

**IN THE COURT OF APPEALS
FOR THE STATE OF GEORGIA**

Case No. A21A1134

ENEDIA TRUJILLO DE PAZ

Appellant,

vs.

ANA ALBERTO DE PINEDA

Appellee.

**GEORGIA DEFENSE LAWYERS ASSOCIATION'S AMICUS CURIAE
BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI**

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I. INTRODUCTION

It should not be this difficult for an insurance company to pay its policy limits to settle a claim against its insured. And yet, it has become increasingly impossible in the State of Georgia for an insurance company to do just that. It cannot be seriously disputed that State Farm Mutual Automobile Insurance Company (“State Farm”) took all reasonable steps to accept the demand presented by the plaintiff, respondent Enedina Trujillo De Paz, and pay its full policy limits to settle her claim against the insured defendant, petitioner Ana Alberto De Pineda. State Farm did not make a counteroffer, it did not try to impose conditions and it did not insist on unreasonable settlement terms. On the contrary, State Farm did everything in its power to accept the demand that had been presented. However, through no fault of State Farm, the settlement check was not received within the deadline set by the demand, and the Court of Appeals held that no settlement had been reached.

If all plaintiff wanted was to receive the policy limits and settle her claim, she could have accepted those policy limits more than three years ago. Plaintiff’s refusal to do so based solely on a delay of a few days in receiving the settlement check demonstrates that the real purpose of the settlement demand, like so many others sent following this Court’s decision in Southern General Ins. Co. v. Holt,

262 Ga. 267 (1992), was to set up a subsequent “bad faith” claim against the insurance company.

Enough is enough. Almost thirty years after this Court issued its opinion in Holt and cautioned that it was not creating a rule of law that would allow plaintiff attorneys to “set up” insurance companies, 262 Ga. at 269, and despite efforts to enact a legislative reform, the “bad faith set up” persists in Georgia, now more than ever. The Georgia Defense Lawyers Association (“GDLA”) respectfully urges this Court to grant certiorari and address the unintended consequences created by Holt and subsequent decisions.

II. ISSUES PRESENTED

Whether a binding settlement agreement has been reached when an insurance company, such as State Farm here, does everything in its power to accept a settlement demand.

III. STANDARD OF REVIEW

A petition for certiorari should be granted in a case “of great concern, gravity, or importance to the public.” Ga. S. Ct. R. 40; Sharpe v. DOT, 267 Ga. 267, 270 (1996). This Court has recognized Georgia’s “strong public policy of encouraging negotiations in settlement.” E.g., Smith v. Baptiste, 287 Ga. 23, 29 (2010) (quoting Edelkind v. Boudreaux, 271 Ga. 314, 317 (1989)) (punctuation omitted). That strong public policy will be frustrated if this Court allows the “bad

faith set up” to continue and refuses to enforce settlements reached when an insurer takes all reasonable steps within its control to pay its policy limits and effectuate a settlement on behalf of its insured. For that reason, the issues presented in this case are of great concern, gravity, or importance to the public.

IV. IDENTITY AND INTEREST OF AMICUS CURIAE

The GDLA is an association of approximately 950 Georgia lawyers, including sole practitioners and lawyers in law firms of all sizes, who engage in litigation, primarily for defendants in civil litigation, and represent insurance companies, individuals, and self-insured corporations. The GDLA is dedicated to, among other purposes, supporting and improving the civil defense bar, improving the adversary system of jurisprudence in our courts, eliminating court congestion and delay in litigation, and otherwise improving the administration of justice.

The GDLA and its members are interested in ensuring that basic principles of insurance law, contract law, and tort law are clearly defined and uniformly applied. It is axiomatic that legal systems are intended to provide a level of certainty and predictability so that individuals and businesses can shape their conduct appropriately. Ensuring predictability, fairness, and reasonableness in the making of settlement demands and the enforcement of settlement agreements is of key importance to all persons and companies involved in litigation of civil matters

in Georgia courts. Almost every settlement or purported settlement of a litigated civil matter will involve a client of a member or potential member of the GDLA.

The GDLA submits this amicus brief in support of Appellee/Petitioner in this matter out of concern that the opinion of the Court of Appeals, if not reversed, will only exacerbate a growing problem in this state regarding time-limited settlement demands designed to do one thing – allow plaintiffs to argue no settlement has been reached in order to set up a later claim for “bad faith” or “negligent failure to settle.” Because the GDLA’s members regularly represent defendants and insurance companies in civil litigation (and regularly advise both insureds and insurers regarding settlement of liability claims), the GDLA has a vested interest in having this Court provide clarity and guidance on the formation and enforcement of settlement agreements.

The GDLA respectfully submits that where an insurer undertakes all acts within its control in order to satisfy the conditions presented in a settlement offer, such evidence demonstrates a meeting of the minds between the contracting parties and supports a finding of the formation of a valid and enforceable settlement contract. Affirmance of the trial court’s Order will result in certainty in the law and for parties engaged in settlement negotiations. On the other hand, if the Court of Appeals’ decision is allowed to stand, it will be yet another example of the unintended consequences stemming from this Court’s decision in Holt nearly 30

years ago. Under the Court of Appeal's decision, the actions of an uninterested stranger to the negotiations can dictate whether a binding settlement agreement was formed and, most critically, would harm the interests of both insurers and insureds in this state. The public policy of this state of encouraging settlement of disputes is of critical importance and should be furthered. Affirming the creation of a settlement contract where all reasonable conditions were satisfied, and evidence exists showing a clear meeting of the minds, furthers such a public policy.

V. ARUGMENT AND CITATION OF AUTHORITY

When this Court issued its decision in Holt, it was careful to note:

Nothing in this decision is intended to lay down a rule of law that would mean that a plaintiff's attorney under similar circumstances could "set up" an insurer for an excess judgment merely by offering to settle with the policy limits and by imposing an unreasonably short time within which the offer would remain open.

Holt, 262 Ga. at 269 (quoting Grumbling v. Medallion Ins. Co., 392 F. Supp. 717, 721 (D. Rr. 1975)). However, one unintended consequence of the Holt decision is that plaintiff's attorneys have spent the next 30 years employing ever more creative tactics to create a "bad faith set up." When the Legislature attempted to enact a legislative remedy in 2013 with O.C.G.A. § 9-11-67.1, the plaintiff's bar employed new tactics to avoid the legislative intent and frustrate the ability of insurers to pay their policy limits and settle claims against their insureds. And then, when this Court refused to put a halt to such practices in Grange Mutual

Cas. Co. v. Woodard, 300 Ga. 848 (2017), an emboldened plaintiff's bar doubled down. The Legislature recently passed a revised version of § 9-11-67.1 in an effort to curb some of the abusive practices employed to frustrate the intent of the original statute and implicitly allowed under Grange. Yet, it is a never ending game of Whac-a-Mole for insurers attempting to pay their policy limits and settle claims against their Georgia insureds.

As the Chief Judge of the Court of Appeals has recognized, the rule adopted in Holt "creates an incentive, in cases where damages greatly exceed policy limits, for a plaintiff to attempt to set up a bad faith claim." White v. Cheek, ___ Ga. App. ___, 859 S.E. 2d 104, 110 (2021) (McFadden, C.J., concurring specially).

Indeed, as Chief Judge McFadden recognized in another case:

It has become clear that, to a plaintiff whose injuries greatly exceed the available coverage, a policy – limits settlement can be less value than a rejected offer and consequent bad-faith claim – however dubious the claim. In the context of proceedings to enforced purported settlements, plaintiffs sometimes structure offers not to reach settlements, but rather to elicit rejections.

Wright v. Nelson, 358 Ga. App. 871, 876-77 (2021) (McFadden, C.J., concurring specially) (citing Douglas R. Richmond, An Overview of Insurance Bad Faith Law and Litigation, 25 Seton Hall L. Rev. 74, 131 (1994) (noting potential of a third-party insurance claimant "tr[ying] to 'set up' a bad faith claim by way of sharp practice")).

While some judges on the Court of Appeals have urged the Legislature to address this problem, there are affirmative steps that this Court can – and should – take to put a stop to the “bad faith set up.” While plaintiff may assert that this is not a “bad faith” case, it should be noted that almost every case involving a motion to enforce a settlement agreement is the first step in a subsequent action for bad faith against the insurer. See White v. Cheek, 859 S.E.2d at 111 (“these bad faith claims usually come to us that way, as inchoate issues and motivating factors in actions to enforce settlement agreements. We rarely see an appeal that directly address the merits of a bad faith claim, such as the reasonability of an insurer’s actions.”) (McFadden, C.J., concurring). But there is no need for this case, or the many like it, to ever get to that stage. The GDLA respectfully urges this Court to accept the petition for certiorari and adopt a ruling that an insurer has reached a settlement of a claim on behalf of its insured when it takes all reasonable steps to satisfy the conditions imposed by the demand. Under that rule, the decision of the trial court enforcing the settlement reached here should be affirmed.

VI. CONCLUSION

For the foregoing reasons, GDLA, as amicus curiae, respectfully requests that this Court grant the petition for writ of certiorari.

Respectfully submitted this 28th day of October, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *Georgia Defense Lawyers Association's Amicus Curiae Brief In Support Of Petition For Writ Of Certiorari* upon all counsel of record using the Court's electronic filing system which will automatically send e-mail notification to all attorneys of record and by depositing a copy of the same in the United States Mail, postage pre-paid, addressed to the following counsel of record:

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This 28th day of October, 2021.

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