

>> ALL RISE.  
SUPREME COURT OF FLORIDA IS NOW  
IN SESSION.  
PLEASE BE SEATED.  
NO NEXT CASE ON THE DOCKET IS  
HARVEY VERSUS GEICO.  
>> MAY IT PLEASE THE COURT.  
I'M PHILLIP BECHARD ON BEHALF OF  
THE PETITIONER.  
>> YOU HAVE TO SPEAK IN THE  
MICROPHONE.  
THERE YOU GO.  
>> REPRESENTING THE PETITIONER  
AND WITH ME COUNCIL TABLE ARE  
FRED CUNNINGHAM AND GREG YAFFA,  
TRIAL COUNSEL.  
AS A HOUSEKEEPING MATTER, I HAVE  
MY PHONE AS ACTS AS RECEIVER FOR  
MY HEARING AIDS, IF I ADJUST IT,  
PLEASE DON'T THINK I'M REACHING  
FOR A LIFELINE ON TOUGH  
QUESTIONS.  
WE'RE SEEKING REVIEW OF THE  
OPINION OF THE FOURTH DISTRICT  
WHICH CONFLICTS NOT ONLY THE  
CASE LAW ON DIRECTED VERDICT  
WHICH I THINK IS THOROUGHLY  
ADDRESSED IN THE BRIEFS.  
I WILL NOT DELVE INTO IT ABSENT  
QUESTIONS, BUT ALSO, WITH  
RESPECT TO NOT ONLY THE STANDARD  
FOR BAD FAITH CONDUCT, LIABILITY  
INSURER BUT CAUSATION STANDARD  
FOR BAD FAITH.  
THERE WERE THREE STATEMENTS IN  
THE FOURTH DISTRICT OPINION  
WHICH ARE IRRECONCILABLE WITH  
THE STATE OF BAD FAITH LAW IN  
FLORIDA.  
WE HAVE CHALLENGED THOSE.  
>> [INAUDIBLE]  
THOSE ARE ALL IN PAIR THEN THE  
CALL QUOTES FROM--  
PARENTHETICAL QUOTES?  
>> NO.  
THERE IS ONE THAT IS, WHICH IS A  
PARENTHETICAL FROM THE NOVOA  
CASE, SATISFYING THE BAD FAITH  
STANDARD THE INSURER DOESN'T  
HAVE TO ACT, PRUDENTLY OR

REASONABLE.

THE ESSENCE OF BAD FAITH THAT THE INSURER ACTS ONLY IN SOLE INTEREST WAS NOT PARENTHETICAL I DON'T BELIEVE BUT CAUSATION CLEARLY WAS NOT AND IN FACT WAS STATED WITH, CITING TWO FEDERAL PUBLISHED DECISIONS NEITHER OF WHICH ADDRESS THE CAUSATION ISSUE.

SO--

>> WAS THAT ISSUE, THE THIRD ISSUE, WHICH SAYS, WHAT THEY'RE HOLDING IS WHERE THE INSURANCE OWN ACTIONS OR INACTIONS RESULT, AT LEAST IN PART IN EXCESS JUDGMENT.

>> CORRECT.

>> THE INSURER CAN NOT BE LIABLE FOR BAD FAITH.

THAT IS WHERE THEY CITE TO, THAT'S, THAT DOES NOT SEEM TO BE ANYWHERE IN THE LAW OF FLORIDA ON BAD FAITH.

WAS CAUSATION, WAS THERE A, DID GEICO SEEK TO HAVE A JURY INSTRUCTION ON CAUSATION, ON, SOMETHING I GUESS LIKE, CONTRIBUTORY NEGLIGENCE? HOW IS THAT PRESERVED AT THE TRIAL LEVEL.

>> THIS IS RATHER CHANGE TAIL. GEICO AT TRIAL ARGUED THERE SHOULD BE NO JURY INSTRUCTION ON CAUSATION AND THEY PREVAILED ON THAT ARGUMENT.

I READ THE COLLOQUY AND CANDIDLY I DON'T UNDERSTAND IT.

THAT WAS THEIR POSITION.

THE JURY WAS NOT GIVEN A JURY INSTRUCTION ON CAUSATION.

THE ONE QUESTION INTERROGATORY ON THE VERDICT DID NOT INCLUDE ANY ELEMENT OF CAUSATION.

THE FOURTH DISTRICT CREATED THAT FROM WHOLE CLOTH.

IT IS ESSENTIALLY A CONTRIBUTORY NEGLIGENCE ARGUMENT WHICH WOULD NOT APPLY IN A NORMAL, WE'LL SAY NORMAL TORT CASE, BUT CERTAINLY

HAS NO RELATIONSHIP TO THE  
BALANCE OF DUTIES AND  
OBLIGATIONS IN A FIDUCIARY  
RELATIONSHIP.

NOW, AND SO THE, THE FOURTH  
DISTRICT TO HAVE DONE THAT,  
WITHOUT THE ISSUE BEING IN ANY  
WAY INVOLVED IN THE TRIAL COURT  
IS RATHER UNUSUAL.

IN FACT, THE FOURTH DISTRICT'S  
HOLDING AS TO THE STANDARD ON  
BAD FAITH BEARS NO RELATIONSHIP  
TO THE ARGUMENT THAT GEICO MADE  
IN THE FOURTH DISTRICT.

>> YOU SAID THAT THEY SAY IN THE  
BAD FAITH, THAT THE INSURER HAS  
TO BE ACTING ON THE BASIS OF  
THEIR OWN INTERESTS, BUT ISN'T  
THERE REALLY-- AND THAT THAT  
WAS INCORRECT.

IS THAT WHAT I HEARD YOU SAY  
EARLIER?

>> WHAT I SAID WAS, THEIR  
STATEMENT THAT THE ESSENCE OF  
BAD FAITH IS WHERE THEY ACT  
SOLELY IN THEIR OWN INTEREST,  
CERTAINLY THAT IS AN EXAMPLE OF  
BAD FAITH.

>> IT SEEMS TO ME THAT WE HAVE  
SAID THAT IN THE NICOLA CASE IN  
2006?

DIDN'T THIS COURT USE LANGUAGE  
VERY SIMILAR TO THAT WHEN  
TALKING ABOUT WHAT THE DUTY IS  
THAT, WHAT HAPPENS IN A BAD  
FAITH CASE?

>> WELL IT IS, IT IS A STATEMENT  
THAT IS TAKEN FROM THREE  
DIFFERENT OPINIONS OF THIS COURT  
STARTING WITH LAPERE.

IN EACH OPINION HISTORICAL  
DISCUSSION OF TRANSITION OF  
POLICIES FROM INDEMNITY POLICIES  
TO LIABILITY POLICIES.

IT COMPANIES FROM A LAW REVIEW  
ARTICLE, HOWEVER IT WAS NEVER  
INTENDED TO BE THE EXPANSIVE AND  
CONTROLLING DEFINITION OF BAD  
FAITH.

IT IS ONE EXAMPLE OF BAD FAITH

BUT IF YOU LOOK AT THE BURGESS CASE THERE WAS CERTAINLY NOT REALLY AN INDICATION THAT THE INSURANCE COMPANY WAS ACTING SOLELY IN ITS OWN INTEREST. IT DROPPED THE BALL.

IT ORALLY AGREED TO A SETTLEMENT AND DIDN'T FOLLOW THROUGH BUT THE STANDARD IS, WHETHER THE INSURANCE COMPANY ACTS AS A REASONABLY PRUDENT PERSON WOULD IN DILIGENTLY HANDLING THEIR OWN PRIVATE FINANCIAL AFFAIRS.

>> AND SO, LET'S JUST TALK ABOUT THAT.

WHAT ARE THE, WHERE DID GEICO GO WRONG IN THE HANDLING OF THIS PARTICULAR CLAIM?

>> THERE WERE MULTIPLE PLACES. FIRST OF ALL, THEY DID TENDER THE POLICY LIMITS WHICH THEY CLAIM TO AS PROVING THEY DID EVERYTHING RIGHT, HOWEVER THE ADJUSTER WHO HAD 19 YEARS EXPERIENCE, FRAN KORKUS, THE SUPER SUPERVISOR SAID THEY KNEW THAT DID NOT SETTLE THE CASE. THEY BOTH TESTIFIED THEY KNEW THIS SITUATION, CATASTROPHIC INJURY, DEATH, THREE SURVIVORS, THAT A PLAINTIFF'S ATTORNEY TO DO HIS DUE DILIGENCE HAD TO INVESTIGATE PERSONAL ASSETS, OTHER COVERAGES AND COURSE AND SCOPE WHICH IS PARTICULARLY IMPORTANT IN THIS CASE BECAUSE THE VEHICLE BEING DRIVEN WAS CO-OWNED BY MR. HARVEY AND HIS BUSINESS I BELIEVE IT WAS, AND IT WAS A PRIVATE ENTITY.

WHEN FICO SENT THE AFFIDAVIT OF COVERAGE, THE ONLY THING IDENTIFIED WAS A DIFFERENT POLICY, NOT MULTICO, MR. HARVEY'S PERSONAL ASSETS, HIS BUSINESSES ASSETS. THERE WAS QUESTION MARRIED BUT HIS WIFE WAS NOT ON THE CAR DRIVING IT, BUT WHAT OTHER ASSETS WOULD BE.

WHETHER THERE WERE INSURANCE POLICIES SUCH AS FOR HIS BUSINESS.

THERE WAS THE QUESTION OF COURSE AND SCOPE, WHICH WOULD RAISE OTHER ISSUES OF EXPOSURE TO THE BUSINESS AND COVERAGES.

AND THEY KNEW THAT THAT INFORMATION WAS NECESSARY FOR THE PLAINTIFF'S COUNSEL TO MAKE A REASONABLE EVALUATION OF THE POLICY LIMITS OFFER AND TO ADVISE HIS CLIENT.

SO WHAT HAPPENS IS, FRAN KORKUS GETS FOUR REQUESTS FROM THE CLAIMANT'S LAW OFFICE TO, ON THE PHONE WHERE THEY PERSONALLY EXPLAIN WHAT IS WANTED, WHY IT IS NEED.

SHE ADMITTED SHE HAD NO REASON NOT TO WORK AT GETTING --

>> ONE SEPTEMBER THE POLICY LIMITS.

ONCE THE POLICY LIMITS WERE OFFERED, DID IT REQUIRE RELIEF OF ANYONE INCLUDING THE FOLKS YOU MENTIONED?

>> THEY SENT ONE RELEASE WITH THE TENDER AND PROPERTY DAMAGE, THE PROPERTY DAMAGE HAD NOT BEEN RESOLVED AND FRAN CORK IS ADMITTED IN HER TESTIMONY WITHIN AN APPROPRIATE RELEASE.

IN THE WAY OF THE PATTERN HERE WAS NOT SIMPLE NEGLIGENCE, THERE WERE FOUR REQUESTS IN THE SPACE OF A MONTH, TWO CONVERSATIONS WITH MISTER HARVEY SAYING I WILL DO IT.

I HAVE AN ATTORNEY, MY ATTORNEY ISN'T PRESENT.

TWO DIRECTIVES FROM HER SUPERVISOR WHO SAID RIGHT TO THE CLAIMANTS COUNSEL, EXPLAIN PRIVATE COUNSEL, AND THE FOURTH DISTRICT CONSTRUED THIS AS A REQUEST FOR UNILATERAL AFFIDAVIT AND CRITICIZED MY CLIENT, BECAUSE HE DIDN'T DO IT UNILATERALLY WHEN IT WAS A

RECORDED STATEMENT WHICH IS THE CUSTOMER, ISSUES SUCH AS THE FINANCIAL ASSETS OF A PRIVATE COMPANY, MANY NUANCES.

>> AT THAT POINT, GEICO HANDLING CLAIMS BY THE ESTATE.

AT THE POINT GEICO OR MISS CORCORAN DID NOT INFORM THEM, THE DEFENDANT, DID NOT INFORM THE ESTATE THAT THE DEFENDANT WAS WILLING TO COOPERATE AND GIVE THE STATEMENTS, GEICO WAS IN FACT HANDLING THE CLAIMS PROCESS.

>> THEY HAVE CONTROL OF IT AND MISTER HARVEY ALLOWED THEM.

>> THE GIVING OF THEIR POLICY LIMITS DID NOT VITIATE ANY OTHER DUTY.

>> CORRECT.

THEIR OWN TESTIMONY ACKNOWLEDGES THAT.

THERE EXPERT TESTIFIED WITHOUT THIS INFORMATION DOMINIC COULD NOT ADVISE THE ESTATE WHETHER TO ACCEPT THE POLICY LIMIT'S OFFER AND MISTER HALLORAN AND FRAN KORKUS KNEW IT.

GEICO SAYS IT WASN'T A CONDITION OF SETTLEMENT, IT DIDN'T HAVE TO BE.

EVERYONE KNEW WHAT WAS GOING ON. FRAN KORKUS HAD EXPERIENCE IN THIS.

HE ADVISED HER WHAT TO DO TWICE AND SHE NEVER DID IT, NEVER RESPONDED TO HIM, NEVER INFORMED US, THE COUNCIL THAT THERE WAS A PERSONAL ATTORNEY MY CLIENT RETAINS, THAT THEY COULD HAVE CONTACTED.

FRAN KORKUS WAS THE IMPEDIMENT TO THE NECESSARY INFORMATION FOR THE CLAIMANT TO EVALUATE THE POLICY LIMITS OFFER AND THIS WAS WHERE LIABILITY WAS CLEARED IN TWO DAYS RECOGNIZED THAT.

IT WAS A DEATH CASE.

LIABILITY WAS CLEAR.

AFTER FOUR ATTEMPTS, TWO EXEMPT

-- TWO ATTEMPTS TO EXPLAIN WHAT KORKUS KNEW THAT THE CLAIMANT'S ATTORNEY NEEDED THIS INFORMATION, NOTHING WAS DONE.

>> HOW DO WE FACTOR IN, AND SUGGESTS THE LETTER, A RESPECT -- TO THE DEFENDANT.

EVEN THOUGH THE DEFENDANT'S ATTORNEY WAS NOT AVAILABLE UNTIL SEPTEMBER 5TH, THERE WAS STILL TIME BEFORE THE ACTUAL SUIT WAS FILED, IN DETERMINING,

>> THAT WAS A FACTUAL QUESTION. AND THE OPPORTUNITIES THEY HAD AND RESPONSIBILITY ON TYCO, THEY WERE THE POINT PERSON FOR THE COMMUNICATIONS.

REPEATEDLY FOR NO REASON REFUSED MY CLIENT'S INSTRUCTIONS AS TO HIS PERSONAL WILLINGNESS, FRAN KORKUS MISREPRESENTED IN THE FIRST PHONE CALL, THAT SHE FLAT OUT DENIED THEY WOULD REDUCE THE INSURER AND NEVER SPOKE TO THE INSURER.

THAT WAS KNOWLEDGE, CONSENT, SHE DID THAT, AND IT IS IN THE A LOG NOTES, SAID TO HER WE WOULDN'T HAVE DONE THAT, IT WAS OBVIOUS THIS WAS NOT A CASE, THIS WAS NOT A CASE OF JUST OVERSIGHT, SHE HAD 19 YEARS EXPERIENCE WHERE THEY RECENTLY HAD IN TWO YEARS RELEVANT TO THE SITUATION SOME PROBLEMS WITH HER PERFORMANCE AND SHE HAD BEEN CRITICIZED.

THE A LOG SHOW NOTES SHE WAS TWICE GIVEN INSTRUCTIONS WHAT TO DO.

ABOUT THE RECORDED STATEMENT, SHE NEVER DID AND UNDER THESE CIRCUMSTANCES THIS IS SUFFICIENT TO GO TO A JURY ON BAD FAITH.

>> THE THING THAT GOT ME, WHEN THE INSURED FINALLY REALIZED -- GEICO, THE ESTATE WANT THIS INFORMATION ON AUGUST 31ST, DOESN'T HE SAY SOMETHING LIKE PLEASE LET THE ESTATE KNOW I

WANT TO COOPERATE?

>> CORRECT.

>> WHAT IS THE TESTIMONY IN THE RECORD.

SHE DOESN'T DO -- I UNDERSTAND ANYTHING.

>> THE TESTIMONY WAS HE TOLD HER, YOU HAVE RETAINED PRIVATE COUNSEL, AND HE WILL MEET WITH HIM AS TO HOW TO DO IT.

>> ON AUGUST 31ST, THURSDAY OR FRIDAY, THE LABOR DAY WEEKEND. THE FACT THE PRIVATE ATTORNEY WASN'T AVAILABLE UNTIL TUESDAY, NOT TALKING ABOUT THAT BUT IF SOMEONE UNDERSTOOD THIS, YOU BETTER GET THIS INFORMATION. EVERYBODY NEEDED TO UNDERSTAND THE URGENCY.

LET'S ASSUME THE ATTORNEY -- DID HE TESTIFY.

THE ATTORNEY FOR MISTER HARVEY?

>> NO.

AND WHAT HE UNDERSTOOD AND --

>> HE WAS PROVIDED ON THE 23RD, IN RESPONSE TO THE EXCESS EXPOSURE STARTED GATHERING FINANCIAL INFORMATION EVEN BEFORE HE KNEW THERE WAS A REQUEST FOR THE STATEMENT. HE DELIVERED THAT INFORMATION TO MISTER GARRITY.

THE CLAIMANTS COUNSEL TESTIFIED IF HE WAS TOLD MISTER HARVEY ATTAINS PRIVATE COUNSEL, HE WOULD NOT HAVE PROCEEDED TO FILE SUIT, A WASTE OF TIME, THE COLLECTIBLE ASSET, DISSIPATED WITH TIME AND WAS DONE.

THE CLAIMANTS COUNSEL WITH PRIVATE COUNSEL AND HOPING TO RESERVE 5 MINUTES FOR REBUTTAL WITH QUESTIONS OF A SIT DOWN.

>> MAY IT PLEASE THE COURT, MY NAME IS RICHARD YOUNG AND I REPRESENT GEICO.

WE ASK THAT YOU AFFIRM THE DECISION OF THE DISTRICT COURT OF APPEAL BECAUSE IT IS CORRECT

ON THE FACTS AND THE LAW.  
>> RESET THE STAGE A LITTLE BIT.  
WE SEEM TO BE TALKING AS THOUGH  
THIS IS A JURY VERDICT THAT IS  
BEING REVIEWED ON APPEAL.  
THAT IS NOT THE CASE, CORRECT?  
>> IT IS A MOTION FOR DIRECTED  
VERDICT.  
>> THIS IS A PARTY, YOU, YOUR  
SIDE SEEKS A DIRECTED VERDICT IN  
THIS LITIGATION.  
THOMAS THE COURT VIEW THAT IN  
RENDERING A DECISION ON THAT.  
AND THE INSURED HERE,  
DISREGARDING ANY CONFLICTS.  
WE ARE IN THE WEEDS, THAT IS NOT  
THE STANDARD.  
THE STANDARD AS I UNDERSTAND IT  
IS THE APPELLATE COURT TO  
DETERMINE WHAT THE FOURTH  
DISTRICT SHOULD HAVE DETERMINED,  
MOST FAVORABLE TO THE INSURED,  
WHETHER THERE IS SUFFICIENT  
EVIDENCE TO GO TO A JURY.  
AS I UNDERSTAND IT THERE IS  
EVIDENCE, MAYBE CONFLICT, I  
DON'T KNOW, I ASSUME IT WAS,  
THERE IS EVIDENCE THE POWERS  
THAT BE WITH GEICO, TOLD THIS  
ADJUSTER WHAT TO DO.  
>> SOME STATEMENTS ABOUT WHAT  
WAS SAID BUT THAT WAS NOT WHAT  
WAS SAID.  
>> MY UNDERSTANDING, TALKING  
ABOUT WHAT WAS MADE, YOU'RE  
SAYING THERE IS NO EVIDENCE.  
WHAT GEICO INSTRUCTED THIS  
ADJUSTER.  
AND SHE DISREGARDED IT.  
>> NO EVIDENCE IN THIS RECORD.  
AND WHEN THE PLAINTIFF  
CHARACTERIZES THEIR  
INSTRUCTIONS, MISTER HARVEY  
NEVER SAID TO FRANK QUERCUS --  
>> WHAT DID GEICO TELL IT'S  
ADJUSTER.  
WOULD YOU ADVISE THE INSURED OF  
THE REQUEST OF THE STATEMENT AND  
PASS THAT ALONG.  
TO THE INSURED.

>> THAT IS A DISPUTE.  
I HEARD MISTER BIRD STAND THERE  
AND SAY THE ADJUSTER DID NOT  
COMMUNICATE THAT JUST NOW.  
WHAT DOES THE RECORD SHOW?  
>> COUNSEL FOR THE PLAINTIFF ON  
AUGUST 24TH TO THE GEICO  
ADJUSTER, AND THE ADJUSTER HAD  
TO COIN DECLINED TO OFFER THE  
ADJUSTMENT.  
>> MISS KORKUS CALLED THE  
INSURED TO LET THEM KNOW ABOUT  
THIS AND SENT HIM THE LETTER.  
>> WHAT ABOUT THE CLAIMANT?  
>> SHE SPOKE TO THE CLAIMANT'S  
ATTORNEY TOO AND SET I HAVE  
GIVEN THIS TO THE INSURER.  
>> IS THAT WHAT THIS RECORD  
SHOWS?  
SHE CALLED THE CLAIMANT BACK AND  
TOLD HIM YOUR LETTER IS  
INCORRECT.  
>> HE DID SEND ANOTHER LETTER IN  
WHICH HE SAID YOU ASKED WHAT WE  
WANTED AND HERE'S WHAT WE WANT  
AND SHE PASSED THAT TO THE  
INSURED AND THE CLAIMANT.  
>> MY UNDERSTANDING IS SHE  
STONEWALLED, WOULD NOT GIVE OR  
DID NOT HAVE TO THE CLAIMANTS,  
THE ESTATE, THE INFORMATION THEY  
HAVE ASKED FOR.  
>> IT IS IMPOSSIBLE FOR HER TO  
DO THAT, AND THE FINANCIAL  
INFORMATION.  
AND WHAT SHE DID -- I THINK I  
HAVE --  
>> THAT IS NOT MY QUESTION.  
AS I UNDERSTOOD IT, THE ESTATE,  
THE CLAIMANT SAID THE INSURANCE  
ADJUSTER WAS NOT WILLING TO MAKE  
THE INSURED AVAILABLE OR  
STATEMENT AVAILABLE.  
>> IN THE SECOND LETTER HE WROTE  
ON THE 31ST, HE CONFIRMED THIS  
WILL CONFIRM, I ASKED IF YOU  
WOULD MAKE MISTER HARVEY  
AVAILABLE FOR A STATEMENT AND  
YOU WERE UNABLE TO CONFIRM HE  
WOULD BE AVAILABLE WHICH IS TRUE

AND IT IS TRUE MISTER HARVEY  
COULD AGREE TO BE AVAILABLE AND  
MISTER HARVEY UNDISPUTED IN THE  
RECORD NEVER TOLD MISS KORKUS HE  
WOULD BE AVAILABLE.

>> WE ARE BACK IN THE WEEDS A  
BIT, WE ARE TALKING ABOUT AN  
INSURANCE COMPANY THAT HAS TO  
ACT AS A FIDUCIARY TO ITS  
INSURED.

19, 20 YEARS, MAY BE A BUSINESS  
PERSON --

>> HE IS A LOBBYIST, LEGISLATOR.  
>> THAT IS VERY INTERESTING AND  
MAYBE THAT CAME OUT WHETHER HE  
IS A MORE SOPHISTICATED INSURED  
BUT AT THE POINT SAY NO OR HE  
KNOWS THIS IS A CLEAR LIABILITY  
CASE WITH A 51-YEAR-OLD DECEASED  
WHO LEFT A WIFE AND THREE  
CHILDREN, \$100,000 DOESN'T  
MATTER ANYWHERE IN FLORIDA  
ANYWHERE IS NOT GOING TO BEGIN  
TO COMPENSATE.

SO YOU KNOW THIS IS A CASE THAT  
IS GOING TO FAR EXCEED THEIR  
POLICY LIMITS.

YOU WOULD AGREE AT THAT POINT  
WEDNESDAY NO THAD AND THEY TELL  
HARVEY YOU SHOULD GET YOUR OWN  
ATTORNEY TOO, THAT DOES NOT  
PEOPLE THEIR OBLIGATION TO  
SETTLE THE CASE.

>> IT DOES NOT.

>> TWO DAYS LATER THERE IS A  
CALL THAT WE NEED A STATEMENT.  
IF SOMEONE IS ACTING AS A  
FIDUCIARY, DO THEY HAVE AN  
OBLIGATION TO DO EVERYTHING  
POSSIBLE EVERY DAY FROM THE  
TIMES THEY DETERMINE THIS IS A  
CATASTROPHIC, FINANCIAL, HUGE  
VERDICT TO GET THIS RESOLVED?

>> NO, THEY ABSOLUTELY DO NOT.

>> DOESN'T GEICO HAVE TO ACT AS  
IF IT WAS THEIR ASSETS ON THE  
LINE?

IS THAT THE ESSENCE OF BEING A  
FIDUCIARY, THAT IT IS THERE IS  
IF THEY WERE FACING THE PROSPECT

OF THIS TYPE OF VERDICT, WHAT WOULD THEY DO?

>> CONFLATING WHAT GEICO CAN DO OR CAN'T DO, THIS IS A REQUEST, INCREDIBLY IMPORTANT TO THIS DECISION, A REQUEST MADE OF AN INSURANCE COMPANY WHEN IT WRITES A POLICY DOES NOT BECOME THE KIND OF FIDUCIARY YOU ARE DESCRIBING.

I DON'T AGREE WITH THAT.

>> THE INSURED HAD TO COOPERATE. IS THERE ANY INDICATION THAT THE INSURED WAS TOLD BEFORE AUGUST 31ST THERE IS CLEAR LIABILITY TWO DAYS AFTER THAT THE VERY ESSENCE OF WHAT THE ESTATE NEEDS TO SETTLE IS TO KNOW IF THERE IS OTHER INSURANCE AND WHAT YOUR ASSETS ARE AND THEY NEED A STATEMENT BEFORE AUGUST 31ST.

>> WE STIPULATE AUGUST 31ST WAS THE DAY.

THAT WAS THE UNDISPUTED EVIDENCE -- IT WAS AUGUST 31ST.

>> YOU WOULD AGREE, NOTHING TO ENSURE THE STATEMENT, IF THEY REFUSED, IF THE INSURER REFUSED, GEICO CAN'T MAKE THE INSURER DO IT, IF SHE EVER PASSED ON BEFORE AUGUST 31ST, WHAT THE ESTATE WAS ASKING.

>> MISTER HARVEY SAID SHE DIDN'T.

WE ARE NOT GOING TO ARGUE THAT. WE LOOK AT THAT IN A WAY THAT IS MOST FAVORABLE SO WE ACCEPT THE 31ST.

THAT IS STILL QUITE SOMETIME BEFORE SEPTEMBER 13TH WHEN THE SUIT IS FILED, HE HAS HIS OWN PERSONAL ATTORNEY, LOBBYIST, HE WILL MAKE THE DECISION WHETHER HE DISCLOSES PERSONAL ASSETS, IS AN UNPRECEDENTED EXPANSION OF THE INSURER'S DUTIES, NOT JUST AN INSURANCE COMPETE WITH A DUTY TO ACT IN GOOD FAITH AND PASS THE REQUEST TO BE INSURED BUT A

GUARANTOR OF THE INSURED'S COMPLIANCE WITH THAT REQUEST WAS NEVER HIS ANY CASE IN FLORIDA SAID THAT.

>> I DIDN'T THINK THAT WAS THEIR ARGUMENT.

WITH THAT THEIR ARGUMENT TO THE JURY?

>> THEIR ARGUMENT WAS THEY SHOULD HAVE MADE SURE MISTER HARVEY GAVE THIS STATEMENT.

>> GOING TO THE ISSUE OF CAUSATION DID GEICO ARGUE BELOW -- THE INSURED'S FAULT, IS THAT WHAT THEIR DEFENSE WAS AT TRIAL?

>> OUR DEFENSE AT TRIAL WAS WE COULD NOT SETTLE THIS CASE BECAUSE THERE WAS A REQUEST MADE BEYOND THE COMPANY'S CONTROL OF MISTER HARVEY THAT ONLY MISTER HARVEY COULD COMPLY WITH.

WE NEVER SHOULD BE IN A POSITION WHERE WE STRONG-ARM OUR INSUREDS TO GIVE THEM OUR FINANCIAL INFORMATION, THAT IS THEIR DECISION, NOT OURS.

WE HAVE TO HAS ALONG THE REQUEST, MAKE SURE THEY KNOW THE REQUEST HAS BEEN MADE AND MISTER HARVEY HIRED AN ATTORNEY.

>> YOUR ARGUMENT ON THE MERITS AT THE TRIAL, YOU ACTED REASONABLY AND WOULD YOU AGREE TO FULFILL THE DUTY OF GOOD FAITH, DO YOU THINK AND ENSURE -- YOU AGREE WITH THAT STATEMENT?

>> THAT STATEMENT HAS BEEN LIFTED OUT OF CONTEXT.

WHAT YOU REFERENCED WAS DECIDED BY THE 11TH CIRCUIT WHICH IS GEORGIA IN THOSE CASES, GEORGIA ALLOWS CLAIMS BASED ON NEGLIGENCE, FLORIDA DOES NOT, THAT WAS AN IN ARTFUL ATTEMPT TO SAY FLORIDA DOESN'T FOLLOW A NEGLIGENCE STANDARD OF BAD-FAITH.

YOU HAVE TO HAVE MORE.

IT REFERENCES THIS COURT,

CORRECTLY CITES THE STANDARD FOR BAD FAITH IN THE STATE OF FLORIDA AND GOES ON -- I DON'T AGREE THERE IS AN INSURED DOESN'T ACT REASONABLY, TRYING TO SAY -- IN THAT OPINION.

>> IN THE FOURTH DISTRICT OPINION.

>> IT IS DIRECTLY CITED THE LAW AS PERTAINS TO THE ANALYSIS. OF THE COURT LOOKS AT PAGE 4 THEY START THE ANALYSIS, IN THE ECONOMY CASE, THEY GO FOR ALL FACTORS, APPLY THOSE FACTORS AND THE PLAINTIFFS HEARTBURN BEGINS WHERE THE COURT SAYS NOT POSITIVE TO THE ANALYSIS, THEY BEGIN A DISCUSSION.

>> WHAT ABOUT WHERE THE INSURED'S ACTIONS RESULT IN PART FROM THE ACCESS?

>> IN PART -- I DON'T AGREE WITH.

>> WHAT ABOUT THE CAUSATION ARGUMENT THE FOURTH DISTRICT ADOPTED THAT DID YOU NOT ABANDON THE CAUSATION ARGUMENT BELOW?

>> WE DID NOT ASK FOR A JURY INSTRUCTION, THE QUESTION OF CAUSATION IS SUBSUMED IN THE BAD-FAITH ISSUE, THERE IS NOT ABANDONMENT OF THE ISSUE, THE COURT IS ASKED A QUESTION. IF YOU LOOK AT STANDARD JURY INSTRUCTIONS IT SAYS YOU SHOULD NOT GIVE CAUSATION INSTRUCTION WHEN THE COURT DETERMINES DAMAGES WHICH IS THE CASE IN EVERY BAD-FAITH CASE.

>> THE JURY UNDERSTOOD IF THEY DETERMINE THE INSURANCE RESPONSIBILITY TO GET TO THE ESTATES, TO GET THIS INFORMATION THAT THEY COULD FIND THE INSURER FULFILLED ITS DUTY OF GOOD FAITH.

THE QUESTION HERE IS IS THAT A JURY QUESTION?

IS THERE ENOUGH IN THIS RECORD WITH MISS EMILY 13'S CLAIM, THAT

THERE WAS MORE THAN MERE NEGLIGENCE IN WHAT MISS KORKUS DID AND YOU ARE SAYING NOT AND I'M LOOKING AT THIS EVIDENCE AND IT LOOKS LIKE MAYBE I WOULD SAY SOMETHING, SOMEONE ELSE MIGHT SAY SOMETHING ELSE BUT DOESN'T THAT MAKE IT A JURY QUESTION?

>> IF I MAY HAVE TWO MINUTES, THERE WAS NO TESTIMONY THIS CASE COULD HAVE SETTLED, WE WANTED A STATEMENT.

WITHOUT THE STATEMENT WE CANNOT DECIDE WHAT THE CLIENT SHOULD DO.

EVEN HAD HE GIVEN A STATEMENT WOULD YOU HAVE SETTLED?

>> WE MUST BE LOOKING AT DIFFERENT RECORDS.

I THOUGHT THERE WAS A QUOTED PORTION IN THIS TRANSCRIPT WHERE CLAIMANT'S LAWYER SAID WE WOULD HAVE SETTLED THIS CASE IF THE STATEMENT HAD BEEN GIVEN.

>> HE SAID THE OPPOSITE.

IT IS QUOTED IN OUR BRIEF THAT WHAT HE SAID, I ASKED HIM QUESTIONS, IF THE STATEMENT HAD BEEN GIVEN, IT WOULD HAVE DEPENDED ON WHAT IT SHOWED AS WHAT I WOULD HAVE RECOMMENDED TO MY CLIENT SO YOU WOULDN'T HAVE KNOWN WHAT YOU WOULD HAVE RECOMMENDED WITHOUT SEEING IT AND HIS ANSWER WAS NO.

WHAT YOU GOT IS A SITUATION WHERE HE SAID EVEN IF HE GAVE THE STATEMENT I CAN'T TELL YOU WHAT I WOULD HAVE DONE.

THERE IS THE PART YOUR HONOR IS REFERRING TO WHERE HE SAID IF HE HAD GIVEN A STATEMENT AND IT SHOWED 85,000 I WOULD EVER COMMITTED WE SETTLE.

>> THAT IS WHAT IT SHOWED.

>> THE SAME TRIAL, HE SAID I DON'T KNOW WHAT IT WOULD HAVE SHOWN.

AND THE SPECULATION, IF IT HAD SHOWN THIS WE WOULD HAVE SAID

THAT.

>> RESPECTFULLY, IT IS NOT INFERENCE IF YOU HAVE THE DOCUMENTS, IT SHOWS WHAT THE EVIDENCE WAS, HOW MUCH THE ASSETS WERE AND WHETHER IT WOULD HAVE SETTLED.

THE LADY WOULDN'T GIVE IT TO HIM.

>> THAT IS -- TOO IMPORTANT NOT TO POINT OUT, SHE CAN'T MAKE IT MISTER HARVEY GIVE THAT.

HE NEVER GOT A STATEMENT.

>> DID MISTER HARVEY SAY SHE DIDN'T TELL ME ABOUT THIS, GIVING THIS INFORMATION?

>> HE ADMITS ON THE 31ST HE WAS TOLD.

>> HE DISCUSSED THE LETTERS WITH MISS KORKUS.

>> DID THE DEFENDANT, HARVEY, DID HARVEY TELL MISS KORKUS I AM WILLING TO GIVE A STATEMENT.

PLEASE TELL THEM MY LAWYER IS OUT OF TOWN AND UNAVAILABLE UNTIL 5 SEPTEMBER, POLICE PASSED THAT INFORMATION ON TO THE CLAIMANT'S LAWYER?

>> NOT THE FIRST PART.

HE SAID MY LAWYER IS OUT OF TOWN UNTIL THAT NUMBER 50.

I HAVE TO TALK TO MY LAWYER AND GET BACK TO YOU.

LET THEM KNOW WE ARE, QUOTE, WORKING ON IT.

HE NEVER SAID -- HE ADMITTED AT TRIAL --

>> IT IS SOMETHING OTHER THAN DOING NOTHING.

IT IS CLEAR MISS KORKUS DID NOT PASS THAT INFORMATION ON TO THE CLAIMANT'S ATTORNEY.

>> THE PLAINTIFF POINTED THE OUT GEICO WAS AN IMPEDIMENT, THAT IS FLAT UNTRUE.

THE DUTY TO COOPERATE EXTENDS WHEN INSURERS ASK TO GIVE PERSONAL INFORMATION THAT IS FINANCIAL THEY GO THROUGH THE INSURANCE COMPANY TO PROVIDE IT.

THERE IS NO CASE THAT STANDS FOR THAT PROPOSITION, THAT INSURER WILL MAKE A DECISION ON WHETHER TO GIVE THAT INFORMATION AND OFTEN TIMES IT IS DONE DIRECTLY WITH THE PLAINTIFFS ATTORNEY.

>> THAT COULD HAVE BEEN -- GEICO COULD HAVE BEEN ONE OF TWO THINGS.

AFTER THEY SAID, COULD HAVE SAID THIS IS A CLEAR LIABILITY, MILLIONS OF DOLLARS A VERDICT, TO SETTLE THE CASE, WE NEED TO DO THIS, THIS AND THIS ASKING AS YOUR FIDUCIARY.

>> THEY COULDN'T HAVE SAID -- AND THEY HAVE NO -- WHAT WILL BE THE MOST LIKELY TO SETTLE THE CASE.

>> HE OUGHT TO DO THIS, THIS IS GIVING LEGAL ADVICE AND THAT IS BEYOND THE PALE OF WHAT INSURANCE COMPANIES, FOR THE POLICYHOLDER.

AND IN CONSULTATION WITH AN ATTORNEY, AND THAT IS GOING DOWN TO THE DECK OF SAYING THE COMMUNICATED REQUEST HIS AFFIRMATIVE DUTIES AND START GIVING ADVICE TO DO ABOUT IT.

>> YOU HAVE A GOOD POINT HOW FAR THEY COULD GO.

I AGREE WITH THAT.

THE QUESTION IS SHE KNOWS A COUPLE DAYS AFTER THEY WANT A STATEMENT.

IT IS NOT COMMUNICATED UNTIL AUGUST 31ST.

IN THAT TIME PERIOD, TO GET WHAT THE ESTATE WANTED, FROM THAT TIME ON, IT WAS FINANCIALLY GOING TO BE EITHER RUINATION OR YOU WERE GOING TO SETTLE THE CASE.

>> THE UNDISPUTED EVIDENCE IS AFTER MISS KORKUS SENT THE LETTER ON AUGUST 11TH, HIRED MISTER GARRITY TO COLLECT THIS FINANCIAL INFORMATION, THE FIRST DAY THEY COULD MEET, AND DISCUSS

ALL OF THAT.  
HE WAS IN THE PROCESS OF DOING  
WHAT YOUR HONOR WAS CONCERNED  
ABOUT SO HE WAS DOING THAT.  
OUR ARGUMENT WAS WHY WOULD HE DO  
THAT IF SHE DIDN'T TELL HIM ON  
THE 14TH, FORGET THAT, 31ST WAS  
THE DAY HE KNEW FOR SURE.  
WHEN HE GOT THAT, HE HAD UNTIL  
THE 13TH TO DIRECTLY COMMUNICATE  
MISTER DOMINIC'S INFORMATION  
BECAUSE THEY HAD HIS LETTERS, HE  
HAD A LAWYER NAMED MISTER  
GARRITY ACTING AS PERSONAL  
COUNSEL SO THE QUESTION IS IT IS  
FRAN KORKUS'S FOR THE NONE OF IT  
HAPPENS.

WAS MISS KORKUS PERFECT?  
ABSOLUTELY NOT.

WAS SHE ACTING IN A WAY SHE WAS  
COMMUNICATING WHAT SHE NEEDED TO  
COMMUNICATE?

BELATED ME.

IT WAS NOT THE FIRST DAY SHE  
KNEW.

>> I NEED TO ASK YOU THIS.  
YOU INDICATE MISTER HARVEY MET  
WITH HIS PRIVATE LAWYER ON THE  
23RD AND THAT IS IN THE RECORD.  
AT THAT TIME, MISTER HARVEY  
BROUGHT DOCUMENTATION TO THE  
MEETING WITH THE ATTORNEY  
SHOWING WHAT HIS BUSINESS ASSETS  
WERE, WHO TESTIFIED BY THAT  
INFORMATION?

WHERE DO WE GET THE FACT HARVEY  
MET WITH THE ATTORNEY AND  
BROUGHT THAT INFORMATION TO THE  
ATTORNEY ON THE 23RD, TESTIFIED  
TO IT.

AND IF I MAY SINCE I SEE MY TIME  
IS OVER I WOULD LIKE TO POINT  
OUT MISTER HARVEY NEVER PROVIDED  
THE STATEMENT BEFORE OR AFTER  
THE LAWSUIT, NEVER DEMANDS MADE  
IN THIS CASE, NEVER A STATEMENT  
MADE TO GEICO THIS WAS A  
CONDITION OF SETTLEMENT.

THERE'S A LOT OF INFERENCES THE  
PLAINTIFF SUGGESTED BUT NO

STATEMENT AND THE PLAINTIFF ADMITTED THAT AT TRIAL, THEY NEVER SAID THIS IS CONDITION OF SETTLEMENT.

WE BELIEVE THE FOURTH DISTRICT'S OPINION SHOULD BE AFFIRMED BUT FOR ANY REASON YOU DISAGREE WITH OUR POSITION ON THIS WE ASK THE CASE BE REMANDED TO CONSIDER THE REMAINING POINTS ON APPEAL THEY DID NOT ADDRESS.

THANK YOU.

>> IT IS UNFORTUNATE I HAVE TO STAY WITH YOU ON REBUTTAL TO COME.

MISTER HARVEY NEVER DECLINED TO GIVE A STATEMENT.

THE RECORD IS DETAILED IN PAGE 3 AND 4 OF OUR REPLY BRIEF MULTIPLE TIMES.

THE BEST EVIDENCE COMING IN THE A LOG, KORKUS PUT IN REFERENCE, SUMMARIZES A CALL SHE HAD WITH MISTER HARVEY ON SEPTEMBER 1ST, AND INSURER DOES NOT WANT THE ATTORNEY TO THINK WE ARE ACTING FAST ENOUGH AND WHAT WE CAN DO TO LET THE CLAIMANT'S ATTORNEY TO KNOW WE ARE NOT WORKING ON THIS.

I TOLD IN SHORT I WILL DISCUSS LATER WITH MANAGEMENT AND GET BACK TO HIM.

>> HIS STATEMENT IS THAT?

>> FRAN KORKUS THE ADJUSTER WHO DIDN'T TELL HARVEY ON THE 14TH WHEN THE REQUEST WAS MADE FOR THE FINANCIAL STATEMENT IN THE RECORD IS UNDISPUTED THAT THE REASON MISTER HARVEY MET WITH HIS ATTORNEY ON THE 23RD WAS HE GOT THE EXCESS EXPOSURE, HE WAS CONCERNED ABOUT HIS ASSETS, DIDN'T KNOW ANYTHING ABOUT ANY REQUESTS FROM THE CLAIMANT. THAT IS NOT WHY HE DID IT. LATER HE CONTACTED HIS ATTORNEY ABOUT GETTING TOGETHER HOW TO DO IT.

>> JUSTICE QUINCE ASKED WHAT YOU

ARE QUOTING FROM.  
JUSTICE QUINCE ASKED WHAT YOU  
ARE QUOTING FROM.  
>> THIS IS THE A LOG.  
>> WHAT IS THAT?  
>> I AM SORRY.  
IT IS THE ACTIVITY LOG.  
THERE IS A FOOTNOTE, THIS IS THE  
ACTIVITY LOG.  
>> FOR MISS KORKUS?  
>> ALL THE PEOPLE, WHAT THEY DO,  
PHONE CALLS AND EVERYTHING ELSE.  
>> PAGE 3 OF YOUR REPLY BRIEF.  
>> YOU SEE BULLET POINTS ON THE  
REPEATED EVIDENCE THAT MISTER  
HARVEY WAS WILLING TO DO THIS.  
>> I WANT TO MAKE SURE MISTER  
DOMINIC KNOWS I WOULD GIVE A  
STATEMENT AND MY LAWYER IS NOT  
AROUND.  
>> WHAT WAS THE TESTIMONY?  
>> LET ME UNDERSTAND, EVERYBODY  
AGREES, MISS KORKUS DID NOT  
NOTIFY HER INSURED FOR THE  
REQUEST, THAT 17 DAYS PAST.  
AND THEN SHE DID NOT NOTIFY  
CLIENTS REPRESENTATIVE THAT HER  
CLIENT WAS WORKING ON IT.  
>> DIDN'T NOTIFY THERE WAS  
PRIVATE COUNSEL, EFFORTS WERE  
MADE TO GIVE THE STATEMENT AND  
WILLINGNESS OF MISTER HARVEY TO  
DO SO.  
>> OF THE DEFICIENCY, CONSTITUTE  
BAD FAITH.  
>> ANOTHER STATEMENT --  
>> ABOUT THE DIRECTIVES FROM HER  
SUPERIOR ABOUT WHAT TO DO.  
THIS IS IN THE A LOG AS WELL,  
THESE CHOICE BITS ARE FROM 3672  
TO 3673 OF THE RECORD.  
THERE WAS AN ENTRY BY THE  
SUPERVISOR.  
AUGUST 31, '17 DAYS AFTER THE  
REQUEST WAS MADE, WAS THERE A  
REQUEST THAT INSURED BE MADE  
AVAILABLE FOR STATEMENT?  
ARE FAR NO REFERENCE TO THAT ON  
THE FILE.  
IF A REQUEST WAS MADE, SURELY

NOT DENY THAT REQUEST ON OUR OWN WHICH IS EXACTLY WHAT SHE DID.

>> THE MOST FAVORABLE?

>> IN ANY LIGHT.

>> SHE DENIED A REQUEST ON HER OWN?

DENIED THE REQUEST FOR A STATEMENT ON HER OWN.

>> SHE DENIED THE REQUEST ON AUGUST 14TH, WE NEED TO ARRANGE A RECORDED STATEMENT AND SHE SAID NO.

THE PARALEGAL TESTIFIED SHE REFUSED AND WAS SO SHOCKED SHE SPOKE TO MISTER DOMINIC AND SAID YOU WON'T BELIEVE THIS.

DOMINIC FILED IT WITH A LETTER, HE WOULDN'T FILE, AND HAD A CONVERSATION WITH YOU, DENIED IT.

AND THERE WAS ANOTHER PHONE CALL, IT WAS REQUESTED AND WHY. LET ME READ ONE MORE EXCEPT WHERE THE SUPERVISOR TOLD HER WHAT TO DO ON SEPTEMBER 1ST, SAYS IS MISTER HARVEY, WHETHER HE WILL SUBMIT TO GIVING A STATEMENT WHICH IS NOT TRUE FROM ALL THE SECRETARY.

MISTER HALLORAN DIDN'T KNOW BECAUSE KORKUS DIDN'T PUT IT IN THE A LOG.

HE GOES ON TO SAY THAT IS NOT THE CASE, WE SHOULD SEND A LETTER TO MISTER DOMINIC EXPLAINING THIS WITH A COPY TO THE INSURED AND HIS PERSONAL ATTORNEY.

NOTHING WAS DONE AND THERE WERE TEN DAYS OF NO CONTACT, SHE TOLD MY CLIENTS SHE WOULD GET BACK TO HIM AFTER TALKING TO MANAGEMENT, TOLD HIM HE SHOULDN'T SHOW UP, STANDING BY HIMSELF, AND WE NEVER ARGUED THE INSURANCE COMPANY HAD AN OBLIGATION TO FORCE MISTER HARVEY TO REVEAL HIS PERSONAL FINANCES.

THAT IS A STRAW MAN ARGUMENT. WE ARE ASKING FOR CONTINUATION

OF THE EXISTING LOSS IN FLORIDA,  
THAT THE THREE CLEARLY  
INACCURATE STATEMENTS OF THE LAW  
IN THE FOURTH DISTRICT'S  
DECISION BE ERADICATED BY  
QUASHING THAT DECISION SO THAT  
THE STATE OF THE LAW IN FLORIDA  
ON BAD FAITH REMAINS THE SAME  
AND IT REQUIRES REMAND FOR ENTRY  
OF JUDGMENT.