

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT

DENNIS MURPHY, in his capacity as Personal Representative of the Wrongful Death Estate of Ruben Bonilla, Jr., and ANNIE-LAURIE COOGAN, in her capacity as Personal Representative of the Wrongful Death Estate of Serina T. Clark, as assignees for claims brought by Plaintiffs, CLARKE COLL, Chapter 7 Trustee of the Bankruptcy Estate of Pawan Kumar Jain, and, ANNAMMA PHILIP, in her capacity as a named insured and as third-party beneficiary,

Plaintiffs,

No. D-202-CV-2016-04582

v.

THE DOCTORS COMPANY, a foreign insurance company, THE DOCTORS MANAGEMENT COMPANY, a foreign for-profit company, PROFESSIONAL UNDERWRITERS LIABILITY INSURANCE COMPANY, a foreign insurance company; WESTERN ASSURANCE CORPORATION, a New Mexico for-profit corporation,

Defendants.

### **JOINT FINAL PRETRIAL ORDER**

This matter having come before the court pursuant to Rule 1-016 NMRA, and the court being fully advised in the premises, the court hereby orders:

#### **I. GENERAL NATURE OF PARTIES' CLAIMS.**

The parties' separate statements of their positions on the claims at issue are set out below.

##### **i. Plaintiffs' Statement**

Plaintiffs claim, and the Court has found, Defendant PULIC breached its insurance contract, violated its fiduciary duty to defend and indemnify its insured, and committed insurance bad faith. Plaintiffs further claim, and the Court has found, Defendant PULIC violated the Unfair Insurance Practices Act in a number of ways. The general factual basis for Plaintiffs' claims and the Court's findings are set forth in the Uncontroverted Facts section of this Order, which is

incorporated herein by this reference. Plaintiffs are entitled to compensatory, punitive, and statutory damages as a result of PULIC's conduct in an amount to be determined at trial.

Plaintiffs further claim that Defendant PULIC breached its fiduciary and contractual duties to investigate claims once it received notice of claims through Andrea Rogers, Dr. Jain's insurance agent. Plaintiffs claim that Defendant, in bad faith, took no investigatory actions, *i.e.*, requesting the names of the 17 patient drug toxicity deaths, after receiving the notice of claims, in violation of its duty to investigate. Plaintiffs are entitled to compensatory, statutory, and punitive damages as result of this violation of law. Further, Defendant took no effort to assist Dr. Jain directly, or through Ms. Rogers, to record the 17 patient deaths in PULIC's claims system. Additionally, Plaintiffs claim that Defendant PULIC violated the Unfair Practices Act.

Plaintiffs additionally claim, without limitation, as follows:

1. Dr. Jain was a medical doctor practicing in Las Cruces, New Mexico.
2. Dr. Jain paid premiums to PULIC, an insurance company, in exchange for a defense and indemnity in the event he was sued for medical malpractice resulting in death or injury.
3. On or about July 25, 2012, Dr. Jain's insurance agent, Andrea Rodgers of Western Insurance, learned through the TV news that Dr. Jain was being investigated by the New Mexico Medical Board for overprescribing narcotics that resulted in patient deaths.
4. On July 25, 2012, Ms. Rodgers obtained documents from the New Mexico Medical Board, including a Summary Suspension Order, Amended Summary Suspension Order, and Notice of Contemplated Action (hereinafter referred to collectively as "New Mexico Medical Board documents").
5. The New Mexico Medical Board's Notice of Contemplated Action stated that "[Dr. Jain] has, in many cases, deviated from the standard of care required of physicians through the

injudicious prescribing of medication... approximately 17 drug-toxicity deaths occurred while under the care of [Dr. Jain] which can be linked to [Dr. Jain's] prescribing as described herein.”

6. Ruben Bonilla, Jr. and Serina Clark were two of the 17 patient drug-toxicity deaths referenced in the New Mexico Medical Board documents.

7. On July 25, 2012, Ms. Rogers sent an email marked “URGENT” to PULIC with the New Mexico Medical Board documents attached.

8. Ms. Rogers knew that lawsuits could be filed against Dr. Jain for the 17 drug toxicity deaths identified in the New Mexico Medical Board documents, which is why she forwarded the documents directly to PULIC.

9. On or about July 25, 2012, Cheri Priddy, PULIC's Vice President of Underwriting, received Ms. Roger's email and read the New Medical Board documents that Ms. Rogers had sent.

10. It was not uncommon for insurance agents, like Ms. Rogers, to contact PULIC directly, on behalf of insureds, to report claims involving the insureds.

11. As his insurance agent, Ms. Rogers had the authority to report claims to PULIC on behalf of Dr. Jain.

12. If Ms. Rogers received information that PULIC needed, she would forward it to the insurance company on behalf of her client, the insured, Dr. Jain.

13. If PULIC needed additional information to record a claim, they would either contact the broker or the insured doctor.

14. Dr. Jain, the insured, received written notice from a representative of the injured party, *i.e.*, the New Mexico Medical Board, when he received the New Mexico Medical Board documents.

15. Defendant PULIC received Written Notice of Damages to an injured party from an Incident, as those terms are defined in the Policy, when Ms. Rogers, acting on behalf of Dr. Jain, submitted the New Mexico Medical Board documents to PULIC, on July 25, 2012.

16. The Claims, including Ruben Bonilla's and Serina Clark's, were received during the Claims Reporting Period, as that term is defined in the Policy.

17. The Claims Reporting Period for Dr. Jain's Policy ran from January 1, 2005, to August 28, 2012.

18. In a claims-made policy, it is critical that an insurance company record all potential claims to protect the insured.

19. According to PULIC's Vice President of Underwriting and its Senior Underwriter, if the underwriting department received notice of a claim by email or phone, the underwriter would forward the information to PULIC's claims department and also respond to the insurance agent or insured with a form email instructing them to report the claim to PULIC's claim department.

20. PULIC had no written policies, procedures, standards or guidelines for claims personnel; the only training was done on the job, but the on the job was not recorded. Further, there was no claims manual at PULIC.

21. PULIC's process was to follow up with an email if information submitted for a claim is insufficient or if the claim was sent to Underwriting instead of Claims. Yet, despite receiving the "urgent" email from Ms. Rogers and reading the New Mexico Medical Board documents attached to it, Ms. Priddy did not share the information contained within Ms. Rogers' email, or the documents attached to it, with PULIC's claims department.

22. Ms. Priddy did not respond to Ms. Rogers' email telling her to report the 17 drug-toxicity deaths to PULIC's claims department to ensure the claims were recorded.

23. No one within PULIC asked Ms. Rogers or Dr. Jain for the names of the 17 patients whose drug toxicity deaths were referenced in the New Mexico Medical Board documents.

24. There is no condition or term within the Policy issued to Dr. Jain that requires that a certain department within PULIC be notified of claims; the Policy only requires that “the Company” (referring to PULIC) be notified, which it was.

25. The 17 drug-toxicity patient deaths identified in the New Mexico Medical Board documents were never recorded in PULIC’s system as claims.

26. Yet, PULIC’s Senior Underwriter and PULIC Vice President of Claims testified that 17 drug-toxicity deaths alleged to have been caused by an insured’s deviation from the standard of care should have been recorded in PULIC’s system as claims, if they were reported.

27. If PULIC had followed the proper procedure, the 17 drug-toxicity deaths would have been recorded as claims within PULIC’s system.

28. Defendant PULIC failed to investigate the claims related to the 17 drug toxicity deaths that were set forth in the New Mexico Medical Board documents they received on or about July 25, 2012. PULIC’s investigation would have included requesting the patients’ names and asking for their medical records.

29. As a result of Ms. Rogers’ July 25, 2012, email, PULIC chose to cancel Dr. Jain’s Policy effective August 28, 2012.

30. Ms. Priddy sent an email on July 26, 2012, to Ms. Rogers with three (3) tail coverage quotes for 1-year, 5-year and 10-year tails.

31. Ms. Rogers responded to Ms. Priddy on July 26, 2012, asking if PULIC could offer Dr. Jain a three-year tail coverage option.

32. On July 26, 2012, Ms. Priddy forwarded Ms. Rogers' email to her boss, Mr. Freedman, asking if she should offer a 3-year tail coverage quote at the usual 225% rate.

33. Later that same day, July 26, 2012, Ms. Priddy had an in-person "urgent" meeting with her boss, Stephen Freedman, the Senior Vice President of PULIC.

34. At 9 p.m. on July 26, 2012, Mr. Freedman responded to Ms. Priddy's email inquiring if she should offer a 3-year tail at the usual percentage rate to Dr. Jain. In his email Mr. Freedman wrote "Your call... I'd be tempted to say "no". if we blow an agg[regate], I'd rather get as much \$\$ as possible, so let him buy a 5 year [tail]."

35. Following Mr. Freedman's email directive, at 10:22 pm on July 26, 2012, Ms. Priddy sent Ms. Rogers an email stating, in part, "We cannot offer a 3-year tail option."

36. Mr. Freedman's "blow an agg" comment was referring to spending the \$3,000,000 aggregate policy limit on Dr. Jain's PULIC Policy.

37. Ms. Priddy also understood that her boss, Mr. Freedman, was referring to "blowing" the \$3,000,000 aggregate of Dr. Jain's Policy.

38. Mr. Freedman's July 26, 2012, email is direct evidence that PULIC's Senior Vice President knew claims could result from the 17 drug-toxicity deaths caused by Dr. Jain's injudicious prescribing of prescription medications referenced in the New Mexico Medical Board's Notice of Contemplated Action that PULIC received from Ms. Rogers on July 25, 2012.

39. On July 26, 2012, PULIC's Vice President of Underwriting issued a Cancellation Letter to Dr. Jain via Federal Express.

40. The Cancellation Letter informed Dr. Jain that PULIC was canceling his Policy effective August 28, 2012 "due to, but not limited to, license suspension, nature of allegations, and practice profile" and it provided quotes for 1-year, 5-year and 10-year tail coverage.

41. Mr. Freedman, a Senior Vice president, approved the July 26, 2012, Cancellation Letter's contents before it was issued.

42. PULIC's July 26, 2012, Cancellation Letter did not advise Dr. Jain that he should ensure all potential claims were reported, including the 17 deaths identified by the New Mexico Medical Board documents to PULIC to ensure they were timely recorded before his Policy expired.

43. PULIC failed to advise Dr. Jain that he had a claims-made policy, and to explain what that meant with regards to future lawsuits that would likely be forthcoming as a result of the 17 drug-toxicity deaths.

44. PULIC never asked Dr. Jain, or Ms. Rogers, for the names of the 17 patients whose drug toxicity deaths were referenced in the New Mexico Medical Board documents.

45. PULIC never asked Dr. Jain to provide the medical records for these 17 patients.

46. PULIC never investigated the claims arising from the 17 drug-toxicity deaths.

47. On August 9, 2013, and August 26, 2013, Dr. Jain was sued in two separate wrongful death lawsuits for medical malpractice that resulted in two of his patients' untimely deaths, Ruben Bonilla, Jr. and Serina Clark. Both Mr. Bonilla and Ms. Clark were included in the 17 drug-toxicity deaths identified by the New Mexico Medical Board in the documents obtained and reviewed by Defendant.

48. The allegations against Dr. Jain in the two wrongful death lawsuits were for the same conduct described in the New Mexico Medical Board documents, which were in the possession and knowledge of PULIC as of July 25, 2012, 33 days before it cancelled Dr. Jain's policy on August 28, 2012.

49. When Dr. Jain was served with the wrongful death lawsuit filed by Dennis Murphy on behalf of Mr. Bonilla's estate (hereinafter "the Murphy lawsuit"), he promptly and timely notified PULIC.

50. On August 21, 2013, Dr. Jain emailed only the Summons to Sally Cleaver, a Senior Claims Adjuster at PULIC.

51. PULIC (through Sally Cleaver) never requested a copy of the Complaint for the Murphy lawsuit, which described the basis for the wrongful death lawsuit.

52. On August 27, 2013, PULIC (through Sally Cleaver) issued a Denial Letter to Dr. Jain refusing to provide liability coverage for the Murphy lawsuit.

53. The August 27, 2013, Denial Letter misrepresented the contents of the Policy by misquoting key Policy definitions, including "claim" and "incident", to benefit PULIC's incorrect assertion that the 17 drug-toxicity deaths did not qualify as claims under Dr. Jain's policy.

54. Because PULIC denied coverage on the Murphy lawsuit, Dr. Jain did not submit the second wrongful death lawsuit, filed by Annie-Laurie Coogan on behalf of the estate of Serina Clark, to PULIC when he was served.

55. As a result of PULIC's refusal to defend or indemnify Dr. Jain for the Murphy and Coogan lawsuits, Dr. Jain divorced his wife of 35 years and filed bankruptcy.

**ii. Defendant's Statement<sup>1</sup>**

This case involves the contractual, tort, and statutory causes of action of Pawan K. Jain, M.D. ("Dr. Jain") against his former medical professional liability insurer, Defendant Professional

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<sup>1</sup> To the extent that PULIC's Statement of the Case references prior, adverse rulings by the Court, those references are intended only as factual statements regarding the current status of this Case and are not intended to waive any right to contest unresolved issues at trial or to appeal prior rulings after the entry of final judgment.



Underwriters Liability Insurance Company (“PULIC”). Clarke Coll, acting as Trustee of Dr. Jain’s Bankruptcy Estate, assigned those causes of action to Plaintiffs, who now stand in Dr. Jain’s shoes and are prosecuting his claims. Plaintiffs have no independent causes of action against PULIC. Dr. Jain was not aware of the assignment and did not participate in it.

In their representative capacity, Plaintiffs have alleged that PULIC breached the insurance policy, committed insurer bad faith, and violated the Unfair Practices Act (“UPA”) and the Unfair Insurance Practices Act (“UIPA”) in failing to defend and indemnify Dr. Jain against two wrongful-death lawsuits that were asserted against him. Dr. Jain filed for bankruptcy and Clarke Coll, the Bankruptcy Trustee, settled the wrongful-death lawsuits as part of Dr. Jain’s bankruptcy case. The Court already has decided that PULIC breached the policy’s obligation to defend and indemnify Dr. Jain against the wrongful death lawsuits, committed certain unfair insurance claims practices, and committed bad faith by failing to defend Dr. Jain. The Court also already has decided that Dr. Jain’s compensatory damages resulting from PULIC’s failure to defend and indemnify him are limited by the Settlement Agreement resolving, and dismissal with prejudice of, the wrongful death lawsuits to the \$810,000 paid to settle those lawsuits (and administer Dr. Jain’s bankruptcy) and any fees and costs Dr. Jain actually incurred in the defense of the wrongful death lawsuits before their settlement.

Remaining for trial are Plaintiffs’ allegations that PULIC committed bad faith in failing to indemnify Dr. Jain, violated the UPA, and/or violated the UIPA in additional ways, as well as Plaintiffs’ prayer for punitive or statutory damages. PULIC denies any additional liability, denies that Dr. Jain incurred any damages other than those already recognized by the Court, and denies that its conduct warrants punitive or other exemplary damages.

## II. COURT'S PRIOR ORDERS ON DISPOSITIVE MOTIONS

<b>Date</b>	<b>Name of Order</b>
2020.04.20	Letter Decision by Judge Campbell
2020.07.14	Order Denying Defendant PULIC's MPSJ #6 Re Plaintiff's_ Claims for Insurer Bad Faith and Punitive Damages
2020.07.14	Order Denying Plaintiff's_ 7th MPSJ for Issue & Claim Preclusion on POC against PULIC
2020.07.14	Order Granting in Part and Denying in Part Defendant PULIC's MPSJ #5 Re Plaintiff's_ Claims Under Unfair Practices Act and Unfair Insurance Practices Act
2020.09.09	Order Denying Defendant. PULIC's MSJ #1 Re Policy's Criminal Act Exclusion
2020.09.09	Order Granting Plaintiffs_ 1st MSJ on Count I - Declaratory Judgment
2020.09.10	Order Denying Defendant. PULIC's MSJ #2 Re Lack of Notice Within the Policy Period
2020.09.10	Order Denying Defendant. PULIC's MSJ #3 Re Material Misrepresentations in Policy Application
2020.09.10	Order Granting Defendant PULIC's MPSJ #4 Re Philip's Lack of Standing
2020.09.10	Order Granting in Part & Denying in Part Defendant. PULIC's MPSJ #7 Re Alleged Damages of Dr. Jain's Bankruptcy Estate
2020.09.10	Order Granting in Part & Denying in Part Pltf's 5th MPSJ on Defendants_ Affirmative Defenses
2020.09.10	Order Granting Plaintiff's_ 2nd MPSJ on Count II - Breach of Contract
2020.09.10	Order Granting Plaintiff's_ 3rd MPSJ on Counts III and V - Breach of the Duty to Defend
2020.09.10	Order Granting Plaintiff's_ 4th MPSJ on Defendants_ Affirmative Defenses Related to Coverage
2020.09.10	Order Granting Plaintiff's_ 6th MPSJ for Defendant's Violations of the Insurance Practices Act
2021.02.11	Opinion and Order Granting Defendant's Motion for Clarification of Order Granting in Part and Denying in Part Its Motion for Partial Summary Judgment #7 Regarding Alleged Damages of Jain's Bankruptcy Estate
2022.12.02	Order Denying Plaintiff's 10th MPSJ on Count III
2022.12.02	Order Granting TDC & TDMC's MSJ and Denying Plaintiff's_ 8th MPSJ
2022.12.02	Order Granting-Denying in Part Plaintiff's_ 9th MPSJ on Count IV

### III. UNCONTROVERTED FACTS.

The following facts are established by admissions, stipulations, or prior orders of the Court:<sup>2</sup>

i. Pawan Kumar Jain, M.D. (“Dr. Jain”) is a neurologist who ran a pain management clinic in Las Cruces, New Mexico prior to revocation of his medical license by the New Mexico Medical Board in 2012.

ii. Professional Underwriters Liability Insurance Company (“PULIC”) is a Washington, DC domiciled insurance company that provides medical professional liability insurance to “high risk” doctors who, because of their prior claim histories and/or specialties, are unable to obtain insurance in the “standard” market.

iii. On January 17, 2012, PULIC renewed Dr. Jain’s Medical Professional Liability Policy (the “Policy”), which had first been issued to Dr. Jain in 2005. The renewed Policy had a Policy Period of January 1, 2012, to January 1, 2013, and a retroactive effective date of January 1, 2005.

iv. The Policy provided claims-made coverage. (Am. Compl. ¶ 56.)

v. The Court determined that the meanings of “Claim,” “Damages,” and “representative” as used in the Policy are ambiguous. (Ltr. Decision at 7, 10, and 11.)

vi. Western Assurance (through Andrea Rodgers) acted as Dr. Jain’s insurance agent and broker and sold the Policy to Dr. Jain. (Am. Compl. ¶ 57.)

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<sup>2</sup> The Parties stipulate to certain of the following facts as uncontroverted solely on the basis of the Court’s findings and conclusions on summary judgment and reserve all rights to contest those findings and conclusions on appeal after the entry of final judgment in this case or as otherwise may be appropriate.

vii. On or about July 25, 2012, Western Assurance’s employee and agent, Andrea Rodgers, learned through the television news that Dr. Jain was being investigated for overprescribing opiates that had resulted in patient deaths and injuries. (Am. Compl. ¶ 65.)

viii. On July 25, 2012, Ms. Rodgers emailed PULIC documents she obtained related to Dr. Jain from the New Mexico Medical Board, including a Summary Suspension Order, Amended Summary Suspension Order, and Notice of Contemplated Action. (Am. Compl. ¶ 66.)

ix. On or about July 25, 2012, Cheri Priddy, PULIC’s Vice President of Underwriting, received and read the New Mexico Medical Board documents that Ms. Rodgers emailed to PULIC. (Am. Compl. ¶ 69.)

x. The Court determined that PULIC received a “Claim” through its receipt of the New Mexico Medical Board’s Notice of Contemplated Action on July 25, 2012, which was provided by Andrea Rogers on behalf of Jain as his insurance agent. (Ltr. Decision at 12.)

xi. On July 26, 2012, Ms. Priddy issued a letter to Dr. Jain titled “Notice of Cancellation/Expiration Policy #P93314-13 Professional Underwriters Professional Liability Insurance Company Policy” (“Cancellation Letter”). (Am. Compl. ¶ 99.)

xii. Having learned that Dr. Jain had already closed his medical practice, Ms. Priddy obtained Dr. Jain’s home address and sent the Cancellation Letter to him at that address.

xiii. The Cancellation Letter informed Dr. Jain that PULIC was canceling his Policy effective August 28, 2012, because of his license suspension and provided quotes for extended reporting coverage (*i.e.*, tail-coverage quotes). (Am. Compl. ¶ 100; Ltr Decision at 3.)

xiv. The Court determined that the cancellation letter quoted tail coverage in one, five, and ten-year durations, but not a three-year tail coverage quote. (Ltr. Decision at 17.)

xv. The Court determined that PULIC had the option of offering three-year tail coverage to its insured and knowingly misrepresented to Dr. Jain's agent that it could not offer a three-year tail. (Order Granting in Part and Denying in Part Plaintiffs' Ninth Motion for Partial Summary Judgment on Count IV for Unfair Claims Practices, filed 12/2/22.)

xvi. The Court also determined that, upon receipt of the New Mexico Medical Board documents, PULIC failed to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under the Policy and failed to affirm or deny coverage of claims within a reasonable time after proof of loss requirements under the Policy have been completed and submitted by the insured. (Order Granting in Part and Denying in Part Plaintiffs' Ninth Motion for Partial Summary Judgment on Count IV for Unfair Claims Practices, filed 12/2/22.)

xvii. On August 9, 2013, and August 26, 2013, Dr. Jain was named as a defendant in two separate wrongful-death lawsuits for medical malpractice that resulted in two of his patients' untimely deaths, Ruben Bonilla, Jr. and Serina Clark. (Am. Compl. ¶ 112.)

xviii. Although Mr. Bonilla and Ms. Clark were not identified by name in the New Mexico Medical Board documents pursuant to the Board's confidentiality rules, they were two of the patient deaths that had been investigated by the Board leading to Dr. Jain's license revocation in 2012. Dr. Jain treated both patients and prescribed controlled substances, *i.e.*, opiate pain medication, to them prior to their deaths in 2010.

xix. On August 21, 2013, Dr. Jain emailed PULIC's Senior Claims Supervisor, Sally Cleaver, regarding the Bonilla wrongful-death lawsuit.

xx. On August 27, 2013, PULIC, through Ms. Cleaver, issued a denial letter for the Bonilla wrongful-death lawsuit.

xxi. The Court determined that PULIC denied Dr. Jain's claim as untimely made and reported. (Ltr. Decision at 3.)

xxii. The Court determined that PULIC misrepresented pertinent provisions of its Policy in its August 27, 2013, denial letter, including the definitions of "Claim," "Damages," and "Incident." (Ltr. Decision at 18, 23; Order Granting Plaintiffs' Sixth Motion for Partial Summary Judgment for Defendant's Violations of the Insurance Practices Act, filed 9/10/20.)

xxiii. The Court determined that PULIC received the Ruben Bonilla, Jr. and Serina Clark "Claims" within the "Claims Reporting Period" as both terms are defined in the Policy and the Insured was entitled to a defense and indemnity under the Policy for the lawsuits brought on behalf of Ruben Bonilla, Jr. and Serina Clark in August 2013. (Order Granting Plaintiffs' First Motion for Summary Judgment on Count I: Declaratory Judgment, filed 9/9/20.)

xxiv. The Court determined that PULIC breached the contract by failing to defend and indemnify its Insured against the allegations alleged in the lawsuits brought on behalf of Ruben Bonilla, Jr. and Serina Clark in August 2013. (Order Granting Plaintiffs' Second Motion for Partial Summary Judgment on Count II: Breach of Contract, filed 9/10/20.)

xxv. On September 5, 2013, Dr. Jain and his former wife, Annamma Philip, filed a Stipulated Petition for Dissolution of Marriage. (Stipulated Petition for Dissolution of Marriage, filed September 5, 2013, Plaintiffs' MSJ Ex. SS)

xxvi. On October 25, 2013, Dr. Jain filed for Chapter 7 bankruptcy protection.

xxvii. The Court determined that Dr. Jain's compensatory damages from PULIC's breach of contract are limited to the \$810,000 paid in the bankruptcy settlement and any fees and costs Dr. Jain actually incurred in the defense of those lawsuits before their settlement. (4/20/20 Letter Decision at 25-33; Order Granting In Part and Denying In Part Defendant PULIC's Motion for

Partial Summary Judgment #7 Regarding Alleged Damages of Dr. Jain's Bankruptcy Estate; and Opinion and Order on PULIC's Motion for Clarification of the Court's Order Granting In Part and Denying In Part Defendant PULIC's Motion for Partial Summary Judgment #7 Regarding Alleged Damages of Dr. Jain's Bankruptcy Estate, entered February 2, 2021).

#### **IV. CONTESTED ISSUES OF FACT.**

The Parties' contested issues of fact are set out below.

##### **A. Plaintiffs' Contested Issues of Fact**

1. Did Defendant PULIC engage in insurance bad faith, breach the fiduciary duty owed to Dr. Jain, breach of the covenant of good faith and fair dealing, and violate of the Unfair Insurance Practices Act and Unfair Practices Act by its acts and omissions, including its failure to *investigate* the claims of 17 drug toxicity deaths, in July 2012?

2. Did Defendant PULIC violate the Unfair Practices Act?

3. The amount of compensatory damages owed to Plaintiffs including the amount of the policy. *See e.g.*, pg. 28 of letter decision.

4. The amount and extent of damages and punitive damages owed to Plaintiffs.

5. The amount of damages caused by PULIC's statutory violations.

6. The amount of attorneys' fees, costs, pre- and post-judgment interest owed to Plaintiffs.

7. **Orders of the Court.** Plaintiffs contend that the following are established by Orders of the Court and are undisputed fact and are the law of the case:

Dennis Murphy, in his capacity as Personal Representative of the Wrongful Death Estate of Ruben Bonilla, Jr., and Annie-Laurie Coogan, in her capacity as Personal Representative of the Wrongful Death Estate of Serina Clark, shall have the rights, privileges and obligations to participate in the lawsuit that Clarke C. Coll and Annamma Philip had in their capacity as Plaintiffs. *See* Order Granting Motion to Substitute Parties, filed May 23, 2018.

Defendant PULIC received the Ruben Bonilla, Jr. and Serina Clark “Claims” within the “Claims Reporting Period” as both terms are defined in the Policy and the Insured was entitled to coverage (defense and indemnity) under the Policy for the lawsuits brought on behalf of Ruben Bonilla, Jr. and Serina Clark in August 2013. *See* Order Granting Plaintiffs’ First Motion for Summary Judgment on Count I: Declaratory Judgment, filed September 9, 2020.

Defendant PULIC owed its Insured a defense and indemnity for the lawsuits filed on behalf of Ruben Bonilla, Jr. and Serina Clark in August 2013. Defendant PULIC’s Insured complied with the terms of the Policy. Defendant PULIC breached the contract by failing to defend and indemnify its Insured against the allegations alleged in the lawsuits brought on behalf of Ruben Bonilla, Jr. and Serina Clark in August 2013. Defendant PULIC’s breach of contract caused its Insured damages in an amount to be determined at the trial in this matter. *See* Order Granting Plaintiffs’ Second Motion for Partial Summary Judgment on Count II: Breach of Contract, filed September 10, 2020.

Defendant PULIC breached the duty to defend its Insured against the allegations alleged in the lawsuit brought on behalf of Ruben Bonilla, Jr. and Serina Clark. Further, Defendant PULIC breached its duty to conduct a reasonable investigation into insurance coverage for its Insured for the lawsuits filed on behalf of Ruben Bonilla, Jr. and Serina Clark. Defendant PULIC engaged in insurance bad faith and breached the fiduciary duties owed to its Insured by failing to defend and indemnify its Insured against the allegations alleged in the lawsuit brought on behalf of Ruben Bonilla, Jr. and Serina Clark. *See* Order Granting Plaintiffs’ Third Motion for Partial Summary Judgment on Count III and V: Breach of Duty to Defend, filed September 10, 2020.

Defendant PULIC waived all of its insurance coverage defenses that could be asserted in this action as a matter of law because Defendant PULIC failed to defend its Insured in the wrongful death lawsuits brought on behalf of Ruben Bonilla, Jr. and Serina Clark.

8. The following affirmative defenses have been dismissed:
  - Affirmative Defense B (arbitration);
  - Affirmative Defense C (failure to state a claim upon which relief may be granted);
  - Affirmative Defense I (insured’s misrepresentation);
  - Affirmative Defense J (claims barred to extent failed to satisfy conditions for coverage);
  - Affirmative Defense L stricken due to Defendants’ failure to explain;
  - Affirmative Defense M (coverage for harms and claims excluded under Policy);
  - Affirmative Defense N (failure to mitigate damages);



- Affirmative Defense O (doctrines of contributory or comparative fault, estoppel, waiver, failure of consideration, fraud, illegality or failure to perform);
- Affirmative Defense P (liability or duty owed to be reduced or limited by apportionment of damages);
- Affirmative Defense Q (statute of limitations);
- Affirmative Defense R (no coverage obligation for claims arising from liabilities assumed by the insured by contract or agreement);
- Affirmative Defense S (breach of the cooperation clause of the Policy);
- Affirmative Defense T (improper assignment of rights or claims except as to Plaintiff Phillip); and
- Affirmative Defense Y (further affirmative defenses).

9. The following affirmative defenses have been granted in part and denied in part:

- Affirmative Defense D (lack standing). Granted in part and denied in part. Granted as to Trustee Coll and the assignees Murphy and Coogan. Denied as to Plaintiff Phillip. Trustee Coll and the assignees Murphy and Coogan have standing to bring these claims; Phillip does not have standing.
- Affirmative Defenses E, F, G, H. Granted in part and denied in part. Plaintiffs' compensatory damages for breach of contract are limited to the Settlement Agreement in the bankruptcy proceeding and Dr. Jain's collateral damages as a result of the bankruptcy.
- Affirmative Defense K. Granted in part and denied in part. Granted only as to Phillips' standing.
- Affirmative Defense V. Granted in part and denied in part. The motion on Affirmative Defense V is denied consistent with the Court's ruling on Defendant PULIC's Motion for Summary Judgment Number 8.
- Affirmative Defense W (punitive damages). Granted in part and denied in part. Granted in part consistent with the Court's ruling against Defendant PULIC on its Motion for Summary Judgment on Punitive Damages. Denied in part consistent with the Court's ruling in favor of Defendant PULIC on the effect of the settlement agreement on damages as to the breach of contract claim.
- Affirmative Defense X (waiver, unclean hands, or estoppel). Granted in part and denied in part. Granted as to unclean hands and estoppel consistent with the Court's Order on Defendant's Third Motion for Summary Judgment.

Denied in part as to waiver and the Court rules consistent with its order on the Defendant's Seventh Motion for Summary Judgment.

*See Order Granting Plaintiffs' Fifth Motion for Partial Summary Judgment on Defendants' Affirmative Defenses Related to Coverage, filed September 10, 2020.*

- Defendant PULIC violated Section 59A-16-20(A) of the Trade Practices and Frauds Act of the Insurance Code by misrepresenting pertinent policy provisions of its Policy in its August 27, 2013, letter denying its Insured a defense in the Murphy wrongful death lawsuit, which caused its Insured to not tender the Coogan wrongful death lawsuit and to file for bankruptcy protection. *See Order Granting Plaintiffs' Sixth Motion for Partial Summary Judgment for Defendant's Violations of the Insurance Practices Act, filed September 10, 2020.*
- The criminal-acts exclusion in the Policy that PULIC issued to Dr. Jain excluded coverage for "any judgment or final adjudication based upon or arising out of any dishonest, deliberately fraudulent, criminal, or maliciously or deliberately wrongful acts committed by or at the direction of, or ratified by, any Insured". There has not been any judgment or final adjudication against Dr. Jain for his acts or omissions in treating Ruben Bonilla or Serena Clark. Accordingly, the criminal-acts exclusion in the Policy that PULIC issued to Dr. Jain is not triggered and does not apply to Dr. Jain for his acts and omissions in treating Ruben Bonilla and Serena Clark. *See Order Denying Defendant PULIC's Motion for Summary Judgment #1 Regarding the Policy's Criminal Act Exclusion, filed September 9, 2020.*
- The submission to PULIC by Dr. Jain's insurance broker of the New Mexico Medical Board's Notice of Contemplated Action against Dr. Jain sufficed for the reporting of a Claim under the claims-made Policy. *See Order Denying Defendant PULIC's Motion for Summary Judgment #2 Regarding Lack of Notice Within the Policy Period, filed September 10, 2020.*
- In his renewal application on November 9, 2011, Dr. Jain did not disclose to PULIC that: (a) he was aware of Ruben Bonilla's and Serena Clark's deaths in 2010 and had copies of the medical examiner's reports as to the causes of those deaths; (b) he understood that the New Mexico Medical Board ("Board") had started to investigate him in August 2010; or (c) he had responded in writing to a Board Complaint in September 2011. PULIC unilaterally refused to defend Dr. Jain in the lawsuit brought by Dennis Murphy, on behalf of Mr. Bonilla's wrongful death estate, and in the lawsuit brought by Annie-Laurie Coogan, on behalf of Ms. Clark's wrongful death estate. Therefore, Defendant PULIC waived its ability to later assert a rescission defense by declining to either: (a) immediately seek a declaratory judgment before or pending the trials in the primary actions; or (b) defend Dr. Jain in the lawsuits under a reservation of rights. *See Order Denying Defendant PULIC's Motion for Summary Judgment*

#3 Regarding Material Misrepresentation in Policy Application, filed September 10, 2020.

- Annamma Philip had no right to insurance benefits for the underlying wrongful-death lawsuits as an insured under the Policy that PULIC issued to Dr. Jain. Philip did not qualify as a third-party beneficiary of Dr. Jain's Policy as a result of any coverage available for the underlying wrongful-death lawsuits. Philip lacked standing to assert any of the claims for relief in the Amended Complaint against the TDC Defendants. Because Philip did not have any right to insurance benefits and lacked standing to assert any claim for relief, she had no claim to assign and, therefore, could not assign to Plaintiffs any of the claims for relief in the Amended Complaint against the TDC Defendants. Plaintiffs cannot recover damages from the TDC Defendants as assignees of Philip. Partial Judgment shall be entered in favor of the TDC Defendants on all claims for relief asserted by Plaintiffs as Philip's assignees, with Plaintiffs to take nothing therefrom, and each party to bear its own attorneys' fees and costs incurred thereon. *See Order Granting Defendant PULIC's Motion for Partial Summary Judgment #4 Regarding Philip's Lack of Standing, filed September 10, 2020.*
- Plaintiffs may assert UIPA claims against PULIC as a matter of law because PULIC's denial letter to Dr. Jain in 2013 set out definitions for "Claim," "Damages," and "Incident" that were different than the definitions of those terms in the Policy that PULIC had issued to him. Plaintiffs may not assert a UIPA claim [under Section 59A-16-20(B)] for failing to acknowledge and act reasonably promptly on communications regarding his claim because PULIC acknowledged receipt of Dr. Jain's claim in 2013 and responded within six days. In light of the Court's rulings on coverage under the Policy for the underlying wrongful-death lawsuits, Plaintiffs have a viable claim under the UIPA for PULIC's failure to affirm coverage within a reasonable time. In light of the Court's rulings on coverage, Plaintiffs have a viable claim under the UIPA for PULIC's failure to settle the underlying wrongful-death lawsuits. PULIC's decision not to offer three-year tail coverage to Dr. Jain raises questions of fact as to UPA and UIPA violations, in that there is a reasonable inference that PULIC offered only more expensive coverage by excluding the middle-tier option that may have been most beneficial to Dr. Jain. Accordingly, Plaintiffs have a viable claim for UPA and UIPA violations against PULIC. *See Order Granting In Part Defendant PULIC's Motion for Partial Summary Judgment #5 Regarding Plaintiffs' Claims under the Unfair Insurance Practices Act and the Unfair Insurance Practices Act, filed July 14, 2020.*
- "Any claim to Policy benefits by Jain's bankruptcy estate . . . is limited to fees and costs Jain actually incurred in defense of the wrongful death suits and the distributions to the wrongful death estates already paid by the bankruptcy estate, including the difference between the amount actually received and the amount paid by Philip. *Opinion and Order, filed February 11, 2021 (clarifying Order Granting in Part and Denying in Part Its Motion for Partial Summary Judgment*

#7 Regarding Alleged Damages of Jain's Bankruptcy Estate, filed Sept. 10, 2020).

- Defendant PULIC violated Section 59A-16-20(A) of the Trade Practices and Frauds Act of the Insurance Code by misrepresenting to the insured pertinent facts or policy provisions relating to coverage because PULIC had the option of offering a three-year tail to its insured and knowingly misrepresented to the insured's agent that it could not offer a three-year tail. Defendant PULIC violated Section 59A-16-20(C) and (D) of the Trade Practices and Frauds Act of the Insurance Code upon receipt of the email submission by Dr. Jain's insurance agent, Andrea Rogers, with the New Mexico Medical Board's Notice of Contemplated Action, which referenced the 17 drug-toxicity deaths of Dr. Jain's patients, by failing to adopt and implement reasonable standards for the prompt investigation and processing of insured's claim arising under the Policy, and failing to affirm or deny coverage of claims of insureds within a reasonable time after proof of loss requirements under the policy have been completed and submitted by the insured. *See* Order Granting in Part and Denying in Part Plaintiffs' Ninth Motion for Partial Summary Judgment on Count IV for Unfair Claims Practices Against PULIC, filed December 2, 2022.
- The Doctors Company and The Doctors Management Company have demonstrated entitlement to judgment as a matter of law on all Counts asserted against them in Plaintiffs' Amended Complaint by making prima facie showings as to all theories of direct and vicarious liability, including Plaintiffs' claims arising out of theories of agency and piercing the corporate veil, and that Plaintiffs have failed to rebut those showings. *See* Order Granting The Doctors Company and The Doctors Management Company Motions for Summary Judgment and Denying Plaintiffs' Eighth Motion for Partial Summary Judgment on the Issue of Control and Vicarious Liability, filed December 2, 2022.

10. Plaintiffs assert the following facts are not contested and part of the Court's factual findings in entering its summary judgment orders:

- a. Defendant PROFESSIONAL UNDERWRITERS LIABILITY INSURANCE COMPANY (hereinafter, "PULIC") is a foreign insurance company that provided medical malpractice insurance to high-risk providers, including New Mexico providers in Las Cruces, NM.
- b. Defendant PULIC issued a renewal policy to a physician named Dr. Pawan Jain, a medical doctor in Las Cruces New Mexico, with a policy period from January 1, 2012, to January 1, 2013, and a retroactive effective date of January 1, 2005. The Policy stated it was a claims-made policy.
- c. Western Assurance (through Andrea Rodgers) acted as Dr. Jain's agent and insurance agent and sold the Policy to Dr. Jain.

- d. Defendant's policy stated that it insured for liability for:

"CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD."

"THIS POLICY PROVIDES COVERAGE ON A "CLAIMS MADE" BASIS: COVERAGE OF THIS INSURANCE WILL APPLY ONLY TO THE LIABILITY FOR CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED, ARISING OUT OF INCIDENTS THAT OCCURRED ON OR AFTER THE RETROACTIVE DATE SHOWN ON THE DECLARATIONS OF THE POLICY, AND WHICH ARE REPORTED TO THE COMPANY DURING THE CLAIMS REPORTING PERIOD."

- e. The Policy stated that it would pay "all sums which the Insured shall become legally obligated to pay as Damages because of any Claim against the Insured for Injury because of an Incident involving Professional Services if the Claim is first made during the Claims Reporting Period." The "Defense and Settlement of Claims" provision stated that Defendant would "defend any Claim against the Insured reported to the Company during the Claims Reporting Period, even if the allegations of the Claim are groundless, false or fraudulent."
- f. Under the "Period of Coverage" provision, the policy stated: "This Policy applies only to Professional Services rendered or which should have been rendered on or after the Retroactive Date stated in the Declarations and then only if a Claim is first reported during the Claims Reporting Period."
- g. The Policy defines a "Claim" as:

both the receipt by the Insured of written notice received from the injured party or a representative of the injured party and a written notice filed by the Insured and received by the Company that alleges Damages to an injured party from an incident, provided the Incident occurred during and is received by the Company during the Claims Reporting Period; the Company requires that the written notice contain a description of specific events, the nature of the possible injury, and the alleged error or omission.

Under the Policy, "Damages" means including Damages for death and for care and loss of services resulting from Injury.

- h. The New Mexico Medical Board (Board) received several complaints concerning Jain's prescribing practices, including from patient Serina Clark's mother, Betty Clark.
- i. The Board issued a Notice of Contemplated Action stating that Jain "has treated numerous patients for chronic neuropathy pain. [He] has, in many cases, deviated from the standard of care required of physicians through the injudicious prescribing of medication." The Board stated that

“approximately 17 drug toxicity deaths occurred to patients while under the care of [Jain] which can be linked to [his] prescribing as described herein.”

- j. Patients Serina Clark and Ruben Bonilla, Jr. were two of the 17 patients that died. Dr. Jain had treated patients Bonilla and Clark, prescribing controlled substances to them, prior to their overdose deaths in 2010.
- k. On July 25, 2012, Dr. Jain’s insurance agent, Andrea Rogers, emailed PULIC copies of the Board’s determination suspending Jain’s medical license. The following day, PULIC notified Jain that, because of the license suspension, it was cancelling the Policy as of August 28, 2012.
- l. In August 2013, Jain was named as a defendant in the wrongful death lawsuits filed on behalf of their wrongful death estates of Serina Clark and Ruben Bonilla, Jr.
- m. Plaintiff Dennis Murphy is the personal representative of the Wrongful Death Estate of Ruben Bonilla, Jr.
- n. Plaintiff Annie-Laurie Coogan is the personal representative of the Wrongful Death Estate of Serina Clark.
- o. Both lawsuits alleged that malpractice occurred during the Claims Reporting Period.
- p. On August 21, 2013, Dr. Jain requested insurance coverage (a defense and indemnity) under the Policy for the Bonilla wrongful death lawsuit. PULIC denied this request as untimely on August 27, 2013.
- q. Dr. Jain did not request coverage under the Policy for the Clark wrongful death lawsuit because PULIC denied the Bonilla request for insurance coverage.
- r. As a result of the denial of coverage, Jain filed bankruptcy on October 25, 2013.
- s. As a result of the Chapter 7 Bankruptcy Petition filed by Dr. Jain on October 25, 2013, all legal or equitable interests of Dr. Jain in property became property of Dr. Jain’s bankruptcy estate, pursuant to Bankruptcy Code § 541, including the claims the Trustee had asserted in this case before assigning his claims to Mr. Murphy and Ms. Coogan.
- t. In May 2017, the Dr. Jain’s bankruptcy estate settled the wrongful death claims filed against Jain by selling Dr. Jain’s and his wife’s assets, to pay two a total of \$895,637.00. In addition to the cash payment, Dr. Jain’s bankruptcy trustee, Clarke Coll, assigned (or gave) this lawsuit that Mr. Coll filed on Dr. Jain’s behalf against PULIC to Mr. Murphy and Ms. Coogan. The assignments allow the Wrongful Death Estates (Murphy and Coogan)

to take over suing PULIC in this lawsuit, and they are entitled to all proceeds from this lawsuit.

- u. Pursuant to the New Mexico Wrongful Death Act, any proceeds recovered from this lawsuit against PULIC by Mr. Murphy and Ms. Coogan will be paid to the statutory beneficiaries of Mr. Bonilla's and Ms. Clark's wrongful death estates.
- v. The Court has determined that PULIC received written notice of a Claim within the Claims Reporting Period as defined by the Policy and that Dr. Jain was entitled insurance coverage under the Policy for the Bonilla and Clark wrongful death claims. Defendant PULIC received a "Claim" through its receipt of the New Mexico Medical Board's Notice of Contemplated Action on July 25, 2012, which was provided by Andrea Rogers as Dr. Jain's insurance agent. Dr. Jain was entitled to a defense to the wrongful death lawsuit brought by Mr. Murphy on behalf of Ruben Bonilla, Jr. and the wrongful death lawsuit brought by Ms. Coogan on behalf of Serina Clark. Further, Dr. Jain was entitled to indemnity under the Policy which means PULIC would pay Mr. Murphy for the wrongful death of Ruben Bonilla, Jr. which is distributed to his beneficiaries and PULIC would pay Ms. Coogan for the wrongful death of Serina Clark which is distributed to her beneficiaries.
- w. PULIC breached its contractual obligations by not providing a defense and indemnity under the Policy.
- x. "Bad faith means a frivolous or unfounded refusal to pay." *Charter Servs., Inc. v. Principal Mut. Life Ins. Co.*, 1994-NMCA-007, ¶ 19, 117 N.M. 82, 868 P.2d 1307 (quoted authority omitted).
- y. Defendant committed insurance bad faith and breached its fiduciary duties, entitling Plaintiffs to compensatory and punitive damages.
- z. The Policy explained that, if it was cancelled or not renewed, Dr. Jain would have the option to purchase extended-reporting, or "tail" coverage, for a premium calculated at the applicable percentage of the premium stated in the declarations.
- aa. PULIC's August 2013 cancellation letter stated that, because the Policy provided claims-made coverage, Dr. Jain would not have coverage after the Policy was cancelled for claims "arising out of acts performed prior to the termination" unless he purchased tail coverage.
- bb. Cheri Priddy, PULIC's Senior Vice President of Underwriting, received and read the Board's Notice provided by Andrea Rogers on July 25, 2012. The following day, Ms. Priddy met to discuss the cancellation of Jain's Policy with Steven Freeman, Senior Vice President. Ms. Priddy sent Mr. Freedman an email asking if she could offer a three-year tail to Dr. Jain, stating that

PULIC “usually use[s] 225 percent” for a three-year tail. Mr. Freedman responded, “Your call, I’d be tempted to say no. If we blow an agg, I’d rather dealt as much money as possible, so let him buy a five-year [tail.]”

- cc. Ms. Priddy sent Ms. Rogers an email on July 26, 2012, stating PULIC could not offer a 3-year tail.
- dd. The Cancellation Letter quoted tail coverage in 1-year, 5-year, and 10-year durations. PULIC’s letter did not offer Jain a 3-year tail coverage quote at its standard pricing.
- ee. Defendant PULIC violated Section 59A-16-20(A) of the Trade Practices and Frauds Act of the Insurance Code by misrepresenting to the insured pertinent facts or policy provisions relating to coverage because PULIC had the option of offering a three-year tail to its insured and knowingly misrepresented to the insured’s agent that it could not offer a three-year tail.
- ff. Defendant PULIC violated Section 59A-16-20(C) and (D) of the Trade Practices and Frauds Act of the Insurance Code upon receipt of the email submission by Dr. Jain’s insurance agent, Andrea Rogers, with the New Mexico Medical Board’s Notice of Contemplated Action, which referenced the 17 drug-toxicity deaths of Dr. Jain’s patients, by failing to adopt and implement reasonable standards for the prompt investigation and processing of insured’s claim arising under the Policy, and failing to affirm or deny coverage of claims of insureds within a reasonable time after proof of loss requirements under the policy have been completed and submitted by the insured.

## **B. Defendant’s Contested Issues of Fact**

A. The New Mexico Medical Board began investigating Dr. Jain in 2010. Dr. Jain never personally reported the investigation or any outcome of the investigation to PULIC, nor did he request that Western Assurance report any such information to PULIC.

B. Whether Dr. Jain incurred any reasonable and necessary expenses, including attorneys’ fees, for defending the underlying wrongful-death lawsuits against him.

C. Whether Dr. Jain filed for bankruptcy because of PULIC’s breach of contract or would have filed for bankruptcy regardless.

D. Dr. Jain and his former wife, Annamma Philip, permanently separated in July 2012. (Stipulated Petition for Dissolution of Marriage, filed September 5, 2013, Plaintiffs’ MSJ Ex. SS.)



E. PULIC's decision in 2012 not to treat the New Mexico Medical Board documents as a notice of Claims was reasonable under PULIC's understanding of the terms of the Policy that it had at that time, industry custom and practice, and the surrounding circumstances.

F. Andrea Rogers did not intend to submit a "claim" to PULIC when she submitted the New Mexico Medical Board documents.

G. Dr. Jain did not believe that a "claim" had been made against him or would be made against him prior to the cancellation date of his Policy and, therefore, did not believe that any claim needed to be made to PULIC in relation to the 17 patient deaths investigated by the New Mexico Medical Board.

H. Dr. Jain never requested that Andrea Rogers report a claim related to any of the 17 patient deaths investigated by the New Mexico Medical Board to PULIC, nor did he authorize her to do so.

I. Dr. Jain was not aware that Andrea Rogers submitted the New Mexico Medical Board documents to PULIC.

J. Dr. Jain understood how the claims-made coverage provided by his PULIC Policy functioned.

K. Dr. Jain understood how to report a claim to PULIC under his Policy.

L. PULIC's bad faith caused Dr. Jain no damages in addition to any damages incurred as a result of PULIC's breach of contract.

M. PULIC's conduct in denying Dr. Jain a defense and/or indemnity for the wrongful-death lawsuits was not reckless, dishonest, malicious, willful, or wanton so as to warrant punitive damages.

N. Mr. Freedman was not aware of the contents of the New Mexico Medical Board documents at the time of his communications with Ms. Priddy in July 2012 about Dr. Jain's Policy and offer of tail coverage.

O. Dr. Jain testified that he could not afford one year of tail coverage and, therefore, would not have purchased a three-year tail had it been offered.

P. Dr. Jain suffered no actual damages from any alleged violation of the UPA.

Q. PULIC did not willfully engage in any violation the UPA so as to entitle Plaintiffs to seek an award of up to treble damages.

R. Dr. Jain suffered no damages as a result of PULIC's misrepresenting pertinent Policy provisions in its August 27, 2013, denial letter.

S. Whether Dr. Jain suffered no damages as a result of PULIC's misrepresenting pertinent facts or Policy provisions relating to coverage because PULIC had the option of offering a three-year tail but told the insured's agent that it could not offer a three-year tail.

T. Dr. Jain suffered no damages as a result of PULIC's failing, upon receipt of the email submission by Dr. Jain's broker with the New Mexico Medical Board's Notice of Contemplated Action, to adopt and implement reasonable standards for the prompt investigation and processing of the insured's claim arising under the Policy in violation of the UIPA.

U. Dr. Jain suffered no damages as a result of PULIC's failing, upon receipt of the email submission by Dr. Jain's broker with the New Mexico Medical Board's Notice of Contemplated Action, to affirm or deny coverage of claims of insureds within a reasonable time after proof of loss requirements under the policy have been completed and submitted by the insured in violation of the UIPA.

V. PULIC did not willfully engage in any violation the UIPA so as to entitle Plaintiffs to seek an award of attorneys' fees.

W. On April 16, 2014, a Grand Jury Indictment was filed against Dr. Jain in the United States District Court for the District of New Mexico. (Indictment, filed April 16, 2014, Depo. EX. 45)

X. In May 2017, the underlying wrongful-death lawsuits were settled in Dr. Jain's bankruptcy case and were subsequently dismissed with prejudice.

Y. Clarke Coll, acting as Trustee of Dr. Jain's Bankruptcy Estate, assigned the causes of action in this matter to Plaintiffs, who now stand in Dr. Jain's shoes and are prosecuting his claims.

Z. Plaintiffs have no independent causes of action against PULIC.

AA. Dr. Jain was not aware of the Assignment and did not participate in it.

BB. Dr. Jain's compensatory damages are limited to the \$810,000 paid in the bankruptcy settlement to resolve the wrongful-death lawsuits and any fees and costs Dr. Jain actually incurred in the defense of those lawsuits before their settlement. The \$10,000,000 in creditor claims asserted by the wrongful death claimants is not recoverable in this action under any theory of liability. (4/20/20 Letter Decision at 25-33; Order Granting In Part and Denying In Part Defendant PULIC's Motion for Partial Summary Judgment #7 Regarding Alleged Damages of Dr. Jain's Bankruptcy Estate; and Opinion and Order on PULIC's Motion for Clarification of the Court's Order Granting In Part and Denying In Part Defendant PULIC's Motion for Partial Summary Judgment #7 Regarding Alleged Damages of Dr. Jain's Bankruptcy Estate, entered February 2, 2021).

**V. CONTESTED ISSUES OF LAW.**

The contested issues of law in addition to those implicit in the foregoing issues of fact are:

**i. Plaintiffs' Contested Issues of Law<sup>3</sup>**

1. Whether Plaintiffs are entitled to present the full amount of their bankruptcy claims, i.e., 5 million per wrongful death estate, given that Dr. Jain's debt was not discharged by the bankruptcy court and Dr. Jain was never released in the settlement agreement by Coogan or Murphy.

2. On pg. 28 of the letter decision, the court expressly stated that its decision on the amount of damages was limited to the discussion of policy benefits and not assigned claims including breach of the duty to defend and bad faith. Accordingly, the damages are not limited to \$810,000 and include the policy benefits.

**ii. Defendant's Contested Issues of Law<sup>4</sup>**

A. Whether PULIC assumed any fiduciary duties to Dr. Jain when it never assumed control over the defense or settlement of the underlying wrongful-death lawsuits.

B. Whether PULIC's obligation to indemnify under the Policy ran only to its insured, Dr. Jain.

C. Whether Dr. Jain's understanding of the Policy's claims-made coverage and PULIC's conduct under it are relevant to the reasonableness of PULIC's claims handling.

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<sup>3</sup> Plaintiffs reserve all rights with regarding to the Court's prior decisions granting summary judgment on issues adverse to Plaintiffs, including the right to appeal those decisions upon entry of final judgment in this matter.

<sup>4</sup> PULIC reserves all rights with regarding to the Court's prior decisions granting summary judgment on issues adverse to PULIC, including the right to appeal those decisions upon entry of final judgment in this matter.

D. Whether PULIC's understanding of the Policy's claims-made coverage are relevant to the reasonableness of its claims handling.

E. Whether the unfair insurance claims practice defined by NMSA 1978, § 59A-16-20(E) is applicable to the facts of this case.

F. Whether the unfair insurance claims practice defined by NMSA 1978, § 59A-16-20(G) is applicable to the facts of this case.

G. Whether the unfair insurance claims practice defined by NMSA 1978, § 59A-16-20(L) is applicable to the facts of this case.

H. Whether Plaintiffs are entitled to attorneys' fees and costs pursuant to NMSA 1978, § 69-2-1.

I. Whether Plaintiffs are entitled to punitive damages.

J. Whether any harm suffered by the families of Dr. Jain's patients may be considered in assessing an award of punitive damages.

K. Whether Plaintiffs are entitled to statutory treble damages.

L. Whether, if awarded, Plaintiffs are entitled to both punitive damages and treble damages or whether Plaintiffs must elect their remedy.

M. Whether PULIC violated the UPA by knowingly misrepresenting to the insured's agent that it could not offer a three-year tail.

N. Whether PULIC violated the UPA by knowingly misrepresenting in connection with the sale of goods or services that the Policy had qualities that it did not have.

O. Whether PULIC violated the UPA by knowingly misrepresenting in connection with the sale of goods or services that the Policy was of a particular standard, quality or grade.

P. Whether PULIC violated the UPA by knowingly offering the Policy to Dr. Jain with no intention of supplying the services attached to the Policy.

Q. Whether PULIC violated the UPA by knowingly failing to deliver the quality of insurance contracted for by Dr. Jain.

## **VI. EXHIBITS.**

Each party shall provide all other parties copies of all exhibits and shall make all demonstrative exhibits available for inspection no later than **Wednesday, December 21, 2022**. In accordance with the Court's Order on Trial Schedule, by **December 12, 2022**, the parties shall exchange electronic copies of all exhibits to be introduced at trial with hard copies to follow by **December 13, 2022**. Failure to exchange will result in the exhibit being summarily denied into admission as evidence. Objections to any non-stipulated exhibits shall be filed with the Court on or before **December 16, 2022**. Responses to those objections shall be filed with the Court on or before **December 22, 2022**. On or before **December 23, 2022, at noon**, counsel shall deliver to chambers: copies of the non-stipulated exhibits and filed objections and responses. The Parties shall exchange any demonstrative or summary exhibits **no later than 24 hours in advance** of the attempted use or introduction of such exhibits.

The parties intend to offer the following exhibits in evidence at trial:

### **i. Plaintiffs' Exhibit List**

1. 7-25-12 PULIC Emails re NMMB Notice of Cont. Action – Depo Ex. 4.pdf
2. 7-26-12 Priddy Calendar Note to Meet w Freedman – Depo Ex. 16.pdf
3. 7-26-12 Freedman Email approving Cancellation Letter and tail quote – Depo Ex. 18.pdf
4. 7-26-12 PULIC Emails re Tail Cover and Blow an ag\_ - Depo Ex. 17.pdf
5. Emails re Cancellation Letter Priddy, Freedman and Rogers - Depo Ex. 15.pdf

6. 7-26-12 PULIC Cancellation Letter w tail quotes - Depo Ex. 14.pdf
7. NMMB Notice of Contemplated Action - Depo Ex. 4.pdf
8. NMMB Hearing Officers Report 11-6-2012 - CooganMurphy 246718-246740.pdf
9. 8-27-13 PULIC Denial Letter - Depo Ex. 6.pdf
10. Carla Hall's drawing of PULIC offices - Depo Ex. 33.pdf
11. 2012 Perf Dev Plan E4-Micyvch - Depo Ex. 110.pdf
12. 2013 Perf Dev Plan for E4-Micevych - PULIC\_JAIN004921-4925.pdf
13. 2009 TDC Perf Dev Plan E1-Sally Cleaver - PULIC\_JAIN002865-2902.PDF
14. 2009 Perf Dev Plan E3-Priddy - Depo Ex. 109.pdf
15. 2009-2013 Incentive Plan Payouts for E2-Freedman - PULIC\_JAIN002933-2934.PDF
16. Freedman's LinkedIn - Depo Ex. 34.pdf
17. TDC Goals 2009-2013 - Depo Ex 114.pdf
18. TDC Long-term Incentive Plan - Depo Ex. 113.pdf
19. TDC's Short Term Incentive Plan - Depo Ex. 112.pdf
20. Priddy's Agreement to Rules - Depo Ex. 19 .pdf
21. PULIC Org Chart - Depo Ex. 35.pdf
22. PULIC Website in 2012 - Depo Exhibit 74.pdf
23. AM Best Rating - CooganMurphy 246773-5- 8-24-2022.pdf
24. TV News Story of Dr. Jain - CooganMurphy 245448.mp4
25. TDSIC NAIC Annual Statement 2021 - Depo Ex. 118.pdf
26. Jain Bankruptcy Schedules - BK Doc 16.pdf
27. Chapter 7 Trustee's Final Account and Distribution Report Certification 1-30-19 -

BK Doc 154.pdf

28. Order allowing Coogan and Murphy claims 10-24-17 - BK Doc 128.pdf
29. Top 10 Prescribers in 2010 - Murphy-Bonilla 1862.pdf
30. Bankruptcy Settlement Agreement.pdf
31. Assignment.pdf
32. Photos of Ruben Bonilla, Jr. and Serina Clark (Bates Nos. to be provided)
33. Demonstrative Exhibits to be disclosed as directed;
34. Any items identified through discovery in this matter that are admissible.<sup>5</sup>
35. Any discovery answers or responses in this matter that are admissible.
36. Any items required for impeachment or rebuttal which cannot be reasonably foreseen at this time.
37. Any items identified through discovery in this matter that are admissible
38. Any exhibit to a deposition to which Plaintiffs do not object.
39. Any discovery answers or responses in this matter answered by Defendants.
40. Rebuttal exhibits which cannot reasonably be determined at this time.
41. Summary Exhibits to be disclosed as directed.
42. Blown up Exhibits identified by Plaintiffs
43. Any items required for impeachment or rebuttal.

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<sup>5</sup> PULIC objects to Plaintiffs' exhibit category nos. 34, 35, and 37-39 as being contrary to the Court's instructions and the purposes of the Joint Pretrial Order, which is to bring finality to the list of issues being tried, witnesses to testify, and exhibits to be used. By using these "catch-all" categories, Plaintiffs are attempting to give themselves unfettered discretion to use exhibits not specifically named in the Order. PULIC respectfully requests that these categories be stricken. To the extent that the Court permits these categories (which it should not), PULIC appends the same categories to its exhibit list.



ii. **Defendant's Exhibit List**<sup>6</sup>

Ex. No.	Description	Depo Ex.	Beg Bates	End Bates
1	Certified Copy of Dr. Jain's PULIC Policy	8	PULIC_JAIN000001	PULIC_JAIN000026
2	Claim Information Form	7	PULIC_JAIN000746	PULIC_JAIN000746
3	Email from Cheri Priddy to All Employees - PULIC re Claim Reporting		PULIC_JAIN002984	PULIC_JAIN002985
4	Jain Pre-PULIC Claims History Spreadsheet	10	PULIC_JAIN000119	PULIC_JAIN000119
5	Rating and Coding Sheet	11	PULIC_JAIN001130	PULIC_JAIN001130
6	Policy Renewal Application	13	PULIC_JAIN000309	PULIC_JAIN000313
7	WAC Medical Malpractice Insurance Coverage Checklist	60	Murphy/Coogan 00833	Murphy/Coogan 00833
8	Professional Liability Quotation and Premium Finance Agreement	58	Murphy/Coogan 00965; Murphy/Coogan 00973	Murphy/Coogan 00965; Murphy/Coogan 00973
9	PULIC Underwriting Guidelines	23	PULIC_JAIN002560	PULIC_JAIN002562
10	Emails between C. Priddy and A. Rogers re Jain and policy cancellation	4	PULIC_JAIN000352	PULIC_JAIN000354
11	Emails between C. Priddy and A. Rogers re Jain and policy cancellation, attaches NMMB documents	4	PULIC_JAIN000355	PULIC_JAIN000362
12	Emails between C. Priddy and A. Rogers re request for tail quote		PULIC_JAIN000372	PULIC_JAIN000374
13	Emails between C. Priddy and A. Rogers re Jain's office closure and NMMB hearing		PULIC_JAIN000368	PULIC_JAIN000371
14	Email from Freedman to Priddy re cancellation and tail quote	18	PULIC_JAIN000375	PULIC_JAIN000375
15	Emails between C. Priddy and A. Rogers re Jain's address for cancellation letter		PULIC_JAIN000376	PULIC_JAIN000379
16	Emails from C. Priddy to A. Rogers declining 3-year tail option with attached Notice of Cancellation, Tail Quotation, and Policy Cancellation Endorsement	15	PULIC_JAIN000380	PULIC_JAIN000387

<sup>6</sup> PULIC will substitute certified copies of judicial records from other proceedings prior to trial.

<b>Ex. No.</b>	<b>Description</b>	<b>Depo Ex.</b>	<b>Beg Bates</b>	<b>End Bates</b>
17	Notice of Cancellation, Tail Quotation, and Cancellation Endorsement from C. Priddy to Jain	14	PULIC_JAIN000385	PULIC_JAIN000387
18	Emails from C. Priddy to S. Freedman requesting review of cancellation letter and tail quote	15	PULIC_JAIN000388	PULIC_JAIN000388
19	Meeting invitation from C. Priddy to S. Freedman re Dr. Jain discuss with Steve (without attachments)	16	PULIC_JAIN002543	PULIC_JAIN002543
20	Email exchange among A. Rogers, C. Priddy, and S. Freedman re: NMMB documents, policy cancellation, and tail quote	56	PULIC_JAIN002553	PULIC_JAIN002557
21	Email from A. Rogers to Jain re cancellation letter and tail quote	41	Murphy/Coogan 01111	Murphy/Coogan 01112
22	Letter from WAC to Jain enclosing \$6,823.24 check for return premium (check not attached)		Coll-002033	Coll-002033
23	Voluntary Petition by Jain's P.C. to Bankr. Ct. under Chapter 7 (not Bates labeled)	64		
24	Screen Shot of Adjuster's Notes - Ruben Bonilla v. Jain	5	PULIC_JAIN000921	PULIC_JAIN000925
25	Email from Jain to Cleaver attaching Summons		PULIC_JAIN000956	PULIC_JAIN000957
26	PULIC coverage denial letter to Jain	6	PULIC_JAIN000040	PULIC_JAIN000044
27	Email from Jain to Cleaver re Coverage Ltr	9	PULIC_JAIN000955	PULIC_JAIN000955
28	USA v. Jain Indictment (not Bates labeled)	45		
29	Settlement Agreement with Wrongful-Death Estates (not Bates labeled)	38		
30	Assignment of Rights, Claims, Interests and Causes of Action (not Bates labeled)	39		
31	Bankr. Ct. Order Approving Settlement Agreement Between the Trustee, Debtor, Annamma Philip, LLC's, and Claimants			
32	Order Granting Plaintiff's Motion for Dismissal with Prejudice of All Claims Against Pawan Kumar Jain, M.D. in <i>Murphy v. Jain</i>			

<b>Ex. No.</b>	<b>Description</b>	<b>Depo Ex.</b>	<b>Beg Bates</b>	<b>End Bates</b>
33	Order for Dismissal in <i>Coogan v. Jain</i>			
34	WAC Claims Guidelines	52	Murphy/Coogan 00122	Murphy/Coogan 00130
35	WAC Account Activity List	51	Murphy/Coogan 00014	Murphy/Coogan 00054
36	WAC Notice	50	Murphy/Coogan 00525	Murphy/Coogan 00525
37	Bankr. Ct. Summary of Schedules	67		
38	Chapter 7 Trustee's Final Account and Distribution Report and Application to Be Discharged	69		
39	TDC Specialty Insurance Company most recent Statutory Basis Financial Statements (Ernst & Young)		To be provided.	
40	Page from FC&S Cancellation and Nonrenewal Handbook-New Mexico Commercial Lines	22	PULIC_JAIN002544	PULIC_JAIN002544
41	Indictment, filed April 16, 2014 (not Bates labeled)	45		
42	Jain Plea Agreement, filed February 11, 2016		Coll-000090	Coll-000097
43	Stipulated Petition for Dissolution of Marriage, filed September 5, 2013 (not Bates labeled)	Plain -tiffs' MSJ Ex. SS		
44	Second Stipulated Amended Marital Settlement Agreement, filed October 23, 2013	70	Coll 002983	Coll 002995
45	Bankr. Ct. Final Decree in <i>In re Pawan Jain, M.D., P.C.</i> , filed 5/20/2013	65		
46	2010 Professional Liability Policy Renewal Application		Coll-000724A1	Coll-000724A2
47	Transcript of the September 24, 2012, Hearing Before the New Mexico Medical Board in <i>In re Pawan Kumar Jain, M.D.</i>			
48	July 24, 2019, Affidavit of Sondra Frank			
	Demonstrative Exhibits to be disclosed as directed.			

Ex. No.	Description	Depo Ex.	Beg Bates	End Bates
	Any items required for impeachment or rebuttal which cannot be reasonably foreseen at this time.			
	Summary Exhibits to be disclosed as directed.			

**VII. WITNESSES.**

The Parties will call or have available at trial the following “will call” witnesses. The Parties reserve the right to call the following “may call” witnesses. Additional witnesses will not be allowed without a showing of good cause why their disclosure did not take place in conformance with this Order. The Parties shall exchange any proposed deposition designations no later than **Friday, December 16, 2022, at 5:00 p.m.** Counter-designations shall be disclosed no later than **Tuesday, December 20, 2022, at 5:00 p.m.** Objections to Designation or Counter-designations shall be disclosed no later than **Thursday, December 22, 2022, at noon.** Pursuant to the Court’s Order on Trial Schedule, any disputes concerning deposition designations or counter-designations (including any objections or responses) shall be submitted to the Court for resolution on or before **December 23, 2022, at noon.**

**i. Plaintiffs will call the following witnesses**

1. Cheri Priddy;<sup>7</sup>
2. Sally Cleaver;
3. Steve Freedman;
4. Elliot Flood;

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<sup>7</sup> PULIC has agreed to bring Ms. Cleaver, Mr. Freedman, Ms. Micevych and Ms. Priddy to testify live at trial.

5. Shannon Micevych

**ii. Defendant will call the following witnesses**

A. Sally Cleaver

B. Stephen Freedman

C. Shannon Micevych

D. Steven Plitt

E. Cheri Priddy

**iii. Plaintiffs may call the following witnesses**

1. Andrea Rogers;

2. Clarke C. Coll;

3. Dr. Robert Zuniga, MD;

4. Betty Clark;

5. Michael Bonilla;

6. Any person named as a potential witness by the defendants in this matter;<sup>8</sup>

7. Any person who has been deposed in this matter;

8. Any person who has been identified through discovery in this matter;

9. Any person who has been deposed or otherwise identified through discovery in this matter whose testimony is required for rebuttal purposes and cannot be reasonably foreseen at this time.

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<sup>8</sup> PULIC objects to Plaintiffs' witness category nos. 6-8 as being contrary to the Court's instructions and the purposes of the Joint Pretrial Order, which is to bring finality to the list of issues being tried, witnesses to testify, and exhibits to be used. By using these "catch-all" categories, Plaintiffs are attempting to give themselves unfettered discretion to call additional witnesses not specifically named in the Order. PULIC respectfully requests that these categories be stricken. To the extent that the Court permits these categories (which it should not), PULIC appends the same categories to its witness list.

iv. **Defendant may call the following witnesses**

- A. Clarke Coll
- B. Jose R. Coronado
- C. Sondra Frank (or other representative of the New Mexico Medical Board)
- D. Pawan Kumar Jain (if not presented by deposition)
- E. Andrea Rogers
- F. Susan Stapp<sup>9</sup>
- G. Robert Zuniga<sup>10</sup>
- H. Marilya Spina
- I. Any person who has been deposed or otherwise identified through discovery in this matter whose testimony is required for rebuttal purposes and cannot be reasonably foreseen at this time.

v. **Plaintiffs will present the following testimony by deposition:**

- 1. PULIC Rule 1-030(B)(6) representative Marilya Spina
- 2. PULIC Rule 1-030(B)(6) representative Cheri Priddy
- 3. Plaintiffs reserve the right to make counter-designations to any portions of deposition testimony identified by Defendants for use at trial

vi. **Defendant will present the following testimony by deposition:**

- A. Pawan Jain, if unavailable to testify at trial.
- B. Clarke Coll, if unavailable to testify at trial.

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<sup>9</sup> Whether Defendant calls Ms. Stapp is dependent on the outcome of PULIC's proposed Motion in Limine #8.

<sup>10</sup> Whether Defendant calls Dr. Zuniga is dependent on the outcome of PULIC's Motion in Limine #1.

- C. Andrea Rogers, if unavailable to testify at trial.
- D. Defendant reserves the right to make counter-designations to any portions of deposition testimony identified by Plaintiffs for use at trial.

#### **VIII. JURY INSTRUCTIONS.**

In accordance with the Court's Order on Trial Schedule, as modified by the Court's Second Order on Trial Schedule, Plaintiff's counsel shall prepare one (1) set of annotated and one (1) set of non-annotated jury instructions and deliver to Defendant's counsel by **Tuesday, December 20, 2022**. Defendant's counsel shall prepare amended and additional instructions, if any and return to Plaintiff's counsel by **Wednesday, December 28, 2022**. The parties' joint and separate instructions shall be submitted to the Division email address in Word format by **Tuesday, January 3, 2023, at 4:00 p.m.**

#### **IX. LENGTH OF TRIAL.**

In accordance with the Court's Order on Trial Schedule, as modified by the Court's Second Order on Trial Schedule, the trial will commence on **Monday, January 9, 2023**, at the Bernalillo County Courthouse, 400 Lomas Blvd. NW, Courtroom 720. The length of trial is **6** days, including voir dire. The parties will pick a jury on **Monday, January 9, 2023**, and trial begins on **Tuesday, January 10, 2023**. Trial will begin at 9:00 a.m. every day, but counsel and parties shall be present in the Courtroom by 8:30 a.m. every day. Trial will not go past 5:00 p.m. any day.

Twelve jurors and two alternates will be seated. Voir dire will take place in two sessions. The first session will commence at 9:00 a.m., and the second session will commence at 1:00 p.m. Each side will get an equal amount of time for questioning during voir dire. Counsel for Plaintiffs will be allotted a *total* of forty-five (45) minutes of questioning per session, and Counsel for Defendant will be allotted forty-five (45) minutes of questioning per session.

**X. SETTLEMENT.**

The possibility of settlement of this case is considered: Poor. The parties have attended multiple mediations, without success, including as recently as July 2022.

**XI. PENDING MOTIONS IN LIMINE**

The parties are awaiting rulings from the Court on the parties' motions in Limine, which will be incorporated herein. A list of the pending motions in Limine is attached as Ex. A.

**XII. MODIFICATION; INTERPRETATION.**

This order shall control the course of the trial and may not be modified except by Court order upon agreement of the parties or to prevent manifest injustice. The pleadings will be deemed merged herein. In the event of ambiguity in any provision of this order, reference may be made to the pleadings and to the prior Orders entered by this Court.

IT IS SO ORDERED.

  
\_\_\_\_\_  
**HONORABLE ELAINE P. LUJAN,  
DISTRICT COURT JUDGE**



RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of December 2022.

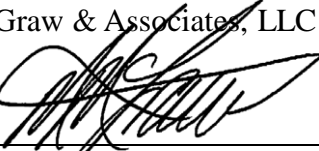
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*Attorneys for Defendant PULIC*

## **EXHIBIT A**

### **Plaintiffs pending Motions in Limine:**

1. Plaintiffs' Motion in Limine to Exclude the Testimony of Dr. Pawankumar Jain, filed on October 30, 2019.
2. Plaintiffs' Motion in Limine to Exclude Subsequent Evidence Regarding Dr. Pawankumar Jain, filed on October 30, 2019.
3. Plaintiffs' Motion in Limine to Prohibit Improper Testimony, filed on March 10, 2020.
4. Plaintiffs' Motion in Limine to Prohibit Improper Statements, filed on November 1, 2022.
5. Plaintiffs' Amended Motion in Limine to Prohibit Misleading and Confusing the Jury, filed on November 1, 2022.
6. Plaintiffs' Motion in Limine Regarding Prior Jury Trial and Settlements, filed on November 1, 2022.

### **Defendants pending Motions in Limine:**

1. Defendant PULIC's Motion in Limine No. 1 to Exclude Evidence from the Wrongful-Death Lawsuits, filed on November 3, 2022.
2. Defendant PULIC's Motion in Limine No. 2 Regarding Plaintiffs as the Wrongful-Death Estates, filed on November 3, 2022.
3. Defendant PULIC's Motion in Limine No. 3 to Exclude Improper Lay Witness Testimony, filed on November 3, 2022.
4. Defendant PULIC's Motion in Limine No. 4 Regarding the Amount of Plaintiffs Bankruptcy Claims and Anticipated Testimony of Bankruptcy Trustee Clarke Coll, filed on November 3, 2022.
5. Defendant PULIC's Motion in Limine No. 5 Regarding Golden Rule Arguments, filed on November 3, 2022.
6. Defendant PULIC's Motion in Limine No. 6 Regarding the Parties' Litigation Conduct in this Case, filed on November 3, 2022.
7. Defendant PULIC's Motion in Limine No. 7 Regarding Other Claims or Lawsuits Against Them, filed on November 3, 2022.
8. Defendant PULIC's Unopposed Motion for Leave to File its Motion in Limine No. 8 to Preclude Certain Financial and Corporate Structure Testimony of Elliott Flood and Related Arguments of Counsel Regarding TDC and TDMC, filed December 6, 2022.