

RECEIVED**Apr 22 2024****SC Court of Appeals**

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	2019-CP-23-01438
	)	
	)	
	)	
	)	
BENIGNA VARGAS,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
MGA INSURANCE COMPANY, INC.,	)	
AND CALIDAD LATINA, INC.,	)	
DEFENDANTS.	)	
_____	)	

October 23, 24, and 25, 2023,
Greenville, South Carolina

B E F O R E:

THE HONORABLE PERRY H. GRAVELY, JUDGE; and a jury.

A P P E A R A N C E S:

RAYMOND T. WOOTEN, ESQ.
Attorney for the Plaintiff

JEANMARIE TANKERSLEY, ESQ.
Attorney for the Defendants

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(PW) - Denotes Plaintiff's Witness

(DW) - Denotes Defense Witness

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P R O C E E D I N G S

1
2 THE COURT: Just for -- just for the record, #70,
3 Mr. Scruggs, none of the ones he mentioned presented a
4 problem, but others did. So he is not qualified. So
5 Mr. Scruggs will not be on our jury panel.

6 It's so refreshing to see very short motions.

7 All right. So we've got a motion for summary
8 judgment, a motion to quash, and a motion in limine.

9 MS. TANKERSLEY: Well, Your Honor, I, also, have, I
10 think, three just evidentiary motions in limine that I
11 haven't filed because --

12 THE COURT: All right.

13 MS. TANKERSLEY: -- I'm not sure if they'll --

14 THE COURT: I guess the first one is the -- is the
15 motion for summary judgment, I guess, needs to be heard
16 first.

17 MS. TANKERSLEY: Yes, Your Honor.

18 THE COURT: All right. Since -- I'm going to --

19 Mr. Wooten, since you're the Plaintiff, tell me what
20 this case is about.

21 MR. WOOTEN: Certainly, Your Honor. And, Your Honor,
22 did you get my memo --

23 THE COURT: Memorandum, yes.

24 MR. WOOTEN: Okay.

25 THE COURT: The one you -- yeah, you e-mailed it to

1 us, yes.

2 MR. WOOTEN: Yeah. I don't know if you flipped
3 through it. There's a ton of exhibits. So I won't go
4 through each one of them. But if you're curious about any
5 of the documents I'm talking about --

6 THE COURT: And just -- just kind of general about
7 what the case is about.

8 MR. WOOTEN: Sure. So my client, Benigna Vargas, was
9 in a wreck back in 2018. The car she was driving was
10 insured by MGA. Her husband had gotten that MGA insurance
11 policy. And, you know, MGA is, actually, the parent
12 company of Gainsco. I guess Gainsco's a trade name.

13 So, anyway, her damages were more than the insurance
14 the lady that hit her had. So we requested from Gainsco
15 the underinsured rejection form. They sent us a form that
16 was missing a page. That page had information that was
17 required under the statute in order for the form to comply
18 with the statute to be considered a meaningful offer.

19 We asked them for it three times. Each time they
20 sent us the form missing the page. Then when, I guess,
21 they knew we were about to file suit about four months
22 later after we settled with the liability carrier, all the
23 sudden, this form magically appears with the missing page.
24 The missing page is just a standard form. It's the one
25 page in the application that doesn't have a signature.

1 And so, anyway, we go ahead. We file suit. We
2 subpoena the file from the insurance agent. They send us
3 a file that has -- doesn't have that page in it; right?
4 So it's missing.

5 Then we depose the insurance agent and she testifies
6 that they scan every single page that is presented to
7 their customers when they buy insurance. She says that
8 their typical practice when they get requests -- or
9 requests for --

10 THE COURT: I didn't want your argument. I just -- I
11 just wanted the gist of what the case was about.

12 MR. WOOTEN: Sure. Well, anyway, so what we think
13 happened is they inserted the missing page in order to
14 cover-up the fact that there was no meaningful offer.

15 So we have -- and we got a computer expert to confirm
16 the day that this -- the one time there's been a complete
17 form. The day it showed up, it was created that same day
18 using an office scanner, despite the fact that they're a
19 paperless office. And they claim their normal practice is
20 to just forward the PDF that's already scanned.

21 So we think there's pretty good evidence that they
22 just inserted this missing form. So you've got two parts
23 of the case. One is reformation to provide underinsured
24 coverage. The other is for fraud. So we're asking for
25 actual and punitive damages.

1 THE COURT: Okay. Now, I'll hear your motion for
2 summary judgment.

3 MS. TANKERSLEY: Thank you, Your Honor.

4 Jeanmarie Tankersley. And I'm here on behalf of both
5 of the Defendants. It's Calidad -- I mean, Calidad
6 Latina, Inc., is the local agent. And then MGA Insurance
7 Company is the insurance company that issued the policy.

8 We are asking for a motion for summary judgment as to
9 the fraud cause of action on a couple of grounds. One,
10 Plaintiff lacks standing to bring this cause of action.

11 Two, the -- the fraud cause of action seemingly
12 hinges on whether or not there was a meaningful offer.
13 And I believe there was a meaningful offer in this case.

14 And then, three, of course, the law in South Carolina
15 is there are nine elements of fraud. And if any of those
16 elements are not proven by clear and convincing evidence,
17 then the entirety of the claim fails.

18 The background in this is a little confusing. So I
19 want to briefly go over it. We've talked about how this
20 was originally a declaratory judgment action back in 2019
21 for an insurance policy that was issued to somebody named
22 Alfredo Mendez. That was taken out in March of 2017. He
23 met with an agent at Calidad Latina to get
24 dealership-required insurance. Basically, he was trying
25 to buy a car. They said, We'll give it to you when you

1 have proof of insurance. And they sent him next door. He
2 got a policy that required -- or that met the requirements
3 that the dealership had. Then he could go back and buy
4 the car. So he went to do that in 2017.

5 It is undisputed that he was given an application and
6 that there are a number of signature pages on that
7 application. And it is undisputed that those are his
8 signatures. He's not saying he didn't sign it. He's not
9 saying it was forged, it was computer generated, nothing
10 like that. Those are his signatures.

11 In the process when an agent meets -- at Calidad when
12 an agent meets with a client, they, according to their
13 testimony, testified that they go over the forms and
14 the -- the coverage available to the clients verbally as
15 well. The UIM selection rejection form that he was
16 provided is the same form that the Department of
17 Insurance, you know, says meets the -- the statutory
18 requirement. It is the exact same form. He signed that
19 form.

20 That form is in English, but Gainsco MGA, also, puts
21 in their application a paragraph in Spanish that,
22 essentially, says, if you do not understand this form and
23 you need somebody to explain it to you, alert the agent.
24 By signing below, you are confirming that you have been --
25 that you understand what you are signing and that it has

1 been explained to you. And he signed that and confirmed,
2 again, that that's his -- his signature.

3 So as seen by the signatures on the form, Mr. Mendez
4 rejected UIM coverage. He was -- never had UIM coverage
5 on his policy. He's never paid any premiums for UIM
6 coverage. After he reviewed and signed the application,
7 as well as some other documents that the agency provides
8 him about his vehicle, some additional coverage documents,
9 that type of thing.

10 Calidad then gives Mr. Mendez some of the documents
11 from the application, specifically, Pages 4, 8, and 9.
12 And he -- they give those to the insured. They take them
13 home. That includes, like, the little coverage cards you
14 get, as well as that UIM form handout that does not
15 require a signature. He's, also, given, like, the bill of
16 sale, receipts, things like that.

17 The testimony of the insurance agent, Angela Beltran,
18 who owns Calidad Latina, is that they scan the signature
19 pages. And I understand that there may be some confusion,
20 based on her testimony, that she would scan the entirety
21 of the application. But that simply isn't true. That,
22 also, isn't true based on what she provided in her
23 subpoena response.

24 They take out a number of things. They take out Page
25 4 of the application, which details what UIM coverage is.

1 They take out the insurance -- insurance cards page. They
2 take out the letter that's to the insured from the
3 insurance company, and some other things. They hand those
4 to the insured. And then they sign and scan the signature
5 pages.

6 She, again, testified to that in her deposition. On
7 Page 15 of the deposition, she says -- or the question is
8 asked, What documents would you upload?

9 She says, The application, everything that's required
10 to be signed. We keep records of that and then as well as
11 the driver's license.

12 And, again, later in her testimony, she, again, talks
13 about how they upload the signature pages. That's, also,
14 what's required of them in the application that they get
15 from Gainsco. There's a page that states that the
16 insurance company, Gainsco MGA, does not retain copies of
17 these forms.

18 And so if they ever request it, then the local agent
19 has to send to them the signature page, which is pretty
20 standard in every UIM case I've had. We just usually
21 provide that last signature page where it has the
22 selection rejection option. So that's what's done in this
23 case. Those are the documents that they scan and that
24 they save.

25 There is, also, the underwriting application which

1 Gainsco MGA sends to the local agent on a different
2 software, different system. That is the form as it is
3 made from underwriting. That's the document that they
4 print out to provide to the insured. And then what they
5 upload is, again, just the signature pages or, like, the
6 first page of the application to explain who the person
7 is, what their coverages are. So that's what he got.

8 MGA Gainsco then, of course, mailed Mr. Mendez his
9 policy information and continued to mail it to him every
10 six months. They have the debt page showing there's UIM
11 coverage, as well as his additional policy information.
12 He's never at any point in time paid a premium for UIM,
13 never had any indication that he was supposed to have UIM,
14 and, certainly, never paid a premium for it.

15 Over a year after the policy was taken out, the
16 Plaintiff in this case --

17 Is it Beniga [phonetic]?

18 MR. WOOTEN: Benigna.

19 MS. TANKERSLEY: Benigna Vargas got into a car
20 accident. She was driving a vehicle that was listed on
21 this policy. It's a little unclear whether or not they
22 were technically married. But for purposes of this, she
23 was driving a car that was on the policy. And that's
24 really all that matters.

25 She settled with the liability carrier for 25,000 and

1 then, presumably, was going to pursue the UIM coverage.

2 So, again, after that happened, Mr. Wooten reached
3 out to MGA and asked for the selection rejection form.
4 That's in November of 2018. Because MGA doesn't keep
5 copies of it pursuant to their policy, they got the
6 signature pages from Calidad and then forwarded that
7 information to Mr. Wooten.

8 There is some back and forth. And I don't think the
9 actual e-mails or communications between Mr. Wooten and
10 Calidad have been attached as an exhibit anywhere.
11 There's some back and forth between him and my client
12 on -- in November of 2018. They're faxing the information
13 or e-mailing the signature pages. He's saying all the
14 pages aren't coming through. They think that means that
15 the fax just isn't sending all the pages they've scanned,
16 not that there's this material page that isn't included.
17 So they send it three times.

18 There's no communication after that until -- in
19 January of 2019, the Plaintiff filed suit for the
20 underlying motor vehicle accident in Spartanburg and then
21 serves Gainsco MGA as the UIM carrier. That is when I got
22 involved in the case. This is January February of 2019.

23 I informed Mr. Wooten there's a selection rejection
24 form. There is no UIM coverage. He let me know there
25 were some missing pages. I then tell my client, hey, they

1 say there's some missing pages. Can you send me the
2 application?

3 So at that point in time, MGA Gainsco, again, asks
4 Calidad for the signature pages that says we need all of
5 the pages. So she prints off the signature pages that are
6 saved in their system and the -- the additional
7 application Page 4 from the underwriting file. And then
8 she combines those documents, Pages 1 through 6, sends
9 those back to MGA. MGA sends it to me. I send it to
10 Mr. Wooten. That's in March of 2019. And it is
11 presumedly the interaction that is the basis for this
12 fraud claim.

13 Nobody has ever argued that that document, that PDF
14 was not created the day that they sent it to me. Once
15 we -- that happened I believe he filed the declaratory
16 judgment action shortly thereafter. And, at that point in
17 time, it was just a DJ against MGA Gainsco. Calidad was
18 not a party to the lawsuit at that point.

19 So Mr. Wooten took the deposition of Angela Beltran
20 at that time, who is the owner of Calidad Latina. She
21 talked about how she scans in the signature pages and
22 saves the application.

23 Again, she does not save every single page of every
24 document that is presented. She saves the signature pages
25 of the application because that is -- and the first page

1 because that is the only documents that they are required
2 to retain from -- by policy with MGA and -- and with
3 Gainsco.

4 She, also, saves receipts, bills of sales, things
5 like that. But she doesn't save any of the pages that
6 don't have signatures on them or that don't have
7 identifying information. She considers the application to
8 be those signature pages. At no point in time does she
9 ever scan in everything that she gets from underwriting or
10 everything that is handed to the insured.

11 Based on that testimony alone -- and, as he
12 mentioned, he retained somebody to look at the e-mail to
13 show that the PDF was created in March of 2019, which,
14 again, nobody is disputing. Based on that finding about
15 the e-mail being created in March of 2019, he then
16 attempted to amend the complaint to add in bad faith,
17 South Carolina Unfair Trade Practices Act, and fraud. The
18 order from the Court was no to the bad faith, no to the
19 SCUTPA claim, yes to fraud, if he complies with the
20 foundations in the Gaskins case.

21 So then Plaintiff amended the complaint to add
22 Calidad at that point in time as a Defendant and to add
23 this cause of action for fraud. That was two years after
24 the declaratory judgment action was filed.

25 So we are asking for summary judgment as to the fraud

1 claim, again, for a number of reasons. As an initial
2 matter, Plaintiff just simply does not have standing to
3 bring this claim. There are three ways that a Plaintiff
4 can have standing. One is statutory. One is public
5 importance. And the third is Constitutional. I don't
6 think anybody's claiming that there's statutory standing
7 or the public importance doctrine applies. So I don't
8 address the two of those. But they are in the memo.

9 Under Constitutional standing, in order to have it,
10 the Court is -- looks at three things. The first is
11 whether or not the Plaintiff, who must show that she
12 suffered an injury, in fact, which has to be concrete and
13 particularized. Plaintiff has no injury in this case.

14 Presumably, the injury is that there is no UIM
15 coverage. But that is what the declaratory judgment
16 action is here to resolve, whether or not she has
17 coverage. She, also, wasn't involved in any of the
18 communications between me or Mr. Wooten, or Mr. Wooten and
19 my client in March of 2019.

20 Second, in order to have Constitutional standing,
21 there must be a causal connection between the injury and
22 the harm complained of. Here again, the harm is
23 presumably that she doesn't have UIM coverage or she has
24 been denied UIM coverage. Either way, that doesn't have
25 anything to do with this March 2019 e-mail. Because

1 Mr. Mendez rejected UIM back in 2017 long before this
2 e-mail was sent. And MGA told Plaintiff's counsel that
3 there was no UIM coverage in 2018. So they had already
4 denied for purposes of litigation that there was any sort
5 of coverage before this e-mail was sent.

6 The third factor for standing is that it must be
7 likely that the injury will be redressed by a favorable
8 decision. Again, here, if -- the injuries that there's no
9 UIM coverage for that's not resolved by damages in a fraud
10 case, that's resolved by the declaratory judgment action.

11 Opposing counsel argues in his memo in opposition
12 that suppression of the facts to Plaintiff should give her
13 standing. But, again, there was -- there was no
14 representations. There were no suppression of facts.
15 There were no communications between my clients and the
16 Plaintiff at any point in time.

17 He attempts to get around that by saying that, as her
18 attorney, he's an agent for purposes of fraudulent
19 communications. But if that was the case, then he would
20 become a witness in the fraud case. And, obviously,
21 that's not something that -- that we're allowed to do as
22 attorneys. So as an initial matter, again, I don't
23 believe she has standing.

24 The second reason that the fraud cause of action
25 should be dismissed is because it seems to hinge on

1 whether or not there was a meaningful offer in this case.
2 We would be entitled to a meaningful offer under three
3 separate reasons.

4 One, the law in South Carolina is very clear that if
5 that form approved by the Department of Insurance is
6 signed, then you get a conclusive presumption. The
7 statute, 38-77-350(b), it says, If this form is signed by
8 the named insured after it has been completed by an
9 insurance producer or a representative of the insurer, it
10 is conclusively presumed that there was an informed,
11 knowing selection of coverage. And neither the insurance
12 company nor an agent is liable to the named's insurance or
13 another insured under the policy or the insured's failure
14 to purchase optional coverage or higher limits.

15 So based on that alone -- the statute doesn't say
16 that the insurance agent has to retain all of the pages of
17 the application. The insurance -- or the statute doesn't
18 say all of the pages have to be presented. It just says
19 if this form is signed, you get a conclusive presumption.
20 We have the signed signature pages. So we should have a
21 conclusive presumption that a meaningful offer was made.

22 Mr. Mendez has never testified that he was not
23 provided all the pages. He testified that he doesn't
24 really have any memory of what he signed, but that those
25 are his signatures, that is the form that he was

1 presented. And, additionally, he confirmed that all of
2 the pages were numbered. So if he had realized that a
3 page was missing, he would have had the opportunity to
4 alert the agent, which he confirms he did not do.

5 There are two cases really, specifically, on point
6 regarding whether or not there are signature pages
7 missing. One is Bagnal vs. Foremost. The Court found a
8 meaningful offer in that case where an insured claimed he
9 only received one page of an offer form, but didn't
10 dispute that he signed it. The Court noted that the
11 signed acknowledgement of that form showed that the form
12 had been explained to him and he understood it.

13 In Slice vs. Liberty, it's a similar situation where
14 the Court found there was a meaningful offer. That the
15 insured claimed she only received two of four pages of the
16 form. But, as here, she couldn't really remember what
17 pages she got. But she acknowledged that it was her
18 signature. The agent, also, testified that it was a
19 normal procedure to give all of the pages, but only save
20 the signature pages. And in that case, the Court, again,
21 recognized the pages are numbered and that's sufficient to
22 alert somebody if a page is missing.

23 Even if we don't get the conclusive presumption
24 pursuant to statute, the Court can still find that a
25 meaningful offer was made because the form alone complies

1 with the statutory requirements for the DOI forms.

2 Even if a page is missing, as alleged in this case,
3 the form can still comply with the statutory requirements.
4 Because in Slice, the case I just mentioned, they -- the
5 Court says if that first page of explanations is missing,
6 the second page, which is verbatim in Slice as to what our
7 language on our form is, which is the signature page and
8 is verbatim the same, it is enough for the selection
9 rejection form.

10 Because there is a place that says here's what -- you
11 know, if you want UIM coverage, check yes or no. And then
12 by checking this, you are declining UIM coverage. That's
13 in the Slice case. And if that is what happened here,
14 that second page that he signed is sufficient to comply
15 with the statutory requirements.

16 And, third, even if we don't get the conclusive
17 presumption and we did make a meaningful offer with the
18 form in which we would have the burden to show, then we
19 still would have a meaningful offer under Wannamaker.
20 Because the agent certified when she signed the form that
21 she explained UIM. She testified that their general
22 practice is that UIM is explained. And it does not matter
23 that she can't remember a particular conversation that she
24 had with somebody back in 2017.

25 In Cohen, which is 402 S.C. 66, a meaningful offer

1 was found where the agent had no memory of the
2 communication with the insured, but testified that their
3 general practice is to explain the coverage. The insured
4 testified he spent less than five minutes signing
5 documents. And he, also, testified that he didn't review
6 them. And -- and under Wannamaker, that was sufficient to
7 find a meaningful offer.

8 So the third reason that I believe the cause of
9 action for fraud should be dismissed is because South
10 Carolina law is clear, there are nine elements. And if
11 even one of them is not proved by clear and convincing
12 evidence, then the entirety of the claim fails. Here, I
13 don't think that any of the elements of fraud have been
14 proven by clear and convincing evidence.

15 The first one is that the representation of fact has
16 to be made. Again, the Defendants have never made any
17 representations to the Plaintiff. The only people they
18 have communicated with are the insured, Alfredo Mendez,
19 and on one day in 2018, Mr. Wooten, and, otherwise, to me.

20 The Plaintiff has to prove that there was a falsity
21 to the representation. Again, there is no representation
22 if we're talking about the 2019 e-mail being the
23 representation. That was a representation between Calidad
24 and MGA and then MGA and me. Plaintiff was not involved
25 in that in any way. And there was no testimony that that

1 has been a false representation.

2 The third factor is materiality. In Gaskins, it
3 deals with the inducement of -- fraudulent inducement of
4 signing a release. In that case, they talk about a
5 representation wasn't material, unless it is, first,
6 proved that there was an obligation to pay. Here, again,
7 we have not shown that the insurance companies have any
8 obligation to pay because the declaratory judgment action
9 is still pending.

10 Number four is knowledge of falsity. No one
11 knowingly made any sort of false representations to the
12 Plaintiff. And, again, if we're talking about the e-mail,
13 there's no testimony that was false. And, again, that
14 would be a claim of fraud potentially between Calidad and
15 MGA, not Calidad and the Plaintiff.

16 The fifth requirement is intention that the
17 representation be acted upon. There was never anything
18 given to Plaintiff with the intention that they do any --
19 that she does anything in response to anything that
20 Defendants have said.

21 Number five is the hearer's ignorance of -- I mean,
22 number six is the hearer's ignorance of the falsity.
23 Plaintiff has never heard any representations from the
24 Defendants. And even if she had, she should have already
25 known that there was no UIM coverage because, I believe,

1 she was living at the house with the insured at that point
2 in time. They were mailed the UIM forms and all of the
3 policies. So she could have looked at the declaratory --
4 or at the dec pages at that point in time and seen that
5 there was no UIM coverage.

6 The seventh element is hearer's reliance on its
7 truth. If -- again, the representation is presumedly this
8 March 2019 or even November of 2018 e-mails back and forth
9 between me, opposing counsel, or the Defendants that there
10 was no UIM coverage, then neither the Plaintiff or
11 Mr. Mendez has relied on that assertion because they filed
12 a declaratory judgment action.

13 So under no circumstances with any of these
14 representations did the Plaintiff rely on it because a DJ
15 was filed. Nobody said, okay, there's no UIM and then
16 they went about their business.

17 The eighth element is a hearer's right to rely.
18 Again, Plaintiff has never been given any representation.
19 So I don't know what she would have been relying on.
20 There's, certainly, no proof she had the right to rely on
21 any communications between Calidad and MGA.

22 And the final element is the hearer's consequent and
23 proximate injury. We've already discussed that the
24 Plaintiff doesn't have any injury in this case. And if
25 the injury is there's no UIM coverage, that is covered by

1 the declaratory judgment action. The coverage was denied
2 back in 2017 when Mr. Mendez signed the selection
3 rejection form, not after the 2018 communications or 2019
4 communications. UIM coverage has been denied since March
5 of 2017.

6 This is truly simply just a declaratory judgment
7 action which Plaintiff has improperly tried to change into
8 a bad faith, SCUTPA, fraud cause of action when -- in an
9 attempt to get monetary damages, rather than just a
10 reformation of a policy when there is no evidence that any
11 sort of fraud or bad faith occurred in this case between
12 Defendants and the Plaintiff or the insured.

13 The only representation made where this fourth page
14 of the application was included was an e-mail from me to
15 Mr. Wooten. So unless he plans for us to be witnesses in
16 this case or for a separate cause of action of fraud
17 between the two of us, then I really don't see how there
18 can be a cause of action for fraud in this matter.

19 So we are asking, of course, that the summary
20 judgment as to the fraud cause of action be granted.

21 THE COURT: Mr. Wedlake -- I'm sorry. Mr. Wooten.

22 MR. WOOTEN: If I could just ask a few questions of
23 the Court first.

24 THE COURT: Sorry. I just couldn't resist.

25 MR. WOOTEN: I get the feeling I might get a lot of

1 that today.

2 THE COURT: No. That's the last time, promise.

3 MR. WOOTEN: Your Honor, let me just start out. I
4 think me and Ms. Tankersley might have read a different
5 deposition. When I deposed her client, I asked her
6 client, And when y'all -- I guess prior to you signing and
7 when y'all would scan documents after people signed them,
8 would you take any pages out, or would you scan every
9 single page?

10 Answer: We scan every single page.

11 And then I asked her again in the deposition, So
12 prior to you signing, when someone would sign a document,
13 would you save all the document or would you have only
14 saved part of the document?

15 We save all the documents.

16 Would you -- and that would include the pages that
17 didn't have any signatures on them?

18 Correct.

19 And those would be scanned?

20 Correct.

21 So, Your Honor, for four years, they have maintained
22 that they scanned the entire file. And that for some
23 reason, when we requested the signature pages, they took
24 out the non-signature pages -- I'm sorry. When we
25 requested the underinsured rejection form, they took out

1 the non-signature pages.

2 When we sent the subpoena, she, again, testified that
3 she took out the non-signature pages. She testified that
4 when there is the one complete form that that was,
5 actually, printed straight out of her file. And now
6 today, they're arguing that they only kept the signature
7 pages. And I guess they're admitting that Ms. Beltran,
8 actually, was attempting to defraud us by putting the
9 signature page in, which is what we've complained of the
10 whole time. I mean, Your Honor, it's just a complete 180
11 of what's been going on in this case.

12 And as far as the signature page and it -- it being a
13 meaningful offer, as I put in my brief, MGA itself
14 testified that that page was not in there. It would not
15 be a meaningful offer. Ms. Beltran testified that she
16 doesn't know if my client was presented -- or I'm sorry,
17 if Mr. Mendez was presented with Page 4.

18 She said she doesn't met with him -- doesn't know who
19 met with him, can't say what was said to him. And, Your
20 Honor, it's notable in her deposition when I asked her to
21 explain what underinsured coverage was, she didn't even
22 explain it right. So if she did try and explain it to him
23 in the deposition [sic], it wouldn't have been a
24 meaningful offer because it wouldn't have been a proper
25 explanation of what underinsured coverage is.

1 And, Your Honor, as far as -- I don't know. Do I --
2 do I need to say more?

3 THE COURT: Well, whatever you want to tell me.

4 MR. WOOTEN: Your Honor, there's a lot of stuff.

5 THE COURT: I know. Well, I mean, and I get --
6 assuming everything that you're saying is correct, I'm
7 having trouble how that is -- I mean, it sounds like what
8 you're saying is they didn't offer this correctly under
9 the statute.

10 MR. WOOTEN: That's correct.

11 THE COURT: And it doesn't sound like there was any
12 intention. I mean, I haven't heard anything -- you say
13 that, oh, we intentionally as to that. And then, at most,
14 they kind of cover up the fact that they didn't do this
15 properly. But I don't know how that is fraud relating to
16 your client and how that is something that's a viable
17 claim that your client can present.

18 It sounds like they just -- they -- they messed up
19 and then they tried to cover-up their mess up. Then how
20 is that fraud?

21 MR. WOOTEN: Well, certainly, Your Honor, the -- the
22 fraud is in them -- the fraud is not them messing up.
23 That is what it is; right? The fraud is in once they mess
24 up, they then create this -- they create this complete
25 form by inserting the missing page. And then they use

1 that to deny my coverage -- my client underinsured
2 coverage, which has a value. And --

3 THE COURT: But isn't that a bad faith kind of issue,
4 which has already been kicked out?

5 MR. WOOTEN: I think it's both. And I think fraud --
6 it's, certainly, a fraud claim. I mean, you -- it doesn't
7 have to be an oral representation. It can -- it doesn't
8 have to be made to the person. It just has to be intended
9 that they would rely on it.

10 THE COURT: But doesn't the fraud have to happen at
11 the time of the offer?

12 MR. WOOTEN: No, sir. I don't see why it would.

13 THE COURT: I -- I mean, because either they
14 fraudulently offer -- I mean, aren't you saying, well,
15 they -- I mean, I thought your complaint said they
16 fraudulently -- there wasn't a meaningful offer.

17 I mean, doesn't it go down to was there an offer or
18 not an offer, and then that's what's handled under the
19 declaratory judgment?

20 MR. WOOTEN: Well, sure, Your Honor. The entire case
21 boils down to was this Page 4 presented to them or not?
22 And if you think that it was, then that's the end of the
23 case. We don't get anything; right? We don't get
24 reformation. We don't get anything.

25 If you think that it wasn't, then all the sudden

1 you've got them, basically, forging a document to try and
2 avoid having underinsured coverage. And I think we get
3 both the declaratory judgment in our favor and we, also,
4 get a finding for fraud.

5 And, Your Honor, I would note the -- the finding as
6 to bad faith, they refused to allow us to amend our
7 complaint to add a claim for bad faith. And I -- not that
8 it matters here, I don't think it was a correct ruling.
9 Because I think in -- in a third party, you can't do that
10 until after you get a judgment. But with a first party,
11 there's nothing saying you can't go ahead and do it.

12 But, Your Honor, I think we'd have viable claims for
13 both bad faith and fraud.

14 THE COURT: But all we've got -- because of all that,
15 though, all we're dealing with is your third cause of
16 action for fraud in the amended complaint.

17 MR. WOOTEN: Certainly, Your Honor. And I do have to
18 say, too, Your Honor, this is a kind of a basic legal
19 fact. It just seems insane to me that an insurance
20 company and their agent could insert a form to attempt to
21 cover up the fact that they didn't make a meaningful offer
22 and that there's no way to recover against them for that.

23 I mean, if that's the case, then how come every time
24 there's not a meaningful offer they wouldn't go through
25 and just, you know, try and cover it up?

1 THE COURT: But isn't that resolved in the fact that
2 whether -- if you can show that -- I mean, because,
3 basically, if you can show that, then you get the
4 coverage. If you can't show that, then you don't get the
5 coverage.

6 MR. WOOTEN: Well, sure, Your Honor. That's kind of
7 like a bank robber. You don't just let them give the
8 money back. Or else, why wouldn't they try and rob a bank
9 every time?

10 THE COURT: I mean, to me, that seems like maybe a
11 regulatory, or something like that. But I just -- again,
12 I'm -- I'm going to look at everything. But I just -- I
13 don't think that the fraud is there. But I -- you know,
14 so, therefore, you may have to talk a little more.

15 MR. WOOTEN: Okay. Fair enough. Your Honor, I'd
16 point out one thing. I don't know that this motion was
17 timely. The case has been going on for four years. They
18 filed this motion a week before trial. A lot of the
19 things she was complaining about the elements of fraud,
20 those are properly to be found by the fact finder, which
21 in this case would be the jury.

22 So I don't think you kick it on summary judgment the
23 day before we go in front of a jury. I think you let the
24 jury decide.

25 And let me see. What else did we say?

1 A lot of the arguments that were made just now, a lot
2 of the factors that were talked about weren't, actually,
3 even addressed in their motion. It's outside the scope of
4 it. Let me see.

5 THE COURT: I mean, it sounds like -- and that
6 concerned me, too. And I'm going to let you address that
7 in a minute, the fact that this is a -- this -- this case
8 has been going on a while. And the amended complaint was
9 filed -- I mean, I know you had motions to dismiss. But
10 it sounds like that's the gist.

11 I mean, that's -- the fraud claim, I mean, I don't
12 think -- I know it was short filed. But I don't think you
13 were caught by surprise that this was the main argument,
14 though. And I'm sure this was a -- I mean, this was what
15 all the depositions, I'm sure, all related to this main
16 issue.

17 So, I mean, do you need additional time to address --
18 I mean, anything else that you'd like to present, then --

19 MR. WOOTEN: Well, Your Honor --

20 THE COURT: I guess what prejudice do you have?

21 MR. WOOTEN: Well, I just did want to add one
22 clarification.

23 THE COURT: Yeah.

24 MR. WOOTEN: Their previous motion was a motion for
25 summary judgment and a motion to dismiss. So when we

1 tried to file -- and then we had the motion to amend. So
2 we tried to file a motion to amend. They said there's no
3 claim for fraud so it'd be futile. The Court found it
4 wouldn't be futile, we could assert a claim -- a claim for
5 fraud; right?

6 Then they filed a motion to dismiss as to fraud
7 because they said we didn't meet the elements, which is,
8 essentially, what they're arguing here. And they filed a
9 motion for summary judgment saying there was a meaningful
10 offer, which is, essentially, what they're arguing here as
11 well, just saying it's not a meaningful offer, so no
12 fraud. That was, also, denied by the Court.

13 And, now, we get here to this motion, which is
14 simply -- essentially, the same arguments for the third
15 time.

16 THE COURT: Let me -- let me --

17 Address that, Ms. Tankersley.

18 MS. TANKERSLEY: Yes, Your Honor. So the motion for
19 summary judgment that we had previously was for the
20 declaratory judgment action. It was not dealing with the
21 fraud claim.

22 We had a motion to -- to dismiss based on the
23 pleadings. So we were simply arguing that all the
24 elements of fraud hadn't been pled, which, as the Court
25 knows, is a requirement to even continue forward with

1 fraud. We didn't discuss the merits of any of the -- the
2 fraud elements at that point in time, just whether or not
3 they were sufficiently pled.

4 I assumed there would probably be a little bit more
5 discovery at that point in time for the fraud cause of
6 action. There ended up not being. So we filed this
7 motion for summary judgment on standing, meaningful offer,
8 and the elements of fraud.

9 If you ignore the whole meaningful offer argument, I
10 still don't think the Plaintiff has standing. And they
11 still haven't met the elements of fraud by clear and
12 convincing evidence. And there is going to be no
13 additional evidence that would be presented at trial that
14 would be different from what we already have. And so he
15 hasn't met that burden. And summary judgment is
16 appropriate. And, certainly, if Plaintiff doesn't have
17 standing, summary judgment is appropriate.

18 THE COURT: And, again, Mr. Wooten, I don't want
19 to -- you know, I mean, do you have any -- again, as far
20 as the timing of the motion, I mean, do you -- have you --
21 can you show any prejudice for this as far as -- I mean,
22 it sounds like this is kind of one of the main issues that
23 y'all have been dealing with. Even though there wasn't a
24 motion on the table, it sounds like the issues that y'all
25 have been dealing with pretty much from -- from the get go.

1 MR. WOOTEN: Sure, Your Honor.

2 THE COURT: And you've had several motions -- and I
3 realize that in -- your motion was a little -- a little --
4 didn't have a whole bunch of information in it.

5 MR. WOOTEN: Your Honor, the main prejudice was
6 having to spend my weekend replying to it. So I count
7 that as prejudice. But --

8 THE COURT: Maybe you missed some football game that
9 you didn't really want to watch anyway looking at the
10 outcome.

11 MR. WOOTEN: But, again, Your Honor, I think -- given
12 the timing, I think that we ought to go in front of a jury
13 and let them decide. I mean, questions of -- it is a
14 question of fact for the jury.

15 And, again, the representation, it doesn't have to be
16 oral. It doesn't have to be made to the person in
17 particular. And my client's named on the insurance
18 policy. She's, clearly, the person they're attempting to
19 defraud by these actions.

20 THE COURT: All right. Anything else on the motion
21 for summary judgment?

22 MS. TANKERSLEY: No, Your Honor.

23 THE COURT: All right. Do we need to -- I guess we
24 need to -- you need a ruling for this before we decide
25 exactly which -- which way we're going on the rest of it.

1 MS. TANKERSLEY: Correct.

2 THE COURT: Because you really -- and I really want
3 to have an opportunity to look at every -- I mean, I'm
4 going to look at all the memos very carefully now that
5 I've heard the arguments?

6 So what you've got -- motion in limine's is,
7 basically, all that's left; is that correct?

8 MS. TANKERSLEY: Well --

9 THE COURT: The motion -- motion to quash has been
10 resolved?

11 MS. TANKERSLEY: Yeah. I don't think that --

12 THE COURT: Okay.

13 MS. TANKERSLEY: -- is an issue. The motion to
14 bifurcate is not an issue if the fraud cause of action is
15 dismissed. And then I have a couple of motions --

16 THE COURT: Right.

17 MS. TANKERSLEY: -- in limine. But they're all
18 evidentiary and something we can address right before
19 trial.

20 THE COURT: All right. Let me -- let's see. Let me
21 look. And I will let y'all know this afternoon what --
22 and we just can address them tomorrow.

23 And let me -- the timing -- I mentioned to you
24 downstairs when everybody was here, but I had forgotten
25 when we were at the pre-trial -- I mean, at the roster

1 meeting, but I have a State Grand Jury that has been set
2 for a while that's at 10:00 in the morning. It should not
3 last very long.

4 What I thought we could do is, if we need the jury to
5 come back in, we can have them come in at 9:30. We would
6 select a jury -- well, let me see here. I'm trying to
7 figure out the best way to -- to do this. Well, that
8 doesn't make sense then to just -- figure out what the
9 jury -- all right.

10 Let's -- we're just going to have to do -- let's have
11 the jury come back in at 10:30. That way, I can --
12 because, otherwise, we could draw the jury. And then we'd
13 have to let them take a break and we'd finish. And that's
14 always a little complicated. So there's no reason to do
15 that.

16 Let's just -- y'all plan on -- regardless -- well,
17 let's see here. Because we'd have -- if the jury is
18 coming in -- I'm thinking out loud. I should have thought
19 about this before. All right. The jury is coming in. We
20 still -- okay. If I -- if I rule that the fraud claim
21 is -- is alive, then the jury will have to come in. But
22 we still have motions that we need to hear. And there's
23 no reason to have the jury waiting on those.

24 MS. TANKERSLEY: So what time is your --

25 THE COURT: Let's do -- let's plan on being here at

1 10:30. We'll hear motions. Then we'll have the jury come
2 in at -- we'll have the jury be here at 11:30. We'll draw
3 the jury and then probably start just after lunch.

4 And I realize that's -- that's going to put
5 everything into Wednesday morning. But I don't know
6 how -- with this other thing in there how we can avoid
7 that. And if we don't need the jury, then we can just
8 plan on starting at 10:30, or soon after we finish the
9 State Grand Jury. I've got to take a plea. It's just
10 sentencing. They've already -- I think it should last
11 about 30 minutes, at the most.

12 Does that work? I mean, is --

13 MS. TANKERSLEY: Yeah.

14 THE COURT: Have I missed anything?

15 MS. TANKERSLEY: Be here at 10:30?

16 THE COURT: Be here at 10:30. We will not have the
17 jury come in until 11:30.

18 MS. TANKERSLEY: Okay.

19 MR. WOOTEN: Okay.

20 THE COURT: And if we're running a little bit late,
21 then, we, at least, won't have a lot of waiting in there.

22 MS. TANKERSLEY: And, honestly, if we end up going
23 forward with the jury, we might be able to finish this in
24 half a day.

25 THE COURT: We'll probably -- or maybe argue and

1 charge on Wednesday morning.

2 MS. TANKERSLEY: Okay.

3 THE COURT: Because I don't think -- I can't imagine
4 we can get any testimony in enough to be able to argue and
5 charge.

6 MS. TANKERSLEY: Well, that's true. We, also, have
7 an interpreter so things will --

8 THE COURT: Oh, yeah, it'll definitely be --

9 Did you get all that worked out? I know that was a
10 little bit of an issue that you presented to Lyndall.

11 MR. WOOTEN: Yeah. We have her all day tomorrow, so
12 that will be fine.

13 THE COURT: Do you have her all day Wednesday?

14 MR. WOOTEN: No, no. I've just got her in the
15 morning on Wednesday, but we canceled that because we
16 thought we were going all day tomorrow.

17 THE COURT: Oh, okay.

18 MS. TANKERSLEY: But we wouldn't have -- if we're
19 doing charges and --

20 THE COURT: We'll make -- we'll make sure we -- yeah.
21 Okay. Anything else?

22 MS. TANKERSLEY: No, sir.

23 THE COURT: I'll let y'all know this afternoon what I
24 come up with.

25 MS. TANKERSLEY: Thank you.

1 MR. WOOTEN: Thank you.

2 THE COURT: All right. See y'all in the morning.

3 (WHEREUPON, the proceedings were concluded at
4 approximately 11:47 a.m., to be reconvened on
5 Tuesday, October 24, 2023.)

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TUESDAY, OCTOBER 24, 2023

THE COURT: On the voir dire, if y'all -- let me just ask you this question, too. In light of my ruling yesterday, is the Calidad still a party?

MS. TANKERSLEY: Well, I guess that's up to Raymond. They weren't a party in the original declaratory judgment action. I don't know if he intended for them to be a party to the DJ action after he amended it or not.

MR. WOOTEN: Your Honor, if it's -- if it's only a DJ action pending, then I don't see how they're a party.

THE COURT: Okay.

MR. WOOTEN: I mean, the only thing we would get from them would be money damages. And if there's no money damages --

THE COURT: Okay. I just -- so we will -- so I guess I need to do a Form 4 that they would -- since the fraud claim was dismissed, then they're dismissed from the action.

MS. TANKERSLEY: I think that's fine.

THE COURT: All right. And that way, you're not withdrawing it --

MR. WOOTEN: That sounds good.

THE COURT: All right. Voir dire. Let's see. Do you have any -- okay. Looking at the Plaintiff's proposed -- I'm just going to go through the voir dire and

1 then we'll go through motions in limine.

2 Jeanmarie, do you have their --

3 MS. TANKERSLEY: Yes, I have that. And I don't have
4 any objections.

5 THE COURT: I think that's the first I've ever been
6 asked to ask number five, but.

7 MR. WOOTEN: I just came up with that one on my own.

8 THE COURT: Do you want me -- I'm not going to ask
9 each independently, like, go through. Because, I mean,
10 that's -- everybody is going to stand up. I mean,
11 that's...

12 MR. WOOTEN: Well, Your Honor, I'd be more interested
13 to see the person that didn't stand up and didn't --
14 wasn't familiar with using computers or e-mail.

15 THE COURT: Well, then ask it the other way.

16 MR. WOOTEN: That's fine.

17 THE COURT: Yes. Let's do -- let's ask it the other
18 way. Because, otherwise, I'm going to have to go through
19 each person, you know.

20 And I think as far as the introduction of the case,
21 I'm going to just say, this is a dispute about whether the
22 Plaintiff is entitled to underinsured motorist coverage
23 under a policy issued by Defendant MGA and...

24 MS. TANKERSLEY: I'm sorry. Can you say that again?

25 THE COURT: I said, when I kind of introduce the

1 case, I'm going to say this is a case where -- about
2 whether the Plaintiff is entitled to underinsured motorist
3 coverage under a policy issued by the Defendant. I mean,
4 I don't -- that's just the -- the summary that I will tell
5 them before I ask them the voir dire questions.

6 MS. TANKERSLEY: Okay. Thank you.

7 THE COURT: All right. Let's first -- so it looks
8 like all the voir dire questions, I'm fine with those.
9 I'll ask my standard ones for a civil case that apply and
10 then the ones that y'all have presented.

11 All right. Let's go with Plaintiff's motion in
12 limine. You just have one; right? Is that correct?

13 MR. WOOTEN: Sir?

14 THE COURT: You just -- the Plaintiff just had one;
15 correct?

16 MR. WOOTEN: Just one sheet that's got --

17 THE COURT: Right, one. All right. The first one,
18 whether or not Plaintiff now has underinsured motorist
19 coverage.

20 MR. WOOTEN: Yes, sir, Your Honor. It's my
21 understanding that the Defendant may try and argue that
22 Mr. Mendez or Plaintiff has never gotten underinsured
23 coverage after the fact. And I don't think that would be
24 appropriate testimony. And that'd be a subsequent
25 remedial measure. And, also, I just don't think it's

1 relevant to whether or not a meaningful offer was made in
2 this case.

3 MS. TANKERSLEY: I disagree on this one, Your Honor.
4 He testified in his deposition that he's taken out, at
5 least, four or five policies back at that time and has,
6 subsequently, taken out additional policies. And he
7 testified he's never gotten underinsured motorist
8 coverage. So I think that goes to his competency.

9 If there's, you know, any question that he's able to
10 understand insurance, or understand the application
11 process, or what he's looking at, it, certainly, matters
12 that he's had this experience multiple times.

13 THE COURT: I think anything after the fact, though,
14 doesn't -- would not apply to the time that he applied for
15 this one, would it?

16 MS. TANKERSLEY: Well, and -- and that's fine if --
17 if we want to limit it to I'm allowed to ask him about,
18 you know, did you take out policies before this? Have you
19 taken out a number of policies prior to 2017? But
20 that's -- I'm fine with that.

21 THE COURT: What do you --

22 MR. WOOTEN: Your Honor, certainly, I think the ones
23 after aren't relevant. But I don't know about the ones
24 before either. We don't know if a meaningful offer was
25 made then. We don't know what happened in any of those

1 transactions. Also, Your Honor, we don't know if he had
2 underinsured before or not. And I don't know if he
3 does --

4 THE COURT: And I don't know what the -- what the
5 testimony at the depositions -- or whatever. I mean, I
6 think it's appropriate to go into the fact that he had
7 prior insurance just to show that he had dealt with this
8 before. But I don't -- let me -- I'm going to -- I may
9 have to just wait and see on that one. Okay.

10 MR. WOOTEN: Your Honor, our second motion is we'd
11 like to keep out any testimony about whether or not
12 Mr. Mendez or Plaintiff has subsequently used Calidad
13 Latina as their insurance agency. I think Mr. Mendez may
14 have gotten a subsequent policy from the same agency.

15 Again, I just don't think there's any relevance to
16 that and, you know, it happened after the fact so it
17 doesn't show anything.

18 MS. TANKERSLEY: He has used this agency, I believe,
19 on a number of occasions. I don't know if it was before
20 and after, or simply before, or simply after. But I -- I,
21 certainly, think that goes to the Plaintiff's allegations
22 that, you know, they've -- they've presented him something
23 and they've done a poor job. If they continuously use
24 this place, then, clearly, that's not what the belief is
25 here.

1 It -- it goes to whether or not they have trust in
2 this agency. And I think if they're a repeat customer,
3 that, certainly, shows that they believe they do a good
4 job.

5 MR. WOOTEN: Again, Your Honor, this question is not
6 whether they have trust, but it is what happened at the
7 time they bought this policy. And a lot of stuff that we
8 found out didn't get found out. You know, we're here four
9 years later and we know a lot more than he would have
10 known at the time.

11 THE COURT: Yeah. I mean, I'm going to deny your
12 motion on that. All right.

13 MS. TANKERSLEY: And I can easily tell you, Your
14 Honor, his number three and his number four, I've -- I've
15 consented to. I don't have any issues with those.

16 THE COURT: Okay.

17 MS. TANKERSLEY: And, number five, I just -- I think
18 I understand what that's saying. And I think I consent to
19 it, but I'm not entirely sure.

20 And, number six, I do consent to.

21 THE COURT: All right. You consent to -- and five,
22 any references that the law is unfair. How about life is
23 unfair?

24 All right. So you consent to six. I'm not -- and
25 what do you -- I guess she's -- he's saying for you not to

1 argue that it's unfair.

2 I mean, is that what you're saying?

3 MR. WOOTEN: Sure, Your Honor. They can't, for
4 instance, get up there and argue that it's unfair that the
5 insurance company should have to provide underinsured
6 coverage, even though he didn't, you know, pay for it for
7 several years, anything along those lines.

8 MS. TANKERSLEY: I -- I have no intention of saying
9 it's unfair for an insurance company to have to pay
10 somebody for underinsured motorist coverage. But if the
11 argument is I don't think they should have to pay
12 underinsured motorist coverage, I think that's the logical
13 conclusion of our argument that he was offered it and
14 rejected it. But I'm not -- I'm not going to say it's
15 unfair for insurance companies, in general, to have to
16 abide by the law.

17 THE COURT: Well, I think the way that you're --
18 there, I'm going to grant the motion in limine. But I'm
19 not -- I -- I don't think you're arguing what he's asking.
20 That's a little bit --

21 MS. TANKERSLEY: Okay.

22 THE COURT: Number seven.

23 MR. WOOTEN: Your Honor, I don't think that one --

24 THE COURT: That wouldn't apply --

25 MR. WOOTEN: -- would apply to damages.

1 THE COURT: Okay. So that takes care of Plaintiff's.
2 Defendants, you have two separate ones?

3 MS. TANKERSLEY: I do. And, also, as I mentioned
4 before, I -- I did the renewed motion for a conclusive
5 presumption, which is really just reiterating what's
6 already been put forth before.

7 THE COURT: Okay.

8 MS. TANKERSLEY: But I put it into a more concise
9 motion.

10 THE COURT: All right. And I'll review that.
11 Okay. Defendants motion in limine.

12 MS. TANKERSLEY: Okay. So we have two motions in
13 limine. The first of which is Defendants motion in limine
14 regarding Plaintiff's motor vehicle accident. This one is
15 simply -- I am fine, of course, because I think it's
16 necessary in order to establish what UIM is and -- and
17 that this is a declaratory judgment action that the
18 Plaintiff was involved in a car accident. And that she
19 has reached a settlement of 25,000, but she thinks her
20 damages are above that.

21 But anything else about the details of the car
22 accident, the nature of her injuries, any sort of medical
23 treatment, I think all of that's irrelevant to this case.
24 And, you know, there hasn't been any discovery, obviously,
25 of -- of that incident in this declaratory judgment

1 action.

2 And if she gets into the details of that, I don't
3 think there's any way we can really rebut it, unless we
4 get into, essentially, litigating the underlying car
5 accident. And any testimony to that, I think, would,
6 certainly, be prejudicial -- unfairly prejudicial to the
7 Defendants. Because, really, the entire purpose would
8 just be to invoke sympathy for somebody who's involved in
9 a car accident.

10 THE COURT: Mr. Wooten.

11 MR. WOOTEN: Your Honor, the only thing we intend to
12 say is that she was in a car wreck. Her damages exceeded
13 the \$25,000 that the person had. The other person was at
14 fault. And, you know, that's about it for the facts of
15 the car wreck.

16 THE COURT: You're fine with that?

17 MS. TANKERSLEY: Yes.

18 THE COURT: All right.

19 MS. TANKERSLEY: My second motion in limine is
20 regarding the e-mail communications. I'm moving to
21 exclude all evidence, testimony, comments, or inferences
22 regarding the communications between Defendants,
23 Defendants counsel, and Plaintiff's counsel.

24 There were a number of communications alleged in the
25 amended complaint that we discussed yesterday. But,

1 specifically, there's two separate dates. The first is
2 Defendant MGA e-mailed and faxed Plaintiff's counsel the
3 signature pages from the MGA policy application three
4 times on November 28th of 2018. That's in the amended
5 complaint.

6 And then the second being Defendants counsel e-mailed
7 Plaintiff's counsel Pages 1-6 of the MGA application,
8 which included the signature pages previously provided, as
9 well as that fourth page of the application. It doesn't
10 say in the complaint that these were made by counsel, or
11 to counsel, or by Defendants to Defendants counsel.
12 Because they omitted the word "counsel" from the
13 complaint. But that is what those communications are.
14 They're -- they're between counsel.

15 And, obviously, neither one of us can testify as a
16 witness regarding these communications. But they -- they,
17 also, aren't relevant. They don't have any tendency to
18 make the -- the fact that a meaningful offer was made back
19 in 2017 anymore or less likely to have happened.

20 Obviously, if they want to talk about, you know,
21 there was a missing page, I think all of that comes in
22 regarding, you know, did you save these pages? Were they
23 saved in your system? But getting into did you send these
24 pages to me at -- on this date or did opposing counsel
25 send this page to me in 2019 just, certainly, isn't

1 relevant.

2 THE COURT: Well, and let's talk about the first one
3 about the e-mail and faxing to Plaintiff's counsel.

4 I mean, Mr. Wooten, you're -- let's hear from you on
5 that one.

6 MR. WOOTEN: Sure, Your Honor. I think, first of
7 all, all this stuff is, certainly, relevant. It was all
8 pre-suit. And it goes into establishing whether or not
9 that page was there. In fact, it's all key to determining
10 whether -- you know, our whole theory of the case is that
11 they didn't have it, they slipped it in there. And some
12 of these communications are key to determining that.

13 THE COURT: Well, let me ask you this, do they -- and
14 I don't know. Did you take a deposition of somebody from
15 MGA?

16 MR. WOOTEN: We did, Your Honor. And --

17 THE COURT: I mean, did they say that that page was
18 not in the three that they faxed to you?

19 MR. WOOTEN: Your Honor, it was their 30(b)(6). And
20 I don't believe I got them to authenticate the documents.
21 But I did walk them through the documents. They admitted
22 that the form was not in --

23 THE COURT: And I guess -- I mean, if she's
24 objecting, how do you get -- I mean, I'm trying to figure
25 it out. Do you get that in without she being a witness?

1 MR. WOOTEN: I think we just get it in through the
2 MGA testimony is how I was planning on doing it.

3 THE COURT: I mean, that's what I'm saying. I mean,
4 can you -- are they going to say that it was faxed three
5 times and that -- that form that you're saying wasn't in
6 there wasn't in that fax?

7 MR. WOOTEN: Sure, Your Honor. They say that, yes,
8 we see this. It wasn't there. And then they explain why
9 it wasn't there. And then they -- I asked about the
10 second one. And then they explained, yeah, it's still not
11 there for this reason. And then I asked about the third.
12 And they explained, well, it's still not there for that
13 reason.

14 THE COURT: And what -- what is your problem with
15 that?

16 MS. TANKERSLEY: That's not in the testimony.
17 That's -- that's the e-mails back and forth. It says in
18 the e-mails from him to MGA, Hey, I'm not getting all the
19 pages.

20 And she responds, Oh, the fax must not be going
21 through. We've been having issues with that. We'll send
22 it again. We'll send it again.

23 That's not in the 30(b)(6) testimony. That's a
24 totally different person. The 30(b)(6) was a
25 representative of the company. It was not the adjuster

1 sending e-mails back and forth.

2 MR. WOOTEN: Your Honor, if I might, I --

3 THE COURT: Yeah. I mean, I think then -- without
4 going too far, I mean, I think I'm going to have to wait
5 and see how that goes. I mean, if you can have that
6 testimony presented by -- some way from a witness, but, I
7 mean, without you becoming the witness.

8 Then I -- I mean, I think it is relevant information,
9 based on his theory. But I'm not sure I can rule on that
10 until I hear what the witnesses are testifying to.

11 MS. TANKERSLEY: And -- and that's fine. My only
12 concern is I don't, generally, object to anybody's opening
13 statements. But if -- I want to make sure I'm preserving
14 that objection. And if he talks about it in opening, I
15 may have to object during opening. I don't want to cramp
16 his style.

17 THE COURT: I got you.

18 And how about the second one --

19 MR. WOOTEN: I'm sorry, Your Honor. I found the spot
20 in the deposition. Do you want to just read what it says?

21 THE COURT: Yeah. Let's see what it --

22 MR. WOOTEN: And, Your Honor, I'll note, too, that we
23 had sent a trial [inaudible] to MGA. They objected to it
24 and had their motion to quash the subpoena. And so that's
25 why we're having to get it in through the deposition,

1 which I don't know if that would bring back up a motion to
2 quash or not.

3 MS. TANKERSLEY: Is this Ken's?

4 MR. WOOTEN: Uh-huh. It's page 38 is what I was
5 going to show him.

6 THE COURT: I'll let her get her copy.

7 MR. WOOTEN: Your Honor, we're starting on 38 --

8 THE COURT: Let her -- let her pull hers up.

9 MS. TANKERSLEY: Okay. Go ahead.

10 THE COURT: Okay.

11 MR. WOOTEN: If you see there on 38, that's just kind
12 of how the testimony goes. I think there's five exhibits
13 we talk about in that same way.

14 (Pause.)

15 THE COURT: All right. Ms. Tankersley.

16 MS. TANKERSLEY: Yeah. I mean, he's, certainly,
17 asked him about these e-mails. But he's not the person
18 that sent the e-mails and he didn't authenticate them. He
19 didn't take the deposition of the adjuster who sent these
20 applications. He didn't call that adjuster as a witness.

21 So, presumedly, the only person in the courtroom that
22 can testify to that would be Raymond.

23 MR. WOOTEN: Your Honor, this was a 30(b)(6)
24 deposition. And one of the topics of the deposition was
25 the applications regarding the case. So I think it's,

1 certainly, proper for one where MGA --

2 THE COURT: I mean, it's proper -- it's proper for a
3 deposition. But does that make it admissible?

4 MR. WOOTEN: I'm sorry, Your Honor. Are you talking
5 about in terms of authentication --

6 THE COURT: I mean, yeah, authenticating it.

7 MR. WOOTEN: I think a 30(b)(6) to authenticate it.
8 I mean, in terms of you're allowed to use a 30(b)(6)
9 deposition for anything in trial just like you would any
10 other deposition of a party opponent, so.

11 THE COURT: But you still have to -- you still have
12 to be admissible under the rules of evidence.

13 MR. WOOTEN: Sure.

14 THE COURT: How about your second indication about
15 the...

16 MS. TANKERSLEY: Are you asking me about the second
17 communication?

18 THE COURT: Yes.

19 MS. TANKERSLEY: The -- the second communication is
20 an e-mail between me and -- and Raymond. I, certainly,
21 don't know how that would ever come in as evidence.

22 And, again, I want to be clear. I'm not trying to
23 keep out any testimony about how they didn't save Page 4.
24 The testimony will be clear that their process is they
25 sign the documents. They scan in the identifying parts of

1 the application, signature pages, policy information, and
2 save it in their system. And that they do not save it
3 with Page 4, as well as, like, five other pages that come
4 from the application packet.

5 So that -- that testimony will, certainly, be
6 allowed. And -- and he can examine Angela about that.
7 It's just this idea of these communications in November of
8 2018 that didn't involve Ms. Beltran and that involved
9 somebody -- an adjuster who's not here and Mr. Wooten, and
10 then, of course, me to Mr. Wooten in March of 2019.

11 MR. WOOTEN: Your Honor, we weren't intending to
12 introduce an e-mail from January or May. I mean, I have
13 no intention of doing that, so.

14 THE COURT: Okay. But the document itself is not --
15 I mean, nobody -- I mean, that's -- that's -- I think both
16 parties agree that that document's coming in; right? Not
17 the e-mail, but the six-page application?

18 MS. TANKERSLEY: Yeah. I -- I have no objection to
19 it.

20 THE COURT: And he's agreeing not to do the e-mail.

21 MR. WOOTEN: Your Honor, if I could just be clear.
22 There's an e-mail from Ms. Beltran where she was
23 forwarding the e-mail where she had sent it to -- or sent
24 the full form to MGA back in 2019. And we would intend to
25 introduce that into evidence. And that was about three

1 days before Jeanmarie e-mailed the form to me.

2 MS. TANKERSLEY: An e-mail between Angela and MGA, he
3 can, obviously, ask her about. But an e-mail where she's
4 forwarding another e-mail to him, I, again, think is
5 improper.

6 THE COURT: I mean, is that -- I mean, I think -- I
7 don't think that's what he asked. I mean --

8 MR. WOOTEN: Well, just, one, I wanted to make sure
9 that we didn't -- that there were two separate e-mails. I
10 think they know that. I just wanted to make sure that was
11 being covered by the motion in limine.

12 And, two, there is some commentary that she has in
13 that e-mail that I think would, certainly, be relevant.

14 THE COURT: And that's the e-mail from Ms. Beltran --

15 MR. WOOTEN: That she sent to every -- all the
16 attorneys in the case, and the MGA adjuster, and
17 everybody.

18 THE COURT: Okay. That she sent to MGA. I'm not --

19 MS. TANKERSLEY: I'm not fully tracking either. But
20 if -- the case was filed against MGA. I did not represent
21 Calidad yet at that time.

22 He took her deposition and asked, Will you forward me
23 the e-mail you sent to Calidad?

24 I said, That should be fine.

25 She sent it. And if she put anything in the body of

1 that e-mail, again, I think that's inappropriate. It has
2 nothing to do -- well, it's not relevant. But it's not
3 appropriate to possess communications between her, what
4 would be her future counsel, and then opposing counsel.

5 THE COURT: I don't think he's talking about that. I
6 mean, it doesn't --

7 MS. TANKERSLEY: I think he is.

8 MR. WOOTEN: I am.

9 THE COURT: Oh, okay.

10 MR. WOOTEN: I'll just pass you a copy, Your Honor,
11 so you can see exactly what we're talking about.

12 (Pause.)

13 THE COURT: All right.

14 MS. TANKERSLEY: I can't cross-examine Raymond as to
15 why did you send this e-mail? Why -- you know, why are
16 you requesting this information? Why is this pertinent --
17 like, he -- he was the instigator of this communication.
18 And to -- to take her deposition before he sues her, get
19 this communication from her, and then file a lawsuit
20 against her, and then try to use this as an exhibit in
21 evidence, I think, is wholly inappropriate.

22 THE COURT: Here's the e-mail from March 14th. I was
23 unable to find the one from May 28th. This is the same
24 PDF document we have in our files. I'm not...

25 MR. WOOTEN: Yes, sir, Your Honor. And then, also,

1 if you look down at the bottom where it says, Forwarded
2 message on that first page, so what this says is this is
3 the forwarded e-mail. This is important for a couple of
4 reasons. It has the attached PDF that shows where they --
5 our expert analyzed it. It shows it was made the same day
6 that it was e-mailed. It was made using an office
7 scanner. So that's what that is.

8 The only part that's from Ms. Beltran to the
9 attorneys in the case was at the top. And, Your Honor, I,
10 certainly, think that's relevant. It's not privileged.

11 THE COURT: I'm going to let that -- I'm going to let
12 that in.

13 MS. TANKERSLEY: The entirety of the e-mail?

14 THE COURT: Yes.

15 All right. And then as to number one, I'm not
16 entirely sure how that's going to unfold, even after
17 reviewing the deposition. So I'm just going to have to
18 wait and see how that one plays out.

19 MR. WOOTEN: Your Honor, if I may. The only time it
20 would come in would be through that deposition, which
21 we're going to have to do through designations, so.

22 THE COURT: Have y'all done the designations?

23 MS. TANKERSLEY: I have -- I have received his list,
24 but I have objections to it.

25 MR. WOOTEN: Do you want me to pass that up, Your

1 Honor?

2 THE COURT: We're not going to be able to address
3 those designations right now. I mean, the jury's outside
4 waiting.

5 MS. TANKERSLEY: I'm sorry.

6 THE COURT: I said we can't -- when do you plan on
7 doing this designation? I guess in your case in chief?

8 MR. WOOTEN: Yes, sir, Your Honor. He'd be my --
9 would be my fourth witness.

10 THE COURT: Well, at some point, I'm going to have to
11 look through it and -- isn't that the whole purpose of
12 presenting that, at least, a day beforehand to the Court?

13 MS. TANKERSLEY: That's what I was going to say.

14 MR. WOOTEN: I guess I e-mailed it to Jeanmarie and
15 forget to copy you on it. So I apologize.

16 THE COURT: Because I -- well, I mean, what we're
17 going to do is draw the jury and break for lunch anyway.
18 So, I mean, how -- what -- I mean, is it pretty involved
19 as far as what I'm going to have to review?

20 MS. TANKERSLEY: Well, you go ahead.

21 MR. WOOTEN: Your Honor, would you like me to pass
22 this up?

23 THE COURT: Yes.

24 Ms. Tankersley, what is -- I mean --

25 MS. TANKERSLEY: So I --

1 THE COURT: Just generally here without going into
2 argument.

3 MS. TANKERSLEY: Yeah. I -- I put together kind of
4 just a brief response in the event it came up. Some of
5 these are dealing with, I think, what would have been his
6 argument under the fraud cause of action and not this one.
7 But without looking at it in front of me, I can't tell you
8 exactly what my objections were --

9 THE COURT: Okay. Is that the deposition you just
10 gave me that I just gave back to you?

11 MR. WOOTEN: Yes, Your Honor.

12 THE COURT: I guess what I can do is review it during
13 lunch. And then we can discuss it after lunch. How about
14 that?

15 MS. TANKERSLEY: Okay. And I can give you what my
16 response --

17 MR. WOOTEN: Do you want a copy of the deposition?

18 THE COURT: Yes. I mean, it's not a lot of pages, or
19 it doesn't look like it. I guess that's not huge.

20 MS. TANKERSLEY: And I -- I put on mine just pursuant
21 to the rule if these come in, then I might want to do
22 these three, or whatever it is. Yeah, three. But I'm not
23 a hundred percent sure that I have any intention of doing
24 it.

25 THE COURT: Okay. Y'all are going to paper me to

1 death up here.

2 MS. TANKERSLEY: We can exclude all this, if Your
3 Honor prefers.

4 THE COURT: All right. Anything else before we bring
5 the jury in?

6 MS. TANKERSLEY: Not from me, Your Honor.

7 THE COURT: All right. Is the Plaintiff ready for
8 the jury?

9 MR. WOOTEN: Yes, Your Honor.

10 THE COURT: Are the Defendants ready for the jury?

11 MS. TANKERSLEY: Yes, Your Honor.

12 THE COURT: And I will -- like I said, this is --
13 Calidad has been dismissed. And we'll do -- have to do a
14 Form 4 to that extent. But based on the ruling and the
15 motion for summary judgment, they're no longer a party.

16 All right. Bring the jury in.

17 THE BAILIFF: They're still downstairs.

18 THE COURT: Oh, okay. That's right.

19 THE BAILIFF: They'll be up shortly.

20 (Pause.)

21 THE COURT: Is the Plaintiff ready?

22 MR. WOOTEN: Yes, Your Honor.

23 THE COURT: Is the Defendant ready?

24 MS. TANKERSLEY: Yes, Your Honor.

25 THE COURT: All right. Bring the jury in.

1 (WHEREUPON, the jury panel entered the courtroom.)

2 THE COURT: All right. Welcome back, ladies and
3 gentlemen. You thought you had skirted through, didn't
4 you?

5 But anyway, we are -- we're getting ready to start a
6 trial. And it's my understanding that -- from talking
7 with the attorneys that this is not going to be a very
8 long trial. I expect that it will go into tomorrow. But
9 I see no reason why the case cannot be completed today and
10 then some of tomorrow. So that's -- you know, and it is
11 a -- even though it may not be a very long case, it's a
12 very important case for both the Plaintiff in this matter
13 and the Defendants.

14 Now, I'm going to read you the caption of the case.
15 This is the case of Benigna Vargas, that's the Plaintiff,
16 that's the one that brought the action vs. MGA Insurance
17 Company, Inc.

18 All right. And this case revolves around -- what
19 you're going to have to determine is there's a dispute of
20 whether there is certain coverage. The -- the Plaintiff
21 has filed this suit saying that they're entitled to
22 underinsured motorist coverage under the policy that was
23 issued by the Defendant. And that is what the jury will
24 be deciding in this case.

25 So now, I'm going to ask you some questions that,

1 specifically, are tailored to this case. And they're --
2 you know, yesterday, when I was talking to you, those
3 questions were to determine if you were qualified.

4 These questions have two purposes. One is to make
5 sure that you can be fair and impartial in the trial of
6 this case. And, two, to get a little more information to
7 the attorneys. And then they -- so that when they,
8 actually, select a jury, they'll have a little more
9 information about you.

10 JURY QUALIFICATION

11 THE COURT: All right. So, first of all, I'm going
12 to ask Ms. Vargas, if you could stand at this time.

13 All right. Thank you.

14 Is there anyone related by blood or marriage, have a
15 close personal, business, or social relationship with
16 Ms. Vargas? If so, please, stand.

17 (WHEREUPON, there was no response.)

18 THE COURT: All right. Now, at this time, I'm going
19 to ask if the attorneys will stand and introduce
20 themselves and their law firm.

21 MR. WOOTEN: My name is Raymond Wooten. I'm with the
22 firm of Smith Jordan. We're located over in Easley.

23 MS. TANKERSLEY: Jeanmarie Tankersley. And this
24 is -- I'm sorry. This is Ashley Hrubala. We're with the
25 firm of Clawson & Staubes here in Greenville.

1 THE COURT: All right. Is there anybody related by
2 blood or marriage, or have any close personal, business,
3 or social relationship with any of the attorneys in this
4 case? If so, please, stand.

5 Yes. Your name and number?

6 PROSPECTIVE JUROR: Megan Coleman, #20. We do
7 recruiting and staffing for Clawson & Staubes.

8 THE COURT: All right. And do you believe that
9 because of that, you could be fair and impartial in the
10 trial of this case?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Okay. You could be.

13 All right. Thank you.

14 All right. Is there anybody that has been
15 represented by the attorneys or their law firms, or have
16 you ever been involved in a matter where these lawyers or
17 their law firms have been on the other side of you? If
18 so, please, stand.

19 (WHEREUPON, there was no response.)

20 THE COURT: All right. And no response.

21 Now, I'm going to list some witnesses that may
22 or may -- that -- that have been listed as possible
23 witnesses in this case. And it's going to be the same
24 question that I asked of you, are you related by blood or
25 marriage? Do you have a close personal, business, or

1 social relationship with any of these individuals?

2 I've already mentioned the Plaintiff in this matter.
3 Alfredo Mendez -- and if you -- if you recognize these
4 names or need to respond, then just stand up and I'll ask
5 you further questions. Alfredo Mendez, Angela Beltran,
6 and William Henry Thames.

7 Is anybody related by blood or marriage, have a close
8 personal, business, or social relationship with any of
9 these individuals? If so, please, stand.

10 (WHEREUPON, there was no response.)

11 THE COURT: Okay. No response.

12 Is there anybody that is employed by, formerly
13 employed by, have any family members that are employed by,
14 or formerly employed by Calidad Latina Insurance Company
15 and MGA Insurance Company, Inc.? If so, please, stand.

16 (WHEREUPON, there was no response.)

17 THE COURT: All right. And no response.

18 All right. And is there any member of this panel who
19 opposes immigration into the United States and would be
20 unable to impartially adjudicate a dispute involving a
21 Spanish speaking U.S. citizen or legal resident? If so,
22 please, stand.

23 (WHEREUPON, there was no response.)

24 THE COURT: All right. And no response.

25 As a juror, you're only allowed to consider the facts

1 and issues presented at trial. If you were to be picked
2 as a juror, would you consider the facts and evidence
3 presented to you at trial in reaching your -- or would you
4 be unable to just consider the facts and evidence
5 presented to you at trial in reaching your verdict? So if
6 anybody would have trouble reaching a verdict just based
7 on the facts presented at trial, then, please, stand.

8 (WHEREUPON, there was no response.)

9 THE COURT: Okay. Does anyone believe it's immoral
10 or wrong to file a lawsuit against another person or
11 entity? If so, please, stand.

12 (WHEREUPON, there was no response.)

13 THE COURT: Okay. And no response.

14 Have you or any member of your immediate family ever
15 suffered personal injuries in a car accident? If so,
16 please, stand.

17 All right. And we'll start with you. Your name and
18 number?

19 PROSPECTIVE JUROR: Pamela Harris, #39.

20 THE COURT: Okay. And how [sic] is your response to
21 that question?

22 PROSPECTIVE JUROR: I've -- I've had personal injury.

23 THE COURT: Okay. And -- and because of that, could
24 you still be fair and impartial in the trial of this case?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: All right. Thank you.

2 Yes. Your name and number?

3 PROSPECTIVE JUROR: Bonny Bramos, #11.

4 THE COURT: Okay. And how -- your response?

5 PROSPECTIVE JUROR: I've had several car accidents.

6 THE COURT: You have?

7 PROSPECTIVE JUROR: I've been involved.

8 THE COURT: All right. And could you still be fair

9 and impartial in the trial of this case?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: All right. Thank you.

12 Yes. Your name and number?

13 PROSPECTIVE JUROR: Ian Waters, #88.

14 THE COURT: And your response?

15 PROSPECTIVE JUROR: My mother was in a car accident.

16 THE COURT: Okay. Could you still be fair and

17 impartial in the trial of this case?

18 PROSPECTIVE JUROR: Uh-huh.

19 THE COURT: All right. Thank you.

20 Yes. Your name and number?

21 PROSPECTIVE JUROR: Judey Burton, #13. Just a -- a

22 minor accident with some injuries.

23 THE COURT: Okay. Can you still be fair and

24 impartial in the trial of this case?

25 PROSPECTIVE JUROR: Yes, sir.

1 THE COURT: All right. Thank you.

2 All right. Is there anyone who is not -- now, this
3 is kind of a -- a -- this is going to be a question about
4 your use of computers, and e-mails, and document scanners.
5 All right.

6 Is there anyone who is not familiar or do not use any
7 of the following: a computer, e-mail, document scanner,
8 or printer? If so, please, stand. I know that's kind of
9 a convoluted question here.

10 (WHEREUPON, there was no response.)

11 THE COURT: Let me just break it down. Is there
12 anyone -- I'm going to break it down. It may be easier.

13 Is there anyone who's not familiar or does not use a
14 computer? If so, please, stand.

15 (WHEREUPON, there was no response.)

16 THE COURT: All right. No response.

17 Is there anyone not familiar -- who does not use
18 e-mail? If so, please, stand.

19 (WHEREUPON, there was no response.)

20 THE COURT: No response.

21 Is there anyone who does not use or is not familiar
22 with a document scanner? If so, please, stand.

23 All right. You're awful young to -- yes.

24 PROSPECTIVE JUROR: I don't know what that is.

25 THE COURT: All right. Well, could you be fair and

1 impartial in the trial of this case because of that?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: All right. Thank you.

4 Is there anyone who is not familiar or does not use a
5 printer? If so, please, stand.

6 THE COURT: Okay. Do you not use a printer?

7 PROSPECTIVE JUROR: Never.

8 THE COURT: All right. And could you still be fair
9 and impartial in the trial of this case?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: I feel like my next question -- but does
12 anybody have a printer that, actually, works? I have
13 problems with that.

14 (WHEREUPON, there was no response.)

15 THE COURT: All right. And this is kind of what I've
16 asked before, but just to make sure I'm complete. This
17 lawsuit involves a dispute regarding insurance coverage
18 between Ms. Vargas and the Defendant, MGA Insurance
19 Company. Based solely on this, is there any member of the
20 jury panel who feels they could not be fair and impartial
21 and give both the Plaintiff and Defendant a fair trial?
22 If so, please, stand.

23 (WHEREUPON, there was no response.)

24 THE COURT: All right. And no response.

25 Is there any member of the jury panel or a member of

1 your immediate family that works for an insurance company
2 or an insurance agency? If so, please, stand.

3 All right. Your name and number?

4 PROSPECTIVE JUROR: Ian Waters, #88.

5 THE COURT: Okay. And what is your response to that?

6 PROSPECTIVE JUROR: My mom works for Canal Insurance.

7 THE COURT: Okay. And could you still be fair and
8 impartial in the trial of this case?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: All right. Thank you.

11 Yes. Your name and number?

12 PROSPECTIVE JUROR: Mary Drummond, #23. I am a life
13 insurance agent.

14 THE COURT: Okay. And could you still be fair and
15 impartial in the trial of this case?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Okay. Thank you.

18 Anyone else?

19 (WHEREUPON, there was no response.)

20 THE COURT: Is there any member of the jury panel, a
21 member of your immediate family -- I've already asked if
22 you worked for MGA and Calidad, but I forgot to ask you
23 about Gainsco Auto Insurance. Is there anybody who works
24 for -- either you or a member of your immediate family
25 works for Gainsco Auto Insurance? If so, please, stand.

1 (WHEREUPON, there was no response.)

2 THE COURT: Okay. No response.

3 Is there any member of the jury panel or a member of
4 your immediate family who has insurance policies with MGA
5 Insurance Company, Calidad Latina, or Gainsco Auto
6 Insurance? If so, please, stand.

7 (WHEREUPON, there was no response.)

8 THE COURT: All right. And no response.

9 Has any member of the jury panel been a party to a
10 lawsuit either as a plaintiff or defendant? Have you ever
11 brought a lawsuit or has a lawsuit ever been brought
12 against you? If so, please, stand.

13 All right. We'll start with you back there. Your
14 name and number?

15 PROSPECTIVE JUROR: Jenna Zayicek, #94.

16 THE COURT: And what -- what kind of lawsuit was it?

17 PROSPECTIVE JUROR: Yes. It was civil. My late
18 grandfather sued me. But it was settled outside of court.

19 THE COURT: All right. I'm sorry. I couldn't hear
20 you.

21 PROSPECTIVE JUROR: My late grandfather sued me, but
22 it was settled outside of court. And he passed away.

23 THE COURT: Okay. And you were the Defendant in that
24 matter?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: All right. Could you still be fair and
2 impartial in the trial of this case?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: All right. Thank you.

5 Yes. Your name and number?

6 PROSPECTIVE JUROR: Allison Hart, #40. And I just
7 wasn't sure if custody was included in that.

8 THE COURT: Okay. And that was a Family Court
9 matter?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Okay. Could you still be fair and
12 impartial in the trial of this case?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: All right. Thank you.

15 Yes. Your name and number?

16 PROSPECTIVE JUROR: Angela Laird, #51.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR: And it was a malpractice.

19 THE COURT: All right.

20 PROSPECTIVE JUROR: I was the Plaintiff.

21 THE COURT: Okay. And could you still be fair and
22 impartial in the trial of this case?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: All right. Thank you.

25 Yes.

1 PROSPECTIVE JUROR: David Williams, #90. Medical
2 malpractice, defendant.

3 THE COURT: Okay. And could you still be fair and
4 impartial in the trial of this case?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: All right. Thank you.

7 Yes. Lady here.

8 PROSPECTIVE JUROR: Michele Nilson, #59. Just
9 divorce.

10 THE COURT: All right. Just a Family Court matter?

11 PROSPECTIVE JUROR: Yes, sir.

12 THE COURT: Okay. Can you still be fair and
13 impartial in the trial of this case?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: All right. Thank you.

16 Yes.

17 PROSPECTIVE JUROR: Pamela Harris, #39. It was,
18 also, a Family Court matter.

19 THE COURT: I'm sorry.

20 PROSPECTIVE JUROR: It was, also, a Family Court
21 matter.

22 THE COURT: Okay. And you could still be fair and
23 impartial in the trial of this case?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: And I appreciate y'all bringing that to

1 my attention. But, really, just to -- just to make sure
2 that -- everybody that has that has Family Court matters
3 doesn't need to stand up. This is a civil case, which is
4 a little bit differently than a Family Court case. We're
5 just -- where you brought a lawsuit against somebody, so.
6 And that's fine that you brought that attention. But I
7 didn't want everybody else to be like, oh, I've been
8 involved in a Family Court matter. I need to tell them.

9 All right. Is there any member of the jury panel or
10 a member of your immediate family ever filed a lawsuit
11 against an insurance company? If so, please, stand. I
12 think we probably covered that in the previous, but just
13 to make sure.

14 (WHEREUPON, there was no response.)

15 THE COURT: No response.

16 Is -- is there any member of the jury panel that has
17 formed or expressed any opinion about any of the issues
18 involved in this case? If so, please, stand.

19 (WHEREUPON, there was no response.)

20 THE COURT: All right. And no response.

21 Is there any member of the jury panel aware of any
22 bias or prejudice which you would have against the
23 Plaintiff or the Defendant? If so, please, stand.

24 (WHEREUPON, there was no response.)

25 THE COURT: All right. And no response.

1 Is there any member of the jury panel know of any
2 reason whatsoever that they could not be fair and
3 impartial in the trial of this case? If so, please,
4 stand.

5 (WHEREUPON, there was no response.)

6 THE COURT: All right. Any additional questions from
7 the Plaintiff?

8 MR. WOOTEN: None from the Plaintiff.

9 THE COURT: Any additional questions from the
10 Defendant?

11 MS. TANKERSLEY: No, Your Honor.

12 THE COURT: So looking -- and just -- you'll hear
13 numbers here, but they're not the same numbers that you
14 have on your badge. This is a separate list of numbers.

15 We will have one alternate. We will pick from
16 numbers #1 through #21. #7 was removed. And then the
17 alternates will be picked from #22, #23, and #24, so.

18 JURY SELECTION

19 THE CLERK: There will be four strikes each.
20 Plaintiff strikes first.

21 MR. WOOTEN: The Plaintiff strikes Juror #3.

22 THE CLERK: Plaintiff strikes Juror #3.

23 MS. TANKERSLEY: Defendant strikes Juror #9.

24 THE CLERK: Defendant strikes Juror #9.

25 MR. WOOTEN: Plaintiff strikes Juror #10.

1 THE CLERK: Plaintiff strikes Juror #10.

2 MS. TANKERSLEY: Defendant strikes Juror #11.

3 THE CLERK: Defendant strikes Juror #11.

4 MR. WOOTEN: Plaintiff strikes Juror #14.

5 THE CLERK: Plaintiff strikes Juror #14.

6 MS. TANKERSLEY: Defendant strikes Juror #12.

7 THE CLERK: Defendant strikes Juror #12.

8 MR. WOOTEN: Plaintiff strikes Juror #8.

9 THE CLERK: Plaintiff strikes Juror #8.

10 MS. TANKERSLEY: Defendant strikes Juror #19.

11 THE CLERK: Defendant strikes Juror #19.

12 THE COURT: All right. For the alternates.

13 THE CLERK: For the alternates, #22 through #24.

14 MR. WOOTEN: Plaintiff strikes Juror #23.

15 THE CLERK: Plaintiff strikes Juror #23.

16 MS. TANKERSLEY: Defendant strikes Juror #22.

17 THE CLERK: Defendant strikes Juror #22.

18 Okay. Ladies and gentlemen, I'm going to call these
19 names back -- these numbers back to you.

20 Plaintiff strikes #3, #8, #40 -- #10, and #14.

21 MR. WOOTEN: That's correct.

22 THE CLERK: And #23.

23 MR. WOOTEN: Yes.

24 THE CLERK: And Defendant strikes #9, #11, #12, #19,
25 and #22.

1 MS. TANKERSLEY: That's correct.

2 THE CLERK: Ladies and gentlemen, when I call your
3 name, please, gather your things and come have a seat in
4 the jury box.

5 Jamie Benitez.

6 (WHEREUPON, Jamie Benitez, a Hispanic female, came
7 forward.)

8 THE CLERK: Amy Johnson.

9 (WHEREUPON, Amy Johnson, a white female, came
10 forward.)

11 THE CLERK: Angela Laird.

12 (WHEREUPON, Angela Laird, a white female, came
13 forward.)

14 THE CLERK: Allison Hart.

15 (WHEREUPON, Allison Hart, a white female, came
16 forward.)

17 THE CLERK: Joseph Clark.

18 (WHEREUPON, Joseph Clark, a white male, came
19 forward.)

20 THE CLERK: Janet Baker.

21 (WHEREUPON, Janet Baker, a white female, came
22 forward.)

23 THE CLERK: Ian Waters.

24 (WHEREUPON, Ian Waters, a white male, came forward.)

25 THE CLERK: Judey Burton.

1 (WHEREUPON, Judey Burton, a white female, came
2 forward.)

3 THE CLERK: Patrick Clare.

4 (WHEREUPON, Patrick Clare, a white male, came
5 forward.)

6 THE CLERK: Alexandra Brandenburg.

7 (WHEREUPON, Alexandra Brandenburg, a white female,
8 came forward.)

9 THE CLERK: Pamela Harris.

10 (WHEREUPON, Pamela Harris, a white female, came
11 forward.)

12 THE CLERK: Robert Soto.

13 (WHEREUPON, Robert Soto, a Asian male, came forward.)

14 THE CLERK: And for our alternate, Bonnie Bramos.

15 THE COURT: No. That one -- that number didn't
16 relate -- just -- are you Ms. Bramos?

17 JUROR #11, BONNY BRAMOS: Yeah.

18 THE COURT: All right. No, that number that you
19 heard stricken was not your number.

20 JUROR #11, BONNY BRAMOS: Oh.

21 THE COURT: That's what I was saying. There was a
22 list that we had by the numbers, so.

23 THE CLERK: Thank you.

24 (WHEREUPON, Bonny Bramos, a white female, came
25 forward.)

1 THE COURT: I think y'all figured out if you sat next
2 to the wall, then you were going to be picked.

3 All right. Any objection or exception to the
4 selection process from the Plaintiff?

5 MR. WOOTEN: None from the Plaintiff, Your Honor.

6 THE COURT: From the Defendant?

7 MS. TANKERSLEY: No, Your Honor.

8 THE COURT: All right. I'll talk to this crowd, then
9 I'll talk to that crowd.

10 Okay. We're going to -- I'm going to let y'all go to
11 lunch. So we have some matters we have to go over related
12 to this case, and some other matters.

13 So I'm going to let y'all go to lunch. And we'll
14 start the case after lunch. And we'll probably -- I
15 anticipate that we'll probably run -- it's hard always
16 gauging exactly how long -- at what time we'll break.
17 We'll probably be as close to 5:00 as possible. It may be
18 a little bit early depending on where the witnesses are.
19 But we'll be coming back tomorrow. So we will not keep
20 you late, or anything like that.

21 A couple of rules that are very important that you
22 will apply when you go to lunch now and throughout the
23 trial. And I'll tell you every time we break, you'll hear
24 me say this, do not discuss the case. And I realize you
25 don't have any information about the case. But it's very

1 important that you not discuss the case among the jurors,
2 also, with your friends and family while you're on break.

3 The second part is do not do any type of
4 investigation, Google the parties or the law, or anything
5 like that. Everything that you are going to need to make
6 your decision you'll be presented with in this courtroom
7 under our rules. So it's very important that you not do
8 any type of independent research and bring that back.
9 That's strictly prohibited.

10 The third thing is, I'm not aware of any media
11 coverage in the case or any -- you know, so do not pay
12 attention to media coverage, if there's any out there, but
13 particularly social media. I'm not aware of anything like
14 that. But if there is any social media, please, disregard
15 anything like that.

16 And, finally, if anyone should contact you, other
17 than somebody from the clerk's office, please, let the
18 bailiffs know when you get back. Like I said, we have
19 several matters. I'm going to ask that you come back at
20 2:00. And we'll start the case at that time.

21 So, at this time, if you'll follow the -- the bailiff
22 to the -- he'll tell you -- give you further -- further
23 instructions.

24 (WHEREUPON, the jury was excused from open court at
25 approximately 12:07 p.m.)

1 THE COURT: All right. For the rest of you, you're
2 going to go back downstairs and I -- they will be telling
3 you that you have to call back after 6:00 tonight. I'm
4 not sure if we're going to have another matter, but --
5 this week. But if we do, we need -- we should be --
6 that's why we've got to have you call back. But I don't
7 expect that you'll be coming back, but I can't promise you
8 that, so.

9 All right. Y'all have a good rest of the afternoon.
10 And if I don't see you again, I want to thank you again
11 for your service.

12 Ms. Drummond. Yes, come on up.

13 (WHEREUPON, the remaining jury panel members exited
14 the courtroom with the exception of Juror #23, Mary
15 Drummond.)

16 THE COURT: I believe you're the one that said your
17 father had passed away.

18 JUROR #23, MARY DRUMMOND: Yes.

19 THE COURT: I'm going to go ahead and excuse you for
20 the rest of the week.

21 So thank you for coming.

22 And I hope everything goes -- goes okay with the
23 arrangements.

24 JUROR #23, MARY DRUMMOND: All right. Thank you.

25 THE COURT: I wish you the best.

1 (WHEREUPON, Juror #23, Mary Drummond, exited the
2 courtroom.)

3 THE COURT: All right. Anything from the Plaintiff?

4 MR. WOOTEN: Your Honor, not as to the jury
5 selection, but as to the designations. I wanted to pass
6 up -- what I had done is when I, initially, sent them to
7 Jeanmarie, I did the list. And then last night after your
8 ruling and just because I had a little time that I didn't
9 think I was going to have, I went through and broke one of
10 them up into multiple parts so we weren't reading 20
11 straight pages.

12 So she gave you the objections. And so I was going
13 to pass up my original proposed voir dire so you can see
14 her objections. Because it wouldn't match up with the one
15 I handed you.

16 THE COURT: Okay. I can't say that I understood any
17 of that. But, hopefully, it will make sense when I look
18 at it.

19 MS. TANKERSLEY: My -- my form was based off of this
20 old --

21 MR. WOOTEN: Yeah.

22 THE COURT: Oh, I got you.

23 MR. WOOTEN: See, I broke up number five.

24 THE COURT: This is your original?

25 MR. WOOTEN: That's the original.

1 THE COURT: Okay.

2 MR. WOOTEN: And then number five is now broken into
3 separate parts.

4 THE COURT: All right. So y'all be back in here
5 about 1:40.

6 MS. TANKERSLEY: Okay.

7 THE COURT: And that way, we can discuss everything.
8 I think that should give us time to do that. We'll start
9 right at 2:00.

10 I mean, I imagine none -- none of these witnesses
11 will probably be long. I think we should be -- we should
12 be able to get all the testimony in today.

13 MR. WOOTEN: Yes, sir, Your Honor. I'd anticipate we
14 would.

15 THE COURT: All right. And I think we're going -- I
16 think we may struggle on the jury instructions, too. We
17 may need time to look at those.

18 All right. See y'all at 1:40.

19 (WHEREUPON, a lunch break was taken.)

20 THE COURT: We're back on the record on Vargas vs.
21 MGA.

22 Let's go over the designations in the deposition.
23 The deposition -- the -- what y'all tried to tell me
24 beforehand made sense when I started looking at it about
25 the objections and the amended versions.

1 All right. Let's go with your amended deposition
2 designations. If I read it correctly, you have no
3 objection to one and two, Ms. Tankersley?

4 MS. TANKERSLEY: Yeah, assuming that's the same
5 thing -- yes.

6 THE COURT: And then number three is Page 32 through
7 33. And your objection?

8 MS. TANKERSLEY: So for Page 32, Lines 18 to the
9 bottom of the page, my objection is he's asking them to
10 opine about the law, whether or not that -- that form
11 complies with South Carolina law. I think that's outside
12 the scope of -- on that 30(b)(6) deposition. And, two,
13 what a witness can testify to as to whether or not that
14 complies with the law.

15 THE COURT: Mr. Wooten. And I think you have several
16 of these in there that -- some of the basis of the
17 objection.

18 MR. WOOTEN: Your Honor, I think it goes right to the
19 heart of the case. He's the representative of an
20 insurance company. If an insurance company doesn't know
21 about whether or not a form should qualify under the law,
22 I don't know who would. And a company can, certainly,
23 offer an opinion as to something like that.

24 THE COURT: I mean, I feel like that's -- I mean, I
25 don't think that their opinion on the law, which is what

1 you're getting from them, is appropriate. And that comes
2 up quite a bit. I mean, that's the main question for the
3 jury. And this is not even an expert. So I'm going to
4 grant their objection on that one.

5 Let's see, 33. I think -- I think part of that is
6 the same thing. But I think part of it may be okay.
7 Let's -- let me hear what you...

8 MS. TANKERSLEY: Yes, Your Honor.

9 THE COURT: It's 33 through 37.

10 MS. TANKERSLEY: It's the same objection regarding
11 the opinion as to law. But then, also, we're doing my
12 objection about conversations and references to these
13 e-mails in 2018. I -- I argued earlier, of course, that
14 it's not relevant. But I failed to mention, too, that I
15 believe these e-mails would, also, be hearsay. And
16 they're not authenticated, of course.

17 So those are my objections for that area.

18 THE COURT: Mr. Wooten.

19 MR. WOOTEN: Your Honor, again, we, certainly, think
20 the stuff's relevant. We think that -- you know, we sent
21 a subpoena to MGA. They haven't brought anybody with whom
22 it'd be appropriate to introduce it.

23 THE COURT: I mean, that -- it's your burden and
24 that's your job.

25 MR. WOOTEN: Sir?

1 THE COURT: I said, isn't that yours, though? If --
2 if you're going to put it in, I mean, isn't...

3 MR. WOOTEN: It is, Your Honor. But we, also, sent a
4 subpoena to their client who they listed as a witness and
5 they haven't brought anybody.

6 THE COURT: Oh, I got you.

7 MS. TANKERSLEY: We -- it was consented that that
8 subpoena was withdrawn because it was just sent to MGA.
9 It wasn't sent within the appropriate amount of time.
10 They're a company based out of Texas. And the 30(b)(6)
11 depo -- Mr. Hawley has passed away. So, like, he wouldn't
12 be able to be here. And they didn't name or ask for
13 anybody else, specifically, which is why we had done that
14 motion to quash. But --

15 THE COURT: Oh, this Mr. Hawley has passed?

16 MS. TANKERSLEY: Yes. Yeah. He died this past
17 year -- either this year -- this calendar year or the past
18 calendar year. He had a very short illness and just
19 suddenly died.

20 THE COURT: I'm sorry to hear that.

21 I don't -- I'm going to let him go into the various
22 production of the -- of the different forms. But I think
23 on -- let's see, Page 35, Lines 3 through 20, it goes into
24 whether it was properly offered under South Carolina law.
25 And I think that's Lines 3 through -- Lines 3 through 20.

1 Can I write on this one, or is this the one you're
2 using?

3 MR. WOOTEN: I -- I've got an extra copy.

4 THE COURT: Okay. So Lines 3 through 20 on Page 35,
5 I'm not going to allow.

6 MR. WOOTEN: Your Honor --

7 THE COURT: Yes.

8 MR. WOOTEN: -- if I may. Their testimony, too, as
9 to whether or not the form without that page is a valid
10 offer. I think it not only goes to the law which we were
11 just talking about, but it, also, goes to why they did
12 what they did.

13 I mean, the whole reason -- our whole theory in this
14 case is that they inserted this missing form because they
15 knew that it wasn't a meaningful offer without that page
16 being there. And so that testimony not only is important
17 for what we're talking about. But it's, also, important
18 to show, hey, here's your motive for why you would even,
19 you know, take all these actions to try and, basically,
20 forge a form.

21 THE COURT: Okay. Well, and your -- I'm going to
22 deny it still.

23 Page 36, I did not -- I didn't have a problem with
24 36.

25 MS. TANKERSLEY: Yeah. My objections with that are

1 still just the -- the November and March communications.

2 THE COURT: Right. And number five, 37 through 41.
3 I think that's the same.

4 MS. TANKERSLEY: Yes. On Page 30 -- well, yeah. It
5 would be the same objection about the e-mails and then any
6 opinions he's asking.

7 THE COURT: I don't think there's any opinions on
8 that, is there?

9 MS. TANKERSLEY: And, again, Your Honor, the -- the
10 hearsay. It's, like, if you look at 40, reading these
11 e-mails, these are all statements from somebody who's not
12 here and somebody who is not a party to the case.

13 THE COURT: And I think they're based on the fact
14 that these are 30(b)(6) depositions, representatives of
15 the companies, and what they received in their matters.
16 I'm going to allow it.

17 MS. TANKERSLEY: Yes, Your Honor.

18 THE COURT: All right. Number -- number six, 42
19 through 44, I think that's just the whole e-mail thing
20 again.

21 All right. Same ruling on that. I think it's all
22 just e-mail.

23 MS. TANKERSLEY: I agree.

24 THE COURT: Okay. And your same objection there?

25 MS. TANKERSLEY: Yes, Your Honor.

1 THE COURT: Seven, Page 52 to 53.

2 All right. Number seven, your response.

3 MS. TANKERSLEY: I think these, again, are just
4 dealing with the e-mails. And then, also, on Page --
5 well, are you only going through --

6 THE COURT: It's on Page 53 through Line 11.

7 MS. TANKERSLEY: Okay. Then, yeah, I think that's
8 just dealing with the e-mails.

9 THE COURT: All right. So I'm going to allow that.
10 Number eight, Page 55 through 57. I think that goes
11 into --

12 MS. TANKERSLEY: Yeah. These -- these are the
13 objections about --

14 THE COURT: Meaningful offer opinion.
15 Mr. Wooten.

16 MR. WOOTEN: I'm sorry, Your Honor. What was the --

17 THE COURT: We're on number eight.

18 MR. WOOTEN: What was the objection? I didn't hear
19 that part.

20 THE COURT: Do you want to repeat what you --

21 MS. TANKERSLEY: Yes. This is the same objection I
22 was making before about being outside of the scope of what
23 you can testify. And it goes to the -- it's a question of
24 law, an opinion that he's not permitted to testify to.

25 MR. WOOTEN: Your Honor, again, this goes to the

1 motive of why MGA chose to insert this missing form.
2 Basically, again, they admit that -- I'm asking them about
3 if you deny coverage, doesn't that mean that MGA has to
4 pay less money?

5 THE COURT: Well, and you, also, talk about the duty
6 of good faith, which is not in here. And I get -- my same
7 ruling as before. I'm going to deny your request for
8 those.

9 All right. And number nine, Page 59, 1 through 7.
10 That's talking about good faith of an insurance company,
11 which is not a claim here. So I'm going to deny that one.

12 And 10, I guess, is no longer applicable, is it?

13 MR. WOOTEN: It's not, Your Honor.

14 THE COURT: All right. And then how about the -- do
15 you have any objection to the designations made by --
16 that's all -- that's all the designations from the
17 Plaintiff's side; correct?

18 MR. WOOTEN: That's correct, Your Honor.

19 My only -- I don't know if it's really an objection
20 is number three. She stops where it's Page 25, 1 through
21 14.

22 THE COURT: Okay.

23 MR. WOOTEN: It stops in the middle a -- the middle
24 of an answer.

25 MS. TANKERSLEY: And, Your Honor, at -- at lunch, I

1 was looking trying to consolidate that whole section a
2 bit. Because, otherwise, it's a decent amount of reading.

3 So I'll just represent to y'all, I -- I don't plan on
4 having her read all of what I've marked here. That was
5 sort of an abundance of caution. I would still do 22, 20
6 through 25, and then 23 down to Line 20. But then on Page
7 24 only from Line 3 to Line 5. And then Line 17 to Line
8 24. And then --

9 THE COURT: So at the end of that "et cetera"?

10 MS. TANKERSLEY: Yes. Because then they start
11 getting into more -- it just gets a little wordy.

12 And then on Page 25, yes, it would just be Line 6 to
13 Line 14 to kind of --

14 THE COURT: And where -- where are you ending on 14?
15 At the end of the period?

16 MS. TANKERSLEY: Of -- "of that record."

17 THE COURT: All right. Are there any exceptions to
18 their proposal?

19 MR. WOOTEN: I don't have any objection, Your Honor.

20 THE COURT: All right. I'm sure the jury will be
21 very excited to hear all this from a deposition.

22 MS. TANKERSLEY: I wouldn't present anything --

23 THE COURT: Do y'all want to do it at the end of the
24 day just so they can go home and take a nap?

25 MS. TANKERSLEY: Well, we're going to -- when I start

1 with Ms. --

2 THE COURT: I know.

3 MS. TANKERSLEY: -- it will be fun for everybody.

4 THE COURT: All right. Is there anything else before
5 we bring the jury in?

6 MR. WOOTEN: Sure, Your Honor. I think their
7 position is they get to open first because they have the
8 burden of proof. Our position is that under Rule 43, it
9 says that the -- let me see. It, basically, says the
10 Plaintiff gets to open first and then gets the right of
11 rebuttal.

12 MS. TANKERSLEY: In the -- I don't remember what you
13 titled it, but you provided me with relevant case law for
14 his side. And it has that the burden of proof is on us.

15 And so if the burden of proof is on us, then under
16 that same rule, it says if it shifts -- if the burden
17 shifts, then we start the -- we have the right to open and
18 close. We take upon the burden of proof and shall have
19 the like privilege to open and close.

20 MR. WOOTEN: Your Honor, I looked it up on Westlaw
21 and it says, A defendant is not entitled to open -- and
22 I'm sitting down just so I can read this.

23 THE COURT: That's fine.

24 MR. WOOTEN: A defendant is not entitled to open and
25 reply unless he admits in his answer the plaintiff's cause

1 of action and sets up an affirmative defense. And, Your
2 Honor, they've not admitted our action. I mean, they're
3 contesting the dec that we filed a lawsuit about.

4 MS. TANKERSLEY: Then if we don't have -- if he says
5 he's the moving party and we're not admitting to any of
6 the liability, we're not admitting that the form wasn't
7 formally provided, then, presumed, he should have the
8 burden of proof. But if it's our burden, we should go
9 first.

10 I'm happy to let him have the burden.

11 THE COURT: I'm going to let the Plaintiff go. And
12 I'll just -- I'll tell them what the burdens of proving
13 are.

14 How about that?

15 MS. TANKERSLEY: But then he gets all the benefit,
16 Your Honor.

17 THE COURT: So -- all right. Anything else from the
18 Plaintiff before we bring the jury in?

19 MR. WOOTEN: Do you mind -- do you mind if we see if
20 the screen works?

21 THE COURT: Yeah.

22 (Pause.)

23 MS. TANKERSLEY: Your Honor, he wants to show those
24 e-mails that I've objected to. And I -- I know the
25 Court's ruling on motions in limine. But, obviously, I'm

1 going to have to make a contemporaneous objection to it.
2 Just given everybody knows that so that I don't seem like
3 a jerk.

4 MR. WOOTEN: That's fine.

5 THE COURT: All right. So you're going to wait until
6 those come into -- actually, come into play?

7 MR. WOOTEN: Sir?

8 THE COURT: So what are you going to do? You said,
9 That's fine.

10 MR. WOOTEN: Oh, that she was going to object during
11 my opening statement.

12 THE COURT: Okay. Well, I mean, if they're not in
13 evidence and she's not stipulating...

14 MR. WOOTEN: Your Honor, my understanding was that
15 you can use in opening something that you reasonably
16 expect to come into evidence. And these are things that
17 are going to come in through MGA -- I'm sorry, through
18 Ms. Beltran. They're all things that she's admitted to in
19 her deposition. It's two e-mails that she sent to MGA and
20 then their standard response.

21 THE COURT: I mean, you can talk about them. But if
22 they're not in evidence and -- I mean, I don't -- I mean,
23 I'm going to -- I'm going to weigh -- I mean, everything's
24 so convoluted, quite frankly, that you can't assume
25 anything.

1 MR. WOOTEN: Very well.

2 THE COURT: What I usually do is have a brief summary
3 of what the -- what the case is going to be about, kind of
4 procedural-type stuff. And I'm going to just tell them
5 that -- as I will tell them at the end of the trial and
6 discuss the burden -- you can do that -- the burden of
7 proof -- that each party may have burdens of proof in the
8 matter. And it is by the preponderance of the evidence.
9 And just kind of, generally, state that.

10 All right. Anything else before I bring the jury in
11 from the state -- I mean, state -- from the Plaintiff?

12 MR. WOOTEN: None from the Plaintiff.

13 THE COURT: From the Defendant?

14 MS. TANKERSLEY: No, Your Honor.

15 THE COURT: All right. Bring the jury in.

16 (WHEREUPON, the jury came into open court at
17 approximately 2:07 p.m.)

18 THE COURT: All right. Good afternoon, ladies and
19 gentlemen. I hope everybody had a good lunch.

20 And now, we're going to start the trial of this case.
21 But before, I'm -- I've got some things I want to tell
22 you. Before I do that, I'm going to ask that the clerk
23 give you the oath in this case.

24 THE CLERK: Ladies and gentlemen, please stand and
25 raise your right hand for the oath in this case.

1 (WHEREUPON, the jury was sworn at approximately
2 2:08 p.m.)

3 THE CLERK: Thank you.

4 INTRODUCTORY REMARKS

5 THE COURT: All right. Let me just kind of give you
6 what I call my road map about this case. And then I'm
7 going to turn it over to the lawyers.

8 First, I like to make sure you understand who all --
9 I mean, kind of know who some of the other people in this
10 courtroom are. You've already met the attorneys and
11 the -- the parties. But some of the staff here -- seated
12 in front of me is our court reporter. She takes down all
13 that's stated and keeps the record for the case.

14 And the clerk of court's in charge of administering
15 the oath, and kind of in charge of the courtroom. Seated
16 to my right is my law clerk, who just recently passed the
17 bar last week. So she assists me with any research, or
18 anything like that.

19 But the most important people for you are the
20 bailiffs, the individuals in the red coats. Let me tell
21 you why Greenville has some of the best in the state. We
22 get to go all over the state. These guys and gals do a
23 wonderful job. If you need anything, you just let them
24 know. If there's something that I need to get involved
25 with, then they will let me know. So if you have any

1 questions, please, direct that to them.

2 Your role as a juror is very important. You're to
3 determine what the facts of this case are. Okay. You and
4 I have different roles, though.

5 My role is to preside over the trial, rule on
6 objections, and determine what the law is that applies to
7 this case. Let me talk about objections. You may hear
8 objections from time to time by the attorneys. And the
9 reason for those is we have -- in our courts, we have very
10 strict rules of evidence that apply. And those evidence
11 are followed. And that's usually what the objections
12 relate to is to make sure that those are followed
13 correctly, and that all of the evidence that's presented
14 to you is consistent with our rules of evidence.

15 And then at the end of the trial, I will charge you
16 on the law of the case. Because that's my job is to
17 determine what the law is that applies to this case.

18 You're to listen to everything. You're to apply the
19 law. And you're to determine what the facts are. And
20 when I say that, basically, you're going to have a -- a
21 question -- a verdict form that will ask you a specific
22 question and you must answer that. And that is what your
23 verdict will be.

24 This is a little bit different than, you know, a
25 criminal case where you have to find them guilty or not

1 guilty. Normally, in a civil case, it is for damages.
2 And a jury is to find for one party or the other and
3 determine the amount of damages.

4 This is a little different than that. This is going
5 to be what we call an interrogatory question to the jury,
6 which you will answer. And that's how you'll determine
7 what the facts are. I will explain that a little further
8 when we get -- at the conclusion of the trial.

9 Now, I will ask that you not take notes. I don't
10 think that you will need to take notes. This should be a
11 fairly short case. I expect we'll get most of the
12 testimony in today, possibly some in tomorrow. And then
13 we should finish up this case tomorrow.

14 The normal way for a trial to start is the attorneys
15 will start with opening statements. Those will not be
16 evidence. That's their summary of what the case is going
17 to be about.

18 Then the Plaintiff will present their evidence. Then
19 the Defense will present their evidence. And then at the
20 conclusion of all the evidence that's presented, the
21 attorneys will have closing arguments. Then I will charge
22 you on the law. And then at that point, you'll be able to
23 go back in your room and begin deliberations. And
24 deliberation just means decide what the -- you know, what
25 the result of the case is or what -- the answer to the

1 question.

2 I always point out that just in case anybody has been
3 involved in a criminal case that this is much different in
4 a lot of respects. One is it's not anybody charged with
5 any crime. Also, the burden of proof is different. The
6 burden of proof is by a preponderance of the evidence.
7 And that's more likely than not. That's just a lower
8 standard.

9 And the reason is in criminal cases, the burden is
10 beyond a reasonable doubt. That's a much higher burden.
11 In this case, as I will tell you at the conclusion, each
12 party may have different burdens to prove certain things.
13 But their burden is by a preponderance of the evidence.

14 Now, as I told you, your job is to determine what the
15 facts are. And if I do anything or I say anything that
16 makes you think I have an opinion about the facts, then
17 you're to disregard that. Because that's me kind of
18 stepping in that jury box. And I'm not supposed to be in
19 there. So disregard anything. Please do not take
20 anything I say or do means I have an opinion on the facts.

21 As I told you before you -- we broke for lunch, it's
22 real important that you not discuss the case before you
23 have all of the evidence and the law. Because, one, if
24 you're -- you're starting to discuss the case, you're
25 starting to make up your mind, and you're doing that

1 before you have all the proper tools that you need. So
2 that's why it's so important not to discuss the case among
3 yourselves. And I know that's difficult because the only
4 thing right now you have in common is this case.

5 It's, also, tough when you get home or talk to your
6 friends tonight, you know. You cannot talk to them about
7 the case. Because you don't need input from any other
8 source than what's in this courtroom.

9 That's, also, why it's very important that you not do
10 any type of research. In our day, we Google everything.
11 It's not appropriate and totally prohibited that you do
12 any type of research about the law in this case, about the
13 parties, about anything -- the lawyers, anything like
14 that.

15 Again, everything that you will need to make your
16 decision, you will get in this courtroom under our rules
17 of evidence. Okay. And that's what's real important
18 about a courtroom proceeding is the rules of evidence and
19 the rules of the court that we have to comply with.

20 That's why I, also, said you're not to pay any
21 attention to any media coverage. But I'm not expecting
22 any here. But I just always like to make sure you're
23 aware of that.

24 In the case that will be presented, you will have
25 several -- there may be several types of evidence. You'll

1 have testimony from the witness stand from witnesses. You
2 may have deposition -- portions of depositions that will
3 be presented. A deposition is a statement that is taken
4 outside the courtroom. Both lawyers have asked -- had an
5 opportunity to ask questions. It's under the same rules
6 as if they were here. But, sometimes, it's more
7 convenient or -- to use a deposition of somebody that's
8 not able to get to Court for whatever reason.

9 There may be stipulations that counsel have had.
10 There may be documents. There may be photographs. All of
11 those type things are evidence. And all those are type --
12 things that you will be considering if you -- when you
13 make your decision.

14 Again, one of the things that you'll need to
15 determine is believability or credibility of witnesses.
16 One of the things is you will determine if one witness is
17 believable or not, and kind of weigh that. That's part of
18 your decision in determining what the facts are.

19 As far as the timing, as I told you before, we try to
20 close -- we try to stop as close to 5:00 as possible. We
21 don't want to run past 5:00, unless we absolutely have to.
22 And if we have to do that, I will discuss it with y'all so
23 if anybody needs to make any arrangements.

24 And what I'm talking about is maybe we have a witness
25 that may not can be here tomorrow and we may have to go a

1 little past 5:00. I don't anticipate that. But I -- if
2 it looks like that is going to be the case, I will stop,
3 discuss it with y'all, and make sure that everybody is
4 okay with that.

5 We try to take breaks probably every hour. Again,
6 that kind of depends on where we are on witnesses. But if
7 anybody needs to take a break and we're, like, in a
8 witness, please, indicate to the bailiff and we'll try to
9 take a break as soon as possible. We realize this is an
10 inconvenience to you. And we try to make it as little
11 inconvenience as possible.

12 So, also, probably most likely, we will start back at
13 9:30 in the morning. That's usually what I look for. But
14 if -- I will discuss that with you before -- before we
15 leave.

16 One of the things that you will do at your first
17 break is I will ask that you select a foreperson. And
18 that would be from the original 12. The alternate -- if
19 there's -- an alternate does not qualify for -- as the
20 foreperson. The foreperson is merely -- has a special
21 seat.

22 But, the alternate, you have your special seat right
23 there.

24 But the alternate -- I mean, the foreperson will sit
25 in the first seat. But their role is to lead discussions

1 during the deliberations. And they will, also, be the one
2 to communicate with the Court by way of notes, or anything
3 that needs to be communicated with the Court. Other than
4 that, they don't -- their -- their role is the same as
5 everybody else. I always like to say a foreperson does
6 not get paid any more than the small penance that y'all --
7 the rest of you get.

8 So anyway, those are my little comments.

9 At this point, I'm going to turn it over to the
10 attorneys for their opening statements.

11 Mr. Wooten.

12 OPENING STATEMENTS

13 MR. WOOTEN: Thank you, Your Honor.

14 May it please the Court.

15 There we go. I'll get a little closer to y'all.

16 So we're here today to talk about insurance. So,
17 first, what I'm going to do is I'm going to kind of
18 explain what we're talking about. And then I'm going to
19 explain what happened in this case and what the testimony
20 will be.

21 Now, everybody in here probably has car insurance.
22 There's two types of car insurance that you're required to
23 have in any policy. And there's a third type of coverage
24 that the insurance company is required to offer you. The
25 first type of mandatory coverage is called liability

1 coverage. And that is what most people think of when they
2 think of general car insurance. That covers any damage
3 the policy holder causes.

4 So let's say the policy holder is driving down the
5 road. They run a red light, hurt somebody. Their
6 liability coverage is what pays for the damage they
7 caused. It's required to be in every policy in South
8 Carolina.

9 There's limits on that. A lot of people aren't aware
10 of that, but a policy has to have, at least, 25,000 per
11 person coverage, meaning if they cause injuries to
12 somebody, they have to pay up to \$25,000 in damages and
13 50,000 per occurrence, meaning no matter how many people
14 are hurt in that wreck, the most the insurance company
15 will have to pay is \$50,000. That's the minimum limits.
16 And that's a mandatory coverage. Every policy is going to
17 have it.

18 The second type of mandatory coverage is called
19 uninsured motorist coverage. I'm going to say that again
20 because a distinction matters. It's uninsured. And what
21 that covers is if the policy holder gets in a wreck and
22 they get hit by somebody that doesn't have insurance
23 coverage, the uninsured coverage applies.

24 So let's say the policy holder is driving on the
25 road, somebody runs a red light and hits them. The person

1 who hit them didn't have liability coverage. Well, then
2 their underinsured coverage is where they make a claim for
3 their damages. So, again, that's mandatory coverage.
4 Policy limits are similar to what they are for liability.

5 The third type of coverage -- and what this case is
6 about is called underinsured coverage. Now, liability is
7 mandatory, uninsured is mandatory. Underinsured, the
8 insurance company has to make a meaningful offer of. So
9 they have to offer it whenever they sell a policy.

10 Underinsured coverage applies when the policy holder
11 gets hit and the person who hits them has coverage, but
12 it's not enough for their injuries. So the person is
13 underinsured that hits them.

14 So the same example we're using, a person is driving
15 down the road, somebody runs a red light and hits them.
16 And let's say they spend a week in the hospital and have
17 \$100,000 in medical bills. Well, the person that runs the
18 red light has the minimum limits, a \$25,000 policy. So
19 the person who hits them, liability would pay the 25,000.
20 And then the policy holder can make a claim on their own
21 underinsured coverage for their additional damages over
22 the policy limits.

23 That's the type of coverage we're here about today.
24 And the insurance company has to make a meaningful offer.
25 Now, you'll hear more about that later. But, basically,

1 they can either do that orally if it meets certain
2 requirements, or they can get the insured to sign a form.

3 And if there's a dispute and there's a question of
4 whether or not there's insurance coverage, normally, the
5 first thing you do is you ask for the underinsured
6 rejection form is what it's normally called. And so
7 that's what you're going to be hearing a lot about today
8 is the underinsured rejection form.

9 In this case, my client, Benigna Vargas, was in a
10 wreck in July of 2018. She was driving a car that was
11 insured by MGA. It's better known as Gainsco. I don't
12 know if anybody has ever heard of it. But it's a smaller
13 insurance company. But they go by Gainsco. That's their
14 trade name. You've probably never heard of MGA, unless
15 you're, you know, an attorney or you do what I do.

16 So anyway, we requested the underinsured rejection
17 form. And that's what we're talking about today. The
18 policy was taken out by Ms. Vargas' husband at the time,
19 Alfredo Mendez.

20 You'll hear from Mr. Mendez. And he'll testify that
21 he went to buy a car for Ms. Vargas. He went to one of
22 those buy here pay here lots where they require you to
23 have insurance. And so they recommended that he go to a
24 company called Calidad Latina. It's an insurance agency.
25 They have an office here in Greenville. They, also, have

1 an office in Spartanburg and a bunch of offices in
2 Georgia. They cater to the Hispanic community.

3 Mr. Mendez had been recommended to them. And then,
4 also, he was told that they speak Spanish. And as you'll
5 find out, Mr. Mendez mainly speaks Spanish. He can
6 understand a little bit of English, but not much. He
7 can't read any English. So he went there.

8 As Mr. Mendez is going to testify, when he got there,
9 the -- the car lot where he bought the car had already
10 faxed over some information. They presented to him
11 several different companies that wrote policies. He
12 picked Gainsco because it was the cheapest one.

13 They didn't really explain anything. They didn't
14 really go over the coverages. He doesn't remember a whole
15 lot about it, other than it took about 10, 15 minutes.
16 And as you'll find out, he paid 1,175 for six months of
17 insurance. And underinsured coverage was only \$55 more.
18 But he did not get that.

19 So the question is going to be, did they make a
20 meaningful offer of underinsured coverage? When the form
21 was requested and it was first sent, it was missing a
22 page. And that page was required in order for the form to
23 be a meaningful offer. That was pointed out to the
24 insurance company. And then about four months later,
25 another form was sent. And this time, the missing page

1 was included. The page that was included has information
2 that's required in order for it to be a meaningful offer
3 and comply with the statutes. It does not have any
4 signatures on it.

5 So the question today is going to be, why was that
6 form not provided? And why did it show up later? There's
7 going to be a few things that you know for sure happened
8 in this case. We know for sure that Mr. Mendez purchased
9 this policy in 2017. We know for sure that Ms. Vargas was
10 in a wreck.

11 It's -- Calidad's owner and agent, Ms. Angela
12 Beltran, who's here, is going to testify at the time that
13 Mr. Mendez purchased this policy, Calidad scanned every
14 single page that was presented to their customers. They
15 testified that if they were to send out one of these
16 underinsured rejection forms to the insurance company that
17 they would just e-mail the PDF that they already had.
18 They would attach it to an e-mail. They wouldn't print
19 out the e-mail, scan it, and make another PDF and then
20 e-mail it again.

21 And you're going to -- so we know that happened. We
22 know that after we filed suit and we sent a subpoena to
23 Calidad for their complete file that they produced a form
24 that was, again, missing Page 4. And they signed a
25 verification saying that that was their complete file.

1 So what your job is going to be is to be -- figure
2 out, all right, well, we know these things happened.
3 Well, what's the explanation for them? Under one
4 explanation, the form was not there. It was never
5 presented to Mr. Mendez. And so when they scanned every
6 page, like they testified they did, it wasn't there
7 because it was never presented to him.

8 The other explanation you'll hear from Ms. Beltran is
9 that they misunderstood when they wanted the complete
10 form. They didn't follow their typical procedures, you
11 know. They misunderstood again later when they did the
12 subpoena response.

13 And -- and then you'll, also, hear from our expert,
14 Tim [sic] Thames, who's a video forensics expert, who will
15 say that that e-mail that came with the complete form --
16 the one time in this case where we've seen Page 4
17 anywhere -- that that PDF was created the day that it was
18 e-mailed. And it was created using an office scanner. So
19 it wasn't just forwarded as their typical -- their typical
20 policy would be.

21 So, again, at the end of the case, you're going to go
22 back and you're going to have to decide, did -- did they
23 make a meaningful offer? Was this Page 4 included, or was
24 it just stuck in later to try and cover up the fact that
25 they had not made a meaningful offer?

1 And so I appreciate everybody's time and look forward
2 to presenting this case.

3 Thank you.

4 THE COURT: Ms. Tankersley.

5 MS. TANKERSLEY: Thank you, Your Honor.

6 Good afternoon, y'all.

7 I'm Jeanmarie Tankersley. And I am here with an
8 associate from my office, Ashley Hrubala. She, also, just
9 passed the bar on Friday. So she's here with me
10 throughout the trial, but she is not sworn in yet. So she
11 can't come out here and talk to anybody throughout the
12 trial.

13 We represent the Defendant in this case, which is MGA
14 Insurance Company. As Mr. Wooten noted, sometimes, people
15 refer to them as Gainsco. Gainsco owns MGA. And so for
16 all intents and purposes, it's the same company for what
17 we're talking about today.

18 Before I get into what the case is about and what
19 you'll see in evidence, I want to explain a little bit
20 about who my client -- my client is. As everybody knows,
21 all vehicles on the road in South Carolina, all driver's
22 on the road in South Carolina, it doesn't matter if you
23 have a valid license, it doesn't matter what car you're
24 driving, it's got to be insured.

25 So my company -- or my client, MGA Insurance Company,

1 is a company that sells motor vehicle insurance policies
2 to people. As Mr. Wooten noted, they're not, you know,
3 this huge company. You don't see commercials about them
4 like you would for Allstate, Progressive, Travelers,
5 whatever. Now, they're in the same kind of business.
6 They're just a much smaller company.

7 Calidad Latina, who you're going to hear about a
8 decent amount today, too -- Ms. Angela Beltran is here on
9 behalf of them. She's the owner. They are an agent for
10 MGA Insurance Company. They can sell other peoples -- or
11 other companies policies, but they, also, sell MGA.

12 So y'all all know, I'm sure, if you want to get an
13 auto insurance policy, you can go online, you can fill out
14 an application yourself, you can call up, but you're not
15 going to walk into the headquarters of Progressive, or
16 Allstate, or Gainsco, in this instance. You're going to
17 go to a local agent if you want to see somebody in person.
18 Her company is the local agent. So that's what their role
19 is in this case.

20 As I said, Angela is the owner. And as Mr. Wooten
21 noted, they have offices here in Greenville, and
22 Spartanburg, and then a handful in Georgia as well. So
23 you're going to hear from her with regard to the policy
24 and -- and their interactions with Mr. Mendez.

25 MGA Insurance Company had a representative that was

1 involved in this case. His name was Ken Hawley. Sadly,
2 this past year, he had a sudden illness that he passed
3 away from. So, obviously, he can't be with here -- be
4 with us here today. But you still might hear some of
5 his deposition testimony in evidence a little later
6 on.

7 So the issue in this case is whether or not an
8 insurance policy purchased by Mr. Mendez has the insurance
9 coverage that Mr. Wooten talked about, the underinsured
10 motorist coverage. Whether or not he paid for that
11 policy, whether or not -- or not that sort of insurance
12 coverage was offered to him.

13 So we're simply here about whether or not the
14 Plaintiff, Ms. Vargas, is entitled to insurance company --
15 or insurance coverage on Mr. Mendez's policy that he was
16 offered by Calidad and MGA, that he rejected, signed a
17 rejection form saying he did not want it, and that he has
18 never paid for.

19 So I think the evidence is going to show today that
20 Mr. Mendez wanted to purchase a vehicle. The dealership
21 requires that he go and get proof of insurance. He then
22 went into Calidad Latina. He met with one of their
23 agents. He was presented a few different insurance policy
24 options. He decided to go with the cheapest one with the
25 coverage that the dealership required of him.

1 The agent explained the costs and the options,
2 including the optional types of insurance coverage called
3 underinsured motorist coverage. And for simplicity, I'm
4 going to call that UIM coverage today. That's what
5 people, typically, refer to that as, UIM coverage.

6 The adjusters -- I mean, the agent offered that.
7 They said he could buy it. It would cost more money. He
8 rejected it. He signed a form saying that he rejected it
9 and that he wanted the -- the policy that just had what
10 the dealership required.

11 The agent then printed out his application, explained
12 the policy to him again. Mr. Mendez signed the documents
13 confirming the policy coverage that he wanted and that he
14 was going to pay for.

15 MGA then mailed every six months to Mr. Mendez
16 information about his policy, what his premiums were going
17 to be, the policy language that never showed that he had
18 this UIM coverage. Neither did any of the documents that
19 he signed that -- while he was meeting with Calidad show
20 that he had opted into this additional more expensive
21 insurance coverage. He has never paid for it. He has
22 only paid premiums for what the dealership required and
23 what was required by law.

24 The evidence is, also, going to show that Ms. Vargas
25 the Plaintiff, again, was involved in an accident about a

1 year after her husband took out this policy. She was paid
2 by the at-fault driver's insurance coverage. And then she
3 came and asked MGA to pay more money out of this policy
4 under this UIM coverage. MGA says, no, you don't have
5 that coverage. You never purchased it. It was offered to
6 you and you rejected it.

7 So the evidence is going to show, again, that the
8 agent offered it to him. He rejected it. He signed
9 saying he didn't want it. And he has never paid a premium
10 for it.

11 Mr. Wooten has explained this in a little bit more
12 detail. But the law in South Carolina is that an
13 insurance company by law has to offer you this optional
14 insurance coverage, this UIM coverage. It's called a
15 meaningful offer. That's the term under the law.

16 I believe the evidence is going to show that was
17 offered to him verbally. It was offered to him in
18 writing. And he, again, rejected it.

19 So you're going to hear some testimony, I believe, in
20 this case about, as Mr. Wooten indicated, potentially some
21 e-mails, how documents are saved, how documents are sent,
22 how they get from the insurance company to the local
23 agent. And we're going to go over some of that to make it
24 a little more simple. Because it can sound a little
25 convoluted. But I can tell you right now that all of that

1 is really just noise.

2 What matters in this case is that he met with an
3 agent. The agent explained the different policy
4 information. He was given a signed form. He rejected the
5 insurance company -- or the insurance coverage. And since
6 then, again, he has never paid any premiums for this UIM
7 coverage.

8 So that, again, is what we believe the evidence is
9 going to show today. We really do appreciate y'all being
10 here. And like Judge Gravely said, I think we're going to
11 keep it pretty short for everybody.

12 Thank y'all.

13 THE COURT: All right. Mr. Wooten.

14 MR. WOOTEN: Thank you, Your Honor.

15 The Plaintiff would call Angela Beltran.

16 THE CLERK: Ms. Beltran, hi. Please place your left
17 hand on the Bible and raise your right hand.

18 WHEREUPON,

19 ANGELA BELTRAN,
20 after first having been duly sworn, testified as follows:

21 THE CLERK: Please state your full name for the
22 record.

23 THE WITNESS: Angela Beltran.

24 THE CLERK: Thank you.

25 You may be seated.

DIRECT EXAMINATION

BY MR. WOOTEN:

Q All right. Ms. Beltran, am I saying that correctly?
Is it Beltron or Beltran?

A Beltran.

Q Okay. I'm going to butcher it either way. So I
apologize in advance.

All right. Ms. Beltran, you are the owner of Calidad
Latina Insurance Agency; correct?

A Correct.

Q All right. And you're, also, their licensed
insurance agent?

A Correct.

Q Okay. And the company has about 10 locations;
correct?

A Correct.

Q Okay. And you live in Atlanta; is that correct?

A Correct.

Q Okay. And back in 2017, you would create an
application for MGA Insurance using a computer program; is
that correct?

A Correct.

Q Okay. And then you would print out a hard copy; is
that correct?

A Correct. And I just want to clarify. I didn't

1 create the application. It was downloaded from their
2 system.

3 Q Okay. So you download an application from MGA's
4 system --

5 THE COURT: Hold on.

6 MS. TANKERSLEY: Can we approach for just a second?

7 THE COURT: Yes. Approach.

8 (WHEREUPON, a bench conference was held.)

9 BY MR. WOOTEN:

10 Q All right. Ms. Beltran, so I believe before we went
11 up there, you were saying that you download an application
12 from MGA on the computer?

13 A Correct.

14 Q And then you print out a hard copy; is that correct?

15 A Correct.

16 Q Okay. And then you would have the customer sign the
17 copy; is that correct?

18 A Correct.

19 Q And then you'd have them scan it into your computer
20 system?

21 A Yes.

22 Q And you would scan every single page?

23 A We would scan all the pages that have the signature,
24 yes.

25 Q Okay. But you don't scan every single page?

1 A From that package, we don't.

2 Q Okay. Do you remember when I took your deposition?

3 A Yeah. It was, like, three years ago, or more.

4 Q All right. Ms. Beltran, let me -- let's take a look
5 at your deposition here. Do you mind holding that?

6 A (There was no verbal response.)

7 Q And let's go -- we're on Page 22 here. So we're on
8 17 through 21. Line 17, question: When y'all -- I guess
9 prior to e-signing, when y'all would scan documents after
10 people signed them, would you take any pages out, or would
11 you scan every single page?

12 And your answer was: We scan every single page.

13 A Yes. From -- I think you were asking me about the
14 application itself with the signatures. But the document
15 itself have -- have many pages that we don't scan.

16 For example, the ID cards that we give to the
17 customer, we don't scan that. There are -- all the pages
18 there that -- some documents that we need to send to the
19 company proving they get discounts, we don't scan that.
20 So there -- we scan every single page that has a
21 signature, yes.

22 Q Okay. But you -- but there, you testified you scan
23 every single page. But your testimony today is you only
24 scan signature pages?

25 A Yes. I'm sorry. I didn't understand the question.

1 Q Okay. Well, let's turn to Page 28 here. And let's
2 look at Lines 9 through 17. Question: And so prior to
3 e-signing, when someone would sign a document, would you
4 save all the document, or would you have only saved part
5 of the document?

6 Answer: We'll save all the documents.

7 Question: Would you -- and that would include the
8 pages that didn't have any signatures on them?

9 Answer: Correct.

10 A So we scan all the -- we'll scan all the documents
11 that has signature pages. The rest of the document that
12 don't have the signature pages is still in the computer
13 system in the MGA or Gainsco system where we can just
14 download them. And we scan that separately from the
15 package.

16 Q Yes, ma'am. That's not what you said in your
17 deposition, was it?

18 A I don't know, probably not.

19 Q Well, here, we can read that again. And so prior to
20 e-signing when someone would sign a document, would you
21 save all the document, or would you have only saved part
22 of the document?

23 Answer: We'll save all the -- well, we'll save all
24 the documents.

25 Question: Would you -- and that would include the

1 pages that didn't have any signatures on them?

2 Answer: Correct.

3 And, again, did I read that correctly?

4 A You did, yes. And, like I said, we scan it
5 separately. So we scan -- we scan the documents that have
6 the signature pages. The other documents are saved in the
7 system.

8 Q All right. And let's go to Page 51 of your
9 deposition. Okay. Question: Would the fact that there
10 was no Page 4 provided in response to our subpoena
11 indicate that there was no Page 4 scanned in?

12 Answer: No. It doesn't indicate that. Because I
13 guess it was misunderstood that I just -- that I
14 understood just send what is signed. So we just pulled
15 out the pages that were with signatures. Since this page
16 doesn't have a signature, we just didn't pull it out.

17 Question: So if we went in and looked at the PDF's
18 in your system, it would have that Page 4 in there, or
19 would the Page 4 not be in the PDF?

20 Answer: It should be in there, yeah.

21 A Okay. So, again, there -- there is this package that
22 comes with the application from Gainsco that it has
23 everything in there. So we download all that. We show it
24 to the customer for him to sign. We explain to him
25 everything. We keep the pages that have the signatures.

1 And the rest of the pages either we have to send to the
2 company or we give to the customer.

3 Page 4 -- in there is a page that we, as agents, need
4 to give to the customer. Because that Page 4 indicates
5 all the coverage as an explanation and a phone number for
6 you to call the state if you have any questions about it.

7 So if we wanted to get that form, we would -- we just
8 went to their system where they have everything there and
9 just print it again.

10 Q Okay. And that's not what you testified to several
11 years ago when your deposition was taken, was it?

12 A Yeah, I guess not. Because I was confused with what
13 happened there.

14 Q Okay. Now -- and I'll grab this back from you.

15 Thank you.

16 I'll leave it right there.

17 All right. And so after the client would sign, you
18 would shred the hard copies; correct?

19 A Correct.

20 Q All right. And you have what's referred to as a
21 paperless office?

22 A Yes.

23 Q All right. And when an insurance company would
24 request forms, you would just send the PDF that you
25 already had in the system; correct?

1 A Yes.

2 Q Okay. You wouldn't print out forms and then scan
3 them again to create another PDF and then e-mail them;
4 correct?

5 A It depends. Like in this case, we were requested by
6 the insurance company to send them the application, which
7 we did with all the signatures in there. And it was
8 requested several times. I'd send it again because we
9 have pages missing. And we would send it again, send it
10 again because we have pages missing until someone from the
11 company -- I don't know who -- they said, well, there's
12 one page missing. It's Page 4. And we didn't even
13 realize that.

14 So we're like, oh, that Page 4, we don't have it
15 scanned with the signatures because we gave it to the
16 customer. So we just reprinted it from the website and
17 rescan everything and send it to you, whoever was asking
18 for it.

19 Q Now, most of your customers are Spanish speaking;
20 correct?

21 A Correct.

22 Q All right. And most of your customers don't
23 understand the difference between all the coverages?

24 A I'm sure they don't. Of course, that's why we're
25 here.

1 Q Okay. And if somebody can't read English and you
2 don't explain underinsured coverage to them, then they
3 probably don't understand what underinsured coverage is,
4 do they?

5 MS. TANKERSLEY: I object to the form. I'm sorry.
6 Objection.

7 THE COURT: What?

8 MS. TANKERSLEY: I said, "Objection."

9 THE COURT: What --

10 MS. TANKERSLEY: Speculation of whether or not the
11 customer --

12 THE COURT: Sustained.

13 BY MR. WOOTEN:

14 Q And, Ms. Beltran, do you recall when I asked you to
15 explain underinsured coverage to me in your deposition?

16 A Yes.

17 Q Okay. And let's -- let's look at that. So right
18 here, I'll let you read along here. So question: And I
19 guess as an insurance agent, you're familiar with
20 underinsured coverage?

21 Answer: Yes.

22 Question: So can you explain to me what it is?

23 Answer: So underinsured coverage will cover you for
24 three basic things. It will cover you -- let's say
25 someone crashes your car and flies away, it will cover

1 that. Or if someone crashes your car and doesn't have
2 insurance, or if someone crashes your car and doesn't have
3 enough coverage, then the underinsured coverage will kick
4 in and pay for that.

5 Did I read that correctly?

6 A You did.

7 Q But that's not a correct explanation of underinsured
8 coverage, is it?

9 A Well, I give you -- sorry -- I gave you more
10 explanation than -- than was required. So I explained
11 what the underinsured motorist was. Then I didn't explain
12 that if someone doesn't have enough coverage, then that's
13 when the underinsured will kick in and pay for it.

14 Q Yes, ma'am. But you said in your deposition that
15 that's what underinsured coverage is; correct?

16 A I was just giving you more information than what you
17 asked.

18 Q Now, you don't remember meeting with Mr. Mendez, do
19 you?

20 A We help a lot of customers. We have a lot of people.
21 So, yes, I don't recall exactly the details.

22 Q Okay. And you don't know who met with him?

23 A I'm sure it was me.

24 Q Okay. Let's go to Page 25 of your deposition here.

25 All right. So when you were deposed -- let's see. We're

1 on 17, Do you know who assisted Mr. Mendez in filling out
2 these documents?

3 Answer: I don't recall.

4 So now, you remember that you did meet with him?

5 A I -- I don't recall meeting with -- meeting with him,
6 specifically.

7 Q Okay. And you don't know who met with him?

8 A Because when we did this was two years -- or two and
9 a half years after that. So it was hard to recall.

10 Q Okay. And you have, what'd we say, 10 offices;
11 correct?

12 A Yeah.

13 Q Okay. And you live in Atlanta?

14 A Yeah.

15 Q And so do you meet with every single customer of
16 Calidad?

17 A I don't. I have agents.

18 Q Okay. So there's really no way to say that you're
19 the one that met with him, is there?

20 A If my signature is there, I was -- I was meeting with
21 him. Because I come here every other week.

22 Q All right. And am I correct that you sign all
23 policies?

24 A Yeah. We sign -- I sign all the policies. And the
25 agents sign their policies as well.

1 Q And so let's go to Page 31 of your deposition. All
2 right. Let's look at Lines 13 through 18.

3 So question: Does -- the fact that you sign the
4 policy, does that mean you, actually, met with the person,
5 or do you just sign all the policies?

6 Answer: I sign all the policies.

7 Question: So we can't tell that you met with him
8 based on that?

9 Answer: Correct.

10 So is it your testimony now that you can tell that
11 you met with him, potentially signed it, or is it your
12 testimony like at your deposition that we can't tell who
13 met with him?

14 A I want to say I can't tell.

15 Q You -- you would say you can't tell?

16 A I can -- I can say I cannot tell if it was me, if it
17 was another agent. It was probably me, but I'm not a
18 hundred percent sure.

19 Q All right. And then you're not sure -- we've talked
20 about this Page 4 in openings. You're not sure if Page 4
21 was, actually, presented to Mr. Mendez or not, are you?

22 A Well, within our processes, I'm sure.

23 Q Okay. You said you are sure?

24 A Yes. In our processes -- the way we do our
25 processes, we hand out everything that came with that

1 package to -- to the customers.

2 Q Okay. Let's go to Page 45 of your deposition. All
3 right. If you don't mind holding that.

4 Thank you.

5 Lines 14 through 16. Question: Any reason to
6 believe that he was not provided with Page 4 of that
7 packet?

8 Answer: I'm not sure if it wasn't provided.

9 And then let's go to Page 50. All right. Line 22,
10 And is there any way to tell if Mr. Mendez was, actually,
11 provided that Page 4?

12 Answer: I don't know.

13 Did I read that correctly?

14 A You did. You read that correctly.

15 MR. WOOTEN: All right. If we could mark that as
16 Plaintiff's Exhibit No. 1, please, ma'am.

17 (WHEREUPON, Plaintiff's Exhibit No. 1 was marked for
18 identification only.)

19 BY MR. WOOTEN:

20 Q And if you could take a look at this document that's
21 been marked as Plaintiff's Exhibit No. 1.

22 A (Witness complied.)

23 Q And do you recognize that document?

24 A You showed it to me in my deposition.

25 Q Okay. And what is it?

1 A It looks like an e-mail.

2 Q Okay. And what does that e-mail have attached to it?

3 A It has all the signatures of the application.

4 Q Okay. And is that a true and accurate copy of that
5 e-mail?

6 A How do I know?

7 Q Okay. And that came from -- what was the e-mail
8 address that came from?

9 A CalidadLatina@bellsouth.net.

10 Q Okay. And is that your companies e-mail address?

11 A It used to be.

12 Q Okay. It used to be. Well, was it your companies
13 e-mail address at the time that e-mail was sent?

14 A Yes.

15 Q Okay. And so you don't know if that's a true and
16 accurate copy of that e-mail or not?

17 A Yeah. I mean, if it came from -- from our e-mail and
18 everything here is -- yeah.

19 MR. WOOTEN: Okay. Well, I'd move to admit that into
20 evidence as Plaintiff's Exhibit No. 1.

21 THE COURT: Any objection?

22 MS. TANKERSLEY: Yes.

23 THE COURT: Or subject to your previous --

24 MS. TANKERSLEY: Yes, continuing objection.

25 THE COURT: All right. Then I'm going to -- subject

1 to your objection, I am going to allow it in.

2 (WHEREUPON, Plaintiff's Exhibit No. 1 was admitted into
3 evidence.)

4 BY MR. WOOTEN:

5 Q Now, can you agree that that e-mail and the
6 attachment to it does not contain Page 4 of that
7 application?

8 A Yes.

9 Q Okay. And I believe it was your testimony previously
10 that your agency only sent the signature page because
11 that's somehow what they understood MGA to be asking for;
12 is that correct?

13 MS. TANKERSLEY: I object. Your Honor, I don't think
14 she's testified to that today.

15 MR. WOOTEN: Okay.

16 BY MR. WOOTEN:

17 Q Did you -- did your agency send that because that's
18 what they understood MGA to be asking for, only the
19 signature pages?

20 A Correct.

21 Q All right. And that would be contrary to your
22 agencies normal policy of just forwarding the already
23 scanned PDF; is that correct?

24 A I -- I don't really have a policy regarding
25 forwarding e-mails.

1 Q Okay. Let's look at Page 44 of your deposition here.
2 All right. Line 12, question: And whenever they
3 requested anything, would you just -- and -- and I guess
4 e-mail them the PDF's that you saved?

5 Answer: Correct.

6 Did I read that correctly?

7 A You did.

8 MR. WOOTEN: All right. I'd like to mark this as
9 Plaintiff's Exhibit No. 2, please, ma'am.

10 (WHEREUPON, Plaintiff's Exhibit No. 2 was marked for
11 identification only.)

12 BY MR. WOOTEN:

13 Q All right. Let me give you what's been marked as
14 Plaintiff's Exhibit No. 2. Do you recognize that
15 document?

16 A Yes. I just saw it.

17 Q Okay. And what is it?

18 A It's an e-mail from my e-mail from -- with the
19 application.

20 Q Okay.

21 A Including Page 4.

22 Q Okay. And I'd move to -- I'm sorry. Is that a true
23 and accurate copy?

24 A Yes.

25 MR. WOOTEN: Okay. I move that that be admitted into

1 evidence as Plaintiff's Exhibit No. 2.

2 THE COURT: Any objection?

3 MS. TANKERSLEY: Same objection.

4 THE COURT: All right. Subject to your objection,
5 that'll be Plaintiff's Exhibit No. 2?

6 MR. WOOTEN: Yes, sir.

7 THE COURT: All right.

8 (WHEREUPON, Plaintiff's Exhibit No. 2 was admitted into
9 evidence.)

10 MR. WOOTEN: And, Your Honor, I'd move to be allowed
11 to publish that to the jury.

12 THE COURT: You may.

13 BY MR. WOOTEN:

14 Q All right. Ms. Beltran, that's the same thing you
15 have in front of you.

16 Okay. So, first of all, let's talk about the first
17 page. Is this -- you sent this e-mail; correct?

18 A Yes.

19 Q Okay. And it says, Here is the e-mail from
20 March 14th, 2019. I was unable to find the e-mail from
21 November 28th, 2018. This is the same PDF document we
22 have in our files for Alfredo Palafox Mendez.

23 Did I read that correctly?

24 A Yes.

25 Q Okay. And I believe a few minutes ago you said your

1 policy at this time was only to scan the signature pages;
2 correct?

3 A Yes.

4 Q Okay.

5 A So let me clarify that. Our policy is to keep the
6 signature pages and any back up that we have from the
7 customer; right? So Page 4 doesn't have any signatures.
8 But if it's required from the company or from -- if the
9 customer wants it again, we have a way to just print it
10 out and give it to the customer, send it to the company,
11 or do anything we want with that.

12 So in our policy, in our world, we have all the
13 documents. They may be not in the same order or in the
14 same place, but we have them.

15 Q Okay. So there's no PDF document that existed on
16 your system that would have a complete six-page
17 application; is that correct?

18 A I don't think so.

19 Q And, yet, in this e-mail, you said this is the same
20 PDF document we have in our files for Alfred Palafox
21 Mendez, didn't you?

22 A That's what it says there. And everything is the
23 same on the -- the signature pages. It's just that Page 4
24 that we provide to the customer.

25 Q Okay. And you didn't say in that e-mail, I took this

1 page out of another place and put it in with the signature
2 pages to create a complete form, did you?

3 MS. TANKERSLEY: Objection, Your Honor. If he gets
4 into -- can we approach?

5 THE COURT: Yes.

6 (WHEREUPON, a bench conference was held.)

7 BY MR. WOOTEN:

8 Q Ms. Beltran, is it your testimony today that to
9 create the attachment for this PDF that you pulled the
10 Page 4 from another file and inserted it in Mr. Mendez's
11 signature pages?

12 A I would not say that I pulled it from another file.
13 I would just say I pulled it out from his file from the
14 companies file.

15 Q Do you know if you pulled it from his file?

16 A From the companies file.

17 Q No, ma'am. Do you know if you pulled it from
18 Mr. Mendez's file, specifically?

19 A From Mr. Mendez's, specifically, yes. Because the
20 page is the same for every -- for every customer. It's a
21 handout.

22 Q And Page 4 is a standard form that's in every file;
23 correct?

24 A Yes.

25 Q All right. I'll ask you a couple more questions

1 about this while we've got this exhibit up. Let's see.

2 Okay. If you can turn to Page 4 of Plaintiff's Exhibit

3 No. 2, please, ma'am.

4 A (Witness complied.)

5 Q Okay. And so at the top of this page, it says, Offer
6 of uninsured motorist coverage and optional underinsured
7 motorist coverage; correct?

8 A Correct.

9 Q Okay. And that's the page that, actually, has a
10 description of what underinsured coverage is; correct?
11 Doesn't it?

12 A Yes. It has a description of what it is,
13 underinsured --

14 Q Okay.

15 A -- motorist coverage, underinsured, meaning limits.

16 Q Okay. And let's -- that's the only place in that
17 form that has a description of what underinsured coverage
18 is; correct?

19 A Yes.

20 Q Okay. If you looked at any of the other pages, Page
21 1 through 3, or Page 5 and 6, it doesn't describe to you
22 what underinsured coverage is, does it?

23 A Well, Page 5 has a small summary of underinsured
24 motorist.

25 Q Okay. But it doesn't explain to you what

1 underinsured motorist coverage is, does it?

2 A No.

3 MR. WOOTEN: Okay. If we can mark this as
4 Plaintiff's Exhibit No. 3, please, ma'am.

5 (WHEREUPON, Plaintiff's Exhibit No. 3 was marked for
6 identification only.)

7 BY MR. WOOTEN:

8 Q All right. Can you -- can you take a look at what's
9 been marked as Plaintiff's Exhibit No. 3, please?

10 A (Witness complied.)

11 Q And do you recognize that document?

12 A This is the application.

13 Q Okay. Can you look at the whole document, please,
14 ma'am?

15 A (Witness complied.)

16 Q Okay. And what is that?

17 A So this is the application that is used once the
18 customer selects the company and the premium. It gets
19 into Gainsco's system. We download this application. And
20 we explain to the customer what he is getting. He signs
21 the document.

22 Also, there is an optional coverage of [inaudible].
23 There is a form for vehicle inspection report just to make
24 sure the car doesn't have any damage. There is a bill of
25 sale to make sure the VIN number is -- on the car is what

1 we're insuring.

2 It has another form that we create it in our agency
3 that is not from Gainsco, just to make sure the customer
4 understands the coverages and -- and, specifically, one
5 coverage, which is if somebody else drives the vehicle who
6 lives in their household, they will not be covered.

7 And this form is in Spanish so they can understand
8 better. The form, also, has, specifically, what kind of
9 coverages he's getting. And he signed it. He has a
10 receipt. And this is just the -- this is from here.

11 Q Okay. So that is, actually, your subpoena response
12 when we subpoenaed the complete file; correct?

13 A Yeah.

14 Q Okay. And if we look at that, there's no Page 4 in
15 there, is there?

16 A Correct. There's no Page 4 because we gave it to the
17 customer.

18 Q Okay. So you just gave the customer Page 4?

19 A We gave the customer Page 4. We gave the customer an
20 ID card that comes with this package. The ID card says
21 how long -- from when to when you have insurance and the
22 VIN number of the item.

23 There is another document that comes with the package
24 that says what documents you need to send to Gainsco in
25 order for them to apply to this account. So none of those

1 are in here.

2 Q Okay. So you only gave the customer Page 4 out of
3 that whole application. You didn't give him a copy of the
4 whole application?

5 MS. TANKERSLEY: Objection, Your Honor. That wasn't
6 just her testimony. She testified as to what pages she
7 gave -- she listed about four pages that she gives to the
8 customer.

9 THE COURT: All right. I mean, ask your question.
10 I'll let her answer it.

11 MR. WOOTEN: Okay. Sorry.

12 BY MR. WOOTEN:

13 Q So you just gave the customer Page 4. You don't give
14 them the entire six-page application that's signed?

15 A We -- so, first, we get all the documents printed out
16 from the company. And we give the customer everything to
17 sign. All of the documents are there. He signs where he
18 needs to sign. He returns back the documents.

19 And then we separate the documents. One -- one pile
20 goes on file is for his signatures. And the other pile is
21 for either the company or the customer.

22 Q Okay. So you don't just -- you don't scan the entire
23 application. You only scan the signature pages?

24 A Correct.

25 Q But remember in your deposition a couple years ago,

1 you said you scanned every single page?

2 A I understood you were talking about the documents
3 that contained the signatures.

4 Q Yes, ma'am. Do you understand in your deposition you
5 said you didn't just scan signature pages?

6 A And I wasn't completely clear about that.

7 Q Okay. Let's look at that verification. So, again,
8 on this verification, that's your signature; correct?

9 A Correct.

10 Q Okay. And it says, As the records custodian, I
11 verify that the enclosed is a true, accurate, and complete
12 copy of the documents requested; is that correct?

13 A Correct.

14 Q Okay. Let's see. Now, when I deposed you -- well,
15 I'm sorry. Let me ask -- re-ask that question.

16 So you didn't just pull out the signature pages and
17 produce only the signature pages at that time in response
18 to that subpoena, did you?

19 A Could you repeat that again?

20 Q Did you just pull out the signature pages out of the
21 PDF and produce only the signature pages when you
22 responded to that subpoena?

23 A When I responded, I pulled out -- I printed the
24 signature pages, the application, which is a separate
25 file -- a separate file from the -- a separate file -- a

1 separate document from the vehicle inspection report, a
2 separate document -- we have a separate document for the
3 bill of sale. So each one is named. It's separate. It's
4 different. It's not the whole package.

5 Q Okay. Let's look at your deposition here, Page 23.
6 All right. Starting on Line 11, question: And does this
7 look like a true and complete copy of your subpoena
8 response?

9 Answer: Yes. We know there's one page missing. But
10 it was because when we received the request, we just sent
11 pages that had the signatures. So we just probably took
12 it off from the package to send it to you.

13 So at that time, you're testifying that you took the
14 non-signature pages out; correct?

15 A Yes.

16 Q But now, it's your testimony that you only scan the
17 signature pages; is that correct?

18 A We scan the signature pages because the other pages
19 we give to the customer. And if we need to print the
20 pages again, we can just go to the system and print them.

21 Q Okay. But that's not what you told me when I deposed
22 you, was it?

23 A I'm sorry. I was confused.

24 Q Okay. And let's go to Page 51, Line 4, question:
25 Would the fact that there was no Page 4 provided in

1 response to our subpoena indicate that there was no Page 4
2 scanned in?

3 Answer: No. It doesn't indicate that. Because I
4 guess it was misunderstood that I understood just send
5 what it signed. So we don't just pull the pages. They
6 were with signatures. Since this page doesn't have a
7 signature, we just didn't pull it out.

8 So at that time, again, you said you just pulled out
9 the signature pages; is that correct?

10 A Correct.

11 Q Okay. And it was your testimony at that time that
12 the PDF would have every single page in it; correct?

13 A It just depends on what you call a complete
14 application. Like, for example, this one is a complete
15 application for -- for -- for what we had in our system
16 that is separate and how we save it in our system.

17 Q Okay. Let's talk about the coverage that Mr. Mendez
18 did get. And if we can look at the first page of that
19 subpoena response. There, you're on it.

20 And on that first page, am I correct that it cost him
21 \$1,175 to get the six months of this insurance with
22 Gainsco?

23 A Yes.

24 Q Okay. And then if we turn to -- can you turn to the
25 fifth page, please, ma'am?

1 A (Witness complied.)

2 Q And am I correct it would only cost \$55 more to get
3 underinsured coverage?

4 A Yes.

5 Q Okay. And these forms are all in English; correct?

6 A Yes.

7 Q And Mr. Mendez can't read English, can he?

8 A He can't.

9 Q So unless somebody explained to him what it was, he'd
10 have no way of knowing; correct?

11 A Correct.

12 Q All right. And that's how a lot of your customers
13 are; right? They don't speak English, don't read English?

14 A Correct.

15 Q All right. Let's turn to the reimbursement motor
16 club page. All right. So Page 7 here, this is a
17 reimbursement motor club; is that correct?

18 A Uh-huh.

19 Q Okay. And that costs \$70; is that correct?

20 A Uh-huh.

21 Q And that just provided some towing if he ever needed
22 a tow?

23 A Towing and rental.

24 Q All right. And this is not a required coverage, is
25 it?

1 A No. It's additional coverage.

2 Q Okay. And so he could have, actually, gotten
3 underinsured for cheaper than what he got this
4 reimbursement motor club; is that correct?

5 A Yes.

6 Q So he wasn't just getting the absolute cheapest thing
7 he could get; is that correct?

8 A He just decided he wanted this better than the other
9 options.

10 Q Do you remember that?

11 A No. I'm assuming from what I see.

12 MR. WOOTEN: All right. I think that's all the
13 questions I have. I appreciate your time.

14 THE WITNESS: You're welcome.

15 THE COURT: All right. Cross-examination.

16 Is everybody good over here?

17 (WHEREUPON, the jurors indicated in the affirmative.)

18 CROSS-EXAMINATION

19 BY MS. TANKERSLEY:

20 Q Hey, Ms. Beltran.

21 I know you went through a little bit of kind of what
22 y'all's process is and -- and the interactions with
23 Mr. Mendez. But I'm going to see if we can kind of clear
24 up what all y'all just talked about back and forth.

25 All right. So you live in Atlanta now; is that

1 right?

2 A Correct. I live with my husband and my four-month
3 old.

4 Q Congratulations.

5 You testified, I believe, that you are in Greenville,
6 though, about every other week; is that right?

7 A Correct.

8 Q Okay. Back in 2017, was that still the same schedule
9 or was it different at all?

10 A I think I was here every week.

11 Q Every week back in 2017?

12 A Yeah.

13 Q Okay. And what do you do for a living?

14 A So I'm a business owner. We've been in business for
15 20 years. And that's what -- that's what I do with
16 insurance.

17 Q And the business that you own is Calidad Latina?

18 A Correct.

19 Q Okay. And you said y'all have been in business for
20 about 20 years?

21 A Correct.

22 Q Why -- why did y'all start that business?

23 A Well, the reason we started, actually, was to be very
24 proactive about explaining to our customers that don't
25 speak English how the coverages in insurance work. Those

1 are the main reason. Because I saw from the time when we
2 started, including me, how my agent didn't explain
3 anything to me on the insurance policy. And I wanted to
4 give that to our customers. And that was the reason why
5 we started. Because we saw them taking advantage of --
6 from our customers.

7 Q All right. And I believe you testified to this, but
8 y'all have locations here in -- in Greenville, and in
9 Spartanburg, and then some offices in Georgia, too; is
10 that right?

11 A Yes. We have two offices here. And we have -- we
12 have four locations in Georgia. And then the other four
13 are from employees that started working with us and wanted
14 to have their own insurance business. And so we just
15 provided them the opportunity to continue growing and have
16 their own franchise.

17 So four out of those eight are from employees that
18 started working for us and they just branched out.

19 Q And I'm going to talk a little bit about your
20 background and -- and how you came to -- to be a -- an
21 agent and then -- and an insurance agency. So what is
22 your educational background?

23 A So I went to Georgia State for finance and management
24 for undergrad. And then I did my MBA in marketing.

25 Q Okay. And do you have any -- like, hold any

1 insurance licenses?

2 A Yes, property, casualty, and life and health.

3 Q Okay. What do you have to do to -- to obtain those
4 licenses?

5 A I just had to take some hours -- 40 hours of studying
6 and take a test -- state test.

7 Q And, presumably, you passed all those tests and you
8 have your licenses?

9 A Yes.

10 Q Okay. How long have you had your insurance licenses?

11 A I would say more than 17, 18 years.

12 Q Okay. So Calidad Latina is what's considered a -- a
13 insurance broker; is that fair?

14 A Correct.

15 Q And that means y'all sell different insurance
16 companies policies. It's not just like you're a State
17 Farm agent, so you sell State Farm policies. You sell
18 lots of different companies?

19 A Correct. So we -- we are an independent brokerage.
20 So we contract with different insurance companies, mostly
21 known standard. Known standard means that they -- these
22 companies will accept people that don't have a driver's
23 license, or they have a lot of tickets, or it's hard for
24 them to get insurance in the standard market, which is
25 State Farm and those companies.

1 Q So does that mean those policies end up being a
2 little more expensive because the people that are applying
3 have some issues that kind of concern the insurance
4 companies?

5 A Well, it means that these companies are more willing
6 to accept them. And I don't think it'll be -- it is a
7 little more. But it would be even expensiver [sic] if
8 they go to State Farm, for example, because they don't
9 want them.

10 Q I got you. How many agents did the Greenville office
11 of Calidad have back in 2017?

12 A So including me, three.

13 Q Okay. And what were the other two agents names?

14 A Laura [phonetic] and Martha.

15 Q Ms. Martha and your mother?

16 A Yes.

17 Q So you, your mom, and a woman named Martha were the
18 three licensed agents at the Greenville location back when
19 Mr. Mendez took out his policy?

20 A Correct.

21 Q So he would have had to have met with one of the
22 three of you, either, you, your mom, or Laura?

23 A Right.

24 Q All right. So now, I want to talk a little bit about
25 what the process is of somebody taking out -- or coming

1 and purchasing an insurance policy. So it's my
2 understanding there are a couple of ways that somebody can
3 initiate wanting to buy a policy. They can walk in from
4 the street and say, I need insurance, tell me what my
5 options are, or a dealership can send them over saying, we
6 have somebody that wants to buy a car, but they need
7 insurance. Is that accurate?

8 A Yeah. It is accurate.

9 Q Okay. If a dealership sends somebody over for proof
10 of insurance, do they contact you ahead of time?

11 A They will give us a call and let us know we're
12 sending you a customer that wants insurance.

13 Q And do they fax over any information so you can kind
14 of get started?

15 A They will usually fax their bill of sale, the car
16 that they're purchasing so we already have their VIN
17 number, year, and model of the car.

18 Q Okay. So once you have that information from the
19 dealership, what's the next step in the process?

20 A So when the customer comes in, he says, okay, I want
21 insurance. You've already got the information from the
22 dealership. We -- we ask the customer all the questions,
23 personal questions, name, address. We ask them what kind
24 of coverage they want. We explain that the coverage is
25 right there. We input all that information into our

1 system, which is a quoting system. We give the customer a
2 price based on the coverages that they desire.

3 And we can give them around three options. They pick
4 from those three options what they want. Once they pay,
5 we'll issue -- we'll send the information to the company.
6 And the company will automatically issue a policy.

7 Q Okay. So the dealership sends over a fax or calls
8 you and says, here's the information about the vehicle
9 this person is purchasing. We're sending them over. That
10 person comes in. Then one of your agents explains to them
11 what the coverages are, what their options are based on
12 what they say they want; right?

13 A Right.

14 Q And then you input that into the computer into a
15 system. Is that system -- is that turbo writer?

16 A TurboRater.

17 Q Okay. So once you input that information into turbo
18 writer [sic], it kind of goes out into the world of
19 insurance companies. And it comes back with the quotes
20 from the various companies about this will cost this much
21 money, it'll cost this much money here, et cetera, et
22 cetera?

23 A Exactly. And the same information will give us
24 different prices from different companies. And we'll give
25 the customer three options. Usually, they want the one

1 that is more appropriate to their budget.

2 Q Okay. And as the agent -- well, I guess both for
3 giving the various quotes. The agent does explain what
4 the coverage options are and what the optional insurance
5 is as well; is that right?

6 A Right. We have to do that before because it comes
7 with a price.

8 Q Right.

9 A So -- so we explain to them, if you get all the
10 coverages including UIM or including everything, you can
11 make payments, and all that. This is the price. Is that
12 what you want?

13 No, I want something else.

14 Okay. So let me take some things off. This is what
15 you -- what you'll get for this price that you want and
16 these are the coverages that you get.

17 Q Okay. So you can -- like, if you say, you can get
18 liability insurance and -- and uninsured motorist because
19 that's what's required. But you can, also, get med pay,
20 which is optional or UIM, which is optional. Here's what
21 the price is going to be. And if they say, that's too
22 expensive, you can start backtracking and say, okay, we'll
23 take that off, here's the new price?

24 A Correct.

25 Q Okay. So then once you have, I think you said, about

1 three quotes from different companies, then at that point
2 in time is when the customer picks which one they want; is
3 that right?

4 A Exactly.

5 Q Okay. Once they pick which one they want, what
6 happens after that?

7 A Once he picks what he wants, then we submit that
8 information. We send it to the company, in this case
9 Gainsco. We send all the information to Gainsco. And
10 then Gainsco produces the application for them to sign,
11 and maybe cards, a payment schedule, anything that's --
12 that's required for their policy, too.

13 Q Okay. I think this was talked about a little bit,
14 but what are -- what are the mandatory minimum limits
15 somebody has to buy in order to get car insurance in South
16 Carolina?

17 A So the mandatory limits are 25, 50, 25, like he
18 explained. 25,000 is what someone will get for bodily
19 injury for just one person. 50,000 is the max you can get
20 if there are more than two people injured, two or more.
21 And the other 25,000 covers for property damage.

22 Q All right. So you -- you get the application or you
23 send it in to turbo writer. You -- the customer has
24 selected this policy. That goes to whoever the insurance
25 carrier is. And then they send back the form, the

1 application package?

2 A Correct.

3 Q That person would then need to sign and go over
4 and -- and fill out?

5 A Correct.

6 Q Okay. And back in 2017, you would have been --
7 e-signing wouldn't have been something that y'all were
8 doing or that, at least, MGA or Gainsco wasn't doing; is
9 that right?

10 A Correct.

11 Q Okay. So if somebody doesn't have e-signing, you
12 would print out that entire package from the insurance
13 company and present that to the customer; right?

14 A Correct.

15 Q For them to hard sign?

16 A Correct.

17 Q Okay. When the application is presented in physical
18 form, y'all hand it to the customer. Is the agent going
19 through what is in that packet of what the coverages are
20 and what all they've chosen or rejected?

21 A Yeah. I go over the coverages again. In this case,
22 it was comprehensive, collision, I believe, everything
23 that needs a signature.

24 Q Okay. And -- and you testified a little bit about
25 this with Mr. Wooten. But what do you do once the

1 customer has signed the application?

2 A So when he signs everything, we take everything back
3 and we divide the whole package in piles. So one pile
4 will be the signature pages, you know, the contract. The
5 other pile would be documents that we need to provide to
6 the customer, like, in this case Page 4. We provide the
7 ID cards. We provide the payment schedule. There is an
8 inspection report that we need to -- we are the ones --
9 agents to sign. All that comes from the package. And we
10 just separate that.

11 Q Okay. So there's really three piles of things?

12 A Uh-huh.

13 Q One is the documents that you want to keep. One are
14 the documents that you give to the customer. And then one
15 are the documents you have to send back to the company?

16 A To the company, correct.

17 Q Okay. What do you do with the remaining documents
18 that you have that y'all have to keep in your system? Are
19 you -- are that -- are those the documents you're talking
20 about that you save and scan in y'all's specific system --

21 A So the remaining -- the remaining documents don't
22 come from -- from the package. They come from the
23 customer, like, a copy of their ID, or a copy of the bill
24 of sale, anything that backs up the information that isn't
25 in the -- in the application.

1 Q Okay. And that's y'all's policy to only keep the
2 documents that you don't provide to the client; right?
3 You don't -- you don't save the handouts that they get to
4 take home with them because those don't have any
5 identifying information?

6 A Exactly.

7 Q They're just standard?

8 A They're standard documents. And we don't make a copy
9 of that because we can just print it out any time we want,
10 if need be.

11 Q Right. And so by that, you mean, like, because they
12 are the same form in every policy that an insurance
13 company gets, you can just go on that insurance companies
14 system and print that form out at any point in time?

15 A Correct.

16 Q So there's no need to save it additionally in your
17 system?

18 A Correct.

19 Q Okay. And -- and I think you testified earlier that
20 y'all would keep hard copies for about a month; is that
21 right?

22 A Yes. We keep hard copies for, like, about a month.
23 And we make sure everything is scanned. And then we
24 shred. And we just keep it in the system.

25 Q And if somebody's been sent over by a dealership to

1 get proof of insurance after you go over the application
2 packet and all that with them, do they then take the proof
3 of insurance and go back to the dealership?

4 A They take -- yeah. They take proof of insurance,
5 payment schedule, everything that comes with the package,
6 the -- the Page 4. And then they go to the dealership,
7 show them that they have a policy. And then they let them
8 drive away with their new car.

9 Q Okay. Do they have to come back to the agency to do
10 a vehicle inspection?

11 A They have to come back with the vehicle, yeah, to do
12 an inspection just to ensure the vehicle doesn't have any
13 damage.

14 Q And what do y'all -- what does that vehicle
15 inspection look like that y'all do?

16 A So we just go outside and take pictures of the car.

17 Q Make sure there's no, like, dents, or scratches, or
18 anything?

19 A Yeah.

20 Q Well, other than what they have reported, I guess?

21 A Yeah, exactly.

22 Q All right. So what we've just gone over, that is
23 Calidad Latina's general practice. That's y'all's customs
24 with all the customers that come in; is that right?

25 A Correct.

1 Q All right. So now what I want to do is talk about
2 Mr. Mendez and his policy, specifically. Because what
3 this case is, ultimately, about is a policy that
4 Mr. Mendez purchased back in March of 2017. And I know
5 y'all talked about this and there was a little bit of back
6 and forth. But this happened six years ago. So you don't
7 have any independent memory of meeting with him six years
8 ago; right?

9 A Huh-uh.

10 Q Okay. And you don't know, specifically, which of the
11 three agents met with him when he came in in March of
12 2017; is that right?

13 A Correct.

14 Q But it would have had to have been either you, Laura,
15 or your mother; right?

16 A Yeah.

17 MS. TANKERSLEY: Okay. Can I have this marked?

18 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
19 identification only.)

20 BY MS. TANKERSLEY:

21 Q All right. I'm --

22 MS. TANKERSLEY: May I approach, Your Honor?

23 THE COURT: Yes, you may.

24 BY MS. TANKERSLEY:

25 Q I'm handing you what's been marked as Defendant's

1 Exhibit No. 1. And I might use my screen for this.

2 Okay. Are you familiar with what I've handed you?

3 And you can flip through it to see if it's...

4 A Yeah. This is the application that is printed out
5 from -- no, the complete package that is printed out from
6 Gainsco before we give it to the customer.

7 Q Okay. And I don't think we, actually, went over this
8 earlier, but is it your understanding that when Mr. Mendez
9 was given his three or so options for insurance that he
10 chose the coverage with Gainsco MGA?

11 A Correct.

12 Q Okay. So once he opted into that policy, is this the
13 document that underwriting from Gainsco provided for his
14 application?

15 A Correct. That's the document that is produced on the
16 Gainsco website with his information and the coverages.

17 Q Okay. So is this -- is this the exact form that
18 would come from underwriting?

19 A Yes.

20 Q What you're looking at?

21 A Yes.

22 MS. TANKERSLEY: Your Honor, I'd like to introduce
23 this as Defendant's Exhibit No. 1.

24 THE COURT: Any objection?

25 MR. WOOTEN: No objection.

1 THE COURT: All right. It's in without objection.

2 (WHEREUPON, Defendant's Exhibit No. 1 was admitted into
3 evidence.)

4 MS. TANKERSLEY: May I publish?

5 THE COURT: You may.

6 You're going to have to hit your -- I think you need
7 to hit the -- something on there will take that off.

8 MS. TANKERSLEY: Say that again.

9 THE COURT: Hit -- hit the power button maybe, one of
10 those buttons you have to push to get that off. Hit the
11 down.

12 MS. TANKERSLEY: The down button --

13 THE COURT: The zoom button.

14 BY MS. TANKERSLEY:

15 Q All right. So looking at Defendant's Exhibit No. 1,
16 what does that first page show? And you can look at just
17 the one that's in front of you. You don't have to look at
18 the screen.

19 A So this is the summary. The first page of the
20 application -- this is the summary of his coverages.

21 Q Okay. So this is -- what does it really show that
22 he's purchased here?

23 A Okay. So it's saying here that he purchased the
24 liability policy. He purchased uninsured motorist. Those
25 two are mandatory. Then he purchased comprehensive with a

1 500 deductible --

2 Q Okay. So this -- and you can look at the screen
3 while I do this. This bodily injury liability right here,
4 that's the one that's by law; right?

5 A Correct.

6 Q And then the property damage, that's, also, by law?

7 A Correct. 25 -- it's 25, yes.

8 Q Underinsured is by law?

9 A Correct.

10 Q And then underinsured right here, that's one of the
11 optional ones; right?

12 A Correct.

13 Q And he did not purchase that because there's no
14 number right there?

15 A Correct. And no premium.

16 Q No premium. Right. So over here, there would be an
17 amount if he had purchased that?

18 A Correct.

19 Q Okay. So then looking down a little bit further, you
20 mentioned comprehensive and collision. And you -- those
21 are -- those are kind of an additional layer of insurance
22 they can get; is that right?

23 A Correct. So comprehensive and collision are
24 additional insurance that you get. So if you get into an
25 accident, you -- you still can pay even if the other

1 person doesn't pay, or if a tree falls on your car, you
2 still get paid.

3 Q Okay. So if you're at fault, your property damage
4 will be covered?

5 A Correct.

6 Q Okay. And is that, typically, what a dealership will
7 require somebody to buy?

8 A Yes. Because the dealership still owns the car.

9 Q All right. So then flipping to the -- the next page,
10 what is -- what is number -- or Page 2 about?

11 A So the other one is driver's information. And he has
12 the main person on the policy. And the second person is
13 the wife.

14 Q Okay. So this is just filling out who's -- who's,
15 actually, covered by this insurance policy?

16 A Uh-huh.

17 Q All right. Page 3, what's going on there?

18 A So those are standard questions that the company asks
19 to make sure that they understand. For example, that if
20 there is no -- they cannot drive the vehicle if it's
21 suspended, revoked, or license -- or that whoever is not
22 on the application will not be able to drive, or that
23 there is no damage to -- to the vehicle.

24 Q Okay. Looking at the next page, Page 4, what is this
25 page about?

1 A So this page explains the coverages, the minimum
2 coverages that the policy provides. It explains the
3 insured motorist and underinsured motorist. And it gives
4 the customer the option to read this carefully. And if
5 they wanted to add underinsured motorist, they can, you
6 know, call that office and --

7 Q All right. Page 5?

8 A So this is kind of like a summary of the coverages
9 that they're getting. The limit -- limits of coverages,
10 which is 25, 50, 25. Here, they're offer for underinsured
11 motorist, which they rejected. They put, no.

12 Q Okay.

13 A That's pretty much it.

14 Q So this -- this Page 1 shows what they purchased.
15 And Page 5 shows what they purchased as well, basically?

16 A Correct.

17 Q All right. So this is talking about that uninsured
18 motorist, which we've said is required by law. And then
19 this optional one is Roman numeral three, the underinsured
20 coverage. And it has the premium amount being \$55. Do
21 you wish to purchase it? It's selected, no. So that's
22 all on the application before he signs it; correct?

23 A Correct.

24 Q All right. Page 6, what, in general, is this page
25 about?

1 A This is explaining everything, again, about the
2 policy.

3 Q Okay. And in -- in bold type down here at the
4 bottom, there's language in both English and Spanish; is
5 that correct?

6 A Yes.

7 Q This next page is -- kind of looks like a -- a fax
8 cover sheet; right?

9 A Correct.

10 Q So is this what you would send back to the insurance
11 company to MGA?

12 A Correct. This is what we'll send back with a check
13 mark saying here is the proof of prior insurance. Here's
14 the proof that they didn't have an accident. Defensive
15 driver discount.

16 Q Okay. And this page here looks like a letter to
17 Mr. Mendez. And I believe you testified earlier that
18 there are some documents that you take out after the
19 application is signed. One of them is dealing with
20 discounts, whether or not somebody gets a discount. Is
21 that what this page is?

22 A Yes. That page mentions that he might get -- or
23 might get a discount based on his trans union, credit
24 score, and other -- other things.

25 Q Okay. Now, is this letter informing him that he did

1 not qualify for any of the discounts or for the best rate
2 possible?

3 A Correct.

4 Q And that is because of these three things listed
5 here?

6 A Correct.

7 Q Which are what?

8 A The customer has no bank credit card accounts. So
9 he -- they were not able to pull out his complete credit
10 score. That's why they gave him a higher rate.

11 Q Okay.

12 A I'm sorry. He doesn't have a history of personal
13 finance loans. It's one or less.

14 Q Okay. So, basically, his credit report didn't show
15 anything so they charged him -- they didn't give him any
16 sort of discount; is that right?

17 A Yeah.

18 Q All right. This next page, are these the insurance
19 cards that you have to show, like, if you get pulled over
20 by the police?

21 A Correct.

22 Q Proof of insurance, is that what this is?

23 A Yes.

24 Q Okay. And that's -- again, you testified earlier you
25 pull some documents out after they sign and give them to

1 the customer to take home. Is that one of these?

2 A Correct.

3 Q All right. ETF confirmation, what is that?

4 A EFT confirmation, that means that's -- that's a
5 receipt from the company saying that we paid it.

6 Q It's just showing we got the money?

7 A Yeah.

8 Q All right. And then the last page of the application
9 packet is what?

10 A That's the inspection report that we have to complete
11 and send it back to -- to the company.

12 MS. TANKERSLEY: I would like to mark this as
13 Defendant's Exhibit No. 2.

14 (WHEREUPON, Defendant's Exhibit No. 2 was marked for
15 identification only.)

16 BY MS. TANKERSLEY:

17 Q If you'll take a second and flip through that
18 document and let me know if you recognize it.

19 A (There was no response.)

20 Q I'm sorry. It would help if I gave it to you. All
21 right. I'm handing you what's been marked as Defendant's
22 Exhibit No. 2. Will you now flip through that and let me
23 know if you recognize it?

24 A Yes. It's the same application that is now the one
25 that he signs.

1 Q Okay. Are there any additional documents in there
2 that Calidad comes up with that are not from MGA --

3 MR. WOOTEN: Your Honor, could we approach?

4 THE COURT: Yes.

5 (WHEREUPON, a bench conference was held.)

6 THE COURT: Let's just take a short break.

7 How --

8 MS. TANKERSLEY: I mean, we've just got to go through
9 his --

10 THE COURT: Let's just take a short break. How about
11 that?

12 And I'm going to give y'all -- tell y'all, on the
13 break, don't discuss the case. But go ahead and select a
14 foreperson. And when you've selected the foreperson,
15 please, give the name to the bailiff and they'll let me
16 know.

17 So we'll bring you back out in just a few minutes.

18 (WHEREUPON, the jury was excused from open court at
19 approximately 3:43 p.m.)

20 THE COURT: We've been going an hour and 45 minutes
21 and the jury was looking at me.

22 So we can -- we can discuss this.

23 Yes.

24 MR. WOOTEN: Your Honor, the document I think she's
25 about to try and introduce -- and I don't think it was

1 ever produced in discovery.

2 MS. TANKERSLEY: It -- it's -- all of it has been
3 produced in discovery.

4 MR. WOOTEN: I've never seen it.

5 MS. TANKERSLEY: It -- it's the same -- it's the
6 signature pages, plus the application pages.

7 MR. WOOTEN: Your Honor, there is only one time that
8 Page -- this has got Page 4 in it. And there's only one
9 time that's ever appeared and that's that e-mail that I
10 was asking her about.

11 MS. TANKERSLEY: And it's --

12 MR. WOOTEN: And it's, also, got the -- this
13 reimbursement motor club page, which I don't believe I've
14 ever seen.

15 MS. TANKERSLEY: You asked her about the
16 reimbursement motor club in her deposition.

17 MR. WOOTEN: No, no. The -- the second page.

18 THE COURT: Why don't y'all look at that and discuss
19 that. And we're going to take a break.

20 MR. WOOTEN: Okay.

21 THE COURT: And you're -- Ms. Beltran, you're in what
22 I call my witness bubble. Once you start testifying, you
23 can't discuss your testimony with anyone. Okay.

24 THE WITNESS: Okay.

25 THE COURT: You can step down. And we'll bring you

1 back up. But don't discuss your testimony.

2 THE WITNESS: Okay.

3 THE COURT: Okay. Thank you.

4 We'll take a seven-minute break.

5 (WHEREUPON, a break was taken.)

6 THE COURT: All right. Did y'all resolve your
7 differences, or do I need to get involved?

8 MS. TANKERSLEY: You've got to get involved.

9 THE COURT: All right. So -- you can sit down.
10 Everybody sit down, except you Mr. Wooten.

11 MR. WOOTEN: Your Honor, our objection is this
12 document has never been produced in discovery. We were
13 sitting here talking -- well, I'll let Jeanmarie say what
14 it is. But, apparently, it's something that she just put
15 together where she put the forms and the signature forms
16 to make it look like it's a complete set of documents.

17 MS. TANKERSLEY: Yeah. So all this is a combination
18 of what's already been entered into evidence, which is the
19 application from MGA, plus the signature documents into
20 one. And then the question will be, is this what it would
21 look like once the person has, like, gotten it and signed
22 it?

23 THE COURT: So what is your objection?

24 MR. WOOTEN: Well, Your Honor, one, it was never
25 produced in discovery. And, two, I think it's --

1 THE COURT: I mean, all the documents were. She has
2 just --

3 MR. WOOTEN: Well, for instance, the page that is
4 the -- Page 2 of 3 of the motor club reimbursement hasn't
5 been -- that was never produced.

6 You're giving me -- you're giving me the look like
7 you're going to deny my objection.

8 THE COURT: No. I'm really just trying to figure
9 out -- and I'm just -- no, I'm really not. I haven't
10 got -- actually, it's very blank up here at the moment.

11 MR. WOOTEN: Sure, Your Honor. I guess it's -- like,
12 there were no pictures of the car wreck and to be trying
13 to introduce pictures that I got made to say this is what
14 it would have looked like, you know --

15 MS. TANKERSLEY: But -- but it's not. Because these
16 are all documents that exist in real life. They've just
17 been --

18 THE COURT: Well, I mean, if -- if there's a document
19 in there that it was not produced in discovery, then take
20 that out.

21 MS. TANKERSLEY: Well, yeah. So there's -- and --
22 and to explain it, he asked her in her deposition about
23 this reimbursement motor club. She had just, like with
24 Page 4, taken out the page that doesn't have signatures on
25 it and given it to the insured. It's not material to the

1 UIM selection rejection form. So I just got a copy of it
2 and put it in so that it was complete. But if he wants me
3 to --

4 THE COURT: If it wasn't -- if it wasn't in -- in
5 discovery, then go ahead and you can take that out.

6 MS. TANKERSLEY: Yeah.

7 THE COURT: And the rest of it I realize is not in
8 the format. But the way she's showing it, you can -- I
9 think that's subject to your cross-examination.

10 All right. Just for timing purposes --

11 MS. TANKERSLEY: I don't think I'll take that much
12 longer with her. I just have to go through --

13 THE COURT: Right. And I'm not trying to cut you
14 off. And then --

15 MS. TANKERSLEY: Yeah.

16 THE COURT: -- I mean, it's 4:00 now. Are -- is the
17 next witness short or -- not their size, but, I mean, in
18 length.

19 MR. WOOTEN: Your Honor, Mr. Thames I think may be
20 the shortest expert witness in history.

21 THE COURT: Well, I mean, that's -- he looks pretty
22 tall, but...

23 Y'all are supposed to laugh. It's late. Okay.
24 That's fine. Well, let's -- I mean, because I don't want
25 to -- I mean, because I don't want to go beyond 5:00 today

1 since we're coming back tomorrow anyway.

2 MR. WOOTEN: Okay. And, Your Honor, just for
3 housekeeping, our interpreter, she can --

4 I think you can be here tomorrow morning; right?

5 THE INTERPRETER: I can, yes.

6 MR. WOOTEN: Okay. She can be here tomorrow morning.
7 So we can do any Spanish speaking witnesses then. Because
8 those will be our next and then the designations with MGA
9 in the deposition.

10 THE COURT: All right. So are you ready for the
11 jury?

12 Did they pick a foreperson?

13 THE BAILIFF: They're working on it.

14 THE COURT: Oh, if they're having this much trouble,
15 then we might as well plan on being here Thursday.

16 THE BAILIFF: I think one of them is a teacher.
17 They -- they had to have a secret ballot. I'll be -- I'll
18 be right back.

19 MR. WOOTEN: Can I send her home?

20 THE COURT: I don't care. I mean, if you don't need
21 her, I don't. I mean, no offense.

22 MR. WOOTEN: If we're just going to do one more
23 witness after her, then --

24 THE COURT: Okay. Yeah. That's fine.

25 Is the Plaintiff ready?

1 MR. WOOTEN: Yes, Your Honor.

2 THE COURT: Is the Defendant ready?

3 MS. TANKERSLEY: Yes, Your Honor.

4 THE COURT: I guess we're ready.

5 (WHEREUPON, the jury came into open court at
6 approximately 4:05 p.m.)

7 THE COURT: All right. Ms. Laird, I understand you
8 are the foreperson.

9 JUROR #51, ANGELA LAIRD: Yes.

10 THE COURT: And we'll try to get you a little better
11 paper to write on.

12 If you'll make that an exhibit, Madam Court Reporter.

13 (WHEREUPON, Court's Exhibit No. 1 was marked for
14 identification and admitted into evidence.)

15 THE COURT: All right. You may proceed with your
16 cross-examination.

17 MS. TANKERSLEY: Thank you, Your Honor.

18 CONTINUED CROSS-EXAMINATION

19 BY MS. TANKERSLEY:

20 Q All right. Ms. Beltran, I have handed you what's
21 been previously marked as Defendant's Exhibit No. 2. I
22 believe I was asking you to flip through that. Have you
23 had an opportunity to flip through?

24 A Yes.

25 Q Okay. Is that -- is what you're looking at there,

1 basically, what the completed application would look like
2 after the insured -- or Mr. Mendez in this case signed the
3 documents?

4 A Correct.

5 Q Okay. And -- and I want to point one thing out.
6 With the exception of -- if you flip to the first
7 reimbursement motor club page -- it's towards the back.
8 Okay. And that has Page 1 of that and Page 3 of that;
9 right?

10 A Correct.

11 Q Okay. And there's a Page 2 that would have been
12 provided to the customer, but is not in this package; is
13 that right?

14 A Correct.

15 MS. TANKERSLEY: All right. I'd -- I'd like to
16 introduce this as Defendant's Exhibit No. 2.

17 THE COURT: All right. Any objection?

18 MR. WOOTEN: None, Your Honor.

19 THE COURT: All right. It's in without objection.

20 (WHEREUPON, Defendant's Exhibit No. 2 was admitted into
21 evidence.)

22 MS. TANKERSLEY: Okay. May I publish this to the
23 jury?

24 THE COURT: Yes, you may.

25 BY MS. TANKERSLEY:

1 Q Okay. So I'm going to refer to this kind of as the
2 executed application.

3 A All right.

4 Q All right. So looking at that, the -- the Page 1 of
5 this thing would be the exact same form after he signed
6 the application as it was before he signed it; right?

7 A Right.

8 Q Same as the one that we were just looking at?

9 A Correct.

10 Q It shows what he purchased and it, also, shows what
11 he did not purchase; correct?

12 A Correct.

13 Q Okay. Number two would be the same page that we were
14 looking at before, except he's signed it; is that correct?

15 A Correct.

16 Q All right. So in the middle of the page, that's
17 Mr. Mendez's signature; is that right?

18 A Correct.

19 Q Okay. And -- and looking at that, I know it's kind
20 of scribbly, but it looks like there's a "P." Is it your
21 understanding that his middle name is Palifax -- Palafox?

22 A Correct.

23 Q Okay. Because that's up there on the form.

24 All right. Page 3, same thing. This is the same
25 page that it was previously, but now, he's signed it down

1 there at the bottom; is that right?

2 A Yes.

3 Q All right. Page 4, which is that explanation of some
4 of the uninsured and the UIM coverage, as well as what
5 state requirements are, that hasn't changed at all because
6 there's no signature, or anything; right?

7 A Correct.

8 Q All right. Page 5, this is the same page that it was
9 in the original application, except now, he has signed it
10 in two places; is that accurate?

11 A Correct.

12 Q Okay. The -- the first place that he has signed is
13 this offer of optional underinsured motorist coverage. So
14 that's an offer of UIM coverage; correct?

15 A Correct.

16 Q Okay. And before he ever signed, it showed that he
17 could purchase it up to the limits of \$25,000 for an
18 additional cost of 55 bucks; right?

19 A Correct.

20 Q Okay. And then here, it says, No. He signed it
21 rejecting UIM coverage; right?

22 A Correct.

23 Q That is the -- the purpose of this section of this
24 form is to ensure that he knows that he is rejecting this
25 coverage?

1 A Correct.

2 Q Okay. And then down here, what is he signing in the
3 second part of the page?

4 A So he's acknowledged that everything has been
5 explained here regarding uninsured motorist coverage and
6 optional uninsured motorist coverage. He acknowledged
7 that he's rejecting it and just signed it.

8 Q Okay. And it says, By my signature, I acknowledge
9 that I have read or I have had read to me the above
10 explanations and offers of underinsured motorist coverage
11 and optional UIM coverage; correct?

12 A Correct.

13 Q Okay. I understand the above explanations of these
14 coverages are intended only to be brief descriptions of
15 uninsured motorist coverage and optional UIM coverage.
16 And that payment of the benefits under either of these
17 coverages is subject both to the terms and conditions of
18 my policy?

19 A Correct.

20 Q All right. And he signed acknowledging that; right?

21 A Yes.

22 Q Okay. This page and -- and the previous page before
23 it, is it your understanding that this explanation page,
24 plus this kind of break down of what the coverages are and
25 the selection rejection, that that's the form that the

1 Department of Insurance provides?

2 A Correct.

3 Q And that insurance companies use that form to comply
4 with the law?

5 A Exactly.

6 Q Okay. On the next page, which is Page 5, again, the
7 same one as the previous document that we went over,
8 except now, he has signed it and you have signed it; is
9 that right?

10 A Correct.

11 Q All right. And -- and what are you -- when you sign
12 down here under "Agent's Statement," what are you
13 certifying with your signature?

14 A That everything that -- all the information that he
15 provided, it's -- it's the same in the application. And
16 that I explained everything that's in the application.

17 Q All right. Then looking at this one, this is, again,
18 just that same letter to Mr. Mendez telling him that he
19 didn't get the best rate because of his credit score;
20 right?

21 A Correct.

22 Q All right. Page 8, it's still the exact same proof
23 of insurance forms?

24 A Yes.

25 Q Or proof of insurance cards, rather?

1 A Correct.

2 Q All right. Now, this one's new. And I know you
3 testified about it a little bit when you were speaking
4 with Mr. Wooten. But what is this reimbursement motor
5 club form?

6 A So this is the application to -- for -- for him to
7 have towing -- towing and rental service.

8 Q Okay. And this form is, also, in English; right?
9 It's not in Spanish?

10 A Yes.

11 Q Okay. But he opted in to this?

12 A Correct.

13 Q And then these numbers one through -- 1 of 3, and
14 then 3 of 3, so the explanation document is just not in
15 this package; correct?

16 A Correct.

17 Q Or -- well, what is Page 2?

18 A So Page 2 explains what -- what the actual coverages
19 are for him to make a claim in case he needs to make a
20 claim regarding towing and rental.

21 Q Okay. And -- and it looks like at the top of Page 3
22 here, it says, Oklahoma, Tennessee, Wisconsin, Wyoming.
23 So does Page 2 cover the rest of the states --

24 A The states, uh-huh.

25 Q All right. Got you. But it doesn't require any sort

1 of signature?

2 A Right.

3 Q Okay. So he signed down here. You signed as well
4 acknowledging that the membership's voluntary and that
5 he's opting into that coverage; right?

6 A Correct.

7 Q Okay. The vehicle inspection form -- or report, this
8 is, again, the same one from the original application that
9 you were sent by MGA, except now y'all have filled in some
10 information about the inspection; right?

11 A Correct.

12 Q It has the condition of the vehicle down here. And
13 then he signs it and you sign it; is that accurate?

14 A Correct.

15 Q All right. What is this -- this is in Spanish,
16 obviously. So if you can explain to us what it is, but
17 it -- translate it in English.

18 A Okay. So it says, For the customer that's involved,
19 we have explained clearly in -- in detail that the members
20 of the family, like, family members, son, daughters, or
21 people that live in the household and drive the vehicles
22 have to be included in the policy in case of an accident
23 or a claim to the policy. The drivers that is -- are not
24 included in the policy will not be covered.

25 Q Okay. So --

1 A And then it says, The customer accepts this form --
2 this vehicle -- this policy under these conditions. And
3 the rest is, again, describing what coverages he has
4 purchased. So he has liability, uninsured motorist, plus
5 collision and comprehensive.

6 Q So he has two different vehicles on the policy;
7 right?

8 A Yes.

9 Q So this first one is -- he has the minimum
10 requirements by law on the first vehicle. And on the
11 second vehicle, he has the minimum requirements from the
12 dealership; is that accurate?

13 A Correct.

14 Q Do you have any reason to believe that Mr. Mendez was
15 not provided with every page of this application that he
16 signed, including this page that does not require a
17 signature?

18 A No, ma'am.

19 Q And earlier, Mr. Wooten was asking you about some of
20 your deposition testimony. On, I believe, Page -- do you
21 still have your depo in front of you, the book
22 with your --

23 A Yes.

24 Q On Page 45 -- and I just want to make sure we clarify
25 that. Because that was, actually, when I was asking you

1 questions in your deposition. And I asked a bad question.
2 I tried to clean it up in the transcript. So I want to
3 clean it up for everybody now.

4 So I asked -- looking at Line 10 on Page 45 -- well,
5 actually, we'll start at Page 6 -- I mean, Line 6 to
6 explain why my question was not great.

7 I asked, I've -- I've just got a couple. Do you
8 believe that Mr. Mendez was given that Page 4 when he was
9 signing the rejection form?

10 And do you see your response there?

11 A Yes.

12 Q And what did you ask?

13 A Do I believe it was given to him?

14 Q And I said, Yes. That the entire Pages 1 through 6
15 were provided to him when he was signing them?

16 What was your response?

17 A Everything we have the customer to sign, we just give
18 it to him -- to them.

19 Q Okay. And -- and then I ask again. And -- and this
20 is my question that was kind of confusing. Any reason to
21 believe he was not provided with Page 4 of that packet?

22 And what's your response at that time?

23 A I said, I'm not sure if it wasn't provided.

24 Q Yeah. I'm not sure if it wasn't provided.

25 So then I try to make my question make more sense and

1 ask, When you provide the UIM rejection forms to people
2 and they sign the hard copies, do you give them Pages 1
3 through 6 to sign?

4 Yes.

5 And I ask, Is that a "yes"?

6 And what is your response?

7 A Yes.

8 Q Yes. Okay. So I apologize for the poor questioning.
9 But I wanted to make sure that everybody was on the same
10 page about what you were testifying to at that point in
11 time. Because that is consistent with your testimony
12 today; right? That you have no reason to believe he
13 wouldn't have been given this one page out of the entire
14 application?

15 A Correct.

16 Q All right. If you'll look at what's already been
17 provided to you that's Plaintiff's Exhibit No. 3. And
18 flip through that for me, if you will.

19 A To which page?

20 Q No. Sorry. Just, like, look at it. Because I'm
21 going to ask questions. I'm sorry.

22 And you've -- you've identified this previously as
23 the documents that you had provided in response to a
24 subpoena; right?

25 A Right.

1 Q Okay. Are these the documents that you saved in your
2 system from the application?

3 A Correct.

4 Q All right. And I -- I know that this is kind of
5 harped on in this case. I want to make sure that we're
6 very clear as to what the system is.

7 So that -- that document right there, Plaintiff's
8 Exhibit No. 3, is all of the documents that you take after
9 the completed application, which we just looked at. You
10 separated them into three different piles. You send some
11 home with the Plaintiff -- or with the Plaintiff's
12 husband, Mr. Mendez, you send some back to MGA, and the
13 other ones you upload into your system; right?

14 A Correct.

15 Q Okay. And then, again, the original application from
16 Gainsco that has all the information, but none of the
17 signatures, that is, also, still saved. It's just -- or
18 it comes directly from them. And if you ever want to go
19 back and get standard forms, you can just go to Gainsco
20 and get the standard forms out?

21 A Correct.

22 Q Okay. So I want to go through what you saved and why
23 you decided to save it, or that that's the general
24 practice of what you saved. So Page 1, you've saved that
25 in your system; right?

1 A Correct.

2 Q And that has the information, but no signature;
3 correct?

4 A Correct.

5 Q And why -- so why do you save that page?

6 A So -- because it is pretty much the only page that
7 contains -- well, not the only, but it's just a summary of
8 everything. So if I don't save it, I don't know what the
9 rest of the pages are.

10 Q And if y'all have an audit, or something, you have to
11 be able to provide this type of information; right?

12 A Correct.

13 Q So what his policy is, what his premium is, you save
14 all of that.

15 All right. Page 2 that has a signature, so you
16 again --

17 A Save.

18 Q Save it for purposes of showing what the application
19 is, showing who the drivers are, and that he's signed it?

20 A Correct.

21 Q Page 3, he indicated, you know, yes or no to these
22 questions that are on it. And then he signed agreeing to
23 that. So why do y'all save Page 3?

24 A Because it has a signature in there.

25 Q Okay. Now, Page 4 of the document we were just

1 looking at has that list of explanations. It is not saved
2 in this packet?

3 A Correct.

4 Q Why do you not save it in this packet?

5 A Because we give the explanation of coverages to the
6 customer.

7 Q You hand it to him and he takes it home?

8 A Correct.

9 Q All right. This page, Page 5, this, again, is the
10 page where he says -- or where it shows in the
11 application, you can buy underinsured motorist coverage
12 for \$55 and these are the limits you get. He said, no.
13 He signed, no. And he signed again down here
14 acknowledging that he has read it or had it read to him,
15 the above explanations of UIM coverage.

16 So you keep this page because, again, it shows what
17 he has selected, what he hasn't selected, and his
18 signature; right?

19 A Correct.

20 Q All right. Same with the -- the next page. This is
21 the one that's in English and portions in Spanish where he
22 signs and you signed. So you save that one; right?

23 A Correct.

24 Q Okay. Reimbursement motor club. This is what we
25 were talking about is that additional optional policy;

1 right? Towing and things like that?

2 A Right.

3 Q All right. It's in English. He opted into it. Why
4 do you save this first page that doesn't have a signature?

5 A Because it has his information in there that -- all
6 the information in there.

7 Q Okay. It's got details specific to him?

8 A Right.

9 Q Now, that's Page 1 of 3 here at the bottom. Then we
10 go to Page 3 of 3. So you did not save Page 2 of that in
11 your system; right?

12 A Right.

13 Q And why not?

14 A Because it doesn't have signatures on it. And it's a
15 page that we give to the customer.

16 Q Okay. It just details the other stated stuff we were
17 talking about; right?

18 A Right.

19 Q So they get to take it home. If they want to read
20 more about it, they can read more about it?

21 A Right.

22 Q The vehicle inspection report, y'all save that
23 because it details the vehicle information, as well as his
24 signature; right?

25 A Correct.

1 Q And that might be something that comes up later.

2 All right. This document here is new. That wasn't
3 in either of the two packets we looked at before. What --
4 what is that?

5 A That's the bill of sale from the dealership.

6 Q Okay. So this is what the dealership sends you
7 showing that he's paid for this vehicle?

8 A Yes.

9 Q Okay. And so why do you save that in your system?

10 A Because we want to make sure that the vehicle that
11 we're insuring is the same as the bill of sale. Like, we
12 just want to make sure it has the VIN number and
13 everything's correct. We don't want to insure the wrong
14 vehicle.

15 Q All right. And then this last one is the -- or not
16 last one, but this form here is the last form we went over
17 where it, again, confirms what his policy is, what he's
18 purchasing. And he signs it. This form is in Spanish.
19 You save that, obviously, again because of his signature
20 pages. And it talks about what he purchased; right?

21 A Correct.

22 Q Okay. This last one, I believe that's a -- is that a
23 receipt?

24 A Correct.

25 Q Okay. And you, again, save that showing what he paid

1 that day for the policy?

2 A Right.

3 Q Because that's specific to him. Okay. So
4 Plaintiff's Exhibit No. 3, the subpoena response, which
5 is, again, all of the documents you've saved in your
6 system. In looking at this, plus the document that would
7 have been the full application that you -- or whoever the
8 agent was that met him would have given him while he was
9 signing. You took out from that -- you took out the Page
10 4; right? Because it's -- your testimony is that's a
11 handout, that's something that you give to the customer?

12 A Correct.

13 Q And is there, like, a 30-day window where they get to
14 change their policy if they want to add UIM or not?

15 A Exactly. So the -- Page 4 explains the coverages and
16 the minimum limits that they have. And at the bottom, it
17 says, If you change your mind and you would like to have
18 UIM, you can come to the office, which the address is
19 there, or give us a call and we'll change it.

20 Q Okay. So that's on this Page 4?

21 A Correct.

22 Q So you -- when you separate and make your three
23 piles, this -- this non -- or this standard form which has
24 no signatures, no identifying information, but has
25 explanations that are helpful to the customer, you take

1 out of the application; correct?

2 A Correct.

3 Q All right. Then you would, also, take out this
4 letter to Mr. Mendez?

5 A Correct.

6 Q Because that's, also, something that's directed to
7 him, has information for him. So you don't need to keep
8 it?

9 A Right.

10 Q Okay. So you take that out. You take out the proof
11 of insurance cards?

12 A Correct.

13 Q You give -- give that to him?

14 A They need to have that in their car.

15 Q And do they have to go and take that to the
16 dealership, too?

17 A Correct.

18 Q Okay. So you take that out. You take out that
19 second page that we talked about of the motor club?

20 A Correct.

21 Q Because that is something the customer would need the
22 information?

23 A Correct.

24 Q And nothing that you need to save in your system?

25 A Right.

1 Q All right. And then you've, also, taken out the
2 original application from Gainsco. You have, also, taken
3 out the, like, document that looked like a fax kind of
4 cover sheet telling you what you needed to send to the
5 company; right?

6 A Correct.

7 Q This document requirement page you take out?

8 A The fax cover sheet for Gainsco.

9 Q Okay. And then the proof of payment that's provided,
10 this ETF confirmation, you take that out, too; right?

11 A Correct.

12 Q This thing that was in the original document?

13 A Right.

14 Q Okay. And so then what remains is what you save in
15 your system, and what you have produced in this case, and
16 what you've produced to Plaintiffs attorney showing all --
17 what was saved in your system; is that accurate?

18 A Correct.

19 Q Okay. I know we've talked about this, but I want to
20 make sure that it is clear. It is Calidad Latina's
21 general practice and y'all's customs and policy when you
22 meet with a customer to explain to them both orally
23 verbally, and by handing them those forms in writing what
24 their options are for insurance coverage?

25 A Yes, it is.

1 Q Okay. And when you were explaining that both
2 verbally and on the form, you explain what their -- what
3 the limits of the optional coverage are; right?

4 A Correct.

5 Q And that was what's on Page 5. It shows that he
6 could only get 25,000 of UIM because that's how much he
7 purchased for liability?

8 A Uh-huh.

9 Q Okay. On the form on Page 5, which we noticed, it
10 says that he could purchase it for \$55. That's something
11 he saw, signed right underneath it; right?

12 A Correct.

13 Q Okay. So y'all -- y'all notify them on the form and
14 then, also, verbally of what the premium increase would
15 be?

16 A Correct.

17 Q Okay. Earlier you testified that it's likely that a
18 number of your customers that come in probably don't
19 understand all the nuances or really all the coverages of
20 insurance; is that fair?

21 A Yeah.

22 Q Okay. What do y'all do to remedy that?

23 A Well, we explain.

24 Q Okay.

25 A I mean, our -- our biggest reason why we're in

1 business is to educate the customers and to explain to
2 them the coverages, and everything that's covered, what's
3 not covered so they don't get in trouble.

4 Q Okay. And that's sort of what you talked about
5 earlier; right? That you developed this company, Calidad
6 Latina, to serve primarily the Hispanic community; right?

7 A Correct.

8 Q And that's to make sure that y'all can explain in
9 English or in Spanish, if that's the language that they
10 speak, what their options are for insurance?

11 A Correct.

12 Q Okay. And -- and I assume your mother and the other
13 agent, also, are both fluent in both English and Spanish?

14 A Yes.

15 MS. TANKERSLEY: All right. That's all the questions
16 I have for you. I appreciate your time.

17 THE COURT: All right. Redirect.

18 REDIRECT EXAMINATION

19 BY MR. WOOTEN:

20 Q All right. Ms. Beltran, you don't remember who met
21 with Alfredo when he went in to get that policy, do you?

22 A I don't.

23 Q And there's no way to tell who met with him, is
24 there?

25 A No.

1 Q And so we don't know who met with him. We don't know
2 how long they met for, do we?

3 A No.

4 Q We don't know what was said to him, do we?

5 A We have standards in the agency. So what was said to
6 him pretty much is the standard.

7 Q But you don't, actually, know what was said to him.
8 There's no way to know if that standard was followed, is
9 there?

10 A Correct.

11 Q Okay. You don't know how long they met with him, do
12 you?

13 A Correct.

14 Q And you don't know what was explained to him, do you?

15 A Correct.

16 Q Okay. And you don't even know who was working in
17 Greenville at that time, do you?

18 A Do you mean that day, specifically?

19 Q At that time period?

20 A Right now off the top of my head, no.

21 Q Okay. A few minutes ago you said that you -- that
22 they were supposed to take pictures when they took his --
23 when they got his policy; correct?

24 A Correct.

25 Q And there were no pictures that were ever produced in

1 your file, was there?

2 A They were not sent, yes.

3 Q Okay.

4 A The pictures that we sent are not required by the
5 company. We just take an extra step to take pictures.

6 Q Okay. And when you sent us your complete file, it
7 didn't include pictures, did it?

8 A No. We didn't think it was necessary.

9 Q All right. Let's look at Defendant's Exhibit No. 1,
10 please. And, again, this document is all in English,
11 except for the sentence or two at the very end; correct?

12 A Correct.

13 Q And so if Mr. Mendez couldn't read English, he
14 wouldn't know what any of this meant, would he?

15 MS. TANKERSLEY: Objection, Your Honor. He's already
16 gone over this with direct.

17 THE COURT: All right. Yeah. Limited -- I'll let
18 you go forward a little bit, but don't -- just don't
19 rehash.

20 MR. WOOTEN: Okay.

21 BY MR. WOOTEN:

22 Q Let's go to Page 5 of this document. Are you on Page
23 5 there, or can you see it up there?

24 A Yeah.

25 Q When you look there, that was, actually, prefilled in

1 by the company. It was not filled in by Mr. Mendez, was
2 it?

3 MS. TANKERSLEY: Your Honor, same objection. He
4 had -- he introduced the signature pages into evidence --

5 THE COURT: Well, I think this is a little different.
6 I'm going to let him go with this.

7 BY MR. WOOTEN:

8 Q Okay. So this part was filled in prior to Mr. Mendez
9 doing anything; correct?

10 A Correct. So when we input all the information given
11 by him to us, we put in all the information. We explain
12 the coverages. That's when we pick and choose what
13 coverages he wants. And it gets prefilled in the system.

14 Q Okay. So, again, that check mark that says, "No,"
15 that was -- that's put in by a computer. That's not put
16 in by Mr. Mendez; correct?

17 A Correct.

18 Q Okay. Let's look at this document that was
19 introduced. I believe it's Defendant's Exhibit No. 2.
20 And if you can look at Defendant's Exhibit No. 2 there,
21 just to be clear, you don't have this document, do you?

22 A I don't -- this document? This one?

23 Q Yes, ma'am.

24 A The first page?

25 Q Uh-huh.

1 A I do have it.

2 Q That's, actually, something Ms. Tankersley put
3 together for this trial, isn't it?

4 MS. TANKERSLEY: Objection, Your Honor. That is --
5 the first page he has introduced into evidence, so the
6 second page and the third page --

7 MR. WOOTEN: Your Honor, I believe the testimony
8 earlier was that this is what it would have looked like if
9 it, actually, existed.

10 THE COURT: What's your objection?

11 MS. TANKERSLEY: The objection is that he's
12 misconstruing testimony. He's saying that I've created
13 Page 1. He just asked if this is Page 1. Page 1 is a
14 document that he's introduced into evidence.

15 MR. WOOTEN: No. Your Honor, I think my question
16 was, isn't this document all the pages combined?

17 THE COURT: You said, Page.

18 MR. WOOTEN: Oh, excuse me.

19 THE COURT: Yeah. That -- you said, Page.

20 MR. WOOTEN: Excuse me. I misspoke. I'll ask that
21 question again.

22 BY MR. WOOTEN:

23 Q This document doesn't, actually, exist, does it?

24 A This?

25 Q Yes, ma'am?

1 A The complete package?

2 Q Yes, ma'am.

3 A I don't know what you mean by that, really.

4 Q Well, there's -- I believe your testimony earlier was
5 that you only scanned signature pages; right?

6 A We scan signature pages for the application, yes.
7 And I, also, said that I, also, scan the other pages
8 separately.

9 Q Okay. I believe you said that -- I'm sorry. Wasn't
10 your testimony today that you give Page 4 to the customer?

11 A Yeah.

12 Q Okay. So you give Page 4 to the customer and you
13 scan it?

14 A No. I scan the other pages. Like, for example, the
15 towing and rental, or the inspection form, or this form
16 that we created in our agency, we scan it separately.

17 Q Okay. And there's nowhere -- there's no document on
18 your system that looks like that document, is there?

19 A You mean like one PDF with everything here?

20 Q Yes. Yes, ma'am.

21 A No.

22 Q Okay. So that's just what you say it would have
23 looked like when he -- when it was presented to him;
24 correct?

25 A Correct.

1 Q But we don't know if that's, actually, what it looked
2 like when it was presented to him or not, do we?

3 A That's how everything gets printed off so we can give
4 it to him so he can sign it.

5 Q Yes, ma'am. But that's not what was printed off.
6 That's got signature pages; correct, that are, actually,
7 signed?

8 A It has everything in there, including Page 4. So
9 we -- we print out everything that comes out and we give
10 it to him. He signs everything. Then we take it and we
11 separate it into piles.

12 Q Yes, ma'am. And, apparently, somebody took those
13 piles and put them back together to create that document
14 for this trial; correct?

15 A Probably.

16 Q There's no way to say if that was, actually,
17 presented to Mr. Mendez, is there?

18 A Our practices are to print everything, give it to the
19 customer. He'll sign where he needs to sign. We'll get
20 back everything. And we just separate it into different
21 piles. And we scan it with different names so we know
22 exactly what's in -- in the whole package.

23 Q And let's look to see if it's the same in other
24 documents. Let's go to the agent's statement there on
25 Page 6. All right. Again, Ms. Beltran, it says that you

1 certified that, to the best of your knowledge, all
2 information contained herein is correct and complete. The
3 statements herein are those of the applicant. This
4 application and any attachments have in all respects been
5 prepared in accordance with the terms of MGA Insurance
6 Company, Inc., South Carolina, personal auto program rules
7 manual. And the applicant legally signed the application
8 for insurance. I'm legally qualified to submit this
9 application for insurance. And then you signed it;
10 correct?

11 A Uh-huh.

12 Q But you don't know if you, actually, met with him;
13 correct?

14 A Yeah. If it wasn't me, it was one of my agents.

15 Q Okay. And so you don't, actually, know if any of
16 that's correct, do you?

17 A There is no other way to not be because everything is
18 there.

19 Q Yes, ma'am. But you sign all policies, don't you?

20 A Yeah.

21 Q Okay. So you don't go and ask every agent whether or
22 not they complied with all the -- the rules and
23 requirements every time a policy is issued, do you?

24 A Yeah, we do. And, actually, it is harder to just
25 take things out, instead of just print everything and give

1 it to the customer for him to sign. I mean, it's more
2 work to take -- take things out. So I don't see why not.

3 Q I'm sorry. What?

4 A I don't see why not we would not just print out
5 everything and just give it to the customer.

6 Q Okay. You don't just give them the signature pages
7 to sign to get them out of there quicker?

8 A No.

9 Q Let's look at Plaintiff's Exhibit No. 3.

10 MS. TANKERSLEY: Plaintiff's Exhibit No. 3 is an
11 exhibit that he introduced and has argued on behalf of --

12 THE COURT: Where do you plan on going?

13 MR. WOOTEN: Your Honor, I was just going to ask her
14 about the fact that she inserted this page in based on
15 what she testified with Ms. Tankersley was her practice.

16 THE COURT: I think that's been gone over several
17 times.

18 MR. WOOTEN: Okay. Am I making my point?

19 (WHEREUPON, there was no response.)

20 MR. WOOTEN: I was just kidding.

21 BY MR. WOOTEN:

22 Q All right. Ms. Beltran, the last thing I'll ask you
23 about, prior to -- or you just testified a second ago --
24 or a few minutes ago that your procedure was to only scan
25 the signature pages; correct?

1 A We scan the signature pages for the application. And
2 we scan the other things as well, but not together.

3 Q Okay. And when I deposed you back in 2020, your
4 testimony then was that you scanned all the pages;
5 correct?

6 A Yeah.

7 Q And you said you didn't take out the signature pages;
8 correct?

9 A So we -- again, so we scan the signature pages first
10 in one document. And then we scan everything else
11 separately just to know what's in -- in the file.

12 Q Okay. So, again, question: And so prior to
13 e-signing when someone would sign a document, you would
14 save --

15 MS. TANKERSLEY: Your Honor, objection --

16 BY MR. WOOTEN:

17 Q -- all the --

18 THE COURT: Hold on. Objection.

19 MS. TANKERSLEY: He's already gone through this
20 testimony with her before. He's trying to get a second
21 bite at the apple by rehashing his prior questions.

22 THE COURT: Sustained.

23 MR. WOOTEN: Okay. That's all I have.

24 THE COURT: All right. You may step down,
25 Ms. Beltran.

1 Counsel, can y'all approach.

2 MS. TANKERSLEY: Your Honor, may I ask to -- well, we
3 can do it when we approach.

4 (WHEREUPON, a bench conference was held.)

5 THE COURT: All right. Ladies and gentlemen, in
6 talking with them, it looks like we have a witness that's
7 from out of town. He's supposed to be very short. But it
8 may run us a little past 5:00.

9 Does anybody need to make any calls or anything if we
10 go a little past 5:00?

11 (WHEREUPON, there was no response.)

12 THE COURT: All right. We'll take a short break and
13 make whatever arrangements you need to make.

14 Can you not go past 5:00 or do you --

15 UNIDENTIFIED JUROR: No. I can. Do you know how
16 long after 5:00?

17 THE COURT: No. Just -- from what they're telling
18 me, not very long.

19 UNIDENTIFIED JUROR: Oh, okay. Then don't worry
20 about it.

21 THE COURT: Okay. Then you may call your next
22 witness.

23 MR. WOOTEN: Thank you, Your Honor.

24 The Plaintiff would call Tim [sic] Thames.

25 THE CLERK: Mr. Thames, please place your left hand

1 on the Bible and raise your right hand.

2 WHEREUPON,

3 HENRY WILLIAM THAMES, III,

4 after first having been duly sworn, testified as follows:

5 THE CLERK: Thank you.

6 You may be seated.

7 Please state your full name for the record.

8 THE WITNESS: Henry William Thames, III.

9 DIRECT EXAMINATION

10 BY MR. WOOTEN:

11 Q And, Mr. Thames, can you tell the jury what your
12 educational background is?

13 A I attended the University of South Carolina
14 undergrad. And after that, I have certifications from a
15 paralegal institute. And then I have certifications in --
16 for digital forensics.

17 Q Okay. And what are those certifications?

18 A Cellebrite, which is a mobile forensic software
19 application. I have two different certifications from
20 them. Law is a litigation support tool that we would
21 process data and various administrative -- administrator
22 certifications from e-discovery tools.

23 Q Okay. And are you familiar with PDF's and metadata
24 on those PDF's?

25 A Yes.

1 Q And what sort of experience do you have in working
2 with metadata on PDF's?

3 A With -- really, with forensics, we extract data from
4 electronic files or electronically stored information.
5 And we extract metadata, which are properties of an
6 electronic file.

7 Q Okay. And how long have you been doing that?

8 A I entered e-discovery in -- around 2005. And I've
9 been in e-discovery since then.

10 Q Okay. And do you have any licenses or did you have
11 any licenses?

12 A Yes. I held a -- a private investigator's license
13 for forensics that's issued by SLED under South Carolina
14 Code 40-18-20(a). And that expired because I'm no longer
15 with a company and I no longer do forensics. I'm now with
16 a different company.

17 MR. WOOTEN: Okay. I would move that Mr. Thames be
18 found an expert in the area of digital forensics.

19 THE COURT: Any objection or voir dire?

20 MS. TANKERSLEY: Voir dire, please, Your Honor.

21 THE COURT: Okay.

22 VOIR DIRE EXAMINATION

23 BY MS. TANKERSLEY:

24 Q All right. Mr. Thames, you said you went to the
25 University of South Carolina. What was your degree in

1 there?

2 A Art history and philosophy.

3 Q Okay. And you used to hold a license, but you don't
4 currently have that SLED license; right? Is that what
5 you're saying?

6 A I don't.

7 Q Do you have any other licenses relating to
8 technology?

9 A I still hold my Cellebrite licenses. And I keep
10 those current. And --

11 Q And what is that again?

12 A Cellebrite.

13 Q What is Cellebrite?

14 A Cellebrite is a digital forensics utility or software
15 application predominantly used by law enforcement that we
16 held a license of it. And that's how I would extract
17 information from mobile devices.

18 Q So it's a software?

19 A Software, yes.

20 Q All right. Any other licenses at all relating to
21 technology?

22 A No licenses, but certifications in multiple
23 applications.

24 Q Those certifications are with?

25 A Relativity, Cloud Nine, ONO. Going way back,

1 Summation Accordance [phonetic].

2 Q And those are all just softwares; correct?

3 A Those are softwares.

4 Q So you've been trained how to use some software?

5 A Yes.

6 Q Okay. Do you have any formal education at all with
7 regard to technology?

8 A No, other than the certifications for digital
9 forensics.

10 Q And -- and that's for the softwares that we went
11 over --

12 A Softwares, yeah, for Cellebrite primary.

13 MS. TANKERSLEY: Okay. Nothing further, Your Honor.

14 THE COURT: All right. What was the -- what was
15 the -- expert in what field?

16 MR. WOOTEN: Digital forensics, Your Honor.

17 THE COURT: All right. Any objection?

18 MS. TANKERSLEY: Yes. I -- I object, Your Honor,
19 based on the -- the qualifications and training.

20 THE COURT: All right. Anything further?

21 MS. TANKERSLEY: No.

22 THE COURT: I find that he has been -- that he's been
23 properly qualified to serve as an expert in digital
24 forensics.

25 So I'm going to deny your motion.

1 Ladies and gentlemen, let me tell you a little bit
2 about what an expert witness can do. Normally, a person
3 cannot testify about opinions or conclusions. They can
4 only testify about what they saw, heard, stuff like that.

5 The exception to that is an expert witness. And they
6 can testify about conclusions or opinions. And that's
7 based on their education, their experience, their
8 training. And this witness is qualified as an expert in
9 digital forensics.

10 But just like any other witness, you can give this
11 witness the weight that you feel is appropriate.

12 So you may proceed.

13 MR. WOOTEN: Thank you, Your Honor.

14 CONTINUED DIRECT EXAMINATION

15 BY MR. WOOTEN:

16 Q Mr. Thames, can you briefly describe what a PDF is?

17 A A PDF is a portable document file. It is created
18 when you use a device to scan that -- scan a file, either
19 hard paper or you can convert it into that portable file.

20 Q Okay. And what is metadata? Can you explain that,
21 please?

22 A Metadata is known as data about the data. It's
23 really characteristics of an electronic file.

24 Q Okay. And do PDF's have metadata?

25 A Yes.

1 Q Okay. And did you run the metadata on -- let's see
2 here. Did you run the metadata on this e-mail that is
3 Plaintiff's Exhibit No. 2?

4 A We did.

5 Q Okay. And when was that PDF created?

6 A March 14th, 2019.

7 Q Okay. And what is the date of the initial e-mail at
8 the bottom there from Calidad Latina to Nick Mendoza with
9 Gainsco?

10 A March 14th, 2019.

11 Q Okay. So the PDF was created the same day it was
12 e-mailed to Gainsco?

13 A Yes.

14 Q Okay. And, like, how is that PDF created?

15 A The PDF -- the metadata showed that it was created by
16 an Epson scanner or office scanner, which could be an
17 application or it could be an actual device. And you
18 would take paper records -- hard paper records and scan
19 the document to create that electronic file.

20 MR. WOOTEN: Okay. Thank you.

21 That's all the questions I have for you.

22 THE COURT: Cross-examination.

23 MS. TANKERSLEY: No, Your Honor.

24 THE COURT: All right. You may step down.

25 They kept their word.

1 All right. Ladies and gentlemen, that concludes
2 today's testimony. We will come back in the morning and
3 continue with the case. If you'll be back here -- is 9:30
4 good for everybody?

5 (WHEREUPON, the jurors indicated in the affirmative.)

6 THE COURT: All right. My four rules, don't discuss
7 the case among yourselves, with friends, family, anything
8 like that. Do not do any type of research. Again, that's
9 strictly prohibited. Do not pay any attention to any
10 coverage -- any media coverage, including social media.
11 And, finally, if anybody contacts you, other than somebody
12 from the clerk's office, please, let the bailiffs know.

13 So we will see you at 9:30 in the morning.

14 Have a good evening.

15 (WHEREUPON, the jury was excused from open court at
16 approximately 4:52 p.m.)

17 THE COURT: Yes.

18 MS. TANKERSLEY: Judge, do you mind if Angela is
19 excused for tomorrow? They'd have to get a nanny again
20 for the second day for their baby. And if they don't have
21 to be here, then --

22 THE COURT: She's not a party.

23 MR. WOOTEN: We don't have any objection.

24 THE COURT: All right. Anything from the Plaintiff?

25 MR. WOOTEN: No, Your Honor.

1 THE COURT: Anything from the Defendant?

2 MR. TANKERSLEY: Nothing, Judge.

3 THE COURT: All right. See y'all in the morning.

4 (WHEREUPON, the proceedings were concluded at
5 approximately 4:56 p.m., to be reconvened on
6 Wednesday, October 25, 2023.)

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1 WEDNESDAY, OCTOBER 25, 2023

2 THE COURT: Anything from the Plaintiff?

3 MR. WOOTEN: No, Your Honor.

4 THE COURT: Anything from the Defendant?

5 MS. TANKERSLEY: No, Your Honor.

6 THE COURT: Have y'all looked at any jury charges?

7 MS. TANKERSLEY: I've prepared, like, a draft,
8 depending on how things go.

9 THE COURT: Well, at some point, send those. I think
10 what we are looking at is argue and charge after lunch.

11 MS. TANKERSLEY: Well, it depends --

12 THE COURT: I guess we're going to go over these
13 documents another 20 times.

14 MS. TANKERSLEY: I don't want to go over any -- I
15 have, like, five questions for the Plaintiff. My
16 questioning, of course, of Mr. Mendez will be longer.

17 THE COURT: All right. I've gotten the charges.
18 They're pretty much -- you know, it's funny because I
19 thought this was going to be very difficult. But when --
20 and we'll talk about those in a few minutes -- I mean, at
21 the break, but it's really pretty -- pretty easy. It's
22 just -- I mean, I'm like you, it's the statute and the
23 Wannamaker elements. And I think we've got a few things
24 we'll have to discuss.

25 So here's my plan. It looks like we're going to have

1 at least, a couple hours worth of testimony.

2 Is that what y'all anticipate?

3 MR. WOOTEN: Your Honor, I assume Mr. Mendez -- I'm
4 going to call him. He's going to need a translator. So I
5 think that will be the longest one by far. I wouldn't
6 think reading in that deposition testimony will take
7 really that long. And then Ms. Vargas will -- maybe not
8 quite as short as Mr. Thames, but pretty close.

9 THE COURT: Okay. And I'm trying to think schedule
10 wise. I think we're going to need to probably go over the
11 charge and verdict form. We may let the jury go to lunch
12 a little early and then finalize everything, and then make
13 them come back a little bit early. Because I really
14 hadn't made a plan for them to -- to have lunch for them.

15 I just want to make sure we've got all -- at least,
16 we're not -- at least, we're on the same page, or
17 something. So I expect when we get through with the
18 testimony, we'll let them go to lunch, even if it's what I
19 call my kindergarten lunch at 11:30. And then -- then
20 we'll finalize everything. Then we'll come back, argue,
21 and charge. That's -- I think that's probably the
22 schedule there.

23 All right. Does that work for everybody?

24 MS. TANKERSLEY: Yeah. And I --

25 MR. WOOTEN: Yes, sir.

1 THE COURT: I am not accepting any more paperwork
2 today.

3 MS. TANKERSLEY: This is just for Grace.

4 THE LAW CLERK: Thank you.

5 THE COURT: All right. Make sure -- because we had a
6 little bit of an issue with this yesterday. Just because
7 I say bring in the jury, always check with me before you,
8 actually, let them in the door.

9 THE BAILIFF: Yeah.

10 THE COURT: You can do like in -- you can do like
11 in -- when I was in Beaufort the first time, I was sitting
12 there getting ready. And the bailiff would yell real
13 loudly, The jury is entering the courtroom. I about fell
14 out of my chair. But it was real loud.

15 THE BAILIFF: And Donnie's got the voice for that
16 one.

17 THE COURT: Yeah. Mark's the one.

18 THE BAILIFF: Yeah, Mark.

19 THE COURT: We had -- when I had to clear the
20 courtroom that time, I think they heard them down at the
21 jail.

22 All right. Is the Plaintiff ready for the jury?

23 MR. WOOTEN: Yes, Your Honor.

24 THE COURT: Is the Defendant ready for the jury?

25 MS. TANKERSLEY: Yes, Your Honor.

1 THE COURT: All right. Bring the jury in.

2 (WHEREUPON, the jury came into open court at
3 approximately 9:44 a.m.)

4 THE COURT: All right. Good morning, ladies and
5 gentlemen. I hope everybody had a good evening.

6 It looks like we're -- the -- as you will recall, the
7 Plaintiff is still in their case in chief. And from all
8 discussions, it looks like we're -- it looks like we're on
9 schedule to finish this case up today most likely. And,
10 again, this could change a little bit.

11 But I -- I anticipate that what we'll do is finish
12 the testimony and the evidence this morning. And we may
13 have to break a little bit early for lunch. Because
14 there's some things that we have to go over before we
15 present it to you. So we may take an early lunch and then
16 start back early. We should be able to give it to you
17 this afternoon.

18 So with that being said, Mr. Wooten, you can call
19 your next witness.

20 MR. WOOTEN: Thank you, Your Honor.

21 The Plaintiff would call Alfredo Palafox Mendez,
22 please.

23 THE CLERK: I'll swear her in first.

24 THE COURT: Okay.

25 THE CLERK: Ms. Giersberg --

1 (WHEREUPON, the Interpreter spoke in Spanish to
2 Mr. Alfredo Mendez.)

3 THE COURT: No. We're going -- we're going to swear
4 you in first.

5 THE INTERPRETER: Okay.

6 THE CLERK: Yeah.

7 (WHEREUPON, Interpreter Elizabeth Giersberg was
8 sworn in.)

9 THE CLERK: Thank you.

10 THE COURT: All right. Now, we'll swear Mr. Mendez
11 in.

12 THE CLERK: Mr. Mendez, place your left hand on the
13 Bible and raise your right hand.

14 WHEREUPON,

15 ALFREDO PALAFOX MENDEZ,
16 after first having been duly sworn, testified as follows:

17 THE CLERK: Thank you.

18 Please state your full name for the record.

19 THE INTERPRETER: May you repeat, please?

20 THE CLERK: Please state your full name for the
21 record.

22 THE INTERPRETER: I'm sorry. I don't understand.

23 THE CLERK: What is your name?

24 THE INTERPRETER: Alfredo Palafox Mendez.

25 THE CLERK: Thank you.

1 You may be seated.

2 THE COURT: All right. Ladies and gentlemen of the
3 jury, you're about to hear testimony of a witness who will
4 be testifying in Spanish. The witness will be testifying
5 through an interpreter. Some of you may have knowledge of
6 Spanish. But, however, you cannot rely on your own
7 knowledge of Spanish. And even if you disagree with the
8 interpreter's translation, you must accept the translation
9 of the witness' testimony by the interpreter.

10 In other words, you're to give the weight and
11 testimony of this witness the same as you do any other
12 witness. You'll give it the weight and value you feel is
13 appropriate.

14 So you may proceed.

15 MR. WOOTEN: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 (WHEREUPON, the following answers of Alfredo Palafox
18 Mendez were translated by an interpreter.)

19 BY MR. WOOTEN:

20 Q Mr. Mendez, do you have trouble hearing?

21 A Can you, please, repeat?

22 Q Mr. Mendez, do you have trouble with your hearing?

23 A I can't hear.

24 Q Okay. And is that hearing aids that you have in?

25 A These are devices I bought to help me hear better,

1 but they don't help.

2 Q Okay. If you don't understand one of my questions,
3 can you ask me to repeat it like you've been doing so far?

4 A I didn't understand everything.

5 Q If you don't understand one of my questions, can you
6 ask me to repeat it, please?

7 A Yes.

8 Q Okay. Mr. Mendez, did you buy car insurance for the
9 Honda Civic that Ms. Vargas was driving?

10 A Can you, please, repeat?

11 Q Mr. Mendez, did you buy car insurance for the Honda
12 Civic that Ms. Vargas was driving?

13 A Yes. I bought insurance.

14 Q Okay. And where did you buy that car insurance?

15 A Calidad Latina.

16 Q And why did you go to Calidad Latina to buy the
17 insurance?

18 A Because when I bought the -- the car for Benigna, she
19 needed it for work. We both needed it for work. So the
20 dealer where I bought the car sent me there to Calidad
21 Latina.

22 Q Okay. Did the dealership send any information to
23 Calidad Latina?

24 A Yes.

25 Q Okay. When you dealt with Calidad Latina, did you

1 speak with them in English or Spanish?

2 A In Spanish.

3 Q Okay. Can you speak English?

4 A A little bit. The biggest difficulty is my hearing.

5 Q Okay. Can you read English?

6 A No.

7 Q Okay. Do you remember who met with you at Calidad?

8 A Can you repeat, please?

9 Q Do you remember who met with you at Calidad?

10 A No, not exactly.

11 Q Okay. Did -- did they explain anything to you when
12 you met with them?

13 A Basically, nothing. Because I already had the
14 information.

15 Q Okay. And what information did you already have?

16 A When I got there, the information I had given the
17 dealership had already been sent to Calidad Latina. So by
18 the time I got there, basically, it was just signing
19 papers. That's it.

20 Q Okay. How long did the whole process take at Calidad
21 Latina?

22 A About 15 minutes.

23 Q Okay. Did they ever discuss underinsured motorist
24 coverage with you?

25 A Well, that -- they -- they explained only very

1 little, basically, nothing or almost nothing, as far as I
2 remember. Because it was, basically, going -- going over
3 the -- going through the papers that I needed to sign.
4 So, basically, so that I would sign the papers.

5 Q All right. And let me hand you what's been marked as
6 Plaintiff's Exhibit No. 3.

7 A Okay.

8 Q And if we turn to the second page here, is this your
9 signature on this form?

10 A Yes. It's my signature.

11 Q Okay. You don't dispute that that -- that you signed
12 these forms, do you?

13 A Can you, please, repeat?

14 Q You don't dispute that you signed these forms, do
15 you?

16 A I don't understand. Can you repeat?

17 Q Is that your signature on those forms?

18 A Yes.

19 Q Okay. Do you remember, in particular, what documents
20 you signed?

21 A Not anymore. I don't remember exactly anymore.

22 Q All right. And let's turn to Page 5 of this form.
23 And do you see where I'm pointing here?

24 A Yes.

25 Q Okay. And was that filled in by you or was that

1 filled in by a computer where the "X" is next to, No?

2 A No. I -- I only signed.

3 Q Okay. And let me --

4 THE COURT: It will take a second.

5 MR. WOOTEN: I'm sorry.

6 BY MR. WOOTEN:

7 Q Mr. Mendez, can you see on that screen?

8 A Yes.

9 Q Okay. And is that the signature and the check box
10 next to "No" that we were just looking at?

11 A Yes.

12 Q Okay. Mr. Mendez, can you see on the screen here
13 where I'm pointing at?

14 A Yes.

15 Q And am I -- does that sound correct that the MGA
16 insurance cost you \$1,175?

17 A May you, please, repeat?

18 Q Yes, sir. It says the premium is \$1,175. Does that
19 sound correct?

20 A Yes.

21 Q Okay. Let's look back here at Page 5 again. Do you
22 see where I'm pointing on the screen?

23 A Yes.

24 Q Okay. And -- and does that -- what -- what amount --
25 well, that's a bad question.

1 Okay. And so is it correct that you could have
2 bought underinsured coverage for \$55?

3 A Can you repeat, please? I didn't understand.

4 Q According to this form, does it -- well, I'll strike
5 that.

6 All right. Can you see that page, Mr. Mendez?

7 A Yes.

8 Q Do you know what reimbursement motor club is?

9 A No.

10 Q Okay. Do you know why you purchased this?

11 A No.

12 Q Okay. And, Mr. Mendez, do you see here on the screen
13 here the -- the Spanish writing?

14 A Yes.

15 Q And can you read the Spanish?

16 A Yes.

17 Q Can you read anything else on these forms, other than
18 the numbers?

19 A Only what's in Spanish.

20 Q Okay. And did you feel the need to ask them about
21 anything in the forms that you couldn't read?

22 A Yes.

23 THE INTERPRETER: The interpreter requests a
24 repetition of the question. The interpreter's not sure of
25 accuracy in the interpretation.

1 MR. WOOTEN: Okay.

2 BY MR. WOOTEN:

3 Q Mr. Mendez, did you ask them to explain anything else
4 in this -- these documents to you that was not in Spanish?

5 A May you, please, repeat?

6 Q Mr. Mendez, did you ask them to explain anything to
7 you in these forms that was not written in Spanish?

8 A I don't remember. They just said that -- at the
9 bottom of the page, it was in Spanish and just to sign.

10 MR. WOOTEN: Okay. I think that's all the questions
11 I have for you, Mr. Mendez. If you could answer any that
12 Ms. Tankersley may have.

13 MS. TANKERSLEY: This is just for the interpreter. I
14 assume it's easier for you to stand, but there's an extra
15 chair, if you want a -- like, a chair to sit behind him.

16 THE INTERPRETER: (There was no verbal response.)

17 CROSS-EXAMINATION

18 BY MS. TANKERSLEY:

19 Q All right. Mr. Mendez, how are you today?

20 A Excuse me?

21 Q How are -- how are you doing?

22 A Very well.

23 Thank you.

24 Q Wonderful. I -- you might not remember me. But we
25 met when I took your deposition, I think, a couple years

1 ago, maybe a year ago in my office. Do you remember that?

2 A I remember being deposed, but I don't exactly
3 remember you.

4 Q Okay. That's fine. All right. I'm going to ask you
5 a little bit of questions about some background
6 information. And we'll talk about your policy with
7 Gainsco. Okay.

8 A Okay.

9 Q All right. You are, originally, from Mexico, but
10 you've been in South Carolina for about 20 years; is that
11 right?

12 A Correct.

13 Q How old are you?

14 A 44.

15 Q Okay. And I know you're -- you mentioned that you're
16 hard of hearing and that makes understanding English a
17 little more difficult. But you are under -- able to
18 understand a decent amount of English; is that fair?

19 A So, so.

20 Q Okay. How do you know the Plaintiff, Ms. Vargas?

21 A I didn't understand. Can you repeat?

22 Q How do you know Ms. Vargas?

23 A Okay. When the accident happened, she was my life
24 partner. And we have a child in common.

25 Q Okay. Are y'all still together now?

1 A We're separated.

2 Q Okay. Are y'all still working on the relationship or
3 are y'all done?

4 A I don't even know that.

5 Q Okay. We're here today about the policy that you had
6 with MGA and Gainsco. But before you had an insurance
7 policy with them, you had an insurance policy with
8 Esurance; is that right?

9 A Yes.

10 Q Okay. And that -- you had to switch policies because
11 your license expired; is that right?

12 A That's right.

13 Q Okay. And -- and so you didn't have a valid license
14 at the -- in March of 2017 when you were taking out -- or
15 buying the Gainsco policy; right?

16 A I did have insurance because I have another car. But
17 I don't remember the company that I was with.

18 Q Okay. Back in -- when you were taking out the
19 Gainsco policy, did you or Ms. Vargas have a valid license
20 at that time?

21 A Can you repeat? I didn't understand the last part.

22 Q Did you or -- or your wife have a valid license at
23 the time you were trying to buy this policy?

24 A No.

25 Q All right. So when you went to Calidad, the -- the

1 dealership had sent you over for coverage; right?

2 A Yes.

3 Q Okay. And they require that you get what's called
4 full coverage, which is something more than what the state
5 requires you get; is that right?

6 A Can you repeat, please?

7 Q Sure. So when you go to the dealership, they tell
8 you that you have to get insurance; right?

9 A Yes.

10 Q And they tell you that you have to get full coverage
11 for the car; is that right?

12 A Yes.

13 Q And that is to protect the car because they still own
14 it a little bit; right?

15 A Yes.

16 Q So if a tree falls on it or if you're responsible for
17 an accident and the car gets beat up, the coverage you buy
18 would still pay for the damage to that car; right?

19 A Can you repeat, please?

20 Q I don't know if I remember what I asked. The -- the
21 coverage the dealership wants you to get will -- will pay
22 for any damages to the property no matter what happened or
23 how the damage happened; right?

24 A I get confused. And at the end, I don't understand
25 what you're saying.

1 Q Okay. That's fine. All right. You went to Calidad
2 Latina in 2017 to buy insurance for that Honda; right?

3 A Yes.

4 Q And you've gone there a few times since then as well
5 for other insurance; right?

6 MR. WOOTEN: Your Honor, we'd object for relevance.

7 MS. TANKERSLEY: It's relevant because if they're
8 arguing that they did -- Calidad did a bad job, that they
9 somehow are something that they shouldn't be trusting,
10 he's gone there since --

11 THE COURT: All right. I'm going to allow it.

12 THE INTERPRETER: Can you repeat, please?

13 BY MS. TANKERSLEY:

14 Q Sure. You've been to Calidad Latina more than once;
15 right?

16 A Yes.

17 Q You've continued to use them to buy insurance with?

18 A Yes.

19 Q Okay. Every time you've gone to an agent to purchase
20 insurance, you've gone to -- to agencies where they speak
21 Spanish; right?

22 A Yes.

23 Q Okay. Back in 2017 when you went to Calidad Latina,
24 there were three agents working there at the time, Angela,
25 Martha, and Laura. But you believe that you met with

1 Angela; is that right?

2 A Well, honestly, when the dealer told me to go to
3 Calidad Latina, he said, You need to talk to this person.
4 She already has your information. So I don't know any
5 more in the end who it was. She was already waiting for
6 me.

7 Q Do you think it was -- her name was Angela?

8 A Yes.

9 Q All right. When you went in to meet with Angela at
10 Calidad, did they give you multiple options of insurance
11 policies to choose from? And by that, I mean one from
12 Gainsco, one from maybe Esurance, or some other carrier,
13 one from some other insurance company?

14 A No.

15 Q They did not give you multiple options?

16 A No. She only said that there were other companies,
17 but that the one that she was offering to me was the
18 cheapest one.

19 Q Okay. So they told you that there were other
20 companies available with different prices; right?

21 A Yes.

22 Q And you chose Gainsco because that one was the
23 cheapest?

24 A Yes. They recommended it to me from the dealership.
25 They were already recommending this -- this one.

1 Q Did you want one of the more expensive ones, or did
2 you want the cheaper one?

3 A Honestly, I thought that I was buying an insurance
4 policy -- insurance policy with total coverage for the car
5 and, also, mainly because my wife was going to be driving
6 it.

7 Q Okay. But they gave you options, told you there
8 would be more expensive policies with different companies,
9 and you chose to go with Gainsco; right?

10 A Can you repeat it?

11 Q Ultimately, you decided to go with Gainsco because
12 that was the cheapest option you were given, the most
13 economical option; right?

14 A Yes.

15 Q Okay. And what you were asking for was full
16 coverage, what the dealership required; right?

17 A Yes.

18 MS. TANKERSLEY: May I approach, Your Honor?

19 THE COURT: You may.

20 BY MS. TANKERSLEY:

21 Q I'm going to show you what's been marked as
22 Defendant's Exhibit No. 1.

23 MS. TANKERSLEY: Grace, could I get the screen?

24 BY MS. TANKERSLEY:

25 Q Do you -- you don't remember if you got this

1 application; right?

2 A I don't understand very well that -- I don't
3 remember. Can you repeat that?

4 Q Sure. So when you met with Calidad Latina was back
5 in 2017; right, that was six or seven years ago?

6 A Yes.

7 Q Okay. Do you have any real independent memory of
8 that meeting?

9 A No.

10 Q All right. But that application form has your name;
11 correct?

12 A Correct.

13 Q All right. And your address?

14 A That was my address at that time.

15 Q Okay. So in 2017, it has your correct address?

16 A Yes.

17 Q Okay. And it, also, has what the policy -- policy
18 limits are; right?

19 A Yes.

20 Q Okay. And over here, these numbers, are those what
21 your -- what the policy costs, what the payments would be?

22 A Yes.

23 Q Okay. And -- and these numbers, both the policy
24 limits and the premium costs, those are written the same
25 in English as they would be written in Spanish; right?

1 A Yes.

2 Q Okay. And you can see on that form that there are no
3 numbers written next to these optional policies on the
4 form; right? There's no premium costs in these little
5 blocks?

6 A Yes.

7 Q All right. You can hand me that document back.
8 Thank you.

9 All right. I'm going to hand you what's been marked
10 as Plaintiff's Exhibit No. 3. Okay. And that -- that
11 looks like the same kind of packet of documents I gave
12 you, except now some of those pages are signed; right?

13 A Yes.

14 Q Okay. So that first page is the same. It has your
15 policy information on it; right?

16 A Yes.

17 Q Okay. Now, flip to Page 2 for me.

18 A Okay.

19 Q Page 2, you've signed that page; right?

20 A Yes.

21 Q Page 3, is that, also, your signature at the bottom?

22 A Yes.

23 Q Do you see how the pages are numbered at the bottom?

24 A Yes.

25 Q They were numbered in the document that I handed to

1 you before, too; right?

2 A Yes.

3 Q In the application, Defendant's Exhibit No. 1, the
4 pages are numbered, also; right?

5 A Yes.

6 Q And the page numbers are written the same in English
7 as they would be in Spanish; right?

8 A Yes.

9 Q Okay. This -- this document that you signed, you
10 don't have any reason to believe that you didn't receive
11 that whole package; right? That they didn't hand you
12 every page in that packet, do you?

13 A I don't understand what you mean.

14 Q You have no reason to believe that the -- the agent
15 you met with, probably Angela, didn't hand you the whole
16 packet; right?

17 A No.

18 Q Did you ever notice any pages missing from the
19 packet?

20 A No.

21 Q Okay. Go to Page 4 for me.

22 A I'm there.

23 Q All right. Do you see this -- this section here
24 where there's numbers 25,000, 50,000, 25,000? Do you see
25 that?

1 A Yes.

2 Q Okay. And then you see under there the premium
3 amount, \$55; right?

4 A Yes.

5 Q All right. And you see the box that says "No" with
6 an "X" next to it; right?

7 A Yes.

8 Q And my Spanish is pretty limited, but the word "no"
9 is the same in English as it is in Spanish; right?

10 A Yes.

11 Q Okay. And is that your signature there right
12 underneath it?

13 A Yes.

14 Q Okay. And is this your signature again down here
15 under a section that talks about how you understand and
16 acknowledge that the coverages have been explained to you?
17 You signed there; right?

18 A Yes. That's my signature.

19 Q Okay. Let's go to the -- the next page. All right.
20 Do you see at the bottom of that page where there's a bold
21 type in Spanish and in English?

22 A Can you repeat that, please?

23 Q Sure. And you can look on the screen where I'm
24 pointing. Do you see this section down here that's in
25 bold that's in Spanish and in English?

1 A Yes.

2 Q Okay. Can you read that for me in the Spanish?

3 A Yes.

4 Q Can you, actually, read it for me right now?

5 A Do I read it?

6 Q Yes. Out loud.

7 MS. TANKERSLEY: Can you go ahead and translate that
8 part? And then we'll do the second paragraph.

9 THE INTERPRETER: If you cannot read, comprehend, or
10 understand this document in whole or in part, it is
11 very -- it is very important that you ask for help from
12 somebody who can interpret and explain the content of this
13 document to you.

14 BY MS. TANKERSLEY:

15 Q Okay. Go ahead and read that second sentence there.

16 A Excuse me. I didn't hear.

17 Q Sure. Go ahead and read that second sentence.

18 And that means -- oh, sorry. That means my signature
19 represents that this document has been explained to me and
20 I understand all of the contents of this document.

21 A Honestly, when I signed, I did read this. But the
22 agent didn't explain anything to me, only three or four
23 words. And then I signed.

24 Q Why did you sign it?

25 A Because I thought that I was buying an -- an

1 insurance policy with total coverage like the dealership
2 was requiring for me.

3 Q Well, and you went back to the dealership later that
4 day; right?

5 A Yeah. I went to the dealership and I took it to him.
6 I -- I signed the documents. And I took the receipt with
7 me, gave it -- handed it to the dealership. He gave me
8 the car. And I went home.

9 Q Okay. So the documents you gave the dealership
10 showed that you had the coverage that the dealership
11 required; right? You had met what they wanted?

12 A Yes. He only took a -- made a copy of the card that
13 you have to bring to the car.

14 Q Okay. But you were allowed to buy the car?

15 A Can you repeat, please?

16 Q You were allowed to buy the car that day?

17 A Yes.

18 Q Okay. And -- and you didn't tell anybody at the
19 agency that you didn't understand what you were signing,
20 or that they didn't explain it well enough; right?

21 A That's true. I didn't tell anybody.

22 Q Go to the next page in that packet. It's this. Do
23 you see that? Are you there?

24 A Yes.

25 Q Okay. So on the -- the next page is the signature

1 from you at the bottom purchasing that -- that coverage,
2 the reimbursement coverage?

3 THE INTERPRETER: The interpreter requests the
4 repetition of the name of the part of the policy.

5 MS. TANKERSLEY: Reimbursement motor club.

6 THE INTERPRETER: I didn't -- I didn't hear it all.
7 Can you repeat it?

8 BY MS. TANKERSLEY:

9 Q Sure. I'll make it more simple. At the bottom of
10 that second page, that's your signature; right?

11 A Yes.

12 Q Okay. Go to the next page. Is -- is -- did they do
13 an -- an inspection of your vehicle?

14 A Not the insurance company.

15 Q You don't remember them taking photos?

16 A I -- I only remember they took some pictures?

17 Q Of -- of your car?

18 A Yes. But it was not on the same day. Because the
19 dealership sent all the information to Calidad Latina.
20 And then I went home.

21 Q Right. It was the same day, but they looked at your
22 car?

23 A They gave me the car on the same day.

24 Q Okay. You signed the bottom of that Page 2; right?

25 A Yes.

1 Q Okay. Do you know what that next page is?

2 A (There was no response.)

3 Q Do you know what it is?

4 A I didn't hear.

5 Q Do you know what that is, this page?

6 A I don't know.

7 Q Okay. Now, the -- the next page, that's in Spanish;
8 right?

9 A Yes.

10 Q Okay. So you can read all of this page; right?

11 A Yes.

12 Q And it confirms, again, the type of coverage that you
13 purchased; right?

14 A Can you repeat that?

15 Q Sure. If you look at the screen where I'm pointing,
16 this, again, confirms the coverage that you have; right?

17 A Yes.

18 Q Okay. And that's your signature, again, at the
19 bottom; right?

20 A Yes.

21 Q Okay. You can put that down.

22 All right. Your agent told you sort of this is your
23 coverage, this is what it covers; right?

24 A Yes.

25 Q You didn't ask any questions?

1 A No. She just told me to take the receipt to the
2 dealership. And they gave me the car. And she
3 congratulated me.

4 Q Okay. You went to Calidad with the intention of
5 getting what the dealership required. And that's what you
6 ended up buying; right?

7 A Yes.

8 Q Okay. Later, you received over the -- scratch that.
9 You had this policy for a couple of years; is that
10 right?

11 A Yes.

12 Q Okay. And over those years, you received a number of
13 things in the mail from Gainsco; right?

14 A Possibly. I don't even remember any more, but...

15 Q Okay. I'm going to hand you something. And you can
16 look at that and see if that looks like things you would
17 have been sent in the mail from Gainsco. And you can flip
18 through it.

19 A Yes.

20 MS. TANKERSLEY: Okay. And I'll -- I'll mark this as
21 Defendant's Exhibit No. 2.

22 THE COURT REPORTER: Defendant's Exhibit No. 3.

23 MS. TANKERSLEY: Defendant's Exhibit No. 3. Sorry.

24 (WHEREUPON, Defendant's Exhibit No. 3 was marked for
25 identification only.)

1 BY MS. TANKERSLEY:

2 Q All right. Do these look like the letters and
3 notifications you would have gotten from Gainsco?

4 A Well, honestly, I don't -- I -- all I remember is
5 that I would get packages from Gainsco. And I wouldn't
6 even -- I would keep them for a little bit. And then I
7 would throw them out. I was just -- I just knew that I
8 had good coverage from -- from the -- from the insurance
9 company.

10 Q Okay. And so at some point in time, they sent you
11 some documents that probably include what the policy looks
12 like; right, the language -- or the full policy?

13 A Honestly, I just imagined that it had to do with the
14 coverage -- the insurance coverage because I don't
15 understand it. So I would just leave it like that.

16 Q Okay. You didn't ever get those documents in the
17 mail and then take them to somebody to interpret them or
18 anything for you, did you?

19 A No.

20 Q Okay. And for this policy with Gainsco, you never
21 called them and said, I want -- after you signed it, I
22 don't want more insurance, or I want to change the
23 insurance that I have, did you?

24 A No.

25 Q Okay. In all the times that you had taken out

1 insurance before this policy in 2017, you had never
2 purchased the optional UIM coverage; is that right?

3 A Before this policy, I -- I had other -- other cars
4 insured through other companies. But I don't remember
5 anymore.

6 MS. TANKERSLEY: Can I get -- does the Judge need to
7 open it?

8 THE CLERK: I can open it.

9 MS. TANKERSLEY: Go for it.

10 THE CLERK: Go ahead and open it because I don't have
11 anything to open it with.

12 THE COURT: Ladies and gentlemen, while she's opening
13 a deposition -- and I think I told you this in -- in my
14 preliminary remarks to you. Depo -- in fact, I should
15 have told you this yesterday when a deposition was being
16 used.

17 A deposition is a statement which is taken during the
18 course of litigation. And it is a sworn testimony at the
19 time. A court reporter types out the transcript of the
20 statement. And it's a question and answer period where
21 both attorneys are at this deposition they take.

22 Now, it can be used at trial for various purposes.
23 And so you're to just -- but it's the same -- it's sworn
24 testimony at the time. But you're to use it to -- to
25 the -- give it the weight and value you feel is

1 appropriate.

2 So you may proceed.

3 MS. TANKERSLEY: Thank you.

4 And this is not a question to him. I -- this is my
5 first time with an interpreter. So I assume I give her
6 the transcript and she would translate it.

7 Not this whole thing. I'll tell you what to read.

8 THE INTERPRETER: Oh, okay.

9 MS. TANKERSLEY: I'm just not going to hand it to him
10 because it's in English.

11 BY MS. TANKERSLEY:

12 Q Okay. If you'll look at Page 53 of your transcript
13 on Line 21, I ask, In all the times that you've taken out
14 insurance with any agent or any carrier, have you ever
15 opted to have underinsured motorist coverage?

16 And you responded to that, No.

17 Am I reading that correctly?

18 A And the question is?

19 Q Did I read that correctly?

20 A I didn't hear everything that you said.

21 Q So I was reading right here. In all the times that
22 you've taken out insurance with any agent or any carrier,
23 have you ever opted to have underinsured motorist
24 coverage?

25 And your answer was, No.

1 A I don't -- I didn't understand the last part. May
2 the interpreter repeat?

3 Q Yes.

4 A I don't really understand it exactly. But I've
5 always bought full coverage for the cars -- insurance for
6 full coverage for the cars that I have had.

7 Q Okay. And that's -- every time you've bought
8 insurance coverage, it's -- it's -- you've bought what the
9 dealership required; right?

10 A Yes.

11 Q Okay. Once you were finished signing the documents
12 at the agency, they -- they handed you some documents to
13 take with you; right?

14 A Yes.

15 Q Do you know what those documents were? Do you
16 remember?

17 A Not completely. It's -- it was what I signed and
18 what I took to the dealership.

19 MS. TANKERSLEY: Okay. Bear with me for just one
20 minute. Okay.

21 (Pause.)

22 MS. TANKERSLEY: That's all the questions I have for
23 you. I appreciate it.

24 THE COURT: All right. Redirect.

25 MR. WOOTEN: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. WOOTEN:

Q All right. Alfredo, did Calidad ask for your driver's license when you got that policy?

A No. The dealership already knew that I didn't have one. I took my passport to them.

Q Okay. Was -- the lack of a license, did that prevent you from getting car insurance through Calidad?

A No.

Q Did the lack of a license prevent you from -- prevent you from getting an insurance policy from MGA?

A Can you repeat that, please?

Q Did the lack of a license prevent you from getting an insurance policy from MGA?

A What's MGA?

Q They go by Gainsco.

A No.

Q Okay. Throughout the course of this case, have you been kept up-to-date about what's going on in this case?

A The interpreter is going to ask for clarification.

Honestly, the one -- the person who gives me more information about the case is Benny [sic]. And she -- mainly, she says when we have an appointment, when we need to meet, and kind of things like that --

Q Okay. And --

1 A -- because of my hearing -- because of my hearing
2 issues. And the attorney, also, contacted me, but just to
3 let me know when we needed to come to court.

4 Q Okay. Did you know about any allegations about
5 things that Calidad or their agents had done?

6 A I didn't understand. Can you repeat that?

7 Q Did you know about allegations about anything that
8 Calidad or its agents had done?

9 MS. TANKERSLEY: I --

10 THE COURT: Hold on.

11 MS. TANKERSLEY: I'm objecting. This isn't anything
12 that was brought up on cross-examination. If he wanted to
13 go over it, he should have done it on the original direct.

14 MR. WOOTEN: Sure, Your Honor.

15 I'm sorry. Your objection was it wasn't brought up
16 in the original or in redirect -- or in your cross?

17 MS. TANKERSLEY: In my cross. It's outside the scope
18 of redirect.

19 MR. WOOTEN: Well, Your Honor, she asked him about
20 whether he still used Calidad after the fact. And so I'm
21 going into what he knew about what Calidad had done as to
22 why he would ever change agencies.

23 THE COURT: All right. I'm going to allow the
24 question.

25 MR. WOOTEN: Sorry. Were we waiting on an answer or

1 a question?

2 THE INTERPRETER: Can you repeat the question again,
3 please?

4 BY MR. WOOTEN:

5 Q Okay. Did you know about any of the allegations
6 about things that Calidad or its employees had done?

7 A Well, from -- well, no. Because they -- I knew
8 something was not right when they denied coverage for the
9 damages to Benny.

10 Q Okay. Did you know about the insurance issues as far
11 as underinsured coverage in this case?

12 A Yes. Yeah, since the moment that the accident --
13 this whole thing with the accident happened. But I didn't
14 think that there was going to come anything from it.

15 Q Okay. You were asked earlier about whether or not
16 there were pages missing in the application. Do you
17 remember that?

18 A I didn't know that page was missing until I was told
19 by Benny and the attorney. I didn't know before that.

20 Q Okay. Would you have noticed if a page was missing
21 when you were signing these forms?

22 A I didn't notice.

23 Q And let me show you what's Page 5 of Plaintiff's
24 Exhibit No. 3. And if it's okay with you, let me put it
25 on the screen. And then you can look on the screen.

1 MS. TANKERSLEY: Your Honor, same objection. He's
2 already shown him this exhibit.

3 THE COURT: Mr. Wooten.

4 MR. WOOTEN: I was going to ask him about something
5 that she had asked him about.

6 THE COURT: Okay. Just move along.

7 MR. WOOTEN: I will.

8 BY MR. WOOTEN:

9 Q Alfredo, you were asked if you -- if you could read
10 that number right there. Do you recall that?

11 A No, I don't remember.

12 Q Okay. No. Just a minute -- just a few minutes ago,
13 do you remember when Ms. Tankersley asked you if you could
14 read that number?

15 A I -- I don't remember.

16 Q Okay. Let me ask you this, so do you know what this
17 says, this line that's just above my finger? Can you read
18 that?

19 A No.

20 Q Okay. And -- and I believe earlier you said no is
21 the same in Spanish; is that correct?

22 A I, honestly, don't remember being explained any of
23 that, almost any of that.

24 Q All right. And do you know what underinsured
25 coverage is?

1 A I didn't know.

2 Q Okay. Do you know what full coverage is?

3 A Yes. I thought I was buying full coverage.

4 Q Okay. But do you know what full coverage, actually,
5 is?

6 A Can you repeat it, please?

7 Q Do you know what full coverage, actually, means?

8 A Not exactly.

9 Q Okay. Let's look at this page from Plaintiff's
10 Exhibit No. 3. Do you know what this word means that's
11 right above my finger?

12 A From the little I understand, I would say it's simple
13 coverage.

14 Q Okay. And do you know what this is?

15 A No.

16 Q Okay. Do you know what this is?

17 A No.

18 Q Do you know what that is?

19 A No.

20 MR. WOOTEN: That's all the questions I have.

21 THE COURT: All right. You may step down.

22 All right. Ladies and gentlemen, we'll take a short
23 break, 10 minutes. And then we'll come back in and finish
24 up here, I think, probably shortly.

25 Don't discuss the case. And we'll see you back in a

1 few minutes.

2 (WHEREUPON, the jury was excused from open court at
3 approximately 11:01 a.m.)

4 THE COURT: All right. 10 minutes.

5 (WHEREUPON, a break was taken.)

6 THE COURT: Is the Plaintiff ready?

7 MR. WOOTEN: Yes, Your Honor.

8 Your Honor, I do have one question, though. So we're
9 going to do the transcript next. And if the exhibits get
10 admitted, we will just pull those out of the original
11 transcript? Because it's not all of them. It's just a
12 few of them.

13 THE COURT: Are they ones that are already in here?

14 MR. WOOTEN: No, sir. It was different ones. It was
15 what they had their motion in limine about before.

16 THE COURT: What are they -- what else can y'all
17 possibly put in here?

18 MR. WOOTEN: It's the e-mails where when we requested
19 the underinsured rejection form, they kept sending it to
20 us without the missing page. It's -- it's the same form
21 that we've seen already. It's just different e-mails from
22 MGA.

23 MS. TANKERSLEY: I think the issue that we were
24 talking about with those is --

25 Are these the ones that are to you?

1 MR. WOOTEN: Yeah. I think they're all stuff sent to
2 me.

3 MS. TANKERSLEY: Yeah. There's no one to
4 authenticate them. And, obviously, I -- I think they're
5 not relevant. And, of course, he can't testify as a
6 witness.

7 THE COURT: Yeah. I mean, that does present a
8 problem.

9 MR. WOOTEN: It does. And our argument would be that
10 we tried to subpoena somebody from the company to show up
11 and they didn't, so.

12 MS. TANKERSLEY: You withdrew the subpoena.

13 MR. WOOTEN: We didn't withdraw the subpoena.

14 THE COURT: I guess just reference them and then
15 I'll -- they're not put in, I guess. I mean, are they --
16 are there a lot of them that are referenced? I didn't --
17 I guess I didn't catch that part when I was going through
18 them.

19 MR. WOOTEN: It's three e-mails and a fax.

20 THE COURT: So I guess you'll just have to reference
21 them without putting them into evidence.

22 MR. WOOTEN: Okay.

23 MS. TANKERSLEY: From a logistics perspective, I
24 think he's going to have --

25 Do you want -- Ray, do you want one of your people to

1 read?

2 MR. WOOTEN: Yeah. I was going to get Andrea to read
3 the bulk of it. And then I think she was going to have
4 her read the --

5 MS. TANKERSLEY: If that's okay from a logistics.

6 THE COURT: All right. So you've got the Plaintiff
7 and then the deposition?

8 MR. WOOTEN: Yes, Your Honor. We're going to do the
9 deposition first.

10 THE COURT: I thought we were going to finish early.
11 But I guess I was too optimistic with you guys. We're
12 going to go to lunch on time.

13 All right. Is the Plaintiff ready for the jury?

14 MR. WOOTEN: Yes, Your Honor.

15 THE COURT: Is the Defendant ready for the jury?

16 MS. TANKERSLEY: Yes, Your Honor.

17 THE COURT: All right.

18 (Pause.)

19 THE BAILIFF: Are you ready, Judge?

20 THE COURT: Yes. Bring them in.

21 MS. TANKERSLEY: Your Honor --

22 THE COURT: Hold on.

23 THE BAILIFF: Hold it. Stop.

24 MS. TANKERSLEY: Sorry. I know what your ruling is
25 with regard to those e-mails. And I, obviously, heard it.

1 But I'm going to object contemporaneously, but just the
2 one time.

3 THE COURT: Okay. Well, I mean, I guess it's the
4 deposition -- can you just put your-- are you going to
5 object while he's reading the deposition? I guess --
6 that's fine. Just -- that's fine. You can do it -- you
7 can do it at that point.

8 MS. TANKERSLEY: Okay.

9 THE COURT: All right. Now, bring them in.

10 (WHEREUPON, the jury came into open court at
11 approximately 11:20 a.m.)

12 THE COURT: All right. Mr. Wooten, you may proceed.

13 MR. WOOTEN: Thank you, Your Honor.

14 We'd like to call Defendant MGA through their
15 deposition testimony.

16 THE COURT: All right. And, ladies and gentlemen, as
17 I told you before, depositions -- this is going to be a
18 deposition. And it's a previous statement under oath.
19 And you're to give it -- like any other piece of evidence
20 or any other witness, you're to give it the weight and
21 value that it -- that you feel is appropriate.

22 What we -- what we do in these situations -- this
23 individual is not here. So -- and Mr. Wooten's
24 questions -- he will have somebody from his office
25 reading. This is obviously, not the person here. And

1 then when they have questions from the other side, they'll
2 kind of switch there, so anyway.

3 You don't need to swear her.

4 THE CLERK: Okay.

5 MR. WOOTEN: If I may open it, Your Honor.

6 THE COURT: Yes, you may.

7 Did y'all include the oath?

8 MR. WOOTEN: Sir?

9 THE COURT: Did y'all include the oath?

10 MR. WOOTEN: I'm not sure.

11 Do you want to see it?

12 THE COURT: I mean, when you -- in your designations,
13 I don't think you --

14 MR. WOOTEN: No, sir. I don't think we did.

15 THE COURT: All right. This is the deposition of MGA
16 Insurance Company's designee representative Ken Hawley.
17 It was taken on August the 19th, 2022. And it says on
18 Page 5, The deponent was duly sworn to tell the truth. So
19 they were -- the oath was administered to this witness at
20 that time.

21 You may proceed, Mr. Wooten.

22 MR. WOOTEN: Thank you, Your Honor.

23 And the first designation is Page 8, Lines 1 through
24 5. So if you'll turn to Page 8, please.

25 All right. Question: And MGA and Gainsco are the

1 same company; correct?

2 MS. ANDREA RAMIREZ: No. MGA is the insurance
3 company, the company that issues the policy. Gainsco,
4 Incorporated is a holding company. It's the parent
5 company. And Gain -- Gainsco Auto Insurance is the
6 registered trademark of MGA Insurance Company.

7 MR. WOOTEN: Okay. Next, if you could turn to Page
8 13, please, ma'am. All right. And this will be Line 4
9 through Line 7 on the following page.

10 Okay. So my question was, is it typical to have a
11 situation like this where one spouse goes and obtains
12 coverage for cars that are driven by both spouses?

13 MS. ANDREA RAMIREZ: Yes.

14 MR. WOOTEN: And in a situation like that -- or like
15 this, Calidad is acting as the agent for MGA; is that
16 correct?

17 MS. ANDREA RAMIREZ: Yes. Calidad in this case is an
18 appointed independent agent.

19 MR. WOOTEN: Okay. And when you say "appointed
20 independent agent," what does that mean?

21 MS. ANDREA RAMIREZ: Approved.

22 MR. WOOTEN: I'm sorry. What did you say?

23 MS. ANDREA RAMIREZ: Approved.

24 MR. WOOTEN: Okay. And so Calidad handles all the
25 forms, the application, all that stuff; correct?

1 MS. ANDREA RAMIREZ: Well, when you say "handles,"
2 they're responsible for quoting the risk. They're
3 responsible for obtaining the proper -- according to our
4 underwriting guidelines obtaining the proper signatures,
5 selling the policies, and maintaining the documentation
6 regarding the records of said policy.

7 MR. WOOTEN: Okay. If you can go through Line 7 on
8 the next page, please, ma'am.

9 MS. ANDREA RAMIREZ: I believe it is very specific,
10 their originals -- the original, yeah.

11 MR. WOOTEN: Were they required to keep hard copies
12 of the originals or could they keep scanned copies?

13 MS. ANDREA RAMIREZ: I believe the agent -- the
14 agency agreement allows them to keep scanned copies. But
15 that's the original copy, nevertheless, is their
16 disposition.

17 MR. WOOTEN: Okay. And our next one is Page 33. And
18 this is going to go through Page 37, Line 22. So we'll
19 start on Line 11 on Page 33.

20 All right. Am I correct that MGA's decision not to
21 provide underinsured coverage in the underlying wreck is
22 based on this underinsured selection rejection form that
23 was e-mailed to it on November 28th of 2018?

24 MS. ANDREA RAMIREZ: I believe the decision is based
25 upon the subsequent receipt of all six pages of the

1 application from the agent's records showing, again, all
2 six pages, plus a rejection -- signed rejection of
3 underinsured motorist coverage, which is consistent with
4 all of the declaration pages that have ever been sent to
5 the insured and the fact that no premiums have ever been
6 paid for underinsured motorist coverage.

7 MR. WOOTEN: As of November 28th of 2018, am I
8 correct that it was MGA's position that there was no
9 underinsured coverage on this policy?

10 MS. ANDREA RAMIREZ: That is correct.

11 MR. WOOTEN: Okay. And that position that there was
12 no underinsured coverage remained the same up until the
13 subsequent UIM rejection form that you referenced was
14 received; correct?

15 MS. ANDREA RAMIREZ: Correct.

16 MR. WOOTEN: Essentially, nothing changed. MGA kept
17 the same position from the time it received this
18 underinsured rejection form on November 28th of 2018, and
19 it stayed the same even after it had received the
20 subsequent UIM rejection form; correct?

21 MS. ANDREA RAMIREZ: That is correct.

22 MR. WOOTEN: So that would mean that between the time
23 that it received this underinsured rejection form that was
24 incomplete on November 28th of 2018 until it received the
25 subsequent form, MGA was relying on this in -- incomplete

1 form; is that correct?

2 And Ms. Tankersley objected to the form.

3 MS. TANKERSLEY: Thank you.

4 What page are you on? I got lost.

5 MR. WOOTEN: We're on 34 now.

6 MS. TANKERSLEY: Okay.

7 MS. ANDREA RAMIREZ: MGA was relying on its internal
8 records from which the data was obtained from the original
9 data transfer at the time of binding showing that there
10 was no coverage and no premiums ever charged to this
11 insured for underinsured motorist coverage. The act of
12 requesting the records dating back to the inception of the
13 policy vis-a -- vis-à-vis the application from the agent's
14 records were just a normal part of the process of
15 obtaining the documentation regarding the rejection of
16 those coverages.

17 MR. WOOTEN: Would you agree --

18 MS. TANKERSLEY: Objection, Your Honor. I believe
19 starting on Page -- or on 35 -- Page --

20 MR. WOOTEN: Oh, yeah, you're right, you're right.
21 Sorry. I missed my note.

22 Okay. We've got to skip to 20 here. All right.

23 THE COURT: Let me -- let me just tell the jury.
24 What they have done is designated certain portions of the
25 deposition so that the entire deposition is not read, but

1 just relevant portions that the attorneys feel are
2 appropriate. So that's why you may see some skipping
3 around here, so.

4 MR. WOOTEN: Okay. Sorry, Andrea. We need to skip
5 down to Line 21.

6 And am I correct that the reason that MGA reached out
7 to the adjuster and asked for the signed application was
8 so that it could ascertain whether or not a meaningful
9 offer of UIM had been made?

10 And then Ms. Tankersley objects and says, I'm sorry.
11 Can you repeat that, Raymond? I didn't hear you.

12 Question: Sure. Am I correct that the reason that
13 MGA reached out to Calidad Latina and requested the signed
14 application was so that it could determine whether or not
15 a meaningful offer of underinsured coverage had been made?

16 MS. ANDREA RAMIREZ: I believe that's part of it. I
17 believe that they -- it's a normal practice, according to
18 our process, to request a copy of the application when a
19 claim has been presented. So within the context of
20 obtaining the executed or signed application to obtain the
21 information regarding the rejection and selection of
22 uninsured motorist coverage, which includes the offer.

23 MR. WOOTEN: And what MGA obtained on November 28th
24 of 2018 from Calidad Latina would not constitute a
25 meaningful offer of underinsured coverage; correct?

1 MS. TANKERSLEY: I object to the form -- or I'm
2 sorry. I object to the form is what I said in the depo.

3 Your Honor, can we approach briefly?

4 THE COURT: Yes.

5 (WHEREUPON, a bench conference was held.)

6 MR. WOOTEN: All right. Andrea, if we can go to
7 Page -- stay on Page 37, but go down to Line 13.

8 Is it MGA's position that Page 4 out of 6 was,
9 actually, presented to Mr. Mendez?

10 MS. ANDREA RAMIREZ: Again, based on the
11 certification -- the agent's certification by the insured,
12 that is our position.

13 MR. WOOTEN: Is it based on anything else or just the
14 agent's certification?

15 And then Ms. Tankersley objects to the form.

16 MS. ANDREA RAMIREZ: The agent's certification.

17 MR. WOOTEN: Okay. And then -- I'm sorry. We keep
18 going here through Page 41, Line 12.

19 All right. Let me show you some other documents
20 here. Let me show you what we'll mark as Exhibit No. 2.

21 And, Jenny, I'll e-mail you all this stuff
22 afterwards.

23 Court reporter: Okay.

24 Question: Exhibit No. 2, can you see that on your
25 screen?

1 MS. ANDREA RAMIREZ: Yeah. It's small, but I can see
2 it.

3 MR. WOOTEN: Okay. I'll try and zoom in a little bit
4 here for you. All right. Exhibit No. 2 is an e-mail from
5 Chelsea Nance on November 28th, 2018 at 4:47 p.m. Do you
6 see that?

7 MS. ANDREA RAMIREZ: Yes.

8 MS. TANKERSLEY: Objection, Your Honor. Just the
9 continuing objection.

10 THE COURT: Okay. As previously objected.

11 MR. WOOTEN: Okay. And it looks like the attachments
12 Page 1, Page 2, Page 3, Page 4, and Page 5. Do you see
13 that?

14 MS. ANDREA RAMIREZ: Yes. I see that.

15 MR. WOOTEN: And if I -- if we scroll down, I'll
16 represent to you -- and just tell me if you want me to
17 stop. But that is Page 1 of 6, Page 2 of 6, Page 3 of 6,
18 Page 5 of 6, and Page 6 of 6 of Mr. Mendez's application;
19 is that correct?

20 MS. ANDREA RAMIREZ: Correct.

21 MR. WOOTEN: Okay. So as of that date, MGA had an
22 incomplete copy of the application; correct?

23 MS. ANDREA RAMIREZ: Correct.

24 MR. WOOTEN: And that's the same thing that we were
25 just looking at that was sent to MGA as part of Exhibit

1 No. 1 in that e-mail; correct?

2 MS. ANDREA RAMIREZ: Yes. Well, maybe with the first
3 e-mail from the agent.

4 MR. WOOTEN: Then I'll show you what we'll mark as
5 Exhibit No. 3. Can you see that document?

6 MS. ANDREA RAMIREZ: Yes.

7 MR. WOOTEN: Okay. And, again, this is an e-mail
8 from Chelsea Nance on November 28th of 2018 at 6:06 p.m.
9 And, again, she attaches a copy of the application. And
10 I'll just scroll through it again. And, again, you've got
11 Page 1, Page 2, Page 3, Page 5, and Page 6; correct?

12 MS. ANDREA RAMIREZ: Correct.

13 MR. WOOTEN: Okay. So, again, it's that same form
14 that is missing Page 4 of 6; correct?

15 MS. ANDREA RAMIREZ: Correct.

16 MR. WOOTEN: And without Page 4 of 6, you would agree
17 that it's an incomplete underinsured rejection form;
18 correct?

19 MS. TANKERSLEY: Objection, Your Honor. That's the
20 same thing we just talked about.

21 THE COURT: Do y'all want to approach?

22 (WHEREUPON, a bench conference was held.)

23 MR. WOOTEN: All right. Andrea, we'll go starting at
24 Page 40, Line 4.

25 MS. ANDREA RAMIREZ: Okay.

1 MR. WOOTEN: All right. This is another e-mail from
2 Ms. Nance, which we will mark as exhibit -- I believe
3 we're on number 4. Do you see this November 28th, 2018 at
4 6:32 p.m.?

5 MS. ANDREA RAMIREZ: Yes.

6 MR. WOOTEN: It says, I've sent the policy
7 application via fax. Let me know if it's still not coming
8 through. Do you see that?

9 MS. ANDREA RAMIREZ: Yes.

10 MR. WOOTEN: Okay. And then we'll mark this as
11 Exhibit No. 5 here.

12 MS. ANDREA RAMIREZ: Although -- let me just say that
13 although this says via fax, we only have fax servers. So
14 this was reduced electronically and then sent
15 electronically. It may have printed out on physical paper
16 on the recipient's side possibly, but it was all
17 electronic on our side.

18 MR. WOOTEN: Okay. And this is what we'll mark as
19 Exhibit No. 5. This is, I believe, where the form was
20 faxed to us. Do you see that?

21 MS. ANDREA RAMIREZ: The form?

22 MR. WOOTEN: The application -- I'm sorry -- was
23 faxed to us.

24 MS. ANDREA RAMIREZ: Okay. That's a fax cover page.

25 MR. WOOTEN: Yes, sir. And do you see -- it says

1 November 28th at 5:31 p.m.; correct?

2 MS. ANDREA RAMIREZ: Yes.

3 MR. WOOTEN: Okay. And would that be central time
4 that that's being sent out or would that be mountain time?

5 MS. ANDREA RAMIREZ: We don't have any operation
6 centers in mountain time, just eastern and central.

7 MR. WOOTEN: All right. And so if we look at this
8 document, again, we've got the same underinsured rejection
9 form that's missing Page 4 out of 6; correct?

10 MS. ANDREA RAMIREZ: Correct.

11 MR. WOOTEN: All right. Next, if you could go to
12 Page 42, Line 15.

13 All right. So this e-mail that we've marked as
14 Exhibit No. 6 was sent by Angela Beltran on November 24th
15 of 2020. But what I want you to look down to is down here
16 it's a forwarded e-mail, March 14th, 2019 regarding
17 Alfredo Palafox Mendez. And I believe that this is the
18 e-mail where Calidad sent what MGA contends is the
19 complete application; is that correct?

20 MS. ANDREA RAMIREZ: Yeah. I would tell you that
21 seeing what I'm looking at -- seeing two forwarded message
22 headers there, she probably went back and copied her
23 original e-mail chain that was communicating with Chelsea
24 Nance previously and just brought that current.

25 Can you maybe scroll up a little bit, please?

1 MR. WOOTEN: Right here?

2 MS. ANDREA RAMIREZ: Yeah. I mean, so the first
3 e-mail header says November 24th, 2020 at 17:24 p.m. EST.
4 And the second one, the Nick Mendoza says March 14th,
5 2019. Well, it's small, but.

6 MR. WOOTEN: You want me to zoom in?

7 MS. ANDREA RAMIREZ: It's eastern daylight time.

8 MR. WOOTEN: Can you read that, though?

9 MS. ANDREA RAMIREZ: There we go. Okay. Yeah.

10 MR. WOOTEN: Okay. And if we look down at this one,
11 there's all six pages of the application, including Page 4
12 out of 6. I'll scan the bottom here so you can see that.
13 Is that correct?

14 MS. ANDREA RAMIREZ: Yes.

15 MR. WOOTEN: And this is the first time that a
16 complete application form has been provided; correct?

17 MS. ANDREA RAMIREZ: Provided to MGA?

18 MR. WOOTEN: Yes, sir. Is that correct?

19 MS. ANDREA RAMIREZ: That's correct.

20 MR. WOOTEN: And would you agree that on this Page 4
21 out of 6, there's nowhere for a person to sign; correct?

22 MS. ANDREA RAMIREZ: It's not a signatory page,
23 correct.

24 MR. WOOTEN: Okay. And this Page 4 out of 6 is just
25 the standard -- a standard page; correct? A standard

1 form?

2 MS. ANDREA RAMIREZ: It's part of the application,
3 but, yes.

4 MR. WOOTEN: There's nothing different -- sorry.
5 There's nothing different about this Page 4 out of 6 and
6 the Page 4 out of 6 that would be on any other application
7 produced by MGA at this time; correct?

8 MS. ANDREA RAMIREZ: Correct.

9 MR. WOOTEN: All right. And next, we will go to Page
10 52, Line 11.

11 Okay. So what you've got here is you've got an
12 insurance agent that e-mailed to MGA an incomplete form in
13 November of 2018; correct?

14 MS. ANDREA RAMIREZ: Yes.

15 MR. WOOTEN: Okay. They've produced an incomplete
16 form to us in response to a subpoena; correct?

17 MS. ANDREA RAMIREZ: From what I've seen in this in
18 your scrolling, correct.

19 MR. WOOTEN: The only time that they sent a PDF -- a
20 complete PDF was part of Exhibit No. 6, which was sent to
21 MGA after they, specifically, requested a complete form
22 that included Page 4 out of 6; correct?

23 MS. ANDREA RAMIREZ: Yeah. Let's not leave it at PDF
24 because we have a lot of PDF's around here. You've just
25 shown me a PDF of an application, plus all kinds of other

1 forms. Was it a motor club, you know, that apparently --
2 that -- that apparently that the agency sold? And that's
3 an example of what I mentioned before that there are often
4 times other forms that are related to other services or
5 agency specific forms that are part of the process and
6 that those are not for us. We're MGA.

7 So when you say "PDF," you mean application in PDF
8 form; correct?

9 MR. WOOTEN: That's correct. You're right. So the
10 only time that we've seen a complete application was the
11 one that was attached to Exhibit No. 6; correct?

12 MS. ANDREA RAMIREZ: As provided by the independent
13 agent with the second response -- e-mail response with a
14 copy of the complete application in PDF form.

15 MR. WOOTEN: Okay. And that's all the questions.
16 Thank you.

17 THE COURT: All right. I believe the Defendant would
18 like to present some additional portions of the
19 deposition.

20 MS. TANKERSLEY: Yes, Your Honor, just briefly.

21 THE COURT: All right. You may proceed.

22 And, ladies and gentlemen, this is the same witness,
23 Ken Hawley, just a presentation of some additional
24 portions.

25 All right. You may proceed.

1 MS. TANKERSLEY: All right. On Page 7, Line 18.

2 All right. What is your full name?

3 MS. ASHLEY HRUBALA: Kenneth Wood Hawley.

4 MS. TANKERSLEY: And what is your job at MGA?

5 MS. ASHLEY HRUBALA: Corporate claims manager.

6 MS. TANKERSLEY: How long have you had that job?

7 MS. ASHLEY HRUBALA: About five years or so.

8 MS. TANKERSLEY: How long have you been with MGA?

9 MS. ASHLEY HRUBALA: Approximately 12 years.

10 MS. TANKERSLEY: All right. Page 10.

11 Okay. Has MGA directly -- and by directly, I mean by
12 not through Calidad Latina -- had any communications with
13 Alfredo?

14 MS. ASHLEY HRUBALA: Is your question in the life of
15 the policy?

16 MS. TANKERSLEY: Yes, sir. With regard to either the
17 policy or the claim?

18 MS. ASHLEY HRUBALA: You know, there would be a
19 number of communications, including sending out the
20 policy. It'd be sort of policy endorsements, or
21 amendments, or required policy disclosures.

22 MS. TANKERSLEY: Okay. Are those all, I guess,
23 written communications with him?

24 MS. ASHLEY HRUBALA: Right.

25 MS. TANKERSLEY: Page 22.

1 So in March of 2017, take me through the process when
2 somebody would get an insurance policy. And what I'm
3 looking for here is MGA's side. What do you get from the
4 insurance agent, what's sent to you, what's kept, and
5 where is it kept?

6 MS. ASHLEY HRUBALA: Well, first of all, there is no
7 stock of blank applications that exist separate from the
8 process I'm going to explain. So within this process, the
9 application comes into existence by being printed at a
10 particular point in time. Let me explain the process.

11 So in order for an agent to sell a policy, there must
12 be a quote that is started and that exists. And then that
13 quote includes many variables, including name, address,
14 lists zip code, vehicles that are requested to be covered,
15 all of the various coverages that could be purchased or
16 that are asked for on each vehicle, et cetera, their
17 driving record, garaging address.

18 And within that quote, the agent -- independent
19 agent, rather, can obtain a price. Essentially, since
20 it's in quote status, that is an estimation of what the
21 policy requested would cost. And that remains in the
22 closed status until requested to be bound.

23 When and if the quote is bound -- and that is,
24 specifically, through MGA software, it came through their
25 web portal and that -- and that's a separate system that

1 the independent agent would have to log on through the
2 internet.

3 MS. TANKERSLEY: Okay. Go ahead over to Page 24.

4 MS. ASHLEY HRUBALA: So the quote if it is going to
5 be bound right then, that election has to be made or that
6 process has to be initiated by the independent agent. The
7 application is, again, not sent from MGA physically. It
8 is initiated and exists at that point in time to be
9 printed by the agent physically at that location. And
10 that would be the original copy of the application as
11 printed.

12 And then from there, that application is used for
13 signatures for the insured to sign in presentation to the
14 insured, et cetera.

15 MS. TANKERSLEY: All right. Page 25.

16 MS. ASHLEY HRUBALA: As the application is printed on
17 the agency side, a copy -- an electric -- an electronic
18 only copy of that original application is automatically
19 saved in MGA's server. And that is not a copy. It is not
20 a physical copy.

21 It is an electronic record, which is date stamped and
22 exists for audit purposes. So the application that the
23 agent prints physically, the agent is responsible for
24 maintaining a copy of that record.

25 MS. TANKERSLEY: Okay. That's all the questions. I

1 appreciate it.

2 THE COURT: All right. Mr. Wooten.

3 MR. WOOTEN: Thank you, Your Honor.

4 The Plaintiff would call Benigna Vargas.

5 THE COURT: And I'll remind you that you're already
6 under oath, Madam Interpreter.

7 THE CLERK: Ms. Vargas, please place your left hand
8 on the Bible and raise your right hand.

9 WHEREUPON,

10 BENIGNA VARGAS,
11 after first having been duly sworn, testified as follows:

12 THE CLERK: Please say your full name.

13 THE INTERPRETER: Benigna Vargas [inaudible].

14 THE CLERK: Thank you.

15 You may be seated.

16 DIRECT EXAMINATION

17 (WHEREUPON, the following answers of Benigna Vargas
18 were translated by an interpreter.)

19 BY MR. WOOTEN:

20 Q Ms. Vargas, where do you live?

21 A In Greer.

22 Q Okay. And what do you do for work?

23 A In a Mexican -- Mexican restaurant, I'm the kitchen
24 manager.

25 Q Okay. And how long have you worked at that restaurant?

1 A It's almost 10 years.

2 Q Okay. Were you always the kitchen manager?

3 A No. 10 years ago, I started washing dishes.

4 Q Okay. And how many days a week do you work?

5 A I work the entire week.

6 Q Okay. And why do you work so hard?

7 A Because three little girls depend on me and myself.

8 Q Okay. And were you in a car wreck in July of 2018?

9 THE INTERPRETER: The interpreter requests repetition
10 of the date.

11 MR. WOOTEN: July of 2018, 2018.

12 THE INTERPRETER: 2018?

13 MR. WOOTEN: Yes, ma'am.

14 THE INTERPRETER: Yes.

15 BY MR. WOOTEN:

16 Q And did the insurance company for the person who hit
17 you settle their -- your claim with them?

18 A Yes. But the coverage was not enough to cover all
19 expenses.

20 Q Okay. And what car were you driving when this wreck
21 occurred?

22 A A black Honda Civic.

23 Q Okay. And who -- who insured that car?

24 A Alfredo, who was my life partner at that time. And
25 he got a -- insurance with a company called Gainsco.

1 MR. WOOTEN: Okay. Thank you, Ms. Vargas.

2 That's all the questions I have. Answer any

3 Ms. Tankersley may have.

4 THE COURT: Cross-examination.

5 MS. TANKERSLEY: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. TANKERSLEY:

8 Q All right. Ms. Vargas, I just have a few questions.

9 A Yes. Go ahead.

10 Q How long have you been living in the U.S.?

11 A 10 years.

12 Q Okay. So how's your English?

13 A I understand some. I do not speak it.

14 Q Okay. You testified that you were involved in this
15 car accident back in -- in 2018. And the person who was
16 responsible for that accident, his insurance company paid
17 you some money; right?

18 A Yes.

19 Q Okay. And -- and in the process of that settlement,
20 did you sign a document that was in English confirming the
21 settlement?

22 A Yes.

23 Q Okay. Were you and Mr. Mendez living together back
24 in 2017, 2018?

25 A Yes. And we have a -- a child in common.

1 Q Okay. Did you ever review any of the documents that
2 Gainsco or MGA sent to y'all's house about this policy?

3 A No. Because at that time, Alfredo would see to
4 everything.

5 MS. TANKERSLEY: Okay. That's all questions I have
6 for you then. I appreciate it.

7 THE COURT: All right. Any redirect?

8 MR. WOOTEN: None, Your Honor.

9 THE COURT: All right. You may step down.

10 MR. WOOTEN: Your Honor, at this time, the Plaintiff
11 would rest their case.

12 THE COURT: All right. Ladies and gentlemen, the
13 Plaintiff has rested their case in chief. So at this
14 point, there are some things I have to go over with the
15 attorneys. And then I'll bring you back out in just a few
16 minutes and give you instructions for -- for your lunch.

17 Okay. Step back in there. Do not discuss the case,
18 though.

19 (WHEREUPON, the jury was excused from open court at
20 approximately 11:50 a.m.)

21 THE COURT: All right. Anything further from the
22 Plaintiff at this point?

23 MR. WOOTEN: Your Honor, I guess we need to wait
24 until the end of the Defendant's case to move for directed
25 verdict.

1 THE COURT: That's fine. I just always ask the
2 Plaintiff first.

3 Okay. Defendant.

4 MOTIONS

5 MS. TANKERSLEY: Yes, Your Honor. I've got a -- a
6 directed verdict motion --

7 THE COURT: Okay.

8 MS. TANKERSLEY: -- on whether or not there was a
9 meaningful offer. One, I -- I think we get a conclusive
10 presumption for the form. The statute -- and, of course,
11 the case law is that whether or not the form complies is
12 a -- an issue of law for the Court to decide.

13 The form that we have is the same form that is
14 created by the South Carolina Department of Insurance.
15 The statute, 38-77-350(b), states that if the DOI form is
16 signed by the named insured after it has been completed by
17 an insurance producer or a representative of the insurer,
18 meaning that the insurance company is the one that checks
19 that little box, it is conclusively presumed that there is
20 an informed knowing selection of coverage. And neither
21 the insurance company nor an insurance agent is liable to
22 the named insured or another insured under the policy for
23 the insurance failure to purchase optional insurance.

24 Section D states, Compliance with this section
25 satisfies the insurer's and agent's duty to explain an

1 offer of optional coverages and higher limits. And no
2 person including, but not limited to an insured, an
3 insurance agent is liable in action for damages on account
4 of the selection of rejection made by the named insured.

5 The only approved form that the Department of
6 Insurance has is in English. The law does not require the
7 form to be in the insured's first language. That's not an
8 option. The -- the DOI just doesn't have a Spanish form.

9 It doesn't matter, though, if English was his second
10 language because the Court held in Croft vs. Old Republic,
11 which is 365 S.C. 402, that the Court is to apply a purely
12 objective test regarding the adequacy of the form and is
13 to disregard the insured's knowledge or level of
14 sophistication.

15 They haven't provided anything to even really rebut,
16 if you could, the presumption that we get about the form.
17 This March 2019 e-mail only shows that opposing counsel
18 didn't, initially, receive Page 4, not that Mr. Mendez
19 didn't receive Page 4. He testified he has no reason to
20 believe he didn't get Page 4. He has no memory of -- of
21 getting anything incomplete. He didn't notify anybody
22 that he was missing any pages. The pages are numbered.
23 They are the same in Spanish as they would be in English.

24 He sort of has claimed that he didn't really read it.
25 But South Carolina law, of course, is that a person who

1 signs a contract or other written document can't avoid the
2 effect of the document simply by claiming he didn't read
3 it. And that language is from 354 S.C. 648. There's a
4 number of cases that are -- are pretty on point.

5 He's, certainly, not the first person to claim he
6 couldn't understand or, specifically, remember what he
7 signed. In Clinton vs. West American Insurance Company,
8 364 S.C. 113, the Court found a meaningful offer, even
9 when the insured testified she didn't recall filling out
10 the offer, but, again, as in here, admitted that the
11 signature on form were [sic] hers.

12 Another case which is unpublished, so not
13 precedential, but potentially persuasive is Phillips vs.
14 American National, 201 S.C. Lexus 378. The insured
15 testified he didn't remember if the information in the UIM
16 form was there when he signed it. The Court still found
17 that that was only speculation that the information wasn't
18 there, so not enough to show there wasn't a meaningful
19 offer.

20 In another case, Phillips vs. Progressive, 2008 U.S.
21 District Lexus 51017, the Plaintiff's assertion that she
22 did not read or review the coverages upon receipt of the
23 forms or at the time the coverage was renewed does not
24 require the Court to reform the policy. And they found
25 the application in question amounted to be a meaningful

1 offer.

2 Wiegand vs. USAA is one of the sort of formative
3 cases with all this law. It's 391 S.C. 159. They held
4 that a form complied with the statute even if not approved
5 by the Department of Insurance. So you've got the DOI
6 form, which we have.

7 But even if we didn't have that, the form can still
8 comply with the -- the statutory requirement if it
9 contains a brief and concise explanation of UIM, contained
10 every UIM limit, which they were approved to sell, which
11 is on Page 5, it's not on Page 4, and that there was a
12 space to select or reject. That was here. A space to
13 acknowledge that he had been offered additional coverage
14 as was here. And then, of course, the Department of
15 Insurance mailing address is on the form. That's -- of
16 course, complies here.

17 In the Wiegand case, the Court noted that the insured
18 was provided annual reports from USAA, as was the insured
19 here, which showed no UIM coverage on his vehicle. He
20 never informed the carrier that a mistake had been made
21 and never asked for UIM coverage. So in that case, the
22 Court found that USAA was entitled to a presumption of a
23 meaningful offer.

24 There's some cases directly on point about whether or
25 not pages were missing. The first is Bagnal vs. Foremost,

1 2010 U.S. Lexus 18 567. The district court there found a
2 meaningful offer again. The insured claimed he only
3 received one of the pages, which is more than the insured
4 here said. He has not testified that he did not get all
5 the pages.

6 But in that case, he said he didn't get the pages.
7 But he did not dispute that he signed it. He signed an
8 acknowledgment that the form had been explained to him and
9 he understood it, which is exactly what the insured did
10 here. And in that case, the insurance agency or carrier,
11 also, only saved signature pages.

12 In Slice vs. Liberty Mutual, again, the Court found a
13 meaningful offer when the insured argued she didn't get a
14 meaningful offer because she was only given two of the
15 four pages. She admitted that she signed the signature
16 pages, but couldn't remember, like here, if she got all
17 four of the pages. The insurance agency testified -- or
18 the insurance agent testified it was their normal practice
19 to provide all the pages, but, again, only to save the
20 signature pages.

21 The form had page numbers, which the Court said was
22 sufficient to alert the person signing the pages that if a
23 page was missing, they should see it. And that saving
24 the -- only the signature documents was a normal practice.
25 And that requiring an insurance carrier to do anything

1 other than that would be commercially unreasonable for
2 them to have to keep all of these standard pages that
3 don't change from policy to policy.

4 THE COURT: And what case was that?

5 MS. TANKERSLEY: That's Slice vs. Liberty Mutual.
6 And I've got copies of it.

7 THE COURT: Is that a South Carolina case?

8 MS. TANKERSLEY: It's South Carolina District Court.

9 THE COURT: Oh, okay.

10 MS. TANKERSLEY: Do you want copies of it, Your
11 Honor?

12 THE COURT: Yes, if you've got a copy.

13 MS. TANKERSLEY: I do.

14 THE COURT: Okay. You can proceed.

15 MS. TANKERSLEY: The Court in that case, also, found
16 that even if -- the form was still sufficient even if the
17 pages had been missing because the language that was on
18 the page where he signed was sufficient under the statute
19 to form a meaningful offer. And they detail in that case
20 what the languages on that form -- and without seeing the
21 form, but they have it typed out in the -- in the case.
22 It appears to be identical to what we have in our Page 5.
23 So under that case, I think that we would have a
24 conclusive presumption as well, even if our form was
25 missing Page 4.

1 And then, finally, Your Honor, I think we have a
2 meaningful offer under the Wannamaker standards as well.

3 Under Cohen vs. Progressive, 402 S.C. 66, they hold
4 that even if you don't get the conclusive presumption, you
5 can still get a meaningful offer.

6 THE COURT: But isn't that a factual question --

7 MS. TANKERSLEY: Yes --

8 THE COURT: -- to try to present to the jury?

9 MS. TANKERSLEY: Yes -- well, yes. But for purposes
10 of my directed --

11 THE COURT: Okay.

12 MS. TANKERSLEY: -- verdict motion, I would say that
13 they have not -- throughout the -- the evidence, there's
14 not a sufficient amount -- there are -- there is a
15 sufficient amount of evidence to rule on it now, rather
16 than having the jury to hear it.

17 The factors under Wannamaker are the insured's
18 notification process must be reasonable, whether oral or
19 in writing. Obviously, here, they -- there's testimony
20 that they have both the form and verbal explanations.

21 The insured must specify the limits of optional
22 coverage. That's on our form. And, again, there is
23 testimony that all of that would have been explained.
24 Because he had the minimum limits, the only option for
25 additional coverage would be minimum limits of UIM. It's

1 just 25/50/25.

2 The insurer must advise the insured of the nature of
3 the optional coverage. Obviously, Angela testified to
4 that. But, also, Mr. Mendez when I asked -- because this
5 was his deposition testimony as well -- did they go over
6 the coverages in your policy and what you did and didn't
7 accept. And he testified, Yes.

8 So that meets that factor as well as the forms that
9 he signed, which show the additional costs and the
10 additional premium. He has, clearly, testified that his
11 purpose was to go into this insurance company to get proof
12 of insurance to take back to the dealership so that he
13 could drive away with this car.

14 It does not matter that the agent doesn't have any
15 specific knowledge of their interactions. It's enough
16 under that Cohen vs. Progressive case to show that it is
17 their normal procedure. Obviously, most people involved
18 in business are not going to remember what they did six or
19 seven years ago. And to expect testimony of this is
20 exactly what was said from either the insured or the
21 insurance agent is asking a lot of our witnesses.

22 But it is sufficient that they can testify to what
23 their normal procedures are. He's testified over and over
24 that those are his signatures, that they're in Spanish. I
25 understand what I am signing and it has been explained to

1 me. And he signed underneath that in Spanish.

2 The Cohen vs. Progressive case, too, is similar to
3 this one. The agent testified she didn't recall meeting
4 with the insured, but she signed the application form
5 saying that it had been explained to him, which is what
6 happened here.

7 She testified that her general procedure for
8 completing an application is that she speaks with them
9 about what he wants, he fills out a quote sheet. Again,
10 just like here. Then she creates an application, prints
11 it off, same as here, gives it to the client, gives the
12 client a chance to read it, goes through the application
13 explaining the coverage. And then the client signs the
14 application in several places acknowledging that he has
15 read it. Again, just like here.

16 And in that Cohen case, the insured testified he
17 doesn't really remember talking about UIM coverage, that
18 he spent less than five minutes going over the application
19 and signing the forms. He testified that the agent didn't
20 explain what was in the paperwork and that he didn't
21 review them before signing. And the Court still found
22 that there was a meaningful offer because of the agent's
23 testimony that that's their normal practice. That the
24 form used by the agent had the required contents and that
25 the insured signed the acknowledgment stating that he had

1 read everything.

2 So I think under really all three options, the form
3 is the DOI form. The form meets the statutes. We should
4 get a conclusive presumption. And under the Wannamaker
5 factors that we have met everything showing that there was
6 a meaningful offer in this case.

7 THE COURT: Mr. Wooten.

8 MR. WOOTEN: Thank you, Your Honor.

9 So, Your Honor, if I could pass up a little thing I
10 put together with all the case law here.

11 THE COURT: Okay.

12 MR. WOOTEN: I may have already presented this, but I
13 printed out more copies.

14 THE COURT: I have not gotten one.

15 MR. WOOTEN: So, Your Honor -- and this doesn't
16 really have the facts of the case. This is just the case
17 law that applies.

18 THE COURT: All right.

19 MR. WOOTEN: So, first of all, they have to make a
20 meaningful offer. Everybody agrees with that. They bear
21 the burden of proving that a meaningful offer was made.
22 And a meaningful offer may be made by having an insured
23 sign a form that complies with the South Carolina code
24 section.

25 In order to comply with that section, the form has to

1 have a brief concise explanation of coverage, which that's
2 on Page 4 of their form. It, also, has to have some other
3 things and then the telephone number, mailing address of
4 the Department of Insurance, which is, also, on Page 4.

5 So without that page, you don't meet the requirements
6 of the statute. And so then the insured does not get the
7 presumption of a meaningful offer. If a form does not
8 comply with the statute, the insured may not benefit from
9 the protections of the statute. A form does not
10 necessarily constitute a meaningful offer simply because
11 it was approved by the Department of Insurance.

12 So, Your Honor, I think the testimony here is very
13 clear. And the evidence shows that Mr. Mendez was not
14 presented with all those pages. That they probably just
15 gave him a stack of signature pages. The evidence shows
16 that they then attempted to cover that up by inserting a
17 page.

18 I mean, Ms. Beltran's testimony went from -- in 2020,
19 she said that they scanned every single page. And that
20 she had sent the complete form straight out of her file.
21 And then all the sudden, we come to court now and she says
22 she only scans the signature pages. It's about the
23 biggest flip in testimony I think I've ever seen. And so,
24 Your Honor, I think it's clear that the reason she's doing
25 that is because they did not present him with all those

1 pages.

2 In all the cases that Ms. Tankersley cited to such as
3 Slice, those all deal with issues where there's no --
4 the -- they're all older cases pretty much back in the
5 days where people kept hard copies. Or in Slice, they
6 even talk about microfilm. That was back when storage was
7 an issue.

8 And the -- the rule is, of course, if you just keep
9 signature pages, that's fine. But that's not the
10 testimony here. The testimony here is that they keep all
11 pages. So they keep all pages. And that first time they
12 ever sent it, it was missing the -- Page 4, then it's not
13 a meaningful offer.

14 In Slice, I remember, particularly, they said there
15 that there's no evidence that they weren't presented with
16 all the pages. Here, there is evidence that they weren't
17 presented with all the pages.

18 As far as --

19 THE COURT: I mean, what evidence is there that they
20 were not presented with the pages?

21 MR. WOOTEN: Your Honor, they testified --
22 Ms. Beltran testified in 2020 in her deposition that they
23 scanned every single page that was presented to the
24 insured; correct?

25 And so then when they produced the form, it was

1 missing Page 4 when they first produced it. Four months
2 later, they send it and it has Page 4 included. That's
3 the document that we got Mr. Thames to evaluate. And he
4 said that that was created the day it was e-mailed. And
5 it was created using an office scanner.

6 Now, Ms. Beltran had testified that she scanned
7 everything. She just forwarded this stuff that was
8 already scanned. So why do you create something that day
9 using an office scanner, instead of just e-mailing the PDF
10 you already have.

11 Then we come here into court and she admits that she,
12 actually, made that form up. She took pages from other
13 documents and put it in there. So you've got her
14 admitting she just made up a complete form. Now, the only
15 reason she makes up a complete form and then lies about it
16 back in 2020 is because it doesn't exist in the first
17 place.

18 THE COURT: Okay.

19 MR. WOOTEN: Then, Your Honor, as far as a meaningful
20 offer, they can't say who met with Mr. Mendez. They can't
21 say what was told to him. They can't say how long they
22 did it. And in all these other cases such as Cohen, you
23 had testimony from the person that met with them who could
24 testify as to their own normal practice.

25 And Ms. Beltran when she did try and explain

1 underinsured coverage, she didn't even explain it
2 properly. So if that was the explanation that her
3 employees were using, then it wouldn't qualify as a
4 meaningful offer under Wannamaker because it's not even
5 explaining it right.

6 They don't meet any of the factors. I mean,
7 literally, they don't meet any of the four factors. They
8 don't have any details about what it is. There's no
9 evidence that they follow this normal practice, which we
10 first heard about yesterday.

11 And so we don't think there's sufficient evidence to
12 find that they made a meaningful offer, other than in the
13 form.

14 THE COURT: All right. Anything briefly in response?

15 MS. TANKERSLEY: Yes, Your Honor, very briefly. I
16 think her deposition testimony and her testimony yesterday
17 mesh. I don't think it's a flip flop of testimony. She
18 testified she -- in her depo she scans the signature
19 pages. When she's asked about scanning other pages, it is
20 clear that they are talking about signature pages, that
21 that's what she's scanning in. She, also, testified today
22 that she scans in all these other documents that she
23 produced in her subpoena -- or yesterday, rather.

24 Anything about there's no evidence that he didn't
25 meet with the agent or that these cases are talking about

1 they knew who the agent was, specifically, he testified --
2 I asked him, Did you meet with Angela? He said, Yes. He,
3 also, testified to that in his deposition. So I think
4 it's clear that he met with her. But, regardless, it's
5 all of the agents -- they all have the same practice. And
6 there's only three of them. So I don't think that --
7 that's -- proves anything in this case or disproves
8 anything in this case.

9 And these e-mails from 2018 and 2019, the only thing
10 those show is that opposing counsel was not provided with
11 Page 4. They -- nothing shows, including his own
12 testimony, that Mr. Mendez was not shown Page 4 back in
13 2017.

14 THE COURT: All right. I'm going to look at this
15 Wannamaker case -- not Wannamaker case. I'm going to look
16 at this Slice case right quick before I -- we'll take just
17 a few minutes. I'm going to step back here and discuss it
18 with my legal expert.

19 (WHEREUPON, a break was taken.)

20 THE COURT: All right. I just wanted to review the
21 Slice case since I have not seen it before. It is -- I
22 would note that it is a district court from South Carolina
23 and -- maybe to use as persuasive value, but not
24 necessarily as binding.

25 I believe there's a couple of distinctions there.

1 One is in Slice, there was a mailing of the form. And
2 they -- the guy testified they always mailed it. It's a
3 little bit different than these circumstances.

4 I just believe -- okay. As to the presumption, I
5 believe that they've raised enough issue with whether
6 that -- I think for you -- for the Defendant to have -- be
7 entitled to the presumption, there has to be -- I have to
8 find that that Page 4 was included. And I think there's
9 enough of an issue there.

10 Because I think in order for the presumption to meet
11 that -- to meet the statute -- statutory form -- and it
12 has to have a brief and concise explanation of the
13 coverage. That is, clearly, only provided on Page 4,
14 which there's an issue that -- whether that was included
15 or not.

16 So I'm -- I'm going to deny your motion as to the
17 presumption. I believe that there's enough of a factual
18 issue to present the case to the jury on whether there was
19 a meaningful offer. So based on that, I'm going to deny
20 your motion and let the jury decide, so.

21 MS. TANKERSLEY: Understood.

22 THE COURT: All right. Anything else?

23 MS. TANKERSLEY: No, nothing from me.

24 THE COURT: Are you planning on presenting any
25 evidence?

1 MS. TANKERSLEY: No.

2 THE COURT: I'm not kidding. I figured there wasn't
3 anything else, but I have to ask.

4 All right. Is the Plaintiff ready for the jury?

5 MR. WOOTEN: Yes, Your Honor.

6 THE COURT: Is the Defense ready for the jury?

7 MS. TANKERSLEY: Yes, Your Honor.

8 THE COURT: And all I'm going to do is release them
9 for lunch. All right. And we'll come back at 1:45.

10 MS. TANKERSLEY: Sure.

11 THE COURT: Do you want to say anything on the record
12 as far as resting, or do you want me to just tell them
13 that the Defendant is not presenting any additional
14 evidence?

15 MS. TANKERSLEY: Yeah. You can just tell them.
16 That's fine with me.

17 THE COURT: Okay.

18 (WHEREUPON, the jury came into open court at
19 approximately 12:22 p.m.)

20 THE COURT: All right. Ladies and gentlemen, as you
21 will recall, the Plaintiff had rested their case. There
22 were some things we had to go over.

23 The Defendant has indicated they will not be
24 presenting any additional testimony. So they have rested
25 as well, which means that is all the evidence that you

1 will have for you to consider during your deliberations.

2 At this time, though, we need to make sure -- I will
3 have to meet with the lawyers. And we determine and make
4 sure that all the -- the proper law has been considered
5 that I will be presenting to you in my charge.

6 So we're going -- we're going to go ahead and break
7 for lunch.

8 If I give y'all until 1:45, is that good? Does that
9 give everybody sufficient time?

10 (WHEREUPON, the jurors indicated in the affirmative.)

11 THE COURT: All right. So -- and when you come back,
12 we've got -- we've got the kind of final endings. When we
13 come back, the attorneys will provide their closing
14 arguments. Then I will charge you on the law. And it's
15 not a very -- it's not going to be a very long process.
16 And then at that time, you will be -- finally, be able to
17 go back in your jury room and discuss the case.

18 So, in the meantime, don't discuss the case. Don't
19 do any type of research. Do not pay any attention to any
20 media coverage. If anybody contacts you, other than
21 somebody from the clerk's office, please, let the bailiffs
22 know. Otherwise, y'all have a good lunch. And we'll see
23 you at 1:45.

24 THE BAILIFF: All right. Do you want to get started
25 at 1:45?

1 THE COURT: Yes.

2 THE BAILIFF: Okay.

3 THE COURT: I mean, if anybody -- if anybody gets to
4 running a little bit late from lunch, don't worry. We're
5 not going anywhere.

6 (WHEREUPON, the jury was excused from open court at
7 approximately 12:24 p.m.)

8 THE COURT: All right. Mr. Wooten.

9 MR. WOOTEN: Your Honor, the Plaintiff moves for a
10 directed verdict. We think that they have failed to meet
11 their burden of proof. That the form met the statutory
12 requirements. So the form doesn't count.

13 And we, also, think they failed to meet their burden
14 of proof that they, otherwise, made a meaningful offer.
15 So, therefore, we'd ask for directed verdicts.

16 THE COURT: All right. And I believe, again, it's
17 kind of the same analysis applying to the -- to the
18 Defendant's motion would, also, apply to yours. And that
19 is -- this is something that the jury will need to
20 determine.

21 So motion denied.

22 (WHEREUPON, a lunch break was taken.)

23 THE COURT: We're back on the record.

24 The -- in chambers, we went through the jury charge.
25 And I gave a copy and made some corrections, based on

1 that, and, also, discussed the verdict form.

2 And were there any objections or exceptions by the
3 Plaintiff?

4 MR. WOOTEN: None, Your Honor.

5 THE COURT: And by -- on behalf of the Defendant?

6 MS. TANKERSLEY: None, Your Honor.

7 THE COURT: And I know -- I know we discussed the
8 burden -- the burden of proof. Just to make sure
9 everybody's on the same page, the way I read -- I mean,
10 there hasn't been any discussion about the order of
11 argument.

12 MS. TANKERSLEY: There was a brief discussion.

13 THE COURT: Well, it was pretty well on who started
14 the case. But, I mean -- and I -- and this kind of
15 confirms what I had -- I think I'd said earlier that the
16 way that that -- it's -- as Mr. Wooten argued, there --
17 there's, actually, a case that without it meeting the --
18 the complaint, then it doesn't -- even though the burden
19 is there, it doesn't shift the rights for closing
20 argument? In fact, there's a case that -- that even
21 handles that. So I had to look that up during lunch. So
22 I had some help, though.

23 All right. Anything before we bring the jury in from
24 the Plaintiff?

25 MR. WOOTEN: Your Honor, the only thing I would

1 request, I was going to show some stuff from my computer.
2 Can we see if it works on the screen?

3 THE COURT: Yeah.

4 (Pause.)

5 MR. WOOTEN: Yeah. That's perfect. That's all I
6 needed to know.

7 Thank you.

8 THE COURT: All right. Anything else from the
9 Defendant?

10 (WHEREUPON, there was no response.)

11 THE COURT: Anything else from the --

12 MS. TANKERSLEY: No, Your Honor.

13 THE COURT: All right. Bring the jury in.

14 Now, the -- how do you -- the best way to do that is
15 for me to move it here and then when you need it, turn it
16 on. Because --

17 MR. WOOTEN: Okay.

18 THE COURT: -- otherwise, it doesn't really change.
19 What I'm doing is I'm -- are you going to be using the
20 document arm?

21 MR. WOOTEN: No, just the computer.

22 THE COURT: All right. I will use -- I'll probably
23 use your document arm in my charge.

24 MR. WOOTEN: Okay.

25 THE COURT: Elbow, or Elmo, whatever it's called.

1 Okay. Bring the jury in.

2 (WHEREUPON, the jury came into open court at
3 approximately 1:54 p.m.)

4 THE COURT: All right. Ladies and gentlemen, as I
5 told you before you went to lunch, we're at the final
6 phase of the case. And that is we have closing arguments
7 by the attorneys. And, again, this is not evidence. This
8 is their summary or their argument about what evidence
9 has -- has been presented. The Plaintiff gets to open.
10 Then the Defendant will argue. And then the Plaintiff has
11 the opportunity for rebuttal, if -- if deemed appropriate.

12 After that, I will charge you on the law. And then
13 I'll send you back to your jury room.

14 So with that being said, Mr. Wooten.

15 MR. WOOTEN: Thank you, Your Honor.

16 May it please the Court.

17 And if you could, Your Honor, could you cut the
18 computer on?

19 THE COURT: Now, before you start, sometimes -- is
20 it -- sometimes after lunch, those don't work up there.

21 THE BAILIFF: It's on for a change.

22 THE COURT: All right. That's good.

23 CLOSING ARGUMENTS

24 MR. WOOTEN: I appreciate everybody being here. And
25 I appreciate everybody paying attention. It looks like

1 y'all have paid attention the whole time. So I appreciate
2 that.

3 In a few minutes, you're going to go back and you're
4 going to get to deliberate, which is just y'all are going
5 to get to talk about the case and decide what you think,
6 actually, happened. In opening, I said that we know that
7 there are certain things that happened. And your job in
8 this case is to figure out how we get to those points, we
9 know these things. What's the road that got us there?
10 And so I just kind of summarized those points that we know
11 for sure that are up here.

12 So the first thing we know is that Alfredo Mendez
13 purchases this insurance policy. He does it back in 2017.
14 We know that November 28th of 2018, Calidad Latina e-mails
15 MGA an underinsured rejection form, or they may call it an
16 application. And it's missing the fourth page.

17 We know that then about four months later, March
18 14th, 2019, Calidad e-mails MGA a complete form that does
19 have that page inserted all the sudden. And we know that
20 May 15th, 2019, Calidad produced its file in response to a
21 subpoena and signed a sworn verification saying it was
22 their complete file. And it was missing Page 4.

23 And so, again, your job is to explain, all right,
24 well, how do we get to this [inaudible]? Because that
25 affects what your decision will be in this case today.

1 And so to do that, we have to look at the evidence. Now,
2 there's been a lot of testimony and y'all have looked at a
3 lot of forms that in a lot of cases are pretty similar
4 forms.

5 And so the first thing I want to talk about is the
6 ever changing story of Angela Beltran. We filed this case
7 in 2019. We took her deposition in 2020. In 2020, she
8 testified that she scans every single page of every form
9 that they give to a client.

10 And, Andrea, can you pull up form two, please?

11 And you see it right up there highlighted for you.
12 When y'all -- I guess prior to e-signing, when y'all would
13 scan documents --

14 MS. TANKERSLEY: This was never asked to be published
15 to the jury.

16 MR. WOOTEN: It was deposition testimony that was
17 used in her --

18 THE COURT: If it was -- if it was used in -- in
19 questioning her, then it would be appropriate.

20 MR. WOOTEN: So as she says here, you can see, When
21 y'all -- I guess prior to e-signing, when y'all would scan
22 documents after people signed them, would you take any
23 pages out or would you scan every single page?

24 We scan every single page.

25 Also, in 2020, she testified that when they would

1 send a PDF to the insurance company, they would just
2 e-mail the documents that they already had. They didn't
3 print it out, then scan it to create another PDF, then
4 e-mail that PDF. They'd scan what they already had.

5 And when they sent that e-mail on November 18th of
6 2018, if you followed her testimony then --

7 And, Andrea, if you'll pull up Page 4 here -- or
8 document 4.

9 When she sent this e-mail back in 2018, it makes
10 perfect sense. She -- she scanned every single page that
11 was presented to Mr. Mendez. She e-mailed that to MGA
12 when they asked for it. And so that's all that was
13 presented. Because this e-mail does not have Page 4 in
14 it.

15 And, Andrea, if you could scroll down to -- so we can
16 see that, please.

17 So we've got Page 1 of 6, Page 2 of 6, Page 3 of 6.
18 And then we skip to Page 5 of 6. So if you followed her
19 testimony, that means no form -- no Page 4 was presented
20 to Mr. Mendez.

21 When she sent that complete form -- let's see here.
22 So four months later, she sends that complete form.

23 And, Andrea, can you pull up page -- or document
24 five, please?

25 Here at the top, this is the e-mail where she

1 forwarded it in 2020. But you can see down at the bottom
2 the date that it was sent, the original e-mail, March
3 14th, 2019. And even in this e-mail in 2020 -- here's the
4 e-mail from March 14th, 2019, I was unable to find the
5 e-mail from November 28th, 2018. This is the same PDF
6 document we have in our files for Alfredo Palafox Mendez.

7 And, again, this document has the -- the form
8 attached that includes Page 4. It's the first time and
9 one of only two times in this case that Page 4 has ever
10 appeared. So she doesn't explain -- she doesn't explain
11 back then why -- let me see here. She didn't explain in
12 her deposition because we didn't have it cemented yet why
13 she created it using an office scanner on the day that it
14 was e-mailed.

15 When we're -- when they responded to our subpoena --

16 And, Andrea, if you can pull up six, please, ma'am.

17 When they responded to our subpoena, again, no Page
18 4. She signed this verification. I verify that the
19 enclosed is a true, accurate, and complete copy of the
20 documents requested. And, yet, somehow, Page 4 is not
21 there. Again, Page 4 is not there because they never
22 presented it to him. It would have been scanned in if
23 they had.

24 And when we asked her in 2020, she explained all this
25 by saying, well, she sent the first e-mail without Page 4

1 because she misunderstood and thought that we only wanted
2 the signature pages. And so she, actually, pulled Page 4
3 out and sent that to MGA.

4 Then her testimony was that when she sent the
5 complete form four months later, she was just sending the
6 actual document she had scanned, as you saw by her e-mail
7 earlier. Of course, she didn't mention about how it was
8 created that day using an office scanner.

9 Then her testimony back then was -- well, and when we
10 sent the subpoena that -- she, again, somehow made the
11 same misunderstanding and pulled out all the non-signature
12 pages to send to us. And then she for some reason signed
13 a verification saying it was a complete file, even though
14 it really wasn't.

15 So, you know, maybe one of these things could happen.
16 Maybe there's one misunderstanding. But every time you
17 add on another misunderstanding, or another variance from
18 their normal practice, or another thing that just doesn't
19 make a lot of sense, the chances of that being what,
20 actually, happened get less and less likely.

21 And you have to remember who you're talking about,
22 too. This is a lady that, apparently, started an
23 insurance agency, has grown it to 10 offices, and, yet,
24 she, apparently, gets confused by basic document requests.
25 We even had to hire Mr. Thames, the digital forensics

1 expert, to confirm when that PDF -- the complete PDF was
2 produced. The whole reason he was there is because they
3 didn't tell us that.

4 At trial, y'all heard it yesterday, three years after
5 she's deposed, she tells a very different story. In fact,
6 her testimony was the exact opposite of what it had been
7 when she was deposed in 2020.

8 At trial, she said that she only scans signature
9 pages.

10 And, Andrea, if you can pull up document three,
11 please.

12 And keep in mind this was her testimony in 2020. And
13 so prior to e-signing, when someone would sign a document,
14 would you save all the document or would you have only
15 saved part of the document?

16 Answer: We'll save all the documents.

17 Question: Would you? And that would include the
18 pages that didn't have any signatures on them?

19 Answer: Correct.

20 Question: And those would be scanned?

21 Answer: Correct.

22 And then you heard her sit up here yesterday and tell
23 you that she only scanned the signature pages. And then
24 she went into some explanation about how they separate
25 things into three piles, and they give some documents to

1 clients, and they keep some. And it kind of changed
2 throughout the course of her testimony. It was kind of
3 unclear. But in any event, it's totally opposite of what
4 she testified to in 2020.

5 And your memory of what you were doing in 2017 is not
6 going to get better in 2023 than what it was in 2020.
7 We're three years farther down the line and somehow
8 everything's changed completely. These aren't simple
9 mistakes, you know. This is directly contradictory
10 testimony.

11 And, apparently, yesterday, for the first time, she
12 admits that when she sent that form in the e-mail that had
13 the complete form, including Page 4 -- well, she said she,
14 actually, cobbled that together from different forms. Of
15 course, that's not what the e-mail says where it says,
16 Here's the PDF that I have scanned in the file.

17 And so you've got to ask, well, all right, well, why
18 does somebody flip their testimony so completely? And the
19 answer is because she knows that she got caught red
20 handed. She knows that she put that form in when it was
21 not there. She knows that no meaningful offer was made to
22 Mr. Mendez. And so what do you do? You try a different
23 story because the first one's not working. It is clear
24 that they did not present Page 4 to Mr. Mendez. And it's
25 clear that they didn't make a meaningful offer.

1 Again, she testified they scanned every single page
2 that is presented back in 2020. And she testified that
3 they would just send the insurance company what's already
4 scanned. Well, that's what they did in that first e-mail
5 back in 2018 and the page that's missing. So we know it
6 wasn't presented with it.

7 And it's important to remember we've only seen the
8 complete application twice in this case. The first is
9 that -- the second e-mail she sent in 2019 where she sent
10 it to MGA, March of 2019. She sends that with a complete
11 form, which yesterday for the first time, she admitted
12 she, actually, put that form together. The other time
13 is -- I believe it's Defendant's Exhibit No. 2, which they
14 put together to show you what a form would have looked
15 like if they had it. But, of course, that was never
16 produced to us.

17 So when you get back in the -- the deliberation room,
18 you're going to have these exhibits. And when you see
19 Defendant's Exhibit No. 2, don't let that confuse you.
20 That's not a form that ever existed that ever was produced
21 in discovery. It's something that was put together just
22 for trial to show you what it would look like if they did
23 have it.

24 It's also -- or I'm sorry. It's to -- you know, one
25 question is, well, why didn't they present Page 4? And,

1 quite frankly, we don't know. It doesn't really matter.
2 We just know that they didn't. Because, otherwise, it
3 would have been scanned in there initially. They probably
4 just hand them a stack of signature pages and move them
5 along -- you know, move him on his way.

6 But the argument that, oh, we took it out because we
7 only save signature pages doesn't make any sense. That
8 made sense 30 or 40 years ago when people kept hard copies
9 of all this stuff. And your file cabinet's filled up and
10 so you were trying to take pages out. It doesn't make
11 sense now when you scan everything digitally and it's
12 costless to have an extra page in there. In fact, it's
13 just creating more work for yourself.

14 Another question is, all right, well, why does all
15 this stuff even matter? And I think Alfredo is a perfect
16 example. The burden is not on a person to ask about
17 underinsured coverage. Because most people don't know
18 about underinsured coverage. Most people don't know what
19 it is. Most people don't know why it's important. And if
20 the insurance company doesn't explain that as they're
21 required to do under the law, nobody's ever going to buy
22 it.

23 And I don't know if there's anybody that's ever said,
24 let me pay for more for the same thing, you know. It's --
25 it just doesn't happen. And so the insurance company has

1 the duty. The insured does not have the duty to go ask
2 the insurance company about coverages they can buy. The
3 insurance company is required to make that offer.

4 Another thing you probably heard is, oh, well,
5 Mr. Mendez didn't pay. Again, if you don't know about
6 something, why are you going to pay for it? I mean, I
7 doubt Mr. Mendez even knew that underinsured coverage was
8 a thing. He's not going to then know that I should
9 inquire to see if there are any other insurance coverages
10 that I should be paying for when there's this thing that I
11 don't know about, that I haven't been told about.

12 Now, I've talked about how we know that the form
13 didn't include Page 4. Because, again, you can either get
14 somebody to sign a form, in which case the insurance
15 company gets a conclusive presumption, or the insurance
16 company can, otherwise, make a meaningful offer.

17 Now, under South Carolina law, the Defendant would
18 have to prove that the insurer's notification process was
19 commercially reasonable, whether oral or in writing. The
20 insurer must specify the limits of the optional coverage
21 and not merely offer additional coverage in general terms.
22 The insurer must intelligently advise the insured of the
23 nature of the optional coverage. And the insured must be
24 told that optional coverages are available for an
25 additional premium.

1 So let's talk about what we know on this. We know
2 Ms. Beltran said she doesn't know if she met with Alfredo.
3 She signs all the policies. So the fact that she signed
4 the policy doesn't mean anything. Alfredo doesn't really
5 remember who he met with. It may have been Angela.

6 And Ms. Beltran doesn't know how long they talked to
7 him. She doesn't know what they talked about. She
8 doesn't know what was explained to him. Yesterday, she
9 tried to tell us her -- the standard policies and
10 procedures for Calidad. According to Ms. Beltran, her
11 agents meet with the person. They explain coverages. And
12 they inspect the vehicle. But just like the testimony
13 about the forms, that doesn't hold up either.

14 Andrea, if you could pull up the -- document six,
15 please, ma'am. And then go down to the inspection form,
16 which is Page 8.

17 So let's look at this inspection form. Y'all can see
18 up here, none of this is filled in. They don't have the
19 physical condition. The don't have the body. They don't
20 have the glass. They did nothing. This is just a
21 preprinted form. And the only thing they did is, I
22 believe, fill in the odometer reading. So there's one
23 thing they didn't do that, according to their procedures,
24 they should have done. And that's the only thing that we
25 can really know. That's the only thing we really have.

1 And the other thing is Ms. Beltran said, well, they
2 explain coverages. When Ms. Beltran tried to explain what
3 underinsured coverage was, she couldn't even explain it
4 right. If she had offered that explanation that she did
5 when we were taking her testimony yesterday and in her
6 deposition, that wouldn't be a meaningful offer because
7 that's not the correct explanation of underinsured
8 coverage.

9 I don't think we can sit here and believe that they
10 went through their policies and procedures with regard to
11 explaining coverages when the only thing that we know for
12 sure about is this inspection that we know that they did
13 not, actually, fill that out as was apparent with their
14 policies and procedures. We also -- I don't think it's
15 reasonable to expect that if Ms. Beltran, the owner and
16 licensed agent, can't explain underinsured coverage
17 properly that the people working for her are going to sit
18 there and take the time to explain it properly.

19 And, Andrea, if you can scroll down to Page 10 of
20 that document, please, ma'am.

21 And here's another one. Mr. Mendez was asked about
22 this form. As you can see, this is a standard Calidad
23 Latina insurance form. And if you look up here, there's a
24 place at the top where you can handwrite in the date,
25 the -- I believe that is insured. My Spanish is

1 nonexistent. So you'll have to excuse me. And I guess
2 that's the policy number.

3 And if you look down, Alfredo was asked about the
4 different coverages here. And I think it's very
5 interesting to look at this. So if you look at these
6 little circles, these circles are made by a computer. And
7 then you can hand check in what coverages you buy. And
8 you know what you don't see there is underinsured
9 coverage.

10 So on their standard form, there's nowhere to even
11 check that you bought underinsured coverage. And, yet,
12 they say that they make meaningful offers of underinsured
13 coverage to their customers. Well, there should be a box
14 to check for underinsured coverage if that was the case,
15 but there's not.

16 The last thing I want to point out here is one of the
17 things that you'll have to consider is the sophistication
18 of the parties. So if you're considering whether they
19 made a meaningful offer, you have to consider what they
20 know already.

21 Mr. Mendez is not sophisticated when it comes to
22 insurance. It would take a long time to explain this to
23 him. He can't read English. And they only met with him
24 for 10 or 15 minutes -- I'm sorry. I believe he said
25 15 minutes on the stand today. There's no way that you're

1 going to make a meaningful offer of underinsured coverage
2 to him and then do all the other things that Ms. Beltran
3 testified that they did and was their common procedure in
4 only 10 or 15 minutes.

5 And so I think the evidence is clear that there was
6 no meaningful offer made orally. And, also, that that
7 page was not presented to him. So there was no meaningful
8 offer made by way of form.

9 Now, when you go back, you're going to get a jury
10 verdict. And, eventually, you're going to have to decide.
11 And it says, Did Defendant MGA Insurance Company, Inc.,
12 make a meaningful offer of underinsured motorist coverage
13 to Alfredo Mendez at the time of application for the
14 subject insurance policy? And I think based on the
15 evidence, you need to check, No.

16 Again, I appreciate your time and appreciate you
17 hearing my case.

18 Thank you.

19 THE COURT: Ms. Tankersley.

20 MS. TANKERSLEY: Thank you, Your Honor.

21 All right. Before we get started on my -- my closing
22 argument, I do want to explain why Angela isn't with me
23 today. She isn't a party to this case. So she's not here
24 past when her testimony is given. Plus, as she just
25 mentioned, she's got that four-month-old baby. And her

1 and her husband were very anxious to get back to the baby.
2 That's why she isn't with us today. She's, otherwise,
3 fine.

4 So we are here today, as we've talked about from the
5 beginning, because the Plaintiff, Ms. Vargas, is suing my
6 client. Her life partner -- her husband at the time
7 signed multiple documents back in 2017 saying he didn't
8 want the optional coverage of UIM, which would cost more
9 money. He wanted only what the dealership wanted him to
10 get, which is some additional property damage coverage to
11 make sure if the vehicle gets damaged that he's got some
12 insurance that pays for it. That's what he wanted.
13 That's what he got.

14 Now, Ms. Vargas is trying to argue that we never
15 really offered him any of this optional insurance. But he
16 was offered it verbally. He was offered it on that
17 written form. He never asked for it. He never paid for
18 it. And he signed a document multiple times saying he
19 didn't want it.

20 Judge Gravely is going to instruct y'all on the law
21 here in a little bit. And he's going to tell you that the
22 law requires my client, MGA Insurance Company, to make
23 that meaningful offer of UIM to its customers.

24 So as we've talked about, the Department of Insurance
25 comes up with a form that they provide to insurance

1 companies that says, if you give this form to your
2 clients, you have met your burden of -- of providing this
3 meaningful offer by law. As Angela testified, that is the
4 exact form that we use to give to our customers. That is
5 the exact form that Mr. Mendez was given. The Department
6 of Insurance is the one that puts it together. If
7 somebody signs it, they have rejected the offer. A
8 meaningful offer was given to them. That is the law.

9 Judge Gravely is, also, going to tell you that when
10 an insurance company doesn't use one of these forms, they
11 can still make this meaningful offer under the law
12 verbally. And -- and they -- there are a few factors
13 when -- for what y'all look at to see if somebody's made a
14 meaningful offer, even outside of that form.

15 So the person buying insurance can be offered the
16 optional coverage verbally or in writing. That was,
17 obviously, done here. The insurance company must specify
18 the limits of optional coverage available.

19 Here again, both Mr. Mendez and Angela testified that
20 coverages and options were explained to him. And it is
21 on -- written on the form. Under the law, they, also,
22 must advise the person buying insurance of the nature of
23 the optional insurance, which is, again, what they're
24 testifying to when they're talking about how they explain
25 the different coverages and the different options to the

1 insureds when they come in.

2 Finally, the person buying insurance has to be told
3 that the optional insurance costs extra. So earlier,
4 y'all have seen, you know, this Page 5 where there was the
5 \$25,000, \$50,000, \$25,000 and \$50 extra. That satisfies
6 that prong. This is showing, here's what it would cost.
7 Here's what it would get. So they -- they go over that in
8 the form. And then they go over that verbally.

9 Importantly, what Judge Gravely's, also, going to
10 tell you about the law is that South Carolina law says,
11 very specifically, as I'm sure probably most states law
12 says, very specifically, if a person signs a contract,
13 they can't later claim that they didn't understand it or
14 that they didn't read it.

15 If the person can't read, they have a duty and a
16 burden to have somebody explain what they are signing to
17 them. You can't sign a document and then later say, oh, I
18 didn't read that. I didn't understand it. Because then,
19 any time you want to get out of a contract, you can say, I
20 didn't read that and I didn't understand it. So that is
21 the law in South Carolina. What we're asking of y'all
22 today is that you find that my insurance company, MGA
23 Insurance company, my client made that meaningful offer to
24 Mr. Mendez in this case.

25 Now, the Plaintiff is attempting to sort of make a

1 mountain out of a mole hill with all of this information
2 about when e-mails were sent in 2018 and 2019. That
3 nobody can remember an exact conversation from six years
4 ago. That because the agent only scans in signature pages
5 and forms with identifying information, then that surely
6 means that this -- Mr. Mendez was not provided with the
7 explanation pages in the policy.

8 None of that has anything to do with whether or not
9 back in March of 2017 that the agent who met with
10 Mr. Mendez gave him a meaningful offer of insurance.
11 Nothing that happened in 2018. Nothing that happened in
12 2019. Nothing that happened in 2020 has anything to do
13 with what happened in March of 2017, which is when he
14 executed that policy.

15 The Plaintiff is going to argue that the -- or has
16 argued that the agent must have printed out the form,
17 which we know that the form that they print out has Page 4
18 in it because this is the document that comes out from MGA
19 Insurance before it gets signed. And that has that Page 4.

20 So his argument is that they printed out that
21 document, must have taken out the explanation pages, and
22 then handed it to the person signing the documents in an
23 attempt to sort of move things along or rush them out of
24 the business and get them to sign these documents.

25 There's an expression, you know, that the simplest

1 explanation is likely the correct explanation. Here, we
2 know that the agent prints off this exhibit, Defendant's
3 Exhibit No. 1. It is given by MGA Insurance Company once
4 they produce that quote. They talked about that in Ken
5 Hawley's deposition, that they read -- the agent testified
6 to that.

7 They get this. They print it off. They then combine
8 that with some of the other documents that they have, the
9 personal Calidad -- you know, the reimbursement motor club
10 and the -- the optional one that he was showing you on the
11 screen that -- that's all in Spanish.

12 They -- they take those things together. And then
13 they hand them to the customer. As the customer is going
14 through and reading it, they are, again, explaining here's
15 what this page is, here's what this page is. This is what
16 you're buying. This is what you're rejecting again and
17 again so the person who's signing it understands what they
18 are signing.

19 Now, he argued that this Exhibit No. 2 was put
20 together and never existed in real life. And that is a
21 hundred percent true. I -- I put together this document.
22 I combined Exhibit No. 1, which is the document that gets
23 printed out, and then Plaintiff's Exhibit No. 3, which is
24 the signed forms to create what the document would look
25 like when it gets in front of the person who's signing it.

1 This is not something that I'm saying we saved, that we
2 put in any sort of system. It is a document that I came
3 up with to sort of simplify what this process is.

4 So Defendant's Exhibit No. 1 is the actual form
5 that's printed out. Defendant's Exhibit No. 2 is what it
6 would look like when the insured was signing it and was
7 reviewing it.

8 The agent then, as she testified, would take out some
9 of the documents and would put them into piles, piles for
10 the insured to take, piles for the insurance company to
11 get, and then the piles for what she would scan. So
12 that's what, ultimately, becomes Plaintiff's Exhibit
13 No. 3.

14 So you've got Defendant's Exhibit No. 1, the before
15 form. Defendant's Exhibit No. 2, what it would look like
16 when they were signing it. And then Plaintiff's Exhibit
17 No. 3 is everything that she kept that she saved.

18 And, of course, there's been some back and forth
19 about she said she only saved signature pages, she said
20 that she produced her entire file, and now she's flip
21 flopping. It is very clear to me from the testimony, both
22 in her deposition and today -- or yesterday at trial that
23 her position has not changed on what the policy is or what
24 they save. There was some miscommunication it seems
25 between the two of them during the deposition. Because

1 she testified that she, you know, scanned signature pages
2 and that she saves all of the documents from the
3 application, which is true.

4 This is the subpoena response he was talking about,
5 that she sent them all of these documents, that she
6 verified it. This page doesn't have a signature page.
7 She scans that. That page has a signature page. I mean,
8 we've gone through all of these. This doesn't have a
9 signature. She scans that. Anything with identifying
10 information she takes.

11 Opposing counsel, also, made mention that with this
12 verification she's saying that she produced everything in
13 her file. And that anything in here was -- that's not
14 produced in here was never in her file. But this
15 verification says, I verify that the enclosed is a true,
16 accurate, and complete copy of the documents requested and
17 maintained in my possession. He did not provide you
18 anything that shows exactly what was requested or what
19 they sent to her. That's just what was sent in response.

20 Angela testified that Calidad exists and -- and has
21 existed, as he mentioned in his argument, for about
22 20 years. It exists because Angela wanted to create a
23 business that served the Hispanic community, so that
24 people understood what they were buying. That's their
25 entire business model. She would not be rushing people

1 our of the door. Her business was to make sure that
2 people who didn't speak English understood what they were
3 getting into.

4 Plus, from a business perspective, it doesn't make a
5 whole lot of sense -- if you are selling insurance and
6 selling insurance policies, you want people to buy more
7 insurance, not less insurance. It doesn't serve the
8 purpose of the company or the purpose of the business to
9 take out an explanation page so that the customer can --
10 can't review them and then they choose not to buy more
11 insurance.

12 As he mentioned, they've been in business for a long
13 time. And if anything about bad practices or incorrect
14 practices had come up, that would be their reputation at
15 this point in time. But, in fact, Mr. Mendez himself says
16 that he continues to go back to this agency showing that
17 he trusts this agency and that they are not out there kind
18 of ripping people off, or taking out explanation pages, or
19 not giving people enough information in order to buy
20 insurance.

21 The reason that companies, and people, and lawyers
22 have people sign documents and the reason that we put page
23 numbers on documents is so that years down the road, like
24 here, someone can't just say, I didn't know what I was
25 signing, or that page was slipped in. That's why we have

1 numbers on the bottom of pages. And that's why we have
2 people sign at the end, to confirm that they knew what
3 they were signing and that all of the pages were there
4 from the get-go.

5 So I told y'all at the beginning in opening
6 statements yesterday that all of this talk about e-mails,
7 and scanners, and PDF's, and how these documents are saved
8 or not saved is really noise. It -- it doesn't make a
9 difference as to whether or not Mr. Mendez was given a
10 meaningful offer. That's all that matters is if in March
11 of 2017, he was given an offer verbally and in writing and
12 that that was a meaningful offer under the law.

13 So what we know to support that is we know that
14 Mr. Mendez went over to Calidad because the dealership
15 wanted him to buy that full coverage, which means it
16 protected the property damage. We know that he went in
17 and he met with an agent. He testified today that he
18 believes that agent was Angela. And even if it wasn't --
19 there's a one-third chance it was, because there were
20 only, like, three people that were agents there at that
21 point in time.

22 He went in and said that he wanted that property
23 damage coverage from -- that the dealership was asking of
24 him. We know that the agent explained to him his options,
25 then input what he wanted into the system, the turbo

1 writer system. They got back about three quotes from
2 different insurance companies. And we know that he picked
3 the cheapest option.

4 There's been some conversation about valid licenses,
5 and insurance policies getting issued, and the cost of the
6 policy. And the only reason that matters is because his
7 insurance policy was so expensive, over a thousand dollars
8 because he did not have a valid license. As Angela was
9 testifying to, not a lot of people will insure people who
10 don't have licenses and, also, because of the document we
11 went over about his credit report. That's why it was so
12 expensive. But he still, according to his testimony,
13 picked the cheapest of the options.

14 We know, again, that the agent explained that to him
15 as they were putting the quotes together and, then again,
16 as they were finalizing his selection. We know that the
17 agent has to print out and hand Mr. Mendez that Exhibit
18 No. 1, which again, has Page 4.

19 We know that the agent, again, goes through the
20 coverage and options telling him what the forms say, what
21 his coverage is. And very, very importantly, we know that
22 he signed each one of those signature pages. The pages
23 are numbered and, obviously, numbers are the exact same in
24 English as they would be in Spanish. So he can see the
25 page numbers on the bottom of the forms, even if he can't

1 read the document in English.

2 We know, because he testified, that he never told
3 anybody that any pages were missing. He has no reason to
4 believe any of the pages were missing. He never once
5 testified that he wasn't given the entire form, not once.
6 In fact, the only time he testified that he knew there was
7 potentially a page missing, he said, is when the attorney
8 told him, not in 2017, but in 2018, 2019, or 2020.

9 He signed right under on this form, which is in
10 Spanish and in English. And, again, in Spanish and in
11 English in bold type, it says, If you cannot read,
12 comprehend, or understand this document all or in part, it
13 is very important that you ask for help from some person
14 that can interpret and explain to you the content of this
15 document. And, again, it says in Spanish and in English,
16 My signature represents that this document has been
17 explained to me and I understand all of the contents of
18 this document. He signed it right underneath that,
19 something, obviously, that he can read.

20 We know that the form that he was given, again, is
21 the Department of Insurance form, the one that's standard.
22 And the law says that if you sign that form, which he did,
23 then we, as the insurance company, have met our burden
24 that a meaningful offer was made. Again, I know that this
25 is in English, and it is not in Spanish. And I know that

1 that can be difficult for people who are not native
2 English speakers to be able to read these types of
3 documents. But the official language of the United States
4 is English. They -- there aren't any forms from the
5 Department of Insurance that are in Spanish. They have to
6 be presented with the English document.

7 The -- the Plaintiff herself testified that she
8 signed a settlement document in the case where -- the
9 underlying accident where she got involved in a wreck.
10 Somebody else caused the damage. They settled for
11 \$25,000. The form that they signed for that settlement is
12 in English. But she's not going to come back now and say,
13 well, that was an invalid settlement because it was in
14 Spanish [sic] and not in English [sic].

15 Mr. Mendez, also, signed another form in that packet
16 for optional coverage, which was all in English. He opted
17 into that, the towing coverage, the reimbursement
18 coverage. And he's not now saying, well, that's not
19 valid.

20 Exhibit No. 2, again, is what the application would
21 have looked like after it was completed. I made that -- I
22 made that exhibit up. I know that. I'm not hiding that.
23 It's the same way he made up that timeline that he put up
24 on the screen. It's an exhibit that I made simply for
25 purposes of today.

1 The agent then would separate, as she testified, all
2 the documents into kind of three different piles, handouts
3 to give to Mr. Mendez, documents to send to MGA, and then
4 documents that they saved in their system, which is
5 Plaintiff Exhibit No. 3.

6 Mr. Mendez testified that he received documents from
7 the agent in person the day that he took the policies. So
8 when she says she hands him documents, he confirmed that.
9 Because he needed the proof of insurance, the payment, all
10 of that to go back to the dealership and get that car.

11 We have to make a meaningful offer as a company. So
12 what we do in order to meet that burden is we present
13 people with this form. And then we have agents that
14 certify that they are explaining these documents to the
15 people who are signing them.

16 Mr. Mendez continued to receive policy information
17 directly from Gainsco and from MGA. That was part of Ken
18 Hawley's testimony and Mr. Mendez's testimony, that he
19 gets in all of these policy documents, the thick
20 explanation of what the policy is, the renewal documents,
21 the cancellation documents, the payment documents. Those
22 all get sent to his house. He testified to that and
23 confirmed that.

24 He, also, testified, I don't review them and I likely
25 threw them away. When I asked if he ever would take those

1 documents or any documents for -- related to this policy
2 of insurance to -- for somebody to interpret it, he said,
3 No.

4 And, again, the law is if you can't read something,
5 it is your burden to go and have somebody explain that to
6 you or to read that to you. And he did not do that here.
7 All he ever wanted was the minimum requirements by law for
8 the dealership and that is what he has gotten.

9 The Plaintiff's counsel testified -- or argued a
10 little bit about how you can take into consideration
11 somebody's knowledge or level of sophistication when
12 deciding whether or not a meaningful offer was made to
13 them. And I understand that he may not be fluent in
14 English and he -- and is hard of hearing. But he is,
15 certainly, sophisticated enough and smart enough to know
16 what he was buying and know that he was signing something
17 that was binding him to the insurance that he was buying.

18 He has been in the United States for around 20 years.
19 He testified he knows some English. He testified that he
20 has taken out multiple insurance policies before. And he,
21 certainly, trusts Calidad and thinks Calidad does a good
22 job. Because he has gone back there even after 2018,
23 which is when he said he found out that MGA Gainsco was
24 denying the coverage on his policy for the UIM. He
25 continued to go to them. So, clearly, he thinks they're

1 doing a good job. Clearly, he trusts them and thinks that
2 they're explaining these policy documents to him.

3 So looking at all of that, I think the evidence only
4 shows in this case that the UIM was explained to him
5 verbally and in writing, that the Department of Insurance
6 form was provided to him. And that Mr. Mendez knowingly
7 rejected this UIM coverage. He confirmed it with his
8 signature on multiple pages.

9 So that's what I'm asking of y'all today, to look at
10 all the signed forms and consider all the verbal
11 explanations that both he and Angela testified he
12 received. And because of that, Mr. Mendez received a
13 meaningful offer under the law. And because he was
14 offered optional UIM coverage, we have met our burden. He
15 rejected it. And he never once paid for it.

16 I appreciate y'all's time. And I -- I thank y'all
17 for listening to all this evidence for the past couple of
18 days.

19 THE COURT: All right. Brief response, Mr. Wooten.

20 MR. WOOTEN: Thank you, Your Honor.

21 Folks, one thing I do want to point out in this is
22 that the Defendant has the burden of proof. I should have
23 mentioned that earlier. They have to prove what happened.
24 If they can't prove that a meaningful offer was made or if
25 you're just not sure what happened, then you have to find

1 for the Plaintiff in this case and say no meaningful offer
2 was made. I should have mentioned that.

3 As far as what you just heard, respectfully, I think
4 all these documents and forms have everything to do with
5 what happened on that day. Why do you insert missing
6 forms to try and create a complete form? You know, why do
7 you claim that you keep misunderstanding simple things?
8 Why do you completely flip your testimony three years
9 later?

10 And, Andrea, can you pull up --

11 Judge, if we can pull that up.

12 There is no way to square what she said in 2020 that
13 she scans every single page. And that would include any
14 pages that didn't have a signature on them with what she
15 said yesterday. It's just -- you can't match those two.
16 They're completely opposite.

17 Now, why do you flip your testimony? That's what
18 you're going to have to ask yourself when you go back
19 there.

20 We talk about simple explanations. Well, is the
21 simplest explanation that you create three piles of
22 documents and give some to one person and some to the
23 other? Or is the simplest explanation that you just hand
24 somebody a stack of signature pages? I think when you go
25 with the simple explanation, she gave the signature pages.

1 She scanned everything she gave him. She e-mailed what
2 she had to MGA. And it shows that he was not presented
3 with a complete form.

4 And remember, if that Page 4 is not in there, it
5 doesn't have some of the things that are required under
6 the statute, the form doesn't comply, no meaningful offer.
7 That's your simplest explanation. And that's what
8 happened.

9 Again, I appreciate your time. And I look forward to
10 getting your verdict.

11 Thank you.

12 CHARGE ON THE LAW

13 THE COURT: All right. Now, you get to hear from me.
14 I'm going to come down there. I always feel like the
15 Wizard of Oz when I'm standing up here.

16 And this is not going to be very long. This is --
17 this is the -- what we call the charge, the jury charge,
18 the law in the case.

19 This is a little bit unusual case. I mean, normally,
20 if you watch much TV or if you've ever been involved in a
21 jury trial, then you normally -- it's either a criminal
22 case where you're trying to determine whether somebody was
23 guilty or not guilty. And normally, civil cases when
24 someone files an action against somebody, they're seeking
25 damages. And your verdict is, we find for whatever party.

1 And we find for the Plaintiff for X dollars. This is a
2 little different animal. And it's called -- what we call
3 a declaratory judgment action.

4 You have to determine, basically, what are the rights
5 of the parties under the insurance policy and under our
6 law. That's kind of what your question is, you're
7 determining the rights. You're declaring what the rights
8 of the parties are. That's what we call a declaratory
9 judgment action. And your basic question is going to be
10 whether the Defendant has proven to you that a meaningful
11 offer of underinsured coverage was made at the time that
12 the application was taken out.

13 Now, what I'm going to do is I'm going to give you
14 some tools to help you and tools that you can use in
15 making that decision.

16 Now, first of all, as I told you at the very
17 beginning of this case, your duty and my duties are
18 totally different. Okay. My duty, again, is to preside
19 over the trial, rule on objections, and determine what the
20 law is.

21 Now, if you came into this courtroom and you had an
22 opinion on what you thought the law was in this area, or
23 what you think it should be, if it contradicts what I'm
24 telling you, then you're to disregard that. Because
25 you've taken an oath that you will apply the law that I am

1 giving you right now.

2 Also, as I told you, you're to determine -- you're
3 the ones to determine the facts in the case. And if there
4 is anything that I did or said that makes you think I have
5 an opinion on the facts, then you're to disregard that.
6 And you're to make a decision on the facts -- you're here
7 to make a decision as to what the facts are.

8 All right. And how do you do that? You look at
9 the -- you apply the law that I'm giving you and you look
10 at the evidence. And the evidence in this case is -- you
11 must -- you look at the testimony by the witnesses. You
12 look you at the deposition testimony. You look at any
13 stipulation that counsel had. You look at the exhibits.
14 And each of those items, you give it the weight and value
15 which you feel is appropriate. And that's how you
16 determine what the facts are.

17 Now, in this case -- and it's, also, a little bit
18 unusual that in this case the Defendant, MGA Insurance
19 Company, has the burden of proof. They have the burden to
20 show that a meaningful offer was made. Normally, in a
21 case, the Plaintiff has the burden. But this is a little
22 bit different of case again.

23 What is the burden of proof? You've heard probably
24 if you watch TV or you've been involved in a criminal case
25 on a jury, then you realize that's a really high burden,

1 beyond a reasonable doubt. Well, and the reason I always
2 say that is because you -- that has nothing to do with
3 this case. You're -- that's not the burden. That's a
4 very -- that's a very high burden. Because usually,
5 you're taking away somebody's freedom. So, therefore, the
6 state has to have a very stiff burden before they can
7 deprive somebody of their liberties and their freedom.

8 But this case is what we call a preponderance of the
9 evidence. And that sounds like a big old legal term, but
10 it is -- because it is. But it just means the greater
11 weight of the evidence, more likely than not.

12 A lot of times, it's kind of illustrated with the
13 scales of justice. And you may know what I'm talking
14 about with a lady -- a statute of a lady and she's blind
15 and she's got two scales that she's holding. When the
16 Court -- when the parties come into a courtroom, those
17 scales are even. Okay.

18 And preponderance of the evidence, if the Defendant
19 in this matter tips those scales ever so slightly in favor
20 of the Defendant, then they've met their burden. That's
21 more likely than not by the greater weight of the
22 evidence.

23 On the other hand, if -- if you find that the scales
24 have kind of remained even or have tipped the other way,
25 then that means that they haven't met their burden. So

1 that's kind of -- kind of an illustration that is commonly
2 used when you're talking about preponderance of the
3 evidence. Again, it's more likely than not, by the
4 greater weight of the evidence. Did it convince you?

5 Now, there's two types of evidence that can be relied
6 on in any civil case. That's direct evidence and that's
7 circumstantial evidence.

8 Direct evidence is when a witness or a piece of
9 evidence directly proves a particular point, what a person
10 saw, what a person heard.

11 Circumstantial evidence is where, sometimes, you
12 may -- there's a chain of facts to prove a particular
13 point. Sometimes, I like to illustrate this by saying,
14 you know, direct evidence of it's raining is if you look
15 out the window and you see big old rain drops falling on
16 your car.

17 But circumstantial evidence of it's raining is when
18 you go into your house -- is you pull up in the driveway,
19 the driveway is -- is dry. Your car is dry. You see some
20 clouds up above. You go inside. You hear thunder. A few
21 minutes later, you go outside, it's not raining, but your
22 car is wet and the pavement is wet. That's circumstantial
23 evidence. Because there had to be a series of facts to
24 prove the fact that you were trying to prove.

25 And whether a party relies on circumstantial or

1 direct evidence, the weight is still the same. It can
2 be -- it's still by a preponderance of the evidence. And
3 there can be a combination. It can be -- a party could
4 use direct evidence, or they can use circumstantial
5 evidence, or a combination of the two.

6 Now, one of the things, too, is there was a --- an
7 expert that was qualified in this case. And, as I told
8 you at that time, normally, a witness can't testify about
9 opinions or conclusions. They have to only testify about
10 what they observed, or heard, or felt.

11 The difference is an expert opinion -- is an expert
12 witness. And that is depending on their -- their
13 experience, their education, their training. All of that
14 goes into the fact of whether they can be qualified as an
15 expert. And then they can issue an opinion, based on
16 their education, and their experience, and their training.

17 Now, just because somebody is qualified as an expert
18 doesn't mean you have to accept their opinion. It's still
19 up to you to weigh that evidence the same as you do every
20 other witness -- witness and every other piece of
21 evidence. And that's you give it the weight that you feel
22 is appropriate, even if there is no evidence contradicting
23 that. So it's still up to you to review the evidence of
24 an expert witness. And you determine whether that is
25 something that convinces you of anything or not.

1 Now, let's talk about witnesses -- credibility of
2 witnesses. Credibility, that's one of the things that you
3 can use in making your decision is credibility of
4 witnesses. Now, that just means believability.

5 Now, you may accept a portion of somebody's testimony
6 and reject the remaining portion. You may accept one
7 witness over several witnesses, or you may accept several
8 witnesses testimony over one witness. Again, you just
9 have to use your common sense to determine what convinces
10 you of what the facts are.

11 You can consider whether a -- you know, the -- the
12 appearance of a person on the -- on the stand, how they
13 acted, whether they had any interest or bias, whether they
14 have provided any previous statements or not. All of that
15 is things for you to determine is -- is what weight and
16 value you should give that person.

17 I, also, wanted to advise you in this matter that one
18 of the parties is a corporation. In our courts, there's
19 no distinction made between a corporation and an
20 individual. A corporation is a person in the eyes of the
21 law. And a corporation is entitled to the same fair and
22 impartial consideration by a jury as an individual. So
23 that's just kind of a general of law.

24 Now, those are the -- those are what I call the
25 general tools that you'll have. Those are the kind of

1 tools or kind of charge that would apply to most every
2 case. Now, I'm going to give you some specific law that
3 applies, specifically, to this case.

4 First, a person who signs a contract or other written
5 document cannot avoid the effect of the document by
6 claiming he did not read it. A person signing a document
7 is responsible for reading and understanding the document
8 and making sure of its contents. If the person cannot
9 read or understand the document, he has the affirmative
10 duty to ask someone to read the document to him. Simply
11 stated, a person who signs a contract or other written
12 document is bound by the terms and conditions of the
13 writing.

14 Now, I'm going to tell you a little bit about -- from
15 the coverage -- underinsured motorist coverage. An
16 automobile -- under South Carolina law, automobile
17 insurance carriers are required to offer the option to the
18 insured of underinsured motorist coverage up to the limits
19 of the insured liability coverage, and to provide coverage
20 in the event that damages are sustained in excess of the
21 liability limits carried by an at-fault insured, or
22 underinsured motorist, or in excess of any damage cap or
23 limitation imposed by statute. So that's kind of the
24 definition of what underinsured is.

25 Now, let me discuss with you meaningful offer. You

1 have to decide whether the Defendant in this case made a
2 meaningful offer of underinsurance coverage. An insurance
3 coverage -- an insurance company must make a meaningful
4 offer of underinsured motorist coverage to its insured.

5 A meaningful offer may be made by having an insured
6 sign a form that complies with state law and is provided
7 by the Department of Insurance. The form, at a minimum,
8 must provide the following: It must have a brief and
9 concise explanation of the coverage. It has to have a
10 list of all available limits and the range of premiums for
11 the limits. It has to have a space to mark whether the
12 insured chooses to accept or reject the coverage in a
13 space to state the limits of the coverage the insured
14 desires, a space for the insured to sign the form that
15 acknowledges that he has been offered the optional
16 coverage. It has to have the mailing address and
17 telephone number of the Department of Insurance so the
18 Applicant can contact if he has any questions or if the
19 insurance agent is unable to answer them.

20 Now, that is what's required of the form that is to
21 be provided to an applicant. And if this form is signed
22 by an applicant after it's been completed by an insurance
23 agent or representative, it is conclusively presumed there
24 was an informed knowing selection of coverage. And
25 neither the insurance company nor an insurance agent is

1 liable to the named insured or other insured under the
2 policy of the insured's failure to purchase the optional
3 coverage or higher limits. That's what we call a
4 presumption.

5 Compliance of this section satisfies the insurance
6 agent's duty to explain and offer optional coverages and
7 higher limits. And no person, including, but not -- not
8 limited to an insurer and insurance agent is liable in an
9 action for damages on account of the selection or
10 rejection made by that applicant.

11 Now, an insurer can, also, prove a meaningful offer
12 by meeting the following. So that's the form provided by
13 the insurance department that has been discussed.

14 Now, this is an additional way that the insurer may,
15 also, prove that a meaningful offer of underinsured
16 motorist coverage was provided by showing the following --
17 and there's four things. And it is the insurer's
18 notification process must be commercially reasonable,
19 whether oral or in writing. Number two, the insurer must
20 specify the limits of optional coverage and not merely
21 offer additional coverage in general terms. Number three,
22 the insurer must intelligibly advise insured of the nature
23 of the optional coverage. And number four, the insured
24 must be told that the optional coverages are available for
25 an additional premium.

1 A non-complying offer has the legal effect of no
2 offer at all. An insurance company bears the burden of
3 proving that the insured was presented with a meaningful
4 offer of underinsured motorist coverage.

5 When deciding if a meaningful offer has been made,
6 you have to -- you have to consider the applicant's
7 knowledge and level of sophistication. Evidence of
8 insured's or applicant's understanding or lack thereof of
9 underinsured motorist coverage should be considered, along
10 with the applicant's knowledge and level of sophistication
11 in determining whether the applicant intelligently
12 explained -- I'm sorry, in determining whether the
13 insurance agent intelligently explained such coverage to
14 the insured.

15 So that's all the law which applies to meaningful
16 offer.

17 And at this time, I'm going to show you the verdict
18 form. All right. This is what you're going to have back
19 there with you. And the top part is just the caption of
20 the case. It says, Verdict. And then you will look --
21 the question you're going to answer is, We, the jury,
22 unanimously find as follows. And it says, Please answer
23 the following question. Did Defendant MGA Insurance
24 Company make a meaningful offer of underinsured motorist
25 coverage to Alfredo Mendez at the time of application for

1 the subject insurance policy? If you find the Defendant
2 has met its burden in establishing that there was a
3 meaningful offer, then you would check, Yes. If you find
4 the Defendant has not met its burden about the meaningful
5 offer, you would check, No.

6 And then once --

7 This is where you come in, Madam Forelady. And once
8 you have reached a verdict, you would check that. You
9 would date and you would sign. And you would let the
10 bailiff know that you have reached a verdict.

11 Now, just a couple things about the verdict. Your
12 verdict has to be unanimous. That means all 12 of y'all
13 must agree on what your answer is. And this answer should
14 be based on the evidence. It should not be based on
15 anything outside the record. It should not be based on
16 any sympathy, any passion, any prejudice, any bias,
17 anything except the law which I have given you and the
18 evidence which has been presented.

19 Now, when you get back there, you may have some
20 questions. And that's one of the other roles you have.
21 You write that on a piece of paper. And, hopefully,
22 they've provided something a little bit different and
23 something more than napkins and a pen, but, no. If you
24 need to write any questions, then you would -- you would
25 write the question out. You would sign and date it. And

1 you would give it to the bailiff. And the bailiff will
2 bring it to me.

3 Now, I can -- I can -- there's two ways I can respond
4 to that. I can either -- first of all, I'll grab the
5 lawyers and talk. We'll discuss it. I'll either write a
6 response on that piece of paper and send it back to you,
7 or I may bring -- I may have to bring you back in here
8 to -- to give you some additional information.

9 Now, I will tell you, we cannot answer any factual
10 questions. A lot of times, like, there will be questions
11 like, oh, there was a reference to another document. Can
12 we see that document? We can't answer those kind of
13 questions. We can't give you any more information than
14 has been presented already.

15 You know, that's -- your job is to determine what the
16 facts are. So we can't answer those types of questions.
17 But if you do have any questions, like I said, just write
18 them out.

19 Now, I'm going to talk to my alternate. You've
20 worked just as hard as everybody else up to this point.
21 But under our law, you're not allowed to deliberate with
22 them.

23 JUROR #11, BONNY BRAMOS: So can I go home?

24 THE COURT: Yes, you can. You will be able to go
25 home. But, no, not yet -- not quite yet. But I will say

1 your role is very important. Because if for some reason,
2 one of the jurors would not have been able to continue,
3 then you'd have had to step in. I always like to -- to
4 compare an alternate to the -- to the backup quarterback
5 in the Super Bowl. You know, if that starting quarterback
6 is in the game and doesn't get hurt, then nobody knows who
7 the alternate is, but -- I mean, the backup. But the
8 moment that -- that starting quarterback goes down, the
9 most important person in the stadium is that backup.

10 So your role has been very important.

11 JUROR #11, BONNY BRAMOS: Thank you.

12 THE COURT: The fact we're not going to let you
13 continue does not mean -- diminish your role.

14 So at this time, I'm going to send you back to your
15 jury room. But you can't discuss it yet. Because I need
16 to make sure that I've not misstated anything or I left
17 anything out. In that case, I'm going to -- I'll bring
18 you back in and just correct whatever it is. I won't go
19 through the whole thing.

20 But if it is time for you to discuss, the bailiff
21 will bring back the verdict form and the evidence. And
22 he'll ask the alternate to step out and he'll say, You may
23 begin your deliberations.

24 So at this point, step back in your jury room and
25 wait for further instructions.

1 (WHEREUPON, the jury was excused from open court at
2 approximately 2:54 p.m.)

3 THE COURT: All right. Any exceptions or objections
4 from the Plaintiff?

5 MR. WOOTEN: None from the Plaintiff, Your Honor.

6 THE COURT: Defendant?

7 MS. TANKERSLEY: No, Your Honor.

8 THE COURT: All right. Make sure we have the
9 exhibits there and put that with the verdict form.
10 Let me go talk to this alternate.

11 (WHEREUPON, the proceedings were recessed at
12 approximately 2:56 p.m.)

13 (WHEREUPON, Court's Exhibit No. 2 was marked for
14 identification and admitted into evidence.)

15 QUESTIONS FROM THE JURY

16 THE COURT: All right. We're back on the record.

17 Court's Exhibit No. 2. We had a question from the
18 jury foreperson, Angela Laird, with today's date at 3:58
19 p.m.

20 Was the insurance packet printed when he got to the
21 agency? Was the X already in the box on Page 5 when he
22 arrived at the agency? Are state docs available online in
23 Spanish? And does the insurance company provide a Spanish
24 version of the application?

25 I talked with the attorneys in chambers. And the

1 response is that you must rely on evidence presented at
2 trial. We cannot provide any additional information.

3 Any objection from the Plaintiff?

4 MR. WOOTEN: None from the Plaintiff, Your Honor.

5 THE COURT: And Defendant?

6 MS. TANKERSLEY: No, Your Honor.

7 THE COURT: All right. We'll send this note back to
8 them. And that will clear up everything.

9 (WHEREUPON the proceedings were recessed at
10 approximately 4:08 p.m.)

11 THE COURT: All right. I understand we have a
12 verdict.

13 Anything from the Plaintiff before we bring the jury
14 in?

15 MR. WOOTEN: Nothing from the Plaintiff, Your Honor.

16 THE COURT: From the Defendant?

17 MS. TANKERSLEY: No, Your Honor.

18 THE COURT: All right. Bring the jury in.

19 (WHEREUPON, the jury came into open court at
20 approximately 5:25 p.m.)

21 THE COURT: All right. Madam Forelady, I understand
22 you've reached a verdict.

23 JUROR #51, ANGELA LAIRD: Yes.

24 THE COURT: If you could hand it to the bailiff,
25 please.

1 Thank you.

2 All right. It's in proper order.

3 If you will publish the verdict, please.

4 VERDICT

5 THE CLERK: Your Honor, this is case number
6 2019-CP-23-01438, Benigna Vargas vs. MGA Insurance
7 Company, Inc. We, the jury, unanimously find as follows:
8 Please answer the following question, Did defendant MGA
9 Insurance Company, Inc., make a meaningful offer of
10 underinsured motorist coverage to Alfredo Mendez at the
11 time of application for the subject insurance policy?
12 Yes, signed Angela Laird, foreperson, October 25th, 2023.

13 If this is your verdict so say you all. Please
14 signify by raising your right hand.

15 (WHEREUPON, all of the jurors raised their right
16 hand.)

17 THE COURT: All right. Thank you.

18 Anything from the jury before I release the jury from
19 the Plaintiff?

20 MR. WOOTEN: None, Your Honor.

21 THE COURT: All right. From the Defendant?

22 MS. TANKERSLEY: No, Your Honor.

23 THE COURT: All right. Ladies and gentlemen, that
24 concludes your service not only for this case, but for the
25 week. I really appreciate your service. And at this

1 time, you're free to go.

2 And I'll stick -- I'll step back there in just a
3 minute if anybody has any questions. But if you need to
4 go on, please, feel free to do so.

5 All right. Thank you very much.

6 And you're good for three years.

7 (WHEREUPON, the jury was excused from open court at
8 approximately 5:33 p.m.)

9 THE COURT: Do you want -- anybody -- you want to
10 look at the verdict?

11 MS. TANKERSLEY: Can we get copies?

12 THE LAW CLERK: Yeah. I'll make some copies.

13 THE COURT: All right. Any motions from the
14 Plaintiff?

15 MR. WOOTEN: Yes, Your Honor. We'd just move -- we
16 don't think the verdict was supported by the evidence. So
17 we'd ask that the verdict be set aside.

18 THE COURT: And I -- I mean, I think that it was,
19 clearly, a factual issue. And I believe that it was
20 proper. There was definitely sufficient evidence either
21 way.

22 And I -- so, therefore, I'm going to deny your
23 motion.

24 MR. WOOTEN: Thank you, Your Honor.

25 THE COURT: All right. Anything from the Defendant?

1 MS. TANKERSLEY: No, Your Honor.

2 THE COURT: Is there anything other than -- I mean,
3 as far as the Form 4 on the DJ action?

4 MS. TANKERSLEY: So we've got the Form 4 that you
5 sent for the fraud.

6 THE COURT: No. I mean for this one here to -- I
7 guess maybe I need to put just, verdict in favor of the --
8 the form is going to be a little different than a
9 normal...

10 MS. TANKERSLEY: Yeah. I think for DJ, you can just
11 say, verdict in favor of the Defendant.

12 THE COURT: All right. Well, I think it was a good
13 job both ways. The jury, evidentially, felt like both
14 people did a good job. They stayed out a long time.

15 All right. Well, good luck to you.

16 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 23rd, 24th, and 25th days of October, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 18, 2024

Hollie M. Jenkins, Court Reporter