IN THE SUPREME COURT OF FLORIDA

CASE NO. SC05-1021

L.T. NO.: 04-10436

MICHELLE MACOLA and
INGE QUIGLEY,

Appellants

v.

GOVERNMENT EMPLOYEES INSURANCE COMPANY,

Appellee.

BRIEF OF *AMICUS CURIAE* COMPLEX INSURANCE CLAIMS LITIGATION ASSOCIATION IN SUPPORT OF APPELLEE GOVERNMENT EMPLOYEES INSURANCE COMPANY

Proceedings to Review Questions Certified from the
United States Court of Appeals for the Eleventh Circuit

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INTEREST OF AMICUS CURIAE

The Complex Insurance Claims Litigation Association ("CICLA") is a trade association of major property and casualty insurance companies.[1] CICLA has participated in cases throughout the country, including several cases in this Court.[2] CICLA members provide much of the liability coverage written in Florida. Accordingly, CICLA is vitally interested in the judicial interpretation of § 624.155, Fla. Stat. With a broad outlook on the statutory and public policy considerations before the Court, CICLA addresses the proper interpretation of § 624.155, Fla. Stat., in light of the Florida legislature's intent to avoid unnecessary bad faith litigation by permitting insurers to "cure" instances of alleged bad faith conduct.

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[1] This brief is filed on behalf of the following CICLA members: ACE Group of Insurance and Reinsurance Companies; AIG Insurance Companies; Chubb & Son, A Division of Federal Insurance Company; Farmers Insurance Group of Companies; Hartford Insurance Group; Liberty Mutual Insurance Company; Royal & SunAlliance; St. Paul Fire and Marine Insurance Company; Selective Insurance Company; The Travelers Indemnity Company; and Zurich American Insurance Company.

[2] *See, e.g., Taurus Holdings, Inc. v. United States Fid. & Guar. Co.*, Docket No. SC04-771 (Fla. 2004) (pending); *Swire Pac. Holdings, Inc. v. Zurich Ins. Co.*, 845 So. 2d 161 (Fla. 2003); *Deni Assocs. of Fla., Inc. v. State Farm Fire & Cas. Ins. Co.*, 711 So. 2d 1135 (Fla. 1998); *Dimmitt Chevrolet, Inc. v. Southeast Fid. Ins. Corp.*, 636 So. 2d 700 (Fla. 1993).

CERTIFIED QUESTIONS

1. In the context of a third party bad faith claim where there is a possibility of an excess judgment, does an insurer "cure" any bad faith under § 624.155 when, in response to a civil remedy notice, it timely tenders the policy limits after the initiation of a lawsuit against its insured but before the entry of an excess judgment?

2. If so, does such a cure of the statutory bad faith claim constitute a full satisfaction of the judgment such that the insured and derivative injured third parties are barred from bringing a common law bad faith claim to recover the difference between the policy limits and the excess judgment?

ARGUMENT

I. AN INSURER CURES ITS ALLEGED BAD FAITH UNDER SECTION 624.155 FLA. STAT. WHEN, IN RESPONSE TO A CIVIL REMEDY NOTICE, IT TIMELY TENDERS THE POLICY LIMITS BEFORE THE ENTRY OF AN EXCESS JUDGMENT.

Under § 624.155(3)(d), Fla. Stat. (2003), an insurer cures alleged bad faith when, in response to a Civil Remedy Notice ("CRN"), it tenders its policy limits at a time when no excess judgment has been entered against its policyholder. So long as no excess judgment has been entered, the maximum obligation of an insurer is its policy limits. Tendering policy limits, therefore, "cures" any claim that the insurer failed to settle a claim. However, Petitioners would require an insurer to pay the full amount of a claimant's demand, even in excess of policy limits, to avoid a statutory action for alleged bad faith failure to settle. Petitioners would

thus require an insurer to advance more than the amount it contracted to pay, a result that is not justified under the insurance policy, the common law, or § 624.155. Rather than encouraging resolution of claims by prompting payment of an amount up to the insurance policy limits, Petitioners' approach would serve only to eviscerate the "cure" provision and increase litigation. This Court should hold that an insurer's payment of policy limits in response to a pre-judgment CRN cures any alleged bad faith failure to settle, thereby maintaining the vitality of the cure provision. For these reasons, CICLA urges the Court to answer the certified questions in the affirmative.

Section 624.155, Fla. Stat. (2003) provides, in relevant part:

> (1) Any person may bring a civil action against an insurer when such person is damaged . . .
>
> (b) By the commission of any of the following acts by the insurer:
>
> 1. Not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for her or his interests.
>
> * * *
>
> (3)(a) As a condition precedent to bringing an action under this section, the department and the authorized insurer must have been given 60 days' written notice of the violation. . . .
>
> (d) No action shall lie if, within 60 days after filing notice, the damages are paid or the circumstances giving rise to the violation are corrected.

* * *

> (8) The civil remedy specified in this section does not preempt any other remedy or cause of action provided for pursuant to any other statute or pursuant to the common law of this state. Any person may obtain a judgment under either the common-law remedy of bad faith or this statutory remedy, but shall not be entitled to a judgment under both remedies.

Petitioner Inge Quigley invoked the statutory remedy by serving a CRN on Respondent Government Employees Insurance Company ("GEICO") five months after Petitioner Michelle Macola sued Mrs. Quigley's late husband Francis Quigley for bodily injuries suffered in an automobile accident. *Macola v. Gov't Employees Ins. Co.*, No. 04-10436, slip op. at 5 (11th Cir. 2005) (*per curiam*) (the "Macola Opinion"). Mrs. Quigley alleged in her CRN that GEICO committed bad faith "by failing to settle with Macola for policy limits when it had the opportunity to do so." *Id*. at 5.

Before Ms. Macola sued Mr. Quigley, Ms. Macola offered to settle her bodily injury claims for the bodily injury policy limits available under the GEICO policy issued to Mr. Quigley.[3] *Id.* at 4. GEICO tendered its bodily injury policy limits in response to this offer. *Id.* Ms. Macola later refused to settle her bodily injury claims for GEICO's policy limits, after avoiding communication with

[3] Ms. Macola's pre-filing settlement offer also demanded $1,377.81 in property damages. *Id*. at 4. This demand is not relevant to the instant matter, because Ms. Macola waived her property damage claim by bringing suit against Mr. Quigley's estate only for bodily injuries. *Id.* at 5 n.2.

GEICO for 120 days. *Id*. at 4-5. Ms. Macola returned GEICO's check and proceeded to sue Mr. Quigley, who passed away during the litigation. *Id*.

Mrs. Quigley served her CRN on GEICO five months after the suit was filed, and long before an excess judgment was entered against her. *Id*. at 5. GEICO *again* tendered its policy limits within 60 days of receipt of Mrs. Quigley's CRN, as required by section 624.155(3)(d). Again, the matter did not settle for GEICO's policy limits. Both petitioners then filed common law bad faith claims against GEICO following entry of an excess judgment against Mrs. Quigley. *Id*. at 6.

Petitioners now assert that GEICO's prompt proffer of its policy limits did not "cure" its alleged bad faith failure to settle within the meaning of the Florida statute. Petitioners maintain that, to cure an alleged bad faith failure to settle in the third-party context, an insurer must "pay the amount of any excess judgment against the insured if one has been entered, or effectuate a settlement of the injured third party's claim if no excess judgment has yet been entered."[4] Here, GEICO's actions were taken before any excess judgment. Therefore, the question presented

[4] Appellant Michelle Macola's Initial Brief on the Merits, *Macola, et al. v. Gov't Employees Ins. Co.*, Case No. SC05-1021 (Fla.) ("Macola Brief") at 20; *see also* Initial Brief of Movant/Appellant, Inge Quigley, *Macola, et al. v. Gov't Employees Ins. Co.*, Case No. SC05-1021 (Fla.) ("Quigley Brief") at 9-10 (arguing alternatively that the cure provision does not apply to third-party bad faith claims, but if it does, that GEICO was required to "negotiate[e] an agreement with Macola").

is whether the tender of policy limits constituted a cure or whether, as Petitioners contend, GEICO's duty was to "effectuate a settlement" even if that required a payment in excess of the policy limits. This Court should hold that the payment of policy limits constitutes a "cure" under the plain language and legislative intent of section 624.155.

A. Where An Excess Judgment Has Not Been Entered, Policy Limits Represent The Full Payment For Which The Insurer Could Have Been Held Responsible.

GEICO paid the full amount for which it then had any potential obligation by tendering its policy limits in response to Mrs. Quigley's Civil Remedy Notice. In the third-party context, an insurer is not liable for damages in excess of policy limits unless and until an excess judgment has been entered against its policyholder without such an attempt to settle. Mrs. Quigley served her CRN at a time when no such judgment had been entered against her. GEICO's tender of its policy limits was a complete "cure" under section 624.155(3)(d) of any prior bad faith failure to settle and constituted full payment of any "damages" available from GEICO at the time the CRN was served and at the time of GEICO's response.

"[W]hen the legislature employed the term 'damages' in section 624.155(2)(d)[5], it necessarily contemplated the same elements of damages that are

[5] Subsection 624.155(2) was renumbered subsection (3) by an amendment effective July 1, 2003. Ch. 2003-149, §§ 2, 10, Laws of Fla.

viable and extant under the decisional law of the supreme court." *Hollar v. Int'l Bankers Ins. Co.*, 572 So. 2d 937, 940 (Fla. 3d DCA 1990); *Swamy v. Caduceus Self Ins. Fund, Inc.*, 648 So. 2d 758, 760 n.3 (Fla. 1st DCA 1994) (damages available for a third-party bad faith claim are the same whether claimants pursue the statutory or common law remedy). At common law, a claimant cannot demonstrate that the insured was damaged by an insurer's alleged bad faith failure to settle unless an excess judgment is entered against the insured. *See Fid. & Cas. Co. of N.Y. v. Cope*, 462 So. 2d 459, 461 (Fla. 1985). A bad faith claimant therefore cannot recover extracontractual damages under the statute absent entry of an excess judgment; otherwise, "the insurer [could be] held liable for bad faith failure to settle even though its insured might later be found not liable in the underlying tort action." *Fortson v. St. Paul Fire & Marine Ins. Co.*, 751 F.2d 1157, 1160-61 (11th Cir. 1985) (dismissing statutory bad faith claim filed by injured third party prior to resolution of underlying tort suit because "[t]he damages plaintiff seeks can only be determined after the liability of St. Paul's insured has been established."); *State Farm Fire & Cas. Co. v. Zebrowski*, 706 So. 2d 275, 277 (Fla. 1997) (dismissing statutory bad faith claim filed by injured third party where judgment obtained against insured was within policy limits). This limitation necessarily applies to insureds as well as injured third parties, because in a direct action "[t]he injured third party only has a derivative claim as the insured's

stand-in." *Dunn v. Nat'l Sec. Fire & Cas. Co.*, 631 So. 2d 1103, 1107 (Fla. 5th DCA 1993).

Under this authority, GEICO's tender of its policy limits clearly was sufficient to effect a cure under the statute. When Mrs. Quigley served her CRN, only contractual damages under the policy were potentially available. With no excess judgment in place, she could not demonstrate harm from any alleged breach of GEICO's fiduciary duties to attempt to settle within policy limits, or what the extent of damages from any alleged bad faith failure to settle might be. *Cope*, 462 So. 2d at 461; *Zebrowski*, 706 So. 2d at 277. Requiring GEICO to pay more than its policy limit under § 624.155 (3)(d) in order to cure its alleged bad faith failure to settle would be tantamount to awarding speculative extracontractual damages at a time when Mrs. Quigley might not have been found liable, or liable in excess of policy limits, in the underlying tort action. *Fortson*, 751 F.2d at 1160-61. "Nothing in the statutory language of section 624.155 suggests that the Florida legislature intended such an anomalous possibility." *Id*. at 1161.

Petitioners concede that GEICO could not be required to pay a speculative excess judgment at the time Mrs. Quigley served her CRN. Macola Brief at 21; Quigley Brief at 22. However, they argue that the only way GEICO could cure its alleged bad faith conduct was to settle Ms. Macola's bodily injury claim, even if that required payment in excess of policy limits. *Id.* This position misconstrues an

insurer's obligation to attempt to settle by offering an amount up to its policy limits, transforming that duty instead into a requirement that the insurer pay whatever it takes to actually settle, even if that amount far exceeds what the insurer contracted to pay.

An insurer's fiduciary duty to its insured requires it to attempt in good faith to settle third-party claims, not to achieve settlement at any cost. Section 625.155(1)(b)(1) permits an action against an insurer for "[n]ot *attempting in good faith* to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for her or his interests." (Emphasis added.) *See also Imhof v. Nationwide Mut. Ins. Co.*, 643 So. 2d 617, 618 (Fla. 1994) (statute requires "that the insurer make a good-faith effort to settle claims."). The insurer's duty under common law is to "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 recovery, would do so." *Boston Old Colony Ins. Co. v. Gutierrez*, 386 So. 2d 783, 785 (Fla. 1980) (emphasis added). This Court has recognized that section 624.155 does not impose an obligation on insurers to pay whatever the plaintiff demands in order to effect a cure under the statute. *See* Part I.B., *infra* (discussing *Talat Enters., Inc. v. Aetna Cas. & Sur. Co.*, 753 So. 2d 1278 (Fla. 2000)).

Quite simply, an insurer's duty to attempt to settle is limited to its policy limits. If it becomes apparent that a claim exceeds policy limits, the insurer's obligation is to tender its policy limits, not to settle at any cost. Plainly, an insurer has no obligation to commit funds in excess of policy limits to obtain a settlement.

By twice tendering its policy limits, GEICO attempted in good faith to settle Ms. Macola's bodily injury claims for the full amount for which GEICO could be liable under the insurance agreement.[6] GEICO's tender of policy limits therefore cured any alleged failure to settle within limits. That tender of the full amount GEICO was obligated to pay under the policy constituted the only cure to which Mrs. Quigley was entitled, whether that cure is characterized as paying "damages" or correcting "the circumstances giving rise to the violation."

[6] At the time Mrs. Quigley chose to serve her CRN, GEICO's obligation was to *attempt* in good faith to settle. To the extent that Ms. Macola's damages exceeded GEICO's policy limits, GEICO had no contractual duty to pay any damages in excess of its limits. GEICO in no way created the excess judgment that ensued. If a claimant's damages are greater than the amount of coverage purchased, the policyholder will face the possibility of an excess judgment. The policyholder cannot contend that an excess judgment arose from the insurer's failure to settle when the facts show that the claim could not be settled for policy limits.

B. Requiring Insurers To Pay More Than Policy Limits To Cure An Alleged Bad Faith Failure To Settle In Response To A Pre-Judgment Civil Remedy Notice Would Eliminate The Incentive To Pay, Frustrating The Legislative Intent To Avoid Bad Faith Litigation.

Petitioners argue, without supporting authority, that prior to entry of an excess judgment in the third-party context, an insurer must correct "the circumstances giving rise to the violation" to cure, and may only do so by actually settling the claim against the insured, even if that requires payment in excess of policy limits. Macola Brief at 21; Quigley Brief at 21-22. This interpretation directly conflicts with the legislative intent underlying § 624.155(3)(d).

"The purpose of the civil remedy notice is to give the insurer one last chance to settle a claim with its insured and avoid unnecessary bad faith litigation—not to give the insured a right of action to proceed against the insurer even after the insured's claim has been paid or resolved." *Lane v. Westfield Ins. Co.*, 862 So. 2d 774, 779 (Fla. 5th DCA 2003). The insurer's "last chance to settle" would be rendered meaningless if, as Petitioners argue, a policyholder could force its insurer to pay more than its policy limits to avoid bad faith litigation simply by serving a pre-judgment CRN. This would eliminate insurer's incentive to cure in response to a CRN and convert the statutory remedy into "a right of action to proceed against the insurer even after the insured's claim has been paid or resolved." *Lane*, 862 So. 2d at 779.

The Court previously rejected such an end-run around the statute in *Talat Enters., Inc. v. Aetna Cas. & Sur. Co.*, 753 So. 2d 1278 (Fla. 2000). The insurer in *Talat* initially paid its policyholder $10,000 under a first-party policy for fire damage to the policyholder's restaurant. *Talat*, 753 So. 2d at 1279. The policyholder demanded an appraisal, submitting proofs of loss for both personal property damage and loss of business income. *Id.* at 1279–80. Arbitrators returned an appraisal award in favor of the policyholder for less than the total damages claimed. *Id.* at 1280. The insurer paid the appraisal award in full one month later. *Id.* The policyholder then issued a CRN pursuant to § 624.155. *Id.* The policyholder alleged that the insurer was required to pay not only the damages owed under the policy, but also all extracontractual damages demanded by the policyholder for the insurer's alleged failure to make a good faith attempt to settle the claim. *Id.*

The Court rejected the policyholder's contention that an insurer must pay damages in excess of its policy limits in order to avoid bad faith litigation, concluding that such a requirement would frustrate the purpose underlying the statute:

> Section 624.155 does not impose on an insurer the obligation to pay whatever the insured demands. The sixty-day window is designed to be a cure period that will encourage payment of the underlying claim, and avoid unnecessary bad faith litigation. Surely an insurer need not immediately pay 100% of the damages claimed

> to flow from bad faith conduct in order to avoid the chance that the insured will succeed on a bad faith cause of action. If the insurer may avoid a bad faith action only by paying in advance every penny of the damages that it faces if it loses at trial, the insurer would have no reason to pay. . . . Section 624.155(2)(d) would have no effect or purpose under such an interpretation.

Id. at 1282 (footnote omitted). The Court further noted that while:

> the Legislature was less than precise in its use of the word "damages" . . . section 624.155(2)(d) . . . cannot reasonably be construed to require payment of extra-contractual damages to avoid bad-faith litigation until the conditions for payment under the policy have been fulfilled and the insurer has failed to cure within the sixty-day statutory period for cure after notice is filed in accord with the statute.

Id. at 1283. Because the insurer paid the contractual damages owed under the policy (*i.e.*, the appraisal award) before expiration of the sixty-day cure period, the policyholder had no bad faith cause of action under the statute. *Id.*

The *Talat* rationale applies here. Mrs. Quigley served her CRN at a time when no excess judgment existed. GEICO therefore could not be held liable to her for damages in excess of its policy limits. *See Cope*, 462 So. 2d at 461 (excess judgment necessary to demonstrate insurer damaged the policyholder); *Zebrowski*, 706 So. 2d at 275. Rather, the maximum contractual damages owed under the policy at that time were GEICO's policy limits, which GEICO tendered. Petitioners nevertheless argue that GEICO could "avoid a bad faith action only by paying in advance every penny of the damages that it faces if it loses at trial"

(*Talat*, 753 So. 2d at 1282) — *i.e.*, by settling Ms. Macola's claim for whatever amount she demanded, even in excess of policy limits. Macola Brief at 21; Quigley Brief at 21-22. If this were true, GEICO "would have no reason to pay," rendering the cure provision a nullity. *Talat*, 753 So. 2d at 1282. The Court cannot accept an interpretation that renders a portion of the statute meaningless. *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 456 (Fla. 1992).

The Court noted parenthetically in *Talat* that "[t]o cure an alleged violation and to avoid a civil action, an insurer must pay the claim (sometimes in excess of policy limits in the third-party context) before the sixty days expire." *Talat*, 753 So. 2d at 1282. This comment is properly limited to situations where, as in *Hollar*, the policyholder serves a CRN on its insurer *after* an excess judgment has been entered against the policyholder. *Hollar*, 572 So. 2d at 940. In such situations, an insurer might be required to pay more than its policy limits (*i.e.*, the excess judgment) to avoid a third-party bad faith claim under the statute. The Court's aside in *Talat*, however, cannot reasonably be read to cover situations where the policyholder files a CRN prior to entry of an excess judgment against the policyholder. To so hold would embrace exactly the interpretation rejected in *Talat*, forcing insurers either to acquiesce to claimants' settlement demands, whatever they may be, or to permit a bad faith action to proceed.

C. The Interpretation Advanced By Respondent Upholds The Legislative Intent Of Section 624.155 Without Harming The Interests Of Policyholders.

Interpreting the cure provision to require payment only up to an insurer's policy limits prior to entry of an excess judgment implements the legislative intent behind § 624.155 without harming the interests of policyholders. The statute does not permit policyholders to control what constitutes a sufficient cure. *Id.* ("Surely an insurer need not immediately pay 100% of the damages claimed to flow from bad faith conduct in order to avoid the chance that the insured will succeed on a bad faith cause of action."). For the statute to operate rationally and prevent needless bad faith litigation, insurers must have an objective measure of the "damages" available at the time a policyholder files a CRN. Policy limits provide the maximum measure for pre-judgment CRNs; the excess judgment may provide the appropriate measure for post-judgment notices. Introducing a policyholder's speculative extracontractual damages or a claimant's unsubstantiated demands into the pre-judgment calculation would multiply litigation in cases such as this one, as policyholders and insurers battle over the actions necessary to cure any given violation. Such a result would run contrary to the central legislative purpose of the Civil Remedy Notice procedure—"to be a cure period that will encourage payment of the underlying claim, and avoid unnecessary bad faith litigation." *Id*.

A measure of damages that excludes speculative extracontractual damages visits no injustice on policyholders. The legislature has made the policy determination that avoidance of bad faith litigation is to be encouraged.[7] Because the function of bad faith litigation is "to provide the insured with an extra-contractual remedy," *Hollar*, 572 So. 2d at 939 (citation omitted), legislation that seeks to avoid such litigation necessarily contemplates avoidance of extracontractual damages as well.

In summary, an insurer's payment of its policy proceeds satisfies its obligation to cure its alleged bad faith conduct under § 624.155(3)(d). The cure provision serves the important public policy purpose of encouraging early settlement of insurance claims and avoiding unnecessary bad faith litigation. Requiring insurers to pay more than their policy limits in response to a pre-excess judgment CRN would frustrate this legislative purpose by eliminating insurers' incentive to cure alleged violations.

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[7] The Court may not substitute its own judgment for the legislature's policy choice in this matter. *North Fla. Women's Health & Counseling Servs., Inc. v. State*, 866 So. 2d 612, 658 (Fla. 2003) (quoting *State v. Rife*, 789 So. 2d 288, 292 (Fla. 2001)) ("We have long recognized that it is not this Court's 'function to substitute its judgment for that of the Legislature as to the wisdom or policy of a particular statute.'").

II. POLICYHOLDERS WHO OBTAIN A CURE PAYMENT UNDER Section 624.155 MAY NOT PURSUE A DUPLICATIVE COMMON LAW BAD FAITH ACTION.

The plain language of § 624.155(8) prohibits a policyholder from pursuing a common law bad faith action after obtaining a remedy under the statute's cure provision. Section 624.155(8) provides:

> Any person may obtain a judgment under either the common-law remedy of bad faith or this statutory remedy, but shall not be entitled to a judgment under both remedies.

This paragraph applies to third-party bad faith claims. There is no common law remedy for first party claims under Florida law. *Talat*, 753 So. 2d at 1281, 1283.

The obvious intent of § 624.155(8) is to require a policyholder or claimant to obtain a bad faith remedy either under the statute or the common law, not both. Petitioners argue, however, that GEICO's cure payment cannot foreclose their common law action because it did not result in entry of a judgment. Macola Brief at 44-46.[8] Petitioners further argue that GEICO's cure payment did not satisfy their bad faith claim because it did not include extracontractual damages, *i.e.*, the excess judgment entered against Mrs. Quigley two years later. Macola Brief at 30-31. Finally, Petitioners assert, without authority, that § 624.155(3)(d) is

[8] Petitioner Quigley does not address the subsection 624.155(8) bar on duplicative remedies in her initial brief. *See* Quigley Brief at 24-26.

inapplicable to third-party claims. Macola Brief at 46-47; Quigley Brief at 8-9. None of these contentions withstands scrutiny.

Petitioners' position fails to harmonize subsection 624.155(3)(d) with the prohibition on duplicative remedies set forth in subsection 624.155(8). *Forsythe*, 604 So. 2d at 455 ("[C]ourts must give full effect to *all* statutory provisions and construe related statutory provisions in harmony with one another.") (emphasis in original). An insurer's cure payment cannot logically result in entry of a formal court judgment, because the 60-day Civil Remedy Notice requirement is a *condition precedent* to bringing a bad faith action under the statute. *See* § 624.155(3)(a). If the insurer cures its alleged bad faith conduct within the 60-day period, "no action shall lie" under the statute; therefore, no judgment will be entered. *See* § 624.155(3)(d). Under Petitioner's approach, an insurer's cure would *never* foreclose a common law action based on the same bad faith claim because it would never result in a court judgment.

Such a result would render § 624.155(3)(d) meaningless in the third-party context. Under Petitioners' theory, even if the insurer "cured" its bad faith by paying (and thereby eliminated any statutory claim for bad faith), the policyholder still could maintain a common law action to pursue a higher judgment than the cure payment. If Petitioners' interpretation were correct, insurers could avoid a duplicative common law action only by failing or refusing to cure and permitting a

statutory bad faith claim to go forward to judgment. This would eviscerate the cure provision and frustrate the legislature's intent "to give the insurer one last chance to settle a claim with its insured and avoid unnecessary bad faith litigation." *Lane*, 862 So. 2d at 779.

In any event, under Florida law, "a full satisfaction of the right asserted will estop the plaintiff from pursuing other consistent remedies. . . . [T]he satisfaction of the claim by one remedy puts an end to other remedies." *Barbe v. Villeneuve*, 505 So. 2d 1331, 1333 (Fla. 1987) (quoting *Am. Process Co. v. Fla. White Pressed Brick Co.*, 47 So. 942, 944 (Fla. 1908)). GEICO paid all amounts it had any legal obligation to pay on behalf of Mrs. Quigley in response to her CRN. *See* Part I.A., *supra*. Plaintiffs concede that no extracontractual damages could be assessed against GEICO at that time. Macola Brief at 21; Quigley Brief at 19. Because the "damages" available under section 624.155(3)(d) are identical to the damages available at common law, *Hollar*, 572 So. 2d at 940, GEICO's payment of its full policy limits in response to Mrs. Quigley's statutory demand therefore necessarily satisfied Petitioners' common law claim.

Finally, Petitioners' argument that § 624.155(3)(d) does not apply to third-party claims is without merit. No Florida authority so limits the cure provision, and Petitioners cite none. The statute itself makes no distinction, implied or otherwise, between first and third-party claims in this regard. Moreover, one of the

cases upon which Petitioners rely expressly applied the cure provision to a third-party bad faith claim. *Id.* (finding that the civil remedy remained unsatisfied "and an action under this section remains available" where the insurer failed to satisfy an excess judgment entered against the policyholder *prior* to its service of a CRN).

CONCLUSION

For the reasons stated above, *amicus curiae* Complex Insurance Claims Litigation Association urges the Court to answer the certified questions in the affirmative.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that this answer brief complies with Rule 9.210, Fla.R.App.P., and is typed in Times New Roman 14-point font.

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