IN THE DISTRICT COURT OF APPEAL OF FLORIDA, SIXTH DISTRICT

CASE NO.: 6D23-2213
Trial Court Case No. 07-0054-CA
Consolidated with 07-1539-CA

JOHN ROBERT SEBO, individually and as Trustee under Revocable Trust Agreement of John Robert Sebo, dated November 4, 2004,

Appellant,

v.

AMERICAN HOME INSURANCE COMPANY INC.,

Appellee.

APPELLANT'S INITIAL BRIEF

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PRELIMINARY STATEMENT

This appeal presents important questions related to the trial of bad faith actions and the extra-contractual damages recoverable by an insured. When insureds are wrongly denied the policy benefits they paid for, Florida statutory and common law provides two distinct layers of protection. The first layer—a legal prerequisite to the second—is a coverage action where an insured can obtain the contractual benefits due. The second layer is an action for bad faith, where extra-contractual damages can be recovered for a tortious breach of duty by a party's insurer. Both layers of protection are stage center in this case.

The plaintiff here is John Robert Sebo, whose home sustained severe property damage, principally from water intrusion and wind, as a result of faulty construction and natural forces. The extensive damage induced by summer rains and later Hurricane Wilma proved irreparable as the damage was uncovered through a process similar to peeling back an onion. This was the beginning of Mr. Sebo's nightmare. Mr. Sebo with no help from his insurance carrier was forced to investigate and begin remediation on his own, uncovering rain and storm damage and hidden construction defects.

While recognizing that Mr. Sebo's damage involved millions of dollars, AIG provided coverage for only a fraction of his loss, rejecting the rest purportedly because it resulted from an uninsured cause. When Florida's Supreme Court put that no-coverage argument to rest, AIG still dragged its feet, refusing to pay even the amounts it conceded were owed. In the meantime, abandoned by his insurer, Mr. Sebo, at his own expense, sued the third parties responsible for the faulty construction, recovering several million dollars through settlements in the process.

The final chapter in Mr. Sebo's nightmare should have been anything but. In the bad faith trial against AIG, he proved multiple acts of bad faith that began with AIG's cursory investigation of the loss and continued through having to sue AIG to obtain the benefits due. Yet, despite controlling law and its own prior rulings, the trial court erroneously let in evidence of his third-party settlements, unjustifiably estopped Mr. Sebo from proving extra-contractual damages he sustained, and approved a verdict form that obscured the statutory bad faith violations.

The resulting defense verdict was predictable—but prejudicially wrong as Mr. Sebo's new trial motion demonstrated. Apart from the

trial errors just noted, that motion established that the jury's failure to find a single act of bad faith was against the manifest weight of evidence given AIG's proven and mostly unrebutted breach of its claims handling duties. It also made a *prima facie* case for juror misconduct and asked for juror interviews and a hearing to substantiate what discovery revealed. Yet five days later, without waiting for opposition, the trial court summarily denied the motion in its entirety. No interviews were permitted, no hearing was held, and no evaluation of the arguments for new trial was provided.

As the analysis below reveals, the errors in the admission of the settlements, the preclusion of proof on extra-contractual damages, and use of a flawed verdict form misled the jury and stripped Mr. Sebo of the extra-contractual damages to which he was entitled. The trial court's refusal to grant a new trial given the resulting prejudice and Mr. Sebo's proven case of bad faith further magnified the injustice. Reversal is called for and this Court should so hold.

POINTS ON APPEAL

I. THE TRIAL COURT'S FAILURE TO FOLLOW THE COLLATERAL SOURCE RULE AND APPLICABLE STATUTORY LAW IRRETRIEVABLY PREJUDICED MR. SEBO'S BAD FAITH CASE.

II. **THE TRIAL COURT'S MISAPPLICATION OF ISSUE PRECLUSION PRINCIPLES IRRETRIEVABLY PREJUDICED MR. SEBO'S RIGHT TO RECOVER EXTRACONTRACTUAL DAMAGES.**

III. **THE TRIAL COURT ERRED WHEN IT FAILED TO ENTER DIRECTED VERDICT ON THE QUESTION OF BAD FAITH LIABILITY.**

IV. **THE VERDICT FORM COMPOUND QUESTIONS IRRETRIEVABLY PREJUDICED MR. SEBO'S RIGHT TO RECOVER EXTRA-CONTRACTUAL DAMAGES.**

V. **REVERSAL IS REQUIRED TO VINDICATE FLORIDA'S PUBLIC POLICY AS THE VERDICT IS CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE.**

As to all points on appeal, Mr. Sebo filed his Motion for Entry of an Order Granting the Right to Conduct Interviews of Two Jurors and For a New Trial, and Alternatively, Motion for Judgment in Accordance with Sebo's Motion for Directed Verdict. [R. 107263-107363]. Both motions were denied. [R. 107364-107365].

STATEMENT OF BASIS FOR JURISDICTION

This Court has jurisdiction under Florida Rule of Appellate Procedure 9.030 (b) (1) (A) and the Florida Constitution § 4 (b) (1). This is an appeal from a final judgment that is not directly reviewable by the supreme court or a circuit court. After the jury verdict, the final judgment was entered on February 14, 2023. On February 22, 2023, the trial court denied Plaintiff's Motion for Entry of an Order

Granting the Right to Conduct Interviews of Two Jurors and For a New Trial, and Alternatively, Motion for Judgment in Accordance with Sebo's Motion for Directed Verdict. A Notice of Appeal was timely filed on March 16, 2023.

STATEMENT OF THE CASE

Mr. Sebo's custom built Naples, Florida home was covered under an "all-risk" policy, specifically tailored for his residence. After his home was severely damaged, his claim for insurance benefits was denied by the home's insurer, AIG. After that, in January 2007, Mr. Sebo filed and prosecuted what should have been a subrogation action pursued by AIG against the sellers of his home, the architect who designed it, the makers and installers of its windows and doors, and the construction company that built it. This effort cost Mr. Sebo millions of dollars.

After AIG denied coverage, Mr. Sebo added AIG to his ongoing action, seeking a declaration that AIG's policy covered the damage to his home. In a verdict entered on March 3, 2011, the jury agreed with him and judgment ultimately was entered against AIG.

AIG appealed. On appeal, the Second District Court of Appeal found that "[t]here is no dispute in this case that there was more than

one cause of the loss, including defective construction, rain, and wind." *Am. Home Assur. Co. v. Sebo*, 141 So. 3d 195, 197 (Fla. 2d DCA 2013). The Court, however, disagreed with the trial court's application of *Wallach v. Rosenberg*, 527 So. 2d 1386 (Fla. 3d DCA 1988), and specifically with that trial court's "determination that the concurrent causation doctrine should be applied in a case involving multiple perils and a first-party insurance policy." *Sebo*, 141 So. 3d at 198. The Second District accordingly reversed and remanded for a new trial, "in which the causation of [Mr.] Sebo's loss is examined under the efficient proximate cause theory." *Id.* at 201.

On Mr. Sebo's petition, the Supreme Court disagreed with the Second District and remanded for further proceedings after "approv[ing] the rationale of the Third District in *Wallach*." *Sebo v. Am. Home Assur. Co.*, 208 So. 3d 649, 695 (Fla. 2016). The Supreme Court first recognized that "*Wallach* has continued to be applied in Florida courts until the Second District's decision in *Sebo*." *Id.* at 699. It then agreed that "[w]here weather perils combine with human negligence to cause a loss, it seems logical and reasonable to find the loss covered by an all-risk policy even if one of the causes is excluded from coverage[.]" *Id.*

Although the Supreme Court plainly determined that coverage was due, AIG refused to pay even the undisputed amount it owed. Instead, AIG tried, unsuccessfully, to obtain a set-off from the money recovered by Mr. Sebo on his own initiative from the other parties he sued. It also contested its responsibility for the attorneys' fees it owed for forcing Mr. Sebo to prove that the damage to his home was covered. In the end, Mr. Sebo did not receive his final payment from AIG until late January 2020 — 5,130 days after he made his covered property damage claim.

In October 2018, and with leave of court, Mr. Sebo amended his complaint to bring this first-party statutory "bad faith" action against AIG, pursuant to Sections 624.155 and 626.9541(i) (Florida's "Unfair Claims Settlement Practices Act") of the Florida Statutes. This case was tried to a jury, who found in favor of AIG. Judgment was entered on February 14, 2023, and Mr. Sebo timely moved for a new trial and for discovery and a hearing on potential juror misconduct. Five days after filing, the trial court denied the motion without comment. This appeal followed.

STATEMENT OF FACTS

I. BACKGROUND FOR MR. SEBO'S INSURANCE BAD FAITH ACTION

Bob Sebo came from very humble beginnings. [R. 106304-307/2026:9-2029:3]. That changed when he became the fourth employee and founder of a company known as Paychex. [R. 106307-308/2029:4-2030:5]. After a thorough third-party inspection, Mr. Sebo purchased a superficially gorgeous Naples, Florida home for $11.2 million in April 2005. [R. 106308-309/2030:1-2031:21]. AIG provided homeowners insurance through the AIG Private Client Group ("PCG"). [R. 106777-779/2390:23-2392:20]. The main house, guest house and other permanent structures were insured for over $8 million. [R. 10248].

Strong rains in the early summer of 2005, followed by Hurricane Wilma in October, caused extensive damage to the home, as well as mold from water intrusion. [R. 104258/810:2-16]. Multiple construction defects compounded the harm. [R. 104231/765:1-14; 104338-339/890:19-891:14]. Mr. Sebo's efforts to repair his home proved unsuccessful. [R. 104333-335/885:12-887:3; 104335-336/887:9-888:18]. His attempts to obtain coverage for the property damage proved just as futile. [R. 104335/887:4-8].

AIG summarily rejected coverage for the bulk of his multi-million dollar loss. [R. 107125/2943:17-18; 102910]. Abandoned by

his insurer, Mr. Sebo sued the parties who sold him the property and those responsible for the construction defects in his home. [R. 104333-335/885:12-887:3; 104335-336/887:9-888:18]. That litigation required a substantial personal investment in attorneys' fees and costs. [R. 106844-845/2457:11-2458:21; 107085-086/2903:23-2904:4].

After the coverage denial, Mr. Sebo added AIG to his third-party action. [R. 106365-366/2087:7-2088:17]. After a costly trial and multiple appeals, he proved his case for coverage. [*Id.*; R. 10400-001/647:8-648:1]. After much resistance and foot-dragging, AIG finally paid him $15,001,997.82 for his covered losses and a portion of his attorneys' fees and costs incurred. [R. 107095/2913:3-16]. Nevertheless, since his policy limits had been reached, he remained on the hook for more than $3.5 million in unreimbursed fees and costs and for more than $1.5 million in precautionary repair costs. [R. 107111-107113/2929:3-2930:1; 2930:22-2931:17].

Having obtained his coverage judgment, Mr. Sebo was authorized to, and did, sue AIG for its bad faith handling of his property damage claim. [R. 41616-41618; 41620-41654; 56919-56920]. After the requisite factual showing, he obtained leave of

court to add a claim for punitive damages. [R. 66746-66747].

II. THE FOUNDATION FOR MR. SEBO'S CLAIMS OF BAD FAITH

Discovery and trial revealed one thing: the number of statutory and common law acts of bad faith AIG committed was staggering. They began with AIG's inadequate inspection of the property, continued through its investigation of the loss, were further reflected in its treatment and denial of Mr. Sebo's claim, and with its persistent efforts to delay paying the benefits due.

Discovery further revealed that AIG's unlawful conduct was an entrenched business practice. AIG's bad faith conduct included its failure to: (1) properly train its claims representatives; (ii) adopt and implement standards for the proper handling and investigation of claims; (iii) accurately represent the terms of its policy and Mr. Sebo's obligations; and (iv) put Mr. Sebo's financial interests ahead of its own. All of this was on full display in Mr. Sebo's bad faith case.

The Flawed Property Inspections: AIG denied coverage based in part on its assertion that the damages Mr. Sebo claimed preceded the inception of its policy in April 2005 [R. 102328]. AIG knew, however, that this was a false narrative; Mr. Sebo provided AIG with a copy of a comprehensive pre-purchase, third-party inspection

report which, room-by-room, failed to document water intrusion or wood rot. [R. 103104-103129]. Indeed, this mirrored the experience of AIG's Dale Tomlinson, who had inspected the house for its prior owners and re-inspected the house after Mr. Sebo's purchase (before Hurricane Wilma) in September 2005. [R. 102545-102557].

Mr. Tomlinson's report found very limited signs of water intrusion (fixed by Mr. Sebo) and opined the house was worth more than its initial purchase value — requiring Mr. Sebo to pay an additional premium to remain insured. [R. 102549]. Once the claim was made, however, Mr. Tomlinson re-inspected the property alongside the assigned adjuster, AIG's Jed Usich, and, in a full about face, found the property to be beset with pre-existing conditions requiring millions of dollars to repair. [R. 104925/1092:10-22].

The Incomplete Investigation: An insurance company's obligation to conduct a thorough, prompt and unbiased investigation of a loss is codified by Florida statute and set forth in Best Practice Manuals relied on by AIG's claims personnel. [R. 107100-107103/2918:11-2919:9]. For a multi-million dollar first-party loss with multiple causes, a proper investigation would minimally involve an inspection of the entire property for obvious and hidden damage.

[*Id.*].

In particular, Mr. Sebo's experts offered uncontradicted testimony that a proper investigation should have included an inspection of the entire property, obtaining the property plans so that locations of hidden damage and dimensions for an estimate could be sourced, determining the existence of prior claims through on-line services, reviewing building records to verify specifications and alterations given the construction defects, interviewing witnesses such as the prior owners (who Mr. Tomlinson knew), engaging a roofer to verify the soundness of the roof given the clear damage sustained, and estimating of damages sustained even if less than the deductible. [R. 106395-445; 106574-601; 106601-690; 106690-699/2117:15-2167:17; 2187:14-2214:17 (direct); 2214:18-2303:13 (cross); 2303:20-2312:24 (re-direct)]. None of this happened.

AIG did hire Irving Lee Pack and Kelly Gibbons of Interscience to evaluate the damage. [R. 101607]. Combined, AIG paid them a little more than $20,000 – only 10% of the more than $200,000 AIG later spent on just one trial expert [R. 102543-102523]. AIG delegated the investigation to Mr. Usich—the only AIG claims employee to ever set foot on Mr. Sebo's property post-Hurricane

Wilma. [R. 104932/1099:1-6; 104945/1112:14-25].

Mr. Usich's first inspection occurred on January 6, 2006. [R. 101607]. Less than two weeks later he reserved AIG's rights to deny coverage. [R. 101606 ("discussed, reviewed, and approved ROR on this matter on 1/18")]. Then on February 2, 2006, the same day as his second inspection, Mr. Usich informed his manager, Greg Jones that there would be a coverage denial on Mr. Sebo's claim "this month," despite contemporaneous notes in the claim file confirming that there were multiple causes of loss, with two of three causes being covered. [R. 103210]. AIG never attempted to allocate between covered and uncovered damage. [R. 102235-236; R. 102325-328]. It did agree to pay $50,000, the policy sub-limit for mold. [*Id.*].

The First Infirm Claim Denial: In a letter dated April 19, 2006, AIG denied coverage, save for the mold limit. [R. 102325-328; 104422/974:8-13; 102910]. Mr. Usich initially prepared the letter, which was reviewed and revised by Mr. Jones, and Mr. Jones' superior, Paul Cuzzola. [R. 102413]. The denial letter gave two reasons: (i) the damages occurred prior to the inception of the policy; and (ii) the defective construction exclusion barred coverage. [R. 10327]. On the former, both the heavy spring rains and the hurricane

took place after policy inception. [R. 10327]. Regarding the latter, there was no mention of the covered concurrent causes, which should have resulted in a different decision, as AIG's corporate representative later admitted under oath:

> If we've got a claim that involves wind damage, which is a covered cause of loss, and we've got flood damage that occurs at the same time, which is an excluded cause of loss, we conduct an inspection. We hire experts needed to assist us in determining cause…… If we are unable to separate out the damages because they are commingled, then we give the customer the benefit of the doubt and we pay the claim.

[R. 104401/953:17-954:5]. AIG's claims manuals in part drove this result; each one expressly required that the adjusters use the efficient proximate cause doctrine despite governing Florida law. [R. 102611; 102638].

The Second Infirm Claim Denial: Following the first denial Mr. Sebo attempted to re-engage with AIG, but those efforts failed. When contacted by Mr. Sebo's repair contractor, AIG's property inspector was told to "stand down". [R. 107101-102/2919:23-2920:16]. Mr. Sebo's counsel wrote to AIG in April 2007 asking to discuss the claim. Mr. Usich, unbeknownst to Mr. Sebo, had moved. [R. 107101/2919:18-22]. After AIG's non-response, Mr. Sebo tried

one last time, in early May 2008, when he was contemplating the final demolition of his home. [R. 102294-993]. By then, Debra Osborne had taken over Mr. Usich's responsibilities. She was supervised by Patrick Flaherty. [R. 103927/574:11-22].

When Ms. Osborne was told that Mr. Sebo would be sending additional information, Mr. Flaherty confided to Ms. Osborne that AIG would have to "go through the motions." [R. 104669-670/1444:18-1445:19]. That is precisely what it did. [*Id.*]. Ms. Osborne never examined the documents (the time-table in evidence proves this), and even though Mr. Flaherty asked for an engineering inspection, AIG never did that either. [R. 104670-104674/1445:21-1449:17]. Instead, AIG denied the claim a second time, attaching its prior April 19 letter. [R. 104672/1447:7-24].

The Insufficient Reserves, Paltry Settlement Offers, and Unprecedented Payment Demand: Despite the significant claimed damage, AIG carried a negligible reserve on Mr. Sebo's claim. [R. 101658; 103946-947/593:11-594:19]. AIG's claims-handling expert later admitted he had never seen a case where the amount owed was 140,000 times more than the reserve. [R. 106006-007/1841:13-1842:3]. AIG's offers to resolve the claim were paltry: $100, $2,500

and $100,000, all made in late 2010. [R. 107104/2922:5-9]. Its claims expert again candidly admitted that none of these offers complied with Section 626.9541(1)(i)(f). [R. 107104/2922:10-24].

Ironically, AIG's final settlement offer was actually a payment demand. [R. 107104/2922:10-21]. After losing its summary judgment on the concurrent cause doctrine, AIG demanded that Mr. Sebo pay it $150,000, gave him less than 24 hours to accept, and insisted he pay within 15 days. [R. 101636-637]. Notably, AIG's expert admitted that until this case, he had never seen an insurer take such a position. [R. 106007/1842:24-1843:4; 107104/2922:10-21].

The Newly-Minted No-Claim Defense: After Mr. Sebo resolved his claims against the non-insurer defendants, his declaratory relief action against AIG went to trial. Having lost the concurrent causation issue, AIG deployed a new defense: Mr. Sebo was not entitled to coverage because he had never made a claim. [R. 107098/2916:16-24].

AIG's Persistent Failure to Pay: In the initial coverage action, the jury awarded Mr. Sebo damages totaling $13,741,200 for repair, reconstruction and loss of use. [R. 30737-798]. On December

1, 2016, the Supreme Court determined that Mr. Sebo should prevail, reinstating the jury's verdict as modified by the trial court. [R. 41324-339]. The only open issue was whether AIG could deduct from the total then owed – which with interest alone would exceed $10,000,000 – the $6 million Mr. Sebo collected on his own initiative from third parties after AIG rejected his claim. [R. 31222-230; R. 32610-612]. Undisputed evidence proved the balance of the obligation claimed and AIG admitted it; as AIG wrote on January 27, 2017: "I think it's safe to say that we may be hit for more than $5 million and perhaps considerably more." [R. 104014/661:1-10]. Yet no portion of that amount was paid for nearly two years. [R. 101665-667; R. 103200-209].

AIG's Litany of Statutory Violations: The proof at trial revealed multiple Unfair Practice Action violations, including:

- Subsection (i)3.c requiring insurers to "acknowledge and act promptly upon communications with respect to claims." AIG repeatedly failed to acknowledge and act promptly in response to Mr. Sebo's communications. [R. 107101-102/2919:10-2920:16];

- Subsection (i)3.d prohibiting insurers from "[d]enying claims without conducting reasonable investigations based upon available information" if "committ[ed] or perform[ed] with such frequency as to indicate a general business practice." AIG's investigation failed to consider "all available sources of

information," and was inconsistent with AIG's Best Practices Guidelines. Instead, the investigation was result-oriented. Among other things, AIG sent its May 15, 2008 denial letter without having an engineer evaluate the relevant documents. [R. 104674/1449:4-17];

- Subsection (i)3.f requiring insurers to provide a written explanation, based on the facts and the law, for denial of a claim or the offer of a compromise payment. AIG's two written coverage explanations provided no legal analysis of causation, the key issue in the case. [R. 102325-328; 102235-236; R. 107109-111/2927:12-2929:2]. And, all four of its settlement offers/demands admittedly failed to comply;

- Subsections (i)3.g and (i)3.h, in tandem, requiring an insurer to advise its insured what information it needs and why. AIG's expert conceded at trial that AIG violated subsection (i)3.h because it failed to explain why certain requested information was needed [R. 107102-104/2920:17-2922:3]; and

- Subsection (i)3.a requiring insurers to "adopt and implement standards for the proper investigation of claims" and deems the failure of such as an "[u]nfair claims settlements practice" if "commit[ed] or perform[ed] with such frequency as to indicate a general business practice." The evidence at trial demonstrated that AIG adopted the wrong causation standard [R. 107106-107109/2924:24-2927:6]. This was no honest mistake, but another calculated decision to ignore the prevailing causation doctrine in Florida. [*Id.*].

AIG's General Business Practices: Through multiple witnesses, primarily from AIG, Mr. Sebo proved that AIG's acts violating Florida law and industry standards occurred with enough frequency to establish a general business practice. AIG's claims

handling was driven by its profit motives, not its insured's well-being. [R. 107119-123/2937:7-2941:17]. In particular, AIG created metrics for paying substantial bonuses to employees who achieved reductions on claim payments, creating a danger, as its head of claims conceded, "that claim payments [will] be manipulated." [R. 107118/2936:21-25].

Equally telling, despite the many statutory violations conceded by AIG's own expert, no one who worked on Mr. Sebo's claim or the related litigation was censured, reprimanded, or suffered any adverse employment consequence over the manner in which his claim or ensuing litigation was handled. [R. 107124/2942:13-20]. Indeed, none of the many managers and executives involved in the decisions on Mr. Sebo's claim found reason to disagree with, or even counsel a change in, the manner in which he was treated. [R. 106599-106600/2212:3-2213:12].

III. THE TRIAL OF MR. SEBO'S BAD FAITH ACTION IS INFECTED WITH PREJUDICIAL ERROR AND JUROR MISCONDUCT

At trial, Mr. Sebo introduced the evidence of AIG's bad faith, most of it without rebuttal. [R. 107136/2954:12-19]. Yet, within an hour, the jury returned a defense verdict. [R. 107190/3008:2-3

(excused 12:56 p.m.); R. 107192/3010:9-3014:17 (jurors present 2:15 p.m.)]. Mr. Sebo's motion for new trial chronicled the reasons for that irrational result, with several standing out. [R. 107263-363].

The Misleading and Prejudicial Demonstrative Exhibit and Settlement Evidence. Until moments before trial, AIG was barred from attempting to reduce its liability for damages it caused by deducting the amounts Mr. Sebo recovered from third parties.[1] Yet, at trial, the court reversed course and AIG took full advantage.

Beginning with opening statement, the court allowed evidence and argument regarding Mr. Sebo's third-party settlements, including their amounts. [R. 103884-885/531:17-532:5; 103896/543:13-20]. AIG requested (over objection) a preliminary statement of the case that was read to the jury before opening that specifically referenced the third-party settlements. [R. 103823-828/470:10-475:8; R. 103787]. Following that, AIG started its

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[1] On March 15, 2011, AIG first filed a Motion to Apply Set Off, arguing that Mr. Sebo "has received substantial sums in settlements with several of the former co-defendants in this action." [R. 31222]. With AIG's Motion in Limine No. 2 on January 14, 2022 [R. 85874], the trial court considered and rejected AIG's efforts to reduce its liability by set-off for the fifth time. [A-6477].

drumbeat that Mr. Sebo's bad faith case was nothing more than a "money grab":

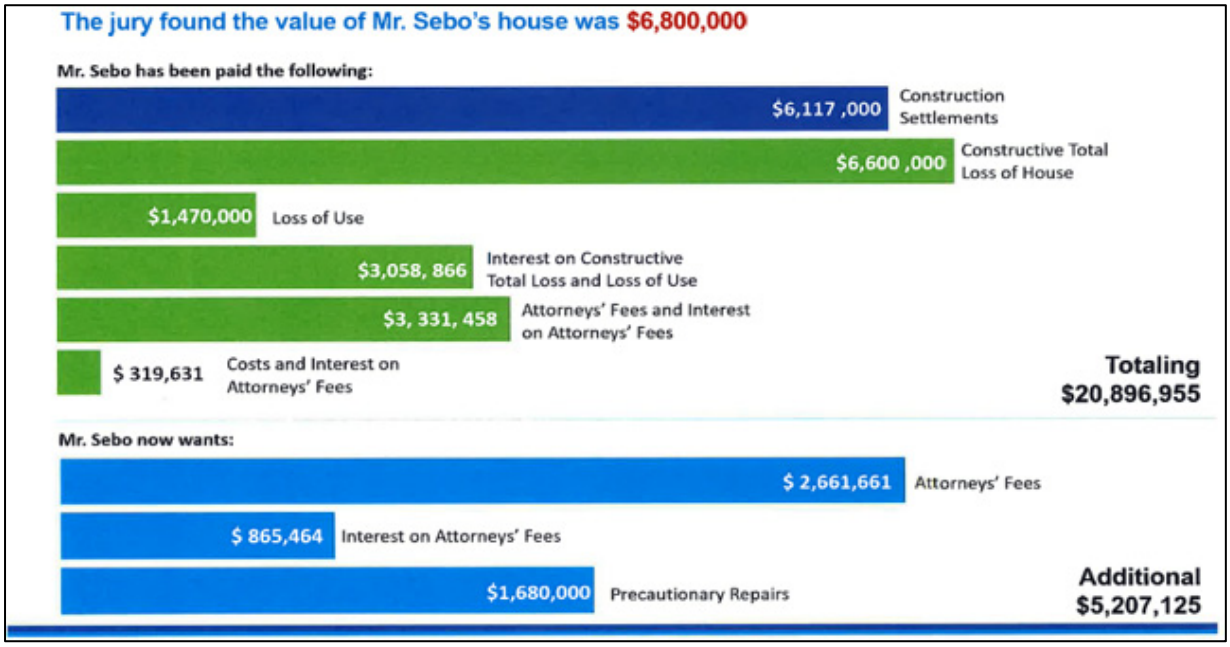
> And what we will show you is that what this case is really about is that Mr. Sebo changes his story to get paid. He's done it in the past, and he comes here to you today doing it again all to get more money.

[R. 103870/517:6-14]. AIG proceeded to give the jury background on Mr. Sebo's efforts to sue third parties (while leaving out the important detail that those efforts were made after AIG offered to pay a mere $50,000 for Mr. Sebo's multi-million dollar claim). As AIG put it:

> And you will see that he ultimately ended upset [sic] settling those claims, the fraud and construction claims, with Mr. Jacobson and his contractors for $6.1 million. And you will see that the appraised value of Mr. Sebo's house was $6.8 million. But when he went through those settlements with the construction defendants and got that money, we will show you he then changed his story. He no longer said that the construction defects and the construction defects alone caused his damage, no, now he said that it was the construction defects and the weather-related events including Hurricane Wilma. And by changing his story, he was then targeting all of the insurance money.

[R. 103870/517:6-14; 103873-874/520:15-521:5].

AIG then used an inflammatory demonstrative exhibit to drive home its "money grab" theme:



[R. 103269]. To achieve maximum effect, the chart used similar colors for the settlement amounts and Mr. Sebo's claimed compensatory damages. [*Id.*]. The length of the lines on the chart also were not to scale [*Id.*] and Mr. Sebo's actual harm suffered, including his extra-contractual damages, went unmentioned. [*Id.*].

Towards the end of its opening statement, AIG touted Mr. Sebo's settlement recoveries as the heart of its defense. As AIG summarized:

> We contend Mr. Sebo has not suffered any

> damages. We will show that. He's been paid. We contend he is changing his story again to try to convince you he has more damages . . .
>
> So Bob Sebo has now recovered $21 million. Changed his story once, and now he's asking you to work with him to rewrite the history again so the story could be changed so he can get more money.

[R. 103870/517:6-14; 103873-874/520:15-521:5; 103897/544:13-18; 103899/546:19-23]. According to AIG, Mr. Sebo should pay a price for having obtained the settlements. [*Id.*].

But the purported "money grab" was simply Mr. Sebo's attempt to do what Florida law expressly allows: recover extra-contractual damages for AIG's bad faith. Nevertheless, his repeated requests for curative instructions concerning the settlements were ignored. [R. 103823-828/470:10-475:8]. And despite the court's eventual recognition of the error in allowing this argument and testimony, AIG came back to it in closing:

> So we have one story to go after the Jacobsons and the contractors, he got a settlement. He changed his story to go after my client, and he got paid.
>
> And now he comes before you here again and he's changed his stories again. And based on yet new stories he wants you to pay him more money.

[R. 103870/517:6-14; 103873-874/520:15-521:5; 107129/2947:6-13].

Issue Preclusion. The prejudice from the settlement evidence was compounded by the trial court's misapplication of issue preclusion principles. [R. 87627 - 87630]. That misapplication stripped Mr. Sebo of an entire and significant category of extra-contractual damages; fees and costs he actually paid, but was not able to be awarded under a lodestar analysis totaling $3,527,125.01, or the Uniform Guidelines applicable to costs. [*Id.*]. The court found, in accepting AIG's arguments, that any extra-contractual damages that could have been pursued in the prior coverage action could not be pursued in the statutory bad faith action. [*Id.*].

The court rejected Mr. Sebo's arguments that this estoppel finding turned Florida law upside down. Under decades of controlling law, an insured cannot pursue extra-contractual damages in a coverage action. [*Id.*]. As a result of that erroneous ruling, however, Mr. Sebo was forced to press damage claims he might otherwise have elected not to pursue.

The Verdict Form. Mr. Sebo requested that the verdict form separate causation from liability; yet at AIG's request, it combined

liability, damages, and causation in a single query. [R. 100941-100943;107041-107042]. The jury thus was unable to either make individual findings concerning AIG's non-compliance with the Unfair Claim Settlement Practices Act, 626.9541(1)(i) FLA. STAT., separately find causation and damages, or to award punitive damages absent then-sought compensatory damages as permitted by law. [R. 100941-100943].

Juror Misconduct. Two jurors made material misrepresentations during *voir dire* when they failed to disclose that they are licensed insurance agents. [R. 107315-107340; 103500-103522]. These facts would have prompted Mr. Sebo to move to strike for cause, particularly given the impact to the Naples, Florida area by recent hurricane landfalls (Wilma, Irma and Ian), as well as very recent legislative activity regarding the insurance crisis. [R. 107307]. Yet despite Florida law's mandatory requirements, the trial court failed to allow juror interviews or permit a hearing where proof of prejudice could be developed and disclosed. [R. 107364].

Proven Bad Faith. Mr. Sebo's motion for new trial also demonstrated why the jury's verdict was against the manifest weight of the evidence given AIG's multiple independent statutory violations

and breach of its claims handling duties.[2] The motion included admissions from AIG's own bad faith expert conceding that critical aspects of AIG's claims handling violated industry standards and Florida's statutory mandates. [R. 107295-107302]. It further explained how the admission of the settlements, the issue preclusion ruling, and verdict form obscured what was a proven case of bad faith. [R. 103270].

Despite that showing, five days later, on February 22, 2023, the court summarily denied Mr. Sebo's motion for new trial without addressing his arguments and similarly rejected any proceedings related to the juror misconduct. [R. 107364].

SUMMARY OF ARGUMENT

Florida's insurance bad faith statutory scheme protects policyholders from insurers who are unwilling to promptly investigate claims and live up to the promises they make. When express statutory duties are not fulfilled, private citizens have the power to seek actual and punitive damages to provide full relief and deter the

[2] On Mr. Sebo's oral motion for directed verdict at the close of the evidence, AIG's counsel conceded that he had made out a *prima facie* case of bad faith. [R. 105450].

unlawful conduct. Here, there is no question that Mr. Sebo was victimized twice: once, by AIG during the claim process and, next, by the trial court in the errors advanced on this appeal.

First, the trial court failed to enforce Florida's entrenched rule and Florida statutory law by allowing AIG to introduce evidence of settlement payments made by third parties. This gave AIG the platform to argue that Mr. Sebo had already been fully compensated for AIG's breach and that this action was nothing but a money-grab. This line of argument, in turn, deliberately obfuscated the distinct purpose of statutory bad-faith actions and AIG thereby got an undeserved free pass for its proven tortious conduct.

Second, the court misapplied issue preclusion principles and causation standards, thereby stripping Mr. Sebo of any recovery for extra-contractual damages he foreseeably suffered from AIG's bad faith. Mr. Sebo was unable to put his full measure of extra-contractual damages before the jury and AIG once again got an immunity from liability it did not deserve.

Third, Mr. Sebo was entitled to a directed verdict on AIG's liability when AIG's expert, Mr. Richmond, admitted that AIG breached its duty of good faith and fair dealing to Mr. Sebo when it

violated 626.9541(i)(3)(h).

Fourth, the court erroneously denied Mr. Sebo's request to separate causation from liability on the verdict form. As a result, the jury could only find for Mr. Sebo if it concluded that (i) AIG violated the bad faith statute and (ii) that violation caused Mr. Sebo to suffer *compensatory* damages. But the bad faith statute allows policyholders to recover nominal and punitive damages, even where there are no compensatory damages. Here, however, the jury never had the chance to make such a finding.

Fifth, the court declined to meaningfully address Mr. Sebo's motion for new trial highlighting these prejudicial errors and establishing a miscarriage of justice given his proven and largely unrebutted case of bad faith. AIG's breaches of duty should, at the very least, have supported an award of nominal or punitive damages as provided by settled Florida law. Simply put, the trial court should have exercised its discretion, evaluated the record, and directed that a new trial be granted. Its summary denial of Mr. Sebo's motion abdicated that role.

Here, Mr. Sebo deserves a new trial where his bad faith claim can be presented in the manner Florida law intends. This Court

should reverse the judgment so the protections for policyholders Florida envisions are realized.

STANDARD OF REVIEW

The trial court's legal rulings governing its admission of the settlement evidence, limiting Mr. Sebo's claimed damages and adopting the verdict form are reviewed *de novo*. *R.L.G. v. State*, 322 So. 3d 721, 724 (Fla. 3d DCA 2021); *see, e.g.*, *Samiian v. Johnson*, 302 So. 3d 966, 980 (Fla. 1st DCA 2020) (reviewing *de novo* whether the trial court "erred in allowing the jury to determine causation and damages in [a] bad faith action . . . , which . . . resulted in the jury hearing irrelevant and prejudicial evidence and receiving erroneous . . . verdict forms."). As such, this Court is tasked with "mak[ing] its own determination as to the correctness of the decision of the trial court, regardless of the reasons or theories assigned therefor." *Landis v. Allstate Ins. Co.*, 546 So. 2d 1051, 1053 (Fla. 1989) (quoting *In re Estate of Yohn*, 238 So. 2d 290, 295 (Fla. 1970)).

The trial court's denial of new trial for the evidentiary errors and the verdict being against the manifest weight of the evidence is reviewed for abuse of discretion. *See Campbell v. Griffith*, 971 So. 2d 232, 235 (Fla. 2d DCA 2008) (quoting *Dewitt v. Maruhachi Ceramics*

of Am., Inc., 770 So. 2d 709, 711 (Fla. 5th DCA 2000)).

Where an abuse of discretion results in prejudicial error, reversal is called for under settled law. *Hill v. Sadler*, 186 So. 2d 52, 55 (Fla. 2d DCA 1966) ("[A] judgment is not reversible in the absence of prejudicial error clearly demonstrated."). "Prejudicial error requiring a reversal of judgment or a new trial occurs only where 'the error complained of has resulted in a miscarriage of justice.'" *Goldschmidt v. Holman*, 571 So. 2d 422, 425 (Fla. 1990) (quoting § 59.041, FLA. STAT.). A "miscarriage of justice" arises if the jury was confused or misled by the prejudicial error. *See Fla. Power & Light Co. v. McCollum*, 140 So. 2d 269, 269 (Fla. 1962) (affirming appellate court's reversal of trial court's judgment due upon finding that the jury might have been misled).

ARGUMENT

I. THE TRIAL COURT'S FAILURE TO FOLLOW THE COLLATERAL SOURCE RULES AND APPLICABLE STATUTORY LAW IRRETRIEVABLY PREJUDICED MR. SEBO'S BAD FAITH CASE.

With the trial court's blessing, AIG repeatedly told the jury that Mr. Sebo had already obtained a windfall by virtue of the settlements he received, developing its money grab theme in its opening statement, carrying it through during witness cross examination,

and at the end of trial in closing. [R. 103869-900 (defense opening)/516:14-547:18; R. 107127-169/2945:1-2987:16]. As noted, the capstone of AIG's prejudicial theme was an artfully contrived but highly misleading demonstrative exhibit.

AIG argued that the settlements and their amounts should come in because they supposedly were relevant to causation. This was never true. Mr. Sebo's argument that AIG's failure to pay caused him to pursue others who, under Florida law, may have some responsibility for his damages does not arise from any prior injury, but, in fact, from the very one complained of in this case. *See Cunningham v. Progressive Select Ins.*, No. 18-cv-325, 2019 U.S. Dist. LEXIS 167598, at *25-26 M.D. Fla. July 29, 2019) (rejecting defendant-insurer's argument that there could be no causal connection between insurer's alleged bad faith conduct and insured's prior excess judgment).

No settlement money received could break the causal chain between AIG's conduct and attorneys' fees and costs spent pursuing various third parties after AIG denied coverage but before any particular settlement was achieved. AIG never bothered presenting evidence suggesting otherwise. While Mr. Sebo's pursuit of these

third parties is relevant to the amounts he sought as extra-contractual damages, whether he recovered any money never was. This evidence never should have been admitted.

A. The Collateral Source Rule Should Have Cut-Off AIG's Settlement Evidence.

Florida's well-settled collateral source rule should have barred the settlement evidence. Put simply, "the collateral source rule bars the admission of evidence of payments made by third parties." *Higgs v. Costa Crociere S.P.A. Co.*, 969 F.3d 1295, 1310 (11th Cir. 2020) (citing *Bourque v. Diamond M. Drilling Co.*, 623 F.2d 351, 354 (5th Cir. 1980)). While the damages portion of the collateral source rule has been superseded by statute, this "evidentiary portion of the rule remains alive and well in Florida," *Nationwide Mut. Fire Ins. Co. v. Harrell*, 53 So. 3d 1084, 1086 (Fla. 1st DCA 2010), having "enjoy[ed] a long history of legal precedent." *Benton v. CSX Transp., Inc.*, 898 So. 2d 243, 245 (Fla. 4th DCA 2005).

The evidentiary collateral source rule serves to prohibit the jury learning of prior recoveries to nearly the same extent as the statutory prohibition on settlement does. *Sheffield v. Superior Ins. Co.*, 800 So. 2d 197, 203 (Fla. 2001) (characterizing a trial court's denial of an

objection to evidence of collateral sources of recovery in an insurance case as "erroneous" and "an obvious error" of which there could be "no question") (quoting *Mattek v. White*, 695 So. 2d 942, 944 (Fla. 4th DCA 1997).

The prudential justification behind this rule is that "[e]vidence of collateral source benefits may lead the jury to believe that the plaintiff is . . . trying to obtain a double or triple payment for one injury . . . , or to believe that compensation already received is . . . sufficient recompense." *Gormley v. Gte Prods. Corp.*, 587 So. 2d 455, 458 (Fla. 1991) (internal quotations and citations omitted) (finding it error to "disclose the irrelevant and prejudicial fact of insurance," but also finding that such evidence could be introduced as rebuttal evidence upon plaintiff's denial that a different value of property lost had ever been calculated); *see also Ellison v. Willoughby*, 326 So. 3d 214, 224 (Fla. 2d DCA 2021), *affirmed in part and reversed on other grounds*, *Ellison v. Willoughby*, No. SC2021-1580, 2023 Fla. LEXIS 16485 (Nov. 2, 2023) ("The underlying principle of the collateral source rule is that it is better for the wronged plaintiff to receive a potential windfall than for a tortfeasor to be relieved of responsibility for the wrong . . .") (citations and quotations omitted) (question of

collateral source set-off rather than evidentiary portion of the rule).[3]

On this record, application of the collateral source rule as it pertains to Mr. Sebo's third party settlements is compelled by settled law. Those settlements were obtained on his own initiative after AIG abandoned him. The collateral source rule, as a matter of sound policy, is intended to forestall the prejudice that comes from a jury's thinking that a double recovery is being obtained – exactly what AIG pejoratively conveyed in relying on the settlements.

B. Sections 768.0414 And 90.4058 Should Likewise Have Cut-Off AIG's Settlement Evidence.

Florida's statutory law also should have barred the settlement

[3] While Mr. Sebo does not concede that any recovery would be a windfall, *Ellison*'s reasoning is nevertheless persuasive with respect to applying the evidentiary collateral source rule here because *Ellison* was a Second District case that also concerned the dynamics of collateral sources in the context of a bad faith insurance claim.

evidence. "Both sections 768.041[4] and 90.408[5], Florida Statutes (2006), prohibit the admission at trial of any evidence of settlement or dismissal of a defendant." *Saleeby v. Rocky Elson Constr., Inc.*, 3 So. 3d 1078, 1080 (Fla. 2009) (holding that the unambiguous language of the statutes admit no exceptions and that violation of the prohibition against admission of settlement is reversible error).

Indeed, following AIG's unsuccessful effort to introduce settlements at the coverage trial in this very case, the Florida Supreme Court affirmed this exclusionary rule, quoting *Saleeby*'s language finding the relevant statutory language in question "clear

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[4] "The fact of such a release or covenant not to sue, or that any defendant has been dismissed by order of the court shall not be made known to the jury." § 768.041(3), FLA. STAT. The phrase "such a release or covenant" refers to the phrase found in § 768.041(2), FLA. STAT.: "a release or covenant not to sue to any person, firm, or corporation in partial satisfaction of the damages sued for."

The purpose of section 768.041 is to "promote Florida's public policy favoring settlement by excluding such prejudicial evidence at trial." *Saleeby*, 3 So. 3d at 1083.

[5] "Evidence of an offer to compromise a claim which was disputed as to validity or amount, as well as any relevant conduct or statements made in negotiations concerning a compromise, is inadmissible to prove liability or absence of liability for the claim or its value." § 90.408, FLA. STAT.

and unambiguous."[6] *Sebo v. Am. Home Assur. Co.*, 208 So. 3d 694, 700 (Fla. 2016) (holding the same settlements that AIG introduced at the bad faith trial were correctly excluded from the coverage case, but noting that the trial court could nonetheless consider settlements in post-trial proceedings); *see also Baudo v. Bon Secours Hosp./Villa Maria Nursing Ctr.*, 684 So. 2d 211, 213 (Fla. 3d DCA 1996) (noting that "by virtue of these statutes the parties are free to settle claims on their own terms without jeopardizing claims remaining against others." (quoting *Price v. Beker*, 629 So. 2d 911, 912 (Fla. 4th DCA 1993)).

The basis for this prohibition rests on the fact that a jury's knowledge of a settlement with another party leads to an extreme risk of an unfair trial, and the damage done to the jury's ability to consider a defendant's liability and plaintiff's damages independent from the amount received from other sources. *City of Coral Gables v. Jordan*, 186 So. 2d 60, 63 (Fla. 3d DCA 1966) (recognizing that a jury's knowledge of a defendant's settlement with another tortfeasor

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[6] In fact, the jury in the coverage case, untainted by unfairly prejudicial settlement evidence, had no problem awarding Mr. Sebo many millions of dollars.

is "immediately and completely destructive to the possibility of a fair trial between the plaintiff and the defendant." Once again, this is the precise rationale that should have led to the exclusion of the third party settlement evidence in this case.

C. There Is No Denying The Prejudicial Effect Of The Admission Of Settlement Evidence.

AIG knew what it was doing. It argued pretrial that settlement and more specifically settlement amounts were somehow relevant to causation, although exactly how or why remained a mystery. It then argued (over Mr. Sebo's objection) for a preliminary statement of the case that was ultimately read to the jury before opening that included reference to settlements with third parties. [R. 103823-828/470:10-475:8].

The trial court eventually admonished the jury that settlement amounts could not operate to reduce Mr. Sebo's damages. That came far too late to rectify the prejudice that already occurred. Not only had AIG firmly fixed its money grab theme, it continued to introduce settlement evidence during Mr. Sebo's case in chief, including during cross examination of Mr. Sebo's counsel, David Zulian. [R. 104316-317/868:7-869:10].

Then came the cross examination of Mr. Sebo. As if to highlight for the jury that his damages had been reduced by settlement funds received from others, AIG's counsel finished her cross examination by asking the following questions:

> Q. So the lines 1 through 43 that were talked about, which were the fees and costs that you incurred, Mr. Sebo?
> A. Yes.
> Q. Those resulted in the settlements you achieved that we just talked about?
> A. I - - I think so.

[R. 106381/2103:1-7].

Here, the prejudice from AIG's use of the settlement evidence is apparent and gives rise to reversible error. Mr. Sebo's effort in obtaining the settlements had no relationship to the extra-contractual damages he sought. The same was true for the coverage benefits he sued to obtain. And Mr. Sebo's pursuit of his extra-contractual damages was not a "money grab" but something specifically endorsed by Florida's statutory law. The speed of the jury's verdict reveals just how effectively AIG's strategy succeeded. But AIG never should have had the benefit of its highly prejudicial money grab theme and that alone requires reversal.

Specifically, the Third District has "repeatedly found that the

mere inference of settlement is sufficient to warrant a new trial" *Hernandez v. CGI Windows & Doors, Inc.*, 347 So. 3d 113, 119 (Fla. 3d DCA 2022). Other districts have construed the statutory language in a similarly expansive manner. *See, e.g.*, *Muhammad v. Toys R Us, Inc.*, 668 So. 2d 254, 256 (Fla. 1st DCA 1996) (counsel's remark to the jury venire suggesting the possibility of a settlement constituted reversible error); *Henry v. Beacon Ambulance Serv., Inc.*, 424 So. 2d 914, 915 (Fla. 4th DCA 1982). The same result should follow here for the same reason.

II. THE TRIAL COURT'S MISAPPLICATION OF ISSUE PRECLUSION PRINCIPLES IRRETRIEVABLY PREJUDICED MR. SEBO'S RIGHT TO RECOVER EXTRACONTRACTUAL DAMAGES.

The trial court also erred when it used issue preclusion principles to cut out a significant category of Mr. Sebo's extra-contractual damages. In essence, the court found that Mr. Sebo could not pursue any extra-contractual damages in his bad faith case that he purportedly could have pursued in his coverage action. But that reasoning turns Florida law upside down.

Bad faith damages are not recoverable in a coverage action. Indeed, a claim for bad faith cannot even be pursued until the case for coverage has been proven. And here, the prior coverage action

involved only Mr. Sebo's claim for declaratory relief, resulting in an award, not of any extra-contractual damages, but policy benefits due and a portion of the attorneys' fees and costs expended to obtain them.

In a bad faith case, unlike a contract case, the available statutory damages include any which "are a reasonably foreseeable result of a specified violation of this section by the authorized insurer...." § 624.155(8), FLA. STAT. This standard is akin to tort causation, where the specific harm need not be foreseeable in order for the plaintiff to recover. *See Kafie v. N.W. Mut. Life Ins. Co.*, 834 F. Supp. 2d 1354, 1363 (S.D. Fla. 2011) ("reasonably foreseeable" is analogous to the standard of recovery for torts); *Miller v. Allstate Ins. Co.*, 573 So. 2d 24, 29 (Fla. 3d DCA 1990) (distinguishing tort from contractual damages, holding "in tort, once the plaintiff is in the area of risk created by the defendant's wrong, the defendant is usually liable for all injuries caused by his misconduct. In contract, undoubtedly out of concern for the impact on commerce, damages are limited to the types of loss the breaching party had reason to anticipate at the time the contract was made.").

Moreover, as far as the coverage action is concerned, neither *res*

judicata nor collateral estoppel apply to prevent Mr. Sebo from recovering foreseeable extra-contractual damages in this bad faith case. The jury in the coverage phase did not – and could not – consider AIG's liability under Section 624.155 or what extra-contractual damages, including the *full* extent of Mr. Sebo's coverage phase attorneys' fees, might have been foreseeably caused by AIG's statutory violations.

A. *Res Judicata* Cannot Preclude Mr. Sebo From Seeking The Full Extent Of His Coverage Phase Attorneys' Fees.

Res judicata prevents the parties from re-litigating the same causes of action and defenses that were litigated or could have been litigated in a prior related proceeding. *Dadeland Depot, Inc. v. St. Paul Fire & Marine Ins. Co.*, 945 So. 2d 1216, 1235 (Fla. 2006).

Because a bad faith action is "grounded upon a legal duty to act in good faith, and is thus separate and independent of the claim arising from the contractual obligation to perform," *res judicata* does not prevent Mr. Sebo from seeking those extra-contractual damages in his bad faith case that were caused by AIG's *bad faith* failure to pay. *Id.* at 1235-36; *Blanchard v. State Farm Mut. Auto. Ins. Co.*, 575 So. 2d 1289, 1291 (Fla. 1991) ("[T]he claim arising from bad faith is

grounded upon a legal duty to act in good faith, and is thus separate and independent of the claim arising from the contractual obligation to perform."); *GEICO Gen. Ins. Co. v. Harvey*, 109 So. 3d 236, 240 (Fla. 4th DCA 2013) ("The Florida Supreme Court has repeatedly recognized that a claim arising from bad faith is grounded upon the legal duty to act in good faith, and is thus separate and independent of the claim arising from the contractual obligation to perform.") (internal quotations omitted); *GEICO Cas. Co. v. Barber*, 147 So. 3d 109, 112 (Fla. 5th DCA 2014) ("Barber is not precluded from litigating the damages issue on his bad-faith claim, as the judgment entered in this case based on GEICO's contractual obligations under the policy is separate and distinct from Barber's claim for bad faith.").

Mr. Sebo's bad faith claim had not even accrued at the time of the verdict in the coverage phase because there had not yet been a determination as to whether AIG breached its obligation to pay for covered damages under the AIG policy. *See, e.g.*, *Harvey*, 109 So. 3d at 239 ("An insurance bad faith action does not accrue until the issue of coverage under the policy has been determined."); *Dadeland Depot*, 945 So. 2d at 1235 ("[I]t is clear that the first two prerequisites for application of res judicata – the identity of the thing sued for and

identity of the cause of action – are not and cannot be satisfied" as a matter of law in first-party bad faith cases) (citing *Blanchard*, 575 So. 2d at 1291).

Res judicata, by definition, cannot apply to preclude a claim that never could have been litigated in a prior action. It should not have precluded any part of Mr. Sebo's extra-contractual damage claim here.

B. Collateral Estoppel Cannot Preclude Mr. Sebo From Seeking The Full Extent Of His Coverage Phase Attorneys' Fees.

Collateral estoppel is similarly inapplicable because the issues of AIG's statutory liability and Mr. Sebo's entitlement to *extra*-contractual damages were not and could not have previously litigated in the breach of contract phase either.

For collateral estoppel to apply, five factors must be met:

(1) an identical issue must have been presented in prior proceedings;

(2) the issue must have been a critical and necessary part of the prior determination;

(3) there must have been a full and fair opportunity to litigate the issue;

(4) the parties in the two proceedings must be identical; and

(5) the issues must have been actually litigated.

Cook v. State, 921 So. 2d 631, 634 (Fla. 2d DCA 2005); *Topps v. State*, 865 So. 2d 1253, 1255 (Fla. 2004).

An issue has been actually litigated in a prior proceeding when it is "properly raised, by the pleadings or otherwise, and is submitted for determination, and is determined." *Woodson v. Eleventh Judicial Circuit,* 791 Fed. App'x 116, 119 (11th Cir. 2019). The determination must be essential to the prior adjudication in order to be given preclusive effect. *State v. Strong*, 593 So. 2d 1065, 1067 (Fla. 4th DCA 1992); *see also Seaboard Coast Line R.R. Co. v. Cox*, 338 So. 2d 190, 191 (Fla. 1976) ("[E]stoppel by judgment required . . . that the issue in the second action that is sought to be estopped from re-litigation be identical to necessary and material issues resolved in the first suit."); *Dep't of Health & Rehab Servs. v. B.J.M.*, 656 So. 2d 906, 910 (Fla. 1995).

While both Mr. Sebo and AIG were parties in the coverage phase of this case, none of the other requisite elements of collateral estoppel apply. In *Dadeland Depot*, the Florida Supreme Court emphasized that the basis for liability and damages in a breach of contract action is separate and distinct from the theories of liability and damages

required to prevail in a first-party bad faith case. *Id.*at 1223 ("the damages at issue in [the bad faith action] are those resulting from a statutory violation and bad faith under the bond, which could not have been presented prior to resolution of the underlying ... dispute.").

Dadeland Depot thus makes a critical distinction — consistent with its rationale that *res judicata* does not bar a subsequent bad faith action — between: (i) a party that attempts to re-litigate contractual liability and contractual damages; and (ii) a party seeking to bring a subsequent bad faith case involving never-before litigated issues of *extra*-contractual liability and *extra*-contractual damages.

Under Florida law, collateral estoppel bars the former, but not the latter. *B.J.M.*, 656 So. 2d at 910 (prior judicial review of juvenile placement that determined the juvenile was appropriately placed did not operate to collaterally estop later-asserted negligence claims because the prior judicial determination did not decide the issue of common law negligence liability); *Diagnostic Leasing, Inc. v. Assoc. Indem. Corp.*, No. 8:16-CV-958-T-36TGW, 2017 U.S. Dist. LEXIS 1872, at *15 (M.D. Fla. April 12, 2017) ("Neither res judicata nor collateral estoppel prevent [the insured] from re-litigating the

damages issue because the judgment entered in the underlying case was based on [the insurer's] contractual obligations under the CGL policy; which are separate and distinct from this bad faith action); *MI Windows & Doors, LLC v. Liberty Mut. Fire Ins. Co.*, No. 8:14-CV-3139-T-23MAP, 2018 U.S. Dist. LEXIS 83919, at *13 (M.D. Fla. May 18, 2018) (denying insurer's motion for summary judgment in a bad faith case as to collateral estoppel because "MIWD's entitlement to reimbursement of MIWD's defense fees and costs and Liberty's purported failure to adequately defend were never litigated or adjudicated in the Florida action."); *Royal Marco Point I Condo. Ass'n, Inc. v. QBE Ins. Corp.*, No. 3:07-CV-16, 2010 U.S. Dist. LEXIS 70134, at *11 (M.D. Fla. July 13, 2010) (insured not collaterally estopped from seeking damages in a first-party statutory case under Section 624.155 because the appraisal award was based on QBE's contractual breach, not its statutory violations).

In the end, the trial court misapplied these basic preclusion principles by erroneously relying on the Eleventh Circuit's unpublished opinion in *Kaplan v. Nautilus Insurance Co.*, 861 Fed. Appx. 798 (11th Cir. 2021). The *Kaplan* court suggests that differences in contractual and bad faith standards amount to nothing

more than "semantics." *Id.* at 803. Not so.

The differences between contractual and statutory bad faith liability, and contractual and bad faith damages, are hardly "semantic."[7] Those differences have been recognized repeatedly by the Florida Supreme Court, going back decades. *See, e.g., Blanchard*, 575 So. 2d at 1291 ("[T]he claim arising from bad faith is grounded upon a legal duty to act in good faith, and is thus separate and independent of the claim arising from the contractual obligation to perform.").

Indeed, in 2021, our Supreme Court held that extracontractual consequential damages are precluded in first-party insurance actions

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[7] Reliance on cases such as *GEICO General Insurance Co. v. Paton*, 150 So. 3d 804 (Fla. 4th DCA 2014), as support for application of collateral estoppel against Mr. Sebo is similarly misplaced. *Paton* stands for the simple proposition that in an underinsured motorist bad faith case, the amount of the jury verdict in the underlying tort case is admissible in the subsequent bad faith case. *Id.* at 806. In such cases, as affirmed by the Florida Supreme Court in *Fridman*, the basis for and measure of damages are the same; the bodily injury damages recoverable in tort are the measure of the insurer's liability for the "excess" of its policy limits if the insurer is liable for bad faith. *See Fridman v. Safeco Ins. Co. of Ill.*, 185 So. 3d 1214, 1228 (Fla. 2016). While not an uninsured motorist case, here, the verdict form from the coverage trial was admitted into evidence to prove the amount of precautionary repairs that Mr. Sebo could not recover as part of the judgment in the coverage case. [R. 101638-639].

that do not involve bad faith. *Citizens Prop. Ins. Corp. v. Manor House, LLC*, 313 So. 3d 579, 580 (Fla. 2021). And under *Blanchard* and its progeny, not only were statutory bad faith liability and statutory bad faith damages not litigated in the coverage case, they could not have been without the trial court committing reversible error.[8] The reasoning in *Kaplan* has no application on a record like this one and there is no analytical basis on which collateral estoppel could bar Mr. Sebo's pursuit of his extra-contractual damages.

C. The Erroneous Application Of Res Judicata And Collateral Estoppel Principles Prejudiced Mr. Sebo's Right To Recover Extra-Contractual Damages.

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[8] The doctrine of the law of the case does not apply for the same reasons. The doctrine of the law of the case is a principle of judicial estoppel, and requires that questions of law actually decided on appeal must govern the case in the same court and the circuit court, through all subsequent stages of the proceedings. *See City Nat'l Bank of Fla. v. City of Tampa*, 67 So. 3d 293, 299 (Fla. 2d DCA 2011) (quoting *Fla. Dept' of Transp. v. Juliano*, 801 So. 2d 101, 105 (Fla. 2001)). The legal question of whether Mr. Sebo was entitled to extra-contractual damages, including the full extent of his attorneys' fees and costs not awarded in the contract action, as a result of AIG's failure to act in good faith, was not decided in the contract action because it could not be. Thus, the doctrine of the law of the case, likewise, cannot preclude Mr. Sebo from seeking to recovery for the full amount of harm caused by AIG's bad faith conduct.

Initially, Mr. Sebo's compensatory damages were set forth in Exhibit A to Mr. Sebo's Verified Responses to American Home's First Interrogatories entitled "Sebo's Total Damages & Payments by AmH — as of 5/17/19" ("*Mr. Sebo's Verified Damages Summary*"). [A-2690 - 2693]. The Verified Damages Summary is an Excel spreadsheet with numbered lines listing all of the expenses he incurred that were sought as compensatory damages, as well as interest. [*Id.*]. These expenses included the attorneys' fees and costs incurred suing AIG and the narrow third-parties. [*Id.*]. The total amount was $34,630,387.05. [*Id.*].

At the summary judgment stage, AIG divided Mr. Sebo's damages into five categories: (i) attorneys' fees and costs (and related interest) incurred by Mr. Sebo in the coverage case; (ii) damages to the house or related to the house; (iii) attorneys' fees and costs incurred to sue third parties such as the contractors and sellers; (iv) interest on debt incurred to pay attorneys' fees; and (v) prejudgment interest. [A-2610 - A-2629]. AIG contended that Mr. Sebo was not entitled to any of these damages. [*Id.*].

The trial court partially agreed. It's subsequent preclusion ruling significantly reduced Mr. Sebo's damages to $5,207,125.01.

[R. 87627-87630; R. 105935/1798:16-24]. But this did not equate to the harm he suffered. Florida's statutory bad faith statute prescribes a broad remedy and provides that "[u]pon adverse adjudication at trial or upon appeal, the authorized insurer shall be liable for damages, together with court costs and reasonable attorney's fees incurred by the plaintiff." § 624.155(4), FLA. STAT. This entitled Mr. Sebo to more than his contractual recovery. *See, e.g., Marracini v. Clarendon Nat'l Ins. Co.*, 2003 U.S. Dist. LEXIS 21990, *5 (S.D. Fla. Oct. 1, 2003) (quoting *Time Ins. Co. v. Burger*, 712 So. 2d 389, 392 (Fla. 1998)).

Moreover, recoverable statutory damages need only be reasonably foreseeable, and can include: consequential damages occasioned by AIG's breach of contract not otherwise awarded in the coverage case; unpaid interest; any adverse financial impact on the insured (here, Mr. Sebo) occasioned by AIG's conduct; attorney's fees and costs pursuant to Section 624.155(4); and interest on the amount found due. *See, e.g.*, FLA. STAT. § 624.155(8); *Fridman*, 185 So. 3d at 1223 (quoting *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 60 (Fla. 1995)) ("Damages in first-party bad faith actions are to include the total amount of a claimant's damages, including

any amount in excess of the claimant's policy limits without regard to whether the damages were caused by the insurance company."); *Dadeland Depot*, 945 So. 2d at 1243-44; *Burger*, 712 So. 2d at 392 (damages under the statute "may include, but are not limited to, interest, court costs, and reasonable attorney's fees incurred by the plaintiffs").

Levesque v. GEICO, No. 21-12257, 2022 U.S. App. LEXIS 12131, at *16 (11th Cir. May 5, 2022)—a published decision post-dating *Kaplan*—makes clear that Florida law allows an insured to recover their attorneys' fees as part of their damages, limited to recovering only what they were liable to pay their attorneys. *Levesque* cited to a Second District case in support: *Milling v. Travelers Home & Marine Insurance Co.*, 311 So. 3d 289 (Fla. 2d DCA 2020). In *Milling*, the policyholder sought attorneys' fees as compensatory damages resulting from her insurer's bad faith failure to settle pursuant to Section 624.155. *Id.* at 291. The Second District held that the trial court erred when it granted the insurer's summary judgment motion by concluding that Section 627.727(8) precludes, categorically, the recovery of certain policyholder's attorneys' fees. *Id.* at 293. The Second District explained that litigation of the existence

and amount of the policyholder's damages was a part of the prosecution of the bad faith suit. *Id.*

In line with these authorities, the jury should have been able to consider all of Mr. Sebo's damages – including the full scope of his unrecovered attorney's fees and costs. At the very least, AIG should not have been allowed to falsely claim that Mr. Sebo had been made whole. The prejudice from the erroneous preclusion ruling is also apparent. It cut off the lion's share of damages Mr. Sebo sustained from AIG's bad faith. For these independent reasons, a new trial should be granted.

III. THE TRIAL COURT ERRED WHEN IT FAILED TO ENTER DIRECTED VERDICT ON THE QUESTION OF BAD FAITH LIABILITY.

The trial court erred when it failed to enter directed verdict on the question of bad faith liability. AIG's own expert, Mr. Richmond, admitted that AIG violated 626.9541(i)(3)(h). [R. 105999/1834:10-16]("A: It may well comply with part (g). It certainly wouldn't comply with part (h)."). On that admission, Mr. Sebo moved for directed verdict as to AIG's violation of Florida's Unfair Claims Settlement Practices Act, subsection (h). [R. 10547/2717:14 - 105469/2729:6]. The trial court denied Mr. Sebo's request for directed verdict on this

issue. [R. 105469/2729:12-14]. This was error as it was undisputed that AIG violated 626.9541(i)(3)(h). As such, that trial court should have entered directed verdict on this issue.

IV. THE VERDICT FORM'S ERRONEOUS COMPOUND QUESTION IRRETRIEVABLY PREJUDICED MR. SEBO'S RIGHT TO RECOVER EXTRA-CONTRACTUAL DAMAGES.

The trial court committed prejudicial error on the verdict form, which misled the jury and deprived Mr. Sebo of the right to obtain nominal or punitive damages. Specifically, the verdict form stated:

> 1. Did the Defendant, American Home Assurance Company, fail in good faith to timely pay Mr. Sebo's insurance claim and/or violate any of the provisions of the Florida Unfair Claims Settlement Practices Act, which was or were the legal cause of loss, injury or damages to Mr. Sebo?
>
> YES____ NO ✓

[R. 100941]. This form failed to separate causation from liability and likewise failed to provide for separate findings on AIG's bad faith violations. For either or both reasons, it was prejudicially flawed.

A. The Verdict Form Prejudicially Prevented The Jury From Separately Considering A Reward Of Nominal Or Punitive Damages.

Mr. Sebo requested that the verdict form separate causation from liability. [R. 105546-105549/2806:12-2809:24; 105552/2812:3-10; 105553-554/2813:12-2814:9]. That is, Mr.

Sebo argued that the jury should be asked first whether he had proven that AIG violated Florida's bad faith laws, and, if so, whether Mr. Sebo was entitled to any damages—compensatory, nominal *or* punitive damages. But the verdict form combines the questions of liability, causation, and damages in a way that eliminates the possibility that Mr. Sebo could recover for nominal or punitive damages. As phrased, he could only recover if AIG's violations of the bad faith statute *caused* Mr. Sebo to suffer compensatory damages—that is, AIG's violations had to be "the legal cause of loss, injury, or damages *to Mr. Sebo*." [R. 100907].

This was error, since Florida law permits a policyholder to recover punitive damages, even where an insurer is not liable for compensatory damages. *See Howell-Demarest v. State Farm Mut. Automobile Insurance Co.*, 673 So. 2d 526 (Fla. 4th DCA 1996).

In *Howell-Demarest*, State Farm refused to pay a policyholder's medical bills despite there being $100,000 in medical coverage. In the coverage action, the policyholder alleged that State Farm's refusal was a general business practice, which gave rise to a statutory punitive damages claim. State Farm argued that it had paid the compensatory damages after the suit was filed, so there could be no

claim for punitive damages. The appellate court disagreed. It explicitly found State Farm's argument "unavailing" because State Farm's payment of compensatory damages constituted a settlement of the compensatory damage claim, but not settlement of the punitive damage claim. *Id.* at 528 n. 1 (citing *Stephenson v. Collins,* 216 So. 2d 433 (Fla. 1968)); *see also Scott v. Progressive Express Insurance Co.*, 932 So. 2d 475, 479 (Fla. 4th DCA 2006) ("Progressive's settlement of its obligation to Scott is the equivalent of a verdict in favor of Scott and therefore Scott's actions for benefits have been resolved in his favor.").

Here, Mr. Sebo sought compensatory and punitive damages, but the verdict form precluded such recovery. As phrased, AIG's violations had to be "the legal cause of loss, injury, or damages *to Mr. Sebo*." [R. 100907]. Since the jury had heard evidence of Mr. Sebo's recovery under the policy, as well as his recovery in his third-party action, they apparently concluded that AIG's statutory violations had not caused Mr. Sebo any loss or injury. But there could have been a violation of Florida's bad faith statute—and, as described above,

there were such violations—without causing Mr. Sebo loss or injury.[9]

Under Florida law, these violations would at least be candidates for nominal damages. *Swope Rodante, P.A. v. Harmon*, 85 So. 3d 508, 510 (Fla. 2d DCA 2012) (explaining that "the invasion of a legal right" permits a plaintiff to "recover at least nominal damages"). Long-standing Florida law also could not be clearer: punitive damages are available even where no compensatory damages have been proven. *Ault v. Lohr*, 538 So. 2d 454, 456 (Fla. 1989) ("[W]e hold that a finding of liability alone will support an award of punitive damages even in the absence of financial loss for which compensatory damages would be appropriate." (internal quotation marks omitted)).

Accordingly, Mr. Sebo *should* have been able to recover for AIG's bad faith violations, even if the jury found that those violations were not "the legal cause of loss, injury, or damages *to Mr. Sebo*." [R. 100907]. And had the verdict form been properly constructed, the

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[9] For instance, AIG's violation of subsection (i)3.c—its failure to "acknowledge and act promptly upon communications with respect to claims"—may not have independently caused Mr. Sebo compensatory damages. Yet, a violation of that subsection would nevertheless have entitled Mr. Sebo to nominal or punitive damages.

jury at a minimum *could* have awarded nominal or punitive damages *Ault*, 538 So. 2d at 456, while considering other consequential harm as well.

B. The Verdict Form Prejudicially Failed To Separate AIG's Bad Faith Violations Under Section 624.155(1)(B)1 And Section 626.9541(1)(I)(3).

The trial court compounded its verdict form error by denying Mr. Sebo's request that the jury be able to make individual findings about AIG's violations of the Unfair Claim Settlement Practices Act. Instead, the court lumped violations of the Act together with Mr. Sebo's failure-to-pay claim under section 624.155(1)(b)1. The verdict form asked whether AIG "fail[ed] in good faith to timely pay Mr. Sebo's insurance claim" and/or "violate[d] any of the provisions of the Florida Unfair Claims Settlement Practices Act…." [R. 100906-907].

In doing so, the court accepted AIG's argument—unsupported by any on point authority—that violations of this portion of the statutory remedy are simply a sub-part of the section 624.155(1)(b)1 claim for failure to pay. This, too, was error under Florida law, which recognizes two distinct types of bad faith claims: one for failure to pay; and another for unfair claims practices. *See Cooper v. Federated Nat'l Ins. Co.*, 285 So. 3d 1036, 1038 (Fla. 5th DCA 2019) (holding

that court's failure to instruct the jury separately on violations of 626.9541(1)(i)(3) was reversible error that "resulted in a miscarriage of justice" and rejecting insurer's position that "the acts constituting a violation of section 626.9541(1)(i)3 were subsumed within the standard jury instruction"); *Urena v. Allstate Prop. & Cas. Ins. Co.*, No. 8:13-cv-911-T-35TGW, 2015 U.S. Dist. LEXIS 199504, at *15 (M.D. Fla. Apr. 9, 2015) ("[T]he statute provides two separate causes of action that may be asserted against an insurer, one for bad faith failure to settle and one for unfair claim settlement practices.") (collecting cases); *Kearney v. Auto-Owners Ins. Co.*, No. 8:06-cv-00595-T-24 TGW, 2010 U.S. Dist. LEXIS 50327, at *12 (M.D. Fla. Apr. 14, 2010) ("[A]n unfair claim settlement practices claim can exist independent of a bad faith claim….").

An insurer violates Florida law by failing to pay when it should have done so had it acted fairly, honestly, and with due regard for the interests of the insured. *See* § 624.155(1)(b)(1), FLA. STAT. Whether an insurer has violated § 624.155(1)(b)(1) is informed by the Unfair Claims Settlement Practices Act. *See* § 624.155(1)(a)(1), FLA. STAT. (citing § 626.6541(1)(i), (o), and (x), FLA. STAT.). This is because violations of the Unfair Claims Settlement Practices Act may cause

the insurer's wrongful failure to pay under § 624.155(1)(b)(1). In this case, Mr. Sebo presented undisputed evidence of AIG's violations of both § 624.155(1)(b)(1) and the Unfair Claims Settlement Practices Act. These are distinct violations, both of which may support a claim for damages, including nominal and punitive damages.

Because Florida law allows a policyholder to pursue separate claims for unfair claim settlement practices and for bad faith failure to pay, the court should have separated these elements on the verdict form as Mr. Sebo requested. Had it done so, the jury could have decided that AIG violated one or more of the provisions of the Unfair Claim Settlement Practices Act. Again, such a finding would have entitled Mr. Sebo to nominal damages, punitive damages, or both—regardless of whether Mr. Sebo proved that the violations caused compensatory damage. *See, e.g.*, *Scott*, 932 So. 2d at 479 (holding that the policyholder could still pursue his claim for punitive damages, even though he had already settled and released his claim against the insurer for compensatory damages).

As written, however, the jury could only have answered "yes" on the verdict form if AIG's violations of the Act caused *compensatory* damages. But AIG's statutory violations need not have resulted in

compensatory damages to support a liability finding. The court thus prejudicially erred in not allowing the jury to consider whether AIG was liable for its discrete statutory violations.

V. REVERSAL IS REQUIRED TO VINDICATE FLORIDA'S PUBLIC POLICY PROVIDING RECOVERY FOR STATUTORY BAD FAITH.

The trial court summarily rejected Mr. Sebo's motion for new trial based on the verdict being: (i) the product of the prejudicial errors identified above; and (ii) against the manifest weight of the evidence. The record in this case, however, demanded that the trial court revisit its rulings and intercede. Mr. Sebo's proven case of bad faith warranted a recovery, not rejection, and a new trial should be granted for this reason, too.

Fairness and honesty should have characterized AIG's dealings with Mr. Sebo but those words cannot even colorably apply to what transpired. The reasons for denying his claim were pretextual and the investigation that led to the denial was inadequate in every particular. The settlement offers (and ultimately an unprecedented demand) evinced consideration only for AIG's interests, as did AIG's unconscionable delay in refusing to pay even the uncontested amounts it owed. Material misrepresentations likewise were made

along the way and the conduct engaged in was inconsistent with AIG's own Best Practices Guidelines.

Expert testimony, including from AIG, established its claims handing malfeasance, as did the admissions of its witnesses on what transpired. Yet, AIG's personnel remained unrepentant, stating to a person that they could not see a reason to do things differently. No one was admonished or disciplined for participating in a claim denial that was a foregone conclusion, founded on an inadequate investigation, that left its insured to pursue third parties in order to try to recover for his loss.

Here, this conduct should not go unpunished but AIG was let off the hook because the trial court lost sight of the recognized policies bad faith actions are intended to further.

To start with, bad faith claims serve an entirely different purpose than coverage (or breach-of-contract) actions against insurers. Unlike coverage claims, bad faith claims are designed to protect policyholders and punish insurers who engage in bad behavior. *Demase v. State Farm Fla. Ins. Co.*, 239 So. 3d 218, 222 (Fla. 5th DCA 2018) ("The [bad faith] statute was 'designed and intended to provide a civil remedy for any person damaged by an

insurer's conduct.'" (quoting *QBE Ins. Corp.*, 94 So. 3d at 546)); *Ellison*, 326 So. 3d at 222 (Fla. 2d DCA 2021) ("[B]ad faith damages are considered a 'punitive, extracontractual award' because bad faith claims punish the insurer's failure to fulfill its obligations to the insured." (quoting *Harvey*, 259 So. 3d at 13, 15 (Canady, C.J., dissenting))).

As this analysis underscores, bad faith damages do more than simply allow policyholders to recover what is rightfully owed them under their policies. In enacting the bad faith statutes, the Florida Legislature intended to allow policyholders to recover damages for violations of the statute, even if those damages exceed what the policyholder is entitled to under an insurance policy:

> The legislation specifically contemplates damages recoverable under the bad faith statute that are a reasonably foreseeable result of a specified violation of the applicable section by the insurer and may include an award or judgment in an amount that exceeds the insurance amount.... [T]he Legislature has specifically authorized first parties to recover damages in bad faith actions and ... the legislation contemplated more than the recovery of the same damages already available in a breach of contract action.

Dadeland Depot, 945 So. 2d at 1222; *See Kafie v. Nw. Mut. Life Ins.*

Co., No. 11-21251-CIV, 2011 U.S. Dist. LEXIS 109849, at *20 (S.D. Fla. Sep. 27, 2011) ("[B]efore section 624.155 was adopted, an insured's only remedy against an insurer who acted in bad faith was to recover damages contemplated under the policy. The adoption of section 624.155 thus permitted an insured to recover *extra-contractual* damages." (internal citation omitted)).

Moreover, in keeping with the statutes' purposes, the remedy for statutory bad faith violations is broadly framed: "Upon adverse adjudication at trial or upon appeal, the authorized insurer shall be liable for damages, together with court costs and reasonable attorney's fees incurred by the plaintiff." § 624.155(4), FLA. STAT. These damages need only be reasonably foreseeable. They can include consequential damages resulting from an insurer's contractual breach, unpaid interest, any adverse financial impact on the insured, attorneys' fees and costs pursuant to Section 624.155(4), and interest on the amount found due. *See, e.g.*, § 624.155(8), FLA. STAT.; *Fridman*, 185 So. 3d at 1223 (quoting *Laforet*, 658 So. 2d at 60) ("Damages in first-party bad faith actions are to include the total amount of a claimant's damages, including any amount in excess of the claimant's policy limits without regard to

whether the damages were caused by the insurance company."); *Dadeland Depot*, 945 So. 2d at 1243-44; *Burger*, 712 So. 2d at 392 (damages under the statute "may include, but are not limited to, interest, court costs, and reasonable attorney's fees incurred by the plaintiffs"); *Levesque*, 2022 U.S. App. LEXIS 12131, at *9 (an insured may recover attorneys' fees) (citing *Milling*, 311 So. 3d at 292-93.

Here, the introduction of prejudicial settlement evidence, the erroneous limitation on the extra-contractual damages recoverable and the failure of the verdict form to properly delineate the statutory violations and the damages recoverable from them led to a defense verdict that undermines the very purposes of Florida's bad faith law and is indisputably against the manifest weight of the evidence. This is not a breach of contract case and it should not be treated like one. The statutes and common law are intended to protect policyholders and punish insurers who have acted to protect their own interests and abandoned their policyholders in the process — exactly what transpired here.

Mr. Sebo's motion for new trial asked the trial court to step in, exercise its discretion, and say so. But there is no exercise of discretion to evaluate. Mr. Sebo's motion was summarily denied

without comment or evaluation. That, too, is reversible error. Mr. Sebo deserves a new trial where he can recover compensatory, nominal or punitive damages for AIG's bad faith just as Florida law envisions.

CONCLUSION

For the foregoing reasons and in the interests of justice, Mr. Sebo asks that this Court reverse and remand for a new trial.

DATED this 13th day of November, 2023.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with font requirements of Rule 9.045, Florida Rules of Appellate Procedure. It is typed in Bookman Old Style 14-point font and is proportionately spaced type. Additionally, this brief complies with Rule 9.210, Florida Rules of Appellate Procedure, as it is 12,802 words.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of November 2023, a true and correct copy of the foregoing Appellant Brief was served via electronic service using the portal system with the Florida Courts e-Filing Portal, which send e-mail notification of such filing in accordance with Rule 2.516 Fla. R. Jud. Admin. to all counsel of record and those on the Service List below.

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