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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2023-001289

Tasha Jones and Shaniqua Thompson, ... Respondents,

v.

Lyndon Southern Insurance Company,
Safe Choice Insurance, LLC, and
Jupiter Managing General Agency, Inc, Defendants,

Of which

Lyndon Southern Insurance Company is the Appellant.

**RECORD ON APPEAL
VOLUME I**

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP4004650

Tasha Jones et al
PLAINTIFF(S)

Lyndon Southern Insurance Company et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

The Motion to Compel (filed 9/21/20) heard on January 6, 2021 is GRANTED.
Produce within 10 days.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/08/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Richland Common Pleas

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

So Ordered

s/DeAndrea Gist Benjamin, #2161

FORM 4

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

Plaintiff's Motion to Compel (filed on 2/14/2022) heard on March 8, 2022 is hereby GRANTED. Defendant must produce outstanding discovery responses and pay sanction fees pursuant to the Court's Order (entered on 4/30/2021) within 10 days. Defendant is informed that failure to comply (i.e., failure to complete discovery or failure to pay Plaintiff's counsel) will result in the Answer being stricken.

Plaintiff's Motion to Strike Defendant's Answer (filed on 2/14/2022) is DENIED at this time, with leave to refile.

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, defendant, et al
Case Number: 2019CP4004650
Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

Electronically signed on 2022-05-19 12:52:02 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP4004650

Tasha Jones et al
PLAINTIFF(S)

Lyndon Southern Insurance Company et al
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☐ Other

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

This matter was before the Court on Wednesday, January 18th, 2023 at 12:00 p.m. upon the Plaintiff's Motion for Summary Judgment made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, and filed with the Court on November 10th, 2022. The hearing was held on WebEx. Present representing the Plaintiff was Dietrich Lake. Present representing the Defendant(s) was Ransome Hayward Helmly and Adam Noah Yount. After consideration of the record, arguments made, and the applicable law, the Court finds that a genuine issue of material fact does exist sufficient to withstand the standard for summary judgment. Therefore, the Court finds that Plaintiff's Motion for Summary Judgment, filed on November 10th, 2022, should be and is therefore denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

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Richland Common Pleas

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

So Ordered

s/ R.E. Hood #2164

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Tasha Jones and)
Shaniqua Thompson)
Plaintiffs,)
vs.)
Lyndon Southern Insurance)
Company)
Defendant.)

IN THE COURT OF COMMON PLEAS

Civil Action No: 2019-CP-40-04650

VERDICT FORM

RICHLAND COUNTY
FILED
2023 JUN 23 AM 8:53
JANETTE W. MCBRIDE
Clerk, C.S., R.F.C.

1. As to Breach of Contract, we, the Jury unanimously find for the Plaintiffs in the amount of:

Tasha Jones \$ 50,300 Actual Damages
Shaniqua Thompson \$ 50,000 Actual Damages

2. As to Bad Faith Refusal to Pay, we, the Jury, unanimously find for:

☒ The Plaintiffs
☐ The Defendant

If you find for the Defendant in Question No. 2, **please stop your deliberations.**

3. If you find for the Plaintiffs as to the Bad Faith Refusal to Pay, what damages do you award to each Plaintiff as a consequence of the Bad Faith Refusal to Pay?

Tasha Jones \$ 75,000 Damages
Shaniqua Thompson \$ 75,000 Damages

4. Do you find that the Plaintiffs have proven by clear and convincing evidence that the Defendant Lyndon Southern acted recklessly, willfully, or wantonly in causing the damages to the Plaintiffs?

✓ YES (Go to Question 5) NO (Stop Deliberations)

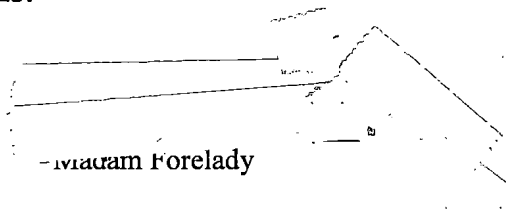
5. State the amount of punitive damages, if any, that you award to each Plaintiff.

Tasha Jones \$ 350,000 Punitive Damages

Shaniqua Thompson \$ 350,000 Punitive Damages

Please sign and date the Verdict Form. Notify the Bailiff that you have reached a unanimous verdict.

SO SAY WE ALL, this 22 day of June, 2023.


- Miriam Forelady

Columbia, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP4004650

Tasha Jones et al
PLAINTIFF(S)

Lyndon Southern Insurance Company et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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- ☐ **STAYED DUE TO BANKRUPTCY**
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☐ Other

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

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

The Court directed verdict in favor of the Plaintiffs as to Breach of Contract and submitted to the jury the issue of the amount of actual damages as to Breach of Contract.

The jury awarded the following relief:

As to Breach of Contract, the jury awarded actual damages to Plaintiff Jones in the amount of \$50,300 and to Plaintiff Thompson in the amount of \$50,000.

As to Bad Faith Refusal to Pay, the jury awarded consequential damages to Plaintiff Jones in the amount of \$75,000 and to Plaintiff Thompson in the amount of \$75,000.

As to Punitive Damages, the jury awarded punitive damages in the sum of \$350,000 to Plaintiff Jones and \$350,000 to Plaintiff Thompson.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/14/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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Richland Common Pleas

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

So Ordered

s/ Clifton B. Newman, 2127

Electronically signed on 2023-07-14 06:29:29 page 3 of 3

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

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

Factual Background

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

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

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

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

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

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

LEGAL ANALYSIS

Rule 50 & Rule 59 Motions

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

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

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

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

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

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

New Trial/New Trial Absolute

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

Directed Verdict

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

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

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

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

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

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

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

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

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

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

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

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

Thirteenth Juror Doctrine

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

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

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

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

New Trial Absolute

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

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

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

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

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

Judgment Notwithstanding the Verdict (JNOV)

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

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

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

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

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

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

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

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

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

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

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

New Trial Remittitur

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

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

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

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

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

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

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

Punitive Damages

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THEREFORE, IT IS HEREBY;

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

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

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

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

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

IT IS SO ORDERED.

Clifton B. Newman
Presiding Judge

March ____, 2024
Columbia, South Carolina



Richland Common Pleas

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

So Ordered

s/ Clifton B. Newman, 2127

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019 CP-40- 04650

Tasha Jones; and Shaniqua Thompson
PLAINTIFF(S)

Lyndon Southern Insurance Company, et al
DEFENDANT(S)

Submitted by:

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

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

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney’s box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

_____	_____
_____	_____
ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk’s entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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

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

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

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

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



Richland Common Pleas

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

So Ordered

s/ Clifton B. Newman, 2127

Electronically signed on 2024-03-27 15:22:42 page 6 of 6

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No: 2019-CP-40
	)	
Tasha Jones; and	)	
Shaniqua Thompson	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	SUMMONS
	)	
Lyndon Southern Insurance	)	
Insurance Company; and	)	
Safe Choice Insurance, LLC	)	
	)	
Defendants.	)	
	)	

TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to serve upon Dietrich A. Lake, plaintiff's attorney, whose address is 1034 Briargate Circle, Suite 201, Columbia, SC 29210, an Answer to the Complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service.

If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

s/Dietrich A. Lake
Dietrich A. Lake #69649
The Lake Law Firm
1034 Briargate, Circle, Suite 201
Columbia, SC 29210
803/750-8311 office
803/750-8312 fax
ATTORNEY FOR PLAINTIFFS

August 21, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Tasha Jones; and	)	Civil Action No: 2019-CP-40-
Shaniqua Thompson	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	COMPLAINT
	)	
Lyndon Southern Insurance	)	
Insurance Company; and	)	
Safe Choice Insurance, LLC	)	
	)	
Defendants.	)	
	)	

The Plaintiffs; complaining of the Defendants, alleges:

1. The Plaintiff Tasha Jones is a citizen and resident of Richland County, South Carolina.
2. The Plaintiff Shaniqua Thompson is a citizen and resident of Richland County, South Carolina.
3. Upon information and belief, the Defendant Lyndon Southern Insurance Company (hereinafter referred to as Lyndon) is incorporated under the laws of the State of Delaware with their principal place of business in Jacksonville, Florida.
4. Upon information and belief, the Defendant Safe Choice Insurance, LLC (hereinafter referred to as Safe Choice) is incorporated under the laws of the State of South Carolina with their principal place of business in Lexington, South Carolina.

5. Upon information and belief, Lyndon, through its agents and subsidiaries, operates insurance companies throughout the United States and engages in the business of selling automobile insurance in Richland County, Columbia, South Carolina.

6. The Defendant Safe Choice handled and negotiated the insurance agreement of the Plaintiff Tasha Jones on behalf of the Defendant Lyndon.

7. The parties hereto, the subject matter hereof, and all things and matters hereinafter alleged are within the jurisdiction of the Honorable Court as the accident and subsequent Complaint and judgment which gives rise to this action occurred in Richland County. Furthermore, the Plaintiffs are residents of Richland County and the Defendant Safe Choice has its' principle place of business in the State of South Carolina.

8. The Defendants entered into an insurance contract with the Plaintiff Tasha Jones under Policy Number CH4154345-00 to provide automobile coverage limits of the following: Bodily Injury \$25,000.00/\$50,000.00 (each person/each accident); UIM \$20,000.00/\$50,000.00 (each person/each accident); UM \$25,000.00/\$50,000.00 (each person/each accident); and Medical payment limit coverage of \$1000.00 (each person/each accident).

9. The Plaintiff Tasha Jones' insurance agreement also provided for physical damage coverage to her 2006 Kia Sedona LX #KNDMB233X66050682 with \$500.00 deductibles; towing in the amount up to \$50 per disablement; and rental reimbursement of \$20.00 per day and a maximum amount of \$400.00.

10. The Plaintiff Tasha Jones paid a premium of over \$2200.00 for this insurance agreement plus a fee for the policy.

FACTUAL BACKGROUND

11. All the allegations in Paragraphs 1 through 10 are hereby incorporated herein as if they had been set forth fully hereunder.

12. On or about the 15th day of June, 2017, the Plaintiffs were stopped at the intersection of Farrow Road and Standish Street in Richland County, Columbia, South Carolina.

13. That the Plaintiff Tasha Jones was the driver of the vehicle while the Plaintiff Shaniqua Thompson was a passenger in that same vehicle.

14. That a John Doe was driving a vehicle that was travelling behind the Plaintiff's vehicle on Standish Street in Richland County, Columbia, South Carolina.

15. That John Doe's vehicle struck the Plaintiff Jones' vehicle in the rear and fled the scene of the accident.

16. The injuries and damages as hereinafter set forth were caused by the negligent and reckless conduct of John Doe in the following particulars:

- a) In failing to maintain a proper lookout;
- b) In driving too fast for conditions;
- c) In failing to exercise that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances;
- d) In driving recklessly;
- e) In leaving the scene of an accident; and,

f) In failing to maintain proper control of a motor vehicle.

17. As a direct and proximate result of the John Doe's negligence, the Plaintiff Tasha Jones suffered injuries to her neck, back and body; furthermore, the Plaintiff Tasha Jones' injuries were of such a nature as to require her to expend monies for hospitalization, doctor's care, and other medical necessities in an amount of \$9586.95.

18. The Plaintiff Tasha Jones has suffered and will continue to suffer great pain and mental anguish as a result of this collision.

19. As a direct and proximate result of John Doe's negligence, the Plaintiff Shaniqua Thomson suffered injuries to her head, neck, back and body; furthermore, the Plaintiff Shaniqua Thompson's injuries were of such a nature as to require her to expend monies for hospitalization, doctor's care, and other medical necessities in an amount of \$9780.71.

20. The Plaintiff Shaniqua Thompson has suffered and will continue to suffer great pain and mental anguish as a result of this collision.

21. That the Plaintiffs brought an action against John Doe under Civil Action number 2018-GS-40-00337 for injuries they sustained as a result of the accident which occurred on or about June 15, 2017.

22. That the John Doe failed to an Answer the Complaint or file a motion to dismiss or file a motion for enlargement of time in which to respond, or to even file a Notice of Appearance of Counsel despite proper service.

23. That an Order of Judgment was entered in against John Doe on September 28, 2018.

24. That a damages hearing was set in the matter of Civil Action number 2018-GS-40-00337 on January 30, 2019; however, the Plaintiffs continued the matter to allow the Defendant Lyndon to make an appearance in this matter.

25. That a damages hearing was set in the matter of Civil Action number 2018-GS-40-00337 on June 6, 2019, and the Defendant Lyndon did not make or file a timely appearance in this matter.

26. That the Court issued judgment against John Doe in favor of the Plaintiffs in the amount of \$50,000.00 each per Plaintiff.

27. That an Order of Judgment was signed by the Court on June 19, 2019, indicating judgment against John Doe in favor of the Plaintiffs in the amount of \$50,000.00 each per Plaintiff.

28. That the Plaintiffs presented their demand for payment to the Defendant Lyndon on June 20, 2019.

29. That the Plaintiffs' demand for payment of the judgment requested that said payment be made within fifteen (15) business days from receipt of the demand letter.

30. That the Plaintiffs' demand letter stated that failure to pay the judgment amount within fifteen (15) days would be in bad faith.

31. That the Defendant Lyndon has failed to pay or otherwise respond to the Plaintiffs' demand for payment of the judgment within the allotted fifteen (15) business days.

32. That the Defendant Lyndon has provided no reasonable basis for its' refusal to pay the judgment nor has the Defendant Lyndon provided any reasonable basis why it has not otherwise responded in this matter.

LYNDON POLICY

33. All the allegations in Paragraphs 1 through 32 are hereby incorporated herein as if they had been set forth fully hereunder.

34. Upon information and belief, Lyndon issued an automobile policy to Tasha Jones with an effective policy period of March 3, 2017 until September 3, 2017, under policy number CH4154345-00.

35. Policy number CH4154345-00 provided insurance coverage for the following vehicles owned by the Plaintiff Tasha Jones at the time of this incident which is the subject of the declaratory judgement action:

a) 2006 Kia Sedona LX #KNDMB233X66050682.

36. The policy was negotiated and sold to the Plaintiff Tasha Jones by the Defendant Safe Choice in Lexington, South Carolina; Safe Choice managed the policy.

37. Upon information and belief, the Plaintiff Shaniqua Thompson is defined as an insured under the policy as she was a passenger in the Plaintiff's Tasha Jones' vehicle at the time of this accident which gives rise to this action.

38. Upon information and belief, the Lyndon policy provides coverage for "bodily injury" suffered by you or a relative because of "property damage." The damages must result from an accident arising out of the ownership, maintenance or use of that uninsured motor vehicle.

39. Upon information and belief, the insurance agreement imposes upon the Defendant Lyndon some of the following duties to the Plaintiff Jones and any other beneficiaries:

- a) A duty to pay a beneficiary in the event of a claim;
- b) A duty to defend;
- c) A duty to properly handle claims; and
- d) A duty of good faith and fair dealing;

40. Upon information and belief, the insurance agreement imposes upon the Defendant Safe Choice some of the following duties to the Plaintiff Jones and any other beneficiaries:

- a) A duty to use a reasonable degree of care necessary to protect the interest of their insured(s); and
- b) A duty to act reasonably to get the coverage the Plaintiff sought with a company who can and will promptly pay claims when they are due; and
- c) A duty to help the Plaintiff settle any issue with their insurance.

41. The Lyndon policy is subject to various definitions, exclusions and endorsements.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

42. All the allegations in Paragraphs 1 through 41 are hereby incorporated herein as if they had been set forth fully hereunder.

43. That there is a legal and existing insurance agreement between the Plaintiffs and the Defendant Lyndon for Uninsured Motorist Coverage.

44. That the Plaintiff Tasha Jones performed under the insurance agreement by payment a premium under the insurance agreement and cooperating under the insurance agreement.

45. That the Defendant Lyndon's conduct has breached the insurance policy in the following manners:

- a) In refusing to pay the Judgments in the matter of Civil Action number 2018-GS-40-00337;
- b) In refusing to timely appear or otherwise answer or defend in the matter of Civil Action number 2018-GS-40-00337;
- c) In failing to properly handle the claim in this matter which gives rise to this action; and
- d) In failing to exercise good faith and fair dealings in the claim in this matter which gives to this action.

46. That the Plaintiffs sustained damages in excess of the UM policy limits as a result of the Defendant Lyndon's breach of the insurance agreement.

47. That the Plaintiffs are entitled to recover the judgment and actual damages, consequential damages, and punitive damages.

FOR A SECOND CAUSE OF ACTION
(Negligence)

48. All the allegations in Paragraphs 1 through 47 are hereby incorporated herein as if they had been set forth fully hereunder.

49. That the Plaintiff Tasha Jones relied upon the Defendant Safe Choice to act as a reasonably prudent agent to secure automobile insurance coverage for her vehicle in the event she sustained a loss.

50. That the Defendant Safe Choice's act and omission and conduct has breached the its duty insurance policy in the following manners:

a) In failing to assist the Plaintiffs in settling their issue with the insurance; and

b) In failing to act reasonably in securing coverage for the Plaintiffs with a company who could and would promptly pay claims when they were due.

51. That the Plaintiff sustained damages as a result of the Defendant Safe Choice's negligence in securing a sound insurance company for her automobile coverage for her vehicle.

52. That the Plaintiffs are entitled to recover actual damages, consequential damages, and punitive damages.

FOR A THIRD CAUSE OF ACTION
(Bad Faith)

53. All the allegations in Paragraphs 1 through 52 are hereby incorporated herein as if they had been set forth fully hereunder.

54. That the Defendant Lyndon's acts and omissions and conduct in refusing to pay the contracted benefits is without reasonable basis and is in bad faith.

55. That the Defendant's conduct in failing to timely appear or otherwise answer or defend in the matter of Civil Action number 2018-GS-40-00337 is without reasonable basis and is in bad faith.

56. That the Defendant's conduct in failing to respond to its' insured or to exercise good faith and fair dealings in handling the claim in this matter which gives to this action is without reasonable basis and is in bad faith.

57. That the Plaintiffs are entitled to recover punitive damages as a result of the Defendant Lyndon's bad faith conduct.

FOR A FOURTH CAUSE OF ACTION
(Attorney Fees)

58. All the allegations in Paragraphs 1 through 57 are hereby incorporated herein as if they had been set forth fully hereunder.

59. That more than sixty (60) days have passed since a demand has been made for payment of the benefits.

60. Plaintiffs have been required to retain the services of an attorney to commence this action and are entitled to attorney's fees and costs.

WHEREFORE, Plaintiff prays judgment against the Defendants in the amount of actual, consequential and punitive damages, together with attorney fees and the costs of this action.

S/Dietrich A. Lake

Dietrich A. Lake #69649
The Lake Law Firm
1034 Briargate Circle, Suite 201
Columbia, SC 29210
803/750-8311 office
803/750-8312 fax
ATTORNEY FOR PLAINTIFFS

August 21, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Tasha Jones; and)
Shaniqua Thompson)
Plaintiffs,)
vs.)
Lyndon Southern Insurance)
Company; and Safe Choice)
Insurance, LLC)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

Civil Action No: 2019-CP-40-04650

SUMMONS
(Amended)

TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to serve upon Dietrich A. Lake, plaintiff's attorney, whose address is 1034 Briargate Circle, Suite 201, Columbia, SC 29210, an Answer to the Complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service.

If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

s/Dietrich A. Lake
Dietrich A. Lake #69649
The Lake Law Firm
1034 Briargate, Circle, Suite 201
Columbia, SC 29210
803/750-8311 *office*
803/750-8312 *fax*
ATTORNEY FOR PLAINTIFFS

August 23s, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No: 2019-CP-40-04650
	)	
Tasha Jones; and	)	
Shaniqua Thompson	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	COMPLAINT
	)	(Amended)
	)	
Lyndon Southern Insurance	)	
Company; and Safe Choice	)	
Insurance, LLC	)	
	)	
Defendants.	)	
	)	

The Plaintiffs; complaining of the Defendants, alleges:

1. The Plaintiff Tasha Jones is a citizen and resident of Richland County, South Carolina.
2. The Plaintiff Shaniqua Thompson is a citizen and resident of Richland County, South Carolina.
3. Upon information and belief, the Defendant Lyndon Southern Insurance Company (hereinafter referred to as Lyndon) is incorporated under the laws of the State of Delaware with their principal place of business in Jacksonville, Florida.
4. Upon information and belief, the Defendant Safe Choice Insurance, LLC (hereinafter referred to as Safe Choice) is incorporated under the laws of the State of South Carolina with their principal place of business in Lexington, South Carolina.

5. Upon information and belief, Lyndon, through its agents and subsidiaries, operates insurance companies throughout the United States and engages in the business of selling automobile insurance in Richland County, Columbia, South Carolina.

6. The Defendant Safe Choice handled and negotiated the insurance agreement of the Plaintiff Tasha Jones on behalf of the Defendant Lyndon.

7. The parties hereto, the subject matter hereof, and all things and matters hereinafter alleged are within the jurisdiction of the Honorable Court as the accident and subsequent Complaint and judgment which gives rise to this action occurred in Richland County. Furthermore, the Plaintiffs are residents of Richland County and the Defendant Safe Choice has its' principle place of business in the State of South Carolina.

8. The Defendants entered into an insurance contract with the Plaintiff Tasha Jones under Policy Number CH4154345-00 to provide automobile coverage limits of the following: Bodily Injury \$25,000.00/\$50,000.00 (each person/each accident); UIM \$20,000.00/\$50,000.00 (each person/each accident); UM \$25,000.00/\$50,000.00 (each person/each accident); and Medical payment limit coverage of \$1000.00 (each person/each accident).

9. The Plaintiff Tasha Jones' insurance agreement also provided for physical damage coverage to her 2006 Kia Sedona LX #KNDMB233X66050682 with \$500.00 deductibles; towing in the amount up to \$50 per disablement; and rental reimbursement of \$20.00 per day and a maximum amount of \$400.00.

10. The Plaintiff Tasha Jones paid a premium of over \$2200.00 for this insurance agreement plus a fee for the policy.

FACTUAL BACKGROUND

11. All the allegations in Paragraphs 1 through 10 are hereby incorporated herein as if they had been set forth fully hereunder.

12. On or about the 15th day of June, 2017, the Plaintiffs were stopped at the intersection of Farrow Road and Standish Street in Richland County, Columbia, South Carolina.

13. That the Plaintiff Tasha Jones was the driver of the vehicle while the Plaintiff Shaniqua Thompson was a passenger in that same vehicle.

14. That a John Doe was driving a vehicle that was travelling behind the Plaintiff's vehicle on Standish Street in Richland County, Columbia, South Carolina.

15. That John Doe's vehicle struck the Plaintiff Jones' vehicle in the rear and fled the scene of the accident.

16. The injuries and damages as hereinafter set forth were caused by the negligent and reckless conduct of John Doe in the following particulars:

- a) In failing to maintain a proper lookout;
- b) In driving too fast for conditions;
- c) In failing to exercise that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances;
- d) In driving recklessly;
- e) In leaving the scene of an accident; and,

f) In failing to maintain proper control of a motor vehicle.

17. As a direct and proximate result of the John Doe's negligence, the Plaintiff Tasha Jones suffered injuries to her neck, back and body; furthermore, the Plaintiff Tasha Jones' injuries were of such a nature as to require her to expend monies for hospitalization, doctor's care, and other medical necessities in an amount of \$9586.95.

18. The Plaintiff Tasha Jones has suffered and will continue to suffer great pain and mental anguish as a result of this collision.

19. As a direct and proximate result of John Doe's negligence, the Plaintiff Shaniqua Thomson suffered injuries to her head, neck, back and body; furthermore, the Plaintiff Shaniqua Thompson's injuries were of such a nature as to require her to expend monies for hospitalization, doctor's care, and other medical necessities in an amount of \$9780.71.

20. The Plaintiff Shaniqua Thompson has suffered and will continue to suffer great pain and mental anguish as a result of this collision.

21. That the Plaintiffs brought an action against John Doe under Civil Action number 2018-GS-40-00337 for injuries they sustained as a result of the accident which occurred on or about June 15, 2017.

22. That the John Doe failed to an Answer the Complaint or file a motion to dismiss or file a motion for enlargement of time in which to respond, or to even file a Notice of Appearance of Counsel despite proper service.

23. That an Order of Judgment was entered in against John Doe on September 28, 2018.

24. That a damages hearing was set in the matter of Civil Action number 2018-GS-40-00337 on January 30, 2019; however, the Plaintiffs continued the matter to allow the Defendant Lyndon to make an appearance in this matter.

25. That a damages hearing was set in the matter of Civil Action number 2018-GS-40-00337 on June 6, 2019, and the Defendant Lyndon did not make or file a timely appearance in this matter.

26. That the Court issued judgment against John Doe in favor of the Plaintiffs in the amount of \$50,000.00 each per Plaintiff.

27. That an Order of Judgment was signed by the Court on June 19, 2019, indicating judgment against John Doe in favor of the Plaintiffs in the amount of \$50,000.00 each per Plaintiff.

28. That the Plaintiffs presented their demand for payment to the Defendant Lyndon on June 20, 2019.

29. That the Plaintiffs' demand for payment of the judgment requested that said payment be made within fifteen (15) business days from receipt of the demand letter.

30. That the Plaintiffs' demand letter stated that failure to pay the judgment amount within fifteen (15) days would be in bad faith.

31. That the Defendant Lyndon has failed to pay or otherwise respond to the Plaintiffs' demand for payment of the judgment within the allotted fifteen (15) business days.

32. That the Defendant Lyndon has provided no reasonable basis for its' refusal to pay the judgment nor has the Defendant Lyndon provided any reasonable basis why it has not otherwise responded in this matter.

LYNDON POLICY

33. All the allegations in Paragraphs 1 through 32 are hereby incorporated herein as if they had been set forth fully hereunder.

34. Upon information and belief, Lyndon issued an automobile policy to Tasha Jones with an effective policy period of March 3, 2017 until September 3, 2017, under policy number CH4154345-00.

35. Policy number CH4154345-00 provided insurance coverage for the following vehicles owned by the Plaintiff Tasha Jones at the time of this incident which is the subject of the declaratory judgement action:

a) 2006 Kia Sedona LX #KNDMB233X66050682.

36. The policy was negotiated and sold to the Plaintiff Tasha Jones by the Defendant Safe Choice in Lexington, South Carolina; Safe Choice managed the policy.

37. Upon information and belief, the Plaintiff Shaniqua Thompson is defined as an insured under the policy as she was a passenger in the Plaintiff's Tasha Jones' vehicle at the time of this accident which gives rise to this action.

38. Upon information and belief, the Lyndon policy provides coverage for "bodily injury" suffered by you or a relative because of "property damage." The damages must result from an accident arising out of the ownership, maintenance or use of that uninsured motor vehicle.

39. Upon information and belief, the insurance agreement imposes upon the Defendant Lyndon some of the following duties to the Plaintiff Jones and any other beneficiaries:

- a) A duty to pay a beneficiary in the event of a claim;
- b) A duty to defend;
- c) A duty to properly handle claims; and
- d) A duty of good faith and fair dealing;

40. Upon information and belief, the insurance agreement imposes upon the Defendant Safe Choice some of the following duties to the Plaintiff Jones and any other beneficiaries:

- a) A duty to use a reasonable degree of care necessary to protect the interest of their insured(s); and
- b) A duty to act reasonably to get the coverage the Plaintiff sought with a company who can and will promptly pay claims when they are due; and
- c) A duty to help the Plaintiff settle any issue with their insurance.

41. The Lyndon policy is subject to various definitions, exclusions and endorsements.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

42. All the allegations in Paragraphs 1 through 41 are hereby incorporated herein as if they had been set forth fully hereunder.

43. That there is a legal and existing insurance agreement between the Plaintiffs and the Defendant Lyndon for Uninsured Motorist Coverage.

44. That the Plaintiff Tasha Jones performed under the insurance agreement by payment a premium under the insurance agreement and cooperating under the insurance agreement.

45. That the Defendant Lyndon's conduct has breached the insurance policy in the following manners:

- a) In refusing to pay the Judgments in the matter of Civil Action number 2018-GS-40-00337;
- b) In refusing to timely appear or otherwise answer or defend in the matter of Civil Action number 2018-GS-40-00337;
- c) In failing to properly handle the claim in this matter which gives rise to this action; and
- d) In failing to exercise good faith and fair dealings in the claim in this matter which gives to this action.

46. That the Plaintiffs sustained damages in excess of the UM policy limits as a result of the Defendant Lyndon's breach of the insurance agreement.

47. That the Plaintiffs are entitled to recover the judgment and actual damages, consequential damages, and punitive damages.

FOR A SECOND CAUSE OF ACTION
(Negligence)

48. All the allegations in Paragraphs 1 through 47 are hereby incorporated herein as if they had been set forth fully hereunder.

49. That the Plaintiff Tasha Jones relied upon the Defendant Safe Choice to act as a reasonably prudent agent to secure automobile insurance coverage for her vehicle in the event she sustained a loss.

50. That the Defendant Safe Choice's act and omission and conduct has breached the its duty insurance policy in the following manners:

a) In failing to assist the Plaintiffs in settling their issue with the insurance; and

b) In failing to act reasonably in securing coverage for the Plaintiffs with a company who could and would promptly pay claims when they were due.

51. That the Plaintiff sustained damages as a result of the Defendant Safe Choice's negligence in securing a sound insurance company for her automobile coverage for her vehicle.

52. That the Plaintiffs are entitled to recover actual damages, consequential damages, and punitive damages.

FOR A THIRD CAUSE OF ACTION
(Bad Faith)

53. All the allegations in Paragraphs 1 through 52 are hereby incorporated herein as if they had been set forth fully hereunder.

54. That the Defendant Lyndon's acts and omissions and conduct in refusing to pay the contracted benefits is without reasonable basis and is in bad faith.

55. That the Defendant's conduct in failing to timely appear or otherwise answer or defend in the matter of Civil Action number 2018-GS-40-00337 is without reasonable basis and is in bad faith.

56. That the Defendant's conduct in failing to respond to its' insured or to exercise good faith and fair dealings in handling the claim in this matter which gives to this action is without reasonable basis and is in bad faith.

57. That the Plaintiffs are entitled to recover punitive damages as a result of the Defendant Lyndon's bad faith conduct.

FOR A FOURTH CAUSE OF ACTION
(Attorney Fees)

58. All the allegations in Paragraphs 1 through 57 are hereby incorporated herein as if they had been set forth fully hereunder.

59. That more than sixty (60) days have passed since a demand has been made for payment of the benefits.

60. Plaintiffs have been required to retain the services of an attorney to commence this action and are entitled to attorney's fees and costs.

WHEREFORE, Plaintiff prays judgment against the Defendants in the amount of actual, consequential and punitive damages, together with attorney fees and the costs of this action.

s/Dietrich A. Lake

Dietrich A. Lake #69649
The Lake Law Firm
1034 Briargate Circle, Suite 201
Columbia, SC 29210
803/750-8311 office
803/750-8312 fax
ATTORNEY FOR PLAINTIFFS

August 23, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2019-CP-40-4650
	)	
Tasha Jones; and Shaniqua Thompson,	)	
	)	
Plaintiffs,	)	
	)	DEFENDANT LYNDON SOUTHERN
vs.	)	INSURANCE COMPANY’S ANSWER
	)	TO PLAINTIFFS’ COMPLAINT
Lyndon Southern Insurance Company;	)	(Jury Trial Demanded)
and Safe Choice, LLC,	)	
	)	
Defendants.	)	
	)	

TO: DIETRICH A. LAKE, ESQUIRE, ATTORNEY FOR PLAINTIFFS

Defendant Lyndon Southern Insurance Company (“Defendant” or “LSIC”) by and through the undersigned counsel, hereby answers the Plaintiffs’ Complaint as follows:

1. Each and every allegation not specifically admitted, qualified or explained is denied.

GENERAL ALLEGATIONS

2. Upon current information and belief, the allegations contained in paragraphs 1, 2, and 3 of the Complaint are admitted for jurisdictional purposes only.

3. Defendant is without sufficient information to determine the truth of the allegations in Paragraph 4 of Plaintiffs’ Complaint and therefore denies the same and demands strict proof thereof.

4. As to paragraph 5, LSIC denies that it operates insurance companies throughout the United States. LSIC is an underwriter of non-standard automobile insurance policies in multiple states, but no longer does so in South Carolina. Any and all other allegations, inferred or implied, are denied and strict proof thereof is demanded.

5. Defendant is without sufficient information to determine the truth of the allegations in paragraphs 6 and 7 and therefore denies the same and demands strict proof thereof.

6. Defendant is without sufficient information to determine the truth of the allegations in Paragraphs 16, 17, and 18, including all subparts, and therefore denies the same and demands strict proof thereof.

7. Upon information and belief, paragraphs 8 and 9 are admitted.

8. Defendant is without sufficient information to determine the truth of the allegations in paragraph 10 and therefore denies the same and demands strict proof thereof.

FACTUAL ALLEGATIONS

9. As to Paragraph 11, Defendant re-asserts and re-alleges Defendant's responses to Paragraph 1 through 10 of the Complaint as if re-stated verbatim herein.

10. As to paragraphs 12 through 20, Defendant admits that Plaintiffs were involved in an automobile accident with an unknown driver on or about the date, time, and location specified. As for the remaining allegations, Defendant is without sufficient information to determine the truth of the of the allegations asserted and therefore denies the same and demands strict proof thereof.

11. Paragraph 21 is admitted.

12. Defendant denies the allegations in paragraph 22, as stated, and demands strict proof thereof.

13. Upon information and belief, Paragraphs 23 and 24 are admitted.

14. Paragraph 25 is denied.

15. Paragraphs 26 and 27 are a matter of the public court record and therefore Defendant craves reference to the same.

16. Defendant is without sufficient information to determine the truth of the allegations in paragraphs 28 through 32 and therefore denies the same and demands strict proof thereof.

THE LYNDON POLICY

17. As to Paragraph 33, Defendant re-asserts and re-alleges Defendant's responses to Paragraph 1 through 32 of the Complaint as if re-stated verbatim herein.

18. As to paragraph 34 and 35, Defendant admits, upon information and belief, that it sold through an agent the policy referenced. Defendant further avers that the policy provided coverage in accordance with the terms and conditions set forth in the policy and that the policy speaks for itself. The Defendant denies any allegations contained in said paragraph to the extent they are inconsistent with the policy and the Defendant denies providing any coverage not contemplated by the policy. The Defendant denies any remaining or inconsistent allegations contained and demands strict proof thereof.

19. Defendant is without sufficient information to determine the truth of the allegations in paragraph 36 and 37 and therefore denies the same and demands strict proof thereof.

20. As to paragraphs 38 through 41, Defendant admits, upon information and belief, that it sold through an agent the policy referenced. Defendant further avers that the policy provided coverage in accordance with the terms and conditions set forth in the policy and that the policy speaks for itself. The Defendant denies any allegations contained in said paragraph to the extent they are inconsistent with the policy and the Defendant denies

providing any coverage not contemplated by the policy. The Defendant denies any remaining or inconsistent allegations contained and demands strict proof thereof.

AS TO THE FIRST CAUSE OF ACTION

21. As to Paragraph 42, Defendant re-asserts and re-alleges Defendant's responses to Paragraph 1 through 41 of the Complaint as if re-stated verbatim herein.

22. As to paragraphs 43 through 47, Defendant admits, upon information and belief, that it sold through an agent the policy referenced. Defendant further avers that the policy provided coverage in accordance with the terms and conditions set forth in the policy and that the policy speaks for itself. The Defendant denies any allegations contained in said paragraph to the extent they are inconsistent with the policy and the Defendant denies providing any coverage not contemplated by the policy. The Defendant denies any remaining or inconsistent allegations contained and demands strict proof thereof.

AS TO THE SECOND CAUSE OF ACTION

23. As to Paragraph 48, Defendant re-asserts and re-alleges Defendant's responses to Paragraph 1 through 47 of the Complaint as if re-stated verbatim herein.

24. Paragraphs 49 through 52 do not apply to LSIC and thus no response is required.

AS TO THE THIRD AND FOURTH CAUSES OF ACTION

25. Defendant denies paragraphs 53 through 60 and demands strict proof thereof.

FOR A FIRST DEFENSE
(Reservation and Non-Waiver)

25. Defendant has not had an opportunity to conduct a thorough investigation or engage in sufficient discovery regarding the matters set forth in Plaintiffs' Complaint,

and therefore, reserves the right to amend this Answer to assert additional defenses as may arise during discovery.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant prays that this Court grant the relief sought herein and dismiss all claims against them with prejudice, as well as fees and costs incurred. Defendant further prays for such other relief this court may deem proper.

Respectfully submitted,

s/ Ransome H Helmly

Ransome H. Helmly
SC Bar # 78081
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Attorney for Defendant

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

TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to serve upon Dietrich A. Lake, plaintiff's attorney, whose address is 1034 Briargate Circle, Suite 201, Columbia, SC 29210, an Answer to the Complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service.

If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

s/Dietrich A. Lake
Dietrich A. Lake #69649
The Lake Law Firm
1034 Briargate, Circle, Suite 201
Columbia, SC 29210
803/750-8311 *office*
803/750-8312 *fax*
ATTORNEY FOR PLAINTIFFS

March 18, 2021
Columbia, South Carolina

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

The Plaintiffs; complaining of the Defendants, alleges:

1. The Plaintiff Tasha Jones is a citizen and resident of Richland County, South Carolina.

2. The Plaintiff Shaniqua Thompson is a citizen and resident of Richland County, South Carolina.

3. Upon information and belief, the Defendant Lyndon Southern Insurance Company (hereinafter referred to as Lyndon) is incorporated under the laws of the State of Delaware with their principal place of business in Jacksonville, Florida.

4. Upon information and belief, the Defendant Safe Choice Insurance, LLC (hereinafter referred to as Safe Choice) is incorporated under the laws of the State of South Carolina with their principal place of business in Lexington, South Carolina.

5. Upon information and belief, the Defendant Jupiter Managing General Agency, Inc.(hereinafter referred to as Jupiter) in incorporated under the laws of Tennessee with their principal place of business in Nashville, Tennessee.

6. Upon information and belief, Lyndon, through its agents and subsidiaries, operates insurance companies throughout the United States and engages in the business of selling automobile insurance in Richland County, Columbia, South Carolina.

7. The Defendant Safe Choice handled and negotiated the insurance agreement of the Plaintiff Tasha Jones on behalf of the Defendant Lyndon.

8. Upon information and belief, Jupiter handled and negotiated automobile property and casualty insurance claims on behalf of Lyndon in Richland County and throughout South Carolina; furthermore, Jupiter handled and/or adjusted the Plaintiffs' claims in case arising out of an accident which occurred on or about the 15th day of June, 2017.

9. The parties hereto, the subject matter hereof, and all things and matters hereinafter alleged are within the jurisdiction of the Honorable Court as the accident and subsequent Complaint and judgment which gives rise to this action occurred in Richland County. Furthermore, the Plaintiffs are residents of Richland County and the Defendant Safe Choice has its' principle place of business in the State of South Carolina.

10. The Defendants entered into an insurance contract with the Plaintiff Tasha Jones under Policy Number CH4154345-00 to provide automobile coverage limits of the following: Bodily Injury \$25,000.00/\$50,000.00 (each

person/each accident); UIM \$20,000.00/\$50,000.00 (each person/each accident); UM \$25,000.00/\$50,000.00 (each person/each accident); and Medical payment limit coverage of \$1000.00 (each person/each accident).

11. The Plaintiff Tasha Jones' insurance agreement also provided for physical damage coverage to her 2006 Kia Sedona LX #KNDMB233X66050682 with \$500.00 deductibles; towing in the amount up to \$50 per disablement; and rental reimbursement of \$20.00 per day and a maximum amount of \$400.00.

12. The Plaintiff Tasha Jones paid a premium of over \$2200.00 for this insurance agreement plus a fee for the policy.

FACTUAL BACKGROUND

13. All the allegations in Paragraphs 1 through 12 are hereby incorporated herein as if they had been set forth fully hereunder.

14. On or about the 15th day of June, 2017, the Plaintiffs were stopped at the intersection of Farrow Road and Standish Street in Richland County, Columbia, South Carolina.

15. That the Plaintiff Tasha Jones was the driver of the vehicle while the Plaintiff Shaniqua Thompson was a passenger in that same vehicle.

16. That a John Doe was driving a vehicle that was travelling behind the Plaintiff's vehicle on Standish Street in Richland County, Columbia, South Carolina.

17. That John Doe's vehicle struck the Plaintiff Jones' vehicle in the rear and fled the scene of the accident.

18. The injuries and damages as hereinafter set forth were caused by the negligent and reckless conduct of John Doe in the following particulars:

- a) In failing to maintain a proper lookout;
- b) In driving too fast for conditions;
- c) In failing to exercise that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances;
- d) In driving recklessly;
- e) In leaving the scene of an accident; and,
- f) In failing to maintain proper control of a motor vehicle.

19. As a direct and proximate result of the John Doe's negligence, the Plaintiff Tasha Jones suffered injuries to her neck, back and body; furthermore, the Plaintiff Tasha Jones' injuries were of such a nature as to require her to expend monies for hospitalization, doctor's care, and other medical necessities in an amount of \$9586.95.

20. The Plaintiff Tasha Jones has suffered and will continue to suffer great pain and mental anguish as a result of this collision.

21. As a direct and proximate result of John Doe's negligence, the Plaintiff Shaniqua Thomson suffered injuries to her head, neck, back and body; furthermore, the Plaintiff Shaniqua Thompson's injuries were of such a nature as to require her to expend monies for hospitalization, doctor's care, and other medical necessities in an amount of \$9780.71.

22. The Plaintiff Shaniqua Thompson has suffered and will continue to suffer great pain and mental anguish as a result of this collision.

23. That the Plaintiffs brought an action against John Doe under Civil Action number 2018-GS-40-00337 for injuries they sustained as a result of the accident which occurred on or about June 15, 2017.

24. That the John Doe failed to an Answer the Complaint or file a motion to dismiss or file a motion for enlargement of time in which to respond, or to even file a Notice of Appearance of Counsel despite proper service.

25. That an Order of Judgment was entered in against John Doe on September 28, 2018.

26. Jupiter was the claim's administrator for Lyndon handling both Plaintiffs' claims related to and arising out of the accident of June 15, 2017.

27. That a damages hearing was set in the matter of Civil Action number 2018-GS-40-00337 on January 30, 2019; however, the Plaintiffs continued the matter to allow the Defendant Lyndon and Jupiter to make a formal appearance in this matter with their counsel.

28. That a damages hearing was set in the matter of Civil Action number 2018-GS-40-00337 on June 6, 2019, and that neither Lyndon or Jupiter made or filed a timely appearance in this matter despite the previous continuance.

29. Both Lyndon and Jupiter failed to protect and/or defend the Plaintiffs' interests in the matter of Civil Action number 2018-GS-40-00337.

30. That the Court issued judgment against John Doe in favor of the Plaintiffs in the amount of \$50,000.00 each per Plaintiff.

31. That an Order of Judgment was signed by the Court on June 19, 2019, indicating judgment against John Doe in favor of the Plaintiffs in the amount of \$50,000.00 each per Plaintiff.

32. That the Plaintiffs presented their demand for payment to the Lyndon's and Jupiter's known counsel on June 20, 2019.

33. That Lyndon and Jupiter retained counsel in this matter in January 2019 before either damage hearing and before the issuance of the judgment on June 6, 2019.

34. That the Plaintiffs' demand for payment of the judgment requested that said payment for the judgments be made within fifteen (15) business days from receipt of the demand letter.

35. That the Plaintiffs' demand letter stated that failure to pay the judgment amounts within fifteen (15) days would be in bad faith.

36. That the Lyndon and Jupiter failed to pay or otherwise respond to the Plaintiffs' demand letter for payment of the judgment within the allotted fifteen (15) business days.

37. That the Lyndon and Jupiter failed to pay the medical coverage to the Plaintiffs after issuance of the judgment and/or at any other reasonable time after the accident.

38. That Lyndon and Jupiter provided no reasonable basis for its' refusal to pay the judgment nor have Lyndon and/or Jupiter provided any reasonable basis why it did not otherwise timely respond in this matter.

39. That Lyndon's and Jupiter's first filed appearance in this matter was on or about July 20, 2020 when their counsel filed a Rule 60(b) motion.

LYNDON POLICY

40. All the allegations in Paragraphs 1 through 39 are hereby incorporated herein as if they had been set forth fully hereunder.

41. Upon information and belief, Lyndon issued an automobile policy to Tasha Jones with an effective policy period of March 3, 2017 until September 3, 2017, under policy number CH4154345-00.

42. Policy number CH4154345-00 provided insurance coverage for the following vehicles owned by the Plaintiff Tasha Jones at the time of this incident which is the subject of the declaratory judgement action:

a) 2006 Kia Sedona LX #KNDMB233X66050682.

43. The policy was negotiated and sold to the Plaintiff Tasha Jones by the Defendant Safe Choice in Lexington, South Carolina; Safe Choice managed the Plaintiff Tasha Jones' policy.

44. Upon information and belief, the Plaintiff Shaniqua Thompson is defined as an insured under the policy as she was a passenger in the Plaintiff's Tasha Jones' vehicle at the time of this accident which gives rise to this action.

45. Upon information and belief, the Lyndon policy provided coverage for "bodily injury" suffered by you or a relative because of "property damage." The damages must result from an accident arising out of the ownership, maintenance or use of that uninsured motor vehicle.

46. Upon information and belief, the insurance agreement imposes upon the Defendants Lyndon and Jupiter some of the following duties to the Plaintiff Jones and any other beneficiaries:

- a) A duty to pay a beneficiary in the event of a claim;
- b) A duty to defend;
- c) A duty to properly handle claims; and
- d) A duty of good faith and fair dealing.

47. Upon information and belief, the insurance agreement imposes upon the Defendant Safe Choice some of the following duties to the Plaintiff Jones and any other beneficiaries:

- a) A duty to use a reasonable degree of care necessary to protect the interest of their insured(s); and
- b) A duty to act reasonably to secure the coverage the Plaintiff sought with a company who can and will promptly pay claims when they are due; and
- c) A duty to help the Plaintiff settle any issue with the insurance carrier and/or any other agent of the carrier.

48. The Lyndon policy is subject to various definitions, exclusions and endorsements.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

49. All the allegations in Paragraphs 1 through 48 are hereby incorporated herein as if they had been set forth fully hereunder.

50. That there is a legal and existing insurance agreement between the Plaintiffs and the Defendant Lyndon for Uninsured Motorist Coverage.

51. That the Plaintiff Tasha Jones performed under the insurance agreement by payment of her premium under the insurance agreement and cooperating under the insurance agreement.

52. That Lyndon's and Jupiter's conduct has breached the insurance policy in the following manners:

a) In refusing to pay the Judgments in the matter of Civil Action number 2018-GS-40-00337;

b) In refusing to timely appear or otherwise answer or defend in the matter of Civil Action number 2018-GS-40-00337;

c) In failing to properly handle the claim in this matter which gives rise to this action;

d) In failing to pay the medical payment coverage; and

e) In failing to exercise good faith and fair dealings in the claim in this matter which gives to this action.

53. As a direct and proximate result of Lyndon's and Jupiter's willful breach of contract, the Plaintiffs sustained an injury from Lyndon and Jupiter's failure to pay benefits to the Plaintiffs for the their loss under the insurance contract.

54. The Plaintiffs have suffered and will continue to suffer great pain and mental anguish as a result of this breach of contract and bad faith.

WHEREFORE, the Plaintiffs pray judgment against Lyndon and Jupiter for the judgment amount plus interest, actual damages in an appropriate amount, consequential damages, and punitive damages.

FOR A SECOND CAUSE OF ACTION
(Negligence)

55. All the allegations in Paragraphs 1 through 54 are hereby incorporated herein as if they had been set forth fully hereunder.

56. That the Plaintiff Tasha Jones relied upon the Defendant Safe Choice to act as a reasonably prudent agent to secure automobile insurance coverage for her vehicle in the event she sustained a loss.

57. That the Defendant Safe Choice's acts and/or omissions and/or conduct breached its duty to the Plaintiffs in the following manners:

a) In failing to assist the Plaintiffs in settling their issue with the insurance; and

b) In failing to act reasonably in securing coverage for the Plaintiffs with a company who could and would promptly pay claims when they were due.

58. As a direct and proximate result of Safe Choice's negligence in failing to secure a sound insurance company for the Plaintiffs automobile coverage for the Plaintiffs' vehicle, the Plaintiffs sustained an injury from Lyndon and Jupiter's failure to pay benefits to the Plaintiffs for the their loss under the insurance contract.

59. The Plaintiffs have suffered and will continue to suffer great pain and mental anguish as a result of this breach of contract and bad faith.

WHEREFORE, the Plaintiffs pray judgment against Safe Choice actual damages in an appropriate amount, consequential damages, and punitive damages.

FOR A THIRD CAUSE OF ACTION
(Negligent Hiring, Training, Supervising)

60. All the allegations in Paragraphs 1 through 59 are hereby incorporated herein as if they had been set forth fully hereunder.

61. That Lyndon and Jupiter owed the Plaintiff a duty of care in the handling and administration of the Plaintiffs' claims at and/or during the time of this incident and/or judgement due to the contractual relationship between all the parties.

62. That Lyndon and/or Jupiter had a duty to hire, train, and supervise competent employees and businesses in the administration of Lyndon's claims for its' policyholders.

63. That Jupiter administered the Plaintiffs' claim and failed to ensure payment the judgment when it was presented for payment by the Plaintiffs; furthermore, Jupiter failed to ensure payment of the medical payment coverage after the judgment.

64. That Lyndon and/or Jupiter failed to retain counsel after the filing of Civil Action number 2018-GS-40-00337.

65. The injuries and damages as hereinafter set forth were caused by the negligent and reckless conduct of Lyndon and/or Jupiter in the following particulars:

a) In hiring Jupiter and/or Jupiter's agents who were not competent to administer the Plaintiffs' claims;

b) In failing to adequately train Jupiter and/or Jupiter's agents who were not competent to properly adjust and/or handle the Plaintiffs' claims; and

c) In failing to adequately supervise Jupiter and/or Jupiter's agents who were not competent to properly adjust and/or handle the Plaintiffs' claims.

66. As a direct and proximate result of Lyndon's and/or Jupiter's negligence in the following: a) in hiring Jupiter and/or its' agents to administer Lyndon's claims; b) in failing to adequately train Jupiter and/or Jupiter's agents, and c) in failing to adequately supervise Jupiter and/or Jupiter's agents, the Plaintiffs sustained an injury from Lyndon and Jupiter's failure to pay benefits to the Plaintiffs for the their loss under the insurance contract.

67. The Plaintiffs have suffered and will continue to suffer great pain and mental anguish as a result of this breach of contract and bad faith.

WHEREFORE, the Plaintiffs pray judgment against Lyndon and Jupiter for actual damages in an appropriate amount, punitive damages, and for the costs of this action.

FOR A FOURTH CAUSE OF ACTION
(Vicarious Liability)

68. All the allegations in Paragraphs 1 through 67 are hereby incorporated herein as if they had been set forth fully hereunder.

69. Jupiter and Jupiter's agents were acting within the scope of its' contractual relationship with Lyndon at all pertinent times during this incident.

70. Jupiter breached its contract and/or duty with the Plaintiffs at a time and location where Jupiter was instructed to perform Lyndon's business.

71. Jupiter and/or Jupiter's agents actions at the time of this incident where in furtherance of Lyndon's business.

72. Lyndon is responsible for the conduct of Jupiter and/or Jupiter's agents' conduct who breached the insurance contract with the Plaintiffs while within the course of Jupiter's contractual relationship with Lyndon.

73. Lyndon had the inherent authority to control the conduct of Jupiter and/or Jupiter's agents.

74. The injuries and damages as hereinafter set forth were caused by the negligent and reckless and/or willful conduct of Lyndon in the following particulars:

a) In failing to properly supervise and/or control the negligent conduct of its' agent Jupiter and/or Jupiter's agents who breached the insurance agreement with the Plaintiffs by failing to pay the judgment and failing to pay the medical payment coverage.

75. As a direct and proximate result of Lyndon's negligence in failing to adequately control the conduct of Jupiter and/or Jupiter's agents while Jupiter was operating under the scope of its' contractual relationship with Lyndon, the Plaintiffs sustained an injury from Lyndon and Jupiter's failure to pay benefits to the Plaintiffs for the their loss under the insurance contract.

76. The Plaintiffs have suffered and will continue to suffer great pain and mental anguish as a result of this breach of contract and bad faith.

WHEREFORE, the Plaintiffs pray judgment against Lyndon and Jupiter for actual damages in an appropriate amount, punitive damages, and for the costs of this action.

FOR A FIFTH CAUSE OF ACTION
(Bad Faith)

77. All the allegations in Paragraphs 1 through 76 are hereby incorporated herein as if they had been set forth fully hereunder.

78. That Safe Choice's acts and omissions and conduct in recommending the Plaintiffs to Lyndon for insurance coverage without full disclosure of Lyndon's claims administration practices to the Plaintiffs was without reasonable basis and was in bad faith.

79. That the Defendants Lyndon's and Jupiter's acts and omissions and conduct in refusing to pay the contracted benefits is without reasonable basis and is in bad faith.

80. That the Defendants Lyndon's and Jupiter's conduct in failing to timely appear or otherwise answer or defend in the matter of Civil Action number 2018-GS-40-00337 is without reasonable basis and is in bad faith.

81. That the Defendants Lyndon's and Jupiter's conduct in failing to respond to its' insured and/or to exercise good faith and fair dealings in handling the claim in this matter which gives to this action is without reasonable basis and is in bad faith.

82. That the Defendants Lyndon's and Jupiter's conduct in failing to pay the judgment in Civil Action number 2018-GS-40-00337 is without reasonable basis and is in bad faith.

83. That the Defendants Lyndon's and Jupiter's conduct in failing to defend and/or timely appear in Civil Action number 2018-GS-40-00337 was without reasonable basis and was in bad faith.

84. That the Defendants Lyndon's and Jupiter's conduct in failing to pay the medical payment coverage after issuance of the judgment is without reasonable basis and is in bad faith.

85. As a direct and proximate result of all of the Defendants' willful negligent conduct and/or breach of contract, the Plaintiffs sustained an injury from Lyndon and Jupiter's failure to pay benefits to the Plaintiffs for the their loss under the insurance contract.

86. The Plaintiffs have suffered and will continue to suffer great pain and mental anguish as a result of this negligence, breach of contract, and bad faith.

WHEREFORE, the Plaintiffs are entitled to recover punitive damages as a result of all of the Defendants bad faith conduct.

FOR A SIXTH CAUSE OF ACTION
(Attorney Fees)

87. All the allegations in Paragraphs 1 through 86 are hereby incorporated herein as if they had been set forth fully hereunder.

88. That more than sixty (60) days have passed since a demand has been made for payment of the benefits.

89. Plaintiffs have been required to retain the services of an attorney to commence this action and are entitled to attorney's fees and costs.

WHEREFORE, the Plaintiffs pray judgment against all the Defendants in the amount of actual, consequential and punitive damages, together with attorney fees and the costs of this action.

s/Dietrich A. Lake
Dietrich A. Lake #69649
The Lake Law Firm
1034 Briargate Circle, Suite 201
Columbia, SC 29210
803/750-8311 office
803/750-8312 fax
ATTORNEY FOR PLAINTIFFS

March 18, 2021
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2019-CP-40-4650
Tasha Jones; and Shaniqua Thompson,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	DEFENDANT LYNDON SOUTHERN
	)	INSURANCE COMPANY'S ANSWER
Lyndon Southern Insurance Company;	)	TO PLAINTIFFS' AMENDED
and Safe Choice, LLC,	)	COMPLAINT
	)	(Jury Trial Demanded)
Defendants.	)	
	)	

TO: DIETRICH A. LAKE, ESQUIRE, ATTORNEY FOR PLAINTIFFS

Defendant Lyndon Southern Insurance Company ("Defendant" or "LSIC") by and through the undersigned counsel, hereby answers the Plaintiffs' Complaint as follows:

1. Each and every allegation not specifically admitted, qualified or explained is denied.

GENERAL ALLEGATIONS

2. Upon current information and belief, the allegations contained in paragraphs 1 through 5 of the Complaint are admitted for jurisdictional purposes only.

3. Defendant is without sufficient information to determine the truth of the allegations in Paragraph 4 of Plaintiffs' Complaint and therefore denies the same and demands strict proof thereof.

4. As to paragraph 6, LSIC denies that it operates insurance companies throughout the United States. LSIC is an underwriter of non-standard automobile insurance policies in multiple states, but no longer does so in South Carolina. Any and all other allegations, inferred or implied, are denied and strict proof thereof is demanded.

5. Paragraph 7 is denied.

6. Defendant is without sufficient information to determine the truth of the allegations in paragraphs 7 and 8 and therefore denies the same and demands strict proof thereof.

7. Upon information and belief, paragraph 8 is admitted.

8. Upon information and belief, paragraph 9 is admitted.

9. Upon information and belief, paragraphs 9, 10 and 11 are admitted.

FACTUAL ALLEGATIONS

10. As to Paragraph 13, Defendant re-asserts and re-alleges Defendant's responses to Paragraph 1 through 12 of the Complaint as if re-stated verbatim herein.

11. As to paragraphs 14 through 22, Defendant admits that Plaintiffs were involved in an automobile accident with an unknown driver on or about the date, time, and location specified. As for the remaining allegations, Defendant is without sufficient information to determine the truth of the of the allegations asserted and therefore denies the same and demands strict proof thereof.

12. Paragraph 23 is admitted.

13. Defendant denies the allegations in paragraph 24, as stated, and demands strict proof thereof.

14. Paragraph 25 is a matter of the public court record and therefore Defendant craves reference to the same.

15. Paragraph 26 is admitted.

16. Paragraph 27 is a matter of the public court record and therefore Defendant craves reference to the same.

17. As to paragraph 28, Defendant admits that a hearing was set but denies the remaining allegations as stated.

18. Paragraph 29 is denied.

19. Paragraphs 30 and 31 is a matter of the public court record and therefore Defendant craves reference to the same.

20. Defendant is without sufficient information to determine the truth of the allegations asserted in paragraphs 32 through 36 and therefore denies the same and demands strict proof thereof.

21. Paragraph 37 is denied and strict proof thereof is demanded.

22. Paragraph 38 is denied.

23. Paragraph 39 is denied.

THE LYNDON POLICY

24. As to Paragraph 40, Defendant re-asserts and re-alleges Defendant's responses to Paragraph 1 through 39 of the Complaint as if re-stated verbatim herein.

25. As to paragraphs 41 through 46, Defendant admits, upon information and belief, that it sold through an agent the policy referenced. Defendant further avers that the policy provided coverage in accordance with the terms and conditions set forth in the policy and that the policy speaks for itself. The Defendant denies any allegations contained in said paragraph to the extent they are inconsistent with the policy and the Defendant denies providing any coverage not contemplated by the policy. The Defendant denies any remaining or inconsistent allegations contained and demands strict proof thereof.

26. Defendant is without sufficient information to determine the truth of the allegations in paragraph 46 and 47 and therefore denies the same and demands strict proof thereof.

27. As to paragraph 48, Defendant admits, upon information and belief, that it sold through an agent the policy referenced. Defendant further avers that the policy provided coverage in accordance with the terms and conditions set forth in the policy and that the policy speaks for itself. The Defendant denies any allegations contained in said paragraph to the extent they are inconsistent with the policy and the Defendant denies providing any coverage not contemplated by the policy. The Defendant denies any remaining or inconsistent allegations contained and demands strict proof thereof.

AS TO THE FIRST CAUSE OF ACTION

28. As to Paragraph 49, Defendant re-asserts and re-alleges Defendant's responses to Paragraph 1 through 48 of the Complaint as if re-stated verbatim herein.

29. As to paragraphs 50 and 51, Defendant admits, upon information and belief, that it sold through an agent the policy referenced. Defendant further avers that the policy provided coverage in accordance with the terms and conditions set forth in the policy and that the policy speaks for itself. The Defendant denies any allegations contained in said paragraph to the extent they are inconsistent with the policy and the Defendant denies providing any coverage not contemplated by the policy. The Defendant denies any remaining or inconsistent allegations contained and demands strict proof thereof.

30. Paragraph 52, 53 and 54 are denied and strict proof thereof is demanded.

AS TO THE SECOND CAUSE OF ACTION

31. As to Paragraph 55, Defendant re-asserts and re-alleges Defendant's responses to Paragraph 1 through 54 of the Complaint as if re-stated verbatim herein.

32. Paragraphs 56 through 59 do not apply to LSIC and thus no response is required.

AS TO THE THIRD CAUSE OF ACTION

33. As to paragraph 60, Defendant re-asserts and re-alleges Defendant's responses to Paragraph 1 through 59 of the Complaint as if re-stated verbatim herein.

34. Defendant denies paragraphs 61 through 67 and demands strict proof thereof.

AS TO THE FOURTH CAUSE OF ACTION

35. As to paragraph 68, Defendant re-asserts and re-alleges Defendant's responses to Paragraph 1 through 67 of the Complaint as if re-stated verbatim herein.

36. Defendant denies paragraphs 70 through 76 and demands strict proof thereof.

AS TO THE FIFTH CAUSE OF ACTION

37. As to paragraph 77, Defendant re-asserts and re-alleges Defendant's responses to Paragraph 1 through 76 of the Complaint as if re-stated verbatim herein.

38. Defendant denies paragraphs 78 through 86 and demands strict proof thereof.

AS TO THE SIXTH CAUSE OF ACTION

39. As to paragraph 87, Defendant re-asserts and re-alleges Defendant's responses to Paragraph 1 through 86 of the Complaint as if re-stated verbatim herein.

40. Defendant denies paragraphs 88 and 89 and demands strict proof thereof.

FOR A FIRST DEFENSE
(SCRCP 12(b)(6) - Failure to State a Claim)

41. LSCI asserts that Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief may be granted and should therefore be dismissed.

FOR A SECOND DEFENSE
(Waiver, Estoppel, , Laches, and Unclean Hands)

42. The Plaintiff's claims may be barred by the doctrines of waiver, estoppel, laches, and or unclean hands.

43. Plaintiffs have an obligation to mitigate damages but failed to do so, thus barring any recovery from Defendant.

FOR A THIRD DEFENSE
(Policy Terms and Conditions)

44. LSIC incorporates by reference all policy terms and conditions and affirmatively asserts the same where applicable as a defense to the allegations in the Plaintiff's Complaint.

FOR A FOURTH DEFENSE
(S.C. Code § 38-77-150)

45. Defendant incorporates by reference S.C. Code § 38-77-150 as a defense to allegations in Plaintiffs' Complaint.

FOR A FIFTH DEFENSE
(Reservation and Non-Waiver)

46. Discovery is ongoing regarding the matters set forth in Plaintiffs' Complaint, and therefore, reserves the right to amend this Answer to assert additional defenses as may arise during discovery.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant prays that this Court grant the relief sought herein and dismiss all claims against them with prejudice, as well as fees and costs incurred. Defendant further prays for such other relief this court may deem proper.

Respectfully submitted,

s/ Ransome H Helmly

Ransome H. Helmly
SC Bar # 78081
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Mt. Pleasant, SC 29464
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F: 843-284-9871
rhh@helmylaw.com
*Attorney for Defendant Lyndon Southern Ins.
Co.*

August 26, 2021
Mt. Pleasant, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP4004650

Tasha Jones et al
PLAINTIFF(S)

Lyndon Southern Insurance Company et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Plaintiff's Motion for Default Judgment (filed on 8/26/2021) is hereby GRANTED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/18/2022 .

David Starr Cobb for Safe Choice Insurance Llc
Ransome Hayward Helmly for Lyndon Southern Insurance Company
Dietrich Andre' Lake for Tasha Jones,Shaniqua Thompson
Adam Noah Yount for Jupiter Managing General Agency Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Richland Common Pleas

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

So Ordered

Jocelyn Newman

Electronically signed on 2022-03-18 10:44:30 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

TASHA JONES and SHANIQUA THOMPSON,
Plaintiffs,

Case No. 2019-CP-40-04650

vs.

**NOTICE AND MOTION TO SET ASIDE
ENTRY OF DEFAULT**

LYNDON SOUTHERN INSURANCE
COMPANY; SAFE CHOICE INSURANCE,
LLC; and JUPITER MANAGING GENERAL
AGENCY, INC.,

Defendants.

TO: DIETRICH A. LAKE, ESQUIRE, Attorney for the Plaintiff

PLEASE TAKE NOTICE that Defendant Jupiter Managing General Agency, Inc. ("Jupiter"), through its undersigned attorneys, will move at a time and place to be set by the Court and counsel involved, for an Order setting aside Entry of Default for good cause shown pursuant to Rule 55(c), SCRCP.

The Court record and affidavits to be submitted will demonstrate that good cause exists to set aside Entry of Default. The motion will be supported by Rule 55(c) and applicable case. In the alternative, although Defendant Jupiter submits that Rule 55(c) lesser standard applies, the record will demonstrate mistake, inadvertence, surprise, or excusable negligent under Rule 60(b)(1), SCRCP.

This motion will be based upon the record herein, the Affidavit of Brian Brown (attached hereto as Exhibit A), the South Carolina Rules of Civil Procedure, applicable case law and other materials the Court may receive. Further, the undersigned certifies that consulting with opposing counsel with respect to the filing of this motion would serve no useful purpose.

(Signature block on following page.)

HAYNSWORTH SINKLER BOYD, P.A.
134 Meeting Street, Third Floor (29401)
P. O. Box 340
Charleston, SC 29402-0340
843.722.3366
Fax: 843.722.2266
Email: ayount@hsblawfirm.com

By: /s/ Adam N. Yount
ADAM N. YOUNT (SC Bar #76342)

Attorneys for Defendant

March 31, 2022
Charleston, South Carolina
HSB 7180433 v.1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No: 2019-CP-40-04650
	)	
Tasha Jones; and	)	
Shaniqua Thompson	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	TASHA JONES
	)	(AFFIDAVIT)
Lyndon Southern Insurance	)	
Company; and Safe Choice	)	
Insurance, LLC	)	
	)	
Defendants.	)	
	)	

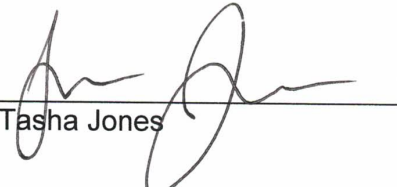
PERSONALLY APPEARED BEFORE ME, TASHA JONES, who first
being duly sworn, state the following:

1. I am a Plaintiff and the policy holder in this matter.
2. I currently reside at 309 Carterhill Road, West Columbia, SC 29172.
3. That I entered into an insurance contract with the Safe Choice Insurance LLC and Lyndon Southern Insurance Company to provide automobile insurance under Policy No.: CH4154345-00.
4. That I was involved in an accident on or about June 15, 2017, with an uninsured motorist vehicle which struck my vehicle in the rear.
5. That I obtained a judgment against the uninsured driver on or about June 19, 2019, in the amount of \$50,000.00 under Civil Action No.: 2018-CP-40-0037 .
6. That I presented my demand for payment of the judgment to my insurer on June 20, 2019.

7. That my insurer, the Defendant Lyndon Southern, has failed to satisfy any of the judgment plus interest despite my written request.

8. That I was required to institute proceedings against my insurer, the Defendant Lyndon Southern, in the above-stated action to recover the judgment amount plus interest reasonably due or payable with an uninsured motorist claim arising under Policy No.: CH4154345-00.

9. That there is no genuine issue of fact as to whether the Defendant Lyndon Southern acted in bad faith when it failed to pay my judgment of June 19, 2019.


Tasha Jones

Sworn to and subscribed before me
On this 10th day of November, 2022


NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 4/30/23

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No: 2019-CP-40-04650
	)	
Tasha Jones; and	)	
Shaniqua Thompson	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	SHANIQUEA THOMPSON
	)	(AFFIDAVIT)
Lyndon Southern Insurance	)	
Company; and Safe Choice	)	
Insurance, LLC	)	
	)	
Defendants.	)	
	)	

PERSONALLY APPEARED BEFORE ME, SHANIQUEA THOMPSON, who first being duly sworn, state the following:

1. I am a Plaintiff in this matter.
2. I currently reside at 4311 Catherine Avenue, Columbia, SC 29201.
3. That I was covered under an insurance contract between Tasha Jones and Lyndon Southern Insurance Company under Policy No.: CH4154345-00 as a guest passenger in her vehicle at the time of an accident.
4. That I was involved in an accident on or about June 15, 2017, with an uninsured motorist vehicle which struck the rear of a vehicle that was insured by the Defendant Lyndon Southern for uninsured motorist coverage; I was a passenger in their insured vehicle which was owned and being operated by the Defendant Lyndon Southern's policyholder, Tasha Jones, at the time of said accident.

5. That I obtained a judgment against the uninsured driver for my injuries from the June 15, 2017 accident on or about June 19, 2019, in the amount of \$50,000.00 under Civil Action No.: 2018-CP-40-00337.

6. That I presented my demand for payment of the judgment to my insurer on June 20, 2019.

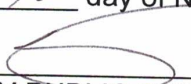
7. That the insurer, the Defendant Lyndon Southern, has failed to satisfy any of the judgment plus interest despite my written request.

8. That I was required to institute proceedings against my insurer, the Defendant Lyndon Southern, in the above-stated action to recover the judgment amount plus interest reasonably due or payable with an uninsured motorist claim arising under Policy No.: CH4154345-00.

9. That there is no genuine issue of fact as to whether the Defendant Lyndon Southern acted in bad faith when it failed to pay my judgment of June 19, 2019.


Shaniqua Thompson

Sworn to and subscribed before me
On this 10th day of November, 2022


NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 4/30/27

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2019-CP-40-4650
	)	
Tasha Jones; and Shaniqua Thompson,	)	
	)	
Plaintiffs,	)	DEFENDANT LYNDON SOUTHERN
	)	INSURANCE COMPANY'S
vs.	)	MOTION FOR SUMMARY
	)	JUDGMENT
	)	
Lyndon Southern Insurance Company,	)	
Safe Choice, LLC, and Jupiter Managing	)	
General Agency, Inc. ,	)	
	)	
Defendants.	)	
	)	

TO: DIETRICH A. LAKE, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

PLEASE TAKE NOTICE that Defendant Lyndon Southern Insurance Company ("LSIC") hereby moves this Court, at a time and place to be set by the Court but not sooner than 10 days after service, for judgment as a matter of law pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. This is a breach of contract, negligence, and bad faith action arising out of a "John Doe" uninsured motorist ("UM") claim pursuant to Section 38-77-150, *et. seq.* of the South Carolina Code of Laws. In the present action, Plaintiffs' claims are essentially that LSIC improperly handled the underlying UM claim by, *inter alia*, not appearing, defending, and/or indemnifying Plaintiffs in the underlying UM action, and that LSIC failed to pay the judgment rendered in the underlying action and thus breached its insurance contract with Plaintiffs and acted in bad faith in the process.

Based on the law as applied to the established facts, LSIC is entitled to summary judgment on Plaintiffs' claims because it acted reasonably and breached no duties with respect to its handling of the underlying UM claim, its insurance contract with Plaintiffs, and the judgment rendered in the underlying action. LSIC had a reasonable basis to dispute

and/or reject the Plaintiffs' demands in the underlying claim. In addition, LSIC complied with the provisions of the UM statute with respect to its right to appear and defend in the underlying "John Doe" action. Lastly, Plaintiffs failed to take the appropriate action with respect to the judgment rendered in the underlying "John Doe" action.

This motion, to the extent required, will be supported by the pleadings, depositions, answers to interrogatories, admissions on file, affidavits, the South Carolina Rules of Civil Procedure, and South Carolina statutory and common law.

Respectfully submitted,

s/Ransome H. Helmly

Ransome H. Helmly, Esq. (SC Bar # 78081)
409 Coleman Blvd. Ste. 200

p: 843-884-0184

f: 843-284-9871

rh@helmylaw.com

*Attorney for Defendant Lyndon Southern
Insurance Company*

June 8, 2023
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Docket No.: 2019-CP-40-4650
	)	
TASHA JONES and SHANIQUA THOMPSON,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	NOTICE OF SETTLEMENT OF
	)	PLAINTIFFS' CLAIMS AGAINST
	)	SAFE CHOICE INSURANCE, LLC
	)	(does not end lawsuit)
LYNDON SOUTHERN INSURANCE COMPANY, SAFE CHOICE INSURANCE, LLC, and JUPITER MANAGING GENERAL AGENCY, INC.	)	
	)	
	)	
Defendants.	)	
	)	

Plaintiffs and Defendant Safe Choice Insurance, LLC have settled all matters pending between them in this lawsuit, which will be memorialized by a formal release to be signed later between Plaintiffs and Safe Choice Insurance, LLC. This settlement does not affect Plaintiffs' claims against the other defendants and does not end the lawsuit against those defendants.

June 19, 2023

THE LAKE LAW FIRM

s/Dietrich Lake
Dietrich Lake
1034 Briargate Circle, Suite 201
Columbia, South Carolina 29210
Phone: (803) 750-8311
dietrich@thelakelawfirm.org
ATTORNEY FOR PLAINTIFFS

TURNER PADGET

s/David S. Cobb
David S. Cobb
Post Office Box 22129
Charleston, South Carolina 29413
Direct: (843) 576-2803
dcobb@turnerpadget.com
ATTORNEY FOR SAFE CHOICE INSURANCE, LLC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2019-CP-40-4650
	)	
Tasha Jones and Shaniqua Thompson,	)	
	)	
Plaintiffs,	)	**** Hearing Requested ****
	)	
vs.	)	
	)	
Lyndon Southern Insurance Company,	)	
	)	
Defendant.	)	
	)	

**DEFENDANT LYNDON SOUTHERN INSURANCE COMPANY’S POST-TRIAL
MOTION PURSUANT TO RULES 50(b) AND/OR 59(a) and 59(e), AND FOR OTHER
RELIEF PURSUANT TO THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE**

TO: THE HONORABLE CLIFTON NEWMAN, PRESIDING CIRCUIT COURT JUDGE,
and DIETRICH A. LAKE, ESQUIRE, ATTORNEY FOR PLAINTIFFS

Defendant Lyndon Southern Insurance Company (“Lyndon”) moves the Court for judgment notwithstanding the verdict pursuant to Rule 50(b), SCRCP, or in the alternative, for a new trial absolute or a new trial *nisi remittitur* pursuant to Rule 59(a), SCRCP; or in the alternative, to alter or amend the judgment pursuant to Rule 59(e), SCRCP; and for such other and further relief as may be authorized under the South Carolina Rules of Civil Procedure.

INTRODUCTION

This matter is a first-party breach of contract and bad faith action arising out of an uninsured motorist (“UM”) claim under S.C. CODE ANN. § 38-77-150. On June 15, 2017, a vehicle driven by Plaintiff Tasha Jones and insured by Lyndon was rear-ended by an unknown driver who fled the scene. Ms. Jones and her passengers—Plaintiff Shaniqua Thompson and a third individual who settled his claim with Lyndon and asserted no claims in this matter—were injured in the accident. Ms. Jones and Ms. Thompson each incurred medical expenses of roughly \$10,000; there

was no evidence at trial that either Ms. Jones or Ms. Thompson suffered any permanent injury.

Ms. Jones is the “**named insured**” (defined as “the person ... listed on the **Declarations** as insured”) on an automobile insurance policy she purchased from Lyndon, for which she had elected the minimum UM bodily injury limits of \$25,000 per person and \$50,000 aggregate per accident. Under the UM coverage terms of the policy, Ms. Thompson is an “**insured person**” (defined as a person occupying the covered vehicle “with the permission of the **named insured**”).¹ After the third passenger’s settlement with Lyndon, approximately \$42,000 in UM coverage remained. As a necessary predicate to recovery under the UM provision of the Lyndon policy, Ms. Jones pursued a “John Doe action” against the unknown driver. *See* S.C. CODE ANN. § 38-77-180. Ms. Thompson was also a plaintiff in that action. The John Doe action resulted in a judgment against the unknown driver of \$50,000 each for Ms. Jones and Ms. Thompson.

Plaintiffs thereafter filed this action against Lyndon, asserting claims for breach of contract and bad faith. Plaintiffs allege that Lyndon (1) breached its contract with Ms. Jones by, *inter alia*, failing to timely appear or otherwise answer or defend the John Doe action and failing to pay the full amount of the judgment against John Doe as demanded by Plaintiffs; and (2) acted in bad faith by unreasonably and without basis failing to do these things. The case was tried before a jury June 21-22, 2023. After this Court directed a verdict in both Plaintiffs’ favor as to breach of contract, the jury returned damages for breach of contract for Ms. Jones in the amount of \$50,300 and for Ms. Thompson in the amount of \$50,000. The jury further found that Lyndon acted in bad faith in refusing to pay, awarding each \$75,000. Finally, the jury awarded each \$350,000 in punitive damages.

¹ Respectfully, the Court failed to recognize this critical distinction in its consideration of Lyndon’s Motion for Summary Judgment and motions for directed verdict regarding Ms. Thompson’s right and/or standing to recover.

LEGAL STANDARDS

Rule 50

Rule 50(b), SCRCP, governs a motion for a judgment notwithstanding the verdict, and provides:

Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned, such party may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

Rule 59(a)

Rule 59(a), SCRCP, governs a motion for a new trial, and provides in relevant part:

A new trial may be granted to all or any of the parties and on all or part of the issues ... in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State.

Rule 59(a)(1), SCRCP. When a motion for new trial asserts the jury's verdict is unsupported by the evidence, the trial judge may grant a new trial absolute under the "thirteenth juror" doctrine. *Ex parte Travelers Home & Marine Ins. Co. v. Stringfellow*, 427 S.C. 238, 244, 830 S.E.2d 718, 721 (Ct. App. 2019) (holding that the trial judge is "duty-bound to grant a new trial if the evidence does not support the verdict" and that the appellate court "must uphold a trial court's thirteenth juror decision unless it is wholly unsupported by the evidence." (internal quotation marks

omitted)).

When a motion for new trial asserts the verdict is either excessive or inadequate, “the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice.” *Nestler v. Fields*, 426 S.C. 34, 40, 824 S.E.2d 461, 464 (Ct. App. 2019). In the latter case, “it becomes the duty of the trial judge ... to set aside the verdict absolutely.” *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 531, 431 S.E.2d 557, 558 (1993). If the verdict is merely excessive, the trial judge “has the power to reduce the verdict by granting a new trial *nisi remittitur*.” *Burke v. AnMed Health*, 393 S.C. 48, 56, 710 S.E.2d 84, 88 (Ct. App. 2011).

Rule 59(e)

Rule 59(e), SCRCPP, provides that “[a] motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.” A Rule 59(e) motion may be used to call the trial court’s attention to errors of law. *See Tisdale v. State*, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004). Under South Carolina law, “it is proper to view a rule 59(e) motion not only as a vehicle to request the trial court ‘alter or amend the judgment,’ but also as a vehicle to seek ‘reconsideration’ of issues and arguments.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 21–22, 602 S.E.2d 772, 778 (2004). “There is nothing inherently unfair in allowing a party one final chance to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity.” *Id.* at 22, 602 S.E. 2d at 779. A party may wish to file a Rule 59(e) motion when “she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Id.* at 24, 602 S.E.2d at 780. The South Carolina Rules of Civil Procedure contemplate that a party must however, file a Rule 59(e) motion “when an issue or argument has been raised, but not ruled on,

in order to preserve it for appellate review.” *Id.* Most respectfully, Lyndon asks the Court to (re)consider and expressly rule on each and every distinct issue/argument Lyndon raised at trial, each of which is hereby repeated, reasserted, and incorporated herein by reference, to include especially, but without limitation the Court’s failure to grant Lyndon’s motion for mistrial, discussed herein.

S.C. CODE ANN. § 15-32-530

A statutory cap on punitive damages is imposed by S.C. CODE ANN. § 15-32-530, which provides in relevant part:

(A) Except as provided in subsections (B) and (C), an award of punitive damages may not exceed the greater of three times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of five hundred thousand dollars.

(B) The limitation provided in subsection (A) may not be disclosed to the jury. If the jury returns a verdict for punitive damages in excess of the maximum amount specified in subsection (A), the trial court should first determine whether:

(1) the wrongful conduct proven under this section was motivated primarily by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was known or approved by the managing agent, director, officer, or the person responsible for making policy decisions on behalf of the defendant; or

(2) the defendant’s actions could subject the defendant to conviction of a felony and that act or course of conduct is a proximate cause of the plaintiff’s damages;

If the trial court determines that either item (1) or (2) apply, then punitive damages must not exceed the greater of four times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of two million dollars and, if necessary, the trial court shall reduce the award and enter judgment for punitive damages in the maximum amount allowed by this subsection.

S.C. CODE ANN. § 15-32-530(A), (B). “[T]he language of subsection (A) unambiguously reveals the legislature’s intent to require trial courts to reduce punitive damages awards in excess of ‘the

greater of three times the amount of compensatory damages ... or the sum of five hundred thousand dollars,' unless exempt under subsection (B) or (C)." *Garrison v. Target Corp.*, 435 S.C. 566, 581, 869 S.E.2d 797, 805 (2022). The statutory cap on punitive damages is not an affirmative defense that must be pleaded or it else it is waived; rather it is a "mandatory directive" to the trial court. *Id* at 581, 869 S.E.2d at 806 (describing the statute as a "mandatory directive").

DISCUSSION

Motion for Judgment Notwithstanding the Verdict

Lyndon is entitled to judgment as a matter of law, as detailed below, and therefore moves for a JNOV pursuant to Rule 50(b) or, in the alternative under Rule 59(e), SCRCP, on the following grounds:

1. Plaintiff Shaniqua Thompson

Plaintiff Thompson lacks standing to assert claims against Lyndon, either for breach of contract or bad faith. *See Hardaway Concrete Co. v. Hall Contracting Corp.*, 374 S.C. 216, 225, 647 S.E.2d 488, 492 (Ct. App. 2007) ("Generally, a third person not in privity of contract with the contracting parties does not have a right to enforce the contract."); *Carter v. Am. Mut. Fire Ins. Co.*, 279 S.C. 368, 370, 307 S.E.2d 227, 227 (1983) (holding that "[a]lthough this Court recently recognized a cause of action for bad faith refusal to pay first party benefits due under an insurance contract ... this cause of action does not extend to a person who is not a party to or a *named insured* under the insurance contract") (citing *Nichols v. State Farm Mut. Auto. Ins. Co.*, 279 S.C. 336, 306 S.E.2d 616 (1983)) (emphasis added).² Accordingly, it was error to send any claims by Ms.

² In a factually similar case, the United States District Court, District of South Carolina, addressed the lack of standing of a non-party to the insurance contract. *Hill v. Canal Ins. Co.*, CA No. 7:12-330-TMC, 2012 U.S. Dist. LEXIS 107056 (D.S.C. Aug. 1, 2012). In *Hill*, the district court noted "[t]he South Carolina Supreme Court and the South Carolina Court of Appeals 'have repeatedly denied actions for bad faith refusal to pay claims to third parties who are not *named insureds*.'" *Id.* (emphasis added) (quoting *Kleckley v. Northwestern Nat'l Cas. Co.*, 338 S.C. 131, 526 S.E.2d 218.

Thompson to the jury, and Lyndon is entitled to judgment as a matter of law. Therefore, its Motion for JNOV under Rule 50(b), or in the alternative, under Rule 59(e), SCRCP, on this ground should be granted.

2. Lyndon had no statutory or contractual obligation to appear and defend the “John Doe” action.

The relevant statute provides that the insurer has the “right to defend in the name of John Doe” but does not impose a duty to do so. S.C. CODE ANN. § 38-77-180. The insurance policy imposes a contractual duty to appear and defend only if there is a claim of liability *against an insured*, which does not apply to an action *against a John Doe* under § 38-77-180. Under the UM provision of the policy, Lyndon agreed only to “pay for damages an **insured person** is legally entitled to recover,” up to policy limits. Because no such obligation to appear and defend existed, the verdict entered against it at trial must not stand, as Lyndon is entitled to judgment as a matter of law on the breach of contract and bad faith actions. Therefore, its Motion for JNOV under Rule 50(b), or in the alternative, under Rule 59(e), SCRCP, on this ground should be granted.

3. Lyndon had no statutory or contractual obligation to pay judgment amounts over and above the applicable limits of UM coverage.

The auto insurance policy Ms. Jones purchased from Lyndon explicitly provides that Lyndon is not bound by any judgment for damages arising out of a suit brought without its written consent. It further provides that Lyndon will “pay for damages an insured person is legally entitled to recover from the owner or operator of an uninsured motor vehicle because of bodily injury ... the [limit] for each accident as stated in the Declarations is the *maximum* [w]e will pay for bodily

(2000)). In her Amended Complaint, Ms. Thompson conceded that Lyndon entered into an insurance contract with Plaintiff Tasha Jones ¶10; that Plaintiff Jones’ insurance contract provided for certain coverages ¶11; and that Plaintiff Jones paid the premium for the insurance agreement ¶12. Ms. Thompson herself clearly recognizes the insurance contract at issue is between Ms. Jones and Lyndon.

injury ... sustained by two or more persons in any one accident.” The UM statute only requires Lyndon to pay “all sums which [an insured] is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, *within limits...*” of its policy. S.C. CODE ANN. § 38-77-150 & 180 (emphasis added). Consequently, Lyndon did not breach its contract with Ms. Jones in declining Plaintiffs’ demand for payment of the full amount of the judgment in the “John Doe” action. Moreover, because Lyndon had an objectively reasonable basis to contest Plaintiffs’ demand, there is no bad faith as a matter of law. See *BMW of N. Am., LLC v. Complete Auto Recon Servs., Inc.*, 399 S.C. 444, 453, 731 S.E.2d 902, 907 (Ct. App. 2012) (where an insurer has a reasonable ground for contesting a claim, there is no bad faith). Accordingly, Lyndon is entitled to judgment as a matter of law. Therefore, its Motion for JNOV under Rule 50(b), or in the alternative, under Rule 59(e), SCRCPP, on this ground should be granted.

4. Lyndon cannot be found liable for bad faith because it never had an opportunity to settle within the policy limits.

The undisputed evidence at trial established that every one of Plaintiffs’ demands, including their demand for payment of the judgment in the “John Doe” action, were for specific dollar figures well in excess of the limits of the UM policy Ms. Jones purchased. Ms. Jones even testified that she would not have settled for policy limits prior the damages hearing in the “John Doe” action. Indisputably, Lyndon was never given an opportunity to settle within or for the policy limits. See *Founders Ins. Co. v. Richard Ruth's Bar & Grill LLC*, 2016 WL 3219538 at 3 (D.S.C. June 8, 2016) (to the extent that there was no reasonable opportunity to settle within policy limits, a bad faith failure-to-settle claim is not viable) (citing *Whiting Turner Contracting Co. v. Liberty Mut. Ins. Co.*, 912 F. Supp. 2d 321, 343 (D. Md. 2012)). Accordingly, Lyndon is entitled to judgment as a matter of law and submission of the claim for bad faith at trial was error. Therefore, its Motion for JNOV under Rule 50(b), or in the alternative, under Rule 59(e), SCRCPP, on this

ground should be granted.

5. As a matter of law, Lyndon's handling of the claim was objectively reasonable and not in bad faith.

Lyndon accepted the claim, paid Ms. Jones and Ms. Thompson the MedPay benefits due under the policy, paid Ms. Jones's UM property damage claim pursuant to the policy, and extended settlement offers based on its reasonable evaluation of Plaintiffs' damages. Additionally, Lyndon's rejection of Plaintiffs' original settlement demand was objectively reasonable, given that it was for a specific dollar amount that exceeded the policy limits by \$80,000.00. "[T]he fact that the parties had difference estimations of the value of a claim is not, under South Carolina law, evidence of bad faith on the part of the party offering the lower amount." *Collins v. Auto-Owners Ins. Co.*, 438 Fed. Appx. 247 (4th Cir. 2011). As noted by this Court in its charge to the jury, it was the Plaintiffs' burden:

to prove that there was no reasonable basis to support the decision of the insurance company to deny the plaintiffs' benefits. If there is any reasonable ground for contesting the claim of the Plaintiffs, there is no bad faith.

Yet the issue of bad faith was sent to the jury in error, despite all of the evidence at trial establishing that Lyndon acted promptly to pay both Plaintiffs' claims for MedPay, paid Ms. Jones for her property damage, and rightfully declined to pay a demand that was \$80,000 over and above the policy limits. Still, Lyndon made reasonable offers based on its evaluation of claimed medical expenses to both Plaintiffs, and its representative at trial explained the rationale behind those offers. See *Henry v. Government Employees Ins. Co.*, 275 F.Supp.3d 750, 754 (D.S.C. 2017) (where insurer evaluates a demand and denies the demand based on its own reasonable valuation or makes a settlement offer based on its own reasonable valuation, the insurer will not be found liable for bad faith); see also *Snyder v. State Farm Mutual Automobile Ins. Co.*, 586 F.Supp.2d 453, 458 (2008) (duty to deal in good faith does not necessarily entail a duty to make a settlement

offer). Accordingly, Plaintiffs failed in their burden to establish that there was “no reasonable basis to support the decision of [Lyndon]” and Lyndon is entitled to a new trial absolute. Therefore, Lyndon’s Motion for JNOV under Rule 50(b), or in the alternative, under Rule 59(e), SCRCp, on this ground should be granted.

Incorporating all of the foregoing, Lyndon respectfully submits the Court erred in failing to enter judgment in accordance with the motions for directed verdict made on behalf of Lyndon. Consequently, Lyndon likewise respectfully asks the Court to set aside the ruling that Lyndon breached its contract, set aside the jury verdict, and instead enter judgment in Lyndon’s favor. Alternatively, pursuant to Rule 59(e), Lyndon respectfully asks the Court to reconsider its granting of Plaintiffs’ motion for directed verdict on their breach of contract claim, its denial of Lyndon’s motion for directed verdict on Ms. Thompson’s breach of contract claim, and its denial of Lyndon’s motion for directed verdict on Plaintiffs’ bad faith claims.

New Trial *nisi remittitur* under Rule 59(a)

In the instant case, the verdict *must* be reformed, as Plaintiff Jones may only recover once for her actual damages.³ When a jury finds in favor of a plaintiff in a case in which both breach of contract and bad faith are alleged, as here, the verdict must be modified as a plaintiff may recover only once for the amount of the alleged actual damages. See *Nichols*, at 340.

In the alternative, Lyndon is entitled to a new trial *nisi remittitur* on the breach of contract claim on the grounds that the damages awarded by the jury are plainly excessive. The insurance policy purchased by Ms. Jones provided UM coverage of \$50,000 in the aggregate, which amount constitutes the outermost limit of Lyndon’s potential liability. Due to Lyndon’s previous

³ Again, Plaintiff Thompson cannot recover for either breach of contract or bad faith refusal to pay as she did not and cannot establish that she had a mutually binding contract with Lyndon.

settlement with the third occupant of the vehicle, the remaining UM coverage at the time of trial was approximately \$42,000. The jury's verdict of \$50,300 for Ms. Jones and \$50,000 for Ms. Thompson far exceeds the contractually available coverage. Additionally, as noted *supra*, Ms. Thompson lacks standing to assert any claim for breach of the insurance contract between Lyndon and Ms. Jones. Accordingly, in the event this Court does not grant Lyndon's Motion for JNOV, which it should, Lyndon is entitled to a new trial unless Plaintiffs consent to a *remittitur* of the verdict to the amount of coverage remaining under the UM policy.

New Trial Absolute under Rule 59(a)

Alternatively, in the event this Court does not grant Lyndon's Motion for JNOV under Rule 50(b) and/or 59(e), which it should, Lyndon is entitled to a new trial on the grounds that Lyndon was prejudiced by Plaintiffs' running attacks on Lyndon's counsel and that the jury's verdict was against the weight of the evidence.

First, Lyndon is entitled to a new trial on the basis of Plaintiffs' tactic of attacking Lyndon's counsel on irrelevant and improper grounds. *See, e.g.*, 58 Am. Jur. 2d *New Trial* § 112 ("Where an attorney for one party attacks opposing counsel in the presence of the jury, such conduct constitutes ground for a new trial if it appears that it has a tendency to result in prejudice to the opposing party or to the accused."). Respectfully, this Court committed error when it denied Lyndon's motion for mistrial on that ground. Plaintiffs' counsel repeatedly attempted to prejudice the jury with irrelevant statements to the effect that Lyndon's counsel had not attended the hearing in the John Doe action. Despite the fact it was neither essential nor required for Lyndon to defend the John Doe hearing, Lyndon did, in fact, have a representative present; trial counsel's associate was in attendance. Plaintiffs' counsel made this running commentary, even calling another lawyer to the stand to confirm Lyndon's trial counsel was not present at the John Doe hearing, even though

Plaintiffs' trial counsel himself was also absent. Such argument and testimony could only serve to prejudice the jury against Lyndon, the remedy for which is a new trial absolute.

Second, and in the alternative to its request for judgment as a matter of law on this ground, the only relevant evidence at trial established that Lyndon's handling of the underlying claim was objectively reasonable and not in bad faith. As noted above, it was the Plaintiffs' burden:

to prove that there was no reasonable basis to support the decision of the insurance company to deny the plaintiffs' benefits. If there is any reasonable ground for contesting the claim of the Plaintiffs, there is no bad faith.

All of the evidence at trial established that Lyndon acted promptly to pay both Plaintiffs' claims for MedPay and also paid Ms. Jones for her property damage and Plaintiffs' proffered "experts" on claims handling did not dispute such evidence. Thereafter, Lyndon made reasonable offers based on its evaluation of claimed medical expenses to both plaintiffs and its representative at trial explained the rationale behind those offers. Accordingly, Plaintiffs failed in their burden to establish that there was "no reasonable basis to support the decision of [Lyndon]" and Lyndon is entitled to a new trial absolute.

Third, the jury's verdict was inconsistent. It awarded each Plaintiff \$50,000 (plus \$300 to Ms. Jones for applying the wrong property damage deductible) under the breach of contract claim but awarded each \$75,000 in consequential damages under the bad faith claim, despite the lack of evidence of consequential damages. See *Hundley ex rel. Hundley v. Rite Aid*, 339 S.C. 285, 529 S.E.2d 45 (Ct. App. 2000) (a verdict which is internally inconsistent will be reversed and a new trial will be ordered). These verdicts are inconsistent and in the event this Court rejects Lyndon's Motion for JNOV under Rule 50(b) and/or 59(e) as to Plaintiffs' claim for bad faith, it should order a new trial under Rule 59(a) based on what was clearly jury confusion as to the appropriate measure of damages.

Statutory Cap on Punitive Damages

In the event this Court rejects Lyndon's Motion for JNOV under Rule 50(b) and/or 59(e) as to Plaintiffs' claim for bad faith, Lyndon is entitled to reformation of the jury's punitive damages verdict because it exceeds the statutory cap imposed by S.C. CODE ANN. § 15-32-530(A). Under that statute, as it applies here, the maximum punitive damages award is three times the compensatory damages award. Here, the jury awarded each plaintiff \$75,000 in compensatory damages on the bad faith claim. Therefore, the maximum amount of punitive damages was \$225,000. The jury's award of \$350,000 in punitive damages per plaintiff therefore must be reduced to the statutory cap. *See Garrison*, 435 S.C. at 560-61, 869 S.E.2d. at 805-06.

Respectfully submitted,

s/Ransome H. Helmly

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Attorney for Defendant Lyndon Southern Insurance Company

July 3, 2023

Mt. Pleasant, South Carolina



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July 3, 2023

Via First Class Mail and Email to cnewmanlc@sccourts.org

The Honorable Clifton B. Newman
P.O. Box 516
Kingstree, SC 29556-0516

Re: Tasha Jones, et al. v. Lyndon Southern Insurance Company, et al.
CA 2019-CP-40-04650

Dear Judge Newman:

As you know, I represent Defendant Lyndon Southern Insurance Company in the above-referenced breach of contract and bad faith action tried before you in Richland County June 21-22, 2023. Please find enclosed a copy of Lyndon Southern Insurance Company's post-trial motions pursuant to Rules 50(b), 59(a), and 59(e), SCRCF e-filed today. I will forward a clocked copy as soon as one is generated and available. We are respectfully requesting a hearing on these motions. Please do not hesitate to contact me or my office should you have questions or concerns or need additional information.

With kindest regards, I am

Sincerely,

A handwritten signature in blue ink, appearing to read 'RH', with a large, stylized loop at the end.

Ransome H. "Randy" Helmly

Cc: Dietrich Lake, Esq. (via email)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2019-CP-40-4650
	)	
Tasha Jones and Shaniqua Thompson,	)	
	)	
Plaintiffs,	)	**** Hearing Requested ****
	)	
vs.	)	
	)	
Lyndon Southern Insurance Company,	)	
	)	
Defendant.	)	
	)	

**DEFENDANT LYNDON SOUTHERN INSURANCE COMPANY’S POST-TRIAL
MOTION PURSUANT TO RULES 50(b) AND/OR 59(a) and 59(e), AND FOR OTHER
RELIEF PURSUANT TO THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE**

TO: THE HONORABLE CLIFTON NEWMAN, PRESIDING CIRCUIT COURT JUDGE,
and DIETRICH A. LAKE, ESQUIRE, ATTORNEY FOR PLAINTIFFS

Defendant Lyndon Southern Insurance Company (“Lyndon”) moves the Court for judgment notwithstanding the verdict pursuant to Rule 50(b), SCRCP, or in the alternative, for a new trial absolute or a new trial *nisi remittitur* pursuant to Rule 59(a), SCRCP; or in the alternative, to alter or amend the judgment pursuant to Rule 59(e), SCRCP; and for such other and further relief as may be authorized under the South Carolina Rules of Civil Procedure.

INTRODUCTION

This matter is a first-party breach of contract and bad faith action arising out of an uninsured motorist (“UM”) claim under S.C. CODE ANN. § 38-77-150. On June 15, 2017, a vehicle driven by Plaintiff Tasha Jones and insured by Lyndon was rear-ended by an unknown driver who fled the scene. Ms. Jones and her passengers—Plaintiff Shaniqua Thompson and a third individual who settled his claim with Lyndon and asserted no claims in this matter—were injured in the accident. Ms. Jones and Ms. Thompson each incurred medical expenses of roughly \$10,000; there

was no evidence at trial that either Ms. Jones or Ms. Thompson suffered any permanent injury.

Ms. Jones is the “**named insured**” (defined as “the person ... listed on the **Declarations** as insured”) on an automobile insurance policy she purchased from Lyndon, for which she had elected the minimum UM bodily injury limits of \$25,000 per person and \$50,000 aggregate per accident. Under the UM coverage terms of the policy, Ms. Thompson is an “**insured person**” (defined as a person occupying the covered vehicle “with the permission of the **named insured**”).¹ After the third passenger’s settlement with Lyndon, approximately \$42,000 in UM coverage remained. As a necessary predicate to recovery under the UM provision of the Lyndon policy, Ms. Jones pursued a “John Doe action” against the unknown driver. *See* S.C. CODE ANN. § 38-77-180. Ms. Thompson was also a plaintiff in that action. The John Doe action resulted in a judgment against the unknown driver of \$50,000 each for Ms. Jones and Ms. Thompson.

Plaintiffs thereafter filed this action against Lyndon, asserting claims for breach of contract and bad faith. Plaintiffs allege that Lyndon (1) breached its contract with Ms. Jones by, *inter alia*, failing to timely appear or otherwise answer or defend the John Doe action and failing to pay the full amount of the judgment against John Doe as demanded by Plaintiffs; and (2) acted in bad faith by unreasonably and without basis failing to do these things. The case was tried before a jury June 21-22, 2023. After this Court directed a verdict in both Plaintiffs’ favor as to breach of contract, the jury returned damages for breach of contract for Ms. Jones in the amount of \$50,300 and for Ms. Thompson in the amount of \$50,000. The jury further found that Lyndon acted in bad faith in refusing to pay, awarding each \$75,000. Finally, the jury awarded each \$350,000 in punitive damages.

¹ Respectfully, the Court failed to recognize this critical distinction in its consideration of Lyndon’s Motion for Summary Judgment and motions for directed verdict regarding Ms. Thompson’s right and/or standing to recover.

LEGAL STANDARDS

Rule 50

Rule 50(b), SCRCP, governs a motion for a judgment notwithstanding the verdict, and provides:

Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned, such party may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

Rule 59(a)

Rule 59(a), SCRCP, governs a motion for a new trial, and provides in relevant part:

A new trial may be granted to all or any of the parties and on all or part of the issues ... in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State.

Rule 59(a)(1), SCRCP. When a motion for new trial asserts the jury's verdict is unsupported by the evidence, the trial judge may grant a new trial absolute under the "thirteenth juror" doctrine. *Ex parte Travelers Home & Marine Ins. Co. v. Stringfellow*, 427 S.C. 238, 244, 830 S.E.2d 718, 721 (Ct. App. 2019) (holding that the trial judge is "duty-bound to grant a new trial if the evidence does not support the verdict" and that the appellate court "must uphold a trial court's thirteenth juror decision unless it is wholly unsupported by the evidence." (internal quotation marks

omitted)).

When a motion for new trial asserts the verdict is either excessive or inadequate, “the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice.” *Nestler v. Fields*, 426 S.C. 34, 40, 824 S.E.2d 461, 464 (Ct. App. 2019). In the latter case, “it becomes the duty of the trial judge ... to set aside the verdict absolutely.” *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 531, 431 S.E.2d 557, 558 (1993). If the verdict is merely excessive, the trial judge “has the power to reduce the verdict by granting a new trial *nisi remittitur*.” *Burke v. AnMed Health*, 393 S.C. 48, 56, 710 S.E.2d 84, 88 (Ct. App. 2011).

Rule 59(e)

Rule 59(e), SCRCPP, provides that “[a] motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.” A Rule 59(e) motion may be used to call the trial court’s attention to errors of law. *See Tisdale v. State*, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004). Under South Carolina law, “it is proper to view a rule 59(e) motion not only as a vehicle to request the trial court ‘alter or amend the judgment,’ but also as a vehicle to seek ‘reconsideration’ of issues and arguments.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 21–22, 602 S.E.2d 772, 778 (2004). “There is nothing inherently unfair in allowing a party one final chance to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity.” *Id.* at 22, 602 S.E. 2d at 779. A party may wish to file a Rule 59(e) motion when “she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Id.* at 24, 602 S.E.2d at 780. The South Carolina Rules of Civil Procedure contemplate that a party must however, file a Rule 59(e) motion “when an issue or argument has been raised, but not ruled on,

in order to preserve it for appellate review.” *Id.* Most respectfully, Lyndon asks the Court to (re)consider and expressly rule on each and every distinct issue/argument Lyndon raised at trial, each of which is hereby repeated, reasserted, and incorporated herein by reference, to include especially, but without limitation the Court’s failure to grant Lyndon’s motion for mistrial, discussed herein.

S.C. CODE ANN. § 15-32-530

A statutory cap on punitive damages is imposed by S.C. CODE ANN. § 15-32-530, which provides in relevant part:

(A) Except as provided in subsections (B) and (C), an award of punitive damages may not exceed the greater of three times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of five hundred thousand dollars.

(B) The limitation provided in subsection (A) may not be disclosed to the jury. If the jury returns a verdict for punitive damages in excess of the maximum amount specified in subsection (A), the trial court should first determine whether:

(1) the wrongful conduct proven under this section was motivated primarily by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was known or approved by the managing agent, director, officer, or the person responsible for making policy decisions on behalf of the defendant; or

(2) the defendant’s actions could subject the defendant to conviction of a felony and that act or course of conduct is a proximate cause of the plaintiff’s damages;

If the trial court determines that either item (1) or (2) apply, then punitive damages must not exceed the greater of four times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of two million dollars and, if necessary, the trial court shall reduce the award and enter judgment for punitive damages in the maximum amount allowed by this subsection.

S.C. CODE ANN. § 15-32-530(A), (B). “[T]he language of subsection (A) unambiguously reveals the legislature’s intent to require trial courts to reduce punitive damages awards in excess of ‘the

greater of three times the amount of compensatory damages ... or the sum of five hundred thousand dollars,’ unless exempt under subsection (B) or (C).” *Garrison v. Target Corp.*, 435 S.C. 566, 581, 869 S.E.2d 797, 805 (2022). The statutory cap on punitive damages is not an affirmative defense that must be pleaded or it else it is waived; rather it is a “mandatory directive” to the trial court. *Id.* at 581, 869 S.E.2d at 806 (describing the statute as a “mandatory directive”).

DISCUSSION

Motion for Judgment Notwithstanding the Verdict

Lyndon is entitled to judgment as a matter of law, as detailed below, and therefore moves for a JNOV pursuant to Rule 50(b) or, in the alternative under Rule 59(e), SCRPC, on the following grounds:

1. Plaintiff Shaniqua Thompson

Plaintiff Thompson lacks standing to assert claims against Lyndon, either for breach of contract or bad faith. *See Hardaway Concrete Co. v. Hall Contracting Corp.*, 374 S.C. 216, 225, 647 S.E.2d 488, 492 (Ct. App. 2007) (“Generally, a third person not in privity of contract with the contracting parties does not have a right to enforce the contract.”); *Carter v. Am. Mut. Fire Ins. Co.*, 279 S.C. 368, 370, 307 S.E.2d 227, 227 (1983) (holding that “[a]lthough this Court recently recognized a cause of action for bad faith refusal to pay first party benefits due under an insurance contract ... this cause of action does not extend to a person who is not a party to or a *named insured* under the insurance contract”) (citing *Nichols v. State Farm Mut. Auto. Ins. Co.*, 279 S.C. 336, 306 S.E.2d 616 (1983)) (emphasis added).² Accordingly, it was error to send any claims by Ms.

² In a factually similar case, the United States District Court, District of South Carolina, addressed the lack of standing of a non-party to the insurance contract. *Hill v. Canal Ins. Co.*, CA No. 7:12-330-TMC, 2012 U.S. Dist. LEXIS 107056 (D.S.C. Aug. 1, 2012). In *Hill*, the district court noted “[t]he South Carolina Supreme Court and the South Carolina Court of Appeals ‘have repeatedly denied actions for bad faith refusal to pay claims to third parties who are not *named insureds*.’” *Id.* (emphasis added) (quoting *Kleckley v. Northwestern Nat’l Cas. Co.*, 338 S.C. 131, 526 S.E.2d 218.

Thompson to the jury, and Lyndon is entitled to judgment as a matter of law. Therefore, its Motion for JNOV under Rule 50(b), or in the alternative, under Rule 59(e), SCRPC, on this ground should be granted.

2. Lyndon had no statutory or contractual obligation to appear and defend the “John Doe” action.

The relevant statute provides that the insurer has the “right to defend in the name of John Doe” but does not impose a duty to do so. S.C. CODE ANN. § 38-77-180. The insurance policy imposes a contractual duty to appear and defend only if there is a claim of liability *against an insured*, which does not apply to an action *against a John Doe* under § 38-77-180. Under the UM provision of the policy, Lyndon agreed only to “pay for damages an **insured person** is legally entitled to recover,” up to policy limits. Because no such obligation to appear and defend existed, the verdict entered against it at trial must not stand, as Lyndon is entitled to judgment as a matter of law on the breach of contract and bad faith actions. Therefore, its Motion for JNOV under Rule 50(b), or in the alternative, under Rule 59(e), SCRPC, on this ground should be granted.

3. Lyndon had no statutory or contractual obligation to pay judgment amounts over and above the applicable limits of UM coverage.

The auto insurance policy Ms. Jones purchased from Lyndon explicitly provides that Lyndon is not bound by any judgment for damages arising out of a suit brought without its written consent. It further provides that Lyndon will “pay for damages an insured person is legally entitled to recover from the owner or operator of an uninsured motor vehicle because of bodily injury ... the [limit] for each accident as stated in the Declarations is the *maximum* [w]e will pay for bodily

(2000)). In her Amended Complaint, Ms. Thompson conceded that Lyndon entered into an insurance contract with Plaintiff Tasha Jones ¶10; that Plaintiff Jones’ insurance contract provided for certain coverages ¶11; and that Plaintiff Jones paid the premium for the insurance agreement ¶12. Ms. Thompson herself clearly recognizes the insurance contract at issue is between Ms. Jones and Lyndon.

injury ... sustained by two or more persons in any one accident.” The UM statute only requires Lyndon to pay “all sums which [an insured] is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, *within limits...*” of its policy. S.C. CODE ANN. § 38-77-150 & 180 (emphasis added). Consequently, Lyndon did not breach its contract with Ms. Jones in declining Plaintiffs’ demand for payment of the full amount of the judgment in the “John Doe” action. Moreover, because Lyndon had an objectively reasonable basis to contest Plaintiffs’ demand, there is no bad faith as a matter of law. See *BMW of N. Am., LLC v. Complete Auto Recon Servs., Inc.*, 399 S.C. 444, 453, 731 S.E.2d 902, 907 (Ct. App. 2012) (where an insurer has a reasonable ground for contesting a claim, there is no bad faith). Accordingly, Lyndon is entitled to judgment as a matter of law. Therefore, its Motion for JNOV under Rule 50(b), or in the alternative, under Rule 59(e), SCRCPP, on this ground should be granted.

4. Lyndon cannot be found liable for bad faith because it never had an opportunity to settle within the policy limits.

The undisputed evidence at trial established that every one of Plaintiffs’ demands, including their demand for payment of the judgment in the “John Doe” action, were for specific dollar figures well in excess of the limits of the UM policy Ms. Jones purchased. Ms. Jones even testified that she would not have settled for policy limits prior the damages hearing in the “John Doe” action. Indisputably, Lyndon was never given an opportunity to settle within or for the policy limits. See *Founders Ins. Co. v. Richard Ruth's Bar & Grill LLC*, 2016 WL 3219538 at 3 (D.S.C. June 8, 2016) (to the extent that there was no reasonable opportunity to settle within policy limits, a bad faith failure-to-settle claim is not viable) (citing *Whiting Turner Contracting Co. v. Liberty Mut. Ins. Co.*, 912 F. Supp. 2d 321, 343 (D. Md. 2012)). Accordingly, Lyndon is entitled to judgment as a matter of law and submission of the claim for bad faith at trial was error. Therefore, its Motion for JNOV under Rule 50(b), or in the alternative, under Rule 59(e), SCRCPP, on this

ground should be granted.

5. As a matter of law, Lyndon's handling of the claim was objectively reasonable and not in bad faith.

Lyndon accepted the claim, paid Ms. Jones and Ms. Thompson the MedPay benefits due under the policy, paid Ms. Jones's UM property damage claim pursuant to the policy, and extended settlement offers based on its reasonable evaluation of Plaintiffs' damages. Additionally, Lyndon's rejection of Plaintiffs' original settlement demand was objectively reasonable, given that it was for a specific dollar amount that exceeded the policy limits by \$80,000.00. "[T]he fact that the parties had difference estimations of the value of a claim is not, under South Carolina law, evidence of bad faith on the part of the party offering the lower amount." *Collins v. Auto-Owners Ins. Co.*, 438 Fed. Appx. 247 (4th Cir. 2011). As noted by this Court in its charge to the jury, it was the Plaintiffs' burden:

to prove that there was no reasonable basis to support the decision of the insurance company to deny the plaintiffs' benefits. If there is any reasonable ground for contesting the claim of the Plaintiffs, there is no bad faith.

Yet the issue of bad faith was sent to the jury in error, despite all of the evidence at trial establishing that Lyndon acted promptly to pay both Plaintiffs' claims for MedPay, paid Ms. Jones for her property damage, and rightfully declined to pay a demand that was \$80,000 over and above the policy limits. Still, Lyndon made reasonable offers based on its evaluation of claimed medical expenses to both Plaintiffs, and its representative at trial explained the rationale behind those offers. See *Henry v. Government Employees Ins. Co.*, 275 F.Supp.3d 750, 754 (D.S.C. 2017) (where insurer evaluates a demand and denies the demand based on its own reasonable valuation or makes a settlement offer based on its own reasonable valuation, the insurer will not be found liable for bad faith); see also *Snyder v. State Farm Mutual Automobile Ins. Co.*, 586 F.Supp.2d 453, 458 (2008) (duty to deal in good faith does not necessarily entail a duty to make a settlement

offer). Accordingly, Plaintiffs failed in their burden to establish that there was “no reasonable basis to support the decision of [Lyndon]” and Lyndon is entitled to a new trial absolute. Therefore, Lyndon’s Motion for JNOV under Rule 50(b), or in the alternative, under Rule 59(e), SCRCF, on this ground should be granted.

Incorporating all of the foregoing, Lyndon respectfully submits the Court erred in failing to enter judgment in accordance with the motions for directed verdict made on behalf of Lyndon. Consequently, Lyndon likewise respectfully asks the Court to set aside the ruling that Lyndon breached its contract, set aside the jury verdict, and instead enter judgment in Lyndon’s favor. Alternatively, pursuant to Rule 59(e), Lyndon respectfully asks the Court to reconsider its granting of Plaintiffs’ motion for directed verdict on their breach of contract claim, its denial of Lyndon’s motion for directed verdict on Ms. Thompson’s breach of contract claim, and its denial of Lyndon’s motion for directed verdict on Plaintiffs’ bad faith claims.

New Trial *nisi remittitur* under Rule 59(a)

In the instant case, the verdict *must* be reformed, as Plaintiff Jones may only recover once for her actual damages.³ When a jury finds in favor of a plaintiff in a case in which both breach of contract and bad faith are alleged, as here, the verdict must be modified as a plaintiff may recover only once for the amount of the alleged actual damages. See *Nichols*, at 340.

In the alternative, Lyndon is entitled to a new trial *nisi remittitur* on the breach of contract claim on the grounds that the damages awarded by the jury are plainly excessive. The insurance policy purchased by Ms. Jones provided UM coverage of \$50,000 in the aggregate, which amount constitutes the outermost limit of Lyndon’s potential liability. Due to Lyndon’s previous

³ Again, Plaintiff Thompson cannot recover for either breach of contract or bad faith refusal to pay as she did not and cannot establish that she had a mutually binding contract with Lyndon.

settlement with the third occupant of the vehicle, the remaining UM coverage at the time of trial was approximately \$42,000. The jury's verdict of \$50,300 for Ms. Jones and \$50,000 for Ms. Thompson far exceeds the contractually available coverage. Additionally, as noted *supra*, Ms. Thompson lacks standing to assert any claim for breach of the insurance contract between Lyndon and Ms. Jones. Accordingly, in the event this Court does not grant Lyndon's Motion for JNOV, which it should, Lyndon is entitled to a new trial unless Plaintiffs consent to a *remittitur* of the verdict to the amount of coverage remaining under the UM policy.

New Trial Absolute under Rule 59(a)

Alternatively, in the event this Court does not grant Lyndon's Motion for JNOV under Rule 50(b) and/or 59(e), which it should, Lyndon is entitled to a new trial on the grounds that Lyndon was prejudiced by Plaintiffs' running attacks on Lyndon's counsel and that the jury's verdict was against the weight of the evidence.

First, Lyndon is entitled to a new trial on the basis of Plaintiffs' tactic of attacking Lyndon's counsel on irrelevant and improper grounds. *See, e.g.*, 58 Am. Jur. 2d *New Trial* § 112 ("Where an attorney for one party attacks opposing counsel in the presence of the jury, such conduct constitutes ground for a new trial if it appears that it has a tendency to result in prejudice to the opposing party or to the accused."). Respectfully, this Court committed error when it denied Lyndon's motion for mistrial on that ground. Plaintiffs' counsel repeatedly attempted to prejudice the jury with irrelevant statements to the effect that Lyndon's counsel had not attended the hearing in the John Doe action. Despite the fact it was neither essential nor required for Lyndon to defend the John Doe hearing, Lyndon did, in fact, have a representative present; trial counsel's associate was in attendance. Plaintiffs' counsel made this running commentary, even calling another lawyer to the stand to confirm Lyndon's trial counsel was not present at the John Doe hearing, even though

Plaintiffs' trial counsel himself was also absent. Such argument and testimony could only serve to prejudice the jury against Lyndon, the remedy for which is a new trial absolute.

Second, and in the alternative to its request for judgment as a matter of law on this ground, the only relevant evidence at trial established that Lyndon's handling of the underlying claim was objectively reasonable and not in bad faith. As noted above, it was the Plaintiffs' burden:

to prove that there was no reasonable basis to support the decision of the insurance company to deny the plaintiffs' benefits. If there is any reasonable ground for contesting the claim of the Plaintiffs, there is no bad faith.

All of the evidence at trial established that Lyndon acted promptly to pay both Plaintiffs' claims for MedPay and also paid Ms. Jones for her property damage and Plaintiffs' proffered "experts" on claims handling did not dispute such evidence. Thereafter, Lyndon made reasonable offers based on its evaluation of claimed medical expenses to both plaintiffs and its representative at trial explained the rationale behind those offers. Accordingly, Plaintiffs failed in their burden to establish that there was "no reasonable basis to support the decision of [Lyndon]" and Lyndon is entitled to a new trial absolute.

Third, the jury's verdict was inconsistent. It awarded each Plaintiff \$50,000 (plus \$300 to Ms. Jones for applying the wrong property damage deductible) under the breach of contract claim but awarded each \$75,000 in consequential damages under the bad faith claim, despite the lack of evidence of consequential damages. See *Hundley ex rel. Hundley v. Rite Aid*, 339 S.C. 285, 529 S.E.2d 45 (Ct. App. 2000) (a verdict which is internally inconsistent will be reversed and a new trial will be ordered). These verdicts are inconsistent and in the event this Court rejects Lyndon's Motion for JNOV under Rule 50(b) and/or 59(e) as to Plaintiffs' claim for bad faith, it should order a new trial under Rule 59(a) based on what was clearly jury confusion as to the appropriate measure of damages.

Statutory Cap on Punitive Damages

In the event this Court rejects Lyndon's Motion for JNOV under Rule 50(b) and/or 59(e) as to Plaintiffs' claim for bad faith, Lyndon is entitled to reformation of the jury's punitive damages verdict because it exceeds the statutory cap imposed by S.C. CODE ANN. § 15-32-530(A). Under that statute, as it applies here, the maximum punitive damages award is three times the compensatory damages award. Here, the jury awarded each plaintiff \$75,000 in compensatory damages on the bad faith claim. Therefore, the maximum amount of punitive damages was \$225,000. The jury's award of \$350,000 in punitive damages per plaintiff therefore must be reduced to the statutory cap. *See Garrison*, 435 S.C. at 560-61, 869 S.E.2d. at 805-06.

Respectfully submitted,

s/Ransome H. Helmly

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*Attorney for Defendant Lyndon Southern Insurance
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July 3, 2023

Mt. Pleasant, South Carolina



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July 8, 2023

Via 1st Class Mail and Email to cnewmanlc@sccourts.org

The Honorable Clifton B. Newman
P.O. Box 516
Kingstree, SC 29556-0516

Re: Tasha Jones, et al. v. Lyndon Southern Insurance Company, et al.
CA 2019-CP-40-04650

Dear Judge Newman:

As you know, I represent Defendant Lyndon Southern Insurance Company in the above-referenced breach of contract and bad faith action tried before you in Richland County June 21-22, 2023. Please find enclosed a clocked copy of Lyndon Southern Insurance Company's post-trial motions pursuant to Rules 50(b), 59(a), and 59(e), SCRCF e-filed Monday, July 3, 2023. We are respectfully requesting a hearing on these motions. Please do not hesitate to contact me or my office should you have questions or concerns or need additional information.

With kindest regards, I am

Sincerely,

A handwritten signature in blue ink, appearing to read 'RH' followed by a stylized flourish.

Ransome H. "Randy" Helmly

Cc: Dietrich Lake, Esq. (via email)

ELECTRONICALLY FILED - 2023 JUL 08 10:14 AM - RICHLAND - COMMON PLEAS - CASE#2019CP4004650

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No: 2019-CP-40-04650
	)	
Tasha Jones; and	)	
Shaniqua Thompson	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	MEMORANDUM IN SUPPORT OF DENIAL
	)	OF DEFENANT'S POST TRIAL MOTIONS
Lyndon Southern Insurance	)	
Company; Safe Choice Insurance)	)	
LLC; and Jupiter Managing	)	
General Agency, Inc.	)	
	)	
Defendants.	)	
_____	)	

The Plaintiffs submit this Memorandum of Law in support of their oral arguments to the court on January 30, 2024, to deny the Defendant' Lyndon Southern's post-trial motions.

Factual Background

The Plaintiffs filed a civil action against the Defendant Lyndon Southern in Richland County, Columbia, South Carolina on August 22, 2019; an amended Summons and amended Complaint was filed on August 23, 2019. On March 19, 2021, the Summons and Complaint was amended again when additional defendants were added to this action.

A trial was held before this Court on the week of June 19, 2023. The Plaintiffs presented testimony from the Plaintiffs and two (2) expert witnesses concerning the insurance agreement between the Defendant and the Plaintiffs, testimony concerning the breach of that agreement, and testimony concerning damages from that breach of the insurance agreement. The Plaintiffs presented the lay-witness testimony from their

counsel who handled the damages hearing for the underlying judgment. Finally, the Plaintiffs presented testimony from the Defendant Lyndon Southern's vice president of claims who testified about the insurance agreement, testified about the Plaintiff's claim. The vice president of claims for the Defendant Lyndon Southern was unable to provide much testimony concerning how the claim was handled; he was also unable to testify at all about the Defendant Lyndon Southern's standards, policies, and procedures regarding claims handling to ensure claims are promptly handled and settled.

At the conclusion of the trial on June 23, 2023, the Plaintiffs received a jury verdict as follows: Plaintiff Tasha Jones, fifty thousand, three hundred dollars (\$50,300.00) in consequential damages for Breach of Contract; seventy-five thousand dollars (\$75,000.00); and three-hundred and fifty thousand (\$350,000.00) in punitive damages. Plaintiff Shaniqua Thompson, fifty thousand dollars (\$50,000.00) in consequential damages for Breach of Contract; seventy-five thousand dollars (\$75,000.00); and three-hundred and fifty thousand (\$350,000.00) in punitive damages. The Defendant Lyndon Southern declined to make any post-trial motions at the discharge of the jury; the Defendant Lyndon Southern declined to request (by motion) any additional time from the Court to make any post-trial motions. (See, Transcript.)

Rule 50 & Rule 59 Motions

Both Rule 30 and Rule 59, SCRCP address the methods for obtaining relief from a judgment and/or jury verdict. Rule 50(e) mandates the time frame for filing a Motion for Judgment Notwithstanding the verdict; it clearly states that "the motion for judgment n.o.v. shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter..." The Note to the 1996 Amendment

states that “post-trial motions are made promptly at the end of the trial, or at that time the court, upon motion, may grant an additional ten days to make them.”

Rule 59, SCRCP, states similar language as it addresses the request for new trials and sets the time for setting such motions. Rule 59 states that “the motion for a new trial shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter...” In Rule 59’s Note to the 1986 Amendment, the comments state “in jury trials, post-trial motions are made promptly at the end of the trial, or at that time the court, upon motion, may grant an additional ten days to make them...”

The Plaintiff contends that the Defendant Lyndon Southern did not comply with the time requirements enumerated in both Rule 50 and Rule 59, SCRCP. The Defendant Lyndon Southern failed to make any post-trial motion at the discharge of the jury after the jury had reached its’ verdict; furthermore, the Defendant Lyndon Southern failed to request additional time upon motion to file any post-trials at the discharge of the jury after the jury reached its’ verdict.

The Court asked both Counsel for the Plaintiff and Counsel for the Defendant if either party wanted to conduct individual polling of each jury member to determine, “if that was their verdict and whether it was still their verdict.” Counsel for the Plaintiff declined to poll the jury; counsel for Lyndon Southern clearly stated to the court “**None from the Defense, Your Honor.**” (See Transcript, p. 5, lines 10-13.) The Plaintiff contends that the jury completed and fulfilled its’ jury duties at the very moment both counsel for the Plaintiffs and Counsels for the Defendant declined to poll them regarding their verdict; therefore, the jury was thereby considered discharged even though the

Court did not use that specific verbiage in the Court's communications with the jury after their verdict. The Court would later "excuse" the jury after the Court stated that there were "**no post-trial motions**" and this was a "**final verdict.**" (See Transcript, p. 5, lines 23-25 – p.6, line 1.)

The Defendant Lyndon Southern had two (2) opportunities after declining to poll the jury to comply with the mandatory requirement of both Rule 50 and Rule 59, SCRCP. First, the Court inquired as to whether any of the parties had any post-trial motions. Counsel for the Plaintiff declined to make any post-trial motions. Counsel for the Defendant Lyndon Southern stated the following in response to the Court's question to the Defendant Lyndon Southern as to whether it had any post-trial motions: "**None from the Plaintiff, Your Honor.**" (See Transcript, p. 5, lines 14-16.) The Defendant Lyndon Southern clearly, explicitly, and verbally stated that it did not have any post-trial motions; furthermore, the Defendant Lyndon Southern did not make any motion to the Court requesting any additional time to make any post-trial motions. The Defendant Lyndon Southern failed in its' first opportunity to comply with the mandatory time for filing post-trial motions set forth in Rule 50 and Rule 59, SCRCP.

The second opportunity that the Defendant Lyndon Southern had to comply with timing requirements of Rule 50 and Rule 59, SCRCP was when this Court asked both parties, "are there any other matters we need to attend to on this case?" (See Transcript, p. 7, lines 19-20.) The Defendant Lyndon Southern did not clearly or explicitly state that it wanted to make a motion for new trial based upon any reasons; furthermore, the Defendant did not make any motion to the Court requesting any additional time to make any post-trial motions for a new trial. Lyndon Southern failed in

its' second opportunity to comply with the mandatory time for filing post-trial motions set forth in Rule 50 and Rule 59, SCRCP.

The *only* statement that counsel for the Defendant Lyndon Southern made (after the jury had been discharged) was that "I just want to renew my **directed verdict** motion." Counsel for the Defendant never uses words or phrases such as: 1) "motion for additional time to file any post-trial motions;" or "new trial;" or "JNOV;" or "new trial *nisi remittitur*;" or "Thirteenth Juror Doctrine;" or "de novo review of punitive damages award;" or "new trial absolute;" or any other terminology that would have notified this trial court that the Defendant Lyndon Southern wanted to be heard on any post-trial motions. This Court's response to Counsel for Lyndon Southern's statement that the Defendant Lyndon Southern wanted to renew its' motion for directed verdict was met with this response from the court, "We'll indicate that it was properly made, directed verdict motion, but no post-trial motions were made." (See Transcript, p. 12, lines 18-21.) The Defendant Lyndon Southern made no further clarifying statements to this trial court after the Defendant Lyndon Southern knew or should have known that this trial court believed (based upon Counsel for the Defendant Lyndon Southern's statement) that the Defendant Lyndon Southern did not intend to make any post-trial motions. It is clear from the transcript that the Defendant Lyndon Southern failed to make a motion for a new trial after the jury was discharged; it is abundantly clear from the Defendant Lyndon Southern's own word, "none" when asked if there were any post-trial motions. It is further clear from the transcript that the Defendant Lyndon Southern failed to request additional time from the Court to file any motions for a new trial.

Rule 6, SCRCP defines the amount of time allowed to file motions. As it relates to motions filed pursuant to Rule 50 and Rule 59 SCRCP, Rule 6(b) states that “the time for taking any action under rules 50(b), 52(b), 59, and 60(b) may not be extended except to the extent and under the conditions stated in them.” The Plaintiff contends that this Rule 6 prohibits this Court from enlarging the time frame for the Defendant Lyndon Southern to file post-trial motions when Lyndon Southern did not comply with the conditions as stated in both rules. In other words, Rule 50(b) and Rule 59 motions for new trials required the Defendant Lyndon Southern to either argue its’ motion(s) for any new trial motions at the discharge of the jury or the Defendant Lyndon Southern was required to file a motion with the Court requesting additional time to file its’ post-trial motions to preserve Lyndon Southern’s right to be heard by this trial court on the Defendant Lyndon Southern’ motions for a new trial. The Defendant Lyndon Southern did neither. the Defendant Lyndon Southern’s motions should be denied for failing to adhere to required procedures since this trial court cannot enlarge the Defendant Lyndon Southern’s time to cure its’ failure to comply with the timing requirements for filing post-trial motions for new trials pursuant to either Rule 50 or Rule 59.

Our Supreme Court has consistently held that “if a rule’s language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary, and the stated meaning should be enforced. *Maxwell v. Genez*, 356 S.C. 617, 591 S.E.2d 26 (S.C. 2003). Our Supreme Court further stated in *Genez* that our courts should apply “the same rules of construction used to interpret statutes.” Our courts have held that a South Carolina statute should be interpreted according to its’ “clear meaning.” *Nucor Steel, a Div. of Nucor Corp. v. South Carolina Public Service Com’n*, 426 S.E.2d 319,

310 S.C. 539 (S.C. 1992). The *Nucor* case limits the authority of this trial court to enlarge the time frame for the Defendant Lyndon Southern to file any post-trial motions pursuant to Rule 50 and/or Rule 59 SCRPC, since the language of both rules is clear in its requirement that a party has to argue its' post-trial motions at the discharge of the jury or request additional time to file any post-trial motions pursuant to a motion to the court for additional time to file post-trial motions. *Nucor* goes on to hold that "The well settled rule in South Carolina is that, where possible, all provision of a statute must be given full force and effect." Also citing, *Bradford v. Byrnes*, 221 S.C. 255, 70 S.E.2d 228 (1952).

It is clear that that the Defendant Lyndon Southern had multiple opportunities to time file its' post-trial motions but failed to do so. The Defendant Lyndon Southern waived its' rights to file post-trial motions pursuant to both Rule 50 and Rule 59, SCRPC, when those post-trial motions were not timely argued at the time of discharge and when there was no motion to the court for addition time to file any post-trial motions. Our Courts have defined "**waiver**" as a "voluntary and intentional abandonment ore relinquishment of a known right." *Eason v. Eason*, 384 S.C. 473, 682 S.E.2d 804 (S.C. 2009). The Defendant Lyndon Southern, through its' legal counsel, knew it had the right to file post-trial motions after the jury returned its' verdict; the Defendant Lyndon Southern filed its' post-trial motions ten (10) days after the jury had been discharged, so the Defendant Lyndon Southern obviously knew it possessed those same rights at the discharge of the jury. the Defendant Lyndon Southern waived and abandoned that right to post-trial considerations in three (3) instances:

1. In clearly and verbally stating “none” to the Court when Lyndon Southern was asked by the court if it had any post-trial motions;
2. In failing to make any post-trial motions at the discharge of the jury; and
3. In failing to request additional time from the Court (pursuant to motion) to file any post-trial motions.

The Plaintiff contends that the Defendant Lyndon Southern is not entitled to any consideration of its’ post-trial motions since the Defendant Lyndon Southern did not timely file its’ post-trial motions pursuant to the mandatory time limits of Rule 50 and Rule 59 SCRCP. The Defendant Lyndon Southern did knowingly and voluntarily waive its’ right to consideration of any post-trial motions (to include the de novo review of the punitive damage award); this abandonment of that right by the Defendant Lyndon Southern was done intentionally and knowingly through the Defendant Lyndon Southern’s own counsel of record.

The Defendant Lyndon Southern’s request for new trials pursuant to Rule 50 and Rule 59, SCRCP, should be denied due to Lyndon Southern failing to comply with the time procedural requirements of both Rule 50 and Rule 59, SCRCP.

NEW TRIAL

While the Plaintiff contends that the Defendant Lyndon Southern’s motions should be denied pursuant to failing the procedural requirements to timely file its’ post-trial motions pursuant to the procedural requirements of both Rule 50 and Rule 59, SCRCP, the Plaintiff will address the merits of the Defendant Lyndon Southern’s post-trial motions below.

The Defendant Lyndon Southern enumerated the following reasons for disturbing the jury's verdict: 1) JNOV; 2) Thirteenth Juror Doctrine; 3) New Trial Absolute; and 4) New Trial *Nisi Remittitur*. It is not clear from Lyndon Southern's motion whether it was seeking a new trial pursuant to the Thirteenth Juror Doctrine as there is a lack of discussion of the doctrine in the Defendant Lyndon Southern's memorandum. Although the Plaintiffs contend that Lyndon Southern waived its' right to seek a new trial pursuant to the Thirteenth Juror Doctrine for the lack of clarity in its' motion, the Plaintiffs will still address the Thirteenth Juror Doctrine out of an abundance of caution.

Judgment Notwithstanding the Verdict (JNOV)

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

As this trial court is aware, the court must view the evidence and all reasonable inferences in the light most favorable to the non-moving party in ruling a JNOV motion. *Bishop Logging Co. v. John Deere Industrial Equipment Co.*, 317 S.C. 520, 450 S.E.2d 183 (Ct.App. 1995). Furthermore, the court in *Bishop Logging* stated that the case must be submitted to the jury if more than one inference can be drawn from the evidence.

The Plaintiffs assert that this case was properly submitted to the jury as there was substantial evidence to submit this case to the jury; furthermore, there was no error of law made by the court in submitting the case to the jury. This trial court heard testimonial evidence from the Plaintiffs about the binding insurance agreement between the Plaintiffs and Lyndon Southern, this trial court heard testimonial evidence about a

demand for payment of benefits from a judgment obtained under the insurance agreement, this trial court heard testimonial evidence the Defendant Lyndon Southern paid no benefits to the Plaintiffs under the uninsured motorist bodily injury coverage of the mutually binding insurance contract, and this trial court heard testimonial evidence about the damages which arose out of the Defendant Lyndon Southern's failure to pay any benefits under the uninsured motorist bodily injury coverage of the insurance contract. In addition, this trial court heard testimony from two experts who provided their opinion that the Defendant Lyndon Southern's failing to pay the benefits under the contract were not reasonable; furthermore, the experts testified that the Defendant Lyndon Southern's claims handling of this case and Lyndon Southern's lack of policy and procedures for claims handling was not reasonable.

The Defendant Lyndon Southern argues that the trial court erred in denying its' motion for directed verdict; Lyndon Southern further contends that the trial court erred in granting the Plaintiffs' motion for directed verdict once all of the evidence was presented to the jury. Our appellate courts have held that "when evidence presented at trial yields only one conclusion concerning liability, a trial court may properly grant a motion for directed verdict." *Cock-N-Bull Steak House, Inc. v. Generali Ins. Co.*, 466 S.E.2d 727, 321 S.C. 1 (S.C. 1995). The Plaintiffs assert that this trial court properly denied the Defendant Lyndon Southern's motion for directed verdict on the issue of whether Lyndon Southern breached its' insurance agreement with the Plaintiffs; furthermore, this case was properly submitted to the jury on the issues of damages from the breach as it was the role of the jury to determine the damages amount, if any, from the evidence

concerning the breach of contract. There was no error of law made by this court in submitting the damages case to the jury.

Our Court of Appeals in *Maro v. Lewis*, 389 S.C. 216, 697 S.E.2d 684 (S.C.App. 2010) held that the Plaintiff has the burden of proving the existence of a contract, proving the breach of the contract, and proving damages as a result of that breach. In this case, the Defendant Lyndon Southern admitted to the following:

1. That both Plaintiffs are considered insureds under an enforceable insurance agreement (Ex. A.) and that both Plaintiffs were entitled to first-party benefits; (See, Ex. B., Part C -UM/UIM Coverage)
2. That the Plaintiffs obtained a monetary judgment award related to uninsured motorist benefits under the Defendant Lyndon Southern's insurance agreement;
3. That Lyndon Southern did not pay any uninsured motorist benefits to either Plaintiff despite the judgment (Ex. C.) and despite the Plaintiffs request for payment of benefits under the binding insurance mutually binding insurance agreement (Ex. D.);
4. That Lyndon Southern charged the Plaintiff Jones a higher deductible than was allowed under the contract; Lyndon Southern has failed to reimburse the Plaintiff Jones her \$300 for the overcharge to date; and
5. That all of the Plaintiffs medical expenses are still outstanding since Lyndon Southern failed to pay any benefits under the uninsured motorist coverage.

Both Plaintiffs brought an action against Lyndon Southern for breach of contract and bad faith for refusing to pay first-party benefits under the Plaintiff Jones' insurance policy. The Plaintiffs submitted into evidence the Plaintiff Jones' insurance policy (See, Ex. B.) In Part C of the Uninsured/Underinsured Motorist Coverage section of the policy, Lyndon Southern defines and states that:

Insured person means:

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

The Defendant Lyndon Southern seeks to take a conflicting position as it relates to the Plaintiff Thompson. Lyndon Southern agrees that Plaintiff Thompson is entitled to first-party benefits as an insured under the insurance agreement yet the Defendant Lyndon Southern argues that Plaintiff Thompson is not entitled damages for Lyndon Southern breach of contract for failing to pay said first party benefits. This argument goes against public policy and our case law as it relates to breach of contract and bad faith for a bad faith refusal to pay benefits under the insurance policy.

Our Supreme Court has addressed the issue of what an insured is entitled to recover under a breach of contract and bad faith action for failure of an insurer to pay first party benefits under an enforceable insurance agreement. *Nichols v. State Farm*

Mut. Auto Ins. Co., 306 S.E.2d. 616, 279 S.C. 336 (S.C. 1983) clearly holds “that if an insured can demonstrate bad faith or unreasonable action by the insurer in processing a claim under their mutually binding insurance contract, he can recover consequential damages in a tort action. Actual damages are not limited by the contract. Further, if he can demonstrate the insurer’s actions were willful or in reckless disregard of the insured’s rights, he can recover punitive damages.”

The Plaintiffs contend that the only inference that could be drawn from the evidence is that there was an enforceable insurance agreement at the time of this accident between the Plaintiffs and the Defendant Lyndon Southern; both Plaintiffs were defined as insureds under the enforceable insurance agreement. The Plaintiffs contend that the only inference that could be drawn from the evidence is that Lyndon Southern intentionally and willfully failed to pay any first-party benefits to the Plaintiffs under the enforceable and mutually binding insurance agreement. The Plaintiffs contend that the only inference that could be drawn from the evidence is that Lyndon Southern breached its’ contract with the Plaintiffs to pay first-party benefits and that the refusal to pay was in bad faith; the refusal to pay said first-party benefits caused the Plaintiffs to suffer damages as a result of the breach of contract by the Defendant Lyndon Southern. The court was correct in granting the Plaintiffs’ motion for directed verdict since no other inferences could be drawn from the evidence presented to the jury. The Plaintiffs presented evidence of the mutually binding insurance agreement, they presented evidence of the judgment, they presented evidence that the Defendant Lyndon Southern failed to pay any benefits after written request by the Plaintiffs, and they presented evidence that they sustained damages as a result of Lyndon Southern’s

failure to pay any benefits under the agreement. The Plaintiffs also presented testimony from their expert, Stanley L. Lipshultz, who testified that the Defendant Lyndon Southern failed to implement reasonable standards and/or procedures for the prompt handling and prompt settlement of this claim; furthermore, Mr. Lipshultz testified that it was not reasonable to have a lack of policies and procedures for claims handling, testified that it was not reasonable to have a lack of record keeping, testified that it was not reasonable to offer to settle the claims for an amount less than otherwise reasonably due, and he testified that it was not reasonable to charge the Plaintiff a higher deductible than what was required under the insurance agreement.

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

The Defendant Lyndon Southern did not offer any evidence into the record as to why it ignored clear and settled South Carolina case law when it failed to pay any first-party benefits to the Plaintiffs under the mutually binding insurance agreement. The

failure on Lyndon Southern's part to pay any amounts on the judgment had the effect of being a denial of the Plaintiffs' claim for benefits under their uninsured motorist bodily injury claim under the insurance policy. The Defendant Lyndon Southern offered no evidence showing that any other inferences could be drawn from the testimony and evidence presented at trial that it had not breached its contract with the Plaintiffs nor did the Defendant Lyndon Southern offer any evidence that it had not acted in bad faith when it refused to pay benefits to the Plaintiffs under the insurance agreement. The Defendant Lyndon Southern argues that it never an opportunity to settle the case within the policy limits; however, all of the testimony entered into evidence showed that Lyndon Southern only made one offer and that offer was for was less than the medicals. There is no evidence in the record that Lyndon Southern made any other offers to settle this case before a judgment was entered by the court in the underlying automobile accident case. The Plaintiffs' initial demand was made on October 23, 2017; Lyndon Southern made a counteroffer on October 31, 2017, for less than the Plaintiffs' medical expenses; and the Plaintiffs' judgment demand was made to Lyndon Southern on June 20, 2019. There is no evidence in the record that the Defendant Lyndon Southern made any attempt to settle this matter at any time after October 31, 2017. In fact, much of the evidence presented at trial showed that there was no adjuster assigned to the case for most of the time since the inception of the civil action; furthermore, there is no record and/or notes from any adjuster on assigned to the case since January 21, 2019. Both experts testified that it was not reasonable for the Defendant Lyndon Southern to not have an assigned adjuster to the case who could handle and settle the matter and pay the first-party benefits to the Plaintiffs under the contract. Both experts responded

to the Lyndon Southern's argument that it acted reasonably because it did not have an opportunity to settle the case and both testified that the Defendant Lyndon Southern arguments lacked merit; furthermore, both experts testified that Lyndon's Southern's argument was not in line with South Carolina law. Both experts testified that the Defendant Lyndon Southern requiring the Plaintiffs to file suit to recover benefits under the policy, that Lyndon Southern's failure to have claim's handling policies, procedures and records was evidence of the breach of contract and bad faith. Our Supreme Court, in *Cock-N-Bull*, affirmed the decision by the trial court to direct verdict to the Plaintiff in a breach of contract and bad faith action. As in this case, the Supreme Court in *Cock-N-Bull* determined that the language of the insurance contract set forth the scope of coverage under a mutually enforceable agreement. The Supreme Court in *Cock-N-Bull* further determined that the Defendant's refusal to pay benefits under the mutually enforceable agreement "constituted breach of contract," and that the Defendant acted in "bad faith." The actions of Lyndon Southern are similar to the actions of the Defendant in *Cock-N-Bull*; therefore, a directed verdict in the Plaintiffs' favor was proper as the evidence, when viewed in the light most favorable to Lyndon Southern, yields only one inference ... that inference is that the Defendant Lyndon Southern breached its' mutually enforceable agreement with the Plaintiffs and acted in bad faith as there was no reasonable basis for not paying the judgment.

The Defendant Lyndon Southern incorrectly argues that the Plaintiffs were not entitled to recover damages outside of the insurance agreement and that argument again is inconsistent with our case law in *Nichols*. *Nichols* specifically states that damages are not limited by contract when there is a breach of contract and bad for

failing to pay first-party benefits. In the underlying case, Lyndon Southern exercised its' right not to appear and to defend the Defendant John Doe at the damages hearing in the uninsured motorist action; the Court awarded each Plaintiff \$50,000.00 in damages after hearing their testimony. The Defendant Lyndon Southern's argument runs counter to public policy as Lyndon Southern chose not to defend but attempts to argue that the Plaintiffs' damages should be reduced to the limits of the insurance agreement. Lyndon Southern was bound to the judgment amount once it knowingly and voluntarily chose not to appear and not to defend at the damages hearing. The Defendant Lyndon Southern must live with the consequences of not participating in the underlying uninsured motorist litigation when it had ample opportunity to do so.

This trial court's granting of the Plaintiffs' motion for directed verdict was proper as the evidence did not yield more than one inference. The Defendant Lyndon Southern's failure to make any payment was a breach of contract and Lyndon Southern acted in bad faith; for the previously stated reasons above, the trial court's denial of Lyndon Southern's motion for directed verdict was proper. There was sufficient evidence presented by which there was inference that could be drawn that the Defendant breached the insurance contract and acted in bad faith; therefore, this Court should deny the Defendant's request for a judgment as a matter of law as this Court's legal conclusion that the case should go to the jury was not controlled by any errors of law.

Thirteenth Juror Doctrine

The Thirteenth Juror Doctrine entitles the judge to sit, in essence, as the thirteenth juror when he finds the evidence does not justify the verdict, and then to grant

a new trial based solely on the facts. *Lane v. Gilbert Const. Co., Ltd.*, 383 S.C. 590, 681 S.E.2d 879 (2009).

The Defendant contends that it should receive a new trial based upon the Thirteenth Juror Doctrine. This doctrine allows the circuit court to grant a new trial absolute when the court finds the evidence does not support the verdict.

The Plaintiffs contend that there was sufficient evidence in the record to support the submission of the cause of action to the jury and would refer this trial court to the testimony of the witnesses as to the existence of a binding contract, testimony as to the failure to pay uninsured motorist bodily injury benefits under the contract, testimony as to the damages that the Plaintiffs incurred as a result of said brief, and testimony as to the unreasonableness of the Defendant Lyndon Southern's conduct in failing to pay the benefits and in its' unreasonable handling of the Plaintiffs' uninsured motorist bodily injury claims.

There was ample evidence in the record to support the submission of the cause of action to the jury as this trial court originally found. There was evidence of the contract, evidence of the breach of contract, evidence of damages sustained by the Plaintiffs as a result of the breach of contract and bad faith conduct by the Defendant Lyndon Southern. This court should deny the Defendant Lyndon Southern's request for a new trial under the Thirteenth Juror Doctrine.

New Trial Absolute

A trial court may grant a new trial absolute on the ground that the verdict is excessive or inadequate. *Rush v. Blanchard*, 310 S.C. 375, 379, 426 S.E.2d 802, 805 (1993). The circuit court should grant a new trial absolute on the excessiveness of the

verdict only if the amount is so grossly excessive as to shock the conscience of the court and clearly indicates the verdict amount reached was the result of passion, caprice, partiality, corruption or some other improper motives. *Id.*

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

There was sufficient evidence in the record to indicate that the jury's verdict was not excessive. The Plaintiffs testified about their outstanding medical expenses and about their overall economic losses from the failure of the Defendant to pay any uninsured motorist bodily injury benefits under the policy. The Plaintiffs also testified about the collateral consequences and/or damages that arose from the Defendant's failure to pay benefits under the uninsured motorist's claim under a valid and mutually binding insurance agreement. This type of testimony is evidence of damages to warrant the verdicts in this case. This trial court should exercise its' discretion in finding that the awards were neither excessive as to shock the conscience nor were the awards the result of passion, caprice, partiality, corruption or some other improper motives. This trial court should deny the Defendant's request for a new trial absolute as there was sufficient evidence in the record to indicate that the awards were not excessive.

New Trial Remittitur

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

There was sufficient evidence in the record for the trial court to determine that the awards were neither excessive as to shock the conscience nor were the awards the result of passion, caprice, partiality, corruption or some other improper motives. The Plaintiffs both testified that they both had a valid judgment for \$50,000.00 under the uninsured motorist bodily injury coverage benefits under a mutually binding insurance agreement with Lyndon Southern. The Plaintiffs presented testimony regarding out of pocket and outstanding expenses for medical treatment and presented testimony regarding out of pocket and outstanding expenses for prescription medication. The Plaintiffs presented testimony regarding the negative impact to their financial stability with the outstanding medical expenses for which they were still responsible for paying some six (6) years after the accident which is the underlying subject of the judgment.

There is sufficient evidence in the record to indicate that the Defendant Lyndon Southern acted wantonly, willfully, and with reckless disregard for the financial well-being of the Plaintiffs when the Defendant Lyndon Southern breached its' contract with the Plaintiffs. See, *Cock-N-Bull*. Our Supreme Court has affirmed that "a conscious failure to exercise due care constitutes willfulness." *Taylor v. Medenica*, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996). It is clear and convincing that Lyndon Southern had no

reasonable basis to deny paying the benefits under uninsured motorist bodily injury action. The clear and convincing evidence of the Defendant Lyndon Southern's conduct consists of the following: 1) The existence of a valid insurance agreement for uninsured motorist bodily injury coverage under a mutually binding insurance agreement with the Defendant; 2) There was no reasonable testimony from Lyndon Southern regarding why they refused to pay the award for uninsured motorist bodily injury benefits after receiving the demand for payment from the Plaintiffs; 3) The Defendant intentionally and willfully refused to pay the Plaintiff's benefits under the uninsured motorist bodily injury coverage; the Defendant was aware that the Plaintiffs were ultimately responsible for the medical expenses accrued under the uninsured motorist bodily injury claim; and 4) The Defendant failed to have any policies and/or procedures for claim's handling and/or record keeping; 5) The Defendant required the Plaintiffs to file suit to recover benefits under the mutually binding insurance agreement; and 6) The Defendant failed to adopt and/or implement reasonable standards for the prompt investigation, handling, and settlement of claims.

The Defendant has presented no evidence that the jury's awards were excessive so as to be the result of passion, caprice, prejudice, or some other influence outside of the evidence. There was sufficient evidence in the record to indicate that the Defendant acted wantonly, willfully, and recklessly in the breach the contract with the Plaintiffs in this incident. This Court should deny the Defendant's request for new trial *nisi remittitur* as there was sufficient evidence in the record for the awards to the Plaintiffs and there was also sufficient evidence in the record to indicate that the awards were not

excessive. The jury's determination of damages should be entitled to substantial deference. See, *Rush*.

Punitive Damages

As this Court is already aware, a de novo review must be conducted when evaluating the constitutionality of a punitive damage award. The purpose of punitive damages is to serve as a deterrent for offenders and to prevent others from committing certain or similar wrongs in the future. The South Carolina Supreme Court in *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (S.C. 2009), outlined the following test to be conducted in the de novo review of punitive damages: 1) Reprehensibility; 2) Ratio; and 3) Comparative Penalty Awards.

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

This case involves reprehensible conduct on the part of the Defendant Lyndon Southern. The harm to the Plaintiffs was economic in this action and physical in the underlying uninsured motorist bodily injury claim. As a result of the Defendant Lyndon Southern's failure to pay the benefits under the uninsured motorist bodily injury coverage, the Plaintiffs were left with outstanding medical expenses and other costs. Furthermore, both Plaintiffs testified as to their financial well-being after the underlying accident which was the subject of the judgment. The conduct of the Defendant Lyndon

Southern reflected indifference and a reckless disregard for the safety and financial well-being of the Plaintiffs by not paying benefits under a mutually binding insurance contract. The Plaintiffs were financially vulnerable because of their age and/or lack of work history; furthermore, they were financially vulnerable because the amount of outstanding expenses was almost \$10,000.00 for each Plaintiff. The outstanding medical expenses resulted in bad credit and would limit the Plaintiffs' ability to obtain credit to get loans and/or would limit their ability to obtain other goods and/or limit their ability to obtain stable housing. The Defendant Lyndon Southern's actions were repetitive and intentionally malicious and deceitful in the following ways: 1) the Defendant Lyndon Southern made an offer for settlement of both the Plaintiffs' cases which was below medical expenses with no reasonable basis for the offers below the medical expenses; 2) the Defendant Lyndon Southern intentionally and willfully refused to pay the Plaintiff's benefits under the uninsured motorist bodily injury coverage over an extended period of time; 3) the Defendant Lyndon Southern was aware that the Plaintiffs had outstanding medical expenses related to the first-party benefits when it refused to pay any benefits under the insurance agreement; 4) the Defendant Lyndon Southern failed to have any policies and/or procedures for claim's handling and/or record keeping to resolve its' insurance claims; 5) the Defendant Lyndon Southern required the Plaintiffs to file suit to recover benefits under the insurance agreement; and 6) The Defendant Lyndon Southern failed to adopt and/or implement reasonable standards for the prompt investigation, handling, and settlement of insurance claims. Also, a negative inference could be drawn from Lyndon Southern failing to produce any evidence that any of its' actions were reasonable.

The ratio prong of the test considers the disparity between the actual or potential harm suffered by the plaintiff and the amount of the punitive damages award. The United States Supreme Court, though not adhering to any bright line rules, has stated that few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process. *State Farm v. Campbell*, 538 U.S. 408, 124 S.Ct. 1513, 155 L.Ed.2d 585 (2003). This case involves a single-digit ratio between punitive and compensatory damages. Our Supreme Court has held that a punitive damage award will not violate due process so long as the degree of punishment is both reasonable and proportionate to the amount of harm to the Plaintiff and the general damages recovered. See, *Mitchell*. The trial court should consider the following in determining the reasonableness of a ratio: 1) the likelihood that the award will deter the defendant from similar conduct; 2) whether the damage award is reasonably related to the harm likely to result from such conduct; and 3) the defendant's ability to pay. *Id.*

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

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

A review of case law reflects a case which presents similar issues present in the Plaintiff's case. See *James v. Horrace Mann Ins. Co.*, 638 S.E.2d 667, 371 S.C. 187 (S.C.2006). In that *James* insurance negligence and bad faith case, the jury returned a verdict for the Plaintiff for \$146,600.00 actual damages for bad faith and \$1,000,000.00 in punitive damages. The ratio in the *James* bad faith action was 6.82 to 1 in a trial where the Defendant acted in bad faith for failing to advise the Plaintiff of the correct available coverage.

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

The Defendant Lyndon Southern contends that S.C. Ann. §15-32-30 (A) serves as a statutory cap to the punitive damage award in this case; subsection (A) states that

“an award of punitive damages may not exceed the greater of three times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of five hundred thousand dollars;” however, the Defendant Lyndon Southern failed to state in its’ memorandum that subsection (C) provides an exception to the statutory cap. The exception to the statute laid out in subsection (C) states that “when the trial court determines one of the following apply, there shall be no cap on punitive damages if:

- (1) at the time of injury the defendant had an intent to harm and determines that the defendant's conduct did in fact harm the claimant;

In this case the Defendant Lyndon Southern had the intent to harm the Plaintiffs when the Defendant Lyndon Southern intentionally failed to pay the Plaintiffs any benefits without a reasonable basis for doing so. The Defendant Lyndon Southern did in fact harm the Plaintiffs as the Plaintiffs were not made whole after being involved in an accident with a John Doe vehicle. The Plaintiffs were required to retain counsel, they were required to file a civil suit to recover benefits under the policy, they incurred additional costs and expenses in the litigation of the breach of contract and bad faith action against the Defendant. The Plaintiffs meet the exception requirements of S.C. Ann. §15-32-30 (A); therefore, the punitive damage award to the Plaintiffs should not be capped at all pursuant to statute. The punitive damage award is proper and complies with S.C. Ann. §15-32-30 (A).

The award of \$350,000.00 punitive damage to each plaintiff was proper in this case and does not violate any due process concerns. Furthermore, the award was supported by the evidence and not excessive so as to be the result of passion, caprice,

prejudice, or some other influence outside of the evidence. The jury determined that the defendant's acted wantonly, willfully, and maliciously in this incident; therefore, this court should not disturb this finding.

Conclusion

The Plaintiff contends that this court should deny all of the Defendant Lyndon Southern's motions and request for a new trial. The core reason for denying all of the Defendant Lyndon Southern's motions is that the Defendant Lyndon Southern did not comply with the procedural requirements of both Rule 50 and Rule 59, SCRCP regarding the time to file post-trial motions. Please note that even if the Defendant Lyndon Southern had complied with the procedural requirements of both Rule 50 and Rule 59 SCRCP, that all of the Defendant Lyndon Southern's motions should also be denied because there is significant evidence in the record of the Defendant's breach of a valid and enforceable insurance agreement with the Plaintiffs while acting in bad faith. There was undisputed evidence that the Plaintiffs were entitled to first-party benefits under the uninsured motorist bodily insurance policy and further evidence that there was no reasonable basis for the Defendant's failure to pay the benefits under the policy. There was evidence that the Defendant's breach of the contract resulted in damages to the Plaintiffs.

There is sufficient evidence in the record to support the jury's award of compensatory and punitive damages in this case and there is no evidence in the record that the awards were excessive so as to be the result of passion, caprice, prejudice, or some other influence outside of the evidence. Furthermore, there was sufficient evidence in the record to support and justify the verdict to defeat the Defendant Lyndon

Southern's request for the court to apply the Thirteenth Juror Doctrine and the Defendant's JNOV motion. Finally, the jury award of punitive damage was proper and should not be disturbed by this court since there was no evidence of a due process violation in that award which complied with the test set forth in *Mitchell*. Furthermore, the award of punitive damage is not capped pursuant to S.C. Ann. §15-32-30 (A) as the Plaintiffs are entitled to exception to this statute (pursuant to subsection C) because the Defendant had the intent to harm the Plaintiffs and did in fact harm the Plaintiffs by its breach of contract and conduct in bad faith.

Respectfully submitted,

s/Dietrich A. Lake

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February 8, 2024
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge

Case No. 2019-CP-40-04650

Tasha Jones and Shaniqua Thompson, ...Respondents,

v.

Lyndon Southern Insurance Company and
Safe Choice Insurance, LLC, ... Defendants,

Of whom

Lyndon Southern Insurance Company is the Appellant.

NOTICE OF APPEAL

Lyndon Southern Insurance Company appeals the jury verdict entered on June 23, 2023 (attached hereto as **Exhibit A**) and the Form 4 Order and Judgment of the Honorable Clifton B. Newman dated July 14, 2023 (attached hereto as **Exhibit B**). Appellant received written notice of the Form 4 Order and Judgment on July 14, 2023.

August 11, 2023

s/ Ransome H. Helmly

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In The Court of Common Pleas
Fifth Judicial Circuit
2019-CP-40-4650

June 21, 22, 2023
Columbia, South Carolina

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

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1 WEDNESDAY, JUNE 21, 2023

2 THE COURT: Okay, what do we have?

3 MR. LAKE: Just a little trial. That's all.

4 THE COURT: All right.

5 MR. LAKE: Breach of contract with Mr. Helmsly [sic]
6 here today, and so about six witnesses. We anticipate
7 probably over tomorrow. Just got a few pretrial matters to
8 address with the court this morning. We should be ready to
9 go after that.

10 THE COURT: Okay. Yes, sir.

11 MR. HELMLY: Good morning, Judge.

12 THE COURT: Good morning.

13 MR. HELMLY: Randy Helmly on behalf of defendant
14 Lyndon Southern Insurance Company. As Mr. Lake mention, we
15 have pretrial matters. The items that Ms. -- the law clerk
16 requested, but we have a motion for summary judgment that's
17 pending before the court and would like, like for that to
18 be heard prior to commencing trial.

19 THE COURT: Okay. Ready to proceed with the motion?

20 MR. HELMLY: Yes, Your Honor.

21 THE COURT: All right.

22 MR. HELMLY: May it please the court? This is a
23 breach of contract and bad faith action arising out of a
24 uninsured motorist claim that arose in 2017. Plaintiff
25 Tasha Jones purchased an insurance policy from Lyndon

1 Southern Insurance. Plaintiff Shaniqua Thompson was a
2 passenger in that vehicle.

3 The first item, Your Honor, that I -- before the court
4 is -- pertains to Ms. Thompson's claims. Ms. Thompson is
5 not a named insured under the policy. We have a number of
6 decisions that have come down that indicate that a named --
7 a person that's not a named insured may not pursue a breach
8 of contract or a bad-faith claim as each of those causes of
9 action, the essential element is a mutually binding
10 contract. And as a matter of law, her claims must fail
11 because she's not a named insured. She's not in privity of
12 contract.

13 She has benefits under the policy. Those benefits
14 arise purely by, by contract that the named insured, Ms.
15 Jones, procured with Lyndon Southern Insurance. You know,
16 there are a number of remedies that named insureds are
17 entitled to that merely incidental insureds are not,
18 stacking being one of them.

19 So, there are a number of cases that have addressed
20 that. I have some cases for Your Honor. There's a case,
21 *Kleckley v. Northwest National Casualty Company*, where
22 plaintiff's claim was dismissed for lacking privity of
23 contract. A recent -- I won't say recent -- 2015 court
24 decision affirmed that, acknowledging that there are
25 benefits that arise pursuant to policy and pursuant to

1 statute, but having a mutually binding contract is an
2 essential core element of each cause of action. She
3 doesn't have that. That's admitted in the complaint;
4 that's admitted in an affidavit previously submitted to the
5 court. Her claims arise purely as an -- as an insured
6 under the policy, but that is -- you know, an insured under
7 the policy is a -- can be any number of unknown persons at
8 the time that policy is contracted and bargained for.

9 Ms. Thompson didn't provide any consideration for the
10 contract, so, you know, by any objective measure, Your
11 Honor, she doesn't have privity of contract. She can't
12 meet the first element of those claims and, therefore,
13 those claims should be dismissed.

14 Beyond that, Judge, these claims, even aside -- if you
15 take that issue and set it aside, these claims as a matter
16 of law should be dismissed, and primarily for legal reasons
17 and the legal reasons that permeate this case. That are
18 several ---

19 THE COURT: You're now going from one plaintiff to
20 both plaintiffs?

21 MR. HELMLY: I'm -- I ---

22 THE COURT: You said these claims.

23 MR. HELMLY: Well, position on Ms. Thompson is clearly
24 -- I think the law is crystal clear that without a
25 contract, she can't proceed on these claims. Not that

1 she's not without -- that she's not entitled to benefits
2 under the contract. It's just that the manner in which she
3 has chosen to pursue those benefits is, is not supported in
4 any of our case law.

5 That aside, the claims should fail as a matter of law
6 because at this point there really is no genuine issue as
7 to any material fact with Ms. Thompson.

8 THE COURT: Are you still talking about Ms. Thompson,
9 or are you now talking ---

10 MR. HELMLY: I've moved on to sort of both, all the
11 claims in general. I'm sorry, Judge, for not being clear
12 on that.

13 THE COURT: Okay. All right.

14 MR. HELMLY: Plaintiffs have essentially asserted that
15 in the underlying uninsured motorist claim, the defendant
16 failed to appear and defend that claim as, as one basis for
17 having violated the contract and acted in bad faith.
18 They've also indicated that the judgment that was rendered,
19 the failure to pay the full amount of that judgment is in
20 bad faith, general assertions about the underlying handling
21 of the claim being in bad faith, and in breach of the
22 contract. And essentially, Judge, every step of the way,
23 beginning from the initial demand that the plaintiffs made
24 being in excess of the limits of coverage, and not in the
25 form of a *Nichols* demand or a *Tyger River* demand. Just we

1 want \$65,000 per person on a policy -- on a minimum limits
2 policy that only provides 25 per person and 50 aggregate.

3 THE COURT: You've kind of jumped into your legal
4 argument, and I don't understand what the whole controversy
5 is about. It was -- I assume there was a car wreck. If we
6 could start at that point.

7 MR. HELMLY: My apologies.

8 THE COURT: Give the judge, give the judge a little
9 background.

10 MR. HELMLY: My apologies, Judge. I have obviously
11 been in the weeds on this case for quite some time and,
12 therefore, when I speak about it, I speak as if everyone
13 else is just as familiar as I am.

14 THE COURT: All right.

15 MR. HELMLY: But I apologize.

16 The car wreck on -- in 2017, an unidentified driver
17 ran into the back of the vehicle that was being driven by
18 Ms. Jones. Ms. Thompson was a passenger. There was a
19 third -- or second passenger as well. The third person in
20 the vehicle settled his claims with the carrier sort of at
21 the outset after, after the carrier received the medicals
22 for each of the claimants.

23 The medicals for each were less than \$10,000 per
24 claimant. Plaintiffs sent a demand to the carrier
25 demanding \$65,000 per person. Again, that demand that was

1 sent to carrier was not couched in terms of demanding
2 policy limits, setting forth, you know, conditions of
3 resolution, putting a -- like a time-sensitive demand. It
4 was simply here are the medicals, and we want \$65,000 per
5 person even though the maximum under the policy would be
6 \$25,000 per person.

7 You know, in this case there was a third claimant and,
8 you know, once they received all the medicals, they
9 evaluated them, extended offers. Third claimant accepted
10 his offer, settled his case. You know, the balance on
11 policy limits at that point was \$42,000. Claimants
12 demanded \$65,000 per person. From there -- presumably that
13 was Lyndon Southern made other offers to each of those
14 claimants for -- after undertaking a audit of the medical
15 records to determine what's reasonable and necessary,
16 extended offers that were slightly below the, the medicals.
17 There was no counteroffer; there was no response at all.

18 Some time went by. A John Doe action was filed.
19 Pursuant to statute, the carrier has the right to appear
20 and defend in a UM claim. It's not mandatory; there is no
21 duty that arises under the policy that requires them to
22 appear and defend. It is not akin to a third-party claim
23 in which every liability policy says there's a duty to
24 defend. That doesn't exist in this policy, nor does it
25 arise under statute.

1 There was a default found against John Doe. Counsel
2 did appear for the damages hearing. Ultimately was
3 precluded from appearing or contesting damages at the
4 hearing, having been found to be in default. Judge Hood
5 entered an award for \$50,000 per claimant.

6 Following that, a demand was issued to the carrier for
7 payment of the full amount of the judgment, and this is
8 where, you know, I think has been the biggest obstacle in
9 Mr. Lake and I working on this case is, is, is that
10 judgment. We don't dispute that the judgment is valid,
11 that the judgment -- that the court decided that the claim
12 was \$50,000 per person. The reason the carrier didn't pay
13 the full amount of the judgment is because the policy says
14 and the policy mirrors the statute that says uninsured
15 claimant is entitled to receive benefits that they are
16 legally entitled to recover and they, they certainly are at
17 the point a judgment is rendered. But both policy and the
18 statute say within the limits of the policy.

19 You know, it's been treated as if this is an excess
20 judgment in a third-party context where the policy limits
21 are blown, and that's not the case here. This is merely a,
22 a first party UM case. The judgment's against John Doe.
23 It's not against the carrier. It's against John Doe. You
24 know, the carrier doesn't have any obligation to John Doe
25 or duty to protect John Doe's interest to make sure that

1 John Doe doesn't wind up with an excess judgment. Its
2 obligation is to pay the benefits owed in the contract.
3 And clear, plain, unambiguous language of the contract says
4 amounts legally entitled to recover up to the limits within
5 the limits of policy. You know, at no point has -- have
6 the plaintiffs been entitled to \$100,000 or \$50,000 per
7 claimant.

8 THE COURT: And ---

9 MR. HELMLY: Not at the outset ---

10 THE COURT: And the policy limits are?

11 MR. HELMLY: \$25,000 per person, \$50,000 aggregate.

12 So, at no point presuit, during the John Doe action, or
13 even after procurement of the judgment are they entitled to
14 that much. They are entitled to what the policy says they
15 are entitled to, and, and, and that's the -- the plaintiffs
16 have taken the position that the judgment is now
17 untouchable, and it's somewhat nuanced, Judge but it's --
18 again, not contesting the judgment or the value that the
19 court placed on the case when they rendered that judgment.
20 That's all well and good. Don't contest those facts, don't
21 contest the decision Judge Hood reached and the reasoning
22 behind it.

23 You know, my -- I will say it was a general damages
24 award. There was no, you know, line items about what that
25 \$50,000 entailed, general damages award. There were no

1 punitive damages awarded. So, it's limited to the coverage
2 provided under the uninsured motorist bodily injury
3 coverage.

4 And so at every turn, the plaintiffs have rejected any
5 notion whatsoever of accepting coverage limits, and it's,
6 it's the -- I guess the desired outcome would be, dare I
7 say, Judge, somewhat absurd. It would allow plaintiffs at
8 every turn to say give me more than what I paid for, and if
9 you choose to go contest this in the court or not contest
10 it in court and just rely on the terms of the policy or
11 rely on the statute, then I'm going to sue you for bad
12 faith. And that essentially would turn every single case
13 into a potential bad-faith case. And I don't think that's
14 the desired result of the -- of the legislature when they
15 wrote the statute, and I don't think that's the desired
16 result of any court that's handed down, you know, decisions
17 on the subject.

18 There are mountains of case law that says essentially
19 -- and, and this is kind of a main point -- that if the
20 carrier has any justifiable, objectively reasonable basis
21 for denying a demand or denying claim, then as a matter of
22 law, the bad-faith claim fails. And, and I would argue,
23 and supported by all the cases I have cited, that reliance
24 on the policy limits is sort of the -- is, is, is
25 reasonable because that's what they contracted for, and

1 certainly reliance on language in the statute is reasonable
2 because that's the -- that's the scheme the legislature ---

3 THE COURT: Whenever you throw out the word
4 reasonable, whenever I hear the word reasonable, I hear a
5 question of fact for someone to determine, what is
6 reasonable and what is not.

7 MR. HELMLY: I think that, Judge, in the body of case
8 law, reasonable can be question of fact if it might be
9 dealing with some sort of, you know, claims handling,
10 policy, procedures, something along those lines. But when
11 it is so objectively reasonable -- in other words, I'm
12 relying on the policy limits, you know -- that is ---

13 THE COURT: Well, what am I -- I'm to decide what's
14 reasonable based on what you're telling me or based on
15 what? Based on -- I'm trying to understand. Where are we
16 with this case? If you're now arguing that the actions of
17 the insurer were reasonable -- they properly denied the
18 claim, properly made a reasonable offer to settle the case,
19 and all of that -- is that where we are now?

20 MR. HELMLY: Essentially, Judge ---

21 THE COURT: You started saying that -- talking about
22 Ms. Thompson being out of the picture because she's not an
23 insured, and so she just can't bring this kind of lawsuit.

24 MR. HELMLY: Yes, sir.

25 THE COURT: Now you've jumped from that to saying that

1 that the claims are -- I should grant summary judgment and
2 throw the entire case out, and we should not have a hearing
3 today. Is that what -- I mean, we should not ---

4 MR. HELMLY: I don't believe -- I don't believe
5 there's really anything for a jury to decide. I think the
6 case law ---

7 THE COURT: Well, let, let me -- let me ask again. Is
8 this a -- and I'm just reading through the file as you are
9 talking. Has a jury been demanded in this case?

10 MR. HELMLY: I think Mr. Lake in his complaint
11 demanded a jury.

12 THE COURT: So, we're here for a jury trial.

13 MR. HELMLY: We are here for a jury trial, Judge, but
14 it's ---

15 THE COURT: I understand you have pretrial motions.
16 You said that. I just want to know that. Whether we have
17 -- whether your motions are denied, we're going to be
18 moving in to calling a jury and having the trial. Does
19 that -- are these damages witnesses or what?

20 MR. HELMLY: Certainly if Your Honor denies the
21 motions, then we're moving towards a trial. Mr. Lake has
22 some, some witnesses to testify about the facts of the case
23 and render an opinion on, on what's reasonable, and, and
24 that goes to the court can decide reasonableness under
25 circumstances where ---

1 THE COURT: What, what is it that you want me to
2 decide?

3 MR. HELMLY: That reliance on an insurance policy and
4 the coverage limits therein is by any -- no reasonable jury
5 could find that it's, it's not reasonable. The case law
6 says, in fact, it is reasonable.

7 THE COURT: Reliance on the insurance policy is
8 reasonable.

9 MR. HELMLY: Yes, Your Honor.

10 THE COURT: All right, I'm just trying ---

11 MR. HELMLY: And ---

12 THE COURT: Yeah, you, like you said, you've been in
13 the weeds. I haven't been in the weeds. I'm coming out of
14 the house.

15 MR. HELMLY: You were in the weeds earlier in the
16 year, earlier in the year, Judge.

17 So, it was -- and so that, that is -- it's one of
18 those cases where there, there are -- I'm not sure there
19 are any facts that really the carrier disputes as far as
20 procedurally and how the judgment came about, what happened
21 at the underlying claim base.

22 THE COURT: So, you all have try, attempted to pay the
23 policy limits and the plaintiffs would not accept it
24 because they want more money than that?

25 MR. HELMLY: They've always wanted more money than

1 that. They've explicitly and implicitly rejected any
2 notion of accepting policy limits. The night before the
3 damages hearing back in 2019, it was disclosed to, to, to
4 plaintiffs' counsel that this is what we have left on the
5 policy.

6 THE COURT: So, Ms. Thompson is entitled to 25,000 but
7 cannot pursue a bad faith case. Is that right?

8 MR. HELMLY: Correct.

9 THE COURT: And you're ready to -- you're ready to get
10 her out of here to resolve her claim for what she's
11 entitled to under the policy because I haven't heard from
12 Mr. Lake yet, but I can't imagine a scenario where a
13 passenger can file a bad faith when there's no duty owed to
14 a passenger. Unless I'm shown some law to the contrary, I
15 agree with you on that.

16 MR. HELMLY: We've always wanted to pay what the
17 policy allows.

18 THE COURT: So, that addresses Ms. Thompson unless Mr.
19 Lake has a rabbit that he's going to pull out of the hat at
20 the present.

21 Now, with regard to the other lady, Ms. Jones, she is
22 suing saying bad faith because you are her insurer,
23 insurer, and you breached all duties to her with regard to
24 whatever they claimed in their lawsuit. And you're saying
25 no, we were reasonable even though we have a duty to defend

1 under our policy.

2 MR. HELMLY: We don't.

3 THE COURT: You do not have a duty?

4 MR. HELMLY: It's a first-party claim.

5 THE COURT: Okay.

6 MR. LAKE: We're allowed to just let it go to judgment
7 and then -- and then raise policy defenses.

8 THE COURT: You only have a ---

9 MR. HELMLY: In most of these ---

10 THE COURT: --- duty to defend if it -- if it was a
11 claim for liability, then ---

12 MR. HELMLY: If, if Ms. Jones ---

13 THE COURT: --- there would be a duty.

14 MR. HELMLY: --- had run in the back of somebody and
15 she got sued, we're jumping in to defend.

16 THE COURT: All right. So, there's no duty to defend
17 first-party claims.

18 MR. HELMLY: Correct, Your Honor, and that -- that's
19 unambiguously stated in the policy, and it is -- it is
20 indicated in the statute when it says the, the carrier has
21 the right to defend.

22 On the flip side, the carrier doesn't have the right
23 to defend. I mean, I've had plenty of cases where simply
24 the -- it was allowed to go to, you know, judgment and then
25 nine times out of ten they, you know, they get a judgment

1 and they file an ex contractu claim just on the policy to
2 say we got the judgment or we got a judgment against John
3 Doe. In a John Doe situation or an uninsured motorist
4 situation, you know, the policy says this. Pay us what
5 we're entitled to under the policy and off we go, and
6 that's happened time and time again.

7 THE COURT: I'm sure this scenario with the number of
8 car wrecks and lawsuits and all of that and these kinds of
9 controversies, I'm sure this is not a unique case. There
10 must have -- there has to be something on the books that
11 addresses this situation.

12 MR. HELMLY: There are -- you know, specifically,
13 factually I haven't found anything that's directly on
14 point. What I have found are a bunch of first-party cases,
15 and they're all cited, and I have a ---

16 THE COURT: First party bad-faith cases?

17 MR. HELMLY: First party bad-faith cases.

18 THE COURT: All right.

19 MR. HELMLY: And in all of these cases, you know, in
20 the first-party context and it's -- as you well know,
21 Judge, there's been a mountain of case law decided on *Tyger*
22 *River* and *Nichols* over the years and, and, and they are
23 nuanced but they are -- they are different because the
24 duties under the policy are different in a first-party
25 context than they are under a third-party context. And so

1 what you have is, you know, there is no -- you're not
2 protecting an unknown driver or a John Doe. You don't have
3 to look out for their interest in an excess judgment. What
4 you have to do is, is look at the claim and evaluate it.
5 And the cases say particularly that -- find the language
6 that I'm looking for, Your Honor. I apologize.

7 THE COURT: While you're looking for that, you wrote
8 here that:

9 Lyndon never had a reasonable opportunity to
10 settle the claim within the policy limits and
11 thus cannot be said to have acted in bad faith.

12 MR. HELMLY: There's a -- there's a case, *Founders* is
13 the name of the case that essentially says that if an
14 insurer is never given an opportunity to settle for limits,
15 then as a matter of law it can't -- it can't be bad faith
16 if you -- you're not given an opportunity, you know.

17 THE COURT: They were given a demand, weren't they?

18 MR. HELMLY: Those demands -- and, and every case
19 makes specific -- you know, all the cases address the, you
20 know, pay us the limits within ten days, you know, in
21 exchange for a covenant. Otherwise, we'll revoke that
22 offer and move to pursue a judgment against your insurer.
23 That -- that's not the situation here. This is -- this is,
24 hey, give us \$65,000 per person. That's, that's a --
25 that's saying that we don't really care what the limits

1 are. I mean, the demand says what the demand says. We
2 don't care what the limits are. We want \$65,000 per
3 person.

4 Now, there are -- you know, I understand, you know,
5 negotiations in general start high and, you know, try to
6 find some common ground but, you know, in our world, in the
7 bad-faith world there are certain, you know, parameters
8 that exist. There are certain, you know, language that the
9 court has adopted over the years. And so when demands are
10 made, despite being aware of the policy limits that are
11 always in a specific dollar amount above the policy limits,
12 I think that's a -- that's unequivocally saying we want
13 more than policy limits. We're not willing to settle for
14 the policy limits, you know, and so it's -- I, I handled
15 enough cases where I've seen those demands come through,
16 and they are obviously demands that get, you know, a great
17 amount of attention. And this demand got attention.
18 Records were reviewed. An offer was made, and never heard
19 from them again.

20 THE COURT: All right. Let me -- let me hear, if you
21 can wrap up, let me hear from Mr. Lake.

22 MR. HELMLY: Your Honor, I'll just -- you know, the
23 courts have clearly recognized that, you know, there's --
24 an insurer acts in bad faith when there is no reasonable
25 basis to support its decision. You know, the flip side of

1 that is where an insurer has a, a reasonable ground for
2 contesting a claim, there can be no bad faith. And
3 certainly the line of cases suggests that or indicates that
4 by logical extension that I'm relying on the terms of the
5 policy, which is -- which is -- which is what we're
6 supposed to do when we contract for insurance.

7 They have obligations. We have obligations that the
8 decisions we are made -- making are based on what the
9 policy said. And here sort of the, the basics of a policy,
10 the amounts of coverage, if you say I want 65 and we say
11 you're only entitled to 25, then that's a reasonable basis
12 to -- or, or even say we've reviewed your medicals and
13 we're going to offer this, you know, rejecting a demand for
14 an amount that is, you know, collectively in this case
15 \$80,000 above the limits that were available, I would argue
16 we don't have to take that to a jury. That, you know, the
17 court has the discretion to say, yeah, the policy said
18 this. The statute said this, and, and, and yeah, that's
19 reasonable to rely on the, the policy and the statute.

20 THE COURT: So, we'll, we'll close your part of it,
21 but you're once again telling me what it is you want me to
22 do.

23 MR. HELMLY: Yes, Your Honor. I, I believe, based on
24 the undisputed facts in the case, that as a matter of law
25 the bad-faith claims, breach of contract claims fail.

1 THE COURT: So, you want me to ---

2 MR. HELMLY: We want you to dismiss ---

3 THE COURT: --- dismiss it?

4 MR. HELMLY: --- their case.

5 THE COURT: Dismiss both cases?

6 MR. HELMLY: Dismiss both cases. I think Ms.

7 Thompson's case is sort of clear. You know, there's only
8 been one exception to that first party thing, the
9 necessities doctrine and a widow of -- husband's making a
10 claim and he dies, and you got the widow left. Court made
11 an exception with regard to a life insurance policy.
12 That's not been extended in any other case presented with
13 this issue. No contract, no claim. Can't satisfy the
14 basic elements of either. So, I think Ms. Thompson's
15 claims are, as a matter of law, are -- should be -- should
16 be dismissed.

17 THE COURT: All right. Mr. Lake.

18 MR. HELMLY: Thank you, Judge.

19 MR. LAKE: Thank you, Your Honor. I would disagree
20 with both assertions in this particular case. I think Mr.
21 Helmlly actually provided you with a copy of the policy of
22 the -- Ms. Jones.

23 And as it relates to -- the one thing we do agree
24 about is that these are first-party benefits, okay, and
25 it's defined in their own language of this contract. Ms.

1 Thompson is identified as an insured. This would be page 9
2 of the policy.

3 THE COURT: Page 9 of the policy. Do I have the
4 policy?

5 MR. LAKE: Yes, Your Honor. I think Mr. Helmsly
6 submitted that to you last night.

7 THE COURT: Oh. Last night. I wasn't looking for
8 emails from Mr. Helmsly last night.

9 MR. HELMLY: Judge, we didn't know who would be
10 hearing it until lunchtime yesterday, so we, we, we sent it
11 over. I've got ---

12 Did you print a hard copy?

13 I've got a hard copy of the -- of the -- it's an
14 exhibit to the memo that I provided to the court, and I can
15 -- I've got one right here for you, Judge, if you would
16 like to have it.

17 THE COURT: Yeah. You know, in this current era, we
18 get things emailed to us all the time as if we spend our
19 time looking for -- looking for and reading lawyer emails.

20 MR. HELMLY: It's not what you live to do, Judge?

21 THE COURT: No.

22 MR. LAKE: Well, Your Honor, if you look at what would
23 be Part C as it relates to uninsured ---

24 THE COURT: Page what?

25 MR. LAKE: The page right here would be page 9.

1 THE COURT: All right, page 9.

2 MR. LAKE: Is what I'm specifically referring to.

3 THE COURT: All right.

4 MR. LAKE: Which identifies Ms. Thompson specifically
5 as an insured. If you look at numbered paragraph 1,
6 subsection 1.

7 THE COURT: Paragraph 1.

8 MR. LAKE: I'm sorry?

9 THE COURT: Yes, I'm looking at ---

10 MR. LAKE: Okay.

11 THE COURT: --- paragraph 1.

12 MR. LAKE: It says as an insured person any other
13 person while occupying your covered auto is considered an
14 insured person up under their policy. And I think that,
15 Your Honor, as it relates to our case law, that
16 distinguishes between a third-party bad-faith claim which
17 you're not allowed to bring -- we would agree with that --
18 versus a first-party claim, and that as a first-party
19 individual in this particular case identified as an
20 insured, the case law is, is plentiful. That says a first
21 party can bring in a bad-faith claim, breach of contract
22 claim against an insurer if they did not ---

23 THE COURT: What's the definition of a first party?

24 MR. LAKE: The first party would be the insured. I
25 think they have identified her as an insured. That's your

1 first-party claim. But the benefits, really it's not an
2 indemnification as you would up under a third-party claim.
3 It's really a claim that coming directly from the insurer
4 itself.

5 So, if you're looking at, Your Honor, case law in
6 terms of *Nichols* as relates to bad faith, you've got
7 *Tadlock* ---

8 THE COURT: Let's start at one, one at a time. Which
9 one ---

10 MR. LAKE: Okay.

11 THE COURT: --- you want me to look at now?

12 MR. LAKE: Your Honor, I'll give you -- I've got a
13 couple of different cases I'll give you that address this
14 particular issue, and I'll go over each one of them. The
15 first one is the most prevalent one is *Nichols*.

16 THE COURT: All right. Do you have a copy of that
17 that I can see?

18 And I started out the week doing a trial in Kershaw
19 County on Monday Juneteenth. We were there in trial. We
20 got through there, and I'm coming in to help clean up the
21 docket. It's not something I've been concerned with or
22 anticipated. So, while you are looking for whatever you're
23 looking for, we have other lawyers here.

24 (A PAUSE.)

25 THE COURT: All right, Mr. Lake, now your *Nichols*

1 case.

2 MR. LAKE: Yes, Your Honor, and I'm having my
3 assistant make some other copies of those other cases I
4 would like the court to look at it regarding this matter,
5 so I may move on to the issue of ---

6 THE COURT: Well, give me a chance to look at this
7 case.

8 MR. LAKE: Yes, sir.

9 THE COURT: From Aiken County. Ronnie Maxwell.
10 Charlie Carpenter and others on the other side. Tort
11 action for bad faith refusal to pay first-party benefits.
12 Jury awarded 10,000 actual damages, and this is from 1983.
13 Chevrolet was stolen from a parking lot. When he recovered
14 it, it had damage to the exterior and its high-performance
15 engine. Insured against a theft loss. It was a State Farm
16 policy. Filed claim for the repair costs. They refused to
17 pay the full claim. Then brought suit alleging breach of
18 contract and bad faith. Insurer moved for -- to have the
19 verdict conform, reasoning that the actual damages were the
20 same under both causes of action, not entitled to double
21 recovery. First issue is whether State Farm -- the state
22 should -- this state should recognize an action for bad
23 faith in an insurer's handling of a claim for first-party
24 benefits.

25 *Greenburg* decision is premised on implied covenant of

1 good faith and fair dealing that neither party will do
2 anything to impair the other's right to receive benefits
3 under the contract. It's a breach of this duty by insurer.
4 Insurer's bad faith refusal renders them liable in tort,
5 and actual damages are not limited to the contract.

6 While we've never ruled on the precise question
7 held in *Tyger River* that an insurer's
8 unreasonable refusal to settle within policy
9 limits subjects the insurer to tort liability, we
10 have also held the unreasonable refusal of
11 insurer's part to accept an offer of compromise
12 will render it liable in tort to the insured for
13 the amount of the judgment against the insured in
14 excess of policy limits. Plenty of public policy
15 reasons. We held today that insured can
16 demonstrate bad faith or unreasonable actions by
17 the insurer in processing a claim under their
18 mutually binding insurance, he can recover
19 consequential damages, damages not limited to the
20 contract.

21 That's that case.

22 MR. LAKE: Your Honor, my assistant will be here with
23 the other cases, but they all -- the one thing that I
24 wanted the court -- that I'll bring to the court's
25 attention as relates to that specific language is they use

1 to word insured, and she is an insured -- this would be Ms.
2 Thompson -- is insured up under that policy, and she is
3 allowed to bring a breach of contract, bad faith up under
4 this particular law. And in some of the cases that I'll
5 hand the court -- all stand for that same principle, these
6 types of claims ---

7 THE COURT: So, how do you respond to the argument
8 that Mr. Helmly was making that seemingly had me convinced.

9 MR. LAKE: He was mixing his arguments up, Your Honor,
10 in all honestly. I think he was invoking third party,
11 which I agree. If she was a third party, she could not
12 bring a bad-faith action. She's not a third party in this
13 particular matter. She's a first party.

14 THE COURT: By definition ---

15 MR. LAKE: By definition, she's insured.

16 THE COURT: --- she's an insured ---

17 MR. LAKE: Correct.

18 THE COURT: --- by definition.

19 MR. LAKE: And so by definition of being insured,
20 she's allowed to bring a breach of contract, bad-faith type
21 of action, and that's what all of these cases, that's what
22 their premise is.

23 Your Honor, we've also provided a copy of Ms.
24 Anastopoulo, Professor Anastopoulo's deposition where she
25 outlined from -- the deviations where it's indication that

1 some of the conduct beyond -- from Lyndon was unreasonable.

2 You think about the very first thing, Your Honor.

3 There's two things I want you to take note of is that their
4 offer to settle this case was below the medicals. We made
5 an offer, but they had really three options. They either
6 could accept it, they could either reject it, or they could
7 make a counter offer. And in this particular case, their
8 evidence, their records indicate that they made a initial
9 offer of less than medicals, which was unreasonable. They
10 never explained how they come up with that amount, and to
11 date, Your Honor, never made another offer. They continue
12 to make this argument, oh, well, we were going to settle
13 this right there, but there has never been any offer that
14 has been made by Lyndon to resolve this case.

15 Now, we did attempt before the damages hearing to
16 resolve this case, Your Honor, and there is an email that
17 we will make part of the, the record. It will go towards
18 the issue of bad faith, but there has never been any
19 attempt on their part to try to settle this thing when they
20 had an opportunity. I'll provide the court with this.

21 THE COURT: All right.

22 MR. LAKE: Your Honor, this is so case where
23 essentially there are a whole lot of things that we believe
24 Lyndon did wrong in this particular matter. This suit was
25 filed back in January of 2018. Was properly served on the

1 defendant. They did not respond to it. Mr. Helmly was
2 actually provided with a copy of this complaint, I think,
3 that summer before we actually had the default in front of
4 Judge Jocelyn Newman. So, they had an opportunity to, to
5 address this matter.

6 I know they've indicated we don't have a duty to
7 defend up under the statute and things of that sort, which
8 is partially correct, Your Honor. However, what I would
9 contend is that they undertook. They actually -- there was
10 communications to Mr. Helmly to come to court to address
11 this matter. He actually came to court for a damages
12 hearing and at that time asked for a continuance, which
13 Judge Hood granted. Judge Hood only gave him certain
14 instructions: make a notice of appearance, and file a
15 request to continue this matter. I consented to that
16 matter. Mr. Helmsly never did any of those kind of things.

17 The next time I heard from Mr. Helmsly was the day
18 before the damages hearing which was scheduled January the
19 6th. And what you see, Your Honor, is that he reached out
20 to me, and I tried to send him a response to get this
21 matter resolved within the amount of coverage that was
22 still available out there in this particular matter, and
23 that's what that offer reflects because even if you
24 subtract that amount from the total amount of coverage
25 available, they would still have \$2000. But I have never

1 gotten a response to that very email right there, which we
2 would say is unreasonable. It's bad faith or evidence of
3 additional bad faith or unreasonable behavior or conduct on
4 behalf of Lyndon in this particular matter. So, I'm not
5 even going to add the fact that, Your Honor, their policies
6 and procedures that they did not follow.

7 I'll hand these copies up. I'll hand these up as
8 well.

9 (A PAUSE.)

10 MR. LAKE: But since the time, Your Honor -- and they
11 had an opportunity to do it. It's a lot of the conduct
12 that has, you know, kind of -- you look at it, what Lyndon
13 has done, Your Honor. That is not the intent of the courts
14 in terms of conduct, reasonable conduct. And I think there
15 is an implied, with every contract, it's implied you'll
16 have good faith. What they're basically saying is that
17 we're going to essentially not respond, not do anything,
18 which is contrary to what he had to -- did. They just
19 weren't allowed to speak in terms of the damages hearing
20 because Judge Hood found that he did not follow his orders
21 to make a note of appearance or anything along those lines.

22 But what they're trying to say is, Judge, we don't
23 have to appear, and even if we don't appear and the
24 judgment exceeds it, then no matter what the judgment is,
25 then we're still going to be bound by the terms of that

1 contract, and I don't think that's what the law basically
2 allows. There's no good faith in that because what you're
3 essentially doing is now -- what's most important as an
4 additional thing as relates to bad faith is that you're now
5 forcing the plaintiffs to then have to bring another action
6 for the amount of judgment, which is what we're doing in
7 this particular case.

8 I think when Mr. Helmsly, Mr. Helmsly is saying, well,
9 if you normally could just -- even if you get an excess,
10 you could file another action to have it declared as to
11 what the amount is that should be owed. Well, why does the
12 policyholder, the insureds in this particular case, why are
13 they required to continually have to file suit to get what
14 Mr. Helmsly has himself has described as a valid judgment?

15 So, when you couple those two things, Your Honor, I
16 think that issue of bad faith goes to the jury. I think
17 there clear, ample evidence of the breach of contract in
18 terms of when you go back to the original offer. There was
19 no attempt to settle this matter before the damages
20 hearing, which was scheduled on the 6th, because there's no
21 response to that email, and I don't think Mr. Helmsly can
22 tell you that he can provide you with any type of response
23 that Lyndon has provided regarding that offer.

24 With that, I would ask this court to deny the motion.
25 I think she does qualify as an insured, and we're ready to

1 proceed.

2 THE COURT: All right, anything else?

3 MR. HELMLY: Very quickly, Your Honor, with regard to
4 Ms. Thompson's claims. She is an insured under the policy,
5 entitled to benefits. Courts have, have, have acknowledged
6 that. In *Nichols*, that person was the name insured. In
7 other words, the person that purchased the contract, and
8 these two cases address that specifically, that it is the,
9 the named insured, the contractor, person who purchased the
10 contract is the only -- is, is the only person that can
11 bring a bad-faith claim.

12 In the *Kleckley* case, they talk, they discuss they're
13 entitled to benefits as an insured and there are remedies,
14 administrative remedies that can be taken if they don't
15 feel like they've been treated fairly. But they go on to
16 say our courts have never extended this remedy to non-named
17 insureds. In other ---

18 THE COURT: Who ---

19 MR. HELMLY: --- words, who's on the declarations
20 page, page.

21 THE COURT: The courts ---

22 MR. HELMLY: Who purchased the contract.

23 THE COURT: Courts in *Kleckley* you're saying? You're
24 saying the courts have never. Is that language from a
25 case?

1 MR. HELMLY: That language is directly from those two
2 cases that I just handed, handed up. Our courts have
3 never.

4 THE COURT: Let me see what that -- our court have
5 never language, where is that?

6 MR. HELMLY: I highlighted it, Judge.

7 THE COURT: It's highlighted, all right. Okay,
8 *Nichols:*

9 We recognize the tort for insurer's bad faith
10 refusal to pay first-party benefits allows a
11 first-party claim by the insured for bad faith in
12 processing claims and benefits due under a
13 mutually binding contract. This court and the
14 Court of Appeals have repeatedly denied actions
15 for bad faith refusal to pay claims to third
16 parties who are not named insureds. *Kleckley's*
17 claim is in line with established South Carolina
18 precedent because she is a third party to the
19 insurance contract between Hardee's and
20 Northwestern.

21 All right. All right, are you all through arguing
22 this motion?

23 MR. LAKE: Your Honor, I think your, your language in
24 that still -- that's the premise of those cases. That's
25 the difference between this case and *Kleckley* is that

1 *Kleckley* in that case was a third party. She's not a third
2 party. She's an insured up under this particular contract
3 as a passenger pursuant to their agreement. So, both of
4 those cases he's listed, I think one of them addressed the
5 issue where insurance company may not have been aware of
6 the suit, and so judgment was entered, and so the insurance
7 company basically said they should only be allowed to pay
8 up to the limits amounts.

9 Again, in this particular case we're talking about an
10 insured, not a third party. So, I want to make the
11 distinction that *Kleckley* addresses the issue of third
12 party. She's not that in this particular case.

13 MR. HELMLY: Last point, Your Honor. That, that
14 argument has been sort of addressed in *Kleckley* as well as
15 the *Auto-Owners* case that I handed up. And, and they make
16 a distinction between somebody who is entitled as an
17 insured to receive benefits and someone who is a party
18 named insured to the contract. Named insured and insured
19 are distinct persons, and I will leave it at that.

20 MR. LAKE: Your Honor, if I just -- I hate to belabor
21 the one point again, but even if you look at *Kleckley*, and
22 it cites *Nichols* in there up under the analysis when it
23 talks about the -- you know, second paragraph. It says:
24 *Nichols* allowed the first-party claim by the insured. It
25 didn't go into that specific named insured. It says

1 insured. And I think that the court knew exactly what it
2 was indicating or stating by using that particular language
3 and she, therefore, qualifies as an insured in this
4 particular matter.

5 THE COURT: Well, the *Auto-Owners* claim involves
6 uninsured motorist benefits. All of these other cases
7 interestingly involve commercial liability policies. None
8 of them are auto accident cases, it appears. *Nichols*,
9 well, maybe *Nichols* is. Well, it's a car stolen, so it's a
10 different, different scenario.

11 So, you all have given me a lot of cases from the
12 1980s and 1990s. And *Kleckley* is 2000, and this
13 *Auto-Owners* involving the UIM benefits, is, is a more
14 recent case.

15 You know, policies are to be strictly construed
16 against the drafter of the policy. Based on the drafting
17 of this policy, I cannot conclude that as a matter of law
18 that the plaintiffs are not insureds because the language
19 of the policy clearly defines an insured to include a
20 person occupying the vehicle.

21 What page was that again? Page 9?

22 MR. LAKE: Yes, sir.

23 THE COURT: Insured means you, any family member,
24 or any other person listed as a driver.

25 That's A.

1 B: Any other person while occupying your covered
2 auto, provided they actually use it within the
3 permission of the named insured.

4 C: Any person entitled to recover damages for
5 bodily injuries covered under Part C of this
6 policy sustained by a person meeting the
7 definition of an insured person in 1.A and 1.B
8 above.

9 So, I'm not sure how this -- you know, these policies
10 tend to be uniform throughout the insurance industry. I
11 don't know where this particular one came from or if this
12 particular one is standard. But based on the language of
13 it, it appears that -- it certainly appears from this
14 perspective that the, in my view, that the plaintiff is not
15 -- defendant is not entitled to summary judgement. So, I
16 deny the motion for summary judgement.

17 MR. HELMLY: Thank you, Your Honor.

18 THE COURT: All right, what's next?

19 MR. LAKE: Your Honor, the plaintiffs did have a few
20 pretrial motions that I provided to the -- to the court,
21 and I'll hand those up to you. It's just really, I think,
22 we've got some voir dire, and I've got a motion in limine
23 that I'll hand up, and just kind of address some pretrial
24 issues, Your Honor.

25 THE COURT: I hate motions in limine. They don't ever

1 seem to mean anything. What is it that you want me limit?

2 MR. LAKE: Your Honor, just testimony outside of what
3 Mr. Fishbein testified to at his deposition. Mr. Fishbein
4 was listed as the 30(b)(6) witness for Lyndon.

5 THE COURT: All right.

6 MR. LAKE: So, all things related to Lyndon, he was
7 the person. So, when we took his deposition, a lot of
8 things he kept saying I don't know. He didn't know
9 anything about policies; he didn't know anything about
10 procedures. He didn't know a lot of things about a lot of
11 different things.

12 THE COURT: Is he a witness here today?

13 MR. LAKE: Correct, Your Honor. He's seated next to
14 Mr. Helmsly. So, I wanted to make sure he did not testify
15 to things outside of his deposition because I have not been
16 provided supplemental documents as such, and I don't know
17 whether he just went back now and has done some research
18 and talked to people and things of that sort. But at the
19 time we took his deposition in 2022, he didn't know a lot
20 of things. And so I just want to make sure he doesn't come
21 in and testify to things outside of that, scope of that
22 testimony.

23 THE COURT: All right. Response to that.

24 MR. HELMLY: Your Honor, Mr. Fishbein's a senior vice
25 president of claims for the company. His, his testimony

1 is, I think, relevant to, to the issues that will -- any
2 testimony that is relevant to the issues that are going to
3 be raised today. Obviously if, if Mr. Lake decides he
4 needs to be impeached on things he may have said
5 previously, I don't think he is confined to that testimony.
6 If there's a -- if it's a matter of recollection, you know,
7 there's not a -- it would be impossible for him to ---

8 THE COURT: Is there a rule that restricts a 39(b)(6)
9 witness to limit their testimony to the confines of a
10 deposition?

11 MR. HELMLY: Not, not that I'm aware of.

12 THE COURT: Mr. Lake.

13 MR. LAKE: Well, Your Honor, in this particular case,
14 they're up under -- Lyndon's up under an order of contempt.
15 They were held in contempt for not complying with discovery
16 and making things available. And so I think in lieu of
17 that contempt order, allowing him to testify to things
18 outside of his deposition testimony really would be a
19 violation ---

20 THE COURT: A contempt order saying what?

21 MR. LAKE: He did not comply with discovery process in
22 terms of providing documentation, in terms of, I think,
23 testimony as well. I'll leave it in the court's
24 discretion. I just -- I thought that that would be
25 something that we needed to kind of address and make sure

1 that he didn't ---

2 THE COURT: Well, I think objectionable items such as
3 that should be raised during the course of the trial.

4 All right, what else in limine?

5 MR. LAKE: Your Honor, I have -- I think I gave you my
6 only copy.

7 THE COURT: What's the defendant's motion about?

8 MR. HELMLY: Your Honor, merely that, that sort of
9 ties into a lot of what we've been discussing, precluding
10 experts from interpreting statute or policy language as
11 that's the province of the court. There's case law to
12 support that. So -- and, and not being aware of your
13 position on motions in limine, we can -- we can address
14 that as it comes or as they arise, Judge.

15 THE COURT: All right. Very good.

16 All right, objections the voir dire?

17 And do we have a list of jurors getting ready to come
18 in here?

19 MR. LAKE: Yes, Your Honor.

20 CLERK: Yes, Your Honor.

21 THE COURT: All right, voir dire, what's the issue
22 with these voir dires?

23 MR. LAKE: I don't have any issues. I don't know if
24 he has issues with mine or anything.

25 MR. HELMLY: Your Honor, I would just -- his voir dire

1 is fairly comprehensive, and I think most of it is
2 applicable. There are a few things. Number 13:

3 Do you feel you have any difficulty in awarding
4 compensatory and/or punitive damages if you
5 determine that the defendants were negligent in
6 this case?

7 And obviously mere negligence is not the standard for
8 punitive damages. So, I think that that's, that's a bit
9 misleading and perhaps be confused.

10 THE COURT: I'm not going to instruct the jury on
11 punitive damages because there is no instruction. That's
12 like just throwing out words for them. What is punitive
13 damages? I'd have to give them a jury charge on the
14 standard and the meaning and everything else. So, that, if
15 that applies, it will be instructed, given in the form of
16 an instruction and not a voir dire inquiry.

17 MR. HELMLY: And I -- the same kind of comments,
18 Judge, for 4 to 5. I think those are -- those are matters
19 of instruction for the jury with regard to what they are
20 required or entitled to consider under the law.

21 THE COURT: Do you believe there should be caps on
22 the amount of damages? Do you believe that you
23 could not consider substantial damages?

24 All right, Mr. Lake, what would the jury know about
25 caps on damages? What would that mean to them?

1 MR. LAKE: Which number again?

2 THE COURT: What are the caps on damages ---

3 MR. HELMLY: 4.

4 THE COURT: --- in this case?

5 MR. HELMLY: 4 and 5.

6 THE COURT: Does any of that apply to this case?

7 MR. LAKE: Well, Your Honor, it just goes to -- and I
8 think the court may have a better voir dire request. It's
9 just really kind of designed to find out whether there --
10 if there are such jurors that have concerns about awarding
11 large sums of damages and things of that sort. Jurors come
12 into these cases from different backgrounds. A lot of them
13 may not necessarily understand money or appreciate certain
14 types of money. So, it's really more to weed out someone
15 that may have some issues. If they thought bad faith
16 applied in this particular case -- it's not someone that's
17 saying, okay, well, you know, we're not going to award them
18 certain things, or we don't believe they should get a
19 certain amount of money and things of that sort. But I'll
20 be okay if the court, it if maybe reworded that particular
21 request.

22 MR. HELMLY: Your Honor, I think it's somewhat of a
23 subtle attempt to signal to the, the jury panel these are
24 big damages, you know, and try to plant that seed. And I
25 just take that damages are a matter of law and would be

1 properly provided for in the -- in the jury instruction.

2 THE COURT: I think a jury would have a hard enough
3 time grasping the facts of this case rather than trying to
4 get them committed to what they consider to be appropriate
5 damages.

6 MR. LAKE: Yes, sir.

7 THE COURT: I'm going to stay away from those two.

8 MR. LAKE: Yes, sir.

9 THE COURT: All right, what else?

10 MR. LAKE: I don't think there's anything else from
11 me.

12 THE COURT: Okay.

13 MR. HELMLY: Nothing further, Judge.

14 THE COURT: All right. We'll take five minutes and
15 get the jury in here. Do you all have the list to look at
16 already?

17 MR. LAKE: Yes, sir.

18 MR. HELMLY: Yes, sir.

19 THE COURT: Oh, okay. You ready to strike them?

20 MR. LAKE: Yes, sir.

21 MR. HELMLY: Yes, sir.

22 THE COURT: All right. So, we'll take five minutes
23 and then we'll press on.

24 (OFF THE RECORD.)

25 (LETTER MARKED AS PLAINTIFF'S EXHIBIT NUMBER 1 FOR

1 IDENTIFICATION.)

2 (ORDER OF JUDGMENT MARKED AS PLAINTIFF'S EXHIBIT
3 NUMBER 2 FOR IDENTIFICATION.)

4 (TRANSCRIPT OF HEARING MARKED AS PLAINTIFF'S EXHIBIT
5 NUMBER 3 FOR IDENTIFICATION.)

6 (TRANSCRIPT OF HEARING MARKED AS PLAINTIFF'S EXHIBIT
7 NUMBER 4 FOR IDENTIFICATION.)

8 (DEFENDANT'S ANSWERS MARKED AS PLAINTIFF'S EXHIBIT
9 NUMBER 5 FOR IDENTIFICATION.)

10 (MARKET EVALUATION REPORT MARKED AS PLAINTIFF'S
11 EXHIBIT NUMBER 6 FOR IDENTIFICATION.)

12 (ORDER MARKED AS PLAINTIFF'S EXHIBIT NUMBER 7 FOR
13 IDENTIFICATION.)

14 (DEFENDANT'S REQUEST TO ADMIT MARKED AS PLAINTIFF'S
15 EXHIBIT NUMBER 8 FOR IDENTIFICATION.)

16 (LETTER WITH OFFER MARKED AS PLAINTIFF'S EXHIBIT
17 NUMBER 9 FOR IDENTIFICATION.)

18 (JUDGMENT MARKED AS PLAINTIFF'S EXHIBIT NUMBER 10 FOR
19 IDENTIFICATION.)

20 (AFFIDAVIT MARKED AS PLAINTIFF'S EXHIBIT NUMBER 11 FOR
21 IDENTIFICATION.)

22 (AFFIDAVIT MARKED AS PLAINTIFF'S EXHIBIT NUMBER 12 FOR
23 IDENTIFICATION.)

24 (RENEWAL DECLARATION MARKED AS PLAINTIFF'S EXHIBIT
25 NUMBER 13 FOR IDENTIFICATION.)

1 (CLAIM NOTES MARKED AS PLAINTIFF'S EXHIBIT NUMBER 14
2 FOR IDENTIFICATION.)

3 (AGREEMENT MARKED AS PLAINTIFF'S EXHIBIT NUMBER 15 FOR
4 IDENTIFICATION.)

5 (POLICY OF FEE CONSENT MARKED AS PLAINTIFF'S EXHIBIT
6 NUMBER 16 FOR IDENTIFICATION.)

7 (SUBMISSION CONFIRMATION MARKED AS PLAINTIFF'S EXHIBIT
8 NUMBER 17 FOR IDENTIFICATION.)

9 (PAYMENT MARKED AS PLAINTIFF'S EXHIBIT NUMBER 18 FOR
10 IDENTIFICATION.)

11 (NEW DECLARATION MARKED AS PLAINTIFF'S EXHIBIT NUMBER
12 19 FOR IDENTIFICATION.)

13 (APPLICATION MARKED AS PLAINTIFF'S EXHIBIT NUMBER 20
14 FOR IDENTIFICATION.)

15 THE COURT: Good morning. Ladies and gentlemen, I am
16 Clifton Newman and I am presiding in this courtroom, and
17 you all have been sent up here for us to do jury selection
18 and jury trial. I'll have the lawyers introduce
19 themselves. I can tell you it's a case, a lawsuit against
20 -- by the two plaintiffs there, Tasha Jones and Shaniqua
21 Thompson.

22 Turn around and stand up so they see who y'all are.

23 *Tasha Jones and Shaniqua Thompson vs. v. Lyndon*
24 *Southern Insurance Company*, and the parties are represented
25 by counsel.

1 Mr. Lake, if you'll introduce yourself to the jury and
2 anyone else you want introduce.

3 MR. LAKE: Yes. How you doing? Good morning. My
4 name is Dietrich Lake. I represent the plaintiffs in this
5 particular case, who are seated to my left. Here I've got
6 my paralegal assisting me, Caroline. I have several
7 witnesses that are going to be here.

8 THE COURT: Okay, if Ms. Caroline will stand.

9 MR. LAKE: Caroline, she's my paralegal. I've also
10 got several witnesses that are here today that will be
11 testifying on our behalf. We have Professor Constance
12 Anastopoulo, and we've got Stanley Lipshultz, who's also to
13 my right.

14 THE COURT: All right. For the defense.

15 MR. HELMLY: Good morning. Thank y'all for being
16 here. My name is Randy Helmlly. I represent Lyndon
17 Southern Insurance Company. Seated to my left is Mr.
18 Howard Fishbein. He is the senior vice president for
19 claims for the insurance company. Thank y'all for being
20 here. Look forward to spending some time with you.
21 Hopefully not too much time, but thank you for being here.
22 We appreciate your service.

23 THE COURT: And more specifically, this case revolves
24 around an automobile accident in which plaintiffs claimed
25 to suffer injuries and the insurance on the vehicle was

1 through the defendant, Lyndon Southern Insurance Company.
2 A dispute has arisen concerning what transpired beyond that
3 wreck itself, and the lawyers will explain it to you in
4 much greater detail during their opening statements, but
5 it's resulted in a lawsuit, and you all have been sent here
6 for us to select the jury. And I have a number of
7 questions to ask you so that the lawyers will have some
8 information on you so that will help them figure out who
9 they want on this jury, or maybe who they don't want on
10 this jury.

11 (WHEREUPON, JURY VOIR DIRE IS CONDUCTED, FOLLOWED BY
12 JURY SELECTION.)

13 THE COURT: Ladies and gentlemen, those of you who
14 were not selected, thank you very much, and I think they
15 want you to go back downstairs to the assembly room. Thank
16 you very much.

17 (WHEREUPON, THE JURY PANEL EXITS.)

18 THE COURT: All right, ladies and gentlemen, if you
19 all will stand to be sworn.

20 (WHEREUPON, THE JURY IS SWORN.)

21 THE COURT: Ladies and gentlemen, you will showed up
22 this morning and were sent here for jury selection. You
23 went through the process of me asking you questions,
24 questions requested by the lawyers, and you have now been
25 selected by the lawyers to give -- be the jury in this

1 case. And you just took an oath to well and duly try this
2 case and render a true verdict according to the law and
3 according to the evidence so help you God. As long as you
4 hold true to that oath you just took, at the end of the
5 case no one will have any right to criticize the verdict
6 that you render.

7 Now as jurors, it is your -- it will be your
8 responsibility to decide the facts of this case.
9 Necessarily, it will be your responsibility to weigh the
10 and evaluate the credibility of the witnesses who testify
11 and of the evidence offered during the trial.

12 It's my job to instruct you the law that applies to
13 this case, and as the judge, I am the sole judge of the
14 law, and you must accept it as correct, the law as I state
15 it to you at this time during the trial and in greater
16 detail at the end of the trial.

17 Now, this case is a case that was brought by the
18 plaintiff against the defendant. The plaintiff, having
19 brought the case, has the burden of proof, and that burden
20 of proof is by the preponderance or greater weight of the
21 evidence. As the case begins, if you'll imagine the scales
22 of justice are evenly balanced, and if at the end of the
23 case the scales remain evenly balanced or tip ever so
24 slightly in the defendant's favor, then the plaintiff will
25 have failed to meet their burden of proof. If, on the

1 other hand, should the scales tip ever so slightly in favor
2 of the plaintiff, the plaintiff will have met their burden
3 of proof and will be entitled to a verdict for any damages
4 that they have proven by a preponderance or a greater
5 weight of the evidence.

6 And I look forward to working with you all in this
7 case and keep it moving so we don't waste much time.

8 We do, however, require that you do not discuss the
9 case at all. Once you have been picked on the jury and
10 you've taken an oath to decide the case based on the
11 evidence, which will be exhibits and testimony and based on
12 the law, you are to listen to the entire case, listen to
13 the instructions of law, and then at that time you will be
14 asked to go back and deliberate. That will be when you
15 first discuss the case, and it will be among the twelve of
16 you who have listened to the same thing.

17 So, you know, it would be totally improper to leave
18 here and decide to discuss the case with somebody not on
19 the jury to get their opinion. It would be totally
20 improper for you to try to do any research to figure out
21 something else. The entire case will be presented here in
22 the courtroom, and you will deliberate with the people who
23 heard the same thing. So, we need you to pay attention.

24 If at any point in time you need a break, let me know
25 and we'll take a break. I don't want to wear anybody out,

1 but we need to get this case moving.

2 Later in the process, I will appoint one of you to
3 serve as the foreperson of the jury, and that person will
4 be the spokesperson for the jury and will have the
5 responsibility of presiding over jury deliberations and of
6 completing the verdict form representing the unanimous
7 verdict of the jury when we reach that point.

8 And I always pick the perfect person to serve as
9 foreperson. And so I don't know who that is right now, but
10 when I choose one of you to be the foreperson, it will be
11 the perfect person to be the foreperson of this jury. So,
12 we look forward to this process.

13 We'll start now with opening statements, first by the
14 plaintiff.

15 MR. LAKE: Thank you, Your Honor. Please the court?

16 (A PAUSE.)

17 MR. LAKE: This is pretty old. I hope it doesn't fall
18 on me.

19 Good morning again, ladies and gentlemen of the jury.
20 My name is Dietrich Lake. I represent the plaintiffs in
21 this particular case. As you get a little bit older, you
22 start having to need a little bit of aids to kind of help
23 me go through these things because I can't remember things
24 the way I used to.

25 But a couple of things stood out to me about this

1 particular case that I think is important for you all to
2 know. These are some of the facts you are going to hear in
3 this particular case. I want to go back to when this event
4 first happened.

5 This was an automobile accident that happened back on
6 June the 15, 2017. Here we are today. It's 6/21/23. So,
7 it's been about 2197 days since this accident. You ask
8 yourself, ladies and gentlemen of the jury, is that
9 reasonable for my clients in this particular case to not
10 have been compensated for their damages, for the injuries?
11 This was an accident where they were actually stopped at a
12 stop sign. There's going to be no dispute. He's not even
13 going to dispute what happened; he's not going to dispute
14 the majority of the things.

15 They're at a stop sign when they get slammed in the
16 rear by a John Doe driver essentially. The person hit them
17 in the rear, fled the scene of the accident, got away,
18 never been captured. Police were called. Everything that
19 they were required to do they did.

20 They were injured in the automobile accident. They
21 were transported from the scene by ambulance. They were
22 seen at the hospital. They end up getting some treatment
23 after this accident, and things of that sort. And what
24 you're going to find out is roughly they had medical
25 expenses of about for -- I'm going to do this for you,

1 for...

2 (A PAUSE.)

3 MR. LAKE: Ms. Jones has -- roughly has medical
4 expenses of about \$9586. Ms. Thompson has about \$9780.
5 Car's a total loss. Property damage is paid, but what
6 you're going to find out, ladies and gentlemen of the jury,
7 it wasn't paid in full. They did not give them all of
8 their money connected to this property damage claim.

9 Car was a total loss. There was an uninsured motorist
10 claim, which meant essentially there is a \$200 deductible
11 in this particular case that will come off the top. But
12 instead of them taking \$200 off the top of it, they took
13 \$500, and they have never given her her money back even
14 though they knew that they took too much money. But it
15 didn't just stop at that particular stage right there.

16 We talked about the medical expenses that they've had.
17 I tell you Ms. Jones had roughly 9586.95. Ms. Thompson has
18 97 -- 9780.71. So, this is what her insurance company
19 does. They offer then without really any good reason, they
20 offered \$7500 for Ms. Jones. They just discounted her
21 medicals. They said you have to be responsible for
22 negotiating your medicals down, but this is the number
23 we're going to give you to resolve your claims. Ms.
24 Thompson, which is kind of strange, they gave Ms. Thompson
25 more than they gave their policy holder because with her

1 9780, she gets offered 86 -- \$8660.

2 Now mind you, we had -- you know, there is a process
3 by which when you -- and you'll hear about it -- when
4 you're trying to settle claims, it's a negotiation process
5 and, you know, we made an offer in this particular case,
6 and really at that point they had an opportunity to do a
7 couple of things. They could reject that offer, they could
8 counter that particular offer, but they didn't do that in
9 this particular case. Well, actually they did. This was
10 their offer and since that date back when the offer was
11 originally made, this has been the only offer that they
12 have ever made in this particular case.

13 But that's not why we're here because , because of
14 this particular incident, because of their position, which
15 we believe is unreasonable to offer someone less than the
16 medicals, we ended up suing her insurance company. And
17 they're allowed to do that in this particular case. So,
18 they start the process of filing suit, and when you file
19 suit, you actually have to give a person a copy of the
20 summons and complaint so they can be aware.

21 So, everything was proper. Everything was given to
22 Lyndon, but they don't answer. They do not answer the
23 summons and complaint at all. They get themselves in
24 default even though they actually have the documents, and
25 you're going to hear they had the records. They had an

1 opportunity to respond before the default, but they didn't.
2 They choose not to respond. So, they got held in default.
3 That means her own insurance company who she put on notice
4 of this particular event didn't respond at all.

5 But it doesn't just end at that particular stage. At
6 some point a couple of months later after already default
7 has been entered into, you have to have a actual damages
8 hearing where a judge such as Judge Newman will sit down
9 and actually listen to the parties, which is what happened
10 in this particular case, and award a certain amount of
11 damages.

12 Now, the first time this thing was scheduled January
13 30, 2019. Again I say 2019 is when we had the first
14 opportunity to talk to the judge about this particular
15 issue. And Mr. Helmsly came here and asked for a
16 continuance. Plaintiffs consented to that; we didn't mind.
17 We wanted to get this matter resolved, but the court
18 requires that when you come and show up, you have to put in
19 a notice of appearance. You have to actually file a
20 request for continuance in this particular matter, which
21 was not done.

22 So, when we come back months later on June the 6th of
23 2019, they're still not prepared. They're still not ready
24 to go. Mr. Helmsly is not even there at the hearing and
25 what happens is why we are here today.

1 My clients actually got up on a stand and told the
2 judge what happened to them, what they experienced, what
3 was their injuries, what was their pain and suffering. And
4 after hearing that testimony, the judge awarded \$50,000
5 apiece to both of them based upon what he heard.

6 Ladies and gentlemen of the jury, you're going to find
7 out that is conclusive as to what the value of their claim
8 is because a judge determined that. They had an
9 opportunity to appeal it, to file a motion to reconsider,
10 to do anything, but they did nothing, absolutely not one
11 single thing. And even after the clients requested that
12 they pay, nothing. No response at all to their demand
13 because it's a valid demand.

14 I would love to hear Mr. Helmsly say that that is not
15 a valid demand, but I guarantee you he won't say that. He
16 won't say it's not a valid judgment. I guarantee you he
17 will say that \$50,000 is a valid matter. What he wants to
18 come -- what he wants to complain about really is to say,
19 oh, well. You know what? That's exceeded our policy
20 limits. So? That's what the law allows. That's what the
21 law says. When you have an opportunity to resolve this
22 matter before you get to this point and you choose not to,
23 then you're not bound by the constrictions of the policy.

24 But they didn't care. That's what you're going to
25 find out in this particular case. There has been no

1 attempt to settle this matter. There has been no
2 counteroffer to their original \$7500.

3 And the most interesting thing -- we have Mr. Fishbein
4 here. I had an opportunity to take his deposition last
5 year, July 20, '22, because I wanted to know why. You
6 know, if you've got a judgment that happened back on June
7 the 19, 2019, when Judge Hood signed that document for
8 \$50,000 apiece, and up until today, that makes 100 -- 1462,
9 but when I took his deposition actually on July 20, I
10 wanted to know why Mr. Fishbein, the person who ultimately
11 decides what gets paid, what doesn't get paid, and things
12 of that sort as the vice president -- seems like everything
13 flows through him. I wanted to know why y'all hadn't paid
14 this amount, and unfortunately I had to find out the real
15 reason: because they don't care.

16 I know that sounds harsh when I say that but, you
17 know, when I asked him to tell me about the judgment itself
18 in 2022, he had just looked at the judgment for the very
19 first time. Three years after the judgment has been issued
20 is the first time that he even bothered to look at it
21 because he didn't care that these ladies were still waiting
22 on it. He didn't care that there were outstanding bills.

23 You're going to hear testimony from him -- we'll see
24 if he still remembers this right here -- but what he said,
25 well, it kind of struck me as odd. Well, it's not because

1 it's kind of in line with his testimony, is that this was
2 just another claim. I think he caught himself because he
3 realized how callus that sounded, but that's what he said.
4 This was just another claim.

5 So, when you're wanting to know why we are here today,
6 this is why we are here today because at a certain point,
7 there has to be a line. It has to be someone that actually
8 holds them accountable for their conduct. And when you
9 think about a breach of contract, what essentially you're
10 saying is there's a meeting of the minds between parties:
11 that they give you something in return for something else.
12 And when it comes to an automobile insurance policy, I
13 mean, it's, it's simple. You pay them and they cover a
14 loss. That's what the expectation is.

15 If I have -- if I get hurt or if someone else gets
16 hurt, you're going to pay whatever that damage is, you
17 know. You're going to try to resolve it, try to resolve it
18 within the limits of the policies because that's the
19 reasonable thing to do.

20 You're going to hear that word a lot throughout this
21 testimony, reasonable, and whether some of the things that
22 Lyndon did was reasonable. You're going to hear from two
23 experts in this particular case: Professor Anastopoulo, Mr.
24 Lipshultz. Both are going to be here, and they're going to
25 examine not only the policy but some of the conduct, some

1 of the actions of Lyndon to tell you that a lot of the
2 things they did weren't reasonable at all. Didn't follow
3 standard.

4 You're not going to see -- here's, here's now you know
5 they never had any real intent to pay her, pay their
6 clients after January 2019, actually even before we even
7 get the damages amount. There is no other record of
8 anything else being on this case, not one thing. When I
9 asked him who was the adjustor on the case now, he didn't
10 know.

11 You're going to have to ask yourself. Is it
12 reasonable for someone who handles these things, and
13 someone to be out \$50,000, is that reasonable conduct from
14 an insurance company that you pay and that you have an
15 expectation, which both of them had the expectation that in
16 this accident, they would've been compensated for their
17 injuries and their pain and suffering.

18 Think about, look at these: 9886, 9586, 7500. Where's
19 the pain and suffering, ladies and gentlemen? Is that
20 reasonable? That's what you get to ask, that question. Is
21 that a reasonable -- what can they in theory do with this
22 right here because they can't even pay their medical
23 expenses with that, neither one of them.

24 Ask them to show you their offer. After suit was
25 filed, before we had a default hearing, before we had a

1 damages hearing, make them show you what offer that they
2 made to these clients to settle their case at any point.
3 They haven't, but the plaintiffs did.

4 We did attempt it before we even had the damages
5 hearing, the night before the damages hearing because we'd
6 already gotten them in default because when you're in
7 default, you ain't got really much room.

8 So, they in theory had \$50,000 in bodily injury
9 coverage, another 75 -- I'm sorry another \$25,000 in
10 property damage coverage that we already told you they
11 didn't pay her all her money, which again is not
12 reasonable. We actually think that's fraudulent conduct.
13 Ask them why they kept that extra \$300 that they were
14 entitled to. Let's have -- I want to hear an explanation
15 from Mr. Fishbein as to where that \$300 is today and why it
16 was never given to her because I'm certainly going to ask
17 him about it. Listen to his answer. Listen to his
18 response about what he did with that money.

19 The plaintiffs in this particular case bear the
20 burden, and I think the judge has kind of said what it is.
21 It's the greater weight of the evidence, preponderance of
22 the evidence. That means if we tip the scales oh so in our
23 favor, then my clients are entitled to recover not only the
24 entire \$50,000, but they're also entitled to recover the
25 interest on that 50,000, okay? So, we're not just here for

1 \$50,000. We're here for the interest on that \$50,000 as
2 well, and I think by our calculation it might be about
3 another 25,000 because they ain't paid nothing. They
4 didn't even pay it into the court. They have done nothing,
5 absolutely nothing on this particular case. That's what
6 the evidence is going to show. Again, reasonable behavior
7 by an insurance company that you select.

8 So as we talk about that, your role as a jury is
9 really the factfinders, to kind of look at all the evidence
10 and kind of figure out exactly whether the plaintiffs have
11 met their burden. We think we will be able to meet that
12 particular burden, but the biggest job you'll have today is
13 really kind of determining what amount of damages. Not
14 only that \$50,000, but we're also asking you to punish
15 them, to issue punitive damages to deter them from ever
16 doing this again to anybody.

17 I was talking to Mr. Lipshultz the other day, and when
18 we were talking, it was actually June the 15, 2023. It was
19 the same day. He asked me did you realize it? I don't
20 think I realized how long this case has been around.

21 They're going to come up here and try to tell you,
22 well, we offered to settle within the policy limits. Ask
23 them to show you. Tell them to show you in writing where
24 that was offered. They had every opportunity to resolve
25 this case, and they never did. You can't decide we're not

1 going to show up, we don't have to show up, and then don't
2 like the results. That's what the expert will tell you.
3 You can't complain about the results if you don't take the
4 time to bother to show up for court. That's what they did.

5 Oh, but they, again, they did show up to court. They
6 just weren't prepared to go forward. The judge didn't let
7 them because they had never followed the orders that the
8 judge had given them. And you're going to find throughout
9 this entire case that's a common theme: they do not follow
10 orders. And when you want to get the attention to someone
11 because, I mean, apparently \$50,000 is nothing to them. An
12 25,000 in interest apparently is nothing to them because
13 they were here in South Carolina. Now they're gone, so you
14 have to give a verdict that's going to reach down to
15 Florida where they're at to get their attention, to get Mr.
16 Fishbein's attention because apparently he just really kind
17 of got involved in this case last year.

18 Ladies and gentlemen of the jury, again my name is
19 Dietrich Lake. I look forward to presenting this case to
20 you. That's it.

21 THE COURT: For the defense.

22 MR. HELMLY: Ladies and gentlemen of the jury, again my
23 name is Randy Helmlly. I represent Lyndon Southern
24 Insurance Company.

25 That sounds awful. Everything he just said sounds

1 awful, and there's only one problem: the law and contract.
2 He mentioned in his opening meeting of the minds. That
3 took place. Took place with Ms. Jones and her insurance
4 agent when she purchased an insurance policy that provided
5 her certain amounts of coverage for various types of
6 accidents. That coverage -- and you're going to hear a lot
7 of things about insurance coverage and insurance policies.
8 I've been doing this for a long time and it, it --
9 sometimes it gets confusing.

10 The amounts of coverage she purchased were \$25,000 for
11 an accident per person and \$50,000 for an accident for the
12 total amount of people involved. In other words, the most
13 any one person can get in the accident would be \$25,000.
14 The most that any total group of people can get would be
15 \$50,000.

16 There were three people in this car in this accident,
17 and he's right. Accident happened. There's no denial that
18 Mr. John Doe, whomever he is, was at fault for the
19 accident. Don't deny that they went and got medical
20 treatment. There was a third person in the car. His
21 medical bills were similar. He accepted the offer from the
22 insurance company, settled his claim. Happily paid it.
23 Went on about his business.

24 But here's the thing. When you purchase a contract
25 for insurance, that meeting of the mind says I'm going to

1 pay you a certain amount for a premium, and in exchange
2 we're going to provide you certain amounts of coverage. No
3 more than that coverage because that's all that you paid
4 for. You have the option to purchase as much coverage as
5 you want, millions of dollars. Obviously it's going to
6 cost you more, but you have that option. So, there's an
7 agreement. There's a give and take. You agree that I'll
8 pay this much in a premium; I get this much in coverage.

9 Plaintiffs, through Mr. Lake, when they sent their
10 demand in to the insurance carrier, to Lyndon, back in
11 2017, they said don't really care what we contracted for.
12 We each want \$65,000. We each want \$65,000. It's a
13 two-way street; it's a two-way street. You can't demand
14 more than what you've paid for, and you're going to find
15 that's what they demanded at every turn.

16 He mentioned a damages hearing. Well, the night
17 before that damages hearing, they were informed here is the
18 coverage remaining on this policy. The third claimant
19 received roughly \$8000. There's \$42,000 remaining of
20 available limits. That's what they contracted for. That
21 what -- well, I say they. That's what Ms. Jones contracted
22 for; that's what she purchased. That's the agreement that
23 she made. And prior to the damages hearing, they said we
24 still want \$30,000 apiece.

25 Insurance company's not obligated to pay more than

1 what they've contracted for. This is not a matter of being
2 cruel and harsh and inconsiderate. Yes, they offered --
3 they offered money early on based on their evaluation of
4 the medicals. They got the medical records, looked it,
5 said we don't believe that's reasonable treatment under the
6 circumstances. They're -- that's -- they're entitled to do
7 that, but still at every turn they asked for more than what
8 they paid for. Asked more than what they paid for.

9 Mr. Lake has tried to paint the insurance carrier's
10 conduct as completely and entirely unreasonable. He's
11 glossed over the law when it comes to what an insurance
12 carrier in these situations is required to do when it comes
13 to the filing of a lawsuit. They have laws in South
14 Carolina. They got statutes and they spell out what an
15 insurance carrier has to do, and those laws don't require
16 them to participate in that lawsuit. They're allowed to
17 rely on the contract that was made between Ms. Jones and
18 the insurance company. So, while lots of time has passed
19 since this accident took place, they bear some
20 responsibility as well. They bear some responsibility as
21 well because they asked for more than what they paid for.

22 Imagine you've hired an employee, and you've told that
23 employee and y'all have agreed that you're going to get
24 paid \$500 a week and at the end of that week, the employee
25 comes to you and says nope. I want \$5000, and you say

1 that's not what we agreed to. They say, well, too bad.
2 We're going to go sue you. That's essentially what
3 happened here; that's what happened here.

4 And, yes, it's taken a long time, but it's a two-way
5 street. It's a two-way street. Insurance carrier has
6 responsibilities, things that they should do, but so do the
7 plaintiffs. The plaintiffs have a responsibility, an
8 obligation to adhere to the terms of the contract that Ms.
9 Jones and Lyndon Southern agreed to. And so I want you to
10 keep that in mind throughout this trial. We've never taken
11 the position that they're not entitled to something.

12 You'll hear this in the trial. There will be evidence
13 presented. Somebody will probably read a statute, read a
14 section of the policy. It's riveting, riveting stuff, I
15 tell you, reading insurance policies, but they say what
16 they say. They say what they say, and they say in this
17 situation, in this situation we will pay for damages that
18 you're legally entitled to recover up to, up to the
19 coverage limits of the policy.

20 South Carolina statute says an insurance carrier has
21 an obligation to pay in a situation like this when you're
22 injured by an uninsured motorist and you are seeking
23 coverage. An insurance carrier in this situation, Lyndon
24 Southern, is required to pay damages that you're legally
25 entitled to recover up to the policy limits, within the

1 policy limits. And that's what the central issue is.

2 They believe and have believed since day one that, for
3 whatever reason, they don't have to adhere to the terms of
4 the contract. They're here claiming that Lyndon Southern
5 hasn't adhered to the terms of the contract. Well, neither
6 have they. They've asked for more than what was paid for.
7 Keep that in mind throughout this entire trial. They've
8 asked for more than what they've paid for.

9 Mr. Fishbein, yeah, he works for Lyndon Southern
10 Insurance. And, yes, he is in charge of claims. They're a
11 big company; they have lots of claims. His, his not
12 knowing who Ms. Jones and who Ms. Thompson are is, is not
13 something to hold against him. It's thousands of claims,
14 and so that's not -- it's not that he doesn't care. It's
15 not that Lyndon Southern doesn't care, but in every
16 business, in every endeavor, in everything that's going on
17 around us, if you agrees to something, you got to stick to
18 it. You can't just decide that you want more than what you
19 pay for.

20 Ms. Jones and Ms. Thompson, yea, they're entitled to
21 something. They are. They always have been. They've
22 always been -- they, they always have been entitled to
23 something, but they never, they've answer at any turn
24 offered Lyndon Southern the opportunity to settle this
25 claim within the limits of their policy. Every demand

1 they've ever made has been far and above what they
2 contracted for.

3 So, that's why we're here. That's why we're here.
4 It's not because we don't care. It's not because we don't
5 think they're entitled to something. It's because at every
6 turn, they've asked for more than what they paid for.

7 Going to be a lot of evidence. It's not going to be
8 the most exciting stuff in the world, but I ask you to pay
9 attention. Listen to the witnesses. Look at the words in
10 the policy and the statute. Listen to the language in
11 there. Listen to what they contracted for. Listen to what
12 they've agreed to. And at the end, while I think you'll
13 find that they are entitled to policy limits, Lyndon
14 Southern was completely reasonable in rejecting their
15 offers for amounts that far exceeded what they contracted
16 for.

17 So, thanks for your attention. Thanks for being here.
18 I look forward to spending some time with you the next day,
19 day and a half. Thank you very much.

20 THE COURT: Well, let's see. It's 12:30. First
21 witness.

22 MR. LAKE: Thank you, Your Honor. Plaintiff calls
23 Tasha Jones.

24 TASHA JONES, BEING DULY SWORN,
25 TESTIFIES AS FOLLOWS:

1 CLERK: Would you please state your full name for the
2 record?

3 WITNESS: Tasha. Do I need my middle name? Tasha
4 Jones.

5 CLERK: You may be seated.

6 WITNESS: Thank you.

7 DIRECT EXAMINATION BY MR. LAKE:

8 Q. Ms. Jones, how are you doing today?

9 A. I'm good and you?

10 Q. Fine. I'm going to ask you a quick question before we
11 get started. How much of that legally entitled money that
12 you recovered -- were you able to recover up under the
13 policy limit, how much of that have you received?

14 A. Nothing.

15 Q. So, even that little amount that he's saying that you
16 were entitled to you, you have got not one single penny.

17 A. No, I haven't ever gotten a offer for it.

18 Q. Can you speak into that?

19 A. Can you hear me?

20 (A PAUSE.)

21 Q. In seven years -- or six years, I'm sorry, other than
22 your MedPay benefits of \$1000, you haven't got anything,
23 correct?

24 A. No.

25 Q. And for the jury, could you state your, your full

1 name?

2 A. Tasha Jones.

3 Q. And you stay here in Columbia.

4 A. Yes.

5 Q. And how long you been living here in Columbia?

6 A. All of my life. I've pretty much lived in the
7 Columbia area.

8 Q. And with this particular vehicle, who was your
9 insurance agent?

10 A. SafeChoice.

11 Q. Okay, and where is SafeChoice located?

12 A. SafeChoice is -- Safe -- SafeChoice is located in
13 Lexington.

14 Q. Okay, and where did you reside at the time?

15 A. I resided in Richland County.

16 Q. And did you conduct business with -- was your -- was
17 your car insured in Richland County?

18 A. Yes, it was.

19 Q. And did you conduct business with SafeChoice from
20 Richland County?

21 A. Yes.

22 Q. How did you do that?

23 A. I called my payments in for my insurance.

24 Q. Okay, and what vehicle did you have at the time of
25 this accident?

1 A. You said what vehicle?

2 Q. Yes.

3 A. I had a Kia Sedona van.

4 Q. And how long had you been insured with SafeChoice
5 before this accident?

6 A. Before the particular accident, I had been with them,
7 I believe, for, like, a year.

8 Q. Okay, and you never had an injury claim with them
9 before ---

10 A. No.

11 Q. --- correct? Let me get certain things marked, some
12 photographs.

13 (A PAUSE.)

14 Q. And while we're waiting to have -- sorry. I forgot.

15 (A PAUSE.)

16 (PHOTOGRAPHS INDIVIDUALLY MARKED AS PLAINTIFFS'
17 EXHIBIT NUMBERS 21, 22, 23, 24, 25 FOR IDENTIFICATION.)

18 Q. And let me show you these particular photographs and
19 ask you. Do you recognize those photographs?

20 A. Yes. These are my vehicle after the accident.

21 Q. And does it a fairly and accurately depict the damages
22 you have to your vehicle at the time?

23 A. Yes.

24 Q. After the accident?

25 A. Yes.

1 MR. LAKE: Your Honor, at this time the plaintiffs
2 would move Plaintiffs' Exhibit Numbers 21 through 25 into
3 evidence.

4 MR. HELMLY: No objection.

5 THE COURT: They're admitted.

6 MR. LAKE: Permission to publish to the jury? Okay to
7 publish?

8 THE COURT: Anything that's in evidence.

9 (PHOTOGRAPHS INDIVIDUALLY MARKED INTO EVIDENCE AS
10 PLAINTIFFS' EXHIBIT NUMBERS 21, 22, 23, 24, 25.)

11 Q. And just briefly kind of tell me what happened with
12 this accident.

13 A. So, we were at a stop sign and while we were at a stop
14 sign, a car hit us from behind. I called the police
15 whenever I was hit, and the ambulance and everybody came to
16 the scene, and that's when they let me know that the car --
17 the person that was in the car was no longer there.

18 Q. And so you say we. Who is we?

19 A. Me, Ms. Thompson, and there was another individual
20 that was in the vehicle with us.

21 Q. And what is the name of that individual?

22 A. Ernest Mack.

23 Q. Was everybody in that accident injured?

24 A. Yes.

25 Q. Okay. Was everybody transported from the scene?

1 A. Yes.

2 Q. And as a result of your injuries, what did you do next
3 after that?

4 A. I ended up having to go to the hospital, as well as
5 through physical therapy for my back.

6 Q. And your back was injured in this automobile accident?

7 A. Yes.

8 Q. And who was your insurance carrier at the time?

9 A. Lyndon.

10 Q. I want to show you a couple of documents so that you
11 can kind of take a look at. I want to show you what's been
12 marked as Plaintiffs' Exhibit Number 19 and 20. Can you
13 kind of briefly go through that? Can you identify what
14 both of these documents are?

15 A. This is my application for my insurance and also the
16 policy.

17 Q. And is that, in fact, the information regarding your
18 case?

19 A. Yes.

20 Q. Okay.

21 MR. LAKE: Your Honor, at this time we'd move both
22 exhibits into evidence.

23 THE COURT: Any objection?

24 MR. HELMLY: What document is this?

25 MR. LAKE: This would be 19 and 20?

1 MR. HELMLY: What's the?

2 MR. LAKE: I'm sorry. I apologize.

3 (COUNSELORS CONFER.)

4 MR. HELMLY: No objection.

5 THE COURT: It's admitted.

6 MR. LAKE: Thank you, Your Honor.

7 (NEW DECLARATION MARKED INTO EVIDENCE AS PLAINTIFF'S
8 EXHIBIT NUMBER 19.)

9 (APPLICATION MARKED INTO EVIDENCE AS PLAINTIFF'S
10 EXHIBIT NUMBER 20.)

11 Q. I want to go over a couple of things with you
12 regarding this dec page. More specifically, who are the
13 parties to this particular agreement in terms of the
14 insurance company, agent, things of that sort?

15 A. Me and Lyndon.

16 Q. Okay.

17 A. And SafeChoice is also listed here.

18 Q. And is it also -- does that document tell you exactly
19 what your coverage is?

20 A. Yes, it does.

21 Q. And what does it say as it relates to your coverage
22 that was on that particular vehicle?

23 A. So, for my vehicle it says 25,000.

24 Q. \$25,000 for property damage, correct?

25 A. Uh-huh.

1 Q. And am I correct it also reads 25,000 per person for
2 bodily injury?

3 A. Yes. Correct.

4 Q. And then up to \$50,000 total.

5 A. Correct.

6 Q. So, you're not disputing that. I want to make sure
7 we're, we're correct. We're not disputing that's your
8 policy.

9 A. Yes.

10 Q. And as it relates to your uninsured motorist coverage,
11 what, what was your deductible for your uninsured motorist
12 coverage?

13 A. My deductible?

14 Q. On the other page.

15 A. \$200.

16 Q. So, \$200 was your deductible at that particular time?

17 A. Yes.

18 Q. When did you become aware that you had not received
19 all of your deductible?

20 A. This year.

21 Q. Did you authorize Lyndon to keep your other \$300?

22 A. No.

23 Q. Did you give them consent to keep your other \$300?

24 A. No.

25 Q. Did they, in fact, even ever disclose to you that they

1 had kept an extra \$300 out of your deductible?

2 A. No.

3 Q. And so you received a lesser claim just based upon --
4 a lesser amount based upon their not giving you all of your
5 deductible?

6 A. Yes. Correct.

7 Q. Now, I know we were talking about your medical
8 expenses that you had. I think I gave a number. Was that
9 number correct in terms of how much your medical bills were
10 worth?

11 A. Yes.

12 Q. Are those medical bills still outstanding?

13 A. Yes.

14 Q. All these six years?

15 A. Yes.

16 Q. Has the outstanding medical expenses, what kind of
17 issues has it created for you?

18 A. It creates a stress and outstanding bills. I am a
19 single parent, so all my money counts, and I just feel like
20 I was treated very unfairly.

21 Q. And so you say you were treated unfairly in what way?

22 A. They couldn't -- they didn't even give me all of my
23 money pertaining to the property damage. They literally
24 took \$300 out of my children's mouth. At that point, they
25 broke their own contract.

1 Q. And do you remember what you had been paying to have
2 that insurance?

3 A. I believe when I started out, I was paying, like,
4 \$400, and then it might have dropped down some.

5 Q. Okay. Now, I'm showing in this particular document
6 that's been marked into evidence Plaintiffs' Exhibit Number
7 20. Your payment had been \$453.60.

8 A. Yes.

9 Q. And so at the time of this accident, you did have
10 coverage at that particular moment, correct?

11 A. Yes. Correct.

12 Q. I know you said they took money out of your kids'
13 mouths and things of that sort. What else could you have
14 done with that \$300?

15 A. Just as far as I could have been, like, buying food,
16 clothes, different stuff that I have expenses on for myself
17 as well as for my children, and just, you know, having to
18 -- even having to come here, I'm literally missing work. I
19 missing work. That's more money that I have to lose out on
20 coming here.

21 Q. How many times have you had to come to the courthouse?

22 A. This is probably, like, the fourth or fifth time
23 because the first we had to do the continuance, and then I
24 had to come back after that for another one when he didn't
25 even show up. He was at a fundraiser.

1 WITNESS: Like, you asked for a continuance so that
2 you could get prepared, and you sent somebody else, and you
3 were at a fundraiser. Like, really?

4 Q. And so I'm assuming that you're saying -- where are
5 you working at now?

6 A. Right now I do work from home with Cigna Insurance.

7 Q. And so how long have you worked for Cigna?

8 A. I just start with Cigna in November.

9 Q. And so you're missing time from working at Cigna?

10 A. Yes.

11 Q. Are you missing compensation?

12 A. Yes.

13 Q. And I know we talked -- testified that you at some
14 point had to, you know, go to a hearing, and you said it
15 was a continuance. Would that be the one that happened
16 back in January of 2019?

17 A. Yes.

18 Q. Now, I want to make sure I'm correct. Your vehicle
19 was a -- what was it? Was it repairable?

20 A. No.

21 Q. Did you end up having to buy a vehicle ---

22 A. Yes.

23 Q. --- after that? How were you able to pay for that?

24 A. It actually took me a little while to actually get
25 another vehicle because the money that I got back from them

1 wasn't really enough for me to even purchase a vehicle.

2 So, that's another thing like that other \$300 could have
3 also went toward me having another vehicle.

4 Q. What was your understanding when you entered into this
5 contract with Lyndon as to what they owed you in terms of
6 duty?

7 A. Basically if I'm in a accident or anything, that
8 everything would be covered. Like, to me that's the point
9 of having full coverage, not for you to send me something
10 saying that you're not even going to pay for my full
11 medical bills.

12 Q. Did you ever receive any explanation as to why they
13 never offered to pay your full medical bills?

14 A. No.

15 Q. Have you ever, other than that offer that they made in
16 your particular case, have you seen any other offers?

17 A. No.

18 Q. And your -- what is your understanding as to whether
19 you communicated any offers to them prior to the damages
20 hearing?

21 A. So from my understanding, offers were sent for us to
22 try to start a negotiation, but they never really
23 negotiated. The only thing that they ever sent was the
24 amount for less than the medical bills.

25 Q. I want to make sure this is...

1 (COUNSELORS CONFER.)

2 Q. Let me show you what's been marked as Plaintiffs'
3 Exhibit Number 9. Do you recognize that to be the offer
4 that was made to you?

5 A. Yes.

6 Q. And what's the date of that particular offer?

7 A. This was October the 31st of 2017.

8 Q. Have you ever seen any other letters with an offer to
9 you?

10 A. No.

11 Q. And what was that amount they offered you
12 specifically?

13 A. 7500.

14 MR. LAKE: Your Honor, at this time we'd move
15 Plaintiffs' Exhibit Number 9 into evidence.

16 MR. HELMLY: No objection, Your Honor.

17 THE COURT: It's admitted.

18 (LETTER WITH OFFER MARKED INTO EVIDENCE AS PLAINTIFF'S
19 EXHIBIT NUMBER 9.)

20 Q. When this accident happened, did you know who you
21 would be dealing with in terms of the insurance company?

22 A. So, I thought that I would be dealing with SafeChoice,
23 the agent that I actually got the insurance from, but when
24 I contacted them, they redirected me to call Lyndon so that
25 they could actually do the claim.

1 Q. And what were your typical conversations? Not saying
2 specifically what y'all talked about, but what were -- what
3 were the conversations generally about when you did have
4 communications with Lyndon Southern?

5 A. So, at first when I was having communication with
6 them, it was about the damages per the vehicle, and then at
7 -- there was a point where basically they stopped
8 communicating back. Like, I was calling and leaving
9 messages and stuff like that, but I wasn't getting a
10 response.

11 Q. At some point, as a result did you retain counsel?

12 A. Yes.

13 Q. Do you know what their policies and procedures were as
14 relates to returning phone calls?

15 A. Whenever I was speaking with a person about the
16 property damage, they, like, did okay. They did good as
17 far as getting back to me. I don't know exactly, like,
18 what happened when it came to us moving forward with the
19 rest of it, but the agent used to get back in contact with
20 me within, like, the next day. So when they stopped
21 communicating, you know, I kept leaving, like, voicemails
22 and stuff like that, but I never got any response.

23 Q. Did he ever explain the total loss to you and as it
24 relates to the \$500 deductible?

25 A. No.

1 Q. Do you know whether he provided you any paperwork
2 regarding that?

3 A. No.

4 Q. At what point did you receive the check related to
5 that property damage?

6 A. I don't remember the exact date.

7 Q. And so this action, the initial action -- let me show
8 you this particular document.

9 (CIVIL ACTION FILING MARKED AS PLAINTIFFS' EXHIBIT
10 NUMBER 26 FOR IDENTIFICATION.)

11 Q. This is actually your civil action that was brought
12 against John Doe, and what's the -- what's the date that
13 you filed this?

14 A. January the 18th of 2018.

15 Q. And why was this filed?

16 A. Because we had not gotten any kind of response as far
17 as trying to settle the case.

18 Q. And you were aware of what your policy limits were,
19 correct?

20 A. Yes.

21 Q. And -- but you made an offer above that, correct?

22 A. Yes.

23 Q. Why was that?

24 A. To start the negotiation process, but basically, like,
25 after we weren't getting any responses or anything like

1 that and we had to file this, you know, at that point I was
2 thinking that we would be able to at least negotiate, then
3 maybe, you know, upon trying to get it settled.

4 Q. Okay, and so did they ever negotiate or settle
5 anything with you?

6 A. No.

7 Q. All right. What was the judgment amount of this case?

8 A. So, the judge -- the judge basically awarded 50,000,
9 and at that time -- basically because he didn't show up and
10 somebody else came to try to get another continuance. And
11 after he heard the case, he felt like, you know, I guess
12 that was the amount that would be awarded.

13 Q. Show. Let me show you. This is the order of
14 judgment. This is Plaintiffs' Exhibit Number 2. Is that
15 the order of judgment in this particular case?

16 A. Yes.

17 Q. And when was that ---

18 MR. LAKE: And, Your Honor, at this time we move
19 Plaintiffs' Exhibit Number 2 into evidence.

20 THE COURT: Pardon?

21 MR. LAKE: Move Plaintiffs' Exhibit Number 2 into
22 evidence, I think without objection.

23 MR. HELMLY: No objection.

24 THE COURT: It's admitted.

25 (ORDER OF JUDGMENT MARKED INTO EVIDENCE AS PLAINTIFFS'

1 EXHIBIT NUMBER 2.)

2 Q. And was that particular document -- if you could just
3 kind of go through exactly what it said?

4 A. Read the whole thing?

5 Q. Yes, read it.

6 A. Okay: This matter is before the court upon a
7 judgment against defendant John Doe by the
8 plaintiffs, Tasha Jones and Shaniqua Thompson.
9 The court, being fully advised, finds the
10 following. The court has jurisdiction of the
11 parties and the subject matter herein. The
12 plaintiffs, Tasha Jones and Shaniqua Thompson,
13 presented testimony of their respective medical
14 expenses, injuries, and pain and suffering as a
15 result of the accident which -- and the subject
16 of this action. The plaintiff Tasha Jones
17 testified that she incurred total medical
18 expenses of \$9586.95 as a result of this accident
19 which is the subject of this action. That
20 Shaniqua Thompson testified that he incurred --
21 that she incurred total medical expenses of
22 \$9780.91 as a result of a accident which is the
23 subject of this action. That plaintiffs, Tasha
24 Jones and Shaniqua Thompson, testified how their
25 respective quality of life was affected by the

1 accident and that they still experience some
2 difficulties they associate with this accident
3 which is subject of this action. That the
4 defendant, John Doe, was served with notice of
5 damages hearing by letter dated May 9 -- May the
6 14th ---

7 I'm sorry.

8 --- 2019 which advised him/her of the hearing on
9 June 6, 2019, at 3:30 at the Richland County
10 Judicial Center, and that the defendant, John
11 Doe, did not appear at this hearing.
12 Furthermore, no counsel made a timely appearance
13 at this hearing in the matter pursuit [sic] to
14 this court's direction on the record of January
15 the 30, 2019, stating that counsel for John Doe
16 was required to formally file an appearance with
17 the court and that counsel for John Doe needed to
18 formal -- formally file a motion for continuance
19 for that January 30, 2019, damages hearing date.
20 That no notice of appearance was timely filed and
21 received with this court before the hearing on
22 June 6, 2019. Furthermore, that no motion for
23 continuance was ever filed for the original
24 January 30, 2019, damages hearing on damages
25 hearing date. That James Sexton was presented at

1 the hearing for the defendant. He explained to
2 the court that Randy Helmly was defense counsel
3 but that he could not attend the hearing due to a
4 fundraiser in Greenville, South Carolina. Court
5 exercised its discretion in not allowing any
6 counsel for defendant John Doe at the damages
7 hearing of June 6, 2019, to present any testimony
8 or to otherwise respond to the plaintiffs' damage
9 claim/and or/testimony and/or admission into
10 evidence of the plaintiffs' medical records at
11 the damages hearing pursuant to counsel for
12 defendant John Doe failing to comply with the
13 court's order of January 30, 2019, to file a
14 notice of appearance and to file a motion for
15 continuance in the above-stated case. That this
16 court, based upon the finding of the facts and
17 record in this case, hereby finds judgment in
18 favor of plaintiff Tasha Jones against the
19 defendant, John Doe, and award the amount of
20 50,000 to plaintiff Tasha Jones. And the court
21 hereby finds judgment in favor of the plaintiff
22 Shaniqua Thompson against the defendant, John
23 Doe, and award the amount of 50,000 to the
24 plaintiff Shaniqua Thompson.

25 Q. And what date was that signed?

1 A. This was on -- talking about here?

2 Q. I believe it might be on the last page, the page with
3 the judge that signed it.

4 A. It says Hood and it says it was June the 19th of 2019.

5 Q. After hearing all your facts, he awarded you \$50,000?

6 A. Yes.

7 Q. Is that 50,000 close to at least your initial offer of
8 65,000?

9 A. Yes.

10 Q. And certainly more than the \$7500 initially that they
11 initially offered.

12 A. Correct.

13 Q. And which was less than your medicals.

14 A. Yes.

15 Q. I think we've talked -- I'm showing you what's been
16 marked as Plaintiffs' Exhibit Number 6.

17 MR. LAKE: Your Honor, I'd ask to move this into
18 evidence, I think without any objection from Mr. Helmly.
19 This is the total loss information.

20 MR. HELMLY: No objection.

21 THE COURT: It's admitted.

22 (MARKET LOSS REPORT MARKED INTO EVIDENCE AS
23 PLAINTIFF'S EXHIBIT NUMBER 6.)

24 Q. Let me show you what's been marked in terms of
25 Plaintiffs' Exhibit Number 6, which is your total loss

1 information. It's my understanding, I guess, the total
2 amount of your -- what is the total amount of what you --
3 they said they gave you ---

4 A. 3 ---

5 Q. --- property damage settlement value?

6 A. \$3783.15.

7 Q. Okay, and on that document, on the second page, it
8 gives you a break down of how they came up with the options
9 that you eventually choose, and what was that?

10 A. It was 3 -- 3603. I guess that's, what, the total
11 value?

12 Q. Yes.

13 A. And then it was \$180 for taxes, and it says the
14 deductible was \$500, and the company retained 3322 and 15.

15 Q. Do you remember the exact amount that you received?

16 A. The 2041.

17 Q. And that's after what's been taken out?

18 A. A salvage deduction for \$662 and a \$500 deductible.

19 Q. So, you see there they have you a \$500 deductible?

20 A. Yes, and my deductible was only 200.

21 Q. And so I want to make sure I know the -- so, there
22 were people there for Lyndon at both hearings, correct?

23 A. Yes. There -- Mr. Helmly came to the first one, and
24 then a different individual came to the second one.

25 Q. But nobody followed the court's order.

1 A. No.

2 Q. Has anyone told you that you do not have a valid
3 contract with Lyndon?

4 A. No.

5 MR. LAKE: Beg the court's indulgence.

6 (A PAUSE.)

7 MR. LAKE: One second, Your Honor.

8 (A PAUSE.)

9 Q. What was your understanding -- I know you said you had
10 an understanding with Lyndon in terms of what would be
11 paid. What was your understanding in talking with your
12 agent as relates to the claim?

13 A. So, my understanding was basically that I needed to
14 contact Lyndon specifically when it came to the claims
15 portion.

16 Q. Did he ever explain to you the process of what would
17 happen in terms of what you would get paid?

18 A. No.

19 Q. And what is the amount that you're asking the court --
20 the jury to award you?

21 A. For here?

22 Q. Yes.

23 A. Today?

24 Q. Yes, in terms of do you believe that you're entitled
25 to the entire \$50,000 plus interest?

1 A. Yes.

2 Q. And why is that?

3 A. Because for one, they didn't even take the time out to
4 come to court. They don't answer to the court. They don't
5 answer to anybody. If the judge even asked them to do
6 something and they are supposed to follow the law and he
7 tells you to do something and you don't do it, I feel like
8 they feel like they are above the law, and they don't have
9 to follow anything.

10 MR. LAKE: No further questions.

11 THE COURT: Ladies and gentlemen, we're going to break
12 for lunch now. Come back at 2:15. Please do not discuss
13 the case. You will follow the bailiff here, and need you
14 back at 2:15.

15 (THE JURY EXITS AT 1:07 PM.)

16 THE COURT: All right, young lady, you will be subject
17 to cross-examination. You cannot discuss your testimony
18 with anyone during lunch.

19 We'll be back at 2:15.

20 WITNESS: Okay.

21 (OFF THE RECORD.)

22 (EMAIL MARKED AS DEFENDANT'S EXHIBIT NUMBER 1 FOR
23 IDENTIFICATION.)

24 (LETTER MARKED AS DEFENDANT'S EXHIBIT NUMBER 2 FOR
25 IDENTIFICATION.)

1 THE COURT: All right, Madame Witness, if you would
2 take your spot there once again.

3 (A PAUSE.)

4 THE COURT: Bring the jury.

5 (THE JURY ENTERS AT 2:24 PM.)

6 THE COURT: Cross-examination.

7 MR. HELMLY: Thank you, Your Honor.

8 THE COURT: Oh, before you get started, regarding note
9 taking, I understand that someone might have been taking
10 notes. Certainly if the jury would like to take notes, you
11 can take notes.

12 There are two schools of thought regarding note
13 taking. One is that when jurors are focused on note
14 taking, they kind of lose focus on the witness, witnesses
15 on the witness stand and cause a distraction. We also have
16 found over a period of time wherever juror leave notes that
17 it's, you know, a lot of scribbling and not much written.
18 A lot of doodling more than anything else. But if you want
19 to take notes, the bailiffs will distribute pads to each of
20 you, but you will leave the pads in your seat when you
21 leave out and then collect them back when you come back.

22 The reason jurors do not typically take notes is
23 because the recollection or the fact that you have taken a
24 note is to be given no further or greater credibility than
25 someone's recollection about testimony. That having been

1 said, you are welcome to take notes if you would like to.

2 And who would like to take notes? You've got two
3 jurors and others will probably add on, so -- where did
4 they go? All right, he'll bring some notepads back, I
5 assume, for y'all to be able to take notes.

6 And you may proceed.

7 MR. HELMLY: Thank you, Your Honor.

8 CROSS-EXAMINATION BY MR. HELMLY:

9 Q. Good afternoon, Ms. Jones.

10 A. Good afternoon.

11 Q. I'm going to walk through the claim with you, so the
12 chronology of how things played out after the accident.

13 Accident occurred June 13, 2017, correct?

14 A. Yes.

15 THE COURT: If we'll just take a moment, let him
16 distribute those notepads.

17 (A PAUSE.)

18 THE COURT: Okay. You may proceed.

19 Q. So, the accident occurred on June 15, 2017, correct?

20 A. Yes.

21 Q. And you reported the accident to Lyndon via their
22 claims administrator the following day on, on June the
23 16th, correct?

24 A. I'm not sure exactly what day I spoke with them.

25 Like, the actual times on which I spoke with them.

1 Q. If I told you it was on June 16, 2017, would you
2 disagree with that, the day after?

3 A. Probably not. I probably did contact them.

4 Q. And on June 16th, the same day, did they not arrange
5 for a rental car for you?

6 A. I did get a rental car.

7 Q. And they immediately arranged for an appraisal and
8 estimate of your vehicle, correct?

9 A. Yes, I did get that done.

10 Q. Do you recall what transpired after that?

11 A. Basically that's when I was contacting them about the
12 rest of everything when it came to the claim, but I didn't
13 get any responses.

14 Q. When you say the rest of everything, what do you ---

15 A. As far as, like, my medical bills and all of that
16 stuff.

17 Q. When did you begin treatment?

18 A. So, I went to the hospital right after the accident,
19 so.

20 Q. And so you started calling them about your medical
21 bills, and they weren't responding. That's your testimony?

22 A. Yes, basically.

23 Q. What were you -- you went to the hospital the same
24 day. What were you calling them about as far as medical
25 bills?

1 A. Basically to see, you know, what the process was on
2 them getting that portion of the claim handled.

3 Q. And as far as your medical treatment goes, after you
4 went to the ER on the 16th, what did -- what was next step
5 in that medical treatment process?

6 A. I went to physical therapy at some point as well.

7 Q. When did that begin?

8 A. I don't know the exact date, but it was -- I don't --
9 I don't know the exact date that I actually started the
10 physical therapy.

11 Q. How long after did you start talking with them about
12 resolving the property damage portion of the claim?

13 A. Could you repeat the question?

14 Q. How long was it before the appraisal took place and
15 then you began talking to them about the insurance, the
16 property damage portion of the claim?

17 A. I'm not sure of, like, the timeframe in which -- it
18 was after I spoke with them that, like, I got the check and
19 stuff if that's what you're asking.

20 Q. Okay. So, the accident occurred on the 15th.

21 A. Uh-huh.

22 Q. And reported the claim on the 16th.

23 A. Uh-huh.

24 Q. They arranged for a rental car.

25 A. Uh-huh, and I -- I'm trying to think. It's so long

1 ago. Like, I'm sorry if I don't remember all of the dates
2 and stuff. So, I do know that I spoke with them. I got
3 the rental car. At some point after -- I only had, like, a
4 certain amount of days which I could have the rental car.
5 So, I know I had to give it back at some point, and they
6 did end up giving me the check for the damages and stuff,
7 the property damage.

8 Q. Does July 24, 2017, sound about right for ---

9 A. That, that ---

10 Q. --- check ---

11 A. --- may be right.

12 Q. Before you got that check, did you talk to them about
13 how much it was going to be and things of that nature?

14 A. As far as the property damage?

15 Q. Yes.

16 A. Oh. Yes.

17 Q. Did they go through that process with you as far as
18 what the -- what the value was and what was owed to the
19 lien holder and ---

20 A. Yes.

21 Q. --- things of that nature?

22 A. Yes.

23 Q. Okay, and gave you a breakdown of all that stuff?

24 A. Yes.

25 Q. Okay. Did you receive a -- in discussing that, did

1 they tell you what the deductible was going to be in that
2 process?

3 A. It's possible that they did, yes, correct.

4 Q. But whatever amount they offered to you or determined
5 the property damages were, they spoke to about it, and you,
6 you accepted that offer, correct?

7 A. Correct.

8 Q. Okay, and you testified earlier that you -- it was
9 only this year or some time recently that you realized that
10 the deductible that they ---

11 A. Charged me was incorrect.

12 Q. Was incorrect.

13 A. Correct.

14 Q. How did you -- how did you learn that?

15 A. When basically when we were going through all of the
16 documents, and I actually was able to see what my claims --
17 I mean, what my -- I'm sorry, policy actually said. Like
18 at the time when I spoke with them, I didn't really even
19 double back to look at my policy because I wouldn't have
20 thought that -- I would've thought that you guys knew that
21 it was only supposed to be \$200 and not 500. I wouldn't
22 have thought that I would have needed to double check
23 behind you guys for that.

24 Q. The deductible on your, your liability coverage is
25 \$500, correct?

1 A. I'm not -- I'm not sure. I would have to look at the
2 paperwork.

3 (A PAUSE.)

4 A. So, you said for?

5 Q. The liability portion of the coverage, and I can point
6 you to where that's listed. Flip over on page 2 where it
7 says coverages.

8 A. Uh-huh.

9 Q. And what does it say about your collision coverage?

10 A. Property ---

11 Q. Deductible. Sorry.

12 (A PAUSE.)

13 Q. It says: Physical damage deductible per accident
14 comprehensive \$500, collision \$500.

15 A. Okay. I see it here. Yeah, I see it here.

16 Q. So, you understand that to mean you've got a \$500
17 deductible if there's property damage to the -- to the car,
18 correct?

19 (A PAUSE.)

20 A. They got it worded differently, though.

21 (A PAUSE.)

22 A. So, it's kind of, I guess, different. So, it does say
23 that, but I'm looking at on here it says for uninsured
24 motorist, so it wouldn't have been considered as ---

25 Q. Correct, correct. What I'm saying is a portion of

1 your policy provides for \$500 in ---

2 A. Well, yeah.

3 Q. --- a deductible.

4 A. It has that here, yes.

5 Q. Correct, and could that not just be a mistake?

6 A. It could have been.

7 Q. Okay.

8 A. Well, it ---

9 Q. And, and -- sorry. Go ahead. Didn't mean to
10 interrupt you.

11 A. I was going to say yes, a mistake could have been made
12 on you guys' behalf, but I do feel like once that mistake
13 was made and you guys found out about that mistake, like,
14 you still didn't try to rectify it.

15 Q. When did -- can -- do you have an idea of when ---

16 A. I don't know when you guys found out.

17 Q. A little while ago.

18 A. You said a while ago.

19 Q. Earlier today.

20 A. Oh. Okay.

21 Q. And so it certainly could have just been a mistake. I
22 mean, after all, your lawyer got involved in this case. I
23 think he sent a letter of rep on July 24th. Property
24 damage was settled on July 20th, and it appears he didn't
25 even notice it.

1 A. Uh-huh.

2 Q. So, certainly could've been just an honest mistake as
3 opposed to a large insurance company trying to screw
4 somebody out of ---

5 A. I mean ---

6 Q. --- \$300, correct.

7 A. This is true, but I also feel like with everything
8 else that transpired on top of that, I was still kind of in
9 the same position. So, in my mind why wouldn't you try to
10 take advantage if I already feel like I'm being taken
11 advantage of?

12 Q. Well, at that point, they had accepted the claim.
13 They had gotten you a rental car. They had, you know,
14 worked through the property damage, made an offer, got you
15 a check all within the span of about forty days. So, at
16 that point had you been treated unfairly up to that point?

17 A. Honestly, I don't even feel like it should've taken up
18 to that long, but I'm not sure, you know, how long it's
19 supposed to take as far as that. But even though they got
20 the check out, they still ended up taking partial of my
21 money.

22 Q. But you agree this is a honest mistake. After all,
23 there's a handful of people in here that are ---

24 A. Yeah, but I would ---

25 Q. --- are still in this and just overlooked it.

1 A. Yes. I would have expected for them being an
2 insurance company to know how to break down. I have to --
3 I had to literally, like, read it to kind of comprehend it
4 just now myself, but I feel like as the insurance company,
5 this is, you guys should have plenty of knowledge with it.
6 This is your field. So, I mean, it could have been a
7 honest mistake, but I do feel like with that, you know, you
8 guys, like I said, this is your field, so.

9 Q. So, you mentioned that -- you testified earlier that
10 you after that, you just didn't -- you didn't hear from
11 anybody. Is that accurate?

12 A. Correct.

13 Q. Was there any -- anything specific that you were
14 looking to hear from them on?

15 A. At that time, I left voicemails. I can't tell you
16 exactly what I said now, but I know I left voicemails
17 explaining to them what I was calling about each time I
18 called.

19 Q. When Mr. Lake sent them a letter of representation on
20 July the 24th, you understand that at that point ---

21 A. Yeah, no ---

22 Q. --- they're not allowed to talk to you.

23 A. --- contact can be made, uh-huh. Yeah.

24 Q. So at that point, you would not have had any direct
25 ---

1 A. Yeah, I do ---

2 Q. --- communication.

3 A. Understand that, correct.

4 Q. So, from July 24th going forward ---

5 A. Correct.

6 Q. --- no direct communication.

7 A. Uh-huh.

8 Q. And then presumably or, I suppose during, you know,
9 for the ensuing months, you were -- you were receiving
10 medical treatment, correct?

11 A. Yes.

12 Q. So, on October the 24th, Mr. Lake sent the, the -- his
13 initial demand in.

14 A. Uh-huh.

15 Q. For \$65,000 for you and \$65,000 for Ms. Thompson,
16 correct?

17 A. Uh-huh.

18 Q. Let me show you what's marked as Defendant's Exhibit

19 2. Can you tell me what that is?

20 A. This is the offer that was sent. Wasn't it, like, for
21 ---

22 Q. Yes.

23 A. --- you guys? Yeah, the offer.

24 MR. HELMLY: Move defendant's Exhibit 2 into evidence.

25 MR. LAKE: No objection.

1 THE COURT: It's admitted.

2 (LETTER MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
3 NUMBER 2.)

4 Q. Were you at that time aware of the limits of the
5 policy that you had -- you had purchased from Lyndon?

6 A. Yes.

7 Q. What was the -- I think you mentioned the, the
8 reasoning behind the \$65,000 demand was, was to, you said,
9 just to get negotiations started.

10 A. Yes. Correct.

11 Q. They sent a response quickly thereafter offering
12 roughly \$7,500, correct?

13 A. Correct.

14 Q. Did you respond to that, that offer?

15 A. I believe -- I'm not sure of the timeframe, but I
16 believe that something else was sent over. I'm not sure of
17 the timeframe, though.

18 Q. So, they sent the offers. There's no record of any
19 counteroffer or response to that offer. The next thing
20 that happened was the filing of the lawsuit, correct?

21 A. Can you repeat that?

22 Q. Well, after they sent you the offers that were, as
23 you've testified, below what you believe your medical bills
24 to be.

25 A. Yes. Uh-huh.

1 Q. There was no counter to that, correct?

2 A. No, I don't think it was one at that time. I think
3 that maybe, like, it was discussed down the line, but I
4 don't think we actually sent anything else.

5 Q. Was there a reasoning for that you...

6 A. It was below my bills.

7 Q. Well, the demand you made was below -- was well above
8 your limits.

9 A. Yeah. This is true, but I, I feel like with
10 everything that already had transpired, that it was still
11 basically kind of be like a negotiation type of thing, but
12 it didn't seem like you guys wanted to even pay me for the
13 amount that was even billed basically.

14 Q. So, what's good for the goose is not good for the
15 gander in this instance. Is that what you're saying?

16 A. That's -- I'm not -- I'm not sure of that phrase. I'm
17 sorry.

18 Q. I show you what I have -- what's been marked as
19 Defendant's Exhibit 1. I represent this is an email from
20 Mr. Lake to me. Would you read that out for me?

21 A. Randy: Sorry for the late follow up, but I
22 haven't -- I have -- I was unable to reach my
23 clients to get their position on resolving this
24 matter. Let me know if you can get at least 30K
25 apiece to settle the case. Your client could use

1 the remaining liability coverage and use some
2 coverage under the UMPD coverage to supplement
3 the liability coverage. The carrier is in
4 default, and I believe that -- I believe there
5 are some elements of bad faith in them letting
6 this case get to this point. I think it would be
7 in their best interest to settle and not risk a
8 hearing, but that will be their call. I have
9 told Mr. Witherspoon to recommend to the client
10 that they take the offer if you can get it. I
11 will be out of the loop in the morning, but hope
12 this case can be settled. Dietrich Lake.

13 MR. HELMLY: Move Defendant's Exhibit 1 into evidence.

14 MR. LAKE: No objection.

15 THE COURT: It's admitted.

16 (EMAIL MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
17 NUMBER 1.)

18 Q. So, were you aware prior to this email being sent that
19 there was a discussion regarding -- or that Mr. Lake was
20 informed that the remaining policy limits after having
21 compensated Mr. Mack were roughly \$42,000?

22 MR. LAKE: Objection, Your Honor. I would object to
23 that. There's, there's no record of that.

24 THE COURT: Was there a question to the witness?

25 MR. HELMLY: I don't believe I -- I said was she aware

1 that there was discussion that was had.

2 THE COURT: Okay, that's the question? Let me hear
3 the complete question. Then I can will rule on the
4 objection.

5 Q. Were you made aware that a discussion had taken place
6 between myself and Mr. Lake about the remaining available
7 limits of coverage and what they were and what my clients
8 might be willing to do if you would agree to those
9 remaining limits of coverage?

10 MR. LAKE: I renew my objection on that objection.

11 THE COURT: And what's the basis of the objection?

12 MR. LAKE: One is relevance, and then two, there's no
13 foundation of -- that this ever occurred. He's going --
14 he's going to make that type of allegation, there has to be
15 a foundation for that.

16 THE COURT: Foundation for the question?

17 MR. LAKE: Foundation for this allegation of this kind
18 of communication.

19 THE COURT: All right. So, your response.

20 MR. HELMLY: Your Honor, I think Mr. Lake has opened
21 the door to the back-and-forth dialogue that occurred
22 during this case. He's stated on multiple occasions that
23 no offers have ever been made, and that's not true.

24 MR. LAKE: Your Honor, the only communications that
25 Mr. Helmly and I had was that email that I acknowledged as

1 a -- as a response.

2 THE COURT: Well, the slippery slope at this point
3 that you both are on is that the lawyers cannot be
4 witnesses, and the questions posed to witnesses should not
5 be such that the credibility of the lawyer is needed to
6 confirm or refute the response by the witness, and this
7 would -- this matter is kind of unusual in that sense. I

8 I don't know whether there's a foundation for the
9 question or not or whether to establish a foundation
10 either, one or both of the lawyers would have to testify.

11 MR. HELMLY: I'll rephrase, Your Honor. I think I can
12 rephrase to...

13 THE COURT: All right.

14 Q. Were you ever made aware that at this point in time,
15 the remaining limits of the uninsured motorist bodily
16 injury coverage was \$42,000?

17 A. I don't really recall. I can't really -- I can't
18 really answer because I don't recall. We've had, like, so
19 many discussions. It's been a long time. I can't say,
20 like, out of every discussion that we've had that I can say
21 yes, I specifically remember that conversation, just as
22 well as I haven't been able to say the exact dates and
23 times that I spoke with your insurance company.

24 Q. You would agree in this email, the, the amount asked
25 for would exceed the remaining limits coverage.

1 A. That said -- you said it was a coverage of 42, that
2 said 30,000, right?

3 Q. Apiece.

4 A. Oh. Okay. Well, yes, it exceeds.

5 Q. If at that time Mr. Lake said Ms. Jones ---

6 WITNESS: Can I ask a question?

7 THE COURT: No.

8 WITNESS: Okay.

9 Q. Would you have taken what essentially would have
10 amounted to half of \$42,000 at that time?

11 A. Well, that was my question. It would have depended on
12 how long it had been. Like, had we already been to court
13 already the first time? Were we already, like, way down
14 the line?

15 Q. I'm just asking you that. At that period of time, the
16 night before the damages hearing, would, would ---

17 A. Two years later?

18 Q. No. If this was October of 2000 -- excuse me, June 5,
19 2019.

20 A. So, yeah, two years later. At that point, I had
21 waited so long, why not ask for some additional for me
22 having to continuously try to even get something out of you
23 guys? Like, the only thing that was ever offered was below
24 my medical bills, nothing else.

25 Q. And then at that point, there was no other demand

1 made, correct?

2 A. For?

3 Q. Until this one, there was no other demand made be ---

4 A. As far -- as, as far as I know. I don't know. Like,
5 I can't speak for, like, if you guys emailed back and forth
6 because, like I said, I don't -- I don't -- I don't see his
7 emails. So, I don't know, like, if you guys spoke about
8 that, but as far as, like, him actually showing me
9 something then that you guys sent then to offer, no.

10 Q. What I'm saying is that when you -- the initial demand
11 that you made ---

12 A. Uh-huh.

13 Q. --- was \$65,000, above policy limits.

14 A. Uh-huh.

15 Q. And Lyndon countered with the, the offer that was what
16 you believe ---

17 A. Below.

18 Q. --- to be below the medical bills.

19 A. Uh-huh.

20 Q. And then the next demand that's received by Lyndon is
21 for \$30,000 apiece for a total of 60 with ---

22 A. So, that's -- but that's not on the same -- I mean,
23 would it still be considered as the same thing even though
24 it's a email?

25 Q. It's a -- it's a -- it's a written offer to -- it's

1 from your attorney ---

2 A. Okay.

3 Q. --- saying my clients will, will take this.

4 A. Okay.

5 Q. But your saying at that point, you wouldn't have taken
6 that.

7 A. Two years down the line, I mean.

8 Q. You wouldn't take it, right? So, when Lyndon makes
9 the offer in October of, of 2017 and there's no response,
10 you know, at that point you've got a couple of different
11 options. You could counter, which that didn't happen, or
12 you can choose to file a lawsuit, which that's what
13 happened. But between those times, there were -- there
14 were no other demands made and, and your testimony here
15 today is at that point, you would no longer accept the
16 limits of coverage, correct?

17 A. I guess if it was offered, but it was never offered as
18 far as I know.

19 Q. You said on June 5th you wouldn't -- you wouldn't have
20 taken it because it was two years down the road, right?

21 The judgment that you received was against whom?

22 A. On John -- talking about John Doe?

23 Q. Correct.

24 A. Right, John Doe.

25 Q. That's not a judgment against Lyndon Southern,

1 correct?

2 A. I would assume that John Doe would be under the
3 insured motorist.

4 Q. But the judgment ---

5 A. If not ---

6 Q. --- as, as set forth on the order and entered with the
7 clerk of court says judgment against John Doe, correct?

8 A. Yes, it was for John Doe but -- well, I can't ask
9 questions. Go ahead.

10 Q. And even as, as we sit here today, there is no
11 judgment against Lyndon Southern, correct?

12 A. It's against John Doe.

13 Q. So at that point, you'd agree that your claim was
14 handled promptly, right, right out of the gate?

15 A. As far as my property?

16 Q. As far as getting you -- getting you a car and ---

17 A. That part of it.

18 Q. --- getting property damage squared away, that, that
19 all was ---

20 A. That part of it was fine.

21 Q. And, and as Mr. -- you received \$1000 in MedPay
22 coverage in around October 24, 2017, didn't you?

23 A. Uh-huh.

24 Q. And that MedPay ---

25 THE COURT: Ma'am, ma'am, we don't use uh-huh in

1 court.

2 WITNESS: Oh. I'm sorry.

3 THE COURT: We use words.

4 A. Yes, I believe so.

5 Q. And med -- what is your understanding what MedPay
6 coverage is?

7 A. Just like the -- something that's given for medical
8 coverage during the accident.

9 Q. To be used toward your medical expenses, correct?

10 A. Yes. Correct.

11 Q. Did, did you use that money to pay down the medical
12 expenses that you talked about earlier?

13 A. No, not that I recall.

14 MR. HELMLY: No further questions. Thank you, Ms.
15 Jones.

16 WITNESS: Uh-huh.

17 REDIRECT EXAMINATION BY MR. LAKE:

18 Q. A few more questions, Ms. Jones. I know Mr. Helmly
19 talked about that property damage claim and everything was
20 fine. Was keeping your \$300 fine?

21 A. No.

22 Q. And have you ever seen any written offer from Lyndon
23 after that initial offer?

24 A. No.

25 Q. And at the time of this particular claim that you had,

1 how many people were involved in this accident again?

2 A. Three.

3 Q. Did you -- did you know at that particular time the
4 status of Mr. Mack's claim?

5 A. No.

6 Q. So, you actually didn't know how much money was out
7 there.

8 A. I didn't know what, like, his settlement with them or
9 anything like that was, no.

10 Q. Okay, and so your total amount available of available
11 coverage, if I'm understanding, is 50,000 for your bodily
12 injury, correct?

13 A. Uh-huh.

14 THE COURT: You just said uh-huh.

15 WITNESS: Yes. I'm sorry. I keep forgetting.

16 MR. HELMLY: Have to give her the deposition spiel,
17 Judge.

18 Q. It was 50,000 that you had that you were aware of
19 total bodily injury, correct?

20 A. Yes.

21 Q. And you had \$25,000 in property damage available,
22 correct?

23 A. Yes.

24 Q. Total, and at this point, you're not aware of anything
25 that had been settled.

1 A. No.

2 Q. So, 30 and 30 is what?

3 A. 60.

4 Q. Is 60 less than 75?

5 A. Yes.

6 THE COURT: All right.

7 MR. LAKE: Just a few more questions, Your Honor.

8 Q. I just want to make sure I'm clear on this, this offer
9 that was made. I think you said earlier it said use the
10 remaining liability coverage.

11 A. Yes, I think that's what it said.

12 Q. And some of the coverage up under the uninsured
13 motorist property damage coverage.

14 A. Correct.

15 Q. To come up with that \$30,000.

16 A. Yes.

17 MR. LAKE: No further questions.

18 THE COURT: Anything further?

19 MR. HELMLY: One thing, Your Honor.

20 (A PAUSE.)

21 MR. HELMLY: My apologies, Judge. I'm just looking
22 for the...

23 (A PAUSE.)

24 RECROSS-EXAMINATION BY MR. HELMLY:

25 Q. In reference to that, that question that was -- that

1 was just asked regarding using the property damage coverage
2 to supplement the liability coverage, what -- you have been
3 paid for your vehicle, your property damage. The, the
4 deductible mistake notwithstanding, but you had been paid
5 for the, the vehicle, correct?

6 A. Yes.

7 Q. And in this lawsuit, there's -- and the lawsuit
8 against John Doe, there's, there's no claim in here for
9 property damage or you're not seeking any money for
10 property damage. So, wouldn't you agree at that point, the
11 property damage matter is, settled, correct?

12 A. I mean, outside of keeping the \$300.

13 Q. Okay. All right.

14 MR. HELMLY: Thank you very much.

15 THE COURT: You may step.

16 (THE WITNESS EXITS THE STAND.)

17 MR. LAKE: At this time, the plaintiff calls Shaniqua
18 Thompson.

19 THE COURT: Ladies and gentlemen, let's stand for a
20 moment and stretch. You all look like you're getting
21 tired, so let's just stretch and stay alert.

22 (A PAUSE.)

23 THE COURT: Okay.

24 SHANIQUA THOMPSON, BEING DULY
25 SWORN, TESTIFIES AS FOLLOWS:

1 CLERK: Would you please state your full name for the
2 record?

3 WITNESS: Shaniqua Thompson.

4 CLERK: And you may be seated.

5 DIRECT EXAMINATION BY MR. LAKE:

6 Q. You all right there?

7 A. I am. How about you?

8 Q. State your full name for the record.

9 A. Shaniqua Thompson.

10 Q. And where do you reside?

11 A. In Columbia, South Carolina.

12 Q. And you married?

13 A. Yes.

14 Q. You have kids?

15 A. Yes.

16 Q. And I think you probably want to let the jury know I
17 guess you're a little bit tired today, correct?

18 A. I am. I just had a baby five days ago.

19 Q. You got a boy or a girl?

20 A. A girl.

21 Q. And I guess you had to be here the last couple of
22 days.

23 A. Yes.

24 Q. Is that how important this case is for you?

25 A. Yes.

1 Q. Tell me about your role in this particular event.
2 Start with the accident.

3 A. I was riding with Tasha. We was coming -- was coming
4 from somebody's house, and we stopped at a stop sign, and
5 the car ran us in the back all the way to the middle of the
6 street, and she called the ambulance and waited for the
7 ambulance to come, and we got on the ambulance, and --
8 well, back up. The police got there. Nobody was in the
9 car. He came to let us know nobody was in the car that hit
10 us, and the ambulance and stuff came. We went to the
11 hospital and started from there.

12 Q. And so you are a passenger in the car at that time?

13 A. Yes.

14 Q. And where were you seated at?

15 A. I was seated in the backseat.

16 Q. And did you have a seatbelt on?

17 A. I did.

18 Q. Were you injured as a result of this accident?

19 A. Yes. My neck and my back.

20 Q. And what happened -- where did you go in terms of
21 after this accident to address your injuries to your neck
22 and back?

23 A. If I ain't mistaken, we went to Providence, and then
24 we got some medical treatment there. Couple more days, I
25 still wasn't feeling no better. So, I went to Lexington

1 Medical, and they gave us some treatment there. And then I
2 also had to go to the chiropractor in the process also.

3 Q. And did you have an opportunity to make any demands in
4 the case -- I mean, make an offer to resolve your case with
5 Lyndon Southern Insurance?

6 A. I really -- I did call them, but nobody really never
7 reached out to me either. So, that's when I got with Tasha
8 and we got you.

9 Q. And it's my understanding your, your medicals about
10 \$9780.71.

11 A. Yes, sir.

12 Q. And are those medicals still outstanding?

13 A. They are.

14 Q. And I think we've already kind of communicated what
15 the offer was. Were you aware the offer was \$8660?

16 A. I was.

17 Q. Did you accept that offer?

18 A. I didn't.

19 Q. Why not?

20 A. Because it didn't even cover my medical expenses.

21 Q. Have you received any other offers since that time?

22 A. Not that I can recall.

23 Q. Seen any other documents from anyone connected to
24 Lyndon, Mr. Helmly's office, regarding any counteroffer to
25 either the offer of 65,000 or the offer of 30,003?

1 A. No, sir.

2 Q. And did you testify at the hearing?

3 A. Yes, I did.

4 Q. Essentially without going word for word what you said,
5 what did you testify to in front of the judge?

6 A. I told him about the, the wreck. I told him about my
7 injuries, and he awarded us 50,000.

8 Q. Do you remember when that was?

9 A. I can't tell you the specific date, but I know it was
10 a couple years ago.

11 Q. And if I said that it happened back on June 19, 2019,
12 would that sound about right?

13 A. That's about right.

14 Q. And I guess other than a MedPay, you have not received
15 any other compensation.

16 A. No, sir.

17 Q. You have received 50,000, correct?

18 A. Not at all.

19 Q. And was that order that the judge gave in June was the
20 final order?

21 A. Yes.

22 Q. Have you received any of the remaining coverage that
23 was on that Lyndon policy?

24 A. Nothing.

25 Q. Did you even know what the policy limit was on -- what

1 remained in terms of coverage at that time?

2 A. No, sir.

3 Q. Have you ever known what the remaining coverage was?

4 A. No, sir.

5 Q. Have you ever seen any communications or letters from
6 anybody connected to Lyndon or Mr. Helmly indicating what
7 the available coverage was in that -- in this case?

8 A. No, sir.

9 Q. How many times you estimate you've had to come to
10 court?

11 A. I'm going to say about four or five times, yeah.

12 Q. Was it your expectation that you would have to file
13 suit in order to recover that judgment?

14 A. No, I didn't think we would have to go through all
15 this.

16 Q. By all this, what do you mean by that?

17 A. Coming back and forth to court and still getting a
18 judgment and still not getting paid, and now six years
19 later now, now we're doing a trial. No, I didn't expect
20 for us to go have to go down this long road.

21 Q. Did you expect to be away from your child today?

22 A. I didn't expect to be away from my baby today.

23 MR. LAKE: Beg the court's indulgence.

24 (A PAUSE.)

25 Q. This accident you had, where did it happen at?

1 A. Off Farrow Road.

2 Q. Is that ---

3 A. I can't think of the name of that street, but it was
4 -- we ended out on Farrow Road.

5 Q. So, it was a -- I guess you would describe it is a
6 hard impact?

7 A. It was a very hard impact, and I was the backseat.
8 So, I felt the impact.

9 Q. This was, like, a van. Am I right?

10 A. Correct.

11 Q. And this happened in Richland County?

12 A. Yes.

13 Q. What was -- what has been the impact to you from not
14 receiving the judgment in this particular case?

15 A. I'm going to look at y'all when I say this. This,
16 this has been a long journey. It's really been stressful
17 not knowing if our medical bills was going to get paid.
18 Then we went to court to get granted some money, and we
19 still didn't get it. And then I wind up having a baby five
20 days ago and still having to come in here and face -- and,
21 you know, do this, do this still, you know? So, it's
22 really been a lot. And then I still have other kids,
23 younger kids.

24 So, it's really been a lot. It's really been
25 stressful more than anything. And like I said, I got a

1 newborn at home that I can't be with because I'm in here
2 trying to fight to get money that was already rewarded to
3 me. So, it, it has been a very stressful trial.

4 MR. LAKE: No further questions.

5 THE COURT: Cross-examination.

6 CROSS-EXAMINATION BY MR. HELMLY:

7 Q. Good afternoon, Ms. Thompson.

8 A. How you doing?

9 Q. I feel you. I've been holed up in my officer for
10 about ten days. I'm tired, too, and want to see my family
11 as well.

12 The vehicle involved in the wreck was not yours,
13 correct?

14 A. Correct.

15 Q. You didn't sustain any property damage, correct?

16 A. Correct.

17 Q. You received your MedPay?

18 A. Yes.

19 Q. Did that money go towards paying down medical
20 expenses?

21 A. I'm guessing so.

22 Q. The insurance policy -- let me ask you this. Did you
23 ever got to SafeCo and, and get a contract for a policy of
24 insurance?

25 A. No, sir.

1 Q. So, you don't have a contract of insurance with Lyndon
2 Southern?

3 A. I don't.

4 Q. That, that contract, that policy is, is Ms. Jones's
5 policy, correct?

6 A. Correct. I was just a ride.

7 Q. Before the demand, the first demand -- try to simplify
8 this without dates. The first demand back in October of
9 2017 for \$65,000 that you made, at the time were you --
10 were you aware of what the, the limits of the policy were?

11 A. No, sir.

12 Q. You weren't?

13 A. No.

14 Q. Did you ---

15 A. No, sir.

16 Q. Did you ask what and try to find out the limits of the
17 policy?

18 A. Really no, sir, I didn't. I just -- we was waiting to
19 negotiate, as Tasha said.

20 Q. So, when you received an offer that you believed was
21 below your ---

22 A. Medical bills.

23 Q. --- medical bills, you, you didn't respond to that
24 one, correct?

25 A. Correct.

1 Q. Your, your response was just to go file a lawsuit,
2 correct?

3 A. Correct.

4 Q. And that -- and that's your choice, right?

5 A. Yes, sir.

6 Q. And the judgment that you obtained, you understand
7 that judgment was not against since Lyndon Southern
8 Insurance, correct?

9 A. Okay. Yes, it's against the John Doe, yes.

10 Q. Against John Doe, and we don't insure John Doe, right?

11 A. Correct.

12 Q. Lyndon Southern insures Ms. Jones, correct?

13 A. Correct.

14 Q. Did -- when, when is the first time that you were made
15 aware of what the limits of the coverage were?

16 A. I can't really tell you. I really can't tell you, but
17 I was aware later on what it was, not right away but later
18 in -- through the process.

19 Q. You kind of learned about it through the process.

20 A. Yes, sir.

21 Q. Quite an education.

22 A. It was.

23 MR. HELMLY: Give me one second.

24 (A PAUSE.)

25 MR. HELMLY: No further questions. Thank you, Ms.

1 Jones -- I mean, Ms. Thompson.

2 WITNESS: Yes, sir.

3 MR. LAKE: No further questions, Your Honor.

4 THE COURT: You may step down.

5 (THE WITNESS EXITS THE STAND.)

6 THE COURT: We'll take about five minutes. Please do
7 not discuss the case.

8 (THE JURY EXITS AT 3:15 PM.)

9 THE COURT: All right, who's going to be our next
10 witness?

11 MR. LAKE: Your Honor, we'll call Mr. Witherspoon.
12 He's a short, very short witness. Then I'll probably have
13 Mr. Lipshultz.

14 THE COURT: Very short direct?

15 MR. LAKE: Very short.

16 THE COURT: Very short direct?

17 MR. LAKE: Very short.

18 MR. HELMLY: I reserve. Have no idea at this point.

19 (OFF THE RECORD.)

20 THE COURT: Okay.

21 CLERK: Ready for the jury?

22 THE COURT: Bring them on.

23 (THE JURY ENTERS AT 3:26 PM.)

24 THE COURT: Thank you. Your next witness.

25 MR. LAKE: I plan on calling Michael Witherspoon.

1 MICHAEL WITHERSPOON, BEING DULY
2 SWORN, TESTIFIES AS FOLLOWS:

3 CLERK: Would you please state your name for the
4 record?

5 WITNESS: Michael Witherspoon.

6 CLERK: Thank you. You may be seated.

7 DIRECT EXAMINATION BY MR. LAKE:

8 Q. Mr. Witherspoon, just want to kind of ask you just a
9 few quick fact questions. Just for the record, would you
10 tell the jurors who you are?

11 A. My name is Michael Witherspoon. I'm an attorney.
12 I've been practicing law for twenty years. I also was an
13 insurance adjuster, regional claims supervisor, for
14 fourteen years. So, I've been doing this for thirty-five
15 years.

16 Q. And how did you become involved in this particular
17 matter?

18 A. Well, Mr. Lake could not attend a damage hearing, so
19 he asked me to fill in for him, and I filled in for him at
20 the hearing, and there was a judgment ruled for \$50,000
21 from the judge.

22 Q. And ---

23 A. For each, each individual.

24 Q. And before that, what -- were you aware of an offer
25 that had been communicated to Lyndon prior to the damages

1 hearing?

2 A. Yes, and, and the offer for resolving this case was
3 \$30,000 each plus property damage limits to see if they
4 could get the case resolved even prior to the hearing.

5 Q. And did you ever at any point either get a
6 counteroffer to that particular offer or a response to that
7 offer from the individuals that were there?

8 A. No. No, we did not.

9 Q. And those individuals that were there, were they able
10 to address the court?

11 A. No.

12 Q. And why was that?

13 A. Because the, the attorney of record did not show up
14 that day, and they were never -- I understood that they
15 were never -- they were supposed to enter a -- an
16 appearance and they never did that. I understand that in
17 January before this hearing, they were supposed to enter an
18 appearance and notify the court that they were the attorney
19 of record. That was never done. So, another attorney
20 showed up that had nothing to do with the case, and we
21 objected to him being involved in it. The judge did not
22 allow him to present the case, present the defense to the
23 case.

24 Q. And when you say an appearance, what is an appearance?

25 A. An appearance is an attorney is involved in the case.

1 They notify the court that they will be involved in
2 representing parties in the case and that they are the
3 attorney of record. That's the appearance.

4 Q. And what does it mean to you as an attorney that's
5 been practicing for a while, what does it mean when a judge
6 gives you an order to do something in terms of filing a
7 notice of appearance and filing a motion for a continuance?

8 A. Well, the judge is in charge and if he makes an order,
9 you got to follow it and you got to do it, no question
10 asked. Once an order is made, you have to do it.

11 Q. And from your understanding, was that done in this
12 particular case?

13 A. No, it was not done.

14 Q. By any representative of Lyndon?

15 A. No, it was never done.

16 MR. LAKE: No further questions.

17 THE COURT: For the defense?

18 MR. HELMLY: Just a couple of questions.

19 CROSS-EXAMINATION BY MR. HELMLY:

20 Q. Mr. Witherspoon, I'm Mr. Helmly.

21 A. Okay.

22 Q. How are you today?

23 A. I'm good.

24 Q. You were filling in for Mr. Lake that day because he
25 had a conflict, right?

1 A. Correct.

2 Q. And the gentleman that showed up, his name was, was
3 Jim Saxton and he was my associate at the time. Were you
4 aware of that?

5 A. Yes.

6 Q. Okay. Were you aware that an electronic notice of
7 appearance was, was filed the day before?

8 A. No.

9 Q. Okay.

10 A. And the judge and the court had no record of it.

11 Q. Certainly.

12 A. And my understanding at the hearing, the judge got a
13 little upset because the attorney indicated that the
14 attorney was supposed to be there, but he was on a
15 fundraiser. And the attorney, the judge got a little upset
16 that he was there -- he should have been there and he
17 wasn't and, and -- but Mr. Lake had put notices in that
18 Mike Witherspoon should -- would be there and represent the
19 clients for that default hearing, damage hearing.

20 MR. HELMLY: No further questions.

21 THE COURT: Anything further?

22 MR. LAKE: No questions, Your Honor.

23 THE COURT: Thank you, Mr. Witherspoon.

24 (THE WITNESS EXITS THE STAND.)

25 THE COURT: Next witness.

1 MR. LAKE: Your Honor, plaintiffs would call Stanley
2 Lipshultz.

3 STANLEY LIPSHULTZ, BEING DULY
4 SWORN, TESTIFIES AS FOLLOWS:

5 CLERK: Would you please state your full name for the
6 record?

7 WITNESS: Stanley Lipshultz.

8 CLERK: Thank you. You may be seated.

9 VOIR DIRE EXAMINATION BY MR. LAKE:

10 Q. And, Mr. Lipshultz, could you state your name for the
11 record?

12 A. Stanley Lipshultz.

13 Q. And could you explain to the jury a little bit about
14 your educational background?

15 A. I graduated from Washington University in St. Louis
16 with a bachelor's degree in '67, and I graduated from the
17 Washington College of Law at the American University with a
18 juris doctor degree in 1970.

19 Q. And could you give me a little bit of history in terms
20 of your work background?

21 A. I started -- my first real job was as a claims
22 adjuster. I was a staff outside adjuster. I handle all
23 types of claims, including claims like the one that we're
24 here discussing, and handled a lot of other claims as well.
25 I was promoted to become a supervisor and I supervised six

1 adjusters who handled the same type of claims.

2 I had a short stint at the Federal National Mortgage
3 Association, and then I began my legal practice. I went to
4 night school during the time I was working as an adjuster.
5 When I finished night school, I took the bar. Was
6 administered to both the District of Columbia and the State
7 of Maryland, which is where I'm from, and started
8 practicing in 1972.

9 From '72 to '99 I was a trial attorney. I retired in
10 1999 and started my own consulting practice assisting
11 attorneys with respect to insurance matters, and that is
12 what I continue to do today.

13 Q. And how often do you consult in insurance matters?

14 A. Not as much as I'd like to, but probably thirty to
15 fifty times a year.

16 Q. And when you say consult, what does that involve?

17 A. Well, it depends. Most of the time, attorneys call me
18 and ask me whether or not they have a potential claim that
19 can be brought against either an insurance agent or an
20 insurance company, and I will counsel them. Sometimes I
21 tell them that there isn't anything I can help them with.
22 Sometimes I do assist them.

23 Q. And I know you have a juris doctor license. What
24 other licenses do you -- professional licenses do you have?

25 A. Well professional license, I have an insurance agents

1 license, but I also have the CPCU designation. CPCU, it
2 stands for chartered property casualty underwriter, and
3 that is a designation that takes several years to obtain.
4 During the time that I matriculated, it was necessary to
5 take ten college-level courses, pass each course before I
6 was able to claim the designation, and I obtained that in
7 1989.

8 Q. And what does that allow you to do?

9 A. Well, allows me -- it really doesn't allow me to do
10 anything other than causes me to have more knowledge with
11 respect to insurance matters. For example, the, the course
12 that I took included the law and insurance, commercial
13 liability, commercial property, personal liability,
14 personal property, and a number of finance and accounting,
15 and a number of other courses so that I would have a more
16 well rounded background in insurance.

17 Q. And have you had any publications?

18 A. I authored about seventeen different locations, most
19 of them involving insurance.

20 Q. And we say involving insurance. Any specific area?

21 A. Special relationship and agent and broker situations,
22 and I have an article that's going to be published the end
23 of this month on bad faith.

24 Q. And how long have you, I guess, been involved with
25 claims involving bad faith?

1 A. Well, since 1999 when I set up my own practice.

2 Q. Have you ever -- is your special -- is your
3 specialization in your consulting business solely just bad
4 faith, or does it incorporate others?

5 A. No. I have a number of other areas. In addition to
6 claims -- and some claims don't rise to the level of bad
7 faith. They just are poorly handled. I also represent --
8 or I shouldn't say represent. I advise attorneys who have
9 claims either for or against insurance agents, and I
10 counsel lawyers who have claims involving insurance
11 companies whether they would be able to sue or whether they
12 should sue.

13 Q. Would that involve representing both sides of the coin
14 in terms of both insurer and plaintiffs or just one
15 particular side?

16 A. No. I, I'm very selective what I -- what I choose to
17 take as an assignment, and I would say that on balance most
18 -- half are on the plaintiff's side and half are on the
19 defense side.

20 Q. And have you ever been qualified as an expert?

21 A. Yes.

22 Q. How many times would you estimate?

23 A. Five or six times.

24 Q. Any specific areas that you've been qualified?

25 A. It's been a -- it's been a while, but agent broker,

1 standard of care, and claims handling.

2 Q. And do you believe the testimony that you may offer
3 today will allow the judge and the jury to understand the
4 facts of this particular case?

5 A. Certainly hopeful.

6 MR. LAKE: Your Honor, at this time the plaintiffs
7 would offer Mr. Lipshultz as an expert in insurance.

8 THE COURT: Speak a little louder for me. I'm behind
9 this glass.

10 MR. LAKE: At this time, the plaintiff would move to
11 introduce Mr. Lipshultz is an expert in insurance.

12 THE COURT: All right, what says the defense?

13 MR. HELMLY: No objection, Your Honor.

14 THE COURT: All right, ladies and gentlemen, this
15 witness is qualified as an expert in the field of
16 insurance. An expert witness, unlike regular lay
17 witnesses, can offer opinions in the area of their
18 expertise in accordance with the rules of evidence.

19 You may proceed.

20 MR. LAKE: Thank you.

21 DIRECT EXAMINATION BY MR. LAKE:

22 Q. Mr. Lipshultz, have you had an opportunity to view
23 documents in this particular case?

24 A. Yes.

25 Q. Just kind of give the jury a laundry list of all the

1 documents that you've had an opportunity to review in this
2 particular matter.

3 A. Well, I reviewed all of the pleadings or the papers
4 that have been filed by the attorneys. I have reviewed the
5 claims file which produced -- or claims file, the claim
6 notes that were produced by Lyndon. I've also -- excuse me
7 -- reviewed the complaint, the amended complaint, and I'm
8 sure there are other things that I've reviewed, but those
9 are the main -- the main ones. Oh, and I've also reviewed
10 Mr. Fishbein's deposition.

11 Q. And when you are looking at things to review, how do
12 you even decide what you're going to review?

13 A. Well, since this case involved claims handling,
14 obviously I wanted to see anything that had to do with
15 claims, the claim, and to -- my recollection is that there
16 are two files. One are claim notes and the other is a
17 claim file, and those were the most important things other
18 than the deposition given by the corporate representative
19 of Lyndon Southern, who is Mr. Fishbein.

20 Q. And when you are giving your opinions in this
21 particular matter, is it based upon objective or subjective
22 type of facts?

23 A. Totally objective.

24 Q. And I'm just going to ask you just some kind of
25 general definition background type of formation. How would

1 you define, I guess, claims handling and the role of claims
2 adjuster?

3 A. Ordinarily -- when I started as a claims adjuster, we
4 were trained in how to adjust a claim, and I was a -- back
5 when I started, which was in 1968, we didn't even have
6 recorders. If there was an accident like the one that
7 occurred here, we would go to -- we'd take witness
8 statements, but we would actually handwrite them out, then
9 have the witnesses sign them at the end. We take
10 photographs of the -- of the scene of the accident. If it
11 was one of the insureds that our company insured, then we
12 would collect the medical bills and any other special
13 damages, which would include lost wages and other types of
14 loss, monies that are lost by a potential claimant.

15 After the, the injured parties were finished with
16 their treatment, then we would evaluate the, the claims and
17 then we would make an offer. No one -- and I was taught
18 that you can't negotiate backwards. So, you make your best
19 offer first. You always make a lower offer, expecting that
20 you'll be able to negotiate a settlement within a
21 satisfactory range.

22 Q. Let me just ask you a question specific about what you
23 just said there as a claims adjuster. You say you never
24 negotiate backwards. Does that involve going below
25 medicals to make an offer?

1 A. I have to say in my experience that there is no way
2 that I as an adjuster or as an attorney presenting people
3 who have been sued could conceive of a way to settle a case
4 where the settling party would actually be in the hole or
5 be upside down where the money that they took wouldn't
6 satisfy their responsibilities.

7 Q. And would you deem an offer that is below medicals,
8 would you -- would you deem it as reasonable?

9 A. No.

10 Q. Why? Why not.

11 A. If I can use the -- this current case?

12 Q. Use this current case.

13 A. Okay. The -- you've heard that the, the outstanding
14 medical bills for both Ms. Jones and Ms. Thompson were
15 roughly \$10,000. There's a rule of thumb here where what
16 an adjuster would do is to separate out the diagnostic and
17 emergency room bills and look at the treatment that was
18 given to the, the injured parties. Then try to factor in
19 something for their pain and suffering and for the
20 inconvenience that they have suffered. So, what I would
21 have done, what I have done in the past, and what I would
22 do now is to usually take a multiple, depending upon how
23 bad they were hurt.

24 So, let's just say that for one of the plaintiffs, of
25 the 10,000, 1000 was for emergency room or x-rays, but the

1 rest was for treatment and it took a certain while before
2 the treatment was over. Then I would look at how -- what
3 the treatment was for. Then I would attempt to put into
4 the mix an amount that would satisfy a reasonable offer.

5 Q. And would that ever involve a time when that offer is
6 below the medicals?

7 A. No, not in my practice and not, not that I believe is
8 a, a part of this industry custom and practice.

9 Q. When you say custom and practice, what does that mean?

10 A. Well, there is -- there are customs and practice
11 within the insurance industry that are uniformly followed
12 by insurance companies, and one of the industry custom and
13 practices is that you try to make a fair and reasonable
14 offer to an injured party so that you can resolve their
15 claims.

16 Q. Was that in this particular case?

17 A. No.

18 Q. Now, you were asked also, I guess, to look at -- I
19 know you talked about claims handling, claims handling
20 procedure specifically. Did you discover or find any
21 claims handling procedures in this particular case?

22 A. Well, as far as the company that was handling the
23 claim, there were no claims practices that I could -- that
24 I could find. I understand Lyndon with its internal
25 procedures does have some type of claims procedure, but

1 they were never shared with the company that was adjusting
2 the Jones and Thompson claim.

3 Q. So to date, have you ever seen any claims adjusting
4 policies or procedures or handbook of either Lyndon or
5 Jupiter that was managing the claim?

6 A. No. No.

7 Q. And what's the -- what is significant about the fact
8 that you were unable to find any type of documentation of
9 any type of claims handling practice and procedures?

10 A. Well, it appeared that Lyndon was leaving the
11 third-party administrator, the company that was adjusting
12 the claim, was leaving it to their own devices as to how to
13 solve or settle these cases. And my understanding is that
14 Jupiter, which was the company, the third-party
15 administrator, was only given \$25,000 to settle all of the
16 claims that were involved in this particular accident so
17 that the second 25 was never -- was never touched.

18 And it's my understanding further that if the
19 adjusting company, Jupiter, wanted to settle the case for
20 more than \$25,000, that they had to seek the approval of
21 Lyndon. And during my review of the claim file and the
22 claim notes, I see no indication that the additional
23 \$25,000 was ever sought and without that approval, then the
24 insurance adjuster couldn't have settled the case for the
25 -- for more than \$25,000. And if you add up -- Mr. Mack

1 settled for \$8,800, and if you add up the two offers that
2 were made to Ms. Jones and Ms. Thompson, they come to
3 \$25,025. And to the best of my knowledge, there were no
4 other counteroffers made in this case.

5 And I also should also add that because an offer to
6 settle is made higher than policy limits does not suggest
7 that you should simply ignore that and not try to get a
8 case settled, which is basically what happened here.

9 Q. Is it often that the offer to settle a case are on the
10 high end?

11 A. I'm sorry?

12 Q. Is it often that you find -- often that offers are
13 made on the high end in terms of the negotiation process?

14 A. No. No. Every once in a while that happens, but it
15 doesn't happen very frequently, and I can obviously assure
16 you it didn't happen in this case.

17 Q. And this case settled for about \$50,000. Am I
18 correct?

19 A. This -- you're talking about the judgment?

20 Q. In terms of judgment, yes.

21 A. The court, after a hearing, determined the value of
22 Ms. Thompson and, and Ms. Jones's claims and came to a
23 decision that they were worth \$50,000 each.

24 Q. And do you have an opinion as to that particular
25 judgment?

1 A. My opinion is that Judge Hood, who has obviously heard
2 more cases than either I or anybody else, fairly and
3 adequately evaluated the medicals and the testimony of Ms.
4 Jones and Ms. Thompson and believed that the claims were
5 valued at \$50,000 each, which would obviously not in -- or
6 in addition to their medical bills, their pain and their
7 suffering, which the offers made by Lyndon did -- not only
8 didn't include pain and suffering but actually were lower
9 than that what was, in my opinion, reasonable.

10 Q. Is it reasonable not to compensate someone who's
11 injured for pain and suffering?

12 A. No, it is not.

13 Q. Let me ask you a question. I know you were talking
14 about it was three individuals that were involved in this
15 case. Do you happen to know what the medicals for all
16 three of the plaintiffs -- or plaintiffs in this case were?

17 A. Well, I know that the, the, the two plaintiffs who
18 were here today, Ms. Thompson and, and Ms. Jones, was
19 roughly 20,000 or -- roughly 20,000, and I don't know what
20 Mr. Mack's claims were.

21 Q. Let me show you what's been already...

22 (COUNSELORS CONFER.)

23 MR. HELMLY: No objection.

24 MR. LAKE: We move straight into evidence Plaintiff's
25 Exhibit Number 14.

1 (CLAIM NOTES MARKED INTO EVIDENCE AS PLAINTIFF'S
2 EXHIBIT NUMBER 14.)

3 Q. Want you to specifically refer to this particular -- I
4 know you testified earlier that you had observed some
5 notes. What were those documents?

6 A. Well, these are the -- these are the claim notes.
7 Yeah, these are the claim notes that were maintained by
8 Jupiter, which are -- which was -- or which is the claims
9 handling arm of Lyndon.

10 Q. And would you expect to find claim notes in a file?

11 A. Oh, yes.

12 Q. And in terms of notes, what type of notes would you
13 expect to be found in a claim file?

14 A. Well, I expect to see a collection of medical bills.
15 I would expect to see any type of interaction that an
16 adjuster had with any of the injured parties. I would also
17 expect to see notations with respect to offers of
18 settlement made either by the attorney representing the
19 plaintiffs or the insurance company because it's a back-
20 and-forth situation where negotiations always take place.

21 Q. Did you see any negotiations on the part of Lyndon in
22 this particular case?

23 A. No. Not only did I not see it, I didn't see any
24 evidence that they even sought to get extra money to be
25 able to settle the case over the \$25,000.

1 Q. And let me see if I can find something here.

2 (A PAUSE.)

3 Q. Let me get you to turn to page -- look at page 5 of
4 21. It's notation for October 31, 2017.

5 A. Okay.

6 Q. And who was the claims adjuster found on that
7 particular day?

8 A. Phil Levesque.

9 Q. And just for clarification, an adjuster is the person
10 that's going to be handling the case to conclusion?

11 A. Yes.

12 Q. So, would you expect to find records that start from
13 the date the person got assigned the case until the date
14 that the entire case was settled?

15 A. That's what you would expect, yes.

16 Q. Did you find any in this particular case?

17 A. No. For some reason, the claim notes abruptly end on
18 November 27, 2018, and you've heard about the hearing on
19 the damages. And the last entry is an inquiry to Mr. Helm
20 -- Helmly dated November 27, 2019, wanting to know an
21 update on the file, and an analysis of the liability, and
22 what is the settlement value, and there are no notes that
23 go after that.

24 Q. Would you expect to see notes?

25 A. I -- yes, I would absolutely. Not only would I expect

1 to see them. I would expect to see how Mr. Helmly
2 evaluated this case and what dollar value he put on the
3 case for settlement.

4 Q. So, we don't know that because it's not there.

5 A. No, we did not know what it was.

6 Q. Is that reasonable?

7 A. No, it's not reasonable.

8 Q. And why not?

9 A. Because the adjuster is, is, is -- follows, always
10 follows the -- well, not always but -- because sometimes
11 they think they know more than the lawyers, but we know
12 better than that. But the -- generally the adjuster will
13 follow the recommendation of the defense attorney.

14 Q. Okay, and we'll come back to that area right there,
15 but going back to page 5 of 21, I think it looks like there
16 is, is a subsection. They've indicated that Ms. Jones's
17 records were \$9,586,95, correct?

18 A. Yes. Yes.

19 Q. And it indicated that the medicals were audited.

20 A. Yes.

21 Q. To \$6600.

22 A. Yes.

23 Q. What does that mean?

24 A. Well, I have to admit that in the entire time that
25 I've been involved in the insurance industry, with respect

1 to a liability claim, I have never ever seen a situation
2 where the medical bills of an injured party are audited,
3 and I don't under -- well, I, I'm not certain that I, I
4 know what they mean. But what happened here is that some
5 -- a company called Review Med audited the medical bills
6 and concluded that part of these medical bills were not
7 part of the customary and usual treatment. But if, if I am
8 an injured party and the doctor tells me that I need to
9 have chiropractic manipulations or if I need physical
10 therapy, I'm not going to question the doctor. And I am
11 not going to be able to go to my healthcare providers and
12 say, you know, \$2200 of this was not part -- shouldn't have
13 been charged me because they're going to say you owe us
14 this money, and you have to pay it back. And I have in my
15 entire career, I have never seen a liability claim medical
16 bills audited.

17 Q. And it looks like for Ms. -- what was the range that
18 they set for Ms. Jones?

19 A. 75, 7500 to 9100.

20 Q. So, that's their settlement range, correct?

21 A. Right.

22 Q. So, that is still less than her total meds of
23 \$9586.95.

24 A. Correct.

25 Q. And for Ms. Shaniqua Thompson, it looks like her

1 medical records are \$9780.81, and her medical records were
2 audited down to what amount?

3 A. \$7663.14.

4 Q. And what was her range?

5 A. The range, the range was 1000 to \$2500 over meds. The
6 range to settle was \$8660 to \$9900.

7 Q. So, she's about \$200 above the -- to settle her case?

8 A. Right.

9 Q. Was that adequate to compensate her for her pain and
10 suffering?

11 A. Judge Hood didn't seem to think so.

12 Q. And it indicates in there that: Will negotiate meds
13 with providers. Is that something they anticipated that
14 the policy owner is supposed to do -- or the injured
15 parties? Just below that.

16 A. I, I see that and I was curious because third-party
17 administrators like this adjusting company ordinarily do
18 not negotiate the medical bills. They simply settle the
19 case for a fair amount and then allow the parties that
20 received the money to pay their medical providers.

21 Q. And I just -- I know it was Jupiter that was the TPA,
22 was the third-party administrator that was handling this
23 particular matter. Have you as of this date even seen any
24 licensing for Jupiter that would allow them to adjust
25 claims here in South Carolina for that timeframe?

1 A. No.

2 Q. If you don't have a license to adjust claims, what
3 does that mean?

4 A. It means you don't have a license, so you ---

5 Q. Does that mean you shouldn't be adjusting claims?

6 A. Well, you probably shouldn't be adjusting claims.

7 Q. And in this particular case, looking at the records on
8 page 2 of 21, when was the original suit filed, when they
9 received it?

10 A. Okay, the -- their activity log shows that they
11 received the lawsuit on February 1, 2018.

12 Q. Okay, and what's the next thing that happens on this?

13 A. It looks like they settled Mr. Mack's claim for --
14 well, they settled it for 8865, but they, at least in my
15 opinion, improperly added the \$1000 that they had paid for
16 MedPay, but that was all that was done because they, they
17 never acted on the lawsuit. Well, I should -- say never,
18 but they didn't immediately act on the fact that they had
19 received a lawsuit.

20 Q. And Mr. Mack's medical expenses, to my understanding,
21 was \$10,699.26.

22 A. Right.

23 Q. So, they got him to settle for \$8866.45.

24 A. Correct.

25 Q. And just kind of looking up under there where it

1 starts, the sentence says: Total. What does it -- what,
2 what does it tell you?

3 A. Which? Which page you want now?

4 Q. This is on page 4 of 21 at 11 -- at November 3, 2017,
5 at the 2222 hour, read the next to last line on that
6 paragraph.

7 A. Okay, it says that:

8 Mr. Mack accepted 9865. Told him if he wants the
9 entire check, that he will have to negotiate the
10 medicals with his providers on his own. I
11 advised him MedPay 1000 was already paid, and he
12 accepted emailed ---

13 I'm not familiar. Was this -- oh: Emailed release to
14 his email address.

15 Q. So, in order to get the check, he would have to agree
16 to negotiate the meds on his own.

17 A. Correct.

18 Q. Even though the check was less than the actual damages
19 themselves.

20 A. Right.

21 Q. And part of the damages is really what they paid on
22 the 7000 because of the 1000 for the MedPay.

23 A. That's right.

24 Q. Was that reasonable?

25 A. No, it was not reasonable, but when, when I reviewed

1 the claims notes, it appeared as though Mr. Mack was very
2 anxious to get ---

3 MR. HELMLY: Objection, Your Honor.

4 THE COURT: It appears Mr. Mack?

5 MR. HELMLY: Mr. Mack, who's not here in the claim,
6 was anxious. This is his -- he says it appears Mr. Mack
7 was anxious. He can't testify to Mr. Mack's state of mind
8 at this time. He's never spoken to Mr. Mack. His words,
9 that's improper.

10 MR. LAKE: Your Honor, I'll, I'll rephrase that
11 question.

12 THE COURT: All right.

13 Q. How often was Mr. Mack calling about his injury and
14 his settlement?

15 A. Constantly. He was in a hurry to get his case
16 settled.

17 Q. And you said they filed suit in February 1, 2018. So,
18 there's no doubt that they got it. Am I correct?

19 A. That's correct.

20 Q. And then it appears that their next action was on June
21 28, 2018.

22 A. That's correct, yes.

23 Q. And that was roughly about four months later?

24 A. Yes.

25 Q. Is there any explanation as to what was going on with

1 this particular case from February the 1st to June 28th?

2 A. Not a thing.

3 Q. So, it appeared that the adjuster had never even
4 touched the file after the suit had been filed.

5 A. Well, there's no action on the suit. Ordinarily when
6 you get a lawsuit, you immediately send it to be defended
7 by your defense counsel.

8 Q. And that -- was that done initially in this case?

9 A. No.

10 Q. The next activity in on June 28, 2018, and what
11 happens? What does Lyndon do at that point?

12 A. Well, they -- Mr. Levesque, who was the adjuster,
13 realized that there was a suit that was filed, and so he
14 sent that to Mr. Helmly, and that was June 28th. That's
15 four months after the suit was, was filed.

16 Q. And so at this point on June 28, 2018, Mr. Helmly has
17 the suit.

18 A. As far as I know, yes. I mean, that's what the file
19 reflects.

20 Q. So, here it's June. What's the next activity on that
21 case?

22 A. January 2, 2019 -- I'm sorry, November 27th.

23 Q. Okay.

24 A. 2018.

25 Q. Okay. So, roughly about, about five months?

1 A. Five months and that's when Mr. Levesque asked Mr.
2 Helmly to give him an update on the file. He wanted an
3 analysis of liability, he wanted an analysis of damages,
4 and he wanted to know what the settlement value was.

5 Q. No response.

6 A. No.

7 Q. Is that reasonable for there to be a suit and no
8 activity between -- only two activities between February
9 the 1st of 2018 and November 27, 2018?

10 A. No.

11 Q. And then what's your next activity?

12 A. January 21, 2019, when Mr. Levesque received a notice
13 of the hearing that was scheduled for January 30, 2019, and
14 he sent that to -- well, it says defense counsel. And then
15 he says: Urgent, urgent. Court hearing on damages.

16 Q. And so he called him at that time, defense counsel,
17 correct?

18 A. Yes.

19 Q. And just kind of look at what -- below the, I guess,
20 11:13 AM when that was sent. Who all received that?

21 A. Mr. Helmly. Well, it says: To Randy. And to Terry,
22 Howard.

23 Q. Howard. Do we know whether that's Mr. Fishbein or
24 not?

25 A. No, I, I do not know.

1 Q. It just says Howard.

2 A. Right.

3 Q. So, at that particular moment, everybody knows there's
4 a damages hearing.

5 A. Yes.

6 Q. Now tell me. Here we are in July of 2023. What's the
7 next activity in this log?

8 A. I don't have anything after -- I don't have anything,
9 any notations after January 21, 2019.

10 Q. Is that reasonable?

11 A. No, it is not.

12 Q. Why not? Why is that problematic?

13 A. Because we don't know what was happening with respect
14 to these claims. We don't know if there was any extra
15 money given to Mr. Levesque to offer. According to my
16 understanding, there was never a request for the extra
17 money, the \$25,000 that would have given Mr. Levesque the
18 ability to have \$42,000 in order to settle the case. And I
19 would have expected to see considerable more, especially
20 after the hearing where the hearing took place.

21 And you -- if you remember that the hearing was
22 postponed because Mr. Helmly asked for it. Mr. Lake did
23 not object, and in the following June after some -- well,
24 you heard Mr. Witherspoon testify and the judge awarded the
25 money, the two \$50,000 judgments, and yet there's not a

1 thing in the file that shows that the judgments were
2 entered. Nor does it show any reaction or response to the
3 fact that there were two judgments.

4 And I, I realize that Mr. Helmly asked the question or
5 made a statement that, you know, the judgments are against
6 John Doe, but they are really against Lyndon.

7 MR. HELMLY: Objection, Your Honor. That is a -- to
8 begin with, that's a -- it's a clear misstatement of the
9 law. And, number two, expert is not here to -- or cannot
10 render an opinion on, on what the relevant statutes say.

11 THE COURT: I sustain the objection.

12 Q. Are you familiar with uninsured motorist?

13 A. Yes.

14 Q. Are you familiar with John Doe civil action?

15 A. Yes.

16 Q. Kind of explain just in, in laymen's terms, what does
17 that mean to file a John Doe action?

18 A. Well, we, we don't know the identity of the person who
19 caused this accident because after striking the rear of the
20 car, they ran away and they were never found. And so in
21 order to begin the process of suing for damages, the
22 plaintiffs here would have to sue John Doe because Lyndon
23 Southern didn't cause the accident. John Doe did. And so
24 as a result, the defendant here is John Doe, but the real
25 party, if you will, because John Doe ---

1 MR. HELMLY: Objection, Your Honor.

2 A. John Doe doesn't -- John Doe does not ---

3 THE COURT: Hold on, sir.

4 MR. LAKE: Just one second.

5 MR. HELMLY: Again, he's, he's, he's, he's, he's
6 misstating the law and he's trying to testify about the,
7 the -- I think he said is the real party in interest here,
8 and again same objection. It's not the law and it's not
9 his domain to interpret law.

10 THE COURT: Overrule the objection.

11 Q. You can continue.

12 A. We know John Doe doesn't exist. He's just a
13 placeholder in the lawsuit. And when John Doe loses the
14 case, then it becomes the insurance company -- in this case
15 Lyndon's -- responsibility to pay on behalf of John Doe.

16 Q. Let's back up just a little bit. We come to the
17 damages hearing. I think you've heard the testimony. You
18 just testified yourself about Lyndon not fully appearing in
19 this particular case for various reasons. Was that
20 reasonable?

21 A. That's difficult to answer. I mean, if, if the
22 insurance company that is basically behind the John Doe
23 action doesn't want to show up, that's, that's the gamble
24 that they take. And so the issue here, though, is that Mr.
25 Helmly appeared on behalf of John Doe in the original

1 January 30th hearing date, and so from that I concluded
2 that the insurance carrier, Lyndon, had entered an
3 appearance on behalf of John Doe.

4 Q. And you said something about gamble. What's that mean
5 when you say the insurance company gambled in this
6 particular matter by whether or not to appear or not to
7 appear?

8 A. Well, they could have decided that these cases
9 together weren't worth enough to warrant their time or to
10 spend the money on a defense attorney. So, they just
11 figured they'll roll the dice and see whether it comes in
12 lower than our limits and if it does, great. And if it
13 comes out above, then we're just not going to pay it.

14 Q. Can you do that?

15 A. You can try, but no, you shouldn't.

16 Q. And why is that?

17 A. An organization, and especially an insurance company,
18 usually does not ignore a, a judgment or an order of a
19 court, which is basically what happened here.

20 Q. And did you find any appeal of this order of the court
21 anywhere where the order of the court was set aside?

22 A. Well, I saw where there was an attempt to get it set
23 aside one year after the original judgment was rendered,
24 but that was denied and there were no other attempts to
25 have any affect on the judgment because there were other

1 avenues that the insurance company could have pursued and
2 failed.

3 Q. What avenues were those?

4 A. They could have asked for a remittitur. They could
5 have gone back to Judge Hood and said, well, you gave too
6 much money. So, we would like you to reduce your, your
7 findings because we think that these cases aren't worth
8 \$50,000.

9 But one of the things that I believe could have been
10 done and has never been done and is appropriate is for
11 Lyndon to have paid into the registry of the court the
12 balance of the \$50,000, which would have been roughly
13 \$42,000, and, and then said to Mr. Lake you go at this
14 money because that's all we're going to give you. And
15 that, perhaps before the judgments were entered, could have
16 settled this case.

17 Q. Okay. So, that was one option they could have done?

18 A. Yes.

19 Q. Was that done in this particular case?

20 A. No.

21 Q. You see any offers from them at all?

22 A. No, I do not.

23 Q. Would you have expected to see some?

24 A. Yes, I absolutely would.

25 Q. And what about -- I know you said something about a

1 remittitur. What is a motion to reconsider? Could they
2 have filed a motion to reconsider?

3 A. Yes, they did. They filed a motion to reconsider,
4 saying there was a mistake or neglect in the -- again, this
5 was a year after the judgments were entered, and the, the,
6 the judge who ruled on that said you haven't proved that
7 there was any mistake or inadvertence, and so the judgments
8 stand.

9 Q. And no appeal filed after that.

10 A. No.

11 Q. And I know you said it was a year. Said it was a
12 year, almost a year between, I guess, when the judgment was
13 obtained and they filed a motion to set aside the judgment.

14 A. Right.

15 Q. Is it reasonable that you have knowledge of a judgment
16 amount to wait that long in order to file this type of
17 motion?

18 A. Well, I don't think, no.

19 Q. Why is that?

20 A. Well, if you were concerned about the entry of a
21 judgment, and I would be if there were two \$50,000
22 judgments of \$100,000 and I only have \$42,000 to settle,
23 yes, I would be in court as soon as possible so that I
24 could try to resolve these issues.

25 Q. Would you have at least looked at the judgment as

1 well?

2 A. Well, of course I would.

3 Q. Would you wait three years to see a judgment?

4 A. No.

5 Q. Why not?

6 A. Because from the insurance carrier's perspective, the
7 insurance company knows it owes a certain amount of money.

8 And we go back to 19 -- or 2017. We're now in 2023, and
9 even though the insurance company, Lyndon, agrees we owe
10 the money -- at least owe the balance of the limits -- but
11 they haven't even offered that.

12 Q. And because the amount of the judgment exceeds that
13 positive, and what does that mean as, as relates to this
14 particular case?

15 A. You mean as far as ---

16 Q. As it relates to, yes, in terms of the fact that their
17 conduct was unreasonable, would the parties be confined to
18 the, the positives?

19 A. Well, I don't believe so. I don't believe so because
20 when Lyndon chose to not challenge the damage hearing, they
21 basically have agree that whatever the court found is what
22 the value of the cases were. And again, as I think I
23 mentioned earlier, that if there was a judgment against me,
24 I wouldn't ignore it. I would pay it. And so there's a
25 judgment against the John Does or the John Doe, then Lyndon

1 owes this money.

2 Q. And just kind of -- if you could go over your
3 chronology of the things that you observed from your view
4 that appeared to you to be unreasonable conduct on behalf
5 of Lyndon.

6 A. Well, one of the most telling things in this case is
7 the fact that Lyndon only gives their adjusters \$25,000 to
8 settle claims, whether there's ten people or one person,
9 and that kind of causes a problem with respect to the
10 adjustment of a claim.

11 And as I testified earlier, if you add up all three of
12 the -- money that was paid to Mr. Mack and then the offers
13 that were made to Ms. Jones and Ms. Thompson, it comes to
14 \$25,000. So, in order to get the case settled beyond that,
15 it would be necessary for the adjuster to seek the approval
16 of Lyndon, but it does not appear from the file that that
17 was ever sought, that Mr. Levesque, who was the adjuster at
18 Jupiter, did not ask for more money to settle the case.
19 This, this one particular part of the adjustment is
20 essentially something that would cause almost every claim
21 that was worth more than \$25,000 to fail.

22 The other problem with this, with the way this, this
23 particular claim was handled was the auditing of the
24 medical bills, which, as I said earlier, in my entire
25 career I have never seen a liability claim where the

1 medical bills were audited. You may see that in medical
2 insurance claims where insurance, the health insurance
3 company doesn't want to pay because they think you've,
4 you've overtreated, but not in this type of case. And
5 those two things alone were way outside of the industry
6 custom and practice.

7 The other situation is that -- well, there are two
8 things. One, these, these claim notes end January 2, 2019.
9 There's -- and, and I am of the opinion that there was
10 considerable activity after that date but that the
11 insurance company didn't want anybody to know what was
12 going on. So, they just never either wrote it down or they
13 didn't -- they just didn't include those last few pages.

14 And the other problem is that Lyndon -- this was what
15 we would call a substandard automobile policy. In other
16 words, the most that Ms. Jones could get was 25, 50. She
17 wasn't offered a higher limit because this was the best
18 that she could do, and Lyndon, the best way I could put it
19 is that they kind of looked down on these, these types of
20 policies because ---

21 MR. HELMLY: Objection, Your Honor. There's no
22 foundation for that.

23 WITNESS: Yes, there is.

24 THE COURT: Objection, lack of foundation.

25 Mr. Lake, response.

1 MR. LAKE: I'll rephrase that question, Your Honor.

2 THE COURT: All right.

3 Q. What you described as a lack of -- strike that. I
4 would describe that as standards. Would that be a fair way
5 to say it?

6 A. Well, I suppose so, but the thing is Lyndon itself
7 does not handle these types of claims. That's what Mr.
8 Fishbein will say when he testifies, that we, Lyndon
9 Insurance Company, do not handle these substandard
10 automobile claims in-house. We send them out to be handled
11 by a third-party administrator, which is what happened
12 here. And basically I see no oversight by Lyndon with
13 respect to how these claims are handled. They don't
14 provide the adjusters with any practices or procedures.
15 They just basically let them go at it, and the, the
16 important thing to know is that Lyndon retains ultimate
17 authority on any settlement of any claim so that the
18 adjusters cannot settle any claim without the approval of
19 Lyndon, and there's nothing in this file to demonstrate
20 that this permission was ever requested.

21 Q. And just kind of going back, let me show you what's
22 been marked as Plaintiffs' Exhibit 15.

23 MR. HELMLY: No objection.

24 MR. LAKE: Move Plaintiffs' Exhibit 15 into evidence.

25 (AGREEMENT MARKED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT

1 NUMBER 15.)

2 Q. Let me show you this particular document. Are you
3 familiar with this? You were talking about the TPA Jupiter
4 and...

5 A. Yes, I'm unfamiliar with this document.

6 Q. And what does -- what do you recognize that document
7 to be?

8 A. It's the agreement, the contract between Lyndon
9 Southern Insurance Company and Jupiter Managing General
10 Agency. It's a claims administration agreement.

11 Q. And does that agreement itself, does it require
12 policies and procedures?

13 A. If I remember correctly, it does but as I said
14 earlier, on page -- I think it's page -- on page 6, part 5,
15 duties and obligations of company, part 5.b:

16 Company has ultimate authority and responsibility
17 for authorizing claims payment and settlement of
18 claims under this agreement.

19 So, Jupiter had \$25,000 to settle all the claims but
20 never got more than \$25,000 to settle the other two claims.

21 Q. And so with that we've got one person that who I think
22 looked at the notes that Mr. Mack had expenses of 11,000,
23 Ms. Thompson and Ms. Jones had medical expenses of 9000
24 apiece, and both of those -- all three of those together
25 exceeded 25,000, correct?

1 A. Right.

2 Q. And were they still -- in your review of the records,
3 it had to be done with 25,000?

4 A. Well, it had to -- it was supposed to be done within
5 25,000 but if it couldn't be done within 25,000, then the
6 adjuster would seek permission from Lyndon to settle the
7 case for more than the \$25,000 total. But that -- as I
8 said, there is nothing in the claim notes which show that
9 that offer was ever -- that they ever asked for permission
10 ---

11 Q. I just want ---

12 A. --- for that extra 25.

13 Q. I just want to go through a few little quick things
14 with this document. I'm going to try to guide you through
15 just to figure out did you observe any of this information
16 that -- contained in this agreement between both parties.

17 It's indicated that -- if you look at paragraph 4
18 indicates that:

19 Claims administrator shall adopt and agree upon
20 guidelines for reserving features that comply
21 with company guidelines and are consistent with
22 industry -- industry standards.

23 Did you ever find any company guidelines for either
24 Jupiter or Lyndon?

25 A. No, I did not.

1 Q. Did you ever find any industry standards for either
2 Jupiter or Lyndon?

3 A. No.

4 Q. Was there any testimony by any witness of Lyndon as to
5 what, if any, standards that they followed in terms of
6 claims adjusting?

7 A. No.

8 Q. It said that -- if you go down to paragraph 8, it
9 says:

10 To provide in accordance with the company's
11 procedures and authority an initial report and
12 periodic reports on the status of each
13 administered claim in excess of reporting level
14 or otherwise reportable.

15 A. I'm sorry. I lost you there. What page?

16 Q. Paragraph 8, still on the same page, number 3.

17 A. Oh. Okay, number what?

18 Q. Number 8.

19 A. Okay, you're on page -- I'm sorry, it's page -- looks
20 like page 2.

21 Q. Oh, I'm sorry. It might be page -- I apologize.

22 A. Okay.

23 Q. Did you ever figure out exactly, looking at that
24 paragraph, again what company procedures they were
25 referring to?

1 A. No.

2 Q. Did you ever find any evidence of these periodic
3 reports or initial reports authority additional authority
4 in this particular case?

5 A. No, not at all.

6 Q. And if you go to page 3, go to paragraph 13, it states
7 specifically that they:

8 Shall maintain files for all administered claims
9 in the claims administrator's claim system. That
10 may include where necessary defense of claims,
11 other litigation, other proceedings, claims
12 handling activities, expense control, and
13 disbursement.

14 Did you find any of these records?

15 A. Some. It was kind of piecemeal, but it was certainly
16 not -- certainly not the entirety of this claim.

17 Q. And you can almost tell it's not the entirety of the
18 claim because we're here today. Am I right?

19 A. Yes.

20 Q. And there should be some records of what led up to
21 this particular case.

22 A. Yes.

23 Q. And right now, we still don't know what Mr. Helmly's
24 recommendations were, correct?

25 A. That's right. We do not.

1 Q. If you go to page 5 where it says duties and
2 obligations of claims administrator, it indicated in
3 paragraph 8:

4 Claims administrator shall maintain all industry
5 standard claim information necessary in the
6 jurisdiction which claims administrator performs
7 claims.

8 Were you able to find that?

9 A. Some. Some. The physical damage claim, all that
10 information was there. The -- as I said, the closer that
11 we got to the hearing on the damages, the less information
12 was contained in the file or the claim file.

13 Q. And you would agree there's a difference between a
14 property damage claim and a bodily injury claim, correct?

15 A. Oh, absolutely.

16 Q. What -- explain to the jury. What's the difference
17 just in terms of evaluation and how these are settled?

18 A. Well, if you're -- if you run into somebody's rear-end
19 and cause damage, then the insurance company goes out,
20 evaluates it, and then they will pay the damage. There's
21 really no -- there's nothing else to discuss or to observe.
22 But if somebody's injured, that's a completely different
23 situation and if you're injured, then if -- if you're
24 injured in any automobile accident, then you expect to be
25 treated fairly, and you expect to receive a reasonable

1 offer. And if you've been through considerable pain and
2 suffering, then you expect to be compensated for that as
3 well. And that's the difference because, you know, a car
4 is a car and it can be fixed or it can be totaled, but your
5 body is something completely different.

6 Q. And let's talk about that. Let's talk about a PD
7 claim. What's your thoughts on not paying the entire --
8 taking \$300 extra out of the deductible?

9 A. Well, I have to say that my understanding is that
10 Lyndon does not provide a copy of the insurance policy to
11 the adjusters. I don't know why, but they do not. And so
12 it's possible that because of the way that Lyndon interacts
13 with its adjusters that they simply weren't aware of the
14 fact that they owed or that the -- that the deductible was
15 only \$200 as opposed to \$500.

16 Q. Should they have been aware or should Lyndon have
17 advised them or provided them with copies of the policy so
18 they would know what the appropriate deductibles are?

19 A. Of course.

20 Q. Is there anything that Ms. -- did you find any
21 evidence that there was anything Ms. Jones did wrong as
22 relates to her deductible?

23 A. No.

24 Q. Who bears the, the burden of the issue regarding
25 failure to pay her \$300?

1 A. Well, I would think it's the insurance company because
2 they're the ones that are holding her money.

3 Q. And who are the ones who cut the checks, according to
4 what you read?

5 A. The insurance company.

6 Q. That would be Lyndon ---

7 A. Lyndon.

8 Q. --- we're speaking about?

9 A. Correct.

10 Q. So, Lyndon still has her \$300?

11 A. They do indeed.

12 Q. As it relates to these TPAs they use, turn to Jupiter,
13 are they also required to maintain insurance?

14 Q. As far as -- yes. Well, according to the agreement
15 they are.

16 Q. And was there any insurance in this particular case
17 regarding their TPA, Jupiter?

18 A. I'm sorry. I didn't hear the ---

19 Q. Do you recall whether there any insurance as it
20 relates to Jupiter in this particular matter?

21 A. As far as I know, they did not comply with the
22 requirement to carry insurance.

23 Q. And so who again selected Jupiter as their TPA?

24 A. According to Mr. Fishbein, the -- Lyndon conducts due
25 diligence and then selects their third-party

1 administrators.

2 Q. Does the fact that they didn't have insurance at the
3 time of this incident be considered due diligence?

4 A. No.

5 Q. Would that be reasonable?

6 A. Well, that's a difficult question to answer because
7 Lyndon is the one that suffers because of the fact that the
8 -- that Jupiter didn't carry the insurance, but one would
9 expect that something as, as serious as this, that Jupiter
10 would -- I mean, that Lyndon would require proof of
11 insurance from Jupiter, and they did not.

12 Q. That's what I was going to ask you. Would there be --
13 if there was some sort of audit, audit of the medical
14 records, was there evidence that they audited the TPAs,
15 third-party administrators, to confirm that they are
16 complying and doing all the things they need to do
17 regarding their claims adjusting?

18 A. I, I didn't see any evidence that.

19 Q. And so that's why you had your opinion earlier they
20 were just kind of doing whatever they wanted to do?

21 A. Yes. That's pretty much accurate

22 Q. And what's the importance of adopting and implements
23 reasonable standards for investigating and handling claims?

24 A. Well, so that the ultimate result -- which is that the
25 insurance company has a responsibility to be fair and

1 reasonable in its evaluation of the claims, and failing to
2 do that, they have fallen well below the industry custom
3 and practice.

4 Q. And what is that industry custom and practice?

5 A. I believe I testified earlier that it's to, to
6 evaluate -- collect information, evaluates the claims, and
7 then make a fair and reasonable offer to settle.

8 Q. And how does that come into play as relates to
9 requiring -- should a carrier require their insureds or
10 policy owners to file suits and collect judgments?

11 A. No, absolutely not.

12 Q. Why not?

13 A. Because they -- it is, is not part of the custom and
14 practice of the industry to force your own insureds to sue
15 you, you, the insurance company, in order to collect money
16 they legitimately owe you.

17 Q. And through your investigation, was there money that
18 the plaintiffs in this case were legitimately owed?

19 A. Yes.

20 Q. Why is that?

21 A. Well, for two reasons but primarily because there are
22 two unassailable judgments entered against John Doe, which
23 ultimately is, is Lyndon, and they have totally ignored the
24 judgments.

25 Q. Is it reasonable to ignore those judgments?

1 A. No, not, not at all.

2 Q. Mr. Lipshultz, have all of your opinions that you've
3 given today been to a reasonable degree of professional
4 certainty?

5 A. Yes.

6 Q. As to whether Lyndon acted reasonable or unreasonable
7 in the handling of their claims?

8 A. Yes.

9 MR. LAKE: Beg the court's indulgence.

10 (A PAUSE.)

11 THE COURT: Ladies and gentlemen, we will take a break
12 now. Please go to the jury room. Please do not discuss
13 the case.

14 You have more questions of this witness?

15 MR. LAKE: Your Honor, I think that will be it. I
16 just wanted to confirm.

17 THE COURT: All right, go to the jury room. Do not
18 discuss the case. Leave the notes in your seats.

19 (THE JURY EXITS AT 4:21 PM.)

20 THE COURT: You may step down. Do not discuss your
21 testimony.

22 Now, we have Ms. Anastopoulo from Charleston. Did you
23 plan on calling her today?

24 MR. LAKE: Your Honor.

25 MS. ANASTOPOULO: Yes. Please, sir.

1 THE COURT: You know, you have to manage the clock.
2 The clock is ticking.

3 MR. LAKE: Well, Mr. Lipshultz, he catches a flight
4 tomorrow, and that's why I've got to get him in and things
5 of that sort.

6 THE COURT: I understand. I'm just posing the
7 question.

8 (A PAUSE.)

9 MR. LAKE: I'm going to -- I'm going to beg shortly
10 during this break to see whether I can convince her to give
11 me one more day.

12 THE COURT: It depends on how long this
13 cross-examination takes.

14 MR. HELMLY: Your Honor, what I ---

15 THE COURT: I can stay here till midnight, but it's
16 not about me.

17 MR. LAKE: Your Honor, ideally ---

18 MR. HELMLY: Me, too, Judge.

19 THE COURT: Yeah.

20 MR. LAKE: Your Honor, what I ideally wanted to do ---

21 THE COURT: The lady with a newborn can't.

22 MR. LAKE: Your Honor, I've really just got three more
23 witnesses after this right here. But I wanted to Mr.
24 Ndreu, Mr. Fishbein, and I wanted to save ---

25 THE COURT: You know, you bring all these -- everybody

1 here on the first day of trial and then talk an hour to
2 each one of them. You run out of time.

3 MR. LAKE: I'm sorry, Your Honor.

4 THE COURT: But we're going to take a few minutes, and
5 we'll press on.

6 MR. LAKE: Thank you, Your Honor.

7 THE COURT: But as you can see, we're reaching an hour
8 where the jurors stop listening as well.

9 MR. LAKE: I know.

10 THE COURT: They go to sleep. Okay.

11 (OFF THE RECORD.)

12 THE COURT: You can bring them on.

13 (A PAUSE.)

14 THE COURT: Does anybody know where the lawyers went?

15 CLERK: Yes, sir. I can get them. They're right in
16 the hallway.

17 THE COURT: The jurors are coming in.

18 (THE JURY ENTERS AT 4:57 PM.)

19 THE COURT: All right, cross-examination.

20 CROSS-EXAMINATION BY MR. HELMLY:

21 Q. Good afternoon, Mr. Lipshultz. Am I pronouncing that
22 correctly, Lipshultz?

23 A. Yes. Yes, Mr. Helmly.

24 Q. All right. I won't be long at all. Just a few
25 questions. I think one of the first things you said in

1 your testimony was you were discussing your experience
2 having adjusted claims. You said never make your best
3 offer first.

4 A. Correct.

5 Q. And, and certainly you would agree than insurance
6 carrier is, is not obligated to -- or is only obligated to
7 make a -- make an offer that they believe is reasonable
8 based on their own internal evaluation, correct?

9 A. I'm not sure I understand your question. Fair and
10 reasonable means fair and reasonable, and that's what most
11 insurance companies follow. And so in this particular
12 case, the internal requirements were that the cases all be
13 settled for \$25,000. That is not industry custom and
14 practice.

15 So as I said earlier, the three claims that were
16 involved in this case, Mr. Mack's case was settled. The
17 two other offers totaled \$25,025. That was not reasonable
18 and if that's the internal practice, then that's not
19 reasonable either.

20 Q. But the, the negotiation never extended beyond their
21 first offer. The plaintiffs demanded, the plaintiffs
22 demanded \$80,000 in excess of the aggregate limits and,
23 and, and according to you, that's totally fine, and the
24 carrier can't come back and make an offer that they believe
25 is reasonable based on their own internal evaluation,

1 whatever process that may be. Looking at the medical
2 records, trying to determine if they're usual and
3 customary, that's -- are you suggesting that it's not
4 reasonable for them to, to, to make an offer based on their
5 own evaluation?

6 A. That's not what I said. What I said was that their
7 process was not fair and reasonable. That, as I said
8 earlier, I've been involved with insurance for over fifty
9 years. I've never seen a liability claim such as this one
10 or an injury claim such as this one where the issue is a
11 settlement value audited, the medicals audited. That's
12 just not part of the custom and practice in the industry,
13 and what that did was limit the ability of the adjuster to
14 settle the case, at least originally. But the offers that
15 were made were so low that even if the -- even if you think
16 that the offer that was made was too high, one would expect
17 that once you realized that you're not going to get these
18 cases settled for the total of \$25,000, I need more money,
19 but that never occurred. So, there was never any counter
20 to that, what you consider to be too high of an offer, in
21 excess of the policy limits.

22 Q. The plaintiffs sent the demand. Lyndon countered and
23 then that was it. No other -- the plaintiffs never sent
24 another demand to them after that, until after suit was
25 filed. So, are -- isn't it -- they have a -- they have a

1 right to, to disagree on the value of a claim, don't you --
2 don't you think?

3 A. Well, as long as the original evaluation was fair and
4 reasonable, absolutely, but the original evaluation of this
5 claim was not fair and not reasonable.

6 Q. And that's -- and that's based on what?

7 A. Based on experience and the fact that a judge in this
8 court awarded each one of these defendant -- these
9 plaintiffs \$50,000 for their pain and suffering and a
10 recoupment of their medical bills.

11 Q. But the decisions are made not -- they can't predict
12 the future. They have a right to be wrong, do they not?

13 A. Who?

14 Q. The carrier. They've got a right to be wrong about
15 the value of the claim, don't they?

16 A. Of course they do, but that's a risk that they choose
17 to take.

18 Q. And they have a right to contest claims based on their
19 reasonable evaluation.

20 A. Well, I don't know what you mean by contest claims.
21 If you're -- we're not talking about liability here. We're
22 only talking about valuation, correct?

23 Q. Correct.

24 A. Sure. They can -- they can evaluate claims, but they
25 have to be -- there has to be a reasonable offer and offers

1 that are lower than the medical bills are not reasonable.

2 Q. Well, demands higher than the limits are unreasonable
3 as well, correct?

4 A. No, not necessarily, but at the end of the day, what I
5 would have expected to have happened here is that Mr.
6 Leveque would've gone to Lyndon and said I cannot get these
7 cases settled for the total of \$25,000. I need the extra
8 limits; I need the extra 25,000. That would have allowed
9 him to be able to settle the case for the balance, which
10 was roughly \$42,000.

11 Q. How was he supposed to know? They didn't -- they
12 didn't counter the offer that you allege or claim to be
13 unreasonable. They didn't counter. They went silent and
14 filed a lawsuit.

15 A. Well, I'm not sure that ---

16 Q. They, they ---

17 A. I'm not sure that that's accurate. Let's just assume
18 that that's correct. Once this case was set for a hearing,
19 still they didn't make an offer. They still did not come
20 and say look. We agree that this case is worth the balance
21 of the policy limits, so that's what we're going to offer
22 you so that we can get the case settled because we don't
23 want to risk having a judge award more than our policy
24 limits, but that was a risk that Lyndon chose.

25 Q. Do you recognize the difference between a third-party

1 claim and a first-party UF claim, uninsured claim?

2 A. Of course.

3 Q. And that there, there are distinctions between those
4 two?

5 A. Yes.

6 Q. Do you think that is -- you would agree that it's
7 reasonable for an insurance carrier to make decisions,
8 extend offers, choose how to handle claims based on
9 governing statutes?

10 A. Well, I would expect that any adjusting company or any
11 insurance company, for that matter, would be very much
12 aware of all of the governing statutes, including fair
13 claims practices, as well as the statutes that operate on
14 the uninsured motorist claims.

15 Q. Have you reviewed those?

16 A. I have.

17 Q. You think it's reasonable for a insurance carrier to
18 rely on the terms and conditions and the policy limitations
19 in making its decisions on paying claims, valuing claims,
20 settling claims?

21 A. Sure. That wasn't done here, but yes, I agree that's,
22 that's certainly reasonable.

23 Q. So, so, if the policy says that pursuant to an
24 uninsured motorist claim that they are obligated to pay
25 claims that an insured is legally entitled to recover

1 within limits, does that have any -- I mean, if, if, if, if
2 the law -- if the law and the statute says that all that
3 they are required to pay, the law and the policy, all that
4 they are required to pay in a situation such as this is up
5 to the limits.

6 A. I, I -- you're asking me a legal question, and even if
7 it isn't a legal question, I heartily disagree.

8 Q. But they are -- it is reasonable to follow the --
9 follow the law and the terms of the policy, correct?

10 A. Which law are you referring to?

11 Q. The governing law.

12 A. Well, are you talking about Fair Claims Practices Act
13 because they certainly didn't follow that.

14 Q. That doesn't provide a private right of action, so
15 that's irrelevant here. I'm talking about the uninsured
16 motorist statute.

17 A. Okay. Well, the only thing that I saw was that the
18 insurance company had an obligation. It depends on how you
19 read the statute. Lyndon reads the statute as we don't
20 really care what happens, so we don't need to show up. I
21 read the statute as something that, based upon the language
22 of your policy, something that you should -- that Lyndon
23 should have paid more attention to.

24 Q. Is it your contention that in every case, every claim,
25 a carrier has a duty to, to even make a settlement offer?

1 A. Well, I don't make contentions.

2 Q. Is it your opinion?

3 A. That an insurance company is required to make an offer
4 of settlement?

5 Q. Yes.

6 A. Well, it depends on the circumstances.

7 MR. HELMLY: That's all I have. Thank you.

8 THE COURT: Anything further?

9 MR. LAKE: No further question.

10 THE COURT: Thank you, sir. You may step down.

11 WITNESS: Thank you, Your Honor.

12 MR. LAKE: Your Honor, may this witness be excused?

13 THE COURT: All witnesses are excused once they step
14 down.

15 (THE WITNESS EXITS THE STAND.)

16 THE COURT: Now, someone has a child care issue at 6
17 o'clock?

18 JUROR: Yes, sir.

19 THE COURT: All right. We have -- unfortunately, we
20 have another witness who -- he's showing me two. I know we
21 have one from Charleston here.

22 MR. LAKE: There's three. I've got -- I've kind of
23 narrowed it down to two. One is Mr. Fishbein.

24 THE COURT: Fishbein will be here tomorrow.

25 MR. LAKE: I think she was going to go last.

1 THE COURT: Pardon? We're not going to stay here til
2 midnight.

3 (A PAUSE.)

4 MR. LAKE: She's going to come back tomorrow.

5 THE COURT: All right.

6 MR. LAKE: And we can -- we can -- with the childcare
7 issues, I think my new mother has childcare issues, too, as
8 well. She's been gone about twelve hours now. So, I think
9 she's ready to get home to the baby. So, we're fine with
10 that.

11 THE COURT: All right, ladies and gentlemen we will
12 resume at 9:30 tomorrow morning. Please do not discuss the
13 case.

14 When you return tomorrow, Ms. Peay.

15 JUROR: Yes.

16 THE COURT: You will be the forelady of this jury.

17 JUROR: Thanks. Thank you.

18 (THE JURY EXITS AT 5:10 PM.)

19 THE COURT: Now, who's your -- are you saying your
20 next witness will be?

21 MR. LAKE: Mr. Howard Fishbein and then we'll call
22 Constance Anastopoulo. Then we'll rest. So, we start at
23 9:30, I would say we'd be ready, done with all the
24 witnesses before 11.

25 THE COURT: All right. Regarding these requested

1 charges, do you have any -- well, I think -- are we -- you
2 both have submitted requested charges that all appear to be
3 rather standard even though we do not use Judge Anderson's
4 charge, charges.

5 MR. HELMLY: Your Honor.

6 THE COURT: The substance of them, they're contained
7 in the standard charges.

8 MR. HELMLY: In light of some of the, you know,
9 testimony we've heard today and sort of this fine line
10 between law and opinion and things like that, there may be
11 some, some additional charges that -- or things to be
12 included in those charges.

13 THE COURT: All right.

14 MR. HELMLY: I'll put those together obviously, Judge,
15 and certainly your discretion to decide whether or not to
16 use them. Is there any way that we can get a copy of your
17 charges beforehand?

18 THE COURT: Well, when they're ready, which will be
19 probably when you all get through with the witnesses.
20 Always they'll be prepared and distributed, but we're still
21 in the plaintiffs' case.

22 MR. HELMLY: I assume yours are fantastic, Judge.

23 THE COURT: Oh, yeah, they are, but you all have just
24 decided to have a jury decide this case? I'm not being
25 presumptuous, but the defense is not trying to settle this

1 case?

2 MR. HELMLY: We have been, Judge, and, and there is a
3 -- just a -- there's a really large gulf, and I think that,
4 you know, I think we've made reasonable offers based on
5 the...

6 THE COURT: You know, this is a -- this is a totally a
7 plaintiff's jury listening to this case, and I don't know
8 all the dynamics, and of course I haven't spoken with any
9 of them. I'm just reading the tea leaves, and you may have
10 a bottomless pit over there for the defense. But I can't
11 understand why -- and I don't know what your -- what
12 efforts you all have made to resolve the case. But I'm
13 just raising a question. In about six months, I'll be a
14 mediator, arbitrator.

15 MR. HELMLY: Well, Judge, I ---

16 THE COURT: Will be my line of work trying to figure
17 out, resolving cases.

18 MR. HELMLY: I think Mr. Lake and I have, to a certain
19 degree, agreed that we'd like to resolve it, and, and the
20 problem that we've had is the -- and I think we've
21 undertaken a reasonable evaluation and, and we're so far
22 apart, and it's -- and that's the way it is.

23 THE COURT: Trying to convince the jury. The
24 plaintiff has testified. Your witness may be an excellent
25 witness. It's food for thought. This is insurance, bad

1 faith in which punitive damages are being sought, actual
2 and punitive damages, and basically Mr. Lake is going to
3 ask the jury to fill out a blank check for the plaintiffs.
4 And we have a legal issue about whether or not she is
5 classified as an insured or covered under the bad faith
6 statute. There are a lot of ingredients here that doesn't
7 bode well for the defense as I sit and listen. We have --
8 he still has to put up his star expert witness who teaches
9 all of this to the judges and everybody else.

10 MR. HELMLY: And is a renowned lover of insurance
11 companies and defense attorneys and everybody else.

12 MS. ANASTOPOULO: I testify on both sides, but I did
13 just teach all the judges, as Judge Newman knows.

14 THE COURT: I was in her class, and so -- but, you
15 know, just giving you food for thought overnight as you try
16 to figure this thing out.

17 One thing about a settlement is that it settles the
18 issues; there are no appeals when cases are settled.
19 Plaintiffs are sitting in a good position right now, and
20 I'm not sure, you know, about the insurance company as I
21 was looking at the policy. I know I'm not familiar with
22 this agency, company, but I see these out-of-state
23 addresses. It's not a standard form. Company may not have
24 standard practices. It just raises a lot of questions to
25 my mind.

1 With that, we'll check out for the day.

2 MR. LAKE: Thank you, Your Honor.

3 MR. HELMLY: Thank you, Judge.

4 THE COURT: See you in the morning.

5 (WHEREUPON, THE CASE IS AT EASE.)

6 *THURSDAY, JUNE 22, 2023*

7 (COURT RESUMES AT 9:39 AM.)

8 THE COURT: Good morning.

9 MR. LAKE: Your Honor, this is proposed on my -- on
10 the plaintiffs' behalf. I think Gabbie had asked that you
11 -- proposed a copy of a verdict form, so that's just the
12 plaintiffs' proposed...

13 MR. HELMLY: Your Honor, I, I -- you issued this one,
14 and I think we're working on a verdict form, and this one
15 said breach of contract accompanied by a fraudulent act.
16 That's not -- that's not pled in the complaint. So, I
17 don't think that's appropriate.

18 MR. LAKE: Your Honor, it does give punitive damages.
19 I'm only aware of one attorney in the -- in the case.

20 THE COURT: Only aware of what?

21 MR. LAKE: One counsel for Lyndon in this particular
22 matter. So, I'm not sure -- I know you said something
23 about we're working on that right now. So, I'm not exactly
24 sure ---

25 THE COURT: He can work with whomever he wants.

1 MR. LAKE: Yeah, but I think, Your Honor, you still
2 have to make some sort of appearance in this particular
3 matter.

4 THE COURT: Who?

5 MR. LAKE: I don't know. Whoever he's talking about.
6 I'm not quite sure.

7 THE COURT: Well, I'm not sure what you're talking
8 about. You were talking about the verdict form.

9 MR. HELMLY: Yes, Your Honor.

10 THE COURT: You indicate that he did not indicate a
11 cause of action for breach of contract with fraudulent --
12 accompanied by a fraudulent act. So, he ---

13 MR. LAKE: Your Honor, that goes -- that's part of
14 damages punitive damages, and we did plead punitive damages
15 in this particular matter.

16 THE COURT: Number 3 is: Did Southern breach its
17 contract accompanied by fraudulent act.

18 MR. HELMLY: The cause of action pled in the
19 complaint, Your Honor, is, is just, just breach of
20 contract.

21 MR. LAKE: Your Honor, this -- that only goes to the
22 issue of damages, is my understanding, the fraudulent
23 conduct. It's an issue of damages. Sorry. I apologize.
24 I think that is -- just, Your Honor, just for the court
25 reporter, that is a damages issues from my understanding,

1 but I'll leave it up to the court. That's just a proposal.
2 Court asked for proposals, so we proposed.

3 THE COURT: Did you share with the other side?

4 MR. LAKE: Yes, sir.

5 THE COURT: I mean, did you all do any consultation in
6 regard to the verdict form?

7 MR. HELMLY: We did not, Your Honor.

8 THE COURT: We're having a wasted conversation then if
9 you all didn't share and discuss and see if you agree.

10 MR. HELMLY: I just saw it, and I was just -- I was
11 surprised by the breach of contract accompanied by
12 fraudulent acts simply because it's not a -- that is a
13 separate, independent cause of action not pled in his
14 complaint. So, I certainly can, can have one.

15 THE COURT: What's your position about punitive
16 damages?

17 MR. HELMLY: I think there, there would have to be a
18 finding of that in its -- and, and, and I'm not sure if Mr.
19 Lake is choosing to elect a remedy here, the breach of
20 contract remedy here. Bad faith is pled as well, bad faith
21 refusal to pay and ---

22 THE COURT: What's your position as to whether the
23 jury should be instructed on punitive damages?

24 MR. HELMLY: I don't believe that wanton or willful or
25 reckless conduct has been established by the testimony thus

1 far.

2 THE COURT: Well, assuming that it's a jury issue, do
3 you believe the jury should decide the issue of punitive
4 damages?

5 MR. HELMLY: As opposed to the court?

6 THE COURT: Well, the court is not going to decide it.
7 I'll instruct the jury as to the appropriate law, and
8 they'll, they'll move on. We have four or five witnesses
9 so, you know, my brain hasn't jumped to jury charge yet.

10 MR. HELMLY: And I guess, Your Honor, since, since,
11 you know, the testimony hasn't concluded, it's a little bit
12 difficult to -- or perhaps premature to finalize a verdict
13 form.

14 THE COURT: Typically you don't get punitive damages
15 for breach of contract.

16 MR. HELMLY: Correct. Yeah, I mean, for breach of
17 contract, for punitive damages ---

18 THE COURT: Go ahead. I'll listen to you. Go right
19 ahead.

20 MR. HELMLY: Your Honor, under -- for breach of
21 contract, there -- punitive damages are not, not, not
22 appropriate. Only -- would only be for any tort cause of
23 action. So, no, I don't believe that, you know, the jury
24 should be instructed on, on punitive damages. It appears
25 it's -- we've got a -- it's an actual damages case.

1 THE COURT: Well, an allegation of bad faith. So, do
2 you give punitive damages for bad faith?

3 MR. HELMLY: They are...

4 (A PAUSE.)

5 THE COURT: We'll come back to all of that. I'm just
6 throwing it out there.

7 MR. HELMLY: I think, you know, certainly our body of
8 case law suggests that, you know, if there is willful,
9 wanton, reckless disregard in the -- in the conduct, if
10 found to have committed bad faith, yes, Your Honor.

11 THE COURT: All right.

12 MR. HELMLY: The case law certainly says that.

13 THE COURT: Well, that's the essence of the case. Mr.
14 Lake says it's a fraudulent act. You said, well, he, he
15 didn't plead that, but he's pled bad faith. He doesn't
16 care what you call it. He wants punitive damages in
17 addition to actual damages.

18 MR. HELMLY: Well, I was just confused by the verdict
19 form because it appears that there's, you know, there's an
20 election of remedies here because he just mentions the
21 breach of contract. There's two causes of action before
22 the court, and I believe it's faith bad -- a breach of
23 contract and then bad faith.

24 THE COURT: Do you have -- do you have to elect -- do
25 you have to elect the remedy before or after a verdict?

1 Is that a juror?

2 JUROR: Yes.

3 THE COURT: All right. How did you get lost?

4 JUROR: Traffic.

5 THE COURT: Oh. I mean, lost in where to come.

6 JUROR: I'm looking for the jury room.

7 THE COURT: Well, just -- you come this way and go
8 through that door there. We've been looking for you.

9 JUROR: I know. I'm so sorry.

10 THE COURT: But you're supposed to come back around
11 some other kind of way.

12 JUROR: Okay. I'm sorry.

13 THE COURT: That's all right.

14 JUROR: Sorry.

15 (THE JUROR EXITS THE COURTROOM.)

16 THE COURT: All right, she didn't hear anything. She
17 was just coming through.

18 All right, well those are some of the things being
19 bantered around, and we'll press on with the case. We'll
20 get there. Wherever it is we're supposed to go, we'll get
21 there.

22 The last juror showed up ready. Y'all ready for the
23 jury?

24 MR. LAKE: We're ready, Your Honor.

25 THE COURT: All right. Bring them on.

1 (THE JURY ENTERS AT 9:49 AM.)

2 THE COURT: Good morning.

3 JURY: [EN MASSE] Good morning.

4 THE COURT: Proceed.

5 MR. LAKE: Your Honor, the plaintiffs would call
6 Howard Fishbein.

7 HOWARD FISHBEIN, BEING DULY SWORN,
8 TESTIFIES AS FOLLOWS:

9 CLERK: Would you please state your full name for the
10 record?

11 WITNESS: Howard Fishbein.

12 CLERK: Thank you. You may be seated.

13 WITNESS: Thank you.

14 DIRECT EXAMINATION BY MR. LAKE:

15 Q. Good morning.

16 A. Good morning.

17 Q. Where are you currently employed?

18 A. I'm sorry. I didn't hear you.

19 Q. Sorry. I apologize. Where are you currently
20 employed?

21 A. Fortegra Spec -- Fortegra Financial.

22 Q. And what is Fortegra?

23 A. It's a holding company.

24 Q. And just for the jury's purpose, what, what is a
25 holding company?

1 A. So, most insurance companies that you'll see on TV or
2 whatever, they're actually owned by a holding company.
3 Most holding companies own multiple insurance companies, so
4 they roll up into -- they're wholly-owned subsidiaries of a
5 parent company.

6 Q. And as a holding company in this particular matter,
7 how many insurance companies does Fortegra own or manage?

8 A. I think eight or nine.

9 Q. Eight or nine, and ---

10 A. It's actually -- it's owned by Lotts Intermediary, and
11 then Lotts Intermediary is owned by Fortegra Financial.

12 Q. Okay, and so where does Lyndon Southern fit into that
13 there?

14 A. It's a wholly-owned subsidiary of Lotts Intermediary.

15 Q. Okay. So, what's the connection Fortegra and Lyndon?

16 A. Lotts Intermediary owns 100 percent of Lyndon
17 Southern, and Fortegra Financial owns 100 percent of Lotts
18 Intermediary.

19 Q. Okay, and what is your role at Lyndon?

20 A. I'm the senior vice president of claims.

21 Q. And just explain to the jury. What does that mean?

22 A. I have responsibility for the Specialty Claims Unit
23 within the organization.

24 Q. And this is standard plus substandard? Or
25 nonstandard, I apologize.

1 A. We'll, it would -- are you talking about auto?

2 Q. Yes, specifically.

3 Q. So, we, we only have a nonstandard auto policy
4 program.

5 Q. And explain to the jury what nonstandard auto is.

6 A. It's typically for individuals who might not qualify
7 for a standard policy. So, they could have loss history or
8 other things that would make them ineligible. And so it's
9 a policy that allows for eligibility to, to meet the
10 minimum standard limits required by the state.

11 Q. Now, how many adjusters does, does Lyndon have to
12 handle these nonstandard auto claims?

13 A. We don't handle them in-house.

14 Q. You don't handle those in-house. What about Fortegra?
15 Does Fortegra handle any claims in-house?

16 A. Yes. Not auto, though.

17 Q. Okay, but all your auto claims will be nonstandard,
18 and all of them are going to be handled by a TPA, correct?

19 A. Correct.

20 Q. And in South Carolina, who was your TPA at the time?

21 A. Originally -- well, for, for this policy you mean?

22 Q. Correct.

23 A. So, originally it was David Morris Associates.

24 Q. And that's DMA, correct?

25 A. Correct, DMA.

1 Q. And where is DMA now?

2 A. I believe they still operate out of Dallas or Houston.
3 I'm not entirely sure.

4 Q. Are they here in South Carolina at all or do any
5 business in South Carolina?

6 A. I'm sure they do.

7 Q. Okay, and then what -- who's next?

8 A. And then it switched to Jupiter.

9 Q. Okay. What is Jupiter's status now?

10 A. I believe they're not an ongoing concern or they've

11 ---

12 Q. They no longer ---

13 A. --- changed their business.

14 Q. They're no longer claim adjusting, are they?

15 A. I don't think they adjust claims anymore, although I'm
16 not entirely sure.

17 Q. And along that same lines, I think you've been asked
18 before to provide us with was some information showing that
19 Jupiter was authorized or licensed to do business here in
20 South Carolina. Were you able to find that information or
21 provide it to us?

22 A. I don't recall being requested for that, but I know
23 that the adjuster who handled this file was licensed in
24 South Carolina.

25 Q. What evidence do you have of that that was provided to

1 either me or to your attorney two years ago?

2 A. I looked it up on the license look up.

3 Q. When did you do that?

4 A. Say again?

5 Q. When did you do that?

6 A. I did yesterday actually.

7 Q. Did you provide that information to your attorney to
8 let me know this morning?

9 A. I, I did make him aware that Phil Levesque was a
10 licensed South Carolina adjuster, yes.

11 Q. And where is Mr. Levesque today ---

12 A. I'm ---

13 Q. --- to verify that?

14 A. I'm not sure.

15 Q. Okay, and as the claims vice president of claims
16 adjusting, I assume you manage claims for all of the
17 businesses up under Fortegra.

18 A. No.

19 Q. Which companies were you specifically responsible for?

20 A. So, it's not a -- it's not company driven.

21 Q. Okay.

22 A. There are several different units within the
23 organization. I'm responsible for the Specialty Unit.

24 Q. Okay, and how do you define Specialty Unit?

25 A. There are several different units within the

1 organization. I'm responsible for the Specialty Unit.

2 Q. Okay, and how do you define Specialty Unit?

3 A. Within our organization, it generally doesn't include
4 our warranty products or our credit products.

5 Q. But it does include nonstandard auto, right?

6 A. It does. Correct

7 Q. And so I guess I want to ask this question. Why
8 either did Lyndon or Fortegra keep Ms. Jones's \$300?

9 A. I only found out about that yesterday for the first
10 time when, when Ms. Jones testified about that.

11 Q. And why weren't you previously aware of that?

12 A. Because I didn't realize it.

13 Q. I know. I'm asking. Why didn't you realize that?

14 A. Because no one brought to my attention. Same reason
15 that nobody seemed to have been aware of it, but if it had
16 been brought to my attention, I gladly would have paid it
17 to her. I would have looked at the file and seen that it
18 was clearly a mistake with regard to the identified
19 applicable deductible, and I would have paid it.

20 Q. When I talked -- when I took your deposition last year
21 of 2022, do you recall telling me you hadn't looked at the
22 file? Do you recall saying that?

23 A. I don't recall that.

24 Q. Okay, you don't recall that. Do you recall saying
25 that you haven't looked at the judgment as well?

1 A. I don't recall that.

2 Q. Well, I'll make sure I show you that.

3 A. Okay.

4 Q. Aren't your files audited?

5 A. Aren't the auto files ---

6 Q. Claims.

7 A. --- audit? Some -- there are audits that are usually
8 conducted, yes.

9 Q. Explain to the jury what an audit is.

10 A. We would hire a third party to go in and when we
11 utilize third-party administrators, which are outside
12 companies that will adjust claims for us, we will have them
13 take a sample of files, look at them, and give us some
14 information or feedback on things that can improve
15 efficiencies or identify deficiencies in the -- in the
16 file.

17 Q. And what audits of records have you provided to the
18 plaintiffs in anticipation of this trial today?

19 A. I don't know.

20 Q. You don't know as vice president. So, you don't know
21 whether this claim was audited or not.

22 A. I don't know that, no.

23 Q. Well, who would have been -- ask you a question then,
24 better question. Did you know what the deductibles that
25 apply to UI -- to UM claims were in South Carolina at the

1 time?

2 A. I don't know that there's a standard deductible, but
3 I, I saw the policy.

4 Q. And what does the policy say?

5 A. It said \$200.

6 Q. The policy says \$200, correct?

7 A. Correct.

8 Q. And are you aware if there's any statutes in South
9 Carolina that also attributes \$200?

10 A. Off the top of my head, I'm not.

11 Q. So, you would agree that at the time of this event,
12 Lyndon was aware, Jupiter was aware that this was a
13 uninsured motorist claim, right?

14 A. Yes.

15 Q. So, did anybody explain to Ms. Jones that this should
16 have only been a \$200 deductible?

17 A. I don't know.

18 Q. Why don't you know that?

19 A. Because I never spoke with Ms. Jones.

20 Q. Have you talked to Phil Levesque to ask him that
21 question?

22 A. I did not speak to Phil to ask him that question.

23 Q. Is there any reason why you haven't asked him why they
24 didn't her pay \$300?

25 A. Well for starters, again, I only found that out

1 yesterday for the first time.

2 Q. Well, who should known that she kept 300 -- you kept
3 \$300 of hers?

4 A. You know, look. Humans are adjusting these files,
5 okay? People make mistakes and when we make mistakes, we
6 try to correct them. And if you had told me three months
7 ago, six months ago, or even two days ago, I gladly would
8 have paid Ms. Jones the \$300.

9 Q. Okay.

10 A. That she was entitled to.

11 Q. So, you've known about this for at least a couple of
12 days. So, have you cut a check for her?

13 A. I knew about it yesterday and, and ---

14 Q. Well, did you call anyone to order a check for her the
15 minute you knew that she was out \$300?

16 MR. HELMLY: Objection, Your Honor.

17 THE COURT: The basis for the objection.

18 MR. HELMLY: It's highly argumentative. We're talking
19 about evidence that's been produced here in this trial.

20 THE COURT: The objection is overruled.

21 A. I, I did not.

22 Q. Why didn't you?

23 A. Because it was presented as damages in this case, and
24 the jury, you know, I fully expect that they would award
25 her that \$300. She's entitled to it. I'm not disputing

1 that.

2 Q. You do know -- aware this is a breach of contract
3 claim, correct?

4 A. Yes, I'm of that.

5 Q. And so it's your acknowledgment that you all over the
6 last six years have either willfully or recklessly kept her
7 \$300.

8 A. No.

9 Q. Well, what do you acknowledge then?

10 A. Acknowledging that someone made a mistake, not that it
11 was willful or wanton or with disregard for Ms. Jones.

12 Q. Well, how ---

13 A. People make mistakes, and there was a mistake made.

14 Q. Wouldn't audits catch that?

15 A. Not in this ---

16 Q. Wouldn't an audit catch that?

17 A. Not necessarily. I mean, it depends if they audited
18 that file or not. Again, you have people doing audits, and
19 someone's who's completing an audit can make a mistake.

20 Q. So, we've got Mr. Levesque. Did he catch it?

21 A. It appears he did not.

22 Q. Okay. Who's above Mr. Phil?

23 A. I believe an individual named Terry James.

24 Q. So, he didn't catch it either?

25 A. I don't know -- I don't know what the looked at, but I

1 assume he did not catch it.

2 Q. And he reviewed the files, correct?

3 A. I don't know. I'm assuming he does, yes.

4 Q. Because I've seen on some of these claim notes that
5 he's listed as one of the parties that were involved in all
6 these emails, correct?

7 A. Could, yeah, probably.

8 Q. So, that means he has had access to this file as well
9 to look at, correct?

10 A. He could have, yes.

11 Q. And so he missed it.

12 A. I don't know if he looked at that aspect of the file.
13 So, I don't know if he did or didn't.

14 Q. Well, what aspect did he look at then?

15 A. I don't know if he reviewed, reviewed this file as
16 part of his internal audit of, of his team.

17 Q. Okay, and that would be -- is that Terry?

18 A. Terry.

19 Q. Okay, what's his -- Terry what?

20 A. James, Terry James.

21 Q. Okay, and who's above Terry James?

22 A. I don't know in their organization.

23 Q. So, you don't know. So, that person missed it as
24 well.

25 Q. Yes.

1 Q. Okay. Now, tell me. From that person that's above
2 Terry to you, how many people are in between that?

3 A. Well, Terry would normally reach out to me.

4 Q. Okay. So, Terry never reached out to you.

5 A. Not regarding that, no.

6 Q. And since this suit has been filed in 2019, you never
7 reviewed this entire file to determine what is owed and
8 what's not owed.

9 A. I did. I did look at portions of the file. That's,
10 that's not accurate. I did not note -- I did notice that
11 myself. That's correct.

12 Q. Well, you testified in your deposition that you didn't
13 look at the judgment until 2022.

14 A. I probably hadn't.

15 Q. Okay. Well, what portions did you look at back in
16 2019?

17 A. I do not recall specifically.

18 Q. Okay. Let me -- it shows back here on January 21,
19 2019, that you were sent an email regarding the hearing on
20 damages.

21 A. Correct.

22 Q. Do you recall getting that?

23 A. I do.

24 Q. Huh?

25 A. Not specifically but I know I got it, yes.

1 Q. Okay. Why are there no responses to this particular
2 email to you?

3 A. I, I don't know.

4 Q. Should there have been some responses by you?

5 A. It depends on what my response was.

6 Q. Okay. Well, the message says: Urgent, urgent. Does
7 that get your attention?

8 A. Sure.

9 Q. Why would something that says urgent, urgent get your
10 attention?

11 A. Because it's urgent.

12 Q. And it was a damages hearing, right?

13 A. Correct.

14 Q. And as we're going back through some of those things,
15 did you retain counsel to represent you in that particular
16 matter?

17 A. Jupiter had.

18 Q. Okay. Jupiter retained who to represent them in that
19 matter?

20 A. Mr. Helmlly.

21 Q. And what was the purpose -- did you have to authorize
22 that?

23 A. No.

24 Q. Okay. So, they could authorize -- they could hire
25 someone on their own?

1 A. Correct.

2 Q. But they do have to kind of notify you they're doing
3 that, correct?

4 A. No.

5 Q. They don't have to notify you?

6 A. No.

7 Q. Are you aware that they do that?

8 A. Sometimes but it depends ---

9 Q. Well, you would have been aware ---

10 A. --- on the ---

11 Q. --- of Randy's being involved because he's actually
12 also included in this email, right?

13 A. Correct.

14 Q. So, what was the purpose of going to the hearing?

15 A. To address the amount of damages that they might award
16 against John Doe.

17 Q. Does that essentially mean to defend?

18 A. I didn't hear your question.

19 Q. Does that essentially mean to defend?

20 A. To defend John Doe? Well, at least at the damages
21 phase, yes.

22 Q. So, you all were there for the specific purpose of
23 defending John Doe.

24 A. On the damages.

25 Q. On the damages only.

1 A. Correct.

2 Q. You weren't defending him on anything else?

3 A. Well, I'm not so sure there would have been anything
4 to defend on liability. Ms. Jones was rear-ended. I am
5 not so sure how that could've been her fault.

6 And with respect to the medicals and the analysis that
7 had been done, Mr. Helmly was brought in to go and address
8 that with the court in order for them to render a
9 determination that was appropriate, given the medicals.

10 Q. And I, I reviewed the -- this information, your notes,
11 and you would agree that the notes contained everything
12 that you can legally testify that was done in this
13 particular case, correct?

14 A. Well, at least with respect to what Phil might have
15 done.

16 Q. Okay. Are there any other records you have not
17 provided to us?

18 A. Not that I'm aware of.

19 Q. So, you know of any other adjuster working on it right
20 now?

21 A. Well, myself. I mean, I had some involvement once I
22 got that urgent, urgent email.

23 Q. Okay. So, you did get the urgent, urgent email.

24 A. Yes.

25 Q. And so what was the evaluation once you all knew that

1 Lyndon was in default?

2 A. Well, Lyndon was not in default. John Doe was in
3 default.

4 Q. What's the distinction that you take between Lyndon
5 and John Doe?

6 A. Well, we don't insure John Doe.

7 Q. Correct.

8 A. That's an individual who's not affiliated with us in
9 any regard. We have no obligation to John Doe.

10 Q. Who's your obligation to?

11 A. Well, our obligation is to Ms. Jones.

12 Q. Is that this lady right here?

13 A. Yes, ma'am.

14 Q. And you would agree that she, at the time of this
15 accident, she was your insured, right?

16 A. She was.

17 Q. Did you all owe her duties?

18 A. We did and, and we met those duties. We provided her
19 with a rental car the next day. We made the MedPayments.
20 We paid the property that ---

21 Q. But you didn't pay all the property, correct?

22 A. I acknowledge that there was a mistake made, yes.

23 Q. So, you didn't make -- you didn't meet all your
24 duties.

25 A. Well, we attempted to make our duties in the best way

1 we could. Again, people make mistakes. They're not ---

2 Q. People make mistakes.

3 A. --- intentional in any regard, and, and with respect
4 to the UM claim that you, you filed on their behalf
5 against John Doe, you know, there's a -- there's a pretty
6 simple process. I mean, you made a demand for \$65,000.
7 You're fully entitled to do what -- to do what -- anything
8 you want in that regard, and a counter was made that was
9 reasonable under those circumstances, and we never got any
10 response from you except you filed the suit. And you have
11 every right to do that and, and, and just as we would have
12 every right under the statute to either associate in
13 defending that or not defending that. But, you know, the
14 statute's pretty clear that whether we were defending that
15 John Doe action or not, that the, the statute still
16 provides that the limits of the policy are the limits of
17 the policy.

18 Q. And so you're an expert now in South Carolina law.

19 A. I don't have to be an expert. I've read the statute.
20 I mean, I'm a ---

21 Q. You've read the statute.

22 A. --- a licensed attorney ---

23 Q. What statute's that?

24 A. --- myself. I think I'm able to read a statute.

25 Q. What's the statute number?

1 A. I don't recall off the top of my head.

2 Q. You don't recall off the top of your head. Do you
3 practice law in South Carolina?

4 A. I, I have never practiced in South Carolina.

5 Q. We're going to address of couple of the things you
6 said. So, you agree, regardless of what the policy limit
7 is, she can make an offer of any amount, correct?

8 A. She can but for purposes of ---

9 Q. That doesn't mean you have to accept it, right?

10 A. Well, for purposes of -- you know, what, you know,
11 you'll typically hear in terms of this notion of the limits
12 not being the limits, there was never an offer made or a
13 demand made, actually, because it's coming from you to pay
14 the limits applicable to Ms. Jones or Ms. Thompson.

15 Q. And can you show me anything in writing where you all
16 offered the limits to them?

17 A. Well, I know I -- I know that I instructed Randy the
18 night before the damages hearing when you -- to, to talk to
19 you and offer the limits.

20 Q. But Randy wasn't there, was he?

21 A. Well, he spoke to you the night before the damages
22 hearing.

23 Q. Randy was not there that next day.

24 A. No, he was not.

25 Q. He was at a fundraiser, right?

1 A. I don't know, but that's what it said.

2 MR. HELMLY: Objection, Your Honor. Relevance of my
3 not attending that hearing. Mr. Lake wasn't at the hearing
4 either. I mean, it's -- he's trying to impugn me during
5 this entire process, and it's not relevant to the -- to the
6 claims or the causes of action, Judge.

7 THE COURT: All right, in response?

8 MR. HELMLY: Highly prejudicial.

9 MR. LAKE: Your Honor, he just said that he told Randy
10 to tell me that next morning at the damages hearing about
11 his offer for a limit.

12 WITNESS: I, I didn't say that.

13 THE COURT: Who is Randy?

14 MR. LAKE: Mr. Helmsly.

15 MR. HELMLY: It's Helmlly, Helmlly with no S in it.

16 MR. LAKE: Mr. Helmlly. I apologize.

17 THE COURT: Objection is overruled.

18 A. I, I didn't testify to that, just so we're clear.

19 Q. Well, tell you what.

20 A. The night before the hearing, I, I spoke to Randy and
21 told him that -- speak to you that night about the -- an
22 offer, address it from the limits perspective.

23 Q. Right.

24 A. I didn't -- I didn't talk to him about it the next
25 day.

1 Q. Show me in your notes where you made that comment or
2 just made that comment or anything along those lines
3 affirming that that actually, in fact, happened.

4 A. Well, this is not my notes.

5 Q. Wouldn't your notes be in that same claim file system?

6 A. No, because I spoke to Randy directly and I didn't
7 keep a note of it. I gave an instruction to my attorney.

8 Q. Are there any records that could verify exactly your
9 assertion today?

10 A. Maybe a phone record that I called Randy.

11 Q. You have a phone record of that? Was that provided?

12 A. I don't -- I don't have one, no.

13 Q. And so as I look at the medicals for Tasha Jones, it's
14 in the amount of \$9586.95, correct?

15 A. Correct.

16 Q. And they were audited down \$6600, correct?

17 A. I understand to be the case. I mean, I have no reason
18 to believe that's not accurate.

19 Q. Well, did you authorize Jupiter to audit down the
20 medicals?

21 A. I didn't have to authorize them to do that.

22 Q. Why would they do it without your authorization then?

23 A. Because they didn't need my authorization to do that.

24 Q. Have you instructed them in the past to, to engage in
25 audits of bodily injury claims?

1 A. I haven't instructed them specifically to do that, but
2 that's what they should be doing.

3 Q. Do you do that in property damage claims?

4 A. Of course.

5 Q. How to you audit?

6 A. You, you, you have a -- if we're talking about a
7 repair cost, we would get a competing bid. We would have
8 an independent adjuster evaluate the bid, for example, that
9 was received from a -- an insured. We absolutely would do
10 that.

11 Q. And do you -- and how do you do that as it relates to
12 bodily injury claims?

13 A. So, we would have someone who would review the
14 medicals and ---

15 Q. Claims adjuster?

16 A. Excuse me?

17 Q. A claims adjuster?

18 A. No. It would usually either be a third-party medical
19 reviewer or it could be a doctor, or it could be a nurse's
20 practitioner. It depends on the circumstances.

21 Q. And do you get a competing bid?

22 A. Well, we, we get an analysis about what was medically
23 necessary or what would reasonably be necessary given the
24 circumstances.

25 Q. So, what you're saying is that either Lyndon or

1 Jupiter gets to decide what they believe is reasonable and
2 necessary treatment?

3 A. Well, we get to -- we get to opine on what we think
4 is, yes, we do.

5 Q. Get to opine on it. Does that involve talking to the
6 actual doctors or providers that actually treated them?

7 A. I'm not sure what that medical audit company did, but
8 it depends. It, it might be the case and it might not. It
9 depends on the circumstances.

10 Q. Because I see in the records where you all instruct
11 the person that made the offer that they have to negotiate
12 their own medicals.

13 A. They could have. It depend -- I mean, the notes speak
14 for themselves.

15 Q. Okay, and so the range that was set for Ms. Jones,
16 with the understanding that she has \$9,586.95, the range
17 that you all set to resolve her case was \$7500 to \$9,100,
18 correct?

19 A. I believe that's what it says in the notes.

20 Q. And so that's actually still less than her medicals,
21 correct?

22 A. Less than her unaudited medicals?

23 Q. Yes, sir, unaudited medicals.

24 A. Yes.

25 Q. Okay, and so based upon that being her un -- audited

1 medicals, where's her pain and suffering factor into that?

2 A. Well, again, when, when the offer was made by the
3 adjuster, they would have evaluated it, given the audited
4 medicals, and so they factored something in. I don't know
5 what their exact approach was, but they would look at --
6 they would do an investigation into the, the circumstances,
7 the types of injuries, and they would come up with a
8 reasonable offer, given those circumstances.

9 Q. And without you confirming, how do you know that was
10 done?

11 A. That that's the approach ---

12 Q. Yeah, that's how ---

13 A. --- they would take?

14 Q. --- they approached it.

15 A. Well, because I've spoken with those adjusters many
16 times over my experience with them. They're not -- they're
17 seasoned adjusters. They have been doing this for a long
18 time. They know how to -- you know, what a reasonable
19 analysis is and what a fair offer is. And, you know, it
20 doesn't mean that, you know, that Ms. Jones would have had
21 to agree to that number, but if she had, it would have been
22 reasonable as well.

23 There was a third part -- party, a third pass -- there
24 was another passenger in the vehicle that obviously
25 believed that number was reasonable and accepted it.

1 Q. Okay, and y'all paid him less than his medicals,
2 right?

3 A. Excuse me?

4 Q. And you all paid him less than his medicals.

5 A. Not than the audited medicals, I believe.

6 Q. Oh, not the audited medicals. So, does the hospital
7 or the people who have these unaudited medicals, do they
8 take your word that their bills are not legitimate?

9 A. They can or cannot. I mean, that's the, the dialogue
10 process in adjusting a claim. So, when, when Mr. Levesque
11 makes an offer to Ms. Jones and Ms. Thompson, they can
12 respond and have a dialogue if, if, if they see fit. At
13 that moment, though, you were representing them already.
14 So, I don't recall ever getting -- seeing anything in the
15 file in which you responded asking for the basis of the
16 amount or, or any other basis on which we premised those
17 offers.

18 Q. And you would've never told me that, correct?

19 A. I don't know ---

20 Q. That you all have the records.

21 A. I don't know what they would have told -- I assume
22 they would have told you they reviewed the medicals, and
23 this is what they found.

24 Q. And so you all would ---

25 A. I don't know why they wouldn't have.

1 Q. And so you all would've told the defense -- the
2 defense attorney about y'all's process for auditing the
3 medicals then?

4 A. Well, we're -- again, the audit company reviews those
5 medicals. I don't know their exact methodology, right, but
6 ---

7 Q. But shouldn't you?

8 A. Shouldn't I what?

9 Q. As the vice president of claims, shouldn't you know
10 the process by which they take someone's medicals and just
11 reduce them, and then tell that person -- in this case Ms.
12 Jones and Ms. Thompson -- that they actually have to
13 negotiate those medicals down? Shouldn't you want to know
14 the process?

15 A. So, so, there's two things. One -- excuse me -- I do
16 know the process.

17 Q. Okay. Well, tell ---

18 A. Generally.

19 Q. --- me process.

20 A. Which is that they're going to look at the medicals.
21 Just as an example, Ms. Jones went to the emergency room
22 twice, okay? Someone would look at that and, and make a
23 determination as to whether going to the ER twice was
24 medically necessary versus, for example, going to the ER
25 and then going to -- for a different physician, for

1 example. So, the, the, the company that reviews those
2 invoices is going to look at that and know, given their
3 history of probably hundreds of thousands of scenarios that
4 they've looked at, what, under those circumstances, would
5 be necessary, medically necessary, reasonable under those
6 circumstances and not, and then they're going to give us
7 that number.

8 Q. Isn't that someone else's subjective opinion about
9 someone else going to treatment?

10 A. Well, I don't think it's necessarily just subjective.
11 It's ---

12 Q. So, tell me ---

13 A. It's surely ---

14 Q. --- an objective standard.

15 A. --- objectively subjective. So, you know, if, if
16 someone ---

17 Q. Say that again. Pause.

18 A. --- sprains an ankle ---

19 Q. Say that again. I didn't understand that. Say that
20 part again.

21 A. It's objectively subjective.

22 Q. It's objectively subjective.

23 A. So -- correct. So, you know, someone sprains their
24 ankle, they're generally going to follow a certain course
25 of treatment. It might, you know, it might be including

1 icing their ankle. They might go to, you know, and get it
2 looked initially at the emergency room. They might -- but
3 they know generally what, what the general course of
4 treatment for that type of a scenario is and, you know, so,
5 that's what they do their analysis on.

6 Q. What does that mean?

7 A. What?

8 Q. Objectively subjective.

9 A. So, objectively, that's a general course of conduct
10 that you're going to see in terms of what type of treatment
11 you're going to get. The fact that somebody determines,
12 makes a determination that it's not medically necessary,
13 sure, that's always going to be somewhat subjective, but
14 it's based on a series of objective criteria that, you
15 know, occur over and over again in the exact same scenario,
16 yeah.

17 Q. No two people have the same type of accident; no two
18 people have the same type of treatment.

19 A. I understand that. That's why I said it's objectively
20 subjective. There is a degree of subjectivity, but it's
21 based on a series of objective facts.

22 Q. Is there some sort of objective standard that --
23 industry standard as it relates to this particular issue
24 that you're talking about?

25 A. I have -- not that I'm aware of.

1 Q. So, without some sort of industry standard that says
2 this is objective, wouldn't you say that's an unreasonable
3 way to reduce someone's medical expenses?

4 A. No.

5 Q. No?

6 A. It is totally reasonable to utilize an outside party
7 that has expertise in that area if the adjuster doesn't.
8 It's actually the responsible thing to do.

9 Q. It also saves you all money, too, doesn't it?

10 A. It doesn't necessarily save us money.

11 Q. Well, if you're paying them less than the medicals,
12 doesn't that save money?

13 A. It could. It depends. The -- they could come back
14 and tell us something completely different.

15 Q. Okay. In this particular case, you had three people
16 that had substantial medicals, I think. Ms. Jones had
17 \$9586,95, Ms. Thompson had medicals of \$9,780.81, and Mr.
18 Mack had medicals \$11,439.45, correct?

19 A. I, I believe those are the numbers.

20 Q. And so the authority to settle that case was how much?

21 A. Well, Jupiter maintained \$25,000 on authority ---

22 Q. So, they're supposed to settle ---

23 A. --- without calling us.

24 Q. --- that case for \$25,000, correct?

25 A. No. They could choose to try to settle it at whatever

1 value they think are reasonable, or they can call us for
2 more authority.

3 Q. Did you get a call for more authority?

4 A. Not that I'm aware of.

5 Q. Where there discussions about more authority in this
6 particular matter?

7 A. Not that I recall.

8 Q. So, the seasoned adjuster that you indicated, he
9 thought that he could settle all three of those cases for
10 less than 25,000?

11 A. I think he thought he could settle them for what he
12 thought was a reasonable number for each of the claimants,
13 given their injuries.

14 Q. So, you didn't think an offer \$7,500 for Ms. Jones was
15 unreasonable?

16 A. I, I don't.

17 Q. I think you offered \$8,660 for Ms. Thompson on
18 \$9,780.81. You don't believe that's unreasonable either?

19 A. I, I don't.

20 Q. Why not?

21 A. Because it was reasonable given the investigation, the
22 reason also the medical audit, medical review audit, and
23 the offer was made.

24 Q. What if you remove this objectable subjective audit?
25 Is this amount reasonable?

1 A. I don't think it -- I don't know the answer to that
2 question. I mean, it really depends. I don't know
3 everything that Phil looked at in coming up with that
4 determination. I know the medical audit would have been
5 one of those factors, and there would be other factors he
6 would have considered in making an offer. I mean, clearly
7 he had in the file a range, right, so.

8 Q. The range is still less than the medicals.

9 A. Well, the unaudited medicals, yes.

10 Q. Okay. What, what ---

11 A. But ---

12 Q. What I've asked you is remove this subjective
13 standard, subjective objective, however you want to call it
14 in terms of the audit. If you remove this audit that you
15 claim you have, is the offer that you made to both parties
16 in this particular case, would you deem it as reasonable?

17 A. You can't remove it because that's what factually was
18 the case here. And if the audit had, had rendered a
19 different number, Phil might have had a different number.
20 So, you can't just remove a fact that exists.

21 Q. If it's a subjective fact. If it's your own personal
22 belief, it can't be removed. Is that what you're trying to
23 testify to?

24 A. That if it's what?

25 Q. If it is a subjective test.

1 A. What's a subjective test?

2 Q. This audit that you refer to.

3 A. The auditors give a determination of what they think
4 are appropriate medicals given the, the nature of the
5 accident.

6 Q. But I'm not -- I'm not ---

7 A. And then, then Phil has a reasonable basis to rely on
8 that opinion that's been rendered by, you know, effectively
9 someone who's an expert in, in that area.

10 Q. Is it -- is it Lyndon's policy that you all treat
11 subjective opinions and objective opinions the same way?

12 A. Well, again, this, this, this opinion was based on a
13 variety of objective factors that would play into it. So,
14 it's was not just simply a subjective opinion.

15 Q. No, that's not the question I asked you. The question
16 is do you treat subjective opinions and objective opinions,
17 treat them equally? Is it Lyndon's policy to treat both
18 equally?

19 A. We don't have a policy on how we treat opinions.

20 Q. You don't have policies on ---

21 A. Okay, but ---

22 Q. Go ahead.

23 A. But we, we would -- we would look at all the
24 circumstances that we have, and we would come up with a --
25 with a reasonable, you know, answer, or in this case offer,

1 given the circumstances we have.

2 Q. Okay. Then show us your policy then.

3 A. Say that again.

4 Q. Show us your policy.

5 A. I said -- on subjective objective?

6 Q. Show us your policy on anything having to do with
7 claims.

8 A. I'm not sure what you're talking about.

9 Q. Provide -- where is the copy of your policy that we
10 can see all these things you're referring to regarding your
11 claims?

12 A. Well, they're ---

13 Q. Claims handling.

14 A. They're, they're, they're appropriate standards within
15 the industry.

16 Q. No. You've just testified they're your policies,
17 Lyndon's policies, Fortegra's policies. Provide us with
18 those policies. Where are they?

19 A. I'm not sure what you're talking about. You asked me
20 if we had a policy with respect to subjective and
21 objective, and what I said to you is what we do is we take
22 the information we have, and we render a determination. In
23 this case, Phil rendered a determination on making an offer
24 that was reasonable, given those factors.

25 Q. Did you all tell Ms. Jones that when this insurance

1 was sold to her?

2 A. I, I never spoke with Ms. Jones, so I don't know what
3 was and wasn't said to her.

4 Q. Do y'all have any policies, internal policies of
5 Lyndon or Fortegra regarding claims handling?

6 A. I believe Jupiter would have one that's part of the --
7 I believe it's part of the claim service agreement we have.

8 Q. And you also are supposed to -- y'all -- as the, I
9 guess, the vice president, wouldn't Fortegra, Lyndon, have
10 people -- access to the documents or policies of Jupiter?

11 A. Access to their docu ---

12 Q. Yes, aren't they required ---

13 A. We might have at ---

14 Q. --- to provide you with that?

15 A. We might have at one point in time.

16 Q. You might have at one point in time, but you don't
17 now, I'll bet you.

18 A. I, I don't recall now. I don't know that.

19 Q. You don't recall. What about claims handling? You
20 got a claims handling manual?

21 A. Jupiter would have had one.

22 Q. So, you don't have that either?

23 A. We don't.

24 Q. Okay. Now, I think you testified earlier that you all
25 have claims that you do in other areas than non-auto,

1 correct?

2 A. Correct.

3 Q. So, where are those?

4 A. Where are what?

5 Q. Where are those claims manuals?

6 A. Well, we're not necessarily required to maintain a
7 claims manual for every jurisdiction. We do comply with
8 the minimum state, state requirements statutorily and
9 Department of Insurance standards and incorporate those as
10 our -- as our claims guidelines.

11 Q. So, show us those guidelines then. Did you provide
12 those to us?

13 A. I don't know.

14 Q. Why don't you turn to page 3, page 3, and get you to
15 read just paragraph 13.

16 A. I'm sorry, which one?

17 Q. Paragraph 13.

18 A. 13: Maintain...

19 Q. Before you do that, what is that particular document?

20 A. This is the claims administration agreement between
21 Lyndon Southern and Jupiter Managing General Agency.

22 Q. And that spells out the requirements that everybody's
23 supposed to do in this particular case, right?

24 A. Correct.

25 Q. Okay. What does paragraph 13 state?

1 A. 13. Let's see, it says the -- well, it starts with C.
2 Is that -- you want me to start reading C first, I assume?

3 Q. Paragraph 13.

4 A. Right, but that -- it's ---

5 Q. It says: Maintain file.

6 A. It's C.13.

7 Q. That's fine.

8 A. Right. So:

9 The term claims adjusting services as used herein
10 shall mean the furnishing by the claims
11 administrator to the company and it's required by
12 the company that the following services in
13 compliance with the terms of the applicable
14 insurance policy, the laws and regulations of the
15 applicable states, and industry wide standards to
16 maintain files for all administered claims and
17 the claims administrator's claim system that may
18 include where necessary: A, defense of claims; B,
19 other litigation such as subrogation,
20 contribution, or indemnity; C, other proceedings;
21 D, claims handling activities; and E, expense
22 control and disbursements.

23 Q. And that requires you all to maintain those records,
24 correct?

25 A. Jupiter, yes.

1 Q. With you having access to that, correct?

2 A. We do ---

3 Q. Yeah, because ---

4 A. --- have access to it.

5 Q. --- y'all share the same claim system, right?

6 A. No, we don't.

7 Q. At that time.

8 A. No, we didn't. Well, I mean, their -- the, the only
9 record of the Jupiter claims was on the Jupiter system.

10 Q. Okay. Let's go to page 2.

11 A. 2.

12 Q. And I think in that second -- paragraph 4, that second
13 part of it says:

14 Claims administrator shall adopt and agree upon
15 guidelines for reserving Finchers and comply with
16 company guidelines that are consistent with
17 industry standards.

18 So, again I ask you. What are those guidelines that
19 you all have entered into an agreement with Jupiter?

20 A. No, I, I -- we, we didn't provide them with a series
21 of guidelines. They had guidelines I believe they provided
22 to us.

23 Q. But you said company. It says in here company
24 guidelines. That means Lyndon, correct?

25 A. Well, sure. There are still -- there were still

1 guidelines. Like, as an example, they'd have an authority
2 limit. They'd have indications in here as to when they'd
3 have to notify us of certain developments or certain
4 circumstances in all likelihood. So, there, there are --
5 there were aspects that -- you know, it doesn't necessarily
6 mean that there's a company claims handling guidelines, but
7 there are aspects that they had obligations to tell us
8 about.

9 Q. And, yeah, because you go on down to that second
10 paragraph, it says that:

11 Be sure that there is sufficient evidence and
12 documentation gathered and recorded in the
13 company's claim system.

14 A. Can you -- sorry. Say that again.

15 Q. This would be paragraph 7.

16 A. Oh, 7, sorry. I thought you said 10.

17 Q. So, it does make a reference to the fact that you all
18 have a claims system that they are supposed to provide
19 information on, correct?

20 A. No, that's not accurate.

21 Q. That's not ---

22 A. I mean, I could ---

23 Q. That's not accurate?

24 A. It -- I could see what it says there, but we didn't
25 have a claims system.

1 Q. So, this document is wrong?

2 A. That aspect of it is not accurate.

3 Q. That aspect is wrong.

4 A. Yeah. The -- yeah, Jupiter maintained the claim
5 system, and that's where the -- all the claim material was,
6 was being held.

7 Q. Is there anything else wrong about this document that
8 you all entered into?

9 A. I'm not sure.

10 Q. Have you looked at it?

11 A. I've, I've seen it before, yes. I don't recall
12 noticing anything otherwise.

13 Q. As the vice president, wouldn't you be responsible
14 with any of your TPAs for ensuring that these claims
15 administration agreement are accurate?

16 A. That's not accurate, no.

17 Q. Huh?

18 A. No, that's not true.

19 Q. What's not true?

20 A. The legal department would, would draft this
21 agreement. On, on top of the fact I believe this
22 specifically was likely executed before I even joined the
23 organization.

24 Q. So, it's somebody else's fault?

25 A. Somebody had a -- had some kind of scrivener's error

1 obviously with respect to where the material was
2 maintained.

3 Q. I think you go to paragraph 6, it says -- where it
4 says: Duties and obligations of the company.

5 A. What page is that on?

6 Q. Page number 6 where it says: Duties and obligations of
7 the company.

8 A. Yes.

9 Q. And it says, paragraph B up under there, what does
10 that say?

11 A. Paragraph B: Company has ultimate authority
12 and a responsibility for authorizing claims,
13 payments, and settlement of claims under this
14 agreement.

15 Q. Okay, move on over to paragraph C, the next page.

16 A. C. Okay: Company will provide the claims
17 administrator access to company claim system and
18 policy coverage information as required by claims
19 administrator to perform its authorized duties
20 under this agreement.

21 Q. So, that's wrong, too?

22 A. That's not accurate.

23 Q. So, they don't have access to know what the policy and
24 coverage information is.

25 A. Well, they definitely do. I mean, they issued the

1 policies. We, we ---

2 Q. I'm talking about what your document said.

3 A. No. They, they have their own claim system. We don't
4 have a claims system that they utilize, and the agent is
5 the one who issues the policy.

6 I think it's important for you to understand the
7 relationship between an entity like Jupiter and an entity
8 like Lyndon Southern. So, Lyndon Southern effectively
9 authorizes Jupiter to issue policies on its paper, and so
10 there they issue ---

11 Q. Jupiter's not your agent?

12 A. Excuse me?

13 Q. Jupiter wasn't the agent in this case?

14 A. I get it. So, Chappell was the agent in this case.

15 Q. CIS, correct?

16 A. CIS, correct.

17 Q. Those are two entirely different roles.

18 A. They are but -- and, and the folks at Jupiter had
19 complete access to all the policy information and otherwise
20 from Chappell, which was an entity that went out of
21 business, I believe ---

22 Q. That's what I just asked you about, this question
23 right here. Did Jupiter have access to your claim ---

24 A. We don't ---

25 Q. --- system?

1 A. Again, we didn't have a claim system, but, but you
2 also asked if Jupiter had access to all the policy
3 information. The answer to that is yes.

4 Q. Okay, now I'm just reading what the paragraph said:
5 Provides a claims administrator access to company's claim
6 system and policy and coverage information.

7 A. Yeah. So, the claim system, we don't access -- we
8 don't have a claim system, and they had full, full access
9 to the policy and coverage information.

10 Q. I guess back to my original question I asked to Ms.
11 Jones, how many other people have y'all done this to in
12 terms of not paying the correct amount of deductible?

13 MR. HELMLY: Objection, Your Honor. That's been no
14 evidentiary foundation to establish they've done this to
15 other people.

16 MR. LAKE: That's why I asked the question.

17 THE COURT: What was the question again?

18 Q. In light of this issue with Ms. Jones, how many other
19 people have you all potentially done this to as relates to
20 the deductible issue?

21 A. I, I, I couldn't answer that question. It's prob --
22 again, you know, it, it's a very probably rare mistake. I
23 mean, mistakes happen. So, it's -- it, it, it probably is
24 -- I don't know. I can't answer that question, you know,
25 but again, somebody brought that to our attention, we'd,

1 we'd make it right. I mean, we understand Ms. Jones is our
2 insured, you know, her ---

3 Q. Your former insured, right?

4 A. Well, we no longer issue policies in South Carolina,
5 but yes.

6 Q. And this incident happened, what, seven years ago?

7 A. I believe in 2017, so six years ago.

8 Q. About six years ago.

9 A. Uh-huh.

10 Q. And so statute of limitations applies, doesn't it?

11 A. With respect to that?

12 Q. Yes.

13 A. It's possible. It depends.

14 Q. So, she couldn't come back and actually file suit
15 against you for this kind of stuff, could she, for that
16 \$300?

17 A. Ms. Jones?

18 Q. Yes.

19 A. It wouldn't ---

20 Q. That 3 ---

21 A. --- matter. We'd make it right for her. I mean ---

22 Q. You'd make it right for her.

23 A. Well, of course we would. I mean, we're, we're not,
24 like, unreasonable people here. I, I have auto insurance
25 myself. I would want my auto carrier to treat me fairly.

1 That's what we try to do, treat people fairly. People can
2 disagree with, you know, our analysis and that's, that's
3 okay. You know, we don't -- we don't have to be right, you
4 know, but we can have a conversation with our insureds if
5 they disagree with us. I mean, I want to treat people the
6 way I expect to be treated.

7 Q. And is Jupiter -- I'm sorry, is -- Jupiter is not in
8 South Carolina. They're, they're defunct, right?

9 A. Well, I think they might have just changed their name.
10 I'm not entirely sure.

11 Q. But Jupiter as you knew it back then is defunct?

12 A. Yes.

13 Q. DMA as you knew it back then is defunct?

14 A. No. DMA is ---

15 Q. DMA is ---

16 A. --- an ongoing ---

17 Q. --- still around?

18 A. --- concern for sure.

19 Q. How many TPAs do you use while you're in South
20 Carolina?

21 A. I believe would have been just DMA and then Jupiter.

22 Q. Where is Lyndon located?

23 A. They're incorporated in Delaware.

24 Q. Where is the physical office?

25 A. I'm not sure exactly where. I think they're --

1 probably their main physical office would be in
2 Jacksonville, Florida.

3 Q. Florida. Where are you at?

4 A. I'm in New Jersey.

5 Q. So, you're in New Jersey. Do y'all have any kind of
6 business in South Carolina at all now?

7 A. I'm not sure. In terms of an office location?

8 Q. I know you don't have a physical office, correct?

9 A. We do business in South Carolina, if that's ---

10 Q. What type?

11 A. --- what you mean.

12 Q. What type of business do you ---

13 A. We do other ---

14 Q. --- still do in South Carolina?

15 A. --- other lines of business: professional liability,
16 general liability. We, I believe, have cyber, several
17 other areas of coverage.

18 Q. Is this under the name of Lyndon or up under the name
19 Fortegra?

20 A. Lyndon.

21 Q. You no longer write non-auto, correct?

22 A. We write nonstandard auto stuff.

23 Q. Y'all still write -- when did y'all come back to South
24 Carolina?

25 A. We never -- in South Carolina we don't because we

1 don't work with an agent that writes in South Carolina.

2 Q. That's what I say. Y'all, y'all canceled the
3 policies, if I remember correctly.

4 A. I don't recall that being the case.

5 Q. You don't recall stop writing business in South
6 Carolina?

7 A. Well, we would have stopped at some point writing new
8 business in South Carolina because the agency went out of
9 business, but I don't specifically know the statutes in
10 South Carolina as to whether you have an obligation to
11 automatically renew an insurance policy to the extent an
12 insured chooses to stay with you as a carrier. I know
13 there are some states where you automatically have to
14 provide renewal terms, whether you've decided as an
15 organization that you choose to continue writing in that
16 state or not. I don't know in South Carolina, but I do
17 know that the agency we worked with -- because Chappell
18 went out of business, they stopped writing. So, we no
19 longer were working in South Carolina for that reason.

20 Q. So, Jupiter's out of business. CIS is out of
21 business, correct?

22 A. Correct.

23 Q. These were the two parties that dealt specifically
24 with Ms. Jones and her policy, correct?

25 A. Correct.

1 Q. How well do y'all vet y'all's TPAs and your brokers?

2 A. Well, I'm sure we have a pretty, pretty thorough due
3 diligence.

4 Q. Even considering they're both of out of business now?

5 A. Sure. I mean, you know, they were -- Jupiter was an
6 entity that was in business, I think, for maybe two decades
7 before we did business with them. It's not -- it's not
8 that they were, you know, a fly-by-night entity. Chappell
9 Insurance, I believe, is in the same scenario. They were
10 in business for, you know, couple of decades, and I don't
11 know the circumstances of them going out of business.
12 Whether someone retired or -- you know, I don't know the
13 circumstances.

14 Q. What are the generally accepted claims handling
15 standards and best practices?

16 A. What are they?

17 Q. Yeah.

18 A. So, they could -- they are, generally, they're going
19 to be, like, an industry wide standard that would generally
20 be applied.

21 Q. Why don't you tell me specifically what they are?
22 Tell this jury what specifically they are.

23 A. Well, to -- when you get a claim reported, you're
24 going to evaluate it. You're going to look at it under the
25 policy. You're going to gather information and conduct an

1 appropriate investigation, and then you're going to take
2 appropriate action depending on what you've obtained in
3 that investigation, whether it be a third-party claim or
4 first-party claim.

5 Q. And where is that scenario you just discussed, where
6 is that found?

7 A. Where was that found? Again, it's ---

8 Q. Where would I find that?

9 A. Again, it's a -- it's a -- it's going to be a
10 generally accepted standard. There's not going to be a
11 document in all likelihood that you could look to, but
12 they're going to at least, you know, at least at the
13 minimum comply with Department of Insurance standards, as
14 well as statutory standards.

15 Q. Is that your subjective opinion of what the definition
16 is?

17 A. No. I mean, I know that the minimum standards that
18 are going to be applied are the ones that the state's going
19 to require you apply.

20 Q. I'm just going to ask you some, some quick questions
21 real quick. I didn't ask you, but I heard you testify.
22 Part of your background is you're a lawyer as well,
23 correct?

24 A. Correct.

25 Q. How long you been a lawyer?

1 A. For twenty-three, twenty-four years.

2 Q. So as a lawyer, you know what judgments are.

3 A. I do.

4 Q. What is a judgment?

5 A. A judgment would be an award granted from one party --
6 generally the claimant -- against another party in an
7 action.

8 Q. What does that mean to you?

9 A. It means that there is a judgment against some entity.

10 Q. Does that means it's final?

11 A. Does that means it's what?

12 Q. It's final, final determination of the court as to all
13 matters related to that particular incident.

14 A. Assuming all avenues of appeal have expired or been
15 fully adjudicated, at some point it would become final.

16 Q. Final.

17 A. At some point.

18 Q. I mean, it's nothing can be done about it, nothing can
19 be changed about it, correct?

20 A. Correct.

21 Q. Okay, let me show you what's been marked as
22 Plaintiffs' Exhibit Number 2.

23 A. Okay.

24 Q. And ask you what that is.

25 A. This is the order of judgment for Ms. Jones and Ms.

1 Thompson against John Doe.

2 Q. And what was that in the amount of?

3 A. The amount of the judgment?

4 Q. Yes.

5 A. 50,000 to Ms. Jones and 50,000 to Ms. Thompson.

6 Q. And would you agree that judgment was final?

7 A. Yes.

8 Q. Wasn't appealed.

9 A. Correct.

10 Q. And you all at Lyndon, you all had an opportunity to
11 appeal that, correct?

12 A. We theoretically could have, sure.

13 Q. Chose not to, right?

14 A. Well, we had a right to do that, but we didn't have
15 any obligation. John, John Doe's not our insured. We have
16 no obligation to John Doe.

17 Q. Who's your obligation to then?

18 A. To, to Ms. Jones and ---

19 Q. Well, Ms. Jones has got a verdict for \$50,000 or
20 judgment for \$50,000.

21 A. Correct, against Mr. Doe and the, the statute is
22 pretty clear, at least with respect to what our obligations
23 are when this type of an accident is filed, that we have a
24 -- we have a right to step in to the extent that we choose
25 to and defend this John Doe, or we don't have to. I mean,

1 that's why we have a right to do it, but it doesn't mean
2 that we must. But that statute also is very clear that
3 the, the policy limits are still applicable under that
4 statute.

5 Q. Is that the same statute you don't remember the number
6 of?

7 A. I'm sure if you'd provide it to me, it would refresh
8 my recollection of the specific statute number, but, but,
9 yes, it is that statute.

10 Q. It is that statute. So, so, I want to make sure I'm
11 not confusing things. So, your opinion is, position --
12 Lyndon's position is that essentially you didn't have to do
13 anything to defend this particular matter or appear in
14 court, correct?

15 A. That's correct.

16 Q. And regardless of the judgment, you didn't have to do
17 anything else.

18 A. Well, no. I mean, the answer to that is yes and no.
19 I mean -- so, first we had no obli -- it's not my opinion
20 that we didn't have to get involved in this lawsuit. It's,
21 it's in the statute. So, it's not my ---

22 Q. But y'all chose to ---

23 A. --- my opinion.

24 Q. --- get involved?

25 A. What?

1 Q. But y'all chose to get involved.

2 A. In the damages phase, we made an attempt to, correct.

3 Q. So, y'all ---

4 A. But whether ---

5 Q. You all appeared or attempted to appear.

6 A. We attempted to, correct, but ---

7 Q. You attempted to defend.

8 A. Can I answer? Yeah.

9 Q. Go ahead.

10 A. Whether we got involved in this case from the
11 beginning, or when we attempted to in the middle, or if we
12 choose to never at all, it wouldn't have changed what the
13 statute says, which is that the most the carrier's going to
14 be responsible for is the limits of the policy. So, in the
15 same breath, if we' had been involved, and I'm not sure how
16 anyone was going to defend John Doe on liability because he
17 rear-ended Ms. Jones. There's no way unless she was
18 reversing, which, again, there no one to even testify to
19 that, and I don't believe she was doing that. There's no
20 defense on the liability. It's 100 percent about the
21 damages aspect, right? And so, you know, Mr. Helmly tried
22 to get involved in order to address the, the damages.

23 But even if we had been involved from the very
24 beginning and they rendered this \$100,000 judgment, the
25 statue still says what it says. It doesn't -- it doesn't

1 make any difference and, frankly, Randy not being able to
2 participate in the damages hearing, frankly, was to Ms.
3 Jones's and Ms. Thompson's benefit because if he had been
4 involved, maybe the court would have determined that the UM
5 benefits they were entitled to were less than the policy
6 limits. So, you know, the fact that he wasn't able to
7 participate was, was a good thing for them.

8 Q. Well, let me ask you a question. You say it's to
9 their benefit. How is it to their benefit when they
10 haven't received anything from Lyndon even up to the amount
11 of the judgment?

12 A. Well, again, the judgment was not against Lyndon.
13 That needs to be clear. It's not against Lyndon, and the
14 statute doesn't provide for, for -- in a UM claim where you
15 chose to pursue that lawsuit, and you have every right to
16 do that.

17 You know, you made a demand of 65,00 each, so
18 \$130,000. A counter was made roughly for about \$16,000,
19 about, you know, more than a third of what was on the
20 remaining limits at that point in time. And you didn't
21 choose to either continue to engage in negotiations as you
22 know was, was testified to by Ms. Jones that the offer was
23 made to, you know, engage in a dialogue, which didn't
24 happen.

25 Q. Where's ---

1 A. And ---

2 Q. --- your dialogue?

3 A. Well, we did. What do you mean?

4 Q. Where is your -- where is your written offer? Show it
5 to me.

6 A. There's an ---

7 Q. After ---

8 A. --- offer for \$8000. That was in counter to your
9 demand for 65,000, and it is in writing.

10 Q. After you -- after there was a email that was sent to
11 Randy -- I think it's already been admitted into evidence
12 -- on June the 5, 2019, before the damages hearing.

13 A. Correct.

14 Q. Show me your response to that.

15 A. I don't know if Randy responded or not.

16 Q. Would he have had a responsibility or Lyndon would
17 have had a responsibility to respond to that offer?

18 A. Well, again, it's, it's, it's a -- that was in excess
19 of the policy limits, and I, I don't -- I don't know what
20 Randy did or didn't do. I wasn't ---

21 Q. Shouldn't you ---

22 A. No.

23 Q. --- have known that?

24 A. I don't think I should have necessarily known that. I
25 know that I spoke with Randy, and I -- and he obviously

1 spoke with you because the ---

2 Q. Where do you have that in the records that he spoke to
3 me?

4 A. Well, because the intro to your response is: Randy,
5 sorry for the late follow up, but I was unable to reach my
6 clients. It appears to me that it's pretty reasonable for
7 me to believe that Randy asked you to speak to your clients
8 or convey something to your clients. So, whether you did
9 or didn't, I don't know. I'm just saying I think it's a
10 reasonable thing for me to believe, given your introductory
11 sentence here.

12 Q. But, but under that theory, given you only authorized
13 25,000, wouldn't that require you to authorize anything
14 above 25,000, even if it was to Randy?

15 A. I didn't authorized 25,000. I authorized the
16 remaining limits, which would have been \$42,000.

17 Q. So, you authorized \$42,000 to be paid.

18 A. To be offered, yes.

19 Q. To be offered.

20 A. Correct. We never got an offer or a demand from you
21 for those remaining limits.

22 Q. When did you offer? When did you make that offer?

23 A. My understanding is Randy spoke with you the night
24 before the hearing and conveyed to you the remaining limits
25 for \$42,000, and that we would resolve this for the

1 \$42,000, you know, and you presumably said you'd speak to
2 your clients and then responded to him with, again, a
3 counter demand that was larger than the remaining limits.

4 Q. Isn't ---

5 A. I mean, at not time did we ever get a demand from you
6 that was inside our policy limits.

7 Q. You were ---

8 A. Ever.

9 Q. You were in default at that particular moment, weren't
10 you?

11 A. We were not. We are not. John Doe.

12 Q. Oh, oh. John Doe is in default.

13 A. I mean, I'm not sure how there's not a clear
14 distinction there. John Doe is not our insured; we have no
15 obligation to defend John Doe. I, I'm not sure how that
16 has any bearing on Lyndon Southern at all.

17 And, and again whether we had decided to file a notice
18 of appearance in the very beginning of this case in terms
19 of the case you filed against John Doe and defend it, it
20 doesn't change what the statute says, which is that we're,
21 we're obligated to pay no more than our limits and that we
22 have a right to associate in but, we don't have to do that.

23 THE COURT: Ladies and gentlemen, I'm going to have
24 you go to the jury room. Please do not discuss the case.

25 (THE JURY EXITS AT 10:53 AM.)

1 THE COURT: We'll take a few minutes, hopefully
2 condense some of this.

3 WITNESS: Excuse me, sir?

4 THE COURT: We'll take a few minutes.

5 WITNESS: Okay. Can I get down from here, or should I
6 stay here?

7 THE COURT: Hopefully we'll condense some of this.
8 Yes.

9 WITNESS: Thank you.

10 THE COURT: Do not discuss your testimony.

11 WITNESS: I won't.

12 (OFF THE RECORD.)

13 THE COURT: Bring the jury.

14 MR. HELMLY: Your Honor, can we address something
15 before -- outside the presence of the -- of the jury?

16 THE COURT: Yes, sir.

17 MR. HELMLY: I'm kind of in a bind here, Judge. Mr.
18 Lake has inserted me directly into the middle of this,
19 denied some conversations that he and I had, and I've never
20 found myself in this position, Judge. And he's --
21 essentially I'm a witness at this point, and I think Mr.
22 Lake is probably a witness, too, unless we can, you know,
23 come to some stipulation that we did have a conversation
24 disclosing the policy limits to take back to his client,
25 and then we received the offer for \$30,000 each.

1 You know, I just hate to put the court in this
2 position, and I'm -- and I'm -- again, haven't ever found
3 myself in this position, Judge, and I'm, I guess, seeking
4 some guidance from the court here.

5 THE COURT: The court has no guidance.

6 Mr. Lake.

7 MR. LAKE: No, I thought he was -- I thought the
8 conversation, he just asked me out in the lobby area, he
9 said he wanted to be able to communicate what Mr. Fishbein
10 thought. That's what I understood, so I wasn't aware that
11 he was talking to talk to me about something else.

12 MR. HELMLY: Well, I was ---

13 MR. LAKE: But, Your Honor, I would oppose at this
14 particular stage. Look how far we are in this case.

15 I would point out to Your Honor I asked Randy about
16 recusing himself in this particular manner. He chose not
17 to. I made a motion to get him recused from this case.
18 They objected to it and it was denied. So, I think we're a
19 little late in the case to try to say, well, he needs to be
20 off the case at this particular moment. So, that's, that's
21 as much as I would say on that particular matter, and I
22 would object. We need to move forward.

23 They've chosen their counsel, understanding all the
24 things that were associated with his continued
25 representation in this matter, and they've assumed whatever

1 happens at this point.

2 It's my understanding, lastly, Your Honor, is that
3 Randy had sent me something. We had talked this morning,
4 and he asked me to convey an offer to them.

5 MR. HELMLY: That was -- and I was -- I was going --
6 and Mr. Lake sent me a text with a -- with a settlement
7 proposal and, and I didn't see that text under we took a
8 break in Mr. Fishbein's testimony. And so I wanted to at
9 least pass that on to him.

10 THE COURT: You don't want to settle the case or no?
11 That's up to ---

12 MR. HELMLY: I haven't been able to disclose the offer
13 to my client.

14 THE COURT: Well, there he is right there.

15 MR. HELMLY: I didn't want the court or anyone else to
16 get the impression I was talking to him about his testimony
17 out in the hall.

18 THE COURT: You can talk with him about settlement.

19 Now, is it true that y'all told the judge at the
20 roster meeting that this was a half day trial?

21 MR. HELMLY: No, sir.

22 MR. LAKE: We're going to be done. We're going to be
23 done shortly, Your Honor.

24 THE COURT: Maybe they were confused with another
25 case, but we'll take a few more whatever so you all can

1 have a conversation.

2 MR. HELMLY: Thank you, Your Honor.

3 THE COURT: About trying to settle the case.

4 (OFF THE RECORD.)

5 MR. HELMLY: Your Honor, I appreciate your patience.

6 We're, we're on the phone with folks right now.

7 THE COURT: All right.

8 (OFF THE RECORD.)

9 THE COURT: Yes, sir.

10 MR. HELMLY: Your Honor, we are -- like I said, Mr.
11 Lake had texted me a settlement proposal at 9:23, and I had
12 -- my phone was in my bag and I didn't see it. So, I have
13 conveyed it to my clients, and we are having really
14 substantive conversations, and I think probably would have
15 some sort of answer here in the next, you know, ten to
16 fifteen minutes, Judge.

17 THE COURT: Well, we'll proceed in the interim because
18 with the number of years this has been pending and it
19 hasn't been resolved, we don't want to delay the trial.

20 MR. HELMLY: I, I understand, Judge. One of, you
21 know, one of the things -- some of the things that have
22 been said in court, you know, I'm concerned about from the
23 impression that's been made that perhaps I've, I've done
24 something improper or unethical or something like that.
25 And so now I feel like my personal or -- and, and

1 professional interests have been sort of shoved right into
2 the middle of all this.

3 THE COURT: Well, it is kind of an interesting thing
4 in that if you have been involved in the bad faith
5 allegation as far as being informed and not following
6 through or just, you know, their bantering back and forth
7 about Randy, and I'm not sure who they're talking about,
8 then ---

9 MR. HELMLY: I wasn't aware that I was going to be put
10 in the middle of the bad faith, you know, the allegation,
11 as if I, I had some part in the -- I wasn't aware that that
12 was going to be the case, and that certainly wasn't the
13 case, but that's been put on the record.

14 THE COURT: Yeah.

15 MR. HELMLY: And, and now I, I have some concerns,
16 Judge.

17 THE COURT: Yeah. I ---

18 MR. HELMLY: And I, I have expressed those concerns.

19 THE COURT: I understand, and I raised that question
20 initially yesterday as far as the -- some -- the manner in
21 which some of the examination, examinations were going on,
22 not simply as to you but as to Mr. Lake as well. Didn't
23 you do this, or didn't I tell you this, didn't I offer
24 this? But I don't know that any of that raises to the
25 level of me declaring a mistrial because it is the witness

1 testifying, and the witness may have interjected your name
2 as to what he communicated with you. It's not a situation
3 where counsel has, you know, broken into attorney-client
4 privilege for anything.

5 I think probably inevitably when you get a bad-faith
6 case and the lawyer has been involved in defending the
7 case, you know, the allegations probably to some extent
8 run, will run up the chain.

9 MR. HELMLY: And we've always sort of been in the --
10 sort of in the same posture, Mr. Lake and I, caught off
11 guard by some of the allegations or statements that have
12 been made. And so hindsight is always 20/20, Judge, as you
13 know, but we'll proceed as -- you know, I think I'm
14 inclined to have to make that motion on the record. I
15 understand your position on it.

16 THE COURT: All right. Your motion ---

17 MR. HELMLY: But unless the court wants to -- I don't
18 know where we stand in communications right now.

19 THE COURT: Yeah. Well, you know, we'll come up on a
20 lunch break pretty soon, and we'll be in the afternoon
21 pretty soon, and we'll be in the evening pretty soon. You
22 know, we've gone through an hour and a half or whatever and
23 some examination and a lot of conversation. But, you know,
24 I believe in moving on and getting a case over with at some
25 point in time, and all of a sudden I sent the jury out to

1 let them catch their breath, and that was an hour ago at
2 this point. So, I was going to take a five minute break,
3 and that's been an hour ago, and they're bringing lunch in
4 at 12:15.

5 CLERK: Yes, sir.

6 THE COURT: You've got to manage the whole process
7 and, you know, you all have all that time to continue
8 talking. If so, you can do it, but for the record, I deny
9 your motion for mistrial. I certainly understand your
10 concerns, but I, once again, may not have been focused so
11 much of being in the weeds of who said what to who when and
12 who did what in response to what was said, but I don't
13 believe that it has at this point prevented you from
14 continuing representation. So, I deny a mistrial or motion
15 to step aside.

16 MR. HELMLY: Thank you, Your Honor.

17 THE COURT: All right. If you'll bring the jury.

18 (THE JURY ENTERS AT 11:49 AM.)

19 THE COURT: Okay. Very good. You may proceed.

20 MR. LAKE: Thank you, Your Honor.

21 Q. Mr. Fishbein, let me show you what's been marked as
22 Plaintiffs' Exhibit Number 13. Would you take a look at
23 that document for me? tell me what you recognize that
24 document to be.

25 A. It looks like the, the Lyndon Southern Insurance

1 Company policy issued to Tasha Jones.

2 Q. And does that fairly and accurately depict what her
3 policy was?

4 A. I believe so.

5 Q. It's kept contemporaneously with -- in -- through the
6 normal course of business?

7 A. I'm sorry. Say that again.

8 Q. Do y'all keep that document as your normal course of
9 business in terms of policies and stuff?

10 A. The policy would be kept, yeah.

11 MR. LAKE: Your Honor, at this time the plaintiffs
12 move Number 13 into evidence.

13 MR. HELMLY: No objection.

14 THE COURT: So admitted.

15 (RENEWAL DECLARATION MARKED INTO EVIDENCE AS
16 PLAINTIFF'S EXHIBIT NUMBER 13.)

17 Q. All right, let me take you to -- turn to page 8 in
18 that, your document. Are you there on the uninsured part?

19 A. Yes.

20 Q. Is uninsured first party, third party?

21 A. It's first party.

22 Q. Explain to the jury what that means.

23 A. It means that you're making a claim against your own
24 insurance policy rather than some third party making a
25 claim against you which would trigger your insurance

1 policy.

2 So, the difference is in this case, Ms. Jones was hit
3 by somebody and was seeking coverage under her uninsured
4 motorist coverage, whereas if Ms. Jones had hit somebody,
5 they would be seeking damages under the liability coverage
6 of her policy rather than their own.

7 Q. And so in laymen's terms, under uninsured motorist
8 coverage, the uninsured motor vehicle is, in fact, John
9 Doe. Would that be fair to say?

10 A. Correct. That would be the -- well, he, he would be
11 the uninsured motorist.

12 Q. Okay. So, you know who John Doe is then, correct?

13 A. Well, I know ---

14 Q. I mean, not the person, particular ---

15 A. --- that fictitious person, yes.

16 Q. Fictitious person. Okay. Now, read that first
17 paragraph.

18 A. The insuring agreement, uninsured motorist
19 coverage. If you pay us the premium when due for
20 this coverage, we will pay for damages an insured
21 person is legally entitled to recover for the
22 owner or operator of an uninsured motor vehicle
23 because of bodily injury or property damage
24 sustained by an insured person caused by an
25 accident and arising out of the ownership

1 maintenance or use of an uninsured motor vehicle.

2 Q. In laymen's terms, if John Doe hits Ms. Jones or any
3 insured person that's paid their premium ---

4 A. Uh-huh.

5 Q. --- you all will pay. Is that what that ---

6 A. Well, that ---

7 Q. --- seems to say?

8 A. --- will trigger that coverage part, yes.

9 Q. Okay, and we will pay for damages.

10 A. Well, yes, it triggers that, that coverage part.

11 Q. Okay. Let me show you what's been marked as
12 Plaintiffs' Exhibit Number 18. What do you recognize that
13 to be?

14 A. I'm guessing here, but it looks like Tasha Jones's
15 payment of the ---

16 Q. Payment.

17 A. --- insurance policy premium.

18 Q. And there's no evidence that she wasn't paying her
19 premiums, correct?

20 A. Well, let me just see this one. Sorry.

21 Q. Is that not a receipt for payment of the -- of the
22 premium?

23 A. It, it looks like an older receipt. This is -- and
24 not for this policy.

25 Q. Okay, but up under the same -- under the coverage that

1 she had?

2 A. Well, so, Ms. Jones had three policies issued by
3 Lyndon Southern. Those policies were six month policies.

4 Q. Okay.

5 A. I don't have any reason to believe Ms. Jones didn't
6 pay her premium, but this payment is not reflective of that
7 premium.

8 Q. But if she hadn't paid her premium, what would happen?

9 A. Presumably they'd cancel her policy, but I don't have
10 any reason to believe she didn't pay. Just saying this one
11 isn't...

12 Q. And y'all would have never paid for the claim as well,
13 correct, if she -- if she didn't have coverage at the time
14 of this accident, you would have never paid her for either
15 MedPay coverage or the property damage coverage.

16 A. Correct. Her policy was canceled, she wouldn't have
17 coverage.

18 Q. All right. We know she had coverage that particular
19 moment.

20 A. Yeah. There's reason for me to believe. That's
21 obvious.

22 Q. Going to that second page of that document, you also
23 define who is an insured up under this subsection, correct?

24 A. Which page? I'm sorry.

25 Q. This would be page 9, and just look specifically at

1 paragraph -- I'm sorry, subparagraph B under paragraph, 1
2 that identified who was the insured person. Read that.

3 A. When used in this part C, insured person means
4 any other person while occupying your covered
5 auto provided the actual use thereof is with the
6 permission of the named insured.

7 Q. And would you agree that applies to Ms. Thompson?

8 A. She was entitled to, to benefits as a -- as a
9 passenger, yes.

10 Q. And she's considered insured based upon your language
11 in your policy. Would you agree?

12 A. Correct. She is an insured person with this language,
13 yep.

14 Q. Let me show you what's been marked as Plaintiffs'
15 Exhibit Number 1, ask you do you recognize that document?

16 A. I don't remember it specifically, but I -- it -- it's
17 a letter from you addressed to Mr. Helmly which indicated
18 you're enclosing a copy of an order of judgment.

19 Q. And so why is it you're not familiar with that
20 particular document?

21 A. I've never seen it before. Maybe I saw it in her
22 deposition. I don't think I've ever seen it.

23 Q. So, what is a demand letter?

24 A. You issued a demand of the judgment you obtained
25 against John Doe.

1 Q. And was that the appropriate thing to do in this
2 particular case where Ms. Jones would demand that you, as
3 her insurer, would pay that?

4 A. The judgment? No.

5 Q. So, who would she send that type of letter to then?

6 A. Well, she could send this type of letter asking for us
7 to pay her the, the remaining policy limits, given the
8 judgment, but the judgment itself, that wouldn't be ---

9 Q. And ---

10 A. --- appropriate given the statute.

11 Q. And how many days did you get to pay whatever amount
12 that you thought you were entitled to pay?

13 A. I'm sorry, say that ---

14 Q. I mean, is there a certain limit in terms of days that
15 you were asked to pay?

16 A. This letter says that you request within fifteen
17 business days.

18 Q. And the date of this letter is dated when?

19 A. June 20, 2019.

20 MR. LAKE: Your Honor, at this time we would move
21 Plaintiffs' Exhibit Number 1 into evidence.

22 MR. HELMLY: No objection.

23 THE COURT: Admitted.

24 (LETTER MARKED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT
25 NUMBER 1.)

1 Q. And in response to that judgment, that demand, you
2 paid what dollar amount?

3 A. I never saw that demand or would have -- I would have
4 presumably responded, but I never saw that demand.

5 Q. So, in all these years you've had this case, you've
6 never seen that demand?

7 A. Again, it's an exhibit. I might have seen it at our
8 deposition a year -- my deposition a year ago, but other
9 than that, I never recall ever seeing a letter like that
10 from you.

11 Q. And that would have been your first time, when I
12 showed it to you?

13 A. Excuse me?

14 Q. That would have been the first time you saw that?

15 A. When you showed it to me?

16 Q. Yes, sir.

17 A. Yes.

18 Q. And same applies to the offer of judgment, which would
19 be --

20 (A PAUSE.)

21 Q. What's been marked, I think, into evidence as
22 Plaintiffs' Exhibit Number 7. That's kind of the
23 accompanying page to that particular demand. I'll ask you
24 again. Do you recognize that document?

25 A. I know what it is, but I don't recognize it

1 specifically, no.

2 Q. So, even after our conversations last year about this
3 same document, I mean, that same particular document back
4 on June the -- July 20, 2022, you still haven't had an
5 opportunity to review that judgment, order of judgment to
6 figure out what it says?

7 A. The order of judgment in the case?

8 Q. Yes.

9 A. I, I might have seen it. I don't recall specifically.
10 I mean, I know what it says at this point.

11 Q. You know what it says?

12 A. Well, my recollection is -- no, this one's different.
13 I'm sorry. I thought you were referring to the order of
14 judgment against John Doe.

15 Q. Is that ---

16 A. That was a different document, though, I believe.

17 Q. What, what is that particular document right there
18 that you have?

19 A. This says order of judgment also.

20 Q. Okay.

21 A. You gave me that earlier.

22 Q. So, there's two order of judgments in this particular
23 case. There's two order of judgments in this particular
24 matter.

25 A. I'd have to look at that one again, but it looks that

1 -- like that's the case.

2 Q. Okay. Well, take a look at that particular -- does
3 that refresh your memory, looking at that document?

4 A. Well, this one you showed me earlier, and I can see
5 that it's the order judgment against John Doe.

6 Q. And have you reviewed that, had a chance to act on it
7 since you took a look at it since last year?

8 A. Did I have a -- say that again. I'm sorry.

9 Q. Have you had a chance to act on that judgment or
10 respond to that judgment since you first saw it last year?

11 A. I don't recall the exact timing but I, you know, I
12 know we mediated this case in an effort to try to resolve
13 it, but the order of judgment it, again, it speaks for
14 itself. It's a judgment against John Doe, not the carrier.

15 Q. So, as long as it's against John Doe, didn't matter to
16 you.

17 A. Well, no. I mean, this is what would trigger us
18 offering to you the limit, the remaining limits.

19 MR. LAKE: Beg the court's indulgence.

20 (A PAUSE.)

21 Q. Just reviewing this particular document right there,
22 just kind of briefly review that.

23 (A PAUSE.)

24 A. Okay.

25 Q. And what type of document is that? What type of order

1 is that?

2 A. It is a denial of a motion.

3 Q. What type of motion?

4 A. To set aside the judgment.

5 Q. And so that was dated when?

6 A. This is dated -- it's not dated.

7 Q. And last page, the very last page.

8 A. It's not dated.

9 (A PAUSE.)

10 Q. What's the date on that?

11 A. The electronic signature you're talking about?

12 8/4/2020.

13 Q. That was by ---

14 A. So, August 4th.

15 Q. And so that was Judge Manning at that time?

16 A. Yes.

17 Q. And since that time -- that's your final -- that was
18 the final action that Lyndon took on this particular case.

19 Am I correct?

20 A. With regard to the John Doe action? Yes.

21 Q. Correct, to dispute or to challenge the amount of
22 damages, correct?

23 A. Correct.

24 Q. So, that is conclusive in terms of the amount.

25 A. Against John Doe, yes.