

RECEIVED
AUG 30 2017
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-In-Equity and Special Circuit Court Judge

Appellate Case No. 2017-000242

Robert E. Feldman and Lois J. Feldman.....Appellants,

vs.

Gary P. Coggin Respondent.

RECORD ON APPEAL

Thomas A. Pendarvis, J.D.
Christopher W. Lempesis, Jr., J.D., L.L.M.
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit A1
Beaufort, SC 29902-4188
Thomas@PendarvisLaw.com
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Counsel for Appellants

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Jeffrey M. Bogdan, J.D.
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Counsel for Respondent

INDEX

	<u>Page</u>
<u>ORDERS, JUDGMENTS, DECREES AND DECISIONS</u>	
Scheduling Order, dated June 17, 2016	3
Order Granting Defendant's Motion for Summary Judgment, filed September 9, 2016	5
Order Denying Motion to Alter or Amend Judgment, dated January 27, 2017.....	6

PLEADINGS

Summons and Verified Complaint, filed May 19, 2015 with attachments.....	8
Answer (to the Verified Complaint), filed August 20, 2015	24

TRANSCRIPTS

Transcript of Deposition of Gary P. Coggin, dated June 8, 2016.....	35
Transcript of Hearing on Motion for Summary Judgment, dated June 29, 2016	295

OTHER MATERIALS AND DOCUMENTS

Answer (on behalf of Liberty Mutual Insurance Company in Robert Feldman & Lois Feldman v. Sarah Dickenson, 2012-CP-07-3800), filed January 7, 2013	317
Liberty Mutual Insurance Company's Notice and Motion to Dismiss (in Robert Feldman & Lois Feldman v. Sarah Dickenson, 2012-CP-07-3800), dated October 8, 2014	320
Memorandum in Support of Liberty Mutual's Motion to Dismiss in Robert Feldman & Lois Feldman v. Sarah Dickenson, 2012-CP-07-3800), dated December 1, 2014	322
Request to Transfer to the Jury Trial Roster, filed February 29, 2016	324
Request for Scheduling Order, filed March 9, 2016	325
Response to the Request for Scheduling Order, filed March 18, 2016.....	326
Plaintiff's Response to the Request for Scheduling Order, filed March 25, 2016.....	341
Motion for Summary Judgment, filed May 16, 2016	353
Memorandum in Support of Motion for Summary Judgment, filed June 22, 2016.....	355
Plaintiffs' Memorandum in Opposition to Motion for Summary Judgment, filed June 27, 2016.....	380
Rule 56(f), SCRCP, Affidavit of Thomas A. Pendarvis, filed June 28, 2016	457
Plaintiffs' Supplemental Memorandum in Opposition to Defendant's Motion for Summary Judgment, filed July 11, 2016.....	462
Plaintiffs' Notice of Motion and Motion for Leave to File Amended Verified Complaint, filed July 19, 2016.....	469
Defendant's Reply to Plaintiffs' Supplemental Memorandum in Opposition to Defendant's Motion for Summary Judgment, filed July 28, 2016	487
Plaintiffs' Sur-Reply to Defendant's Reply to Plaintiffs' Supplemental Memorandum in Opposition to Defendant's Motion for Summary Judgment, filed August 1, 2016.....	497

Defendant's Memorandum in Opposition to Plaintiff's Motion for Leave to File Amended Verified Complaint, filed September 7, 2016 with exhibits:	499
a) Email chain between counsel for the Appellants and Respondent sent July 8 and July 11, 2016 (Exhibit A);	508
b) December 17, 2013 letter from Gary Coggin to Robert Feldman (part of Exhibit B);....	512
c) May 9, 2014 letter from Gary Coggin to Robert Feldman (part of Exhibit B);.....	514
d) September 15, 2014 letter from Gary Coggin to Robert Feldman (part of Exhibit B);...	516
Email to trial court clerk, dated September 13, 2016	517
Second email to trial court clerk, dated September 14, 2016	520
Plaintiffs' Motion to Alter or Amend Judgment, dated September 19, 2016.....	524
Reply email from trial court clerk, dated September 22, 2016.....	661
Defendant's Memorandum in Opposition to Plaintiffs' Motion to Alter or Amend Judgment, dated October 3, 2016.....	665
App. Email to Judge Dukes with proposed Order, forwarded January 6, 2017	669
Defendant's Supplemental Memorandum in Opposition to Plaintiff's Motion to Alter or Amend Judgment, dated January 10, 2017	675

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

ROBERT E. FELDMAN and LOIS J.
FELDMAN,

Plaintiffs,

vs.

GARY P. COGGIN,

Defendant.

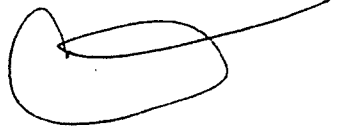
) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT
) C/A No.: 2015-CP-07-01251

SCHEDULING ORDER

2016 JUN 17 PM 3:11
JERRI ANN ROSENEA
BEAUFORT COUNTY, S.C.
CLERK OF COURT

This matter came before the Court on Plaintiff's Request to Transfer to the Jury Trial Roster and Defendant's Request for Scheduling Order. At a hearing held on March 31, 2016, the Court found that this case will not be called for trial before January 1, 2016. As a result, the parties were able to agree on additional deadlines prior to the trial date. Accordingly, pursuant to Rule 26(f) and Rule 40(e)(2) of the South Carolina Rules of Civil Procedure, the Court establishes the following deadlines in this case:

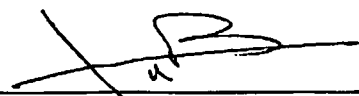
1. Plaintiff shall identify each person whom Plaintiff expects to call as an expert at trial by **August 1, 2016**.
2. Defendants shall identify each person whom Defendants expect to call as an expert at trial by **October 1, 2016**.
3. Discovery shall be completed no later than **December 1, 2016**. All discovery requests shall be served in time for the responses thereto to be served by this date. De bene-esse depositions must be completed by discovery deadline.
4. All dispositive motions shall be filed on or before **December 15, 2016**.
5. This case is subject to being called for jury selection and trial on or after **January 1, 2017**.


Carmen T. Mullen
Chief Administrative Judge

5-24, 2016
Beaufort, South Carolina

WE SO MOVE AND CONSENT:

BARNWELL WHALEY PATTERSON & HELMS, LLC

By: 

M. Dawes Cooke, Jr
Jeffrey M. Bogdan
288 Meeting Street, Suite 200
P.O. Drawer H
Charleston, SC 29401
(843) 577-7700
mdc@barnwell-whaley.com
jbogdan@barnwell-whaley.com

ATTORNEYS FOR THE DEFENDANT

PENDARVIS LAW OFFICES, P.C.

By: 

Thomas A. Pendarvis, Esquire
Christopher W. Lempesis, Jr., Esquire
710 Boundary St., Unit A1
Beaufort, SC 29902-4188
thomas@pendarvislaw.com
chris@pendarvislaw.com

ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CASE NO: 2015-CP-07-1251

Robert E. Feldman, et al.,

Plaintiff(s),

vs.

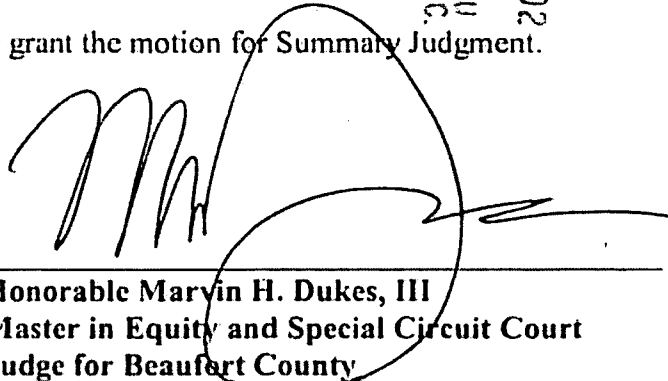
Gary P. Coggin,

Defendant(s).

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

This matter came before me on Defendant's Motion for Summary Judgment, filed May 16, 2016. After hearing from parties, I hereby grant the motion for Summary Judgment.

IT IS SO ORDERED:



Honorable Marvin H. Dukes, III
Master in Equity and Special Circuit Court
Judge for Beaufort County

September 9, 2016
Beaufort, South Carolina

2016 SEP -9 PM 11:02
CLERK OF COURT
BEAUFORT COUNTY S.C.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CASE NO: 2015-CP-07-1251

Robert E. Feldman, et al.,

Plaintiff(s),

vs.

Gary P. Coggin,

Defendant(s).

ORDER DENYING MOTION TO
ALTER OR AMEND JUDGMENT

This came before me for hearing December 12, 2016 on Plaintiffs' Motion to Alter or Amend Judgment, filed 9/19/2016. Attorney Thomas A. Pendarvis appeared for the Plaintiffs and Jeffrey M. Bogdan appeared for the Defendant. After hearing from parties, I hereby deny the motion.

IT IS SO ORDERED:

Honorable Marvin H. Dukes, III
Master in Equity and Special Circuit Court
Judge for Beaufort County

January ____, 2017
Beaufort, South Carolina



Beaufort Common Pleas

Case Caption: Robert E Feldman , plaintiff, et al VS Gary P Coggin

Case Number: 2015CP0701251

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2017-01-27 13:47:14 page 2 of 2

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2015-CP-07-125

Robert E. Feldman and Lois J. Feldman,

Plaintiffs,

vs.

Gary P. Coggin,

Defendant.

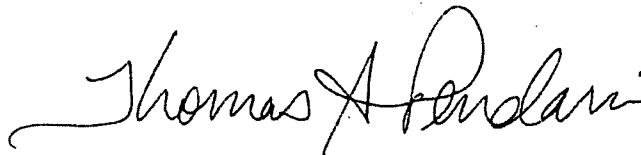
SUMMONS

2015 MAY 19 PM 3:24
CLERK OF COURT
BEAUFORT COUNTY, S.C.

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the subscribers at their office, PENDARVIS LAW OFFICES, P.C., 500 Carteret St., Suite A, Beaufort, SC 29902-5066, within Thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis (SC Bar # 064918)
Catherine B. Kerney (SC Bar # 81429)
500 Carteret St Ste A
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843.524.9500 Tel.
Thomas@PendarvisLaw.com
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Lawyers for Plaintiffs

Beaufort, South Carolina

May 11, 2015

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2015-CP-07- 1251

Robert E. Feldman and Lois J. Feldman,
Plaintiffs,

vs.

Gary P. Coggin,
Defendant.

VERIFIED COMPLAINT
(Jury Trial Demanded)

(Legal Professional Negligence)
(Breach of Contract)

2015 MAY 19 PM 3:24
CLERK OF COURT
SOUTH CAROLINA
COUNTY OF BEAUFORT

Plaintiffs, Robert E. Feldman and Lois J. Feldman, complaining of Defendant, Gary P. Coggin, would respectfully show unto the Court as follows:

SUMMARY OF THE CASE

1. This legal malpractice action centers upon the Defendant lawyer's professional negligence while representing his clients on claims arising from a motor vehicle collision in 2010. The Defendant lawyer's acts and omissions, including failing to perfect service of process on the defendant at-fault driver, allowed the statute of limitations to expire on his clients' claims. Allowing the statute of limitations to expire resulted in their inability to recover all of the \$500,000 in available underinsured insurance proceeds that, but for the Defendant lawyer's acts and omissions, would have been paid by their carrier to compensate them for personal injuries, medical expenses, lost wages, and loss of consortium claims arising from their injuries caused by the at-fault driver.

PARTIES

2. Defendant, Gary P. Coggin, is, upon information and belief, a citizen and resident of Beaufort County, South Carolina, and is an lawyer licensed to practice law in this State.

3. Plaintiff, Robert E. Feldman, is a resident of Beaufort County, South Carolina.
4. Plaintiff, Lois J. Feldman, is a resident of Beaufort County, South Carolina.

JURISDICTION

5. This Court has jurisdiction over these matters based upon Article V of the South Carolina Constitution, S.C. CODE ANN. §§ 36-2-802 and 36-2-803 (1976), and its plenary powers.

VENUE

6. Venue is proper in Beaufort County as it is, upon information and belief, the county of residence for Defendant, Gary P. Coggin.

FACTS

7. Defendant, Gary P. Coggin ("Coggin"), is a lawyer licensed to practice law in South Carolina.

8. Coggin accepted the representation of Plaintiffs, Robert E. Feldman and Lois J. Feldman ("Bob Feldman," "Lois Feldman," or collectively, "the Feldmans"), on their personal injury and loss of consortium claims against an at-fault driver, Sarah Dickenson ("Dickenson"), arising from a motor vehicle accident that occurred on October 9, 2010.

9. On October 9, 2010, Dickenson failed to properly control her motor vehicle while traveling on US 278 in Beaufort County, South Carolina, and was at fault in causing a collision with a vehicle driven by Bob Feldman, which caused Bob Feldman to suffer substantial personal injuries, incur medical expenses, and incur lost wages, all of which gave rise to valuable personal injury and loss of consortium claims in favor of the Feldmans.

10. Bob Feldman's present medical specials alone exceed \$150,000, he has substantial future medical needs, he has substantial lost wages, and he has sustained other financial losses.

11. As part of the representation, Coggin obtained copies of the medical specials, substantial future medicals, materials showing Bob Feldman's substantial loss wages, and other financial losses.

12. Dickenson had \$100,000 of available liability insurance coverage for the Feldmans' claims.

13. The Feldmans had \$500,000 in underinsurance (UIM) coverage with Liberty Mutual Insurance Company ("Liberty") available for injuries sustained and claims arising from the collision caused by Dickenson.

14. To get their consent to settle for only \$85,000 of Dickenson's \$100,000 liability coverage, Coggin recommended they settle for 85,000 and assured the Feldmans that he would recover the available \$500,000 in UIM coverage under the Feldmans' policy issued by Liberty. Based on Coggin's assurances, the Feldmans authorized the settlement with Dickenson and her liability carrier.

15. Coggin settled the Feldmans' claims for only \$85,000 of Dickenson's \$100,000 available liability coverage.

16. On or about October 29, 2012, Coggin filed suit on behalf of the Feldmans against Dickenson in the Beaufort County Court of Common Pleas in a matter styled, *Robert Feldman & Lois Feldman vs. Sarah Dickenson*, C.A. # 2012-CP-07-3800 ("the Underlying Lawsuit") alleging claims for negligence and loss of consortium, and including an *ad damnum* clause seeking a total of \$525,000 in damages.

17. On or about November 29, 2012, Coggin provided copies of the Underlying Lawsuit papers to Liberty.

18. To commence the Underlying Lawsuit under South Carolina common law and Rule 3(a), SCRCP, Coggin was required to file the lawsuit with the clerk of court and accomplish service of process on Dickenson within the statute limitations in any manner prescribed by law or, if Dickenson was not served within the statute limitations, actual service was required to be accomplished no later than 120 days of the date of filing, which was on or before February 26, 2013.

19. Once service of process has been accomplished, Rule 4(g), SCRCP, required the person serving process to make a proof of service in the form of an affidavit stating, among other things, the date, time and place of service. Rule 4(g), SCRCP, also required Coggin to file proof of service with the Clerk of Court.

20. Coggin did not commence the Underlying Lawsuit.

21. Coggin did not commence the Underlying Lawsuit within the applicable statute of limitations because Dickenson was not served within the statute limitations and actual service of process was not accomplished before February 26, 2013.

22. Coggin did not at any point obtain an affidavit or other sworn statement by any individual establishing proof of service of process on Dickenson through personal service pursuant to Rule 4(d), SCRCP.

23. Coggin did not at any point obtain service of process on Dickenson through a statute or an order of court pursuant to Rule 4(e), SCRCP.

24. Coggin did not at any point obtain service of process on Dickenson anywhere within the United States pursuant to Rule 4(h), SCRCP.

25. Coggin did not at any point obtain service of process on Dickenson by an acceptance of service pursuant to Rule 4(j), SCRPC.

26. Coggin did not at any point obtain service of process on Dickenson by publication pursuant to S.C. CODE ANN. §§15-9-15 and 15-9-710.

27. Coggin did not at any point file any documents or an affidavit by an individual establishing proof of service of process on Dickenson by delivering a copy of the summons and complaint personally or by any other means.

28. Liberty retained counsel to represent Dickenson in the Underlying Lawsuit.

29. On October 9, 2013, the statute of limitations expired on the Feldmans' claims against Dickenson.

30. On or about May 5, 2014, Coggin sent a letter to a third-party concerning the Feldmans' claims stating, among other things, about Mr. Feldman's claim that "this does not include loss of work, loss of enjoyment of life and pain and suffering. If we would consider this, the demand on UIM is \$300,000 to \$350,000." Coggin further represented that Ms. Feldman's loss of consortium claim was valued at \$100,000.

31. In or around September, 2014, upon information and belief, counsel for Dickenson advised Coggin of their plan to file a motion to dismiss based on Coggin's failure to serve Dickenson with process, and, upon information and belief, extending on behalf of Liberty a \$25,000 offer to settle to avoid having to litigate the dispute further and because the Feldmans were their insureds.

32. On or about September 15, 2014, Coggin sent a letter to the Feldmans "advis[ing] you to settle the matter at hand for the \$25,000 that has been offered," notwithstanding his

prior pleadings and representations valuing the combined claims between \$450,000 and \$525,000.

33. On October 8, 2014, almost 2 years after the Underlying Lawsuit had been filed and almost 1 year after the statute of limitations had expired, counsel for Dickenson filed a motion to dismiss pursuant to Rule 12(b)(4) and 12(b)(5), SCRCP, stating, "Although Plaintiffs filed a lawsuit within the applicable statute of limitations, Plaintiffs have failed to serve the Defendant within the applicable time period. To date, upon information and belief, the Defendant still has not been served with this lawsuit."

34. After the motion to dismiss had been filed and after the statute of limitations had expired on their claims against Dickeson but before the hearing on the motion to dismiss, the Feldmans terminated Coggin's representation of them and retained other counsel to take over the representation.

35. There was no proof of service or any other evidence that service of process on Dickenson had been accomplished in the files that Coggin delivered to the Feldmans' new counsel.

36. In several communications, including Coggin's response to a subpoena, Coggin indicated that the entire file had been delivered and that Coggin had no other documents related to his representation of the Feldmans. The file did not contain proof of service of process on Dickenson.

37. Liberty paid the Feldmans a mere \$25,000 of the available \$500,000 in UIM coverage to settle the Feldmans' claims against Dickenson and the UIM policy.

38. The Feldmans knew and understood that it was virtually certain that Dickenson's motion to dismiss on statute of limitations grounds would be granted. Liberty would not be

required to pay the \$500,000 policy limits under the UIM policy because Coggin, as the Feldmans' legal counsel, did not satisfy the requirements of S.C. CODE ANN. § 38-77-160 by timely and properly commencing a lawsuit and obtaining a judgment against Dickenson. Therefore, the Feldmans agreed to settle their claims for only \$25,000 of the available \$500,000 in UIM coverage to mitigate the damages caused by Coggin's failure to commence the Underlying Lawsuit within the time period allowed by the applicable statute of limitations, the South Carolina Rules of Civil Procedure, and South Carolina common law.

39. Coggin is liable to his clients, the Feldmans, as a direct and proximate result of not performing his professional duties to timely commence a lawsuit on their behalf before permitting a statutory time limitation to bar the Feldmans' claims against Dickenson.

40. Had Coggin met the standard of care by performing his professional duties to timely commence a lawsuit, it is more likely than not that the Feldmans would have recovered the entire amount of the \$500,000 UIM policy from Liberty.

FOR A FIRST CAUSE OF ACTION
(Legal Professional Negligence)

41. The foregoing factual and jurisdictional allegations are reiterated and realleged as though set forth verbatim.

42. At all times relevant hereto, a lawyer-client relationship existed between Coggin and the Feldmans.

43. Coggin owed duties to the Feldmans, including the duty to represent and protect the Feldmans' interests by timely commencing a lawsuit on their behalf before permitting a statutory time limitation to bar the Feldmans' claims against Dickenson.

44. Coggin failed to meet the minimum standard of care thereby breaching his professional duties to the Feldmans and otherwise acted in a negligent, grossly negligent, willful, wanton and reckless manner by failing to timely commence a lawsuit on their behalf before permitting a statutory time limitation to bar the Feldmans' claims against Dickenson.

45. Coggin failed to meet the minimum standard of care thereby breaching his professional duties to the Feldmans by other such particulars as the evidence in this case may demonstrate.

46. As a direct and proximate result Coggin's breach of his professional duties by the actions and omissions as specified herein, the Feldmans sustained actual, consequential, and incidental damages in an amount to be determined by the jury at the trial of this case.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

47. The foregoing factual and jurisdictional allegations are reiterated and realleged as though set forth verbatim.

48. Coggin entered into a contract with the Feldmans, the terms of which Coggin agreed and contracted to provide competent and prudent legal services.

49. The Feldmans fulfilled all necessary preconditions, if any, of the contract with Coggin.

50. By virtue of their contract, Coggin owed duties to the Feldmans, including the duty to protect, preserve and advance the rights and interests of the Feldmans by possessing and exercising that degree of care, skill, and learning which other reasonable and competent lawyers would be expected to possess and exercise under the same or similar circumstances.

51. Coggin failed to meet the minimum standard of care by failing to timely commence a lawsuit on their behalf before permitting a statutory time limitation to bar the Feldmans' claims against Dickenson thereby breaching his contractual duties to the Feldmans.

52. Coggin failed to meet the minimum standard of care thereby breaching his contractual duties to the Feldmans by other such particulars as the evidence in this case may demonstrate.

53. As a direct and proximate result of Coggin's breach of his contractual duties by the actions and omissions as specified herein, the Feldmans sustained actual, consequential, and incidental damages in an amount to be determined by the jury at the trial of this case.

TRIAL BY JURY.

54. The Feldmans demand a jury trial on all claims and issues so triable.

EXPERT AFFIDAVIT

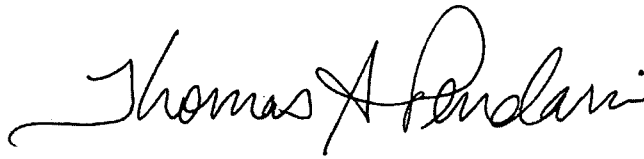
55. Pursuant to S.C. CODE ANN. § 15-36-100(B) (2006), attached hereto and incorporated herein by reference as **Exhibit 1**, is the affidavit of Samuel C. Bauer, J.D., an expert witness and lawyer with experience in handling personal injury matters, which specifies at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, Robert E. Feldman and Lois J. Feldman, pray for judgment against Defendant, Gary P. Coggin, for all actual damages, consequential damages, and incidental damages, and for prejudgment interest, all in an amount to be more specifically

proven at trial, and the costs of this action, and for such other and further relief as this Honorable Court may deem just and proper.

Respectfully submitted,

A handwritten signature in black ink, reading "Thomas A. Pendarvis". The signature is fluid and cursive, with the first name "Thomas" and last name "Pendarvis" clearly legible.

Thomas A. Pendarvis (SC Bar # 064918)
Catherine B. Kerney (SC Bar # 81429)
PENDARVIS LAW OFFICES, P.C.
500 Carteret St Ste A
Beaufort, SC 29902-5066
843.524.9500 Tel.
843.524.9501 Fax.
Thomas@PendarvisLaw.com
Carey@PendarvisLaw.com

Counsel for Plaintiffs

Beaufort, South Carolina

April 16, 2015

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2015-CP-07-

Robert E. Feldman and Lois J. Feldman,
Plaintiffs,

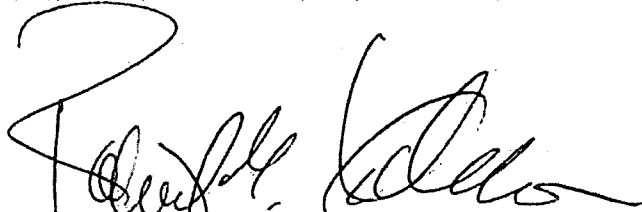
vs.

Gary P. Coggin,

Defendant.

**VERIFICATION OF THE
COMPLAINT**

PERSONALLY appeared before me, Robert E. Feldman, who, first being duly sworn, says: that he is a Plaintiff in the foregoing action; that he has read the foregoing Complaint; that the statements contained therein are true to the best of his knowledge except as to those stated to be based upon information and belief, as to which, he believes such matters to be true.


Robert E. Feldman

SWORN to before me this

15 day of April, 2015



NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires Oct 8, 2024

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2015-CP-07-

Robert E. Feldman and Lois J. Feldman,

Plaintiffs,

vs.

Gary P. Coggin,

Defendant.

**EXPERT MERIT AFFIDAVIT BY
SAMUEL C. BAUER**

**Pursuant to
S.C. CODE ANN. § 15-36-100(B)**

STATE OF SOUTH CAROLINA)
) SS:
COUNTY OF BEAUFORT)

Personally appeared before me, Samuel C. Bauer, who, first being duly sworn, says:

1. It is my expert opinion, held to a reasonable degree of professional certainty based upon my review of the available evidence, that the defendant-lawyer committed at least one act of professional negligence proximately causing financial damages to the plaintiffs.
2. The following statements and opinions are based on my review of the available evidence.
3. Gary P. Coggin (Coggin) is a lawyer licensed to practice law in South Carolina.
4. Coggin had a client-lawyer relationship with Robert E. Feldman and Lois J. Feldman (the Feldmans) with regard to representing them on their personal injury and loss of consortium claims against an at-fault driver, Sarah Dickenson (Dickenson), arising from a motor vehicle accident she caused that occurred on October 9, 2010.
5. Dickenson had \$100,000 of available liability insurance coverage for the Feldmans' claims and the Feldmans had \$500,000 in underinsurance (UIM) coverage available for injuries sustained

and claims arising from the collision caused by Dickenson.

6. Coggin settled the Feldmans' claims for only \$85,000 of Dickenson's \$100,000 available liability coverage.

7. On or about October 29, 2012, Coggin filed suit on behalf of the Feldmans against Dickenson in the Beaufort County Court of Common Pleas in a matter styled, *Robert Feldman & Lois Feldman vs. Sarah Dickenson*, C.A. # 2012-CP-07-3800 (the Underlying Suit) alleging claims for negligence and loss of consortium, and including an *ad damnum* clause seeking a total of \$525,000 in damages.

8. Coggin did not at any point obtain an affidavit or other sworn statement by any individual establishing proof of service of process on Dickenson through personal service under any of the methods available under Rule 4, SCRCPP, or by publication pursuant to S.C. CODE ANN. §§15-9-15 and 15-9-710.

9. Coggin did not at any point file any documents or an affidavit by an individual establishing proof of service of process on Dickenson.

10. On October 9, 2013, the statute of limitations expired on the Feldmans' claims against Dickenson.

11. Coggin did not present to the court any evidence establishing Dickenson had, in fact, been served with process of the Underlying Suit on or before October 9, 2013, when the statute of limitations expired.

12. Coggin owed duties to the Feldmans, including the duty to represent and protect the Feldmans' interests by timely commencing a lawsuit on their behalf before permitting a statutory time limitation to bar the Feldmans' claims against Dickenson.

13. Coggin was required serve Dickenson with process of the Underlying Lawsuit before the statute of limitations expired to timely commence the lawsuit under the South Carolina Rules of Civil Procedure and binding case law.

14. Coggin failed to meet the minimum standard of care thereby breaching his professional duties to the Feldmans by failing to timely commence a lawsuit on their behalf before the statutory time limitations expired precluding the Feldmans' recovery of a judgment against Dickenson as required in order to recover the \$500,000 in benefits available under their UIM policy.

15. Had Coggin met the standard of care by performing his professional duties to ensure the Dickenson was timely served with process to commence a lawsuit and protect the Feldmans' claims, it is more likely than not that the Feldmans would have recovered all or almost all of the \$500,000 UIM policy coverage.

16. In my opinion, that the Feldmans would have recovered and Liberty would have paid all or almost all of the \$500,000 in UIM coverage, based on the amount of Mr. Feldman's medical expenses incurred and the future medical expenses his physicians are advising he will, more likely than not, incur as a result of the accident, and his lost wages.

17. My resume, summarizing my professional qualifications, is attached as Exhibit 1.

18. I am a lawyer licensed to practice law in the State of South Carolina since _____.

19. I am a shareholder in BAUER & METRO, P.C., located at 38 New Orleans Rd, Hilton Head Island, South Carolina.

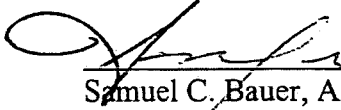
20. My areas of practice generally relate to litigation matters, including litigation of personal injury claims.

21. I have been retained by Thomas A. Pendarvis with PENDARVIS LAW OFFICES as an expert witness in this matter on behalf of Robert E. Feldman and Lois J. Feldman.

22. In rendering my opinion I have reviewed the available evidence of the kinds of factual sources and legal authorities customarily relied upon by lawyers serving as experts to develop opinions on the handling of personal injury claims. I have had access to the factual materials available, including the materials filed with the Beaufort County Clerk of Court's office and other materials in the Feldmans' possession.

23. I reserve the right to supplement my opinions based on additional evidence obtained and testimony developed in this matter.

Further the Affiant sayeth not.



Samuel C. Bauer, Affiant

SWORN to before me this 7 day of ^{May}~~April~~, 2015



(L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires 12/30/23.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

ROBERT E. FELDMAN and LOIS J.
FELDMAN,

Plaintiffs,

vs.

GARY P. COGGIN,

Defendant.

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT
) C/A No.: 2015-CP-07-01251

ANSWER

2015 AUG 20 PM 3:13

TO: THOMAS A. PENDARVIS, ATTORNEY FOR PLAINTIFF

The Defendant Gary P. Coggin (hereinafter "Defendant"), by and through his undersigned counsel, hereby submits this Answer to the Plaintiffs' Complaint. All allegations of the Plaintiffs' Complaint that are not specifically admitted herein are denied.

AS TO THE SUMMARY OF THE CASE

1. Defendant denies the allegations contained in Paragraph 1 of the Plaintiffs' Complaint.

AS TO PARTIES

2. Defendant admits the allegations contained in Paragraph 2 of the Plaintiffs' Complaint.

3. Defendant admits, upon information and belief, the allegations contained in Paragraph 3 of the Plaintiffs' Complaint.

4. Defendant admits, upon information and belief, the allegations contained in Paragraph 4 of the Plaintiffs' Complaint.

AS TO JURISDICTION

5. Paragraph 5 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 5 of the Plaintiffs' Complaint.

AS TO VENUE

6. Paragraph 6 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 6 of the Plaintiffs' Complaint, except that Defendant admits that he is a resident of Beaufort County.

AS TO FACTS

7. Defendant admits the allegations contained in Paragraph 7 of the Plaintiffs' Complaint.

8. Defendant admits the allegations contained in Paragraph 8 of the Plaintiffs' Complaint.

9. Paragraph 9 of the Plaintiffs' Complaint contains allegations that are not directed at Defendant, conclusions of law, and that are beyond Defendant's knowledge and information. Accordingly, no response is required from Defendant. To the extent a response is required, Defendant admits only that Plaintiff Bob Feldman retained Defendant to represent him in a lawsuit against Dickenson resulting from a motor vehicle accident and denies all remaining and inconsistent allegations.

10. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 10 of the Plaintiffs' Complaint and therefore denies the same.

11. In response to Paragraph 11 of the Plaintiffs' Complaint, Defendant admits only that he obtained certain copies of documents evidencing Plaintiff Bob Feldman's damages and denies all remaining and inconsistent allegations therewith.

12. Defendant admits, upon information and belief, the allegations contained in Paragraph 12 of the Plaintiffs' Complaint.

13. Defendant admits, upon information and belief, the allegations contained in Paragraph 13 of the Plaintiffs' Complaint.

14. Defendant denies the allegations contained in Paragraph 14 of the Plaintiffs' Complaint.

15. In response to Paragraph 15 of the Plaintiffs' Complaint, Defendant admits only that the Feldmans voluntarily agreed to settle the claim against Dickenson for \$85,000 and denies all remaining and inconsistent allegations therewith.

16. In response to Paragraph 16 of the Plaintiffs' Complaint, Defendant craves reference to the filed Complaint in the Underlying Lawsuit and denies all allegations inconsistent therewith.

17. Defendant admits, upon information and belief, the allegations contained in Paragraph 17 of the Plaintiffs' Complaint.

18. Paragraph 18 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, Defendant craves reference to Rule 3(a), SCRCF and all other relevant authority, and denies all allegations inconsistent therewith.

19. Paragraph 19 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, Defendant craves reference to Rule 4(g), SCRCF and all other relevant authority, and denies all allegations inconsistent therewith.

20. Paragraph 20 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 20 of the Plaintiffs' Complaint.

21. Paragraph 21 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 21 of the Plaintiffs' Complaint.

22. Paragraph 22 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 22 of the Plaintiffs' Complaint.

23. Paragraph 23 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, Defendant admits the allegations contained in Paragraph 23 of the Plaintiffs' Complaint.

24. Paragraph 24 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 24 of the Plaintiffs' Complaint.

25. Paragraph 25 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, Defendant admits the allegations contained in Paragraph 25 of the Plaintiffs' Complaint.

26. Paragraph 26 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, Defendant admits the allegations contained in Paragraph 26 of the Plaintiffs' Complaint.

27. In response to Paragraph 27 of the Plaintiffs' Complaint, Defendant craves reference to the filings in the Underlying Action and denies all allegations inconsistent therewith.

28. Defendant admits, upon information and belief, the allegations contained in Paragraph 28 of the Plaintiffs' Complaint.

29. Paragraph 29 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 29 of the Plaintiffs' Complaint.

30. In response to Paragraph 30 of the Plaintiffs' Complaint, Defendant craves reference to the letter cited therein and denies all allegations inconsistent therewith.

31. Defendant denies the allegations contained in Paragraph 31 of the Plaintiffs' Complaint.

32. In response to Paragraph 32 of the Plaintiffs' Complaint, Defendant craves reference to the letter cited therein and denies all allegations inconsistent therewith.

33. In response to Paragraph 33 of the Plaintiffs' Complaint, Defendant craves reference to the filed motion to dismiss and denies all allegations inconsistent therewith.

34. In response to Paragraph 34 of the Plaintiffs' Complaint, Defendant admits only that he no longer represents the Feldmans and denies all remaining and inconsistent allegations.

35. In response to Paragraph 35 of the Plaintiffs' Complaint, Defendant craves reference to the files referenced therein and denies all allegations inconsistent therewith.

36. In response to Paragraph 36 of the Plaintiffs' Complaint, Defendant craves reference to the communications and file referenced therein and denies all allegations inconsistent therewith.

37. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 37 of the Plaintiffs' Complaint and therefore denies the same.

38. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 38 of the Plaintiffs' Complaint and therefore denies the same. Defendant specifically denies that "it was a virtual certainty that Dickenson's motion to dismiss on statute of limitations grounds would be granted."

39. Defendant denies the allegations contained in Paragraph 39 of the Plaintiffs' Complaint.

40. Defendant denies the allegations contained in Paragraph 40 of the Plaintiffs' Complaint.

AS TO THE FIRST CAUSE OF ACTION
(Legal Professional Negligence)

41. In response to Paragraph 41 of the Plaintiff's Complaint, Defendant reasserts all of his responses to the prior Paragraphs of the Plaintiffs' Complaint as if fully restated herein verbatim.

42. Paragraph 42 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 42 of the Plaintiffs' Complaint.

43. Paragraph 43 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, Defendant admits the allegations contained in Paragraph 43 of the Plaintiffs' Complaint.

44. Defendant denies the allegations contained in Paragraph 44 of the Plaintiffs' Complaint.

45. Defendant denies the allegations contained in Paragraph 45 of the Plaintiffs' Complaint.

46. Defendant denies the allegations contained in Paragraph 46 of the Plaintiffs' Complaint.

AS TO THE SECOND CAUSE OF ACTION
(Breach of Contract)

47. In response to Paragraph 47 of the Plaintiff's Complaint, Defendant reasserts all of his responses to the prior Paragraphs of the Plaintiffs' Complaint as if fully restated herein verbatim.

48. In response to Paragraph 48 of the Plaintiffs' Complaint, Defendant craves reference to the contract cited therein and denies all allegations inconsistent therewith.

49. Defendant admits the allegations contained in Paragraph 49 of the Plaintiffs' Complaint.

50. Paragraph 50 of the Plaintiffs' Complaint contains conclusions of law to which no response is required. To the extent a response is required, Defendant craves reference to the contract cited therein and denies all allegations inconsistent therewith.

51. Defendant denies the allegations contained in Paragraph 51 of the Plaintiffs' Complaint.

52. Defendant denies the allegations contained in Paragraph 52 of the Plaintiffs' Complaint.

53. Defendant denies the allegations contained in Paragraph 53 of the Plaintiffs' Complaint.

AS TO THE TRIAL BY JURY

54. In response to Paragraph 54 of the Plaintiffs' Complaint, Defendant concedes the Plaintiffs' demand for a jury trial on all claims and issues so triable.

AS TO THE EXPERT AFFIDAVIT

55. In response to Paragraph 54 of the Plaintiffs' Complaint, Defendant admits that Plaintiffs attached an expert affidavit to their Complaint, but denies the conclusions reached therein.

AS TO THE PRAYER FOR RELIEF

56. Defendant contends that Plaintiffs are not entitled to any relief, including the relief requested in the "WHEERFORE" paragraph.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES:
(Failure to State a Claim)

57. The Plaintiffs have failed to state facts sufficient to constitute a cause of action for which relief can be granted against Defendant, and therefore, the action against Defendant should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES:
(Mitigation of Damages)

58. The Plaintiffs' claims are barred, in whole or in part, because the Plaintiffs failed to mitigate any injuries and damages allegedly sustained and by the doctrine of avoidable consequences.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES:
(Lack of Proximate Cause)

59. No act or omission on the part of Defendant either caused or contributed to any alleged injury or damage the Plaintiffs may have sustained.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES:
(Intervening/Superseding Negligence)

60. Should it be determined that Defendant was negligent, careless, reckless or grossly negligent, which allegations are expressly denied by Defendant, then Defendant would show this Court that the damages sustained by the Plaintiffs, if any, were proximately caused by the intervening and superseding negligence of others, which intervening and superseding negligence proximately caused any damages alleged to have been suffered by the Plaintiffs.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES:
(Sole Negligence of Third Parties)

61. Defendant would allege that any injuries or damages sustained by the Plaintiffs were due to and caused by the sole acts of negligence and recklessness on the part of third parties in failing to exercise due and reasonable care for the safety of others.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES:
(Unavailability of Punitive Damages)

62. Any award of punitive damages against Defendant will violate the rights guaranteed to him by the United States Constitution for the following reasons:

- a. Any award of punitive damages will violate the prohibition against excessive fines contained in the Eighth Amendment to the United States Constitution as applied to the states by way of the Due Process Clause of the Fourteenth Amendment to the United States Constitution;
- b. Any award of punitive damages will violate the guarantees of due process found in the Fourteenth Amendment to the United States Constitution because there is a lack of objective guidelines for a jury to base its award and the current guidelines are arbitrary, vague, and unconstitutional.

63. Any award of punitive damages against Defendant will violate the rights guaranteed to it by the South Carolina Constitution for the following reasons:

- a. Any award of punitive damages will violate the prohibition against excessive fines contained in Article I, Section XV of the South Carolina Constitution;
- b. Any award of punitive damages will violate the guarantees of due process found in Article I, Section III of the South Carolina Constitution because there is a lack of objective guidelines for a jury to base its award and the current guidelines are arbitrary, vague, and unconstitutional.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES:
(Waiver)

64. Some or all of the Plaintiffs' claims against Defendant are barred by the doctrine of waiver.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES:
(Estoppel)

65. Some or all of the Plaintiffs' claims against Defendant are barred by the doctrines of judicial estoppel and equitable estoppel.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES:
(Statute of Limitations)

66. Some or all of the Plaintiffs' causes of action against Defendant are barred by the applicable statute of limitations.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES:
(Reservation of Additional Defenses)

67. Defendant reserves the right to assert any additional and further defenses that may be revealed by information obtained during the course of investigation and discovery as consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the Complaint of Plaintiffs, Defendant prays that the Plaintiffs' Complaint be dismissed with attorneys' fees and costs being award to Defendant and for such other relief as this Honorable Court deems just and proper.

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY: 

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Jeffrey M. Bogdan, Esquire
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jbogdan@barnwell-whaley.com
Attorneys for Defendant

August 17, 2015
Charleston, South Carolina

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF BEAUFORT

3 ROBERT E. FELDMAN and
4 LOIS J. FELDMAN,

Plaintiffs,

5 vs.

CASE NO. 2015-CP-07-1251

6 GARY P. COGGIN,

7 Defendant.

8
9 DEPOSITION OF: GARY P. COGGIN

10 DATE: June 8, 2016

11 TIME: 10:06 a.m.

12 LOCATION: Pendarvis Law Offices, P.C.
13 710 Boundary Street, Unit A-1
Beaufort, SC

14 TAKEN BY: Counsel for the Plaintiffs

15 REPORTED BY: TRISHA M. THOMAS

16
17
18 A. WILLIAM ROBERTS, JR. & ASSOCIATES

19 Fast, Accurate & Friendly

20 Charleston, SC Hilton Head, SC Myrtle Beach, SC
(843) 722-8414 (843) 785-3263 (843) 839-3376

21
22 Columbia, SC Greenville, SC Charlotte, NC
(803) 731-5224 (864) 234-7030 (704) 573-3919



1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFFS

3 ROBERT E. FELDMAN and LOIS J. FELDMAN:

4 PENDARVIS LAW OFFICES, P.C.

5 BY: THOMAS A. PENDARVIS

6 CHRISTOPHER W. LEMPESIS, JR.

7 710 Boundary Street, Unit A-1

8 Beaufort, SC 29902

9 (843) 524-9500

10 Thomas@pendarvislaw.com

11 Chris@pendarvislaw.com

12 ATTORNEYS FOR THE DEFENDANT

13 GARY P. COGGIN:

14 BARNWELL, WHALEY, PATTERSON & HELMS,
15 LLC

16 BY: JEFFREY M. BOGDAN

17 288 Meeting Street, Suite 200

18 Charleston, SC 29401

19 (843) 577-7700

20 Jbogdan@barnwell-whaley.com

21 ALSO PRESENT: Robert E. Feldman

22 (INDEX AT REAR OF TRANSCRIPT)

GARY P. COGGIN

being first duly sworn, testified as follows:

EXAMINATION

BY MR. PENDARVIS:

Q. Good morning, Mr. Coggin. We exchanged greetings right before the deposition started.

Could you state your full name for the record, please?

A. Gary Coggin.

Q. Mr. Coggin, you are a lawyer licensed to practice here in South Carolina, correct?

A. In good standing.

Q. And for the formality of the deposition rules there are a few things we need to have an agreement on.

A. Sure. Go ahead. Uh-huh.

Q. And you've taken depositions before, correct?

A. Yes.

Q. That's yes.

If you need a break at any point in time, please, you know, let us know. We're not here for an endurance contest. I'll be glad to take a break and accommodate.

MR. PENDARVIS: Same for counsel.

1 THE WITNESS: That will be fine.

2 BY MR. PENDARVIS:

3 Q. Number two, I'm going to be asking a
4 series of questions today, of course, and showing
5 you some documents. If in the course of that
6 exchange you have any questions about or
7 misunderstandings, maybe, about the type of -- what
8 I'm asking, please let me know. I'll be glad to
9 readdress or rephrase the question.

10 And you're not allowed to communicate
11 with counsel about the substance of your
12 testimony --

13 A. That's fine.

14 Q. -- during the course of the deposition
15 today.

16 And you understand all those, correct?

17 A. Yes, I do.

18 Q. And you're doing great on verbal
19 response. Better than me.

20 I am going to do my very best today not
21 to interrupt your answers, so if I do that, please
22 make sure to stop me or your counsel will 'cause
23 I've done it in the past. I want to do my very
24 best to get a good, clean transcript today.

25 A. Absolutely.

1 Q. Okay. Before we get into the
2 substance, what did you do to prepare for your
3 deposition today?

4 A. I looked over the documents a little
5 bit. That's about all.

6 Q. And you did that today?

7 A. At McDonald's, briefly, yeah.

8 Q. Okay. Did you review the pleadings and
9 your --- the discovery requests and responses in
10 the case?

11 A. I looked at the pleadings for about
12 five minutes. I did not look at the discovery.

13 Q. And just on the procedural side of the
14 lawsuit so far, in this lawsuit have you been
15 assisting your counsel in preparing discovery
16 responses?

17 A. Very little.

18 Q. Okay. Okay. Have you reviewed --

19 A. Let me back up to -- in preparing
20 discovery?

21 Q. Responses, your responses.

22 A. Oh, yes. Absolutely.

23 Q. Okay.

24 A. Yeah. Sorry.

25 Q. When did you first meet Mr. Robert

1 "Bob" Feldman?

2 A. I think it was in -- I'm not sure of
3 the exact date, but sometime in 2010, latter part
4 of the year, probably in the fall.

5 Q. Was it related to the automobile
6 accident?

7 A. Yes, it was.

8 Q. And prior to -- and we're going to get
9 into your representation of Mr. Feldman and his
10 wife. Did you know them before that?

11 A. No.

12 Q. Either?

13 A. Neither one.

14 Q. Okay.

15 A. Let me back up again. Lois worked at
16 the bank. I don't know if I knew her at that time
17 or not.

18 Q. TD Bank?

19 A. Yeah. Yes.

20 Q. And do you have an account with TD
21 Bank, or did you have an account with TD Bank?

22 A. No longer.

23 Q. No longer?

24 A. Yeah.

25 Q. But during the course of --

1 A. Yes.

2 Q. -- of the initial part of your
3 representation, you did have a -- you or your law
4 firm had an account with TD Bank?

5 A. Yes.

6 Q. Which one? You?

7 A. Law firm.

8 Q. Okay. When did you become licensed to
9 practice law in South Carolina?

10 A. 1994 or '95. I'm not sure which one.

11 Q. Okay. And could you describe -- where
12 did you -- where in South Carolina did you begin
13 practicing law?

14 A. Hilton Head Island. I've been there
15 the entire time.

16 Q. Okay. And describe the nature of your
17 law practice here in South Carolina.

18 A. Mostly accident injury, a little bit of
19 general practice. People come in off the street
20 and need help. I do a lot of that.

21 Q. Divorce? Criminal?

22 A. No. Most of the time it's poor people
23 that have lost their truck, getting thrown out of
24 an apartment, something like that.

25 Q. Okay. How many cases have you tried?

1 A. In court?

2 Q. Yes, sir. And let's go first to --
3 let's focus in on circuit court actions.

4 A. I don't know. I really can't tell you.
5 If you have any documents I can look at, I'll be
6 happy to look at them and tell you, but I really
7 don't know. I've been here since '95, and that's
8 all I can tell you.

9 Q. More than ten lawsuits to try -- that
10 went to trial?

11 A. Again, I don't know.

12 Q. What's your best estimate of cases that
13 you've tried? Estimate now. I'm not asking for an
14 accurate number.

15 A. Anywhere from -- in common pleas?

16 Q. Yes, sir.

17 A. Anywhere from five to fifteen.

18 Q. Okay.

19 A. I don't know.

20 Q. And I understand --

21 A. Yeah. And I really --

22 Q. -- it's just an estimated range.

23 A. And I'm going to back up. I don't
24 really want to speculate on it 'cause I just don't
25 know.

1 Q. Okay. And those common plea matters --
2 okay. First off, you've tried cases, and you've
3 tried cases in common pleas court.

4 A. Yes, I have.

5 Q. Correct?

6 Were the cases you tried limited to
7 auto -- personal injury claims arising from
8 automobile accidents?

9 A. The cases I've tried, I believe were
10 limited to involving an automobile.

11 No. That's not correct. I've done
12 other cases where there was disputes over money,
13 et cetera.

14 Q. Okay. Were the majority of the cases
15 you tried automobile accident cases?

16 A. Yeah. I believe so.

17 Q. Okay. Have you formed a corporation or
18 an entity to operate your law practice?

19 A. I'm an LLC.

20 Q. Coggin Law Office, LLC?

21 A. I believe that's it.

22 Q. Okay. I'm going to represent to you
23 that Mr. Feldman's accident with -- the collision
24 with Ms. Dickenson between -- Dickenson, as driver,
25 and Mr. Feldman occurred on October the 9th, 2010.

1 We're going to see some documents on that. I'm
2 just going to represent that to you now.

3 And I'm going to also represent -- when
4 we get a copy, but I thought we had a copy right
5 here, but we're going to get a copy of your fee
6 agreement with Mr. Feldman that's dated a few days
7 later, October 13, 2010. I'm going to show you
8 that in just a moment.

9 And tell me about your first meeting
10 with Mr. Feldman. Where did it occur?

11 A. It occurred at Bob's house.

12 Q. Okay. And how did it come about that
13 you went to Mr. Feldman's house?

14 A. I believe I received a call from
15 Mr. Feldman. He said he was infirm from the
16 accident and asked me to come to his house.

17 Q. So you went to his house --

18 A. Yes.

19 Q. -- to meet. And you had some
20 conversations with Mr. Feldman?

21 A. Oh, absolutely.

22 Q. And, of course, you know, that's
23 October 2010. I'm not going to ask for a verbatim.
24 Could you generally describe the substance of your
25 communications with Mr. Feldman at his house that

1 day?

2 A. Talked about the accident.

3 Q. Okay. Did you have any conversations
4 -- okay. What did he tell you about the accident?

5 A. Essentially what happened is that he
6 was on 278 -- I believe he was in the slower lane
7 -- coming up to an intersection. A vehicle came
8 through the intersection against the light and hit
9 him.

10 Q. Did he describe medical treatments and
11 things that happened after the collision?

12 A. You know, I can't speculate. I'm sure
13 he did, and I'm sure we talked about that. I don't
14 recall.

15 Q. Did you have any conversations about
16 your serving as counsel for Mr. Feldman in that
17 meeting at his house that day?

18 A. Again, I'm sure we did, but I don't
19 recall.

20 Q. Were there any conversations about your
21 representing his wife, Lois Feldman, as part of the
22 representation?

23 A. I don't recall, and I don't -- in that
24 case I don't think that came up.

25 Q. Do you have a typical conversation or

1 things you discuss with clients as you are
2 developing the, you know, lawyer-client
3 relationship and leading to the contract?

4 A. You're going to have to be more
5 specific, Mr. Pendarvis. I don't know what you're
6 asking.

7 Q. All I'm asking is, in the circumstance
8 where you're meeting with a prospective client --

9 A. Uh-huh.

10 Q. -- and a contract's not been signed, is
11 there -- are there things you describe about what
12 you're going to do and how the representation is
13 going to be handled that are communicated to your
14 clients or prospective clients before the
15 contract's signed?

16 A. I don't hold out a lot of things. I
17 tell them that I will represent them competently,
18 and I don't know anything more beyond that, and I
19 specifically don't remember anything in that
20 conversation.

21 Q. Did you have any discussions with
22 Mr. Feldman at or about the time the contract was
23 signed about how -- who would be paying costs for
24 the litigation?

25 A. The -- my contract's pretty clear on

1 that, and it says that the -- the plaintiff or the
2 party will play -- pay all reasonable costs.

3 Q. That wasn't my question. My question
4 was: Did you have any conversations with
5 Mr. Feldman about who is paying costs in this
6 litigation?

7 A. I don't know.

8 Q. Okay.

9 (EXH. 1, Contingency Fee Agreement, was
10 marked for identification.)

11 BY MR. PENDARVIS:

12 Q. Going to pass to you a copy of a
13 document that's been marked as Exhibit 1 -- states
14 on the title of the document Contingency Fee
15 Agreement -- and ask is this a copy of the fee
16 agreement that you presented to Mr. Feldman?

17 A. It's signed by Mr. Feldman. I agree --
18 I believe it is.

19 Q. And is that your signature at the very
20 bottom?

21 A. Yes, it is.

22 Q. And is this or was this the standard
23 contingency fee agreement that you were using in --

24 A. At that time, yeah.

25 Q. -- 2010?

1 A. Uh-huh.

2 Q. I see, in reference to Paragraph 6,
3 there's a portion of the form that has been marked
4 out.

5 A. Uh-huh.

6 Q. You see that?

7 A. Yes, I do.

8 Q. And it says -- it's the portion that
9 says: 40 percent if there is an appeal.

10 Did your agreement with Mr. Feldman
11 exclude modification of the 33 percent if there was
12 an appeal?

13 A. The -- this exactly says the 40 percent
14 if there's an appeal. I don't do appeals.

15 Q. Okay.

16 A. I think probably I made that clear to
17 Mr. Feldman.

18 Q. Why is that in your contract then? Why
19 do you even have --

20 A. It's a -- that's a good question. It's
21 a standard in the contract. I've never done an
22 appeal.

23 Q. Did Ms. Lois Feldman ever sign a fee
24 agreement with you?

25 A. No.

1 Q. But she was named as a plaintiff in the
2 complaint you filed though?

3 A. Yes, she was.

4 Q. What were the terms of your
5 relationship -- of your relationship with her?

6 A. She was essentially subsumed into the
7 contingency fee agreement.

8 Q. Okay. When you take on a case -- and
9 we'll use the car -- automobile accident case as an
10 example -- do you have internal calendars that you
11 mark for statutes of limitations and things of that
12 nature?

13 A. No.

14 Q. What do you do to make sure that you've
15 timely filed the claim?

16 A. The -- the claim is filed as soon as I
17 get it and as soon as we've agreed on it. The
18 three-year statute of limitations is something I'm
19 well aware of all the time.

20 Q. Well, we do know that the -- the
21 lawsuit in this case -- you filed a lawsuit in this
22 case, correct?

23 A. That's correct.

24 Q. And when was it filed, approximately?

25 A. It was filed after the settlement. The

1 settlement was in 2012 -- I believe in the fall --
2 so it was filed shortly after that.

3 Q. I thought you said that you typically
4 file -- that you file the case right after you take
5 it.

6 A. No. I said after we agreed to have it
7 filed. I'm not filing a case if I'm going to
8 settle the case.

9 Q. Okay.

10 A. I apologize if I gave that impression.

11 Q. And after you accepted the
12 representation of Mr. Feldman in October of 2010 --
13 we're going to look at some demand letters and that
14 by --

15 A. Sure.

16 Q. -- the summer of 2011 -- and is it
17 accurate that in between October -- generally
18 between October of 2010 and July of '11 you were
19 gathering medical documents and things that were --
20 you know, that related to the claim?

21 A. That and the scene of the accident,
22 taking photographs. I visited with Bob at his
23 home, I think probably three times during that
24 period of time. Getting the police reports,
25 et cetera, et cetera.

1 Q. Okay. And if I'm -- stop for a second.

2 (EXH. 2, Letter from Gary Coggin to
3 Sonya Wise dated July 5, 2011, was marked for
4 identification.)

5 BY MR. PENDARVIS:

6 Q. If I'm understanding things
7 correctly -- we're going to look at some documents
8 in which you made --

9 A. Sure.

10 Q. -- demands -- those were all based on
11 the information you had gathered during the -- part
12 of your representation, correct?

13 A. I think most of my demands would in
14 part have been made on that, and I cannot tell you
15 what I gathered at that time because I don't know.

16 Q. Sure.

17 A. Okay? And I -- it could very well have
18 been that I started to look for information a year
19 later. I don't know. Unless you can show me
20 something that I sent off, I just can't help you on
21 that but --

22 Q. I'm going to -- okay. Fair enough.
23 And I'm not really -- I want to do my best to get
24 an accurate --

25 A. Yeah. No. I understand.

1 Q. -- reflection of what happened, so
2 let's -- this will help a little bit, I believe.
3 I'm going to pass you one of the first. I will
4 represent to you there were several demands letters
5 that were made, and we're going to look at each of
6 them.

7 This is a letter dated -- I'm passing
8 you now a document marked as Exhibit 2. This
9 appears to be a letter you wrote to -- the at-fault
10 party was Sarah Dickenson.

11 A. That's correct.

12 Q. This appears to be a letter you wrote
13 on July 5, 2011, to the claims representative for
14 Ms. Dickenson's carrier, Allstate Insurance; is
15 that correct?

16 A. Sonya Wise. Yes.

17 Q. And based on the information that you
18 had gathered -- and I would suggest you take a look
19 at this last -- next to the last paragraph -- you
20 made an offer to settle for \$1,550,000, correct?

21 MR. BOGDAN: Object to the form.

22 BY MR. PENDARVIS:

23 Q. Let me restate that. I want to get a
24 good answer.

25 Can you read for me the last sentence

1 in the next to the last paragraph on page 2?

2 A. Uh-huh. I think you will agree with me
3 an offer of settlement for damages of 1,500,000 is
4 reasonable.

5 Q. Did you consider that to be an offer on
6 behalf of Robert Feldman?

7 A. That was an offer I made to settle.

8 Q. And based on the information you had at
9 the time, this was a reasonable offer?

10 A. The -- yes and no. The fact of the
11 matter is is that in visiting with Bob over the
12 year -- and I saw him quite often from October 9 to
13 this date -- he represented to me that he was in
14 excruciating pain, and he represented to me that he
15 could do very, very little of what he had done
16 before. He could hardly go to the bathroom.

17 I think at that time he claimed that he
18 was still sleeping in the La-Z-Boy that he would
19 sleep in and he could not even get to his bed
20 because it wasn't comfortable.

21 So a lot of this was based on what Bob
22 wanted. Bob talked to me about -- initially I
23 think he said he wanted to settle for \$2,500,000.
24 I said that was way too high. He wanted big
25 numbers on this. And based on what I knew,

1 primarily from Bob, and what I saw coming from the
2 doctors -- and again, I don't know when those came.
3 They might have come later. I don't know. Based
4 on what Bob told me, I felt that a million 500 was
5 at that time reasonable. Now, later on, I realized
6 that that wasn't. But at this time, yes.

7 Q. And when you said later on that wasn't,
8 you're talking about the -- Mr. Feldman's injuries
9 weren't as severe as you were led to believe?

10 A. Yes.

11 Q. And when did you come to that
12 realization?

13 A. It was a slow realization, and it came
14 to fruition in my thought pattern during 2013.

15 Q. What part of 2013?

16 A. I would say that it started in the
17 summer months of 2013. And again, I can't be that
18 sure. If you have documents that say earlier, let
19 me see it and I'll be happy to comment on it.

20 Q. We don't have -- I'll tell you we don't
21 have a single document anywhere where you
22 communicated in writing to Mr. Feldman that you
23 didn't -- you weren't believing his statements to
24 you about his injuries. I'm going to represent to
25 you there's no document, no e-mail, no letter, no

1 note, anything.

2 The first time we saw -- I want to
3 represent to you the first time we saw that was in
4 this litigation.

5 Number two, did you have any
6 conversations with Mr. Feldman wherein he described
7 how he felt after he get an epidural injection?

8 A. No.

9 Q. Did you ever write to anyone describing
10 how Mr. Feldman felt after he got an epidural
11 injection?

12 A. He may have said he felt much better.
13 Okay? Beyond that, I -- I don't know.

14 There's -- you've made about three
15 questions here, so you're going to have to back up
16 and ask me one at a time, and I'll be happy to
17 answer it.

18 Q. Did you have any conversations with Bob
19 Feldman about how he felt after he got an epidural
20 injection?

21 A. I think Bob probably told me he felt
22 very good after he had an epidural. That's all I
23 can tell you.

24 Q. Okay.

25 A. I don't remember.

1 Q. Did you communicate those thoughts and
2 statements by Mr. Feldman to anyone in writing?

3 A. I wrote letters to the doctors asking
4 for impairment ratings and things like that, yes,
5 and they're somewhere in your files. I probably
6 also wrote a letter -- and again, this has been --
7 we're going a period of six years now. I probably
8 wrote to the insurance companies.

9 Q. And based on what you stated on page 2
10 of Exhibit 2 --

11 A. Uh-huh.

12 Q. -- you were aware Mr. Feldman really
13 enjoyed playing golf, correct?

14 The first full paragraph.

15 A. He has suffered greatly?

16 Q. No. In sum is the beginning of that
17 paragraph. Read on.

18 A. Oh, okay. That's -- he can no longer
19 enjoy a round of golf, take walks --

20 Q. Yeah.

21 A. -- drive, and travel. Yeah. Uh-huh.
22 That's it.

23 Q. So you knew he enjoyed golf.

24 Did Mr. Feldman ever tell you that
25 after he had an epidural injection he was able to

1 go play golf?

2 A. I don't remember.

3 Q. Possible?

4 A. I don't remember.

5 Q. No, no. That's not the question.

6 A. I don't think we ever -- we -- no. I'm
7 telling you. I don't remember.

8 I do remember this, is that -- in
9 answer to your question that went unanswered -- I
10 talked to Bob many, many times about how he had
11 compromised his case by playing golf. We had many
12 conversations of that. To put it in writing I
13 think would have impugned Bob. I never put it in
14 writing.

15 Q. You're a good trial lawyer, right?

16 A. I don't know.

17 Q. You try --

18 A. Uh-huh.

19 Q. -- to do your best?

20 A. Uh-huh.

21 Q. You don't think you'd be able to argue
22 in front of a jury that the days after Bob Feldman
23 got an epidural he was able to go play golf and
24 that that really was mitigation more than anything?

25 MR. BOGDAN: Object to the form.

1 THE WITNESS: Mr. Pendarvis, I used to
2 be an enthusiastic golfer, and I developed back
3 spasms. I haven't paid for -- played for 15 years
4 because of that. That's my answer.

5 BY MR. PENDARVIS:

6 Q. Well, maybe let me rephrase the
7 question 'cause you might not have understood it.
8 I'm asking about your skills as a trial lawyer.

9 A. Yeah.

10 Q. Here's my question: With your
11 experience as a trial lawyer, would you have been
12 able to explain to a jury that despite the injuries
13 Bob Feldman suffered -- let me finish my question.
14 Sorry.

15 A. I'm not saying --

16 Q. I thought you were getting ready to say
17 something.

18 A. No, no, no, no, no.

19 Q. -- despite the injuries Bob Feldman
20 experienced from the collision with Ms. -- caused
21 by Ms. Dickenson that he was able to play a round
22 of golf after epidural injections and that that
23 really had -- that was no compromise to his claim?

24 MR. BOGDAN: Object to the form.

25 THE WITNESS: If I felt that I was

1 lying -- and that would have been the case here --
2 I wouldn't have been able to sell that to the jury.
3 I wouldn't lie to a jury.

4 BY MR. PENDARVIS:

5 Q. What would be the lie?

6 What would be the lie?

7 A. The lie is this, is that he was playing
8 golf and he was claiming at the same time that he
9 was infirm from back injuries.

10 Q. Did you ever have any conversations
11 with Mr. Feldman about the frequency of his golf
12 activities?

13 A. I told Mr. Feldman any number of times
14 -- and I didn't know about the frequency of his
15 golf activities. I told Mr. Feldman any number of
16 times -- 'cause he would make oblique references to
17 golf. And I said, Bob, if you're playing golf,
18 we've got a problem with this case.

19 And he -- oh, no. I'm not playing
20 golf. I'm just riding around in the cart because I
21 have friends and it's a social thing. Every once
22 in a while I'll swing a club two or three times a
23 round.

24 That was our conversation. That's what
25 he told me.

1 Q. And this all comes in, you said -- is
2 this leading to the part in the summer of 2013 you
3 mentioned earlier when you became --

4 A. This is before that. He would make
5 oblique references from time to time about, you
6 know, golf and so forth, and that's what I would
7 tell him.

8 MR. PENDARVIS: This will be three.

9 THE WITNESS: Mr. Pendarvis, could I --
10 BY MR. PENDARVIS:

11 Q. Hold a second while the court --
12 she's --

13 A. Well, no. I'm -- I'm still trying to
14 answer the question, but go ahead.

15 Q. Okay. Well, she was --

16 A. Oh, okay.

17 Q. -- marking an exhibit. I'm sorry.

18 A. Yeah. If we look at Exhibit 2, at the
19 bottom of the page it says: In addition, Bob has
20 experienced other losses following this accident.

21 And this is what Bob was telling me.
22 He could no longer assume the responsibility of
23 home maintenance. The tasks of landscaping,
24 gardening, power washing, window washing, garbage
25 disposal are now handled with others at a price.

1 In addition, he is no longer able to work at his
2 once-thriving business as a mortgage broker. In
3 sum, these medical losses proximately caused by the
4 negligence of your insured continue to accrue, and
5 they're easily more than \$70,000 a year.

6 This is what Bob would tell me at all
7 times. Sometimes he would call me, and I felt that
8 he was on the verge of tears when he would talk
9 about things like this. I felt very sorry for him.

10 Q. Thank you.

11 (EXH. 3, Letter from Gary Coggin to
12 Sonya Wise dated October 10, 2011, was marked for
13 identification.)

14 BY MR. PENDARVIS:

15 Q. Passing to you now another document
16 that's marked as Exhibit 3 to your deposition.
17 This appears to be another letter to Ms. Wise dated
18 -- this one's dated October 10 --

19 A. Uh-huh.

20 Q. -- 2011. Is this your signature on
21 page 2?

22 A. Yes, it is.

23 Q. And the contents of this letter are
24 true and accurate to the best of your knowledge
25 when you wrote it?

1 A. I believe so.

2 Q. Did you ever -- how were you going to
3 establish -- excuse me. Let me rephrase that.

4 If claims against Ms. Dickenson were
5 not settled, what were your plans to establish
6 Mr. Feldman's lost wages at trial?

7 A. In -- now, we've moving ahead now, but
8 in discovery, when Mr. Allen came in, they asked
9 many, many times for Bob's wages. Bob was a
10 mortgage broker for an outfit called Silverthorn.
11 Before that he was a mortgage broker. And I asked
12 many times what his wages were because I wanted to
13 specifically say something to Allstate. Bob would
14 never give me an answer.

15 Q. Okay. So you're telling me you were
16 not going to be able to prove damages at trial?

17 A. No. What we were going to look at and
18 what Bob finally agreed on was that -- I said:
19 Well, Bob, mortgage brokers, according to the
20 standards that I read -- and I researched this on
21 Google -- make, at the low end, 50,000 a year.

22 And he said: Yeah. That's about
23 right.

24 So that's what I was going to go with.

25 Q. And that was the footnote, maybe, on

1 page 2 of Exhibit 3?

2 A. Hang on.

3 Yeah. Uh-huh.

4 Q. And how were you going to get that into
5 evidence at trial?

6 A. We would have to get an economist.
7 I've used economists in trial.

8 Q. Were you going to -- did you have plans
9 to get a vocation rehabilitation specialist to give
10 an opinion on whether Mr. Feldman was able to
11 work --

12 A. Mr. Feldman was --

13 Q. -- as a broker?

14 A. Excuse me. I'm sorry. Finish it.

15 Q. I was finished. Just that he was going
16 to be able or unable to work as a broker.

17 A. The -- Bob had held out that he could
18 not sit up for very long periods of time, and that
19 varied. Sometimes it was 15 minutes, a half an
20 hour, something like that. And I can't tell you.
21 That was told to me many times. The -- I felt that
22 he was in physical therapy. I think the physical
23 therapist would have been able to testify in trial
24 on this.

25 Q. Okay. In the -- two, three -- fourth

1 full paragraph on page 1 of Exhibit 3, you're
2 making -- discussing future medical treatments.

3 A. Uh-huh.

4 Q. Do you see that?

5 A. I do. I'm reading it.

6 Q. Okay.

7 THE REPORTER: Sorry. I didn't --

8 THE WITNESS: I'm -- I'm reading it.

9 THE REPORTER: Okay.

10 THE WITNESS: That's what I meant. I
11 was reading it silently. I'm sorry.

12 BY MR. PENDARVIS:

13 Q. And do you see that?

14 A. Yes, I do.

15 Q. Okay. I'm just not sure I had a clear
16 answer.

17 Were you planning on getting a life
18 care planner to develop a future medical plan for
19 Mr. Feldman for use at trial?

20 A. There is a -- and I can answer it this
21 way. There is a very good economist that's used by
22 all the trial attorneys out of the University South
23 Carolina. I believe he was an economics professor.
24 I've used him before. I was going to use that
25 gentleman.

1 Q. Oliver Wood?

2 A. That's him. Yeah.

3 Q. And how was Mr. Wood going to be able
4 to give any testimony about the value of the future
5 medicals without a life care plan?

6 A. I would have -- okay. Number one, I
7 don't know what you're talking about with a life
8 care plan.

9 Q. Okay.

10 A. You're going to have to explain that to
11 me.

12 Q. How was Mr. -- have you used Dr. Wood
13 at trial?

14 A. Uh-huh.

15 Q. And were you able to get Dr. Wood's
16 opinions on future medicals introduced in evidence
17 at trial?

18 A. The trial was years ago, and the -- the
19 trial -- and I just don't remember what it was. I
20 was very impressed by what he had done, and he, in
21 whatever case this was -- and I think this was a
22 wrongful death case -- was able to go forward on
23 what this gentleman would have made, and I was
24 basing the thoughts that I had for Mr. Feldman on
25 Mr. Wood.

1 Q. Did you talk to Dr. Wood about
2 Mr. Feldman's case?

3 A. No, I did not.

4 Q. But you were planning to talk with --
5 sorry. Off the record.

6 (Off-the-record conference.)

7 (EXH. 4, Letter from Gary Coggin to
8 Alton Prioleau dated October 17, 2011, was marked
9 for identification.)

10 BY MR. PENDARVIS:

11 Q. Mr. Feldman, just for correcting the
12 record, the copy of the Exhibit 3 that's been
13 presented to you has inadvertently got a third
14 page, and I'm going to ask if we can remove --
15 'cause it's clearly not -- wasn't enclosed with
16 this letter. It's a copy of September 2012
17 settlement agreement, and the letter itself is
18 October 10, '11, so --

19 A. Can I see the settlement agreement?

20 Q. It's on page 3 of Exhibit 3, and I'm --
21 I'm just suggesting that, if you don't mind, pull
22 that off, because it was inadvertently included
23 with Exhibit 3.

24 A. No, no. This is part of the exhibit.

25 Q. I know it is. What it was presented to

1 you --

2 A. Yeah. Oh. I --

3 Q. -- and it's --

4 A. It's part of the -- it's part of the
5 case. Excuse me.

6 Q. Right. Part of the case but not --

7 A. That's fine.

8 Q. I'm just going to ask --

9 A. Yeah.

10 Q. -- if we can remove that from
11 Exhibit 3.

12 A. Absolutely.

13 Q. That was just inadvertently included.

14 A. Absolutely. Yeah.

15 Q. I'm not sure how that got there, but...
16 And just, again, moving down the
17 trail --

18 A. Uh-huh.

19 Q. -- I'm going to pass to you now another
20 letter to Allstate claims representative, and this
21 is marked as Exhibit 4. Apparently it's -- this
22 appears to be a letter dated October 17, 2011, to a
23 new claims representative, Mr. Alton Prioleau. Am
24 I saying that right?

25 A. That's pretty close. I don't remember.

1 Q. And this may be the identical letter.

2 A. Yeah.

3 Q. I'll let you take a look and see, but,
4 you know, I've got two letters, both signed and --
5 oh. Excuse me. This one was not signed, the copy
6 I've got. Do you know -- let me rephrase.

7 Take a look at Exhibit 4. Do you know
8 if this letter was sent to Mr. Prioleau?

9 A. I do not know. By way of explanation,
10 Allstate will switch up, as you're probably aware,
11 their adjusters, and Ms. Wise had been with me.
12 Prioleau -- I may have decided I was going to send
13 him the same letter to her, but I don't know, and I
14 can't tell you beyond that. I have no idea.

15 Q. I'm going to represent to you we're
16 going to be looking at some more letters to
17 Mr. Prioleau --

18 A. Yeah. That's fine.

19 Q. -- so apparently he --

20 A. He was on --

21 Q. You're right. He comes on board at
22 some point.

23 A. Yeah.

24 Q. Okay.

25 (EXH. 5, Letter from Gary Coggin to

1 Alton Prioleau dated October 24, 2011, was marked
2 for identification.)

3 BY MR. PENDARVIS:

4 Q. Mr. Coggin, I'm going to pass to you
5 now another letter. It appears to be another
6 letter you wrote. This one's date October 24,
7 2011. It's been marked as Exhibit No. 5.

8 Okay. Is this a letter that you sent
9 to Mr. Prioleau in -- on October 24, 2011?

10 A. I would think so, but I don't -- I only
11 have one page. There's not a signature page.

12 Q. I think it is.

13 A. Oh, okay. Excuse me.

14 You're right. Yeah. I agree.

15 Q. Is that your signature?

16 A. Uh-huh.

17 Q. Okay.

18 A. Yes.

19 Q. And what is the purpose of this letter?
20 Or what was the purpose of this letter?

21 A. I think I was probably bringing him up
22 to speed on medicals.

23 Q. And notwithstanding your statements
24 about Mr. Feldman's pain and suffering issues --

25 A. Uh-huh. Uh-huh.

1 Q. -- as the way he was living, you have
2 no reason to doubt that the medical bills and the
3 surgeries were related to the accident, do you?

4 A. The surgery that we're talking about
5 here was previous to the accident. It was 2008.
6 No, they -- they weren't related at all. This was
7 a preexisting condition that Bob had.

8 Q. And you're describing in Paragraph 3
9 that the -- that matters between January of 2011
10 and March of 2011 are dealing with --

11 A. Yeah.

12 Q. -- treatments for the accident?

13 A. If you read the second sentence:
14 Please note here there are two separate regimes --

15 Q. Right.

16 A. -- of physical therapy for the
17 claimant.

18 The only thing I can think of was that
19 somehow they were connected and I sent the two bill
20 -- that's all I can think of. I don't know.

21 Q. Just clarifying for the adjuster what's
22 going on --

23 A. Yeah.

24 Q. -- with treatments?

25 A. Yes.

1 Q. Let's take a look, if the -- that
2 document that was attached to the letter, I've got
3 another copy for you. I'll tell you, before we get
4 just into that --

5 A. Uh-huh.

6 Q. -- let's let the court reporter mark
7 that. That's going to be Exhibit 6. And I've got
8 a few questions for you.

9 A. Okay.

10 MR. BOGDAN: Hand that to her, Gary,
11 and let her mark it.

12 THE WITNESS: Oh. I'm so sorry.

13 MR. PENDARVIS: Well, I'll let you --
14 you can look at it all you need.

15 (EXH. 6, Release, Covenant Not to
16 Execute and Settlement Agreement, was marked for
17 identification.)

18 BY MR. PENDARVIS:

19 Q. Take a moment and look that over. When
20 you're ready, we'll -- let me know, and we'll have
21 a few questions.

22 MR. BOGDAN: Was that six, Thomas?

23 MR. PENDARVIS: Yeah. It's number six.

24 THE WITNESS: Okay.

25 BY MR. PENDARVIS:

1 Q. It appears from the date of the
2 document, September 18 --

3 A. 2012.

4 Q. -- 2012 --

5 A. Yeah.

6 Q. -- that by that time you've reached an
7 agreement to resolve the claims with
8 Ms. Dickenson's at-fault carrier, Allstate --

9 A. Correct.

10 Q. -- for an amount of 85,000?

11 A. Correct.

12 Q. And she had \$100,000 in coverage,
13 correct?

14 A. Correct.

15 Q. Did you have any discussions with
16 Mr. Feldman about settlement with Allstate?

17 A. Yeah. We did. There was a hundred
18 thousand dollars there. Bob, at this time, was
19 putting considerable pressure on me to get this
20 settled. He told me he was broke. There was one
21 time, maybe twice, that he called and asked to
22 borrow money from me, which I couldn't do.

23 I told him that I was pushing as hard
24 as I could to get this matter settled and that we
25 would -- I would relay all reasonable settlements

1 to him. They had started out by offering, I think,
2 \$40,000, and they moved up. \$85,000, to me, for
3 three broken ribs, was just fine because you got to
4 the point where you could go after his UIM and make
5 that declaration with full confidence that it would
6 be treated the way it should, rather than if you
7 settled for \$40,000.

8 In addition to that, Bob had also
9 gotten five -- gotten \$5,000 from his own insurance
10 company. These companies, particularly Allstate
11 and State Farm, will always argue that the med pay
12 is part of the settlement, and I've had that happen
13 in cases that I've won where they come back to me
14 and they argue that they want the money for what
15 they paid when there was Allstate on both sides.
16 They want the 20,000 they paid in med pay. So I
17 look at this as more a \$90,000 settlement.

18 The settlement was made purely with
19 Bob's agreement, and Bob wanted to know if we were
20 going to go after his UIM. Considering at this
21 time, 2012, I was of the opinion that everything
22 Bob told me about his condition was truthful, I
23 said: Yes. We are.

24 Q. So you, based on a claim that you made
25 demands in excess of a million dollars, you're

1 telling the jury in this case that in September
2 2012 \$85,000 was a sufficient settlement with the
3 at-fault driver?

4 A. The one thing you have to be aware of
5 is that --

6 Q. Well, answer yes or no and then you can
7 explain. Is that what you're telling me?

8 A. Ask me the question again.

9 Q. So you are going to be telling the jury
10 in this case that based on a claim that you made a
11 demand for Mr. Feldman in excess of \$1 million --

12 A. Uh-huh.

13 Q. -- that in September 2012 the \$85,000
14 settlement on a \$100,000 policy was sufficient and
15 reasonable?

16 MR. BOGDAN: Object to the form.

17 THE WITNESS: The \$90,000 settlement on
18 a hundred thousand dollar policy was reasonable,
19 yes.

20 BY MR. PENDARVIS:

21 Q. Notwithstanding your million dollar
22 demand?

23 A. Now, at the beginning of this,
24 Mr. Pendarvis, you made a pledge to me you weren't
25 going to try to trick me. Is this one of these

1 non-trick questions?

2 Q. First off, I didn't say that. I don't
3 intend to trick you. I don't intend to trick you,
4 but I just want to put in light for the jury that
5 the -- you made a -- let's make sure that we're
6 clear.

7 A. The policy was a hundred thousand
8 dollars. We got \$90,000. That was a good
9 settlement.

10 Q. Well --

11 A. That's the answer.

12 Q. We're going to stick with that.

13 A. Okay.

14 Q. Remember your statement.

15 A. Okay. That's fine.

16 Q. Remember your statement for trial.

17 A. Okay. I'll remember that.

18 Q. How were you going to establish that
19 Mr. Feldman was under -- that the at-fault party
20 was underinsured when you didn't get all the policy
21 limits as part of making your claim against
22 Mr. Feldman's underinsured carrier?

23 A. I can only go with what the policy is
24 that I've known for the years I have practiced law,
25 and that is that you can make a claim for

1 underinsurance for any reason whatsoever, and even
2 if I had gotten \$20,000, I still could have claimed
3 the underinsurance. Whether they would have paid
4 it or not is something different, but the -- in
5 this case here they took the case very seriously
6 and -- as I expected they would.

7 Q. Okay. Did you have any discussions
8 with Mr. Feldman about the risks of accepting
9 85,000; that it might create a defense for the
10 underinsured carrier that there was -- that the
11 at-fault party truly wasn't underinsured because
12 you didn't get all of the available proceeds?

13 A. I do not know any case I've ever seen
14 that has addressed that question. My answer, that
15 is -- that was not a consideration, was not a
16 problem.

17 And remember, Bob desperately needed
18 money. And remember this also. Bob did not have
19 to take the settlement.

20 Q. So the answer to the question is no,
21 you didn't have that conversation with Bob?

22 A. What's that?

23 Q. That you didn't discuss any risks of
24 settling for less than policy limits?

25 A. No. I think that probably would have

1 come up, and I think I would have told him that we
2 can still bring the action for UIM. I have never
3 seen, Mr. Pendarvis, a case where we have made a
4 settlement for less that wouldn't get UIM. I've
5 gotten UIM a number of times.

6 (EXH. 7, Civil Action Cover Sheet,
7 Summons, Complaint, Copy of certified mail
8 envelope, was marked for identification.)

9 BY MR. PENDARVIS:

10 Q. Mr. Feldman, I'm passing to you a copy
11 of a group of documents, a civil cover sheet --

12 A. Uh-huh.

13 Q. -- a summons, and a complaint, and I'm
14 going to ask that you -- in very back of it is a
15 certified mail receipt, a copy of a certified mail
16 receipt. Were these pleadings you signed and filed
17 on behalf of Robert Feldman and Lois Feldman in
18 October of 2012?

19 A. Yeah. Yes.

20 Q. Can we call this the Feldman versus
21 Dickenson lawsuit for today?

22 A. Absolutely.

23 Q. Okay. And, of course, you prepared the
24 complaint, correct?

25 A. Yes, I did.

1 Q. Is there anything in this document that
2 you believe is -- today -- is not accurate?

3 A. No. It's accurate.

4 Q. Okay. And looking at the last page of
5 Exhibit 7, pursuant to the statutes -- and I'm not
6 going to go into the specific statutes, but
7 pursuant to South Carolina law you served a copy of
8 this civil cover sheet, summons, and complaint on
9 the secretary of state?

10 A. No. The department of insurance.

11 Q. Department of insurance? Okay.

12 And they, in turn, deliver it to
13 Liberty Mutual?

14 A. That's correct.

15 Q. And Liberty Mutual was the underinsured
16 carrier for the Feldmans?

17 A. That was Robert's carrier. That's
18 right.

19 Q. Okay. And basically the ad damnum
20 clauses on -- on the last page of the complaint
21 would have effectively make this demand a policy
22 limits demand for the underinsured coverage,
23 correct?

24 A. You used the phrase ad damnum. I don't
25 know what that means.

1 Q. The two wherefore clauses on the last
2 page of the complaint --

3 A. Uh-huh.

4 Q. -- make two separate demands, one for
5 the first cause of action in the amount of 300,000,
6 and the second for the second cause of action in
7 the amount of \$225,000. Do you see that?

8 A. Yes.

9 Q. And combined, that would have been a --
10 basically a policy limits demand for the
11 underinsured coverage, correct?

12 A. That's correct.

13 Q. Assume for a second, Mr. Coggin, that
14 Liberty Mutual tendered payment right then and
15 there. Out of the \$525,000, what would have been
16 your fee?

17 A. Well, they probably would have tendered
18 payment for 500, which was the extent of the
19 policy.

20 Q. Let's assume 500.

21 A. My fee would have been 35 percent.

22 Q. Okay. Were there any discussions with
23 Mr. Feldman about taking less than 35 percent if
24 the case was settled early in the representation?

25 A. I do not recall anything like that.

1 Q. In a claim where the lawsuit is being
2 brought against a defendant who is -- there's been
3 a covenant to -- not to execute and you're pursuing
4 underinsured coverage, in that context what do you
5 do to effect service of process of the -- of the
6 pleadings?

7 A. I didn't understand the first part of
8 the question.

9 Q. Well, in the context where you have
10 settled under a covenant with the at-fault party --

11 A. Not to execute.

12 Q. -- and you're proceeding with a
13 complaint to pursue underinsured coverage.

14 A. Uh-huh.

15 Q. In that context. And then we can even
16 apply it here to the Feldman versus Dickenson
17 matter. What do you do to effect service of
18 process?

19 A. You hire a process server. You give
20 them a copy of the process, you give them the last
21 known address, and ask them to serve it.

22 Q. And I've seen some information where
23 you did just that in this case, correct?

24 A. That's right.

25 Q. And that's a requirement to perfect the

1 pleadings in an underinsured lawsuit context?

2 A. It's a requirement. It's not
3 perfecting the pleadings, but it's a requirement to
4 serve them, yeah.

5 Q. It's a requirement to formally commence
6 the lawsuit.

7 A. Yeah.

8 Q. Correct?

9 A. That's correct.

10 Q. And so if I were -- I want to get to
11 the right...

12 Mr. Michael Witt was the process server
13 you hired here in Beaufort County --

14 A. That's correct.

15 Q. -- to effect service on Ms. Dickenson?

16 A. That's correct.

17 Q. And do I understand correctly that he
18 tried to serve her at the last known address?

19 A. Yeah. Doncaster Road was in Sun City.

20 Q. And I understand that he learned that
21 she -- Ms. Dickenson had been -- Ms. Dickenson's
22 family had taken her back to New York state?

23 A. He didn't know that. The neighbors
24 were not forthcoming. They just simply said she
25 hadn't been there for a while and they didn't know

1 where she was at.

2 Q. And Mr. Witt told you that sometime
3 right after he was charged with serving?

4 A. He -- he gave me an affidavit of
5 nonservice.

6 Q. Okay. Did you follow up with that and
7 ask him what he found out about where she might be
8 located?

9 A. Oh, yeah. Absolutely.

10 Q. How did you come to learn that
11 Ms. Dickenson was in New York state?

12 A. You're probably as familiar with this
13 -- these materials on the Internet as I am.
14 There's various search engines like Spokeo, People
15 Find, and that type of thing. Armed with the
16 information that I had -- the age, the previous
17 addresses -- and if you plug that in, that's --
18 it'll come up.

19 Q. And what did you do next?

20 And what was your next step for
21 service?

22 A. My next step was to serve her in person
23 with a process server from Long Island.

24 Q. And the location was on Long --
25 somewhere on Long Island?

1 A. I think it may have been New Hyde Park.
2 I'm familiar with Long Island to a certain extent,
3 but there's a number of cities very close -- or a
4 number of little cities very close to -- what am I
5 thinking of -- maybe the Bronx or Brooklyn.

6 Q. Okay. I'm a pure, unadulterated
7 southern. I've been up there one time. I'm going
8 to rely on you to tell me that.

9 A. I will tell you a great story about
10 going up there to a deposition one time.

11 Q. We'll do that later.

12 A. We'll do that later, yeah.

13 Q. Okay. So Mr. Witt obviously wouldn't
14 be a good candidate --

15 A. No, no. Huh-uh.

16 Q. -- to handle that, so what was your
17 next step for effecting service on Ms. Dickenson in
18 New York state?

19 A. I went on the Internet and looked at
20 where she lived. And then I looked at various
21 process service companies in that area and made
22 some calls.

23 Like everywhere else, nobody answers
24 their phone. The first company where they answered
25 the phone was a company called Zeller --

1 Zellner-Wood. Okay? I don't remember the first
2 name exactly. And I talked to a process server
3 there by the name of Fran, then we went from there.

4 Q. And payment arrangements were made, and
5 you delivered the pleadings to --

6 A. Fran --

7 Q. -- Zeller-Wood; is that correct?

8 A. Fran wanted up front money.

9 Q. Okay.

10 A. Like New York. She said a money order
11 would be fine. I -- and the one mistake I made in
12 my affidavit, I said it was \$200, and I think it
13 was actually a hundred dollars. And she wanted
14 payment of a hundred dollars.

15 I made two calls to her -- actually,
16 there was about three calls. I called initially
17 and then I called back a couple of more times. The
18 second time we made the arrangements, and after I
19 finished that call, I called her back and said I
20 want to firm up the address with you. Give me the
21 address again. And that's -- she gave it to me. I
22 took care of it all that afternoon.

23 Q. And the address you're talking is the
24 Zeller-Wood process serving address?

25 A. Right.

1 Q. You gave her what you got off the
2 Internet for Ms. Dickenson's service --

3 A. Yeah.

4 Q. -- process address? Okay.

5 A. Uh-huh. Uh-huh. And that was -- I do
6 remember that. That was an address -- I think
7 MacGregor Avenue. And I can't remember. I think
8 it might have been New Hyde Park, though I'm not
9 sure.

10 Q. Okay. And using Exhibit 7 --

11 A. Right.

12 Q. -- October 29 as our sort of baseline,
13 when were these conversations with Zeller-Wood
14 process service company?

15 A. It was a -- what I remember, it was a
16 while because I had given this to Mr. Witt. He
17 probably had it for two or three weeks. He was
18 pretty thorough. And when he came back to me, I'm
19 thinking maybe sometime in November, even early
20 December. I don't know.

21 Q. Okay. Can you relate the conversation
22 with the Zeller-Wood -- Fran in terms of when you
23 sent the department of insurance the copy of the
24 summons and complaint?

25 A. I never talked to her about sending

1 anything to department of insurance.

2 Q. No, no, no. I'm going to represent to
3 you that in November -- on November 29 you sent the
4 letter to the department of insurance --

5 A. Uh-huh.

6 Q. -- and I'm asking: Can you -- does
7 that clue you in on when you had the conversations
8 with the service --

9 A. Huh-uh. I think it was pretty
10 concurrent. I think that the -- it went to the
11 department of insurance first.

12 Q. I don't know if it's me or you, but
13 we've got to slow down on our Q and A 'cause we're
14 talking on top of each other a little bit. Okay?

15 A. I apologize.

16 Q. No, no, no. I'm apologizing equally.
17 I'm not sure which of us is doing it, but let's --

18 A. Yeah. Ask me the question again.

19 Q. Okay. So you're believing late
20 November or maybe early December is this
21 conversation, and I'm going to represent to you
22 that in late November is when the -- you sent a
23 letter to the department of insurance.

24 A. And if I can answer that --

25 Q. Sure.

1 A. -- I believe I served the department of
2 insurance first.

3 Q. Before the conversation with the
4 process server?

5 A. Yeah. Uh-huh.

6 Q. Okay. That's fine.

7 (EXH. 8, Answer and Certificate of
8 Service, was marked for identification.)

9 BY MR. PENDARVIS:

10 Q. And by follow-up question or response,
11 when I said process server, I'm really referring
12 now to Zeller-Wood and not Mr. Witt.

13 A. That's fine.

14 Q. Okay. I'm going to pass you a copy of
15 a document marked as Exhibit 8 to your deposition
16 that appears to be the answer filed on behalf of
17 Liberty Mutual or by Liberty Mutual's counsel.

18 A. Yeah.

19 Q. This is weird. We both know that Sarah
20 Dickenson's the defendant but that Liberty Mutual
21 is the party answering the complaint per the
22 statute, but anyway -- so this is the answer that
23 was filed on behalf of Liberty Mutual?

24 A. Uh-huh.

25 Q. Yes?

1 A. I'm sorry. Yes.

2 Q. When did you receive a copy of this
3 answer?

4 A. It's time-stamped January 7, and I
5 assume I received it by mail, so it would have been
6 within five days.

7 Q. Okay. So early January --

8 A. Yeah.

9 Q. -- you received this answer?

10 A. And I can answer the former question
11 now if you want me to trigger it.

12 Q. Yes.

13 A. November the 28th was the -- no.
14 November 28, I think, is when he received the --
15 the service from the secretary of state.

16 Q. Okay. Help me understand, Mr. Coggin.
17 We're going to look at your affidavit about
18 receiving proof of service of process. In light of
19 the time when you received the answer, when did you
20 receive information about service of process from
21 the Zeller-Woods people: Before? After? Can you
22 help me there?

23 A. This answer?

24 Q. Yes, sir. Exhibit 8.

25 A. I believe it would have been before.

1 Q. So you had information from Zeller-Wood
2 process server Fran --

3 A. Uh-huh.

4 Q. -- someone up there -- that
5 Ms. Dickenson had been served?

6 A. That's correct.

7 Q. Tell me what you understood about the
8 service of Ms. Dickenson in New York state at the
9 time you received that information.

10 A. I had sent the material to
11 Zellner-Wood. I didn't hear anything from them,
12 and I called them a week later. The -- Fran again
13 answered the phone. She said service had been
14 attempted at the address I had given her and there
15 was nonservice.

16 And I said -- I can remember saying,
17 jeez, thinking to myself this is going to be a
18 headache.

19 And she said: Don't worry. We got a
20 real good address, and we're serving that.

21 Didn't hear anything from her, and I
22 called probably seven or eight days later, and she
23 said service has been made. And she said: You'll
24 -- and I asked about the affidavit of service, and
25 she said: You'll be getting that.

1 I received the affidavit of service. I
2 remember I waited quite some time, and I was going
3 to call her, and I would say it was three weeks
4 after the conversation, when I was ready to call
5 her that day, there was an affidavit of service in
6 the mail.

7 Q. So that's late December?

8 A. It could have been -- it could have
9 been January. I don't know.

10 Q. Was there a cover letter with the
11 affidavit of service?

12 A. Affidavit of service. That was it.

13 Q. Just the raw affidavit?

14 A. Uh-huh.

15 Q. Who served it?

16 A. It was a gentleman. I looked at the
17 name. It wasn't -- certainly wasn't Fran.

18 Q. Right.

19 A. It was a name of a process server, and
20 he had served it on an address where this woman
21 was, which was a -- I determined later it was an
22 assisted living, slash, dementia home. You know,
23 the woman is, I think, 85 at that time, something
24 like that, and that's all I could tell.

25 It was served. The person that

1 accepted service was, I remember, a man, a man's
2 name, and I was a little concerned about that, but
3 I looked at the law and the rules. You know,
4 service at the residence accepted by somebody who
5 holds them self out to accept -- be able to accept
6 service. It was fine.

7 Q. When you filed the complaint in -- in
8 Exhibit 7, did -- did you mark the time for service
9 of process of the complaint, the time period you
10 were allowed to serve it?

11 Let me back up.

12 A. Yeah. I'm not --

13 Q. Are you aware of a rule -- are you
14 aware of a rule of procedure that limits the time
15 to serve a summons and complaint?

16 A. There -- there's a couple of rules.
17 You're going to have to help me out here because I
18 think I know what you're talking about, and I'm
19 going to probably disagree with you. We have --
20 tell me what the rule is.

21 Q. Well, this is your deposition.

22 A. And I apologize.

23 Q. This is your deposition. I'm asking
24 you: What rule --

25 Let me ask you a different way. What

1 rules are in play as far as the time to serve a
2 summons and complaint that were -- that were
3 governing matters in --

4 A. Oh, okay.

5 Q. -- when this complaint was filed in
6 2012?

7 A. Service can be made within 120 days
8 after the time has tolled by statute.

9 Q. And what tolls the time by statute?

10 A. Three years.

11 Q. And do I understand what you're saying
12 is once you file a complaint you have 120 days to
13 serve it?

14 A. No. Once you -- when Robert was
15 injured was September 10 or 9. You had three years
16 from that time.

17 Q. 2010?

18 A. Yeah. If you filed a complaint --
19 okay -- you would have -- you would be able to
20 serve that complaint, for example, filed the last
21 day of the statute. You still had 120 days to
22 serve it after the statute ran.

23 Q. And if you don't serve it after 120
24 days, what happens?

25 A. It's -- I assume you're in default.

1 Q. Okay. Or out of time?

2 A. Yes.

3 Q. Okay.

4 A. Excuse me.

5 Q. Did you mark on your calendar or have
6 an internal calendaring system that identified the
7 120 days from the date of filing?

8 A. No, I did not.

9 Q. And how does that help Mr. Coggin -- I
10 mean Mr. Feldman? I mean, what if you missed the
11 deadline?

12 A. I didn't miss the deadline. That's
13 the --

14 Q. I'm asking you what if. What did you
15 do to make sure you had the deadline calendared?

16 A. I knew the dates very well. If you're
17 asking if I calendared and put it on a calendar, I
18 did not, by I knew the dates very well.

19 Q. What was the 120th day of after
20 October 29, 2012?

21 A. No. It's not -- it would have been 120
22 days after -- it would have been 120 days after
23 2016 -- or under -- after 2013 and ran.

24 Q. This complaint was filed October 29,
25 2012.

1 A. Uh-huh.

2 Q. Wouldn't it be 120 days after this
3 complaint was filed?

4 A. I don't know. When was it filed?

5 It's filed October 29. The -- the --
6 was served, as I said, in -- that's November. It
7 was served probably in January. That's -- that's
8 more than enough time after it's been filed.

9 Q. I'm really trying to get an idea.

10 A. Yeah.

11 Q. What's the 120th day after October 29,
12 2012?

13 A. No, no. It -- that's not the way the
14 -- the rule reads. Everybody makes that mistake.
15 It's 120 days after the three-year time period.

16 Q. Okay.

17 A. I've had that argument with people many
18 times. I can show you the rule.

19 Q. Okay.

20 A. That has nothing to do with this at
21 all. This was served in a timely basis.

22 Q. So what did the rules require as far as
23 filing proof of service?

24 A. The rule says -- I think it's within
25 ten days after the receipt of service.

1 Q. And you testified a few moments ago
2 that you received an affidavit from a process
3 server in New York --

4 A. Right. Uh-huh.

5 Q. -- stating that they -- Ms. Dickenson
6 had been served with process?

7 A. Yeah.

8 Q. When did you file that document?

9 A. I did not.

10 Q. Why not?

11 A. Put it in the papers of the case and
12 went on to other things.

13 Q. No. I'm asking why not.

14 A. I just told you.

15 Q. You knew there was a rule that required
16 filing?

17 That's yes?

18 A. Yes.

19 Q. And you did not file the affidavit,
20 correct?

21 A. That's correct.

22 Q. How did that help Mr. Feldman and
23 Ms. Feldman on their claim?

24 A. There is -- there is case law,
25 Mr. Pendarvis -- and I think you've probably read

1 it -- that says that that's not determinative. If
2 in fact you serve it and you had -- you have
3 service of process -- it's been returned -- that's
4 enough to satisfy the law.

5 Q. Okay.

6 A. So Mr. Feldman's in good -- was in good
7 shape with that.

8 Q. Okay. And so I've passed you
9 Exhibit 8, correct?

10 A. Yeah.

11 Q. So early January --

12 A. Uh-huh.

13 Q. -- within a week or so -- let's just
14 say -- I think you testified within five days or so
15 of January 7, 2013, you received this answer by
16 Liberty Mutual Insurance Company, correct?

17 A. That's correct. Yeah. Uh-huh.

18 Q. And did you look at the whole answer,
19 read the entire document?

20 A. Oh, yeah. Absolutely. Uh-huh.

21 Q. And you saw as a fifth defense they
22 were alleging that plaintiff had failed to
23 effectuate proper service, right?

24 A. The heading says improper service. I'm
25 not sure the heading is part of the -- the

1 paragraph, but go ahead.

2 Q. Well, could you read Paragraph 10 for
3 us?

4 A. Further answering, party alleges
5 plaintiff has failed to effectuate proper service
6 under 12(b)(4) and 12(b)(5).

7 Q. And with that assertion by the
8 defendant, why didn't you file the affidavit of
9 service?

10 A. I had simply forgot.

11 Q. Okay. And as of January 4 -- you know,
12 what was the -- you said earlier -- I want to make
13 sure I'm clear on this --

14 A. Yeah.

15 Q. -- that the statute of limitations
16 governing Mr. and Ms. Fieldman's claims against
17 Ms. Dickenson would have been -- if the wreck
18 occurred on October 9, 2010 --

19 A. Uh-huh. Yes.

20 Q. -- then the statute of limitations
21 would have been expired on that claim October 9,
22 2013, correct?

23 A. October 10, 2013.

24 Q. Correct.. Day after. You're right.
25 You're right.

1 So October 10, 2013, was the last date
2 to commence a lawsuit against Ms. Dickenson?

3 A. That's correct.

4 Q. If a summons and complaint is not
5 served on a defendant, then the lawsuit's not
6 commenced, correct?

7 A. That would -- according to the law,
8 yeah, that's correct.

9 Q. Okay. As of January 4, 2013, when
10 Mr. Allen -- I'm going to assume that that's his
11 signature -- but on the date this answer was
12 filed --

13 A. Uh-huh.

14 Q. -- in January of 2013 the statute of
15 limitations hadn't expired yet, had it?

16 A. No. No. No.

17 We're still on eight?

18 Q. Right.

19 A. Okay.

20 Q. In other words, assuming -- and I'm
21 asking you to assume this lawsuit wasn't properly
22 commenced. A new lawsuit could have been filed any
23 time before October 10, 2013, and the statute would
24 have been protected, correct?

25 A. Yes.

1 Q. With that assumption?

2 A. Uh-huh.

3 MR. PENDARVIS: Let's take a break for
4 a minute.

5 (A recess transpired.)

6 BY MR. PENDARVIS:

7 Q. As I briefly mentioned off the record,
8 Mr. Coggin, there -- there are plenty of materials
9 in your files that have been delivered to us that
10 dealt with the discovery answer, interrogatories,
11 requests for production both ways, motions to
12 compel, and all of those things, but at the end of
13 the day you -- documents were exchanged,
14 interrogatories were answered, and by May of 2014
15 mediation was scheduled.

16 A. Okay.

17 Q. Correct?

18 A. Uh-huh.

19 Q. Terry Finger was the mediator?

20 A. Correct. Uh-huh.

21 Q. I think we all know Terry.

22 MR. PENDARVIS: You know Terry?

23 MR. BOGDAN: Not personally.

24 MR. PENDARVIS: Okay. Well, he's a
25 fella that does a lot of mediation around Beaufort

1 County. Good guy.

2 BY MR. PENDARVIS:

3 Q. In the time between January 2013 and
4 May of 2014, did you have any other conversations
5 with Mr. Julian Allen, the lawyer hired by Liberty
6 Mutual, about service of process, affidavits of
7 service, anything of that nature?

8 A. None.

9 Q. Did you review your pleadings to -- for
10 -- ensure compliance with service of process or
11 anything of that sort during those year and a half
12 or so?

13 A. I was pretty much hands-on with this
14 case, but I can't say that I did or didn't.

15 Q. I guess we can really say 2013 and
16 early 2014 you were communicating with some of the
17 medical providers who had treated Mr. Feldman,
18 correct?

19 A. I had a lot of communications with them
20 by letter. It seemed to me, prior to the
21 settlement more so than afterwards, I know I had
22 sent some letters to Dr. Shissias and also
23 Dr. Reuben -- I think it's Reuben or Rubner --
24 Reuben -- regarding what Bob was feeling and how
25 badly he was injured and so forth like that and

1 asking for maximum medical improvement and so forth
2 like that.

3 Q. And was to supplement with
4 Ms. Dickenson's carrier, Allstate?

5 A. That was for -- in prep for the
6 settlement with the carrier. That's correct.

7 Q. Did you have any communications with
8 any of the medical providers during 2013 and early
9 2014 to get an update on medical condition?

10 A. I don't remember. If you have
11 something, I would like to look at it, and I'd
12 certainly tell you.

13 Q. I'm going to represent to you that
14 through October of 2013 the only communications we
15 have with any of Mr. Feldman's medical providers is
16 a letter from Mr. Allen to Dr. Platt and Coastal
17 Carolina with a subpoena for records and other
18 activities by the defense --

19 A. Uh-huh.

20 Q. -- but not you.

21 A. Okay.

22 Q. You already had a large body of
23 Mr. Feldman's records, correct?

24 A. I would think so. And again, I don't
25 remember the date of any of those letters.

1 Q. That's fine.

2 At some point before you were -- you
3 moved to be relieved as counsel you were trying to
4 schedule the deposition of Dr. Reuben, correct,
5 that got canceled for some reason?

6 A. That I don't remember.

7 Q. Okay. We'll look at that.

8 A. I don't remember that at all.

9 Q. By December of 2013 this case was
10 coming up on the roster, correct, for trial?

11 A. I don't recall.

12 Q. I don't have this as an exhibit, but
13 I'm going to show this to both of you. This is a
14 document, Mr. Coggin, from your file that's an
15 e-mail from you to Mr. Allen that states that the
16 case is up on the jury -- transferred to the jury
17 roster.

18 A. Okay.

19 Q. And I'll give you --

20 A. I don't remember that.

21 Q. Does that look like -- I mean, this
22 came from your file. And then I'm going to give
23 you a Bates number too so you'll have the record.

24 A. That's my style of writing, yes.

25 Q. And for the -- and I'm not going to

1 make this as an exhibit, but this is -- this
2 document bears Bates number -- come on -- 00119.

3 MR. BOGDAN: Does it have a date on it?
4 I didn't see it.

5 MR. PENDARVIS: It didn't have the
6 subject re line on the --

7 THE WITNESS: Thomas, could I see that
8 again, please?

9 BY MR. PENDARVIS:

10 Q. Certainly. But it's talking about --
11 and it doesn't, but I'll read it. I'll read it in
12 the record. It says: Julian. Re the case of
13 Feldman versus Dickenson.

14 I'm going to skip the civil action
15 number.

16 As a courtesy to you, please be
17 informed that I will request a transfer of the same
18 to the jury trial roster in January of the new
19 year. I hope you have a holiday season.

20 And so that would have been December
21 '13, transfer onto jury trial roster in 2014.

22 A. Is there a date on that or not? I
23 don't see it.

24 Q. No, no, sir, there's not, but we're
25 talking --

1 A. See, that's --

2 Q. I mean, it's talking about the new
3 year, and that's why I'm --

4 A. I just don't -- that looks like
5 something I would do, but I would love to know what
6 the date was.

7 Q. The reason I'm asking you about this is
8 the case was filed in 2012, October?

9 A. Uh-huh. Yes.

10 Q. So by early 2014 it's going to be
11 appearing on Beaufort County roster, correct,
12 whether you move to transfer to the jury trial
13 roster or not. Fair enough?

14 A. We were probably in the midst of
15 receiving notifications about ADR, et cetera,
16 et cetera. That would have come a little later
17 though. And I don't know what the default time is
18 for that, the triggers for those being sent out,
19 but we're getting into the neighborhood.

20 Q. We've not seen a notice of ADR, but I
21 will move into --

22 A. Yeah.

23 Q. -- that topic at this point.

24 (EXH. 9, Letter from Gary Coggin to
25 Terry Finger dated May 5, 2014, was marked for

1 identification.)

2 BY MR. PENDARVIS:

3 Q. Mr. Coggin, I am passing to you a
4 letter dated May 5, 2014, marked as Exhibit 9 to
5 your deposition. It appears to be a letter from
6 you to Terry Finger --

7 A. Uh-huh.

8 Q. -- re mediation, Feldman v. Dickenson.
9 Is this your signature on page 2?

10 A. Yes, it is.

11 Q. And is this your statement of the claim
12 in the case as of May 5, 2014?

13 A. You know, I thought that the -- the
14 mediation was May 5 or 4. I'm not sure about the
15 -- the date on this. And I don't know what the
16 mediation date was, but I will say it is my
17 signature.

18 Q. So your testimony is the mediation was
19 sometime in May of 2014?

20 A. Yeah. Uh-huh.

21 Q. Okay.

22 A. 2014. That's correct.

23 Q. As of May 2014, are the statements you
24 made in this letter accurate, to the best of your
25 knowledge?

1 A. Yes, it is.

2 Q. And were the -- was the demand made on
3 the first two paragraphs on page 2 reasonable based
4 on what you knew at the time you made the demand in
5 May of 2014?

6 A. No, it was not.

7 Q. I think you've told me before you
8 learned some things, you believe in 2013, about
9 Mr. Feldman's health?

10 A. That's correct. Yeah. Uh-huh.

11 Q. And why did you make a statement in
12 mediation -- to a mediator that was not reasonable
13 based on what you knew?

14 A. This was a mediation. I had asked for
15 \$300,000 for Mr. Feldman and \$225,000 for his wife.
16 We were in a mediation, and the mediation was going
17 to be for a settlement. In this case here we had
18 already settled for \$100,000. He had \$500,000 of
19 underinsurance, and I was going into this
20 mediation, as with every mediation, is starting
21 high; you end up low.

22 Q. So your testimony is that you knew you
23 were making an unreasonable demand when you made it
24 in this letter dated May 5, 2014, to Mr. Finger?

25 A. This is something that you -- when you

1 put in -- when you go into mediation, these are all
2 supposed to be privileged, and my demand in this --
3 considering the problems that I had under -- found
4 out about Bob, this was merely, on my end, puffing.
5 You can recall it unreasonable, whatever you want,
6 but it was puffing. I was starting high. We would
7 end up somewhere where I thought would be a good --
8 would be a good settlement for Bob.

9 Q. Did you have any conversations with
10 Mr. Feldman or Mrs. Lois Feldman about the
11 substance of what you were demanding in the letter
12 marked as Exhibit 9?

13 A. Apparently I didn't copy Bob on it, so
14 I would say probably not.

15 Q. Okay. I have not seen what I'm going
16 to ask for. I'm just going to see if you know of
17 anything. Did the carrier or Mr. Allen on behalf
18 of Liberty Mutual submit a mediation statement to
19 Mr. Finger?

20 A. I don't know. I don't recall any.

21 Q. You participated in the mediation?

22 A. Oh, absolutely.

23 Q. And was it Mr. Finger's office?

24 A. Yes.

25 Q. Okay. Who was there?

1. A. Mr. Feldman was there, Mr. Finger was
2 there, Mr. Allen was there, I was there, and Lois
3 Feldman was there.

4 Q. Did this mediation go down like most of
5 the ones I've been in where the parties meet,
6 little bit of conversation about the mediator's
7 role, then parties break into separate rooms for
8 negotiation?

9 A. It started out that way.

10 Q. And what was the demand made in the
11 mediation?

12 A. I assume the demand was probably like
13 this: Here is my demand.

14 Q. Similar to the wherefore clauses in the
15 complaint?

16 That's a yes?

17 A. Yes.

18 Q. Did Liberty Mutual make a counteroffer?

19 A. They did make a counteroffer.

20 Q. And what was that?

21 A. 25,000.

22 Q. Did you make any notes? Did you record
23 any notes during the -- during the mediation?

24 A. I don't believe so, no.

25 Q. Okay. And what was -- when you

1 received the \$25,000 counteroffer, what -- did it
2 come with a message on why it was so low?

3 A. Actually, I thought it was a pretty
4 good offer. Very rarely you get an offer of
5 \$25,000 in a mediation. They usually start off
6 about five or six.

7 Q. Okay. What did you -- describe the
8 conversation with Mr. Feldman when the \$25,000
9 offer was made.

10 A. Unfortunately, Bob kind of lost his
11 composure and started to carry on about how this
12 was nothing and so forth like that, and he
13 essentially left the mediation shortly after that.

14 Q. So your testimony is that a \$25,000 --
15 all right. Let me back up..

16 A. Yeah.

17 Q. Was \$25,000 the opening offer from
18 Liberty Mutual?

19 A. Yes, it was.

20 Q. And your testimony is that was a pretty
21 high offer for mediation?

22 A. I thought so, yeah.

23 Q. Was there any message conveyed with the
24 offer?

25 A. I don't believe there was any message

1 at all.

2 Q. Well, do you remember if there was a
3 message that said this is our final offer, 25,000,
4 take it or leave it?

5 A. If there was something like that, I
6 always take those with a grain of salt. I then
7 reduce my offer, and we'll see what happens.

8 Q. So --

9 A. They weren't getting in the car.

10 Q. Your understanding was they were
11 prepared to continue negotiating over --

12 A. Oh, absolutely.

13 Q. -- north of \$25,000?

14 A. Absolutely.

15 Q. And what was the -- was there a
16 counteroffer made?

17 A. I didn't have time.

18 Q. Okay. In terms of Mr. Feldman left
19 immediately?

20 A. Yeah. Uh-huh.

21 Q. Were there any follow-up conversations
22 with -- okay. So after Mr. Feldman left, what
23 happened next?

24 A. I think I apologized to Terry Finger.
25 I said: Terry, I'm sorry about this.

1 And he said: Oh, it happens all the
2 time. Don't worry.

3 And that was about it.

4 Q. Were there any continuing settlement
5 negotiations after the mediation?

6 A. Bob was very hard to get ahold of at
7 that time. I would call and -- and I never was
8 able to get ahold of him. He told me later that --
9 I wrote him some letters. He told me later he had
10 been in Chicago or something like that.

11 Q. Okay. Was that the -- I want to make
12 sure I'm clear. The \$25,000 was the only offer at
13 mediation?

14 A. We didn't have any time even to give a
15 counteroffer.

16 Q. Okay.

17 A. That's the only offer that was made.

18 Q. Were there ever any points in time
19 after the mediation where -- where on behalf of Mr.
20 and Ms. Feldman a counteroffer was made?

21 A. I don't believe so. I don't remember.

22 Q. During the mediation, was there any
23 mention of the service of process issue?

24 A. I don't think that was an issue.

25 Q. No. Maybe, but was there any mention

1 of that?

2 A. No. Answer is no.

3 Q. Was there any mention of statute of
4 limitations?

5 A. No.

6 Q. Did Mr. Finger make any comments to you
7 about the merits of the claim, claim value, or
8 anything of that nature during the mediation?

9 A. Terry -- and I've known him for 25
10 years or close to -- is a very taciturn person, and
11 he didn't say anything one way or the other.

12 I do remember this, and I'm -- this has
13 triggered. Bob had said a number of things, and I
14 remember Terry saying to him: Well, maybe they'll
15 believe this about your -- your back and so forth
16 when you go to trial.

17 Or something to that effect. And Bob
18 left.

19 Q. Do I understand from that comment you
20 just made that --

21 A. Yeah.

22 Q. -- that during the breakout session Bob
23 Feldman was telling you, Terry, and his wife, those
24 in the room, that his injuries were severe and this
25 -- you know, he needed this --

1 A. I -- I don't know if it was that as
2 much as he was just simply very, very irritated at
3 the -- what he considered to be a small offer.

4 Q. And what did you say to Mr. Feldman?

5 A. Wasn't much I could say.

6 Q. Did you tell him in your experience
7 there could be -- there was going to be some
8 continuing negotiations?

9 A. I don't know. I'm not going to say
10 anything that I did say or didn't say because I
11 just don't remember. I could have said something.
12 I might not have said anything. I don't know.

13 Q. Can you talk generally in terms of how
14 you handle mediations? In that scenario do you
15 generally try to tell a client that settlement
16 negotiations are -- this is early and they're going
17 to continue, they're not leaving, that kind of
18 thing?

19 A. Thomas, I've never had a situation in
20 the mediations where this has happened.

21 Q. Okay.

22 A. People will stay, and they'll stay to
23 the bitter end, is my -- my experience.

24 Q. After the mediation was over, did you
25 believe you were going to have to try the case?

1 A. Oh, yeah. Uh-huh.

2 Q. Again, I'm not going to make this an
3 exhibit --

4 A. Yes.

5 Q. -- but -- I'm not going to make this an
6 exhibit. I've got -- you've produced copies of
7 letters in May to Dr. Reuben stating you're
8 providing a HIPAA form and asking for medical
9 records. Is that consistent with your plans on
10 trying this case?

11 A. I -- I don't remember that, so I can't
12 comment on it.

13 Q. I'm going to -- again, this is --

14 A. I'd like to see the whole letter if
15 it's --

16 Q. I'm going to show it to you.

17 A. Yeah.

18 Q. It's a one-page letter, and it's Bates
19 numbered 00114, and this is -- I'm going to let
20 your counsel look at it too.

21 A. Okay. I -- it looks to me like I was
22 asking for a -- to be brought up to speed on the
23 treatments he had had since October of 2012.
24 That's certainly my letter.

25 Q. Okay. And my question was: And this

1 is consistent with your understanding that you were
2 going to have to try this case, getting his medical
3 records and things of that nature?

4 A. I thought that trying the case was on
5 the horizon. Bob was bound and determined, from
6 the conversations with him, he wanted to have this
7 case tried.

8 Q. As of May of 2014 -- well, before we
9 get to that, when you spend money on a client
10 matter, you keep a record -- do you keep a record
11 that identifies monies spent on client matters so
12 that it can be recovered if there's a settlement?

13 A. The way I keep it is everything is --
14 that we write for payment for depositions, payments
15 for filing, payments for attorney -- or not for
16 attorneys but for process servers and so forth like
17 that is ordinarily, with the exception of
18 Zellner-Wood, is ordinarily in check, and I will
19 keep contact with those checks.

20 I do not like what a lot of attorneys
21 do, and that is to nickel and dime people to death:
22 Letter, 42 cents. I don't do that. What I do is I
23 keep the checks. I put them in the file, and at
24 the end of the case I go through all my materials.
25 I add up the checks. It's a very fair way, I

1 think, of treating my clients.

2 Q. Okay. And so you're able to account
3 for monies spent on a client matter that --
4 significant monies?

5 A. Significant money, yeah.

6 Q. No charges for faxes and --

7 A. No.

8 Q. -- letters and postage. Okay.

9 A. No, no.

10 Q. So as of May 2014 -- and I understand
11 you don't have any records right here, but is -- am
12 I correct in understanding that you paid for a
13 filing fee --

14 A. Uh-huh.

15 Q. -- from the Feldmans?

16 A. Uh-huh.

17 Q. A money order to Zeller-Wood process
18 serving people?

19 A. I never charged for that.

20 Q. No. But you paid for it, right?

21 A. Yes, I did. Yeah.

22 Q. And were there any other expenses
23 incurred, medical record expenses or things of that
24 nature?

25 A. That's hard for me to answer. I can

1 tell you this, is that I checked as to what Bob
2 made on the underlying settlement for the predicate
3 accident, and I believe I charged him \$900 for
4 expenses for two years.

5 Q. Okay.

6 A. And that's -- beyond that, I can't tell
7 you.

8 Q. Okay. Well, at any point -- so we're
9 clear --

10 A. Uh-huh.

11 Q. -- the \$900, thereabout, that your firm
12 had spent prior to the settlement with Allstate --

13 A. Yeah.

14 Q. -- was reimbursed out of the Allstate
15 settlement proceeds, correct?

16 A. That's correct. Yeah.

17 Q. And so you're kind of starting with a
18 clean slate when the new lawsuit gets filed, right?

19 A. That's correct.

20 Q. And so the monies you spent from the
21 beginning of the lawsuit, Feldman v. Dickenson,
22 until May of 2014, had you asked Bob Feldman to
23 reimburse you for those monies?

24 A. I don't know if I had or not.

25 Q. In most cases don't you handle those

1 expenses and recover them out of the settlements
2 for clients?

3 A. Sometimes. Other times, when they get
4 larger and it gets involved, I will ask the client.
5 I'll say: You're going to have to pick this up.
6 You're going to have to do this and that and so
7 forth. And the clients are usually pretty -- you
8 know, they're pretty -- pretty much --

9 Thomas, may -- I want to explain
10 something. Bob already owed me money for work that
11 I had done and that he had promised to pay me which
12 he never paid, so --

13 Q. And this was the DUI for --

14 A. Yeah, yeah. Uh-huh.

15 Q. -- another person?

16 A. Yeah. And when he promised before when
17 I took it on, he said: I'll pay you.

18 When I finished up and I won the
19 case -- girl blue a .284, and we had it thrown out.
20 And Bob said: You know I don't have the money.

21 That was the answer. So I was very --
22 very close with money with Bob.

23 Q. When did that -- first off --

24 A. Yeah.

25 Q. -- I understood your testimony earlier

1 that the first time you met Mr. Feldman was right
2 after the collision with Dickenson --

3 A. Yeah.

4 Q. -- was at his house?

5 A. Yeah.

6 Q. When did you take on this other matter,
7 the DUI matter?

8 A. That was -- I believe it was the summer
9 of 2013.

10 Q. And you'd already settled the -- with
11 Allstate at that point?

12 A. Yeah. Uh-huh, uh-huh.

13 Q. Okay. What was the agreement? I mean,
14 you didn't represent Mr. Feldman, right, in the
15 DUI?

16 A. Mr. Feldman asked me to take this on as
17 -- he asked me if I did DUIs and so forth, and I
18 ~~had been rather successful in trying these cases~~
19 and so forth and winning them, and he asked me if I
20 did it, and I said: Yeah.

21 He said he had young woman named Karma
22 who was staying at his house, and she had been in a
23 D -- she had --

24 Q. Been charged?

25 A. -- had a DUI at the entrance to where

1 he lived, and he asked me to represent her.

2 Q. And you agreed?

3 A. Yeah. Uh-huh.

4 Q. Okay. And if I'm hearing your
5 testimony correctly, then the compensation with
6 that representation, Mr. Feldman had agreed to
7 under -- you know, be reasonable for that?

8 A. He had indicated to me: I will pay you
9 whatever -- whatever you charge.

10 Q. Was there a fee agreement or anything
11 on that?

12 A. That was -- Bob is a trustworthy
13 person. If he said he was going to pay me, he was
14 going to pay me. I do at a lot of things on a
15 handshake.

16 Q. And I didn't say -- accurately.

17 A. Yeah.

18 Q. Was there a written agreement on that?

19 A. No.

20 Q. Help me on understanding this. What
21 does payment on the Young case have anything to do
22 with your representation of Dickenson in this
23 case -- I mean of the Feldmans.

24 A. No. That's a good question. There was
25 a lot of money going out, and in getting ready for

1 trial there was going to be a great money going
2 out, and this was a case that I felt that we
3 probably would not win because I think Julian Allen
4 knew pretty much what was going on with Bob, though
5 he and I never discussed any of this, but I wanted
6 to make sure I had my money. It's as easy as that.

7 And Bob had indicated to me with his
8 actions regarding the case of Miss Karma that he
9 was not willing to pay, which greatly surprised me.

10 Q. Was it willing or able?

11 A. Bob had received a settlement eight
12 months earlier or ten months earlier of nearly
13 \$50,000, and I had worked very hard to get him that
14 money, and I assumed, the way he talked about how
15 he would pay me, that he was -- he had the money.

16 I guarantee you this. If he had said
17 I'm not going to pay you or I'm going to short you
18 if you win or lose, I wouldn't have done it.

19 Q. Wouldn't have done what?

20 A. The case.

21 Q. The Dickenson case?

22 A. No, no, no, no, no. The Karma Young
23 case.

24 Q. And did Mr. Coggin ever tell --
25 Mr. Feldman ever tell you that he was not going to

1 pay you for your work on the Young case?

2 A. What he told me was, oh, I'll pay you,
3 but I never got it. We talked about it two or
4 three times. In fact, I lowered the price.

5 What I recall is saying to him this was
6 a \$5,000 case, which is what I charge for DUIs, and
7 I said I'll charge -- I think the first time I told
8 him I'll charge 3,000. He didn't have the money.
9 And then I later said I'll charge you \$2,000, and
10 he didn't have the money.

11 Q. Let's consider the summer of 2014:
12 May, June, July, August.

13 A. Fine.

14 Q. Did you have any conversations with
15 Mr. Feldman, or Ms. Feldman for that matter, about
16 the value of their claim against Ms. Dickenson?

17 A. I don't recall.

18 Q. There was a \$25,000 offer of
19 settlement.

20 A. Right.

21 Q. Did you have any discussions -- you
22 told us about the mediation.

23 A. Right.

24 Q. Did you have any discussions with
25 either of the Feldmans after the mediation prior to

1 your moving to be relieved as counsel about the
2 value -- the merits of their claim and the value of
3 their claim?

4 A. I told Bob any number of times that he
5 had greatly compromised his case by his insistence
6 on playing golf. I told him that probably a half
7 dozen times.

8 Q. You made some requests to Mr. Feldman
9 to assist in paying cost during the summer of 2014?

10 A. I don't think I ever made to assist in
11 paying cost. I asked him to pay the cost, yes.

12 Q. Okay. What did Mr. Feldman tell you?
13 Or what was his response?

14 A. I wrote him a number of letters which
15 weren't answered. When I say a number of letters,
16 two or three, which weren't answered, and I got a
17 call from him, oh, I don't know when, at the end of
18 the summer, and we had discussed it at that time,

19 and I don't remember what he told me. I think he
20 told me I'll pay you out of the settlement.

21 Q. Did you have any -- thank you for that.
22 Did you have any conversation about the \$25,000
23 offer and why that was good, bad, or otherwise?

24 A. I don't believe we ever discussed it.
25 That -- as far as I was concerned, that was over.

1 That was -- that ship had sailed.

2 MR. PENDARVIS: This is going to be
3 ten.

4 (EXH. 10, Letter from Gary Coggin to
5 Robert Feldman dated September 15, 2014, was marked
6 for identification.)

7 (Off-the-record conference.)

8 BY MR. PENDARVIS:

9 Q. Mr. Coggin, I've passed to you a letter
10 dated September 15, 2012.

11 A. Uh-huh.

12 Q. It appears to be a letter from you to
13 Mr. Feldman --

14 A. Yeah.

15 Q. -- outlining the merits of the claim --

16 A. Yeah.

17 Q. -- and the cost and the prospect for
18 trial. First question: Is this your letter to
19 Mr. Coggin?

20 A. Yes, it is.

21 Q. To Mr. Feldman. Excuse me.

22 A. Yeah.

23 Q. The first sentence talks about
24 disagreements over the past year.

25 A. Uh-huh.

1 Q. Can you elaborate on what that --

2 A. Yeah. It -- it involved Bob playing
3 golf.

4 Q. And what did you understand Bob's --
5 your next sentence talks about, you know, your
6 concern about not being able to meet his
7 expectations.

8 A. Right.

9 Q. What did you understand were
10 Mr. Feldman's expectations as of September 2014?

11 A. He wanted to exhaust the amount of
12 underinsurance.

13 Q. Okay.

14 A. And apparently I did talk about the
15 \$25,000. I see that in here. I stand corrected.

16 Q. Saves the question.

17 A. Yeah.

18 Q. Thank you.

19 And do I understand from the first
20 sentence in the second full paragraph: The
21 circumstances surrounding your injuries.

22 And does that mean the golf issue, that
23 he was not as injured as you thought he initially
24 was?

25 A. That's -- that's absolutely right.

1 That's exactly what I was talking about.

2 Q. What was the amount of the medicals
3 that Mr. Feldman had incurred as a result of the
4 collision with Dickenson?

5 A. I have no idea. Have no idea.

6 Q. It's in your communications in the
7 original demands?

8 A. If you have something that says it --

9 Q. Well, they're in front of you --

10 A. -- let me look at it and see.

11 Q. -- but let's take -- let's take a look.

12 MR. BOGDAN: You guys are talking over
13 each other.

14 MR. PENDARVIS: I'm sorry.

15 MR. BOGDAN: Let's help Trisha out
16 here.

17 THE WITNESS: I apologize.

18 BY MR. PENDARVIS:

19 Q. You testified about the letter to
20 Mr. Finger, that it was accurate as far as you knew
21 based on the -- what information you had in May of
22 2014. Do you recall that testimony?

23 A. I don't -- I don't know what you're
24 talking about.

25 Q. This is Exhibit 9.

1 A. Okay.

2 Q. I'm trying to get an understanding of
3 the amount of medicals that you understood
4 Mr. Feldman had incurred that were in context for
5 your conversations in September of 2014.

6 A. I think I can answer that. Typically
7 -- for example, I'm going to trial at the end of
8 this month, and the attorney on the other side and
9 I have talked about medicals. I don't typically
10 get those together until the eve of trial for the
11 reason that I don't want to miss anything, so I
12 don't know if there was any medicals that we could
13 talk about. If there was, I'd love to see it
14 because I just don't remember.

15 Q. Well, you're stating to Mr. Finger on
16 the top of the second page that the amount of the
17 -- the amount of -- the above amount is 150 to
18 180,000.

19 A. Only an estimate. I have no idea what
20 I was basing that on.

21 Q. Okay. But you wouldn't have written
22 something that was not true, would you?

23 A. I would have estimated something, and
24 that could be \$50,000 high. I don't know.

25 Q. Okay. So let's just knock \$50,000 off

1 both numbers, so between 100 and \$130,000 in
2 medicals.

3 A. I think that the retail numbers would
4 probably been somewhere around there, yeah.

5 Q. Okay. So 100 to \$130,000 in medicals,
6 no dispute on liability whatsoever, and your
7 testimony today is that your recommendation to
8 accept \$25,000 was a fair value for Mr. Feldman's
9 claim?

10 A. Yes, it was.

11 Q. You're saying he wouldn't even get his
12 medicals back?

13 A. Yes. He would not.

14 Q. Okay.

15 A. Based on the information I have. And
16 again, Bob compromised his case.

17 Q. Are you going to tell this jury that
18 Bob Feldman's playing golf after the collision
19 would mean that the at-fault party wasn't
20 responsible for at least paying back the medical
21 expenses he incurred? Yes or no and then you can
22 explain.

23 A. This was a preexisting condition.

24 Q. No, sir. The question is -- yes or
25 no -- are you going to tell this jury that Bob

1 Feldman would not be able to recover the at -- the
2 medical expenses he incurred by Ms. Dickenson's
3 collision? Yes or no.

4 A. He would not, based on his behaviors.

5 Q. After the fact. Let me rephrase the
6 question. I want to make sure I got this.

7 A. Uh-huh.

8 Q. Your testimony is that Mr. Feldman's
9 conduct after the accident is going to defeat his
10 claim to recover medicals that were incurred as a
11 result of Ms. Dickenson's clear liability?

12 A. His conduct --

13 MR. BOGDAN: Object to the form.

14 THE WITNESS: His conduct after the
15 fact, after the accident, were such that it showed
16 that he didn't have any problems.

17 BY MR. PENDARVIS:

18 Q. We're not talking about pain and
19 suffering.

20 A. I'm talking --

21 Q. I'm not talking about pain and
22 suffering. I want to talk about medical expenses
23 that were incurred as a result of the collision.

24 A. So you're talking about medical
25 expenses that are obviously puffed up for a trial?

1 Q. No, sir. I'm talking about actual
2 medical expenses that Mr. Feldman incurred that you
3 stated in the letter that we've adjusted down by
4 \$50,000 were between a hundred and \$130,000 in
5 medicals, and my -- I want to make sure I'm clear
6 on this. You're going to go in front of the jury
7 and tell the jury that Mr. Feldman would not have
8 been able to recover out-of-pocket medical expenses
9 because of his conduct after the fact?

10 A. Yeah.

11 MR. BOGDAN: Object to the form.

12 THE WITNESS: That's exactly right.
13 Yes. Emphatically.

14 And again, Mr. Pendarvis, I don't know
15 -- and again, I've stated that to you. I don't
16 know what his medicals were. That was just an
17 estimate.

18 BY MR. PENDARVIS:

19 Q. Did Julian Allen ever say anything
20 about to you Mr. Golf -- Mr. Feldman's golf
21 situation?

22 A. Julian Allen, what I recall -- and we
23 didn't -- I think a lot of that would be
24 privileged. Julian Allen did ask Mr. Feldman at
25 his deposition if he had ever played golf since the

1 accident. Mr. Feldman replied in the affirmative,
2 and Julian Allen apparently, if I remember
3 correctly, asked some follow-up questions, and
4 Bob's reasoning was the same thing he'd always told
5 me, was that he just liked to ride around in the
6 cart to be with his friends.

7 Q. Thank you for your summary of the
8 deposition testimony.

9 A. I don't know if that's a summary of
10 not. That's a summary of my recollection.

11 Q. That's fair.

12 A. You're welcome.

13 Q. And here's my question.

14 A. Yeah.

15 Q. Outside of the deposition --

16 A. Uh-huh.

17 Q. -- did you have any conversations with
18 Julian Allen about Mr. Feldman's golf?

19 A. Not that I can recall. If you have
20 something I could look at, I'd be happy to look at
21 it and comment on it.

22 Q. My question was about conversations,
23 not really letters, e-mails, or anything like that.
24 Did you have any conversations with --

25 A. Not that I recall.

1 Q. Did Mr. Allen ever communicate other --
2 in a conversation statements to the effect that
3 Mr. Feldman's golf activities were a reason they
4 weren't offering any money?

5 A. I don't recall him ever saying anything
6 like that. But I want to put this caveat.
7 Mr. Allen is a very skilled attorney, and
8 Mr. Allen, I believe, probably knew all about this.

9 Q. Have you had any conversations with
10 Mr. Allen about the merits of this claim --

11 A. No.

12 Q. -- this legal malpractice case?

13 A. No.

14 Q. Do you know if your counsel has reached
15 out to Mr. Allen?

16 A. I -- I don't know.

17 MR. BOGDAN: I think that's work
18 product.

19 THE WITNESS: I'm not sure.

20 MR. PENDARVIS: The rules only allow
21 you -- are you instructing the witness not to
22 answer, or are you just objecting? 'Cause I think
23 the rules only deal with communication,
24 attorney-client privilege, not work product. I'm
25 just trying to get an understanding of where we

1 are.

2 MR. BOGDAN: What's the question again?

3 BY MR. PENDARVIS:

4 Q. The question is: Do you know if your
5 lawyer has reached out to Mr. Julian Allen about
6 the -- his testimony in this case?

7 A. The answer is I don't know.

8 Q. Okay. I have not seen any written
9 communications from Mr. Allen about the settlement.
10 Are there -- I mean, were you aware of any that
11 somehow didn't get in the file or anything of that
12 nature?

13 A. I'm not aware of anything. And again,
14 if there is something, I'd like to look at it.

15 Q. Okay. I --

16 A. Okay.

17 Q. I'm telling you I haven't seen it
18 either. I just wanted to see if there was
19 something.

20 I'm going to break this -- this is a
21 question about lost wages.

22 A. Okay.

23 Q. And I'm going to break this down to
24 several segments of time. During the time
25 Mr. Feldman was getting treatments for injuries

1 caused by the accident, do you believe he had a
2 claim for lost wages for that limited time period?

3 A. I would believe he did, yes.

4 Q. Okay.

5 A. Uh-huh.

6 Q. Would the fact that Mr. Feldman may
7 have played golf months, years after that, defeat
8 his claim for lost wages?

9 A. That I don't know, but the fact of the
10 matter is I don't know if he worked.

11 Q. Okay.

12 A. He would never answer that question to
13 me.

14 Q. For the time period after Mr. -- or
15 after the accident and while Mr. Feldman was not
16 actively getting medical treatments, did you reach
17 out to any of the physicians or vocation
18 rehabilitations experts to find out if there were
19 -- if Mr. Feldman's ability to work was limited or
20 compromised by the injuries caused by the accident?

21 A. Regarding work, I don't believe I ever
22 asked that question. There were letters that I
23 wrote to his physicians, but it wasn't -- didn't
24 involve work.

25 Q. Typically requesting copies of medical

1 records?

2 A. Medical records. I believe I sent a
3 letter to Shissias and to Dr. Reuben regarding his
4 health and so forth.

5 Q. And a percentage of impairment?

6 A. Yeah. Uh-huh.

7 Q. Okay.

8 A. That's right.

9 Q. So if a person was determined to be 11
10 percent impaired, that would tend to support a
11 claim for lost wages, wouldn't it?

12 A. If he worked.

13 Q. Right. And you've made those arguments
14 for other clients where percentages of impairment
15 impaired their ability to work, correct?

16 A. If they have a job. If they don't have
17 a job, they don't pay workers' comp or anything
18 else like that. You know that.

19 Q. So turning back to Exhibit 10, if I'm
20 understanding --

21 A. Yeah.

22 Q. -- your testimony -- I want to try to
23 summarize here.

24 A. Uh-huh.

25 Q. Looking at the -- one, two, three --

1 third full paragraph, you -- last sentence: In the
2 interim, I advise you to settle the matter at hand
3 for the 25,000 that's been offered.

4 A. That's correct.

5 Q. Did you have any conversations with
6 Mr. Feldman about why you were making this
7 recommendation?

8 A. Bob and I talked on the telephone. As
9 I said, I sent a couple of these letters to him
10 regarding costs and so forth like that. My
11 recollection is he called me sometime later in the
12 summer. At that time I told him that he had
13 severely compromised his case with his activities
14 and I felt that the -- the case was really not a
15 very good case.

16 Q. You'd been practicing law about 20 --
17 almost 25 years --

18 A. Yeah.

19 Q. -- as of this?

20 A. That's about right. Yeah.

21 Q. And it's your testimony that Mr. -- if
22 you'd gone to trial that you didn't -- your expert
23 opinion was that the case was not worth more than
24 \$25,000?

25 A. Based on what I knew about Bob, yes.

1 Q. After this September 15 letter we
2 marked as Exhibit 10, did you have any
3 conversations with Mr. Feldman about having the
4 need to maybe find substitute counsel instead of
5 filing a motion to withdraw as counsel?

6 A. I don't recall. But I have a feeling
7 that I did. And if you have a letter, I'd like --
8 I'd like to look at it before I answer any further
9 than that.

10 Q. You believe you've had conversations
11 with Mr. Feldman about --

12 A. I think I may have written him a
13 letter.

14 Q. Okay. Check something real quick.

15 A. Sure.

16 Q. I don't think I've seen the -- I don't
17 think I've seen the letter.

18 I'm going to represent you the first
19 time that the substitution of counsel came into
20 play was after you had filed your motion to
21 withdraw.

22 Well, I'll tell you what. I'll just
23 use this for now. I'm not going to mark this as an
24 exhibit. We've got a copy of it, but you filed a
25 motion to be -- to withdraw as counsel, correct?

1 A. I don't recall that.

2 Q. This is --

3 A. So show me -- pass me the certificate
4 of service.

5 Q. I'm showing to you a copy of the
6 certificate of service. And do you recall filing a
7 motion to withdraw?

8 A. I don't recall.

9 Q. Okay.

10 A. That doesn't mean I didn't do it, but I
11 don't recall. And if you have something that will
12 help me, please give it to me.

13 Q. This image I'm going to show you is
14 Bates No. 00048, and it's a -- it appears to be a
15 clocked copy of a motion to -- for withdrawal of
16 appearance and stay of proceedings, and the movant
17 was you.

18 I can make that a little larger if
19 that'll help.

20 A. Yeah. Go ahead. I can't hardly see
21 it.

22 Q. I'm sorry.

23 A. Is that the end of it, or can I move it
24 down?

25 Q. Yes, sir. We can --

1 A. Oh.

2 Q. Oh, wait a minute. Let me see if I can
3 get it to scroll down better.

4 A. Okay. Okay. Is that it? Is there a
5 signature page?

6 Q. I think there is, and I'll show you
7 that.

8 A. Okay. That's correct.

9 What was the date? I'm -- I apologize.

10 Q. It was clocked or filed with the court
11 on September 16, 2014.

12 A. Okay.

13 Q. And did you have any -- and where I'm
14 going with this is did you have any conversations
15 with Mr. Feldman before this motion was filed on
16 the preference to substitute counsel rather than
17 you moving to be relieved as counsel?

18 A. I just don't remember. I think it
19 would be my habit to talk to him because ordinarily
20 I talk to people. I just don't remember.

21 Q. Did you help the Feldmans find other
22 counsel?

23 A. No. I don't believe I did that, no.

24 Q. Why not?

25 A. He didn't ask me. If he had asked me,

1 I would have given him some recommendations.

2 MR. BOGDAN: Do you have a signature
3 page of that, Tom?

4 MR. PENDARVIS: Sure.

5 MR. BOGDAN: Thanks.

6 MR. PENDARVIS: It goes over to Bates
7 page 00049, and I think the -- out of order, but
8 0030 was the certificate of service, the same date
9 as the signed.

10 BY MR. PENDARVIS:

11 Q. Okay. The law firm of Bauer & Metro
12 took over the representation --

13 A. That's correct.

14 Q. -- of the Feldmans?

15 A. Uh-huh.

16 Q. Okay. I'm going to go back a little
17 bit in just a second, back in time.

18 MR. BOGDAN: Did you mark this?

19 MR. PENDARVIS: No.

20 (EXH. 11, Letter from Gary Coggin to
21 Julian Allen dated May 21, 2014, was marked for
22 identification.)

23 BY MR. PENDARVIS:

24 Q. Mr. Coggin, I'm going -- I'm going to
25 rewind a little bit.

1 A. That's fine.

2 Q. We've been up to the point of -- in
3 September. I'm going to go back a little bit, into
4 May. I'm passing you -- appears to be a letter
5 from you to Julian Allen from May 21, 2014. Going
6 to ask if -- if that's a letter you sent to
7 Mr. Allen?

8 A. Yes, it is.

9 Q. Okay. What's the purpose of this
10 letter?

11 A. I would assume I was still working on
12 the case and trying to get a settlement.

13 Q. It appears, if you're looking at the
14 third paragraph, that there -- you provided all of
15 Mr. Feldman's medical records that you had in your
16 possession --

17 A. Uh-huh.

18 Q. -- and you divided them basically into
19 preaccident medical bills and postaccident medical
20 bills.

21 A. That's --

22 Q. Is that a fair summary?

23 A. That's correct.

24 Q. And looking at the -- you're showing
25 existing medicals, and this is the -- one, two,

1 three, four -- fifth paragraph beginning with the
2 word following.

3 A. Uh-huh.

4 Q. You're showing total billings at
5 47,450?

6 A. Yeah. Uh-huh.

7 Q. And you're also looking at foreseeable
8 future for injections that Mr. Feldman's going to
9 need?

10 A. Right.

11 Q. So you had done some calculations on
12 the amount of medicals?

13 A. I just told you I didn't remember.

14 Q. I know. And I'm just saying -- well,
15 you also said sometimes you don't do them until
16 right before trial, but my point is you had done
17 some for Mr. Feldman's case during the time you
18 were representing him, correct?

19 A. I would say so. I would agree.

20 Q. Okay.

21 A. This also shows that the billings were
22 relatively small compared to what they were before,
23 47,450.

24 Q. Okay. Did you develop any values for
25 the future medicals that Mr. Feldman was going to

1 need?

2 A. You're going to have to explain that to
3 me. I don't know what you mean.

4 Q. Your letter says that, according --
5 Mr. Feldman has had 16 injections, one every two
6 and a half months --

7 A. Yeah.

8 Q. -- and the injections will continue at
9 this rate for the foreseeable future.

10 A. I -- no. I did -- I'm going to back up
11 on this. There was a letter to Dr. Shissias or
12 Reuben in which I talked about some kind of future
13 medicals or something like that, and that's all I
14 can tell you. I do remember there was something
15 there.

16 Q. Okay.

17 A. If you have it, I'd like to look at
18 that.

19 Q. And you made statements in the -- to
20 the Allstate carrier about future medicals for
21 Mr. Feldman?

22 A. If there's -- in the letters, I would
23 say yes. I don't know if I did or not. I'm sure I
24 did.

25 Q. You're welcome to look. I'm going to

1 represent to you that you did.

2 A. Yeah, yeah.

3 Q. If you want to see them, you can.

4 A. Yeah. I'd like to see them, yeah.

5 Q. They're right in front of you. They're
6 in one of the earlier exhibits, those first two or
7 three letters that we looked at.

8 A. You're going to have to help me here.
9 What are we looking for?

10 Q. I'm looking. I'm --

11 A. I had a -- I had a senior moment there.

12 Q. Well, in one of your first letters,
13 Exhibit 2, July 5, 2011 --

14 A. Uh-huh.

15 Q. -- the second full paragraph and,
16 really, the third full paragraph talk about future
17 medicals.

18 A. Okay.

19 Q. And question I've got is, that that was
20 an expense that was going to be available at trial
21 for the case.

22 A. Uh-huh.

23 Q. Correct?

24 A. Uh-huh.

25 Q. Thank you. I just feel -- I wanted to

1 get that testimony.

2 A. Yes, yes.

3 Q. Fast-forward now back again to the
4 point in time when -- after Bauer & Metro had taken
5 over the representation. Could you describe just
6 generally what happened in that exchange?

7 A. There was a -- they asked for the --
8 all the records. I put them in a box. They sent a
9 girl over to get them, and I had to carry them.
10 They were so heavy I had to carry them down to the
11 car for her.

12 Q. And the records you're referring to
13 would have been the entire file for the Feldmans?

14 A. I believe so, yes.

15 Q. And you were -- and we've seen
16 communications or -- communication's been produced
17 where you were basically telling the lawyers at
18 Bauer & Metro that -- to protect your expenses that
19 you'd paid and your interest in the \$25,000
20 settlement offer?

21 A. Uh-huh.

22 Q. Correct?

23 A. Yeah.

24 Q. You've got to say yes.

25 A. It's got to be --

1 Q. No, no, no.

2 A. I'd have to see it. I remember some
3 kind of letter like that. I'm not going to agree
4 to the specifics until I look at it.

5 Q. Okay.

6 A. I don't remember what I said.

7 Q. That's fine. The letter -- I mean,
8 it's just not worth really getting into.

9 Let's just do this.

10 (EXH. 12, Letter from Carrie M. Murphy
11 to Gary Patrick Coggin dated October 7, 2014, was
12 marked for identification.)

13 BY MR. PENDARVIS:

14 Q. Mr. Coggin, I'm going to pass you a
15 document marked Exhibit 12 --

16 A. Sure.

17 Q. -- to your deposition. This appears to
18 be a document from the Bauer & Metro law firm faxed
19 and e-mailed to you on October 7, 2014. I'm going
20 to let you read that, and I have a few questions
21 for you.

22 A. Uh-huh. I read it.

23 Q. Tell me about this telephone
24 conversation on October 6 referenced in the first
25 sentence between you and Mr. Bauer.

1 A. I don't remember.

2 Q. Okay. This letter states that --
3 apparently it's about the affidavit of service
4 conversation.

5 A. I would -- again, I don't remember.

6 Q. When you received this letter -- second
7 sentence says: We have searched the file you've
8 provided --

9 A. Uh-huh.

10 Q. -- and cannot locate the affidavit of
11 service for the named defendant.

12 A. Right.

13 Q. I would appreciate it if you would
14 search your records and provide me a copy of the
15 affidavit or name the -- or the name of the process
16 server who served the pleadings on the defendant.

17 A. Okay.

18 Q. And you got this letter, correct?

19 A. Yes.

20 Q. What did you do in response?

21 A. I don't know if I did anything. I
22 didn't consider this to be something that I had to
23 answer. They said they couldn't find the affidavit
24 of service. My position was that I had included
25 the affidavit of service in all my papers. I

1 didn't hold anything back, and I think that's all
2 that I can tell you about that.

3 Q. Is that what you said to Mr. Bauer when
4 he called you on October 6?

5 A. I don't know. I told you already I
6 didn't know what we talked about. We could have
7 talked about anything. I've known Sam for a long
8 time.

9 Q. What do you believe your duties are to
10 a client when you terminate the representation of a
11 client?

12 MR. BOGDAN: Object to the form.

13 MR. PENDARVIS: What's the basis of the
14 objection?

15 MR. BOGDAN: It calls for a legal
16 conclusion.

17 MR. PENDARVIS: Okay. I'm going to ask
18 him. He's a lawyer.

19 BY MR. PENDARVIS:

20 Q. You're a lawyer, right?

21 A. That doesn't deserve an answer, does
22 it?

23 Q. I mean, you're a lawyer, and you know
24 that there are rule --

25 A. Thomas, you're trying to be

1 provocative. I'm not going to answer that.

2 Q. No, I'm not.

3 A. Yes, you are.

4 Q. You're a lawyer, and you know there are
5 rules governing your duties to a client when you're
6 terminating representation.

7 A. I do not know what the ethical -- as I
8 sit here, no, I don't know enough about the ethical
9 conundrums regarding transferring of documents. I
10 did everything correctly and up front. That's all
11 I can tell you.

12 Q. You would agree, as the lawyer who'd
13 handled a matter for a client, including
14 Mr. Feldman and Ms. Feldman, that you've got an
15 obligation to make sure the transition of the file
16 to new counsel goes as smoothly as possible so as
17 not to interfere with the client's claims, correct?

18 A. Absolutely.

19 Q. And if that meant looking, going an
20 extra step to look for an affidavit of service,
21 that's not asking too much, is it?

22 A. I probably looked through every file
23 that I had in my office, so, yes, we looked very
24 hard for that. I thought you were asking what I
25 did with Bauer & Metro.

1 Q. I thought -- my understanding was your
2 testimony was I probably didn't do anything when I
3 got this letter that's been marked as Exhibit --

4 A. In response to Bauer & Metro. That's
5 all I meant.

6 Q. Okay.

7 A. I looked very hard for that.

8 Q. Did you respond -- do you know if you
9 communicated back to Bauer -- Sam Bauer or anyone
10 at Bauer & Metro about your efforts to look?

11 A. I don't know. I don't know if that's
12 any of their business. I don't know, and that's my
13 answer.

14 (Off-the-record conference.)

15 BY MR. PENDARVIS:

16 Q. I'm going to represent to you that
17 ultimately there was an order submitted
18 substituting counsel, that your motion to be
19 relieved never was -- did you ever appear on the
20 motion to be relieved as counsel?

21 A. I don't believe it ever came up.

22 Q. Yeah. It was a substitution of counsel
23 that was --

24 A. Yeah.

25 Q. -- handled, so the order relieving you

1 as counsel for Mr. and Ms. Feldman was done by
2 substitution and a consent. Okay.

3 (EXH. 13, Letter from Julian K. Allen
4 to Honorable Jerri Ann Roseneau dated October 8,
5 2014; Liberty Mutual Insurance Company's Notice and
6 Motion to Dismiss; and Certificate of Service, was
7 marked for identification.)

8 BY MR. PENDARVIS:

9 Q. This is 13.

10 A. Thank you.

11 Q. Mr. Coggin, this -- a document -- a
12 cover letter and a -- and a motion that's been
13 passed to you marked Exhibit 13 --

14 A. Uh-huh.

15 Q. This appears to be a letter from Julian
16 Allen to the clerk of court filing defendant's --
17 Liberty Mutual Insurance Company's notice and
18 motion to dismiss.

19 A. Okay.

20 Q. And you were copied on that, correct?

21 A. Yes.

22 Q. You were of record at that point. You
23 were --

24 A. Oh, no, no. Yes.

25 Q. You were still counsel of record,

1 right?

2 A. Right.

3 Q. So Bauer & Metro and their law firm
4 were -- before this motion got filed, they were --
5 they were looking for the affidavit, right?

6 A. They indicated they had gone through
7 the file, yes.

8 Q. Okay. Did you have any conversations
9 with anyone about this motion when you received it?

10 A. I don't believe did.

11 Q. Did Mr. Metro or Mr. Bauer call you to
12 discuss this motion when they received it?

13 A. I don't remember. If you have
14 something, it might trigger my memory. I'm not
15 trying -- I'm not being deliberately obtuse.

16 MR. PENDARVIS: Let's take a pause
17 while we're looking for this document.

18 (A recess transpired.)

19 (EXH. 14, Letter from Samuel C. Bauer
20 to Gary Patrick Coggin dated October 10, 2014, was
21 marked for identification.)

22 BY MR. PENDARVIS:

23 Q. Mr. Coggin, I'm passing to you a
24 document marked as Exhibit 14 that appears to be
25 another letter to you from the Bauer & Metro firm,

1 and this one's from Sam Bauer to you --

2 A. Uh-huh.

3 Q. -- dated October 10, 2014. Did you
4 receive this letter?

5 A. I don't remember, but I think I did.
6 My address is on there. Everything is correct.

7 Q. It appears there was a -- I mean, this
8 references a conversation with you and Mr. Bauer.
9 You were going to look for the affidavit?

10 A. Uh-huh.

11 Q. That's yes?

12 A. Yes. Excuse me.

13 Q. What did you do in response to this
14 letter?

15 A. There was an ongoing search for the
16 affidavit of service. All right? As for the --
17 the check, that -- my recollection of that was
18 clear. I paid cash for that. Oh, no. Not the
19 process -- yeah. The process server. We're
20 talking about Zellner-Wood.

21 You can provide an affidavit it was
22 personally served, and I did provide an affidavit.

23 Q. Well, let me ask you this. Why didn't
24 you just call back the process server in New York
25 and just get another affidavit?

1 A. I called them immediately. In fact, we
2 must have had 20 conversations. And I called them
3 immediately, and as I said, I'd had a number of
4 conversations with her when this was being served,
5 and the answer that I got was -- the first time I
6 called them -- was that one-time service, none of
7 the -- none of the documents are kept. We only
8 keep the documents -- they only keep records for
9 people that work with us multiple times. Other
10 times, everything else is destroyed or thrown away,
11 and that was the answer.

12 Now, I talked to them several times
13 after that. I called them up and confronted them
14 with the telephone calls I had made there, and they
15 said, well -- at that point the answer was that
16 they had had three different computer systems in
17 since the period of time. They're obviously
18 worried about a malpractice suit themselves.

19 And the last time I -- I called many,
20 many times, and another time I called, that they
21 said they looked and they couldn't find anything,
22 so that was the gist of the excuses every time.

23 And then this gal, Fran, stopped taking
24 my calls, so there was only so much you could do.

25 Q. Why were you doing all the -- why did

1 you take all these actions to try to recover the
2 affidavit of service?

3 A. Why?

4 Q. Yes. Why?

5 A. Because I had done it. They had served
6 -- I had served.

7 Q. Well --

8 A. I had an obligation.

9 Q. What was the purpose of the affidavit
10 of service? I mean, why did you need to get it?

11 A. Well, the affidavit of service had to
12 be filed. I had to protect my client. I'm not
13 sure if that's what you're asking.

14 Q. Okay. I think we're going to look at
15 an affidavit that you prepared. I'm following up
16 on some conversation --

17 A. We're talking about different things?

18 Q. Yeah.

19 A. Yeah.

20 Q. The last statement this -- in this
21 request from Mr. Bauer was could you provide an
22 affidavit, and you did provide one at some point,
23 correct?

24 A. Yeah.

25 Q. Okay. Now, in between the affidavit

1 you prepared did Mr. Bauer or his firm serve you
2 with a subpoena for production of the file or the
3 affidavit?

4 A. I think they did serve me. I don't
5 know if it was for the production of the file or
6 not. Maybe it was. I think I recall that.

7 (EXH. 15, Letter from Gary Coggin to
8 Jerri Roseneau dated December 6, 2014; Objection to
9 Plaintiffs' Subpoena; and Certificate of Service,
10 was marked for identification.)

11 BY MR. PENDARVIS:

12 Q. Mr. Coggin, I'm going to skip a step or
13 two --

14 A. Yeah.

15 Q. -- and I'm going to pass you as -- a
16 document marked as Exhibit 15. It appears to be a
17 letter from you to the clerk of court filing an
18 objection to a subpoena, and I'm going to ask if
19 that's a letter -- is that your signature and an
20 objection that you filed?

21 A. Yeah. Uh-huh.

22 Q. And so, based on the statement in your
23 objection, the subpoena that was served sought,
24 quote, copies of any and all records evidencing
25 service of process of plaintiff's summons and

1 complaint in the above-captioned matter upon
2 Defendant Sarah Dickenson, correct?

3 A. That's correct.

4 Q. And your objection was that you
5 provided the file?

6 A. A complete file had been provided.
7 Right.

8 (EXH. 16, Affidavit of Gary Coggin, was
9 marked for identification.)

10 BY MR. PENDARVIS:

11 Q. I'm going to pass you a document marked
12 as Exhibit 16. It appears to be an affidavit that
13 you signed a few days later dated December 8 and,
14 first off, ask if this is an affidavit you signed?

15 A. Yeah. Yes, it is.

16 Q. And did anyone assist you with the
17 content of this affidavit?

18 A. No. I did it myself. I'll take part
19 of the blame for it.

20 Q. Did you have any conversations with
21 Mr. Bauer or Mr. Metro or anyone at that law firm
22 while you were developing this affidavit?

23 A. I don't believe so, no.

24 Q. Okay. To your knowledge was this ever
25 submitted to a court?

1 A. Yes. I think the -- this was given to
2 Julian Allen, and I probably sent a copy of it to
3 Bauer & Metro, and I don't know. Unless you have a
4 -- something else. Maybe you have some letters or
5 something like that.

6 Q. I'm not sure I've seen a clocked copy
7 or a cover letter. I'm just try -- that's what I'm
8 trying to find out.

9 A. I think I gave it to Mr. Allen, and I
10 probably gave a copy to Sam Bauer.

11 Q. Do you know if this was submitted to
12 Judge Kinard when he heard the hearing -- motion?

13 A. It's in the documents. And again, I --
14 I don't know. You're -- I'd have to look at it and
15 see. I -- I don't recall one way or the other.

16 MR. PENDARVIS: Okay. Off the record
17 for just a moment.

18 (Off-the-record conference.)

19 (EXH. 17, Answer to Defendant's
20 12(b)(4) and 12(b)(5) Motion to Dismiss, was marked
21 for identification.)

22 (EXH. 18, Answer to Defendant's
23 12(b)(4) and 12(b)(5) Motion to Dismiss, was marked
24 for identification.)

25 BY MR. PENDARVIS:

1 Q. Mr. Coggin, I'm going to pass to you
2 two documents. Both of them are styled Answer of
3 Defendant's 12(b)(4) and 12(b)(5) Motion to
4 Dismiss. One, Exhibit 17, has not been signed, and
5 one, Exhibit 18, has been signed. Take a look at
6 those for a moment and then I've got a couple of
7 questions for you.

8 A. Okay.

9 Q. Did you prepare these documents?

10 A. I'm sure I did.

11 Q. Why did you prepare them?

12 A. I don't know if it was in response to
13 Julian Allen's motion to dismiss. Depends on the
14 dates. And then there was a second hearing, and
15 you provided us those documents under -- you
16 provided us those documents under the
17 interrogatories or production yesterday, so there
18 were two separate hearings.

19 Q. Right.

20 A. One in front of Maitley Murphy, a young
21 -- or young judge, and then one in front of an old
22 judge, Judge Kinard, so I -- I think they were
23 probably prepared for one of those. That's all I
24 can think of.

25 Q. By this time you'd been relieved as

1 counsel for Mr. Feldman?

2 A. I don't know what the -- the dates
3 were, so I can't tell you.

4 Q. Do you believe when you prepared these
5 responses to the plaintiff's motion -- excuse me --
6 the defendant's motion that you were counsel of
7 record -- counsel for Mr. or Ms. Feldman?

8 A. There's two ways I could answer that
9 question. The first one is that I don't know what
10 the date is that we have the consents and so forth
11 like that. If you can provide that for me, I can
12 answer it a lot better.

13 The second one is that the -- the clerk
14 of court or in -- become mixed up from time to time
15 and they'll list an attorney as the counsel of
16 record, and you better show up even if you're not,
17 so I can't tell you when it was or whatever until I
18 know what the dates were.

19 Q. After letting you look at this I'm
20 going to represent to you --

21 A. Yeah.

22 Q. -- that October 17 Mr. Bauer sent you a
23 consent order -- let's get it. You can read it --
24 for substitution of counsel.

25 A. Uh-huh. Do you have the consent order?

1 That's what I'm looking for.

2 Q. I believe it's the next page. Here's
3 the cover page for the judge. Hold on. I got to
4 do it -- switch to the next page.

5 A. The same thing is I still can't answer
6 it.

7 Q. And here's --

8 A. I'm sure you have it.

9 Q. And here's the --

10 A. Okay.

11 Q. -- consent. Did you sign a consent
12 order?

13 A. I don't know. I want to see it.

14 Q. Do you believe you stayed on as counsel
15 for the Feldmans?

16 A. What I -- I think that -- and you were
17 talking about the obligations that you have. I
18 think that to a certain extent, as the author of
19 the predicate incident over which this is involved,
20 I had a certain obligation to Bob Feldman to
21 protect him as much as I could, which is what I was
22 doing, so I don't know what the dates are or
23 anything else like that.

24 Q. Fair enough.

25 (EXH. 19, Transcript of Record dated

1 January 6, 2015, was marked for identification.)

2 BY MR. PENDARVIS:

3 Q. Mr. Coggin, we were able to obtain a
4 copy of the transcript of a hearing before Judge
5 Kinard in January of 2015. I'm going to pass a
6 copy of it to you marked as Exhibit 19. And,
7 candidly, we just got it recently. Did you have a
8 chance to look over this transcript before our
9 deposition today?

10 A. Briefly, briefly.

11 Q. There is a summary in the first page
12 about the circumstances about you and at an earlier
13 hearing.

14 A. Right. Uh-huh.

15 Q. Accurate, as far as you know?

16 A. Do you want me to comment on it?

17 Q. Sure.

18 A. This is one of the things that I was
19 talking about where you're listed as the attorney
20 of counsel. I was the attorney of counsel listed.

21 Q. Okay.

22 A. That's why I showed up. Sam Bauer came
23 in, and Sam and I have known each other for years.
24 He sat down at the table with me. I asked him what
25 he was doing, and he said: I'm the attorney here.

1 And I said: Where are you on the list?

2 I said: I got to go by the list here.

3 We had a brief disagreement, which --
4 and I can't remember how it worked, to be honest
5 with you, what happened after that. And I think we
6 both -- I think we both answered, to be honest with
7 you.

8 Q. I mean, we're kind of coming at it from
9 both sides of the same thing. You filed a motion
10 to be relieved.

11 A. Uh-huh.

12 Q. There's a substitution of counsel --

13 A. Right.

14 Q. -- that was in play, and apparently no
15 order had been signed at this point.

16 A. I don't know. That -- I don't know if
17 the order was signed or not. All I know is that I
18 was on the roster, and if you're on the roster, you
19 better -- you know, sometimes it takes a while to
20 get these orders signed and so forth, and I didn't
21 know what the situation was, so I went to answer
22 it.

23 Q. And if we take a look at page 4 of the
24 transcript, which is Norton, bunch of zeros, 4,
25 very bottom right-hand corner. Page 4 of the

1 transcript --

2 A. Yeah, yeah. Go ahead.

3 Q. -- and if you scroll down to line
4 number 17 --

5 A. Uh-huh.

6 Q. -- take a look at that, 17 through 20.

7 A. Yeah. That's exactly what I was
8 talking about.

9 Q. And then down below that, 21, 22, that
10 Mr. Coggin had been relieved as of November of
11 2014?

12 A. Uh-huh.

13 Q. Correct?

14 A. Yeah.

15 Q. And this is a hearing that's taking
16 place in January of '15.

17 A. No. This is a -- I think this is a
18 December hearing.

19 Q. It says on the front -- first page
20 January 6, 2015 --

21 A. Hang on.

22 Q. -- before Judge Kinard.

23 A. Hang on. But we're talking about Judge
24 Murphy here.

25 Q. Right, right. But I'm just saying that

1 this is --

2 A. November of '14.

3 Q. -- reciting a history. In a hearing
4 before -- let me make sure I get this correct.

5 A. Yeah.

6 Q. In a hearing before Judge Kinard in
7 January of 2015, Mr. Allen, on pages 3 and 4 of the
8 transcript, is giving Judge Kinard some history
9 behind the motion, correct?

10 A. Right. Uh-huh.

11 Q. Okay. And that's the discussion you
12 had mentioned earlier about Judge Murphy?

13 A. Right. Uh-huh.

14 Q. Okay.

15 A. I thought we were talking about Murphy
16 here.

17 Q. My apologizes if I wasn't clear.

18 A. Yeah. Okay. This is the Kinard.
19 Yeah.

20 Q. And in this circumstance, beginning, I
21 believe, on page 5 of the transcript, is the first
22 point in time where you're giving arguments to the
23 Court, correct?

24 A. Yeah. Uh-huh.

25 Q. Okay. And if we fast-forward through

1 the arguments to page 9 --

2 A. Okay.

3 Q. -- of the transcript, in particular,
4 line 18, you told Judge Kinard that you were not
5 going to -- you don't -- didn't blame Bauer & Metro
6 about the affidavit not getting filed, correct?

7 A. You know, there's -- in this case,
8 Mr. Pendarvis, there's plenty of blame to go
9 around. Most of it rests on my doorstep, and I
10 fully admit that I failed to file this paper when I
11 got it; however, I will maintain today and tomorrow
12 and whenever that all the papers of the case went
13 over to Bauer & Metro. I don't know what happened.

14 There were three documents that did not
15 come back. One was the -- my -- one was my
16 contract with Mr. Feldman. They called me and
17 asked -- told me that they didn't have the
18 contract, and I know that was in there. We sent
19 that off. We sent a copy off.

20 The second was the -- the affidavit of
21 nonservice by Michael Witt, and I knew that was in
22 there because when I was putting them in I -- I
23 looked at this document and I said: Who hand
24 scribbled this? And it was Mike Witt's document.
25 That never came back to me.

1 The third document was this, but I will
2 not --

3 Q. And by this, just so the record's
4 clear, you're talking about the affidavit of
5 service in New York?

6 A. The affidavit of service, yeah. And --
7 but I am not going to say -- even though I've said
8 I put them with the papers of the case and that's
9 what I remember, that is -- I will not accuse Bauer
10 & Metro of doing anything untoward because I don't
11 think they're capable of that, and that's what I'm
12 saying.

13 Q. And if we fast-forward over to page
14 11 --

15 A. Sure.

16 Q. -- Judge Kinard, bless his soul --

17 A. A good man.

18 Q. A very good man. That's one thing we
19 will definitely not disagree on.

20 He's instructing you --

21 A. Uh-huh.

22 Q. -- page 11, line 3, to get an affidavit
23 from the process server.

24 A. Uh-huh.

25 Q. Correct?

1 A. Uh-huh.

2 Q. That's yes. I'm sorry to --

3 A. Yeah. I'm sorry. That's correct.

4 Yeah.

5 Q. And from your prior testimony and your
6 multiple conversations with the Zeller-Wood process
7 server people in New York, that simply couldn't be
8 done, correct?

9 A. Actually, I -- I talked to them, and I
10 talked to the president of Zeller-Wood, and he
11 said: Send me up your proposed affidavit.

12 I sent it to him, and in that period of
13 time --

14 Q. I'm listening. In that period of
15 time...

16 A. Okay. In that period of time a couple
17 things happened: One, the case was settled.
18 Number two, Kinard died.

19 The other part of it was that Kinard
20 also told Mr. Allen to get an affidavit from
21 Ms. Dickenson. I never pushed the affidavit after
22 that because they had settled the case, and as far
23 as I was concerned that ended the case.

24 And the second thing is immediately
25 after that Judge Kinard died, and had that been

1 scheduled, I would have driven to New York and
2 stood at their doorstep until they signed this
3 affidavit.

4 Q. And it's your testimony you prepared a
5 proposed affidavit?

6 A. Yes, I did.

7 Q. Have you produced that?

8 A. No. Because it went off to them. I
9 don't even remember what it was. I produced the
10 affidavit. I sent it up to them.

11 Q. You didn't keep a copy of it?

12 A. I did not.

13 Q. Do you have a word processing document
14 that generates that?

15 A. I can tell you what -- exactly what it
16 said, if you want me to tell you.

17 Q. Well, I need to see the -- no, no, no.
18 My question was: Do you have a word processing
19 file from which that affidavit was printed?

20 A. I can look. I don't know how it was
21 done or whatever. I have a computer at home. I
22 have a computer at the office. The computers at
23 home have been thrown out. I don't know. I have a
24 computer that all the -- all the memory has been
25 wiped out somehow.

1 The fact of the matter is is what they
2 were going to agree to was that I had made multiple
3 calls to them. That's all they would agree to. So
4 it's not exactly the smoke --

5 Q. So there wasn't --

6 A. It's not the smoking gun. And I will
7 look for it.

8 Q. So they weren't going to be able -- I'm
9 sorry.

10 A. Yeah. I'll look for it. I'll try to
11 get it for you.

12 Q. Well --

13 A. If I have it, I'll look for it.

14 Q. Then I'm correct -- then the statement
15 that an affidavit of service from the process
16 server was not available?

17 A. I did not finish. I don't know -- you
18 know, it depends on what your definition of the
19 affidavit of service is.

20 Q. Did you believe that someone with
21 personal knowledge of service on Ms. Dickenson,
22 however that occurred --

23 A. Uh-huh.

24 Q. -- was available to give an affidavit
25 about those events?

1 A. That question -- I asked that question
2 of Zeller-Wood one time, and the answer was we have
3 thousands of process servers. We can't possibly
4 dig up who it is. I can only go with what they
5 told me. That was their way of saying no.

6 Q. Okay. And essentially the document --
7 draft affidavit you sent to New York was arguably
8 the flip side of your affidavit that said I made
9 multiple calls and their affidavit saying we
10 received multiple calls, correct?

11 A. Prior to the service of the affidavit.

12 Q. Okay.

13 A. Yeah. Uh-huh. That's exactly right.

14 Q. So effectively, your decision not to
15 file the affidavit left the Feldmans in a position
16 of not being able to respond to the motion to
17 dismiss, correct?

18 A. No. That did not even -- that did not
19 even come up. Judge Kinard said he was going to
20 schedule another hearing. He wanted us, in the
21 interim, to each come up with affidavits. Mr. --
22 Mr. Allen never had an affidavit. I had never had
23 an affidavit. You guys settled. That was --
24 Mr. Feldman settled that relatively quickly. I
25 would say within a month. Okay?

1 That had been drafted. It had been
2 sent off. I didn't hear anything. In the meantime
3 it was settled.

4 Q. Did you tell Mr. Metro, Mr. Bauer, or
5 anyone representing Mr. Feldman that the process
6 server people in New York, Zeller-Wood, had told
7 you that basically there was not going to be an
8 affidavit available from someone who had personal
9 knowledge of service?

10 A. No, I did not.

11 Q. Did you have any communications with
12 Bauer or Metro after the hearing on January 6,
13 2015?

14 A. What's -- what's January 6, 2015?

15 Q. This hearing. It's the transcript that
16 you're looking at.

17 A. Okay. Hang on.

18 Q. And I'm just trying to find out: Did
19 you have any conversations with them?

20 A. I think I may have talked with Sam
21 regarding what happened, and he said that the case
22 settled.

23 Q. Didn't Judge Kinard say at the end of
24 the hearing that -- I'm going to quote this from
25 page 11, lines 25, carrying over to page 12, to

1 you: But I don't think I can let it go forward
2 without a little more than your affidavit?

3 A. Where are we at?

4 MR. BOGDAN: Object to the form.

5 BY MR. PENDARVIS:

6 Q. Page 11, line 25. I said 24. I'm
7 sorry. Line 25, over to line 1 on page 12.

8 Isn't that what Judge Kinard told you,
9 that you were basically going to need an affidavit
10 of service?

11 MR. BOGDAN: Object to the form.

12 THE WITNESS: Judge Kinard said a
13 couple of things, and I don't agree with that.
14 Judge Kinard also said: This is a complicated
15 case, and I have not read the case law.

16 He said a number of things.

17 BY MR. PENDARVIS:

18 Q. But in conclusion he told you: But I
19 don't think I can let it go forward without a
20 little more than your affidavit.

21 Correct?

22 MR. BOGDAN: Object to the form.

23 THE WITNESS: What he was meaning there
24 was that -- and I was there -- is that he was going
25 to have to read the case law on this. He was going

1 to have to go over my memorandum of law, and he was
2 going to decide. He also said to Mr. -- to
3 Mr. Allen he wanted an affidavit from him.

4 BY MR. PENDARVIS:

5 Q. From Ms. Dickenson?

6 A. Yeah. And you -- look with this. The
7 last person to talk to him was Julian Allen, not
8 me. Julian Allen said: Thanks, judge.

9 The Court says: Good luck with it
10 because it's complicated. I don't think I can let
11 it go forward without a little more of your --
12 without a little more than your affidavit.

13 And that was the end. So he was
14 talking to Julian Allen rather than me, I believe.

15 Q. But the response to that question was
16 who? Could you read into the record who answered
17 that statement?

18 A. I said: Thank you, Judge.

19 Q. Right. Judge was talking to you.
20 Okay.

21 A. You're reaching, Mr. Pendarvis.

22 MR. BOGDAN: Object to the form.

23 THE WITNESS: You're reaching.

24 BY MR. PENDARVIS:

25 Q. Here's --

1 A. No. That's not the correct -- that's
2 -- no. He was speaking to Mr. Allen. I said thank
3 you, Judge, for that ruling.

4 Q. Did you communicate with Mr. Bauer or
5 Mr. Metro -- well, one more thing.

6 A. Yeah.

7 Q. The only affidavit before the Court was
8 your affidavit, correct? At the hearing before
9 Judge Kinard on January 6.

10 A. That was an affidavit that I had
11 written that I had promised a while -- way before
12 that had nothing to do with Judge Kinard.

13 Q. No, no, no. I'm sorry if I wasn't
14 clear.

15 The only affidavit before Judge Kinard
16 was your affidavit that's been marked as
17 Exhibit 16, correct?

18 A. I don't even know if that went in front
19 of Judge Kinard. I have no idea about that
20 affidavit. I don't know much about it. You
21 probably have the history of that, as who saw it
22 and whatever. You would probably know better than
23 me.

24 Q. If you look on page 5 of the
25 transcript, there's -- beginning on line 8, through

1 line 10, Mr. Allen is describing your affidavit.

2 A. Okay.

3 Q. And you're welcome to look through this
4 transcript, but I'm going to represent to you that
5 the only affidavit mentioned in this entire hearing
6 of January 6, 2015, was your affidavit marked as
7 Exhibit 16.

8 A. Okay.

9 Q. Are you aware of any other affidavits
10 that were before the Court?

11 A. All that is done here is Allen has
12 referenced it, and he referenced it very badly. He
13 obviously didn't have the affidavit in front of
14 him. Process server up in New Jersey or New York
15 to serve the defendant. I think I got the
16 affidavit, but I don't have it. I don't know who
17 actually served or where they were served under
18 these rules.

19 That's not what my affidavit said.
20 Mr. Allen did not have the affidavit in front of
21 him. I don't know where that affidavit was.

22 Q. The statement you made before the
23 Court, really pages 8 and 9 of the transcript,
24 basically were the substance of the affidavit,
25 correct?

1 A. Tell me what sections you're referring
2 to.

3 Q. Pages 8, 9.

4 A. Yeah. I know that, but tell me
5 basically.

6 Q. You're explaining on page 9, line 9
7 through, certainly, line 19 on page 9, you're
8 describing the efforts you made to -- matters that
9 related to the affidavit of service, correct?

10 A. Yeah. I don't think that had anything
11 to -- oh, the affidavit of service. I thought you
12 were --

13 Q. Yes, sir.

14 A. -- talking about my affidavit --

15 Q. Yes.

16 A. -- that I had --

17 From nine?

18 Q. The middle of page 9.

19 A. No, no. It went till -- till what
20 number though?

21 Q. Nine to 19. And then again on page
22 10 --

23 A. Yeah. That's -- I would agree with
24 that, yeah.

25 Q. -- you're describing what's -- what

1 happened.

2 A. Uh-huh.

3 Q. And I saw this a second ago. Bear with
4 me.

5 A. Yeah. Sure. Take your time.

6 Q. And in fact, on page 10, lines 18 and
7 19, you told Judge Kinard, quote: In addition to
8 all that, Your Honor, I have submitted an affidavit
9 as to what happened.

10 A. Yeah. Uh-huh.

11 Q. Okay.

12 A. We have not received an affidavit from
13 Ms. Dickenson. That's what Kinard was referring
14 to.

15 Q. Right. But the only affidavit before
16 was a little more than your affidavit on page 12.
17 It's the only affidavit that's being discussed, was
18 your affidavit.

19 A. But he says -- but I say in there: We
20 have not received an affidavit from Ms. Dickenson.

21 That was what was -- were required by
22 Mr. Allen, and the judge says: Good luck. I don't
23 think we can go forward with it without a little
24 more than your affidavit.

25 He was talking to Julian Allen, not me.

1 They had the affidavit that I submitted.

2 Q. After January 6, 2015, did you
3 communicate with Mr. Bauer or Mr. Metro or anyone
4 else in the law firm about the Feldmans' matter?

5 A. I don't know if I did or not. I don't
6 think so.

7 Q. Did you --

8 A. Wait. Back up. I think that Sam told
9 me it had been settled. I think I got the
10 information from him.

11 Q. Did you have any conversations with
12 Mr. Bauer or Mr. Metro or anyone at the Bauer &
13 Metro law firm about filing a motion to intervene
14 to stop the settlement?

15 A. I had thought about that, and I thought
16 better of it.

17 Q. So the answer is yes, you did have a
18 conversation with one of them?

19 A. I don't know. What I -- I don't know
20 if I told them about that or not. I think what
21 happened was I had called -- when I heard about it,
22 I called Allen and I called Bauer saying I'm going
23 to file a motion to intervene, then I called them
24 back about two hours later and said I decided not
25 to do it.

1 Q. What would have been the basis of your
2 motion to intervene?

3 A. I have no idea. I can't remember it.

4 Q. What made you consider filing a motion
5 to intervene?

6 A. I -- I thought a couple things. I
7 thought that maybe I should have been consulted.
8 Okay? I wondered what the agreement was, without
9 running it past me. Because I was the author of
10 the predicate incident, I thought there was a
11 courtesy that should have been given to me. And
12 that's about all I can tell you.

13 I do know I called them both back in a
14 relatively short time, said I've -- after a lot of
15 thought I decided I'm not going to do that.

16 Q. Have you had any further communications
17 with Mr. Bauer, Mr. Metro, or anyone at that law
18 firm about the Feldmans, the Feldmans' claims?

19 A. I have communications with them, but I
20 don't think I've ever talked to them again about
21 that. If you have some information, let me look at
22 it, and I'll be happy to comment on it.

23 Q. I'm trying to find out the information.
24 Did you --

25 A. What I'm saying is I don't recall.

1 Q. Okay.

2 A. What I'm saying is, if you have any
3 information, let me see it.

4 Q. Have you had any communications with
5 Liberty Mutual directly about the --

6 A. No.

7 Q. -- Feldman matter?

8 A. No. I don't believe so.

9 Q. Getting really close.

10 A. That's all right. Take your time.

11 (Off-the-record conference.)

12 BY MR. PENDARVIS:

13 Q. I want to understand some of the
14 defenses asserted in your answer.

15 A. Sure.

16 Q. And I'm happy to show it to you.
17 There's an affirmative defense for failure to
18 mitigate.

19 A. I'd like to look at it. I don't know
20 what we're talking about here. Do you have a copy?

21 Q. Have you ever seen a failure to
22 mitigate defense as a lawyer?

23 A. No. I -- I want to look at it and see
24 what --

25 Q. Sure.

1 A. -- the context of it and so forth like
2 that. I don't even know who --

3 MR. BOGDAN: Our answer in this case?

4 MR. PENDARVIS: Yes.

5 THE WITNESS: Oh. I can't answer it.
6 I don't know.

7 BY MR. PENDARVIS:

8 Q. Well, this is an answer that was filed
9 on your behalf in this case, correct?

10 A. Uh-huh.

11 Q. Yes?

12 A. Yes.

13 Q. And do you have any knowledge of what
14 factual allegations support this affirmative
15 defense for alleged failure to mitigate?

16 A. I don't know what's behind that
17 defense. The defense -- those defenses were
18 drafted by my lawyers. That's why I'm paying them.
19 And that particular thing, I have no idea.

20 Q. There is -- and I'll let you look at
21 it.

22 A. Sure.

23 Q. There is an affirmative defense for
24 statute of limitations. I want to let you read it.
25 It's Paragraph 66.

1 A. Again, I'm paying Dawes and Jeff here
2 to answer these. I think these questions would be
3 better placed in front of them.

4 Q. I haven't asked the question. I just
5 wanted to let you know that's been asserted, and my
6 question is: What facts are you aware of that
7 would support a statute of limitations defense?

8 A. I don't know -- I don't think it'd be
9 fair to you or to myself to answer that question
10 without having some knowledge about it.

11 Q. Is that going to be the answer for each
12 of these affirmative defenses that I were to ask
13 you about?

14 A. I would say so, yes.

15 Q. Okay. That saves us --

16 A. As I said, I've paid my attorneys to do
17 this.

18 Q. Save us some time. Save us some time.

19 A. Yeah.

20 Q. Let me take a break, talk to my folks,
21 and then we'll wrap it up.

22 A. That'll be fine. Thank you.

23 (A recess transpired.)

24 MR. PENDARVIS: Mr. Coggin -- back on
25 the record.

1 THE WITNESS: Yeah.

2 MR. PENDARVIS: That's all the
3 questions I've got at this time.

4 EXAMINATION

5 BY MR. BOGDAN:

6 Q. Gary, for the record, Jeff Bogdan, your
7 attorney in this case. I've got a couple things to
8 follow up with you on just to --

9 A. Sure.

10 Q. -- clear up a couple issues.

11 Will you look at Exhibit 1, please?

12 A. I was keeping these in good order.

13 Q. You did a good job.

14 A. There we go.

15 Q. This is a copy of your contingency fee
16 agreement --

17 A. Right.

18 Q. -- with Mr. Feldman, correct?

19 A. Uh-huh.

20 Q. All right. Is that a yes?

21 A. Yes. Excuse me.

22 Q. It's all right.

23 Thomas talked with you about the
24 strike-out over the 40 percent of the fee if
25 there's an appeal.

1 A. Yeah.

2 Q. Right? And you said that you don't do
3 appeals.

4 A. That's correct.

5 Q. And then he asked you, well, why is
6 this in the agreement. You just said it was a
7 standard agreement; is that right?

8 A. Yeah. Yes.

9 Q. Do you not do appeals -- have you had
10 an opportunity to do an appeal?

11 A. I've had many opportunities. I just
12 don't -- it's a whole section of the law that I
13 think you can get yourself in deep trouble.

14 Q. Sure. Sure.

15 A. The other thing too -- and I want to
16 add to that, is I've been -- I thought about that
17 -- is that Robert actually asked me to strike that,
18 the 40 percent.

19 Q. Okay.

20 A. And, you know, I have to give Robert
21 credit. I've been getting after him pretty good,
22 but he -- he did ask me to strike that.

23 Q. Are those his initials next to it?

24 A. I think so.

25 Q. Okay. And if for some reason you would

1 have pursued Mr. Feldman's case and let's say it
2 would have gone to trial and it turned out one way
3 or the other and there was an appeal, would you
4 have associated another attorney to handle that --

5 A. Absolutely, yeah.

6 Q. Let me finish the question.

7 A. I'm sorry.

8 Q. Would you have associated another
9 attorney to handle that appeal?

10 A. Yes.

11 Q. Okay. And in that event, if this 40
12 percent provision was still in there, then that
13 would be the applicable provision for the -- for
14 the contingency based on the appeal, correct?

15 A. Yeah. But we struck it.

16 Q. Right.

17 A. Yeah.

18 Q. And you would have had to share that
19 fee with the attorney who you associated?

20 A. Absolutely.

21 Q. All right. I want to look at Julian
22 Allen's answer, and it is Exhibit 8.

23 A. Yeah.

24 Q. Do you see that one?

25 Just getting it out of the way.

1 A. Number eight. Let's do it this way.

2 Okay. We've got it.

3 Q. All right. Who is this answer filed on
4 behalf of? Liberty Mutual Insurance Company,
5 correct?

6 A. I think it's Liberty Mutual, yes.

7 Q. All right. Okay. And when a --

8 A. In fact, it says in the first sentence:
9 Liberty Mutual Insurance --

10 Q. Right.

11 A. -- as the underinsured.

12 Q. Is it your understanding that when a
13 party that files an answer to a complaint asserts
14 affirmative defenses that those are the affirmative
15 defenses of that party?

16 MR. PENDARVIS: Form objection.

17 THE WITNESS: That's correct.

18 BY MR. BOGDAN:

19 Q. Okay. And if you look at the fifth --
20 the fifth defense for improper service -- you see
21 that one?

22 A. Yes, I do.

23 Q. Okay. And this is Liberty Mutual's
24 defense, correct?

25 A. Right.

1 Q. Okay. And it says improper service,
2 correct?

3 A. (Witness moves head up and down.)

4 Q. Okay. And who does it say was not
5 properly served with the complaint?

6 A. It says no one.

7 Q. It doesn't say that Ms. Dickenson was
8 improperly served with the complaint?

9 A. No.

10 MR. PENDARVIS: Form objection.

11 THE WITNESS: The assumption here is
12 that Liberty Mutual wasn't served.

13 BY MR. BOGDAN:

14 Q. This is a general and unspecific
15 affirmative defense, is it not?

16 A. That's correct.

17 MR. PENDARVIS: Form objection.

18 BY MR. BOGDAN:

19 Q. Okay. And if this affirmative defense
20 was specific and said that Sarah Dickenson was not
21 properly served with the -- with service, what
22 would you have done?

23 MR. PENDARVIS: Form objection.

24 THE WITNESS: I would have immediately
25 checked with Zellner-Wood to see what was going on,

1 and if I had gotten the answer they had been giving
2 me, I would have re-served.

3 BY MR. BOGDAN:

4 Q. And would that have also triggered you
5 to look for and file the affidavit of service --

6 MR. PENDARVIS: Form objection.

7 BY MR. BOGDAN:

8 Q. -- that you had already received?

9 A. Yes.

10 MR. BOGDAN: Let me finish the question
11 again, Thomas.

12 MR. PENDARVIS: I'm sorry. He's
13 answering so quick I can --

14 MR. BOGDAN: I understand. Let me
15 start over --

16 THE WITNESS: Yeah.

17 MR. BOGDAN: -- just so we get this
18 clean, and I'll --

19 BY MR. BOGDAN:

20 Q. Gary, if you'll wait, 'cause we know
21 Thomas is going to object.

22 A. I -- I -- yeah. That's fine.

23 Q. We'll let him get it in.

24 A. Yeah, yeah.

25 MR. PENDARVIS: Leading questions.

1 I'll give you the hint.

2 MR. BOGDAN: Okay.

3 BY MR. BOGDAN:

4 Q. What would you have done with regards
5 to the affidavit of service that you had already
6 received had this affirmative defense actually said
7 that Sarah Dickenson was not properly served?

8 A. I would have searched high and low for
9 that affidavit.

10 Q. And what would you have done with it if
11 you found it?

12 A. I would have filed it.

13 Q. That's it for Exhibit 8. Let's move on
14 to Exhibit 9.

15 A. Eleven, ten. Nine. Okay.

16 Q. This is the letter from you to Terry
17 Finger, correct?

18 A. That's correct.

19 Q. And there was some discussion between
20 you and Mr. Pendarvis about the demand, the opening
21 demand at mediation that you made in this of 300 to
22 \$350,000, correct?

23 A. That's correct.

24 Q. And I believe he asked you if you had
25 discussed this opening demand with Mr. Feldman, and

1 you said that Mr. Feldman was not cc'd on the
2 letter, right?

3 A. That's correct.

4 Q. Okay. Just because he's not cc'd on
5 the letter, does that mean that you wouldn't have
6 discussed this opening demand with him?

7 MR. PENDARVIS: Form objection.

8 THE WITNESS: May 5. We were still
9 discussing these matters. I probably did.

10 BY MR. BOGDAN:

11 Q. Okay. You just don't have any
12 recollection?

13 A. I don't have any recollection, but my
14 habit would have been to discuss it with him.

15 Q. Okay. All right. Still on Exhibit 9.
16 There was also a lot of discussion between you and
17 Mr. Pendarvis about this 150 to \$180,000 range that
18 was -- is set out on top of page 2?

19 A. Uh-huh.

20 Q. Is that a yes?

21 A. Excuse me. Yes.

22 Q. Okay. You remember that line of
23 testimony?

24 A. Yes.

25 Q. And I believe where we ended up was

1 that you testified that this was an estimate of Bob
2 Feldman's past medical expenses; is that correct?

3 MR. PENDARVIS: Form objection.

4 THE WITNESS: Hang on.

5 Yes.

6 BY MR. BOGDAN:

7 Q. Okay. Well, what I want you to do is
8 look back on the first page, and if you see the --
9 it's numbered A. It says impairment. Do you see
10 that?

11 A. Yes.

12 Q. And then number B is medicals. Do you
13 see that?

14 A. Yes.

15 Q. So in the impairment section the last
16 sentence says: By any formula, this impairment
17 should be valued at somewhere around \$100,000.

18 Is that right?

19 A. That's what it says.

20 Q. Okay. And then under the medicals, the
21 conclusion of that section is: If this is extended
22 ten years, there is an expense of \$60,000.

23 Correct?

24 A. That's correct.

25 Q. Okay. So what's \$100,000 plus \$60,000?

1 A. 160.

2 Q. Okay. So then the next sentence is:

3 The above amount is \$150,000 to \$180,000.

4 Correct?

5 A. That's correct.

6 Q. Those are not actual past-incurred
7 medical expenses, are they?

8 MR. PENDARVIS: Form objection.

9 THE WITNESS: No, they're not.

10 MR. BOGDAN: All right. That's all I
11 have.

12 EXAMINATION

13 BY MR. PENDARVIS:

14 Q. Mr. Feldman, one follow-up on your --

15 MR. BOGDAN: Tom, Coggin.

16 MR. PENDARVIS: Oh. I'm sorry. That
17 was it?

18 MR. BOGDAN: No, no. You called him
19 Mr. Feldman.

20 MR. PENDARVIS: I'm sorry. Mr. Coggin.

21 THE WITNESS: I'm always flattered.
22 I'm always flattered.

23 MR. PENDARVIS: Thank you. Thank you.

24 BY MR. PENDARVIS:

25 Q. You were asked some questions by your

1 counsel concerning Exhibit 8 and in particular the
2 fifth defense asserted by -- by the defendants in
3 the -- defendant in the answer that was filed.

4 A. Uh-huh.

5 Q. Is it your testimony that when you
6 received this answer that you analyzed this fifth
7 defense carefully enough to see that it didn't name
8 Ms. Dickenson specifically?

9 A. At what period of time are we talking?

10 Q. January 4 -- sometime in January of
11 2013.

12 A. I -- I analyzed very closely. I'm not
13 sure when.

14 Q. Well, you were asked questions that
15 suggested that had this improper service fifth
16 defense had Ms. Dickenson's name in here --

17 A. Uh-huh.

18 Q. -- that you would have done things
19 differently, and my question to you is: Did you --
20 is it your testimony that you analyzed this fifth
21 defense that carefully and decided they didn't name
22 Ms. Dickenson, therefore I'm not going to have to
23 worry about this affidavit?

24 MR. BOGDAN: Object to the form.

25 THE WITNESS: I don't think that's what

1 I testified to, but no.

2 BY MR. PENDARVIS:

3 Q. You didn't analyze it that carefully in
4 January of 2013?

5 A. No. I didn't -- you -- the last
6 sentence. Repeat the last sentence.

7 Q. In --

8 A. That I don't have to serve
9 Ms. Dickenson?

10 Q. My question -- let me reframe the
11 question.

12 A. Yeah.

13 Q. See if I can get this clear. I want to
14 make certain about your testimony about what
15 actually occurred when you received this answer in
16 terms of your analysis of this fifth defense.

17 A. Uh-huh.

18 Q. Am I correct in understanding your
19 testimony that you didn't analyze it as carefully
20 as was suggested earlier in that because it does
21 not state Ms. Dickenson's name you chose not to
22 file the affidavit or look for the affidavit?

23 MR. BOGDAN: Object to the form.

24 THE WITNESS: I don't think that's what
25 it said -- what he said, but -- and it has nothing

1 to do with looking for the affidavit or not. This
2 was in 2013. I didn't start looking for the
3 affidavit until two thousand and -- when I heard
4 from Bauer & Metro.

5 BY MR. PENDARVIS:

6 Q. Okay.

7 A. I did look at this very closely when I
8 -- when I received it. I always do. And I thought
9 that -- at that time, to myself, I felt that
10 Mr. Allen had quite -- a very slim answer. He
11 didn't include a statute of limitations defense,
12 and I knew enough that the improper service defense
13 of his was not enough to fit the law and -- but as
14 for I decided not to look for Ms. Dickenson at the
15 time, no.

16 Q. If it had had reference somewhere in
17 this defense the name Dickenson, would you have
18 done anything different?

19 A. I probably would have looked a little
20 closer at my papers.

21 Q. Why?

22 A. Because I knew that he was doing
23 something specific here when he hadn't done it in
24 the entire case, and he was talking about Liberty
25 Mutual. He says he answers for Liberty Mutual. If

1 he had said something about Ms. Dickenson, yeah,
2 that would have raised my antenna.

3 Q. Well, have you looked at 38-7 --
4 Section 38-77-160?

5 A. I'm sure I have, but I cannot tell you
6 what 38-77-160 says. I've pretty much at one time
7 or another had most of the civil procedure book
8 memorized, but that goes quickly, as you probably
9 know.

10 Q. Well, honestly, candidly, S.C. Code
11 Annotated Section 38-77-160 is not in the Rules of
12 Civil Procedure. It's in the Code of Laws, but --

13 A. Okay. Well, tell me what it is.
14 And congratulations.

15 Q. It's a statute governing the
16 underinsured motorist carrier's rights to defend on
17 behalf of their insured. And the wherefore clause
18 states what?

19 A. I'm -- I don't know. I'm going to have
20 to look at the --

21 Q. I know. But take a look at Exhibit 8.

22 A. I'm going to have to look at the law.

23 MR. BOGDAN: Hold on a second.

24 THE WITNESS: Yeah.

25 MR. BOGDAN: Let him get the question

1 out.

2 BY MR. PENDARVIS:

3 Q. Take a look at Exhibit 8 --

4 A. Okay. Go ahead.

5 Q. -- and the wherefore clause.

6 A. I apologize. What are we looking at
7 now?

8 Q. Exhibit 8, the wherefore clause on page
9 2 of Exhibit 8.

10 A. Oh, okay.

11 Q. Could you read that, please?

12 A. Wherefore, having answered, Defendant
13 asks this Court to dismiss the complaint and grant
14 such relief as the Court deems just and proper.

15 Q. On page 1, in the caption, who is the
16 named defendant?

17 A. It's Sarah Dickenson.

18 Q. Okay.

19 A. However, it says: Liberty Mutual, as
20 the alleged underinsured, answers this complaint as
21 follows.

22 Q. But the wherefore clause on page 2 does
23 not say wherefore, having answered, Liberty Mutual
24 asks this Court to dismiss the complaint, does it?

25 A. Mr. Pendarvis, we can parse this all

1 day long, and we're going to -- and we can also go
2 into the books, and you know as well as I do we'll
3 probably have five or six different answers for it.
4 I -- I think it's unfair of you to try to catch me
5 on something where I don't know the law on this.

6 Q. Well, I'm not really doing that except
7 in response to --

8 A. Yeah, you are.

9 Q. And that's fine. But it's my job to
10 handle the case for Mr. Feldman, and what I'm
11 trying to understand is what your testimony was,
12 that if this answer had been styled differently in
13 terms of the language in the fifth defense your
14 testimony is you would have done things
15 differently, and I'm trying to understand what it
16 is that would have triggered something different
17 than what you did.

18 A. Here's what I -- my answer was. If it
19 said further answering, alleges the Plaintiff had
20 failed to effect proper service under Rule 12(b)(4)
21 and 12(b)(5) on Ms. Dickenson, you're doggone right
22 I would have looked very closely at that.

23 Q. Okay.

24 A. All right.

25 MR. PENDARVIS: Thank you. I have no

1 further questions.

2 (The witness, after having been advised
3 of his right to read and sign this transcript, does
4 not waive that right.)

5 (The deposition was concluded at
6 1:44 p.m.)
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SIGNATURE OF DEPONENT

DEPONENT: GARY P. COGGIN
DEPOSITION DATE: June 8, 2016
REPORTER: TRISHA M. THOMAS
AWR JOB #: 160608tmt
CASE CAPTION: ROBERT E. FELDMAN and LOIS J.
FELDMAN vs. GARY P. COGGIN

(Please return both Signature of Deponent pages)

I, the undersigned, GARY P. COGGIN, do
hereby certify that I have read the foregoing
deposition and find it to be a true and accurate
transcription of my testimony, with the following
corrections, if any:

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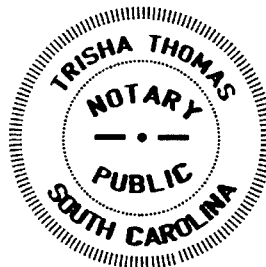
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FELDMAN vs. GARY P. COGGIN

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GARY P. COGGIN

Date

I, Trisha M. Thomas, Notary Public for the State of South Carolina at Large, do hereby certify that the deponent was advised of his or her right to read and sign said deposition both verbally and in writing. If the deponent fails to execute and return foregoing Signature of Deponent pages within the thirty (30) days allowed pursuant to the Rules of Civil Procedure, the original transcript may be filed with the court.



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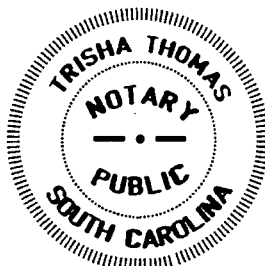
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My Commission expires
February 2018

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I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 21st day of June,
2016, at Hardeeville, Jasper County, South
Carolina.



T Thomas

Trisha M. Thomas,
Court Reporter
My Commission expires
February 2018

I N D E X

Page/Line

WITNESS/EXAMINATION

GARY P. COGGIN

3 1

EXAMINATION

3 3

BY MR. PENDARVIS

EXAMINATION

150 4

BY MR. BOGDAN

EXAMINATION

159 12

BY MR. PENDARVIS

SIGNATURE OF DEPONENT

167 1

CERTIFICATE OF REPORTER

169 1

REQUESTED INFORMATION INDEX

(No Information Requested)

E X H I B I T S

Page/Line

EXH. 1, Contingency Fee

13 9

Agreement

EXH. 2, Letter from Gary

17 2

Coggin to Sonya Wise dated

1	July 5, 2011		
2	EXH. 3, Letter from Gary	27	11
3	Coggin to Sonya Wise dated		
4	October 10, 2011		
5	EXH. 4, Letter from Gary	32	7
6	Coggin to Alton Prioleau dated		
7	October 17, 2011		
8	EXH. 5, Letter from Gary	34	25
9	Coggin to Alton Prioleau dated		
10	October 24, 2011		
11	EXH. 6, Release, Covenant Not	37	15
12	to Execute and Settlement		
13	Agreement		
14	EXH. 7, Civil Action Cover	43	6
15	Sheet, Summons, Complaint,		
16	Copy of certified mail		
17	envelope		
18	EXH. 8, Answer and Certificate	53	7
19	of Service		
20	EXH. 9, Letter from Gary	70	24
21	Coggin to Terry Finger dated		
22	May 5, 2014		
23	EXH. 10, Letter from Gary	90	4
24	Coggin to Robert Feldman dated		
25	September 15, 2014		

1	EXH. 11, Letter from Gary	106	20
2	Coggin to Julian Allen dated		
3	May 21, 2014		
4	EXH. 12, Letter from Carrie M.	112	10
5	Murphy to Gary Patrick Coggin		
6	dated October 7, 2014		
7	EXH. 13, Letter from Julian K.	117	3
8	Allen to Honorable Jerri Ann		
9	Roseneau dated October 8,		
10	2014; Liberty Mutual Insurance		
11	Company's Notice and Motion to		
12	Dismiss; and Certificate of		
13	Service		
14	EXH. 14, Letter from Samuel C.	118	19
15	Bauer to Gary Patrick Coggin		
16	dated October 10, 2014		
17	EXH. 15, Letter from Gary	122	7
18	Coggin to Jerri Roseneau dated		
19	December 6, 2014; Objection to		
20	Plaintiffs' Subpoena; and		
21	Certificate of Service		
22	EXH. 16, Affidavit of Gary	123	8
23	Coggin		
24	EXH. 17, Answer to Defendant's	124	19
25	12(b)(4) and 12(b)(5) Motion		

1 to Dismiss
2 EXH. 18, Answer to Defendant's 124 22
3 12(b)(4) and 12(b)(5) Motion
4 to Dismiss
5 EXH. 19, Transcript of Record 127 25
6 dated January 6, 2015
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A	W	R

2016 59:23 167:2 168:2	129:23,24,25 131:7 160:10	9	action 43:2,6 45:5,6 69:14	137:7,8,9,11,15, 22,23 138:8 139:2, 9,20 140:3,12
2018 168:25	40 14:9,13 150:24 151:18 152:11	9 19:12 58:15 63:18, 21 70:24 71:4 73:12 92:25 132:1 142:23 143:3,6,7, 18 156:14 157:15	actions 8:3 87:8 121:1	141:7,8,10,15,16, 20 142:1,5,6,13, 16,19,20,21,24 143:9,11,14 144:8, 12,15,16,17,18,20, 24 145:1 155:5 156:5,9 160:23 161:22 162:1,3
21 106:21 107:5 130:9	42 81:22	95 7:10 8:7	actively 100:16	affidavits 66:6 137:21 142:9
22 130:9	47,450 108:5,23	9th 9:25	activities 25:12,15 67:18 98:3 102:13	affirmative 97:1 147:17 148:14,23 149:12 153:14 154:15,19 156:6
24 35:1,6,9 139:6	5	A	actual 96:1 159:6	afternoon 50:22
25 78:9 102:17 138:25 139:6,7	5 17:3 18:13 34:25 35:7 70:25 71:4, 12,14 72:24 110:13 131:21 141:24 157:8	ability 100:19 101:15	ad 44:19,24	age 48:16
25,000 74:21 76:3 102:3	50,000 28:21	above-captioned 123:1	add 81:25 151:16	agree 13:17 19:2 35:14 108:19 112:3 115:12 136:2,3 139:13 143:23
278 11:6	500 20:4 45:18,20	absolutely 4:25 5:22 10:21 33:12,14 43:22 48:9 62:20 73:22 76:12,14 91:25 115:18 152:5,20	addition 26:19 27:1 39:8 144:7	agreed 15:17 16:6 28:18 86:2,6
28 54:14	6	accept 57:5 94:8	address 46:21 47:18 50:20, 21,23,24 51:4,6 55:14,20 56:20 119:6	agreement 3:15 10:6 13:9,15, 16,23 14:10,24 15:7 32:17,19 37:16 38:7 39:19 85:13 86:10,18 146:8 150:16 151:6,7
284 84:19	66 148:25	accepted 16:11 57:1,4	addressed 42:14	ahead 3:16 26:14 28:7 63:1 104:20 130:2 164:4
28th 54:13	7 43:6 44:5 51:10 54:4 57:8 62:15 112:11,19	accepting 42:8	addresses 48:17	allegations 148:14
29 51:12 52:3 59:20, 24 60:5,11	8	accident 6:6 7:18 9:15,23 10:16 11:2,4 15:9 16:21 26:20 36:3, 5,12 83:3 95:9,15 97:1 100:1,15,20	adjusted 96:3	alleged 148:15 164:20
3	8	accidents 9:8	adjuster 36:21	alleges 63:4 165:19
3 27:11,16 29:1 30:1 32:12,20,23 33:11 36:8 131:7 133:22	85 56:23	accommodate 3:24	adjusters 34:11	alleging 62:22
3,000 88:8	85,000 38:10 42:9	account 6:20,21 7:4 82:2	admit 132:10	Allen 28:8 64:10 66:5 67:16 68:15 73:17 74:2 87:3 96:19, 22,24 97:2,18
300 156:21		accrue 27:4	ADR 70:15,20	
300,000 45:5		accurate 8:14 16:17 17:24 27:24 44:2,3 71:24 92:20 128:15 167:7	advise 102:2	
33 14:11		accurately 86:16	advised 166:2 168:14	
35 45:21,23		accuse 133:9	affidavit 48:4 50:12 54:17 55:24 56:1,5,11, 12,13 61:2,19 63:8 113:3,10,15,23,25 115:20 118:5 119:9,16,21,22,25 121:2,9,11,15,22, 25 122:3 123:8,12, 14,17,22 132:6,20 133:4,6,22 134:11, 20,21 135:3,5,10, 19 136:15,19,24	
38-7 163:3				
38-77-160 163:4,6,11				
4				
4 32:7 33:21 34:7 63:11 64:9 71:14				

98:1,7,8,10,15 99:5,9 106:21 107:5,7 117:3,16 124:2,9 131:7 134:20 137:22 140:3,7,8,14 141:2 142:1,11,20 144:22,25 145:22 162:10 Allen's 125:13 152:22 allowed 4:10 57:10 168:16 Allstate 18:14 28:13 33:20 34:10 38:8,16 39:10,15 67:4 83:12,14 85:11 109:20 Alton 32:8 33:23 35:1 amount 38:10 45:5,7 91:11 92:2 93:3,16,17 108:12 159:3 analysis 161:16 analyze 161:3,19 analyzed 160:6,12,20 Ann 117:4 Annotated 163:11 answering 53:21 63:4 155:13 165:19 answers 4:21 49:23 162:25 164:20 165:3 antenna 163:2 apartment 7:24 apologize 16:10 52:15 57:22 92:17 105:9 164:6 apologized 76:24 apologizes 131:17 apologizing 52:16	apparently 33:21 34:19 73:13 91:14 97:2 113:3 129:14 appeal 14:9,12,14,22 150:25 151:10 152:3,9,14 appeals 14:14 151:3,9 appearance 104:16 appearing 70:11 appears 18:9,12 27:17 33:22 35:5 38:1 53:16 71:5 90:12 104:14 107:4,13 112:17 117:15 118:24 119:7 122:16 123:12 applicable 152:13 apply 46:16 approximately 15:24 area 49:21 arguably 137:7 argue 23:21 39:11,14 argument 60:17 arguments 101:13 131:22 132:1 arising 9:7 Armed 48:15 arrangements 50:4,18 asks 164:13,24 asserted 147:14 149:5 160:2 assertion 63:7 asserts 153:13	assist 89:9,10 123:16 assisted 56:22 assisting 5:15 assume 26:22 45:13,20 54:5 58:25 64:10, 21 74:12 107:11 assumed 87:14 assuming 64:20 assumption 65:1 154:11 at-fault 18:9 38:8 40:3 41:19 42:11 46:10 94:19 attached 37:2 attempted 55:14 attorney 81:15 93:8 98:7 126:15 128:19,20, 25 150:7 152:4,9, 19 attorney-client 98:24 attorneys 30:22 81:16,20 149:16 August 88:12 author 127:18 146:9 auto 9:7 automobile 6:5 9:8,10,15 15:9 Avenue 51:7 aware 15:19 22:12 34:10 40:4 57:13,14 99:10,13 142:9 149:6 AWR 167:3 168:3	B back 5:19 6:15 8:23 21:15 24:2 25:9 39:13 43:14 47:22 50:17,19 51:18 57:11 75:15 78:15 94:12,20 101:19 106:16,17 107:3 109:10 111:3 114:1 116:9 119:24 132:15,25 145:8,24 146:13 149:24 158:8 bad 89:23 badly 66:25 142:12 bank 6:16,18,21 7:4 based 17:10 18:17 19:8, 21,25 20:3 22:9 39:24 40:10 72:3, 13 92:21 94:15 95:4 102:25 122:22 152:14 baseline 51:12 basically 44:19 45:10 107:18 111:17 138:7 139:9 142:24 143:5 basing 31:24 93:20 basis 60:21 114:13 146:1 Bates 68:23 69:2 80:18 104:14 106:6 bathroom 19:16 Bauer 106:11 111:4,18 112:18,25 114:3 115:25 116:4,9,10 118:3,11,19,25 119:1,8 121:21 122:1 123:21 124:3,10 126:22 128:22 132:5,13 133:9 138:4,12 141:4 145:3,12,22 146:17 162:4	Bear 144:3 bears 69:2 Beaufort 47:13 65:25 70:11 bed 19:19 begin 7:12 beginning 22:16 40:23 83:21 108:1 131:20 141:25 behalf 19:6 43:17 53:16, 23 73:17 77:19 148:9 153:4 163:17 behaviors 95:4 believing 20:23 52:19 big 19:24 bill 36:19 billings 108:4,21 bills 36:2 107:19,20 bit 5:5 7:18 18:2 52:14 74:6 106:17, 25 107:3 bitter 79:23 blame 123:19 132:5,8 bless 133:16 blue 84:19 board 34:21 Bob 6:1 16:22 19:11, 21,22 20:1,4 21:18,21 23:10,13, 22 24:13,19 25:17 26:19,21 27:6 28:9,13,18,19 29:17 36:7 38:18 39:8,19,22 42:17, 18,21 66:24 73:4,

8,13 75:10 77:6 78:13,17,22 81:5 83:1,22 84:10,20, 22 86:12 87:4,7,11 89:4 91:2 94:16, 18,25 102:8,25 127:20 158:1	broker 27:2 28:10,11 29:13,16 brokers 28:19 Bronx 49:5 Brooklyn 49:5 brought 46:2 80:22 bunch 129:24 business 27:2 116:12	car 15:9 76:9 111:11 care 30:18 31:5,8 50:22 carefully 160:7,21 161:3,19 Carolina 3:11 7:9,12,17 30:23 44:7 67:17 168:13 Carrie 112:10 carrier 18:14 38:8 41:22 42:10 44:16,17 67:4,6 73:17 109:20 carrier's 163:16 carry 75:11 111:9,10 carrying 138:25 cart 25:20 97:6 case 5:10 11:24 15:8,9, 21,22 16:4,7,8 23:11 25:1,18 31:21,22 32:2 33:5,6 40:1,10 42:5,13 43:3 45:24 46:23 61:11,24 66:14 68:9,16 69:12 70:8 71:12 72:17 79:25 80:10 81:2,4,7,24 84:19 86:21,23 87:2,8, 20,21,23 88:1,6 89:5 94:16 98:12 99:6 102:13,14,15, 23 107:12 108:17 110:21 132:7,12 133:8 134:17,22, 23 138:21 139:15, 25 148:3,9 150:7 152:1 162:24 165:10 167:4 168:3 cases 7:25 8:12 9:2,3,6, 9,12,14,15 39:13 83:25 85:18 cash 119:18 catch 165:4	caused 24:20 27:3 100:1, 20 caveat 98:6 cc'd 157:1,4 cents 81:22 certificate 53:7 104:3,6 106:8 117:6 122:9 certified 43:7,15 certify 167:7 168:13 cetera 9:13 16:25 70:15, 16 chance 128:8 CHANGE 167:9 168:5 charge 86:9 88:6,7,8,9 charged 48:3 82:19 83:3 85:24 charges 82:6 check 81:18 103:14 119:17 checked 83:1 154:25 checks 81:19,23,25 Chicago 77:10 chose 161:21 circuit 8:3 circumstance 12:7 131:20 circumstances 91:21 128:12 cities 49:3,4 City 47:19 civil 43:6,11 44:8 69:14 163:7,12 168:16	claim 15:15,16 16:20 24:23 39:24 40:10 41:21,25 46:1 61:23 63:21 71:11 78:7 88:16 89:2,3 90:15 94:9 95:10 98:10 100:2,8 101:11 claimant 36:17 claimed 19:17 42:2 claiming 25:8 claims 9:7 18:13 28:4 33:20,23 38:7 63:16 115:17 146:18 clarifying 36:21 clause 163:17 164:5,8,22 clauses 44:20 45:1 74:14 clean 4:24 83:18 155:18 clear 12:25 14:16 30:15 41:6 63:13 77:12 83:9 95:11 96:5 119:18 131:17 133:4 141:14 150:10 161:13 clerk 117:16 122:17 126:13 client 12:8 79:15 81:9,11 82:3 84:4 114:10, 11 115:5,13 121:12 client's 115:17 clients 12:1,14 82:1 84:2, 7 101:14 clocked 104:15 105:10 124:6 close 33:25 49:3,4 78:10 84:22 147:9 closely 160:12 162:7
Bob's 10:11 28:9 39:19 91:4 97:4 body 67:22 Bogdan 18:21 23:25 24:24 37:10,22 40:16 65:23 69:3 92:12, 15 95:13 96:11 98:17 99:2 106:2, 5,18 114:12,15 139:4,11,22 140:22 148:3 150:5,6 153:18 154:13,18 155:3,7, 10,14,17,19 156:2, 3 157:10 158:6 159:10,15,18 160:24 161:23 163:23,25 book 163:7 books 165:2 borrow 38:22 bottom 13:20 26:19 129:25 bound 81:5 box 111:8 break 3:21,24 65:3 74:7 99:20,23 149:20 breakout 78:22 briefly 5:7 65:7 128:10 bring 43:2 bringing 35:21 broke 38:20 broken 39:3	calculations 108:11 calendar 59:5,17 calendared 59:15,17 calendaring 59:6 calendars 15:10 call 10:14 27:7 43:20 50:19 56:3,4 77:7 89:17 118:11 119:24 called 28:10 38:21 49:25 50:16,17,19 55:12, 22 102:11 114:4 120:1,2,6,13,19,20 132:16 145:21,22, 23 146:13 159:18 calls 49:22 50:15,16 114:15 120:14,24 136:3 137:9,10 canceled 68:5 candidate 49:14 candidly 128:7 163:10 capable 133:11 caption 164:15 167:4 168:3	C		

165:22	communication 98:23	concerned 57:2 89:25 134:23	continue 27:4 76:11 79:17 109:8	11 15:22,23 17:12 18:11,15,20 22:13 38:9,11,13,14 43:24 44:14,23 45:11,12 46:23 47:8,9,14,16 50:7 55:6 61:20,21 62:9,16,17 63:22, 24 64:3,6,8,24 65:17,20 66:18 67:6,23 68:4,10 70:11 71:22 72:10 82:12 83:15,16,19 101:15 102:4 103:25 105:8 106:13 107:23 108:18 110:23 111:22 113:18 115:17 117:20 119:6 121:23 123:2,3 130:13 131:4,9,23 132:6 133:25 134:3,8 136:14 137:10,17 139:21 141:1,8,17 142:25 143:9 148:9 150:18 151:4 152:14 153:5,17,24 154:2, 16 156:17,18,22, 23 157:3 158:2,23, 24 159:4,5 161:18
closer 162:20	communication's 111:16	concluded 166:5	CONTINUED 168:1	corrected 91:15
club 25:22	communications 10:25 66:19 67:7, 14 92:6 99:9 111:16 138:11 146:16,19 147:4	conclusion 114:16 139:18 158:21	continuing 77:4 79:8	correcting 32:11
clue 52:7	comp 101:17	concurrent 52:10	contract 12:3,22 14:18,21 132:16,18	corrections 167:8
Coastal 67:16	companies 22:8 39:10 49:21	condition 36:7 39:22 67:9 94:23	contract's 12:10,15,25	correctly 17:7 47:17 86:5 97:3 115:10
Code 163:10,12	company 39:10 49:24,25 51:14 62:16 153:4	conduct 95:9,12,14 96:9	conundrums 115:9	cost 89:9,11 90:17
Coggin 3:1,5,9,10 9:20 17:2 27:11 32:7 34:25 35:4 45:13 54:16 59:9 65:8 68:14 70:24 71:3 87:24 90:4,9,19 106:20,24 112:11, 14 117:11 118:20, 23 122:7,12 123:8 125:1 128:3 130:10 149:24 159:15,20 167:2,4, 6 168:4,12	Company's 117:5,17	conference 32:6 90:7 116:14 124:18 147:11	conversation 11:25 12:20 25:24 42:21 51:21 52:21 53:3 56:4 74:6 75:8 89:22 98:2 112:24 113:4 119:8 121:16 145:18	costs 12:23 13:2,5 102:10
collision 9:23 11:11 24:20 85:2 92:4 94:18 95:3,23	compared 108:22	confidence 39:5	conversations 10:20 11:3,15,20 13:4 21:6,18 23:12 25:10 51:13 52:7 66:4 73:9 76:21 81:6 88:14 93:5 97:17,22,24 98:9 102:5 103:3,10 105:14 118:8 120:2,4 123:20 134:6 138:19 145:11	counsel 3:25 4:11,22 5:15 11:16 53:17 68:3 80:20 89:1 98:14 103:4,5,19,25 105:16,17,22 115:16 116:18,20, 22 117:1,25 126:1, 6,7,15,24 127:14 128:20 129:12 160:1
combined 45:9	compel 65:12	confronted 120:13	conveyed 75:23	counteroffer 74:18,19 75:1
comfortable 19:20	compensation 86:5	congratulations 163:14	copied 117:20	
commence 47:5 64:2	competently 12:17	connected 36:19	copies 80:6 100:25 122:24	
commenced 64:6,22	complaint 15:2 43:7,13,24 44:8,20 45:2 46:13 51:24 53:21 57:7, 9,15 58:2,5,12,18, 20 59:24 60:3 64:4 74:15 123:1 153:13 154:5,8 164:13,20,24	consent 117:2 126:23,25 127:11	copy 10:4,5 13:12,15 32:12,16 34:5 37:3 43:7,10,15 44:7 46:20 51:23 53:14 54:2 73:13 103:24 104:5,15 113:14 124:2,6,10 128:4,6 132:19 135:11 147:20 150:15	
comment 20:19 78:19 80:12 97:21 128:16 146:22	complete 123:6	consents 126:10	corner 129:25	
comments 78:6	compliance 66:10	considerable 38:19	corporation 9:17	
Commission 168:24	complicated 139:14 140:10	consideration 42:15	correct 3:11,18 4:16 9:5,	
common 8:15 9:1,3	composure 75:11	considered 79:3		
communicate 4:10 22:1 98:1 141:4 145:3	compromise 24:23	consistent 80:9 81:1		
communicated 12:13 20:22 116:9	compromised 23:11 89:5 94:16 100:20 102:13	consulted 146:7		
communicating 66:16	computer 120:16 135:21,22, 24	contact 81:19		
	computers 135:22	content 123:17		
	concern 91:6	contents 27:23		
		contest 3:23		
		context 46:4,9,15 47:1 93:4 148:1		
		contingency 13:9,14,23 15:7 150:15 152:14		

76:16 77:15,20 County 47:13 66:1 70:11 couple 50:17 57:16 102:9 125:6 134:16 139:13 146:6 150:7,10 court 8:1,3 9:3 26:11 37:6 105:10 117:16 122:17 123:25 126:14 131:23 140:9 141:7 142:10,23 164:13,14,24 168:17 courtesy 69:16 146:11 covenant 37:15 46:3,10 cover 43:6,11 44:8 56:10 117:12 124:7 127:3 coverage 38:12 44:22 45:11 46:4,13 create 42:9 credit 151:21 Criminal 7:21	dates 59:16,18 125:14 126:2,18 127:22 Dawes 149:1 day 11:1,17 56:5 58:21 59:19 60:11 63:24 65:13 165:1 days 10:6 23:22 54:6 55:22 58:7,12,21, 24 59:7,22 60:2, 15,25 62:14 123:13 168:16 deadline 59:11,12,15 deal 98:23 dealing 36:10 dealt 65:10 death 31:22 81:21 December 51:20 52:20 56:7 68:9 69:20 122:8 123:13 130:18 decide 140:2 decided 34:12 145:24 146:15 160:21 162:14 decision 137:14 declaration 39:5 deems 164:14 deep 151:13 default 58:25 70:17 defeat 95:9 100:7 defend 163:16 defendant 46:2 53:20 63:8 64:5 113:11,16 123:2 142:15 160:3 164:12,16	defendant's 117:16 124:19,22 125:3 126:6 defendants 160:2 defense 42:9 62:21 67:18 147:17,22 148:15, 17,23 149:7 153:20,24 154:15, 19 156:6 160:2,7, 16,21 161:16 162:11,12,17 165:13 defenses 147:14 148:17 149:12 153:14,15 definition 136:18 deliberately 118:15 deliver 44:12 delivered 50:5 65:9 demand 16:13 40:11,22 44:21,22 45:10 72:2,4,23 73:2 74:10,12,13 156:20,21,25 157:6 demanding 73:11 demands 17:10,13 18:4 39:25 45:4 92:7 dementia 56:22 department 44:10,11 51:23 52:1,4,11,23 53:1 depends 125:13 136:18 deponent 167:1,2,5 168:1, 14,15 deposition 3:6,13 4:14 5:3 27:16 49:10 53:15 57:21,23 68:4 71:5 96:25 97:8,15 112:17 128:9 166:5 167:2,7 168:2,14 depositions	3:17 81:14 describe 7:11,16 10:24 11:10 12:11 75:7 111:5 describing 21:9 36:8 142:1 143:8,25 deserve 114:21 desperately 42:17 destroyed 120:10 determinative 62:1 determined 56:21 81:5 101:9 develop 30:18 108:24 developed 24:2 developing 12:2 123:22 Dickenson 9:24 18:10 24:21 28:4 43:21 46:16 47:15,21 48:11 49:17 55:5,8 61:5 63:17 64:2 69:13 71:8 83:21 85:2 86:22 87:21 88:16 92:4 123:2 134:21 136:21 140:5 144:13,20 154:7, 20 156:7 160:8,22 161:9 162:14,17 163:1 164:17 165:21 Dickenson's 18:14 38:8 47:21 51:2 53:20 67:4 95:2,11 160:16 161:21 died 134:18,25 differently 160:19 165:12,15 dig 137:4 dime 81:21 directly 147:5 disagree	57:19 133:19 disagreement 129:3 disagreements 90:24 discovery 5:9,12,15,20 28:8 65:10 discuss 12:1 42:23 118:12 157:14 discussed 87:5 89:18,24 144:17 156:25 157:6 discussing 30:2 157:9 discussion 131:11 156:19 157:16 discussions 12:21 38:15 42:7 45:22 88:21,24 dismiss 117:6,18 124:20, 23 125:4,13 137:17 164:13,24 disposal 26:25 dispute 94:6 disputes 9:12 divided 107:18 Divorce 7:21 doctors 20:2 22:3 document 13:13,14 18:8 20:21,25 27:15 37:2 38:2 44:1 53:15 61:8 62:19 68:14 69:2 112:15, 18 117:11 118:17, 24 122:16 123:11 132:23,24 133:1 135:13 137:6 documents 4:5 5:4 8:5 10:1 16:19 17:7 20:18 43:11 65:13 115:9 120:7,8 124:13 125:2,9,15,16 132:14
D				
damages 19:3 28:16 damnum 44:19,24 date 6:3 19:13 35:6 38:1 59:7 64:1,11 67:25 69:3,22 70:6 71:15,16 105:9 106:8 126:10 167:2 168:2,12 dated 10:6 17:3 18:7 27:12,17,18 32:8 33:22 35:1 70:25 71:4 72:24 90:5,10 106:21 112:11 117:4 118:20 119:3 122:8 123:13 127:25				

doggone 165:21	easily 27:5	entrance 85:25	excuses 120:22	experts 100:18
dollar 40:18,21	easy 87:6	envelope 43:8	execute 37:16 46:3,11 168:15	expired 63:21 64:15
dollars 38:18 39:25 41:8 50:13,14	economics 30:23	epidural 21:7,10,19,22 22:25 23:23 24:22	EXH 13:9 17:2 27:11 32:7 34:25 37:15 43:6 53:7 70:24 90:4 106:20 112:10 117:3 118:19 122:7 123:8 124:19,22 127:25	expires 168:24
Doncaster 47:19	economist 29:6 30:21	equally 52:16	exhaust 91:11	explain 24:12 31:10 40:7 84:9 94:22 109:2
dont' 114:5	economists 29:7	essentially 11:5 15:6 75:13 137:6	exhibit 13:13 18:8 22:10 26:17,18 27:16 29:1 30:1 32:12, 20,23,24 33:11,21 34:7 35:7 37:7 44:5 51:10 53:15 54:24 57:8 62:9 68:12 69:1 71:4 73:12 80:3,6 92:25 101:19 103:2,24 110:13 112:15 116:3 117:13 118:24 122:16 123:12 125:4,5 128:6 141:17 142:7 150:11 152:22 156:13,14 157:15 160:1 163:21 164:3,8,9	explaining 143:6
doorstep 132:9 135:2	effect 46:5,17 47:15 78:17 98:2 165:20	establish 28:3,5 41:18	extra 115:20	explanation 34:9
doubt 36:2	effecting 49:17	estimate 8:12,13 93:19 96:17 158:1	F	
dozen 89:7	effectively 44:21 137:14	estimated 8:22 93:23	fact 19:10 62:2 88:4 95:5,15 96:9 100:6,9 120:1 136:1 144:6 153:8	
draft 137:7	effectuate 62:23 63:5	ethical 115:7,8	facts 149:6	
drafted 138:1 148:18	efforts 116:10 143:8	eve 93:10	factual 148:14	
drive 22:21	elaborate 91:1	event 152:11	failed 62:22 63:5 132:10 165:20	
driven 135:1	Eleven 156:15	events 136:25	fails 168:15	
driver 9:24 40:3	Emphatically 96:13	evidence 29:5 31:16	failure 147:17,21 148:15	
DUI 84:13 85:7,15,25	enclosed 32:15	evidencing 122:24	fair 17:22 70:13 81:25 94:8 97:11 107:22 127:24 149:9	
DUIS 85:17 88:6	end 28:21 65:12 72:21 73:4,7 79:23 81:24 89:17 93:7 104:23 138:23 140:13	exact 6:3	fall 6:4 16:1	
duly 3:2	ended 134:23 157:25	EXAMINATION 3:3 150:4 159:12	familiar 48:12 49:2	
duties 114:9 115:5	endurance 3:23	exception 81:17	family 47:22	
E				
e-mail 20:25 68:15	engines 48:14	excess 39:25 40:11	Farm 39:11	
e-mailed 112:19	enjoy 22:19	exchange 4:6 111:6	fast-forward 111:3 131:25 133:13	
e-mails 97:23	enjoyed 22:13,23	exchanged 3:5 65:13	faxed	
earlier 20:18 26:3 63:12 84:25 87:12 110:6 128:12 131:12 161:20	ensure 66:10	exclude 14:11		
early 45:24 51:19 52:20 54:7 62:11 66:16 67:8 70:10 79:16	enthusiastic 24:2	excruciating 19:14		
	entire 7:15 62:19 111:13 142:5 162:24	excuse 28:3 29:14 33:5 34:5 35:13 59:4 90:21 119:12 126:5 150:21 157:21	experience 24:11 79:6,23	
	entity 9:18		experienced 24:20 26:20	
			expert 102:22	

112:18 faxes 82:6 February 168:25 fee 10:5 13:9,14,15,23 14:23 15:7 45:16, 21 82:13 86:10 150:15,24 152:19 feel 110:25 feeling 66:24 103:6 Feldman 6:1,9 9:25 10:6,10, 15,20,25 11:16,21 12:22 13:5,16,17 14:10,17,23 16:12 19:6 20:22 21:6, 10,19 22:2,12,24 23:22 24:13,19 25:11,13,15 29:10, 12 30:19 31:24 32:11 38:16 40:11 41:19 42:8 43:10, 17,20 45:23 46:16 59:10 61:22,23 66:17 69:13 71:8 72:15 73:10 74:1,3 75:8 76:18,22 77:20 78:23 79:4 83:21,22 85:1,14, 16 86:6 87:25 88:15 89:8,12 90:5,13,21 92:3 93:4 95:1 96:2,7, 24 97:1 99:25 100:6,15 102:6 103:3,11 105:15 108:25 109:5,21 115:14 117:1 126:1,7 127:20 132:16 137:24 138:5 147:7 150:18 156:25 157:1 159:14,19 165:10 167:4 168:3,4 Feldman's 9:23 10:13 20:8 28:6 32:2 35:24 41:22 62:6 67:15, 23 72:9 91:10 94:8,18 95:8 96:20 97:18 98:3 100:19 107:15 108:8,17 152:1 158:2	Feldmans 44:16 82:15 86:23 88:25 105:21 106:14 111:13 127:15 137:15 146:18 Feldmans' 145:4 146:18 fella 65:25 felt 20:4 21:7,10,12, 19,21 24:25 27:7,9 29:21 87:2 102:14 162:9 Fieldman's 63:16 fifteen 8:17 file 16:4 58:12 61:8,19 63:8 68:14,22 81:23 99:11 111:13 113:7 115:15,22 118:7 122:2,5 123:5,6 132:10 135:19 137:15 145:23 155:5 161:22 filed 15:2,15,16,21,24, 25 16:2,7 43:16 53:16,23 57:7 58:5,18,20 59:24 60:3,4,5,8 64:12, 22 70:8 83:18 103:20,24 105:10, 15 118:4 121:12 122:20 129:9 132:6 148:8 153:3 156:12 160:3 168:17 files 22:5 65:9 153:13 filing 16:7 59:7 60:23 61:16 81:15 82:13 103:5 104:6 117:16 122:17 145:13 146:4 final 76:3 finally 28:18 find 48:15 100:18 103:4 105:21 113:23 120:21	124:8 138:18 146:23 167:7 fine 4:1,13 33:7 34:18 39:3 41:15 50:11 53:6,13 57:6 68:1 88:13 107:1 112:7 149:22 155:22 165:9 Finger 65:19 70:25 71:6 72:24 73:19 74:1 76:24 78:6 92:20 93:15 156:17 Finger's 73:23 finish 24:13 29:14 136:17 152:6 155:10 finished 29:15 50:19 84:18 firm 7:4,7 50:20 83:11 106:11 112:18 118:3,25 122:1 123:21 145:4,13 146:18 fit 162:13 flattered 159:21,22 flip 137:8 focus 8:3 folks 149:20 follow 48:6 150:8 follow-up 53:10 76:21 97:3 159:14 footnote 28:25 foregoing 167:7 168:15 foreseeable 108:7 109:9 forgot 63:10 form 14:3 18:21 23:25 24:24 40:16 80:8 95:13 96:11	114:12 139:4,11, 22 140:22 153:16 154:10,17,23 155:6 157:7 158:3 159:8 160:24 161:23 formality 3:13 formally 47:5 formed 9:17 formula 158:16 forthcoming 47:24 forward 31:22 139:1,19 140:11 144:23 found 48:7 73:3 156:11 fourth 29:25 Fran 50:3,6,8 51:22 55:2,12 56:17 120:23 frequency 25:11,14 friends 25:21 97:6 front 23:22 50:8 92:9 96:6 110:5 115:10 125:20,21 130:19 141:18 142:13,20 149:3 fruition 20:14 full 3:7 22:14 30:1 39:5 91:20 102:1 110:15,16 fully 132:10 future 30:2,18 31:4,16 108:8,25 109:9,12, 20 110:16	26:24 gardening 26:24 Gary 3:1,9 17:2 27:11 32:7 34:25 37:10 70:24 90:4 106:20 112:11 118:20 122:7 123:8 150:6 155:20 167:2,4,6 168:4,12 gathered 17:11,15 18:18 gathering 16:19 gave 16:10 48:4 50:21 51:1 124:9,10 general 7:19 154:14 generally 10:24 16:17 79:13, 15 111:6 generates 135:14 gentleman 30:25 31:23 56:16 get all 41:20 42:12 girl 84:19 111:9 gist 120:22 give 28:14 29:9 31:4 46:19,20 50:20 68:19,22 77:14 104:12 136:24 151:20 156:1 giving 131:8,22 155:1 glad 3:23 4:8 golf 22:13,19,23 23:1, 11,23 24:22 25:8, 11,15,17,20 26:6 89:6 91:3,22 94:18 96:20,25 97:18 98:3 100:7 golfer 24:2 good 3:5,12 4:24 14:20 18:24 21:22 23:15

30:21 41:8 49:14 55:20 62:6 66:1 73:7,8 75:4 86:24 89:23 102:15 133:17,18 140:9 144:22 150:12,13 151:21 Google 28:21 governing 58:3 63:16 115:5 163:15 grain 76:6 grant 164:13 great 4:18 49:9 87:1 greatly 22:15 87:9 89:5 group 43:11 guarantee 87:16 guess 66:15 gun 136:6 guy 66:1 guys 92:12 137:23	138:17 158:4 happen 39:12 happened 11:5,11 18:1 76:23 79:20 111:6 129:5 132:13 134:17 138:21 144:1,9 145:21 happy 8:6 20:19 21:16 97:20 146:22 147:16 hard 38:23 77:6 82:25 87:13 115:24 116:7 head 7:14 154:3 headache 55:18 heading 62:24,25 health 72:9 101:4 hear 55:11,21 138:2 heard 124:12 145:21 162:3 hearing 86:4 124:12 125:14 128:4,13 130:15,18 131:3,6 137:20 138:12,15, 24 141:8 142:5 hearings 125:18 heavy 111:10 held 29:17 high 19:24 72:21 73:6 75:21 93:24 156:8 Hilton 7:14 hint 156:1 HIPAA 80:8 hire 46:19 hired 47:13 66:5	history 131:3,8 141:21 hit 11:8 hold 12:16 26:11 114:1 127:3 163:23 holds 57:5 holiday 69:19 home 16:23 26:23 56:22 135:21,23 honest 129:4,6 honestly 163:10 Honor 144:8 Honorable 117:4 hope 69:19 horizon 81:5 hour 29:20 hours 145:24 house 10:11,13,16,17,25 11:17 85:4,22 Huh-uh 49:15 52:9 hundred 38:17 40:18 41:7 50:13,14 96:4 Hyde 49:1 51:8	118:21 122:10 123:9 124:21,24 128:1 identified 59:6 identifies 81:11 image 104:13 immediately 76:19 120:1,3 134:24 154:24 impaired 101:10,15 impairment 22:4 101:5,14 158:9,15,16 impressed 31:20 impression 16:10 improper 62:24 153:20 154:1 160:15 162:12 improperly 154:8 improvement 67:1 impugned 23:13 inable 29:16 inadvertently 32:13,22 33:13 incident 127:19 146:10 include 162:11 included 32:22 33:13 113:24 including 115:13 incurred 82:23 92:3 93:4 94:21 95:2,10,23 96:2 infirm 10:15 25:9 information 17:11,18 18:17 19:8 46:22 48:16 54:20 55:1,9 92:21	94:15 145:10 146:21,23 147:3 informed 69:17 initial 7:2 initially 19:22 50:16 91:23 initials 151:23 injection 21:7,11,20 22:25 injections 24:22 108:8 109:5, 8 injured 58:15 66:25 91:23 injuries 20:8,24 24:12,19 25:9 78:24 91:21 99:25 100:20 injury 7:18 9:7 insistence 89:5 instructing 98:21 133:20 insurance 18:14 22:8 39:9 44:10,11 51:23 52:1,4,11,23 53:2 62:16 117:5,17 153:4,9 insured 27:4 163:17 intend 41:3 interest 111:19 interfere 115:17 interim 102:2 137:21 internal 15:10 59:6 Internet 48:13 49:19 51:2 interrogatories 65:10,14 125:17 interrupt 4:21 intersection 11:7,8	
H					
habit 105:19 157:14 half 29:19 66:11 89:6 109:6 hand 37:10 102:2 132:23 handle 49:16 79:14 83:25 152:4,9 165:10 handled 12:13 26:25 115:13 116:25 hands-on 66:13 handshake 86:15 Hang 29:2 130:21,23					
		I			
		idea 34:14 60:9 92:5 93:19 141:19 146:3 148:19 identical 34:1 identification 13:10 17:4 27:13 32:9 35:2 37:17 43:8 53:8 71:1 90:6 106:22 112:12 117:7			

intervene 145:13,23 146:2,5	124:2 125:13 140:7,8,14 144:25 152:21	large 67:22 168:13	20:25 22:6 27:11, 17,23 32:7,16,17 33:20,22 34:1,8, 13,25 35:5,6,8,19, 20 37:2 52:4,23 56:10 66:20 67:16 70:24 71:4,5,24 72:24 73:11 80:14, 18,24 81:22 90:4, 9,12,18 92:19 96:3 101:3 103:1,7,13, 17 106:20 107:4,6, 10 109:4,11 112:3, 7,10 113:2,6,18 116:3 117:3,12,15 118:19,25 119:4, 14 122:7,17,19 124:7 156:16 157:2,5	list 126:15 129:1,2
introduced 31:16	July 16:18 17:3 18:13 88:12 110:13	larger 84:4 104:18	letters 16:13 18:4 22:3 34:4,16 66:22 67:25 77:9 80:7 82:8 89:14,15 97:23 100:22 102:9 109:22 110:7,12 124:4	listed 128:19,20
involve 100:24	June 88:12 167:2 168:2	late 52:19,22 56:7	liability 94:6 95:11	listening 134:14
involved 84:4 91:2 127:19	jury 23:22 24:12 25:2,3 40:1,9 41:4 68:16 69:18,21 70:12 94:17,25 96:6,7	law 7:3,7,9,13,17 9:18, 20 41:24 44:7 57:3 61:24 62:4 64:7 102:16 106:11 112:18 118:3 123:21 139:15,25 140:1 145:4,13 146:17 151:12 162:13 163:22 165:5	Liberty 44:13,15 45:14 53:17,20,23 62:16 66:5 73:18 74:18 75:18 117:5,17 147:5 153:4,6,9,23 154:12 162:24,25 164:19,23	litigation 12:24 13:6 21:4
involving 9:10	K	lawsuit 5:14 15:21 43:21 46:1 47:1,6 64:2, 21,22 83:18,21	letting 126:19	lived 49:20 86:1
irritated 79:2	Karma 85:21 87:8,22	lawsuit's 64:5	liability 94:6 95:11	living 36:1 56:22
Island 7:14 48:23,25 49:2	keeping 150:12	lawsuits 8:9	licensed 3:10 7:8	LLC 9:19,20
issue 77:23,24 91:22	Kinard 124:12 125:22 128:5 130:22 131:6,8,18 132:4 133:16 134:18,19, 25 137:19 138:23 139:8,12,14 141:9, 12,15,19 144:7,13	lawyer 3:10 23:15 24:8,11 66:5 99:5 114:18, 20,23 115:4,12 147:22	lie 25:3,5,6,7	locate 113:10
issues 35:24 150:10	kind 75:10 79:17 83:17 109:12 112:3 129:8	lawyer-client 12:2	life 30:17 31:5,7	located 48:8
J	knew 6:16 19:25 22:23 59:16,18 61:15 72:4,13,22 87:4 92:20 98:8 102:25 132:21 162:12,22	lawyers 111:17 148:18	light 11:8 41:4 54:18	location 48:24
January 36:9 54:4,7 56:9 60:7 62:11,15 63:11 64:9,14 66:3 69:18 128:1,5 130:16,20 131:7 138:12,14 141:9 142:6 145:2 160:10 161:4	knock 93:25	leading 12:3 26:2 155:25	limitations 15:11,18 63:15,20 64:15 78:4 148:24 149:7 162:11	Lois 6:15 11:21 14:23 43:17 73:10 74:2 167:4 168:3
jeez 55:17	knowledge 27:24 71:25 123:24 136:21 138:9 148:13 149:10	learn 48:10	limited 9:6,10 100:2,19	long 29:18 48:23,24,25 49:2 114:7 165:1
Jeff 149:1 150:6	L	learned 47:20 72:8	limits 41:21 42:24 44:22 45:10 57:14	longer 6:22,23 22:18 26:22 27:1
Jerri 117:4 122:8	La-z-boy 19:18	leave 76:4	lines 138:25 144:6	looked 5:4,11 49:19,20 56:16 57:3 110:7 115:22,23 116:7 120:21 132:23 162:19 163:3 165:22
Jersey 142:14	landscaping 26:23	leaving 79:17		lose 87:18
job 101:16,17 150:13 165:9 167:3 168:3	lane 11:6	led 20:9		losses 26:20 27:3
judge 124:12 125:21,22 127:3 128:4 130:22,23 131:6,8, 12 132:4 133:16 134:25 137:19 138:23 139:8,12, 14 140:8,18,19 141:3,9,12,15,19 144:7,22	language 165:13	left 75:13 76:18,22 78:18 137:15		lost 7:23 28:6 75:10 99:21 100:2,8 101:11
Julian 66:5 69:12 87:3 96:19,22,24 97:2, 18 99:5 106:21 107:5 117:3,15		legal 98:12 114:15		lot 7:20 12:16 19:21 65:25 66:19 81:20 86:14,25 96:23 126:12 146:14 157:16
		letter 17:2 18:7,9,12		love 70:5 93:13
				low 28:21 72:21 75:2

156:8 lowered 88:4 luck 140:9 144:22 lying 25:1	57:1 133:17,18 man's 57:1 March 36:10 mark 15:11 37:6,11 57:8 59:5 103:23 106:18 marked 13:10,13 14:3 17:3 18:8 27:12,16 32:8 33:21 35:1,7 37:16 43:8 53:8,15 70:25 71:4 73:12 90:5 103:2 106:21 112:12,15 116:3 117:7,13 118:21, 24 122:10,16 123:9,11 124:20, 23 128:1,6 141:16 142:6 marking 26:17 material 55:10 materials 48:13 65:8 81:24 matter 19:11 38:24 46:17 81:10 82:3 85:6,7 88:15 100:10 102:2 115:13 123:1 136:1 145:4 147:7 matters 9:1 36:9 58:3 81:11 143:8 157:9 maximum 67:1 McDonald's 5:7 meaning 139:23 means 44:25 meant 30:10 115:19 116:5 meantime 138:2 med 39:11,16 mediation 65:15,25 71:8,14, 16,18 72:12,14,16,	20 73:1,18,21 74:4,11,23 75:5, 13,21 77:5,13,19, 22 78:8 79:24 88:22,25 156:21 mediations 79:14,20 mediator 65:19 72:12 mediator's 74:6 medical 11:10 16:19 27:3 30:2,18 36:2 66:17 67:1,8,9,15 80:8 81:2 82:23 94:20 95:2,22,24 96:2,8 100:16,25 101:2 107:15,19 158:2 159:7 medicals 31:5,16 35:22 92:2 93:3,9,12 94:2,5, 12 95:10 96:5,16 107:25 108:12,25 109:13,20 110:17 158:12,20 meet 5:25 10:19 74:5 91:6 meeting 10:9 11:17 12:8 memorandum 140:1 memorized 163:8 memory 118:14 135:24 mention 77:23,25 78:3 mentioned 26:3 65:7 131:12 142:5 merits 78:7 89:2 90:15 98:10 message 75:2,23,25 76:3 met 85:1 Metro 106:11 111:4,18 112:18 115:25 116:4,10 118:3,11, 25 123:21 124:3 132:5,13 133:10	138:4,12 141:5 145:3,12,13 146:17 162:4 Michael 47:12 132:21 middle 143:18 midst 70:14 Mike 132:24 million 20:4 39:25 40:11, 21 mind 32:21 minute 65:4 105:2 minutes 5:12 29:19 missed 59:10 mistake 50:11 60:14 misunderstandings 4:7 mitigate 147:18,22 148:15 mitigation 23:24 mixed 126:14 modification 14:11 moment 10:8 37:19 110:11 124:17 125:6 moments 61:1 money 9:12 38:22 39:14 42:18 50:8,10 81:9 82:5,17 84:10,20, 22 86:25 87:1,6, 14,15 88:8,10 98:4 monies 81:11 82:3,4 83:20,23 month 93:8 137:25 months 20:17 87:12 100:7 109:6	morning 3:5 mortgage 27:2 28:10,11,19 motion 103:5,20,25 104:7, 15 105:15 116:18, 20 117:6,12,18 118:4,9,12 124:12, 20,23 125:3,13 126:5,6 129:9 131:9 137:16 145:13,23 146:2,4 motions 65:11 motorist 163:16 movant 104:16 move 70:12,21 104:23 156:13 moved 39:2 68:3 moves 154:3 moving 28:7 33:16 89:1 105:17 multiple 120:9 134:6 136:2 137:9,10 Murphy 112:10 125:20 130:24 131:12,15 Mutual 44:13,15 45:14 53:17,20,23 62:16 66:6 73:18 74:18 75:18 117:5,17 147:5 153:4,6,9 154:12 162:25 164:19,23 Mutual's 53:17 153:23
Macgregor 51:7 made 14:16 17:8,14 18:5,20 19:7 21:14 31:23 39:18,24 40:10,24 41:5 43:3 49:21 50:4,11,15, 18 55:23 58:7 71:24 72:2,4,23 74:10 75:9 76:16 77:17,20 78:20 83:2 89:8,10 101:13 109:19 120:14 136:2 137:8 142:22 143:8 146:4 156:21 mail 43:7,15 54:5 56:6 maintain 132:11 maintenance 26:23 Maitley 125:20 majority 9:14 make 4:22 15:14 25:16 26:4 28:21 39:4 41:5,25 44:21 45:4 59:15 63:12 69:1 72:11 74:18,19,22 77:11 78:6 80:2,5 87:6 95:6 96:5 104:18 115:15 131:4 161:14 makes 60:14 making 30:2 41:21 72:23 102:6 malpractice 98:12 120:18 man	marked 13:10,13 14:3 17:3 18:8 27:12,16 32:8 33:21 35:1,7 37:16 43:8 53:8,15 70:25 71:4 73:12 90:5 103:2 106:21 112:12,15 116:3 117:7,13 118:21, 24 122:10,16 123:9,11 124:20, 23 128:1,6 141:16 142:6 marking 26:17 material 55:10 materials 48:13 65:8 81:24 matter 19:11 38:24 46:17 81:10 82:3 85:6,7 88:15 100:10 102:2 115:13 123:1 136:1 145:4 147:7 matters 9:1 36:9 58:3 81:11 143:8 157:9 maximum 67:1 McDonald's 5:7 meaning 139:23 means 44:25 meant 30:10 115:19 116:5 meantime 138:2 med 39:11,16 mediation 65:15,25 71:8,14, 16,18 72:12,14,16,	20 73:1,18,21 74:4,11,23 75:5, 13,21 77:5,13,19, 22 78:8 79:24 88:22,25 156:21 mediations 79:14,20 mediator 65:19 72:12 mediator's 74:6 medical 11:10 16:19 27:3 30:2,18 36:2 66:17 67:1,8,9,15 80:8 81:2 82:23 94:20 95:2,22,24 96:2,8 100:16,25 101:2 107:15,19 158:2 159:7 medicals 31:5,16 35:22 92:2 93:3,9,12 94:2,5, 12 95:10 96:5,16 107:25 108:12,25 109:13,20 110:17 158:12,20 meet 5:25 10:19 74:5 91:6 meeting 10:9 11:17 12:8 memorandum 140:1 memorized 163:8 memory 118:14 135:24 mention 77:23,25 78:3 mentioned 26:3 65:7 131:12 142:5 merits 78:7 89:2 90:15 98:10 message 75:2,23,25 76:3 met 85:1 Metro 106:11 111:4,18 112:18 115:25 116:4,10 118:3,11, 25 123:21 124:3 132:5,13 133:10	morning 3:5 mortgage 27:2 28:10,11,19 motion 103:5,20,25 104:7, 15 105:15 116:18, 20 117:6,12,18 118:4,9,12 124:12, 20,23 125:3,13 126:5,6 129:9 131:9 137:16 145:13,23 146:2,4 motions 65:11 motorist 163:16 movant 104:16 move 70:12,21 104:23 156:13 moved 39:2 68:3 moves 154:3 moving 28:7 33:16 89:1 105:17 multiple 120:9 134:6 136:2 137:9,10 Murphy 112:10 125:20 130:24 131:12,15 Mutual 44:13,15 45:14 53:17,20,23 62:16 66:6 73:18 74:18 75:18 117:5,17 147:5 153:4,6,9 154:12 162:25 164:19,23 Mutual's 53:17 153:23	
N				
named 15:1 85:21 113:11 164:16 nature 7:16 15:12 66:7 78:8 81:3 82:24 99:12				

needed 42:17 78:25		offering 39:1 98:4		passed 62:8 90:9 117:13
negligence 27:4	O	office 9:20 73:23 115:23 135:22	P	passing 18:7 27:15 43:10 71:3 107:4 118:23
negotiating 76:11	object 18:21 23:25 24:24 40:16 95:13 96:11 114:12 139:4,11, 22 140:22 155:21 160:24 161:23	Oliver 31:1	p.m. 166:6	past 4:23 90:24 146:9 158:2
negotiation 74:8	objecting 98:22	once-thriving 27:2	pages 131:7 142:23 143:3 167:5 168:15	past-incurred 159:6
negotiations 77:5 79:8,16	objection 114:14 122:8,18, 20,23 123:4 153:16 154:10,17, 23 155:6 157:7 158:3 159:8	one's 27:18 35:6 119:1	paid 24:3 39:15,16 42:3 82:12,20 84:12 111:19 119:18 149:16	Patrick 112:11 118:20
neighborhood 70:19	obligation 115:15 121:8 127:20	one-page 80:18	pain 19:14 35:24 95:18, 21	pattern 20:14
neighbors 47:23	obligations 127:17	one-time 120:6	paper 132:10	pause 118:16
nickel 81:21	oblique 25:16 26:5	ongoing 119:15	papers 61:11 113:25 132:12 133:8 162:20	pay 13:2 39:11,16 84:11,17 86:8,13, 14 87:9,15,17 88:1,2 89:11,20 101:17
non-trick 41:1	obtain 128:3	opening 75:17 156:20,25 157:6	paragraph 14:2 18:19 19:1 22:14,17 30:1 36:8 63:1,2 91:20 102:1 107:14 108:1 110:15,16 148:25	paying 12:23 13:5 89:9,11 94:20 148:18 149:1
nonservice 48:5 55:15 132:21	obtuse 118:15	operate 9:18	paragraphs 72:3	payment 45:14,18 50:4,14 81:14 86:21
north 76:13	occur 10:10	opinion 29:10 39:21 102:23	Park 49:1 51:8	payments 81:14,15
Norton 129:24	occurred 9:25 10:11 63:18 136:22 161:15	opinions 31:16	parse 164:25	Pendarvis 3:4,25 4:2 12:5 13:11 17:5 18:22 24:1,5 25:4 26:8,9, 10 27:14 30:12 32:10 35:3 37:13, 18,23,25 40:20,24 43:3,9 53:9 61:25 65:3,6,22,24 66:2 69:5,9 71:2 90:2,8 92:14,18 95:17 96:14,18 98:20 99:3 106:4,6,10, 19,23 112:13 114:13,17,19 116:15 117:8 118:16,22 122:11 123:10 124:16,25 128:2 132:8 139:5, 17 140:4,21,24 147:12 148:4,7 149:24 150:2 153:16 154:10,17, 23 155:6,12,25 156:20 157:7,17 158:3 159:8,13,16, 20,23,24 161:2
Notary 168:13	October 9:25 10:7,23 16:12,17,18 19:12 27:12,18 32:8,18 33:22 35:1,6,9 43:18 51:12 59:20, 24 60:5,11 63:18, 21,23 64:1,23 67:14 70:8 80:23 112:11,19,24 114:4 117:4 118:20 119:3 126:22	opportunities 151:11	part 6:3 7:2 11:21 17:11,14 20:15 26:2 32:24 33:4,6 39:12 41:21 46:7 62:25 123:18 134:19	
note 21:1 36:14	obtain 128:3	opportunity 151:10	participated 73:21	
notes 74:22,23	off-the-record 32:6 90:7 116:14 124:18 147:11	order 50:10 82:17 106:7 116:17,25 126:23, 25 127:12 129:15, 17 150:12	parties 74:5,7	
notice 70:20 117:5,17	offer 18:20 19:3,5,7,9 75:4,9,17,21,24 76:3,7 77:12,17 79:3 88:18 89:23 111:20	orders 129:20	party 13:2 18:10 41:19 42:11 46:10 53:21 63:4 94:19 153:13, 15	
notifications 70:15	offered 102:3	ordinarily 81:17,18 105:19	pass 13:12 18:3 33:19 35:4 53:14 104:3 112:14 122:15 123:11 125:1 128:5	
notwithstanding 35:23 40:21		original 92:7 168:16		
November 51:19 52:3,20,22 54:13,14 60:6 130:10 131:2		out-of-pocket 96:8		
number 4:3 8:14 21:5 25:13,15 31:6 37:23 43:5 49:3,4 68:23 69:2,15 78:13 89:4,14,15 120:3 130:4 134:18 139:16 143:20 153:1 158:12		outfit 28:10		
numbered 80:19 158:9		outlining 90:15		
numbers 19:25 94:1,3		owed 84:10		

162:5 164:2,25 165:25 people 7:19,22 48:14 54:21 60:17 79:22 81:21 82:18 105:20 120:9 134:7 138:6 percent 14:9,11,13 45:21, 23 101:10 150:24 151:18 152:12 percentage 101:5 percentages 101:14 perfect 46:25 perfecting 47:3 period 16:24 22:7 57:9 60:15 100:2,14 120:17 134:12,14, 16 160:9 periods 29:18 person 48:22 56:25 78:10 84:15 86:13 101:9 140:7 personal 9:7 136:21 138:8 personally 65:23 119:22 phone 49:24,25 55:13 photographs 16:22 phrase 44:24 physical 29:22 36:16 physicians 100:17,23 pick 84:5 place 130:16 plaintiff 13:1 15:1 62:22 63:5 165:19 plaintiff's 122:25 126:5	Plaintiffs' 122:9 plan 30:18 31:5,8 planner 30:18 planning 30:17 32:4 plans 28:5 29:8 80:9 Platt 67:16 play 13:2 23:1,23 24:21 58:1 103:20 129:14 played 24:3 96:25 100:7 playing 22:13 23:11 25:7, 17,19 89:6 91:2 94:18 plea 9:1 pleadings 5:8,11 43:16 46:6 47:1,3 50:5 66:9 113:16 pleas 8:15 9:3 pledge 40:24 plenty 65:8 132:8 plug 48:17 point 3:21 34:22 39:4 68:2 70:23 83:8 85:11 107:2 108:16 111:4 117:22 120:15 121:22 129:15 131:22 points 77:18 police 16:24 policy 40:14,18 41:7,20, 23 42:24 44:21 45:10,19 poor 7:22	portion 14:3,8 position 113:24 137:15 possession 107:16 possibly 137:3 postaccident 107:19 postage 82:8 power 26:24 practice 3:11 7:9,17,19 9:18 practiced 41:24 practicing 7:13 102:16 preaccident 107:19 predicate 83:2 127:19 146:10 preexisting 36:7 94:23 preference 105:16 prep 67:5 prepare 5:2 125:9,11 prepared 43:23 76:11 121:15 122:1 125:23 126:4 135:4 preparing 5:15,19 presented 13:16 32:13,25 president 134:10 pressure 38:19 pretty 12:25 33:25 51:18 52:9 66:13 75:3,20 84:7,8 87:4 151:21 163:6 previous 36:5 48:16	price 26:25 88:4 primarily 20:1 printed 135:19 Prioleau 32:8 33:23 34:8, 12,17 35:1,9 prior 6:8 66:20 83:12 88:25 134:5 137:11 privilege 98:24 privileged 73:2 96:24 problem 25:18 42:16 problems 73:3 95:16 procedural 5:13 procedure 57:14 163:7,12 168:16 proceeding 46:12 proceedings 104:16 proceeds 42:12 83:15 process 46:5,18,19,20 47:12 48:23 49:21 50:2,24 51:4,14 53:4,11 54:18,20 55:2 56:19 57:9 61:2,6 62:3 66:6, 10 77:23 81:16 82:17 113:15 119:19,24 122:25 133:23 134:6 136:15 137:3 138:5 142:14 processing 135:13,18 produced 80:6 111:16 135:7, 9 product 98:18,24 production 65:11 122:2,5 125:17	professor 30:23 promised 84:11,16 141:11 proof 54:18 60:23 proper 62:23 63:5 164:14 165:20 properly 64:21 154:5,21 156:7 proposed 134:11 135:5 prospect 90:17 prospective 12:8,14 protect 111:18 121:12 127:21 protected 64:24 prove 28:16 provide 113:14 119:21,22 121:21,22 126:11 provided 107:14 113:8 123:5,6 125:15,16 providers 66:17 67:8,15 providing 80:8 provision 152:12,13 provocative 115:1 proximately 27:3 Public 168:13 puffed 95:25 puffing 73:4,6 pull 32:21 pure 49:6 purely 39:18

purpose 35:19,20 107:9 121:9 pursuant 44:5,7 168:16 pursue 46:13 pursued 152:1 pursuing 46:3 pushed 134:21 pushing 38:23 put 23:12,13 41:4 59:17 61:11 73:1 81:23 98:6 111:8 133:8 putting 38:19 132:22	R raised 163:2 ran 58:22 59:23 range 8:22 157:17 rarely 75:4 rate 109:9 ratings 22:4 raw 56:13 re-served 155:2 reach 100:16 reached 38:6 98:14 99:5 reaching 140:21,23 read 18:25 22:17 28:20 36:13 61:25 62:19 63:2 69:11 112:20, 22 126:23 139:15, 25 140:16 148:24 164:11 166:3 167:7 168:14	38:25 40:15,18 72:3,12 86:7 reasoning 97:4 recall 11:14,19,23 45:25 68:11 73:5,20 88:5,17 92:22 96:22 97:19,25 98:5 103:6 104:1, 6,8,11 122:6 124:15 146:25 receipt 43:15,16 60:25 receive 54:2,20 119:4 received 10:14 54:5,9,14,19 55:9 56:1 61:2 62:15 75:1 87:11 113:6 118:9,12 137:10 144:12,20 155:8 156:6 160:6 161:15 162:8 receiving 54:18 70:15 recently 128:7 recess 65:5 118:18 149:23 reciting 131:3 recollection 97:10 102:11 119:17 157:12,13 recommendation 94:7 102:7 recommendations 106:1 record 3:8 32:5,12 65:7 68:23 69:12 74:22 81:10 82:23 117:22,25 124:16 126:7,16 127:25 140:16 149:25 150:6 record's 133:3 records 67:17,23 80:9 81:3 82:11 101:1,2 107:15 111:8,12 113:14 120:8 122:24	recover 84:1 95:1,10 96:8 121:1 recovered 81:12 reduce 76:7 reference 14:2 162:16 referenced 112:24 142:12 references 25:16 26:5 119:8 referring 53:11 111:12 143:1 144:13 reflection 18:1 reframe 161:10 regimes 36:14 rehabilitation 29:9 rehabilitations 100:18 reimburse 83:23 reimbursed 83:14 relate 51:21 related 6:5 16:20 36:3,6 143:9 relationship 12:3 15:5 relay 38:25 Release 37:15 relief 164:14 relieved 68:3 89:1 105:17 116:19,20 125:25 129:10 130:10 relieving 116:25 rely 49:8 remember 12:19 21:25 23:2, 4,7,8 31:19 33:25	41:14,16,17 42:17, 18 50:1 51:6,7,15 55:16 56:2 57:1 67:10,25 68:6,8,20 76:2 77:21 78:12, 14 79:11 80:11 89:19 93:14 97:2 105:18,20 108:13 109:14 112:2,6 113:1,5 118:13 119:5 129:4 133:9 135:9 146:3 157:22 remove 32:14 33:10 Repeat 161:6 rephrase 4:9 24:6 28:3 34:6 95:5 replied 97:1 reporter 30:7,9 37:6 167:3 168:2 reports 16:24 represent 9:22 10:2,3 12:17 18:4 20:24 21:3 34:15 52:2,21 67:13 85:14 86:1 103:18 110:1 116:16 126:20 142:4 representation 6:9 7:3 11:22 12:12 16:12 17:12 45:24 86:6,22 106:12 111:5 114:10 115:6 representative 18:13 33:20,23 represented 19:13,14 representing 11:21 108:18 138:5 request 69:17 121:21 requesting 100:25 requests 5:9 65:11 89:8 require 60:22
Q question 4:9 13:3 14:20 23:5,9 24:7,10,13 26:14 40:8 42:14, 20 46:8 52:18 53:10 54:10 80:25 86:24 90:18 91:16 94:24 95:6 97:13, 22 99:2,4,21 100:12,22 110:19 126:9 135:18 137:1 140:15 149:4,6,9 152:6 155:10 160:19 161:10,11 163:25 questions 4:4,6 21:15 37:8, 21 41:1 97:3 112:20 125:7 149:2 150:3 155:25 159:25 160:14 166:1 quick 103:14 155:13 quickly 137:24 163:8 quote 122:24 138:24 144:7	readdress 4:9 reading 30:5,8,11 reads 60:14 ready 24:16 37:20 56:4 86:25 real 55:20 103:14 realization 20:12,13 realized 20:5 reason 36:2 42:1 68:5 70:7 93:11 98:3 151:25 167:9 168:5 reasonable 13:2 19:4,9 20:5	97:10 102:11 119:17 157:12,13 recommendation 94:7 102:7 recommendations 106:1 record 3:8 32:5,12 65:7 68:23 69:12 74:22 81:10 82:23 117:22,25 124:16 126:7,16 127:25 140:16 149:25 150:6 record's 133:3 records 67:17,23 80:9 81:3 82:11 101:1,2 107:15 111:8,12 113:14 120:8 122:24	related 6:5 16:20 36:3,6 143:9 relationship 12:3 15:5 relay 38:25 Release 37:15 relief 164:14 relieved 68:3 89:1 105:17 116:19,20 125:25 129:10 130:10 relieving 116:25 rely 49:8 remember 12:19 21:25 23:2, 4,7,8 31:19 33:25	representation 6:9 7:3 11:22 12:12 16:12 17:12 45:24 86:6,22 106:12 111:5 114:10 115:6 representative 18:13 33:20,23 represented 19:13,14 representing 11:21 108:18 138:5 request 69:17 121:21 requesting 100:25 requests 5:9 65:11 89:8 require 60:22

required 61:15 144:21	163:16	Sarah 18:10 53:19 123:2 154:20 156:7 164:17	separate 36:14 45:4 74:7 125:18	session 78:22
requirement 46:25 47:2,3,5	risks 42:8,23			set 157:18
researched 28:20	Road 47:19	sat 128:24	September 32:16 38:2 40:1,13 58:15 90:5,10 91:10 93:5 103:1 105:11 107:3	settle 16:8 18:20 19:7,23 102:2
residence 57:4	Robert 5:25 19:6 43:17 58:14 90:5 151:17, 20 167:4 168:3	satisfy 62:4	series 4:4	settled 28:5 38:20,24 39:7 45:24 46:10 72:18 85:10 134:17,22 137:23,24 138:3, 22 145:9
resolve 38:7	Robert's 44:17	Save 149:18	serve 46:21 47:4,18 48:22 57:10,15 58:1,13,20,22,23 62:2 122:1,4 142:15 161:8	settlement 15:25 16:1 19:3 32:17,19 37:16 38:16 39:12,17,18 40:2,14,17 41:9 42:19 43:4 66:21 67:6 72:17 73:8 77:4 79:15 81:12 83:2,12,15 87:11 88:19 89:20 99:9 107:12 111:20 145:14
respond 116:8 137:16	role 74:7	saves 91:16 149:15	served 44:7 53:1 55:5 56:15,20,25 60:6, 7,21 61:6 64:5 113:16 119:22 120:4 121:5,6 122:23 142:17 154:5,8,12,21 156:7	settlements 38:25 84:1
response 4:19 53:10 89:13 113:20 116:4 119:13 125:12 140:15 165:7	room 78:24	scenario 79:14	server 46:19 47:12 48:23 50:2 53:4,11 55:2 56:19 61:3 113:16 119:19,24 133:23 134:7 136:16 138:6 142:14	settling 42:24
responses 5:9,16,21 126:5	rooms 74:7	scene 16:21	servers 81:16 137:3	severe 20:9 78:24
responsibility 26:22	Roseneau 117:4 122:8	schedule 68:4 137:20	service 46:5,17 47:15 48:21 49:17,21 51:2,14 52:8 53:8 54:15,18,20 55:8, 13,23,24 56:1,5, 11,12 57:1,4,6,8 58:7 60:23,25 62:3,23,24 63:5,9 66:6,7,10 77:23 104:4,6 106:8 113:3,11,24,25 115:20 117:6 119:16 120:6 121:2,10,11 122:9, 25 133:5,6 136:15, 19,21 137:11 138:9 139:10 143:9,11 153:20 154:1,21 155:5 156:5 160:15 162:12 165:20	severely 102:13
responsible 94:20	roster 68:10,17 69:18,21 70:11,13 129:18	scheduled 65:15 135:1		shape 62:7
restate 18:23	round 22:19 24:21 25:23	scribbled 132:24		share 152:18
rests 132:9	Rubner 66:23	scroll 105:3 130:3		sheet 43:6,11 44:8
result 92:3 95:11,23	rule 57:13,14,20,24 60:14,18,24 61:15 114:24 165:20	search 48:14 113:14 119:15		ship 90:1
retail 94:3	rules 3:14 57:3,16 58:1 60:22 98:20,23 115:5 142:18 163:11 168:16	searched 113:7 156:8		Shissias 66:22 101:3 109:11
return 167:5 168:15	ruling 141:3	season 69:19		short 87:17 146:14
returned 62:3	running 146:9	secretary 44:9 54:15		shortly 16:2 75:13
Reuben 66:23,24 68:4 80:7 101:3 109:12		section 151:12 158:15,21 163:4,11		show 10:7 17:19 60:18 68:13 80:16 104:3, 13 105:6 126:16 147:16
review 5:8 66:9		sections 143:1		showed 95:15 128:22
reviewed 5:18		segments 99:24		
rewind 106:25		sell 25:2		
ribs 39:3		send 34:12 134:11		
ride 97:5		sending 51:25		
riding 25:20		senior 110:11		
right-hand 129:25		sentence 18:25 36:13 90:23 91:5,20 102:1 112:25 113:7 153:8 158:16 159:2 161:6		
rights			serving 11:16 48:3 50:24 55:20 82:18	
	S			
	S.C. 163:10			
	sailed 90:1			
	salt 76:6			
	Sam 114:7 116:9 119:1 124:10 128:22,23 138:20 145:8			
	Samuel 118:19			

showing 4:4 104:5 107:24 108:4 shows 108:21 side 5:13 93:8 137:8 sides 39:15 129:9 sign 14:23 127:11 166:3 168:14 signature 13:19 27:20 35:11, 15 64:11 71:9,17 105:5 106:2 122:19 167:1,5 168:1,15 signed 12:10,15,23 13:17 34:4,5 43:16 106:9 123:13,14 125:4,5 129:15,17,20 135:2 significant 82:4,5 silently 30:11 Silverthorn 28:10 Similar 74:14 simply 47:24 63:10 79:2 134:7 single 20:21 sir 8:2,16 54:24 69:24 94:24 96:1 104:25 143:13 sit 29:18 115:8 situation 79:19 96:21 129:21 skilled 98:7 skills 24:8 skip 69:14 122:12 slash 56:22	slate 83:18 sleep 19:19 sleeping 19:18 slim 162:10 slow 20:13 52:13 slower 11:6 small 79:3 108:22 smoke 136:4 smoking 136:6 smoothly 115:16 social 25:21 Sonya 17:3 18:16 27:12 sort 51:12 66:11 sought 122:23 soul 133:16 South 3:11 7:9,12,17 30:22 44:7 168:13 southern 49:7 spasms 24:3 speaking 141:2 specialist 29:9 specific 12:5 44:6 154:20 162:23 specifically 12:19 28:13 160:8 specifics 112:4 speculate 8:24 11:12 speed 35:22 80:22	spend 81:9 spent 81:11 82:3 83:12, 20 Spokeo 48:14 stand 91:15 standard 13:22 14:21 151:7 standards 28:20 standing 3:12 start 75:5 155:15 162:2 started 3:6 17:18 20:16 39:1 74:9 75:11 starting 72:20 73:6 83:17 state 3:7 39:11 44:9 47:22 48:11 49:18 54:15 55:8 161:21 168:13 stated 22:9 96:3,15 statement 41:14,16 71:11 72:11 73:18 121:20 122:22 136:14 140:17 142:22 statements 20:23 22:2 35:23 71:23 98:2 109:19 states 13:13 68:15 113:2 163:18 stating 61:5 80:7 93:15 statute 15:18 53:22 58:8, 9,21,22 63:15,20 64:14,23 78:3 148:24 149:7 162:11 163:15 statutes 15:11 44:5,6 stay 79:22 104:16 stayed 127:14	staying 85:22 step 48:20,22 49:17 115:20 122:12 stick 41:12 stood 135:2 stop 4:22 17:1 145:14 stopped 120:23 story 49:9 street 7:19 strike 151:17,22 strike-out 150:24 struck 152:15 style 68:24 styled 125:2,165:12 subject 69:6 submit 73:18 submitted 116:17 123:25 124:11 144:8 145:1 subpoena 67:17 122:2,9,18, 23 substance 4:11 5:2 10:24 73:11 142:24 substitute 103:4 105:16 substituting 116:18 substitution 103:19 116:22 117:2 126:24 129:12 subsumed 15:6 successful 85:18	suffered 22:15 24:13 suffering 35:24 95:19,22 sufficient 40:2,14 suggest 18:18 suggested 160:15 161:20 suggesting 32:21 suit 120:18 sum 22:16 27:3 summarize 101:23 summary 97:7,9,10 107:22 128:11 summer 16:16 20:17 26:2 85:8 88:11 89:9,18 102:12 summons 43:7,13 44:8 51:24 57:15 58:2 64:4 122:25 Sun 47:19 supplement 67:3 support 101:10 148:14 149:7 supposed 73:2 surgeries 36:3 surgery 36:4 surprised 87:9 surrounding 91:21 swing 25:22 switch 34:10 127:4 sworn 3:2 system 59:6

systems 120:16	90:3 156:15 158:22	139:13,16 146:6 150:7 160:18 165:14	160:9 162:9,15 163:6	transfer 69:17,21 70:12
T	tend 101:10	thinking 49:5 51:19 55:17	time-stamped 54:4	transferred 68:16
table 128:24	tendered 45:14,17	thirty 168:16	timely 15:15 60:21	transferring 115:9
taciturn 78:10	terminate 114:10	Thomas 37:22 69:7 79:19 84:9 114:25 150:23 155:11,21 167:3 168:2,13,24	times 16:23 23:10 25:13, 16,22 27:7 28:9,12 29:21 43:5 50:17 60:18 84:3 88:4 89:4,7 120:9,10, 12,20	transition 115:15
takes 129:19	terminating 115:6	thought 10:4 16:3 20:14 24:16 71:13 73:7 75:3,22 81:4 91:23 115:24 116:1 131:15 143:11 145:15 146:6,7,10, 15 151:16 162:8	title 13:14	transpired 65:5 118:18 149:23
taking 16:22 45:23 120:23 130:15	terms 15:4 51:22 76:18 79:13 161:16 165:13	thoughts 22:1 31:24	today 4:4,15,20,24 5:3,6 43:21 44:2 94:7 128:9 132:11	travel 22:21
talk 27:8 32:1,4 79:13 91:14 93:13 95:22 105:19,20 110:16 140:7 149:20	Terry 65:19,21,22 70:25 71:6 76:24,25 78:9,14,23 156:16	thousand 38:18 40:18 41:7 162:3	told 20:4 21:21 25:13, 15,25 29:21 38:20, 23 39:22 43:1 48:2 61:14 72:7 77:8,9 88:2,7,22 89:4,6, 19,20 97:4 102:12 108:13 114:5 132:4,17 134:20 137:5 138:6 139:8, 18 144:7 145:8,20	treated 39:6 66:17
talked 11:2,13 19:22 23:10 50:2 51:25 87:14 88:3 93:9 102:8 109:12 114:6,7 120:12 134:9,10 138:20 146:20 150:23	testified 3:2 61:1 62:14 92:19 158:1 161:1	thousands 137:3	tolls 58:8	treating 82:1
talking 20:8 31:7 36:4 50:23 52:14 57:18 69:10,25 70:2 92:1,12,24 95:18, 20,21,24 96:1 119:20 121:17 127:17 128:19 130:8,23 131:15 133:4 140:14,19 143:14 144:25 147:20 160:9 162:24	testify 29:23	three-year 15:18 60:15	tomorrow 132:11	treatments 11:10 30:2 36:12, 24 80:23 99:25 100:16
talks 90:23 91:5	testimony 4:12 31:4 71:18 72:22 75:14,20 84:25 86:5 92:22 94:7 95:8 97:8 99:6 101:22 102:21 111:1 116:2 134:5 135:4 157:23 160:5,20 161:14,19 165:11, 14 167:8	thrown 7:23 84:19 120:10 135:23	Tom 106:3 159:15	trial 8:10 23:15 24:8,11 28:6,16 29:5,7,23 30:19,22 31:13,17, 18,19 41:16 68:10 69:18,21 70:12 78:16 87:1 90:18 93:7,10 95:25 102:22 108:16 110:20 152:2
tasks 26:23	that'll 104:19 149:22	till 143:19	topic 70:23	trick 40:25 41:3
TD 6:18,20,21 7:4	therapist 29:23	time 3:22 6:16 7:15,22 12:22 13:24 15:19 16:24 17:15 19:9, 17 20:5,6 21:2,3, 16 25:8 26:5 29:18 38:6,18,21 39:21 49:7,10 50:18 54:19 55:9 56:2,23 57:8,9,14 58:1,8,9, 16 59:1 60:8,15 64:23 66:3 70:17 72:4 76:17 77:2,7, 14,18 85:1 88:7 89:18 99:24 100:2, 14 102:12 103:19 106:17 108:17 111:4 114:8 120:5, 17,19,20,22 125:25 126:14 131:22 134:13,15, 16 137:2 144:5 146:14 147:10 149:18 150:3	top 52:14 93:16 157:18	trigger 54:11 118:14
tears 27:8	thereabout 83:11	transcript 4:24 127:25 128:4, 8 129:24 130:1 131:8,21 132:3 138:15 141:25 142:4,23 166:3 168:16	total 108:4	triggered 78:13 155:4 165:16
telephone 102:8 112:23 120:14	thing 25:21 36:18 40:4 48:15 79:18 97:4 127:5 129:9 133:18 134:24 141:5 148:19 151:15	transcription 167:8	trail 33:17	triggers 70:18
telling 23:7 26:21 28:15 40:1,7,9 78:23 99:17 111:17	things 3:14 11:11 12:1, 11,16 15:11 16:19 17:6 22:4 27:9 61:12 65:12 72:8 78:13 81:3 82:23 86:14 121:17 128:18 134:17		transcription 167:8	Trisha 92:15 167:3 168:2, 13,24
ten 8:9 60:25 87:12				trouble 151:13
				truck 7:23
				true 27:24 93:22 167:7
				trustworthy 86:12
				truthful 39:22
				turn 44:12

turned 152:2 turning 101:19 type 4:7 48:15 typical 11:25 typically 16:3 93:6,9 100:25 U uh-huh 3:16 12:9 14:1,5 19:2 22:11,21 23:18,20 27:19 29:3 30:3 31:14 33:18 35:16,25 37:5 40:12 43:12 45:3 46:14 51:5 52:5 53:5,24 55:3 56:14 60:1 61:4 62:12,17,20 63:19 64:13 65:2,18,20 67:19 70:9 71:7,20 72:10 76:20 80:1 82:14,16 83:10 84:14 85:12 86:3 90:11,25 95:7 97:16 100:5 101:6, 24 106:15 107:17 108:3,6 110:14,22, 24 111:21 112:22 113:9 117:14 119:2,10 122:21 126:25 128:14 129:11 130:5,12 131:10,13,24 133:21,24 134:1 136:23 137:13 144:2,10 148:10 150:19 157:19 160:4,17 161:17 UIM 39:4,20 43:2,4,5 ultimately 116:17 unadulterated 49:6 unanswered 23:9 underinsurance 42:1,3 72:19 91:12 underinsured 41:20,22 42:10,11 44:15,22 45:11 46:4,13 47:1	153:11 163:16 164:20 underlying 83:2 undersigned 167:6 understand 4:16 8:20 17:25 46:7 47:17,20 54:16 58:11 78:19 82:10 91:4,9,19 147:13 155:14 165:11,15 understanding 17:6 76:10 81:1 82:12 86:20 93:2 98:25 101:20 116:1 153:12 161:18 understood 24:7 55:7 84:25 93:3 unfair 165:4 University 30:22 unreasonable 72:23 73:5 unspecific 154:14 untoward 133:10 update 67:9 V valued 158:17 values 108:24 varied 29:19 vehicle 11:7 verbal 4:18 verbally 168:14 verbatim 10:23 verge 27:8 versus 43:20 46:16 69:13	visited 16:22 visiting 19:11 vocation 29:9 100:17 W wages 28:6,9,12 99:21 100:2,8 101:11 wait 105:2 145:8 155:20 waited 56:2 waive 166:4 walks 22:19 wanted 19:22,23,24 28:12 39:19 50:8,13 81:6 87:5 91:11 99:18 110:25 137:20 140:3 149:5 washing 26:24 ways 65:11 126:8 week 55:12 62:13 weeks 51:17 56:3 weird 53:19 whatsoever 42:1 94:6 wherefore 45:1 74:14 163:17 164:5,8,12,22,23 who'd 115:12 wife 6:10 11:21 72:15 78:23 win 87:3,18 window 26:24 winning 85:19 wiped	135:25 Wise 17:3 18:16 27:12, 17 34:11 withdraw 103:5,21,25 104:7 withdrawal 104:15 Witt 47:12 48:2 49:13 51:16 53:12 132:21 Witt's 132:24 woman 56:20,23 85:21 won 39:13 84:18 wondered 146:8 Wood 31:1,3,12,25 32:1 Wood's 31:15 word 108:2 135:13,18 words 64:20 work 27:1 29:11,16 84:10 88:1 98:17, 24 100:19,21,24 101:15 120:9 worked 6:15 87:13 100:10 101:12 129:4 workers' 101:17 working 107:11 worried 120:18 worry 55:19 77:2 160:23 worth 102:23 112:8 wrap 149:21 wreck 63:17 write 21:9 81:14 writing 20:22 22:2 23:12,	14 68:24 168:15 written 86:18 93:21 99:8 103:12 141:11 wrongful 31:22 wrote 18:9,12 22:3,6,8 27:25 35:6 77:9 89:14 100:23 Y year 6:4 17:18 19:12 27:5 28:21 66:11 69:19 70:3 90:24 years 22:7 24:3 31:18 41:24 58:10,15 78:10 83:4 100:7 102:17 128:23 158:22 yesterday 125:17 York 47:22 48:11 49:18 50:10 55:8 61:3 119:24 133:5 134:7 135:1 137:7 138:6 142:14 young 85:21 86:21 87:22 88:1 125:20,21 Z Zeller 49:25 Zeller-wood 50:7,24 51:13,22 53:12 55:1 82:17 134:6,10 137:2 138:6 Zeller-woods 54:21 Zellner-wood 50:1 55:11 81:18 119:20 154:25 zeros 129:24

CONTINGENCY FEE AGREEMENT

I, Robert E. Feldman, herein after referred to as "Client" do hereby employ
And retain Mr. Gary Coggin, Attorney at Law "Attorney", to represent Client as legal counsel for all
Purposes in connection with Client's claim for damages resultant from
AUTO MOTOCYCLE ACCIDENT

1. Client agrees to pay all reasonable expenses of the attorney in the case.
2. Should the client terminate this agreement prior to final conclusion, the attorney has the right to be reimbursed of all costs and hourly fees up to the date of termination.
3. CLIENT AGREES THAT THE ATTORNEY HAS MADE NO PROMISES OR GRARANTEES REGARDING THE OUTCOME OF THIS CASE.
4. Client does hereby bind his heirs successors, assigns, executors and legal representatives to this agreement.
5. At his discretion, attorney may associate another attorney(s) of his choosing in this matter at no additional cost to client or any member of client's family.
6. This contract between attorney and client is solely for attorney's services in obtaining a settlement. Contingency to attorney is as follows: 33-1/3% if settled before a complaint is filed; 35% if a complaint is filed; 40% if there is an appeal. *Ref*
7. After completion of the professional services, the attorney agrees to keep Client's files for a period of three (3) years, after which time, the file may be destroyed by attorney.
8. Client will keep attorney informed at all times of client's address and telephone number(s).

I have read this contract and agree to its terms and conditions. There are no other agreements, oral or otherwise between client and the attorney. Any modification to this agreement shall be made in writing and signed by both the client and the attorney.

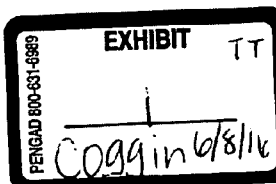
Signed this day

10/13/2010

Client's signature

Robert E. Feldman

Attorney's signature

Gary Coggin

Gary Coggin
Attorney at Law
P.O. Box 7092
Hilton Head Island, SC 29938

843.689.7777
Admitted to practice SC & IL

843.689.7779
gcitylaw@aol.com

July 5, 2011

Sonya Wise
Claims Representative
Allstate Insurance
P.O. Box 660626
Dallas, TX 75266

Re: Robert Feldman v. Sarah Dickenson
Claim No.: 0178662803
Date Accident: October 9, 2010

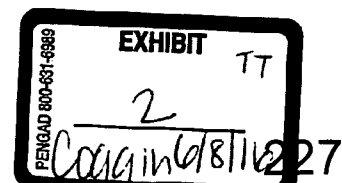
Dear Ms. Wise:

As you are aware from previous correspondence, I am the attorney for Mr. Robert Feldman. And, as you are further aware, on October 9, 2010, Mr. Feldman was seriously and permanently injured in an automobile accident caused by your insured in Bluffton, South Carolina.

Since the time of this accident, Mr. Feldman has been under continuous medical care for 5th, 6th and 9th rib fractures and excruciating and chronic pain to his lower back. Most recently, to alleviate this latter described pain condition, Mr. Feldman has followed a regime of physical therapy and endured a series of lower back epidural injections from Dr. Reuben, a local spinal orthopedist. Unfortunately, neither the exercise nor the injections have abated the pain experienced by Mr. Feldman and, at this writing, he has been seeing neurologist, Dr. Shissias who has been aggressively treating the above mentioned symptoms.

To date, due to the negligence of your insured, Bob Feldman has accrued nearly \$10,000 in medical bills. It is likely that many more thousands will be spent in treatment and medications before Mr. Feldman returns, if ever, to the state of health he enjoyed prior to the accident of October 9, 2010.

In addition, Bob Feldman has experienced other losses following this accident. For example, due to his condition, Bob can no longer assume to responsibilities of home maintenance. Those tasks of landscaping, gardening, power washing, window cleaning and garbage disposal are now handled by others – at a price. In addition, he is no longer able to work in his once thriving business as a mortgage broker. In sum, those non-



medical losses proximately caused by the negligence of your insured continue to accrue and are now easily more than \$70,000 per year.

In sum, Mr. Feldman has already suffered greatly and, more than likely, will continue to suffer in many ways into the future. If, for example, we look beyond those medical bills and financial losses set forth immediately above, we can see that Bob's condition has far exceeded the physical and financial. Indeed, he has lost all enjoyment of life! He can no longer enjoy a round of golf, take walks, drive or travel any great distance, sit down for drinks and a meal with friends or enjoy time with his wife.

Pain and discomfort rule his life. All else is secondary.

I am enclosing copies of the Mr. Feldman's medical bills to date. Please review these and consider the financial losses and loss of enjoyment of life that I have touched upon. I think you will agree with me that, an offer of settlement for damages of \$1,550,000 is very reasonable.

At your convenience, please contact me. I would like to begin discussions re the settlement of this claim.

Sincerely,



Gary Coggin

Copy: Robert Feldman ✓
Enclosures

GPC/cab

Gary Coggin
Attorney at Law
P.O. Box 7092
Hilton Head Island, SC 29938

843.689.7777t
gcitylaw@aol.com

843.689.7779f
Admitted to practice SC & IL

October 10, 2011

Sonya Wise
Claims Representative
Allstate Insurance
P.O. Box 660626
Dallas, TX 75266

Re: Robert Feldman v. Sarah Dickenson
Claim No.: 0178662803
Date Accident: October 9, 2010

Dear Ms. Wise:

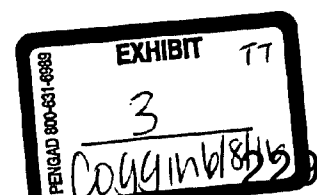
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Since the time of this accident, Mr. Feldman has been under continuous medical care for 5th, 6th and 9th rib fractures and excruciating and chronic pain to his lower back. (Review the Atlantic Radiology MRI on page 77 herein to see condition of the Lumbar back).

Most recently, to alleviate this latter described pain condition, Mr. Feldman has followed a regime of physical therapy and endured a series of lower back epidural injections from Dr. Reuben, a local spinal orthopedist. Unfortunately, neither the exercise nor the injections have abated the pain experienced by Mr. Feldman and, at this writing, he has been seeing neurologist, Dr. Shissias who has been aggressively treating the above mentioned symptoms.

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maintenance. Those tasks of landscaping, gardening, power washing, window cleaning and garbage disposal are now handled by others – at a price. In addition, he is no longer able to work in his once thriving business as a mortgage broker.* In sum, those non-medical losses proximately caused by the negligence of your insured continue to accrue and are now easily more than \$70,000 per year.

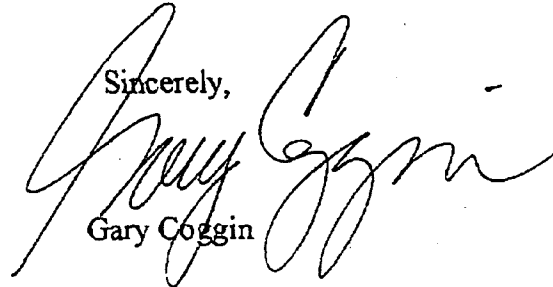
In sum, Mr. Feldman has already suffered greatly and, more than likely, will continue to suffer in many ways into the future. If, for example, we look beyond those medical bills and financial losses set forth immediately above, we can see that Bob's condition has far exceeded the physical and financial. Indeed, he has lost all enjoyment of life! He can no longer enjoy a round of golf, take walks, drive or travel any great distance, sit down for drinks and a meal with friends or enjoy time with his wife.

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At your convenience, please contact me. I would like to begin discussions re the settlement of this claim.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gary Coggin", written in dark ink.

Gary Coggin

Copy: Robert Feldman
Enclosures

GPC/cab

*According to the United States Bureau of Labor Statistics, in South Carolina a mortgage broker can expect an average salary of \$55,850 per year as of 2009. More than likely, considering Mr. Feldman's condition, it may be at least two (2) more years before he will be able to work on a fulltime basis. By that time, he will have lost over \$200,000 of income.

Gary Coggin

Attorney at Law
P.O. Box 7092
Hilton Head Island, SC 29938

843.689.7777t
gcitylaw@aol.com

843.689.7779f
Admitted to practice SC & IL

October 17, 2011

Alton Prioleau
Claims Representative
Allstate Insurance Company
P.O. Box 7068
Columbia, SC 29202

Re: Robert Feldman v. Sarah Dickenson
Claim No.: 0179662803
Date Accident: October 9, 2010

Dear Mr. Prioleau:

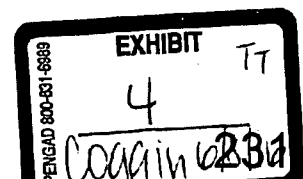
As you are aware from previous correspondence and telephone discussions, I am the attorney for Mr. Robert Feldman. And, as you are further aware, on October 9, 2010, Mr. Feldman was seriously and permanently injured in an automobile accident caused by your insured in Bluffton, South Carolina.

Since the time of this accident, Mr. Feldman has been under continuous medical care for 5th, 6th and 9th rib fractures and excruciating and chronic pain to his lower back. (Review the Atlantic Radiology MRI on page 77 herein to see condition of the Lumbar back).

Most recently, to alleviate this latter described pain condition, Mr. Feldman has followed a regime of physical therapy and endured a series of lower back epidural injections from Dr. Reuben, a local spinal orthopedist. Unfortunately, neither the exercise nor the injections have abated the pain experienced by Mr. Feldman and, at this writing, he has been seeing neurologist, Dr. Shissias who has been aggressively treating the above mentioned symptoms.

To date, due to the negligence of your insured, Bob Feldman has accrued nearly \$10,000 in medical bills. It is likely that many more thousands will be spent in treatment and medications before Mr. Feldman returns, if ever, to the state of health he enjoyed prior to the accident of October 9, 2010.

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At your convenience, please contact me. I would like to begin discussions re the settlement of this claim.

Sincerely,

Gary Coggin

Copy: Robert Feldman
Enclosures

GPC/cab

*According to the United States Bureau of Labor Statistics, in South Carolina a mortgage broker can expect an average salary of \$55,850 per year as of 2009. More than likely, considering Mr. Feldman's condition, it may be at least two (2) more years before he will be able to work on a fulltime basis. By that time, he will have lost over \$200,000 of income.

Gary Coggin

Attorney at Law

P.O. Box 7092

Hilton Head Island, SC 29938

843.689.7777t

gcitylaw@aol.com

October 24, 2011

843.689.7779f

Admitted to practice SC & IL

Alton Prioleau
Claims Representative
Allstate Insurance
P.O. Box 7068
Columbia, SC 29202

Re: Robert E. Feldman v. Sarah Dickinson

Date Loss: October 9, 2010

Claim Number: 01979662803 NSS

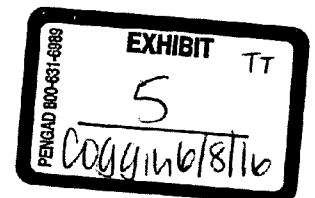
Dear Mr. Prioleau:

17966203 *claw*

Per our discussion this morning, I have reviewed the Claimant's submission to you and concluded that the following was not sent to you:

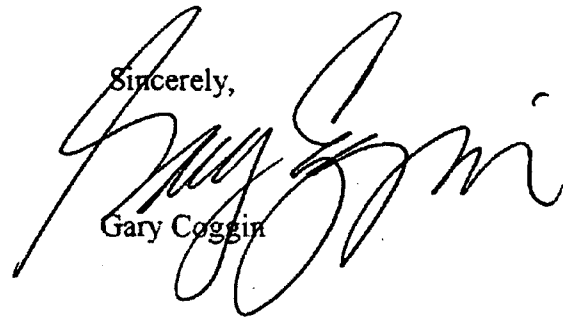
1. A bill in the amount of \$720 from Charles G. Shissias, MD. While Dr. Shissias is part of the LowCountry Group, it appears that he billed out separately to you. I have included this in the instant fax and will include the same bill in a separate mailing to you.
2. The total for medical bills is \$15,941.88. I have included that itemization with this fax.
3. Not included are the documents for the Select Physical Therapy Group. Please note here that there are two (2) separate regimes of physical therapy for the Claimant. The first, January 25, 2011 to March 29, 2011, attaches directly to the matter at hand; the second May 29, 2008 to July 3, 2008 was a recoupment from lumbar surgery. was in connection with a back surgery March 28, 2008. There are a number of documents here and I will send them by mail.

Please contact me if there is anything else you require to evaluate this claim.



Sincerely,

Gary Coggin

A handwritten signature in black ink, appearing to read 'Gary Coggin', written over the printed name.

GPC/cab

STATE OF SOUTH CAROLINA}
COUNTY OF BEAUFORT}

RELEASE, COVENANT NOT TO
EXECUTE AND SETTLEMENT AGREEMENT

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the undersigned, ROBERT FELDMAN, in consideration of the sum of \$85,000 Dollars and 0 Cents paid to ROBERT FELDMAN, the receipt of which sums are hereby acknowledged, do hereby release and forever discharge SARA DICKINSON, the Allstate Property and Casualty Insurance Company, their agents, servants, employees, heirs, executors, administrators and assigns, none of whom admit any liability to the undersigned, but all expressly deny any liability from any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever, which ROBERT FELDMAN may have against SARA DICKINSON on account of the accident on October 09, 2010 at or near hwy 278, Bluffton, SC.

This release is not intended to and does not release any claims that the undersigned may have for underinsured motorist coverage through the underinsured motorist provision of any policy which by statute or policy definition the undersigned qualifies as an insured. The undersigned expressly reserves the right to prosecute legal actions in tort against the releasees solely for the purpose of establishing a claim for underinsured motorist benefits under any automobile policy applicable to the undersigned. For the consideration cited above, the undersigned specifically agrees and covenants never to attempt to collect any sum from the released parties and agrees and covenants never to seek to execute any judgment obtained against the releasees and will not seek to collect any such judgment out of the personal or real assets of the releasees.

If any judgment is obtained against the releasees, the undersigned agrees to seek to collect such judgment from the underinsured motorist carrier. The undersigned further agrees and covenants that if a verdict is returned against the releasees, the undersigned will move the Court to order that the judgment be entered against the underinsured motorist carrier and not the releasees in an appropriate amount. If the judgment is entered against the releasees, or either of them, it is specifically agreed and covenanted that the undersigned and their attorney will mark the judgment paid and satisfied as soon as is legally practical without making any effort to collect any amount from the releasees.

The undersigned warrants that no other persons or entities have any rights or interest in the undersigned's claim or claims against SARA DICKINSON by assignment, subrogation, or otherwise, and that no person has asserted any such claims and that no assignment or grant or subrogation of the undersigned's claim or claims against SARA DICKINSON will be made that will result in assignment or subrogation of any claims that the undersigned may have against SARA DICKINSON, or any other party on account of any alleged fault or liability of SARA DICKINSON in connection with the injuries sustained by ROBERT FELDMAN, or growing out of the aforesaid collision, and the undersigned further agrees to protect, save, defend and hold harmless SARA DICKINSON and the Allstate Property and Casualty Insurance Company, there from and will indemnify SARA DICKINSON and the Allstate Property and Casualty Insurance Company, for any expenses incurred in connections therewith.

The undersigned understands and further agrees that this agreement shall constitute a release of any lien upon property that may otherwise arise by reason of entry of a judgment against the releasees, and that the Clerk of Court of any county in whose office such judgment is enrolled is authorized and directed to note the release of all such liens. The undersigned will file such certification with the appropriated Clerk of Court or do such other things as may be necessary to effectuate such release of all liens.

By entering this agreement, SARA DICKINSON and the Allstate Property and Casualty Insurance Company, do not make any representation as to the effect of this agreement on the undersigned's claim for underinsured motorist benefits and the undersigned and their attorney expressly acknowledge this disclaimer.

The undersigned expressly represents and warrants that he has consulted with his attorney and understands the effect of the things herein agreed to and that no statements or representations made by any of the persons, firms or corporations released herein nor his agents or representatives have influenced him or induced him to execute and deliver this release.

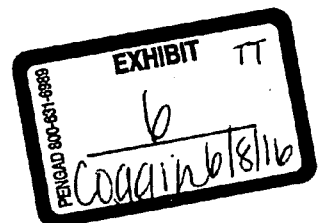
It is further understood and agreed that the payment of the above said amount is not to be construed as an admission of liability on the part of the persons, firms and corporations released, liability by them being expressed denied.

I have read the foregoing, Covenant Not To Execute and Settlement Agreement and understand it to be a binding agreement.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 18th day of September, 2012

WITNESS:

[Signature] (SEAL)
[Signature] (SEAL)



STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

ROBERT FELDMAN & LOIS FELDMAN

Plaintiff(s)

vs.

SARAH DICKENSON

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012-CP-07-

3800

SC Bar #: 10758

Telephone #: 843.689.7777

Fax #: 843.689.7779

Other:

E-mail: gcitylaw@aol.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20____-CP-_____ ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☒ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☒ Other (399) Loss Consortium	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstatement License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of-State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature:

Date: 10/22/2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

RECEIVED NOV 07 2012

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

ROBERT FELDMAN & LOIS
FELDMAN,)

Plaintiffs,)

v.)

SARAH DICKENSON,)

Defendant.)

COURT OF COMMON PLEAS

CASE NO. 2012-CP-07-

3800

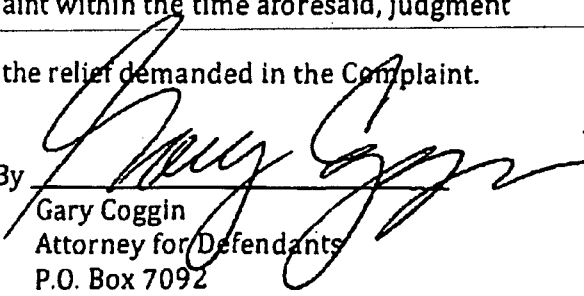
SUMMONS

12 OCT 29 PM 3:22
CLERK OF COURT
BEAUFORT COUNTY, SC.

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer on the subscriber at their offices at P.O Box 7092, Hilton Head Island, SC 29938 within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

By


Gary Coggin
Attorney for Defendants
P.O. Box 7092
Hilton Head Island, SC 29938

October 22 2012

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
ROBERT FELDMAN & LOIS)
FELDMAN,)
Plaintiffs,)
v.)
SARAH DICKENSON,)
Defendant.)

COURT OF COMMON PLEAS

CASE NO. 2012-CP-07- 3800

COMPLAINT
(Jury Trial Demanded)

12 OCT 29 PM 3:22
CLERK OF COURT
BEAUFORT COUNTY, S.C.

The Plaintiff above named would show unto this Court:

1. The parties and subject matter herein contained are within the jurisdiction of this Honorable Court.
2. The Plaintiff and Defendant are residents of the County of Beaufort, State of South Carolina.
3. At the times hereinafter mentioned, the Plaintiff is informed and believes that the Defendant owned and maintained a 2003 Honda sedan bearing South Carolina 2011 license plate number CYJ-754, which at said time and place was being operated by the Defendant.
4. At the times hereinafter mentioned, the Plaintiff was the owner and operator of a 2006 Chrysler SUV, license plate number BXE545.

1.

For a First Cause of Action
(Negligence)

5. On October 9, 2010 at approximately 3:20 p.m., the Plaintiff was traveling East on US-278 in his 2006 Chrysler SUV. He entered the intersection of US-278 and

Buck Island Road on a green light when suddenly, without warning, the Defendant's vehicle suddenly accelerated and made a left turn from the US-278 Westbound into the intersection and directly into the path of the Plaintiff's vehicle. The Plaintiff attempted to take evasive action so as to avoid the Defendant's speeding vehicle but was struck with great force and violence in the left front side of his vehicle, demolishing it and causing it to careen off the right side of the road before coming to a rest in a shallow ditch. The Defendant's vehicle then hit a second vehicle stopped at the red light on Buck Island before coming a stop off the left side of the road.

6. The force of these consecutive crashes experienced by the Plaintiff, i.e. first being struck by the Defendant and then crashing to a stop in the ditch, inflicted great injuries to his person, as more particularly hereinafter set forth in the following particulars:

- a) Operating her motor vehicle at a rate of speed which was excessive for the circumstances then prevailing;
- b) In failing to keep a proper look out;
- c) In failing to maintain proper control over the motor vehicle;
- d) In failing to take advantage of any last clear chance to avoid striking Plaintiff's vehicle when the Defendant saw, or should have seen, the Plaintiff's vehicle in the roadway;
- e) In failing to observe traffic signals and passing through a traffic light;
- f) In failing to take any evasive action, by any means, to keep from striking the Plaintiff's vehicle;
- g) In colliding with the Plaintiff's vehicle;
- h) In failing to properly observe the road and traffic conditions;

- i) In failing to exercise that degree of care which a reasonable and prudent person would have exercised under the same and similar circumstances;
- j) In failing to reduce the speed of her motor vehicle upon approaching a place where she saw, or should have seen, the Plaintiff's vehicle passing into the intersection.
- k) In violating the laws, statutes, and ordinances of the state of South Carolina.

7. That as the direct and proximate result of the aforesaid negligent and careless acts or omissions of the Defendant, the Plaintiff:

- a) Was struck by Defendant's motor vehicle;
- b) Was and continues to be painfully injured;
- c) Was subjected to the administration of medications;
- d) Was and continues to be subjected to pain, mental anguish, suffering, and discomfort over a period of time
- e) Suffered three (3) broken ribs;
- f) Suffered painful and continuous injury to his lower back;
- g) Was and continues to be subjected to painful medical procedures;
- h) Suffered the total destruction of his personal property, to wit: a 2006 Chrysler SUV.
- i) Suffered and continues to suffer interruption to sleep.

2.

For a Second Cause of Action
(Loss of Consortium A.C. Code Ann. Section 15-75-29)

8. The Plaintiffs incorporate by reference all the above paragraphs as though fully set forth herein.

9. At the time of the accident complained of herein, the Plaintiffs were married and continue to be married.

10. That as a result of the wrongful and negligent acts of the Defendants, and each of the Plaintiffs were caused to suffer, and will continue to suffer in the future, loss of consortium, loss of society, affection, assistance, and conjugal fellowship, all to the detriment of their marital relationship.

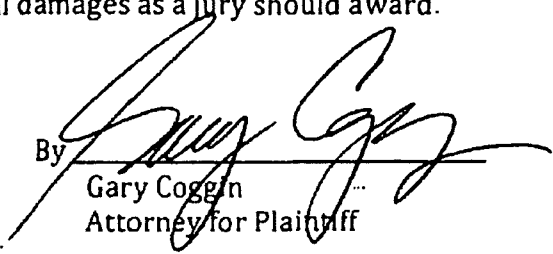
11. That all the aforesaid injuries and damages were caused solely and proximately by the negligence of the Defendant.

Wherefore, on the First Cause of Action of Negligence, Plaintiff demands judgment against the Defendant in the amount of THREE HUNDRED THOUSAND DOLLARS (\$300,000) for actual damages, including the cost for this action and attorney's fees, and other damages this Honorable Court deems appropriate

WHEREFORE, on the Second Cause of Action of Loss of Consortium, the Plaintiffs as husband and wife, demand judgment against the Defendant, in the amount of TWO HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS (\$225,000), plus costs, prejudgment interest, post judgment interest, and any other costs as this Honorable Court should award.

Plaintiff is entitled to actual damages as a jury should award.

By


Gary Coggan
Attorney for Plaintiff

October 22 2012

CERTIFIED MAIL

STATE OF SOUTH CAROLINA
DEPARTMENT OF INSURANCE
P.O. BOX 100105
COLUMBIA, S.C. 29202-3105



91 7199 9991 7031 5332 7955



U.S. POSTAGE PITNEY BOWES
ZIP 29201 \$005.20⁰
02 1W
0001369055 NOV 29 2012

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

SERVICE OF PROCESS

Liberty Mutual Fire Ins Co
c/o CSC
1703 Laurel St
Columbia, SC 29207



STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

ROBERT FELDMAN & LOIS
FELDMAN,)

Plaintiffs,)

v.)

SARAH DICKENSON,)

Defendant.)

IN THE COURT OF COMMON PLEAS

Docket No.: 2012-CP-07-3800

ANSWER

(Jury Trial Demanded)

13 JUN 11 7 PM 4:26
BEAUFORT COUNTY S.C.
CLERK OF COURT

Liberty Mutual Insurance Company, as the alleged underinsured motorist carrier under S.C. Code Ann. § 38-77-160, answers the Complaint as follows:

FOR A FIRST DEFENSE

1. Except as specifically admitted, qualified, or explained, Liberty denies the allegations in the Complaint and demands strict proof thereof.

2. Paragraph 1 is a statement of law to be determined by the court.

3. Upon information and belief, Liberty admits Paragraphs 2 through 4.

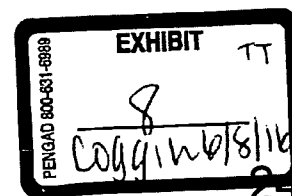
4. Liberty lacks sufficient information to form a belief as to Paragraphs 5 through 7. Therefore, Liberty denies those allegations and demands strict proof thereof.

5. Paragraph 8 does not require a response.

6. Liberty lacks sufficient information to form a belief as to Paragraphs 9 through 11. Therefore, Liberty denies those Paragraphs and demands strict proof thereof.

FOR A SECOND DEFENSE
(Comparative Negligence)

7. FURTHER ANSWERING, this party alleges any injury and damage sustained was caused by the negligence or willfulness of Plaintiff, combining, concurring, and contributing with the negligence or willfulness, if any, on the party of this party. Because Plaintiff's negligence or willfulness is greater than the alleged



negligence or willfulness of this party, Plaintiff is barred from recovery against this party.

FOR A THIRD DEFENSE
(Comparative Negligence)

8. FURTHER ANSWERING, this party alleges any injury and damage sustained by Plaintiff was caused by the negligence or willfulness of Plaintiff, combining, concurring, and contributing with the negligence or willfulness, if any, on the party of this party. Therefore, the Court should reduce any recovery awarded to Plaintiff for the alleged injuries and damage based upon the percentage of negligence or willfulness attributed to Plaintiff.

FOR A FOURTH DEFENSE
(Statutory Defense)

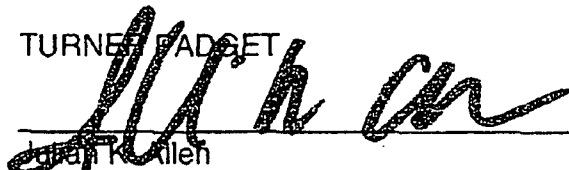
9. FURTHER ANSWERING, this party reserves and asserts all rights under S.C. Code Ann. § 15-38-15.

FOR A FIFTH DEFENSE
(Improper Service)

10. FURTHER ANSWERING, this party alleges that Plaintiff has failed to effectuate proper service under Rule 12(b)(4) and Rule 12(b)(5).

WHEREFORE, having answered, Defendant asks this Court to dismiss the Complaint and grant such relief as the Court deems just and proper.

TURNER PADGET



Julia K. Allen
Post Office Box 22129
Charleston, South Carolina 29413-2129
Direct: (843) 579-8305
Fax: (843) 577-1661
JAllen@TurnerPadget.com

Charleston, South Carolina

January 4, 2013

ATTORNEYS FOR LIBERTY MUTUAL
INSURANCE COMPANY

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

ROBERT FELDMAN & LOIS
FELDMAN,)

Plaintiffs,)

v.)

SARAH DICKENSON,)

Defendant.)

IN THE COURT OF COMMON PLEAS

Docket No.: 2012-CP-07-3800

CERTIFICATE OF SERVICE

13 JAN -7 PM 11:26
BEAUFORT COUNTY, S.C.
CLERK OF COURT

I hereby certify that on this 14 day of January, 2013 a copy of the above and foregoing **Liberty Mutual Insurance Company's Answer to Plaintiff's Complaint, Interrogatories and Request for Production to Plaintiff** has been mailed to all counsel of record, postage prepaid and properly addressed as follows:

Gary Coggin
Post Office Box 7092
Hilton Head, SC 29938
Attorneys for Plaintiff

Deborah Buck
Deborah Buck

Coggin Law Office

P.O. Box 7092
Hilton Head, SC 29938
Phone: 843-689-7777
Fax: 843-689-7779
Email: gcitylaw@aol.com

May 5, 2014

Terry Finger
Finger & Fraser, PA
PO Box 24005
Hilton Head Island, SC 29925

Re: Mediation: Feldman v. Dickenson.

Dear Mr. Finger:

In response to your letter of April 3, 2014 requesting a listing of issues for mediation of the above referenced matter, please see below:

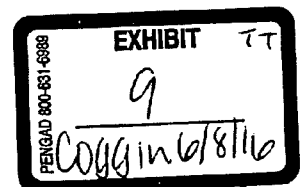
Facts. On October 9, 2010 Robert Feldman (plaintiff) was traveling East on US 278 in Bluffton, South Carolina. He was in the right hand lane and passing on a green light through the intersection at Buck Island Road. At that time Sarah Dickenson (defendant) passed through the intersection on a red light and attempted access Buck Island Road. In doing so, she drove into the plaintiff's path and a crash ensued. Feldman sustained three broken ribs and lower back injuries.

Liability. Liability is not an issue in this case. The plaintiff has received \$90,000 thus far in recompense (\$85,000 Allstate & \$5000 medpay).

UIM. Plaintiff is seeking payment from his UIM. In the complaint filed on his behalf on October 29, 2012 he is requesting an amount of \$300,000 on his first cause of action of negligence. This basis of this demand is as follows:

a. Impairment. Plaintiff has been awarded a full body impairment of 12% by Dr. Reuben pursuant to the South Carolina Code of Laws, 19-1-150 (life expectancy tables), at the time of his injury, plaintiff had a life expectancy of fifteen (15) additional years. By any formula, this impairment should be valued at somewhere around \$100,000.

b. Medicals. Currently the plaintiff receives an epidural injection in his lower back every two (2) months. This is an expense of approximately \$6000 annually. If this is extended ten (10) years, there is an expense of \$60,000.



246

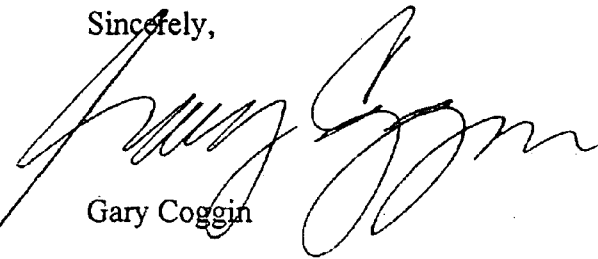
00025

The above amount is \$150,000 to \$180,000. This does not include loss of work, loss of enjoyment of life and pain and suffering. If we would consider this, the demand on UIM is \$300,000 to \$350,000.

The demand for the loss of consortium action is statutory and the amount chosen was based on conversations with the plaintiffs and intended to be in line with the impairment.

If you have any questions with any of the above, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Coggin", written over the printed name.

Gary Coggin

GPC/cab

Coggin Law Office

P.O. Box 7092
Hilton Head, SC 29938
Phone: 843-689-7777
Fax: 843-689-7779
Email: gcorylaw@aol.com

September 15, 2014

Robert Feldman
55 Crescent Plantation
Bluffton, SC 29910

Re: Robert Feldman & Lois Feldman v. Sarah Dickenson
Case No.: 2012-CP-07-542

Dear Mr. Feldman:

I have spent a great deal of time over this past weekend considering our disagreements over the past year re the above referenced case. Unfortunately, it has become apparent to me that I will not be able to meet your expectations in this matter.

I would like you to understand that, given the circumstances surrounding your injuries, not to mention your refusal to fund the depositions and other expenses necessary to moving this case to trial, I have accomplished all that I can on your behalf. You have already received \$90,000 (\$85,000 BI and \$5000 MedPay) and have been offered an additional \$25,000 from your underinsurer (UIM). I believe this UIM offer to be fair and equitable and, as part of the total, more than will be awarded in a jury trial.

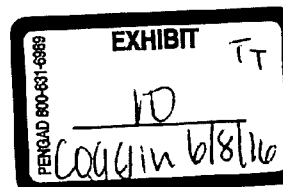
With this said, please be on notice that I am drafting a motion to the Court to be relieved as counsel. I will post to you a stamped and filed copy of the same as soon as is feasible. In the interim, I advise you to settle matter at hand for the \$25,000 that has been offered.

On the other hand, if you wish to continue, I ask that you immediately seek other counsel. Perhaps another attorney will see something in this case that I have missed. However, please remember to advise any future attorney that this is a UIM claim and that he must protect both my contingency on the \$25,000 UIM offer and also my unreimbursed expenses.

Sincerely,

Gary Coggin

GPC/cab



248

00020

Coggin Law Office

P.O. Box 7092
Hilton Head, SC 29938
Phone: 843-889-7777
Fax: 843-889-7779
Email: gcitylaw@aol.com

Via US Mail & Fax 843.725.8579

May 21, 2014

Julian Allen
Turner Padgett Graham & Laney, PA
PO Box 22129
Charleston, SC29413-2129

Re: Robert Feldman v. Sarah Dickenson
Case No. 2012-CP-07-542

Dear Mr. Allen:

Per our discussions re the above referenced case, I am enclosing the medical Billing records for Mr. Feldman's care and treatment by Dr. Jeffrey Reuben during the period 02/05/2008 through 04/10/2014. The complete records are twenty-two (22) pages in length.

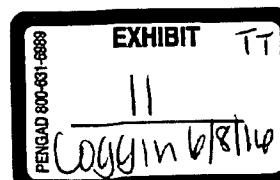
To help you understand the billing, please note the following: a) each service date is marked in orange; b) the total charge all services that date is marked in blue; and c) each individual procedure that goes to make up the total charge is marked in yellow.

In addition, I have divided the bills into two sections: the period before the accident with Sarah Dickenson on October 21, 2010 and the period beginning immediately after the accident.

During the period before the accident, Mr. Feldman's medical bills for treatment and procedures to his back were \$141,236. During this period of time, he had two (2) epidural injections. The first was 02/11/2008 and the second was a month later in 03/03/2008.

Following the accident with Ms. Dickenson, in the period 10/21/2010 through 04/10/2014, the total billings for medical services is \$47,450. In this period of time, approximately forty (40) months, Mr. Feldman has had sixteen (16) epidural injections, Averaging one every 2 ½ months. According to Mr. Feldman, the injections will continue at this rate for the foreseeable future.

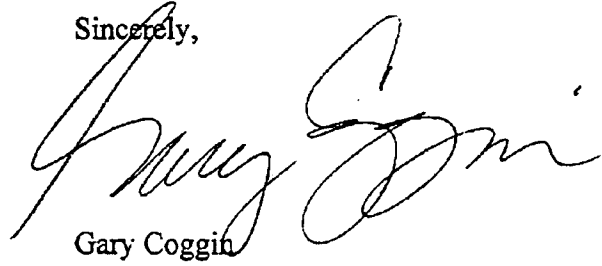
With this said, I am enclosing an unmarked copy for your use. Please discuss this matter the carrier and get back to me at your convenience.



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00027

Sincerely,

A handwritten signature in cursive script, appearing to read "Gary Coggin".

Gary Coggin

Copy: Robert Feldman
Enclosure

GPC/cab

SAMUEL C. BAUER

ROBERT S. METRO


BAUER & METRO P.C.

October 7, 2014
VIA FACSIMILE, US & ELECTRONIC MAIL

Gary Patrick Coggin
COGGIN LAW OFFICE
PO Box 7092
Hilton Head Island, SC 29938
Fax: 689-7779
Email: gcitylaw@aol.com

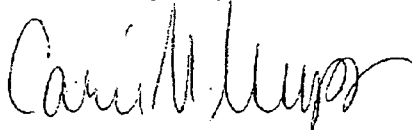
RE: Robert Feldman v. Sarah Dickenson
2012-CP-07-3800

Dear Gary:

This is to confirm your telephone conversation of yesterday, October 6, 2014, with Mr. Bauer. We have searched the file you provided and cannot locate the Affidavit of Service for the named Defendant. I would appreciate it if you would search your records and provide a copy of the Affidavit or the name of the process server who served the pleadings to Defendant.

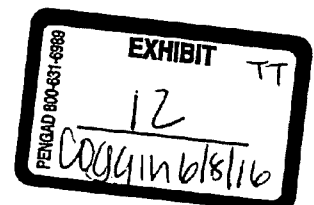
Thank you in advance for your anticipated cooperation on this matter.

Yours very truly,



Carrie M. Murphy
Litigation Paralegal

/cmm



TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

Julian K. Allen

Direct Dial: 843-579-8305

Direct Fax: 843-577-1661

jallen@turnerpadget.com

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

October 8, 2014

Honorable Jerri Ann Roseneau
Beaufort County Clerk of Court
Post Office Box 1128
Beaufort, SC 29901-1128

Re: Robert Feldman & Lois Feldman v. Sarah Dickenson

Docket No.: 2012-CP-07-3800

Claim No.: 016443929-05

TP File No.: 01464.06788

Dear Madam Clerk,

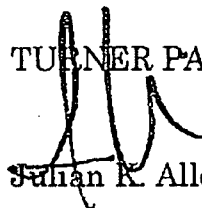
I have enclosed the original and one copy of Defendant's Notice and Motion to Dismiss, along with a motion slip and filing fee, in the above-referenced action. Please file the original and return a filed copy to me in the enclosed self-addressed, stamped envelope.

By copy of this correspondence and enclosures, we are hereby serving opposing counsel with the same. If you have any questions or need additional information, please call me at your convenience.

With kind regards, I am

Sincerely,

TURNER PADGET

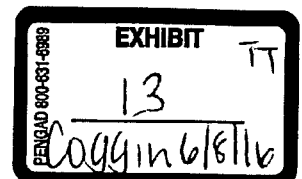


Julian K. Allen

JKA/psd

Enclosure

cc: Gary Coggin (w/enclosure)
✓ Rob Metro (w/enclosure)



BUSINESS • LITIGATION • SOLUTIONS

Gateway Center • Suite 200 • 40 Calhoun Street (29401) • PO Box 22129 • Charleston, SC 29413
Phone (843) 576-2800 • Fax (843) 577-3369 • turnerpadget.com

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT)	Docket No.: 2012-CP-07-3800
ROBERT FELDMAN & LOIS)	
FELDMAN,)	
Plaintiffs,)	LIBERTY MUTUAL INSURANCE
v.)	COMPANY'S NOTICE AND
SARAH DICKENSON,)	MOTION TO DISMISS
Defendant.)	

TO: GARY COGGIN AND ROB METRO ATTORNEYS FOR PLAINTIFF:

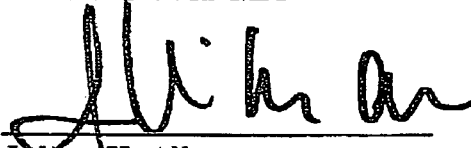
YOU WILL PLEASE TAKE NOTICE that Liberty Mutual Insurance Company will move before the Court as soon as counsel may be heard for an Order dismissing this lawsuit due to Plaintiffs' failure to effectuate proper service under Rule 12(b)(4) and 12(b)(5).

~~This lawsuit arises from a motor vehicle accident on October 9, 2010.~~
 Although Plaintiffs filed a lawsuit within the applicable statute of limitations, Plaintiffs have failed to serve the Defendant within the applicable time period. To date, upon information and belief, the Defendant still has not been served with this lawsuit. Therefore, pursuant to Louden v. Moragne, 327 S.C. 465 (Ct. App. 1997) and other authority, Liberty Mutual requests this Court dismiss the lawsuit with prejudice. Liberty Mutual Insurance Company will rely on deposition transcripts, affidavits, supporting law, and other statutory authority in reliance for this Motion.

[Signature on following page]

Respectfully submitted,

TURNER PADGET

A handwritten signature in black ink, appearing to read "Julian", written over a horizontal line.

Julian K. Allen

P.O. Box 22129

Charleston, South Carolina 29413

Telephone: (843) 579-8305

Fax: (843) 577-1661

E-mail: jallen@turnerpadget.com

October 8, 2014

ATTORNEYS FOR LIBERTY MUTUAL
INSURANCE COMPANY

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

Docket No.: 2012-CP-07-3800

ROBERT FELDMAN & LOIS)
FELDMAN,)

Plaintiffs,)

v.)

SARAH DICKENSON,)

Defendant.)

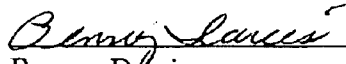
CERTIFICATE OF SERVICE

I, Penny Davis, an employee of Turner, Padgett, Graham & Laney, P.A., hereby certify that I have on October 8, 2014, served a copy of the foregoing Notice and Motion to Dismiss upon counsel of record, by placing same in the United States Mail, postage prepaid to:

Gary Coggin
Post Office Box 7092
Hilton Head, SC 29938

Rob Metro
Bauer & Metro, PC
P. O. Box 7965
Hilton Head Island, SC 29938

Attorneys for Plaintiffs


Penny Davis



SAMUEL C. BAUER

ROBERT S. METRO

BAUER & METRO PC.

October 10, 2014
VIA FACSIMILE & UNITED STATES MAIL

Gary Patrick Coggin
COGGIN LAW OFFICE
PO Box 7092
Hilton Head Island, SC 29938
Fax: 689-7779

RE: Robert Feldman v. Sarah Dickenson
2012-CP-07-3800

Dear Gary:

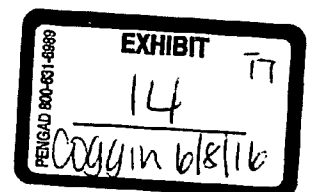
When we last spoke, you indicated that you were going to attempt to locate the Affidavit of Service and/or the check in which you paid the process server in the above-referenced matter. Defendant's counsel has filed a Motion to Dismiss this action based on failure to perfect proper service upon the Defendant, a copy of which is enclosed for your review. Is your recollection of this matter strong enough that you would provide an affidavit that the Defendant was personally served and a copy of the Affidavit Service cannot be located at this time?

Thank you in advance for your anticipated cooperation on this matter.

Yours very truly,

Samuel C. Bauer

/cmm



Coggin Law Office

P.O. Box 7092
Hilton Head, SC 29938
Phone: 843-689-7777
Fax: 843-689-7778
Email: gcogginlaw@aol.com

December 6, 2014

Jeri Roseneau
Clerk of Court Beaufort County
PO Box 1128
Beaufort, SC 29901

Re: Robert Feldman & Lois Feldman v. Sarah Dickenson
Case Number: 2012-CP-07-3800

Dear Ms. Roseneau:

I am enclosing a copy of both Attorney's Objection to Plaintiffs' Subpoena and my Certification of Service by Fax and US Mail.

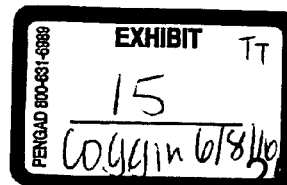
Please time stamp both documents and place them in the file of the above referenced case.

By Copy of this letter, I am serving the same upon Samuel Bauer, Esquire.

Sincerely,

Gary Coggin

Copy: Samuel Bauer
Enclosures



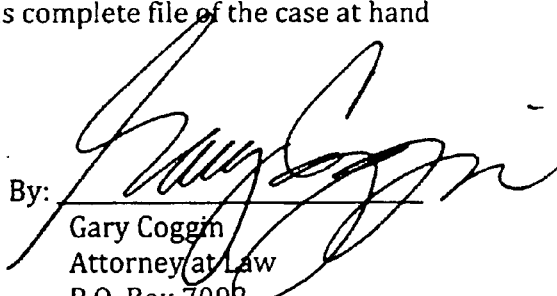
00039

STATE OF SOUTH CAROLINA
BEAUFORT COUNTY
ROBERT FELDMAN & LOIS FELDMAN,
Plaintiffs,
v.
SARAH DICKENSON,
Defendant.

COURT OF COMMON PLEAS
CASE NO. 2012-CP-07-3800

OBJECTION TO PLAINTIFFS'
SUBPOENA

NOW COMES Gary Coggin, formerly attorney to the Plaintiff(s), and pursuant to South Carolina Rules of Civil Procedure Rule 45(c), objects to Plaintiffs' Attorney's subpoena requesting "Copies of any and all records evidencing service of process of Plaintiff's Summons and Complaint in the above captioned matter upon Defendant Sarah Dickenson." Attorney Coggin states that his complete file of the case at hand has been provided to Plaintiffs' Attorneys.

By: 

Gary Coggin
Attorney at Law
P.O. Box 7092
Hilton Head Island, SC 29938

December 6, 2014

STATE OF SOUTH CAROLINA)
)
BEAUFORT COUNTY)
)
ROBERT FELDMAN & LOIS FELDMAN,)
)
Plaintiffs,)
)
v.)
)
SARAH DICKENSON,)
)
Defendant.)

COURT OF COMMON PLEAS

CASE NO. 2012-CP-07-3800

OBJECTION TO PLAINTIFFS'
SUBPOENA

CERTIFICATE OF SERVICE BY FAX AND US MAIL

The undersigned attorney hereby certifies that he has this 6th day of
December, 2014 mailed and faxed a copy of the foregoing Objection to Plaintiffs'
Subpoena to the attorney of record for all other parties in this action by placing the
same properly addressed and numbered in the U.S. Mail and facsimile and sent to
the following:

Samuel Bauer ✓
Bauer & Metro PC
PO Box 7965
Hilton Head Island, SC 29938

843.842.6563 Facsimile

By

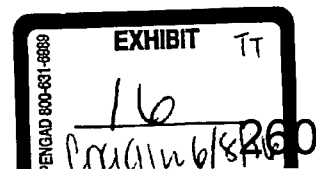
Gary Coggin Law
843.689.7777

Affidavit of Gary Coggin

My name is Gary Coggin. I am over the age of twenty-one years and am in good health. I am an attorney in good standing in the state of South Carolina. In late 2010 I was hired by Robert Feldman to represent him in an action for damages for injuries he sustained in an automobile accident with one Sarah Dickenson. After approximately two years of negotiation I settled the case in a manner favorable to Mr. Feldman. Because Mr. Feldman wished to gain an amount of money from his underinsurance, I, under the laws of South Carolina, drafted a complaint in the matter for service upon both Mr. Feldman's insurer, Liberty Mutual Insurance, and the defendant in the case, Sarah Dickenson.

Service on both Ms. Dickenson and Liberty Mutual Insurance (through the Secretary of Insurance of South Carolina) was accomplished within the following several weeks. In early November, 2012, this attorney charged his process server, Michael Witt, with the service of a summons and complaint in the matter of Feldman v. Dickenson, Case Number 2012-CP-07-3800, upon Sarah H. Dickenson at 116 Doncaster Lane in Bluffton, South Carolina. On November 12, 2012 Mr. Witt appeared at my office and stated that he had been to the Doncaster address and talked to a couple who gave him the information that Ms. Dickenson was no longer at the address and that they did not know her current whereabouts. (Affidavit 1)

This attorney paid Mr. Witt and told him that he would personally track down Ms. Dickenson. (Affidavit 2). After an extensive internet search, Ms. Dickenson was finally located at 58 MacGregor Street in Roslyn Heights, New York. (Exhibit 3) Subsequently, a process server in the area located. (Exhibit 4). On November 16,



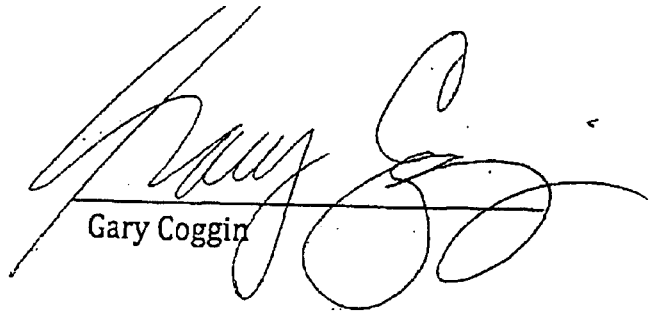
2012 two (2) telephone calls were made to a woman who identified herself as Fran at the Zellner - Wood Process Services Company. (Exhibit 5) The initial call was to determine if, when, and how much it would cost to have process be served on Ms. Dickenson. Attorney was told the cost was \$200 and that Ms. Dickenson would be served immediately upon receipt of payment. The Attorney told Fran that he would send a money order or a cashiers check if that would hasten services.

After ending the first call, Attorney immediately called Zellner - Wood back to make sure he had the correct address. He then went to the North end Hilton Head Island Post Office and purchased a money order. All the materials for service were then sent US Mail, first class, to Zellner - Wood the same afternoon.

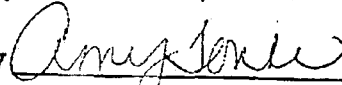
Approximately one week later, Attorney telephoned Zeller - Wood to determine progress re service. He was told that a server had been to the 58 MacGregor address and was told that Sarah Dickenson no longer lived at that address. Attorney was told that another address had been obtained and that service would be made at that location shortly.

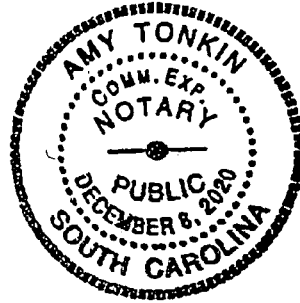
A week or so later, Attorney determined that service had been made upon Ms. Dickenson and that an affidavit of service was forthcoming. Two or three weeks later, an Affidavit of Service arrived. The Affidavit had been served at an unfamiliar address and someone, not Ms. Dickenson, had signed to accept service. Attorney was not surprised by this as he believed that Ms. Dickenson was in some kind of supervised living arrangement.

After reviewing the affidavit of service, Attorney placed it in file of the Feldman case which was subsequently turned over to the Plaintiffs' new attorney.


Gary Coggin

Sworn to before me this 8th
day of December, 2014.

By 
Notary Public for South Carolina
My Commission Expires: 12/08/2020



STATE OF SOUTH CAROLINA

BEAUFORT COUNTY

ROBERT FELDMAN & LOIS FELDMAN,

Plaintiffs,

v.

SARAH DICKENSON,

Defendant.

COURT OF COMMON PLEAS

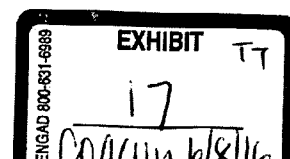
CASE NO. 2012-CP-07-3800

ANSWER TO DEFENDANT'S
12(b)(4) AND 12(b)(5)
MOTION TO DISMISS

FACTS OF THE CASE

On or about October 9, 2010 at approximately 3:20 p.m., Plaintiff Robert Feldman (Plaintiff) was traveling in an easterly direction on US-278 in his 2006 Chrysler SUV. As he entered the Buck Island Intersection on a green light, his vehicle was struck by the Defendant's vehicle which had made a left turn off US-278 westbound into the intersection and directly into the path of Plaintiff's vehicle. The Plaintiff attempted to take evasive action so as to avoid the Defendant's vehicle but was struck with great force and violence on the left front side of his vehicle, causing it to careen off the right side of the road before coming to a stop in a shallow ditch.

Shortly thereafter, Plaintiff hired Attorney Gary Coggin (Attorney) to represent him for his claim for damages for injuries he sustained in the accident. After nearly two years, the Attorney reached a settlement with Allstate Insurance that was agreeable to Plaintiff. A Covenant Not to Execute was signed and then, less than two months after the settlement, an action was filed on behalf of the Plaintiff seeking not only additional compensation from the underinsured motorist (UIM)



provision of his policy for injuries but also a claim for loss of consortium which added Plaintiff's wife as an additional Plaintiff.

A short time thereafter, both the Secretary of Insurance of South Carolina and the tortfeasor were served with process.¹ On January 7, 2013, Liberty Mutual Insurance (Liberty Mutual), the UIM, answered the Complaint on behalf of the Defendant. The Response consisted of four (4) defenses,² the last of which stated the following in a truncated, bare bones manner:

FURTHER ANSWERING, this party alleges that Plaintiff has failed to effectuate proper service under Rule 12(b)(4) and Rule 12(b)(5).

As the lawsuit progressed, Attorney Coggin and Plaintiff Feldman began to dispute the value and conduct of the case. Over the course of the following twenty months, these disagreements became so frequent and disruptive that Attorney Coggin withdrew from the case in late September, 2014. The Plaintiff quickly retained the law firm of Bauer and Metro (Firm) and a transfer of the file of the case was affected. Unfortunately, upon a careful review of the documents therein, the Affidavit of Service of process upon the tortfeasor could not be found by the Firm. Attorney Coggin steadfastly maintained service had been perfected and that he had received an Affidavit of Service of Process and had placed the same with the documents of the case. (Despite the best efforts of the Firm and Coggin, the Affidavit of Service has yet to be located).

While this controversy was playing out, on October 8, 2014 nearly two years

-
1. See attached as **Exhibit 1** a copy of the complaint filed on behalf of the Plaintiffs.
 2. See attached as **Exhibit 2** a copy of Liberty Mutual Insurance Co. answer.

after being served as UIM carrier, Liberty Mutual moved to dismiss the Complaint based on "Plaintiffs' failure to effectuate proper service under Rule 12(b)(4) and Rule 12(b)(5)."³ Here, the Defendant cited Loudon v. Moragne, 327 S.C. 465 (Ct. App. 1997) as authority for the motion.⁴ On December 2, 2014, the Firm and Attorney Coggin received a memorandum document in support of the Motion to Dismiss which was, in effect, a replication of the Loudon v. Marogne rule that the case must be dismissed because of the tolling of the statute of limitations.⁵ Curiously, in putting forth this argument, Liberty Mutual overlooked the fact that two years earlier it had waived the Statute of Limitations defense by failing to plead the same in its response to Plaintiff's complaint.⁶

1. Motion to Dismiss

In its Motion to Dismiss, the Defendant seeks dismissal of the complaint pursuant to Rule 12(b)(4) and Rule 12(b)(5) SCRCP. Although Defendant states that it will rely on deposition transcripts, affidavits, supporting law, and other statutory authority in reliance for the motion (sic.), none of these materials have been produced to Plaintiff.

2. Standard For Dismissal

The party moving for dismissal has the burden of showing there was

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3. Motion to Dismiss attached herein as **Exhibit 3**
 4. Loudon v. Moragne attached herein as **Exhibit 4**.
 5. Memorandum in Support of Liberty Mutual's Motion to Dismiss attached herein as **Exhibit 5**.
 6. See Page 8 for discussion of Defendant's failure to include SOL in Answer.

insufficiency of process and / or insufficiency of service of process. Looking to our state and federal law for guidance, we see that when considering dismissal, all evidence must be viewed in the light most favorable to the Plaintiff. See Choa v. Rivendale Woods, Inc., 415 F.3d342, 346 (4th Cir. 2005). Further, state and federal law asserts that any objection to sufficiency of process and sufficiency of service of process should be specific and point out in what manner the Plaintiff has failed to satisfy the requirements of the service provision he utilizes. Unisun Unsurance v. Hawkins, 342 S.C. 537, 537 S.E.2d 559 (Ct. App.) 2000; Travelers Ins. Co. v. Panama-Williams, Inc.; 424 F. Supp. 1156 (N.D. Okla. 1976), et al.; Photolab Corp. v. Simplex Specialty Co., 806 F.2d 807 (8th Cir. 1993

3. Need for a Supporting Affidavit

The Defendant asserts that this matter should be dismissed based on SCRCP 12(b)(4) and 12(b)(5). This Honorable Court should deny this motion based on the Defendant's failure to file a supporting affidavit with this motion. SCRCP 6(d) states that "[W]hen a motion is to be supported by affidavit, the affidavit shall be served with the motion ..." Defendant's motion seeks dismissal under SCRCP 12(b)(4) and 12(b)(5), a motion that requires a supporting affidavit as to the facts supporting the requested dismissal, namely an affidavit from the tortfeasor stating she was not served with process. While Attorney Coggin attached an affidavit to his filed Memo Opposing Defendant's Motion to Dismiss and provided copies to the Firm and to Liberty Mutual,⁷ no such affidavit has accompanied Liberty Mutual's Motion to Dismiss or its supporting Memorandum. Therefore the Motion should be denied.

7. See Coggin Affidavit as **Exhibit 6**.

ARGUMENT

The Defendant's motion to dismiss fails for the following reasons: 1) the 12(b)(4) and 12 (b)(5) defenses of insufficiency of process and insufficiency of service of process were improperly raised; 2) Defendant did not assert the affirmative defense of Statute of Limitations in her response to Plaintiff's complaint, thereby waiving the defense; 3) the Defendant was properly served.⁶

1) The 12(b)(4) and 12(b)(5) SCRPC defenses of insufficiency of service of process were improperly raised by Defendant's Attorney

In Garner v. Houck, 312 S.C. 481, 435 S.E.2d 847 (1993), the Supreme Court of South Carolina held that a party who fails to properly raise the defense of insufficient service of process under Rule 12(b) waives any issues or defenses regarding service, including a statute of limitations defense. Subsequently, in the case Unison Insurance v. Hawkins, 342 S.C. 537, 537 S.E.2d 559 (Ct. App.) 2000, our Appellate Court referenced the Garner ruling with approval and went on to quote Professor James F. Flanagan's opinion that, "The ... waiver provision affects not only the motion itself but any argument based on the alleged defect." South Carolina Civil Procedure 100 (2nd ed. 1996):

In Unison, for example, our Court held that the Defendant's assertion in its responsive pleading that Plaintiff "failed to serve within the three-year statute of limitations" does not raise the defense of insufficiency of service of process because respondent failed to specify any defects in the service. This opinion was based, at least in part, upon Allan Wright's and Arthur Miller's Federal Civil Practice and Procedure 2d § 1353 (1990) which says, "The objection to insufficiency

of process or its service should point out specifically in what manner plaintiff has failed to satisfy the requirements of the service provision he utilized." Wright and Miller citing Travelers Ins. Co. v. Panama-Williams, Inc., 424 F.Supp.1156 (N.D.Okla.1976).

In the matter at hand, the insurer's attorney merely lists Rules 12(b)(4) & (5) SCRCP in his responsive pleading number four (4). (See Defendants pleadings attached as Exhibit No. 2). In addition to failing to name the defenses, Defendant has also failed to point out any defects, errors, or mistakes in service. Similarly, the Defendant does not state specifically in what manner, or any manner, in which the Plaintiff has failed to satisfy the requirements of the service provision(s) he utilized. Unison at 562. As stated, perhaps, most succinctly by Professor James Flanagan, "Challenges to the method of service of process assert that the service was not accomplished according to the rules or statutes. Any objection under these rules should specify why the rule was not satisfied." South Carolina Civil Procedure, 3rd Edition, p. 100. Under our state and federal common law, it is not sufficient to merely name or list the rule of law. "We will not write into the pleadings allegations and defenses that are not presented." Davis v. Monteith, 289 S.C. 176, 345 S.E.2d 724(1986)

With the exception of Garner and Unisun, our courts have not addressed the "degree of specificity" required by our rules of civil procedure. However, because Rule 12(b)(4) and Rule 12(5) SCRCP are substantially similar to their federal counterparts, in the absence of state law on this question, we can look to federal cases interpreting the rule for guidance. Roberts v. Peterson 292 S.C. 149,

355 S.E. 2d 280 (Ct. App. 1987).

Where federal courts have addressed this question, they have held that objections to the sufficiency of service of process must be specific and must point out in what manner the Plaintiff has failed to satisfy the rule relating to the service provisions utilized. Patterson v. Whitlock, No. 08-2219 (U.S. Ct. App. 4th Circuit) 2010, p. 7. Here, where the Defendant Liberty Mutual only names or numbers a service of process contention in its response, that contention is waived because the Defendant does not explain with specificity where Plaintiff has failed to follow the Rule. See also O'Brien v. R.J. O'Brien & Assocs., 998 F.2d 1394 (7th Cir. 1993) (holding objection to service of process must be specific and must point out in what manner the rules were not satisfied); Photolab Corp. v. Simplex Specialty Co., 806 F.2d 807 (8th Cir. 1986) (same); Sassower v. City of White Plains, 1993 WL 378862 (S.D.N.Y. 1993) (same); King v. Best Western Country Inn, 138 F.R.D. 39 (S.D.N.Y. 1991) (same); White v. Johnson, 151 Ga. App. 345, 259 S.E.2d 731 (1979) (must be specifically pled or is waived); Travelers Ins. Co. v. Panama Williams, Inc., 424 F. Supp. 1156 (N.D. Okla. 1975) cited as stated above at 5A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure Civil 2d § 1353 (1990).

Similarly, it can be argued that where the Defendant named 12(b)(4) & (5) defenses in his answer, he did not at any time seek to amend his answer or develop the same in any kind of reasonably prompt manner. Instead, he waited for nearly two (2) years to file a motion to dismiss. See Datskow v. Teledyne, Inc., 899 F.2d 1298, 1303 (2d Cir. 1990) which concluded that defendant waived its defective service defense by stating it bare bones in his answer, but not developing it until the

motion to dismiss filed four months later.

Pursuant to the principles stated above, the Defendant waived his opportunity to challenge Plaintiff's service of process by doing the following: i) not stating any objections to service of process in his Answer to the underlying Complaint, but only listing the numbers of the rules 12(b)(4) & (5) and failing at any time to point out where the rules of service were not satisfied; ii) waiting for nearly two years before submitting a Rule 12 motion to dismiss which still did not specify how the rules of service were not satisfied – a tactic not only barred by Rule 12(h) but which is also outside the statute of limitations; iii) not seeking at anytime for two years after service to amend its response to Plaintiff's complaint so as to come within the parameters of the rules discussed herein.

2) Because the Defendant failed to raise the affirmative defense of statute of limitations in his answer to Plaintiff's complaint, this defense is waived.

Further to the discussion of sufficiency / insufficiency of service of process in re Feldman v. Dickerson is the fact that Defendant's attorney failed to plead the Rule 8(c) SCRCP affirmative defense of statute of limitations. Here, the general rule under common law, code, and modern pleading practice is that an affirmative defense is not available to the defendant unless it has been affirmatively pleaded. James v. Hazard, Civil Procedure, 3rd ed. 1985, p.201. Similarly, the Supreme Court has stated recently that, "[I]n civil litigation, a statutory time limitation is forfeited if not raised in a defendant's answer or in an amendment thereto." Wood v. Milyard, 132 S.Ct. 1826, 1832 (2012). (quoting Day v. McDounough, 547 U.S. 198, 202 (2006)). Our courts agree. "The failure to plead an affirmative defense is deemed a waiver

of the right to assert it.” Whitehead v. State, 352 S.C. 215, 220, 574 S.E. 2d 200, 202 (2002). “An appellant cannot benefit from an affirmative defense that was never pled.” Earthscapes Unlimited Inc. v. Ulbrich, No. 26903, (2010).

Also, it should be noted here that the statute of limitations is not a defense listed under Rule 12(b). Similarly, it is not listed under any other subdivision of Rule 12. Glenn v. School District No. Five of Anderson County, 294 S.C. 530, 366 S.E.2d 47 (App. Ct. 1988). It would follow then that, having failed to include the affirmative defense of statute of limitations in his response or, subsequently, amend his complaint to include the same, the defendant cannot now attach or boot-strap either of his deficient Rule 12(b) defenses to an unpleaded affirmative defense of statute of limitations. (Besides, the statute of limitations has tolled and precludes any such action).

a. Defendant’s Notice and Motion to Dismiss and Defendant’s Memorandum in Support of Liberty Mutual’s Motion to Dismiss.

In Defendants’ Memorandum in Support of Motion to Dismiss, the Defendant’s attorney states that, “In Liberty Mutual’s Answer to the Complaint, Liberty Mutual asserts *Improper Service* as an affirmative defense.” Obviously, with this argument, made for the first time two (2) years after Defendant’s response to Plaintiff’s Complaint and long after the statute allowing such actions, the Defendant is seeking to preserve his 12(b)(4) and 12(b)(5) objections. This maneuver fails for the following reasons: First, objections to service of process “must be specific and must point out in what manner the plaintiff has failed to

satisfy the requirements of service." Bobo v. Umoh, Order Case No. 06-4110 U.S. Dist. W.D. Ct. Arkansas, 2008 *quoting* Photolab at 810. Next, even if defendant had properly asserted the objection in his answer, which was not done here, his failure to raise the issue by formal motion for nearly years serves as a waiver of the issue. (and, as stated above, is beyond the statute). Umoh citing Herman v.800Ideas .com, 455 F. Supp.2d 942, 959 (Minn. 2006). Finally, this can only be raised where there are no disputed facts and where material outside the pleadings is not required to resolve them. James Flanagan, South Carolina Civil Procedure, p. 70.

b. Waiver of Affirmative Defense

There is little or no application of Louden v. Moragne to the case at hand. Under our rules of procedure, SCRCP 8(c) requires a statute of limitations to be plead as an affirmative defense. Because the Defendant neither pleaded the affirmative defense of statute of limitations in his response to the complaint nor has he, in the two (2) years since the responsive pleading, moved this Court to amend his response to include said defense, he has waived his right to assert the defense. See Glenn v. School District No. 5 of Anderson County, op. cit.; D & D leasing Co. v. Lipson, 305 S.C. 540, 409 S.E.2d 794 (Ct. App. 1991). Said in another way, this forecloses the defendant from asserting the affirmative defense of Statute of Limitations. James F. Flanagan, South Carolina Civil Procedure, p. 210.

Conclusion

Under the common law of both South Carolina and the federal courts, the rules of this case are as follows: a) In order to assert a challenge in defensive

pleadings for SCRCP Rule 12(b)(4) insufficiency of process and or SCRCP Rule 12(b)(5) insufficiency of the service of process "[t]he objection must be specific and must point out in what manner the plaintiff has failed to satisfy the requirements of the service provision utilized." Photolab Corp. v. Simplex Specialty Co. 806 F.2d 807, 810 (8th Cir. 1986), et al. Defendant has not done that here. Having failed to plead his Rule 12(b)(4) and Rule 12(b)(5) objections with any degree of specificity and in failing to point out in what manner the Plaintiff failed to satisfy the applicable procedural statute as required in state and federal law, Defendant's responsive pleading is insufficient and must fail.

Similarly, by neglecting to assert his SCRCP 8(c) affirmative defense of statute of limitations, the Plaintiff has also waived this defense and, as a result, Plaintiff's motion to dismiss must fail.

By _____

January 2, 2014

STATE OF SOUTH CAROLINA

BEAUFORT COUNTY

ROBERT FELDMAN & LOIS FELDMAN,

Plaintiffs,

v.

SARAH DICKENSON,

Defendant.

COURT OF COMMON PLEAS

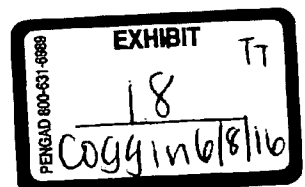
CASE NO. 2012-CP-07-3800

ANSWER TO DEFENDANT'S
12(b)(4) AND 12(b)(5)
MOTION TO DISMISS

FACTS OF CASE

On or about October 9, 2010 at approximately 3:20 p.m., Plaintiff Robert Feldman (Plaintiff) was traveling in an easterly direction on US-278 in his 2006 Chrysler SUV. As he entered the Buck Island Intersection on a green light, his vehicle was struck by the Defendant's vehicle which had made a left turn off US-278 westbound into the intersection and directly into the path of Plaintiff's vehicle. The Plaintiff attempted to take evasive action so as to avoid the Defendant's vehicle but was struck with great force and violence on the left front side of his vehicle, causing it to careen off the right side of the road before coming to a stop in a shallow ditch.

Shortly thereafter, Plaintiff hired Attorney Gary Coggin (Attorney) to represent him for his claim for damages for injuries he sustained in the accident. After nearly two years, the Attorney reached a settlement with Allstate Insurance that was agreeable to Plaintiff. A Covenant Not to Execute was signed and then, less than two months after the settlement, an action was filed on behalf of the Plaintiff seeking not only additional compensation from the underinsured motorist



provision of his policy for injuries but also a claim for loss of consortium which added Plaintiff's wife as and additional Plaintiff (Plaintiff 2).

A few days thereafter, both the Secretary of Insurance of South Carolina and the tortfeasor were served with process. Sometime after these services, the Plaintiff and Attorney began having disagreements as per the value of the Plaintiffs' case. In the ensuing months an offer of settlement was rejected by the Plaintiff, who at the same time refused to pay mounting litigation costs, both past and future.

Subsequently, in September, 2014 Attorney withdrew from the case and Plaintiff immediately hired the law firm of Bauer and Metro. Attorney gave the firm his complete file of the case. In early October, 2014 Attorney received a telephone call from one of the firm's attorneys who said that the firm could not locate the Affidavit of Service on the Defendant. At about the same time, the UIM attorney was made aware of this fact and on or about October 8, 2014, he filed a Notice and Motion to Dismiss the lawsuit under Rules 12(b)(4) and 12(b)(5) of the S.C.R.Civ.P.

ARGUMENT

The Defendant's motion to dismiss fails for the following reasons: 1) the 12(b)(5) defense of insufficiency of service of process was improperly raised; 2) Defendant did not assert the affirmative defense of Statute of Limitation in her response to Plaintiff's complaint, thereby waiving the defense; 3) the Defendant was served.*

*Attorney's position re this matter has never changed. Service upon the Defendant was made in the same time period as service on the Insurer through the Secretary of Insurance. An affidavit verifying service upon the Defendant was sent to the Attorney by the process server on a timely basis. This affidavit was placed in the file of the case which was in turn given to the Plaintiffs' new attorneys.

1) The 12(b)(5) SCRCP defense of insufficiency of service of process was improperly raised.

In Garner v. Houck, 312 S.C. 481, 435 S.E.2d 847 (1993), the Supreme Court of South Carolina held that a party who fails to properly raise the defense of insufficient service of process under the rule waives any issues or defenses regarding service, including a statute of limitations defense. A few years later, in the case Unisun Insurance v. Hawkins, 342 S.C. 537, 537 S.E.2d 559 (Ct. App.) 2000, our Appellate Court referenced the above Garner ruling with approval and went on to quote Professor James F. Flanagan's opinion that, "The ... waiver provision affects not only the motion itself but any argument based on the alleged defect." South Carolina Civil Procedure 100 (2nd ed. 1996):

In Unison, for example, our Court held that the Defendant's assertion in its responsive pleading that Unisun "failed to serve within the three-year statute of limitations" does not raise the defense of insufficiency of service of process because respondent failed to specify any defects in the service. This opinion was based, at least in part, upon Allan Wright's and Arthur Miller's Federal Civil Practice and Procedure 2d § 1353 (1990) which said, "The objection to insufficiency of process or its service should point out specifically in what manner plaintiff has failed to satisfy the requirements of the service provision he utilized." *Citing* Travelers Ins. Co. v. Panama-Williams, Inc., 424 F.Supp.1156 (N.D.Okla.1976).

In the matter instantly at hand, the insurer's attorney merely names the Rule 12(b)(4) & Rule 12(b)(5) defenses of "insufficiency of process" and "insufficiency of service of process." He does not specify defects, errors, mistakes or the manner in which the requirements of service were not satisfied. Under state and federal

common law, this is not sufficient. "We will not write into the pleadings allegations and defenses that are not presented." Davis v. Monteith, 289 S.C. 176, 345 S.E.2d 724(1986)

With the exception of Garner and Unison, our courts have not addressed the "degree of specificity" required by our rules of civil procedure. However, because Rule 12(b)(5) SCRPC is substantially similar to its federal counterpart, in the absence of state law on this question, federal cases interpreting the rule are persuasive. Roberts v. Peterson 292 S.C. 149, 355 S.E. 2d 280 (Ct. App. 1987)

"Where federal courts have addressed this question, they have held that objections to the sufficiency of service of process must be specific and must point out in what manner the Plaintiff has failed to satisfy the rule relating to the service provisions." Unison referencing O'Brien v. R.J. O'Brien & Associates, 998 F.2d 1394 (7th Cir. 1993); (holding objection to service of process must be specific and must point out in what manner the rules were not satisfied); Photolab Corp. v. Simplex Specialty Co., 806 F.2d 807 (8th Cir. 1986) (same); Sassower v. City of White Plains, 1993 WL 378862 (S.D.N.Y. 1993) (same); King v. Best Western Country Inn, 138 F.R.D. 39 (S.D.N.Y. 1991) (same); White v. Johnson, 151 Ga. App. 345, 259 S.E.2d 731 (1979)(must be specifically pled or is waived); Travelers Ins. Co. v. Panama Williams, Inc., 424 F. Supp. 1156 (N.D. Okla. 1975) cited at 5A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure Civil 2d § 1353 (1990).

2) Because the Defendant failed to raise the affirmative defense of statute of limitations in his answer to Plaintiff's complaint, this defense is waived.

Further to the discussion of sufficiency / insufficiency of service of process in

re Feldman v. Dickerson is the fact that Defendant's attorney failed to plead the Rule 8(c) SCRCP affirmative defense of statute of limitations.* Here, the general rule under common law, code, and modern pleading practice is that an affirmative defense is not available to the defendant unless it has been affirmatively pleaded. James v. Hazard, Civil Procedure, 3rd ed. 1985, p.201. Similarly, the Supreme Court has stated recently that, "[I]n civil litigation, a statutory time limitation is forfeited if not raised in a defendant's answer or in an amendment thereto." Wood v. Milyard, 132 S.Ct. 1826, 1832 (2012). (quoting Day v. McDounough, 547 U.S. 198, 202 (2006)). Our courts agree. "The failure to plead an affirmative defense is deemed a waiver the right to assert it." Whitehead v. State, 352 S.C. 215, 220, 574 S.E. 2d 200, 202 (2002). "An appellant cannot benefit from an affirmative defense that was never pled." Earthscapes Unlimited Inc. v. Ulbrich, No. 26903, (2010).

Also, it should be noted here that the statute of limitations is not a defense listed under Rule 12(b). Similarly, it is not listed under any other subdivision of Rule 12. Glenn v. School District No. Five of Anderson County, 294 S.C. 530, 366 S.E.2d 47 (App. Ct. 1988). It would follow then that, having failed to include the affirmative defense of statute of limitations in his response or, subsequently, amend his complaint to include the same, the defendant cannot now attach or boot-strap either of his deficient Rule 12(b) defenses to an unpleaded affirmative defense of statute of limitations.

*Specifically, Rule 8(c) S.C.R.C.P. states that, in responding to a pleading, a party "shall" set forth affirmatively the defenses, i.e. res judicata, statute of frauds, statute of limitations, waiver and other matters constituting an avoidance or affirmative defense. Under the rule, such defenses "shall" be asserted in a party's answer.

a. Defendant's Notice and Motion to Dismiss and Defendant's Memorandum in Support of Liberty Mutual's Motion to Dismiss.

In Defendants' Memorandum in Support of Motion the Defendant's attorney states that, "In Liberty Mutual's Answer to the Complaint, Liberty Mutual asserts *Improper Service* as an affirmative defense." This argument fails for the following. First, what is currently styled by Attorney as "Improper Service" was formerly Defendant's Fifth Defense in his responsive pleadings which simply listed the Rule 12(b)(4) and 12(b)(5) defenses as Defendant's answers to Plaintiff's complaints. These defenses, as already argued above, were improperly raised and must fail on their own for not listing defects, errors, mistakes or the manner in which the requirements of process and / or service were violated. *See discussed above Garner v. Houch, Unisun Insurance v. Hawkins, Photolab Corp. v. Simplex Specialty Co., et al.* It should be obvious here, with this "Improper Service" argument, that Liberty Mutual is attempting to resurrect and restyle its faulty 12(b) defenses and present them as 8(c) affirmative defenses to be raised by a 12(b)(6) motion. Finally, this will not be effective because in this jurisdiction affirmative defenses can only be raised where there are no disputed facts and where material outside the pleadings are not required to resolve them. James Flanagan, South Carolina Civil Procedure, p. 70.

In Defendants' Notice and Motion to Dismiss and then, in his subsequent Memorandum in Support of Motion, attorney cites only Louden v. Moragne 486 S.E. 2d 525 (S.C. App. 1997) for authority. Briefly, Louden v. Moragne is an auto accident case where the injured party brought an action against his underinsurer for damages but failed to serve the Defendant before the applicable statute of limitations expired. Because of the failure to timely serve the dismissal

was granted.

b. Waiver of Affirmative Defense

There is little or no application of Louden v. Moragne to the case at hand. Under our rules of procedure, SCRPC 8(c) requires a statute of limitations to be plead as an affirmative defense. Because the Defendant neither pleaded the affirmative defense of statute of limitations in his response to the complaint nor has he, in the two (2) years since the responsive pleading, moved this Court to amend his response to include said defense, he has waived his right to assert the defense. See Glenn v. School District No. 5 of Anderson County, op. cit.; D & D leasing Co. v. Lipson, 305 S.C. 540, 409 S.E.2d 794 (Ct. App. 1991). Said in another way, this forecloses the defendant from asserting the affirmative defense of Statute of Limitations. James F. Flanagan, South Carolina Civil Procedure, p. 210.

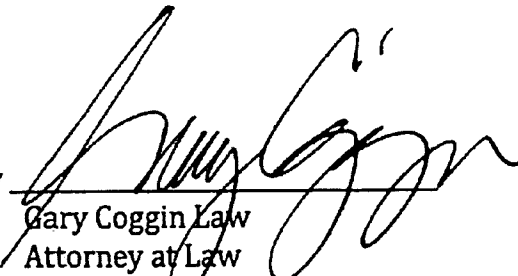
Conclusion

Under the common law of both South Carolina and the federal courts, the rules of this case are as follows. a) In order to assert a challenge in defensive pleadings for SCRPC Rule 12(b)(4) insufficiency of process and or SCRPC Rule 12(b)(5) insufficiency of the service of process "[t]he objection must be specific and must point out in what manner the plaintiff has failed to satisfy the requirements of the service provision utilized." Photolab Corp. v. Simplex Specialty Co. 806 F.2d 807, 810 (8th Cir. 1986), et al. Defendant has not done that here. Having failed to plead his Rule 12(b)(4) and Rule 12(b)(5) objections with any degree of specificity and in failing to point out in what manner the Plaintiff failed to satisfy the applicable

procedural statute as required in state and federal law, Defendant's responsive pleading is insufficient and must fail.

Similarly, by neglecting to assert his SCRCP 8(c) affirmative defense of statute of limitations, the Plaintiff has also waived this defense and, as a result, Plaintiff's motion to dismiss must fail.

By



Gary Coggin Law
Attorney at Law
P.O. Box 7092

Hilton Head Island, South Carolina 209928
(843) 689.7777

December 7, 2014

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	
ROBERT FELDMAN,	)	CASE NO. 2012-CP-07-03800
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	
	)	
SARAH DICKENSON, et al,	)	
	)	
DEFENDANTS.	)	

January 6, 2015

Beaufort, South Carolina

B E F O R E:

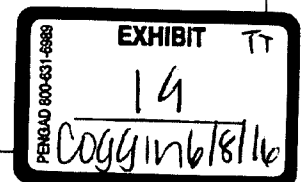
The Honorable J. Ernest Kinard, Jr.

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

Samuel Christopher Bauer, Esquire
For the Plaintiff

Gary P. Coggin, Esquire
For the Plaintiff

Julian Kane Allen, Esquire
For the Defense



Phyllis Norton, CVR-Master, Nationally Certified Verbatim Court Reporter
636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464
PNorton@sccourts.org

I N D E XMOTION HEARING

-- 03

EXHIBITS - None ProfferedCERTIFICATION OF TRANSCRIPT

-- 12

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

1 MR. BAUER: Your Honor, I am Sam Bauer on behalf of the
2 Bauer & Metro Law Firm. We represent the plaintiff in this
3 case and are responding to the defendant underinsured
4 motorist's carrier's motion to dismiss.

5 We took over this case, substituted as counsel for Mr.
6 Coggins (sic), Gary Coggins, who formerly represented the
7 plaintiff. Since the defendant's motion to dismiss touches
8 on a period of time where Mr. Coggins represented the --
9 represented the plaintiff I have asked him if he would like
10 to argue that motion.

11 He agrees that he is in a better position to argue in
12 opposition to that motion than I am, and with the client's
13 permission Mr. Coggins is here and is willing to do that.

14 THE COURT: All right. You are the movant, right?

15 MR. ALLEN: Yes, Your Honor.

16 THE COURT: Okay.

17 MR. ALLEN: Good morning, Judge, Julian Allen on behalf
18 of Liberty Mutual Insurance Company. As Mr. Bauer pointed
19 out, I am the underinsured motorist carrier lawyer from the
20 accident that happened back in October of 2010.

21 A lawsuit was filed October 29, 2012. I filed an
22 answer on behalf of Liberty Mutual as the UIM carrier on
23 January 7th, 2013. The defendant herself has never
24 appeared. She has never given a deposition.

25 My motion to dismiss is based on plaintiff's failure to

1 properly serve the defendant. There is a case on point. It
2 is called Louden versus Moragne. And it stands for the
3 proposition that - and I am quoting: A negligence action is
4 against the at-fault driver, not directly against the
5 insurance company. Service on the at-fault driver is an
6 essential component of the negligence action, thus we hold
7 that the named defendant in action for benefits under a
8 plaintiff's UIM policy must be properly served with the
9 summons and complaint prior to the running of the statute.

10 In this case Rule 3 also requires that a summons and
11 complaint be served within 120 days, and Rule 5 says that
12 proof of that service shall be filed with the court within
13 10 days.

14 There is no proof of service that has ever been filed
15 in this case. So pursuant to all the rules in the case

16 that -- decided I ask that the case be dismissed.

17 A little bit of this motion's hearing. It was actually
18 set before Judge Murphy on December 9th. And at that point
19 Mr. Bauer and Mr. Coggin were in disagreement as to who was
20 going to argue the motion.

21 Mr. Coggin had been relieved of counsel as of I believe
22 November of 2014, so Judge Murphy made a determination that
23 since you are not a counsel of record you are not -- haven't
24 filed notice of appearance, that she was not inclined to
25 hear any argument from Mr. Coggin.

1 That is still our position as well that Mr. Coggin's
2 submissions and arguments should not be considered by the
3 court. But if the court is inclined to hear them, I can
4 address them.

5 Back at the hearing at December 9, 2014, Judge Murphy
6 said all right well if there is a proof of service whoever
7 has got the file find the proof of service and give it to
8 Mr. Allen or file it with the court. That has not been
9 done. What I did receive after the hearing was an affidavit
10 from Mr. Coggin himself.

11 And as to the service issue it is basically I hired a
12 process server up in New Jersey or New York to serve the
13 defendant. I think I got the affidavit, but I don't have
14 it. I don't know who was actually served or where they were
15 served. So under the rules I don't think that meets the
16 standard of service and ask that the court dismiss the
17 lawsuit. Thank you.

18 MR. COGGIN: Judge, good morning. I think at our
19 advanced ages it is always happy to see one another.

20 Your Honor, I think Mr. -- what Mr. Allen says is
21 partially correct. In his citations of Louden versus
22 Moragne I want to go on record as saying this Louden versus
23 Moragne actually depends on the case of -- or of statute of
24 limitations, the Rule 8(C), Motion for Statute of
25 Limitations.

1 If you look in Mr. -- in Mr. Allen's answer, responsive
2 pleadings, you will see he did not plead a statute of
3 limitations. And by all jurisdictions, in all jurisdictions
4 and all dicta, if you don't plead it you don't use it.

5 That was 22 months ago. In the 22 months since that
6 time Mr. Allen has not brought a motion to amend. And in
7 that period of time we have had exhaustive discovery.
8 We have probably exchanged 15 or 20 telephone calls, of
9 dozens of letters. And at no time did that come up at
10 all.

11 The fact of the matter is he did not include the
12 statute of limitations in his responsive pleadings. He is
13 foreclosed from using that.

14 Now, Your Honor, there are three different reasons that
15 the plaintiffs believe that Mr. Allen's motion to dismiss
16 will fail. The first is that he pleads Rule 12(b)4 and Rule
17 12(b)5, defenses of insufficiency of process and defenses in
18 insufficiency of service. The defendant in these cases in
19 his responsive pleadings improperly raised these defenses.
20 And for that reason they should be denied.

21 In the case of Houck verse - Garner versus Houck in
22 South Carolina in 1993 our Supreme Court said that where a
23 party fails to properly raise the defense of insufficient
24 service of process under Rule 12 he waives any issues or
25 defenses regarding service.

1 That was echoed in the case of Unisun versus Hawkins,
2 a 2000 case where in 2000 our Appellate Court referenced
3 Garner ruling with approval and went on to say the objection
4 to insufficiency of process or its service should point
5 out specifically in what manner plaintiff has failed to
6 satisfy the requirements of the service provision he
7 utilized.

8 If you look at defense number five you will see in Mr.
9 Allen's pleadings you see that Mr. Allen only listed
10 generically the defenses. He put down Rule 12(b)4. He put
11 down rule 12(b)5. Nothing more. And for that reason
12 because they were inappropriately raised and the defenses
13 were not explained as required by state law, that should
14 fail.

15 Now you can look further and beyond state law. You
16 can look to federal law on these things. And our federal
17 counterparts have established Rule 12(b). That has been
18 copied by the state. And where the state copies these
19 laws we can look to the federal cases for guidance as
20 persuasive.

21 Our federal courts when they have looked at this and
22 held the objections to sufficiency of proces- -- service of
23 process must be specific and must point out in what manner
24 the plaintiff has failed to satisfy the rule relating to the
25 service provisions utilized. And that's under Patterson

1 versus Whitlock.

2 In the case the UIM carrier, Liberty Mutual, only names
3 or numbers a service of process. And when he only numbers
4 that and fails to point out the defect or fails to point out
5 in what manner the plaintiff failed to satisfy the rules of
6 service of process, he has failed in that. The mere
7 rendering or the mere generic listing of a defense does not
8 make it a defense.

9 In this case the court is very specific in federal law
10 and state law as to what has to be done. And I can list an
11 exhaustive list of cases in federal court which actually say
12 that.

13 Similarly, Your Honor, it can be argued that where the
14 defendant generically listed Rule 12(b)4 and Rule 12(b)5 he
15 had 22 months in which to come before the court and amend
16 that.

17 In that period of time, as I said before, we had
18 exhaustive relations between one another to the point that I
19 actually like Mr. Allen. And the fact of the matter was at
20 no time did Mr. Allen ever say to me I need to amend this
21 complaint to comply with the laws.

22 In addition to that, Your Honor, as I stated in Mr.
23 Allen's responsive pleadings, he did not anywhere list a
24 statute of limitations defense. And for him then to come up
25 with Loudon versus Moragne, a case that is based and turns

1 on the statute of limitations, is just simply wrong.

2 He has and he knows very well he has to plead that
3 defense affirmatively under 8(c). That was not done. And
4 in that 22 months since the time he filed his responsive
5 pleadings he did not at any time come to me and say I have
6 to amend this complaint - which I would have given him - I
7 have to amend this complaint to include a statute of
8 limitations defense. So that also fails.

9 Now, Your Honor, the final thing is as to the service
10 of process, Your Honor; I did not think. I received an
11 answer to the affidavit, and I will fall on my knees in
12 front of this court and tell the court that I was wrong in
13 that I did not -- I think it is Rule 4, not Rule 5. I did
14 not file it with the court. My mistake. My mistake also I
15 didn't make 15 or 20 copies. Again, my mistake.

16 All I did was I put it with the papers of the case.
17 The papers of the case went over to Mr. Bauer & Mitro's
18 firm. And I am not going to blame them. Because I had it.
19 And in this case here it was served.

20 Now we have asked Mr. Allen several times as to the
21 location of the defendant. And that is Ms. Dickenson. She
22 is actually in a home in Bristol -- called the Bristol. It
23 is on 666. Good name. Frontage Road in New Hyde Park, New
24 York.

25 I believe that Ms. Dickenson was served because the

1 service of process said another name besides her, another
2 address besides her. And I have found out later that she
3 had lived with her relatives at 58 MacGregor Place and had
4 moved and been put in this home.

5 So we feel and I feel that Ms. Dickenson is available.
6 Whether she is competent, I don't know. But the fact of the
7 matter is is she was served. Service was then sent to me.

8 I have had several conversations with the process
9 server in New York. They admit after I showed them the
10 telephone records that they did talk to me and that I talked
11 to them more than once.

12 I am now trying to track my TracFones, which is a very
13 difficult subject; but I believe there's two or three
14 conversations there that I will be able to show the court.

15 The fact of the matter was she was served. And in this
16 underinsurance we have these three reasons, as I have said,
17 why you should reject the motion to dismiss.

18 In addition to all of that, Your Honor, I have
19 submitted an affidavit as to what happened. We have not
20 received an affidavit from Ms. Dickenson. We have asked for
21 that through Mr. Bauer. No affidavit has been forthcoming
22 that she hasn't been served. That is all I can say on this
23 case.

24 I am going to ask the court to dismiss -- or excuse me,
25 to deny the motion to dismiss on this basis.

1 THE COURT: Well, I can't deny it. I can't grant it.
2 I give you both 30 days to send me proposed orders.

3 And you get an affidavit from the processor server.

4 You get an affidavit from Ms. Dickenson saying she
5 wasn't served.

6 You know, that is the best I can do.

7 MR. COGGIN: Okay, Your Honor. Thank you.

8 THE COURT: I mean y'all just handed up these briefs.
9 I read them. But of course I haven't read any of these
10 cases like you -- that you cite.

11 MR. COGGIN: It is a daunting proposal, Your Honor.

12 THE COURT: But he did plead non service. He doesn't
13 have to do that with specificity. He -- you are on notice
14 that he says you didn't comply with the rule. Which you
15 didn't, because you didn't file it.

16 MR. ALLEN: And just briefly, the statute of
17 limitations, I didn't raise statute of limitations because
18 it was only two years after the accident so I didn't have
19 that defense.

20 THE COURT: Okay.

21 MR. COGGIN: Thank you, Your Honor. Good to see you
22 again.

23 MR. ALLEN: Thanks, Judge.

24 THE COURT: Good luck with it, because that is
25 complicated. But I don't think I can let it go forward

1 without a little more than your affidavit.

2 MR. COGGIN: Thank you.

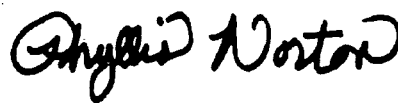
3 (WHEREUPON, the hearing concluded.)

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned case, relative to appeal, in the Court for Beaufort County, South Carolina, on January 6, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.



PHYLLIS NORTON, CVR

Date: June 3, 2016

Certified Transcript Provided For: C. Lempesis, Jr.
Certification Reference #060316 Certified Original

1 State of South Carolina) Court of Common Pleas
 2 County of Beaufort) 14th Judicial Circuit
 3) No.: 2015-CP-07-01251
 4 Robert E. Feldman and)
 5 Louis J. Feldman,)
 6 Plaintiffs,)
 7 vs.) HEARING
 8 Gary P. Coggin,) June 29, 2016
 9 Defendant.)

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Hearing reported by Deborah S. Thomas,
 Certified Verbatim Reporter and Notary Public in and
 for the State of South Carolina; said hearing held
 before the Honorable Marvin H. Dukes, III, Beaufort
 County Master in Equity and Special Circuit Court
 Judge in accordance with the South Carolina Rules of
 Civil Procedure, at the Beaufort County Courthouse,
 102 Ribaut Road, Room 212, Beaufort, South Carolina,
 on June 29, 2016, at the hour of 10:27 a.m.

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1	CONTENTS	
2	Hearing	
3		Page
4	Exhibit Index	4
5	Certificate of Reporter	25
6	Word Index	

7 * * * * *

9
10
11
12
13
14
15
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EXHIBIT INDEX

Exhibits: Marked at Page
(None were proffered)

* * * * *

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1 This hearing is taken in accordance
2 with the South Carolina Rules of Civil Procedure.
3 JUDGE DUKES: Good morning. We are
4 here on Feldman and Feldman versus Coggin. This is
5 15-CP-07-1251. This is Defendant's Motion for
6 Summary Judgment. I'm happy to hear from you, sir.
7 MR. COOKE: Thank you. Dawes Cooke
8 with Barnwell whaley Patterson & Helms for the
9 Defendant. Your Honor, this is a legal malpractice
10 case. And the essence of the case is that the
11 Plaintiffs contend that when Mr. Coggin represented
12 them in an underinsured motorist case -- they've
13 already settled the underlying liability case for

6-29-16 feldman hrg
14 \$85,000. Brought an underinsured motorist case.
15 The allegation of the complaint is that he
16 failed to serve the underinsured motorist with the
17 summons and Complaint. Under the Underinsured
18 Motorist Statute you are suppose to serve both the
19 insurance company and the underinsured motorist.
20 And the allegation of this case is that
21 because of Mr. Coggin's failure to do that or his
22 failure to be able to prove that he had done it,
23 they had to settle the case cheap for \$25,000 and it
24 was really a \$500,000 case.
25 So discovery is ongoing. And there are

5

1 plenty of factual issues as to whether, in fact, he
2 did serve, what the value of the underlying case
3 would have been, and why they settled for what they
4 settled for after substitute counsel was retained to
5 take over the case.

6 But we've isolated a single threshold
7 legal issue that we think is dispositive, and that
8 is that the -- when Liberty Mutual, who was the
9 underinsured motorist carrier, when they moved to
10 dismiss based on the failure to serve the
11 underinsured motorist, they had failed to properly
12 plead that defense. And therefore that motion
13 should have been denied, ultimately would have been
14 denied.

15 It was actually heard by Judge Kinard, but
16 he took it and held it in abeyance and instructed
17 the parties to provide affidavits of service and so
18 forth. So he never actually ruled and, of course,

6-29-16 feldman hrg
19 ultimately as you know he passed away, but by the
20 clearly established case law which was established
21 at that time, specifically a case called Unison
22 versus Hawkins which, in turn, relies on previous
23 Supreme Court authority, the failure to serve must
24 be specifically pled and you must plead specifically
25 the way in which you failed to effect service.

6

1 And in this case it was not done. The
2 answer that was filed by Liberty Mutual is attached
3 as Exhibit A to our Motion for Summary Judgment.
4 And in there the answer begins, it says, Liberty
5 Mutual Insurance Company, as the alleged
6 underinsured motorist carrier under South Carolina
7 Code Section 38-7-160, answers the complaint as
8 follows.

9 And it's signed by Julian Allen with
10 Turner Padgett as attorney for Liberty Mutual
11 Insurance Company. And so the fifth defense is
12 entitled Improper Service. It says, further
13 answering, this party alleges that Plaintiff has
14 failed to effect proper service -- effectuate proper
15 service under Rule 12(b)(4) and Rule 12(b)(5).

16 And that way of pleading it is inadequate
17 as a matter of law under the case of Unison versus
18 Bruce Hawkins. In that case, the Defendant had
19 pleaded, quote, Plaintiffs failed to serve Defendant
20 Bruce Hawkins within the three-years Statute of
21 Limitations.

22 That pleading was actually more specific
23 than this one because in that case at least they

24 6-29-16 feldman hrg
said who was not properly served. In this case, it
25 doesn't even say who was not properly served. It 7

1 doesn't say it was the underinsured motorist who was
2 not properly served. You could have just as easily
3 have read this to say that Liberty Mutual was not
4 properly served. In fact, that is what it implies
5 when it says furthering answering, this party
6 alleges that Plaintiff has failed to effectuate
7 proper service.

8 And this party is Liberty Mutual who is
9 the one that filed the answer. And what the Court
10 said was that -- they incorporated jurisprudence
11 from Federal Courts that had interpreted the same
12 rule in the Federal Rules and said Federal Courts
13 addressing this issue have held that objections to
14 the sufficiency of service of process must be
15 specific and must point out in what manner the
16 Plaintiff has failed to satisfy the rule relating to
17 service of process.

18 To cite another case it says, in fact,
19 quote, the objection to insufficiency of process or
20 its service should point out specifically in what
21 manner Plaintiff has failed to satisfy the
22 requirement of service provision. We hold the
23 averment that Unison, quote, failed to serve Bruce
24 Hawkins within the three-year Statute of Limitations
25 is insufficient standing alone to raise the defense 8

1 of insufficiency of service of process.

2 Having failed to allege process with even
Page 6

3 a minimal amount of specificity in his responsive
4 pleading, Bruce may not now bootstrap the defense to
5 his Statute of Limitations argument, a separate
6 affirmative defense, likewise subject to waiver.

7 You know, one would perhaps just reading
8 the rule in a vacuum would think that that is a
9 hyper-technical requirement that you be specific,
10 but there is a reason for that. In this particular
11 case at the time that the answer was filed the
12 Statute of Limitations had not run. So had they
13 pleaded with specificity that you did not serve --
14 you did not serve Ms. Dickinson at all, it would
15 have been a simple matter to go back and make sure
16 that you did get service and file the affidavit of
17 service, but the statute actually -- the answer was
18 filed in January of 2013. The statute ran I believe
19 in October of 2013.

20 Liberty Mutual never moved to dismiss the
21 case, never said exactly what their objection to the
22 service was until after the statute had already run.
23 And so under this authority both the improper
24 service or failure to serve and the Statute of
25 Limitations that was associated with that are waived

9

1 as a matter of law.

2 You may remember a case Poston versus
3 Davis where you ruled that as well and the Court of
4 appeals in an unpublished opinion affirmed citing
5 again the Unison Insurance Company versus Hawkins
6 case.

7 JUDGE DUKES: They like to affirm me
Page 7

8 in the unpublished ones and reverse me in the
9 published ones.

10 MR. COOKE: Well, that's right.

11 JUDGE DUKES: -- confirmed somewhere.

12 MR. COOKE: You were so right they
13 didn't even need to explain why, but it says, you
14 know, following the following authority Unison
15 Insurance versus Hawkins holding the defense of
16 insufficiency of service of process and Statute of
17 Limitations are affirmative defenses which are
18 waived if not properly pled in the responsive
19 pleading.

20 Now, I'm going to talk just for a second
21 about the procedural status of where we are because
22 I think what Thomas is probably going to say is,
23 well, Judge, we still need to flesh out discovery
24 because Judge Kinard in the motions hearing sounded
25 like he was persuaded that the pleading was

10

1 sufficient. And so we think that the Plaintiffs
2 needed to settle cheap because of the fear that the
3 judge was going to rule against them, but that is
4 not really what you do in a legal malpractice case.

5 And I would cite to Your Honor Doe versus
6 Howell, which is not in our brief, but the citation
7 is 367 South Carolina 432, 626 Southeastern 2nd 25
8 which basically says that when you are talking about
9 a case within a case, that is in a malpractice case
10 you are asked to go back retrospectively and
11 determine what would have happened if the lawyer had
12 done what the Plaintiff says he should have done.

13 That is a matter of law. And what the
14 Court said was the question of the success of the
15 underlying claim if suit had been brought in that
16 case is a question of law. And they cite Manning
17 versus Quinn. It's in Footnote 15 where it says,
18 the likelihood of success of action that the
19 Plaintiff alleged the Defendant should have taken
20 was a question of law. And decision of that
21 question on summary judgment motion is appropriate.

22 So, in other words, it's not relevant to
23 say that the Plaintiff was afraid that Judge Kinard
24 was going to rule against them. You are suppose to
25 look back, and if you can rule as a matter of law

11

1 that that pleading was inadequate then that is what
2 you are suppose to do in a legal malpractice case.

3 And you can do that on summary judgment.
4 And here under the case that was decided in 2000, so
5 it was clearly available to the Court when this was
6 being argued years later, that pleading of simply
7 saying, further answering, this party alleges that
8 Plaintiff has failed to effectuate service under
9 Rule 12(b)(4) and Rule 12(b)(5).

10 As a matter of law Liberty Mutual
11 Insurance Company would not be permitted to sandbag
12 using that language and then after the Statute of
13 Limitations has run now say, okay, what we really
14 meant was you didn't serve Ms. Dickinson, the
15 underinsured motorist. In fact, you didn't serve
16 her at all. It wasn't that you just didn't properly
17 serve her.

18 And, again, the language that they
19 rejected in the Unison case was actually more
20 specific than this. It said that that defense was
21 Plaintiff's had failed to serve Defendant Bruce
22 Hawkins within the three-year Statute of
23 Limitations.

24 Also, let me apologize for my rudeness. I
25 didn't introduce Jeff Bogdan who is here with me and ¹²

1 our summer law clerks Tyler Graves and Wes Randolph
2 who are here as well.

3 JUDGE DUKES: All right. welcome.
4 welcome.

5 MR. COOKE: So that is it.

6 JUDGE DUKES: I mean, essentially the
7 threshold issue you are talking about is that -- as
8 I understand the argument is that Judge Kinard, all
9 though he didn't rule, could not have ruled under
10 the law except one way?

11 MR. COOKE: Correct.

12 JUDGE DUKES: Okay.

13 MR. COOKE: Correct. Under the
14 Unison case and the authorities that they cite
15 there.

16 JUDGE DUKES: Okay. Mr. Pendarvis,
17 happy to hear from you, sir.

18 MR. PENDARVIS: Good morning, Your
19 Honor. May it please the Court, I'm here on behalf
20 of Robert and Louis Feldman. I've got my new
21 associate with me, Chris Lempesis who is on board.

22 JUDGE DUKES: I've seen Chris on many
Page 10

23 occasions?

24 MR. PENDARVIS: Don't hold that
25 against me or the Feldmans. Let me respond to the

13

1 motion in this way. Let's assume as a matter of law
2 that the arguments Mr. Cooke made are true. I don't
3 agree, but let's just assume that just for the
4 moment.

5 There is abundant case law -- South
6 Carolina is an exceptional jurisdiction in legal
7 malpractice terms. It's not simply just case within
8 a case jurisdiction. You also have claims for
9 settlement value.

10 The Motion for Summary Judgment -- Motion
11 to Dismiss filed by Liberty Mutual was heard in
12 January of 2015. In May of '14, the parties
13 participated in mediation. We believe there is
14 going to be testimony based on the beginnings of
15 discovery with Mr. Coggin and others that the case
16 was not prepared for settlement.

17 They went into -- and we believe that
18 Julian Allen is going to testify that had the case
19 been properly prepared there would have been a
20 substantially greater settlement offer at the
21 mediation.

22 So even if -- even if Liberty Mutual's
23 defense was invalid or improper or wouldn't have
24 been successful as a matter of law, they hadn't
25 filed the motion. They went to a mediation with

14

6-29-16 feldman hrg
1 authority to settle. And we believe Julian Allen is
2 going to say had Mr. Coggin presented a life care
3 plan that he admitted he didn't do, and other
4 information to substantiate wage loss, incapacity or
5 damage from the connection causally linking the
6 medical expenses to the car wreck that he brought,
7 you know, the reason for the case, the testimony had
8 not been developed by the doctors or a life care
9 plan person or anyone of that sort that could
10 quantify and put a settlement value on the Feldmans'
11 claims.

12 Going into the mediation there were
13 demands for policy limits by Mr. Coggin. And what
14 we believe that discovery will reveal from
15 Mr. Julian Allen is the case would have settled or a
16 substantially greater amount of money would have
17 been put on the table at a mediation nine months
18 before any hearing on the motion.

19 And so under the Sims case and some other
20 authority I'm happy to provide the Court, there is a
21 claim on the settlement value of the case that is
22 factually related regardless of whether at a hearing
23 on the merits of the legal matter the Plaintiffs
24 would have lost or won.

25 And so, you know, as to settlement value

15

1 and what we also expect, there were lawyers -- Sam
2 Bauer and Rob Metro. Their deposition haven't been
3 taken yet, but we believe they are going to say
4 based on the age of the case when they took it over
5 and the matter was on a trial docket and there was

6-29-16 feldman hrg
6 communications with Mr. Coggin to the Feldmans
7 before he moved to be relieved that this case was
8 coming up for trial.

9 And we believe the testimony from
10 Mr. Bauer and Mr. Metro is going to be there wasn't
11 sufficient time to get the case ready. The statute
12 had already run. They couldn't dismiss it and
13 refile it, so they recommended that the Feldmans
14 take the 25,000 to settle.

15 And so the real essence of the malpractice
16 was failure to prepare the case. It would have
17 settled at mediation. And so we believe that those
18 factual issues are going to preclude any ruling as a
19 matter of law on whether or not Liberty's Motion for
20 Summary Judgment would have been successful.

21 JUDGE DUKES: What was the timeline
22 again on the filing and the motion and the mediation
23 and the transfer of the case?

24 MR. PENDARVIS: It was a 2013 --
25 excuse me. 2012 lawsuit. October of 2012. The

16

1 matter was mediated. A 2010 car wreck. So October
2 of 2010 car wreck, so October of 2000 -- it might be
3 November. I'm sorry, Your Honor.

4 MR. LEMPESIS: I think it was
5 October.

6 MR. PENDARVIS: And so it would have
7 been a 2013 Statute of Limitations. The matter was
8 served in Oklahoma, Liberty Mutual via Secretary of
9 State in let's say January of 2013. And the process
10 of the case began. Liberty answered. You've seen

11 6-29-16 feldman hrg
12 their answer in the exhibit.

13 The case worked for over a year and comes
14 to mediation in May of '14 which would have been
15 ample time, we believe standard of care, for a
16 lawyer preparing a personal injury claim case to get
17 a life care plan, quantify -- in some way quantify
18 both the causally related medical expenses from the
19 car wreck and also quantify the economic loss from
20 lost wages that neither of which were properly done
21 or at least that is what we expect Julian Allen who
22 was defending Liberty is going to say, that had
23 these items been, you know, being properly presented
24 it would have been admissible at trial, and his
25 recommendation to Liberty would have been to settle
 it at a higher amount.

17

1 And so that is way before Liberty filed
2 the motion. And if that is true, and if a jury were
3 to agree that had the case been properly prepared
4 the matter would have settled at the mediation in
5 May of '14, there never would have been a hearing on
6 the motion to -- on the 12(b) motions that were
7 asserted and the answer by Liberty.

8 So we believe there are indeed fact
9 questions that need to be resolved because, as the
10 Court knows, 90 -- I don't even know what the number
11 is. Ninety-something percent or greater cases
12 settle. And the likelihood that this P.I. case with
13 admitted liability would have gone to trial and
14 there would have been a merits hearing is remote.
15 That the reality is had the case been properly

16 6-29-16 feldman hrg
prepared it would have settled.

17 And so our position is that this motion
18 must be denied. And I've got a Rule 56 affidavit
19 that we filed with the Court that says we are not
20 able to present by testimony, testimony from
21 Mr. Allen, the Liberty Mutual lawyer, or Mr. Bauer
22 and Mr. Metro, that would relate to whether the case
23 was properly prepared for settlement.

24 JUDGE DUKES: All right.

25 MR. COOKE: Can I respond to that

18

1 briefly?

2 JUDGE DUKES: Yes, sir.

3 MR. COOKE: First of all, these
4 allegations now about not having a life care plan
5 and an economist, and medical testimony, those
6 aren't in the current complaint against Mr. Coggin.
7 The only allegation of negligence against him in the
8 verified complaint is the failure to commence the
9 suit within the Statute of Limitations and properly
10 serve Ms. Dickinson.

11 So none of that is in this complaint. The
12 argument that Thomas is making is exactly the
13 argument that the Plaintiffs made in the Doe versus
14 Howell case. They had an expert attorney who said
15 the Statute of Limitations -- it was a sexual
16 molestation case. You remember the Porter Gaudé
17 molestation cases --

18 JUDGE DUKES: Vaguely.

19 MR. COOKE: -- with Guy Fisher that
20 was molesting kids? well, this was the very first

6-29-16 feldman hrg
21 of those cases. The Plaintiff was represented
22 Gedney Howell. And Gedney settled his case for
23 \$70,000. One of the other cases that was
24 represented by Greg Myers went to trial, and they
25 got a verdict for 130 million dollars in the

19

1 parents' case.

2 And so this kid, you know, said, well, my
3 lawyer committed malpractice because he didn't get
4 enough money for me. These cases were worth
5 millions of dollars and I didn't get, you know, in
6 on that action.

7 The Court granted summary judgment and
8 said, your case was barred by the Statute of
9 Limitations as a matter of law. And so it doesn't
10 matter what your expert says your case could have
11 been negotiated for. You weren't entitled to
12 anything. And so -- and that is where those quotes
13 came from that I read you about the standard is when
14 you are doing a case within a case, that is to be
15 determined -- what the outcome of the underlying
16 case would have been is a matter of law.

17 That is if the Plaintiff -- if the defense
18 attorney had done what the Plaintiff says he should
19 have done, the Court here is suppose to decide that
20 as a matter of law under the Manning versus Quinn
21 and Doe versus Howell.

22 So in this case all we are asking the
23 Court to do is to look at Liberty Mutual's specific
24 Motion to Dismiss the case and the answer that they
25 filed and then compare that to Unison versus

20

1 Hawkins. And I think you would have to rule as a
2 matter of law that the failure to serve
3 Ms. Dickinson, if in fact she was not served, was
4 not as a matter of law and proximate cause of the
5 loss of that case or the loss of value of that case.

6 MR. PENDARVIS: Brief rebuttal, Your
7 Honor?

8 JUDGE DUKES: Yes. Go ahead.

9 MR. PENDARVIS: Number one, in each
10 of these causes of action alleged -- and I do not
11 have a copy of my complaint with me, I think it
12 might be here --

13 JUDGE DUKES: Feel free to look.

14 MR. PENDARVIS: -- we've alleged
15 that -- and I'll get to the paragraph cites, but
16 we've alleged that the claim is also based upon
17 other evidence we developed in the discovery of the
18 case. We've put them on notice that this --
19 something like this may be part of the allegations.

20 Number 2, let's assume Liberty Mutual's
21 defense was invalid. Or excuse me. Not invalid.
22 would have been ruled -- let's assume that it would
23 have been ruled denied. And you have testimony, as
24 we might expect, from Mr. Bauer and Mr. Metro, that
25 the case was -- they were not going to be able to

21

1 prepare the case for trial because of the lack of
2 time.

3 And that Mr. Coggin had the case for
4 pushing two and a half years and didn't properly

5 prepare it. And they could have -- wouldn't have
6 been able to prevail at trial. And these are --
7 those are questions -- regardless of whether
8 Liberty's defense was successful or not, if the
9 testimony is that the case had been languished, lack
10 of discovery for that entire time, then the Feldmans
11 ought to have a chance to have their experts and
12 present testimony to show that failure to prepare
13 this case for trial was the reason they didn't get
14 the case settled and why they weren't able to
15 prevail at trial and why they accepted a settlement
16 at the value they did.

17 JUDGE DUKES: All right.

18 MR. COOKE: Tom is referring to
19 Paragraphs 44 and 45. Forty-four says Coggin failed
20 to meet the minimum standard of care thereby
21 breaching his professional duties to the Feldmans
22 and otherwise acted in a negligent, grossly
23 negligent, willful, wanton, and reckless manner by
24 failing to timely commence a lawsuit on their behalf
25 before permitting a statutory time limitation to bar
22

1 the Feldmans' claims against the Dickinson.

2 Paragraph 45 is the catchall that he's
3 talking about that says, Coggin failed to meet the
4 minimum standard of care thereby breaching his
5 professional duties to the Feldmans by other such
6 particulars as the evidence in this case may
7 demonstrate.

8 And obviously that is not an adequate
9 allegation to bring up other failures to meet
Page 18

10 standard of care by not having a life care expert,
11 economist, or working up the medicals.

12 MR. PENDARVIS: And, of course, Your
13 Honor, there is an expert affidavit that alleges
14 Mr. Coggin didn't meet the standard of care. So as
15 to these allegations we -- you know, this is a
16 matter for development in the facts of the case.
17 And if the facts demonstrate that Mr. Coggin did not
18 prepare this case to the degree that a successor
19 lawyer could take it over and effectively prosecute
20 it, then we believe we should be able to take it to
21 a jury.

22 MR. COOKE: Again, the only act of
23 negligence that the expert asserts is the failure to
24 effect service on Ms. Dickinson, Paragraph 13.

25 JUDGE DUKES: All right. Well, I've 23

1 got to read the cases, of course, that you all gave
2 me. And I think you had a couple maybe you were
3 going to -- a couple of them you were going to send?

4 MR. PENDARVIS: Would you mind if I
5 provided a supplemental memorandum with that
6 settlement issue as to South Carolina Courts, the
7 Supreme Court.

8 JUDGE DUKES: That would be fine.
9 And you are welcome to have whatever time you want
10 to respond to it if you want.

11 MR. COOKE: I'll send you that Doe
12 versus Howell. We sent them to each other plenty of
13 times.

14 MR. PENDARVIS: We are going to both
Page 19

6-29-16 feldman hrg

15 pull them out of previous briefs.

16 JUDGE DUKES: No problem. Well, why
17 don't you all just set up a time that is convenient
18 for both of you to get those things in and get them
19 to Heather if you would, obviously copy the other.
20 And I will see what I can do. Anything else for
21 this record?

22 MR. PENDARVIS: That is a good point.
23 The expert affidavit is Sam Bauer who was the
24 successor attorney. So obviously if he had felt
25 that the case wasn't adequately prepared he could

24

1 have put that in his affidavit, but we will address
2 that.

3 JUDGE DUKES: All right. Thank you.

4 MR. COOKE: One last little thing,
5 Your Honor, there is a consent scheduling order that
6 has this case set for trial in January with
7 discovery going through. So the parties have
8 anticipated a good bit of work to be done. We
9 intend to name another expert. This was just an
10 affidavit for filing per the statute.

11 JUDGE DUKES: Got you. Okay.
12 Anything else then for the record?

13 MR. COOKE: I think that is going to
14 do it for us.

15 JUDGE DUKES: Okay. All right. That
16 will conclude the record.

17 (Whereupon, the hearing was concluded
18 at 10:51 a.m.)

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1 Certificate of Reporter

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I, Deborah S. Thomas, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported the hearing of Feldman et al vs. Coggin, on the 29th day of June, 2016: and that the foregoing 24 pages constitute a true and correct transcription of the said hearing.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript shall be hereafter delivered to Christopher W. Lempesis, Jr., Esquire, Pendarvis Law Office, PC, 710 Boundary Street, Unit A1, Beaufort, South Carolina 29902-4188.

In witness whereof I set my hand and seal this 5th day of April, 2017.

My Commission
expires 1/4/18

Deborah S. Thomas, CVRM
and Notary Public for the
State of South Carolina

6-29-16 feldman hrg

25

♀

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
ROBERT FELDMAN & LOIS)
FELDMAN,)
Plaintiffs,)
v.)
SARAH DICKENSON,)
Defendant.)

IN THE COURT OF COMMON PLEAS
Docket No.: 2012-CP-07-3800

ANSWER
(Jury Trial Demanded)

13 JUN -7 PH 4:26
DEPT. OF COURT S.C.

Liberty Mutual Insurance Company, as the alleged underinsured motorist carrier under S.C. Code Ann. § 38-77-160, answers the Complaint as follows:

FOR A FIRST DEFENSE

1. Except as specifically admitted, qualified, or explained, Liberty denies the allegations in the Complaint and demands strict proof thereof.
2. Paragraph 1 is a statement of law to be determined by the court.
3. Upon information and belief, Liberty admits Paragraphs 2 through 4.
4. Liberty lacks sufficient information to form a belief as to Paragraphs 5 through 7. Therefore, Liberty denies those allegations and demands strict proof thereof.
5. Paragraph 8 does not require a response.
6. Liberty lacks sufficient information to form a belief as to Paragraphs 9 through 11. Therefore, Liberty denies those Paragraphs and demands strict proof thereof.

FOR A SECOND DEFENSE
(Comparative Negligence)

7. FURTHER ANSWERING, this party alleges any injury and damage sustained was caused by the negligence or willfulness of Plaintiff, combining, concurring, and contributing with the negligence or willfulness, if any, on the party of this party. Because Plaintiff's negligence or willfulness is greater than the alleged

negligence or willfulness of this party, Plaintiff is barred from recovery against this party.

FOR A THIRD DEFENSE
(Comparative Negligence)

8. FURTHER ANSWERING, this party alleges any injury and damage sustained by Plaintiff was caused by the negligence or willfulness of Plaintiff, combining, concurring, and contributing with the negligence or willfulness, if any, on the party of this party. Therefore, the Court should reduce any recovery awarded to Plaintiff for the alleged injuries and damage based upon the percentage of negligence or willfulness attributed to Plaintiff.

FOR A FOURTH DEFENSE
(Statutory Defense)

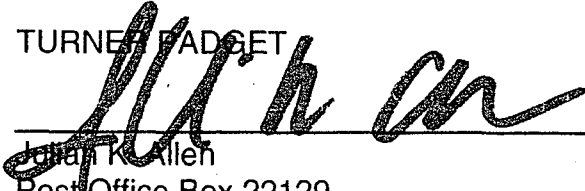
9. FURTHER ANSWERING, this party reserves and asserts all rights under S.C. Code Ann. § 15-38-15.

FOR A FIFTH DEFENSE
(Improper Service)

10. FURTHER ANSWERING, this party alleges that Plaintiff has failed to effectuate proper service under Rule 12(b)(4) and Rule 12(b)(5).

WHEREFORE, having answered, Defendant asks this Court to dismiss the Complaint and grant such relief as the Court deems just and proper.

TURNER PADGET


Julia K. Allen

Post Office Box 22129

Charleston, South Carolina 29413-2129

Direct: (843) 579-8305

Fax: (843) 577-1661

JAllen@TurnerPadget.com

Charleston, South Carolina

January 4, 2013

ATTORNEYS FOR LIBERTY MUTUAL
INSURANCE COMPANY

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
ROBERT FELDMAN & LOIS)
FELDMAN,)
)
Plaintiffs,)
)
v.)
)
SARAH DICKENSON,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

Docket No.: 2012-CP-07-3800

CERTIFICATE OF SERVICE

13 JAN -7 PM 4:26
BEAUFORT COUNTY, S.C.
CLERK OF COURT

I hereby certify that on this 4 day of January, 2013 a copy of the above and foregoing **Liberty Mutual Insurance Company's Answer to Plaintiff's Complaint, Interrogatories and Request for Production to Plaintiff** has been mailed to all counsel of record, postage prepaid and properly addressed as follows:

Gary Coggin
Post Office Box 7092
Hilton Head, SC 29938
Attorneys for Plaintiff

Deborah Buck
Deborah Buck

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT)	Docket No.: 2012-CP-07-3800
ROBERT FELDMAN & LOIS)	
FELDMAN,)	
Plaintiffs,)	LIBERTY MUTUAL INSURANCE
v.)	COMPANY'S NOTICE AND
SARAH DICKENSON,)	MOTION TO DISMISS
Defendant.)	

TO: GARY COGGIN AND ROB METRO ATTORNEYS FOR PLAINTIFF:

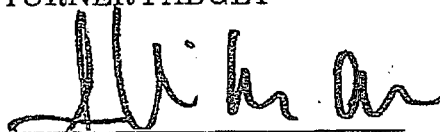
YOU WILL PLEASE TAKE NOTICE that Liberty Mutual Insurance Company will move before the Court as soon as counsel may be heard for an Order dismissing this lawsuit due to Plaintiffs' failure to effectuate proper service under Rule 12(b)(4) and 12(b)(5).

This lawsuit arises from a motor vehicle accident on October 9, 2010. Although Plaintiffs filed a lawsuit within the applicable statute of limitations, Plaintiffs have failed to serve the Defendant within the applicable time period. To date, upon information and belief, the Defendant still has not been served with this lawsuit. Therefore, pursuant to Louden v. Moragne, 327 S.C. 465 (Ct. App. 1997) and other authority, Liberty Mutual requests this Court dismiss the lawsuit with prejudice. Liberty Mutual Insurance Company will rely on deposition transcripts, affidavits, supporting law, and other statutory authority in reliance for this Motion.

[Signature on following page]

Respectfully submitted,

TURNER PADGET

A handwritten signature in dark ink, appearing to read "Julian K. Allen", written over a horizontal line.

Julian K. Allen

P.O. Box 22129

Charleston, South Carolina 29413

Telephone: (843) 579-8305

Fax: (843) 577-1661

E-mail: jallen@turnerpadget.com

October 8, 2014

ATTORNEYS FOR LIBERTY MUTUAL
INSURANCE COMPANY

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

Docket No.: 2012-CP-07-3800

ROBERT FELDMAN & LOIS)
FELDMAN,)

Plaintiffs,)

v.)

SARAH DICKENSON,)

Defendant.)

**MEMORANDUM IN SUPPORT OF
LIBERTY MUTUAL'S MOTION TO
DISMISS**

This matter is before the Court upon Liberty Mutual's Motion to Dismiss based on Plaintiffs' failure to serve the Defendant.

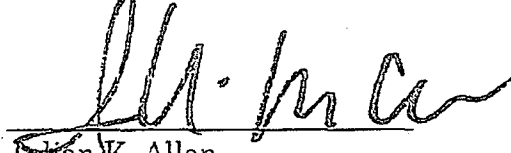
This lawsuit arises from a motor vehicle accident, which occurred on October 9, 2010. This lawsuit is a claim for underinsured motorist benefits. In Liberty Mutual's Answer to the Complaint, Liberty Mutual asserts *Improper Service* as an affirmative defense. To date, the Defendant has not been served with this lawsuit. As such, Liberty Mutual asks this Court to dismiss this lawsuit based on Plaintiffs' failure to timely serve the Defendant before the applicable statute of limitations expired.

In Louden v. Moragne, 327 S.C. 465 (Ct. App. 1997), the underinsured motorist carrier (State Farm Mutual Automobile Insurance Company) moved for summary judgment, as Plaintiff failed to properly serve Defendant Moragne prior to the expiration of the statute of limitations. The trial judge granted summary judgment in favor of the Defendant, and the Court of Appeals affirmed that decision. Quite simply, "[s]ervice on the at-fault driver is an essential component of the negligence action. Thus, we hold that the named defendant in an action for benefits under a plaintiff's underinsured motorist policy must be properly served

with the summons and complaint prior to the running of the statute of limitations.”
Id., 469.

Rule 3 of South Carolina Rules of Civil Procedure requires that the summons and complaint be served either a) within the statute of limitations or b) if not served within the statute of limitations, not later than 120 days after filing. This accident occurred over four years from the date of Liberty Mutual's Motion. Therefore, since Plaintiffs have failed to timely serve the Defendant, Liberty Mutual requests the Court to dismiss this lawsuit.

TURNER PADGET



Julian K. Allen

P.O. Box 22129

Charleston, South Carolina 29413

Telephone: (843) 579-8305

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E-mail: jallen@turnerpadget.com

December 1, 2014

ATTORNEYS FOR LIBERTY MUTUAL
INSURANCE COMPANY

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2015-CP-07-1251

Robert E. Feldman and Lois J. Feldman,
Plaintiffs,

vs.

Gary P. Coggin,
Defendant.

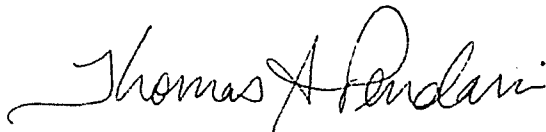
**REQUEST TO TRANSFER TO
THE JURY TRIAL ROSTER**

To: M. Dawes Cook, Jr., J.D. and Jeffrey M. Bogdan, J.D., Counsel for Defendant:

YOU PLEASE TAKE NOTICE THAT Plaintiffs by and through their undersigned counsel, hereby request that this action be transferred from the General Docket to the Jury Trial Roster pursuant to Rule 40(e)(1), South Carolina Rules of Civil Procedure. This motion is based on the grounds that this case is more than 9 months old in that it was filed on May 19, 2015.

Respectfully submitted,

PENDARVIS LAW OFFICES, PC



Thomas A. Pendarvis (SC Bar # 064918)
Christopher W. Lempesis, Jr. (SC Bar #77012)
710 Boundary Street, Unit A-1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com
Chris@PendarvisLaw.com

Counsel for Plaintiffs

Beaufort, South Carolina
February 25, 2016

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT
) C/A No.: 2015-CP-07-01251

ROBERT E. FELDMAN and LOIS J.
FELDMAN,

Plaintiffs,

vs.

GARY P. COGGIN,

Defendant.

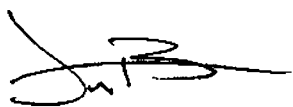
REQUEST FOR SCHEDULING ORDER

2016 MAR -9 PM 3:24
JEREMY ANDERSON
BEAUFORT COUNTY S.C.
CLERK OF COURT

TO: THOMAS A. PENDARVIS, ATTORNEY FOR PLAINTIFF

WILL YOU PLEASE TAKE NOTICE THAT Defendant, by and through the undersigned counsel, in response to Plaintiffs' Request to Transfer to the Jury Trial Roster, which was served on Defendant on February 25, 2016, and pursuant to Rule 40(e)(1), requests that the Court enter a Scheduling Order in this matter pursuant to Rule 40(e)(2).

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY: 

M. Dawes Cooke, Jr., Esquire
Jeffrey M. Bogdan, Esquire
288 Meeting Street, Suite 200
Charleston, SC 29401
843-577-7700 (phone)
843-577-7708 (fax)
mdc@barnwell-whaley.com
jbogdan@barnwell-whaley.com
Attorneys for Defendant

March 7, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

ROBERT E. FELDMAN and LOIS J.
FELDMAN,

Plaintiffs,

vs.

GARY P. COGGIN,

Defendant.

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT
) C/A No.: 2015-CP-07-01251

**RESPONSE TO REQUEST FOR
SCHEDULING ORDER**

2016 APR 18 PM 3:18
CLERK OF COURT
JUDICIAL CIRCUIT
2ND JUDICIAL CIRCUIT
JANUARY 2016

TO: THOMAS A. PENDARVIS, ATTORNEY FOR PLAINTIFF

WILL YOU PLEASE TAKE NOTICE THAT Defendant Gary Coggin (hereinafter "Attorney Coggin"), by and through his undersigned counsel, pursuant to Rule 40(e)(2) of the South Carolina Rules of Civil Procedure, hereby submits this Response to the Request for Scheduling Order.

FACTS/PROCEDURAL HISTORY

Attorney Coggin represented the Plaintiffs in an attempt to recover for personal injuries that Plaintiff Robert Feldman sustained when he was involved in an automobile accident allegedly caused by Sarah Dickenson on October 9, 2010. After successfully recovering \$85,000 for Mr. Feldman from Ms. Dickenson's automobile liability insurance carrier without litigation, Attorney Coggin filed suit on behalf of both Plaintiffs against Ms. Dickenson in an attempt to recover underinsured motorist (UIM) benefits from Plaintiffs' own automobile liability insurance carrier, Liberty Mutual Insurance Company. That case, styled Robert & Lois Feldman v. Sarah Dickenson, 2012-CP-070-3800 (hereinafter the "UIM Action") was filed on or around October 29, 2012.

Liberty Mutual retained an attorney to defend the UIM Action. For almost two years, Liberty Mutual and its retained counsel defended the UIM Action by participating in written discovery, filing motions, taking both of the Plaintiffs' depositions, and participating in mediation on or around May 7, 2014. Liberty Mutual offered, and Attorney Coggin recommended Plaintiffs accept, \$25,000 at mediation, but the Plaintiffs refused. Attorney Coggin's recommendation to accept this amount was based partially on the fact that he recently discovered that Plaintiff Robert Feldman had been playing golf regularly after the accident, something which both Plaintiffs had represented to Attorney Coggin that Robert Feldman could not do because of the injuries he sustained in the accident. To Attorney Coggin, this newly discovered fact completely undermined Plaintiffs' claim for damages in the UIM Action.

After Plaintiffs' refusal to accept Liberty Mutual's \$25,000 settlement offer at mediation, Attorney Coggin began focusing on getting the UIM Action ready for trial. In order to present the Plaintiffs' case at trial, Attorney Coggin would have to incur some rather large expenses, including those associated with taking video-taped *de benne esse* depositions of Plaintiff Robert Feldman's treating physicians. However, Plaintiffs refused to provide Attorney Coggin the funds to cover these expenses. Since Attorney Coggin now believed that the value of the UIM Action was severely compromised by the fact that Mr. Feldman had been playing golf regularly, Attorney Coggin was not willing or able to advance these expenses on behalf of the Plaintiffs. After over nine months of attempting to get Plaintiffs to commit to paying these expenses, Attorney Coggin filed a Motion to Withdraw as Counsel and to Stay the Proceedings on September 16, 2014. The following day, Attorney Coggin was contacted by Attorney Robert Metro with notice that his firm, Bauer & Metro, P.C, was taking over representation of the Plaintiffs in the UIM Action. On September 23, 2014, Attorney Coggin provided Bauer & Metro

his entire file in the UIM Action. The Consent Order to substitute counsel was filed on November 20, 2014.

On October 14, 2014, after Bauer & Metro took over representation of the Plaintiffs but before the Consent Order to substitute counsel was filed, Liberty Mutual filed a Motion to Dismiss, arguing that Dickenson was not served with the Summons and Complaint in the UIM Action within the statute of limitations, which expired on October 9, 2013. Notably, this was almost two years after the UIM Action was filed. Attorney Coggin believes that he served Ms. Dickenson with the Summons and Complaint.

While this Motion to Dismiss was pending, Plaintiffs, now represented by Bauer & Metro, decided to accept Liberty Mutual's \$25,000 settlement offer that was made at mediation, while they were under Attorney Coggin's representation. A Stipulation of Dismissal with Prejudice of the UIM Action was filed on March 4, 2015.

This legal malpractice action was filed just over two months later, on May 19, 2015. In this action, Plaintiffs allege that Attorney Coggin breached the standard of care by failing to serve Ms. Dickenson with the Summons and Complaint in the UIM Action, which forced them to accept Liberty Mutual's \$25,000 settlement offer instead of the \$500,000 maximum UIM benefits that Plaintiffs claim they "more likely than not" would have recovered from Liberty Mutual in the UIM Action. Plaintiffs attached the affidavit of Attorney Samuel Bauer to comply with the expert affidavit requirement. Attorney Bauer is a shareholder with Bauer & Metro and one of the attorneys who took over representation of the Plaintiffs in the UIM Action after Attorney Coggin filed his Motion to Withdraw as Counsel.

After Attorney Coggin timely answered the Complaint on August 20, 2015, the parties began engaging in written discovery, which is still ongoing. Prior to beginning the deposition

phase of this case, the parties agreed to participate in an early mediation, which was conducted on February 3, 2016. While the case did not settle at the mediation, the mediator and the parties continued efforts to settle for approximately one month following the mediation. Mediation was not declared to be at an impasse until March 1, 2016 and the Proof of ADR was filed on or around March 3, 2016.

On February 25, 2016, before the Mediation was declared to be at an impasse and just over nine months after the Complaint was filed, Plaintiffs filed a Request to Transfer to the Jury Trial Roster under Rule 40(e)(1). After an attempt to agree on a consent scheduling order with the Plaintiffs failed, Attorney Coggin filed a Request for a Scheduling Order under Rule 40(e)(1). Attorney Coggin now submits this Response to the Request for the Scheduling Order, as mandated by Rule 40(e)(2).

ARGUMENT

Defendant requests that the Court enter the Scheduling Order that is attached hereto as Exhibit A. This case was filed less than eleven months ago and discovery did not begin until Attorney Coggin filed his answer on August 20, 2015, which was less than seven months ago. While written discovery has begun and is ongoing, no depositions have been taken or even noticed. This is partly due to the fact that the parties agreed to participate in an early mediation, which would hopefully have resolved the case and avoided the protracted and expensive discovery process. Unfortunately, the mediation was not successful. Surprisingly, despite the fact that the mediation was still not declared to be at an impasse and before a single deposition had been taken or even noticed, Plaintiffs requested that this case be transferred to the jury trial, which has prompted this filing.

Discovery in this case will be extensive and will likely require over a year to complete. Attorney Coggin will have to and is entitled to develop discovery and take depositions not only regarding the allegations made in this case – that he failed to serve Ms. Dickenson with the Summons and Complaint in the UIM Action – but will also have to and is entitled to develop discovery regarding liability and damages in the UIM Action. See Summer v. Carpenter, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997) (in a legal malpractice case, the plaintiff must prove the “case within a case,” or that plaintiff most probably would have been successful in the underlying suit if the attorney had not committed the alleged malpractice). The necessary discovery will include depositions of the Robert Feldman, Lois Feldman, Ms. Dickenson (who is believed to live in New York), the claims handler for Liberty Mutual assigned to the UIM Action, Liberty Mutual’s retained defense counsel in the UIM Action, Plaintiff Bob Feldman’s treating medical providers, Attorney Sam Bauer, and Attorney Robert Metro, just to name a few.

Plaintiffs have seemingly recognized the complexity of discovery in this case and the number of witnesses. In response to Attorney Coggin’s interrogatory asking Plaintiffs to identify all persons known to be witnesses, Plaintiffs produced a “Cast of Characters” which includes *forty eight (48)* individuals. See Exhibit B. It is impressive, to say the least, that Plaintiffs believe this case is ready to be placed on the trial roster despite not having deposed even one of the 48 witnesses they identified, including Attorney Coggin.

No scheduling orders have been submitted to date in this relatively young legal malpractice case and Plaintiffs’ February 25 request was the first from any party to transfer this case to the jury trial. No motions are currently pending. Defendant anticipates that there may be motions to amend the pleadings, particularly to add counterclaims against Plaintiffs. Defendant also expects that he will file a Motion for Summary Judgment. Based on the above, Attorney

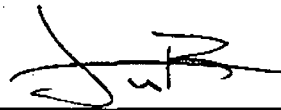
Coggin requests that the Court allow the parties ample time to conduct the extensive discovery that seems necessary to prepare this case for trial. Attorney Coggin believes that the Scheduling Order attached as Exhibit A allows for an appropriate amount of time and respectfully requests that the Court sign and enter the same.

CONCLUSION

This legal malpractice action is not ready to be placed on the trial roster. It was filed less than eleven months ago and discovery has not even been open for seven months. The early mediation, which officially failed less than one month ago, caused the parties to delay taking depositions such that none have been taken or even noticed. The remaining discovery necessary to get this case ready for trial will likely take over a year to complete. Accordingly, Attorney Coggin respectfully requests that the Court enter the Scheduling Order attached as Exhibit A.

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY: _____



M. Dawes Cooke, Jr., Esquire
Jeffrey M. Bogdan, Esquire
288 Meeting Street, Suite 200
Charleston, SC 29401
843-577-7700 (phone)
843-577-7708 (fax)
mdc@barnwell-whaley.com
jbogdan@barnwell-whaley.com
Attorneys for Defendant

March 16, 2016
Charleston, South Carolina

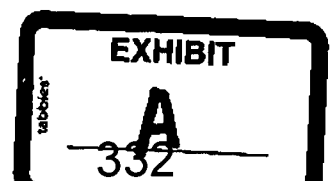
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	C/A No.: 2015-CP-07-01251
ROBERT E. FELDMAN and LOIS J. FELDMAN,	)	
	)	
	)	SCHEDULING ORDER
Plaintiffs,	)	
	)	
vs.	)	
	)	
GARY P. COGGIN,	)	
	)	
Defendant.	)	
_____	)	

Pursuant to Rule 26(f) and Rule 40(e)(2) of the South Carolina Rules of Civil Procedure, the Court establishes the following deadlines in this case:

1. Plaintiff shall identify each person whom Plaintiff expects to call as an expert at trial by **January 1, 2017**.
2. Plaintiff shall make its expert witnesses available for deposition on or before **February 1, 2017**.
3. Defendants shall identify each person whom Defendants expect to call as an expert at trial by **March 1, 2017**.
4. Discovery shall be completed no later than **July 1, 2017**. All discovery requests shall be served in time for the responses thereto to be served by this date. De bene esse depositions must be completed by discovery deadline.
5. All dispositive motions shall be filed on or before **July 1, 2017**.
6. This case is subject to being called for jury selection and trial on or after **September 1, 2017**.

Chief Administrative Judge

_____, 2016
_____, South Carolina





Feldman v. Coggins

Cast of Characters

Authored by:

**Thomas A. Pendarvis
Pendarvis Law Offices, P.C.**

Thursday, October 29, 2015

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EXHIBIT

Full Name	Addresses	Role In Case	Short Name
Ms. Abria	Liberty Mutual Insurance Company PO Box 958 Lake Mary, Florida 32795	Adjuster with Liberty Mutual Insurance Company, who dealt with property damages matters	Abria
Julian Allen, J.D.	58 Folly Road Boulevard, Suite 400 Charleston, SC 29407	Lawyer with Turner Padgett Graham & Laney, P A who defended Liberty Mutual Insurance Company's position in the Robert Feldman and Lois Feldman v. Sarah Dickenson, 2012-CP-07-3800, Beaufort County, South Carolina..	AllenJD
Samuel C. Bauer, J.D.	Bauer & Metro, P.C. P.O. Box 7965 Hilton Head Island, SC 29938	Lawyer with Bauer & Metro, P.C.	BauerJD
David E. Belton, J.D.	South Carolina Department of Insurance Capitol Center 1201 Main Street, Suite 1000 Columbia, South Carolina 29201	Lawyer with South Carolina Department of Insurance	BeltonJD
Patrolman W. Bleach	P.O. Box 1758 Bluffton, SC 29910	Highway Patrolman who investigated scene of accident giving rise to claims asserted in Robert Feldman and Lois Feldman v. Sarah Dickenson, 2012-CP-07-3800, Beaufort County, South Carolina..	BleachP
Judy Bradley	Liberty Mutual Insurance Company PO Box 958 Lake Mary, Florida 32795	Claims representative with Liberty Mutual Insurance Company	BradleyJ
Timothy Brandt, P.T.	Select Physical Therapy 70 Pennington Drive, Suite9 Bluffton, SC 29910	Physical therapist with Select Physical Therapy who provided physical therapy services to Robert E. Feldman after collision giving rise to claims in Robert Feldman and Lois Feldman v. Sarah Dickenson, 2012-CP-07-3800, Beaufort County, South Carolina..	BrandtTPT
Deborah C. Buck	58 Folly Road Boulevard, Suite 400 Charleston, SC 29407	Secretary with Turner Padgett Graham & Laney, P A who helped Julian Allen, J.D.	BuckD

Full Name	Addresses	Role In Case	Short Name
Robert Clodfelter, MD	25 Hospital Center Boulevard Hilton Head Island, SC 29926	Physician with Hilton Head Island Regional Medical Center who provided medical services to Robert E. Feldman after collision giving rise to claims in Robert Feldman and Lois Feldman v. Sarah Dickenson, 2012-CP-07-3800, Beaufort County, South Carolina..	ClodfelterR
Gary P. Coggin, J.D.	c/o Barnwell Whaley Patterson & Helms, LLC 288 Meeting Street, Suite 200 Charleston, SC 29401	Defendant, and lawyer who represented Robert E. Feldman and Lois J. Feldman in Robert Feldman and Lois Feldman v. Sarah Dickenson, 2012-CP-07-3800, Beaufort County, South Carolina..	CogginJD
Carol Coggin	Gary P. Coggin, J.D.'s wife	Gary P. Coggin, J.D.'s wife	CogginW
Sarah Helen Dickenson	Address unknown	Defendant in Robert Feldman and Lois Feldman v. Sarah Dickenson, 2012-CP-07-3800, Beaufort County, South Carolina.; at-fault driver who caused collision and injuries to Robert E. Feldman.	DickensonS
Pablo E. Dominguez	Address unknown	Witness to the accident giving rise to claims asserted in Robert Feldman and Lois Feldman v. Sarah Dickenson, 2012-CP-07-3800, Beaufort County, South Carolina..	DominguezP
Kevin Evans	Allstate Insurance Company 1400 Browning Rd. Columbia, SC 29210	Adjuster with Allstate Insurance Company	EvansK
Robert E. Feldman	c/o Pendarvis Law Offices, P.C. 500 Carteret Street, Suite A Beaufort, SC 29902	Plaintiff and client Gary P. Coggin, J.D. represented in Robert Feldman and Lois Feldman v. Sarah Dickenson, 2012-CP-07-3800, Beaufort County, South Carolina..	FeldmanR
Lois J. Feldman	c/o Pendarvis Law Offices, P.C. 500 Carteret Street, Suite A	Plaintiff and client Gary P. Coggin, J.D. represented in Robert Feldman and Lois	FeldmanWife

Full Name	Addresses	Role In Case	Short Name
**	Beaufort, SC 29902	Feldman v. Sarah Dickenson, 2012-CP-07-3800, Beaufort County, South Carolina..	**
Terry Finger	Finger & Fraser, PA PO Box 2400S Hilton Head Island, SC 29925	Lawyer who served as a mediator in the Robert Feldman and Lois Feldman v. Sarah Dickenson, 2012-CP-07-3800, Beaufort County, South Carolina..	FingerTJD
Fran		Works at Zellner - Wood Process Services Company	Fran
Angela L. Goldsby	154 Stonewalk Drive Rincon, GA 31326	Witness to the accident giving rise to claims asserted in Robert Feldman and Lois Feldman v. Sarah Dickenson, 2012-CP-07-3800, Beaufort County, South Carolina..	GoldsbyA
Malcolm Goldsby	154 Stonewalk Drive Rincon, GA 31326	Witness to the accident giving rise to claims asserted in Robert Feldman and Lois Feldman v. Sarah Dickenson, 2012-CP-07-3800, Beaufort County, South Carolina..	GoldsbyM
Nailah Goldsby	154 Stonewalk Drive Rincon, GA 31326	Witness to the accident giving rise to claims asserted in Robert Feldman and Lois Feldman v. Sarah Dickenson, 2012-CP-07-3800, Beaufort County, South Carolina..	GoldsbyN
Ronald Goldsby	154 Stonewalk Drive Rincon, GA 31326	Driver of another vehicle involved in collision with Robert E. Feldman that was caused by Sarah Helen Dickenson.	GoldsbyR
Thomas Goldsby	154 Stonewalk Drive Rincon, GA 31326	Witness to the accident giving rise to claims asserted in Robert Feldman and Lois Feldman v. Sarah Dickenson, 2012-CP-07-3800, Beaufort County, South Carolina..	GoldsbyT
Dennis Golota	Liberty Mutual Insurance Company PO Box 958	Claims representative with Liberty Mutual Insurance Company	GolotaD

Full Name	Addresses	Role In Case	Short Name
**	Lake Mary, Florida 32795	**	**
Cassandra Guynup		Worked with G&G Physician Billing	GuynupC
Steven P. Guynup, P.T.	Select Physical Therapy 70 Pennington Drive, Suite9 Bluffton, SC 29910	Physical therapist with Select Physical Therapy who provided physical therapy services to Robert E. Feldman after collision giving rise to claims in Robert Feldman and Lois Feldman v. Sarah Dickenson, 2012-CP-07-3800, Beaufort County, South Carolina..	GuynupSPT
Alfred Hand, MD	25 Hospital Center Boulevard Hilton Head Island, SC 29926	Physician with Hilton Head Island Regional Medical Center who provided medical services to Robert E. Feldman after collision giving rise to claims in Robert Feldman and Lois Feldman v. Sarah Dickenson, 2012-CP-07-3800, Beaufort County, South Carolina..	HandA
Amanda M. Harper	Bauer & Metro, P.C. P.O. Box 7965 Hilton Head Island, SC 29938	Paralegal with Bauer & Metro, P.C.	HarperA
The Honorable Marvin H. Dukes, III	Beaufort County Clerk of Court Post Office Box 1128 Beaufort, SC 29901-1128	Master-In-Equity / Special Circuit Judge who presided over motion to compel filed by Liberty Mutual Insurance Company in the Robert Feldman and Lois Feldman v. Sarah Dickenson, 2012-CP-07-3800, Beaufort County, South Carolina..	JudgeDukes
Jennifer Meyhew, P.T.	Select Physical Therapy 70 Pennington Drive, Suite9 Bluffton, SC 29910	Physical therapist with Select Physical Therapy who provided physical therapy services to Robert E. Feldman after collision giving rise to claims in Robert Feldman and Lois Feldman v. Sarah Dickenson, 2012-CP-07-3800, Beaufort County, South Carolina..	MayhewJPT
Barbara B. McFadden, J.D.	10 Pinckney Colony Rd.	Lawyer with Barbara B. McFadden, LLC	McFaddenBJD

Full Name	Addresses	Role In Case	Short Name
**	Ste. 300 Okatie, SC 29909	who provided legal counsel to Sarah Helen Dickenson concerning transfer of property in Beaufort County, South Carolina.	**
Gwendolyn Fuller McGriff	SC Department of Insurance P.O. Box 100105 Columbia, SC 29202-310 5	Acting Insurance Commissioner	McGriffG
Robert S. Metro, J.D.	Bauer & Metro, P.C. P.O. Box 7965 Hilton Head Island, SC 29938	Lawyer with Bauer & Metro, P.C.	MetroJD
Carrie M. Murphy	Bauer & Metro, P.C. P.O. Box 7965 Hilton Head Island, SC 29938	Paralegal with Bauer & Metro, P.C.	MurphyC
Bruce Alan Pitkin	1 Corpus Christi Place Ste#102 P.O. Box 5458 (29938) Hilton Head Island, SC 29928	Process server with Hilton Head Investigations, Inc. who served Gary P. Coggin, J.D. with Subpoena to produce records in Robert Feldman and Lois Feldman v. Sarah Dickenson, 2012-CP-07-3800, Beaufort County, South Carolina..	PitkinB
Michael A. Platt, MD.	1010 Medical Center Drive, Suite 240 Hardeeville, SC 29927	Physician with Coastal Carolina Associates who provided healthcare services to Robert E. Feldman	PlattMD
Kenneth Alan Priegel	26 Bridel Path Labe Bluffton, SC 29910	Witness to the accident giving rise to claims asserted in Robert Feldman and Lois Feldman v. Sarah Dickenson, 2012-CP-07-3800, Beaufort County, South Carolina..	PriegelK
Alton Prioleau	Allstate Insurance Company 1400 Browning Rd. Columbia, SC 29210	Adjuster with Allstate Insurance Company	PrioleauA
Jeffrey Reuben, MD	300 Midway Drive Spine Suite Beaufort, SC 29906	Physician who provided treatments to Robert E. Feldman for injuries that were the subject of claims asserted in the	ReubenMD

Full Name	Addresses	Role In Case	Short Name
**	**	Robert Feldman and Lois Feldman v. Sarah Dickenson, 2012-CP-07-3800, Beaufort County, South Carolina..	**
Jerri Ann Roseneau	Beaufort County Clerk of Court Post Office Box 1128 Beaufort, SC 29901-1128	Beaufort County Clerk of Court	RoseneauJ
Schilling, MD		Physician with Atlantic Radiology Associates, LLC who provided medical services to Robert E. Feldman after collision giving rise to claims in Robert Feldman and Lois Feldman v. Sarah Dickenson, 2012-CP-07-3800, Beaufort County, South Carolina..	Schilling
Charles Shissias, MD	c/o Beaufort Memorial Hospital 955 Ribaut Road Beaufort, SC 29902	Physician who provided treatments to Robert E. Feldman for injuries that were the subject of claims asserted in the Robert Feldman and Lois Feldman v. Sarah Dickenson, 2012-CP-07-3800, Beaufort County, South Carolina..	ShissiasMD
Louis Andrew Sist	86 Parkside Drive Bluffton, SC 29910	Witness to the accident giving rise to claims asserted in Robert Feldman and Lois Feldman v. Sarah Dickenson, 2012-CP-07-3800, Beaufort County, South Carolina..	SistL
David Wheeler	Liberty Mutual Insurance Company PO Box 958 Lake Mary, Florida 32795	Adjuster with Liberty Mutual Insurance Company	WheelerD
Sonya Wise	Allstate Insurance Company Insurance P.O. Box 660626 Dallas, TX 75266	Claims Representative with Allstate Insurance Company	WiseS
Michael Witt		Process server on Hilton Head Island who was retained by Gary P. Coggin, J.D. to effect service of process on Sarah Helen Dickenson.	WittM

Full Name	Addresses	Role In Case	Short Name
Karma Young			YoungK
Cissy Zareva	Hilton Head Island, SC	Regulatory Coordinator and Custodian of Records for Hargray Communications Group, Inc.	ZarevaC

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

ROBERT E. FELDMAN and LOIS
FELDMAN,

Plaintiffs,

vs.

GARY P. COGGIN,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
C/A No. 2015-CP-07-01251
BEAUFORT COUNTY, S.C.
JERRI ANN ROSE
CLERK OF COURT

**PLAINTIFF'S
RESPONSE TO REQUEST FOR
SCHEDULING ORDER**

**TO: M. DAWES COOK, JR., J.D. AND JEFFREY M. BOGDAN, J.D., COUNSEL
FOR DEFENDANT**

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Robert E. Feldman and Lois J. Feldman, by and through undersigned counsel, pursuant to Rule 40(e)(2) of the South Carolina Rules of Civil Procedure, hereby submit this Response to the Request for Scheduling Order.

This case should be placed on the trial roster. Both the Plaintiffs and the Defendant have had intimate, direct and actual knowledge of the subjects of this suit for some time; and Plaintiffs should not be forced to wait to try this case based on the Defendant's preference of indefinitely drawing out this litigation.

Mr. Feldman was seriously injured in an automobile collision on October 9, 2010. As a result of the collision, Mr. Feldman sustained broken ribs and severe back injuries requiring Mr. Feldman to suffer through epidural injections presumably for the rest of his life. Defendant Coggin represented Mr. and Mrs. Feldman in pursuit of their claims arising from the automobile accident.

After making multiple \$1.5 million dollar demands, inexplicably, Defendant

Coggin resolved the claim with the at-fault driver's carrier for only 85% of the limit of the at-fault driver's policy coverage. Thereafter, in 2012, Defendant Coggin filed suit in an attempt to recover against Mr. Feldmans underinsured motorist coverage (UIM), through the action styled as Robert & Lois Feldman v. Sarah Dickenson, 2012-CP-070-3800 (hereinafter the "UIM Action"). Defendant Coggin never filed proof of service of process upon Ms. Dickenson; even after UIM Action defense counsel asserted insufficiency of service of process and statute of limitations defenses. All claims against the at-fault driver that could trigger UIM coverage were time-barred after October 9, 2013.

As late as May of 2014, Defendant Coggin was making demands for the \$500,000.00 UIM policy limits. In June of 2014, Defendant Coggin took out a line of equity on his home. By August of 2014, and after the statute of limitations expired with no service of process achieved on Ms. Dickenson, Defendant Coggin began insisting that Mr. Feldman settle the claims with the UIM carrier for \$25,000.00, based on the existence of an outstanding legal bill of \$2000.00 for work that Defendant Coggin had performed for another person; and the anticipated costs of litigation in the UIM Action.

Given the extremely low settlement that Defendant Coggin was recommending in August 2014, and the stark contrast to Defendant Coggin's initial and continued expectations of the case up to that point, the Feldmans decided that they should attempt to locate alternative counsel. The Feldmans located alternative counsel and at that time determined that the UIM Action would be dismissed for Defendant Coggin's failure to properly serve the at-fault driver. The Feldmans settled the UIM Action for the \$25,000.00 offer that was well below Mr. Feldman's approximate bills of \$150,000.00,

for medical treatment. The present suit followed soon thereafter.

In the present suit, Defendant Coggin requested a 30 day extension to file an Answer, which Plaintiffs granted. The parties proceeded to trade extensive written discovery, including several sets of requests for production of documents, interrogatories, and requests for admission. Over 360 documents have already been exchanged between Plaintiffs and Defendant, although a tremendous amount of this information was already in the possession of Defendant Coggin because he represented the Plaintiffs in the underlying suit. Also, the parties mediated the case after an ADR Notice dated January 8, 2016.

This is a simple case. Plaintiffs estimate that they will need to conduct approximately two depositions, one of which is the doctor in the UIM Action that opined as to Mr. Feldmans lifetime total impairment rating of 12%, and the other of which is the deposition of the defense attorney in the UIM Action who is expected to testify that the UIM carrier would have tendered at or near the \$500,000.00 limits of the policy if the UIM Action had been properly pursued. Plaintiffs also believe that they will be calling somewhere in the nature of five (5) witnesses in total at a trial of this matter. Defendant Coggin has not attempted to notice a deposition nor has Defendant Coggin indicated how many depositions or witnesses he believes are necessary in defense of the Feldmans claims.

Defendant Coggin has propounded numerous interrogatories concerning the underlying UIM Action, even though, presumably he was fully knowledgeable of that case and its strengths and weaknesses. Despite having grounds to object to the numerous additional interrogatories propounded by Defendant Coggin, Plaintiffs have

responded to such interrogatories in an effort to move this matter forward as expeditiously as possible.

Defendant Coggin has known about his failures to achieve required personal service since at least December of 2014, as indicated in the affidavit that he wrote which is attached hereto as "Exhibit 1". The Feldmans have been waiting since the fall of 2010, to secure funds from the UIM coverage that Mr. Feldman purchased. The Feldmans have incurred large medical expenses, they have lost the value of Mr. Feldmans earning capacity, Mr. Feldman has experienced a lot of pain and loss of enjoyment of his life; and Mrs. Feldman has lost time with her husband whom she must now care for on a frequent and regular basis.

To literally add insult to injury, the Feldmans have not received the benefit of \$500,000.00 of underinsured motorist coverage that they purchased because Defendant Coggin failed to timely execute service of process. Undersigned counsel has requested to move this matter to the jury trial roster to expedite resolution of this sad series of events but now Defendant Coggin requests that this matter not be tried before 2017, which is seven years after Mr. Feldman sustained his injuries and resulting damages, and at least three years after Mr. Coggin actually wrote a sworn statement indicating that he failed to achieve the required personal service by the required deadline.

The parties have already traded extensive written discovery. The Feldmans are prepared and ready to try this case. Defendant Coggin appears to be interested in further delay, despite the fact that all of the information that he could need should already be in his files if he met the requisite standards of care in the UIM Action.

Defendant Coggin signed a Complaint in the UIM Action; and also filed an Answer in the present action, which both, from separate ends of the pleading spectrum, represent that Defendant Coggin met the requisite standards of care in investigating, developing, and prosecuting the UIM Action. Despite these facts, Defendant Coggin also claims that he needs additional time to develop his view of the UIM Action. If Defendant Coggin did all that he should have done for the Feldmans in the UIM Action, as he has affirmatively represented in this matter and with the filing of the Complaint in the UIM Action, he should be more than ready to defend this case. Accordingly, Plaintiffs respectively request that the Court place this matter on the jury roster. Also, Plaintiffs consent to the Scheduling Order attached hereto as Exhibit 3.

Respectfully Submitted,

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis (SC Bar # 064918)
Christopher W. Lempesis, Jr. (SC Bar#077012)
710 Boundary Street, Unit A-1
Beaufort, SC 29902
843.524.9500 Tel.
843.524.9501 Fax.
Thomas@PendarvisLaw.com

Counsel for Plaintiffs

Beaufort, South Carolina
March 22, 2016

Affidavit of Gary Coggin



My name is Gary Coggin. I am over the age of twenty-one years and am in good health. I am an attorney in good standing in the state of South Carolina. In late 2010 I was hired by Robert Feldman to represent him in an action for damages for injuries he sustained in an automobile accident with one Sarah Dickenson. After approximately two years of negotiation I settled the case in a manner favorable to Mr. Feldman. Because Mr. Feldman wished to gain an amount of money from his underinsurance, I, under the laws of South Carolina, drafted a complaint in the matter for service upon both Mr. Feldman's insurer, Liberty Mutual Insurance, and the defendant in the case, Sarah Dickenson.

Service on both Ms. Dickenson and Liberty Mutual Insurance (through the Secretary of Insurance of South Carolina) was accomplished within the following several weeks. In early November, 2012, this attorney charged his process server, Michael Witt, with the service of a summons and complaint in the matter of Feldman v. Dickenson, Case Number 2012-CP-07-3800, upon Sarah H. Dickenson at 116 Doncaster Lane in Bluffton, South Carolina. On November 12, 2012 Mr. Witt appeared at my office and stated that he had been to the Doncaster address and talked to a couple who gave him the information that Ms. Dickenson was no longer at the address and that they did not know her current whereabouts. (Affidavit 1)

This attorney paid Mr. Witt and told him that he would personally track down Ms. Dickenson. (Affidavit 2). After an extensive internet search, Ms. Dickenson was finally located at 58 MacGregor Street in Roslyn Heights, New York. (Exhibit 3) Subsequently, a process server in the area located. (Exhibit 4). On November 16,

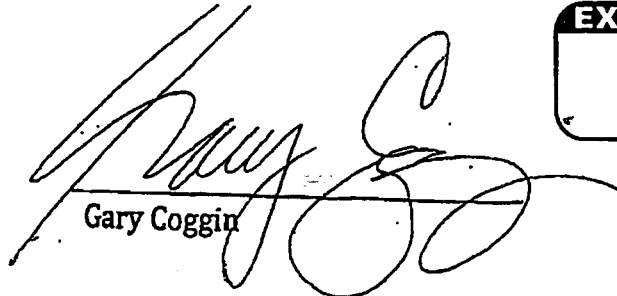
2012 two (2) telephone calls were made to a woman who identified herself as Fran at the Zellner - Wood Process Services Company. (Exhibit 5) The initial call was to determine if, when, and how much it would cost to have process be served on Ms. Dickenson. Attorney was told the cost was \$200 and that Ms. Dickenson would be served immediately upon receipt of payment. The Attorney told Fran that he would send a money order or a cashiers check if that would hasten services.

After ending the first call, Attorney immediately called Zellner - Wood back to make sure he had the correct address. He then went to the North end Hilton Head Island Post Office and purchased a money order. All the materials for service were then sent US Mail, first class, to Zellner - Wood the same afternoon.

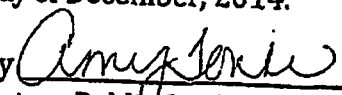
Approximately one week later, Attorney telephoned Zeller - Wood to determine progress re service. He was told that a server had been to the 58 MacGregor address and was told that Sarah Dickenson no longer lived at that address. Attorney was told that another address had been obtained and that service would be made at that location shortly.

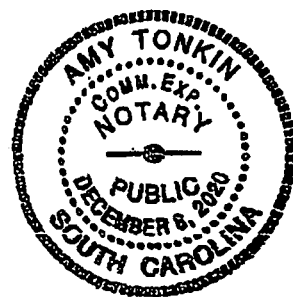
A week or so later, Attorney determined that service had been made upon Ms. Dickenson and that an affidavit of service was forthcoming. Two or three weeks later, an Affidavit of Service arrived. The Affidavit had been served at an unfamiliar address and someone, not Ms. Dickenson, had signed to accept service. Attorney was not surprised by this as he believed that Ms. Dickenson was in some kind of supervised living arrangement.

After reviewing the affidavit of service, Attorney placed it in file of the Feldman case which was subsequently turned over to the Plaintiffs' new attorney.


Gary Coggin

Sworn to before me this 8th
day of December, 2014.

By 
Notary Public for South Carolina
My Commission Expires: 12/08/2020



Gary Coggin
Attorney at Law
P.O. Box 7092
Hilton Head Island, SC 29938

843.689.7777
Admitted to practice SC & IL

843.689.7777
gc@citylaw@aol.com

July 22, 2011

Robert Feldman
55 Crescent Plantation
Bluffton, SC 29910



Dear Mr. Feldman:

This afternoon, Alton Prioleau, the claims representative for Allstate returned my call. We discussed your claim, or rather the submission of the demand package. I told him that, with the exception of the radiology bills and the Bluffton EMS medical records, everything was ready to be sent. He inquired after your wage verification and I told him that, as a self employed businessman you would be submitting, under separate cover, at least five (5) years of tax returns. Prioleau told me he would like to receive everything at once and to forward the package as soon as I receive the tax returns.

I have no problem with this request and, as such, Bob, if you would, please assemble your last five tax returns and get copies of the same to me. I will then get all the material off to Allstate.

Please call me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Coggin".

Gary Coggin

Coggin Law Office

P.O. Box 7092
Hilton Head, SC 29938
Phone: 843-689-7777
Fax: 843-689-7779
Email: gcitylaw@aol.com

May 5, 2014

Terry Finger
Finger & Fraser, PA
PO Box 24005
Hilton Head Island, SC 29925



Re: Mediation: Feldman v. Dickenson

Dear Mr. Finger:

In response to your letter of April 3, 2014 requesting a listing of issues for mediation of the above referenced matter, please see below:

Facts. On October 9, 2010 Robert Feldman (plaintiff) was traveling East on US 278 in Bluffton, South Carolina. He was in the right hand lane and passing on a green light through the intersection at Buck Island Road. At that time Sarah Dickenson (defendant) passed through the intersection on a red light and attempted access Buck Island Road. In doing so, she drove into the plaintiff's path and a crash ensued. Feldman sustained three broken ribs and lower back injuries.

Liability. Liability is not an issue in this case. The plaintiff has received \$90,000 thus far in recompense (\$85,000 Allstate & \$5000 medpay).

UIM. Plaintiff is seeking payment from his UIM. In the complaint filed on his behalf on October 29, 2012 he is requesting an amount of \$300,000 on his first cause of action of negligence. This basis of this demand is as follows:

a. Impairment. Plaintiff has been awarded a full body impairment of 12% by Dr. Reuben pursuant to the South Carolina Code of Laws, 19-1-150 (life expectancy tables), at the time of his injury, plaintiff had a life expectancy of fifteen (15) additional years. By any formula, this impairment should be valued at somewhere around \$100,000.

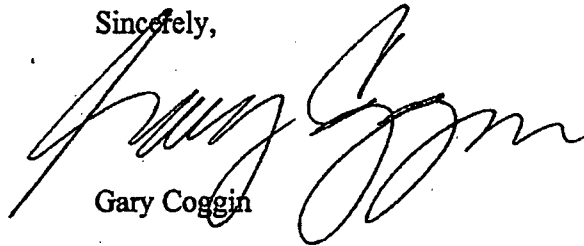
b. Medicals. Currently the plaintiff receives an epidural injection in his lower back every two (2) months. This is an expense of approximately \$6000 annually. If this is extended ten (10) years, there is an expense of \$60,000.

The above amount is \$150,000 to \$180,000. This does not include loss of work, loss of enjoyment of life and pain and suffering. If we would consider this, the demand on UIM is \$300,000 to \$350,000.

The demand for the loss of consortium action is statutory and the amount chosen was based on conversations with the plaintiffs and intended to be in line with the impairment.

If you have any questions with any of the above, please do not hesitate to contact me.

Sincerely,



Gary Coggin

GPC/cab



STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

ROBERT E. FELDMAN and LOIS J.
FELDMAN,

Plaintiffs,

vs.

GARY P. COGGIN,

Defendant.

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) C/A No.: 2015-CP-07-01251

SCHEDULING ORDER

EXHIBIT

3

Pursuant to Rule 26(f) and Rule 40(e)(2) of the South Carolina Rules of Civil Procedure,
the Court establishes the following deadlines in this case:

1. Discovery shall be completed no later than July 1, 2016. All discovery requests shall be served in time for the responses thereto to be served by this date. De bene esse depositions must be completed by discovery deadline.
5. All dispositive motions shall be filed on or before August 1, 2016.
6. This case is subject to being called for jury selection and trial on or after September 1, 2016.

Chief Administrative Judge

_____, 2016
_____, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) SECOND JUDICIAL CIRCUIT
C/A No.: 2015-CP-07-01251

ROBERT E. FELDMAN and LOIS J. FELDMAN,
FELDMAN,

Plaintiffs,

vs.

GARY P. COGGIN,

Defendant.

MOTION FOR SUMMARY JUDGMENT

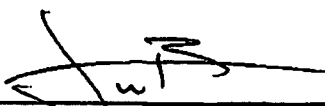
TO: THOMAS PENDARVIS, ATTORNEY FOR PLAINTIFFS ROBERT FELDMAN AND LOIS FELDMAN:

PLEASE TAKE NOTICE that ten (10) days after the service hereof, or as soon thereafter as counsel may be heard, the Defendant, Gary P. Coggin will appear before the Court of Common Pleas in the Beaufort County Courthouse at 140 Ribaut Road, Beaufort, South Carolina 29901, or another location as the Court may specify, and Motion the Judge of that Honorable Court for an Order granting him summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the grounds that the pleadings, depositions, answers to interrogatories, and admissions on file show that there is no genuine issue as to any material fact and that Defendant is entitled to judgment as a matter of law.

This Motion is further based on South Carolina Jurisprudence, the South Carolina Rules of Civil Procedure, the pleadings and discovery in this action, and any Memorandum and affidavits that will be subsequently filed.

WHEREFORE, based on the law of the State of South Carolina, the grounds set forth above, and such materials as may have been or may hereafter be properly submitted to the Court, Defendant respectfully prays this Honorable Court enter judgment in his favor.

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY: 

M. Dawes Cooke, Jr., Esquire

Jeffrey M. Bogdan, Esquire

288 Meeting Street, Suite 200

Charleston, SC 29401

843-577-7700 (phone)

843-577-7708 (fax)

mdc@barnwell-whaley.com

jbogdan@barnwell-whaley.com

Attorneys for Defendant

May 13, 2016

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

ROBERT E. FELDMAN and LOIS J.
FELDMAN,

Plaintiffs,

vs.

GARY P. COGGIN,

Defendant.

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT
) C/A No.: 2015-CP-07-01251

**MEMORADNUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

This matter is before the Court on the Defendant's Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Defendant hereby submits this Memorandum in support of his Motion for Summary Judgment.

BRIEF SUMMARY OF THE ARGUMENT

In this legal malpractice action, Plaintiffs have sued their former attorney, Defendant attorney Gary P. Coggin (hereinafter "Attorney Coggin"), alleging that he breached the standard of care during his representation of them by failing to serve the alleged at-fault driver with the summons and complaint in an action to recover the Plaintiffs' underinsured motorist (hereinafter "UIM") benefits. The Plaintiffs accepted a \$25,000 settlement from their UIM carrier, which Attorney Coggin negotiated on their behalf, but they now claim that they would have recovered all of the available \$500,000 UIM benefits if Attorney Coggin had served the at-fault driver. While the question of whether Attorney Coggin did in fact serve the alleged at-fault driver with the summons and complaint, which Attorney Coggin insists he did, is one for the jury, that question is not pertinent to this Motion or to the disposition of this case because, even if Attorney Coggin did breach the standard of care by failing to serve the at-fault driver, that breach did not

proximately cause the Plaintiffs to suffer any damages. If Attorney Coggin did in fact fail to serve the at-fault driver, such failure would not have affected the underlying UIM case in any way, because under clearly established law the defendant in that case waived its right to use failure to effect service and the statute of limitations as defenses by failing to allege in what way service was improper or even who was not properly served. The law was very clear that a defendant could not simply vaguely assert improper service in his answer and hope that the plaintiff would not figure out what the claimed defect was until after the statute of limitations had run, as Liberty Mutual did in that case.

FACTS

Attorney Coggin represented the Plaintiffs in an effort to recover for personal injuries that Plaintiff Robert Feldman sustained when he was involved in an automobile accident allegedly caused by Sarah Dickenson on October 9, 2010. Compl. ¶¶8-9. After successfully recovering \$85,000 for Mr. Feldman from Ms. Dickenson's automobile liability insurance carrier without litigation, Attorney Coggin filed suit on behalf of both Plaintiffs against Ms. Dickenson in an attempt to recover UIM benefits from Plaintiffs' own automobile liability insurance carrier, Liberty Mutual Insurance Company. Compl. ¶¶15-16. That case, styled Robert & Lois Feldman v. Sarah Dickenson, 2012-CP-070-3800 (hereinafter the "UIM Action") was filed on or around October 29, 2012. Compl. ¶16.

After Attorney Coggin served the summons and complaint in the UIM Action on Liberty Mutual, as is required by S.C. Code Ann. §38-77-160, Liberty Mutual retained attorney Julian Allen "to represent Dickenson" in the UIM Action.¹ Compl. ¶¶17, 28. Liberty Mutual filed an

¹ Despite the fact that Plaintiffs claim that Attorney Allen represented Dickenson in the UIM Action, South Carolina law is clear that Attorney Allen actually represented Liberty Mutual and did not represent Dickenson. Crawford v. Henderson, 356 S.C. 389, 398, 589 S.E.2d 204, 209 (Ct. App. 2003) ("[T]he attorney for the UIM carrier represents the carrier and not the named defendant.").

Answer to the UIM Action on January 7, 2013, a copy of which is attached hereto as Exhibit A.

The Answer included only four (4) affirmative defenses, the last of which read as follows:

FOR A FIFTH DEFENSE
(Improper Service)

10. FURTHER ANSWERING, this party alleges that Plaintiff has failed to effectuate proper service under Rule 12(b)(4) and Rule 12(b)(5).

Liberty Mutual's Answer did not allege that the at-fault driver, Dickenson, was not served, nor did it raise the statute of limitations as an affirmative defense. Liberty Mutual did not file any motions prior to the Answer, nor did it amend its Answer within 30 days of serving it as allowed by Rule 15(a), SCRCP.

For almost two years, Liberty Mutual defended the UIM Action by participating in written discovery, filing motions, taking both of the Plaintiffs' depositions, and participating in mediation on or around May 7, 2014. Liberty Mutual offered, and Attorney Coggin recommended Plaintiffs accept, \$25,000 at mediation, but the Plaintiffs refused. Attorney Coggin's recommendation to accept this amount was based partially on the fact that he recently discovered that Plaintiff Robert Feldman had been playing golf regularly after the October 9, 2010 accident, something which both Plaintiffs had represented to Attorney Coggin that Robert Feldman could not do because of the injuries he sustained in the accident. To Attorney Coggin, this newly discovered fact completely undermined Plaintiffs' claim for damages in the UIM Action.

After Plaintiffs' refusal to accept Liberty Mutual's \$25,000 settlement offer at mediation, Attorney Coggin began focusing on getting the UIM Action ready for trial. In order to present the Plaintiffs' case at trial, Attorney Coggin would have to incur some rather large expenses, including those associated with taking video-taped *de bene esse* depositions of Plaintiff Robert

Feldman's treating physicians. However, Plaintiffs refused to provide Attorney Coggin the funds to cover these expenses, despite having agreed to do so in the Contingency Fee Agreement that Mr. Feldman signed. After over nine months of attempting to get Plaintiffs to commit to paying these expenses, on September 16, 2014 Attorney Coggin filed a Motion to Withdraw as Counsel and to Stay the Proceedings. The following day Attorney Coggin was contacted by Attorney Robert Metro with notice that his firm, Bauer & Metro, P.C, was taking over representation of the Plaintiffs in the UIM Action. On September 23, 2014, Attorney Coggin provided Bauer & Metro his entire file in the UIM Action. The Consent Order to substitute counsel was filed on November 20, 2014.

Between January 7, 2013 when Liberty Mutual filed his Answer, and September 16, 2014, when Attorney Coggin filed his Motion to Withdraw, Liberty Mutual did not raise or argue that anyone was not served or was improperly served with process or that the statute of limitations had expired. Notably, the three-year statute of limitations for the UIM Action expired on October 9, 2013. Liberty Mutual continued actively defending the UIM Action after the expiration of the statute of limitation, including participation at mediation.

On October 14, 2014, after Bauer & Metro took over representation of the Plaintiffs but before the Consent Order to substitute counsel was filed, Liberty Mutual filed a Motion to Dismiss, a copy of which is attached hereto as Exhibit B, claiming for the first time that *Dickenson* was not served with the Summons and Complaint in the UIM Action within the statute of limitations, which expired on October 9, 2013.² Notably, the Motion to Dismiss was filed almost two years after the UIM Action was filed.

While this Motion to Dismiss was pending, Plaintiffs, now represented by Bauer &

² Exhibit B also includes the Memorandum in Support of Liberty Mutual's Motion to Dismiss, which was filed on December 2, 2014. The Memorandum in Support does not advance any substantive arguments that are not contained in the Motion to Dismiss.

Metro, decided to accept Liberty Mutual's \$25,000 settlement offer that was made at mediation while they were under Attorney Coggin's representation. Importantly, Plaintiffs did not allow the Motion to Dismiss to be adjudicated, as they claim they now were "certain" that it would have been granted (Compl. ¶38). A Stipulation of Dismissal with Prejudice of the UIM Action was filed on March 4, 2015.

This legal malpractice action was filed just over two months later, on May 19, 2015. In this action, Plaintiffs allege that Attorney Coggin breached the standard of care by failing to serve Dickenson with the Summons and Complaint in the UIM Action (Compl. ¶39), which forced them to accept Liberty Mutual's \$25,000 settlement offer instead of the \$500,000 maximum UIM benefits that Plaintiffs claim they "more likely than not" would have recovered from Liberty Mutual in the UIM Action (Compl. ¶¶38, 40).

LAW / ANALYSIS

In order to prevail in an action for legal malpractice, a plaintiff must prove: (1) the existence of any attorney-client relationship; (2) breach of a duty by the attorney; (3) damage to the plaintiff; and (4) proximate causation of the plaintiff's damages by the breach. Harris Teeter, Inc. v. Moore & Van Allen, PLLC, 390 S.C. 275, 282, 701 S.E.2d 742, 745 (2010); Holy Loch Distributors, Inc. v. Hitchcock, 340 S.C. 20, 26, 531 S.E.2d 282, 285 (2000).

The proximate causation element requires the plaintiffs to prove that they "most probably" would have realized a better result in the underlying case if not for the defendant's breach of the standard of care. "[A] plaintiff must show she most probably would have been successful in the underlying suit if the attorney had not committed the alleged malpractice." Summer v. Carpenter, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997). "The question of the success

of the underlying claim, if suit had been brought, is a question of law.” Doe v. Howe, 367 S.C. 432, 442, 626 S.E.2d 25, 30 (Ct. App. 2005).

Here, in order to prove causation based on Attorney Coggin’s alleged failure to serve Dickenson within the statute of limitations, the Plaintiffs will have to prove that Attorney Allen’s Motion to Dismiss the UIM Action was meritorious, which would have then made the Plaintiffs’ acceptance of Liberty Mutual’s \$25,000 settlement offer reasonable.

However, even if Attorney Coggin never served Ms. Dickenson, which Attorney Coggin does not concede, the Motion to Dismiss the UIM Action had absolutely no merit and would have had to have been denied had the Plaintiffs allowed it to be decided. The Motion to Dismiss was doomed because Attorney Allen waived the right to challenge the service of process on Dickenson and the right to raise a statute of limitations defense by not properly including them in his Answer to the UIM Action and by actively defending the UIM Action for almost two years while staying silent as to the service issue. Accordingly, Plaintiffs cannot prove the proximate cause element of a legal malpractice case, as a matter of law, and Attorney Coggin is entitled to summary judgment.

I. THE MOTION TO DISMISS THE UIM ACTION WAS MERITLESS BECAUSE LIBERTY MUTUAL FAILED TO PROPERLY INCLUDE A RULE 12(B)(4) AFFIRMATIVE DEFENSE FOR INSUFFICIENCY OF PROCESS OR A RULE 12(B)(5) AFFIRMATIVE DEFENSE FOR INSUFFICIENCY OF SERVICE OF PROCESS

Rule 12(b) of the South Carolina Rules of Civil Procedure requires a defendant to assert an affirmative defense for “insufficiency of process” (Rule 12(b)(4)) and “insufficiency of service of process” (Rule 12(b)(5)) in its initial responsive pleading or motion. Rule 12(h) states that the Rule 12(b)(4) insufficiency of process defense and the Rule 12(b)(5) insufficiency of service of process defense are waived unless they are so plead. See also Garner v. Houck, 312 S.C. 481, 487, 435 S.E. 2d 847, 850 (1993) (holding that a defendant must raise issues regarding

service of process in its initial responsive pleading/motion, or else defendant cannot later claim that any alleged improper or insufficient process or service supports a dispositive motion).

The Court of Appeals of South Carolina clarified the pleading requirement for insufficiency of service of process in its opinion in Unisun Ins. v. Hawkins, 342 S.C. 537, 537 S.E.2d 559 (Ct. App. 2000). In Unisun, the plaintiffs failed to make proper service on the defendant Bruce Hawkins, but the defendant's answer stated by way of affirmative defense only that "Plaintiffs have failed to serve defendant Bruce Hawkins within the three year statute of limitations." Id. at 539, 435 S.E.2d at 560. Defendant Bruce Hawkins later moved for summary judgment, arguing that he was never properly served with the summons and complaint. The circuit court granted the motion, finding that plaintiffs failed to properly serve him. Id. at 539-40, 435 S.E.2d at 561-61. The Court of Appeals reversed, finding that the language defendant Bruce Hawkins included in his affirmative defense was insufficient to raise the Rule 12(b)(5) affirmative defense of insufficiency of service of process, because the pleading "failed to specify any defects in the service of process." Id. at 542-43, 435 S.E.2d at 562. The Court of Appeals found that defendant Bruce Hawkins "failed to allege process with even a minimal amount of specificity in his responsive pleading" and, thus, he waived the defense as well as a statute of limitations defense premised on the insufficient service. Id. See also Poston v. Davis, 2009 WL 9528768 (Ct. App. March 30, 2009) (finding that the defenses of insufficiency of service of process and statute of limitations are affirmative defenses which are waived if not properly plead in the responsive pleading); H. Lightsey, Jr. & J. Flanagan, South Carolina Civil Procedure 100 ("Challenges to the method of service of process [must] assert that service was not accomplished according to the rules or statutes. Any objection under these rules should specify why the rule was not satisfied.").

The reasoning of courts interpreting the analogous Federal Rules of Civil Procedure are also instructive, as Federal Rules 12(b)(4), 12(b)(5), and 12(h) are substantively identical to their South Carolina counterparts.³ Various federal courts across the country have analyzed this issue and concluded that, in order to challenge service of process, a defendant's initial answer or motion must not merely raise the 12(b)(4) and/or 12(b)(5) affirmative defense, but must do so with such specificity to point out in what manner the process was flawed or how plaintiff failed to properly serve process. O'Brien v. R.J. O'Brien & Assocs. 998 F.2d 1394, 1400 (7th Cir. 1993) ("Objections to the sufficiency of process must be specific and must point out in what manner the plaintiff has failed to satisfy the service provision utilized."); Photolab Corp. v. Simplex Specialty Co., 806 F.2d 807, 810 (8th Cir. 1993) (same); Sassower v. City of White Plains, 1993 WL 378862 (S.D.N.Y. 1993) ("Objections to service must be specific and point out in what manner the utilized service of process rules were not satisfied; once done, the burden of proof as to effectiveness of service shifts to plaintiff."); King v. Best Western Country Inn, 138 F.R.D. 39 (S.D.N.Y. 1993) (same); Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure Civil 2nd, 1353 (1990) ("The objection to insufficiency of process or its service should point out specifically in what manner plaintiff has failed to satisfy the requirements of the service provision he utilized.").

One federal case that is particularly instructive is Zisman v. Sieger, 106 F.R.D. 194 (N.D.Ill. 1985). There, after plaintiff's first attempt at service of a summons and complaint on defendant, a Japanese corporation, the defendant filed a Motion to Dismiss, arguing that service of process was improper under Illinois law's provisions for service on foreign corporations. Id. at 197. After obtaining leave of court, plaintiff attempted service a second time on defendant.

³ See Roberts v. Peterson, 292 S.C. 149, 355 S.E. 2d 280 (Ct. App. 1987) (where the state rule has adopted the language of a federal rule, federal cases interpreting the federal rule are persuasive).

Id. at 196. Defendant responded with a second Motion to Dismiss, but this time argued that service was improper not under Illinois law, but under the terms of the Hague Convention. Id. at 197. The court found as follows:

The only objection to the first attempted service was that it did not comply with the relevant provisions of Illinois law for service of process on a foreign corporation. [Defendant] could have, but did not raise the issue of compliance with the Hague Convention. If the Hague Convention applies at all, it applied then. If the Hague Convention applies, that first attempted service was insufficient on that basis as well. Failure to raise the objection in the first Rule 12(b) motion constitutes a waiver of the issue under Rule 12(h) and (g). . . .

Rule 12 requires a defendant who wishes to raise jurisdictional defenses to raise them all when he makes his first defensive move. The Rule ... is intended to eliminate unnecessary delays at the pleading stage of a case by avoiding the piecemeal consideration of pretrial motions. The failure to raise an objection which could have been raised in a previous 12(b) motion constitutes a waiver of that issue.

. . . [B]y failing to raise its objection to service based on the Hague Convention in the previous motion, when that objection was clearly available to it, [Defendant] has waived that objection to the sufficiency of service of process. If [Defendant] had raised the issue, even generally, in its prior motion, and the second attempted service failed to comply with some particular of the Convention, then [Defendant] would not now be barred from asserting that as a defense to the second attempted service.

Id. at 197-98 (internal quotations and citations omitted). The important takeaway from Zisman is that, in order to preserve a defense for insufficient service of process, a defendant must not only raise the defense in its first responsive pleading, but also explain with specificity each reason why service was improper. If a defendant does not include any specific reason, or includes one reason in its initial responsive pleading, but later claims service was improper for a different reason, the argument as to that second reason will be considered waived.

Another federal case, Bobo v. Umoh, 2008 WL 4911222 (W.D. Ark. Nov. 13, 2008), a copy of which is attached hereto as Exhibit C, is instructive. There, the defendant answered the plaintiff's complaint and included blanket and unspecific affirmative defenses that the complaint should be dismissed pursuant to Rule 12(b)(4) and 12(b)(5). Defendant then actively litigated the case for nearly two years before filing a motion to dismiss under Rules 12(b)(4) and 12(b)(5), arguing he was never served with the summons and complaint. The court denied the motion, finding that defendant's "generic assertion of the defenses available under Rule 12(b) was insufficient to preserve his objection to plaintiffs' failure to perfect service of process." The court further found that, even if the defendant "had properly asserted the objection in his answer, his failure to raise the issue by formal motion for nearly two years would serve as a waiver of the issue."

Here, while the Answer in the UIM Action did include the words "improper service," "Rule 12(b)(4)," and "Rule 12(b)(5)" in an affirmative defense, the Answer merely named the defense, to wit, "Plaintiff has failed to effectuate proper service under Rule 12(b)(4) and Rule 12(b)(5)." The affirmative defense said no more. It was not specific and did not point out in what manner the rules of service of process were not satisfied, or even who was not properly served. Liberty Mutual's affirmative defense was less specific than the affirmative defense that the South Carolina Court of Appeals deemed invalid in Unisun. There, the affirmative defense at least identified that it was Bruce Hawkins who challenged the service of process. Liberty Mutual's affirmative defense, on the other hand, did not properly raise defenses under Rule 12(b)(4) or 12(b)(5) because it failed to specifically state the reason or reasons the service was flawed, or even on whom service was not accomplished (Ms. Dickenson or Liberty Mutual). The Answer was filed by Liberty Mutual, not Dickenson, so the natural inference from a defense

of “failure to effect proper service” was that Liberty Mutual was not properly served. The pleading does not reasonably put the plaintiff on notice that the defense referred to Dickenson or that she was not only not properly served, but she was not served at all. The Motion to Dismiss argued that it was Dickenson, not Liberty Mutual, who was not served. Since the Answer did not properly raise this defense, it was waived and could not be argued in a later dispositive motion. Rule 12(h), SCRCP; Houck, 312 S.C. at 487, 435 S.E. 2d at 850; Unisun, 342 S.C. at 542-43, 537 S.E.2d at 562; Zisman, 106 F.R.D. at 197-98.

This case presents a perfect example of why courts require that Rule 12(b)(4) and 12(b)(5) affirmative defense be plead with specificity in the initial answer. Had the Answer specified the particular alleged defects with the service of process and who was allegedly not served, Attorney Coggin would have been on notice of those alleged defects at that time and could have timely corrected the problem. Attorney Coggin testified as such in his deposition, by stating that if Liberty Mutual’s affirmative defense had at least identified that it was Ms. Dickenson who was allegedly not properly served, he would have further investigated that issue at the time, and had an opportunity to correct any errors in service that he may have discovered. However, the Answer did not put Attorney Coggin on notice of the actual alleged defect in service, or even who was not served, and those specifics were not raised for over two years, when Liberty Mutual filed the Motion to Dismiss the UIM Action and after the statute of limitations had run.

Since the Motion to Dismiss the UIM Action was meritless, because the defenses asserted therein were waived, any breach of the standard of care that Attorney Coggin may have committed if he failed to properly serve Ms. Dickenson with the summons and complaint in the UIM Action did not proximately cause any damages to Plaintiffs. Stated another way, because

the Motion to Dismiss in the UIM Action was completely meritless, the Plaintiffs as a matter of law cannot prove that they “most probably” would have realized a better outcome in the UIM Action had Attorney Coggin not breached the standard of care by failing to serve Dickenson. Summer v. Carpenter, 328 S.C. at 42, 492 S.E.2d at 58. Since proximate cause is a matter of law and an essential element of Plaintiff’s legal malpractice claim, this court should grant Defendant summary judgment as to the Plaintiff’s Legal Professional Negligence cause of action. Harris Teeter, 390 S.C. at 282, 701 S.E.2d at 745; Howe, 367 S.C. 442, 626 S.E.2d at 30.

II. EVEN IF THE MOTION TO DISMISS THE UIM ACTION WAS GRANTED, THE UIM ACTION STILL WOULD HAVE SURVIVED BECAUSE ATTORNEY COGGIN COULD HAVE RE-SERVED DICKENSON, SINCE THE STATUTE OF LIMITATIONS DEFENSE HAD BEEN WAIVED IN THE UIM ACTION

A critical and necessary component to the Plaintiffs’ case against Attorney Coggin is proving that the statute of limitations in the UIM Action had expired when the Motion to Dismiss was filed, such that if the Motion to Dismiss was granted, Attorney Coggin would be precluded from simply re-serving Dickenson with the summons and complaint in the UIM Action and starting the UIM Action anew. Attorney Coggin concedes that the three year statute of limitations for the UIM Action began to run on October 9, 2010 and expired on or around October 9, 2013.

A party can waive a statute of limitations defense. RWE NUKEM Corp. v. ENSR Corp., 373 S.C. 190, 197, 644 S.E.2d 730, 734 (2007). “Waiver of [the statute of] limitations may be shown by words or conduct. Thus, waiver may result from express agreement, . . . from failure to claim the defense, or by any action or inaction manifestly inconsistent with an intention to insist on the statute.” Mende v. Conway Hosp., Inc., 304 S.C. 313, 314, 404 S.E.2d 33, 34 (1991), quoting 54 C.J.S. Limitation of Actions § 22 at 52 (1987).

Here, Liberty Mutual waived any statute of limitations it had in the UIM Action by (1) failing to raise it at all in its Answer; (2) actively defending the UIM Action for over ten (10) months before the statute of limitations expired; (3) continuing to defend the UIM Action for over one year after the statute of limitations expired; and (4) not raising the statute of limitations defense until after it expired. Because Liberty Mutual actively defended the UIM Action without raising the statute of limitations or any issues with service of process, Attorney Coggin was lulled into believing that Liberty Mutual took no issue with the service of process or the timeliness thereof. It was only after the statute of limitations expired that Liberty Mutual, through its Motion to Dismiss, first argued that service was never made on Dickenson and that it could not later be made because the statute of limitations had expired. This was certainly gamesmanship on behalf of Liberty Mutual, as it could have raised its service of process arguments in ample time such that Attorney Coggin could have corrected any alleged problems with the service before the statute of limitations expired. See Mende, 304 S.C. 314, 404 S.E.2d 34 (finding that defendant waived its statute of limitations after it participated in discovery for over two years, agreed to a voluntary non-suit after the statute of limitations expired, and then raised the expired statute of limitations as a defense when plaintiff re-filed the suit); Parker v. Parker, 313 S.C. 482, 487-88, 443 S.E.2d 388, 391 (1994) (finding that a party waived its right to claim that a statute of limitations applied, when the party did not raise the defense immediately and instead waiting until long after the statute expired to first raise the defense for the first time, which “lulled” the other party into a position where she could not assert her rights).

Unisun is just as instructive on the statute of limitations issue as it is on the service of process issue. In Unisun, defendant Hawkins claimed that since he was not served within the statute of limitations, the case against him must be dismissed. After finding that Defendant

Hawkins failed to properly raise, and thus waived, his service of process defense, the Court of Appeals then found that because he “failed to challenge the service of process properly, he also waived his statute of limitations defense”

For these reasons, the Court should find as a matter of law that the statute of limitations defense in the UIM Action was waived due to the conduct of Liberty Mutual in defending the case and in failing to properly raise the service of process defense. If the statute of limitations argument was waived, then Liberty Mutual’s Motion to Dismiss the UIM Action, even if granted, would have had no effect on the UIM Action because Attorney Coggin could have later re-served Dickenson with process. Therefore, Attorney Coggin’s alleged failure to serve Dickenson with process in the UIM Action could not have proximately cause any damages to the Plaintiffs here, and this legal malpractice case must fail. Harris Teeter, 390 S.C. at 282, 701 S.E.2d at 745; Howe, 367 S.C. 442, 626 S.E.2d at 30.

III. PLAINTIFFS’ SECOND CAUSE OF ACTION FOR BREACH OF CONTRACT SHOULD FAIL BECAUSE IT IS DUPLICATIVE OF PLAINTIFFS’ DEFECTIVE LEGAL MALPRACTICE CLAIM

The Court should dismiss the second cause of action of Plaintiffs’ Complaint for breach of contract because that claim is duplicative of the Plaintiffs’ first legal malpractice cause of action. The South Carolina Supreme Court has held that, in a legal malpractice cause, a court should dismiss all alternative legal theories that are based on the alleged acts:

In the current matter, however, RFT’s claim for breach of fiduciary duty arose out of the duty inherent in the attorney-client relationship and it arose out of the same factual allegations. Thus, RFT’s claim for legal malpractice necessarily encompassed a breach of the fiduciary duty an attorney has to his or her client. RFT specifically acknowledged at trial that it could not provide any circumstances differentiating the two claims.

RFT Mgmt. Co. v. Tinsley & Adams, LLP, 399 S.C. 322, 336, 732 S.E.2d 166, 173 (2012). This is consistent with the law of other states. See Town of North Hempstead v. Winston & Strawn, LLP, 814 N.Y.S.2d 237, 240 (N.Y. App. Div. 2006) (“[W]here, as here, the breach of contract and fiduciary duty claims arose from the same facts and did not allege distinct damages, they should be dismissed, as a matter of law, as duplicative of the legal malpractice claim.”); General Sec. Ins. Co. v. Jordan, Coyne & Savits, LLP, 357 F. Supp. 2d 951, 961-62 (E.D. Va. 2005); Oehlerich v. Llewellyn, 285 Ga. App. 738, 647 S.E.2d 399 (Ga. Ct. App. 2007); Larson v. O'Donnell, 836 N.E.2d 863, 871 (Ill. Ct. App. 2005) (“[W]here a breach of fiduciary duty claim is based on the same operative facts as a legal malpractice claim and results in the same injury, the latter claim should be dismissed as duplicative.”); Aller v. Law Office of Carole C. Schriefer, P.C., 140 P.3d 23, 28 (Colo. Ct. App. 2005); McMann v. Mockler, 503 S.E.2d 894, 897 (Ga. Ct. App. 1998) (“[T]he trial court correctly concluded that McMann’s claims for . . . breach of fiduciary duty were merely duplications of her malpractice complaint.”); Greathouse v. McConnell, 982 S.W.2d 165, 172 (Tex. Ct. App. 1998); Majumdar v. Lurie, 274 Ill.App.3d 267, 210 Ill. Dec. 720, 653 N.E.2d 915, 921 (1995).

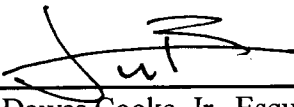
Plaintiffs’ breach of contract claim simply alleges that Attorney Coggin breached the contract he entered with the Plaintiffs when he failed to serve Dickenson with process in the UIM Action within the statute of limitations. This is identical to the claims alleged by the Plaintiffs in their legal malpractice cause of action. Since the legal malpractice cause of action fails as a matter of law, so too should the breach of contract cause of action.

CONCLUSION

In this legal malpractice case, Plaintiffs have the burden of proving that Attorney Coggin’s alleged breach of the standard of care – failing to serve Dickenson with the process

within the statute of limitation – proximately caused them damages. Put another way, they have to prove that they would have experienced a better outcome than they did in the UIM Action (a \$25,000 settlement) had Attorney Coggin served Dickenson. Since Plaintiffs claim they only accepted the \$25,000 settlement sum because they were certain that Liberty Mutual's Motion to Dismiss the UIM Action would be granted, their case here lives and dies with the merits of that Motion to Dismiss. As explained above, that Motion to Dismiss the UIM Action had absolutely no merit and would have been denied had the Plaintiffs allowed it to be adjudicated. Accordingly, Plaintiffs legal malpractice case against their former attorney must fail as a matter of law.

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June 20, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

ROBERT FELDMAN & LOIS
FELDMAN,

Plaintiffs,

v.

SARAH DICKENSON,

Defendant.

IN THE COURT OF COMMON PLEAS

Docket No.: 2012-CP-07-3800

ANSWER
(Jury Trial Demanded)

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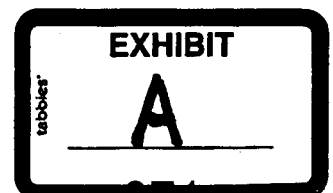
Liberty Mutual Insurance Company, as the alleged underinsured motorist carrier under S.C. Code Ann. § 38-77-160, answers the Complaint as follows:

FOR A FIRST DEFENSE

1. Except as specifically admitted, qualified, or explained, Liberty denies the allegations in the Complaint and demands strict proof thereof.
2. Paragraph 1 is a statement of law to be determined by the court.
3. Upon information and belief, Liberty admits Paragraphs 2 through 4.
4. Liberty lacks sufficient information to form a belief as to Paragraphs 5 through 7. Therefore, Liberty denies those allegations and demands strict proof thereof.
5. Paragraph 8 does not require a response.
6. Liberty lacks sufficient information to form a belief as to Paragraphs 9 through 11. Therefore, Liberty denies those Paragraphs and demands strict proof thereof.

FOR A SECOND DEFENSE
(Comparative Negligence)

7. FURTHER ANSWERING, this party alleges any injury and damage sustained was caused by the negligence or willfulness of Plaintiff, combining, concurring, and contributing with the negligence or willfulness, if any, on the part of this party. Because Plaintiff's negligence or willfulness is greater than the alleged



negligence or willfulness of this party, Plaintiff is barred from recovery against this party.

FOR A THIRD DEFENSE
(Comparative Negligence)

8. FURTHER ANSWERING, this party alleges any injury and damage sustained by Plaintiff was caused by the negligence or willfulness of Plaintiff, combining, concurring, and contributing with the negligence or willfulness, if any, on the party of this party. Therefore, the Court should reduce any recovery awarded to Plaintiff for the alleged injuries and damage based upon the percentage of negligence or willfulness attributed to Plaintiff.

FOR A FOURTH DEFENSE
(Statutory Defense)

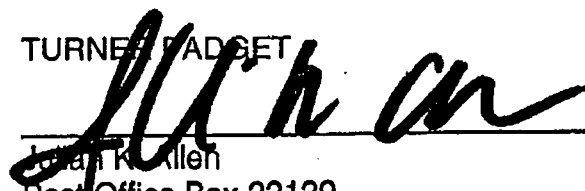
9. FURTHER ANSWERING, this party reserves and asserts all rights under S.C. Code Ann. § 15-38-15.

FOR A FIFTH DEFENSE
(Improper Service)

10. FURTHER ANSWERING, this party alleges that Plaintiff has failed to effectuate proper service under Rule 12(b)(4) and Rule 12(b)(5).

WHEREFORE, having answered, Defendant asks this Court to dismiss the Complaint and grant such relief as the Court deems just and proper.

TURNER PADGET



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Charleston, South Carolina

January 4, 2013

ATTORNEYS FOR LIBERTY MUTUAL
INSURANCE COMPANY

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

ROBERT FELDMAN & LOIS
FELDMAN,

Plaintiffs,

v.

SARAH DICKENSON,

Defendant.

IN THE COURT OF COMMON PLEAS

Docket No.: 2012-CP-07-3800

CERTIFICATE OF SERVICE

13 JAN - 7 PM 4:26
CLERK OF COURT
JUDICIAL DISTRICT
SOUTH CAROLINA

I hereby certify that on this 4 day of January, 2013 a copy of the above and foregoing **Liberty Mutual Insurance Company's Answer to Plaintiff's Complaint, Interrogatories and Request for Production to Plaintiff** has been mailed to all counsel of record, postage prepaid and properly addressed as follows:

Gary Coggin
Post Office Box 7092
Hilton Head, SC 29938
Attorneys for Plaintiff

Deborah Buck
Deborah Buck

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

Docket No.: 2012-CP-07-3800

ROBERT FELDMAN & LOIS)
FELDMAN,)

Plaintiffs,)

v.)

SARAH DICKENSON,)

Defendant.)

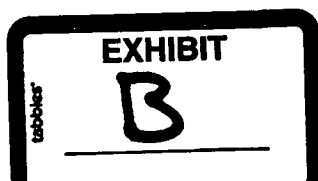
LIBERTY MUTUAL INSURANCE
COMPANY'S NOTICE AND
MOTION TO DISMISS

TO: GARY COGGIN AND ROB METRO ATTORNEYS FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that Liberty Mutual Insurance Company will move before the Court as soon as counsel may be heard for an Order dismissing this lawsuit due to Plaintiffs' failure to effectuate proper service under Rule 12(b)(4) and 12(b)(5).

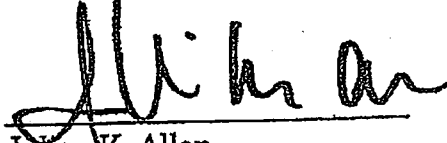
This lawsuit arises from a motor vehicle accident on October 9, 2010. Although Plaintiffs filed a lawsuit within the applicable statute of limitations, Plaintiffs have failed to serve the Defendant within the applicable time period. To date, upon information and belief, the Defendant still has not been served with this lawsuit. Therefore, pursuant to Louden v. Moragne, 327 S.C. 465 (Ct. App. 1997) and other authority, Liberty Mutual requests this Court dismiss the lawsuit with prejudice. Liberty Mutual Insurance Company will rely on deposition transcripts, affidavits, supporting law, and other statutory authority in reliance for this Motion.

[Signature on following page]



Respectfully submitted,

TURNER PADGET

A handwritten signature in dark ink, appearing to read "Julian K. Allen", written over a horizontal line.

Julian K. Allen

P.O. Box 22129

Charleston, South Carolina 29413

Telephone: (843) 579-8305

Fax: (843) 577-1661

E-mail: jallen@turnerpadget.com

October 8, 2014

ATTORNEYS FOR LIBERTY MUTUAL
INSURANCE COMPANY

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

Docket No.: 2012-CP-07-3800

ROBERT FELDMAN & LOIS)
FELDMAN,)

Plaintiffs,)

v.)

SARAH DICKENSON,)

Defendant.)

MEMORANDUM IN SUPPORT OF
LIBERTY MUTUAL'S MOTION TO
DISMISS

This matter is before the Court upon Liberty Mutual's Motion to Dismiss based on Plaintiffs' failure to serve the Defendant.

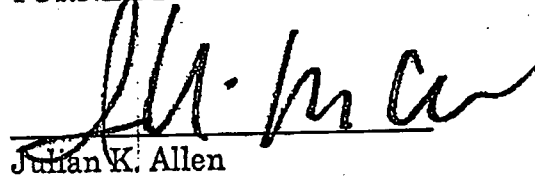
This lawsuit arises from a motor vehicle accident, which occurred on October 9, 2010. This lawsuit is a claim for underinsured motorist benefits. In Liberty Mutual's Answer to the Complaint, Liberty Mutual asserts *Improper Service* as an affirmative defense. To date, the Defendant has not been served with this lawsuit. As such, Liberty Mutual asks this Court to dismiss this lawsuit based on Plaintiffs' failure to timely serve the Defendant before the applicable statute of limitations expired.

In Louden v. Moragne, 327 S.C. 465 (Ct. App. 1997), the underinsured motorist carrier (State Farm Mutual Automobile Insurance Company) moved for summary judgment, as Plaintiff failed to properly serve Defendant Moragne prior to the expiration of the statute of limitations. The trial judge granted summary judgment in favor of the Defendant, and the Court of Appeals affirmed that decision. Quite simply, "[s]ervice on the at-fault driver is an essential component of the negligence action. Thus, we hold that the named defendant in an action for benefits under a plaintiff's underinsured motorist policy must be properly served

with the summons and complaint prior to the running of the statute of limitations." Id., 469.

Rule 3 of South Carolina Rules of Civil Procedure requires that the summons and complaint be served either a) within the statute of limitations or b) if not served within the statute of limitations, not later than 120 days after filing. This accident occurred over four years from the date of Liberty Mutual's Motion. Therefore, since Plaintiffs have failed to timely serve the Defendant, Liberty Mutual requests the Court to dismiss this lawsuit.

TURNER PADGET



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December 1, 2014

ATTORNEYS FOR LIBERTY MUTUAL
INSURANCE COMPANY

2008 WL 4911222

Only the Westlaw citation is currently available.

This decision was reviewed by West editorial staff and not assigned editorial enhancements.

United States District Court,
W.D. Arkansas,
Texarkana Division.

Jesse BOBO, et al., Plaintiffs

v.

Daniel F. UMOH, M.D., et al., Defendants.

No. 06-4110.

Nov. 13, 2008.

Attorneys and Law Firms

Ernest L. Cochran, Law Office of Ernest L. Cochran, Texarkana, TX, Matthew F. Golden, Cochran & Golden, Texarkana, TX, for Plaintiffs.

Bettina E. Brownstein, David P. Glover, Jane A. Kim, Wright, Lindsey & Jennings LLP, Little Rock, AR, Sarah E. Greenwood, Timothy L. Boone, Huckabay, Munson, Rowlett & Moore, P.A., Little Rock, AR, for Defendants.

ORDER



JIMM LARRY HENDREN, District Judge.

*1 Now on this 13th day of November, 2008, comes on to be considered **Separate Defendant Daniel Umoh, M.D.'s Motion to Dismiss (Doc. 83)** and **Motion to Quash Notice of Deposition (Doc. 93)**. The Court, being well and sufficiently advised, finds and orders as follows with respect thereto:

1. Plaintiffs instituted this medical malpractice action on November 21, 2006. Separate defendant Dr. Umoh filed an answer on January 2, 2007. On October 22, 2008, nearly two years after the action was instituted, Dr. Umoh filed the current motion to dismiss, arguing that plaintiffs' complaint should be dismissed pursuant to Fed.R.Civ.P. 12(b)(4) and (b)(5), as he has never been served with a summons or a copy of the complaint. Dr. Umoh explains that he previously filed an answer to the complaint, although service of process had not been made, because he received notification from his insurer of the filing of the complaint.

2. Plaintiffs respond that they had a good faith belief that Dr. Umoh had been served, as a "process server was hired, ... soon thereafter, Defendant Umoh filed an answer[,] ... and this case was litigated for nearly two years without Defendant asserting any objection." (Doc. 86 at pgs. 8-9.) Plaintiffs argue that Dr. Umoh, therefore, waived any objection to service of process.

3. Dr. Umoh argues that he preserved his objection because, in his answer, he "ple[d] affirmatively that Plaintiffs' Complaint should be dismissed pursuant to Rule 12(b)(1)(2)(3)(4) and (5)." (Doc. 1 ¶ 11.) Objections to service of process "must be specific and must point out in what manner the plaintiff has failed to satisfy the requirements of the service provision utilized." *Photolab Corp. v. Simplex Specialty Co.*, 806 F.2d 807, 810 (8th Cir.1986).

4. The Court finds that Dr. Umoh's generic assertion of the defenses available under Rule 12(b) was insufficient to preserve his objection to plaintiffs' failure to perfect service of process. The Court further finds that even if Dr. Umoh had properly asserted the objection in his answer, his failure to raise the issue by formal motion for nearly two years would serve as a waiver of the issue. *See Hammann v. 1-800 Ideas.com, Inc.*, 455 F.Supp.2d 942, 959 (D.Minn.2006).

5. Based on the foregoing, the Court hereby orders as follows:

* Dr. Umoh's **Motion to Dismiss (Doc. 83)** is hereby **DENIED**.

* Dr. Umoh's **Motion to Quash Notice of His Deposition (Doc. 93)** pending a ruling of the motion to dismiss is **DENIED** as moot.

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 2008 WL 4911222

End of Document

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT
C/A No.: 2015-CP-07-01251

Robert E. Feldman and Louis J.)
Feldman,)

Plaintiffs,)

vs.)

Gary P. Coggin,)

Defendant.)

**PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT**

JENNIFER ANN ROSEHEAD
CLERK OF COURT
BEAUFORT COUNTY, S.C.

2016 JUN 27 PM 12:41

**TO: M. DAWES COOKE, JR. AND JEFFREY M. BOGDAN, COUNSEL FOR
DEFENDANT:**

Plaintiffs, Robert E. Feldman and Lois J. Feldman, respectfully submit this
Memorandum in Opposition to the Motion for Summary Judgment filed by Defendant.

SUMMARY OF THE ARGUMENTS

The Motion for Summary Judgment should be denied for each and all of the
following bases:

1. The motion fails to provide adequate notice of the basis for the relief requested in the motion in violation of Rule 7, SCRPC. Motion by ambush is not permitted.
2. The motion is premature as discovery is not complete.
3. Plaintiffs and their counsel cannot, for reasons stated, present by affidavit facts which are essential to justify their opposition.
4. There are genuine issues of material fact which preclude an award of summary judgment to Defendant.

FACTS

In October 2010, Mr. Feldman was seriously injured in an automobile collision

caused by another driver. Mr. Coggin accepted the representation of Mr. and Ms. Feldman in pursuit of their personal injury and loss of consortium claims arising from the collision. **Mr. Coggin made demands for \$1.5M** to the carrier for the at-fault driver.¹ Inexplicably, Mr. Coggin resolved the claims against the at-fault driver's carrier for only \$85,000 of the \$100,000 limit available under the at-fault driver's liability policy coverage.

In October 2012, Mr. Coggin filed a lawsuit styled, *Robert & Lois Feldman v. Sarah Dickenson*, 2012-CP-070-3800 (hereinafter the "UIM lawsuit"), to recover under Mr. Feldman's available \$500,000 in underinsured motorist coverage. Mr. Coggin hired a company in the State of New York to have someone personally serve the at-fault driver, Sarah Dickenson, who had been relocated to New York after the collision. Although he testified that he received an affidavit showing service on someone at an assisted living facility somewhere in the State of New York where he believed Sarah Dickenson was living, **Mr. Coggin admitted in his deposition in this lawsuit that he had the duty to file, but did not file, an affidavit of service showing that Ms. Dickenson had been served with process.** (Coggin deposition, Exhibit 1; 121:8-13, 127:17-23, 132:9-11, 142:14-18).

After the 120 days that were available under Rule 3(a), SCRCP, to serve the pleadings had expired and after the statute of limitations had expired, Mr. Coggin made demands for payment of the \$500,000 policy limit to counsel for the UIM carrier during the UIM lawsuit. The UIM carrier made a nuisance settlement offer of \$25,000, which was not accepted. The UIM lawsuit was coming up on the trial roster in the early

¹ The statements of fact in this background section are derived generally from Mr. Coggin's deposition testimony and from the exhibits to his deposition. The deposition of Mr. Coggin was taken on Wednesday, June 8, 2016, and the original sealed transcript is being filed contemporaneously with this memorandum and is attached hereto and incorporated herein by reference as **Exhibit 1**.

summer – fall of 2014. After it was clear that Mr. Coggin was going to have to try the UIM lawsuit, in August 2014, he filed a motion to be relieved as counsel.

Other lawyers took over the representation of Mr. and Ms. Feldman, and immediately asked Mr. Coggin for the affidavit of service, as they were unable to locate it or proof that it had been filed in the Feldmans' file materials delivered by Mr. Coggin. Literally the day after the new lawyers asked Mr. Coggin for the affidavit of service, counsel for the UIM carrier filed a motion to dismiss the UIM "lawsuit due to Plaintiffs' failure to effectuate proper service under Rule 12(b)(4) and 12(b)(5)."

Mr. Coggin filed an affidavit in the UIM lawsuit explaining his efforts to have Ms. Dickenson served and the efforts to obtain a copy of the affidavit of service. Unfortunately, Mr. Coggin's affidavit did not contain any admissible testimony by someone with personal knowledge of the efforts to serve Ms. Dickenson. On January 6, 2015, a hearing on the motion to dismiss was held before the Hon. J. Earnest Kinard, Jr. After directing Mr. Coggin to "get an affidavit from the process server," the transcript, in relevant part, on pages 11-12 contains the following colloquy between Judge Kinard and Mr. Coggin:

12 THE COURT: But he did plead non service. He doesn't
13 have to do that with specificity. He -- you are on notice
14 that he says you didn't comply with the rule. Which you
15 didn't, because you didn't file it.

25 But I don't think I can let it go forward
1 without a little more than your affidavit.
2 MR. COGGIN: Thank you.

Mr. Coggin testified in his deposition that he contacted the company in New York seeking another copy of the affidavit of service and was told they would not be able to provide a copy or identify the individual who attempted to effect service. The new

lawyers were able to convince the UIM carrier to restore the prior settlement offer, and the UIM lawsuit then settled for \$25,000. This lawsuit was filed shortly thereafter.

ARGUMENTS

1. The Motion fails to provide notice of the basis for relief requested.

Rule 7, SCRCP, states that "[a]n application to the court for an order shall be by motion ... shall state with particularity the grounds therefor ..." SCRCP 7(b)(1). In *Camp v. Camp*, 386 S.C. 571, 575, 689 S.E.2d 634, 636 (2010), the S.C. Supreme Court explained:

Rule 7(b)(1), SCRCP requires that motions shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The particularity requirement is to be read flexibly in recognition of the peculiar circumstances of the case. By requiring notice to the court and the opposing party of the basis for the motion, rule 7(b)(1) advances the policies of reducing prejudice to either party and assuring that the court can comprehend the basis of the motion and deal with it fairly.

(Internal citations and quotations omitted.) To permit plaintiff to file a skeletal motion within the relevant time period and then allow the motion to be filled in later "would make mockery of the particularity requirements of Rule 7(b)(1)." *Garrison v. Burke*, No. 91 C 20150, 1997 WL 148048, at *1 (N.D. Ill. Feb. 26, 1997). As one court noted (interpreting the substantively similar federal Rule 7):

The court would ordinarily excuse the failure to comply with (Rule 7(b)(1) if it were inadvertent, but such is not the case here. There should be strict compliance with the rules, otherwise they will be whittled away and become meaningless and unenforceable.

Steingut v. National City Bank of New York, 36 F.Supp. 486, 487 (E.D.N.Y. 1941). A motion that fails to meet the particularity requirements will not be considered adequate or timely. See *Talano v. Northwestern Med. Faculty Foundation, Inc.*, 273 F.3d 757, 761 (7th Cir. 2001) (Rule 59(e) motion "devoid of specificity" does not satisfy Rule 7(b)(1),

and therefore does not toll the time period for filing an appeal); See, e.g., *Rosenberg v. Gattarello*, 359 N.E.2d 467 (Ohio Ct. App. 1976); *Schmidt v. Michigan*, 1:10 CV 307, 2010 WL 2720868 (W.D. Mich. July 7, 2010).

The Defendant's Motion does not recite the basis of the relief requested but instead makes vague reference to depositions, which have not been conducted, pleadings containing disputes of material fact, unidentified answers to interrogatories, and unidentified admissions, all alleged to be "on file" in a file that has not been identified. (See Affidavit of Thomas A. Pendarvis, attached hereto as "**Exhibit 2**".)

Plaintiffs cannot identify the basis of the Motion, the Motion does not state with particularity the grounds therefor, and should therefore be denied. *Id.* The Motion also lacks any supporting materials.

Rule 56(c), SCRCP, "requires summary judgment motions and, inferentially, supporting materials required to be on file when they are to be relied upon at a summary judgment motion hearing. To be on file, we hold they ordinarily must have been filed." *Lloyd's Inc. v. Good*, 306 S.C. 450, 453, 412 S.E.2d 441, 443 (Ct. App. 1991). The trial court should refuse to consider materials that were not timely served such that the opposing party had no time to prepare a response. *Black v. Lexington School District No. 2*, 327 S.C. 55, 60, 488 S.E.2d 327, 329 (1997). There were no supporting materials filed with the Defendant's Motion. The Court should not consider any materials that were not filed with the Motion and Defendants should not be permitted to file any additional supporting materials.

2. Plaintiffs cannot present by affidavit facts essential to justify their opposition.

"Should it appear from the affidavits of a party opposing the motion that he cannot

for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment ..." SCRPC 56(f). Plaintiffs cannot present by affidavit facts which are essential to justify their opposition to this Motion because the Motion itself does not provide enough information and/or notice as to the bases of the Motion; and because, despite pursuit of discovery by Plaintiffs, discovery that would provide information for affidavits in opposition has not yet occurred. See (Plaintiffs' Rule 56(f) affidavit, **Exhibit 2**). For these reasons, the Motion for Summary Judgment should be denied.

3. There genuine issues of material fact that preclude summary judgment.

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *USAA Property and Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 661 S.E.2d 791, (S.C. 2008), *rehearing denied*.

While the question of Defendant's liability may no longer be in dispute, based on Mr. Coggin's deposition testimony, the question of the proximate cause of the damages suffered by Plaintiffs is in dispute.

The client's burden of establishing proximate cause in a legal malpractice action requires that he prove that he would have obtained a better result in the underlying matter if the attorney had exercised reasonable care. The burden does not necessarily compel the client to demonstrate that he would have won the underlying case. Rather, it is enough for the legal malpractice plaintiff to show that he has lost a valuable right; e.g., the settlement value of the underlying case.

Doe v. Howe, 367 S.C. 432, 446, 626 S.E.2d 25, 32 (Ct. App. 2005). "Ordinarily, the question of proximate cause is one of fact for the jury ..." *McNair v. Rainsford*, 330 S.C. 332, 349, 499 S.E.2d 488, 497 (Ct. App. 1998).

Mr. Coggin committed legal error in failing to file an affidavit showing service of process within the statute limitations which made it impossible to defend the motion to

dismiss and likely would have resulted in a dismissal with prejudice, had the case not been settled for the \$25,000 nuisance value. The Plaintiffs also intend to show that Defendant Coggin's failure to secure a life care plan expert, a vocational expert and an expert to reduce the damages to present value, separately and/or together resulted in Plaintiffs losing valuable rights, including significant diminution in the settlement value of the case, notwithstanding the failure to effect service of process issue. See (Plaintiffs' Rule 56(f) affidavit, Exhibit 2); (Plaintiffs' Verified Complaint and the expert affidavit attached as an exhibit). On the other hand, Mr. Coggin claims—in stark contrast to the Verified Complaint and the Affidavit of Merit—that the Plaintiffs' claims were reduced approximately 95% in value because Mr. Feldman attempted to play golf. See e.g., (Coggin deposition, 94:17-95:16). While the parties agree that Mr. Coggin owed duties to the Plaintiffs, the parties disagree as to whether Mr. Coggin violated those duties, including the duties to develop the damage aspects of the case, whether such violations were the proximate cause of the damages claimed, and the value of damages that Plaintiffs' claim. See (Plaintiffs' Rule 56(f) affidavit, Exhibit 2). The outcome of these various factual disputes must be determined by a jury and for these reasons, the Motion for Summary Judgment should be denied.

4. Discovery is incomplete.

[S]ummary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.” *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (citations omitted).

Weeks prior to his filing the present Motion, in his “Response to Request for a Scheduling Order” Mr. Coggin, argued that “[d]iscovery in this case will be extensive and will likely require over a year to complete” and that

This legal malpractice action is not ready to be placed on the trial roster. It was filed less than eleven months ago and discovery has not even been open for seven months. The early mediation, which officially failed less than one month ago, caused the parties to delay taking depositions such that none have been taken or even noticed. The remaining discovery necessary to get this case ready for trial will likely take over a year to complete.

Id. at pg. 5, 6. Two depositions were scheduled, with one currently moving forward and a second awaiting confirmation as to the schedule of the Defendant and counsel for the Defendant. See (Plaintiffs' Rule 56(f) affidavit, Exhibit 2). Plaintiffs are actively vetting expert witnesses to be named not later than August 1, 2016. *Id.* It is clear, through Defendant's own arguments, as well as the current development of discovery in this case, that discovery has not been completed, that Plaintiffs have not had a full and fair opportunity to complete discovery, that Plaintiffs are actively engaged in discovery, the results of which are necessary to respond to this motion for summary judgment, and on these bases that this Motion for Summary Judgment should be denied. See *Baughman*, *supra*, and (Plaintiffs' Rule 56(f) affidavit, Exhibit 2).

5. Standard of Review.

Pursuant to Rule 56(c), SCRCP, summary judgment is proper only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). Under Rule 56(c), SCRCP, the party seeking summary judgment has the burden of demonstrating the absence of a genuine issue of material fact. *Baughman*, 306 S.C. at 102, 410 S.E.2d at 539. In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997); *City of Columbia v. American Civil Liberties Union*, 323 S.C. 384, 475 S.E.2d 747

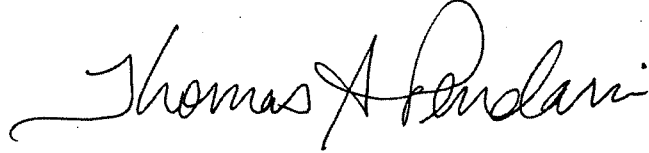
(1996); *Lattie v. SHS Enterprises, Inc.*, 300 S.C. 417, 389 S.E.2d 300 (Ct. App. 1990) (summary judgment standard of review is to liberally construe the record in favor of the nonmoving party and give the nonmoving party the benefit of all favorable inferences that might reasonably be drawn therefrom); *Gilmore v. Ivey*, 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986). "At the summary judgment stage of the proceedings, it is only necessary for the non-moving party to submit a scintilla of evidence warranting determination by a jury for summary judgment to be denied." *Hill v. York County Sheriff's Department*, 313 S.C. 303, 437 S.E.2d 179, 182 (Ct. App. 1993), cert. denied (1994).

CONCLUSION

Defendant's Motion for Summary Judgment should be denied because the Motion fails to provide adequate notice of the basis for the relief requested therein; Plaintiffs and their counsel cannot present facts by affidavit which are essential to justify their opposition; there are genuine issues of material fact which preclude an award of summary judgment to Defendant; and discovery has not been completed. For all the reasons stated herein, the Plaintiffs respectfully submit that the defendant's motion for summary judgment should be denied and attorney's fees and costs incurred in defending this motion should be awarded to the Plaintiffs.

Respectfully Submitted,

PENDARVIS LAW OFFICES, P.C.

A handwritten signature in black ink, reading "Thomas A. Pendarvis". The signature is fluid and cursive, with a large initial "T" and "P".

Thomas A. Pendarvis (SC Bar # 064918)
Christopher W. Lempesis, Jr. (SC Bar # 077012)
710 Boundary Street, Unit A-1
Beaufort, SC 29902
843.524.9500 Tel.
Thomas@PendarvisLaw.com

Counsel for Plaintiffs

Beaufort, South Carolina

June 27, 2016

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF BEAUFORT

3 ROBERT E. FELDMAN and
4 LOIS J. FELDMAN,

Plaintiffs,

5 vs.

CASE NO. 2015-CP-07-1251

6 GARY P. COGGIN,

7 Defendant.
8

9 DEPOSITION OF: GARY P. COGGIN

10 DATE: June 8, 2016

11 TIME: 10:06 a.m.

12 LOCATION: Pendarvis Law Offices, P.C.
13 710 Boundary Street, Unit A-1
Beaufort, SC

14 TAKEN BY: Counsel for the Plaintiffs

15 REPORTED BY: TRISHA M. THOMAS
16
17

18 A. WILLIAM ROBERTS, JR. & ASSOCIATES

19 Fast, Accurate & Friendly

20 Charleston, SC Hilton Head, SC Myrtle Beach, SC
21 (843) 722-8414 (843) 785-3263 (843) 839-3376

22 Columbia, SC Greenville, SC Charlotte, NC
23 (803) 731-5224 (864) 234-7030 (704) 573-3919
24
25

EXHIBIT

1

A W R

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

2016 JUN 27 PM 12:41
KARL ANN ROSE TEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Page 2

1 APPEARANCES OF COUNSEL:
2 ATTORNEYS FOR THE PLAINTIFFS
3 ROBERT E. FELDMAN and LOIS J. FELDMAN:
4
5 PENDARVIS LAW OFFICES, P.C.
6 BY: THOMAS A. PENDARVIS
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9 Beaufort, SC 29902
10 (843) 524-9500
11 Thomas@pendarvislaw.com
12 Chris@pendarvislaw.com
13 ATTORNEYS FOR THE DEFENDANT
14 GARY P. COGGIN:
15
16 BARNWELL, WHALEY, PATTERSON & HELMS,
17 LLC
18 BY: JEFFREY M. BOGDAN
19 288 Meeting Street, Suite 200
20 Charleston, SC 29401
21 (843) 577-7700
22 Jbogdan@barnwell-whaley.com
23
24 ALSO PRESENT: Robert E. Feldman
25
(INDEX AT REAR OF TRANSCRIPT)

Page 4

1 THE WITNESS: That will be fine.
2 BY MR. PENDARVIS:
3 Q. Number two, I'm going to be asking a
4 series of questions today, of course, and showing
5 you some documents. If in the course of that
6 exchange you have any questions about or
7 misunderstandings, maybe, about the type of -- what
8 I'm asking, please let me know. I'll be glad to
9 readdress or rephrase the question.
10 And you're not allowed to communicate
11 with counsel about the substance of your
12 testimony --
13 A. That's fine.
14 Q. -- during the course of the deposition
15 today.
16 And you understand all those, correct?
17 A. Yes, I do.
18 Q. And you're doing great on verbal
19 response. Better than me.
20 I am going to do my very best today not
21 to interrupt your answers, so if I do that, please
22 make sure to stop me or your counsel will 'cause
23 I've done it in the past. I want to do my very
24 best to get a good, clean transcript today.
25 A. Absolutely.

Page 3

1 GARY P. COGGIN
2 being first duly sworn, testified as follows:
3 EXAMINATION
4 BY MR. PENDARVIS:
5 Q. Good morning, Mr. Coggin. We exchanged
6 greetings right before the deposition started.
7 Could you state your full name for the
8 record, please?
9 A. Gary Coggin.
10 Q. Mr. Coggin, you are a lawyer licensed
11 to practice here in South Carolina, correct?
12 A. In good standing.
13 Q. And for the formality of the deposition
14 rules there are a few things we need to have an
15 agreement on.
16 A. Sure. Go ahead. Uh-huh.
17 Q. And you've taken depositions before,
18 correct?
19 A. Yes.
20 Q. That's yes.
21 If you need a break at any point in
22 time, please, you know, let us know. We're not
23 here for an endurance contest. I'll be glad to
24 take a break and accommodate.
25 MR. PENDARVIS: Same for counsel.

Page 5

1 Q. Okay. Before we get into the
2 substance, what did you do to prepare for your
3 deposition today?
4 A. I looked over the documents a little
5 bit. That's about all.
6 Q. And you did that today?
7 A. At McDonald's, briefly, yeah.
8 Q. Okay. Did you review the pleadings and
9 your --- the discovery requests and responses in
10 the case?
11 A. I looked at the pleadings for about
12 five minutes. I did not look at the discovery.
13 Q. And just on the procedural side of the
14 lawsuit so far, in this lawsuit have you been
15 assisting your counsel in preparing discovery
16 responses?
17 A. Very little.
18 Q. Okay. Okay. Have you reviewed --
19 A. Let me back up to -- in preparing
20 discovery?
21 Q. Responses, your responses.
22 A. Oh, yes. Absolutely.
23 Q. Okay.
24 A. Yeah. Sorry.
25 Q. When did you first meet Mr. Robert

Page 6

1 **"Bob" Feldman?**
2 A. I think it was in -- I'm not sure of
3 the exact date, but sometime in 2010, latter part
4 of the year, probably in the fall.
5 **Q. Was it related to the automobile**
6 **accident?**
7 A. Yes, it was.
8 **Q. And prior to -- and we're going to get**
9 **into your representation of Mr. Feldman and his**
10 **wife. Did you know them before that?**
11 A. No.
12 **Q. Either?**
13 A. Neither one.
14 **Q. Okay.**
15 A. Let me back up again. Lois worked at
16 the bank. I don't know if I knew her at that time
17 or not.
18 **Q. TD Bank?**
19 A. Yeah. Yes.
20 **Q. And do you have an account with TD**
21 **Bank, or did you have an account with TD Bank?**
22 A. No longer.
23 **Q. No longer?**
24 A. Yeah.
25 **Q. But during the course of --**

Page 8

1 A. In court?
2 **Q. Yes, sir. And let's go first to --**
3 **let's focus in on circuit court actions.**
4 A. I don't know. I really can't tell you.
5 If you have any documents I can look at, I'll be
6 happy to look at them and tell you, but I really
7 don't know. I've been here since '95, and that's
8 all I can tell you.
9 **Q. More than ten lawsuits to try -- that**
10 **went to trial?**
11 A. Again, I don't know.
12 **Q. What's your best estimate of cases that**
13 **you've tried? Estimate now. I'm not asking for an**
14 **accurate number.**
15 A. Anywhere from -- in common pleas?
16 **Q. Yes, sir.**
17 A. Anywhere from five to fifteen.
18 **Q. Okay.**
19 A. I don't know.
20 **Q. And I understand --**
21 A. Yeah. And I really --
22 **Q. -- it's just an estimated range.**
23 A. And I'm going to back up. I don't
24 really want to speculate on it 'cause I just don't
25 know.

Page 7

1 A. Yes.
2 **Q. -- of the initial part of your**
3 **representation, you did have a -- you or your law**
4 **firm had an account with TD Bank?**
5 A. Yes.
6 **Q. Which one? You?**
7 A. Law firm.
8 **Q. Okay. When did you become licensed to**
9 **practice law in South Carolina?**
10 A. 1994 or '95. I'm not sure which one.
11 **Q. Okay. And could you describe -- where**
12 **did you -- where in South Carolina did you begin**
13 **practicing law?**
14 A. Hilton Head Island. I've been there
15 the entire time.
16 **Q. Okay. And describe the nature of your**
17 **law practice here in South Carolina.**
18 A. Mostly accident injury, a little bit of
19 general practice. People come in off the street
20 and need help. I do a lot of that.
21 **Q. Divorce? Criminal?**
22 A. No. Most of the time it's poor people
23 that have lost their truck, getting thrown out of
24 an apartment, something like that.
25 **Q. Okay. How many cases have you tried?**

Page 9

1 **Q. Okay. And those common plea matters --**
2 **okay. First off, you've tried cases, and you've**
3 **tried cases in common pleas court.**
4 A. Yes, I have.
5 **Q. Correct?**
6 **Were the cases you tried limited to**
7 **auto -- personal injury claims arising from**
8 **automobile accidents?**
9 A. The cases I've tried, I believe were
10 limited to involving an automobile.
11 No. That's not correct. I've done
12 other cases where there was disputes over money,
13 et cetera.
14 **Q. Okay. Were the majority of the cases**
15 **you tried automobile accident cases?**
16 A. Yeah. I believe so.
17 **Q. Okay. Have you formed a corporation or**
18 **an entity to operate your law practice?**
19 A. I'm an LLC.
20 **Q. Coggin Law Office, LLC?**
21 A. I believe that's it.
22 **Q. Okay. I'm going to represent to you**
23 **that Mr. Feldman's accident with -- the collision**
24 **with Ms. Dickenson between -- Dickenson, as driver,**
25 **and Mr. Feldman occurred on October the 9th, 2010.**

Page 10

1 We're going to see some documents on that. I'm
2 just going to represent that to you now.
3 And I'm going to also represent -- when
4 we get a copy, but I thought we had a copy right
5 here, but we're going to get a copy of your fee
6 agreement with Mr. Feldman that's dated a few days
7 later, October 13, 2010. I'm going to show you
8 that in just a moment.
9 And tell me about your first meeting
10 with Mr. Feldman. Where did it occur?
11 A. It occurred at Bob's house.
12 Q. Okay. And how did it come about that
13 you went to Mr. Feldman's house?
14 A. I believe I received a call from
15 Mr. Feldman. He said he was infirm from the
16 accident and asked me to come to his house.
17 Q. So you went to his house --
18 A. Yes.
19 Q. -- to meet. And you had some
20 conversations with Mr. Feldman?
21 A. Oh, absolutely.
22 Q. And, of course, you know, that's
23 October 2010. I'm not going to ask for a verbatim.
24 Could you generally describe the substance of your
25 communications with Mr. Feldman at his house that

Page 12

1 things you discuss with clients as you are
2 developing the, you know, lawyer-client
3 relationship and leading to the contract?
4 A. You're going to have to be more
5 specific, Mr. Pendarvis. I don't know what you're
6 asking.
7 Q. All I'm asking is, in the circumstance
8 where you're meeting with a prospective client --
9 A. Uh-huh.
10 Q. -- and a contract's not been signed, is
11 there -- are there things you describe about what
12 you're going to do and how the representation is
13 going to be handled that are communicated to your
14 clients or prospective clients before the
15 contract's signed?
16 A. I don't hold out a lot of things. I
17 tell them that I will represent them competently,
18 and I don't know anything more beyond that, and I
19 specifically don't remember anything in that
20 conversation.
21 Q. Did you have any discussions with
22 Mr. Feldman at or about the time the contract was
23 signed about how -- who would be paying costs for
24 the litigation?
25 A. The -- my contract's pretty clear on

Page 11

1 day?
2 A. Talked about the accident.
3 Q. Okay. Did you have any conversations
4 -- okay. What did he tell you about the accident?
5 A. Essentially what happened is that he
6 was on 278 -- I believe he was in the slower lane
7 -- coming up to an intersection. A vehicle came
8 through the intersection against the light and hit
9 him.
10 Q. Did he describe medical treatments and
11 things that happened after the collision?
12 A. You know, I can't speculate. I'm sure
13 he did, and I'm sure we talked about that. I don't
14 recall.
15 Q. Did you have any conversations about
16 your serving as counsel for Mr. Feldman in that
17 meeting at his house that day?
18 A. Again, I'm sure we did, but I don't
19 recall.
20 Q. Were there any conversations about your
21 representing his wife, Lois Feldman, as part of the
22 representation?
23 A. I don't recall, and I don't -- in that
24 case I don't think that came up.
25 Q. Do you have a typical conversation or

Page 13

1 that, and it says that the -- the plaintiff or the
2 party will play -- pay all reasonable costs.
3 Q. That wasn't my question. My question
4 was: Did you have any conversations with
5 Mr. Feldman about who is paying costs in this
6 litigation?
7 A. I don't know.
8 Q. Okay.
9 (EXH. 1, Contingency Fee Agreement, was
10 marked for identification.)
11 BY MR. PENDARVIS:
12 Q. Going to pass to you a copy of a
13 document that's been marked as Exhibit 1 -- states
14 on the title of the document Contingency Fee
15 Agreement -- and ask is this a copy of the fee
16 agreement that you presented to Mr. Feldman?
17 A. It's signed by Mr. Feldman. I agree --
18 I believe it is.
19 Q. And is that your signature at the very
20 bottom?
21 A. Yes, it is.
22 Q. And is this or was this the standard
23 contingency fee agreement that you were using in --
24 A. At that time, yeah.
25 Q. -- 2010?

Page 14

1 A. Uh-huh.
2 Q. I see, in reference to Paragraph 6,
3 there's a portion of the form that has been marked
4 out.
5 A. Uh-huh.
6 Q. You see that?
7 A. Yes, I do.
8 Q. And it says -- it's the portion that
9 says: 40 percent if there is an appeal.
10 Did your agreement with Mr. Feldman
11 exclude modification of the 33 percent if there was
12 an appeal?
13 A. The -- this exactly says the 40 percent
14 if there's an appeal. I don't do appeals.
15 Q. Okay.
16 A. I think probably I made that clear to
17 Mr. Feldman.
18 Q. Why is that in your contract then? Why
19 do you even have --
20 A. It's a -- that's a good question. It's
21 a standard in the contract. I've never done an
22 appeal.
23 Q. Did Ms. Lois Feldman ever sign a fee
24 agreement with you?
25 A. No.

Page 16

1 settlement was in 2012 -- I believe in the fall --
2 so it was filed shortly after that.
3 Q. I thought you said that you typically
4 file -- that you file the case right after you take
5 it.
6 A. No. I said after we agreed to have it
7 filed. I'm not filing a case if I'm going to
8 settle the case.
9 Q. Okay.
10 A. I apologize if I gave that impression.
11 Q. And after you accepted the
12 representation of Mr. Feldman in October of 2010 --
13 we're going to look at some demand letters and that
14 by --
15 A. Sure.
16 Q. -- the summer of 2011 -- and is it
17 accurate that in between October -- generally
18 between October of 2010 and July of '11 you were
19 gathering medical documents and things that were --
20 you know, that related to the claim?
21 A. That and the scene of the accident,
22 taking photographs. I visited with Bob at his
23 home, I think probably three times during that
24 period of time. Getting the police reports,
25 et cetera, et cetera.

Page 15

1 Q. But she was named as a plaintiff in the
2 complaint you filed though?
3 A. Yes, she was.
4 Q. What were the terms of your
5 relationship -- of your relationship with her?
6 A. She was essentially subsumed into the
7 contingency fee agreement.
8 Q. Okay. When you take on a case -- and
9 we'll use the car -- automobile accident case as an
10 example -- do you have internal calendars that you
11 mark for statutes of limitations and things of that
12 nature?
13 A. No.
14 Q. What do you do to make sure that you've
15 timely filed the claim?
16 A. The -- the claim is filed as soon as I
17 get it and as soon as we've agreed on it. The
18 three-year statute of limitations is something I'm
19 well aware of all the time.
20 Q. Well, we do know that the -- the
21 lawsuit in this case -- you filed a lawsuit in this
22 case, correct?
23 A. That's correct.
24 Q. And when was it filed, approximately?
25 A. It was filed after the settlement. The

Page 17

1 Q. Okay. And if I'm -- stop for a second.
2 (EXH. 2, Letter from Gary Coggin to
3 Sonya Wise dated July 5, 2011, was marked for
4 identification.)
5 BY MR. PENDARVIS:
6 Q. If I'm understanding things
7 correctly -- we're going to look at some documents
8 in which you made --
9 A. Sure.
10 Q. -- demands -- those were all based on
11 the information you had gathered during the -- part
12 of your representation, correct?
13 A. I think most of my demands would in
14 part have been made on that, and I cannot tell you
15 what I gathered at that time because I don't know.
16 Q. Sure.
17 A. Okay? And I -- it could very well have
18 been that I started to look for information a year
19 later. I don't know. Unless you can show me
20 something that I sent off, I just can't help you on
21 that but --
22 Q. I'm going to -- okay. Fair enough.
23 And I'm not really -- I want to do my best to get
24 an accurate --
25 A. Yeah. No. I understand.

Page 18

1 Q. -- reflection of what happened, so
2 let's -- this will help a little bit, I believe.
3 I'm going to pass you one of the first. I will
4 represent to you there were several demands letters
5 that were made, and we're going to look at each of
6 them.
7 This is a letter dated -- I'm passing
8 you now a document marked as Exhibit 2. This
9 appears to be a letter you wrote to -- the at-fault
10 party was Sarah Dickenson.
11 A. That's correct.
12 Q. This appears to be a letter you wrote
13 on July 5, 2011, to the claims representative for
14 Ms. Dickenson's carrier, Allstate Insurance; is
15 that correct?
16 A. Sonya Wise. Yes.
17 Q. And based on the information that you
18 had gathered -- and I would suggest you take a look
19 at this last -- next to the last paragraph -- you
20 made an offer to settle for \$1,550,000, correct?
21 MR. BOGDAN: Object to the form.
22 BY MR. PENDARVIS:
23 Q. Let me restate that. I want to get a
24 good answer.
25 Can you read for me the last sentence

Page 20

1 primarily from Bob, and what I saw coming from the
2 doctors -- and again, I don't know when those came.
3 They might have come later. I don't know. Based
4 on what Bob told me, I felt that a million 500 was
5 at that time reasonable. Now, later on, I realized
6 that that wasn't. But at this time, yes.
7 Q. And when you said later on that wasn't,
8 you're talking about the -- Mr. Feldman's injuries
9 weren't as severe as you were led to believe?
10 A. Yes.
11 Q. And when did you come to that
12 realization?
13 A. It was a slow realization, and it came
14 to fruition in my thought pattern during 2013.
15 Q. What part of 2013?
16 A. I would say that it started in the
17 summer months of 2013. And again, I can't be that
18 sure. If you have documents that say earlier, let
19 me see it and I'll be happy to comment on it.
20 Q. We don't have -- I'll tell you we don't
21 have a single document anywhere where you
22 communicated in writing to Mr. Feldman that you
23 didn't -- you weren't believing his statements to
24 you about his injuries. I'm going to represent to
25 you there's no document, no e-mail, no letter, no

Page 19

1 in the next to the last paragraph on page 2?
2 A. Uh-huh. I think you will agree with me
3 an offer of settlement for damages of 1,500,000 is
4 reasonable.
5 Q. Did you consider that to be an offer on
6 behalf of Robert Feldman?
7 A. That was an offer I made to settle.
8 Q. And based on the information you had at
9 the time, this was a reasonable offer?
10 A. The -- yes and no. The fact of the
11 matter is is that in visiting with Bob over the
12 year -- and I saw him quite often from October 9 to
13 this date -- he represented to me that he was in
14 excruciating pain, and he represented to me that he
15 could do very, very little of what he had done
16 before. He could hardly go to the bathroom.
17 I think at that time he claimed that he
18 was still sleeping in the La-Z-Boy that he would
19 sleep in and he could not even get to his bed
20 because it wasn't comfortable.
21 So a lot of this was based on what Bob
22 wanted. Bob talked to me about -- initially I
23 think he said he wanted to settle for \$2,500,000.
24 I said that was way too high. He wanted big
25 numbers on this. And based on what I knew,

Page 21

1 note, anything.
2 The first time we saw -- I want to
3 represent to you the first time we saw that was in
4 this litigation.
5 Number two, did you have any
6 conversations with Mr. Feldman wherein he described
7 how he felt after he get an epidural injection?
8 A. No..
9 Q. Did you ever write to anyone describing
10 how Mr. Feldman felt after he got an epidural
11 injection?
12 A. He may have said he felt much better.
13 Okay? Beyond that, I -- I don't know.
14 There's -- you've made about three
15 questions here, so you're going to have to back up
16 and ask me one at a time, and I'll be happy to
17 answer it.
18 Q. Did you have any conversations with Bob
19 Feldman about how he felt after he got an epidural
20 injection?
21 A. I think Bob probably told me he felt
22 very good after he had an epidural. That's all I
23 can tell you.
24 Q. Okay.
25 A. I don't remember.

Page 22

1 **Q. Did you communicate those thoughts and**
2 **statements by Mr. Feldman to anyone in writing?**
3 A. I wrote letters to the doctors asking
4 for impairment ratings and things like that, yes,
5 and they're somewhere in your files. I probably
6 also wrote a letter -- and again, this has been --
7 we're going a period of six years now. I probably
8 wrote to the insurance companies.
9 **Q. And based on what you stated on page 2**
10 **of Exhibit 2 --**
11 A. Uh-huh.
12 **Q. -- you were aware Mr. Feldman really**
13 **enjoyed playing golf, correct?**
14 **The first full paragraph.**
15 A. He has suffered greatly?
16 **Q. No. In sum is the beginning of that**
17 **paragraph. Read on.**
18 A. Oh, okay. That's -- he can no longer
19 enjoy a round of golf, take walks --
20 **Q. Yeah.**
21 A. -- drive, and travel. Yeah. Uh-huh.
22 That's it.
23 **Q. So you knew he enjoyed golf.**
24 **Did Mr. Feldman ever tell you that**
25 **after he had an epidural injection he was able to**

Page 24

1 THE WITNESS: Mr. Pendarvis, I used to
2 be an enthusiastic golfer, and I developed back
3 spasms. I haven't paid for -- played for 15 years
4 because of that. That's my answer.
5 BY MR. PENDARVIS:
6 **Q. Well, maybe let me rephrase the**
7 **question 'cause you might not have understood it.**
8 **I'm asking about your skills as a trial lawyer.**
9 A. Yeah.
10 **Q. Here's my question: With your**
11 **experience as a trial lawyer, would you have been**
12 **able to explain to a jury that despite the injuries**
13 **Bob Feldman suffered -- let me finish my question.**
14 **Sorry.**
15 A. I'm not saying --
16 **Q. I thought you were getting ready to say**
17 **something.**
18 A. No, no, no, no, no.
19 **Q. -- despite the injuries Bob Feldman**
20 **experienced from the collision with Ms. -- caused**
21 **by Ms. Dickenson that he was able to play a round**
22 **of golf after epidural injections and that that**
23 **really had -- that was no compromise to his claim?**
24 MR. BOGDAN: Object to the form.
25 THE WITNESS: If I felt that I was

Page 23

1 **go play golf?**
2 A. I don't remember.
3 **Q. Possible?**
4 A. I don't remember.
5 **Q. No, no. That's not the question.**
6 A. I don't think we ever -- we -- no. I'm
7 telling you. I don't remember.
8 I do remember this, is that -- in
9 answer to your question that went unanswered -- I
10 talked to Bob many, many times about how he had
11 compromised his case by playing golf. We had many
12 conversations of that. To put it in writing I
13 think would have impugned Bob. I never put it in
14 writing.
15 **Q. You're a good trial lawyer, right?**
16 A. I don't know.
17 **Q. You try --**
18 A. Uh-huh.
19 **Q. -- to do your best?**
20 A. Uh-huh.
21 **Q. You don't think you'd be able to argue**
22 **in front of a jury that the days after Bob Feldman**
23 **got an epidural he was able to go play golf and**
24 **that that really was mitigation more than anything?**
25 MR. BOGDAN: Object to the form.

Page 25

1 lying -- and that would have been the case here --
2 I wouldn't have been able to sell that to the jury.
3 I wouldn't lie to a jury.
4 BY MR. PENDARVIS:
5 **Q. What would be the lie?**
6 **What would be the lie?**
7 A. The lie is this, is that he was playing
8 golf and he was claiming at the same time that he
9 was infirm from back injuries.
10 **Q. Did you ever have any conversations**
11 **with Mr. Feldman about the frequency of his golf**
12 **activities?**
13 A. I told Mr. Feldman any number of times
14 -- and I didn't know about the frequency of his
15 golf activities. I told Mr. Feldman any number of
16 times -- 'cause he would make oblique references to
17 golf. And I said, Bob, if you're playing golf,
18 we've got a problem with this case.
19 And he -- oh, no. I'm not playing
20 golf. I'm just riding around in the cart because I
21 have friends and it's a social thing. Every once
22 in a while I'll swing a club two or three times a
23 round.
24 That was our conversation. That's what
25 he told me.

Page 26

1 **Q. And this all comes in, you said -- is**
2 **this leading to the part in the summer of 2013 you**
3 **mentioned earlier when you became --**
4 A. This is before that. He would make
5 oblique references from time to time about, you
6 know, golf and so forth, and that's what I would
7 tell him.
8 MR. PENDARVIS: This will be three.
9 THE WITNESS: Mr. Pendarvis, could I --
10 BY MR. PENDARVIS:
11 **Q. Hold a second while the court --**
12 **she's --**
13 A. Well, no. I'm -- I'm still trying to
14 answer the question, but go ahead.
15 **Q. Okay. Well, she was --**
16 A. Oh, okay.
17 **Q. -- marking an exhibit. I'm sorry.**
18 A. Yeah. If we look at Exhibit 2, at the
19 bottom of the page it says: In addition, Bob has
20 experienced other losses following this accident.
21 And this is what Bob was telling me.
22 He could no longer assume the responsibility of
23 home maintenance. The tasks of landscaping,
24 gardening, power washing, window washing, garbage
25 disposal are now handled with others at a price.

Page 28

1 A. I believe so.
2 **Q. Did you ever -- how were you going to**
3 **establish -- excuse me. Let me rephrase that.**
4 If claims against Ms. Dickenson were
5 not settled, what were your plans to establish
6 Mr. Feldman's lost wages at trial?
7 A. In -- now, we've moving ahead now, but
8 in discovery, when Mr. Allen came in, they asked
9 many, many times for Bob's wages. Bob was a
10 mortgage broker for an outfit called Silverthorn.
11 Before that he was a mortgage broker. And I asked
12 many times what his wages were because I wanted to
13 specifically say something to Allstate. Bob would
14 never give me an answer.
15 **Q. Okay. So you're telling me you were**
16 **not going to be able to prove damages at trial?**
17 A. No. What we were going to look at and
18 what Bob finally agreed on was that -- I said:
19 Well, Bob, mortgage brokers, according to the
20 standards that I read -- and I researched this on
21 Google -- make, at the low end, 50,000 a year.
22 And he said: Yeah. That's about
23 right.
24 So that's what I was going to go with.
25 **Q. And that was the footnote, maybe, on**

Page 27

1. In addition, he is no longer able to work at his
2 once-thriving business as a mortgage broker. In
3 sum, these medical losses proximately caused by the
4 negligence of your insured continue to accrue, and
5 they're easily more than \$70,000 a year.
6 This is what Bob would tell me at all
7 times. Sometimes he would call me, and I felt that
8 he was on the verge of tears when he would talk
9 about things like this. I felt very sorry for him.
10 **Q. Thank you.**
11 (EXH. 3, Letter from Gary Coggin to
12 Sonya Wise dated October 10, 2011, was marked for
13 identification.)
14 BY MR. PENDARVIS:
15 **Q. Passing to you now another document**
16 **that's marked as Exhibit 3 to your deposition.**
17 **This appears to be another letter to Ms. Wise dated**
18 **-- this one's dated October 10 --**
19 A. Uh-huh.
20 **Q. -- 2011. Is this your signature on**
21 **page 2?**
22 A. Yes, it is.
23 **Q. And the contents of this letter are**
24 **true and accurate to the best of your knowledge**
25 **when you wrote it?**

Page 29

1 **page 2 of Exhibit 3?**
2 A. Hang on.
3 Yeah. Uh-huh.
4 **Q. And how were you going to get that into**
5 **evidence at trial?**
6 A. We would have to get an economist.
7 I've used economists in trial.
8 **Q. Were you going to -- did you have plans**
9 **to get a vocation rehabilitation specialist to give**
10 **an opinion on whether Mr. Feldman was able to**
11 **work --**
12 A. Mr. Feldman was --
13 **Q. -- as a broker?**
14 A. Excuse me. I'm sorry. Finish it.
15 **Q. I was finished. Just that he was going**
16 **to be able or unable to work as a broker.**
17 A. The -- Bob had held out that he could
18 not sit up for very long periods of time, and that
19 varied. Sometimes it was 15 minutes, a half an
20 hour, something like that. And I can't tell you.
21 That was told to me many times. The -- I felt that
22 he was in physical therapy. I think the physical
23 therapist would have been able to testify in trial
24 on this.
25 **Q. Okay. In the -- two, three -- fourth**

Page 30

1 full paragraph on page 1 of Exhibit 3, you're
2 making -- discussing future medical treatments.
3 A. Uh-huh.
4 Q. Do you see that?
5 A. I do. I'm reading it.
6 Q. Okay.
7 THE REPORTER: Sorry. I didn't --
8 THE WITNESS: I'm -- I'm reading it.
9 THE REPORTER: Okay.
10 THE WITNESS: That's what I meant. I
11 was reading it silently. I'm sorry.
12 BY MR. PENDARVIS:
13 Q. And do you see that?
14 A. Yes, I do.
15 Q. Okay. I'm just not sure I had a clear
16 answer.
17 Were you planning on getting a life
18 care planner to develop a future medical plan for
19 Mr. Feldman for use at trial?
20 A. There is a -- and I can answer it this
21 way. There is a very good economist that's used by
22 all the trial attorneys out of the University South
23 Carolina. I believe he was an economics professor.
24 I've used him before. I was going to use that
25 gentleman.

Page 32

1 Q. Did you talk to Dr. Wood about
2 Mr. Feldman's case?
3 A. No, I did not.
4 Q. But you were planning to talk with --
5 sorry. Off the record.
6 (Off-the-record conference.)
7 (EXH. 4, Letter from Gary Coggin to
8 Alton Prioleau dated October 17, 2011, was marked
9 for identification.)
10 BY MR. PENDARVIS:
11 Q. Mr. Feldman, just for correcting the
12 record, the copy of the Exhibit 3 that's been
13 presented to you has inadvertently got a third
14 page, and I'm going to ask if we can remove --
15 'cause it's clearly not -- wasn't enclosed with
16 this letter. It's a copy of September 2012
17 settlement agreement, and the letter itself is
18 October 10, '11, so --
19 A. Can I see the settlement agreement?
20 Q. It's on page 3 of Exhibit 3, and I'm --
21 I'm just suggesting that, if you don't mind, pull
22 that off, because it was inadvertently included
23 with Exhibit 3.
24 A. No, no. This is part of the exhibit.
25 Q. I know it is. What it was presented to

Page 31

1 Q. Oliver Wood?
2 A. That's him. Yeah.
3 Q. And how was Mr. Wood going to be able
4 to give any testimony about the value of the future
5 medicals without a life care plan?
6 A. I would have -- okay. Number one, I
7 don't know what you're talking about with a life
8 care plan.
9 Q. Okay.
10 A. You're going to have to explain that to
11 me.
12 Q. How was Mr. -- have you used Dr. Wood
13 at trial?
14 A. Uh-huh.
15 Q. And were you able to get Dr. Wood's
16 opinions on future medicals introduced in evidence
17 at trial?
18 A. The trial was years ago, and the -- the
19 trial -- and I just don't remember what it was. I
20 was very impressed by what he had done, and he, in
21 whatever case this was -- and I think this was a
22 wrongful death case -- was able to go forward on
23 what this gentleman would have made, and I was
24 basing the thoughts that I had for Mr. Feldman on
25 Mr. Wood.

Page 33

1 you --
2 A. Yeah. Oh. I --
3 Q. -- and it's --
4 A. It's part of the -- it's part of the
5 case. Excuse me.
6 Q. Right. Part of the case but not --
7 A. That's fine.
8 Q. I'm just going to ask --
9 A. Yeah.
10 Q. -- if we can remove that from
11 Exhibit 3.
12 A. Absolutely.
13 Q. That was just inadvertently included.
14 A. Absolutely. Yeah.
15 Q. I'm not sure how that got there, but...
16 And just, again, moving down the
17 trail --
18 A. Uh-huh.
19 Q. -- I'm going to pass to you now another
20 letter to Allstate claims representative, and this
21 is marked as Exhibit 4. Apparently it's -- this
22 appears to be a letter dated October 17, 2011, to a
23 new claims representative, Mr. Alton Prioleau. Am
24 I saying that right?
25 A. That's pretty close. I don't remember.

Page 34

1 Q. And this may be the identical letter.
2 A. Yeah.
3 Q. I'll let you take a look and see, but,
4 you know, I've got two letters, both signed and --
5 oh. Excuse me. This one was not signed, the copy
6 I've got. Do you know -- let me rephrase.
7 Take a look at Exhibit 4. Do you know
8 if this letter was sent to Mr. Prioleau?
9 A. I do not know. By way of explanation,
10 Allstate will switch up, as you're probably aware,
11 their adjusters, and Ms. Wise had been with me.
12 Prioleau -- I may have decided I was going to send
13 him the same letter to her, but I don't know, and I
14 can't tell you beyond that. I have no idea.
15 Q. I'm going to represent to you we're
16 going to be looking at some more letters to
17 Mr. Prioleau --
18 A. Yeah. That's fine.
19 Q. -- so apparently he --
20 A. He was on --
21 Q. You're right. He comes on board at
22 some point.
23 A. Yeah.
24 Q. Okay.
25 (EXH. 5, Letter from Gary Coggin to

Page 36

1 Q. -- as the way he was living, you have
2 no reason to doubt that the medical bills and the
3 surgeries were related to the accident, do you?
4 A. The surgery that we're talking about
5 here was previous to the accident. It was 2008.
6 No, they -- they weren't related at all. This was
7 a preexisting condition that Bob had.
8 Q. And you're describing in Paragraph 3
9 that the -- that matters between January of 2011
10 and March of 2011 are dealing with --
11 A. Yeah.
12 Q. -- treatments for the accident?
13 A. If you read the second sentence:
14 Please note here there are two separate regimes --
15 Q. Right.
16 A. -- of physical therapy for the
17 claimant.
18 The only thing I can think of was that
19 somehow they were connected and I sent the two bill
20 -- that's all I can think of. I don't know.
21 Q. Just clarifying for the adjuster what's
22 going on --
23 A. Yeah.
24 Q. -- with treatments?
25 A. Yes.

Page 35

1 Alton Prioleau dated October 24, 2011, was marked
2 for identification.)
3 BY MR. PENDARVIS:
4 Q. Mr. Coggin, I'm going to pass to you
5 now another letter. It appears to be another
6 letter you wrote. This one's date October 24,
7 2011. It's been marked as Exhibit No. 5.
8 Okay. Is this a letter that you sent
9 to Mr. Prioleau in -- on October 24, 2011?
10 A. I would think so, but I don't -- I only
11 have one page. There's not a signature page.
12 Q. I think it is.
13 A. Oh, okay. Excuse me.
14 You're right. Yeah. I agree.
15 Q. Is that your signature?
16 A. Uh-huh.
17 Q. Okay.
18 A. Yes.
19 Q. And what is the purpose of this letter?
20 Or what was the purpose of this letter?
21 A. I think I was probably bringing him up
22 to speed on medicals.
23 Q. And notwithstanding your statements
24 about Mr. Feldman's pain and suffering issues --
25 A. Uh-huh. Uh-huh.

Page 37

1 Q. Let's take a look, if the -- that
2 document that was attached to the letter, I've got
3 another copy for you. I'll tell you, before we get
4 just into that --
5 A. Uh-huh.
6 Q. -- let's let the court reporter mark
7 that. That's going to be Exhibit 6. And I've got
8 a few questions for you.
9 A. Okay.
10 MR. BOGDAN: Hand that to her, Gary,
11 and let her mark it.
12 THE WITNESS: Oh. I'm so sorry.
13 MR. PENDARVIS: Well, I'll let you --
14 you can look at it all you need.
15 (EXH. 6, Release, Covenant Not to
16 Execute and Settlement Agreement, was marked for
17 identification.)
18 BY MR. PENDARVIS:
19 Q. Take a moment and look that over. When
20 you're ready, we'll -- let me know, and we'll have
21 a few questions.
22 MR. BOGDAN: Was that six, Thomas?
23 MR. PENDARVIS: Yeah. It's number six.
24 THE WITNESS: Okay.
25 BY MR. PENDARVIS:

Page 38

1 **Q. It appears from the date of the**
2 **document, September 18 --**
3 A. 2012.
4 **Q. -- 2012 --**
5 A. Yeah.
6 **Q. -- that by that time you've reached an**
7 **agreement to resolve the claims with**
8 **Ms. Dickenson's at-fault carrier, Allstate --**
9 A. Correct.
10 **Q. -- for an amount of 85,000?**
11 A. Correct.
12 **Q. And she had \$100,000 in coverage,**
13 **correct?**
14 A. Correct.
15 **Q. Did you have any discussions with**
16 **Mr. Feldman about settlement with Allstate?**
17 A. Yeah. We did. There was a hundred
18 thousand dollars there. Bob, at this time, was
19 putting considerable pressure on me to get this
20 settled. He told me he was broke. There was one
21 time, maybe twice, that he called and asked to
22 borrow money from me, which I couldn't do.
23 I told him that I was pushing as hard
24 as I could to get this matter settled and that we
25 would -- I would relay all reasonable settlements

Page 40

1 **telling the jury in this case that in September**
2 **2012 \$85,000 was a sufficient settlement with the**
3 **at-fault driver?**
4 A. The one thing you have to be aware of
5 is that --
6 **Q. Well, answer yes or no and then you can**
7 **explain. Is that what you're telling me?**
8 A. Ask me the question again.
9 **Q. So you are going to be telling the jury**
10 **in this case that based on a claim that you made a**
11 **demand for Mr. Feldman in excess of \$1 million --**
12 A. Uh-huh.
13 **Q. -- that in September 2012 the \$85,000**
14 **settlement on a \$100,000 policy was sufficient and**
15 **reasonable?**
16 MR. BOGDAN: Object to the form.
17 THE WITNESS: The \$90,000 settlement on
18 a hundred thousand dollar policy was reasonable,
19 yes.
20 BY MR. PENDARVIS:
21 **Q. Notwithstanding your million dollar**
22 **demand?**
23 A. Now, at the beginning of this,
24 Mr. Pendarvis, you made a pledge to me you weren't
25 going to try to trick me. Is this one of these

Page 39

1 to him. They had started out by offering, I think,
2 \$40,000, and they moved up. \$85,000, to me, for
3 three broken ribs, was just fine because you got to
4 the point where you could go after his UIM and make
5 that declaration with full confidence that it would
6 be treated the way it should, rather than if you
7 settled for \$40,000.
8 In addition to that, Bob had also
9 gotten five -- gotten \$5,000 from his own insurance
10 company. These companies, particularly Allstate
11 and State Farm, will always argue that the med pay
12 is part of the settlement, and I've had that happen
13 in cases that I've won where they come back to me
14 and they argue that they want the money for what
15 they paid when there was Allstate on both sides.
16 They want the 20,000 they paid in med pay. So I
17 look at this as more a \$90,000 settlement.
18 The settlement was made purely with
19 Bob's agreement, and Bob wanted to know if we were
20 going to go after his UIM. Considering at this
21 time, 2012, I was of the opinion that everything
22 Bob told me about his condition was truthful, I
23 said: Yes. We are.
24 **Q. So you, based on a claim that you made**
25 **demands in excess of a million dollars, you're**

Page 41

1 non-trick questions?
2 **Q. First off, I didn't say that. I don't**
3 **intend to trick you. I don't intend to trick you,**
4 **but I just want to put in light for the jury that**
5 **the -- you made a -- let's make sure that we're**
6 **clear.**
7 A. The policy was a hundred thousand
8 dollars. We got \$90,000. That was a good
9 settlement.
10 **Q. Well --**
11 A. That's the answer.
12 **Q. We're going to stick with that.**
13 A. Okay.
14 **Q. Remember your statement.**
15 A. Okay. That's fine.
16 **Q. Remember your statement for trial.**
17 A. Okay. I'll remember that.
18 **Q. How were you going to establish that**
19 **Mr. Feldman was under -- that the at-fault party**
20 **was underinsured when you didn't get all the policy**
21 **limits as part of making your claim against**
22 **Mr. Feldman's underinsured carrier?**
23 A. I can only go with what the policy is
24 that I've known for the years I have practiced law,
25 and that is that you can make a claim for

Page 42

1 underinsurance for any reason whatsoever, and even
2 if I had gotten \$20,000, I still could have claimed
3 the underinsurance. Whether they would have paid
4 it or not is something different, but the -- in
5 this case here they took the case very seriously
6 and -- as I expected they would.

7 **Q. Okay. Did you have any discussions**
8 **with Mr. Feldman about the risks of accepting**
9 **85,000; that it might create a defense for the**
10 **underinsured carrier that there was -- that the**
11 **at-fault party truly wasn't underinsured because**
12 **you didn't get all of the available proceeds?**

13 A. I do not know any case I've ever seen
14 that has addressed that question. My answer, that
15 is -- that was not a consideration, was not a
16 problem.

17 And remember, Bob desperately needed
18 money. And remember this also. Bob did not have
19 to take the settlement.

20 **Q. So the answer to the question is no,**
21 **you didn't have that conversation with Bob?**

22 A. What's that?

23 **Q. That you didn't discuss any risks of**
24 **settling for less than policy limits?**

25 A. No. I think that probably would have

Page 44

1 **Q. Is there anything in this document that**
2 **you believe is -- today -- is not accurate?**

3 A. No. It's accurate.

4 **Q. Okay. And looking at the last page of**
5 **Exhibit 7, pursuant to the statutes -- and I'm not**
6 **going to go into the specific statutes, but**
7 **pursuant to South Carolina law you served a copy of**
8 **this civil cover sheet, summons, and complaint on**
9 **the secretary of state?**

10 A. No. The department of insurance.

11 **Q. Department of insurance? Okay.**
12 **And they, in turn, deliver it to**
13 **Liberty Mutual?**

14 A. That's correct.

15 **Q. And Liberty Mutual was the underinsured**
16 **carrier for the Feldmans?**

17 A. That was Robert's carrier. That's
18 right.

19 **Q. Okay. And basically the ad damnum**
20 **clauses on -- on the last page of the complaint**
21 **would have effectively make this demand a policy**
22 **limits demand for the underinsured coverage,**
23 **correct?**

24 A. You used the phrase ad damnum. I don't
25 know what that means.

Page 43

1 come up, and I think I would have told him that we
2 can still bring the action for UIM. I have never
3 seen, Mr. Pendarvis, a case where we have made a
4 settlement for less that wouldn't get UIM. I've
5 gotten UIM a number of times.

6 (EXH. 7, Civil Action Cover Sheet,
7 Summons, Complaint, Copy of certified mail
8 envelope, was marked for identification.)

9 BY MR. PENDARVIS:

10 **Q. Mr. Feldman, I'm passing to you a copy**
11 **of a group of documents, a civil cover sheet --**
12 A. Uh-huh.

13 **Q. -- a summons, and a complaint, and I'm**
14 **going to ask that you -- in very back of it is a**
15 **certified mail receipt, a copy of a certified mail**
16 **receipt. Were these pleadings you signed and filed**
17 **on behalf of Robert Feldman and Lois Feldman in**
18 **October of 2012?**

19 A. Yeah. Yes.

20 **Q. Can we call this the Feldman versus**
21 **Dickenson lawsuit for today?**

22 A. Absolutely.

23 **Q. Okay. And, of course, you prepared the**
24 **complaint, correct?**

25 A. Yes, I did.

Page 45

1 **Q. The two wherefore clauses on the last**
2 **page of the complaint --**

3 A. Uh-huh.

4 **Q. -- make two separate demands, one for**
5 **the first cause of action in the amount of 300,000,**
6 **and the second for the second cause of action in**
7 **the amount of \$225,000. Do you see that?**

8 A. Yes.

9 **Q. And combined, that would have been a --**
10 **basically a policy limits demand for the**
11 **underinsured coverage, correct?**

12 A. That's correct.

13 **Q. Assume for a second, Mr. Coggin, that**
14 **Liberty Mutual tendered payment right then and**
15 **there. Out of the \$525,000, what would have been**
16 **your fee?**

17 A. Well, they probably would have tendered
18 payment for 500, which was the extent of the
19 policy.

20 **Q. Let's assume 500.**

21 A. My fee would have been 35 percent.

22 **Q. Okay. Were there any discussions with**
23 **Mr. Feldman about taking less than 35 percent if**
24 **the case was settled early in the representation?**

25 A. I do not recall anything like that.

Page 46

1 Q. In a claim where the lawsuit is being
2 brought against a defendant who is -- there's been
3 a covenant to -- not to execute and you're pursuing
4 underinsured coverage, in that context what do you
5 do to effect service of process of the -- of the
6 pleadings?
7 A. I didn't understand the first part of
8 the question.
9 Q. Well, in the context where you have
10 settled under a covenant with the at-fault party --
11 A. Not to execute.
12 Q. -- and you're proceeding with a
13 complaint to pursue underinsured coverage.
14 A. Uh-huh.
15 Q. In that context. And then we can even
16 apply it here to the Feldman versus Dickenson
17 matter. What do you do to effect service of
18 process?
19 A. You hire a process server. You give
20 them a copy of the process, you give them the last
21 known address, and ask them to serve it.
22 Q. And I've seen some information where
23 you did just that in this case, correct?
24 A. That's right.
25 Q. And that's a requirement to perfect the

Page 48

1 where she was at.
2 Q. And Mr. Witt told you that sometime
3 right after he was charged with serving?
4 A. He -- he gave me an affidavit of
5 nonservice.
6 Q. Okay. Did you follow up with that and
7 ask him what he found out about where she might be
8 located?
9 A. Oh, yeah. Absolutely.
10 Q. How did you come to learn that
11 Ms. Dickenson was in New York state?
12 A. You're probably as familiar with this
13 -- these materials on the Internet as I am.
14 There's various search engines like Spokeo, People
15 Find, and that type of thing. Armed with the
16 information that I had -- the age, the previous
17 addresses -- and if you plug that in, that's --
18 it'll come up.
19 Q. And what did you do next?
20 And what was your next step for
21 service?
22 A. My next step was to serve her in person
23 with a process server from Long Island.
24 Q. And the location was on Long --
25 somewhere on Long Island?

Page 47

1 pleadings in an underinsured lawsuit context?
2 A. It's a requirement. It's not
3 perfecting the pleadings, but it's a requirement to
4 serve them, yeah.
5 Q. It's a requirement to formally commence
6 the lawsuit.
7 A. Yeah.
8 Q. Correct?
9 A. That's correct.
10 Q. And so if I were -- I want to get to
11 the right...
12 Mr. Michael Witt was the process server
13 you hired here in Beaufort County --
14 A. That's correct.
15 Q. -- to effect service on Ms. Dickenson?
16 A. That's correct.
17 Q. And do I understand correctly that he
18 tried to serve her at the last known address?
19 A. Yeah. Doncaster Road was in Sun City.
20 Q. And I understand that he learned that
21 she -- Ms. Dickenson had been -- Ms. Dickenson's
22 family had taken her back to New York state?
23 A. He didn't know that. The neighbors
24 were not forthcoming. They just simply said she
25 hadn't been there for a while and they didn't know

Page 49

1 A. I think it may have been New Hyde Park.
2 I'm familiar with Long Island to a certain extent,
3 but there's a number of cities very close -- or a
4 number of little cities very close to -- what am I
5 thinking of -- maybe the Bronx or Brooklyn.
6 Q. Okay. I'm a pure, unadulterated
7 southern. I've been up there one time. I'm going
8 to rely on you to tell me that.
9 A. I will tell you a great story about
10 going up there to a deposition one time.
11 Q. We'll do that later.
12 A. We'll do that later, yeah.
13 Q. Okay. So Mr. Witt obviously wouldn't
14 be a good candidate --
15 A. No, no. Huh-uh.
16 Q. -- to handle that, so what was your
17 next step for effecting service on Ms. Dickenson in
18 New York state?
19 A. I went on the Internet and looked at
20 where she lived. And then I looked at various
21 process service companies in that area and made
22 some calls.
23 Like everywhere else, nobody answers
24 their phone. The first company where they answered
25 the phone was a company called Zeller --

Page 50

1 Zellner-Wood. Okay? I don't remember the first
2 name exactly. And I talked to a process server
3 there by the name of Fran, then we went from there.
4 **Q. And payment arrangements were made, and**
5 **you delivered the pleadings to --**
6 A. Fran --
7 **Q. -- Zeller-Wood; is that correct?**
8 A. Fran wanted up front money.
9 **Q. Okay.**
10 A. Like New York. She said a money order
11 would be fine. I -- and the one mistake I made in
12 my affidavit, I said it was \$200, and I think it
13 was actually a hundred dollars. And she wanted
14 payment of a hundred dollars.
15 I made two calls to her -- actually,
16 there was about three calls. I called initially
17 and then I called back a couple of more times. The
18 second time we made the arrangements, and after I
19 finished that call, I called her back and said I
20 want to firm up the address with you. Give me the
21 address again. And that's -- she gave it to me. I
22 took care of it all that afternoon.
23 **Q. And the address you're talking is the**
24 **Zeller-Wood process serving address?**
25 A. Right.

Page 52

1 anything to department of insurance.
2 **Q. No, no, no. I'm going to represent to**
3 **you that in November -- on November 29 you sent the**
4 **letter to the department of insurance --**
5 A. Uh-huh.
6 **Q. -- and I'm asking: Can you -- does**
7 **that clue you in on when you had the conversations**
8 **with the service --**
9 A. Huh-uh. I think it was pretty
10 concurrent. I think that the -- it went to the
11 department of insurance first.
12 **Q. I don't know if it's me or you, but**
13 **we've got to slow down on our Q and A 'cause we're**
14 **talking on top of each other a little bit. Okay?**
15 A. I apologize.
16 **Q. No, no, no. I'm apologizing equally.**
17 **I'm not sure which of us is doing it, but let's --**
18 A. Yeah. Ask me the question again.
19 **Q. Okay. So you're believing late**
20 **November or maybe early December is this**
21 **conversation, and I'm going to represent to you**
22 **that in late November is when the -- you sent a**
23 **letter to the department of insurance.**
24 A. And if I can answer that --
25 **Q. Sure.**

Page 51

1 **Q. You gave her what you got off the**
2 **Internet for Ms. Dickenson's service --**
3 A. Yeah.
4 **Q. -- process address? Okay.**
5 A. Uh-huh. Uh-huh. And that was -- I do
6 remember that. That was an address -- I think
7 MacGregor Avenue. And I can't remember. I think
8 it might have been New Hyde Park, though I'm not
9 sure.
10 **Q. Okay. And using Exhibit 7 --**
11 A. Right.
12 **Q. -- October 29 as our sort of baseline,**
13 **when were these conversations with Zeller-Wood**
14 **process service company?**
15 A. It was a -- what I remember, it was a
16 while because I had given this to Mr. Witt. He
17 probably had it for two or three weeks. He was
18 pretty thorough. And when he came back to me, I'm
19 thinking maybe sometime in November, even early
20 December. I don't know.
21 **Q. Okay. Can you relate the conversation**
22 **with the Zeller-Wood -- Fran in terms of when you**
23 **sent the department of insurance the copy of the**
24 **summons and complaint?**
25 A. I never talked to her about sending

Page 53

1 A. -- I believe I served the department of
2 insurance first.
3 **Q. Before the conversation with the**
4 **process server?**
5 A. Yeah. Uh-huh.
6 **Q. Okay. That's fine.**
7 (EXH. 8, Answer and Certificate of
8 Service, was marked for identification.)
9 BY MR. PENDARVIS:
10 **Q. And by follow-up question or response,**
11 **when I said process server, I'm really referring**
12 **now to Zeller-Wood and not Mr. Witt.**
13 A. That's fine.
14 **Q. Okay. I'm going to pass you a copy of**
15 **a document marked as Exhibit 8 to your deposition**
16 **that appears to be the answer filed on behalf of**
17 **Liberty Mutual or by Liberty Mutual's counsel.**
18 A. Yeah.
19 **Q. This is weird. We both know that Sarah**
20 **Dickenson's the defendant but that Liberty Mutual**
21 **is the party answering the complaint per the**
22 **statute, but anyway -- so this is the answer that**
23 **was filed on behalf of Liberty Mutual?**
24 A. Uh-huh.
25 **Q. Yes?**

Page 54

1 A. I'm sorry. Yes.

2 Q. When did you receive a copy of this

3 answer?

4 A. It's time-stamped January 7, and I

5 assume I received it by mail, so it would have been

6 within five days.

7 Q. Okay. So early January --

8 A. Yeah.

9 Q. -- you received this answer?

10 A. And I can answer the former question

11 now if you want me to trigger it.

12 Q. Yes.

13 A. November the 28th was the -- no.

14 November 28, I think, is when he received the --

15 the service from the secretary of state.

16 Q. Okay. Help me understand, Mr. Coggin.

17 We're going to look at your affidavit about

18 receiving proof of service of process. In light of

19 the time when you received the answer, when did you

20 receive information about service of process from

21 the Zeller-Woods people: Before? After? Can you

22 help me there?

23 A. This answer?

24 Q. Yes, sir. Exhibit 8.

25 A. I believe it would have been before.

Page 56

1 I received the affidavit of service. I

2 remember I waited quite some time, and I was going

3 to call her, and I would say it was three weeks

4 after the conversation, when I was ready to call

5 her that day, there was an affidavit of service in

6 the mail.

7 Q. So that's late December?

8 A. It could have been -- it could have

9 been January. I don't know.

10 Q. Was there a cover letter with the

11 affidavit of service?

12 A. Affidavit of service. That was it.

13 Q. Just the raw affidavit?

14 A. Uh-huh.

15 Q. Who served it?

16 A. It was a gentleman. I looked at the

17 name. It wasn't -- certainly wasn't Fran.

18 Q. Right.

19 A. It was a name of a process server, and

20 he had served it on an address where this woman

21 was, which was a -- I determined later it was an

22 assisted living, slash, dementia home. You know,

23 the woman is, I think, 85 at that time, something

24 like that, and that's all I could tell.

25 It was served. The person that

Page 55

1 Q. So you had information from Zeller-Wood

2 process server Fran --

3 A. Uh-huh.

4 Q. -- someone up there -- that

5 Ms. Dickenson had been served?

6 A. That's correct.

7 Q. Tell me what you understood about the

8 service of Ms. Dickenson in New York state at the

9 time you received that information.

10 A. I had sent the material to

11 Zellner-Wood. I didn't hear anything from them,

12 and I called them a week later. The -- Fran again

13 answered the phone. She said service had been

14 attempted at the address I had given her and there

15 was nonservice.

16 And I said -- I can remember saying,

17 jeez, thinking to myself this is going to be a

18 headache.

19 And she said: Don't worry. We got a

20 real good address, and we're serving that.

21 Didn't hear anything from her, and I

22 called probably seven or eight days later, and she

23 said service has been made. And she said: You'll

24 -- and I asked about the affidavit of service, and

25 she said: You'll be getting that.

Page 57

1 accepted service was, I remember, a man, a man's

2 name, and I was a little concerned about that, but

3 I looked at the law and the rules. You know,

4 service at the residence accepted by somebody who

5 holds them self out to accept -- be able to accept

6 service. It was fine.

7 Q. When you filed the complaint in -- in

8 Exhibit 7, did -- did you mark the time for service

9 of process of the complaint, the time period you

10 were allowed to serve it?

11 Let me back up.

12 A. Yeah. I'm not --

13 Q. Are you aware of a rule -- are you

14 aware of a rule of procedure that limits the time

15 to serve a summons and complaint?

16 A. There -- there's a couple of rules.

17 You're going to have to help me out here because I

18 think I know what you're talking about, and I'm

19 going to probably disagree with you. We have --

20 tell me what the rule is.

21 Q. Well, this is your deposition.

22 A. And I apologize.

23 Q. This is your deposition. I'm asking

24 you: What rule --

25 Let me ask you a different way. What

Page 58

1 rules are in play as far as the time to serve a
2 summons and complaint that were -- that were
3 governing matters in --
4 A. Oh, okay.
5 Q. -- when this complaint was filed in
6 2012?
7 A. Service can be made within 120 days
8 after the time has tolled by statute.
9 Q. And what tolls the time by statute?
10 A. Three years.
11 Q. And do I understand what you're saying
12 is once you file a complaint you have 120 days to
13 serve it?
14 A. No. Once you -- when Robert was
15 injured was September 10 or 9. You had three years
16 from that time.
17 Q. 2010?
18 A. Yeah. If you filed a complaint --
19 okay -- you would have -- you would be able to
20 serve that complaint, for example, filed the last
21 day of the statute. You still had 120 days to
22 serve it after the statute ran.
23 Q. And if you don't serve it after 120
24 days, what happens?
25 A. It's -- I assume you're in default.

Page 60

1 A. Uh-huh.
2 Q. Wouldn't it be 120 days after this
3 complaint was filed?
4 A. I don't know. When was it filed?
5 It's filed October 29. The -- the --
6 was served, as I said, in -- that's November. It
7 was served probably in January. That's -- that's
8 more than enough time after it's been filed.
9 Q. I'm really trying to get an idea.
10 A. Yeah.
11 Q. What's the 120th day after October 29,
12 2012?
13 A. No, no. It -- that's not the way the
14 -- the rule reads. Everybody makes that mistake.
15 It's 120 days after the three-year time period.
16 Q. Okay.
17 A. I've had that argument with people many
18 times. I can show you the rule.
19 Q. Okay.
20 A. That has nothing to do with this at
21 all. This was served in a timely basis.
22 Q. So what did the rules require as far as
23 filing proof of service?
24 A. The rule says -- I think it's within
25 ten days after the receipt of service.

Page 59

1 Q. Okay. Or out of time?
2 A. Yes.
3 Q. Okay.
4 A. Excuse me.
5 Q. Did you mark on your calendar or have
6 an internal calendaring system that identified the
7 120 days from the date of filing?
8 A. No, I did not.
9 Q. And how does that help Mr. Coggin -- I
10 mean Mr. Feldman? I mean, what if you missed the
11 deadline?
12 A. I didn't miss the deadline. That's
13 the --
14 Q. I'm asking you what if. What did you
15 do to make sure you had the deadline calendared?
16 A. I knew the dates very well. If you're
17 asking if I calendared and put it on a calendar, I
18 did not, by I knew the dates very well.
19 Q. What was the 120th day of after
20 October 29, 2012?
21 A. No. It's not -- it would have been 120
22 days after -- it would have been 120 days after
23 2016 -- or under -- after 2013 and ran.
24 Q. This complaint was filed October 29,
25 2012.

Page 61

1 Q. And you testified a few moments ago
2 that you received an affidavit from a process
3 server in New York --
4 A. Right. Uh-huh.
5 Q. -- stating that they -- Ms. Dickenson
6 had been served with process?
7 A. Yeah.
8 Q. When did you file that document?
9 A. I did not.
10 Q. Why not?
11 A. Put it in the papers of the case and
12 went on to other things.
13 Q. No. I'm asking why not.
14 A. I just told you.
15 Q. You knew there was a rule that required
16 filing?
17 That's yes?
18 A. Yes.
19 Q. And you did not file the affidavit,
20 correct?
21 A. That's correct.
22 Q. How did that help Mr. Feldman and
23 Ms. Feldman on their claim?
24 A. There is -- there is case law,
25 Mr. Pendarvis -- and I think you've probably read

Page 62

1 it -- that says that that's not determinative. If
2 in fact you serve it and you had -- you have
3 service of process -- it's been returned -- that's
4 enough to satisfy the law.
5 **Q. Okay.**
6 A. So Mr. Feldman's in good -- was in good
7 shape with that.
8 **Q. Okay. And so I've passed you**
9 **Exhibit 8, correct?**
10 A. Yeah.
11 **Q. So early January --**
12 A. Uh-huh.
13 **Q. -- within a week or so -- let's just**
14 **say -- I think you testified within five days or so**
15 **of January 7, 2013, you received this answer by**
16 **Liberty Mutual Insurance Company, correct?**
17 A. That's correct. Yeah. Uh-huh.
18 **Q. And did you look at the whole answer,**
19 **read the entire document?**
20 A. Oh, yeah. Absolutely. Uh-huh.
21 **Q. And you saw as a fifth defense they**
22 **were alleging that plaintiff had failed to**
23 **effectuate proper service, right?**
24 A. The heading says improper service. I'm
25 not sure the heading is part of the -- the

Page 64

1 **So October 10, 2013, was the last date**
2 **to commence a lawsuit against Ms. Dickenson?**
3 A. That's correct.
4 **Q. If a summons and complaint is not**
5 **served on a defendant, then the lawsuit's not**
6 **commenced, correct?**
7 A. That would -- according to the law,
8 yeah, that's correct.
9 **Q. Okay. As of January 4, 2013, when**
10 **Mr. Allen -- I'm going to assume that that's his**
11 **signature -- but on the date this answer was**
12 **filed --**
13 A. Uh-huh.
14 **Q. -- in January of 2013 the statute of**
15 **limitations hadn't expired yet, had it?**
16 A. No. No. No.
17 We're still on eight?
18 **Q. Right.**
19 A. Okay.
20 **Q. In other words, assuming -- and I'm**
21 **asking you to assume this lawsuit wasn't properly**
22 **commenced. A new lawsuit could have been filed any**
23 **time before October 10, 2013, and the statute would**
24 **have been protected, correct?**
25 A. Yes.

Page 63

1 paragraph, but go ahead.
2 **Q. Well, could you read Paragraph 10 for**
3 **us?**
4 A. Further answering, party alleges
5 plaintiff has failed to effectuate proper service
6 under 12(b)(4) and 12(b)(5).
7 **Q. And with that assertion by the**
8 **defendant, why didn't you file the affidavit of**
9 **service?**
10 A. I had simply forgot.
11 **Q. Okay. And as of January 4 -- you know,**
12 **what was the -- you said earlier -- I want to make**
13 **sure I'm clear on this --**
14 A. Yeah.
15 **Q. -- that the statute of limitations**
16 **governing Mr. and Ms. Fieldman's claims against**
17 **Ms. Dickenson would have been -- if the wreck**
18 **occurred on October 9, 2010 --**
19 A. Uh-huh. Yes.
20 **Q. -- then the statute of limitations**
21 **would have been expired on that claim October 9,**
22 **2013, correct?**
23 A. October 10, 2013.
24 **Q. Correct. Day after. You're right.**
25 **You're right.**

Page 65

1 **Q. With that assumption?**
2 A. Uh-huh.
3 MR. PENDARVIS: Let's take a break for
4 a minute.
5 (A recess transpired.)
6 BY MR. PENDARVIS:
7 **Q. As I briefly mentioned off the record,**
8 **Mr. Coggin, there -- there are plenty of materials**
9 **in your files that have been delivered to us that**
10 **dealt with the discovery answer, interrogatories,**
11 **requests for production both ways, motions to**
12 **compel, and all of those things, but at the end of**
13 **the day you -- documents were exchanged,**
14 **interrogatories were answered, and by May of 2014**
15 **mediation was scheduled.**
16 A. Okay.
17 **Q. Correct?**
18 A. Uh-huh.
19 **Q. Terry Finger was the mediator?**
20 A. Correct. Uh-huh.
21 **Q. I think we all know Terry.**
22 MR. PENDARVIS: You know Terry?
23 MR. BOGDAN: Not personally.
24 MR. PENDARVIS: Okay. Well, he's a
25 fella that does a lot of mediation around Beaufort

Page 66 1 County. Good guy. 2 BY MR. PENDARVIS: 3 Q. In the time between January 2013 and 4 May of 2014, did you have any other conversations 5 with Mr. Julian Allen, the lawyer hired by Liberty 6 Mutual, about service of process, affidavits of 7 service, anything of that nature? 8 A. None. 9 Q. Did you review your pleadings to -- for 10 -- ensure compliance with service of process or 11 anything of that sort during those year and a half 12 or so? 13 A. I was pretty much hands-on with this 14 case, but I can't say that I did or didn't. 15 Q. I guess we can really say 2013 and 16 early 2014 you were communicating with some of the 17 medical providers who had treated Mr. Feldman, 18 correct? 19 A. I had a lot of communications with them 20 by letter. It seemed to me, prior to the 21 settlement more so than afterwards, I know I had 22 sent some letters to Dr. Shissias and also 23 Dr. Reuben -- I think it's Reuben or Rubner -- 24 Reuben -- regarding what Bob was feeling and how 25 badly he was injured and so forth like that and	Page 67 1 asking for maximum medical improvement and so forth 2 like that. 3 Q. And was to supplement with 4 Ms. Dickenson's carrier, Allstate? 5 A. That was for -- in prep for the 6 settlement with the carrier. That's correct. 7 Q. Did you have any communications with 8 any of the medical providers during 2013 and early 9 2014 to get an update on medical condition? 10 A. I don't remember. If you have 11 something, I would like to look at it, and I'd 12 certainly tell you. 13 Q. I'm going to represent to you that 14 through October of 2013 the only communications we 15 have with any of Mr. Feldman's medical providers is 16 a letter from Mr. Allen to Dr. Platt and Coastal 17 Carolina with a subpoena for records and other 18 activities by the defense -- 19 A. Uh-huh. 20 Q. -- but not you. 21 A. Okay. 22 Q. You already had a large body of 23 Mr. Feldman's records, correct? 24 A. I would think so. And again, I don't 25 remember the date of any of those letters.
Page 68 1 Q. That's fine. 2 At some point before you were -- you 3 moved to be relieved as counsel you were trying to 4 schedule the deposition of Dr. Reuben, correct, 5 that got canceled for some reason? 6 A. That I don't remember. 7 Q. Okay. We'll look at that. 8 A. I don't remember that at all. 9 Q. By December of 2013 this case was 10 coming up on the roster, correct, for trial? 11 A. I don't recall. 12 Q. I don't have this as an exhibit, but 13 I'm going to show this to both of you. This is a 14 document, Mr. Coggin, from your file that's an 15 e-mail from you to Mr. Allen that states that the 16 case is up on the jury -- transferred to the jury 17 roster. 18 A. Okay. 19 Q. And I'll give you -- 20 A. I don't remember that. 21 Q. Does that look like -- I mean, this 22 came from your file. And then I'm going to give 23 you a Bates number too so you'll have the record. 24 A. That's my style of writing, yes. 25 Q. And for the -- and I'm not going to	Page 69 1 make this as an exhibit, but this is -- this 2 document bears Bates number -- come on -- 00119. 3 MR. BOGDAN: Does it have a date on it? 4 I didn't see it. 5 MR. PENDARVIS: It didn't have the 6 subject re line on the -- 7 THE WITNESS: Thomas, could I see that 8 again, please? 9 BY MR. PENDARVIS: 10 Q. Certainly. But it's talking about -- 11 and it doesn't, but I'll read it. I'll read it in 12 the record. It says: Julian. Re the case of 13 Feldman versus Dickenson. 14 I'm going to skip the civil action 15 number. 16 As a courtesy to you, please be 17 informed that I will request a transfer of the same 18 to the jury trial roster in January of the new 19 year. I hope you have a holiday season. 20 And so that would have been December 21 '13, transfer onto jury trial roster in 2014. 22 A. Is there a date on that or not? I 23 don't see it. 24 Q. No, no, sir, there's not, but we're 25 talking --

Page 70

1 A. See, that's --
2 **Q. I mean, it's talking about the new**
3 **year, and that's why I'm --**
4 A. I just don't -- that looks like
5 something I would do, but I would love to know what
6 the date was.
7 **Q. The reason I'm asking you about this is**
8 **the case was filed in 2012, October?**
9 A. Uh-huh. Yes.
10 **Q. So by early 2014 it's going to be**
11 **appearing on Beaufort County roster, correct,**
12 **whether you move to transfer to the jury trial**
13 **roster or not. Fair enough?**
14 A. We were probably in the midst of
15 receiving notifications about ADR, et cetera,
16 et cetera. That would have come a little later
17 though. And I don't know what the default time is
18 for that, the triggers for those being sent out,
19 but we're getting into the neighborhood.
20 **Q. We've not seen a notice of ADR, but I**
21 **will move into --**
22 A. Yeah.
23 **Q. -- that topic at this point.**
24 (EXH. 9, Letter from Gary Coggin to
25 Terry Finger dated May 5, 2014, was marked for

Page 72

1 A. Yes, it is.
2 **Q. And were the -- was the demand made on**
3 **the first two paragraphs on page 2 reasonable based**
4 **on what you knew at the time you made the demand in**
5 **May of 2014?**
6 A. No, it was not.
7 **Q. I think you've told me before you**
8 **learned some things, you believe in 2013, about**
9 **Mr. Feldman's health?**
10 A. That's correct. Yeah. Uh-huh.
11 **Q. And why did you make a statement in**
12 **mediation -- to a mediator that was not reasonable**
13 **based on what you knew?**
14 A. This was a mediation. I had asked for
15 \$300,000 for Mr. Feldman and \$225,000 for his wife.
16 We were in a mediation, and the mediation was going
17 to be for a settlement. In this case here we had
18 already settled for \$100,000. He had \$500,000 of
19 underinsurance, and I was going into this
20 mediation, as with every mediation, is starting
21 high; you end up low.
22 **Q. So your testimony is that you knew you**
23 **were making an unreasonable demand when you made it**
24 **in this letter dated May 5, 2014, to Mr. Finger?**
25 A. This is something that you -- when you

Page 71

1 identification.)
2 BY MR. PENDARVIS:
3 **Q. Mr. Coggin, I am passing to you a**
4 **letter dated May 5, 2014, marked as Exhibit 9 to**
5 **your deposition. It appears to be a letter from**
6 **you to Terry Finger --**
7 A. Uh-huh.
8 **Q. -- re mediation, Feldman v. Dickenson.**
9 **Is this your signature on page 2?**
10 A. Yes, it is.
11 **Q. And is this your statement of the claim**
12 **in the case as of May 5, 2014?**
13 A. You know, I thought that the -- the
14 mediation was May 5 or 4. I'm not sure about the
15 -- the date on this. And I don't know what the
16 mediation date was, but I will say it is my
17 signature.
18 **Q. So your testimony is the mediation was**
19 **sometime in May of 2014?**
20 A. Yeah. Uh-huh.
21 **Q. Okay.**
22 A. 2014. That's correct.
23 **Q. As of May 2014, are the statements you**
24 **made in this letter accurate, to the best of your**
25 **knowledge?**

Page 73

1 put in -- when you go into mediation, these are all
2 supposed to be privileged, and my demand in this --
3 considering the problems that I had under -- found
4 out about Bob, this was merely, on my end, puffing.
5 You can recall it unreasonable, whatever you want,
6 but it was puffing. I was starting high. We would
7 end up somewhere where I thought would be a good --
8 would be a good settlement for Bob.
9 **Q. Did you have any conversations with**
10 **Mr. Feldman or Mrs. Lois Feldman about the**
11 **substance of what you were demanding in the letter**
12 **marked as Exhibit 9?**
13 A. Apparently I didn't copy Bob on it, so
14 I would say probably not.
15 **Q. Okay. I have not seen what I'm going**
16 **to ask for. I'm just going to see if you know of**
17 **anything. Did the carrier or Mr. Allen on behalf**
18 **of Liberty Mutual submit a mediation statement to**
19 **Mr. Finger?**
20 A. I don't know. I don't recall any.
21 **Q. You participated in the mediation?**
22 A. Oh, absolutely.
23 **Q. And was it Mr. Finger's office?**
24 A. Yes.
25 **Q. Okay. Who was there?**

Page 74

1 A. Mr. Feldman was there, Mr. Finger was
2 there, Mr. Allen was there, I was there, and Lois
3 Feldman was there.
4 **Q. Did this mediation go down like most of**
5 **the ones I've been in where the parties meet,**
6 **little bit of conversation about the mediator's**
7 **role, then parties break into separate rooms for**
8 **negotiation?**
9 A. It started out that way.
10 **Q. And what was the demand made in the**
11 **mediation?**
12 A. I assume the demand was probably like
13 this: Here is my demand.
14 **Q. Similar to the wherefore clauses in the**
15 **complaint?**
16 **That's a yes?**
17 A. Yes.
18 **Q. Did Liberty Mutual make a counteroffer?**
19 A. They did make a counteroffer.
20 **Q. And what was that?**
21 A. 25,000.
22 **Q. Did you make any notes? Did you record**
23 **any notes during the -- during the mediation?**
24 A. I don't believe so, no.
25 **Q. Okay. And what was -- when you**

Page 76

1 at all.
2 **Q. Well, do you remember if there was a**
3 **message that said this is our final offer, 25,000,**
4 **take it or leave it?**
5 A. If there was something like that, I
6 always take those with a grain of salt. I then
7 reduce my offer, and we'll see what happens.
8 **Q. So --**
9 A. They weren't getting in the car.
10 **Q. Your understanding was they were**
11 **prepared to continue negotiating over --**
12 A. Oh, absolutely.
13 **Q. -- north of \$25,000?**
14 A. Absolutely.
15 **Q. And what was the -- was there a**
16 **counteroffer made?**
17 A. I didn't have time.
18 **Q. Okay. In terms of Mr. Feldman left**
19 **immediately?**
20 A. Yeah. Uh-huh.
21 **Q. Were there any follow-up conversations**
22 **with -- okay. So after Mr. Feldman left, what**
23 **happened next?**
24 A. I think I apologized to Terry Finger.
25 I said: Terry, I'm sorry about this.

Page 75

1 **received the \$25,000 counteroffer, what -- did it**
2 **come with a message on why it was so low?**
3 A. Actually, I thought it was a pretty
4 good offer. Very rarely you get an offer of
5 \$25,000 in a mediation. They usually start off
6 about five or six.
7 **Q. Okay. What did you -- describe the**
8 **conversation with Mr. Feldman when the \$25,000**
9 **offer was made.**
10 A. Unfortunately, Bob kind of lost his
11 composure and started to carry on about how this
12 was nothing and so forth like that, and he
13 essentially left the mediation shortly after that.
14 **Q. So your testimony is that a \$25,000 --**
15 **all right. Let me back up.**
16 A. Yeah.
17 **Q. Was \$25,000 the opening offer from**
18 **Liberty Mutual?**
19 A. Yes, it was.
20 **Q. And your testimony is that was a pretty**
21 **high offer for mediation?**
22 A. I thought so, yeah.
23 **Q. Was there any message conveyed with the**
24 **offer?**
25 A. I don't believe there was any message

Page 77

1 And he said: Oh, it happens all the
2 time. Don't worry.
3 And that was about it.
4 **Q. Were there any continuing settlement**
5 **negotiations after the mediation?**
6 A. Bob was very hard to get ahold of at
7 that time. I would call and -- and I never was
8 able to get ahold of him. He told me later that --
9 I wrote him some letters. He told me later he had
10 been in Chicago or something like that.
11 **Q. Okay. Was that the -- I want to make**
12 **sure I'm clear. The \$25,000 was the only offer at**
13 **mediation?**
14 A. We didn't have any time even to give a
15 counteroffer.
16 **Q. Okay.**
17 A. That's the only offer that was made.
18 **Q. Were there ever any points in time**
19 **after the mediation where -- where on behalf of Mr.**
20 **and Ms. Feldman a counteroffer was made?**
21 A. I don't believe so. I don't remember.
22 **Q. During the mediation, was there any**
23 **mention of the service of process issue?**
24 A. I don't think that was an issue.
25 **Q. No. Maybe, but was there any mention**

Page 78

1 of that?

2 A. No. Answer is no.

3 Q. Was there any mention of statute of

4 limitations?

5 A. No.

6 Q. Did Mr. Finger make any comments to you

7 about the merits of the claim, claim value, or

8 anything of that nature during the mediation?

9 A. Terry -- and I've known him for 25

10 years or close to -- is a very taciturn person, and

11 he didn't say anything one way or the other.

12 I do remember this, and I'm -- this has

13 triggered. Bob had said a number of things, and I

14 remember Terry saying to him: Well, maybe they'll

15 believe this about your -- your back and so forth

16 when you go to trial.

17 Or something to that effect. And Bob

18 left.

19 Q. Do I understand from that comment you

20 just made that --

21 A. Yeah.

22 Q. -- that during the breakout session Bob

23 Feldman was telling you, Terry, and his wife, those

24 in the room, that his injuries were severe and this

25 -- you know, he needed this --

Page 80

1 A. Oh, yeah. Uh-huh.

2 Q. Again, I'm not going to make this an

3 exhibit --

4 A. Yes.

5 Q. -- but -- I'm not going to make this an

6 exhibit. I've got -- you've produced copies of

7 letters in May to Dr. Reuben stating you're

8 providing a HIPAA form and asking for medical

9 records. Is that consistent with your plans on

10 trying this case?

11 A. I -- I don't remember that, so I can't

12 comment on it.

13 Q. I'm going to -- again, this is --

14 A. I'd like to see the whole letter if

15 it's --

16 Q. I'm going to show it to you.

17 A. Yeah.

18 Q. It's a one-page letter, and it's Bates

19 numbered 00114, and this is -- I'm going to let

20 your counsel look at it too.

21 A. Okay. I -- it looks to me like I was

22 asking for a -- to been brought up to speed on the

23 treatments he had had since October of 2012.

24 That's certainly my letter.

25 Q. Okay. And my question was: And this

Page 79

1 A. I -- I don't know if it was that as

2 much as he was just simply very, very irritated at

3 the -- what he considered to be a small offer.

4 Q. And what did you say to Mr. Feldman?

5 A. Wasn't much I could say.

6 Q. Did you tell him in your experience

7 there could be -- there was going to be some

8 continuing negotiations?

9 A. I don't know. I'm not going to say

10 anything that I did say or didn't say because I

11 just don't remember. I could have said something.

12 I might not have said anything. I don't know.

13 Q. Can you talk generally in terms of how

14 you handle mediations? In that scenario do you

15 generally try to tell a client that settlement

16 negotiations are -- this is early and they're going

17 to continue, they're not leaving, that kind of

18 thing?

19 A. Thomas, I've never had a situation in

20 the mediations where this has happened.

21 Q. Okay.

22 A. People will stay, and they'll stay to

23 the bitter end, is my -- my experience.

24 Q. After the mediation was over, did you

25 believe you were going to have to try the case?

Page 81

1 is consistent with your understanding that you were

2 going to have to try this case, getting his medical

3 records and things of that nature?

4 A. I thought that trying the case was on

5 the horizon. Bob was bound and determined, from

6 the conversations with him, he wanted to have this

7 case tried.

8 Q. As of May of 2014 -- well, before we

9 get to that, when you spend money on a client

10 matter, you keep a record -- do you keep a record

11 that identifies monies spent on client matters so

12 that it can be recovered if there's a settlement?

13 A. The way I keep it is everything is --

14 that we write for payment for depositions, payments

15 for filing, payments for attorney -- or not for

16 attorneys but for process servers and so forth like

17 that is ordinarily, with the exception of

18 Zellner-Wood, is ordinarily in check, and I will

19 keep contact with those checks.

20 I do not like what a lot of attorneys

21 do, and that is to nickel and dime people to death:

22 Letter, 42 cents. I don't do that. What I do is I

23 keep the checks. I put them in the file, and at

24 the end of the case I go through all my materials.

25 I add up the checks. It's a very fair way, I

Page 82

1 think, of treating my clients.
2 **Q. Okay. And so you're able to account**
3 **for monies spent on a client matter that --**
4 **significant monies?**
5 A. Significant money, yeah.
6 **Q. No charges for faxes and --**
7 A. No.
8 **Q. -- letters and postage. Okay.**
9 A. No, no.
10 **Q. So as of May 2014 -- and I understand**
11 **you don't have any records right here, but is -- am**
12 **I correct in understanding that you paid for a**
13 **filing fee --**
14 A. Uh-huh.
15 **Q. -- from the Feldmans?**
16 A. Uh-huh.
17 **Q. A money order to Zeller-Wood process**
18 **serving people?**
19 A. I never charged for that.
20 **Q. No. But you paid for it, right?**
21 A. Yes, I did. Yeah.
22 **Q. And were there any other expenses**
23 **incurred, medical record expenses or things of that**
24 **nature?**
25 A. That's hard for me to answer. I can

Page 84

1 **expenses and recover them out of the settlements**
2 **for clients?**
3 A. Sometimes. Other times, when they get
4 larger and it gets involved, I will ask the client.
5 I'll say: You're going to have to pick this up.
6 You're going to have to do this and that and so
7 forth. And the clients are usually pretty -- you
8 know, they're pretty -- pretty much --
9 Thomas, may -- I want to explain
10 something. Bob already owed me money for work that
11 I had done and that he had promised to pay me which
12 he never paid, so --
13 **Q. And this was the DUI for --**
14 A. Yeah, yeah. Uh-huh.
15 **Q. -- another person?**
16 A. Yeah. And when he promised before when
17 I took it on, he said: I'll pay you.
18 When I finished up and I won the
19 case -- girl blue a .284, and we had it thrown out.
20 And Bob said: You know I don't have the money.
21 That was the answer. So I was very --
22 very close with money with Bob.
23 **Q. When did that -- first off --**
24 A. Yeah.
25 **Q. -- I understood your testimony earlier**

Page 83

1 tell you this, is that I checked as to what Bob
2 made on the underlying settlement for the predicate
3 accident, and I believe I charged him \$900 for
4 expenses for two years.
5 **Q. Okay.**
6 A. And that's -- beyond that, I can't tell
7 you.
8 **Q. Okay. Well, at any point -- so we're**
9 **clear --**
10 A. Uh-huh.
11 **Q. -- the \$900, thereabout, that your firm**
12 **had spent prior to the settlement with Allstate --**
13 A. Yeah.
14 **Q. -- was reimbursed out of the Allstate**
15 **settlement proceeds, correct?**
16 A. That's correct. Yeah.
17 **Q. And so you're kind of starting with a**
18 **clean slate when the new lawsuit gets filed, right?**
19 A. That's correct.
20 **Q. And so the monies you spent from the**
21 **beginning of the lawsuit, Feldman v. Dickenson,**
22 **until May of 2014, had you asked Bob Feldman to**
23 **reimburse you for those monies?**
24 A. I don't know if I had or not.
25 **Q. In most cases don't you handle those**

Page 85

1 **that the first time you met Mr. Feldman was right**
2 **after the collision with Dickenson --**
3 A. Yeah.
4 **Q. -- was at his house?**
5 A. Yeah.
6 **Q. When did you take on this other matter,**
7 **the DUI matter?**
8 A. That was -- I believe it was the summer
9 of 2013.
10 **Q. And you'd already settled the -- with**
11 **Allstate at that point?**
12 A. Yeah. Uh-huh, uh-huh.
13 **Q. Okay. What was the agreement? I mean,**
14 **you didn't represent Mr. Feldman, right, in the**
15 **DUI?**
16 A. Mr. Feldman asked me to take this on as
17 -- he asked me if I did DUIs and so forth, and I
18 had been rather successful in trying these cases
19 and so forth and winning them, and he asked me if I
20 did it, and I said: Yeah.
21 He said he had young woman named Karma
22 who was staying at his house, and she had been in a
23 D -- she had --
24 **Q. Been charged?**
25 A. -- had a DUI at the entrance to where

Page 86

1 he lived, and he asked me to represent her.
2 **Q. And you agreed?**
3 A. Yeah. Uh-huh.
4 **Q. Okay. And if I'm hearing your**
5 **testimony correctly, then the compensation with**
6 **that representation, Mr. Feldman had agreed to**
7 **under -- you know, be reasonable for that?**
8 A. He had indicated to me: I will pay you
9 whatever -- whatever you charge.
10 **Q. Was there a fee agreement or anything**
11 **on that?**
12 A. That was -- Bob is a trustworthy
13 person. If he said he was going to pay me, he was
14 going to pay me. I do at a lot of things on a
15 handshake.
16 **Q. And I didn't say -- accurately.**
17 A. Yeah.
18 **Q. Was there a written agreement on that?**
19 A. No.
20 **Q. Help me on understanding this. What**
21 **does payment on the Young case have anything to do**
22 **with your representation of Dickenson in this**
23 **case -- I mean of the Feldmans.**
24 A. No. That's a good question. There was
25 a lot of money going out, and in getting ready for

Page 88

1 **pay you for your work on the Young case?**
2 A. What he told me was, oh, I'll pay you,
3 but I never got it. We talked about it two or
4 three times. In fact, I lowered the price.
5 What I recall is saying to him this was
6 a \$5,000 case, which is what I charge for DUIs, and
7 I said I'll charge -- I think the first time I told
8 him I'll charge 3,000. He didn't have the money.
9 And then I later said I'll charge you \$2,000, and
10 he didn't have the money.
11 **Q. Let's consider the summer of 2014:**
12 **May, June, July, August.**
13 A. Fine.
14 **Q. Did you have any conversations with**
15 **Mr. Feldman, or Ms. Feldman for that matter, about**
16 **the value of their claim against Ms. Dickenson?**
17 A. I don't recall.
18 **Q. There was a \$25,000 offer of**
19 **settlement.**
20 A. Right.
21 **Q. Did you have any discussions -- you**
22 **told us about the mediation.**
23 A. Right.
24 **Q. Did you have any discussions with**
25 **either of the Feldmans after the mediation prior to**

Page 87

1 trial there was going to be a great money going
2 out, and this was a case that I felt that we
3 probably would not win because I think Julian Allen
4 knew pretty much what was going on with Bob, though
5 he and I never discussed any of this, but I wanted
6 to make sure I had my money. It's as easy as that.
7 And Bob had indicated to me with his
8 actions regarding the case of Miss Karma that he
9 was not willing to pay, which greatly surprised me.
10 **Q. Was it willing or able?**
11 A. Bob had received a settlement eight
12 months earlier or ten months earlier of nearly
13 \$50,000, and I had worked very hard to get him that
14 money, and I assumed, the way he talked about how
15 he would pay me, that he was -- he had the money.
16 I guarantee you this. If he had said
17 I'm not going to pay you or I'm going to short you
18 if you win or lose, I wouldn't have done it.
19 **Q. Wouldn't have done what?**
20 A. The case.
21 **Q. The Dickenson case?**
22 A. No, no, no, no, no. The Karma Young
23 case.
24 **Q. And did Mr. Coggin ever tell --**
25 **Mr. Feldman ever tell you that he was not going to**

Page 89

1 **your moving to be relieved as counsel about the**
2 **value -- the merits of their claim and the value of**
3 **their claim?**
4 A. I told Bob any number of times that he
5 had greatly compromised his case by his insistence
6 on playing golf. I told him that probably a half
7 dozen times.
8 **Q. You made some requests to Mr. Feldman**
9 **to assist in paying cost during the summer of 2014?**
10 A. I don't think I ever made to assist in
11 paying cost. I asked him to pay the cost, yes.
12 **Q. Okay. What did Mr. Feldman tell you?**
13 **Or what was his response?**
14 A. I wrote him a number of letters which
15 weren't answered. When I say a number of letters,
16 two or three, which weren't answered, and I got a
17 call from him, oh, I don't know when, at the end of
18 the summer, and we had discussed it at that time,
19 and I don't remember what he told me. I think he
20 told me I'll pay you out of the settlement.
21 **Q. Did you have any -- thank you for that.**
22 **Did you have any conversation about the \$25,000**
23 **offer and why that was good, bad, or otherwise?**
24 A. I don't believe we ever discussed it.
25 That -- as far as I was concerned, that was over.

Page 90

1 That was -- that ship had sailed.
2 MR. PENDARVIS: This is going to be
3 ten.
4 (EXH. 10, Letter from Gary Coggin to
5 Robert Feldman dated September 15, 2014, was marked
6 for identification.)
7 (Off-the-record conference.)
8 BY MR. PENDARVIS:
9 Q. Mr. Coggin, I've passed to you a letter
10 dated September 15, 2012.
11 A. Uh-huh.
12 Q. It appears to be a letter from you to
13 Mr. Feldman --
14 A. Yeah.
15 Q. -- outlining the merits of the claim --
16 A. Yeah.
17 Q. -- and the cost and the prospect for
18 trial. First question: Is this your letter to
19 Mr. Coggin?
20 A. Yes, it is.
21 Q. To Mr. Feldman. Excuse me.
22 A. Yeah.
23 Q. The first sentence talks about
24 disagreements over the past year.
25 A. Uh-huh.

Page 92

1 That's exactly what I was talking about.
2 Q. What was the amount of the medicals
3 that Mr. Feldman had incurred as a result of the
4 collision with Dickenson?
5 A. I have no idea. Have no idea.
6 Q. It's in your communications in the
7 original demands?
8 A. If you have something that says it --
9 Q. Well, they're in front of you --
10 A. -- let me look at it and see.
11 Q. -- but let's take -- let's take a look.
12 MR. BOGDAN: You guys are talking over
13 each other.
14 MR. PENDARVIS: I'm sorry.
15 MR. BOGDAN: Let's help Trisha out
16 here.
17 THE WITNESS: I apologize.
18 BY MR. PENDARVIS:
19 Q. You testified about the letter to
20 Mr. Finger, that it was accurate as far as you knew
21 based on the -- what information you had in May of
22 2014. Do you recall that testimony?
23 A. I don't -- I don't know what you're
24 talking about.
25 Q. This is Exhibit 9.

Page 91

1 Q. Can you elaborate on what that --
2 A. Yeah. It -- it involved Bob playing
3 golf.
4 Q. And what did you understand Bob's --
5 your next sentence talks about, you know, your
6 concern about not being able to meet his
7 expectations.
8 A. Right.
9 Q. What did you understand were
10 Mr. Feldman's expectations as of September 2014?
11 A. He wanted to exhaust the amount of
12 underinsurance.
13 Q. Okay.
14 A. And apparently I did talk about the
15 \$25,000. I see that in here. I stand corrected.
16 Q. Saves the question.
17 A. Yeah.
18 Q. Thank you.
19 And do I understand from the first
20 sentence in the second full paragraph: The
21 circumstances surrounding your injuries.
22 And does that mean the golf issue, that
23 he was not as injured as you thought he initially
24 was?
25 A. That's -- that's absolutely right.

Page 93

1 A. Okay.
2 Q. I'm trying to get an understanding of
3 the amount of medicals that you understood
4 Mr. Feldman had incurred that were in context for
5 your conversations in September of 2014.
6 A. I think I can answer that. Typically
7 -- for example, I'm going to trial at the end of
8 this month, and the attorney on the other side and
9 I have talked about medicals. I don't typically
10 get those together until the eve of trial for the
11 reason that I don't want to miss anything, so I
12 don't know if there was any medicals that we could
13 talk about. If there was, I'd love to see it
14 because I just don't remember.
15 Q. Well, you're stating to Mr. Finger on
16 the top of the second page that the amount of the
17 -- the amount of -- the above amount is 150 to
18 180,000.
19 A. Only an estimate. I have no idea what
20 I was basing that on.
21 Q. Okay. But you wouldn't have written
22 something that was not true, would you?
23 A. I would have estimated something, and
24 that could be \$50,000 high. I don't know.
25 Q. Okay. So let's just knock \$50,000 off

Page 94

1 both numbers, so between 100 and \$130,000 in
2 medicals.
3 A. I think that the retail numbers would
4 probably been somewhere around there, yeah.
5 Q. Okay. So 100 to \$130,000 in medicals,
6 no dispute on liability whatsoever, and your
7 testimony today is that your recommendation to
8 accept \$25,000 was a fair value for Mr. Feldman's
9 claim?
10 A. Yes, it was.
11 Q. You're saying he wouldn't even get his
12 medicals back?
13 A. Yes. He would not.
14 Q. Okay.
15 A. Based on the information I have. And
16 again, Bob compromised his case.
17 Q. Are you going to tell this jury that
18 Bob Feldman's playing golf after the collision
19 would mean that the at-fault party wasn't
20 responsible for at least paying back the medical
21 expenses he incurred? Yes or no and then you can
22 explain.
23 A. This was a preexisting condition.
24 Q. No, sir. The question is -- yes or
25 no -- are you going to tell this jury that Bob

Page 96

1 Q. No, sir. I'm talking about actual
2 medical expenses that Mr. Feldman incurred that you
3 stated in the letter that we've adjusted down by
4 \$50,000 were between a hundred and \$130,000 in
5 medicals, and my -- I want to make sure I'm clear
6 on this. You're going to go in front of the jury
7 and tell the jury that Mr. Feldman would not have
8 been able to recover out-of-pocket medical expenses
9 because of his conduct after the fact?
10 A. Yeah.
11 MR. BOGDAN: Object to the form.
12 THE WITNESS: That's exactly right.
13 Yes. Emphatically.
14 And again, Mr. Pendarvis, I don't know
15 -- and again, I've stated that to you. I don't
16 know what his medicals were. That was just an
17 estimate.
18 BY MR. PENDARVIS:
19 Q. Did Julian Allen ever say anything
20 about to you Mr. Golf -- Mr. Feldman's golf
21 situation?
22 A. Julian Allen, what I recall -- and we
23 didn't -- I think a lot of that would be
24 privileged. Julian Allen did ask Mr. Feldman at
25 his deposition if he had ever played golf since the

Page 95

1 Feldman would not be able to recover the at -- the
2 medical expenses he incurred by Ms. Dickenson's
3 collision? Yes or no.
4 A. He would not, based on his behaviors.
5 Q. After the fact. Let me rephrase the
6 question. I want to make sure I got this.
7 A. Uh-huh.
8 Q. Your testimony is that Mr. Feldman's
9 conduct after the accident is going to defeat his
10 claim to recover medicals that were incurred as a
11 result of Ms. Dickenson's clear liability?
12 A. His conduct --
13 MR. BOGDAN: Object to the form.
14 THE WITNESS: His conduct after the
15 fact, after the accident, were such that it showed
16 that he didn't have any problems.
17 BY MR. PENDARVIS:
18 Q. We're not talking about pain and
19 suffering.
20 A. I'm talking --
21 Q. I'm not talking about pain and
22 suffering. I want to talk about medical expenses
23 that were incurred as a result of the collision.
24 A. So you're talking about medical
25 expenses that are obviously puffed up for a trial?

Page 97

1 accident. Mr. Feldman replied in the affirmative,
2 and Julian Allen apparently, if I remember
3 correctly, asked some follow-up questions, and
4 Bob's reasoning was the same thing he'd always told
5 me, was that he just liked to ride around in the
6 cart to be with his friends.
7 Q. Thank you for your summary of the
8 deposition testimony.
9 A. I don't know if that's a summary of
10 not. That's a summary of my recollection.
11 Q. That's fair.
12 A. You're welcome.
13 Q. And here's my question.
14 A. Yeah.
15 Q. Outside of the deposition --
16 A. Uh-huh.
17 Q. -- did you have any conversations with
18 Julian Allen about Mr. Feldman's golf?
19 A. Not that I can recall. If you have
20 something I could look at, I'd be happy to look at
21 it and comment on it.
22 Q. My question was about conversations,
23 not really letters, e-mails, or anything like that.
24 Did you have any conversations with --
25 A. Not that I recall.

Page 98

1 Q. Did Mr. Allen ever communicate other --
2 in a conversation statements to the effect that
3 Mr. Feldman's golf activities were a reason they
4 weren't offering any money?
5 A. I don't recall him ever saying anything
6 like that. But I want to put this caveat.
7 Mr. Allen is a very skilled attorney, and
8 Mr. Allen, I believe, probably knew all about this.
9 Q. Have you had any conversations with
10 Mr. Allen about the merits of this claim --
11 A. No.
12 Q. -- this legal malpractice case?
13 A. No.
14 Q. Do you know if your counsel has reached
15 out to Mr. Allen?
16 A. I -- I don't know.
17 MR. BOGDAN: I think that's work
18 product.
19 THE WITNESS: I'm not sure.
20 MR. PENDARVIS: The rules only allow
21 you -- are you instructing the witness not to
22 answer, or are you just objecting? 'Cause I think
23 the rules only deal with communication,
24 attorney-client privilege, not work product. I'm
25 just trying to get an understanding of where we

Page 100

1 caused by the accident, do you believe he had a
2 claim for lost wages for that limited time period?
3 A. I would believe he did, yes.
4 Q. Okay.
5 A. Uh-huh.
6 Q. Would the fact that Mr. Feldman may
7 have played golf months, years after that, defeat
8 his claim for lost wages?
9 A. That I don't know, but the fact of the
10 matter is I don't know if he worked.
11 Q. Okay.
12 A. He would never answer that question to
13 me.
14 Q. For the time period after Mr. -- or
15 after the accident and while Mr. Feldman was not
16 actively getting medical treatments, did you reach
17 out to any of the physicians or vocation
18 rehabilitations experts to find out if there were
19 -- if Mr. Feldman's ability to work was limited or
20 compromised by the injuries caused by the accident?
21 A. Regarding work, I don't believe I ever
22 asked that question. There were letters that I
23 wrote to his physicians, but it wasn't -- didn't
24 involve work.
25 Q. Typically requesting copies of medical

Page 99

1 are.
2 MR. BOGDAN: What's the question again?
3 BY MR. PENDARVIS:
4 Q. The question is: Do you know if your
5 lawyer has reached out to Mr. Julian Allen about
6 the -- his testimony in this case?
7 A. The answer is I don't know.
8 Q. Okay. I have not seen any written
9 communications from Mr. Allen about the settlement.
10 Are there -- I mean, were you aware of any that
11 somehow didn't get in the file or anything of that
12 nature?
13 A. I'm not aware of anything. And again,
14 if there is something, I'd like to look at it.
15 Q. Okay. I --
16 A. Okay.
17 Q. I'm telling you I haven't seen it
18 either. I just wanted to see if there was
19 something.
20 I'm going to break this -- this is a
21 question about lost wages.
22 A. Okay.
23 Q. And I'm going to break this down to
24 several segments of time. During the time
25 Mr. Feldman was getting treatments for injuries

Page 101

1 records?
2 A. Medical records. I believe I sent a
3 letter to Shissias and to Dr. Reuben regarding his
4 health and so forth.
5 Q. And a percentage of impairment?
6 A. Yeah. Uh-huh.
7 Q. Okay.
8 A. That's right.
9 Q. So if a person was determined to be 11
10 percent impaired, that would tend to support a
11 claim for lost wages, wouldn't it?
12 A. If he worked.
13 Q. Right. And you've made those arguments
14 for other clients where percentages of impairment
15 impaired their ability to work, correct?
16 A. If they have a job. If they don't have
17 a job, they don't pay workers' comp or anything
18 else like that. You know that.
19 Q. So turning back to Exhibit 10, if I'm
20 understanding --
21 A. Yeah.
22 Q. -- your testimony -- I want to try to
23 summarize here.
24 A. Uh-huh.
25 Q. Looking at the -- one, two, three --

Page 102

1 third full paragraph, you -- last sentence: In the
2 interim, I advise you to settle the matter at hand
3 for the 25,000 that's been offered.

4 A. That's correct.

5 Q. Did you have any conversations with
6 Mr. Feldman about why you were making this
7 recommendation?

8 A. Bob and I talked on the telephone. As
9 I said, I sent a couple of these letters to him
10 regarding costs and so forth like that. My
11 recollection is he called me sometime later in the
12 summer. At that time I told him that he had
13 severely compromised his case with his activities
14 and I felt that the -- the case was really not a
15 very good case.

16 Q. You'd been practicing law about 20 --
17 almost 25 years --

18 A. Yeah.

19 Q. -- as of this?

20 A. That's about right. Yeah.

21 Q. And it's your testimony that Mr. -- if
22 you'd gone to trial that you didn't -- your expert
23 opinion was that the case was not worth more than
24 \$25,000?

25 A. Based on what I knew about Bob, yes.

Page 104

1 A. I don't recall that.

2 Q. This is --

3 A. So show me -- pass me the certificate
4 of service.

5 Q. I'm showing to you a copy of the
6 certificate of service. And do you recall filing a
7 motion to withdraw?

8 A. I don't recall.

9 Q. Okay.

10 A. That doesn't mean I didn't do it, but I
11 don't recall. And if you have something that will
12 help me, please give it to me.

13 Q. This image I'm going to show you is
14 Bates No. 00048, and it's a -- it appears to be a
15 clocked copy of a motion to -- for withdrawal of
16 appearance and stay of proceedings, and the movant
17 was you.

18 I can make that a little larger if
19 that'll help.

20 A. Yeah. Go ahead. I can't hardly see
21 it.

22 Q. I'm sorry.

23 A. Is that the end of it, or can I move it
24 down?

25 Q. Yes, sir. We can --

Page 103

1 Q. After this September 15 letter we
2 marked as Exhibit 10, did you have any
3 conversations with Mr. Feldman about having the
4 need to maybe find substitute counsel instead of
5 filing a motion to withdraw as counsel?

6 A. I don't recall. But I have a feeling
7 that I did. And if you have a letter, I'd like --
8 I'd like to look at it before I answer any further
9 than that.

10 Q. You believe you've had conversations
11 with Mr. Feldman about --

12 A. I think I may have written him a
13 letter.

14 Q. Okay. Check something real quick.

15 A. Sure.

16 Q. I don't think I've seen the -- I don't
17 think I've seen the letter.

18 I'm going to represent you the first
19 time that the substitution of counsel came into
20 play was after you had filed your motion to
21 withdraw.

22 Well, I'll tell you what. I'll just
23 use this for now. I'm not going to mark this as an
24 exhibit. We've got a copy of it, but you filed a
25 motion to be -- to withdraw as counsel, correct?

Page 105

1 A. Oh.

2 Q. Oh, wait a minute. Let me see if I can
3 get it to scroll down better.

4 A. Okay. Okay. Is that it? Is there a
5 signature page?

6 Q. I think there is, and I'll show you
7 that.

8 A. Okay. That's correct.

9 What was the date? I'm -- I apologize.

10 Q. It was clocked or filed with the court
11 on September 16, 2014.

12 A. Okay.

13 Q. And did you have any -- and where I'm
14 going with this is did you have any conversations
15 with Mr. Feldman before this motion was filed on
16 the preference to substitute counsel rather than
17 you moving to be relieved as counsel?

18 A. I just don't remember. I think it
19 would be my habit to talk to him because ordinarily
20 I talk to people. I just don't remember.

21 Q. Did you help the Feldmans find other
22 counsel?

23 A. No. I don't believe I did that, no.

24 Q. Why not?

25 A. He didn't ask me. If he had asked me,

Page 106

1 I would have given him some recommendations.
2 MR. BOGDAN: Do you have a signature
3 page of that, Tom?
4 MR. PENDARVIS: Sure.
5 MR. BOGDAN: Thanks.
6 MR. PENDARVIS: It goes over to Bates
7 page 00049, and I think the -- out of order, but
8 0030 was the certificate of service, the same date
9 as the signed.
10 BY MR. PENDARVIS:
11 Q. Okay. The law firm of Bauer & Metro
12 took over the representation --
13 A. That's correct.
14 Q. -- of the Feldmans?
15 A. Uh-huh.
16 Q. Okay. I'm going to go back a little
17 bit in just a second, back in time.
18 MR. BOGDAN: Did you mark this?
19 MR. PENDARVIS: No.
20 (EXH. 11, Letter from Gary Coggin to
21 Julian Allen dated May 21, 2014, was marked for
22 identification.)
23 BY MR. PENDARVIS:
24 Q. Mr. Coggin, I'm going -- I'm going to
25 rewind a little bit.

Page 108

1 three, four -- fifth paragraph beginning with the
2 word following.
3 A. Uh-huh.
4 Q. You're showing total billings at
5 47,450?
6 A. Yeah. Uh-huh.
7 Q. And you're also looking at foreseeable
8 future for injections that Mr. Feldman's going to
9 need?
10 A. Right.
11 Q. So you had done some calculations on
12 the amount of medicals?
13 A. I just told you I didn't remember.
14 Q. I know. And I'm just saying -- well,
15 you also said sometimes you don't do them until
16 right before trial, but my point is you had done
17 some for Mr. Feldman's case during the time you
18 were representing him, correct?
19 A. I would say so. I would agree.
20 Q. Okay.
21 A. This also shows that the billings were
22 relatively small compared to what they were before,
23 47,450.
24 Q. Okay. Did you develop any values for
25 the future medicals that Mr. Feldman was going to

Page 107

1 A. That's fine.
2 Q. We've been up to the point of -- in
3 September. I'm going to go back a little bit, into
4 May. I'm passing you -- appears to be a letter
5 from you to Julian Allen from May 21, 2014. Going
6 to ask if -- if that's a letter you sent to
7 Mr. Allen?
8 A. Yes, it is.
9 Q. Okay. What's the purpose of this
10 letter?
11 A. I would assume I was still working on
12 the case and trying to get a settlement.
13 Q. It appears, if you're looking at the
14 third paragraph, that there -- you provided all of
15 Mr. Feldman's medical records that you had in your
16 possession --
17 A. Uh-huh.
18 Q. -- and you divided them basically into
19 preaccident medical bills and postaccident medical
20 bills.
21 A. That's --
22 Q. Is that a fair summary?
23 A. That's correct.
24 Q. And looking at the -- you're showing
25 existing medicals, and this is the -- one, two,

Page 109

1 need?
2 A. You're going to have to explain that to
3 me. I don't know what you mean.
4 Q. Your letter says that, according --
5 Mr. Feldman has had 16 injections, one every two
6 and a half months --
7 A. Yeah.
8 Q. -- and the injections will continue at
9 this rate for the foreseeable future.
10 A. I -- no. I did -- I'm going to back up
11 on this. There was a letter to Dr. Shissias or
12 Reuben in which I talked about some kind of future
13 medicals or something like that, and that's all I
14 can tell you. I do remember there was something
15 there.
16 Q. Okay.
17 A. If you have it, I'd like to look at
18 that.
19 Q. And you made statements in the -- to
20 the Allstate carrier about future medicals for
21 Mr. Feldman?
22 A. If there's -- in the letters, I would
23 say yes. I don't know if I did or not. I'm sure I
24 did.
25 Q. You're welcome to look. I'm going to

Page 110

1 represent to you that you did.
2 A. Yeah, yeah.
3 Q. If you want to see them, you can.
4 A. Yeah. I'd like to see them, yeah.
5 Q. They're right in front of you. They're
6 in one of the earlier exhibits, those first two or
7 three letters that we looked at.
8 A. You're going to have to help me here.
9 What are we looking for?
10 Q. I'm looking. I'm --
11 A. I had a -- I had a senior moment there.
12 Q. Well, in one of your first letters,
13 Exhibit 2, July 5, 2011 --
14 A. Uh-huh.
15 Q. -- the second full paragraph and,
16 really, the third full paragraph talk about future
17 medicals.
18 A. Okay.
19 Q. And question I've got is, that that was
20 an expense that was going to be available at trial
21 for the case.
22 A. Uh-huh.
23 Q. Correct?
24 A. Uh-huh.
25 Q. Thank you. I just feel -- I wanted to

Page 112

1 Q. No, no, no.
2 A. I'd have to see it. I remember some
3 kind of letter like that. I'm not going to agree
4 to the specifics until I look at it.
5 Q. Okay.
6 A. I don't remember what I said.
7 Q. That's fine. The letter -- I mean,
8 it's just not worth really getting into.
9 Let's just do this.
10 (EXH. 12, Letter from Carrie M. Murphy
11 to Gary Patrick Coggin dated October 7, 2014, was
12 marked for identification.)
13 BY MR. PENDARVIS:
14 Q. Mr. Coggin, I'm going to pass you a
15 document marked Exhibit 12 --
16 A. Sure.
17 Q. -- to your deposition. This appears to
18 be a document from the Bauer & Metro law firm faxed
19 and e-mailed to you on October 7, 2014. I'm going
20 to let you read that, and I have a few questions
21 for you.
22 A. Uh-huh. I read it.
23 Q. Tell me about this telephone
24 conversation on October 6 referenced in the first
25 sentence between you and Mr. Bauer.

Page 111

1 get that testimony.
2 A. Yes, yes.
3 Q. Fast-forward now back again to the
4 point in time when -- after Bauer & Metro had taken
5 over the representation. Could you describe just
6 generally what happened in that exchange?
7 A. There was a -- they asked for the --
8 all the records. I put them in a box. They sent a
9 girl over to get them, and I had to carry them.
10 They were so heavy I had to carry them down to the
11 car for her.
12 Q. And the records you're referring to
13 would have been the entire file for the Feldmans?
14 A. I believe so, yes.
15 Q. And you were -- and we've seen
16 communications or -- communication's been produced
17 where you were basically telling the lawyers at
18 Bauer & Metro that -- to protect your expenses that
19 you'd paid and your interest in the \$25,000
20 settlement offer?
21 A. Uh-huh.
22 Q. Correct?
23 A. Yeah.
24 Q. You've got to say yes.
25 A. It's got to be --

Page 113

1 A. I don't remember.
2 Q. Okay. This letter states that --
3 apparently it's about the affidavit of service
4 conversation.
5 A. I would -- again, I don't remember.
6 Q. When you received this letter -- second
7 sentence says: We have searched the file you've
8 provided --
9 A. Uh-huh.
10 Q. -- and cannot locate the affidavit of
11 service for the named defendant.
12 A. Right.
13 Q. I would appreciate it if you would
14 search your records and provide me a copy of the
15 affidavit or name the -- or the name of the process
16 server who served the pleadings on the defendant.
17 A. Okay.
18 Q. And you got this letter, correct?
19 A. Yes.
20 Q. What did you do in response?
21 A. I don't know if I did anything. I
22 didn't consider this to be something that I had to
23 answer. They said they couldn't find the affidavit
24 of service. My position was that I had included
25 the affidavit of service in all my papers. I

Page 114

1 didn't hold anything back, and I think that's all
2 that I can tell you about that.
3 **Q. Is that what you said to Mr. Bauer when**
4 **he called you on October 6?**
5 A. I don't know. I told you already I
6 didn't know what we talked about. We could have
7 talked about anything. I've known Sam for a long
8 time.
9 **Q. What do you believe your duties are to**
10 **a client when you terminate the representation of a**
11 **client?**
12 MR. BOGDAN: Object to the form.
13 MR. PENDARVIS: What's the basis of the
14 objection?
15 MR. BOGDAN: It calls for a legal
16 conclusion.
17 MR. PENDARVIS: Okay. I'm going to ask
18 him. He's a lawyer.
19 BY MR. PENDARVIS:
20 **Q. You're a lawyer, right?**
21 A. That doesn't deserve an answer, does
22 it?
23 **Q. I mean, you're a lawyer, and you know**
24 **that there are rule --**
25 A. Thomas, you're trying to be

Page 116

1 **Q. I thought -- my understanding was your**
2 **testimony was I probably didn't do anything when I**
3 **got this letter that's been marked as Exhibit --**
4 A. In response to Bauer & Metro. That's
5 all I meant.
6 **Q. Okay.**
7 A. I looked very hard for that.
8 **Q. Did you respond -- do you know if you**
9 **communicated back to Bauer -- Sam Bauer or anyone**
10 **at Bauer & Metro about your efforts to look?**
11 A. I don't know. I don't know if that's
12 any of their business. I don't know, and that's my
13 answer.
14 (Off-the-record conference.)
15 BY MR. PENDARVIS:
16 **Q. I'm going to represent to you that**
17 **ultimately there was an order submitted**
18 **substituting counsel, that your motion to be**
19 **relieved never was -- did you ever appear on the**
20 **motion to be relieved as counsel?**
21 A. I don't believe it ever came up.
22 **Q. Yeah. It was a substitution of counsel**
23 **that was --**
24 A. Yeah.
25 **Q. -- handled, so the order relieving you**

Page 115

1 provocative. I'm not going to answer that.
2 **Q. No, I'm not.**
3 A. Yes, you are.
4 **Q. You're a lawyer, and you know there are**
5 **rules governing your duties to a client when you're**
6 **terminating representation.**
7 A. I do not know what the ethical -- as I
8 sit here, no, I don't know enough about the ethical
9 conundrums regarding transferring of documents. I
10 did everything correctly and up front. That's all
11 I can tell you.
12 **Q. You would agree, as the lawyer who'd**
13 **handled a matter for a client, including**
14 **Mr. Feldman and Ms. Feldman, that you've got an**
15 **obligation to make sure the transition of the file**
16 **to new counsel goes as smoothly as possible so as**
17 **not to interfere with the client's claims, correct?**
18 A. Absolutely.
19 **Q. And if that meant looking, going an**
20 **extra step to look for an affidavit of service,**
21 **that's not asking too much, is it?**
22 A. I probably looked through every file
23 that I had in my office, so, yes, we looked very
24 hard for that. I thought you were asking what I
25 did with Bauer & Metro.

Page 117

1 **as counsel for Mr. and Ms. Feldman was done by**
2 **substitution and a consent. Okay.**
3 (EXH. 13, Letter from Julian K. Allen
4 to Honorable Jerri Ann Roseneau dated October 8,
5 2014; Liberty Mutual Insurance Company's Notice and
6 Motion to Dismiss; and Certificate of Service, was
7 marked for identification.)
8 BY MR. PENDARVIS:
9 **Q. This is 13.**
10 A. Thank you.
11 **Q. Mr. Coggin, this -- a document -- a**
12 **cover letter and a -- and a motion that's been**
13 **passed to you marked Exhibit 13 --**
14 A. Uh-huh.
15 **Q. This appears to be a letter from Julian**
16 **Allen to the clerk of court filing defendant's --**
17 **Liberty Mutual Insurance Company's notice and**
18 **motion to dismiss.**
19 A. Okay.
20 **Q. And you were copied on that, correct?**
21 A. Yes.
22 **Q. You were of record at that point. You**
23 **were --**
24 A. Oh, no, no. Yes.
25 **Q. You were still counsel of record,**

Page 118

1 right?

2 A. Right.

3 Q. So Bauer & Metro and their law firm

4 were -- before this motion got filed, they were --

5 they were looking for the affidavit, right?

6 A. They indicated they had gone through

7 the file, yes.

8 Q. Okay. Did you have any conversations

9 with anyone about this motion when you received it?

10 A. I don't believe did.

11 Q. Did Mr. Metro or Mr. Bauer call you to

12 discuss this motion when they received it?

13 A. I don't remember. If you have

14 something, it might trigger my memory. I'm not

15 trying -- I'm not being deliberately obtuse.

16 MR. PENDARVIS: Let's take a pause

17 while we're looking for this document.

18 (A recess transpired.)

19 (EXH. 14, Letter from Samuel C. Bauer

20 to Gary Patrick Coggin dated October 10, 2014, was

21 marked for identification.)

22 BY MR. PENDARVIS:

23 Q. Mr. Coggin, I'm passing to you a

24 document marked as Exhibit 14 that appears to be

25 another letter to you from the Bauer & Metro firm,

Page 120

1 A. I called them immediately. In fact, we

2 must have had 20 conversations. And I called them

3 immediately, and as I said, I'd had a number of

4 conversations with her when this was being served,

5 and the answer that I got was -- the first time I

6 called them -- was that one-time service, none of

7 the -- none of the documents are kept. We only

8 keep the documents -- they only keep records for

9 people that work with us multiple times. Other

10 times, everything else is destroyed or thrown away,

11 and that was the answer.

12 Now, I talked to them several times

13 after that. I called them up and confronted them

14 with the telephone calls I had made there, and they

15 said, well -- at that point the answer was that

16 they had had three different computer systems in

17 since the period of time. They're obviously

18 worried about a malpractice suit themselves.

19 And the last time I -- I called many,

20 many times, and another time I called, that they

21 said they looked and they couldn't find anything,

22 so that was the gist of the excuses every time.

23 And then this gal, Fran, stopped taking

24 my calls, so there was only so much you could do.

25 Q. Why were you doing all the -- why did

Page 119

1 and this one's from Sam Bauer to you --

2 A. Uh-huh.

3 Q. -- dated October 10, 2014. Did you

4 receive this letter?

5 A. I don't remember, but I think I did.

6 My address is on there. Everything is correct.

7 Q. It appears there was a -- I mean, this

8 references a conversation with you and Mr. Bauer.

9 You were going to look for the affidavit?

10 A. Uh-huh.

11 Q. That's yes?

12 A. Yes. Excuse me.

13 Q. What did you do in response to this

14 letter?

15 A. There was an ongoing search for the

16 affidavit of service. All right? As for the --

17 the check, that -- my recollection of that was

18 clear. I paid cash for that. Oh, no. Not the

19 process -- yeah. The process server. We're

20 talking about Zellner-Wood.

21 You can provide an affidavit it was

22 personally served, and I did provide an affidavit.

23 Q. Well, let me ask you this. Why didn't

24 you just call back the process server in New York

25 and just get another affidavit?

Page 121

1 you take all these actions to try to recover the

2 affidavit of service?

3 A. Why?

4 Q. Yes. Why?

5 A. Because I had done it. They had served

6 -- I had served.

7 Q. Well --

8 A. I had an obligation.

9 Q. What was the purpose of the affidavit

10 of service? I mean, why did you need to get it?

11 A. Well, the affidavit of service had to

12 be filed. I had to protect my client. I'm not

13 sure if that's what you're asking.

14 Q. Okay. I think we're going to look at

15 an affidavit that you prepared. I'm following up

16 on some conversation --

17 A. We're talking about different things?

18 Q. Yeah.

19 A. Yeah.

20 Q. The last statement this -- in this

21 request from Mr. Bauer was could you provide an

22 affidavit, and you did provide one at some point,

23 correct?

24 A. Yeah.

25 Q. Okay. Now, in between the affidavit

Page 122

1 you prepared did Mr. Bauer or his firm serve you
2 with a subpoena for production of the file or the
3 affidavit?
4 A. I think they did serve me. I don't
5 know if it was for the production of the file or
6 not. Maybe it was. I think I recall that.
7 (EXH. 15, Letter from Gary Coggin to
8 Jerri Roseneau dated December 6, 2014; Objection to
9 Plaintiffs' Subpoena; and Certificate of Service,
10 was marked for identification.)
11 BY MR. PENDARVIS:
12 Q. Mr. Coggin, I'm going to skip a step or
13 two --
14 A. Yeah.
15 Q. -- and I'm going to pass you as -- a
16 document marked as Exhibit 15. It appears to be a
17 letter from you to the clerk of court filing an
18 objection to a subpoena, and I'm going to ask if
19 that's a letter -- is that your signature and an
20 objection that you filed?
21 A. Yeah. Uh-huh.
22 Q. And so, based on the statement in your
23 objection, the subpoena that was served sought,
24 quote, copies of any and all records evidencing
25 service of process of plaintiff's summons and

Page 124

1 A. Yes. I think the -- this was given to
2 Julian Allen, and I probably sent a copy of it to
3 Bauer & Metro, and I don't know. Unless you have a
4 -- something else. Maybe you have some letters or
5 something like that.
6 Q. I'm not sure I've seen a clocked copy
7 or a cover letter. I'm just try -- that's what I'm
8 trying to find out.
9 A. I think I gave it to Mr. Allen, and I
10 probably gave a copy to Sam Bauer.
11 Q. Do you know if this was submitted to
12 Judge Kinard when he heard the hearing -- motion?
13 A. It's in the documents. And again, I --
14 I don't know. You're -- I'd have to look at it and
15 see. I -- I don't recall one way or the other.
16 MR. PENDARVIS: Okay. Off the record
17 for just a moment.
18 (Off-the-record conference.)
19 (EXH. 17, Answer to Defendant's
20 12(b)(4) and 12(b)(5) Motion to Dismiss, was marked
21 for identification.)
22 (EXH. 18, Answer to Defendant's
23 12(b)(4) and 12(b)(5) Motion to Dismiss, was marked
24 for identification.)
25 BY MR. PENDARVIS:

Page 123

1 complaint in the above-captioned matter upon
2 Defendant Sarah Dickenson, correct?
3 A. That's correct.
4 Q. And your objection was that you
5 provided the file?
6 A. A complete file had been provided.
7 Right.
8 (EXH. 16, Affidavit of Gary Coggin, was
9 marked for identification.)
10 BY MR. PENDARVIS:
11 Q. I'm going to pass you a document marked
12 as Exhibit 16. It appears to be an affidavit that
13 you signed a few days later dated December 8 and,
14 first off, ask if this is an affidavit you signed?
15 A. Yeah. Yes, it is.
16 Q. And did anyone assist you with the
17 content of this affidavit?
18 A. No. I did it myself. I'll take part
19 of the blame for it.
20 Q. Did you have any conversations with
21 Mr. Bauer or Mr. Metro or anyone at that law firm
22 while you were developing this affidavit?
23 A. I don't believe so, no.
24 Q. Okay. To your knowledge was this ever
25 submitted to a court?

Page 125

1 Q. Mr. Coggin, I'm going to pass to you
2 two documents. Both of them are styled Answer of
3 Defendant's 12(b)(4) and 12(b)(5) Motion to
4 Dismiss. One, Exhibit 17, has not been signed, and
5 one, Exhibit 18, has been signed. Take a look at
6 those for a moment and then I've got a couple of
7 questions for you.
8 A. Okay.
9 Q. Did you prepare these documents?
10 A. I'm sure I did.
11 Q. Why did you prepare them?
12 A. I don't know if it was in response to
13 Julian Allen's motion to dismiss. Depends on the
14 dates. And then there was a second hearing, and
15 you provided us those documents under -- you
16 provided us those documents under the
17 interrogatories or production yesterday, so there
18 were two separate hearings.
19 Q. Right.
20 A. One in front of Maitley Murphy, a young
21 -- or young judge, and then one in front of an old
22 judge, Judge Kinard, so I -- I think they were
23 probably prepared for one of those. That's all I
24 can think of.
25 Q. By this time you'd been relieved as

Page 126

1 **counsel for Mr. Feldman?**
2 A. I don't know what the -- the dates
3 were, so I can't tell you.
4 **Q. Do you believe when you prepared these**
5 **responses to the plaintiff's motion -- excuse me --**
6 **the defendant's motion that you were counsel of**
7 **record -- counsel for Mr. or Ms. Feldman?**
8 A. There's two ways I could answer that
9 question. The first one is that I don't know what
10 the date is that we have the consents and so forth
11 like that. If you can provide that for me, I can
12 answer it a lot better.
13 The second one is that the -- the clerk
14 of court or in -- become mixed up from time to time
15 and they'll list an attorney as the counsel of
16 record, and you better show up even if you're not,
17 so I can't tell you when it was or whatever until I
18 know what the dates were.
19 **Q. After letting you look at this I'm**
20 **going to represent to you --**
21 A. Yeah.
22 **Q. -- that October 17 Mr. Bauer sent you a**
23 **consent order -- let's get it. You can read it --**
24 **for substitution of counsel.**
25 A. Uh-huh. Do you have the consent order?

Page 128

1 January 6, 2015, was marked for identification.)
2 BY MR. PENDARVIS:
3 **Q. Mr. Coggin, we were able to obtain a**
4 **copy of the transcript of a hearing before Judge**
5 **Kinard in January of 2015. I'm going to pass a**
6 **copy of it to you marked as Exhibit 19. And,**
7 **candidly, we just got it recently. Did you have a**
8 **chance to look over this transcript before our**
9 **deposition today?**
10 A. Briefly, briefly.
11 **Q. There is a summary in the first page**
12 **about the circumstances about you and at an earlier**
13 **hearing.**
14 A. Right. Uh-huh.
15 **Q. Accurate, as far as you know?**
16 A. Do you want me to comment on it?
17 **Q. Sure.**
18 A. This is one of the things that I was
19 talking about where you're listed as the attorney
20 of counsel. I was the attorney of counsel listed.
21 **Q. Okay.**
22 A. That's why I showed up. Sam Bauer came
23 in, and Sam and I have known each other for years.
24 He sat down at the table with me. I asked him what
25 he was doing, and he said: I'm the attorney here.

Page 127

1 That's what I'm looking for.
2 **Q. I believe it's the next page. Here's**
3 **the cover page for the judge. Hold on. I got to**
4 **do it -- switch to the next page.**
5 A. The same thing is I still can't answer
6 it.
7 **Q. And here's --**
8 A. I'm sure you have it.
9 **Q. And here's the --**
10 A. Okay.
11 **Q. -- consent. Did you sign a consent**
12 **order?**
13 A. I don't know. I want to see it.
14 **Q. Do you believe you stayed on as counsel**
15 **for the Feldmans?**
16 A. What I -- I think that -- and you were
17 talking about the obligations that you have. I
18 think that to a certain extent, as the author of
19 the predicate incident over which this is involved,
20 I had a certain obligation to Bob Feldman to
21 protect him as much as I could, which is what I was
22 doing, so I don't know what the dates are or
23 anything else like that.
24 **Q. Fair enough.**
25 (EXH. 19, Transcript of Record dated

Page 129

1 And I said: Where are you on the list?
2 I said: I got to go by the list here.
3 We had a brief disagreement, which --
4 and I can't remember how it worked, to be honest
5 with you, what happened after that. And I think we
6 both -- I think we both answered, to be honest with
7 you.
8 **Q. I mean, we're kind of coming at it from**
9 **both sides of the same thing. You filed a motion**
10 **to be relieved.**
11 A. Uh-huh.
12 **Q. There's a substitution of counsel --**
13 A. Right.
14 **Q. -- that was in play, and apparently no**
15 **order had been signed at this point.**
16 A. I don't know. That -- I don't know if
17 the order was signed or not. All I know is that I
18 was on the roster, and if you're on the roster, you
19 better -- you know, sometimes it takes a while to
20 get these orders signed and so forth, and I didn't
21 know what the situation was, so I went to answer
22 it.
23 **Q. And if we take a look at page 4 of the**
24 **transcript, which is Norton, bunch of zeros, 4,**
25 **very bottom right-hand corner. Page 4 of the**

Page 130

1 transcript --
2 A. Yeah, yeah. Go ahead.
3 Q. -- and if you scroll down to line
4 number 17 --
5 A. Uh-huh.
6 Q. -- take a look at that, 17 through 20.
7 A. Yeah. That's exactly what I was
8 talking about.
9 Q. And then down below that, 21, 22, that
10 Mr. Coggin had been relieved as of November of
11 2014?
12 A. Uh-huh.
13 Q. Correct?
14 A. Yeah.
15 Q. And this is a hearing that's taking
16 place in January of '15.
17 A. No. This is a -- I think this is a
18 December hearing.
19 Q. It says on the front -- first page
20 January 6, 2015 --
21 A. Hang on.
22 Q. -- before Judge Kinard.
23 A. Hang on. But we're talking about Judge
24 Murphy here.
25 Q. Right, right. But I'm just saying that

Page 132

1 the arguments to page 9 --
2 A. Okay.
3 Q. -- of the transcript, in particular,
4 line 18, you told Judge Kinard that you were not
5 going to -- you don't -- didn't blame Bauer & Metro
6 about the affidavit not getting filed, correct?
7 A. You know, there's -- in this case,
8 Mr. Pendarvis, there's plenty of blame to go
9 around. Most of it rests on my doorstep, and I
10 fully admit that I failed to file this paper when I
11 got it; however, I will maintain today and tomorrow
12 and whenever that all the papers of the case went
13 over to Bauer & Metro. I don't know what happened.
14 There were three documents that did not
15 come back. One was the -- my -- one was my
16 contract with Mr. Feldman. They called me and
17 asked -- told me that they didn't have the
18 contract, and I know that was in there. We sent
19 that off. We sent a copy off.
20 The second was the -- the affidavit of
21 nonservice by Michael Witt, and I knew that was in
22 there because when I was putting them in I -- I
23 looked at this document and I said: Who hand
24 scribbled this? And it was Mike Witt's document.
25 That never came back to me.

Page 131

1 this is --
2 A. November of '14.
3 Q. -- reciting a history. In a hearing
4 before -- let me make sure I get this correct.
5 A. Yeah.
6 Q. In a hearing before Judge Kinard in
7 January of 2015, Mr. Allen, on pages 3 and 4 of the
8 transcript, is giving Judge Kinard some history
9 behind the motion, correct?
10 A. Right. Uh-huh.
11 Q. Okay. And that's the discussion you
12 had mentioned earlier about Judge Murphy?
13 A. Right. Uh-huh.
14 Q. Okay.
15 A. I thought we were talking about Murphy
16 here.
17 Q. My apologizes if I wasn't clear.
18 A. Yeah. Okay. This is the Kinard.
19 Yeah.
20 Q. And in this circumstance, beginning, I
21 believe, on page 5 of the transcript, is the first
22 point in time where you're giving arguments to the
23 Court, correct?
24 A. Yeah. Uh-huh.
25 Q. Okay. And if we fast-forward through

Page 133

1 The third document was this, but I will
2 not --
3 Q. And by this, just so the record's
4 clear, you're talking about the affidavit of
5 service in New York?
6 A. The affidavit of service, yeah. And --
7 but I am not going to say -- even though I've said
8 I put them with the papers of the case and that's
9 what I remember, that is -- I will not accuse Bauer
10 & Metro of doing anything untoward because I don't
11 think they're capable of that, and that's what I'm
12 saying.
13 Q. And if we fast-forward over to page
14 11 --
15 A. Sure.
16 Q. -- Judge Kinard, bless his soul --
17 A. A good man.
18 Q. A very good man. That's one thing we
19 will definitely not disagree on.
20 He's instructing you --
21 A. Uh-huh.
22 Q. -- page 11, line 3, to get an affidavit
23 from the process server.
24 A. Uh-huh.
25 Q. Correct?

Page 134

1 A. Uh-huh.

2 **Q. That's yes. I'm sorry to --**

3 A. Yeah. I'm sorry. That's correct.

4 Yeah.

5 **Q. And from your prior testimony and your**

6 **multiple conversations with the Zeller-Wood process**

7 **server people in New York, that simply couldn't be**

8 **done, correct?**

9 A. Actually, I -- I talked to them, and I

10 talked to the president of Zeller-Wood, and he

11 said: Send me up your proposed affidavit.

12 I sent it to him, and in that period of

13 time --

14 **Q. I'm listening. In that period of**

15 **time...**

16 A. Okay. In that period of time a couple

17 things happened: One, the case was settled.

18 Number two, Kinard died.

19 The other part of it was that Kinard

20 also told Mr. Allen to get an affidavit from

21 Ms. Dickenson. I never pushed the affidavit after

22 that because they had settled the case, and as far

23 as I was concerned that ended the case.

24 And the second thing is immediately

25 after that Judge Kinard died, and had that been

Page 136

1 The fact of the matter is is what they

2 were going to agree to was that I had made multiple

3 calls to them. That's all they would agree to. So

4 it's not exactly the smoke --

5 **Q. So there wasn't --**

6 A. It's not the smoking gun. And I will

7 look for it.

8 **Q. So they weren't going to be able -- I'm**

9 **sorry.**

10 A. Yeah. I'll look for it. I'll try to

11 get it for you.

12 **Q. Well --**

13 A. If I have it, I'll look for it.

14 **Q. Then I'm correct -- then the statement**

15 **that an affidavit of service from the process**

16 **server was not available?**

17 A. I did not finish. I don't know -- you

18 know, it depends on what your definition of the

19 affidavit of service is.

20 **Q. Did you believe that someone with**

21 **personal knowledge of service on Ms. Dickenson,**

22 **however that occurred --**

23 A. Uh-huh.

24 **Q. -- was available to give an affidavit**

25 **about those events?**

Page 135

1 scheduled, I would have driven to New York and

2 stood at their doorstep until they signed this

3 affidavit.

4 **Q. And it's your testimony you prepared a**

5 **proposed affidavit?**

6 A. Yes, I did.

7 **Q. Have you produced that?**

8 A. No. Because it went off to them. I

9 don't even remember what it was. I produced the

10 affidavit. I sent it up to them.

11 **Q. You didn't keep a copy of it?**

12 A. I did not.

13 **Q. Do you have a word processing document**

14 **that generates that?**

15 A. I can tell you what -- exactly what it

16 said, if you want me to tell you.

17 **Q. Well, I need to see the -- no, no, no.**

18 **My question was: Do you have a word processing**

19 **file from which that affidavit was printed?**

20 A. I can look. I don't know how it was

21 done or whatever. I have a computer at home. I

22 have a computer at the office. The computers at

23 home have been thrown out. I don't know. I have a

24 computer that all the -- all the memory has been

25 wiped out somehow.

Page 137

1 A. That question -- I asked that question

2 of Zeller-Wood one time, and the answer was we have

3 thousands of process servers. We can't possibly

4 dig up who it is. I can only go with what they

5 told me. That was their way of saying no.

6 **Q. Okay. And essentially the document --**

7 **draft affidavit you sent to New York was arguably**

8 **the flip side of your affidavit that said I made**

9 **multiple calls and their affidavit saying we**

10 **received multiple calls, correct?**

11 A. Prior to the service of the affidavit.

12 **Q. Okay.**

13 A. Yeah. Uh-huh. That's exactly right.

14 **Q. So effectively, your decision not to**

15 **file the affidavit left the Feldmans in a position**

16 **of not being able to respond to the motion to**

17 **dismiss, correct?**

18 A. No. That did not even -- that did not

19 even come up. Judge Kinard said he was going to

20 schedule another hearing. He wanted us, in the

21 interim, to each come up with affidavits. Mr. --

22 Mr. Allen never had an affidavit. I had never had

23 an affidavit. You guys settled. That was --

24 Mr. Feldman settled that relatively quickly. I

25 would say within a month. Okay?

Page 138

1 That had been drafted. It had been
2 sent off. I didn't hear anything. In the meantime
3 it was settled.
4 **Q. Did you tell Mr. Metro, Mr. Bauer, or**
5 **anyone representing Mr. Feldman that the process**
6 **server people in New York, Zeller-Wood, had told**
7 **you that basically there was not going to be an**
8 **affidavit available from someone who had personal**
9 **knowledge of service?**
10 A. No, I did not.
11 **Q. Did you have any communications with**
12 **Bauer or Metro after the hearing on January 6,**
13 **2015?**
14 A. What's -- what's January 6, 2015?
15 **Q. This hearing. It's the transcript that**
16 **you're looking at.**
17 A. Okay. Hang on.
18 **Q. And I'm just trying to find out: Did**
19 **you have any conversations with them?**
20 A. I think I may have talked with Sam
21 regarding what happened, and he said that the case
22 settled.
23 **Q. Didn't Judge Kinard say at the end of**
24 **the hearing that -- I'm going to quote this from**
25 **page 11, lines 25, carrying over to page 12, to**

Page 140

1 to have to go over my memorandum of law, and he was
2 going to decide. He also said to Mr. -- to
3 Mr. Allen he wanted an affidavit from him.
4 BY MR. PENDARVIS:
5 **Q. From Ms. Dickenson?**
6 A. Yeah. And you -- look with this. The
7 last person to talk to him was Julian Allen, not
8 me. Julian Allen said: Thanks, judge.
9 The Court says: Good luck with it
10 because it's complicated. I don't think I can let
11 it go forward without a little more of your --
12 without a little more than your affidavit.
13 And that was the end. So he was
14 talking to Julian Allen rather than me, I believe.
15 **Q. But the response to that question was**
16 **who? Could you read into the record who answered**
17 **that statement?**
18 A. I said: Thank you, Judge.
19 **Q. Right. Judge was talking to you.**
20 **Okay.**
21 A. You're reaching, Mr. Pendarvis.
22 MR. BOGDAN: Object to the form.
23 THE WITNESS: You're reaching.
24 BY MR. PENDARVIS:
25 **Q. Here's --**

Page 139

1 **you: But I don't think I can let it go forward**
2 **without a little more than your affidavit?**
3 A. Where are we at?
4 MR. BOGDAN: Object to the form.
5 BY MR. PENDARVIS:
6 **Q. Page 11, line 25. I said 24. I'm**
7 **sorry. Line 25, over to line 1 on page 12.**
8 **Isn't that what Judge Kinard told you,**
9 **that you were basically going to need an affidavit**
10 **of service?**
11 MR. BOGDAN: Object to the form.
12 THE WITNESS: Judge Kinard said a
13 couple of things, and I don't agree with that.
14 Judge Kinard also said: This is a complicated
15 case, and I have not read the case law.
16 He said a number of things.
17 BY MR. PENDARVIS:
18 **Q. But in conclusion he told you: But I**
19 **don't think I can let it go forward without a**
20 **little more than your affidavit.**
21 **Correct?**
22 MR. BOGDAN: Object to the form.
23 THE WITNESS: What he was meaning there
24 was that -- and I was there -- is that he was going
25 to have to read the case law on this. He was going

Page 141

1 A. No. That's not the correct -- that's
2 -- no. He was speaking to Mr. Allen. I said thank
3 you, Judge, for that ruling.
4 **Q. Did you communicate with Mr. Bauer or**
5 **Mr. Metro -- well, one more thing.**
6 A. Yeah.
7 **Q. The only affidavit before the Court was**
8 **your affidavit, correct? At the hearing before**
9 **Judge Kinard on January 6.**
10 A. That was an affidavit that I had
11 written that I had promised a while -- way before
12 that had nothing to do with Judge Kinard.
13 **Q. No, no, no. I'm sorry if I wasn't.**
14 **clear.**
15 **The only affidavit before Judge Kinard**
16 **was your affidavit that's been marked as**
17 **Exhibit 16, correct?**
18 A. I don't even know if that went in front
19 of Judge Kinard. I have no idea about that
20 affidavit. I don't know much about it. You
21 probably have the history of that, as who saw it
22 and whatever. You would probably know better than
23 me.
24 **Q. If you look on page 5 of the**
25 **transcript, there's -- beginning on line 8, through**

Page 142

1 line 10, Mr. Allen is describing your affidavit.
2 A. Okay.
3 Q. And you're welcome to look through this
4 transcript, but I'm going to represent to you that
5 the only affidavit mentioned in this entire hearing
6 of January 6, 2015, was your affidavit marked as
7 Exhibit 16.
8 A. Okay.
9 Q. Are you aware of any other affidavits
10 that were before the Court?
11 A. All that is done here is Allen has
12 referenced it, and he referenced it very badly. He
13 obviously didn't have the affidavit in front of
14 him. Process server up in New Jersey or New York
15 to serve the defendant. I think I got the
16 affidavit, but I don't have it. I don't know who
17 actually served or where they were served under
18 these rules.
19 That's not what my affidavit said.
20 Mr. Allen did not have the affidavit in front of
21 him. I don't know where that affidavit was.
22 Q. The statement you made before the
23 Court, really pages 8 and 9 of the transcript,
24 basically were the substance of the affidavit,
25 correct?

Page 144

1 happened.
2 A. Uh-huh.
3 Q. And I saw this a second ago. Bear with
4 me.
5 A. Yeah. Sure. Take your time.
6 Q. And in fact, on page 10, lines 18 and
7 19, you told Judge Kinard, quote: In addition to
8 all that, Your Honor, I have submitted an affidavit
9 as to what happened.
10 A. Yeah. Uh-huh.
11 Q. Okay.
12 A. We have not received an affidavit from
13 Ms. Dickenson. That's what Kinard was referring
14 to.
15 Q. Right. But the only affidavit before
16 was a little more than your affidavit on page 12.
17 It's the only affidavit that's being discussed, was
18 your affidavit.
19 A. But he says -- but I say in there: We
20 have not received an affidavit from Ms. Dickenson.
21 That was what was -- were required by
22 Mr. Allen, and the judge says: Good luck. I don't
23 think we can go forward with it without a little
24 more than your affidavit.
25 He was talking to Julian Allen, not me.

Page 143

1 A. Tell me what sections you're referring
2 to.
3 Q. Pages 8, 9.
4 A. Yeah. I know that, but tell me
5 basically.
6 Q. You're explaining on page 9, line 9
7 through, certainly, line 19 on page 9, you're
8 describing the efforts you made to -- matters that
9 related to the affidavit of service, correct?
10 A. Yeah. I don't think that had anything
11 to -- oh, the affidavit of service. I thought you
12 were --
13 Q. Yes, sir.
14 A. -- talking about my affidavit --
15 Q. Yes.
16 A. -- that I had --
17 From nine?
18 Q. The middle of page 9.
19 A. No, no. It went till -- till what
20 number though?
21 Q. Nine to 19. And then again on page
22 10 --
23 A. Yeah. That's -- I would agree with
24 that, yeah.
25 Q. -- you're describing what's -- what

Page 145

1 They had the affidavit that I submitted.
2 Q. After January 6, 2015, did you
3 communicate with Mr. Bauer or Mr. Metro or anyone
4 else in the law firm about the Feldmans' matter?
5 A. I don't know if I did or not. I don't
6 think so.
7 Q. Did you --
8 A. Wait. Back up. I think that Sam told
9 me it had been settled. I think I got the
10 information from him.
11 Q. Did you have any conversations with
12 Mr. Bauer or Mr. Metro or anyone at the Bauer &
13 Metro law firm about filing a motion to intervene
14 to stop the settlement?
15 A. I had thought about that, and I thought
16 better of it.
17 Q. So the answer is yes, you did have a
18 conversation with one of them?
19 A. I don't know. What I -- I don't know
20 if I told them about that or not. I think what
21 happened was I had called -- when I heard about it,
22 I called Allen and I called Bauer saying I'm going
23 to file a motion to intervene, then I called them
24 back about two hours later and said I decided not
25 to do it.

Page 146

1 **Q. What would have been the basis of your**
2 **motion to intervene?**
3 A. I have no idea. I can't remember it.
4 **Q. What made you consider filing a motion**
5 **to intervene?**
6 A. I -- I thought a couple things. I
7 thought that maybe I should have been consulted.
8 Okay? I wondered what the agreement was, without
9 running it past me. Because I was the author of
10 the predicate incident, I thought there was a
11 courtesy that should have been given to me. And
12 that's about all I can tell you.
13 I do know I called them both back in a
14 relatively short time, said I've -- after a lot of
15 thought I decided I'm not going to do that.
16 **Q. Have you had any further communications**
17 **with Mr. Bauer, Mr. Metro, or anyone at that law**
18 **firm about the Feldmans, the Feldmans' claims?**
19 A. I have communications with them, but I
20 don't think I've ever talked to them again about
21 that. If you have some information, let me look at
22 it, and I'll be happy to comment on it.
23 **Q. I'm trying to find out the information.**
24 **Did you --**
25 A. What I'm saying is I don't recall.

Page 148

1 A. -- the context of it and so forth like
2 that. I don't even know who --
3 MR. BOGDAN: Our answer in this case?
4 MR. PENDARVIS: Yes.
5 THE WITNESS: Oh. I can't answer it.
6 I don't know.
7 BY MR. PENDARVIS:
8 **Q. Well, this is an answer that was filed**
9 **on your behalf in this case, correct?**
10 A. Uh-huh.
11 **Q. Yes?**
12 A. Yes.
13 **Q. And do you have any knowledge of what**
14 **factual allegations support this affirmative**
15 **defense for alleged failure to mitigate?**
16 A. I don't know what's behind that
17 defense. The defense -- those defenses were
18 drafted by my lawyers. That's why I'm paying them.
19 And that particular thing, I have no idea.
20 **Q. There is -- and I'll let you look at**
21 **it.**
22 A. Sure.
23 **Q. There is an affirmative defense for**
24 **statute of limitations. I want to let you read it.**
25 **It's Paragraph 66.**

Page 147

1 **Q. Okay.**
2 A. What I'm saying is, if you have any
3 information, let me see it.
4 **Q. Have you had any communications with**
5 **Liberty Mutual directly about the --**
6 A. No.
7 **Q. -- Feldman matter?**
8 A. No. I don't believe so.
9 **Q. Getting really close.**
10 A. That's all right. Take your time.
11 (Off-the-record conference.)
12 BY MR. PENDARVIS:
13 **Q. I want to understand some of the**
14 **defenses asserted in your answer.**
15 A. Sure.
16 **Q. And I'm happy to show it to you.**
17 **There's an affirmative defense for failure to**
18 **mitigate.**
19 A. I'd like to look at it. I don't know
20 what we're talking about here. Do you have a copy?
21 **Q. Have you ever seen a failure to**
22 **mitigate defense as a lawyer?**
23 A. No. I -- I want to look at it and see
24 what --
25 **Q. Sure.**

Page 149

1 A. Again, I'm paying Dawes and Jeff here
2 to answer these. I think these questions would be
3 better placed in front of them.
4 **Q. I haven't asked the question. I just**
5 **wanted to let you know that's been asserted, and my**
6 **question is: What facts are you aware of that**
7 **would support a statute of limitations defense?**
8 A. I don't know -- I don't think it'd be
9 fair to you or to myself to answer that question
10 without having some knowledge about it.
11 **Q. Is that going to be the answer for each**
12 **of these affirmative defenses that I were to ask**
13 **you about?**
14 A. I would say so, yes.
15 **Q. Okay. That saves us --**
16 A. As I said, I've paid my attorneys to do
17 this.
18 **Q. Save us some time. Save us some time.**
19 A. Yeah..
20 **Q. Let me take a break, talk to my folks,**
21 **and then we'll wrap it up.**
22 A. That'll be fine. Thank you.
23 (A recess transpired.)
24 MR. PENDARVIS: Mr. Coggin -- back on
25 the record.

Page 150

1 THE WITNESS: Yeah.
2 MR. PENDARVIS: That's all the
3 questions I've got at this time.
4 EXAMINATION
5 BY MR. BOGDAN:
6 Q. Gary, for the record, Jeff Bogdan, your
7 attorney in this case. I've got a couple things to
8 follow up with you on just to --
9 A. Sure.
10 Q. -- clear up a couple issues.
11 Will you look at Exhibit 1, please?
12 A. I was keeping these in good order.
13 Q. You did a good job.
14 A. There we go.
15 Q. This is a copy of your contingency fee
16 agreement --
17 A. Right.
18 Q. -- with Mr. Feldman, correct?
19 A. Uh-huh.
20 Q. All right. Is that a yes?
21 A. Yes. Excuse me.
22 Q. It's all right.
23 Thomas talked with you about the
24 strike-out over the 40 percent of the fee if
25 there's an appeal.

Page 152

1 have pursued Mr. Feldman's case and let's say it
2 would have gone to trial and it turned out one way
3 or the other and there was an appeal, would you
4 have associated another attorney to handle that --
5 A. Absolutely, yeah.
6 Q. Let me finish the question.
7 A. I'm sorry.
8 Q. Would you have associated another
9 attorney to handle that appeal?
10 A. Yes.
11 Q. Okay. And in that event, if this 40
12 percent provision was still in there, then that
13 would be the applicable provision for the -- for
14 the contingency based on the appeal, correct?
15 A. Yeah. But we struck it.
16 Q. Right.
17 A. Yeah.
18 Q. And you would have had to share that
19 fee with the attorney who you associated?
20 A. Absolutely.
21 Q. All right. I want to look at Julian
22 Allen's answer, and it is Exhibit 8.
23 A. Yeah.
24 Q. Do you see that one?
25 Just getting it out of the way.

Page 151

1 A. Yeah.
2 Q. Right? And you said that you don't do
3 appeals.
4 A. That's correct.
5 Q. And then he asked you, well, why is
6 this in the agreement. You just said it was a
7 standard agreement; is that right?
8 A. Yeah. Yes.
9 Q. Do you not do appeals -- have you had
10 an opportunity to do an appeal?
11 A. I've had many opportunities. I just
12 don't -- it's a whole section of the law that I
13 think you can get yourself in deep trouble.
14 Q. Sure. Sure.
15 A. The other thing too -- and I want to
16 add to that, is I've been -- I thought about that
17 -- is that Robert actually asked me to strike that,
18 the 40 percent.
19 Q. Okay.
20 A. And, you know, I have to give Robert
21 credit. I've been getting after him pretty good,
22 but he -- he did ask me to strike that.
23 Q. Are those his initials next to it?
24 A. I think so.
25 Q. Okay. And if for some reason you would

Page 153

1 A. Number eight. Let's do it this way.
2 Okay. We've got it.
3 Q. All right. Who is this answer filed on
4 behalf of? Liberty Mutual Insurance Company,
5 correct?
6 A. I think it's Liberty Mutual, yes.
7 Q. All right. Okay. And when a --
8 A. In fact, it says in the first sentence:
9 Liberty Mutual Insurance --
10 Q. Right.
11 A. -- as the underinsured.
12 Q. Is it your understanding that when a
13 party that files an answer to a complaint asserts
14 affirmative defenses that those are the affirmative
15 defenses of that party?
16 MR. PENDARVIS: Form objection.
17 THE WITNESS: That's correct.
18 BY MR. BOGDAN:
19 Q. Okay. And if you look at the fifth --
20 the fifth defense for improper service -- you see
21 that one?
22 A. Yes, I do.
23 Q. Okay. And this is Liberty Mutual's
24 defense, correct?
25 A. Right.

Page 154

1 Q. Okay. And it says improper service,
2 correct?
3 A. (Witness moves head up and down.)
4 Q. Okay. And who does it say was not
5 properly served with the complaint?
6 A. It says no one.
7 Q. It doesn't say that Ms. Dickenson was
8 improperly served with the complaint?
9 A. No.
10 MR. PENDARVIS: Form objection.
11 THE WITNESS: The assumption here is
12 that Liberty Mutual wasn't served.
13 BY MR. BOGDAN:
14 Q. This is a general and unspecific
15 affirmative defense, is it not?
16 A. That's correct.
17 MR. PENDARVIS: Form objection.
18 BY MR. BOGDAN:
19 Q. Okay. And if this affirmative defense
20 was specific and said that Sarah Dickenson was not
21 properly served with the -- with service, what
22 would you have done?
23 MR. PENDARVIS: Form objection.
24 THE WITNESS: I would have immediately
25 checked with Zellner-Wood to see what was going on,

Page 156

1 I'll give you the hint.
2 MR. BOGDAN: Okay.
3 BY MR. BOGDAN:
4 Q. What would you have done with regards
5 to the affidavit of service that you had already
6 received had this affirmative defense actually said
7 that Sarah Dickenson was not properly served?
8 A. I would have searched high and low for
9 that affidavit.
10 Q. And what would you have done with it if
11 you found it?
12 A. I would have filed it.
13 Q. That's it for Exhibit 8. Let's move on
14 to Exhibit 9.
15 A. Eleven, ten. Nine. Okay.
16 Q. This is the letter from you to Terry
17 Finger, correct?
18 A. That's correct.
19 Q. And there was some discussion between
20 you and Mr. Pendarvis about the demand, the opening
21 demand at mediation that you made in this of 300 to
22 \$350,000, correct?
23 A. That's correct.
24 Q. And I believe he asked you if you had
25 discussed this opening demand with Mr. Feldman, and

Page 155

1 and if I had gotten the answer they had been giving
2 me, I would have re-served.
3 BY MR. BOGDAN:
4 Q. And would that have also triggered you
5 to look for and file the affidavit of service --
6 MR. PENDARVIS: Form objection.
7 BY MR. BOGDAN:
8 Q. -- that you had already received?
9 A. Yes.
10 MR. BOGDAN: Let me finish the question
11 again, Thomas.
12 MR. PENDARVIS: I'm sorry. He's
13 answering so quick I can --
14 MR. BOGDAN: I understand. Let me
15 start over --
16 THE WITNESS: Yeah.
17 MR. BOGDAN: -- just so we get this
18 clean, and I'll --
19 BY MR. BOGDAN:
20 Q. Gary, if you'll wait, 'cause we know
21 Thomas is going to object.
22 A. I -- I -- yeah. That's fine.
23 Q. We'll let him get it in.
24 A. Yeah, yeah.
25 MR. PENDARVIS: Leading questions.

Page 157

1 you said that Mr. Feldman was not cc'd on the
2 letter, right?
3 A. That's correct.
4 Q. Okay. Just because he's not cc'd on
5 the letter, does that mean that you wouldn't have
6 discussed this opening demand with him?
7 MR. PENDARVIS: Form objection.
8 THE WITNESS: May 5. We were still
9 discussing these matters. I probably did.
10 BY MR. BOGDAN:
11 Q. Okay. You just don't have any
12 recollection?
13 A. I don't have any recollection, but my
14 habit would have been to discuss it with him.
15 Q. Okay. All right. Still on Exhibit 9.
16 There was also a lot of discussion between you and
17 Mr. Pendarvis about this 150 to \$180,000 range that
18 was -- is set out on top of page 2?
19 A. Uh-huh.
20 Q. Is that a yes?
21 A. Excuse me. Yes.
22 Q. Okay. You remember that line of
23 testimony?
24 A. Yes.
25 Q. And I believe where we ended up was

Page 158

1 that you testified that this was an estimate of Bob
2 Feldman's past medical expenses; is that correct?
3 MR. PENDARVIS: Form objection.
4 THE WITNESS: Hang on.
5 Yes.
6 BY MR. BOGDAN:
7 Q. Okay. Well, what I want you to do is
8 look back on the first page, and if you see the --
9 it's numbered A. It says impairment. Do you see
10 that?
11 A. Yes.
12 Q. And then number B is medicals. Do you
13 see that?
14 A. Yes.
15 Q. So in the impairment section the last
16 sentence says: By any formula, this impairment
17 should be valued at somewhere around \$100,000.
18 Is that right?
19 A. That's what it says.
20 Q. Okay. And then under the medicals, the
21 conclusion of that section is: If this is extended
22 ten years, there is an expense of \$60,000.
23 Correct?
24 A. That's correct.
25 Q. Okay. So what's \$100,000 plus \$60,000?

Page 160

1 counsel concerning Exhibit 8 and in particular the
2 fifth defense asserted by -- by the defendants in
3 the -- defendant in the answer that was filed.
4 A. Uh-huh.
5 Q. Is it your testimony that when you
6 received this answer that you analyzed this fifth
7 defense carefully enough to see that it didn't name
8 Ms. Dickenson specifically?
9 A. At what period of time are we talking?
10 Q. January 4 -- sometime in January of
11 2013.
12 A. I -- I analyzed very closely. I'm not
13 sure when.
14 Q. Well, you were asked questions that
15 suggested that had this improper service fifth
16 defense had Ms. Dickenson's name in here --
17 A. Uh-huh.
18 Q. -- that you would have done things
19 differently, and my question to you is: Did you --
20 is it your testimony that you analyzed this fifth
21 defense that carefully and decided they didn't name
22 Ms. Dickenson, therefore I'm not going to have to
23 worry about this affidavit?
24 MR. BOGDAN: Object to the form.
25 THE WITNESS: I don't think that's what

Page 159

1 A. 160.
2 Q. Okay. So then the next sentence is:
3 The above amount is \$150,000 to \$180,000.
4 Correct?
5 A. That's correct.
6 Q. Those are not actual past-incurred
7 medical expenses, are they?
8 MR. PENDARVIS: Form objection.
9 THE WITNESS: No, they're not.
10 MR. BOGDAN: All right. That's all I
11 have.
12 EXAMINATION
13 BY MR. PENDARVIS:
14 Q. Mr. Feldman, one follow-up on your --
15 MR. BOGDAN: Tom, Coggin.
16 MR. PENDARVIS: Oh. I'm sorry. That
17 was it?
18 MR. BOGDAN: No, no. You called him
19 Mr. Feldman.
20 MR. PENDARVIS: I'm sorry. Mr. Coggin.
21 THE WITNESS: I'm always flattered.
22 I'm always flattered.
23 MR. PENDARVIS: Thank you. Thank you.
24 BY MR. PENDARVIS:
25 Q. You were asked some questions by your

Page 161

1 I testified to, but no.
2 BY MR. PENDARVIS:
3 Q. You didn't analyze it that carefully in
4 January of 2013?
5 A. No. I didn't -- you -- the last
6 sentence. Repeat the last sentence.
7 Q. In --
8 A. That I don't have to serve
9 Ms. Dickenson?
10 Q. My question -- let me reframe the
11 question.
12 A. Yeah.
13 Q. See if I can get this clear. I want to
14 make certain about your testimony about what
15 actually occurred when you received this answer in
16 terms of your analysis of this fifth defense.
17 A. Uh-huh.
18 Q. Am I correct in understanding your
19 testimony that you didn't analyze it as carefully
20 as was suggested earlier in that because it does
21 not state Ms. Dickenson's name you chose not to
22 file the affidavit or look for the affidavit?
23 MR. BOGDAN: Object to the form.
24 THE WITNESS: I don't think that's what
25 it said -- what he said, but -- and it has nothing

Page 162

1 to do with looking for the affidavit or not. This
2 was in 2013. I didn't start looking for the
3 affidavit until two thousand and -- when I heard
4 from Bauer & Metro.
5 BY MR. PENDARVIS:
6 **Q. Okay.**
7 A. I did look at this very closely when I
8 -- when I received it. I always do. And I thought
9 that -- at that time, to myself, I felt that
10 Mr. Allen had quite -- a very slim answer. He
11 didn't include a statute of limitations defense,
12 and I knew enough that the improper service defense
13 of his was not enough to fit the law and -- but as
14 for I decided not to look for Ms. Dickenson at the
15 time, no.
16 **Q. If it had had reference somewhere in**
17 **this defense the name Dickenson, would you have**
18 **done anything different?**
19 A. I probably would have looked a little
20 closer at my papers.
21 **Q. Why?**
22 A. Because I knew that he was doing
23 something specific here when he hadn't done it in
24 the entire case, and he was talking about Liberty
25 Mutual. He says he answers for Liberty Mutual. If

Page 164

1 out.
2 BY MR. PENDARVIS:
3 **Q. Take a look at Exhibit 8 --**
4 A. Okay. Go ahead.
5 **Q. -- and the wherefore clause.**
6 A. I apologize. What are we looking at
7 now?
8 **Q. Exhibit 8, the wherefore clause on page**
9 **2 of Exhibit 8.**
10 A. Oh, okay.
11 **Q. Could you read that, please?**
12 A. Wherefore, having answered, Defendant
13 asks this Court to dismiss the complaint and grant
14 such relief as the Court deems just and proper.
15 **Q. On page 1, in the caption, who is the**
16 **named defendant?**
17 A. It's Sarah Dickenson.
18 **Q. Okay.**
19 A. However, it says: Liberty Mutual, as
20 the alleged underinsured, answers this complaint as
21 follows.
22 **Q. But the wherefore clause on page 2 does**
23 **not say wherefore, having answered, Liberty Mutual**
24 **asks this Court to dismiss the complaint, does it?**
25 A. Mr. Pendarvis, we can parse this all

Page 163

1 he had said something about Ms. Dickenson, yeah,
2 that would have raised my antenna.
3 **Q. Well, have you looked at 38-7 --**
4 **Section 38-77-160?**
5 A. I'm sure I have, but I cannot tell you
6 what 38-77-160 says. I've pretty much at one time
7 or another had most of the civil procedure book
8 memorized, but that goes quickly, as you probably
9 know.
10 **Q. Well, honestly, candidly, S.C. Code**
11 **Annotated Section 38-77-160 is not in the Rules of**
12 **Civil Procedure. It's in the Code of Laws, but --**
13 A. Okay. Well, tell me what it is.
14 And congratulations.
15 **Q. It's a statute governing the**
16 **underinsured motorist carrier's rights to defend on**
17 **behalf of their insured. And the wherefore clause**
18 **states what?**
19 A. I'm -- I don't know. I'm going to have
20 to look at the --
21 **Q. I know. But take a look at Exhibit 8.**
22 A. I'm going to have to look at the law.
23 MR. BOGDAN: Hold on a second.
24 THE WITNESS: Yeah.
25 MR. BOGDAN: Let him get the question

Page 165

1 day long, and we're going to -- and we can also go
2 into the books, and you know as well as I do we'll
3 probably have five or six different answers for it.
4 I -- I think it's unfair of you to try to catch me
5 on something where I don't know the law on this.
6 **Q. Well, I'm not really doing that except**
7 **in response to --**
8 A. Yeah, you are.
9 **Q. And that's fine. But it's my job to**
10 **handle the case for Mr. Feldman, and what I'm**
11 **trying to understand is what your testimony was,**
12 **that if this answer had been styled differently in**
13 **terms of the language in the fifth defense your**
14 **testimony is you would have done things**
15 **differently, and I'm trying to understand what it**
16 **is that would have triggered something different**
17 **than what you did.**
18 A. Here's what I -- my answer was. If it
19 said further answering, alleges the Plaintiff had
20 failed to effect proper service under Rule 12(b)(4)
21 and 12(b)(5) on Ms. Dickenson, you're doggone right
22 I would have looked very closely at that.
23 **Q. Okay.**
24 A. All right.
25 MR. PENDARVIS: Thank you. I have no

Page 166

1 further questions.
2 (The witness, after having been advised
3 of his right to read and sign this transcript, does
4 not waive that right.)
5 (The deposition was concluded at
6 1:44 p.m.)
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Page 168

1 SIGNATURE OF DEPONENT (CONTINUED)
2 DEPOSITION DATE: June 8, 2016
3 REPORTER: TRISHA M. THOMAS
4 AWR JOB #: 160608tmt
5 CASE CAPTION: ROBERT E. FELDMAN and LOIS J.
6 FELDMAN vs. GARY P. COGGIN
7 PAGE LINE CHANGE REASON
8
9
10
11
12
13 GARY P. COGGIN Date
14 I, Trisha M. Thomas, Notary Public for the
15 State of South Carolina at Large, do hereby certify
16 that the deponent was advised of his or her right
17 to read and sign said deposition both verbally and
18 in writing. If the deponent fails to execute and
19 return foregoing Signature of Deponent pages within
20 the thirty (30) days allowed pursuant to the Rules
21 of Civil Procedure, the original transcript may be
22 filed with the court.
23
24 Trisha M. Thomas
25 My Commission expires
February 2018



TThomas

Page 167

1 SIGNATURE OF DEPONENT
2 DEPONENT: GARY P. COGGIN
3 DEPOSITION DATE: June 8, 2016
4 REPORTER: TRISHA M. THOMAS
5 AWR JOB #: 160608tmt
6 CASE CAPTION: ROBERT E. FELDMAN and LOIS J.
7 FELDMAN vs. GARY P. COGGIN
8
9 (Please return both Signature of Deponent pages)
10
11 I, the undersigned, GARY P. COGGIN, do
12 hereby certify that I have read the foregoing
13 deposition and find it to be a true and accurate
14 transcription of my testimony, with the following
15 corrections, if any:
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PAGE	LINE	CHANGE	REASON
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Page 169

1 CERTIFICATE OF REPORTER
2
3 I, Trisha M. Thomas, Court Reporter and
4 Notary Public for the State of South Carolina at
5 Large, do hereby certify that the foregoing
6 transcript is a true, accurate, and complete
7 record.
8
9 I further certify that I am neither
10 related to nor counsel for any party to the cause
11 pending or interested in the events thereof.
12
13 Witness my hand, I have hereunto
14 affixed my official seal this 21st day of June,
15 2016, at Hardeeville, Jasper County, South
16 Carolina.
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TThomas

Trisha M. Thomas,
Court Reporter
My Commission expires
February 2018

Page 170				Page 171			
1	I N D E X			1	July 5, 2011		
2		Page/Line		2	EXH. 3, Letter from Gary	27	11
3	WITNESS/EXAMINATION			3	Coggin to Sonya Wise dated		
4	GARY P. COGGIN	3	1	4	October 10, 2011		
5	EXAMINATION	3	3	5	EXH. 4, Letter from Gary	32	7
6	BY MR. PENDARVIS			6	Coggin to Alton Prioleau dated		
7	EXAMINATION	150	4	7	October 17, 2011		
8	BY MR. BOGDAN			8	EXH. 5, Letter from Gary	34	25
9	EXAMINATION	159	12	9	Coggin to Alton Prioleau dated		
10	BY MR. PENDARVIS	~		10	October 24, 2011		
11	SIGNATURE OF DEPONENT	167	1	11	EXH. 6, Release, Covenant Not	37	15
12	CERTIFICATE OF REPORTER	169	1	12	to Execute and Settlement		
13				13	Agreement		
14				14	EXH. 7, Civil Action Cover	43	6
15	REQUESTED INFORMATION INDEX			15	Sheet, Summons, Complaint,		
16				16	Copy of certified mail		
17	(No Information Requested)			17	envelope		
18				18	EXH. 8, Answer and Certificate	53	7
19				19	of Service		
20	E X H I B I T S			20	EXH. 9, Letter from Gary	70	24
21		Page/Line		21	Coggin to Terry Finger dated		
22	EXH. 1, Contingency Fee	13	9	22	May 5, 2014		
23	Agreement			23	EXH. 10, Letter from Gary	90	4
24	EXH. 2, Letter from Gary	17	2	24	Coggin to Robert Feldman dated		
25	Coggin to Sonya Wise dated			25	September 15, 2014		
Page 172				Page 173			
1	EXH. 11, Letter from Gary	106	20	1	to Dismiss		
2	Coggin to Julian Allen dated			2	EXH. 18, Answer to Defendant's	124	22
3	May 21, 2014			3	12(b) (4) and 12(b) (5) Motion		
4	EXH. 12, Letter from Carrie M.	112	10	4	to Dismiss		
5	Murphy to Gary Patrick Coggin			5	EXH. 19, Transcript of Record	127	25
6	dated October 7, 2014			6	dated January 6, 2015		
7	EXH. 13, Letter from Julian K.	117	3	7			
8	Allen to Honorable Jerri Ann			8			
9	Roseneau dated October 8,			9			
10	2014; Liberty Mutual Insurance			10			
11	Company's Notice and Motion to			11			
12	Dismiss; and Certificate of			12			
13	Service			13			
14	EXH. 14, Letter from Samuel C.	118	19	14			
15	Bauer to Gary Patrick Coggin			15			
16	dated October 10, 2014			16			
17	EXH. 15, Letter from Gary	122	7	17			
18	Coggin to Jerri Roseneau dated			18			
19	December 6, 2014; Objection to			19			
20	Plaintiffs' Subpoena; and			20			
21	Certificate of Service			21			
22	EXH. 16, Affidavit of Gary	123	8	22			
23	Coggin			23			
24	EXH. 17, Answer to Defendant's	124	19	24			
25	12(b) (4) and 12(b) (5) Motion			25			

Exhibits	127:25 128:6 173:5	\$900 83:3,11	10:7 69:21 117:3,9, 13	110:13
COGGIN.EXH.001 13:9,13 150:11 170:22	\$1 40:11	(	14 118:19,24 131:2	2012 16:1 32:16 38:3,4 39:21 40:2,13 43:18 58:6 59:20,25 60:12 70:8 80:23 90:10
COGGIN.EXH.002 17:2 18:8 22:10 26:18 110:13 170:24	\$1,550,000 18:20	(30) 168:16	15 24:3 29:19 90:5,10 103:1 122:7,16 130:16	2013 20:14,15,17 26:2 59:23 62:15 63:22, 23 64:1,9,14,23 66:3,15 67:8,14 68:9 72:8 85:9 160:11 161:4 162:2
COGGIN.EXH.003 27:11,16 29:1 30:1 32:12,20,23 33:11 171:2	\$100,000 38:12 40:14 72:18 158:17,25	0	150 93:17 157:17	2014 65:14 66:4,16 67:9 69:21 70:10,25 71:4,12,19,22,23 72:5,24 81:8 82:10 83:22 88:11 89:9 90:5 91:10 92:22 93:5 105:11 106:21 107:5 112:11,19 117:5 118:20 119:3 122:8 130:11
COGGIN.EXH.004 32:7 33:21 34:7 171:5	\$130,000 94:1,5 96:4	00048 104:14	16 105:11 109:5 123:8, 12 141:17 142:7	2015 128:1,5 130:20 131:7 138:13,14 142:6 145:2
COGGIN.EXH.005 34:25 35:7 171:8	\$150,000 159:3	00049 106:7	160 159:1	2016 59:23 167:2 168:2
COGGIN.EXH.006 37:7,15 171:11	\$180,000 157:17 159:3	00114 80:19	160608tmt 167:3 168:3	2018 168:25
COGGIN.EXH.007 43:6 44:5 51:10 57:8 171:14	\$2,000 88:9	00119 69:2	17 32:8 33:22 124:19 125:4 126:22 130:4, 6	21 106:21 107:5 130:9
COGGIN.EXH.008 53:7,15 54:24 62:9 152:22 156:13 160:1 163:21 164:3, 8,9 171:18	\$2,500,000 19:23	0030 106:8	18 38:2 124:22 125:5 132:4 144:6	22 130:9
COGGIN.EXH.009 70:24 71:4 73:12 92:25 156:14 157:15 171:20	\$20,000 42:2	1 13:9,13 30:1 139:7 150:11 164:15	180,000 93:18	24 35:1,6,9 139:6
COGGIN.EXH.010 90:4 101:19 103:2 171:23	\$225,000 45:7 72:15	1,500,000 19:3	19 127:25 128:6 143:7, 21 144:7	25 78:9 102:17 138:25 139:6,7
COGGIN.EXH.011 106:20 172:1	\$25,000 75:1,5,8,14,17 76:13 77:12 88:18 89:22 91:15 94:8 102:24 111:19	10 27:12,18 32:18 58:15 63:2,23 64:1, 23 90:4 101:19 103:2 118:20 119:3 142:1 143:22 144:6	1994 7:10	25,000 74:21 76:3 102:3
COGGIN.EXH.012 112:10,15 172:4	\$300,000 72:15	100 94:1,5	1:44 166:6	278 11:6
COGGIN.EXH.013 117:3,13 172:7	\$350,000 156:22	11 16:18 32:18 101:9 106:20 133:14,22 138:25 139:6	2 17:2 18:8 19:1 22:9, 10 26:18 27:21 29:1 71:9 72:3 110:13 157:18 164:9,22	28 54:14
COGGIN.EXH.014 118:19,24 172:14	\$40,000 39:2,7	12 112:10,15 138:25 139:7 144:16	20 102:16 120:2 130:6	284 84:19
COGGIN.EXH.015 122:7,16 172:17	\$5,000 39:9 88:6	12(b)(4) 63:6 124:20,23 125:3 165:20	20,000 39:16	28th 54:13
COGGIN.EXH.016 123:8,12 141:17 142:7 172:22	\$50,000 87:13 93:24,25 96:4	12(b)(5) 63:6 124:20,23 125:3 165:21	2008 36:5	29 51:12 52:3 59:20,24 60:5,11
COGGIN.EXH.017 124:19 125:4 172:24	\$525,000 45:15	120 58:7,12,21,23 59:7, 21,22 60:2,15	2010 6:3 9:25 10:7,23 13:25 16:12,18 58:17 63:18	
COGGIN.EXH.018 124:22 125:5 173:2	\$60,000 158:22,25	120th 59:19 60:11	2011 16:16 17:3 18:13 27:12,20 32:8 33:22 35:1,7,9 36:9,10	
COGGIN.EXH.019	\$70,000 27:5	13		
	\$85,000 39:2 40:2,13			
	\$90,000 39:17 40:17 41:8			

3 3 27:11,16 29:1 30:1 32:12,20,23 33:11 36:8 131:7 133:22 3,000 88:8 300 156:21 300,000 45:5 33 14:11 35 45:21,23 38-7 163:3 38-77-160 163:4,6,11	141:9 142:6 145:2 66 148:25 7 7 43:6 44:5 51:10 54:4 57:8 62:15 112:11,19 8 8 53:7,15 54:24 62:9 117:4 123:13 141:25 142:23 143:3 152:22 156:13 160:1 163:21 164:3,8,9 167:2 168:2 85 56:23 85,000 38:10 42:9	accepting 42:8 accident 6:6 7:18 9:15,23 10:16 11:2,4 15:9 16:21 26:20 36:3,5, 12 83:3 95:9,15 97:1 100:1,15,20 accidents 9:8 accommodate 3:24 account 6:20,21 7:4 82:2 accrue 27:4 accurate 8:14 16:17 17:24 27:24 44:2,3 71:24 92:20 128:15 167:7 accurately 86:16 accuse 133:9 action 43:2,6 45:5,6 69:14 actions 8:3 87:8 121:1 actively 100:16 activities 25:12,15 67:18 98:3 102:13 actual 96:1 159:6 ad 44:19,24 add 81:25 151:16 addition 26:19 27:1 39:8 144:7 address 46:21 47:18 50:20, 21,23,24 51:4,6 55:14,20 56:20 119:6 addressed 42:14 addresses 48:17 adjusted 96:3 adjuster	36:21 adjusters 34:11 admit 132:10 ADR 70:15,20 advise 102:2 advised 166:2 168:14 affidavit 48:4 50:12 54:17 55:24 56:1,5,11,12, 13 61:2,19 63:8 113:3,10,15,23,25 115:20 118:5 119:9, 16,21,22,25 121:2, 9,11,15,22,25 122:3 123:8,12,14,17,22 132:6,20 133:4,6,22 134:11,20,21 135:3, 5,10,19 136:15,19, 24 137:7,8,9,11,15, 22,23 138:8 139:2, 9,20 140:3,12 141:7,8,10,15,16,20 142:1,5,6,13,16,19, 20,21,24 143:9,11, 14 144:8,12,15,16, 17,18,20,24 145:1 155:5 156:5,9 160:23 161:22 162:1,3 affidavits 66:6 137:21 142:9 affirmative 97:1 147:17 148:14, 23 149:12 153:14 154:15,19 156:6 afternoon 50:22 age 48:16 agree 13:17 19:2 35:14 108:19 112:3 115:12 136:2,3 139:13 143:23 agreed 15:17 16:6 28:18 86:2,6 agreement 3:15 10:6 13:9,15, 16,23 14:10,24 15:7 32:17,19 37:16 38:7 39:19 85:13 86:10,	18 146:8 150:16 151:6,7 ahead 3:16 26:14 28:7 63:1 104:20 130:2 164:4 ahold 77:6,8 allegations 148:14 alleged 148:15 164:20 alleges 63:4 165:19 alleging 62:22 Allen 28:8 64:10 66:5 67:16 68:15 73:17 74:2 87:3 96:19,22, 24 97:2,18 98:1,7,8, 10,15 99:5,9 106:21 107:5,7 117:3,16 124:2,9 131:7 134:20 137:22 140:3,7,8,14 141:2 142:1,11,20 144:22, 25 145:22 162:10 Allen's 125:13 152:22 allowed 4:10 57:10 168:16 Allstate 18:14 28:13 33:20 34:10 38:8,16 39:10,15 67:4 83:12,14 85:11 109:20 Alton 32:8 33:23 35:1 amount 38:10 45:5,7 91:11 92:2 93:3,16,17 108:12 159:3 analysis 161:16 analyze 161:3,19 analyzed 160:6,12,20 Ann 117:4 Annotated 163:11 answering
4 4 32:7 33:21 34:7 63:11 64:9 71:14 129:23,24,25 131:7 160:10 40 14:9,13 150:24 151:18 152:11 42 81:22 47,450 108:5,23	9 9 19:12 58:15 63:18, 21 70:24 71:4 73:12 92:25 132:1 142:23 143:3,6,7,18 156:14 157:15 95 7:10 8:7 9th 9:25			
5 5 17:3 18:13 34:25 35:7 70:25 71:4,12, 14 72:24 110:13 131:21 141:24 157:8 50,000 28:21 500 20:4 45:18,20	A ability 100:19 101:15 above-captioned 123:1 absolutely 4:25 5:22 10:21 33:12,14 43:22 48:9 62:20 73:22 76:12, 14 91:25 115:18 152:5,20 accept 57:5 94:8 accepted 16:11 57:1,4			
6 6 14:2 37:7,15 112:24 114:4 122:8 128:1 130:20 138:12,14				

53:21 63:4 155:13 165:19 answers 4:21 49:23 162:25 164:20 165:3 antenna 163:2 apartment 7:24 apologize 16:10 52:15 57:22 92:17 105:9 164:6 apologized 76:24 apologizes 131:17 apologizing 52:16 apparently 33:21 34:19 73:13 91:14 97:2 113:3 129:14 appeal 14:9,12,14,22 150:25 151:10 152:3,9,14 appeals 14:14 151:3,9 appearance 104:16 appearing 70:11 appears 18:9,12 27:17 33:22 35:5 38:1 53:16 71:5 90:12 104:14 107:4,13 112:17 117:15 118:24 119:7 122:16 123:12 applicable 152:13 apply 46:16 approximately 15:24 area 49:21 arguably 137:7 argue 23:21 39:11,14 argument 60:17	arguments 101:13 131:22 132:1 arising 9:7 Armed 48:15 arrangements 50:4,18 asks 164:13,24 asserted 147:14 149:5 160:2 assertion 63:7 asserts 153:13 assist 89:9,10 123:16 assisted 56:22 assisting 5:15 assume 26:22 45:13,20 54:5 58:25 64:10,21 74:12 107:11 assumed 87:14 assuming 64:20 assumption 65:1 154:11 at-fault 18:9 38:8 40:3 41:19 42:11 46:10 94:19 attached 37:2 attempted 55:14 attorney 81:15 93:8 98:7 126:15 128:19,20, 25 150:7 152:4,9,19 attorney-client 98:24 attorneys 30:22 81:16,20 149:16 August 88:12 author 127:18 146:9	auto 9:7 automobile 6:5 9:8,10,15 15:9 Avenue 51:7 aware 15:19 22:12 34:10 40:4 57:13,14 99:10,13 142:9 149:6 AWR 167:3 168:3 B back 5:19 6:15 8:23 21:15 24:2 25:9 39:13 43:14 47:22 50:17,19 51:18 57:11 75:15 78:15 94:12,20 101:19 106:16,17 107:3 109:10 111:3 114:1 116:9 119:24 132:15,25 145:8,24 146:13 149:24 158:8 bad 89:23 badly 66:25 142:12 bank 6:16,18,21 7:4 based 17:10 18:17 19:8, 21,25 20:3 22:9 39:24 40:10 72:3,13 92:21 94:15 95:4 102:25 122:22 152:14 baseline 51:12 basically 44:19 45:10 107:18 111:17 138:7 139:9 142:24 143:5 basing 31:24 93:20 basis 60:21 114:13 146:1 Bates 68:23 69:2 80:18 104:14 106:6 bathroom	19:16 Bauer 106:11 111:4,18 112:18,25 114:3 115:25 116:4,9,10 118:3,11,19,25 119:1,8 121:21 122:1 123:21 124:3, 10 126:22 128:22 132:5,13 133:9 138:4,12 141:4 145:3,12,22 146:17 162:4 Bear 144:3 bears 69:2 Beaufort 47:13 65:25 70:11 bed 19:19 begin 7:12 beginning 22:16 40:23 83:21 108:1 131:20 141:25 behalf 19:6 43:17 53:16,23 73:17 77:19 148:9 153:4 163:17 behaviors 95:4 believing 20:23 52:19 big 19:24 bill 36:19 billings 108:4,21 bills 36:2 107:19,20 bit 5:5 7:18 18:2 52:14 74:6 106:17,25 107:3 bitter 79:23 blame 123:19 132:5,8 bless 133:16 blue 84:19	board 34:21 Bob 6:1 16:22 19:11,21, 22 20:1,4 21:18,21 23:10,13,22 24:13, 19 25:17 26:19,21 27:6 28:9,13,18,19 29:17 36:7 38:18 39:8,19,22 42:17, 18,21 66:24 73:4,8, 13 75:10 77:6 78:13,17,22 81:5 83:1,22 84:10,20,22 86:12 87:4,7,11 89:4 91:2 94:16,18, 25 102:8,25 127:20 158:1 Bob's 10:11 28:9 39:19 91:4 97:4 body 67:22 Bogdan 18:21 23:25 24:24 37:10,22 40:16 65:23 69:3 92:12,15 95:13 96:11 98:17 99:2 106:2,5,18 114:12,15 139:4,11, 22 140:22 148:3 150:5,6 153:18 154:13,18 155:3,7, 10,14,17,19 156:2,3 157:10 158:6 159:10,15,18 160:24 161:23 163:23,25 book 163:7 books 165:2 borrow 38:22 bottom 13:20 26:19 129:25 bound 81:5 box 111:8 break 3:21,24 65:3 74:7 99:20,23 149:20 breakout 78:22 briefly 5:7 65:7 128:10

bring 43:2	candidate 49:14	12,14,15 39:13 83:25 85:18	City 47:19	closely 160:12 162:7 165:22
bringing 35:21	candidly 128:7 163:10	cash 119:18	civil 43:6,11 44:8 69:14 163:7,12 168:16	closer 162:20
broke 38:20	capable 133:11	catch 165:4	claim 15:15,16 16:20 24:23 39:24 40:10 41:21,25 46:1 61:23 63:21 71:11 78:7 88:16 89:2,3 90:15 94:9 95:10 98:10 100:2,8 101:11	club 25:22
broken 39:3	caption 164:15 167:4 168:3	caused 24:20 27:3 100:1,20	claimant 36:17	clue 52:7
broker 27:2 28:10,11 29:13,16	car 15:9 76:9 111:11	caveat 98:6	claimed 19:17 42:2	Coastal 67:16
brokers 28:19	care 30:18 31:5,8 50:22	cc'd 157:1,4	claiming 25:8	Code 163:10,12
Bronx 49:5	carefully 160:7,21 161:3,19	cents 81:22	claims 9:7 18:13 28:4 33:20,23 38:7 63:16 115:17 146:18	Coggin 3:1,5,9,10 9:20 17:2 27:11 32:7 34:25 35:4 45:13 54:16 59:9 65:8 68:14 70:24 71:3 87:24 90:4,9,19 106:20,24 112:11,14 117:11 118:20,23 122:7,12 123:8 125:1 128:3 130:10 149:24 159:15,20 167:2,4,6 168:4,12
Brooklyn 49:5	Carolina 3:11 7:9,12,17 30:23 44:7 67:17 168:13	certificate 53:7 104:3,6 106:8 117:6 122:9	clarifying 36:21	collision 9:23 11:11 24:20 85:2 92:4 94:18 95:3,23
brought 46:2 80:22	Carrie 112:10	certified 43:7,15	clause 163:17 164:5,8,22	combined 45:9
bunch 129:24	carrier 18:14 38:8 41:22 42:10 44:16,17 67:4,6 73:17 109:20	certify 167:7 168:13	clauses 44:20 45:1 74:14	comfortable 19:20
business 27:2 116:12	carrier's 163:16	cetera 9:13 16:25 70:15,16	clean 4:24 83:18 155:18	commence 47:5 64:2
C	carry 75:11 111:9,10	chance 128:8	clear 12:25 14:16 30:15 41:6 63:13 77:12 83:9 95:11 96:5 119:18 131:17 133:4 141:14 150:10 161:13	commenced 64:6,22
calculations 108:11	carrying 138:25	CHANGE 167:9 168:5	clerk 117:16 122:17 126:13	comment 20:19 78:19 80:12 97:21 128:16 146:22
calendar 59:5,17	cart 25:20 97:6	charge 86:9 88:6,7,8,9	client 12:8 79:15 81:9,11 82:3 84:4 114:10,11 115:5,13 121:12	comments 78:6
calendared 59:15,17	case 5:10 11:24 15:8,9, 21,22 16:4,7,8 23:11 25:1,18 31:21,22 32:2 33:5, 6 40:1,10 42:5,13 43:3 45:24 46:23 61:11,24 66:14 68:9,16 69:12 70:8 71:12 72:17 79:25 80:10 81:2,4,7,24 84:19 86:21,23 87:2,8,20,21,23 88:1,6 89:5 94:16 98:12 99:6 102:13, 14,15,23 107:12 108:17 110:21 132:7,12 133:8 134:17,22,23 138:21 139:15,25 148:3,9 150:7 152:1 162:24 165:10 167:4 168:3	charged 48:3 82:19 83:3 85:24	client's 115:17	Commission 168:24
calendaring 59:6		charges 82:6	clients 12:1,14 82:1 84:2,7 101:14	common 8:15 9:1,3
calendars 15:10		check 81:18 103:14 119:17	clocked 104:15 105:10 124:6	communicate 4:10 22:1 98:1 141:4 145:3
call 10:14 27:7 43:20 50:19 56:3,4 77:7 89:17 118:11 119:24		checked 83:1 154:25	close 33:25 49:3,4 78:10 84:22 147:9	communicated 12:13 20:22 116:9
called 28:10 38:21 49:25 50:16,17,19 55:12, 22 102:11 114:4 120:1,2,6,13,19,20 132:16 145:21,22, 23 146:13 159:18	cases 7:25 8:12 9:2,3,6,9,	checks 81:19,23,25		communicating 66:16
calls 49:22 50:15,16 114:15 120:14,24 136:3 137:9,10		Chicago 77:10		
canceled 68:5		chose 161:21		
		circuit 8:3		
		circumstance 12:7 131:20		
		circumstances 91:21 128:12		
		cities 49:3,4		

communication 98:23	concerned 57:2 89:25 134:23	continue 27:4 76:11 79:17 109:8	44:14,23 45:11,12 46:23 47:8,9,14,16 50:7 55:6 61:20,21 62:9,16,17 63:22,24 64:3,6,8,24 65:17, 20 66:18 67:6,23 68:4,10 70:11 71:22 72:10 82:12 83:15, 16,19 101:15 102:4 103:25 105:8 106:13 107:23 108:18 110:23 111:22 113:18 115:17 117:20 119:6 121:23 123:2, 3 130:13 131:4,9,23 132:6 133:25 134:3, 8 136:14 137:10,17 139:21 141:1,8,17 142:25 143:9 148:9 150:18 151:4 152:14 153:5,17,24 154:2,16 156:17,18, 22,23 157:3 158:2, 23,24 159:4,5 161:18	139:13 146:6 150:7, 10
communication's 111:16	concluded 166:5	CONTINUED 168:1		court 8:1,3 9:3 26:11 37:6 105:10 117:16 122:17 123:25 126:14 131:23 140:9 141:7 142:10, 23 164:13,14,24 168:17
communications 10:25 66:19 67:7,14 92:6 99:9 111:16 138:11 146:16,19 147:4	conclusion 114:16 139:18 158:21	continuing 77:4 79:8		courtesy 69:16 146:11
comp 101:17	concurrent 52:10	contract 12:3,22 14:18,21 132:16,18		covenant 37:15 46:3,10
companies 22:8 39:10 49:21	condition 36:7 39:22 67:9 94:23	contract's 12:10,15,25		cover 43:6,11 44:8 56:10 117:12 124:7 127:3
company 39:10 49:24,25 51:14 62:16 153:4	conduct 95:9,12,14 96:9	conundrums 115:9		coverage 38:12 44:22 45:11 46:4,13
Company's 117:5,17	conference 32:6 90:7 116:14 124:18 147:11	conversation 11:25 12:20 25:24 42:21 51:21 52:21 53:3 56:4 74:6 75:8 89:22 98:2 112:24 113:4 119:8 121:16 145:18		create 42:9
compared 108:22	confidence 39:5	conversations 10:20 11:3,15,20 13:4 21:6,18 23:12 25:10 51:13 52:7 66:4 73:9 76:21 81:6 88:14 93:5 97:17,22,24 98:9 102:5 103:3,10 105:14 118:8 120:2, 4 123:20 134:6 138:19 145:11		credit 151:21
compel 65:12	confronted 120:13	conveyed 75:23	corrected 91:15	Criminal 7:21
compensation 86:5	congratulations 163:14	copied 117:20	correcting 32:11	D
competently 12:17	connected 36:19	copies 80:6 100:25 122:24	corrections 167:8	damages 19:3 28:16
complaint 15:2 43:7,13,24 44:8,20 45:2 46:13 51:24 53:21 57:7,9, 15 58:2,5,12,18,20 59:24 60:3 64:4 74:15 123:1 153:13 154:5,8 164:13,20, 24	consent 117:2 126:23,25 127:11	copy 10:4,5 13:12,15 32:12,16 34:5 37:3 43:7,10,15 44:7 46:20 51:23 53:14 54:2 73:13 103:24 104:5,15 113:14 124:2,6,10 128:4,6 132:19 135:11 147:20 150:15	correctly 17:7 47:17 86:5 97:3 115:10	date 6:3 19:13 35:6 38:1 59:7 64:1,11 67:25 69:3,22 70:6 71:15, 16 105:9 106:8 126:10 167:2 168:2, 12
complete 123:6	consents 126:10	conveyed 75:23	cost 89:9,11 90:17	dated 10:6 17:3 18:7 27:12,17,18 32:8 33:22 35:1 70:25 71:4 72:24 90:5,10 106:21 112:11 117:4 118:20 119:3 122:8 123:13 127:25
compliance 66:10	considerable 38:19	copied 117:20	costs 12:23 13:2,5 102:10	dates 59:16,18 125:14 126:2,18 127:22
complicated 139:14 140:10	consideration 42:15	copies 80:6 100:25 122:24	counsel 3:25 4:11,22 5:15 11:16 53:17 68:3 80:20 89:1 98:14 103:4,5,19,25 105:16,17,22 115:16 116:18,20, 22 117:1,25 126:1, 6,7,15,24 127:14 128:20 129:12 160:1	Dawes 149:1
composure 75:11	considered 79:3	copy 10:4,5 13:12,15 32:12,16 34:5 37:3 43:7,10,15 44:7 46:20 51:23 53:14 54:2 73:13 103:24 104:5,15 113:14 124:2,6,10 128:4,6 132:19 135:11 147:20 150:15	cost 89:9,11 90:17	day 11:1,17 56:5 58:21
compromise 24:23	consistent 80:9 81:1	corner 129:25	counteroffer 74:18,19 75:1 76:16 77:15,20	
compromised 23:11 89:5 94:16 100:20 102:13	consulted 146:7	corporation 9:17	County 47:13 66:1 70:11	
computer 120:16 135:21,22, 24	contact 81:19	correct 3:11,18 4:16 9:5,11 15:22,23 17:12 18:11,15,20 22:13 38:9,11,13,14 43:24	couple 50:17 57:16 102:9 125:6 134:16	
computers 135:22	content 123:17	correct 3:11,18 4:16 9:5,11 15:22,23 17:12 18:11,15,20 22:13 38:9,11,13,14 43:24		
concern 91:6	contents 27:23	corner 129:25		
	contest 3:23	corporation 9:17		
	context 46:4,9,15 47:1 93:4 148:1	correct 3:11,18 4:16 9:5,11 15:22,23 17:12 18:11,15,20 22:13 38:9,11,13,14 43:24		
	contingency 13:9,14,23 15:7 150:15 152:14			

59:19 60:11 63:24 65:13 165:1 days 10:6 23:22 54:6 55:22 58:7,12,21,24 59:7,22 60:2,15,25 62:14 123:13 168:16 deadline 59:11,12,15 deal 98:23 dealing 36:10 dealt 65:10 death 31:22 81:21 December 51:20 52:20 56:7 68:9 69:20 122:8 123:13 130:18 decide 140:2 decided 34:12 145:24 146:15 160:21 162:14 decision 137:14 declaration 39:5 deems 164:14 deep 151:13 default 58:25 70:17 defeat 95:9 100:7 defend 163:16 defendant 46:2 53:20 63:8 64:5 113:11,16 123:2 142:15 160:3 164:12,16 defendant's 117:16 124:19,22 125:3 126:6 defendants 160:2 defense 42:9 62:21 67:18 147:17,22 148:15,	17,23 149:7 153:20, 24 154:15,19 156:6 160:2,7,16,21 161:16 162:11,12, 17 165:13 defenses 147:14 148:17 149:12 153:14,15 definition 136:18 deliberately 118:15 deliver 44:12 delivered 50:5 65:9 demand 16:13 40:11,22 44:21,22 45:10 72:2,4,23 73:2 74:10,12,13 156:20, 21,25 157:6 demanding 73:11 demands 17:10,13 18:4 39:25 45:4 92:7 dementia 56:22 department 44:10,11 51:23 52:1,4,11,23 53:1 depends 125:13 136:18 deponent 167:1,2,5 168:1,14, 15 deposition 3:6,13 4:14 5:3 27:16 49:10 53:15 57:21,23 68:4 71:5 96:25 97:8,15 112:17 128:9 166:5 167:2,7 168:2,14 depositions 3:17 81:14 describe 7:11,16 10:24 11:10 12:11 75:7 111:5 describing 21:9 36:8 142:1 143:8,25 deserve 114:21 desperately	42:17 destroyed 120:10 determinative 62:1 determined 56:21 81:5 101:9 develop 30:18 108:24 developed 24:2 developing 12:2 123:22 Dickenson 9:24 18:10 24:21 28:4 43:21 46:16 47:15,21 48:11 49:17 55:5,8 61:5 63:17 64:2 69:13 71:8 83:21 85:2 86:22 87:21 88:16 92:4 123:2 134:21 136:21 140:5 144:13,20 154:7,20 156:7 160:8,22 161:9 162:14,17 163:1 164:17 165:21 Dickenson's 18:14 38:8 47:21 51:2 53:20 67:4 95:2,11 160:16 161:21 died 134:18,25 differently 160:19 165:12,15 dig 137:4 dime 81:21 directly 147:5 disagree 57:19 133:19 disagreement 129:3 disagreements 90:24 discovery 5:9,12,15,20 28:8 65:10 discuss 12:1 42:23 118:12 157:14	discussed 87:5 89:18,24 144:17 156:25 157:6 discussing 30:2 157:9 discussion 131:11 156:19 157:16 discussions 12:21 38:15 42:7 45:22 88:21,24 dismiss 117:6,18 124:20,23 125:4,13 137:17 164:13,24 disposal 26:25 dispute 94:6 disputes 9:12 divided 107:18 Divorce 7:21 doctors 20:2 22:3 document 13:13,14 18:8 20:21,25 27:15 37:2 38:2 44:1 53:15 61:8 62:19 68:14 69:2 112:15,18 117:11 118:17,24 122:16 123:11 132:23,24 133:1 135:13 137:6 documents 4:5 5:4 8:5 10:1 16:19 17:7 20:18 43:11 65:13 115:9 120:7,8 124:13 125:2,9,15,16 132:14 doggone 165:21 dollar 40:18,21 dollars 38:18 39:25 41:8 50:13,14 Doncaster 47:19 dont' 114:5	doorstep 132:9 135:2 doubt 36:2 dozen 89:7 draft 137:7 drafted 138:1 148:18 drive 22:21 driven 135:1 driver 9:24 40:3 DUI 84:13 85:7,15,25 DUIS 85:17 88:6 duly 3:2 duties 114:9 115:5 E e-mail 20:25 68:15 e-mailed 112:19 e-mails 97:23 earlier 20:18 26:3 63:12 84:25 87:12 110:6 128:12 131:12 161:20 early 45:24 51:19 52:20 54:7 62:11 66:16 67:8 70:10 79:16 easily 27:5 easy 87:6 economics 30:23 economist 29:6 30:21 economists 29:7 effect 46:5,17 47:15 78:17

98:2 165:20 effecting 49:17 effectively 44:21 137:14 effectuate 62:23 63:5 efforts 116:10 143:8 elaborate 91:1 Eleven 156:15 Emphatically 96:13 enclosed 32:15 end 28:21 65:12 72:21 73:4,7 79:23 81:24 89:17 93:7 104:23 138:23 140:13 ended 134:23 157:25 endurance 3:23 engines 48:14 enjoy 22:19 enjoyed 22:13,23 ensure 66:10 enthusiastic 24:2 entire 7:15 62:19 111:13 142:5 162:24 entity 9:18 entrance 85:25 envelope 43:8 epidural 21:7,10,19,22 22:25 23:23 24:22 equally 52:16 essentially 11:5 15:6 75:13 137:6	establish 28:3,5 41:18 estimate 8:12,13 93:19 96:17 158:1 estimated 8:22 93:23 ethical 115:7,8 eve 93:10 event 152:11 events 136:25 evidence 29:5 31:16 evidencing 122:24 exact 6:3 EXAMINATION 3:3 150:4 159:12 exception 81:17 excess 39:25 40:11 exchange 4:6 111:6 exchanged 3:5 65:13 exclude 14:11 excruciating 19:14 excuse 28:3 29:14 33:5 34:5 35:13 59:4 90:21 119:12 126:5 150:21 157:21 excuses 120:22 execute 37:16 46:3,11 168:15 EXH 13:9 17:2 27:11 32:7 34:25 37:15 43:6 53:7 70:24 90:4 106:20 112:10 117:3 118:19 122:7 123:8 124:19,22 127:25 exhaust	91:11 exhibit 13:13 18:8 22:10 26:17,18 27:16 29:1 30:1 32:12,20,23,24 33:11,21 34:7 35:7 37:7 44:5 51:10 53:15 54:24 57:8 62:9 68:12 69:1 71:4 73:12 80:3,6 92:25 101:19 103:2, 24 110:13 112:15 116:3 117:13 118:24 122:16 123:12 125:4,5 128:6 141:17 142:7 150:11 152:22 156:13,14 157:15 160:1 163:21 164:3, 8,9 exhibits 110:6 existing 107:25 expectations 91:7,10 expected 42:6 expense 110:20 158:22 expenses 82:22,23 83:4 84:1 94:21 95:2,22,25 96:2,8 111:18 158:2 159:7 experience 24:11 79:6,23 experienced 24:20 26:20 expert 102:22 experts 100:18 expired 63:21 64:15 expires 168:24 explain 24:12 31:10 40:7 84:9 94:22 109:2 explaining 143:6 explanation 34:9 extended 158:21	extent 45:18 49:2 127:18 extra 115:20 F fact 19:10 62:2 88:4 95:5,15 96:9 100:6, 9 120:1 136:1 144:6 153:8 facts 149:6 factual 148:14 failed 62:22 63:5 132:10 165:20 fails 168:15 failure 147:17,21 148:15 fair 17:22 70:13 81:25 94:8 97:11 107:22 127:24 149:9 fall 6:4 16:1 familiar 48:12 49:2 family 47:22 Farm 39:11 fast-forward 111:3 131:25 133:13 faxed 112:18 faxes 82:6 February 168:25 fee 10:5 13:9,14,15,23 14:23 15:7 45:16,21 82:13 86:10 150:15, 24 152:19 feel 110:25 feeling 66:24 103:6 Feldman 6:1,9 9:25 10:6,10,	15,20,25 11:16,21 12:22 13:5,16,17 14:10,17,23 16:12 19:6 20:22 21:6,10, 19 22:2,12,24 23:22 24:13,19 25:11,13, 15 29:10,12 30:19 31:24 32:11 38:16 40:11 41:19 42:8 43:10,17,20 45:23 46:16 59:10 61:22, 23 66:17 69:13 71:8 72:15 73:10 74:1,3 75:8 76:18,22 77:20 78:23 79:4 83:21,22 85:1,14,16 86:6 87:25 88:15 89:8,12 90:5,13,21 92:3 93:4 95:1 96:2,7,24 97:1 99:25 100:6,15 102:6 103:3,11 105:15 108:25 109:5,21 115:14 117:1 126:1,7 127:20 132:16 137:24 138:5 147:7 150:18 156:25 157:1 159:14,19 165:10 167:4 168:3, 4 Feldman's 9:23 10:13 20:8 28:6 32:2 35:24 41:22 62:6 67:15,23 72:9 91:10 94:8,18 95:8 96:20 97:18 98:3 100:19 107:15 108:8,17 152:1 158:2 Feldmans 44:16 82:15 86:23 88:25 105:21 106:14 111:13 127:15 137:15 146:18 Feldmans' 145:4 146:18 fella 65:25 felt 20:4 21:7,10,12,19, 21 24:25 27:7,9 29:21 87:2 102:14 162:9 Fieldman's 63:16 fifteen 8:17

file 16:4 58:12 61:8,19 63:8 68:14,22 81:23 99:11 111:13 113:7 115:15,22 118:7 122:2,5 123:5,6 132:10 135:19 137:15 145:23 155:5 161:22 filed 15:2,15,16,21,24,25 16:2,7 43:16 53:16, 23 57:7 58:5,18,20 59:24 60:3,4,5,8 64:12,22 70:8 83:18 103:20,24 105:10, 15 118:4 121:12 122:20 129:9 132:6 148:8 153:3 156:12 160:3 168:17 files 22:5 65:9 153:13 filing 16:7 59:7 60:23 61:16 81:15 82:13 103:5 104:6 117:16 122:17 145:13 146:4 final 76:3 finally 28:18 find 48:15 100:18 103:4 105:21 113:23 120:21 124:8 138:18 146:23 167:7 fine 4:1,13 33:7 34:18 39:3 41:15 50:11 53:6,13 57:6 68:1 88:13 107:1 112:7 149:22 155:22 165:9 Finger 65:19 70:25 71:6 72:24 73:19 74:1 76:24 78:6 92:20 93:15 156:17 Finger's 73:23 finish 24:13 29:14 136:17 152:6 155:10 finished 29:15 50:19 84:18	firm 7:4,7 50:20 83:11 106:11 112:18 118:3,25 122:1 123:21 145:4,13 146:18 fit 162:13 flattered 159:21,22 flip 137:8 focus 8:3 folks 149:20 follow 48:6 150:8 follow-up 53:10 76:21 97:3 159:14 footnote 28:25 foregoing 167:7 168:15 foreseeable 108:7 109:9 forgot 63:10 form 14:3 18:21 23:25 24:24 40:16 80:8 95:13 96:11 114:12 139:4,11,22 140:22 153:16 154:10,17, 23 155:6 157:7 158:3 159:8 160:24 161:23 formality 3:13 formally 47:5 formed 9:17 formula 158:16 forthcoming 47:24 forward 31:22 139:1,19 140:11 144:23 found 48:7 73:3 156:11 fourth 29:25	Fran 50:3,6,8 51:22 55:2, 12 56:17 120:23 frequency 25:11,14 friends 25:21 97:6 front 23:22 50:8 92:9 96:6 110:5 115:10 125:20,21 130:19 141:18 142:13,20 149:3 fruition 20:14 full 3:7 22:14 30:1 39:5 91:20 102:1 110:15, 16 fully 132:10 future 30:2,18 31:4,16 108:8,25 109:9,12, 20 110:16 G gal 120:23 garbage 26:24 gardening 26:24 Gary 3:1,9 17:2 27:11 32:7 34:25 37:10 70:24 90:4 106:20 112:11 118:20 122:7 123:8 150:6 155:20 167:2,4,6 168:4,12 gathered 17:11,15 18:18 gathering 16:19 gave 16:10 48:4 50:21 51:1 124:9,10 general 7:19 154:14 generally 10:24 16:17 79:13, 15 111:6 generates 135:14	gentleman 30:25 31:23 56:16 get all 41:20 42:12 girl 84:19 111:9 gist 120:22 give 28:14 29:9 31:4 46:19,20 50:20 68:19,22 77:14 104:12 136:24 151:20 156:1 giving 131:8,22 155:1 glad 3:23 4:8 golf 22:13,19,23 23:1, 11,23 24:22 25:8, 11,15,17,20 26:6 89:6 91:3,22 94:18 96:20,25 97:18 98:3 100:7 golfer 24:2 good 3:5,12 4:24 14:20 18:24 21:22 23:15 30:21 41:8 49:14 55:20 62:6 66:1 73:7,8 75:4 86:24 89:23 102:15 133:17,18 140:9 144:22 150:12,13 151:21 Google 28:21 governing 58:3 63:16 115:5 163:15 grain 76:6 grant 164:13 great 4:18 49:9 87:1 greatly 22:15 87:9 89:5 group 43:11 guarantee 87:16 guess	66:15 gun 136:6 guy 66:1 guys 92:12 137:23 H habit 105:19 157:14 half 29:19 66:11 89:6 109:6 hand 37:10 102:2 132:23 handle 49:16 79:14 83:25 152:4,9 165:10 handled 12:13 26:25 115:13 116:25 hands-on 66:13 handshake 86:15 Hang 29:2 130:21,23 138:17 158:4 happen 39:12 happened 11:5,11 18:1 76:23 79:20 111:6 129:5 132:13 134:17 138:21 144:1,9 145:21 happy 8:6 20:19 21:16 97:20 146:22 147:16 hard 38:23 77:6 82:25 87:13 115:24 116:7 head 7:14 154:3 headache 55:18 heading 62:24,25 health 72:9 101:4 hear 55:11,21 138:2

heard 124:12 145:21 162:3	hour 29:20	improvement 67:1	44:10,11 51:23 52:1,4,11,23 53:2 62:16 117:5,17 153:4,9	55:17
hearing 86:4 124:12 125:14 128:4,13 130:15,18 131:3,6 137:20 138:12,15,24 141:8 142:5	hours 145:24	impugned 23:13	insured 27:4 163:17	Jeff 149:1 150:6
hearings 125:18	house 10:11,13,16,17,25 11:17 85:4,22	inable 29:16	intend 41:3	Jerri 117:4 122:8
heavy 111:10	Huh-uh 49:15 52:9	inadvertently 32:13,22 33:13	interest 111:19	Jersey 142:14
held 29:17	hundred 38:17 40:18 41:7 50:13,14 96:4	incident 127:19 146:10	interfere 115:17	job 101:16,17 150:13 165:9 167:3 168:3
high 19:24 72:21 73:6 75:21 93:24 156:8	Hyde 49:1 51:8	include 162:11	interim 102:2 137:21	judge 124:12 125:21,22 127:3 128:4 130:22, 23 131:6,8,12 132:4 133:16 134:25 137:19 138:23 139:8,12,14 140:8, 18,19 141:3,9,12, 15,19 144:7,22
Hilton 7:14	I	included 32:22 33:13 113:24	internal 15:10 59:6	Julian 66:5 69:12 87:3 96:19,22,24 97:2,18 99:5 106:21 107:5 117:3,15 124:2 125:13 140:7,8,14 144:25 152:21
hint 156:1	idea 34:14 60:9 92:5 93:19 141:19 146:3 148:19	including 115:13	Internet 48:13 49:19 51:2	July 16:18 17:3 18:13 88:12 110:13
HIPAA 80:8	identical 34:1	incurred 82:23 92:3 93:4 94:21 95:2,10,23 96:2	interrogatories 65:10,14 125:17	June 88:12 167:2 168:2
hire 46:19	identification 13:10 17:4 27:13 32:9 35:2 37:17 43:8 53:8 71:1 90:6 106:22 112:12 117:7 118:21 122:10 123:9 124:21,24 128:1	infirm 10:15 25:9	interrupt 4:21	jury 23:22 24:12 25:2,3 40:1,9 41:4 68:16 69:18,21 70:12 94:17,25 96:6,7
hired 47:13 66:5	identified 59:6	information 17:11,18 18:17 19:8 46:22 48:16 54:20 55:1,9 92:21 94:15 145:10 146:21,23 147:3	intersection 11:7,8	
history 131:3,8 141:21	identifies 81:11	informed 69:17	intervene 145:13,23 146:2,5	
hit 11:8	image 104:13	initial 7:2	introduced 31:16	
hold 12:16 26:11 114:1 127:3 163:23	immediately 76:19 120:1,3 134:24 154:24	initially 19:22 50:16 91:23	involve 100:24	
holds 57:5	impaired 101:10,15	initials 151:23	involved 84:4 91:2 127:19	
holiday 69:19	impairment 22:4 101:5,14 158:9,15,16	injection 21:7,11,20 22:25	involving 9:10	
home 16:23 26:23 56:22 135:21,23	impressed 31:20	injections 24:22 108:8 109:5,8	irritated 79:2	
honest 129:4,6	impression 16:10	injured 58:15 66:25 91:23	Island 7:14 48:23,25 49:2	
honestly 163:10	improper 62:24 153:20 154:1 160:15 162:12	injuries 20:8,24 24:12,19 25:9 78:24 91:21 99:25 100:20	issue 77:23,24 91:22	
Honor 144:8	improperly 154:8	insistence 89:5	issues 35:24 150:10	
Honorable 117:4		instructing 98:21 133:20	J	
hope 69:19		insurance 18:14 22:8 39:9	January 36:9 54:4,7 56:9 60:7 62:11,15 63:11 64:9,14 66:3 69:18 128:1,5 130:16,20 131:7 138:12,14 141:9 142:6 145:2 160:10 161:4	
horizon 81:5			jeez	
				K
				Karma 85:21 87:8,22
				keeping 150:12
				Kinard 124:12 125:22 128:5 130:22 131:6, 8,18 132:4 133:16 134:18,19,25 137:19 138:23 139:8,12,14 141:9, 12,15,19 144:7,13
				kind 75:10 79:17 83:17 109:12 112:3 129:8
				knew 6:16 19:25 22:23 59:16,18 61:15

72:4,13,22 87:4 92:20 98:8 102:25 132:21 162:12,22	leading 12:3 26:2 155:25	licensed 3:10 7:8	162:19 163:3 165:22	make 4:22 15:14 25:16 26:4 28:21 39:4 41:5,25 44:21 45:4 59:15 63:12 69:1 72:11 74:18,19,22 77:11 78:6 80:2,5 87:6 95:6 96:5 104:18 115:15 131:4 161:14
knock 93:25	learn 48:10	lie 25:3,5,6,7	lose 87:18	making 30:2 41:21 72:23 102:6
knowledge 27:24 71:25 123:24 136:21 138:9 148:13 149:10	learned 47:20 72:8	life 30:17 31:5,7	losses 26:20 27:3	malpractice 98:12 120:18
L	leave 76:4	light 11:8 41:4 54:18	lost 7:23 28:6 75:10 99:21 100:2,8 101:11	man 57:1 133:17,18
La-z-boy 19:18	leaving 79:17	limitations 15:11,18 63:15,20 64:15 78:4 148:24 149:7 162:11	lot 7:20 12:16 19:21 65:25 66:19 81:20 86:14,25 96:23 126:12 146:14 157:16	man's 57:1
landscaping 26:23	led 20:9	limited 9:6,10 100:2,19	love 70:5 93:13	March 36:10
lane 11:6	left 75:13 76:18,22 78:18 137:15	limits 41:21 42:24 44:22 45:10 57:14	low 28:21 72:21 75:2 156:8	mark 15:11 37:6,11 57:8 59:5 103:23 106:18
language 165:13	legal 98:12 114:15	lines 138:25 144:6	lowered 88:4	marked 13:10,13 14:3 17:3 18:8 27:12,16 32:8 33:21 35:1,7 37:16 43:8 53:8,15 70:25 71:4 73:12 90:5 103:2 106:21 112:12,15 116:3 117:7,13 118:21,24 122:10,16 123:9,11 124:20,23 128:1,6 141:16 142:6
large 67:22 168:13	letter 17:2 18:7,9,12 20:25 22:6 27:11, 17,23 32:7,16,17 33:20,22 34:1,8,13, 25 35:5,6,8,19,20 37:2 52:4,23 56:10 66:20 67:16 70:24 71:4,5,24 72:24 73:11 80:14,18,24 81:22 90:4,9,12,18 92:19 96:3 101:3 103:1,7,13,17 106:20 107:4,6,10 109:4,11 112:3,7,10 113:2,6,18 116:3 117:3,12,15 118:19, 25 119:4,14 122:7, 17,19 124:7 156:16 157:2,5	list 126:15 129:1,2	luck 140:9 144:22	marking 26:17
larger 84:4 104:18	legal 98:12 114:15	listed 128:19,20	lying 25:1	material 55:10
late 52:19,22 56:7	letter 17:2 18:7,9,12 20:25 22:6 27:11, 17,23 32:7,16,17 33:20,22 34:1,8,13, 25 35:5,6,8,19,20 37:2 52:4,23 56:10 66:20 67:16 70:24 71:4,5,24 72:24 73:11 80:14,18,24 81:22 90:4,9,12,18 92:19 96:3 101:3 103:1,7,13,17 106:20 107:4,6,10 109:4,11 112:3,7,10 113:2,6,18 116:3 117:3,12,15 118:19, 25 119:4,14 122:7, 17,19 124:7 156:16 157:2,5	listening 134:14	M	materials 48:13 65:8 81:24
law 7:3,7,9,13,17 9:18, 20 41:24 44:7 57:3 61:24 62:4 64:7 102:16 106:11 112:18 118:3 123:21 139:15,25 140:1 145:4,13 146:17 151:12 162:13 163:22 165:5	letters 16:13 18:4 22:3 34:4,16 66:22 67:25 77:9 80:7 82:8 89:14,15 97:23 100:22 102:9 109:22 110:7,12 124:4	litigation 12:24 13:6 21:4	Macgregor 51:7	matter 19:11 38:24 46:17 81:10 82:3 85:6,7 88:15 100:10 102:2 115:13 123:1 136:1 145:4 147:7
Laws 163:12	letting 126:19	lived 49:20 86:1	made 14:16 17:8,14 18:5, 20 19:7 21:14 31:23 39:18,24 40:10,24 41:5 43:3 49:21 50:4,11,15,18 55:23 58:7 71:24 72:2,4, 23 74:10 75:9 76:16 77:17,20 78:20 83:2 89:8,10 101:13 109:19 120:14 136:2 137:8 142:22 143:8 146:4 156:21	matters 9:1 36:9 58:3 81:11 143:8 157:9
lawsuit 5:14 15:21 43:21 46:1 47:1,6 64:2,21, 22 83:18,21	liability 94:6 95:11	living 36:1 56:22	mail 43:7,15 54:5 56:6	maximum 67:1
lawsuit's 64:5	Liberty 44:13,15 45:14 53:17,20,23 62:16 66:5 73:18 74:18 75:18 117:5,17 147:5 153:4,6,9,23 154:12 162:24,25 164:19,23	location 48:24	maintain 132:11	McDonald's 5:7
lawsuits 8:9		located 48:8	maintenance 26:23	
lawyer 3:10 23:15 24:8,11 66:5 99:5 114:18, 20,23 115:4,12 147:22		Lois 6:15 11:21 14:23 43:17 73:10 74:2 167:4 168:3	Maitley 125:20	
lawyer-client 12:2		long 29:18 48:23,24,25 49:2 114:7 165:1	majority 9:14	
lawyers 111:17 148:18		longer 6:22,23 22:18 26:22 27:1		
		looked 5:4,11 49:19,20 56:16 57:3 110:7 115:22,23 116:7 120:21 132:23		

meaning 139:23	merits 78:7 89:2 90:15 98:10	82:5,17 84:10,20,22 86:25 87:1,6,14,15 88:8,10 98:4	N	15 78:13 89:4,14,15 120:3 130:4 134:18 139:16 143:20 153:1 158:12
means 44:25	message 75:2,23,25 76:3	monies 81:11 82:3,4 83:20, 23	named 15:1 85:21 113:11 164:16	numbered 80:19 158:9
meant 30:10 115:19 116:5	met 85:1	month 93:8 137:25	nature 7:16 15:12 66:7 78:8 81:3 82:24 99:12	numbers 19:25 94:1,3
meantime 138:2	Metro 106:11 111:4,18 112:18 115:25 116:4,10 118:3,11, 25 123:21 124:3 132:5,13 133:10 138:4,12 141:5 145:3,12,13 146:17 162:4	months 20:17 87:12 100:7 109:6	needed 42:17 78:25	O
med 39:11,16	Michael 47:12 132:21	morning 3:5	negligence 27:4	object 18:21 23:25 24:24 40:16 95:13 96:11 114:12 139:4,11,22 140:22 155:21 160:24 161:23
mediation 65:15,25 71:8,14, 16,18 72:12,14,16, 20 73:1,18,21 74:4, 11,23 75:5,13,21 77:5,13,19,22 78:8 79:24 88:22,25 156:21	Middle 143:18	mortgage 27:2 28:10,11,19	negotiating 76:11	objecting 98:22
mediations 79:14,20	midst 70:14	motion 103:5,20,25 104:7, 15 105:15 116:18, 20 117:6,12,18 118:4,9,12 124:12, 20,23 125:3,13 126:5,6 129:9 131:9 137:16 145:13,23 146:2,4	negotiation 74:8	objection 114:14 122:8,18,20, 23 123:4 153:16 154:10,17,23 155:6 157:7 158:3 159:8
mediator 65:19 72:12	Mike 132:24	motions 65:11	negotiations 77:5 79:8,16	obligation 115:15 121:8 127:20
mediator's 74:6	million 20:4 39:25 40:11,21	motorist 163:16	neighborhood 70:19	obligations 127:17
medical 11:10 16:19 27:3 30:2,18 36:2 66:17 67:1,8,9,15 80:8 81:2 82:23 94:20 95:2,22,24 96:2,8 100:16,25 101:2 107:15,19 158:2 159:7	mind 32:21	movant 104:16	neighbors 47:23	oblique 25:16 26:5
medicals 31:5,16 35:22 92:2 93:3,9,12 94:2,5,12 95:10 96:5,16 107:25 108:12,25 109:13,20 110:17 158:12,20	minute 65:4 105:2	move 70:12,21 104:23 156:13	non-trick 41:1	obtain 128:3
medicals 31:5,16 35:22 92:2 93:3,9,12 94:2,5,12 95:10 96:5,16 107:25 108:12,25 109:13,20 110:17 158:12,20	minutes 5:12 29:19	moved 39:2 68:3	nonservice 48:5 55:15 132:21	obtuse 118:15
meet 5:25 10:19 74:5 91:6	missed 59:10	moves 154:3	north 76:13	occur 10:10
meeting 10:9 11:17 12:8	mistake 50:11 60:14	moving 28:7 33:16 89:1 105:17	Norton 129:24	occurred 9:25 10:11 63:18 136:22 161:15
memorandum 140:1	misunderstandings 4:7	multiple 120:9 134:6 136:2 137:9,10	Notary 168:13	October 9:25 10:7,23 16:12, 17,18 19:12 27:12, 18 32:8,18 33:22 35:1,6,9 43:18 51:12 59:20,24 60:5,11 63:18,21,23 64:1,23 67:14 70:8 80:23 112:11,19,24 114:4 117:4 118:20 119:3 126:22
memorized 163:8	mitigate 147:18,22 148:15	Murphy 112:10 125:20 130:24 131:12,15	note 21:1 36:14	off-the-record 32:6 90:7 116:14 124:18 147:11
memory 118:14 135:24	mitigation 23:24	Mutual 44:13,15 45:14 53:17,20,23 62:16 66:6 73:18 74:18 75:18 117:5,17 147:5 153:4,6,9 154:12 162:25 164:19,23	notes 74:22,23	offer 18:20 19:3,5,7,9
mention 77:23,25 78:3	mixed 126:14	Mutual's 53:17 153:23	notice 70:20 117:5,17	
mentioned 26:3 65:7 131:12 142:5	modification 14:11		notifications 70:15	
	moment 10:8 37:19 110:11 124:17 125:6		notwithstanding 35:23 40:21	
	moments 61:1		November 51:19 52:3,20,22 54:13,14 60:6 130:10 131:2	
	money 9:12 38:22 39:14 42:18 50:8,10 81:9		number 4:3 8:14 21:5 25:13, 15 31:6 37:23 43:5 49:3,4 68:23 69:2,	

75:4,9,17,21,24 76:3,7 77:12,17 79:3 88:18 89:23 111:20	owed 84:10	passed 62:8 90:9 117:13	people 7:19,22 48:14 54:21 60:17 79:22 81:21 82:18 105:20 120:9 134:7 138:6	30:18 31:5,8
offered 102:3	P	passing 18:7 27:15 43:10 71:3 107:4 118:23	percent 14:9,11,13 45:21,23 101:10 150:24 151:18 152:12	planner 30:18
offering 39:1 98:4	p.m. 166:6	past 4:23 90:24 146:9 158:2	percentage 101:5	planning 30:17 32:4
office 9:20 73:23 115:23 135:22	pages 131:7 142:23 143:3 167:5 168:15	past-incurred 159:6	percentages 101:14	plans 28:5 29:8 80:9
Oliver 31:1	paid 24:3 39:15,16 42:3 82:12,20 84:12 111:19 119:18 149:16	Patrick 112:11 118:20	perfect 46:25	Platt 67:16
once-thriving 27:2	pain 19:14 35:24 95:18, 21	pattern 20:14	perfecting 47:3	play 13:2 23:1,23 24:21 58:1 103:20 129:14
one's 27:18 35:6 119:1	paper 132:10	pause 118:16	period 16:24 22:7 57:9 60:15 100:2,14 120:17 134:12,14, 16 160:9	played 24:3 96:25 100:7
one-page 80:18	papers 61:11 113:25 132:12 133:8 162:20	pay 13:2 39:11,16 84:11,17 86:8,13,14 87:9,15,17 88:1,2 89:11,20 101:17	periods 29:18	playing 22:13 23:11 25:7, 17,19 89:6 91:2 94:18
one-time 120:6	paragraph 14:2 18:19 19:1 22:14,17 30:1 36:8 63:1,2 91:20 102:1 107:14 108:1 110:15,16 148:25	paying 12:23 13:5 89:9,11 94:20 148:18 149:1	person 48:22 56:25 78:10 84:15 86:13 101:9 140:7	plea 9:1
ongoing 119:15	paragraphs 72:3	payment 45:14 18 50:4,14 81:14 86:21	personal 9:7 136:21 138:8	pleadings 5:8,11 43:16 46:6 47:1,3 50:5 66:9 113:16
opening 75:17 156:20,25 157:6	Park 49:1 51:8	payments 81:14,15	personally 65:23 119:22	pleas 8:15 9:3
operate 9:18	parse 164:25	Pendarvis 3:4,25 4:2 12:5 13:11 17:5 18:22 24:1,5 25:4 26:8,9, 10 27:14 30:12 32:10 35:3 37:13, 18,23,25 40:20,24 43:3,9 53:9 61:25 65:3,6,22,24 66:2 69:5,9 71:2 90:2,8 92:14,18 95:17 96:14,18 98:20 99:3 106:4,6,10,19,23 112:13 114:13,17, 19 116:15 117:8 118:16,22 122:11 123:10 124:16,25 128:2 132:8 139:5, 17 140:4,21,24 147:12 148:4,7 149:24 150:2 153:16 154:10,17, 23 155:6,12,25 156:20 157:7,17 158:3 159:8,13,16, 20,23,24 161:2 162:5 164:2,25 165:25	phone 49:24,25 55:13	pledge 40:24
opinion 29:10 39:21 102:23	part 6:3 7:2 11:21 17:11, 14 20:15 26:2 32:24 33:4,6 39:12 41:21 46:7 62:25 123:18 134:19	participated 73:21	photographs 16:22	plenty 65:8 132:8
opinions 31:16	parties 74:5,7	parties 74:5,7	phrase 44:24	plug 48:17
opportunities 151:11	party 13:2 18:10 41:19 42:11 46:10 53:21 63:4 94:19 153:13, 15	parties 74:5,7	physical 29:22 36:16	point 3:21 34:22 39:4 68:2 70:23 83:8 85:11 107:2 108:16 111:4 117:22 120:15 121:22 129:15 131:22
opportunity 151:10	pass 13:12 18:3 33:19 35:4 53:14 104:3 112:14 122:15 123:11 125:1 128:5	parties 74:5,7	physicians 100:17,23	points 77:18
order 50:10 82:17 106:7 116:17,25 126:23, 25 127:12 129:15, 17 150:12		parties 74:5,7	pick 84:5	police 16:24
orders 129:20		parties 74:5,7	place 130:16	policy 40:14,18 41:7,20,23 42:24 44:21 45:10, 19
ordinarily 81:17,18 105:19		parties 74:5,7	plaintiff 13:1 15:1 62:22 63:5 165:19	poor 7:22
original 92:7 168:16		parties 74:5,7	plaintiff's 122:25 126:5	portion 14:3,8
out-of-pocket 96:8		parties 74:5,7	Plaintiffs' 122:9	position 113:24 137:15
outfit 28:10		parties 74:5,7	plan	possession
outlining 90:15		parties 74:5,7		

107:16 possibly 137:3 postaccident 107:19 postage 82:8 power 26:24 practice 3:11 7:9,17,19 9:18 practiced 41:24 practicing 7:13 102:16 preaccident 107:19 predicate 83:2 127:19 146:10 preexisting 36:7 94:23 preference 105:16 prep 67:5 prepare 5:2 125:9,11 prepared 43:23 76:11 121:15 122:1 125:23 126:4 135:4 preparing 5:15,19 presented 13:16 32:13,25 president 134:10 pressure 38:19 pretty 12:25 33:25 51:18 52:9 66:13 75:3,20 84:7,8 87:4 151:21 163:6 previous 36:5 48:16 price 26:25 88:4 primarily 20:1 printed 135:19 Prioleau	32:8 33:23 34:8,12, 17 35:1,9 prior 6:8 66:20 83:12 88:25 134:5 137:11 privilege 98:24 privileged 73:2 96:24 problem 25:18 42:16 problems 73:3 95:16 procedural 5:13 procedure 57:14 163:7,12 168:16 proceeding 46:12 proceedings 104:16 proceeds 42:12 83:15 process 46:5,18,19,20 47:12 48:23 49:21 50:2,24 51:4,14 53:4,11 54:18,20 55:2 56:19 57:9 61:2,6 62:3 66:6,10 77:23 81:16 82:17 113:15 119:19,24 122:25 133:23 134:6 136:15 137:3 138:5 142:14 processing 135:13,18 produced 80:6 111:16 135:7,9 product 98:18,24 production 65:11 122:2,5 125:17 professor 30:23 promised 84:11,16 141:11 proof 54:18 60:23 proper 62:23 63:5 164:14 165:20	properly 64:21 154:5,21 156:7 proposed 134:11 135:5 prospect 90:17 prospective 12:8,14 protect 111:18 121:12 127:21 protected 64:24 prove 28:16 provide 113:14 119:21,22 121:21,22 126:11 provided 107:14 113:8 123:5, 6 125:15,16 providers 66:17 67:8,15 providing 80:8 provision 152:12,13 provocative 115:1 proximately 27:3 Public 168:13 puffed 95:25 puffing 73:4,6 pull 32:21 pure 49:6 purely 39:18 purpose 35:19,20 107:9 121:9 pursuant 44:5,7 168:16 pursue 46:13 pursued 152:1	pursuing 46:3 pushed 134:21 pushing 38:23 put 23:12,13 41:4 59:17 61:11 73:1 81:23 98:6 111:8 133:8 putting 38:19 132:22 Q question 4:9 13:3 14:20 23:5, 9 24:7,10,13 26:14 40:8 42:14,20 46:8 52:18 53:10 54:10 80:25 86:24 90:18 91:16 94:24 95:6 97:13,22 99:2,4,21 100:12,22 110:19 126:9 135:18 137:1 140:15 149:4,6,9 152:6 155:10 160:19 161:10,11 163:25 questions 4:4,6 21:15 37:8,21 41:1 97:3 112:20 125:7 149:2 150:3 155:25 159:25 160:14 166:1 quick 103:14 155:13 quickly 137:24 163:8 quote 122:24 138:24 144:7 R raised 163:2 ran 58:22 59:23 range 8:22 157:17 rarely 75:4 rate 109:9 ratings	22:4 raw 56:13 re-served 155:2 reach 100:16 reached 38:6 98:14 99:5 reaching 140:21,23 read 18:25 22:17 28:20 36:13 61:25 62:19 63:2 69:11 112:20, 22 126:23 139:15, 25 140:16 148:24 164:11 166:3 167:7 168:14 readdress 4:9 reading 30:5,8,11 reads 60:14 ready 24:16 37:20 56:4 86:25 real 55:20 103:14 realization 20:12,13 realized 20:5 reason 36:2 42:1 68:5 70:7 93:11 98:3 151:25 167:9 168:5 reasonable 13:2 19:4,9 20:5 38:25 40:15,18 72:3,12 86:7 reasoning 97:4 recall 11:14,19,23 45:25 68:11 73:5,20 88:5, 17 92:22 96:22 97:19,25 98:5 103:6 104:1,6,8,11 122:6 124:15 146:25 receipt 43:15,16 60:25 receive 54:2,20 119:4

received 10:14 54:5,9,14,19 55:9 56:1 61:2 62:15 75:1 87:11 113:6 118:9,12 137:10 144:12,20 155:8 156:6 160:6 161:15 162:8	18:1 reframe 161:10 regimes 36:14 rehabilitation 29:9 rehabilitations 100:18 reimburse 83:23 reimbursed 83:14 relate 51:21 related 6:5 16:20 36:3,6 143:9 relationship 12:3 15:5 relay 38:25 Release 37:15 relief 164:14 relieved 68:3 89:1 105:17 116:19,20 125:25 129:10 130:10 relieving 116:25 rely 49:8 remember 12:19 21:25 23:2,4, 7,8 31:19 33:25 41:14,16,17 42:17, 18 50:1 51:6,7,15 55:16 56:2 57:1 67:10,25 68:6,8,20 76:2 77:21 78:12,14 79:11 80:11 89:19 93:14 97:2 105:18, 20 108:13 109:14 112:2,6 113:1,5 118:13 119:5 129:4 133:9 135:9 146:3 157:22 remove 32:14 33:10 Repeat 161:6 rephrase 4:9 24:6 28:3 34:6	95:5 replied 97:1 reporter 30:7,9 37:6 167:3 168:2 reports 16:24 represent 9:22 10:2,3 12:17 18:4 20:24 21:3 34:15 52:2,21 67:13 85:14 86:1 103:18 110:1 116:16 126:20 142:4 representation 6:9 7:3 11:22 12:12 16:12 17:12 45:24 86:6,22 106:12 111:5 114:10 115:6 representative 18:13 33:20,23 represented 19:13,14 representing 11:21 108:18 138:5 request 69:17 121:21 requesting 100:25 requests 5:9 65:11 89:8 require 60:22 required 61:15 144:21 requirement 46:25 47:2,3,5 researched 28:20 residence 57:4 resolve 38:7 respond 116:8 137:16 response 4:19 53:10 89:13 113:20 116:4 119:13 125:12 140:15 165:7 responses 5:9,16,21 126:5 responsibility	26:22 responsible 94:20 restate 18:23 rests 132:9 result 92:3 95:11,23 retail 94:3 return 167:5 168:15 returned 62:3 Reuben 66:23,24 68:4 80:7 101:3 109:12 review 5:8 66:9 reviewed 5:18 rewind 106:25 ribs 39:3 ride 97:5 riding 25:20 right-hand 129:25 rights 163:16 risks 42:8,23 Road 47:19 Robert 5:25 19:6 43:17 58:14 90:5 151:17, 20 167:4 168:3 Robert's 44:17 role 74:7 room 78:24 rooms 74:7 Roseneau 117:4 122:8	roster 68:10,17 69:18,21 70:11,13 129:18 round 22:19 24:21 25:23 Rubner 66:23 rule 57:13,14,20,24 60:14,18,24 61:15 114:24 165:20 rules 3:14 57:3,16 58:1 60:22 98:20,23 115:5 142:18 163:11 168:16 ruling 141:3 running 146:9 S S.C. 163:10 sailed 90:1 salt 76:6 Sam 114:7 116:9 119:1 124:10 128:22,23 138:20 145:8 Samuel 118:19 Sarah 18:10 53:19 123:2 154:20 156:7 164:17 sat 128:24 satisfy 62:4 Save 149:18 saves 91:16 149:15 scenario 79:14 scene 16:21 schedule 68:4 137:20 scheduled 65:15 135:1

scribbled 132:24	154:5,8,12,21 156:7	settlements 38:25 84:1	30:11	sought 122:23
scroll 105:3 130:3	server 46:19 47:12 48:23 50:2 53:4,11 55:2 56:19 61:3 113:16 119:19,24 133:23 134:7 136:16 138:6 142:14	settling 42:24	Silverthorn 28:10	soul 133:16
search 48:14 113:14 119:15	servers 81:16 137:3	severe 20:9 78:24	Similar 74:14	South 3:11 7:9,12,17 30:22 44:7 168:13
searched 113:7 156:8	service 46:5,17 47:15 48:21 49:17,21 51:2,14 52:8 53:8 54:15,18, 20 55:8,13,23,24 56:1,5,11,12 57:1,4, 6,8 58:7 60:23,25 62:3,23,24 63:5,9 66:6,7,10 77:23 104:4,6 106:8 113:3,11,24,25 115:20 117:6 119:16 120:6 121:2, 10,11 122:9,25 133:5,6 136:15,19, 21 137:11 138:9 139:10 143:9,11 153:20 154:1,21 155:5 156:5 160:15 162:12 165:20	severely 102:13	simply 47:24 63:10 79:2 134:7	southern 49:7
season 69:19	serving 11:16 48:3 50:24 55:20 82:18	shape 62:7	single 20:21	spasms 24:3
secretary 44:9 54:15	session 78:22	share 152:18	sir 8:2,16 54:24 69:24 94:24 96:1 104:25 143:13	speaking 141:2
section 151:12 158:15,21 163:4,11	set 157:18	sheet 43:6,11 44:8	sit 29:18 115:8	specialist 29:9
sections 143:1	settle 16:8 18:20 19:7,23 102:2	ship 90:1	situation 79:19 96:21 129:21	specific 12:5 44:6 154:20 162:23
segments 99:24	settled 28:5 38:20,24 39:7 45:24 46:10 72:18 85:10 134:17,22 137:23,24 138:3,22 145:9	Shissias 66:22 101:3 109:11	skilled 98:7	specifically 12:19 28:13 160:8
sell 25:2	settlement 15:25 16:1 19:3 32:17,19 37:16 38:16 39:12,17,18 40:2,14,17 41:9 42:19 43:4 66:21 67:6 72:17 73:8 77:4 79:15 81:12 83:2,12,15 87:11 88:19 89:20 99:9 107:12 111:20 145:14	short 87:17 146:14	skills 24:8	specifics 112:4
send 34:12 134:11		shortly 16:2 75:13	skip 69:14 122:12	speculate 8:24 11:12
sending 51:25		show 10:7 17:19 60:18 68:13 80:16 104:3, 13 105:6 126:16 147:16	slash 56:22	speed 35:22 80:22
senior 110:11		showed 95:15 128:22	slate 83:18	spend 81:9
sentence 18:25 36:13 90:23 91:5,20 102:1 112:25 113:7 153:8 158:16 159:2 161:6		showing 4:4 104:5 107:24 108:4	sleep 19:19	spent 81:11 82:3 83:12,20
separate 36:14 45:4 74:7 125:18		shows 108:21	sleeping 19:18	Spokeo 48:14
September 32:16 38:2 40:1,13 58:15 90:5,10 91:10 93:5 103:1 105:11 107:3		side 5:13 93:8 137:8	slim 162:10	stand 91:15
series 4:4		sides 39:15 129:9	slow 20:13 52:13	standard 13:22 14:21 151:7
serve 46:21 47:4,18 48:22 57:10,15 58:1,13, 20,22,23 62:2 122:1,4 142:15 161:8		sign 14:23 127:11 166:3 168:14	slower 11:6	standards 28:20
served 44:7 53:1 55:5 56:15,20,25 60:6,7, 21 61:6 64:5 113:16 119:22 120:4 121:5, 6 122:23 142:17		signature 13:19 27:20 35:11, 15 64:11 71:9,17 105:5 106:2 122:19 167:1,5 168:1,15	small 79:3 108:22	standing 3:12
		signed 12:10,15,23 13:17 34:4,5 43:16 106:9 123:13,14 125:4,5 129:15,17,20 135:2	smoke 136:4	start 75:5 155:15 162:2
		significant 82:4,5	smoking 136:6	started 3:6 17:18 20:16 39:1 74:9 75:11
		silently	smoothly 115:16	starting 72:20 73:6 83:17
			social 25:21	state 3:7 39:11 44:9 47:22 48:11 49:18 54:15 55:8 161:21 168:13
			Sonya 17:3 18:16 27:12	stated 22:9 96:3,15
			sort 51:12 66:11	

statement 41:14,16 71:11 72:11 73:18 121:20 122:22 136:14 140:17 142:22 statements 20:23 22:2 35:23 71:23 98:2 109:19 states 13:13 68:15 113:2 163:18 stating 61:5 80:7 93:15 statute 15:18 53:22 58:8,9, 21,22 63:15,20 64:14,23 78:3 148:24 149:7 162:11 163:15 statutes 15:11 44:5,6 stay 79:22 104:16 stayed 127:14 staying 85:22 step 48:20,22 49:17 115:20 122:12 stick 41:12 stood 135:2 stop 4:22 17:1 145:14 stopped 120:23 story 49:9 street 7:19 strike 151:17,22 strike-out 150:24 struck 152:15 style 68:24 styled 125:2 165:12 subject 69:6	submit 73:18 submitted 116:17 123:25 124:11 144:8 145:1 subpoena 67:17 122:2,9,18,23 substance 4:11 5:2 10:24 73:11 142:24 substitute 103:4 105:16 substituting 116:18 substitution 103:19 116:22 117:2 126:24 129:12 subsumed 15:6 successful 85:18 suffered 22:15 24:13 suffering 35:24 95:19,22 sufficient 40:2,14 suggest 18:18 suggested 160:15 161:20 suggesting 32:21 suit 120:18 sum 22:16 27:3 summarize 101:23 summary 97:7,9,10 107:22 128:11 summer 16:16 20:17 26:2 85:8 88:11 89:9,18 102:12 summons 43:7,13 44:8 51:24 57:15 58:2 64:4 122:25 Sun 47:19	supplement 67:3 support 101:10 148:14 149:7 supposed 73:2 surgeries 36:3 surgery 36:4 surprised 87:9 surrounding 91:21 swing 25:22 switch 34:10 127:4 sworn 3:2 system 59:6 systems 120:16	24 96:1 119:20 121:17 127:17 128:19 130:8,23 131:15 133:4 140:14,19 143:14 144:25 147:20 160:9 162:24 talks 90:23 91:5 tasks 26:23 TD 6:18,20,21 7:4 tears 27:8 telephone 102:8 112:23 120:14 telling 23:7 26:21 28:15 40:1,7,9 78:23 99:17 111:17 ten 8:9 60:25 87:12 90:3 156:15 158:22 tend 101:10 tendered 45:14,17 terminate 114:10 terminating 115:6 terms 15:4 51:22 76:18 79:13 161:16 165:13 Terry 65:19,21,22 70:25 71:6 76:24,25 78:9, 14,23 156:16 testified 3:2 61:1 62:14 92:19 158:1 161:1 testify 29:23 testimony 4:12 31:4 71:18 72:22 75:14,20 84:25 86:5 92:22 94:7 95:8 97:8 99:6 101:22 102:21 111:1 116:2 134:5 135:4 157:23 160:5, 20 161:14,19 165:11,14 167:8	that'll 104:19 149:22 therapist 29:23 therapy 29:22 36:16 thereabout 83:11 thing 25:21 36:18 40:4 48:15 79:18 97:4 127:5 129:9 133:18 134:24 141:5 148:19 151:15 things 3:14 11:11 12:1,11, 16 15:11 16:19 17:6 22:4 27:9 61:12 65:12 72:8 78:13 81:3 82:23 86:14 121:17 128:18 134:17 139:13,16 146:6 150:7 160:18 165:14 thinking 49:5 51:19 55:17 thirty 168:16 Thomas 37:22 69:7 79:19 84:9 114:25 150:23 155:11,21 167:3 168:2,13,24 thought 10:4 16:3 20:14 24:16 71:13 73:7 75:3,22 81:4 91:23 115:24 116:1 131:15 143:11 145:15 146:6,7,10, 15 151:16 162:8 thoughts 22:1 31:24 thousand 38:18 40:18 41:7 162:3 thousands 137:3 three-year 15:18 60:15 thrown 7:23 84:19 120:10 135:23 till 143:19 time

3:22 6:16 7:15,22 12:22 13:24 15:19 16:24 17:15 19:9,17 20:5,6 21:2,3,16 25:8 26:5 29:18 38:6,18,21 39:21 49:7,10 50:18 54:19 55:9 56:2,23 57:8,9, 14 58:1,8,9,16 59:1 60:8,15 64:23 66:3 70:17 72:4 76:17 77:2,7,14,18 85:1 88:7 89:18 99:24 100:2,14 102:12 103:19 106:17 108:17 111:4 114:8 120:5,17,19,20,22 125:25 126:14 131:22 134:13,15, 16 137:2 144:5 146:14 147:10 149:18 150:3 160:9 162:9,15 163:6 time-stamped 54:4 timely 15:15 60:21 times 16:23 23:10 25:13, 16,22 27:7 28:9,12 29:21 43:5 50:17 60:18 84:3 88:4 89:4,7 120:9,10,12, 20 title 13:14 today 4:4,15,20,24 5:3,6 43:21 44:2 94:7 128:9 132:11 told 20:4 21:21 25:13, 15,25 29:21 38:20, 23 39:22 43:1 48:2 61:14 72:7 77:8,9 88:2,7,22 89:4,6,19, 20 97:4 102:12 108:13 114:5 132:4, 17 134:20 137:5 138:6 139:8,18 144:7 145:8,20 toll 58:8 tolls 58:9 Tom 106:3 159:15 tomorrow	132:11 top 52:14 93:16 157:18 topic 70:23 total 108:4 trail 33:17 transcript 4:24 127:25 128:4,8 129:24 130:1 131:8, 21 132:3 138:15 141:25 142:4,23 166:3 168:16 transcription 167:8 transfer 69:17,21 70:12 transferred 68:16 transferring 115:9 transition 115:15 transpired 65:5 118:18 149:23 travel 22:21 treated 39:6 66:17 treating 82:1 treatments 11:10 30:2 36:12,24 80:23 99:25 100:16 trial 8:10 23:15 24:8,11 28:6,16 29:5,7,23 30:19,22 31:13,17, 18,19 41:16 68:10 69:18,21 70:12 78:16 87:1 90:18 93:7,10 95:25 102:22 108:16 110:20 152:2 trick 40:25 41:3 trigger 54:11 118:14 triggered 78:13 155:4 165:16 triggers 70:18	Trisha 92:15 167:3 168:2, 13,24 trouble 151:13 truck 7:23 true 27:24 93:22 167:7 trustworthy 86:12 truthful 39:22 turn 44:12 turned 152:2 turning 101:19 type 4:7 48:15 typical 11:25 typically 16:3 93:6,9 100:25 U uh-huh 3:16 12:9 14:1,5 19:2 22:11,21 23:18,20 27:19 29:3 30:3 31:14 33:18 35:16,25 37:5 40:12 43:12 45:3 46:14 51:5 52:5 53:5,24 55:3 56:14 60:1 61:4 62:12,17,20 63:19 64:13 65:2, 18,20 67:19 70:9 71:7,20 72:10 76:20 80:1 82:14,16 83:10 84:14 85:12 86:3 90:11,25 95:7 97:16 100:5 101:6,24 106:15 107:17 108:3,6 110:14,22, 24 111:21 112:22 113:9 117:14 119:2, 10 122:21 126:25 128:14 129:11 130:5,12 131:10,13, 24 133:21,24 134:1 136:23 137:13 144:2,10 148:10 150:19 157:19 160:4,17 161:17	UIM 39:4,20 43:2,4,5 ultimately 116:17 unadulterated 49:6 unanswered 23:9 underinsurance 42:1,3 72:19 91:12 underinsured 41:20,22 42:10,11 44:15,22 45:11 46:4,13 47:1 153:11 163:16 164:20 underlying 83:2 undersigned 167:6 understand 4:16 8:20 17:25 46:7 47:17,20 54:16 58:11 78:19 82:10 91:4,9,19 147:13 155:14 165:11,15 understanding 17:6 76:10 81:1 82:12 86:20 93:2 98:25 101:20 116:1 153:12 161:18 understood 24:7 55:7 84:25 93:3 unfair 165:4 University 30:22 unreasonable 72:23 73:5 unspecific 154:14 untoward 133:10 update 67:9 V valued 158:17 values 108:24 varied 29:19	vehicle 11:7 verbal 4:18 verbally 168:14 verbatim 10:23 verge 27:8 versus 43:20 46:16 69:13 visited 16:22 visiting 19:11 vocation 29:9 100:17 W wages 28:6,9,12 99:21 100:2,8 101:11 wait 105:2 145:8 155:20 waited 56:2 waive 166:4 walks 22:19 wanted 19:22,23,24 28:12 39:19 50:8,13 81:6 87:5 91:11 99:18 110:25 137:20 140:3 149:5 washing 26:24 ways 65:11 126:8 week 55:12 62:13 weeks 51:17 56:3 weird 53:19 whatsoever 42:1 94:6 wherefore 45:1 74:14 163:17 164:5,8,12,22,23

who'd 115:12 wife 6:10 11:21 72:15 78:23 win 87:3,18 window 26:24 winning 85:19 wiped 135:25 Wise 17:3 18:16 27:12,17 34:11 withdraw 103:5,21,25 104:7 withdrawal 104:15 Witt 47:12 48:2 49:13 51:16 53:12 132:21 Witt's 132:24 woman 56:20,23 85:21 won 39:13 84:18 wondered 146:8 Wood 31:1,3,12,25 32:1 Wood's 31:15 word 108:2 135:13,18 words 64:20 work 27:1 29:11,16 84:10 88:1 98:17,24 100:19,21,24 101:15 120:9 worked 6:15 87:13 100:10 101:12 129:4 workers' 101:17 working 107:11 worried 120:18	worry 55:19 77:2 160:23 worth 102:23 112:8 wrap 149:21 wreck 63:17 write 21:9 81:14 writing 20:22 22:2 23:12,14 68:24 168:15 written 86:18 93:21 99:8 103:12 141:11 wrongful 31:22 wrote 18:9,12 22:3,6,8 27:25 35:6 77:9 89:14 100:23 Y year 6:4 17:18 19:12 27:5 28:21 66:11 69:19 70:3 90:24 years 22:7 24:3 31:18 41:24 58:10,15 78:10 83:4 100:7 102:17 128:23 158:22 yesterday 125:17 York 47:22 48:11 49:18 50:10 55:8 61:3 119:24 133:5 134:7 135:1 137:7 138:6 142:14 young 85:21 86:21 87:22 88:1 125:20,21 Z Zeller 49:25 Zeller-wood 50:7,24 51:13,22 53:12 55:1 82:17 134:6,10 137:2 138:6	Zeller-woods 54:21 Zellner-wood 50:1 55:11 81:18 119:20 154:25 zeros 129:24

EXHIBIT
2

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) C/A No.: 2015-CP-07-01251

ROBERT E. FELDMAN and LOIS J.
FELDMAN,

Plaintiffs,

vs.

GARY P. COGGIN,

Defendant.

**RULE 56(f), SCRPC
AFFIDAVIT OF
THOMAS A. PENDARVIS**

THOMAS A. PENDARVIS
BEAUFORT COUNTY, S.C.
CLERK OF COURT

2016 JUN 27 PM 12:41

Personally appeared before me, Thomas A. Pendarvis, who first being duly sworn, says:

1. I am a lawyer licensed and in good standing in the State of South Carolina and in the State of Georgia.
2. The testimony in this Affidavit relates to matters of fact, as to which I am competent to testify as I am over the age of eighteen years and not affected by anything which would affect my ability to testify.
3. I am counsel for the Plaintiffs in the foregoing action, which asserts legal malpractice claims based on the Defendant's handling of the Plaintiffs' claims arising from a motor vehicle collision.
4. I have reviewed the Defendant's Motion for Summary Judgment filed on May 16, 2016 ("Motion").
5. The Motion provides that it is based on the following grounds: "the pleadings, depositions, answers to interrogatories, and admissions on file show that there is no genuine issue as to any material fact ..." and recites that the " ... Motion is further

based on South Carolina Jurisprudence, the South Carolina Rules of Civil Procedure, the pleadings and discovery in this action, and any Memorandum and affidavits that will be subsequently filed."

6. The Motion makes reference to depositions which have not yet occurred. Currently, the deposition of a key witness, Julian Allen, J.D. (defense counsel in the underlying "under insured motorist" lawsuit at issue) is scheduled for September 13, 2016, and no depositions have been taken of the witnesses to the underlying motor vehicle collision or Plaintiff, Robert Feldman's treating physicians.
7. The Plaintiffs have actively pursued and continue to actively pursue discovery in this matter, including having only recently conducted the deposition of Defendant Coggin.
8. Also, Plaintiffs have consulted with several potential expert witnesses. At this point, Plaintiffs have commenced the process of information exchange with some of these potential expert witnesses and anticipate shortly having justification to identify said expert witnesses as expert witnesses for trial.
9. Eight weeks prior to filing the present Motion, in his "Response to Request for a Scheduling Order" filed on March 16, 2016, the Defendant argued that "[d]iscovery in this case will be extensive and will likely require over a year to complete" and that ... "[t]he remaining discovery necessary to get this case ready for trial will likely take over a year to complete."
10. The parties entered into a Scheduling Order by consent, establishing that the Plaintiffs shall identify each expert witness by no later than August 1, 2016; and that discovery shall be complete no later than December 1, 2016. That Order was forwarded to the Court for approval and signature on May 18, 2016.
11. On behalf of the Plaintiffs, my firm has consulted and will shortly identify four experts:

an expert competent to provide a life care plan and corresponding opinion regarding the future medical needs of Mr. Feldman, an expert competent to provide a report and corresponding opinion regarding Mr. Feldman's vocational rehabilitation possibilities, an expert competent to provide an additional opinion as to the various acts and omissions of the Defendant which constitute legal malpractice and the cause of the damages suffered by Plaintiffs, and an expert competent to reduce the damages claimed by Plaintiffs to present value.

12. Discovery in this matter is not complete, as Julian Allen, J.D., and these four referenced experts, have not been deposed, and Plaintiffs have only recently, not even two days ago, received the deposition transcript of the Defendant. Additionally, the additional needed depositions are likely to necessitate additional requests for production of documents.

13. At a minimum, we request the opportunity to take depositions of Julian Allen, J.D., possibly some of Plaintiff Robert Feldman's treating physicians, which will allow the four referenced experts to develop their opinions.

14. There are genuine issues of material fact that have not been resolved, including the fact that the Verified Complaint recites that Defendant Coggin did not obtain an affidavit or other sworn statement by any individual establishing proof of service of process on the at-fault driver in the underlying case at issue pursuant to Rule 4(d), SCRCP, (Compl. at ¶ 22.) and Defendant Coggin denies this allegation. (Ans. at ¶ 22).

15. The question of proximate cause of the damages suffered by Plaintiffs is in dispute, as Plaintiffs contend that Defendant Coggin's failures to properly serve the at-fault driver, and to properly prepare the case for settlement, mediation and trial, resulted in

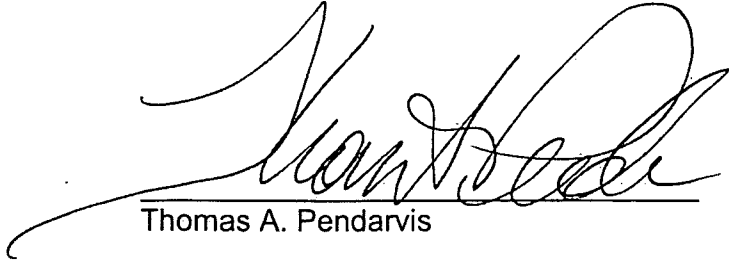
Plaintiffs losing valuable rights, whereas Defendant Coggin claims, that the Plaintiffs' claims were drastically reduced in value because Mr. Feldman attempted to play golf; or in the alternative that Defendant Coggin would have been successful in defending the UIM carrier's Motion to Dismiss.

16. While the parties agree that Defendant Coggin owed duties to the Plaintiffs, the parties disagree as to whether Defendant Coggin violated those duties, whether such violations were the proximate cause of the damages claimed, and the value of damages that Plaintiffs claim.

17. Depending on the outcome of pending discovery, the Plaintiffs may seek to amend their Verified Complaint to include additional specific allegations of legal malpractice, based on Defendant Coggin's failures to secure a life care plan expert, a vocational expert and an expert to reduce the damages to present value, which separately and/or together resulted in Plaintiffs losing valuable rights, including diminution in the settlement value of the case.

18. Plaintiffs respectfully submit that for the foregoing reasons, which are essential to justify Plaintiffs opposition, Plaintiffs respectfully submit that this Court continue the hearing on Defendant's motion for summary judgment until such time as discovery is been completed.

FURTHER AFFIANT SAYETH NOT.


Thomas A. Pendarvis

Beaufort, South Carolina

June 24, 2016

SWORN to before me this

24 day of June, 2016



Melanie Weitzel
NOTARY PUBLIC
State of South Carolina
My Commission Expires
July 2, 2024

 (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission expires 7/2/24

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

ROBERT E. FELDMAN and LOIS J.
FELDMAN,

Plaintiffs,

vs.

GARY P. COGGIN,

Defendant.

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) C/A No.: 2015-CP-07-01251

**RULE 56(f), SCRPC
AFFIDAVIT OF
THOMAS A. PENDARVIS**

2016 JUN 28 PM 1:30
JERRI ALAN ROSEHEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Personally appeared before me, Thomas A. Pendarvis, who first being duly sworn, says:

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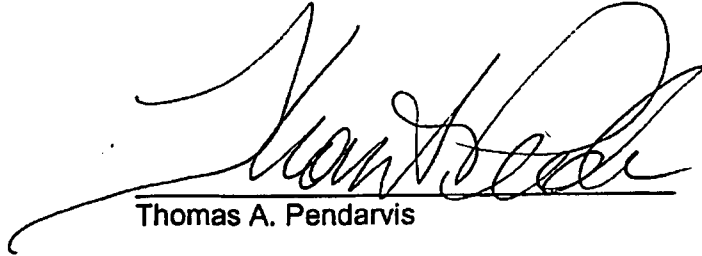
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18. Plaintiffs respectfully submit that for the foregoing reasons, which are essential to justify Plaintiffs opposition, Plaintiffs respectfully submit that this Court continue the hearing on Defendant's motion for summary judgment until such time as discovery is been completed.

FURTHER AFFIANT SAYETH NOT.


Thomas A. Pendarvis

Beaufort, South Carolina

June 24, 2016

SWORN to before me this

24 day of June, 2016



Melanie Weitzel
NOTARY PUBLIC
State of South Carolina
My Commission Expires
July 2, 2024


(L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission expires 7/2/24

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2015-CP-07-1254

Robert E. Feldman and Lois J. Feldman,

Plaintiffs,

vs.

Gary P. Coggin,

Defendant.

**PLAINTIFFS' SUPPLEMENTAL
MEMORANDUM IN OPPOSITION
TO DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

2016 JUL 11 PM 3:48
JEREMY ANN ROSE
CLERK OF COURT

To: M. DAWES COOK, JR., J.D. AND JEFFREY M. BOGDAN, J.D., COUNSEL FOR
DEFENDANT:

Plaintiffs, Robert E. Feldman and Lois J. Feldman, respectfully submit this
Supplemental Memorandum in Opposition to Defendant's Motion For Summary Judgment.

**Defendant Coggin's negligence which compromised the
value of the Plaintiffs' claims in the underlying UIM lawsuit
is at the heart of Plaintiffs' claims in this lawsuit.**

I. The allegations in the Verified Complaint.

Pursuant to S.C. CODE ANN. § 15-36-100(B), the Verified Complaint includes at least one act of professional negligence which centers on Defendant Coggin's failure to timely serve the at-fault driver. In addition, the Verified Complaint also contains language which clearly places Defendant Coggin on notice of the existence of additional claims or refinement of existing claims.¹ The Verified Complaint contains the following factual averments:

¹ Plaintiffs have asked counsel for Mr. Coggin to accept service on an Amended Verified Complaint that contains specific allegations concerning Mr. Coggin's errors in failing to prepare the underlying case for settlement or trial, which Plaintiffs contend proximately resulted in a diminution in the settlement value and trial value of their claims.

45. Coggin failed to meet the minimum standard of care thereby breaching his professional duties to the Feldmans by other such particulars as the evidence in this case may demonstrate.

46. As a direct and proximate result Coggin's breach of his professional duties by the actions and omissions as specified herein, the Feldmans sustained actual, consequential, and incidental damages in an amount to be determined by the jury at the trial of this case.

52. Coggin failed to meet the minimum standard of care thereby breaching his contractual duties to the Feldmans by other such particulars as the evidence in this case may demonstrate.

53. As a direct and proximate result of Coggin's breach of his contractual duties by the actions and omissions as specified herein, the Feldmans sustained actual, consequential, and incidental damages in an amount to be determined by the jury at the trial of this case.

Mr. Coggin has responded to such allegations with a Motion for Summary Judgment on the grounds that even if Mr. Coggin was negligent failing to serve the at-fault driver in the UIM case, that breach did not proximately cause the Plaintiffs to suffer any damages because there was no final ruling and Plaintiffs could have been successful in defending the UIM carrier's motion to dismiss in the underlying UIM case. Even if Defendant is correct regarding the motion to dismiss (which is disputed), Mr. Coggin's failure to prepare the Feldmans' case greatly reduced the settlement value of the UIM case.

II. Disputed actual issues bearing on whether Mr. Coggin's failure to prepare the Feldmans' case proximately resulted in a diminution of the settlement value of the Feldmans' claims.

Mr. Coggin accepted the representation of the Feldmans in October 2010, less than one week after the motor vehicle collision that gave rise to the Feldmans' claims. In September 2012, after making several \$1.5 million demands, Mr. Coggin recommended the Feldmans accept a \$85,000, the available \$100,000 liability policy. On October 29, 2012, Mr. Coggin filed the Summons and Complaint in the underlying UIM case. On

January 4, 2013, Liberty Mutual filed its Answer which included the defense of "Improper Service" claiming that "Plaintiff's failed to effectuate proper service under Rule 12(b)(4) and 12(b)(5)." On January 4, 2013, Liberty Mutual also served Mr. Coggin with interrogatories and requests for production. On March 19, 2013, after several months of past no response, Liberty Mutual filed a motion to compel. On June 24, 2013, the court issued a Consent Order Granting Defendant Liberty Mutual's Motion to Compel, which required the Feldmans to provide complete responses within 20 days "will be subject to sanctions." On July 9, 2013, Mr. Coggin signed Plaintiffs' Answers to Defendant's First Set of Interrogatories. On May 6, 2014, the parties in the underlying UIM lawsuit participated in a mediation. The mediation was unsuccessful and on September 16, 2014, Mr. Coggin filed a "Motion for Withdrawal of Appearance and to Stay Proceeding."

At no point during Mr. Coggin's nearly 4 year representation of the Feldmans, did he 1) provide the UIM carrier with sworn testimony by any of the treating physicians causally linking Mr. Feldman's injuries, medical expenses, and future medical needs to the motor vehicle collision; 2) take deposition testimony of any fact witness, treating physicians, or any other expert witness; 3) retain a vocational rehabilitation expert to establish Mr. Feldman's present and future lost wages; 4) retain a nurse with life care planning certification to prepare a life care plan report showing present and future medical needs and expenses; or 5) retain an economist prepare a report showing the present value of Mr. Feldman's future medical expenses. Plaintiffs expect testimony from Julian Allen, who was representing Liberty Mutual in the underlying UIM lawsuit, showing that had Mr. Coggin prepared and developed the causation and damages aspects of the Feldman's

underlying claims, it would have been more likely than not that Liberty Mutual would have offered substantially more than \$25,000 to resolve the Feldmans' claims.

III. Loss of settlement value caused by a lawyer's negligence can be recovered in a legal malpractice action.

Mr. Coggin's motion should be denied on the grounds that the Feldmans should be allowed to complete discovery and present this Court with facts showing that Mr. Coggin's acts and omissions proximately caused a diminution in the settlement value of their claims.

The client's burden of establishing proximate cause in a legal malpractice action ... does not necessarily compel the client to demonstrate that he would have won the underlying case. **Rather, it is enough for the legal malpractice plaintiff to show that he has lost a valuable right; e.g., the settlement value of the underlying case.**

Doe v. Howe, 367 S.C. 432, 446, 626 S.E.2d 25, 32 (Ct. App. 2005) (emphasis added).

"[I]n cases applying the preponderance of the evidence burden of proof, the nonmoving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-S. Mgmt. Co.*, 673 S.E.2d 801, 803 (S.C. 2009). Claims by a legal malpractice plaintiff survive summary judgment with a showing of a scintilla of evidence that establishes that he would have received a larger settlement **or** that he would have most probably prevailed on the underlying claim at trial. In *Hall v. Fedor*, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002), the Court of Appeals held in a legal malpractice case that a former client **"could satisfy the 'most probably' requirement and defeat [the defendant lawyer's] summary judgment motion by establishing he 'most probably' would have received a larger settlement."**

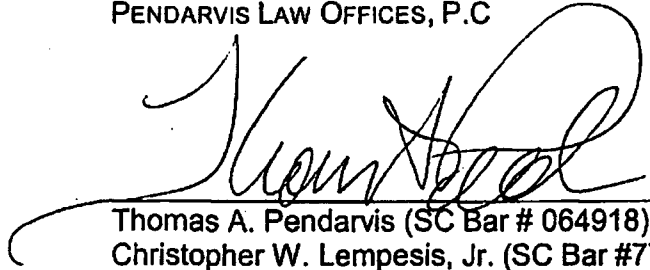
Mr. Coggin's deposition establishes that the value of the Plaintiffs claims in the UIM case were as high as the highest demand made by Mr. Coggin on behalf of Plaintiffs. The highest demand that Mr. Coggin made was \$1,550,000.00 (Coggin dep. 18:17-19:7, June 8, 2016). Additionally, Mr. Coggin's deposition establishes that Mr. Feldman's actual medical expenses occasioned by the collision subject of UIM case were at least \$100,000 to \$130,000 (Coggin dep. 94-96); and that Mr. Feldman's condition rendered him unable to work for at least two more years, resulting in lost income of over \$200,000.00. (Coggin dep. Ex. 3 at pg. 2.). The case settled for \$25,000.00. The question is whether the negligence of Mr. Coggin was the proximate cause for the diminution in the settlement value of the case. "Ordinarily, the question of proximate cause is one of fact for the jury ..." *McNair v. Rainsford*, 330 S.C. 332, 349, 499 S.E.2d 488, 497 (Ct. App. 1998). In the context of this particular case and Motion for Summary Judgment, Mr. Coggin requests that the Court rule as a matter of law that the motion to dismiss was winnable and that because the motion to dismiss was winnable, as a question of fact, Mr. Coggin's negligence could not have been a proximate cause for the case settling for an extremely low figure. This conclusion would require the court to rule as a matter of law that the Motion to Dismiss was without merit, but then also that if the Motion to Dismiss had been won, that the case was not devalued because of Mr. Coggin's negligence.

Plaintiffs have already provided Mr. Coggin's deposition in response to the Motion for Summary Judgment, which demonstrates a scintilla of evidence as to the value of the UIM case and the \$25,000.00 that the case settled for. The question of proximate cause of the diminution in value of the case is a factual question that should be considered by the jury; and Defendants have not and cannot provide a factual basis for the court to conclude

that Mr. Coggin's negligence was not a proximate cause of the extremely low settlement amount relative to the other competing values of the case which are outlined in Mr. Coggin's deposition. Additionally, the Verified Complaint (verified under oath) provides factual averments, with the significance of an Affidavit, that other particulars that the evidence reveals will support that as a direct and proximate result Coggin's breach of his professional duties and breaches of contract by his actions and omissions the Plaintiffs sustained actual, consequential, and incidental damages in an amount to be determined by the jury at the trial of this case. Counsel for Plaintiffs has provided a Rule 56(f), SCRCF affidavit which outlines the fact that discovery in this matter, under the Consent Scheduling Order agreed to by Mr. Coggin, is not yet complete, and that as a result, as of the filing of this Motion for Summary Judgment, Plaintiffs are not able, yet, to provide the factual particulars by affidavit which will further outline the negligence of Mr. Coggin which resulted in the devaluation of the UIM Case at settlement and which directly and proximately caused the damages complained of in the Verified Complaint. Based on all of the foregoing, Plaintiffs respectfully request that Defendant's Motion for Summary Judgment be denied.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C

A large, stylized handwritten signature in black ink, appearing to read 'Thomas A. Pendarvis', is written over a horizontal line.

Thomas A. Pendarvis (SC Bar # 064918)
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Counsel for Plaintiffs

Beaufort, South Carolina
July 8, 2016

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2015-CP-07-1251

Robert E. Feldman and Lois J. Feldman,

Plaintiffs,

vs.

Gary P. Coggin,

Defendant.

**PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR
LEAVE TO FILE AMENDED
VERIFIED COMPLAINT**

2016 JUL 19 PM 3:44
JERRI A. ROSE, J.C.
CLERK OF COURT
FOURTEENTH JUDICIAL CIRCUIT
BEAUFORT COUNTY, S.C.

To: M. DAWES COOK, JR., J.D. AND JEFFREY M. BOGDAN, J.D., COUNSEL FOR
DEFENDANT:

NOTICE

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Robert E. Feldman and Lois J. Feldman, by and through the undersigned attorneys, will move ten days after service of this motion or as soon thereafter as counsel can be heard, for an Order pursuant to Rule 15, SCRPC, to amend their Verified Complaint.

MOTION

The grounds for this motion are stated as follows:

Rule 15(a) of the South Carolina Rules of Civil Procedure provides that more than 30 days after a responsive pleading is served, "a party may amend his pleading only by leave of court or by written consent of the adverse party" Although requested to consent to the amendment of Plaintiffs' pleadings, Defendant Gary Coggin, the motions, responses, and actions of Defendant Coggin demonstrate he has not consented to the filing and service of the Amended Complaint.

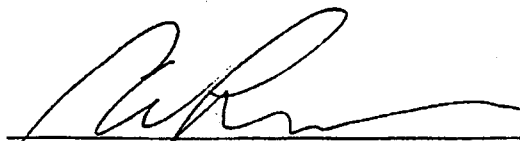
Rule 15(a), SCRPC, provides that "leave [to amend] shall be freely given when justice so requires and does not prejudice any other party." Rule 15(a), SCRPC, permits a plaintiff to add, modify, or change existing claims against an existing defendant. *Valentine v. Davis*, 319 S.C. 169, 460 S.E.2d 218 (Ct. App. 1995). The additional and/or modified allegations directed toward Defendant, as set forth in Exhibit 1, are well within the purview of acceptable amended pleadings under Rule 15(a), SCRPC. Rule 15(a) has been interpreted "to strongly favor amendments where the moving party has not been guilty of bad faith and is not acting for the purpose of delay, the opposing party will not be unduly prejudiced, and the trial of the issues will not be unduly prejudiced." *Forrester v. Smith & Steele Builders, Inc.*, 295 S.C. 504, 369 S.E.2d 156, 157 (Ct. App. 1988) (citations omitted). There are no allegations that Plaintiffs' motion to amend is in bad faith, for the purpose of delay, will prejudice Defendant Coggin, or will prejudice the trial of this case. *Shelton v. Southern Railroad Co.*, 86 S.C. 98, 67 S.E. 899 (1910) (party opposing motion to amend has burden of establishing prejudice). Plaintiffs' motion should be granted. See *Forrester v. Smith & Steele Builders, Inc.*, 295 S.C. 504, 369 S.E.2d 156 (Ct. App. 1988) ("... leave to amend shall be freely given when justice so requires and does not prejudice any other party.").

This case is subject to a Consent Scheduling Order filed with the Court on June 17, 2016, which requires Plaintiffs to identify expert witnesses for trial not later than August 1, 2016; and that discovery be completed not later than December 1, 2016. Plaintiffs are well within the time frame established in said Consent Scheduling Order to conduct discovery and to amend pleadings as a result of facts gleaned from discovery. In fact, in a pleading

signed on March 16, 2016, Defendant took the position that discovery in this matter would take more than a year from that date to complete so there is obviously, from Defendant's perspective, still much discovery to be conducted and as a result plenty of time to allow Defendant to conduct discovery to address the amendments contained in the proposed Amended Complaint. See Defendant's "Response to Request for a Scheduling Order" ("The remaining discovery necessary to get this case ready for trial will likely take over a year to complete." *Id.* at pg. 5, 6). Defendant Coggin is already aware of the allegations regarding his negligence resulting in diminution of settlement value as he was questioned and testified as to his role in diminution of settlement value in his deposition conducted on June 8, 2016, and which is on file with the Court.

WHEREFORE, on the bases of all of the foregoing, Plaintiffs Robert E. Feldman and Lois J. Feldman pray that this Court allow them to file the proposed *Amended Verified Complaint* attached to this motion to amend as Exhibit 1.

Respectfully submitted,



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Counsel for Plaintiffs

Beaufort, South Carolina

July 7, 2016

EXHIBIT**1**

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2015-CP-07-01251

Robert E. Feldman and Lois J. Feldman,
Plaintiffs,

vs.

Gary P. Coggin,
Defendant.

**AMENDED
VERIFIED COMPLAINT**
(Jury Trial Demanded)

(Legal Professional Negligence)
(Breach of Contract)

Plaintiffs, Robert E. Feldman and Lois J. Feldman, complaining of Defendant, Gary P. Coggin, would respectfully show unto the Court as follows:

SUMMARY OF THE CASE

1. This legal malpractice action centers upon the Defendant lawyer's professional negligence while representing his clients on claims arising from a motor vehicle collision in 2010. The Defendant lawyer's acts and omissions, including failing to perfect service of process on the defendant at-fault driver, allowed the statute of limitations to expire on his clients' claims. In addition, the Defendant lawyer's acts and omissions in not properly preparing the underlying case greatly reduced and compromised the value of the case. Allowing the statute of limitations to expire, and otherwise failing to properly prepare the case resulted in Feldman's inability to recover a significant portion of the \$500,000 in available underinsured insurance proceeds that, but for the Defendant lawyer's acts and omissions, would have been paid by their carrier to compensate them for personal injuries, medical expenses, lost wages, and loss of consortium claims arising from their injuries caused by the at-fault driver.

PARTIES

2. Defendant, Gary P. Coggin, is, upon information and belief, a citizen and resident of Beaufort County, South Carolina, and is an lawyer licensed to practice law in this State.
3. Plaintiff, Robert E. Feldman, is a resident of Beaufort County, South Carolina.
4. Plaintiff, Lois J. Feldman, is a resident of Beaufort County, South Carolina.

JURISDICTION

5. This Court has jurisdiction over these matters based upon Article V of the South Carolina Constitution, S.C. CODE ANN. §§ 36-2-802 and 36-2-803 (1976), and its plenary powers.

VENUE

6. Venue is proper in Beaufort County as it is, upon information and belief, the county of residence for Defendant, Gary P. Coggin.

FACTS

7. Defendant, Gary P. Coggin ("Coggin"), is a lawyer licensed to practice law in South Carolina.
8. Coggin accepted the representation of Plaintiffs, Robert E. Feldman and Lois J. Feldman ("Bob Feldman," "Lois Feldman," or collectively, "the Feldmans"), on their personal injury and loss of consortium claims against an at-fault driver, Sarah Dickenson ("Dickenson"), arising from a motor vehicle accident that occurred on October 9, 2010.
9. On October 9, 2010, Dickenson failed to properly control her motor vehicle while traveling on US 278 in Beaufort County, South Carolina, and was at fault in causing a collision with a vehicle driven by Bob Feldman, which caused Bob Feldman to suffer

substantial personal injuries, incur medical expenses, and incur lost wages, all of which gave rise to valuable personal injury and loss of consortium claims in favor of the Feldmans.

10. Bob Feldman's present medical specials alone exceed \$150,000, he has substantial future medical needs, he has substantial lost wages, and he has sustained other financial losses.

11. As part of the representation, Coggin obtained copies of the medical specials, substantial future medicals, and some materials showing Bob Feldman's substantial loss wages, and other financial losses.

12. Dickenson had \$100,000 of available liability insurance coverage for the Feldmans' claims.

13. The Feldmans had \$500,000 in under insurance (UIM) coverage with Liberty Mutual Insurance Company ("Liberty") available for injuries sustained and claims arising from the collision caused by Dickenson.

14. To get their consent to settle for only \$85,000 of Dickenson's \$100,000 liability coverage, Coggin recommended they settle for 85,000 and assured the Feldmans that he would recover the available \$500,000 in UIM coverage under the Feldmans' policy issued by Liberty. Based on Coggin's assurances, the Feldmans authorized the settlement with Dickenson and her liability carrier.

15. Coggin did not prepare or provide documents to the insurance adjuster nor defense counsel in the UIM case that actually demonstrated the lost wages of Mr. Feldman, despite Coggin having such documentation by way of, among other items, tax returns of Mr. Feldman.

16. Coggin did not timely attempt to procure nor timely recommend that the Feldmans procure services of key expert witnesses be utilized to establish Mr. Feldman's lost wages, medical expenses, nor the anticipated future costs of Mr. Feldman's medical treatment during his representation of the Feldmans.

17. Coggin settled the Feldmans' claims for only \$85,000 of Dickenson's \$100,000 available liability coverage.

18. On or about October 29, 2012, Coggin filed suit on behalf of the Feldmans against Dickenson in the Beaufort County Court of Common Pleas in a matter styled, *Robert Feldman & Lois Feldman vs. Sarah Dickenson*, C.A. # 2012-CP-07-3800 ("the Underlying Lawsuit") alleging claims for negligence and loss of consortium, and including an *ad damnum* clause seeking a total of \$525,000 in damages.

19. On or about November 29, 2012, Coggin provided copies of the Underlying Lawsuit papers to Liberty.

20. To commence the Underlying Lawsuit under South Carolina common law and Rule 3(a), SCRPC, Coggin was required to file the lawsuit with the clerk of court and accomplish service of process on Dickenson within the statute limitations in any manner prescribed by law or, if Dickenson was not served within the statute limitations, actual service was required to be accomplished no later than 120 days of the date of filing, which was on or before February 26, 2013.

21. Once service of process has been accomplished, Rule 4(g), SCRPC, required the person serving process to make a proof of service in the form of an affidavit stating, among other things, the date, time and place of service. Rule 4(g), SCRPC, also required Coggin to file proof of service with the Clerk of Court.

22. Coggin did not commence the Underlying Lawsuit.
23. Coggin did not commence the Underlying Lawsuit within the applicable statute of limitations because Dickenson was not served within the statute limitations and actual service of process was not accomplished before February 26, 2013.
24. Coggin did not at any point obtain an affidavit or other sworn statement by any individual establishing proof of service of process on Dickenson through personal service pursuant to Rule 4(d), SCRCP.
25. Coggin did not at any point obtain service of process on Dickenson through a statute or an order of court pursuant to Rule 4(e), SCRCP.
26. Coggin did not at any point obtain service of process on Dickenson anywhere within the United States pursuant to Rule 4(h), SCRCP.
27. Coggin did not at any point obtain service of process on Dickenson by an acceptance of service pursuant to Rule 4(j), SCRCP.
28. Coggin did not at any point obtain service of process on Dickenson by publication pursuant to S.C. CODE ANN. §§15-9-15 and 15-9-710.
29. Coggin did not at any point file any documents or an affidavit by an individual establishing proof of service of process on Dickenson by delivering a copy of the summons and complaint personally or by any other means.
30. Liberty retained counsel to represent Dickenson in the Underlying Lawsuit.
31. On October 9, 2013, the statute of limitations expired on the Feldmans' claims against Dickenson.
32. On or about May 5, 2014, Coggin sent a letter to a third-party concerning the Feldmans' claims stating, among other things, about Mr. Feldman's claim that "this does

not include loss of work, loss of enjoyment of life and pain and suffering. If we would consider this, the demand on UIM is \$300,000 to \$350,000." Coggin further represented that Ms. Feldman's loss of consortium claim was valued at \$100,000.

33. Coggin represented the Feldmans during a mediation of the UIM case on Tuesday, May 6, 2014.

34. In or around September, 2014, upon information and belief, counsel for Dickenson advised Coggin of their plan to file a motion to dismiss based on Coggin's failure to serve Dickenson with process, and, upon information and belief, extending on behalf of Liberty a \$25,000 offer to settle to avoid having to litigate the dispute further and because the Feldmans were their insureds.

35. On or about September 15, 2014, Coggin sent a letter to the Feldmans "advis[ing] you to settle the matter at hand for the \$25,000 that has been offered," notwithstanding his prior pleadings and representations valuing the combined claims between \$450,000 and \$525,000.

36. On October 8, 2014, almost 2 years after the Underlying Lawsuit had been filed and almost 1 year after the statute of limitations had expired, counsel for Dickenson filed a motion to dismiss pursuant to Rule 12(b)(4) and 12(b)(5), SCRCP, stating, "Although Plaintiffs filed a lawsuit within the applicable statute of limitations, Plaintiffs have failed to serve the Defendant within the applicable time period. To date, upon information and belief, the Defendant still has not been served with this lawsuit."

37. After the motion to dismiss had been filed and after the statute of limitations had expired on their claims against Dickeson but before the hearing on the motion to dismiss,

the Feldmans were terminated Coggin's representation of them and retained other counsel to take over the representation.

38. Coggin attempted to get an Affidavit of Service from the process server to indicate that the at-fault driver had actually been served the Complaint in the UIM case, however, Coggin was not able to get such an Affidavit because no such process server could be identified.

39. There was no proof of service or any other evidence that service of process on Dickenson had been accomplished in the files that Coggin delivered to the Feldmans' new counsel.

40. In several communications, including Coggin's response to a subpoena, Coggin indicated that the entire file had been delivered and that Coggin had no other documents related to his representation of the Feldmans. The file did not contain proof of service of process on Dickenson.

41. Throughout the approximately four years that Coggin represented the Feldmans, Coggin never provided information to the UIM adjuster nor counsel for the UIM carrier to substantiate Mr. Feldman's lost wages.

42. Throughout the approximately four years that Coggin represented the Feldmans, Coggin did not prepare the Feldman's file for trial.

43. Throughout the approximately four years that Coggin represented the Feldmans, Coggin did not procure expert witnesses necessary to properly prepare the Feldmans' claims for settlement or trial. Coggin did not supply needed information to UIM counsel regarding lost wages, medical expenses, nor future medical expenses.

44. Liberty paid the Feldmans a mere \$25,000 of the available \$500,000 in UIM coverage to settle the Feldmans' claims against Dickenson and the UIM policy.

45. Based on communications from Defendant Coggin urging the Feldmans to accept \$25,000.00, and the outcome of the January 6, 2015 hearing on the Motion to Dismiss, the Feldmans knew and understood that it was virtually certain that Dickenson's motion to dismiss on statute of limitations grounds would be granted. Liberty would not be required to pay the \$500,000 policy limits under the UIM policy because Coggin, as the Feldmans' legal counsel, did not satisfy the requirements of S.C. CODE ANN. § 38-77-160 by timely and properly commencing a lawsuit and obtaining a judgment against Dickenson. Based on all of the foregoing, the Feldmans agreed to settle their claims for only \$25,000 of the available \$500,000 in UIM coverage to mitigate the damages caused by Coggin's failure to commence the Underlying Lawsuit within the time period allowed by the applicable statute of limitations, the South Carolina Rules of Civil Procedure, and South Carolina common law.

46. Coggin is liable to his clients, the Feldmans, as a direct and proximate result of not performing his professional duties to:

- a. timely commence a lawsuit on their behalf before permitting a statutory time limitation to bar the Feldmans' claims against Dickenson;
- b. timely and properly prepare the lawsuit for settlement negotiations, mediation, and trial;
- c. timely and properly advise the Feldmans to secure the appropriate expert evaluations and participation to establish lost wages, and current and future medical care expenses; and

d. timely and properly supply all relevant documentation to support Mr.

Feldman's claims for lost wages, and current and future medical expenses.

47. Had Coggin met the standard of care by performing his professional duties to timely commence a lawsuit, timely and properly prepare the lawsuit for settlement negotiations, mediation, and trial; timely and properly advise the Feldmans to secure the appropriate expert evaluations and participation to establish lost wages, and current and future medical care expenses; and timely and properly supply all relevant documentation to support Mr. Feldman's claims for lost wages, and current and future medical expenses; it is more likely than not that the Feldmans would have recovered the entire amount of the \$500,000 UIM policy from Liberty.

FOR A FIRST CAUSE OF ACTION
(Legal Professional Negligence)

48. The foregoing factual and jurisdictional allegations are reiterated and realleged as though set forth verbatim.

49. At all times relevant hereto, a lawyer-client relationship existed between Coggin and the Feldmans.

50. Coggin owed duties to the Feldmans, including the duty the duty to protect, preserve and advance the rights and interests of the Feldmans by possessing and exercising that degree of care, skill, and learning which other reasonable and competent lawyers would be expected to possess and exercise under the same or similar circumstances; and in the following particulars, duties:

- a. to represent and protect the Feldmans' interests by timely commencing a lawsuit on their behalf before permitting a statutory time limitation to bar the Feldmans' claims against Dickenson;
- b. to timely and properly prepare the lawsuit for settlement negotiations, mediation, and trial;
- c. to timely and properly advise the Feldmans to secure the appropriate expert evaluations and participation to establish lost wages, and current and future medical care expenses; and
- d. to timely and properly supply all relevant documentation to support Mr. Feldman's claims for lost wages, and current and future medical expenses.

51. Coggin failed to meet the minimum standard of care thereby breaching his professional duties to the Feldmans and otherwise acted in a negligent, grossly negligent, willful, wanton and reckless manner by:

- a. failing to timely commence a lawsuit on their behalf before permitting a statutory time limitation to bar the Feldmans' claims against Dickenson; and by failing to adequately prepare the case for settlement discussions, mediation, and trial.
- b. failing to timely and properly prepare the lawsuit for settlement negotiations, mediation, and trial;
- c. failing to timely and properly advise the Feldmans to secure the appropriate expert evaluations and participation to establish lost wages, and current and future medical care expenses;

- d. falling to timely and properly supply all relevant documentation to support Mr. Feldman's claims for lost wages, and current and future medical expenses; and
- e. falling to protect, preserve and advance the rights and interests of the Feldmans by possessing and exercising that degree of care, skill, and learning which other reasonable and competent lawyers would be expected to possess and exercise under the same or similar circumstances

52. Coggin failed to meet the minimum standard of care thereby breaching his professional duties to the Feldmans by other such particulars as the evidence in this case may demonstrate.

53. As a direct and proximate result Coggin's breach of his professional duties by the actions and omissions as specified herein, the Feldmans sustained actual, consequential, and incidental damages in an amount to be determined by the jury at the trial of this case.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

54. The foregoing factual and jurisdictional allegations are reiterated and realleged as though set forth verbatim.

55. Coggin entered into a contract with the Feldmans, the terms of which Coggin agreed and contracted to provide competent and prudent legal services.

56. The Feldmans fulfilled all necessary preconditions, if any, of the contract with Coggin.

57. By virtue of their contract, Coggin owed duties to the Feldmans, including the duty to protect, preserve and advance the rights and interests of the Feldmans by possessing

and exercising that degree of care, skill, and learning which other reasonable and competent lawyers would be expected to possess and exercise under the same or similar circumstances.

58. Coggin failed to meet the minimum standard of care by failing to timely commence a lawsuit on their behalf before permitting a statutory time limitation to bar the Feldmans' claims against Dickenson thereby breaching his contractual duties to the Feldmans.

59. Coggin failed to meet the minimum standard of care by:

- a. failing to timely and properly prepare the lawsuit for settlement negotiations, mediation, and trial;
- b. failing to timely and properly advise the Feldmans to secure the appropriate expert evaluations and participation to establish lost wages, and current and future medical care expenses; and
- c. failing to timely and properly supply all relevant documentation to support Mr. Feldman's claims for lost wages, and current and future medical expenses.
- d. failing to protect, preserve and advance the rights and interests of the Feldmans by possessing and exercising that degree of care, skill, and learning which other reasonable and competent lawyers would be expected to possess and exercise under the same or similar circumstances

60. Coggin failed to meet the minimum standard of care thereby breaching his contractual duties to the Feldmans by other such particulars as the evidence in this case may demonstrate.

61. As a direct and proximate result of Coggin's breach of his contractual duties by the actions and omissions as specified herein, the Feldmans sustained actual, consequential, and incidental damages in an amount to be determined by the jury at the trial of this case.

TRIAL BY JURY.

62. The Feldmans demand a jury trial on all claims and issues so triable.

EXPERT AFFIDAVIT

63. Pursuant to S.C. CODE ANN. § 15-36-100(B) (2006), attached hereto and incorporated herein by reference as **Exhibit 1**, is the affidavit of Samuel C. Bauer, J.D., an expert witness and lawyer with experience in handling personal injury matters, which specifies at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, Robert E. Feldman and Lois J. Feldman, pray for judgment against Defendant, Gary P. Coggin, for all actual damages, consequential damages, and incidental damages, and for prejudgment interest, all in an amount to be more specifically proven at trial, and the costs of this action, and for such other and further relief as this Honorable Court may deem just and proper.

Respectfully submitted,

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Counsel for Plaintiffs

Beaufort, South Carolina

July 7, 2016

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2015-CP-07-

Robert E. Feldman and Lois J. Feldman,

Plaintiffs,

vs.

Gary P. Cogglin,

Defendant.

**VERIFICATION OF THE
AMENDED COMPLAINT**

PERSONALLY appeared before me, Robert E. Feldman, who, first being duly sworn, says: that he is a Plaintiff in the foregoing action; that he has read the foregoing Complaint; that the statements contained therein are true to the best of his knowledge except as to those stated to be based upon information and belief, as to which, he believes such matters to be true.

Robert E. Feldman

SWORN to before me this

_____ day of July, 2016

NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires _____

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

ROBERT E. FELDMAN and LOIS J.
FELDMAN,

Plaintiffs,

vs.

GARY P. COGGIN,

Defendant.

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT
) C/A No.: 2015-CP-07-01251

)
)
) **DEFENDANT'S REPLY TO PLAINTIFFS'**
) **SUPPLEMENTAL MEMORANDUM IN**
) **OPPOSITION TO DEFENDANT'S**
) **MOTION FOR SUMMARY JUDGMENT**
)
)
)
)
)
)

2016 JUL 28 PM 3:29
BEAUFORT COUNTY, S.C.
CLERK OF COURT

This matter is before the Court on the Defendant's Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Defendant hereby submits this Reply to Plaintiffs' Supplemental Memorandum in Opposition to Defendant's Motion for Summary Judgment.

Plaintiffs have not responded at all to the substance of Attorney Coggin's motion for summary judgment, which is that Attorney Coggin's alleged failure to serve the at-fault driver in the UIM Action could not have caused any harm to the Plaintiff's UIM claim. Rather, Plaintiffs assert that they wish to pursue certain new, heretofore unpled claims of professional negligence.

FACTS/PROCEDURAL HISTORY

Plaintiffs' Verified Complaint in this legal malpractice case alleges one theory of liability: that Attorney Coggin committed legal malpractice while representing the Plaintiffs in an Underlying UIM Action by failing to serve the at-fault driver in that case within the statute of limitations. This single theory of liability is succinctly recited in the first numbered paragraph of the Plaintiffs' Verified Complaint:

This legal malpractice action centers upon [Attorney Coggin's] professional negligence while representing his clients on claims arising from a motor vehicle

collision in 2010. [Attorney Coggin's] acts and omissions, including failing to perfect service of process on the defendant at-fault driver, allowed the statute of limitations to expire on his clients' claims. Allowing the statute of limitations to expire resulted in their inability to recover all of the \$500,000 in available underinsured insurance proceeds that, but for [Attorney Coggin's] acts and omissions, would have been paid by their carrier to compensate them for personal injuries, medical expenses, lost wages, and loss of consortium claims arising from their injuries caused by the at-fault driver.

(Complaint ¶1).

As required by S.C. Code Ann. § 15-36-100(B), Plaintiffs attached to their Verified Complaint that affidavit of an expert witness, Samuel C. Bauer, which, like the Verified Complaint, only alleged one theory of liability against Attorney Coggin: that Attorney Coggin committed legal malpractice by failing to serve the at-fault driver in Plaintiffs' UIM Action. (Complaint Exhibit 1, ¶14). Mr. Bauer was actually the attorney who took over representation of the Plaintiffs after Attorney Coggin withdrew as their counsel in the UIM Action, and therefore had unique first-hand knowledge of the UIM Action at the time he drafted and/or executed his affidavit.

Attorney Coggin filed this Motion for Summary Judgment to address the sole allegation of negligence Plaintiffs presented in their pleading. In his Memorandum in Support, Attorney Coggin argued that the sole theory that Plaintiffs had up to that point alleged against Attorney Coggin could not support a legal malpractice action, as a matter of law. Specifically, Attorney Coggin argued that, even assuming that he did not properly serve the at-fault driver in the UIM Action (which he does not concede), any such failure was not a proximate cause of any damage to the Plaintiffs because the UIM carrier waived its right to use the defense of failure to make service when it failed to properly plead that as an affirmative defense in its answer in the UIM Action. Attorney Coggin's detailed, sixteen page Memorandum in Support, cited the South Carolina Rules of Civil Procedure, South Carolina case law, instructive case law from the Fourth

Circuit, and instructive case law from other jurisdictions that supported his argument that any alleged failure of service was waived as a defense in the UIM Action, and therefore, the alleged failure of service would not have had any effect on the underlying UIM Action, which means that it did not proximately cause any injury to the Plaintiffs in this case.

Instead of responding to Attorney Coggin's substantive arguments, Plaintiffs first filed a Rule 56(f) Affidavit of their attorney, Thomas Pendarvis, stating that more discovery was needed to respond to Attorney Coggin's Motion. Also in this affidavit, Plaintiffs made reference for the first time to a new theory of liability against Attorney Coggin: that he breached the standard of care by failing to properly prepare the UIM Action for settlement, mediation, and trial.

Plaintiff then filed a Memorandum in Opposition to Motion for Summary Judgment. Again, instead of addressing Attorney Coggin's substantive argument that his alleged failure to serve the at-fault driver could not support this legal malpractice action, Plaintiffs challenged the procedural appropriateness of Attorney Coggin's Motion for Summary Judgment, argued that more discovery was necessary, and argued that, aside from the service of process issue, Attorney Coggin committed legal malpractice by failing to properly prepare the UIM Action for settlement, mediation, and trial.

At the hearing on Attorney Coggin's Motion for Summary Judgment, Attorney Coggin, through counsel, demonstrated that Plaintiffs' sole theory of liability contained in their Verified Complaint and expert affidavit (that Attorney Coggin failed to serve the at-fault driver) could not support a legal malpractice action against Attorney Coggin. Plaintiffs again failed to present any case law or make any presentation opposing Attorney Coggin's arguments on this topic. Instead, Plaintiffs again argued that the Motion for Summary Judgment should be denied because Plaintiffs have an alternative theory against Attorney Coggin: that he breached the standard of

care by failing to prepare Plaintiffs' case for settlement, mediation, and trial. At the hearing, Plaintiffs were granted leave to file a supplemental memorandum in opposition to Attorney Coggin's Motion for Summary Judgment.

In their Supplemental Memorandum, Plaintiffs again fail to challenge Attorney Coggin's argument that, even assuming he failed to serve the at-fault driver, such a failure cannot, as a matter of law, support this legal malpractice action. In fact, Plaintiffs only make reference to Attorney Coggin's argument twice, by saying that they dispute it, and then immediately shifting to the new alternative theory of liability. Pltfs' Supp. Memo. in Opp., p.2 ("Even if Defendant is correct regarding the motion to dismiss (which is disputed), Mr. Coggin's failure to prepare the Feldmans' case greatly reduced the settlement value of the UIM case."), p.5 ("In the context of this particular case and Motion for Summary Judgment, Mr. Coggin requests that the Court rule as a matter of law that the motion to dismiss was winnable and that because the motion to dismiss was winnable, as a question of fact, Mr. Coggin's negligence could not have been a proximate cause for the case settling for an extremely low figure. This conclusion would require the court to rule as a matter of law that the Motion to Dismiss was without merit, but then also that if the Motion to Dismiss had been won, that the case was not devalued because of Mr. Coggin's negligence.").

ARGUMENT

The Court should grant Attorney Coggin's Motion for Summary Judgment for two reasons: (1) the only legal theory contained in Plaintiffs' Verified Complaint and expert affidavit, that Attorney Coggin committed malpractice by failing to serve the at-fault driver, cannot support this legal malpractice action as a matter of law and (2) Plaintiffs' new theory of liability, that Attorney Coggin failed to properly prepare the underlying UIM Action for

settlement, mediation, and trial is not properly before the Court at this time, and cannot save this case from summary judgment. Alternatively, should the Court be inclined to let this legal malpractice action continue under Plaintiffs' new failure to prepare the UIM Action theory, Attorney Coggin requests that the Court grant partial summary judgment, finding that any alleged failure to serve the at-fault driver cannot support this legal malpractice action.

1. ATTORNEY COGGIN'S ALLEGED FAILURE TO SERVE THE AT-FAULT DRIVER IN THE UIM ACTION DID NOT PROXIMATELY CAUSE PLAINTIFFS ANY DAMAGE AND, THEREFORE, IS AN INSUFFICIENT THEORY ON WHICH TO BASE THIS LEGAL MALPRACTICE CASE

This issue has been briefed at length in Attorney Coggin's Memorandum in Support of his Motion for Summary Judgment, filed June 22, 2016, and argued at the hearing on June 29, 2016. Attorney Coggin incorporates the arguments made in his Memorandum in Support and at the hearing as if they were made herein *verbatim*.

As a brief summary, Plaintiffs' UIM insurance carrier, Liberty Mutual, filed an answer to Plaintiffs' complaint in the UIM Action and did not properly raise the affirmative defense that Attorney Coggin failed to serve the at-fault driver with the summons and complaint. Had Liberty Mutual properly raised that affirmative defense, Attorney Coggin would have been put on notice of the alleged failure of service, and would have had time to investigate and correct any deficiencies with the service. South Carolina case law is clear that the result of Liberty Mutual's failure is that Liberty Mutual waived its right to argue that the UIM Action should have been dismissed due to failure of service. See Unisun Ins. v. Hawkins, 342 S.C. 537, 537 S.E.2d 559 (Ct. App. 2000); Poston v. Davis, 2009 WL 9528768 (Ct. App. March 30, 2009). Therefore, the motion to dismiss that Liberty Mutual filed in the underlying UIM Action was meritless as a matter of law. Since Plaintiffs' only theory of liability against Attorney Coggin contained in their pending Verified Complaint and accompanying expert affidavit is based on his alleged

failure to serve the at-fault driver, which resulted in Liberty Mutual's motion to dismiss, Plaintiffs' case here must also fail as a matter of law.

As noted above, despite filing an affidavit and two briefs, and arguing at a hearing, Plaintiffs have not advanced any arguments in opposition to Attorney Coggin's argument on this matter. Accordingly, the only evidence and arguments on the record support the Court granting Attorney Coggin's Motion for Summary Judgment as to the Plaintiffs' case that is currently pending.

2. THE COURT SHOULD NOT ALLOW THIS CASE TO CONTINUE BASED ON PLAINTIFFS' NEW THEORY THAT ATTORNEY COGGIN COMMITTED LEGAL MALPRACTICE BY FAILING TO PROPERLY PREPARE THE UIM ACTION FOR SETTLEMENT, MEDIATION, AND TRIAL

Plaintiffs' entire argument in opposition to Attorney Coggin's Motion for Summary Judgment is that, even if Attorney Coggin is correct on the service of process theory, he may still be liable for legal malpractice under the theory that he allegedly failed to properly prepare Plaintiffs' UIM Action for settlement, mediation, and trial. Plaintiffs allege for the first time during these summary judgment proceedings that Attorney Coggin breached the standard of care by failing to "1) provide the UIM carrier with sworn testimony of any treating physicians causally linking Mr. Feldman's injuries, medical expenses, and future medical needs to the motor vehicle collision; 2) take deposition testimony of any fact witness, treating physicians, or any other expert witness; 3) retain a vocational rehabilitation expert to establish Mr. Feldman's present and future lost wages; 4) retain a nurse with life care planning certification to prepare a life care plan report showing present and future medical needs and expenses; or 5) retain an economist [to] prepare a report showing the present value of Mr. Feldman's future medical expenses." Pltfs' Supp. Memo. in Opp., p.3.

It is elementary that a complaint must set forth “a short and plain statement of the *facts* showing that the pleader is entitled to relief,” SCRCP 8(a) (emphasis added). No facts supporting Plaintiffs’ new theory of liability are set forth in the Verified Complaint, which is currently the Plaintiffs’ governing pleading in this case. Neither is this theory of liability alleged in Mr. Bauer’s expert affidavit, despite the fact that Mr. Bauer replaced Attorney Coggin as the Plaintiffs’ attorney in the underlying UIM Action and consummated the settlement of that matter. Mr. Bauer has unique personal knowledge of the UIM Action and could have included this allegation of negligence in his affidavit, if he believed it to be valid.

Since Plaintiffs have failed to argue against Attorney Coggin’s position that the only theory of liability currently before the Court fails as a matter of law, the Court should grant Attorney Coggin’s Motion for Summary Judgment and dismiss this entire action.

Plaintiffs have filed a Motion to Amend their Complaint to assert this new theory of legal malpractice against Attorney Coggin. Notably, the expert affidavit that Plaintiffs intend to use to support their proposed Amended Complaint is the exact same affidavit of Mr. Bauer that they used to support their pending Verified Complaint. This affidavit does not contain any allegation that Attorney Coggin breached the standard of care by failing to prepare the UIM Action for settlement, mediation, or trial. This Motion to Amend is still pending, thus the Verified Complaint on file, which does not include this theory of recovery, is the Plaintiffs’ operative pleading and contains all of the issues that should be in front of the Court. Rule 8(a), SCRCP (“A pleading which sets forth a cause of action . . . shall contain . . . a short and plain statement of the facts showing the pleader is entitled to relief . . .”). Plaintiffs’ pending Verified Complaint does not include any facts showing that Plaintiffs are entitled to relief under the

theory that Attorney Coggin failed to properly prepare the UIM Action for settlement, mediation, or trial.

It is important to note that if the Court does grant Attorney Coggin's Motion for Summary Judgment and dismiss this case, Plaintiffs would still have the opportunity to file a new, separate suit against Attorney Coggin for his alleged failure to prepare the UIM Action for settlement, mediation, and trial. Mr. Bauer substituted for Attorney Coggin as counsel of record for the Plaintiffs in the UIM Action of November 20, 2014 and settled the UIM Action in February or March 2015. Accordingly, the statute of limitations for Plaintiffs to file a brand new action against Attorney Coggin has not expired. Assuming they can procure an expert affidavit stating that Attorney Coggin breached the standard of care by failing to properly prepare the UIM Action for settlement, mediation, and trial, Plaintiffs are free to file that case against Attorney Coggin after the instant case is dismissed.

Plaintiffs should not be allowed to continue the present action under a new legal theory that is not supported by their expert affidavit, when the one theory that the affidavit does support is subject to dismissal by summary judgment. That would circumvent the mandate of §15-36-100(B) that Plaintiffs must file with their complaint an expert affidavit specifying at least one negligent act or omission. Plaintiffs have apparently conceded, by not submitting any argument to the contrary, that the only negligent act or omission contained in their expert affidavit cannot continue to serve as the basis of this case. To allow them to continue the instant action under this flawed affidavit would run afoul of §15-36-100(B). Accordingly, the Court should grant summary judgment in full, which would provide the Plaintiffs an opportunity to file a new "failure to prepare" case with an expert affidavit supporting that theory.

3. ALTERNATIVELY, THE COURT SHOULD GRANT ATTORNEY COGGIN PARTIAL SUMMARY JUDGMENT, FINDING THAT HIS ALLEGED FAILURE TO SERVE THE AT-

FAULT DRIVER CANNOT SUPPORT A CLAIM OF LEGAL MALPRACTICE UNDER THESE FACTS

Should the Court be inclined to allow the currently filed case to proceed against Attorney Coggin under the theory that he may have breached the standard of care by failing to properly prepare the UIM Action for trial, Attorney Coggin would ask that the Court grant partial summary judgment finding that his alleged failure to serve the at-fault driver with the process in the UIM Action does not support a legal malpractice action against him under these circumstances.

Rule 56(d) of the South Carolina Rules of Civil Procedure states:

If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It may thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

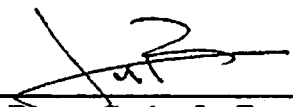
Since the Plaintiffs have not argued against Attorney Coggin's position that he is entitled to summary judgment on the issue of whether his alleged failure to serve the at-fault driver with process in the UIM Action can support a claim for legal malpractice under these facts, the Court should, at the very least, grant Attorney Coggin partial summary judgment on that issue alone. That would allow the Plaintiffs to proceed forward against Attorney Coggin on other theories of legal malpractice, including that he allegedly failed to properly prepare the UIM Action, but not on a theory that his alleged failure to serve the at-fault driver caused the Plaintiffs any harm. As stated above, Plaintiffs have not presented an expert opinion that Attorney Coggin was negligent in any way aside from failing to serve the at-fault driver, so Attorney Coggin believes that

Plaintiffs should not be able to go forward under any theory until it is supported by expert affidavit. However, Attorney Coggin would request that if his Motion for Summary Judgment is not granted in full, he is at the very least entitled to Partial Summary Judgment on the service issue.

CONCLUSION

Despite being given numerous opportunities, Plaintiffs have not presented any argument to oppose Attorney Coggin's summary judgment position that his alleged failure to serve the at-fault driver cannot form the basis of this legal malpractice action. Since that is the only theory of liability that the Plaintiffs currently have in front of the Court, Attorney Coggin should be granted summary judgment on this entire case. In the alternative, Attorney Coggin should be granted partial summary judgment, finding that his alleged failure to serve the at-fault driver cannot support this legal malpractice action.

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BY: 

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Attorneys for Defendant

July 20, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT
) C/A No.: 2015-CP-07-01251

Robert E. Feldman and Louis J.)
Feldman,)

Plaintiffs,)

vs.)

Gary P. Coggin,)

Defendant.)

PLAINTIFFS' SUR-REPLY TO

**DEFENDANT'S REPLY TO
PLAINTIFFS' SUPPLEMENTAL
MEMORANDUM IN OPPOSITION
TO DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

2016 AUG - 1 PM 3:30
CLERK OF COURT
JUDICIAL CIRCUIT
BEAUFORT COUNTY, S.C.

**TO: M. DAWES COOKE, JR. AND JEFFREY M. BOGDAN, COUNSEL FOR
DEFENDANT:**

Plaintiffs, Robert E. Feldman and Lois J. Feldman, respectfully submit this Sur-
Reply.

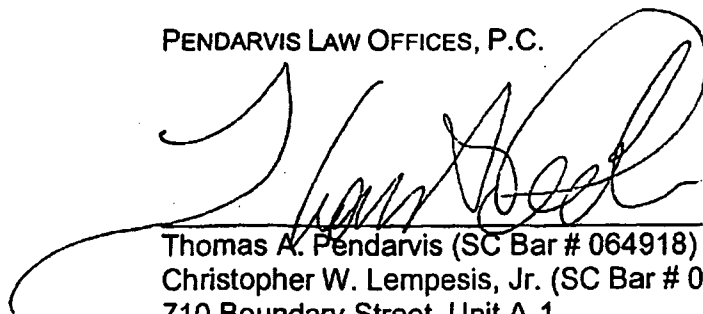
Defendant's Motion should be denied because disputed questions of material fact remain as to whether Mr. Coggin's actions and inactions devalued the Feldmans' UIM claims. The viability of the UIM carrier's motion to dismiss in the underlying case is not dispositive as to the impact of Coggin's failures on diminution in the value of the Feldmans' UIM claims. Defendant's Reply (and other motion papers) simply do not extinguish the *disputed questions of fact* on the diminution in settlement value, raised in record before the trial court by Mr. Coggin's deposition and the Verified allegations in the Complaint. Defendant Coggin's focus on the *allegations* in the Verified Complaint is misplaced in light of the standards for a motion for summary judgment.

For these reasons and for all of the other many reasons already discussed, including the fact that discovery is not complete, the Motion for Summary Judgment

should be denied. See *Hall v. Fedor*, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002) and *Doe ex rel. Doe v. Batson*, 345 S.C. 316, 321, 548 S.E.2d 854, 857 (2001).

Respectfully Submitted,

PENDARVIS LAW OFFICES, P.C.

A large, stylized handwritten signature in black ink, likely belonging to Thomas A. Pendarvis, is written over a horizontal line.

Thomas A. Pendarvis (SC Bar # 064918)
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Counsel for Plaintiffs

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July 28, 2016

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) SECOND JUDICIAL CIRCUIT
C/A No.: 2015-CP-07-01251

ROBERT E. FELDMAN and LOIS J.
FELDMAN,

Plaintiffs,

vs.

GARY P. COGGIN,

Defendant.

SHIRLEY -7 AM 11:02
JEROME ROSENEAU
CLERK OF COURT
BEAUFORT COUNTY, S.C.

**DEFENDANT'S MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S MOTION
FOR LEAVE TO FILE AMENDED
VERIFIED COMPLAINT**

TO: THOMAS A. PENDARVIS, ATTORNEY FOR PLAINTIFF

For the reasons that follow, the Defendant, Gary P. Coggin (hereinafter "Attorney Coggin") respectfully requests that the Court deny the Plaintiff's Motion for Leave to File Amended Verified Complaint.

BRIEF SUMMARY OF ARGUMENT

In this legal malpractice case, Plaintiffs' current Verified Complaint alleges only one theory of liability against Attorney Coggin: failure to properly serve a complaint in an underlying case. The expert affidavit that was filed as part of their current Verified Complaint specifies this one negligent act or omission, but no others. Attorney Coggin has moved for Summary Judgment, arguing that even if he failed to properly serve the complaint in the underlying case, such failure cannot support this legal malpractice action because as a matter of law the defendant failed to timely assert that as a defense. Instead of addressing this argument, Plaintiff responded to the Motion for Summary Judgment by arguing that Attorney Coggin is liable to the Plaintiffs under a new and distinct theory: that he failed to prepare the underlying case for settlement and trial. Attorney Coggin's Motion for Summary Judgment was fully briefed and argued to Judge Dukes and is currently awaiting decision.

Plaintiffs now seek to amend their Verified Complaint to include the new theory of liability: that Attorney Coggin was negligent in failing to prepare the underlying case. However, Plaintiffs propose to use the exact same expert affidavit that they filed as part of their original Verified Complaint, which opines only that Attorney Coggin breached the standard of care by failing to properly serve the complaint. The expert affidavit does not specify any other alleged negligent acts or omissions and does not opine that Attorney Coggin breached the standard of care by failing to prepare the underlying case. The expert affidavit therefore does not support the new theory of liability.

If the Court allows Plaintiffs' proposed Amended Verified Complaint and Judge Dukes grants Attorney Coggin's Motion for Summary Judgment, Plaintiffs' Amended Verified Complaint will not be supported by any expert affidavit, and thus would violate S.C. Code § 15-36-100(B). Alternatively, if Judge Dukes denies Attorney Coggin's Motion for Summary Judgment, Attorney Coggin will consent to the filing of the proposed Amended Verified Complaint. Accordingly, Attorney Coggin requests that the Court deny the Plaintiffs' Motion for Leave to Amend pending Judge Dukes' ruling on the Motion for Summary Judgment.

FACTS

Attorney Coggin represented the Plaintiffs in an effort to recover for personal injuries that Plaintiff Robert Feldman sustained when he was involved in an automobile accident allegedly caused by Sarah Dickenson on October 9, 2010. Compl. ¶¶8-9. After successfully recovering \$85,000 for Mr. Feldman from Ms. Dickenson's automobile liability insurance carrier without litigation, Attorney Coggin filed suit on behalf of both Plaintiffs against Ms. Dickenson in an attempt to recover UIM benefits from Plaintiffs' own automobile liability insurance carrier, Liberty Mutual Insurance Company. Compl. ¶¶15-16. That case, styled Robert & Lois Feldman