

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION**

FIFE M. WHITESIDE, Trustee in  
Bankruptcy, on behalf of Bonnie Winslett,

Plaintiff,

vs.

GEICO INDEMNITY COMPANY  
("GEICO"),

Defendant.

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CIVIL ACTION FILE

NO.: 4:16 CV 00313-CDL

**PRETRIAL ORDER – JURY**

This case is scheduled for trial to begin on June 18, 2018 beginning at 9:00 A.M. at the United States Courthouse in Columbus, Georgia. The following constitutes a pretrial order entered in the above-styled case after conference with counsel for the parties:

(1)(a) The names, addresses, and telephone numbers of all attorneys who personally appeared at pretrial and who will conduct the trial are as follows:

Plaintiff: Charles A. Gower  
Georgia Bar No. 303500  
Miranda J. Brash  
Georgia Bar No. 475203  
Charles A. Gower, P.C.  
1425 Wynnton Road  
P. O. Box 5509  
Columbus, GA 31906  
(706) 324-5685  
[Charles@cagower.com](mailto:Charles@cagower.com)  
[miranda@cagower.com](mailto:miranda@cagower.com)

Defendant: J. Robb Cruser, Esq.  
Kathleen M. Hurley, Esq.  
Cruser & Mitchell, LLP  
Meridian II, Suite 2000  
275 Scientific Drive  
Norcross, GA 30092  
(404) 881-2622  
[rcruser@cmlawfirm.com](mailto:rcruser@cmlawfirm.com)  
[khurley@cmlawfirm.com](mailto:khurley@cmlawfirm.com)

Other: Co-counsel for Defendant  
Wallace Miller, III, Esq.  
Wallace Miller, III, LLC  
509 Forest Hills Road  
Macon, GA 31209-7126  
(478) 474-4145  
[wallacemiller@bellsouth.net](mailto:wallacemiller@bellsouth.net)

(b) The names, addresses, and telephone numbers of all nonparty persons including attorneys who have a fixed or contingent financial interest in this case are as follows:

Charles A. Gower  
and all partners, shareholders or any other individuals having an ownership interest in Charles A. Gower, P.C.  
1425 Wynnton Road  
Columbus, GA 31906  
Tel: (706) 324-5685

Fife M. Whiteside  
1124 Lockwood Avenue  
Columbus, GA 31906  
Tel: (706) 320-1215

Austin Gower  
1425 Wynnton Road  
P.O. Box 5509  
Columbus, GA 31906  
Tel: (706) 324-5685

Terry Guthrie  
453 Lee Road 438  
Phenix City, AL 36877  
Tel: (706) 580-4474

Ben B. Philips  
105 13<sup>th</sup> Street, Suite B  
Columbus, GA 31901  
Tel: (706) 323-6461

Stephen J. Hodges  
105 13<sup>th</sup> Street, Suite B  
Columbus, GA 31901  
Tel: (706) 323-6461

(2) (a) Companion cases pending in this and other federal/state courts are: The United States Bankruptcy Court, Middle District of Georgia, In Re: Bonnie Winslett, Debtor; Case No. 12-41181.

(b) Possible derivative claims not now the subject of pending litigation: None.

(3) The estimated time required for trial is:

By Plaintiff: Three days;

By Defendant: Four days.

(4) The parties agree that the court has jurisdiction of the parties and the subject matter pursuant to 28 U.S.C. § 1332.

(5) The jury will be qualified as to relationship with the following:

Fife M. Whiteside, Trustee in Bankruptcy

Bonnie Winslett

Terry Guthrie

Charles A. Gower, P.C.  
1425 Wynnton Road  
Columbus, GA 31906  
Charles A. Gower  
Austin Gower  
Miranda J. Brash

Cruser, Mitchell, Novitz, Sanchez, Gaston & Zimet, LLP  
J. Robb Cruser  
Kathleen M. Hurley

Wallace Miller, III, LLC  
509 Forest Hills Road  
Macon, GA 31209-7126  
Wallace Miller, III, Esq.

GEICO Indemnity Company, also commonly referred to simply as “GEICO”

Karen Griffis

Philips Branch & Hodges  
Steve Hodges

(6) All discovery has been completed, unless otherwise noted, and the court will not consider any further motions to compel discovery except for good cause shown. The parties, however, shall be permitted by agreement to take depositions of any person(s) for the preservation of evidence or for use at trial.

(7) Unless otherwise noted, the names of the parties as shown in the caption to this order are correct and complete, and there is no question by any party as to the misjoinder or non-joinder of any parties.

(8) The following is the Plaintiff's brief and succinct outline of the case and contentions:

On February 26, 2012, Bonnie Winslett was driving an SUV covered by a GEICO

insurance policy when she hit Terry Guthrie while he was riding a bicycle. The GEICO insurance policy covering Bonnie at the time of the wreck provided for bodily injury coverage with a limit of Thirty Thousand Dollars (\$30,000.00) per person. There is no dispute that Bonnie was solely at fault for the collision. As a result of the collision, Terry sustained serious and significant physical injuries. The collision was so horrifyingly severe that Terry's sister who witnessed the collision said that the sight of it caused her to urinate on herself.

While Terry was transported by ambulance to the emergency room where he received immediate medical care accumulating nearly \$10,000 in medical bills, he was unable to obtain much needed follow-up care for his severe injuries because he had no money and no insurance. Eventually Terry obtained health insurance and had surgery to attempt to repair his injuries; however, Terry continues to suffer constant and significant pain from his injuries to this day.

On February 28, 2012, GEICO received notice of the wreck and the claim against Bonnie. By March 2, 2012, GEICO determined that Bonnie was 100% at fault for the collision and that it would accept liability on her behalf and adjust the claim.

On March 5, 2012, GEICO sent Bonnie a letter stating, without qualification, that "We have completed our liability investigation for the above listed accident. ***Based on the evidence we have gathered, we are responsible for the accident.*** Mr. Guthrie was injured in this accident and ***we will be handling this injury directly with Attorney Charles Gower.***" This is the only letter Bonnie ever received from GEICO and she understood it to mean that GEICO claimed responsibility and that GEICO was handling the matter for her. GEICO failed to advise Bonnie that litigation could be a possible outcome and it did not request that Bonnie notify GEICO if she was sued. GEICO also did not warn her of the possibility of any excess liability. Because

Bonnie was insured as a permissive driver she did not have a copy of the GEICO insurance policy. After Bonnie's receipt of the March 5, 2012 letter, GEICO lost contact with Bonnie. Despite knowing that it had lost contact with Bonnie, GEICO took no actions to try and locate her.

On May 15, 2012, Terry's attorney sent GEICO a 30-day time limited demand offering GEICO the opportunity to settle Terry's claim against Bonnie for the \$30,000 policy limits. The demand made GEICO aware that Terry's medical expenses for the emergency care he received on the day of the wreck totaled nearly \$10,000.00. The demand also made clear that Terry continued to suffer from his injuries following the day of the wreck and needed additional medical treatment which he had been unable to obtain due to not having any insurance or money to pay for it.

GEICO adjustor Melissa Herndon and her supervisor, Charles Goodroe, first became aware of the demand on May 22, 2012. Mr. Goodroe instructed Ms. Herndon to respond to the demand within 10 days and to forward copies of the demand and all follow up communications concerning the claim to Bonnie until the claim was resolved. Mr. Goodroe also instructed her to "gather as much information as possible" before deciding whether to accept or reject the settlement opportunity.

On May 23, 2012, despite there being 22 days left to investigate Terry's claim, Ms. Herndon and Mr. Goodroe made the decision to reject the settlement opportunity after spending less than two hours evaluating Terry's claim. Ms. Herndon and Mr. Goodroe determined, with the assistance of GEICO's Claims IQ computer program, that a "fair" value range for Terry's injuries was between \$12,409.00 and \$15,909.00. Ms. Herndon and Mr. Goodroe then chose to

place GEICO's interests ahead of Bonnie's interest in being protected from excess liability and only offered Terry just \$12,409.00 to settle his claim. Melissa Herndon spoke with Terry's attorney, Austin Gower, on May 23, 2012, relaying GEICO's rejection of the opportunity to settle for the policy limits and conveying GEICO's counteroffer of \$12,409.00. While he does not remember the specific conversation, Austin Gower is confident that he would have told Ms. Herndon that GEICO's counteroffer was too low and that if GEICO did not pay the policy limits he would be filing suit on behalf of Terry against Bonnie. GEICO's counteroffer was not accepted.

GEICO unreasonably rejected Terry's settlement offer without first conducting a reasonable investigation. GEICO chose not to talk with Terry despite the demand explicitly informing GEICO of the continuing nature of his injuries and his need for additional medical treatment, nor did they investigate an earlier injury claim Terry had with GEICO in 2010 which would have easily indicated to GEICO that Terry's earlier 2010 injury was made worse by the February 26, 2012 accident. In addition, Ms. Herndon and Mr. Goodroe refused to consider or insufficiently considered various relevant factors that would impact the value of Terry's claim, including: (1) the value of Terry's injury at trial; (2) the emotional impact on Terry; (3) the actual accident facts; (4) eyewitness statements concerning the severity of the collision; (5) that Terry needed additional future medical treatment; (6) any possible future pain and suffering; and (7) that Terry would have to pay his attorney's fees out of any settlement. Bonnie was never informed of GEICO's rejection of the offer to settle for the policy limits. Despite knowing that it had lost contact with Bonnie, GEICO continued to take no steps to locate her.

On May 29, 2012, Terry's attorney filed a lawsuit against Bonnie for Terry's damages.

GEICO knew, or should have known, that its rejection of the time limited demand paired with GEICO's failure to otherwise settle the claim before the 30-day period expired would result in a lawsuit against Bonnie, exposing her to excess liability. GEICO continued to make no effort to locate Bonnie or inform her that it had failed to settle the claim against her. GEICO also made no effort to advise Bonnie that if she was sued that GEICO expected her to immediately notify GEICO.

On May 30, 2012, Bonnie was served with Terry's lawsuit and, based on GEICO's only communication with her, the March 5, 2012 letter, Bonnie reasonably believed that GEICO was handling it and ripped up the lawsuit and threw it away. According to Ted Theus, the lawyer GEICO subsequently hired to represent Bonnie, Bonnie honestly did not know she needed to do anything with the lawsuit.

On August 8, 2012, GEICO was informed that a default judgment had been entered against Bonnie on August 1, 2012. Approximately two and half months after GEICO rejected the opportunity to settle the claim against Bonnie for the \$30,000.00 policy limits, a Superior Court judge awarded Terry \$2,916,204.00 for his injuries. Had GEICO accepted the offer to settle for the \$30,000.00 policy limits then Bonnie would have been released from any further liability and the lawsuit against her exposing her to excess liability would never have been filed.

Recognizing its obvious bad faith in failing to settle the claim for the policy limits, GEICO moved quickly to appoint outside fee counsel to attempt to have the default judgment against Bonnie set aside. However, GEICO did so without first effectively notifying Bonnie that it was providing her this representation pursuant to a reservation of rights.



When GEICO's efforts to have the default judgment set aside failed, Fife Whiteside, on behalf of Terry as the petitioning creditor, filed a Chapter 7 involuntary bankruptcy petition against Bonnie, seeking to collect on the judgment. While bankruptcy would have been in Bonnie's best interest since the judgment could have been fully discharged, GEICO responded by paying \$30,000 to hire additional counsel, Steve Gunby, to fight against the involuntary bankruptcy petition.

GEICO wanted the involuntary bankruptcy against Bonnie to fail so that it could not be sued by the bankruptcy trustee for bad faith failure to settle Terry Guthrie's bodily injury claim against Bonnie for the \$30,000 policy limits. No one on behalf of GEICO has been able to explain how its attempt at defeating the bankruptcy would have benefitted Bonnie in any way. Clearly, GEICO's decision to fight the involuntary bankruptcy was made with GEICO, once again, elevating its own financial interest above that of its insured, Bonnie Winslett.

Finally, in August 2015, when its efforts to fight the bankruptcy also failed, GEICO informed Bonnie that it would now deny all liability for Terry's claim against her.

(9) The following is the Defendant's brief and succinct outline of the case and contentions:

GEICO issued Policy Number 4223-28-06-05 ("Policy") to the named insured, Karen Yvette Griffis ("Griffis"), with bodily injury liability limits of \$30,000 per person and \$60,000 per occurrence. Bonnie Winslett ("Winslett") was not the policyholder, nor a listed driver on the policy, nor a resident in Griffis' household but allegedly was a permissive operator, albeit driving on a suspended license, at the time of the accident. On February 26, 2012, Griffis gave Winslett the keys to her 1996 Ford Explorer. Winslett was operating the Ford Explorer on 29<sup>th</sup>

Street and made a U-turn and struck Terry Guthrie (“Guthrie”) who was riding a bicycle.

The Gower law firm represented Plaintiff Guthrie against Winslett in the underlying automobile accident case. Dated May 15, 2012, Austin Gower, on behalf of Guthrie, sent a demand letter to GEICO asserting Winslett was negligent in causing Guthrie’s injuries and sought the \$30,000 bodily injury liability policy limits in the underlying matter. After consultation with her boss, claims manager Charlie Goodroe, Melissa Herndon (“Herndon”), a GEICO claims examiner, by letter dated May 23, 2012, timely responded to the demand by offering \$12,409 to settle the claim. In this action, the Gower firm has switched sides and now pursues the claims of Bonnie Winslett.

Winslett was essentially “homeless” prior to the accident. But for approximately three (3) weeks prior to the accident she had managed to occupy and live alone in an “unrentable” apartment on 25<sup>th</sup> Street in Columbus, Georgia. It had no electricity and no water and “wasn’t really supposed to be rented out because it wasn’t rentable” but Winslett was staying there “actually kind of for free.” Before that she was living in a “tent” in “Sherman’s Auto in the bushes.”

On February 26, 2012, Griffis wanted to spend time with a man and needed some “privacy” so she asked Winslett if they could “borrow” her apartment and if Winslett could “get out” for a while. Winslett knew Griffis because they got “high” together on “crack” off and on for the prior two years. So Griffis gave Winslett the keys to the 1996 Ford Explorer and Winslett left her own apartment.

Winslett first drove to the store in the North Highland area. She then saw a friend on 29<sup>th</sup> Street and she made a U-turn and struck Terry Guthrie who was riding a bicycle. After the

accident, Guthrie went to the emergency room and Winslett went to jail because she did not have a valid driver's license.

From the accident scene, Guthrie was transported by ambulance to The Medical Center in Columbus, Georgia. The medical assessment was "1. MVA, 2. Contusion, right hip 3. Contusion chest." The diagnostic tests were normal and showed: "Rt Hip XR: No acute findings" "Rt Ribs XR: No acute findings," "Rt Femur XR: No acute findings," "Pelvis XR: No acute findings," "CT-Pelvis: No acute findings," and "CT-Chest: No acute abnormality." Guthrie received "Neosporin" to abrasions and was prescribed Motrin and Lortab and released the same day in "stable condition". His medical expenses totaled \$9,908.35 at the time GEICO received Guthrie's policy limits demand.

By letter dated May 15, 2012, Austin Gower sent a demand for the \$30,000 policy limits to GEICO. The demand letter contained medical records showing one (1) ER visit only and \$9,908.35 in medical bills. In the demand letter, there was no documentation of any additional follow up treatment after the one ER visit and no disclosure of Guthrie's prior injuries or treatment for similar injuries in the demand letter. There was no claim for lost wages.

By letter dated May 23, 2012 from claims examiner Herndon, GEICO timely offered \$12,409 to settle the claim which was \$2,500 for general damages of pain and suffering above the \$9,908.35 in medical bills presented. Herndon then began the fruitless process of trying to follow up on her settlement offer with Gower's office in an attempt to settle the Guthrie matter.

Rather than responding to the settlement offer, six (6) days later, Guthrie filed suit against Winslett on May 29, 2012 and served her on May 30, 2012. Neither Guthrie, nor Gower, nor Winslett, nor Griffis, nor anyone else told GEICO about the lawsuit until after the Default

Judgment was taken. On June 1, 2012 and again on June 27, 2012, Herndon called the Gower firm to follow up on her settlement offer. No one was available so she left voice mails for Gower and asked if there was a response to GEICO's \$12,409 offer. Gower never returned the phone calls. Getting nowhere with calling, on June 27, 2012, Herndon sent a letter to Gower to "attempt to settle" the claim and asked for a response. Gower did not respond. Herndon called Gower again on July 17, 2012 to follow up on the outstanding offer and this time was told again that no one was available, neither the "atty nor paralegal were avail," so she left a message for paralegal "Jawanda" requesting a follow up on the pending settlement offer. Again, Herndon's call was not responded to. Gower's office never bothered to respond to the three (3) phone calls or one letter from GEICO during the critical period from when the lawsuit was served (May 30, 2012) until after the Default Judgment was entered (August 1, 2012). Guthrie, through counsel, never told GEICO of the lawsuit, until after the Default Judgment was taken.

Winslett was in jail for approximately 40 days after the accident. After her release, she went back to her apartment complex on 25<sup>th</sup> Street. She encountered an unidentified "black lady" at the apartment complex who gave her bus passes, her birth certificate and a March 5, 2012 letter from GEICO. The letter requested that Winslett contact GEICO. The letter had GEICO's contact information, including Herndon's direct dial phone number. Winslett saw part of the letter but did not contact GEICO because she was "messed up that day" being high "probably on crack or pot." In Winslett's altered state she came to the conclusion that the March 5, 2012 letter meant that GEICO "had taken care of everything" and she didn't need to do anything else. When asked what in the letter led her to that conclusion, Winslett testified, "I plead the fifth." Winslett ripped up the March 5, 2012 letter and denied receiving the other

letters sent by GEICO to her at the same address.

In late May, 2012, Winslett was served with the Summons and Complaint (sometimes referred to as “suit papers”) by a deputy sheriff at the same 25<sup>th</sup> Street apartment complex. Winslett was again “high” on the day she was served with the suit papers. Winslett asked the deputy if he could help her and the deputy told her to contact the attorney’s office listed on the Complaint. The next day, Winslett went to the homeless task force to access a telephone. Winslett called Gower’s office and spoke to Jowanda Sparks, a paralegal, about what to do with the suit papers. Jowanda told Winslett to “get in touch with that insurance company.” Winslett also spoke to an unidentified “white lady” social worker at the homeless task force about what to do with the suit papers. The social worker also told her to “get in touch with the insurance company.” Winslett didn’t and instead said, “the hell with this shit” and “ripped” up the suit papers. Despite being told by Jowanda and separately by the social worker, Winslett knew by “common sense” that she should have notified GEICO of the lawsuit. Winslett did not notify GEICO of the suit papers and does not know how GEICO would know about the suit papers. When asked directly how GEICO was supposed to know that she was served with suit papers after she ripped them up, Winslett testified, “I have no idea. That, I cannot answer. I don’t know. I don’t know. That’s too much.”

On August 1, 2012, following a hearing, Judge McBride entered a Default Judgment against Winslett in the amount of \$2,916,204.00. There was no transcript of the hearing. The hearing lasted approximately forty-five (45) minutes. Only one witness testified, Mr. Guthrie. Only one document was presented, an annuity table. No medical bills were entered into evidence. No medical records were entered into evidence. GEICO did not know about the

lawsuit or the Default Judgment hearing and has no understanding of how Judge McBride came to his finding in the amount of \$2,916,204.00 based on the record before him. On August 8, 2012, A. Gower first notified GEICO of the lawsuit and of the Default Judgment and demanded payment.

GEICO contends that it acted reasonably in its response to Terry Guthrie's May 15, 2012 offer to settle his claims against Bonnie Winslett.

GEICO further contends that the Bankruptcy Trustee's alleged damages were not proximately caused by GEICO; rather, they were caused by the failure of Bonnie Winslett to give GEICO notice of the lawsuit.

(10) The issues for determination by the jury are as follows:

By Plaintiff:

- (a) Duty, breach, causation, damages;
- (b) Negligent or bad-faith failure to investigate and settle within the policy limits;
- (c) Breach of fiduciary duty;
- (d) Vicarious liability;
- (d) Attorney fees and expenses pursuant to O.C.G.A. § 13-6-11;
- (e) Punitive Damages
- (f) Specific intent to cause harm;
- (g) Whether Defendant's conduct in failing to settle a clear liability, catastrophic claim within the policy limit was reasonable?
- (h) Whether Defendant's failure to investigate after receiving the demand for the policy limits was reasonable, in good faith, and/or consistent with its fiduciary

duties?

- (i) After Defendant received the demand for the policy limits, whether Defendant's conduct in failing to request to speak with Terry Guthrie about the nature and extent of his injuries prior to making the decision to reject the demand was reasonable?
- (j) Whether Defendant's refusal to consider Terry Guthrie's stated need for additional medical treatment and his inability to pay for said treatment due to his lack of insurance was reasonable, in good faith, or consistent with its fiduciary duties?
- (k) Whether Defendant's conduct in failing to notify its insured, a non-policyholder permissive driver, of any duties owed to GEICO under the policy was reasonable?
- (l) Whether Defendant's conduct in failing to promptly notify its insured of GEICO's decision to reject a policy limits demand and the consequences thereof was reasonable, in good faith and consistent with its fiduciary duties?
- (m) Whether Defendant's conduct in failing to keep Bonnie Winslett informed of the claim status, including Defendant's failure to settle the claim against her, was reasonable, in good faith and consistent with its fiduciary duties?
- (n) Whether Defendant's failure to warn Bonnie Winslett that litigation could be a possible outcome and/or that she could potentially be exposed to excess liability beyond the policy limits was reasonable, in good faith and consistent with its fiduciary duties?
- (o) Whether Defendant's failure to take any steps to locate its insured when it knew it

had lost contact her was reasonable, in good faith and consistent with its fiduciary duties?

- (p) Once Defendant knew it had failed to settle the claim against its insured within the 30-day demand time limit, whether it was reasonable, in good faith and consistent with its fiduciary duties for Defendant not to take any steps to determine whether a lawsuit had been filed against its insured?
- (q) Whether Defendant's conduct in failing to follow company rules regarding claims handling was reasonable?
- (r) Whether Defendant's claims handling practices were reasonable, in good faith, and/or consistent with its fiduciary duties?
- (s) Whether Defendant's conduct constitutes a failure to abide by the reasonable customs and practices of claims handling involving a clear liability, catastrophic claim?
- (t) Whether Plaintiff is entitled to damages as a result of the negligent or bad faith conduct of Defendant?
- (u) If Plaintiff is entitled to recover damages, the amount of such damages?
- (v) Whether Plaintiff is entitled to recover attorney's fees and expenses of litigation for the bad faith conduct of Defendant pursuant to O.C.G.A. § 13-6-11?
- (w) Whether the actions and inactions of Defendant were done with a conscious disregard of the rights of their insured?
- (x) Whether the actions and inactions of Defendant were done knowing there was a substantial certainty of financial harm to their insured?



- (y) Whether Defendant breached its fiduciary duty to its insured?
- (z) Whether there is clear and convincing evidence that Defendant's actions and inactions showed willful misconduct or conscious indifference to the consequences for their insured?
- (aa) Whether there is clear and convincing evidence that Defendant knew there was a substantial certainty that Defendant's conduct would cause financial harm to their insured?
- (bb) Whether Plaintiff is entitled to punitive damages?
- (cc) If Plaintiff is entitled to recover punitive damages, the amount of such damages?
- (dd) Whether GEICO's conduct in spending \$30,000 to hire additional counsel, Steve Gunby, to fight against the bankruptcy petition was reasonable, in good faith and consistent with its fiduciary duties?
- (ee) Whether GEICO continued to impermissibly elevate its own financial interests above that of its insured by paying \$30,000 to Steve Gunby to fight against the bankruptcy petition?
- (ff) Whether GEICO acted with specific intent to cause Bonnie harm by hiring additional counsel to fight against the bankruptcy petition?

By Defendant:

Did GEICO exercise that degree of care that a reasonably prudent insurance company would exercise in its response to Mr. Guthrie's May 15, 2012 offer to settle his claims against Bonnie Winslett?

Whether Bonnie Winslett's failure to notify GEICO of Terry Guthrie's lawsuit caused her

damages. (Reference: Order, Doc #46)

(11) If a tort action, specifications of negligence, including applicable code sections, are as follows:

By Plaintiff:

- (a) O.C.G.A. § 51-1-2 (Ordinary Negligence)
- (b) O.C.G.A. § 51-1-6 (Breach of Legal Duty)
- (c) O.C.G.A. § 51-1-8 (Breach of Private Duty)
- (d) O.C.G.A. § 51-12-51.1 et seq. (Punitive Damages)
- (e) O.C.G.A. § 13-6-11 (Expenses of Litigation Including Attorney's Fees)
- (f) O.C.G.A. § 51-2-2 (Liability for torts of employees)
- (g) O.C.G.A. § 10-6-51 (Principal bound by acts of agent)
- (h) O.C.G.A. § 33-6-34 (Unfair Claims Settlement Practices)
- (i) O.C.G.A. § 1-3-1(d)(3) (Computation of Time)
- (j) O.C.G.A. § 23-2-58 (Confidential Relations, Good Faith Required)

By Defendant:

GEICO contends that it acted reasonably in responding to Guthrie's demand and that Winslett caused the Default Judgment.

(12) If a contract action, the terms of the contract are as follows (or, the contract is attached as an exhibit to this order): This is an alleged bad faith failure to settle claim.

By Plaintiff:

While this case arises from a contract of insurance, it is a negligent or bad faith failure to settle tort case, not a breach of contract coverage case. The GEICO insurance policy covering

Bonnie Winslett is Plaintiff's Exhibit P-28.

By Defendant:

The insurance contract is Defendant's Exhibit "19". Defendant contends that Bonnie Winslett breached the insurance contract by failing to give notice of the lawsuit filed by Terry Guthrie against Bonnie Winslett.

(13) The types of damages and the applicable measure of those damages are as follows:

(a) Special Damages: Plaintiff is entitled to damages in an amount equal to the excess judgment against Bonnie Winslett over the policy limits. This amount includes post-judgment interest. Should the jury decide to apportion a percentage of fault for the excess judgment to Bonnie Winslett, then the amount of special damages shall be reduced by the percentage of fault the jury assigns to Bonnie Winslett. O.C.G.A. § 51-12-33. If that percentage of fault equals or exceeds 50%, then Plaintiff shall not be entitled to recover damages. O.C.G.A. § 51-12-33 (g).

(b) Punitive Damages: Plaintiff is entitled to punitive damages based on defendant's acting, or failing to act, with specific intent to cause harm. Punitive damages are authorized by the evidence and measured by the enlightened conscience of the jury pursuant to O.C.G.A. § 51-12-5.1.

(c) Attorney's Fees and Expenses of Litigation: Plaintiff is entitled to attorneys' fees and the expenses of litigation in this action pursuant to O.C.G.A. § 13-6-11.

Defendant denies that Plaintiff is entitled to any damages.

(14) All material undisputed facts established by the pleadings, depositions, or

admissions of the parties are attached hereto as **Exhibit A**, are signed by counsel, and will be submitted to the jury at the beginning of trial [ALL PARTIES MUST STIPULATE TO THESE FACTS - otherwise there are NO undisputed facts].

(15) Pursuant to the court's usual practice, pleadings will not be submitted to the jury.

(16) Special authorities relied upon by plaintiff relating to peculiar legal questions are as follows:

By Plaintiff:

Plaintiff relies upon the statutory and case law cited and relied on in Plaintiff's Motion for Partial Summary Judgment, Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment, Plaintiff's Reply on Plaintiff's Motion for Partial Summary Judgment, and other pleadings, including Plaintiff's Motion(s) in Limine, submitted in this case.

(17) Special authorities relied upon by defendant relating to peculiar legal questions are as follows:

By Defendant

Defendant relies upon all prior briefing with respect to Plaintiff's Motion for Partial Summary Judgment and Defendant's Motion for Summary Judgment. GEICO is submitting a Motion in Limine to address the peculiar legal questions with respect to this matter.

(18) The following are lists of witnesses the:

(a) Plaintiff will have present at trial:

Plaintiff Fife M. Whiteside

Peter Knowe

Austin Gower

Terry Guthrie

Charlie Gower

(b) Plaintiff may have present at trial:

Charles Goodroe

Melissa Herndon

Barry Heiten

Kathy Kiser

Ted Theus

Bonnie Winslett

Steve Hodges

Jowanda Sparks

Steve Fike

Dr. Burkus

(c) Defendant will have present at trial: None.

(d) Defendant may have present at trial:

Terry Guthrie;

Karen Griffis;

Charles Mears;

Bonnie Winslett;

Melissa Herndon;

Brandy Avery;

Elvi Holmes;

Charlie Goodroe;

Kathy Kiser;

Barry Heiten;

Steve Fike;

Charles Gower;  
Austin Gower;  
Sgt. Ray Spivey  
Jawanda Bailey;  
Steve Hodges;  
Expert Peter J. Hildebrand, Esq.;  
Expert Thomas D. Harper, Esq.;  
Dr. Kenneth Burkus;  
Dr. James Thomas;  
Ted Theus;  
Neal Callahan;  
Steven Gunby;

Opposing counsel may rely on representation by the designated party that it will have a witness present unless notice to the contrary is given in sufficient time prior to trial to allow the other party to subpoena the witness or obtain this testimony by other means. Counsel should be prepared to state at the Pre-Trial Conference objections to any witness listed.

(19) Attached hereto as **Exhibit B** is a list of all depositions that each party intends to introduce at trial. **If** parties do not intend to read the entire deposition into the record, page and line designations and counter designations should be included.

(20) Attached hereto as **Exhibit C** is a list of all exhibits that each party intends to tender into evidence at trial. *(Please designate with an asterisk (\*) those exhibits to which an authenticity objection exists.)* All exhibits should be numerically marked prior to trial and

should contain the following information: Case number and trial exhibit designation: P-1 would denote Plaintiffs Exhibit #1; D-1 would denote Defendant's Exhibit #1; J-1 would denote Joint Exhibit #1. Please DO NOT use letters to identify your exhibits. The courtroom deputy clerk will answer any questions regarding enumeration of exhibits or access to courtroom technology.]

PLEASE NOTE: ELECTRONIC EVIDENCE FILES SHOULD BE PROVIDED TO THE COURTROOM DEPUTY AT LEAST ONE WEEK PRIOR TO TRIAL. PLEASE REFER TO THE COURT WEBSITE FOR INFORMATION REGARDING THE JURY EVIDENCE RECORDING SYSTEM (JERS) AND OTHER AVAILABLE COURTROOM TECHNOLOGY ([HTTP://WWW.GAMD.USCOURTS.GOV/TECHNOLOGY](http://www.gamd.uscourts.gov/technology)).

(21) Attached hereto as **Exhibit D** is the form of all possible verdicts to be considered by the jury.

(22) The possibilities of settling the case are:

By Plaintiff: Unlikely

By Defendant: Poor

(23) A jury of twelve will be selected and all jurors shall participate in the verdict unless excused from service by the court.

(24) The parties are notified that if this action is settled after jurors have been summoned and it is too late to notify jurors that it is no longer necessary for them to report for jury service, the cost of compensating those jurors who report for jury service unnecessarily shall be taxed as costs upon the parties, as the Court determines appropriate.

(25) Other matters:

By Plaintiff: None

By Defendant: (a) GEICO is filing a motion to continue the case given that Melissa Herndon is on medical leave and will not be off medical leave at the time of the trial.

(b) If punitive damages are permitted to go the jury, GEICO requests bifurcation of any such claimed damages.

Respectfully submitted this 5<sup>th</sup> day of February, 2018:

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION**

FIFE M. WHITESIDE, Trustee in  
Bankruptcy, on Behalf of Bonnie Winslett,  
  
Plaintiff,

vs.

GEICO INDEMNITY COMPANY  
("GEICO"),  
  
Defendant.

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CIVIL ACTION FILE  
NO.: 4:16 CV 00313-CDL

**ORDER**

It is hereby ORDERED that the foregoing, including the attachments thereto, constitutes the pretrial order in the above case and supersedes the pleadings which may not be further amended except by order of the court to prevent manifest injustice. After receiving briefing from the parties as ordered at the pretrial conference, the Court plans to issue an order prior to trial that clarifies certain issues, including causation and damages.

This 6<sup>th</sup> day of February, 2018.

s/Clay D. Land \_\_\_\_\_  
Clay D. Land  
Chief United States District Judge  
Middle District of Georgia