DANIEL BERG and SHERYL BERG, Plaintiffs	: IN THE COURT OF COMMON PLEAS : OF BERKS COUNTY, PENNSYLVANIA
VS.	: CIVIL ACTION-LAW
NATIONWIDE MUTUAL INSURANCE COMPANY, Defendant	: NO. 98-813

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Attorneys for Plaintiffs

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OPINION, JEFFREY K. SPRECHER, J. JULY 22, 2015

INTRODUCTION

This court was assigned this case, when it was in its third decade of life. It started in the 90s with an auto accident, on September 4, 1996, resulting in substantial damage to plaintiff's vehicle. Both a jury trial and a non-jury trial were conducted, and the case has been appealed to both the Pennsylvania Superior Court and the Pennsylvania Supreme Court: *Berg v. Nationwide Mut. Ins. Co., Inc.*, 44 A.3d 1664 (Pa.Super. 2012). The Superior Court remanded the case to our court "for a new trial on the Berg's claim pursuant to 42 Pa.C.S.A. 8371." This court presided over a bad faith non-jury trial.

The above referenced 26 page Opinion by the Superior Court provided a great deal of guidance and direction to this court. Quotes from the opinion are cited throughout as *Berg v. Nationwide Mut. Ins. Co., Inc.*, 44 A.3d 1664 (Pa.Super. 2012).

Defendant appeals the Decision and Verdict dated June 21, 2014. This Opinion is filed pursuant to Pa. R.A.P. 1925 and supplements the Decision of June 21, 2014.

FACTS

The facts are stated in the Decision and need no further amplification.

ISSUES

"An insurance company has a duty to deal with its insured on a fair and frank basis, and at all times, to act in good faith." *Berg v. Nationwide Mut. Ins. Co., Inc.*, 44 A.3d 1664 (Pa.Super. 2012) at 1165.

Defendant, Nationwide Mutual Insurance Company, raises the following issues in its Concise Statement of Errors Complained of on Appeal.

1. This court erred in concluding that defendant violated Pennsylvania's insurer bad faith statute, 42 Pa. C.S. § 8371, because this court's underlying factual findings were unsupported and/or contradicted by the record, including, but not limited to:

    a. This court erred in finding that a September 10, 1996 estimate of the cost of repairs existed and was changed when defendant "vetoed" the initial assessment of the vehicle by Lindgren Chrysler Plymouth (Lindgren).

    b. This court erred in finding that defendant was aware that the vehicle of plaintiffs, Daniel Berg and Sheryl Berg, was returned with faulty repairs.

    c. This court erred in charging defendant with Lindgren's knowledge and conduct.

d. This court erred in failing to recognize that the plaintiffs did not establish that their vehicle was incapable of being repaired.

e. This court erred in finding that defendant's purchase, preservation, and eventual disposition of plaintiffs' vehicle implied bad faith, when this court previously entered an Order giving defendant permission to store and ultimately dispose of the vehicle.

f. This court erred in finding that defendant engaged in a "scorched earth" litigation strategy, including in finding that the claims manual at issue in the *Bonenberger v. Nationwide Mut. Ins. Co.,* 791 A.2d 378 (Pa. Super. 2002) litigation had applied to plaintiffs' claim.

2. This court erred as a matter of law and in its findings of fact when it conflated the knowledge, conduct, and duties of the auto repair professionals with the knowledge, conduct, and duties of defendant. This error caused this court to make findings of fact not supported by the record and to impose duties upon defendant that go beyond a duty of good faith and fair dealing when handling plaintiffs' insurance claim.

3. This court erred as a matter of law in considering defendant's litigation conduct as supporting a finding of bad faith.

4. This court abused its discretion in awarding attorneys' fees. For example, the award of attorneys' fees to plaintiffs was improperly based upon fees incurred by defendant.

5. This court abused its discretion in awarding punitive damages. For example:

a. No evidence supports the factual findings underlying the punitive damage award.

b. The jury's finding that defendant did not commit fraud and the previous court's denial of trebling damages under the UTPCPL weighs strongly against any punitive damage award.

c. This court failed to apply Pennsylvania law regarding the award of punitive damages.

d. This court's punitive damage award violates the Due Process Clause of the United States Constitution because: (i) the award is grossly excessive and unconstitutional under the factors set forth by the United States Supreme Court; (ii) attorneys' fees cannot count as compensatory damages for purposes of calculating an acceptable ratio to punitive damages; and (iii) this court based the punitive damages on purported misconduct towards policyholders other than the plaintiffs.

6. This court abused its discretion in awarding interest in contravention of the bad faith statute. For example:

a. Awarding interest on attorney's fees is contrary to Pennsylvania law and to the purpose of prejudgment interest.

b. The bad faith statute only authorizes interest on the amount of an insurance "claim," not the prospective fees sought in a bad faith suit.

c. This court's interest award is grossly excessive, including to the extent this court awards plaintiffs compound, rather than simple interest.

d. Interest should not issue with respect to the vast majority of the attorneys' fees award due to plaintiffs' delays in litigating the case.

DISCUSSION

"The insurer's duty of good faith originates from the insurer's status as a fiduciary for its insured under the insurance contract, which gives the insurer the right, inter alia, to handle and process claims." *Berg v. Nationwide Mut. Ins. Co., Inc.*, 44 A.3d 1664 (Pa.Super. 2012) at 1165.

- **Defendant first submits that this court erred in finding that a September 10, 1996 estimate of the cost of repairs existed and was changed when defendant "vetoed" the initial assessment of the vehicle by Lindgren.**

This issue is without merit. Doug Joffred, the manager of Lindgren's body shop, testified that he had written an appraisal on September 10, 1996 and that it was referenced in a claim log (2004 Transcript, 625). He kept the appraisal in his filing cabinet, but it was missing. Defendant had routine access to the filing cabinet (2004 Transcript, 626). At his deposition, Mr. Joffred testified that he had told defendant that the vehicle was a structural total loss because the frame was twisted (2004 Transcript, 629).

This court found in its said Decision of June 21, 2014, 13-14:

> 32. Upon receiving notification from Lindgren's assigned appraiser that the vehicle was a structural total loss due to a twisted frame, Defendant immediately dispatched claim representative Mr. Witmer to inspect the damage. It was Defendant's Mr. Witmer who objected to the total loss and declared the vehicle repairable and instructed that the vehicle be shipped to another facility to attempt structural repairs. Mr. Witmer admitted the vehicle had already been declared a total loss by Mr. Joffred by the time he got to the repair facility to view the damage.

> 33. Prior to unilaterally deciding the vehicle was not a total loss, Mr. Witmer admits he did not write and/or sign his own independent appraisal of the loss, or even pick up a tool. Although Mr. Witmer vacated the total loss appraisal without writing his own independent appraisal, he knew Pennsylvania law provides that a vehicle can be, indeed should be, a total loss if the assigned appraiser believes the vehicle cannot reasonably be restored. Mr. Witmer's supervisor, Dean Jones, CPCU, also agreed.

Thus, defendant vetoed the original assessment by its actions. Defendant had a second appraisal performed ten days later which stated that the Jeep could be repaired for approximately $12,500.00, about one-half of the replacement cost. The structural damage was so extensive that defendant's own Blue Ribbon repair shop, Lindgren, was unable to fix it, and it had to be sent to another facility for repairs. The second facility was also unable to straighten the bent frame.

Dean Jones, in addition to being Mr. Witmer's supervisor, was also a property specialist for defendant during the relevant period of the repairs on the Jeep. He testified that according to the log, the plaintiffs' vehicle had been declared a total loss (2004 Transcript, 241).

- **Defendant next argues that this court erred in finding that it was aware that the vehicle was returned with faulty repairs.**

This issue is meritless. Mr. Joffred testified that defendant had performed random inspections on a regular basis during the entire period of four months of repairs (2004 Transcript, 643). Thus, defendant was present at times during the period when Lindgren was working on the Jeep.

Steve Potosnak was defendant's inspector from the latter part of 1997 through late 1998. He went into Lindgren several times per month to see how their estimates were going and their progress. He provided monthly performance evaluations for the shop to fill out (2004 Transcript, 372).

George Moore had his auto shop participate in the Blue Ribbon Repair Program. He testified that defendant had its Blue Ribbon repair shops maintain a shop control log for all vehicles that were referred under the program. This log had to be available at all times for examination by defendant's representative (2004 Transcript, 64). Defendant picked up the logs and the shop kept copies of it (2004 Transcript, 68). Moreover, defendant provided its Blue Ribbon repair shops with a pamphlet (2004 Transcript, Exhibit 34). The pamphlet informs the facility that a log must be maintained by each facility.

Michael Grumbein, a damage specialist for defendant during the relevant time period of the Jeep repairs, testified that he performed random inspections at Blue Ribbon repair shops (2004 Transcript, 102).

David Wert, a Lindgren employee at the time of the repairs on the Jeep, testified that he once saw employees of defendant going over the repairs for the Jeep (2004 Transcript, 547). He also saw an adjustor for defendant looking at the Jeep when it was nearly completed (2004 Transcript, 552).

Due to above evidence, this court concluded that defendant knew or should have known that the vehicle had faulty repairs. As stated in Finding of Fact #22 of this Court's Decision of June 23, 2014, 10-11:

> 22. Nationwide would argue that when it was returned to Lindgren, Lindgren alone knew of the unsafe condition, that Defendant never once inspected it, and that in addition to never inspecting the repair process, Defendant knew nothing of the repair work on the Jeep in the period of September 6, 1996 to December 31, 1998 when it was being

repaired at Lindgren's. This court finds this argument to be both contrary to the evidence and illogical.

- **Defendant contends that this court erred in failing to recognize that the plaintiffs did not establish that their vehicle was incapable of being repaired.**

This issue is without merit. It is undisputed that the frame repairs were unsuccessful. Even defendant's automotive expert, William Anderton, confirmed this fact. He determined that the incomplete repair and substandard workmanship by Lindgren contributed to the significantly misaligned front structure (2004 Transcript, 853-854). He also noted in his report that Lindgren owned and maintained a car aligner universal bench system which was capable of holding, pulling, and measuring most vehicles within any tied structure components, including plaintiffs' Jeep. There was no indication that the equipment was defective, and it was his opinion that it was more than adequate and fully capable of properly restoring the damaged structure of the Jeep (2004 Transcript, 854). Lindgren, however, did not attempt the structural repair which reflected their original opinion that the vehicle was totaled. Even Mr. Anderton did not believe that the Jeep should have been returned to plaintiffs to drive (2004 Transcript, 896). Furthermore, he found that the visible portion of the repaired and replaced structural components were not properly corrosion protected (2004 Transcript, 893).

Plaintiffs' expert, Donald Phillips, P.E., inspected the Jeep on November 25, 1997, and found that there were issues with the repair regarding the unibody. These included the unibody's left stub rail positioning and welding, the radiator support, fan shroud, rear transmission mount, exposed welds, missing welds that were replaced by rivets on the front structures, interference between the steering gear and the cross member, hood misalignment, engine misalignments, parts not replaced but they were represented on estimate, damaged suspension parts not replaced and on vehicle, poor weld repairs to the left front frame rail, the grill attachment, the headlight mounting and the steering wheel not being centered. He further found feathering and coupling of the tires which meant that the front end steering geometry was not correct so it was not wearing evenly (2004 Transcript, 442).

Mr. Phillips' opinion was that because the vehicle was outside of the specified tolerances of the original vehicle manufacturer, it would not perform or respond the same way as designed from the factory if it were involved in a subsequent collision (2004 Transcript, 445-446). He testified that the safety of the Jeep was directly tied to the performance of the crumple zone and the timely deployment of the air bag as the forces are transmitted through that crumple zone which had been damaged and not repaired properly (2004 Transcript, 450).

Mr. Phillips' findings mirrored those of Stephen Potosnak, defendant's expert, who inspected plaintiffs' vehicle and documented his findings in the claim log on April 30, 1998. His findings included the following:

> RT FNDR HANGING OUT FROM REAR EDGE, RF MLDG HANGING LOOSE. HOOD GAPS UNEVEN ON BOTH SIDES. UPON LOOKING AT FRONT TIRES/WHEELS, LF IN SUBSTANTIALLY IN COMPARISON TO RF, WHICH IS EVEN WITH EDGE OF FNDR., (MAKES REAR APPEAR SHIFTED TO RIGHT). RF RAIL APRON AND RAIL NOT REPLACED, RT APRON STILL SPLIT IN SEVERAL AREAS. RT TRAIL STILL HAS DAMAGE NEAR SWAY BAR MOUNT. FAN BLADE CLOSER TO LS SIDE OF SHROUD THAN RS, APPEARS TO HAVE CONTACTED SHROUD AT SOME POINT AND BROKE SHROUD NEAR UPPER MOUNTING POINT ON RAD SUPT. AS VIEWED FROM REAR, APPEARS UPPER BODY SWAY WAS NOT PULLED COMPLETELY BACK BEFORE REPLACEMENT OF PARTS BEGAN.

As this court stated in its Decision in Finding of Fact #48, 18:

48. Plaintiffs returned to the BRRP facility several times to have repair concerns addressed, initially because the head lights were not working and both front tires were wearing down to the metal bolts within a short time after the vehicle was returned.

In conclusion, Lindgren did not even attempt to repair the structural damage. The facility that did the structural repair could not fix it properly. Hence, two different facilities could not repair this Jeep. Defendant's own expert believed that it should not have been returned to plaintiffs to drive. For these reasons, this court found that plaintiffs proved that the vehicle was incapable of being repaired.

- **Defendant maintains that this court erred in finding that defendant's purchase, preservation, and eventual disposition of plaintiffs' vehicle implied bad faith because the Honorable Albert A. Stallone entered an order giving defendant permission to store and ultimately dispose of the vehicle.**

Defendant's argument is disingenuous. The court finds two issues of bad faith. The first is this court's implication of bad faith for defendant's disposal of plaintiffs' Jeep. Defendant is correct that Judge Stallone's order did, in fact, permit defendant to dispose of plaintiffs' Jeep. Defendant argues that, in and of itself, excuses it from any accusation of bad faith. However, Defendant's argument is shallow because defendant could still have avoided the spoliation of the most important piece of evidence in the case even if disposing of the Jeep was permitted by Judge Stallone's Order, and even if it was not opposed by plaintiffs, and even if defendant was accumulating monthly service fees by not disposing of the vehicle. Defendant spent millions of dollars on attorney fees alone, so it is unclear why it did not want to maintain the non-spoliation of the evidence and to pay for the continued storage of the Jeep. Defendant easily could have maintained this vital evidence in a case that was in ongoing litigation. What was the hurry to destroy the Jeep?

Furthermore, if defendant had allowed plaintiff to purchase (and thereby preserve the evidence), defendant would not have paid a penny more for storage. As the lease was expiring, plaintiffs' attorney formally stated his intent to purchase the Jeep. Defendant did not want this to happen and subsequently in its very first correspondence to Summit Bank on January 13, 1999, threatened legal action if the bank transferred title to anyone but defendant. For what reason, other than to obtain possession of this crucial evidence did defendant so vociferously threaten Summit Bank that if it sold or transferred ownership and possession of the Jeep to plaintiff, Nationwide would sue the bank?

Coincidentally, if Nationwide had not been in a hurry to destroy the evidence, why did it not provide photographs to plaintiffs of the damaged Jeep. As stated in its Findings of Fact in the Decision, 29-30:

> 84. Defendant did not produce any photographs, as identified in the claim file on September 10, 1996, as follows: "SHOP WILL FORWARD ESTIMATE AND PHOTOS." The photographs were not produced at any time before this lawsuit was filed. Plaintiffs had to file a Motion for Sanctions to get Defendant to produce any photographs of the subject vehicle. Specifically, when Plaintiffs served Defendant with a discovery request seeking all photographs, Defendant filed a Motion for Protective Order. The motion was denied as to photographs. Defendant then claimed no photographs existed! Plaintiffs filed a Motion for Sanctions attaching proof that photographs exist, and a second Order was entered mandating Defendant's compliance with its prior Order. Thereafter, Defendant produced only two photographs, both of poor quality. [emphasis added]
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> 85. Defendant's production of only two photographs, even after a motion for sanctions resulted in a second Order mandating compliance with the prior Order, is evidence of Defendant's continued application of its

> bad faith litigation strategy. Defendant's own personnel admitted at trial in 2004, under cross-examination, that there must exist more than two photographs of the damaged vehicle because photographs were a fundamental feature of Defendant's BRRP; all participating BRRP facilities were required to provide Defendant with numerous photographs of the damaged vehicles to support and/or correspond to the appraisal being written and submitted to Defendant. Thus, this court concludes that there had to be more than two photographs of Plaintiffs' vehicle documenting how heavily damaged it was and the many repairs estimated to put it back together.

The second issue of bad faith arises solely as a result of defendant's decision to finally total the Jeep, not at the time of the crash, but rather, *after* plaintiffs had paid **all** the monthly lease payments for two additional years. The vehicle was totaled only after plaintiffs (defendant's insureds), further suffered by paying a total lease payment of approximately $10,800.00. Had defendant originally totaled the Jeep, plaintiffs would still be paying $300 a month lease but would have been driving a new vehicle after the crash. Thus, the defendant refused to total the Jeep for its insured, but made absolutely certain that the leasing company that owned and leased the Jeep to plaintiffs was not in a position to re-lease or sell the defective Jeep to someone else, particularly to plaintiffs. Defendant also made certain that plaintiffs pay off the entire lease agreement and that the Jeep was depreciated to the maximum in value for two full years before totaling it.

This court cannot conclude that defendant did this for any other reason than to save money and to avoid further liability to a third party. If the Jeep had been sold or re-leased, defendant would have exposed itself to liability to the new party if the Jeep had been involved in a collision and one or more people had been injured or killed. Shockingly, this is exactly the liability that defendant incurred and the dangerous exposure to which it subjected its own insureds when it returned the Jeep to plaintiffs. It owed the duty to plaintiffs to avoid that type of liability exposure. It breached its duty and acted in bad faith to its insured by returning a dangerous, un-crashworthy automobile to plaintiffs and clandestinely used another body shop to attempt to fix it after it had been initially declared "totaled." Two independent body shops combined could not repair the Jeep even by taking an excessively long period of time to attempt to do so. Lindgren estimated the repairs would take twenty-five days to complete; however, the body shops kept the Jeep for four months and still could not straighten out the bent frame!

Defendant then obtained a court order from Judge Stallone to validate its possession of the Jeep. This court order had the parties share the cost of storage. In the ordinary case, this sharing of expenses would not be unusual; however, with the protracted litigation of this case, it soon became impossible for plaintiffs to pay their share as the costs climbed to thousands of dollars. Defendant then went back to Judge Stallone to obtain an order permitting it to dispose of the Jeep, the vital evidence, because plaintiffs had not paid their share of the storage fees.

So now by early 1999, defendant had paid a total of at least $30,500 under its contractual obligations for plaintiffs' collision. Instead of initially compensating plaintiffs for their total losses by playing $25,000 for the value of the Jeep, it paid $12,500 to attempt to repair the Jeep. It then paid an additional $18,000 to Summit Bank to finally total the Jeep twenty-eight months after the crash. By then it was $5,500 over the cost of totaling the Jeep. That figure would be higher but for plaintiffs having paid down the lease and the Jeep having depreciated in value by two years.

Plaintiffs, on the other hand, lost the use of their Jeep for the four-month repair period and received a rental car for just one month. They also had to continue paying

$300 per month to Summit bank on the lease, not for a new Jeep but for a damaged and dangerous one. Defendant's litigation strategy by that time had caused both defendant and plaintiffs to suffer mounting unnecessary losses. Obviously, Nationwide does not mind putting its money where its mouth is by wasting millions of dollars to send a loud message, but it dragged its insured down with it, causing plaintiffs to sustain unmerited damages due to its bad faith litigation strategy.

- **Defendant asserts that this court erred in finding that defendant engaged in a "scorched earth" litigation strategy, including finding that the claims manual at issue in *Bonenberger v. Nationwide Mut. Ins. Co.*, 791 A.2d 378 (Pa. Super. 2002), had been applied to plaintiffs' claim.**

This issue is meritless. Defendant's infamous *Bonenberger* bad faith claim strategy was implemented in 1993. The order of the Superior Court in *Bonenberger* for defendant to end its claims strategy was issued in 2002. Plaintiffs' claim arose in 1996; thus, the strategy was still in place at the time the Jeep was damaged and was alive and well for at least the first six years of this litigation. Defendant never presented any evidence that its scorched earth claims strategy ended before the Superior Court's mandate in 2002.

"[I]nsurer's aggressive litigation strategy, documented in claims processing manual, that was designed to deter filing of small value claims, was relevant to determination whether insurer acted in bad faith." *Berg v. Nationwide Mut. Ins. Co., Inc.*, 44 A.3d 1664 (Pa.Super. 2012) at 1164.

This court is well aware that the Superior Court's finding of a scorched earth claims adjustment philosophy did not specifically apply to a collision property claim issue. The court in *Bonenberger* was dealing with an underinsured motorist claim; however, in the earlier *Berg* decision, the Superior Court stated that its decision in *Bonenberger* governs the issue of bad faith in the case *sub judice*. It ruled in *Berg* that on retrial the Bergs should be permitted, subject to the laying of a proper foundation and authentication of any related documents, to introduce evidence regarding Nationwide's alleged litigation strategy in an effort to establish bad faith conduct under section 8371. Plaintiffs did in fact accomplish that. By 1996, the mold had long been cast for defendant's claims strategy in our case, and it has not changed except to grow worse.

> Automobile insurer's aggressive litigation strategy, documented in claims processing manual that was designed to deter filing of small value claims, was relevant to determination whether insurer acted in bad faith in denying total loss claim by insureds despite appraisal of total loss and instead making repairs to vehicle that resulted in structural defects that created potentially dangerous condition, regardless of whether insurer ultimately paid claim. 42 Pa.C.S.A. § 8371.

Berg v. Nationwide Mut. Ins. Co., Inc., 44 A.3d 1664 (Pa.Super. 2012) at 1166.

James Nicholas Chett, plaintiffs' expert in the handling of insurance claims and an insurance litigation consultant, testified that defendant's conduct was reckless in handling the claim in the case *sub judice*. It was his opinion that defendant should not have defended this case in the way that it did and that it should have attempted a settlement after the issuance of either the Potosnak or the Anderton reports. Defendant never attempted any settlement but continued to defend this action.

For these reasons and those expressed in the earlier Opinion and to be further covered later in this court's Opinion, this court found that defendant had engaged in a scorched earth litigation strategy in the instant case.

- **Defendant asserts that this court conflated the knowledge, conduct, and duties of the auto repair professionals with those of defendant which caused it to make findings of fact not supported by the record and impose duties upon defendant that go beyond a duty of good faith and fair dealing when handling plaintiffs' claim.**

This court did not do this and made specific findings as to defendant's bad faith due to its knowledge, actions, and inactions. Defendant is not specific as to the findings that are in error, so this court cannot continue to thoroughly address this issue.

- **Defendant next submits that it was error in considering that defendant's litigation conduct supported a finding of bad faith.**

This issue is without merit. As stated above, plaintiff presented expert testimony from Mr. Chett that defendant should have at least attempted to settle the case after it had received its own experts' reports instead of pouring more money into its defense of this claim. For purposes of bad faith litigation under Pennsylvania law, an insurance company is chargeable with the actions of its attorney; as such, it is also chargeable with his inactions. *Lublin v. American Financial Group, Inc., et al.*, 960 F. Supp. 2d 534 (2013).

In the case *sub judice*, defendant exhibited bad faith in its litigation strategy by refusing to settle and by hiding and refusing to give discoverable materials to plaintiffs until it was ordered to do so. Some documents, such as the first appraisal, have never been released to plaintiffs and their knowledge of these documents only came through other exhibits and witnesses' testimony. For these reasons and those expressed *infra* and in the prior Opinion, this court determined that defendant acted in bad faith during the litigation in this case.

- **Defendant contends that this court abused its discretion in awarding attorney fees because they were improperly based upon those incurred by defendant.**

This complaint is without merit. The amount of defendant's attorney fees was one reason for its award to plaintiff. Defendant's attorneys were paid in excess of $2.5 million in timely and risk-free litigation fees and expenses. This does not include amounts paid in the last two-and-one-half years which comes to a total well in excess of $3,000.000.00. Defendant chose to incur these defense costs rather than to settle plaintiffs' claim.

Plaintiffs' attorneys undertook this case on a contingency fee basis. Plaintiffs' high risk of not winning the case was compounded by defendant's concealment of evidence and its litigation strategy of sending a message through this case to plaintiff attorneys everywhere: no one can win small claims cases against defendant due to the high costs of litigation. Plaintiffs' attorneys were not paid a penny to date for their herculean efforts, expenses, and risks; they have funded this action for all these years without any compensation. For those reasons, this court was reluctant to award counsel fees to the plaintiffs in an amount that was less than defendant paid its own attorneys who were timely paid and bore far less risk. Plaintiffs' attorneys advanced all legal fees, have not received any compensation, and fought against a leviathan.

Defendant's attorneys were timely paid throughout this protracted litigation. Plaintiffs' counsel handled this case on a contingency fee basis. Therefore, plaintiffs' counsel worked with no payment but the incentive that they would receive a percentage of the award recovered. This court is well aware that contingency contracts, such as this one, that deal with extraordinary risk of no return would merit a 40% - 50% fee for the law firm if that firm obtains a positive result. This court is not ordering a 50% or $9 million fee payment to the law firm representing plaintiff. This court is satisfied to award plaintiff's firm the same, no more, no less, than that reported by defendant for legal representation in this case. As the defense continues this litigation, this court respectfully offers that the appellate court consider remanding this case to this court for a final hearing on plaintiff's award of attorney fees based equally on the full amount paid by defendant in legal fees and expenses in this case to defend plus delay interest.

Moreover, this court notes that plaintiffs' attorneys put forth 5,689 hours in attorney time. Plaintiffs requested an hourly rate of $525.00 based on the length and complexity of this litigation, the contingent nature of counsel's representation, defendant's aggressive litigation tactics, and the results achieved through the litigation. This amount would merit a legal fees award of $2,986,908.75 before costs. Plaintiffs' costs in the case *sub judice* were $82,942.06; therefore, this court awarded counsel fees of $2,917,058.94, which amounts to an hourly rate of $512.00 for 5,689 hours. This is almost $70,000.00 less than the total fee requested by plaintiffs, and plaintiffs' fees and expenses and advancement of costs are far from over.

Both parties expended approximately the same amount of billable hours in prosecuting and defending this lawsuit. Although defendant was represented by different attorneys throughout the litigation, plaintiff was represented by the same law firm from the very beginning. This law firm had to battle constantly defendant's bad faith litigation tactics. If it were not for plaintiffs' counsel's tenacity, this litigation would have been abandoned long ago, defendant would have succeeded in its scorched earth claims practice one more time, and plaintiffs would never have achieved justice. For all of the reasons stated *supra* and in the earlier Decision, this court awarded the attorney fees of $3,000,000.00.

- **Defendant maintains that this court abused its discretion in awarding punitive damages.**

This issue is meritless.

To recover under the Pennsylvanian insurance bad faith statute, the plaintiff must show by clear and convincing evidence: 1) that the insured lacked a reasonable basis for denying benefits and 2) that the insurer knew or recklessly disregarded its lack of reasonable basis. *Gold v. State Farm Fire and Cas. Co.,* E.D. Pa. 2012, 880 F. Supp. 2d 587.

In the case before this court, Nationwide contractually provided for collision coverage for repair or replacement of its customers' insured vehicle. This is not a third party coverage case; but, is a contract entered into directly by the plaintiffs with the defendant for good faith coverage and representation.

Year after year, plaintiffs trustingly paid the premiums for insurance coverage for defendant's provision of representation and payment of any liability if ever needed. Premiums are paid, regardless of whether or not Nationwide ever has to incur any claims and regardless of whether its expense is one hundred dollars or one hundred thousand dollars. Plaintiffs, as with other policyholders, pay for this peace of mind.

Defendant is a for-profit corporation, operating a successful business in which it strives to have its profits outweigh its expenses. As we learned in the trial, it is very successful. Profitability is the best way to measure any successful business—one that is making money, one that has its head above water, one that profits over and above its operating costs. Plaintiff's expert testimony at trial set the value of Nationwide at $14 billion dollars, three or four times greater than the value necessary to rate defendant as a viable corporation by Pennsylvania insurance company business standards.

Business Formula for Profitability

Every business has two criteria to evaluate to show it as a viable financially secure business. The concept is simple; it must increase its income or reduce its expenses to make a profit.

How does defendant reduce the cost of doing business to increase its profits? First, it will only pay the cost for repair or replacement of the clients' automobiles if damage occurs, if the insureds have current coverage, and only if the claim is timely filed.

Beyond the basics, what can Nationwide do to control its bottom line? Its employees and agents might be directed to constantly explore and implement cost cutting measures to reduce the amount of claims that it is required to pay. For instance, to reduce its expenses, it can eliminate clients who are projected to be high risks due to age, gender, residence, and other factors, including excessive use of the car and the accident and motor vehicle violation history of the client. Or it can label these people as high risk and greatly increase their premiums accordingly. These actions increase its income.

Every insurance company is operating on risk projections to measure and control its cost. The more control the insurance company has over its profits and, more importantly, its risk of loss, the more control it has over a huge unknown, its cost of doing business.

In most claims for compensation and damages, the insurance company is in control. The offer to pay all or part of a plaintiff's demand is guided by the party in the driver's seat, the company that holds the assets. The catchy comment that possession is nine-tenths of the law, illustrates the potential compensation process in this industry.

One of three resolutions is possible which is entirely determined by the insurance company, the payer: 1) it makes only partial settlement offer to the claimant; 2) the claimant's demand for full compensation for losses sustained is agreed to by insurance company; 3) no settlement takes place and the case must go to trial for the plaintiff to receive full compensation.

Civil Personal Injury Claims

Someone working in the civil litigation industry, including claims adjustors, lawyers, and judges, knows that it may be easier to settle large claim cases with serious damage than it is to settle smaller cases. That is because we know that larger damage cases will likely result in a verdict for plaintiff while smaller cases will likely result in a defense verdict. Why? It is easier to prove damages in larger cases because many of the injuries are obvious and so extensive that the case cries out for compensation. The only question is what amount. With smaller cases, the claim is usually for soft tissue injuries that are more difficult to prove and, of course, pain in the lower back is less compensable than broken bones and disability. In such cases the question of what number is not even reached until plaintiff can provide proof of any damages actually caused by the collusion. Back pain can be a natural consequence of aging but broken bones had to have been the result of a trauma caused by the impact.

The jury is the ultimate arbiter of what injuries are sustained and if these were caused by the crash. Jurors are obviously more sympathetic to bigger cases where there clearly is injury, sometimes serious, than in smaller cases where two hurdles are faced by the plaintiff in every case: 1) did plaintiff really suffer the alleged damages and, if so, to what extent and 2) even if damages were suffered, were they caused by this collision or were the injuries the result of degenerative back disease, for instance. Some jurors will conclude that almost everybody suffers these injuries and the plaintiff, as with everyone else, needs to "suck it up" and move on. Jurors may also conclude that the plaintiff is trying to get money that is not merited and that this case is another one of those frivolous law suits that they read and hear about and it is their job to make sure he does not get away with it.

The bottom line is what amount of compensation is merited in any personal injury award. First, what good is awarding money to compensate an injured party for her damages suffered? The answer, of course, is that no amount of money is going to cover the pain and suffering of the innocent party. Taken to its logical conclusion, no amount of money will bring back a wife, daughter, or mother killed in a car crash. That said, should we change our civil compensation system for injuries suffered? Of course not.

We are a civilized, lawful society in which our economic system is free enterprise and our compensation is income and benefits. Businesses are encouraged to make money and be properly compensated because that benefits our society. The greatest inventor, hardest worker, and wisest investor will be richly rewarded accordingly. That is not only OK, it is the best there is. A person who invents and produces the products that are essential for our society today should be well rewarded for uplifting us all. We want to encourage others to do the same. That is certainly the case with the men and women who found a cure for polio and those that provided our children with other immunizations against the deadliest childhood diseases in history. All one needs to do is visit the older cemeteries to see the devastating effects of disease and life in general suffered by our early settlers in America. A 19th century farmer was almost lucky if he lost only one or two of his eight or nine children during childbirth or infancy.

There is no question that our socio-economic system which rewards brilliant and hardworking people is far more successful in improving health care, transportation, food production and safety than any other society, especially those where everyone is treated the same. For instance in communist countries, officials who are all paid the same will be more tempted to commit bribery because there is no legitimate way to get ahead.

What is the reward system for our hardest workers and smartest people? Generally, it is fair compensation. It works for everyone in a free economic system—supply and demand, what the market will pay for the products and services provided. A meeting of the minds of both seller and buyer is the basis for the start of a contract.

Fortunately, insurance companies operate up front with an equitable compensation offer for damages sustained by its insureds. If the company is not fair and the claim is not properly evaluated and/or if the company is looking to its own economic consideration or to send a scorched earth message to lawyers who handle personal injury cases, then a bad faith case might be filed against the company. Filing a bad faith case against the insurance company is a rare event.

The greatest problem for the plaintiff in a bad faith claim against the insurance company is, once again, the risk. In this case, it is astronomical. The insured takes a huge risk that the case could go on without compensation for years. The insured's attorney is not likely to pursue litigation either due to his risk of no compensation, or at least the long delay in receiving any compensation is compounded by the greater risk that he could be devoting thousands of dollars of in-kind legal fees and expenses to pursue this case. And for what? This is the best example of David taking on Goliath. Who is willing to risk all that?

Insurance Customers

The Webster Dictionary defines insurance: "The act, business or system of insuring. Contractual coverage binding a party to indemnify another against specific loss in return for premiums paid."

Unlike almost all other products that a customer may purchase, with insurance he may never use or spend that which he bought. All insurance, to varying degrees, exemplifies this apparent paradox. With life insurance, a customer may own coverage for forty years and never use it, paying all those premiums for an event that, fortunately, did not occur in those years. The customer may purchase one million dollars of coverage, pay forty years of premiums, and neither he nor his family ever receives a penny in return. After forty years, he may drop it because he no longer needs life coverage and the premiums are now at the highest level. But for forty years his family received peace of mind, knowing that if the breadwinner dies, there will be $1,000,000 delivered to help his family to make up for some of his loss.

The customers purchase insurance almost exclusively on good faith and trust. The whole concept of insurance is to provide complete coverage to the customer to assure that whenever a terrible expense or great loss is suffered there is coverage against a debt that cannot possibly be borne by the customer alone. The customer trusts that a very reliable company will drop everything to come to his aid at a time of disaster. The customers may not begin to comprehend the workings of the insurance industry or know that there is an insurance commissioner provided by their government to check and balance the industry and to come to the aid of the customers. The customer does not know one insurance company from another. All he generally does know is that this company is one he trusts, with an agent who is a member of the community, possessing a solid reputation, who sells the product and stands behind it. The agent for the insurance company might be the only person the customer knows in the entire massive insurance industry.

The insurance contract is an example of two parties that are nowhere near on the same level of sophistication, knowledge, resources, and power to negotiate an arms-length deal entering into a binding agreement. The customer pays first for the company to provide full coverage for the length of the contract. The insurance company determines who, what, when, and why it will pay. It may not ever process a complaint and it may never pay anything back to the customer. So what does the customer purchase? Peace of mind coverage. The customer fully relies on the insurance company, the Goliath, acting in good faith. He trusts that the company will provide a prompt, good faith representation during his time of greatest need.

What does good faith representation mean to the customer? The assurance that the customer is in good hands, totally covered and protected by the comforting embrace of his insurance company, the enormous, powerful entity that holds him close to the heart while providing deep pockets, if needed, to cover any award against the customer. The company provides full and qualified legal representation to the customer. All of this is promised by the insurance company.

The most important needs of the customer are met at the most frightening time in his life. Peace of mind, help and coverage are what he counts on at, potentially, the time of the customer's worst nightmare.

The value of the agent representing the insurance company cannot be overstated. The insurance agent is often the only one in the insurance world that the customer knows, believes, and relies upon for help to guarantee good faith representation. As with any other item for sale in the marketplace, the customer is purchasing primarily on the reputation of this salesman who is probably well-known and trusted for many years, perhaps for years by other members of the customer's family. Faith in the insurance agent to take care of him by marshalling the full arsenal of this huge and powerful nationally known insurance company to be on the customer's side is what the customer is buying.

The consumer may not know that one company is better than another—if in fact one is. Who does? He or she may buy the product only because that is what the insurance agent recommends. If he sells insurance for Company X, then he obviously recommends and stands behind Company X or he would not sell that company's product.

Insurance Advertisement

Unlike most products that the consumer buys, there is very little substance to that which gets advertised in the insurance world. The insurance companies advertise intangibles such as being a good neighbor, providing friendly service, and immediately responding. Some companies stress only a possible savings to the customer, using vacationing pigs singing "boots and pants," cavemen playing golf, and other nonsense props and storylines to entertain, to catch the attention of the customer. The ads, if they do say anything of any value, might boast that the company is providing better and friendlier service or that "15 minutes *could* save you 15%," or that they have been perhaps "saving the public money for 75 years." Again, the consumer is in the dark which stresses an even greater need for trustworthiness and good faith representation.

We see advertisements created by Madison Avenue ad people that make a claims adjuster magically appear at the scene of the accident whenever there is a need for any help. Television commercials show wild animals and other dangers threatening the customer while help is not only on the way; immediate aid is there apparently only due to buying insurance coverage from Company X. Insurance people are available instantaneously 24 hours a day by phone, if they cannot magically appear at the scene of the accident. They can be called by the customer's wife to verify that it is really them.

The only thing the ad tells us is that the adjuster, at 3:00 a.m., is wearing khaki pants. Some ads use a cone-headed husband and wife!?!

Good Faith vs Bad Faith

The consumer buys insurance on good faith, hope, trust and expectation that at critical times the company will set itself apart from other companies on service, legal representation, and prompt compensation for losses. We trust that the company will be on our side and go to bat for us, that they will be there just like a good neighbor or family member, and that they will be tough with the other side when we need them to be.

We just had an accident. We are scared. We need a company "Driven to be the best." We may have hurt someone or worse. We may have caused thousands of dollars of damage. We are sick about it. We want a company that will keep its promises and step up in our time of need. We need help and we need in now. "It's at times like these that [company] sets itself apart." We can trust them; after all they advertise that "they insure over 40,000,000 people worldwide." No problem because we are "The No Problem People."

Some insurance companies personify this theme with its name alone. We are your rock. We will Cure your problem. We will fix this—we will make the tragedy go away. We will help you through this. We will rid you of this terrible problem—your life threatening sickness that has inflicted you.

The ad men tell us they are **BIG**. We are told to ask about their reputation, to ask about them at our work. In addition to being Big, they are kind and friendly. They must be friendly. There is always a smiling face, warmly assuring the customer that he is doing mighty fine at a time like this. At a time of need what can be better than a friend, a good neighbor, someone who makes their customers' problems, their problems? "Step up," their slogans say it all: "Let us be your rock;" "It is who we are;" "We are driven to be the best;" "It is what you need:" [it is] "what matters to you;" "A better way of life;" "Without it, no insurance is complete;" "You're in good hands;" "Like a good neighbor" (they will be there to take care of you).

What is meant by each one of these brands? The company wants the customer to receive its mission statement: this is what we do, who we are. We are solid and we have been around for a long time. You can trust and rely on us. We are there for you—immediately—not three weeks from today. "Ask about us." "We are the no problem people." We will take good care of you. "We're big, safe, and friendly" communicates that we're big and powerful—a force to be reckoned with. We are your friend—we will help you. You want us on your side. We're safe—you can trust us to take care of your every need, and on top of all that we're also friendly. A friend in need is a friend in deed. A friend who is with us to the end. We're "the quiet company." We speak softly and carry a big stick. That's what we need in our moment of crisis: Roosevelt and America, the toughest and biggest of them all on our side. "We keep our promises to you." "We make our customers' problems our problems." It doesn't get any better than hearing a big, powerful insurance company dropping everything to help when help is needed. If that doesn't communicate "Peace of Mind," what can?

The consumer does not know the advantages and disadvantages of buying this company over another company. We can be certain that the advertising people are aware of that fact. Yet, they do not tell us what are the pros and cons of a company.

They would rather entertain us and just say that they are more friendly, more helpful, more responsive.

In our free enterprise system, other products, on the other hand, such as the automobiles that these companies insure, are evaluated and measured constantly by the consumer. The consumer knows the differences in all areas including, but not just, purchase price.

Do we know as little about buying a car as we do about buying insurance? No, we know far more about cars than insurance.

Everything we need to know is available to us, the consumer, when it comes to cars. We are always comparing its performance, price, size, gas mileage, etc. And we have lots of help in this area. The advertisements tell us in detail and we see for ourselves car and truck ads everywhere, all the time. And they are specific, telling us quantifiable statistics, real information—not useless information.

If we cannot tell how good this brand is over others from driving the car or from ads or talking to others, we can consult volumes of materials including books and magazines that rate cars against each other. We can consult the blue book to see how the car holds its value as it ages. The government even evaluates automobiles for gas mileage and safety. Everybody knows somebody who knows about car purchasing. Ask your mechanic. Literally, we can find out more information for automobiles that we will probably ever need or want.

The owner has ample opportunity to evaluate the product on speed, comfort, reliability, performance, durability, and expense to operate. We know every time we fill the tank, have the car inspected, serviced, and repaired, and when we trade it in for a newer car, just how much value to place on the purchase of that brand and whether or not we will do it again for ourselves and our family. With insurance, however, we know far less and hopefully never have a chance to evaluate it closely. There may not be anything mythical about our insurance, but we all know (and the law tells us) we must have it, and that it gives us peace of mind.

<u>Justice Provided for Bad Faith</u>

Because our society is a society of laws, we must provide a court system for compensation for all the day to day injuries or deaths in civil cases in order to make the person whole. If we did not do this, retaliation may be the result. However, in alleged bad faith insurance cases, society goes a big step further.

> In an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith toward the insured, the court may take all the following actions:
>
> (1) Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%.
>
> (2) Award punitive damages against the insurer.
>
> (3) Assess court costs and attorney fees against the insurer.

Berg v. Nationwide Mut. Ins. Co., Inc., 44 A.3d 1664 (Pa.Super. 2012), 1170-1171.

"An insurance claim must be evaluated on its merits alone, by examining the particular situation and the injury for which recovery is sought." *Berg v. Nationwide Mut. Ins. Co., Inc.*, 44 A.3d 1664 (Pa.Super. 2012) at 1166.

Unlike the vast majority of goods that we purchase, we may renew insurance coverage month after month and year after year without ever being able to evaluate what we bought—without any reason to conclude that we shall immediately change companies or remain with the same. We can only buy on good faith and trust. This is not buyer beware because the buyer may never be able to find out. It is, at best, user beware. Until you use it, you will never know what you got. You may hear stories of one insurance company and how good or bad its service is, but you will never really know until something happens to you when it may be too late. We purchase and repurchase on faith, hope, and trust year after year. Hopefully, we do so without ever being in a position to find out what peace of mind we really bought.

As the Superior Court of Pennsylvania has held:

> Individuals expect that their insurers will treat them fairly and properly evaluate any claim they may make. A claim must be evaluated on its merits alone, by examining the particular situation and the injury for which recovery is sought. An insurance company may not look to its <u>own economic considerations</u>, seek to limit its <u>potential liability</u>, and operate in a fashion designed to "<u>send a message</u>." [emphasis added]
>
> Rather, it has a duty to compensate its insureds for the fair value of their injuries. Individuals make payments to insurance carriers to be insured in the event coverage is needed. It is the responsibility of insurers to treat their insureds fairly and provide just compensation for covered claims based on the actual damages suffered. Insurers do a terrible disservice to their insureds when they fail to evaluate each individual case in terms of the situation presented and the individual affected.

Bonenberger, 791 A.2d at 382.

The customer trusts that the company will represent her family in good faith, protecting her and her family in every way, that will treat her fairly, and properly evaluate the claim without looking to its own economic interests. The insured deserves the hope, faith, and trust that the insurer will perform as contracted and paid for, not in a fashion designed to send anyone a toughness message, and certainly not to us who have called them family for all these years. And certainly not for its own economic considerations or to limit its own liability. All the customer knows is that if a small, medium, large, or extra-large crisis occurs, he is covered by: legal representation and payment of his debts. He trusts that he will not lose everything, and thus enjoys peace of mind.

"An insurance company may not look to its own economic considerations, seek to limit its potential liability, and operate in a fashion designed to send a message; rather, it has a duty to compensate its insureds for the fair value of their injuries." *Berg v. Nationwide Mut. Ins. Co., Inc.*, 44 A.3d 1664 (Pa.Super. 2012) at 1166.

Insurance companies are well compensated in a way that allows them to operate a successful business and accumulate wealth. They must perform their fundamentally required services to their insured. The company owes this duty to the insured, to the public, and to the industry. It cannot use its massive assets and prominent position to take advantage of the very small client. It must not threaten or attempt to or initiate a David and Goliath relationship with its insured.

Sui Juris

This court reviewed thousands of pages of transcripts and depositions, familiarized itself with the contents of dozens of motions, answers, and other pleadings contained in 35 boxes and accordion files. We do not complain but simply note that which has been produced, filed, accumulated, and developed in its 17 years of actual court litigation. Post-trial, since June 21, 2014 more files, motions, and briefs have been submitted, legal fees and costs expended, and arguments heard and made as defense preserved its issues for its appeal.

The case began with an automobile accident on September 4, 1996 and ended with this court's verdict entered on June 21, 2014, one year ago. Legal and factual issues have been tried to both jury and non-jury verdicts, and appeals filed, including previously to the Pennsylvanian Superior Court and to the Pennsylvanian Supreme Court. Several millions of dollars have been expended to prosecute and defend this case in court, including discovery costs and, especially, legal fees.

The Bergs placed their trust in Nationwide as did their relatives before them. In our free enterprise system, the Bergs could have chosen any other insurance company in which to enter into a binding contract agreeing to pay, not insignificantly, for the company's duty to provide good faith representation and guaranteed reimbursement for damages sustained if there is a motor vehicle collision.

<u>Nationwide's Bad Faith Conduct</u>

"It is the responsibility of insurers to treat their insureds fairly and provide just compensation for covered clams based on the actual damages suffered." *Berg v. Nationwide Mut. Ins. Co., Inc.*, 44 A.3d 1664 (Pa.Super. 2012) at 1166.

The Bergs were forced to discover what peace of mind they really bought. Plaintiffs contracted with defendant to provide good faith coverage to them, if and when they sustained damages to their car from a collision with another party.

"On the date of the accident, the Bergs were insured by a Nationwide automobile policy that covered, *inter alia*, losses 'caused by collision or upset.'" *Berg v. Nationwide Mut. Ins. Co., Inc.*, 44 A.3d 1664 (Pa.Super. 2012) at 1167.

The contract by law required plaintiffs to perform their obligation and timely pay the premiums. In return defendant was also obligated by law to produce full coverage to plaintiffs as provided in the contract and to do so in good faith.

Nationwide had several legal duties[1] and fiduciary obligations that it recklessly disregarded.

1) To promptly process, adjust, and resolve the claim. The collision occurred 19 years ago. Defendant spent over $3 million to defend a case that could have and should have been resolved by following the original estimate that the Berg's Jeep was totaled. That would have initially cost Nationwide another $12,500. Instead, defendant spent and re-spent that sum of money many times over—more than three thousand times for the better part of two decades just to defend the action because it did not promptly process, adjust, and resolve the claim.

> Automobile insured's allegations that they contacted insurer to file claim for damage to vehicle from automobile accident, that they asserted request for prompt payment for repairs, and that insurer acted in bad faith by failing to effect prompt, fair and equitable settlement of claim, was claim, that arose under insurance policy, as required to support claim under bad faith insurance statutes. 42 Pa.C.S.A. § 8371.

Berg v. Nationwide Mut. Ins. Co., Inc., 44 A.3d 1664 (Pa.Super. 2012) at 1165.

Defendant recklessly disregarded prompt resolution and adjustment of the claim. Its Blue Ribbon repair company (Lindgren) immediately declared the Jeep totaled because of the bent frame. This appraisal was soon overruled by defendant. Thus, plaintiffs received only a poorly repaired Jeep with a bent frame and numerous defects that left it un-crashworthy. That initial appraisal was not followed by defendant for the entire time that plaintiffs paid the monthly lease payments while they drove the defective Jeep. It was only after plaintiffs made all remaining monthly payments, for over two

[1] In *Berg v. Nationwide Mut. Ins. Co, Inc.*, the Superior Court referred to *Toy v. Metropolitan Life Ins. Co.*, 593 Pa. 20, 41, 928 A.2d 186. 199 (2007). "[O]ur Supreme Court has held that section 8371 applies in any action in which an insurer is called upon 'to perform its contractual obligations of defense and indemnification or payment of a loss that failed to satisfy the duty of good faith and fair dealing implied in the parties' insurance contract.'" Further, in footnote number 6, the Court stated that the Bergs are not limited in asserting "their 8371 claim in this case, however, since the alleged bad faith conduct here occurred during the processing of an actual claim."

years, that Nationwide did follow the initial appraisal that the Jeep be totaled. It was only then, immediately after plaintiff made their last monthly payment that defendant totaled the Jeep and compensated the leasing company, not the plaintiffs, for the total value of the Jeep. This was by no means a prompt resolution of plaintiffs' claim. The case is still ongoing. The plaintiffs have not been compensated under the terms of the contract.

2) The Bergs were never informed why it took over four times longer to repair their Jeep. They were continuously led to believe the Jeep was safe for use, and defendant never told them that the Jeep was immediately totaled and that it had to be taken to a third party auto body company because Lindgren could not repair it.

3) Was there a violation of the Uniform Insurance Practices Act and Unfair Claims Practices Act? Yes, as determined by a jury under the then existing facts of the 2004 trial.

4) Was there a violation of the Motor Vehicle Physical Damage Appraiser Act? Yes, as determined by this court in our non-jury bad faith trial.

This court again looks to the guidance from our appellate court in answering Questions 2, 3, and 4.

> In determining whether automobile insurer acted in bad faith relating to insureds' claim for total loss damage to vehicle, under bad faith insurance statute, by interfering with total loss appraisal and later returning vehicle to them despite known structural deficiencies in repairs that created potentially dangerous condition, "bad faith" could be premised on insurer's alleged violations of catchall provision of Uniform Trade practices and Consumer Protection Law and Motor Vehicle Physical Damage Appraiser Act. 42 Pa.C.S.A. § 8371; 63 P.S. § 201-2(4)(xxi).

Berg v. Nationwide Mut. Ins. Co., Inc., 44 A.3d 1664 (Pa.Super. 2012) at 1165.

5) Was there a failure by defendant to follow its own claims handling guidelines? Yes, by overruling Lindgren's appraisal and sending the Jeep, without plaintiff's approval or knowledge, to be worked on by a third party repair shop for it to try to straighten out the bent frame. Nationwide's appraiser made his determination without lifting a tool and never issued a written appraisal as required by law and regulations.

> Plaintiff seeking damages for an insurer's bad faith conduct under the bad faith insurance statute may, in addition to other available methods, attempt to prove bad faith by demonstrating that the insurer has violated one or more provisions of related Pennsylvania insurance statutes or regulations, even if those provisions do not provide for private rights of action. 42 Pa.C.S.A. § 8371.

Berg v. Nationwide Mut. Ins. Co., Inc., 44 A.3d 1664 (Pa.Super. 2012), 1165-1166.

6) Was there a failure to make a timely offer of settlement? There most certainly was. Defendant tries to divert the blame for this unprecedented endless and protracted litigation to plaintiffs. Of course, the only one who could settle this case was Nationwide if it had made a legitimate offer. Instead it sent a scorched earth message to litigants and the plaintiffs bar that they cannot fight Goliath, especially in small claims cases because their lives will be made miserable. Nationwide will dig in its heels and fight all the way to the end. Plaintiffs simply could not afford to dispute defendant, to hire a lawyer, and fight it in court. Plaintiffs had better do it Nationwide's way. After all, what lawyer will take plaintiff's case against Nationwide on a contingency contract? Certainly plaintiffs cannot afford to pay for all the legal fees and costs that will be necessary to fight defendant in court.

7) Did defendant elevate its own interest above the interest of its insured? Yes, if defendant, Nationwide, could save $12,500 by repairing rather than replacing plaintiff's un-crashworthy automobile in just this one case, in how many other cases would the

adjusters follow the same procedure? If the answer is in the hundreds or more, the total profits to the Nationwide company would easily be in the millions of dollars. Although, in our case, we have no evidence of its Pennsylvania Best Claims Practices Manual controlling and setting policy in property claims adjustments, we do have independent substantiated evidence that defendant's Pennsylvania Best Claims Practices Manual applied to smaller claims and that it "was in existence since 1993 and was used by Nationwide's employees as their primary guide to evaluating, valuing, and negotiating claims," page 381 *Bonenberger*. For all these reasons, this court did not abuse its discretion in awarding punitive damages.

- **Defendant next suggests that the jury's finding that defendant did not commit fraud and the previous court's denial of trebling damages under the UTPCPL weigh strongly against any punitive damage award.**

This argument is disingenuous. After five days of trial, the jury returned a verdict that defendant had violated the catch-all provision of the UTPCPL and awarded compensatory damages of $295.00 against defendant. The Superior Court held that the jury's finding that defendant violated the UTPCPL constituted some evidence of bad faith conduct by defendant. Thus, there is no evidence that the jury did not find a lack of fraud by defendant. Indeed, the opposite is true.

"[J]ury's finding that insurer violated catchall provision of UTPCPL was some evidence of bad faith." *Berg v. Nationwide Mut. Ins. Co., Inc.*, 44 A.3d 1664 (Pa.Super. 2012) at 1164.

The prior judge's refusal to treble damages or award punitive damages is irrelevant. The Superior Court found that "the trial court's arguments here reflect a clear misunderstanding of the nature of the Bergs' claims under section 8371" (*Berg* at 15). The Honorable Albert A. Stallone was reversed and the case was remanded for a new trial. The claim of bad faith was at issue in the trial before the undersigned.

In defense of Judge Stallone, only the tip of the iceberg of the bad faith evidence was discovered and known to plaintiffs' counsel and to the court when the jury and Judge Stallone tried this case in 2004. For instance, the evidence by 2004 was that $922,000 had been spent in defense legal fees; however, on testimony before the undersigned in 2013, another $907,543.00 that was never disclosed by defendant was found to have been spent in October 2004 alone! This was discovered independently by plaintiffs' auditor who testified in the trial before this court.

The Superior Court in its Opinion referenced that defendant had spent $922,000 through 2004 to litigate this case rather than settling with its policyholders and that the cost of legal fees and expenses are relevant issues determining bad faith. *Berg v. Nationwide Mut. Ins. Co., Inc.*, 44 A.3d 1664 (Pa.Super. 2012), 1176-1177.

Also, under oath defendant admitted in its verified response to plaintiffs' interrogatories of May 28, 2013, that it paid its attorneys $1.173 million plus $110,602 in expert witness fees. Defendant's sworn answer in 2013 shockingly did not include a half million dollars, the correct amount, it had spent in legal fees and expenses <u>up to 2004</u>, nine years before!

So if it spent $1,829,543 by 2004 ($922,000 + $907,543), how much did it really spend by May 28, 2013 when it answered the interrogatories? We know that it certainly was not the $1,283,000 figure that it answered under oath because it fails to include a half million dollars as stated. In addition to the figure being at least $500,000 below what it spent through 2004, it fails entirely to include any payment for the next 9 years! (2004 to 2013). Perhaps another half million dollars or more was paid making the truthful total amount of fees and costs incurred in Nationwide's answer under oath perhaps a million dollars more! Again the Superior Court told everyone that the costs of legal fees and expense are relevant issues determining bad faith. Is that why defendant failed to reveal up to another million dollars in its answer?

- **Defendant asserts next that this court failed to apply Pennsylvania law regarding the award of punitive damages.**

This statement is ridiculous. The prior Opinion and this Opinion thoroughly address this court's reasons for the imposition of punitive damages and took into consideration Pennsylvania law in imposing punitive damages.

Punitive damages are awarded only for outrageous conduct, that is, for acts done with a bad motive or with a reckless indifference to the interests of others. Wealth is considered in the assessment of the amount of punitive damages because if a wealthy person commits a heinous act, nominal punitive damages will not deter either that person or any other similarly situated person from committing a similar act. *Vance v. 46 And 2, Inc.*, 920 A.2d 202 (Pa. Super. 2007).

This court cited many acts of outrageous conduct on the part of defendant and found that punitive damages must be awarded. This court awarded $18 million in punitive damages due to the outrageous acts of defendant and its great wealth. As stated in the Decision, defendant has more than $14 billion in Statutory Surplus. This is three times the amount required by state regulators. Defendant stipulated that an $18 million punitive award equals only 0.2% of defendant's $9 billion in excess Statutory Surplus. This award, as stated in the Decision, has little or no impact upon defendant; however, although it is minimal, it is steep enough to punish defendant and to warn other insurance companies to follow the law. Thus, this court applied Pennsylvania law in awarding punitive damages, and, in fact, followed what the evidence was of the stipulated impact of an $18 million award of punitive damages. Again, this $18 million figure and its impact was stipulated to by both sides and defendant offered no additional testimony on this issue.

- **Defendant's final argument concerning punitive damages is that the award violates the Due Process Clause of the United States Constitution because the award is grossly excessive and unconstitutional under the factors set forth by the United States Supreme Court, attorney fees cannot count as compensatory damages for purposes of calculating an acceptable ratio to punitive damages, and this court based the punitive damages on purported misconduct towards policyholders other than plaintiffs.**

This argument fails. As stated in the Decision, the United States Supreme Court identified three important guideposts for punitive damages: the degree of reprehensibility of the defendant's conduct; the disparity between the actual or potential harm suffered by the plaintiff and the punitive damage award; and the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. In its Decision, this court discussed these guideposts and their relationship to the defendant in the case at bar. For those reasons, the award is neither grossly excessive nor unconstitutional.

- **Defendant submits that attorney's fees cannot count as compensatory damages for purposes of calculating an acceptable ratio to punitive damages.**

This issue is without merit. In *Holluck v. Erie Ins. Exchange*, 842 A.2d 409 (Pa. Super. 2004), the compensatory damages in the bad faith claim were limited to attorneys' fees, costs, and interest of $278,835.00. The award of punitive damages was in the amount of $2.8 million. The Superior Court concluded that in considering Erie's reprehensible conduct, due process was not violated as a result of the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award. Therefore, attorneys' fees can be used for the purposes of calculating punitive damages, and the ratio between the two can be quite high.

In the case *sub judice*, the potential harm to these plaintiffs and others was profound. The Potosnak Report which detailed and alerted defendant to the extensive problems with the plaintiffs' Jeep was not communicated by defendant in any way to plaintiffs or their counsel for five years. This is the apex of defendant's bad faith in our case. It was finally disclosed when defendant was forced to do so as a result of plaintiffs' motions for admissions which defendant opposed. Defendant only disclosed this report to prevent the accusation of further wrong doing.

Summation of Violations of Defendant's Duty to Warn/Inform/Disclose Important Opinions and Facts to Its Insured

1. Plaintiffs were not provided a copy of the September 10, 1996, total loss evaluation as required by the applicable insurance regulations. The plaintiffs were not even told that the opinion of the assigned appraiser was that the vehicle was a structural total loss because the frame was twisted. Defendants defied and ignored the September 10, 1996 appraisal and informed plaintiffs of the September 20, 1996 appraisal only. Defendant attempted to pull the wool over their insureds' eyes by never disclosing the existence of the initial appraisal.

2. Plaintiffs were not advised that the damage to their vehicle was such that the BRRP facility (Lindgren) with whom they contracted for body work, did not possess the proper equipment to straighten the frame damage and, thus, was unable to attempt the repairs.

3. Plaintiffs were not advised or consulted with regard to defendant's decision to have their vehicle taken to an undisclosed repair facility to attempt structural frame repairs. Plaintiffs gave no permission and did not contract with the third party repair facility for the repair of the Jeep. Defendant, alone, made the decision to vacate the total loss appraisal and transport the vehicle to another repair facility; by not informing their insured of the facts, defendant ill-treated plaintiffs and ignored its duty to their insured.

Of course, the decision of which person or company to contract with for repair is solely that of the Bergs. Not only did the Bergs not make this important contractual decision and not only were they not even informed of the serious damage issues, Nationwide also returned the dangerous Jeep to their insured without any warning whatsoever.

4. Defendant did not warn or advise plaintiffs about the vehicle, but instead, paid the claim benefit directly to its BRRP facility. Defendant's dishonesty continued to be shown by this example. Plaintiffs were not only misled, but also uninformed by defendant. This conduct is nothing less than unconscionable. This arrogance and disrespect were increased to a new level when it returned the Jeep with all of its defects and safety risks without any warning to the Bergs of what the Jeep had been put through in an attempt—which failed to fix it.

5. On April 14, 1998, pre-complaint depositions were taken at which time plaintiffs discovered, for the first time, that their vehicle was originally appraised as structural total loss due to a badly twisted frame.

6. At trial in 2004, Mr. Bashore admitted that the Potosnak Report was an ordinary claim-file entry from Mr. Potosnak to Mr. Bashore, documenting structural repair failures and the non-replacement of structural components, rather than a communication to counsel; thus it was not and is not protected by attorney/client privilege. Defendant kept this damning report hidden from its own insured, the people who had placed their trust in Nationwide for years.

7. Defendant's Answer to plaintiffs' complaints was verified by Mr. Bashore. Despite Mr. Bashore's later admissions (as stated above in #6), that the Potosnak report documented extensive repair failures, he had denied in defendant's answer to plaintiffs' complaint that there were any structural repair failures. His untruthful answer refused to admit any repair issues despite having the Potosnak report in hand. The

Verification was expressly made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

8. Preceding the trial before Judge Stallone, defendant had made approximately thirty redactions to its claim log which it asserted were all protected under attorney-client privilege; however, many of these redactions were to log entries created before the litigation even started. Nearly every one of defendant's redactions remained undisclosed at the said trial. However, nearly every one of defendant's redactions was overruled by this court in a subsequent *in camera* discovery relief hearing. This court concludes that Nationwide, contrary to its duty in the discovery rules of civil procedure to provide relevant, important facts, wrongly used an alleged attorney/client relationship to accomplish its intent to hide this discoverable material from its insured.

9. In addition to concealing the Potosnak Report through five years of litigation, other evidence remains missing. Corroborating evidence confirms the following should exist and, yet, has never been produced: 1) more than two photographs of the damaged Jeep taken at the time it was declared a structural total loss—for which defendant untruthfully had previously answered that no photos ever existed! 2) The September 10, 1996 appraisal declaring the Jeep a structural total loss was never produced although it was referenced in defendant's claim file. 3) The BRRP documents used by defendant to document the findings of its routine monthly inspections were never produced.

10. Defendant concealed $907,543 in spent legal fees in 2004. Thus, it paid at least $1,827,543 by 2004 (the $992,000 that the Superior Court had concluded was relevant added to this $907,543 that was paid on October 6, 2004 but only came to light

in the trial before the undersigned in late 2013). This was done <u>after</u> defendant answered and verified under oath that it had paid a total of $1,283,602, a half million dollars less. This figure was used by defendant to answer plaintiff's interrogatories. Defendant in the interrogatories not only failed to disclose this additional $907,543 paid in October 2004 but also therefore reported no additional legal fees and expenses for 9 more years of litigation from 2004 to 2013. The bottom line is that defendant failed to report perhaps a million dollars in legal fees and expenses when it was on notice that the Superior Court allowed the issue of legal fees to be used in the bad faith insurance case.

> The Bergs sought to introduce evidence of Nationwide's litigation strategy and practices in this case for substantially identical reasons as those outlined in *Bonenberger*. The Bergs contend that Nationwide implemented a litigation strategy that called for aggressive tactics designed to deter the filing of small claims. Bergs' Brief at 50. They further contend that Nationwide documented this litigation strategy in a claims processing manual ("Best Claims practices"), and that as a result, the trial court erred in refusing to permit testimony regarding the amounts paid by Nationwide to its attorneys in the case. Bergs' Brief at 49-55. Based upon *Bonenberger*, we agree and conclude that on retrial the Bergs should be permitted, subject to the laying of proper foundation and authentication of any related documents, to introduce evidence regarding Nationwide's alleged litigation strategy in an effort to establish bad faith conduct under section 8371.

Berg v. Nationwide Mut. Ins. Co., Inc., 44 A.3d 1664 (Pa.Super. 2012) at 1177.

- **Defendant's last contention regarding this issue is that this court based the punitive damages award on purported misconduct towards policyholders other than the plaintiffs.**

This contention is false. This court based the award on the outrageous acts that defendant practiced on these plaintiffs. Plaintiffs paid thousands of dollars in premiums to Nationwide for many years. Nationwide provided in return its lawful duty of honest, good faith representation in the event plaintiffs ever needed it. Plaintiffs bargained for defendant's treating them fairly, for Nationwide to evaluate the claim on its merits alone, for plaintiffs to be compensated for the fair value of their damages to the extent of the amount of coverage and for Nationwide to competently provide legal representation. Sadly, defendant obviously did not view the contract and its duty the same.

By replacing the September 10, 1996 total loss appraisal, defendant stood to save money on the claim payment via confidential BRRP discounts captured only if the vehicle was repaired, including discounts on parts and labor. Most significantly, the Jeep repairs saved defendant 50% of the replacement loss or approximately $12,500.00. Nationwide looked to its own economic considerations to increase its profit margin by lowering its claims due in an attempt to limit its potential liability and operate in a fashion consistent with how it operated in *Bonenberger*. It continued to send a message to the plaintiffs' bar to take only what Nationwide offers to settle in small claims or you will lose after paying a huge price to fight them. All of this was contra to defendant's obligation of good faith representation as enunciated by our appellate court.

The *Bonenberger* court found that defendant, in small claims cases, used an internal practice manual detailing aggressive litigation tactics intended to create a perception in the legal community that defendant was a defense-minded carrier. This court found that the practice manual was still in use at the time of this claim. That is the only reference by this court to other policyholders in the Decision.

The actual wording of defendant's "Best Claims Practices Manual of 1993 and Beyond," is applicable to the facts in our case. Defendant's defense strategy reinforced that which it had advertised as a philosophy that it was a "defense-minded carrier in the minds of the plaintiff's legal community." The strategy was to avoid litigation by "implementing a more aggressive posture in handling smaller claims cases of lesser exposure (i.e. cases not exceeding $25,000)." This strategy created and reinforced a defense-minded perception.

Our case fits this description like a glove fits a hand:

1. Defendant told lawyers everywhere, it is a defense-minded carrier, especially the plaintiffs' bar.

2. It hoped to avoid litigation by implementing a tough defense strategy by creating roadblocks and escalating expenses, making it impossible to justify fighting Nationwide in court.

3. The original claim did not exceed $25,000.

4. By fighting the Bergs for 19 years rather than settling the case Nationwide is still able to broadcast that same philosophy telling the plaintiff's bar even today that neither the Bergs nor their attorney will ever succeed. This case is known to perhaps every litigation attorney in Pennsylvania. The message to them continues to be you cannot beat us on a small claims case and *Berg v. Nationwide* is a valuable reminder to the Pennsylvania's bar of that being the case today and that being the case for the past two decades.

Its defense minded strategy will be broadcast several more times as this case goes through the appeal process. Its tough philosophy is communicated to Pennsylvania's bar by Nationwide's never ending defense strategy in this case.

Defense expert, Constance Foster, testified that a claims manual itself can be used against the defendant as evidence of bad faith (Transcript, 191). She defined a

Scorched Earth Strategy as when a defendant attempts through various mechanisms to overwhelm the plaintiffs. This court finds that defendant's errors of commission and omission, as set forth, fit Ms. Foster's definition of the Scorched Earth Policy in the case *sub judice*. This court finds that plaintiff proved defendant's bad faith by clear and convincing evidence. Defendant's said claims strategy stands alone as having been in full force and effect during the time period 1993 until it may have been stopped and changed by Nationwide at a later time, obviously, not prior to 2002. However, regardless of whether or not the tough claim strategy did end, Nationwide's most effective advertising of its tough philosophy to the plaintiff's bar occurred when this court's decision in this case one year ago became the number one requested opinion by the lawyers of Pennsylvania in 2014 as reported in the *Legal Intelligencer:* Who can afford a legal fight with the insurance company for 19 years even if you do win?

Finally, at the depositions scheduled by plaintiffs for discovery early in this case, four of defendant's high ranking employees testified that the *Bonenberger* tough defense procedures manual was still in full use in claims processing. However, at the first trial in 2004, all four testified under oath they were all mistaken –that the said procedures manual was discontinued.

This court finds defendant was further motivated to repair rather than pay full replacement costs because of the confidential Blue Ribbon discounts captured only if the vehicle is repaired, including discounts on parts and labor. The payback to defendant for parts and labor by each Blue Ribbon repair shop across the country adds perhaps millions of dollars of further motivation to repair, not replace, a policyholder's damaged or destroyed vehicle.

Therefore, the punitive damages were based on the aforesaid reasons and as a deterrent for future violations by defendant and other insurance companies.

- **Defendant's last issue concerns its argument that this court abused its discretion in awarding interest in contravention of the bad faith statute. First, defendant contends that awarding interest on attorneys' fees is contrary to Pennsylvania law and to the purpose of prejudgment interest.**

This issue is meritless. An award of interest for the insurer's bad faith toward its insured is within the sound discretion of the trial court. The governing statute, 42 Pa.C.S.A. § 8371, permits the trial court to calculate interest on the entire verdict.

- **Defendant also asserts that the interest award is grossly excessive, including to the extent that this court awards plaintiffs compound interest rather than simple interest.**

This issue is without merit. This court awarded statutory interest. By operation of law, it denied plaintiffs' request for compound interest because it did not timely mold the Verdict to grant the compound interest.

- **Defendant's last complaint is that interest should not have been granted to the vast majority of the attorneys' fees award due to plaintiffs' delays in litigating this case.**

This issue is a frippery. Most of the delays in this case were due to plaintiffs' attempts to receive discoverable materials and defendant's conduct in concealing discoverable evidence.

Defendant argues that extensive delays were caused in plaintiff's filing and refiling its amended civil complaint. Although plaintiffs filed eight amended complaints, all of them were filed by October 25, 1998, approximately ten months after the litigation began on January 23, 1998. Assuming *arguendo*, that plaintiffs can be faulted with delays through October 25, 1998, almost all of the seventeen-year delay since then was due to defendant's aggressive, defense-minded claims strategy. In addition to concealing the Potosnak Report, other evidence still remains missing today, including: photographs of the Jeep when it was declared a structural total loss; the September 10, 1996 appraisal declaring the Jeep a total loss; and the Blue Ribbon inspection documents more specifically repeatedly used by defendant to document the findings of its routine monthly inspections.

Defendant clearly followed a litigation strategy designed to "starve out" and wear down plaintiffs and their counsel. Nationwide's message: the wealthy and powerful corporation could wait 20 years or until the end of time, while plaintiffs' counsel tires of waiting for compensation from his clients to pay his legal fees and expenses or if plaintiffs are able to pay their legal fees, Nationwide could wait until the end of time for plaintiffs to grow weary of spending hundreds of thousands of dollars to compete with defendant's billions.

Moreover, defendant never tried to settle this case amicably and forced plaintiffs to continue the litigation to achieve justice. Mr. Chett testified that defendant forgot about its insured, and the insured is the person to whom it owes a duty to discharge under the insuring agreement. Defendant convinced Judge Stallone to allow it to dispose of the Jeep. The most important piece of evidence was consciously and intentionally destroyed by Nationwide in the early years of this marathon litigation.

Defendant has done everything it possibly could to stonewall the claims processing disposition for its insured. It failed, dismally, to treat the Bergs' fairly to properly remediate the claim. It looked to its own economic considerations and has sought to limit its potential liability and operated in a fashion designed to send a message. It breached its duty to compensate its insured for the fair value of their injuries. Insurers must treat their insured fairly and provide just compensation for their claims based on the actual damages suffered. As the Honorable Court in *Bonenberger* concluded, "insurers do a terrible disservice to their insured when they fail to evaluate each individual case in terms of the situation presented and the individuals affected."

For these reasons and those noted in this court's Decision, the contention of delay by plaintiffs is absurd.

CONCLUSION

"Our Supreme Court has long recognized that 'the utmost fair dealing shall characterize the transactions between an insurance company and the insurer'. *Dercoli v. Pennsylvania Nat. Mut. Ins. Co.*, 520 A.2d 906 (1989)." *Berg v. Nationwide Mut. Ins. Co., Inc.*, 44 A.3d 1664 (Pa.Super. 2012) at 1170.

No one from defendant warned the plaintiffs that the Jeep was dangerous to drive or that it should be immediately recalled. Even after the Potosnak Report was provided to defendant, it did not immediately total the Jeep and give plaintiffs any remedy. Defendant hid the report from its insured—it hid the fact that the car was defective and un-crashworthy. It did not promptly recall plaintiffs' Jeep and replace this dangerous instrument with a loaner car. Instead, defendant refused to settle this case and poured more money into defending it without ever warning plaintiffs not to drive the Jeep. Defendant simply buried the evidence and hid the fact that it knew anything about this report and what it meant to the safety of anyone in a collision. It has been unscrupulous in this litigation by failing to produce documents required by law and by answering dishonestly. Returning the Jeep to plaintiffs with a bent frame that could not protect its occupants in a car crash was nothing short of exposing the insured to an unjustifiable risk of death or injury in the event of a collision.

In accordance with the foregoing Opinion this court submits that defendant's appeal should be denied and this court's Verdict affirmed.

NOTICE IS HEREBY GIVEN OF THE ENTRY OF THIS ORDER OR DECREE PURSUANT TO RULE P.C.P. 236 YOU ARE NOTIFIED THAT THIS ORDER/DOCUMENT HAS BEEN FILED IN THE PROTHONOTARY'S OFFICE OF BERKS COUNTY AND THIS IS AN EXTRACT FROM THE RECORD OF SAID COURT CERTIFIED THIS 23 DAY OF July 20 15
Marianne R. Sutton, Prothonotary
Michelle Bricker Deputy

JEFFREY K. SPRECHER, J.

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