Case No. 18-15074-DD

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

GEICO INDEMNITY COMPANY,

Appellant,

v.

FIFE M. WHITESIDE, Trustee in Bankruptcy
on Behalf of Bonnie Winslett,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

REPLY BRIEF OF APPELLANT

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, and 11th Cir. R. 26.1, counsel for Appellant hereby certifies that to the best of counsel's knowledge, the following is a complete list of trial judge(s), all attorneys, persons, associations of persons, firms, partnerships, or corporations that may have an interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates and parent corporations, including any publicly held corporation that owns 10% or more of the party's stock, and other identifiable legal entities related to a party:

1. Berkshire Hathaway, Inc. (NYSE:BRK.A and BRK.B)
2. Bondurant, Mixson & Elmore, LLP
3. Brash, Miranda J.
4. Charles A. Gower, P.C.
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22. Terry, Michael B.

23. Wasmuth, Edward H., Jr.

24. Whiteside, Fife M.

25. Winslett, Bonnie

The ultimate parent entity of GEICO Indemnity Company is Berkshire Hathaway, Inc.

The stock of Berkshire Hathaway, Inc. is publicly traded on the New York Stock Exchange (NYSE:BRK.A and BRK.B).

Respectfully submitted,

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I. STATEMENT OF THE CASE

GEICO stands by the factual statement in its opening brief. A few points in the factual statement in Appellee's Brief merit comment.

To describe the underlying accident, Appellee cites to the trial testimony in the District Court of the Cyclist. Brief of Appellee, pp. 14-15. However, the matters cited by Appellee are ones that the Cyclist testified about in 2018 and were unknown to GEICO in 2012. In 2012, GEICO had only the police accident report, Attorney Gower's demand letter, and a few pages of medical records. Attorney Gower insisted at the time that these few records were "adequate information regarding the degree of [the Cyclist's] injuries." (Doc. 119-4, p. 3). Attorney Gower refused GEICO's repeated requests in 2012 to obtain a statement from the Cyclist. (Doc. 119-15) (Doc. 119-13, p. 5 (entry for 8:28 a.m.)).

Appellee makes no attempt to justify the amount of the $2.9 million default judgment. He cannot. The record contains nothing to justify it. No evidence existed of what had occurred at the default hearing in Superior Court. In his testimony in the District Court, the Cyclist said nothing to remotely suggest that $2.9 million was a fair measure of his actual damages. Appellee's own expert testified that

GEICO could not have reasonably evaluated the case as worth $2.9 million (Doc. 134, p. 234:3-7).

Appellee asserts that "GEICO" made arguments and "GEICO" took the position in the Cyclist's state court case after entry of the default judgment. Brief of Appellee, pp. 17-18. However, GEICO was not a party to that case. Those were positions taken by the Insured Driver with the advice of her lawyer. *See Winslett v. Guthrie*, 326 Ga. App. 747, 751, 755 S.E.2d 287, 292 (2014) ("*Winslett* makes various other arguments for a set aside ....") (emphasis added). GEICO never litigated anything in state court.

II. ARGUMENT AND CITATION OF AUTHORITY

A. Appellee's Reliance on Hindsight Fatally Infects His Analysis of This Case

Appellee chides GEICO for raising the problem with hindsight in this case. But, Appellee's approach to this case is fatally infected with hindsight.

For Appellee, the key to this case is GEICO's March 5, 2012 letter to the Insured Driver. In that letter, GEICO acknowledged coverage and stated that it "will be handling this injury directly with Attorney Charles Gower." (Doc. 119-3). Appellee uses that March 5 letter to

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saddle GEICO with responsibility for the default judgment. Because of that letter (according to Appellee), the Insured Driver was absolved of all obligations under the insurance policy. She did not need to respond to service of the Cyclist's lawsuit despite the contrary warning in the summons. (Doc. 119-23, p. 5). She did not need to tell GEICO that she had been served with suit papers. Indeed, GEICO purportedly "triggered" the Insured Driver's failure to respond properly to the Cyclist's lawsuit by sending the March 5 letter. By sending that letter, GEICO rendered "foreseeable" the Insured Driver's throwing away of the suit papers. Appellee places more weight on the thin reed of the March 5 letter than it can bear.

GEICO had no reason to believe that the Insured Driver would respond to a summons and complaint in any way other than how a reasonable person would have done. Georgia law imposed a duty on the Insured Driver to respond to the summons and complaint. *Winslett v. Guthrie*, 326 Ga. App. 747, 750, 755 S.E.2d 287, 291 (2014). The summons warned her that a default judgment could be entered against her if she did not timely answer. (Doc. 119-23, p. 5). Upon receiving a

summons and complaint, a reasonable insured would have contacted the insurance company she thought was "handling" the matter.

Any contention that GEICO reasonably should have foreseen that the Insured Driver would throw away the summons and complaint is based wholly on hindsight. It relies on facts that the District Court and the jury saw during the trial in 2018 but were unknown to GEICO in 2012.

Hindsight enters this case because the Insured Driver testified in the District Court. The District Court said during the trial: "I think there's evidence that GEICO knew what kind of defendant they were dealing with in this situation." (Doc. 134, p. 266:7-9). In its post-trial order, the District Court stated:

> Defendant also had information reasonably available to it that Winslett was not stable, and that she lived in an unrentable apartment with no electricity and no furniture except for a mattress on the floor. Defendant had information available to it that should have put it on notice of Winslett's unreliability and lack of sophistication, which would lead a reasonable insurance company to conclude that such a person may not notify it of a lawsuit or respond to one served upon her.

(Doc. 147, p. 11). Nothing supports these assertions. Appellee notes the District Court's statement during the 2018 trial (Brief of Appellee, pp.

39-40), but cites no record evidence to support it. Attorney Gower never informed GEICO of those matters. The Policyholder did not. The Insured Driver did not. Nevertheless, the District Court and the jury heard all about the Insured Driver and her personal circumstances and used that information to evaluate GEICO's actions in 2012.

Appellee blames GEICO for not telling the Insured Driver to forward any summons to GEICO. No basis exists for concluding that this would have made a difference to the Insured Driver. Beyond what the summons said, the paralegal working for the Cyclist's lawyer, Attorney Gower, when asked "what should I do" by the Insured Driver, told the Insured Driver to inform GEICO of the lawsuit. (Doc. 133, pp. 100:5-17, 129:16-132:12). The Insured Driver ignored that instruction. Why would another letter have changed the Insured Driver's behavior when the paralegal's instruction did not?

Appellee blames GEICO for not communicating more thoroughly with the Insured Driver about the Cyclist's claim. But, in the March 5 letter Appellee builds its case upon, GEICO asked the Insured Driver to call the Adjuster. (Doc. 119-3). She did not do so. The Adjuster testified that she "was never able to speak to [the Insured Driver] to be able to

explain anything to her." (Doc. 133, p. 38:14-15). The Adjuster wrote to the Insured Driver in early May 2012, reporting that the claim had not settled. (Doc. 119-18). On May 23, 2012 the Adjuster wrote to the Insured Driver that the Cyclist had made a policy limits demand and provided a copy. (Doc. 119-20). The copy of that demand given to the Insured Driver noted that GEICO had until June 15 to respond. *Id.*, p. 4. Therefore, in late May 2012, GEICO was telling the Insured Driver that the matter was not resolved and that the deadline for responding to the Cyclist's demand was June 15. The Insured Driver had no reason to believe that the Cyclist's claim had been "handled," when she was served with a summons and complaint on May 30.

The GEICO manual touted by Appellee says only that the examiner handling the claim should remind the insured in writing of their obligation to forward a summons and complaint "[i]f the examiner feels there is a good chance that suit will be filed." (Doc. 133, p. 38:16-17) (Doc. 119-9, p. 12). GEICO had no reason to expect an imminent lawsuit in May 2012. Attorney Gower never threatened the immediate filing of a lawsuit. His settlement demand did not threaten suit. It stated only that his client's offer would be withdrawn if not accepted

within 31 days. (Doc. 119-4, p. 3). Moreover, Attorney Gower did not even wait the full 31 days to file suit. His demand letter was dated May 15, 2012. (Doc. 119-4). He filed suit May 29, 2012, after GEICO's May 23, 2012 counteroffer. (Doc. 119-5) (Doc. 119-23). GEICO certainly had no reason to believe Attorney Gower would file a lawsuit on behalf of the Cyclist a mere *six days* after GEICO sent its counteroffer.

GEICO repeatedly reached out to Attorney Gower asking for updates. (Doc. 119-28) (Doc. 119-13, p. 5 (entry for 4/25), p. 7 (entry for 3/8)). After making its counteroffer, GEICO made multiple attempts to contact Attorney Gower after the lawsuit had been filed (unknown to GEICO). (Doc. 119-25) (Doc. 119-13, p. 1 (entries on 6/1 and 6/27 about leaving messages with Attorney Gower's office)).

Appellee blames GEICO for not sending a copy of the insurance policy to the Insured Driver. But, Appellee cites no authority creating such a duty. And, what evidence suggests that would have changed the outcome? What evidence suggests she could have read the policy? What evidence does Appellee present that the Insured Driver would have heeded the policy when she did not heed the summons or the instructions of the paralegal?

What was "foreseeable" to GEICO in 2012, what GEICO allegedly "triggered," and what was the probable consequence of GEICO's action in 2012 has been judged through the lens of facts that came to light only much later. When the facts actually known to GEICO in 2012 are examined and the case evaluated using those facts, Appellee's claim fails.

B. A Bad Faith Claim Cannot Exist When the Actions of the Insured Driver and the Policyholder Voided Coverage

Appellee emphasizes that his claim arises in tort and is not one for breach of contract. Appellee asserts that the failures of the Insured Driver and the Policyholder speak only to the issue of proximate cause in his tort claim. But, that misunderstands the nature of a bad faith failure to settle claim.

A party asserting a bad faith failure to settle claim maintains that the insurer denied the insured the protection afforded by the insurance policy in bad faith. However, that protection comes with all of the limits, requirements and conditions embodied in the written insurance policy. An insured cannot claim the benefits of that policy without accepting its obligations. In other words, the Insured Driver cannot claim to be entitled to the protection of that policy if she ignores the

requirements of the policy. That is why this Court has held that an insurer cannot be held liable for a bad faith failure to settle when the relevant policy provided no coverage. *OneBeacon American Ins. Co. v. The Catholic Diocese of Savannah*, 477 Fed. Appx. 665, 673 (11th Cir. 2012); *The Langdale Co. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 609 Fed. Appx. 578, 596 (11th Cir. 2015). *See also Cash v. Preferred Risk Ins. Co.*, 155 Ga. App. 228, 270 S.E.2d 391, 393 (1980) (plaintiff has no claim that the insurer acted with gross negligence in handling a claim when the policy provided no coverage).

The limitations and requirements in the insurance policy directly impact the viability of a bad faith failure to settle claim. The Georgia Supreme Court recognized this in *Trinity Outdoor, LLC v. Central Mut. Ins. Co.*, 285 Ga. 583, 679 S.E.2d 10 (2009). In that case, a lawsuit was filed against the insured and the insurer provided a defense. *Id.* at 583, 679 S.E.2d at 11. The claimants made a time-limited settlement demand that the insurer rejected. The insured then settled the claim without the insurer's participation. *Id.* at 584, 679 S.E.2d at 11. The insured then sued to recover its payment from the insurer, alleging both a breach of contract and a claim that the insurer had acted negligently

and in bad faith by not settling. *Id.* at 584, 679 S.E.2d at 11-12. A provision in the policy provided that the insured could sue the insurer only after an agreed settlement (one the insurer had signed off on) or the entry of a judgment against the insured after an "actual trial." *Id* at 585, 679 S.E.2d at 12. The Georgia Supreme Court invoked that policy provision to conclude:

> The insurance contract also made it clear that [the insured] could sue [the insurer] only about agreed upon settlements and judgments following a jury trial. This is the bargain that [the insured] struck with [the insurer] . . .
>
> Accordingly, based upon the facts of this case and the terms of the insurance policy in question, [the insured] cannot maintain an action against [the insurer] for bad faith failure to settle the [claimants'] claim in the absence of a jury verdict.

Id. at 587, 679 S.E.2d at 13. *See also Piedmont Office Realty Trust, Inc. v. XL Specialty Ins. Co.*, 297 Ga. 38, 43, 771 S.E.2d 864, 867 (2012) (insured cannot bring a bad faith action against an insurer in violation of a "no action" clause in policy (insurer cannot be sued without agreed settlement or judgment)).

The exact principle that the Georgia Supreme Court recognized in *Trinity Outdoor* applies here. That a bad faith failure to settle claim is a tort claim does not make the policy language irrelevant. The plain

policy language can prevent an insured from pursuing a bad faith failure to settle claim.

That the Insured Driver lost coverage after GEICO received a policy limit demand does not change the analysis. A bad faith claim does not arise until entry of a judgment against the insured in excess of the policy limit. *See* 14 *Couch on Insurance* (3d ed.) § 206:4 at p. 206-13 (the majority of states follow the rule that a cause of action for a bad faith failure to settle accrues upon entry of an excess judgment). If an insured loses coverage before the bad faith claim accrues, no bad faith claim exists.

An insurer rejects a policy limits demand because it concludes that the reasonable value of the case is less than the demand. That conclusion is not proven wrong until an excess judgment is entered. GEICO was allowed to contest the value of the Cyclist's claim and be proven right in its valuation. Until the point when it was proven wrong, an insurer has the right to require that the insured and the policyholder fulfill their obligations under the policy.

To hold otherwise creates a terrible moral hazard. If a policy limits demand is made and rejected and the insured thought that the

rejection was negligent, the insured could then choose to ignore all of his obligations under the policy, relying on his belief that his bad faith claim would cover him whatever the outcome of any lawsuit over the underlying claim. The insured would be relieved of any obligation to cooperate in the defense of his own case.

Appellee attempts to distinguish *OneBeacon America Ins. Co. v. The Catholic Diocese of Savannah*, 477 Fed. Appx. 665 (11th Cir. 2012). Appellee focuses on the issue of why timely notice was not given in that case. Brief of Appellee, pp. 35-36. However, that is irrelevant to O.C.G.A. § 33-7-15 and the policy language that statute requires. Under the policy language at issue, if notice of a lawsuit is not given to the insurer and the insurer is prejudiced, coverage is lost. (Doc. 119-27, pp. 8-9). Therefore, the holding in *OneBeacon* that no bad faith claim exists when coverage is lost applies in this case. *OneBeacon*, 477 Fed. Appx. at 673.

Appellee asserts that policy put the obligation on the Policyholder and not the Insured Driver to inform GEICO of the Cyclist's lawsuit. Brief of Appellee, p. 30. However, that does not alter the fact that the policy was breached. The Policyholder did not inform GEICO of the

lawsuit. Whether the Policyholder knew of the lawsuit is irrelevant. A claim had been made under her policy. GEICO informed her of that fact. (Doc. 119-17). If she chose to distance herself from the matter and not communicate with the Insured Driver about a claim under her policy, it did not excuse the breach. Likewise, the Insured Driver, seeking the benefit of that policy, has an interest in seeing that the policy terms are satisfied. An "other insured" under an automobile policy cannot use her ignorance of the policy terms as an excuse for failing to see that the terms are complied with.

Appellee argues that the purpose of O.C.G.A. § 33-7-15 and the required policy language was fulfilled because GEICO had time to investigate the accident. Brief of Appellee, p. 29. But, the plain language of the statute and the policy required notice to GEICO of a lawsuit. The plain language of the statute and the policy were breached.

Appellee treats the policy language at issue as an "exculpatory clause." Brief of Appellee, p. 32. That is the wrong analytical approach. The provision at issue is a coverage clause. Regardless of why coverage is lost, if it is lost, a party cannot claim that the insurer in bad faith deprived them of the protection of the policy.

Cases such as *Trinity Outdoor* show that the policy language remains relevant in a bad faith failure to settle case. O.C.G.A. § 33-7-15 and the policy language it requires further "the elimination of the risk of a default judgment." *Southeastern Express Systems, Inc. v. Southern Guaranty Ins. Co. of Ga.*, 224 Ga. App. 697, 701, 482 S.E.2d 433, 436 (1997). The reasons for avoiding a default judgment are no different whether the claim is for coverage or a bad faith failure to settle. The policy was breached and coverage lost. The bad faith failure to settle claim should fail.

C. **As a Matter of Law, the Insured Driver's Conduct was the Intervening Proximate Cause of the Default Judgment**

When the actions of a party other than the defendant are not foreseeable by the defendant, were not triggered by the defendant, and were sufficient to cause the plaintiff's injury, the actions of the defendant cease to be the proximate cause of the plaintiff's injury. *Powell v. Harsco Corp.*, 209 Ga. App. 348, 350, 433 S.E.2d 608, 610 (1993). The record in this case established all three requirements for the Insured Driver's conduct being the intervening proximate cause of the default judgment.

"[F]oreseeable consequences are those which are *probable*, according to ordinary and usual experience, and those which, because they happen so frequently, may be expected to happen again." *Edwards v. Campbell*, 338 Ga. App. 876, 883, 792 S.E.2d 142, 148 (2016) (internal quotations omitted, emphasis in original). The Georgia Supreme Court has stated:

> One is bound to anticipate and provide against what usually happens and what is likely to happen; but it would impose too heavy a responsibility to hold him bound in like manner to guard against what is unusual and unlikely to happen or what, as it is sometimes said, is only remotely and slightly probable.

Atlanta Gas Light Co. v. Gresham, 260 Ga. 391, 392-93, 394 S.E.2d 345, 347 (1990) (internal quotations and emphasis omitted). When an insurer rejects a policy limits demand, a default judgment against the insured is not "probable" or "likely to happen," even when the insurer has told the insured that it has accepted coverage.

In arguing that GEICO's March 5, 2012, letter "triggered" the Insured Driver's allowing a default judgment, Appellee's reliance on hindsight achieves full flower. He cites to the Insured Driver's testimony in the District Court. Brief of Appellee, p. 40. But, the

Insured Driver never told GEICO those things in 2012. No reasonable reading of GEICO's March 5, 2012 letter would treat it as providing an excuse for the Insured Driver to ignore a summons and complaint. That the failure to accept the time limited demand preceded the Cyclist's lawsuit does not make it a "trigger" of the default judgment. To accept that logic is to endorse the logical fallacy of *post hoc ergo propter hoc*.[1]

The conduct of the Insured Driver was sufficient in itself to cause the default judgment in the Cyclist's lawsuit in state court. If she had informed GEICO of the summons and complaint, GEICO would have provided her with a defense in the Cyclist's lawsuit. (Doc. 134, pp. 41:23-44:19). On this record, only speculation could lead to the conclusion that the Cyclist's lawsuit, properly-defended, would have produced an excess verdict, and speculation about what might have happened cannot support a bad faith claim. *See Whiteside v. Decker, Hallman, Barber & Briggs, P.C.,* 310 Ga. App. 16, 19-20, 712 S.E.2d 87, 90-91 (2011). It was not GEICO's burden to disprove that an excess verdict could have resulted. Appellee selected the default judgment as

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[1] "Latin: 'after this, therefore because of this' is a logical fallacy that states 'Since event Y f*ollowed* event X, event Y must have been *caused* by event X.'" https://en.wikipedia.org/wiki/Post_hoc_ergo_propter_hoc (last visited February 22, 2019) (emphasis in original).

the measure of damages, and the Insured Driver's conduct was sufficient to cause it.

D. Using the $2.9 Million Default Judgment as the Measure of Damages Violated Due Process

Appellee argues that GEICO waived any due process argument. He made the same argument in the District Court in responding to GEICO's post-trial motions (Doc. 142, pp. 14-15), but the District Court didn't bite and instead addressed the merits. GEICO had repeatedly raised the due process issue prior to its Rule 50(b) motion.

In its Rule 50(a) motion, GEICO asserted that it could not be bound by a $3 million default judgment of which it had no notice. (Doc. 134, pp. 266:24-267:1). That contention built upon the due process argument GEICO previously had raised in its Motion in Limine. (Doc. 54, pp. 1-3). Considering all the circumstances, GEICO's Rule 50(a) motion adequately informed the Court and counsel that GEICO contested on due process ground the use of the default judgment as the measure of damages. *See Rankin v. Evans*, 133 F.3d 1425, 1432-33 (11th Cir. 1998) (requirement to specify the grounds for a Rule 50(a) motion is satisfied when, considering the circumstances, the court and counsel are aware of the basis for the motion). Appellee was not

sandbagged by GEICO's raising the due process issue in its Rule 50(b) motion or on appeal.[2]

GEICO also preserved the due process issue for appellate review when it raised the issue in its Motion in Limine. (Doc. 54, pp. 1-3). The heading of the first section of GEICO's Motion in Limine states: "Evidence of the $2,916,204 Default Judgment is Barred For Due Process Considerations." *Id.*, p. 1. That Motion cites to a number of the cases GEICO has cited in this Court. *Id.*, pp. 1-2. The District Court rejected GEICO's arguments that the default judgment could not be used as the measure of damages. (Doc. 81, p. 9). That alone preserves the due process issue for appellate review. *See* Fed. R. Evid. 103(b); *ML Healthcare Services, LLC v. Publix Super Markets, Inc.*, 881 F.3d 1293, 1305 (11th Cir. 2018) ("A motion *in limine* may preserve an objection when the district court has 'definitively' ruled on the matter at issue.").

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[2] Even if GEICO had not raised the due process issue in its Rule 50(a) motion, it would be a basis for a new trial. *See* 9B Charles Allen Wright & Arthur R. Miller, *Federal Practice and Procedure* (3d ed.) § 2531, p. 478 ("The failure to seek a judgment as a matter of law at the close of all the evidence does not procedurally bar a motion for new trial….").

GEICO raised the due process problem with using the default judgment as the measure of damages.[3]

The cases cited by GEICO stand for the proposition that an insurer cannot be held liable in a bad faith case for an amount of damages it had no opportunity to litigate. This Court made that point in *Bottini v. GEICO*, 859 F.3d 987 (11th Cir. 2017), a case Appellee never mentions. *Bottini* was a bad faith failure to settle case. Under Florida law, if an insurer failed to settle a claim, the insured pursued a two-step process to recover bad faith damages. First, the insured pursued a breach of contract to establish damages and recover the policy limits. The insured then filed a second claim to recover the excess damages established by the first case. *Id.* at 988. In *Bottini*, the first case determined total damages of over $30 million when the policy limits were $50,000. *Id.* at 990. The state appellate court concluded that GEICO could not challenge the $30 million award on appeal in the first case because no argument it advanced would have reduced the damages below the $50,000 limit it could be made to pay in the first case. *Id.* at

[3] In responding to GEICO's Motion in Limine, Appellee addressed the merits of the due process argument. He did not argue that GEICO had waived its due process objection. (Doc. 70, pp. 1-5).

991. This Court concluded that the amounts of damages found in the first proceeding "does not bind the parties in the present bad-faith action." *Id.* at 997. It noted that "GEICO has been denied its right to appellate review of properly-preserved claims of error in the determination of damages." *Id.* at 996 (internal quotation omitted). This Court cited to an earlier state appellate decision that concluded that "[d]enying the parties right to appeal the binding damages determination . . . could give rise to procedural due process problems." *Id.* at 995 (citing *Fridman v. Safeco Ins. Co. of Ill.,* 185 So.3d 1214, 1226 (Fla. 2016)).

Appellee emphasizes that GEICO had the opportunity to litigate causation. Brief of Appellee, p. 46. Yet, GEICO never had the chance to litigate the question of the quantum of damages its conduct purportedly caused. Here, GEICO could not litigate the quantum of the Cyclist's damages. GEICO had no opportunity to help its insured litigate those damages in state court. GEICO never knew of the Cyclist's state court case until it was too late to litigate the amount of damages.

The problem caused by using the amount of the default judgment as the exclusive measure of damages was not solved by the jury's

apportioning damages pursuant to O.C.G.A. § 51-12-33. That statute asks the jury to determine the relative fault of the parties. That determination is not a substitute for (or even a good proxy for) a decision about the amount of damages. The instant case did not involve an indivisible quantum of damages proximately caused by multiple parties. The jury was not allowed to decide the true value of the Cyclist's claim. It was not given the evidence to do so. A jury could have determined what the verdict might have been if Ms. Winslett's case had been properly defended. A trial in which the $2.9 million default judgment was the sole measure of damages was fundamentally flawed.

III. CONCLUSION

For all these reasons and the reasons previously asserted, GEICO Indemnity Company respectfully asks that this Court set aside the Amended Judgment in this case and direct the entry of judgment in favor of GEICO, or, alternatively, grant GEICO a new trial.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

1. This Brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because, excluding the parts of the Reply Brief exempted by Fed. R. App. P. 32(f), this Reply Brief contains 4445 words.

2. This Reply Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this Reply Brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Century Schoolbook.

Respectfully submitted,

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

GEICO INDEMNITY COMPANY,	§	
	§	
Defendant/Appellant,	§	
	§	CASE NO. 18-15074-DD
vs.	§	
	§	
FIFE M. WHITESIDE, Trustee in Bankruptcy, on Behalf of Bonnie Winslett,	§	
	§	
Plaintiff/Appellee.	§	
	§	

CERTIFICATE OF SERVICE

This is to certify that I have this 27th day of February, 2019, filed the foregoing **REPLY BRIEF OF APPELLANT** with the Clerk of Court using the CM/ECF system which will electronically send notification of such filing to registered counsel:

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I further certify that on this 27th day of February, 2019, seven copies of the **REPLY BRIEF OF APPELLANT** were dispatched via next business day FedEx delivery for filing to the following:

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