
**IN THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT OF FLORIDA**

CASE NO. 4D13-185

L.T. CASE NO. 11-27972 (14)

On Appeal from a Final Order of the Seventeenth Judicial Circuit,
In and For Broward County, Florida
The Honorable Eileen O'Connor

JOSEPH AND JUDY CAMMARATA,
Appellants/Plaintiffs,

vs.

STATE FARM FLORIDA INSURANCE COMPANY,
Appellee/Defendants.

**AMICUS CURIAE BRIEF
OF THE FLORIDA JUSTICE REFORM INSTITUTE,
IN SUPPORT OF APPELLEE STATE FARM.**

Mark K. Delegal, Esq.

Fla. Bar No. 989924

mark.delegal@hklaw.com

Matthew H. Mears, Esq.

Fla. Bar No.: 885231

matthew.mears@hklaw.com

Holland & Knight LLP

315 S. Calhoun Street, Suite 600

Tallahassee, Florida 32301

Ph. (850) 224-7000

Fax (850) 224-8832

*Counsel for Amici Curiae Florida
Justice Reform Institute*

William W. Large, Esq.

Fla. Bar No. 981273

william@fljustice.org

Florida Justice Reform Institute

210 S. Monroe Street

Tallahassee, Florida 32301

Telephone: (850) 222-0170

Facsimile: (850) 222-1098

*Counsel for Amici Curiae Florida
Justice Reform Institute*

TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF INTEREST	1
SUMMARY OF THE ARGUMENT	1
ARGUMENT	2
I. THE DECISION OF THIS COURT IS IN CONFLICT WITH THE DECISION OF ANOTHER COURT AND SHOULD BE CERTIFIED TO THE FLORIDA SUPREME COURT AS BOTH A CONFLICT AND A QUESTION OF GREAT PUBLIC IMPORTANCE.	2
A. There is a conflict between this Court and the Third District Court of Appeal.....	3
B. This Court's decision in <i>Cammarata</i> passes on a question of great public importance.	4
CONCLUSION	6

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Cammarata v. State Farm Fla. Ins. Co.</i> , Case No. 4D13-185, 2014 WL 4327948 (Fla. 4th DCA Sept. 3, 2014)	passim
<i>North Pointe Insurance Co. v. Tomas</i> , 999 So. 2d 728 (Fla. 3d DCA 2008)	4
<i>State Farm Florida Ins. Co. v. Seville Place Condominium Ass'n, Inc.</i> , 74 So. 3d 105 (2011)	4
<i>State Farm Mut. Auto. Ins. Co. v. Laforet</i> , 658 So. 2d 55 (Fla. 1995)	5
<i>State v. Vickery</i> , 961 So. 2d 309 (Fla. 2007)	2, 3
<i>Vest v. Travelers Insurance Co.</i> , 753 So. 2d 1270 (Fla. 2000)	1, 4
OTHER AUTHORITIES	
Art. V, § 3(b)(4), Fla. Const.	2, 3

STATEMENT OF INTEREST

The Florida Justice Reform Institute (the "Institute") is Florida's leading organization of concerned citizens, small business owners, business leaders, doctors, and lawyers who are working towards the common goal of promoting predictability and personal responsibility in the civil justice system in Florida through the elimination of wasteful civil litigation and the promotion of fair and equitable legal practices. The Institute is the first independent organization focused solely on civil justice in Florida. Since its founding the Institute has worked to restore faith in the Florida judicial system and to protect Floridians from the social and economic toll of rampant litigation.

As an organization that represents a wide range of interests, the Institute can provide the Court with perspective on the importance of a just, understandable, and uniform legal system. Conflicting legal standards for bad faith claims will create confusion and uncertainty for companies that operate statewide. Certifying this case to the Florida Supreme Court will allow the court to establish a uniform standard for bad faith claims.

SUMMARY OF THE ARGUMENT

In *Cammarata v. State Farm Fla. Ins. Co.*, Case No. 4D13-185, 2014 WL 4327948, at *1 (Fla. 4th DCA Sept. 3, 2014), this Court was constrained by its reading of *Vest v. Travelers Insurance Co.*, 753 So. 2d 1270 (Fla. 2000), to hold

that "an insurer's liability for coverage and the extent of damages, and not an insurer's liability for breach of contract, must be determined before a bad faith action becomes ripe." This decision directly conflicts with a decision of the Third District Court that found that an insurer's liability for breach of contract is necessary before a bad faith action accrues. The Institute respectfully requests that this Court certify this conflict to the Florida Supreme Court for resolution. Further, this Court's decision in *Cammarata* passes on questions of great public importance that should be certified to the Florida Supreme Court.¹

ARGUMENT

I. THE DECISION OF THIS COURT IS IN CONFLICT WITH THE DECISION OF ANOTHER COURT AND SHOULD BE CERTIFIED TO THE FLORIDA SUPREME COURT AS BOTH A CONFLICT AND A QUESTION OF GREAT PUBLIC IMPORTANCE.

The Florida Constitution grants to the Florida Supreme Court the power to "review any decision of a district court of appeal that passes upon a question certified by it to be of great public importance, or that is certified by it to be in direct conflict with a decision of another district court of appeal." Art. V, § 3(b)(4), Fla. Const. In *State v. Vickery*, 961 So. 2d 309, 311-12 (Fla. 2007), the Florida Supreme Court discussed its jurisdiction under article V, section 3(b)(4), holding that the "certification of conflict provides [the court] with jurisdiction per

¹ Although this amicus brief only addresses the certification issue, the Institute fully supports Appellee's Motion for Rehearing.

se." *Vickery*, 961 So. 2d at 312. Absent a certified conflict, the court's jurisdiction "depends on whether the decision actually 'expressly and directly' conflicts with the decision of another court" as provided in Article V, section 3(b)(3). *Vickery*, 961 So. 2d at 312.

For this reason, the Florida Supreme Court has advised district courts to use the constitutional term of art, "certify" when they intend to certify a conflict under article V, section 3(b)(4):

We therefore advise district courts that when they intend to certify conflict under article V, section 3(b)(4) of the Florida Constitution, they use the constitutional term of art "certify."

Vickery, 961 So. 2d at 312. This case presents a clear conflict among two district courts of appeal and passes on a question that is of great public importance. Thus, certification to the Florida Supreme Court is appropriate.

A. There is a conflict between this Court and the Third District Court of Appeal.

In *Cammarata v. State Farm Fla. Ins. Co.*, Case No. 4D13-185, 2014 WL 4327948 (Fla. 4th DCA Sept. 3, 2014), this Court held that the conditions precedent for a bad faith action consist of two determinations: first, a determination "of the existence of liability" and second, a determination of "the extent of the insured's damages." *Id.* at *6. As Judge Gerber explained in his concurring opinion, "the majority opinion would open the door to allow an insured to sue an insurer for bad faith any time the insurer dares to dispute a claim, but then pays the

insured just a penny more than the insurer's initial offer to settle, without a determination that the insurer breached the contract." *Id.* *7 (J. Gerber concurring) (emphasis added).

In *North Pointe Insurance Co. v. Tomas*, 999 So. 2d 728, 728–29 (Fla. 3d DCA 2008), *receded from on other ground*, *State Farm Florida Ins. Co. v. Seville Place Condominium Ass'n, Inc.*, 74 So. 3d 105 (2011), the court held that an insurer's liability for breach of contract is necessary before a bad faith action accrues. The holding of this Court in *Cammarata* directly conflicts with the holding of the Third District in *North Pointe Insurance*. In the Fourth District a determination that the insurer breached the contract is not required for a bad faith claim. In contrast, in the Third District, a bad faith claim does not accrue until an insurer's liability for breach of contract has been established.

Because this conflict will lead to confusion, forum shopping, and to conflicting and contradictory rulings, the Institute respectfully requests that the Court certify a conflict to the Florida Supreme Court.

B. This Court's decision in *Cammarata* passes on a question of great public importance.

In addition, this Court's decision in *Cammarata* passes on a question of great public importance—the prerequisites to bringing a bad faith claim—that should be certified to the Florida Supreme Court. This Court felt constrained by its reading of *Vest v. Travelers Insurance Co.*, 753 So. 2d 1270 (Fla. 2000), to hold that "an

insurer's liability for coverage and the extent of damages, and not an insurer's liability for breach of contract, must be determined before a bad faith action becomes ripe." *Cammarata*, 2014 WL 4327948, at *1. Judge Gerber properly described this Court's holding as a "slippery slope." *Id.* *7 (J. Gerber concurring).

Judge Gerber observed that given the facts of this case, "[t]he insurer's exposure should be at an end." Indeed, the reasonable expectation of the parties could only be that both sides received all they bargained for under the insurance contract. The insured filed a claim and the insurer paid the full amount due under the policy, as determined by the "agreed-upon dispute resolution process of appraisal." *Id.* at *8.

But, under this Court's decision, the insurer's exposure is not at an end. Instead, the insurer now faces an entire new array of liability. In contrast to the insurer's liability under the insurance contract that is generally limited to the specified policy limits, liability for bad faith claims are not so limited. *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 58 (Fla. 1995) (noting that damages in bad faith actions may be awarded in excess of policy limits). This outcome is remarkable in a case where the record "provides no basis indicating that the insurer breached the contract, much less failed to act in good faith to settle the claim." *Cammarata*, 2014 WL 4327948, at *8 (J. Gerber concurring). Instead, even though the insurer was "merely exercise[ing] its rights under the contract's agreed-

upon dispute resolution process of appraisal," *Id.*, this Court held that all prerequisites to a bad faith claim have been satisfied. *Id.* at *1.

To open the door for a bad faith claim in cases such as the one presented here, where the insurer promptly paid the claim as required by the terms of the policy and where there is no evidence that the insurer failed to act in good faith, represents a dramatic shift in the interpretation of insurance contracts in Florida. If this change of course is not reversed, it could lead to a dramatic increase in insurance premiums and may result in insurance companies deciding to pull out of Florida or not enter the market in the first place. Therefore, this case presents a question of great public importance that should be immediately certified to the Florida Supreme Court.

CONCLUSION

The September 3, 2014 decision of this Court changes the prerequisites to bring a bad faith claim in a way that directly conflicts with a decision of the Third District. In addition, the question of when a bad faith claim accrues, and the prerequisites for bringing a bad faith claim, are matters of great public importance. Therefore, the Institute respectfully moves this Court to certify a conflict among

district courts and to certify a question of great public importance to the Florida Supreme Court.²

Respectfully submitted this 9th day of October, 2014.

HOLLAND & KNIGHT LLP

/s/Mark K. Delegal

Mark K. Delegal, Esq.

Fla. Bar No.: 989924

mark.delegal@hklaw.com

Matthew H. Mears, Esq.

Fla. Bar No.: 885231

matthew.mears@hklaw.com

Holland & Knight LLP

315 S. Calhoun Street, Suite 600

Tallahassee, Florida 32301

Ph. (850) 224-7000

Fax (850) 224-8832

-and-

William W. Large, Esq.

Fla. Bar No. 981273

william@fljustice.org

Florida Justice Reform Institute

210 S. Monroe Street

Tallahassee, Florida 32301

Ph. (850) 222-0170

Fax (850) 222-1098

*Counsel for Amicus Curiae Florida Justice
Reform Institute*

² The Institute supports the question proposed by Appellee in Appellee's Motion for Certification dated September 29, 2014.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been electronically filed and that a copy has been served by e-mail to the following all on this 9th day of October, 2014:

<p>George A. Vaka, Esq. 777 S. Harbour Island Blvd., Suite 300 Tampa, FL 33602 Tel: 813-549-1799 Email: gvaka@vakalaw.com nlauten@vakalaw.com awilliams@vakalaw.com</p>	<p>Kelly Kubiak, Esq., Merlin Law Group, P.A. 777 S. Harbour Island Boulevard, # 950 Tampa, FL 33602 Attorneys for Appellants Tel: 813-229-1000 Email: kkubiak@merlinlawgroup.com bbently@merlinlawgroup.com fbradley@merlinlawgroup.com</p>
--	---

Paul L. Nettleton
Carlton Fields, P.A.
4200 Miami Tower
100 SE Second Street
Miami, Florida 33131
Attorneys for Appellee
Tel: (305) 530-0050
Email: pnettleton@carltonfields.com

/s/Mark K. Delegal

Attorney

CERTIFICATE OF RULE 9.210 COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

/s/Mark K. Delegal
Attorney

#33449578_v1