IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ELIJAH SIMONE, Plaintiff and Respondent, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY Defendant and Appellant	B326990 (Los Angeles County Case No. 20STCV14579 Hon. Mark V. Mooney) Appeal from judgment entered February 8, 2023

APPLICATION FOR PERMISSION TO FILE AMICUS BRIEF; BRIEF OF THE CIVIL JUSTICE ASSOCIATION OF CALIFORNIA AND THE AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION AS AMICI CURIAE SUPPORTING APPELLANT

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Application for Permission to File Amicus Brief

The Civil Justice Association of California (CJAC) and the American Property Casualty Insurance Association (APCIA) apply for permission to file an amicus brief pursuant to California Rules of Court, rule 8.200 (c), supporting Appellant.

CJAC is a nonprofit organization whose members are businesses from a broad cross section of industries. CJAC's principal purpose is to educate the public and its governing bodies about how to make laws determining who gets paid, how much, and by whom when the conduct of some causes harm to others—more fair, certain, and economical. Toward this end, CJAC regularly appears as amicus curiae in numerous cases of interest to its members, including those that raise issues of concern to the business community and the insurance industry. CJAC and its members are substantially interested in the proper development of clear and consistent rules regarding bad faith claims against insurers.

APCIA is the primary national trade association for home, auto, and business insurers. APCIA's members, who collectively write nearly 59.1 percent of all property and casualty insurance in the State of California, range in size from small companies to the largest insurers with global operations and include companies headquartered in California with substantial operations and workforces. On issues of importance to the insurance industry and marketplace, APCIA advocates sound and progressive public policies on behalf of its members in legislative and regulatory forums at the federal and state levels.

APCIA also files amicus curiae briefs in significant cases before federal and state courts, including this Court.

This brief will assist the Court by providing a broader perspective on the issue before the Court than that provided by the individual defendant that brought this appeal.

No party to this appeal nor any counsel for a party authored the proposed amicus brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the brief.

No person or entity made a monetary contribution intended to fund the preparation or submission of the brief, other than amici and their members.

Amicus Brief

As this case illustrates, the ability of personal injury defendants to assign their bad faith insurance claims to their nominal adversaries elevates the stakes in routine day-to-day claims handling decisions. Because a State Farm claims manager did not respond to some questions posed by one of its insureds, a $25,000 risk turned into a $11.6 million judgment against State Farm. According to the trial court, State Farm acted in bad faith because it did not do "all within its power to effect a settlement," even though it made a policy limits offer to settle within two days after the injured party invited such an offer. [3 AA 875]

As State Farm explains in its opening and reply briefs, the judgment should be reversed, because the trial court misapplied the law regarding good faith settlement offers. In writing its decision, this Court should look beyond this case and articulate guidelines that insurers may rely on in dealing with settlement inquiries from those pursuing claims against their insureds. If the result in this case were affirmed, insurers would be subject to entrapment for inadvertently "refusing" a settlement demand containing extraneous technical requirements while making a policy limits offer that would otherwise be considered good faith "as a matter of law." (*Graciano v. Mercury Gen. Corp.* (2014) 231 Cal.App.4th 414, 426.)

The Legislature has recently addressed the abuses that can arise if plaintiffs are allowed to base bad faith claims on the failure of an insurer to respond to every statement in what the plaintiffs will later contend was an offer of settlement. With the

enactment of SB 1155 in 2022, a "time-limited" demand for settlement within a liability insurer's policy limits made by a represented claimant cannot be the basis for a bad faith claim unless the demand meets certain requirements.[1]

The new statute was prompted by concerns from the insurance industry "that these 'time-limited demands' have become increasingly unreasonable and used as a litigation tactic to subject insurance companies to bad faith liability in excess of the relevant policy limits." (Senate Floor Analysis for SB 1155, dated August 17, 2022, p. 4.) The bill's author explained how the bill met those concerns:

> This bill will benefit Californians by allowing insurers to meet obligations to protect their policyholder and complete reviews of a claim to ensure that only legitimate claims and charges are paid. This will also help to expedite the resolution of damage claims and avoid costly litigation for all parties. Finally, it will benefit policy holders by reducing the risk of bad faith litigation allegations that increase the cost of insurance policies.

(Senate Floor Analysis for SB 1155, dated August 17, 2022, p. 7.)

Because the new statute only applies to demands by claimants who are represented by counsel, it does not regulate

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[1] A "time-limited" demand must be "in writing," "labeled as a time-limited demand," and contain the following material terms: a time period within which the demand must be accepted of not less than 30 days, a "clear and unequivocal offer to settle all claims within policy limits, including the satisfaction of all liens," an offer for a complete release, the date and location of the loss, the claim number, if known, a description of all known injuries, and reasonable proof sufficient to support the claim. (Code Civ. Proc., § 999.1, effective January 1, 2023.)

communications from claimants who have not retained an attorney, which was the situation in the present case. Although the specific details required by section 999.1 may not be suitable for imposition on those who do not have an attorney, the courts should apply the principles developed through case law in a way that also promotes the policies behind that statute. That requires the announcement of clear guidelines that insurers may rely on in their interactions with unrepresented claimants.

A To fulfill their obligations under the covenant of good faith and fair dealing implied in their insurance policies, insurers are required to make "reasonable efforts" to settle within policy limits.

Every contract of insurance includes an implied covenant of good faith and fair dealing. (*Comunale v. Traders & Gen. Insurance Co.* (1958) 50 Cal.2d 654, 658.)

> This implied covenant obligates the insurance company, among other things, to make reasonable efforts to settle a third party's lawsuit against the insured. If the insurer breaches the implied covenant by unreasonably refusing to settle the third party suit, the insured may sue the insurer in tort to recover damages proximately caused by the insurer's breach.

(*PPG Industries, Inc. v. Transamerica Ins. Co.* (1999) 20 Cal.4th 310, 312.)

To prove bad faith, the claimant must show that the insurer's conduct "demonstrates a failure or refusal to discharge contractual responsibilities, prompted not by an honest mistake, bad judgment or negligence but rather by a conscious and deliberate act, which unfairly frustrates the agreed common purposes and disappoints the reasonable expectations of the

other party thereby depriving that party of the benefits of the agreement." (*Chateau Chamberay Homeowners Assn. v. Associated Internat. Ins. Co.* (2001) 90 Cal.App.4th 335, 346, quoting *Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1395.) "A claim for 'wrongful refusal to settle' requires proof the insurer unreasonably failed to accept an otherwise reasonable offer within the time specified by the third party for acceptance." Whether or not that insurer has acted reasonably in such circumstances "must be measured in the light of the time limitation which plaintiff had placed on her offer." (*Graciano*, *supra*, 231 Cal.App.4th at p. 434.)

When an insurer timely tenders its "full policy limits," "the insurer has acted in good faith as a matter of law, [citation omitted] because 'by offering the policy limits in exchange for a release, the insurer has done all within its power to effect a settlement.'" (*Ibid.* See also *Lehto v. Allstate Ins. Co.* (1994) 31 Cal.App.4th 60, 73 ("by offering the policy limits in exchange for a release, the insurer has done all within its power to effect a settlement"); *State Farm Mut. Auto. Ins. Co. v. Crane* (1990) 217 Cal.App.3d 1127, 1136 (an insurer's "policy limits settlement offer was in good faith as a matter of law").)

B An insurer is not required to do "all within its power" to effect a settlement.

The trial court ruled against State Farm, because it was "unable to make a finding" that the insurer did "all within its power to effect a settlement." [3 AA 875] That conclusion rested on a phrase from the *Graciano* case that the trial court took out of context. In *Graciano*, the insurer made a full policy limits offer

within three weeks after the first contact from the injured party's attorney, which was within the deadline set by the attorney. By doing so, the insurer had done "all within its power" to try to settle the case. The Court of Appeal did not say that the insurer was *required to* do all within its power. It did not announce a new standard for measuring insurer conduct. Rather, in analyzing whether the insurer acted reasonably, the Court simply concluded, "Yes, it did." The actions the *Graciano* court deemed reasonable—offering limits within three weeks of receiving the claimant's demand—were virtually identical to State Farm's actions in this case. It made a policy limits offer within two days of the communication from the claimant.

The *Graciano* court took the phrase from the *Lehto* case, which rejected a claim that the insurer had acting in bad faith by not declining an offer that did not include a release of liability. By making a policy limits offer, the insurer had done all within its power to bring about a settlement. The *Lehto* decision did not suggest that an insurer was *required* to do that. An insurer has acted in good faith if it acts reasonably. It is not required to exhaust every possibility.

Other courts have similarly misinterpreted that phrase to establish a duty. In *Hedayati v. Interinsurance Exchange of the Automobile Club* (2021) 67 Cal.App.5th 833, 851, the Court of Appeal asserted that, in deciding whether the insurer had acted in bad faith "the *Graciano* court considered on the question of timeliness whether the insurer had done 'all within its power to effect a settlement.'" In *Barickman v. Mercury Casualty Co.*

(2016) 2 Cal.App.5th 508, 520, the Court of Appeal likewise thought it necessary to inquire into whether the insurer "did all within its power to effect a settlement."

In arriving at its decision in this case, this Court should be clear that proof an insurer did "all within its power" is not required to defeat a bad faith claim. "Sloppy or negligent claims handling does not rise to the level of bad faith." (*Chateau Chamberay*, *supra*, 90 Cal.App.4th at p. 351.) The standard is whether the "insurer by a conscious and deliberate act" frustrated the settlement process.

C There is no requirement that an insurer respond to immaterial matters in a claimant's inquiry about settlement.

The trial court's determination that State Farm acted in bad faith rested on its failure to provide the information that the injured party demanded in his August 31, 2015, letter. Although case law indicates that an insurer's duty of good faith may include an obligation to provide *some* information in response to the injured party's inquiry, there is no case that says the insurer must respond to every concern. The question is whether the insurer's conduct prevents a settlement.

The one piece of information that has been recognized as material to the settlement process is the liability limit of the insurer's policy. "Suffice to say for now that the relevance of disclosure of policy limits to the settlement of an underlying claim cannot be gainsaid." (*Boicourt v. Amex Assurance Co.* (2000) 78 Cal.App.4th 1390, 1393.) Here, State Farm provided

that information in writing the same day it made its policy limits offer. [1 AA 284]

The Court can take further guidance as to what terms are material from the recently enacted statute that delineates the "material terms" that must be included in a time-delimited demand to settle. (See footnote 1 above, at page 8.) They do not include any of the requests beyond the policy limits demand in the injured party's letter.[2] The trial court's decision did not cite any law to support its conclusion that the requests were reasonable, and there is none. Indeed, the Court of Appeal has ruled that an insurer was entitled to judgment in its favor when it made a policy limits offer but had not provided requested information about whether its insured was acting in the scope of her employment. (*Pinto v. Farmers Ins. Exchange* (2021) 61 Cal.App.5th 676, 692-693.)

If the communication from the claimant does not ask for information that is clearly material to settlement discussions with the insurer, the insurer should not be tasked with a good faith duty to respond. Offering the policy limits within a reasonable time is all that the law requires.

[2] His letter demanded to be told how much insurance the insured had (which was provided within two days), whether the insured had "other insurance," what kind of car he was driving, and whether the car was "for work." [1 AA 272-273]

Conclusion

This Court should reverse the trial court's judgment for all the reasons that State Farm has explained in its briefing. In writing its decision, the Court should have in mind the importance of adhering to clear guidelines that insurers may rely on in responding to claims. In this case, that means the Court should explain that an insurer has met its good faith obligation as a matter of law by making a timely policy limits offer, so long as it does not otherwise deliberately obstruct the prospects for settlement. It should also explain that an insurer does not have a duty to respond to immaterial questions that an injured party poses. The insurer should not be tasked with a duty to provide information beyond the policy limits, in the absence of special circumstances that might require additional information.

Dated: November 8, 2024

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CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that, pursuant to Rule 8.204 (c)(1) of the California Rules of Court, the enclosed Respondents' brief is produced using 13-point Roman type including footnotes and contains approximately 2,800 words, which is less than the total words permitted by the Rules of Court. Counsel relies on the word count of the computer program used to prepare this brief.

/s/ Calvin House