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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

APPELLATE CASE NO. 2026-002295
CIVIL ACTION NO. 2021-CP-21-26-00808

Opinion No. 6162 (S.C. Ct. App. filed August 26, 2026)

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

RESPONDENT-PETITIONER,

versus

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

DEFENDANTS,

Of which Crescent Coast Insurance, LLC is the

PETITIONER-RESPONDENT.

CRESCENT COAST INSURANCE, LLC'S RETURN TO THE PETITION FOR WRIT OF CERTIORARI OF A. TEBELE & SONS

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COUNTERSTATEMENT OF QUESTIONS PRESENTED FOR REVIEW

I. Did the Court of Appeals properly affirm the Trial Court's denial of 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 where the evidence presented by A. Tebele & Sons at trial supported the jury's verdict?

II. Did A. Tebele & Sons fail to 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?

III. Does South Carolina's Valued Policy Statute fail to establish a *per se* rule of damages against an insurance agent in a breach of fiduciary duty case?

INTRODUCTION

Under Rule 242(b) of the South Carolina Appellate Court Rules, "[a] writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." The following factors indicate the character of reasons which the Court will consider in granting a petition for writ of certiorari:

> **(1)** Where there are novel questions of law.
>
> **(2)** Where there is a dissent in the decision of the Court of Appeals.
>
> **(3)** Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
>
> **(4)** Where substantial constitutional issues are directly involved.
>
> **(5)** Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Id.

The Petition of A. Tebele & Sons against Crescent Coast Insurance, LLC ("Crescent Coast") does not present any of the above factors or contain any other special or important reason as to why this Court should grant its Petition. In urging this Court to grant its Petition, A. Tebele & Sons mischaracterizes the Court of Appeals' Opinion when it contends that the Court of Appeals

fixed the measure of damages for an insurance agent's breach of a fiduciary duty in permitting an agent's commission to serve as the measure of damages.

The Court of Appeals did not fix the measure of damages for any breach of fiduciary duty claim against an insurance agent, but rather decided under the specific facts of this case and the applicable standard of review, that the Trial Court properly denied A. Tebele & Sons' motion for new trial absolute or new trial *nisi additur* because the evidence presented to the jury by A. Tebele & Sons supported the jury's determination of damages. Notably, A. Tebele & Sons presented evidence of around $17,000.00 in commission earned by Crescent Coast coupled with its argument to the jury that Crescent Coast breached its fiduciary duty by purportedly using an unlicensed agent in its transactions with A. Tebele & Sons. The jury's award of $15,000.00 on the breach of fiduciary claim was consistent with the evidence placed by A. Tebele & Sons before the jury.

In reviewing the Trial Court's denial of A. Tebele & Sons' motion for new trial absolute or for new trial *nisi remittitur*, the Court of Appeals properly adhered to the long-standing appellate standard of review for determining the adequacy or inadequacy of jury verdicts and further gave substantial deference to the jury's verdict as required under our appellate court precedent. That A. Tebele & Sons disputes the jury's determination of damages and seeks a third bite of the apple for another review of the jury's award does not warrant consideration by this Court. The only pertinent question presented by A. Tebele & Sons' Petition is whether the evidence in the record supports the jury's award of damages on the breach of fiduciary claim. The answer is resoundingly yes, and for that reason, A. Tebele & Sons' Petition does not raise any special or important grounds meriting review by this Court.

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 Crescent Coast for the purported failure to procure insurance coverage and breaches of fiduciary duties.

On February 3, 2020, A Tebele & Sons filed a Complaint 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.] In the alternative, A. Tebele & Sons alleged claims of negligence and breach of fiduciary duty against Crescent Coast. [R.pp. 25-28.] 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, ¶ 73.] The Insurers and Crescent Coast answered the Complaint, denying its materials allegations. [R.pp. 29-113.]

On December 4, 2023, the case proceeded to trial before The Honorable B. Alex Hyman and a jury. [R.p. 330.] 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 at the close of defendants' evidence. [R.pp. 1262, l. 24 – 1276, l. 4; 1353, ll. 13-19.] In support of its motion, 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.] 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.]

On December 13, 2023, the jury rendered their verdict and found for the Insurers on the breach of contract and bad faith claims. [R.pp. 7-13; 1454, l. 24 – 1455, 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 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.] 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.]

On December 21, 2023, A. Tebele & Sons filed post-trial motions against the Insurers and Crescent Coast. [R.pp. 238-74.] 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.] Crescent Coast opposed the post-trial motion, and the Trial Court denied the post-trial motions as to both the Insurers and Crescent Coast on April 8, 2024. [R.pp. 1-6; 316-29.]

A. Tebele & Sons filed an appeal with the Court of Appeals. Crescent Coast filed a cross-appeal on the jury's verdict as to the breach of fiduciary duty claim. After hearing argument on May 13, 2026, the Court of Appeals issued its Opinion on August 26, 2026 affirming the jury's

[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.]

verdict. As to the appeals between A. Tebele & Sons and Crescent Coast, the Court of Appeals held the Trial Court did not err in denying A. Tebele & Sons' motion for new trial absolute or new trial *nisi additur* as to the jury's award of damages against Crescent Coast on the breach of fiduciary duty claim. See Opinion No. 6162, pp. 8-10. The Court of Appeals also held the Trial Court did not err in denying Crescent Coast's motion for a direct verdict made on the grounds that an insurance agent does not owe a fiduciary duty to an insurance applicant as a matter of law. Id. at pp. 10-11. Both A. Tebele & Sons and Crescent Coast petitioned the Court of Appeals for rehearing on September 10, 2026, which the Court of Appeals denied on September 16, 2026.

On October 16, 2026, Crescent Coast filed a Petition for Writ of Certiorari with this Court seeking review of the Court of Appeals' holding that Crescent Coast, as an insurance agent, owed a fiduciary duty to A. Tebele & Sons. A. Tebele & Sons also filed a Petition for Writ of Certiorari seeking review of the Court of Appeals' opinion affirming the jury's award of damages on the breach of fiduciary duty claim. Crescent Coast responds to the Petition of A. Tebele & Sons and respectfully requests this Court to deny A. Tebele & Sons' Petition for the reasons set forth herein.

COUNTERSTATEMENT OF FACTS RELATING TO CRESCENT COAST

A. Tebele & Sons is a South Carolina general partnership which oversees the leasing and management of 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.] It has been in the business for 25 to 30 years. [R.p. 1014, 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.] 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"). [R.pp. 16; 1010, ll. 22-24.]

Mr. Tebele is a sophisticated insurance buyer who has managed millions of dollars of property over the past 25 to 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.]

Mr. Tebele met Joey Sutherland through the restaurant business. [R.pp. 715, ll. 4-15; 958, l. 24 – 959, 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.] 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.] 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.]

Mr. Sutherland joined Crescent Coast in March 2018. [R.pp. 710, l. 22 – 711, l. 7; 715, l. 24 – 716, l. 5.] Crescent Coast is a retail property and casualty insurance agency co-owned by David Egan. [R.p. 847, 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.] Likewise, a retail agency does not make coverage decisions. [R.p. 889, 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.] 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.]

In the summer of 2018, Mr. Tebele decided to seek insurance quotes for his 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.] 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.] 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.]

When Mr. Egan and Mr. Sutherland met with Mr. Tebele in August of 2018, they reviewed the information needed regarding Mr. Tebele's 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.] 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.] 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.]

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; 1696.] In total, 5 of the 23 properties were marked on the Acord form as sprinklered. [R.pp. 745, l. 25 – 746, l. 4; 891, l. 25 – 892, l. 5.]

Crescent Coast relied upon the information given by Mr. Tebele in marking the 1901 North King Property as 100% sprinklered. [R.p. 737, 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.] Terry Tadlock, Crescent Coast's standard of care expert, confirmed 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.]

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.] 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.]

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.] 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.]

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.] 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.]

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.]

Crescent Coast received a quote for coverage from AmWins Special Risk Underwriters. [R.pp. 2088.] 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.]

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.] 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.] 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.]

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.] On January 14, 2019, Mr. Tebele executed a signed Acord application, which was submitted to AmWins Brokerage. [R.pp. 1744-78.]

It is uncontroverted that the application noted the 1901 North Kings Property was "100%" sprinklered. [R.pp. 1009, ll. 8-24; 1764.] 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.] 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.]

The total amount of commission to be earned by Crescent Coast was approximately $17,000.00[2] – which was determined as 10% percent 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.] At trial, A. Tebele & Sons emphasized the

[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.]

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.]

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.] 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.]

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.] 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.] 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.]

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 (testimony of Mr. Tadlock 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.] 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.]

Mr. Tebele never asked Mr. Egan any questions about any of the provisions of the binder. [R.p. 907, 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.] Mr. Egan immediately had those properties added and submitted to the underwriter. [R.pp. 910, l. 23 – 911, l. 1.] To handle the requested changes, the carrier had to issue endorsements to the policy. [R.p. 913, 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.] 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.]

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.] 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.] Even though a hard copy of the entire policy had not yet been delivered to Mr. Tebele, the 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.]

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.] Mike Dover, who was employed with Crawford Sprinkler, testified 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.] 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.]

Carolina Tap installed most of the line that was to connect the city's water supply to the interior pipes, but still had 10 to 15 feet remaining that needed to be installed to reach the building. Carolina Tap needed to bring 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.] Mr. Dover testified that in August 2018, Crawford Sprinkler's work was about 90 to 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.]

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.] 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.] 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.]

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.] 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.] 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.]

After the fire, Mr. Tebele retained James Twaddell, a public insurance adjuster, to assist with his insurance claim under the policy. [R.pp. 504, ll. 1-18; 507, 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.]

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.]

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.]

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.]

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.] 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.]

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.] 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.]

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.] 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.] 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.]

Nevertheless, Mr. Tebele never informed Mr. Sutherland or anyone at Crescent Coast after August 2018 that there was any issue with the sprinkler system even admitting that he was fully aware that the system was not operational. [R.pp. 753, ll. 16-19; 920, ll. 12-15; 926, l. 23 – 927, l. 13; 1022, l. 23 – 1023, l. 21; 1093, ll. 8-11; 1105, ll. 16-25.] 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.]

ARGUMENT

I. The Court of Appeals properly affirmed the Trial Court's denial of 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 supported the jury's verdict.

A. Tebele & Sons contends the Court of Appeals erred in affirming the Trial Court's denial of 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 and did not compensate A. Tebele & Sons for its loss. A. Tebele & Sons relies upon evidence that the cost to rebuild the 1901 North Kings Property is potentially in excess of $8 million and that the insurance policy, had it provided coverage, was valued at $2.85 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 for breach of fiduciary duty.[3]

[3] Crescent Coast has challenged in its Petition before this Court 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.

As of part of its breach of fiduciary duty claim against Crescent Coast, A. Tebele & Sons alleged that Crescent Coast breached this duty by continuing to collect commission off the sale of the policy. [R.p. 27, ¶ 73.] 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. 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 p. 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.]

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.] 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 ("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 (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.] 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.]

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 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 commission 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. The jury's award of damages also comports with the nature of damages that may be awarded on a breach of fiduciary claim. 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 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 60% negligent[5] in the procurement of a policy

[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).

[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.

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); Bryant v. Waste Mgmt., 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 is consistent with the evidence and theories of liability presented to the jury by A. Tebele & Sons. Accordingly, the Court of Appeals correctly held the Trial Court's denial of A. Tebele & Sons' motion for a new trial absolute or for a new trial *nisi additur* was 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).

The Court of Appeals did not establish a fixed measure of damages for an insurance agent's breach of fiduciary duty as A. Tebele & Sons contends. The Court of Appeals rather based its holding upon specific evidence presented in this case. A Tebele & Sons cannot put forth a claim before the jury that Crescent Coast breached its fiduciary duty by using an alleged unlicensed agent while earning a commission and then complain when the jury awards damages in line with the amount of the earned commission. Crescent Coast therefore respectfully requests this Court to deny A. Tebele & Son's Petition as to the damages awarded on the breach of fiduciary duty claim.

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.

Before the Court of Appeals, A. Tebele & Sons argued that the Valued Policy Statute, S.C. CODE ANN. § 38-75-20, entitled it to a minimum of $2.85 million in damages which equals the value of the policy covering the 1901 North Kings Property. The Court of Appeals properly

concluded this argument was not preserved for appellate review because it was raised for the first time on appeal. See Herron v. Century BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011).

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).

A. Tebele & Sons claims it invoked the Valued Policy Statute as a benchmark against which the adequacy of the jury's verdict should be measured and that it could not complain about the inadequacy of the verdict before it was returned. But A. Tebele & Sons contends the statute fixes the minimum amount of damages which should have been awarded by the jury. A. Tebele & Sons never requested the Trial Court to instruct or charge the jury that should it find in favor of A. Tebele & Sons on the breach of fiduciary duty claim, the jury was required to award at a minimum damages set by the statute. Therefore, the issue is not preserved for appellate review.

Further, the Valued Policy Statute does not fix the amount A. Tebele & Sons should have been awarded on the breach of fiduciary duty claim. The 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 statute provides a clear framework for establishing policy limits and valuing fire losses

and further 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. The Valued Policy Statute does not provide a floor for A. Tebele & Sons' loss under a breach of fiduciary duty claim, particularly where here A. Tebele & Sons offered different theories of a breach with varying amounts of potential damages. The Valued Policy Statute does not warrant the grant of certiorari.

CONCLUSION

For the reasons set forth herein, Crescent Coast respectfully requests that the Petition for Writ of Certiorari by A. Tebele & Sons be denied.

Respectfully submitted,

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