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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.LM.
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit A1
Beaufort, SC 29902-4188
Thomas@PendarvisLaw.com
Chris@PendarvisLaw.com

Counsel for Appellants

M. Dawes Cooke, Jr., J.D.
Jeffrey M. Bogdan, J.D.
BARNWELL WHALEY PATTERSON & HELMS, LLC
PO Drawer H
Charleston, SC 29402
mdc@barnwell-whaley.com
jbogdan@barnwell-whaley.com

Counsel for Respondent

Volume 1

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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,	)	
Plaintiffs,	)	**SCHEDULING ORDER**
vs.	)	
GARY P. COGGIN,	)	
Defendant.	)	

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

This matter came before the Court on Plaintiff's Request to Transfer 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**

BEAUFORT COUNTY, S.C.
CLERK OF COURT
2016 SEP -9 PM 12:02

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

ELECTRONICALLY FILED - 2017 Jan 27 2:40 PM - BEAUFORT - COMMON PLEAS - CASE#2015CP070125

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

ELECTRONICALLY FILED - 2017 Jan 27 2:40 PM - BEAUFORT - COMMON PLEAS - CASE#2015CP0701251



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

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.

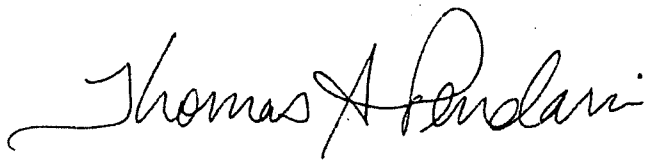
SUMMONS

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

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
Beaufort, SC 29902-5066
843.524.9500 Tel.
Thomas@PendarvisLaw.com
Carey@PendarvisLaw.com

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.

2015 MAY 19 PM 3:24

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. 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 statue limitations in any manner prescribed by law or, if Dickenson was not served within the statue 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 statue 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), SCRCP.

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

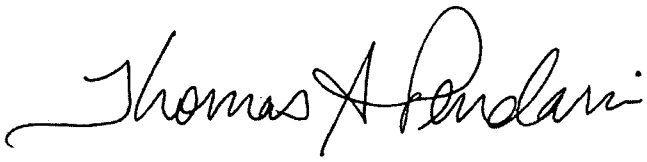
55. Pursuant to S.C. CODE ANN. § 15-36-100(B) (2006), attached hereto and incorporated herein by reference as **Exhibit 1**, is the affidavit of Samuel C. Bauer, J.D., an expert witness and lawyer with experience in handling personal injury matters, which specifies at least one negligent act or omission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



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, SCRCP, 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 Dickeson 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 ~~April~~ May, 2015

_____ (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires 12/30/23.

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,	)	
Plaintiffs,	)	**ANSWER**
vs.	)	
GARY P. COGGIN,	)	
Defendant.	)	

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), SCRCP 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), SCRCP 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: _____

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

August 17, 2015
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF BEAUFORT

ROBERT E. FELDMAN and
LOIS J. FELDMAN,

Plaintiffs,

vs. CASE NO. 2015-CP-07-1251

GARY P. COGGIN,

Defendant.

DEPOSITION OF: GARY P. COGGIN

DATE: June 8, 2016

TIME: 10:06 a.m.

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

TAKEN BY: Counsel for the Plaintiffs

REPORTED BY: TRISHA M. THOMAS

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PLAINTIFFS
ROBERT E. FELDMAN and LOIS J. FELDMAN:

PENDARVIS LAW OFFICES, P.C.
BY: THOMAS A. PENDARVIS
CHRISTOPHER W. LEMPESIS, JR.
710 Boundary Street, Unit A-1
Beaufort, SC 29902
(843) 524-9500
Thomas@pendarvislaw.com
Chris@pendarvislaw.com

ATTORNEYS FOR THE DEFENDANT
GARY P. COGGIN:

BARNWELL, WHALEY, PATTERSON & HELMS, LLC
BY: JEFFREY M. BOGDAN
288 Meeting Street, Suite 200
Charleston, SC 29401
(843) 577-7700
Jbogdan@barnwell-whaley.com

ALSO PRESENT: Robert E. Feldman

(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.

THE WITNESS: That will be fine.

BY MR. PENDARVIS:

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

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

A. That's fine.

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

And you understand all those, correct?

A. Yes, I do.

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

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

A. Absolutely.

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

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

Q. And you did that today?

A. At McDonald's, briefly, yeah.

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

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

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

A. Very little.

Q. Okay. Okay. Have you reviewed --

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

Q. Responses, your responses.

A. Oh, yes. Absolutely.

Q. Okay.

A. Yeah. Sorry.

Q. When did you first meet Mr. Robert

"Bob" Feldman?

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

Q. Was it related to the automobile accident?

A. Yes, it was.

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

A. No.

Q. Either?

A. Neither one.

Q. Okay.

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

Q. TD Bank?

A. Yeah. Yes.

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

A. No longer.

Q. No longer?

A. Yeah.

Q. But during the course of --

A. Yes.

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

A. Yes.

Q. Which one? You?

A. Law firm.

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

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

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

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

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

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

Q. Divorce? Criminal?

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

Q. Okay. How many cases have you tried?

A. In court?

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

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

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

A. Again, I don't know.

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

A. Anywhere from -- in common pleas?

Q. Yes, sir.

A. Anywhere from five to fifteen.

Q. Okay.

A. I don't know.

Q. And I understand --

A. Yeah. And I really --

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

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

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

A. Yes, I have.

Q. Correct?

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

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

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

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

A. Yeah. I believe so.

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

A. I'm an LLC.

Q. Coggin Law Office, LLC?

A. I believe that's it.

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

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

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

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

A. It occurred at Bob's house.

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

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

Q. So you went to his house --

A. Yes.

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

A. Oh, absolutely.

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

day?

A. Talked about the accident.

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

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

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

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

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

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

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

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

Q. Do you have a typical conversation or

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

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

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

A. Uh-huh.

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

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

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

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

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

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

A. I don't know.

Q. Okay.

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

BY MR. PENDARVIS:

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

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

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

A. Yes, it is.

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

A. At that time, yeah.

Q. -- 2010?

A. Uh-huh.

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

A. Uh-huh.

Q. You see that?

A. Yes, I do.

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

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

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

Q. Okay.

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

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

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

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

A. No.

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

A. Yes, she was.

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

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

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

A. No.

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

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

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

A. That's correct.

Q. And when was it filed, approximately?

A. It was filed after the settlement. The

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

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

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

Q. Okay.

A. I apologize if I gave that impression.

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

A. Sure.

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

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

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

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

BY MR. PENDARVIS:

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

A. Sure.

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

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

Q. Sure.

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

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

A. Yeah. No. I understand.

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

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

A. That's correct.

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

A. Sonya Wise. Yes.

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

MR. BOGDAN: Object to the form.

BY MR. PENDARVIS:

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

Can you read for me the last sentence

in the next to the last paragraph on page 2?

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

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

A. That was an offer I made to settle.

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

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

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

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

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

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

A. Yes.

Q. And when did you come to that realization?

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

Q. What part of 2013?

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

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

note, anything.

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

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

A. No.

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

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

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

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

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

Q. Okay.

A. I don't remember.

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

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

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

A. Uh-huh.

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

The first full paragraph.

A. He has suffered greatly?

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

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

Q. Yeah.

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

Q. So you knew he enjoyed golf.

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

go play golf?

A. I don't remember.

Q. Possible?

A. I don't remember.

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

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

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

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

A. I don't know.

Q. You try --

A. Uh-huh.

Q. -- to do your best?

A. Uh-huh.

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

MR. BOGDAN: Object to the form.

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

BY MR. PENDARVIS:

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

A. Yeah.

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

A. I'm not saying --

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

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

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

MR. BOGDAN: Object to the form.

THE WITNESS: If I felt that I was

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

BY MR. PENDARVIS:

Q. What would be the lie?

What would be the lie?

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

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

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

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

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

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

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

MR. PENDARVIS: This will be three.

THE WITNESS: Mr. Pendarvis, could I --

BY MR. PENDARVIS:

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

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

Q. Okay. Well, she was --

A. Oh, okay.

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

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

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

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

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

Q. Thank you.

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

BY MR. PENDARVIS:

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

A. Uh-huh.

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

A. Yes, it is.

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

A. I believe so.

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

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

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

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

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

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

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

Q. And that was the footnote, maybe, on

page 2 of Exhibit 3?

A. Hang on.

Yeah. Uh-huh.

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

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

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

A. Mr. Feldman was --

Q. -- as a broker?

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

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

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

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

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

A. Uh-huh.

Q. Do you see that?

A. I do. I'm reading it.

Q. Okay.

THE REPORTER: Sorry. I didn't --

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

THE REPORTER: Okay.

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

BY MR. PENDARVIS:

Q. And do you see that?

A. Yes, I do.

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

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

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

Q. Oliver Wood?

A. That's him. Yeah.

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

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

Q. Okay.

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

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

A. Uh-huh.

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

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

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

A. No, I did not.

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

(Off-the-record conference.)

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

BY MR. PENDARVIS:

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

A. Can I see the settlement agreement?

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

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

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

you --

A. Yeah. Oh. I --

Q. -- and it's --

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

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

A. That's fine.

Q. I'm just going to ask --

A. Yeah.

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

A. Absolutely.

Q. That was just inadvertently included.

A. Absolutely. Yeah.

Q. I'm not sure how that got there, but...

And just, again, moving down the trail --

A. Uh-huh.

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

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

Q. And this may be the identical letter.

A. Yeah.

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

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

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

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

A. Yeah. That's fine.

Q. -- so apparently he --

A. He was on --

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

A. Yeah.

Q. Okay.

(EXH. 5, Letter from Gary Coggin to

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

BY MR. PENDARVIS:

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

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

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

Q. I think it is.

A. Oh, okay. Excuse me.

You're right. Yeah. I agree.

Q. Is that your signature?

A. Uh-huh.

Q. Okay.

A. Yes.

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

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

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

A. Uh-huh. Uh-huh.

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

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

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

A. Yeah.

Q. -- treatments for the accident?

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

Q. Right.

A. -- of physical therapy for the claimant.

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

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

A. Yeah.

Q. -- with treatments?

A. Yes.

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

A. Uh-huh.

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

A. Okay.

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

THE WITNESS: Oh. I'm so sorry.

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

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

BY MR. PENDARVIS:

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

MR. BOGDAN: Was that six, Thomas?

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

THE WITNESS: Okay.

BY MR. PENDARVIS:

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

A. 2012.

Q. -- 2012 --

A. Yeah.

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

A. Correct.

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

A. Correct.

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

A. Correct.

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

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

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

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

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

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

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

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

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

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

A. Ask me the question again.

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

A. Uh-huh.

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

MR. BOGDAN: Object to the form.

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

BY MR. PENDARVIS:

Q. Notwithstanding your million dollar demand?

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

non-trick questions?

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

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

Q. Well --

A. That's the answer.

Q. We're going to stick with that.

A. Okay.

Q. Remember your statement.

A. Okay. That's fine.

Q. Remember your statement for trial.

A. Okay. I'll remember that.

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

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

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

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

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

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

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

A. What's that?

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

A. No. I think that probably would have

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

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

BY MR. PENDARVIS:

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

A. Uh-huh.

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

A. Yeah. Yes.

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

A. Absolutely.

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

A. Yes, I did.

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

A. No. It's accurate.

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

A. No. The department of insurance.

Q. Department of insurance? Okay.

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

A. That's correct.

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

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

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

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

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

A. Uh-huh.

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

A. Yes.

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

A. That's correct.

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

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

Q. Let's assume 500.

A. My fee would have been 35 percent.

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

A. I do not recall anything like that.

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

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

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

A. Not to execute.

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

A. Uh-huh.

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

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

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

A. That's right.

Q. And that's a requirement to perfect the

pleadings in an underinsured lawsuit context?

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

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

A. Yeah.

Q. Correct?

A. That's correct.

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

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

A. That's correct.

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

A. That's correct.

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

A. Yeah. Doncaster Road was in Sun City.

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

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

where she was at.

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

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

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

A. Oh, yeah. Absolutely.

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

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

Q. And what did you do next?

And what was your next step for service?

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

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

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

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

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

Q. We'll do that later.

A. We'll do that later, yeah.

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

A. No, no. Huh-uh.

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

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

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

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

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

A. Fran --

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

A. Fran wanted up front money.

Q. Okay.

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

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

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

A. Right.

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

A. Yeah.

Q. -- process address? Okay.

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

Q. Okay. And using Exhibit 7 --

A. Right.

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

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

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

A. I never talked to her about sending

anything to department of insurance.

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

A. Uh-huh.

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

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

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

A. I apologize.

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

A. Yeah. Ask me the question again.

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

A. And if I can answer that --

Q. Sure.

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

Q. Before the conversation with the process server?

A. Yeah. Uh-huh.

Q. Okay. That's fine.

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

BY MR. PENDARVIS:

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

A. That's fine.

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

A. Yeah.

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

A. Uh-huh.

Q. Yes?

A. I'm sorry. Yes.

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

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

Q. Okay. So early January --

A. Yeah.

Q. -- you received this answer?

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

Q. Yes.

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

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

A. This answer?

Q. Yes, sir. Exhibit 8.

A. I believe it would have been before.

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

A. Uh-huh.

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

A. That's correct.

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

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

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

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

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

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

Q. So that's late December?

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

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

A. Affidavit of service. That was it.

Q. Just the raw affidavit?

A. Uh-huh.

Q. Who served it?

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

Q. Right.

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

It was served. The person that

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

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

Let me back up.

A. Yeah. I'm not --

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

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

Q. Well, this is your deposition.

A. And I apologize.

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

Let me ask you a different way. What

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

A. Oh, okay.

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

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

Q. And what tolls the time by statute?

A. Three years.

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

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

Q. 2010?

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

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

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

Q. Okay. Or out of time?
A. Yes.
Q. Okay.
A. Excuse me.
Q. Did you mark on your calendar or have an internal calendaring system that identified the 120 days from the date of filing?
A. No, I did not.
Q. And how does that help Mr. Coggin -- I mean Mr. Feldman? I mean, what if you missed the deadline?
A. I didn't miss the deadline. That's the --
Q. I'm asking you what if. What did you do to make sure you had the deadline calendared?
A. I knew the dates very well. If you're asking if I calendared and put it on a calendar, I did not, by I knew the dates very well.
Q. What was the 120th day of after October 29, 2012?
A. No. It's not -- it would have been 120 days after -- it would have been 120 days after 2016 -- or under -- after 2013 and ran.
Q. This complaint was filed October 29, 2012.

A. Uh-huh.

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

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

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

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

A. Yeah.

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

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

Q. Okay.

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

Q. Okay.

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

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

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

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

A. Right. Uh-huh.

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

A. Yeah.

Q. When did you file that document?

A. I did not.

Q. Why not?

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

Q. No. I'm asking why not.

A. I just told you.

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

That's yes?

A. Yes.

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

A. That's correct.

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

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

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

Q. Okay.

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

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

A. Yeah.

Q. So early January --

A. Uh-huh.

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

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

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

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

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

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

paragraph, but go ahead.

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

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

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

A. I had simply forgot.

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

A. Yeah.

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

A. Uh-huh. Yes.

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

A. October 10, 2013.

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

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

A. That's correct.

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

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

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

A. Uh-huh.

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

A. No. No. No.

We're still on eight?

Q. Right.

A. Okay.

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

A. Yes.

Q. With that assumption?
A. Uh-huh.
MR. PENDARVIS: Let's take a break for a minute.
(A recess transpired.)
BY MR. PENDARVIS:
Q. As I briefly mentioned off the record, Mr. Coggin, there -- there are plenty of materials in your files that have been delivered to us that dealt with the discovery answer, interrogatories, requests for production both ways, motions to compel, and all of those things, but at the end of the day you -- documents were exchanged, interrogatories were answered, and by May of 2014 mediation was scheduled.
A. Okay.
Q. Correct?
A. Uh-huh.
Q. Terry Finger was the mediator?
A. Correct. Uh-huh.
Q. I think we all know Terry.
MR. PENDARVIS: You know Terry?
MR. BOGDAN: Not personally.
MR. PENDARVIS: Okay. Well, he's a fella that does a lot of mediation around Beaufort

County. Good guy.

BY MR. PENDARVIS:

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

A. None.

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

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

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

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

asking for maximum medical improvement and so forth like that.

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

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

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

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

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

A. Uh-huh.

Q. -- but not you.

A. Okay.

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

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

Q. That's fine.

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

A. That I don't remember.

Q. Okay. We'll look at that.

A. I don't remember that at all.

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

A. I don't recall.

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

A. Okay.

Q. And I'll give you --

A. I don't remember that.

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

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

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

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

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

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

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

BY MR. PENDARVIS:

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

I'm going to skip the civil action number.

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

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

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

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

A. See, that's --

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

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

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

A. Uh-huh. Yes.

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

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

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

A. Yeah.

Q. -- that topic at this point.

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

identification.)

BY MR. PENDARVIS:

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

A. Uh-huh.

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

A. Yes, it is.

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

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

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

A. Yeah. Uh-huh.

Q. Okay.

A. 2014. That's correct.

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

A. Yes, it is.

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

A. No, it was not.

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

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

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

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

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

A. This is something that you -- when you

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

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

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

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

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

Q. You participated in the mediation?

A. Oh, absolutely.

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

A. Yes.

Q. Okay. Who was there?

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

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

A. It started out that way.

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

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

Q. Similar to the wherefore clauses in the complaint?

That's a yes?

A. Yes.

Q. Did Liberty Mutual make a counteroffer?

A. They did make a counteroffer.

Q. And what was that?

A. 25,000.

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

A. I don't believe so, no.

Q. Okay. And what was -- when you

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

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

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

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

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

A. Yeah.

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

A. Yes, it was.

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

A. I thought so, yeah.

Q. Was there any message conveyed with the offer?

A. I don't believe there was any message

at all.

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

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

Q. So --

A. They weren't getting in the car.

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

A. Oh, absolutely.

Q. -- north of $25,000?

A. Absolutely.

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

A. I didn't have time.

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

A. Yeah. Uh-huh.

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

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

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

And that was about it.

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

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

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

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

Q. Okay.

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

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

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

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

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

Q. No. Maybe, but was there any mention

of that?

A. No. Answer is no.

Q. Was there any mention of statute of limitations?

A. No.

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

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

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

Or something to that effect. And Bob left.

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

A. Yeah.

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

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

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

A. Wasn't much I could say.

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

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

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

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

Q. Okay.

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

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

A. Oh, yeah. Uh-huh.

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

A. Yes.

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

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

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

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

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

A. Yeah.

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

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

Q. Okay. And my question was: And this

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

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

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

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

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

think, of treating my clients.

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

A. Significant money, yeah.

Q. No charges for faxes and --

A. No.

Q. -- letters and postage. Okay.

A. No, no.

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

A. Uh-huh.

Q. -- from the Feldmans?

A. Uh-huh.

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

A. I never charged for that.

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

A. Yes, I did. Yeah.

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

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

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

Q. Okay.

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

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

A. Uh-huh.

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

A. Yeah.

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

A. That's correct. Yeah.

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

A. That's correct.

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

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

Q. In most cases don't you handle those

expenses and recover them out of the settlements for clients?

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

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

Q. And this was the DUI for --

A. Yeah, yeah. Uh-huh.

Q. -- another person?

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

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

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

Q. When did that -- first off --

A. Yeah.

Q. -- I understood your testimony earlier

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

A. Yeah.

Q. -- was at his house?

A. Yeah.

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

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

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

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

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

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

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

Q. Been charged?

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

he lived, and he asked me to represent her.

Q. And you agreed?

A. Yeah. Uh-huh.

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

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

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

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

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

A. Yeah.

Q. Was there a written agreement on that?

A. No.

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

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

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

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

Q. Was it willing or able?

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

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

Q. Wouldn't have done what?

A. The case.

Q. The Dickenson case?

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

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

pay you for your work on the Young case?

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

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

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

A. Fine.

Q. Did you have any conversations with Mr. Feldman, or Ms. Feldman for that matter, about the value of their claim against Ms. Dickenson?

A. I don't recall.

Q. There was a $25,000 offer of settlement.

A. Right.

Q. Did you have any discussions -- you told us about the mediation.

A. Right.

Q. Did you have any discussions with either of the Feldmans after the mediation prior to

your moving to be relieved as counsel about the value -- the merits of their claim and the value of their claim?

A. I told Bob any number of times that he had greatly compromised his case by his insistence on playing golf. I told him that probably a half dozen times.

Q. You made some requests to Mr. Feldman to assist in paying cost during the summer of 2014?

A. I don't think I ever made to assist in paying cost. I asked him to pay the cost, yes.

Q. Okay. What did Mr. Feldman tell you? Or what was his response?

A. I wrote him a number of letters which weren't answered. When I say a number of letters, two or three, which weren't answered, and I got a call from him, oh, I don't know when, at the end of the summer, and we had discussed it at that time, and I don't remember what he told me. I think he told me I'll pay you out of the settlement.

Q. Did you have any -- thank you for that. Did you have any conversation about the $25,000 offer and why that was good, bad, or otherwise?

A. I don't believe we ever discussed it. That -- as far as I was concerned, that was over.

That was -- that ship had sailed.

MR. PENDARVIS: This is going to be ten.

(EXH. 10, Letter from Gary Coggin to Robert Feldman dated September 15, 2014, was marked for identification.)

(Off-the-record conference.)

BY MR. PENDARVIS:

Q. Mr. Coggin, I've passed to you a letter dated September 15, 2012.

A. Uh-huh.

Q. It appears to be a letter from you to Mr. Feldman --

A. Yeah.

Q. -- outlining the merits of the claim --

A. Yeah.

Q. -- and the cost and the prospect for trial. First question: Is this your letter to Mr. Coggin?

A. Yes, it is.

Q. To Mr. Feldman. Excuse me.

A. Yeah.

Q. The first sentence talks about disagreements over the past year.

A. Uh-huh.

Q. Can you elaborate on what that --

A. Yeah. It -- it involved Bob playing golf.

Q. And what did you understand Bob's -- your next sentence talks about, you know, your concern about not being able to meet his expectations.

A. Right.

Q. What did you understand were Mr. Feldman's expectations as of September 2014?

A. He wanted to exhaust the amount of underinsurance.

Q. Okay.

A. And apparently I did talk about the $25,000. I see that in here. I stand corrected.

Q. Saves the question.

A. Yeah.

Q. Thank you.

And do I understand from the first sentence in the second full paragraph: The circumstances surrounding your injuries.

And does that mean the golf issue, that he was not as injured as you thought he initially was?

A. That's -- that's absolutely right.

That's exactly what I was talking about.

Q. What was the amount of the medicals that Mr. Feldman had incurred as a result of the collision with Dickenson?

A. I have no idea. Have no idea.

Q. It's in your communications in the original demands?

A. If you have something that says it --

Q. Well, they're in front of you --

A. -- let me look at it and see.

Q. -- but let's take -- let's take a look.

MR. BOGDAN: You guys are talking over each other.

MR. PENDARVIS: I'm sorry.

MR. BOGDAN: Let's help Trisha out here.

THE WITNESS: I apologize.

BY MR. PENDARVIS:

Q. You testified about the letter to Mr. Finger, that it was accurate as far as you knew based on the -- what information you had in May of 2014. Do you recall that testimony?

A. I don't -- I don't know what you're talking about.

Q. This is Exhibit 9.

A. Okay.

Q. I'm trying to get an understanding of the amount of medicals that you understood Mr. Feldman had incurred that were in context for your conversations in September of 2014.

A. I think I can answer that. Typically -- for example, I'm going to trial at the end of this month, and the attorney on the other side and I have talked about medicals. I don't typically get those together until the eve of trial for the reason that I don't want to miss anything, so I don't know if there was any medicals that we could talk about. If there was, I'd love to see it because I just don't remember.

Q. Well, you're stating to Mr. Finger on the top of the second page that the amount of the -- the amount of -- the above amount is 150 to 180,000.

A. Only an estimate. I have no idea what I was basing that on.

Q. Okay. But you wouldn't have written something that was not true, would you?

A. I would have estimated something, and that could be $50,000 high. I don't know.

Q. Okay. So let's just knock $50,000 off

both numbers, so between 100 and $130,000 in medicals.

A. I think that the retail numbers would probably been somewhere around there, yeah.

Q. Okay. So 100 to $130,000 in medicals, no dispute on liability whatsoever, and your testimony today is that your recommendation to accept $25,000 was a fair value for Mr. Feldman's claim?

A. Yes, it was.

Q. You're saying he wouldn't even get his medicals back?

A. Yes. He would not.

Q. Okay.

A. Based on the information I have. And again, Bob compromised his case.

Q. Are you going to tell this jury that Bob Feldman's playing golf after the collision would mean that the at-fault party wasn't responsible for at least paying back the medical expenses he incurred? Yes or no and then you can explain.

A. This was a preexisting condition.

Q. No, sir. The question is -- yes or no -- are you going to tell this jury that Bob

Feldman would not be able to recover the at -- the medical expenses he incurred by Ms. Dickenson's collision? Yes or no.

A. He would not, based on his behaviors.

Q. After the fact. Let me rephrase the question. I want to make sure I got this.

A. Uh-huh.

Q. Your testimony is that Mr. Feldman's conduct after the accident is going to defeat his claim to recover medicals that were incurred as a result of Ms. Dickenson's clear liability?

A. His conduct --

MR. BOGDAN: Object to the form.

THE WITNESS: His conduct after the fact, after the accident, were such that it showed that he didn't have any problems.

BY MR. PENDARVIS:

Q. We're not talking about pain and suffering.

A. I'm talking --

Q. I'm not talking about pain and suffering. I want to talk about medical expenses that were incurred as a result of the collision.

A. So you're talking about medical expenses that are obviously puffed up for a trial?

Q. No, sir. I'm talking about actual medical expenses that Mr. Feldman incurred that you stated in the letter that we've adjusted down by $50,000 were between a hundred and $130,000 in medicals, and my -- I want to make sure I'm clear on this. You're going to go in front of the jury and tell the jury that Mr. Feldman would not have been able to recover out-of-pocket medical expenses because of his conduct after the fact?

A. Yeah.

MR. BOGDAN: Object to the form.

THE WITNESS: That's exactly right. Yes. Emphatically.

And again, Mr. Pendarvis, I don't know -- and again, I've stated that to you. I don't know what his medicals were. That was just an estimate.

BY MR. PENDARVIS:

Q. Did Julian Allen ever say anything about to you Mr. Golf -- Mr. Feldman's golf situation?

A. Julian Allen, what I recall -- and we didn't -- I think a lot of that would be privileged. Julian Allen did ask Mr. Feldman at his deposition if he had ever played golf since the

accident. Mr. Feldman replied in the affirmative, and Julian Allen apparently, if I remember correctly, asked some follow-up questions, and Bob's reasoning was the same thing he'd always told me, was that he just liked to ride around in the cart to be with his friends.

Q. Thank you for your summary of the deposition testimony.

A. I don't know if that's a summary of not. That's a summary of my recollection.

Q. That's fair.

A. You're welcome.

Q. And here's my question.

A. Yeah.

Q. Outside of the deposition --

A. Uh-huh.

Q. -- did you have any conversations with Julian Allen about Mr. Feldman's golf?

A. Not that I can recall. If you have something I could look at, I'd be happy to look at it and comment on it.

Q. My question was about conversations, not really letters, e-mails, or anything like that. Did you have any conversations with --

A. Not that I recall.

Q. Did Mr. Allen ever communicate other -- in a conversation statements to the effect that Mr. Feldman's golf activities were a reason they weren't offering any money?

A. I don't recall him ever saying anything like that. But I want to put this caveat. Mr. Allen is a very skilled attorney, and Mr. Allen, I believe, probably knew all about this.

Q. Have you had any conversations with Mr. Allen about the merits of this claim --

A. No.

Q. -- this legal malpractice case?

A. No.

Q. Do you know if your counsel has reached out to Mr. Allen?

A. I -- I don't know.

MR. BOGDAN: I think that's work product.

THE WITNESS: I'm not sure.

MR. PENDARVIS: The rules only allow you -- are you instructing the witness not to answer, or are you just objecting? 'Cause I think the rules only deal with communication, attorney-client privilege, not work product. I'm just trying to get an understanding of where we

are.

MR. BOGDAN: What's the question again?

BY MR. PENDARVIS:

Q. The question is: Do you know if your lawyer has reached out to Mr. Julian Allen about the -- his testimony in this case?

A. The answer is I don't know.

Q. Okay. I have not seen any written communications from Mr. Allen about the settlement. Are there -- I mean, were you aware of any that somehow didn't get in the file or anything of that nature?

A. I'm not aware of anything. And again, if there is something, I'd like to look at it.

Q. Okay. I --

A. Okay.

Q. I'm telling you I haven't seen it either. I just wanted to see if there was something.

I'm going to break this -- this is a question about lost wages.

A. Okay.

Q. And I'm going to break this down to several segments of time. During the time Mr. Feldman was getting treatments for injuries

caused by the accident, do you believe he had a claim for lost wages for that limited time period?

A. I would believe he did, yes.

Q. Okay.

A. Uh-huh.

Q. Would the fact that Mr. Feldman may have played golf months, years after that, defeat his claim for lost wages?

A. That I don't know, but the fact of the matter is I don't know if he worked.

Q. Okay.

A. He would never answer that question to me.

Q. For the time period after Mr. -- or after the accident and while Mr. Feldman was not actively getting medical treatments, did you reach out to any of the physicians or vocation rehabilitations experts to find out if there were -- if Mr. Feldman's ability to work was limited or compromised by the injuries caused by the accident?

A. Regarding work, I don't believe I ever asked that question. There were letters that I wrote to his physicians, but it wasn't -- didn't involve work.

Q. Typically requesting copies of medical

records?

A. Medical records. I believe I sent a letter to Shissias and to Dr. Reuben regarding his health and so forth.

Q. And a percentage of impairment?

A. Yeah. Uh-huh.

Q. Okay.

A. That's right.

Q. So if a person was determined to be 11 percent impaired, that would tend to support a claim for lost wages, wouldn't it?

A. If he worked.

Q. Right. And you've made those arguments for other clients where percentages of impairment impaired their ability to work, correct?

A. If they have a job. If they don't have a job, they don't pay workers' comp or anything else like that. You know that.

Q. So turning back to Exhibit 10, if I'm understanding --

A. Yeah.

Q. -- your testimony -- I want to try to summarize here.

A. Uh-huh.

Q. Looking at the -- one, two, three --

third full paragraph, you -- last sentence: In the interim, I advise you to settle the matter at hand for the 25,000 that's been offered.

A. That's correct.

Q. Did you have any conversations with Mr. Feldman about why you were making this recommendation?

A. Bob and I talked on the telephone. As I said, I sent a couple of these letters to him regarding costs and so forth like that. My recollection is he called me sometime later in the summer. At that time I told him that he had severely compromised his case with his activities and I felt that the -- the case was really not a very good case.

Q. You'd been practicing law about 20 -- almost 25 years --

A. Yeah.

Q. -- as of this?

A. That's about right. Yeah.

Q. And it's your testimony that Mr. -- if you'd gone to trial that you didn't -- your expert opinion was that the case was not worth more than $25,000?

A. Based on what I knew about Bob, yes.

Q. After this September 15 letter we marked as Exhibit 10, did you have any conversations with Mr. Feldman about having the need to maybe find substitute counsel instead of filing a motion to withdraw as counsel?

A. I don't recall. But I have a feeling that I did. And if you have a letter, I'd like -- I'd like to look at it before I answer any further than that.

Q. You believe you've had conversations with Mr. Feldman about --

A. I think I may have written him a letter.

Q. Okay. Check something real quick.

A. Sure.

Q. I don't think I've seen the -- I don't think I've seen the letter.

I'm going to represent you the first time that the substitution of counsel came into play was after you had filed your motion to withdraw.

Well, I'll tell you what. I'll just use this for now. I'm not going to mark this as an exhibit. We've got a copy of it, but you filed a motion to be -- to withdraw as counsel, correct?

A. I don't recall that.

Q. This is --

A. So show me -- pass me the certificate of service.

Q. I'm showing to you a copy of the certificate of service. And do you recall filing a motion to withdraw?

A. I don't recall.

Q. Okay.

A. That doesn't mean I didn't do it, but I don't recall. And if you have something that will help me, please give it to me.

Q. This image I'm going to show you is Bates No. 00048, and it's a -- it appears to be a clocked copy of a motion to -- for withdrawal of appearance and stay of proceedings, and the movant was you.

I can make that a little larger if that'll help.

A. Yeah. Go ahead. I can't hardly see it.

Q. I'm sorry.

A. Is that the end of it, or can I move it down?

Q. Yes, sir. We can --

A. Oh.

Q. Oh, wait a minute. Let me see if I can get it to scroll down better.

A. Okay. Okay. Is that it? Is there a signature page?

Q. I think there is, and I'll show you that.

A. Okay. That's correct.

What was the date? I'm -- I apologize.

Q. It was clocked or filed with the court on September 16, 2014.

A. Okay.

Q. And did you have any -- and where I'm going with this is did you have any conversations with Mr. Feldman before this motion was filed on the preference to substitute counsel rather than you moving to be relieved as counsel?

A. I just don't remember. I think it would be my habit to talk to him because ordinarily I talk to people. I just don't remember.

Q. Did you help the Feldmans find other counsel?

A. No. I don't believe I did that, no.

Q. Why not?

A. He didn't ask me. If he had asked me,

I would have given him some recommendations.

MR. BOGDAN: Do you have a signature page of that, Tom?

MR. PENDARVIS: Sure.

MR. BOGDAN: Thanks.

MR. PENDARVIS: It goes over to Bates page 00049, and I think the -- out of order, but 0030 was the certificate of service, the same date as the signed.

BY MR. PENDARVIS:

Q. Okay. The law firm of Bauer & Metro took over the representation --

A. That's correct.

Q. -- of the Feldmans?

A. Uh-huh.

Q. Okay. I'm going to go back a little bit in just a second, back in time.

MR. BOGDAN: Did you mark this?

MR. PENDARVIS: No.

(EXH. 11, Letter from Gary Coggin to Julian Allen dated May 21, 2014, was marked for identification.)

BY MR. PENDARVIS:

Q. Mr. Coggin, I'm going -- I'm going to rewind a little bit.

A. That's fine.

Q. We've been up to the point of -- in September. I'm going to go back a little bit, into May. I'm passing you -- appears to be a letter from you to Julian Allen from May 21, 2014. Going to ask if -- if that's a letter you sent to Mr. Allen?

A. Yes, it is.

Q. Okay. What's the purpose of this letter?

A. I would assume I was still working on the case and trying to get a settlement.

Q. It appears, if you're looking at the third paragraph, that there -- you provided all of Mr. Feldman's medical records that you had in your possession --

A. Uh-huh.

Q. -- and you divided them basically into preaccident medical bills and postaccident medical bills.

A. That's --

Q. Is that a fair summary?

A. That's correct.

Q. And looking at the -- you're showing existing medicals, and this is the -- one, two,

three, four -- fifth paragraph beginning with the word following.

A. Uh-huh.

Q. You're showing total billings at 47,450?

A. Yeah. Uh-huh.

Q. And you're also looking at foreseeable future for injections that Mr. Feldman's going to need?

A. Right.

Q. So you had done some calculations on the amount of medicals?

A. I just told you I didn't remember.

Q. I know. And I'm just saying -- well, you also said sometimes you don't do them until right before trial, but my point is you had done some for Mr. Feldman's case during the time you were representing him, correct?

A. I would say so. I would agree.

Q. Okay.

A. This also shows that the billings were relatively small compared to what they were before, 47,450.

Q. Okay. Did you develop any values for the future medicals that Mr. Feldman was going to

need?

A. You're going to have to explain that to me. I don't know what you mean.

Q. Your letter says that, according -- Mr. Feldman has had 16 injections, one every two and a half months --

A. Yeah.

Q. -- and the injections will continue at this rate for the foreseeable future.

A. I -- no. I did -- I'm going to back up on this. There was a letter to Dr. Shissias or Reuben in which I talked about some kind of future medicals or something like that, and that's all I can tell you. I do remember there was something there.

Q. Okay.

A. If you have it, I'd like to look at that.

Q. And you made statements in the -- to the Allstate carrier about future medicals for Mr. Feldman?

A. If there's -- in the letters, I would say yes. I don't know if I did or not. I'm sure I did.

Q. You're welcome to look. I'm going to

represent to you that you did.

A. Yeah, yeah.

Q. If you want to see them, you can.

A. Yeah. I'd like to see them, yeah.

Q. They're right in front of you. They're in one of the earlier exhibits, those first two or three letters that we looked at.

A. You're going to have to help me here. What are we looking for?

Q. I'm looking. I'm --

A. I had a -- I had a senior moment there.

Q. Well, in one of your first letters, Exhibit 2, July 5, 2011 --

A. Uh-huh.

Q. -- the second full paragraph and, really, the third full paragraph talk about future medicals.

A. Okay.

Q. And question I've got is, that that was an expense that was going to be available at trial for the case.

A. Uh-huh.

Q. Correct?

A. Uh-huh.

Q. Thank you. I just feel -- I wanted to

get that testimony.

A. Yes, yes.

Q. Fast-forward now back again to the point in time when -- after Bauer & Metro had taken over the representation. Could you describe just generally what happened in that exchange?

A. There was a -- they asked for the -- all the records. I put them in a box. They sent a girl over to get them, and I had to carry them. They were so heavy I had to carry them down to the car for her.

Q. And the records you're referring to would have been the entire file for the Feldmans?

A. I believe so, yes.

Q. And you were -- and we've seen communications or -- communication's been produced where you were basically telling the lawyers at Bauer & Metro that -- to protect your expenses that you'd paid and your interest in the $25,000 settlement offer?

A. Uh-huh.

Q. Correct?

A. Yeah.

Q. You've got to say yes.

A. It's got to be --

Q. No, no, no.

A. I'd have to see it. I remember some kind of letter like that. I'm not going to agree to the specifics until I look at it.

Q. Okay.

A. I don't remember what I said.

Q. That's fine. The letter -- I mean, it's just not worth really getting into.

Let's just do this.

(EXH. 12, Letter from Carrie M. Murphy to Gary Patrick Coggin dated October 7, 2014, was marked for identification.)

BY MR. PENDARVIS:

Q. Mr. Coggin, I'm going to pass you a document marked Exhibit 12 --

A. Sure.

Q. -- to your deposition. This appears to be a document from the Bauer & Metro law firm faxed and e-mailed to you on October 7, 2014. I'm going to let you read that, and I have a few questions for you.

A. Uh-huh. I read it.

Q. Tell me about this telephone conversation on October 6 referenced in the first sentence between you and Mr. Bauer.

A. I don't remember.

Q. Okay. This letter states that -- apparently it's about the affidavit of service conversation.

A. I would -- again, I don't remember.

Q. When you received this letter -- second sentence says: We have searched the file you've provided --

A. Uh-huh.

Q. -- and cannot locate the affidavit of service for the named defendant.

A. Right.

Q. I would appreciate it if you would search your records and provide me a copy of the affidavit or name the -- or the name of the process server who served the pleadings on the defendant.

A. Okay.

Q. And you got this letter, correct?

A. Yes.

Q. What did you do in response?

A. I don't know if I did anything. I didn't consider this to be something that I had to answer. They said they couldn't find the affidavit of service. My position was that I had included the affidavit of service in all my papers. I

didn't hold anything back, and I think that's all that I can tell you about that.

Q. Is that what you said to Mr. Bauer when he called you on October 6?

A. I dont' know. I told you already I didn't know what we talked about. We could have talked about anything. I've known Sam for a long time.

Q. What do you believe your duties are to a client when you terminate the representation of a client?

MR. BOGDAN: Object to the form.

MR. PENDARVIS: What's the basis of the objection?

MR. BOGDAN: It calls for a legal conclusion.

MR. PENDARVIS: Okay. I'm going to ask him. He's a lawyer.

BY MR. PENDARVIS:

Q. You're a lawyer, right?

A. That doesn't deserve an answer, does it?

Q. I mean, you're a lawyer, and you know that there are rule --

A. Thomas, you're trying to be

provocative. I'm not going to answer that.

Q. No, I'm not.

A. Yes, you are.

Q. You're a lawyer, and you know there are rules governing your duties to a client when you're terminating representation.

A. I do not know what the ethical -- as I sit here, no, I don't know enough about the ethical conundrums regarding transferring of documents. I did everything correctly and up front. That's all I can tell you.

Q. You would agree, as the lawyer who'd handled a matter for a client, including Mr. Feldman and Ms. Feldman, that you've got an obligation to make sure the transition of the file to new counsel goes as smoothly as possible so as not to interfere with the client's claims, correct?

A. Absolutely.

Q. And if that meant looking, going an extra step to look for an affidavit of service, that's not asking too much, is it?

A. I probably looked through every file that I had in my office, so, yes, we looked very hard for that. I thought you were asking what I did with Bauer & Metro.

Q. I thought -- my understanding was your testimony was I probably didn't do anything when I got this letter that's been marked as Exhibit --

A. In response to Bauer & Metro. That's all I meant.

Q. Okay.

A. I looked very hard for that.

Q. Did you respond -- do you know if you communicated back to Bauer -- Sam Bauer or anyone at Bauer & Metro about your efforts to look?

A. I don't know. I don't know if that's any of their business. I don't know, and that's my answer.

(Off-the-record conference.)

BY MR. PENDARVIS:

Q. I'm going to represent to you that ultimately there was an order submitted substituting counsel, that your motion to be relieved never was -- did you ever appear on the motion to be relieved as counsel?

A. I don't believe it ever came up.

Q. Yeah. It was a substitution of counsel that was --

A. Yeah.

Q. -- handled, so the order relieving you

as counsel for Mr. and Ms. Feldman was done by substitution and a consent. Okay.

(EXH. 13, Letter from Julian K. Allen to Honorable Jerri Ann Roseneau dated October 8, 2014; Liberty Mutual Insurance Company's Notice and Motion to Dismiss; and Certificate of Service, was marked for identification.)

BY MR. PENDARVIS:

Q. This is 13.

A. Thank you.

Q. Mr. Coggin, this -- a document -- a cover letter and a -- and a motion that's been passed to you marked Exhibit 13 --

A. Uh-huh.

Q. This appears to be a letter from Julian Allen to the clerk of court filing defendant's -- Liberty Mutual Insurance Company's notice and motion to dismiss.

A. Okay.

Q. And you were copied on that, correct?

A. Yes.

Q. You were of record at that point. You were --

A. Oh, no, no. Yes.

Q. You were still counsel of record,

right?

A. Right.

Q. So Bauer & Metro and their law firm were -- before this motion got filed, they were -- they were looking for the affidavit, right?

A. They indicated they had gone through the file, yes.

Q. Okay. Did you have any conversations with anyone about this motion when you received it?

A. I don't believe did.

Q. Did Mr. Metro or Mr. Bauer call you to discuss this motion when they received it?

A. I don't remember. If you have something, it might trigger my memory. I'm not trying -- I'm not being deliberately obtuse.

MR. PENDARVIS: Let's take a pause while we're looking for this document.

(A recess transpired.)

(EXH. 14, Letter from Samuel C. Bauer to Gary Patrick Coggin dated October 10, 2014, was marked for identification.)

BY MR. PENDARVIS:

Q. Mr. Coggin, I'm passing to you a document marked as Exhibit 14 that appears to be another letter to you from the Bauer & Metro firm,

and this one's from Sam Bauer to you --

A. Uh-huh.

Q. -- dated October 10, 2014. Did you receive this letter?

A. I don't remember, but I think I did. My address is on there. Everything is correct.

Q. It appears there was a -- I mean, this references a conversation with you and Mr. Bauer. You were going to look for the affidavit?

A. Uh-huh.

Q. That's yes?

A. Yes. Excuse me.

Q. What did you do in response to this letter?

A. There was an ongoing search for the affidavit of service. All right? As for the -- the check, that -- my recollection of that was clear. I paid cash for that. Oh, no. Not the process -- yeah. The process server. We're talking about Zellner-Wood.

You can provide an affidavit it was personally served, and I did provide an affidavit.

Q. Well, let me ask you this. Why didn't you just call back the process server in New York and just get another affidavit?

A. I called them immediately. In fact, we must have had 20 conversations. And I called them immediately, and as I said, I'd had a number of conversations with her when this was being served, and the answer that I got was -- the first time I called them -- was that one-time service, none of the -- none of the documents are kept. We only keep the documents -- they only keep records for people that work with us multiple times. Other times, everything else is destroyed or thrown away, and that was the answer.

Now, I talked to them several times after that. I called them up and confronted them with the telephone calls I had made there, and they said, well -- at that point the answer was that they had had three different computer systems in since the period of time. They're obviously worried about a malpractice suit themselves.

And the last time I -- I called many, many times, and another time I called, that they said they looked and they couldn't find anything, so that was the gist of the excuses every time.

And then this gal, Fran, stopped taking my calls, so there was only so much you could do.

Q. Why were you doing all the -- why did

you take all these actions to try to recover the affidavit of service?

A. Why?

Q. Yes. Why?

A. Because I had done it. They had served -- I had served.

Q. Well --

A. I had an obligation.

Q. What was the purpose of the affidavit of service? I mean, why did you need to get it?

A. Well, the affidavit of service had to be filed. I had to protect my client. I'm not sure if that's what you're asking.

Q. Okay. I think we're going to look at an affidavit that you prepared. I'm following up on some conversation --

A. We're talking about different things?

Q. Yeah.

A. Yeah.

Q. The last statement this -- in this request from Mr. Bauer was could you provide an affidavit, and you did provide one at some point, correct?

A. Yeah.

Q. Okay. Now, in between the affidavit

you prepared did Mr. Bauer or his firm serve you with a subpoena for production of the file or the affidavit?

A. I think they did serve me. I don't know if it was for the production of the file or not. Maybe it was. I think I recall that.

(EXH. 15, Letter from Gary Coggin to Jerri Roseneau dated December 6, 2014; Objection to Plaintiffs' Subpoena; and Certificate of Service, was marked for identification.)

BY MR. PENDARVIS:

Q. Mr. Coggin, I'm going to skip a step or two --

A. Yeah.

Q. -- and I'm going to pass you as -- a document marked as Exhibit 15. It appears to be a letter from you to the clerk of court filing an objection to a subpoena, and I'm going to ask if that's a letter -- is that your signature and an objection that you filed?

A. Yeah. Uh-huh.

Q. And so, based on the statement in your objection, the subpoena that was served sought, quote, 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, correct?

A. That's correct.

Q. And your objection was that you provided the file?

A. A complete file had been provided. Right.

(EXH. 16, Affidavit of Gary Coggin, was marked for identification.)

BY MR. PENDARVIS:

Q. I'm going to pass you a document marked as Exhibit 16. It appears to be an affidavit that you signed a few days later dated December 8 and, first off, ask if this is an affidavit you signed?

A. Yeah. Yes, it is.

Q. And did anyone assist you with the content of this affidavit?

A. No. I did it myself. I'll take part of the blame for it.

Q. Did you have any conversations with Mr. Bauer or Mr. Metro or anyone at that law firm while you were developing this affidavit?

A. I don't believe so, no.

Q. Okay. To your knowledge was this ever submitted to a court?

A. Yes. I think the -- this was given to Julian Allen, and I probably sent a copy of it to Bauer & Metro, and I don't know. Unless you have a -- something else. Maybe you have some letters or something like that.

Q. I'm not sure I've seen a clocked copy or a cover letter. I'm just try -- that's what I'm trying to find out.

A. I think I gave it to Mr. Allen, and I probably gave a copy to Sam Bauer.

Q. Do you know if this was submitted to Judge Kinard when he heard the hearing -- motion?

A. It's in the documents. And again, I -- I don't know. You're -- I'd have to look at it and see. I -- I don't recall one way or the other.

MR. PENDARVIS: Okay. Off the record for just a moment.

(Off-the-record conference.)

(EXH. 17, Answer to Defendant's 12(b)(4) and 12(b)(5) Motion to Dismiss, was marked for identification.)

(EXH. 18, Answer to Defendant's 12(b)(4) and 12(b)(5) Motion to Dismiss, was marked for identification.)

BY MR. PENDARVIS:

Q. Mr. Coggin, I'm going to pass to you two documents. Both of them are styled Answer of Defendant's 12(b)(4) and 12(b)(5) Motion to Dismiss. One, Exhibit 17, has not been signed, and one, Exhibit 18, has been signed. Take a look at those for a moment and then I've got a couple of questions for you.

A. Okay.

Q. Did you prepare these documents?

A. I'm sure I did.

Q. Why did you prepare them?

A. I don't know if it was in response to Julian Allen's motion to dismiss. Depends on the dates. And then there was a second hearing, and you provided us those documents under -- you provided us those documents under the interrogatories or production yesterday, so there were two separate hearings.

Q. Right.

A. One in front of Maitley Murphy, a young -- or young judge, and then one in front of an old judge, Judge Kinard, so I -- I think they were probably prepared for one of those. That's all I can think of.

Q. By this time you'd been relieved as

counsel for Mr. Feldman?

A. I don't know what the -- the dates were, so I can't tell you.

Q. Do you believe when you prepared these responses to the plaintiff's motion -- excuse me -- the defendant's motion that you were counsel of record -- counsel for Mr. or Ms. Feldman?

A. There's two ways I could answer that question. The first one is that I don't know what the date is that we have the consents and so forth like that. If you can provide that for me, I can answer it a lot better.

The second one is that the -- the clerk of court or in -- become mixed up from time to time and they'll list an attorney as the counsel of record, and you better show up even if you're not, so I can't tell you when it was or whatever until I know what the dates were.

Q. After letting you look at this I'm going to represent to you --

A. Yeah.

Q. -- that October 17 Mr. Bauer sent you a consent order -- let's get it. You can read it -- for substitution of counsel.

A. Uh-huh. Do you have the consent order?

That's what I'm looking for.

Q. I believe it's the next page. Here's the cover page for the judge. Hold on. I got to do it -- switch to the next page.

A. The same thing is I still can't answer it.

Q. And here's --

A. I'm sure you have it.

Q. And here's the --

A. Okay.

Q. -- consent. Did you sign a consent order?

A. I don't know. I want to see it.

Q. Do you believe you stayed on as counsel for the Feldmans?

A. What I -- I think that -- and you were talking about the obligations that you have. I think that to a certain extent, as the author of the predicate incident over which this is involved, I had a certain obligation to Bob Feldman to protect him as much as I could, which is what I was doing, so I don't know what the dates are or anything else like that.

Q. Fair enough.

(EXH. 19, Transcript of Record dated

January 6, 2015, was marked for identification.)

BY MR. PENDARVIS:

Q. Mr. Coggin, we were able to obtain a copy of the transcript of a hearing before Judge Kinard in January of 2015. I'm going to pass a copy of it to you marked as Exhibit 19. And, candidly, we just got it recently. Did you have a chance to look over this transcript before our deposition today?

A. Briefly, briefly.

Q. There is a summary in the first page about the circumstances about you and at an earlier hearing.

A. Right. Uh-huh.

Q. Accurate, as far as you know?

A. Do you want me to comment on it?

Q. Sure.

A. This is one of the things that I was talking about where you're listed as the attorney of counsel. I was the attorney of counsel listed.

Q. Okay.

A. That's why I showed up. Sam Bauer came in, and Sam and I have known each other for years. He sat down at the table with me. I asked him what he was doing, and he said: I'm the attorney here.

And I said: Where are you on the list?

I said: I got to go by the list here.

We had a brief disagreement, which -- and I can't remember how it worked, to be honest with you, what happened after that. And I think we both -- I think we both answered, to be honest with you.

Q. I mean, we're kind of coming at it from both sides of the same thing. You filed a motion to be relieved.

A. Uh-huh.

Q. There's a substitution of counsel --

A. Right.

Q. -- that was in play, and apparently no order had been signed at this point.

A. I don't know. That -- I don't know if the order was signed or not. All I know is that I was on the roster, and if you're on the roster, you better -- you know, sometimes it takes a while to get these orders signed and so forth, and I didn't know what the situation was, so I went to answer it.

Q. And if we take a look at page 4 of the transcript, which is Norton, bunch of zeros, 4, very bottom right-hand corner. Page 4 of the

transcript --

A. Yeah, yeah. Go ahead.

Q. -- and if you scroll down to line number 17 --

A. Uh-huh.

Q. -- take a look at that, 17 through 20.

A. Yeah. That's exactly what I was talking about.

Q. And then down below that, 21, 22, that Mr. Coggin had been relieved as of November of 2014?

A. Uh-huh.

Q. Correct?

A. Yeah.

Q. And this is a hearing that's taking place in January of '15.

A. No. This is a -- I think this is a December hearing.

Q. It says on the front -- first page January 6, 2015 --

A. Hang on.

Q. -- before Judge Kinard.

A. Hang on. But we're talking about Judge Murphy here.

Q. Right, right. But I'm just saying that

this is --

A. November of '14.

Q. -- reciting a history. In a hearing before -- let me make sure I get this correct.

A. Yeah.

Q. In a hearing before Judge Kinard in January of 2015, Mr. Allen, on pages 3 and 4 of the transcript, is giving Judge Kinard some history behind the motion, correct?

A. Right. Uh-huh.

Q. Okay. And that's the discussion you had mentioned earlier about Judge Murphy?

A. Right. Uh-huh.

Q. Okay.

A. I thought we were talking about Murphy here.

Q. My apologizes if I wasn't clear.

A. Yeah. Okay. This is the Kinard. Yeah.

Q. And in this circumstance, beginning, I believe, on page 5 of the transcript, is the first point in time where you're giving arguments to the Court, correct?

A. Yeah. Uh-huh.

Q. Okay. And if we fast-forward through

the arguments to page 9 --

A. Okay.

Q. -- of the transcript, in particular, line 18, you told Judge Kinard that you were not going to -- you don't -- didn't blame Bauer & Metro about the affidavit not getting filed, correct?

A. You know, there's -- in this case, Mr. Pendarvis, there's plenty of blame to go around. Most of it rests on my doorstep, and I fully admit that I failed to file this paper when I got it; however, I will maintain today and tomorrow and whenever that all the papers of the case went over to Bauer & Metro. I don't know what happened.

There were three documents that did not come back. One was the -- my -- one was my contract with Mr. Feldman. They called me and asked -- told me that they didn't have the contract, and I know that was in there. We sent that off. We sent a copy off.

The second was the -- the affidavit of nonservice by Michael Witt, and I knew that was in there because when I was putting them in I -- I looked at this document and I said: Who hand scribbled this? And it was Mike Witt's document. That never came back to me.

The third document was this, but I will not --

Q. And by this, just so the record's clear, you're talking about the affidavit of service in New York?

A. The affidavit of service, yeah. And -- but I am not going to say -- even though I've said I put them with the papers of the case and that's what I remember, that is -- I will not accuse Bauer & Metro of doing anything untoward because I don't think they're capable of that, and that's what I'm saying.

Q. And if we fast-forward over to page 11 --

A. Sure.

Q. -- Judge Kinard, bless his soul --

A. A good man.

Q. A very good man. That's one thing we will definitely not disagree on.

He's instructing you --

A. Uh-huh.

Q. -- page 11, line 3, to get an affidavit from the process server.

A. Uh-huh.

Q. Correct?

A. Uh-huh.

Q. That's yes. I'm sorry to --

A. Yeah. I'm sorry. That's correct. Yeah.

Q. And from your prior testimony and your multiple conversations with the Zeller-Wood process server people in New York, that simply couldn't be done, correct?

A. Actually, I -- I talked to them, and I talked to the president of Zeller-Wood, and he said: Send me up your proposed affidavit.

I sent it to him, and in that period of time --

Q. I'm listening. In that period of time...

A. Okay. In that period of time a couple things happened: One, the case was settled. Number two, Kinard died.

The other part of it was that Kinard also told Mr. Allen to get an affidavit from Ms. Dickenson. I never pushed the affidavit after that because they had settled the case, and as far as I was concerned that ended the case.

And the second thing is immediately after that Judge Kinard died, and had that been

scheduled, I would have driven to New York and stood at their doorstep until they signed this affidavit.

Q. And it's your testimony you prepared a proposed affidavit?

A. Yes, I did.

Q. Have you produced that?

A. No. Because it went off to them. I don't even remember what it was. I produced the affidavit. I sent it up to them.

Q. You didn't keep a copy of it?

A. I did not.

Q. Do you have a word processing document that generates that?

A. I can tell you what -- exactly what it said, if you want me to tell you.

Q. Well, I need to see the -- no, no, no. My question was: Do you have a word processing file from which that affidavit was printed?

A. I can look. I don't know how it was done or whatever. I have a computer at home. I have a computer at the office. The computers at home have been thrown out. I don't know. I have a computer that all the -- all the memory has been wiped out somehow.

The fact of the matter is is what they were going to agree to was that I had made multiple calls to them. That's all they would agree to. So it's not exactly the smoke --

Q. So there wasn't --

A. It's not the smoking gun. And I will look for it.

Q. So they weren't going to be able -- I'm sorry.

A. Yeah. I'll look for it. I'll try to get it for you.

Q. Well --

A. If I have it, I'll look for it.

Q. Then I'm correct -- then the statement that an affidavit of service from the process server was not available?

A. I did not finish. I don't know -- you know, it depends on what your definition of the affidavit of service is.

Q. Did you believe that someone with personal knowledge of service on Ms. Dickenson, however that occurred --

A. Uh-huh.

Q. -- was available to give an affidavit about those events?

A. That question -- I asked that question of Zeller-Wood one time, and the answer was we have thousands of process servers. We can't possibly dig up who it is. I can only go with what they told me. That was their way of saying no.

Q. Okay. And essentially the document -- draft affidavit you sent to New York was arguably the flip side of your affidavit that said I made multiple calls and their affidavit saying we received multiple calls, correct?

A. Prior to the service of the affidavit.

Q. Okay.

A. Yeah. Uh-huh. That's exactly right.

Q. So effectively, your decision not to file the affidavit left the Feldmans in a position of not being able to respond to the motion to dismiss, correct?

A. No. That did not even -- that did not even come up. Judge Kinard said he was going to schedule another hearing. He wanted us, in the interim, to each come up with affidavits. Mr. -- Mr. Allen never had an affidavit. I had never had an affidavit. You guys settled. That was -- Mr. Feldman settled that relatively quickly. I would say within a month. Okay?

That had been drafted. It had been sent off. I didn't hear anything. In the meantime it was settled.

Q. Did you tell Mr. Metro, Mr. Bauer, or anyone representing Mr. Feldman that the process server people in New York, Zeller-Wood, had told you that basically there was not going to be an affidavit available from someone who had personal knowledge of service?

A. No, I did not.

Q. Did you have any communications with Bauer or Metro after the hearing on January 6, 2015?

A. What's -- what's January 6, 2015?

Q. This hearing. It's the transcript that you're looking at.

A. Okay. Hang on.

Q. And I'm just trying to find out: Did you have any conversations with them?

A. I think I may have talked with Sam regarding what happened, and he said that the case settled.

Q. Didn't Judge Kinard say at the end of the hearing that -- I'm going to quote this from page 11, lines 25, carrying over to page 12, to

you: But I don't think I can let it go forward without a little more than your affidavit?

A. Where are we at?

MR. BOGDAN: Object to the form.

BY MR. PENDARVIS:

Q. Page 11, line 25. I said 24. I'm sorry. Line 25, over to line 1 on page 12.

Isn't that what Judge Kinard told you, that you were basically going to need an affidavit of service?

MR. BOGDAN: Object to the form.

THE WITNESS: Judge Kinard said a couple of things, and I don't agree with that. Judge Kinard also said: This is a complicated case, and I have not read the case law.

He said a number of things.

BY MR. PENDARVIS:

Q. But in conclusion he told you: But I don't think I can let it go forward without a little more than your affidavit.

Correct?

MR. BOGDAN: Object to the form.

THE WITNESS: What he was meaning there was that -- and I was there -- is that he was going to have to read the case law on this. He was going

to have to go over my memorandum of law, and he was going to decide. He also said to Mr. -- to Mr. Allen he wanted an affidavit from him.

BY MR. PENDARVIS:

Q. From Ms. Dickenson?

A. Yeah. And you -- look with this. The last person to talk to him was Julian Allen, not me. Julian Allen said: Thanks, judge.

The Court says: Good luck with it because it's complicated. I don't think I can let it go forward without a little more of your -- without a little more than your affidavit.

And that was the end. So he was talking to Julian Allen rather than me, I believe.

Q. But the response to that question was who? Could you read into the record who answered that statement?

A. I said: Thank you, Judge.

Q. Right. Judge was talking to you. Okay.

A. You're reaching, Mr. Pendarvis.

MR. BOGDAN: Object to the form.

THE WITNESS: You're reaching.

BY MR. PENDARVIS:

Q. Here's --

A. No. That's not the correct -- that's -- no. He was speaking to Mr. Allen. I said thank you, Judge, for that ruling.

Q. Did you communicate with Mr. Bauer or Mr. Metro -- well, one more thing.

A. Yeah.

Q. The only affidavit before the Court was your affidavit, correct? At the hearing before Judge Kinard on January 6.

A. That was an affidavit that I had written that I had promised a while -- way before that had nothing to do with Judge Kinard.

Q. No, no, no. I'm sorry if I wasn't clear.

The only affidavit before Judge Kinard was your affidavit that's been marked as Exhibit 16, correct?

A. I don't even know if that went in front of Judge Kinard. I have no idea about that affidavit. I don't know much about it. You probably have the history of that, as who saw it and whatever. You would probably know better than me.

Q. If you look on page 5 of the transcript, there's -- beginning on line 8, through

line 10, Mr. Allen is describing your affidavit.

A. Okay.

Q. And you're welcome to look through this transcript, but I'm going to represent to you that the only affidavit mentioned in this entire hearing of January 6, 2015, was your affidavit marked as Exhibit 16.

A. Okay.

Q. Are you aware of any other affidavits that were before the Court?

A. All that is done here is Allen has referenced it, and he referenced it very badly. He obviously didn't have the affidavit in front of him. Process server up in New Jersey or New York to serve the defendant. I think I got the affidavit, but I don't have it. I don't know who actually served or where they were served under these rules.

That's not what my affidavit said. Mr. Allen did not have the affidavit in front of him. I don't know where that affidavit was.

Q. The statement you made before the Court, really pages 8 and 9 of the transcript, basically were the substance of the affidavit, correct?

A. Tell me what sections you're referring to.

Q. Pages 8, 9.

A. Yeah. I know that, but tell me basically.

Q. You're explaining on page 9, line 9 through, certainly, line 19 on page 9, you're describing the efforts you made to -- matters that related to the affidavit of service, correct?

A. Yeah. I don't think that had anything to -- oh, the affidavit of service. I thought you were --

Q. Yes, sir.

A. -- talking about my affidavit --

Q. Yes.

A. -- that I had --

From nine?

Q. The middle of page 9.

A. No, no. It went till -- till what number though?

Q. Nine to 19. And then again on page 10 --

A. Yeah. That's -- I would agree with that, yeah.

Q. -- you're describing what's -- what

happened.

A. Uh-huh.

Q. And I saw this a second ago. Bear with me.

A. Yeah. Sure. Take your time.

Q. And in fact, on page 10, lines 18 and 19, you told Judge Kinard, quote: In addition to all that, Your Honor, I have submitted an affidavit as to what happened.

A. Yeah. Uh-huh.

Q. Okay.

A. We have not received an affidavit from Ms. Dickenson. That's what Kinard was referring to.

Q. Right. But the only affidavit before was a little more than your affidavit on page 12. It's the only affidavit that's being discussed, was your affidavit.

A. But he says -- but I say in there: We have not received an affidavit from Ms. Dickenson.

That was what was -- were required by Mr. Allen, and the judge says: Good luck. I don't think we can go forward with it without a little more than your affidavit.

He was talking to Julian Allen, not me.

They had the affidavit that I submitted.

Q. After January 6, 2015, did you communicate with Mr. Bauer or Mr. Metro or anyone else in the law firm about the Feldmans' matter?

A. I don't know if I did or not. I don't think so.

Q. Did you --

A. Wait. Back up. I think that Sam told me it had been settled. I think I got the information from him.

Q. Did you have any conversations with Mr. Bauer or Mr. Metro or anyone at the Bauer & Metro law firm about filing a motion to intervene to stop the settlement?

A. I had thought about that, and I thought better of it.

Q. So the answer is yes, you did have a conversation with one of them?

A. I don't know. What I -- I don't know if I told them about that or not. I think what happened was I had called -- when I heard about it, I called Allen and I called Bauer saying I'm going to file a motion to intervene, then I called them back about two hours later and said I decided not to do it.

Q. What would have been the basis of your motion to intervene?

A. I have no idea. I can't remember it.

Q. What made you consider filing a motion to intervene?

A. I -- I thought a couple things. I thought that maybe I should have been consulted. Okay? I wondered what the agreement was, without running it past me. Because I was the author of the predicate incident, I thought there was a courtesy that should have been given to me. And that's about all I can tell you.

I do know I called them both back in a relatively short time, said I've -- after a lot of thought I decided I'm not going to do that.

Q. Have you had any further communications with Mr. Bauer, Mr. Metro, or anyone at that law firm about the Feldmans, the Feldmans' claims?

A. I have communications with them, but I don't think I've ever talked to them again about that. If you have some information, let me look at it, and I'll be happy to comment on it.

Q. I'm trying to find out the information. Did you --

A. What I'm saying is I don't recall.

Q. Okay.
A. What I'm saying is, if you have any information, let me see it.
Q. Have you had any communications with Liberty Mutual directly about the --
A. No.
Q. -- Feldman matter?
A. No. I don't believe so.
Q. Getting really close.
A. That's all right. Take your time.
(Off-the-record conference.)
BY MR. PENDARVIS:
Q. I want to understand some of the defenses asserted in your answer.
A. Sure.
Q. And I'm happy to show it to you. There's an affirmative defense for failure to mitigate.
A. I'd like to look at it. I don't know what we're talking about here. Do you have a copy?
Q. Have you ever seen a failure to mitigate defense as a lawyer?
A. No. I -- I want to look at it and see what --
Q. Sure.

A. -- the context of it and so forth like that. I don't even know who --

MR. BOGDAN: Our answer in this case?

MR. PENDARVIS: Yes.

THE WITNESS: Oh. I can't answer it. I don't know.

BY MR. PENDARVIS:

Q. Well, this is an answer that was filed on your behalf in this case, correct?

A. Uh-huh.

Q. Yes?

A. Yes.

Q. And do you have any knowledge of what factual allegations support this affirmative defense for alleged failure to mitigate?

A. I don't know what's behind that defense. The defense -- those defenses were drafted by my lawyers. That's why I'm paying them. And that particular thing, I have no idea.

Q. There is -- and I'll let you look at it.

A. Sure.

Q. There is an affirmative defense for statute of limitations. I want to let you read it. It's Paragraph 66.

A. Again, I'm paying Dawes and Jeff here to answer these. I think these questions would be better placed in front of them.

Q. I haven't asked the question. I just wanted to let you know that's been asserted, and my question is: What facts are you aware of that would support a statute of limitations defense?

A. I don't know -- I don't think it'd be fair to you or to myself to answer that question without having some knowledge about it.

Q. Is that going to be the answer for each of these affirmative defenses that I were to ask you about?

A. I would say so, yes.

Q. Okay. That saves us --

A. As I said, I've paid my attorneys to do this.

Q. Save us some time. Save us some time.

A. Yeah.

Q. Let me take a break, talk to my folks, and then we'll wrap it up.

A. That'll be fine. Thank you.

(A recess transpired.)

MR. PENDARVIS: Mr. Coggin -- back on the record.

THE WITNESS: Yeah.

MR. PENDARVIS: That's all the questions I've got at this time.

EXAMINATION

BY MR. BOGDAN:

Q. Gary, for the record, Jeff Bogdan, your attorney in this case. I've got a couple things to follow up with you on just to --

A. Sure.

Q. -- clear up a couple issues.

Will you look at Exhibit 1, please?

A. I was keeping these in good order.

Q. You did a good job.

A. There we go.

Q. This is a copy of your contingency fee agreement --

A. Right.

Q. -- with Mr. Feldman, correct?

A. Uh-huh.

Q. All right. Is that a yes?

A. Yes. Excuse me.

Q. It's all right.

Thomas talked with you about the strike-out over the 40 percent of the fee if there's an appeal.

A. Yeah.

Q. Right? And you said that you don't do appeals.

A. That's correct.

Q. And then he asked you, well, why is this in the agreement. You just said it was a standard agreement; is that right?

A. Yeah. Yes.

Q. Do you not do appeals -- have you had an opportunity to do an appeal?

A. I've had many opportunities. I just don't -- it's a whole section of the law that I think you can get yourself in deep trouble.

Q. Sure. Sure.

A. The other thing too -- and I want to add to that, is I've been -- I thought about that -- is that Robert actually asked me to strike that, the 40 percent.

Q. Okay.

A. And, you know, I have to give Robert credit. I've been getting after him pretty good, but he -- he did ask me to strike that.

Q. Are those his initials next to it?

A. I think so.

Q. Okay. And if for some reason you would

have pursued Mr. Feldman's case and let's say it would have gone to trial and it turned out one way or the other and there was an appeal, would you have associated another attorney to handle that --

A. Absolutely, yeah.

Q. Let me finish the question.

A. I'm sorry.

Q. Would you have associated another attorney to handle that appeal?

A. Yes.

Q. Okay. And in that event, if this 40 percent provision was still in there, then that would be the applicable provision for the -- for the contingency based on the appeal, correct?

A. Yeah. But we struck it.

Q. Right.

A. Yeah.

Q. And you would have had to share that fee with the attorney who you associated?

A. Absolutely.

Q. All right. I want to look at Julian Allen's answer, and it is Exhibit 8.

A. Yeah.

Q. Do you see that one?

Just getting it out of the way.

A. Number eight. Let's do it this way. Okay. We've got it.

Q. All right. Who is this answer filed on behalf of? Liberty Mutual Insurance Company, correct?

A. I think it's Liberty Mutual, yes.

Q. All right. Okay. And when a --

A. In fact, it says in the first sentence: Liberty Mutual Insurance --

Q. Right.

A. -- as the underinsured.

Q. Is it your understanding that when a party that files an answer to a complaint asserts affirmative defenses that those are the affirmative defenses of that party?

MR. PENDARVIS: Form objection.

THE WITNESS: That's correct.

BY MR. BOGDAN:

Q. Okay. And if you look at the fifth -- the fifth defense for improper service -- you see that one?

A. Yes, I do.

Q. Okay. And this is Liberty Mutual's defense, correct?

A. Right.

Q. Okay. And it says improper service, correct?

A. (Witness moves head up and down.)

Q. Okay. And who does it say was not properly served with the complaint?

A. It says no one.

Q. It doesn't say that Ms. Dickenson was improperly served with the complaint?

A. No.

MR. PENDARVIS: Form objection.

THE WITNESS: The assumption here is that Liberty Mutual wasn't served.

BY MR. BOGDAN:

Q. This is a general and unspecific affirmative defense, is it not?

A. That's correct.

MR. PENDARVIS: Form objection.

BY MR. BOGDAN:

Q. Okay. And if this affirmative defense was specific and said that Sarah Dickenson was not properly served with the -- with service, what would you have done?

MR. PENDARVIS: Form objection.

THE WITNESS: I would have immediately checked with Zellner-Wood to see what was going on,

and if I had gotten the answer they had been giving me, I would have re-served.

BY MR. BOGDAN:

Q. And would that have also triggered you to look for and file the affidavit of service --

MR. PENDARVIS: Form objection.

BY MR. BOGDAN:

Q. -- that you had already received?

A. Yes.

MR. BOGDAN: Let me finish the question again, Thomas.

MR. PENDARVIS: I'm sorry. He's answering so quick I can --

MR. BOGDAN: I understand. Let me start over --

THE WITNESS: Yeah.

MR. BOGDAN: -- just so we get this clean, and I'll --

BY MR. BOGDAN:

Q. Gary, if you'll wait, 'cause we know Thomas is going to object.

A. I -- I -- yeah. That's fine.

Q. We'll let him get it in.

A. Yeah, yeah.

MR. PENDARVIS: Leading questions.

I'll give you the hint.

MR. BOGDAN: Okay.

BY MR. BOGDAN:

Q. What would you have done with regards to the affidavit of service that you had already received had this affirmative defense actually said that Sarah Dickenson was not properly served?

A. I would have searched high and low for that affidavit.

Q. And what would you have done with it if you found it?

A. I would have filed it.

Q. That's it for Exhibit 8. Let's move on to Exhibit 9.

A. Eleven, ten. Nine. Okay.

Q. This is the letter from you to Terry Finger, correct?

A. That's correct.

Q. And there was some discussion between you and Mr. Pendarvis about the demand, the opening demand at mediation that you made in this of 300 to $350,000, correct?

A. That's correct.

Q. And I believe he asked you if you had discussed this opening demand with Mr. Feldman, and

you said that Mr. Feldman was not cc'd on the letter, right?

A. That's correct.

Q. Okay. Just because he's not cc'd on the letter, does that mean that you wouldn't have discussed this opening demand with him?

MR. PENDARVIS: Form objection.

THE WITNESS: May 5. We were still discussing these matters. I probably did.

BY MR. BOGDAN:

Q. Okay. You just don't have any recollection?

A. I don't have any recollection, but my habit would have been to discuss it with him.

Q. Okay. All right. Still on Exhibit 9. There was also a lot of discussion between you and Mr. Pendarvis about this 150 to $180,000 range that was -- is set out on top of page 2?

A. Uh-huh.

Q. Is that a yes?

A. Excuse me. Yes.

Q. Okay. You remember that line of testimony?

A. Yes.

Q. And I believe where we ended up was

that you testified that this was an estimate of Bob Feldman's past medical expenses; is that correct?

MR. PENDARVIS: Form objection.

THE WITNESS: Hang on.

Yes.

BY MR. BOGDAN:

Q. Okay. Well, what I want you to do is look back on the first page, and if you see the -- it's numbered A. It says impairment. Do you see that?

A. Yes.

Q. And then number B is medicals. Do you see that?

A. Yes.

Q. So in the impairment section the last sentence says: By any formula, this impairment should be valued at somewhere around $100,000.

Is that right?

A. That's what it says.

Q. Okay. And then under the medicals, the conclusion of that section is: If this is extended ten years, there is an expense of $60,000.

Correct?

A. That's correct.

Q. Okay. So what's $100,000 plus $60,000?

A. 160.

Q. Okay. So then the next sentence is: The above amount is $150,000 to $180,000.

Correct?

A. That's correct.

Q. Those are not actual past-incurred medical expenses, are they?

MR. PENDARVIS: Form objection.

THE WITNESS: No, they're not.

MR. BOGDAN: All right. That's all I have.

EXAMINATION

BY MR. PENDARVIS:

Q. Mr. Feldman, one follow-up on your --

MR. BOGDAN: Tom, Coggin.

MR. PENDARVIS: Oh. I'm sorry. That was it?

MR. BOGDAN: No, no. You called him Mr. Feldman.

MR. PENDARVIS: I'm sorry. Mr. Coggin.

THE WITNESS: I'm always flattered. I'm always flattered.

MR. PENDARVIS: Thank you. Thank you.

BY MR. PENDARVIS:

Q. You were asked some questions by your

counsel concerning Exhibit 8 and in particular the fifth defense asserted by -- by the defendants in the -- defendant in the answer that was filed.

A. Uh-huh.

Q. Is it your testimony that when you received this answer that you analyzed this fifth defense carefully enough to see that it didn't name Ms. Dickenson specifically?

A. At what period of time are we talking?

Q. January 4 -- sometime in January of 2013.

A. I -- I analyzed very closely. I'm not sure when.

Q. Well, you were asked questions that suggested that had this improper service fifth defense had Ms. Dickenson's name in here --

A. Uh-huh.

Q. -- that you would have done things differently, and my question to you is: Did you -- is it your testimony that you analyzed this fifth defense that carefully and decided they didn't name Ms. Dickenson, therefore I'm not going to have to worry about this affidavit?

MR. BOGDAN: Object to the form.

THE WITNESS: I don't think that's what

I testified to, but no.

BY MR. PENDARVIS:

Q. You didn't analyze it that carefully in January of 2013?

A. No. I didn't -- you -- the last sentence. Repeat the last sentence.

Q. In --

A. That I don't have to serve Ms. Dickenson?

Q. My question -- let me reframe the question.

A. Yeah.

Q. See if I can get this clear. I want to make certain about your testimony about what actually occurred when you received this answer in terms of your analysis of this fifth defense.

A. Uh-huh.

Q. Am I correct in understanding your testimony that you didn't analyze it as carefully as was suggested earlier in that because it does not state Ms. Dickenson's name you chose not to file the affidavit or look for the affidavit?

MR. BOGDAN: Object to the form.

THE WITNESS: I don't think that's what it said -- what he said, but -- and it has nothing

to do with looking for the affidavit or not. This was in 2013. I didn't start looking for the affidavit until two thousand and -- when I heard from Bauer & Metro.

BY MR. PENDARVIS:

Q. Okay.

A. I did look at this very closely when I -- when I received it. I always do. And I thought that -- at that time, to myself, I felt that Mr. Allen had quite -- a very slim answer. He didn't include a statute of limitations defense, and I knew enough that the improper service defense of his was not enough to fit the law and -- but as for I decided not to look for Ms. Dickenson at the time, no.

Q. If it had had reference somewhere in this defense the name Dickenson, would you have done anything different?

A. I probably would have looked a little closer at my papers.

Q. Why?

A. Because I knew that he was doing something specific here when he hadn't done it in the entire case, and he was talking about Liberty Mutual. He says he answers for Liberty Mutual. If

he had said something about Ms. Dickenson, yeah, that would have raised my antenna.

Q. Well, have you looked at 38-7 -- Section 38-77-160?

A. I'm sure I have, but I cannot tell you what 38-77-160 says. I've pretty much at one time or another had most of the civil procedure book memorized, but that goes quickly, as you probably know.

Q. Well, honestly, candidly, S.C. Code Annotated Section 38-77-160 is not in the Rules of Civil Procedure. It's in the Code of Laws, but --

A. Okay. Well, tell me what it is.

And congratulations.

Q. It's a statute governing the underinsured motorist carrier's rights to defend on behalf of their insured. And the wherefore clause states what?

A. I'm -- I don't know. I'm going to have to look at the --

Q. I know. But take a look at Exhibit 8.

A. I'm going to have to look at the law.

MR. BOGDAN: Hold on a second.

THE WITNESS: Yeah.

MR. BOGDAN: Let him get the question

out.

BY MR. PENDARVIS:

Q. Take a look at Exhibit 8 --

A. Okay. Go ahead.

Q. -- and the wherefore clause.

A. I apologize. What are we looking at now?

Q. Exhibit 8, the wherefore clause on page 2 of Exhibit 8.

A. Oh, okay.

Q. Could you read that, please?

A. Wherefore, having answered, Defendant asks this Court to dismiss the complaint and grant such relief as the Court deems just and proper.

Q. On page 1, in the caption, who is the named defendant?

A. It's Sarah Dickenson.

Q. Okay.

A. However, it says: Liberty Mutual, as the alleged underinsured, answers this complaint as follows.

Q. But the wherefore clause on page 2 does not say wherefore, having answered, Liberty Mutual asks this Court to dismiss the complaint, does it?

A. Mr. Pendarvis, we can parse this all

day long, and we're going to -- and we can also go into the books, and you know as well as I do we'll probably have five or six different answers for it. I -- I think it's unfair of you to try to catch me on something where I don't know the law on this.

Q. Well, I'm not really doing that except in response to --

A. Yeah, you are.

Q. And that's fine. But it's my job to handle the case for Mr. Feldman, and what I'm trying to understand is what your testimony was, that if this answer had been styled differently in terms of the language in the fifth defense your testimony is you would have done things differently, and I'm trying to understand what it is that would have triggered something different than what you did.

A. Here's what I -- my answer was. If it said further answering, alleges the Plaintiff had failed to effect proper service under Rule 12(b)(4) and 12(b)(5) on Ms. Dickenson, you're doggone right I would have looked very closely at that.

Q. Okay.

A. All right.

MR. PENDARVIS: Thank you. I have no

further questions.

(The witness, after having been advised of his right to read and sign this transcript, does not waive that right.)

(The deposition was concluded at 1:44 p.m.)

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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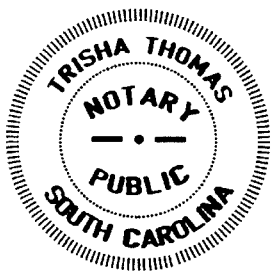
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REPORTER: TRISHA M. THOMAS
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GARY P. COGGIN Date

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.



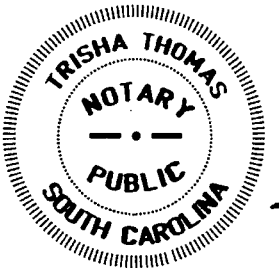
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My Commission expires
February 2018

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I, Trisha M. Thomas, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

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

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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 mobile 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 THR 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 contact 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

EXHIBIT TT

PENGAD 800-631-6989

Coggin 6/8/16

Gary Coggin
Attorney at Law
P.O. Box 7092
Hilton Head Island, SC 29938

843.689.7777
Admitted to practice SC & IL

843.689.7779f
gcity law@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

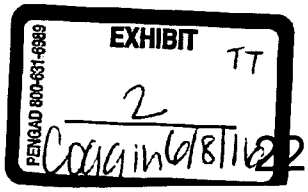
Dear Ms. Wise:

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:

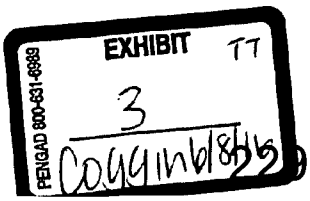
As you are aware from previous correspondence, I am the attorney for Mr. Robert Feldman. And, as you are further aware, on October 9, 2010, Mr. Feldman was seriously and permanently injured in an automobile accident caused by your insured in Bluffton, South Carolina.

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. (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.

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.

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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

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:

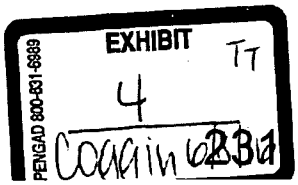
As you are aware from previous correspondence and telephone discussions, I am the attorney for Mr. Robert Feldman. And, as you are further aware, on October 9, 2010, Mr. Feldman was seriously and permanently injured in an automobile accident caused by your insured in Bluffton, South Carolina.

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.

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.

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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

843.689.7779f
Admitted to practice SC & IL

October 24, 2011

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 cla

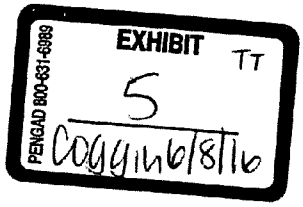
Per our discussion this morning, I have reviewed the Claimant's submission to you and concluded that the following was not sent to you:

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

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:

_____ _____ (SEAL)

_____ _____ (SEAL)

EXHIBIT TT
6
Cogain 6/8/16
PENGAD 800-631-6989

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

12 OCT 29 PM 3:22
BEAUFORT COUNTY'S BUREAU
CLERK OF COURT

Submitted By: Gary Coggin, Esq.
Address: P.O. Box 7092 Hilton head Island, SC 29938

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
- ☐ Reinstate Drv. 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)

COPY

EXHIBIT 7 Coggin 6/8/11

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	)	COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO. 2012-CP-07-380
	)	
ROBERT FELDMAN & LOIS FELDMAN,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	SUMMONS
	)	
SARAH DICKENSON,	)	
	)	
Defendant.	)	

12 OCT 29 PM 3:22
BEAUFORT COUNTY, S.C.
CLERK OF COURT

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	)	COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO. 2012-CP-07-3800
	)	
ROBERT FELDMAN & LOIS FELDMAN,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	COMPLAINT
	)	(Jury Trial Demanded)
SARAH DICKENSON,	)	
	)	
Defendant.	)	

12 OCT 29 PM 3:22
JEANNETTE BEAUFORT 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 deep 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 Coggin
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 1M
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 29201

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	Docket No.: 2012-CP-07-3800
ROBERT FELDMAN & LOIS FELDMAN,	)	
Plaintiffs,	)	**ANSWER** (Jury Trial Demanded)
v.	)	
SARAH DICKENSON,	)	
Defendant.	)	

13 JAN -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

EXHIBIT TT
8
Copy in 6/8/16
PENGAD 800-631-6989

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

Julian 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	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	Docket No.: 2012-CP-07-3800
ROBERT FELDMAN & LOIS FELDMAN,	)	
	)	
Plaintiffs,	)	**CERTIFICATE OF SERVICE**
	)	
v.	)	
	)	
SARAH DICKENSON,	)	
	)	
Defendant.	)	

13 JAN -7 PM 4:26
BEAUFORT COUNTY, S.C.
CLERK OF COURT

I hereby certify that on this 4th 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:

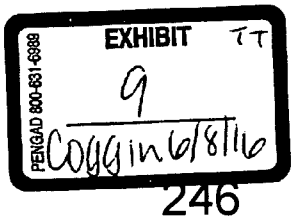
Facts. On October 9, 2010 Robert Feldman (plaintiff) was traveling East on US 278 in Bluffton, South Carolina. He was in the right hand lane and passing on a green light through the intersection at Buck Island Road. At that time Sarah Dickenson (defendant) passed through the intersection on a red light 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 bee 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.

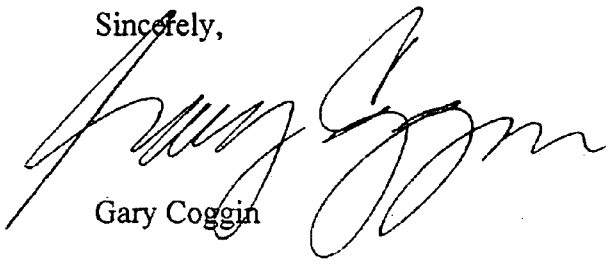


The above amount is $150,000 to $180,000. This does not include loss of work, loss of enjoyment of life and pain and suffering. If we would consider this, the demand on UIM is $300,000 to $350,000.

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

Coggin Law Office

P.O. Box 7092
Hilton Head, SC 29938
Phone: 843-689-7777
Fax: 843-689-7779
Email: gcitylaw@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.

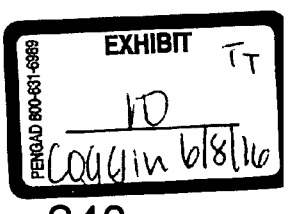
With this said, please be on notice that I am drafting a motion to the Court to be relieved as counsel. I will post to you a stamped and filed copy of the same as soon as is feasible. In the interim, I advise you to settle matter at hand for the $25,000 that has been offered.

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



Coggin Law Office

P.O. Box 7092
Hilton Head, SC 29938
Phone: 843-689-7777
Fax: 843-689-7779
Email: gcitylaw@aol.com

Via US Mail & Fax 843.725.8579
May 21, 2014

Julian Allen
Turner Padget 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.

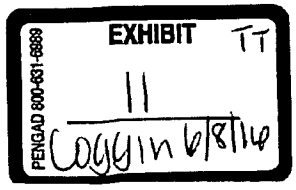
To help you understand the billing, please note the following: a) each service date is marked in orange; b) the total charge all services that date is marked in blue; and c) each individual procedure that goes to make up the total charge is marked in yellow.

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.



Sincerely,

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:

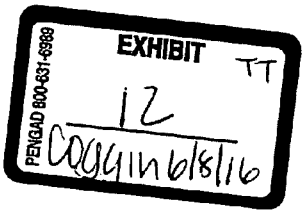
This is to confirm your telephone conversation of yesterday, October 6, 2014, with Mr. Bauer. We have searched the file you provided and cannot locate the Affidavit of Service for the named Defendant. I would appreciate it if you would search your records and provide a copy of the Affidavit or the name 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)

EXHIBIT 13
Coggin 6/8/16

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 COMPANY'S NOTICE AND MOTION TO DISMISS**
v.)	
SARAH DICKENSON,)	
Defendant.)	

TO: GARY COGGIN AND ROB METRO ATTORNEYS FOR PLAINTIFF:

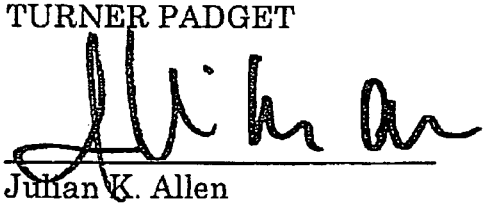
YOU WILL PLEASE TAKE NOTICE that Liberty Mutual Insurance Company will move before the Court as soon as counsel may be heard for an Order dismissing this lawsuit due to Plaintiffs' failure to effectuate proper service under Rule 12(b)(4) and 12(b)(5).

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



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,)	**CERTIFICATE OF SERVICE**
v.)	
SARAH DICKENSON,)	
Defendant.)	

I, Penny Davis, an employee of Turner, Padget, 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 P.C.

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:

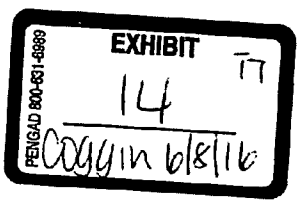
When we last spoke, you indicated that you were going to attempt to locate the Affidavit of Service and/or the check in which you paid the process server in the above-referenced matter. Defendant's counsel has filed a Motion to Dismiss this action based on failure to perfect proper service upon the Defendant, 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: 843-689-7779
Email: gcitylaw@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.

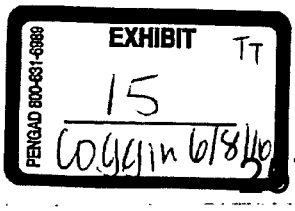
Please time stamp both documents and place them in the file of the above referenced case.

By Copy of this letter, I am serving the same upon Samuel Bauer, Esquire.

Sincerely,

Gary Coggin

Copy: Samuel Bauer
Enclosures



STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
BEAUFORT COUNTY	)	CASE NO. 2012-CP-07-3800
	)	
ROBERT FELDMAN & LOIS FELDMAN,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	OBJECTION TO PLAINTIFFS' SUBPOENA
	)	
	)	
SARAH DICKENSON,	)	
	)	
Defendant.	)	

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	)	COURT OF COMMON PLEAS
	)	
BEAUFORT COUNTY	)	CASE NO. 2012-CP-07-3800
	)	
ROBERT FELDMAN & LOIS FELDMAN,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	OBJECTION TO PLAINTIFFS' SUBPOENA
	)	
	)	
SARAH DICKENSON,	)	
	)	
Defendant.	)	

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

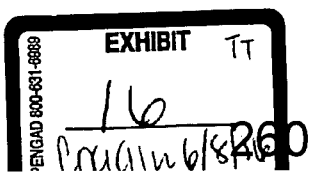
By _____
Gary Coggin Law
843.689.7777

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.

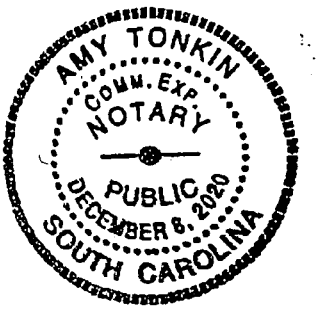
A week or so later, Attorney determined that service had been made upon Ms. Dickenson and that an affidavit of service was forthcoming. Two or three weeks later, an Affidavit of Service arrived. The Affidavit had been served at an unfamiliar address and someone, not Ms. Dickenson, had signed to accept 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

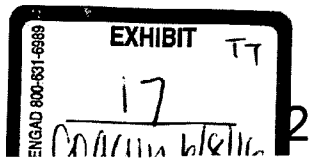


STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
BEAUFORT COUNTY	)	CASE NO. 2012-CP-07-3800
	)	
ROBERT FELDMAN & LOIS FELDMAN,	)	
	)	
Plaintiffs,	)	
	)	ANSWER TO DEFENDANT'S
v.	)	12(b)(4) AND 12(b)(5)
	)	MOTION TO DISMISS
SARAH DICKENSON,	)	
	)	
Defendant.	)	

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

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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) SCRCP 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 Unisun 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 statues. 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 (2dCir. 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. McDounoug, 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	)	COURT OF COMMON PLEAS
	)	
BEAUFORT COUNTY	)	CASE NO. 2012-CP-07-3800
	)	
ROBERT FELDMAN & LOIS FELDMAN,	)	
	)	
Plaintiffs,	)	
	)	ANSWER TO DEFENDANT'S
v.	)	12(b)(4) AND 12(b)(5)
	)	MOTION TO DISMISS
SARAH DICKENSON,	)	
	)	
Defendant.	)	

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

EXHIBIT TT
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Coggin 6/8/16
PENGAD 800-631-6989

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 Unisun, our courts have not addressed the "degree of specificity" required by our rules of civil procedure. However, because Rule 12(b)(5) SCRCP 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. McDounoug, 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, 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 _____

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:

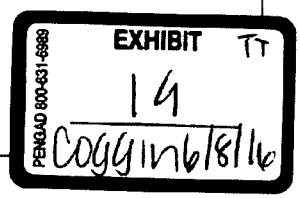
The Honorable J. Ernest Kinard, Jr.

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 X

MOTION HEARING -- 03

EXHIBITS - None Proffered

CERTIFICATION 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.

MR. BAUER: Your Honor, I am Sam Bauer on behalf of the Bauer & Metro Law Firm. We represent the plaintiff in this case and are responding to the defendant underinsured motorist's carrier's motion to dismiss.

We took over this case, substituted as counsel for Mr. Coggins (sic), Gary Coggins, who formerly represented the plaintiff. Since the defendant's motion to dismiss touches on a period of time where Mr. Coggins represented the -- represented the plaintiff I have asked him if he would like to argue that motion.

He agrees that he is in a better position to argue in opposition to that motion than I am, and with the client's permission Mr. Coggins is here and is willing to do that.

THE COURT: All right. You are the movant, right?

MR. ALLEN: Yes, Your Honor.

THE COURT: Okay.

MR. ALLEN: Good morning, Judge, Julian Allen on behalf of Liberty Mutual Insurance Company. As Mr. Bauer pointed out, I am the underinsured motorist carrier lawyer from the accident that happened back in October of 2010.

A lawsuit was filed October 29, 2012. I filed an answer on behalf of Liberty Mutual as the UIM carrier on January 7th, 2013. The defendant herself has never appeared. She has never given a deposition.

My motion to dismiss is based on plaintiff's failure to

properly serve the defendant. There is a case on point. It is called Louden versus Moragne. And it stands for the proposition that - and I am quoting: A negligence action is against the at-fault driver, not directly against the insurance company. Service on the at-fault driver is an essential component of the negligence action, thus we hold that the named defendant in action for benefits under a plaintiff's UIM policy must be properly served with the summons and complaint prior to the running of the statute.

In this case Rule 3 also requires that a summons and complaint be served within 120 days, and Rule 5 says that proof of that service shall be filed with the court within 10 days.

There is no proof of service that has ever been filed in this case. So pursuant to all the rules in the case that -- decided I ask that the case be dismissed.

A little bit of this motion's hearing. It was actually set before Judge Murphy on December 9th. And at that point Mr. Bauer and Mr. Coggin were in disagreement as to who was going to argue the motion.

Mr. Coggin had been relieved of counsel as of I believe November of 2014, so Judge Murphy made a determination that since you are not a counsel of record you are not -- haven't filed notice of appearance, that she was not inclined to hear any argument from Mr. Coggin.

That is still our position as well that Mr. Coggin's submissions and arguments should not be considered by the court. But if the court is inclined to hear them, I can address them.

Back at the hearing at December 9, 2014, Judge Murphy said all right well if there is a proof of service whoever has got the file find the proof of service and give it to Mr. Allen or file it with the court. That has not been done. What I did receive after the hearing was an affidavit from Mr. Coggin himself.

And as to the service issue it is basically I hired a process server up in New Jersey or New York to serve the defendant. I think I got the affidavit, but I don't have it. I don't know who was actually served or where they were served. So under the rules I don't think that meets the standard of service and ask that the court dismiss the lawsuit. Thank you.

MR. COGGIN: Judge, good morning. I think at our advanced ages it is always happy to see one another.

Your Honor, I think Mr. -- what Mr. Allen says is partially correct. In his citations of Louden versus Moragne I want to go on record as saying this Louden versus Moragne actually depends on the case of -- or of statute of limitations, the Rule 8(C), Motion for Statute of Limitations.

If you look in Mr. -- in Mr. Allen's answer, responsive pleadings, you will see he did not plead a statute of limitations. And by all jurisdictions, in all jurisdictions and all dicta, if you don't plead it you don't use it.

That was 22 months ago. In the 22 months since that time Mr. Allen has not brought a motion to amend. And in that period of time we have had exhaustive discovery. We have probably exchanged 15 or 20 telephone calls, of dozens of letters. And at no time did that come up at all.

The fact of the matter is he did not include the statute of limitations in his responsive pleadings. He is foreclosed from using that.

Now, Your Honor, there are three different reasons that the plaintiffs believe that Mr. Allen's motion to dismiss will fail. The first is that he pleads Rule 12(b)4 and Rule 12(b)5, defenses of insufficiency of process and defenses in insufficiency of service. The defendant in these cases in his responsive pleadings improperly raised these defenses. And for that reason they should be denied.

In the case of Houck verse - Garner versus Houck in South Carolina in 1993 our Supreme Court said that where a party fails to properly raise the defense of insufficient service of process under Rule 12 he waives any issues or defenses regarding service.

That was echoed in the case of Unisun versus Hawkins, a 2000 case where in 2000 our Appellate Court referenced Garner ruling with approval and went on to say 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.

If you look at defense number five you will see in Mr. Allen's pleadings you see that Mr. Allen only listed generically the defenses. He put down Rule 12(b)4. He put down rule 12(b)5. Nothing more. And for that reason because they were inappropriately raised and the defenses were not explained as required by state law, that should fail.

Now you can look further and beyond state law. You can look to federal law on these things. And our federal counterparts have established Rule 12(b). That has been copied by the state. And where the state copies these laws we can look to the federal cases for guidance as persuasive.

Our federal courts when they have looked at this and held the objections to sufficiency of proces- -- 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. And that's under Patterson

versus Whitlock.

In the case the UIM carrier, Liberty Mutual, only names or numbers a service of process. And when he only numbers that and fails to point out the defect or fails to point out in what manner the plaintiff failed to satisfy the rules of service of process, he has failed in that. The mere rendering or the mere generic listing of a defense does not make it a defense.

In this case the court is very specific in federal law and state law as to what has to be done. And I can list an exhaustive list of cases in federal court which actually say that.

Similarly, Your Honor, it can be argued that where the defendant generically listed Rule 12(b)4 and Rule 12(b)5 he had 22 months in which to come before the court and amend that.

In that period of time, as I said before, we had exhaustive relations between one another to the point that I actually like Mr. Allen. And the fact of the matter was at no time did Mr. Allen ever say to me I need to amend this complaint to comply with the laws.

In addition to that, Your Honor, as I stated in Mr. Allen's responsive pleadings, he did not anywhere list a statute of limitations defense. And for him then to come up with Louden versus Moragne, a case that is based and turns

on the statute of limitations, is just simply wrong.

He has and he knows very well he has to plead that defense affirmatively under 8(c). That was not done. And in that 22 months since the time he filed his responsive pleadings he did not at any time come to me and say I have to amend this complaint - which I would have given him - I have to amend this complaint to include a statute of limitations defense. So that also fails.

Now, Your Honor, the final thing is as to the service of process, Your Honor; I did not think. I received an answer to the affidavit, and I will fall on my knees in front of this court and tell the court that I was wrong in that I did not -- I think it is Rule 4, not Rule 5. I did not file it with the court. My mistake. My mistake also I didn't make 15 or 20 copies. Again, my mistake.

All I did was I put it with the papers of the case. The papers of the case went over to Mr. Bauer & Mitro's firm. And I am not going to blame them. Because I had it. And in this case here it was served.

Now we have asked Mr. Allen several times as to the location of the defendant. And that is Ms. Dickenson. She is actually in a home in Bristol -- called the Bristol. It is on 666. Good name. Frontage Road in New Hyde Park, New York.

I believe that Ms. Dickenson was served because the

service of process said another name besides her, another address besides her. And I have found out later that she had lived with her relatives at 58 MacGregor Place and had moved and been put in this home.

So we feel and I feel that Ms. Dickenson is available. Whether she is competent, I don't know. But the fact of the matter is is she was served. Service was then sent to me.

I have had several conversations with the process server in New York. They admit after I showed them the telephone records that they did talk to me and that I talked to them more than once.

I am now trying to track my TracFones, which is a very difficult subject; but I believe there's two or three conversations there that I will be able to show the court.

The fact of the matter was she was served. And in this underinsurance we have these three reasons, as I have said, why you should reject the motion to dismiss.

In addition to all of that, Your Honor, I have submitted an affidavit as to what happened. We have not received an affidavit from Ms. Dickenson. We have asked for that through Mr. Bauer. No affidavit has been forthcoming that she hasn't been served. That is all I can say on this case.

I am going to ask the court to dismiss -- or excuse me, to deny the motion to dismiss on this basis.

THE COURT: Well, I can't deny it. I can't grant it. I give you both 30 days to send me proposed orders.

And you get an affidavit from the processor server.

You get an affidavit from Ms. Dickenson saying she wasn't served.

You know, that is the best I can do.

MR. COGGIN: Okay, Your Honor. Thank you.

THE COURT: I mean y'all just handed up these briefs. I read them. But of course I haven't read any of these cases like you -- that you cite.

MR. COGGIN: It is a daunting proposal, Your Honor.

THE COURT: But he did plead non service. He doesn't have to do that with specificity. He -- you are on notice that he says you didn't comply with the rule. Which you didn't, because you didn't file it.

MR. ALLEN: And just briefly, the statute of limitations, I didn't raise statute of limitations because it was only two years after the accident so I didn't have that defense.

THE COURT: Okay.

MR. COGGIN: Thank you, Your Honor. Good to see you again.

MR. ALLEN: Thanks, Judge.

THE COURT: Good luck with it, because that is complicated. But I don't think I can let it go forward

without a little more than your affidavit.

MR. COGGIN: Thank you.

(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

PHYLLIS NORTON, CVR

Date: June 3, 2016

Certified Transcript Provided For: C. Lempesis, Jr.
Certification Reference #060316 Certified Original

State of South Carolina) Court of Common Pleas
) 14th Judicial Circuit
County of Beaufort) No.: 2015-CP-07-01251

Robert E. Feldman and Louis J. Feldman,

Plaintiffs,

vs.

Gary P. Coggin,

Defendant.

HEARING

June 29, 2016

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.

THOMAS REPORTING SERVICES
156 Argent Way
Bluffton, South Carolina 29909
(803) 206-7390

Appearances

Representing the Plaintiff:

THOMAS A. PENDARVIS, ESQUIRE
CHRISTOPHER W. LEMPESIS, JR., ESQUIRE

Pendarvis Law Offices, P.C.
710 Boundary Street, Unit A-1
Beaufort, South Carolina 29902
Thomas@PendarvisLaw.com

Representing the Defendant:

M. DAWES COOKE, JR., ESQUIRE
Barnwell Whaley Patterson & Helms, LLC
P.O. Drawer H
Charleston, South Carolina 29402-0197
mdc@barnwell-whaley.com

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EXHIBIT INDEX

Exhibits: Marked at Page

(None were proffered)

* * * * *

This hearing is taken in accordance with the South Carolina Rules of Civil Procedure.

JUDGE DUKES: Good morning. We are here on Feldman and Feldman versus Coggin. This is 15-CP-07-1251. This is Defendant's Motion for Summary Judgment. I'm happy to hear from you, sir.

MR. COOKE: Thank you. Dawes Cooke with Barnwell Whaley Patterson & Helms for the Defendant. Your Honor, this is a legal malpractice case. And the essence of the case is that the Plaintiffs contend that when Mr. Coggin represented them in an underinsured motorist case -- they've already settled the underlying liability case for

$85,000. Brought an underinsured motorist case.

The allegation of the complaint is that he failed to serve the underinsured motorist with the Summons and Complaint. Under the Underinsured Motorist Statute you are suppose to serve both the insurance company and the underinsured motorist.

And the allegation of this case is that because of Mr. Coggin's failure to do that or his failure to be able to prove that he had done it, they had to settle the case cheap for $25,000 and it was really a $500,000 case.

So discovery is ongoing. And there are

plenty of factual issues as to whether, in fact, he did serve, what the value of the underlying case would have been, and why they settled for what they settled for after substitute counsel was retained to take over the case.

But we've isolated a single threshold legal issue that we think is dispositive, and that is that the -- when Liberty Mutual, who was the underinsured motorist carrier, when they moved to dismiss based on the failure to serve the underinsured motorist, they had failed to properly plead that defense. And therefore that motion should have been denied, ultimately would have been denied.

It was actually heard by Judge Kinard, but he took it and held it in abeyance and instructed the parties to provide affidavits of service and so forth. So he never actually ruled and, of course,

ultimately as you know he passed away, but by the clearly established case law which was established at that time, specifically a case called Unison versus Hawkins which, in turn, relies on previous Supreme Court authority, the failure to serve must be specifically pled and you must plead specifically the way in which you failed to effect service.

And in this case it was not done. The answer that was filed by Liberty Mutual is attached as Exhibit A to our Motion for Summary Judgment. And in there the answer begins, it says, Liberty Mutual Insurance Company, as the alleged underinsured motorist carrier under South Carolina Code Section 38-7-160, answers the complaint as follows.

And it's signed by Julian Allen with Turner Padget as attorney for Liberty Mutual Insurance Company. And so the fifth defense is entitled Improper Service. It says, further answering, this party alleges that Plaintiff has failed to effect proper service -- effectuate proper service under Rule 12(b)(4) and Rule 12(b)(5).

And that way of pleading it is inadequate as a matter of law under the case of Unison versus Bruce Hawkins. In that case, the Defendant had pleaded, quote, Plaintiffs failed to serve Defendant Bruce Hawkins within the three-years Statute of Limitations.

That pleading was actually more specific than this one because in that case at least they

said who was not properly served. In this case, it doesn't even say who was not properly served. It

doesn't say it was the underinsured motorist who was not properly served. You could have just as easily have read this to say that Liberty Mutual was not properly served. In fact, that is what it implies when it says furthering answering, this party alleges that Plaintiff has failed to effectuate proper service.

And this party is Liberty Mutual who is the one that filed the answer. And what the Court said was that -- they incorporated jurisprudence from Federal Courts that had interpreted the same rule in the Federal Rules and said Federal Courts addressing this issue 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 service of process.

To cite another case it says, in fact, quote, the objection to insufficiency of process or its service should point out specifically in what manner Plaintiff has failed to satisfy the requirement of service provision. We hold the averment that Unison, quote, failed to serve Bruce Hawkins within the three-year Statute of Limitations is insufficient standing alone to raise the defense

of insufficiency of service of process.

Having failed to allege process with even

a minimal amount of specificity in his responsive pleading, Bruce may not now bootstrap the defense to his Statute of Limitations argument, a separate affirmative defense, likewise subject to waiver.

You know, one would perhaps just reading the rule in a vacuum would think that that is a hyper-technical requirement that you be specific, but there is a reason for that. In this particular case at the time that the answer was filed the Statute of Limitations had not run. So had they pleaded with specificity that you did not serve -- you did not serve Ms. Dickinson at all, it would have been a simple matter to go back and make sure that you did get service and file the affidavit of service, but the statute actually -- the answer was filed in January of 2013. The statute ran I believe in October of 2013.

Liberty Mutual never moved to dismiss the case, never said exactly what their objection to the service was until after the statute had already run. And so under this authority both the improper service or failure to serve and the Statute of Limitations that was associated with that are waived

as a matter of law.

You may remember a case Poston versus Davis where you ruled that as well and the Court of appeals in an unpublished opinion affirmed citing again the Unison Insurance Company versus Hawkins case.

JUDGE DUKES: They like to affirm me

in the unpublished ones and reverse me in the published ones.

MR. COOKE: Well, that's right.

JUDGE DUKES: -- confirmed somewhere.

MR. COOKE: You were so right they didn't even need to explain why, but it says, you know, following the following authority Unison Insurance versus Hawkins holding the defense of insufficiency of service of process and Statute of Limitations are affirmative defenses which are waived if not properly pled in the responsive pleading.

Now, I'm going to talk just for a second about the procedural status of where we are because I think what Thomas is probably going to say is, well, Judge, we still need to flesh out discovery because Judge Kinard in the motions hearing sounded like he was persuaded that the pleading was

sufficient. And so we think that the Plaintiffs needed to settle cheap because of the fear that the judge was going to rule against them, but that is not really what you do in a legal malpractice case.

And I would cite to Your Honor Doe versus Howell, which is not in our brief, but the citation is 367 South Carolina 432, 626 Southeastern 2nd 25 which basically says that when you are talking about a case within a case, that is in a malpractice case you are asked to go back retrospectively and determine what would have happened if the lawyer had done what the Plaintiff says he should have done.

That is a matter of law. And what the Court said was the question of the success of the underlying claim if suit had been brought in that case is a question of law. And they cite Manning versus Quinn. It's in Footnote 15 where it says, the likelihood of success of action that the Plaintiff alleged the Defendant should have taken was a question of law. And decision of that question on summary judgment motion is appropriate.

So, in other words, it's not relevant to say that the Plaintiff was afraid that Judge Kinard was going to rule against them. You are suppose to look back, and if you can rule as a matter of law

that that pleading was inadequate then that is what you are suppose to do in a legal malpractice case.

And you can do that on summary judgment. And here under the case that was decided in 2000, so it was clearly available to the Court when this was being argued years later, that pleading of simply saying, further answering, this party alleges that Plaintiff has failed to effectuate service under Rule 12(b)(4) and Rule 12(b)(5).

As a matter of law Liberty Mutual Insurance Company would not be permitted to sandbag using that language and then after the Statute of Limitations has run now say, okay, what we really meant was you didn't serve Ms. Dickinson, the underinsured motorist. In fact, you didn't serve her at all. It wasn't that you just didn't properly serve her.

And, again, the language that they rejected in the Unison case was actually more specific than this. It said that that defense was Plaintiff's had failed to serve Defendant Bruce Hawkins within the three-year Statute of Limitations.

Also, let me apologize for my rudeness. I didn't introduce Jeff Bogdan who is here with me and our summer law clerks Tyler Graves and Wes Randolph who are here as well.

JUDGE DUKES: All right. Welcome. Welcome.

MR. COOKE: So that is it.

JUDGE DUKES: I mean, essentially the threshold issue you are talking about is that -- as I understand the argument is that Judge Kinard, all though he didn't rule, could not have ruled under the law except one way?

MR. COOKE: Correct.

JUDGE DUKES: Okay.

MR. COOKE: Correct. Under the Unison case and the authorities that they cite there.

JUDGE DUKES: Okay. Mr. Pendarvis, happy to hear from you, sir.

MR. PENDARVIS: Good morning, Your Honor. May it please the Court, I'm here on behalf of Robert and Louis Feldman. I've got my new associate with me, Chris Lempesis who is on board.

JUDGE DUKES: I've seen Chris on many

occasions?

MR. PENDARVIS: Don't hold that against me or the Feldmans. Let me respond to the

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motion in this way. Let's assume as a matter of law that the arguments Mr. Cooke made are true. I don't agree, but let's just assume that just for the moment.

There is abundant case law -- South Carolina is an exceptional jurisdiction in legal malpractice terms. It's not simply just case within a case jurisdiction. You also have claims for settlement value.

The Motion for Summary Judgment -- Motion to Dismiss filed by Liberty Mutual was heard in January of 2015. In May of '14, the parties participated in mediation. We believe there is going to be testimony based on the beginnings of discovery with Mr. Coggin and others that the case was not prepared for settlement.

They went into -- and we believe that Julian Allen is going to testify that had the case been properly prepared there would have been a substantially greater settlement offer at the mediation.

So even if -- even if Liberty Mutual's defense was invalid or improper or wouldn't have been successful as a matter of law, they hadn't filed the motion. They went to a mediation with

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authority to settle. And we believe Julian Allen is going to say had Mr. Coggin presented a life care plan that he admitted he didn't do, and other information to substantiate wage loss, incapacity or damage from the connection causally linking the medical expenses to the car wreck that he brought, you know, the reason for the case, the testimony had not been developed by the doctors or a life care plan person or anyone of that sort that could quantify and put a settlement value on the Feldmans' claims.

Going into the mediation there were demands for policy limits by Mr. Coggin. And what we believe that discovery will reveal from Mr. Julian Allen is the case would have settled or a substantially greater amount of money would have been put on the table at a mediation nine months before any hearing on the motion.

And so under the Sims case and some other authority I'm happy to provide the Court, there is a claim on the settlement value of the case that is factually related regardless of whether at a hearing on the merits of the legal matter the Plaintiffs would have lost or won.

And so, you know, as to settlement value

and what we also expect, there were lawyers -- Sam Bauer and Rob Metro. Their deposition haven't been taken yet, but we believe they are going to say based on the age of the case when they took it over and the matter was on a trial docket and there was

communications with Mr. Coggin to the Feldmans before he moved to be relieved that this case was coming up for trial.

And we believe the testimony from Mr. Bauer and Mr. Metro is going to be there wasn't sufficient time to get the case ready. The statute had already run. They couldn't dismiss it and refile it, so they recommended that the Feldmans take the 25,000 to settle.

And so the real essence of the malpractice was failure to prepare the case. It would have settled at mediation. And so we believe that those factual issues are going to preclude any ruling as a matter of law on whether or not Liberty's Motion for Summary Judgment would have been successful.

JUDGE DUKES: What was the timeline again on the filing and the motion and the mediation and the transfer of the case?

MR. PENDARVIS: It was a 2013 -- excuse me. 2012 lawsuit. October of 2012. The

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matter was mediated. A 2010 car wreck. So October of 2010 car wreck, so October of 2000 -- it might be November. I'm sorry, Your Honor.

MR. LEMPESIS: I think it was October.

MR. PENDARVIS: And so it would have been a 2013 Statute of Limitations. The matter was served in Oklahoma, Liberty Mutual via Secretary of State in let's say January of 2013. And the process of the case began. Liberty answered. You've seen

their answer in the exhibit.

The case worked for over a year and comes to mediation in May of '14 which would have been ample time, we believe standard of care, for a lawyer preparing a personal injury claim case to get a life care plan, quantify -- in some way quantify both the causally related medical expenses from the car wreck and also quantify the economic loss from lost wages that neither of which were properly done or at least that is what we expect Julian Allen who was defending Liberty is going to say, that had these items been, you know, being properly presented it would have been admissible at trial, and his recommendation to Liberty would have been to settle it at a higher amount.

And so that is way before Liberty filed the motion. And if that is true, and if a jury were to agree that had the case been properly prepared the matter would have settled at the mediation in May of '14, there never would have been a hearing on the motion to -- on the 12(b) motions that were asserted and the answer by Liberty.

So we believe there are indeed fact questions that need to be resolved because, as the Court knows, 90 -- I don't even know what the number is. Ninety-something percent or greater cases settle. And the likelihood that this P.I. case with admitted liability would have gone to trial and there would have been a merits hearing is remote. That the reality is had the case been properly

prepared it would have settled.

And so our position is that this motion must be denied. And I've got a Rule 56 affidavit that we filed with the Court that says we are not able to present by testimony, testimony from Mr. Allen, the Liberty Mutual lawyer, or Mr. Bauer and Mr. Metro, that would relate to whether the case was properly prepared for settlement.

JUDGE DUKES: All right.

MR. COOKE: Can I respond to that

briefly?

JUDGE DUKES: Yes, sir.

MR. COOKE: First of all, these allegations now about not having a life care plan and an economist, and medical testimony, those aren't in the current complaint against Mr. Coggin. The only allegation of negligence against him in the verified complaint is the failure to commence the suit within the Statute of Limitations and properly serve Ms. Dickinson.

So none of that is in this complaint. The argument that Thomas is making is exactly the argument that the Plaintiffs made in the Doe versus Howell case. They had an expert attorney who said the Statute of Limitations -- it was a sexual molestation case. You remember the Porter Gaude molestation cases --

JUDGE DUKES: Vaguely.

MR. COOKE: -- with Guy Fisher that was molesting kids? Well, this was the very first

of those cases. The Plaintiff was represented Gedney Howell. And Gedney settled his case for $70,000. One of the other cases that was represented by Greg Myers went to trial, and they got a verdict for 130 million dollars in the

parents' case.

And so this kid, you know, said, well, my lawyer committed malpractice because he didn't get enough money for me. These cases were worth millions of dollars and I didn't get, you know, in on that action.

The Court granted summary judgment and said, your case was barred by the Statute of Limitations as a matter of law. And so it doesn't matter what your expert says your case could have been negotiated for. You weren't entitled to anything. And so -- and that is where those quotes came from that I read you about the standard is when you are doing a case within a case, that is to be determined -- what the outcome of the underlying case would have been is a matter of law.

That is if the Plaintiff -- if the defense attorney had done what the Plaintiff says he should have done, the Court here is suppose to decide that as a matter of law under the Manning versus Quinn and Doe versus Howell.

So in this case all we are asking the Court to do is to look at Liberty Mutual's specific Motion to Dismiss the case and the answer that they filed and then compare that to Unison versus

Hawkins. And I think you would have to rule as a matter of law that the failure to serve Ms. Dickinson, if in fact she was not served, was not as a matter of law and proximate cause of the loss of that case or the loss of value of that case.

MR. PENDARVIS: Brief rebuttal, Your Honor?

JUDGE DUKES: Yes. Go ahead.

MR. PENDARVIS: Number one, in each of these causes of action alleged -- and I do not have a copy of my complaint with me, I think it might be here --

JUDGE DUKES: Feel free to look.

MR. PENDARVIS: -- we've alleged that -- and I'll get to the paragraph cites, but we've alleged that the claim is also based upon other evidence we developed in the discovery of the case. We've put them on notice that this -- something like this may be part of the allegations.

Number 2, let's assume Liberty Mutual's defense was invalid. Or excuse me. Not invalid. Would have been ruled -- let's assume that it would have been ruled denied. And you have testimony, as we might expect, from Mr. Bauer and Mr. Metro, that the case was -- they were not going to be able to

prepare the case for trial because of the lack of time.

And that Mr. Coggin had the case for pushing two and a half years and didn't properly

prepare it. And they could have -- wouldn't have been able to prevail at trial. And these are -- those are questions -- regardless of whether Liberty's defense was successful or not, if the testimony is that the case had been languished, lack of discovery for that entire time, then the Feldmans ought to have a chance to have their experts and present testimony to show that failure to prepare this case for trial was the reason they didn't get the case settled and why they weren't able to prevail at trial and why they accepted a settlement at the value they did.

JUDGE DUKES: All right.

MR. COOKE: Tom is referring to Paragraphs 44 and 45. Forty-four says 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 the Dickinson.

Paragraph 45 is the catchall that he's talking about that says, 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.

And obviously that is not an adequate allegation to bring up other failures to meet

standard of care by not having a life care expert, economist, or working up the medicals.

MR. PENDARVIS: And, of course, Your Honor, there is an expert affidavit that alleges Mr. Coggin didn't meet the standard of care. So as to these allegations we -- you know, this is a matter for development in the facts of the case. And if the facts demonstrate that Mr. Coggin did not prepare this case to the degree that a successor lawyer could take it over and effectively prosecute it, then we believe we should be able to take it to a jury.

MR. COOKE: Again, the only act of negligence that the expert asserts is the failure to effect service on Ms. Dickinson, Paragraph 13.

JUDGE DUKES: All right. Well, I've

got to read the cases, of course, that you all gave me. And I think you had a couple maybe you were going to -- a couple of them you were going to send?

MR. PENDARVIS: Would you mind if I provided a supplemental memorandum with that settlement issue as to South Carolina Courts, the Supreme Court.

JUDGE DUKES: That would be fine. And you are welcome to have whatever time you want to respond to it if you want.

MR. COOKE: I'll send you that Doe versus Howell. We sent them to each other plenty of times.

MR. PENDARVIS: We are going to both

pull them out of previous briefs.

JUDGE DUKES: No problem. Well, why don't you all just set up a time that is convenient for both of you to get those things in and get them to Heather if you would, obviously copy the other. And I will see what I can do. Anything else for this record?

MR. PENDARVIS: That is a good point. The expert affidavit is Sam Bauer who was the successor attorney. So obviously if he had felt that the case wasn't adequately prepared he could

have put that in his affidavit, but we will address that.

JUDGE DUKES: All right. Thank you.

MR. COOKE: One last little thing, Your Honor, there is a consent scheduling order that has this case set for trial in January with discovery going through. So the parties have anticipated a good bit of work to be done. We intend to name another expert. This was just an affidavit for filing per the statute.

JUDGE DUKES: Got you. Okay. Anything else then for the record?

MR. COOKE: I think that is going to do it for us.

JUDGE DUKES: Okay. All right. That will conclude the record.

(Whereupon, the hearing was concluded at 10:51 a.m.)

Certificate of Reporter

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.

Deborah S. Thomas, CVRM
and Notary Public for the
State of South Carolina

My Commission
expires 1/4/18

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	Docket No.: 2012-CP-07-3800
ROBERT FELDMAN & LOIS FELDMAN,	)	
Plaintiffs,	)	**ANSWER** (Jury Trial Demanded)
v.	)	
SARAH DICKENSON,	)	
Defendant.	)	

13 JAN -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

Julian K. Allen
Post Office Box 22129
Charleston, South Carolina 29413-2129
Direct: (843) 579-8305
Fax: (843) 577-1661
JAllen@TurnerPadget.com

ATTORNEYS FOR LIBERTY MUTUAL INSURANCE COMPANY

Charleston, South Carolina

January 4, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	Docket No.: 2012-CP-07-3800
ROBERT FELDMAN & LOIS FELDMAN,	)	
Plaintiffs,	)	**CERTIFICATE OF SERVICE**
v.	)	
SARAH DICKENSON,	)	
Defendant.	)	

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 COMPANY'S NOTICE AND MOTION TO DISMISS**
v.)	
SARAH DICKENSON,)	
Defendant.)	

TO: GARY COGGIN AND ROB METRO ATTORNEYS FOR PLAINTIFF:

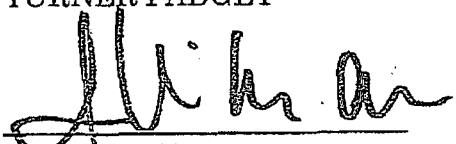
YOU WILL PLEASE TAKE NOTICE that Liberty Mutual Insurance Company will move before the Court as soon as counsel may be heard for an Order dismissing this lawsuit due to Plaintiffs' failure to effectuate proper service under Rule 12(b)(4) and 12(b)(5).

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



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)) COUNTY OF BEAUFORT)	IN THE COURT OF COMMON PLEAS 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.

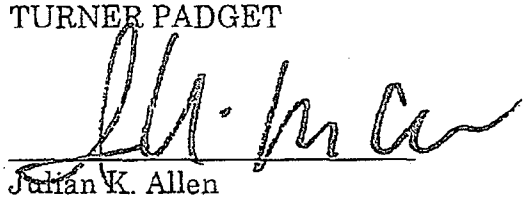
This lawsuit arises from a motor vehicle accident, which occurred on October 9, 2010. This lawsuit is a claim for underinsured motorist benefits. In Liberty Mutual's Answer to the Complaint, Liberty Mutual asserts *Improper Service* as an affirmative defense. To date, the Defendant has not been served 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 Morange 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
Fax: (843) 577-1661
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

2016 FEB 29 PM 3:07
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Robert E. Feldman and Lois J. Feldman,

Plaintiffs,

vs.

Gary P. Coggin,

Defendant.

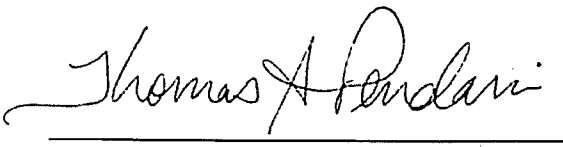
REQUEST TO TRANSFER TO THE JURY TRIAL ROSTER

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	)	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,	)	
Plaintiffs,	)	**REQUEST FOR SCHEDULING ORDER**
vs.	)	
GARY P. COGGIN,	)	
Defendant.	)	

2016 MAR -9 PM 3:24
JEAN AMY ROSENEAU
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).

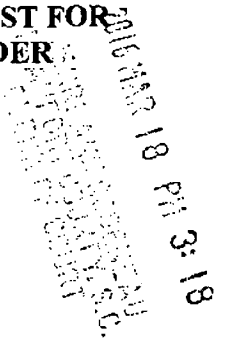
BARNWELL WHALEY PATTERSON & HELMS, LLC

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	)	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,	)	
Plaintiffs,	)	**RESPONSE TO REQUEST FOR SCHEDULING ORDER**
vs.	)	
GARY P. COGGIN,	)	
Defendant.	)	



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 its 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

EXHIBIT
A
332

EXHIBIT
1



Feldman v. Coggins

Cast of Characters

Authored by:

Thomas A. Pendarvis
Pendarvis Law Offices, P.C.

Thursday, October 29, 2015

tabbies
EXHIBIT
B

	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 Padget 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 Padget 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. Box100105 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 J. FELDMAN, Plaintiffs, vs. GARY P. COGGIN, Defendant.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT C/A No.: 2015-CP-07-01251 **PLAINTIFF'S RESPONSE TO REQUEST FOR SCHEDULING ORDER**

2016 MAR 29 PM 12
JERRI ANN ROCKWELL
BEAUFORT COUNTY, S.C.
CLERK OF COURT

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, andafter 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

EXHIBIT 1

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,

EXHIBIT
1

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.

EXHIBIT
1

Gary Coggin

Sworn to before me this 8th
day of December, 2014.

By Amy Tonkin
Notary Public for South Carolina
My Commission Expires: 12/08/2020

AMY TONKIN
COMM. EXP.
NOTARY
PUBLIC
DECEMBER 8, 2020
SOUTH CAROLINA

Gary Coggin
Attorney at Law
P.O. Box 7092
Hilton Head Island, SC 29938

843.689.7777
Admitted to practice SC & IL

843.689.7779f
geity law@aol.com

EXHIBIT
2

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,

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

EXHIBIT
2

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 bee 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

EXHIBIT
2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	C/A No.: 2015-CP-07-01251
ROBERT E. FELDMAN and LOIS J. FELDMAN,	)	
Plaintiffs,	)	**SCHEDULING ORDER**
vs.	)	
GARY P. COGGIN,	)	
Defendant.	)	

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
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	C/A No.: 2015-CP-07-01251
ROBERT E. FELDMAN and LOIS J. FELDMAN,	)	
	)	**MOTION FOR SUMMARY JUDGMENT**
Plaintiffs,	)	
vs.	)	
GARY P. COGGIN,	)	
Defendant.	)	

TO: THOMAS PENDARVIS, ATORNEY 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	)	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,	)	
Plaintiffs,	)	**MEMORADNUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**
vs.	)	
GARY P. COGGIN,	)	
Defendant.	)	

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 it 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 statue 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.

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

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)

13 JAN -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

EXHIBIT
tabbies
A

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

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	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	Docket No.: 2012-CP-07-3800
ROBERT FELDMAN & LOIS FELDMAN,	)	
Plaintiffs,	)	**CERTIFICATE OF SERVICE**
v.	)	
SARAH DICKENSON,	)	
Defendant.	)	

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

STATE OF SOUTH CAROLINA)) COUNTY OF BEAUFORT)	IN THE COURT OF COMMON PLEAS 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).

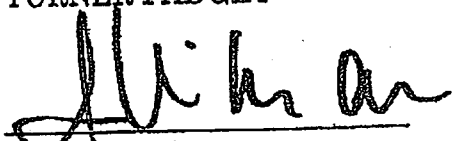
This lawsuit arises from a motor vehicle accident on October 9, 2010. Although Plaintiffs filed a lawsuit within the applicable statute of limitations, Plaintiffs have failed to serve the Defendant within the applicable time period. To date, upon information and belief, the Defendant still has not been 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]

EXHIBIT B

Respectfully submitted,

TURNER PADGET



Julian K. Allen
P.O. Box 22129
Charleston, South Carolina 29413
Telephone: (843) 579-8305
Fax: (843) 577-1661
E-mail: jallen@turnerpadget.com

ATTORNEYS FOR LIBERTY MUTUAL INSURANCE COMPANY

October 8, 2014

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT)	Docket No.: 2012-CP-07-3800
ROBERT FELDMAN & LOIS FELDMAN,)	
Plaintiffs,)	**MEMORANDUM IN SUPPORT OF LIBERTY MUTUAL'S MOTION TO DISMISS**
v.)	
SARAH DICKENSON,)	
Defendant.)	

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 Morange 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

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Exhibit 5

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
Fax: (843) 577-1661
E-mail: jallen@turnerpadget.com

ATTORNEYS FOR LIBERTY MUTUAL INSURANCE COMPANY

December 1, 2014

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.

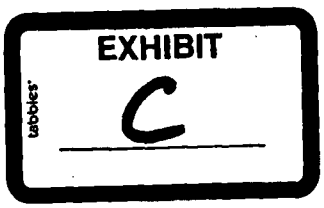
Jesse BOBO, et al., Plaintiffs
v.
Daniel F. UMOH, M.D., et al., Defendants.

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

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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 Louis J. Feldman, Plaintiffs, vs. Gary P. Coggin, Defendant.	)	**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

JENN ANN ROSEMEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT
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, SCRCP. 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:

> THE COURT: But he did plead non service. He doesn't have to do that with specificity. He -- you are on notice that he says you didn't comply with the rule. Which you didn't, because you didn't file it.
>
> ---
>
> But I don't think I can let it go forward without a little more than your affidavit.
>
> 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)(I), 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)(I) 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)(I)." *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. Northwestem 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 ..." SCRCP 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 statue 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. <u>Standard of Review</u>.

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

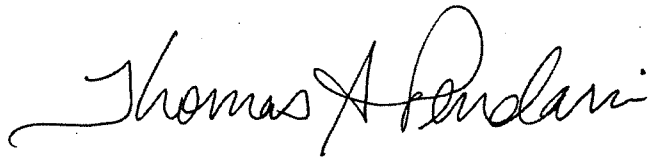
(1996); *Lattie v. SHS Enterprises, Inc.*, 300 S.C. 417, 389 S.E.2d 300 (Ct. App. 1990) (summary judgment standard of review is to liberally construe the record in favor of the nonmoving party and give the nonmoving party the benefit of all favorable inferences that might reasonably be drawn therefrom); *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, 308, 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.



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

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

ROBERT E. FELDMAN and
LOIS J. FELDMAN,

Plaintiffs,

vs. CASE NO. 2015-CP-07-1251

GARY P. COGGIN,

Defendant.

DEPOSITION OF: GARY P. COGGIN

DATE: June 8, 2016

TIME: 10:06 a.m.

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

TAKEN BY: Counsel for the Plaintiffs

REPORTED BY: TRISHA M. THOMAS

2016 JUN 27 PM 12:41
MARY ANN ROSEBEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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EXHIBIT
1

Page 2

APPEARANCES OF COUNSEL:
ATTORNEYS FOR THE PLAINTIFFS
ROBERT E. FELDMAN and LOIS J. FELDMAN:

PENDARVIS LAW OFFICES, P.C.
BY: THOMAS A. PENDARVIS
CHRISTOPHER W. LEMPESIS, JR.
710 Boundary Street, Unit A-1
Beaufort, SC 29902
(843) 524-9500
Thomas@pendarvislaw.com
Chris@pendarvislaw.com

ATTORNEYS FOR THE DEFENDANT
GARY P. COGGIN:

BARNWELL, WHALEY, PATTERSON & HELMS, LLC
BY: JEFFREY M. BOGDAN
288 Meeting Street, Suite 200
Charleston, SC 29401
(843) 577-7700
Jbogdan@barnwell-whaley.com

ALSO PRESENT: Robert E. Feldman

(INDEX AT REAR OF TRANSCRIPT)

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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.

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THE WITNESS: That will be fine.
BY MR. PENDARVIS:

Q. Number two, I'm going to be asking a series of questions today, of course, and showing you some documents. If in the course of that exchange you have any questions about or misunderstandings, maybe, about the type of -- what I'm asking, please let me know. I'll be glad to readdress or rephrase the question.
And you're not allowed to communicate with counsel about the substance of your testimony --

A. That's fine.

Q. -- during the course of the deposition today.
And you understand all those, correct?

A. Yes, I do.

Q. And you're doing great on verbal response. Better than me.
I am going to do my very best today not to interrupt your answers, so if I do that, please make sure to stop me or your counsel will 'cause I've done it in the past. I want to do my very best to get a good, clean transcript today.

A. Absolutely.

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

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

Q. And you did that today?

A. At McDonald's, briefly, yeah.

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

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

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

A. Very little.

Q. Okay. Okay. Have you reviewed --

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

Q. Responses, your responses.

A. Oh, yes. Absolutely.

Q. Okay.

A. Yeah. Sorry.

Q. When did you first meet Mr. Robert

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"Bob" Feldman?
A. I think it was in -- I'm not sure of the exact date, but sometime in 2010, latter part of the year, probably in the fall.
Q. Was it related to the automobile accident?
A. Yes, it was.
Q. And prior to -- and we're going to get into your representation of Mr. Feldman and his wife. Did you know them before that?
A. No.
Q. Either?
A. Neither one.
Q. Okay.
A. Let me back up again. Lois worked at the bank. I don't know if I knew her at that time or not.
Q. TD Bank?
A. Yeah. Yes.
Q. And do you have an account with TD Bank, or did you have an account with TD Bank?
A. No longer.
Q. No longer?
A. Yeah.
Q. But during the course of --

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A. Yes.
Q. -- of the initial part of your representation, you did have a -- you or your law firm had an account with TD Bank?
A. Yes.
Q. Which one? You?
A. Law firm.
Q. Okay. When did you become licensed to practice law in South Carolina?
A. 1994 or '95. I'm not sure which one.
Q. Okay. And could you describe -- where did you -- where in South Carolina did you begin practicing law?
A. Hilton Head Island. I've been there the entire time.
Q. Okay. And describe the nature of your law practice here in South Carolina.
A. Mostly accident injury, a little bit of general practice. People come in off the street and need help. I do a lot of that.
Q. Divorce? Criminal?
A. No. Most of the time it's poor people that have lost their truck, getting thrown out of an apartment, something like that.
Q. Okay. How many cases have you tried?

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A. In court?
Q. Yes, sir. And let's go first to -- let's focus in on circuit court actions.
A. I don't know. I really can't tell you. If you have any documents I can look at, I'll be happy to look at them and tell you, but I really don't know. I've been here since '95, and that's all I can tell you.
Q. More than ten lawsuits to try -- that went to trial?
A. Again, I don't know.
Q. What's your best estimate of cases that you've tried? Estimate now. I'm not asking for an accurate number.
A. Anywhere from -- in common pleas?
Q. Yes, sir.
A. Anywhere from five to fifteen.
Q. Okay.
A. I don't know.
Q. And I understand --
A. Yeah. And I really --
Q. -- it's just an estimated range.
A. And I'm going to back up. I don't really want to speculate on it 'cause I just don't know.

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Q. Okay. And those common plea matters -- okay. First off, you've tried cases, and you've tried cases in common pleas court.
A. Yes, I have.
Q. Correct?
Were the cases you tried limited to auto -- personal injury claims arising from automobile accidents?
A. The cases I've tried, I believe were limited to involving an automobile.
No. That's not correct. I've done other cases where there was disputes over money, et cetera.
Q. Okay. Were the majority of the cases you tried automobile accident cases?
A. Yeah. I believe so.
Q. Okay. Have you formed a corporation or an entity to operate your law practice?
A. I'm an LLC.
Q. Coggin Law Office, LLC?
A. I believe that's it.
Q. Okay. I'm going to represent to you that Mr. Feldman's accident with -- the collision with Ms. Dickenson between -- Dickenson, as driver, and Mr. Feldman occurred on October the 9th, 2010.

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

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

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

A. It occurred at Bob's house.

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

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

Q. So you went to his house --

A. Yes.

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

A. Oh, absolutely.

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

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day?

A. Talked about the accident.

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

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

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

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

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

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

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

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

Q. Do you have a typical conversation or

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

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

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

A. Uh-huh.

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

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

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

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

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

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

A. I don't know.

Q. Okay.

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

BY MR. PENDARVIS:

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

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

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

A. Yes, it is.

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

A. At that time, yeah.

Q. -- 2010?

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A. Uh-huh.
Q. I see, in reference to Paragraph 6, there's a portion of the form that has been marked out.
A. Uh-huh.
Q. You see that?
A. Yes, I do.
Q. And it says -- it's the portion that says: 40 percent if there is an appeal. Did your agreement with Mr. Feldman exclude modification of the 33 percent if there was an appeal?
A. The -- this exactly says the 40 percent if there's an appeal. I don't do appeals.
Q. Okay.
A. I think probably I made that clear to Mr. Feldman.
Q. Why is that in your contract then? Why do you even have --
A. It's a -- that's a good question. It's a standard in the contract. I've never done an appeal.
Q. Did Ms. Lois Feldman ever sign a fee agreement with you?
A. No.

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Q. But she was named as a plaintiff in the complaint you filed though?
A. Yes, she was.
Q. What were the terms of your relationship -- of your relationship with her?
A. She was essentially subsumed into the contingency fee agreement.
Q. Okay. When you take on a case -- and we'll use the car -- automobile accident case as an example -- do you have internal calendars that you mark for statutes of limitations and things of that nature?
A. No.
Q. What do you do to make sure that you've timely filed the claim?
A. The -- the claim is filed as soon as I get it and as soon as we've agreed on it. The three-year statute of limitations is something I'm well aware of all the time.
Q. Well, we do know that the -- the lawsuit in this case -- you filed a lawsuit in this case, correct?
A. That's correct.
Q. And when was it filed, approximately?
A. It was filed after the settlement. The

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settlement was in 2012 -- I believe in the fall -- so it was filed shortly after that.
Q. I thought you said that you typically file -- that you file the case right after you take it.
A. No. I said after we agreed to have it filed. I'm not filing a case if I'm going to settle the case.
Q. Okay.
A. I apologize if I gave that impression.
Q. And after you accepted the representation of Mr. Feldman in October of 2010 -- we're going to look at some demand letters and that by --
A. Sure.
Q. -- the summer of 2011 -- and is it accurate that in between October -- generally between October of 2010 and July of '11 you were gathering medical documents and things that were -- you know, that related to the claim?
A. That and the scene of the accident, taking photographs. I visited with Bob at his home, I think probably three times during that period of time. Getting the police reports, et cetera, et cetera.

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Q. Okay. And if I'm -- stop for a second.
(EXH. 2, Letter from Gary Coggin to Sonya Wise dated July 5, 2011, was marked for identification.)
BY MR. PENDARVIS:
Q. If I'm understanding things correctly -- we're going to look at some documents in which you made --
A. Sure.
Q. -- demands -- those were all based on the information you had gathered during the -- part of your representation, correct?
A. I think most of my demands would in part have been made on that, and I cannot tell you what I gathered at that time because I don't know.
Q. Sure.
A. Okay? And I -- it could very well have been that I started to look for information a year later. I don't know. Unless you can show me something that I sent off, I just can't help you on that but --
Q. I'm going to -- okay. Fair enough. And I'm not really -- I want to do my best to get an accurate --
A. Yeah. No. I understand.

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

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

A. That's correct.

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

A. Sonya Wise. Yes.

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

MR. BOGDAN: Object to the form.

BY MR. PENDARVIS:

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

Can you read for me the last sentence

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in the next to the last paragraph on page 2?

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

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

A. That was an offer I made to settle.

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

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

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

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

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

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

A. Yes.

Q. And when did you come to that realization?

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

Q. What part of 2013?

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

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

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note, anything.

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

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

A. No.

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

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

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

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

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

Q. Okay.

A. I don't remember.

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Q. Did you communicate those thoughts and statements by Mr. Feldman to anyone in writing?
A. I wrote letters to the doctors asking for impairment ratings and things like that, yes, and they're somewhere in your files. I probably also wrote a letter -- and again, this has been -- we're going a period of six years now. I probably wrote to the insurance companies.
Q. And based on what you stated on page 2 of Exhibit 2 --
A. Uh-huh.
Q. -- you were aware Mr. Feldman really enjoyed playing golf, correct?
The first full paragraph.
A. He has suffered greatly?
Q. No. In sum is the beginning of that paragraph. Read on.
A. Oh, okay. That's -- he can no longer enjoy a round of golf, take walks --
Q. Yeah.
A. -- drive, and travel. Yeah. Uh-huh. That's it.
Q. So you knew he enjoyed golf.
Did Mr. Feldman ever tell you that after he had an epidural injection he was able to

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go play golf?
A. I don't remember.
Q. Possible?
A. I don't remember.
Q. No, no. That's not the question.
A. I don't think we ever -- we -- no. I'm telling you. I don't remember.
I do remember this, is that -- in answer to your question that went unanswered -- I talked to Bob many, many times about how he had compromised his case by playing golf. We had many conversations of that. To put it in writing I think would have impugned Bob. I never put it in writing.
Q. You're a good trial lawyer, right?
A. I don't know.
Q. You try --
A. Uh-huh.
Q. -- to do your best?
A. Uh-huh.
Q. You don't think you'd be able to argue in front of a jury that the days after Bob Feldman got an epidural he was able to go play golf and that that really was mitigation more than anything?
MR. BOGDAN: Object to the form.

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THE WITNESS: Mr. Pendarvis, I used to be an enthusiastic golfer, and I developed back spasms. I haven't paid for -- played for 15 years because of that. That's my answer.
BY MR. PENDARVIS:
Q. Well, maybe let me rephrase the question 'cause you might not have understood it. I'm asking about your skills as a trial lawyer.
A. Yeah.
Q. Here's my question: With your experience as a trial lawyer, would you have been able to explain to a jury that despite the injuries Bob Feldman suffered -- let me finish my question. Sorry.
A. I'm not saying --
Q. I thought you were getting ready to say something.
A. No, no, no, no, no.
Q. -- despite the injuries Bob Feldman experienced from the collision with Ms. -- caused by Ms. Dickenson that he was able to play a round of golf after epidural injections and that that really had -- that was no compromise to his claim?
MR. BOGDAN: Object to the form.
THE WITNESS: If I felt that I was

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lying -- and that would have been the case here -- I wouldn't have been able to sell that to the jury. I wouldn't lie to a jury.
BY MR. PENDARVIS:
Q. What would be the lie?
What would be the lie?
A. The lie is this, is that he was playing golf and he was claiming at the same time that he was infirm from back injuries.
Q. Did you ever have any conversations with Mr. Feldman about the frequency of his golf activities?
A. I told Mr. Feldman any number of times -- and I didn't know about the frequency of his golf activities. I told Mr. Feldman any number of times -- 'cause he would make oblique references to golf. And I said, Bob, if you're playing golf, we've got a problem with this case.
And he -- oh, no. I'm not playing golf. I'm just riding around in the cart because I have friends and it's a social thing. Every once in a while I'll swing a club two or three times a round.
That was our conversation. That's what he told me.

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

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

MR. PENDARVIS: This will be three.

THE WITNESS: Mr. Pendarvis, could I --

BY MR. PENDARVIS:

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

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

Q. Okay. Well, she was --

A. Oh, okay.

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

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

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

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

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

Q. Thank you.

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

BY MR. PENDARVIS:

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

A. Uh-huh.

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

A. Yes, it is.

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

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A. I believe so.

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

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

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

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

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

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

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

Q. And that was the footnote, maybe, on

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page 2 of Exhibit 3?

A. Hang on.

Yeah. Uh-huh.

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

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

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

A. Mr. Feldman was --

Q. -- as a broker?

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

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

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

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

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full paragraph on page 1 of Exhibit 3, you're making -- discussing future medical treatments.
A. Uh-huh.
Q. Do you see that?
A. I do. I'm reading it.
Q. Okay.
THE REPORTER: Sorry. I didn't --
THE WITNESS: I'm -- I'm reading it.
THE REPORTER: Okay.
THE WITNESS: That's what I meant. I was reading it silently. I'm sorry.
BY MR. PENDARVIS:
Q. And do you see that?
A. Yes, I do.
Q. Okay. I'm just not sure I had a clear answer.
Were you planning on getting a life care planner to develop a future medical plan for Mr. Feldman for use at trial?
A. There is a -- and I can answer it this way. There is a very good economist that's used by all the trial attorneys out of the University South Carolina. I believe he was an economics professor. I've used him before. I was going to use that gentleman.

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Q. Oliver Wood?
A. That's him. Yeah.
Q. And how was Mr. Wood going to be able to give any testimony about the value of the future medicals without a life care plan?
A. I would have -- okay. Number one, I don't know what you're talking about with a life care plan.
Q. Okay.
A. You're going to have to explain that to me.
Q. How was Mr. -- have you used Dr. Wood at trial?
A. Uh-huh.
Q. And were you able to get Dr. Wood's opinions on future medicals introduced in evidence at trial?
A. The trial was years ago, and the -- the trial -- and I just don't remember what it was. I was very impressed by what he had done, and he, in whatever case this was -- and I think this was a wrongful death case -- was able to go forward on what this gentleman would have made, and I was basing the thoughts that I had for Mr. Feldman on Mr. Wood.

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Q. Did you talk to Dr. Wood about Mr. Feldman's case?
A. No, I did not.
Q. But you were planning to talk with -- sorry. Off the record.
(Off-the-record conference.)
(EXH. 4, Letter from Gary Coggin to Alton Prioleau dated October 17, 2011, was marked for identification.)
BY MR. PENDARVIS:
Q. Mr. Feldman, just for correcting the record, the copy of the Exhibit 3 that's been presented to you has inadvertently got a third page, and I'm going to ask if we can remove -- 'cause it's clearly not -- wasn't enclosed with this letter. It's a copy of September 2012 settlement agreement, and the letter itself is October 10, '11, so --
A. Can I see the settlement agreement?
Q. It's on page 3 of Exhibit 3, and I'm -- I'm just suggesting that, if you don't mind, pull that off, because it was inadvertently included with Exhibit 3.
A. No, no. This is part of the exhibit.
Q. I know it is. What it was presented to

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you --
A. Yeah. Oh. I --
Q. -- and it's --
A. It's part of the -- it's part of the case. Excuse me.
Q. Right. Part of the case but not --
A. That's fine.
Q. I'm just going to ask --
A. Yeah.
Q. -- if we can remove that from Exhibit 3.
A. Absolutely.
Q. That was just inadvertently included.
A. Absolutely. Yeah.
Q. I'm not sure how that got there, but... And just, again, moving down the trail --
A. Uh-huh.
Q. -- I'm going to pass to you now another letter to Allstate claims representative, and this is marked as Exhibit 4. Apparently it's -- this appears to be a letter dated October 17, 2011, to a new claims representative, Mr. Alton Prioleau. Am I saying that right?
A. That's pretty close. I don't remember.

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Q. And this may be the identical letter.
A. Yeah.
Q. I'll let you take a look and see, but, you know, I've got two letters, both signed and -- oh. Excuse me. This one was not signed, the copy I've got. Do you know -- let me rephrase.
Take a look at Exhibit 4. Do you know if this letter was sent to Mr. Prioleau?
A. I do not know. By way of explanation, Allstate will switch up, as you're probably aware, their adjusters, and Ms. Wise had been with me. Prioleau -- I may have decided I was going to send him the same letter to her, but I don't know, and I can't tell you beyond that. I have no idea.
Q. I'm going to represent to you we're going to be looking at some more letters to Mr. Prioleau --
A. Yeah. That's fine.
Q. -- so apparently he --
A. He was on --
Q. You're right. He comes on board at some point.
A. Yeah.
Q. Okay.
(EXH. 5, Letter from Gary Coggin to

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Alton Prioleau dated October 24, 2011, was marked for identification.)
BY MR. PENDARVIS:
Q. Mr. Coggin, I'm going to pass to you now another letter. It appears to be another letter you wrote. This one's date October 24, 2011. It's been marked as Exhibit No. 5.
Okay. Is this a letter that you sent to Mr. Prioleau in -- on October 24, 2011?
A. I would think so, but I don't -- I only have one page. There's not a signature page.
Q. I think it is.
A. Oh, okay. Excuse me.
You're right. Yeah. I agree.
Q. Is that your signature?
A. Uh-huh.
Q. Okay.
A. Yes.
Q. And what is the purpose of this letter? Or what was the purpose of this letter?
A. I think I was probably bringing him up to speed on medicals.
Q. And notwithstanding your statements about Mr. Feldman's pain and suffering issues --
A. Uh-huh. Uh-huh.

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Q. -- as the way he was living, you have no reason to doubt that the medical bills and the surgeries were related to the accident, do you?
A. The surgery that we're talking about here was previous to the accident. It was 2008. No, they -- they weren't related at all. This was a preexisting condition that Bob had.
Q. And you're describing in Paragraph 3 that the -- that matters between January of 2011 and March of 2011 are dealing with --
A. Yeah.
Q. -- treatments for the accident?
A. If you read the second sentence: Please note here there are two separate regimes --
Q. Right.
A. -- of physical therapy for the claimant.
The only thing I can think of was that somehow they were connected and I sent the two bill -- that's all I can think of. I don't know.
Q. Just clarifying for the adjuster what's going on --
A. Yeah.
Q. -- with treatments?
A. Yes.

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Q. Let's take a look, if the -- that document that was attached to the letter, I've got another copy for you. I'll tell you, before we get just into that --
A. Uh-huh.
Q. -- let's let the court reporter mark that. That's going to be Exhibit 6. And I've got a few questions for you.
A. Okay.
MR. BOGDAN: Hand that to her, Gary, and let her mark it.
THE WITNESS: Oh. I'm so sorry.
MR. PENDARVIS: Well, I'll let you -- you can look at it all you need.
(EXH. 6, Release, Covenant Not to Execute and Settlement Agreement, was marked for identification.)
BY MR. PENDARVIS:
Q. Take a moment and look that over. When you're ready, we'll -- let me know, and we'll have a few questions.
MR. BOGDAN: Was that six, Thomas?
MR. PENDARVIS: Yeah. It's number six.
THE WITNESS: Okay.
BY MR. PENDARVIS:

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Q. It appears from the date of the document, September 18 --
A. 2012.
Q. -- 2012 --
A. Yeah.
Q. -- that by that time you've reached an agreement to resolve the claims with Ms. Dickenson's at-fault carrier, Allstate --
A. Correct.
Q. -- for an amount of 85,000?
A. Correct.
Q. And she had $100,000 in coverage, correct?
A. Correct.
Q. Did you have any discussions with Mr. Feldman about settlement with Allstate?
A. Yeah. We did. There was a hundred thousand dollars there. Bob, at this time, was putting considerable pressure on me to get this settled. He told me he was broke. There was one time, maybe twice, that he called and asked to borrow money from me, which I couldn't do.
I told him that I was pushing as hard as I could to get this matter settled and that we would -- I would relay all reasonable settlements

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to him. They had started out by offering, I think, $40,000, and they moved up. $85,000, to me, for three broken ribs, was just fine because you got to the point where you could go after his UIM and make that declaration with full confidence that it would be treated the way it should, rather than if you settled for $40,000.
In addition to that, Bob had also gotten five -- gotten $5,000 from his own insurance company. These companies, particularly Allstate and State Farm, will always argue that the med pay is part of the settlement, and I've had that happen in cases that I've won where they come back to me and they argue that they want the money for what they paid when there was Allstate on both sides. They want the 20,000 they paid in med pay. So I look at this as more a $90,000 settlement.
The settlement was made purely with Bob's agreement, and Bob wanted to know if we were going to go after his UIM. Considering at this time, 2012, I was of the opinion that everything Bob told me about his condition was truthful, I said: Yes. We are.
Q. So you, based on a claim that you made demands in excess of a million dollars, you're

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telling the jury in this case that in September 2012 $85,000 was a sufficient settlement with the at-fault driver?
A. The one thing you have to be aware of is that --
Q. Well, answer yes or no and then you can explain. Is that what you're telling me?
A. Ask me the question again.
Q. So you are going to be telling the jury in this case that based on a claim that you made a demand for Mr. Feldman in excess of $1 million --
A. Uh-huh.
Q. -- that in September 2012 the $85,000 settlement on a $100,000 policy was sufficient and reasonable?
MR. BOGDAN: Object to the form.
THE WITNESS: The $90,000 settlement on a hundred thousand dollar policy was reasonable, yes.
BY MR. PENDARVIS:
Q. Notwithstanding your million dollar demand?
A. Now, at the beginning of this, Mr. Pendarvis, you made a pledge to me you weren't going to try to trick me. Is this one of these

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non-trick questions?
Q. First off, I didn't say that. I don't intend to trick you. I don't intend to trick you, but I just want to put in light for the jury that the -- you made a -- let's make sure that we're clear.
A. The policy was a hundred thousand dollars. We got $90,000. That was a good settlement.
Q. Well --
A. That's the answer.
Q. We're going to stick with that.
A. Okay.
Q. Remember your statement.
A. Okay. That's fine.
Q. Remember your statement for trial.
A. Okay. I'll remember that.
Q. How were you going to establish that Mr. Feldman was under -- that the at-fault party was underinsured when you didn't get all the policy limits as part of making your claim against Mr. Feldman's underinsured carrier?
A. I can only go with what the policy is that I've known for the years I have practiced law, and that is that you can make a claim for

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

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

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

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

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

A. What's that?

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

A. No. I think that probably would have

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

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

BY MR. PENDARVIS:

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

A. Uh-huh.

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

A. Yeah. Yes.

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

A. Absolutely.

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

A. Yes, I did.

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

A. No. It's accurate.

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

A. No. The department of insurance.

Q. Department of insurance? Okay. And they, in turn, deliver it to Liberty Mutual?

A. That's correct.

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

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

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

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

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

A. Uh-huh.

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

A. Yes.

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

A. That's correct.

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

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

Q. Let's assume 500.

A. My fee would have been 35 percent.

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

A. I do not recall anything like that.

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

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

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

A. Not to execute.

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

A. Uh-huh.

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

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

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

A. That's right.

Q. And that's a requirement to perfect the

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pleadings in an underinsured lawsuit context?

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

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

A. Yeah.

Q. Correct?

A. That's correct.

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

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

A. That's correct.

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

A. That's correct.

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

A. Yeah. Doncaster Road was in Sun City.

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

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

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where she was at.

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

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

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

A. Oh, yeah. Absolutely.

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

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

Q. And what did you do next?

And what was your next step for service?

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

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

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

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

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

Q. We'll do that later.

A. We'll do that later, yeah.

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

A. No, no. Huh-uh.

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

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

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

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

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

A. Fran --

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

A. Fran wanted up front money.

Q. Okay.

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

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

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

A. Right.

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

A. Yeah.

Q. -- process address? Okay.

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

Q. Okay. And using Exhibit 7 --

A. Right.

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

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

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

A. I never talked to her about sending

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anything to department of insurance.

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

A. Uh-huh.

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

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

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

A. I apologize.

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

A. Yeah. Ask me the question again.

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

A. And if I can answer that --

Q. Sure.

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

Q. Before the conversation with the process server?

A. Yeah. Uh-huh.

Q. Okay. That's fine.

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

BY MR. PENDARVIS:

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

A. That's fine.

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

A. Yeah.

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

A. Uh-huh.

Q. Yes?

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A. I'm sorry. Yes.
Q. When did you receive a copy of this answer?
A. It's time-stamped January 7, and I assume I received it by mail, so it would have been within five days.
Q. Okay. So early January --
A. Yeah.
Q. -- you received this answer?
A. And I can answer the former question now if you want me to trigger it.
Q. Yes.
A. November the 28th was the -- no. November 28, I think, is when he received the -- the service from the secretary of state.
Q. Okay. Help me understand, Mr. Coggin. We're going to look at your affidavit about receiving proof of service of process. In light of the time when you received the answer, when did you receive information about service of process from the Zeller-Woods people: Before? After? Can you help me there?
A. This answer?
Q. Yes, sir. Exhibit 8.
A. I believe it would have been before.

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Q. So you had information from Zeller-Wood process server Fran --
A. Uh-huh.
Q. -- someone up there -- that Ms. Dickenson had been served?
A. That's correct.
Q. Tell me what you understood about the service of Ms. Dickenson in New York state at the time you received that information.
A. I had sent the material to Zellner-Wood. I didn't hear anything from them, and I called them a week later. The -- Fran again answered the phone. She said service had been attempted at the address I had given her and there was nonservice.
And I said -- I can remember saying, jeez, thinking to myself this is going to be a headache.
And she said: Don't worry. We got a real good address, and we're serving that.
Didn't hear anything from her, and I called probably seven or eight days later, and she said service has been made. And she said: You'll -- and I asked about the affidavit of service, and she said: You'll be getting that.

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I received the affidavit of service. I remember I waited quite some time, and I was going to call her, and I would say it was three weeks after the conversation, when I was ready to call her that day, there was an affidavit of service in the mail.
Q. So that's late December?
A. It could have been -- it could have been January. I don't know.
Q. Was there a cover letter with the affidavit of service?
A. Affidavit of service. That was it.
Q. Just the raw affidavit?
A. Uh-huh.
Q. Who served it?
A. It was a gentleman. I looked at the name. It wasn't -- certainly wasn't Fran.
Q. Right.
A. It was a name of a process server, and he had served it on an address where this woman was, which was a -- I determined later it was an assisted living, slash, dementia home. You know, the woman is, I think, 85 at that time, something like that, and that's all I could tell.
It was served. The person that

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accepted service was, I remember, a man, a man's name, and I was a little concerned about that, but I looked at the law and the rules. You know, service at the residence accepted by somebody who holds them self out to accept -- be able to accept service. It was fine.
Q. When you filed the complaint in -- in Exhibit 7, did -- did you mark the time for service of process of the complaint, the time period you were allowed to serve it?
Let me back up.
A. Yeah. I'm not --
Q. Are you aware of a rule -- are you aware of a rule of procedure that limits the time to serve a summons and complaint?
A. There -- there's a couple of rules. You're going to have to help me out here because I think I know what you're talking about, and I'm going to probably disagree with you. We have -- tell me what the rule is.
Q. Well, this is your deposition.
A. And I apologize.
Q. This is your deposition. I'm asking you: What rule --
Let me ask you a different way. What

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

A. Oh, okay.

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

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

Q. And what tolls the time by statute?

A. Three years.

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

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

Q. 2010?

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

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

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

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Q. Okay. Or out of time?

A. Yes.

Q. Okay.

A. Excuse me.

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

A. No, I did not.

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

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

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

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

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

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

Q. This complaint was filed October 29, 2012.

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A. Uh-huh.

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

A. I don't know. When was it filed? It's filed October 29. The -- the -- was served, as I said, in -- that's November. It was served probably in January. That's -- that's more than enough time after it's been filed.

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

A. Yeah.

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

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

Q. Okay.

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

Q. Okay.

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

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

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

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

A. Right. Uh-huh.

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

A. Yeah.

Q. When did you file that document?

A. I did not.

Q. Why not?

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

Q. No. I'm asking why not.

A. I just told you.

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

That's yes?

A. Yes.

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

A. That's correct.

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

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

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

Q. Okay.

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

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

A. Yeah.

Q. So early January --

A. Uh-huh.

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

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

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

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

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

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

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paragraph, but go ahead.

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

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

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

A. I had simply forgot.

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

A. Yeah.

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

A. Uh-huh. Yes.

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

A. October 10, 2013.

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

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

A. That's correct.

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

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

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

A. Uh-huh.

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

A. No. No. No.

We're still on eight?

Q. Right.

A. Okay.

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

A. Yes.

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Q. With that assumption?

A. Uh-huh.

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

(A recess transpired.)

BY MR. PENDARVIS:

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

A. Okay.

Q. Correct?

A. Uh-huh.

Q. Terry Finger was the mediator?

A. Correct. Uh-huh.

Q. I think we all know Terry.

MR. PENDARVIS: You know Terry?

MR. BOGDAN: Not personally.

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

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County. Good guy.
BY MR. PENDARVIS:
Q. In the time between January 2013 and May of 2014, did you have any other conversations with Mr. Julian Allen, the lawyer hired by Liberty Mutual, about service of process, affidavits of service, anything of that nature?
A. None.
Q. Did you review your pleadings to -- for -- ensure compliance with service of process or anything of that sort during those year and a half or so?
A. I was pretty much hands-on with this case, but I can't say that I did or didn't.
Q. I guess we can really say 2013 and early 2014 you were communicating with some of the medical providers who had treated Mr. Feldman, correct?
A. I had a lot of communications with them by letter. It seemed to me, prior to the settlement more so than afterwards, I know I had sent some letters to Dr. Shissias and also Dr. Reuben -- I think it's Reuben or Rubner -- Reuben -- regarding what Bob was feeling and how badly he was injured and so forth like that and

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asking for maximum medical improvement and so forth like that.
Q. And was to supplement with Ms. Dickenson's carrier, Allstate?
A. That was for -- in prep for the settlement with the carrier. That's correct.
Q. Did you have any communications with any of the medical providers during 2013 and early 2014 to get an update on medical condition?
A. I don't remember. If you have something, I would like to look at it, and I'd certainly tell you.
Q. I'm going to represent to you that through October of 2013 the only communications we have with any of Mr. Feldman's medical providers is a letter from Mr. Allen to Dr. Platt and Coastal Carolina with a subpoena for records and other activities by the defense --
A. Uh-huh.
Q. -- but not you.
A. Okay.
Q. You already had a large body of Mr. Feldman's records, correct?
A. I would think so. And again, I don't remember the date of any of those letters.

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Q. That's fine.
At some point before you were -- you moved to be relieved as counsel you were trying to schedule the deposition of Dr. Reuben, correct, that got canceled for some reason?
A. That I don't remember.
Q. Okay. We'll look at that.
A. I don't remember that at all.
Q. By December of 2013 this case was coming up on the roster, correct, for trial?
A. I don't recall.
Q. I don't have this as an exhibit, but I'm going to show this to both of you. This is a document, Mr. Coggin, from your file that's an e-mail from you to Mr. Allen that states that the case is up on the jury -- transferred to the jury roster.
A. Okay.
Q. And I'll give you --
A. I don't remember that.
Q. Does that look like -- I mean, this came from your file. And then I'm going to give you a Bates number too so you'll have the record.
A. That's my style of writing, yes.
Q. And for the -- and I'm not going to

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make this as an exhibit, but this is -- this document bears Bates number -- come on -- 00119.
MR. BOGDAN: Does it have a date on it? I didn't see it.
MR. PENDARVIS: It didn't have the subject re line on the --
THE WITNESS: Thomas, could I see that again, please?
BY MR. PENDARVIS:
Q. Certainly. But it's talking about -- and it doesn't, but I'll read it. I'll read it in the record. It says: Julian. Re the case of Feldman versus Dickenson.
I'm going to skip the civil action number.
As a courtesy to you, please be informed that I will request a transfer of the same to the jury trial roster in January of the new year. I hope you have a holiday season.
And so that would have been December '13, transfer onto jury trial roster in 2014.
A. Is there a date on that or not? I don't see it.
Q. No, no, sir, there's not, but we're talking --

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A. See, that's --
Q. I mean, it's talking about the new year, and that's why I'm --
A. I just don't -- that looks like something I would do, but I would love to know what the date was.
Q. The reason I'm asking you about this is the case was filed in 2012, October?
A. Uh-huh. Yes.
Q. So by early 2014 it's going to be appearing on Beaufort County roster, correct, whether you move to transfer to the jury trial roster or not. Fair enough?
A. We were probably in the midst of receiving notifications about ADR, et cetera, et cetera. That would have come a little later though. And I don't know what the default time is for that, the triggers for those being sent out, but we're getting into the neighborhood.
Q. We've not seen a notice of ADR, but I will move into --
A. Yeah.
Q. -- that topic at this point.
(EXH. 9, Letter from Gary Coggin to Terry Finger dated May 5, 2014, was marked for identification.)
BY MR. PENDARVIS:
Q. Mr. Coggin, I am passing to you a letter dated May 5, 2014, marked as Exhibit 9 to your deposition. It appears to be a letter from you to Terry Finger --
A. Uh-huh.
Q. -- re mediation, Feldman v. Dickenson. Is this your signature on page 2?
A. Yes, it is.
Q. And is this your statement of the claim in the case as of May 5, 2014?
A. You know, I thought that the -- the mediation was May 5 or 4. I'm not sure about the -- the date on this. And I don't know what the mediation date was, but I will say it is my signature.
Q. So your testimony is the mediation was sometime in May of 2014?
A. Yeah. Uh-huh.
Q. Okay.
A. 2014. That's correct.
Q. As of May 2014, are the statements you made in this letter accurate, to the best of your knowledge?

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A. Yes, it is.
Q. And were the -- was the demand made on the first two paragraphs on page 2 reasonable based on what you knew at the time you made the demand in May of 2014?
A. No, it was not.
Q. I think you've told me before you learned some things, you believe in 2013, about Mr. Feldman's health?
A. That's correct. Yeah. Uh-huh.
Q. And why did you make a statement in mediation -- to a mediator that was not reasonable based on what you knew?
A. This was a mediation. I had asked for $300,000 for Mr. Feldman and $225,000 for his wife. We were in a mediation, and the mediation was going to be for a settlement. In this case here we had already settled for $100,000. He had $500,000 of underinsurance, and I was going into this mediation, as with every mediation, is starting high; you end up low.
Q. So your testimony is that you knew you were making an unreasonable demand when you made it in this letter dated May 5, 2014, to Mr. Finger?
A. This is something that you -- when you put in -- when you go into mediation, these are all supposed to be privileged, and my demand in this -- considering the problems that I had under -- found out about Bob, this was merely, on my end, puffing. You can recall it unreasonable, whatever you want, but it was puffing. I was starting high. We would end up somewhere where I thought would be a good -- would be a good settlement for Bob.
Q. Did you have any conversations with Mr. Feldman or Mrs. Lois Feldman about the substance of what you were demanding in the letter marked as Exhibit 9?
A. Apparently I didn't copy Bob on it, so I would say probably not.
Q. Okay. I have not seen what I'm going to ask for. I'm just going to see if you know of anything. Did the carrier or Mr. Allen on behalf of Liberty Mutual submit a mediation statement to Mr. Finger?
A. I don't know. I don't recall any.
Q. You participated in the mediation?
A. Oh, absolutely.
Q. And was it Mr. Finger's office?
A. Yes.
Q. Okay. Who was there?

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

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

A. It started out that way.

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

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

Q. Similar to the wherefore clauses in the complaint?

That's a yes?

A. Yes.

Q. Did Liberty Mutual make a counteroffer?

A. They did make a counteroffer.

Q. And what was that?

A. 25,000.

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

A. I don't believe so, no.

Q. Okay. And what was -- when you

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

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

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

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

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

A. Yeah.

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

A. Yes, it was.

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

A. I thought so, yeah.

Q. Was there any message conveyed with the offer?

A. I don't believe there was any message

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at all.

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

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

Q. So --

A. They weren't getting in the car.

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

A. Oh, absolutely.

Q. -- north of $25,000?

A. Absolutely.

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

A. I didn't have time.

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

A. Yeah. Uh-huh.

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

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

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

And that was about it.

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

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

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

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

Q. Okay.

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

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

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

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

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

Q. No. Maybe, but was there any mention

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of that?
A. No. Answer is no.
Q. Was there any mention of statute of limitations?
A. No.
Q. Did Mr. Finger make any comments to you about the merits of the claim, claim value, or anything of that nature during the mediation?
A. Terry -- and I've known him for 25 years or close to -- is a very taciturn person, and he didn't say anything one way or the other.
I do remember this, and I'm -- this has triggered. Bob had said a number of things, and I remember Terry saying to him: Well, maybe they'll believe this about your -- your back and so forth when you go to trial.
Or something to that effect. And Bob left.
Q. Do I understand from that comment you just made that --
A. Yeah.
Q. -- that during the breakout session Bob Feldman was telling you, Terry, and his wife, those in the room, that his injuries were severe and this -- you know, he needed this --

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A. I -- I don't know if it was that as much as he was just simply very, very irritated at the -- what he considered to be a small offer.
Q. And what did you say to Mr. Feldman?
A. Wasn't much I could say.
Q. Did you tell him in your experience there could be -- there was going to be some continuing negotiations?
A. I don't know. I'm not going to say anything that I did say or didn't say because I just don't remember. I could have said something. I might not have said anything. I don't know.
Q. Can you talk generally in terms of how you handle mediations? In that scenario do you generally try to tell a client that settlement negotiations are -- this is early and they're going to continue, they're not leaving, that kind of thing?
A. Thomas, I've never had a situation in the mediations where this has happened.
Q. Okay.
A. People will stay, and they'll stay to the bitter end, is my -- my experience.
Q. After the mediation was over, did you believe you were going to have to try the case?

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A. Oh, yeah. Uh-huh.
Q. Again, I'm not going to make this an exhibit --
A. Yes.
Q. -- but -- I'm not going to make this an exhibit. I've got -- you've produced copies of letters in May to Dr. Reuben stating you're providing a HIPAA form and asking for medical records. Is that consistent with your plans on trying this case?
A. I -- I don't remember that, so I can't comment on it.
Q. I'm going to -- again, this is --
A. I'd like to see the whole letter if it's --
Q. I'm going to show it to you.
A. Yeah.
Q. It's a one-page letter, and it's Bates numbered 00114, and this is -- I'm going to let your counsel look at it too.
A. Okay. I -- it looks to me like I was asking for a -- to been brought up to speed on the treatments he had had since October of 2012. That's certainly my letter.
Q. Okay. And my question was: And this

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is consistent with your understanding that you were going to have to try this case, getting his medical records and things of that nature?
A. I thought that trying the case was on the horizon. Bob was bound and determined, from the conversations with him, he wanted to have this case tried.
Q. As of May of 2014 -- well, before we get to that, when you spend money on a client matter, you keep a record -- do you keep a record that identifies monies spent on client matters so that it can be recovered if there's a settlement?
A. The way I keep it is everything is -- that we write for payment for depositions, payments for filing, payments for attorney -- or not for attorneys but for process servers and so forth like that is ordinarily, with the exception of Zellner-Wood, is ordinarily in check, and I will keep contact with those checks.
I do not like what a lot of attorneys do, and that is to nickel and dime people to death: Letter, 42 cents. I don't do that. What I do is I keep the checks. I put them in the file, and at the end of the case I go through all my materials. I add up the checks. It's a very fair way, I

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think, of treating my clients.
Q. Okay. And so you're able to account for monies spent on a client matter that -- significant monies?
A. Significant money, yeah.
Q. No charges for faxes and --
A. No.
Q. -- letters and postage. Okay.
A. No, no.
Q. So as of May 2014 -- and I understand you don't have any records right here, but is -- am I correct in understanding that you paid for a filing fee --
A. Uh-huh.
Q. -- from the Feldmans?
A. Uh-huh.
Q. A money order to Zeller-Wood process serving people?
A. I never charged for that.
Q. No. But you paid for it, right?
A. Yes, I did. Yeah.
Q. And were there any other expenses incurred, medical record expenses or things of that nature?
A. That's hard for me to answer. I can

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tell you this, is that I checked as to what Bob made on the underlying settlement for the predicate accident, and I believe I charged him $900 for expenses for two years.
Q. Okay.
A. And that's -- beyond that, I can't tell you.
Q. Okay. Well, at any point -- so we're clear --
A. Uh-huh.
Q. -- the $900, thereabout, that your firm had spent prior to the settlement with Allstate --
A. Yeah.
Q. -- was reimbursed out of the Allstate settlement proceeds, correct?
A. That's correct. Yeah.
Q. And so you're kind of starting with a clean slate when the new lawsuit gets filed, right?
A. That's correct.
Q. And so the monies you spent from the beginning of the lawsuit, Feldman v. Dickenson, until May of 2014, had you asked Bob Feldman to reimburse you for those monies?
A. I don't know if I had or not.
Q. In most cases don't you handle those

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expenses and recover them out of the settlements for clients?
A. Sometimes. Other times, when they get larger and it gets involved, I will ask the client. I'll say: You're going to have to pick this up. You're going to have to do this and that and so forth. And the clients are usually pretty -- you know, they're pretty -- pretty much --
Thomas, may -- I want to explain something. Bob already owed me money for work that I had done and that he had promised to pay me which he never paid, so --
Q. And this was the DUI for --
A. Yeah, yeah. Uh-huh.
Q. -- another person?
A. Yeah. And when he promised before when I took it on, he said: I'll pay you.
When I finished up and I won the case -- girl blue a .284, and we had it thrown out. And Bob said: You know I don't have the money.
That was the answer. So I was very -- very close with money with Bob.
Q. When did that -- first off --
A. Yeah.
Q. -- I understood your testimony earlier

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that the first time you met Mr. Feldman was right after the collision with Dickenson --
A. Yeah.
Q. -- was at his house?
A. Yeah.
Q. When did you take on this other matter, the DUI matter?
A. That was -- I believe it was the summer of 2013.
Q. And you'd already settled the -- with Allstate at that point?
A. Yeah. Uh-huh, uh-huh.
Q. Okay. What was the agreement? I mean, you didn't represent Mr. Feldman, right, in the DUI?
A. Mr. Feldman asked me to take this on as -- he asked me if I did DUIs and so forth, and I had been rather successful in trying these cases and so forth and winning them, and he asked me if I did it, and I said: Yeah.
He said he had young woman named Karma who was staying at his house, and she had been in a D -- she had --
Q. Been charged?
A. -- had a DUI at the entrance to where

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he lived, and he asked me to represent her.
Q. And you agreed?
A. Yeah. Uh-huh.
Q. Okay. And if I'm hearing your testimony correctly, then the compensation with that representation, Mr. Feldman had agreed to under -- you know, be reasonable for that?
A. He had indicated to me: I will pay you whatever -- whatever you charge.
Q. Was there a fee agreement or anything on that?
A. That was -- Bob is a trustworthy person. If he said he was going to pay me, he was going to pay me. I do at a lot of things on a handshake.
Q. And I didn't say -- accurately.
A. Yeah.
Q. Was there a written agreement on that?
A. No.
Q. Help me on understanding this. What does payment on the Young case have anything to do with your representation of Dickenson in this case -- I mean of the Feldmans.
A. No. That's a good question. There was a lot of money going out, and in getting ready for

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trial there was going to be a great money going out, and this was a case that I felt that we probably would not win because I think Julian Allen knew pretty much what was going on with Bob, though he and I never discussed any of this, but I wanted to make sure I had my money. It's as easy as that.
And Bob had indicated to me with his actions regarding the case of Miss Karma that he was not willing to pay, which greatly surprised me.
Q. Was it willing or able?
A. Bob had received a settlement eight months earlier or ten months earlier of nearly $50,000, and I had worked very hard to get him that money, and I assumed, the way he talked about how he would pay me, that he was -- he had the money.
I guarantee you this. If he had said I'm not going to pay you or I'm going to short you if you win or lose, I wouldn't have done it.
Q. Wouldn't have done what?
A. The case.
Q. The Dickenson case?
A. No, no, no, no, no. The Karma Young case.
Q. And did Mr. Coggin ever tell -- Mr. Feldman ever tell you that he was not going to

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pay you for your work on the Young case?
A. What he told me was, oh, I'll pay you, but I never got it. We talked about it two or three times. In fact, I lowered the price.
What I recall is saying to him this was a $5,000 case, which is what I charge for DUIs, and I said I'll charge -- I think the first time I told him I'll charge 3,000. He didn't have the money. And then I later said I'll charge you $2,000, and he didn't have the money.
Q. Let's consider the summer of 2014: May, June, July, August.
A. Fine.
Q. Did you have any conversations with Mr. Feldman, or Ms. Feldman for that matter, about the value of their claim against Ms. Dickenson?
A. I don't recall.
Q. There was a $25,000 offer of settlement.
A. Right.
Q. Did you have any discussions -- you told us about the mediation.
A. Right.
Q. Did you have any discussions with either of the Feldmans after the mediation prior to

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your moving to be relieved as counsel about the value -- the merits of their claim and the value of their claim?
A. I told Bob any number of times that he had greatly compromised his case by his insistence on playing golf. I told him that probably a half dozen times.
Q. You made some requests to Mr. Feldman to assist in paying cost during the summer of 2014?
A. I don't think I ever made to assist in paying cost. I asked him to pay the cost, yes.
Q. Okay. What did Mr. Feldman tell you? Or what was his response?
A. I wrote him a number of letters which weren't answered. When I say a number of letters, two or three, which weren't answered, and I got a call from him, oh, I don't know when, at the end of the summer, and we had discussed it at that time, and I don't remember what he told me. I think he told me I'll pay you out of the settlement.
Q. Did you have any -- thank you for that. Did you have any conversation about the $25,000 offer and why that was good, bad, or otherwise?
A. I don't believe we ever discussed it. That -- as far as I was concerned, that was over.

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That was -- that ship had sailed.
MR. PENDARVIS: This is going to be ten.
(EXH. 10, Letter from Gary Coggin to Robert Feldman dated September 15, 2014, was marked for identification.)
(Off-the-record conference.)
BY MR. PENDARVIS:
Q. Mr. Coggin, I've passed to you a letter dated September 15, 2012.
A. Uh-huh.
Q. It appears to be a letter from you to Mr. Feldman --
A. Yeah.
Q. -- outlining the merits of the claim --
A. Yeah.
Q. -- and the cost and the prospect for trial. First question: Is this your letter to Mr. Coggin?
A. Yes, it is.
Q. To Mr. Feldman. Excuse me.
A. Yeah.
Q. The first sentence talks about disagreements over the past year.
A. Uh-huh.

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Q. Can you elaborate on what that --
A. Yeah. It -- it involved Bob playing golf.
Q. And what did you understand Bob's -- your next sentence talks about, you know, your concern about not being able to meet his expectations.
A. Right.
Q. What did you understand were Mr. Feldman's expectations as of September 2014?
A. He wanted to exhaust the amount of underinsurance.
Q. Okay.
A. And apparently I did talk about the $25,000. I see that in here. I stand corrected.
Q. Saves the question.
A. Yeah.
Q. Thank you.
And do I understand from the first sentence in the second full paragraph: The circumstances surrounding your injuries.
And does that mean the golf issue, that he was not as injured as you thought he initially was?
A. That's -- that's absolutely right.

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That's exactly what I was talking about.
Q. What was the amount of the medicals that Mr. Feldman had incurred as a result of the collision with Dickenson?
A. I have no idea. Have no idea.
Q. It's in your communications in the original demands?
A. If you have something that says it --
Q. Well, they're in front of you --
A. -- let me look at it and see.
Q. -- but let's take -- let's take a look.
MR. BOGDAN: You guys are talking over each other.
MR. PENDARVIS: I'm sorry.
MR. BOGDAN: Let's help Trisha out here.
THE WITNESS: I apologize.
BY MR. PENDARVIS:
Q. You testified about the letter to Mr. Finger, that it was accurate as far as you knew based on the -- what information you had in May of 2014. Do you recall that testimony?
A. I don't -- I don't know what you're talking about.
Q. This is Exhibit 9.

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A. Okay.
Q. I'm trying to get an understanding of the amount of medicals that you understood Mr. Feldman had incurred that were in context for your conversations in September of 2014.
A. I think I can answer that. Typically -- for example, I'm going to trial at the end of this month, and the attorney on the other side and I have talked about medicals. I don't typically get those together until the eve of trial for the reason that I don't want to miss anything, so I don't know if there was any medicals that we could talk about. If there was, I'd love to see it because I just don't remember.
Q. Well, you're stating to Mr. Finger on the top of the second page that the amount of the -- the amount of -- the above amount is 150 to 180,000.
A. Only an estimate. I have no idea what I was basing that on.
Q. Okay. But you wouldn't have written something that was not true, would you?
A. I would have estimated something, and that could be $50,000 high. I don't know.
Q. Okay. So let's just knock $50,000 off

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both numbers, so between 100 and $130,000 in medicals.

A. I think that the retail numbers would probably been somewhere around there, yeah.

Q. Okay. So 100 to $130,000 in medicals, no dispute on liability whatsoever, and your testimony today is that your recommendation to accept $25,000 was a fair value for Mr. Feldman's claim?

A. Yes, it was.

Q. You're saying he wouldn't even get his medicals back?

A. Yes. He would not.

Q. Okay.

A. Based on the information I have. And again, Bob compromised his case.

Q. Are you going to tell this jury that Bob Feldman's playing golf after the collision would mean that the at-fault party wasn't responsible for at least paying back the medical expenses he incurred? Yes or no and then you can explain.

A. This was a preexisting condition.

Q. No, sir. The question is -- yes or no -- are you going to tell this jury that Bob

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Feldman would not be able to recover the at -- the medical expenses he incurred by Ms. Dickenson's collision? Yes or no.

A. He would not, based on his behaviors.

Q. After the fact. Let me rephrase the question. I want to make sure I got this.

A. Uh-huh.

Q. Your testimony is that Mr. Feldman's conduct after the accident is going to defeat his claim to recover medicals that were incurred as a result of Ms. Dickenson's clear liability?

A. His conduct --

MR. BOGDAN: Object to the form.

THE WITNESS: His conduct after the fact, after the accident, were such that it showed that he didn't have any problems.

BY MR. PENDARVIS:

Q. We're not talking about pain and suffering.

A. I'm talking --

Q. I'm not talking about pain and suffering. I want to talk about medical expenses that were incurred as a result of the collision.

A. So you're talking about medical expenses that are obviously puffed up for a trial?

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Q. No, sir. I'm talking about actual medical expenses that Mr. Feldman incurred that you stated in the letter that we've adjusted down by $50,000 were between a hundred and $130,000 in medicals, and my -- I want to make sure I'm clear on this. You're going to go in front of the jury and tell the jury that Mr. Feldman would not have been able to recover out-of-pocket medical expenses because of his conduct after the fact?

A. Yeah.

MR. BOGDAN: Object to the form.

THE WITNESS: That's exactly right. Yes. Emphatically.

And again, Mr. Pendarvis, I don't know -- and again, I've stated that to you. I don't know what his medicals were. That was just an estimate.

BY MR. PENDARVIS:

Q. Did Julian Allen ever say anything about to you Mr. Golf -- Mr. Feldman's golf situation?

A. Julian Allen, what I recall -- and we didn't -- I think a lot of that would be privileged. Julian Allen did ask Mr. Feldman at his deposition if he had ever played golf since the

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accident. Mr. Feldman replied in the affirmative, and Julian Allen apparently, if I remember correctly, asked some follow-up questions, and Bob's reasoning was the same thing he'd always told me, was that he just liked to ride around in the cart to be with his friends.

Q. Thank you for your summary of the deposition testimony.

A. I don't know if that's a summary of not. That's a summary of my recollection.

Q. That's fair.

A. You're welcome.

Q. And here's my question.

A. Yeah.

Q. Outside of the deposition --

A. Uh-huh.

Q. -- did you have any conversations with Julian Allen about Mr. Feldman's golf?

A. Not that I can recall. If you have something I could look at, I'd be happy to look at it and comment on it.

Q. My question was about conversations, not really letters, e-mails, or anything like that. Did you have any conversations with --

A. Not that I recall.

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Q. Did Mr. Allen ever communicate other -- in a conversation statements to the effect that Mr. Feldman's golf activities were a reason they weren't offering any money?

A. I don't recall him ever saying anything like that. But I want to put this caveat. Mr. Allen is a very skilled attorney, and Mr. Allen, I believe, probably knew all about this.

Q. Have you had any conversations with Mr. Allen about the merits of this claim --

A. No.

Q. -- this legal malpractice case?

A. No.

Q. Do you know if your counsel has reached out to Mr. Allen?

A. I -- I don't know.

MR. BOGDAN: I think that's work product.

THE WITNESS: I'm not sure.

MR. PENDARVIS: The rules only allow you -- are you instructing the witness not to answer, or are you just objecting? 'Cause I think the rules only deal with communication, attorney-client privilege, not work product. I'm just trying to get an understanding of where we

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are.

MR. BOGDAN: What's the question again?

BY MR. PENDARVIS:

Q. The question is: Do you know if your lawyer has reached out to Mr. Julian Allen about the -- his testimony in this case?

A. The answer is I don't know.

Q. Okay. I have not seen any written communications from Mr. Allen about the settlement. Are there -- I mean, were you aware of any that somehow didn't get in the file or anything of that nature?

A. I'm not aware of anything. And again, if there is something, I'd like to look at it.

Q. Okay. I --

A. Okay.

Q. I'm telling you I haven't seen it either. I just wanted to see if there was something.

I'm going to break this -- this is a question about lost wages.

A. Okay.

Q. And I'm going to break this down to several segments of time. During the time Mr. Feldman was getting treatments for injuries

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caused by the accident, do you believe he had a claim for lost wages for that limited time period?

A. I would believe he did, yes.

Q. Okay.

A. Uh-huh.

Q. Would the fact that Mr. Feldman may have played golf months, years after that, defeat his claim for lost wages?

A. That I don't know, but the fact of the matter is I don't know if he worked.

Q. Okay.

A. He would never answer that question to me.

Q. For the time period after Mr. -- or after the accident and while Mr. Feldman was not actively getting medical treatments, did you reach out to any of the physicians or vocation rehabilitations experts to find out if there were -- if Mr. Feldman's ability to work was limited or compromised by the injuries caused by the accident?

A. Regarding work, I don't believe I ever asked that question. There were letters that I wrote to his physicians, but it wasn't -- didn't involve work.

Q. Typically requesting copies of medical

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records?

A. Medical records. I believe I sent a letter to Shissias and to Dr. Reuben regarding his health and so forth.

Q. And a percentage of impairment?

A. Yeah. Uh-huh.

Q. Okay.

A. That's right.

Q. So if a person was determined to be 11 percent impaired, that would tend to support a claim for lost wages, wouldn't it?

A. If he worked.

Q. Right. And you've made those arguments for other clients where percentages of impairment impaired their ability to work, correct?

A. If they have a job. If they don't have a job, they don't pay workers' comp or anything else like that. You know that.

Q. So turning back to Exhibit 10, if I'm understanding --

A. Yeah.

Q. -- your testimony -- I want to try to summarize here.

A. Uh-huh.

Q. Looking at the -- one, two, three --

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third full paragraph, you -- last sentence: In the interim, I advise you to settle the matter at hand for the 25,000 that's been offered.

A. That's correct.

Q. Did you have any conversations with Mr. Feldman about why you were making this recommendation?

A. Bob and I talked on the telephone. As I said, I sent a couple of these letters to him regarding costs and so forth like that. My recollection is he called me sometime later in the summer. At that time I told him that he had severely compromised his case with his activities and I felt that the -- the case was really not a very good case.

Q. You'd been practicing law about 20 -- almost 25 years --

A. Yeah.

Q. -- as of this?

A. That's about right. Yeah.

Q. And it's your testimony that Mr. -- if you'd gone to trial that you didn't -- your expert opinion was that the case was not worth more than $25,000?

A. Based on what I knew about Bob, yes.

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Q. After this September 15 letter we marked as Exhibit 10, did you have any conversations with Mr. Feldman about having the need to maybe find substitute counsel instead of filing a motion to withdraw as counsel?

A. I don't recall. But I have a feeling that I did. And if you have a letter, I'd like -- I'd like to look at it before I answer any further than that.

Q. You believe you've had conversations with Mr. Feldman about --

A. I think I may have written him a letter.

Q. Okay. Check something real quick.

A. Sure.

Q. I don't think I've seen the -- I don't think I've seen the letter.

I'm going to represent you the first time that the substitution of counsel came into play was after you had filed your motion to withdraw.

Well, I'll tell you what. I'll just use this for now. I'm not going to mark this as an exhibit. We've got a copy of it, but you filed a motion to be -- to withdraw as counsel, correct?

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A. I don't recall that.

Q. This is --

A. So show me -- pass me the certificate of service.

Q. I'm showing to you a copy of the certificate of service. And do you recall filing a motion to withdraw?

A. I don't recall.

Q. Okay.

A. That doesn't mean I didn't do it, but I don't recall. And if you have something that will help me, please give it to me.

Q. This image I'm going to show you is Bates No. 00048, and it's a -- it appears to be a clocked copy of a motion to -- for withdrawal of appearance and stay of proceedings, and the movant was you.

I can make that a little larger if that'll help.

A. Yeah. Go ahead. I can't hardly see it.

Q. I'm sorry.

A. Is that the end of it, or can I move it down?

Q. Yes, sir. We can --

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A. Oh.

Q. Oh, wait a minute. Let me see if I can get it to scroll down better.

A. Okay. Okay. Is that it? Is there a signature page?

Q. I think there is, and I'll show you that.

A. Okay. That's correct.

What was the date? I'm -- I apologize.

Q. It was clocked or filed with the court on September 16, 2014.

A. Okay.

Q. And did you have any -- and where I'm going with this is did you have any conversations with Mr. Feldman before this motion was filed on the preference to substitute counsel rather than you moving to be relieved as counsel?

A. I just don't remember. I think it would be my habit to talk to him because ordinarily I talk to people. I just don't remember.

Q. Did you help the Feldmans find other counsel?

A. No. I don't believe I did that, no.

Q. Why not?

A. He didn't ask me. If he had asked me,

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I would have given him some recommendations.
MR. BOGDAN: Do you have a signature page of that, Tom?
MR. PENDARVIS: Sure.
MR. BOGDAN: Thanks.
MR. PENDARVIS: It goes over to Bates page 00049, and I think the -- out of order, but 0030 was the certificate of service, the same date as the signed.
BY MR. PENDARVIS:
Q. Okay. The law firm of Bauer & Metro took over the representation --
A. That's correct.
Q. -- of the Feldmans?
A. Uh-huh.
Q. Okay. I'm going to go back a little bit in just a second, back in time.
MR. BOGDAN: Did you mark this?
MR. PENDARVIS: No.
(EXH. 11, Letter from Gary Coggin to Julian Allen dated May 21, 2014, was marked for identification.)
BY MR. PENDARVIS:
Q. Mr. Coggin, I'm going -- I'm going to rewind a little bit.

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A. That's fine.
Q. We've been up to the point of -- in September. I'm going to go back a little bit, into May. I'm passing you -- appears to be a letter from you to Julian Allen from May 21, 2014. Going to ask if -- if that's a letter you sent to Mr. Allen?
A. Yes, it is.
Q. Okay. What's the purpose of this letter?
A. I would assume I was still working on the case and trying to get a settlement.
Q. It appears, if you're looking at the third paragraph, that there -- you provided all of Mr. Feldman's medical records that you had in your possession --
A. Uh-huh.
Q. -- and you divided them basically into preaccident medical bills and postaccident medical bills.
A. That's --
Q. Is that a fair summary?
A. That's correct.
Q. And looking at the -- you're showing existing medicals, and this is the -- one, two,

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three, four -- fifth paragraph beginning with the word following.
A. Uh-huh.
Q. You're showing total billings at 47,450?
A. Yeah. Uh-huh.
Q. And you're also looking at foreseeable future for injections that Mr. Feldman's going to need?
A. Right.
Q. So you had done some calculations on the amount of medicals?
A. I just told you I didn't remember.
Q. I know. And I'm just saying -- well, you also said sometimes you don't do them until right before trial, but my point is you had done some for Mr. Feldman's case during the time you were representing him, correct?
A. I would say so. I would agree.
Q. Okay.
A. This also shows that the billings were relatively small compared to what they were before, 47,450.
Q. Okay. Did you develop any values for the future medicals that Mr. Feldman was going to

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need?
A. You're going to have to explain that to me. I don't know what you mean.
Q. Your letter says that, according -- Mr. Feldman has had 16 injections, one every two and a half months --
A. Yeah.
Q. -- and the injections will continue at this rate for the foreseeable future.
A. I -- no. I did -- I'm going to back up on this. There was a letter to Dr. Shissias or Reuben in which I talked about some kind of future medicals or something like that, and that's all I can tell you. I do remember there was something there.
Q. Okay.
A. If you have it, I'd like to look at that.
Q. And you made statements in the -- to the Allstate carrier about future medicals for Mr. Feldman?
A. If there's -- in the letters, I would say yes. I don't know if I did or not. I'm sure I did.
Q. You're welcome to look. I'm going to

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represent to you that you did.
A. Yeah, yeah.
Q. If you want to see them, you can.
A. Yeah. I'd like to see them, yeah.
Q. They're right in front of you. They're in one of the earlier exhibits, those first two or three letters that we looked at.
A. You're going to have to help me here. What are we looking for?
Q. I'm looking. I'm --
A. I had a -- I had a senior moment there.
Q. Well, in one of your first letters, Exhibit 2, July 5, 2011 --
A. Uh-huh.
Q. -- the second full paragraph and, really, the third full paragraph talk about future medicals.
A. Okay.
Q. And question I've got is, that that was an expense that was going to be available at trial for the case.
A. Uh-huh.
Q. Correct?
A. Uh-huh.
Q. Thank you. I just feel -- I wanted to

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get that testimony.
A. Yes, yes.
Q. Fast-forward now back again to the point in time when -- after Bauer & Metro had taken over the representation. Could you describe just generally what happened in that exchange?
A. There was a -- they asked for the -- all the records. I put them in a box. They sent a girl over to get them, and I had to carry them. They were so heavy I had to carry them down to the car for her.
Q. And the records you're referring to would have been the entire file for the Feldmans?
A. I believe so, yes.
Q. And you were -- and we've seen communications or -- communication's been produced where you were basically telling the lawyers at Bauer & Metro that -- to protect your expenses that you'd paid and your interest in the $25,000 settlement offer?
A. Uh-huh.
Q. Correct?
A. Yeah.
Q. You've got to say yes.
A. It's got to be --

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Q. No, no, no.
A. I'd have to see it. I remember some kind of letter like that. I'm not going to agree to the specifics until I look at it.
Q. Okay.
A. I don't remember what I said.
Q. That's fine. The letter -- I mean, it's just not worth really getting into.
Let's just do this.
(EXH. 12, Letter from Carrie M. Murphy to Gary Patrick Coggin dated October 7, 2014, was marked for identification.)
BY MR. PENDARVIS:
Q. Mr. Coggin, I'm going to pass you a document marked Exhibit 12 --
A. Sure.
Q. -- to your deposition. This appears to be a document from the Bauer & Metro law firm faxed and e-mailed to you on October 7, 2014. I'm going to let you read that, and I have a few questions for you.
A. Uh-huh. I read it.
Q. Tell me about this telephone conversation on October 6 referenced in the first sentence between you and Mr. Bauer.

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A. I don't remember.
Q. Okay. This letter states that -- apparently it's about the affidavit of service conversation.
A. I would -- again, I don't remember.
Q. When you received this letter -- second sentence says: We have searched the file you've provided --
A. Uh-huh.
Q. -- and cannot locate the affidavit of service for the named defendant.
A. Right.
Q. I would appreciate it if you would search your records and provide me a copy of the affidavit or name the -- or the name of the process server who served the pleadings on the defendant.
A. Okay.
Q. And you got this letter, correct?
A. Yes.
Q. What did you do in response?
A. I don't know if I did anything. I didn't consider this to be something that I had to answer. They said they couldn't find the affidavit of service. My position was that I had included the affidavit of service in all my papers. I

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didn't hold anything back, and I think that's all that I can tell you about that.

Q. Is that what you said to Mr. Bauer when he called you on October 6?

A. I dont' know. I told you already I didn't know what we talked about. We could have talked about anything. I've known Sam for a long time.

Q. What do you believe your duties are to a client when you terminate the representation of a client?

MR. BOGDAN: Object to the form.

MR. PENDARVIS: What's the basis of the objection?

MR. BOGDAN: It calls for a legal conclusion.

MR. PENDARVIS: Okay. I'm going to ask him. He's a lawyer.

BY MR. PENDARVIS:

Q. You're a lawyer, right?

A. That doesn't deserve an answer, does it?

Q. I mean, you're a lawyer, and you know that there are rule --

A. Thomas, you're trying to be

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provocative. I'm not going to answer that.

Q. No, I'm not.

A. Yes, you are.

Q. You're a lawyer, and you know there are rules governing your duties to a client when you're terminating representation.

A. I do not know what the ethical -- as I sit here, no, I don't know enough about the ethical conundrums regarding transferring of documents. I did everything correctly and up front. That's all I can tell you.

Q. You would agree, as the lawyer who'd handled a matter for a client, including Mr. Feldman and Ms. Feldman, that you've got an obligation to make sure the transition of the file to new counsel goes as smoothly as possible so as not to interfere with the client's claims, correct?

A. Absolutely.

Q. And if that meant looking, going an extra step to look for an affidavit of service, that's not asking too much, is it?

A. I probably looked through every file that I had in my office, so, yes, we looked very hard for that. I thought you were asking what I did with Bauer & Metro.

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Q. I thought -- my understanding was your testimony was I probably didn't do anything when I got this letter that's been marked as Exhibit --

A. In response to Bauer & Metro. That's all I meant.

Q. Okay.

A. I looked very hard for that.

Q. Did you respond -- do you know if you communicated back to Bauer -- Sam Bauer or anyone at Bauer & Metro about your efforts to look?

A. I don't know. I don't know if that's any of their business. I don't know, and that's my answer.

(Off-the-record conference.)

BY MR. PENDARVIS:

Q. I'm going to represent to you that ultimately there was an order submitted substituting counsel, that your motion to be relieved never was -- did you ever appear on the motion to be relieved as counsel?

A. I don't believe it ever came up.

Q. Yeah. It was a substitution of counsel that was --

A. Yeah.

Q. -- handled, so the order relieving you

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as counsel for Mr. and Ms. Feldman was done by substitution and a consent. Okay.

(EXH. 13, Letter from Julian K. Allen to Honorable Jerri Ann Roseneau dated October 8, 2014; Liberty Mutual Insurance Company's Notice and Motion to Dismiss; and Certificate of Service, was marked for identification.)

BY MR. PENDARVIS:

Q. This is 13.

A. Thank you.

Q. Mr. Coggin, this -- a document -- a cover letter and a -- and a motion that's been passed to you marked Exhibit 13 --

A. Uh-huh.

Q. This appears to be a letter from Julian Allen to the clerk of court filing defendant's -- Liberty Mutual Insurance Company's notice and motion to dismiss.

A. Okay.

Q. And you were copied on that, correct?

A. Yes.

Q. You were of record at that point. You were --

A. Oh, no, no. Yes.

Q. You were still counsel of record,

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right?
A. Right.
Q. So Bauer & Metro and their law firm were -- before this motion got filed, they were -- they were looking for the affidavit, right?
A. They indicated they had gone through the file, yes.
Q. Okay. Did you have any conversations with anyone about this motion when you received it?
A. I don't believe did.
Q. Did Mr. Metro or Mr. Bauer call you to discuss this motion when they received it?
A. I don't remember. If you have something, it might trigger my memory. I'm not trying -- I'm not being deliberately obtuse.
MR. PENDARVIS: Let's take a pause while we're looking for this document.
(A recess transpired.)
(EXH. 14, Letter from Samuel C. Bauer to Gary Patrick Coggin dated October 10, 2014, was marked for identification.)
BY MR. PENDARVIS:
Q. Mr. Coggin, I'm passing to you a document marked as Exhibit 14 that appears to be another letter to you from the Bauer & Metro firm,

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and this one's from Sam Bauer to you --
A. Uh-huh.
Q. -- dated October 10, 2014. Did you receive this letter?
A. I don't remember, but I think I did. My address is on there. Everything is correct.
Q. It appears there was a -- I mean, this references a conversation with you and Mr. Bauer. You were going to look for the affidavit?
A. Uh-huh.
Q. That's yes?
A. Yes. Excuse me.
Q. What did you do in response to this letter?
A. There was an ongoing search for the affidavit of service. All right? As for the -- the check, that -- my recollection of that was clear. I paid cash for that. Oh, no. Not the process -- yeah. The process server. We're talking about Zellner-Wood.
You can provide an affidavit it was personally served, and I did provide an affidavit.
Q. Well, let me ask you this. Why didn't you just call back the process server in New York and just get another affidavit?

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A. I called them immediately. In fact, we must have had 20 conversations. And I called them immediately, and as I said, I'd had a number of conversations with her when this was being served, and the answer that I got was -- the first time I called them -- was that one-time service, none of the -- none of the documents are kept. We only keep the documents -- they only keep records for people that work with us multiple times. Other times, everything else is destroyed or thrown away, and that was the answer.
Now, I talked to them several times after that. I called them up and confronted them with the telephone calls I had made there, and they said, well -- at that point the answer was that they had had three different computer systems in since the period of time. They're obviously worried about a malpractice suit themselves.
And the last time I -- I called many, many times, and another time I called, that they said they looked and they couldn't find anything, so that was the gist of the excuses every time.
And then this gal, Fran, stopped taking my calls, so there was only so much you could do.
Q. Why were you doing all the -- why did

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you take all these actions to try to recover the affidavit of service?
A. Why?
Q. Yes. Why?
A. Because I had done it. They had served -- I had served.
Q. Well --
A. I had an obligation.
Q. What was the purpose of the affidavit of service? I mean, why did you need to get it?
A. Well, the affidavit of service had to be filed. I had to protect my client. I'm not sure if that's what you're asking.
Q. Okay. I think we're going to look at an affidavit that you prepared. I'm following up on some conversation --
A. We're talking about different things?
Q. Yeah.
A. Yeah.
Q. The last statement this -- in this request from Mr. Bauer was could you provide an affidavit, and you did provide one at some point, correct?
A. Yeah.
Q. Okay. Now, in between the affidavit

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you prepared did Mr. Bauer or his firm serve you with a subpoena for production of the file or the affidavit?

A. I think they did serve me. I don't know if it was for the production of the file or not. Maybe it was. I think I recall that.

(EXH. 15, Letter from Gary Coggin to Jerri Roseneau dated December 6, 2014; Objection to Plaintiffs' Subpoena; and Certificate of Service, was marked for identification.)

BY MR. PENDARVIS:

Q. Mr. Coggin, I'm going to skip a step or two --

A. Yeah.

Q. -- and I'm going to pass you as -- a document marked as Exhibit 15. It appears to be a letter from you to the clerk of court filing an objection to a subpoena, and I'm going to ask if that's a letter -- is that your signature and an objection that you filed?

A. Yeah. Uh-huh.

Q. And so, based on the statement in your objection, the subpoena that was served sought, quote, copies of any and all records evidencing service of process of plaintiff's summons and

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complaint in the above-captioned matter upon Defendant Sarah Dickenson, correct?

A. That's correct.

Q. And your objection was that you provided the file?

A. A complete file had been provided. Right.

(EXH. 16, Affidavit of Gary Coggin, was marked for identification.)

BY MR. PENDARVIS:

Q. I'm going to pass you a document marked as Exhibit 16. It appears to be an affidavit that you signed a few days later dated December 8 and, first off, ask if this is an affidavit you signed?

A. Yeah. Yes, it is.

Q. And did anyone assist you with the content of this affidavit?

A. No. I did it myself. I'll take part of the blame for it.

Q. Did you have any conversations with Mr. Bauer or Mr. Metro or anyone at that law firm while you were developing this affidavit?

A. I don't believe so, no.

Q. Okay. To your knowledge was this ever submitted to a court?

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A. Yes. I think the -- this was given to Julian Allen, and I probably sent a copy of it to Bauer & Metro, and I don't know. Unless you have a -- something else. Maybe you have some letters or something like that.

Q. I'm not sure I've seen a clocked copy or a cover letter. I'm just try -- that's what I'm trying to find out.

A. I think I gave it to Mr. Allen, and I probably gave a copy to Sam Bauer.

Q. Do you know if this was submitted to Judge Kinard when he heard the hearing -- motion?

A. It's in the documents. And again, I -- I don't know. You're -- I'd have to look at it and see. I -- I don't recall one way or the other.

MR. PENDARVIS: Okay. Off the record for just a moment.

(Off-the-record conference.)

(EXH. 17, Answer to Defendant's 12(b)(4) and 12(b)(5) Motion to Dismiss, was marked for identification.)

(EXH. 18, Answer to Defendant's 12(b)(4) and 12(b)(5) Motion to Dismiss, was marked for identification.)

BY MR. PENDARVIS:

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Q. Mr. Coggin, I'm going to pass to you two documents. Both of them are styled Answer of Defendant's 12(b)(4) and 12(b)(5) Motion to Dismiss. One, Exhibit 17, has not been signed, and one, Exhibit 18, has been signed. Take a look at those for a moment and then I've got a couple of questions for you.

A. Okay.

Q. Did you prepare these documents?

A. I'm sure I did.

Q. Why did you prepare them?

A. I don't know if it was in response to Julian Allen's motion to dismiss. Depends on the dates. And then there was a second hearing, and you provided us those documents under -- you provided us those documents under the interrogatories or production yesterday, so there were two separate hearings.

Q. Right.

A. One in front of Maitley Murphy, a young -- or young judge, and then one in front of an old judge, Judge Kinard, so I -- I think they were probably prepared for one of those. That's all I can think of.

Q. By this time you'd been relieved as

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counsel for Mr. Feldman?
A. I don't know what the -- the dates were, so I can't tell you.
Q. Do you believe when you prepared these responses to the plaintiff's motion -- excuse me -- the defendant's motion that you were counsel of record -- counsel for Mr. or Ms. Feldman?
A. There's two ways I could answer that question. The first one is that I don't know what the date is that we have the consents and so forth like that. If you can provide that for me, I can answer it a lot better.
The second one is that the -- the clerk of court or in -- become mixed up from time to time and they'll list an attorney as the counsel of record, and you better show up even if you're not, so I can't tell you when it was or whatever until I know what the dates were.
Q. After letting you look at this I'm going to represent to you --
A. Yeah.
Q. -- that October 17 Mr. Bauer sent you a consent order -- let's get it. You can read it -- for substitution of counsel.
A. Uh-huh. Do you have the consent order?

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That's what I'm looking for.
Q. I believe it's the next page. Here's the cover page for the judge. Hold on. I got to do it -- switch to the next page.
A. The same thing is I still can't answer it.
Q. And here's --
A. I'm sure you have it.
Q. And here's the --
A. Okay.
Q. -- consent. Did you sign a consent order?
A. I don't know. I want to see it.
Q. Do you believe you stayed on as counsel for the Feldmans?
A. What I -- I think that -- and you were talking about the obligations that you have. I think that to a certain extent, as the author of the predicate incident over which this is involved, I had a certain obligation to Bob Feldman to protect him as much as I could, which is what I was doing, so I don't know what the dates are or anything else like that.
Q. Fair enough.
(EXH. 19, Transcript of Record dated

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January 6, 2015, was marked for identification.)
BY MR. PENDARVIS:
Q. Mr. Coggin, we were able to obtain a copy of the transcript of a hearing before Judge Kinard in January of 2015. I'm going to pass a copy of it to you marked as Exhibit 19. And, candidly, we just got it recently. Did you have a chance to look over this transcript before our deposition today?
A. Briefly, briefly.
Q. There is a summary in the first page about the circumstances about you and at an earlier hearing.
A. Right. Uh-huh.
Q. Accurate, as far as you know?
A. Do you want me to comment on it?
Q. Sure.
A. This is one of the things that I was talking about where you're listed as the attorney of counsel. I was the attorney of counsel listed.
Q. Okay.
A. That's why I showed up. Sam Bauer came in, and Sam and I have known each other for years. He sat down at the table with me. I asked him what he was doing, and he said: I'm the attorney here.

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And I said: Where are you on the list?
I said: I got to go by the list here.
We had a brief disagreement, which -- and I can't remember how it worked, to be honest with you, what happened after that. And I think we both -- I think we both answered, to be honest with you.
Q. I mean, we're kind of coming at it from both sides of the same thing. You filed a motion to be relieved.
A. Uh-huh.
Q. There's a substitution of counsel --
A. Right.
Q. -- that was in play, and apparently no order had been signed at this point.
A. I don't know. That -- I don't know if the order was signed or not. All I know is that I was on the roster, and if you're on the roster, you better -- you know, sometimes it takes a while to get these orders signed and so forth, and I didn't know what the situation was, so I went to answer it.
Q. And if we take a look at page 4 of the transcript, which is Norton, bunch of zeros, 4, very bottom right-hand corner. Page 4 of the

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transcript --
A. Yeah, yeah. Go ahead.
Q. -- and if you scroll down to line number 17 --
A. Uh-huh.
Q. -- take a look at that, 17 through 20.
A. Yeah. That's exactly what I was talking about.
Q. And then down below that, 21, 22, that Mr. Coggin had been relieved as of November of 2014?
A. Uh-huh.
Q. Correct?
A. Yeah.
Q. And this is a hearing that's taking place in January of '15.
A. No. This is a -- I think this is a December hearing.
Q. It says on the front -- first page January 6, 2015 --
A. Hang on.
Q. -- before Judge Kinard.
A. Hang on. But we're talking about Judge Murphy here.
Q. Right, right. But I'm just saying that

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this is --
A. November of '14.
Q. -- reciting a history. In a hearing before -- let me make sure I get this correct.
A. Yeah.
Q. In a hearing before Judge Kinard in January of 2015, Mr. Allen, on pages 3 and 4 of the transcript, is giving Judge Kinard some history behind the motion, correct?
A. Right. Uh-huh.
Q. Okay. And that's the discussion you had mentioned earlier about Judge Murphy?
A. Right. Uh-huh.
Q. Okay.
A. I thought we were talking about Murphy here.
Q. My apologizes if I wasn't clear.
A. Yeah. Okay. This is the Kinard. Yeah.
Q. And in this circumstance, beginning, I believe, on page 5 of the transcript, is the first point in time where you're giving arguments to the Court, correct?
A. Yeah. Uh-huh.
Q. Okay. And if we fast-forward through

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the arguments to page 9 --
A. Okay.
Q. -- of the transcript, in particular, line 18, you told Judge Kinard that you were not going to -- you don't -- didn't blame Bauer & Metro about the affidavit not getting filed, correct?
A. You know, there's -- in this case, Mr. Pendarvis, there's plenty of blame to go around. Most of it rests on my doorstep, and I fully admit that I failed to file this paper when I got it; however, I will maintain today and tomorrow and whenever that all the papers of the case went over to Bauer & Metro. I don't know what happened.
There were three documents that did not come back. One was the -- my -- one was my contract with Mr. Feldman. They called me and asked -- told me that they didn't have the contract, and I know that was in there. We sent that off. We sent a copy off.
The second was the -- the affidavit of nonservice by Michael Witt, and I knew that was in there because when I was putting them in I -- I looked at this document and I said: Who hand scribbled this? And it was Mike Witt's document. That never came back to me.

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The third document was this, but I will not --
Q. And by this, just so the record's clear, you're talking about the affidavit of service in New York?
A. The affidavit of service, yeah. And -- but I am not going to say -- even though I've said I put them with the papers of the case and that's what I remember, that is -- I will not accuse Bauer & Metro of doing anything untoward because I don't think they're capable of that, and that's what I'm saying.
Q. And if we fast-forward over to page 11 --
A. Sure.
Q. -- Judge Kinard, bless his soul --
A. A good man.
Q. A very good man. That's one thing we will definitely not disagree on.
He's instructing you --
A. Uh-huh.
Q. -- page 11, line 3, to get an affidavit from the process server.
A. Uh-huh.
Q. Correct?

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A. Uh-huh.
Q. That's yes. I'm sorry to --
A. Yeah. I'm sorry. That's correct. Yeah.
Q. And from your prior testimony and your multiple conversations with the Zeller-Wood process server people in New York, that simply couldn't be done, correct?
A. Actually, I -- I talked to them, and I talked to the president of Zeller-Wood, and he said: Send me up your proposed affidavit.
I sent it to him, and in that period of time --
Q. I'm listening. In that period of time...
A. Okay. In that period of time a couple things happened: One, the case was settled. Number two, Kinard died.
The other part of it was that Kinard also told Mr. Allen to get an affidavit from Ms. Dickenson. I never pushed the affidavit after that because they had settled the case, and as far as I was concerned that ended the case.
And the second thing is immediately after that Judge Kinard died, and had that been

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scheduled, I would have driven to New York and stood at their doorstep until they signed this affidavit.
Q. And it's your testimony you prepared a proposed affidavit?
A. Yes, I did.
Q. Have you produced that?
A. No. Because it went off to them. I don't even remember what it was. I produced the affidavit. I sent it up to them.
Q. You didn't keep a copy of it?
A. I did not.
Q. Do you have a word processing document that generates that?
A. I can tell you what -- exactly what it said, if you want me to tell you.
Q. Well, I need to see the -- no, no, no. My question was: Do you have a word processing file from which that affidavit was printed?
A. I can look. I don't know how it was done or whatever. I have a computer at home. I have a computer at the office. The computers at home have been thrown out. I don't know. I have a computer that all the -- all the memory has been wiped out somehow.

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The fact of the matter is is what they were going to agree to was that I had made multiple calls to them. That's all they would agree to. So it's not exactly the smoke --
Q. So there wasn't --
A. It's not the smoking gun. And I will look for it.
Q. So they weren't going to be able -- I'm sorry.
A. Yeah. I'll look for it. I'll try to get it for you.
Q. Well --
A. If I have it, I'll look for it.
Q. Then I'm correct -- then the statement that an affidavit of service from the process server was not available?
A. I did not finish. I don't know -- you know, it depends on what your definition of the affidavit of service is.
Q. Did you believe that someone with personal knowledge of service on Ms. Dickenson, however that occurred --
A. Uh-huh.
Q. -- was available to give an affidavit about those events?

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A. That question -- I asked that question of Zeller-Wood one time, and the answer was we have thousands of process servers. We can't possibly dig up who it is. I can only go with what they told me. That was their way of saying no.
Q. Okay. And essentially the document -- draft affidavit you sent to New York was arguably the flip side of your affidavit that said I made multiple calls and their affidavit saying we received multiple calls, correct?
A. Prior to the service of the affidavit.
Q. Okay.
A. Yeah. Uh-huh. That's exactly right.
Q. So effectively, your decision not to file the affidavit left the Feldmans in a position of not being able to respond to the motion to dismiss, correct?
A. No. That did not even -- that did not even come up. Judge Kinard said he was going to schedule another hearing. He wanted us, in the interim, to each come up with affidavits. Mr. -- Mr. Allen never had an affidavit. I had never had an affidavit. You guys settled. That was -- Mr. Feldman settled that relatively quickly. I would say within a month. Okay?

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That had been drafted. It had been sent off. I didn't hear anything. In the meantime it was settled.

Q. Did you tell Mr. Metro, Mr. Bauer, or anyone representing Mr. Feldman that the process server people in New York, Zeller-Wood, had told you that basically there was not going to be an affidavit available from someone who had personal knowledge of service?

A. No, I did not.

Q. Did you have any communications with Bauer or Metro after the hearing on January 6, 2015?

A. What's -- what's January 6, 2015?

Q. This hearing. It's the transcript that you're looking at.

A. Okay. Hang on.

Q. And I'm just trying to find out: Did you have any conversations with them?

A. I think I may have talked with Sam regarding what happened, and he said that the case settled.

Q. Didn't Judge Kinard say at the end of the hearing that -- I'm going to quote this from page 11, lines 25, carrying over to page 12, to

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you: But I don't think I can let it go forward without a little more than your affidavit?

A. Where are we at?

MR. BOGDAN: Object to the form.

BY MR. PENDARVIS:

Q. Page 11, line 25. I said 24. I'm sorry. Line 25, over to line 1 on page 12.

Isn't that what Judge Kinard told you, that you were basically going to need an affidavit of service?

MR. BOGDAN: Object to the form.

THE WITNESS: Judge Kinard said a couple of things, and I don't agree with that. Judge Kinard also said: This is a complicated case, and I have not read the case law.

He said a number of things.

BY MR. PENDARVIS:

Q. But in conclusion he told you: But I don't think I can let it go forward without a little more than your affidavit.

Correct?

MR. BOGDAN: Object to the form.

THE WITNESS: What he was meaning there was that -- and I was there -- is that he was going to have to read the case law on this. He was going

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to have to go over my memorandum of law, and he was going to decide. He also said to Mr. -- to Mr. Allen he wanted an affidavit from him.

BY MR. PENDARVIS:

Q. From Ms. Dickenson?

A. Yeah. And you -- look with this. The last person to talk to him was Julian Allen, not me. Julian Allen said: Thanks, judge.

The Court says: Good luck with it because it's complicated. I don't think I can let it go forward without a little more of your -- without a little more than your affidavit.

And that was the end. So he was talking to Julian Allen rather than me, I believe.

Q. But the response to that question was who? Could you read into the record who answered that statement?

A. I said: Thank you, Judge.

Q. Right. Judge was talking to you. Okay.

A. You're reaching, Mr. Pendarvis.

MR. BOGDAN: Object to the form.

THE WITNESS: You're reaching.

BY MR. PENDARVIS:

Q. Here's --

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A. No. That's not the correct -- that's -- no. He was speaking to Mr. Allen. I said thank you, Judge, for that ruling.

Q. Did you communicate with Mr. Bauer or Mr. Metro -- well, one more thing.

A. Yeah.

Q. The only affidavit before the Court was your affidavit, correct? At the hearing before Judge Kinard on January 6.

A. That was an affidavit that I had written that I had promised a while -- way before that had nothing to do with Judge Kinard.

Q. No, no, no. I'm sorry if I wasn't clear.

The only affidavit before Judge Kinard was your affidavit that's been marked as Exhibit 16, correct?

A. I don't even know if that went in front of Judge Kinard. I have no idea about that affidavit. I don't know much about it. You probably have the history of that, as who saw it and whatever. You would probably know better than me.

Q. If you look on page 5 of the transcript, there's -- beginning on line 8, through

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line 10, Mr. Allen is describing your affidavit.
A. Okay.
Q. And you're welcome to look through this transcript, but I'm going to represent to you that the only affidavit mentioned in this entire hearing of January 6, 2015, was your affidavit marked as Exhibit 16.
A. Okay.
Q. Are you aware of any other affidavits that were before the Court?
A. All that is done here is Allen has referenced it, and he referenced it very badly. He obviously didn't have the affidavit in front of him. Process server up in New Jersey or New York to serve the defendant. I think I got the affidavit, but I don't have it. I don't know who actually served or where they were served under these rules.
That's not what my affidavit said. Mr. Allen did not have the affidavit in front of him. I don't know where that affidavit was.
Q. The statement you made before the Court, really pages 8 and 9 of the transcript, basically were the substance of the affidavit, correct?

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A. Tell me what sections you're referring to.
Q. Pages 8, 9.
A. Yeah. I know that, but tell me basically.
Q. You're explaining on page 9, line 9 through, certainly, line 19 on page 9, you're describing the efforts you made to -- matters that related to the affidavit of service, correct?
A. Yeah. I don't think that had anything to -- oh, the affidavit of service. I thought you were --
Q. Yes, sir.
A. -- talking about my affidavit --
Q. Yes.
A. -- that I had --
From nine?
Q. The middle of page 9.
A. No, no. It went till -- till what number though?
Q. Nine to 19. And then again on page 10 --
A. Yeah. That's -- I would agree with that, yeah.
Q. -- you're describing what's -- what

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happened.
A. Uh-huh.
Q. And I saw this a second ago. Bear with me.
A. Yeah. Sure. Take your time.
Q. And in fact, on page 10, lines 18 and 19, you told Judge Kinard, quote: In addition to all that, Your Honor, I have submitted an affidavit as to what happened.
A. Yeah. Uh-huh.
Q. Okay.
A. We have not received an affidavit from Ms. Dickenson. That's what Kinard was referring to.
Q. Right. But the only affidavit before was a little more than your affidavit on page 12. It's the only affidavit that's being discussed, was your affidavit.
A. But he says -- but I say in there: We have not received an affidavit from Ms. Dickenson.
That was what was -- were required by Mr. Allen, and the judge says: Good luck. I don't think we can go forward with it without a little more than your affidavit.
He was talking to Julian Allen, not me.

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They had the affidavit that I submitted.
Q. After January 6, 2015, did you communicate with Mr. Bauer or Mr. Metro or anyone else in the law firm about the Feldmans' matter?
A. I don't know if I did or not. I don't think so.
Q. Did you --
A. Wait. Back up. I think that Sam told me it had been settled. I think I got the information from him.
Q. Did you have any conversations with Mr. Bauer or Mr. Metro or anyone at the Bauer & Metro law firm about filing a motion to intervene to stop the settlement?
A. I had thought about that, and I thought better of it.
Q. So the answer is yes, you did have a conversation with one of them?
A. I don't know. What I -- I don't know if I told them about that or not. I think what happened was I had called -- when I heard about it, I called Allen and I called Bauer saying I'm going to file a motion to intervene, then I called them back about two hours later and said I decided not to do it.

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Q. What would have been the basis of your motion to intervene?
A. I have no idea. I can't remember it.
Q. What made you consider filing a motion to intervene?
A. I -- I thought a couple things. I thought that maybe I should have been consulted. Okay? I wondered what the agreement was, without running it past me. Because I was the author of the predicate incident, I thought there was a courtesy that should have been given to me. And that's about all I can tell you.
I do know I called them both back in a relatively short time, said I've -- after a lot of thought I decided I'm not going to do that.
Q. Have you had any further communications with Mr. Bauer, Mr. Metro, or anyone at that law firm about the Feldmans, the Feldmans' claims?
A. I have communications with them, but I don't think I've ever talked to them again about that. If you have some information, let me look at it, and I'll be happy to comment on it.
Q. I'm trying to find out the information. Did you --
A. What I'm saying is I don't recall.

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Q. Okay.
A. What I'm saying is, if you have any information, let me see it.
Q. Have you had any communications with Liberty Mutual directly about the --
A. No.
Q. -- Feldman matter?
A. No. I don't believe so.
Q. Getting really close.
A. That's all right. Take your time.
(Off-the-record conference.)
BY MR. PENDARVIS:
Q. I want to understand some of the defenses asserted in your answer.
A. Sure.
Q. And I'm happy to show it to you. There's an affirmative defense for failure to mitigate.
A. I'd like to look at it. I don't know what we're talking about here. Do you have a copy?
Q. Have you ever seen a failure to mitigate defense as a lawyer?
A. No. I -- I want to look at it and see what --
Q. Sure.

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A. -- the context of it and so forth like that. I don't even know who --
MR. BOGDAN: Our answer in this case?
MR. PENDARVIS: Yes.
THE WITNESS: Oh. I can't answer it. I don't know.
BY MR. PENDARVIS:
Q. Well, this is an answer that was filed on your behalf in this case, correct?
A. Uh-huh.
Q. Yes?
A. Yes.
Q. And do you have any knowledge of what factual allegations support this affirmative defense for alleged failure to mitigate?
A. I don't know what's behind that defense. The defense -- those defenses were drafted by my lawyers. That's why I'm paying them. And that particular thing, I have no idea.
Q. There is -- and I'll let you look at it.
A. Sure.
Q. There is an affirmative defense for statute of limitations. I want to let you read it. It's Paragraph 66.

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A. Again, I'm paying Dawes and Jeff here to answer these. I think these questions would be better placed in front of them.
Q. I haven't asked the question. I just wanted to let you know that's been asserted, and my question is: What facts are you aware of that would support a statute of limitations defense?
A. I don't know -- I don't think it'd be fair to you or to myself to answer that question without having some knowledge about it.
Q. Is that going to be the answer for each of these affirmative defenses that I were to ask you about?
A. I would say so, yes.
Q. Okay. That saves us --
A. As I said, I've paid my attorneys to do this.
Q. Save us some time. Save us some time.
A. Yeah.
Q. Let me take a break, talk to my folks, and then we'll wrap it up.
A. That'll be fine. Thank you.
(A recess transpired.)
MR. PENDARVIS: Mr. Coggin -- back on the record.

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THE WITNESS: Yeah.
MR. PENDARVIS: That's all the questions I've got at this time.
EXAMINATION
BY MR. BOGDAN:
Q. Gary, for the record, Jeff Bogdan, your attorney in this case. I've got a couple things to follow up with you on just to --
A. Sure.
Q. -- clear up a couple issues.
Will you look at Exhibit 1, please?
A. I was keeping these in good order.
Q. You did a good job.
A. There we go.
Q. This is a copy of your contingency fee agreement --
A. Right.
Q. -- with Mr. Feldman, correct?
A. Uh-huh.
Q. All right. Is that a yes?
A. Yes. Excuse me.
Q. It's all right.
Thomas talked with you about the strike-out over the 40 percent of the fee if there's an appeal.

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A. Yeah.
Q. Right? And you said that you don't do appeals.
A. That's correct.
Q. And then he asked you, well, why is this in the agreement. You just said it was a standard agreement; is that right?
A. Yeah. Yes.
Q. Do you not do appeals -- have you had an opportunity to do an appeal?
A. I've had many opportunities. I just don't -- it's a whole section of the law that I think you can get yourself in deep trouble.
Q. Sure. Sure.
A. The other thing too -- and I want to add to that, is I've been -- I thought about that -- is that Robert actually asked me to strike that, the 40 percent.
Q. Okay.
A. And, you know, I have to give Robert credit. I've been getting after him pretty good, but he -- he did ask me to strike that.
Q. Are those his initials next to it?
A. I think so.
Q. Okay. And if for some reason you would

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have pursued Mr. Feldman's case and let's say it would have gone to trial and it turned out one way or the other and there was an appeal, would you have associated another attorney to handle that --
A. Absolutely, yeah.
Q. Let me finish the question.
A. I'm sorry.
Q. Would you have associated another attorney to handle that appeal?
A. Yes.
Q. Okay. And in that event, if this 40 percent provision was still in there, then that would be the applicable provision for the -- for the contingency based on the appeal, correct?
A. Yeah. But we struck it.
Q. Right.
A. Yeah.
Q. And you would have had to share that fee with the attorney who you associated?
A. Absolutely.
Q. All right. I want to look at Julian Allen's answer, and it is Exhibit 8.
A. Yeah.
Q. Do you see that one?
Just getting it out of the way.

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A. Number eight. Let's do it this way.
Okay. We've got it.
Q. All right. Who is this answer filed on behalf of? Liberty Mutual Insurance Company, correct?
A. I think it's Liberty Mutual, yes.
Q. All right. Okay. And when a --
A. In fact, it says in the first sentence: Liberty Mutual Insurance --
Q. Right.
A. -- as the underinsured.
Q. Is it your understanding that when a party that files an answer to a complaint asserts affirmative defenses that those are the affirmative defenses of that party?
MR. PENDARVIS: Form objection.
THE WITNESS: That's correct.
BY MR. BOGDAN:
Q. Okay. And if you look at the fifth -- the fifth defense for improper service -- you see that one?
A. Yes, I do.
Q. Okay. And this is Liberty Mutual's defense, correct?
A. Right.

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Q. Okay. And it says improper service, correct?
A. (Witness moves head up and down.)
Q. Okay. And who does it say was not properly served with the complaint?
A. It says no one.
Q. It doesn't say that Ms. Dickenson was improperly served with the complaint?
A. No.
MR. PENDARVIS: Form objection.
THE WITNESS: The assumption here is that Liberty Mutual wasn't served.
BY MR. BOGDAN:
Q. This is a general and unspecific affirmative defense, is it not?
A. That's correct.
MR. PENDARVIS: Form objection.
BY MR. BOGDAN:
Q. Okay. And if this affirmative defense was specific and said that Sarah Dickenson was not properly served with the -- with service, what would you have done?
MR. PENDARVIS: Form objection.
THE WITNESS: I would have immediately checked with Zellner-Wood to see what was going on,

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and if I had gotten the answer they had been giving me, I would have re-served.
BY MR. BOGDAN:
Q. And would that have also triggered you to look for and file the affidavit of service --
MR. PENDARVIS: Form objection.
BY MR. BOGDAN:
Q. -- that you had already received?
A. Yes.
MR. BOGDAN: Let me finish the question again, Thomas.
MR. PENDARVIS: I'm sorry. He's answering so quick I can --
MR. BOGDAN: I understand. Let me start over --
THE WITNESS: Yeah.
MR. BOGDAN: -- just so we get this clean, and I'll --
BY MR. BOGDAN:
Q. Gary, if you'll wait, 'cause we know Thomas is going to object.
A. I -- I -- yeah. That's fine.
Q. We'll let him get it in.
A. Yeah, yeah.
MR. PENDARVIS: Leading questions.

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I'll give you the hint.
MR. BOGDAN: Okay.
BY MR. BOGDAN:
Q. What would you have done with regards to the affidavit of service that you had already received had this affirmative defense actually said that Sarah Dickenson was not properly served?
A. I would have searched high and low for that affidavit.
Q. And what would you have done with it if you found it?
A. I would have filed it.
Q. That's it for Exhibit 8. Let's move on to Exhibit 9.
A. Eleven, ten. Nine. Okay.
Q. This is the letter from you to Terry Finger, correct?
A. That's correct.
Q. And there was some discussion between you and Mr. Pendarvis about the demand, the opening demand at mediation that you made in this of 300 to $350,000, correct?
A. That's correct.
Q. And I believe he asked you if you had discussed this opening demand with Mr. Feldman, and

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you said that Mr. Feldman was not cc'd on the letter, right?
A. That's correct.
Q. Okay. Just because he's not cc'd on the letter, does that mean that you wouldn't have discussed this opening demand with him?
MR. PENDARVIS: Form objection.
THE WITNESS: May 5. We were still discussing these matters. I probably did.
BY MR. BOGDAN:
Q. Okay. You just don't have any recollection?
A. I don't have any recollection, but my habit would have been to discuss it with him.
Q. Okay. All right. Still on Exhibit 9. There was also a lot of discussion between you and Mr. Pendarvis about this 150 to $180,000 range that was -- is set out on top of page 2?
A. Uh-huh.
Q. Is that a yes?
A. Excuse me. Yes.
Q. Okay. You remember that line of testimony?
A. Yes.
Q. And I believe where we ended up was

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that you testified that this was an estimate of Bob Feldman's past medical expenses; is that correct?
MR. PENDARVIS: Form objection.
THE WITNESS: Hang on.
Yes.
BY MR. BOGDAN:
Q. Okay. Well, what I want you to do is look back on the first page, and if you see the -- it's numbered A. It says impairment. Do you see that?
A. Yes.
Q. And then number B is medicals. Do you see that?
A. Yes.
Q. So in the impairment section the last sentence says: By any formula, this impairment should be valued at somewhere around $100,000. Is that right?
A. That's what it says.
Q. Okay. And then under the medicals, the conclusion of that section is: If this is extended ten years, there is an expense of $60,000. Correct?
A. That's correct.
Q. Okay. So what's $100,000 plus $60,000?

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A. 160.
Q. Okay. So then the next sentence is: The above amount is $150,000 to $180,000. Correct?
A. That's correct.
Q. Those are not actual past-incurred medical expenses, are they?
MR. PENDARVIS: Form objection.
THE WITNESS: No, they're not.
MR. BOGDAN: All right. That's all I have.
EXAMINATION
BY MR. PENDARVIS:
Q. Mr. Feldman, one follow-up on your --
MR. BOGDAN: Tom, Coggin.
MR. PENDARVIS: Oh. I'm sorry. That was it?
MR. BOGDAN: No, no. You called him Mr. Feldman.
MR. PENDARVIS: I'm sorry. Mr. Coggin.
THE WITNESS: I'm always flattered. I'm always flattered.
MR. PENDARVIS: Thank you. Thank you.
BY MR. PENDARVIS:
Q. You were asked some questions by your

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counsel concerning Exhibit 8 and in particular the fifth defense asserted by -- by the defendants in the -- defendant in the answer that was filed.
A. Uh-huh.
Q. Is it your testimony that when you received this answer that you analyzed this fifth defense carefully enough to see that it didn't name Ms. Dickenson specifically?
A. At what period of time are we talking?
Q. January 4 -- sometime in January of 2013.
A. I -- I analyzed very closely. I'm not sure when.
Q. Well, you were asked questions that suggested that had this improper service fifth defense had Ms. Dickenson's name in here --
A. Uh-huh.
Q. -- that you would have done things differently, and my question to you is: Did you -- is it your testimony that you analyzed this fifth defense that carefully and decided they didn't name Ms. Dickenson, therefore I'm not going to have to worry about this affidavit?
MR. BOGDAN: Object to the form.
THE WITNESS: I don't think that's what

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I testified to, but no.
BY MR. PENDARVIS:
Q. You didn't analyze it that carefully in January of 2013?
A. No. I didn't -- you -- the last sentence. Repeat the last sentence.
Q. In --
A. That I don't have to serve Ms. Dickenson?
Q. My question -- let me reframe the question.
A. Yeah.
Q. See if I can get this clear. I want to make certain about your testimony about what actually occurred when you received this answer in terms of your analysis of this fifth defense.
A. Uh-huh.
Q. Am I correct in understanding your testimony that you didn't analyze it as carefully as was suggested earlier in that because it does not state Ms. Dickenson's name you chose not to file the affidavit or look for the affidavit?
MR. BOGDAN: Object to the form.
THE WITNESS: I don't think that's what it said -- what he said, but -- and it has nothing

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to do with looking for the affidavit or not. This was in 2013. I didn't start looking for the affidavit until two thousand and -- when I heard from Bauer & Metro.
BY MR. PENDARVIS:
Q. Okay.
A. I did look at this very closely when I -- when I received it. I always do. And I thought that -- at that time, to myself, I felt that Mr. Allen had quite -- a very slim answer. He didn't include a statute of limitations defense, and I knew enough that the improper service defense of his was not enough to fit the law and -- but as for I decided not to look for Ms. Dickenson at the time, no.
Q. If it had had reference somewhere in this defense the name Dickenson, would you have done anything different?
A. I probably would have looked a little closer at my papers.
Q. Why?
A. Because I knew that he was doing something specific here when he hadn't done it in the entire case, and he was talking about Liberty Mutual. He says he answers for Liberty Mutual. If

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he had said something about Ms. Dickenson, yeah, that would have raised my antenna.
Q. Well, have you looked at 38-7 -- Section 38-77-160?
A. I'm sure I have, but I cannot tell you what 38-77-160 says. I've pretty much at one time or another had most of the civil procedure book memorized, but that goes quickly, as you probably know.
Q. Well, honestly, candidly, S.C. Code Annotated Section 38-77-160 is not in the Rules of Civil Procedure. It's in the Code of Laws, but --
A. Okay. Well, tell me what it is.
And congratulations.
Q. It's a statute governing the underinsured motorist carrier's rights to defend on behalf of their insured. And the wherefore clause states what?
A. I'm -- I don't know. I'm going to have to look at the --
Q. I know. But take a look at Exhibit 8.
A. I'm going to have to look at the law.
MR. BOGDAN: Hold on a second.
THE WITNESS: Yeah.
MR. BOGDAN: Let him get the question

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out.
BY MR. PENDARVIS:
Q. Take a look at Exhibit 8 --
A. Okay. Go ahead.
Q. -- and the wherefore clause.
A. I apologize. What are we looking at now?
Q. Exhibit 8, the wherefore clause on page 2 of Exhibit 8.
A. Oh, okay.
Q. Could you read that, please?
A. Wherefore, having answered, Defendant asks this Court to dismiss the complaint and grant such relief as the Court deems just and proper.
Q. On page 1, in the caption, who is the named defendant?
A. It's Sarah Dickenson.
Q. Okay.
A. However, it says: Liberty Mutual, as the alleged underinsured, answers this complaint as follows.
Q. But the wherefore clause on page 2 does not say wherefore, having answered, Liberty Mutual asks this Court to dismiss the complaint, does it?
A. Mr. Pendarvis, we can parse this all

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day long, and we're going to -- and we can also go into the books, and you know as well as I do we'll probably have five or six different answers for it. I -- I think it's unfair of you to try to catch me on something where I don't know the law on this.
Q. Well, I'm not really doing that except in response to --
A. Yeah, you are.
Q. And that's fine. But it's my job to handle the case for Mr. Feldman, and what I'm trying to understand is what your testimony was, that if this answer had been styled differently in terms of the language in the fifth defense your testimony is you would have done things differently, and I'm trying to understand what it is that would have triggered something different than what you did.
A. Here's what I -- my answer was. If it said further answering, alleges the Plaintiff had failed to effect proper service under Rule 12(b)(4) and 12(b)(5) on Ms. Dickenson, you're doggone right I would have looked very closely at that.
Q. Okay.
A. All right.
MR. PENDARVIS: Thank you. I have no

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further questions.

(The witness, after having been advised of his right to read and sign this transcript, does not waive that right.)

(The deposition was concluded at 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:

PAGE	LINE	CHANGE	REASON

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SIGNATURE OF DEPONENT (CONTINUED)

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

PAGE	LINE	CHANGE	REASON

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.

TRISHA THOMAS NOTARY PUBLIC SOUTH CAROLINA

TThomas

Trisha M. Thomas
My Commission expires
February 2018

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CERTIFICATE OF REPORTER

I, Trisha M. Thomas, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

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.

TRISHA THOMAS NOTARY PUBLIC SOUTH CAROLINA

TThomas

Trisha M. Thomas,
Court Reporter
My Commission expires
February 2018

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EXHIBIT
2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	C/A No.: 2015-CP-07-01251
ROBERT E. FELDMAN and LOIS J. FELDMAN, Plaintiffs, vs. GARY P. COGGIN, Defendant.	)	**RULE 56(f), SCRCP AFFIDAVIT OF THOMAS A. PENDARVIS**

2016 JUN 27 PM 12:41
JILL ANN ROSEHEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

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, 6the 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), SCRCP AFFIDAVIT OF THOMAS A. PENDARVIS**

2016 JUN 28 PM 1:30
BERI ANN ROSEMEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

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").
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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.

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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	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
JEURI ANN ROSE
BEAUFORT COUNTY
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."**

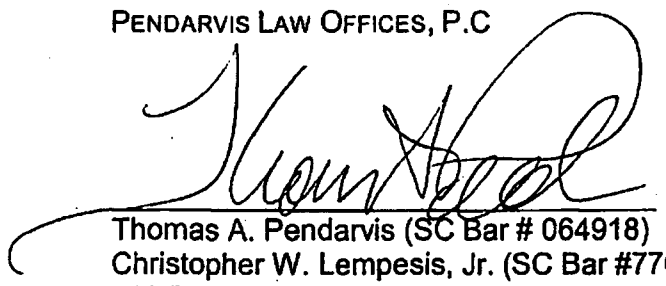
Mr. Coggin's deposition establishes that the value of the Plaintiffs claims in the UIM case were as high as the highest demand made by Mr. Coggin on behalf of Plaintiffs. The highest demand that Mr. Coggin made was $1,550,000.00 (Coggin dep. 18:17-19:7, June 8, 2016). Additionally, Mr. Coggin's deposition 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), SCRCP 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



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
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 ANN ROSEBEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

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, SCRCP, 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), SCRCP, provides that "leave [to amend] shall be freely given when justice so requires and does not prejudice any other party." Rule 15(a), SCRCP, 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), SCRCP. 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,

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

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), SCRCP, Coggin was required to file the lawsuit with the clerk of court and accomplish service of process on Dickenson within the statue limitations in any manner prescribed by law or, if Dickenson was not served within the statue 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), 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.

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 statue 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 exert 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 exert 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 exert 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 exert evaluations and participation to establish lost wages, and current and future medical care expenses;

d. failing 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. 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

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 exert 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,

Thomas A. Pendarvis (SC Bar # 064918)
Christopher W. Lempesis, Jr. (SC Bar #77012)
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit A1
Beaufort, SC 29902-4188
843.524.9500 Tel.
Thomas@PendarvisLaw.com
Chris@PendarvisLaw.com

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. Coggin,

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	)	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,	)	
Plaintiffs,	)	**DEFENDANT'S REPLY TO PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**
vs.	)	
GARY P. COGGIN,	)	
Defendant.	)	

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 Judgement, 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 Judgement 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 Judgement 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.

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

July 20, 2016
Charleston, South Carolina

AUG 0 4 2016

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	C/A No.: 2015-CP-07-01251
Robert E. Feldman and Louis J. Feldman,)	
)	**PLAINTIFFS' SUR-REPLY TO**
Plaintiffs,)	
)	**DEFENDANT'S REPLY TO PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**
vs.)	
)	
Gary P. Coggin,)	
)	
Defendant.)	
)	

2016 AUG -1 PM 3:30
BEAUFORT COUNTY, S.C.
CLERK OF COURT

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.

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

July 28, 2016

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,	)	
Plaintiffs,	)	**DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE AMENDED VERIFIED COMPLAINT**
vs.	)	
GARY P. COGGIN,	)	
Defendant.	)	

2015 SEP -7 AM 11:02
JEANNETTE ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

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