STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-08-2757

Portrait Homes - South Carolina, LLC and Portrait Homes - Persimmon Hill, LLC,

Plaintiffs,

v.

Pennsylvania National Mutual Casualty Insurance Company and The Persimmon Hill Homeowners Association, Inc.,

Defendants,

Post-Trial Motions and
Punitive Damages Order

The Persimmon Hill Homeowners Association, Inc.,

Third-Party Plaintiff,

v.

Jose Castillo d/b/a JJA Framing and JJA Construction, Inc. d/b/a JJA Framing,

Third-Party Defendants.

Before the Court are four matters: (I) Penn National's Motion to Alter or, in the Alternative, to Amend Judgment Pursuant to Rule 59(e), SCRCP; (II) Portrait Homes's request for attorney's fees and costs; (III) Persimmon Hill HOA's request for attorney's fees and costs; and (IV) Punitive Damages determination. With the exception of an issue relating to the interplay between the award to Portrait Homes for breach of contract relating to the duty to indemnify and the award to Persimmon Hill HOA as a judgment creditor, the Court denies Penn National's motion. The Court

awards attorney's fees and costs to Portrait Homes and to Persimmon Hill HOA. The Court awards punitive damages to Portrait Homes and to Persimmon Hill HOA.

I. Penn National's Motion to Alter or Amend

A. As to Portrait Homes

Penn National asserts the Court erred in a number of ways in the Order Regarding Additional Insured Coverage. To the extent an argument by Penn National is not specifically addressed in this current Order, the argument is rejected.

1. Coverage Under Additional Insured Endorsements

The Court found Portrait Homes qualified as an additional insured under three of the Penn National policies based on endorsement 71 11 45 entitled Automatic Additional Insureds - Owners, Contractors and Subcontractors (Completed Operations); and under two policies based on endorsement CG 20.37 entitled Additional Insured - Owners, Lessees or Contractors - Completed Operations. Penn National argues both findings were in error.

(a) Endorsement 71 11 45

A critical issue under this endorsement was determining who was intended to be included as named insured on the three policies containing endorsement 71 11 45. The named insured on the Declarations Pages was listed as "JJA CONSTRUCTION INC". However, on each Declarations Page, following the preprinted category FORM OF BUSINESS, the following is typed in: INDIVIDUAL. The discrepancy between the named insured being listed with "INC" in its name and the form of the business being classified as an individual (as opposed to a corporation) created an ambiguity. *See Estate of Revis By Revis v. Revis*, 326 S.C. 470, 478, 484 S.E.2d 112, 116 (Ct. App. 1997) ("'An ambiguous contract is one capable of being understood in more ways than one, an agreement obscure in meaning through indefiniteness of expression, or having a

double meaning.'") (quoting *Ebert v. Ebert,* 320 S.C. 331, 338, 465 S.E.2d 121, 125 (Ct. App. 1995)). The documents from Penn National's underwriting file introduced at trial showed that Jose Castillo dba JJA Framing was intended by both the insured and the insurer to continue to be insured under the policies issued to JJA Construction Inc.

Furthermore, even if Jose Castillo dba JJA Framing was not considered to be included as a named insured under the policies issued to JJA Construction Inc., the terms of endorsement 71 11 45 were still satisfied because JJA Construction Inc.—the named insured—did have a contract with Portrait Homes. Not only was it alleged in the amended complaints in the underlying construction defect cases that Jose Castillo and JJA Construction Inc. both did business as JJA Framing, the evidence at trial established the allegations were in fact true. If Jose Castillo and JJA Construction Inc. both did business as JJA Framing, then a contract in the name of JJA Framing bound both Jose Castillo and JJA Construction Inc. *See Long v. Carolina Baking Co.,* 190 S.C. 367, 377, 3 S.E.2d 46, 50 (1939) ("'A corporation, as well as individuals, may have or be known by several names in the transaction of its general business so that it may enforce, as well as be bound by, contracts entered into in an adopted name other than the regular name under which it was incorporated.'"); *see generally McCall v. IKON, d/b/a IKON Educational Services,* 363 S.C. 646, 652, 611 S.E.2d 315, 318 (Ct. App. 2005) (holding default judgment obtained against trade name rather than actual legal entity nevertheless bound affiliated entities who were existing corporations recognized under South Carolina law, and noting: "'If a corporation has acquired a name by usage, an adjudication against it by the name so acquired is valid and binding.'"). The contracts between Portrait Homes and Jose Castillo dba JJA Framing, therefore, also bound JJA Construction Inc. Because the contracts between Portrait Homes and Jose Castillo dba JJA

Framing also bound JJA Construction Inc., the requirement under endorsement 71 11 45 that there be a written contract with the named insured ("you") was satisfied.

Penn National asserted in its brief: "The evidence indisputably shows that 'JJA Construction, Inc.' is a separate legal entity for *all* purposes, including insurance." *Penn National's Memorandum of Law in Support of Motion to Alter or, in the Alternative, to Amend Judgment*, p. 19 (emphasis in original). As a matter of fact, just the opposite is true: The evidence convincingly shows that JJA Construction Inc. was not a separate legal entity for any purpose, especially not for purposes of insurance.

At oral arguments on post-trial motions Penn National's attorney argued:

> [T]his argument about Castillo and JJA Construction being one in the same, it doesn't matter.
>
> I mean -- let's assume they are one in the same. The Court found they are one in the same; fine, they are one in the same....
>
> It also doesn't change the fact that on the 71-1145 endorsement the requirement of the contractual obligation on the Persimmon Hill project to provide additional insured coverage for products completed operations hazard it does not exist. It didn't happen.
>
> So the result -- maybe they got to it in a roundabout way and a lazy way and an untimely way, but ultimately the result was accurate.

(Transcript from Hearing on January 15, 2020, p. 66, lines 2-17). The "Contract Insufficient Because Completed Operations Coverage Not Required" Theory now appears to be Penn National's leading contender for why there is no additional insured coverage under endorsement 71 11 45. This alternative theory is not mentioned in the denial letter.[1] The first time Penn National asserted the theory to Portrait Homes appears to have been over four years later during the trial in

[1] Greg Gross, the author of the denial letter, concluded during his investigation the contract *did* satisfy the requirements of endorsement 71 11 45 (*See* HOA Exhibit 78, p. 5; Trial Transcript, p. 429, line 19 - p. 432, line 12).

2019. Adam Parsons, Penn National's home office counsel and the person who made the decision to deny Portrait Homes's additional insured tender, testified endorsement 71 11 45 did not provide additional insured coverage to Portrait Homes because there was no written contract between Portrait Homes and the named insured under the three policies containing the endorsement (Trial Transcript II, p. 60, line 21 - p. 68, line 18). Penn National's counsel asked Parsons on direct examination to assume for the sake of argument that basis for denying coverage was invalid. Parsons then set out the "Contract Insufficient Because Completed Operations Coverage Not Required" Theory. Parsons testified the only contract he considered was the Housing and Purchase Order Contract (Plaintiff's Exhibit 38), which does not have an explicit requirement for completed operations coverage. Parsons concluded that because the underlying construction defect cases involved a claim implicating completed operations (as opposed to ongoing operations), the Housing and Purchase Order Contract was insufficient for that reason as well to satisfy endorsement 71 11 45 (Trial Transcript II, p. 68, line 19 - p. 71, line 5). Parsons rejected the idea the Master Agreement (Plaintiff's Exhibit 37), which did explicitly require completed operations coverage for the additional insured, should be considered in the analysis (Trial Transcript II, p. 71, line 18 - p. 72, line 18). Parsons summarized:

> My conclusion was limited to the tendering parties, but the tendering parties did not qualify as an additional insured for the products operation hazard under this endorsement because those tendering parties have no written contract with JJA Construction, Inc. to buy completed operations hazard insurance at all and it does not require JJA Construction, Inc. to name them as additional insured for the products completed operation hazard largely because that concept came after they had drafted that contract.

(Trial Transcript II, p. 73, lines 4-14).

The Court has found as a matter of fact that the Master Agreement and the Housing and Purchase Order Contract both apply to the Persimmon Hill project.[2] Even if the Master Agreement (Plaintiff's Exhibit 37) is determined not to have applied to the Persimmon Hill project because that Master Agreement was dated after the Housing and Purchase Order Contract was initially signed, two other independent grounds support the Court's finding that the contract between Portrait Homes and JJA Framing required the additional insured coverage to include completed operations.

First, the evidence at trial establishes as a matter of fact that there would have been another Master Agreement in place between Portrait Homes and JJA Framing before the Housing and Purchase Order Contract was initially signed. Shawn Belcher was the purchasing and estimating manager for Portrait Homes from January 2004 through June 2009. One of his main responsibilities was to execute the contracts with subcontractors and to manage those contracts (and the contracts already in place when he arrived) during the course of a project. Belcher testified about the contractual relationships between Portrait Homes and its subcontractors. Belcher testified that for every subcontractor there were two types of contracts entered. First, a contract called a Master Agreement, which was a gateway document that qualified a subcontractor to work for Portrait Homes on any project, was executed. Second, a contract called a Housing and Purchase Order Contract, which was specific to a particular project, was executed. Belcher testified both contracts had to be in place before a subcontractor could work on a project or get

[2] The Housing and Purchase Order Contract was amended on August 15, 2003 and on February 2, 2004 after the Master Agreement was initially signed (Plaintiff's Exhibit 38, p. 6 and testimony of Shawn Belcher in Trial Transcript, p. 468, line 9 - p. 470, line 4). Gross noted in the claim file that "the applicable contract for the site between Portrait Homes and the insured was executed on 8-15-03" (HOA Exhibit 78, p. 5). The Court continues to be unpersuaded by Penn National's contention that the Master Agreement did not apply to the Persimmon Hill project simply because it was signed after the Housing and Purchase Order Contract was initially signed.

paid for any work on a particular project. Belcher testified the form of the contracts would be periodically updated, but the substance of the hold harmless and insurance requirements did not change. Belcher testified both contracts governed a subcontractor's work at a particular project (Trial Transcript, p. 449, line 1 - p. 451, line 3), and the hold harmless and insurance obligations in the Housing and Purchase Order Contract and in the Master Agreement were intended to be complementary (Trial Transcript, p. 436, lines 2-21). Specifically, Belcher testified:

> Q. Did a sub have to have both a master agreement and a housing purchase order contract specific to a project in place in order to work on the project?
>
> A. Yes, sir.
>
> Q. Would they get paid if they didn't have those two documents in place?
>
> A. No, sir.
>
> Q. Okay. Did those documents ever change in form over time?
>
> A. There were small changes along the way, but nothing of -- nothing substantial.
>
> Q. Okay. And did those contracts -- and we'll look at them for this particular project. They contained defense and indemnification obligations?
>
> A. Yes, sir.
>
> Q. That ran both to the subcontractor and to the subcontractor's insurance company? That was the goal?
>
> A. Yes, sir.

(Trial Transcript, p. 450, line 8 - p. 451, line 3).[3] The Court finds as a matter of fact that before the Housing and Purchase Order Contract for Persimmon Hill was entered into, there would have

[3] The Court notes that Penn National's attorneys did not pose a single question to Belcher about the Master Agreement.

been an earlier Master Agreement in place between Portrait Homes and JJA Framing containing the same requirement of additional insured coverage for completed operations.

Second, as noted in the Order Regarding Additional Insured Coverage, the certificate of insurance issued by the Taylor Agency to Portrait Homes relating to additional insured coverage under endorsement 71 11 45 shows that everyone involved (Taylor Agency, JJA Framing, Portrait Homes) believed Portrait Homes was covered for completed operations because endorsement 71 11 45 was attached to the certificate of insurance and was titled "Automatic Additional Insured -- Owners, Contractors And Subcontractors (*Completed Operations*)" (Plaintiff's Exhibit 5) (emphasis added). At the hearing on Penn National's Motion to Alter or, in the Alternative, to Amend Judgment, Penn National's counsel seemed to indicate the certificates of insurance are relevant to the coverage analysis. Specifically, as to the certificate of insurance relating to endorsement 71 11 45, Penn National's counsel stated:

> At some point Portrait Homes decided they wanted a different kind of endorsement, an additional -- a different kind of additional insured endorsement.
>
> And at Portrait Homes' Exhibit 5 is a new certificate of insurance dated December 6, 2005. So basically the year after the first one.
>
> The same thing that happens. They say a -- Mr. Castillo you need to update your insurance information, it is a year later, here is what we want as additional insured, take it to the agency.
>
> And again they say, here is exactly what we want, we want a 71-1145 and the entities we want named are identified. And at that point they do say we want Portrait's Homes-South Carolina, LLC identified. So they do it, but they don't want it on the 2037 anymore. They want a different form. They want the 71-1145. And again they attach it. There should be no doubt to anybody what we, Portrait Homes, want; we want this 71-1145 endorsement.
>
> It then is sent from the Taylor Agency to Penn National. It then goes on the policy exactly as requested, not -- no change, no alteration. Penn National

> did exactly what it was asked to do. It provides that 71-1145 coverage.
>
> And we see that again in multiple policy years. But initially we see it at Portrait Homes' Exhibit 21, Page 29. So for the policy year from December '05 to December '06 we now have that 71-1145 endorsement.

(Transcript from Hearing on January 15, 2020, p. 76, line 19 - p. 77, line 19).

The Court agrees the certificate of insurance should be considered in determining the contractual requirements for the additional insured coverage because the certificate of insurance was in essence a part of the contractual relationship. The Housing and Purchase Order Contract provides:

> Subcontractor shall not commence the Work unless and until it has obtained the above insurance and *delivered to Contractor a certificate or memorandum evidencing such coverage* (including the name of the carrier, policy number, limits and expiration date) and evidencing payment thereof by Subcontractor, *and naming the Contractor*, the owner of the project and any additional parties, *as additional insured.*
>
> *All insurance and coverages shall be in form and substance*, and issued by credit rated companies, *satisfactory to Contractor.*

(Plaintiff's Exhibit 38, p. 4) (emphasis added). The contract required JJA Framing to provide Portrait Homes with the certificate of insurance confirming additional insured coverage for Portrait Homes, and the certificate of insurance provided to Portrait Homes confirmed the additional insured coverage included completed operations. The form and substance of the insurance coverage satisfactory to Portrait Homes included completed operations. Construing the Housing and Purchase Order Contract (Plaintiff's Exhibit 38) and the certificate of insurance (Plaintiff's Exhibit 5) together further supports the Court's finding the contractual relationship between Portrait Homes and JJA Framing required the additional insured coverage to include completed operations.

(b) Endorsement CG 20 37

Penn National repeats its position presented at trial and in the submittals associated with the proposed orders for why Portrait Homes does not qualify as an additional insured under endorsement CG 20 37. The Order (pp. 27-34) adequately explains why the Court ruled to the contrary.

2. The Relevance of Waiver

Penn National contends "[t]he court improperly found that Penn National waived its right to contest coverage and that such waiver operated to extend coverage to uncovered risks, in reliance on *Harleysville Group Ins. v. Heritage Communities, Inc.*, 420 S.C. 321, 336-44, 803 S.E.2d 288, 296-301 (2017) decision." *Penn National's Memorandum of Law in Support of Motion to Alter or, in the Alternative, to Amend Judgment*, p. 22. Penn National contends the requirements discussed in *Harleysville* for reservation of rights letters do not apply to denial letters. The Court disagrees for two reasons, the first being general in nature and the second being specific to this case.

Before addressing those two reasons, a partial review of the Court's discussion of the *Harleysville* decision is useful:

> The Supreme Court [in *Harleysville*] noted that "it is axiomatic that an insured must be provided sufficient information to understand the reasons the insurer believes the policy may not provide coverage." *Id.* at 337-38, 803 S.E.2d at 297. The Supreme Court noted: "'A reservation of rights letter must give fair notice to the insured that the insurer intends to assert defenses to coverage or to pursue a declaratory relief action at a later date.'" *Id.* at 338, 803 S.E.2d at 297. The explanation has to be unambiguous and "'[g]rounds not identified in the reservation of rights may not be asserted later by the insurer[.]'" *Id.* at 339, 803 S.E.2d at 298. Concluding Harleysville failed to meet the required standard, the Supreme Court affirmed "the Special Referee's finding that Harleysville's reservation letters were insufficient to reserve its right to contest

> coverage of actual damages". *Id.* at 343, 803 S.E.2d at 300. The Supreme Court continued: "Because we find Harleysville did not effectively reserve the right to contest coverage, we need not address Harleysville's claims of error regarding various policy exclusions." *Id.* at 343-44, 803 S.E.2d at 300-01; *see Washington v. National Service Fire Insurance Co.,* 252 S.C. 635, 641, 168 S.E.2d 90, 92 (1969) ("It is well settled that an insurer which has denied coverage on some other basis is precluded from defending against an action on a liability policy on the ground that the insured failed to comply with its requirements as to notice and forwarding of suit papers.").

Order Regarding Additional Insured Coverage, p. 37 (footnote at end omitted).

The Court concludes the requirements discussed in *Harleysville* apply to coverage communications in general from an insurer to an insured, not just to a reservation of rights letter. Support for this conclusion can be found in our statutory law. "[I]f committed without just cause and performed with such frequency as to indicate a general business practice," one example of an improper claim practice is "[k]nowingly misrepresenting to insureds or third-party claimants pertinent facts or policy provisions relating to coverages at issue or providing deceptive or misleading information with respect to coverages." S.C. Code Ann. § 38-59-20(1) (Rev. 2015). The statutory prohibition against knowingly misrepresenting coverages is not limited to statements in reservation of rights letters. It would be a poor policy indeed to allow insurers to make misrepresentations in denial letters with impunity. The Court rejects any such notion.

Even if the requirements as discussed in *Harleysville* do not apply to a letter containing a denial of coverage rather than a reservation of rights, the requirements nevertheless apply to Penn National's letter to Portrait Homes. As stated in the Order:

> Each of those witnesses [claims adjuster Greg Gross, in-house counsel Adam Parsons, and expert Bernd Heinze] testified that in responding to Portrait Homes's tender, Penn National had an obligation to thoroughly explain the grounds for the denial (Trial Transcript, p. 211, lines 13-19: Greg Gross; Trial Transcript II, p. 165, line 14 - p. 166, line 3: Adam Parsons; Trial Transcript II, p.

> 480, line 24 - p. 481, line 3: Bernd Heinze). Heinze also expressed an obvious corollary: Penn National had an obligation to provide an explanation of its decision that was accurate (Trial Transcript II, p. 482, lines 10-13). Thus, we have a recognized duty on the part of Penn National to thoroughly and accurately explain the grounds for the decision to deny Portrait Homes's additional insured tender, and we have the testimony at trial of all the witnesses associated with Penn National that the denial letter did not comply with that duty.

Order Regarding Additional Insured Coverage, p. 35. Even if the requirements discussed in *Harleysville* do not apply to denial letters in general, the requirements apply to Penn National in this case because Penn National agreed the obligations to thoroughly and accurately explain the grounds for its decision applied to the denial letter to Portrait Homes. *See generally Roddey v. Wal-Mart Stores East, LP,* 415 S.C. 580, 589, 784 S.E.2d 670, 675 (2016) ("Evidence of a company's deviation from its own internal policies is relevant to show the company deviated from the standard care ...."); *Madison ex rel. Bryant v. Babcock Center, Inc.,* 371 S.C. 123, 141, 638 S.E.2d 650, 659 (2006) ("The standard of care in a given case may be established and defined by the common law, statutes, administrative regulations, industry standards, or a defendant's own policies and guidelines."); *Newbern v. Ford Motor Co.,* 428 S.C. 310, 319, 833 S.E.2d 861, 866 (Ct. App. 2019) ("Several South Carolina cases support the [plaintiffs'] position that deviation from a company's own policies is relevant to show that the company deviated from the standard of care.").

In addition, Penn National contends the Court applied the waiver doctrine impermissibly to grant coverage to Portrait Homes that would not otherwise have existed. Penn National misconstrues the Court's discussion of waiver. The Court did not rule Portrait Homes was entitled to coverage under the Penn National policies based on the doctrine of waiver. The Order notes:

> And yet the concept of waiver has its limits even in the context of an insurance coverage dispute. "South Carolina courts have

> repeatedly and explicitly held that '[w]aiver cannot create coverage and cannot bring into existence something not covered in the policy.'" *Liberty Mutual Insurance Co., v. Westport Insurance Corp.*, 664 F. Supp. 2d 587, 594 (D.S.C.) (2009) (Judge P. Michael Duffy) (quoting *Laidlaw Environmental Services (TOC), Inc. v. Aetna Casualty & Surety Co.*, 338 S.C. 43, 51, 524 S.E.2d 847, 852 (Ct. App. 1999)).

Order Regarding Additional Insured Coverage, pp. 37-38. Portrait Homes was required to prove it met the requirements to trigger coverage under the additional insured endorsements and the insuring agreements, and the Court found Portrait Homes met its burden of proof to do so. The Court did not rule coverage was created by waiver.

3. Portrait Homes is Proper Party

Penn National again[4] argues Portrait Homes's claim for breach of the duty to indemnify fails as a matter of law because the settlement on behalf of Portrait Homes was paid by insurers (mainly Admiral Insurance Company) who issued policies directly to Portrait Homes, rather than having been paid by Portrait Homes personally. Portrait Homes acknowledged at trial that any recovery for breach of the duty to indemnify would indeed flow back to Admiral Insurance Company, but Portrait Homes also benefits from the recovery because the funds would replenish the Admiral insurance policies protecting Portrait Homes against other claims (Trial Transcript, p. 188, l. 20 - p. 189, l. 16). Penn National asserts:

> The court's entry of damages on Portrait Homes' breach of contract claim is at odds with published South Carolina case law finding that a party completely indemnified for his loss sustains no damage for breach of an insurance contract. *See, e.g., Sloan Const. Co., Inc. v. Central Nat. Ins. Co. of Omaha,* 269 S.C. 183, 187, 236 S.E.2d 818,

[4] *See* Penn National's Motion in Limine and Incorporated Memorandum in Support filed November 29, 2018; Memorandum of Law in Support of Penn National's Motion for Partial Summary Judgment Against Portrait Homes filed January 31, 2019; Penn National's Proposed Findings of Fact, Conclusions of Law, and Order (pages 57-61) submitted to the Court by email dated September 18, 2019; and Penn National's Memorandum of Law in Support of Penn National's Proposed Post-Trial Order (pages 29-31) submitted to the Court by email dated October 3, 2019, all of which preceded the Order Regarding Additional Insured Coverage filed on October 22, 2019.

> 820 (1977) (finding that the insured sustained no damage where one of its two insurers defended and the other refused to do so where the insured sought to collect its attorneys fees for defending the underlying action); *Hartford Accident and Indemnity Company v. South Carolina Ins. Co.*, 252 S.C. 428, 436, 166 S.E.2d 762, 765 (1969) (excess carrier standing in the shoes of the insured could not collect defense fees because insured did not sustain that damage where the defense was provided to it without cost).

Defendant Penn National's Motion to Alter or, in the Alternative, to Amend Judgment, p. 4. After again considering Penn National's argument, the Court adheres to its original ruling. Penn National's argument is not supported by binding South Carolina precedent. The two cases cited by Penn National above—*Sloan* and *Hartford Accident*—are distinguishable because they involve a party seeking to recover for defense costs, not for indemnity. *See Hartford Accident*, 252 S.C. at 434, 166 S.E.2d at 764 ("The contention of Hartford is that Carolina [Insurance Company] is indebted to it for the expenses incurred in the defense of the action …."); *Sloan*, 269 S.C. at 187, 236 S.E.2d at 820 ("We hold where two companies insure the identical risk and both policies provide for furnishing the insured with a defense, neither company, absent a contractual relationship, can require contribution from the other for the expenses of the defense where one denies liability and refuses to defend.").

The Supreme Court in *Sloan* noted the distinction between the duty to defend and the duty to indemnify:

> A liability insurance policy contains two insuring provisions of major significance: one, providing for the payment by the insurer of sums the insured shall become obligated to pay, the other providing, in substance, for the defense of any suit alleging bodily injury or property damage and seeking damages payable under the terms of the policy.

269 S.C. at 186, 236 S.E.2d at 820. The Supreme Court continued: "The duty to defend is separate and distinct from the obligation to pay a judgment rendered against the insured." *Id.* at 186, 236 S.E.2d at 820.

A more instructive case for the present situation is *Otis Elevator, Inc. v. Hardin Construction Co.*, 316 S.C. 292, 450 S.E.2d 41 (1994). Otis Elevator sought contractual indemnification from Hardin Construction for a settlement paid to a third party. Otis Elevator had been installing elevators as a subcontractor to Hardin Construction on a project. Otis Elevator permitted Hardin Construction to use one of the elevators on a temporary basis, but required that Hardin Construction execute an indemnification agreement. An employee of another subcontractor was injured when he fell down the elevator shaft after accessing the elevator using a key provided by Hardin Construction. *Id.* at 294-95, 450 S.E.2d at 42-43.

The injured workman sued Otis Elevator. Hardin Construction refused Otis Elevator's request for a defense and indemnity. Otis Elevator eventually settled the case for $892,000. Otis Elevator's insurer, Liberty Mutual Insurance Company, contributed $642,000 to the settlement. Otis Elevator sued Hardin Construction for indemnification. *Id.* at 295, 450 S.E.2d at 43.

In Otis Elevator's action against Hardin Construction for indemnification, the jury returned a verdict against Hardin Construction for $892,000. The trial court reduced the jury's verdict from $892,000 to $250,000 to offset the amount paid by Otis Elevator's insurer, Liberty Mutual. *Id.* at 295, 450 S.E.2d at 43.

One issue on appeal was the propriety of the offset by the trial court based on the portion of the underlying settlement that had been paid by Otis Elevator's insurer, Liberty Mutual. The Supreme Court reversed: "Otis Elevator contends the trial court erred in reducing the jury's verdict to $250,000 to offset the amount that Otis Elevator's insurer, Liberty Mutual, paid in [settlement].

We agree." *Id.* at 300, 450 S.E.2d at 45. The Supreme Court concluded that "Hardin Construction should not receive the benefit of an insurance contract for which Otis Elevator paid the premiums." *Id.* at 300, 450 S.E.2d at 45. The Supreme Court announced the general rule: "'[I]f one party is entitled to indemnity from another, the right to indemnity is not defeated by the fact that the loss to be indemnified for was actually paid by an insurance company.'" *Id.* at 300, 450 S.E.2d at 45-46 (quoting *Tillman v. Wheaton - Haven Recreation Ass'n,* 580 F.2d 1222, 1230 (4th Cir. 1978)).

Penn National argues the opposite: If one party (Portrait Homes) is entitled to indemnity from another (Penn National), the right to indemnity *is* defeated by the fact that the loss being indemnified for was actually paid by an insurance company (Admiral). The Court continues to be unpersuaded by Penn National's argument.

Penn National also presented the Court with a recent decision by a federal district court judge in South Carolina in a substantially similar case in which Penn National was granted summary judgment on this very issue. *See* Opinion and Order filed September 16, 2019 in *Summer Wood Property Owners Association, Inc. v. Pennsylvania National Mutual Casualty Insurance Company*, civil action no. 2:17-cv-3504-BHH. The Court notes the *Summer Wood* insurance coverage case began over two years *after* this case. It took over four years to get this coverage case involving Persimmon Hill to trial, but once that point was reached, the parties aggressively and exhaustively tried the merits of the dispute. Over the course of seven days of trial, twelve witnesses testified, each subjected to rigorous cross examination, and approximately ninety exhibits were introduced. In contrast, in the *Summer Wood* case, Judge Hendricks ruled on a summary judgment motion. The Court has considered Judge Hendricks's Opinion and Order, but declines to follow the reasoning in that decision.

During the hearing on January 15, 2020, Penn National expanded its argument to include the damages awarded for breach of the duty to defend. Penn National's counsel asserted the entire cost of the defense of Portrait Homes in the underlying construction defect cases had been paid by Portrait Homes's insurer Admiral Insurance Company and thus Portrait Homes had no damages to recover. The premise of Penn National's argument is factually incorrect. The evidence established at trial that the total cost of the defense of Portrait Homes in the underlying cases was $394,791.24. Of that total amount, Portrait Homes personally paid $42,791.24, the amount sought to be recovered by Portrait Homes at trial and the amount the Court awarded.[5] The Court's award of $42,791.24 for breach of the duty to defend does not run afoul of the Supreme Court's decisions in *Sloan* and *Hartford Accident*.

4. Modified Time on Risk Analysis

Penn National contends that in awarding damages for breach of the duty to indemnify, the Court improperly applied the time on risk doctrine adopted in *Crossmann Communities of North Carolina, Inc. v. Harleysville Mutual Insurance Co.*, 395 S.C. 40, 717 S.E.2d 589 (2011) (*Crossmann II*). As stated in the Order: "The fundamental basis for the [time on risk] doctrine rests in the language of the liability policies at issue in *Crossmann II*, which required coverage only for property damage that occurred during the policy period." *Order Regarding Additional Insured Coverage*, p. 48. The Order continues in part:

> The textual analysis stressed in *Crossmann II* is consistent with South Carolina's long-standing rule that an insurance policy is a contract whose meaning depends first and foremost on the language used. *See, e.g., Whitlock v. Stewart Title Guaranty Co.*, 399 S.C. 610, 614, 732 S.E.2d 626, 628 (2018). The time on risk doctrine

[5] The testimony at trial was that the balance of $352,000 that had been paid by Admiral had been recovered from other insurers alleged to owe coverage to Portrait Homes as an additional insured and had been applied to repay Admiral (Trial Transcript, p. 186, line 15 - p. 187, line 24).

> adopted in *Crossmann II* depended on the language of the particular policies at issue in that case.
>
> While the policies at issue were liability policies containing standard language in the insuring agreement, it is critical to note that all the policies preceded the new edition of the standard coverage form promulgated by the Insurance Services Office in October 2001.[6] The insuring agreement in the October 2001 edition of the CG 00 01 commercial general liability coverage form included a brand new provision: "'[P]roperty damage' which occurs during the policy period ... includes any continuation, change or resumption of that ... 'property damage' after the end of the policy period." *Compare* Plaintiff's Exhibit 27, p. 31 (October 2001 edition of CG 00 01) *with* Plaintiff's Exhibit 64, p. 1 (July 1998 edition).

Order Regarding Additional Insured Coverage, p. 49. The Court concluded the change in policy language meant the time on risk analysis changed as well, such that "the progressive property damage caused by continuous or repeated exposure to water intrusion occurring *after* the end of a policy period is deemed to be included in what is covered by the policy." *Id.* at 50.

Penn National states it "is unaware of any court adopting the analysis that the court did here." *Penn National's Memorandum of Law in Support of Motion to Alter or, in the Alternative, to Amend Judgment*, p. 36. However, Penn National has called to the Court's attention no cases in South Carolina or anywhere else in the country rejecting the Court's modified time on risk analysis.

Penn National states the Court's orders do not explain how the time on risk approach set out in *Crossman II* has changed. A detailed explanation showing how the modified time on risk analysis applied to the buildings on which JJA Framing worked at Persimmon Hill was referenced

---

[6] The effective dates of the liability policies being construed in *Crossmann II* are listed in *Crossmann Communities of North Carolina, Inc. v. Harleysville Mutual Insurance Co.*, 411 S.C. 506, 512, 769 S.E.2d 453, 456 (Ct. App. 2015) (*Crossmann III*).

in the Order Regarding Additional Insured Coverage (p. 51), but was inadvertently not attached to the Order that was filed. The attachment—entitled "Time on Risk Analysis Based on Policy Form CG 0001 (10/01)"—is attached to this Order as Exhibit A.

Penn National seems to recognize the new language in the policy may warrant a modification of the time on risk analysis adopted in *Crossmann II*. Penn National contends: "If anything, the plain language of the added clause indicates that because continuing property damage is deemed to have occurred in the policy period during which it commenced, all continuing property damage is limited to the first policy triggered after damage commenced. Rather than triggering subsequent policies, therefore, this language has the effect of limiting Plaintiffs to the occurrence limit of the policy in effect at the time the progressive damage began." *Penn National's Memorandum of Law in Support of Motion to Alter or, in the Alternative, to Amend Judgment*, pp. 36-37. Penn National's alternative interpretation of the new language is not supported by the language used. Penn National's alternative interpretation might be reasonable if the provision read: "Property damage which *first* occurs during the policy period includes any continuation, change or resumption of that property damage after the end of the policy period. Property damage which is a continuation, change or resumption of property damage that first occurred during a prior policy period will be deemed to have occurred exclusively within that prior policy period." Even if Penn National's alternative interpretation were reasonable, the interpretation applied by the Court would be mandated "in the light of the well settled rule that the terms of an insurance policy must be construed most liberally in favor of the insured and where the words of the policy are ambiguous, or where they are capable of two reasonable interpretations that construction will be adopted which is most favorable to the insured." *Kingman v. Nationwide Mutual Insurance Co.*, 243 S.C. 405, 411, 134 S.E.2d 217, 220 (1964); *see also Whittington v. Ranger Insurance Co.*, 261

S.C. 582, 587, 201 S.E.2d 620, 622 (1973) ("It is elementary and requires no citation of authority that the provisions of an insurance policy are to be liberally construed in favor of the insured and strictly construed against the company which prepared the policy.").

5. Single Per Occurrence Limit Applies to Recovery Under Five Policies

The Court awarded the per occurrence policy limit of $500,000 to Portrait Homes for breach of the duty to indemnify under five policies (03-04, 04-05, 05-06, 06-07, 07-08). The Court awarded the per occurrence policy limit of $500,000 to the Persimmon Hill HOA on the judgment creditor claim under those same five policies and under three additional policies. Portrait Homes and the Persimmon Hill HOA agree they cannot both recover the per occurrence policy limit of $500,000 under the same five policies (03-04, 04-05, 05-06, 06-07, 07-08). Therefore, the two Orders are altered as follows: To the extent Penn National pays the $2,500,000 awarded to Portrait Homes for breach of the duty to indemnify, Penn National will be entitled to a credit against the award to the Persimmon Hill HOA as judgment creditor. The reverse is also true: To the extent Penn National pays to the Persimmon Hill HOA as judgment creditor the $2,500,000 allocable to the five policies under which Portrait Homes also seeks recovery, Penn National will be entitled to a credit against the award of $2,500,000 to Portrait Homes for breach of the duty to indemnify.

6. Bad Faith

In South Carolina, bad faith refusal to pay benefits under a contract of insurance includes: (1) the existence of a mutually binding contract of insurance between the plaintiff and the defendant; (2) refusal by the insurer to pay benefits due under the contract; (3) resulting from the insurer's bad faith or unreasonable action in breach of the implied covenant of good faith and fair dealing on the contract; (4) causing damage to the insured. *Howard v. State Farm Mut. Auto Ins. Co.*, 316 S.C. 445, 450 S.E.2d. 582 (1994). Whether an insurance company is liable for bad faith

must be judged by the evidence before it at the time it denied the claim. *Id.* In South Carolina, "there is an implied covenant of good faith and fair dealing in every insurance contract 'that neither party will do anything to impair the other's rights to receive benefits under the contract.'" *Tadlock Painting Co. v. Maryland Cas. Co.*, 322 S.C. 498, 500, 473 S.E.2d 52, 53 (1996) (quoting *Nichols v. State Farm Mut. Auto. Ins. Co.*, 279 S.C. 336, 339, 306 S.E.2d 616, 618 (1983)). "[I]f an insured can demonstrate bad faith or unreasonable action by the insurer in processing a claim under their mutually binding insurance contract, he can recover consequential damages in a tort action." *Nichols v. State Farm Mut. Auto. Ins. Co.*, 279 S.C. 336, 340, 306 S.E.2d 616, 619 (1983). "Further, if [the insured] can demonstrate the insurer's actions were willful or in reckless disregard of the insured's rights, he can recover punitive damages." *Id.*

First, as to Portrait's claim of bad faith, Penn National acknowledges that it did not handle Portrait's request for policy benefits in a timely manner but contends that the lack of timeliness in processing the claim is essentially irrelevant because there is no additional insured coverage for Portrait under the policies in the first place. (Transcript from Hearing on January 15, 2020, p. 11, lines 22-25). The Court is not persuaded by this argument and has found Portrait to be an additional insured under five (5) Penn National policies.

While S.C. Code Ann. § 38-59-20 does not give rise to a private cause of action, it is instructive in evaluating the conduct of Penn National. It took nearly seventeen (17) months from the time of Portrait's first tender on June 5, 2013, until Penn National denied Portrait's claim by denial letter dated September 30, 2014. This denial letter was the only written communication Portrait received from Penn National since the initial tender. Seventeen (17) months is not a reasonably prompt response time to Portrait's tender. During this seventeen-month period, Penn National failed to adequately investigate Portrait's request for additional insured status including

neglecting to review and evaluate its own underwriting file and other information that was reasonably available to Penn National as noted in the prior Order. *Order Regarding Additional Insured Coverage*, pp. 53-54. Had Penn National done so, it should have concluded that Portrait met the policy terms as an additional insured.

Furthermore, Penn National acknowledges that it should communicate accurate information and not provide misleading information in the claims handling process, which is also, a requirement of S.C. Code Ann. § 38-59-20. The basis for denial of Portrait's claim as set forth in Penn National's letter dated September 30, 2014 was " . . . the sole avenue to additional insured status would be through an endorsement providing additional insured status for completed operations. The above policies do not contain such an endorsement." (Pl. Ex. 9). This basis for denial was simply untrue, and this misrepresentation was conceded by Greg Gross in his testimony to be "not right", by Adam Parsons to be "inaccurate" and by Penn National's expert, Bernd Heinze, to be the "opposite of what was true". *Order Regarding Additional Insured Coverage*, p. 35.

As Portrait has been found to be an additional insured under JJA's policies, there is a mutually binding contract of insurance between Portrait and Penn National. Second, Penn National has refused to pay benefits due to Portrait as the additional insured under the contract. Third, this resulted from Penn National's bad faith or unreasonable action in breach of the implied covenant of good faith and fair dealing of the contract as described above. Finally, Penn National's bad faith caused damage to Portrait. *See Order Regarding Additional Insured Coverage*, pp. 43-56.

B. As to Persimmon Hill HOA

1. Duty to Defend

Penn National contends that the Court failed to find Penn National was relieved of its duty to defend. In asserting this argument, Penn National relies upon the "similarities" between *Twin City Fire Ins. Co. v. Ben-Arnold-Sunbelt Beverage Co. of S.C.*, 433 F.3d 365, 374 (4th Cir. 2005) and the facts in this case to support its position that JJA knowingly and voluntarily waived his right to a defense. *Twin City* deals with a different fact scenario than that in this case in that the insurance company in *Twin City* hired counsel to provide a defense for its insureds unlike what Penn National did in this case. In *Twin City*, the insureds, however, refused to work with the attorney hired by the insurance company, and instead, hired their own counsel. Penn National similarly relies on *State National Ins. Co. v. Eastwood Construction, LLC*, C/A No. 6:16-cv-02607-AMQ, 2018 WL 8787543, at *16 (D.S.C. Sept. 5, 2018), which is another case wherein the insurer hired counsel to defend its insured again unlike what Penn National did in this case; however, the insured refused to work with the attorney hired by the insurance company, and instead, hired their own counsel. Here, Penn National did not hire counsel for JJA even though coverage was triggered by the allegations in the Complaint. *See* Trial Tr. vol. 1, 295-96; Trial Tr. vol. 2, 169-70. Therefore, contrary to Penn National's assertion, *Twin City* and *Eastwood Construction* are not supportive of Penn National being relieved of its duty to defend in this case.

Penn National further relied on *Tucker v. State Farm Mut. Auto. Ins. Co.*, 232 S.C. 615, 103 S.E.2d. 272 (1958). In *Tucker*, the insurance company also hired an attorney to defend the insured and to meet with the insured in person. The insured in *Tucker* attended a hearing and told the Court that he refused to verify a pleading. *Id.* While there are very few similarities between *Twin City, Eastwood Construction* and *Tucker* and the facts of this case, the common thread in these cases that Penn National relies on is that each of the carriers hired their insureds counsel to provide a defense, something that Penn National made a conscious decision not to do in this case.

Moreover, Penn National relies on Gayle McLeod to establish that Penn National through its agent conveyed full and complete information to JJA regarding pertinent facts of the claim, policy provisions and information regarding coverages. The Court remains unpersuaded by this argument. "In a bench trial, the judge, as the finder of fact, may believe all, some, or none of the testimony, even when it is not contradicted." *Lollis v. Dutton*, 421 S.C. 467, 483, 807 S.E.2d 723, 731 (Ct. App. 2017). A review of Ms. McLeod's testimony shows it is exceedingly reasonable that the Court found that Mr. Castillo was misled by Penn National not providing him with all the pertinent factual information as to coverages available to him for which he had already paid premiums for along with not disclosing this claim was a multi-million dollar liability exposure:

> Q. Any information they asked you to gather from Mr. Castillo when you finally got face-to-face with him, you would have done your best to ask those questions and gather that information?
> A. Correct.
> Q. And the reason you didn't ask those things is because Penn National did not include that in your assignment, correct?
> A. That's true.

Trial Tr. vol. 2, 100:24-101:7 (Testimony of Gayle McLeod). Moreover, Mr. Castillo testified that had he been provided with important information regarding his coverages to include that a defense would be provided as part of the policy benefits for which he has already paid premiums, he would have responded that he wanted Penn National to provide a defense:

> Q. If she had told you, Mr. Castillo, you have paid for a defense each year of these eight-year policy premiums and we, Penn National, will provide you this defense because you paid for it if you want it, you would tell her, of course, would you not?
> A. Yes.
> Q. Do you recall her ever telling you that you had already paid for a defense?
> A. No.
> Q. That would be important to you, wouldn't it?
> A. Yes.

Trial Tr. vol. 2, 369:4-14 (Testimony of Jose Castillo). Furthermore, Mr. Gross testified that there was "no downside" to an insured being provided a defense in light of the fact that they have already paid for it with their premium. Trial Tr. vol. 1, 365:25-366:6 (Testimony of Greg Gross).

There were also inconsistencies in Ms. McLeod's testimony. She agreed that "if it's not in the claims file, it either was not important or it didn't happen[.]" Trial Tr. vol. 2, 104:13-17 (Testimony of Gayle McLeod). Ms. McLeod's reports to Penn National, and affidavit filed with this Court do not mention nor document that Ms. McLeod informed Mr. Castillo of any policy coverages or facts of the claim. At trial, Ms. McLeod testified:

> Q. So you had a discussion with Mr. Castillo about the possibility that if he ignored the lawsuit, he could have a judgment entered against him and they could take everything he owned, correct?
> A. Well, I didn't put it that way.

Trial Tr. vol. 2, 93:9-13 (Testimony of Gayle McLeod).

> Q. When you were trying to persuade him, as you've testified today about all this stuff, did you tell him he had already paid his insurance premiums and the lawyer would be provided to him at no charge?
> A. No. . . .
> Q. Did you tell him he had a free lawyer, all he had to do was let the lawyer do his job?
> A. To me, I was to instruct him to call Penn National and that's what I did.

Trial Tr. vol. 2, 125:11-14; 125:25-126:3 (Testimony of Gayle McLeod).

> Q: You were asked about your interaction with Mr. Castillo. Before you interacted with Mr. Castillo, you got an assignment from Penn National to do certain things?
> A: Correct.
> Q: And you attempted to scrupulously do what they asked you to do? You attempted to accomplish the task they asked you to accomplish?
> A: Yes.
> Q: Did they say word one to you about asking Mr. Castillo about any contracts he had entered with Portrait Homes?
> A: No.

> Q: Did they ask you to ask him about the substance of his work at the project, what he had done?
> A: No.
> Q: If they had asked you to do that, you would have asked him, wouldn't you?
> A: Yes.
> Q: Right. If that had been part of your assignment, you would have attempted to accomplish your assignment. If they had handed you a contract and said how about ask Mr. Castillo - - when you get in front of him and you have 10 minutes to talk to him, how about ask him about this contract. You would have done that if they had asked you to do it, wouldn't you?
> A: Yes.
> Q: Any information they asked you to gather from Mr. Castillo when you finally got face-to-face with him, you would have done your best to ask those questions and gather that information?
> A: Correct.
> Q: And the reason you didn't ask about those things is because Penn National did not include that in your assignment, correct?
> A: That's true.

Trial Tr. vol. 2,99:23-101:7 (Testimony of Gayle McLeod). Therefore, the findings of this Court that Penn National misled JJA regarding the information that Penn National provided about the facts of the claim, policy provisions and coverages will not be altered or amended.

Penn National further asserts that the Court failed to find that Mr. Castillo violated his duty to provide notice and his duty to cooperate, and therefore, the duty to defend was not triggered. This argument, however, fails to account for the fact that the analysis of this Court did not stop at whether there was a breach or not of the policy Notice Conditions. Rather, even if there was a breach, it must be determined if Penn National was substantially prejudiced thereby. "The driving force behind the notice-prejudice rule is that there is 'no sound reason . . . to permit a mere technical noncompliance to deprive an innocent third party of benefits to which he would otherwise be entitled.'" *Neumayer v. Phila. Indem. Ins. Co.*, 427 S.C. 261, 272, 831 S.E.2d 406, 411 (2019) (quoting *Factory Mut. Liab. Ins. Co. of Am. v. Kennedy*, 256 S.C. 376, 381, 182 S.E.2d 727, 729

(1971)). "Rather than provide a 'technical escape-hatch' for the insurer to deny coverage, the notice-prejudice rule balances both interests without a wholesale prohibition of these clauses." *Id.*

In South Carolina, "[w]hether [the] insurer suffered prejudice from [the insured's] alleged failure to cooperate is an issue to be determined by the trier of fact on the merits of the action . . . ." *Puckett v. State Farm Gen. Ins. Co.*, 314 S.C. 371, 374, 444 S.E.2d 523, 524 (1994). This Court has evaluated the testimony including that of Greg Gross who testified that Penn National made the decision to not conduct any investigation of this claim. *See* Trial Tr. vol. 1, 370:1-17 (Testimony of Greg Gross). Penn National had opportunities to investigate as set forth in the Order of this Court but chose not to do so including when its independent adjuster, Gayle McLeod, made a cold call on Mr. Castillo in his garage. The testimony of Greg Gross was there was nothing that Penn National had asked JJA to do that JJA refused to do. Trial Tr. vol. 1, 371:4-8; 371:25-372:8 (Testimony of Greg Gross). Gayle McLeod further testified as to Mr. Castillo's cooperation:

> Q. Well, what had he not done prior to that moment in your mind that led you to the belief he was not cooperating? Is there anything other than Penn National telling you that he wasn't cooperating?
> A. Correct. . . .
> Q. So, at least, for the conversation before he starting walking back inside, he answered every question you asked him?
> A. He did.

Trial Tr. vol. 2, 121:24-122:3; 118:13-16 (Testimony of Gayle McLeod).

Penn National further argues that the mere fact that there is a default in and of itself constitutes prejudice. Penn National was put on notice that a default would be sought if it did not hire counsel to appear for its insured and requested a 30-day extension from Plaintiff's counsel to file an Answer which it never did. Penn National's request for an extension to file an Answer was made after it knew its insured had been served. Penn National now complains it was prejudiced by the very course of conduct that it *affirmatively and knowingly* chose to undertake. The default is a

result of Penn National's own actions and/or inactions, and therefore, there was no substantial prejudice to Penn National. The irony here is that Penn National is the sole architect of the circumstances by which it now is trying to claim it was prejudiced in choosing not to file an Answer after being given a 30-day extension to do so, in refusing to investigate the claim, and in not filing a motion to lift the default after being provided notice of such.

Lastly, Penn National argues that they could not provide a defense because a lawyer is ethically prohibited from representing a client without his consent for representation. This argument from Penn National is not part of any reservation of rights letter and not contained anywhere within its claims log. At trial Penn National argued this as a basis for not providing JJA with a defense, and post-trial asserts it as a basis for which Penn National was prejudiced. (Transcript from Hearing on January 15, 2020, p. 9). The consent for representation and the contractual agreement for Penn National to provide representation for JJA is found in the insuring agreement: "We will have the right and duty to defend the insured against any "suit" seeking those damages. . . ." (Pl. Exs. 13A, at 25; 14, at 39; 17, at 21; 21, at 40; 27, at 31; 29, at 33; 33, at 33; and 34, at 26). In South Carolina Ethics Advisory Opinion 19-04, the question posed dealt with an attorney appearing on behalf of an insured at the request of the insurance carrier. The response provided: ". . . Attorney may appear for and defend Insured at the request of the Insurance Carrier if Insurance Carrier's insurance contract with the Insured gives it the right to retain counsel to defend claims made against the insured." S.C. Ethics Advisory Opinion 19-04. Furthermore, the Supreme Court of South Carolina has provided the following in regard to the intricacies between the insurer, insured, and defense attorney:

> [A]n insurance company that hires an attorney to represent its insured is in a unique position in relation to the resulting attorney-client relationship. Pursuant to the insurance contract, the insurer

> has a duty to defend its insured, and must compensate the attorney for his time in defense of his client. If the insured settles or has judgment imposed against him, the insurance contract ordinarily requires the insurer to pay the settlement or judgment. Many insurance contracts provide the insurer has a right to investigate and settle claims as a representative of its insured. Finally, the insurer's right to settle must be exercised in good faith, and that duty of good faith requires the insurer to act reasonably in protecting the insured from liability in excess of the policy limits.

Sentry Select Ins. Co. v. Maybank Law Firm, LLC, 426 S.C. 154, 157-58, 826 S.E.2d 270, 272 (2019) (citing *Tyger River Pine Co. v. Maryland Cas. Co.*, 163 S.C. 229, 234-35, 161 S.E. 491, 493-94 (1931)). In addition, while the HOA's counsel argued Penn National undertook a defense of JJA in *Lammey* without communicating with its insured due to service by publication, this Court withdraws any reference to *Lammey* and its finding associated therewith in its prior Order; however, this does not alter any other findings or conclusions in the Order regarding Penn National's breach of the duty to defend or Penn National's bad faith conduct which are conclusively supported by other extensive evidence considered by this Court.

2. Bad Faith

In order for there to be bad faith refusal to pay insurance benefits, the four (4) factor test must be met as set forth in *Howard v. State Farm Mut. Auto Ins. Co.*, 316 S.C. 445, 450 S.E.2d. 582 (1994). This Court found that the *Howard* four (4) factor test was met. Penn National contends though that the Court improperly found that Penn National engaged in insurance bad faith based upon Penn National's conduct in its Order, improperly found that Mr. Castillo sustained damages as a consequence of Penn National's bad faith and failed to show how Mr. Castillo was damaged.

While S.C. Code Ann. § 38-59-20 does not give rise to a private cause of action, it is instructive in evaluating the conduct of Penn National. Penn National did not undertake to perform an investigation of this claim as testified to by adjuster Greg Gross. Trial Tr. vol. 1, 370:1-17

(Testimony of Greg Gross). Penn National failed to contact witnesses, hire experts, ask Mr. Castillo for pertinent information when its independent adjuster was face-to-face with him, and failed to gather any information through its own investigative efforts of this claim which Penn National knew was a multi-million-dollar claim from the time it opened the claims file. *See* Trial Tr. vol. 1, 336:11-23, 370:1-17, 436:4-7; Trial Tr. vol. 2, 99:24-100:15, 121:16-19. Both S.C. Code Ann. § 38-59-20 and the case law of South Carolina require a good faith duty to perform a reasonable investigation of claims. *Flynn v. Nationwide Mut. Ins. Co.*, 281 S.C. 391, 395, 315 S.E.2d. 817, 820 (Ct. App. 1984). The reason Penn National refused to conduct any investigation of the claim was because Penn National required Mr. Castillo to specifically request a defense from Penn National prior to Penn National hiring counsel to provide a defense irrespective of whether the Complaint triggered coverage. Trial Tr. vol. 1, 331:8-13. This unilateral imposition by Penn National of the requirement that an insured must request a defense prior to being provided one was something Greg Gross believed was wrong and improper since it was not a term of the insuring agreement. Mr. Gross went to management with his concerns. Trial Tr. vol. 1, 332:16-333:6-17. While home office in-house claims counsel, Adam Parsons, tried to distance himself and Penn National from such a position in this claim by stating that Mr. Gross was mistaken and that Penn National requiring the insured to request a defense prior to counsel being hired was not Penn National's directive, the memorialization of the meeting Greg Gross, Gary Gibson and Adam Parsons had regarding this claim in the claims log note dated July 10, 2013 is contrary to Parsons' testimony at trial. Trial Tr. vol. 2, 143:23-144:10; 276:10-17. The July 10, 2013 claim note states "AP advises that if the NI has not been served and/or has not requested a defense we can not retain counsel on their behalf." (Pl. Ex. 58, 2). Additionally, the claims file is replete with claim notes that Mr. Castillo would not be provided a defense until he affirmatively requested one.

Further, Penn National touts all of its efforts as exceedingly reasonable in its attempt to contact Mr. Castillo about this claim. Penn National's underwriting file contains contact information, to include phone numbers and e-mails, none of which the claims file documents any attempt to utilize to reach him. Mr. Castillo testified that Penn National was able to reach him though when performing year end premium audits when Penn National was seeking to collect additional premiums. Trial Tr. vol. 2, 366:9-13. Penn National also contends that sending three (3) reservations of rights letters, the first two of which were mailed to an address that had been stale for four years and the other returned certified mail with no follow-up was reasonable conduct. Penn National contends this despite the fact that the day the first reservation of rights letter was sent there was a simultaneous claims log entry noting Mr. Castillo's correct address. Moreover, even after Penn National's independent adjuster had a face-to-face conversation with Mr. Castillo at his correct address in North Carolina, Penn National proceeded to send another ROR to the four years stale address in Ladson, South Carolina. (HOA Ex. 15). Penn National used the lack of responsiveness from JJA due to Penn National's own errors of sending the reservation of rights letters to the wrong address as supporting justification that JJA was non-cooperative.

An insurer should not knowingly misrepresent to its insureds pertinent facts or policy provisions relating to coverage at issue or provide deceptive or misleading information with respect to coverages. S.C. Code Ann. § 38-59-20. From the time Penn National opened a claim in this matter, it knew this was a multi-million-dollar claim and the magnitude of the defects and damages at the Persimmon Hill project. Trial Tr. vol. 1, 336:11-23, 436:4-7. Penn National never informed Mr. Castillo of these pertinent facts it possessed or asked Ms. McLeod to do so when face-to-face with Mr. Castillo. Trial Tr. vol. 2, 99:24-100:15; 101:4-7; 121:16-19. Penn National also failed to inform Mr. Castillo that a defense was a policy benefit for which JJA had paid and

was covered within the policy. Trial Tr. vol. 2, 122:14-20; 125:10-19. Mr. Castillo testified that had he been told a lawyer would have been hired at no cost to him since this had been paid for as part of his premium payments he would have responded differently to Ms. McLeod and would have told her JJA wanted a defense. Trial Tr. vol. 2, 397:12-398:2. Misrepresentation of policy benefits and deceptive acts regarding coverages and benefits can occur by both providing misleading information and by failing to disclose pertinent facts.

Penn National did not take and/or attempt to take a recorded statement of Mr. Castillo in contravention of its policy:

> Q: Penn National's own claims manual says that initial contact, there should be a recorded statement, if possible, right?
> A: Depends on the type of claim, **but, yes.**

Trial Tr. vol. 2, 309:21-24 (Testimony of Adam Parsons) (emphasis added). Penn National argues that Ms. McLeod did not have the opportunity to take a recorded statement since her meeting with Mr. Castillo lasted ten (10) minutes, but there is no credible evidence that she attempted or would have attempted to take a statement from Mr. Castillo. Taking a written or recorded statement from the insured was not part of her directive from Penn National, and Ms. McLeod testified that she did not undertake investigative measures because Penn National had not asked her to do so. Trial Tr. vol. 2, 99:23-101:7; 121:2-19. Irrespective of the testimony from Adam Parsons about taking recorded statements, Penn National contends that the portion of the claims manual requiring a recorded statement be taken was not properly authenticated at trial and should not have been considered by this Court in making the finding that Penn National violated its claims manual. Although the Court disagrees with Penn National's contention, this was not determinative of the finding that Penn National acted unreasonably, in bad faith and in breach of the duty of good faith

and fair dealing to its insured. This finding is conclusively supported by other extensive evidence considered by this Court.

Throughout this claim there were numerous other instances both individually and collectively of Penn National's unreasonable action in breach of the implied covenant of good faith and fair dealing. As noted previously, these include sending RORs to a knowingly incorrect address and using the insured not responding to said letters as a basis to assert insured non-cooperation, quoting incorrect policy language in the RORs that had been amended, noting in the claims log five (5) different times that JJA was required to request a defense before Penn National's duty to defend was triggered, noting in the claims log that the claim should be denied for non-cooperation just one week after Penn National knew the insured was served, violating its own policies and procedures, and requesting an extension to respond to the Complaint without any intention of filing an Answer. *Order as to Persimmon Hill Homeowners Association, Inc.'s Claims of Bad Faith, Breach of Contract and Declaratory Judgment Against Pennsylvania National Mutual Casualty Insurance Company,* pp. 40-41. Further, Penn National contends that the competent evidence does not support a finding that its conduct was willful or reckless. This Court disagrees. The Court found "that Penn National knowingly misrepresented to JJA the coverages and policy benefits for the policies at issue in this case by failing to disclose pertinent facts and information to JJA when asking whether JJA wanted a defense." *Order as to Persimmon Hill Homeowners Association, Inc.'s Claims of Bad Faith, Breach of Contract and Declaratory Judgment Against Pennsylvania National Mutual Casualty Insurance Company,* p. 40.

Penn National further argues that this Court improperly found Mr. Castillo sustained damage as a result of its bad faith conduct. This Court remains unpersuaded by this argument. Penn National also contends that the HOA failed to prove any of the damages were covered under

the Penn National policies. There was testimony at trial as to JJA's scope of work. *See* Trial Tr. vol. 1, 97:2-99:4 (Testimony of J. Blanton O'Neal, IV); Trial Tr. vol. 1, 458:1-16 (Testimony of Arthur Shawn Belcher); Trial Tr. vol. 2, 358:20-23 (Testimony of Jose Castillo). Testimony was also provided by J. Blanton O'Neal, IV, regarding the nature and extent of damages at the Persimmon Hill project, and Robert Sisnroy P.E. providing expert testimony on the nature, extent and causation of the damages. *Order as to Persimmon Hill Homeowners Association, Inc.'s Claims of Bad Faith, Breach of Contract and Declaratory Judgment Against Pennsylvania National Mutual Casualty Insurance Company,* p. 33. The judgment against JJA in the amount of $4,156,976.89 was an exhibit at the trial. (HOA Ex. 13). The testimony supported damages claimed were covered under the Penn National policies.

3. Time-on-Risk

Penn National argues that this Court erred in its application of time-on-risk and that the Order for the HOA's case and Order for Portrait's case are inconsistent. The Court is not persuaded by these arguments. While both the HOA and Portrait seek indemnity under Penn National policies, the nature of the claims is different. South Carolina law is clear that when an insurer has a duty to defend, it must provide a defense for all claims asserted in the Complaint including both claims that are covered and uncovered by the policies. *Town of Duncan v. State Budget & Control Bd.*, 326 S.C. 6, 16, 482 S.E.2d 768, 773-74 (1997) (citing *Employers Mut. Liab. Ins. Co. v. Hendrix,* 199 F.2d 53 (4th Cir. 1952) (where a lawsuit contains several causes of action, some of which are covered under the policy and some of which are not, an insurer is not justified in refusing to defend the entire suit)). The defense provided by the insurer also defends the insured for damages that occur from an occurrence during the policy period and continuing damages thereafter under the modified continuous trigger even if the damage occurs during later uninsured periods.

Penn National had the opportunity to defend its insured but chose not to even after requesting a 30-day extension from Plaintiff's counsel to file an answer after its insured had been served. The HOA obtained a general verdict, and Penn National cannot now seek to allocate between covered and uncovered damages under the policy. *See Harleysville Group Ins. v. Heritage Cmtys., Inc.*, 420 S.C. 321, 343 n.11 803 S.E.2d 288, 300 n.11 (2017); *Auto Owners Ins. Co. v. Newman*, 385 S.C.187, 684 S.E.2d 541 (2009). Penn National had the opportunity to seek allocation of damages if it had provided a defense and participated in the underlying litigation on behalf of JJA.

Penn National further contends that a time-on-risk analysis using the default method should be applied to the HOA's award. This Court disagrees that the default method applies in this case given the plain meaning of language in Penn National's policies at issue as discussed at length in this Order. *See* discussion *supra* Section I.A.4. The facts in *Crossman II* were stipulated whereas the facts in this case are not. Further, the policy language before the South Carolina Supreme Court in *Crossman II* is different from the Penn National policies in this case. The Court concluded the change in policy language meant the time on risk analysis changed as well, such that "the progressive property damage caused by continuous or repeated exposure to water intrusion occurring *after* the end of a policy period is deemed to be included in what is covered by the policy." *Order Regarding Additional Insured Coverage*, p. 50. Moreover, this case involves a unique set of facts whereby Penn National refused to provide a defense or other policy benefits to JJA, and a judgment resulted. In addition to differing policy language, the facts and circumstances differ in this case from *Crossman II*. When the time-on-risk framework was developed in *Crossman II*, there was no need for the consideration of the insurer refusing to defend or indemnify because the carrier provided a defense for claims for damages that arose both during the insured and uninsured periods – the question was one of the amount of the indemnity obligation. Penn

National ignores that it made the decision to gamble not only for itself but also with Mr. Castillo's potential financial obligations by not providing Mr. Castillo a defense. Penn National knew this gamble could result in a default judgment for a liability exposure in the multi-millions of dollars. Penn National cannot now claim it should reap the benefits and protections of the default time-on risk even if the default time-on-risk applied in this case which it does not. This would allow Penn National to benefit itself to the detriment of its insured by allocating the pro-rata uninsured period of time portion of the judgment to its insured when such allocated amount could have been significantly reduced or eliminated by defending the claim and/or by negotiated settlement should the Plaintiff have accepted a settlement offer made by Penn National. This though would have required Penn National to perform its defense and indemnity obligations. Penn National chose poorly in its gamble to refuse to defend or indemnify its insured and should not reap the benefits of its poor decision to the detriment of its insured. "An insurance company fails to defend at its own peril. . . ." *Stroup Sheet Metal Works, Inc. v. Aetna Cas. & Sur. Co.*, 268 S.C. 203, 212-13, 232 S.E.2d 885, 888 (1977). "Where an insurer refuses to undertake the defense of an action against the insured based upon a claim within the coverage of the insurance policy, it thereby breaches the contract of insurance and is liable to the insured for all damages resulting to such insured as a direct result of such refusal and breach." *Fuller v. Eastern Fire & Casualty Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962) (citing *Liberty Mutual Ins. Co. v. Atlantic Coast Line Ry. Co.*, 66 Ga. App. 826, 19 S.E.2d 377 (1942); *Butler Bros. v. American Fidelity Co.*, 120 Minn. 157, 139 N.W. 355 (1913)). Further, "[a]n insurer who unreasonably refuses or fails to settle a covered claim within the policy limits is liable to the insured for the entire amount of the judgment obtained against the insured regardless of the limits contained in the policy." *Doe v. S.C. Med.*

Malpractice Liab. Joint Underwriting Ass'n, 347 S.C. 642, 649, 557 S.E.2d 670, 674 (2001) (citing *Trotter v. State Farm Mut. Auto Ins. Co.*, 297 S.C. 465, 475, 377 S.E.2d 343, 349 (Ct. App. 1988)).

4. As to Penn National's Factual Arguments

Penn National argues that certain facts are unsupported by the record. A discussion of these facts and the related testimony exists throughout this Order; therefore, the Court will not address them here again. Further, the Court declines to amend its Order to include additional facts.

II. Portrait Homes's Request for Attorney's Fees and Costs

A successful insured in coverage litigation can recover reasonable attorney's fees associated with the coverage litigation. *See Hegler v. Gulf Insurance Co.*, 270 S.C. 548, 550-51, 243 S.E.2d 443, 444 (1978) (insured entitled to recover attorney's fees from insurer who sued "to relieve itself of coverage"; the insurer's action "amounted to a wrongful breach of its contractual obligation to defend. The legal fees incurred by [the insured], in successfully asserting his rights against [the insurer's] attempt in the declaratory judgment action to avoid its obligation to defend, were damages arising directly as a result of the breach of the contract."); *Gordon-Gallup Realtors, Inc. v. Cincinnati Insurance Co.*, 274 S.C. 468, 471-72, 265 S.E.2d 38, 40 (1980) (applying *Hegler* to situation in which insured rather than insurer initiated coverage lawsuit). Having successfully proven Penn National breached the insurance contracts, Portrait Homes is entitled to recover reasonable attorney's fees and costs associated with prosecuting the claims against Penn National in this case. As set forth in *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989), there are six factors to be considered in awarding attorney's fees. "Consideration should be given to all six criteria in establishing reasonable attorney's fees; none of these six factors is controlling." *Id.* at 384, 377 S.E.2d at 297.

1. The Nature, Extent and Difficulty of the Legal Services Rendered

The liability issues in the additional insured case focused on whether Portrait Homes qualified as an additional insured under the Penn National policies. The determination of that issue was broken down into whether Portrait Homes qualified as an additional insured under a particular endorsement (CG 20 37) on two of the policies and whether Portrait Homes qualified as an additional insured under a separate endorsement (71 11 45) on three other policies. The determination under each endorsement was further broken down into sub-issues. With respect to endorsement 71 11 45, which was triggered by a contract between the named insured under the Penn National policies and Portrait Homes, a substantial issue in the case turned on whether Jose Castillo dba JJA Framing—with whom Portrait Homes had a contract—was in effect the same as JJA Construction Inc., the named insured under the policies having endorsement 71 11 45.

The determination of the critical issues in the case involved not only an examination of the insurance policies, but also a thorough examination of the documents in Penn National's underwriting file. There were many legal issues—both as to liability and damages—involved in the additional insured case. While the issues largely involved application of settled South Carolina law, the presentation of the evidence in a clear manner on some of the issues was nevertheless not a simple task.

2. The Time and Labor Necessarily Devoted to the Case

Stanley C. Rodgers represented Portrait Homes in this case. The dispute between Portrait Homes and Penn National was lengthy and hard fought. The case began in 2014 with multiple alleged additional insurers as Defendants. The claims against all the other insurer Defendants were eventually resolved. By October 2016—over three years ago—Penn National remained as the

only Defendant.[7] From that point forward, multiple depositions were taken; extensive written discovery was exchanged; motions and pretrial briefs were submitted. The trial began in February. Following four days of testimony, the trial was recessed. The trial resumed in May and lasted another three days.

Mr. Rodgers spent 970.70 hours over the last three years working on this case. The amount of time and labor devoted to the case were reasonable in light of the issues of the case, the amount of money in dispute, and the tenacity of the defense put up by Penn National.

3. The Professional Standing of Counsel

Mr. Rodgers is an experienced, skilled attorney with an excellent reputation in the local legal community. He was admitted to the bar in 1992 and has practiced primarily in the Charleston area since 1993. The Court has had many interactions with Mr. Rodgers through the years. The Court finds Mr. Rodgers to be an extremely competent, well prepared attorney, and he tried this complex case in a competent, well prepared manner.

4. The Contingency of Compensation

Not applicable—the fee agreement was a billable hour arrangement, not a contingency.

5. The Fee Customarily Charged in the Locality for Similar Legal Services

Mr. Rodgers charged $250 per hour, except for travel time, for which he charged $125 per hour. Those hourly rates are well within the range customarily charged in this area. The overall fees being requested are reasonable for this case.

6. The Beneficial Results Obtained

[7] Portrait Homes does not seek to be awarded any attorney's fees for work performed prior to the time Penn National became the only Defendant.

The results obtained were very beneficial.

Based on the Court's observations in this case and the updated affidavit submitted by Mr. Rodgers, the Court awards to Portrait Homes attorney's fees of $237,462.50 and costs of $12,540.76 for a total of $250,003.26.

III. Persimmon Hill HOA's Request for Attorney's Fees and Costs

1. The Nature, Extent & Difficulty of the Case

The HOA initially brought an underlying action related to construction defects in the Persimmon Hill community in October of 2012. The prosecution of that case resulted in this declaratory judgment action being filed by Portrait Homes on December 29, 2014, against Penn National for Portrait's claim that it was an additional insured under various insurance policies issued to Jose Castillo d/b/a JJA Framing and JJA Construction, Inc. d/b/a JJA Framing (collectively referred to as "JJA"). The HOA was named a party in this declaratory judgment action and asserted crossclaims against Penn National seeking a declaratory judgment as to whether Penn National's policies provided insurance coverage to its insured, JJA. On July 13, 2016, a Default Judgment was entered against JJA in the underlying action in the amount of $4,156,976.89. After the entry of the Judgment, Plaintiffs' counsel contacted JJA through Michael Sloop, a retired Mecklenburg County detective/police officer – now private investigator, and JJA assigned all of its rights under the Penn National policies to the HOA by written assignment dated December 13, 2016. The assignment provided that the HOA would attempt to collect the judgment amount from Penn National through this case prior to seeking to levy JJA's assets. The litigation was extremely complex and difficult and involved issues of insurance policy language construction, issues as to the duty to defend and duty to indemnify, issues as to coverage analysis, and issues as to the

validity of JJA's assignment to the HOA and the authenticity of Jose Castillo's signature on said assignment. The prosecution of this case resulted in an enormous amount of time being expended by the legal teams for all sides. The HOA engaged experts to discuss the manner in which claims against an insured under a commercial general liability policy should be adjusted, the industry standards and/or customs associated therewith, along with the financial status and profitability of Penn National. The trial of the case took seven (7) days over two (2) nonconsecutive weeks wherein these issues were rigorously argued by counsel for all sides.

2. The Time and Labor Necessarily Devoted to the Case

The trial of the case took seven (7) days over two (2) different terms of court wherein complex issues of law and disputed facts were rigorously argued by counsel. Pursuant to my observations at the trial of this case and the affidavit filed by the HOA's counsel, there was extensive time and labor necessarily devoted to the case. There were numerous depositions, along with tens of thousands of pages of documents exchanged and reviewed throughout the discovery process. Moreover, numerous motions were filed and heard before this Court during the prosecution of this case, which included Penn National's efforts to have the JJA assigned claims dismissed. Counsel prepared and attended mediation, hired and met with experts, prepared witnesses, reviewed voluminous document productions, and prepped for trial on numerous occasions, among other things. The complexity of the issues before the Court and extensiveness of time involved to review, prepare, develop, and prosecute the claims is also evident from the issues discussed in each parties' Pre-Trial Briefs and Motions in Limine.

3. Professional Standing of Counsel

The HOA's Counsel is represented by two (2) different firms, Segui Law Firm, PC, and Chakeris Law Firm, both of which are in good standing with the legal community and enjoy

excellent reputations. Among the HOA's counsel, the individual attorneys Phillip W. Segui, Jr., John T. Chakeris, and Alicia D. Petit have handled large and complicated construction deficiency cases ranging from single family residence to multi-family projects, along with separate insurance coverage litigation and similar breach of contract/bad faith claims. They are well known for their legal skills in these areas of the law and held in high regard by the Court.

4. The Contingency of Compensation

The Attorney-Client agreement between the HOA and its Counsel submitted into evidence at the trial of this case is for Counsel to be compensated one-third (1/3) of the gross award and to be reimbursed for case costs advanced, such as expert expenses. The HOA sought this contingency fee arrangement so that it would not have to assess the Persimmon Hill ownership a one-time assessment, multiple assessments, or have to increase the ownership monthly fees to cover the legal fees and other costs incurred in order to prosecute their claims. In this case, there were significant challenges asserted by Penn National regarding the assigned claims, validity of the assignment, insurance coverage and insurance availability with regards to JJA and other contingencies upon which a successful recovery depended. Penn National vigorously argued that there was no breach of the duty to defend, no bad faith and no coverage available to the HOA under JJA's policies. Had the Court found Penn National's arguments persuasive, which it did not, the HOA's counsel would not be compensated for their time and labor in this case. Despite these obstacles, the HOA's Counsel was able to affect a verdict in the HOA's favor.

5. Beneficial Results Obtained

Seven (7) days were spent in trial prosecuting this case. The verdict awarding $5,370,147.29 for Breach of Duty to Defend and Duty to Indemnify, $5,370,147.29 for Breach of

Duty of Good Faith and Fair Dealing/Bad Faith, and $5,213,170.40 for the HOA's Judgment Creditor claim, plus attorneys' fees and punitive damages is an excellent result.

6. Legal Fees for Similar Services

Similar cases are typically handled on a contingency fee basis ranging from 33.33% to 40.00% in South Carolina. The Court finds that a contingency fee of thirty-three and one-third percent (33.33%) is fair and reasonable and should be approved by this Court.

Therefore, as to the HOA's assigned Breach of Duty to Defend and Duty to Indemnify, case costs in the amount of Fifty-One Thousand Three Hundred Thirty-Two and 03/100 Dollars ($51,332.03) and Attorney's fees in the amount of One Million Seven Hundred Ninety Thousand Forty-Nine and 10/100 Dollars ($1,790,049.10) is hereby declared reasonable and would be awarded should the HOA have elected the remedy of Breach of the Duty to Defend and Indemnify.[8]

IV. Punitive Damages

This court previously found that both Portrait and the HOA as assignee of Mr. Castillo's policy rights are entitled to recover punitive damages against Penn National. A subsequent hearing was held on January 15, 2020 to determine the amount of punitive damages pursuant to S.C. Code Ann. § 15-32-520. "Punitive damages may be awarded in South Carolina when there is clear and convincing evidence that the conduct of the defendant is willful, wanton, or in reckless disregard of the Plaintiff's rights." *Hawkins v. Pathology Assocs., P.A.*, 330 S.C. 92, 109, 498 S.E.2d 395, 405 (Ct. App. 1998) (citing S.C. Code Ann. § 15-33-135 (Supp. 1996); *McGee v. Bruce Hosp.*

[8] Following the Court's Order being filed on October 22, 2019, the HOA filed an Election of Remedies on November 1, 2019, wherein the HOA elected the Breach of Duty of Good Faith & Fair Dealing/Bad Faith rather than the Breach of Duty to Defend and Duty to Indemnify. The Supreme Court has held that the attorney fees under S.C. Code Ann. § 38-59-40 only apply to breach of contract actions. *Nichols v. State Farm Mut. Auto. Ins. Co.*, 279 S.C. 336, 306 S.E. 2d 616 (1983).

System, 321 S.C. 340, 468 S.E.2d 633 (1996); *Taylor v. Medenica*, 324 S.C. 200, 479 S.E.2d 35 (1996)). "A conscious failure to exercise due care constitutes willfulness." *Id.* at 110, 498 S.E.2d at 405 (citing *McCourt v. Abernathy*, 318 S.C. 301, 457 S.E.2d 603 (1995)). "A tort is characterized as reckless, willful or wanton if it was committed in such a manner or under such circumstances that a person of ordinary reason and prudence would have been conscious of it as an invasion of the plaintiff's rights." *Id.* (citing *Taylor v. Medenica*, 324 S.C. 200, 479 S.E.2d 35 (1996)).

Portrait's request for additional insured coverage was initiated by a tender letter to Penn National from Portrait's counsel dated June 5, 2013, in which Portrait requested additional insured coverage and provided Penn National information about the claim including the HOA's forensic engineer's report and the latest amended pleading. (Pl. Ex. 6). At the inception of this claim, Penn National knew that the claim related to its insured's work was a multi-million-dollar claim. Trial Tr. vol. 1, 336:11-23, 436:4-7. Following the first date of entries in the claims log setting up the claim, a meeting took place between Greg Gross, the primary adjuster assigned to this claim, Gary Gibson, regional claim's office team leader, and Adam Parsons, Home Office In-House Claims Counsel, at Penn National's claims office located in Greensboro, North Carolina. *Order as to Persimmon Hill Homeowners Association, Inc.'s Claims of Bad Faith, Breach of Contract and Declaratory Judgment Against Pennsylvania National Mutual Casualty Insurance Company,* p. 4. At this meeting, Adam Parsons instructed Greg Gross and Gary Gibson as to how they are to adjust Portrait's claim for additional insured status and the HOA's claims against Castillo. (Pl. Ex. 58, 2). Gary Gibson memorializes this meeting and Parsons' instructions on how these claims should be handled from the outset in the Penn National claims file:

> GHG and I met with HOC AP here in the NCCSO on 7/9/13. AP advises that if the NI has not been served and/or has not requested a defense we can not retain counsel on their behalf. GHG to send

> monthly letters to the NI advising them we are aware of the suit and asking NI to contact us. Re the tender by the GC, GHG will submit a CQR.

(Pl. Ex. 58, 2) (emphasis added). The testimony of adjuster Greg Gross also affirmed the claims log entry of July 10, 2013, that this meeting with Adam Parsons took place in which a plan was developed and put in place for Greg Gross as the frontline adjuster to implement:

> Q. And this meeting between you, Gary Gibson, and Adam Parsons occurred and is the next entry after having received the Portrait tender; is that right?
> A. Correct.
> Q. And at that point in time, that claim was discussed and a plan to address that claim and how to adjust that claim was discussed between the three of you-all and was essentially left to you, the frontline adjuster, to implement that plan. Would you agree with that?
> A. Correct.

Trial Tr. vol. 1, 340:2-13. Adam Parsons tried to distance himself as Penn National's home office in-house claims counsel from having such a meeting:

> Q. Says you met. Yesterday, you tried to downplay that and say it wasn't a meeting?
> A. Right, it wasn't a meeting.
> Q. Why did they think it was a meeting?
> A. I don't think they did.
> Q. They used the word meet?
> A. Met with. I meet plenty of people, it doesn't mean I have a meeting with them. I just met you, doesn't mean that I've had a meeting with you.

Trial Tr. vol. 2, 302:17-25. A closer examination of the July 10, 2013, claims log entry memorializing this meeting with Adam Parsons, subsequent claim log entries thereafter and testimony from the witnesses demonstrates by clear and convincing evidence that Penn National's conduct was willful, wanton or reckless in denying Portrait and JJA policy benefits to which they were entitled causing each insured harm as discussed further below.

A. Punitive Damages Awarded as to Portrait

From the outset of this claim, Adam Parsons instructed "Re the tender by the GC [Portrait], GHG [Greg H. Gross] will submit a CQR." (Pl. Ex. 58, 2). A CQR is a coverage question report that is an internal Penn National document wherein the adjuster sends a coverage question to home office to be reviewed by Adam Parsons. Trial Tr. vol. 1, 301:5-22. When a CQR is submitted, it is more likely than not that the claim will be denied:

> Q. And CQRs are only submitted when there's coverage questions and it's more likely than not that a claim may be denied. Would you agree with that?
> A. Correct.

Trial Tr. vol. 1, 340:19-23 (Testimony of Greg Gross). This July 10, 2013, claims note is the second day that any notes were entered into the claims log. (Pl. Ex. 58). It was not until September 21, 2013, as reflected in the claims log, that Greg Gross performed or anyone else at Penn National performed any type of coverage analysis as to Portrait's request for additional insured coverage. (Pl. Ex. 58). Hence some two (2) months prior to any coverage analysis taking place, Penn National had determined that it was more likely than not that the claim would be denied.

Portrait's counsel not having received a response to its initial tender sent a second tender letter to Penn National dated May 23, 2014. (Pl. Ex. 8). Seventeen (17) months after Portrait's initial tender, Portrait's counsel received a letter dated September 30, 2014, from Penn National denying its claim for additional insured coverage claiming that Portrait did not qualify as an additional insured for this occurrence. The basis of the denial as stated in the letter is: "This is a completed operations type claim. As such, the sole avenue to additional insured status would be through an endorsement providing additional insured status for completed operations. The above noted policies do not contain such an endorsement." (Pl. Ex. 9). This was the sole basis Penn

National communicated to Portrait for the denial at any time prior to the initiation of this lawsuit. *Order Regarding Additional Insured Coverage*, p. 11. Penn National's basis for the denial was untrue and a misrepresentation of the policy terms; the policies at issue did contain endorsements providing additional insured coverage for completed operations. When questioned at trial about Penn National asserting an untrue basis to deny Portrait's tender for additional insured coverage, Greg Gross referred to the untruth as and it's "not right"[9]; Adam Parsons describe the untruth as "inaccurate"[10]; and Penn National's expert, Bernd Heinze, referred to it as the "opposite of what was true".[11]

At trial, however, Penn National did not rely on the lack of completed operations endorsements in the policies as the basis for why Portrait did not qualify as an additional insured. Rather Penn National relied on the following arguments: Jose Castillo d/b/a JJA Framing was a different entity and therefore a different insured than JJA Construction, Inc.; the written contract(s) qualifying Portrait as an additional insured were signed by Jose Castillo and not JJA Construction, Inc.; the contract requiring completed operations coverage did not apply to the Persimmon Hill project; the endorsements themselves did not identify qualifying Portrait projects (because the qualifying location was a scriveners' error listing Castillo's office address); and the names of the tendering parties did not exactly match the names listed in the endorsements. A comprehensive analysis of Penn National's basis for denial of Portrait's additional insured claim is set forth in the *Order as to Additional Insured Coverage.*

Penn National performed no meaningful investigation or analysis of the underwriting file and material that it had in its possession including the Amended Complaint to determine if Penn

[9] Trial Tr. vol, 1, 434:23-24.
[10] Trial Tr. vol. 2, 172:11-173:38
[11] Trial Tr. vol. 2, 520:8-22.

National's reasons for denial at trial were proper. Under South Carolina law, an insurer's duty to defend is based on the allegations in the underlying complaint. *B.L.G. Enterprises, Inc. v. First Financial Insurance Co.,* 334 S.C. 529, 535, 514 S.E.2d 327, 330 (1999). "If the underlying complaint creates a possibility of coverage under an insurance policy, the insurer is obligated to defend." *City of Hartsville v. South Carolina Municipal Insurance*, 382 S.C. 535, 544, 677 S.E.2d 574, 578 (2009). In determining whether a duty to defend exists, the allegations in the complaint must be taken as true. *Manufacturers and Merchants Mutual Insurance Co. v. Harvey*, 330 S.C. 152, 167, 498 S.E.2d 222, 230 (Ct. App. 1998). Had Penn taken the allegations in the Amended Complaint as true, both Jose Castillo and JJA Construction, Inc. were alleged to be doing business as JJA Framing, and therefore, Portrait should have been provided additional insured coverage for JJA Framing. Additionally, had Penn National reviewed its own underwriting file and certificates of insurance it should have reached the conclusion that Jose Castillo d/b/a JJA Framing and JJA Construction, Inc. are not two separate entities but rather operated as one in the same. The underwriting file contained a name change form specifically indicating a name change only from JJA Framing Company to JJA Construction Inc. (Plaintiff's Exhibit 18). On the audit documents and on the Declarations Page of *every* policy issued by Penn National after the name change effective March 2, 2005, Penn National identified the named insured, JJA Construction, Inc., as an Individual. The classification of the form of business as an Individual on the policies issued to JJA Construction Inc.—though seemingly contradictory—accurately reflected the substance of who the parties intended to be insured under the policies. *Order as to Additional Insured Coverage*, p. 19. Further, Penn National could have included in its assignment to Gayle McLeod to inquire of Mr. Castillo during her cold call as to any of these issues. Had Penn National asked her to do this, Mr. Castillo would have told her as he testified at trial that Jose Castillo d/b/a JJA Framing

and JJA Construction, Inc. d/b/a JJA Framing were operated as one business, had the same location, same employees, same trucks, same telephone number, and same Federal ID number. Trial Tr. vol. 2, 357:5-358:11.

Greg Gross testified as to his history of denying claims for additional insured status at Penn National:

> Q. So I'll start that again. How many -- as of the time you sent this May 2014 [coverage question report], how many additional insured claims had you evaluated in the context of a construction defect case where the general contractor was making an additional insured claim under the subcontractor's policy?
> A. My answer is, probably about 25 to 30.
> Q. Okay. In every one of those claims as to the evaluation of the additional insured claim, did a coverage question report always go from you to Gary Gibson to Adam Parsons?
> A. At Penn National, yes.
> Q. Every time?
> A. Every time.
> Q. Do you remember Penn National ever picking up the defense for an additional insured in that context?
> A. No.
> Q. Never?
> A. Not that I can recall.

Trial Tr. vol. 1, 315:16-316:10 (Testimony of Greg Gross). While the Court notes that Penn National was able to point to a single additional insured claim handled by Greg Gross that Penn National accepted, the Court still finds Mr. Gross' testimony convincing.

As noted in the Court's *Order Regarding Additional Insured Coverage*, Portrait Homes has been damaged by Penn National's bad faith conduct. Portrait paid $3,850,000.00 in settlement and incurred $42,791.24 in attorney's fees from Penn National's failure to defend and indemnify. At trial, Mr. O'Neal testified that JJA Framing was the biggest subcontractor on the job – as is generally the case on a job of this type – and "their work is integrated throughout the project." Trial Tr. vol. 1, 113:7-19 (Testimony of J. Blanton O'Neal, IV). Mr. O'Neal further testified that

the entire amount of the $3,850,000.00 settlement was attributable to JJA Framing's work. Trial Tr. vol. 1, 114:23-115:14 (Testimony of J. Blanton O'Neal, IV).

Portrait's claim for additional insured status was doomed for denial at the inception of the claim. This Court finds that Penn National's home office in-house claims counsel, Adam Parsons, instructed adjuster Greg Gross as to the plan for adjusting Portrait's claim and Greg Gross was charged with its implementation following Parsons' directive. The Court also finds that Penn National failed to perform a reasonable investigation of this claim and knowingly misrepresented coverages under the policies to Portrait in the claim denial. The Court further finds that Penn National's claim denial was unreasonable and untimely in taking seventeen (17) months following Portrait's initial tender to process the doomed claim. The evidence is clear and convincing that this conduct of Penn National was willful, wanton, or in reckless disregard of Portrait's rights causing harm.

Therefore, Portrait Homes is awarded punitive damages in the amount of $3,892,791.24 (3,850,000.00 + 42,791.24).

B. <u>Punitive Damages Awarded as to the HOA as Assignee of JJA's Claims</u>

From the outset of this claim, Adam Parsons instructed "if the NI has not been served and/or requested a defense we can not retain counsel on their behalf." (Pl. Ex. 58, 2). As testified to by Greg Gross, this was because "an insured has to request a defense before Penn National will provide a defense, regardless of whether the pleadings trigger coverage or not." Trial Tr. vol. 1, 331:8-13. Penn National's requirement, however, was not contained in any of Mr. Castillo's insurance policies:

> Q. There [are] no words in the insurance policy that says the insured has to pick up the phone, call, write a letter and say, Penn National,

> provide me a defense. That is not contained within the policies of insurance at Penn National. Do you agree with that?
> A. That is not contained in the policies that I ever saw at Penn National.
> Q. So essentially by making that a requirement for a defense, it is the creation of an additional condition precedent to coverage and that's wrong.
> A. If you say so.
> Q. I'm asking your opinion. When you were a claims adjuster at Penn National.
> A. I was doing what I was told to do.

Trial Tr. vol. 1, 332:16-333:6 (Testimony of Greg Gross). The front-line adjuster, Greg Gross, did not agree with Penn National's directive from its home office in-house claims counsel Adam Parsons:

> Q. But Greg Gross' opinion at Penn National when he was told to not adjust a claim until an insured requested a defense, you went to management and you told them you didn't believe that was correct, that you didn't believe that was proper, you didn't believe that was right?
> A. That is correct.
> Q. And you were just following orders from above?
> A. Correct.

Trial Tr. vol. 1, 333:8-17 (Testimony of Greg Gross). Adjuster Greg Gross further testified that it was not a requirement of any of the four (4) other insurance companies he had previously been employed at adjusting claims. *Id.* at 333. Imposing any requirements on an insured that are not contained in the policy of insurance as a condition to the insured being provided its policy benefits simply at best gives the insured what they have already bargained for and at worst deprives the insured of policy benefits to which it is entitled.

Penn National's adjusting of the HOA's claims against JJA included attempting to send correspondence to JJA on three (3) separate occasions and hiring an independent claims adjuster to cold call JJA to inquire whether JJA wanted Penn National to provide a defense. Penn National

did not make any meaningful effort to utilize the e-mail and phone number contact information that it already had in its possession and previously utilized to contact JJA when conducting year end premium audits where Penn National stood to collect additional premiums. The first Reservation of Rights letter was sent to a four-year-old stale address in Ladson, South Carolina although the same day this ROR letter was written the claim's log entry notes: "Effective 07/29/2009 the insured address is changed to 11227 Eastfield Rd., Huntersville, NC 28078." (Pl. Ex. 58, 7). On the same day the first ROR was sent to the Ladson, South Carolina address and not the North Carolina address, the following plan was noted in Penn National's claims log:

> PLAN: ROR has been sent to the insured today via certified mail. If the insured receives and requests a defense on these complaints, there is a probable defense obligation due to the negligence count in the complaint and the trigger of coverage in South Carolina. Diaried two weeks for acceptance of ROR. If letter comes back unclaimed will issue CQR to HOC for review of coverage (i.e., insured has not demanded a defense to date).

(Pl. Ex. 58, 8). This correspondence was never received by JJA because Penn National sent it to a four (4) year old stale address.

Instead of attempting to contact Mr. Castillo through the e-mail addresses and phone numbers known to Penn National to determine if service had been perfected and to investigate the claim, Mr. Gross was directed to hire an independent adjuster to go to the Berkeley County Courthouse to review the Clerk of Court's file for an affidavit of service to see if and when JJA was served. (Pl. Ex. 58, 2; HOA Ex. 16; Penn Ex. 22). The independent adjuster hired was Gayle McLeod, of Capstone ISG. Following the independent adjuster's second trip to the courthouse, Ms. McLeod advised Penn National that JJA had been served.

There are five (5) different claims log entries from the time the claim was opened until the time Penn National was notified that JJA had been served noting that JJA was required to request

a defense before Penn National's duty to defend was triggered. (Pl. Ex. 58, at 2, 3, 8, and 9). The claim log entry reflecting Penn National's intent to deny the JJA claim prior to Penn National knowing that its insured had been served is telling. The claim log states: "I emailed IA today to check again to see if service has been perfected against the insured. If not, will send CQR to GG for review to send to HOC to recommend that no coverage be afforded any entity as the insured has not come forward requesting a defense and/or in violation of the conditions portion of the policy." (Pl. Ex. 58, 9).

After the independent adjuster informed Penn National that JJA had been served, Penn National's adjuster noted the following plan in the claim log on March 13, 2014:

> PLAN:
> I am going to have IA go to the home of the above and determine from the registered agent what their intentions are with this lawsuit. Are they requesting a defense? If no answer at that point, we have done everything we can do to discuss the case with the insured and will then issue a CQR requesting denial of coverage for defense of the lawsuit and the tender from the GC.

(Pl. Ex. 58, 9). The instructions given by Penn National to Gayle McLeod at Capstone ISG for her additional task were:

1) Make a cold call to the insured to inquire about suit representation,
2) Inquire if insured wishes that Penn National handle suit on their behalf.
3) Obtain contact information on Jose Castillo.

(HOA Ex. 7). At no time was Ms. McLeod asked by Penn National to make any inquiry to Mr. Castillo regarding the allegations in the lawsuit, regarding matters that may be useful to Penn National in conducting an investigation of the claim or providing Mr. Castillo relevant policy information or information in Penn National's possession that are important in determining how one should answer the question of whether he wants a defense.

Penn National received correspondence from counsel for the HOA dated April 24, 2014 advising that if no answer were filed within fifteen (15) days an Order of Default and Judgment would be sought against its insured. (HOA Ex. 8). Penn National acknowledged receipt of the correspondence from the HOA's counsel on May 8, 2014, e-mailing the HOA's counsel requesting a 30-day extension of time therein to respond to the complaint to which the HOA counsel agreed to the extension. (HOA Ex. 9). No Answer was ever filed although, by requesting a 30-day extension to file an Answer, it appeared that Penn National was engaging in providing a defense. An Order of Default was entered on December 22, 2014, more than seven (7) months after Penn National requested an extension to file an Answer. (HOA Ex. 12). At no point in time during the pendency of the underlying case is there any evidence that Penn National considered filing a declaratory judgment action or having separate adjusters for the liability and coverage aspects of the claim as is an insurance industry standard as testified to by the HOA's expert, Maurice Kraut. Trial Tr. vol. 1, 694:19-695:16; 924:17-925:13.

On the Saturday morning of May 10, 2014, Gayle McLeod made a cold call on JJA by showing up unannounced and walking into the open garage of Mr. Castillo's home in Huntersville, North Carolina, and knocking on his backdoor. She spoke with Mr. Castillo (JJA) in his garage for ten (10) minutes. Trial Tr. vol. 2, 96:18-20. During this ten (10) minute conversation, Ms. McLeod asked Mr. Castillo if JJA wanted Penn National to defend it in the underlying case but did not disclose any other relevant information regarding the claim that was known to Penn National. Trial Tr. vol. 2, 93:9-13; 99:23-101:7; 125:11-14; 125:25-126:3. Penn National could have had Ms. McLeod provide JJA with the HOA's forensic engineer's report, discuss the details of the HOA's forensic engineer report, and also could have disclosed that the liability exposure to JJA, including Mr. Castillo personally, was in the multi-millions of dollars; facts known to Penn National for over

eleven (11) months prior to Ms. McLeod's cold call. Penn National also could have had Ms. McLeod inform Mr. Castillo that the defense she was inquiring as to whether or not JJA wanted was a policy benefit that already existed as part of JJA paying insurance premiums to Penn National for eight (8) years and that JJA would be waiving a policy benefit to which it was entitled at no cost if JJA declined a defense. Trial Tr. vol. 2, 125:11-14; 125:25-126:3. Ms. McLeod did not provide this information to Mr. Castillo during the cold call because she was not asked to do so by Penn National. *Id.* Mr. Castillo (JJA) responded that he did not want a defense. Without providing JJA the requisite information that Penn National had in its possession, Penn National misled JJA with respect to the claim, coverage and policy benefits to which it was entitled. Mr. Castillo, a sixty-one (61) year old man with a 6th-grade education, testified at trial that had he been told that he had already paid for Penn National to hire a lawyer as part of his premium payments that he would have told Ms. McLeod yes to Penn National hiring counsel to defend JJA in the underlying case. Trial Tr. vol. 2, 397:12-398:2. Penn National acknowledged at this point when Mr. Castillo and Ms. McLeod had the discussion in his garage, there was not anything JJA had refused to do that Penn National had asked him to do. Trial Tr. vol. 1, 367:2-6. Greg Gross testified that the opportunity to investigate the claim existed but Penn National made the decision not to perform an investigation because the insured did not request a defense. Trial Tr. vol. 1, 370:1-17. On August 11, 2014, following the face-to-face meeting between Gayle McLeod and Jose Castillo in Huntersville, North Carolina, Penn National sent additional ROR correspondence by certified mail to JJA again to the four-years-stale prior old former Ladson, South Carolina address. (HOA Ex. 15). This correspondence was never received by JJA.

Penn National sent the third and final ROR correspondence to JJA on October 2, 2014. (Pl. Exs. 35 and 36). This correspondence was sent by certified mail to both the four-years-stale prior

Ladson, South Carolina, address and the correct Huntersville, North Carolina address. (Pl. Exs. 35 and 36). The certified letter mailed to the Huntersville, North Carolina, address was returned to sender as unclaimed. (Pl. Ex. 58, 16). Mr. Castillo testified that he leaves his house at sunup to go to work and returns home at sundown and is not at home during daytime hours when mail delivery occurs. His working hours were 7:00 am to 7:00 or 8:00 pm at this time. Trial Tr. vol. 2, 367:21-25. This correspondence also could have been sent with a carbon copy regular first-class mail which would have been delivered to his residence with regular postal delivery which does not require a signature, but it was not. The ROR provided the following reasoning for declining coverage:

> Our office sent a representative of Capstone ISG to the residence of Jose Castillo located at 11227 Eastfield Road in Huntersville, North Carolina. Mr. Castillo explained to the representative of Capstone, ISG that he did not want Penn National to defend him or JJA for the aforementioned lawsuits. Therefore, Penn National Insurance will not provide a defense and/or indemnity for these lawsuits at this time.

(Pl. Exs. 35 and 36). The Penn National adjuster acknowledged that JJA never received this correspondence either. Trial Tr. vol. 1, 376:5-9. JJA was never informed by Penn National that it was denying coverage. Trial Tr. vol. 2, 372:14-23.

On December 16, 2014, Penn National's adjuster entered the following two (2) entries: 1) Coverage disclaimers in place. No further pushback. File closed to archives; 2) Coverage disclaimer; close if no push. (Pl. Ex. 58, 17). Thereafter on January 15, 2015, the adjuster's supervisor, Gary Gibson, entered the following entry:

> Reviewed on TL diary. I note the activity since my last review. Coverage was previously declined. The NI has not pursued further. The file has been closed w/o payment.
> I will not continue to follow this file. GHG should advise me of any adverse developments.

Id.

Penn National had the opportunity to investigate the claim and provide a defense to JJA but chose not to. As a result of Penn National's failure to provide JJA a defense, an Order of Default was entered against JJA on December 22, 2014, nearly nineteen (19) months after being on notice of the lawsuit. (HOA Ex. 12). Penn National was also put on notice of the entry of default by correspondence dated July 1, 2015, from HOA's Counsel, but did nothing. (Pl. Ex. 58, 17; HOA Ex. 12). Over a year later, on July 13, 2016, a Default Judgment was entered against JJA in the amount of $4,156,976.89 by the Honorable Dale Van Slambrook. (HOA Ex. 13). Post judgment interest has been accruing at the statutory rate. After the entry of the Judgment, JJA assigned all of its rights under the Penn National policies to the HOA by written assignment dated December 13, 2006. (HOA Ex. 20).

This Court finds that Penn National's home office in-house claims counsel, Adam Parsons, instructed adjuster Greg Gross as to the plan for adjusting JJA's claim and Greg Gross was charged with its implementation following Parsons' directive. This Court finds that Penn National would not hire counsel to defend JJA or investigate the HOA's claim against JJA until JJA affirmatively requested a defense regardless of whether the complaint triggered coverage – a condition to being provided a defense that does not exist in the policy. This Court finds that Penn National put its interests ahead of its insured by asking JJA whether it was requesting the valuable policy benefit of a defense to which it was already entitled. The Court also finds that Penn National failed to perform a reasonable investigation of this claim and knowingly misrepresented coverages under the policies and failed to disclose important information that it had in its possession to Mr. Castillo. The evidence is clear and convincing that the conduct of Penn National was willful, wanton, and in reckless disregard of JJA's rights causing harm.

Penn National's insurance expert in this case, Bernd Heinze, testified Penn National acted in bad faith in a 2007 matter in Delaware County, Pennsylvania in the case of *Pennsylvania National v. Johnson*. Mr. Heinze testified that in this 2007 case, Penn National failed to conduct an investigation of the facts surrounding the claim which was in derogation of the standards and practices of the insurance industry constituting bad faith. Trial Tr. vol. 2, 605:1-19. Mr. Heinze further testified that in the 2007 case, Penn National willingly took no part in the arbitration letting a damage award be entered against their insured and made no efforts to protect its insureds rights constituting bad faith. Trial Tr. vol. 2, 607:15-609:9. Additionally, Mr. Heinze testified that the failure of Penn National to file a declaratory judgment action was in derogation of the standards and practices of the insurance industry and in bad faith. Trial Tr. vol. 2, 609:10-25. According to Mr. Heinze, $6,000,000.00 in punitive damages were awarded against Penn National in this 2007 Pennsylvania case for purposes of punishing and deterring Penn National and other insurers in the same position from acting in a similar fashion in the future. Trial Tr. vol. 2, 610:1-10. Mr. Heinze sought to differentiate what appears to be similar conduct by Penn National in the instant case by relying on the insured tendering to Penn National in the 2007 Pennsylvania case. Trial Tr. vol. 2, 608:10-11.

Based on the foregoing, the HOA as assignee of JJA's policy rights is awarded punitive damages in the amount of $5,370,147.29.

C. Punitive Damages Due Process Review

"The United States Supreme Court has also set forth three guideposts that trial courts must apply to an award of punitive damages to determine whether the award violates due process." *James v. Horace Mann Ins. Co.*, 371 S.C. 187, 194, 638 S.E.2d 667, 670 (2006) (citing *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 575 (1996)). The *Gore* guideposts are: (1) the degree

of reprehensibility of the defendant's misconduct; (2) the disparity between the actual and potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. *Id.* at 196, 638 S.E.2d at 671 (citing *Gore* at 575). "In considering reprehensibility, a court should consider whether: (i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident." *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 587, 686 S.E.2d 176, 185 (2009) (citing *State Farm v. Campbell*, 538 U.S. 408, 419 (2003)). Moreover, "a court, when determining the reasonableness of a particular ratio of actual or potential harm to a punitive damages award, may consider: the likelihood that the award will deter the defendant from like conduct; whether the award is reasonably related to the harm likely to result from such conduct; and the defendant's ability to pay." *Id.* at 588, 686 S.E.2d at 185. "When identifying 'comparable cases' a court may consider: the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant's conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant." *Id.* at 588-89, 686 S.E.2d at 186.

The Supreme Court of South Carolina has held that "*Gamble* remains relevant to the post-judgment due process analysis, but only insofar as it adds substance to the *Gore* guideposts." *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 587, 686 S.E.2d 176, 185 (2009). "The Gamble factors are: (1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the

defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and (8) other factors deemed appropriate." *James v. Horace Mann Ins. Co.*, 371 S.C. 187, 194-95, 638 S.E.2d 667, 671 (2006) (citing *Gamble v. Stevenson*, 305 S.C. 104, 111-12, 406 S.E.2d 350, 354 (1991)). "The trial court is not required to make a finding of fact for each Gamble factor to uphold a punitive damages award." *Id.* at 195, 638 S.E.2d at 671 (citing *McGee v. Bruce Hosp. Sys.*, 321 S.C. 340, 346, 468 S.E.2d 633, 637 (1996)). Additionally, S.C. Code Ann. § 15-32-520 provides factors for analysis for a punitive damages award review.

A South Carolina statute also provides a cap on punitive damages:

> (A) Except as provided in subsections (B) and (C), an award of punitive damages may not exceed the greater of three times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of five hundred thousand dollars.
> (B) . . . If the jury returns a verdict for punitive damages in excess of the maximum amount specified in subsection (A), the trial court should first determine whether:
> (1) The wrongful conduct proven under this section was motivated primarily by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was known or approved by the managing agent, director, officer, or the person responsible for making policy decisions on behalf of the defendant . . .
> If the trial court determines that either item (1) or (2) apply, then punitive damages must not exceed the greater of four times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of two million dollars.
> (C) However, when the trial court determines one of the following apply, there shall be no cap on punitive damages:
> (1) At the time of injury, the defendant had an intent to harm and determines that the defendant's conduct did in fact harm the claimant; . . .

S.C. Code Ann. § 15-32-530.

In the hearing for punitive damages, Portrait and the HOA argued that the evidence supports both exceptions (B) and (C) of S.C. Code Ann. § 15-32-530. After considering the evidence including the testimony from Oliver G. Wood, Ph.D., an expert in the field of economics, and performing an analysis of the *Gore* and *Gamble* factors, along with an analysis of the punitive damages statutory factors set forth in S.C. Code Ann. § 15-32-520, this Court finds that a punitive damages award of an amount equal to the amount awarded in actual damages for bad faith to Portrait Homes ($3,892,791.24) and an amount equal to the amount awarded in actual damages for bad faith to the HOA ($5,370,147.29), as the assignee of JJA's claims, are appropriate and not violative of due process. Therefore, this Court does not need to determine whether exceptions (B) and (C) of S.C. Code Ann. § 15-32-530 are applicable.

1. <u>As to Portrait Homes</u>

a. *Gore* Factors

(I) the degree of reprehensibility of the defendant's misconduct

There is clear and convincing evidence that the conduct of Penn National was willful, wanton, and in reckless disregard of Portrait's rights. The harm caused to Portrait was economic:

> After Penn National denied coverage to Portrait Homes in the fall of 2014, the defense of Portrait Homes in the underlying construction defect cases continued to be handled by Hood Law Firm. O'Neal testified that for the remainder of 2014 and 2015 and into 2016, they were "going hot and heavy in defending the case for our clients. There are tens of depositions going on, expert reviews, expert reports, discovery all over the place." (Trial Transcript, p. 106, line 2-10). O'Neal testified the prospects for the defense were grim. The Persimmon townhome community was a massive project and the construction defect litigation was one of the larger cases that had ever been filed in Berkeley County. O'Neal testified that "larger verdicts were starting to come out. And with the amount of damage that we saw in this, it was not a good outlook for the construction side of the case." (Trial Transcript, p. 107, line 19 – p. 108, line 14).

Order Regarding Additional Insured Coverage, p. 46. Mr. O'Neal further testified that the entire amount of the $3,850,000.00 paid to settle the underlying case was attributable to JJA Framing's work. Trial Tr. vol. 1, 114:23-115:14. Penn National knew at the inception of the claim that the liability exposure was in the multi-millions of dollars and sought to avoid its policy obligations. A plan by home office in-house claims counsel was implemented at the inception of the claim to deny Portrait policy benefits. The manner in which this claim was adjusted was contrary to S.C. Code Ann. § 38-59-20 although this Court recognizes that this statute is instructive and does not provide a private cause of action. Portrait's claim for additional insured status was doomed for denial at the inception of the claim. Penn National failed to perform a reasonable investigation of this claim and knowingly misrepresented coverages under the policies to Portrait in the claim denial. Greg Gross referred to the untrue basis communicated to Portrait for denying its claim as "not right"[12]; Adam Parsons described it as "inaccurate"[13]; and Penn National's expert, Bernd Heinze, referred to it as the "opposite of what was true".

(2) the disparity between the actual and potential harm suffered by the plaintiff and the punitive damages award

The United States Supreme Court set forth in *Campbell*:

> [W]e have been reluctant to identify concrete constitutional limits on the ratio between harm, or potential harm, to the plaintiff and the punitive damages award. We decline again to impose a bright-line ratio which a punitive damages award cannot exceed. Our jurisprudence and the principles it has now established demonstrate, however, that, in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.

[12] Trial Tr. vol, 1, 434:23-24.
[13] Trial Tr. vol. 2, 172:11-173:38

State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 424-25 (2003) (citations omitted). The punitive damages award of this Court is a single digit ratio of one which is within the statutory cap provided by the legislature in S.C. Code Ann. § 15-32-530. This award also comports with the single digit multiplier guidance set forth in *Campbell* and by the South Carolina Supreme Court in *James v. Horace Mann Ins. Co.*, 371 S.C. 187, 638 S.E.2d 667 (2006), wherein an award of 6.82 was upheld in that case wherein the insurer denied the insured's claim based on a false misrepresentation by the claims adjuster to the insured. Therefore, the disparity between the actual and potential harm suffered by Portrait and the punitive damages award comports with due process.

(3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.

The director of the South Carolina Department of Insurance can impose administrative penalties on insurers for violations of the insurance law. As set forth in S.C. Code Ann. § 38-2-10 these penalties for each violation of the insurance laws are: (1) a fine not to exceed $15,000 if the conduct was not willful or a fine not to exceed $30,000 if the conduct was willful; (2) suspend or revoke the violator's authority to do business in the state; or (3) both. After reviewing this statute in *James v. Horace Mann Ins. Co.*, the South Carolina Supreme Court found that "the statutory penalties are set at 'such a low level, there is little basis for comparing it with any meaningful punitive damage award.'" 371 S.C. at 197, 638 S.E.2d at 672 (quoting *Collins Entertainment Corp. v. Coats & Coats Rental Amusement,* 355 S.C. 125, 142, 584 S.E.2d 120, 129 (Ct. App. 2003)). Therefore, the Court in *James* concluded "[t]he punitive damages award was reasonable; was not the result of passion, caprice, or prejudice; and d[id] not violate due process under *Gore*." *Id.* For the same reasoning, this Court finds the punitive damage award in this case is reasonable and does not violate due process under *Gore* also.

2. As to Persimmon HOA

a. Gore Factors

(1) the degree of reprehensibility of the defendant's misconduct:

There is clear and convincing evidence that the conduct of Penn National was willful, wanton, and in reckless disregard of JJA (Castillo's) rights. The harm caused was economic. Here, Jose Castillo, a 61-year-old man with a sixth-grade education that had accumulated significant assets, had financial vulnerability in that a judgment could and ultimately would be entered against him on July 13, 2016, in the amount of $4,156,976.89 by the Honorable Dale Van Slambrook. (HOA Ex. 13). Protecting against this sort of harm by providing a defense to claims and indemnity payments is the essential purpose of policies of insurance. Moreover, the harm was not a mere accident on Penn National's part. Here, Penn had decided that it was not going to investigate and/or defend unless Mr. Castillo *affirmatively* asked for a Defense even though the duty to defend was triggered by the language of the underlying complaint – an obligation that is mentioned nowhere within any of the insurance policies for which Penn National issued to Mr. Castillo. Penn National's decision was not simply an oversight or mere inadvertence; it was a conscious and willful decision as reflected throughout Penn National's claim log and trial testimony. Greg Gross testified that it was Penn National's corporate policy that an insured must request a defense before Penn National will provide a defense, regardless of whether the pleadings trigger coverage or not and prior to adjusting and/or investigating the claim:

> Q: Well, essentially, I'll say that if an insured is required to demand a defense, that is not a condition of the policy. There is no words in the insurance policy that says the insured has to pick up the phone, call, write a letter and say, Penn National, provide me a defense. That is not contained within the policies of insurance at Penn National. Do you agree with that?

A: That is not contained in the policies that I ever saw at Penn National.
Q: So essentially by making that a requirement for a defense, it is the creation of an additional condition precedent to coverage and that's wrong.
A: If you say so.
Q: I'm asking you your opinion. When you were a claims adjustor at Penn National.
A: I was doing what I was told to do.
Q: I understand that, and we're going to get to that. But Greg Gross's opinion at Penn National when he was told to not adjust a claim until an insured requested a defense, you went to management and you told them you didn't believe that was correct, that you didn't believe that was proper, you didn't believe that was right?
A: That is correct.
Q: And you were just following orders from above?
A: Correct.
Q: Okay. And we talked about these other insurance companies that you adjusted claims for Royal Sun, Hartford, Montgomery, Liberty. Did any of those carriers ever ask or try to impose that requirement that didn't exist in the policy?
A: No.

Trial Tr. vol. 1, 332:14-333:23 (Testimony of Greg Gross). Mr. Gross discussed his concerns about this inappropriate claim practice with management but was apparently ignored. Penn National consciously had its employees act in contravention of JJA's policy rights.

Penn National further misled Mr. Castillo by not disclosing any other relevant information regarding the claim known to Penn National during the face-to-face meeting with him in his garage. Trial Tr. vol. 2, 93:9-13; 99:23-101:7; 125:11-14; 125:25-126:3. Penn National could have had Ms. McLeod provide JJA with the HOA's forensic engineer's report, discuss the details of the HOA's forensic engineer report, and also could have disclosed that the liability exposure to JJA, including Mr. Castillo personally, was in the multi-millions of dollars; facts known to Penn National for over eleven (11) months prior to Ms. McLeod's cold call. Penn National also could have had Ms. McLeod inform Mr. Castillo that the defense she was inquiring as to whether or not

JJA wanted was a policy benefit that already existed as part of JJA paying insurance premiums to Penn National for eight (8) years and that JJA would be waiving a policy benefit to which it was entitled at no cost if JJA declined a defense. Trial Tr. vol. 2, 125:11-14; 125:25-126:3. Ms. McLeod did not provide this information to Mr. Castillo during the cold call because she was not asked to do so by Penn National. *Id.*

This Court found that Penn National put its interests ahead of its insured by asking JJA whether it was requesting the valuable policy benefit of a defense to which it was already entitled. The Court also found that Penn National failed to perform a reasonable investigation of this claim and knowingly misrepresented coverages under the policies and failed to disclose important information that it had in its possession to Mr. Castillo. The evidence is clear and convincing that the conduct of Penn National was willful, wanton, and in reckless disregard of JJA's rights causing harm.

"The insurance business is affected with a public interest." *Nichols v. State Farm Mut. Auto. Ins. Co.*, 279 S.C. 336, 340, 306 S.E.2d 616, 619 (1983) (citing *Hinds v. United Ins. Co. of America,* 248 S.C. 285, 149 S.E.2d 771 (1966)). "An insured ordinarily possesses no bargaining power and no means of protecting himself from the kind of treatment which Respondent complained. 'An insured does not contract to obtain any kind of commercial advantage or leverage but only to protect himself against the spectre of accidental [or unavoidable] loss.'" *Id.* (quoting *Trimper v. Nationwide Ins. Co.*, 540 F.Supp. 1188, 1193 (D.S.C. 1982)). Here, Penn National put its interests of attempting to avoid a multi-million-dollar liability exposure above those of JJA, an insured who contracted to protect himself from the type of claim which triggered coverage filed by the HOA's Complaint in the underlying case. Greg Gross moreover testified as to the manner in which a claim should be adjusted:

Q: When an adjustor for Penn National is investigating and deciding a claim, they've got to do it in a timely manner, correct?
A: Yes.
Q: They have to be thorough in their investigation and in their decision, correct?
A: Yes.
Q: And fairness requires them to be looking for coverage, not looking for a way to deny coverage, correct?
A: Under normal circumstances, yes.
Q: And resolving any doubts in favor of coverage and in favor of the insured, correct?
A: Under normal circumstances, yes.
. . .
Q: Help the insured get the maximum benefits to which they're entitled to under their contract of insurance?
A: Yes.
Q: Treat the insured how you would want to be treated?
A: Correct.
Q: Resolve ambiguities in favor of your insured?
A: Correct.
Q: And apply the terms and conditions of the policy fairly?
A: Correct.

Trial Tr. vol. 1, 293-294, 330. JJA's claim was not adjusted in the manner in which Greg Gross testified that claims should be handled.

(2) the disparity between the actual and potential harm suffered by the plaintiff and the punitive damages award:

As discussed above, the United States Supreme Court set forth in *Campbell*:

> [W]e have been reluctant to identify concrete constitutional limits on the ratio between harm, or potential harm, to the plaintiff and the punitive damages award. We decline again to impose a bright-line ratio which a punitive damages award cannot exceed. Our jurisprudence and the principles it has now established demonstrate, however, that, in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.

State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 424-25 (2003) (citations omitted). The punitive damages award of this Court is a single digit ratio of one which is within the statutory cap

provided by the legislature in S.C. Code Ann. § 15-32-530. This award also comports with the single digit multiplier guidance set forth in *Campbell* and by the South Carolina Supreme Court in *James v. Horace Mann Ins. Co.*, 371 S.C. 187, 638 S.E.2d 667 (2006), wherein an award of 6.82 was upheld in the case wherein the insurer denied the insured's claim based on a false misrepresentation by the claims adjuster to the insured. Therefore, the disparity between the actual and potential harm suffered by the HOA, as the assignee of JJA's policy rights, and the punitive damages award comports with due process.

(3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases:

As discussed above, the director of the South Carolina Department of Insurance can impose administrative penalties on insurers for violations of the insurance law. As set forth in S.C. Code Ann. § 38-2-10 these penalties for each violation of the insurance laws are: (1) a fine not to exceed $15,000 if the conduct was not willful or a fine not to exceed $30,000 if the conduct was willful; (2) suspend or revoke the violator's authority to do business in the state; or (3) both. After reviewing this statute in *James v. Horace Mann Ins. Co.*, the South Carolina Supreme Court found that "the statutory penalties are set at 'such a low level, there is little basis for comparing it with any meaningful punitive damage award.'" 371 S.C. at 197, 638 S.E.2d at 672 (quoting *Collins Entertainment Corp. v. Coats & Coats Rental Amusement,* 355 S.C. 125, 142, 584 S.E.2d 120, 129 (Ct. App. 2003)). Therefore, the Court in *James* concluded "[t]he punitive damages award was reasonable; was not the result of passion, caprice, or prejudice; and d[id] not violate due process under *Gore*." *Id.* This Court finds the punitive damage award in the case is reasonable and does not violate due process under *Gore* also.

3. *Gamble* Factors and S.C. Code Ann. § 15-32-520 Factors

In determining the punitive damages awards for Portrait and the HOA, the Court also evaluated the *Gamble* factors and S.C. Code Ann. § 15-32-520 as it would consider in performing a post-verdict review of a jury punitive damage award. After careful consideration of these factors, the Court finds that the punitive damages awards in the case are reasonable and do not violate due process.

To the extent an argument by Penn National is not specifically addressed in this Order, the argument is rejected.

THEREFORE, it is ordered that Portrait Homes is entitled to judgment in the following amounts:

Breach of Contract—Duty to Defend	$	42,791.24
Breach of Contract—Duty to Indemnify	$	2,500,000.00
Prejudgment Interest (8.75% x $2,542,791.24 x 1,325 days [03/107/16 - 10/22/19]):	$	807,693.50
Attorney Fees/Costs	$	250,003.26
Bad Faith Refusal to Pay	$	3,892,791.24
Punitive Damages	$	3,892,791.24
Total:	**$**	**11,386,070.48**

THEREFORE, it is further ordered that the HOA is entitled to judgment in the following amounts:

Bad Faith Refusal to Pay	$	5,370,147.29
HOA's Judgment Creditor Claim	$	5,213,170.40
Punitive Damages	$	5,370,147.29
Total:	**$**	**15,953,464.98**

IT IS SO ORDERED.

Roger M. Young Sr.
Circuit Court Judge

Moncks Corner, SC

Exhibit A

TIME ON RISK ANALYSIS BASED ON POLICY FORM CG 0001 (10/01)

Summary

Damages Allocated by Policy Year

Units	Policy Year	Covered
43.75	2003 - 2004	$ 500,000.00
43.75	2004 - 2005	$ 500,000.00
43.75	2005 - 2006	$ 500,000.00
58.25	2006 - 2007	$ 500,000.00
58.25	2007 - 2008	$ 500,000.00
	Total Recoverable:	**$ 2,500,000.00**

Damages Unrecoverable Because Exhausted

Units	Category	Uncovered
2	Documented JJA with Documented C/O Dates	$ 26,651.94
37	Documented JJA with Undocumented/Assigned C/O Dates	$ 327,216.76
49	Undocumented Framer Assigned to JJA with Documented C/O Dates and Assigned C/O Dates	$ 470,374.81
	Units Documented to be JJA with Documented C/O Dates But Portion of Damages Unrecoverable Because of Per Year Exhaustion	$ 525,756.49
	Total Unrecoverable:	**$ 1,350,000.00**

Key Dates and Numbers for TOR Analysis

Start Date:	C/O + 60 Days
End Date (Sisnroy Scope of Repair):	12/09/2012
Total Damages:	$ 3,850,000.00
Total Documented JJA Units:	287
Total Undocumented Units Assigned to JJA:	49
Damage Per Unit:	$ 11,458.33

Damages Per Unit Documented to be JJA
Allocated by Policy Year: 2003 - 2004

	Address	C/O		Plus 60 Days		Total	
172	Darcy	12/18/2003		02/16/2004	$	11,458.33	
173	Darcy	12/18/2003		02/16/2004	$	11,458.33	
100	Macy	12/23/2003		02/21/2004	$	11,458.33	
101	Macy	12/23/2003		02/21/2004	$	11,458.33	
175	Darcy	01/14/2004		03/14/2004	$	11,458.33	
123	Macy	01/23/2004		03/23/2004	$	11,458.33	
124	Macy	01/23/2004		03/23/2004	$	11,458.33	
127	Macy	01/27/2004		03/27/2004	$	11,458.33	
128	Macy	01/27/2004		03/27/2004	$	11,458.33	
125	Macy	01/29/2004		03/29/2004	$	11,458.33	
103	Macy	02/02/2004		04/02/2004	$	11,458.33	
145	Darcy	02/06/2004		04/06/2004	$	11,458.33	
148	Darcy	02/09/2004		04/09/2004	$	11,458.33	
144	Darcy	02/11/2004		04/11/2004	$	11,458.33	
147	Darcy	02/17/2004		04/17/2004	$	11,458.33	
146	Darcy	02/20/2004		04/20/2004	$	11,458.33	
176	Darcy	02/27/2004		04/27/2004	$	11,458.33	
137	Darcy	03/26/2004		05/25/2004	$	11,458.33	
138	Darcy	03/29/2004		05/28/2004	$	11,458.33	
139	Darcy	03/29/2004		05/28/2004	$	11,458.33	
141	Darcy	03/29/2004		05/28/2004	$	11,458.33	
142	Darcy	03/29/2004		05/28/2004	$	11,458.33	
101	Taylor	03/30/2004	[]	05/29/2004	$	11,458.33	
102	Taylor	03/30/2004		05/29/2004	$	11,458.33	
103	Taylor	03/30/2004		05/29/2004	$	11,458.33	
104	Taylor	03/30/2004		05/29/2004	$	11,458.33	
105	Taylor	03/30/2004	[]	05/29/2004	$	11,458.33	
106	Taylor	03/30/2004		05/29/2004	$	11,458.33	
108	Taylor	03/30/2004		05/29/2004	$	11,458.33	
134	Macy	04/23/2004		06/22/2004	$	11,458.33	
136	Macy	04/23/2004		06/22/2004	$	11,458.33	
137	Macy	04/23/2004		06/22/2004	$	11,458.33	
112	Brockman	04/25/2004		06/24/2004	$	11,458.33	
131	Brockman	04/28/2004		06/27/2004	$	11,458.33	
133	Macy	04/28/2004		06/27/2004	$	11,458.33	
114	Macy	04/29/2004		06/28/2004	$	11,458.33	
114	Macy	04/29/2004		06/28/2004	$	11,458.33	
116	Macy	05/03/2004		07/02/2004	$	11,458.33	
115	Macy	05/06/2004		07/05/2004	$	11,458.33	
125	Brockman	05/09/2004		07/08/2004	$	11,458.33	
101	Madison	05/14/2004		07/13/2004	$	11,458.33	
117	Macy	05/21/2004		07/20/2004	$	11,458.33	
100	Madison	05/21/2004		07/20/2004	$	11,458.33	
174	Darcy	05/26/2004		07/25/2004	$	7,291.81	(Exhaustion)

TOTAL UNITS: 43.5 TOTAL DAMAGES ALLOCATED: $ 500,000.00

Damages Per Unit Documented to be JJA
Allocated by Policy Year: 2004 - 2005

	Address	C/O	Plus 60 Days		Total	
119	Brockman	11/18/2004	01/17/2005	$	11,458.33	
118	Brockman	11/22/2004	01/21/2005	$	11,458.33	
135	Darcy	11/22/2004	01/21/2005	$	11,458.33	
117	Brockman	12/08/2004	02/06/2005	$	11,458.33	
103	Darcy	12/14/2004	02/12/2005	$	11,458.33	
104	Darcy	12/14/2004	02/12/2005	$	11,458.33	
105	Darcy	12/14/2004	02/12/2005	$	11,458.33	
120	Darcy	12/16/2004	02/14/2005	$	11,458.33	
121	Darcy	12/16/2004	02/14/2005	$	11,458.33	
111	Darcy	12/19/2004	02/17/2005	$	11,458.33	
112	Darcy	12/19/2004	02/17/2005	$	11,458.33	
113	Darcy	12/19/2004	02/17/2005	$	11,458.33	
116	Darcy	12/19/2004	02/17/2005	$	11,458.33	
113	Brockman	12/22/2004	02/20/2005	$	11,458.33	
101	Darcy	12/23/2004	02/21/2005	$	11,458.33	
102	Darcy	12/27/2004	02/25/2005	$	11,458.33	
120	Brockman	12/29/2004	02/27/2005	$	11,458.33	
117	Darcy	12/29/2004	02/27/2005	$	11,458.33	
140	Darcy	12/30/2004	02/28/2005	$	11,458.33	
115	Darcy	01/24/2005	03/25/2005	$	11,458.33	
115	Brockman	01/28/2005	03/29/2005	$	11,458.33	
131	Darcy	01/28/2005	03/29/2005	$	11,458.33	
117	Davenport	01/28/2005	03/29/2005	$	11,458.33	
118	Davenport	02/01/2005	04/02/2005	$	11,458.33	
106	Madison	02/09/2005	04/10/2005	$	11,458.33	
122	Brockman	02/10/2005	04/11/2005	$	11,458.33	
139	Brockman	02/23/2005	04/24/2005	$	11,458.33	
141	Brockman	02/23/2005	04/24/2005	$	11,458.33	
109	Brockman	02/24/2005	04/25/2005	$	11,458.33	
137	Brockman	02/24/2005	04/25/2005	$	11,458.33	
138	Brockman	02/24/2005	04/25/2005	$	11,458.33	
142	Brockman	02/24/2005	04/25/2005	$	11,458.33	
110	Brockman	03/07/2005	05/06/2005	$	11,458.33	
111	Brockman	03/10/2005	05/09/2005	$	11,458.33	
111	Davenport	03/10/2005	05/09/2005	$	11,458.33	
126	Brockman	03/17/2005	05/16/2005	$	11,458.33	
116	Davenport	03/21/2005	05/20/2005	$	11,458.33	
108	Brockman	03/23/2005	05/22/2005	$	11,458.33	
129	Brockman	03/31/2005	05/30/2005	$	11,458.33	
100	Darcy	03/31/2005	05/30/2005	$	11,458.33	
123	Darcy	03/31/2005	05/30/2005	$	11,458.33	
124	Darcy	03/31/2005	05/30/2005	$	11,458.33	
125	Darcy	03/31/2005	05/30/2005	$	11,458.33	
126	Darcy	03/31/2005	05/30/2005	$	7,291.81	(Exhaustion)

TOTAL UNITS: 43.5 TOTAL DAMAGES ALLOCATED: $ 500,000.00

Damages Per Unit Documented to be JJA
Allocated by Policy Year: 2005 - 2006

	Address	C/O	Plus 60 Days		Total	
112	Taylor	11/08/2005	01/07/2006	$	11,458.33	
116	Taylor	11/15/2005	01/14/2006	$	11,458.33	
139	Taylor	11/15/2005	01/14/2006	$	11,458.33	
114	Taylor	11/23/2005	01/22/2006	$	11,458.33	
225	Darcy	01/10/2006	03/11/2006	$	11,458.33	
226	Darcy	01/10/2006	03/11/2006	$	11,458.33	
227	Darcy	01/10/2006	03/11/2006	$	11,458.33	
230	Darcy	01/13/2006	03/14/2006	$	11,458.33	
231	Darcy	01/13/2006	03/14/2006	$	11,458.33	
237	Darcy	01/13/2006	03/14/2006	$	11,458.33	
228	Darcy	01/17/2006	03/18/2006	$	11,458.33	
229	Darcy	01/17/2006	03/18/2006	$	11,458.33	
232	Darcy	01/17/2006	03/18/2006	$	11,458.33	
233	Darcy	01/17/2006	03/18/2006	$	11,458.33	
234	Darcy	01/17/2006	03/18/2006	$	11,458.33	
235	Darcy	01/17/2006	03/18/2006	$	11,458.33	
236	Darcy	01/17/2006	03/18/2006	$	11,458.33	
238	Darcy	01/26/2006	03/27/2006	$	11,458.33	
239	Darcy	01/26/2006	03/27/2006	$	11,458.33	
240	Darcy	01/26/2006	03/27/2006	$	11,458.33	
241	Darcy	01/26/2006	03/27/2006	$	11,458.33	
242	Darcy	01/26/2006	03/27/2006	$	11,458.33	
245	Darcy	02/08/2006	04/09/2006	$	11,458.33	
246	Darcy	02/08/2006	04/09/2006	$	11,458.33	
247	Darcy	02/08/2006	04/09/2006	$	11,458.33	
243	Darcy	02/13/2006	04/14/2006	$	11,458.33	
244	Darcy	02/13/2006	04/14/2006	$	11,458.33	
198	Darcy	02/15/2006	04/16/2006	$	11,458.33	
199	Darcy	02/21/2006	04/22/2006	$	11,458.33	
200	Darcy	02/21/2006	04/22/2006	$	11,458.33	
220	Darcy	02/24/2006	04/25/2006	$	11,458.33	
221	Darcy	02/24/2006	04/25/2006	$	11,458.33	
222	Darcy	02/24/2006	04/25/2006	$	11,458.33	
223	Darcy	02/24/2006	04/25/2006	$	11,458.33	
224	Darcy	02/24/2006	04/25/2006	$	11,458.33	
180	Darcy	04/24/2006	06/23/2006	$	11,458.33	
182	Darcy	04/24/2006	06/23/2006	$	11,458.33	
205	Darcy	05/02/2006	07/01/2006	$	11,458.33	
202	Darcy	05/05/2006	07/04/2006	$	11,458.33	
203	Darcy	05/05/2006	07/04/2006	$	11,458.33	
186	Darcy	05/15/2006	07/14/2006	$	11,458.33	
187	Darcy	05/15/2006	07/14/2006	$	11,458.33	
188	Darcy	05/15/2006	07/14/2006	$	11,458.33	
189	Darcy	05/15/2006	07/14/2006	$	7,291.81	(Exhaustion)

TOTAL UNITS: 43.5 TOTAL DAMAGES ALLOCATED: $ 500,000.00

Damages Per Unit Documented to be JJA Allocated by Policy Year: 2006 - 2007

	Address	C/O	Plus 60 Days	Total Days to 12/09/12	Total Per Diem	Days After 12/05/06	Modified TOR Calculation	Total	
174	Darcy	05/26/2004	07/25/2004	3059	3.75	2196	N/A	$ 933.91	
100	Hornby	05/28/2004	07/27/2004	3057	3.75	2196	8231.11	$ 8,231.11	
101	Hornby	05/28/2004	07/27/2004	3057	3.75	2196	8231.11	$ 8,231.11	
102	Hornby	05/28/2004	07/27/2004	3057	3.75	2196	8231.11	$ 8,231.11	
129	Hornby	06/23/2004	08/22/2004	3031	3.78	2196	8301.71	$ 8,301.71	
127	Hornby	06/25/2004	08/24/2004	3029	3.78	2196	8307.19	$ 8,307.19	
130	Hornby	06/25/2004	08/24/2004	3029	3.78	2196	8307.19	$ 8,307.19	
126	Hornby	06/28/2004	08/27/2004	3026	3.79	2196	8315.43	$ 8,315.43	
112	Davenport	06/30/2004	08/29/2004	3024	3.79	2196	8320.93	$ 8,320.93	
113	Davenport	06/30/2004	08/29/2004	3024	3.79	2196	8320.93	$ 8,320.93	
135	Macy	07/09/2004	09/07/2004	3015	3.80	2196	8345.77	$ 8,345.77	
128	Hornby	07/19/2004	09/17/2004	3005	3.81	2196	8373.54	$ 8,373.54	
126	Macy	07/20/2004	09/18/2004	3004	3.81	2196	8376.33	$ 8,376.33	
131	Hornby	07/23/2004	09/21/2004	3001	3.82	2196	8384.70	$ 8,384.70	
134	Hornby	07/23/2004	09/21/2004	3001	3.82	2196	8384.70	$ 8,384.70	
138	Hornby	07/28/2004	09/26/2004	2996	3.82	2196	8398.70	$ 8,398.70	
103	Hornby	07/30/2004	09/28/2004	2994	3.83	2196	8404.31	$ 8,404.31	
137	Hornby	08/02/2004	10/01/2004	2991	3.83	2196	8412.74	$ 8,412.74	
133	Hornby	08/18/2004	10/17/2004	2975	3.85	2196	8457.98	$ 8,457.98	
135	Hornby	08/18/2004	10/17/2004	2975	3.85	2196	8457.98	$ 8,457.98	
136	Hornby	08/18/2004 []	10/17/2004	2975	3.85	2196	8457.98	$ 8,457.98	
122	Darcy	08/24/2004	10/23/2004	2969	3.86	2196	8475.07	$ 8,475.07	
132	Hornby	08/25/2004	10/24/2004	2968	3.86	2196	8477.93	$ 8,477.93	
103	Madison	08/25/2004	10/24/2004	2968	3.86	2196	8477.93	$ 8,477.93	
134	Darcy	08/30/2004	10/29/2004	2963	3.87	2196	8492.24	$ 8,492.24	
143	Darcy	08/30/2004	10/29/2004	2963	3.87	2196	8492.24	$ 8,492.24	
130	Darcy	08/31/2004	10/30/2004	2962	3.87	2196	8495.10	$ 8,495.10	
132	Darcy	08/31/2004	10/30/2004	2962	3.87	2196	8495.10	$ 8,495.10	
133	Darcy	08/31/2004	10/30/2004	2962	3.87	2196	8495.10	$ 8,495.10	
114	Davenport	09/01/2004	10/31/2004	2961	3.87	2196	8497.97	$ 8,497.97	
101	Greyson	09/10/2004	11/09/2004	2952	3.88	2196	8523.88	$ 8,523.88	
103	Greyson	09/10/2004	11/09/2004	2952	3.88	2196	8523.88	$ 8,523.88	
107	Madison	09/17/2004	11/16/2004	2945	3.89	2196	8544.14	$ 8,544.14	
108	Madison	09/20/2004	11/19/2004	2942	3.89	2196	8552.85	$ 8,552.85	
100	Greyson	09/22/2004	11/21/2004	2940	3.90	2196	8558.67	$ 8,558.67	
102	Greyson	09/22/2004	11/21/2004	2940	3.90	2196	8558.67	$ 8,558.67	
119	Darcy	09/28/2004	11/27/2004	2934	3.91	2196	8576.17	$ 8,576.17	
104	Madison	09/29/2004	11/28/2004	2933	3.91	2196	8579.10	$ 8,579.10	
105	Madison	09/30/2004	11/29/2004	2932	3.91	2196	8582.02	$ 8,582.02	
123	Brockman	10/26/2004	12/25/2004	2906	3.94	2196	8658.81	$ 8,658.81	
102	Madison	10/26/2004	12/25/2004	2906	3.94	2196	8658.81	$ 8,658.81	
126	Darcy	03/31/2005	05/30/2005	2750	4.17	2196	N/A	$ 1,858.19	
127	Darcy	03/31/2005	05/30/2005	2750	4.17	2196	9150.00	$ 9,150.00	
129	Darcy	03/31/2005	05/30/2005	2750	4.17	2196	9150.00	$ 9,150.00	
140	Brockman	04/06/2005	06/05/2005	2744	4.18	2196	9170.00	$ 9,170.00	
128	Brockman	04/15/2005	06/14/2005	2735	4.19	2196	9200.18	$ 9,200.18	
130	Brockman	04/25/2005	06/24/2005	2725	4.20	2196	9233.94	$ 9,233.94	
143	Brockman	04/27/2005	06/26/2005	2723	4.21	2196	9240.72	$ 9,240.72	
132	Brockman	04/28/2005	06/27/2005	2722	4.21	2196	9244.12	$ 9,244.12	
115	Davenport	04/28/2005	06/27/2005	2722	4.21	2196	9244.12	$ 9,244.12	
126	Davenport	04/28/2005	06/27/2005	2722	4.21	2196	9244.12	$ 9,244.12	
127	Davenport	04/28/2005	06/27/2005	2722	4.21	2196	9244.12	$ 9,244.12	
114	Brockman	04/29/2005	06/28/2005	2721	4.21	2196	9247.52	$ 9,247.52	
136	Brockman	04/29/2005	06/28/2005	2721	4.21	2196	9247.52	$ 9,247.52	
128	Davenport	04/29/2005	06/28/2005	2721	4.21	2196	9247.52	$ 9,247.52	
132	Davenport	04/29/2005	06/28/2005	2721	4.21	2196	9247.52	$ 9,247.52	
128	Darcy	05/16/2005	07/15/2005	2704	4.24	2196	9305.66	$ 9,305.66	
134	Brockman	05/18/2005	07/17/2005	2702	4.24	2196	9312.54	$ 9,312.54	
129	Davenport	05/18/2005	07/17/2005	2702	4.24	2196	9312.54	$ 9,312.54	
133	Brockman	05/27/2005	07/26/2005	2702	4.24	2196	9312.54	$ 2,428.65	(Exhausted)

TOTAL UNITS: 57.75

TOTAL DAMAGES ALLOCATED: $ 500,000.00

Damages Per Unit Documented to be JJA Allocated by Policy Year: 2007 - 2008

	Address	C/O	Plus 60 Days	Total Days to 12/09/12	Total Per Diem	Days After 12/05/07	Modified TOR Calculation	Total
133	Brockman	05/27/2005	07/26/2005	2693	4.25	1831	N/A	$ 6,883.89
119	Davenport	05/27/2005	07/26/2005	2693	4.25	1831	7790.64	$ 7,790.64
104	Hornby	05/28/2005	07/27/2005	2692	4.26	1831	7793.54	$ 7,793.54
131	Davenport	06/14/2005	08/13/2005	2675	4.28	1831	7843.07	$ 7,843.07
107	Brockman	06/17/2005	08/16/2005	2672	4.29	1831	7851.87	$ 7,851.87
114	Darcy	06/17/2005	08/16/2005	2672	4.29	1831	7851.87	$ 7,851.87
101	Brockman	06/30/2005	08/29/2005	2659	4.31	1831	7890.26	$ 7,890.26
105	Brockman	06/30/2005	08/29/2005	2659	4.31	1831	7890.26	$ 7,890.26
106	Brockman	06/30/2005	08/29/2005	2659	4.31	1831	7890.26	$ 7,890.26
135	Brockman	06/30/2005	08/29/2005	2659	4.31	1831	7890.26	$ 7,890.26
100	Brockman	07/15/2005	09/13/2005	2644	4.33	1831	7935.02	$ 7,935.02
104	Brockman	07/20/2005	09/18/2005	2639	4.34	1831	7950.06	$ 7,950.06
120	Davenport	07/27/2005	09/25/2005	2632	4.35	1831	7971.20	$ 7,971.20
122	Davenport	07/27/2005	09/25/2005	2632	4.35	1831	7971.20	$ 7,971.20
124	Davenport	07/27/2005	09/25/2005	2632	4.35	1831	7971.20	$ 7,971.20
125	Davenport	07/27/2005	09/25/2005	2632	4.35	1831	7971.20	$ 7,971.20
121	Davenport	08/08/2005	10/07/2005	2620	4.37	1831	8007.71	$ 8,007.71
130	Davenport	08/08/2005	10/07/2005	2620	4.37	1831	8007.71	$ 8,007.71
102	Brockman	08/16/2005	10/15/2005	2612	4.39	1831	8032.24	$ 8,032.24
108	Darcy	08/25/2005	10/24/2005	2603	4.40	1831	8060.01	$ 8,060.01
110	Darcy	08/25/2005	10/24/2005	2603	4.40	1831	8060.01	$ 8,060.01
107	Darcy	08/26/2005	10/25/2005	2602	4.40	1831	8063.11	$ 8,063.11
103	Brockman	08/29/2005	10/28/2005	2599	4.41	1831	8072.41	$ 8,072.41
106	Darcy	08/30/2005	10/29/2005	2598	4.41	1831	8075.52	$ 8,075.52
127	Brockman	09/12/2005	11/11/2005	2585	4.43	1831	8116.13	$ 8,116.13
123	Davenport	09/12/2005	11/11/2005	2585	4.43	1831	8116.13	$ 8,116.13
140	Taylor	10/25/2005	12/24/2005	2542	4.51	1831	8253.42	$ 8,253.42
142	Taylor	10/25/2005	12/24/2005	2542	4.51	1831	8253.42	$ 8,253.42
113	Taylor	10/26/2005	12/25/2005	2541	4.51	1831	8256.67	$ 8,256.67
115	Taylor	10/26/2005	12/25/2005	2541	4.51	1831	8256.67	$ 8,256.67
137	Taylor	10/27/2005	12/26/2005	2540	4.51	1831	8259.92	$ 8,259.92
136	Taylor	10/28/2005	12/27/2005	2539	4.51	1831	8263.18	$ 8,263.18
138	Taylor	10/28/2005	12/27/2005	2539	4.51	1831	8263.18	$ 8,263.18
141	Taylor	11/02/2005	01/01/2006	2534	4.52	1831	8279.48	$ 8,279.48
189	Darcy	05/15/2006	07/14/2006	2340	4.90	1831	N/A	$ 1,674.09
190	Darcy	05/15/2006	07/14/2006	2340	4.90	1831	8965.90	$ 8,965.90
204	Darcy	06/06/2006	08/05/2006	2318	4.94	1831	9050.99	$ 9,050.99
212	Darcy	06/20/2006	08/19/2006	2304	4.97	1831	9105.99	$ 9,105.99
211	Darcy	06/21/2006	08/20/2006	2303	4.98	1831	9109.94	$ 9,109.94
214	Darcy	06/21/2006	08/20/2006	2303	4.98	1831	9109.94	$ 9,109.94
213	Darcy	06/23/2006	08/22/2006	2301	4.98	1831	9117.86	$ 9,117.86
207	Darcy	06/27/2006	08/26/2006	2297	4.99	1831	9133.74	$ 9,133.74
201	Darcy	06/28/2006	08/27/2006	2296	4.99	1831	9137.72	$ 9,137.72
209	Darcy	06/28/2006	08/27/2006	2296	4.99	1831	9137.72	$ 9,137.72
181	Darcy	06/29/2006	08/28/2006	2295	4.99	1831	9141.70	$ 9,141.70
217	Darcy	07/12/2006	09/10/2006	2282	5.02	1831	9193.78	$ 9,193.78
218	Darcy	07/12/2006	09/10/2006	2282	5.02	1831	9193.78	$ 9,193.78
177	Darcy	07/19/2006	09/17/2006	2275	5.04	1831	9222.07	$ 9,222.07
178	Darcy	07/19/2006	09/17/2006	2275	5.04	1831	9222.07	$ 9,222.07
215	Darcy	07/20/2006	09/18/2006	2274	5.04	1831	9226.12	$ 9,226.12
210	Darcy	07/25/2006	09/23/2006	2269	5.05	1831	9246.45	$ 9,246.45
219	Darcy	07/27/2006	09/25/2006	2267	5.05	1831	9254.61	$ 9,254.61
192	Darcy	07/31/2006	09/29/2006	2263	5.06	1831	9270.97	$ 9,270.97
191	Darcy	08/01/2006	09/30/2006	2262	5.07	1831	9275.07	$ 9,275.07
193	Darcy	08/01/2006	09/30/2006	2262	5.07	1831	9275.07	$ 9,275.07
194	Darcy	08/10/2006	10/09/2006	2253	5.09	1831	9312.12	$ 9,312.12
196	Darcy	08/11/2006	10/10/2006	2252	5.09	1831	9316.25	$ 9,316.25
183	Darcy	08/15/2006	10/14/2006	2248	5.10	1831	9332.83	$ 9,332.83
184	Darcy	08/15/2006	10/14/2006	2248	5.10	1831	9332.83	$ 9,332.83
185	Darcy	08/15/2006	10/14/2006	2248	5.10	1831	9332.83	$ 5,597.65

TOTAL UNITS: 57.75

TOTAL DAMAGES ALLOCATED: $ 500,000.00

Damages Per Unit Documented to be JJA But Coverage Unavailable Because Exhausted

	Address	C/O	Plus 60 Days		Total
185	Darcy	08/15/2006	10/14/2006	$	3,735.18
195	Darcy	08/28/2006	10/27/2006	$	11,458.33
194	Darcy	09/13/2006	10/13/2006	$	11,458.33

TOTAL UNITS: 2.25 TOTAL DAMAGES ALLOCATED: $ 26,651.84

Documented JJA Units With Undocumented/Assigned C/O Dates But Coverage Unavailable Because Exhausted

Address		C/O		Plus 30 Days		Total
170	Darcy	[01/15/2004	]	02/14/2004	$	7,812.01
171	Darcy	[01/15/2004	]	02/14/2004	$	7,812.01
168	Darcy	[02/15/2004	]	03/16/2004	$	7,887.93
169	Darcy	[02/15/2004	]	03/16/2004	$	7,887.93
166	Darcy	[03/15/2004	]	04/14/2004	$	7,960.30
167	Darcy	[03/15/2004	]	04/14/2004	$	7,960.30
110	Davenport	[04/15/2004	]	05/15/2004	$	8,039.14
102	macy	[04/15/2004	]	05/15/2004	$	8,039.14
118	Darcy	[05/15/2004	]	06/14/2004	$	8,116.93
105	Hornby	[05/15/2004	]	06/14/2004	$	8,116.93
106	Hornby	[06/15/2004	]	07/15/2004	$	8,198.92
107	Hornby	[06/15/2004	]	07/15/2004	$	8,198.92
108	Hornby	[07/15/2004	]	08/14/2004	$	8,279.86
109	Hornby	[07/15/2004	]	08/14/2004	$	8,279.86
111	Hornby	[08/15/2004	]	09/14/2004	$	8,365.19
110	Hornby	[08/15/2004	]	09/14/2004	$	8,365.19
109	Darcy	[08/25/2004	]	09/24/2004	$	8,393.09
124	Brockman	[09/15/2004	]	10/15/2004	$	8,452.30
136	Darcy	[09/15/2004	]	10/15/2004	$	8,452.30
116	Brockman	[10/15/2004	]	11/14/2004	$	8,538.34
121	Brockman	[10/15/2004	]	11/14/2004	$	8,538.34
100	Davenport	[11/15/2004	]	12/15/2004	$	8,629.11
101	Davenport	[11/15/2004	]	12/15/2004	$	8,629.11
102	Davenport	[12/15/2004	]	01/14/2005	$	8,718.81
103	Davenport	[12/15/2004	]	01/14/2005	$	8,718.81
197	Darcy	[01/15/2005	]	02/14/2005	$	8,813.48
104	Davenport	[01/15/2005	]	02/14/2005	$	8,813.48
206	Darcy	[02/15/2005	]	03/17/2005	$	8,910.23
		[02/15/2005	]	03/17/2005	$	8,910.23
216	Darcy	[03/15/2005	]	04/14/2005	$	8,999.46
117	Taylor	[06/15/2006	]	07/15/2006	$	10,757.80
208	Darcy	[06/28/2006	]	07/28/2006	$	10,817.92
118	Taylor	[07/15/2006	]	08/14/2006	$	10,897.57
119	Taylor	[07/15/2006	]	08/14/2006	$	10,897.57
179	Darcy	[07/19/2006	]	08/18/2006	$	10,916.48
120	Taylor	[08/15/2006	]	09/14/2006	$	11,045.87
121	Taylor	[08/15/2006	]	09/14/2006	$	11,045.87

TOTAL UNITS: 37 TOTAL DAMAGES ALLOCATED: $ 327,216.76

Undocumented Framer Assigned to JJA
(58 Unknown Units x 86% = 50 Units)
But Coverage Unavailable Because Exhasted

	Address	C/O	Plus 30 Days	Total
107	Taylor	03/30/2004	04/29/2004	$ 7,998.25
109	Taylor	03/30/2004	04/29/2004	$ 7,998.25
110	Taylor	03/30/2004	04/29/2004	$ 7,998.25
105	Davenport	[05/30/2004]	06/29/2004	$ 8,156.40
106	Davenport	[05/30/2004]	06/29/2004	$ 8,156.40
107	Davenport	[05/30/2004]	06/29/2004	$ 8,156.40
108	Davenport	[05/30/2004]	06/29/2004	$ 8,156.40
109	Davenport	[05/30/2004]	06/29/2004	$ 8,156.40
121	Greyson	[06/30/2004]	07/30/2004	$ 8,239.19
122	Greyson	[06/30/2004]	07/30/2004	$ 8,239.19
123	Greyson	[06/30/2004]	07/30/2004	$ 8,239.19
124	Greyson	[06/30/2004]	07/30/2004	$ 8,239.19
125	Greyson	[06/30/2004]	07/30/2004	$ 8,239.19
117	Greyson	07/08/2004	08/07/2004	$ 8,260.83
126	Greyson	[07/30/2004]	08/29/2004	$ 8,320.93
127	Greyson	[07/30/2004]	08/29/2004	$ 8,320.93
122	Taylor	03/15/2005	04/14/2005	$ 8,999.46
123	Taylor	04/15/2005	05/15/2005	$ 9,100.36
124	Taylor	04/15/2005	05/15/2005	$ 9,100.36
125	Taylor	05/15/2005	06/14/2005	$ 9,200.18
143	Taylor	[05/15/2005]	06/14/2005	$ 9,200.18
144	Taylor	[06/15/2005]	07/15/2005	$ 9,305.66
145	Taylor	[06/15/2005]	07/15/2005	$ 9,305.66
146	Taylor	[07/15/2005]	08/14/2005	$ 9,410.06
147	Taylor	[07/15/2005]	08/14/2005	$ 9,410.06
148	Taylor	[08/15/2005]	09/14/2005	$ 9,520.43
149	Taylor	[08/15/2005]	09/14/2005	$ 9,520.43
131	Taylor	[09/15/2005]	10/15/2005	$ 9,633.42
132	Taylor	[09/15/2005]	10/15/2005	$ 9,633.42
133	Taylor	[10/15/2005]	11/14/2005	$ 9,745.35
134	Taylor	[10/15/2005]	11/14/2005	$ 9,745.35
104	Greyson	[11/15/2005]	12/15/2005	$ 9,863.78
135	Taylor	[11/15/2005]	12/15/2005	$ 9,863.78
105	Greyson	[12/15/2005]	01/14/2006	$ 9,981.16
106	Greyson	[12/15/2005]	01/14/2006	$ 9,981.16
107	Greyson	[01/15/2006]	02/14/2006	$ 10,105.42
108	Greyson	[01/15/2006]	02/14/2006	$ 10,105.42
109	Greyson	[02/15/2006]	03/17/2006	$ 10,232.82
110	Greyson	[02/15/2006]	03/17/2006	$ 10,232.82
104	Macy	[03/15/2006]	04/14/2006	$ 10,350.68
105	Macy	[03/15/2006]	04/14/2006	$ 10,350.68
106	Macy	[04/15/2006]	05/15/2006	$ 10,484.37
107	Macy	[04/15/2006]	05/15/2006	$ 10,484.37
108	Macy	[05/15/2006]	06/14/2006	$ 10,617.09
109	Macy	[05/15/2006]	06/14/2006	$ 10,617.09
111	Greyson	[06/15/2006]	07/15/2006	$ 10,757.80
112	Greyson	[08/15/2006]	09/14/2006	$ 11,045.87
113	Greyson	[09/15/2006]	10/15/2006	$ 11,198.26
114	Greyson	[09/15/2006]	10/15/2006	$ 11,198.26
115	Greyson	[09/15/2006]	10/15/2006	$ 11,198.26

TOTAL UNITS: 50 TOTAL DAMAGES ALLOCATED: $ 470,374.81

Berkeley Common Pleas

Case Caption: Portrait Homes-South Carolina, Llc , plaintiff, et al VS Pennsylvania National Mutual Casualty Insurance Company , defendant, et al

Case Number: 2014CP0802757

Type: Order/Other

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134