No. _____

In the Supreme Court of the United States

RAUL A. PELAEZ as LIMITED GUARDIAN of the Person and Property of JOHN POUL PELAEZ, ward,

Petitioner,

v.

GOVERNMENT EMPLOYEES INSURANCE COMPANY,

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

APPENDIX

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APPENDIX

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Case No. 20-12053

[Filed September 20, 2021]

RAUL A. PELAEZ as Limited Guardian of the Person and Property of JOHN POUL PELAEZ, ward, and MICHAEL ADAM CONLON, JR.,

Plaintiffs,

v.

GOVERNMENT EMPLOYEES INSURANCE COMPANY,

Defendant.

Before BRANCH, GRANT, and ED CARNES, Circuit Judges,

ED CARNES, Circuit Judge:

This is a Florida bad faith case. The insurer promptly offered to settle a bodily injury claim for the $50,000 policy limits. Pointing to overbroad

language in a suggested release form, which the insurer made clear it was willing to modify, the claimant appeals from the district court's rejection of his attempt to obtain a $14,900,000 Bad faith judgement from the insurer.

I.

On April 13, 2012, Michael Conlon had just turned eighteen and was driving his mother's car to the high school prom when he turned into a median and in front of John Pelaez who was on a motorcycle. The motorcycle hit Conlon's car with such force that it spun the car 180 degrees, and the impact injured Pelaez seriously enough that he was airlifted to the hospital. GEICO had issued Conlon's mother a policy covering her car and Conlon as an additional driver. From the scene, Conlon reported to GEICO that there had been an accident damaging the car and it needed to be towed. He didn't report at that time there had been any injuries.

On April 16, which was the next business day, GEICO assigned a claims adjuster to the incident and also received information about how to contact two detectives who were investigating the crash. On April 17 GEICO interviewed Conlon, who suggested Pelaez may have been speeding. He also disclosed for the first time that Pelaez had been injured, rendered unconscious, and airlifted to hospital. On April 18 GEICO learned that the speed limit in the crash area was low (35 miles per hour), the skid marks left by the motorcycle were long (67 feet), and Conlon has not been cited for the accident. Those three facts led GEICO to preliminarily conclude that

Pelaez likely had been speeding and was contributorily negligent.

On April 23, which was ten calendar days after the crash and seven days after GEICO assigned an adjuster to work the claim, it received a letter of representation from Pelaez's attorney. The letter requested certain statutory insurance disclosures but did not make any settlement demands. The same day, GEICO received from Conlon's mother photos of the crash scene, and it received from Pelaez's fiancée a copy of the police report about the crash. The police report indicated Conlon had failed to yield the right of way, a witness had reported Pelaez didn't appear to be speeding, and Pelaez had suffered head and other major injuries.

On April 24, the very next day and only eleven days after the crash, GEICO decided to proactively tender to Pelaez its bodily injury insurance policy limit of $50,000, even though it had not received a settlement demand from Pelaez's attorney. On April 25, less than two weeks after the accident, GEICO's claims adjuster called Pelaez's attorney's office to offer the bodily injury policy limit and ask that GEICO be allowed to inspect the motorcycle so that the company could make an offer on the property damage claim for the motorcycle.

The next day, April 26, which was thirteen calendar days (nine business days) after the accident, a GEICO field adjuster hand delivered to Pelaez's attorney's office a bodily injury claim "tender package." The package contained: a cover sheet that listed the package's contents and described an

enclosed check as "representing tender of the per person policy limit under Bodily Injury Liability coverage"; a $50,000 check inscribed with the notation "[t]ender of per person BI limits"; and a proposed form release of "all claims." The package also contained two letters from GEICO's claims adjuster to Pelaez's attorney. One letter set out the insurance policy's relevant details, including the fact that there were two separate $50,000 policy limits, one for bodily injury and another for property damage.

The other letter in the tender package was also from the claims adjuster to the attorney. It discussed the release. The proposed form release in the package was titled "Release of All Claims" and purported to release Conlon and his mother (the named insured) "from any and all claims, demands, damages, actions, causes of action, or suits of any kind or nature whatsoever, on account of all injuries and damages, known and unknown, which have resulted or may in the future develop as a consequence of" the crash. The accompanying letter from he claims adjuster to Pelaez's attorney explained that "[n]ot all release forms precisely fit the facts and circumstances of every claim" and asked Pelaez's attorney to call "immediately" if he had "any questions about any aspect of the release."

That letter also invited Pelaez's attorney to edit the release by sending GEICO "any suggested changes, additions or deletions with a short explanation of the basis for" them or, if he preferred, to send GEICO an entirely new release of his choosing. The letter made this request of Pelaez's

concerning the proposed release: "If you feel that there is any aspect of the enclosed document, which does not reflect our settlement of your claim(s), please contact me immediately so that we can see that the document is revised to reflect the exact terms of our agreement."

On April 27, which was a Friday and the day after the tender package had been delivered to him, Pelaez's attorney wrote to GEICO's claims adjuster. His letter noted (again) his representation of Pelaez and asked (again) for statutorily required disclosures. It also acknowledged GEICO's desire to inspect the motorcycle. The attorney agreed to cooperate with that but stated he couldn't give "unilateral access" to the motorcycle because he was "evaluating a product liability action." His letter asked who from GEICO would be attending the inspection of the motorcycle and when they would be available, but he didn't disclose its location other than saying it was "being held locally."

One thing that the attorney's April 27 letter didn't do is to respond to the tender package or GEICO's offer of settlement. Or to the invitation for him to suggest changes to the proposed release or submit one himself. He didn't even mention GEICO's settlement offer or proposed release.

GEICO received that letter from Pelaez's attorney the following Monday, April 30. Throughout the remainder of that week, GEICO tried to find out through Pelaez's attorney where the motorcycle was so that it could complete an estimate and adjust the property damage claim. Pelaez's attorney steadfastly

avoided disclosing where the motorcycle was. But at the end of the week, on Friday, May 4, he wrote to GEICO and rejected the $50,000 tender of the full policy limits on the bodily injury claim.

In his letter rejecting the settlement offer, Pelaez's attorney told GEICO that Pelaez and his parents had decided to sue Conlon and his mother instead of settling because GEICO had tried to take advantage of the Pelaez family with an overbroad release. He noted the "GEICO approved form release" was for "all claims" instead of just "the claims that [GEICO was] paying for" because it didn't contain a "reservation for property damage," despite GEICO's sophistication and ability to draft narrower release language. He explained that the Pelaez family would've accepted the policy limits to release the bodily injury claim if GEICO had offered "the proper insurance benefits" – a $50,000 check and a bodily injury only release – but that the family was rejecting the tender offer because GEICO was "requiring them to execute a release of all claims in exchange for payment of less than all of the insurance benefits owed."

In his letter the attorney relayed the family's "scorn, opprobrium and contempt" at what they suspected was "a widespread practice of GEICO [trying] to increase profits by compromising the rights of consumers." Implicitly acknowledging GEICO's invitation for the attorney to revise the form release or send an alternative one of his own, he noted the family would not "[s]ettl[e] on a more limited release." He explained that agreeing to settle using a proper release would "allow GEICO to prey

on the next accident victim." So instead of settling for the full bodily injury policy limit the Pelaez family had decided to sue Conlon and his mother and "take every action necessary to…bring to light the way the GEICO unfairly does business."

GEICO received the rejection letter following Monday, May 7, and on May 8 told Conlon's mother its efforts to settle with Pelaez had been unsuccessful. On May 9[1] GEICO responded to the rejection letter, expressing confusion about why the Pelaez family and their attorney thought its tender of the $50,000 bodily injury policy limit also included the property damage claim when the company had made "multiple attempts" by phone and in writing "to ascertain the location" of Pelaez's motorcycle so that it could estimate the damage and adjust that claim but had never "received a call back with the motorcycle's location" or even any acknowledgments of its "communication attempts." GEICO explained that its practice was to keep bodily injury clams and property damage claims separate and that its "policy contract also outlines this." GEICO reiterated that the release was "a proposed release" and again invited Pelaez's attorney to send "additional language or changes" for the release. And GEICO

[1] Also on May 9, Pelaez's attorney faxed GEICO an offer to settle the bodily injury claim against Conlon's mother for the $50,000 policy limit but reserving all claims against Conlon or any "other potentially responsible" party. Under the terms of that offer, it expired ten business days later. During those ten business days, GEICO had tried unsuccessfully to get Pelaez's attorney to explain why his offer didn't include releasing Conlon. (Because Conlon was an additional insured under the policy, GEICO owed him the same duty it owed his mother.)

reminded Pelaez's attorney that it was still "awaiting the location" of the motorcycle so it could "complete an estimate and resolve the Property Damage claim."

Five months after the Pelaez family[2] sued Conlon and his mother for negligence in Florida state court, and GEICO hired an attorney to defend them. A month after that, Pelaez and GEICO agreed to settle the property damage claim for $7,283.06.[3] Three-and-a-half years later, while negligence litigation was ongoing, GEICO declined to enter a stipulated judgement with the Pelaez family, Conlon, and Conlon's mother. The record does not reveal why it declined but the reason is obvious. A stipulated judgment involving those parties would be a way to obtain an excess judgement that could be used in a bad faith lawsuit against GEICO. GEICO also objected to Conlon and his mother entering stipulated judgment with the Pelaez family and warned the law firm representing Conlon and his mother that if they "enter[ed] into such an

[2] Because John Pelaez is a ward, the lawsuit was filed by John's mother Patricia and by his father Raul. Patricia and Raul each sued Conlon and his mother, and Raul also sued Conlon and his mother as limited guardian of john's person and property.

[3] In a letter dated May 14, 2021, Pelaez's attorney told GEICO that the motorcycle inspection would take place on June 25, and GEICO replied on May 25 to ask if the inspection could happen any earlier. The record doesn't reflect when the actual inspection occurred, but Pelaez's attorney told GEICO on October 25, 2021 that Pelaez agreed to accept $7,283.06 to settle the property damage claim. The claim was ultimately settled for that amount in May 2013.

agreement against Geico's wishes, Geico reserve[d] the right to raise any policy defenses available to it."

Nearly two years after that, on the fifth day of the negligence trial involving the collision, the court entered a final judgment that Pelaez and Conlon had consented to. The judgment awarded Pelaez $14,900,000 against Conlon but stipulated that Pelaez "shall not" record the judgment or try to collect it from Conlon; instead, Pelaez would "seek satisfaction… solely from insurance proceeds, including from claims of 'bad faith' or extra-contractual damages." GEICO was not represented at the trial and was not a party to the stipulated judgment, but Pelaez's attorneys testified that GEICO had agreed to let Conlon enter the stipulated judgement and that Pelaez wouldn't have signed the judgment if GEICO hadn't agreed.[4]

Pelaez and Conlon then brought common law bad faith claims against GEICO in Florida state court, and GEICO removed the lawsuit to federal court. Both sides moved for summary judgment. The district court granted it to GEICO on two grounds, one of which was that no reasonable jury could conclude GEICO has acted in bad faith.[5] This is Pelaez's appeal.

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[4] In a separate agreement on January 4, 2018, Pelaez also settled with Conlon's mother for the GEICO policy's $50,000 bodily injury claim limit. The same amount that GEICO had offered nearly six years earlier.

[5] For its other ground, relying on one of our unpublished opinions, the district court held that the stipulated judgment did not qualify as an excess judgment, which is generally required for a bad faith claim. See Cawthorn v. Auto-Owners

II.

"We review the district court's grant of summary judgment de novo, viewing all facts and drawing all inferences in the light most favorable to" the nonmoving party. Eres v. Progressive Am. Ins. Co., 998 F.3d 1273, 1278 n.3 (11th Cir. 2021). "In diversity cases, we ae required to apply the substantive law of the forum state; here, Florida." Mesa v. Clarendon Nat'l Ins. Co., 799 F.3d 1353, 1358 (11th Cir. 2015); see also GEICO v. Grounds, 332 So. 2d 13, 14-15 (FLA. 1976) (noting that Florida law applies to bas faith insurance actions brought in Florida).

"It has long been the law of [Florida] that an insurer owes a duty of good faith to its insured." Berges v. Infinity Ins. Co., 896 So. 2d 665, 672 (Fla. 2004). The duty has been well-defined for more than 40 years, since the Florida Supreme Court described it in Boston Old Colony Ins. Co. v. Gutierrrez, 386 So. 2d 783 (Fla. 1980):

> An insurer, in handling the defense of claims against its insured, has a duty to use the same degree of care and diligence as a person of ordinary care and prudence should exercise in the management of his own business. For

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Ins. Co., 791 F. App'x 60 (11th Cir. 2019). Because we agree that, as a matter of law, GEICO did not act in bad faith, we have no occasion to address that alternative basis for granting summary judgment
to GEICO.

> when the insured has surrendered to the insurer all control over the handling of the claim, including all decisions with regard to litigation and settlement, then the insurer must assume a duty to exercise such control and make such decisions in good faith and with due regard for the interests of the insured. This good faith duty obligates the insurer to advise the insured of settlement opportunities, to advise as to then probable outcome of the litigation, to warn of then possibility of an excess judgment, and to advise the insured of any steps he might take to avoid same. The insurer must investigate the facts, give fair consideration to a settlement offer that is not unreasonable under the facts, and settle, if possible, where a reasonably prudent person, faced with the prospect of paying the total recover, would do so.

Id. At 785; see also, e.g., Harvey v. GEICO Gen Ins. Co., 259 So. 3d 1,6-7 (Fla. 2018) (quoting Boston Old Colony to define the duty); Kropilak v. 21st Century Ins. Co., 806 F.3d 1062, 1067-68 (11th Cir. 2015) (same). "Breach of this duty may give rise to a cause of action for bad faith against the insurer." Perera v. U.S. Fid. & Guar. Co., 35 So. 3d 893, 898 (Fla. 2010). Florida's bad faith law is "designed to protect insureds who have paid their premiums and who have fulfilled their contractual obligations by cooperating fully with the insurer in the resolution of claims." Berges, 896 So. 2d at 682.

"Where liability is clear, and injuries so serious that a judgment in excess of policy limits is likely, an insurer has an affirmative duty to initiate settlement negotiations." Harvey, 259 So. 3d at 7 (quotation marks omitted). "in such a case, where the financial exposure to the insured is a ticking financial time bomb and suit can be filed at any time, any delay in making an offer… even where there was no assurance that the claim could be settled could be viewed by a fact finder as evidence of bad faith." Id. (cleaned up).

"In Florida, the question of whether an insurer has acted in bad faith in handling claims against the insured is determined under the 'totality of the circumstances' standard." Berges, 896 So. 2d at 680. Indeed "the critical inquiry" in a bad faith action is not whether an insurer met the obligations set out in Boston Old Colony but instead "whether the insurer diligently, and with the same haste and precision as if it were in the insured's shoes, worked on the insured's behalf to avoid an excess judgment." Harvey, 259 So. 3d. at 7 (noting that the Boston Old Colony obligations "are not a mere checklist").

The "focus in a bad faith case is not on the actions of the claimant but rather on those of the insurer in fulfilling its obligations to the insured." Berges, 896 So. 2d at 677. For that reason, a claimant's "actions can[not] let the insurer off the hook when the evidence clearly establishes that the insurer acted in bad faith in handling the insured's claim." See Harvey, 259 So. 3d at 11 (emphasis added) (rejecting the "conclusion that where the [claimant]'s own actions[] even in part cause the judgment, the

insurer cannot be found liable for bad faith") (quotation marks omitted); id. (noting that an insurer can[not] escape liability merely because the [claimant]'s actions could have contributed to the excess judgment") (emphasis added and footnote omitted); id. at 12 (rejecting the idea that, "regardless of what evidence may be presented in support of the [claimant]'s bad faith claim, the "insurer could be absolved of bad faith" if it "can put forth any evidence that the [claimant] acted imperfectly during the claims process," which "would essentially create a contributory negligence defense for insurers" that is "inconsistent with [Florida's] well-established bad faith jurisprudence").[6]

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[6] In Harvey the Florida Supreme Court discussed the principle that the insurer cannot be absolved of bad faith based on the actions of the insured because it was the insured's actions the District Court of Appeal had focused on in the ruling for the insurer. 259 So. 3d at 4, 11-12. But the principle is equally applicable to the actions of a third-party claimant. We know that it is because the court in Harvey was building off of this foundational principle from Berges, which involved the claimant's actions (in setting an allegedly unreasonable deadline) and which the Harvey opinion was quoted four times: "[T]he focus in a bad faith case is not on the actions of the claimant but rather on those of the insurer in fulfilling its obligations to the insured." Harvey, 259 So. 3d at 7, 10, 11, 12 (quoting Berges, 896 So. 2d at 677). All of which is to say that the claimant and the insured are interchangeable for purposes of the principle that the focus in a Florida bad faith action is on the insurer, not on the insured or claimant.

For better clarity and flow, we have used brackets in the quotations from Harvey to replace the word "insured" with the word "claimant" because Pelaez is a third-party claimant.

"[N]egligence is not the standard" for evaluating bad faith actions, Harvey, 259 o. 3d at 9, but "[b]ecause the duty of good faith involves diligence and care in the investigation and evaluation of the claim against the insured, negligence is relevant to the question of good faith," Boston Old Colony, 386 So. 2d at 785. And "[a]lthough bad faith is ordinarily a question for the jury, both this Court and Florida courts have granted summary judgement where there is no sufficient evidence from which any reasonable jury could have concluded that there was bad faith on the part of the insurer." Eres, 998 F.3d at 1278 (cleaned up); see also State Farm Fire & Cas. Co. v. Zebrowski, 706 So. 2d 275, 277 (Fla. 1997) (concluding, in a statutory third-party bad faith action, that summary judgment was appropriate). "While an overbroad release can create a jury question about bad faith, it doesn't necessarily do so." Eres, 998 F.3d at 1279.

III.

Pelaez contends the district court erred in granting summary judgment to GEICO because there is "at least a fact question" about whether GEICO acted in bad faith. He says that a fact question exists because GEICO tendered its policy limits along with "an overbroad release that carried a known danger of rejection," and a "settlement offer cannot establish a lack of bad faith as a matter of law where it creates a known risk of not actually settling the claim and protecting the insured." Pelaez argues that by requiring its adjusters to send "all claims" releases with tender checks for only bodily injury claims GEICO is putting "its own interest ahead of

its insureds," which is a "breach of the duty of good faith under Florida law."

GEICO responds that it "complied with its duties under Florida law and diligently worked on behalf of" its insured by quickly investigating the crash and offering its bodily injury policy limit as soon as it discovered Pelaez was seriously injured and not at fault, which occurred less than two weeks after the crash. GEICO argues that the release it included in its proactive, unsolicited settlement offer included language that made it unmistakably clear was not being required, only proposed. GEICO adds that it didn't "fail to comply with a demand condition regarding a specific type of release" before rejecting the offer. Not only did GEICO never "require[] an overbroad release to settle" but it offered to accept changes to the release or even let Pelaez's attorney draft an entirely new one himself.

The district court agreed with GEICO that the overbroad release did not create a fact question under the totality of the circumstances of this case, and we agree with the well-reasoned holding of the district court. While we have recognized that an overbroad release can create a jury question about bad faith, we've also recognized that it "doesn't necessarily do so." Eres, 998 F.3d at 1279. That's true because "the question of whether an insurer acted in bad faith in handling claims against the insured is determined under the 'totality of the circumstances' standard," Berges, 896 So. 2d at 680, and the scope of a release is one of the circumstances courts consider, but only one.

In Eres when we rejected an argument that an overbroad release created a jury question on bad faith, we explained that the argument's "singular focus on the allegedly overbroad release language ignore[d] the 'totality of the circumstances' - both what came before it and, perhaps even more importantly, what came after." 998 F.3d at 1279. The same is true here. As the district court convincingly explained, what came before and after GEICO sent Pelaez's attorney the overbroad release demonstrates that the company fulfilled its duty to act in good faith.

What came before GEICO sent the overbroad release is that it assigned an adjuster to the claim as soon as possible (the very next business day after the crash), and the adjuster immediately began investigating. His initial investigation didn't reveal the extent of Pelaez's injuries, but did suggest, because of the low speed limit, the long skid marks, and the fact that no citations were issued to Conlon,that Pelaez may have contributed to causing the crash. Once GEICO go the police report that described Pelaez's serious injuries and dispelled the possibility that he had been contributorily negligent, GEICO decided right away to tender Pelaez the entire $50,000 bodily injury limit. Its claims adjuster called Pelaez's attorney the very next day to offer that full amount, and the day after that a $50,000 check for the full bodily injury policy limits was hand delivered to the attorney. The claims adjuster also asked for the company to be allowed to inspect the motorcycle so that it could settle the outstanding property damage claim.

On behalf of the Pelaez family, their attorney rejected the tendered $50,000 check to settle the bodily injury claim, a check that was inscribed "Tender of per person BI limits." And the check had come in a settlement package that included a cover sheet describing it as "representing tender of the per person policy limit under bodily Injury Liability coverage." The attorney claimed that he and the family believed GEICO had tried to take advantage of them by not excluding the motorcycle property damage claim from the proposed release that was in the settlement package. He took that position despite the fact that the letter and proposed release language were addressed not to pro se parties but to an attorney with more than 20 years of legal experience.

And despite the fact that the settlement package emphasized that the language of the release was simply proposed, not insisted on, and told Pelaez's attorney to feel free to send the company "any suggested changes, additions or deletions" he wanted or, if he preferred, to draft an entirely new one himself.

After receiving the attorney's rejection of its tender of the full bodily injury policy amount, purportedly because of the overbroad language of the release, GEICO immediately responded that the proposed language was only a starting point and once again invited Pelaez's attorney to send "additional language or changes" for the release. He never did so. Nor did he ever make any kind of counter-offer to settle the claims against Conlon before filing the negligence lawsuit. By contrast,

GEICO earnestly attempted to settle all of the claims.

What the before, during and after facts show here is that, as the district court aptly concluded, GEICO "did not act in bad faith in sending the unsolicited proposed release with the tender of the $50,000 BI policy limit under circumstances of this case." In Eres the insurer sent the claimant an overbroad release, which she contended constituted bad faith. See 998 F.3d at 1279. In rejecting that contention, we stated that "given [the insurer]'s offer to 'strike' the offending language, it's not clear to us that there would be a jury question regarding bad faith even if [the insurer]'s release contained [problematic] language." Id. We explained: "[W]hen federal courts have found a fact issue regarding bad faith based on overbroad release language, they have relied on the insurer's refusal to remove the release's" problematic language. Id. (alteration adopted and quotation marks omitted). In this case, GEICO not only offered to change any problematic language but to let Pelaez's attorney re-draft the release if he preferred. It would have been a simple thing for the attorney to do, but it is also the last thing he wanted to do.

Pelaez's attorney declined the offer to cure any problem with the release because he had higher goals to pursue. As his rejection letter explained, the attorney suspected the overbroad release was part of a "wide spread practice" by GEICO to "increase profits by compromising the rights of consumers," and he worried about "[h]ow many tragically injured people have signed away their rights…by signing the release of all claims when property damages were

still due." He said that the Pelaez family had instructed him "to proceed to suit" instead of "[s]ettling on a more limited release" because the "fact that, with [his] counsel, they kn[e]w better than to sign" the overbroad release didn't solve the problem" of GEICO "prey[ing] on the next accident victim who may not have a lawyer at all when signing away all claims." (Of course, in this case GEICO's settlement package was not addresses to pro se claimants but to the experienced attorney it knew was representing the claimants.)

In later deposition testimony, Pelaez's attorney described what he saw as GEICO's "taking advantage of people" using overbroad releases as "just wrong" and said his decision not to tell GEICO what he wanted in the release came from the Pelaez's family's desire to "effectuate change, do the right thing." "And the right thing was not taking $50,000 and turning their backs on folks [who] might otherwise become prey for the insurance company" – it was to "help" people by "prevent[ing] this type of bold improper predatory insurance practice [from] continu[ing]." Choosing to "take $50,000" and either sign an "unfair, overbroad release" or explain to GEICO what was wrong with the release "would not have fulfilled [his] fiduciary obligations as an advocate and as a human being" because in his and the Pelaez family's opinion, doing the right thing "can't be just about the money ever." He and his clients kept the insurance claims from settling out of a noble desire to further the wellbeing of humankind, not merely because a $14,900,000 judgment is bigger than a $50,000 settlement. To hear the attorney tell it, the prospect of fourteen million, eight hundred

and fifty thousand additional dollars had nothing to do with it. The wellbeing of humankind was the reason he and his clients rejected GEICO's efforts to settle. Okay, but that does not establish that GEICO acted in bad faith.

All of the facts we have recounted are part of the totality of the circumstances that go into the decision of whether GEICO did act in bad faith when handling Pelaez's claim against Conlon and his mother. We heed, as we must, the Florida Supreme Court's recent reminder that the "focus in a bad faith case is not on the actions of the claimant but rather on those of the insurer fulfilling its obligations to the insured." Harvey, 259 So. 3d at 11 (quoting Burges, 896 So. 2d at 677). But we don't understand that principle to mean the actions of a claimant – or a claimant's attorney – are irrelevant. In a bad faith action there's a difference between focusing on a claimant's actions, which would be improper, and factoring a claimant's actions into the totality of circumstances analysis, which is not improper.

The Florida Supreme Court implicitly recognized this kind of difference in Harvey when it held that an insurer should not be allowed to "escape liability merely because the [claimant]'s actions could have contributed" to a failure to settle. See id. (emphasis added). And it made clear that a [claimant]'s actions can[not] let the insurer off the hook when the evidence clearly establishes that the insurer acted in bad faith in handling the insured's claim. See id. (emphasis added). But we aren't absolving GEICO of liability by faulting Pelaez and his attorney's conduct or by questioning their motives. And we are taking it

as a given that they've "identified some ways" GEICO "might improve its claims-processing practice." Eres, 998 F.3d at 1281.

We aren't allowing GEICO to "escape liability merely because" Pelaez and his attorney's actions "could have contributed" to the failure to settle. Harvey, 259 So. 3d at 11. As they clearly did. Instead, we have discussed Pelaez and has attorney's actions because they show how, in the totality of these circumstances, GEICO did fulfill its good faith duty to Conlon and his mother. They show how the failure to settle the lawsuit against the insureds did not result from bad faith of the insurer.

Because no reasonable jury could conclude that GEICO acted in bad faith before, during, or after sending the proposed release to Pelaez, summary judgment was appropriately entered for it. See, e.g., Eres, 998 F.3d at 1278; Zebrowski, 706 So. 2d at 277.

AFFIRMED

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No.: 8:19-cv-910

[Filed May 15, 2020]

RAUL A. PELAEZ as Limited Guardian of the Person and Property of JOHN POUL PELAEZ, ward, and MICHAEL ADAM CONLON, JR.,	)
Plaintiffs,	)
v.	)
GOVERNMENT EMPLOYEES INSURANCE COMPANY,	)
Defendant.	)

SUMMARY JUDGMENT ORDER

This cause is before the Court upon the parties' motions for summary judgment (Dkts. 42,43) in this insurance bad faith action. The court has reviewed the filings, record evidence, and relevant law. The Court concluded that Defendant Government

Employees Insurance Company ("GEICO") is entitled to summary judgment for two reasons. First, the record is undisputed that Plaintiffs did not obtain an excess judgment as defined under Florida law. Second, even if the threshold matter of obtaining an excess judgment were met, the facts reflect that GEICO did not act in bad faith. Accordingly, final judgment will be entered in GEICO's favor.

FACTS

The material facts are not in dispute. The Court views the facts in the light most favorable to Plaintiffs, the non-movants. *Mesa v. Clarendon Nat. Ins. Co.,* 799 F.3d 1353, 1358 (11th Cir. 2015). Plaintiffs, Paul Pelaez ("Mr. Pelaez") as Limited Guardian of the Person and Property of John Poul Pelaez ward ("Pelaez") (collectively "the Pelaezes") and Michael Adam Conlon, Jr., ("Conlon") (collectively "Plaintiffs") filed the instant common law insurance bad faith action against GEICO in the Circuit Court of the Thirteenth Judicial Circuit, in and for Hillsborough County, Florida. GEICO then removed the action to this Court based on diversity jurisdiction.

The action arises from a motor vehicle accident that occurred on Friday, April 13, 2012, in Hillsborough County, Florida ("the accident"). Conlon, who was operating a Hyundai Accent owned by his mother, Vivian Cubero ("Cubero"), was making a left hand turn and crashed into a motorcycle that Pelaez was driving. At the time of the accident, GEICO insured Cubero under an

automobile liability policy, number 4218462077, which provided bodily injury ("BI") coverage limits in the amount of $50,000 per person/$100,000 per occurrence and also provided separate property damage ("PD") coverage limits of $50,000 ("the policy"). Conlon was covered as an additional driver under the policy.

Conlon phoned GEICO from the scene of the accident and advised that his mother's vehicle was damaged and needed to be towed. At that time, Conlon did not report that there were any injuries. GEICO concluded that the accident was covered under the policy and made phone calls to both Conlon and Cubero in order to gather more information about the accident. GEICO informed Cubero that it was investigating .liability for the accident. GEICO was unable to reach Conlon and left him a voicemail.

On April 16, 2012, the claim was assigned to GEICO claims examiner Robert Sundean ("Sundean"). The same day, GEICO received a call from Pelaez's fiancé, Brianna Niemann ("Niemann"), who advised that she was unaware if Pelaez had an insurance policy for the motorcycle. Niemann also stated that she was working with two detectives who were investigating the accident and she provided their contact information.

On April 17, 2012, Sundean phoned Conlon and left him a message requesting a recorded interview. Sundean then called Pelaez and left him a message requesting a return call. That same day, Sundean phoned one of the detectives Niemann referenced

(detective Sarff) and left him a message informing him that he wanted to discuss the investigation. Later that same day, GEICO conducted Conlon's recorded interview. During this interview, Conlon suggested Pelaez may have been speeding on his motorcycle when he struck Conlon's vehicle. Conlon also stated the Pelaez lost consciousness and was air lifted to the hospital with unknown injuries.

The next day, April 18, 2012, Sundean sent letters to Cubero and Pelaez advising the he was the adjuster assigned to handle the claim. Sundean also sent a separate letter to Pelaez enclosing a HIPAA compliant authorization form, as well as an authorization to obtain leave and salary information. That same day, Sundean continued his investigation of the accident and learned that the posted speed limit at the scene of the accident was thirty-five (35) miles per hour. Sundean concluded that, based on the reported length of the skid marks from the motorcycle being sixty-seven (67) feet, the relatively low speed limit, the apparent high impact of the accident, and the fact that Conlon advised he was not issued a citation for the accident, Pelaez was likely speeding and that there may be some comparative negligence for the accident. Sundean left another message for detective Sarff. Sundean also spoke with Cubero who advised that she would send photos from the scene of the accident with the skid marks.

On April 23, 2012, GEICO received a letter of representation ("LOR") from attorney Jeffrey "Jack" Gordon, Esq., at Maney & Gordon, P.A. ("Gordon"), dated April 20, 2012, advising that he represented Pelaez in connection with the accident. The LOR

requested GEICO send him statutory insurance disclosures, pursuant to Florida Statute § 627.4137. Also on April 23, 2012, Cubero emailed Sundean photos from the scene of the accident. Later on that same day, Niemann faxed Sundean a copy of the police report. The police report indicated that Conlon had failed to yield the right of way and that one of the witnesses to the accident stated that it did not appear as though Pelaez was driving the motorcycle at a high rate of speed, contradicting the information Conlon reported to GEICO. The police report also indicated that Pelaez sustained major injuries including head injuries and confirmed that he had been airlifted to St. Joseph's Hospital from the scene of the accident.

The next day, April 24, 2012, GEICO decided to proactively tender the full BI policy limits of $50,000 in an attempt to settle Pelaez's BI claim.

On April 25, 2012, Sundean phoned Gordon and left a message with his assistant, Heather Austin. Sundean told Austin that GEICO had made the decision to tender the $50,000 BI limits and that a GEICO field adjuster would deliver the check for the BI limits. Sundean also stated that GEICO needed to know the location of Pelaez's motorcycle so that GEICO could adjust Pelaez's PD claim. Upon receiving this message, Austin sent Gordon an email relaying this information, i.e., that GEICO would like to tender the $50,000 BI limits and that GEICO wanted to know the location of the motorcycle to get an estimate of the damage in order to settle the PD claim.

On April 26, 2012, a GEICO field adjuster, Lori Cassidy ("Cassidy"), hand-delivered the BI tender package to Gordon's office. The package had a cover letter that provided an index of the documents that were included in the package and requested that Gordon confirm receipt of the package contents: GEICO's check number N602054895, in the amount of $50,000 (Fifty Thousand dollars), representing tender of the per person policy limit under Bodily Injury Liability coverage; GEICO's proposed release; a coverage limits disclosure letter; and a letter from Sundean. The check specifically stated that it was in payment of "[t]ender of the per person BI limits." The release contained the following language:

> FOR AND IN CONSIDERATION of Fifty Thousand Dollars and 00/100 ($50,000), the receipt and sufficiency of which is acknowledged, the undersigned, John Pelaez, as A Single Individual, hereby releases and forever discharges Vivian Cuberoconlon, Michael Conlon, and all officers, directors, agents or employees of the foregoing, their heirs, executors, administrators, agents, or assigns, none of whom admit any liability to the undersigned, from any and all claims, demands, actions causes of actions, or suits of any kind or nature whatsoever, on account of all injuries and damages, known and unknown, which have resulted or may in the future develop as a consequence of a motor vehicle accident that occurred at the Countryway Bldv and Oaksbury in Tampa, Florida, on or about the 13th of April, 2012.

(Dkt. 42 at Ex. K).

The limits disclosure letter stated that the policy provided BI coverage in the amount of $50,000 per person and also provided $50,000 in separate PD coverage. Sundean's letter stated, in relevant part, that: "[n]ot all release forms precisely fit the facts and circumstances of every claim. Should you have any questions about any aspect of the release, please call me immediately. You may also send me any suggested changes, or if you have a release that you desire to use please forward it to me." (Dkt. 42 at Ex. K).

Also on April 26, 2012, GEICO sent Conlon a letter, advising him of the available coverage limits under the policy, the possibility that the claim could exceed his available coverage limits, that he would be liable for any judgment against him in excess of the policy limits, his right to obtain personal counsel, and his right to contribute towards settlement of the claim.

On April 30, 2012, GEICO received a letter from Gordon dated April 27, 2012. The letter requested that GEICO send him statutory insurance disclosures and stated that Gordon would allow GEICO to inspect the motorcycle.

On May 1, 2012, GEICO noted that it had tried numerous times to contact Gordon's office to try and ascertain the location of the motorcycle to adjust the PD claim. On May 2, 2012, Sundean wrote a letter to Gordon that included a notarized affidavit of coverage as well as a certified copy of the policy. The

letter noted, in relevant part, that GEICO's auto damage adjuster "tried multiple times" to get in touch with Gordon's office to inspect the motorcycle to complete an estimate.

On May 4, 2012, Sundean phoned Gordon again and left him another message requesting a call back to obtain the location of the motorcycle for the PD claim. That same day, Gordon prepared a letter to GEICO rejecting its proactive tender of the $50,000 BI policy limits to settle Pelaez's injury claim. Gordon's letter accused GEICO of taking advantage of his clients. Specifically, Gordon stated in pertinent part that the proposed release was for "all claims" with no reservation for property damage and that "the only logical conclusion is that GEICO purposefully allows for its adjusters to use a release of 'all claims' form, even where only part of the coverage GEICO owes is paid." Gordon's letter also stated: "GEICO has attempted to take advantage of [his] clients by requiring them to execute a release of *all* claims in exchange for payment of *less than all* of the insurance benefits owed. It is for this reason that my clients reject the 'proposed' settlement offer." The letter stated that Gordon's clients instructed him to "proceed to suit and take every action necessary to hold GEICO's insureds fully liable and to bring to light the way GEICO unfairly does business. (Dkt. 42 at Ex. O) (emphasis in original).

On May 8, 2012, Sundean wrote Cubero a letter explaining that GEICO's efforts to settle Pelaez's claim were unsuccessful and, consequently, she may be served with a lawsuit.

On May 9, 2012, Sundean sent Gordon a letter acknowledging Pelaez's rejection of the BI tender and stating in relevant part:

> It is unfortunate that your client, as well as yourself believe the proposed Bodily Injury release also includes Property Damage. Not only is it our practice to keep the Bodily Injury claim separate from the Property Damage claim in each and every claim, but our policy contract also outlines this. A certified copy of the policy has been provided to your office. I am confused as to why both your client and yourself, as an attorney, would assume our tender offer of our insurer's $50,000.00 Bodily Injury limits also includes the Property Damage when GEICO has made multiple attempts by phone and by written correspondence to ascertain the location of your client's motorcycle to complete an estimate. We have yet to have received a call back with the motorcycle's location, let alone receive acknowledgment of our communication attempts.
>
> As you should know, GEICO's release is a proposed release. Should you have and additional language or changes, please present the proposed changes for our review. We will still be awaiting the location of your client's motorcycle to complete an estimate and resolve the Property Damage claim.

(Dkt. 42 at Ex. Q).

Subsequently, Gordon's clients filed suit and GEICO assigned the lawsuit to the Law Office of Ellen Ehrenpreis and, thereafter, to T. R. Unice at Unice, Salzman, P.A. ("Unice") to defend Conlon and Cubero. During the litigation, GEICO was able to inspect the motorcycle and the PD claim was settled.

On December 14, 2017, before the case was submitted to the jury, The Pelaezes entered into a stipulated settlement agreement with Conlon and Cubero. Pursuant to the agreement: Pelaez settled his claim against only Cubero in exchange for a release of the $50,000 BI limits, Pelaez and Conlon agreed that a judgment would be entered against Conlon in the amount of $14,900,000, but that Conlon would not be personally liable for the judgment, nor would the Judgment be collectible against is personal assets or against his bankruptcy estate, and that the only way to seek satisfaction of the Judgment would be from insurance proceeds.

Pursuant to the stipulated settlement agreement, a stipulated Final Judgement was entered against Conlon. At the time this stipulated agreement was entered into, GEICO was defending Colon and Cubero, however, GEICO was not a party to the stipulated agreement or the Final Judgment, and GEICO did not agree to be bound by the stipulated Final Judgment. On January 4, 2018, Pelaez signed a full release of Cubero in exchange for the $50,000 BI policy limits. This bad faith action subsequently ensued against GEICO.

SUMMARY JUDGMENT STANDARD

Motions for summary judgment should be granted only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Celotex Corp. V. Catrett,* 477 U.S. 317, 322 (1986) (internal quotation marks omitted): Fed R. Civ. P. 56(c). The existence of some factual dispute between the litigants will not defeat an otherwise properly supported summary judgement motion; "the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 2148 (1986). The substantive law applicable to the claimed causes of action will identify which facts are material. *Id.* Throughout this analysis, the court must examine the evidence in the light most favorable to the nonmovant and draw all justifiable inferences in its favor. *Id.* at 255.

Once a party properly makes a summary judgment motion by demonstrating the absence of a genuine issue of material fact, whether or not accompanied by affidavits, the nonmoving party must go beyond the pleadings through the use of affidavits, depositions, answers to interrogatories and admissions on file, and designate specific facts showing that there is a genuine issue for trial. *Celotex,* 477 U.S. at 324. The evidence must be significantly probative to support the claims. *Anderson*, 477 U.S. at 248-49.

This Court may not decide a genuinely factual dispute at the summary judgment stage. *Fernandez v. Bankers Nat'l Life Ins. Co.,* 906 F.2d 559, 564 (11th Cir. 1990). "[I]f factual issues are present, the Court must deny the motion and proceed to trial." *Warrior Tombighee Transport Co. v. M/V Nan Fung,* 695 F.2d 1294, 1296 (11th Cir. 1983). A dispute about a material fact is genuine and summary judgment is inappropriate if the evidence is such that a reasonable jury could return a verdict for the novmoving party. *Anderson*, 477 U.S. at 248; *Hoffman v. Allied Corp.,* 912 F.2d 1379, 1383, (11th Cir. 1990). However, there must exist a conflict in substantial evidence to pose a jury question. *Verbraeken v. Westinghouse Elec. Corp.,* 881 F.2d 1041, 1041, 1045 (11th Cir. 1989).

DISCUSSION

I. Florida Law on Bad Faith

Under Florida law, an insurer "has a duty to use the same degree of care and diligence as a person of ordinary care and prudence should exercise in the management of his own business." *Harvey v. GEICO Gen. Ins. Co.,* 259 So. 3d 1, 8 (Fl. 2018) (quoting *Boston Old Colony Ins. Co. v. Gutierrez,* 386 So. 2d 783, 785 (Fla. 1980)). This means an insurer must act "diligently, and with the same haste and precision as if it were in the insured's shoes, work[ing] on the insured's behalf to avoid excess judgment." *Id.* at 7. Failure to satisfy this duty means an insurer has acted in bad faith.

In considering whether an insurer satisfied its duty, the Florida Supreme Court listed several specific requirements an insurer must fulfill: (1) insurers must advise insureds of settlement opportunities; (2) insurers must advise insureds on the probable outcome of litigation; (3) insurers must warn insureds of the possibility of an excess judgment; and (4) insurers must advise insureds of steps they might take to avoid an excess judgment. *Boston Old Colony,* 386 So. 2d at 785. And "[w]here liability is clear, and injuries so serious that a judgment in excess of the policy limits is likely, an insurer has an affirmative duty to initiate settlement negotiations." *Harvey,* 259 So. 3d at 7 (quoting *Powell v. Prudential Prop. & Cas. Ins. Co.,* 584, So. 2d 12, 14 (Fla. Dist. Ct. App. 1991)).

In determining whether an insurer acted in bad faith, the "totality of the circumstances" are considered. *Berges v. Infinity Ins. Co.,* 896 So. 2d 665, 680 (Fla. 2004). The issue, therefore, "is whether, under all of the circumstances, the insurer could and should have settled the claim within policy limits had it acted fairly and honestly toward its insured and with due regard for his interest." *Id.* at 679. Or, in other words, "the gravamen of what constitutes bad faith is whether under all the circumstances an insurer failed to settle a claim against an insured when it had a reasonable opportunity to do so." *Contreras v. U.S. Sec. Ins. Co.,* 927 So. 2d 16, 20 (Fla. Dist. Ct. App. 2006).

While the issue of whether an insurer acted in bad faith is generally a question for a jury, courts can, in certain circumstances, conclude as a matter of

law that an insurer is not liable for bad faith. *Id.* at 680; *see also Cadle v. GEICO Gen. Ins. Co.,* 838 F.3d 1113, 1123 (11th Cir. 2016) ("Where a judge concludes as a matter of law a plaintiff has not established her bad-faith case against an insurer, he must remove the case from the jury for decision."); *Mesa v. Clarendon Nat. Ins. Co.,* 799 F.3d 1353, 1359 (11th Cir. 2015) (affirming district court's order granting summary judgement for insurer because there was insufficient evidence for a reasonable jury to find that [the insured] acted in bad faith.").

When considering if an insurer acted in bad faith, the focus of the bad faith case is on the conduct of the insurer in fulfilling its obligations to the insured. *Harvey,* 259 So. 3d at 7. Although bad faith requires more than mere negligence by an insurer, *"negligence is relevant* to the question of good faith." *Id.* at 9 (emphasis in original). That said, "the conduct of a claimant and the claimant's attorney are relevant to determining the 'realistic possibility of settlement within policy limits.'" *Cousin v. GEICO Gen. Ins. Co.,* 719 F. App'x 954, 960 (11th Cir. 2018) (citing *Barry v. GEICO Gen. Ins. Co.,* 938 So. 2d 613, 618 Fla. Dist Ct. App. 2006)); *see also Boston Old Colony,* 386 So. 2d at 786 (considering the actions of the insured and claimant regarding opportunity to settle when ruling that the trial court properly granted an insurer's motion for directed verdict in a bad faith case).

Finally, to prevail in a bad faith case, the must be "a causal connection between the damages claimed and the insurer's bad faith." *Perera v. U.S. Fid & Guar. Co.,* 35 So. 3d 893, 903 – 04 (Fla. 2010);

Cunningham v. Standard Guar. Ins. Co., 630 So. 2d 179, 181-82 (Fla. 1994) ("[A] third party must obtain a judgment against the insured in excess of the policy limits before prosecuting a bad-faith claim against the insured's liability carrier."). If a plaintiff can show breach and causation, he can show injury. The amount of liability that exceeds the policy limits is the injury. *United Servs. Auto Ass'n v. Jennings,* 731 So. 2d 1258, 1259 n.2 (Fla. 1999). It is this final point that the Court turns to first because it is a threshold issue. In other words, an excess judgment is required before the bad faith case can proceed.

II. Plaintiffs Did Not Obtain an "Excess Judgment"

GEICO argues that it is entitled to judgment as a matter of law because there is no excess judgment in this case. The Court agrees. Causation is proved with an excess judgment, which is judgment above the insurance policy limits. "Causation is a prerequisite for the claim: for an insured to bring a bad faith claim, the injured party must first win an excess judgment." *Cawthorn v. Auto-Owners Ins. Co.,* 791 F. App'x 60, 64-66 (11th Cir. 2019) (citing *Cunningham,* 630 So. 2d 179 at 181-82).

The Eleventh Circuit recently discussed three exceptions to the excess judgment rule that are deemed "functional equivalents" of an excess judgment under Florida law. *Cawthorn,* 791 F. App'x at 64-66 (citing *Perera v. U.S. Fid. & Guar. Co.,* 35 So. 3d 893, 899 (Fla. 2020)). The first exception is called a *Cunningham* agreement, wherein the insurance company and the injured

party agree to try the bad faith claim first, and, if the jury finds no bad faith, the parties agree to settle for the policy limits. *Cunningham*, 630 So. 2d at 182.

The second exception is called a *Coblentz* agreement. *Coblentz* agreements arise when the insurance company fails to defend the insured and, in response, the insured and the injured third party agree to settle the suit and allow the injured third party to sue the insurance company on a theory of bad faith. *Coblentz*, 416 F. 2d at 1063; *Steil v. Fla. Physicians Ins. Reciprocal,* 448 So. 2d 589, 591 (Fla. 2d Dist. Ct. App. 1984).

The third exception occurs when an excess carrier incurs damages because the primary carrier acted in bad faith. In such cases an excess carrier may bring a bad faith claim against a primary insurer "by virtue of equitable subrogation." *Perera,* 35 So. 3d at 900.

Here, none of the exceptions to the classic scenario of an excess judgement apply. The consent judgment is not a *Cunningham* agreement because, unlike in *Cunningham*, the insurer, GEICO, was not a party to the consent judgment. The consent judgment is not a *Coblentz* agreement because it is undisputed that GEICO did not neglect its duty to defend. Finally, the third exception does not apply because this is not a case of an excess carrier suing a primary carrier.

Instead of pointing to an exception, Plaintiffs argue that the consent judgment is an excess judgment. The Court disagrees. As the Eleventh

Circuit held, "[a] judgement is a final decision– a verdict–reached by a factfinder. A judgment is an *excess* judgment when the amount of the verdict recovered by the injured party is greater than all the available insurance coverage. A consent judgment, on the other hand, is akin to a private contract, one that it is simply acknowledged and recorded by a court." *Cawthorn,* 791 F. App'x at 65-66 (internal citations omitted). The Eleventh Circuit further noted that if it adopted the argument that a consent judgment is tantamount to an excess judgment, "we would be carving out a fourth exception to the consent judgment rule." *Id.* The Eleventh Circuit aptly noted that:

> Florida law protects insurance companies with the excess judgment rule. If consent judgments were enough to show causation, that protection would be eliminated. Insurers would not know whether an insured party and an injured party entered into a consent judgment as adversaries, at arm's length and in good faith, or as friends, making a strategic decision to undermine an insurance company's policy. Surely no court would eviscerate the well-established safeguards without paying any attention to the gravity of the decision.

Here, the record is undisputed that GEICO did not neglect its duty to defend, did not agree to be bound by the terms of the consent agreement/judgment, and was not a party to the consent agreement. Accordingly, GEICO is entitled to summary judgment because the existence of an excess judgment or its functional equivalent is not

present here. *Schultz v. Gov't Employees Ins. Co.,* No. 1:15CV172-MW/GRJ, 2018 WL 7185324 at *4 (N.D. Fla. Dec. 7, 2018) ("There was no excess judgment in his case, nor were there any of the widely recognized functional equivalents. Moreover, there is no reason to recognize Schultz's Agreement as a new type of functional equivalent (in fact, there is reason to hold otherwise). Accordingly, Geico has shown that it is entitled to summary judgment as matter of law.).

III. GEICO Did Not Act in Bad Faith

Although the court need not determine whether GEICO is entitled to summary judgment on its argument that did not handle the insurance claim in bad faith, the matter is fully briefed and the parties would benefit from the Court ruling on this issue in case Plaintiffs chose appeal this Order. The Court concludes that no reasonable jury could conclude that GEICO acted in bad faith in its handling of the claim.

Specifically, the record reflects that, upon being notified of the accident, GEICO expeditiously began its investigation and immediately determined that coverage was available for the accident. GEICO was given very little information about the accident and continued to investigate the accident by, among other things: attempting to contact the detective that was assigned the claim, taking Conlon's recorded interview, looking up the speed limit at the scene of the accident, speaking with both of its insureds, attempting to contact Pelaez regarding any injury claims he may have, and attempting to obtain photos

from the scene of the accident. GEICO's initial investigation revealed that Pelaez was likely speeding at the time of the accident and there could be some comparative negligence for the accident.

GEICO continued to investigate, and, on April 23, 2012, GEICO first received a copy of the police report, which detailed that Pelaez had suffered serious injuries and contradicted the information Conlon had given GEICO regarding Pelaez's alleged speeding. The very next day, which was eleven (11) days after the accident, GEICO made the decision to tender the full $50,000 BI Policy limits to settle Pelaez's BI claim. GEICO then called Gordon's office the day after to advise him that it wanted to tender the full $50,000 BI policy limits to settle the BI claim and that it also wanted to know the location of the motorcycle so it could inspect it and obtain an estimate in order to attempt to settle the separate PD claim.

Plaintiff's main argument is that the release was intentionally overly broad because it attempted to release all claims when the PD claim was still outstanding. The Court disagrees that this fact is enough to turn this matter over to the jury, especially under the totality of the circumstances. Notably, the letter from Sundean to Gordon specifically advised Gordon that the release GEICO included was proposed and that Gordon could send any changes, additions, deletions, or send his own proposed release, as well as a release drafted entirely by Gordon. As a matter of law, GEICO did not act in bad faith in sending the unsolicited proposed release

with the tender of the $50,000 BI policy limits under the circumstances of this case.

Accordingly, it is ORDERED AND ADJUDGED that:

1. Defendant GEICO's Motion for Summary Judgment (Dkt. 42) is GRANTED.

2. Plaintiff's Partial Motion for Summary Judgment (Dkt. 43) is DENIED.

3. All other motions are denied as moot.

4. The Clerk is directed to enter Final Judgment in favor of Defendant and against Plaintiffs.

5. The Clerk is ordered to close this case.

DONE and **ORDERED** in Tampa, Florida this May 15, 2020

/s/James Moody, Jr
JAMES MOODY, JR.
UNITED STATES DISTRICT JUDGE