

Supreme Court of Florida

No. SC17-85

SUZANNE HARVEY, etc.,
Petitioner,

vs.

GEICO GENERAL INSURANCE COMPANY,
Respondent.

September 20, 2018

QUINCE, J.

This case involves the application of the law of bad faith, which imposes a fiduciary obligation on an insurer to protect its insured from a judgment that exceeds the limits of the insured’s policy. The specific issue in this case is whether the Fourth District Court of Appeal misapplied this Court’s bad faith precedent and relied on inapplicable federal precedent when it reversed the judgment entered in favor of the insured after a jury found that the insurer acted in bad faith in failing to settle the claim. *GEICO Gen. Ins. Co. v. Harvey*, 208 So. 3d 810, 812 (Fla. 4th DCA 2017). The Fourth District concluded that “the evidence was insufficient as a matter of law to show that the insurer acted in bad faith,” and, “even if the

insurer's conduct were deficient, the insurer's actions did not cause the excess judgment." *Id.* We have jurisdiction based on the Fourth District's misapplication of our bad faith precedent as set forth in *Boston Old Colony Insurance Co. v. Gutierrez*, 386 So. 2d 783 (Fla. 1980), and, more recently, in *Berges v. Infinity Insurance Co.*, 896 So. 2d 665 (Fla. 2004).¹

For the reasons that follow, we conclude that the Fourth District erred in holding that the evidence was insufficient to show that the insurer acted in bad faith in failing to settle the insured's claim. In reaching this erroneous conclusion, the Fourth District failed to properly apply the directed verdict standard and misapplied this Court's precedent in *Boston Old Colony* and *Berges*, where we set forth the fiduciary duties of insurance companies toward their insurers. We also conclude that the Fourth District misapplied our precedent when it stated that an insurer cannot be liable for bad faith "where the *insured's own actions or inactions* . . . at least in part" caused the excess judgment. *Harvey*, 208 So. 3d at 816. Not only did the Fourth District misapply our well-established bad faith precedent but it relied, in part, on nonbinding federal cases that cannot be reconciled with our

1. We have jurisdiction. *See* art. V, § 3(b)(3), Fla. Const.; *see also Cortez v. Palace Resorts, Inc.*, 123 So. 3d 1085, 1087 (Fla. 2013) (stating that this Court's conflict jurisdiction was properly invoked by the district court's misapplication of a decision of this Court).

clear precedent. Accordingly, we quash the Fourth District's decision and remand with instructions to reinstate the final judgment.

FACTS AND PROCEDURAL HISTORY

The Underlying Accident

On August 8, 2006, Petitioner James Harvey, the insured, was involved in an automobile accident with John Potts. Potts, who was 51 years old at the time of the accident, died from injuries sustained in the crash, leaving behind a wife and three children. Harvey's vehicle was registered in both his name and his business's name, and was covered under a \$100,000 liability policy. The accident was reported to his insurer, Respondent GEICO, and the claim was assigned to Fran Korkus, a claims adjuster.

The Claims Process

Two days after the accident, on August 10, GEICO resolved the liability issue adversely to Harvey. GEICO was aware that there was significant financial exposure to Harvey because Potts had died leaving multiple survivors and Harvey's insurance coverage was only \$100,000. On August 11, Korkus sent Harvey a letter explaining that Potts' claim could exceed his policy limits and that he had the right to hire his own attorney.

Vivian Tejeda, a paralegal employed by the attorney representing Potts' estate, called Korkus on August 14 and requested a statement from Harvey. Tejeda

explained that a recorded statement from Harvey was necessary to determine the extent of his assets, whether he had any additional insurance, and if he was in the course and scope of his employment at the time of the accident. Significantly, Korkus did not immediately communicate the request to Harvey, and, according to Tejada, Korkus denied the request.

Three days later, GEICO tendered the full amount of the policy limits to the estate's attorney, Sean Domnick, along with a release and affidavit of coverage. In response, Domnick wrote a letter to Korkus, acknowledging receipt of the check and Korkus's refusal to make Harvey available for a statement. Korkus received this letter on August 31 and faxed it to Harvey, who learned for the first time that a statement had been requested.

That same day, Korkus contacted Domnick regarding the requested statement. After the conversation, Domnick faxed a letter confirming the scope of the conversation:

This confirms our conversation in which you told me that you had received our recent letter regarding this matter. *You asked me why we wanted a statement from Mr. Harvey. I told you that it was for the same reason that Ms. Tejada outlined previously as well as that referenced in my recent letter.* We want to determine what other coverage or assets may be available to cover this incident. You were unable to confirm that he would be available for a statement.

(Emphasis added.) Korkus did not respond to the letter.

The next day, September 1, Harvey called Korkus to discuss Domnick's letter. Harvey told Korkus that he planned to meet with his attorney, whom he had hired at Korkus's suggestion, to review his financial documents and provide the information requested, but advised Korkus that his attorney would not be available until September 5. Korkus documented the call in the following activity log entry:

Received call from insured. He received the fax. Said his company attorney Pat Geraghty is not available until Tuesday after the holiday weekend. *Insured does not want claimant attorney to think we are not acting fast enough and asked what we can do to let the claimant's attorney know we are working on this.* I told insured that we will discuss letter with management and get back to him. Insured requested I fax him a copy of any response before it's sent.

(Emphasis added.) Korkus's supervisor specifically instructed Korkus to relay Harvey's message to Domnick. Korkus did not.

On September 13, 2006, approximately one month after Tejada's initial request for a statement, the estate returned GEICO's check and filed a wrongful death suit against Harvey. The wrongful death action was tried before a jury that found Harvey 100% at fault and awarded the estate \$8.47 million in damages. A judgment in favor of the estate was entered against Harvey for the full amount of damages.

Harvey's Bad Faith Action

Harvey filed a bad faith claim against GEICO based on the judgment that exceeded his policy limits of \$100,000. At the trial on Harvey's bad faith claim,

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