

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

B. Alex Hyman, Circuit Court Judge

Lower Court Case No. 2020-CP-26-00808

A. Tebele & Sons, a South Carolina General Partnership, Appellant-Respondent,

v.

Certain Underwriters at Lloyd's, HDI Global Specialty SE, General Security Indemnity
Company of Arizona, and Crescent Coast Insurance, LLC, Respondents,

Of which Crescent Coast Insurance, LLC is the Respondent-Appellant.

Appellate Case No. 2024-000705

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1 MR. WATSON: Objection, Your Honor, what time?

2 BY MR. CONNELL:

3 Q. After the fire, but prior to the fire, but if you might
4 have rented to --

5 A. We're talking about prior to the fire?

6 Q. So, yeah. So prior to the fire, you're renovating,
7 putting all this piping system in. Were you doing other work
8 inside the building?

9 A. No, primarily with the sprinkler.

10 Q. Alright. And so were people interested in renting, and
11 were you taking phone calls for that?

12 A. There were a couple of prospects and nothing
13 materialized, but it was actually -- it was like a Brazilian
14 steakhouse was interested, and of course, we were interested,
15 but I think in that case one of the gentlemen that was funding
16 it who also ran the business here locally --

17 Q. Don't tell me what he said.

18 A. Well, no, I'm not going to tell you what he said. He
19 had to return back to Brazil, so therefore, it was non-startup.
20 We couldn't get it done.

21 Q. And have you paid all the premium to -- for this
22 particular policy, did you pay all the premiums?

23 A. Yes, absolutely.

24 Q. There's been some premiums, finance agreement?

25 A. Yes.

1 Q. Did you pay every dollar on that?

2 A. Yes.

3 Q. And who had control of the fire protection system? Tell
4 me about that, please, sir.

5 A. So when we signed the contract, which of course, we had
6 to do, because the City was adamant that this is what we needed
7 to do. So within the Crawford contract, it basically says that
8 no party is to touch the system until they complete their work,
9 testing, et cetera. So really, it was very much not in my
10 hands. It was -- even if I wanted, and I think we even heard
11 somebody say this, that Mr. Tebele could have done this and
12 that. Absolutely not.

13 Q. The contract prohibited you from trying to --

14 A. Yes.

15 Q. -- adjust the sprinkler system?

16 A. And most likely for liability reasons, Crawford would
17 not allow anybody to touch it. My guess is that they were
18 probably -- that was maybe a condition with their own liability
19 carriers, that as long as they handle all the work, they
20 supervise it, and no one else can interfere, so -- and we had
21 no reason to because when I met Mike Dover, I asked him, I
22 said, how long have you all been installing sprinkler systems?
23 Like, 75 years. How long in Myrtle Beach? 75 years. So I
24 said, you know, this is a company that I could trust to give
25 the job to, and --

1 Q. You were continually asking Crawford; were you not?

2 A. Yes.

3 Q. And were you also trying to contact Carolina Tap & Bore,
4 ask them when they could come to do it?

5 A. Yes.

6 Q. Let me show you this, Exhibit 44.

7 A. Okay. I recognize this.

8 Q. Alright.

9 A. Do you want me to say what it is or read it?

10 THE COURT: I've got that 44 was stipulated?

11 BY MR. CONNELL:

12 Q. Okay. Yes, sir. What does it say?

13 A. So it says: Richard, please expedite, and it's dated.
14 Forgive me. It's dated Friday, August 31st of '18 in the
15 afternoon. And it says: Subject, tap installation. Richard,
16 please expedite with all necessary mobilization and permits to
17 get the tap install done. I would appreciate if Chris Lee
18 would put you in touch with all the necessary personnel within
19 the City and fire department. So just to tell you what this
20 is, so Mike Dover had recommended Carolina Tap, and I decided,
21 you know, I was going to hire them, sent an email to Mr. Young,
22 who was, I think, second generation of this company, you know,
23 him and the dad and, you know, big utility contractors, and
24 then to make sure that everybody knew and is in the loop on
25 this, I actually CC'd the City on it, because, you know, Chris

1 Lee, who, unfortunately, is no longer with us, fine gentleman,
2 but anyway, he was helpful, and, you know, I wanted to make
3 sure he knew both who to contact and that we were following
4 through, and of course, after I sent this, I actually forwarded
5 it to Mike Dover so that -- from corporate sprinkler so that he
6 would know and everybody would be essentially connected to each
7 other.

8 THE COURT: Alright. Mr. Connell, I have 44 as
9 already being admitted.

10 MR. CONNELL: Yes, sir.

11 THE COURT: Okay.

12 MR. CONNELL: Yes, sir.

13 BY MR. CONNELL:

14 Q. I want to put my hands on the binder just one minute so
15 we can --

16 A. Sure.

17 Q. -- we can talk about that. Okay. Here it is right
18 here. I got it. Thank you. Come down here, please, just for
19 a second.

20 A. Sure.

21 Q. Stand over here? If you would, please.

22 A. Sure.

23 Q. Alright. So this is the only document you've really
24 ever gotten, right, the binder?

25 A. Yeah, for the most part, this is it.

1 Q. And the binder is dated 01/15, that's prior to the fire.

2 A. Yes.

3 Q. And it has limits of liability of how much?

4 A. 22,150,000 -- 55,400.

5 Q. And does it describe the coverages that you're supposed
6 to have?

7 A. So it does give you exactly what's covered, meaning, the
8 real property and also the internal business, personal
9 property, and income loss.

10 Q. Okay. So let me let you look at page 2: Comments,
11 conditions --

12 A. Uh-huh.

13 Q. -- protective safeguards: The following are required
14 within five days of binding. Do you see that? "Comments" at
15 the top there?

16 A. Oh, inspection. So then, yeah, so just an inspection
17 contact, like --

18 Q. Alright.

19 A. -- my name, essentially.

20 Q. The following --

21 A. Right.

22 Q. -- are required: Number one, inspection. And then it's
23 got protective safeguards; does it not?

24 A. It's -- it's -- it is there, yes.

25 Q. Alright. How many properties were there?

1 A. Twenty. So --

2 Q. There were more than 20, right?

3 A. -- twenty-three locations.

4 Q. How many had protective safeguards?

5 A. Very few.

6 Q. Has there been testimony there were four?

7 A. It's basically four -- like, four properties, and one is
8 like in the one location, so.

9 Q. So let's assume for the moment that we had a calamity
10 that all 23 burned down.

11 A. Uh-huh.

12 Q. Under this term, none will be paid, right?

13 MR. WATSON: Objection, Your Honor. Foundation and
14 speculation of this witness.

15 MR. CONNELL: Your Honor, it's no speculation based
16 on the binder.

17 THE COURT: Overruled.

18 BY MR. CONNELL:

19 Q. Right?

20 A. So --

21 Q. What were you buying is what I'm asking?

22 A. Right.

23 Q. If you were getting a protective safeguard on -- with no
24 description, you're paying \$160,000.00 for it. According to
25 this, everyone had to have a protective safeguard, right?

1 A. Or there's no way to really know.

2 Q. Right. And even the schedule of values that had been
3 talked about --

4 A. Shows not provided.

5 Q. Right.

6 A. Right. They didn't have a schedule.

7 Q. And most of them had no sprinkler system, right?

8 A. Yes.

9 MR. CONNELL: Okay. Alright, Your Honor, that's all
10 I have.

11 THE COURT: Alright. Ladies and gentlemen, it is
12 3:15. As you may have already realized, this case is going to
13 go into next week. I've spoken with the attorneys. It does
14 appear like we may be able to be finishing testimony Monday,
15 but because there's no chance of finishing it today, I'm going
16 to go ahead and allow y'all to leave. Y'all put in a hard
17 week, and I do appreciate it. I hope that y'all have a
18 wonderful weekend, and we will see y'all bright and early
19 Monday morning at 9:00 A.M. Just as I've told you before, do
20 not do your own independent research, do not discuss this with
21 anyone else, including your fellow jurors, but again, y'all
22 have a great weekend.

23 THE JURY: Thank you, you too.

24 THE WITNESS: I appreciate it, Your Honor.

25 THE COURT: Yes, sir, I didn't feel free to tell the

1 **(Whereupon proceedings reconvened Monday, December 11, 2023)**

2 **(Jury entered the courtroom.)**

3 THE COURT: Please be seated. I hope everybody had a
4 good weekend. Anything we need to take up before we bring the
5 jury in?

6 MR. CONNELL: No, Your Honor.

7 MR. WATSON: No, Your Honor.

8 MR. RISER: No, Your Honor.

9 THE COURT: Mr. Tebele, if you'll go ahead and take
10 the stand. Alright. Mr. Tebele, just as a reminder, you're
11 still under oath.

12 THE WITNESS: Yes.

13 **(Jury entered the courtroom at this time.)**

14 THE COURT: Alright. Good morning, ladies and
15 gentlemen. I hope that you all had a great weekend. We're
16 going to go ahead and get started. Mr. Tebele is still under
17 oath. He will now be questioned by Mr. Watson. Yes, sir?

18 MR. WATSON: May it please the Court?

19 THE COURT: Yes, sir.

20 **CROSS-EXAMINATION**

21 BY MR. WATSON:

22 Q. Good morning, Mr. Tebele.

23 A. Good morning.

24 Q. Did you have a good weekend?

25 A. Yes. Thank you.

1 Q. Ready to go?

2 A. Yes.

3 Q. First, I'm going to show you what's already in evidence,
4 excerpts. Can you see that?

5 A. Yeah.

6 Q. Do you want me to turn it over for you?

7 A. Somewhat. Okay, okay.

8 Q. This is, I believe it's Defendant's 25 or the
9 Plaintiff's 25, the application. It's already in evidence. Do
10 you recognize that this was the one that had January 11th on
11 the top and it concerns the location that had the fire in 1901
12 North Kings Highway, right?

13 A. To be honest, I can't see it that well from here.

14 Q. Sure. Let's bring it right up. You see it says:
15 Location 11, North Kings Highway?

16 A. Yes.

17 Q. 1901 North Kings Highway?

18 A. Yes.

19 Q. And below that is an excerpt of the location where it
20 said: Percent sprinkler, 100. Right?

21 A. Okay. Well --

22 Q. And this was all on the application when you signed it,
23 January 14th, with your DocuSign signature, right?

24 A. It looks the same, yeah.

25 Q. Right. And this is a photograph that's already in

1 evidence from Ms. Weaver taken shortly after the fire, and you
2 recognize this as being how the scene looked a few days after
3 the fire with regard to the pipe and the trench and everything?

4 A. Yes.

5 Q. So this is our third time speaking with you having taken
6 an oath to tell the truth, right, sir?

7 A. Yes. Correct.

8 Q. The first one was at the examination under oath in July
9 2019 at the office of your counsel at the time, Mr. Redman and
10 Mr. Gunway; right?

11 A. Yes.

12 Q. And then we took your deposition during this litigation
13 in 2021, I think that was on Zoom with your then counsel, Mr.
14 Weaver and Mr. DesChamps, right?

15 A. Yes.

16 Q. Okay. And now we're here, of course, with Mr. Connell,
17 as well. You told the truth at your examination under oath,
18 correct?

19 A. Yes.

20 Q. And you told your truth at the deposition, right?

21 A. Yes.

22 Q. Now, let's talk about the property. The property is
23 owned by Kings Realty LP, correct?

24 A. It's titled in the name of Kings Realty, correct.

25 Q. Now, you talked a bit about your living arrangement,

1 that you traveled frequently back and forth between your
2 residence in Myrtle Beach and up in New York?

3 A. I did, I did.

4 Q. And your wife and your five children all live full time
5 in New York, right?

6 A. For the most part, yeah.

7 Q. And I think you're mostly in the New York on the
8 weekends, and you're mostly during the business week here in
9 Myrtle Beach?

10 A. Yes, correct.

11 Q. And, in fact, your son recently graduated from law
12 school up in New York?

13 A. About, like, over a year ago, but, yeah.

14 Q. And he's practicing now as an attorney?

15 A. Yes. Today's his birthday, actually, in case anybody
16 wants to know. He's 20, so. Thank you.

17 Q. Now, in the earlier days of your company, you owned some
18 retail stores that were, some would call, beachwear, sales, and
19 T-shirt shops, souvenir shops?

20 A. My father. Yeah, my father, correct.

21 Q. Okay. And now the general partner, you started -- you
22 explained this a little bit on Friday with Mr. Connell. A.
23 Tebele & Sons is a business, it's a general partnership?

24 A. Yes.

25 Q. And the limited partners, the general partner is another

1 LLC company called Kings Realty Management, LLC?

2 A. What's your question? Repeat it. I'm sorry.

3 Q. The general partner of the partnership, A. Tebele &
4 Sons, is a legal entity called Kings Realty Management LLC,
5 correct?

6 A. That's not correct.

7 Q. That's not?

8 A. That's not.

9 Q. Well, who's the general partner? Correct me.

10 A. No. So Tebele & Sons is a general partnership with
11 basically two general partners.

12 Q. And who are they?

13 A. So it was my dad, David Tebele, and my Uncle, Edward,
14 who, actually, Edward was alive at the time of this loss, but
15 unfortunately passed away right before COVID.

16 Q. Alright. When we took your examination under oath, did
17 you state that the Kings Realty Management, LLC was basically
18 the general partner of the limited partnership and that it held
19 the general partnership interest?

20 A. Of the Kings Realty partnership.

21 Q. I see. That's where we're not connecting.

22 A. Correct. Exactly.

23 Q. I understand.

24 A. And do you want to know why that was done? I'm happy to
25 share that with you --

1 Q. No, that will be okay.

2 A. -- just to be factually correct.

3 Q. It's okay. Now, Ms. Garcia, shortly before the fire,
4 was evicted from the 1901 North Kings Highway space, correct?

5 A. She was not evicted.

6 Q. Well, the eviction action was filed.

7 A. The eviction action -- if she was evicted, we may not be
8 here, but --

9 Q. Right.

10 A. -- here we are.

11 Q. Right. The action was filed February 14th, ten days
12 before the fire?

13 A. That sounds correct.

14 Q. And the entity that evicted her was the Kings Realty LP
15 entity as the legal owner at the time?

16 A. Yes.

17 Q. And at the time she -- you filed for eviction, she owed
18 \$41,200.00 in unpaid rent?

19 A. That sounds correct.

20 Q. And the lease you had in effect with Ms. Garcia at the
21 time was for \$7,000.00 a month?

22 A. Right. That was her beginning rent and was supposed to
23 escalate, but here, again --

24 Q. Right.

25 A. -- she never got to that point.

1 Q. Right. It never got to the escalation point --

2 A. Yeah.

3 Q. -- she wasn't there long enough?

4 A. Right.

5 Q. Now, you talked a bit on Friday about your background.

6 You've graduated college from New York University, right --

7 A. Yes.

8 Q. -- with finance degree?

9 A. Yes.

10 Q. And you've been a licensed real estate broker, South
11 Carolina, for over ten years?

12 A. Yes.

13 Q. And that requires annual continuing education?

14 A. Yes.

15 Q. And you do that?

16 A. Yes. And it's actually biannual, so like every couple
17 of years.

18 Q. You have to take a certain number of hours every two
19 years?

20 A. Every two years, right.

21 Q. A. Tebele & Sons, the business of that entity for about
22 25 to 30 years has been the leasing and managing of these 23,
23 give or take, properties in Myrtle Beach, right?

24 A. That's right. Kind of like -- exactly, managing the
25 parent entity.

1 Q. Being the owner and being the landlord, collecting the
2 rent, making sure the property's taken --

3 A. Right.

4 Q. -- care of --

5 A. Correct.

6 Q. -- addressing things from the tenants?

7 A. Yes.

8 Q. And for the partnership, you are the person, or the
9 point person --

10 A. I'm the --

11 Q. -- that operates day-to-day business?

12 A. Right, the manager, so yes.

13 Q. The manager.

14 A. Right.

15 Q. And there is no other manager but you?

16 A. Not, not at this point, no.

17 Q. And you have your office staff. You have Ms. Simonetti,
18 whose name has come up here and there, like an admin support
19 person?

20 A. She actually left at the end of '21 because her son --
21 her son decided he wanted to live in Florida, and she doesn't
22 have a lot of family, so she's since relocated down there.

23 Q. And you do not have an in-house risk manager or a
24 in-house CFO of any kind?

25 A. I don't.

1 Q. You're basically in that -- all of these roles?

2 A. Yeah, I'm handling, right.

3 Q. And when it came to making decisions for A. Tebele &
4 Sons about insurance within the company, you're the person
5 making those decisions?

6 A. Yes.

7 Q. And when you had to delegate those matters, you would
8 delegate those to whoever was your insurance agent at a given
9 time, whether it was Crescent Coast or whether it was BB&T,
10 McGriff, or any of the other names that they've had over --

11 A. So --

12 Q. -- the years, right?

13 A. It's, right, important to get the right agent,
14 obviously, to, you know, handle -- handle the properties and
15 communications, et cetera.

16 Q. Right. Because if you -- you're not a insurance agent,
17 so if you have questions about insurance matters --

18 A. Right.

19 Q. -- those who you can go to?

20 A. Yes.

21 Q. And during your time managing these properties over the
22 past 25, 30 years, you've encountered lots of different types
23 of policies. You testified on Friday about some of them.
24 You've encountered liquor liability policies, right?

25 A. Yes.

1 Q. You've encountered general liability, what people call

2 --

3 A. It's pretty standard.

4 Q. Okay.

5 A. Right?

6 Q. What people call --

7 A. Yeah.

8 Q. -- GL.

9 A. Yes.

10 Q. We've heard, that's when you said, oh, there's --

11 sometimes there's slip and falls, and then --

12 A. Right.

13 Q. -- everybody gets sued. You've had that experience?

14 A. Yes.

15 Q. Obviously, you've had property policies protecting your
16 properties throughout the time you've owned them?

17 A. Yes.

18 Q. Then you talked about you've worked with excess policies
19 before, and umbrella coverages, right?

20 A. Yes. Comes into play in the slip and fall, really.

21 Q. Sure. For extra protection?

22 A. Yes.

23 Q. You've dealt with flood insurance, whether you might
24 need it or might not, and you talked about whether your
25 property was in a flood zone, right? And even before this

1 policy that we're here at, the 2019 policy, you had prior
2 policies that were procured from the London insurance market?

3 A. Yes.

4 Q. And you talked about your knowledge regarding
5 non-admitted carriers and that if you had your preference you
6 would have admitted carriers because you could go to the state
7 for help?

8 A. A lot of what I've learned has been, you know, the last
9 several years, obviously, coming up with this case, but.

10 Q. Well, in terms of that last issue, in particular, right?

11 A. Uh-huh.

12 Q. But you've had all those other types of policies going
13 on 20-plus years, off and on?

14 A. But they're not all created equal, but, yes.

15 Q. Right.

16 A. Yeah, as we know.

17 Q. Now, let's talk a little about the sprinkler system at
18 1901 North Kings Highway. When Ms. Garcia became a tenant,
19 that property had no system at all?

20 A. Yes.

21 Q. And Mr. Tebele, I'm approaching you with what's been
22 marked for identification purposes as Defendant's Exhibit 1.

23 A. Yes.

24 Q. Are you able to identify that?

25 A. So this is a lease between, I guess, our company and Ms.

1 Garcia --

2 Q. And --

3 A. -- for -- for the restaurant.

4 Q. The front page is an amendment to the original lease
5 which is attached behind it; would you agree?

6 A. Yes. So this changed the dates of the agreement because
7 I believe she was supposed to go in in 2016, and that's when we
8 ran into issue with, you know, her getting -- actually getting
9 the license, even though the city was really supposed to give
10 her the license. She had an application in, but I guess
11 somebody in -- within the city said, you know, you need to
12 fulfill whatever requirements, and I guess with the delays, we
13 have to amend the lease.

14 Q. And so this is a true and correct copy of the original
15 lease with its amendment?

16 A. Yes.

17 MR. WATSON: Your Honor, I move to admit Defendant's
18 Exhibit 1 into evidence.

19 THE COURT: Okay.

20 MR. DESCHAMPS: No objection.

21 MR. WATSON: Defendant's Exhibit No. 1.

22 THE COURT: It's admitted into evidence.

23 **(Defendant's Exhibit No. 1 was admitted into evidence.)**

24 BY MR. WATSON:

25 Q. And this lease, the name of the tenant is Melissa

1 Garcia, doing business as La Casona Latin Cuisine and Lounge,
2 right?

3 A. Yes.

4 Q. And the lease began in April 2016, according to the
5 original version?

6 A. You're right.

7 Q. And she was only leasing a portion of the space, not the
8 entire space, right?

9 A. That's correct.

10 Q. And she was paying -- we already talked about the amount
11 of rent she was paying, actually. There is a paragraph, and
12 it's going to be possibly too small for you to read, and it may
13 be too small for me to read, entitled, number 9 -- number 8,
14 Entry and Inspection. This lease allowed for the owner to
15 enter the tenant space with reasonable notice to the tenant,
16 right?

17 A. And like you said, it's very difficult to read, but it's
18 a standard clause that you would have, at least.

19 Q. Right. The landlord can come. They have to give
20 reasonable notice. You can't just barge in in the middle of a
21 lunch rush at the restaurant. You've got to give them
22 reasonable notice, right?

23 A. Yes.

24 Q. And the lease itself never discussed the presence of a
25 sprinkler system or who would maintain it because it didn't

1 have one, right?

2 A. The only clause regarding maintenance, I think the
3 tenant's supposed to maintain, like, the internal systems, for
4 instance, like plumbing. Something internal usually is the
5 responsibility of the tenant, something with the exterior, like
6 a roof, might be for the landlord.

7 Q. But Ms. Garcia wasn't installing the sprinkler system,
8 that was the owner, your company was installing the sprinkler
9 system?

10 A. Well, we were not installing, Crawford was installing.

11 Q. Well, compared to the tenant, you were much more
12 involved in that process and directing it than Ms. Garcia was?

13 A. Well --

14 Q. You weren't going to her for selection on which
15 contractor to use and which type of sprinkler to install?

16 A. Well, we were doing it so that she could operate. For
17 instance, if we had -- presumably, if we had, like, a regular
18 retail tenant, non-restaurant, it may not require this, you
19 know, I'm not even like exactly sure of the codes with that,
20 but given that for the purpose of her operating as a
21 restaurant, it needed to get done. And typically, Crawford's
22 going to contract with, you know, like I said, in this case
23 with us, so.

24 Q. Right. Your company chose Crawford over other sprinkler
25 contractors?

1 A. We selected --

2 Q. You chose them.

3 A. We selected them, right.

4 Q. Alright. And the City of Myrtle Beach allowed you to
5 keep the premises open, the restaurant open while this
6 installation of the sprinkler system was occurring?

7 A. They did, they did.

8 Q. And you started, as Mr. Dover testified, that process of
9 installing a sprinkler began as early as 2016 with the
10 negotiations of what it was going to contain through the design
11 and through the install, all the way up to, I think Mr. Dover
12 said, 95 percent of his work being done in early 2019, right?

13 A. That makes sense, yeah.

14 Q. And then Crawford was installing the whole system, and
15 then he had subcontracted out -- they had subcontracted out
16 that final piece for the utility contractor, Carolina Tap &
17 Bore, to finish the connection to the city's water source?

18 A. Yes.

19 Q. And as of January 1st, 2019, the system was fully
20 installed throughout the whole building, and the tap connection
21 was not complete yet, correct?

22 A. That's correct.

23 Q. And at the time you were discussing the policy with Joey
24 Sutherland and Crescent Coast in August of 2018, you told
25 Crescent Coast that it was installed, but it's not yet

1 connected to the water?

2 A. Absolutely.

3 Q. And on February 13th, about a month after you signed
4 that application and about ten days before the fire, you were
5 at the property with Mike Dover of Crawford Sprinkler, right?

6 A. Correct, I was.

7 Q. And from that meeting, you were on site, and you saw
8 that the pipe still hadn't been finished, and you knew that it
9 wasn't yet ready to be --

10 A. We didn't --

11 Q. -- drawing water from the city's water system --

12 A. Right. We didn't really -- really, the meeting took
13 place inside the premises, you know, Ms. Garcia's premises, and
14 he was just showing that this is where the connection is going
15 to come in, and that was it, really. I don't even remember
16 going outside at that point.

17 Q. And you left that meeting. After you left that meeting,
18 you never told Crescent Coast, by the way, this application I
19 signed a month ago about 100 percent sprinkler, that system is
20 still not connected, you never told them that, did you?

21 A. I didn't tell them that.

22 Q. Now, Ms. Garcia, she continued to operate this
23 restaurant and cook and use heat sources while unprotected by
24 the sprinklers, right? There was no water while she was
25 operating?

1 A. It was not in -- it was in the process, obviously, we
2 were trying to get it in, but.

3 Q. And you heard that Mr. Egan testified that Ms. Garcia,
4 on her tenant's insurance policy, indicated that the property
5 was 100 percent sprinklered, do you remember that?

6 A. She did, she did.

7 Q. And then Mr. Sutherland testified that Ms. Garcia called
8 him in a panic, that was his word --

9 A. That was not --

10 Q. -- on January 10th, saying, the fire department told me
11 I have no sprinkler protection, right?

12 A. That's not correct.

13 Q. That's not what he said?

14 A. He didn't -- he didn't say the fire department.

15 Q. The City of Myrtle Beach, excuse me.

16 A. He did not say that.

17 Q. Alright. You don't recall Mr. Sutherland testifying
18 that it was relayed to him from Ms. Garcia that she got a call
19 from someone on behalf of the City of Myrtle Beach telling her
20 she had an issue with the sprinklers not being operational?

21 A. That's not correct.

22 Q. Alright. Well --

23 A. Do you want to know?

24 Q. We can agree that that's what led to the email that
25 we've seen throughout this trial, Plaintiff's Exhibit 23, the

1 Sandra Nenna email?

2 A. I believe Mr. Sutherland said it was an inspector that

3 --

4 Q. Okay. Well --

5 A. -- advised her, and she did call it.

6 Q. Thank you.

7 A. But the rest of it is correct, so I just wanted to
8 clarify.

9 Q. I appreciate that.

10 A. Yes.

11 Q. But the source of this email, the January 11th email
12 from Sandra Nenna, was Ms. Garcia who initiated that, right?

13 A. With the inspector, was my understanding.

14 Q. You didn't initiate that, that was Ms. Garcia?

15 A. No.

16 Q. And it makes sense, right, that Ms. Garcia would have
17 been in a panic if she thought enough to put on her own
18 application that this property was protected by a sprinkler
19 system and then finds out it actually isn't while she's serving
20 customers and cooking, right? That makes sense?

21 A. Repeat your question.

22 Q. Sure. It would make sense to you, wouldn't it, that Ms.
23 Garcia would be in a panic if she thought her restaurant space
24 was protected with sprinklers when it was, in fact, not
25 protected, and she's operating a restaurant, cooking, using

1 flames, et cetera?

2 A. I disagree with that.

3 Q. That wouldn't? You don't think --

4 A. I don't think --

5 Q. -- that would have caused --

6 A. I don't think that was --

7 THE COURT: Let him finish his answer. Just let him
8 finish his answer.

9 A. Yeah. I disagree with that. She would not have
10 panicked because the system was not connected, because she
11 would be aware, being the occupant, that they were in the
12 process, so I don't believe that she would be panicked by that.
13 In fact, I'm not sure why she panicked. I would have liked
14 some clarification on that.

15 Q. But you heard Mr. Sutherland used the word "panic?"

16 A. I did, I did.

17 Q. Now, that back again with the application and the
18 process for applying to it. You started talking to Mr.
19 Sutherland July 2018 about submitting this new application,
20 correct?

21 A. That's also incorrect.

22 Q. Well, you talked -- he came to you well before July
23 2018?

24 A. I mean, he was coming to talk to me since 2017 as --

25 MR. WATSON: Your Honor, fair is fair, I need to

1 finish my question.

2 THE COURT: Go ahead and ask the question.

3 MR. WATSON: Sure.

4 Q. The process of the solicitation and the desire to get
5 your business started well before that?

6 A. Well before.

7 Q. We've had testimony.

8 A. Okay.

9 Q. And you were submitting a lot of text messages back and
10 forth with Mr. Sutherland over that period, weren't you?

11 A. Yes. And also because he was the insurance agent for
12 the tenant.

13 Q. Mr. Tebele, I'm handing you what's been marked for
14 identification purposes.

15 MR. CONNELL: No objection to Number 12, Your Honor.

16 **(Defendant's Exhibit No. 12 was marked for identification.)**

17 Q. Mr. Tebele, I'm handing you what's been marked for
18 identification purposes as Defendant's Exhibit 12. Do you
19 recognize this to be a series of text message communication
20 between yourself and Mr. Sutherland?

21 A. I mean, it's quite long ago, but, you know, presuming
22 that this is the messages.

23 Q. And some of these are overlapping with other exhibits
24 because it has the bunny rabbit emoji on it, remember that?

25 A. Yeah, not from me, but, yeah.

1 Q. No, that was him, right?

2 A. Yeah.

3 MR. WATSON: And I would move at this time
4 Defendant's Exhibit 12 into evidence.

5 MR. RISER: No objection.

6 THE COURT: Defendant's 12 is admitted into evidence.

7 **(Defendant's Exhibit No. 12 was admitted into evidence.)**

8 BY MR. WATSON:

9 Q. If you can't see the screen, you're welcome, Mr. Tebele,
10 to stand down and get a place where you can see it.

11 A. Thank you.

12 Q. I'm going to display it.

13 A. Thank you. I'll do that. I'll stand over here.

14 MR. WATSON: Is that large enough for you folks to
15 see? Alright.

16 Q. The first text in this exhibit was from October 26,
17 2017. Joey writes: Good morning, Melissa. Can I meet with us
18 today? And he wants to meet with you about talking about your
19 property insurance, right?

20 A. Yeah.

21 Q. And we're not going to talk about every single one of
22 these, but we're going to talk about something. We're going to
23 skip ahead a little to December the 12th, 2017. You were going
24 to have a meeting around 3:00, and Melissa was --

25 A. Right.

1 Q. -- hoping to be there, right?

2 A. Right.

3 Q. And then that Joey indicates here, the same day, he
4 wants to talk with you about your property insurance renewal,
5 right?

6 A. Yes.

7 Q. And that meeting apparently actually happened because he
8 came -- he was here at your office store?

9 A. Right.

10 Q. Later in the sequence, now we're in June of 2018, you --
11 when it says "A," that's your text, right?

12 A. Yes.

13 Q. You say: Joe, I want to -- may want to switch
14 everything before the summer, can't talk now, right?

15 A. Correct.

16 Q. And Joey responds he's going to pull out all your
17 records, refresh his memory, and then you can meet together,
18 right?

19 A. Yes.

20 Q. Skipping ahead a little more. On July 12th, again:
21 We're on for today, 3:00. Yes. That meeting actually went
22 forward, right?

23 A. Yes.

24 Q. And then on August 1st, he texts you again, wants to go
25 over -- sit down and go over the list of properties and the

1 values of each one, take maybe 30 minutes, right?

2 A. Yes.

3 Q. And you couldn't do it right away, but August 8th, he's
4 reconfirming with you, and then later that same day, August
5 8th, see you at 3:00, right?

6 A. Yeah.

7 Q. That meeting happened?

8 A. Right.

9 Q. And then that same day after you say the meeting's going
10 to happen, you comment: Did you speak with Melissa? We
11 haven't been paid in over two months, plus, she owed six grand
12 for electric, right?

13 A. Yes.

14 Q. So this was already a problem --

15 A. Yes.

16 Q. -- with the tenant?

17 A. Yes.

18 Q. And then you start asking him questions about her
19 insurance: Is she carrying enough coverage? He responds: GL
20 and LL. That's general liability and liquor liability --

21 A. Right.

22 Q. -- and contents. And you said: Better than nothing.
23 Right?

24 A. Right.

25 Q. So that meeting occurs and you didn't sign any of those

1 applications yet, right?

2 A. No.

3 Q. And then we're now in November, and you're asking him:
4 When can we sit down? Wants to have another meeting about the
5 property insurance. After you exchange some more emails --
6 excuse me, some more texts, that last one says, November 20th,
7 2018, on that page and you started asking him again: Hey, did
8 you get the quotes? Right?

9 A. Right.

10 Q. And he says: The carriers don't release the quotes
11 until about 30 days out from removal, and I believe it's in
12 January, so hopefully, by mid-December. Right?

13 A. By December, right. Trying to get --

14 Q. He says second week of December, right?

15 A. Trying to get a quote.

16 Q. And then you comment: Do you require anything more
17 because Alice is asking for tenant and lease information? Now,
18 Alice as in Alice Santos from McGriff.

19 A. It's Sanders. That --

20 Q. Sanders?

21 A. And I think I corrected it on the errata.

22 Q. Okay. So --

23 A. Yes.

24 Q. It's been called Santos --

25 A. Because when I read it -- forgive me. Yes, the --

1 Q. We'll just call her Alice to make it easy. Alice is
2 fine. Alice was the David Egan counterpart with McGriff, or
3 BB&T at the time, right?

4 A. She was the agent for --

5 Q. Right.

6 A. Right.

7 Q. She was your point person of contact with them?

8 A. Yes.

9 Q. And so you were having a little competition between the
10 two agencies to see who can get you the best deal, right?

11 A. To compare quotes, right.

12 Q. Right. The point being, which deal is going to be the
13 best for the company in terms of price, coverages, et cetera.

14 A. Right, right.

15 Q. And Joe responds: We've got all we need. Then he
16 mentions, he asks you questions about your 2015 fire claim,
17 which you talked about a little bit, I think, on direct. You
18 had a neon sign and --

19 A. Yes, correct.

20 Q. And we don't need to get into that again.

21 A. Okay.

22 Q. And here, you are continuing to talk about the neon sign
23 claim, and then you comment the likelihood of a similar
24 incident would be almost (inaudible) right?

25 A. Right.

1 Q. And then we are now going to shift even further ahead.
2 We're still in December, mid-December of 2018. He's asking
3 about the status of the quote from the incumbent, that's Alice
4 at McGriff, right?

5 A. Correct.

6 Q. And you say, did it, so it's progressing. Then Joey
7 asks you for a tenant list, and you forward it because one
8 carrier that's quoting is asking for it, right?

9 A. Right.

10 Q. And you sent that to him?

11 A. Yes.

12 Q. And he was, as he notes, one carrier, he was shopping
13 around among insurers to get the best deal for you, right?

14 A. Presumably, right.

15 Q. At least as far as you can tell. Now, the next
16 exchange, still in December, we're now at December 28th just
17 past Christmas, Joey comments he's just spoken with David for
18 an update, working on getting quotes, no need to worry, renewal
19 is 1/15, we've got plenty of time. Right?

20 A. (Nods head, yes.)

21 Q. That's what he's telling you at the time.

22 A. That's what he's telling us, but I'm -- and go ahead.

23 Q. And he's, you know, he wants your account. He says in
24 the same exchange, he's pushing as hard as he can. That's what
25 he's telling you, right? January 4th, ten days before you sign

1 an application, he says -- Joey asks you: Please call David.
2 He has a few quick questions. The property side is pretty much
3 done, And now you're working on the GL side, general liability,
4 the slip-and-fall exposure side.

5 A. Right, right.

6 Q. And again, further down in January, again: Comments
7 about the GL. So running down to the wire, that was the focal
8 point, right?

9 A. Right.

10 Q. Start and your policy expired, what was it, midnight the
11 14th?

12 A. Right, right.

13 Q. So the clock's ticking. January 11th, three days out,
14 Joey says: I have an alternative proposal. Call me when you
15 can.

16 A. Correct.

17 Q. You understand that the alternative proposal was the cut
18 and commission and the final quote?

19 A. Okay.

20 Q. And that was the last exchange you had with Joey before
21 the 14th, which was the date you put your DocuSign on it, and
22 then next one is after the fire?

23 A. Yes.

24 MR. WATSON: Oh, you can take your seat.

25 THE WITNESS: Thank you.

1 BY MR. WATSON:

2 Q. And the meeting you had in August, Mr. Egan and Mr.
3 Sutherland were at that meeting where you went over all the
4 locations?

5 A. Yes.

6 Q. And you went through about 30, 45 minutes worth of time
7 going through each one, right?

8 A. Correct.

9 Q. And according to you, they were very thorough asking you
10 exactly what was going on property by property so they could do
11 the application, right?

12 A. Yes.

13 Q. And even though you didn't sign them, you saw those
14 interim drafts of this application, one in August and one in
15 November?

16 A. No, sir.

17 Q. You never saw them?

18 A. No.

19 Q. And these are a variety of types of use of these
20 locations. Some are restaurants, some are retail, some are --

21 A. Right.

22 Q. -- grocery stores, et cetera?

23 A. He -- he never -- he never indicated what he was doing
24 other than gathering the information.

25 Q. And we can agree one more time that when you signed --

1 DocuSigned it, the language above the DocuSign indicated that
2 the applicant had made a reasonable inquiry to obtain the
3 answers to the questions and that you represented that these
4 answers are true, correct, and complete to the best of your
5 knowledge, right?

6 A. Yes.

7 Q. And one of your locations, location 12 on the policy,
8 1901 North Kings Highway was location 11 on that application,
9 location 12 was at Thorny's space, right, where the Thorny's
10 restaurant was?

11 A. I don't know, I don't recall.

12 Q. But one of the locations was a Thorny's space?

13 A. Was a property at Sixth Avenue.

14 Q. Right. And that property did have an operational
15 sprinkler system in January 2019?

16 A. Yes.

17 Q. And one of the locations, location 20, was a Family
18 Dollar store, right? That was a tenant?

19 A. Family Dollar is one of our tenants.

20 Q. And they had an operational sprinkler system in January
21 of 2019, right?

22 A. They did.

23 Q. And another location, number 23, was a Burkes part of
24 store, or store, right?

25 A. Yes.

1 Q. And they, too, have a operational sprinkler system when
2 you signed an application --

3 A. Yes.

4 Q. -- right? And then location 24 was a Piggly Wiggly
5 grocery store, right?

6 A. Yes.

7 Q. And that one also had an operational --

8 A. So those are all -- all the last three are in the same
9 property, so, yeah.

10 Q. But they're listed on the --

11 A. As different locations, but it's -- forgive me. It's a
12 all one property.

13 Q. Right. And they all were protected by an operable
14 sprinkler system in January 2019, which caused you to put that
15 on the application, or sign an agreement to that, correct?

16 A. Well, as I said, I didn't put that on the application, I
17 just went over the properties with them.

18 Q. Well, you signed the application containing notations
19 that each of those locations I just went through, Thorny's,
20 Family Dollar, the Burkes, and the Piggly Wiggly, all had
21 operable sprinkler systems --

22 A. So -- so --

23 Q. -- right?

24 A. So the ACORD 140, which is basically that summary page,
25 which is really supposed to be part of three pages, but those

1 were inserted in the middle of the document, so in effect, the
2 first -- the first part of the application, there's some
3 signatures, and then the last part is the flood and terrorism
4 rejection. So to clarify, these interim pages were inserted,
5 but there was nowhere to put a signature on them, so, and I've
6 heard it said over and over again here, that I put that --
7 first of all, I never put that down, and there was no signature
8 next to that 100 percent. Like I said, pages were inserted,
9 it's supposed to be part of a three-page document. If you look
10 at the actual application, you'll have 20 page two's, but you
11 don't have page 1 and page 3, and we have that for one
12 location, which is 2909 South Kings Highway, which I did sign,
13 and according to my current agent who reviewed it, he walked me
14 through what the actual 140 is.

15 Q. You're not challenging that those four spaces that we
16 went over had sprinkler systems connected to water?

17 A. I didn't challenge that, no.

18 Q. And you're not challenging that you signed the
19 application?

20 A. I signed in the places that, you know -- and anyone
21 who's familiar with the DocuSign, you click -- similar to your
22 cell phone contract, you click, and then it jumps 20 pages
23 ahead to the next place to click, and -- and I'm happy to walk
24 through the application exactly where I signed and the
25 locations but just to clarify. So yes, so there was a

1 signature required in the beginning, two signatures that were
2 required, basic information and information on the 2909
3 Atlantic Beach property, which I did sign, and then 20 pages in
4 between of page two's, followed by the flood and terrorism
5 rejection, and as I said, if you've done a DocuSign, it just
6 jumps to the places to sign, so, and that's what I did.

7 Q. And when it came time to do the DocuSign, you didn't
8 review anything but the places where you were supposed to sign
9 because this had been a long, month's long process in terms of
10 getting this application to the signature place?

11 A. Well, the coverage was due to expire at midnight that
12 night. This policy is binded in London, so, you know, I'm
13 pretty sure, like, with the time difference, you know, what I
14 was told was it was important that we get it in because if we
15 didn't get it in we might not have coverage, that's the bottom
16 line, because we really were at the wire.

17 Q. Shortly after the effective date of the policy, you got
18 a copy of the binder, which I believe is already in evidence
19 probably several times, but, right, you eventually were emailed
20 a copy of the binder. I'm approaching with what's Defendant's
21 Exhibit 25. I believe it's already in evidence, but.

22 A. Yes.

23 Q. And much has been said about this binder because it does
24 -- the binder itself didn't tell you, Mr. Tebele, that 1901 was
25 required to have an automatic sprinkler system, right?

1 A. Correct.

2 Q. And if you look at the binder, the binder itself doesn't
3 actually list any of your property addresses anywhere on it
4 that are being insured; does it?

5 A. No.

6 Q. Okay. But you knew which properties you were hoping to
7 insure and that you were attempting to insure is the same 23
8 properties that you gave Crescent Coast to all the information
9 about, right?

10 A. We, again, that's part of the whole process, that they
11 review the locations, but, yes.

12 Q. Did you call in Crescent Coast and go like, hey, this
13 binder doesn't list all my locations, are my other locations
14 insured? You didn't do that, right?

15 A. We didn't -- we didn't call him to tell him about this.

16 Q. Because you didn't need to because you knew your --

17 A. But --

18 Q. -- properties, right?

19 A. But at some --

20 Q. He didn't need to --

21 A. But at some point -- but at some point, the list of
22 properties was reviewed, as we know.

23 Q. Of course.

24 A. We heard that in the testimony.

25 Q. But you weren't relying on that binder document to tell

1 you what you owned, right?

2 A. It was -- it was emailed to me, but no, this does not
3 show the locations, as you said.

4 Q. And you didn't ask any questions of Crescent Coast about
5 that binder between the time you got it and the time of the
6 fire; isn't that true?

7 A. We discussed coverages, and, you know, based on
8 conversations with Mr. Egan, he was telling us all these
9 additional coverages that he got us, and there was no mention
10 of any other requirements, nor was there any of the application
11 if you look at it, and the application has conditions, but
12 there's nothing there requiring operating sprinkler. So for
13 the record, that application I signed did not contain any
14 requirements for them, which could have been listed there, but
15 they weren't.

16 Q. Are you saying Crescent Coast tricked you into signing
17 it without your knowledge?

18 A. I didn't say that. I said that the requirement for a
19 sprinkler, an operating sprinkler, was not on the application.
20 In fact, if you look at it under Premises Fire Protection,
21 there's nothing -- there's nothing listed there, so.

22 Q. Right. It just has the 100 in the --

23 A. That's it.

24 Q. -- sprinkler column?

25 A. There's nothing there for fire protection, and there's

1 nothing on the application, so.

2 Q. And you made several changes to the policy after the
3 binder was entered after the policy became effective, such as
4 adding mortgagees and changing street addresses, and adding a
5 residence as a location, right?

6 A. The residence, as I said --

7 Q. Not the residence, a residential building?

8 A. Right. So as I said before, the residential building
9 was on one of our properties but fronted on a different street,
10 so we just added that as separate.

11 Q. And this got added to your policy by way of an
12 endorsement in late January, right?

13 A. They -- right. They issued an endorsement on that.

14 Q. And there was never an endorsement prepared in that same
15 time frame to tell the insurers: My sprinkler system at 1901
16 North Kings Highway is not operational? Was there?

17 A. I, I didn't -- I didn't see that, you know?

18 Q. And you didn't send an email to Crescent Coast asking to
19 do that, right?

20 A. Well, Crescent Coast knew the state of the system, both
21 at the time we met, I think it's clear, both when we met, we
22 told them it's not connected, and obviously, at the time of the
23 application, they knew it was not connected, as Mr. Sutherland
24 testified and everyone else here has testified, so.

25 Q. But at the time you signed this application as true and

1 accurate on January 14th, you didn't know about this email,
2 right?

3 A. That's correct.

4 Q. You didn't even know Ms. Garcia had called Crescent
5 Coast and asked them about the sprinkler system until after the
6 fire?

7 A. That's correct.

8 Q. Now, in terms of this insurance policy, you would agree,
9 A. Tebele & Sons and you individually never spoke with the
10 insurers directly?

11 A. We were not given that opportunity.

12 Q. You also never spoke with Mr. Melvin or anyone from
13 AmWins Special Risk Underwriters directly?

14 A. Our only opportunity would be if they send their
15 representatives to us. Otherwise we --

16 Q. I'm sorry, go ahead.

17 A. Otherwise, we have no way of -- you know, unless they
18 send their reps to us.

19 Q. And you hired an insurance agent, Crescent Coast, to do
20 all these communications to the insurers and their underwriter
21 for the company? That was their job?

22 A. That's part of their job, yes.

23 Q. And you're not getting calls directly from the insurers
24 or from Mr. Melvin about the policy, they're communicating
25 through Crescent Coast to your business, right?

1 A. With the exception of -- because we do provide contact
2 information, as you know, and it's a requirement of the policy,
3 and the insurers, not only do they have your contact
4 information, typically they send inspectors to you, and I
5 always try to make myself available for those inspectors,
6 specifically to prevent issues like this from occurring, and I
7 think in those cases that that's the best potential outcome, is
8 if the insurers send their people to talk directly to the
9 insured.

10 Q. Well, the best potential outcome is that the fire was
11 put out by an operable sprinkler system, would you agree?

12 A. But that was -- you know, I mean, we couldn't control
13 the fact that the fire occurred.

14 Q. But you could control the fact that the sprinkler system
15 was protecting it by finishing off the pipe; couldn't you?

16 A. But it wasn't my -- you know, I wasn't assigned to
17 finish the pipe. I hired a company, and in fact, and I was
18 going to bring it with me this morning, but I was looking at
19 Carolina Tap on Google -- Google Reviews, and, you know,
20 everything like: Stellar company, and people are very happy.
21 They're well able to have done that, so, and that's why I hired
22 them.

23 Q. Let's talk about once the fires occurred, the claim
24 process. You allowed Ms. Weaver from the field adjusting
25 company to come and take pictures of the property and gather

1 information about the fire, right?

2 A. That's her job. I mean, she's hired by the
3 administrator of the policy.

4 Q. And you received letters that have already been put in
5 evidence from the insurers in March explaining to you their
6 concern about the protective safeguard endorsement and doing
7 what's called a reservation of rights, you got those letters,
8 right?

9 A. Yes.

10 Q. And then they asked for your examination under oath in a
11 letter in April from my office, and you got that?

12 A. Uh-huh.

13 Q. Yes?

14 A. Yes.

15 Q. And you got -- with that request, there were some
16 documents requested that the insurers wished for you to
17 provide, and you got those together and you provided them?

18 A. Yes.

19 Q. And then I know you were ill, I think, in the May time
20 frame when the examination was supposed to occur, it ended up
21 occurring July the 3rd at Mr. Redman's office, right?

22 A. Yes.

23 Q. And then after that examination under oath occurred, you
24 got the letter declining the claim in August?

25 A. Unfortunately.

1 Q. Now, you talked a little bit on Friday about your loss
2 of rent claim being, I think you said about \$750,000.00, in
3 that ballpark, right?

4 A. So I heard it --

5 Q. My question is just about the number.

6 A. Okay.

7 Q. That was approximately the number that you stated?

8 A. So I referenced my past records of how much revenue we
9 were able to generate when the building was fully occupied,
10 because, of course, that was the plan, and the best, you know,
11 numbers I could use were actual numbers from the earliest, or
12 the most recent, rather, five-year period, when the building
13 was fully occupied.

14 Q. You never provided those numbers, or this explanation
15 that you're giving today at the examination under oath when
16 asked about your loss of rents, did you?

17 A. I didn't because they just asked me about loss of rents
18 that was on the policy, you know, so.

19 Q. And at the time at the examination you just indicated
20 you were losing \$7,000.00 a month every month that it was not
21 occupied?

22 A. Yes.

23 Q. And your coverage for business income is only
24 \$100,000.00 limit, right?

25 A. Right. Well, they being the agents, I guess, because we

1 spoke about this, and they said, you're really limited by
2 what's in the leases, because ultimately, that's what the loss
3 people are going to use, you know, so it's, you know, I just
4 followed their advice on that, and that's what they put down.

5 Q. So based on these finances that apparently, going back
6 to 2014, you really were underinsured for that business income,
7 right?

8 A. I didn't -- no -- well, I disagree, because they were
9 asking for the current income, which obviously until our system
10 was fully installed we couldn't fully lease the building, but
11 as we know, the system was due to be fully installed, you know,
12 in early 2019, so really, that -- that should have, you know --
13 that should have allowed us to get more income.

14 Q. Let's shift gears a bit. Mr. Twaddell, your public
15 adjuster, you heard him testify his percentage of --

16 A. Yes.

17 Q. -- his percentage of this recovery on this claim is five
18 percent, right?

19 A. Yes.

20 Q. And then that 1st of July 2019, you added a second
21 public adjuster, Mr. Zevuloni, right?

22 A. Yes.

23 Q. And when you took your examination under oath, you said
24 that was because Mr. Twaddell had become a bit
25 non-communicative with you about the claim process?

1 A. Yeah.

2 Q. That's what led you to add a second public adjuster?

3 A. Right, and --

4 Q. And then we saw the letter from Mr. Connell in July 2023
5 telling Twaddell that his public adjuster agreement had been
6 canceled, right?

7 A. Yes.

8 Q. You authorized your lawyer to send him that, right?

9 A. Yes.

10 Q. And what is Mr. Zevuloni's percentage of this claim that
11 he's entitled to?

12 A. So it varied depending on -- it actually varied
13 depending on what we were going to have to pay out.
14 Presumably, if we were still -- if we were still bound by the
15 Triple G contract, which is a five percent, then I think you
16 would get 8 percent, but if not I think you would get 10
17 percent, so there's a difference of, like, two percentage
18 points there.

19 Q. So sitting here today, there's potential, Mr. Zevuloni
20 has an 8 percent interest, or as much as a 13 percent interest?

21 A. 8 to 10.

22 Q. 8 to 10?

23 A. Right.

24 Q. So combined, you would owe public adjusters potentially
25 13 percent of this claim up to 15 percent?

1 A. That's correct.

2 Q. And Mr. Twaddell, despite your lawyer's letter saying
3 the contract was canceled, he testified last week here at trial
4 without even receiving a subpoena, correct?

5 A. I'm not sure about that.

6 Q. And did you reach a new agreement with Mr. Twaddell that
7 --

8 A. No. Well, other than, are you saying other than the
9 original agreement?

10 Q. Since the time you told him it was canceled, was there
11 any new agreement reached?

12 A. So he never accepted that, that that was a unilateral
13 communication.

14 Q. Are you planning to pay him five percent if you recover
15 in this case?

16 A. We may be -- we may have to, I believe, because --
17 because of what we signed, so.

18 Q. Now, when you were working with Mr. Twaddell, you would
19 correspond by email, right?

20 A. Yes.

21 Q. We're going to talk about some of those emails. You're
22 welcome to come down where you stood before and talk about
23 this.

24 MR. WATSON: Sorry about that delay. Alright. These
25 are all exhibits that are already in evidence. This is Exhibit

1 55F. Is that too small? Can you all see?

2 BY MR. WATSON:

3 Q. Alright. So on March 8th, 2019, the "from" here is you,
4 right?

5 A. Yes.

6 Q. You emailed Mr. Twaddell and said: This is the most
7 recent request to Crawford when work is to be done. It's just
8 a theory, but it's possible the storm which hit the area in the
9 fall and caused untold flooding and difficulties in crews
10 entering the area delayed their ability to begin and complete
11 the work. There is no way to have foreseen that it would not
12 be connected by the time this policy was binded. These were
13 your words to him, right?

14 A. Yes.

15 Q. On the same subject, now looking at Exhibit 55E, April
16 the 5th, you wrote to Mr. Twaddell again, and in short, you're
17 discussing again the issue of the delays beyond anyone's
18 control with regard to finishing the sprinkler system, right?
19 That was what you wrote to him?

20 A. Yeah. Yes, sir.

21 Q. And you're trying to explain that this system was
22 supposed to have been done. You signed it thinking it was
23 going to be imminently done, but it experienced these delays,
24 and you're talking with your public adjuster about that here,
25 aren't you?

1 A. Is that a question?

2 Q. It was.

3 A. So what I was telling him is that perhaps the insurers
4 would consider that in their investigation of the claim and
5 give that consideration because, obviously, we did have, like,
6 a historic storm, and it's inevitable that -- you know, the
7 company's from Columbia, inevitable that it could have caused
8 some delays.

9 Q. But you already knew when you signed this, that it
10 wasn't finished. You were hoping that it would be imminently
11 finished after you signed it, right?

12 A. That incorrect.

13 Q. Oh, you knew it was connected when you signed it?

14 A. I -- we spoke about this, and basically, from -- from
15 all the information I had and reviewing all the information
16 leading up to the install, the plan from Crawford was to finish
17 by year-end, and all the communications I had is they were
18 telling the tenant they would be done in a couple of weeks. So
19 based on that, I, you know, I did believe that it was -- you
20 know, make -- they were making those connections. And
21 actually, as we heard Mike Dover testify, you know, he was
22 saying that they may have actually connected it briefly to test
23 it with water, so, you know?

24 Q. When you heard about the fire, did you think to
25 yourself, well, that shouldn't be a problem because the

1 sprinkler system is connected, so I'm sure it put it out?

2 A. Well, at that point, we had already, as we said, we'd
3 been there in February.

4 Q. So you knew it wasn't put out?

5 A. At the time of the fire.

6 Q. Next, I'm showing you from the Defendant's Exhibit 55D.
7 You write Mr. Twaddell on April 14th, and you again mentioned
8 there's ample room and grounds for them, meaning the insurer,
9 to pursue Crawford, Carolina Tap, or the City to figure out why
10 the install was not completed, but you knew it wasn't completed
11 as late as February the 13th, you've already testified to that,
12 right?

13 A. I did know it wasn't completed, but at that time, again,
14 that -- first of all, my impression was that they would do it
15 before then, but at that time when they called me, obviously, I
16 told them to expedite and get it connected.

17 Q. And you were so confident at this point in time, you
18 made the comment to Mr. Twaddell with regard to the insurers
19 that you were to go for the jugular on Tuesday?

20 A. I --

21 Q. Those were your words?

22 A. To be honest, I don't remember writing that --

23 Q. But you --

24 A. -- I mean, it was five years ago, so, I mean, but I will
25 say this: Obviously, anybody with this type of loss, we all

1 saw the videos of, you know, the type of damage we're talking
2 about, and we always pay our premiums, and we always carry
3 insurance, so, you know, the thought of -- the thought of
4 possibly not having coverage or being, you know, having an
5 insurance company not stand behind you at the time of the loss
6 is something that I don't wish on my worst enemy. I mean, it's
7 been personally challenging at every level. I pray that it
8 does not occur to anybody in this courtroom because I think --
9 and I think a lot of people would probably do a lot worse than
10 I did, you know, but I'm a faith-based person and, you know, I,
11 you know, tried to see it through and grow from it, you know,
12 the best I could.

13 Q. This sentence here: I have 250,000 in taxes owed by the
14 partners that is due tomorrow. When you say "the partners," is
15 that the A. Tebele & Sons partners?

16 A. So that's right before tax time, so it would have been
17 probably the partners of A. Tebele, like, the taxes of --
18 that's taxed on.

19 Q. You were filing a tax return?

20 A. Right, right, right.

21 Q. I understand. Now, now we're in May. This is Exhibit
22 55A. You wrote an email May 16th to Mr. Twaddell saying: Jim,
23 thanks for the follow-up. If "they," meaning the insurers,
24 right? The "they" in that sentence; is that correct?

25 A. Yes.

1 Q. If they maintain they didn't have knowledge, I believe
2 they should cooperate in turning over all their internal emails
3 to document that. If not, we will have a judge make them
4 produce it through discovery. Number one, that's what you
5 wrote in your email, correct?

6 A. Okay.

7 Q. Number two, the claim hadn't been denied at this point
8 in May, right? That was not until August?

9 A. I mean, you're talking about -- again, when you have a
10 loss, and if anyone, God forbid, has a loss in their home, and
11 imagine three months going by and no answers from the insurer
12 that you paid premiums to, and it's a very distressing
13 situation.

14 Q. But you know as of May, that in April the insurers asked
15 for you to give a statement under oath and some documents,
16 right?

17 A. After three months of waiting.

18 Q. But you knew that the claim was still being investigated
19 at this time when you were talking about judges producing
20 things in discovery, right?

21 A. Well, unfortunately, like I said, I, you know, pray that
22 this type of situation doesn't happen to anybody here because
23 this is very challenging, and as you said, on top of my
24 responsibilities of, you know, getting the insurance, there's
25 other responsibilities to take care of, so, you know, and I

1 have obligations to the family, as well.

2 Q. Next, Exhibit 55B, a few days later, you wrote Mr.
3 Twaddell another email, right?

4 A. Yes.

5 Q. And you talked to him about, looking through the policy
6 to maximize our payoff, right? That's what it says?

7 A. That's what adjusters do.

8 Q. And then it even says: I heard in some cases it's
9 possible to collect beyond the policy limits. Right? That's
10 what it says here in the email?

11 A. Well, we had been insured for replacement, so, yes, why
12 not, if the loss is greater.

13 Q. Alright.

14 A. And I believe we have replacement coverage in our
15 policy.

16 Q. You can see that.

17 A. Thank you.

18 Q. And you talked about in one of those emails, about
19 trying to get things in discovery from the insurers, right?
20 You saw that part of the email?

21 A. What's your question?

22 Q. You saw where you were commenting in May about discovery
23 and getting things from the insurers as if there was going to
24 be a lawsuit later, right?

25 A. As I said, many months had gone by at that point, and we

1 believed that we produced whatever they asked for, so just
2 saying they, in turn, should do the same.

3 Q. And as a landlord you're familiar with the litigation
4 process in general, I think you even mentioned it on Friday,
5 sometimes you have a slip and fall and you get sued because
6 they end up suing everybody, right?

7 A. But it gets handled by your insurer. I mean, it's not
8 -- basically, your insurer defends you against the claim.

9 Q. But you're familiar with another lawsuit in which some
10 of your own family members sued A. Tebele & Sons accusing you
11 of mismanaging the partnership, right? He's not objecting.
12 You can answer the question.

13 A. Yes. Yes.

14 Q. That lawsuit dates back to 2014, initially, right?

15 A. Yes.

16 Q. And then it was dismissed in 2018 and then refiled 2021,
17 right?

18 A. It was mutually dismissed with prejudice.

19 Q. And those allegations, were you mismanaging the
20 partnership business?

21 A. Of course not.

22 Q. But they accused you of that in a complaint, right?

23 A. It's common in --

24 Q. Anybody can put anything in a complaint, right?

25 A. Listen, anyone who has family members, and obviously,

1 it's never easy being in business with family, but we've done
2 our best to try to make peace. I mean, that's what we're
3 about. We're not -- you know what I'm saying? I'm not going
4 to sit here and defend anything. We've just done our best to,
5 you know, resolve at any level, and, you know, we're family,
6 so.

7 Q. And we're not Judge and Jury in that dispute.

8 A. Yes.

9 Q. And just because those relatives filed this lawsuit
10 accusing you of those things didn't mean you did those things,
11 did it?

12 A. Obviously, right.

13 Q. Now, changing gears a little bit, back to Alice, the
14 previous agent.

15 A. Yes.

16 Q. She was handling the policy before the policy we were
17 here about for the property that your business owned?

18 A. Yes.

19 Q. And in the handling of the prior year's policy, there
20 had been a mistake made by those insurers because they put
21 protective safeguard requirements on all 20-plus locations,
22 right?

23 A. Somehow or other, it's possible that that did occur. I
24 don't understand how that occurred.

25 Q. And she ended up having to communicate with those

1 insurers and get an endorsement put on the policy to correct
2 that?

3 A. She -- as soon as she received the policy, she let them
4 know right away.

5 Q. Right. She reviewed it, told the insurers, hey, only a
6 few of these had protective safeguard sprinkler systems, and an
7 endorsement was issued in writing to fix that mistake, right?

8 A. They removed -- yes, they removed it off the policy.

9 MR. WATSON: Mr. Tebele, I appreciate your time this
10 morning, and please answer everyone else's questions while I
11 pack up all this up.

12 THE COURT: Mr. Watson, one quick question. We had
13 Defense's 25, is that you all's, or is that Mr. Riser's 25?

14 MR. WATSON: We numbered the ones 1 through 50, so
15 they came from us. Anything with the number 1 through 50
16 emanated from the insurers, anything from 60 and above emanated
17 from --

18 THE COURT: I had it as 25 as already in evidence.

19 MR. WATSON: Yeah, I think it is.

20 MR. RISER: Your Honor, I believe Plaintiff's 25 is
21 the January 11th ACORD application. Defendant's 25 is the
22 binder.

23 THE COURT: That's what I have. Thank you. Sorry
24 about that. Mr. Riser, your witness.

25 MR. RISER: With Your Honor's permission and the

1 witness', may I move a little closer to you?

2 THE WITNESS: Sure.

3 **CROSS-EXAMINATION**

4 BY MR. RISER:

5 Q. I know this has been a long process, Mr. Tebele.

6 A. Yes.

7 Q. And I'm going to try to be brief.

8 A. Thank you.

9 Q. You've owned, and you've already testified to this,
10 you've owned and managed commercial property for decades,
11 right?

12 A. Yes.

13 Q. And you said it's the family business?

14 A. Yes.

15 Q. Okay. So and you testified to Mr. Watson, your
16 insurance, you are familiar with insurance and insurance
17 renewals?

18 A. From the standpoint of having to renew every year, yes.

19 Q. Right, yes, because that happens every year,
20 particularly on your property policies.

21 A. Yes.

22 Q. Okay. So nearly every year you work with insurance
23 agencies to talk about renewal premiums.

24 A. Right.

25 Q. And you're faced with a decision whether to stay with an

1 agency or move it?

2 A. Yes.

3 Q. Okay. You have 23 commercial properties in Myrtle
4 Beach?

5 A. Locations, right.

6 Q. And they're valued now -- the 2018 value was at \$22
7 million, approximately?

8 A. 2019, 20, right.

9 Q. Okay.

10 A. Right.

11 Q. And managing that property isn't easy?

12 A. Not at all.

13 Q. It's time-consuming?

14 A. Yes.

15 Q. And it's hard to keep up with sometimes?

16 A. It can be.

17 Q. Okay. Crescent Coast has no role in your companies,
18 right?

19 A. They don't.

20 Q. Right. And you certainly never asked them to be a
21 property manager?

22 A. No.

23 Q. Okay. And Crescent Coast had no role in the decision to
24 add sprinklers to 1901 North Kings Highway, correct?

25 A. Crescent Coast did -- to add the physical sprinklers to

1 the location?

2 Q. Yes, sir.

3 A. No.

4 Q. Okay. Yes. And Crescent Coast had no role in the
5 construction of that sprinkler system itself?

6 A. No, no.

7 Q. And they had no role in the contracts governing the
8 construction?

9 A. No.

10 Q. Okay. And no one at Crescent Coast ever told you there
11 were experts in construction or sprinkler system installation?

12 A. No.

13 Q. And to you, Crescent Coast was just an insurance agency?

14 A. They're an agency that had, you know, as we heard,
15 they've soliciting us for the last couple of years, that they
16 could, you know, work on our account and do a good job, and we
17 put some reliance on that --

18 Q. Okay.

19 A. -- that they would follow through with that.

20 Q. You didn't ask them to do anything other than your
21 current agent was doing?

22 A. Yes.

23 Q. Okay. Between 2018 and '19, Crescent Coast worked with
24 you to get significant savings for your overall insurance
25 premiums from your previous agency, McGriff?

1 A. To gather quotes to compare. They were working on
2 obtaining quotes.

3 Q. Okay. And would you agree Crescent Coast was
4 responsive, especially when you had changes to make to the
5 information you provided to the policies, both before January
6 the 15th and after binding?

7 A. Your question is, were they responsive before and after?

8 Q. Yes.

9 A. So, as you know, the previous year, they also -- or Joe
10 Sutherland also tried to, you know, get our business, didn't
11 end up getting us a quote, and we had doubts about whether they
12 would come up with quotes for this policy in question, and
13 really, ultimately, it really did come down to the wire. I
14 mean, despite the promises of bringing us, you know, household
15 name insurance companies like Liberty, Travelers, et cetera,
16 they didn't deliver that, you know? And we didn't end up
17 getting these quotes, really, until the end.

18 Q. But when you decided to go with Crescent Coast, because
19 you did, right?

20 A. We did.

21 Q. Yeah. When you decided to go with them, just before the
22 policy was bound, you added additional properties to the
23 policy, just before the property was bound, didn't you?

24 A. I don't think that's correct.

25 Q. Well, we can certainly look at exhibits that are already

1 in evidence regarding that, but --

2 A. Are you talking about endorsements?

3 Q. No, no, no.

4 A. Or what?

5 Q. No. Just before the property was bound on -- the
6 insurance was bound on January 15th, you added some locations
7 and changed some information. That happened before and after
8 the policy.

9 A. I don't recall. It's possible.

10 Q. But Crescent Coast took care of that with the brokers
11 and the carriers, correct?

12 A. If -- right.

13 Q. Okay.

14 A. If they were asked to add something.

15 Q. Yeah. And you've already testified that after the fire,
16 Crescent Coast worked with you to make a claim and to request
17 information to assist you with the claim?

18 A. They did.

19 Q. Alright. And I believe you even testified you thought
20 they were trying to be helpful?

21 A. It was really in their best interest for us to, you
22 know, as customers to get paid, and obviously, that's what
23 everyone was hoping for --

24 Q. And they --

25 A. -- to have this resolved.

1 Q. And they tried their best to get the information that
2 you requested?

3 A. They used whatever was available to them to request.

4 Q. And you said some information ultimately from AmWins
5 wasn't provided, but that's not the fault of Crescent Coast?

6 A. Which information are you talking about?

7 Q. You said that AmWins, earlier in your testimony, that
8 Crescent Coast requested some information from AmWins, I don't
9 know if it was the schedule of values or some communication.

10 A. So really surrounding, just to clarify, surrounding and
11 -- and to answer, also, and to add to your previous question,
12 surrounding the email notification from January 11th from
13 Crescent Coast to AmWins, obviously, we were happy that we got
14 that email, but we wanted whatever backup documentation was
15 related to send that email, and, you know, we were constantly
16 trying to get that in terms of, you know, what events led to
17 that communication and what other information was available for
18 us to use in our claim.

19 Q. And that would be related to inspection reports --

20 A. Yes.

21 Q. -- or back-of-house AmWins information, right?

22 A. It would be related to inspection reports that were --
23 would have been ordered by AmWins, but then CC-ed, presumably,
24 to the agent.

25 Q. But you don't know that?

1 A. I kind of do know that.

2 Q. You do know what?

3 A. That typically, the agents are notified of inspections
4 because they have to notify the occupants of the building.

5 Q. Being notified of an inspection doesn't mean receiving
6 an inspection report, does it?

7 A. Not necessarily.

8 Q. Okay. And so Crescent Coast worked with you to request
9 that information from AmWins, but it was not provided?

10 A. I'm not sure. I know I requested it. I requested:
11 Please get me any inspections that took place. And, you know,
12 particularly the January 10th, 2019 inspection, which
13 obviously, if you have this loss, and that's the most recent
14 inspection, that's the one you want because that's going to
15 provide all the information, you know, factual information
16 from, you know, in this case, what we know is there -- there
17 was a 24-year veteran inspector who was actually there on
18 January 10th of 2019 and documented a lot of this, you know,
19 information on record, and obviously, that would be -- would
20 have been a tremendous help for us to obtain that.

21 Q. But you already testified that Crescent Coast tried to
22 be helpful after the claim was filed?

23 A. To the extent that they could and were not able to
24 obtain that inspection.

25 Q. Okay. So back to 2018, you previously testified that

1 meetings regarding your properties began in August of 2018,
2 correct?

3 A. There was an August meeting --

4 Q. Okay.

5 A. -- that I recall.

6 Q. And that meeting included David Egan, you, and Joey
7 Sutherland?

8 A. Yes.

9 Q. Okay. And they took notes on the information you were
10 giving them as they were going over the property?

11 A. That was my understanding.

12 Q. Okay. And is it your understanding that's the
13 information that started the insurance application process?

14 A. That was the information necessary to obtain a quote.

15 Q. Correct.

16 A. Correct.

17 Q. That's right.

18 A. Yeah.

19 Q. And you testified on Friday that Joey Sutherland and
20 David Egan, what you told them about the 1901 North Kings
21 property was that the sprinkler system was under construction?

22 A. Yes.

23 Q. It covered 100 percent of the building?

24 A. Yes. They asked me that. They said: What percentage
25 of the building does it cover, and I said, 100 percent, because

1 --

2 Q. And if --

3 A. I knew that --

4 Q. I'm sorry. I didn't mean to cut you off.

5 A. Yeah. I knew that from the design because that was at
6 the insistence of the City.

7 Q. And then it was your understanding it would be finished
8 well in advance of the insurance renewal in five months?

9 A. We understood that once we had an appropriate
10 contractor, Mike Dover, and that -- because I did ask him that
11 question, and he said once the utility contractor, you know,
12 took on the job or actually started the job, it was two to
13 three weeks worth of work.

14 Q. Right. And you certainly thought it would be done in
15 five months before your renewals?

16 A. We believed that the City was asking that it get done
17 before that.

18 Q. Okay. Mr. Watson provided you a copy of Exhibits 55E
19 and 55F?

20 A. Yes.

21 Q. And you read those when Mr. Watson asked you questions
22 about them, correct?

23 A. I didn't read them thoroughly, but I --

24 Q. And those are emails from you to Mr. Twaddell, correct?

25 A. Yes.

1 Q. If you could, read your email here on 55E, just the top
2 portion.

3 A. I don't see how it can hurt. We haven't had any
4 substantive conversation since he told me he was the guy that
5 was going to be getting my checks from London. Do you want me
6 to clarify?

7 Q. Yes, sir, please.

8 A. Right. So --

9 Q. If you will just read it.

10 A. Just read it?

11 Q. Yes.

12 A. Okay: In the meantime, I have a technical guy reviewing
13 the sprinkler ducts and Rob Shelton is supposed to speak to
14 Chris Lee, City of Myrtle Beach, to see what he can share about
15 why the install was not yet done at time of the loss. There
16 may have been unforeseen circumstances that led to delays that
17 were beyond anyone's control. Don't forget the time the broker
18 filled out the application and obtained final quotes, the full
19 expectation was that the connection work would take a week or
20 two weeks, which would have been well in advance of the loss
21 and made all of this a moot issue. We can't hurt to know what
22 led to the delays.

23 Q. And so related to the agent there you're talking about,
24 is Crescent Coast, right?

25 A. Yes.

1 Q. And so that's completely consistent with what you told
2 Joey Sutherland and David Egan in August of 2018: This work's
3 going to be done.

4 A. So I told them that, obviously, it was not done because
5 --

6 Q. Right.

7 A. -- they asked me specifically, and I believe they noted
8 that, that it was not done.

9 Q. But it was your expectation that work would be done in a
10 matter of weeks? You've already testified to that.

11 A. I just told them -- I just told them the facts. I said,
12 you know, we have to hire a utility guy. Once we hire a
13 utility guy and does -- and starts the job, it's a few weeks
14 worth of work. So I just told them exactly what the current --

15 Q. But 55E, and I'll take it from here. It says: Don't
16 forget, at the time the broker filled out the application and
17 obtained final quotes, the full expectation was the connection
18 would take a week to two weeks, which would have been well in
19 advance of the loss and made all this a moot issue. Those are
20 your words, right?

21 A. So to answer, what's your question exactly?

22 Q. No, I -- that was it, that those are your words?

23 A. So what I was telling him is, had it gotten done, there
24 presumably may have been some delays because of issues that we
25 discussed, like the hurricane which shut down this area for a

1 month, let's say, and I was basically saying, had it got done,
2 then all this would be moot, right, because it would have been
3 done, and we wouldn't be here right now.

4 Q. Right.

5 A. Right.

6 Q. But it was -- it says: When they obtained -- the agent,
7 obtained the quotes, it was the expectation that it would be
8 done in a matter of weeks. So that was what you expected in
9 August of 2018, right?

10 A. In August of '18, we anticipated that, like I said, it
11 was not a lot of work left to be done, and once we hired the
12 appropriate people, it would get done, and I just told them all
13 that, and truthfully, from my impression, they noted all that,
14 so I don't know why -- to be honest, you know, this whole
15 situation is unfortunate, because they knew it, we told them,
16 and actually, there was no reason for that to get misconstrued.

17 Q. After the August 2018 meeting where you went over the
18 properties and discussed what each -- the status of each
19 property was, you never updated Crescent Coast on the status of
20 the sprinkler system at 1901 North Kings?

21 A. Well, there was no change to the status, you know? So I
22 -- because I hadn't received any confirmation from anyone yet,
23 so.

24 Q. So you didn't discuss it one way or the other with them
25 after August 2018?

1 A. We didn't -- they didn't ask and we didn't -- we didn't
2 update them because, obviously, it still was, you know?

3 Q. We discussed Plaintiff's 25. So I'll hand that to you.

4 A. Yes.

5 Q. That information is already in evidence. I believe you
6 testified, and I don't want to misconstrue your testimony, but
7 I believe you testified earlier when Mr. Watson asked you about
8 this, that you didn't sign the part of the document that lists
9 your property?

10 A. So in a DocuSign, it sort of jumps to -- it jumps to
11 whatever areas they want me to sign it, and given -- given the
12 time that this was sent to us, it was actually, from what my
13 understanding, had to get in and be submitted, otherwise, our
14 coverage was expiring that night. So I just basically, you
15 know, did exactly what the DocuSign prompts you to do.

16 Q. So you didn't review the application?

17 A. So I looked it over, but at the time of signing, like I
18 said, it kind of jumps to the next signature spot. So, you
19 know, it's a pretty rapid process.

20 Q. I'd hold on to that, but I'm going to ask you --

21 A. Yeah.

22 Q. I'm going ask you to look at what's already evidence as
23 Exhibit 47. Those are text messages between you and David
24 Egan?

25 A. Yes.

1 Q. And that we've already discussed it, and we've -- but on
2 the 1st page, it says, Mr. Egan says: Just sent you the
3 DocuSign. And that was on January 11th, right?

4 A. Yeah. So he may have sent it to me, and it was late in
5 the afternoon, it's possible. When I went back -- when I went
6 back over my records, and I'd have to verify this, but I don't
7 believe it -- I don't believe it came through on the email,
8 simply because a lot of these DocuSigns also, they time out.
9 So in other words, when he sent it, it would time out by a
10 certain time so that if you actually went to open that, you may
11 not see it unless you opened it within that time span.

12 Q. But you told David, your response was that you weren't
13 going to look at it that day anyway?

14 A. I was not, right. There was no time.

15 Q. Because you were tired?

16 A. Yes. I was exhausted.

17 Q. Okay. And nevertheless, you had the opportunity to
18 review the application?

19 A. I don't think so because, like I said, if I did not open
20 it at that time, a lot of these DocuSigns do expire.

21 Q. Do you know if that one expired?

22 A. It may very well have.

23 Q. It may very well have. Do you know?

24 A. Based on what I can gather, it may have expired because
25 I don't recall where I have an application attached to that

1 unit.

2 Q. But if you'd opened it on the 11th, you would have had
3 three days to review it before you signed it on the 14th,
4 right?

5 A. If I opened it on the 11th before it expired, then I may
6 have had time to review it.

7 Q. Did you ask David Egan or tell him that you had any
8 trouble with the DocuSign process?

9 A. We were actually supposed to pick it up over the
10 weekend, and I think it just -- we just didn't pick it up --

11 Q. But you were in New York, weren't you?

12 A. Yes.

13 Q. And David Egan was in Myrtle Beach?

14 A. Yes.

15 Q. Okay. So you never told him there was a problem with
16 the DocuSign process?

17 A. We didn't really speak after this Friday afternoon. We
18 didn't speak, I believe, until, like, Monday.

19 Q. And did you ask for a printed copy of the application
20 from Mr. Egan?

21 A. I would have loved to have a printed copy.

22 Q. Did you ask him for one?

23 A. Well, I was gone already at that point, so.

24 Q. Did you ask him to send you one?

25 A. He told me, I'm sending you this, right? And as soon as

1 I could recall opening it was, you know, the day of binding,
2 which was the Monday.

3 Q. Okay. Let's go back to Exhibit 25.

4 A. Is that the application?

5 Q. Yes, sir. It's right there in front of you.

6 A. Alright.

7 Q. So you were asked about the signature process and where
8 you signed.

9 A. Yes.

10 Q. I think Mr. Watson blew up at least one of those
11 signatures, right?

12 A. Yes.

13 Q. Okay. And we discussed that. There are four places, I
14 think, at least, where you can sign this. Does that copy --
15 what numbers does it have on the bottom? Okay. That's it.
16 That's the Crescent Coast. If you could go to the -- if you
17 look at the cover page --

18 A. Yes.

19 Q. -- and there are multiple ACORD applications, right?
20 They have different numbers. They're different types. You
21 mentioned the cover page that's only two or three pages, right?
22 If you will look to the bottom left of the page, what number
23 does that say?

24 A. ACORD 125.

25 Q. ACORD 125. And so if you'll slip over to the 4th page

1 of that document. And there's your signature at the bottom,
2 right?

3 A. Yes.

4 Q. And David Egan also signed that?

5 A. Yes.

6 Q. And just a quick aside, you've -- David Egan interacted
7 with the broker on behalf of your companies when communicating
8 with insurance, right?

9 A. Which broker are you referring to?

10 Q. The AmWins Brokerage. It's David Egan that -- that
11 interacted with the broker, right?

12 A. Who are we talking about specifically? Who?

13 Q. Amwins Brokerage. The brokerage -- the broker for your
14 property policies, it was Mr. Egan that --

15 A. Who specifically are you talking about?

16 Q. The company, Amwins Brokerage, or Hollan Delany or
17 Barrett Sellers who --

18 A. Oh, Barrett Sellers, you mean. Okay. So you're saying
19 the guy that was supposed to have a surplus lines license,
20 essentially? Is that what we're talking about?

21 Q. No. Mr. Egan works for Crescent Coast, right?

22 A. Yes.

23 Q. Yes.

24 A. Yes.

25 Q. And he had to go to a broker --

1 A. He's supposed to be a surplus lines broker.

2 Q. Right.

3 A. Right.

4 Q. To shop your --

5 A. Yes.

6 Q. -- insurance needs and get quotes, right?

7 A. Yes.

8 Q. Okay. And it was Mr. Egan that interacted with the

9 broker?

10 A. Yes.

11 Q. Okay. And it was Mr. Egan that sent you quotes and

12 binders, right?

13 A. And he also interacted with Whitney Gurtzweiler as --

14 Q. Sure.

15 A. -- as we know. Right.

16 Q. Yeah. Yeah. That happened from time to time. And it

17 was Mr. Egan that sent you the finance agreement after the

18 policy was signed?

19 A. Yes. Yes.

20 Q. Okay. Alright. So let's go back to Defendant's 25.

21 A. Alright.

22 Q. So the 4th page, the signature page, that down at the

23 bottom, it says: ACORD 125, right?

24 A. Yes.

25 Q. And that's the same as the cover page --

1 A. Yes.

2 Q. -- so the last three pages. If you'll flip over,
3 there's another document, so the next page, it's an ACORD 45.

4 A. Yes.

5 Q. Okay. And that has general information about additional
6 insured interests, correct?

7 A. Yes.

8 Q. And it lists some businesses, right? Kings Plaza LLC,
9 Kings Realty Management, Kings Realty. Those are all your
10 companies, right, or divisions of your company?

11 A. Different entities --

12 Q. Okay.

13 A. -- on the policy.

14 Q. So if you'll keep flipping over until you get to an
15 ACORD called, it says: Property section, at the top.

16 A. Okay.

17 Q. Alright. What's the ACORD number?

18 A. 140.

19 Q. 140. So if you'll flip over just a couple more pages
20 until you get to the signature page again.

21 A. Yeah, I'm there.

22 Q. Okay. And the ACORD form is still the ACORD 140 listed
23 there, right?

24 A. So this is three pages. These are three subsequent
25 pages of the 140 for 2911 Highway 17 South.

1 Q. Well, just answer my question. So the --

2 A. I am. I am answering your question.

3 Q. The ACORD number at the bottom, if you go to the
4 signature page --

5 A. Yeah.

6 Q. -- here, the ACORD number is still 140, correct?

7 A. Yes.

8 Q. So behind that is, then, multiple pages listing each one
9 of the properties listed on your property policy, correct?

10 A. Yes. They attached the 2nd page of the three-page
11 ACORD, essentially.

12 Q. And it's the ACORD 140.

13 A. Then the 2nd page then. The ACORD -- the ACORD 140 is a
14 three-page document, okay? What they did is they took multiple
15 page two's and inserted it in the middle of this application.

16 Q. Right. The page 2 for the ACORD 140 lists property,
17 right?

18 A. It lists the -- right, some information about that
19 property.

20 Q. And because you have 23 properties, they had to put in
21 23 page two's?

22 A. That was their method where, for better or for worse,
23 that was their method, yeah.

24 Q. And they're all on the ACORD 140 form?

25 A. They include -- like I said, they include that middle

1 page for each property, so yes, of the 140.

2 Q. And these were part of the DocuSign?

3 A. These were attached to the DocuSign.

4 Q. Okay. Alright. I just want to make sure that you're
5 not telling the Jury you didn't sign the ACORD 140.

6 A. What I'm trying to say is, in any, and I'm not an
7 attorney, but in any document, you know, for instance, like car
8 rental agreement, which we've all signed, you know, there's
9 multiple places to sign on the agreement or attachment, so I'm
10 just telling you where I signed, essentially.

11 Q. Okay. So if you'll flip over to the page that includes
12 1901 North Kings, did you find it?

13 A. Yes.

14 Q. What's the property value on that?

15 A. 2,500,000.

16 Q. And that's the number you provided to Crescent Coast?

17 A. That's the number that either they obtained from the
18 previous policy, or that we had discussed.

19 Q. Okay. And the same with -- what are the other two
20 numbers?

21 A. So you have the 100,000 in income --

22 Q. That's --

23 A. -- BIEE, I guess.

24 Q. Which is building income?

25 A. I guess.

1 Q. And that would be lost rents?

2 A. Right. And 250,000 in property in, I guess, contents.

3 Q. And that would be contents you own inside the building,
4 right?

5 A. Yes.

6 Q. Okay. Did you testify on Friday that that was 100
7 percent, that those were 100 percent numbers, or that those
8 were 80 percent value numbers?

9 A. What I said is that we always insure for replacement,
10 and my understanding is as long as you insure for 80 percent of
11 the value, if it runs more, that you're covered, essentially.

12 Q. Okay.

13 A. Yeah.

14 Q. And so let me ask it this way: is 2.5 million 80 percent
15 of the value of the building or 100 percent?

16 A. And so I'm not sure, like I said, I'm not sure how we
17 came up with those numbers. We know now, based on estimates,
18 that it's, unfortunately, it's not, you know, 100 percent of
19 the value, you know, but at the time of the loss, we never got
20 a definitive estimate except the one from the adjuster, so.

21 Q. So the carriers had determined there was coverage for
22 your fire loss, yet, soon after you filed a claim you would
23 have only received the total of 2.85 million, right?

24 A. That would be a question for the adjuster, because the
25 policy includes other items, for instance, this, you know, is

1 very complicated stuff, you know, reviewing everything. Like,
2 if there is additions due to code changes, and things like
3 that, the prices on certain things go up, there's other
4 provisions in the policy that could potentially lead to more --

5 Q. Okay.

6 A. -- more coverage.

7 Q. But on the building value, it would have only given you
8 2.5 million?

9 A. That's what, right, appears, but again, we always insure
10 for replacement but, you know, that -- my understanding is, if
11 replacement runs higher, you would get the higher figure.

12 Q. And there are estimates, and I think you even testified
13 to one on Friday, there are estimates to rebuild the building
14 that are much higher than 2.5 million, right?

15 A. Yes.

16 Q. So even if the fire loss had been covered, you were
17 going to have to come out of pocket to pay the difference,
18 weren't you?

19 A. We would have to come out of pocket, but not
20 necessarily, depending on, you know, if the claim was paid
21 right away, you know, we may have been able to possibly, you
22 know, figure out what to do to, you know, to cover the damage.

23 Q. I'm sorry, are you finished?

24 A. Yeah, yeah.

25 Q. Okay.

1 A. I mean, because there's no way to know at this point.
2 We would have required further studies and possible beginning
3 of the construction to determine that.

4 Q. From your experience as a commercial property owner, you
5 know the value of the insurance premium is directly related to
6 the value assigned to a property, right?

7 A. The premiums should somehow correlate to value.

8 Q. Right. So the more the property is valued, the higher
9 the insurance premium for it is?

10 A. Typically.

11 Q. Okay. So and that makes sense, right? You'd pay a
12 higher premium for a \$2.5 million property than a \$250,000
13 property?

14 A. Yes.

15 Q. Okay.

16 A. Yeah.

17 Q. And so did that factor at all into your decision to
18 value the 1901 Kings property at 2.5 million?

19 A. No.

20 Q. Okay.

21 A. No. We put down what we thought. I mean, we didn't put
22 it down, but going over what was there, we thought these were
23 reasonable good numbers to use.

24 Q. Back to Plaintiff's 25, you've seen these insurance
25 applications before, haven't you?

1 A. Before, meaning when?

2 Q. In your 30 years of managing properties.

3 A. I'll be honest, I haven't seen this full ACORD, and as I
4 testified before, my previous insurance agent from, you know,
5 originally Woodbury, you know, who had been handling our
6 company for years, Woodbury, then Puckett Scheetz & Hogan, then
7 BB&T, and then now McGriff, she -- she handled the application
8 process.

9 Q. And so she never sent you a full application --

10 A. She --

11 Q. -- with all your properties listed?

12 A. She would just come in the office, and my understanding
13 is that the only thing the insurance really needed is to
14 specifically sign that the policy did not include flood or
15 terrorism, because that was the two things, and I imagine
16 that's because probably a lot of people, you know, in the
17 event, God forbid, of either terrorism or flood, people do try
18 and make claims, and those insurers want to clarify that those
19 risks were not covered.

20 Q. But Crescent Coast sent you a full copy of your
21 application, and that was another chance to review the
22 information to see if it was correct and accurate?

23 A. And they sent it to me, like I said, late in the
24 afternoon, is when I got it, and I reviewed it as quickly as I
25 could.

1 Q. Okay. And you didn't ask any questions about it?

2 A. No, because I, you know, presumably, they'd been working
3 on the account for two years, and I relied that they have the
4 correct information.

5 Q. And that included that 1901 North Kings was 100 percent
6 sprinklered?

7 A. They noted on the application that it was.

8 Q. And again, you never spoke with Crescent Coast about
9 that sprinkler system after August 2018?

10 A. I didn't, and I never instructed them what to put down,
11 and like I said, they're the agents, and, you know, this form,
12 especially a 40-page form, is daunting, you know, and it would
13 require somebody who has knowledge of the application to know
14 what to put in here.

15 Q. You testified earlier that you were undergoing a similar
16 process of premium evaluation with your current agent, McGriff,
17 right?

18 A. Yes.

19 Q. And that was also in the summer and fall of 2018?

20 A. More towards the latter, the end of the year, because we
21 wouldn't see quotes until then, and it wasn't by choice, it was
22 just the way it -- we saw the notation that they don't give
23 quotes until, like, 30 days.

24 Q. Yes, sir.

25 A. Right, so.

1 Q. And you didn't agree to go with Crescent Coast over
2 McGriff until right before the policies were bound?

3 A. That's incorrect. So I mean, we had told -- technically
4 speaking, Mr. Egan was calling us. Well, let me go back.

5 Q. Sure.

6 A. As of the time that we left town, which was the end of
7 the previous week, I believe that we told them we're going with
8 McGriff, and David was pretty relentless. I mean, the two of
9 them, they were calling me and, you know, had lowered the
10 price, said, you know, we're lowering the price, we're lowering
11 the deductible, and I had no reason to believe, like I said,
12 that I was getting anything less than coverage. My
13 understanding was it was a good coverage, and even included
14 that they were including extra things that maybe we didn't even
15 have in our previous policy.

16 Q. My question was: You didn't agree to go with Crescent
17 Coast over McGriff until just before the policy was bound? So
18 I'm going to show you again Plaintiff's Exhibit 47.

19 A. Right.

20 Q. These are the, again, the text messages between you --

21 A. Right.

22 Q. -- and David Egan.

23 A. Yes.

24 Q. If you could, and I'll flip over here for you. So the
25 first text messages start on January the 11th, correct?

1 A. Yes.

2 Q. Okay. Where you're asking: Are quotes attached? I see
3 the remarks. So these all appear to be the same day. And then
4 there's a text message that says: I spoke to Alice and she
5 won't split, so if we go with this, you get both. What was
6 that referring to?

7 A. So that was referring to the property and the general
8 liability.

9 Q. And so that was a difference that Crescent Coast was
10 offering that McGriff was not in the way that policies were
11 split?

12 A. And if the GL -- no, it's not necessarily that they were
13 offering that. They were having difficulty getting the GL
14 quote, apparently, or getting a competitive quote.

15 Q. Who was having a difficulty?

16 A. Crescent Coast.

17 Q. Okay. It says: I spoke with Alice and she won't split,
18 so if we go with this, you get both.

19 A. Right. So in other words, if we went with Crescent,
20 that we were going to get the GL and the property.

21 Q. Is that when you decided to go with Crescent Coast?

22 A. At that point, like I said, because David was pretty
23 adamant and persistent, and I know they put a lot of work in,
24 so, you know, I felt that I might give them the opportunity.

25 Q. And that was four days before the policy was bound, on

1 the 15th?

2 A. Depending -- well, it was the Friday afternoon, you
3 know, and we were still discussing at that point.

4 Q. Okay. So you still hadn't decided to go with Crescent
5 Coast or McGriff?

6 A. You know, and again, you know, I got home, I was
7 exhausted, it was not really a good time for me to, you know,
8 to go through that, I couldn't, and so the plan was we were
9 going to pick it up over the weekend.

10 Q. Okay. So you'd already -- so McGriff was already your
11 agent for calendar year 2018?

12 A. For the previous year, yes.

13 Q. Okay. And they weren't going to stop being your agent
14 until January the 14th at midnight?

15 A. They -- the existing policy --

16 Q. Right.

17 A. -- they had would expire on the 15th at midnight.

18 Q. Okay.

19 A. Right.

20 Q. So -- right. And so they were your agent until then,
21 unless you decided to switch?

22 A. I mean, they wrote the previous year's policy.

23 Q. Okay.

24 A. But we, we hadn't, it seems like we hadn't fully decided
25 at that point, that both -- both were being considered.

1 Q. So your policies with -- when you decided to go with
2 Crescent Coast, your policies were bound on January the 15th,
3 2019, correct?

4 A. They became effective on January 15th.

5 Q. Okay. And so --

6 A. But they were bound, I guess, on the 14th, per se. It
7 depends how you want to --

8 Q. Well, I think the binder -- I think the binder came to
9 Crescent Coast on the 15th, but you received it two days later
10 on the 17th, right?

11 A. I think we got it after -- after binding.

12 Q. Yes, sir.

13 A. Right.

14 Q. And Mr. Watson asked you about those binders?

15 A. Yes.

16 Q. And did you review the binder?

17 A. I did look at the -- I did look at the language. I
18 didn't see any, you know, immediate reason for concern with
19 anything.

20 Q. Okay. And you never asked Crescent Coast any questions
21 about the endorsements or coverages or forms that were listed?

22 A. We did not discuss that because, you know, we figured we
23 would get the policy and, you know, review from there.

24 Q. But the binder also includes a summary of the sprinkler
25 endorsement, doesn't it?

1 A. Not really.

2 Q. It doesn't?

3 A. A summary? I wouldn't call it a summary.

4 Q. So under the comments, and I'm looking at Defendant's
5 25, at this point, that's been admitted into evidence. So
6 under the comments and conditions section, it says: The
7 following required, and this is inspection, and the next one is
8 "protective safeguards," which the first one is listed: An
9 automatic sprinkler system. So that does include at least that
10 the automatic sprinkler system is a condition on the binder,
11 right?

12 A. I wouldn't get that from there. In fact, I mean, I
13 guess maybe I read it differently, because you have the
14 inspection contact information, and then a bunch of things
15 related to safety devices, which, obviously, some buildings
16 have, you know.

17 Q. Did you ask Mr. Egan which buildings those apply to?

18 A. We didn't really have an opportunity to discuss that.

19 Q. Okay. After binding on January the 15th, actually,
20 before that, let me go back to Exhibit 47 real briefly. I
21 asked you earlier whether or not property was added to the
22 application --

23 A. Yes.

24 Q. -- just prior to binding, and you said you didn't
25 believe so. We'll switch over here. So this is Exhibit 47.

1 The text message is between you and David. So on Monday,
2 January the 14th, that's a text from David saying: I just got
3 the answer, 1 percent building --

4 A. Right.

5 Q. -- minimum -- it's about deductibles, right?

6 A. Yes.

7 Q. Same. Okay.

8 A. Yes.

9 Q. So on the 14th, there are text messages from you:
10 David, please add these locations. 4200 Highway South, North
11 Myrtle Beach. This is a 1-acre property. It's ground leased
12 to Sticky Fingers. The second one was 975 Folgers Drive
13 Statesville, North Carolina. This is a ground leased to
14 Outback. The third location is 2.65 acres at the intersection
15 of Highway 15 and 17th Avenue, South Myrtle Beach. Did I read
16 that correctly?

17 A. Yes. So these are all, like, the land, they're not
18 building, other coverages.

19 Q. They're property, right?

20 A. They're liability coverages.

21 Q. Okay. But you were asking him, just before the policy
22 was bound to get those added?

23 A. It depends which policy you're talking about, because
24 they were added as liability coverage.

25 Q. Sure. But --

1 A. The land parcels.

2 Q. Right. Because you were taking out -- you were using
3 Crescent Coast for excess general liability and property?

4 A. Okay.

5 Q. Right. Okay.

6 A. So I guess, to answer, they probably reviewed all the
7 buildings, but then I told them, add all these on the
8 liability, so.

9 Q. Okay. And then after --

10 A. Which is normal, by the way.

11 Q. Sure. Okay.

12 A. Okay.

13 Q. But after binding on January the 15th, you or one of
14 your employees did contact Crescent Coast to have more
15 properties added?

16 A. As I said before, so we have one strip center that
17 fronts on Highway Business 17, but there's a house that's part
18 of the center, really, it's actually on the same parcels, and
19 it sits on 30th, but because it sits on 30th, it has an
20 additional address, so we added -- we added that additional
21 address, and that's --

22 Q. I'm going to hand to you what's been marked as Exhibit
23 109. It's already been in evidence, and that's an email from
24 Marie Simonetti. Is Marie Simonetti the person that you
25 testified earlier that recently left your employ?

1 A. She left at the end of '21.

2 Q. Okay.

3 A. Right.

4 Q. So she was working for you at the time --

5 A. Correct. So she -- yeah, I'm sorry.

6 Q. No, that's okay. That email is dated January the 30th,
7 2019, and it's from Marie Simonetti to David Egan and copies
8 you, correct?

9 A. Yes.

10 Q. And what does it ask?

11 A. Upon review, so it's the 30th: Upon review of property
12 insurance breakdown from locations, addresses need to be added.

13 Q. And what are those addresses?

14 A. So I guess she added for this North Myrtle property, 94
15 to 96 Highway 17, and 98 Highway 17, and then there is a house
16 that's 504 at 33rd, and then she clarified the full addresses
17 for Atlantic Beach and another center.

18 Q. Okay.

19 A. Yeah.

20 Q. And so Crescent Coast got those added?

21 A. I believe.

22 Q. Okay. Here's an email, this is Exhibit 70 it's already
23 in evidence. This is an email from David back to Marie. It
24 says: I have sent in to endorse the addresses we discussed as
25 well as sent in to add the 33rd Avenue house. Behind that's an

1 email from David Egan to Hollan Delany saying: Attached to the
2 property info, please add. Is that correct? Do you have any
3 reason to dispute that those got added to your policy?

4 A. No.

5 Q. Okay. So after binding, you discussed property, adding
6 property, and changing addresses with Crescent Coast?

7 A. It sounds like with the office, yes.

8 Q. But you never updated Crescent Coast about the sprinkler
9 system construction at 1901 North Kings after your August 2018
10 meeting?

11 A. We didn't update him on any change.

12 MR. RISER: Okay. Alright. I may have some
13 follow-ups depending on what the other attorneys ask, but I
14 appreciate your time, Mr. Tebele.

15 MR. CONNELL: Your Honor, could we come for sidebar?

16 THE COURT: Yes, sir. Alright. Ladies and
17 gentlemen, we're going to take a brief break primarily to use
18 the facilities if you need to, and maybe get something to
19 drink. Maybe five minutes or so, okay? Alright. Thank you.

20 **(Jury exited the courtroom at this time.)**

21 **(Recess taken.)**

22 THE COURT: Anything before we bring the jury in?

23 MR. CONNELL: No, Your Honor.

24 **(Jury entered the courtroom.)**

25 THE COURT: Alright. Thank you, ladies and

1 gentlemen. Mr. Connell, Redirect?

2 MR. CONNELL: Just a few, Your Honor.

3 **REDIRECT EXAMINATION**

4 BY MR. CONNELL:

5 Q. Alright, Mr. Tebele. Look at Exhibit Number 3, the
6 contract if you would. And the portion on page 2, which
7 indicates that you are not supposed to touch the sprinkler
8 system, do you see that?

9 A. Yes.

10 Q. Read that to the Jury, if you would, just very briefly.

11 A. It says: By accepting this proposal, the purchaser
12 expressly acknowledges, stipulates, until Crawford Sprinkler
13 Company has completely installed the system and has conducted
14 the hydrostatic test, performance has not been -- performance
15 has not been completed, and only upon that being done by
16 Crawford Sprinkler Company does it assume any responsibility
17 obligation to the functioning of the system as installed by it.
18 Under no circumstances is anyone else permitted or authorized
19 to place the system in service or perform a test upon it, and
20 Crawford Sprinkler Company is not responsible for the
21 consequences of any activities of others in that regard.

22 Q. Now, the sprinkler system was still under construction?

23 A. Yes.

24 Q. And the chamber that was going to be put outside, hook
25 the city water up, had still not been performed?

1 A. It still needed to be --

2 Q. And the city had not done an inspection and agreed to
3 permit at that point, as far as final inspection?

4 A. That's correct.

5 Q. Now, there's been a lot of talk about a timeline, so I
6 want you to come down here a minute. I'll just have you draw
7 something for me, if you would, please.

8 A. Okay.

9 Q. Come right here.

10 A. Yeah.

11 Q. Put on the top of that board "timeline," please, sir.

12 A. Okay.

13 Q. Write the word "timeline."

14 A. Oh, okay.

15 Q. Now, Exhibit 47 are your texts between yourself and Mr.
16 Egan, would that be right?

17 A. Yes.

18 Q. Alright. And Exhibit 23 is the email that Crescent
19 Coast sent to Amwins Access --

20 A. Yes.

21 Q. -- correct?

22 A. Yes.

23 Q. So you see the top of this --

24 A. Yes.

25 Q. -- time and date, write the time and date for that,

1 please, sir.

2 A. I'm trying to write it as neat as I --

3 Q. Alright. That's great.

4 A. -- as I can. Penmanship was never my -- there we go.

5 2019 at 12:10 P.M.?

6 Q. 12:10.

7 A. 12:10 P.M.

8 Q. Alright. And as we've put ad nauseum, this is Crescent

9 Coast's email to Amwins about the sprinkler system, correct?

10 A. Yes.

11 Q. Alright. So the text message that Mr. Egan sent to you,

12 put the number 2, put the date and time for that, please, sir.

13 And what time does it say?

14 A. 2:18 P.M.

15 Q. Alright. So what does that tell you about what Crescent

16 Coast knew between January 11th, 12:10, and the time he sent

17 you a text message at 2:18?

18 MR. RISER: Objection, leading.

19 THE COURT: Rephrase the question, please.

20 BY MR. CONNELL:

21 Q. Alright. Let's do it again. January 11th, 2019,

22 Crescent Coast was aware of a problem with sprinkler system,

23 correct?

24 A. Yes.

25 MR. RISER: Objection, calls for speculation.

1 THE COURT: I'm going to sustain the objection.

2 BY MR. CONNELL:

3 Q. Alright. Let's go back again. Read me, if you would,
4 please, sir, Exhibit 23 verbatim.

5 A. From Sandra Nenna at Crescent Coast, sent Friday,
6 January 11th, 2019, 12:10 P.M., to Whitney Gurtzweiler at
7 Amwins dot com, CC Joey Sutherland, Joey at Crescent Coast dot
8 com: Whitney, when app was submitted for this risk, it was
9 represented that the building was 100 percent sprinklered as
10 the sprinkler system was being installed at that time. We have
11 learned as of yesterday that the sprinklers have been installed
12 but the landlord has not turned the water on to have them
13 operational. We just want to give you a heads-up on this.
14 Best, Sandra.

15 Q. Alright. So they were all on the same page. Was that
16 your property that was being discussed in this email?

17 A. Yes.

18 Q. Were you given a phone call by Crescent Coast before
19 January 11th, 2019, at 2:18 P.M. asking about this?

20 A. No.

21 Q. Were you advised about this email until after this
22 became forward in litigation?

23 A. I was not advised until -- I didn't get this email until
24 months after the fire.

25 Q. Alright. So how many times was Crescent Coast aware

1 that the sprinkler system had not been connected?

2 A. So apparently, we met in August of '18. They knew 100
3 percent that it was not connected.

4 Q. How did they know?

5 A. Because I told them.

6 Q. Alright.

7 A. And they asked me, and I said, when it was asked to me,
8 does it run throughout the building? I said, yes, but it's not
9 connected, and I made it clear that we need to hire a utility
10 contractor, and once we get a utility contractor it's a few
11 weeks worth of work. So they knew then for sure.

12 Q. Okay. When is the next time they knew?

13 A. They also knew, reading that email, I guess, you would
14 say from Thursday, January 10th, because as we heard under
15 testimony from Joe Sutherland from Crescent Coast, he received
16 a phone call from the tenant after she had a meeting with the
17 inspector, and she was advising him that, you know, what do we
18 do about this? You know, I'm being advised it's not connected,
19 and you need to do something with that information.

20 Q. Alright. So the application, Exhibit Number 25, when
21 did you get that?

22 A. So it's dated January 11th --

23 Q. Okay.

24 A. -- and according to the text and the communication, it
25 seems like they attempted to send it on the 11th. Whether it

1 was opened or not is another story, but it seems that they
2 generated it and did sent it out on the 11th --

3 Q. Alright.

4 A. -- because that's the date of the application.

5 Q. Was that after January 11th, 2019, at 2:18 P.M.?

6 A. That would have been Friday afternoon after the email
7 was sent --

8 Q. Okay.

9 A. -- and after they learned that the sprinklers were not
10 operational.

11 Q. So that we're clear, 23 came first, right?

12 A. Yes.

13 Q. In the sequence?

14 A. Yes.

15 Q. The email, text message from Mr. Egan came second?

16 A. Yes.

17 Q. Alright. And the --

18 A. The application was --

19 Q. Write that down as number 3, please, sir.

20 A. I'm writing January here.

21 Q. Okay.

22 A. January 11th.

23 Q. Okay. Now, was the sprinkler system still under
24 construction at that time on January 11th, 2019, 2:18?

25 A. So we know, yes.

1 Q. Alright.

2 A. And from the email --

3 Q. Write that down.

4 MR. CONNELL: What's the next exhibit, please, ma'am?

5 THE COURT REPORTER: 107.

6 MR. CONNELL: 107. Thank you. Alright. Your Honor,
7 we offer exhibit 107 into evidence.

8 THE COURT: Any objection?

9 MR. RISER: No.

10 THE COURT: Alright. Plaintiff's 107 is admitted
11 into evidence.

12 **(Plaintiff's Exhibit No. 107 was admitted into evidence.)**

13 MR. CONNELL: And you can go back and sit down.

14 Okay. Thank you, sir.

15 BY MR. CONNELL:

16 Q. Alright. A couple of more things. Now, the schedule of
17 values is what?

18 A. So it's --

19 Q. Now. What you know today.

20 A. Yes. So it's a list of all the properties, addresses,
21 information relating to, I guess, size, construction, et
22 cetera.

23 Q. Okay. You said Mr. Twaddell brought the schedule of
24 values?

25 A. Yes.

1 Q. Exhibit Number 100, had you ever seen that before the
2 application process?

3 A. No.

4 Q. Had you ever signed that?

5 A. No.

6 Q. Had it ever been presented to you?

7 A. No.

8 Q. Alright. Now, one final thing, and then I'll sit down.
9 Exhibit Number 64, the binder.

10 A. Yes.

11 Q. Does the binder describe all of the property on the
12 schedule of values?

13 A. No, it doesn't. It doesn't list any of the property on
14 the schedule.

15 Q. Does the binder have a protective safeguard endorsement
16 provision in the binder?

17 A. Not an express endorsement, no.

18 Q. Does the binder actually have some statements as to
19 protective safeguard endorsement on page 2?

20 A. It has some reference to it.

21 Q. Does the binder describe the property, any of the 23
22 properties?

23 A. No.

24 Q. So let me ask you this: So let's assume we had a fire
25 like we had in Hawaii and everything got burned down --

1 A. Alright.

2 Q. -- and this is all you have, does that describe, does
3 Exhibit 47 describe the property that is involved in this case?

4 A. No, absolutely not.

5 MR. CONNELL: That's all I have. Thank you, Your
6 Honor.

7 THE COURT: Mr. Watson?

8 **RECROSS-EXAMINATION**

9 BY MR. WATSON:

10 Q. Plaintiff's Exhibit 3, Mr. Tebele, the sprinkler
11 contract, or sprinkler document proposal that Mr. Connell just
12 asked you about, you signed that on April 6, 2017, on behalf of
13 Kings Realty Management LLC, right?

14 A. Correct.

15 Q. And that's --

16 A. Actually, I don't -- let me see that.

17 Q. It's -- I have it. It's on the screen. I have it here.

18 A. Do you want me to come over there?

19 Q. No, it's fine.

20 A. Alright.

21 Q. It says: Kings Realty Management LLC, managing member
22 on it.

23 A. Right, yes.

24 Q. That means it's managing member of Kings Realty LLP,
25 which was the title owner of the parcel, right?

1 A. So it would be at the same title.

2 Q. Okay.

3 A. Yes.

4 Q. Okay.

5 MR. WATSON: I don't have any other questions. I do
6 have an exhibit to move in that wasn't in evidence that I think
7 everyone had stipulated previously, Exhibit 55-A. It would be
8 the Twaddell email.

9 MR. RISER: No objection.

10 MR. WATSON: Just housekeeping to get it admitted.

11 THE COURT: Alright. Then Defendant's 55A is
12 admitted into evidence.

13 **(Defendant's Exhibit No. 55A was admitted into evidence.)**

14 MR. WATSON: Thank you, Mr. Tebele. I have no other
15 question for you.

16 MR. RISER: Very briefly, Your Honor?

17 THE COURT: Yes, sir.

18 **RECROSS-EXAMINATION**

19 BY MR. RISER:

20 Q. Mr. Tebele, you were asked about this email.

21 A. Yes.

22 Q. And that email says that: We have learned as of
23 yesterday the sprinklers have been installed but the landlord
24 has not turned the water on. That's different than what the
25 actual status of construction was at that point, right?

1 A. I don't agree.

2 Q. You don't agree?

3 A. No.

4 Q. Does this email say that the water pipe isn't connected
5 at the street?

6 A. I think the clear, the clear disclosure from that email
7 is that the water is not onto the system, and I actually -- I
8 was thinking, forgive me, but I was thinking about that because
9 it was discussed last week, and I think -- I think people can
10 definitely, by looking at that, and I think if we got a bunch
11 of sixth graders here, they would understand that the water is
12 not onto the system.

13 Q. Okay. Well, let's -- your words are "clear disclosure."
14 Let's give some clear disclosure. What's not on this timeline
15 is five months earlier when you told Crescent Coast that the
16 sprinkler system was under construction but not completed,
17 right? So you knew for five months before January the 11th
18 that it hadn't been done, that it hadn't been completed, it was
19 not hooked up for water, right?

20 A. So -- so --

21 Q. Yes or no? It's a yes or no answer. You knew for five
22 months before January the 11th the system had not been
23 completed?

24 A. I don't agree with that.

25 Q. You don't agree that you knew the system hadn't been

1 connected at the street?

2 A. I did not know, right, again, my understanding, I hired
3 the contractor, and my understanding is they would complete the
4 job, so.

5 Q. Did you know on January the 11th at 12:10 P.M. that the
6 construction hadn't been completed?

7 A. That it had not been?

8 Q. Yes.

9 A. I -- I did not know.

10 Q. So you didn't know on January the 11th, 2019, at 2:18
11 P.M. that the construction hadn't been completed?

12 A. That's correct.

13 Q. And you didn't know on January the 14th, 2019, when you
14 signed the application, that it hadn't been completed?

15 A. I did not know that.

16 Q. And you were at a meeting -- so this -- at the bottom,
17 it says: Sprinklers not connected. So you were at a meeting
18 on February the 13th, 2019, two weeks before the loss, correct?

19 A. From the testimony, it sounds like, yes, I was.

20 Q. And you knew at that point it hadn't been connected?

21 A. At that point I did know, and they were basically saying
22 that they were going to finish it.

23 Q. And you didn't share that information with Crescent
24 Coast, did you?

25 A. We didn't discuss that.

1 take up before we bring in the Jury?

2 MR. CONNELL: Nothing, Your Honor.

3 MR. WATSON: Nothing, Your Honor.

4 THE COURT: Then bring in the Jury. Alright.

5 **(Jury entered the courtroom at this time.)**

6 THE COURT: Thank you, ladies and gentlemen. I hope
7 that you had a good lunch. Previously, we had a situation
8 where we took a witness out of turn. We are going to be doing
9 that again. The Plaintiff has not rested, however, because of
10 scheduling, we're going to allow Defense to call a witness.
11 Again, that's considered out of turn because the Plaintiff has
12 not rested, but again, that's why we are doing that. Mr.
13 Watson, you may call your witness.

14 MR. WATSON: Sure. The insurer Defense will call
15 Bernard Hennes.

16 **BERNARD HENNES WAS DULY SWORN AT THIS TIME AND**
17 **TESTIFIED AS FOLLOWS:**

18 THE CLERK: Raise your right hand. Put your left
19 hand on the Bible. Do you solemnly swear or affirm that the
20 testimony you're about give to the Court will be the truth, the
21 whole truth, and nothing but the truth, so help you God?

22 THE WITNESS: I do.

23 THE CLERK: You may be seated.

24 THE WITNESS: Thank you. Good afternoon, Your Honor.

25 THE COURT: Good afternoon.

1 THE CLERK: Could you state your name for the Court,
2 for me.

3 THE WITNESS: Good afternoon. My name's Bernard G.
4 Hennes.

5 **VOIR DIRE EXAMINATION**

6 BY MR. WATSON:

7 Q. Mr. Hennes, where do you live?

8 A. I live in Montgomery Township, Pennsylvania, which is a
9 suburb of Philadelphia.

10 Q. Alright. And where do you work, sir?

11 A. In King of Prussia, Pennsylvania, which is also a suburb
12 of Philadelphia.

13 Q. And who is your employer?

14 A. I'm employed by myself, the Hennes Group, LLC.

15 Q. Alright. And so are you the owner of that business?

16 A. I am.

17 Q. And when you operate the business, do you enter payments
18 and sign documents on behalf of the LLC company that you own?

19 A. Yes.

20 Q. And similar to how A. Tebele & Sons as a partnership and
21 operates as a business but individuals can sign, that's how
22 your business works also?

23 A. Yes.

24 Q. Mr. Hennes, trace for the Jury, if you would, your
25 educational background?

1 A. Sure. I graduated --

2 MR. CONNELL: I'll consent to him being an expert in
3 the field.

4 MR. WATSON: That's fine. I still would like the
5 Jury to get to know Mr. Hennes a little bit. I'll abbreviate.

6 THE WITNESS: Thank you, Mr. Connell.

7 A. I graduated in 1978 from the Canisius University in
8 Buffalo, New York, my hometown, and went on to work for
9 Congressman Jack Kemp, who was a congressman from Buffalo, New
10 York, and worked in Washington, D.C. and in his district
11 council's office for about 10 years. I went on to law school;
12 graduated from Temple University School of Law in Philadelphia,
13 and also, in between graduating from college and going to law
14 school, I spent a semester at the American University Foreign
15 Diplomatic Policy School.

16 Q. And are you a licensed attorney?

17 A. I am since 1983.

18 Q. And in what jurisdiction?

19 A. In Pennsylvania.

20 Q. And have you had experience working on insurance
21 coverage matters and disputes similar to this case?

22 A. Yes, pretty much since I started my legal career in 1983
23 I have been retained by both policyholders like Mr. Tebele and
24 Tebele & Sons, as well as by insurance companies in looking at
25 various insurance policies and coverage issues.

1 Q. And when you were in practice, did you handle cases
2 similar to, like, trials like this?

3 A. Yes, both on the insurer side, as well as with regard to
4 claims handling. We also handled and adjusted claims much like
5 Pinnacle Insurance Bureau did here, and I continue to do that
6 today.

7 Q. You mean Peninsula?

8 A. Peninsula, sorry.

9 Q. And have you also worked on behalf of policyholders in
10 cases against insurers?

11 A. Yes. And from time to time, I'm asked to render an
12 expert opinion like I am here today, and from about 65 to 70
13 percent of my time is spent by being retained by insurance
14 companies and 30 to 35 percent on behalf of policyholders like
15 A. Tebele & Sons.

16 Q. And give us a thumbnail, if you would, of your work
17 experience in some of the places you've worked. Obviously,
18 you've had a long career, and we don't need to take every stop,
19 but just hit the high points.

20 A. Okay. After graduating from law school, I was an
21 associate starting at the bottom at a law firm in Philadelphia
22 called Marshall Dennehey Warner Coleman & Goggin, and I worked
23 there for the senior partner of the firm, Francis Marshall.
24 After that, I was recruited by the Wilson Elser Moskowitz
25 Edelman & Dicker Law Firm and worked there on a number of the

1 similar types of things on insurance coverage, insurance
2 claims, and handling claims around the country for insurance
3 companies and reinsurance companies, both domestically, and
4 also from around the world, and after that in 1997, I decided
5 that I wanted to learn more about how insurance works since I
6 had been retained by a lot of insurance companies in the past,
7 so I took a position and I was recruited by the Reliance
8 Insurance Company and worked there as its vice president and
9 chief national litigation counsel. In that role, I was
10 responsible for undertaking all of the audits of claims and
11 looking at claims to make sure they're being handled
12 appropriately and in accordance with generally accepted
13 industry standards, customs, and practices. I was also
14 responsible for what's called the Bad Faith Claims Unit when
15 policyholders like A. Tebele & Sons might have disputes with
16 the insurance company, and I was also responsible for liaising
17 with all of the excess and umbrella insurance companies. I was
18 responsible for the Environmental Claims and Mass Tort Unit and
19 all of the lawyers across the country that represented our
20 policyholders like A. Tebele & Sons.

21 Q. At Reliance, did you also have a role with respect to
22 its underwriting department?

23 A. Yes. We were co-located, so the underwriters worked
24 alongside of us, and in that role we did a lot of training of
25 the underwriters and in my prior role before coming to

1 Reliance, as well as shortly thereafter, I also worked with an
2 organization called the American Association of Managing
3 General Agents, which was a organization, a professional
4 association, that represented all of the managing general
5 agents from around the United States, and during that time they
6 were writing about 48 to 50 billion dollars of annual written
7 premium in both commercial, general liability, and property
8 insurance policies for insurance companies, both domestically
9 and also within the Lloyd's marketplace, and I became the
10 executive director of that group between 2000 and 2017. A part
11 of that, I was also the executive director of what was called
12 the AAMGA Foundation. We educated insurers, adjusters,
13 underwriters, aggregators, and others in the insurance space
14 and made sure that those folks could maintain their licenses.
15 So brokers and agents have to have certain hours of continuing
16 education each year, and we made sure we could provide that to
17 those agents and brokers and underwriters. We are also
18 responsible for the, what we call the Under Forty Organization,
19 or UFO, which were a group of about 600 claim adjusters,
20 underwriters, and underwriting assistants who were coming up
21 through the process and made sure they had received proper
22 training, as well.

23 Q. And what is the business and function of your current
24 company, the Hennes Group?

25 A. We are undertaking a variety of audits of insurance

1 policies, both directly over the entire company, or by the line
2 of business, so all property policies, all liability policy,
3 maybe product liability policies. So both insurers and
4 policyholders will retain us to take a look to see whether the
5 claims are being handled properly in accordance with customs
6 and standards and practices, whether they are within the
7 guidelines of the company that's retaining us, whether the
8 reserves are being posted are appropriate. There are a number
9 of things, and we provide our reports then to senior
10 management, provide training also to the adjusters and to the
11 underwriters that are there. I have been certified and still
12 am by all 50 departments of insurance across the United States
13 to offer continuing education so that the people can get their
14 credits for classes and courses that I teach. So we will do
15 that, and from time to time I am invited to participate in
16 matters like this and come to talk with you and to the Judge
17 with regard to how insurance claims are handled, what the
18 practices are, and whether what was done in any one particular
19 time was in keeping with those customs, standards, and
20 practices.

21 Q. And when you're not doing all of this insurance-related
22 work, are there other pursuits or interests you have that may
23 be relevant to this case?

24 A. Perhaps, yes. I started our volunteer fire company back
25 home in our township and then assistant chief and president of

1 the Montgomery Township Volunteer Fire Department. I've been a
2 volunteer firefighter for about 32 years now, and I am also the
3 head of our global outreach team for St. Peter's Lutheran
4 Church. We look after towns and villages and people when there
5 are hurricanes or floods or tornadoes, and we will go to those
6 locations. We went to Puerto Rico after Hurricane Maria hit
7 twice, and we sent a team over to Ukraine and we'll probably be
8 going back there again in April to help up where we can and to
9 spread a little bit of the volunteer donations that we get from
10 our parishioners back home.

11 Q. Now, when you work on this case have you been
12 compensated for your time on this case?

13 A. Yes.

14 Q. And what is your rate for your compensation?

15 A. \$495.00 per hour.

16 MR. WATSON: And at this time, Your Honor, I move to
17 tender Mr. Hennes as an expert on insurance claim handling and
18 standards and practices.

19 THE COURT: Mr. Connell, I understand you've already
20 stipulated to that?

21 MR. CONNELL: I don't object to that.

22 MR. RISER: No objection.

23 THE COURT: Alright.

24 THE WITNESS: Thank you, Your Honor.

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DIRECT EXAMINATION

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BY MR. WATSON:

Q. Mr. Hennes, approximately when were you first retained to becoming involved in this matter?

A. I think it was back in May of this year.

Q. And what were you asked to do?

A. I was provided with a lot of documents, the record, as I refer to it, and asked to go through it objectively, call it down the middle and take a look to see whether the actions and activities and conduct of the third-party administrator and the insurers that are on the policy here acted within the generally accepted industry customs standards and practices, and made sure that their investigation, their coverage evaluation, their coverage determination, and the matter in which they interacted with A. Tebele & Sons was appropriate and in keeping with those customs and practices.

Q. And did you, in fact, go through and review the record in order to form your opinions?

A. Yes, I did.

Q. And also, as part of the record, did you review the opinions that were offered by Mr. Gerald Finkel?

A. Yes, I did.

Q. And did you prepare a report of your findings?

A. Yes, sir.

Q. And let's go through, in broad strokes, what those

1 opinions are, Mr. Hennes, and then we can have a little more
2 detail. First off, did you form all of your opinions to a
3 reasonable degree of certainty in your field of expertise?

4 A. Yes, I did, under the totality of circumstances and the
5 facts that the people that I looked at had before them at the
6 time they took those activities.

7 Q. And what opinions did you come to about the quality of
8 the investigation of the Defendant Insurers in this case?

9 A. So in looking at all of the documents that I was
10 provided and looking at it fairly and objectively as I was
11 asked to do by you, Mr. Watson, I came to the conclusion after
12 looking at everything that the matter in which the claim was
13 investigated was timely, it was objective, it was reasonable,
14 it was proper, and it fell within the customs and practices of
15 how I also today adjust property damage claims.

16 Q. And then another opinion, did you reach another opinion
17 regarding the ultimate valuation of the claim conducted by the
18 insurers?

19 A. Yes. And going back to the prior question, it's not
20 just me, the way in which I adjust claims, it's the way the
21 industry adjusts property damage claims and fire loss claims
22 like this. I also reached an opinion based upon the evaluation
23 of coverage that was undertaken by the third-party
24 administrator, Mr. Speaks, and took a look to see whether
25 everything was done in accordance with a reasonable fair effort

1 of the third-party administrator and the insurers trying to
2 find coverage for this loss for A. Tebele & Sons to see whether
3 what happened could fall within the policy that was provided
4 and whether the policy could afford coverage under its terms,
5 conditions, and exclusions.

6 Q. Did you render any opinions about the ultimate coverage
7 decision made by the insurers?

8 A. Yes, I also determined based upon my review that the
9 coverage determination when it was made and communicated was
10 also timely, objective, reasonable and proper and under what we
11 call generally accepted industry customs, standards, and
12 practices.

13 Q. And lastly, did you evaluate the conduct and the way in
14 which the insurers treated the policyholder throughout the
15 claim investigation and decision-making process?

16 A. I did. As I said in my report, I also took a look at
17 the conduct and actions of the parties that were involved and
18 also came to a conclusion that those actions were fair, that
19 the underwriters always made sure that Mr. Tebele's company was
20 placed at least at the same level of their own and was given
21 appropriate fairness and objectivity in a proper and reasonable
22 manner.

23 Q. And why do you say that at least as much as their own?
24 What does that mean?

25 A. That means that it was fair, it was reasonable, and

1 that's what we are required to do as we are looking for
2 coverage, and as was done here. The adjuster and the insurers
3 always made sure that A. Tebele & Sons's interests were placed
4 at least on an equal level to those of their own, if not more.

5 Q. Alright. Let's go briefly a little more in detail. So
6 did you review who the insurers were here in this matter?

7 A. Yes, I did.

8 Q. And in particular, with regard to the Certain interested
9 Underwriters of Lloyd's of London, do you have a particular
10 experience with the Lloyd's market?

11 A. I do.

12 Q. And what kind of experience do you have?

13 A. Since around 1997 I've been working with Underwriters,
14 Certain Underwriters at Lloyd's, which are various syndicates
15 and insurance companies that provide insurance coverage to
16 folks here in the United States and have been also training
17 some of their underwriters and claims personnel over in London.

18 Q. And where does this policy fit with regard to something
19 called excess and surplus lines?

20 A. Right. So let me just go back, and the other insurers
21 that were involved on the policies, you may have already heard
22 are also HDI Global Insurance Company and General Indemnity
23 Security of Arizona. Those two last insurers, as well as the
24 Certain Underwriters at Lloyd's, fall into a category of what's
25 called excess and surplus lines insurance coverage. There are

1 two essential ways in which insurance companies operate here in
2 the United States and as well as here in South Carolina. You
3 can be an admitted insurance company where you provide your
4 forms and your rates of the policy to the insurance department,
5 and they're approved. They're reviewed by the insurance
6 department, and they're approved, and you can then offer them
7 for market and sale through agents, managing general agents, or
8 directly to the policyholders. Excess and surplus lines is
9 another branch of insurance where people that are unable to
10 obtain insurance from admitted companies, as Mr. Tebele
11 testified here this morning, go into the excess and surplus
12 lines market where companies are authorized to sell business
13 and insurance and services through the use of managing general
14 agents, like Amwins Specialty Risk Underwriters, as were
15 involved here.

16 Q. And can a business such as A. Tebele & Sons access
17 insurance through the excess surplus lines market without
18 attempting to get insurance through these admitted insurers?

19 A. No, no. You have to under the laws of the state of
20 Carolina and pretty much all other 50 states, there need to be
21 three declinations, so three admitted companies need to say:
22 We cannot offer insurance to you because of the risk exposure
23 might be too high, if they're too close to the coast, if
24 there's a lot of prior losses, there are a number of different
25 reasons that admitted companies might say, we can't offer you

1 insurance, and therefore, they then are able to access the
2 excess and surplus lines marketplace through their retail
3 agent, Central Coast, or Coastal --

4 Q. Crescent.

5 A. Crescent Coast, sorry. And then Crescent Coast accesses
6 the managing general agent, and the managing general agent then
7 accesses the excess and surplus lines marketplace.

8 Q. And just because an insured, or a policyholder, has an
9 excess surplus lines policy, does that mean that they can't ask
10 questions about their policy during either before or during or
11 after it's enforced?

12 A. No, it happens all the time. I mean, that's why the
13 agent is there. Crescent Coast was there to represent A.
14 Tebele & Sons's interests to make sure that if there are any
15 questions that they're responded to and can be flowed up the
16 stream and responses can come back, much like the premium flows
17 from the policyholder through the retail agent, Crescent Coast,
18 up to the managing general agent, and then up to the Certain
19 Underwriters at Lloyd's and HDI and Global Specialty, as well
20 as any questions that might come down the other way.

21 Q. And just because this is an excess surplus lines policy,
22 is a policyholder required to accept whatever terms are
23 proposed by the insurers, or is there ability to negotiate?

24 A. There's always an ability to negotiate both on the
25 admitted side as well as on the excess and surplus line side to

1 make sure that the policyholder receives what they would like
2 to have and that coverage is afforded for all the various
3 exposures requirements that that policyholder may have.

4 Q. Now, one of the topics that's been discussed during this
5 case a bit is the concept of the policy delivery, the policy
6 being provided to A. Tebele & Sons and the point that Mr.
7 Tebele himself did not physically receive the policy until
8 after the fire. Does that mean that the policy was not
9 delivered to the company?

10 A. No, the policy is bound at the time, it is bound through
11 a binder, and then that binder goes to Crescent Coast who is A.
12 Tebele & Sons's agent, and they then provide it to A. Tebele &
13 Sons.

14 Q. And is that unusual for that sort of binding process to
15 occur before the policyholder actually gets the thick policy?

16 A. No, actually, that's the way it works more often than
17 not. It's very similar to when we look for apartment insurance
18 or home insurance or car insurance, the insurance company will
19 give us a binder and say, yes, you're insured, you can get the
20 motor vehicle identification card that says, yes, you have
21 coverage for your car for this particular time, and then we get
22 the policy after that time. You buy a new car, the same thing
23 happens. You go to a house or home selling, you go to closing,
24 and there's a binder that provides, from the underwriter to the
25 closing folks there, an opportunity to see, yes, this house is

1 covered for insurance and for the mortgage.

2 Q. And as part of your work, did you look at the actual
3 binder that was issued January 15th, 2019, in this case?

4 A. Yes, I did.

5 Q. And did that binder contain a list of all the insured
6 locations on it?

7 A. No.

8 Q. And is that something that typically occurs in the
9 industry?

10 A. It is.

11 Q. And why is that? Why wouldn't -- why isn't that
12 included?

13 A. Because the binder is merely an indication that coverage
14 has now been bound and based upon the application that has come
15 from the policyholder through its agent to the insurance
16 company, coverage is now in place for those locations. They're
17 on the schedule of values and for the amount of what's called
18 total insured value that you may have heard a \$22 million
19 amount that A. Tebele & Sons was seeking for all 23 of its
20 policies, that coverage in that amount is now in place based
21 upon that binder, and then the policy will -- the actual form
22 policy would follow thereafter.

23 Q. Now did this binder in particular make reference to what
24 the Jury's familiar with now is a protective safeguards
25 endorsement?

1 A. Yes, it did.

2 Q. And does that become effective upon the binding, as
3 well?

4 A. Yes. All matters that are listed in the binder become
5 effective at the time the policy incepts, as it's called, or
6 starts, so that January 15th date, 2019, at 12:01 A.M., that's
7 when this policy started, and all aspects and schedules,
8 endorsements and all the aspects that comprise the policy were
9 in effect at that time, so that if there had been a covered
10 cause of loss at 12:02 A.M. on January 15th, there would have
11 been coverage for A. Tebele & Sons.

12 Q. And does the binder itself lay out which locations are
13 required to have automatic sprinkler systems?

14 A. No.

15 Q. And is that typical in the industry?

16 A. Yes.

17 Q. And why is that?

18 A. Well, to the best of my knowledge, education, and
19 training, they are provided as part of the schedule of values
20 that are part of the application that is then submitted to the
21 insurance company, and that's what the insurer underwriters
22 will rely upon in underwriting and providing that coverage
23 based upon the schedule of values and the application that's
24 been submitted by the policyholder.

25 Q. And so how is the policyholder supposed to know from the

1 binder which locations are supposed to have the automatic
2 sprinklers?

3 A. Well, the application actually includes those locations,
4 those four or five locations, I think there were five, that had
5 automatic sprinkler systems and were listed on the application,
6 as you've heard, I'm sure, were 100 percent sprinklered.

7 Q. And upon receipt of the binder, does the policyholder
8 have any recourse if they don't understand what they're reading
9 or if they have questions about what is or isn't included?

10 A. Sure. Much like in this situation, there was a
11 communication between A. Tebele & Sons and their agent with
12 regard to establishing the various components that would be
13 part of this policy, and then afterwards, I remember seeing in
14 the record that A. Tebele & Sons requested some additional
15 locations to be added to the policy and a mortgagee to be added
16 to the policy, so again, that constant state of communications
17 between the policyholder and the retail agent that was retained
18 on behalf of the policyholder, the managing general agent, and
19 then the insurers to make sure that there's coverage for
20 everything that A. Tebele & Sons would like to have insured.

21 Q. Did the binder include reference to a particular
22 protective safeguard endorsement that the insurers relied upon
23 to decline the claim?

24 A. Well, yes. The insurers relied upon the information
25 that is contained within the application and the statement of

1 values that is then reflected within the binder.

2 Q. And there's also, is there a list of forms in the binder
3 that would call out each type of endorsement or a form that's
4 used?

5 A. Yes. So in the insurance industry, we use a lot of
6 numbers to designate various forms. You've heard a number of
7 them, I've heard this morning, as well, but yes, all those
8 numbered forms are indicated on the binder so that it provides
9 a transparent way for the policyholder to know and understand
10 what that policy is going to contain, and also what it may not
11 contain, so that if there is something that is wrong or
12 something more that is requested that the policyholder can then
13 go to its agent and say, we need to add this or we need to take
14 this down.

15 Q. Alright. And did you review the language of the
16 protective safeguard fire endorsement in order to form your
17 opinions?

18 A. Yes.

19 Q. And I'm showing you a demonstrative exhibit, which is
20 based on the endorsement, which is already in evidence. I'm
21 not sure, I think it's Defense 33 or 34. Is this the
22 endorsement that you evaluated? You can come down if you want.

23 THE WITNESS: Your Honor, with your permission?

24 THE COURT: Yes, sir.

25 THE WITNESS: Thank you.

1 A. Yes, this is the protective safeguard endorsement that
2 was added.

3 Q. Now did you review the entirety of this endorsement to
4 attempt to evaluate the decision made by the insurers?

5 A. I did.

6 Q. And based on your review, was the review given by the
7 insurers in accordance with the standards and practices of the
8 industry?

9 A. Yes, it was.

10 Q. And now there's a condition, the jurors already heard,
11 there's a condition and an exclusion within this policy
12 endorsement, right?

13 A. Yes.

14 Q. And explain the difference between a condition and an
15 exclusion here.

16 A. I think the best way to explain what a condition is is
17 that it's a gateway to coverage. It means that in order for
18 coverage to be provided, that condition needs to be complied
19 with, and that's essentially what this condition is. So right
20 under protective safeguards, paragraph A: As a condition of
21 this insurance, you are required to maintain the protective
22 safeguard devices or services listed in the schedule above.

23 Q. And how does one know what devices are required from
24 that sentence?

25 A. Well, it states a number of symbols, AS for automatic

1 sprinkler, AA for automatic fire alarm, and those are the two
2 that are in the symbols here, and it also says "Other" that are
3 also as indicated on the schedule of values on file with the
4 company.

5 Q. And how does the schedule of values interrelate with
6 this endorsement?

7 A. In a couple of ways. As I explained, hopefully well
8 enough, the schedule of values is something that is submitted
9 along with the application that provides the underwriters and
10 those who are actually providing the insurance with the value
11 of the various locations, where they are, what their ISO
12 protective class number is. So ISO stands for Insurance
13 Services Office. It's essentially a rating organization in the
14 United States that looks at a variety of organizations and
15 places, and it will rank from 1 through, I think 9 or 10, the
16 supremacy of a particular location. So for instance, location
17 number 1, or rating number 1, would be that it is in close
18 proximity to a fire department, that it's in close proximity to
19 a hydrant, that it's made of non-combustible or less
20 combustible materials, that the fire department is either a
21 paid or combination or volunteer fire department. There are a
22 variety of different things that go into the classification
23 process of an ISO classification rating. So the schedule of
24 values is relied upon by the underwriters to understand where
25 those locations are, what their ratings are, and in this case,

1 whether they're also sprinklered, and the values of those
2 locations are also indicated on the schedule of values. So
3 here, what we see for the symbol, so these are individual
4 columns, symbols, AS, AA, other, and then over in the
5 right-hand column for the schedule, locations applicable,
6 states: As indicated in the schedule of values on file of the
7 company. So that will then take us back to the schedule of
8 values for those activities or those locations that are
9 required to have automatic sprinkler systems that are
10 maintained, controlled, and in operating condition to make sure
11 that this condition for coverage is met. The exclusion on the
12 other hand is a little bit of a different. The exclusion is
13 down here at the bottom, and it says, I'm just going to read
14 it, I don't want to bore you. I'm sure you've heard this many
15 times, but just to go with the flow: The following is added to
16 the exclusions section of the policy referenced above. So the
17 policy itself, all 80 pages, had a section in it of loss
18 conditions, policy definitions, exclusions, and a number of
19 other sections. The exclusions are essentially what is not
20 covered, or what the policy cannot afford coverage for. And
21 here it states: We will not pay for loss or damage caused by
22 or resulting from fire. If prior to the fire you failed to
23 maintain any protective safeguard listed in the schedule above
24 which you had control in complete working order.

25 Q. And going back to the reference to the schedule of

1 values, this is a demonstrative, it's a blow-up of Exhibit
2 Plaintiff's 100, and it's probably also in multiple times. Do
3 you recognize this to be at the bottom, the schedule of values,
4 and then at the blown up portion references to 1901 North Kings
5 Highway?

6 A. Let me see.

7 Q. Yeah, sure.

8 A. Right. So you see this orange bar here that goes across
9 horizontally, that's location number 10 of 1901 North Kings
10 Highway in Myrtle Beach, and that's what's listed, and the ones
11 in orange indicate the ones that are 100 percent sprinklered.

12 Q. Well, this column would indicate for each location
13 whether it's got a sprinkler system and what percent?

14 A. That's right.

15 Q. It's very small, but the larger version shows it better,
16 and we've highlighted only 1901 North Kings Highway in this
17 blown-up portion, and on the schedule of values, what did it
18 indicate regarding its sprinklered or not sprinklered?

19 A. Just like the application, 100 percent sprinklered.

20 Q. And then it also says: Sprinklered, yes, in the second
21 column.

22 A. Yes. And then ISO protection class number 1.

23 Q. Right. And a lot has been made of the issue of the
24 letters AS not being on the schedule of values.

25 A. Right.

1 Q. In your experience in the industry and working with
2 policies like this, did you expect to see the AS notation on
3 the schedule of values?

4 A. No, because they're already listed by reference here in
5 the column that it says: As indicated on the schedule of
6 values on file of the company, which is the document you're
7 holding there in your hand.

8 Q. Alright. Thank you, sir. You can sit back down. In
9 order to form the opinions you've already offered, did you go
10 through the different steps that were taken by the insurers
11 once the fire loss was presented as an insurance claim to you?

12 A. Yes. There was a retention of the third-party
13 administrator, Peninsula Insurance Bureau, and they're the ones
14 who then went out and hired Ms. Watkins to take some
15 photographs, report back, and do the ongoing investigation that
16 took place as to whether or not coverage could be afforded for
17 this particular loss.

18 Q. And after they did the initial field inspection by Ms.
19 Weaver, did you note different correspondence issued by the
20 insurers to A. Tebele & Sons explaining what was happening with
21 the investigation?

22 A. Yes.

23 Q. And did you find those correspondences to be consistent
24 with industry standards?

25 A. They were, yes.

1 Q. And was there anything you saw in the claim
2 investigation by the insurers that deviated from these industry
3 standards that you were aware of?

4 A. No, no, not based upon my evaluation of the record, no.

5 Q. And did you find any communications or statements made
6 back and forth with Tebele & Sons with your representatives
7 that you found to be inappropriate or not in conformity with
8 the industry standards, how to speak with the insurers?

9 A. No, I think, also as Mr. Finkel stated today, everything
10 was done in accordance with customs and practices and was fair
11 and objective and reasonable under the totality of
12 circumstances of the information that the people that were
13 writing those correspondences had before them at the time.

14 Q. Now, when insurers are declining a claim or issuing a
15 coverage position on the claims such as was done here, are
16 there industry guidelines and standards for what's supposed to
17 be contained in it?

18 A. Yes. When a insurer has reached a determination that
19 coverage cannot be provided based upon the terms and conditions
20 of a policy, a letter is written to the policyholder explaining
21 why and what particular terms and conditions the insurance
22 company is relying upon and saying, sorry, we are just not able
23 to provide you coverage for this particular loss. And that's
24 important, I think, because in what insurance companies do,
25 they offer protection not just to the policyholder here, but to

1 all of their policyholders to look and pay for valid claims and
2 those that are verified and validated based upon the terms and
3 conditions of the policy.

4 Q. And did you find anything in the coverage position
5 letter from August 6th of 2019 that failed to comply with the
6 standards and practices that apply in the insurance industry
7 and insurance out there?

8 A. No, it was completely in keeping with those customs,
9 standards, and practices.

10 Q. And did you find, as a whole, from beginning of
11 reporting to the claim to the issuance of the coverage
12 decision, did you find that the insurers had a reasonable basis
13 for the decision that they were making?

14 A. Yes. In going through the entirety of the record and
15 looking at and following through the thought processes, I was
16 able to determine objectively that the insurers here acted
17 reasonable and in all good conscience in having a reasonable
18 basis based upon an informed judgment in reaching an objective
19 determination that this policy was not able to afford coverage
20 for this particular fire.

21 MR. WATSON: Thank you, Mr. Hennes. Please answer
22 other counsel's questions.

23 THE WITNESS: Thank you, Mr. Watson.

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CROSS-EXAMINATION

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BY MR. CONNELL:

Q. You mentioned, I think, in the beginning that you had a practice that was 65 percent insurers, 35 percent plaintiffs, is that what I heard you say?

A. Good afternoon, Mr. Connell. No, I was testifying about those matters of which I provided expert witness testimony.

Q. And in fact, you've only actually represented plaintiffs about 5 percent of the time when you were a lawyer; is that right?

A. I think that's right, yes. The law firms that I worked for were traditionally law firms that were retained by insurance companies to represent policyholders in a variety of different matters, but in those matters where plaintiffs or others that have issues against insurance companies, it ranged maybe about 5 percent.

Q. And in fact, in your testimony around the country, you've testified for a lot of insurance companies, have you not?

A. I've testified for a lot of insurance companies and policyholders, yes.

Q. Well, let's go to, you've got a list of Exhibit B in your report. Let's go over some of those.

A. Sure.

Q. So you testified for Insurance Company of North America

1 back in 2002; is that right?

2 A. Mr. Connell, would you mind if I have a copy here?

3 Q. Did you bring one?

4 A. No, sir.

5 Q. You did not?

6 A. No, sir.

7 Q. I'll come up there and give to you.

8 A. Alright.

9 Q. Alright. So in 2002, according to Exhibit B --

10 THE WITNESS: Your Honor, your permission?

11 THE COURT: Yes, sir.

12 BY MR. CONNELL:

13 Q. 2002, you testified you were retained by Insurance
14 Company of North America; is that right?

15 A. Yes, sir.

16 Q. And in 2004, you were retained by Cigna and Certain
17 Underwriters of Lloyd's, correct?

18 A. That's right, yes.

19 Q. And is that the same group of Lloyd's that we're here
20 about today?

21 A. No, sir.

22 Q. Alright. And then in 2005, you testified on behalf of
23 Ace American Insurance Company?

24 A. Yes, sir.

25 Q. And in 2005, you testified on behalf of TIG Insurance

1 Company?

2 A. Yes, sir.

3 Q. And in 2005, you testified on behalf of North Carolina
4 Mutual Life Insurance Company?

5 A. Yes, sir.

6 Q. And in 2005, you testified on behalf of Steadfast
7 Insurance Company?

8 A. Yes, sir.

9 Q. And it looks like in 2005, you also testified on behalf
10 of a Steve Johnson?

11 A. Yes, he was a policyholder.

12 Q. Alright. And then you testified on behalf of Century
13 Indemnity?

14 A. Yes, sir.

15 Q. And you testified, that's an insurance company, I take
16 it, is that right?

17 A. Yes, sir, that's right.

18 Q. And then you testified on behalf of Federal Insurance
19 Company, Great American Insurance Company, and Westchester
20 Specialty?

21 A. That's right.

22 Q. All three of those insurance companies?

23 A. Yes, sir.

24 Q. And then in 2006, you testified on behalf of Continental
25 Casualty Insurance Company?

1 A. That's right.

2 Q. And in 2007, you testified on behalf of a German
3 insurance company?

4 A. Yes.

5 Q. Is that right?

6 A. Yes, sir.

7 Q. I can't read the name, but you're fluent in German. So
8 what German insurance company was that?

9 A. AXA Versicherung (phonetic.)

10 Q. Oh, you didn't have to answer.

11 A. Oh, that's a triple-word score if anyone is keeping
12 track.

13 Q. And that was a German insurance company, and that case
14 was tried in the Southern District, or it was -- it was
15 actually tried, right, in Southern District of New York?

16 A. Yes, sir, that's right.

17 Q. Alright. And then you testified for Paul Hoffman and
18 Evelyn Fleming?

19 A. They were both policyholders like A. Tebele & Sons.

20 Q. Okay.

21 A. That's right.

22 Q. And then TIG Insurance Company?

23 A. Yes, sir.

24 Q. Atlanta Gas and Light?

25 A. Yes, they were also a policyholder.

1 Q. Northern Insurance Company, correct?

2 A. Yes, sir.

3 Q. Century Insurance Company?

4 A. Yes, sir.

5 Q. St. Paul and Travelers Insurance Company?

6 A. Yes, sir.

7 Q. Illinois Union Insurance Company?

8 A. Yes, sir.

9 Q. Century Indemnity Insurance Company?

10 A. Yes, sir.

11 Q. Maryland Casualty Company?

12 A. Yes, sir.

13 Q. A doctor by the name of Ann Bybel, Bybel.

14 A. Bybel. That's right, she was a policyholder, that's

15 right.

16 Q. ESIS? That's an insurance carrier, I believe, or is

17 that a company?

18 A. No, it was a third-party administrator, actually.

19 Q. Okay, part of a group, Just Claims, I think; is that

20 right?

21 A. That's right.

22 Q. Alright. Insurance Company of North America?

23 A. Yes, sir.

24 Q. Century Security Company?

25 A. Yes, sir.

1 Q. Indian Harbor Insurance Company?

2 A. Yes, sir.

3 Q. St. Paul Travelers Casualty and Surety Company?

4 A. Yes, sir.

5 Q. Virginia Surety Company?

6 A. Yes, sir.

7 Q. American International Specialty Lines Insurance

8 Company?

9 A. Yes, sir.

10 Q. And back again with ESIS?

11 A. Yes, sir.

12 Q. And Commonwealth Insurance Company of America?

13 A. That's right.

14 Q. Century Indemnity Company and other excess carriers.

15 Who would those other excess carriers be?

16 A. I don't recall, sir. That was in 2012. I don't recall

17 off the top of my head.

18 Q. Okay, fair enough. Were they Lloyd's carriers or

19 syndicates, do you know?

20 A. I don't believe so, no.

21 Q. Alright. And then let's see, that's 2012.

22 A. Yeah. No.

23 Q. Alright.

24 A. Those were domestic excess carriers.

25 Q. Westchester Specialty --

1 A. Let's not forget this one.

2 Q. Oh, let's see. Okay.

3 A. A Ginger Katzenmoyer.

4 Q. Alright. Who was that?

5 A. She was a policyholder.

6 Q. Alright. Westchester Specialty Insurance Company and
7 Coregis Insurance Company?

8 A. Coregis, that's right.

9 Q. Alright. American Guarantee and Liability Insurance
10 Company?

11 A. Yes, sir.

12 Q. Century Indemnity Company?

13 A. Yes, sir.

14 Q. A Specialty Insurance Underwriters?

15 A. Yes, sir.

16 Q. Alliance Underwriters Company, Et Al?

17 A. Yes, sir.

18 Q. Munich Reinsurance America and Century Indemnity
19 Company?

20 A. Yes, sir.

21 Q. Century Indemnity Company again?

22 A. Yes, sir.

23 Q. TGI Insurance Company and Certain Underwriters at
24 Lloyd's; is that right?

25 A. It's TIG.

1 Q. I'm sorry, TIG.

2 A. Yeah.

3 Q. Alright. Thank you. And Certain Underwriters at
4 Lloyd's?

5 A. Yes, sir.

6 Q. Those are you testified, is that the same syndicate
7 we're here about today?

8 A. There are actually two syndicates.

9 Q. Okay.

10 A. Can I just see the case?

11 Q. Yes, sir.

12 A. No, those are different syndicates.

13 Q. Alright. And North American Insurance Company?

14 A. Yes, sir.

15 Q. Bankers Standard Insurance Company?

16 A. Yes, sir.

17 Q. Is that Mount McKinley Insurance Company?

18 A. Yes, that's exactly right.

19 Q. North River Insurance Company?

20 A. Yes.

21 Q. You testified for a lot of insurance companies then?

22 A. Yes, sir.

23 Q. Is that Aspen Insurance Company in England? Is that
24 right, in the UK?

25 A. That's right.

1 Q. And Liberty Mutual Insurance Company of Europe?

2 A. Yes.

3 Q. And Illinois Union American Insurance Company?

4 A. Yes.

5 Q. Connect America Holdings, LLC? What is that please,
6 sir?

7 A. It is a company that is a policyholder of Artist
8 Insurance Company and Kenneth Gross was its principal.

9 Q. Alright. And QBE Specialty. And then again you're
10 testifying for Lloyd's again; is that right?

11 A. Yes, sir.

12 Q. Alright. Is that the same syndicate we're here about
13 today?

14 A. May I see the case?

15 Q. Yes, sir. Yes, sir, right there.

16 A. No, those were different. That was a 2015 case.

17 Q. Alright. That's a different syndicate, but it's still
18 part of the Lloyd's; is that right? Underwriters of Lloyd's
19 but a different syndicate?

20 A. It's a different syndicate, right.

21 Q. Okay.

22 A. Lloyd's is not an insurance company.

23 Q. I understand.

24 A. It's an insurance marketplace.

25 Q. And is that Mendakota --

1 A. Mendakota.

2 Q. -- Insurance Company?

3 A. Yes, sir.

4 Q. Excess Insurers, correct?

5 A. Yes, sir.

6 Q. Wells Fargo Insurance Services?

7 A. Yes, sir.

8 Q. Fireman's Fund Insurance Company?

9 A. Yes, sir.

10 Q. Illinois Union Insurance Company?

11 A. Yes, sir.

12 Q. Pacific Employers Insurance Company and Hartford

13 Accident and Indemnity Company?

14 A. Yes, sir.

15 Q. CorePointe Insurance Company?

16 A. Yes, sir.

17 Q. Admiral Insurance Company?

18 A. Yes, sir.

19 Q. Century Indemnity Company?

20 A. Yes, sir.

21 Q. Continental Western Insurance Company?

22 A. Yes, sir.

23 Q. InsureZone.

24 A. That was a policyholder.

25 Q. Okay. LIU Insurance?

1 A. Yes, sir.

2 Q. Federal National Insurance Company and Federal & Son, A
3 Division of Federal Insurance Company?

4 A. Yes, sir.

5 Q. Alright. Illinois Union Insurance Company?

6 A. Yes, sir.

7 Q. Century Indemnity Company?

8 A. Yes, sir.

9 Q. Sterling, and Sterling is a policyholder, I take it; is
10 that right?

11 A. It was an agency.

12 Q. An agency. Alright.

13 A. An insurance agency, yes.

14 Q. And then we're back again to Certain Underwriters of
15 Lloyd's; is that right?

16 A. Yes, sir.

17 Q. And so is that the same syndicate that we were in this
18 case about?

19 A. Can I just see?

20 Q. Yes, sir.

21 A. They're footnoted here at the bottom, Mr. Connell, so
22 let's just take a look together. No, once again, those were
23 all different syndicates --

24 Q. Okay.

25 A. -- than the ones that are involved here.

1 Q. Alright. And then ESIS again; is that right?

2 A. Yes, sir.

3 Q. And then Century Indemnity Company again?

4 A. Yes.

5 Q. Harleysville Insurance Company in New York?

6 A. Yes.

7 Q. Nationwide Insurance Company?

8 A. Yes.

9 Q. And that's still in, we're still in 2007, I believe; is
10 that right?

11 A. Yes, sir.

12 Q. And it goes on and on to today's date, 2023; is that
13 right?

14 A. Yes, sir.

15 Q. And without going and belaboring the point, you have
16 testified many, many, many times for insurance companies,
17 correct?

18 A. Yes, sir, I have.

19 Q. And just a very few for policyholders?

20 A. Yes. I've been retained by both policyholders and
21 insurance companies, as I've testified, insurance companies
22 maybe 65 to 70 percent, and 30 to 35 percent on behalf of
23 policyholders. What Mr. Connell is showing you now is a list
24 that I'm required to provide transparently to all parties to
25 show all the different organizations and entities on whose

1 behalf I've been retained, where I've given testimony. It does
2 not include those cases in which testimony was not required and
3 where I was retained as a consultant to look at insurance
4 issues, terms and conditions of insurance policies, which also
5 include policyholders, like A. Tebele & Sons.

6 BY MR. CONNELL:

7 Q. Alright. So we don't need to go through the whole list.
8 There's a whole list we can go on further.

9 A. It's up to you, Mr. Connell.

10 Q. And you would agree, there's a whole list of insurance
11 companies; isn't that true?

12 A. And policyholders, that's right.

13 Q. There are only a few policyholders; isn't that true?

14 A. Well, I think there's maybe about 12 now. I've got two
15 other trials in January that are policyholders cases, one in
16 Florida and one in Pennsylvania, actually, that are coming up.

17 Q. But on the list I have, that's less than 5 percent.

18 A. Well, I think there's probably, on the list of testimony
19 that I've given, around 10 or 12.

20 Q. Yes, sir. I'm talking about the entire universe of what
21 you've done.

22 A. Right.

23 Q. Less than 5 percent, right?

24 A. If you can do the math, yes, I would say that's probably
25 right.

1 Q. Yeah. You agree, do you not?

2 A. Yes.

3 Q. Okay. Now, you've also testified in at least, I think
4 you said in your deposition, at least six Lloyd's cases; is
5 that right?

6 A. I think that's right, yes.

7 Q. So you've had experience with Lloyd's of London; is that
8 right?

9 A. As I've testified, that's right.

10 Q. Now, you also, as I understand it, and you can correct
11 me if I'm wrong, you are the executive director of the
12 Federation of Defense & Corporate Counsel; is that right?

13 A. That's correct.

14 Q. And that's a group, correct me if I'm wrong, isn't it
15 true, that's a group that defends insurance companies around
16 the world; isn't that right?

17 A. Yes, sir.

18 Q. Alright.

19 A. And it's also including insurance companies themselves.
20 So we will have members who are underwriters, claim adjusters
21 also, who are members of the organization, as well as insurance
22 finance companies, corporate officers, like Federal Express is
23 a member, so we represent all of those entities that are
24 involved in the insurance space that are peer-reviewed. You
25 can't join the organization, you have to be nominated by a

1 current member, seconded by a member from your state, and then
2 you are allowed to go through an admissions vetting process
3 which takes maybe three to four months, and if found acceptable
4 you are then invited to join.

5 Q. You're not going to let me or Trey join, are you?

6 A. I beg your pardon, sir?

7 Q. You're not going to let me or Trey DesChamps join your
8 organization, are you?

9 A. We'd be happy to have you two, sir.

10 Q. Well, I appreciate that. Alright. So let's talk about,
11 you had indicated during your deposition that there are, like,
12 70 to 80 syndicates of Lloyd's of London; is that right?

13 A. Yes, sir.

14 Q. And as I understand it from what you said in your
15 deposition, that a syndicate is just a group of mostly insurers
16 who want to take a risk and they are involved in the syndicate;
17 is that right?

18 A. Not quite, Mr. Connell. So let me explain. A syndicate
19 is essentially a group of individuals who come together under a
20 common name. Like, let's say we wanted to form the Connell
21 Syndicate today, and we all pitched in a certain amount of
22 money, and we're going to offer that or use that money to offer
23 insurance to other organizations that meet our admissions
24 criteria and who we then provide insurance coverage for. So
25 syndicates are comprised of people like you and me, they're

1 comprised of institutional investors, corporations, and others
2 who provide the funding for that syndicate to offer insurance
3 around the world.

4 Q. And it's true, is it not, that the Lloyd's syndicates,
5 as you said in your deposition, insures everything from Taylor
6 Swift to satellites; isn't that right?

7 A. That's right, as well as A. Tebele & Sons.

8 Q. And it's also true, is it not, and you said in your
9 deposition, that you were the vice president of the insurance
10 company for many years; isn't that right?

11 A. Three years, yes.

12 Q. And you also were in charge of claims. You were a
13 corporate claims counsel for insurance companies?

14 A. That's right.

15 Q. And it's true that you were that for many years, too, is
16 it not?

17 A. Three years, the same position.

18 Q. And it's true that you said in your deposition, quote:
19 I have represented insurance companies my entire life. Isn't
20 that right?

21 A. Yes, sir, as well as the policyholders that are provided
22 insurance coverage by those insurance companies.

23 Q. And it's also true, is it not, that you said you, quote:
24 Worked for insurance companies my entire life. Isn't that
25 true?

1 A. Yes, as I was retained by them, and represented the
2 policyholders like A. Tebele & Sons against whom claims were
3 made, and I defended those claims.

4 Q. And it's true, also, that you had said in your
5 deposition, quote: And I have adjusted claims all my life.
6 Isn't that correct?

7 A. Not all my life, but since I got involved in the
8 insurance business, that's correct.

9 Q. Alright. I stand corrected on that. Alright. So you
10 also indicated in your insurance company that you were actually
11 aware and had been to the HDI Global Specialty insurance
12 company in Germany; is that correct?

13 A. In Hanover, that's right.

14 Q. And you described it, isn't it true, as an eight-story
15 building; isn't that correct?

16 A. To the best of my recollection, yes.

17 Q. Alright. And is it also true, sir, that you have
18 described, or that you put on your resume you have a London
19 address, also; isn't that true?

20 A. Yes. I have a corresponding office in London as part of
21 the Bowood's brokerage.

22 Q. And how far is that from the Lloyd's syndicates
23 operations?

24 A. Well, the Lloyd's syndicates operations are in a variety
25 of different offices within London itself, as well as around

1 the world, and each one of the syndicates has what's called a
2 box at Lloyd's on the various training floors, and the way it
3 works is that brokers will come to the individual underwriters
4 for those syndicates with a policy, a schedule of values. So
5 we'll sort of liken it to what happened here, and they will
6 bring those to the underwriter sitting in the box, and the
7 underwriter will ask the broker a series of questions, what do
8 you know about these folks, are they a good risk, they'll look
9 at the schedule of values, they'll make some computations, and
10 then they will decide how much of that risk they would like to
11 take, and it's usually a percentage of the 100 percent of the
12 risk.

13 Q. So everybody's taking part of the risk so they can make
14 part of the profit, right?

15 A. No. They're taking part of the risk to provide coverage
16 and to provide financing and money for valid claims when they
17 occur.

18 Q. Well, they're doing it for profit, though, aren't they?
19 It's not something for free, right?

20 A. Well, it's certainly not an illegal mercenary or a
21 not-for-profit organization. Lloyd's syndicates have insured
22 everything from the World Trade Centers to when hurricanes and
23 tornadoes and fires, San Francisco fires, earthquakes, happen.
24 They are large insurers of very difficult to insure things.

25 Q. And it's true, is it not, that in this case, there is

1 something called the Brit, B-R-I-T, I guess, and KLN
2 syndicates; isn't that right?

3 A. Well, Brit is a syndicate, and Kiln, K-I-L-N, but it's
4 abbreviated on the sticker, you're absolutely right, Mr.
5 Connell, as K-L-N, as a little monogram or notation.

6 Q. And in regard to this case, isn't it true that those two
7 syndicates were taking part of the risk on this particular
8 policy?

9 A. That's exactly right.

10 Q. Alright. And it's true, also, that you never talked to
11 a witness in this case; isn't that right?

12 A. That's correct.

13 Q. And then --

14 A. I let the record and all the documents that I reviewed
15 speak to me objectively so that I can render an opinion.

16 Q. Alright. And it's also true, is it not, that you've
17 never been a professor in any law school; isn't that true?

18 A. That's right, but I do serve as a adjunct professor at
19 Appalachian State University in the Insurance and Risk
20 Management Program in Boone, North Carolina, and I've been
21 asked by Commissioner Farmer, the South Carolina Department of
22 Insurance commissioner, formerly, to also come to the insurance
23 department and work with him on some matters, as well as in
24 North Carolina.

25 Q. And you would agree with me, would you not, that

1 Professor Finkel's qualifications are stellar; isn't that true?

2 A. That's for the Jury to decide, Mr. Connell.

3 Q. You don't take issue with his qualifications, though; do
4 you?

5 A. I did not look at anything other than what Mr. Finkel
6 presented. It will be for the Jury and His Honor to decide
7 what weight to give his testimony and his credentials in claims
8 handling practices.

9 Q. And you also said, isn't it true, that you said that you
10 had met with Mr. Watson on one or two occasions before this
11 case?

12 A. We had worked on, I think, one or two other cases before
13 this case, that's right.

14 Q. And those were Lloyd's cases; isn't that true?

15 A. I'd have to go back and check, Mr. Connell. I don't
16 recall off the top of my head. I believe one may have been.

17 Q. And isn't it true in your deposition and your testimony
18 today that you are not making any statements regarding what
19 Crescent Coast did in concerns to this case? Isn't that true?

20 A. That's true.

21 Q. Now, let me ask you this: You've been in this business
22 for a long time --

23 A. 40 years.

24 Q. -- isn't it true that every insurance agent should have
25 a license in the state in which they sell insurance?

1 A. That's beyond the scope of my retention, Mr. Connell. I
2 did not take any issue or look at any of those matters.

3 Q. Were you in all your years as an insurance counsel, as
4 an expert, you have never run across a situation where agents
5 are not licensed in selling insurance?

6 MR. ADAMS: I'm going to object on was asked and
7 answered and, as well, it's outside of the scope of direct.

8 MR. CONNELL: It's on cross.

9 THE COURT: I'm going to overrule your objection.

10 BY MR. CONNELL:

11 Q. So you didn't hear the testimony? I know you weren't
12 here, but I'm sure you've heard about it. Mr. Sutherland came
13 on, got on the stand, and he testified and he don't have no
14 license to sell insurance in South Carolina.

15 A. I wasn't aware of that.

16 Q. You've got to have a license to sell insurance; don't
17 you? Isn't that true?

18 A. I'd have to go back and take a look at the laws of South
19 Carolina with regard to that. It's really outside of my claims
20 handling retention that I'm here to talk about today.

21 Q. Well, you ain't never been in no state where they
22 haven't had insurance licenses for sales agents, have you?

23 A. I'd have to go back and take a look, Mr. Connell.

24 Q. Okay. Alright.

25 A. I'm not an agent.

1 Q. Alright. And isn't it true that you also offered no
2 opinion about Mr. Tebele's actions in this case? Isn't that
3 true?

4 A. Yes.

5 Q. That's what you said in your deposition?

6 A. Yes.

7 Q. And it's true, isn't it, that all the consumer really
8 wants in his case, if he's buying insurance, is he wants to
9 make sure he's getting coverage; isn't that right?

10 A. He wants to make sure he has coverage based upon the
11 terms and conditions of the contract that has been afforded to
12 him.

13 Q. But, Mr. Hennes, in a case like this, in any case where
14 you have insurance, the consumer does not get to go look at the
15 policy in a situation like this, like he can look at a car and
16 see if he wants to drive it, he has to rely, does he not, on
17 the insurance company to make sure they're going to do what
18 they're supposed to do at the end of the case if there's a fire
19 or something; isn't that right?

20 A. That's exactly what they did here.

21 Q. So you think they did everything correct, is what your
22 position is; is that right?

23 A. Based upon my objective review of the record and all the
24 documents that I have to look at, that's absolutely right.

25 Q. And you don't care one iota that he spent \$175,000.00 in

1 premium, and the building burned down, and he's not going to be
2 entitled to recover; isn't that right?

3 A. Oh, Mr. Connell, I care a lot about that.

4 Q. You do?

5 A. I absolutely do, absolutely. I mean, this policy was
6 still in force after the fire. It was never canceled. All the
7 other 22 -- excuse me --

8 Q. And what gives --

9 MR. WATSON: Your Honor, may the witness be allowed
10 to answer the question?

11 THE COURT: Let him finish his answer.

12 MR. CONNELL: Yes, Your Honor.

13 A. All the other 22 locations continued to be insured
14 throughout the period of 2019 through 2020. This location was
15 insured, as well. If there had been another loss or a
16 hurricane came through and destroyed part of the building, if
17 that was a coverage cause of loss, that would have been
18 covered. The way in which insurance works is that \$22 million
19 dollars of insurance coverage was provided for the \$170,000.00
20 of premium that was paid. And much like we've seen in larger
21 cases of hurricanes and tornadoes, World Trade Center
22 situations, companies and people like us will pay a smaller
23 amount of premium for a much larger amount of coverage that we
24 will be provided for our covered and valid claims once they
25 occur based on the terms and conditions of the contract that

1 was provided to us.

2 Q. Now, you mentioned the World Trade Center. It's true,
3 and you would agree with me, that the World Trade Center
4 insurance litigation went on for years; isn't that right?

5 A. Yes, sir.

6 Q. So it wasn't that insurance companies were paying, there
7 was litigation about that; isn't that right?

8 A. Yes, sir.

9 Q. Alright.

10 A. The question was whether there were one or two
11 occurrences so that the insurance companies could be advised
12 how much money they would have to pay out based upon the valid
13 claims that arose after the World Trade Center fell.

14 Q. And it's true in this case, you've talked about a
15 hurricane, we don't actually know whether or not Lloyd's of
16 London would have paid for a hurricane or not. They would have
17 gone through the same process and they might have found that
18 the claim wasn't covered; isn't that true?

19 A. No, sir. I think what would have happened is the same
20 thing that happened here, is that the third-party administrator
21 would have gone through the process of performing an objective
22 and thorough investigation, much like was done here, take
23 photographs to send back to the people in London, and to make
24 sure that everyone was aware of what occurred so that the scope
25 and nature of the damage could be evaluated, and that coverage

1 could then be evaluated accordingly, based upon the terms and
2 the conditions of the policy.

3 Q. But we don't know, it's true, is it not, we don't know
4 whether or not there was some other exclusion deep in the
5 policy that would not have paid for a hurricane, we just don't
6 know right now because there's been no claim, correct?

7 A. Well, it would cause us, really, to speculate; wouldn't
8 it, and I would take issue --

9 Q. But that's what --

10 A. -- Mr. Connell, with your statement that exclusions are
11 deep. Exclusions are on just the way every piece of component
12 of that policy is. The ones that where coverage is afforded,
13 how much is available, what the definitions are, exclusions and
14 endorsements are not hidden nor deep, they're in the same
15 composition within that policy as everything else is.

16 Q. Well, I'm glad you made that point. So you're looking
17 at the language of the policy when you make your opinions; are
18 you not?

19 A. I'm looking at the language of the policy to evaluate
20 whether the insurers had an informed basis and made an
21 objectively reasonable decision as to whether coverage could be
22 afforded.

23 Q. Alright. So one of the exhibits in the case, and you
24 actually got it highlighted: AS indicated on the schedule of
25 values on file with the company. Do you see that?

1 A. I do.

2 Q. And it's true, is it not, that there are no AS symbols
3 on the schedule of values in this case. Yes or no?

4 A. As I testified, that's absolutely right.

5 Q. Alright. And so that's actually in violation of the
6 endorsement; is it not?

7 A. No, sir.

8 Q. That's what it says on there.

9 A. No, sir.

10 Q. Isn't the insured, Mr. Tebele, entitled to rely on this:
11 As indicated on the schedule of values on file with the
12 company. Isn't he entitled to that?

13 A. He's entitled to rely upon everything that is in that
14 policy based upon the manner in which that policy exists.

15 THE WITNESS: Your Honor, with your permission?

16 THE COURT: Yes, sir.

17 THE WITNESS: So as we went through the process
18 before -- sorry, Mr. Connell.

19 MR. CONNELL: No problem.

20 A. What Mr. Connell is talking to us about today and right
21 now is the symbol of AS that we have here, but these are two
22 separate and distinct columns. What these columns are
23 referring to are the locations applicable, and what is
24 locations applicable are as indicated on the schedule of values
25 on file with the company.

1 Q. Alright. And you would agree with me, would you not,
2 that the terms of an insurance policy are to be construed most
3 favorably in the Plaintiff's or the insurer's favor, isn't that
4 correct?

5 A. In the event there is an ambiguity, that is correct, but
6 as we know here, there is no ambiguity within this insurance
7 policy.

8 Q. Well, there is an --

9 A. I'm sorry. The policy is interpreted and reviewed based
10 upon the clear and normal way in which these terms and words
11 are used in everyday language.

12 Q. Well, there is an ambiguity, because there's no AS on
13 the policy that y'all put together or that Lloyd's of London
14 put together; isn't that true?

15 A. No, sir.

16 Q. There's no AS on there, right?

17 A. The AS is part of what, as it says on the endorsement,
18 part of the schedule of values, where that is indicated, which
19 is on file with the company. There are two separate indistinct
20 columns.

21 Q. Do I need to show you the schedule of values so that you
22 can see and agree with me that there's no AS in the schedule of
23 values in this case?

24 A. No, I agree with you.

25 Q. We agree. Okay.

1 A. Yes, that's absolutely right.

2 Q. Alright.

3 A. Yeah. There in the application that with 100 percent
4 sprinklered, and on the schedule of values, as well.

5 Q. Okay. And you, of course, know that Mr. Tebele was in
6 the process of constructing a sprinkler system through a
7 contractor; isn't that correct?

8 A. Yes, I believe that's correct --

9 Q. Alright.

10 A. -- as I testified today.

11 Q. And you've heard about that before, haven't you?

12 A. Sure.

13 Q. And Mr. Tebele was spending some \$235,000.00 to do that,
14 was he not?

15 A. Yes, sir.

16 Q. And Mr. Tebele had not had -- the contractor was not
17 able to connect it to the fire hydrant; isn't that true?

18 A. I believe that's the testimony, yes.

19 Q. And so Mr. Tebele had not actually had inspections done
20 from the City of Myrtle Beach to approve the use of that
21 system; isn't that true?

22 A. I think that's correct, and so there's some time that
23 the tap connection is actually made that the city will then
24 wait until that happens and then come out and inspect the
25 process, so flood the system, make sure everything works for

1 you.

2 Q. It's true, is it not, that since he didn't have the
3 inspections done, he couldn't have maintained it because it
4 hadn't been connected; isn't that right?

5 A. That's right.

6 Q. Alright.

7 A. There was no connection made.

8 Q. And so that wasn't in his control, he was waiting on the
9 contractors who had specialized knowledge in how to do that;
10 isn't that true?

11 A. With regard to what, Mr. Connell?

12 Q. With regard to building the vault so that the system
13 could be connected up to the water.

14 A. That's all what he hired the contractors for.

15 Q. Alright. And that was not in his control; was it? He
16 was trying to get that done, but that was not in his control.

17 A. What wasn't in his control?

18 Q. The ability to construct the vault to connect it to the
19 system.

20 A. It was certainly in his control that it was his
21 property. It was certainly in his control that he hired the
22 particular experts to undertake that work. It was also within
23 his control if the work isn't getting done fast enough or
24 properly enough to protect a restaurant in which there are
25 going to be patrons and where there is a requirement of the

1 policy where the protective safeguard endorsement will be
2 applied.

3 Q. But it wasn't in his control to actually do the work, he
4 had to rely on someone else; isn't that true?

5 A. Sure.

6 Q. And these people he was relying on, you just don't find
7 them on street corners, those are people you actually have to
8 go out and hire and have specialized knowledge in doing this
9 type of work?

10 A. That's right.

11 Q. And in this case, the Crawford company, I think you know
12 them well, right? They're a well-respected sprinkler system;
13 isn't that correct?

14 A. They are.

15 Q. And they were the fly-by-night group, right?

16 A. That's my understanding, yes.

17 Q. And they had a contract with Mr. Tebele that said that
18 he could not touch the system during the course of them doing
19 any construction; isn't that right?

20 A. He could not touch the system because it might void the
21 warranty. So I think as Mr. Tebele read it in to all of us
22 here this morning, there was a statement that the company that
23 is putting the sprinkler system in place is the one that is
24 doing that work, and it cannot be done by anyone else without
25 the chance of voiding or damaging something, inadvertently, of

1 course, that might then have to be fixed by the company that's
2 making the installation.

3 Q. Now, it's true, is it not, that it did say about the
4 warranty, it said he could not touch that because that was a
5 contractual term in the policy --

6 A. That's right.

7 Q. -- during the contract, right?

8 A. That's right.

9 Q. Okay. So warranty had nothing to do with it, he agreed
10 when he took -- when he purchased the sprinkler system that
11 they had full control over how to work it, how to install it,
12 how to make sure it operated properly, that was their job, and
13 he was not to be involved in it?

14 A. Well, I don't know that I would say that the Crawford
15 company would be the ones who made sure that it operated
16 properly, they were retained for the purpose of putting it in
17 place. Mr. Tebele retained control over the rest of his
18 building and everything else to make sure that that was then
19 operational, maintained, and connected.

20 Q. Alright. Now, I know you've seen, I asked you in your
21 deposition, you've probably seen this five or six times.
22 You've seen the email, the infamous email between the agent and
23 Amwins Access; have you not?

24 A. Yes, sir.

25 Q. And you agree with me, do you not, that that's exactly

1 the same location where Mr. Tebele's property is; isn't that
2 correct?

3 A. It is part of it, so I think as you probably have heard
4 before, this is a 36,000 square-foot property of which the La
5 Casona Mexican Restaurant had a 9,000 square-foot piece for its
6 restaurant. The rest of it was vacant --

7 Q. Okay.

8 A. -- and was still under Mr. Tebele's ownership and
9 control.

10 Q. And it's true, is it not, that before the policy
11 application was even provided, that Crescent Coast sent an
12 email to Amwins Access and said: We know that the restaurant
13 is not sprinkled. Isn't that true?

14 A. Which Amwins organization, sir?

15 Q. It says Amwins Access.

16 A. Yes, that's right.

17 Q. Alright. I take that back. We don't know, because it
18 says Amwins dot com there, does it not?

19 A. Well, that's the email address, but as we know from the
20 testimony that was provided by Ms. Northcutt, both in her
21 deposition, as well as live here before you through Zoom, that
22 she worked and continues to work for Amwins Access, which is a
23 separate and distinct organization from Amwins Special Risk
24 Underwriters, which was actually the managing general agent
25 which worked to place this policy, and which had the binding

1 authority from the insurance companies to work in affording
2 coverage to A. Tebele & Sons.

3 Q. Well, we know for a fact that prior to the application
4 being filed, that are being submitted, I should say, that this
5 email was sent; isn't that right?

6 A. That's what is correct, yes.

7 Q. Alright. So clearly, Amwins Access had notice, correct?

8 A. Amwins Access received an email -- received an email
9 from Crescent Coast stating that they had received a telephone
10 call from Melissa Garcia advising that a correction had to be
11 made with regard to the application for insurance that she had
12 provided separately, and that Amwins Access helped her procure,
13 that her part of the building was 100 percent sprinklered, and
14 she wanted to make sure that the underwriters and people knew
15 that was not, in fact, the case.

16 Q. And despite that email being sent two hours later, the
17 Crescent Coast agent sent an email -- or a bound -- or sent an
18 application in; isn't that correct? About two hours later?

19 A. For whom?

20 Q. He sent an email -- sent an application in for Mr.
21 Tebele --

22 A. That's right.

23 Q. -- for coverage --

24 A. That's right.

25 Q. -- within two hours of this -- Exhibit 23.

1 A. That's correct, however, that was undertaken by Amwins
2 Specialty Risk Underwriters, not by Amwins Access. Again, two
3 separate independent organizations.

4 Q. Well, so here, let's talk about that. Amwins is a huge
5 company; is it not?

6 A. It is a large insurance brokerage.

7 Q. Amwins Access and Amwins SRU, Amwins Brokerage --

8 A. Oh, they're all in this.

9 Q. -- they're all kind of the, kind of arms of the same,
10 are they not?

11 A. No, they are different divisions. There's no
12 interrelationship between them. There's no sharing of computer
13 systems or email systems or file folders. They all have their
14 unique specialties areas of insurance that they place, as Ms.
15 Northcutt and Mr. Melvin have testified.

16 Q. So in other words, the right hand didn't know what the
17 left hand is doing; isn't that right?

18 A. Well, no, sir. I would take issue with the fact that
19 the right hand and the left hand, they're both independent
20 hands. They're both doing their own thing.

21 Q. Well, that's --

22 A. They're all serving the best interests of their
23 customers.

24 Q. That's not exactly true because Whitney Northcutt is
25 sending emails to Barrett Sellers, and he's at another agency,

1 and he's sending emails to Mr. Melvin, and all these emails are
2 going round and round, so they're all working together; isn't
3 that right?

4 A. Not with regard to Mr. Tebele's property policy.

5 Q. Well, you've seen emails back and forth, so they do talk
6 to each other; don't they?

7 A. Of course, they do.

8 Q. Yeah. So it's not -- you try to compartmentalize it in
9 one little sealed room, but it is true they talk to each other
10 all the time about stuff; do they not?

11 A. Well, they may talk to each other about certain things,
12 but they didn't talk to each other about A. Tebele & Sons
13 property policy and the fact that the application that was
14 submitted through Amwins Specialty Risk Underwriters to the
15 insurers, HDI Global, and General Security Indemnity of
16 Arizona, and the Certain Underwriters of Lloyd's indicated that
17 this particular facility was 100 percent sprinklered and
18 mirrored the schedule of values.

19 Q. It's true, is it not, that in South Carolina, the
20 insurer, such as the Defense in this case, owe a duty to the
21 insurer, Mr. Tebele, above that to which they owe to
22 themselves; isn't that right?

23 A. As I've testified, that's right.

24 Q. Well, no, sir, you said, equal.

25 A. No, I said at least equal.

1 Q. But you agree with me, do you not, that the duty of the
2 insurer is to take care of the insurer, take care of Mr.
3 Tebele, above the duty it has to itself; isn't that right?

4 A. Based upon the terms and conditions of the contract, to
5 look for coverage so that coverage can be afforded to valid
6 claims that are submitted.

7 Q. Alright. And it's true, is it not, that you don't know,
8 and apparently no one knows who prepared the schedule of values
9 in this case; isn't that true?

10 A. That's my understanding, yes.

11 Q. And it's true Mr. Tebele never signed that; isn't that
12 right?

13 A. That's right.

14 Q. And you say he never saw it; isn't that true?

15 A. I think that's what he said, yes.

16 Q. And it's true, is it not, that in the EUO and in the
17 deposition that the insurer's employees thought he was credible
18 and believable; isn't that right?

19 A. I don't know. I would have to ask them with regard to
20 their evaluation of Mr. Tebele. What I do know is that with
21 respect to the schedule of values, whether or not they were
22 seen or not seen by Mr. Tebele, prepared or not prepared by Mr.
23 Tebele or someone on his team based upon prior policies that
24 the schedule of values was also attached to, that somehow or
25 other, we came up with \$22 million dollars of values for all of

1 the properties that Mr. Tebele wanted to have insured, and
2 that's what these insurers provided.

3 Q. Alright. And you did not see in your file any other
4 reason why the claim was denied other than this endorsement;
5 isn't that true, the protective service's endorsement?

6 A. Yes, sir.

7 Q. Yes, sir, you did not see any other reason?

8 A. That's correct.

9 Q. Alright. And you would agree with me, would you not,
10 that the policy provides for coverage for additions added on
11 for construction; isn't that true?

12 A. I did not take a look at making any kind of policy
13 interpretations, Mr. Connell. The policy with regard to
14 anything with regard to those matters would speak for itself.

15 Q. So you didn't look at this part of the policy on the
16 property damage? Come down here, please, sir.

17 A. I looked at the --

18 THE WITNESS: Your Honor, with your permission?

19 THE COURT: Yes, sir.

20 BY MR. CONNELL:

21 Q. You've made the -- it's true, I think you said in your
22 deposition, you've made no decision about this part of the
23 policy; isn't that right?

24 A. That's right, and, again, I looked at the entire policy
25 and all the various papers that were provided to me, and this

1 certainly was one of them.

2 Q. Alright. And read this part right here, 5A.

3 A. Okay. Well, let's make sure we put it in perspective.

4 Q. Let me just ask you to read what I said and you can
5 explain whatever you want.

6 A. Okay.

7 Q. Read 5A, please, sir.

8 A. Alright: If not covered by other insurance, additions
9 under construction, alterations, and repairs to the building or
10 structure.

11 Q. Alright. And you did not look at this in your
12 assessment of the claim; isn't that correct?

13 A. I did look at that because it was part of the policy
14 that I reviewed, but now that I've read it out loud, let's also
15 make sure that we're fair and read the entirety and putting it
16 in context. This is a property damage coverage which under
17 coverage A says: We will pay for direct physical loss of or
18 damage to covered property at an insured location, like the
19 schedule of values that are listed on those 23 locations,
20 caused by or resulting from any covered cause of loss. And
21 then it goes down to the bottom of number 5. As it states
22 here: Covered property, as used in this policy, means the type
23 of property described in this section, A1, and limited in A2,
24 which is not on your thing: Property not covered. And then it
25 goes on from there.

1 Q. And you made no assessment about this; isn't that
2 correct?

3 A. I --

4 Q. That's what you said in your deposition?

5 A. That's right, that's right.

6 Q. Okay.

7 THE WITNESS: Can I sit back down, Mr. Connell?

8 MR. CONNELL: Yes, sir. Thank you, sir.

9 THE WITNESS: My pleasure.

10 BY MR. CONNELL:

11 Q. And you didn't find anything in the records from the
12 insurer that they had actually looked at that section of the
13 policy?

14 A. I didn't see one way or the other whether they did or
15 they didn't. I'm assuming that based upon what the third-party
16 administrator did and the insurers did to try to find coverage
17 for the loss, that they looked at the entire policy that they
18 had provided to A. Tebele & Sons.

19 Q. Well, that's not my question, though. You didn't
20 actually see anything in the record of the claims that they
21 actually looked at that part of the policy; isn't that true?

22 A. No. As I said, Mr. Connell, I can't tell whether they
23 did or they didn't. There was not anything that I saw within
24 the record of documents that I was provided one way or the
25 other. What they were looking for was a way to provide

1 coverage with the fire loss claim, and based upon the
2 protective safeguard endorsement condition and its exclusion,
3 the determination was made reasonably and objectively in a
4 timely manner and consistent with customs and practices that
5 coverage for this fire just could not be afforded.

6 Q. But they didn't look at the provision I just showed you;
7 did they?

8 A. Yeah. It's the same question, Mr. Connell. I don't --

9 Q. But I'm trying to get you to answer it, that's what I'm
10 trying to do.

11 A. I did, sir.

12 Q. Alright.

13 A. I said that I can't tell based on the documents.
14 There's no listing. We took a look at this page. We took a
15 look at this page. We took a look at this condition. We took
16 a look at this subparagraph and this sub-subparagraph. It
17 doesn't go into that level of detail. What I can say is that
18 based upon the deposition testimony that I've read, that there
19 was an effort to look through the entirety of this policy to
20 try to find a way to make this a valid claim that the insurers
21 could pay.

22 Q. Alright. It's just not in the records that they did
23 look at this part of the policy, correct?

24 A. It's not in the record denoted specifically. What is in
25 the record is that they looked at the entire policy.

1 Q. Alright. Now, how about Mr. Twaddell's email, did you
2 see his email?

3 A. Yes, sir.

4 Q. Did you see his email where he actually asked about this
5 section of the policy?

6 A. Yes, sir.

7 Q. And did you see any response to that from the insurance
8 carrier in regard to this part of the policy?

9 A. I don't recall.

10 Q. The answer is no, right?

11 A. I don't recall.

12 Q. Would you like to look at the whole claims file again
13 and see if you can find that right now?

14 A. I'd be happy to.

15 Q. You can't, though, can you?

16 A. I sure can.

17 Q. You can't find it, though?

18 A. I'd have to take a look, sir.

19 Q. And there's no question, is there, in this case, that
20 Mr. Tebele's building is a total loss; isn't that right?
21 You're not arguing about that; are you?

22 A. I don't know. I didn't look at the value. I didn't
23 look at the total loss. I know it's still standing, so I'm not
24 sure what the condition is at this time.

25 Q. You've heard -- well, you weren't here for the

1 testimony, so you don't know what happened about that; isn't
2 that right?

3 A. About what, sir?

4 Q. About whether the building is a total loss.

5 A. No.

6 Q. And I think you said this in your deposition, that you
7 take no position on what Crescent Coast did or didn't do in
8 this case, isn't that right?

9 A. As I testified, that's right.

10 Q. And you talked about the binder. Let me talk to you
11 about that a little bit. It is true, is it not, that the
12 binder doesn't actually itemize all 23 properties; isn't that
13 correct?

14 A. That's correct.

15 Q. And it's also true that the binder has the protective
16 services endorsement on it; isn't that correct?

17 A. No, sir, no, sir. Protective safeguard endorsement.

18 Q. Protective safeguard?

19 A. That's right.

20 Q. Thank you.

21 A. It is listed along with all the other aspects that
22 comprise the policy that was eventually provided.

23 Q. And you would agree with me, would you not, that we
24 don't really know from the binder, just looking at the binder,
25 whether the protective safeguards endorsement applies to all 23

1 properties or just the four that Mr. Tebele had told the agent
2 about?

3 A. That's correct, it's not specified. It's specified that
4 it applies to the policy overall and has to be read in
5 conjunction with the overall terms and conditions that comprise
6 that policy.

7 Q. And --

8 A. Obviously, there will be no ability to provide a
9 protective safeguard endorsement to a property that doesn't
10 have a sprinkler system.

11 Q. And you agree with me, do you not, that it's true that
12 Mr. Tebele did not get the 80-page policy until it was
13 presented to him on the fire claim; isn't that right?

14 A. Yes, that's right.

15 Q. That's the first time you saw it, correct?

16 A. I think that's correct.

17 Q. And it's true, is it not, that the agent, Crescent
18 Coast, had the policy prior to that time? Isn't that true
19 based on your understanding of the testimony?

20 MR. ADAMS: Objection. Misstates testimony and calls
21 for speculation.

22 THE COURT: I'm going to allow him to answer the
23 question.

24 THE WITNESS: I'm not aware of when Crescent Coast
25 received the policy, sir.

1 BY MR. CONNELL:

2 Q. Do you remember what day they received it?

3 A. No, sir. I know when they provided it to Mr. Tebele.

4 Q. Now the coverage limit on the policy is \$2,850,000;
5 isn't that true?

6 A. No, it's \$22 million dollars.

7 Q. I'm talking about this loss.

8 A. Yes. For this --

9 Q. 2 million --

10 A. -- loss or this property, this location?

11 Q. This property, 1901 --

12 A. North Kings Highway.

13 Q. -- North Kings Highway.

14 A. Yes.

15 Q. \$2,850,000.00, right?

16 A. For this location, that's correct.

17 Q. And the policy also has an ordinance and law provision;
18 does it not?

19 A. It does.

20 Q. Tell the Jury what an ordinance and law provision is.

21 A. It would require me to interpret the policy, which is
22 beyond the scope of expert witness testimony, and I would
23 invade the province of the Court if I were to do so, unless the
24 Court wished me to do so.

25 Q. It's true, also, that you indicated when I took your

1 deposition before that there was an error in your report; isn't
2 that correct?

3 A. Yes, I made a couple of typographical errors, one of
4 which was, I listed the scheduled location as number 11 as
5 opposed to number 10.

6 Q. No, I was talking about the section where I asked you
7 what you understood the law to be, and you said that you made a
8 mistake, there was no statute on bad faith law in South
9 Carolina.

10 A. That's right.

11 Q. So you made an error report in that regard; did you not?

12 A. I did, and I amended it as we got together during my
13 deposition --

14 Q. That --

15 A. -- and corrected the transcript and my opinions
16 accordingly.

17 Q. Yes, sir, and that wasn't until I asked you about that
18 and you realized it was an error; isn't that true?

19 A. That's right.

20 Q. And it's true you looked up the South Carolina laws in
21 regard to this case; isn't that true?

22 A. Well, we just determined that there were none, so that
23 would be correct.

24 MR. CONNELL: Alright, sir, thank you much. I
25 appreciate it.

1 THE WITNESS: Thank you, Mr. Connell. I appreciate
2 you as always.

3 MR. CONNELL: Yes, sir. Thank you.

4 THE COURT: Mr. Adams?

5 MR. ADAMS: No, I don't have any questions for this
6 witness, Your Honor.

7 THE COURT: Okay. Redirect?

8 MR. WATSON: Yes.

9 **REDIRECT EXAMINATION**

10 BY MR. WATSON:

11 Q. Mr. Hennes, among the long list of cases of insurance
12 companies that Mr. Connell read to you before he got tired --

13 A. I didn't get tired.

14 Q. No, before he got tired --

15 A. Oh.

16 Q. -- of reading them to you. He was tired. One of the
17 law firms that hired you was one of Mr. Tebele & Sons' own
18 counsel?

19 A. Yes, sir.

20 Q. That was Mr. Weaver from Reed Smith?

21 A. Yes. I've worked with them on many occasions, and in
22 fact, the trial that I mentioned in January is with Reed Smith.

23 Q. And just because you happened to have worked for a
24 variety of insurers and policyholders, did you make up your
25 mind ahead of time before you reviewed all this matter about

1 how your opinions were going to come out?

2 A. No. As a matter of fact, there are probably as equal as
3 many matters that I refuse to participate in as those that I
4 do. Reputation in this business is everything, and I would not
5 have a good conscience to come before you and tell you what I
6 found based upon my objective review of the record if I felt
7 that I was biased in any way.

8 Q. On the protective safeguards fire endorsement, AS
9 automatic sprinkler system is defined in those paragraphs that
10 come above?

11 A. Yes, it is.

12 Q. And one of the words that's used in the definition is
13 the word "connected." Was this a fully connected sprinkler
14 system?

15 A. No.

16 Q. Because it wasn't connected to the water supply?

17 A. Correct. It wasn't connected to the main.

18 Q. So by definition, could a system that was never
19 connected fit -- be an automatic sprinkler system for purposes
20 of this endorsement?

21 A. No.

22 Q. And likewise, did you read anything in the record that
23 told you that there was an automatic sprinkler system in
24 complete working order, Mr. Hennes?

25 A. I think probably the best evidence comes from Mr. Tebele

1 himself, that it wasn't connected and was not in working order
2 at the time of this fire.

3 MR. WATSON: Thank you, Mr. Hennes.

4 THE WITNESS: Thank you, Mr. Watson.

5 MR. CONNELL: Just one question, Mr. Hennes.

6 THE WITNESS: Yes, sir.

7 **RECROSS-EXAMINATION**

8 BY MR. CONNELL:

9 Q. The system was under construction at the time of the
10 fire; isn't that true?

11 A. Yes, sir.

12 Q. Thank you.

13 A. It was not connected.

14 Q. It was under construction, though, right?

15 A. It was not connected. I don't know to what level the
16 construction had -- was continuing, or whether there was just a
17 tap connection that still had to be made.

18 Q. Well, we do know that Mr. Tebele was trying to get the
19 construction finished; do we not?

20 A. He was trying to get it connected, that's right.

21 Q. He was trying to get the -- there was still construction
22 to be done; isn't that true?

23 A. I think there was still construction that involved
24 getting the tap connected to the main, yes, sir.

25 Q. Okay. Construction, right?

1 A. It was --

2 Q. Do we agree on that, at least, construction?

3 A. No, sir, because construction has a different term of
4 art. What Mr. Tebele testified to and what the record reveals
5 is that there had been no tap connection that had been made at
6 the time, much like Ms. Garcia's call to Crescent Coast noted
7 that there had not been a connection to the main done at the
8 time that she submitted her policy yet. Mr. Tebele testified
9 that he was waiting for the folks at Crawford to complete the
10 connection to the main. To what extent there were still
11 connections that had to take place, the little ambient bulbs
12 being placed within the fire sprinkler systems themselves, I
13 don't know. What I do know is, at the time of this fire, that
14 there had been no connection made to the main, and that there
15 was no connection or any water flowing through the system.

16 Q. You've got to have it constructed before you can
17 maintain it; isn't that true?

18 A. Absolutely.

19 MR. CONNELL: Yes, sir. Thank you.

20 THE COURT: Alright. Thank you, Mr. Hennes.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: You can step down.

23 THE WITNESS: Thank you, sir. Your Honor, may I also
24 be excused at the end of the day?

25 THE COURT: Any objections?

1 the weight and credibility, not necessarily the admissibility,
2 so I am going to allow you to testify. Alright. Anything else
3 till we bring the jury in? And, Mr. Adams, I do note for the
4 record your prior objections.

5 MR. ADAMS: Thank you.

6 THE COURT: Let's go ahead and bring him down.

7 MR. DESCHAMPS: Bring him back down?

8 THE COURT: Yes. And I don't normally do this, but
9 we're going to swear you again, just in front of the jury,
10 their is no reason for the jury to know that you've been
11 previously sworn.

12 THE WITNESS: Okay.

13 **(Jury entered the courtroom.)**

14 THE COURT: Alright. Thank you, ladies and
15 gentlemen. Alright. Mr. Connell, Mr. DesChamps, you may call
16 your next witness.

17 MR. DESCHAMPS: Yes, sir, Your Honor. Plaintiff
18 calls Mr. Fred Genay.

19 **GERALD GENAY WAS DULY SWORN AT THIS TIME AND**
20 **TESTIFIED AS FOLLOWS:**

21 THE CLERK: Raise your right hand. Do you solemnly
22 swear or affirm that the testimony you are about to give to the
23 Court will be the truth, the whole truth, and nothing but the
24 truth?

25 THE WITNESS: Yes.

1 THE CLERK: State your name for the Court, please?

2 THE WITNESS: Fred Genay.

3 **VOIR DIRE**

4 MR. DESCHAMPS: Mr. Genay, how are you doing this
5 afternoon?

6 THE WITNESS: Good.

7 BY MR. DESCHAMPS:

8 Q. Mr. Genay, could you give us a very brief personal
9 background about yourself?

10 A. Well, I moved to Myrtle Beach in 1971 from New York and
11 I have two children. I'm married. I have six grandchildren
12 and a great-grandchild to come, a little bit of my personal
13 background. When I came here, I came in 1973, and I went to
14 Suffolk Community College in New York. After that, I came --
15 when I came down here, I went to Horry-Georgetown Technical
16 College for two years, got my associate's degree and then I
17 went to Coastal Carolina for a year. I started my construction
18 career with Hewitt Construction Company. There, I put together
19 estimates and schedules, construction estimates, and building
20 schedules and estimates for nine years. After that, I went to
21 work for Humphrey's Construction Company for a year. I worked
22 there, I was estimating again. We were working on a high-rise
23 and a National Guard Armory. After working for Humphrey's for
24 a year, I went to work for -- for -- let's see, after
25 Humphrey's it was -- it was Humphrey's Construction, and I went

1 to work there for a year. Then after that, I went to work for
2 Baldwin. The work I did there were 10, 12-story high-rises,
3 all commercial work. After that, I went to work for a company
4 named Applied Technology & Management Services. That was an
5 environmental engineering company, for two years. I opened up
6 my own business in 1984, and I worked there for the year 2000
7 for 14 years. There I did estimating, gas scheduling, bar
8 scheduling, or what would we call construction scheduling for
9 different contractors.

10 Q. Can you briefly explain what that is?

11 A. Yeah.

12 Q. On scheduling and estimating --

13 A. Well --

14 Q. -- what you're referencing?

15 A. Well, the scheduling would be actually construction
16 scheduling that I would put together for various contractors.
17 That shows the sequence of work and how much time that
18 particular job takes, and would give them sort of milestones or
19 goals through the project, so they would get a better grip on
20 how to manage the job. Those schedules take a lot of time to
21 do, so they would come to me, and I would do that for them. I
22 had subcontractors that would ask me for a quantitative take on
23 this. Again, it's pretty time-consuming, so I would put
24 together, for example, a foundation contractor or a concrete
25 contractor, I would not have the time to put together or figure

1 out the quantities involved in a commercial building as far as
2 the foundation is concerned, so I would take off all the
3 concrete, rebar, wire mesh, put the estimate together, and they
4 would be able to use that and buy the materials and did their
5 job. So much of what I did there was construction consulting
6 for that company. After I left there and I'm still employed at
7 Harrington Construction Company from 2000 to nine -- to now, so
8 that's 23 years. And my time at Harrington involves the same
9 thing, but mostly cost estimating where we would receive claims
10 and specs from an architect, then I will take the time to
11 format the job and solicit subcontract prices, and finalize the
12 estimate. I'm being very general. There's a few more steps
13 involved in that other than just estimates.

14 Q. Okay. So you're talking about Harrington Construction
15 as a general contractor?

16 A. Yes.

17 Q. And what exactly, real briefly, what is a general
18 contractor?

19 A. Well, a general contractor pretty much is involved in
20 the repair or replacement of a building, and it involves the
21 construction of buildings or structures or --

22 Q. Yes, real simply --

23 A. Yeah.

24 Q. So we can know, was it a general contractor, you
25 represent a general contractor and a subcontractor, so you're

1 preparing?

2 A. Well, I'm a general contractor, so basically I'm
3 preparing the entire estimate, including all the subcontracts,
4 everything it takes to put that job together, which would be
5 subcontractors, the materials and labor that we self-perform.
6 So maybe to make it a little bit more understandable, the
7 typical commercial estimate requires a whole bunch of divisions
8 of work: site work, concrete work, masonry work, electrical,
9 HVAC, plumbing. Well, some work is specialized work. So we'll
10 reach out to a subcontractor who specializes in that work to do
11 that. In doing so, when I receive those bids, it's part of my
12 job to go through and read their subcontract agreement, make
13 sure that they have the full scope of work for the job. If
14 they don't, then we have to clear those issues up, and then
15 extend my estimate, add it all up to do the job.

16 Q. So a general contractor would use a subcontractor, say a
17 situation like you're getting a building and you're hiring
18 somebody that puts in building sprinkler systems; is that
19 correct?

20 A. Yes, that's right.

21 Q. Okay. And the subcontractor would be the company
22 putting in the building sprinklers; is that correct?

23 A. That's correct.

24 Q. And what does the general contractor do as far as the
25 subcontractor putting in the sprinklers?

1 A. It goes a little bit beyond, we also coordinate the
2 work. We're responsible for all the vendors and all the
3 subcontractors that make up the cost of that particular
4 building. So we have to manage the job and make sure that the
5 subcontractors are putting in the work. We'll Q&A it, make
6 sure that the buildings being built according to the contract
7 documents, that they're on schedule, that they're going to get
8 the project done on time, so it's our ultimate responsibility,
9 we're sort of like the conductor of an orchestra when it comes
10 to the construction of the building.

11 Q. Okay. And you previously testified that you are a
12 general contractor; is that correct?

13 A. Yes.

14 Q. Does that mean you have a general contractor's license?

15 A. I do.

16 Q. Okay. Can you tell us a little bit about that?

17 A. Yes. I have a group 2 license, which allows
18 Construction and Management Services, which is the entity that
19 my license is under, to perform work not to exceed \$400,000.

20 Q. Okay. And you have to take an exam to obtain that
21 license; is that correct?

22 A. Yes. The exam I took is to qualify me to build
23 unlimited amount -- you know, it's the unlimited qualifications
24 to build any building, any amount of money. It's a little
25 confusing because even though I am qualified to build any

1 building because I've taken the unlimited exam, I'm in a group
2 2, which is driven by my net worth, so my net worth does not
3 exceed \$400,000. So that's the root limitation that I have to
4 work under. If my net worth increases, then I can go up and be
5 able to build a building greater than \$400,000. I can build a
6 building that cost any amount of money.

7 Q. How about can you serve as a qualifying party for any
8 entity that has a say, like an unlimited or group 5 license?

9 A. Yes.

10 Q. Okay. And Harrington Construction, you've been employed
11 there for how long again?

12 A. Been there 23 years.

13 Q. Okay. And how about Harrington Construction? Does
14 Harrington Construction have a South Carolina general
15 contractor's license?

16 A. Yes, they do.

17 Q. Okay. And what license classification?

18 A. That's group 5. It's unlimited.

19 Q. And what does that mean?

20 A. They can build any building, any height, any cost. When
21 I say, any building, that's commercial or industrial, they can
22 build any residence that there are unlimited contracts.

23 Q. Okay. And at Harrington, what do you do there? Are you
24 chief estimator?

25 A. Yes.

1 Q. Is that for Harrington Construction, the company?

2 A. Yes, sir.

3 Q. And what do you do as chief estimator?

4 A. Well, it's my responsibility to put the estimates
5 together and assist in bidding the job. So my responsibilities
6 include reviewing the contract documents, the --

7 Q. Would that be contracts between the owner and Harrington
8 or subcontractors?

9 A. Oftentimes the contract documents are in the bid
10 documents. They're part of it, so yeah. So and then also too,
11 to review the bid documents, which would be the plans and the
12 specifications. If there's any conflict between the plans and
13 specifications, then it's my responsibility to write up
14 something called an RFI, which would be a request for
15 information. The architect would then go ahead and send me a
16 response back. He may answer my questions, he may not know,
17 then we have to take a little leap of faith sometimes. That's
18 just the way things go in the construction industry. Once
19 those questions are answered, I'll go together and start the
20 format. I estimate it down, study the plans for a day or two
21 before I even do that, I'll start to list all the items in that
22 building that will contribute to the building's cost, I will
23 then go ahead and prepare what's called a subcontractor list of
24 subs that would be involved in the job. It's usually not one
25 sub, it's usually many in one. We might invite three

1 electrical contractors, three plumbers, three, you know, HVAC
2 contractors, but we'll sub contractors together. We also
3 receive subs that get the information about our job through
4 advertising agencies. One of them is RSMeans. Once we get
5 that information, we'll sit down and look at the
6 subcontractor's scope of work. We want to make sure that that
7 sub is not leaving out anything, so we'll quiz them if we have
8 enough time about the plans and specs to make sure that we're
9 getting the lowest, most valid bid we can put in our estimate.
10 Once that's done, then I have to add the estimate up, which is
11 done really electronically, so we get the numbers pretty
12 instantly. I have to make sure that we have what's called our
13 general conditions in there. General conditions is the job
14 related overhead for the project. How long are we going to
15 have a superintendent on the job? Normally, we put a
16 superintendent on the job for the full job. I have to decide,
17 you know, what -- I have to put costs in there for a toolhouse,
18 for a temporary office, all those are indirects that have to go
19 into the jobs. It's all part of the construction. Once I get
20 all that information together, it usually takes me about two to
21 three weeks to do this whole process on a five, six million
22 dollar job, then we sit down sometimes as a group, depending
23 again on time, and we may discuss what our profit line is going
24 to be and that it just has to do with our company's market
25 plan, and then we go ahead and do the project.

1 Q. Okay. You mentioned RSMeans.

2 A. Yes.

3 Q. What is RSMeans?

4 A. It's a company that they advertise jobs to bid, and
5 also, too, they have a -- they put together books and computer
6 programs that have a database in them that you can use.

7 Q. Like an estimating program?

8 A. Yes.

9 Q. And is RSMeans estimating program, is that commonly used
10 by general contractors to use or to prepare job cost estimates?

11 A. Again, you -- it would be up to the general contractor
12 as to the extent of the use he uses that program. So again, we
13 usually use it for good, tight budgets and trying to put
14 numbers together where we don't have all the bid documents.

15 Q. Do you use it to get like, unit cost?

16 A. Yes.

17 Q. Okay. And you previously mentioned indirect costs.
18 What are indirect costs?

19 A. Well, I mean, what you have is you may have a bid bond
20 required for the job. You have to account for your taxes.
21 That's put on materials, labor burden, which is a percentage
22 that we put on our labor to cover FICA and Social Security, and
23 all those indirects have to be applied. A good example would
24 probably be the construction trailer, or office, that would be
25 an indirect. It's usually a cost that doesn't directly

1 contribute to the building, but it's part of the construction.
2 It's part of the general contractor's expense.

3 Q. Okay, Mr. Genay, do you also have a company that you own
4 or your own company?

5 A. Yes.

6 Q. And what company is that?

7 A. It's Construction and Management Services.

8 Q. Okay. And what kind of work does Construction and
9 Management Services do?

10 A. It's offers estimating, pretty much.

11 Q. Okay. And in your past employment and your employment,
12 current employment at Harrington, what types of construction
13 projects have you prepared construction estimates for?

14 A. Oh, banks, restaurants, medical facilities, warehouses,
15 we've done Tanger Mall, we do upfits, pretty good size upfits,
16 do an Anderson Brothers Bank. We did one in Market Commons,
17 we've got one going up in Carolina Forest right now, so we do
18 banks. Carolina Health Center is going up the forest, we're
19 doing that building, soho restaurant is another one that we're
20 doing right now. We do car dealerships. We've done Sparks
21 Toyota. We've done Honda. We've done Ford. We've done Sparks
22 Toyota. We're kind of big on car dealerships. We've got one
23 now, right, going up in Sumter. We're getting ready to start.
24 We do all manner of low-rise offices and multi-story offices.

25 Q. Now, you said Tanger Mall. Is that the Tanger Outlet on

1 Highway 501?

2 A. 501, yeah.

3 Q. Okay. And can you give a dollar range of those project
4 cost estimates that you've done?

5 A. Well, Tanger was, I believe, somewhere between 10 and 15
6 million. That was a pretty good size job.

7 Q. Okay. And how about currently? Are you doing any
8 office buildings, or?

9 A. Right now, no office buildings right now.

10 Q. Okay. Did you recently do one at Myrtle Beach and the
11 one on Grissom Parkway or somewhere?

12 A. Yeah. We, sorry, I don't remember the name, but it's
13 right across from the Rice Building. That was a 3-story office
14 building. We did that about four or five years ago.

15 Q. And how much was that estimated, do you recall at the
16 top of your head?

17 A. That was probably five or six million at the time, or
18 better.

19 Q. Was that building damaged by fire as a result?

20 A. No, no, that was just a new office building.

21 Q. Okay.

22 A. Oh, you're talking about the one that we did on Grissom?
23 That's a replacement. Yeah, that's a 3-story office building
24 --

25 Q. And how much was that?

1 A. -- called Executive Plaza.

2 Q. How much was that?

3 A. That's within the four to five million dollar range.

4 Q. Okay. And was that a complete rebuild or a repair?

5 A. That's one that we're working on right now that we're --
6 we've prepared a budget estimate for the owner, and the next
7 step is to go ahead and put together a final estimate once we
8 get all the bid documents together.

9 Q. And as it pertains to this case, in what fields do you
10 hold yourself out as an expert witness?

11 A. Well, it would be in building construction and cost
12 estimator.

13 MR. DESCHAMPS: Okay. Your Honor, at this time,
14 Plaintiff moves to qualify Fred Genay as an expert in the field
15 of general construction, mainly job costing and estimating.

16 THE COURT: Yes, sir?

17 MR. HARPER: Objection.

18 MR. ADAMS: Same objections.

19 THE COURT: Alright. Your objections are noted but
20 Mr. Genay is qualified as an expert in general contracting and
21 cost estimating.

22 **DIRECT EXAMINATION**

23 BY MR. DESCHAMPS:

24 Q. Mr. Genay, do you recall who first contacted you about
25 testifying in this case?

1 A. Yes, sir, you.

2 Q. It was me? And what did I ask you to do in this case?

3 A. Put together an estimate for the billing in the year
4 2023 and 2019.

5 Q. So a comparison?

6 A. A comparison, yes.

7 Q. A comparison of 2019 cost vs. current cost --

8 A. Versus 2023 or current.

9 Q. Okay. And that's to rebuild or reconstruct Mr. Tebele's
10 building at 1901 North King's Highway?

11 A. Yes, sir.

12 Q. Okay. And just very briefly, as we get into a little
13 more detail. In preparing your estimates, I guess, what did
14 you do or what did you review in forming your opinion in the
15 estimate?

16 A. Yes, I did a walk around the building and a walk inside
17 the building, but very limited walk inside the building because
18 there really are two parts of that building that's on the
19 plans, an A and B part. So I didn't go into the A part very
20 much because it was pretty -- well, the bar joist had collapsed
21 inside that part of the building and it just wasn't safe to go
22 too far back in, but I did go inside the building, and then the
23 plans that I used were put together by, I think, Miller Design
24 Group, and that, I think, was November 17th, stamped on there's
25 a date of 2010.

1 Q. Okay. And did you look at any engineering reports?

2 A. One prepared by a Mr. Martinez (phonetic), I think. I
3 sure do.

4 Q. And the Mr. Martinez report, do you know if that was
5 after -- prepared after or before the fire?

6 A. I'm not sure of that. From the photos I saw, it looks
7 like it was prepared after the fire.

8 Q. Okay. And you just testified that the building's in two
9 parts, an A and B, but is it adjoined or is it kind of like one
10 building?

11 A. No, there's a party wall that separates that -- those
12 two parts that rises a little bit above the roof that separates
13 the A and B part.

14 Q. Okay. And can you give us an overview as far as top to
15 bottom, kind of how you prepared this estimate report as far as
16 top to bottom, going down to your conclusion or the difference
17 in cost?

18 A. Well, again, I did my walk-through, looked and studied
19 the plan that I had, and then I started in my -- in division 3,
20 actually, concrete started to take the footings off, and come
21 up with a quantity there. I walk through the building into
22 division 4, the concrete block or CMU, concrete masonry units,
23 and just built the estimate from top to bottom as best as I
24 could. Structural steel, the building is built out of bar
25 joists and it has a membrane roof on it, which are some of the

1 items that I have in division 7, started marching down the
2 estimate, went to 8, took off some doors and interior doors,
3 storefront that was involved with the building, different
4 finishes on the outside of the building and its associated
5 square footages. I went to division 9, which is sheetrock and
6 suspended ceiling, and tried to visualize the building as it's
7 built and try to build it on paper, it's basically -- as best
8 as I could, electrical, plumbing, HVAC would have been part of
9 it. Also, to the sprinkler system, fire alarm and in division
10 8 -- in division 10, some specialty things, like bathroom
11 accessories. Division 9 finishes on the floor, and so once I
12 had all that formatted, then I went into RSMeans and found
13 those particular unit prices that were associated with those
14 particular work items, extended the spreadsheet, and of course,
15 now I'm talking about working on year 2023, came up for -- with
16 a total for 2023. Took the same quantities, but applied unit
17 rates that I found in RSMeans to 2019, extended those figures
18 and came up with a total. So now I have a total for 2023 and
19 2019.

20 Q. Okay. Mr. Genay, did you prepare a final report?

21 A. Yes.

22 Q. I'm going to hand you --

23 MR. DESCHAMPS: I'm going to go ahead and mark this
24 as Plaintiff's Exhibit 55.

25 **(Plaintiff's Exhibit No. 55 was marked for identification.)**

1 BY MR. DESCHAMPS:

2 Q. Mr. Genay, I'm going to hand you Plaintiff's Exhibit 55.
3 Exhibit 55 that's the --

4 A. Yes.

5 Q. -- report you prepared?

6 A. Yes.

7 Q. Now, did you previously prepare another report?

8 A. Yes.

9 Q. Okay. Is that an updated report?

10 A. Yes.

11 Q. Okay. What did you change from your initial report?

12 A. Well, there were some extension errors in the general
13 conditions part of the estimate that we discovered, so I went
14 back and made the corrections I thought that needed to be
15 corrected. Also, I left out the fire alarm in one of the
16 versions of my estimate, and so I went ahead and added the fire
17 alarm in this estimate, and that was it, pretty much it.

18 Q. Okay. So I guess on this first page of the new report,
19 what is all this stuff at the top? Well, not the specific data
20 but just --

21 A. Yeah.

22 Q. -- what you did here, what you did here, and what you
23 did there.

24 A. Well, here, as I was explaining, these are the
25 particular items that I gleaned from the plans that were

1 involved in the building construction. Like I was explaining
2 before, it includes things like building permit, building plan
3 review, building demolition, because the building had to be
4 demoed, I started marching down here and I picked up termite
5 treatment, believe it or not, coming down a little bit further,
6 concrete, building slab on a grade, footings, isolated
7 footings, stripped footings, and pretty much went all the way
8 down to the bottom of where I get to electrical, mechanical,
9 and plumbing items on the left side, and this is for the year
10 2023. So then over here in this column is where did I get --
11 you know, what areas of the building did I pick this up, this
12 information. So I broke the building down in parts A and B.,
13 so under Location, it says both A and B for, let's say,
14 building permit. That's pretty obvious. Come down here, maybe
15 this is better: Building slab on grade, and it's buildings A
16 and B because I would have had a foundation with footings on
17 the both parts of the building. So I was just trying to
18 isolate where those particular items came from. Over here, the
19 process, for example, interior walls, 8-inch block, building A.
20 So then over to the right, I just simply say, unit rate.
21 That's the cost. And then per square foot. If I had 100
22 square feet and say it was \$20 a square foot, then it was just
23 20 times that square footage. That's how I came up with my
24 calculations, pretty simple calculations. Then over here on
25 the right, I have the quantities. For example, at the top up

1 here, I've got a building demolition. Well, RSMeans, it gave
2 me a unit price per cubic foot of building, not per square
3 foot, so I came up with a cubic footage, the volume of the
4 building, and the reason for that is every building has a
5 different amount of cubic feet, you know. So this one I had a
6 particular amount of cubic feet, and then I went ahead and did
7 the extension. The cubic footage right here was 372, roughly
8 cubic feet, 72,000 cubic feet, and then I would come over here
9 under Subcontract because it would have been a subcontract. It
10 happened to be in RSMeans 41 cents a square foot. I just did
11 the multiplication, that was \$152,749.60, and so that's the
12 amount that I came up with, and it's that process all the way
13 through, okay, to 2023. Well, over here, this doesn't change.
14 The items that make up the building don't change. The only
15 thing that changes over here in 2023 -- 2019, rather, is the
16 unit rates. So RSMeans gave me a different unit rate for demo
17 for 2019. Let me see what it was.

18 Q. So here you have -- here is '23 and this is '19?

19 A. That's '19.

20 Q. So you're comparing these unit costs?

21 A. Yes, these unit costs with this.

22 Q. Okay. And then you go all the way down here, what's all
23 this stuff down here?

24 A. Okay, I then when I get to the bottom of the estimate.

25 Q. Just in a general sense --

1 A. Okay.

2 Q. So just follow through, like, what is this stuff saying?

3 A. So then over here on the right-hand side, under where it
4 says, Divisional Summary in this column, it just gets pulled
5 up, and I arrived at a bottom line, which is --

6 Q. Okay.

7 A. -- we'll get to the summary, right here. Alright.
8 Which was \$6,961 and -- 6 million, rather, 961,020 dollars.
9 Then right below that, it has Sales, Tax, and Labor Burden.
10 The labor burden on some of the labor I picked up through the
11 entire estimate there for 2023. That calculated out to
12 \$44,395.00, come up with a subtotal, and then I applied 10
13 percent profit, which is what we're typically using on a job
14 this big. The only markup would be 10 percent. And once we
15 applied that 10 percent, I added and come up with another
16 subtotal, which would be \$7,705,958, and finally, I added to
17 that architectural piece. That would be architectural,
18 electrical, mechanical, and plumbing. You have to have all
19 that to get your permit and to have a final set of drawings,
20 which if this building was replaced, it's like building it all
21 over again, so you have to have an architect involved in it,
22 and you have to go through all the permitting processes that
23 you do and so you have to pay that architect and that
24 electrical and mechanical and plumbing engineer, and usually,
25 they're working these days on a percentage, and in this case, I

1 used 10 percent. So that came to \$700,000.00, roughly, just
2 for the architect, came up with a total here of \$8,406,499, and
3 I did the same process for 2019, and that particular total came
4 up to \$6,318,084.00. I just simply took the difference between
5 the two prices, one to 2019, one to 2023, and the difference is
6 2,088,415. That's pretty much how I did the estimate.

7 Q. And now, there's a 2nd page over here. Flip to the 2nd
8 page. Is that the same --

9 A. Yeah, yeah. It's the same, yeah, this is one that was
10 -- this is 2,088,415.29.

11 Q. This is your general conditions up here, and these are
12 different unit costs?

13 A. Yeah.

14 Q. What information's in here? I know this is the --

15 A. Yeah.

16 Q. So what information's in here in a general sense?

17 A. Yeah. These are just columns for labor material,
18 rentals, subcontract expenses, but they all total up to the
19 total on the right-hand side of the estimate. Maybe the best
20 way to explain it is just if I go back to interior walls, CMU
21 walls, 426 square feet. Well, that was a subcontract item. I
22 didn't have any material, any rentals involved, all just the
23 sub. So there was a square foot number there. I multiplied it
24 by the square footage, and it's really a cross-check. Down on
25 the bottom, I get the total for labor, materials, and subs, and

1 all that should equal that net amount right there. It's just a
2 cross-check.

3 Q. Okay. Mr. Genay, you can have a seat there.

4 A. Yeah.

5 Q. Now, if it helps because that thing is hard to see and
6 hard to put together.

7 MR. DESCHAMPS: I'll mark these two. One is 55A and
8 one is 55B. Plaintiff's 55A. It's the conclusion section on
9 that report.

10 **(Plaintiff's Exhibits 55A & 55B were marked for**
11 **identification.)**

12 BY MR. DESCHAMPS:

13 Q. Now, Mr. Genay, you prepared that report, and after all
14 your research, your review, and your inspection of the 1901
15 building, did you come to an opinion to a reasonable degree of
16 general construction certainty as to the difference between the
17 2009 reconstruction costs and the current reconstruction costs
18 as to Mr. Tebele's commercial building at 1901?

19 A. Yes.

20 Q. Okay. I'm going to hand you what's been marked as
21 Plaintiff's 55A and 55B. These are the, I guess, the summary
22 or conclusion at the bottom of your report in Exhibit 55. I
23 didn't tape them together, but it probably helps they're side
24 by side.

25 A. Yeah, again, the summary cost for the 2023 was

1 8,406,499. \$8,406,499.76.

2 Q. Okay. And what's the 2019 total?

3 A. And that total is \$6,318,084.48.

4 Q. Okay. And what is your opinion or estimate in that
5 report?

6 A. Simply, it was my task to come up with a difference.

7 Q. And what is that difference?

8 A. \$2,088,415.29.

9 Q. And that's the difference between what?

10 A. The year of 2023 and 2019.

11 Q. Construction cost?

12 A. This is the total construction, yeah, the total.

13 MR. DESCHAMPS: Okay. Your Honor, Plaintiff moves to
14 introduce Exhibit 55A and 55B into evidence.

15 MR. ADAMS: We will renew our objections on that,
16 sir.

17 THE COURT: Same thing, Mr. Harper?

18 MR. HARPER: Yes, sir.

19 THE COURT: Plaintiff's 55A and 55B are admitted into
20 evidence.

21 **(Plaintiff's Exhibits Nos. 55A & 55B were admitted into**
22 **evidence.)**

23 BY MR. DESCHAMPS:

24 Q. Okay. And Mr. Genay, can you step down real quick and
25 we'll have you write the difference for them. Let's take this.

1 Okay. You could write the current reconstruction cost. Can
2 you see that?

3 A. Yes.

4 Q. Okay. Can you write the current 2023? You can just do
5 2023 if you want, however you want to do it. Okay. Can you
6 read that?

7 A. No.

8 Q. Just do the dollar amount, and then 2019. Just do the
9 dollar amount, and then give us the difference. Can you read
10 that?

11 A. (No audible response.)

12 Q. Alright. So the 2023 current reconstruction cost of the
13 1901 building is what? What you wrote on there? How much is
14 that?

15 A. Yes, that's \$8,406,499.00.

16 Q. And what's the 2019?

17 A. \$6,318,084.00.

18 Q. Yeah, I think you meant to put construction cost or
19 something.

20 A. I did.

21 Q. And the difference is 2,088,415.

22 MR. DESCHAMPS: Alright. Please have a seat. Mr.
23 Genay, I have no further questions. Please let me consult with
24 my co-counsel. I can't hand them this. I'll go ahead and mark
25 it. What number are we at? That is 55C? Can I do this 55C?

1 MR. CONNELL: If you want to.

2 MR. DESCHAMPS: I'll mark this as 55C.

3 (Plaintiff's Exhibit No. 55C was marked for identification
4 and admitted into evidence.)

5 MR. DESCHAMPS: Plaintiff moves to admit 55C in the
6 evidence.

7 THE COURT: Any objection?

8 MR. ADAMS: Same objection.

9 THE COURT: 55C is admitted. Mr. Harper?

10 MR. HARPER: Thank you, Your Honor.

11 **CROSS-EXAMINATION**

12 BY MR. HARPER:

13 Q. Good afternoon, Mr. Genay, how are you? Do you recall
14 talking with me at your deposition a month ago?

15 A. Yes.

16 Q. We've talked a little bit or heard from you this
17 afternoon a little bit about Harrington Construction Company
18 and Construction Management Services, Inc. Those are two
19 separate entities, correct?

20 A. That's correct.

21 Q. One of those is your day job, right?

22 A. Yes.

23 Q. And that's with Harrington Construction Company?

24 A. That's correct.

25 Q. They don't have any involvement in this case, right?

1 A. No, sir.

2 Q. They're not going to do any of this work --

3 A. No, sir.

4 Q. -- that you've just opined about?

5 A. That's correct.

6 Q. Construction Management Services, that's your night job,
7 your side hustle?

8 A. Yes.

9 Q. And the last four or five cases you've had for that
10 business that you run on the side, you've done those with Mr.
11 DesChamps, right?

12 A. Yes.

13 Q. And that's all on night, evening hours, weekends when
14 you're not on the clock at your day job?

15 A. That's correct.

16 Q. When you're at Harrington at your day job, you would
17 typically review plans and specifications before you prepare an
18 estimate, right?

19 A. Yes.

20 Q. And in this case, you didn't have plans and
21 specifications, correct?

22 A. I had plans, but they weren't -- they weren't complete.
23 I didn't have electrical, mechanical, or plumbing, but it did
24 have the footprint of the building. It did have elevations.
25 So I could get all that information off of there, but as to

1 specifications, there were no specs.

2 Q. So had some of the information you would typically rely
3 on at Harrington, but not all the information?

4 A. Not all the information.

5 Q. Typically, at Harrington, when you're preparing a
6 project, an estimate for an actual project you're going to be
7 doing, you would go over those plans and specifications that
8 you would generally have with an architect, right?

9 A. We don't go over with him. We go through that RFI
10 process, so we look at the plans and the specifications and try
11 to make sure that we don't have any questions and if we do then
12 we field them to the architect.

13 Q. Here no architect's involved?

14 A. No.

15 Q. And didn't have complete plans and specifications to
16 begin with anyway, right?

17 A. Yes, that's right.

18 Q. Then in your job at Harrington, you would then organize,
19 based on your request for information to the architect and your
20 complete review of the complete plans and specifications, then
21 you would start to organize your estimate?

22 A. Yes, sir.

23 Q. And here you just started organizing the estimate based
24 on incomplete plans, no specifications, and no consultation
25 with any architect?

1 A. No consultation with the architect or RFI, but I did use
2 the plans that I did have, the information.

3 Q. No specifications, though.

4 A. No specification.

5 Q. We're not sure these plans are the complete plans for
6 this building either, right?

7 A. The elevations and the footprint fit the building.

8 Q. And how do you know that, Mr. Genay?

9 A. Well, looking at the elevation, I can see that there was
10 a pagoda on top of the roof. The finishes matched what was on
11 the elevations. When I walked into the building, and then
12 after when I studied the plans, I could tell the footprint was
13 very much like what I was looking at, so my best judgment was,
14 it did.

15 Q. When did you go out to the building, Mr. Genay?

16 A. Yeah. I believe it was -- I believe it was 2021.

17 Q. And then when did you sit down and begin preparing your
18 estimate?

19 A. That would have been about a year later, I think around
20 September of 2023.

21 Q. September 2023, you sat down to begin preparing your
22 estimate?

23 A. Yes.

24 Q. How long when you back -- way back when you inspected
25 the property, how long were you out there?

1 A. Probably about an hour.

2 Q. That's alright?

3 A. Yes, sir.

4 Q. When you're at Harrington and you go over some plans and
5 specifications and you submit your request for information to
6 the architect to get information, you start organizing your
7 estimate, then the next step in that process for estimating for
8 Harrington for the bid they're going to do, that would be
9 solicit subcontractors, solicit bids from them?

10 A. Yes. If it's a hard dollar bid. If it's a budget, it
11 normally comes in with the budget, then I don't have all that
12 information, so I have to take the same steps that I explained
13 before with this one with those type of situations. So not
14 always. We negotiate probably, I'd say more work than we hard
15 dollar bid sometimes, so it's a mixture of both, budget numbers
16 and numbers that involve a set bid date. Yeah.

17 Q. If you're going to perform the work at Harrington, would
18 you use a hard number bid, the subcontractor bids in the
19 estimate?

20 A. If we were going to lock down a contract, yes, we'd
21 probably would, yes.

22 Q. And here, there were no subcontractor bids solicited?

23 A. That's correct.

24 Q. Ever?

25 A. That's correct.

1 Q. There is no subcontractor bid cited to a reference in
2 your report? You never said a bid date here?

3 A. No. And for reasons that I said before, that you know
4 we couldn't, I really couldn't go to a subcontractor with the
5 -- any of the plans, not having the MEPs and other things.

6 Q. Right. You didn't have enough information?

7 A. Yes.

8 Q. You didn't take any measurements or do any testing when
9 you were at the site either, correct?

10 A. No.

11 Q. And you don't know what the contents of the building
12 were at the time of the fire, either, correct?

13 A. No, I don't know.

14 Q. This price comparison that you just showed the Jury,
15 you've never done one of those before this case; have you?

16 A. No, not like this.

17 Q. And you didn't do any research to determine if there
18 were any industry standards to perform such a comparison
19 either; did you?

20 A. No, I did not.

21 Q. You made up a methodology that you thought was suitable
22 for this purpose?

23 A. Well, I was asked, the scope of my work was to come up
24 with a price for the building in 2019 and 2023, that's what I
25 did.

1 Q. Right. But the way you did that is the way that you
2 made up, right? No one told you, do this, Mr. Genay?

3 A. No one told me to do that.

4 Q. And you didn't read in a book or any learned treatise or
5 anything of that nature, this is how you do it in comparison to
6 2019 and 2023?

7 A. Yes.

8 Q. Didn't see any of that?

9 A. (No audible response.)

10 Q. I think I heard you say, Mr. Genay, that on a project
11 of, you know \$6 million figure range with Harrington, you would
12 typically work two or three hard weeks to prepare an estimate
13 for such a project?

14 A. That's correct.

15 Q. That didn't happen here either, did it?

16 A. No, because, again, it just depended on the -- this was
17 an opinion of loss, and based on the information that I had, I
18 spent the maximum time I could on the information I had. So
19 no, I didn't, I didn't spend three weeks on it, but I did spend
20 a good amount of time.

21 Q. I think you told the Jury earlier you had prepared a
22 prior report, is that accurate?

23 A. No, I don't believe I did.

24 Q. That wasn't the report we spoke about at your
25 deposition?

- 1 A. Oh, yes, that, I'm sorry.
- 2 Q. And there were some errors in that report, right?
- 3 A. Yes, sir.
- 4 Q. Who showed you those errors?
- 5 A. Oh, you did.
- 6 Q. To be clear, Harrington is not going to do this work?
- 7 A. That's --
- 8 Q. And your company, Construction Management Services,
9 can't do this work?
- 10 A. That's correct.
- 11 Q. This work, these dollar figures, they're based on
12 RSMeans data, and the majority of the numbers are, at least?
- 13 A. Yes.
- 14 Q. In large part, all RSMeans data?
- 15 A. In large part, yes.
- 16 Q. And those RSMeans data points, they come from the city
17 of?
- 18 A. Charleston.
- 19 Q. Not Myrtle Beach?
- 20 A. That's right. However, they didn't offer any data for
21 Myrtle Beach, so.
- 22 Q. When -- I'm sorry.
- 23 A. So I selected Charleston because it was the closest
24 city, and it's also a resort, so it was a good match.
- 25 Q. When you're going to do work for Harrington, do you

1 offer your clients who are building in Myrtle Beach numbers
2 from Charleston?

3 A. Well, again, if I use -- the answer is yes. If I use
4 that program, then I have no choice. They realize that, you
5 know, it's an estimate based on plans that don't have any fees
6 or electrical, but they expect some type of close number.
7 They're going to a bank or a lending institution, so that --
8 that would be the best fit I could find, was Charleston.

9 Q. And that's when you're doing budgeting for Harrington?

10 A. Yes.

11 Q. When you're actually doing a hard bid, we want to do
12 this job, we're going to do this job, you use subcontractor
13 bids?

14 A. Yes, that's right.

15 Q. Not RSMeans data from Charleston?

16 A. That's right.

17 Q. Do you recall that before your deposition, your number
18 was actually lower than the number that you've offered today as
19 your opinions for 2023 and 2019 costs?

20 A. Could you repeat, I'm not sure.

21 Q. Yes. At the time of your deposition, we've already
22 talked about there was a different number that you had reached
23 for 2023 and 2019, right?

24 A. Yes.

25 Q. At the time of your deposition, both of those numbers

1 were actually lower than the numbers you've offered today?

2 A. Yes, correct.

3 Q. And I pointed out to you during your deposition several
4 errors that would have decreased the cost?

5 A. Well, you didn't find one. So I left out the fire alarm
6 and I put it back in.

7 Q. And the costs that you offered today are actually higher
8 than when you were at the deposition --

9 A. Yes, correct.

10 Q. -- right?

11 A. That's correct.

12 Q. And you haven't produced in this litigation any of the
13 RSMeans data points that you rely on, correct?

14 A. No.

15 Q. You manually transferred information from that database
16 to your Excel spreadsheet?

17 A. That's correct.

18 Q. And we don't have any way of checking to see what other
19 mistakes you've made that have been identified to this -- to
20 date; is that correct?

21 A. Well, I don't know if you do. I would hope there isn't.
22 I did the best job I could do based on the knowledge I have.

23 Q. Right. But we haven't received copies of the documents
24 you were looking at?

25 A. No. And the information I took off -- took from there

1 was right from the computer screen onto my spreadsheet.

2 Q. If you didn't make a mistake, right?

3 A. Yes, sir.

4 Q. Isn't it a base assumption of your comparison that the
5 profitability for the contractor in 2019 was going to be less
6 than the profitability in 2023?

7 A. Yes, it would have, yes.

8 Q. Because I thought I heard you say that the only thing
9 that changed is the unit rates based on the date, but in
10 reality, you also changed the overhead and profit and the
11 architect and permit --

12 A. Well, yeah.

13 Q. -- percentage that you applied to the two different
14 years.

15 A. Yes. Yes, I did, because, again, they're models, and
16 what I did was, in 2019, we were bidding projects at 6 percent,
17 treating this as if a contractor was going to put this job
18 together. They probably would have used that percentage back
19 then. We certainly did, and even with that 6 percent, we were
20 losing jobs, so that -- that -- I thought that was very fair to
21 use the 6 percent for 2019. Now we're not doing that. We're
22 back up raising our price just like everybody else has after
23 COVID, it got a little bit more expensive to do business.

24 Q. What percentage are you doing today?

25 A. 10 percent.

1 Q. So you're actually giving us a discount by going 8
2 percent instead of 6 percent back in 2019?

3 A. No. What I'm saying is our markup in 2019, I put 6
4 percent on that estimate because that's what we were typically
5 doing in putting on estimates, and in 2023, we're using, you
6 know, 10 percent on big jobs, so that's the markup I used.

7 Q. You keep saying "we", who are you referring to when you
8 say "we"?

9 A. Well, it's construction. And I mean, Harrington
10 Construction. That's who I'm working for, so that's where the
11 numbers come from.

12 Q. Right. For purposes today, you're not working for
13 Harrington, though?

14 A. No, I understand, yeah.

15 Q. That's correct, right?

16 A. Yes.

17 Q. Have you ever seen any other estimates for this
18 property?

19 A. No, sir.

20 Q. Take a look at this. Defendant's Exhibit 43 has been
21 previously admitted into evidence. Let's look at the bottom
22 line.

23 A. Okay.

24 Q. Is there a replacement cost there?

25 A. Now, I haven't read this whole estimate. Is this

1 replacement of the building, or is this repairs?

2 Q. You'd have to read the whole estimate as a construction
3 expert --

4 A. I mean, I haven't done that.

5 Q. That's fine.

6 A. So, I don't know.

7 Q. How about if I just represent to you that this is what
8 A. Tebele & Sons represented to the Defendant insurers needed
9 to happen to fix their building after the fire?

10 A. Okay. Okay. Yes, sir, I see it. Okay.

11 Q. Numbers are substantially different, wouldn't you agree?

12 A. Yes.

13 Q. You see the overhead and profits at 10 percent, right?

14 A. I don't see where that is. I see, yes. Okay. Yeah.

15 Q. And yet you stand here today to opine to the Jury that
16 the cost in 2019 to replace this building was \$6.3 million
17 dollars?

18 A. Yes, sir.

19 Q. Did you know Mr. Tebele is only insured for 2.5?

20 A. I don't have any information of that at all.

21 MR. HARPER: Thank you, Your Honor.

22 THE COURT: Yes, sir?

23 MR. ADAMS: Yes, sir.

24

25

1

CROSS EXAMINATION

2 BY MR. ADAMS:

3 Q. Mr. Genay, we've introduced ourselves off the record,
4 but for the record, I'm Hunter Adams for Crescent Coast. You
5 mentioned you're currently employed with Harrington
6 Construction?

7 A. Yes, sir.

8 Q. From what I've gathered that you told this Jury,
9 Harrington Construction, your role there is doing, I guess,
10 real world projects, and what I mean by that is projects that
11 the cost estimate is going to ultimately will be used to do the
12 hammers and nails and construct the building; is that right?

13 A. But that's part of it, though. I probably need to
14 explain that a little bit, too. We also provide -- we also
15 negotiate projects, and those are designing building jobs, and
16 we do quite a bit of those too, probably which I probably
17 should mention. They're done in steps.

18 Q. Right. And for the Jury design building, I believe is
19 -- the GC is also responsible for coordinating the design
20 functions by your engineer or architect?

21 A. That's right.

22 Q. Okay.

23 A. But you also submit a number to them, which usually
24 always is a budget number.

25 Q. Correct.

1 A. And then when you do that, you march through it. Then
2 once you get the design and you get the plans done from the
3 architect, which the general contractor would pay for, then you
4 come up with a number. So it's more than one estimate. It
5 usually involves two, at least.

6 Q. There's a lot of estimates and a lot of steps involved?

7 A. That's right, that's right.

8 Q. And that's having an architect and an engineer providing
9 a set of plans that are going to be used to perform the
10 construction, right?

11 A. That's right.

12 Q. And what we have here is a 2010 set of plans that was
13 used for the prior construction, right? We don't have any
14 architects or engineers that are actually would stand ready to
15 design and perform this work, right?

16 A. That's correct.

17 Q. Because you're not going to do it, correct? And for the
18 record, would you --

19 A. Well, I'm not going to do it, but you're right.

20 Q. Not you?

21 A. No.

22 Q. Not Harrington?

23 A. No.

24 Q. Okay. The use of the phrase, I believe, "conceptual" to
25 describe this estimate that you've had shown the Jury. And so

1 I guess what I want to clarify is, this is basically data
2 received from RSMeans that you transferred to a spreadsheet for
3 2019 and 2023, and that's the initial estimate, but for the
4 real world estimates we would be doing over at Harrington,
5 RSMeans is by no means the final number, right?

6 A. No, because again, we would then get information from
7 the design professional, force them to get it together.

8 Q. And then the subs?

9 A. Yes.

10 Q. Material costs?

11 A. Correct.

12 Q. All the rest of that?

13 A. Uh-huh.

14 Q. So basically, you know, this is an educated guess? The
15 big sheet that your estimate was is an educated guess?

16 A. It's an opinion of cost based on what knowledge I have
17 and rates from RSMeans, so yes, it's the closest number I could
18 come up to based on the information I have.

19 Q. Sure. And did that information include the 2019
20 estimate from Mid-Atlantic that Mr. Harper just asked you
21 about?

22 A. No.

23 Q. Was that given to you by Mr. Tebele or his attorneys?

24 A. I haven't got them.

25 Q. And of course, they wouldn't want you to see that

1 because your number is a lot higher than Mid-Atlantic's; isn't
2 it?

3 A. Yes, sir.

4 Q. And ultimately your number, which is an educated guess,
5 is what Mr. Tebele wants this Jury to award him; is that right?

6 A. I can't -- I --

7 Q. Which could be \$8 million dollars. \$8 million dollars
8 with no subs, no engineers, right?

9 A. Well, again, it's the best number I could put together
10 based on the knowledge I have, the plans that I have.

11 Q. And that's coming from Mr. Tebele and his attorneys,
12 right?

13 A. Well, the plan that I got came from his.

14 Q. Correct.

15 MR. ADAMS: No further questions. Thank you.

16 THE COURT: Redirect?

17 **REDIRECT EXAMINATION**

18 BY MR. DESCHAMPS:

19 Q. Mr. Genay, I'm going to hand you a copy, I believe it
20 was previously been in the evidence as Plaintiff's Exhibit 37,
21 it's Mr. Martinez's engineering report --

22 A. Yeah.

23 Q. -- that he did on Mr. Tebele's building. And did you
24 review that report before you prepared your estimate?

25 A. Yes.

1 Q. And now, I believe Mr. Harper was previously asking you
2 some questions about a repair estimate report that was done
3 before that engineering report; is that correct?

4 A. Yes.

5 Q. Okay. And what did you -- I guess what stood out to you
6 in that engineer report as to -- did anything tell you or
7 direct you as to why you couldn't do a repair estimate?

8 A. Well, it's his last statement that it was his opinion
9 that the building was damaged to the extent that it couldn't be
10 repaired, and so it would have to be replaced, is the way I
11 interpreted it.

12 Q. Okay. Well, can you tell -- and "him," are you
13 referencing Mr. Martinez in his report?

14 A. What was that?

15 Q. You just said, when you were testifying, you stated
16 "him"; were you referencing Mr. Martinez?

17 A. Yes, yes, sir.

18 Q. Okay. Can you tell us if Mr. Martinez recommended
19 anything in his report or his conclusion?

20 A. He says it here: Structure having sustained this degree
21 of damage is recommended for demolition.

22 Q. Okay. And is that why you didn't prepare a repair
23 estimate?

24 A. Yes.

25 Q. And this building, the 1901 building, that was the old

1 Camelot Theater; is that correct?

2 A. Yes, that's correct.

3 Q. Wasn't that building originally built in the '70s?

4 A. Yes --

5 Q. Or the '60s? Okay. And then there was additions and
6 alterations made?

7 A. Alterations.

8 Q. Okay. And those Tom Miller plans, the 2010 plans, are
9 those, I guess, the latest structural additions or
10 modifications that were made to the building?

11 A. As far as I can tell, yes, sir.

12 Q. And to get an updated set of plans, I guess, or more
13 updated from 2010, what would you have to do?

14 A. Well, of course, an architect would have to be hired,
15 and as far as a contractor, if you could rephrase that and make
16 sure I'm answering you right.

17 Q. I guess, how could one, or how could Mr. Tebele get an
18 updated set of architectural drawings?

19 A. As far as a complete set to go for permitting and --

20 Q. Yeah, say it was actually going to be a reconstruction,
21 a teardown of reconstruction.

22 A. Well, they'd have to hire an architect. That's what
23 he'd have to do.

24 Q. And then what would go into as far as the process of
25 getting the plans prepared and drawn; do you know?

1 A. Yeah. I mean, he -- I'm sure he would have, you know --
2 you know, a meeting with the owner, make sure he has all his
3 information right, and then the architect would go through his
4 steps, draw a set of plans up, make sure he has structural
5 plans, electrical, mechanical plumbing, again, all the MEP
6 drawings. You know, his services could be, giving him a list
7 of contractors, maybe, to get solicit prices from, it's just
8 very -- it could be, he could have contract administration in
9 his cost, which would be a little bit of management -- not
10 management, but overseeing of the job while the project's going
11 on, so services may vary, but basically, you put the plans and
12 specs together.

13 Q. Say Mr. Tebele were to get this building demoed. Would
14 Harrington Construction be willing to entertain a contract to
15 do the reconstruction?

16 A. No.

17 Q. And why is that?

18 A. Because obviously, I'm testifying here, and it would
19 definitely be a conflict of interest.

20 Q. And in the future, regardless of this case?

21 A. I can't answer for that, sir.

22 Q. Alright. And you still prepare bids and do estimating
23 for Harrington Construction; is that correct?

24 A. Yes.

25 Q. Okay. And I guess who's your supervisor? Who's your

1 boss?

2 A. I really have two of them. It's the owner of the
3 company and his son. It's a family-owned business, so his
4 father's the president, and of course, his son's the vice
5 president, but I take most of my instruction from the vice
6 president of the company.

7 Q. Okay. And who's the vice president? Jeff?

8 A. Jeff.

9 Q. Okay. And when you're preparing a bid or an estimate
10 for a job, do you consult any treatises or books?

11 A. Other than the bid documents or anything associated with
12 it. Maybe there's some conversation between us and the
13 architect, but not a whole lot.

14 Q. Is there any books you go read, any treatises you go
15 read?

16 A. No. We may do some online research if there's items on
17 there. I do quite a bit of that.

18 Q. What type of research would you do?

19 A. Well, for example, I may have a set of plans that has
20 folding doors from a certain company, and I don't know how to
21 make -- there's no information on the plans about how to
22 contact. For example, to be a folding door that the architect
23 had designed in the job, he's spec'ing it out to be modern fold
24 number 2835, but doesn't tell me who to contact to get a price
25 on that particular item, but that's what he wants, so I can get

1 online and Google that and usually find out who the supplier is
2 with the name of the manufacturer. It's sort of detective
3 work. You go through the whole process of finding the supplier
4 for that item and, or a local rep and then getting the price.

5 Q. How about a textbook? What about any kind of textbooks?

6 A. Well, yeah, sometimes. We'll have to -- certainly there
7 may be code issues that we'll have to get into the codebook and
8 look and research a little bit or understand, or some trade
9 like the American Institute of -- you know, like ACI, American
10 Concrete Institute, may have some information we need, too.

11 Q. Now, when you were preparing this estimate, you didn't
12 get any bids from subcontractors. Why is that? Is it
13 impossible?

14 A. Well, in the circumstances, again, I just don't have
15 electrical, mechanical, and plumbing.

16 Q. But as far as bids from a sub, say you get a sub to come
17 in and put a new sprinkler in this building, this Tebele
18 building --

19 A. Well, if --

20 Q. Why didn't you get any bids from subcontractors?

21 A. Because I didn't have the plans for them to look at to
22 put number together.

23 Q. And would they give you a bid without -- with plans?

24 A. I doubt it, because the way it is right now, they're --
25 these guys are busy, and for them to do research work, which is

1 basically what it would be on their part, there would be no
2 contract for them to sign, and it would be free work.

3 Q. They're not going to give you a bid without a contract?

4 A. That's correct.

5 Q. They're not going to just give you a bid unless they're
6 going to be on a job; is that correct?

7 A. That's correct.

8 Q. And now RSMeans, is that a database that anybody can
9 subscribe to?

10 A. Yeah. There's no prerequisite for anybody if they pay
11 the licensing fee.

12 Q. Okay, and that repair estimate that Mr. Harper was
13 asking you about, I believe that you use the Xactimate
14 estimating program, and do you ever use Xactimate estimating
15 program?

16 A. No, sir.

17 Q. Do any general contractors use Xactimate?

18 A. Not that I know of, but not -- not that I know of.

19 MR. DESCHAMPS: Thank you, Mr. Genay. I have no
20 further questions.

21 MR. HARPER: No further questions, Your Honor.

22 MR. ADAMS: None from Crescent.

23 THE COURT: Alright. Mr. Genay, you may step down.

24 THE WITNESS: Thank you.

25 THE COURT: Alright, Mr. Connell, your next witness?

1 MR. CONNELL: We don't have other witnesses, and I
2 understand we rest, and there's only one other witness from all
3 of us. We'll proceed tomorrow.

4 THE COURT: Alright. Ladies and gentlemen, we're
5 going to send you home. We've got some matters of law to take
6 up first in the morning, so rather than having you all here at
7 9:00, I'm going to let you sleep in a little bit and have you
8 come in at 10:00, but I do imagine that we're going to finish
9 this case tomorrow. Okay. Y'all have a good night and we'll
10 see you tomorrow at 10:00.

11 **(Jury exited the courtroom and was excused for the day.)**

12 **(Concluded on Monday, December 11, 2023 at 4:55 p.m.)**

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1 **(Whereupon proceedings reconvened Monday, December 12, 2023)**

2 THE COURT: Alright, gentlemen, we left off yesterday
3 with Mr. Connell and Mr. Deschamps resting and you'll have some
4 motions to take up this morning, I'm assuming, and then we'll
5 hopefully finish this case up maybe before lunch, hopefully,
6 but I'm happy to hear much.

7 MR. STARR: Your Honor, I don't know if you have a
8 preference of the order, but --

9 THE COURT: I don't.

10 MR. STARR: Okay. On behalf of the Insurer
11 Defendants, we'd like to make a directed verdict motion and
12 argument, if you would indulge us to do that? Your Honor, as a
13 preliminary matter with respect to the Insurer Defendants'
14 motion for directed verdict, we want to incorporate, as part of
15 the record into the oral argument, Insurer Defendants' brief in
16 support of the motion for summary judgment in opposition to
17 Plaintiff's motion for summary judgment. It's in the Court's
18 file already. That was filed on December 2nd of 2022, and I'm
19 going to touch on those arguments and address some of the
20 testimony that came in during Plaintiff's case, but in the
21 interest of time and flow of the argument, I'm not going to
22 recite all of those cases. I might just reference a couple by
23 name for Your Honor, if that's okay with you.

24 THE COURT: Yes, sir.

25 MR. STARR: Okay.

1 THE COURT: That's fine. Yeah.

2 MR. STARR: Your Honor, I think what makes the most
3 sense is to do this just sort of in a step-by-step process, and
4 because if the Court's inclined, I think, at each step, if the
5 Court were to grant directed verdict, it would eliminate the
6 remaining steps that need to be addressed.

7 The first one, Your Honor, is that the Plaintiff has
8 no insurable interest in this property and no standing to
9 properly bring this lawsuit, and so as a matter of law and
10 through directed verdict, the case should be dismissed because
11 the Plaintiff in this case is not a proper Plaintiff to make
12 these claims with respect to the Insurer Defendants. It's
13 undisputed that the owner of this property that is at issue in
14 this case is Kings Realty LP. Plaintiff himself confirmed that
15 during the direct examination, and Counsel put into evidence
16 Plaintiff's Exhibits 1 and 2, and those documents show, in
17 Exhibit 1, that A. Tebele & Sons was the original owner, or not
18 the very, very original owner, but with respect to these
19 corporations, did originally own it, but then conveyed the
20 property to Kings Realty LP sometime at around 1990. And the
21 named Plaintiff entity is a completely separate legal entity
22 that owned this property at one point in the past, but conveyed
23 it, as I said, to Kings Realty LP and has no membership
24 interest in Kings Realty LP. The statute of limitations for
25 Kings Realty LP to bring this case or either of these causes of

1 action has long since expired. Plaintiff does not have the
2 option, which the Court could typically grant, even at this
3 stage in a case, to simply amend the Complaint, which is
4 granted freely to allow the Complaint to reflect the testimony
5 or the evidence as it comes up. That's not the same, Your
6 Honor, as switching parties. That right to freely amend the
7 Complaint does not include the right to add a party plaintiff
8 whose statute of limitations has since expired. Here, this
9 wouldn't be to clarify a cause of action or to provide the
10 proper correct legal name for a party, it's a totally different
11 entity by Plaintiff's own testimony. Plaintiff was always in
12 the best position to know this and never made an effort to
13 correct it while the statute of limitations was still running,
14 and so during Mr. Tebele's direct examination, this was touched
15 on for, I think, for this very reason, and he said,
16 essentially, that A. Tebele & Sons has all of the same people,
17 members, human members, and that it's just, essentially,
18 another entity, but it's all the same people, so it's really
19 all the same thing. That, however, does not satisfy the legal
20 obligation of bringing a lawsuit in the name of the party that
21 has the insurable interest and the right to bring those causes
22 of action. So, and Your Honor, just the Belton v. Cincinnati
23 Insurance Company case, which we've cited in the brief, does
24 address that, that's at 360 SC 575, but because Plaintiff was
25 in that position to know the proper entity, clearly does know

1 the proper entity, and did not bring this lawsuit in the name
2 of the party that has the insurable interest, and that is the
3 insured in this case, directed verdict is appropriate, and we
4 ask that the Court grant that, and of course, if the Court
5 does, then I won't have to argue the other issues, but I'll be
6 happy to address those.

7 THE COURT: Let me hear from Mr. Connell. I'm
8 assuming that he's going to make an argument that Kings Realty
9 --

10 MR. DESCHAMPS: You got this?

11 THE COURT: Alright, Trey, go ahead.

12 MR. DESCHAMPS: Your Honor, of course, we know, going
13 to the guide of the UPA, specifically South Carolina Code,
14 section 33-41-230, (1) and (2), it pretty much says any
15 property that is purchased with partnership funds is
16 partnership property. It doesn't matter the name it's titled
17 in, it doesn't matter if it's subsequently conveyed to another
18 entity to -- just to hold title. The deeds, we put into
19 evidence. The original partners, Mr. Edward Tebele and David
20 Tebele, they purchased this property for \$900,000.00 in 1990.
21 They conveyed it for zero consideration, just they formed Kings
22 Realty LP just to hold title. A. Tebele & Sons, they paid for
23 the sprinkler to be installed, two-hundred-and-something
24 thousand dollars. A. Tebele & Sons is the first name insured
25 on the policy. I think the case law that -- like Benton &

1 Rhodes v. Boden, it's 426 S.E.2d 823 (1993) Court of Appeals
2 case says: Anyone who has an insurable interest in the
3 property is anyone who derives a benefit from its existence or
4 would suffer a loss from its destruction. There's also a
5 Fourth Circuit Court of Appeals case from 2007, Studio Frames
6 versus, I think, Starwater Fire Insurance Company. It's 483
7 F.3d 239. This case said: Where anyone who pays for the
8 installation or construction of an improvement to a building
9 has an insurable interest because they suffer a loss if it's
10 destroyed. Same thing here with the sprinkler system, there's
11 no dispute that Mr. -- or A. Tebele & Sons purchased the
12 sprinkler system or paid Crawford for the construction and the
13 installation of the sprinkler system. There's no dispute that
14 A. Tebele & Sons is on the premium finance agreement, paid the
15 premium for this policy, paid off the principal balance under
16 the premium finance agreement, so I mean, no dispute that A.
17 Tebele & Sons has an insurable interest.

18 THE COURT: Anything else? Mr. Starr?

19 MR. STARR: No, Your Honor, other than that this is
20 something that was very easily identifiable to the Plaintiff
21 itself. They chose not to bring in the name of the owner and
22 lost that opportunity by the statute, and this was also a part
23 of the summary judgment briefing.

24 THE COURT: Alright, Mr. Starr?

25 MR. DESCHAMPS: And --

1 THE COURT: Wait a minute. I'm sorry?

2 MR. DESCHAMPS: May I add, there is a case, South
3 Carolina Insurance Company v. Price. A little different, but
4 the citation is 432 S.E.2d 508, it's a 1993 Court of Appeals
5 case. This is where a claim was brought on the partnership --
6 or on behalf of the partnership, but I think the title of the
7 property was the individual partnership's name, and the carrier
8 denied the claim and then, like I said, when it came up for
9 after the denial, coming to trial, the carrier then said, well,
10 it's in the individual partner's name, not the partnership so
11 there's no coverage. And the Court specifically found that the
12 carrier cannot, I guess, after their denial, they cannot then
13 assert, well, it's not in the name of the insured, the, I
14 guess, the partnership, because it's in the name of the
15 individual partners instead, so it denied the -- the Court
16 denied the carrier's argument.

17 THE COURT: Alright. Thank you. Mr. Starr,
18 respectfully, I'm going to deny your motion. Next motion,
19 please.

20 MR. STARR: Sure. Thank you, Your Honor. Your
21 Honor, next, I want to touch on the cause of action that
22 they've pled in the Complaint, Your Honor, and the first is the
23 breach of contract, and so we move for directed verdict as to
24 the Insurer's Defendants on the breach of contract for the
25 following reasons and as set forth also in the summary judgment

1 brief:

2 As a basic matter, first, Your Honor, denial of a
3 claim on an insurance policy does not in and of itself create a
4 breach of that contract. Plaintiff's case has primarily rested
5 on that incorrect assumption of law, and we'll touch on that in
6 just a second, but notwithstanding that assumption, this policy
7 was not breached by the Insurer Defendants, and in fact, this
8 policy remains in effect, or remained in effect, for not only
9 the 1901 property, but also the other 22 additional properties
10 that are on that policy. Your Honor, the testimony that was
11 presented during Plaintiff's case-in-chief is clear, and it's
12 undisputed that the insurance application that Plaintiff
13 submitted on this policy was that this property, the 1901
14 property, was 100 percent sprinklered. That information was
15 carried over to the schedule of values, which the Court has
16 heard about multiple times over the past several days, and it
17 showed that this property and 4 others, 5 total of the 23
18 properties were 100 percent sprinklered, the other 18, if I'm
19 doing the math right, were shown as 0 percent sprinklered.
20 It's also undisputed that the policy has a protective safeguard
21 endorsement, which again, the Court has seen many times, and
22 there's been testimony about it, which required that the 100
23 percent sprinklered properties maintain as a condition
24 precedent to the coverage for a fire loss that those sprinkler
25 systems be properly maintained. As a result -- and that if

1 they weren't properly maintained, then coverage is excluded for
2 a fire loss on one of those properties, and that's exactly, of
3 course, what happened in this case, as Your Honor knows, on the
4 February 24, 2019, fire. Now, Your Honor ruled pretrial,
5 during the pretrial motions, that the policy language in this
6 case is not ambiguous. The language itself is clear, and on
7 its face, it says what it says and is easily interpreted, and
8 that language clearly provides, in the PSE, which is the
9 protective safeguard endorsement: That failure to maintain an
10 operational sprinkler system at the property will make the fire
11 loss not payable. It contains, first, a condition precedent to
12 the coverage, and then second, an exclusion if that condition
13 precedent is not met. The condition precedent requires the
14 insurers, and this is quoting from it: To maintain the
15 protective devices or services listed on the schedule. The
16 schedule values, which is based on the information provided by
17 Plaintiff himself in the application, states that this property
18 is 100 percent sprinklered. That is a condition that must be
19 met and must be maintained there. The exclusion precludes fire
20 loss coverage if the insurers, quote: Fail to maintain any
21 protective safeguard listed in the schedule, and over which you
22 had control, in complete working order. So as an attempt not
23 to deny the language in the endorsement, but as an attempt to
24 say this wasn't somehow breached or not met by Plaintiff, the
25 testimony that was presented on this issue tried to touch on a

1 couple different things that I'll mention just briefly, but in
2 fact, Your Honor, the testimony does confirm that by the
3 Plaintiff's witnesses that that condition precedent was never
4 met, and therefore, this exclusion, which is plain language,
5 applies. The testimony of Deputy Fire Marshal Marinaro, who
6 started this thing so far back I am starting to forget exactly
7 who all was here, but Deputy Fire Marshal Marinaro confirmed,
8 and we've seen the pictures, that the water -- the pipe from
9 the water system was never connected into the building.

10 Professor Finkel addressed this, and of course, Mr. Tebele
11 himself addressed this and saw it for himself on February 13th,
12 just 11 days before the fire, that, of course, this was never
13 set up or connected. Now, because he knows that this condition
14 has not been met, instead what Plaintiff attempted to do was to
15 invalidate the PSE, which he is unable to do, or to have the
16 policy itself deemed inapplicable because it was never
17 physically delivered to Mr. Tebele's hands before the date of
18 the fire, but both of these arguments failed during Plaintiff's
19 presentation of the evidence. First, of course, the PSE is
20 part of the policy, that's undisputed by all of the witnesses
21 who testified who are capable of testifying to that issue,
22 including Professor Finkel. It's also undisputed that the
23 binder was provided to Mr. Tebele by his own testimony on
24 January 17th, 2019, via email from Mr. Egan at Crescent Coast,
25 and further that the policy was delivered in full to Crescent

1 Coast on February 7th, 2019, Crescent Coast, of course, being
2 Mr. Tebele's agent for purposes of this policy, and just simply
3 not given to him, but that has nothing to do with the carriers,
4 the Insurer Defendants, having not provided the policy. The
5 evidence provides the Court with more -- the testimony provides
6 the Court with more than sufficient evidence that, as a matter
7 of law, the contract was not breached with respect to the
8 breach of contract. If this Court agrees that the contract was
9 not breached in the Insurer Defendants' decision to deny
10 coverage because the condition precedent was not met, then, of
11 course, the bad faith cause of action fails on its face and
12 should be dismissed, and we really wouldn't require argument on
13 that point. That, by the way, was confirmed by their own
14 expert, Professor Finkel, who I'm sure the Court recalls
15 hearing say that if there's no breach of contract in this case,
16 there's no viable bad faith claim because even he agreed that
17 the claim was handled properly. He just simply disagreed with
18 the ultimate decision of how -- of declining the coverage. If
19 the Court chooses to deny the directed verdict motion on breach
20 of contract, I do want to address two other points very
21 briefly. First of all, that Plaintiff did not put into
22 evidence and into this record how the BPP coverage, the
23 business content and personal property of \$250,000.00, was met
24 here, that there was anything confirming what amount of
25 property was in there, what the loss was. There's been no

1 testimony of that at all, and so without putting in any
2 evidence of those damages, if the Court deems that the contract
3 -- well, that you're going to deny the directed verdict on
4 breach of contract, the \$250,000.00 coverage should not be
5 applicable and something for the Jury to consider because
6 there's been no evidence of invoices, reports, what exactly it
7 was, proof of ownership of that property, whatever that
8 property may have been, which we haven't heard any testimony
9 of. It's purely speculative and unproven for Your Honor or for
10 a jury to evaluate, and of course, the case law is, you know,
11 is full of cases that say that speculative damages are not
12 properly to go to a jury as they evaluate damages in a case.
13 That's the 250. And then there's also \$100,000 business income
14 coverage amount. Those amounts aren't disputed. It's 2.5 for
15 the building, just as a reminder, 250 for the business personal
16 property, and 100 for the business income. And with respect to
17 that, there has been no evidence other than just a sort of
18 summary statement by Mr. Tebele that he deemed that his loss of
19 business income is approximately \$750,000.00, which was based
20 on what he would be getting if the building was fully rented
21 out and full with respect to tenants and they were all paying
22 rent. He never showed what those rent schedules would be, he
23 never referenced a time that that was the case, and what we do
24 know what the evidence did show is that, two things: First of
25 all, the only tenant in the building at the time that this

1 happened, and for a period of at least a year or more before
2 this happened, this fire happened, was the La Casona Restaurant
3 and Ms. Garcia, and Plaintiff testified in Court that Ms.
4 Garcia was in arrears by five to six months already, had not
5 paid rent in multiple months, and that an eviction process had
6 been started for her. So the fact of the matter is that for a
7 year prior to this, the income, rental income on this property
8 had been zero. Eviction process was underway with respect to
9 Ms. Garcia at the time that the fire took place, so there's
10 been no evidence presented to the Jury to consider either of
11 those two elements of coverage, and so if the Court denies the
12 directed verdict on breach of contract, we do believe that the
13 limit should be of what the Jury considers is the 2.5 million
14 of building coverage and not the other two coverages. Thank
15 you.

16 MR. DESCHAMPS: Your Honor, real quickly, I think,
17 and I believe in light of the evidence that's been introduced
18 in the trial of this matter, that the Court could reconsider
19 this motion in limine as to the ambiguity as, I mean, in light
20 of the construction provision on page 8 that any property, any
21 additions or alterations to the building that are under
22 construction are covered under this policy. And we have two
23 different protective safeguard endorsements. One says that,
24 the AS symbol, and then reading across it: As indicated on the
25 schedule of values. The other one says, I guess, the

1 properties that are marked 100 percent sprinklered. We have
2 two different endorsements.

3 THE COURT: Let's do this. Let's address his motion
4 first. I do want to come back to that motion. We'll finish
5 all that. Let's do the breach of contract motion, his
6 arguments on that first, and then we'll come back to this.

7 MR. DESCHAMPS: Okay. Well, the kind of interplay --

8 THE COURT: I understand. I understand. And what
9 I'm likely to do -- what I want to hear about, though, is in
10 regards to the business contents provision of \$250,000.00.

11 MR. DESCHAMPS: Well, I believe his motion, he's
12 going into the weight of the evidence presented as far as Mr.
13 Tebele's testimony and the loss of income. He's going more
14 into the weight of --

15 THE COURT: Well, the loss of income is one thing,
16 the business contents are something completely different. I
17 find that there was evidence that whether or not they were in
18 arrears or not, there was \$7,000.00 a month that was being
19 paid, it's \$84,000 a year that I think a jury could at least
20 think about. Now, in regards to business contents, that
21 provision, I don't remember hearing any evidence as to that.
22 You know, I mean, can you point to any evidence of stuff that
23 was in the building?

24 MR. DESCHAMPS: Well, we put the triple G estimate, I
25 believe, had contents and fixtures.

1 THE COURT: What was the triple G?

2 MR. DESCHAMPS: The estimate that Mr. Twaddell had
3 prepared as far as Mr. Tebele's loss. I think I had it.

4 MR. CONNELL: So, Your Honor, Mr. Twaddell's
5 testimony is that there was a total loss of everything, \$2.85
6 million dollars. That's what he testified at the beginning of
7 the trial. That includes the loss of rents, the \$2.5 million
8 dollars, and the \$250,000.00. He just lumped it all together.
9 And so a jury could find, based on his testimony, that there's
10 business personal property loss there.

11 MR. WATSON: Your Honor, I would disagree as far as
12 what Mr. Twaddell testified to. I was very attuned to this
13 issue because I was waiting to see how they were going to come
14 up with the basis for this 250,000 because it never came in.
15 Mr. Twaddell just said he passed along this proof of loss
16 document that has a number on it. That's not enough. Where is
17 anything, a list of what it was, when he got it, how he owned
18 it, how -- was it his versus the tenant's, what was the value
19 of it, nothing.

20 MR. DESCHAMPS: Well, your fixtures and your -- like
21 your hibachi tables and contents like that, that's owned by --

22 MR. WATSON: It's part of the building.

23 MR. DECHAMPS: Yes.

24 MR. WATSON: That's part of the 2.5. We're not
25 contesting that they put all kinds of evidence in of the 2.5.

1 MR. DECHAMPS: The stools, the booths.

2 THE COURT: Well, when I'm thinking of those
3 contents, I'm thinking more of the computer systems, the
4 chairs, possibly plates, things like that, alright?

5 MR. WATSON: The policy defines what falls under it,
6 and they just have --

7 MR. DESCHAMPS: Well, I have --

8 MR. WATSON: -- to give the evidence of it.

9 MR. DESCHAMPS: Well, I have chairs and stools. I
10 mean, there's furniture in Mr. Genay's report.

11 MR. WATSON: He's a building contractor. That's not
12 -- he's not estimating the contents of the business and their
13 tables, the restaurant goods, and the computer system.

14 MR. DESCHAMPS: I think you're getting into the
15 weight of the evidence versus the existence.

16 MR. WATSON: I don't think there's evidence.

17 THE COURT: Can I see Mr. Twaddell's, I guess it's
18 not a report, I guess was it a letter?

19 MR. DESCHAMPS: It's an estimate.

20 MR. WATSON: I think what happened here, Your Honor,
21 to be candid, is they couldn't get the evidence in. They may
22 have had it, but they didn't put a witness up that could get it
23 in because it was pure hearsay. They don't have it available.

24 MR. DESCHAMPS: It's a Defendant exhibit. This is
25 it. Okay.

1 MR. WATSON: At this stage, it's got to be evidence
2 that's an exhibit that's in evidence and certainly, nobody
3 testified about it in any way at all in terms of this object,
4 that object, this price, that price.

5 THE COURT: I'm going to give him a minute to look.

6 MR. DESCHAMPS: Here we go.

7 THE COURT: I tend to agree with you, I don't
8 remember hearing any testimony about it, but if there's
9 something that's in one of these reports, I certainly haven't
10 had a chance to look at the reports.

11 MR. WATSON: What they're looking at is the public
12 adjuster's estimate that he was procured for the building
13 replacement, the 4.5 million, which, it's in evidence, but that
14 was towards the reconstruction, not towards the contents. And
15 to ask a jury to decipher something that's not been presented
16 to them by giving them estimates and saying, here, you can go
17 look for it, I don't think that's their job, I think that's too
18 speculative.

19 THE COURT: Mr. Watson, I was looking, did y'all
20 allege estoppel as an affirmative defense, as well, I know
21 y'all did? If I'm not mistaken, ya'll --

22 MR. WATSON: No. The way estoppel came up, and I
23 think Mr. Starr is prepared to talk about that, it was raised
24 by the Plaintiff as some type of way to get around the policy
25 applying. The assertion at the summary judgment level was that

1 there was some sort of misrepresentation by the insurers
2 relating to the issuance of the policy that they relied upon
3 and to their detriment. This trial has not been about that.
4 There's not been testimony to that end. I don't think it's
5 been pled by either party in their pleadings.

6 THE COURT: The only party who pled it was Crescent.

7 MR. WATSON: Right, and that's a different part of a
8 different dispute. Plaintiff pled it -- Plaintiff has
9 articulated it through, it may have been through prior counsel,
10 that somehow the insurers are estopped from enforcing this
11 protective safeguard endorsement because of the way it was
12 procured and put together. I do think they've attempted to
13 generally make that part of this case, but it was never part of
14 the pleadings, and we had a motion in limine because we were
15 afraid of that issue. I don't think this has been an equitable
16 estoppel trial in any way, so I think -- you know, that's where
17 we see it, but we did -- because we raised it at a motion in
18 limine level and the Court indicated that it was taking it
19 under advisement still because it's an equitable matter. At
20 this time, I think our motion in limine can be granted or
21 directed verdict to be granted to the extent that theory is
22 still viable, or Your Honor could rule that that theory has
23 never been pled and is not part of the case.

24 THE COURT: Well, we'll let them get back into that.

25 MR. WATSON: Yeah, we moved on while they were still

1 looking.

2 MR. DESCHAMPS: Your Honor, the proof of loss that
3 was submitted includes all property and Mr. Twaddell's estimate
4 that was entered in as Defendants' Exhibit 43. It has some of
5 these contents as appliances --

6 THE COURT: Can I see it?

7 MR. DESCHAMPS: Yes, sir. It's scattered throughout,
8 but here's where it starts talking towards the back. It's not
9 organized in the best manner. Your Honor, here's the -- may I
10 approach with the proof of loss?

11 THE COURT: Yes.

12 MR. CONNELL: Your Honor, there's also an estimate
13 here for the sprinkler system for \$250,000.00, and that's some
14 of the business personal property.

15 MR. DESCHAMPS: We also have photographs of personal
16 property --

17 THE COURT: Mr. Watson, let me hear from you.

18 MR. WATSON: I'm sorry. For seven days, all I've
19 heard is, the sprinkler system is part of the building, Covered
20 Property, capital C, capital P, section A. That's been their
21 case for seven days. It's not now suddenly business personal
22 property, also. They can't have it both ways. They've written
23 their case on calling it part of the building.

24 THE COURT: Does the contract define business?

25 MR. WATSON: It does, business personal property, it

1 does.

2 THE COURT: Can you tell me what the definition of
3 this because I'm --

4 MR. WATSON: Sure.

5 THE COURT: It's a pretty broad --

6 MR. WATSON: It's -- no, it's defined. It is, I'll
7 just read it, Section B within Covered Property: Your business
8 personal property located in or on a building at an insured
9 location or in the open consisting of the following: one,
10 furniture and fixtures; two, machinery and equipment; three,
11 stock, which is a defined term; four, all of the personal
12 property owned by you and used in your business; five, labor,
13 material, or services furnished or arranged by you on personal
14 property or of others; six, your use interest as a tenant, that
15 wouldn't apply to A. Tebele & Sons; seven, leased personal
16 property, which you have a contractual responsibility to insure
17 unless otherwise provided for under personal property of
18 others. So there's been no testimony identifying, even if they
19 could say, I'll make up an example, there was a, you know, a
20 table and chairs. There's no evidence in the record that the
21 table and chairs was owned by A. Tebele & Sons or owned by
22 Melissa Garcia or owned by the Kansas City Steakhouse years
23 before. There's been no testimony of documents showing that.
24 There's no list of what these things were. It's just pure
25 speculation at this point. During the claim adjustment, Mr.

1 Twaddell, and they could have elicited this through his
2 testimony, but they didn't, hired a company to do an inventory
3 of what was in the building. For whatever reason, they chose
4 not to bring it as evidence in this case, and now their case is
5 closed, so that's why we made a point to move on that.

6 MR. DESCHAMPS: Your Honor, if I may --

7 THE COURT: I was going to say, in the report, it
8 specifically says appliances --

9 MR. WATSON: But does it say who --

10 THE COURT: -- \$587,000.

11 MR. DESCHAMPS: The definition you just read out of
12 the policy includes fixtures. That would include the
13 sprinkler. That would include the hibachi tables. I mean,
14 that's a fixture and a fixture is --

15 THE COURT: The hibachi tables listed. I know he
16 didn't testify to it, but it's in evidence.

17 MR. WATSON: Well, there's a -- the building coverage
18 and the testimony of Mr. Twaddell, was that -- that estimate
19 was procured for purposes of the building. I had to go back
20 and forth with him. I said, it's more than the 2.5, he said, I
21 know. It's defined in the policy what the building components
22 are, just like it's defined in the policy what the business
23 personal property are.

24 MR. DESCHAMPS: And it defines what a fixture is.

25 MR. WATSON: Mr. Deschamps --

1 THE COURT: Mr. Watson, I'll agree with you, they
2 haven't put up much evidence at all of that, however, there is
3 some evidence of it. I had a feeling that y'all were
4 definitely going to attack that, but as to breach of contract,
5 I'm going to deny your motion as to the provisions, business
6 contacts, and general breach of contract. I think there is
7 some evidence in the record. Alright. Yes, sir?

8 MR. STARR: Alright, Your Honor. Moving on from the
9 breach of contract. With the Court declining the directed
10 verdict on breach of contract, there is still the separate
11 directed verdict argument with respect to the bad faith claim
12 as opposed -- as it relates to the Insurer Defendants. And put
13 very simply and succinctly, Your Honor, there has been zero
14 showing in evidence that the insurers acted in bad faith in the
15 denial of this claim. Under South Carolina law, those are two
16 very distinct things: An insurer acts in bad faith when there
17 is no reasonable basis to support the insurer's decision to
18 decline the claim. And that, Your Honor, is cited a number of
19 times, but we reference the Court to the Cock-N-Bull Steak
20 House v. Generali Insurance, 321 S.C. 1, that says that very
21 clearly, that: Breach of contract, denial of the claim does
22 not make it a bad faith claim. There has to be showing that
23 there is, and the quote is from the case: No reasonable basis
24 for the denial. By denying the breach of contract claim, Your
25 Honor, what Your Honor is ruling is that it's a decision for

1 the Jury to make whether, as a question of fact, whether this
2 was in fact breached or not, whether it was an appropriate
3 decision or not. That alone is evidence that this is not, that
4 there's at least a reasonable basis to consider the denial, and
5 therefore, not bad faith. At worst, in this case, Plaintiff
6 has provided evidence that a strained reading of the policy has
7 eliminated the protective safeguard endorsement condition, and
8 thus, the parties have different interpretations of coverage,
9 or lack thereof. That, different interpretations, does not
10 create bad faith. In fact, Plaintiff's own bad faith expert,
11 Professor Finkel, confirmed that in his testimony when he said
12 that in his review, the handling of this claim by the carriers
13 was proper, and I think he used the phrase, proper in all
14 respects, with respect to how they did it, the timing that they
15 did it, the steps they took to do it, and he said, I just don't
16 agree with the decision that they made, and which is his right
17 to do, but he could not deny that the investigative actions
18 were methodical, deliberate, transparent, appropriate in scope,
19 and timely based on the nature of the loss and all of those
20 things. Those are the factors that a Court looks at in
21 determining bad faith as a matter of law. Were those things
22 not followed and was the insured somehow treated in a way that
23 showed a reckless, willful disregard for the claim? None of
24 that happened here. In an effort to support the bad faith
25 opinion, Professor Finkel testified that Mr. Tebele did not

1 have, quote, control over the sprinkler system. And you heard
2 more about that again yesterday when Mr. Connell talked about
3 the Crawford & Company contract, but Your Honor, and so what --
4 back to Professor Finkel, what he said was, well, they didn't
5 have control over this, so this doesn't apply as an exclusion
6 in this case, but obviously, and I'll touch on it, we don't
7 agree with that interpretation, and it makes no logical sense,
8 but even if someone does agree with that, that doesn't create
9 bad faith. That would allow for the determination that, hey,
10 you breached the contract, this doesn't apply, you relied on
11 something we deem, based on the facts, that it doesn't apply,
12 so we think there should be a payment, That's not bad faith.
13 But what Professor Finkel said is that if the protective
14 safeguard endorsement does not apply to the loss, then there's
15 no restriction on fire coverage and the claim should have been
16 paid, but the basis for his opinion on that was based on two --
17 a couple of things, and they're both wrong as based on what the
18 evidence ultimately showed through the witnesses on the stand,
19 and the first is this whole control scenario. He said that,
20 well, you know, the fire -- I'm sorry, the City -- someone has
21 to hook it up to the city water supply. He couldn't do that
22 himself, Mr. Tebele. And then, in the Crawford contract, it
23 says, you know, you're not supposed to mess with any of this
24 until we're finished, but I believe the Court can see the
25 fallacy of this argument. The reason that Mr. Tebele did not

1 have, quote, control of the system, is because there was no
2 system in place to control. The series of pipes and sprinkler
3 heads in the building did not create a sprinkler system.
4 Nothing existed until those pipes and sprinkler heads were
5 ultimately connected to a water supply. Your Honor, that's no
6 different than saying that a house has central heating and air
7 because there are air ducts and vents built in the construction
8 of the house. If there's no air handler on the outside of the
9 house that is connected to those ducts and there's no system in
10 place, there's no central heating and air. It's capable of
11 having central heating and air if it's finished, but it's not
12 -- it doesn't have it until that's done. That's exactly what
13 we had here. For this period of time, there were pipes in
14 place that would allow for a sprinkler system to be in effect
15 in the building, but none of that was going to happen until it
16 was hooked to a water supply. So of course there was nothing
17 at the time of this loss for Mr. Tebele to control because it
18 didn't exist at the time of the loss, and certainly, that
19 factual scenario does not create a bad faith handling of this
20 claim. Professor Finkel also testified that he believed that
21 the insurers knew that the system was not connected prior to
22 issuing the policy and therefore shouldn't be able to rely on
23 that PSE as a basis for denial. However, he testified that
24 that position of his, that opinion of his, was based on two
25 assumptions, both of which were ultimately determined by the

1 other evidence and testimony in this case, in Plaintiff's case
2 by Plaintiff's witnesses, as being incorrect assumptions. The
3 first is that Whitney Northcutt, the recipient of the now
4 infamous email, was the handler of the Tebele policy in
5 addition to being the handler of the La Casona policy. And
6 second, that knowledge possessed by her as an Amwins Access
7 employee was the same as knowledge that would have been
8 possessed by an Amwins SRU employee, which, of course, we know
9 by undisputed testimony, Amwins SRU was the underwriter of the
10 Tebele policy. Amwins Access was the underwriter for the La
11 Casona tenant policy. Both of those assumptions that Professor
12 Finkel had were disproven by the testimony of both Ms.
13 Northcutt and Mr. Melvin from SRU. Ms. Northcutt confirmed
14 live via Zoom that she received the email and she noted that
15 for her file on the La Casona policy. She testified that the
16 Tebele policy was too large of a policy for Amwins Access, and
17 it was something they just simply don't handle so they refer it
18 out, and that's what happened here. The Tebele policy was
19 handled by Amwins SRU, a completely separate company, under the
20 big Amwins umbrella, which, of course, is no different than any
21 other large company that exists in America that has multiple
22 branches and multiple divisions. Federal Express, which is a
23 client of mine comes to mind. There's FedEx Ground. There's
24 FedEx Freight. There's FedEx Air. There's all these different
25 -- they don't work with each other. They're all part of a

1 larger company, but they don't share emails. They don't look
2 at each other's files and policies, et cetera. That's what we
3 have here, and that was confirmed through the testimony of Mark
4 Melvin, which was the video deposition that was played at the
5 start of this case. He testified that SRU was a separate
6 company from Access and that Ms. Northcutt had no involvement
7 in the Tebele policy, and he had never seen any of those things
8 that were in the Amwins Access and Northcutt file. Professor
9 Finkel conceded in his testimony, Your Honor, that if his
10 assumptions about Ms. Northcutt were wrong, then the
11 information provided to her about the sprinkler system would
12 not have the term that he used throughout his testimony, was
13 infused the company with knowledge of this situation. He
14 conceded that if his assumption was wrong, then the company
15 would not have necessarily -- that SRU would not have
16 necessarily been, quote, infused with that knowledge when she
17 got that. He also conceded that three days later, regardless
18 of that issue, on January 14th, Mr. Tebele himself signed the
19 application that listed the property as 100 percent
20 sprinklered. So even if there had been some level of passage
21 of information based on January 11th data, which was disproven
22 at trial, Mr. Tebele himself gave a different report on that
23 three days later and before this policy by SRU was issued. The
24 bottom line is that the Northcutt email, really, Your Honor,
25 with respect to the insurers and with respect to bad faith, is

1 a red herring completely in this case. It might have something
2 to do with the claim that Plaintiffs wish to make against
3 Crescent Coast, which we don't suggest has merit in that regard
4 either, but, and I think Your Honor even saw this as the
5 testimony went on during the course of the Plaintiff's case,
6 that it shifted more to a, look what Crescent knew, and who at
7 Crescent knew this, and less, did anyone at SRU know it,
8 because the evidence clearly showed that that was not the case.
9 And so this issue has nothing to do with the Insurer Defendants
10 and has less to do with a bad faith suggestion or argument
11 against the Insurer Defendants, and for those reasons, Your
12 Honor, we believe it is appropriate for the Court to direct
13 verdict on the bad faith issue and cause of action and allow
14 only, based on the Court's ruling, we've given our reasons why
15 we think otherwise, but based on the Court's ruling, that only
16 the breach of contract cause of action go forward.

17 And Your Honor, just one other thing, again, if Your
18 Honor chooses to allow the bad faith claim to go to the Jury,
19 then I would like to touch on punitive damages and a charge
20 with respect to that, because that's only potentially available
21 in a bad faith claim, it's not automatic and it requires a
22 separate showing. But we believe that the Court should direct
23 the verdict on the bad faith claim and allow it to only go
24 forward on the breach of contract claim against the Insurer
25 Defendants.

1 THE COURT: Okay.

2 MR. STARR: Thank you.

3 THE COURT: Yes, sir, Mr. Connell?

4 MR. CONNELL: So, Your Honor, we just heard a great
5 closing argument from Mr. Starr about bad faith about testimony
6 and inferences, and all that kind of stuff, and as your
7 predecessor in this office said numerous times, the only thing
8 the Court's concerned about is the existence of evidence and
9 not the weight of it. And so the testimony of our expert and
10 their expert, all goes to the weight of the evidence and not
11 the existence because there certainly was evidence here that
12 the Jury could find it was bad faith. And so I could go all --
13 through all those things, but I don't think it's necessary
14 based on the law. I would say as to the punitive damage thing,
15 but we've already agreed that we'd have to bifurcate that, the
16 Court would have to decide that, we don't need to go into that
17 now. If we don't win, we won't have to worry about punitive
18 damages. So I would like to talk at some point with you about
19 the ambiguity rule, but I know we're not at that point yet.

20 THE COURT: Well, and I'll be the first to tell you
21 that there's only been about four judges in the state who've
22 actually tried a case that's gone on to be bifurcated, so I got
23 on the horn and called seven, none of them had done it. So,
24 you know, this is kind of, I hate to say reinventing the wheel,
25 but kind of. So the bifurcation, if it gets to that point, my

1 assumption would be we would charge it a second time as the
2 punitives are not in the case in chief.

3 MR. CONNELL: Your Honor, I tried one here Memorial
4 Day weekend with Judge Mullen and we tried the case and then
5 once we got a verdict and we put up whatever evidence we were
6 going to do about punitive damages, we made a closing argument,
7 and she gave us 20 minutes --

8 THE COURT: Right.

9 MR. CONNELL: -- because she said the Jury was mad
10 because they didn't realize they have to come back again, and
11 so it was the day before Memorial Day weekend. So it's been
12 done, but in other cases like the Orangeburg Sausage case,
13 which is a big case in South Carolina, they actually had expert
14 witnesses come in and all that good of stuff.

15 MR. DESCHAMPS: I only did one in the Federal Court
16 with Judge Harwell and he charged the Jury. They went back and
17 returned the verdict, then we did closing arguments again and
18 resubmitted in the punitive phase.

19 THE COURT: Alright.

20 MR. DESCHAMPS: That's the only time I've ever done
21 it.

22 MR. CONNELL: We don't need to worry about that now.
23 I mean, that's just something for some other time.

24 THE COURT: Let me hear from Mr. Riser, please. It's
25 suddenly very quiet.

1 MR. RISER: It's certainly up to your discretion,
2 Your Honor. I do think there's one way to skin that cat, and
3 that is if the Jury awards damages on a cause of action for
4 which punitive damages is alleged, then the Jury can then be
5 asked to determine if the conduct is reckless, willful, and
6 wanton --

7 THE COURT: Right.

8 MR. RISER: -- without, you know, any discussion or
9 even use of the words punitive damages. That can be done in
10 this trial, and then the separate --

11 MR. CONNELL: Well, and that's what I did last, we
12 had a Dram Shop case, and the Jury did not find that willful,
13 reckless, wanton, and we can talk about that, that's for sure,
14 but.

15 MR. RISER: And I just stood up to tell you that, and
16 also I think Mr. Starr and I have talked about, you know, that
17 whether this case on the facts and the evidence that's been
18 presented during the trial actually rises to the level of a
19 reckless, willful, and wanton activity is something that both
20 he and I would discuss in our directed verdict motion.

21 THE COURT: Yes. Alright. Mr. Starr, again, you
22 make a very compelling argument, however, there is some
23 evidence if believed by this Jury by the Plaintiff's expert
24 that there may exist some level of bad faith, and, again, there
25 has been some evidence put into the record to support that, so

1 for that, I will deny your motion.

2 As to the punitive stuff, why don't we do this before
3 we kind of skin that cat? I know y'all have motions, as well.
4 Do you have any other motions, Mr. Starr?

5 MR. STARR: No, Your Honor, just to, of course,
6 preserve the punitive argument, but then to touch on, and then
7 Your Honor briefly addressed it, I have it on here almost as a
8 postscript, because, candidly, the three of us at this table,
9 aren't -- it's not -- the equitable estoppel issue is not clear
10 to us. In my opinion, is that there is no issue with respect
11 to these --

12 THE COURT: Well, I'm trying to figure it out myself
13 because I'm looking at who's making the argument.

14 MR. STARR: It's simply never been pled against the
15 Insurer Defendants in the Complaint. We never raised it as a
16 defensive, affirmative defense, and it was not asserted by Gene
17 -- by Mr. Connell in the case. It was -- there was a previous
18 firm. They made some arguments on that issue at summary
19 judgment, which was new to us at that time, but we don't think
20 it's appropriate for the Insurer Defendants. They can address
21 it with respect to their defense, but there -- it's just never
22 -- it just frankly never happened, but yet it's floating out
23 there, and so when Your Honor took it under advisement --

24 THE COURT: I'm just trying to figure out who --

25 MR. STARR: Right. I know.

1 MR. CONNELL: -- was concerned.

2 MR. STARR: And so we just -- to preserve the record
3 and to make sure we've touched on this, I did at least want to
4 raise it, but our position is that Your Honor can -- I don't
5 even know where it was -- if it's even going to come up, but
6 that Your Honor can rule that it can't come up against us. For
7 one, it's not even an offensive tool by State law, and, you
8 know, you can look at that, Your Honor, in Janasik v. Fairway
9 Oaks Village, 307 S.C. 339, Government Employee Ins. Co. v.
10 Chavis, 254 S.C. 507. Even if somehow you thought it could,
11 the six conditions haven't been -- they haven't even been
12 attempted, and so I'm not saying that they have failed to do
13 it, I'm just saying it just -- it kind of randomly popped up
14 once and never popped up again and we just want to make sure
15 that we've addressed it for the record, and ideally, that Your
16 Honor would address it, as well, and just say that it doesn't
17 have anything to do with our case and the breach of contract in
18 bad faith cause of action against us.

19 THE COURT: Alright. Mr. Connell, do you have
20 anything to add? I mean, y'all haven't pled it?

21 MR. CONNELL: Yeah. The only thing I would argue,
22 Your Honor, is the issue -- I don't know if I would call it
23 estoppel, but I'd call it waiver. In the policy language that
24 has been put into evidence would be some argument to the Jury
25 that they waived the protective services safeguard endorsement

1 by the language in the policy. And number 5, it says if you're
2 working under construction, then you're covered, and so I think
3 the Jury -- the Court should charge waiver.

4 THE COURT: Waiver and estoppel are two different
5 things.

6 MR. CONNELL: But I don't know about -- I don't know
7 what they mean by estoppel, so I don't think it's a big deal
8 myself.

9 THE COURT: Well, at this point, I haven't heard any
10 evidence to support it. It's a matter of law. Do y'all have
11 anything to add? Y'all were actually the only ones who pled
12 it.

13 MR. RISER: We did, and intuitively, Your Honor, I
14 think, while I'm not sure how much testimony there was on it,
15 but the argument is that, you know, Mr. Tebele told us what to
16 do, and then he's suing us because we did it, and so should be
17 estopped from his claims against us on that basis.

18 THE COURT: Well, and there's a little more to it
19 than that as far as --

20 MR. RISER: Certainly.

21 THE COURT: -- what has been shown, and I haven't
22 seen that. So for what it's worth as of right now, I don't
23 think it's appropriate. It hasn't been pled, and so I don't
24 think I need to make a finding on it or not, other than y'all
25 haven't put up your case yet. So I'm not going to make a

1 finding as to yours because I don't know what you all are going
2 to put up, but as to any assertion of the estoppel as to the
3 Plaintiff's case, I haven't heard any evidence of making a
4 finding and it's not appropriate.

5 MR. STARR: And I guess, Your Honor, you could grant
6 our motion in limine on it to -- which was taken under
7 advisement.

8 THE COURT: Yeah. And I'll grant the motion in
9 limine as to that. Now, as to what they're going to put up --

10 MR. STARR: Yeah. No. This -- for our purposes,
11 it's only --

12 THE COURT: It's only because of the Jury.

13 MR. STARR: Yes, Your Honor. It's only with respect
14 to that.

15 THE COURT: Okay. Alright. Mr. Riser and Mr. Adams?

16 MR. RISER: Your Honor, we have about -- I mean, I'd
17 say it'll take 15 to 20 minutes. I don't know if you want to
18 go ahead and start, or take a five-minute break, or.

19 THE COURT: Let's go ahead and start. That way we
20 can get a -- we'll take a five-minute break before bringing the
21 Jury in.

22 MR. RISER: Okay.

23 THE COURT: Alright.

24 MR. RISER: Alright. Your Honor, Caleb Riser for
25 Crescent Coast Insurance. May it please the Court? We will

1 also, we have directed verdict motions as to the claims against
2 Crescent Coast. Those two actions, again, this action was pled
3 in the alternative. There was breach of contract and bad faith
4 against the carriers for the policy not having -- or not
5 covering the fire loss, and then if those -- if the policy
6 does, in fact, not cover the fire loss, then the claims -- then
7 the Jury can look to the claims of negligence or breach of
8 fiduciary duties against Crescent Coast. We will incorporate
9 by reference for the record our motion for summary judgment and
10 memorandum of law and support, and before I forget, Your Honor,
11 just for the record, we will also incorporate the arguments of
12 carriers' counsel regarding damages and their speculative
13 nature. We will also renew our motions to limit damages that
14 may be heard or considered by the Jury related to the Genay
15 report and testimony, as well as our motion in limine that in
16 South Carolina the value of damages assessed by a Jury as to an
17 insurance agent is that of the policy limits only. I don't
18 know if Your Honor wants me to -- I'm certainly prepared to go
19 through each and then stop and argue it, or just go through and
20 then let the Plaintiff argue it.

21 THE COURT: Let's start with negligence for cause of
22 action.

23 MR. RISER: Okay. Your Honor, I, briefly, I'll just
24 -- there's some facts that I think that are undisputed that are
25 certainly applicable to both causes of action, but I'll

1 certainly start with negligence. The undisputed facts that
2 have been brought out at the trial include that Crescent Coast
3 is an agency for insurance who simply moves information between
4 prospective clients and insurance brokers or carriers to get
5 the coverages requested or to answer questions about same. In
6 this case, Crescent Coast was asked to quote policies for the
7 Plaintiff in 2018. Those meetings to discuss Plaintiff's
8 insurance needs and properties began in August of 2018 when the
9 Plaintiff told Crescent Coast representatives the following:
10 1901 North Kings has a sprinkler system under construction. It
11 covers 100 percent of the building and should be completed very
12 soon, and certainly well before the renewal on January the
13 15th, five months from that date. Plaintiff never gave
14 Crescent Coast any update on the sprinkler system after that
15 meeting. After months of back and forth between -- on the
16 application information, the Plaintiff accepted and affirmed
17 the application on January the 14th, 2019, and returned it to
18 David Egan, who then submitted it to the broker, Amwins
19 Brokerage, for a binding of coverage. Coverage for the
20 property excess and general liabilities policies that were
21 bound on January the 15th, 2019, and policy binders were
22 forwarded to the Plaintiff on January the 17th. Those binders
23 have various policy language, including the conditions which
24 listed the protected safeguard or sprinkler endorsement that
25 we're here about today, as well as a list of all forms that are

1 included in the policy. The Plaintiff never asked any
2 questions about the application, coverages, endorsements, or
3 conditions. After the binder, the Plaintiff did work with
4 Crescent Coast to add properties to the policy, which required
5 endorsements. Crescent Coast worked with the broker and got
6 the properties added, and that was two weeks after binding.
7 Unfortunately, the fire happened on February 24, 2019. After
8 the fire, Crescent Coast worked with the Plaintiff to make a
9 claim and to gather the requested information to assist with
10 that claim. Your Honor, under these facts, there's no duty to
11 advise the Plaintiff, and none was undertaken by Crescent.
12 Now, specifically on negligence. And Your Honor, we understand
13 South Carolina law on negligence, it requires a duty,
14 approximate causation, and damages. Either it breaches that
15 duty, proximate causation, and then damages.

16 There's also specific South Carolina law on duties of
17 care of insurance agents, where an insurance agent or broker
18 with a view toward being compensated undertakes to procure
19 insurance from a member of the public, the law holds that agent
20 or broker to the exercise of good faith, reasonable skill,
21 care, and diligence in performing those obligations. That's
22 Riddle-Duckworth v. Sullivan, 253 S.C. 411. There's also
23 additional and more specific rules. As a general rule, an
24 insurance agent has no duty to advise an insured at the point
25 of application absent and expressed or implied undertaking to

1 do so. That's Trotter v. State Farm, 297 S.C. 465. The
2 general rule is that there's no duty to advise. Plaintiff
3 never asked and Crescent Coast never offered to advise on
4 sprinkler endorsements or specific coverages or forms. I
5 assume Plaintiff is going, and it's unclear as to all their
6 allegations or exactly what they're alleging is negligence as
7 to Crescent Coast, but we've heard so much about the Sandra
8 Nenna email on January the 11th, 2019, to the extent Plaintiff
9 contends that Crescent Coast breached any duties to the
10 Plaintiff by not calling him or not notifying Amwins Brokerage
11 about that January 11th email. The Plaintiff wasn't a client
12 of Crescent Coast at that point, as he continued to shop for
13 premiums with his current agent and with Crescent Coast. The
14 question received was from an actual client, Melissa Garcia, on
15 a separate policy. Crescent Coast handled it quickly and
16 professionally by notifying the broker on that file, Amwins
17 Access. Mr. Tebele knows more about his buildings than the
18 tenant, and more importantly, he affirmed the information that
19 the building was 100 percent sprinklered when he signed the
20 application three days later on the 14th. Most importantly,
21 the text of the email doesn't say what claims content -- have
22 contended in the whole trial. They wanted to say that it
23 reflected the situation on the ground that the pipe wasn't even
24 hooked up. That email says: The sprinklers are installed 100
25 percent, but the landlord hadn't turned on the water. So

1 Crescent Coast didn't have full knowledge of the system at that
2 point. They just heard from a client what a client said from a
3 third party. But Crescent Coast witnesses fully explored those
4 facts in their testimony. But what's more influential here are
5 Plaintiff's witnesses, including their expert, Professor Finkel
6 and the independent adjuster, Jim Twaddell, what they said
7 about that email. They said this email notification was
8 effective to put Amwins on notice of the issue because Whitney
9 Northcutt worked on both the La Casona policy and some aspects
10 of the Plaintiff's policy. So in other words, Plaintiff's own
11 expert obviates this claim for negligence against Crescent
12 Coast. Now, to the extent Plaintiff contends that Crescent
13 Coast was negligent by the Plaintiff not getting hard copies of
14 the policies after the fire, you heard from Mark Melvin, who
15 was the Amwins SRU underwriter who testified via Zoom
16 deposition, that the policy isn't complete until all of the
17 endorsements are received. David Egan testified that Crescent
18 Coast reviews and corrects policies before delivering them to
19 clients like Mr. Tebele in one large package. In this case,
20 the policy pieces started coming in on February the 7th. More
21 pieces arrived on February the 17th. And then on February the
22 22nd, which was not even one business day before the fire,
23 that's when the GL and excess policies arrived. There were
24 endorsements for the Plaintiff's -- or excuse me, for the
25 property policy that didn't even arrive before the fire. So

1 you have heard testimony that not delivering the policy until
2 after the fire had nothing to do with whether or not he had
3 insurance coverage, because binders had been issued.
4 Furthermore, the Plaintiff never asked questions about the
5 conditions or forms listed on the binder, but Crescent Coast
6 stood ready to answer those questions and provide copies of
7 forms, or even a sample policy if you wanted. But here again,
8 Plaintiff's own expert and their independent adjuster, Jim
9 Twaddell, agreed that not receiving the policies until after
10 the fire, actually benefited Mr. Tebele. They said due to
11 their interpretation of the agency issues at play, the policy
12 remained with the carrier, in the words of Professor Finkel.
13 So I don't think that's a grounds for summary judgment, as
14 well. I hesitate to even mention this because it's been
15 distorted at trial, but to the extent that the Plaintiff
16 contends the question of Mr. Sutherland's insurance license is
17 any evidence of negligence. That 2023 document that was
18 received at trial, for the first time, just does not support
19 negligence, particularly because the testimony of Joey
20 Sutherland was that he was licensed in 2018, but over 13 years
21 he'd been a licensed agent, he let his license lapse from time
22 to time when he was focused on restaurants. The licensing data
23 that Plaintiff offered was factual conjecture. What is correct
24 and supported by the testimony of Joey Sutherland, David Egan,
25 and the Plaintiff, is that David Egan signed the application,

1 David Egan interfaced with the broker, David Egan communicated
2 with the Plaintiff about quotes, applications, binders, and
3 paying his premiums, and there are no questions about Mr.
4 Egan's license in this lawsuit. Again, these facts do not
5 support Plaintiff's claims for negligence, and Crescent Coast
6 requests that they be dismissed as a matter of law.

7 THE COURT: Yes, sir?

8 MR. DESCHAMPS: Yes, Your Honor. David Egan's
9 testimony is important. Mr. Egan testified at trial that he
10 input the 100 percent mark on the schedule of values in
11 December of 2018. The schedule of values is the document that
12 100 percent notation is the basis for the carrier's denial of
13 coverage before Mr. Tebele's application. Mr. Egan testified
14 that he never discussed the schedule of values with Mr. Tebele.
15 He never gave the schedule of values to Mr. Tebele. And he --
16 at the time, he, I guess, was receiving the schedule of values
17 and inputting data at the request of the carrier's underwriter,
18 he assumed the role of a dual agent. The testimony is clear
19 through Mr. Sullivan and Mr. Egan that Crescent Coast began
20 soliciting Mr. Tebele for property insurance in 2017 going into
21 2018. They had assumed more of a role than just taking an
22 application and processing an application. A licensed resident
23 broker by statute in our State, specifically South Carolina
24 Code Section 38-45-90, gives an insurance broker, it says: An
25 insurance broker shall exercise due care in the placing of

1 insurance. And I don't, I guess I'm getting into the fiduciary
2 duty claim when the case law is clear when transaction becomes
3 something more than arm's length, or there are other factors
4 that demonstrate that the party's relationship goes beyond the
5 mere sale of insurance that a fiduciary relationship may arise.
6 In this case, it's certainly more than just processing an
7 application. I think, again, we're getting into the weight of
8 the evidence versus the existence. There's certainly the
9 existence of evidence to go to the Jury for the Jury to
10 determine whether there's a fiduciary relationship and whether
11 that Crescent Coast was negligent in processing the application
12 and assuming the role of dual agency and procuring a policy
13 which didn't provide coverage to Mr. Tebele, and one other
14 note, Mr. Tebele's property was covered and had fire coverage
15 under his prior policies. So if this thing would have burned
16 down in December of '18, it would have been covered. The new
17 policy? Nothing. It was handed to him, the exclusion was
18 handed to him after the loss. Crescent Coast didn't deliver
19 the policy. I just, I think we're getting into the weight of
20 the evidence, and that's for the Jury.

21 MR. RISER: I'm not sure if he addressed negligence
22 or not, but I will say with respect to the statement of values,
23 Amwins Brokerage required that document. They sent it to David
24 Egan with information to be input, but David Egan confirmed
25 that the only information on that related to 1901 North Kings

1 was exactly the same information affirmed by Mr. Tebele on
2 January the 14th. The building was 100 percent sprinklered.

3 THE COURT: And you also say that Mr. Tebele had
4 never seen that document?

5 MR. DESCHAMPS: Yes.

6 MR. RISER: The schedule of values? Yes.

7 THE COURT: Thank you, Mr. Riser. I'm going to deny
8 your motion as to the negligence. I think there is some
9 evidence to go to the Jury on that. Your next motion, sir?

10 MR. RISER: Thank you, Your Honor. The next cause of
11 action is fiduciary duties, which Plaintiff addressed briefly.
12 A fiduciary relationship in South Carolina is based on trust
13 and confidence and proposed by one person in the integrity and
14 fidelity of another. It exists when one imposes a special
15 confidence in another so that the latter, in equity and good
16 conscience, is bound to act in good faith and with good regard
17 in the interest of the one imposing confidence. That's Steele
18 v. Victory. But under South Carolina law, again, there are
19 specific rules as to insurance agents. The default rule in
20 South Carolina under Pitts v. Jackson National Life Ins. Co.,
21 352 S.C. 319, is that an insurance agent is not a fiduciary of
22 a purported insurer, and furthermore, stated more succinctly in
23 South Carolina, the sale of insurance is an arms-length
24 commercial transaction which does not give rise to a fiduciary
25 relationship. That's Gordon v. Fidelity & Casualty, 238 S.C.

1 438. So the default position in South Carolina is that there
2 is no fiduciary relationship between -- for the insured and an
3 agent. In this case, the Plaintiff is a sophisticated
4 purchaser based on his commercial property experience,
5 including his years of experience buying insurance. The
6 Plaintiff testified to it, but multiple witnesses, including
7 Sutherland, Egan, Professor Finkel, and Twaddell all agree with
8 that assertion. There's no special relationship between
9 Crescent Coast and Mr. Tebele. They never worked together
10 before coverage was talked about in the policies until 2018.
11 Mr. Tebele already had an agent in 2018. He was playing his
12 current agent off of Crescent Coast to get the best premium
13 price. He didn't actually become a client of Crescent Coast
14 until after the policy was bound on January the 15th, 2019. At
15 best, Mr. Tebele knew Joey Sutherland for a few years as a
16 restaurant manager, not an insurance agent. Just because
17 Sutherland managed a restaurant for a couple of years in the
18 North Kings Highway building doesn't lend any more trust or
19 special confidence in Crescent Coast's abilities as insurance
20 agents. In Plaintiff's words, he may have with that
21 relationship with his previous agency. He said, they just took
22 care of things. But he was kicking the tires on Crescent
23 Coast. And again, according to Mr. Tebele, they were just
24 another insurance agency providing similar services that his
25 other agency did. Nothing in this trial has swung the pendulum

1 on fiduciary duties issues in the Plaintiff's favor from the
2 legal default position that there is no fiduciary relationship
3 between prospective insurance and an agent, and I would just
4 add that related to the schedule of values, Plaintiff's just
5 false assertion that that somehow puts this out of the realm of
6 the normal context of providing insurance, is ridiculous. And
7 Mr. Egan and Crescent Coast had to go to a broker because they
8 had no direct relationships with carriers that could cover a
9 portfolio the size of Mr. Tebele. They were required to use an
10 internal document, the schedule of values, by the broker. So
11 they were required to put information which only included
12 information that was also reflected in the application that Mr.
13 Tebele did see, but they were required to use a document in
14 order to get a quote for his policies. That is normal
15 insurance agency business and was required to get him coverage.
16 So under that basis, Crescent Coast requests that this claim to
17 be dismissed as a matter of law.

18 MR. DESCHAMPS: Your Honor, I think the Federal
19 District Court case of Smith v. Universal Property and Casualty
20 Insurance Company addresses Mr. Riser's argument. I mean, the
21 Court in that case specifically states that neither Pitts nor
22 the cases that Mr. Riser relies on or closes as a categorical
23 matter, a fiduciary relationship between an insurance agent and
24 an insurer.

25 THE COURT: What was that case again? Smith v.

1 Universal what?

2 MR. DESCHAMPS: Property and Casualty Insurance
3 Company. Your Honor, may I approach? I have a copy if you
4 would like to see it.

5 THE COURT: I've got it.

6 MR. RISER: Do you have a copy for me?

7 MR. DESCHAMPS: Yes. We might have some.

8 MR. RISER: Oh, I'm just looking for a citation.

9 MR. DESCHAMPS: And real quickly, I think Mr. Egan's
10 handling of the schedule of values and becoming a dual agent by
11 modifying or inputting data that affects coverage is one of
12 these things or a factor that demonstrates that this
13 relationship goes beyond the mere sale of insurance, that, and
14 Mr. Sutherland's solicitation, going back to 2017, of Mr.
15 Tebele to sell him property insurance, particularly when Mr.
16 Sutherland previously managed a restaurant in the building, was
17 familiar with the building. Mr. Sutherland and Mr. Egan and
18 Crescent Coast as a whole had a pecuniary interest in the
19 transaction. They got commission when this policy was bound,
20 and there's certainly evidence that this goes beyond a
21 situation where a prospective insurer goes to an insurance
22 agency and says, hey, I want some quotes for coverage, can you
23 see if you can give me some insurance coverage, and processes
24 the applications and sends it off. So I think, we're, again,
25 we're getting into the weight of the evidence, but there's

1 certainly enough evidence to go to the Jury.

2 MR. RISER: Your Honor, if I may? In just my brief
3 review of the case that Mr. DesChamps cited, all that says is
4 that there are other factors that may be considered by a Jury
5 related to a fiduciary relationship, including whether the
6 insurer and insured had a long and close relationship, and from
7 the facts, that does not -- that does not apply to this case.

8 MR. DESCHAMPS: Mr. Sutherland certainly had a long
9 relationship, that in 2017 --

10 MR. RISER: He knew Mr. Sutherland as a restaurant
11 manager.

12 MR. DESCHAMPS: But we have Mr. Sutherland's text
13 messages and evidence that say, hey, in 2017, to Mr. Tebele:
14 Hey, do you want to talk about property insurance? Do you want
15 to talk about property insurance?

16 MR. RISER: Coverage that he did not purchase.

17 MR. DESCHAMPS: That's in 2017, the relationship
18 started. And may I add that Mr. Sutherland was also selling
19 insurance to the tenant.

20 MR. RISER: Mr. Tebele had nothing to do with that
21 policy.

22 THE COURT: Give me one minute. I just need to
23 finish reading this case. Alright, Mr. Riser, you make a good
24 argument, but I'm going to send it to the Jury based on Mr.
25 Sutherland's knowledge of the property, the fact that he had

1 worked there for some period of time, and had been in that
2 business, and it does appear that he was contacting the
3 Plaintiff years before when they were trying to get him to
4 obtain insurance. I'm going to allow it to go to the Jury.

5 MR. RISER: Understood, Your Honor.

6 THE COURT: Yes, sir.

7 MR. RISER: And at this point, would you like to
8 briefly address the punitive damages issue?

9 THE COURT: Yes.

10 MR. RISER: Okay. Just very briefly. We recognize,
11 and I think Plaintiff's counsel, by his comments, recognizes
12 that the trial has been bifurcated for purposes of assessing
13 punitive damages. That being said, we presume the Jury will
14 have the option to assess willful reckless conduct on the part
15 of the Defendants. Punitive damages have been alleged in the
16 bad faith claim as to the carriers and in the claims against
17 the Defendant, Crescent Coast, you know, lifted directly from
18 the Anderson charge on recklessness, willfulness, and
19 wantonness. The words "recklessness," "willfulness," and
20 "wantonness" are synonyms. The terms are used to describe a
21 conscious failure to exercise and observe reasonable or due
22 care. Recklessness implies the doing of a negligent act
23 knowingly, and proving that requires clear and convincing
24 evidence. Under the facts presented here that we've discussed
25 today and certainly that have been presented at trial, we don't

1 THE COURT: Madam Forelady, ladies and gentlemen,
2 good morning. It's good to see y'all. I hope that y'all
3 enjoyed the biscuits this morning. We're going to go ahead and
4 continue this case. Counsel?

5 MR. WATSON: Good morning, Your Honor. Because the
6 Court and Counsel allowed us to take several witnesses out of
7 turn, we have no further live witnesses. We do have a few
8 excerpts of the deposition of Abraham Tebele from October 26th,
9 2021, to read into the record as part of the insurer's case in
10 chief, starting with the reference at page 89. Question: Also,
11 in this same exhibit, if you look at the next page, 610 West
12 South, South Kings Highway, it says it's a restaurant. Do you
13 know what kind of business that is? What's the name of the
14 restaurant or entity? Answer: I think it's Thorny's
15 Steakhouse. Question: And Thorny's Steakhouse has the same
16 100 percent sprink noted on its page, correct? Answer: Yes.
17 Did Thorny's, as of January 2019, have a fire sprinkler system
18 connected to water at that time? Answer: To my knowledge,
19 they did. Question: They did? Yes? I didn't hear you.
20 Answer: At the time, yes, they did have a sprinkler system.
21 Same document, same exhibit, premises 20114, Highway 17 North,
22 what business is located there? Answer: I think it's a Family
23 Dollar. Question: And that, the Family Dollar page on this
24 application indicates 100 percent s-p-r-n-k, as well, correct?
25 Answer: Yes. Did it have a sprinkler system installed that

1 was connected to water at that time? Answer: Yes. Premises
2 23 within the same exhibit, 120 Highway 17 North, what is at
3 that location? Answer: That, I believe that's Burke's.
4 Question: What is Burke's? Answer: Like Apparel, Retail
5 store. Yes. And at the time of this application, it was
6 indicated 100 percent s-p-r-n-k on the application, correct?
7 Answer: That's what it says. As of January of 2019, did it
8 have a sprinkler system connected to water? Answer: Yes.
9 Question: Location 24, 122 Highway 17 North, what's at that
10 location? Answer: It's all -- most of these are all at the
11 same location. Like a strip mall? Yes. Question: And this
12 location, premises 24, has the same 100 percent s-p-r-n-k
13 notated, correct? Answer: That's correct. Question: And it
14 had a sprinkler system at that time that was connected to
15 water? Answer: That's my knowledge. Moving to page 100.
16 Question: Do you believe that it was appropriate for your
17 insurers to accept your application as being truthful when it
18 was submitted? Answer: Yes. Question: And yet, you had told
19 them in your application that the property was 100 percent
20 sprinklered. They were entitled to believe that as truthful,
21 correct? Answer: My understanding, the designation of the 100
22 percent literally means that there is a sprinkler system in the
23 building, you know, there's no reference or mention of being
24 connected in that designation. Moving to page 102. Question:
25 We can agree that the sprinkler system did not spray a single

1 drop of water on the fire that occurred in this case, correct?

2 Answer: It was not connected to water at that time. Moving to

3 page 122. Question: What was the ultimate outcome of the

4 eviction proceedings with Ms. Garcia? Was there any monies

5 paid to Tebele & Sons or King's Realty L.P. as a result of the

6 eviction process? Answer: No. Question: She was already a

7 few months behind on rent before this fire happened, correct?

8 Answer: She was. Question: Beyond the loss of rent, do you

9 have any other understanding of your loss of income that your

10 company has suffered as a result of the fire, which you're

11 claiming through that portion of the policy? Answer: Restate

12 that. Question: Sure. Your policy has a coverage for

13 business income loss or what's called extra expense. Do you

14 know why it is that you claimed the \$100,000.00 limit under

15 that coverage prior to the denial of the claim? Answer: So as

16 I stated before, it probably would have been based on what was

17 specified in the lease for rental income. So as I said, I

18 think her rent was supposed to go for \$9,000.00 a month, so

19 roughly \$180,000.00. That's probably where that figure came

20 from. Question: Do you have any other understanding of where

21 that figure might have come from, beyond the lease payments?

22 Answer: I don't. The last excerpts from page 136. Question:

23 Have you made any claim against the sprinkler company,

24 Crawford? Answer: We haven't filed any complaints against

25 them. Question: I mean, have you, to your knowledge, have any

1 letters been sent to them notifying them that you may be making
2 a claim, or anything of that nature? Answer: Not to my
3 knowledge. Those are the excerpts, Your Honor, and at this
4 point, the insurer Defendants would rest.

5 THE COURT: Thank you. Mr. Adams?

6 MR. ADAMS: Your Honor, at this time, Crescent Coast
7 calls Terry Tadlock.

8 **TERRY TADLOCK WAS DULY SWORN AT THIS TIME AND**
9 **TESTIFIED AS FOLLOWS:**

10 THE CLERK: Can you raise your right hand and place
11 your left on the bible? Do you solemnly swear and affirm that
12 the testimony you're about to give the Court in this case, is
13 the truth, the whole truth, and nothing but the truth, so help
14 you God?

15 THE WITNESS: I do.

16 THE CLERK: You may be seated.

17 THE WITNESS: Thank you.

18 THE CLERK: State your name for the Court, please.

19 THE WITNESS: Terry Tadlock.

20 **VOIR DIRE**

21 BY MR. ADAMS:

22 Q. Good morning, Mr. Tadlock.

23 A. Good morning.

24 Q. Can you tell the Jury where you live?

25 A. I live on Hilton Head Island.

1 Q. And will you briefly tell the Jury about your family,
2 any kids, grandkids?

3 A. Oh, wow. It's going to take a while. I have two
4 children. The way I introduce them usually is I have a
5 44-year-old daughter. She is drop dead gorgeous and perfect in
6 every way, and then I have a son. His name is Matthew. He
7 lives in Bluffton, my daughter lives in Jacksonville, Florida,
8 and I have six grandchildren.

9 Q. Awesome.

10 A. And a beautiful wife, don't forget about her.

11 Q. I won't tell. Will you briefly tell the Jury your work
12 history?

13 A. I began my work history in the end of 1978, beginning of
14 1979 in a Family Insurance Agency in Tallahassee, Florida. I
15 worked there for eight years due to some health problems with
16 my mother. The decision was made to sell the agency, so we
17 sold the agency. I then went to work for the Florida
18 Department of Insurance. I was retained to, basically, convert
19 the state licensing exam from -- at the time it was an essay
20 exam, and I was in charge of the group that converted it to a
21 multiple choice exam, and I was also responsible for agent
22 licensing.

23 Q. Got you. Will you briefly tell the Jury your
24 educational background?

25 A. I graduated from high school 1978. I went to college to

1 play baseball, was injured in my freshman year, come home, and
2 that's when I went to work in the agency. Now, there's a lot
3 of education. I guess we'll get to that later, in insurance.

4 Q. Sure. You could go ahead and tell them now. You know,
5 are you licensed and certified, and what classes and education
6 did you take to achieve those licenses? You can go ahead and
7 tell the Jury all that.

8 A. Okay. I have held a property and casualty license since
9 1978. I have held a life and health license since 1978.
10 Actually, I think the life and health was '78, the P&C may have
11 been '79, a long time ago, been licensed continually since
12 then. When I left the Department of Insurance, I was fortunate
13 enough to go into business with a gentleman who was kind of a
14 -- became my mentor. He was an icon in insurance education in
15 Florida. His name is Jim Harrison, and I started a company
16 called Florida Insurance Educators, which I did education work,
17 and I did consulting work through. I also worked with his
18 company, which was Florida Insurance School, to provide
19 continuing education to insurance agents in the state of
20 Florida. Then we began -- well, Jim had already been doing it.
21 I then began my CIC designation as a Certified Insurance
22 Council professional designation, and that consists of five
23 parts, commercial property, commercial casualty, personal
24 lines, life and health, and agency management. There are --
25 they are three-day classes, and then you have to take a written

1 essay exam for each one of those five. I received that
2 designation, I believe, 1993, 1994, somewhere in that time
3 period. I also had begun my Chartered Property and Casualty
4 Underwriter's designation. I wanted to make sure -- that's
5 probably the elite designation in the industry. It's comprised
6 of two parts, and at the time I did that, I -- it took a while,
7 but got that done, became a CPCU, and it was at that point that
8 the doors started opening for me to teach nationally. I become
9 a faculty member for the Certified Insurance Counselor Program.
10 I am on their national faculty, currently. I still teach for
11 them. I also do a great deal of consulting for insurance
12 agency operations, agency management work, and then later in my
13 career, I started doing a little bit of expert witness work. I
14 don't do a lot, but have done, I don't know, 20 or so cases,
15 and then in '19 or 2010, I was tired of traveling. I mean, 200
16 days a year on the road, I was getting a little tired. An
17 opportunity became available through a good friend of mine in
18 South Carolina, Jon Jensen, who owns Correll Insurance Group.
19 We acquired an agency in Hilton Head, and I started with
20 Correll Insurance Group as the president of the Correll
21 Insurance Group of Hilton Head, and two years later, also
22 started Southeast Coastal Underwriters, which is our brokerage
23 company. We are a wholesale broker as well as a retail agency.
24 And during that time, when I moved to South Carolina, I changed
25 the name of Florida Insurance Educators to TLT Insurance

1 Services, and I still do quite a bit of education consulting
2 work through TLT Insurance Services, which brings me here
3 today.

4 Q. Got you. So, active insurance agency practice, correct?

5 A. Oh, yes. Yeah.

6 Q. Active brokerage practice, correct?

7 A. Yes.

8 Q. And what you're here for today is providing your
9 services as an expert insurance agency?

10 A. Correct.

11 Q. Why don't we just dig into that very briefly? I think
12 you said you've had maybe 20 or so cases where you've been
13 retained as an expert; is that correct?

14 A. Yes.

15 Q. How many of those cases do you recall specifically dealt
16 with allegations against an insurance agent?

17 A. Probably seven to eight of those involve agent duties.

18 Q. And you've been certified previously in times where
19 you've had to give testimony as an expert in insurance-related
20 topics; is that right?

21 A. That is correct.

22 Q. And does that include in South Carolina?

23 A. Yes.

24 MR. ADAMS: Your Honor, at this time, we would tender
25 Mr. Tadlock as an expert in standards and practices governing

1 retail insurance agencies.

2 MR. CONNELL: No objection, Your Honor.

3 MR. WATSON: None, Your Honor.

4 THE COURT: Alright. He will be admitted as an
5 expert in the standards and practices of the insurance
6 agencies. Is that what you said?

7 MR. ADAMS: Yes, Your Honor.

8 THE COURT: Okay.

9 **DIRECT EXAMINATION**

10 BY MR. ADAMS:

11 Q. So let's dig into your opinions in this case. You're
12 the last witness. I'm sure the Jury and everyone here has
13 heard a lot of what we're going to talk about, but one of those
14 is Mr. Tebele, his status as an insurance buyer, and so, in
15 your review of the documents and evidence and discussion with
16 witnesses in this case, how would you describe Mr. Tebele as an
17 insurance buyer?

18 A. Well, I think Mr. Tebele is an incredible business
19 person. You don't become the owner and operator and manager of
20 23 properties without, you know, some, you know -- you know,
21 there -- there's got to be some business savvy there, you know,
22 and owning and operating so many properties, he's clearly had
23 to enter into many, many contracts, particularly tenant
24 relationship contracts. He's had to enter into many, many
25 insurance relationships. So he's had to negotiate the waters

1 of the insurance purchasing before. I would characterize Mr.
2 Tebele as incredibly sophisticated.

3 Q. And I think there's 23 policies, or properties, excuse
4 me, at issue in this case, or at least that he sought coverage
5 through Crescent Coast for?

6 A. I believe that's correct. There are 23 properties on
7 the ACORD app, that is correct.

8 Q. And that doesn't mean there's 23 policies. In fact,
9 there's a lot of different policies that are generally
10 associated with each property, is that your understanding?

11 A. Oh, absolutely. I mean, this case seems to be evolving
12 around just the property side of the business, but there would
13 also be -- there could very well -- there is -- as a matter of
14 fact, I know for a fact, there is a general liability policy,
15 there is a commercial umbrella policy, I would assume there is
16 workers' compensation coverage somewhere, he probably has
17 health insurance, he probably has employee benefits liability,
18 and I -- and, you know, there could be a number of things that
19 he could own as a business person that's part of his overall
20 insurance package.

21 Q. And typically policies have to be renewed on a yearly
22 basis?

23 A. That is correct, annually, generally speaking.

24 Q. So with all these policies that he's held over many
25 different businesses and premises, he's having to update them

1 or renew them yearly?

2 A. That is correct.

3 Q. And before he and Crescent developed a relationship, he
4 had prior agencies he worked with?

5 A. I'm not familiar with all of the agencies that he's
6 worked with in the past, but I am familiar with the agency that
7 he worked with previously to Crescent Coast. I did review the
8 BB&T policy that he had prior to Crescent Coast.

9 Q. And the buildings that he insured previously through
10 different agencies, and he sought to ensure through Crescent
11 Coast, some of them had sprinkler systems in it; did they?

12 A. They did.

13 Q. Are you aware if any of the prior policies governing --
14 or, governing the other premises that he had had any provisions
15 that dealt with sprinkler systems?

16 A. They did, as a matter of fact, and I found it kind of
17 ironic since this claim seems to focus on a protective
18 safeguard endorsement. There was actually a mistake made in
19 the BB&T policy issuance. They had put the protective
20 safeguard endorsement on every single property that Mr. Tebele
21 owned, even the ones that did not have sprinklers, which I
22 don't know who brought that to whose attention. I don't know
23 if Mr. Tebele brought that to the agent's attention or vice
24 versa, but that was a situation that had to be corrected, so it
25 was obvious to me that Mr. Tebele had knowledge of a protective

1 safeguard endorsement.

2 Q. It's not the first time he had to deal with them?

3 A. Correct.

4 Q. Let's dig into your opinions about Crescent Coasts'
5 actions and conduct in this case.

6 A. Okay.

7 Q. And specifically, I'd like for you to explain to the
8 Jury what Crescent Coast did and whether you felt that was
9 consistent with the standards of care that govern insurance
10 agents.

11 A. Okay. One of the things I do in my consulting business
12 is we try to teach what we call best practices for insurance
13 agency operations to make sure that they're run according, not
14 only according to law, but according to industry standards. So
15 when I decided to accept this case, I went back to the initial
16 relationship between the agent of record in this case, which
17 was David Egan in July and August of, I believe, 2018 and
18 worked my way forward to find out, okay, what exactly did they
19 do? Well, he met with the insured, which you should do, he
20 asked the questions, he gathered the necessary data, input the
21 data into the ACORD applications, and there was a lot of back
22 and forth, and the reason I know this is I also interviewed Mr.
23 Egan and asked him some of the questions that I was just
24 curious about. You know, Did you do this? Did you do that?
25 And to satisfy my own curiosity, and there were several

1 meetings, several conversations between Mr. Egan and Mr.
2 Tebele. The applications were completed appropriately. The
3 information was provided by Mr. Tebele that went into the ACORD
4 applications, and then those ACORD applications were forwarded
5 to the broker, in this case, Amwins Brokerage, Insurance
6 Brokerage. The quotes would have been -- started coming back,
7 and that's when there's back and forth between the agent broker
8 to negotiate pricing and this sort of thing to get the most
9 competitive pricing they can, which I think any reasonable
10 agent would do, Mr. Egan did that. Mr. Egan kept Mr. Tebele in
11 the loop, presented Mr. Egan with the quotes. There was a --
12 there was an approved quotation that was provided and then
13 provided Mr. Tebele the ACORD applications for his signature,
14 which he signed, and those -- those applications were the basis
15 for ultimately the binding of the policy, which was -- you
16 know, the binding of the policy is simply a process where the
17 agent interacts with the broker and says, the insured has
18 accepted our offer, please bind the coverage, and the broker
19 did bind the coverage. The broker then issued, the next day, a
20 binder. The following day, that binder was sent to Mr. Tebele.
21 That binder contained a condition that the sprinkler alarm --
22 or, that the protective safeguard endorsement was present. It
23 also listed all of the endorsements that would be on the
24 insurance policy when the final document was issued, and we do
25 that simply so that the insured can go through that list and

1 see if anything jumps out at them as being unusual. If
2 anything is unusual, then, you know, you would simply pick up
3 the phone, and call the agent and say, what is this, because it
4 doesn't make sense to me. Once the binder was issued, the
5 binder was sent to Mr. Tebele. He reviewed the binder,
6 assuming everything was correct because there were no
7 questions, then, unfortunately, the policy started coming in,
8 and there were changes being made. As a matter of fact, there
9 were changes being made just prior to the issuance of the
10 policy. Before they even bind the -- bound the policy, they
11 were making some modifications, and those modifications
12 continued even a couple of days after the policy was bound.
13 Mr. Egan, I think, did the appropriate thing agents should do,
14 and that is get the policies from the carrier, review them,
15 make sure they are issued the way you requested them to be
16 issued. I know it's going to shock you, but sometimes we get
17 paperwork from companies that aren't perfect, and vice versa,
18 I'm sure. So Mr. Egan was reviewing the policies. He still
19 did not have some of the endorsements in. Not a huge critical
20 issue, but he did not have the endorsements in to make part of
21 the package because we had just asked. I wouldn't expect him
22 to come back, you know, instantly. The other thing that Mr.
23 Egan was waiting on was the general liability policy. The
24 general liability policy was actually underwritten in
25 California by an underwriter, Ms. Sisleck (phonetic), I

1 believe, was her name. That policy didn't arrive until the day
2 before the fire. As a matter of fact, it wasn't even a full
3 day before the fire. And Mr. Egan would have then, assuming no
4 fire would have taken place, Mr. Egan would have then brought
5 all this together, put it in a complete binder with a property
6 section, a general liability section, an umbrella section, all
7 the policies, you know, divided so that they would be easily
8 reviewed, or reviewable, and then delivered that to the client.
9 Unfortunately, the fire took place before the actual general
10 liability policy was reviewed and assembled into the policy,
11 because the policy is not just the property policy, you have to
12 look at it as a complete package of coverage. And then,
13 unfortunately, the fire happened and Mr. Egan immediately went
14 to the site, delivered what he had, I still don't think he had
15 everything, but delivered what he had because the unusual
16 circumstances. I mean, I've been doing this, even though you
17 can tell I'm pretty old, 44 years I've been doing this. I'm
18 not sure I've ever seen a situation like this where the fire
19 actually took place or the loss actually took place before the
20 property -- you know, before the policy was issued. Maybe one
21 time. I think maybe I can remember one case, but I -- it just
22 doesn't happen. But when you talk about Crescent Coast and
23 their duties, I mean, he did everything according to standards
24 and practices of an exceptional insurance agency. From the
25 moment that David started the application process all the way

1 through the securing the quotes, negotiating with the
2 underwriters, negotiating with his client, having the binders
3 -- or, you know, effecting the policy, having the binders
4 issued, having the policies issued, he did everything right.

5 Q. Got you. So let's touch on a couple of things that you
6 brought up, and let's go back to when the ACORD applications
7 were being filled out. And one, my question is: we've heard a
8 lot about these ACORD forms. What exactly are they?

9 A. ACORD forms are industry standard applications that
10 companies require because they have a signature block on it.
11 You have to attest that the information that is contained in
12 the application is correct. One of the things that I think
13 very few people take into consideration is insurance is an
14 industry that's built on trust. I mean, the carrier never gets
15 to meet with the insurer, the insurer never gets to meet with
16 the carrier. What we do is we transfer information back and
17 forth, and it's imperative that information be correct, so the
18 underwriters can do their job properly and issue the policy
19 properly, and so that the client gets the coverage that they
20 desire.

21 Q. And so the agent relies on the prospective insured to
22 provide accurate information that has been put into this
23 application?

24 A. Absolutely.

25 Q. In this particular instance, it was marked 100 percent

1 as to the 1901 North King's Highway as being 100 percent
2 sprinklered?

3 A. 1901 North King's Highway was noted as 100 percent
4 sprinklered, and I believe there were four other locations that
5 were also notated as 100 percent sprinklered.

6 Q. And that information came from Mr. Tebele?

7 A. Yes.

8 Q. Now we know that wasn't actually the case at 1901, is
9 that your understanding?

10 A. It was my understanding in reviewing the documents, what
11 happened was Mr. Tebele contracted with a company to install
12 sprinklers in 1901. They installed the piping, they installed
13 the sprinkler heads, and it got all the way to the point of
14 connecting to the main water, and that was never done.

15 Q. And Mr. Tebele, from what you've reviewed, never updated
16 Crescent Coast about the status of the sprinkler system?

17 A. No, I asked -- that was one of the questions that I
18 asked David specifically. I wanted to know for sure. I said,
19 from the moment you met with him in August and put this
20 information into the ACORD apps based on his input, did he ever
21 contact you and tell you anything about the sprinklers? And
22 David told me, no.

23 Q. And would you expect an insurance agent, in that
24 situation, to go out and continue to ask the insured about the
25 status, or, you know, is everything accurate, or are they

1 relying on the insured to report new information to them?

2 A. No, we wouldn't. We wouldn't. We don't follow up on
3 the information that's given to us by the client. We accept it
4 as fact and move on.

5 Q. Because there's many clients, many policies.

6 A. We wouldn't do anything except follow up on information
7 if we did that. I mean, you know, Mr. Egan's office has, I
8 think I counted approximately 2,500 customers, and that's --
9 that's customers, that's not policy count. Policy count could
10 be two or three times that. You know, our job is basically to
11 talk to the insured, gather the information, and then, in turn,
12 give that information to the insurance broker or the carrier,
13 and that's exactly what Mr. Egan did.

14 Q. And Mr. Tebele signed the application?

15 A. He did.

16 Q. And did the application contain any language where he
17 affirmed that it was true and honest to the best of his
18 knowledge?

19 A. Yes. There is a -- there is a bold statement at the
20 signature block that basically says, I attest that the
21 information is true and accurate.

22 Q. And it wasn't true and accurate, is that your
23 understanding with regard to the sprinkler status of 1901 North
24 Kings?

25 A. It was not.

1 Q. You've testified Mr. Tebele received the binder?

2 A. Yes.

3 Q. And that was January 15th, 2019?

4 A. That is correct.

5 Q. And the binder mentioned the list of endorsements?

6 A. It listed a condition for the protective safeguard
7 because the application said there was a sprinkler, and it also
8 listed the endorsement and the schedule of endorsements.

9 Q. Now, Mr. Tebele's attorneys have made a lot about the
10 fact that the binder didn't specifically list all of the
11 properties and which ones were subject to this endorsement and
12 which weren't, and one, I guess I just want to ask: the binder
13 that you reviewed in this case, is it consistent with the
14 binders that you see in your practice as an insurance agent and
15 as an expert?

16 A. Oh, absolutely, it's a typical insurance binder.

17 Q. And it's not a document Crescent Coast drafted?

18 A. No. Crescent Coast has nothing to do with the binder or
19 any endorsement or the policy. They do not have any authority
20 over that whatsoever.

21 Q. And if Mr. Tebele read the binder and saw it contained
22 an endorsement requiring sprinklers, he could have asked
23 Crescent Coast, which properties is going is this going to have
24 -- this endorsement going to cover? I mean, couldn't he have
25 done that?

1 A. Oh, absolutely. I mean, he could have asked that
2 question about any endorsement matters, if he would have had a
3 concern or a question, yes.

4 Q. And he never asked any of those types of questions at
5 any point to Crescent; did he?

6 A. He did not.

7 Q. His primary concern was the premiums?

8 A. Well, I did look for that indication, and I guess what
9 led me to my opinion in this is that at no time during this
10 process, and I look for this specifically because it always
11 intrigues me, at no time during this process from, you know,
12 July and August meetings all through the application process,
13 was there ever any discussion or questions on Mr. Tebele's half
14 about, you know, the coverage or the quality of the coverage.
15 It was, can you get it to me at a lower price than BB&T? And,
16 you know, unfortunately, I'd like to say that's atypical, but
17 probably not, but, you know, Mr. Tebele, having that financial
18 investment in that many properties, I would -- I can say my
19 clients ask questions.

20 Q. Got you. And he was still involved where there were
21 changes being made even up to two weeks after binding to the
22 policy?

23 A. There were. I believe just prior to the issuance of the
24 binder, there was some cleanup work that had to be done, and
25 then there were a couple of locations, I believe, that had to

1 be added shortly thereafter.

2 Q. So he had a full and fair opportunity to ask any
3 questions?

4 A. Oh, absolutely.

5 Q. And he didn't?

6 A. No, he did not.

7 Q. Let's talk about the January 11th email that we've heard
8 about incessantly. Why don't you just tell the Jury your
9 thoughts on it and what Crescent Coast -- whether what they did
10 was consistent with the standards they were being governed by.

11 A. Well, I did look at that because I had a feeling it
12 would be a point of contention. On January 10th, actually, it
13 refers to yesterday, so I'm assuming on the 10th, Ms. Garcia,
14 who was a client of Crescent Coast, and she was the owner of La
15 Casona Restaurant. She sent Mr. Sutherland -- actually, called
16 Mr. Sutherland and said, the -- I'm being told that the water
17 to my sprinkler system is not turned on. Mr. Sutherland then
18 noted or picked up the phone called Ms. Nenna who was an
19 account manager in the office who handles the management of
20 accounts, and she did what I think any account manager in an
21 agency would do. They pull up the account in the agency
22 management system by name and find out who the carrier is and
23 notify the carrier of the information that's been brought to
24 their attention, and that is their obligation, that is their
25 duty. The other thing that concerned me about the email, and I

1 guess it's a little confusing. It says: We have learned as of
2 yesterday that the sprinklers have been installed, but the
3 landlord has not turned the water on to have them operational.
4 I don't even, you know -- to me, if I were to read that, I
5 would think somebody needs to go out and turn a valve, or
6 somebody needs to go out and flip a switch or do something. It
7 would not tell me that, you know, there's still piping and a
8 connection that's not made.

9 Q. Got you. And one thing I want to make real clear is on
10 the call on the 10th and the email on the 11th, Mr. Tebele was
11 not a client of Crescent Coast?

12 A. Mr. Tebele was not a client of Crescent Coast at that
13 time. They were under negotiations with Mr. Tebele at that
14 time, but they -- he was not a client. Also, I can tell you
15 that in my experience in insurance agencies, what happens is
16 when you get information like this, you pull the client's name
17 up in the system, La Casona Restaurant, and it will have, you
18 know, all the pertinent information about La Casona, and then
19 it'll have the contact person at the brokerage that you're
20 responsible for contacting, and in this case, I think it was
21 Ms. Northcutt, and because she worked with Amwins Access they
22 handle small, very small commercial account packages, and she
23 sent in a request to her to let her know that the sprinklers
24 were not turned on, as you just saw, and Ms. Northcutt, I'm
25 assuming, followed protocol and noted the file and moved on.

1 Q. Now I'm sure you're going to be asked about the fact
2 that the application was sent to Mr. Tebele on January 11th, I
3 believe.

4 A. Yes.

5 Q. And you may be asked, well, why didn't Mr. Egan ask Mr.
6 Tebele about the status of the sprinkler? And so, what I want
7 to be clear about is what information was given by Ms. Garcia
8 was different than what was actually at the premises, right?

9 A. It was different. There are several things about the
10 whole process that lead me to my conclusion. Number one, I'm
11 not aware that David Egan even knew about it. David Egan is
12 the agent of record for Mr. Tebele. This was an account
13 management function that account managers simply pulled up in
14 the system and did her obligation, her duty as she's supposed
15 to as an account manager. You do not -- these accounts are not
16 linked in our system. I understand, they're also not linked in
17 Amwin's system. There's no way if a client -- if a tenant were
18 to call me and say, oh, by the way, this condition exists in my
19 building, and I were to pull up that in my agency management
20 system, I would have no way of knowing who the building owner
21 was, who insured the building, or anything else, and at the
22 time, you know, they didn't insure the building.

23 Q. It was Ms. Garcia who called?

24 A. Yes.

25 Q. She was a client?

1 A. That is correct.

2 Q. They pulled up her information?

3 A. That is correct.

4 Q. Sent it to the broker associated with her account?

5 A. Did exactly what they should have done.

6 Q. Did exactly. Let's move on to an issue that's come up
7 regarding licensing. In your review of the documents and
8 evidence in this case, are you aware of any licensing concerns
9 for Crescent Coast regarding the transaction in this case?

10 A. Of Mr. Tebele's policy?

11 Q. Yes, sir.

12 A. No, not at all.

13 Q. Who was the ultimate agent who was responsible for the
14 creation of the application and submission of it to Amwins to
15 try to procure quotes and then eventually coverage?

16 A. Yes, it's my understanding -- well, it's not my
17 understanding, it's fact, that David Egan is the one who
18 gathered the information as the lead agent. He is the agent of
19 record on the account, and by that, what I mean is Mr. Egan is
20 the one who signs the application on behalf of the agency. Mr.
21 Egan gathered the information. Mr. Egan sent the information
22 to Amwins. Mr. Egan negotiated with Mr. Tebele and with
23 Amwins. Mr. Egan also is the one who verified the binder
24 information accuracy. The entire process was done by Mr. Egan.

25 Q. And you're not aware of any issues with Mr. Egan's

1 licensing at that time?

2 A. I'm still not aware of any licensing issues.

3 Q. Got you. You touched on the way the policy was actually
4 delivered to Mr. Tebele, and I don't want you to have to
5 retread ground you've already covered, but the policy, the I
6 guess, kind of meat and bones of it of the basic form was
7 received by Crescent on around February 7th.

8 A. Seventh.

9 Q. But there's still a lot more that needs to go into
10 having an actual complete policy package, right?

11 A. The part that was received on February 7th was the
12 policy form from Amwins. It did not contain any of the
13 endorsements that were changed up to that point, and it did not
14 include any of the other coverages that were required to be
15 part of the package, the general liability, the umbrella, and
16 any other coverages that they may have purchased.

17 Q. And are you aware one endorsement was received around
18 February 22nd?

19 A. That is correct.

20 Q. And then another one didn't even come in until March
21 1st, which was after the fire?

22 A. That is -- that is also correct, yeah.

23 Q. And is it consistent with the standards for an insurance
24 agent to wait for the entire package to come in and review it
25 for accuracy before turning it over to the insured?

1 A. Yeah. What we like to do, and I questioned Mr. Egan on
2 this, and he said they do the same thing. I don't like to
3 disperse things piecemeal, because if you do it just confuses
4 the client. We like to put all of the coverages together. We
5 put them in a binder. We separate the binders by tabs, by
6 coverage, so that we can easily, when we deliver the policy,
7 flip through and go through the pertinent information with
8 them, and then we also provide them electronically, but we
9 don't do that until we have all the information.

10 Q. And it's just unfortunate that before that could occur,
11 the fire happened.

12 A. Yes, tragic, yes, absolutely.

13 Q. Let's switch gears to Crescent Coast's interaction with
14 Amwins. Did you see any deviations from the standard of care
15 regarding how Crescent Coast collected and then provided
16 information to Amwins in this policy?

17 A. No, I didn't. What -- the process always begins with
18 the ACORD applications, gathering a bunch of data that you guys
19 have heard a thousand times and putting all this data into
20 ACORD apps. Then the brokers require, and I've heard so much
21 about this document, I can't believe it's become this
22 important, the statement of values document, which is just, a
23 statement of values is nothing more than an internal document
24 used by Amwins for underwriting purposes. It takes the
25 information that's contained in the application, and it puts it

1 in a horizontal format so that underwriters can just look real
2 quickly and see, okay, for location 19, it's this, and, you
3 know.

4 Q. Make this right here, horizontal line.

5 A. Correct, a horizontal line. See, if I'm an underwriter
6 and I have to look at a building and say, should I be insuring
7 this building? Well, what do I want to know? I want to know
8 the year of construction. I want to know when it's built. I
9 want to know what it's made of. How is it built? I want to
10 know where it's located. I want to know, I almost use the
11 insurance term, I apologize, total insured values. I want to
12 know the different coverages that they've selected, and on the
13 Amwins spreadsheet, they focus on the things that affect
14 coastal underwriting, and that is sprinkler systems, distance
15 to the coast, wind percentage deductibles, those types of
16 things, and what that allows an underwriter to do is quickly,
17 at a glance, look at a spreadsheet instead of have to flip
18 through 20, 30 pages of an application to try to find the
19 information. This is nothing more than a tool of efficiency
20 for a broker. That's all it is.

21 Q. And this is an AmRisc document?

22 A. The document actually was written by AmRisc. That is
23 correct.

24 Q. And but now Amwins uses it.

25 A. I don't want to get myself in trouble. Just about every

1 broker uses it.

2 Q. Yeah. Crescent Coast did not draft this document.

3 A. No, they did not draft it. Not only did they not draft
4 it, but they can't -- the only thing Crescent Coast can do with
5 this, and generally, the way this is completed is that somebody
6 on the company's side in a clerical position will take the
7 ACORD apps and plug this information in. The information will
8 then be sent back to the agency, Crescent Coast in this case,
9 and say, verify this information is correct, make sure we
10 have -- you know, they just want to make sure that all of this
11 stuff is correct before they get to the underwriting, the final
12 underwriting process. Now, the part that the agency can change
13 is they could change, like, the street address they can change.
14 For example, if it wasn't 1901, if there was a clerical
15 mistake, they could go in and edit a field. What they can't
16 change is the static form itself. Each of the fields are
17 hardcoded and they're required to be filled out --

18 Q. The guide, of course.

19 A. -- according to the broker.

20 Q. So for example, the category that says, sprinkler, yes,
21 no, and the category that says, percent sprinklered, that's
22 just how the form is, and Crescent Coast had no ability to
23 change that to reflect anything different other than what the
24 actual information is to be entered?

25 A. Correct. If, for example, the carrier would have come

1 back with this document and said, 1901 sprinklered, 0 percent,
2 sprinklered, no, when the ACORD said otherwise, they could have
3 gone in and they could have showed the 100 percent, and yes,
4 and then communicated with the underwriter, we made this change
5 and here's why, you need to verify it on the ACORD apps.

6 Q. But in this case, the 100 percent sprinklered is
7 consistent with what is noted on the ACORD app for 1901 North
8 Kings that was signed by Mr. Tebele?

9 A. It's my knowledge that nothing on 1901 had to be changed
10 the statement of values.

11 Q. Including the sprinkler status?

12 A. Yeah, it's actually statement of values.

13 Q. Statement. We've been --

14 A. I know.

15 Q. -- using them interchangeably. Mr. Tebele testified
16 that before he did business with Crescent, he had never seen an
17 ACORD application before. Is that your understanding of what
18 he said?

19 A. I wasn't here for the testimony. I did not hear him
20 directly say that. I did hear several people talk about that.
21 The only way Mr. Tebele would not have seen an ACORD app is if
22 he would have never bought insurance before, because every
23 carrier requires signed ACORDs. For example, if I bind it -- if
24 I go to my broker and say, I want to bind this account, they
25 will tell me, before we bind, you must give me signed ACORDs

1 and a signed terrorism form, period. No questions asked. If I
2 don't have signed ACORDs, you're not getting coverage. Now, it
3 is possible, in Mr. Tebele's defense, it's very possible that
4 with BB&T, he signed the ACORD apps originally, he would have
5 had to, but on the renewal, some carriers don't require them.
6 So I don't know how long he was insured with BB&T, and I'm not
7 going to, you know, question, you know, but you cannot get
8 insurance without signing the ACORD apps. That's --

9 Q. And if anything, Crescent Coast providing those ACORD
10 apps to him gave him more information about what the insurance
11 company was going to be looking at when issuing a policy?

12 A. Yeah, there's been a lot made about the fact the
13 statement of values was not provided to Mr. Tebele. The
14 statement of values is an internal work document. That
15 information is not shared with the client. The only document
16 of importance from an underwriting -- from a legal standpoint,
17 from my perspective, is a signed ACORD apps. That's just an
18 internal work document.

19 Q. It's an internal document.

20 A. Uh-huh.

21 Q. And you typically don't provide it to your clients?

22 A. Those?

23 Q. The --

24 A. Oh, no.

25 Q. -- statement of value schedule.

1 A. We never give those to the clients.

2 Q. And Crescent --

3 A. As a matter of fact, I don't even -- I have to -- I have
4 to ask for those from the carrier most of the time.

5 Q. So if anything, it's a rare exception to the rule that
6 this ends up in the insured's hands?

7 A. I'm not aware of it ever ending up in the insured's
8 hands.

9 Q. After the fire happened, can you describe Crescent
10 Coast's involvement in Mr. Tebele filing the claim and whether
11 what they did was consistent with standards governing insurance
12 agents?

13 A. Right. I looked at that because you have to be very,
14 very careful with regard to claims handling practices. An
15 insurance agent's responsibility is to take what is known as a
16 First Notice of Loss, and that is a very basic form that
17 gathers very limited information. It just basically says,
18 here's what we've been told happened, here's when it happened,
19 here's the contact information of the people involved. Please
20 have the claims adjusters reach out to them as soon as
21 possible. Insurance agents have to be very careful. We cannot
22 cross lines. We know we cannot cross lines. We aren't
23 authorized to adjust claims. We have to pass that information
24 on to the carrier. Now, what we will do from time to time, and
25 I noticed on a couple of occasions, Mr. Egan did this. He went

1 to the broker and said, hey, what's going on? Can we -- you
2 know, he did offer his assistance, but it's in a very limited
3 capacity because he has no authority there. The insurance
4 company is the only one that has the authority to adjust the
5 claim. The other issue on this, and I don't know how to say it
6 except just to say it, many insurers today because of
7 marketing, media, whatever you want to call it, they're very
8 quick to run out and do one or two things after a claim. They
9 either hire an attorney, or they hire a public adjuster, which
10 Mr. Tebele did hire a public adjuster. He gave testimony.
11 Once that happens, insurance agents are no longer allowed to
12 communicate with the insurer, and it's for legal reasons. The
13 insurance company is trying to protect the agent from any legal
14 recourse, because once legal representation is in place,
15 including a public adjuster, we're not allowed to communicate
16 with insurers. We're not supposed to.

17 Q. So you didn't see anything out of the ordinary or
18 unusual without Mr. Egan?

19 A. No, I think Mr. Egan -- he reported the claim
20 immediately and did everything he could to answer questions and
21 try to, you know, move the claim along, but that's the
22 company's role from that point on.

23 Q. Overall, did you find Crescent Coast's handling of the
24 beginning from negotiations to filing the claim to be
25 consistent with standards of care governing insurance agents?

1 A. You know, I can sit here and honestly testify that I did
2 not see one single thing that struck me as being out of the
3 ordinary for an insurance agency practice following the good
4 faith duties that insurance agents have.

5 Q. And that's including, an insurance agent isn't expected
6 to take affirmative steps to go out of their way and advise
7 insurers; is that right?

8 A. No, no. Our role is, and the way this happens, and I
9 don't want to get too elementary, but the way this happens, and
10 I can guarantee you it happened here, what happened was Mr.
11 Egan got copies of the BB&T policies and was basically asked to
12 reproduce these policies for less premium. You know, here's my
13 policy, can you write this coverage for less money? And so he
14 had his orders. His orders were to -- and I kind of know
15 that's the case because nothing was talked about coverages and
16 the TIDs were basically the same all the way across.

17 Q. But when Mr. Egan is engaging in that role of trying to
18 replicate the coverages, it has to -- he has to supply all the
19 information that the broker, underwriter, and then ultimately
20 the insurer wants to see, right?

21 A. That is correct.

22 Q. That includes sprinkler status.

23 A. That is correct.

24 Q. And we relied on Mr. Tebele?

25 A. We did.

1 Q. Mr. Tebele never updated Crescent Coast as to the status
2 of the sprinkler system beyond the initial meeting in August
3 2018?

4 A. Beyond August, that is correct.

5 Q. He never asked any questions about endorsements?

6 A. He'd never asked any questions about coverage at all.

7 Q. Got you. Have all your opinions that you've given
8 before the Jury been to a reasonable degree of professional
9 certainty?

10 A. Absolutely, yes.

11 MR. CONNELL: And I beg the Court's indulgence?

12 THE COURT: Yes, sir.

13 MR. CONNELL: That's all the questions I have, Mr.
14 Tadlock. Please answer questions from the other counsel.

15 THE WITNESS: Thank you.

16 MR. CONNELL: Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 **CROSS-EXAMINATION**

19 BY MR. CONNELL:

20 Q. Alright, sir, I heard you say in the beginning that you
21 taught other insurance agents and taught an exam, and all that
22 kind of stuff; is that right?

23 A. Yes, I am.

24 Q. And you were the exam person in Florida for a while, I
25 think you said, you were the agency licensing responsible

1 party; is that right?

2 A. I was over at agent licensing, which meant I have staff
3 approve agents who I'm licensing, and I also was responsible
4 for writing the state insurance exam and having that insurance
5 exam graded.

6 Q. You're talking about the insurance exam for you to be a
7 licensed insurance agent; is that right?

8 A. That is correct.

9 Q. Alright. And I believe I understood in your deposition
10 that you had under your supervisory authority today about 36
11 agents; is that right?

12 A. I have 36 employees.

13 Q. 36 employees.

14 A. Correct.

15 Q. How many agents?

16 A. They're not all agents. There's probably eight to ten
17 agents.

18 Q. Okay. And in your capacity as a regulator in the -- I'm
19 sorry, go ahead.

20 A. I'm sorry, eight to ten agents in that office. Correll
21 Insurance Group is a very large regional office. We have 44
22 offices in five states, and I do also work with some of the
23 other offices, as well.

24 Q. Alright. And as a regulator and as the -- you're in
25 charge of the Correll offices, correct?

1 A. Not as -- now, if you're combining -- you're confusing
2 Florida with South Carolina.

3 Q. I'm talking about here. In Hilton Head Island, I think.

4 A. In Hilton Head Island, I'm not a regulator, that's the
5 government.

6 Q. I understand, but you were a regulator.

7 A. I was.

8 Q. Alright.

9 A. That is correct.

10 Q. And you're now having an agency that has 36 agents; is
11 that right?

12 A. 36 employees.

13 Q. 36 employees. And you said it had about eight agents,
14 right?

15 A. In Hilton Head, that is correct.

16 Q. Alright. And you taught the course to pass, I take it
17 on to get the insurance exam; is that right?

18 A. I teach the -- I've taught the pre-licensing material.
19 I have taught State Continuing Education material. I've taught
20 for CIC, all of the institutes, and I teach the graduate-level
21 seminars, as well.

22 Q. Alright. And you teach insurance agents about ethics
23 too; do you not?

24 A. I do.

25 Q. And there's a code of ethics for insurance agencies

1 there?

2 A. There is.

3 Q. And one of the code of ethics requirements is you have
4 to be licensed; is that right?

5 A. To do what?

6 Q. To sell insurance.

7 A. To sell insurance, yes, not to work in an insurance
8 agency.

9 Q. I got it.

10 A. Okay.

11 Q. And to sell insurance in South Carolina, you have to be
12 licensed, do you not?

13 A. Yes, to sell insurance, it does require an agent
14 license.

15 Q. And it's actually a crime to sell insurance without a
16 license in South Carolina, correct?

17 A. I don't know what the criminal -- I'm not a lawyer, I'm
18 really not sure.

19 Q. We'll let the judge talk about that.

20 A. Yeah.

21 Q. Alright.

22 A. Yeah.

23 Q. So and you would agree with me, would you not, that
24 every agent in your office is licensed, correct?

25 A. Every person who does the functions that require a

1 license in my office is licensed, yes.

2 Q. Alright. And you actually check to make sure your
3 agents are licensed, correct?

4 A. We do.

5 Q. You don't let someone who's unlicensed try to sell
6 insurance in the Hilton Head Island?

7 A. We let unlicensed people service insurance. We let
8 unlicensed people be receptionists. We let unlicensed people
9 do various, you know, sundry, marketing, those kind of things.

10 Q. Okay.

11 A. But when it comes down to signing applications,
12 effectuating coverage, collecting premium, or getting paid a
13 commission, those things require a license.

14 Q. Alright. So if you get a commission on an insurance
15 policy and you're unlicensed, that's an ethical and a criminal
16 violation; isn't that correct?

17 A. I don't know.

18 Q. Alright. You know it's an ethical violation, right?

19 A. I know it is not proper. I don't -- I don't really -- I
20 don't -- the ethics code doesn't speak specifically --

21 Q. Alright.

22 A. -- to that issue, but --

23 Q. So you --

24 A. -- but I don't know the criminal part.

25 Q. Alright. I'm with you. So you weren't here in the

1 beginning, right, of this trial?

2 A. No, I wasn't.

3 Q. Right. And were you made aware that Mr. Sutherland, who
4 apparently knew Mr. Tebele and was working in a restaurant that
5 was in this building and apparently had been an insurance agent
6 off and on didn't have a license?

7 MR. ADAMS: Objection, misstates testimony.

8 THE COURT: Overruled.

9 A. All I know is, I believe -- I believe it was you, Mr.
10 Connell --

11 Q. Yeah.

12 A. I'm not sure, I don't want to misspeak, that showed the
13 document.

14 Q. Alright.

15 A. And it said, you know, I did not see that document, and
16 I have not seen that document.

17 Q. Alright. I got it right here for you.

18 A. Okay.

19 Q. There's actually a -- there's actually a document from
20 the state of South Carolina that you can get online that's been
21 admitted in evidence in this case, Exhibit 74, which talks
22 about people's licenses.

23 A. Okay. Yeah, I'm familiar with the website.

24 Q. And it's actually from the National Association of
25 Insurance Commissions; am I right?

1 A. It's from, it's actually from NIPR. It's just endorsed
2 by NAIC.

3 Q. Okay. And Mr. Joey Frank Sutherland, can you tell me,
4 and I've got it highlighted for you, what that is when his
5 license was effective?

6 A. Well, I can tell you that this license was effective
7 04/05/23.

8 Q. Alright.

9 A. But if you were to look at my license right now, mine
10 would say 05/01/22.

11 Q. Alright. Let me see that. I'll show you something.

12 A. Okay. That only shows the current term.

13 Q. Well, look at Mr. Egan's license. Tell me what day he
14 was first licensed, sir.

15 A. He was first licensed on 05/06/2010.

16 Q. So that goes against what you just said; isn't that
17 true?

18 A. No, it's not, because what happened with Mr. Sutherland
19 is, he let his license lapse because he went back into the
20 restaurant business. Once in South Carolina --

21 Q. Well, how do you --

22 A. Let me -- let me --

23 Q. Yes. Yes, sir.

24 A. -- because I asked.

25 Q. Okay.

1 A. In South Carolina, when your insurance license lapses,
2 then you must apply as a first-time applicant and take the exam
3 over again and the historical data does not show up.

4 Q. So there's no question of he did not have a license;
5 isn't that right?

6 MR. ADAMS: Objection, misstates testimony.

7 THE WITNESS: That's totally incorrect.

8 BY MR. CONNELL:

9 Q. You don't know whether he had a license; is that what
10 you're saying?

11 A. I believe he did have a license.

12 Q. Well, what evidence do you have? There's nothing on all
13 the records here.

14 A. No, you don't.

15 Q. Well, what records do you have that shows he does have?

16 A. I have his testimony, he said that he was licensed in
17 2018.

18 Q. You weren't here for that, how would you know that?

19 A. I was told that.

20 Q. Who told you that?

21 A. Counsel.

22 Q. Alright. Now, if he didn't have a license, he shouldn't
23 have gotten commissioned; isn't that correct?

24 A. If he were not licensed at the time the policy was
25 issued and the commission you were paid, if he did not have a

1 license, then, then I would -- you would have to have a license
2 in order to get a commission.

3 Q. Alright.

4 A. But it goes by the date the commission is issued.

5 Q. I understand. And if he didn't have a license, he
6 shouldn't have gotten any commission, correct?

7 A. If he were not licensed when the commission was issued,
8 he would not have been paid commission.

9 Q. Okay. And it was Mr. Egan's responsibility and duty as
10 the head of the agency to make sure he had a license when he
11 sold this policy, right?

12 A. No.

13 Q. He didn't have the responsibility to do that?

14 A. No. In most agencies, and in ours to some extent, as
15 well, we require everybody to maintain your own license. Now,
16 we do go back and check on it from time to time, but I don't --
17 I'm not taking on the responsibility of checking on 150
18 licensed agents.

19 Q. Why?

20 A. I expect them to take care of that.

21 Q. I thought you said earlier that you do check on them.

22 A. I do check on them from time to time, but I don't -- I
23 -- I don't make it a practice to renew their license for them.

24 Q. I understand.

25 A. Yeah.

1 Q. But you check to see if they do have a license; do you
2 not?

3 A. I do not check annually, no.

4 Q. A spot check on a regular basis.

5 A. From time to time if -- but I mean, if one of my
6 licensees or one of my employees has an insurance license, I'm
7 going to assume that -- here's why I really check. It's a
8 money thing. If you let it lapse, they charge you 200 bucks.

9 Q. Right.

10 A. Okay? And they expect to pay that. So from time to
11 time, I will go in if, particularly if I get a notice saying
12 somebody's late, then I go in and check and say, hey, did you
13 do this paperwork? We got this \$200.00 ticket. And they'll
14 say, oh, no, no, no, I did that, I filed that, and then I've
15 got to go fight with the Department of Insurance, did they
16 really get it in on the day, or not?

17 Q. One of the reasons why you have a license is because you
18 go through the ethical training and you go through the
19 training, a CLE, or whatever requirements are to keep your
20 license up. That's one of the reasons to do it, right?

21 A. Well, I think the reason for the license, initially, is
22 to determine that there is some degree of confidence in
23 insurance coverages and things that govern our industry.

24 Q. In other words, you weren't --

25 A. Now, CLE comes after that.

1 Q. Right. But that's part of having a license. You have
2 training, you have expertise, you have experience to offer what
3 you're trying to sell, right?

4 A. Yes.

5 Q. And so in this case, there's no question, is there, that
6 Mr. Sutherland went to Mr. Tebele at his business on multiple
7 occasions and solicited his business, correct, to buy
8 insurance?

9 A. I don't know that I have definitive proof of that. I
10 know that they had a relationship and he said, hey, you ought
11 to let Crescent Coast look at your insurance. That's not
12 soliciting insurance.

13 Q. Alright.

14 A. Soliciting insurance, and this goes back a long, long
15 way, we used to have solicitor licenses, and those solicitor
16 license and agent licenses are kind of merged into one, and we
17 call them producer licenses now. Unfortunately, we didn't
18 change the code. The solicitor/producer are kind of
19 synonymous. That's the person who signs the application,
20 negotiates with the carrier, collects the premium, and gets
21 paid the commission.

22 Q. But you -- so you didn't -- you weren't told by anybody
23 that Mr. Tebele's testimony was is that he got numerous calls
24 from Mr. Sutherland saying, you know, you need to come and let
25 me try to sell you some coverage?

1 A. Well, I don't have any factual basis for that, no.

2 Q. But if that was what was testified to --

3 A. I still don't think that in and of itself would require
4 a license.

5 Q. So --

6 A. To say, for me to say, hey, guys, why don't you all come
7 to Correll? By the way, you should, I'm just, that's a side
8 point, you all can go to Correll Insurance Agency to get
9 your -- to get your insurance. That doesn't require a license,
10 though.

11 Q. But if you're getting commission, it does, right?

12 A. No, that activity that I just demonstrated does not
13 require a license.

14 Q. I'm with you.

15 A. Getting the commission would require a license.

16 Q. And Mr. Sutherland's testimony is he got 40 percent?

17 MR. ADAMS: Objection.

18 BY MR. CONNELL:

19 Q. You don't know; do you?

20 A. I did not look into that.

21 Q. Nobody told you about that in the last couple of days,
22 that he got 40 percent of the commission on this deal?

23 A. It's not unusual.

24 Q. Alright.

25 A. Yes.

1 Q. But if he didn't have a license, he shouldn't have got
2 it, right?

3 A. If he were not licensed at the time the commission was
4 issued, then the commission should have been held by the
5 agents.

6 Q. Alright. And one of the big deals about this policy is
7 that an insurance agent gets a commission every year the policy
8 is renewed, right?

9 A. Not always, but the agency gets commissioned.

10 Q. Okay. Well, Crescent Coast was going to get -- if they
11 got this big deal, it was a hundred and some seventy thousand
12 dollars, I think. Did you see the amount on the premium?

13 A. The premium?

14 Q. Yes.

15 A. That was only on the property.

16 Q. Alright.

17 A. Okay.

18 Q. If they were going to get -- if they closed this deal
19 and they could keep it closed every year, they were going to
20 get a premium every year, right?

21 A. Correct.

22 Q. And so that's one of the reasons you become an agent is
23 you build a portfolio of clients you've had and you keep
24 renewing them and keep getting premium, right?

25 A. Hopefully.

1 Q. I'm with you.

2 A. It doesn't always work that way --

3 Q. I hear you.

4 A. -- but yes.

5 Q. And the thing about this deal that was so important was
6 the amount of premium here was really large versus me giving
7 you my homeowner's policy in my house, right?

8 A. What kind of house you live in?

9 Q. Well, I don't live in a \$22 million dollar house.

10 A. No, you wouldn't have to.

11 Q. You live in Hilton Head, you might live in a \$22 million
12 dollar house, I don't.

13 A. I wish I lived in it.

14 Q. Well, anybody lives on Hilton Head --

15 A. Yeah.

16 Q. So my point is, it was really a big deal for Crescent
17 Coast to get a \$22 million dollar portfolio of all these
18 properties, right?

19 A. Well, on \$107,000.00 premium, they would make
20 \$10,000.00.

21 Q. 170, I think I heard.

22 A. Was it \$170,000.

23 Q. So they're going to make \$10,000 every year just for
24 keeping it going, right?

25 A. And for maintaining and servicing it, yes.

1 Q. I'm with you. I'm with you. So that's a substantial
2 reason to get this policy, because if I'm selling an auto or a
3 homeowner's policy, that's \$3,000.00, that's 10 percent, 300
4 bucks, right?

5 A. Yes, but how many more of those are there out there than
6 there are \$170,000 commercial policies?

7 Q. How many of them are like this?

8 A. A whole lot of them.

9 Q. There are people who have 23, 35, 50 policies?

10 A. I mean, what I'm saying is insurance agencies typically
11 write a broad range of insurance policies.

12 Q. I know.

13 A. We don't cater to just one.

14 Q. I hear you.

15 A. Yeah.

16 Q. This was a, did you ever hear the term in fishing,
17 catching a whale, this is a whale, right, because you're going
18 to get a \$10,000.00 --

19 A. Well, I don't -- I don't -- I've --

20 Q. Well, you live on Hilton Head, and you don't -- that
21 doesn't --

22 A. No, it's not the fact that I live on --

23 Q. No.

24 A. -- Hilton here. That's irregardless, and I kind of
25 resent the implication, but I mean, insurance agencies -- I

1 wish I had our culture statement to show you. You know, it's
2 not just about making the money. Yes, we deserve to make
3 money, just like you're getting paid to be here today, yes, but
4 we do it as a public service, this isn't something we do for
5 our clients.

6 Q. Well, do you think it was a public service in this case
7 for Mr. Tebele to get this policy and they get it denied and
8 then not get paid for a fire that happened? You said this is
9 one of the few cases you ever heard that this happened on. Do
10 you think that's a public service the way this thing happened?

11 A. No, you're mischaracterizing my testimony. I said what
12 I've never heard or is only that has not taken place was the
13 fire taking place before the policy was issued. I mean, Mr.
14 Tebele's claim not being paid is tragic, but that's between Mr.
15 Tebele and the carrier. That has nothing to -- Crescent Coast
16 has no authority in any of that.

17 Q. Alright. Now, you mentioned, I think, earlier that
18 there was a BB&T policy prior; is that right?

19 A. Yes, there was.

20 Q. Did you look at that policy?

21 A. I did.

22 Q. Alright. It's true, is it not, that on the BB&T policy
23 for 1901 North King's Highway, there was no sprinkling on that
24 policy; isn't that true?

25 A. No, there was sprinkling on every policy.

1 Q. Well, didn't --

2 A. On every property.

3 Q. You mentioned that, but didn't Alice, you mentioned
4 that, and there's been testimony that Alice came along from
5 BB&T and said, I found this problem, we got to fix it, right?

6 A. I'm not sure exactly how it got fixed, but I know it was
7 issued incorrectly, okay?

8 Q. It was discovered --

9 A. Now, in 20 --

10 Q. -- by the agent.

11 A. Well, I don't know who discovered it. I don't know.

12 Q. If Alice is an agent at BB&T and she discovered that and
13 came to Mr. Tebele and said, Look, look what I've discovered.

14 A. We've got a problem, we got to fix it, right.

15 Q. And that's what an agent is supposed to do; is it not?

16 A. Well, I think in this situation, she would have first
17 gone back to the ACORD apps, looked at the ACORD apps, and
18 said, does this information match? Is this concurrent with the
19 information that I have in my court apps? And how this
20 happened, and I'm speculating here to some extent, but in their
21 policy review, they probably identified that the protective
22 safeguard endorsement was put on every property, okay?

23 Q. My point, though, is that the agent from BB&T caught
24 that and went to Mr. Tebele and said, we've got to fix this,
25 isn't that true?

1 A. I don't know what the agent said to Mr. Tebele.

2 Q. But that's what an agent's supposed to do.

3 A. It had to be corrected.

4 Q. And that's why you have an agent, too, to correct those
5 kind of problems, correct?

6 A. Well, you have -- you have an agent to review the
7 policy, make sure the policy is issued, yes.

8 Q. Alright. So you also, let's talk about the email a
9 minute if we could. As you know, we've talked about this a lot
10 under Exhibit Number 23. Who is copied on this email, if you
11 can? Is there a Mr. Sutherland copied on that?

12 A. Yes, and La Casona is the subject.

13 Q. Alright. And Mr. Sutherland is apparently working at
14 that time, January 11th, 2019, for Crescent Coast; is that
15 right?

16 A. I did not check his employment record, but he obviously
17 received a copy of that.

18 Q. Alright.

19 A. So I would assume that he was aware of the La Casona
20 account.

21 Q. He was involved as an agent or something, right?

22 A. In La Casona, I don't --

23 Q. Alright.

24 A. I don't know what his involvement is.

25 Q. So did you know that Mr. Sutherland also knew Ms. Garcia

1 because she was leasing a part of the building that Mr. Tebele
2 owned, his family?

3 A. I'm aware that he knew Ms. Garcia through a restaurant.

4 Q. Right.

5 A. Mr. Sutherland was big into the restaurant business in a
6 year.

7 Q. Right. He'd been a restaurateur and he also was an
8 insurance agent and he also got her policy, apparently, he was
9 the agent of her policy.

10 A. I don't know.

11 Q. Okay.

12 A. I know that Coastal -- excuse me, I keep saying Coastal.
13 Crescent Coast is, yes.

14 Q. And that seems to be true, is it not, based on the
15 records?

16 A. Crescent Coast is the agent for her policy.

17 Q. Now, so Mr. Sutherland, in this case, on January 11th,
18 he gets a copy of this email saying, we know that this property
19 is, I don't want to misstate it, the sprinkler -- the landlord,
20 did not turn the water on to have them in operation. That's
21 January 11th?

22 A. That is correct.

23 Q. And what time was that?

24 A. At 12:10 P.M.

25 Q. Alright. And we also, do we not know that Mr.

1 Sutherland did not call Mr. Tebele and say, hey, I've heard the
2 water's not turned on, what's the deal? Isn't that right?

3 A. I can't imagine why he would, though.

4 Q. Well, he got an email, right?

5 A. He did.

6 Q. And he was involved in the sale of this particular
7 policy of Mr. Tebele?

8 A. No, he was not.

9 Q. He was not involved?

10 A. No.

11 Q. Your testimony is, Mr. Sutherland was not involved in
12 the sale of this insurance product to Mr. Tebele?

13 A. That is correct. Mr. Egan is the agent of record. Mr.
14 Egan is the one who collected the information. Mr. Egan is the
15 one who submitted it, negotiated it, signed the applications,
16 collected the premium and the finance agreement and Mr. Egan
17 was the agent on this account. It was not anyone else.

18 Q. So you weren't here when Mr. Sutherland said he was
19 getting 40 percent because he brought the business in?

20 A. Well, that's a business deal between the two parties.

21 Q. I understand.

22 A. I give people who refer business to me, if they're
23 licensed, I will give them a percentage of the business.

24 Q. If they're licensed, right?

25 A. Yeah.

1 Q. Alright. And your testimony here about whether Mr.
2 Sutherland was licensed, is that you still think he was
3 licensed; is that right?

4 A. I do believe he was licensed.

5 Q. And so Mr. Sutherland gets the email and it's 12:00, and
6 let me see if I can find another thing here. So we've got so
7 many darn documents here. I want to make sure I get the right
8 one.

9 A. It's okay.

10 Q. But within two hours, give or take, Mr. Egan sends an
11 insurance application to Mr. Tebele; is that right?

12 A. I believe so. It was the 11th. I'm not sure of the
13 exact --

14 Q. Same day, within two hours.

15 A. Okay.

16 Q. And at that time, your testimony is, well, you don't
17 know whether or not Mr. Sutherland did anything, right?

18 A. No, I think what they -- I think what Mr. Sutherland did
19 is based on the testimony, the factual testimony, is Mr.
20 Sutherland contacted Ms. Nenna. Ms. Nenna pulled up La Casona
21 because that email doesn't have anything to do with the Mr.
22 Tebele.

23 Q. Right.

24 A. And --

25 Q. Wait a minute. It is the same property; isn't it?

1 A. It has nothing to do with Mr. Tebele.

2 Q. That's not my question. It is the same property that
3 caught that fire.

4 A. No, it's -- Mr. Tebele owns the building, but it's not
5 the same policy. It's not the same client.

6 Q. We're talking over each other. It's not the same -- it
7 is the same property. It's the same building, right? The
8 restaurant, the Mexican restaurant --

9 A. The restaurant is in 1901, yes.

10 Q. Alright. And that's the same building that Crescent
11 Coast was trying to get an insurance policy on within two hours
12 of this email, correct?

13 A. Yes.

14 Q. I'm with you. But Mr. Sutherland's got someone calling
15 because he's got this email, and we've already heard testimony
16 that he got 40 percent, right?

17 A. I don't know what he got, and what he got would have
18 been months later. I mean, you're asking me to speculate to
19 something that I --

20 Q. Alright.

21 A. -- just can't do.

22 Q. I'm not asking you --

23 A. I mean, it's not --

24 Q. Yeah.

25 A. It's just simply not appropriate to imply to them that

1 that's the case.

2 Q. I'm not asking you to speculate, I'm saying that the
3 testimony on Monday was that he got 40 percent.

4 A. He did not have 40 percent anywhere near that day.

5 Q. I'm talking about that's what his commission was, 40
6 percent.

7 A. I don't know.

8 Q. Okay. But just humor me for a minute. If he got 40
9 percent at the time that the deal was closed, then he was an
10 agent, right, or supposed to be a licensed agent?

11 A. He did not receive 40 percent at the time the deal was
12 closed.

13 Q. Don't you all get your commissions up front?

14 A. No.

15 Q. When do you get them?

16 A. 30 to 45 days afterwards.

17 Q. Okay. Well, you get them --

18 A. Or 60 days sometimes.

19 Q. You get them before Lloyd's gets their part of the
20 money; don't you?

21 A. No.

22 Q. You get them afterwards?

23 A. Yes.

24 Q. So within 30 days, he would have gotten his check?

25 A. No, maybe 60.

1 Q. Alright. So the insurance application, we've talked
2 about that, that's a DocuSign; is that right?

3 A. Uh-huh.

4 Q. And so --

5 A. Yes.

6 Q. -- the DocuSign is something, you get on the computer,
7 right?

8 A. Yes.

9 Q. And you have to sign, correct?

10 A. It's an electronic signature.

11 Q. Alright. And so you push a button, right?

12 A. You push start --

13 Q. Alright.

14 A. -- and then it takes you through every page of the
15 document.

16 Q. And every page you want to actually -- they want you to
17 sign; is that correct?

18 A. No. You go through every page, and then where they want
19 you to sign, there's a little arrow.

20 Q. Right. And you don't sign the page, right?

21 A. Sometimes you do, sometimes you don't, and I'm assuming
22 you're getting to the ACORD app.

23 Q. I am.

24 A. Yes, the ACORD app has one signature place.

25 Q. Alright. And that's at the end; is that right?

1 A. It's three-quarters of the way through it.

2 Q. Okay. Now, you said something earlier, and I want to
3 kind of expound on it. It's true, is it not, that insurance is
4 built on trust, right?

5 A. Absolutely.

6 Q. And that's trust between the customer who doesn't know
7 much about the policies and the agent who's going to sell it to
8 you, right?

9 A. Well, it's trust between the client, the agent, the
10 broker, and the carrier.

11 Q. Alright.

12 A. It's all three.

13 Q. Because you don't really know, do you, whether or not
14 that policy is going to pay until the point that you have a
15 calamity like what happened in this case, right?

16 A. You never know if a claim is going to be paid until the
17 claim occurs.

18 Q. Right.

19 A. That's why if you call an insurance company and say, may
20 I give you a hypothetical and can you tell me if this claim
21 would be covered?

22 Q. Alright.

23 A. They will say, no, send me the claim facts, if there is
24 a claim, and we'll determine it. I mean, because --

25 Q. So you --

1 A. I've heard it a thousand times when people say, somebody
2 backed into me at a parking lot, and I say, okay, well, you
3 know, we'll file the claim, we'll turn it in, we'll get your
4 car fixed the best we can. Somebody at the company will
5 contact you, you know, they'll send out an adjuster and you'll
6 deal with it.

7 Q. Right.

8 A. And only to find out that that may not have taken place.

9 Q. Right.

10 A. That's why we don't go out on a limb and say things like
11 that.

12 Q. Right. But when you're selling the policy, you sell all
13 of the things that you think will help you sell the policy,
14 right? Like, I've got this coverage, it's going to be better
15 than the coverage you have on this guy. I've got a 1 percent
16 deductible over here, you've got a 2 percent deductible. Isn't
17 that one of the things you do as an insurance agent?

18 A. Well, as an insurance agent, if there were -- first of
19 all, if I'm working off of a previous policy, I would try to
20 replicate the coverage they have. Now, there are some times
21 when you can't replicate the coverage.

22 Q. Well, you're trying to --

23 A. They need differences.

24 Q. -- give them better ones.

25 A. Huh?

1 Q. You'd want to get them better coverage if they're going
2 to come to you, right?

3 A. Well, it depends, if I can get them better coverage for
4 less premium. If the customer wants -- different customers
5 want different things. Some customers come to me and say, I
6 want the best coverage I can find, price is not the main
7 concern. Other customers come to me and say, I want the
8 cheapest premium I can find, but, you know, for what I have.
9 So we follow their instructions and do what they ask.

10 Q. And this policy that was offered by Crescent Coast had a
11 1 percent deductible; isn't that correct?

12 A. I believe it did, yes.

13 Q. And that was actually better, and that was one of the
14 reasons why Mr. Tebele went and got it because that was a 1
15 percent deductible versus what he had before?

16 A. Yes.

17 Q. And correct me if I'm wrong, but he had a --

18 A. Well, I don't know if that's why he went with them, but
19 that's -- I can tell you what happened. What happened was we
20 probably beat him up as much as we could on price, so we
21 probably said, I need you to throw -- you got to give me
22 something --

23 Q. Right.

24 A. -- or we're going to get this account.

25 Q. It's like selling a car, isn't it, when you go buy a new

1 car?

2 A. No, it's nothing like selling a car.

3 Q. Well, it is. Saying I want to go and get floor mats and
4 you're going to try to close a deal, right?

5 A. Well, I don't --

6 Q. I mean, isn't insurance like that?

7 A. No, it's not like that at all.

8 Q. Well, he was going to sell them a 1 percent deductible
9 on all his policies, and he had a 2 percent before. That was
10 half the deductible that had to be had on a major calamity.

11 A. For a named storm.

12 Q. Right.

13 A. Not for anything else.

14 Q. I understand. But that was a big deal, right?

15 A. It could have been. I don't --

16 Q. We live in coastal South Carolina, that's a big deal.

17 A. Given the fact the premiums were the same, yes, you have
18 to distinguish yourself on another basis.

19 Q. Okay. And that was how it was done in this case?

20 A. But that was done by the agent, not by Mr. Tebele.

21 Q. I understand.

22 A. Yes.

23 Q. The agent offered --

24 A. Or actually, it wasn't even done by the agent, it was
25 probably done by the broker.

1 Q. Well, so the agent called the broker and the broker
2 said, get him on the hook and we'll give him a 1 percent,
3 right?

4 A. The broker probably said, I don't have any more
5 flexibility on price.

6 Q. Have you seen some of the emails back? You haven't
7 looked at those, have you, between the broker and the agents?

8 A. I can answer those from months and months ago, but I,
9 you know --

10 Q. And there were some emails about, we need to get him --
11 we need to get him on this risk, we need to get this, that kind
12 of stuff, do you see that?

13 A. Uh-huh.

14 Q. And so that's what they were trying to do, right?

15 A. Well, of course, we're trying to sell the buyer.

16 Q. I understand. Alright. So you had said there was,
17 quote, nothing out of the ordinary, in this case; is that
18 right?

19 A. There was no conduct by Crescent Coast that was not in
20 accordance with good faith standards.

21 Q. Alright. So just, and I know you're going to argue with
22 me now, just assume for a minute --

23 A. Okay.

24 Q. -- what I'm going to say. Let's assume for a moment
25 that Mr. Sutherland didn't have a license.

1 A. Okay.

2 Q. That would have been out of the ordinary, correct?

3 A. So you're now making me make a speculation that's not a
4 fact in the case?

5 Q. I'm just -- well, we were arguing about that, but I'm
6 just asking you, let's assume that Mr. Sutherland did not have
7 a license. That would be out of the ordinary; would it not?

8 A. Not in this case, because Mr. Sutherland did not act as
9 the agent of record and did not sell the insurance. Mr. Egan
10 did.

11 Q. Alright. I get what you're saying, but let's assume he
12 was not.

13 A. It would not change the facts at all.

14 Q. Okay. So if you ever got a --

15 A. Mr. Egan was the agent who handled everything from
16 beginning to end.

17 Q. And the Schedule of Values, have you ever looked at the
18 policy in this case?

19 A. The Statement of Values?

20 Q. I'm sorry, statement of Values. Sorry, sir. Have you
21 looked at it?

22 A. Have I looked at the policy --

23 Q. Yes, the policy. Do you see that the Policy and the
24 Protective Services endorsement says there must be the symbol
25 AS on the policy?

1 A. I'm not going to get into the interpretation of the
2 policy. I did not go into that in my review.

3 Q. I'm not asking to get into it.

4 A. Okay.

5 Q. But if the Statement of Values said an AS must be on the
6 policy beside each property, you would agree with me, would you
7 not, that it was not in this case?

8 A. I would disagree with everything you said, because the
9 fact of the matter is AS is not on any of it. They use the
10 statement of values in the ACORD App in 100 percent sprinkler.
11 The AS stands for Automatic Sprinkler.

12 Q. I get that.

13 A. Okay. The AA is a burglar system. It has nothing to do
14 with sprinklers. The others deal with things like personal
15 guards and armed guards and things of that nature. Not an
16 issue here. The only one on the endorsement that applied was
17 sprinklers. It was designated at the company level.

18 Q. But it does not have the symbol AS.

19 A. Nor does it have to.

20 Q. But the policy says it does. The endorsement says it
21 does.

22 A. I'm not going to get into arguing --

23 Q. I'm just asking a simple question. The Statement of
24 Values --

25 A. I'm telling you, it's not customary practice to see AS.

1 Q. Okay, but it's completely against what the policy says
2 and the endorsement says.

3 A. I don't know that I would agree with that.

4 Q. Have you read it?

5 A. Yeah, I've read it.

6 Q. Did you know there were actually two protective
7 safeguard endorsements that were --

8 A. Uh-huh.

9 Q. -- and one was an error; is that right?

10 A. I knew there was --

11 Q. And what about that one?

12 A. -- a different one.

13 Q. Okay. Let me take this one here. Alright. Schedule in
14 a block. Could you read where it says: AS symbol. And read
15 from left to right, please, sir.

16 A. It's indicated on the Statement of Values on the
17 following.

18 Q. Yeah, no, I'm talking about right here.

19 A. You said --

20 Q. AS, I apologize. Yeah, read that.

21 A. I did. That's what I just read.

22 Q. Okay. Read it again, because you're reading it so fast
23 I can barely catch it.

24 A. I'm sorry. It's indicated on the Schedule of Values on
25 the following.

1 Q. So it's true, is it not, and this is an easy question,
2 that AS is not on the Schedule of Values?

3 A. I was not retained to do anything other than talk about
4 -- that is a company function and a broker function. I'm not
5 going to testify that.

6 Q. I'm not asking you to do anything but just say what it
7 says in the policy. You can read it.

8 MR. WATSON: Your, Honor, I'm going to object. Asked
9 and answered.

10 THE WITNESS: That's beyond the scope of what I've
11 retained.

12 MR. CONNELL: That's not beyond the scope of you
13 reading.

14 THE COURT: Overruled.

15 Q. That is not beyond the scope of you reading the English
16 language.

17 A. I just read the English language.

18 Q. Okay. And that's what it says, right?

19 A. No, it doesn't say it has to be on the policy, nor is
20 that anything to do with Crescent Coast. Crescent Coast
21 doesn't draft that document. Crescent Coast didn't put that
22 document on the policy. Crescent Coast had nothing to do with
23 that document.

24 Q. I'm not asking you to do that, I'm just asking you to --

25 A. You're asking me to testify to a coverage issue that is

1 outside the scope of what I was retained to do.

2 Q. I'm just asking you to say simply, AS --

3 A. No. Because you're trying to lead me to make a coverage
4 determination. That is beyond the scope of what I'm here for,
5 and beyond the scope of what I'm allowed to do.

6 Q. I'm just simply asking you to read the documents.

7 A. I did.

8 Q. And it's not on the Schedule of values, AS, right? It's
9 not all --

10 A. It's sprinklered 100 percent on the Schedule of Values.

11 Q. The term AS is not on it.

12 A. All sprinklered 100 percent is on it, that has nothing
13 to do with Crescent Coast.

14 Q. I understand. Now, is it your understanding that the
15 sprinkler system was still under construction, hadn't been
16 finished yet?

17 A. I don't know whether it was still under construction. I
18 know that the water had not been connected.

19 Q. Okay. And you understood that the city had not -- the
20 permit had not been approved, there have been no testing and
21 all that kind of stuff?

22 A. I'm not sure why it hadn't been done. It had been
23 worked on for a long, long time, but for some reason, it was
24 not done. It's all I know.

25 Q. And is it your understanding, and back to the Statement

1 of Values, that, you said that form is an insurance company
2 form; is that right?

3 A. No, it's a broker form.

4 Q. Okay. But it's not a Crescent Coast form, correct?

5 A. It is not a Crescent Coast form, nor is it an insurance
6 company form, it is a broker form.

7 Q. Did you see some of the emails where it was I think Mr.
8 Egan said this is quite a horrible document?

9 A. Uh-huh.

10 Q. And --

11 A. I would agree with that statement, by the way.

12 Q. Okay. Tell me why you agree with that being a horrible
13 document.

14 A. Because it just, quite honestly, the reason I don't like
15 it is it requires me to do a lot more extra work.

16 Q. Okay. And the Statement of Values would not have been
17 seen by Mr. Tebele, right?

18 A. The Statement of Values is an internal document for the
19 broker.

20 Q. And so he never gets to see that, right?

21 A. No.

22 Q. So he wouldn't know what was on it, right?

23 A. Yes, he would know what's on it because everything
24 that's on it come off of the ACORD forms.

25 Q. I understand. But he wouldn't actually see the

1 Statement of Values.

2 A. He would not have to, it's on the ACORD form.

3 Q. And I also understand that some insurance companies on
4 the Statement of Value require the insurer to sign; do they
5 not?

6 A. That is incorrect.

7 Q. You've never seen one that was signed?

8 A. I've never seen one signed by the client. I'm not
9 saying that an agent hadn't given one and said, sign here
10 somewhere, but that's very -- I've never personally seen that.

11 Q. If I showed you one from BB&T that said the Statement of
12 Values had to be signed, would you disagree with it?

13 A. I wouldn't disagree with anything if you gave me a
14 document and said an agency did it, but I'm telling you that's
15 not industry practice.

16 Q. Okay. Have you had a chance to look at the premium
17 finance agreement?

18 A. I glanced at it, but I did not pay very much attention
19 to that at all. I'm sorry.

20 Q. The premium -- I'm sorry, go ahead.

21 A. Whatever it is, it's just -- that's -- that's just a
22 finance document I didn't really look at.

23 Q. The premium finance agreement lists how much is going to
24 be financed, correct?

25 A. Yeah, I would assume so, yes.

1 Q. And you're the agents involved in that?

2 A. Huh?

3 Q. The agents involved in premium finance agreement?

4 A. No. The agent simply sends the data to the finance
5 company. The company issues the document and forwards it to
6 the agent for signature and collection of premium.

7 Q. So would Mr. Egan have signed it? Is that a signature
8 at the bottom of the Exhibit?

9 A. I have no idea, but the agent does have to sign that.

10 Q. Alright.

11 A. But they don't have anything to do with completion.
12 That's a document -- it's like a document you'd get in a
13 closing statement in the bank.

14 Q. Alright.

15 A. You know --

16 Q. Yes.

17 A. I don't have any --

18 Q. And if there's anything wrong on the document, the agent
19 is required to inform them; isn't that correct?

20 A. No. That would be an issue between the insurer and the
21 finance company. It's -- all the financing income -- all that
22 is is a relationship between a lending institution to give them
23 money for funding and credit.

24 Q. Go to page 2.

25 A. Okay.

1 Q. Agency broker representations. You see that at the
2 bottom?

3 A. Okay. What do you --

4 Q. Have you seen that before?

5 A. No. To be honest with you, I haven't, because I don't
6 know that I've ever read a finance agreement like this.

7 Q. You would agree with me, would you not, that there are
8 certain representations that the agent is responsible for based
9 on this?

10 A. Oh yeah, we have to supply information correctly and
11 make sure that things are done right.

12 Q. And does it say, also, that if there's something
13 incorrect, you have to notify them?

14 A. If there's something incorrect within the scope of what
15 we do, I would assume.

16 Q. That's what he's assigned to do, right?

17 A. To be honest with you, I don't know anything about --

18 Q. You do see agent --

19 A. I do see that.

20 Q. Now, a series of texts, have you ever seen this, between
21 Mr. Tebele and Mr. Sutherland about this particular -- the
22 purchase of this policy?

23 A. I don't know that I've seen that, so.

24 Q. Would you take a look at it, please, sir? Just look at
25 the first one and I'll give you a hint. Apparently, the bunny

1 rabbit is Mr. Sutherland.

2 A. Okay.

3 Q. Don't those text messages go back to 2017?

4 A. Yes.

5 Q. And in the text messages, you talked about trying to get
6 Mr. Tebele to buy coverage; isn't that right?

7 A. No: If you're ready, we can meet and talk. It doesn't
8 -- nowhere in here does it talk about what -- my guess is,
9 since it's this long ago, because this is prior to Crescent
10 Coast getting permission to quote on the account. This is just
11 simply marketing -- you know, let us quote on your insurance.

12 Q. Puffering, right?

13 A. Well, just -- you know, trying to get business in the
14 door.

15 Q. And so he was soliciting, was he not?

16 A. No, that's not what solicitation is. Solicitation
17 involves the procurement of insurance. It's not -- it's not
18 sending out marketing flyers or that. It's -- and I tried to
19 explain this earlier, solicitation --

20 Q. Okay.

21 A. -- and producer are synonymous terms that have never
22 been changed to the law, and the solicitor function and the
23 producer function are in essence the same. So the functions
24 that a solicitor or a producer would have to be licensed for
25 would be the, you know, the negotiation with the insurance

1 carrier for completing you the app, signing the app, collecting
2 the premium, those types of things we discussed earlier.

3 Q. So you don't see -- you don't consider this to be
4 solicitation, this Exhibit 1 and 2?

5 A. I don't think there's enough detail there to make a
6 determination of what that is, other than, let me, you know,
7 let us look at your insurance.

8 Q. But it does kind of give you the long history between
9 Mr. Sutherland and others and Mr. Tebele about trying to write
10 this policy?

11 A. Well, I don't know what their relationship was long
12 term. Obviously, they knew each other in 2017, beyond that, I
13 don't know.

14 Q. If Mr. Sutherland could land this particular policy, he
15 was going to get a 40 percent commission for as long as it was
16 his inception.

17 A. No.

18 Q. Well, based on his testimony, I should say.

19 A. He would have gotten 40 percent the first year. He
20 would not have gotten that in subsequent years.

21 Q. So Mr. --

22 A. And let me say --

23 Q. Okay.

24 A. -- that's subjection too because I don't know what their
25 commission structure is. You never get the same amount that

1 you get on your first year.

2 Q. The testimony was with Mr. Egan that it was 60/40.

3 A. Okay.

4 Q. And so your belief would be 40 percent only would be for
5 year one?

6 A. That is correct.

7 Q. What would he get for the year two?

8 A. I have no -- I can only go by what we do, okay? We will
9 pay either 40 or 50 percent first year, and then that number
10 drops down to 25 or 30 percent in subsequent years.

11 Q. So if the policy was in effect ten years, he was going
12 to get 20, 25 percent every year?

13 A. I don't know what --

14 Q. That's what the policy is with your agency?

15 A. Yes.

16 Q. So the --

17 A. Yeah, if he were a licensed agent at the time the
18 commission was paid.

19 Q. Alright. And if he wasn't, he shouldn't get anything?

20 A. Correct.

21 MR. CONNELL: Alright. Thank you, sir.

22 MR. HARPER: No questions, Your Honor.

23 MR. ADAMS: Very, very briefly.

24

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REDIRECT EXAMINATION

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BY MR. ADAMS:

Q. The one issue that Plaintiff's counsel has brought up over and over was whether Mr. Sutherland was a licensed insurance agent at the time he received his commission?

A. Yes.

Q. Did you do anything to independently verify the status of Mr. Sutherland's license since the Plaintiffs have injected that as an issue in this case?

A. I did make a phone call to a friend of mine to verify that he was, in fact, licensed.

MR. CONNELL: Objection, Your Honor, about a friend and a phone call, whatever that is.

THE COURT: That's hearsay. I'm going to sustain the objection.

MR. ADAMS: Well, Your Honor, if I may, just for the record, he's allowed to testify as to an inadmissible hearsay in forming his opinions as an expert. The Plaintiffs have injected this as an issue and he's allowed to respond to it because it touches on his opinions.

THE COURT: I'm going to sustain it if he's brining in what somebody's told him.

Q. What is your knowledge?

MR. CONNELL: Objection, Your Honor. It's the same thing. What is your knowledge, and knowledge can only be

1 obtained for hearsay.

2 THE COURT: You all come up here.

3 **(Off the record discussion was held at the bench by**
4 **Court and counsel.)**

5 MR. ADAMS: Your Honor, we would note our position as
6 to the Court's decision.

7 THE COURT: Yes, sir.

8 BY MR. ADAMS:

9 Q. You don't have any concerns with the licensing being an
10 issue with Crescent Coast conduct in this case?

11 A. Absolutely not.

12 Q. Would that be --

13 A. Mr. Egan was the agent working on this account and did
14 all the work from beginning to end.

15 Q. And that includes Mr. Sutherland's work in this case, as
16 well, correct?

17 A. Yes.

18 MR. ADAMS: No further questions.

19 MR. CONNELL: Nothing further, Your Honor.

20 THE COURT: Alright. You may step down.

21 THE WITNESS: Thank you.

22 THE COURT: Mr. Riser, Mr. Adams?

23 MR. RISER: Crescent Coast rests, Your Honor.

24 THE COURT: Okay.

25 MR. RISER: And I don't know if we can take care of

1 it out of turn, but we just want to renew our objections that
2 we have made, as well take up our other motions.

3 THE COURT: Okay. Ladies and gentlemen, the
4 Plaintiff has rested, and both Defendants have rested. We're
5 going to break for lunch now. It is 12:34. Let's try to be
6 back by 1:45, and at that point, we should be ready to hear
7 closing arguments and jury charges. Okay? Thank you. Again,
8 this is a reminder that I've not given you this case yet to
9 deliberate on. Do not speak about this case. Do not do any
10 independent research. Thank you.

11 (Jury exited the courtroom.)

12 (Recess taken.)

13 MR. RISER: Your Honor, we renew our motions for
14 directed verdict, as well as our motions for limitation of
15 damages, both as to the damages presented by Fred Genay, as
16 well as the damages attributable to a real estate agent in
17 South Carolina -- I'm sorry, insurance agent.

18 THE COURT: Thank you, Mr. Riser. Respectfully, I'm
19 going to stick with my prior rulings and deny your motion.

20 MR. STARR: And Your Honor, also, for the record, for
21 the insurer Defendants, we also renew our directed verdict
22 motions. We join in the motion with respect to limiting
23 damages from the testimony of Fred Genay and incorporate our
24 prior arguments and the briefing into this subsequent motion.

25 THE COURT: Alright. Thank you, Mr. Starr. And

1 again, I'm respectfully going to deny those motions.

2 MR. CONNELL: Your Honor, I have a motion.

3 THE COURT: Yes.

4 MR. CONNELL: Your Honor, I believe that the Court --
5 as Your Honor knows, those motions in limine are preliminary,
6 and after Your Honor has heard all the testimony of the case,
7 the case law is clear that Your Honor could make a decision
8 different than what you didn't hear in the beginning, and so,
9 Your Honor, we would move that the Court find, as a matter of
10 law, that there's an ambiguity in the insurance contract in
11 this case. We base that on two things: Number one, the
12 section that was testified to by our expert and was not
13 addressed by the insurance carrier's expert, that additions to
14 construction were covered under the policy. That's found in
15 section 5, property coverage. And the 2nd part would be the
16 testimony that's been elicited and that is agreed to,
17 apparently, is that the schedule of values, which is part of
18 the policy, had to have an AS symbol on it, and that there was
19 no AS symbol on the document, and everybody apparently agrees
20 to that, and so what you have, Your Honor, is you have in this
21 situation, or in this case, you've got two ambiguities, at
22 least in this case. You've got the 1st part of the policy that
23 says that you, any construction additions that are -- or any
24 additions to the structures are covered, and in the
25 endorsement, the protective safeguard endorsement, you've got

1 something that's contrary to that, and on top of that, you've
2 got a section in the protective safeguard endorsement that says
3 you've got to have the AS symbol beside each property on the
4 schedule of values, and it's clear in this case that neither
5 one of those things occurred. And then the final thing, if you
6 look at the protective safeguard endorsement, it says:
7 Maintain, and it's obvious from all the testimony that this
8 particular sprinkler system had not yet been finished, had not
9 been permitted by the City of Myrtle Beach, had not been
10 inspected, and so there was no maintaining involved because it
11 hadn't been finished, so we'd ask Your Honor to charge the Jury
12 that all ambiguities in the policy, which we just talked about,
13 are ambiguities that are in favor of the insured, and in that
14 situation the only issue is damages as to breach of contract.

15 MR. HARPER: We object to that motion, Your Honor.
16 Covered property under the policy simply states the things that
17 property can afford coverage for, it doesn't say, and there is
18 no reasonable interpretation of that provision that renders the
19 claim covered merely because something qualifies as property.
20 The easiest example for Your Honor was the policy in the
21 covered property Capital C, Capital B provision, clearly states
22 and identifies that a building at an insured premises is
23 covered property. The fact that this building was covered
24 property doesn't mean that Mr. Tebele on behalf of A. Tebele &
25 Sons on day one of the inception of the policy can come in and

1 say, give me \$2.5 million dollars for my building because it's
2 covered property. You have to have a covered claim. Here,
3 there wasn't a covered claim based on the other clear and
4 unambiguous provisions of the policy. Turning to the AS
5 argument raised by Plaintiff, AS is not required to be listed
6 on the schedule of values as asserted by Plaintiff. The
7 schedule of values does not include AS for any of the
8 locations. Giving the policy that interpretation renders this
9 whole endorsement surplus in this contract, and the principles
10 of contract interpretation in this state require that the Court
11 not construe contracts in that manner. Also, there's been
12 abundant testimony that the AS symbol does not construe that
13 way in the policy.

14 THE COURT: Let me ask a question. On the protective
15 safe fire endorsement under the box under the schedule, if it's
16 not to be read left to right, why does it state, as indicated
17 on the schedule of values on file with the company, three
18 times?

19 MR. HARPER: Your Honor, I'm not sure we take any
20 issue with it being read left to right, as indicated on the
21 scheduled of values on file with the company. As testified by
22 various witnesses, there are two columns in this box in this
23 schedule.

24 THE COURT: No, I understand that. Just, if
25 "locations applicable" is only to be read by itself, as

1 indicated on the schedule of values within the company, then
2 why is it -- that's been a point of confusion for me, to be
3 honest with you, why it's listed three times on there.

4 MR. HARPER: Your Honor, there are three different
5 symbols that apply to this schedule for the protective
6 safeguards endorsement. We're here only for the AS symbol.
7 The automatic sprinkler system, does it apply or does it not.
8 We refer to the schedule of values to obtain that information,
9 whether it applies or not. If we go to the schedule of values
10 and we look for AS, we don't find it for any of the 23
11 locations.

12 THE COURT: Alright.

13 MR. STARR: And so all of a sudden, what we've done,
14 by adopting this interpretation as our supposed reasonable
15 interpretation, what we're doing is we're taking the protective
16 safeguards endorsement that is clearly and unambiguously
17 included in the policy and we're saying we're just going to
18 throw that away. That is rendering this whole provision
19 surplus within the policy. In contrast, we have the schedule
20 of values that says on the schedule of values, as referred to
21 in the protective safeguards endorsement, we have a sprinkler
22 column, yes or no. For this property and four others, we have
23 sprinklered, yes. For this property and four others, we have
24 sprinkler percentage, 100 percent sprinklered. A reasonable
25 interpretation of the schedule of values in this policy is

1 still rendered by acknowledging that, yes, it is indicated that
2 this property is sprinklered and there are others that are not.
3 We therefore give meaning and meaningful -- we give meaning to
4 all the creators of the policy in this way.

5 MR. WATSON: May I?

6 THE COURT: Yes, please.

7 MR. WATSON: I think to answer your direct question
8 even more, it's as simple as, you look at the box --

9 THE COURT: Well, when your witness from England was
10 testifying, that was kind of what brought it to my attention,
11 quite frankly, because he kept saying, you don't read blocks
12 left to right, you don't read left to right.

13 MR. WATSON: Because, yes, because what Mr. Connell
14 was trying to do with the witness was to make this into a
15 sentence that says: AS, comma, as indicated on the schedule of
16 values in the company, as if it all goes together. The way you
17 read it is you say: This symbol, AS, to which location is this
18 applicable? I look at the locations column and say, oh, it's
19 applicable to the ones as indicated on the schedule of values
20 with the company. It could have said: 1901 North King's
21 Highway and 42 North King's Highway, or it could have listed
22 the actual addresses, but it says, because there's 24
23 locations, go to the schedule of values, that's where you'll
24 find out where AS is required. AS is just code for --

25 MR. CONNELL: No, no, I understand that. When he was

1 testifying, it almost seemed to me like he was saying, this is
2 a symbol line, these are the symbols that are required and
3 they're required in these locations as indicated in the
4 schedule of values, which understand, it just seemed odd that
5 it was listed three times the way he was describing it.

6 MR. WATSON: Well, the easiest way to do it is to
7 say, okay, pretend that AS isn't there. Okay, AA, an automatic
8 alarm, which locations is that applicable to? This didn't have
9 to say the exact same thing. It could have said none or it
10 could have said all locations that are on the code. Like, it
11 could have said anything in terms of -- it could have said
12 location 1, 6, 8, and 11. Rather than enumerate them, it just
13 says, go to the schedule of values because that's where all
14 this information is.

15 MR. CONNELL: No, no, I mean, I understand. It just
16 seemed from his testimony like he was very adamant that while
17 that schedule box works together, it was -- I mean, I'll be
18 honest with you, it was a little bit confusing to me now, now,
19 whether or not that creates an ambiguity, I'm not necessarily
20 there yet. I'm just saying I needed a little bit of
21 explanation on that, as well, because the way he was
22 testifying, it was almost as if he was saying, no, no, no, you
23 read these symbols and then we go to, as indicated on the
24 schedule of values, and those two are not necessarily related
25 horizontally.

1 MR. WATSON: Correct. I think that was his
2 testimony. It's not a sentence. AS is not part of a sentence
3 that says --

4 THE COURT: Right.

5 MR. WATSON: -- AS, comma, as indicated. That's
6 where the difference is.

7 THE COURT: Okay. Mr. Connell?

8 MR. CONNELL: Your Honor, just in response to his
9 argument, the case of State Farm v. Windham, a 2022 case where
10 the Supreme Court said if there's two interpretations of the
11 same provision, one from the insurer and one from the insured,
12 the insured should win because of the doctrine of reasonable
13 expectations in that you expect to have coverage based on the
14 Bell v. Progressive Northern Insurance Company case. So if
15 that's the interpretation they offer, it can also be read just
16 the opposite way for the insured, and because this is a
17 contract of adhesion, ambiguities go to us as it's been
18 described in numerous cases, that the contract is ambiguous.
19 And then on top of that, I'm not sure I understand the language
20 about the property covered because the property covered is from
21 a direct physical loss like a fire, and when you look at that
22 number 5 in the policy that says: Construction additions, I
23 think it's -- here it is right here, Your Honor, number 31: If
24 not covered by insurance. So 5A and then, of course, coverage
25 says, we'll pay for direct fiscal loss. I mean, certainly,

1 this is what happened here. So we would argue, Your Honor,
2 that it is an ambiguous policy, and that we're entitled to that
3 as a matter of law.

4 THE COURT: What was the case you just cited?

5 MR. CONNELL: That's called State Farm Mutual
6 Insurance Company v. Windham. I've got a copy I can give to
7 you. It was written by Justice Hearn, one of the last ones she
8 wrote, and it indicates that if there are two interpretations
9 of the policy and they're both reasonable, then the insured
10 should win because it's a contract of adhesion.

11 THE COURT: Mr. Harper, did you just give me the case
12 too? I'm sorry.

13 MR. HARPER: Today, motions in limine, briefing,
14 there are several.

15 THE COURT: Alright. As to other jury charges, I'm
16 just going to think about this for a few minutes. Is that a
17 copy of it?

18 MR. CONNELL: I've got a copy too.

19 THE COURT: Alright. I would like to go ahead and
20 get into the charge conference. It's 12:45. Are y'all
21 prepared to do that?

22 MR. RISER: Sure, Your Honor.

23 THE COURT: I'm just thinking if we can do it and
24 maybe give y'all at least an hour. I mean, I told you to be
25 back here at 1:45, but get back here at 1:45 and then we can

1 **(Charge Conference)**

2 THE COURT: I will let y'all know, Mr. Riser, quite a
3 few of yours are in my general charge, the duties of jury and
4 judge, preponderance of the evidence, direct and circumstantial
5 evidence, credibility of witnesses, expert witnesses,
6 corporation as a person, deposition testimony, goes directly
7 from the same one, so I've got all of that included, but let's
8 go ahead and start with the Plaintiff's request for jury
9 charges and we'll just kind of go down the row.

10 MR. DESCHAMPS: I'm sorry, this will finish
11 momentarily, Your Honor.

12 THE COURT: I can talk loud. Alright. As to the
13 Plaintiff's request for jury charges, what objections do the
14 Defendants have?

15 MR. WATSON: Your Honor, with regard to the
16 Plaintiff's charges, there are, by my count, five charges,
17 numbers 4, 5, 13, 16, and 17, which all in some way or another
18 give a charge about ambiguity in the policy.

19 THE COURT: You said 4, 5, 13 --

20 MR. WATSON: 13, 16, 17. I don't think I missed any.
21 I might have. No, those are the ones.

22 THE COURT: Thank you.

23 MR. WATSON: First off, based on the arguments from
24 the motion in limine and that have continued somewhat during
25 the directed verdict motion, insurer Defendants would object to

1 any jury charge on ambiguity, as that's the determination of
2 the Court to interpret the policy, and as the record currently
3 stands, the Court had indicated by granting the motion in
4 limine relating to ambiguity that it would charge the Jury that
5 the policy wordings are not ambiguous. So we would object to
6 those. The only other objection I believe insurers have to
7 Plaintiff's charges are as to charge 12. That is a basic
8 charge about what damages flow from a breach of contract. I
9 think it -- to conform to the facts of this case, I think it
10 would be appropriate for the Court to add to 12 that under the
11 contract, the policy limits are the maximum policy limits
12 available for a breach of contract total 2.5 for the building,
13 250 for the personal property, and 100 for the business income,
14 or in some form or fashion because they don't -- they are
15 capped there. They can't find other natural damages flowing
16 from the breach that aren't in the policy, and I think that's
17 consistent with the record. I don't think there's any dispute
18 that if they find breach, that's the most they can find.

19 MR. CONNELL: I don't know about that. I mean, it's
20 a contract of adhesion, and we've got testimony that if they
21 had paid us on day one, they wouldn't have had a \$2 million
22 dollar upcharge as in regard to rebuilding the building. So I
23 think any damages that flow naturally from the breach are
24 recoverable. That would include anything above -- it would
25 include the payment for what Mr. Genay said was the difference

1 from the testimony.

2 THE COURT: And that was the number? Which one is
3 that?

4 MR. RISER: Twenty, that's the last one, Your Honor.
5 Oh, I'm sorry. There are two more. I didn't turn the page.
6 One last objection is charge number 22. That's related to the
7 licensing issue, and I think it's, from Mr. Connell's
8 statements with Terry Tadlock, this might be a criminal
9 statute, and we just object to it. It's an issue inserted into
10 the case by the Plaintiff that has prejudicial language, and it
11 also attempts to -- it could be viewed as presuming that
12 Crescent Coast has done something wrong in the case related to
13 licensing issues, and we object to it on those grounds.

14 MR. CONNELL: I think they objected to everything I
15 put down, so I'm trying to --

16 MR. RISER: Not all of them.

17 THE COURT: I think 21 you're okay with.

18 MR. CONNELL: Oh, great.

19 MR. WATSON: Your Honor, before Mr. Connell goes, I
20 just -- the insurers do want to adjoin in an objection to 19
21 and 20 of the Plaintiffs to the extent you're asking the Court
22 to determine the agency of an insurer, same grounds as our
23 motion in limine. Thank you.

24 THE COURT: Your Honor, which ones? There have been
25 so many numbers floating around, I can't tell which ones are

1 MR. RISER: No, sir, Your Honor.

2 MR. CONNELL: That's been several cases, though.

3 THE COURT: Mr. Riser, I'm going to allow it -- I'm
4 going to charge yours, as well, but I'm going to allow that.

5 MR. RISER: Okay. Thank you.

6 THE COURT: Alright. As to ambiguity, I'm going to
7 stick with my earlier ruling in that regard. So number 4, 5,
8 12?

9 MR. DECHAMPS: 13, 16, and 17.

10 THE COURT: 13, 16.

11 MR. CONNELL: Your Honor, that doesn't preclude me
12 from arguing that policy applies based on the provisions my
13 experts presented, correct?

14 THE COURT: No. I'll let you argue as to what your
15 expert said, but as far as what I charge the Jury, that's
16 something completely separate.

17 MR. CONNELL: Alright.

18 THE COURT: Number 17. Alright. How about number 6?

19 MR. RISER: As it may surprise the Court, I have no
20 objection to 6.

21 THE COURT: Number 7?

22 MR. RISER: Nothing there either, Your Honor.

23 THE COURT: Mr. Connell, you're on a roll.

24 MR. CONNELL: Yeah, two out of two -- two out of
25 seven.

1 to procure the desired coverage the actions of the agent
2 warrants an assumption by the client that he was properly
3 insured in the amount of the desired coverage.

4 MR. RISER: Yeah. The language in the request to
5 charge is that the agent has to notify the client promptly if
6 he has failed to obtain requested insurance. Where is that in
7 the case?

8 THE COURT: Yeah, I don't see that in the case. Why
9 don't we just leave out: And to notify the client promptly if
10 he's going to obtain requested insurance? The rest of that is
11 in there: Client may recover from agent the loss it sustains
12 as a result of agent's failure, and all of that is still in the
13 case. It's just a notification one we'll take out. Mr. Riser,
14 am I right?

15 MR. RISER: I believe that's correct, Your Honor. I
16 understand your ruling on the damages limitation, and over that
17 objection, then I understand. As long as we take out: And to
18 notify up to requested insurance period, then I think then that
19 that's an applicable recitation of Republic Textile.

20 THE COURT: As to 22, the statute, tell me about
21 that.

22 MR. CONNELL: The statute says -- it's not a criminal
23 statute. There is a criminal statute. This says everyone's --

24 THE COURT: That says in the licensure statute?

25 MR. CONNELL: It just everyone's got to have an

1 insurance license, that's all it says.

2 MR. RISER: Again, Your Honor, I think it's
3 prejudicial.

4 THE COURT: I'm going to allow it because there has
5 been some testimony, whether it's believed or not, you can
6 certainly argue in your closing that that is not what was
7 testified to and that's not what the evidence is.

8 MR. RISER: Understood.

9 THE COURT: Yes, sir. Alright. As to, let's go to
10 Certain Underwriters.

11 MR. CONNELL: Your Honor, number 1 --

12 THE COURT: Okay.

13 MR. CONNELL: I think until you get down to the last
14 sentence, this Court has reviewed the insurance policy at
15 issue, and it's determined the provisions are not ambiguous.
16 Your Honor, we've made the motion, your Honor hasn't ruled on
17 that yet, so we would request a specific ruling on the property
18 damage coverage A, and section 5 about the construction we
19 talked about earlier --

20 THE COURT: Right.

21 MR. CONNELL: -- and about the schedule of values
22 that are the requirements of the AS.

23 THE COURT: In that regard, I'm going to stay with my
24 prior ruling that it's not ambiguous -- excuse me, that it is
25 not ambiguous, just as I had ruled prior.

1 the sample verdict form that Defendants have agreed on. It's
2 request 22 in the clean version that I have sent you.

3 MR. CONNELL: Do you want me to comment on that?

4 THE COURT: Which one?

5 MR. CONNELL: On the verdict form there?

6 THE COURT: I hadn't seen it.

7 MR. CONNELL: Okay. Are you guys are going to give
8 them a verdict form or is this --

9 MR. RISER: He has it. The new copy that I just gave
10 him?

11 THE COURT: Okay.

12 MR. RISER: Yes, sir. It's a request 22, and what
13 that includes is a general instruction starting and then the
14 specific -- the nine questions are after that. And essentially
15 what it does is it says, you know, it starts with breach of
16 contract, and then bad faith, then damages, and then a willful
17 wanton, reckless charge. And then it tries to explain, if you
18 have found that there is coverage under the contract, you don't
19 assess negligence or fiduciary duty liability as to Crescent
20 Coast. Mr. Connell has, and Mr. DesChamps pled this in the
21 alternative. So the way that this case has been litigated for
22 four years and tried is that if coverage for the fire loss
23 under the contract of the insurance or the insurance policy is
24 found by the Jury, my client did his job. They got Mr. Tebele
25 a contract that covers his fire loss, so there would be no

1 liability as to Crescent Coast. However, if they do not find
2 that there is coverage under the contract, for whatever reason,
3 they can then assess the potential liability of Crescent Coast
4 under the theories of breach of fiduciary duty or negligence.
5 They could say that both of us -- it could be a loss for Mr.
6 Tebele, but, nevertheless, the alternative pleading is mutually
7 exclusive. He can't tag both of us, and so that's why it's
8 broken down into nine questions.

9 MR. CONNELL: And I think I could get both of them.

10 THE COURT: Yeah. I mean, he sued you under
11 negligence. I mean, that's --

12 MR. RISER: He sued us under negligence, but a plain
13 reading of the pleading is that he sued us under negligence in
14 the alternative if -- for failure to get coverage. He has two
15 claims against the insurance carriers, one for breaching
16 contract and one for bad faith for not giving him coverage. If
17 there is coverage, then he had a client -- he had a -- yes,
18 and, you know, negligence. Paragraph 33 of the complaint
19 itself says: This cause of action is pled in the alternative
20 to the causes of action brought against the insurers. And,
21 Your Honor, I think it's factually and legally -- it's
22 impossible. If Crescent Coast worked for Mr. Tebele and got
23 him a contract that covered his fire loss, how can we be
24 negligent? How can we have breached our fiduciary duties? He
25 got exactly what he bargained for.

1 MR. CONNELL: And, Your Honor, I guess we should
2 renew our motion that you charge ambiguity and find that the
3 insurance contract is -- and I understand your ruling, you've
4 ruled about that ten times --

5 THE COURT: Yes, sir.

6 MR. CONNELL: -- or better.

7 THE COURT: Well, in regards to the close, how do
8 y'all propose, I mean, do y'all care who -- are you planning on
9 going second? How --

10 MR. WATSON: We've been going one, two, three,
11 Connell, Watson, Riser, so I assumed that's how we're going,
12 and Connell does an anchor leg --

13 THE COURT: Yeah.

14 MR. WATSON: -- at the end?

15 THE COURT: The anchor leg. That's a good way to put
16 it.

17 MR. RISER: Only do three. Just Connell --

18 MR. CONNELL: I know y'all like that.

19 MR. RISER: -- Watson, Riser, and stop there.

20 MR. CONNELL: Well, I appreciate that. I appreciate
21 y'all thinking of me for that. Your Honor, I told them, I'm
22 not going to be long. They've been here eight days, and I'm
23 not going to be long, so.

24 THE COURT: Well, they've got a lot. I would ask
25 that, if y'all can, to try to quickly, and it looks like y'all

1 **(Jury entered the courtroom at this time.)**

2 THE COURT: Good morning, Madam Forelady and the rest
3 of the Panel. I appreciate y'all for being here this morning.
4 We are going to finish this case today, I assure you, okay? In
5 fact, we are going to begin our closings. The Plaintiff will
6 close first, followed by each Defendant, and then the Plaintiff
7 will be allowed to give a brief reply after that. After they
8 have given their closing arguments, I will charge you on the
9 law, then I will let you retire to your jury room to
10 deliberate, but only after I've told you to obtain
11 deliberations. We will actually provide you with all of the
12 evidence that has been put into the record, and you'll be able
13 to look at that, pick it up, hold it, and all of that, but
14 we'll go ahead and begin our closing. Mr. Connell?

15 **(Attorney Connell presented a closing argument on**
16 **behalf of the Plaintiffs at this time.)**

17 MR. CONNELL: Thank you, Your Honor. Folks, I want
18 to apologize to you first. Mr. Tebele and I have talked a
19 couple -- the last couple of hours about this case, and Mr.
20 Tebele wants you to know that he had no idea it would take
21 eight days for you all to be here, and we're sorry that it has
22 been eight days, and we just apologize that it took eight days.
23 It shouldn't have taken eight days to do this, to be where we
24 are, so we want you to know that ahead of time. And so it is
25 9:25, and I'm going to tell you that I'm only talking to you

1 about 20 minutes, and at the end of 20 minutes, I'm going to
2 sit down because you have heard this case ad nauseam. You
3 don't need me to talk to you all afternoon about this case, and
4 I'm hopeful that the Defense will do the same thing.

5 So I want to start off with a thought that I have, I
6 think about it a lot in trials, is, you came on Monday, and you
7 came to this big room downstairs, and, of course, nobody wanted
8 to come, and you sat there and there was 300 people there and
9 you've been chosen by a driver's license, or you have been
10 chosen by your voter ID because the law is you can be chosen by
11 either way, and then you heard the Judge qualify people, and
12 it's just not totally random that you were selected to help us
13 with this case, and the reason why I say that is because you
14 have paid such close attention. I mean, I've been involved in
15 cases where people go to sleep. I've been involved in cases
16 where people turn their chair around. Not one of you have done
17 this. And so whoever's in charge of what's right and wrong
18 chose you all to make a decision in this case, and I think
19 that's important for you to remember, that out of all of --
20 there are 800,000 people living in Horry County, and out of all
21 those people you folks got together, and people have taken
22 notes, you've taken close attention to what's happening, and I
23 really appreciate that, because that's not the way it happens
24 all the time here. So I want to talk to you about the case a
25 little bit, and like I said, I'm not going to be long.

1 When I was driving here today, the first thing I saw
2 on 544 coming down the road was a big sign from State Farm. It
3 said: Bundle and save. Your trust is ours and so this -- when
4 you think about insurance and you think about products, the
5 insurance is a different product than anything that we have
6 experienced in our life, and it goes like this. If I want to
7 go buy a car from a dealership, I'm going to look at the car.
8 I'm going to drive the car. I'm going to turn the radio on. I
9 may see what the gas mileage is. I'm going to get to look at
10 that and hold that, and I'm going to know what I'm going to
11 buy. And the same thing if I go get a cup of coffee from
12 Starbucks. If I'm going to buy a cup of coffee, I'm going to
13 see it, I'm going to smell it, I'm going to taste it, and if
14 it's not good, just like the car, I'm going to know right then,
15 but insurance is not like that. Insurance is the only product
16 in the world where you buy the product and you pay the premium
17 month after month, year after year after year, and you expect
18 and you trust and you hope that if you have a catastrophe like
19 a big fire, a wreck, your spouse dies and you have life
20 insurance, you hope that insurance is going to cover you, and
21 you hope that because you have trust in the insurance industry.
22 Well, the trust is broken when you see a case like this, and
23 when I say that, I mean because Mr. Tebele paid over
24 \$100,000.00 in premium for his policies. Mr. Tebele had trust
25 in his agent. Mr. Tebele is not an agent. Mr. Tebele was

1 contacted repeatedly over and over by the Defendant, Crescent
2 Coast Insurance Company and their agents. He was asked, we can
3 get you better coverage, we can get you for a lesser price,
4 everybody does that. So what I want to do, is I want to show
5 you -- I've prepared a short PowerPoint and I want to show you
6 about that, and I'll talk to you about the exhibits in a few
7 minutes. As you remember, I'll try to step back here. As you
8 remember when we first met, I discussed what I call the burden
9 of proof. The burden of proof is the scales of justice. The
10 scales of justice are perfectly balanced when the trial begins,
11 and the Court will charge you that a slight tipping of the
12 scales of the justice in favor of the Plaintiff is required.
13 So it doesn't have to go all the way to the ground, that
14 happens in the criminal cases. I have this feather here
15 because it's a featherweight of justice, slight tipping. So
16 that's the first thing you have to understand in a civil case,
17 everybody has to agree, but has there been a slight tipping of
18 the scales in this case, and I will submit to you in this case,
19 there's clearly a tipping in the scales.

20 Now, so we're trying two lawsuits, ladies and
21 gentlemen, one against the insurance company, and one against
22 the agent, and you can decide during the course of the trial if
23 you hold them both responsible, one responsible, it's up to
24 you, and we're going to talk about that in a few minutes.
25 Remember our expert, Professor Finkel? He pointed to this

1 protective safeguards endorsement. This is against the Lloyd's
2 Entities. I'll call them Lloyd's Entity for purposes of our
3 argument. First, as you know, and you've heard this ad
4 nauseam, but the insurance company -- Mr. Tebele never got the
5 policy, but if he had gotten the policy, this symbol was
6 required. There's a block. You read left to right, as
7 indicated on the schedule of values on file with the covenant.
8 Of course, you're going to have a schedule of values, and
9 you're going to see no AS. Now, why does that make a
10 difference, you're thinking, why is he asking about this.
11 Because insurance policies are not something I negotiate. If
12 I'm buying a car, I get with someone, renegotiate the price,
13 what I'm getting, one with the air conditioning, one with power
14 steering. In an insurance policy, you don't get to see that,
15 usually, before something happens. So what that means is that
16 law has been in South Carolina for over 100 years that all
17 endorsements and all exclusions have a different meaning,
18 meaning, we literally apply coverage. We say, because it's a
19 contract of adhesion, we literally apply coverage for the
20 Plaintiff. In other words, if there's any question, then we
21 should win, and that's one of the issues you'll see. Now, I'm
22 just going to hold this up. This is a provision of the policy
23 that no expert but Professor Finkel talked about it. It's the
24 1st page of the policy: We will pay for direct physical loss
25 or damage to covered property at an insured location caused by

1 resulting -- caused by or resulting from any covered cost of
2 loss. Well, that's a lot of lawyer talk, isn't it? What that
3 means is, we're going to pay if something happens to this
4 property, and we're going to look down here and see what it --
5 we're going to read left to right all the way down, and number
6 5: If not covered by other insurance, additions under
7 construction, alterations, and repairs to the building or
8 structure. Well, the building was currently undergoing
9 construction or repairs for a sprinkler system. Clearly, this
10 provision applies. Now, did you hear anything from the
11 Defendant's experts about that? Remember the guy from
12 Pennsylvania, Mr. Hennes, I think his name is? He came down
13 and he talked about a lot of stuff. Well, when I asked him
14 about this, he said, oh, no, no, no, no, that wasn't in my
15 scope. And Mr. Twaddell, remember him on the first couple of
16 days way back last week? Mr. Twaddell wrote letters about
17 this. He got no answers. He didn't get no answer from the
18 insurance company because they knew that was a good argument,
19 and they didn't want to pay. So consider that when you're
20 looking at Lloyd's, the Lloyd's entities. That's just the same
21 section you see down here: If not covered by other insurance.
22 Well, Mr. Tebele didn't have any other insurance, he had this
23 insurance. So how about this? One of the arguments that has
24 been offered to you is about controlling, who had control of
25 the sprinkler system. Well, the contract that Mr. Tebele

1 signed with Crawford Sprinkler System clearly says that
2 Crawford has control, and you are not to touch it until it's
3 permitted and approved by the City of Myrtle Beach, and you'll
4 see that in your records, and that shows that control cannot be
5 handled by Mr. Tebele. Alright. So as I've talked to you a
6 couple of times, we're trying two cases here. We're trying a
7 case against Crescent Coast Insurance Company, and a case
8 against the Lloyd's Entities. So I just listed some arguments
9 for you to consider. I'll start from the top. Of course,
10 you've heard all about Mr. Sutherland and if he got licensed,
11 you've heard ad nauseam about that. You've heard about the
12 email, this email, that was sent by Crescent Coast when the
13 same policy from the restaurant that was in there was -- it was
14 learned that the sprinkler system was not working. And you'll
15 also have the note from the insurance broker that says: Got
16 it, I'll note the file. You've also heard testimony from Mr.
17 Egan, who works for Crescent Coast, and he sent the
18 application, and so why do you think that's important? Well,
19 let me tell you why that's important. Look, Mr. Egan's a nice
20 guy, and I hate he got himself in this situation, but this is
21 what happened. There are emails on the record: Friday,
22 January 11th, 2019, 12:10 P.M. This email was sent on the same
23 property from their office saying, by the way, you don't have
24 any coverage. Within two hours afterwards, Mr. Egan, same day,
25 same time, 2:18, sends an email with the insurance application

1 to Mr. Tebele, knowing full well, or his office, Crescent
2 Coast, having full knowledge that that was done. An
3 application was generated the same day. So you have knowledge
4 when someone in your group has knowledge. That's what's called
5 knowledge. And so why would he do that? Well, I heard a lot
6 of talk about that from Mr. Egan, but the most important part I
7 heard was this: I had been working on this a long time, and I
8 needed to get some money out of this, and I needed to send
9 this. And so, I think, Mr. Egan, knowing that this had
10 occurred, was probably concerned about whether there would be
11 any coverage problems, and he wanted to get paid. So he said,
12 you know what, here's what I'm going to do, I'm going to bind
13 this coverage. I know the sprinkler system is going to be
14 fully operational in a few weeks, and everything is going to be
15 okay, and so no one will know the difference because in two or
16 three weeks, Mr. Tebele's contractor will finish and we won't
17 have any problem at all. He didn't even think about one thing,
18 though, the fire. The fire occurred, otherwise, no one would
19 ever have known about any of this. So you think -- you have to
20 think about that when you're thinking about the liability of
21 Crescent Coast Insurance. We're not suing Mr. Egan, we're just
22 suing Crescent Coast.

23 Alright. The schedule of values, you know, that big
24 long sheet you all have seen that Mr. Tebele never saw, but
25 that was unsigned by him, that was written up between the

1 insurance companies about what was going to be? That, he'd not
2 hadn't signed that, he would have no knowledge of that. So the
3 binder, you're going to see that -- there are like 75 exhibits
4 here for you to look at. The binder for the coverage, if you
5 look at the binder, that's the thing he got when he started
6 paying the money. The binder is actually incorrect, too.
7 You'll see that because it doesn't list any of the properties.
8 It says that there is a sprinkler endorsement on there, and on
9 top of that, they knew the defendant, Crescent Coast, was
10 aware, because they had gotten the fire policies from the fire
11 agent, and Alice from BB&T had indicated that she had caught
12 this problem before that all these endorsements were on there,
13 and then finally, the policy was put in Crescent Coast's hands
14 on February the 7th, and it was not delivered until after the
15 fire, on the fire's day afterwards. So all those things you
16 have to be thinking about as to the responsibility of Crescent
17 Coast. Alright.

18 This is another example of the protective safeguards
19 endorsement: It's only applicable to locations where the
20 symbol AS or AA is indicated on the schedule of values. Well,
21 again, that goes back to the insurance policies. You construe
22 the insurance policies in light most favorable to the person
23 who's buying and against the insurance company, so that, again,
24 back to Lloyd's. Alright: We will not pay for loss or damage
25 caused by or resulting from fire if prior to the fire you have

1 failed to maintain any protective safeguard listed in the
2 schedule above. Well, we already knew they were constructing
3 it, alright? We already knew Mr. Tebele had no control over
4 it, and we already knew it was not in complete working order
5 because it hadn't been in complete working order because it
6 hadn't been finished yet. So all of these, when you construe
7 that against the insurance company, would provide for a verdict
8 against them.

9 Alright. Let's talk about this a minute. So some of
10 you probably have asked the question, why is Mr. Genay involved
11 in this case? I mean, what was his -- what was the purpose of
12 his testimony? Well, it's already been admitted that the
13 building was a total loss, and the policy provided for
14 \$2,850,000.00 for a total loss. So Mr. Genay's testimony is
15 about the difference in price if you had to buy an insurance --
16 if you had to build this building now versus 2019. So in 2019,
17 the building would have -- could have been purchased and built
18 for \$6,318,000.00. In 2023, it could have been built for
19 \$8,406,499.00, a difference of \$2,088,415.00. So the
20 additional damages that Mr. Tebele has suffered, besides the
21 \$2.85 million dollars for the fire policy, is the difference,
22 if they had paid him back in 2019, that he would have saved.
23 But now he's got to go back and build it, he's going to get
24 \$2.85 million dollars, and he's going to have to build it at
25 this price. We're not asking you for this, we're asking for

1 the difference because that's the difference between 2019's
2 prices, everybody knows prices are higher in 2023. Now, South
3 Carolina has adopted a doctrine of reasonable expectations and
4 it provides that parties in an insurance policy are entitled
5 to, under the contract, the use of fairness principles, and so
6 we would argue to you that the fairness principles apply in
7 this case because of all that's happened.

8 I want to quickly run through a few other things
9 because I said I wouldn't take more than 20 minutes. I'm
10 coming up on that. Alright. So you're going to get these
11 little forms back here, and they're what we call verdict forms,
12 and as I indicated at the beginning, everyone has to agree, the
13 foreperson has to sign, it has to be a unanimous verdict. So
14 I'll show you the verdict form so you'll have some idea when
15 you go back there, and the Court's going to talk about this
16 too. So there are two verdict forms, alright? Verdict form
17 number 1 is, it would be only against the Lloyd's Entities: HDI
18 Global Specialty, General Security Indemnity of Arizona, and
19 the Certain Underwriters. And you got two choices on breach of
20 contract. If you find that the, which we believe you should,
21 you find that the contract was breached, the contract of
22 insurance, then you have to come up with a number to put right
23 here. Alright? And so that number should be the \$2.85 million
24 dollars for the policy he paid for, and it may also include the
25 \$2,088,000.00 for the rebuild. So you have two choices on the

1 breach of contract. It's simply yes or no. Okay? That's
2 first. Alright. And then we're also suing Lloyd's of -- or
3 the Lloyd's syndicates and the insurance companies for bad
4 faith. And you also are going to be asked: Do you find bad
5 faith, and if so, put a dollar amount in there, or you have a
6 second choice, you do not find bad faith. So that's form
7 number 1. Okay? Now, verdict form number 2 is a little bit
8 more complicated, so I'm going to try to explain that to you
9 briefly. Alright. So there's a number of questions you've got
10 to answer, and I'll read the first one to you: Do you, the
11 Jury, unanimously find that Crescent Coast Insurance, that's
12 the company, the other company we're suing, was negligent, and
13 that such negligence caused damages to the Plaintiff? So what
14 you would do, if you did that, you would simply mark it there.
15 And then the next question is: Do you, the Jury, unanimously
16 find that the Plaintiff was negligent and that such negligence
17 proximately caused the damages to Mr. Tebele? And so you have
18 a choice of yes or no, and I'm going to try to explain that to
19 you in a minute, but we would argue that it's "no" in this
20 situation because Crescent Coast knew what they were doing with
21 these emails. So if you put a "no" there, the whole question
22 is, how much are the damages, and you would write it right
23 here. Okay? Now, if you think Mr. Tebele was somewhat
24 negligent in some way, then you have to answer question number
25 3, and that's simply this: You have to come up with a

1 percentage of negligence between Mr. Tebele and Crescent Coast
2 Insurance Company. And we would argue there is no negligence
3 because Mr. Tebele told him way back in August that the
4 sprinkler system was not ready yet, and Mr. -- and Crescent
5 Coast knew on January 11th, 2019, when they sent the email to
6 bind coverage, that they were having -- that their sprinkler
7 system was not connected. So anyway, if you do that, you would
8 put -- you could put any number you want to between 0 and 100,
9 but so let's say, for instance, you want to say Mr. Tebele was
10 10 percent negligent and Mr. -- and Crescent Coast was 90
11 percent. You could simply put that in there. You put the
12 dollar amount on the form. You do not do the math. The Court
13 will do the math for you. But we would suggest to you that
14 there is no negligence, no comparative negligence. Alright.

15 And then the last cause of action is breach of
16 fiduciary duty. We're suing the insurance company, the
17 insurance agent, Crescent Coast Insurance, and we argue to you
18 that they undertook the coverage, that they had specialized
19 knowledge, that they're supposed to have the licenses, and that
20 they have a duty to the person who's buying it to tell them,
21 and when you do that, then it's breach of fiduciary duty if you
22 don't do your job. So, again, you could put a dollar amount in
23 there, you also could find for the Defendant. We think you
24 should find for the Plaintiff. So what are the damages that
25 we've talked to you about, we've got about a few minutes. So

1 we know the damages are \$2.85 million dollars, right, and we
2 know that's from the insurance policy, and then we know that
3 there's \$2,088,000.00 is the difference between the rebuild in
4 2019 and 2023, and so we also know that Mr. Tebele could have
5 rented the property for his family for the last four and a half
6 years, and that's \$750,000.00, that's what he testified to. So
7 that comes to \$5,688,415.29. That's \$5,688,415.29. And so
8 your job is to decipher, from all the facts, who's negligent
9 and to what degree, and also, whether the contract was
10 breached, which we believe it was, when Mr. Tebele bought the
11 policy to begin with. So again, I know this is really -- this
12 is not your normal case. I know that the issues in the
13 exhibits, all of that are difficult, and we appreciate what
14 you've done in listening to us in regard to the catastrophic
15 loss that he has. You know, the witnesses that were the best
16 were Mr. Twaddell and Mr. Finkel. They told what they thought
17 to be the truth based on their experience. Mr. Twaddell was so
18 excellent about what he said having come here, I'd suggest you
19 look back at his testimony.

20 And so then, I want to kind of close with this: every
21 verdict -- well, before I do that, I want to talk to you about
22 this. You know, insurance companies have litigation all the
23 time, but in this case, I want you to look around this
24 courtroom and see who's here. Mr. Tebele's here, Mr. Egan's
25 here for Crescent Coast, and who is here for these insurance

1 companies? Nobody. They haven't been here in the last few
2 days, and that shows arrogance, ladies and gentlemen. They are
3 arrogant in the way they've acted, they are arrogant because
4 nobody stayed here with us all this time, and it's because they
5 don't think you care about what happened here, and we believe
6 that you do care about what happens in this community, and we
7 believe that we should hold all of the insurance companies and
8 all of the insurance agents liable when they make mistakes.
9 You know, Lloyd's syndicates in England, they should have had
10 somebody here, HDMI from Germany should have somebody here, the
11 Arizona insurance company, all should have had somebody here if
12 they really cared about this case. So we would ask you to give
13 Mr. Tebele full compensation or else nobody in this community
14 is going to be safe with an insurance company or insurance
15 agent in the future when you buy coverage. Thank you so much.
16 And I did finish almost in almost 25 minutes.

17 MR. WATSON: Your Honor, may we approach?

18 THE COURT: Yes.

19 **(Off the record discussion was held at the bench by**
20 **Court and counsel at this time.)**

21 **(Attorney Watson presented a closing argument on**
22 **behalf of the Defendant at this time.)**

23 MR. WATSON: I appreciate that Mr. Connell started
24 out his closing with an apology about the length of time that
25 this caused you all to endure his clients and caused you all to

1 endure, I'm not apologizing. I think you'll take note of what
2 happened in this trial, and why we've been here so long, and
3 why this took more than a week, and why my clients, who came
4 here expecting a week-long trial, had to go back to their
5 offices after a week, and why the Court allowed them to testify
6 early to go back home. Now you understand what my clients have
7 had to endure dealing with this claim and these arguments from
8 A. Tebele & Sons for four and a half years. At Jury selection,
9 when y'all sat back here, you got asked some questions, and
10 everyone was standing up, sitting down, but one of the
11 questions, and I'm not going to quote it perfectly, but it was,
12 Are you going to be able to tell a plaintiff that they get no
13 recovery if that's what the policy dictates to you? And nobody
14 stood up. Well, today is your day to do that. At opening,
15 remember, I told you about all the issues about formation of
16 the policy and communication between Crescent Coast and Tebele
17 & Sons, and how that came to be, and that was all over here.
18 That's not our case. Our case is over here. Was the claim
19 correct? Did they decide it right, and was it a reasonable
20 decision, and did they act reasonably when they investigated
21 the claim? Two questions: reasonable conduct, correct
22 decision. Short answer is "yes," and, "yes." And while I'd
23 love to sit down, because I feel like you've seen it, and you
24 know it, and we can pull up all these exhibits again, but those
25 are the answers. You don't have to think about damages on

1 these verdict forms. You don't have to think about doing any
2 math. This was the correct decision under the policy and the
3 facts that applied to the claim, and it was most certainly
4 reasonable. You didn't hear anything from Mr. Finkel, or even
5 in Mr. Connell's closing, that the investigation was somehow
6 improper, that they took too long, that they wrote mean emails
7 to Mr. Tebele, that they misrepresented things in their email,
8 that they lied in their email, none of that. Those are the
9 type of things that expose an insurer to what's called bad
10 faith, you mistreat somebody. Well, what did they do? You all
11 could probably recite it to me. They sent out a field
12 adjuster. They took all the pictures, and only one matters, as
13 we all know. Ms. Weaver got the most important picture of this
14 pipe not connected into this building. After they took the
15 pictures, they figured out whether the fire was intentional or
16 not and what the cause was. Once they did that, they wrote a
17 letter saying, hey, we have a problem. They wrote -- they
18 said, you have this language in your policy about the
19 protective safeguard endorsement. You told us the sprinkler
20 system was connected to water 100 percent on your application.
21 What about this? This fire shouldn't have happened. They
22 asked -- they didn't just -- as Mr. Hanness described on the
23 stand, gave him a chance to explain himself, explain for his
24 company, why did you put this on the application and say it was
25 100 percent sprinklered, and then, yet, we came across this?

1 After they got his answers, they reviewed them, they made a
2 decision. Did they just send him a letter saying, sorry, no
3 check, goodbye? No. They wrote a 5, 6-page letter, which is
4 in evidence, and they went step by step. You will have it.
5 Read it. Does it sound reasonable to you? Does it inform
6 Tebele & Sons of the reason for the declination? Does it quote
7 the protective safeguard endorsement and explain how to read it
8 as Mr. Hannes explained that he doesn't read -- you know, he
9 was asked five or six times, and he was berated, don't you read
10 left to right? What about your textbook? He said, when I read
11 this, I read it in columns because that's how it's arranged.
12 This is all noise when it comes to the AS, and I'll get to that
13 in a minute. I do, because I only have one chance to speak
14 with you -- because Plaintiff has the burden of proof in this
15 case, he gets to go first and then he gets to come back at the
16 end, but this is my only chance, and I have to do my due
17 diligence and talk about damages, but I'm going to do it real
18 briefly because I don't think you're going to find any.

19 When it comes to the contractual damages, there's the
20 three elements. You all can recite them. Two and a half
21 million for the building, because it was a total loss. We
22 didn't put up any witnesses that challenged that. That's the
23 number. \$250,000 for something about business personal
24 property, the items that belonged to the owner in the space
25 where the restaurant was rented. You have to decide, based on

1 the evidence, did they actually put anything in to talk about
2 that? Did they show you a list of what was owned by the tenant
3 versus what was owned by A. Tebele & Sons? He was just a
4 landlord. What did they own? What did that company own? How
5 old was it? What did it cost? Was it four computers? Was it
6 some laptops? Was it a flat-screen TV? We don't know. You
7 don't have to guess. The Judge is going to charge you, but you
8 don't have to guess or speculate on damages. So if you don't
9 believe that's been proven, you could put a 0 for that.

10 Likewise, for the loss of business Income, the policy limit is
11 \$100,000.00. You heard on the stand from Mr. Tebele, this
12 place hadn't been -- she hadn't been paying rent for six
13 months. She was 40,000 in the hole. Again, where was the
14 continuing rent going to come from? You didn't hear any
15 testimony that he had lined up a new tenant to replace her
16 while he was trying to evict her. You didn't hear anything
17 that he posted it for re-rental for anybody. It could be a 0.
18 But remember, the limit was only \$100,000. Whether he says he
19 -- you know, that number he spouted off, \$750,000.00, where is
20 the accountant that put that together? Where is the documents
21 that show what the math is? That's just off the top of his
22 head because he's hoping you'll -- you like the number and you
23 like him and give it to him, but you can't speculate on
24 damages. But again, I don't think you're going to have to do
25 any math, I don't think you have to get to this place, because

1 I think you know. You've been subject for eight days now,
2 seven for the trial, of these facts. There's only one decision
3 that could have been rendered.

4 Two other things about the law that I think you want
5 to know. Number one, you're going to be charged about the
6 power of a signature and what that means. Pay attention to
7 that part, because this case is also all about one signature,
8 and in the age of COVID, although there were criticisms of it,
9 I think, by Plaintiff in the trial, he signed this. He signed
10 this, he put his name on it, he said it was true and accurate,
11 he testified. Remember that little bit, you know, it was
12 probably throwaway to y'all. I got up and read a couple of
13 pages from the deposition, but one passage I read said: Mr.
14 Tebele, was it appropriate for the insurers to rely upon the
15 truth of this signature and the information in the application
16 And he said: Yes. And now it's your turn to rely upon it,
17 because this signature is what matters the most because he was
18 telling the insurers what to insure and what his building
19 consisted of, 100 percent sprinklered. He testified, I
20 believe, if we remember the blocking, I was here, and he was
21 here, and I asked him: You signed this knowing that it wasn't
22 connected to water yet, didn't you?" And he kind of sheepishly
23 answered, and he didn't really want to, but he eventually said,
24 yes. So once he says: I signed it 100 percent sprinklered, he
25 told you it wasn't true and accurate. He didn't tell the

1 insurers it wasn't true and accurate, and they relied on it
2 when she told him it was the right thing to do.

3 Let's work backwards regarding the two types of
4 claims because I think one is easier to talk about. The bad
5 faith allegations, again, the Court's going to charge on what
6 the law is. If the insurers had any reasonable basis for their
7 decision, even if you think they got it wrong, as long as they
8 had a reasonable basis for the decision, there can be no
9 finding that they acted in bad faith. The reasonable basis,
10 again, it's in their declination letter. That's all you really
11 need to know about that. Mr. Finkel, on the stand, took no
12 issue with anything the insurers did, he just didn't like the
13 result. That is a classic situation where even if we give Mr.
14 Finkel the benefit of the doubt, Professor Finkel, reasonable
15 minds differing. Well, if you found that this is a case of two
16 reasonable minds differing, you can't find bad faith, and what
17 Judge Hyman charges you as to the law governs over anything I
18 say, but I believe that's how it would be phrased to you in
19 terms of the standard. When it comes to this policy language
20 -- so that's the bad faith part. We can really move on from
21 there. What's left is the breach of contract. Was the
22 decision correct? The decision was based on one provision of
23 the policy, our favorite, protective safeguards endorsement. I
24 don't need to read it all to you again. It's highlighted on
25 this board, but the whole -- the page is in evidence. AS.

1 It's here because it's defined below as automatic sprinkler
2 system. You're going to be charged by the Court to apply the
3 plain meaning of the language in the policy. The Court is
4 going to charge you that this policy is not ambiguous, that
5 there's -- and the only meaning you are to give it is the
6 meaning of these words in plain ordinary usage: As a condition
7 of this insurance, you heard testimony, that means it's
8 required, you are required to maintain the protective devices
9 or services listed in the schedule above. And I'm not even
10 going there, we know what "the schedule above" means. It's the
11 schedule of values, big Scotch tape thing that Mr. DesChamps
12 and Mr. Connell like to hold up in front of you. On the
13 schedule of values, it said: 100 percent sprinklered. Yes.
14 It matched exactly what was on the application. Mr. Tebele
15 didn't need to receive the schedule of values because he knew
16 what he put in his application and signed two days before the
17 -- before he received the binder. They had every right to rely
18 on his truthful signature and statement of what was in his
19 application. AS, automatic sprinkler system. There's only one
20 word you need to pay attention to, and we highlighted it here,
21 "connected." If it's not connected to water, he didn't have
22 it. He didn't have an automatic sprinkler system. So as a
23 condition of the insurance, he's already violated it. It's a
24 -- it's just a set of pipes that you hang -- you can hang
25 clothes on it, perhaps, or do something else with it, but until

1 this is connected to water, it's useless. He didn't comply
2 with the condition. So arguably, you really don't even have to
3 get to the exclusion at the bottom, but, of course, it had to
4 be in complete working order. It wasn't in any working order.
5 It wasn't working. It wasn't connected. It wasn't a system.
6 Why are we here? Well, the reason we're here is, as Mr. Tebele
7 testified, anybody can bring a lawsuit, and he was quick to say
8 that when I started bringing up his family and accusing him of
9 mismanaging his company. He was quick to say anybody can
10 allege, but that's not true, and I don't think I even had to
11 spell it out any more than that for you about the irony of his
12 statement when it comes to this case.

13 Let's talk about credibility, because you're going to
14 be charged about that. You're going to be charged about how to
15 evaluate the testimony that you've heard in the evidence. That
16 doesn't just mean what they say, although, obviously, what they
17 say is important, but how they said it and the way they said
18 it, that matters. Did they answer direct questions with a
19 direct answer, or when asked a question that they didn't like,
20 did they go on a five-minute speech, you know, similar to a
21 politician at a debate, and get in their pre-recorded or
22 pre-rehearsed case, rather than actually answer the question?
23 You know, Mr. Tebele on the stand, he asked him where -- Mr.
24 Connell was visibly frustrated, asked him where he lived. We
25 got his whole family tree, and we got the rags-to-riches story

1 of A. Tebele & Sons. Where did you live? It's because it was
2 pre-rehearsed. He was using it to get that out. He could have
3 asked what time it is, and then we would have gotten that whole
4 speech. Is that credible? Is that somebody who's more
5 believable? Or do you look at Mr. Hanness, who came here from
6 London to be here with you and explaining in a very calm and
7 rational manner how this policy was read, reviewed, and
8 analyzed? And he was just as calm when Mr. Connell got up in
9 his face. He got real close, he got about right here. He
10 said, why didn't you pay him his money back? And he said, why
11 would I do that, he's got 23 other properties. This policy was
12 still -- the property was still insured for other types of
13 losses, why would I pay that? Is that more credible, more
14 believable? That's your decision. Another part of credibility
15 is bias and financial motive. Well, we know Mr. Tebele's bias
16 and financial motive, he's got millions of reasons to tell the
17 story that he's telling. We also know Mr. Twaddell, the public
18 adjuster, who also has a law license who sat here and said he's
19 got 5 percent of the action, although, maybe -- when I asked
20 Mr. Tebele after, if you win this case, are you going to pay
21 him his 5 percent? There was a long pause. So at least on
22 paper, he thinks he's got a 5 percent stake in the action, so
23 you can evaluate that in terms of his credibility and his
24 believability. Experts, they all get paid by the hour. Mr.
25 Finkel's paid by the hour. Mr. Hennes, who we brought in, is

1 paid by the hour. You put whatever weight on that you want.
2 Who wasn't being compensated to be there? Who's not an expert
3 witness? Who doesn't have a stake in this? Ms. Northcutt, who
4 told you what she did. Mr. Melvin, who told you what he did.
5 Mr. Dover, who probably brought you the most single most
6 important fact in this case, that on February 13th, a month
7 after Mr. Tebele signed this, and 11 days before the fire, he
8 and Mr. Dover were out there and they saw this. He claimed,
9 oh, I was inside the building, I didn't know. He's talking to
10 the sprinkler guy. He knows it's not finished, whether he saw
11 it or not. Did he go back to David Egan or Joey Sutherland or
12 anyone on the insurer side of this matter and say, by the way,
13 I signed this, I just realized I thought it was going to be
14 finished in a week or two, and no one would ever know the
15 wiser, it's been a month, it's not 100 percent anymore, you
16 need to change my policy. Did he do that? No. Why not? Give
17 him the benefit of the doubt, maybe he's just inattentive, or
18 perhaps he knew all along that it was going to potentially
19 impact the price he was getting from these competing brokers,
20 and he said, I'm just going to leave it all as is. These guys,
21 I hired these vendors to fix the sprinkler system. I'm sure in
22 a week or two it will go in, no problem. You get to evaluate
23 all of these questions. And lastly when it comes to
24 credibility, you can look at the credibility of the
25 presentations by the parties, and I'm kind of not talking about

1 Crescent Coast because Mr. Riser is going to come up here and
2 talk about them, because we don't have a claim against them,
3 they don't have a claim against us, so. Which case is simpler?
4 Which case makes more sense? Which case took forever to put
5 on, and which case was short, quick, and to the point? Those
6 things can matter. You evaluate that. We told you at the
7 beginning the decision was correct. The decision was
8 reasonable. That's it. What did they tell you? I'm going to
9 get to the things that came up in Mr. Connell's closing, but I
10 made a list of all the points that they've tried to offer you
11 in this case, when you only have to answer the two questions
12 that I'm advising you about. AS was not in the schedule of
13 values. You heard testimony from Mr. Melvin, from Mr. Hennes,
14 from Mr. Hanness, from Mr. Egan, from Mr. Tadlock, that said,
15 It's not supposed to be on there, but they like it, so they
16 want to make noise about it, and that's all it is, noise. It
17 doesn't change anything related to the application or the
18 policy language. This "covered property" fallacy that Mr.
19 Connell and his client like, he got up here and said, nobody
20 talked about this. I seem to recall going through this point
21 by point with multiple witnesses: Mr. Twaddell, Mr. Hanness,
22 and Mr. Hennes actually did comment on it, Mr. Connell may not
23 remember. All this section does, we went over it. We broke
24 down this language, and we said: Covered Property, capital C,
25 capital P, that just tells you the things you're insuring, that

1 doesn't make a claim covered. So the things you're insuring
2 include things under repair, totally makes sense. If you have
3 a hurricane and you were doing work on your building and the
4 repair work got damaged, that's part of what's covered in the
5 scope of that. Now, you still have to have a covered cause of
6 loss. Interestingly, Mr. Connell made a reference that Mr.
7 Twaddell brought this up in an email, and they never answered
8 it. I pose that that never happened. I challenge Mr. Connell
9 to point to the exhibit number where Mr. Twaddell actually
10 talked about this provision. This was a creation of Mr.
11 Finkel, it was not Mr. Twaddell at all.

12 Control. He didn't have control of the sprinkler
13 systems. Oh, my goodness. The sprinkler system was on its
14 own. He's the building owner. Anyone who owns a house or a
15 property has control. They can hire and fire contractors.
16 They can make decisions to protect their property or not. He
17 wasn't being held hostage by Mike Dover and Crawford Sprinkler
18 about the sprinkler system. All of that language about, don't
19 touch it, relates to the warranty, if you touch our work, it
20 voids our warranty. That's pretty standard stuff. Noise.
21 That's all that is. He never got the policy. I wish I had a
22 dollar for every time I've heard that in the last week and a
23 half, except that he did get the policy, and it goes with
24 another point, the nomenclature, the naming. You've heard me
25 get up and object every time they reference our client as

1 Lloyd's when Lloyd's is not an insurance company. He leaves
2 out the other insurers completely. By the way, they're not an
3 HDMI cable, as Counsel called them, it's HDI Global Specialty.
4 But they're fast and loose with the names because it benefits
5 them to do that because they want you to think of them all as
6 one: Amwins. Well, Amwins is this big company and, I don't
7 know, it says Amwins here, and I don't know, it's just
8 confusing. No, it's not. Mr. Melvin works for a company in
9 Alabama that is a special risk underwriter that does property
10 policies just like Tebele & Sons. Ms. Northcutt works for
11 Amwins Access in Mount Pleasant that does small businesses like
12 Garcia's Restaurant, and that's what they underwrite. They
13 both testified they don't look into each other's systems. They
14 both testified this email died in Ms. Northcutt's system at
15 Amwins Access. Mr. Melvin testified it was not something he
16 had access to or was provided. Noise. And when it comes to
17 getting the policy, Mr. Connell actually conceded -- I made big
18 notes when he talks. I have a lot of wrongs next to the things
19 he said, but I have one yes, with a big exclamation point: The
20 policy for my clients was put in Crescent Coast's hands on
21 February 7th, the full 80, 90-page policy. When he goes to
22 Crescent Coast, that's his agent for receipt. He testified and
23 the insurers testified. They don't talk directly. This is a
24 process. Each side designates people to do this work. The
25 talking occurs -- excuse me, the delivery of the policy

1 occurred when Crescent Coast got it. If Crescent Coast didn't
2 give it to Mr. Tebele's company after February 7th, that's
3 between them. My clients did their job. They gave it to him
4 on February 7th. So by the time of this fire, he had it for
5 over two weeks. Noise. You didn't hear it in Mr. Connell's
6 closing, although he can bring it up when he comes back up
7 here, I think the buzzword was "infused." Ms. Northcutt was
8 infused by this magic email on January 11th with knowledge that
9 permeated to all the insurers all across the United States and
10 over to Europe, this email that went nowhere. That's just not
11 true. You can evaluate that. Mr. Melvin said he never had it.
12 He was not a part of the underwriting process. And guess what?
13 That was on January 11th. It didn't matter whether they got
14 it, because three days later, he signed on the dotted line
15 anyway, or in here, I guess, the DocuSign line and said it was
16 turned on. Remember, this is another thing Mr. Connell and the
17 Plaintiff keep getting wrong. This email doesn't say what they
18 think it says. It just says: It was represented that it was
19 100 percent sprinklered, but we've learned as of yesterday
20 they've been installed and the landlord has not turned the
21 water on, making it sound as if three days later when he said
22 100 percent sprinklered, that that's feasible. The problem is
23 whether Ms. Nenna didn't know how to state it or Ms. Garcia
24 stated incorrectly when she called it in in a panic to Joey
25 Sutherland, it was not as easy as turning it on. It looked

1 like this. That's not something that you just turn on. That
2 requires work. It requires about \$12,000.00 of work that Mr.
3 Tebele chose not to have performed. You heard about his
4 premium finance agreement prepared for a bank so that Tebele &
5 Sons could finance the \$170,000.00 premium. Okay, what does
6 that change? It doesn't change what he said on his
7 application. It doesn't change the policy language. It
8 doesn't change this. Noise. Inspections. You heard a lot
9 about, well, in October, somebody thought there was a sprinkler
10 system in here. And in August, Ms. Garcia thought there was a
11 sprinkler system in there because as the tenant, she checked,
12 yes. Obviously, they were wrong. The only one who actually
13 said, under a requirement to be truthful and accurate to the
14 insurers, the status of the sprinkler system, was Mr. Tebele.
15 He too got it wrong, but he didn't tell anybody he got it
16 wrong, even after a month later, he knew it was wrong. I'm
17 going to skip some of these. There's a lot. I mean --
18 premium. How much is the premium? You know, \$5.00 a square
19 foot, I don't know how that's relevant. Profit. Oh, my
20 goodness. Businesses like to make profit. I don't know an
21 individual or a business that, unless they're a designated
22 nonprofit entity and they're a charitable organization that
23 isn't trying to profit. Certainly, Tebele & Sons is trying to
24 profit right here today. The fact that the insurers also
25 insured the tenant, again, the tenant process of how it was

1 underwritten was all through Amwins Access and Ms. Northcutt.
2 My client's was underwritten through Mr. Melvin in Alabama.
3 The binder. The binder doesn't reference the locations, and
4 the binder doesn't reference -- it didn't tell me which
5 properties had to have sprinkler systems in order to be
6 covered. The binder was generated two days after he already
7 signed this, and who's better that's going to know what
8 locations they own and what locations have sprinklers and which
9 don't, than the owner, who signed it two days ago? Noise.
10 Then we get to what probably the most important part of what
11 Plaintiff keeps saying is: I believed this would be finished.
12 We already talked about how that makes this statement false,
13 but if he believed it would be finished -- excuse me. We heard
14 at the same time, he says, I believed it would be finished, we
15 heard testimony, and I think it may be even Mr. Twaddell who
16 echoed what Mr. Tebele said, he didn't even have to have a
17 sprinkler system. Well, I don't think he believed that because
18 as soon as the fire happened, there's a reason I showed all
19 these emails, they're all -- Defendants 55 with different
20 letters after it, you can read them yourself when you're back
21 there. He got surprised by this. He said: There is no way to
22 have foreseen that it would not be connected by the time this
23 policy was binded. This caught him by surprise. He thought it
24 was -- he may actually have thought it was connected. He kept
25 going. It took another month. They're talking about, oh,

1 there must have been unforeseen circumstances from delays in
2 the fall. This was a two-year sprinkler project. What
3 unforeseen circumstances in the fall is going to delay things?
4 And why is he even thinking about that if he knew it wasn't
5 connected? He's playing it two ways. He was out there on
6 February 13th and he knew it wasn't connected, he looked at it
7 with his own two eyes, but now he got a public adjustor. By
8 this time, by April 5th, he has Mr. Twaddell, who's told him,
9 hey, you're in trouble, man. This protective safeguard
10 endorsement, this is a problem for you. You didn't have a
11 system in place. So let's come up with another story that can
12 get us the coverage. And his story is, I didn't know, I
13 thought it was connected. That's false. He knew it wasn't
14 connected February 13th. So then what happens? If you're,
15 what's the phrase? If you're right, you be quiet and you stay
16 short. If you're in the wrong, you get loud and you hurl the
17 blame in every possible direction and hope something sticks.
18 That's what's happening. He wrote an email April 14th, and he
19 says: I don't understand. Maybe they can pursue Crawford or
20 Carolina Tap, or the City. Why is he pursuing the City? He's
21 trying to throw blame everywhere but at himself and say, I
22 thought it was finished, I thought it was in, but we're going
23 to try and blame someone else, you need to pay my claim.
24 Again, he's already in legal mode. How do we know this? He
25 actually says it. A lot of times, you don't get people

1 candidly thinking like this in emails, but on May 16th, three
2 months before the claim is even decided, he's already made up
3 his mind, we're going to have a Judge produce all their
4 internal emails. He's going on offense. If you have a losing
5 case, you just start firing out in all directions. May 20th,
6 starts talking about, to Twaddell: Let's maximize our payout.
7 He's already getting paid on this claim in his mind: I hear
8 you can get more than policy limits. Huh, funny. They're
9 asking for that here. And there's a few other emails, and I
10 haven't pulled them all out here, but you remember, I'm sure,
11 the go-for-the-jugular email and the, let's get legal, let's
12 bring in legal and start that process, and they have
13 underestimated our fortitude, something to that effect. He's a
14 fighter. He wants -- he doesn't take "no" easily, so he's
15 going to fight, and he's been fighting for four years. The
16 problem is, his cause is not just. He signed an application
17 for a sprinkler system that looked like this, that didn't even
18 exist, told the insurers it was in there when it wasn't, and he
19 got caught, unfortunately, tragically. Thank God, nobody died.
20 Thank God, the only injuries were four minor injuries to
21 firefighters, and this could have been a whole lot worse, but
22 this isn't about protection of people for Tebele & Sons, this
23 is about money. This is about being under the gun from your
24 own family for mismanaging the property, and this is about, how
25 am I going to fund things? How am I going to rehab this asset?

1 Mr. Connell, at opening, commented, I think, at one point,
2 maybe we'll take you out to the site and look at it. Guess
3 what? It looks just like this. It looks just like those
4 pictures we had to endure for, like, an hour and a half on the
5 first day. Everybody said it was a big, bad fire and there was
6 a lot of damage. Why? Because it didn't have a sprinkler
7 system. Mr. Tebele is not new at insurance, he's quite
8 sophisticated, you've heard a lot of testimony about that. He
9 spouted off all he knew about insurance policies, types of
10 coverages, coinsurance, from the witness stand when Mr. Connell
11 asked him questions in one of his pre-prepared speeches. He
12 knew exactly what the process was. He knew when he was
13 emailing with -- excuse me, when he was texting with David
14 Egan. And by the way, when it comes to this application, this
15 is an interesting exhibit, January 14th -- so he's had the
16 application for about three days, I think he claimed he didn't
17 open it, but he had it. On the 14th, he says: Just got the
18 answer. It's 1 percent per building. This is the debate about
19 the deductible. Excuse me, that's Mr. Egan. He got an answer
20 about the deductible. What does Mr. Tebele say on the 14th in
21 response: Please add some locations. This is all to the GL
22 policy and to the property policy. Why is he adding locations
23 on the 14th if he never looked at the application? It's
24 because he had, he wanted to make sure it was right. He just
25 doesn't want you to know that he did it because it doesn't suit

1 his case anymore. He signed this. Whether he did it without
2 thinking or not, he has an obligation that's created by that
3 signature, especially knowing what he knew at the time, and he
4 had every chance to correct it and he didn't. Ms. Garcia, who
5 wasn't here, but she was here through the testimony of Mr.
6 Sutherland, who indicated that there was this panicked phone
7 call on January 10th that she placed, and you heard testimony
8 that she had put on her application she thought the property
9 was 100 percent sprinklered because she saw sprinklers in her
10 restaurant, and that she was in a panic because the City had
11 been out there with an inspector, or someone had been out there
12 with an inspector. She doesn't -- she's not here to explain
13 herself, but it makes perfect sense for you to put this
14 together. She's worried about her customers. She's worried
15 about her restaurant, it's not protected: I'm cooking with
16 open flames. I've thought I had a sprinkler system.
17 My landlord said it would be done soon, but apparently it's
18 not. She's the one that who notified Crescent Coast, not
19 Tebele and Sons. Mr. Tebele didn't even know about that email
20 until way later, on February 13th. where is his e-mail, where
21 is his warning, where is his request to change his policy, it
22 doesn't exist. He geared up right away for litigation, rather
23 than conceding he had made a mistake, conceding he had stuck
24 his neck out too far and got. He went into fight mode, legal
25 mode, lawyer mode, public adjuster mode. To quote Mr. Finkel's

1 article, paraphrasing: He didn't have that sprinkler system,
2 but he wants you to pay him anyway. You can tell him, no,
3 today. You can tell him that it's his obligation to back up
4 what he said in the application, and it was his obligation to
5 protect the property like he told my clients they were supposed
6 to do, he was supposed to do. Thank you for your attention.

7 **(Attorney Riser presented a closing argument on**
8 **behalf of the Defendants at this time.)**

9 MR. RISER: Well, thank you. Thank you. Thank you.
10 Not only for your patience with me to go to my computer, but
11 more importantly, for being here these last ten days. It's
12 been a long process for everybody. It's been a week and a half
13 of something you didn't plan on doing. It's been four years
14 for the parties, and we're appreciative of your time, and on
15 behalf of David Egan and Crescent Coast Insurance, thank you
16 for being attentive and patient with us as we bring this case
17 to a close.

18 You've already been told about how important your
19 job is in this matter, and I'll reiterate it. You're the
20 decision makers on the claim here and I'd like you to remember
21 some key things that I'm going to talk about over the next few
22 minutes as you're assessing whether Crescent Coast is liable to
23 the Plaintiff in this matter. Our case is pretty simple as to
24 Crescent Coast. I can sum it up in a statement you've heard me
25 make over and over in trial. You heard it from Joey

1 Sutherland, you heard it from David Egan, you heard it from
2 Terry Tadlock, you heard it from Mr. Tebele himself. Mr.
3 Tebele never updated Crescent Coast about the status of the
4 sprinkler system after the August 2018 meeting to go over the
5 property. He told Joey and David that the sprinkler system was
6 under construction, covered 100 percent of the building, and
7 would be done soon, long before the renewal in five months.
8 Mr. Tebele's words on the expectation of that time period are
9 in black and white with his independent adjuster, where he
10 says: Don't forget the time the broker filled out the
11 application and obtained final quotes, the full expectation was
12 that the connection work would take a week to two weeks, which
13 would have been well in advance of the loss and make all of
14 this a moot issue. With that information, Crescent Coast
15 marched forward and Mr. Tebele never told them the sprinkler
16 was unfinished for the next six and a half months until the
17 fire. That was even after Mike Dover from Crawford Sprinkler
18 told you that Mr. Tebele was well aware of the situation,
19 because he was communicating with him the whole time. Although
20 that is sure different than what Mr. Tebele told me at the end
21 of his cross-examination when he said -- and when we were
22 pointing at that timeline right there, Plaintiff's Exhibit 107,
23 he stood looking -- he said he stood looking -- he didn't know
24 at any point on that chart that it was finished until he stood
25 looking at the unfinished system on February the 13th, 11 days

1 before the fire. You remember his answer when I asked him if
2 he told Crescent Coast the status of that February 13th
3 meeting: No, we never discussed it. That was also after Mr.
4 Tebele reviewed and signed the application on January the 14th,
5 2019. You remember, he wouldn't agree with me that he got it
6 on January the 11th, even though it was in black and white in
7 the text between he and David Egan, but that application
8 included that 1901 North Kings property was 100 percent
9 sprinklered. It also included a total building value of \$2.5
10 million dollars that Mr. Tebele provided and approved. So on
11 the value of the billing, all Mr. Tebele was going to get for a
12 full building loss was \$2.5 million dollars. Mr. Tebele would
13 have you believe that he's never even seen a full ACORD
14 application before, and he seemed mystified why it included all
15 of his properties. You'll have to decide what is believable,
16 but Terry Tadlock, our expert, told you he'd never experienced
17 a situation in over 40 years of practice where a signed
18 application was not required by an insurance carrier for a new
19 insurance account. Why would Crescent Coast send that to him?
20 I don't know, maybe it's because his agent, Crescent Coast,
21 wanted to make sure he had all the information necessary to
22 review and verify before he got coverage. Mr. Tebele says
23 that's not how his other agency did things, but that sounds
24 pretty reasonable to me. Mr. Tebele still didn't tell Crescent
25 Coast about the sprinkler system, even after the signed

1 application, he signed the application in at least two spots
2 that included this language: The undersigned is an authorized
3 representative of the applicant and presents that reasonable
4 inquiry has been made to obtain the answers to questions on
5 this application. He or she represents that the answers are
6 true, correct, complete to the best of his or her knowledge.
7 Well, Mr. Tebele was in the habit of not communicating in this
8 matter. You'll recall he said he got the insurance binder,
9 which described his coverages. It included the conditions in
10 the summary of the sprinkler endorsement that's listed there.
11 It included -- it even included a list of forms on the policy.
12 He said he never asked questions of Crescent Coast about the
13 issues, and including what buildings the sprinkler endorsement
14 applied to. You heard Joey Sutherland and David Egan testify
15 that they stood at the ready for such questions, but Mr. Tebele
16 only wanted to know about the price of the premiums before even
17 agreeing to become Crescent Coast's client. That's something
18 else to remember. Mr. Tebele had another agent for calendar
19 year of 2018. He was some other agent's client and only
20 decided to become a client of Crescent Coast at the last minute
21 when the price was right. So Crescent Coast jumped through his
22 hoops for five months, not even knowing if he was going to sign
23 or not. Mr. Tebele would have you believe that Crescent Coast
24 was in such a hurry to press forward with the application so
25 that they could get his premiums on his property policy. That

1 should have rang hollow to you when you found out in this trial
2 that Crescent Coast waived \$6,000.00 in commissions on the GL
3 and the excess policy just to get Mr. Tebele to bring his
4 business over.

5 So, on the lawsuit, what are we here to talk about
6 today? You'll have to decide if the Defendants in this matter
7 are liable or not. Mr. Tebele told you in his openings, and he
8 told you today, there are two lawsuits at once. One is against
9 the insurance carriers, alleging that there was coverage for
10 the fire under the policy and that the carriers breached a
11 contract for not paying. They also allege the insurance
12 carriers in their investigation into the claim and in their
13 decision to deny that claim, was in bad faith. I'm not here to
14 tell you anything the carriers did wrong, but you've heard
15 undisputed testimony in this trial that Crescent Coast has
16 nothing to do with forming the policy, interpreting the policy,
17 investigating the claim, or making decisions regarding
18 coverage, but here's something to remember in your
19 deliberation. If you find that there was coverage for the fire
20 loss at issue in this lawsuit for 1901 North Kings Highway, you
21 are free to determine that Crescent Coast did its job to Mr.
22 Tebele and is not liable to the Plaintiff. In other words, if
23 you find there's coverage, then Crescent Coast got Mr. Tebele
24 exactly what he was asking for on the application process, and
25 Crescent Coast should not be liable to him for anything.

1 There's another possibility that you can have in your
2 discretion that Mr. Connell didn't mention when he was going
3 over his verdict form. That's that neither Crescent Coast or
4 the insurance carriers did anything wrong in this case, and
5 none of us are liable to the Plaintiff. When you're assessing
6 Crescent Coast activity, look at the claims against it and why
7 we contend there's no liability. There's a claim for
8 negligence. Now the judge is going to tell you what the law
9 is, and what he says is more important than what I do, but I'm
10 just going to generally describe what negligence is. It's when
11 someone or a company has a duty of care to someone else or
12 another company, and they breach it. That breach has to be
13 directly related to the damages that that person might have.
14 In this case, Mr. Tebele contends Crescent Coast was negligent
15 in putting 100 percent sprinkler on the application without
16 verifying that with Mr. Tebele or telling the broker that the
17 system wasn't complete. Well, Crescent Coast relied and had a
18 duty to rely on what he told them when he represented it in
19 August 2018, that it was going to be done well before the
20 renewal date in five months. Mr. Tebele had the latest
21 information on that, not Crescent Coast. Mr. Tebele had the
22 contract with the sprinkler people, not Crescent Coast. Mr.
23 Tebele was in contact with the city about the sprinkler
24 installation, not Crescent Coast. Mr. Tebele generally had
25 more information about the status of his buildings than anyone

1 else. Mr. Tebele even confirmed the building value and the 100
2 percent designation info by signing the application on January
3 the 14th. Mr. Tebele contends that Crescent Coast was
4 negligent in its handling of the infamous January 11th email
5 from Sandra Nenna that you've heard so much about. This is and
6 has been smoke and mirrors from the Plaintiff since the start
7 of this lawsuit. The reason you saw this so much is that they
8 can't run from the fact that Mr. Tebele said his building was
9 going to be 100 percent sprinklered well before the policy
10 renewal, and he never told Crescent Coast any different. I
11 know you've seen it enough, but let's talk about it again.
12 That email doesn't say that they've -- what the Plaintiffs want
13 it to mean. That email says: The sprinklers are installed,
14 but the landlord hasn't turned the water on. It never said the
15 system isn't connected to water at the street, and don't let
16 them tell you any different. Remember, Mr. Tebele was not a
17 client of Crescent Coast on January the 11th. He also verified
18 the information of 100 percent sprinklered three days later.
19 That's the most important. Mr. Tebele had not given Crescent
20 Coast any information about that sprinkler system in five
21 months. You heard expert Terry Tadlock say that the handling
22 of that email was not a breach of any applicable standard of
23 care, but just don't take his word for it, take the word from
24 the two most important witnesses in this trial, according to
25 Mr. Connell: Professor Gerald Finkel and independent adjuster,

1 Jim Twaddell. Both of them agreed and said that email was
2 effective to notify Amwins about the issue, thus it benefits
3 Mr. Tebele. By the way, neither Professor Finkel or Mr.
4 Twaddell said anything negative about Crescent Coast. They
5 hired an independent adjuster, who's a lawyer, and a retired
6 professor expert, who's a lawyer, to give testimony about the
7 carriers, but never brought an expert in here to tell you one
8 bad word about Crescent Coast. I wonder why that is? Speaking
9 of smoke and mirrors, you heard misstated and misrepresented
10 testimony about Joey Sutherland's license status for most of
11 the trial. Mr. Sutherland told you he was licensed when he
12 worked for Crescent Coast, but that for periods of time in his
13 insurance work over the past 14 years, when he was focused on
14 his restaurants, he let his license lapse a few times. Mr.
15 Tebele's lawyers presented a document for the first time in
16 this case, even though it's been litigated for four years, a
17 document that has a 2023 date for his licensing. Joey
18 Sutherland told you that was related to a recent renewal.
19 Expert Terry Tadlock told you renewals work -- how renewals
20 work after a license has lapsed. It puts the new date on it,
21 and there's no past date of when someone was licensed.
22 Remember, Mr. Tebele's lawyers only stood on that document.
23 They want you to believe that because Joey Sutherland said his
24 license lapsed in the past and he got a commission on the
25 property policy, then that automatically means that it creates

1 some violation in the work that Crescent Coast did. Joey
2 Sutherland told you that wasn't true. Terry Tadlock told you
3 that wasn't true. Here's why it doesn't matter at all. David
4 Egan signed the application, David Egan dealt with the brokers,
5 David Egan communicated with Mr. Tebele about quotes and
6 binders, and David Egan collected money and communicated with
7 Mr. Tebele about the finance agreement. Mr. Tebele was in good
8 hands with David Egan at Crescent Coast, and you've not heard
9 one word about his licensing status, have you? Again, smoke
10 and mirrors inserted in this to distract you from the most
11 important piece of evidence you have heard related to Crescent
12 Coast. That's that Mr. Tebele never updated Crescent Coast
13 about the status of the sprinkler system after that August 2018
14 meeting to go over the property.

15 Now, the statement of values, briefly. You've heard
16 so much about it. It's smoke and mirrors too, as to Crescent
17 Coast. David Egan told you it came to be -- it came to him,
18 filled out, and he had to edit and add some information. It's
19 smoke and mirrors because Crescent Coast didn't create it,
20 Amwins Brokerage required it. You can't change the format of
21 the document, so Crescent Coast couldn't add symbols, A-S, or
22 anything else that the Plaintiff's attorneys have talked about,
23 even if they wanted to. And most importantly, the information
24 regarding 1901 Kings Highway and it's sprinkler on the
25 statement of values was exactly the same as on the application

1 that Mr. Tebele signed on January the 14th. Mr. Tebele
2 contends that Crescent Coast is negligent because Mr. Tebele
3 never got the policies before the fire. I presume that's
4 because Mr. Tebele, who couldn't be bothered to read the
5 application or study a six-page binder that he received, was
6 going to look through 100-page insurance policy to find a
7 sprinkler endorsement and then start asking questions. That
8 would have been the first time he asked questions of Crescent
9 Coast about coverages, endorsements, or conditions in this
10 case. You heard more than one witness say that delivery of the
11 policies had nothing to do with whether or not Mr. Tebele had
12 insurance. That's because there was a binder in place. You
13 also heard David Egan testify why the policies hadn't been
14 delivered before the fire. First, Crescent Coast has to review
15 the policies for accuracy and completeness before they print
16 and bind a full policy package. In this case, David didn't
17 even have a full property policy with all of its endorsements
18 before the fire. He'd only gotten in the excess and GL
19 policies the Friday afternoon before the fire that was in the
20 crack of dawn on Sunday morning, so not even one business day
21 before the fire. You heard from Terry Tadlock, while the
22 delivery after the fire was not out of the ordinary, or breach
23 of any applicable duties or standards of care, but don't just
24 take his word for it. The two most important witnesses in this
25 trial, according to Mr. Connell, also agree it's not a problem.

1 Professor Finkel and Jim Twaddell both said that the late
2 delivery of the policy actually benefited Mr. Tebele in his
3 argument for coverage because the policy -- because of the way
4 they understand agency, they thought it remained in the hands
5 of the carriers.

6 Now, there's one other claim called a breach of
7 fiduciary duties. The judge will give you more detailed
8 information on it, but generally, a fiduciary duty is a duty of
9 trust with someone who's in a special relationship with you.
10 There are lots of circumstances that make a special
11 relationship, but you can take it from Plaintiff's own words
12 why that's not true as to Crescent Coast. Mr. Tebele told you
13 that Crescent Coast had no role in his companies, were never
14 his property managers, you know, the people who you trust to
15 run and operate properties, had no role in his decision to add
16 sprinklers to the building in 1901 North Kings, Crescent Coast
17 had no role in the construction process itself, Crescent Coast
18 never told him they were experts in sprinkler construction or
19 installation, and most importantly, Crescent Coast, Mr. Tebele
20 viewed them as a plain old insurance agency, doing the same
21 thing his other agency was doing, nothing more than that. At
22 best, Mr. Tebele had known Joey Sutherland for four years as a
23 restaurant manager, not as an insurance agent. I'm here to
24 tell you, that's not a fiduciary relationship so Crescent Coast
25 didn't have any fiduciary duties to the Plaintiff in this case.

1 Again, with respect to the claims, Crescent Coast and I request
2 that you remember, Mr. Tebele never updated Crescent Coast
3 about the status of that sprinkler system after that August
4 2018 meeting. All Mr. Tebele had to do was confirm with
5 Crescent Coast that the sprinkler system was not working,
6 before binding or after, and they would have communicated with
7 the broker to make sure everyone was on the same page. That
8 never happened.

9 Now, briefly regarding damages. If you get to the
10 point of assessing damages in this case, and for the reasons I
11 just went over and the reasons that Mr. Watson told you, I
12 certainly hope you do not, but here's some points to remember.
13 Mr. Tebele valued his property in 2018 and 2019 at \$2.5 million
14 dollars. you saw that in the application itself. That was a
15 number supplied by him. The policy itself already took into
16 consideration building value, building income, or lost rents,
17 and contents. That's a total of \$2.85 million dollars, even if
18 the carriers paid out in 2019, right after the fire, that's all
19 he would have gotten, but Mr. Tebele -- Mr. Connell just told
20 you, Mr. Tebele wants you to give him almost \$6 million dollars
21 for the cost of his building and for lost rents on a claim that
22 would have only given him 2.85 million if it had been paid
23 immediately. So let that sink in for a second. Regarding the
24 building reconstruction, you heard how unreliable and
25 speculative Fred Genay's cost estimate is. He didn't look at

1 the values of the property in the policy or look at previous
2 cost estimates from 2019. Those were millions of dollars lower
3 than his estimates, and he didn't have much to say when he was
4 asked about why Mr. Tebele didn't want him to see those
5 estimates from 2019. He'd never even done a look-back cost
6 estimate before. He simply plugged numbers into a computer
7 program and gave us what it spit out. A number of \$2 million
8 dollars higher than a 2019 estimate that Mr. Tebele's own
9 independent adjuster gathered and a 2023 number that was three
10 times the value that Mr. Tebele assigned to the building when
11 he applied for the policy. Regarding Mr. Tebele's loss-of-rent
12 numbers, you didn't see any documents to support that. You
13 just got his word on what those numbers were when the building
14 was fully rented, but in February 2019, that building had one
15 tenant in it who was being evicted. So it's your discretion to
16 award damages in this case, if at all, but I just ask you to
17 consider those points when assessing that number.

18 Now, I'm about to leave you, and I'm sure you're
19 happy about that. I'd like you to think about who had the
20 knowledge about the sprinkler construction at 1901 North Kings
21 and what Mr. Tebele wants you to think about that. Do you
22 remember when he sat on the stand for a day and a half and told
23 you it was everyone else's fault but his? Mr. Tebele wants you
24 to think that a man running a \$22 million dollar commercial
25 real estate portfolio who gets insurance for those properties

1 every year is virtually helpless. In that vein, he said he'd
2 never seen a full property application or an insurance
3 application. He told you he had no control or influence over
4 the sprinkler construction, and the biggest shocker of the
5 trial came in his cross-examination on Monday. Within
6 30-minutes time span, Mr. Tebele told me that he never informed
7 Crescent Coast about the updates on the sprinkler system at
8 1901 North Kings after that August 2018 meeting because there
9 was no update. In other words, it never got completed, so he
10 didn't need to update Crescent Coast, but just a few minutes
11 later, when he was looking at Plaintiff's 107, he shocked us
12 all when he said, even he didn't know that the sprinkler system
13 wasn't finished until the February 13th, 2019 meeting at the
14 site. So which is it? In either version of his story, he
15 still never told Crescent Coast any different after August
16 2018. So, ladies and gentlemen, it's simple. Mr. Tebele wants
17 a bailout. He wants a bailout from you. He wants you to
18 protect him from himself. He could have remedied this issue at
19 any time over the six months between telling Crescent Coast
20 about it and a fire by letting Crescent Coast know the
21 sprinkler system wasn't finished and letting them do their job
22 by contacting the broker and remedying the issue, but he
23 didn't. He also could have pressed his contractors harder to
24 get the work done. He could have evicted his tenant earlier
25 before she ran up a \$42,000 back-rent bill, and there might not

1 have been anyone in the building to cause the fire. He also
2 could have been more diligent in reading the quotes,
3 applications, and binders that Crescent Coast sent him for
4 review before the policy was bound. We'll never know because
5 all of those things were in Mr. Tebele's control, but he never
6 exercised his judgment, authority, and knowledge to end this
7 before it started. Mr. Connell told you that, before this
8 policy was bound, that David Egan and Crescent Coast took a
9 gamble to go ahead and get it bound, that the sprinkler systems
10 would be finished. No. That gamble was all on Mr. Tebele
11 because he knew the status. He confirmed the status on January
12 14th with the signed application, and he went forward anyway
13 without telling Crescent Coast any different. Thank you for
14 your time, patience, and sacrifice this week. When you
15 consider the evidence in this case, I certainly hope you agree
16 that Crescent Coast did nothing wrong and that you find a
17 verdict in their favor on the claims against them.

18 **(Attorney Connell presented a Reply on behalf of the**
19 **Plaintiffs at this time.)**

20 MR. CONNELL: Well, finally, we get the truth. We
21 get from Crescent Coast, find coverage against Lloyd's. That's
22 what he said. It's not Crescent Coast's problem. And then we
23 get from Lloyd's, blame Crescent Coast because they got the
24 policy on February 7th, 2023. So that kind of blame is as old
25 as the Bible, people blaming each other, but we didn't hear

1 that until just a few minutes ago. They blame each other now
2 for the problems. So let me talk to you just five minutes
3 about some issues that were brought up on both
4 cross-examinations -- or both closing arguments. Crescent
5 Coast, he says Crescent Coast didn't know. You know what a
6 smoking gun is, ladies and gentlemen? When I was doing
7 prosecution work, we were trying to get a smoking gun all the
8 time. As to Crescent Coast, this is the smoking gun right
9 here, an email, January 11th, 2019, from the tenant, and then
10 two hours later, an email from Mr. Egan at Crescent Coast.
11 That's knowledge. That is clear knowledge that Crescent Coast
12 was aware, had knowledge, and knew what was going on and
13 decided to bind the policy anyway for money, for money. So
14 this argument that they didn't know, is ridiculous based on
15 that exhibit. Now, let's go back to the Defendant, Lloyd's,
16 because they got the same problem. This is their smoking gun,
17 right here: Property covered. Additions under construction.
18 Alterations and repairs to the building or structure. As you
19 all have heard, City of Myrtle Beach required Lloyd -- required
20 Mr. Tebele -- required him to put a sprinkler system in, and it
21 had not been approved, and it was still under construction, and
22 when, finally -- Mr. Watson, I finally grabbed one thing, he
23 made a mistake with his closing, he said there was still some
24 \$12,000 left. There was. They were trying to get it finished.
25 Mr. Tebele was willing to pay for it, but they were trying to

1 get it finished. So, you know, those things concern me, but
2 the most that concerns me is Mr. Watson's statement about Mr.
3 Twaddell and that there was no evidence. So you'll have this
4 in your jury room. Look at Exhibit 50. He says it didn't
5 exist. Look at it. It's a letter from Mr. Twaddell directly
6 to the insurance company's agent, which talks about this very
7 issue about the installation, so you'll have that in there.
8 And then finally, as I've told you, as I mentioned to you
9 before, insurance policies are designed to be a problem, and so
10 the law, the legislature has said, the Courts have said that if
11 there's any problem with the insurance policy itself, it should
12 be construed in favor of the poor guy who's buying the policy.
13 And in this case, the poor man who's buying the policy is Mr.
14 Tebele, who's getting an 80-page policy on DocuSign, all these
15 things are being done and everybody knows what's going on. So,
16 we would ask that you bring back a verdict, I've already
17 explained that to you, and I really appreciate your time again,
18 and I am going to apologize because this thing shouldn't have
19 taken so long. It shouldn't have taken as long as it did, and
20 that's on all of us. I do apologize. You all get \$15.00 a day
21 to be here, and that's not enough, but as I've learned over the
22 years, the best thing to say about that is jury service usually
23 comes around only once in an entire lifetime. In fact, I've
24 served on a jury myself one time for a week, in a case against
25 a lawyer. So it's been said that it's the highest service you

1 can do outside of being in the military during the war, and so
2 we appreciate it, I appreciate it, and Mr. Tebele appreciates
3 it so much. We thank you again for your time.

4 THE COURT: Thank you, Mr. Connell.

5 MR. CONNELL: Thank you, Your Honor.

6 THE COURT: Ladies and gentlemen, we're going to take
7 a brief break. We have a few matters that we need to take up.
8 When we come back, I'm going to charge you on the law, and then
9 you'll be given this case. Again, I'll remind you, do not
10 begin deliberating until I tell you to. That will be shortly,
11 I promise. Thank you.

12 **(Jury exited the courtroom at this time.)**

13 **(Recess taken.)**

14 THE COURT: Yes, sir?

15 MR. WATSON: I have a motion for either a mistrial or
16 that a curative instruction would be given to this Jury in two
17 different aspects of Mr. Connell's closing. We discussed it at
18 a sidebar that I was not going to interrupt the flow of
19 presentation of the closing arguments to air it. I certainly
20 did not want to be impolite and raise this in the middle of Mr.
21 Connell's closing. First, he gave his own version of a jury
22 charge about South Carolina law and put it up on a PowerPoint
23 slide about what the doctrine of reasonable expectations is and
24 how it plays into this case. That is not what they were being
25 charged with and Your Honor is charging them with it. It's

1 **(Jury Charge)**

2 THE COURT: It is now time for me to charge you all
3 on the law. There will be no more evidence introduced in the
4 case. After I finish charging you we will allow all of this
5 evidence that's been put into this case to go back, and you'll
6 be able to look at, get your hands on and look at everything.
7 I did want to remind you that there are certain duties during
8 the trial, and you have duties, and I have duties. As a trial
9 judge, it's my responsibility to preside over the trial of this
10 case, and I also have the duty to rule on the admissibility of
11 the evidence offered during the trial, and you're to only
12 consider the evidence that's before you, and you've heard
13 closing arguments from the counsel, and I told you at the
14 beginning of this trial that when you hear the attorneys get up
15 and make statements like that, that's their statement but
16 that's not evidence. Evidence comes from the witness stand,
17 and evidence is proven and it's deemed admissible by me. You
18 are not to consider what they have stated as the law or
19 evidence in the case. Again, you are the finders of fact in
20 this case, and only you can find the facts. If you have seen
21 the facts in some way different than what they've stated,
22 that's up to you. Again, you are solely the finders of facts.
23 Now, I have the additional duty to charge you in the law
24 applicable to this case, and I wish I could make it really easy
25 and make it a four-page document, but unfortunately, it's not.

1 As you can imagine, there's a lot of law that goes into this
2 case. I'm going to try to do this as quickly as possible and
3 try to explain it the best way that I can, but I tell you that
4 I'm also going to give you a copy of the law of this case that
5 will also be available for you in your jury room, but in every
6 case described in this court for a jury, though, as I've told
7 you before, the Jury becomes the sole and exclusive judge of
8 the facts. A trial judge cannot comment on the facts. So
9 again, if I've in any way indicated to you in any manner what I
10 think the facts are, I want you to disregard that because
11 that's not my duty here.

12 What I'm going to charge you on first is something
13 called the preponderance of the evidence. In this case, we
14 have four different causes of action. We have breach of
15 contract, or potential causes of action. You have breach of
16 contract, you have potentially a bad-faith claim, you've got a
17 negligence claim, and a breach of a fiduciary duty. In those
18 matters, this is not like a criminal case. What we're talking
19 about is a preponderance of the evidence. The burden of proof
20 in this case, as I said, is by a preponderance of the evidence.
21 A preponderance of the evidence simply means the greater weight
22 of the evidence. It is evidence which as a whole shows that
23 the fact sought to be proven is more likely true than not true.
24 It's often been said that it's a balancing act or even a
25 football stadium, 51 yards would be a preponderance of the

1 evidence. As I said, it can be illustrated by imagining those
2 scales and a weight. When the case begins, the scales are
3 even. After all the evidence has been presented, if the scales
4 remain even, or even if they tip slightly in favor of the
5 Defendant, then you must find in favor of the Defendant, but if
6 the Plaintiff has met that burden of proof and the scales have
7 tipped to the plaintiff, then you must find for the Plaintiff.
8 The Plaintiff in this action, again, has alleged that they have
9 suffered damage as a result of negligence, breach of contract,
10 breach of fiduciary duty, and bad faith. Again, the burden in
11 that that they must prove in this is a preponderance of the
12 evidence. This burden is a positive duty, which may not be met
13 by showing injury alone. That is, the Plaintiff may not rely
14 on the theory that the mere fact of injury warrants recovery.
15 No inference of negligence arises from the mere fact of injury.
16 The Plaintiff's burden of proof cannot be met by relying on the
17 theory that things speak for itself or that the very fact of
18 injury indicates a failure to exercise reasonable care.
19 Plaintiff must produce credible evidence showing some breach of
20 duty owed to him which approximately caused injury or damage.
21 The Plaintiff must also demonstrate, by the preponderance of
22 the evidence, the casual relationship between the alleged
23 negligence of the Defendant and the Plaintiff's injuries. If
24 he fails to demonstrate this causal relationship, he fails to
25 prove his case.

1 What I'm going to charge you on next is direct and
2 circumstantial evidence. There are two different types of
3 evidence generally presented during a trial, direct evidence
4 and circumstantial evidence. Direct evidence is a testimony of
5 a person who claims to have actual knowledge of a fact, such as
6 an eyewitness. It is evidence which immediately establishes
7 that the main fact to be proved. Circumstantial evidence is
8 proof of a chain of facts and circumstances indicating the
9 existence of a fact. It is evidence which immediately
10 establishes collateral facts from which the main fact may be
11 inferred. Circumstantial evidence is based on inference and
12 not on personal knowledge or observation. It is proof that
13 does not actually establish the fact in question but that
14 asserts or describes something else from which you may either
15 reasonably infer the truth of the fact or at least reasonably
16 infer an increase in the probability that the fact is true.
17 For circumstantial evidence to be sufficient to warrant the
18 finding of a fact, the circumstances must lead to that fact
19 with a reasonable certainty. The facts and circumstances
20 should be considered in light of ordinary experience and common
21 sense. The existence of a fact cannot be based on speculation,
22 surmise, or conjecture. The law makes absolutely no
23 distinction between the weight or value to be given to either
24 direct or circumstantial evidence, nor is a greater degree of
25 certainty required of circumstantial evidence than of direct

1 evidence.

2 I next charge you on the credibility of witnesses.

3 You must determine the credibility of witnesses who have

4 testified in this case. Credibility simply means

5 believability. It becomes your duty as a juror to evaluate the

6 evidence and determine what evidence convinces you it is true.

7 In determining the believability of a witness, or excuse me, in

8 determining the believability of witnesses who have testified

9 in this case, you may believe one witness over several

10 witnesses or several witnesses over one witness. You may

11 believe a part of the testimony of a witness and reject the

12 remaining part of the testimony of that same witness. You may

13 believe the testimony of a witness in its entirety or reject

14 the testimony of a witness in its entirety. You may consider

15 whether the witness has an interest in the result of the trial,

16 whether the witness is prejudiced towards either the plaintiff

17 or the defendants, the opportunity for the witness to have seen

18 the matters and things about which the witness may testify, and

19 the way the witness acts on the witness stand, and in

20 determining the credibility of the witness, you may consider

21 any matter that has a reasonable tendency to prove or disprove

22 the truthfulness of his testimony, including but not limited to

23 the following: their demeanor while testifying and the manner

24 in which they testify; the extent of the capacity to perceive,

25 to recollect, or communicate any matter about which they

1 testify; and the extent of the opportunity to perceive any
2 matter for which they are testifying; their reputation for
3 honesty or veracity, or the lack thereof; the existence or
4 nonexistence of a bias, interest, or other motive; a statement
5 previously made by the witness that is inconsistent with the
6 testimony; and the existence or nonexistence of any fact
7 testified to by the witness; their attitude toward the action
8 in which they testify; or toward the given -- their giving of
9 the testimony, and their admissions of untruth or
10 untruthfulness.

11 Expert witness testimony. Although lay witnesses are
12 limited to testifying about facts within their knowledge and
13 are not allowed to give opinions, certain witnesses who by
14 training, education, or experience are considered as experts in
15 a particular field. These experts may give opinions in that
16 field based upon the facts of a matter. Their conclusions and
17 opinions constitute evidence to be considered by you in
18 connection with all of the other testimony and evidence in the
19 case. That is to say, you may consider the expert's opinion
20 just as you do all other evidence in the case, and it is for
21 you, the Jury, to give it such weight as you and your
22 experience and discretion may determine. By this, I mean that
23 you must weigh such evidence and accept or reject it in the
24 same manner that you treat all other evidence in this case. In
25 determining the weight to be given to the expert's opinion, you

1 should consider the qualifications and credibility of the
2 expert and the reasons given for his or her opinions. The
3 testimony of experts is to aid and assist you as jurors, not to
4 dominate or control you in the decisions and questions of fact.
5 Their opinions and deductions from the evidence before you do
6 not preclude your own. You are required to decide -- excuse
7 me. You're required to decide disputed questions after
8 comparison and consideration of all the evidence in the case.
9 Where expert testimony is not relied on to establish a
10 proximate cause, the Plaintiff must offer evidence that rises
11 above a mere speculation or conjecture. I charge you that you,
12 as the jurors, are to apply the same standards of evaluation of
13 expert witness testimony as are applied to other witnesses. It
14 is for the Jury to judge the credibility of the expert
15 witnesses as well as any other witnesses and to decide what
16 weight, if any, is attached to the expert testimony, as well as
17 the testimony of any other witnesses. The amount of the expert
18 witnesses' fee is a matter that you may consider as possibly
19 affecting the believability of an expert. However, there is
20 nothing improper in the expert witness being paid a reasonable
21 fee for their work.

22 I next charge you on deposition testimony. During
23 trial of this case, we have heard testimony by way of
24 depositions of witnesses taken outside of this courtroom. The
25 depositions were taken in the manner prescribed by law, and you

1 will consider the testimony from the depositions just as if the
2 witnesses were here upon the stand testifying. You take the
3 deposition testimony in connection with all of your other
4 testimony, and you assess the credibility of those witnesses
5 from anything that is in the record that will aid you in doing
6 so.

7 I next charge you on corporations as a defendant.
8 This case should be considered and decided by you as an action
9 between persons of equal standing in the community. A
10 corporation or corporate entity such as the Defendant, Crescent
11 Coast LLC and Certain Underwriters at Lloyd's are entitled to
12 the same fair trial at your hands as a private individual such
13 as the Plaintiff. All persons, including corporations and
14 corporate entities, stand equal before the law and are to be
15 dealt with as equals in the court of justice.

16 I next charge you on insurance, generally. I charge
17 you, insurance has long been recognized as a business affected
18 with public interest. It is a complicated business, and its
19 intricacies often confuse the average layperson. The
20 legislature has accordingly provided for the licensing of
21 insurance agents by the State so as to place the business of
22 insurance in competent and trustworthy hands. It is one of the
23 many complications requiring for its safe conduct, not only
24 expert knowledge, but such knowledge as can be acquired only by
25 experience in the business. I next charge you on a producer's

1 license requirement. This is South Carolina Code Section
2 384320. I charge you that a person may not sell, solicit, or
3 negotiate insurance in the state of South Carolina for any line
4 or lines of insurance, unless the person is licensed for that
5 line of authority in accordance with that statute.

6 I next charge you on agents as experts. I charge you
7 that the agent was an expert dealing in a highly specialized
8 business with knowledge and means of knowledge not possessed by
9 the average applicant for insurance. I next charge you on the
10 issue of agency for you. I charge you that the question of
11 agency is a question for the Jury to decide, not the question
12 for the Judge to decide.

13 I next charge you on apparent agency. I charge you
14 that to establish apparent agency, the principal must be shown
15 to have represented another as its agent by affirmative conduct
16 or conscious involuntary inaction and that the plaintiff relied
17 upon such representation to his detriment. Whether the
18 requirements of apparent agency have been proved, again, is a
19 question for the Jury.

20 I next charge you on implied versus apparent agency.
21 I charge you that an agent's implied authority is authority
22 proved or evidenced by conduct, whereas apparent authority is
23 authority that the principal intended the agent to have for
24 such power, that principal holds his agent as possessing or
25 permits him to exercise.

1 I next charge you on knowledge as agent to principal.
2 I charge you that the knowledge of an agent received during
3 transaction pertaining to a matter within the scope of his
4 employments is imputable to the principal.

5 I next charge you an agent's failure to procure
6 desired coverage. I charge you that the client may recover
7 from the agent the loss he sustains as a result of the agent's
8 failure to procure the desired coverage if the agent or --
9 excuse me -- if the actions of the agent warranted an
10 assumption by the client that he was properly insured in the
11 amount of the desired coverage.

12 I next charge you on the agent's duty of reasonable
13 diligence. I charge you that an insurance agent who undertakes
14 to procure insurance for another owes an obligation to his
15 client to use reasonable diligence in attempting to place the
16 insurance requested. The client may recover from the agent the
17 loss he sustains as a result of the agent's failure to procure
18 the desired coverage, if the actions of the agents warranted an
19 assumption by the client that he was properly insured in the
20 amount of the desired coverage.

21 I next charge you as to breach of contract. To
22 prevail against the insurer Defendants, the Plaintiff must show
23 by a preponderance or greater weight of the evidence that the
24 insurer Defendants unjustifiably breached the contract. The
25 word breach means the failure without legal excuse to perform

1 any promise that forms the whole or a part of the contract. A
2 party breaches a contract when that party does not perform as
3 agreed under the contract by failing to carry out a term,
4 promise, or condition of the contract. This Court has reviewed
5 the insurance policy at issue and has determined that the
6 provisions are not ambiguous. Therefore, you are required to
7 apply the plain language of the policy's terms. The policy
8 amount that the plaintiff can recover under the theory of
9 breach of contract is limited to the amounts contained in the
10 terms and conditions of the contract. In this case, the terms
11 and conditions of the contract limit the parties to
12 \$2,850,000.00 on a claim of breach of contract.

13 I next charge you as to bad faith. To recover on an
14 action for bad-faith refusal to pay benefits under an insurance
15 contract, the Plaintiff must prove many things. First, the
16 existence of a mutually binding contract of insurance between
17 the Plaintiff and the insurer Defendants. Second, that there
18 was a refusal by the insurer Defendants to pay the benefits
19 under the contract. Third, that resulting from the insurer
20 Defendants' bad faith or unreasonable action and breach of an
21 implied covenant of good faith and fair dealing arising out of
22 the contract. And fourth, that this caused damage to the
23 Plaintiff.

24 I next charge you on reasonable grounds to deny a
25 claim. If the insurer Defendants had any reasonable ground for

1 contesting the Plaintiff's claim, there is no bad-faith denial
2 of the Plaintiff's claim.

3 I next charge you on consequential damages of bad
4 faith. I charge you that if an insurer can demonstrate bad
5 faith or unreasonable action by the insurer in processing a
6 claim under the mutually binding insurance contract, he can
7 recover consequential damages in a tort action. Actual damages
8 are not limited by that.

9 I next charge you on negligence. The Plaintiff
10 claims that Defendant, Crescent Coast Insurance, was negligent
11 and should compensate the Plaintiff for the injuries the
12 Plaintiff suffered as a result of the Defendant's alleged
13 negligence. In order to prove that the Defendant was
14 negligent, the Plaintiff must prove by a preponderance or
15 greater weight of the evidence the following things: number
16 one, that the Defendant was negligent or careless in one or
17 more of the particulars of conduct alleged by the Plaintiff;
18 and two, that the Plaintiff was injured or damaged in his
19 personal property or both; and three, that the Defendant's
20 negligent or carelessness in one or more of the particulars as
21 alleged by the Plaintiff was the proximate cause of the
22 Plaintiff's injuries. The first of these is whether the
23 Plaintiff has proven by preponderance or greater weight of the
24 evidence that the Defendant breached the duty of care by a
25 negligent act or omission. Negligence means that a person has

1 done something that a reasonable person would not have done or
2 has failed to do something that a reasonable person would have
3 done in the same situation. A suspicion or conjecture that the
4 Defendant was negligent is not evidence of negligence. The
5 mere fact that the Plaintiff sustained injury or damages does
6 not place any responsibility on the Defendant. The Plaintiff
7 must prove by the preponderance of the evidence there was some
8 act of negligence on the part of the Defendant which caused the
9 injury or damage. The Plaintiff must also prove by a
10 preponderance or greater weight of the evidence that he
11 sustained injury or damage as a result of the Defendant's
12 breach of duty.

13 Finally, if you find that the Plaintiff has proved
14 the Defendant was negligent, then your next inquiry would be
15 whether the Plaintiff has proved by a preponderance or greater
16 weight that such negligence was the proximate cause of the
17 injury or damage. A finding of negligence alone is not
18 actionable unless it proximately caused the Plaintiff's
19 injuries. Negligence is not actionable unless it is a
20 proximate cause of the injury complained of, and it may be
21 deemed a proximate cause only when, without such negligence,
22 the injury would not have occurred or could have been avoided.

23 I next charge you on the duty of care of an insurance
24 agent. When an insurance agent or broker with a view toward
25 being compensated undertakes to procure insurance for a member

1 of the public, the law holds the agent or brokerage to the
2 exercise of good faith and reasonable skill, care, and
3 diligence in performing the obligation. In such cases, the
4 burden is upon the insurer to show the reasonable certainty in
5 terms and conditions of the agreement. Generally, a valid
6 contract to procure insurance exists where there is established
7 and promised by the insured to take a policy of insurance and
8 an undertaking on the part of the agent or brokerage to procure
9 it with sufficient information provided upon which to procure
10 the policy. As a general rule, an insurance agent has no duty
11 to advise an insured at the point of application absent an
12 expressed or implied undertaking to do so.

13 I next charge you on comparative negligence.
14 Comparative negligence is the law in South Carolina. Under the
15 doctrine of comparative negligence, the Plaintiff's negligence
16 does not automatically bar recovery unless such negligence
17 exceeds that of a Defendant. A plaintiff in a negligence
18 action may recover damages if his negligence is not greater
19 than that of the defendant. The amount of the plaintiff's
20 recovery shall be reduced in proportion to the amount of his
21 negligence. You, the Jury, must proportion fault between the
22 plaintiff and defendant in a negligence action. The plaintiff
23 may recover damages when his negligence is not greater than
24 that of the defendant. The plaintiff's damages, however, are
25 reduced in full portion to the amounts of his negligence. One

1 of the defenses interposed by the Defendant is that of
2 comparative negligence. The Defendant by his defense, in
3 essence, says that, this, even if the Jury should find that I
4 was at fault, the Plaintiff was more at fault than I was, and
5 the fault of each of us combined and concurred with that of the
6 other to act as proximate cause of the accident and without
7 which the accident would not have happened. In other words, it
8 required the fault of each of us for the accident to have
9 happened, but the plaintiff was more at fault than I was. The
10 plaintiff has the burden of proving the negligence and fault,
11 if any, of the defendant. A defendant has the burden of
12 proving the negligence and fault, if any, of the plaintiff and
13 the degree of such. Where negligence has been established on
14 the part of both the defendant and the plaintiff, then you must
15 weigh or compare the respective contributions of each person to
16 the occurrence. Considering the conduct of each person
17 involved as a whole, you must determine whether one made a
18 larger contribution than the other. In making the comparison,
19 the degree of negligence attributable to a party is not to be
20 measured solely by the character thereof, nor solely by the
21 number of respects in which he is found to have been at fault.
22 It is the conduct of a party considered as a whole which must
23 be determined. That is to say, once it has been established
24 that each has been at fault, it is then the jury's function to
25 weigh their respective contributions to the result, which will,

1 regardless of the nature of their acts or omissions, determine
2 who made the larger contribution and to what extent it exceeds
3 or is less than that of the other. It is the conduct of the
4 parties considered as a whole which is being measured by you in
5 the form of a percentage. If you find that the occurrence was
6 proximately caused by negligence on the part of the Defendant
7 and not the negligence on the part of the Plaintiff, then the
8 Plaintiff is entitled to recover the full amount of any damages
9 you may find he has sustained as a result of the occurrence.
10 If you find the occurrence was proximately caused by the
11 negligence of both the Plaintiff and the Defendant, then you
12 must compare the percentages of the negligence. If the
13 negligence of the Plaintiff is less than or equal to the
14 negligence of the Defendant, then the Plaintiff is entitled to
15 recover any damages which you may find that he has sustained as
16 a result of the occurrence after you have reduced his damages
17 in proportion to the degree of the Plaintiff's own negligence.
18 On the other hand, if the Defendant was not negligent or if the
19 negligence of the Defendant was less than the negligence of the
20 Plaintiff, then the Plaintiff is not entitled to recover any
21 damages. If you find the Plaintiff's negligence to be greater
22 than that of the Defendant against whom recovery is sought,
23 then the Plaintiff shall not recover and you will find for the
24 Defendant.

25 Comparative negligence, if proven by the Defendant,

1 can have one or two possible effects. First, comparative
2 negligence will totally defeat a recovery by an injured
3 plaintiff if the negligence of the injured plaintiff was
4 greater than that of the defendant. Another way of saying this
5 is to say that the plaintiff can recover only when his
6 negligence, if any, is equal to or less than that of the
7 defendant. In order to prevent a verdict in favor of a
8 plaintiff injured by the negligence of a defendant, the
9 defendant has the burden of proving by the greater weight or
10 the preponderance of the evidence that the plaintiff was
11 negligent and that the plaintiff's negligence was greater than
12 that of the defendant. The second possible effect of
13 comparative negligence is that, if proven, it will reduce or
14 partially defeat the plaintiff's recovery. This applies when
15 the plaintiff's negligence is equal to or less than the
16 defendant's or -- excuse me -- the negligence of the defendant.
17 Such a reduction is made when the defendant proves by the
18 preponderance or greater weight of the evidence that the
19 plaintiff was negligent but that the plaintiff's negligence was
20 equal to or less than the defendant's negligence. Please
21 remember that the Plaintiff's negligence must have contributed
22 proximately to his injury. If the negligence of the Plaintiff
23 operated only remotely and not proximately to cause the injury,
24 then the plaintiff is neither barred from recovery nor is his
25 recovery reduced in any way. You will express your

1 determinations in the form of percentages. The percentages
2 allocated between the Plaintiff and the Defendant must equal
3 100 in assigning a degree of negligence to the Plaintiff and to
4 the Defendant. You may not allocate any portions of negligence
5 to anyone other than the parties to this action. If you
6 determined that the Defendant was not negligent or that the
7 Defendant was negligent, but his negligence did not proximately
8 cause the Plaintiff's injuries, it will not be necessary for
9 you to make any determination regarding the amount of damages
10 sustained by the Plaintiff. The same applies should you
11 determine that the Plaintiff's, Defendant's percentage of
12 negligence that is greater than 50 percent, in either event,
13 the foreperson will sign the bottom of the verdict form, and
14 your deliberations are concluded. However, if the percentage
15 of negligence attributed to the Plaintiff is equal to or less
16 than the negligence of the Defendant, that is 50 percent or
17 less, it will be necessary for you to make a determination
18 regarding the damages sustained by the Plaintiff. As with all
19 decisions made by you, the determination of the Plaintiff's
20 damages must be by the greater weight of the evidence. You are
21 to determine the Plaintiff's damages by finding the total
22 amount of damages he sustained. You will enter the amount on
23 the verdict form. You are not permitted to make any reduction
24 of the Plaintiff's total damages based on the percentages of
25 negligence attributed to any party. After your verdict is

1 returned, the Court will address any matters related to
2 reduction that may be appropriate as a matter of law. Again,
3 you can determine only the total amount of the Plaintiff's
4 damages and enter that figure on the verdict form.

5 I now charge you on proximate cause. A plaintiff may
6 only recover for injuries proximately caused by a defendant's
7 negligence. Proximate cause is the direct cause of injury. It
8 is something that produces a natural chain of events, which in
9 the end brings about the injury. In order for the Plaintiff to
10 recover, it is necessary for him to prove that the injury was
11 the proximate result of negligence on the part of the
12 Defendant. This is basic to recovery and cannot be left to
13 surmise, speculation or conjecture. If he fails to demonstrate
14 this causal relationship, he fails to prove his case.
15 Proximate cause requires proof of both causation in fact and
16 legal cause. Causation in fact is proved by establishing the
17 Plaintiff's injuries would not have occurred but for the
18 Defendant's negligence. Legal cause is proved by establishing
19 foreseeability. To prove that the Defendant's negligence
20 proximately caused the Plaintiff's injury, the Plaintiff must
21 first prove causation in fact. This is proven by showing that
22 the injury would not have occurred but for the Defendant's
23 negligence. The Plaintiff must also prove legal cause or that
24 the injury was foreseeable. This means that the injury
25 occurred as a natural and probable consequence of the

1 Defendant's negligence. The Plaintiff must prove that some
2 injury from the Defendant's negligence was foreseeable but does
3 not have to prove that the particular injury that occurred was
4 foreseeable. However, the Defendant cannot be held responsible
5 for things which could not have been expected to happen.
6 Foreseeability is not determined from hindsight, but rather
7 from a Defendant's perspective at the time of the complained
8 act. Where the cause of the Plaintiff's injury may be as
9 reasonably attributable to an act for which Defendant is not
10 liable as the one for which the Defendant is liable. Plaintiff
11 has failed to carry the burden of establishing -- excuse me --
12 if Plaintiff has failed to carry the burden of establishing
13 that his injuries were the proximate result of Defendant's
14 negligence if the accident would have happened as a natural and
15 probable consequence, even if the absence of the alleged
16 breach, then the Plaintiff has failed to demonstrate proximate
17 cause. I further instruct you that an act by the Defendant
18 cannot be made the basis of a claim if such act did nothing
19 more than furnish a condition or give rise to an occasion of
20 which injury was made possible if there intervened between such
21 prior cause an injury a distinct, unrelated, and efficient
22 cause of injury, even though such injury would not have
23 happened but for such condition or occasion.

24 I next charge you on foreseeability. The law
25 requires only reasonable foresight on the part of the

1 Defendant. When the damages complained of are not reasonably
2 foreseeable in the exercise of due care, there is no liability,
3 and one is not charged with foreseeing that which is
4 unpredictable or cannot be expected to happen. Foreseeability
5 is not determined from hindsight, but rather from the
6 Defendant's perspective at the time of the complained-of act.

7 I next charge you on fiduciary duty. A fiduciary
8 relationship is founded on the trust and confidence reposed by
9 one person in the integrity and fidelity of another. A
10 confidential or fiduciary relationship exists when one imposes
11 a special condition in another so that the latter in equity and
12 good conscience is bound to act in good faith and with due
13 regard to the interest of the one imposing the confidence. To
14 constitute a fiduciary relationship, the relationship must be
15 more than a casual one. Parties in a fiduciary relationship
16 must fully disclose to each other all known information that is
17 significant and material, but nondisclosure is improper only
18 when it is the duty of the party having knowledge of the facts
19 to make them known to the other party through that transaction.

20 I next charge you on fiduciary duty as to insurance
21 agent. Under South Carolina law, the sale of insurance is an
22 arms-length commercial transaction which does not give rise to
23 a fiduciary relationship. A fiduciary relationship, if one is
24 found to exist, flows not from the mere fact of an insurance
25 relationship between the parties. Something more than the mere

1 fact of an insurance relationship is required to establish a
2 fiduciary relationship. Other factors may demonstrate that the
3 party's relationship goes beyond the mere sale of insurance.

4 I next charge you on reading and signing documents.
5 A person who signs a contract or other written document cannot
6 avoid the effect of the document by claiming he did not read
7 it. A person signing a document is responsible for reading the
8 document and making sure of its contents. One who signs a
9 written instrument has the duty to exercise reasonable care to
10 protect himself. This law does not impose a duty to explain to
11 an individual what he can learn from simply reading the
12 document. This rule is subject to the exception that if the
13 party is ignorant and unwary, his failure to read this document
14 may be excused. However, our courts very strictly construe
15 this exception. In determining whether a party could be
16 classified as ignorant and unwary, an individual's education,
17 business experience, and intelligence are all considered.

18 I next charge you on actual damages. If you decide that
19 the Plaintiff is entitled to a verdict, then the next step
20 would be to decide how much money, if any, the Defendant should
21 be required to pay. Actual damages are properly called
22 compensatory damages, meaning to compensate, to make an injured
23 party whole, or to put them in the same position they were in
24 prior to the damages received insofar as is monetarily
25 possible. In other words, actual or compensatory damages

1 include compensation for all injuries which are naturally the
2 proximate result of the alleged wrongful conduct of the
3 defendant. Actual damages are awarded to a litigant in
4 compensation for their actual loss or injury. They are such as
5 will compensate the party for injuries suffered or losses
6 sustained. They are such damages as will simply make good or
7 replace the loss caused by the wrong or injury. They are to
8 restore the injured party as nearly as possible to the same
9 position they were in before the wrongful injury occurred. The
10 existence, causation, or amount of damages cannot be left to
11 conjecture, guesswork, or speculation. Damages must be proven
12 with a reasonable degree of certainty. The evidence presented
13 by the Plaintiff must enable you, the Jury, to determine what
14 amount is fair, just and reasonable. The Plaintiff bears the
15 burden of proving by the preponderance of the evidence that he
16 is entitled to compensatory damages.

17 I next charge you on perspective damages. A
18 plaintiff is never entitled to recover conjectural or
19 speculative damages, but if you find the Plaintiff is entitled
20 to a verdict for actual damages, your verdict should include an
21 amount to cover any past, present, and future damages which
22 were proximately caused by the Defendant. Any future damages
23 must be reasonably certain to occur in the future as a result
24 of the Defendant's acts. Actual damages need not be proven to
25 a mathematical certainty or be based on evidence of the precise

1 amount of damages the Plaintiff has suffered. However, the
2 evidence must allow you to determine what amount of damages is
3 fair, just, and reasonable. Money damages for a loss of future
4 earnings, if any, must be stated to their present value.

5 I'll next charge you on damages and a reasonable
6 degree of certainty. The existence or amount of damages cannot
7 be left to conjecture, guess, or speculation. However, proof
8 of amount of loss with absolute or mathematical certainty, as I
9 said, is not required. Damages must be set or of ascertainment
10 with a reasonable degree of certainty.

11 I next charge you on damages, and this is a damages
12 caveat. The fact that I have instructed you concerning damages
13 should not be considered as in any way me implying that any
14 view of mine as to which party is entitled to prevail in this
15 case. Instructions as to the measure of damages are given only
16 for your guidance in the event you should find in favor of the
17 Plaintiff from a preponderance of the evidence and in
18 accordance with the other instructions. I also charge you that
19 a verdict must not be based upon sympathy, passion, prejudice,
20 bias, emotion, or some other consideration not found in the
21 evidence, including any personal feelings you may have for or
22 against the parties to this case, or their counsel. It is your
23 duty to follow the instructions given to you by me, the Judge,
24 concerning the applicable law and apply the law to the facts
25 and evidence before you completely devoid of any sympathy,

1 passion, prejudice, bias, or emotion. You may have more
2 considerations and matters found in the evidence.

3 Alright. Ladies and gentlemen, that was why it took
4 us about three hours yesterday. There's a lot of law in this
5 case. I am making a Court's Exhibit number 4. This is the law
6 that I just charged you. It will be available for you at the
7 appropriate time in the jury room. I am going to ask the
8 parties, any additions or exceptions to my jury charge?

9 MR. RISER: Not from Crescent Coast, Your Honor.

10 MR. WATSON: No, Your Honor.

11 MR. CONNELL: Not at this time, Your Honor.

12 THE COURT: Alright. Ladies and gentlemen, if you
13 will retire to the jury room, we will provide you with your
14 verdict form, as well as all the exhibits in this case. Again,
15 please do not begin deliberating on this matter until you
16 receive that. Okay? Alright.

17 **(Jury exited the courtroom at this time.)**

18 MR. CONNELL: Your Honor, I didn't want to have my
19 exceptions made in front of the Jury, so I would except a
20 couple of things. We asked for requested charge number 4, 5,
21 13, 16, 17, and we also ask that the Court shows the contract
22 ambiguous. I understand Your Honor has ruled on that, but
23 there are those exceptions and we would reiterate those at this
24 point.

25 THE COURT: Alright. Thank you, Mr. Connell. Your

1 record is protected, and I'm going to follow my previous
2 rulings on those.

3 MR. CONNELL: And the other thing, Your Honor, is
4 that you did not -- you did not actually explain the verdict
5 form to them, and I didn't know if you were going to.

6 THE COURT: I'm happy to bring them back out and
7 explain it to them if y'all would like me to.

8 MR. CONNELL: I've always seen that done. I think
9 that's a good idea because if I didn't explain it to them, he
10 didn't explain it to them.

11 MR. WATSON: I have no objection if Your Honor
12 explains it to them back there, rather than shuffling back and
13 forth.

14 THE COURT: Are you all okay with that?

15 MR. CONNELL: Yes, sir, I'm fine with that.

16 THE COURT: Okay. As long as everyone's okay with
17 that, I can certainly give this to them back there and tell
18 them about that.

19 MR. CONNELL: That would be fine, Your Honor.

20 THE COURT: Anything else? Any motions? Alright.
21 Well, we'll be at ease. If y'all can, I guess, just get with
22 the clerk and a court reporter to make sure that all of the
23 evidence is in, and then we'll take it back.

24 MR. CONNELL: I think it was.

25 MR. WATSON: Yeah, we're all done.

1 THE COURT: Ms. Gerber and Ms. Sylvester, I certainly
2 appreciate y'all being with us today or this past week and a
3 half. Unfortunately, as alternates, we have not had anybody
4 drop, so y'all are free to go, but again, I do appreciate y'all
5 being here and your willingness to serve. The fact that you
6 don't get to sit in the jury room during deliberations by no
7 means affects the fact that you've performed your duty, and I
8 think it's three years, is that right?

9 THE CLERK: Yes, sir.

10 THE COURT: You do not have to serve in this Court
11 again for three years. Alright. Again, thank you so much.

12 MR. CONNELL: Thank you.

13 MR. DESCHAMPS: Thank you all.

14 **(Recess taken.)**

15 **(Jury Question)**

16 THE COURT: We have a question. It's in the jury
17 charge that was sent back to them. I don't think we can
18 explain it anymore than what's in the jury charge. In fact, I
19 think there was two or three different charges on fiduciary
20 duty. I'm tempted to tell them we have to use the jury charge
21 that I gave you.

22 MR. CONNELL: I think that's right, Your Honor,
23 that's what you charged them.

24 MR. RISER: That's right, and that was a combination
25 of charges, I think, between the two of us.

1 THE COURT: It was. I thought it was relatively
2 straight forward, but, yeah, alright, we'll just tell them -- I
3 can bring them back out or I can just go back and tell them,
4 hey, you have to use the charges I've given you all.

5 MR. CONNELL: I'm fine with you telling them that.

6 MR. WATSON: Yeah, I'm fine with you just telling
7 them.

8 MR. RISER: I don't have any problems.

9 THE COURT: Okay. Thank you.

10 MR. CONNELL: Your Honor, did I hear you say you were
11 going to stop or something?

12 THE COURT: I was planning on asking them at 5:00, so
13 it might be a good time, if they thought it would be fruitful
14 to stay a little longer, or if they needed to clear their head
15 and come back in the morning.

16 MR. RISER: Yes, sir, no problem.

17 MR. WATSON: It makes sense to me. Thank you.

18 MR. RISER: Do you want us to wait here until you
19 tell us what they're going to do, or go back out?

20 THE COURT: You all can just hang right here. I
21 should be quick. Julie, I'll mark this as Court's Exhibit 7 at
22 this time.

23 THE COURT REPORTER: Yes.

24 THE COURT: They'd like to stay a little bit longer
25 and they think they might be able to finish in the not too

1 distant future, so.

2 MR. CONNELL: Alright, thank you, sir.

3 THE COURT: We'll see.

4 MR. WATSON: Thank you.

5 MR. RISER: Thank you.

6 **(Deliberations continued at 4:58 p.m.)**

7 THE COURT: Not a question, but we've got a
8 statement, that I guess the Foreperson made to one of the
9 deputies, basically indicating, and this was ten minutes ago,
10 but they didn't know if 15 minutes was going to matter. They
11 had originally told her they'd like to stay another hour, felt
12 they could get it worked out in that time, but now indicated
13 that they don't think they're any closer than they were, but
14 they've also indicated that some want to go home and some do
15 not, so at this point, I'm open to doing an Allen Charge. I
16 absolutely would never declare a mistrial without doing that.
17 From what I'm being told, it sounds rather heated in there, so
18 I don't know if we want to go ahead and send them home or Allen
19 Charge them and give them another 30 or 45 minutes. Again, I
20 want to give them every opportunity to come to a verdict on
21 this case before declaring some sort of impasse or mistrial or
22 hung jury. What do you all think?

23 MR. CONNELL: I'm taking in what you said. So I
24 guess what I'd say, Your Honor, is give them the option if they
25 want to stay, and if they agree, let them stay, and if they

1 want to go home, let them go home.

2 THE COURT: Well, the comment she made is that some
3 of are wanting to go home and some want to stay, and I don't
4 even think they can get that unanimous at this point.

5 MR. WATSON: Are the ones wanting to go home saying
6 they will come back tomorrow or they want to --

7 THE COURT: Yes, yes.

8 MR. WATSON: Okay. They want to go home and never
9 come back?

10 THE COURT: Probably would be all of them.

11 MR. WATSON: Right. I mean, I wouldn't say to hold
12 those who are trying to leave against their will past 6:00.

13 THE COURT: I agree. My thoughts are that we either
14 Allen Charge them now or Allen Charge them when we bring them
15 back in the morning.

16 MR. WATSON: I would say, give them the offer of, if
17 you don't think 30 minutes is going to do it, then we're going
18 to send you home. If you think you want 30 more minutes to do
19 it, you can stay, otherwise, we'll come back in the morning.
20 If it's not done, then Allen Charge them in the morning, is
21 what I would think. I don't think giving it tonight is going
22 to --

23 THE COURT: Well, and, between us here, I have no
24 clue if they're close, or anything like that, other than I can
25 hear them in the hallway, so they are obviously communicating,

1 at least. It's when the jury gets really silent that you start
2 wondering, but I'll do that, I'll just send word back with one
3 of our deputies to ask them if 30 minutes, if they think that
4 would be helpful, if they don't, we'll send them home and bring
5 them back in the morning. Okay?

6 MR. CONNELL: Thank you, Your Honor.

7 MR. WATSON: Thank you.

8 MR. RISER: Thank you.

9 THE COURT: Mr. Jordan, will you relay that message
10 to them?

11 THE DEPUTY: Yes, sir.

12 **(Deliberations continued at 6:00 p.m.)**

13 THE COURT: You may be seated. It's my understanding
14 we have a verdict. Anything you need to take up before the
15 Jury comes out?

16 MR. CONNELL: No, Your Honor.

17 MR. WATSON: No, Your Honor.

18 MR. RISER: No, Your Honor.

19 **(Jury entered the courtroom)**

20 THE COURT: Alright. Madam Forelady, I understand
21 that we have a verdict; is that correct?

22 JUROR 230: Yes, we do.

23 **(VERDICT)**

24 THE CLERK: State of South Carolina, County of Horry
25 in the Court of Common Pleas, 15th Judicial Circuit, Civil

1 Action Number 2020-CP-26-0808. A. Tebele & Sons, a South
2 Carolina General Partnership v. Certain Underwriters at
3 Lloyd's, HDI Global Specialty SE, General Security Indemnity
4 Company of Arizona, and Crescent Coast Insurance, LLC. On the
5 first cause of action, breach of an insurance contract, we, the
6 Jury, unanimously find for the Defendants, Certain Underwriters
7 at Lloyd's, HDI Global Specialty SE, General Security Indemnity
8 Company of Arizona.

9 On the second cause of action, bad faith, we, the
10 Jury, unanimously find for the Defendants, Certain Underwriters
11 at Lloyd's, HDI Global Specialty SE, General Security Indemnity
12 Company of Arizona. Signed, Sandra Lobello, Foreperson.

13 Verdict form number 2. Do you, the Jury, unanimously
14 find that the Defendant, Crescent Coast Insurance, LLC, was
15 negligent and that such negligence proximately caused the
16 Plaintiff, A. Tebele & Sons injuries? Yes. Do you, the Jury,
17 unanimously find that the Plaintiff, A. Tebele & Sons, was
18 negligent and that such negligence approximately caused the
19 Plaintiffs, A. Tebele & Sons, injuries? Yes. Taking the
20 combined negligence that proximately caused the Plaintiff's
21 injuries as 100 percent, what percentage of that negligence is
22 attributable to the Plaintiff, A. Tebele & Sons, and what
23 percentage is attributable to the Defendant, Crescent Coast
24 Insurance, LLC? Plaintiff, A. Tebele & Sons, is 60 percent.
25 Defendant, Crescent Coast Insurance, LLC, is 40 percent. On

1 the fourth cause of action, breach of fiduciary duty, we, the
2 Jury, unanimously find for the Plaintiff, A. Tebele & Sons, and
3 against the Defendant, Crescent Coast Insurance, LLC, actual
4 damages in the amount of \$15,000.00. signed, Sandra Lobello,
5 Foreperson, dated December 13th, 2023, Conway, South Carolina.
6 Madam Forelady, ladies and gentlemen of the Jury, is this your
7 verdict? If so, please signify by raising your right hand.
8 Thank you.

9 **(Polling of the Jury)**

10 THE COURT: Alright. Do the parties wish to poll the
11 Jury?

12 MR. CONNELL: We do, Your Honor.

13 THE COURT: Alright.

14 THE CLERK: When I call your juror number, please
15 stand, and I'll have two questions for you. After you answer,
16 you may be seated.

17 Number 230, is this your verdict and is this still
18 your verdict?

19 JUROR 230: Yes.

20 THE CLERK: Thank you. Number 202, is this your
21 verdict and is this still your verdict?

22 JUROR 202: Yes.

23 THE CLERK: Number 16, is this your verdict and is
24 this still your verdict?

25 JUROR 16: Yes, ma'am.

1 THE CLERK: Number 56, is this your verdict and is
2 this still your verdict?

3 JUROR 56: Yes, ma'am.

4 THE CLERK: 116, is this your verdict and is this
5 still your verdict?

6 JUROR 116: Yes, ma'am.

7 THE CLERK: 261, is this your verdict and is this
8 still your verdict?

9 JUROR 261: Yes, ma'am.

10 THE CLERK: 341, is this your verdict and is this
11 still your verdict?

12 JUROR 341: Yes, ma'am.

13 THE CLERK: 183, is this your verdict and is this
14 still your verdict?

15 JUROR 183: Yes, ma'am.

16 THE CLERK: 247, is this your verdict and is this
17 still your verdict?

18 JUROR 247: Yes.

19 THE CLERK: 397, is this your verdict and is this
20 still your verdict?

21 JUROR 397: Yes, ma'am.

22 THE CLERK: Number 17, is this your verdict and is
23 this still your verdict?

24 JUROR 17: Yes, ma'am.

25 THE CLERK: 267, is this your verdict and this is

1 still your verdict?

2 JUROR 267: Yes.

3 THE CLERK: Thank you.

4 THE COURT: Alright. Ladies and gentlemen, I
5 appreciate your service. I know we've kept you here late a
6 couple of times. We've let you go early a couple times, and
7 you've been patient with us, and I certainly appreciate that,
8 and I know that the parties do. You are now excused, and as
9 far as speaking about this case, you know, I told you multiple
10 times not to speak about this case. Now is the time where if
11 you would like to, you can. If the attorneys have questions
12 for you and they contact you afterward, you don't have to speak
13 with them, but if you'd like to, you certainly can, but I'm
14 going to go ahead and excuse you, and, again, thank you so much
15 for being here.

16 (Jury was excused)

17 THE COURT: Alright, Mr. Connell and Mr. DesChamps?

18 MR. CONNELL: Your Honor, we'd like to have 10 days
19 to file any motions.

20 THE COURT: I was just going to ask if you needed 10
21 days.

22 MR. CONNELL: Thank you, Your Honor.

23 THE COURT: And I don't know if any other parties
24 have any other motions they need to make, but we'll certainly
25 give you 10 days, okay?

1 MR. DESCHAMPS: Thank you, Your Honor.

2 MR. CONNELL: Thank you, Your Honor.

3 MR. WATSON: Thank you, Your Honor. Have a good
4 night.

5 THE COURT: You all, too. You all have safe travels.

6 **(Trial concluded on December 13, 2024 at 6:37 p.m.)**

7

8 CERTIFICATE

9 STATE OF SOUTH CAROLINA

10 COUNTY OF HORRY

11 I, Julie A. Kevish, Official Court Reporter for the
12 State of South Carolina, do hereby certify that the foregoing
13 is a true, accurate and complete Transcript of Record of the
14 proceedings had and evidence introduced in the Court of Common
15 Pleas for Horry County, South Carolina, on the 13th day of
16 December, 2023.

17 I do further certify that I am neither of kin,
18 counsel, nor interest to any party hereto.

19 December 13, 2023

20

21



22

JULIE A. KEVISH
OFFICIAL COURT REPORTER

23

24

25

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

COUNTY OF HORRY

A. TEBELE & SONS, a South
Carolina General Partnership,

Plaintiff,

vs.

CASE NO.: 2020-CP-26-080

CERTAIN UNDERWRITERS AT
LLOYD'S, HDI GLOBAL SPECIALTY
SE, GENERAL SECURITY INDEMNITY
COMPANY OF ARIZONA AND
CRESCENT COAST INSURANCE, LLC,

Defendants.

VIDEOTAPED	(Appearance via Zoom)
DEPOSITION OF:	MARK MELVIN
DATE:	November 28, 2023
TIME:	8:40 a.m. (CST) 9:40 a.m. (EST)
LOCATION:	AmWINS SRU 880 Montclair Road, Suite 500 Birmingham, Alabama
TAKEN BY:	Counsel for the Defendants
REPORTED BY:	Mary K. Stepp, Court Reporter (Appearance via Zoom)

1
2 APPEARANCES OF COUNSEL:

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4 (Appearance via Zoom)
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ALSO PRESENT:

Sean Lowther, Videographer
Whitney Hill, Paralegal with Butler Weihmuller
Pam Couch, A. Tebele & Sons
Abraham Tebele
(INDEX AT REAR OF TRANSCRIPT)

1 MR. DesCHAMPS: Trey DesChamps and I'm
2 representing the plaintiff.

3 THE VIDEOGRAPHER: Thank you. And at this
4 time, if our court reporter would please swear the
5 wit- -- in the witness.

6 (Witness sworn.)

7 THE VIDEOGRAPHER: Attorney Watson, you
8 may proceed, sir.

9 MR. WATSON: Thank you.

10 MARK MELVIN,
11 having been first duly sworn, testified as follows:

12 EXAMINATION

13 BY MR. WATSON:

14 Q. Good morning, would you please state your
15 name, sir.

16 A. Mark Melvin.

17 Q. All right. Mr. Melvin, my name is Andy
18 Watson. I'm an attorney representing the insurer
19 defendants in this matter. We are here for your
20 deposition. I have to make a statement for purposes
21 of the record before we get started.

22 This deposition was noticed for purposes
23 of a trial starting next Monday, December the 4th.
24 And for that reason, pursuant to the South Carolina
25 Rules of Civil Procedure, it is being taken for

1 preservation of trial testimony. And, therefore,
2 unlike the typical deposition, all objections are not
3 reserved and should be made by a short statement on
4 the record at the time.

5 All right. Mr. Melvin, where are you
6 testifying from this morning?

7 A. I'm located in Birmingham, Alabama.

8 Q. And is that where you live?

9 A. That is where I live.

10 Q. And we are taking this deposition over
11 Zoom, so there are a few ground rules we need to
12 follow to go smoothly this morning. First off, all
13 of your answers, of course, need to be out loud. You
14 can't shake your head or gesture, go uh-huh, huh-uh.
15 Someone will remind you, okay?

16 A. Okay.

17 Q. I couldn't hear you. I'm not sure why
18 there.

19 A. Hear me now?

20 Q. Yes, thank you.

21 A. Okay.

22 Q. If you don't understand a question, please
23 just point out that you don't understand it, I'll try
24 and ask a different question, okay?

25 A. Okay.

1 Q. If we do need to take a break for any
2 reason -- if you need to take a break, please say the
3 word. We try to break once an hour otherwise, but if
4 there's a particular need, just say the word. This
5 is not a marathon, okay?

6 A. Okay.

7 Q. Lastly, you are being video recorded, in
8 addition to the transcript being taken down by the
9 court reporter. So the Jury will be able to watch
10 and hear your testimony during the trial next week.
11 Do you understand?

12 A. I do.

13 Q. All right. How old are you, sir?

14 A. 36 years old.

15 Q. Are you married?

16 A. I am.

17 Q. Do you have any children?

18 A. I have two kids under -- one is 2 and a
19 half and the other one is three months old.

20 Q. And where are you employed?

21 A. I'm employed in Birmingham, Alabama by
22 AmWINS Special Risk Underwriters.

23 Q. And for purposes of discussion in this
24 case, we've been referencing Special Risk
25 Underwriters with the abbreviation SRU. Are you

1 comfortable with that?

2 A. Yes, I am.

3 Q. Tell the Jury, please, about your
4 educational background. How far did you go in
5 school?

6 A. Sure. So I went to college at Wake Forest
7 University. I graduated from Wake Forest in 2009
8 with a -- my major was -- I got a bachelor of science
9 in business and accountancy from the Wake Forest
10 School of Business. And straight out of school, once
11 I graduated Wake Forest, I joined AmWINS and I have
12 been there ever since. So for the last 14 years
13 post-college.

14 Q. And did you start out of school with
15 AmWINS SRU?

16 A. Yes. So I joined AmWINS SRU summer of
17 2009. I was actually one of the first employees. We
18 had just started up about three or four months prior
19 to me joining. And I worked out of the Birmingham
20 office for about a year. Did a stint for about four
21 years out of Charlotte office. And then was brought
22 back to Birmingham around 2014 to oversee the
23 Birmingham office for SRU. And I have been in that
24 role -- taken on different roles -- out of the
25 Birmingham office since then.

1 Q. And so in some form or fashion, you've
2 been with AmWINS SRU from 2009 to the present?

3 A. That's correct.

4 Q. And what is an underwriter?

5 A. So, an underwriter is a profession, to put
6 it, you know, more simply. We are looking at how we
7 price risk. We actually write insurance policies.
8 And then as part of our job, we have to evaluate how
9 risky that policy is. And then we charge a premium,
10 as well as coverage, in order to provide insurance
11 for a particular commercial property, obviously, is
12 what we do. So it's as simple as that.

13 Q. And is there a particular type of
14 insurance that AmWINS SRU writes?

15 A. Yes. So we specialize -- in our group,
16 specializes in commercial properties, specifically
17 commercial properties that are more coastal. So
18 anything that is within probably 100 miles of the
19 coast line is typically the type of commercial
20 property risks that we would insure.

21 Q. And what position do you currently hold at
22 AmWINS SRU?

23 A. So, I currently am Executive Vice
24 President within the group. And there are several
25 EVPs that help run SRU. And we've got roughly about

1 75 employees now within the group that we oversee.

2 Q. And throughout your tenure with AmWINS
3 SRU, were you in a position to underwrite insurance
4 policies for commercial coastal properties?

5 A. Yes. For the first nine to ten years, I
6 was pretty much underwriting day to day for SRU.

7 Q. Now, does AmWINS SRU, do they sell these
8 commercial policies directly to the businesses?

9 A. No, we -- so SRU, as an underwriting
10 entity, we're only evaluating the risk and providing
11 terms of coverage, as well as price. But we receive
12 these risks. Our distribution comes through a
13 wholesale broker, who's a middleman between the
14 retail agent and ourselves. So we never actually
15 interact with the retail agents themselves or the
16 insureds. It actually comes through several parties
17 before the risk would come to us for underwriting.

18 Q. And I skipped ahead probably a little bit.
19 So AmWINS SRU is itself not an insurance company,
20 would that be accurate?

21 A. That's correct. We are what's called an
22 MGA, a Managing General Agent. So we underwrite
23 risk, but we underwrite on behalf of insurance
24 companies because of our expertise, as well as access
25 to the business here in the U.S. Which is why we

1 have certain companies, insurance companies that we
2 represent being Certain Underwriters of Lloyd's of
3 London that partner with us, in order to access the
4 business here in the U.S.

5 Q. And so the defendants in this case, the
6 interested underwriters at Lloyd's, HDI Global and
7 General Security, what is the relationship of AmWINS
8 SRU to those insurers with regard to the Tebele
9 policy?

10 A. Sure. So we have a contract with all of
11 those parties. And within that contract we have an
12 agreement to underwrite risk on their behalf, as long
13 as it's within the contract guidelines that we've
14 agreed to. And then we then from that point are
15 representing Certain Underwriters of Lloyd's of
16 London, General Security, as well as HDI and
17 underwriting that risk, issuing the policy, as well
18 as helping with the claims process as well. And so
19 that that's the arrangement that we have.

20 And then, obviously, A. Tebele was one of
21 the insureds that we underwrote as part of that
22 process.

23 Q. And the term of delegated binding
24 authority, what does that mean in your area, your
25 parlance?

1 A. Yes. So delegate -- delegation of a
2 binding authority gives us the right to bind risk,
3 which means that we effectively can represent these
4 parties in a risk and binding an account or closing a
5 deal, if you will, in more simple terms, on their
6 behalf without having to get approval from them to do
7 so. They do it -- they delegate that authority to us
8 to represent them in that process.

9 Q. So if we were to do sort of a timeline
10 from left to right of the different entities involved
11 in the process of getting a policy issued to A.
12 Tebele & Sons, first we have the insurers, who are
13 the defendants here in the case. They are delegating
14 their binding authority to AmWINS SRU to issue
15 policies for them; is that right?

16 A. That's correct.

17 Q. And then from that step, what is the next
18 step in the chain in how those policies reach the
19 policyholder?

20 A. Sure. So once we would bind a risk, we
21 would then issue a binder, which is a contract. And
22 then we would follow that up with a policy that we
23 would issue in a common manner. And then both of
24 those documents would be sent to the wholesale broker
25 who we interface with directly. And that wholesale

1 broker would then send that documentation and the
2 contract to the retail agent who's representing the
3 insured.

4 Q. And so to put some -- some names on these
5 different entities, the wholesale broker that you
6 would pass the binder and policy along to, what's the
7 name of that entity for this policy?

8 A. AmWINS is the wholesaler that we were
9 working with.

10 Q. So that would be AmWINS Brokerage of the
11 Carolinas, is that --

12 A. That's correct.

13 MR. DesCHAMPS: Objection.

14 THE WITNESS: AmWINS Brokerage of the
15 Carolinas.

16 BY MR. WATSON:

17 Q. And is AmWINS Brokerage of the Carolinas a
18 different corporate entity from AmWINS SRU?

19 A. Yes.

20 Q. And where are their offices, if you know?

21 A. Their -- their office is in Charlotte, the
22 Brokerage of the Carolinas office, predominantly.
23 And they have a satellite office, I believe, in the
24 Charleston area.

25 Q. And why does AmWINS SRU transmit its

1 binder of policies through a wholesale broker like
2 AmWINS Brokerage of the Carolinas, instead of going
3 directly to the retail agent?

4 A. Sure. So, it's really kind of two fold.
5 One is, oftentimes when an account has a certain risk
6 profile, typically in this case the exposure to
7 hurricane as being the example in this account, the
8 retail agent typically is unable to find an insurance
9 company, I mean, that's considered an admitted
10 insurance company to take that risk.

11 So because they have no ability to find
12 someone to take that risk, they then go through a
13 third party, being a wholesale broker, who has
14 expertise and access to insurance carriers that will
15 take that risk.

16 So that is a separate market. It's called
17 the excess and surplus lines market. And it
18 specializes in risky, hard-to-place risks, which is
19 where we sit. So it's -- it's imperative that
20 wholesale brokers, who we interact with, who then
21 primarily is where the business comes into the U.S.
22 marketplace.

23 And then, secondly, from a distribution
24 model perspective, we're not set up to be able to
25 facilitate massive amounts of relationships from a

1 retail agency perspective, because obviously there
2 are thousands and thousands of retail agents
3 throughout the southeast.

4 But there are a handful of wholesale
5 brokers who aggregate a lot of those accounts, and
6 then provide those accounts to people like SRU. And
7 so it's just a more efficient, simple way for us to
8 transact the business as well.

9 Q. So continuing down along the process of
10 the players in this sequence, you have the retail
11 agent, which would that be -- for this policy, would
12 that be the Crescent Coast entity?

13 A. Yes.

14 Q. And so because you're going through the
15 wholesale broker, AmWINS Brokerage of the Carolinas,
16 is AmWINS SRU communicating directly with Crescent
17 Coast at any point in this process?

18 A. No. We only interact with the wholesale
19 broker, in this case AmWINS Brokerage of the
20 Carolinas.

21 Q. And does AmWINS SRU give Crescent Coast
22 any type of authority or decision-making ability in
23 the process?

24 A. No. We do not.

25 Q. And then last you have the client of the

1 retail agent, which would be the policyholder, in
2 this case A. Tebele & Sons?

3 A. That's correct.

4 Q. Is AmWINS SRU part of a larger corporate
5 entity?

6 A. Yes.

7 Q. And what's the name of that entity?

8 A. AmWINS Group.

9 Q. And are there other companies beneath
10 AmWINS Group besides just AmWINS SRU and AmWINS
11 Brokerage of the Carolinas?

12 A. Yes. There's -- there's multiple entities
13 throughout the corporate umbrella. There's a lot of
14 different LLCs and corporations within the AmWINS
15 parent company.

16 Q. And is AmWINS SRU, it's its own corporate
17 entity?

18 A. It is.

19 Q. And that's who your employer is. That's
20 who you work with.

21 A. Yes, that's correct.

22 Q. Now, another name that's come up during
23 this case is called AmWINS Access Insurance Service,
24 which I'm going to just refer to shorthand as AmWINS
25 Access. Do you work for that company?

1 A. No.

2 Q. Do you know what the business specialty of
3 that company is?

4 A. I know a little bit about the company. I
5 know they deal with smaller accounts. But beyond
6 that, we don't really have a lot of interaction with
7 AmWINS Access.

8 Q. Now, does the AmWINS SRU have a computer
9 system for performing its functions?

10 A. I'm sorry, say that one more time.

11 Q. Sure. Amwins -- excuse me. AmWINS SRU,
12 it has -- you have a computer system that you perform
13 your underwriting function and your issuance of
14 policy functions on?

15 A. That's correct.

16 Q. Can you, from your AmWINS SRU system, see
17 into other AmWINS entities' systems to view their
18 data and information?

19 A. No, we do not have the ability to do that.

20 Q. And so, for example, AmWINS Access, that
21 company, does AmWINS SRU have the ability to look
22 into their system for information while it's
23 underwriting the policy?

24 A. We do not.

25 Q. And specifically for the A. Tebele & Sons

1 policy that we're here about, did you personally ever
2 look into AmWINS Access' files at all to gather
3 information while you were underwriting this policy?

4 A. No.

5 Q. And even if you wanted to, you couldn't
6 have, could you?

7 A. That's correct.

8 Q. And do you know one way or the other if
9 the reverse is possible, whether AmWINS Access could
10 look into SRU's computer system for information?

11 A. They would not be able to, no.

12 Q. Now, this particular policy that A. Tebele
13 & Sons had that's the subject of this case, the
14 insurers each had a percentage of the risk, would
15 that be an accurate statement?

16 A. Yes, that would be accurate.

17 Q. Now, when you're underwriting policies for
18 these insurers, they give you certain parameters or
19 guidelines in which -- in terms of what policies you
20 can issue?

21 A. Yes.

22 Q. And in a general sense, how does that
23 work? What type of parameters are you given?

24 A. Yeah. So we've been given parameters
25 around risk profile. So certain accounts that the

1 insurers may be too risky. They will have outlines
2 within their guidelines, in terms of a variety of
3 factors. Also that would include types of risks that
4 we could insure, in terms of occupancies. There are
5 obviously occupancies that they deem, you know, too
6 risky or we don't have the expertise in, so that
7 would be excluded as part of the contract. And also
8 some of the weighting approach of how we weight our
9 business, how -- how we price business, and how we
10 think about the policy as well, in terms of the
11 conditions of the policy that are also being outlined
12 in the contract.

13 Q. In order to issue a policy for the
14 insurers, do you need to get an application? Do you
15 receive one?

16 A. It's very common, yes.

17 Q. And in this particular instance, did you
18 receive an application signed by A. Tebele & Sons
19 seeking insurance?

20 A. Yes.

21 Q. And is that a function that -- that you
22 perform on a regular basis when you're underwriting
23 risk?

24 A. Yes.

25 Q. I'm going to share my screen. Are you

1 able to see what's on my screen, Mr. Melvin?

2 A. Yes.

3 (Defendant's Exhibit No. 53 previously
4 marked for identification.)

5 BY MR. WATSON:

6 Q. All right. The -- for those following
7 along, this is what was marked as Defendant's Exhibit
8 53 during other depositions. First page is entitled
9 Commercial Insurance Application.

10 And, Mr. Melvin, you're welcome to take
11 time and read through this. But have you seen this
12 A. Tebele & Sons Commercial Insurance Application
13 before?

14 A. Yes.

15 Q. And do you recognize about halfway down
16 under "Applicant Information" that the name of the
17 insured is A. Tebele & Sons?

18 A. Yes.

19 Q. And then on the top left it says, "Agency:
20 Crescent Coast Insurance." Is that the place to put
21 the retail agent?

22 A. Yes.

23 Q. Now, this Commercial Insurance
24 Application, did you draft the contents of this
25 application?

1 A. No.

2 Q. And who drafted it?

3 A. This would have been done by the retail
4 agent in connection -- in corroboration with the
5 insured.

6 Q. So all of the information and all the
7 different boxes, did any of that come from you or
8 anyone else at AmWINS SRU?

9 A. No.

10 Q. Now, in the first page there is a notation
11 of the date, January 11th, 2019. And then do you
12 recognize that as being a few days before this policy
13 was ultimately issued?

14 A. Yes.

15 Q. Now, on the top right paragraph it says,
16 "Underwriter Office: AmWINS Access." Is that
17 accurate?

18 A. No.

19 Q. The underwriter for this policy, was that
20 your company, AmWINS SRU?

21 A. That's correct.

22 Q. And the identification of AmWINS Access as
23 the underwriter, that's incorrect as far as you're
24 concerned?

25 A. Yes.

1 Q. And then under "Status of Transaction,"
2 still on page 1 of this exhibit it says, "Issue
3 policy with an X" and "January 15th, 2019." Is that
4 the date that the policy was to be issued?

5 A. Yep. That's the effective date of the
6 policy.

7 Q. And I'm skipping ahead a few pages to page
8 7 of the exhibit. There's a section entitled,
9 "Additional Premises Information Schedule." And down
10 where it says, "Location No. 11," there's the address
11 "1901 North Kings Highway in Myrtle Beach"; is that
12 correct?

13 A. That's correct.

14 Q. And now this policy had multiple locations
15 on it as being insured; is that right?

16 A. That's right.

17 Q. I believe if we scroll all the way down,
18 there's 24 total numbered locations with different
19 addresses on it?

20 A. That's correct.

21 Q. And so this policy is intending to provide
22 insurance not just for 1901 North Kings Highway, but
23 for all of these 24 different commercial locations?

24 A. That's correct.

25 Q. Skipped over something important on page 4

1 of the exhibit. There's a block entitled
2 "Signature." And towards the bottom there are two
3 DocuSign signatures. Can you identify who's signing
4 this policy?

5 A. Yes. So it looks like the Producer's
6 signature is David Egan and then the Applicant's
7 signature is Abraham Tebele.

8 Q. And they are required to sign this
9 application, in order for the policy to be able to be
10 issued by you?

11 MR. DesCHAMPS: Objection.

12 BY MR. WATSON:

13 Q. Is that correct?

14 A. Yes.

15 Q. In other words, if you get an application
16 and the policyholder hasn't signed it, are you able
17 to proceed and issue the policy anyway?

18 A. It's typically something that we require
19 as part of the process to verify the information.

20 Q. And in the box above the signature, the
21 Applicant's -- the language indicates "He/she
22 represents that the answers are true, correct, and
23 complete to the best of his or her knowledge."

24 Did I read that accurately?

25 A. Yes.

1 Q. And in your role as an underwriter, do you
2 rely upon the truth and accuracy of the information
3 that the policyholder gives you in their application
4 for insurance?

5 A. Absolutely.

6 Q. And did you do so for this particular
7 policy?

8 A. Yes.

9 Q. Moving forward with this same exhibit,
10 this application, does each location get its own page
11 of additional information and details included on it?

12 A. Yes.

13 Q. And I'm skipping to the page which is page
14 21 of the exhibit. It indicates the street address,
15 "1901 North Kings Highway." Do you see that?

16 A. I do.

17 Q. Now, what is the information under
18 "Subject of Insurance" and "Amount" right below that?

19 A. So that's expressing what is -- what the
20 insurance would need to have insured as part of that
21 location. And so the building, obviously, represents
22 the building values of that location. The BPP is the
23 Business Personal Property at that location, so that
24 would be the contents inside the building, typically.
25 And then the BIEE is the Business Income and Extra

1 Expense, which is essentially that business income
2 generated for the entity from that location.

3 Q. And so these are -- are these coverage
4 limits for each of these categories of insurance?

5 A. Yes.

6 Q. So the most coverage available for the
7 building under the policy is 2.5 million dollars,
8 according to this?

9 A. That's correct.

10 Q. And then for Business Income or Extra
11 Expense it's 100,000 limit?

12 A. That's correct.

13 Q. And for Business Personal Property it's a
14 \$250,000 limit?

15 A. That's correct.

16 Q. Now, does AmWINS SRU come up with these
17 numbers or do they -- do they come from somewhere
18 else?

19 A. They come from somewhere else.

20 Q. And is that somewhere else the retail
21 agent and the insured and some combination?

22 A. Yes.

23 Q. And you evaluate the requested amounts of
24 insurance as part of your calculation of whether to
25 take on the risk and what premium to charge?

1 A. That's correct.

2 Q. And this -- in the building description
3 for this location it says, "Restaurant LRO." What is
4 the LRO for?

5 A. That's a lessor's risk reference.

6 Q. That means that the policyholder is going
7 to be leasing out the space?

8 A. That's correct.

9 Q. There's other information further down the
10 same page. For example, it says what fire district
11 it's in, what year it was built, and what the total
12 area is. Do you see those indicators?

13 A. Yes.

14 Q. And, again, this is all information
15 provided to AmWINS SRU by the policyholder by way of
16 Crescent Coast?

17 A. That's correct.

18 Q. And then when it says, "Construction Type
19 MNC," what does that mean?

20 A. That is an acronym for Masonry
21 Non-Combustible Construction.

22 Q. And what does that mean to the
23 uninitiated?

24 A. Yeah. So, MNC constructed building would
25 have masonry walls with a non-combustible roof, if

1 you will, so metal roof. Masonry non-combustible
2 construction type, which is closely identified with
3 ISO construction codes. There's -- there's six
4 different ISO codes that are within the insurance
5 industry that are equivalently outlining, in terms of
6 how you evaluate the quality of the construction of
7 the building.

8 Q. And then there's a box that's indicated
9 that says, "P-r-o-t," space, "CL" with a "1." Do you
10 know what that is?

11 A. Yeah, that would be protection class. So
12 that's proximity to a fire station. 1 being the
13 best, 10 being the worst.

14 Q. Then down in the middle of the page
15 there's a box that has the percentage, "S-p-r-n-k
16 100." What is the significance of that box?

17 A. That references the percent sprinklered of
18 the facility, and 100 would represent 100 percent of
19 the building being sprinkler protected.

20 Q. And, again, this came from the
21 policyholder in some combination with Crescent Coast,
22 as opposed to AmWINS SRU putting it in there?

23 MR. DesCHAMPS: Objection.

24 THE WITNESS: That's correct.

25 BY MR. WATSON:

1 Q. And why is it important to you as an
2 underwriter to know if the particular location has
3 sprinklers for a fire protection ordinance?

4 A. As an underwriter, what we evaluate, the
5 price we charge, as well as the risk itself always is
6 one of the key perils we look at is the fire
7 exposure. Being the possibility that fire could
8 happen, what could be the ultimate loss, if a fire
9 did occur. And for a restaurant cost in particular,
10 and other types of occupancies that exist, that maybe
11 are more prone to have fire events, given the nature
12 of what they are doing, cooking being one of those in
13 restaurants. A building that's got better sprinkler
14 protection, obviously has a much lower probability of
15 having a much greater loss, if a fire were to break
16 out because a sprinkler system would protect it from
17 being a more severe or large fire.

18 So that's why the difference of
19 qualitative measures are outlined in the application
20 that we receive, because it has an impact to an
21 underwriter's view of the risk.

22 Q. Moving ahead with this same exhibit,
23 there's another location. 610 West/South, South
24 Kings Highway, which I believe is a Thorny's, or at
25 one time was a Thorny's Restaurant. Did that

1 location have an indication about whether it was
2 sprinklered for fire protection or not?

3 A. Yes.

4 Q. And that would -- is that 100 as well?

5 A. Yeah, 100 percent sprinklered.

6 Q. And skipping ahead to location, premises
7 20, which is 114 Highway 17 North, I believe to be a
8 Family Dollar location. Likewise, was that indicated
9 as having sprinkler protection on the application?

10 A. Yes. It was outlined as 100 percent
11 sprinkler protected.

12 Q. And there are -- were there other
13 locations that were indicated as having -- not having
14 sprinkler protection?

15 A. Yes.

16 Q. And just as an example, we'll go to the
17 one prior, where it says 112 Highway 17 North, a
18 retail store. Under percentage sprinkler, that
19 is -- there's a number 0, correct?

20 A. That's correct.

21 Q. And so that would indicate that the
22 property is not protected by an automatic sprinkler
23 system?

24 A. That's correct.

25 Q. And so all of those indications, in terms

1 of whether the property is or isn't sprinklered and
2 what type of business is there, that all goes into
3 the calculations of how you're going to insure the
4 property and what kind of policy you're going to
5 issue?

6 MR. DesCHAMPS: Objection.

7 THE WITNESS: Yes.

8 BY MR. WATSON:

9 Q. And what's the next step for you in the
10 process of underwriting this insurance policy, after
11 you receive the signed application from the
12 policyholder via their retail agent?

13 A. Yes. So once we receive the application
14 submission from the wholesaler, we begin underwriting
15 the risk, evaluating the locations, where they --
16 proximity to each, the occupancy, whether they are,
17 you know, restaurants, retail shopping centers,
18 office buildings. We also look at what we feel the
19 proper prices and protections that exist, the
20 construction of the building, what's in the building
21 itself, and the locations of the buildings.

22 And then once we do our evaluation, we'll
23 typically price out the different exposures. So a
24 hurricane would obviously have another price to it.
25 If it's hurricane exposed as well, we would charge

1 premiums as well for what we feel fire risk is, as
2 well as other potential coverages that we would
3 offer, whether that would be flood or earthquake.

4 Once we do that evaluation, we will then
5 provide terms to the broker in the form of a
6 quotation, which outlines the coverages that would
7 exist under the policy, as well as the premium that
8 we would charge and the deductibles that we would
9 require to pick up that risk. As well as other
10 factors, policy, contract terms that we would need to
11 be in compliance with, in order to issue our policy.

12 Q. Did you go through a process of evaluating
13 this application and the risks involved, before you
14 issued a quote to the policyholder?

15 A. Yes.

16 Q. And for this policy, was a policy bound
17 after you issued a quote?

18 A. Yes.

19 Q. And the word "binder" is used in insurance
20 world. What is a binder?

21 A. So, a binder is a -- is a contract that we
22 issue binding, so before they close the effective
23 date of the policy, which outlines all the terms and
24 conditions of the policy. And then that binder is
25 the working document until the actual policy is

1 issued because there's some -- a process, you know,
2 to actually get the policy issued with -- you know,
3 that's upwards of 80 to 100 pages.

4 And once that has been arranged, we then
5 issue a policy in a common manner to the wholesale
6 broker and that's very -- you know, that's industry
7 standard as well.

8 Q. So when a binder is completed, does that
9 mean coverage is effective as of that date?

10 A. That's correct.

11 Q. And that's even though the final policy
12 has not been assembled?

13 A. That's correct. We provide all the policy
14 forms that we used as part of the binder and that
15 will be actually the wording in the policy. And
16 typically if there's any questions around what those
17 policy forms are outlined in the binder, in the quote
18 binder, we routinely provide those documents upon
19 request from the broker.

20 Q. And for the A. Tebele & Sons policy at
21 issue here, did AmWINS SRU issue a binder?

22 A. Yes.

23 (Defendant's Exhibit No. 66 previously
24 marked for identification.)

25 BY MR. WATSON:

1 Q. I'm going to share my screen again. I'm
2 going to show you, first, Mr. Melvin, what's been
3 marked previously as Defendant's Exhibit 66.

4 It's a three-page exhibit. And it is an
5 e-mail dated January 15th, 2019 from a Hollan Delany.

6 Q. Where does Hollan Delany work?

7 A. She's with AmWINS Brokerage of the
8 Carolinas.

9 Q. So she works for that wholesale entity
10 that is the connection between AmWINS SRU and
11 Crescent Coast?

12 A. That's correct.

13 Q. All right. And Ms. Delany, on January
14 15th, is sending something to David. I'll ask you to
15 assume that's David Egan at Crescent Coast. And it
16 indicates that there's an attachment that says, "SRU
17 Binder." Is -- what is an SRU Binder? Is that the
18 some binder that you issue?

19 A. That is the binder that we've issued for
20 the policy.

21 Q. All right. So, the wholesale broker has
22 communicated to Crescent Coast in this e-mail that
23 there's a confirmation of coverage bound for the
24 client effective January 15th, 2019? Is that your
25 understanding when this policy was bound as well?

1 A. That's correct.

2 Q. And as part of the binding process, since
3 you're not sending the full 80 or 90-page policy on
4 January 15th, do you provide other type of
5 information to the retail agent, so that they can
6 understand what's in the policy?

7 A. Absolutely.

8 Q. And what does that take the form of?

9 A. That's the form of a quote. And the
10 quotation, as well as the binder document. We send
11 both of those documents. We provide detailed forms
12 lists of coverage, as well as different clauses that
13 we would require from clients. And then it's very
14 common, as I said earlier, for upon request there's
15 given the policy forms detail within the document.
16 We provide those policy forms to the client upon
17 request.

18 Q. And scrolling through to the end of this
19 exhibit, Ms. Delany communicated that the attached
20 binders set out the precise coverage terms and
21 conditions being bound. Would you -- is that an
22 accurate statement of what the binder does?

23 A. Yes.

24 Q. And then Crescent Coast is given
25 instructions to "Please review this information

1 carefully." And if they find any errors, to please
2 contact Ms. Delany immediately to discuss. Is that
3 the typical language that's used, when a binder is
4 issued in your experience?

5 A. Yes.

6 (Defendant's Exhibit No. 67 previously
7 marked for identification.)

8 BY MR. WATSON:

9 Q. Next I'm showing you what's been
10 previously marked as Defendant's Exhibit 67, which is
11 entitled "Binder Authorization." And it is on
12 letterhead that says AmWINS Special Risk
13 Underwriters. Is this the binder that you personally
14 and your company SRU issued?

15 A. Yes.

16 Q. And is this -- does this coincide,
17 correspond with the SRU binder that would have been
18 attached to the previous exhibit?

19 A. Yes.

20 Q. And this binder contains all the detailed
21 coverages and contents of the policy that you've
22 bound?

23 MR. DesCHAMPS: Objection.

24 THE WITNESS: Yes.

25 BY MR. WATSON:

1 Q. And on page 2, does this binder identify
2 the issuing companies that are providing the
3 insurance?

4 A. Yes.

5 Q. So you have the Underwriters at Lloyd's,
6 you have International Insurance Company of Hanover,
7 which is later renamed to be HDI Global Specialty,
8 SE, and then you have General Security Indemnity of
9 Arizona. So those would be the three insurers
10 providing the coverage?

11 A. That's correct.

12 Q. And then under "Comments and Conditions,"
13 there's a paragraph that says, "Protective
14 Safeguards." Why is that included here?

15 A. It's included as -- to outline the
16 specific safeguards that need to be complied with, in
17 order for the policy to be in effect. And so we've
18 detailed those protective safeguards within the
19 quotation, as well as, as you can see here in the
20 binder, express the terms transparently.

21 Q. Then scrolling down further, there's a
22 notation that says, "Binder Expiration, 90 days
23 Post-Inception of this Binder." What does that mean?

24 A. That means that the binder would expire
25 after 90 days of the effective date of issuance. And

1 as I've mentioned earlier, typically the -- within 30
2 to 60 days the actual, full policy is issued within
3 that time frame. And so at that point the policy
4 that's issued would then become the working document,
5 but not until then.

6 Q. Continuing further with the exhibit
7 there's a page entitled "Property Sublimits." This
8 just provides an explanation of the different types
9 of coverages and the different sublimits for them,
10 would you say?

11 A. That's correct.

12 Q. Scrolling down further to page 5 of the
13 exhibit, there's a page entitled "Common Forms:
14 Primary." Is this the list of forms you were talking
15 about earlier?

16 A. Yes.

17 Q. And so what are these different code
18 numbers where it says "SRU-001 0114? What are all
19 those numbers?

20 A. Yes. So those are the form numbers for
21 the forms that are in the issued policy. And so
22 those are outlined as kind of like a Table of
23 Contents, if you will, for -- for what SRU is
24 providing from a coverage standpoint.

25 So those same points would then show up

1 and be readily present in the policy, once the policy
2 is issued.

3 Q. And so instead of sending all of these
4 actual forms with the binder, you're sending just a
5 list with identifying numbers?

6 A. That's correct.

7 Q. And does the retail agent or the
8 policyholder have the ability to view any of these
9 forms, if they ask you?

10 A. Absolutely.

11 Q. Does that happen in your business on a
12 regular basis?

13 A. Yes. It happens routinely, yes.

14 Q. One of the forms that's listed under
15 "Common Forms" about midway through the page is
16 "SRU-024 0710, Protective Safeguards - Fire,"
17 correct?

18 A. Correct.

19 Q. And if the policyholder or their retail
20 agent, Crescent Coast, had questions about what was
21 contained, they knew as of the date of the binder
22 that this form was part of the policy?

23 MR. DesCHAMPS: Objection.

24 THE WITNESS: That's correct.

25 BY MR. WATSON:

1 Q. After -- after the policy is bound, can
2 terms of the policy be changed by the policyholder?

3 A. Yes. The process called an endorsement to
4 the policy is how that would take place, Andy. And,
5 typically, that request would have to come from the
6 retail agent, to the wholesale agent, to us, and then
7 we would have to review the endorsement request. And
8 if we were in agreement with that change, then we
9 would issue an endorsement, a physical endorsement to
10 the policy to amend those terms.

11 Q. And with regard to the A. Tebele & Sons
12 policies in those days and weeks after coverage was
13 bound, did they make requests for endorsements?

14 A. I don't recall exactly over that time
15 frame, Andy. But they didn't -- they didn't request
16 any endorsements to the protective safeguard
17 endorsement, if that's what you're asking.

18 (Defendant's Exhibit No. 91 previously
19 marked for identification.)

20 BY MR. WATSON:

21 Q. Well, let me see if I can help refresh
22 your recollection. I'm going to show you what's
23 marked as an exhibit, Defendant's 91. This is a
24 three-page exhibit. The first e-mail has a date of
25 January 31, 2019, but I'm going to scroll down to the

1 second e-mail authored by Mr. Egan from Crescent
2 Coast and have you read -- read that for a second.

3 Do you recognize that there are certain
4 requests for change that's being made to the A.
5 Tebele & Sons policy by way of this e-mail?

6 MR. VIDEOGRAPHER: Attorney Watson, it
7 hasn't appeared yet on the screen.

8 THE WITNESS: Yeah, it hasn't appeared.

9 MR. DesCHAMPS: I don't see it.

10 MR. WATSON: Oh, it had to happen some
11 time. (Laughter.) I'll start over.

12 BY MR. WATSON:

13 Q. Defendant's Exhibit 91. It's a three-page
14 exhibit. This is -- the first e-mail says,
15 "Thursday, January 31st, 2019." I'm starting down
16 lower, the second e-mail authored by David Egan on
17 that same date.

18 A. Yes.

19 Q. Do you recognize some changes being
20 requested by Mr. Egan from Crescent Coast on that
21 date?

22 A. I do see that.

23 Q. And so he's asking for certain addresses
24 to be modified, it appears, on this page?

25 A. Yes.

1 Q. And then on the next page of the same
2 exhibit, it appears there's a location being added
3 that was missed. It is a single-family dwelling?

4 A. Correct. I see that.

5 Q. And is -- is that kind of change, these
6 kind of communications requesting changes after the
7 binding has occurred, is that something that happens
8 regularly in your line of work?

9 A. Yes. It does happen regularly.

10 Q. And particularly with a 24-location policy
11 such as this, is that normal?

12 A. That is normal.

13 Q. And if at any point A. Tebele & Sons had
14 wanted to communicate a change that was needed for
15 the Protective Safeguard Endorsement, could they have
16 done it through the same fashion by sending an
17 e-mail?

18 MR. DesCHAMPS: Objection.

19 THE WITNESS: Yes.

20 BY MR. WATSON:

21 Q. And then at the end of the exhibit, to be
22 complete, there's another e-mail indicating they have
23 sent in requesting to endorse the address that was
24 discussed to add a Third Avenue house. So that's a
25 change that, from an underwriting standpoint, you can

1 make by way of an endorsement?

2 A. That's correct.

3 Q. And I think -- I think you already said it
4 in response to a different question, but was any
5 change request ever communicated by A. Tebele & Sons
6 for its retail agent, between the time of the binding
7 and February 24th, the date of the fire in this case?

8 A. Sorry. Say that one more time, Andy.

9 Q. Sure. Was there ever any request made to
10 modify the Protective Safeguard Endorsement between
11 the date of the binder and date of the fire?

12 A. No.

13 (Defendant's Exhibit No. 86 previously
14 marked for identification.)

15 BY MR. WATSON:

16 Q. All right. Let's shift gears and talk
17 about this particular policy that was bound. I'm
18 going to share my screen correctly again, hopefully,
19 this time. I'm showing you what's been marked as
20 Defendant's Exhibit 86.

21 The first few pages are an Affidavit you
22 prepared, but I'm -- I'm skipping ahead to the policy
23 itself attached to it, which is starting on page 5.

24 Do you recognize this page, where it says
25 "Property Declarations - Participating"?