

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2007

PROGRESSIVE SELECT INSURANCE COMPANY,
Petitioner,

v.

STUART SHOCKLEY,
Respondent.

No. 4D06-4602

[February 7, 2007]

PER CURIAM.

Progressive seeks a writ of certiorari to quash the trial court's order denying its motion to dismiss a statutory claim for bad faith under sections 624.155 and 626.9541, Florida Statutes (2006). We grant the petition because both the existence of liability and the extent of damages are elements of a statutory cause of action for bad faith, and in this case the extent of damages has not been determined. In allowing this case to proceed before damages have been determined, the trial court has departed from the essential requirements of law. *Blanchard v. State Farm Mut. Auto. Ins. Co.*, 575 So. 2d 1289 (Fla. 1991). For the reasons expressed by the first district in *Vanguard Fire & Casualty Co. v. Golmon*, 31 Fla. L. Weekly D2835 (Fla. 1st DCA Nov. 15, 2006), we agree with Progressive that it will suffer irreparable harm, which includes discovery of its accident file, if it is forced to defend against both the UM claim and the bad faith claim simultaneously. We therefore grant the petition and remand for the trial court to either dismiss the bad faith claim or abate the bad faith claim until the UM claim is resolved.

KLEIN, SHAHOOD and TAYLOR, JJ., concur.

* * *

Petition for writ of certiorari to the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Kenneth Stern, Judge; L.T. Case No. 502006CA0007512XXXXMB.

John J. Wilke of Wilke & Brooks, P.A., Boca Raton, and Robert I.

Buchsbaum of Kramer, Green, Zuckerman, Greene and Buchsbaum, P.A., Hollywood, for petitioner.

John J. Hoffman of Hoffman & Morris, LLC, Singer Island, for respondent.

Not final until disposition of timely filed motion for rehearing