



HELMLY LAW

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Apr 04 2024

SC Court of Appeals

April 4, 2024

Via email to ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Tasha Jones v. Lyndon Southern Insurance Company
Appellate Case No. 2023-001289

Dear Ms. Kitchings:

As directed by the Court of Appeals in its Order dated January 2, 2024, please allow this correspondence to serve as an update on the status of post-trial motions pending in the underlying action. The motions were heard by Hon. Clifton Newman on Tuesday, January 30, 2024. Judge Newman took the issues under advisement and requested additional briefing on certain issues raised during the hearing. No definitive timeline was set for submission of briefs as the parties were awaiting the trial transcript. Counsel for Plaintiffs submitted his brief on February 9, 2024. The trial transcript was received on February 11, 2023. On March 27, 2024, prior to Lyndon Southern's submission of its supplemental brief, Judge Newman issued an Order denying all of Defendant/Appellant Lyndon Southern's post-trial motions. A copy of Judge Newman's Order is attached to this letter as Exhibit A.

Also on March 27, 2024, Judge Newman issued a Form 4 Order. The Form 4 Order states that it "does not end the case" and further provides:

The damages hearing against the Defendant Jupiter Managing General Agency, Inc. and the hearing regarding Plaintiffs' request for attorney fees and costs shall be scheduled within thirty (30) days from receipt of the remand from the appellate court.

A copy of the Form 4 Order is attached hereto as Exhibit B.

This Court's Order of January 2, 2024 stated that Lyndon Southern's appeal would be held in abeyance pending the trial court's ruling on the pending post-trial motions, which have now been resolved by Judge Newman's March 27, 2024 Order. Therefore, and notwithstanding the language of the Form 4 Order entered by Judge Newman on the same day, it appears that the purposes of this Court's limited remand have been fulfilled, such that the appeal may be taken out of abeyance.

Accordingly, Appellant Lyndon Southern respectfully requests that this Court enter an order removing the appeal from abeyance. Since the trial transcript has been received, Lyndon Southern's

Ransome H. Helmly, LLC

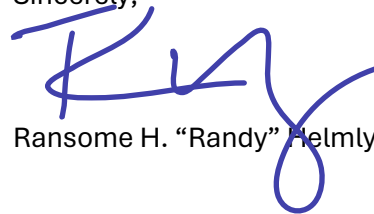
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understanding is that its initial brief and designation of matter to the record on appeal would be due 30 days from the entry of such an order. In the event the Court believes a different deadline should apply, Lyndon Southern respectfully requests the Court's guidance as to the applicable filing deadline(s).

With kindest regards, I am

Sincerely,

A handwritten signature in blue ink, appearing to read "Randy Helmlly". The signature is stylized with a large, sweeping "R" and a long, trailing flourish that loops back under the name.

Ransome H. "Randy" Helmlly

Cc: Dietrich Lake, Esq. (via email)
Kirsten E. Small, Esq. (via email)
Susan P. McWilliams, Esq. (via email)
Connor B. Bauknight, Esq. (via email)

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	Civil Action No: 2019-CP-40-04650
)	
Tasha Jones; and)	
Shaniqua Thompson)	
)	
Plaintiffs,)	
)	
vs.)	<u>ORDER</u>
)	
Lyndon Southern Insurance)	
Company; Safe Choice Insurance)	
LLC; and Jupiter Managing)	
General Agency, Inc.)	
)	
Defendants.)	
_____)	

This matter is before the Court by way of the Defendant's untimely-filed post-trial motions seeking a new trial, a judgment as a matter of law, a judgement notwithstanding the verdict, and a new trial *nisi remittitur*. The Plaintiffs, Tasha Jones and Shaniqua Thompson, were represented by Dietrich A. Lake, Esquire, and the Defendant, Lyndon Southern Insurance Company, was represented by Ransome H. Helmly, Esquire.

Factual Background

The Plaintiffs filed suit against the above-stated Defendants on August 22, 2019, alleging breach of an insurance contract and bad-faith. Each Plaintiff obtained a judgment in the amount of \$50,000.00 for uninsured motorist bodily injury coverage on June 19, 2019; the Defendant Lyndon Southern failed to pay the Plaintiffs the judgment award and/or any benefits under the uninsured motorist coverage.

A trial was held before this Court on the week of June 19, 2023. The Plaintiffs presented testimony from the Plaintiffs and two (2) expert witnesses concerning the

insurance agreement between the Defendant and the Plaintiffs, testimony concerning the breach of that agreement, and testimony concerning damages from that breach of the insurance agreement. The Plaintiffs presented testimony from the Defendant Lyndon Southern's vice president of claims who testified about the insurance agreement and testified about the Plaintiffs' claims; however, the vice president of claims for the Defendant Lyndon Southern was not able to provide much testimony regarding how the Plaintiffs' claims were handled nor was he was able to testify about the Defendant Lyndon Southern's standards, policies, and procedures regarding claims handling to ensure claims were promptly handled and settled.

At the conclusion of the Plaintiffs' case, the court granted the Plaintiffs' motion for directed verdict on this issue as to whether the Defendant Lyndon Southern breached its' contract to pay first-party uninsured motorist benefits to the Plaintiffs; this court determined that the Defendant Lyndon Southern breached its' contract when it failed to pay any uninsured benefits to the Plaintiffs related to an accident which occurred on June 15, 2017. At the conclusion of the trial on June 23, 2023, the Plaintiffs received a jury verdict as follows: Plaintiff Tasha Jones, fifty thousand, three hundred dollars (\$50,300.00) in consequential damages for Breach of Contract; seventy-five thousand dollars (\$75,000.00); and three-hundred and fifty thousand (\$350,000.00) in punitive damages. Plaintiff Shaniqua Thompson, fifty thousand dollars (\$50,000.00) in consequential damages for Breach of Contract; seventy-five thousand dollars (\$75,000.00); and three-hundred and fifty thousand (\$350,000.00) in punitive damages.

At the discharge of the jury, the Defendant Lyndon Southern declined to make any post-trial motions and declined to request (by motion) any additional time from the

Court to make any post-trial motions. The Defendant filed motions ten (10) days after the discharge of the jury seeking the following relief: 1) an order of JNOV; 2) an order seeking a new trial based upon the Thirteenth Juror Doctrine and/or New Trial Absolute and/or New trial *Nisi Remittitur*; 3) an order seeking a new trial based upon the court granting a directed verdict on the issue of breach of contract; and 4) an order seeking to eliminate and/or reduce the amount of the punitive damages awarded to the Plaintiff.

LEGAL ANALYSIS

Rule 50 & Rule 59 Motions

The Defendant Lyndon Southern filed its' post-trial motions seeking relief from the jury's verdict on July 3, 2023 which was ten (10) days after the jury was discharged on June 23, 2023. The Defendant Lyndon Southern failed to make any post-trial motions at the discharge of the jury; furthermore, the Defendant Lyndon Southern failed to request additional time to file its' motions upon motion to the court. Counsel for the Defendant Lyndon Southern verbally stated "none" when this court inquired as to whether the Defendant Lyndon Southern had any post-trial motions.

Both Rule 50 and Rule 59, SCRCP mandate the time frame for filing post-trial motions is "promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter..." The notes to both rules note that "upon motion," the court may grant an additional ten days to make any post-trial motions if the post-trials are not made promptly at the discharge of the jury.

The record is clear that the Defendant Lyndon Southern did not comply with the time requirements enumerated in both Rule 50 and Rule 59, SCRCP. The Defendant Lyndon Southern failed to make any post-trial motion at the discharge of the jury after

the jury had reached its' verdict; furthermore, the Defendant Lyndon Southern failed to request additional time (upon motion) to file any post-trial motions at the discharge of the jury and/or after the jury reached had reached its' verdict. Rule 6(b), SCRCP states that "the time for taking any action under rules 50(b), 52(b), 59, and 60(b) may not be extended except to the extent and under the conditions stated in them." Rule 6 prohibits this Court from enlarging the time frame for the Defendant Lyndon Southern to file post-trial motions when Lyndon Southern did not comply with the conditions as stated in both rules. Our Supreme Court has consistently held that "if a rule's language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary, and the stated meaning should be enforced. *Maxwell v. Genez*, 356 S.C. 617, 591 S.E.2d 26 (S.C. 2003). Furthermore, our courts have held that a South Carolina statute and rules should be interpreted according to its' "clear meaning." *Nucor Steel, a Div. of Nucor Corp. v. South Carolina Public Service Com'n*, 426 S.E.2d 319, 310 S.C. 539 (S.C. 1992).

This court finds that the Defendant Lyndon Southern's post-trial motions were not timely with this court as the Defendant Lyndon Southern' post-trial motions' request did not comply with the procedural requirements of both Rule 50 and Rule 59, SCRCP; therefore, the Defendant Lyndon Southern's request for the following relief: 1) an order of JNOV; 2) an order seeking a new trial based upon the Thirteenth Juror Doctrine and/or New Trial Absolute and/or New trial *Nisi Remittitur*; 3) an order seeking a new trial based the court granting a directed verdict on the issue of breach of contract; and 4) an order seeking to eliminate and/or reduce and/or cap the amount of the punitive damages awarded to the Plaintiffs are all **DENIED**.

Although this court has denied all the Defendant Lyndon Southern's post-trial motions due to the request for each post-trial motion not complying with the procedural requirements of both Rule 50 and Rule 59, SCRCP, this court will still address each motion presented by the Defendant Lyndon Southern.

New Trial/New Trial Absolute

The Defendant Lyndon Southern moved for a new trial based upon the court granting the Plaintiffs' motion for directed verdict at the conclusion of the Plaintiffs' case while denying the Defendant Lyndon Southern's motion for directed verdict; furthermore, the Defendant Lyndon Southern's motion for a new trial is based upon the Defendant's contention that the evidence does not support the jury verdict under the "thirteenth juror" doctrine. Alternatively, the Defendant moved for a new trial absolute and new trial *nisi remittitur* as to damages based upon the Defendant's assertion that the damages awarded were either grossly excessive or excessive.

Directed Verdict

The Defendant contends that it is entitled to a new trial due to the trial court's granting the Plaintiffs' motion for directed verdict as to the breach of contract. The Defendant Lyndon Southern contends that the Plaintiff Shaniqua Thompson was not a named insured under the insurance agreement, therefore, allowing Plaintiff Thompson to pursue this breach of contract and bad faith claim was a "prejudicial error of law." The Defendant does not offer any evidence in support of its' argument; Lyndon Southern's own insurance agreement defines an insured person as the following:

- a. *You, any family member or any other person listed as an additional driver in the Declarations;*

- b. Any other person while occupying Your covered auto, provided the actual use thereof is with the permission of the named insured; and*
- c. Any person entitled to recover damages for bodily injury covered under Part C of this policy sustained by a person meeting the definition of an insured person in 1.a. or 1.b. above.*

This court finds that the Plaintiff Thompson is clearly defined as an insured person under the insurance agreement as she qualifies under all the above-stated conditions within the insurance contract. Lyndon Southern agrees that the Plaintiff Thompson is entitled to first-party benefits as an insured under the insurance agreement; therefore, this court finds that the Plaintiff Thompson is entitled to recover damages for Lyndon Southern's breach of contract for failing to pay her any first- party uninsured motorist benefits under the insurance contract.

Our Supreme Court has addressed the issue of what an insured is entitled to recover under a breach of contract and bad faith action for failure of an insurer to pay first party benefits under an enforceable insurance agreement. *Nichols v. State Farm Mut. Auto Ins. Co.*, 306 S.E.2d. 616, 279 S.C. 336 (S.C. 1983) clearly holds "that if an **insured** can demonstrate bad faith or unreasonable action by the insurer in processing a claim under their mutually binding insurance contract, he can recover consequential damages in a tort action. Actual damages are not limited by the contract. Further, if he can demonstrate the insurer's actions were willful or in reckless disregard of the **insured's** rights, he can recover punitive damages."

Our courts have continuously held that when the evidence yields only one inference and/or the case only presents only a question of law, a directed verdict in

favor of the moving party is proper. *Estate of Haley ex rel. Haley v. Brown*, 370 S.C. 240, 634 S.E.2d 62 (S.C.App. 2006). Furthermore, our appellate courts have held that “when evidence presented at trial yields only one conclusion concerning liability, a trial court may properly grant a motion for directed verdict.” *Cock-N-Bull Steak House, Inc. v. Generali Ins. Co.*, 466 S.E.2d 727, 321 S.C. 1 (S.C. 1995). The issue of whether more than one reasonable inference can be drawn is for the court to determine. *Horton v. Greyhound Corp.*, 241 S.C. 430, 128 S.E.2d 776 (S.C.1962).

In this case, this court finds that only one reasonable inference could be drawn from the evidence presented at trial. There was evidence of the mutually binding insurance agreement between the Plaintiffs and the Defendant Lyndon Southern, there was evidence of a judgment for first-party insurance benefits under the mutually binding insurance agreement, there was evidence that the Defendant Lyndon Southern failed to pay any first-party uninsured motorist bodily injury benefits after written request by the Plaintiffs, and there was evidence that the Plaintiffs sustained damages as a result of Lyndon Southern’s failure to pay any benefits under the agreement. In addition, the Plaintiffs’ expert, Stanley L. Lipshultz, testified that the Defendant Lyndon Southern failed to implement reasonable standards and/or procedures for the prompt handling and prompt settlement of this claim; furthermore, Mr. Lipshultz testified that it was not reasonable to have a lack of policies and procedures for claims handling, he testified that it was not reasonable to have a lack of record keeping, he testified that it was not reasonable to offer to settle the claims for an amount less than otherwise reasonably due, and he testified that it was not reasonable to charge the Plaintiff a higher deductible than what was required under the insurance agreement.

Finally, Professor Constance Anastopoulo, an insurance expert, provided her expert opinion about the existence of a mutually binding insurance contract between the Plaintiffs and the Defendant Lyndon Southern and she testified about the breach of contract and bad faith. Professor Anastopoulo further provided her legal opinion about the acts and/or omissions of Lyndon Southern which was evidence of breach of contract and bad faith. Professor Anastopoulo provided her expert opinion that Lyndon Southern's failure to respond to the Plaintiffs' demand for payment of the judgment and Lyndon Southern's requiring the Plaintiffs to file suit to recover uninsured motorist coverage benefits under the insurance contract was evidence of breach of contract with bad faith. Professor Anastopoulo testified that after reviewing the case that she did not find any reasonable basis to support Lyndon Southern's decision not to pay any first-party uninsured motorist bodily injury benefits to the Plaintiffs under the mutually binding insurance contract. Both experts provided testimony that assisted the jury in understanding the facts of the case.

The Defendant Lyndon Southern incorrectly argues that the Plaintiffs were not entitled to recover damages outside of the insurance agreement; therefore, the Plaintiffs were not entitled to a directed verdict because the Defendant Lyndon Southern had not breached its' contract and that Lyndon Southern was acting reasonably by not paying any monies outside of the insurance agreement. The Defendant Lyndon Southern's argument is without merit and is inconsistent with our case law. Our Supreme Court has addressed the issue of what an insured is entitled to recover under a breach of contract and bad faith action for failure of an insurer to pay first party benefits under an enforceable insurance agreement in *Nichols*. Our courts have held that "actual damages

are not limited by the contract” if either bad faith or unreasonable conduct can be shown by the insured. *Nichols*. Also, punitive damages are available if there is evidence of either willful or evidence of a reckless disregard of the insured’s rights by the insurer. *Id.*

Our Supreme Court in *Cock-N-Bull* determined that the language of the insurance contract set forth the scope of coverage under a mutually enforceable agreement. The Supreme Court in *Cock-N-Bull* further determined that the Defendant’s refusal to pay benefits under the mutually enforceable agreement “constituted breach of contract,” and that the Defendant’s refusal to pay the benefits was considered in “bad faith.” The actions of the Defendant Lyndon Southern are similar to the actions of the Defendant in *Cock-N-Bull*; therefore, a directed verdict in the Plaintiffs’ favor was proper as the evidence, when viewed in the light most favorable to Lyndon Southern, yielded only one inference ... that inference is that the Defendant Lyndon Southern breached its’ mutually enforceable agreement with the Plaintiffs and acted in bad faith as there was no reasonable basis for not paying the judgment. The Defendant Lyndon Southern’s motion for a new trial based upon granting the Plaintiffs’ motion for directed verdict is **DENIED**.

Thirteenth Juror Doctrine

The Defendant seeks a new trial based upon the Thirteenth Juror Doctrine. This doctrine allows the circuit court to grant a new trial absolute when the court finds the evidence does not support the verdict. The Thirteenth Juror Doctrine allows the judge to sit, in essence, as the thirteenth juror when he finds the evidence does not justify the verdict, and then to grant a new trial based solely on the facts. *Lane v. Gilbert Const. Co., Ltd.*, 383 S.C. 590, 681 S.E.2d 879 (2009).

In this case, this court finds that sufficient evidence existed in the record to support the submission of the cause of action to the jury and to support the jury's verdict. Each witness that testified in this case, including the vice-president of claims for the Defendant Lyndon Southern, testified about the existence of a binding contract, they each testified that Lyndon Southern failed to pay uninsured motorist bodily injury benefits to either Plaintiff under the contract, they each testified about the damages that the Plaintiffs incurred as a result of said brief, and the two (2) insurance experts testified about the unreasonableness of the Defendant Lyndon Southern's conduct in failing to pay any uninsured motorist first-party benefits to the Plaintiffs related to the judgment of June 19, 2019; furthermore, each expert testified that the Defendant Lyndon Southern's handling of the Plaintiffs' uninsured motorist bodily injury claims and the Defendant Lyndon Southern's lack of any policies and procedures for handling the Plaintiff's claims were unreasonable.

This court finds that there was ample evidence in the record to support the jury's determination that the Defendant Lyndon Southern engaged in willful, wanton or reckless conduct. There was evidence that the Defendant Lyndon Southern lacked policies and procedures for claims handling, evidence of a mutually binding agreement between the Plaintiffs and the Defendant Lyndon Southern, evidence that the Defendant Lyndon Southern failed to pay benefits under a mutually binding insurance agreement, and evidence that the Plaintiffs were required to file suit to recover benefits under the insurance agreement. This Court finds that there was also ample evidence to support the jury's conclusion that the Defendant engaged in willful, wanton, or reckless conduct

to warrant punitive damages. Therefore, the Defendant's request for a new trial under the Thirteenth Juror Doctrine is **DENIED**.

New Trial Absolute

The Defendant moves for a new trial absolute as to damages on the ground that the compensatory and punitive damages portions of the verdict are excessive. A trial court may grant a new trial absolute on the ground that the verdict is excessive or inadequate. *Rush v. Blanchard*, 310 S.C. 375, 379, 426 S.E.2d 802, 805 (1993). The circuit court should grant a new trial absolute on the excessiveness of the verdict only if the amount is so grossly excessive as to shock the conscience of the court and clearly indicates the verdict amount reached was the result of passion, caprice, partiality, corruption or some other improper motives. *Id.*

The trial court has discretion to deny the Defendant's motion for a new trial. A trial court's decision to either deny or grant a new trial motion will not be disturbed on appeal unless the findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. *Swicegood v. Lott*, 379 S.C 346, 355, 665 S.E.2d 211, 216-216 (Ct. App. 2008). The trial court must consider the testimony and reasonable inferences to be drawn from the evidence in the light most favorable to the nonmoving party when determining whether to grant the Defendant's motion for a new trial. *Id.*

The Defendant Lyndon Southern contends that the jury verdict was grossly excessive because the verdict was indicative of prejudice or partiality or bias or caprice; furthermore, the Defendant Lyndon Southern argues that the punitive damages

awarded constituted a violation of the Defendant's due process rights and because the evidence presented to the jury did not justify the award.

This court finds that there was sufficient evidence in the record to indicate that the jury's verdict was not grossly excessive. The jury had an opportunity to hear and determine the credibility of Plaintiffs and their experts' testimony at trial. The Plaintiffs testified about their outstanding medical expenses and about their overall economic losses from the failure of the Defendant Lyndon Southern to pay any uninsured motorist bodily injury benefits under the policy. The Plaintiffs also testified about the collateral consequences and/or damages that arose from the Defendant Lyndon Southern's failure to pay benefits under the uninsured motorist's claim under a valid and mutually binding insurance agreement. This type of testimony is evidence of damages to warrant the verdicts in this case. This trial court finds that the awards were neither excessive as to shock the conscience nor were the awards the result of passion, caprice, partiality, corruption or some other improper motives. This Court finds that the jury award amount was not so outrageously disproportionate so as to indicate the jury was influenced by either passion or caprice or prejudice; therefore, the verdict was not grossly excessive. The Defendant Lyndon Southern's request for a New Trial Absolute on the issue of damages is **DENIED**.

Judgment Notwithstanding the Verdict (JNOV)

The Defendant Lyndon Southern contends that it is entitled to a JNOV as a matter of law. The Defendant Lyndon Southern further contends that there was either no evidence to support the verdict or that the court made legal conclusions under an error of law.

A judgment notwithstanding the verdict is justified when there is either no evidence to support the verdict or when the trial court's legal conclusions were controlled by errors in law. *Wright v. Hiester Constr. Co.*, 389 S.C. 504, 698 S.E.2d 822, (Ct. App.2010). The court must view the evidence and all reasonable inferences in the light most favorable to the non-moving party in ruling on a JNOV motion. *Bishop Logging Co. v. John Deere Industrial Equipment Co.*, 317 S.C. 520, 450 S.E.2d 183 (Ct.App. 1995). Furthermore, the court in *Bishop Logging* stated that the factual finding of the jury should not be disturbed unless a review of the record reflects that there was no evidence to reasonably support the verdict.

This trial court and jury heard testimonial evidence from the Plaintiffs about the binding insurance agreement between the Plaintiffs and Lyndon Southern; both also heard testimonial evidence about a demand for payment of benefits from a judgment obtained under the insurance agreement, both heard testimonial evidence that the Defendant Lyndon Southern failed to pay any uninsured motorist bodily injury benefits to the Plaintiffs under the uninsured motorist bodily injury coverage of the mutually binding insurance contract, and both heard testimonial evidence about the damages which arose out of the Defendant Lyndon Southern's failure to pay any benefits under the uninsured motorist bodily injury coverage of the insurance contract. In addition, this trial court and jury heard testimony from two experts who provided their opinion that the Defendant Lyndon Southern's conduct in failing to pay the benefits under the contract was not reasonable; furthermore, the experts testified that the Defendant Lyndon Southern's claims handling of this case and Lyndon Southern's lack of policy and procedures for claims handling were not reasonable.

The Defendant Lyndon Southern cites *Hardaway Concrete Co. v. Hall Contracting Corp.*, 374 S.C. 216, 225, 647 S.E.2d 488, 492 (Ct. App. 2007) to justify its' request for a Judgement Notwithstanding the Verdict as it relates to the Plaintiff Thompson. Furthermore, the Defendant Lyndon Southern requests relief under a JNOV for the following: 1) its' contention that Lyndon Southern had no legal basis to appear and defend the underlying "John Doe" action; 2) its' contention that Lyndon Southern had no legal basis to pay a judgment amount over the contract terms; 3) its' contention that Lyndon Southern could not be found liable for bad faith because it never had an opportunity to settle within the policy limits; and 4) its contention that Lyndon Southern's handling of the claim was reasonable and not in bad faith.

This court finds that the Defendant Lyndon Southern's contentions for a JNOV are without merit. Our Court of Appeals in *Maro v. Lewis*, 389 S.C. 216, 697 S.E.2d 684 (S.C.App. 2010) held that the Plaintiff has the burden of proving the existence of a contract, proving the breach of the contract, and proving damages as a result of that breach. In this case, the Defendant Lyndon Southern admitted to the following evidence:

1. Lyndon Southern admitted that both Plaintiffs are considered insureds under an enforceable insurance agreement and that both Plaintiffs were entitled to first-party benefits.
2. Lyndon Southern admitted that the Plaintiffs obtained a monetary judgment award related to uninsured motorist benefits under the Defendant Lyndon Southern's insurance agreement.
3. That Lyndon Southern did not pay any uninsured motorist benefits to

either Plaintiff despite the judgment and despite the Plaintiffs' request for payment of benefits under the binding insurance mutually binding insurance agreement.

In addition, this court finds there was significant evidence to support the jury's verdict. *Nichols* clearly states that actual damages are not limited by the contract if an insured can demonstrate bad faith or unreasonable action by the insurer in processing the claim under the insurance agreement; furthermore, punitive damages are allowed when the party can demonstrate that the insurer's actions were willful or in reckless disregard for the insured's rights.

In this case, this court finds that there was sufficient evidence presented by which the jury could reach its award of damages. The jury was presented with evidence of the Defendant Lyndon Southern's breach of a valid and enforceable insurance agreement with the Plaintiffs while acting in bad faith. There was undisputed evidence that the Plaintiffs were entitled to first-party benefits under the uninsured motorist bodily insurance policy and further evidence that there was no reasonable basis for the Defendant's failure to pay the benefits under the policy. There was evidence that the Defendant's breach of the contract resulted in damages to the Plaintiffs. There was evidence by two experts that the Defendant Lyndon Southern's failure to pay the first-party benefits, Defendant Lyndon Southern's failure to institute policy and procedure for claims handling, the Defendant Lyndon Southern's requiring the Plaintiffs to institute litigation to recover benefits under the insurance contract, and the Defendant Lyndon Southern's charging the Plaintiff Tasha Jones a higher deductible than what was allowed under the insurance agreement were all acts that were unreasonable and

indicative of willful and/or in reckless disregard of the Plaintiff's rights under the insurance contract.

The Defendant's Lyndon Southern's motion for Judgement Notwithstanding the Verdict is **DENIED**.

New Trial Remittitur

The Defendant moves for a new trial *nisi remittitur* in the alternative for a new trial absolute on the matter of damages. The Defendant argues that the verdict was excessive as to actual damages and punitive damages.

A trial court may grant a new trial *nisi remittitur* whenever it finds the amount of the verdict excessive; however, substantial deference must be afforded to the jury's determination of damages and the trial court must offer compelling reasons for invading the jury's province. *Todd v. Joyner*, 385 S.C. 509, 685 S.E.2d 613 (Ct. App. 2008).

The jury had an opportunity to hear the Plaintiffs' testimony concerning damages and to determine the Plaintiff's credibility during her testimony. There was sufficient evidence in the record for the trial court to determine that both awards were neither excessive as to shock the conscience nor were the awards the result of passion, caprice, partiality, corruption or some other improper motives. Plaintiff Jones testified that she incurred \$9,586.95 in medical expenses from the underlying uninsured motorist bodily injury claim under the insurance contract; the Plaintiff Thompson testified that she incurred \$9,780.71 in medical expenses from the underlying uninsured motorist bodily injury claim under the insurance contract. Both Plaintiffs testified that they each had a valid judgment for \$50,000.00 in uninsured motorist bodily injury benefits under the uninsured motorist bodily injury coverage of the mutually binding insurance agreement

with Lyndon Southern. Both Plaintiffs testified about their out of pocket expenses that were still outstanding and both Plaintiffs testified that their incurred medical expenses were still outstanding from the underlying automobile accident. The Plaintiffs presented testimony regarding the negative impact to their financial stability with the outstanding medical expenses for which they were still responsible for paying some six (6) years after the automobile accident which is the underlying subject of the judgment of June 19, 2019.

This court finds that there is sufficient evidence in the record to indicate that the Defendant Lyndon Southern acted wantonly, willfully, and with reckless disregard for the financial well-being of the Plaintiffs when the Defendant Lyndon Southern breached its' contract with the Plaintiffs. See, *Cock-N-Bull*. Our Supreme Court has affirmed that "a conscious failure to exercise due care constitutes willfulness." *Taylor v. Medenica*, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996). This court finds that Lyndon Southern had no reasonable basis to deny paying the benefits under uninsured motorist bodily injury action. There is clear and convincing evidence of the Defendant Lyndon Southern's willful and/or reckless conduct in the following: 1) There was a valid insurance agreement for uninsured motorist bodily injury coverage under a mutually binding insurance agreement with the Defendant; 2) There was no reasonable testimony from Lyndon Southern regarding why they refused to pay the award for uninsured motorist bodily injury benefits after receiving the demand for payment from the Plaintiffs; 3) There was evidence that the Defendant Lyndon Southern intentionally and willfully refused to pay the Plaintiffs' benefits under the uninsured motorist bodily injury coverage and the Defendant was aware that the Plaintiffs were ultimately responsible

for the medical expenses accrued under the uninsured motorist bodily injury claim; and 4) There was evidence that the Defendant failed to have any policies and/or procedures for claims handling and/or record keeping which could have prevented the breach of contract and bad faith; 5) There was evidence that Defendant Lyndon Southern required the Plaintiffs to file suit to recover benefits under the mutually binding insurance agreement; 6) There was evidence that the Defendant Lyndon Southern failed to adopt and/or implement reasonable standards for the prompt investigation, handling, and settlement of claims; and 7) There was evidence that the Defendant Lyndon Southern charged the Plaintiff Jones a higher \$500.00 deductible rather than the \$200.00 deductible which was required under the insurance contract.

This court finds that there is no evidence that the jury's awards were excessive so as to be the result of passion, caprice, prejudice, or some other influence outside of the evidence. This Court further finds that there was sufficient evidence in the record to indicate that the Defendant Lyndon Southern acted wantonly, willfully, and with reckless disregard for the safety of Plaintiff in this incident. Therefore, the Defendant Lyndon Southern's request for new trial *nisi remittitur* as to actual damages and punitive damages is **DENIED**.

Punitive Damages

This Court is aware that a de novo review must be conducted when evaluating the constitutionality of a punitive damage award. The purpose of punitive damages is to serve as a deterrent for offenders and to prevent others from committing certain or similar wrongs in the future. The South Carolina Supreme Court in *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (S.C. 2009), outlined the following test to be

conducted in the de novo review of punitive damages: 1) Reprehensibility; 2) Ratio; and 3) Comparative Penalty Awards.

In analyzing the first prong of reprehensibility, this Court is concerned with the Defendant's conduct and what type of harm was done to the Plaintiffs, whether that conduct was reflective of indifference or reckless disregard for the safety of others, whether the Plaintiffs were financially vulnerable, whether the conduct involved repeated actions or was isolated in nature; and whether the harm was the result of intentional malice, deceit, etc. or was a mere accident.

This case involves reprehensible conduct on the part of the Defendant Lyndon Southern. The harm to the Plaintiffs was economic in this action and physical in the underlying uninsured motorist bodily injury claim. As a result of the Defendant Lyndon Southern's failure to pay the benefits under the uninsured motorist bodily injury coverage, the Plaintiffs were left with outstanding medical expenses and other costs. Furthermore, both Plaintiffs testified as to their financial well-being after the underlying accident which was the subject of the judgment. The conduct of the Defendant Lyndon Southern reflected indifference and a reckless disregard for the safety and financial well-being of the Plaintiffs by not paying benefits under a mutually binding insurance contract. The Plaintiffs were financially vulnerable because of their age and/or lack of work history; furthermore, they were financially vulnerable because the amount of outstanding expenses was almost \$10,000.00 for each Plaintiff. The outstanding medical expenses resulted in bad credit and would limit the Plaintiffs' ability to obtain credit to get loans and/or would limit their ability to obtain other goods and/or limit their ability to obtain stable housing. The Defendant Lyndon Southern's actions were

repetitive and intentionally malicious and deceitful in the following ways: 1) the Defendant Lyndon Southern made an offer for settlement of both the Plaintiffs' cases which was below medical expenses with no reasonable basis for the offers below the medical expenses; 2) the Defendant Lyndon Southern intentionally and willfully refused to pay the Plaintiff's benefits under the uninsured motorist bodily injury coverage over an extended period of time; 3) the Defendant Lyndon Southern was aware that the Plaintiffs had outstanding medical expenses related to the first-party benefits when it refused to pay any benefits under the insurance agreement; 4) the Defendant Lyndon Southern failed to have any policies and/or procedures for claims handling and/or record keeping to resolve its' insurance claims; 5) the Defendant Lyndon Southern required the Plaintiffs to file suit to recover benefits under the insurance agreement; and 6) The Defendant Lyndon Southern failed to adopt and/or implement reasonable standards for the prompt investigation, handling, and settlement of insurance claims. Also, a negative inference could be drawn from Lyndon Southern failing to produce any evidence that any of its' actions were reasonable.

The ratio prong of the test considers the disparity between the actual or potential harm suffered by the plaintiff and the amount of the punitive damages award. The United States Supreme Court, though not adhering to any bright line rules, has stated that few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process. *State Farm v. Campbell*, 538 U.S. 408, 124 S.Ct. 1513, 155 L.Ed.2d 585 (2003). This case involves a single-digit ratio between punitive and compensatory damages. Our Supreme Court has held that a punitive damage award will not violate due process so long as the degree of

punishment is both reasonable and proportionate to the amount of harm to the Plaintiff and the general damages recovered. See, *Mitchell*. This court has considered the following in determining the reasonableness of a ratio: 1) the likelihood that the award will deter the defendant from similar conduct; 2) whether the damage award is reasonably related to the harm likely to result from such conduct; and 3) the defendant's ability to pay. *Id.*

In the Plaintiffs' case, the ratio between actual damages and punitive damages is not excessive as it involves single digit ratios; the ratio satisfies the requirement of due process. The ratio is a single-digit ratio approaching approximately 7 to 1 on the breach of contract cause of action and 4.6 to 1 on the bad faith cause of action. There is evidence to support the \$350,000.00 punitive damage awards to each Plaintiff and evidence that the awards are not excessive or in violation of any due process based upon the low ratio amount. The jury determined that the Defendant Lyndon Southern's conduct was wanton, willful, and with a reckless disregard for the rights of the Plaintiffs. The single digit ratio is evidence that the award is not excessive and is consistent with the requirements of due process.

The comparative penalty award prong allows this Court to consider the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. The Court may consider the type of harm sustained by the plaintiffs, the reprehensibility of the defendant's conduct, the ratio of harm to punitive damages, the size of the award, and any other factors the court may deem relevant.

A review of case law reflects a case which presents similar issues present in the Plaintiff's case. See *James v. Horrace Mann Ins. Co.*, 638 S.E.2d 667, 371 S.C. 187

(S.C.2006). *James* was an insurance negligence and bad faith case; the jury returned a verdict for the Plaintiff for \$146,600.00 actual damages for bad faith and \$1,000,000.00 in punitive damages. The ratio in the *James* bad faith action was 6.82 to 1 in a trial where the Defendant acted in bad faith for failing to advise the Plaintiff of the correct available coverage.

In the case at hand, this Court is presented with a reasonable single-digit ratio from actual to punitive damages. Furthermore, the award is not excessive so as to be the result of passion, caprice, prejudice, or some other influence outside of the evidence. The punitive damage award in this case is consistent with penalties awarded in a comparable case. See, *James*. The awards are reasonably related to the breach of contract and bad faith conduct of the Defendant Lyndon Southern and is a reasonable deterrent to Lyndon Southern to refrain from similar conduct. In addition, there is evidence that the Defendant Lyndon Southern is financially capable of paying the judgment since it is owned by a large holding company, Fortegra Financial.

The Defendant Lyndon Southern contends that S.C. Ann. §15-32-30 (A) serves as a statutory cap to the punitive damage award in this case; subsection (A) states that “an award of punitive damages may not exceed the greater of three times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of five hundred thousand dollars;” however, this statute provides an exception to the statutory cap under subsection (C). The exception to the statute enumerated in subsection (C) states that “when the trial court determines one of the following apply, there shall be no cap on punitive damages if:

- (1) at the time of injury the defendant had an intent to harm and

determines that the defendant's conduct did in fact harm the claimant;

This court finds that the Defendant Lyndon Southern had the intent to harm the Plaintiffs when the Defendant Lyndon Southern intentionally failed to pay the Plaintiffs any benefits without a reasonable basis for doing so in this matter. This court further finds that the Defendant Lyndon Southern did in fact harm the Plaintiffs as the Plaintiffs were not made whole after filing an uninsured motorist bodily injury claim. The Plaintiffs were required to retain counsel, they were required to file a civil suit to recover benefits under the policy, they incurred additional costs and expenses in the litigation of the breach of contract and bad faith action against the Defendant. This court finds that the Plaintiffs meet the exception requirements of S.C. Ann. §15-32-30 (A); therefore, the punitive damage award to the Plaintiffs is not capped pursuant to S.C. Ann. §15-32-30(A). The punitive damage award is proper and complies with S.C. Ann. §15-32-30.

The award of \$350,000.00 in punitive damages to each Plaintiff was proper in this case and does not violate any due process concerns. Furthermore, the award was supported by the evidence and was not excessive so as to be the result of passion, caprice, prejudice, or some other influence outside of the evidence. The jury determined that the defendant's acted wantonly, willfully, and maliciously in this incident; therefore, this court will not disturb this finding.

This Court has conducted its' full de novo review of the punitive damages award to the Plaintiffs; this post-trial review considered the appropriateness of the punitive damages awarded to the Plaintiffs pursuant to South Carolina law. This Court concludes that the award of punitive damages was not excessive and/or grossly

excessive. Therefore, the Defendant's motion for a new trial *nisi remittitur* and/or for a reduction or cap in the punitive damage award is **DENIED**.

THEREFORE, IT IS HEREBY;

ORDERED that all of the Defendant Lyndon Southern's post-trial motions are **DENIED** as the Defendant failed to comply with procedural requirements for filing post-trial motions.

IT IS FURTHER ORDERED that all of the Defendant's motions pursuant to a Judgment Notwithstanding the Verdict or as a matter of law are **DENIED**;

IT IS FURTHER ORDERED that all of the Defendant's motions for a new trial or new trial absolute as to damages are **DENIED**;

IT IS FURTHER ORDERED that all of the Defendant's motions for a new trial *nisi remittitur* are **DENIED**.

IT IS FURTHER ORDERED that the Defendant's motion for a statutory cap for punitive damages is **DENIED**.

IT IS SO ORDERED.

Clifton B. Newman
Presiding Judge

March ____, 2024
Columbia, South Carolina



Richland Common Pleas

Case Caption: Tasha Jones , plaintiff, et al vs Lyndon Southern Insurance Company
, defendant, et al
Case Number: 2019CP4004650
Type: Order/Form 4

So Ordered

s/ Clifton B. Newman, 2127

Tasha Jones; and Shaniqua Thompson
 PLAINTIFF(S)

Lyndon Southern Insurance Company, et al
 DEFENDANT(S)

Submitted by:

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : The damages hearing against the Defendant Jupiter Managing General Agency, Inc. and the hearing regarding the Plaintiffs' request for attorney fees and costs shall be scheduled within thirty (30) days from receipt of the remand from the appellate court.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through “Circuit Court Judge” and indicate “Arbitrator” in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title “Circuit Court Judge” below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the “Judgment Amount To Be Enrolled” box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.



Richland Common Pleas

Case Caption: Tasha Jones , plaintiff, et al vs Lyndon Southern Insurance Company
, defendant, et al
Case Number: 2019CP4004650
Type: Order/Form 4

So Ordered

s/ Clifton B. Newman, 2127