) the defendant's knowledge of the existence of the relationship; (3) the defendant's intentional interference with that relationship; (4) the absence of justification; and (5) damages resulting from defendant's wrongful interference with the relationship.

AutoXchange.com, Inc. v. Dreyer and Reinbold, Inc., 816 N.E.2d 40, 51 (Ind. Ct. App. 2004). The tort of interference with a contractual relationship has the same elements except that instead of a valid business relationship, a valid contract between the parties must exist. Comfax Corp. v. N. Am. Van Lines, Inc., 587 N.E.2d 118, 124 (Ind. Ct. App. 1992). If the Joneses are alleging tortious interference with a business or contractual relationship, their complaint is also legally insufficient, as they do not allege that they had a valid business or

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general applicability.").

contractual relationship with a third party. See Computers Unlimited, Inc. v. Midwest Data Sys., Inc., 657 N.E.2d 165, 168 (Ind. Ct. App. 1995).

We can discern no other theory on which the Joneses' might recover based on the allegations in count III of their complaint. Therefore, we conclude that the trial court properly dismissed this count.

B. Intentional Infliction of Emotional Distress

Count IV of the Joneses' complaint alleges:

> That the defendant intentionally or recklessly inflicted emotional distress upon the plaintiff by their mishandling of the plaintiff's claims, by canceling Plaintiff's insurance policy without cause or by prematurely canceling Plaintiff's insurance policy.

Appellant's App. at 32. The elements of the tort of intentional infliction of emotional distress "are that the defendant: (1) engages in extreme and outrageous conduct (2) which intentionally or recklessly (3) causes (4) severe emotional distress to another." Lachenman v. Stice, 838 N.E.2d 451, 456 (Ind. Ct. App. 2005), trans. denied.

In order to sufficiently set forth a claim for intentional infliction of emotional distress, "a complaint must allege conduct that is so extreme and outrageous as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community." Tucker v. Roman Catholic Diocese of Lafayette-In-Indiana, 837 N.E.2d 596, 603 (Ind. Ct. App. 2005), trans. denied. Depending on the circumstances, the question of whether the defendant's acts constitute "extreme and outrageous conduct" may be either a question of law or a question of fact. Bradley v. Hall, 720 N.E.2d 747, 753 (Ind. Ct. App. 1999). Courts sometimes decline to decide the issue as a question of law because

"[w]hat constitutes 'extreme and outrageous' conduct depends, in part, upon prevailing cultural norms and values." Id.

Indiana recognizes that insurance companies may commit the tort of intentional infliction of emotional distress. See Stump v. Commercial Union, 601 N.E.2d 327, 334 (Ind. 1992) (concluding that an employee may maintain an action for intentional infliction of emotional distress against a worker's compensation insurance carrier), superceded, Ind. Code § 22-3-4-12.1.[4] Similarly, Indiana recognizes "a cause of action for the tortious breach of an insurer's duty to deal with its insured in good faith." Erie Ins. Co. v. Hickman by Smith, 622 N.E.2d 515, 519 (Ind. 1993). In an analogous context, this court has concluded that in regard to an insurance company's denial of a claim, a plaintiff may be entitled to punitive damages if it can show the insurance company acted in bad faith when it denied the claim. Hoosier Ins. Co., Inc. v. Mangino, 419 N.E.2d 978, 983 (Ind. Ct. App. 1981); cf. Vernon Fire & Cas. Ins. Co. v. Sharp, 264 Ind. 599, 610, 349 N.E.2d 173, 181 (1976) ("Insofar as [the insurance companies'] conduct is ascribable to their good faith efforts to pay the legal proceeds, their conduct is privileged."); id. 264 Ind. at 616-17, 349 N.E.2d at 185 (holding that insurance companies' conduct was tortious, and that therefore an award of punitive damages was allowed). In this context, "bad faith" means that the insurance company denied the insured's

[4] Stump held that an injured employee could maintain a common law claim against the insurance carrier for "tortious conduct such as to constitute gross negligence, intentional infliction of emotional distress, or constructive fraud." Id. at 333. In 1997, the legislature enacted Indiana Code section 22-3-4-12.1, which gives the Workers Compensation Board "exclusive jurisdiction to determine whether the . . . worker's compensation insurance carrier . . . has committed an independent tort in adjusting or settling the claim for compensation." In enacting this statute, the legislature "did not abolish the civil cause of action recognized under Stump, but rather compel[led] exclusive recourse to an administrative tribunal." Sims v. U.S. Fidelity & Guar. Co., 782 N.E.2d 345, 354-55 (Ind. 2003) (Dickson, J., dissenting).

claims for no legitimate reason, and that the insurance company knew it had no such legitimate reason. Id.

Other states recognize that an insurance company's conduct in handling a claim may become so outrageous as to give rise to damages for emotional distress. See Goodson v. Am. Standard Ins. Co. of Wis., 89 P.3d 409, 417 (Colo. 2004); Cates Constr., Inc. v. Talbot Partners, 86 Cal.Rptr.2d 855, 865 (Cal. 1999); Stull v. First Am. Title Ins. Co., 745 A.2d 975, 980 (Me. 2000); Roper v. State Farm Mut. Auto. Ins. Co., 958 P.2d 1145, 1148-49 (Idaho 1998).[5] The logic of many of these decisions is that "[b]ecause a primary consideration in purchasing insurance is the peace of mind and security it will provide, an insured may recover for any emotional distress resulting from an insurer's bad faith." Ingalls v. Paul Revere Life Ins. Group, 561 N.W.2d 273, 283 (N.D. 1997); see also Goodson, 89 P.3d at 417; Cal. Shoppers, Inc. v. Royal Glove Ins. Co., 221 Cal.Rptr. 171, 219 (Cal. Ct. App. 1985).

We recognize that courts are reluctant to impose punitive damages in cases stemming from an insurance company's denial of a claim. Hamed v. Gen. Accident Ins. Co. of Am., 842 F.2d 170, 172 (7th Cir. 1988); see also Carroll v. Allstate Ins. Co., 815 A.2d 119, 126-27 (Conn. 2003) ("As distressing as this insurance investigation may have been to the plaintiff, however, it simply was not so atrocious as to trigger liability for intentional infliction of emotional distress." (emphasis in original)); cf. Hailey v. Cal. Physicians' Serv., 69 Cal.

[5] We recognize that in some states, the conduct complained of must extend beyond the mere denial of the claim. E.g., Stull, 745 A.2d at 980; Hayley v. Allstate Ins. Co., 686 N.W.2d 273, 577 (Mich. Ct. App. 2004) ("the failure to pay a contractual obligation or insurance benefits does not amount to outrageous conduct, even if it is done in bad faith or willfully."), appeal denied. In this case, the Joneses' complaint alleges conduct beyond the mere denial of the claim.

Rptr.3d 789, 806-08 (Cal. Ct. App. 2007) (collecting cases in which courts have found insurance companies' conduct not to rise to the level of "extreme and outrageous," but also noting cases where insurance companies' conduct did rise to that level), modified on denial of reh'g, --- Cal.Rptr.3d ---, 2008 WL 186145. However, we reiterate that this case comes to us on the grant of a motion to dismiss. All the plaintiff needs to show in order to survive such a motion is that its claim states a cognizable theory of recovery that could be sustained under some set of facts. Although it may be difficult for a plaintiff to ultimately succeed on a theory of intentional infliction of emotional distress against an insurance company, e.g., Kirk v. Farm & City Ins. Co., 457 N.W.2d 906, 911 (Iowa 1990), such a cause of action does exist. The Joneses have alleged that they suffered emotional distress because of Insurance's conduct, which they allege was outrageous, and that Insurance acted with the intent to emotionally harm the Joneses. Whether the circumstances presented in this case amount to conduct on behalf of Insurance sufficient to sustain the cause of action may either be a question of law or of fact. See Liberty Mut. Ins. Co. v. Steadman, 968 So.2d 592, 595 n.1 (Fla. Ct. App. 2007) (affirming trial court's denial of motion to dismiss and noting that "the question of whether conduct is outrageous enough to support a claim of intentional infliction of emotional distress remains one of law for the court to determine in the first instance whether at summary judgment or at trial."). We emphasize again that we have an incomplete record, as neither party has supplied Insurance's motion or memorandum in support of its motion to dismiss. We decline to determine at this level that the allegations in the Joneses' complaint are insufficient as a matter of law to state a claim upon which relief could be granted. In as much as this case comes to us following a dismissal pursuant to Rule 12(B)(6),

and not a grant of summary judgment in which more facts must be shown, we conclude the trial court improperly dismissed the Joneses' claim for intentional infliction of emotional distress.

C. Negligence

The Joneses' final claim alleges:

> That the defendant's actions in handling the Plaintiff's claims fell below the standard of care of the reasonable insurance company in processing a claim and as a result their conduct caused the Plaintiff financial and emotional pain and suffering.

Appellant's App. at 32. Insurance argues that this claim is merely a restatement of the Joneses' claim for breach of contract and therefore fails to state a claim upon which relief can be granted.

We initially recognize that Indiana "does not recognize a separate cause of action for tortious breach of contract." Allstate Ins. Co. v. Hammond, 759 N.E.2d 1162, 1166 (Ind. Ct. App. 2001) (quoting Broadhurst v. Moenning, 633 N.E.2d 326, 334 (Ind. Ct. App. 1994)). "[T]ort obligations arise, not from an agreement between parties, but by operation of law." Erie Ins. Co., 622 N.E.2d at 518. Without some sort of duty, a party may not recover in tort unless the other party's act would constitute a tort in the absence of a contractual relationship. See Greg Allen Constr. Co., Inc. v. Estelle, 798 N.E.2d 171, 175 (Ind. 2003). As discussed above, an insurance company has a duty to deal in good faith with the insured. Erie Ins. Co., 622 N.E.2d at 518. This obligation of good faith "includes the obligation to refrain from (1) making an unfounded refusal to pay policy proceeds; (2) causing an unfounded delay in making payment; (3) deceiving the insured; and (4) exercising any unfair

advantage to pressure an insured into a settlement of his claim." Id. at 519. However, "[p]oor judgment or negligence do not amount to bad faith; the additional element of conscious wrongdoing must also be present." Colley v. Ind. Farmers Mut. Ins. Group, 691 N.E.2d 1259, 1261 (Ind. Ct. App. 1998), trans. denied. We also recognize insurance companies' right to dispute claims in good faith. Erie Ins. Co., 622 N.E.2d at 520. "Similarly, the lack of diligent investigation alone is not sufficient to support an award." Id. Therefore, mere negligence on the part of an insurer is not sufficient to amount to a breach of the insurer's duty of good faith. Similarly, a punitive damages award will not be awarded against an insurance company based on mere negligence. Id.

Based on these authorities, we conclude that the Joneses' claim for negligence is not cognizable. Their complaint alleges merely that Insurance was negligent in processing their claim. Insurance's obligation to process the claim arose solely from the Policy, and Insurance owed no duty, besides the general duty of good faith, to the Joneses outside of the Policy to investigate said claim.

Conclusion

We conclude the trial court improperly dismissed the Joneses' claims based on the Policy's limitation clause. We also conclude, however, that the trial court's dismissals of the Joneses' claims for tortious interference with economic relations (whether the claim is for interference with business, contract, or prospective relations) and negligence are sustainable on the grounds that the complaint fails to state a cause of action. We therefore remand for further proceedings on the Joneses' claims for breach of contract and intentional infliction of emotional distress.

Affirmed in part, reversed in part, and remanded.

FRIEDLANDER, J., and MATHIAS, J., concur.