RECEIVED
Jul 31 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS
THE HONORABLE B. ALEX HYMAN
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2024-000705
CIVIL ACTION NO. 2021-CP-26-00808

A. Tebele & Sons, a South Carolina General Partnership,

APPELLANT-RESPONDENT,

versus

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.

FINAL RESPONDENT'S BRIEF OF RESPONDENT-APPELLANT CRESCENT COAST INSURANCE, LLC

Caleb M. Riser (S.C. Bar No. 76738)
Carmen V. Ganjehsani (S.C. Bar No. 73515)
Hunter W. Adams (S.C. Bar No. 103526)
RICHARDSON, PLOWDEN & ROBINSON, PA
1900 Barnwell Street (29201)
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
criser@richardsonplowden.com
cganjehsani@richardsonplowden.com
hadams@richardsonplowden.com
ATTORNEYS FOR RESPONDENT-APPELLANT CRESCENT COAST INSURANCE, LLC

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES ii

COUNTERSTATEMENT OF ISSUES ON APPEAL..1

COUNTERSTATEMENT OF THE CASE...1

COUNTERSTATEMENT OF FACTS 4

STANDARD OF REVIEW 18

ARGUMENT..19

I. The Trial Court properly denied A. Tebele & Sons' motion for a new trial absolute or for a new trial *nisi additur* on the jury's award of $15,000.00 in damages on the breach of fiduciary duty cause of action because the evidence presented by A. Tebele & Sons at trial supports the jury's verdict...19

II. A. Tebele & Sons did not preserve for appellate review its argument that South Carolina's Valued Policy Statute serves as the measure of damages for its breach of fiduciary duty cause of action; furthermore, the statute does not establish a *per se* rule of damages against an insurance agent in a breach of fiduciary duty case 26

CONCLUSION..28

TABLE OF AUTHORITIES

CASES **PAGE**

Bailey v. Peacock,
318 S.C. 13, 455 S.E.2d 690 (1995) 22

Bank of New York v. Sumter Cty.,
387 S.C. 147, 691 S.E.2d 473 (2010) 26

Becker v. Wal–Mart Stores, Inc.,
339 S.C. 629, 529 S.E.2d 758 (2000) 21

Brinkley v. S.C. Dep't of Corrs.,
386 S.C. 182, 687 S.E.2d 54 (Ct. App. 2009) 22

Bryant v. Waste Mgmt., Inc.,
342 S.C. 159, 536 S.E.2d 380 (Ct. App. 2000) 24, 25

Daves v. Cleary,
355 S.C. 216, 584 S.E.2d 423 (Ct. App. 2003) 24

Div. of Gen. Servs. v. Ulmer,
256 S.C. 523, 183 S.E.2d 315 (1971), overruled on other grounds by McCall by Andrews v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985) 27

Foggie v. CSX Transp., Inc.,
315 S.C. 17, 431 S.E.2d 587 (1993) 23

Gold Kist, Inc. v. Citizens and Southern Nat'l Bank of S.C.,
286 S.C. 272, 333 S.E.2d 67 (Ct. App. 1985) 24

Green v. McGee,
441 S.C. 157, 892 S.E.2d 520 (Ct. App. 2023), cert. granted on other grounds (Nov. 13, 2024) 19

Harrison v. Bevilacqua,
354 S.C. 129, 580 S.E.2d 109 (2003) 24

Horn v. Davis Elec. Constructors, Inc.,
302 S.C. 484, 395 S.E.2d 724 (Ct. App. 1990) 23

Manios v. Nelson, Mullins, Riley & Scarborough, LLP,
389 S.C. 126, 697 S.E.2d 644 (Ct. App. 2010) 25

Moore v. Moore,
360 S.C. 241, 599 S.E.2d 467 (Ct. App. 2004).. 23, 24

Nelson v. Harris,
441 S.C. 379, 893 S.E.2d 592 (Ct. App. 2023).. 25

O'Neal v. Bowles,
314 S.C. 525, 431 S.E.2d 555 (1993) 18, 25

Republic Textile Equip. Co. of S.C. v. Aetna Ins. Co.,
293 S.C. 381, 360 S.E.2d 540 (Ct. App. 1987).. 27

Todd v. Joyner,
385 S.C. 509, 685 S.E.2d 613 (Ct. App. 2008), aff'd, 385 S.C. 421, 685 S.E.2d 595 (2009)... 21, 22

Verenes v. Alvanos,
387 S.C. 11, 690 S.E.2d 771 (2010) 23

Vinson v. Hartley,
324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996).. 22

Waring v. Johnson,
341 S.C. 248, 533 S.E.2d 906 (Ct. App. 2000).. 22

STATUTES

S.C. CODE ANN. § 38-75-20.. 26

COUNTERSTATEMENT OF ISSUES ON APPEAL

I. The Trial Court properly denied A. Tebele & Sons' motion for a new trial absolute or for a new trial *nisi additur* on the jury's award of $15,000.00 in damages on the breach of fiduciary duty cause of action because the evidence presented by A. Tebele & Sons at trial supports the jury's verdict.

II. A. Tebele & Sons did not preserve for appellate review its argument that South Carolina's Valued Policy Statute serves as the measure of damages for its breach of fiduciary duty cause of action; furthermore, the statute does not establish a *per se* rule of damages against an insurance agent in a breach of fiduciary duty case.

COUNTERSTATEMENT OF THE CASE

This litigation stems from certain insurers' denial of an insurance claim submitted by A. Tebele & Sons for real property damaged in a fire. The insurers denied the claim under a Protective Safeguards – Fire Endorsement which the insurers contend required the damaged property to contain an operational automatic sprinkler system. A. Tebele & Sons brought a lawsuit not only against the insurers seeking coverage, but also asserted claims in the alternative against Respondent-Appellant Crescent Coast Insurance, LLC for the purported failure to procure insurance coverage and breaches of fiduciary duties.

On February 3, 2020, A Tebele & Sons filed a Complaint in the Court of Common Pleas for Horry County against Insurers Certain Underwriters at Lloyd's, HDI Global Specialty SE, and General Security Indemnity Company of Arizona (collectively, the "Insurers") for breach of contract and bad faith. [R.pp. 15-25; Compl.] In the alternative, A. Tebele & Sons alleged claims of negligence and breach of fiduciary duty against Crescent Coast. [R.pp. 25-28; Id.] In its Complaint, A. Tebele & Sons specifically pled Crescent Coast breached its fiduciary duties owed to A. Tebele & Sons by "continuing to collect fees and commissions off the sale of the [insurance policy] . . . ." [R.p. 27; Id. at ¶ 73.]

On March 30, 2020, the Insurers answered the Complaint. [R.pp. 29-106; Insurers' Answers.] On May 8, 2020, Crescent Coast also answered the Complaint, denying its material allegations. [R.pp. 107-113; Answer.]

On December 4, 2023, the case proceeded to trial before The Honorable B. Alex Hyman and a jury. [R.p. 330; Tr. p. 1.] Crescent Coast moved for a directed verdict on A. Tebele & Sons' causes of action for negligence and breach of fiduciary duty, including that it owed no fiduciary duty, at the close of the plaintiff's case and renewed its motion for a directed verdict at the close of the evidence presented in defense. [R.pp. 1262, l. 24 – 1276, l. 4; 1353, ll. 13-19; Id. at pp. 1086, l. 24 – 1100, l. 4; 1182, ll. 13-19.] In support of its motion for directed verdict, Crescent Coast incorporated its previously filed motion for summary judgment and memorandum of law in support of the same. [R.pp. 1263, ll. 8-10; 215-19; 220-28; Id. at p. 1087, ll. 8-10; Mtn. for Summary Judgment filed Nov. 22, 2023; Memo. of Law in Support filed Nov. 30, 2023.] The Trial Court denied the motions for directed verdict. [R.pp. 1271, ll. 7-9; 1275, l. 22 – 1276, l. 4; 1353, ll. 18-19; Tr. pp. 1095, ll. 7-9; 1099, l. 22 – 1100, l. 4; 1182, ll. 18-19.]

On December 13, 2023, the jury rendered their verdict. The jury found for the Insurers on the breach of contract and bad faith claims. [R.pp. 7-13; 1454, l. 24 – 1455, l. 12; Verdict Form; Tr. pp. 1335, l. 24 – 1336, l. 12.] On the negligence claim against Crescent Coast, the jury found Crescent Coast was negligent and that such negligence proximately caused the injuries of A. Tebele & Sons, but also found that A. Tebele & Sons was sixty percent (60%) negligent. Therefore, A. Tebele & Sons was barred from recovering damages from Crescent Coast on its negligence claim. [R.pp. 7-13; 1455, ll. 3-25; Verdict Form; Tr. p. 1336, ll. 13 – 25.]

On the breach of fiduciary duty claim against Cresent Coast, the jury found for A. Tebele & Sons and awarded $15,000.00 in actual damages. [R.pp. 7-13; 1455, l. 25 – 1456, l. 8; Verdict Form; Tr. pp. 1336, l. 25 – 1337, l. 8.]

On December 21, 2023, A. Tebele & Sons filed post-trial motions against the Insurers and Crescent Coast. [R.pp. 238-74; Post-Trial Mtns.] As to Crescent Coast, A. Tebele & Sons moved for a new trial absolute on the negligence[1] and breach of fiduciary duty causes of action or, in the alternative, a new trial *nisi* additur on the breach of fiduciary duty cause of action. [R.pp. 238-49; Post-Trial Mtn.] Crescent Coast filed an opposition to the post-trial motion on January 10, 2024. [R.pp. 316-29; Memo. in Opp.] The Trial Court denied A. Tebele & Sons' post-trial motions as to both the Insurers and Crescent Coast on April 8, 2024. [R.pp. 1-6; Orders.]

A. Tebele & Sons appealed to this Court on April 29, 2024. Crescent Coast filed a cross-appeal to this Court on the jury's verdict as to the breach of fiduciary duty claim on May 6, 2024.

In its cross-appeal, Crescent Coast has challenged whether it, as an insurance agent in an arms-length business transaction with A. Tebele & Sons, owed any fiduciary duty to A. Tebele & Sons. Crescent Coast has requested this Court to reverse the Trial Court's denial of its directed verdict motion on the breach of fiduciary duty claim. Further, Crescent Coast has argued in its cross-appeal that should this Court conclude in the primary appeal of A. Tebele & Sons that coverage for its fire loss exists under the policy issued by the

---

[1] In its motion for a new trial absolute, A. Tebele & Sons made no argument that the jury's determination as to the merits of the negligence claim should be disturbed by the Trial Court. A. Tebele & Sons limited its motion to the basic argument that the damages awarded under the breach of fiduciary duty cause of action were insufficient. [R.pp. 238-49; Post-Trial Mtn.]

Insurers, then Crescent Coast as a matter of law cannot be liable for negligence and breach of fiduciary duty for the failure to procure insurance coverage and the jury's verdict should be reversed on this additional ground.

COUNTERSTATEMENT OF FACTS RELATING TO CRESCENT COAST

A. Tebele & Sons is a South Carolina general partnership which oversees the leasing and management of twenty-three (23) commercial properties valued at approximately $22 million. [R.pp. 895, ll. 1-4; 1011, ll. 22-24; 1014, ll. 21-25; 1060, ll. 3-10; Tr. pp. 695, ll. 1-4; 813, ll. 22-24; 816, ll. 21-25; 862, ll. 3-10.] It has been in the business for twenty-five (25) to thirty (30) years. [R.p. 1014, ll. 21-24; Id. at p. 816, ll. 21-24.] Abraham Tebele operates and manages the day-to-day business for A. Tebele & Sons, including making decisions regarding the insurance for the commercial properties he manages. [R.pp. 1015, ll. 8-16; 1016, ll. 1-6; Id. at pp. 817, ll. 8-16; 818, ll. 1-6.] The property at issue in this litigation which is leased and managed by A. Tebele & Sons is located at 1901 North Kings Highway, Myrtle Beach, South Carolina ("1901 North Kings Property") and is titled in the name of Kings Realty, LP. [R.pp. 16; 1010, ll. 22-24; Compl. ¶ 3; Tr. p. 812, ll. 22-24.]

Mr. Tebele is a sophisticated insurance buyer who has managed millions of dollars of property over the past twenty-five (25) to thirty (30) years. Mr. Tebele, who has had to renew insurance coverage for his commercial properties each year, is well experienced in procuring insurance coverage. [R.pp. 653, l. 22 – 654, l. 9; 739, ll. 12-23; 925, l. 12 – 926, l. 4; 1016, l. 21 – 1018, l. 15; 1059, l. 9 – 1060, l. 8; Tr. pp. 441, l. 22 – 442, l. 9; 531, ll. 12-23; 725, l. 12 – 726, l. 4; 818, l. 21 – 820, l. 15; 861, l. 9 – 862, l. 8.]

Mr. Tebele met Joey Sutherland through the restaurant business. [R.pp. 715, ll. 4-15; 958, l. 24 – 959, l. 16; Id. at pp. 507, ll. 4-15; 758, l. 24 – 759, l. 16.] Mr. Sutherland had previously worked for a restaurant tenant of Mr. Tebele's who occupied the 1901 North Kings Property. [R.p. 713, ll. 1016; Id. at p. 505, ll. 10-16.] Mr. Sutherland also began working in the insurance retail business in 2010, initially with an agency called Global Risk Partners. [R.p. 733, ll. 9-25; Id. at p. 525, ll. 9-25.] Mr. Sutherland, being an insurance agent, would contact Mr. Tebele from time to time offering to help Mr. Tebele secure insurance for his commercial properties. [R.pp. 715, ll. 16-23; 716, ll. 15-23; 719, ll. 17-25; 958, ll. 1-3; 960, ll. 14-18; Id. at pp. 507, ll. 16-23; 508, ll. 15-23; 511, ll.17-25; 758, ll. 1-3; 760, l. 14-18.]

Mr. Sutherland joined Crescent Coast in March 2018. [R.pp. 710, l. 22 – 711, l. 7; 715, l. 24 – 716, l. 5; Id. at pp. 502, l. 22 – 503, l. 7; 507, l. 24 – 508, l. 5.] Crescent Coast is a retail property and casualty insurance agency co-owned by David Egan. [R.p. 847, ll. 7-24; Id. at p. 647, ll. 7-24.] As a retail insurance agency, Crescent Coast does not write insurance policies, does not underwrite policy requests, or put together insurance policies. [R.pp. 737, ll. 5-18; 888, l. 21 – 889, l. 2; Id. at pp. 529, ll. 5-18; 688, l. 21 – 689, l. 2.] Likewise, a retail agency does not make coverage decisions. [R.p. 889, ll. 3-4; Id. at p. 689, ll. 3-4.]

Instead, Crescent Coast, as a retail insurance agency, assists in gathering information from prospective clients and compiling such information into applications to send to carriers and brokers for the purpose of seeking insurance coverage on behalf of the prospective clients. [R.pp. 848, ll. 3-10; 889, ll. 5-25; Id. at pp. 648, ll. 3-10; 689, ll. 5-25.]

In that sense, Crescent Coast acts as a liaison between persons seeking insurance coverage and the carriers and brokers. [R.p. 848, ll. 5-6; Id. at p. 648, ll. 5-6.]

In the summer of 2018, Mr. Tebele decided to seek insurance quotes for his twenty-three (23) commercial properties which were under policies that would expire on January 15, 2019 and would need to be renewed. With that in mind, Mr. Tebele agreed to meet with Crescent Coast to give it "a shot" to see if it could save him money. [R.pp. 720, l. 1 – 721, l. 1; 890, l. 17 – 891, l. 4; 960, ll. 19-25; 957, ll. 5-13; Id. at pp. 512, l. 1 – 513, l. 1; 690, l. 17 – 691, l. 4; 760, ll. 19-25; 775, ll. 5-13.] Mr. Tebele began meeting with Mr. Sutherland and Mr. Egan in August of 2018 to prepare the initial Acord applications to be used in obtaining the insurance quotes. [R.pp. 739, l. 24 – 740, l. 1; 890, ll. 10-16; 891, ll. 14-24; Id. at pp. 531, l. 24 - 532, l. 1; 690, ll. 10-16; 691, ll. 14-24.] An Acord form is a standard independent agent form which retail agencies use to gather underwriting information from prospective clients to send to insurance carriers and brokers so that such carriers and brokers can assess whether they can undertake the risk and provide a quote for coverage. [R.pp. 669, ll. 20-23; 891, ll. 8-13; Id. at pp. 461, ll. 20-23; 691, ll. 8-13.]

When Mr. Egan and Mr. Sutherland met with Mr. Tebele in August of 2018, they reviewed the information needed regarding Mr. Tebele's twenty-three (23) commercial properties. Mr. Sutherland testified they went through each property with Mr. Tebele and verified information for each one, including, as relevant for this case, whether a particular building was sprinklered or not. [R.pp. 721, ll. 3-9; 744, l. 1 – 745, l. 7; Id. at pp. 513, ll. 3-9; 536, l. 1 – 537, l. 7.] Mr. Tebele agreed at trial that he, Mr. Egan, and Mr. Sutherland thoroughly went through each piece of property. [R.p. 1035, ll. 2-12; Id. at p. 837, ll. 2-12.] Crescent Coast had no interest, financial or otherwise, in whether a building was

sprinklered or not; it simply wanted to gather accurate information from Mr. Tebele to obtain proper quotes from the carriers. [R.pp. 745, ll. 14-24; 924, l. 25 – 925, l. 3; Id. at pp. 537, ll. 14-24; 724, l. 25 – 725, l. 3.]

Mr. Egan and Mr. Sutherland both testified that Mr. Tebele informed them a sprinkler system was being installed at the 1901 North Kings Property, that the system covered 100% of the property, and the sprinkler system was expected to be fully functioning well before the policy renewal date of January 15, 2019. As such, Mr. Egan and Mr. Sutherland testified Mr. Tebele instructed them to mark the 1901 North Kings Property as being 100% sprinklered on the Acord application. [R.pp. 746, l. 11 – 747, l. 1; 892, ll. 6-18; 1065, l. 26 – 1067, l. 17; Id. at pp. 538, l. 11 – 539, l. 1; 692, ll. 6-18; 867, l. 25 – 869, l. 17; P. Ex. 9 (Acord application dated Aug. 20, 2018).] In total, five (5) of the twenty-three (23) properties were marked on the Acord form as sprinklered. [R.pp. 745, l. 25 – 746, l. 4; 891, l. 25 – 892, l. 5; Tr. pp. 537, l. 25 – 538, l. 4; 691, l. 25 – 692, l. 5.]

Crescent Coast relied upon the information given by Mr. Tebele in marking the 1901 North King Property as 100% sprinklered on the Acord Form. [R.p. 737, ll. 24-25; Id. at p. 529, ll. 24-25.] Mr. Egan testified that Crescent Coast is not in a position to verify every single piece of information given by a prospective client and that it would be virtually impossible to do so given the number of Crescent Coast clients and prospective clients which nears almost 2,500. [R.pp. 893, l. 15 – 894, l. 12; Id. at pp. 693, l. 15 – 694, l. 12.] Terry Tadlock, Crescent Coast's standard of care expert, confirmed at trial that it is the normal practice of insurance agents to rely upon the information given to them by prospective clients as accurate without following up on such information. [R.pp. . 1284, l.

24 – 1285, l. 8; 1292, l. 21 – 1294, l. 13; Id. at pp. 1113, l. 24 – 1114, l. 8; 1121, l. 21 – 1123, l. 13.]

Mr. Egan further testified that a property owner is more knowledgeable about a piece of its property and its features, such as its value, square footage, and safety features, than Crescent Coast. [R.p. 894, ll. 13-25; Id. at p. 694, ll. 13-25.] Mr. Tebele also never had any questions of Mr. Egan or Mr. Sutherland about coverage or any exclusions or endorsements. [R.pp. 749, l. 25 – 750, l. 2; 925, ll. 4-6; Id. at pp. 541, l. 25 – 542, l. 2; 725, ll. 4-6.]

It is undisputed that Mr. Tebele never updated or otherwise informed Crescent Coast of the status of the sprinkler installation at any point in time after that August 2018 meeting. [R.pp. 749, ll. 5-8; 893, ll. 8-14; 926, l. 23 – 927, l. 10; Id. at pp. 541, ll. 5-8; 693, ll. 8-14; 726, l. 23 – 727, l. 10.] Mr. Tebele himself confirmed that he never updated Crescent Coast as to the status of the sprinkler system after August 2018. [R.p. 1093, ll. 8-11; Id. at p. 895, ll. 8-11.]

On August 20, 2018, Mr. Egan initially submitted the Acord forms for A. Tebele & Sons' properties, including the 1901 North Kings Property, via e-mail to Whitney Gurtzweiler n/k/a Whitney Northcutt, an underwriter with AmWins Access Insurance, seeking a quote for property, excess, and general liability coverage. [R.pp. . 662, l. 5 – 664, l. 2; 668, l. 1 – 669, l. 20; 740, l. 2 – 742, l. 20; 896, ll. 5-14; 1684-1709; Id. at pp. 454, l. 5 – 456, l. 2; 460, l. – 461, l. 20; 532, l. 2 – 534, l. 20; 696, ll. 5-14; P. Ex. 9 (Aug. 20, 2018 e-mail with application).] The properties were too large for AmWins Access to handle, so Ms. Northcutt referred the risk to Barrett Sellers of AmWins Brokerage of the Carolinas ("AmWins Brokerage") to see if he could quote coverage. [R.pp. 671, ll. 10-21; 697, ll. 5-

10; 896, ll. 15-25; 1710; Tr. pp. 463, ll. 10-21; 489 ll. 5-10; 696, ll. 15-25; P. Ex. 10 (E-mail to Sellers).]

From August 2018 to January 2019, Crescent Coast continued to gather quotes for Mr. Tebele for insurance coverage. Mr. Tebele also continued to seek quotes from his current insurance agency at the time, McGriff Insurance, to see who could obtain him the most favorable insurance premiums. [R.pp. 751, ll. 2-6, 19-22; 882, ll. 6-13; 897, ll. 1-7; 899, l. 21 – 900, l. 4; 967, ll. 3-7; 1032, ll. 1-14; Tr. pp. 543, ll. 2-6, 19-22; 682, ll. 6-13; 697, ll. 1-7; 699, l. 21 – 700, l. 4; 767, ll. 3 – 7; 834, ll. 1-14.]

Crescent Coast received a quote for coverage from AmWins Special Risk Underwriters. [R.pp. 2088; D. Ex. 64 (Quote).] The quote indicated that the policy would require a Protective Safeguards Endorsement, including an automatic sprinkler system for the properties that were indicated as sprinklered on the Acord form. [R.pp. 900, l. 5 – 902, l. 15; 2088; Tr. pp. 700, l. 5 – 702, l. 15; D. Ex. 64.]

On Friday, January 11, 2019, Mr. Egan sent Mr. Tebele the insurance quote and the Acord application for Mr. Tebele to sign through DocuSign. Mr. Tebele responded that he had printed it out, but needed until Monday to review. [R.pp. 897, l. 10 - 899, l. 17; 902, ll. 4-7; Tr. pp. 697, l. 10 – 699, l. 17; 702, ll. 4-7.] Mr. Tebele also indicated in his responses to Mr. Egan that he was still working with his current agency and had not fully committed to Crescent Coast yet. [R.pp. 899, l. 16 – 900, l. 4; Id. at pp. 699, l. 16 – 700, l. 4.] At trial, Mr. Tebele testified that he had initially informed Mr. Egan that he was "going to stick with [his] existing broker." [R.p. 982, ll. 4-9; Id. at p. 782, ll. 4-9.]

On January 14, 2019, Mr. Tebele ultimately chose Crescent Coast over his current agent because Crescent Coast was able to give him an overall better premium. [R.pp. 751,

ll. 10-18; 904, ll. 13-24; 982, l. 12 – 984, l. 10; 1085, l. 16 – 1088, l. 7; Id. at pp. 543, ll. 10-18; 704, ll. 13-24; 782, l. 12 – 784, l. 10; 887, l. 16 – 890, l. 7.] On January 14, 2019, Mr. Tebele executed a signed Acord application, which was submitted to AmWins Brokerage. [R.pp. 1744-78; P. Ex. 25 (Application).]

It is uncontroverted that the application noted the 1901 North Kings Property was "100%" sprinklered. [R.pp. 1009, ll. 8-24; 1764; Tr. pp. 811, ll. 8-24; P. Ex. 25.] It is also undisputed Mr. Tebele, after having three days to review the application, acknowledged by his signature that the information contained on the application was true and accurate to the best of his knowledge. [R.pp. 738, ll. 1-3; 902, l. 17 – 904, l. 8; 1035, l. 25 – 1036, l. 6; 1755; Tr. pp. 530, ll. 1-3; 702, l. 17 - 704, l. 8; 837, l. 25 – 838, l. 6; P. Ex. 25.] Also, the application, containing the information supplied by Mr. Tebele, indicated the value of the 1901 North Kings Property was $2,500,000. [R.p. 1764; P. Ex. 25.]

The total amount of commission to be earned by Crescent Coast was approximately $17,000.00[2] – which was determined as 10% percentage of the total premium for all three policies (property, excess and general liability) obtained by Crescent Coast for Mr. Tebele. [R.pp. 727, ll. 16-24; 760, l. 18 – 761, l. 11; 872, l. 15 – 873, l. 4; Tr. pp. 519, ll. 16-24; 552, l. 18 – 553, l. 11; 672, l. 15 – 673, l. 4.] At trial, A. Tebele & Sons emphasized the sizable amount of the commission earned by Crescent Coast in the testimony presented to the jury. [R.pp. 759, l. 19 – 761, l. 11; 1322, l. 6 – 1324, l. 15; Id. at pp. 551, l. 19 – 553, l. 11; 1151, l. 6 – 1153, l. 15.]

---

[2] Notably, Crescent Coast waived the commissions for the excess and general liability policies prior to Mr. Tebele agreeing to go with Crescent Coast for his 2019 insurance policies. [R.pp. 767, l. 21 – 768, l. 7; 923, l. 14 – 924, l. 24; Tr. pp. 559, l. 21 – 560, l. 7; 723, l. 14 – 724, l. 24.]

In tandem with the testimony regarding the commission earned by Crescent Coast, A. Tebele & Sons also questioned before the jury whether Mr. Sutherland had a license to sell or solicit insurance at the time the policy for A. Tebele & Sons was procured. While Mr. Sutherland maintained that he was licensed at that time, counsel for A. Tebele & Sons nevertheless insisted at trial that he was unlicensed while receiving approximately 40% ($6,800.00) of the total commission ($17,000.00) earned by Crescent Coast. [R.pp. 725, l. 6 – 726, l. 5; 727, l. 16 – 728, l. 9; 734, l. 1 – 735, l. 4; 759, l. 19 – 764, l. 9; 933, ll. 9-16; 935, l. 13 – 936, l. 12; Id. at pp. 517, l. 6 – 518, l. 5; 519, l. 16 – 520, l. 9; 526, l. 1 – 527, l. 4; 551, 19 – 556, l. 9; 733, ll. 9-16; 735, l. 13 – 736, l. 12.] Mr. Tebele testified that he would not have purchased a policy from an unlicensed agent if he had been privy to such information. [R.pp. 961, l. 15 – 962, l. 10; Id. at pp. 761, l. 15 – 762, l. 10.]

Counsel for A. Tebele & Sons also elicited testimony from Terry Tadlock, Crescent Coast's standard of care expert, that it would not be proper for an unlicensed agent to receive a commission. [R.pp. 1312, l. 25 – 1318, l. 8; Id. at pp. 1141, l. 25 – 1147, l. 8.] Mr. Tadlock testified that if an agent is proven to be unlicensed, then that agent should not be paid a commission. [R.pp. 1317, l. 24 – 1318, l. 8; 1321, l. 15 – 1322, l. 5; Id. at pp. 1146, l. 24 – 1147, l. 8; 1150, l. 15 – 1151, l. 5.] Counsel for A. Tebele & Sons also questioned Mr. Tadlock on whether Crescent Coast or Mr. Egan had any responsibility to ensure its agents were licensed. [R.pp. 1318, l. 9 – 1318, l. 23; Id. at pp. 1147, l. 9 – 1148, l. 23.]

The policy was bound on January 15, 2019. Once the policy was bound, A. Tebele & Sons became a client of Crescent Coast. [R.pp. 750, l. 14 – 751, l. 1; 1298, ll. 9-14; Id. at pp. 542, l. 14 - 543, l. 1; see also id. at p. 1127, ll. 9-14 (testimony of Terry Tadlock,

Crescent Coast's expert, corroborating that a prospective insured is not a client of a retail insurance agency during the negotiation period and only becomes a client once the policy is bound).]

A commercial property insurance binder, which is proof of insurance, was provided to Mr. Tebele by Mr. Egan on January 17, 2019. [R.pp. 906, l. 2 – 907, l. 17; 1962-67; 1971-72; Id. at pp. 706, l. 2 – 707, l. 17; D. Ex. 25 (Binder); D. Ex. 28 (Jan. 17, 2019 e-mail from Egan to Tebele).] The binder indicated which coverage forms were included with the policy, including the Protective Safeguard Endorsement requiring an automatic sprinkler system. The property insurance coverage for the subject property was $2,500,000 (based on Mr. Tebele's information). The policy likewise contained coverage for lost business income with limits of $100,000 and coverage for internal contents of $250,000. Thus, the total policy amount relevant to this case was $2,850,000. [R.pp. 1962-67; D. Ex. 25.]

Mr. Tebele never asked Mr. Egan any questions about any of the provisions of the binder. [R.p. 907, ll. 18-25; Tr. p. 707, ll. 18-25.] Mr. Tebele, however, did request several revisions post-binding, including the correction of certain property addresses that Mr. Tebele had left off the application. [R.pp. 908, l. 1 – 909, l. 23; 910, ll. 20-22; 2090; Id. at pp. 708, l. 1 – 709, l. 23; 710, ll. 20-22; D. Ex. 109 (Jan. 30, 2019 e-mail requesting additions).] Mr. Egan immediately had those properties added and submitted to the underwriter. [R.pp. 910, l. 23 – 911, l. 1; Tr. pp. 710, l. 23 – 711, l. 1.] To handle the requested changes, the carrier had to issue endorsements to the policy. [R.p. 913, ll. 3-13; Id. at p. 713, ll. 3-13.]

After the policy was bound, Mr. Egan was waiting on the completed policy, including all endorsements, before he delivered a hard copy to Mr. Tebele. A retail insurance agency, such as Crescent Coast, does not deliver the insurance policy to the insured until the entirety of the policy is received by the agency complete with all endorsements. [R.pp. 912, l. 25 – 915, l. 2; Id. at pp. 712, l. 25 – 715, l. 2.] Crescent Coast received most of the policy on February 7, 2019, but was still waiting for the endorsements. [R.pp. 914, ll. 12-24; 2078; Id. at p. 714, ll. 12-24; D. Ex. 34 (Feb. 7, 2019 e-mail to Egan).]

Crescent Coast's expert, Mr. Tadlock, made clear to the jury that it is appropriate for an insurance agent to ensure all policy documents are received, organized, and reviewed for accuracy before production to the client. [R.pp. 1290, l. 5 – 1292, l. 4; Tr. pp. 1119, l. 5 – 1121, l. 4.] Mark Melvin, an underwriter with AmWins Special Risk Underwriters, also confirmed that a policy is not complete until all endorsements are issued and received. [R.pp. 1465, ll. 21-22; 1520 l. 9 – 1521, l. 18; Melvin Dep. Tr. pp. 8, ll. 21-22; 63, l. 9 - 64, l. 18.] Even though a hard copy of the entire policy had not yet been delivered to Mr. Tebele, the twenty-three (23) properties were covered by the policy, subject to its terms and conditions. [R.pp. 1465, ll. 21-22; 1520 l. 9 – 1521, l. 18; Tr. pp. 717, l. 24 – 718, l. 1.]

Meanwhile, the sprinkler system for the 1901 North King Property was never fully completed. Around 2017, Mr. Tebele retained Crawford Sprinkler Company ("Crawford Sprinkler") to install the sprinkler system for the property. [R.pp. 461, ll. 19-25; 467, ll. 8-15; 468, ll. 13-16; 472, l. 23 – 473, l. 23; 1021, l. 24 – 1022, l. 3; Id. at pp. 231, ll. 19-25; 237, ll. 8-15; 238, ll. 13-16; 242, l. 23 – 243, l. 23; 823, l. 24 – 824, l. 3.] Mike Dover, who was employed with Crawford Sprinkler, testified at trial that after all the piping for the sprinkler system was installed inside the building, a service line was needed to be brought

into the building to connect the interior pipe to the city's main line for the water supply. [R.pp. 461, ll. 1-18; 464, l. 13 – 465, l. 2; Id. at pp. 231, ll. 1 – 18; 234, l. 13 – 235, l. 2.] Crawford Sprinkler did not actually perform this type of work. Therefore, Mr. Tebele retained Carolina Tap & Bore ("Carolina Tap"), a utility contractor, to conduct this work. [R.pp. 474, l. 24 – 476, l. 1; 497, ll. 18-20; Id. at pp. 244, l. 24 – 246, l. 1; 267, ll. 18-20.]

Carolina Tap installed most of the line that was to connect the city's water supply to the interior pipes, but still had ten (10) to fifteen (15) feet remaining that needed to be installed to reach the building. Carolina Tap needed to bring to the line to the building and bring it through the wall to connect to the interior pipes. [R.pp. 476, l. 21 – 477, l. 6; Id. at pp. 246, l. 21 – 247, l. 6.] Mr. Dover testified that in August 2018, Crawford Sprinkler's work was about ninety (90) to ninety-five (95) percent complete, but it would have to install the riser that would connect to the underground once Carolina Tap was finished bringing the line inside the building. [R.pp. 481, ll. 101-16; 482, l. 24 – 483, l. 7; Id. at pp. 251, ll. 10-16; 252, l. 24 – 253, l. 7.]

On February 13, 2019, Mr. Dover, Mr. Tebele, and a representative from Carolina Tap met at the 1901 North King Property. Carolina Tap's work had not been completed. The main line from the city's water supply still had not been brought inside the building. Mr. Dover testified that Mr. Tebele saw at this meeting that the sprinkler system was not connected. [R.pp. 485, ll. 9-25; 490, l. 16 – 491, l. 2; 499, ll. 18-20; 1023, ll. 3-6; Id. at pp. 255, ll. 9-25; 260, l. 16 – 261, l. 2; 269, ll. 18-20; 825, ll. 3-6.] Mr. Dover further testified he kept Mr. Tebele informed throughout the sprinkler system installation process and that Mr. Tebele knew in August 2018, January 2019, and February 2019 that the sprinkler system had not been completely installed. [R.pp. 494, ll. 5-8; 498, ll. 2-26; Id. at pp. 264,

ll. 5-8; 268, ll. 2-16.] At trial, Mr. Tebele admitted he never informed Crescent Coast, even after the February 13, 2019 meeting, that the sprinkler system was not actually connected even though he was aware of that fact. [R.pp. 1023, ll. 3-21; 1052, ll. 10-13; Id. at pp. 825, ll. 3-21; 854, ll. 10-13.]

The 1901 North Kings Property was severely damaged by fire on February 24, 2019. When the fire occurred, the sprinkler system was still not completed or operational. [R.pp. 444, ll. 15-20; 486, l. 25 – 487, l. 4; 491, ll. 3-17; Id. at pp. 214, ll. 15-20; 256, l. 25 – 257, l. 4; 261, ll. 3-17.] Mr. Dover testified that at the time of the fire, there was still construction that had to be done to finish making the connection inside the building to the city's water supply and that a fire alarm also needed to be completed and connected as well. [R.p. 488, ll. 16-22; Id. at p. 258, ll. 16-22.] At trial, Mr. Tebele acknowledged the sprinkler system was still under construction at the time of the fire. [R.pp. 970, ll. 22-24; 972, l. 2 – 973, l. 14; Id. at pp. 770, ll. 22-24; 772, l. 2 – 773, l. 14.]

After the fire, Mr. Tebele retained James Twaddell, a public insurance adjuster, to assist with his insurance claim under the policy issued by the Insurers. [R.pp. 504, ll. 1-18; 507, ll. 11-22; Id. at pp. 292, ll. 1-18; 295, ll. 11-22.] On March 8, 2019, approximately two weeks after the fire, Mr. Tebele exchanged e-mail correspondence with Mr. Twaddell in which he theorized that storms may have delayed the completion of the sprinkler work and noted "[t]here was no way to have foreseen that it would not be connected by the time this policy was binded." [R.pp. 564, l. 19 – 565, l. 22; 566, ll. 1-12; 1050, ll. 3-14; 2087; Id. at pp. 352, l. 19 - 353, l. 22; 354, ll. 1-12; 852, ll. 3-14; D. Ex. 55-F (Mar. 8, 2019 e-mail).]

On April 5, 2019, Mr. Tebele again wrote in an e-mail to Mr. Twaddell with regard to the sprinkler system that "[t]here may have been delays that were beyond anyone's control. Don't forget at the time the broker [Crescent Coast] filled out the application and obtained the final quote the full expectation was that the connection work would take a week to two weeks which would have been well in advance of the loss and made all of this a moot issue." [R.pp. 570, l. 8 – 571, l. 23; 1050, ll. 15-20; 2085-86; Tr. pp. 358, l. 8 – 359, l. 23; 852, ll. 15-20; D. Ex. 55-E (April 5, 2019 e-mail).]

Mr. Tebele's statements in the March 8 and April 5 e-mails were consistent with what he told Mr. Egan and Mr. Sutherland in August 2018 about the status of the sprinkler system – that the completion of the system would be done well before the January 2019 policy renewal. [R.pp. 747, l. 10 – 749, l. 4 ; 892, l. 19 – 893, l. 7; 1067, l. 18 – 1070, l. 16; Tr. pp. 539, l. 10 – 541, l. 4; 692, l. 19 – 693, l. 7; 869, l. 18 – 872, l. 16.]

On August 6, 2019, the Insurers denied coverage for the insurance claim under the policy, citing the language of the Protective Safeguards - Fire Endorsement which required a functioning sprinkler system. [R.pp. 2081-84; D. Ex. 46 (Denial Letter).]

At trial, in the plaintiff's case-in-chief, Mr. Tebele presented testimony from his independent adjuster, James Twaddell, and expert Gerald Finkel. Neither offered any testimony that Crescent Coast breached any applicable standard or duty of care or owed any duties to A. Tebele & Sons or Mr. Tebele.

Mr. Tebele admitted at trial that Crescent Coast had no role in his companies and had no role in the decisions concerning the sprinkler system at the 1901 North Kings Property. He also conceded that no one at Crescent Coast ever informed him they were experts in sprinkler system installation. He acknowledged he was not asking anything more

of Crescent Coast than he was from his current insurance agent. [R.pp. 1060, l. 17 – 1061, l. 22; Tr. pp. 862, l. 17 – 863, l. 22.] Mr. Dover also testified that Crawford Sprinkler had never dealt with Crescent Coast during the work performed on the 1901 North Kings Property. [R.p. 500, ll. 1-4; Id. at p. 270, ll. 1-4.]

At trial, Mr. Tebele repeatedly referenced a January 11, 2019 email from Crescent Coast to Whitney Northcutt of AmWins Access. Crescent Coast had also acted as the retail agent for Melissa Garcia, a tenant of the 1901 North Kings Property who operated the La Casona Restaurant. AmWins Access was the underwriter for the tenant insurance policy. [R.pp. 849, ll. 1-18; 851, ll. 19-25; Id. at pp. 649, ll. 1 – 18; 651, ll. 19 - 25.] On January 10, 2019, Ms. Garcia telephoned Mr. Sutherland and advised that an inspector had come to the building and told her there was no water connected to the sprinkler. Mr. Sutherland asked the customer service representative of Crescent Coast, Sandra Nenna, what he should do and Ms. Nenna advised that she would notify AmWins Access, the broker for that insurance policy. Therefore, Ms. Nenna e-mailed Ms. Northcutt on January 11, 2019 to advise that Crescent Coast had learned that the sprinklers were installed, but the landlord had not turned the water on for the sprinklers. [R.pp. 751, l. 23 – 753, l. 15; 1742; Id. at pp. 543, l. 23 – 545, l. 15; P. Ex. 23 (Jan. 11, 2019 e-mail).]

Mr. Sutherland testified he thought the sprinkler system could be made fully functional by simply turning on the water. [R.p. 752, ll. 11-22; Tr. 544 pp., ll. 11-22.] At trial, counsel for A. Tebele & Sons questioned Mr. Sutherland as to why he did not inform Mr. Tebele of this potential issue with the sprinkler system and questioned Mr. Sutherland if he did not communicate the information because it might interfere with his commission. [R.pp. 765, l. 19 – 766, l. 12; Id. at pp. 557, l. 19 – 558, l. 12.] Counsel for A. Tebele &

Sons also criticized Crescent Coast at trial for receiving a commission when Cresent Coast allegedly did not advise Mr. Tebele that the sprinkler system was purportedly not operational. [R.pp. 826, l. 25 – 829, l. 19; 937, l. 11 – 738, l. 10 ; Id. at pp. 624, l. 25 – 627, l. 19; 737, l. 11 – 738, l. 10.]

Nevertheless, Mr. Tebele never informed Mr. Sutherland or anyone at Crescent Coast after August 2018 that there was any issue with the sprinkler system. [R.pp. 753, ll. 16-19; 920, ll. 12-15; 926, l. 23 – 927, l. 13; Id. at pp. 545, ll. 16-19; 720, ll. 12-15; 726, l. 23 – 727, l. 13.] And three days after the January 11, 2019 e-mail was sent, Mr. Tebele verified and signed the Acord application which indicated that the 1901 North Kings Property was 100% sprinklered. [R.pp. 1744-78; P. Ex. 25.]

STANDARD OF REVIEW

A trial judge must grant a new trial absolute if the amount of the jury's verdict is grossly inadequate or excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence. O'Neal v. Bowles, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993). A trial judge's failure to grant a new trial absolute in this situation amounts to an abuse of discretion and on appeal, the appellate court will grant a new trial absolute. Id. The appellate court will only reverse on appeal when the verdict is shown to be grossly inadequate or excessive. Id.

The trial judge also has the power to grant a new trial *nisi* when he finds the amount of the verdict to be merely inadequate or excessive. Id. The denial of a motion for a new trial *nisi* is within the trial judge's discretion, and the appellate court will not reverse the denial on appeal absent an abuse of discretion. Id.

Importantly, as this Court has noted, the appellate court's "task does not involve deciding whether [it] agrees with the jury's verdict or whether [it] agrees with the circuit court's decision to let the jury's verdict stand." The standard of review on appeal is "highly deferential," and a jury's determination of damages is entitled to "substantial deference." Green v. McGee, 441 S.C. 157, 164, 892 S.E.2d 520, 523 (Ct. App. 2023), cert. granted on other grounds (Nov. 13, 2024).

ARGUMENT

I. The Trial Court properly denied A. Tebele & Sons' motion for a new trial absolute or for a new trial *nisi additur* on the jury's award of $15,000.00 in damages on the breach of fiduciary duty cause of action because the evidence presented by A. Tebele & Sons at trial supports the jury's verdict.

A. Tebele & Sons contends the Trial Court erred in denying its motion for a new trial absolute or for a new trial *nisi additur* because the $15,000.00 in damages awarded by the jury on the breach of fiduciary duty claim was grossly inadequate. A. Tebele & Sons relies upon evidence that the cost to rebuild the 1901 North Kings Property is potentially in excess of $8 million. In making this argument, A. Tebele & Sons ignores other evidence it voluntarily and purposely submitted at trial before the jury which could support the jury's award of $15,000.00 in damages on the breach of fiduciary duty cause of action.[3]

At trial, A. Tebele & Sons particularly focused on evidence of the commission earned by Crescent Coast and Mr. Sutherland for procuring the insurance policy. In conjunction with evidence of the total amount of the commission earned by Crescent Coast – around $17,000.00 – A. Tebele & Sons also emphasized to the jury evidence that Mr.

[3] Crescent Coast has challenged in its cross-appeal whether it, as an insurance agent in an arm's length business transaction with A. Tebele & Sons, owed any fiduciary duty as a matter of law.

Sutherland may have been unlicensed at the time the policy was procured. See supra pp. 10-11.

Mr. Tebele testified he would not have purchased a policy from an unlicensed agent. Crescent Coast's standard of care expert, Terry Tadlock, acknowledged during questioning by counsel for A. Tebele & Sons that an unlicensed agent should not receive a commission. Counsel for A. Tebele & Sons also suggested during Mr. Tadlock's testimony that Crescent Coast or Mr. Egan had a responsibility to ensure its agents were licensed. See supra pp. 10-11.

In opposing Crescent Coast's motion for a directed verdict on the breach of fiduciary duty claim, counsel for A. Tebele & Sons argued the motion should be denied because the evidence showed Crescent Coast "had a pecuniary interest in the transaction" and "[t]hey got commission when this policy was bound." [R.p. 1274, ll. 17-19; Tr. p. 1098, ll. 17-19.]

In its closing before the jury, counsel for A. Tebele & Sons argued that Mr. Tebele trusted his insurance agents and pointed to evidence that Mr. Sutherland was potentially unlicensed. [R.pp. 1373, l. 24 – 1374, l. 4; 1377, ll. 10-11; Id. at pp. 1252, l. 24 – 1253, l. 4; 1256, ll. 10-11.] Counsel for A. Tebele & Sons further suggested to the jury in closing that Crescent Coast and Mr. Egan may have known the sprinkler system was not operational when the policy was bound, but did not inform Mr. Tebele because "[Crescent Coast and Mr. Egan] wanted to get paid." [R.pp. 1377, l. 21 – 1378, l. 11; 1421, ll. 11-13; Id. at pp. 1256, l. 21 – 1257, l. 11; 1300, ll. 11-13 ("This is clear knowledge that Crescent Cost was aware, had knowledge, and knew what was going on and decided to bind the policy anyway for money, for money.").]

Specifically, as to the breach of fiduciary duty cause of action, counsel for A. Tebele & Sons argued in its closing to the jury that it is a breach of a fiduciary duty to be unlicensed as an insurance agent:

> And then the last cause of action is breach of fiduciary duty. We're suing the insurance company, the insurance agent, Crescent Coast Insurance, and we argue to you that they undertook the coverage, that they had specialized knowledge, that **they're supposed to have the licenses**, and that they have a duty to the person who's buying it to tell them, and when you do that, then it's a breach of fiduciary duty if you don't do your job.

[R.p. 1383, ll. 15-22; Id. at p. 1262, ll. 15 – 22 (emphasis added).]

Upon the request of counsel for A. Tebele & Sons, the Trial Court charged the jury that "a person may not sell, solicit, or negotiate insurance in the state of South Carolina for any line or lines of insurance, unless the person is licensed for that line of authority in accordance with the statute." [R.pp. 1364, ll. 4-15; 1366, l. 10 – 1367, l. 7; 1432, ll. 2-5; Id. at pp. 1203, ll. 4-15; 1212, l. 20 – 1213, l. 7; 1313, ll. 2 – 5.] The Trial Court also instructed the jury that "a verdict must not be based upon sympathy, passion, prejudice, bias, emotion, or some other consideration not found in the evidence . . . ." [R.p. 1447, ll. 18-22; Id. at p. 1328, ll. 18-22.]

A trial judge has the power to grant a new trial absolute. This power, however, may be exercised only when the verdict "is shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, or other considerations not reflected by the evidence affected the amount awarded." Becker v. Wal–Mart Stores, Inc., 339 S.C. 629, 635, 529 S.E.2d 758, 761 (2000). A jury's determination of damages is entitled to "substantial deference." Todd v. Joyner, 385 S.C. 509, 517, 685 S.E.2d 613, 618 (Ct. App. 2008), aff'd, 385 S.C. 421, 685 S.E.2d 595 (2009). The decision to grant or deny a "new trial motion rests within the discretion of the circuit court, and its decision

will not be disturbed on appeal unless its findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law." Brinkley v. S.C. Dep't of Corrs., 386 S.C. 182, 185, 687 S.E.2d 54, 56 (Ct. App. 2009).

If a jury's award of damages is merely inadequate, the trial judge alone has the discretion to grant a new trial *nisi additur*. Compelling reasons, however, must be given to justify invading the jury's province in this manner. Bailey v. Peacock, 318 S.C. 13, 14, 455 S.E.2d 690, 691 (1995). "The consideration of a motion for a new trial *nisi additur* requires the court to consider the adequacy of the verdict in light of the evidence presented." Waring v. Johnson, 341 S.C. 248, 257, 533 S.E.2d 906, 911 (Ct. App. 2000). "The trial judge who heard the evidence and is more familiar with the evidentiary atmosphere at trial possesses a better-informed view of the damages than [the appellate court]." Vinson v. Hartley, 324 S.C. 389, 405, 477 S.E.2d 715, 723 (Ct. App. 1996). "A trial court does not abuse its discretion in denying a motion for new trial *nisi additur* where evidence in the record supports the jury's verdict." Todd, 385 S.C. at 517–18, 685 S.E.2d at 618.

The jury's award of $15,000.00 on the breach of fiduciary duty claim is not grossly or merely inadequate considering the evidence before the jury. In particular, A. Tebele & Sons advanced before the jury the theory that Crescent Coast breached its fiduciary duty by using an unlicensed agent and collecting commissions on a policy procured by an unlicensed agent. In addition, A. Tebele & Sons also argued to the jury that Crescent Coast did not inform Mr. Tebele about the information in the January 11, 2019 e-mail regarding the functionality of the sprinkler system because it wanted to make sure it was paid its commission on the policy.

The $15,000.00 in damages awarded by the jury squares with the arguments propounded by A. Tebele & Sons as the award approximately equals the $17,000.00 in commission received by Crescent Coast on the policy. The jury's award of damages also comports with the nature of damages that may be awarded on a breach of fiduciary claim. "One standing in a fiduciary relationship with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation," and "the plaintiff is entitled to damages for harm caused by the breach of a fiduciary duty owed to him or her." Moore v. Moore, 360 S.C. 241, 253, 599 S.E.2d 467, 473 (Ct. App. 2004).

One remedy for the breach of a fiduciary duty is the disgorgement of commissions and profits received by the fiduciary.[4] Verenes v. Alvanos, 387 S.C. 11, 18, 690 S.E.2d 771, 774 (2010). A. Tebele & Sons highlighted Crescent Coast's receipt of a commission on the policy it procured for A. Tebele & Sons multiple times at trial. Certainly, it is conceivable that the jury took the commission earned by Crescent Coast into account when it awarded damages on the breach of fiduciary claim.

Moreover, the jury in this case returned a general verdict on the breach of fiduciary claim. A Tebele & Sons did not ask the Trial Court to submit a special verdict form delineating the different types of breaches of fiduciary duty for which it presented evidence to the jury. The jury could have determined that Crescent Coast only breached its fiduciary duty by using an unlicensed agent in the procurement of the insurance policy. The jury may

[4] While the remedy of disgorgement is typically equitable, no party at trial objected to the jury's consideration of the amount of commission earned as a form of damages to be awarded. See Foggie v. CSX Transp., Inc., 315 S.C. 17, 23, 431 S.E.2d 587, 590 (1993) (finding party waived argument that jury should not have determined an equitable issue); see also Horn v. Davis Elec. Constructors, Inc., 302 S.C. 484, 487, 395 S.E.2d 724, 725–26 (Ct. App. 1990) (finding that parties to an equitable action may consent to submit issues of fact to the jury).

have concluded that Crescent Coast did not breach any fiduciary duty in failing to secure a policy that would cover the fire loss at the 1901 North Kings Property.

Such a determination would be consistent with the jury's verdict on the negligence cause of action which found that A. Tebele & Sons was sixty percent (60%) negligent[5] in the procurement of a policy which would cover the fire loss and thus barred from recovery on the claim for Crescent Coast's purported failure to procure insurance coverage. The jury may have found a breach of fiduciary duty on some other basis than a failure to procure insurance.

"The appellate courts of this State exercise every reasonable presumption in favor of the validity of a general verdict." Gold Kist, Inc. v. Citizens and Southern Nat'l Bank of S.C., 286 S.C. 272, 282, 333 S.E.2d 67, 73 (Ct. App. 1985). "[I]t is the duty of the court to sustain verdicts when a logical reason for reconciling them can be found." Daves v. Cleary, 355 S.C. 216, 231, 584 S.E.2d 423, 430 (Ct. App. 2003).

Without a special verdict form, this Court cannot speculate as to the basis of the jury's verdict on the breach of fiduciary duty claim, and the jury's damages award should be upheld. Harrison v. Bevilacqua, 354 S.C. 129, 141, 580 S.E.2d 109, 115 (2003) (finding where no special interrogatories were prepared and there were three different theories of negligence presented, there was no way to determine the basis of the jury's decision; therefore, the trial court correctly denied the motion for a new trial absolute where the verdict was not grossly inadequate); Moore, 360 S.C. at 257, 599 S.E.2d at 475 (finding without a special verdict form, the court could not speculate as to what portion of the award the jury attributed to lost profit as opposed to other tort damages); Bryant v. Waste Mgmt.,

[5] A. Tebele & Sons has not appealed the jury's finding that it was 60% negligent and barred from recovery for damages on the negligence cause of action.

Inc., 342 S.C. 159, 168, 536 S.E.2d 380, 385 (Ct. App. 2000) (finding because jury rendered a general verdict, it could have relied upon multiple allegations of negligence to find defendant liable).

The jury's award of $15,000.00 on the breach of fiduciary duty claim is consistent with the evidence and theories of liability presented to the jury by A. Tebele & Sons. Accordingly, the Trial Court's denial of A. Tebele & Sons' motion for a new trial absolute or for a new trial *nisi additur* is not an abuse of discretion. See O'Neal v. Bowles, 314 S.C. 525, 527, 431 S.E.2d 555, 557 (1993) (finding no abuse of discretion in denying motion for new trial *nisi additur* where jury could have determined damages were result of other causes); Nelson v. Harris, 441 S.C. 379, 390-91, 893 S.E.2d 592, 597-98 (Ct. App. 2023) (holding circuit court did not abuse its discretion in denying plaintiff's motion for a new trial *nisi additur* or new trial absolute where the evidence presented at trial supported the jury's award of damages and could be accounted for within the jury's verdict); Manios v. Nelson, Mullins, Riley & Scarborough, LLP, 389 S.C. 126, 138, 697 S.E.2d 644, 650-51 (Ct. App. 2010) (finding no error by trial court in denying motion for new trial *nisi additur* where, although it was unclear from the record exactly how the jury arrived at its verdict of $53,088.00, there was evidence to support an award of less than the $316,225.00 asked for by the plaintiff). Crescent Coast respectfully requests this Court to uphold the jury's award of damages if the Court does not reverse the Trial Court's denial of the motion for a directed verdict on the breach of fiduciary duty claim as set forth in the cross-appeal.

II. A. Tebele & Sons did not preserve for appellate review its argument that South Carolina's Valued Policy Statute serves as the measure of damages for its breach of fiduciary duty cause of action; furthermore, the statute does not establish a *per se* rule of damages against an insurance agent in a breach of fiduciary duty case.

A. Tebele & Sons also argues in its brief to this Court that under South Carolina's Valued Policy Statute, S.C. CODE ANN. § 38-75-20, it is entitled to a minimum of $2.85 million in damages which equals the value of the policy covering the 1901 North Kings Property. As an initial matter, this argument is not preserved for appellate review. At no point during trial, or more critically, during the charge conference, did A. Tebele & Sons ever raise the argument that the Valued Policy Statute should serve as the basis for its measure of damages. A. Tebele & Sons made this argument for the first time in its post-trial motion for a new trial. "It is axiomatic that an issue cannot be raised for the first time in a post-trial motion." Bank of New York v. Sumter Cty., 387 S.C. 147, 159, 691 S.E.2d 473, 479 (2010).

Further, A. Tebele & Sons' reliance on the statute is without merit. It argues that, had Crescent Coast not breached a fiduciary obligation to A. Tebele & Sons which prevented the fire loss from being covered under the policy, A. Tebele & Sons would have been entitled to the full policy amount under the statute. Tebele's argument misconstrues the purpose of the Valued Policy Statute. The statute provides in relevant part:

> No insurer doing business in this State may issue a fire insurance policy for more than the value stated in the policy or the value of the property to be insured. The amount of insurance must be fixed by the insurer and insured at or before the time of issuing the policy. In case of total loss by fire the insured is entitled to recover the full amount of insurance. In case of a partial loss by fire the insured is entitled to recover the actual amount of the loss but in no event more than the amount of the insurance stated in the contract.

S.C. CODE ANN. § 38-75-20.

"A valued policy statute was first adopted as a part of the law in this state in 1896. This statute required the parties to a fire insurance contract to agree upon the value of the property to be insured and required that such value be stated in the policy. The purpose of this legislation was to eliminate controversy after the loss occurred. Div. of Gen. Servs. v. Ulmer, 256 S.C. 523, 531, 183 S.E.2d 315, 317 (1971), overruled on other grounds by McCall by Andrews v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985).

The purpose of the Valued Policy Statute is to establish a clear framework for establishing policy limits and valuing fire losses. The statute governs **insurers** writing policies in this state. The statute does not establish a *per se* rule that an insurance **agent** is liable for the policy amount in the event of a loss. A. Tebele & Sons has cited no authority that the statute serves as a measure for calculating damages under a breach of fiduciary duty cause of action against an insurance agent. Rather, A. Tebele & Sons cites to Republic Textile Equip. Co. of S.C. v. Aetna Ins. Co., 293 S.C. 381, 389, 360 S.E.2d 540, 545 (Ct. App. 1987). Republic Textile assesses the measure of damages against an insurance agent in *negligence* cases. The cause of action for negligence is not at issue in this appeal.

Additionally, Republic Textile did not espouse a *per se* rule that the policy amount should serve as the only measure of damages, particularly with respect to a breach of fiduciary duty claim and even more particularly, when the plaintiff, as A. Tebele & Sons did in this case, offers different theories of a breach with varying amounts of potential damages. See supra Section I. As such, A. Tebele & Sons' reliance on the Valued Policy Statute and Republic Textile to argue the policy amount should serve as the baseline for a jury award against Crescent Coast under the breach of fiduciary duty cause of action is without merit.

CONCLUSION

For the reasons set forth herein, should this Court decline to reverse the Trial Court's denial of Crescent Coast's motion for a directed verdict on the breach of fiduciary duty claim as argued in the cross-appeal, Crescent Coast requests this Court to uphold the jury's award of damages and affirm the Trial Court's denial of A. Tebele & Sons' motion for a new trial absolute and for a new trial *nisi additur*.

Respectfully submitted,

/s Carmen V. Ganjehsani
Caleb M. Riser (S.C. Bar No. 76738)
Carmen V. Ganjehsani (S.C. Bar No. 73515)
Hunter W. Adams (S.C. Bar No. 103526)
RICHARDSON, PLOWDEN & ROBINSON, PA
1900 Barnwell Street (29201)
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
criser@richardsonplowden.com
cganjehsani@richardsonplowden.com
hadams@richardsonplowden.com
ATTORNEYS FOR RESPONDENT-APPELLANT CRESCENT COAST INSURANCE, LLC

July 31, 2025.

RECEIVED
Jul 31 2025
SC Court of Appeals

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Final Respondent's Brief of Respondent-Appellant complies with Rule 211(b), SCACR.

Respectfully submitted,

/s Carmen V. Ganjehsani

Caleb M. Riser (S.C. Bar No. 76738)
Carmen V. Ganjehsani (S.C. Bar No. 73515)
Hunter W. Adams (S.C. Bar No. 103526)
RICHARDSON, PLOWDEN & ROBINSON, PA
1900 Barnwell Street (29201)
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
criser@richardsonplowden.com
cganjehsani@richardsonplowden.com
hadams@richardsonplowden.com
ATTORNEYS FOR RESPONDENT-APPELLANT CRESCENT COAST INSURANCE, LLC

July 31, 2025.

RECEIVED
Jul 31 2025
SC Court of Appeals

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., for Respondent-Appellant, Crescent Coast Insurance, LLC, do hereby certify that I have this date served the foregoing Final Respondent's Brief, dated July 31, 2025, by personally serving the same pursuant to Section (d)(1) of the Supreme Court's Amended Order dated April 24, 2024, on the following counsel of record using the primary email addresses listed in the Attorney Information System (if applicable):

William Wayne DesChamps, III
W. W. DesChamps, Jr.
DESCHAMPS LAW FIRM
1357 21St Ave. North Ste. 102
Myrtle Beach, SC 29577
trey@deschampslaw.com
wwd@deschampslaw.com

Gene McCain Connell, Jr.
KELAHER CONNELL & CONNOR, PC
PO Drawer 14547
Surfside Beach, SC 29587
gconnell@classactlaw.net

Adam Sinclair Ruffin
RUFFIN LAW FIRM, LLC
1320 Main Street
Suite 300
Columbia, SC 292012941
adam@ruffinappeals.com
Attorneys for Appellant-Respondent A. Tebele & Sons

Roman Creal Harper
Lewis Andrew Watson
BUTLER WEIHMULLER KATZ CRAIG LLP
11525 N. Community House Road
Suite 300
Charlotte, NC 28277
rharper@butler.legal
awatson@butler.legal

Mihaela Cabulea
BUTLER WEIHMULLER KATZ CRAIG LLP
400 North Ashley Drive, Suite 2300
Tampa, Florida 33602
mcabulea@butler.legal

Dominic Allen Starr
MCANGUS GOUDELOCK & COURIE, LLC
PO Box 1349
Myrtle Beach, SC 29578
dominic.starr@mgclaw.com
Attorneys for Respondents Certain Underwriters at Lloyd's; HDI Global Specialty SE; and General Security Indemnify Company of Arizona

/s Carmen V. Ganjehsani
Carmen V. Ganjehsani (S.C. Bar No. 73515)
RICHARDSON, PLOWDEN & ROBINSON, PA
1900 Barnwell Street (29201)
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
ATTORNEYS FOR RESPONDENT-APPELLANT CRESCENT COAST INSURANCE, LLC

Dated: July 31, 2025.