

11th Circ. Reverses Geico's Early Win In \$18M Golf Cart Case

By **Rosie Manins**

Law360 (September 29, 2022, 8:06 PM EDT) -- The Eleventh Circuit ruled Thursday that a golf cart is covered by a Geico auto insurance policy issued to the cart driver's parents, reversing a Florida district court's decision that the insurer doesn't have to cover an \$18 million collision between the golf vehicle and a car.



Geico must cover a collision between a golf cart and a car after an Eleventh Circuit panel ruled that the cart is covered by an auto insurance policy. (iStock.com/jetcityimage)

The appellate court said in a unanimous **opinion** that the policy Geico General Insurance Co. issued to a Florida couple extends to the golf cart their daughter Zabryna Hernandez Acuna was driving when she collided with the Dodge Caliber, causing permanent brain injury to cart passenger Devin Bennar.

Geico had won summary judgment that it owed no coverage in its declaratory action against Acuna, Bennar and others involved in an underlying personal injury suit that ended in an \$18 million consent judgment against Acuna, case records show. But the three-judge appellate panel said the district court wrongly held that a golf cart did not qualify as a private passenger auto as defined by the policy.

"Read in isolation, the policy definition of private passenger auto includes golf carts like the one involved in the accident here — the golf cart was a four-wheeled, privately owned, passenger vehicle," the court said. "Reading the definition of private passenger auto in context to include the definitions of the terms

farm auto and utility auto results in a narrower interpretation, but one that still does not exclude golf carts."

The court also noted that golf carts can typically be driven safely on public roads where their use is allowed by law. The accident at issue occurred in Florida's Miami-Dade County, and the Sunshine State generally permits golf carts to be driven on public roads, according to the opinion.

"Golf carts are ubiquitous — and legal — on public roads in golfing and beach communities throughout Florida," the judges said. "And they are frequently encountered on neighborhood streets traveling to or from a nearby golf course, just as Zabryna Acuna and her passengers apparently were doing when the accident occurred."

Geico sued Acuna and her parents, Monika and Jesse Acuna, as well as Bennar and his parents, Frank Bennar and Eileen Gonzalez, and the golf cart owner Luis O. Chiong in April 2020, case records show. The insurer claimed it owed no coverage under the 2016 policy for the accident, which occurred on July 4 that year.

A default judgment was entered against Chiong, and Geico voluntarily dismissed Monika and Jesse Acuna from the case in October 2020. The other defendants brought a counterclaim against Geico, alleging that it breached the policy by denying coverage.

The trial court granted summary judgment in favor of Geico on the counterclaim, and denied the defendants' motion for summary judgment in their favor on Geico's declaratory claim, prompting **the appeal**.

The appellate court vacated the order in regard to the counterclaim, finding that the basis for it was partly formed by the lower court's error in interpreting the insurance policy. The case was remanded to the trial court for further proceedings.

The appellate panel said a magistrate judge had reasonably observed that the contract breach claim appeared to be a premature claim of bad faith for failure to settle.

"Among other things, the defendants sought extra-contractual damages that may be awarded on a statutory bad-faith claim in Florida, but not in an action for breach of an insurance contract," they said. "On remand, the district court will need to reconsider Geico's motion for summary judgment on the counterclaim in light of our decision on the coverage issue, the relief sought in the counterclaim, and defenses to the counterclaim that were raised by Geico but not reached by the district court."

Stephen A. Marino Jr. of Ver Ploeg & Marino PA, an attorney for the appellants, told Law360 they are pleased with the ruling, which should dispose of the issues raised in Geico's declaratory case. Marino said now that coverage has been established, the next step is to ask a jury to determine whether Geico acted in bad faith in failing to settle the case "when it could and should have done so."

Counsel for Geico did not immediately respond to questions about the opinion Thursday.

Circuit Judges Britt C. Grant, Robert J. Luck and Andrew L. Brasher sat on the panel for the Eleventh Circuit.

Geico is represented by Adam A. Duke and Richard A. Weldy of Young Bill Boles Palmer Duke & Thompson PA.

The appellants are represented by Stephen A. Marino Jr. and Michal Meiler of Ver Ploeg & Marino PA and Elliot B. Kula of Kula & Associates PA.

The case is Geico General Insurance Co. v. Frank Bennar et al., case number 21-13304, in the U.S. Court of Appeals for the Eleventh Circuit.

--Editing by Jill Coffey.