

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION –CIVIL**

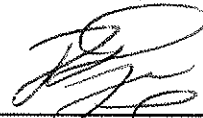
THE ORIGINAL APOSTOLIC FAITH CHURCH	:	April Term 2019
OF THE LORD JESUS CHRIST, INC.,	:	
Plaintiff,	:	No. 4027
v.	:	
AMERICAN CASUALTY COMPANY OF	:	COMMERCE PROGRAM
READING, PA, ET. AL.	:	
Defendants.	:	Control Nos. 20120985/20111277
	:	

**ORDER**

**AND NOW**, this 7th day of January, 2022, upon consideration of Defendant GEICO Insurance Agency (“GEICO”)’s Motion for Summary Judgment and Plaintiff’s response in opposition (Control No.0120985), and Defendant CS&S/Networked Insurance Agents (“NIA”)’s Motion for Summary Judgment and Plaintiff’s response in opposition (Control No. 20111277) and all matters of record, and as explained by the attached Opinion, it hereby is **ORDERED** as follows:

1. GEICO’s Motion for Summary Judgment is **Granted**. Judgment is entered in favor of GEICO and against Plaintiff at Count III and Count IV of Plaintiff’s Complaint.
2. NIA’s Motion for Summary Judgment is **Granted**. Judgment is entered in favor of NIA and against Plaintiff at Count V and Count VI of Plaintiff’s Complaint.

**BY THE COURT**



**RAMY I. DJERASSI, J.**

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**OPINION**

Presently before the Court are defendant GEICO Insurance Agency’s (“GEICO”) and defendant CS&S/Networked Insurance Agents (“NIA”) respective motions for summary judgment. For the reasons discussed below, the motions for summary judgment are granted.

**Background**

The Original Apostolic Faith Church of the Lord Jesus Christ, Inc. (“The Church”) is a Pennsylvania Non Profit Corporation. The Church is the owner of 1512-1516 North Broad Street (“Property”) where it conducted religious services in a sanctuary located on the first floor of the property. GEICO was a retail agent used by the Church to find appropriate insurance coverage for its property and NIA was a wholesale insurance broker that GEICO used to assist its collection of potential insurance policies for the Church.

In 2013, the Church sought commercial insurance for its building and contacted GEICO for assistance. Jacquelyn Bishop was the GEICO agent who obtained the Church’s application information and forwarded the application to NIA so NIA could use its data base platform to provide potential NIA found a policy for GEICO to convey to the Church. The insurance carrier

was defendant American Casualty Company of Reading, PA (“ACCO”). NIA conveyed ACCO’s offer and quote to GEICO who then conveyed to the Church, and the Church accepted.

In April 2013, ACCO issued a commercial insurance policy to the Church insuring the property.<sup>1</sup> The initial policy period was April 26, 2013 to April 26, 2014. The Policy contained an endorsement titled “Pennsylvania Changes” which provides that if ACCO decides not to renew. ACCO “will mail or deliver written notice of nonrenewal, stating the specific reasons for nonrenewal, to the first Named Insured at least 60 days before the expiration of the policy.”

A confirmation of coverage/binder email was sent to the Church from Jessica Mendoza, an NIA customer solutions representative. (“The Mendoza email”). Her email states in part:

Thank you for allowing GEICO Insurance Agency to serve your commercial insurance needs. GEICO and Networked Insurance Agents have partnered together to provide you coverage as well as excellent customer service during the policy term. ...For your assistance, including coverage or service questions, please contact our customer service center toll free at 866-246-3756. We are available Monday –Friday, 8 a.m. EST to 5 p.m. PST to assist you with policy changes, coverage inquiries, and certificates of insurance policy....<sup>2</sup>

On May 17, 2013, an endorsement to the Policy was issued to the Church amending the location and mailing address of the Church.<sup>3</sup> A confirming email was written by Sasha Yinguez, Operations Manager for Strongwood Insurance Service Center, a subsidiary of NIA. The May 17, 2013 email contains the same customer service language used in the Mendoza email.

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<sup>1</sup> The policy issued to the Church was a CNA insurance policy. See, Plaintiff’s response to defendant Geico’s Motion for Summary Judgment #4.

<sup>2</sup> Defendant NIA’s motion for summary judgment exhibits- R94.

<sup>3</sup> Plaintiff’s Exhibits to its response to ACCO’s motion for summary judgment P-23.

The working relationship between GEICO and NIA and its affiliates, as described in the Mendoza email and the May 17, 2013 email, is outlined in a Master Agreement.<sup>4</sup> According to the Master Agreement, GEICO is responsible placing insurance found through NIA who bears responsibility for then servicing the policy accepted by the insured.<sup>5</sup> In 2014, CNA assumed the responsibility to service small business accounts from NIA, including the Church's ACCO policy.<sup>6</sup> CNA provides back room service on small business accounts with functions such as issuing automatic renewal notices, preparing certificates of insurance, and correcting overcharges and incorrect premium miscalculations.<sup>7</sup> CNA does not decide to issue a nonrenewal notice; this is a decision that the insurance carrier makes on its own.

The Church's Policy with ACCO was renewed annually through April 26, 2017. On February 24, 2017, prior to the Policy expiration date, ACCO issued a Notice of Nonrenewal to the Church via first class mail. ACCO made the decision not to renew the policy without any input from GEICO nor NIA.<sup>8</sup> In addition to the Church, ACCO's notice of nonrenewal was sent to NIA. After receiving notice of nonrenewal, the Church contacted ACCO who referred the Church to NIA. The Church contacted NIA and was told that NIA could not do anything about the nonrenewal notice. During NIA's call with the Church, NIA did not commit to price

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<sup>4</sup> Defendant NIA's motion for summary judgment exhibits- deposition of Philip Offutt, corporate representative of GEICO- R 39 L22-25 -R40 L1-7.

<sup>5</sup> Defendant NIA's motion for summary judgment exhibits- deposition of Philip Offutt, corporate representative of GEICO- R 39 L22-25 -R40 L1-7.

<sup>6</sup> Defendant NIA's motion for summary judgment exhibits- deposition of David Strunk, corporate representative for CNA- R98 L1-15.

<sup>7</sup> Id. R99 L17-24- L1-8.

<sup>8</sup> Plaintiff's response to defendant GEICO's motion for summary judgment exhibits- deposition of Janet Alumbaugh, CNA underwriting specialist p26 L14-17, L22-24, pg. 27 L1-3. See also, deposition of David Strunk pg. 32 L21-24 to pg. 33 L1-5, 12-21.

shop for the Church but advised it could do so if the Church filled out a questionnaire form.<sup>9</sup> In addition to contacting ACCO and NIA, the Church called a general customer service number listed on the Mendoza email which directed the Church back to NIA and Strongwood Services Center. The Church on its own also contacted Fair Plan of Pennsylvania to find alternative insurance options.

On March 13, 2017, after the notice of nonrenewal was issued to the Church, NIA, reached out to the Church to offer assistance in finding alternative solutions for the insured if the Church filled out a questionnaire.<sup>10</sup> The email was addressed to [jjt366@yahoo.com](mailto:jjt366@yahoo.com) and stated in pertinent part the following:

It looks like CNA is non-renewing your account due to the age of your building. We would like to quote a few carriers for you and get the best price for you before your policy cancels. Could you please fill out the questionnaire and send it back to us?<sup>11</sup>

In addition to , NIA sent a letter to Ernest Tookes<sup>12</sup> at 1429 Guildord Place, Philadelphia, PA 19122 with the same date as the email. The letter states in pertinent part:

“Your Businessowners (sic) Policy expires on 4/26/2017. The policy in force was issued from information provided by you and your broker, without our involvement. To be able to get the most accurate quote, please fill out the questioner to the best of your knowledge.....”

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<sup>9</sup> See NIA’s motion for summary judgment ¶¶ 52-53 and the Church’s response in opposition ¶¶ 52-52.

<sup>10</sup> Defendant NIA’s motion for summary judgment exhibits -Deanna Mallette deposition R 190 L5-24.

<sup>11</sup> The email notes that it was received on March 13, 2017 at 2:39:54 PM.- Defendant NIA’s motion for summary judgment exhibits R186-187.

<sup>12</sup> Mr. Ernest Tookes was the pastor and president of the Church up until the time of his death. Mr. Tookes passed away on May 11, 2015. Ms. Abigail Tookes is the interim Vice President and was designated the corporate designee for the Church. Defendant NIA’s motion for summary judgment exhibits- R 27L13-22-L28 L1-2.

NIA reports it never got a response; the Church does not recall receiving the email. In any event there was no acceptance of NIA's offer to procure a quote for the Church after ACCO's nonrenewal as there was no completion of the questionnaire with its instructions of the scope of insurance and property information that NIA would need to begin a search.<sup>13</sup>

Using other information sources such as Fair Plan, the Church searched for new insurance on its own. AIG quoted insurance for the Church but the Church did not accept. In the end, the Church operated without insurance coverage. On October 24, 2017, Albert White suffered from a slip and fall and was injured on a sidewalk outside the Church building. On March 28, 2018, the Church building caught fire and sustained significant damage.

On April 26, 2019, the Church filed a complaint naming ACCO, NIA and GEICO as defendants. The Church alleged claims for declaratory judgment and breach of contract against ACCO and breach of contract and negligence against NIA (Counts V and VI) and GEICO (Counts III and IV) respectively.

On June 11, 2019, ACCO filed preliminary objections. On November 19, 2019, this Court overruled in part and sustained in part. ACCO then filed a motion for judgment on pleadings which was denied on August 13, 2020. In the opinion attached to the order, this Court found that the notice of nonrenewal prepared and sent by ACCO failed to meet statutory requirements under 40 P.S. § 3403. ACCO had also filed motions to stay and sever proceedings, and these were denied.

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<sup>13</sup> Defendant NIA's motion for summary judgment exhibits- R 191-192

GEICO also filed preliminary objections. On October 30, 2020, this Court sustained in part and struck any reference to “Unfair Trade Practices” and attorney fees.<sup>14</sup>

In November and December, 2020, ACCO, NIA and GEICO filed motions for summary judgment. On March 24, 2021, at the request of the parties, the Court appointed the Honorable Mark I. Bernstein (ret.) as a judge *pro tempore* in efforts to resolve the case amicably. The Court held these summary judgment motions and preliminary objections to a set of counterclaims in abeyance. On June 30, 2021, the Court conducted a status conference wherein the parties advised that the case had not settled. These summary judgment motions are now ripe for decision.

### **Discussion**

#### **I. The claims for negligence in Count III against GEICO and V against NIA fail as a matter of law.**

In Count III and Count V of the complaint, the Church states claims for negligence against GEICO and NIA respectively. The Church alleges that GEICO and NIA failed to take action to prevent the nonrenewal/cancellation of the policy, failed to take any action to maintain the Church’s coverage, failed to forward information relative to the coverage and failed to assist the Church in finding replacement insurance.<sup>15</sup> The elements of a negligence-based cause of action are a duty, a breach of that duty, a causal relationship between the breach and the resulting injury, and actual loss.<sup>16</sup> The existence of a duty is a question of law for the court to decide.<sup>17</sup>

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<sup>14</sup> While NIA did not file preliminary objections to the “Unfair Trade Practices” reference and the request for attorney fees as GEICO, the reference to “Unfair Trade Practices” reference and the request for attorney fees are nonetheless improper.

<sup>15</sup> Complaint ¶¶ 55-56, 83-84.

<sup>16</sup> *Campo v. St. Luke's Hosp.*, 755 A.2d 20, 23-24 (Pa.Super.2000) citing *J.E.J. v. Tri-County Big Brothers/Big Sisters*, 692 A.2d 582 (Pa.Super.1997).

<sup>17</sup> *Wisniski v. Brown & Brown Ins. Co. of PA*, 906 A.2d 571,576 (2006) quoting *R.W. v. Manzek*, 585 Pa. 335, 888 A.2d 740, 746 (2005).

In negligence cases, a duty consists of one party's obligation to conform to a particular standard of care for the protection of another, a duty grounded in public policy.<sup>18</sup>

In order to ascertain whether such a duty exists, the Court's first inquiry is to determine the relationships between the parties.<sup>19</sup> Here, GEICO acted as a broker agent for Church to find and procure suitable insurance coverage.<sup>20</sup> GEICO solicited and then transmitted the Church's application for insurance and in the process used NIA's data platform to assist its search. ACCO was identified and the Church went ahead and purchased ACCO's Policy.

After ACCO's Policy for the Church went into force in April 2013, GEICO had no further contact with the Church until after the nonrenewal. GEICO was neither responsible for servicing the policy nor engaged to assist the Church to find replacement coverage. ACCO made the decision to issue the nonrenewal notice without any input from GEICO. While it is argued by that GEICO and NIA were partners in providing customer service in support of ACCO's Policy, there is no evidence of this. The Mendoza email, which the Church relies upon to show negligence confirms only that GEICO and NIA worked together to bring the ACCO policy to the Church's attention. GEICO found ACCO using NIA's network; the Church then accepted and paid for ACCO's coverage. As part of the arrangement, NIA through its CNA subsidiary took responsibility for servicing the policy but GEICO did not. Ms. Mendoza was not an employee of

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<sup>18</sup> *Id.*

<sup>19</sup> Courts are to balance several factors in determining whether a duty exists: "(1) the relationship between the parties; (2) the social utility of the actor's conduct; (3) the nature of the risk imposed and foreseeability of the harm incurred; (4) the consequences of imposing a duty upon the actor; and (5) the overall public interest in the proposed solution." See *Althaus v. Cohen*, 562 Pa. 547, 756 A.2d 1166, 1169 (2000).

<sup>20</sup> <https://www.irmi.com/term/insurance-definitions/retail-agent#:~:text=an%20insurance%20agent%20who%20acts%20as%20an%20intermediary%20between%20an%20insured%20and%20the%20marketplace.>



GEICO and the phone number identified on her email to the Church is not a GEICO number. GEICO owed no duty to the Church to review or provide advice on the notice of nonrenewal or to find replacement insurance for the Church.

Similarly, the Church was not owed a duty by NIA to maintain the Church's insurance coverage or to assist the Church in obtaining new coverage. For negligence purposes, the relationship between an insurance broker and client is at arm's length.<sup>21</sup> However, in some instances, a broker may have heightened duties toward a client if the broker has undertaken a confidential relationship.<sup>22</sup> Here, no heightened duty exists. The relationship between NIA and the Church in terms of responsibility for finding insurance coverage for the Church ended at the same time as GEICO's responsibility ended.<sup>23</sup> NIA, like GEICO, had no input in deciding whether the notice of nonrenewal should be issued and NIA received notice of the nonrenewal simultaneously with the Church.

The Church also argues that NIA had a duty to assist the Church in finding replacement insurance. Again, no such duty exists. NIA had a practice in place to offer assistance to insureds who found themselves in situations as the Church, but the outreach appears in the nature of soliciting new business. Evidence shows the Church never accepted NIA's solicitation offer to

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<sup>21</sup> *Wisniski v. Brown & Brown Ins. Co. of Pa*, 906 A.2d 571, 579 (Pa.Super. 2006).

<sup>22</sup> *Gemini Insurance Company v. Meyer Jabara Hotels, LLC*, 231 A.3d 839 (2020), citing *Yenchi v. Ameriprise Financial, Inc.* 639 Pa. 618, 161 A.3d 811 (2017)(holding a broker has enhanced fiduciary duties where a 'confidential relationship' exists between the broker and client) and *Wisniski v. Brown & Brown Ins. Co. of Pa, supra*.

<sup>23</sup> Defendant NIA's motion for summary judgment exhibits- CNA Sales and Service activity for annual policy renewal R 102-104 and CNA call center notes R107-R116.

find quotes for replacement insurance. Nor did NIA offer unsolicited advice to the Church about how much potential premiums for a new policy might cost.<sup>24</sup>

Significantly, there is no evidence that GEICO and NIA made any promises or gave the Church any assurances on finding replacement insurance and the law will not impose an obligation that was never intended.

In the end, the Church initiated its own search for replacement insurance and was successful. The Church obtained from a non-party---but the Church never bought the policy. The Church's negligence claims against both GEICO and NIA fail and the summary judgment motions of both are granted at Count II and Count V respectively.<sup>25</sup>

**II. Count IV against GEICO and Count VI against NIA for breach of Contract also fail as a matter of law.**

In Count IV and Count VI of its complaint, the Church states a claim for breach of contract against GEICO and NIA based on the Mendoza email. It is well established that three elements are necessary to prove a breach of contract: (1) the existence of a contract, including its essential terms; (2) a breach of the contract; and, (3) resultant damages.<sup>26</sup> For a contract to be enforceable, the nature and extent of the mutual obligations must be certain, and

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<sup>24</sup> See NIA's motion for summary judgment ¶¶ 52-53 and the Church's response in opposition ¶¶ 52-52.

<sup>25</sup> The Church relies upon The Restatement (Second) of Torts § 324A Liability to Third Person for Negligent Performance of Undertaking. This reliance to claim the existence of a duty belonging to GEICO and NIA is misplaced as neither, gratuitously or for consideration, agreed to render services to the Church to find replacement insurance. In any event, the Church never provided information by answering form questions to allow these defendants to exercise courtesy efforts.

<sup>26</sup> *Kelley v. Carman Corporation*, 299 A.3d 634, 652 (Pa. Super. 2020), citing *Meyer, Darragh, Buckler, Bedenek & Eck P.L.L.C. v. Law Firm of Malone Middleman P.C.*, 635 Pa. 427, 137 A.3d 1247, 1258 (2016).

the parties must have agreed on the material and necessary details of their bargain.<sup>27</sup> There must be an offer, acceptance, and consideration.”<sup>28</sup> “An offer is a manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.”<sup>29</sup> As explained by our Supreme Court:

It is basic contract law that one cannot suppose, believe, suspect, imagine or hope that an offer has been made. An offer must be intentional, definite, in its terms and communicated, otherwise the minds cannot meet. Nor can one be bound because they are contemplating making an offer, or that they would or should have or that someday they might. An offer must define its terms, specify the thing offered and be an intention of the present or the future to be bound.<sup>30</sup>

Applying the law, Mendoza’s email is not an offer that can lead to an enforceable contract. The email is vague, indefinite and lacks any essential terms. The email does not contain a promise or commitment to maintain coverage, nor does it promise to renew the insurance policy or find replacement coverage. Also, Ms. Mendoza’s does not explain what she means when she wrote that NIA wants to provide “excellent” service actually means. Her language is in the nature of puffery and is not enforceable. <sup>31</sup>

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<sup>27</sup> *Peck v. Delaware County Board of Prison Inspectors*, 572 Pa. 249, 260, 814 A.2d 185, 191 (2002) (citing *Lombardo v. Gasparini Excavating Co.*, 385 Pa. 388, 393, 123 A.2d 663, 666 (1956)).

<sup>28</sup> *Reed v. Pittsburgh Board of Public Education*, 862 A.2d 131, 134 (Pa.Cmwlth.2004).

<sup>29</sup> *Cobaugh v. Klick-Lewis, Inc.*, 385 Pa.Super. 587, 561 A.2d 1248, 1249 (1989) (citing Restatement (Second) of Contracts § 24; 8 P.L.E. Contracts § 23.).

<sup>30</sup> *Morosetti v. Louisiana Land and Exploration Company*, 522 Pa. 492, 494–95, 564 A.2d 151, 152 (1989)

<sup>31</sup> See, *Patel v. Kandola Real Estate, LP*, \_\_\_ A.3d \_\_\_, 2021 Pa. Super. 219 (2021)(Puffery is an exaggeration or overstatement used in marketing and expressed in broad, vague and commendatory language.).

Accordingly, the summary judgment motions of GEICO and NIA are granted on breach of contract at Count IV and Count VI of the Church's complaint.

**III. Conclusion**

Defendants GEICO and NIA are granted summary judgment at Counts III and IV, and Counts V and VI respectively.

DATE: January 7, 2022

**BY THE COURT**



**RAMY I. DJERSSI, J.**