REL: January 31, 2020

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1170760

Ex parte State Farm Fire and Casualty Company

PETITION FOR WRIT OF MANDAMUS

(In re: Samuel L. Boykin et al.

v.

State Farm Fire and Casualty Company and Walker Springs Road Baptist Church)

(Clarke Circuit Court, CV-17-900148)

PER CURIAM.

State Farm Fire and Casualty Company ("State Farm"), a defendant below, petitions this Court for a writ of mandamus

challenging the Clarke Circuit Court's failure to dismiss the underlying action or to enter a judgment in its favor on the claims of the plaintiffs, Samuel L. Boykin, Lucretia S. Boykin, Reginald L. Berry, and Ida Berry (hereinafter collectively referred to as "the respondents"). Specifically, State Farm contends that the respondents' claims are barred by § 27-23-2, Ala. Code 1975 ("the direct-action statute). We deny the petition.

I. Facts

According to the allegations in the complaint, the respondents own residences located near the site of Walker Springs Road Baptist Church ("the Church"). At all relevant times, the respondents held homeowner's insurance policies issued by State Farm; the Church held a liability policy that was also issued by State Farm.

Some time before the initiation of the underlying litigation, the Church submitted site plans to the appropriate governmental authorities for construction of a new building on its property. The site plans provided for the construction or modification of parking areas, the construction of storm-water-detention basins, and the installation of an earthen

dam. Following approval of the site plans, however, the Church allegedly authorized or participated in construction on the project that did not conform to those plans.

After the new construction at the Church site was completed, the Church's property experienced an incident of heavy rainfall. The respondents allege that discrepancies between the site plans and the finished project created conditions that caused the new earthen dam to fail, which, they say, "released a torrent of storm water" that flooded the respondents' residences. As a result, the respondents claim to have suffered substantial property damage.

Both the respondents and the Church submitted claims to State Farm under their respective policies due to water damage. State Farm denied the respondents' claims based on exclusionary language in their homeowner's insurance policies. The respondents then retained counsel to pursue claims against the Church, which prompted State Farm to open a claim file under the Church's liability policy. State Farm proceeded to perform an investigation into the Church's liability for the damage sustained to the respondents' properties. The respondents allege, however, that State Farm did not conduct

a "reasonably careful and/or independent" investigation of the cause of the flooding on their properties. State Farm eventually concluded that the Church was not liable for the flood damage to the respondents' properties.

The respondents subsequently commenced, in the Clarke Circuit Court, a lawsuit against State Farm, the Church, and several fictitiously named defendants. The respondents asserted five claims against State Farm, two of which are relevant to this mandamus petition. The respondents' first claim asserted that, under their homeowner's insurance policies, State Farm had breached fiduciary duties it owed to them. Those duties, they asserted, included:

> "(1) a duty to safeguard [the respondents'] interest with the same fidelity that State Farm ... safeguarded [the Church's] interests; (2) a duty to disclose material facts [to the respondents]; (3) a duty to refrain from making false or misleading statements to [the respondents]; and/or (4) a duty to conduct a reasonably careful and/or independent investigation as to the cause(s) of the flooding and/or the Church's potential legal liability for the [respondents'] damages arising from the flooding."

The respondents' third claim alleged that State Farm had assumed a duty to the respondents via a duty it owed to the

Church under the liability policy. As the complaint expressed it:

> "Pursuant to the liability insurance policy issued by State Farm to the Church, State Farm ... undertook to conduct a reasonably careful and/or independent investigation as to the cause(s) of the flooding and/or the Church's potential legal liability for [the respondents'] damages arising from the flooding.
>
> "State Farm ... thereby assumed a duty of reasonable care to [the respondents], pursuant to Restatement (Second) of Torts § 324A.
>
> "State Farm ... breached such duty, and was/were negligent, by failing to conduct a reasonably careful and/or independent investigation as to the cause(s) of the flooding and/or the Church's potential legal liability for [the respondents'] damages arising from the flooding."

State Farm answered the respondents' complaint and asserted, among other things, that the respondents' claims were barred by the direct-action statute. State Farm subsequently filed a motion for a judgment on the pleadings and a supporting brief, which requested both a judgment on the pleadings, see Rule 12(c), Ala. R. Civ. P., and a dismissal of the respondents' claims. The trial court granted State Farm's motion as to three of the five claims asserted against State

Farm,[1] but it denied the motion as to the respondents' claims alleging breach of fiduciary duty and breach of assumed duty. The present petition followed; this Court subsequently ordered answers and briefs.

II. Standard of Review

> "A writ of mandamus is an extraordinary remedy, and is appropriate when the petitioner can show (1) a clear legal right to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) the properly invoked jurisdiction of the court. Ex parte Inverness Constr. Co., 775 So. 2d 153, 156 (Ala. 2000)."

Ex parte BOC Grp., Inc., 823 So. 2d 1270, 1272 (Ala. 2001).

III. Analysis

This Court almost without fail in opinions addressing mandamus petitions observes that mandamus is an "extraordinary remedy" and that it is permitted only in "exceptional cases." See, e.g., Ex parte Ocwen Fed. Bank, FSB, 872 So. 2d 810, 813 (Ala. 2003). At various times we have declared a need to express the general categories under which mandamus review is permitted as a way of emphasizing the limited scope of its

[1]The dismissed claims alleged that State Farm had violated the Deceptive Trade Practices Act and that it had negligently caused injuries to the respondents' minor children.

availability. See, e.g., Ex parte U.S. Bank Nat'l Ass'n, 148 So. 3d 1060, 1064 (Ala. 2014) (making a list of the exceptional cases in which mandamus review has been permitted, and admitting that "this list may seem to contradict the nature of mandamus as an extraordinary writ," but noting that "the use of mandamus review has essentially been limited to well recognized situations ...."); Ex parte Spears, 621 So. 2d 1255, 1258 (Ala. 1993) (admitting that "[t]he tendency of this Court in the past has been to enlarge the scope of the extraordinary writ of mandamus by recognizing certain exceptions to the general rule that orders ultimately reviewable on appeal from a final judgment are not subject to mandamus review" and declaring that "we should not continue to decide cases in a piecemeal fashion").

In its petition, State Farm does not provide us with any authority in which our courts have reviewed by a petition for the writ of mandamus the denial of a motion to dismiss based on the applicability of the direct-action statute. Instead, State Farm cites authorities that it argues are sufficiently analogous to warrant permitting mandamus review in this case.

First, State Farm cites cases in which we have reviewed by mandamus petition a trial court's failure to dismiss an action based on the abatement statute, § 6-5-440, Ala. Code 1975. See, e.g., State v. The Boys & Girls Clubs of S. Alabama, Inc., 163 So. 3d 1007, 1011 (Ala. 2014); Ex parte J.E. Estes Wood Co., 42 So. 3d 104, 111 (Ala. 2010). State Farm argues that, "[l]ike the abatement statute, ... the direct action statutes are designed to protect liability insurers from being subject to suit, not just from liability, prior to a judgment against the insured." State Farm's mandamus petition, p. 12.

This argument fails to account for the fundamental difference in purpose between the abatement statute and the direct-action statute. The purpose of § 6-5-440, by its own terms, is procedural in nature: "No plaintiff is entitled to prosecute two actions in the courts of this state at the same time for the same cause and against the same party." "The purpose of the rule is to avoid multiplicity of suits and vexatious litigation." Johnson v. Brown-Service Ins. Co., 293 Ala. 549, 551, 307 So. 2d 518, 520 (1974). In contrast, the primary purpose of the direct-action statute is not "to

protect liability insurers from being subject to suit," as State Farm insists, but, rather, to "give the injured party a vested interest (secondary) by way of hypothecation in the amount due the insured by the insurer after the rendition of the judgment against the insured." Macey v. Crum, 249 Ala. 249, 251, 30 So. 2d 666, 667 (1947); see also Maness v. Alabama Farm Bureau Mut. Cas. Ins. Co., 416 So. 2d 979, 981 (Ala. 1982) (same). In other words, the direct-action statute gives a plaintiff a remedy he or she otherwise would not have available because the plaintiff is not a party to the insurance contract upon which he or she is basing the lawsuit. See, e.g., Matthew J. Pallay, The Right of Direct Action: Issues Proceeding Directly Against Marine Insurers, 41 Tul. Mar. L.J. 57, 59 (2016) (explaining that "[t]he common law bars suits against a liability insurer due to lack of privity of contract between the insurer and the injured third party. Accordingly, only parties to the contract may sue upon it, and, thus, remote third parties are left without a remedy when the insured is judgment-proof." (footnotes omitted)). However, a stipulation of the statutory cause of action brought under the direct-action statute is that a recovery may

occur only after the plaintiff has established liability against the insured.[2] See, e.g., Maness, 416 So. 2d at 981 (explaining that, "[o]nce an injured party has recovered a judgment against the insured, the injured party may compel the insurer to pay the judgment"). In short, mandamus review is warranted when the abatement statute is implicated because its purpose is to prevent, from the outset, redundant litigation, and so interlocutory review is appropriate. The purpose of the direct-action statute -- creating a cause of action -- does not carry the same impetus for immediate appellate intervention.

State Farm also draws an analogy to Ex parte Hodge, 153 So. 3d 734 (Ala. 2014), a case in which this Court permitted mandamus review of a trial court's denial of a motion to dismiss contending that the plaintiff's malpractice claim was

[2]Not all direct-action statutes have this requirement. See Matthew J. Pallay, The Right of Direct Action: Issues Proceeding Directly Against Marine Insurers, 41 Tul. Mar. L.J. 57, 59 (2016) (noting that "in some states the injured party may proceed against an insurer without first securing a judgment against the insured" (footnote omitted)). These are sometimes called "pure direct action statutes," and "[r]epresentative statutes of this type are found in Arkansas, California, Louisiana, Puerto Rico, and Wisconsin." Nicolas R. Foster, Marine Insurance: Direct Action Statutes and Related Issues, 11 U.S.F. Mar. L.J. 261, 263 and n.5 (1999).

barred by the four-year statute of repose contained in § 6-5-482(a), Ala. Code 1975. State Farm contends that, as in Hodge, "an eventual appeal is incapable of 'protecting parties from the injury immediately resulting from the error of the court.'" State Farm's mandamus petition, p. 12 (quoting Hodge, 153 So. 3d at 747). State Farm describes the "injury" as having to defend an action in which it "will face an ongoing and intractable conflict of interest in defending its own insured, the Church, as well as defending itself against claims that it breached duties to the [respondents] in undertaking its investigation of the claims without 'safeguarding' their interests." Id. at 14.

However, for several reasons, State Farm's analogy to Hodge also fails. First, unlike in this case, Hodge constituted an extension of mandamus review from a category of cases in which we previously had employed mandamus review for several years, i.e., the failure to exercise due diligence in identifying, before expiration of the statute of limitations, a fictitiously named defendant as the party to be sued. See Hodge, 153 So. 3d at 751 (Shaw, J., concurring specially) (observing that "[i]f this Court will review by mandamus a decision on whether the statute of limitations bars a claim

against one party substituted for a fictitiously named defendant, then I see no logical reason why this Court cannot review a decision on whether the entire action is barred"). In other words, mandamus review involving a type of statute-of-limitations defense was already established before Hodge. No such history exists for the direct-action statute. See Ex parte Watters, 212 So. 3d 174, 183 (Ala. 2016) (Murdock, J., concurring specially) (agreeing with the Court's conclusion that the exception in Hodge did not apply in the case because "[t]he application of a statute of limitations is not an issue in the present case").

Second, Hodge expressly limited mandamus review on a statute-of-limitations defense to those cases in which the defect was apparent from the face of the complaint. The Hodge Court emphasized:

> "This case is not to be read as a general extension of mandamus practice in the context of a statute-of-limitations defense; rather, it should be read simply as extending relief to the defendants in this case where they have demonstrated, from the face of the complaint, a clear legal right to relief and the absence of another adequate remedy."

153 So. 3d at 749 (emphasis added). The expense and potential problems associated with continued litigation do not justify mandamus review when it is not clear from the face of the

complaint that the petitioner has a clear legal right to dismissal of action. See, e.g., Ex parte Sanderson, 263 So. 3d 681, 688 (Ala. 2018) (observing that, "aside from the limited exceptions recognized by this Court and those cases in which it is clear from the face of the complaint that a defendant is entitled to a dismissal or a judgment in its favor, the drastic and extraordinary remedy of a writ of mandamus is not available merely to alleviate the inconvenience and expense of litigation for a defendant whose motion to dismiss or motion for a summary judgment has been denied"); Ex parte Watters, 212 So. 3d at 182 ("Suffice it say, it is not abundantly clear from the face of [the plaintiff's] complaint whether the survival statute dictates dismissal of the legal-malpractice claim because the issue whether the claim sounds in tort, in contract, or in both for that matter, is sharply disputed by the parties.").

It is not apparent from the face of the complaint in this case that State Farm is entitled to a dismissal of the two claims at issue. It is true that it can be ascertained from the complaint that the respondents have not yet obtained a liability judgment against the Church. However, the respondents have contended that their claims are based on

State Farm's own actions, and the complaint couches the claims in those terms. If the claims actually are based on State Farm's own actions toward the respondents -- and we make no determination or implication as to whether that is the case here -- the claims would implicate State Farm's own liability rather than that of the Church. The direct-action statute would not bar such claims. See Howton v. State Farm Mut. Auto. Ins. Co., 507 So. 2d 448, 450 (Ala. 1987) (stating that cases construing the direct-action statute do not "stand[] for the proposition that a direct action against the insurer is barred where the insurer, acting independently of its insured, ... commits a tort against[] a third-party claimant"). Thus, the requirement for permitting mandamus review explicated in Hodge is not fulfilled in this case. Cf. Sanderson, 263 So. 3d at 688-89 (noting that, "although the petitioners argue that the release agreement precludes Wainwright's claims, we cannot say that that conclusion is clear from the face of the complaint," and concluding that, "given Wainwright's allegation that the release agreement is unenforceable, it is 'not abundantly clear,' [Ex parte] Watters, 212 So. 3d [174,] 182 [(Ala. 2016)], from the face of the complaint that the

petitioners are entitled to relief based on the release agreement").

Finally, in its petition State Farm makes a one-sentence argument in favor of mandamus review based on State Farm Mutual Automobile Insurance Co. v. Brown, 894 So. 2d 643 (Ala. 2004): "[W]hen an action is filed against a liability insurer, prior to a judgment against the insured, in violation of the direct action statutes, no justiciable controversy exists." State Farm's mandamus petition, p. 12. In Brown, another State Farm entity, State Farm Mutual Automobile Insurance Company ("the insurer"), argued, as State Farm suggests in this case, that "there [was] no justiciable controversy between the Browns [the plaintiffs] and [the insurer] to justify a direct action against it" because the Browns, who alleged injuries stemming from an automobile accident, had not yet obtained a judgment against the driver of the other vehicle, Waylon Gant, who was insured by the insurer. Brown, 894 So. 2d at 649. The Brown Court explained that

> "[t]he Browns' negligence and wantonness and loss-of-consortium claims against Gant remain pending, and the Browns have yet to obtain a judgment against Gant awarding the Browns damages that would initiate any duty on the part of [the

> insurer] to indemnify Gant. Therefore, any question as to whether [the insurer] would owe anything to the Browns in the future is speculative at best."

Brown, 894 So. 2d at 649. The Court then concluded that

> "[w]e agree with [the insurer's] argument that § 27-23-2 prevents the Browns from bringing this action at this time and in this posture. There is no justiciable controversy because the Browns have yet to obtain a judgment against Gant that would obligate [the insurer] to the Browns in any way. Therefore, the trial court erred in granting the Browns' motion for a partial summary judgment because the Browns' claim violates the direct-action statute, § 27-23-2 ...."

Brown, 894 So. 2d at 650 (emphasis added). Thus, the Brown Court reasoned that no justiciable controversy existed between the Browns and the insurer because the Browns did not yet have a legally protected interest in the insurance contract between Gant and the insurer. This was so because the Browns had not obtained a judgment against Gant for the injuries the Browns allegedly sustained due to the automobile accident. In other words, according to Brown, a plaintiff who brings a direct action against an insurer under § 27-23-2 lacks standing if the plaintiff has not already obtained a judgment against the party insured by the insurer. See, e.g., Town of Cedar Bluff v. Citizens Caring for Children, 904 So. 2d 1253, 1256 (Ala. 2004) (explaining: "'To say that a person has standing is to

say that that person is the proper party to bring the action. To be a proper party, the person must have a real, tangible legal interest in the subject matter of the lawsuit.'" (quoting Doremus v. Business Council of Alabama Workers' Comp. Self-Insurers Fund, 686 So. 2d 252, 253 (Ala. 1996))).

The Brown decision was an appeal of a partial summary judgment that was certified by the trial court as final under Rule 54(b), Ala. R. Civ. P., not a decision stemming from a mandamus petition as in this case. State Farm apparently believes that that distinction is irrelevant because it has raised an issue of subject-matter jurisdiction, i.e., that the respondents lack standing to bring a direct action against State Farm, and this Court has repeatedly stated that "'[m]andamus review is available where the petitioner challenges the subject-matter jurisdiction of the trial court based on the plaintiff's alleged lack of standing to bring the lawsuit.'" Ex parte Rhodes, 144 So. 3d 316, 318 (Ala. 2013) (quoting Ex parte HealthSouth Corp., 974 So. 2d 288, 292 (Ala. 2007)).

The problem with this reasoning is that post-Brown this Court has explained in several decisions that "the concept [of standing] appears to have no necessary role to play in respect

to private-law actions." Ex parte BAC Home Loans Servicing, LP, 159 So. 3d 31, 44 (Ala. 2013). We have observed that in such actions "our courts too often have fallen into the trap of treating as an issue of 'standing' that which is merely a failure to state a cognizable cause of action or legal theory, or a failure to satisfy the injury element of a cause of action." Wyeth, Inc. v. Blue Cross & Blue Shield of Alabama, 42 So. 3d 1216, 1219 (Ala. 2010). Indeed, such confusion is what occurred in Brown. A statutory element of a direct-action claim against an insurer is the establishment of liability against the party insured by the insurer. The Browns failed to fulfill that statutory element in asserting their cause of action against the insurer. Thus, Brown "'actually presented a question of the plaintiff's inability to prove the allegations of its complaint rather than a question of standing.'" Ex parte BAC Home Loans Servicing, 159 So. 3d at 42 (quoting Sturdivant v. BAC Home Loans Servicing, LP, 159 So. 3d 15, 27 (Ala. Civ. App. 2011) (Pittman, J., dissenting) (emphasis omitted)). Cf. Rhodes, 144 So. 3d at 318 (explaining that "the ability or inability of a plaintiff in an ejectment action to prove the elements of

such a claim" "goes to the merits of an ejectment claim" "not to the plaintiff's standing to bring that action").

The same is true in this case. If State Farm's framing of the issue is correct, then the respondents brought direct-action claims against State Farm based on the Church's liability for damage allegedly suffered by the respondents without having first established liability against the Church. Thus, the respondents are unable to fulfill an element required under § 27-23-2 to state a cognizable direct-action claim against State Farm.[3] As this Court has made plain in several cases, that is not a standing problem, and as such it does not implicate subject-matter jurisdiction. See, generally, Ex parte Skelton, 275 So. 3d 144, 151 (Ala. 2018); Ex parte MERSCORP, 141 So.3d 984, 990 (Ala. 2013); Ex parte Kohlberg Kravis Roberts & Co., 78 So. 3d 959, 978-79 (Ala. 2011). "Because the problem alleged by [State Farm] does not

[3]This fact highlights yet another reason Ex parte Hodge, 153 So. 3d 734 (Ala. 2014), is inapposite. The defect at issue in Hodge concerned a problem outside the claim itself, whereas, State Farm alleges a defect that goes to the merits of the respondents' claims. In Hodge, the problem was with when the claim was brought. Here, State Farm's argument involves whether the respondents have established the liability necessary to warrant the recovery they seek from State Farm.

implicate subject-matter jurisdiction, we have no basis on which to consider this petition for a writ of mandamus." Rhodes, 144 So. 3d at 319. See also Kohlberg, 78 So. 3d at 979 (noting that "[a]ny alleged error in the circuit court's decision to deny the defendants' motion to dismiss for failure to state a claim as to the plaintiffs' ... claim can be adequately remedied by appeal"). Therefore, Brown does not present a viable basis for mandamus review in this case.

IV. Conclusion

> "The question in the present case is, in essence, simply whether applicable law recognizes the cause of action at issue. The trial court may err in deciding this question, just as it may err in deciding an innumerable number of other legal questions that determine whether an action in a given case is cognizable or not."

Ex parte U.S. Bank Nat'l Ass'n, 148 So. 3d at 1076 (Murdock, J., dissenting). We do not review such possible errors by a petition for the writ of mandamus. This Court has never recognized an exception to the general rule that would permit interlocutory review of a trial court's denial of a motion to dismiss or for a judgment on the pleadings for cases that turn on whether the plaintiff has stated a cognizable claim under the applicable law. We will not make an exception here. Accordingly, the petition is denied.

PETITION DENIED.

Bolin, Wise, Bryan, Sellers, Mendheim, and Stewart, JJ., concur.

Parker, C.J., and Shaw and Mitchell, JJ., dissent.

MITCHELL, Justice (dissenting).

The majority opinion denies the petition for the writ of mandamus filed by State Farm Fire and Casualty Company ("State Farm") because, it concludes, mandamus review is not available to an insurance company seeking to challenge a trial court's denial of a motion to dismiss based on § 27-23-2, Ala. Code 1975 ("the direct-action statute"). For the reasons that follow, I respectfully dissent. I would instead grant State Farm's petition and issue a writ directing the trial court to dismiss the two remaining claims Samuel L. Boykin, Lucretia S. Boykin, Reginald L. Berry, and Ida Berry (hereinafter referred to collectively as "the respondents") have asserted against State Farm.

The majority opinion correctly notes that this Court has not previously reviewed by mandamus petition the denial of a motion to dismiss based on the direct-action statute.[4]

[4]I note, however, that the Supreme Court of Texas has considered whether a trial court's failure to dismiss a direct action filed against an insurance company is subject to mandamus review and answered that question in the affirmative, concluding that Texas law does not permit such actions and that "mandamus relief is appropriate to spare the parties and the public the time and money spent on fatally flawed proceedings." In re Essex Ins. Co., 450 S.W.3d 524, 528 (Tex. 2014).

Accordingly, to establish that mandamus relief is an appropriate remedy, State Farm cites previous decisions of this Court in which we have permitted mandamus review to consider a trial court's failure to dismiss an action that is barred by specific statutory prohibitions. Among those cases is Ex parte Hodge, 153 So. 3d 734, 749 (Ala. 2014), in which this Court issued a writ of mandamus directing the trial court to dismiss claims where it was clear "from the face of [the plaintiff's] complaint" that those claims were barred by a statute, specifically § 6-5-482(a), Ala. Code 1975, the statute of repose applying to medical-malpractice claims. State Farm argues that it has likewise presented a case in which the underlying claims are clearly barred by a statute -- the direct-action statute -- and it urges us to direct the trial court to similarly dismiss those claims.

As in this case, the plaintiff in Hodge argued that mandamus review was not available to the petitioner because the petitioner allegedly had another adequate remedy, an appeal following the eventual entry of a final judgment. In rejecting that argument, the Court discussed what it means to have an adequate remedy:

> "As for the notion that further litigation in the trial court and the eventual taking of an appeal from a final judgment provides an adequate remedy, Justice Murdock [has] stated:
>
> > "'In Ex parte L.S.B., 800 So. 2d 574 (Ala. 2001), this Court held that the standard for whether some remedy other than mandamus is "adequate" is not whether there simply is some other remedy, e.g., an eventual appeal, but whether that other remedy is "adequate to prevent undue injury." 800 So. 2d at 578. As a result, the Court noted that mandamus would lie to address certain discovery disputes, to enforce compliance with the court's mandate, to enforce a right to a jury trial, and to vacate certain interlocutory rulings in divorce cases. Id. at 578. All of these -- indeed, virtually any ground for mandamus relief -- could eventually be raised in an appeal from a final judgment. Yet we do not consider this to be an "adequate" remedy in many cases.'"

153 So. 3d at 747 (quoting Ex parte Alamo Title Co., 128 So. 3d 700, 715 (Ala. 2013) (Murdock, J., concurring specially)). The Hodge Court further quoted with approval Justice Murdock's explanation for why we allow any mandamus petitions:

> "'[T]he very reason for the limited exceptions we have carved out to the general rule that interlocutory denials of motions to dismiss and motions for a summary judgment cannot be reviewed by way of a petition for a writ of mandamus is that there are certain defenses (e.g., immunity, subject-matter jurisdiction, in personam jurisdiction, venue, and some statute-of-limitations

> defenses) that are of such a nature that a party simply ought not to be put to the expense and effort of litigation. The cases recognizing the availability of mandamus relief as to such matters are countless.'"

153 So. 3d at 748 (quoting Ex parte Alamo Title Co., 128 So. 3d at 716 (Murdock, J., concurring specially)). Applying these principles, the Hodge Court concluded that an appeal of the final judgment that might eventually be entered in that case would be an inadequate remedy for the petitioners because they "would potentially face the substantial expense, time, and effort of litigating a matter as to which they have demonstrated from the face of [the] complaint a clear legal right to have dismissed." 153 So. 3d at 749. That rationale applies in this case as well because it is clear the direct-action statute requires the dismissal of the claims asserted against State Farm.

The majority opinion rejects State Farm's argument that this case is analogous to Hodge for two reasons. First, the majority opinion notes that mandamus review involving certain types of statute-of-limitations defenses was already established before Hodge and that the Court's decision in that case therefore merely "constituted an extension of mandamus review from a category of cases in which we previously had

employed mandamus review for several years." ___ So. 3d at ___. The majority opinion observes that there is no equivalent history for direct-action cases and concludes that this lack of history weighs against extending mandamus review to cases such as this. I am not persuaded by this objection.

This Court has stated the requirements for obtaining mandamus relief on multiple occasions, and those requirements are limited to whether the petitioner has established: "(1) a clear legal right to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) the properly invoked jurisdiction of the court." Ex parte BOC Grp., Inc., 823 So. 2d 1270, 1272 (Ala. 2001). Notably, there is no requirement that a previous petitioner must have successfully sought mandamus relief in an earlier case involving the same issue. Petitioners seeking mandamus relief are entitled to have their petitions considered by reference to the standard utilized in BOC Group -- and a multitude of cases decided before and after BOC Group -- without regard to whether the issue they present has previously been decided by this Court.

Second, the majority opinion notes that the Hodge Court cautioned that its opinion should not be read as extending mandamus practice but "should be read simply as extending relief to the defendants in this case where they have demonstrated, from the face of the complaint, a clear legal right to relief and the absence of another adequate remedy." 153 So. 3d at 749 (emphasis added). Citing other cases in which this Court has indicated a willingness to grant mandamus relief where it is apparent from the face of the complaint that the plaintiff's claims are due to be dismissed, see Ex parte Sanderson, 263 So. 3d 681 (Ala. 2018), and Ex parte Watters, 212 So. 3d 174 (Ala. 2016), the majority opinion examines the claims asserted in the complaint filed against State Farm and concludes that "[i]t is not apparent from the face of the complaint in this case that State Farm is entitled to a dismissal of the two claims at issue." ___ So. 3d at ___. I disagree.

The respondents' two remaining claims against State Farm are a breach-of-fiduciary-duty claim and a breach-of-assumed-duty claim. In their complaint, the respondents allege that State Farm's actions underlying both of those claims damaged them in the same way: "As a direct and proximate result of

[State Farm's actions] plaintiffs have been unable to (1) settle their claims against [State Farm's insured] ... and/or (2) collect proceeds of the liability policy issued by State Farm to [its insured]." Thus, the respondents explicitly claim they were damaged only to the extent they have been unable to collect money they would be owed if State Farm's insured, Walker Springs Road Baptist Church ("the Church"), is liable for the damage to their properties.

This Court has consistently held that the direct-action statute bars any action against an insurer that "is predicated on the establishment of the liability of [the] insured ... until the [injured] party has obtained a judgment against the insured." Saxon v. Lloyd's of London, 646 So. 2d 631, 632 (Ala. 1994). See also State Farm Fire & Cas. Co v. Green, 624 So. 2d 538, 539-40 (Ala. 1993) ("This Court has held that a third party can sue an insurer directly under a third-party beneficiary theory without first obtaining a judgment against the insured, provided that the insurer's liability is not predicated on the establishment of the liability of its insured." (emphasis added)). It is evident from the face of the respondents' complaint (1) that no judgment has been entered against the Church and (2) that the respondents'

remaining claims against State Farm are predicated on the establishment of the liability of the Church.[5] State Farm therefore has a clear legal right to the relief it seeks, and, for the reasons articulated in Hodge, it has no adequate remedy available other than immediate mandamus relief. "If appeal were [its] only remedy [State Farm] would potentially face the substantial expense, time, and effort of litigating a matter as to which [it has] demonstrated from the face of [the] complaint a clear legal right to have dismissed." 153 So. 3d at 749. Therefore, I dissent.

Parker, C.J., concurs.

[5]An examination of the factual allegations underpinning those two claims further supports the conclusion that the claims are predicated on the Church's liability. In both their breach-of-fiduciary-duty claim and their breach-of-assumed-duty claim, the respondents allege that State Farm failed to conduct an adequate and independent investigation of their insurance claims. Of course, even if they prove that allegation, the respondents will not be entitled to recover any damages from State Farm based on that failure without also establishing that a thorough investigation would have shown that the Church was liable for their property damage.