[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-15074

D.C. Docket No. 4:16-cv-00313-CDL

FIFE M. WHITESIDE,

Plaintiff-Appellee,

versus

GEICO INDEMNITY COMPANY,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Georgia

(May 11, 2021)

Before WILSON and GRANT, Circuit Judges, and MARTINEZ,* District Judge.

PER CURIAM:

* Honorable Jose E. Martinez, United States District Judge for the Southern District of Florida, sitting by designation.

The relevant facts of this appeal are set out in *Whiteside v. GEICO Indemnity Co.*, 977 F.3d 1014 (11th Cir. 2020). To briefly summarize here, "GEICO has been found liable for rejecting a policy-limits demand against one of its insureds. The measure of damages in this suit came from an earlier negligence case that GEICO neither knew about nor participated in." *Id.* at 1015. The attorney for Terry Guthrie, the injured party, "did not notify GEICO about the negligence suit—even though he and the insurance company had been communicating about the injured party's claim." *Id.* And Bonnie Winslett, GEICO's insured driver, "thought GEICO was handling the case, so she threw away her summons and complaint, failed to answer either, and decided against notifying GEICO." *Id.* at 1016. That resulted in a $2.9 million excess default judgment against Winslett, who was then forced into involuntary bankruptcy. Her estate sued GEICO for bad faith failure-to-settle and, after a trial, the jury concluded that GEICO was 70% liable for that excess default judgment.

GEICO argued three points on appeal. First, it asserted that O.C.G.A. § 33-7-15 and a corresponding policy provision relieved unnotified insurers of liability for any judgment against its insured. Second, GEICO contended that its rejection of the policy-limits demand was not the proximate cause of the excess default judgment; instead, it said that Winslett, its insured, "caused the entry of that default judgment by throwing away the Summons and Complaint, not informing GEICO, and not taking steps to answer the Complaint." And third, it claimed that using the excess default judgment as the measure of damages violated due process because GEICO did not have notice of that original suit. These arguments raised novel

issues of Georgia law, so we certified three questions to the Supreme Court of Georgia:

1. When an insurer has no notice of a lawsuit against its insured, does O.C.G.A. § 33-7-15 and a virtually identical insuring provision relieve the insurer of liability from a follow-on suit for bad faith?
2. If the notice provisions do not bar liability for a bad-faith claim, can an insured sue the insurer for bad faith when, after the insurer refused to settle but before judgment was entered against the insured, the insured lost coverage for failure to comply with a notice provision?
3. Does a party have the right to contest actual damages in a follow-on suit for bad faith if that party had no prior notice of or participation in the original suit?

Id. at 1022.

This case now returns to us from the Supreme Court of Georgia, which considered each of our questions. *See GEICO Indem. Co. v. Whiteside*, No. S21Q0227, 2021 WL 1521527 (Ga. Apr. 19, 2021). It answered the first question with a qualified "no." *Id.* at *7. The court noted that the "question is whether Winslett's breach was an intervening act sufficient to break the causal chain between GEICO's unreasonable rejection of Guthrie's settlement demand and the excess default judgment entered against Winslett," which turns on "whether the facts of the case supported a finding that GEICO reasonably should have foreseen Winslett's breach and the consequences flowing from it." *Id.* The court then rejected GEICO's argument that the notice provisions relieved it of liability,

explaining that "under the facts and circumstances of this case, OCGA § 33-7-15 and the corresponding policy provisions regarding notice to the insurer of the filing of a suit against the insured do not bar liability as a matter of law for Whiteside's negligent or bad faith failure-to-settle claim on the basis that GEICO did not receive notice of the lawsuit against its insured." *Id.* at *9.

On the second question, the court gave a qualified "yes." *Id.* at *10. It concluded that "even though Winslett lost coverage when she failed to notify GEICO of Guthrie's suit, GEICO is liable for its negligent failure to settle Guthrie's claim under the circumstances of this case." *Id.* at *11. After all, "Winslett was a covered insured under the policy; GEICO owed her a duty to settle; GEICO breached that duty; and the jury found that GEICO was partially at fault for Winslett's failure to comply with the notice-of-suit provision and the resulting default excess judgment entered against Winslett." *Id.*

Finally, the court responded "no" to the third question because if "GEICO were able to re-litigate Guthrie's personal injury claims in the failure-to-settle suit, and then use *Guthrie's* measure of damages as a substitute for what *Winslett* actually suffered as a result of the excess default judgment against her, Winslett may not be made whole even if the jury finds entirely in her favor." *Id.* It reasoned that "Winslett remains liable to Guthrie," so "if the bankruptcy estate does not recover enough from GEICO to satisfy Guthrie's judgment, the estate would not be fully compensated for Winslett's damages, and GEICO would escape responsibility for breaching its settlement duty to Winslett." *Id.*

The answers supplied by the Supreme Court of Georgia largely resolve this appeal.[1] We thank that court for its guidance, and the decision below is **AFFIRMED.**

[1] GEICO also argues that "enforcing the default judgment against GEICO violated GEICO's due process rights" under the Fourteenth Amendment because it did not receive notice of the original action against Winslett after she threw away the summons and complaint. We find no merit in this argument. Like we said before, GEICO "has not cited a case persuading us that the United States Constitution applies in the way it had hoped." *Whiteside*, 977 F.3d at 1022 n.3. And as the Supreme Court of Georgia explained, GEICO's due process argument "makes little sense under the circumstances of this case because damages in a negligent failure-to-settle case reflect the damages the insured incurred as a result of the insurer's tortious failure to settle a claim brought against the insured by a third party." *Whiteside*, 2021 WL 1521527, at *11. Moreover, here GEICO had notice and an opportunity to argue to the jury that it did not cause the excess default judgment—the jury just did not agree.