

**SUPREME COURT OF LOUISIANA**

**No. 98-C-1601 c/w 98-C-1609**

**FRED PETERSON**

**VERSUS**

**GIBRALTAR SAVINGS AND LOAN, CLUB WEST, INC.,  
THE GALLERIA INVESTMENT CORPORATION,  
d/b/a GALLERIA ONE AND/OR THE GALLERIA, ET AL.**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,  
FIFTH CIRCUIT, PARISH OF JEFFERSON**

**CALOGERO, Chief Justice, dissenting**

Material misrepresentations of fact, ill-practice, fraud, and lack of candor in our courts and proceedings should not be trivialized or tolerated in the slightest degree. In this case, plaintiff filed in this Court a Motion to Strike Application for Writ of Certiorari and Review, in which he prayed that this Court strike or otherwise deny the writ application of Gibraltar Savings and Loan, Gibraltar Savings, FGMC Investment Corporation, FGMC, Ltd., Metairie Center Phase I, Ltd., and Reliance Insurance Company, Inc., because of ill-practice. Plaintiff alleges that Gibraltar's insurer, Reliance Insurance Company, told the courts below about a \$1,000,000 primary insurance policy, implying, if not suggesting, that it was the only available policy, and withheld information regarding the existence of a \$10,000,000 excess insurance policy written by the same insurer. Gibraltar and Reliance allegedly did not inform the Fifth Circuit of the excess policy until after the Fifth Circuit reversed the decision of the trial court, rendered an award in favor of plaintiff for \$4,363,333, and denied rehearing, and only after the Gibraltar defendants learned that the plaintiff was seeking to buy Gibraltar's rights against Reliance for failure to settle within policy limits. Essentially, plaintiff alleges that the \$10,000,000 excess policy was only disclosed after it became evident that the policy would be discovered. According to plaintiff, Reliance introduced into the record at trial only a \$1,000,000 policy in order to limit the insurer's liability and to persuade the court to keep the quantum low or reduce it if the jury granted a higher award. Plaintiff further alleges that, despite repeated requests, Gibraltar and Reliance still refuse to divulge any information regarding when or how they learned that the excess policy had been issued, let alone provide a copy of the insurance policy to plaintiff.

In *Crowe v. Smith*, 151 F.3d 217 (5th Cir. 1998), after a civil lawsuit was settled, the trial court discovered that the defendants and their attorneys had conspired to withhold the existence of a \$5,000,000 insurance policy. Consequently, the United States District Court for the Western

District of Louisiana fined the insurance company for its full policy limit with interest. Additional reprimands and suspensions were ordered against the defense attorneys. The Court of Appeal affirmed in part, reversed in part, and remanded with instructions, recognizing that the district court possessed the inherent authority to issue criminal sanctions for misrepresentation, but only after due process has been satisfied.

I would hold in abeyance our judgment, and remand this case to the district court for the limited purpose of conducting an evidentiary hearing to determine the roles of the Gibraltar defendants and their attorneys in the alleged concealment of the \$10,000,000 excess insurance policy. I would further delay this Court's disposition of defendants' attack on the Court of Appeal judgment, and ruling on the motion to strike the writ application filed in this Court until after the full extent of the alleged misrepresentation, ill-practice, fraud and lack of candor is determined.

Accordingly, I respectfully dissent.