NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

ALVORD-POLK, INC.	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
STRICKLER AGENCY, INC.	:	
Appellant	:	No. 915 MDA 2024

Appeal from the Judgment Entered June 18, 2024
In the Court of Common Pleas of Dauphin County Civil Division at No(s): 2020-CV-02069-CV

BEFORE: BOWES, J., OLSON, J., and STEVENS, P.J.E.*

MEMORANDUM BY OLSON, J.: **FILED: APRIL 24, 2025**

Appellant, Strickler Agency, Inc., ("Strickler") appeals from the June 18, 2024 judgment entered in the Court of Common Pleas of Dauphin County upon a jury verdict in favor of Alvord-Polk, Inc., ("Alvord-Polk") and against Strickler. We affirm.

On September 6, 2024, the trial court filed its opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a) and set forth, in detail, the factual and procedural history of this case. ***See*** Trial Court Opinion, 9/6/24, at 1-29. We adopt the recitation of the facts and procedural history contained therein and shall not repeat the same. In short, Alvord-Polk asserted a claim of professional negligence against Strickler after Alvord-Polk incurred losses following a fire at one of its manufacturing facilities that destroyed all its contents and equipment, also known as business personal property. The losses were not covered, in full, by the insurance policy Strickler brokered and

*Former Justice specially assigned to the Superior Court.

obtained for Alvord-Polk because the insurance policy did not provide for blanket agreed value coverage, as Alvord-Polk requested on its insurance coverage application but, instead, contained a coinsurance clause.[1] Upon the

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[1] A "coinsurance" clause, within the context of commercial property insurance, is a provision requiring an insured to insure its property for a specific percentage of the property's value in order to avoid a "penalty" (or reduction) in the claim payout. The coinsurance clause allows insurers to set appropriate premium amounts on policies to remain solvent. N.T., 2/2/24, at 997-999.

"Agreed value" insurance coverage is a type of coverage whereby the insured and insurer agree, prior to the effective date of the insurance policy, to the value of the insured's property. The agreed value is the amount the insured will recover in the event of a total loss of the covered item, regardless of replacement cost or actual cost. If agreed value coverage is elected, the coinsurance provision is waived. ***Id.*** at 999-1001.

"Blanket coverage" is used, often, by businesses with more than one location. Blanket coverage provides a single coverage limit for the insured property, *i.e.*, $300,000.00 on all business personal property at multiple locations, rather than individual limits for each insured property item or each insured location. The single coverage limit may then be applied to a covered loss at any location. This type of coverage allows an insured to move business personal property between the various locations and still maintain coverage. ***Id.*** at 1001-1003.

Thus, with blanket agreed value coverage, the insured and the insurer have agreed to the values of the insured's property, *i.e.*, inventory (business personal property), at multiple locations and the insurance policy provides for blanket coverage at the aggregate of the agreed-to-value amounts. For example, if the insured has three warehouses and the insured and insurer agree that each warehouse typically contains $100,000.00 of inventory, the insurance policy may be written so that the blanket agreed value coverage of the business personal property is $300,000.00. If, by way of further example, the insured moves inventory between warehouses so that on the date of loss one warehouse has $150,000.00 of inventory, while the other two warehouses, which did not sustain a loss, have $100,000.00 and $75,000.00 of inventory, the $175,000.00 of inventory located at the warehouse incurring

close of the evidence at trial, the trial court directed a verdict in favor of Alvord-Polk and against Strickler on the issue of professional negligence, including whether, or not, Strickler owed a duty to Alvord-Polk and Strickler breached any duty it owed. After deliberation, the jury rendered a verdict on the issue of damages in favor of Alvord-Polk and against Strickler in the amount of $4,600,000.00, which equaled the property loss Alvord-Polk incurred and was not covered by its insurance policy. Both parties filed post-trial motions, which the trial court denied on June 13, 2024. The judgment was entered on June 18, 2024, in favor of Alvord-Polk and against Strickler in the amount of $4,600,000.00. This appeal followed.[2]

Strickler raises the following issue for our review:

> Did the trial court err by directing a verdict of professional negligence against Strickler where there was conflicting expert testimony on the issue, and the [trial] court's actions deprived the jury of its exclusive power to weigh the credibility of this testimony and determine whether Strickler met its standard of care?

Strickler's Brief at 4.

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the loss will be fully covered because the policy limit for the type of covered property is $300,000.00.

In the case *sub judice*, Alvord-Polk requested blanket agreed value coverage in its insurance coverage application. The insurance policy, as written, did not contain blanket agreed value coverage but, instead, contained a coinsurance clause.

[2] The trial court did not direct Strickler to file a concise statement of errors complained of on appeal pursuant to Rule 1925(b). The trial court filed its Rule 1925(a) opinion on September 6, 2024.

> In reviewing the trial court's entry of a motion for a directed verdict, our scope of review is limited to determining whether the trial court abused its discretion or committed an error of law that controlled the outcome of the case. A directed verdict may be granted only where the facts are clear and there is no room for doubt. In deciding whether[, or not,] to grant a motion for a directed verdict, the trial court must consider the facts in the light most favorable to the non[-]moving party and must accept as true all evidence which supports that party's contention and reject all adverse testimony.

Berg v. Nationwide Mut. Ins. Co., Inc., 44 A.3d 1164, 1170 (Pa. Super. 2012) (citations and quotation marks omitted), *appeal denied*, 65 A.3d 412 (Pa. 2013); ***see also Whittington v. Daniels***, ___ A.3d ___, 2025 WL 543136, at *3 (Pa. Super. filed Feb. 19, 2025) (slip opinion). Our review of the trial court's decision requires us to view the evidence in the light most favorable to the non-moving party and accept as true all evidence which supports that party's contention and reject all adverse testimony.[3] ***Hall***, 54

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[3] In prior cases, the standard of review of a trial court's decision to grant, or deny, a motion for directed verdict required this Court to "consider the evidence, together with all inferences drawn therefrom, in the light most favorable to the **verdict winner**." ***Hall v. Episcopal Long Term Care***, 54 A.3d 381, 395 (Pa. Super. 2012) (emphasis added), *appeal denied*, 69 A.3d 243 (Pa. 2013); ***see also Morrissey v. St. Joseph's Preparatory Sch.***, 323 A.3d 792, 802 (Pa. Super. 2024); ***compare with***, ***Boyce v. Smith-Edwards-Dunlap Co.***, 580 A.2d 1382, 1386 (Pa. Super. 1990), *appeal denied*, 593 A.2d 413 (Pa. 1991); ***see also Maverick Steel Co, L.L.C. v. Dick Corp./Barton Malow***, 54 A.3d 352, 356 (Pa. Super. 2012), *appeal denied*, 65 A.3d 415 (Pa. 2013); ***Fetherolf v. Torosian***, 759 A.2d 391, 393 (Pa. Super. 2000), *appeal denied*, 796 A.2d 983 (Pa. 2001). This description is based upon the principle that the "standards of review when considering [] motions for a directed verdict and a judgment notwithstanding the verdict [("JNOV")] are identical." ***Hall***, 54 A.3d at 395. While the underlying principle – the standard of review on motions for a directed verdict and a JNOV

A.3d at 395 (stating that, an appellate court reviews the evidence in the same light as the trial court). We review a trial court's legal rulings *de novo*. ***International Diamond Imps., Ltd. v. Singularity Clark, L.P.***, 40 A.3d 1261, 1274 (Pa. Super. 2012).

> There are two bases upon which a directed verdict can be entered; one, the movant is entitled to judgment as a matter of law [or] two, the evidence is such that no two reasonable minds could disagree that the outcome should have been rendered in favor of the movant. With the first, the [trial] court reviews the record and concludes that, even with all factual inferences decided adverse to the movant, the law nonetheless requires a verdict in [the movant's] favor. Whereas with the second, the [trial] court reviews the evidentiary record and concludes that the evidence was such that a verdict for the movant was beyond peradventure.

Morrissey, 323 A.3d at 802 (original brackets omitted); ***see also Hall***, 54 A.3d at 395; ***Whittington***, ___ A.3d ___, 2025 WL 543136, at *3.

It is well-established that "[t]he utmost fair dealing should characterize the transactions between an insurance company and the insured." ***Fedas v. Ins. Co. of State of Pennsylvania***, 151 A. 285, 286 (Pa. 1930); ***see also Dercoli v. Pennsylvania Nat'l Mut. Ins. Co.***, 554 A.2d 906, 909 (Pa. 1989);

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are identical - is true, a motion for a directed verdict is made at the close of all the evidence and before the case is submitted to the jury. ***See*** Pa.R.Civ.P. 226(b) (stating, "[a]t the close of all the evidence, the trial [court] may direct a verdict upon the oral or written motion of any party"). Because of the precise procedural posture in which a directed verdict is entered by a trial court, we owe no deference to the findings of a jury which favor the verdict winner. Thus, to avoid confusion as to which party is entitled (within the context of appellate review) to the benefit of evidentiary inferences arising from contested facts, we shall simply identify that litigant as the "non-moving party."

Banker v. Valley Forge Ins. Co., 585 A.2d 504, 510 (Pa. Super. 1991), *appeal denied*, 600 A.2d 532 (Pa. 1991). The insurer has a duty to deal with the insured fairly and in good faith, which includes the duty of full and complete disclosure of the benefits and limitations of an insurance policy. ***Dercoli***, 554 A.2d at 909; ***see also Banker***, 585 A.2d at 510; ***Egan v. USI Mid-Atlantic, Inc.***, 92 A.3d 1, 20 (Pa. Super. 2014).

The duty to deal fairly and in good faith with full and complete disclosure extends, not only to an insurance agent, but also to an insurance broker.[4] ***Egan***, 92 A.3d at 20 (stating that, the "duty extends to insurance brokers"); ***see also Londo v. McLaughlin***, 587 A.2d 744, 747-748 (Pa. Super. 1991) (stating, "the duty of good faith and fair dealing that applies to insurance companies also applies to insurance brokers"). Thus, an insurance broker has

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[4] This Court previously described the difference between an insurance agent and insurance broker as follows:

> An insurance broker is one who acts as a middleman between the insured and the insurer, soliciting insurance from the public under no employment from any special company, and upon securing an order, placing it with a company selected by the insured or with a company selected by [the broker. An] insurance agent is one who represents an insurer under an employment [agreement entered into between the insurer and its agent.]

Wisniski v. Brown & Brown Ins. Co. of PA, 906 A.2d 571, 578 (Pa. Super. 2006), *appeal denied*, 920 A.2d 834 (Pa. 2007); ***see also*** BLACK'S LAW DICTIONARY 176 (5th ed. 1979) (defining "insurance broker" as a "[p]erson who obtains insurance for individuals or companies from insurance companies or their agents. [An insurance broker d]iffers from an insurance agent in that he [or she] does not represent any particular [insurance] company.").

"a legal duty to inform an insured of the consequences of actions relating to insurance, which [includes] the consequence of no coverage under the policy[.]" ***Londo***, 587 A.2d at 748.

It is well-established that "the insurer ha[s] a duty to advise an insured that it [] issued a policy that differs from what the insured requested." ***Toy v. Metropolitan Life Ins. Co.***, 863 A.2d 1, 13 (Pa. Super. 2004), *aff'd*, 928 A.2d 186 (Pa. 2007); ***see also Tonkovic v. State Farm Mut. Auto. Ins. Co.***, 521 A.2d 920, 925 (Pa. 1987) (stating, "[w]hen the insurer elects to issue a policy differing from what the insured requested and paid for, there is clearly a duty to advise the insured of the changes so made"). Thus, in applying the same duty to an insurance broker under the principle that an insurance broker must deal fairly and act in good faith with full and complete disclosure, the same as the insurer, an insurance broker has a duty to affirmatively notify an insured that the policy issued by the insurer does not contain the same coverage provisions that were requested by the insured. ***Toy***, 863 A.2d at 13; ***see also Tonkovic***, 521 A.2d at 925; ***Al's Café Inc. v. Sanders Ins. Agency***, 820 A.2d 745, 750 (Pa. Super. 2003) (stating, an insured "acquires a cause of action against his [or her insurance] broker or agent where the [insurance] broker neglects to procure insurance, or does not follow instructions, or if the policy is void or materially defective through the [insurance broker's] fault" (quotation marks and citation omitted)).

In the case *sub judice*, the trial court set forth its rationale for granting Alvord-Polk's motion for a directed verdict (***see*** Trial Court Opinion, 9/6/24,

at 31-34), and we incorporate this portion of the trial court's opinion as if set forth herein. We have thoroughly reviewed the record and discern no abuse of discretion or error of law in the trial court's grant of Alvord-Polk's motion for a directed verdict. ***Berg***, 44 A.3d at 1170.

The evidence presented at trial demonstrates that Strickler's expert, Mr. Ahart, testified that an insurance broker has a duty to procure the coverage as requested by the insured or to advise the insured that the coverage is not available or was not included in the insurance coverage.[5] N.T., 2/2/24, at 1003. The insurance policy issued by the insured to Alvord-Polk was a 3-year policy covering the period of July 27, 2017, to July 27, 2020. ***Id.*** at 1008-1009; ***see also*** Exhibit P-40. Mr. Ahart agreed that Strickler breached its duty to Alvord-Polk when it received the insurance policy from the insured and failed to realize, or to disclose, that the insurance policy did not contain the requested coverage as it pertained to Alvord-Polk's business personal property. N.T., 2/2/24, at 1008-1009.

In June 2018, 11 months after the 3-year insurance policy became effective, Strickler provided Alvord-Polk a "proposal" that summarized the business personal property coverage as provided by the terms of the insurance policy but that was still different from the coverage requested by

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[5] Mr. Ahart was admitted as an expert in the insurance industry's standard of care and the liabilities of insurance brokers and agents. N.T., 2/2/24, at 995-996.

Alvord-Polk.[6] ***Id.*** at 1010-1012. Mr. Ahart suggested that Alvord-Polk was, therefore, aware of the coverage for its business personal property upon receipt of the 2018 "proposal" because the coverage terms were provided to it in writing by Strickler, even though Strickler was unaware that the coverage terms differed from the requested provisions. ***Id.*** at 1011-1013. On cross-examination, Mr. Ahart agreed that the 2018 "proposal" was not a proposal to obtain new insurance coverage because the effective insurance policy was a 3-year policy and the term of the policy did not expire until 2020. ***Id.*** at 1053-1054. Rather, Mr. Ahart stated that the "proposal" was really a "snapshot of what coverage was in force" and that no part of the "proposal" indicated that it was a proposal correcting the coverage error. ***Id.*** Mr. Ahart further acknowledged that there was no evidence that a representative of Alvord-Polk acknowledged that it reviewed the "proposal" and agreed to the terms by signing the 2018 "proposal." ***Id.*** at 1047. Instead, Mr. Ahart understood that both Alvord-Polk and Strickler were unaware of the coverage error until after the loss event. ***Id.*** at 1011-1012, 1047, 1056-1057. In fact, Mr. Ahart agreed that Strickler never informed Alvord-Polk that there was a

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[6] Mr. Ahart explained that the 2018 "proposal" set forth the business personal property coverage as detailed by the insurance policy because the information contained in the "proposal" was downloaded directly from the terms of the insurance policy *via* a computer software program. N.T., 2/2/24, at 1011-1012. Unlike Strickler's preparation of the 2017 proposal, Strickler did not manually input the information used to create the 2018 "proposal." ***Id.*** Strickler simply extracted the information using a software program. ***Id.***

discrepancy between the business personal property coverage requested and the coverage provided by the insurance policy. ***Id.*** at 1057.

In viewing the evidence in the light most favorable to Strickler, as the non-moving party, we concur with the trial court that no two reasonable minds could disagree that Strickler breached its duty to advise Alvord-Polk that the coverage provisions of its policy differed from those it requested and, as such, Alvord-Polk was entitled to a directed verdict on the issues of duty and breach of duty. Consequently, we discern no abuse of discretion or error of law in the trial court's order granting a directed verdict, in part, in favor of Alvord-Polk. As we rely in part upon the able trial court's opinion, a copy of said opinion shall be attached to any further filings in this appeal.

Judgment affirmed.

Judgment Entered.

Benjamin D. Kohler, Esq.
Prothonotary

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ALVORD-POLK, INC., Plaintiff	:	IN THE COURT OF COMMON PLEAS DAUPHIN COUNTY, PENNSYLVANIA
v.	:	NO. 2020 CV 02069
STRICKLER AGENCY, INC., Defendant	:	CIVIL ACTION – LAW

2024 SEP -6 PM 2:55

September 6, 2024

MEMORANDUM OPINION

Defendant Strickler Agency, Inc. (Strickler) appeals from an Order in the nature of a final judgment entered against it on June 18, 2024, in the amount of $4.6 million in favor of Plaintiff Alvord-Polk, Inc. (Alvord-Polk). A verdict in that amount was rendered by a jury on February 5, 2024, following a six-day trial. The jury, which had been directed by this Court to find Strickler negligent for failing to procure insurance for Alvord-Polk, held that Strickler's negligence caused Alvord-Polk's damages. The jury also found that Alvord-Polk was not contributorily negligent. Following trial, this Court denied Strickler's Post Trial Motions in the nature of a request for the entry of judgment n.o.v. and/or a new trial. This Memorandum Opinion is written in support of the Order denying the request for Post Trial relief and of the final judgment entered, pursuant to Pa.R.A.P. 1925(a).

Overview

Alvord-Polk is a family-owned tool manufacturing business based in Millersburg, Pa. In 1994, it acquired a South Dakota facility to increase capacity, where it manufactured specialized cutting tools and equipment for aerospace and automotive customers. In November 2018, a fire destroyed Alvord-Polk's business personal property (BPP) at the South Dakota facility, resulting in a $4.6 million shortfall between the loss and what Alvord-Polk's property insurance paid out. At the time of the fire, Alvord-Polk was owned by Ron Boyer and his sons Steve and Dave Boyer. Steve Boyer ("Boyer" [1]) was Alvord-Polk's vice-president and was responsible for obtaining Alvord-Polk's commercial insurance.

[1] All references to "Boyer" in this document are to Steve Boyer, unless otherwise noted.

Prior to 2017, Alvord-Polk used Purdy Insurance as its broker to obtain coverage from The Cincinnati Insurance Company (Cincinnati). In 2017, Boyer sought to change brokers and reached out to Strickler. Strickler agents spent several months reviewing Alvord-Polk's existing coverages and facilities to provide recommendations. Strickler later presented an Initial Proposal to Alvord-Polk/Boyer on June 8, 2017, with blanket agreed value coverage through Cincinnati. This coverage would allow Alvord-Polk to stack coverage limits across multiple locations to reach a total coverage amount both as to buildings and BPP. Such BPP coverage was intended to give Alvord-Polk flexibility in moving equipment between locations without coverage gaps. The proposed blanket coverage policy included total limits of approximately $7.175 million for BPP, across all locations. These limits were based upon the Statement of Values Alvord-Polk/Boyer submitted to Strickler including a valuation of the BPP at the South Dakota facility at $1 million.

After Strickler submitted the Initial Proposal to Alvord-Polk, and unbeknownst to Alvord-Polk, Cincinnati informed Strickler that blanket agreed value coverage was not available for BPP, but only for buildings. Cincinnati subsequently sent two quotes to Strickler reflecting the removal of blanket agreed value. Strickler admittedly failed to point out this change regarding the BPP coverage to Alvord-Polk, and also kept the agreed value blanket coverage in a Revised Proposal it submitted to Alvord-Polk on July 10, 2017.

On July 27, 2017, Strickler's agent prepared and submitted an insurance Application to Cincinnati, for Alvord-Polk, which included blanket agreed value coverage on BPP. When the actual Policy was issued by Cincinnati, it did not include blanket agreed value coverage for the BPP, only the buildings. Strickler admittedly failed to notice the discrepancy between the Policy issued by Cincinnati and that for which Strickler had applied, proposed and was quoted. Alvord-Polk's Boyer also failed to notice this discrepancy upon reviewing the new Policy. As such, coinsurance penalties could apply if the BPP had been undervalued by Alvord-Polk.

A year later, in June 2018, Strickler agents met with Alvord-Polk's Boyer to review coverage and presented a new proposal ("2018 Proposal"). Strickler's agents failed to inform Boyer at this meeting that BPP did not provide blanket agreed value coverage. Strickler's agents confirmed that they could not have so informed Boyer at this time since none of them were aware of the existence of the discrepancy between the coverage applied for in 2017 and that issued by Cincinnati. Nevertheless, Strickler asserted that any discrepancies for BPP coverage between the

Proposals and Application, and the final Policy, were corrected or fixed when it shared the "accurate" 2018 Proposal to Boyer at this meeting, reflecting coinsurance on BPP.

While Strickler acknowledged that it was not itself aware of the discrepancy at this point, as between the coverage applied for (BPP with agreed value blanket coverage) versus what was issued in the 2017 Policy and repeated in the 2018 Proposal (coinsurance on BPP with no agreed value), Strickler asserted that Boyer should have nevertheless, in the exercise of due diligence, recognized this discrepancy Strickler had missed.

After the fire, which destroyed the South Dakota facility's BPP, which a private adjuster valued at around $6.5 million, Alvord-Polk submitted a claim to Cincinnati expecting the $7.175 million blanket limit to apply. However, without blanket agreed value coverage, Cincinnati adjusted the BPP claim under a coinsurance requirement with a penalty due to underinsurance, which reduced the claim payout to only $1.9 million.

Alvord-Polk appraised the value of its BPP across all locations at approximately $25 million and Cincinnati appraised the value at approximately $32 million. As acknowledged by Boyer, these figures were significantly higher than the $7.175 value Boyer placed on Alvord-Polk's BPP across all locations in his 2017 and 2018 Statements of Values. Alvord-Polk later filed this action against Strickler and Cincinnati seeking full coverage. Prior to trial, Cincinnati settled with Alvord-Polk.

At trial, Alvord-Polk asserted that Strickler was negligent for failing to obtain the coverage Strickler had promised and for which it applied, for not advising Alvord-Polk about Cincinnati's decision to not issue blanket BPP coverage leaving it subject to a coinsurance penalty, failing to notice that the 2017 Policy and the 2018 Proposal did not include the promised blanket agreed value coverage for BPP, and for failing to advise Alvord-Polk of the discrepancy prior to the fire loss.

Strickler denied any negligence and also argued that Alvord-Polk was contributorily negligent, including for failing to notice the BPP coverage discrepancy in the original Policy issued in July 2017, failing to notice the BPP coverage discrepancy a year later in the 2018 Proposal, and grossly undervaluing its BPP which Strickler claims triggered the coinsurance penalty.

After the evidence was presented, this Court directed a verdict in Alvord-Polk's favor on the issue of Strickler's negligence. The jury thereafter found that Strickler's negligence was the factual cause of Alvord-Polk's damages and that Alvord-Polk was not contributorily negligent. It awarded Alvord-Polk $4.6 million in damages.

Procedural Background

Alvord-Polk filed its Complaint on May 22, 2020, asserting a claim of professional negligence against Strickler, later amended to include a more detailed professional negligence claim.[2] In its Answer with New Matter, Strickler raised a number of defenses including that Alvord-Polk's contributory negligence barred its action. After the pleadings were closed, both sides filed summary judgment motions. On October 31, 2023, this Court issued a comprehensive Memorandum disposing of those motions.

Regarding Alvord-Polk's motion for partial summary judgment, this Court rejected its claim that Strickler was precluded from raising a contributory negligence defense, clarifying that comparative negligence did not apply under Pennsylvania law. This Court also granted Alvord-Polk's motion, thus rejecting Strickler's interpretation of its contributory negligence defense as meaning that it "had no duty to specifically advise [Alvord-Polk] that it failed to procure the BPP coverage that it recommended and promised to deliver." This Court reasoned as follows:

> Under Pennsylvania law a licensed insurance agent has a duty, under ordinary negligence principles, to exercise the skill and knowledge normally possessed by members of that profession and the failure to do so renders the agent liable for any loss of coverage. Pressley v. Travelers Prop. Cas. Corp., 817 A.2d 1131, 1138 (Pa. Super. 2003). See also, Laventhol & Horwath v. Dependable Ins. Assocs., 579 A.2d 388, 391 (Pa. Super. 1990) ("A plaintiff acquires a cause of action against his broker or agent where the broker 'neglects to procure insurance, or does not follow instructions, or if the policy is void or materially defective through the agent's fault.'") (citation omitted) and Indus. Valley Bank & Tr. Co. v. Dilks Agency at 640 ("[A]n insurance broker is under a duty to exercise the care that a reasonably prudent businessman in the brokerage field would exercise under similar circumstances").
>
> This Court finds that the law is not clear and free from doubt that Defendant owed no duty to specifically advise Plaintiff [Alvord-Polk] that it failed to procure the BPP

[2] Alvord-Polk also named Cincinnati as a Defendant. As noted, Cincinnati settled prior to trial and any background concerning Cincinnati is omitted, except where noted.

> coverage that it had recommended and promised to deliver, under the standard of conduct noted above, and based upon the record, including of the [ ] undisputed facts ....

With regard to Strickler's summary judgment motion, this Court denied its request that this Court strike Alvord-Polk's professional negligence claim and grant judgment in Strickler's favor. Strickler argued that it owed no general duty "to advise Alvord-Polk as to the type or amount of coverage, or to explain the insurance policy and its coverages or recommend a professional appraisal," unless Alvord-Polk could show a special relationship with Strickler. This Court addressed the special relationship issue as follows:

> Indeed, "the relationship between an insurance broker and client is an arm's-length business relationship." Wisniski v. Brown & Brown Ins. Co. of PA, 906 A.2d 571, 579 (Pa. 2006). "[T]he general law is that brokers do not have a duty to advise clients about their insurance needs." Gemini Ins. Co. v. Meyer Jabara Hotels LLC, 231 A.3d 839, 853 (Pa. Super. 2020) (noting that "[w]here the broker has a "confidential relationship" with the client, the broker has enhanced duties of care to the client." Id. (citation omitted)). "[T]he customer is presumed to know what it needs or wants, and the insurance agent is not under a general duty to advise the insured as to the type or amount of available coverage, or to obtain total/full coverage, or explain the policy and its coverages and/or exclusions, absent a special relationship." Stern Fam. Real Est. P'ship v. Pharmacists Mut. Ins. Co., No. CIV A 06-130, 2007 WL 951603, at *3 (W.D. Pa. Mar. 27, 2007) (applying Pennsylvania law); see also; Kilmore v. Erie Ins. Co., 595 A.2d 623, 626 (Pa Super. 1991) and Treski v. Kemper Nat'l Ins. Co., 674 A.2d 1106, 1114-1115 (Pa. Super. 1996).

This Court held that of Alvord-Polk's seven specific negligence allegations, some encompassed claims within the scope of a broker's ordinary duty that did not require a showing by Alvord-Polk that there existed a special relationship and others encompassed heightened duty conduct only cognizable to the extent Alvord-Polk could show it had a special relationship with Strickler. This Court held that, whether the predicate special relationship existed was an issue for a factfinder. Alvord-Polk later informed the Court that it would not be pursuing the heightened duty claims but would only pursue its ordinary negligence claims against Strickler.

The final issue on summary judgment was Strickler's claim that it was entitled to a finding that Alvord-Polk was contributorily negligent as a matter of law, thus barring Alvord-Polk's action. This Court denied the motion, holding that there existed material questions of fact.

Prior to trial, Strickler submitted a list of duties it claimed Alvord-Polk breached rendering it contributorily negligent. Thereafter, this Court issued a number of pre-trial orders, the most notable of which on January 26, 2024, clarifying Strickler's contributory negligence defense (duties) vis-à-vis the parties' proposed jury instructions, which stated:

> (1) This Court finds that as to Duty #2 ([Alvord-Polk's] duty to notice coverage discrepancy in original policy) and Duty #3 ([Alvord-Polk's] duty to notice coverage discrepancy in updated 2018 proposal), Defendant is precluded from asserting these defenses as stated. The undisputed record reflects that Defendant failed to procure the insurance it promised to provide to Plaintiff in the 2017 Policy. The 2018 Proposal repeated the same coverage terms as included in the 2017 Policy. **Where a broker procures a policy differing from what the insured was promised or requested, "there is clearly a duty to advise the insured of the changes so made" and "[t]he burden is not on the insured to read the policy to discover such changes, or not read it at his peril."** Tonkovic v. State Farm Mut. Auto. Ins. Co., 521 A.2d 920, 925 (Pa. 1987). In such cases, our Courts have held that there is no specific duty to read (and comprehend) a policy, unless it was unreasonable for the insured to have not read (and comprehended it). Pressley v. Travelers Prop. Cas. Corp., 817 A.2d 1131, 1141 (Pa. Super. 2003) (**"[T]he policyholder has no duty to read the policy unless under the circumstances it is unreasonable not to read it."**); Rempel v. Nationwide Life Ins. Co., 370 A.2d 366, 369 (Pa. 1977) (same); see also, Tran v. Metro. Life Ins. Co., 408 F.3d 130, 137–38 (3d Cir. 2005).
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> As such, this Court rejects Defendant's Proposed Jury Instruction # 47 (Contributory Negligence – Duty To Read).
>
> (2) With regard to Duty #5 ([Alvord-Polk's] duty to accurately value BPP), this Court finds that the Defendant may raise this contributory negligence defense at trial.
>
> (3) With regard to Duty #1 (duty of [Alvord-Polk's agent to act as a] reasonably prudent business(man)), this Court holds that the jury may be instructed as to this standard of care since it is relevant to Duty #5. This standard of care is also relevant as to Duties #2 and #3 insofar as the jury must assess whether Defendant has met its burden of showing that it was unreasonable for Plaintiff to have failed to read and comprehend the 2017 Policy terms and/or 2018 Proposal under this standard of care.
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> (4) With regard to Duty #4 (duty of [Alvord-Polk] to request removal of co-insurance), this Court will limit the expression of this duty as only applying if the jury were to find that Defendant has met its burden of showing that it was unreasonable for Plaintiff to have failed to read and comprehend the policy terms.

(Court Order 1/26/24) (emphasis added)

Trial and Witness Testimony

The matter proceeded to a six-day trial including testimony from six fact witnesses and two expert witnesses, summarized as follows:

i. Steve Boyer

Following his 1985 graduation from Penn State, Boyer began working full-time at Alvord-Polk, then owned by his father. Boyer assumed many roles over the years including president of Alvord-Polk's cutting tools division. (N.T. 189-190) When his father reduced his workload, Boyer and his brother Dave began to run most of Alvord-Polk's operations. (N.T. 83) In 2012, Boyer became vice-president of AP Inc. (N.T. 74, 191) In 2012, Boyer took over his father's role procuring Alvord-Polk's insurance, reportedly without experience or training in insurance. (N.T. 85-86, 191, 194-195, 201) At that time, Alvord-Polk had in place a 3-year policy with Cincinnati it obtained through Purdy, from July 2011 and July 2014. (N.T. 204; Exbt. P-27)

The South Dakota facility was one of three Alvord-Polk business locations; the other two were in Pennsylvania. Alvord-Polk manufactured cutting tools at its 52,000 square foot building in Lake Preston, South Dakota. (N.T. 75-77) The plant contained myriad machinery and grinding equipment, and had about 34 employees prior to the 2018 fire. (N.T. 79, 82)

Following a property loss in 2016, Boyer considered changing brokers. (N.T. 92-93) He reached out to Strickler based upon a friendship between his own son and his son's college friend, Tony Miller, whose father was an owner with Strickler. (N.T. 95-96) On April 5, 2017, Boyer had a meet-and-greet with Strickler owners Mike Miller, Erik Olsen, and Erik Altenberger, accounts manager Jackie Antes and representative Tony Miller. (N.T. 97-98, 104, 229) Erik Olsen, Strickler's president and CEO, was the lead presenter. (N.T. 100) Boyer was impressed and decided to hire Strickler to assess its insurance needs. (N.T. 100-101, 103)

Strickler undertook a lengthy insurance evaluation process lasting a few months. They held a second meeting on June 8, 2017 at Boyer's office. (N.T. 111-112) Boyer testified that Olsen presented the Initial Proposal which included a new coverage for Alvord-Polk, which was "blanket" or "blanket agreed." (N.T. 113) Boyer understood that by paying a little more for the policy, Alvord-Polk could stack the coverages "where all of the ... buildings' contents [BPP] could

be added up in that bottom number where one could total and now would be used as the number if you had a catastrophic event." (N.T. 113) Boyer had never heard of this type of coverage. (N.T. 114)

The Initial Proposal included quotes from Cincinnati and a few other insurers. (N.T. 116; Exbt. P-35) With regard to valuation of Alvord-Polk's property, Boyer testified that Olsen did not tell him anything about the importance of making sure the coverages at each location were accurate, but instead stressed that what was important was being "comfortable with what it adds up to at the bottom line. ... [t]he bottom line on the building is what we would be insured to." (N.T. 114-115). Boyer did not recall any specific discussion with Strickler that "valuation" of any property loss would be "replacement cost agreed value." (N.T. 123) Boyer testified:

> Q. ... did you have questions about the individual locations or about the bottom line number?
> A. No. The question was in regards to the bottom line number. It had been presented that the bottom line number was the bottom line number that we were covered up and to that number.
> Q. Did Mr. Olsen tell you that in addition to the bottom line numbers, you should look at the values at each location for both buildings and content and make sure that is 100 percent accurate?
> A. No, the comfort level was the bottom line number. And if, in fact, you're comfortable with the bottom line number, that is what would be - or your limit as to what you would be insured to.
> Q. So the bottom line number was your limit for one loss at one location at one time?
> A. Yes.
> Q. Okay. And did Mr. Olsen tell you at that time that if the numbers of both that bottom line number were off, you could be subject to a coinsurance penalty?
> A. That was not reviewed, no.
> Q. Did he even describe coinsurance to you?
> A. Not that I recall, no.

(N.T. 120-121; Exbt. P-35, p.12) Boyer understood that what he was buying was blanket coverage. (N.T. 116)

Boyer admitted that he was aware of disclaimer language in the Initial Proposal, which he agreed Olsen probably pointed out to him. (N.T. 233-234) It stated:

> Please read the exact policy terms and conditions upon receipt of your policy/policies. ...
>
> In providing this proposal to you, we have relied on the information you shared with us. If any areas were omitted and should be included, please bring them to our attention as soon as possible and before coverage is bound. ...
>
> The property limits on the proposal have been selected based upon information provided by you. The duty of establishing acceptable property values is your responsibility. These values should be carefully reviewed and/or appraised to ensure they are adequate to meet the coinsurance provision should a loss occur.

(N.T. 233-234; Exbt. P-35 p. 4) Boyer testified that he did not understand the coinsurance language referenced in this disclaimer. (N.T. 236) Boyer similarly testified that he did not understand coinsurance references submitted in the coverages portion of Strickler's Initial Proposal nor in the 2017 Policy, and did not ask for an explanation. (N.T. 236, 241) Boyer otherwise admitted that the Initial Proposal included a Statement of Values page which Olsen went over with Boyer. (N.T. 121)

Boyer testified that he was never told by Strickler, after presented with the June 8, 2017 Initial Proposal, that Strickler had been told by Cincinnati that Cincinnati would not insure Alvord-Polk's BPP as agreed value blanket coverage but would only insure blanket BPP with coinsurance coverage. (N.T. 280)

On July 10, 2017, Strickler emailed a Revised Proposal to Boyer. (N.T. 126; Exbt. P-38) Boyer confirmed that Strickler included his requested increases in the "blanket total values" on all buildings and BPP across all locations, increasing BPP coverage to $7,175,000. (N.T. 127-128; Exbt. P-38 p. 12) Boyer believed Alvord-Polk would be covered up to this blanket figure for any loss of BPP at any one property. (N.T. 128-129) The Revised Proposal included the Statement of Values based upon figures Boyer submitted, which he agreed were submitted without the advice from a professional appraiser. (N.T. 237, 247)

The increased coverages resulted in an insurance premium increase from $14,246 for property coverage and $97,825 overall, to $18,035 for property and $101,818 overall. (N.T. 129; Exbt. P-38 p.7) The property portion was almost twice what Alvord-Polk was paying under its expiring policy. (N.T. 130)

With Boyer's approval, Strickler submitted an Application to Cincinnati. (N.T. 131) On July 27, 2017, Olsen and Tony Miller presented the completed Application to Boyer for his signature. (N.T. 131-132; Exbt. P-13) Boyer recalled reviewing the blanket coverage figures confirming them for both buildings and BPP (at $7.175K). (N.T. 132-133; Exbt. P-13 p. 18) Boyer agreed that a page he reviewed included a notation for "Agreed Val" for each of the blanket building and blanket BPP entries but stated he did not understand what that meant relative to the bottom line coverage. (N.T. 133) Again, Boyer testified that he recalled no discussions with Olsen or Miller about agreed value. (N.T. 133) Boyer reiterated:

> Q. ... Was there any discussion with Mr. Olsen or Mr. Miller about agreed value?
> A. Not that I recall.
> Q. And was there any discussion about the way these bottom line numbers were derived and whether or not they were accurate?
> A. No. My understanding began with how the blanket was explained to me, that those numbers would be the maximum you were covered to on a claim. And those numbers were consistent from the last [Revised Proposal] to this and it was consistent and I was comfortable in signing the document.

(N.T. 133-134)

Boyer admitted that at the Application meeting, he signed a Statement of Values, applicable from July 27, 2017 to July 27, 2018, verifying the values he submitted for the various buildings and BPP. (N.T. 134; Exbt. P-37) The document noted that "Property is Insured to 90 Percent Replacement Cost Value." (N.T. 134) Boyer testified:

> Q. And did Mr. Miller or Ms. Antes of Strickler explain to you why you needed to sign the Statement of Values that we've identified as Plaintiff's Exhibit 37?
> A. That it was my attesting that the values listed were correct and I was in agreement with the blanket total that was at the bottom.
> Q. In terms of that the values were correct, was your focus on each individual value down the column for each location or was your focus at the bottom line?
> A. My focus was at the bottom because I was told that that was the coverage that I would be getting.
> Q. Again, during this meeting did Mr. Olsen or Mr. Miller tell you to make sure that the values above the bottom line needed to be accurate?
> A. No.
> Q. Did they tell you that if they weren't accurate, you were going to potentially face a coinsurance penalty that could lessen your recovery in the event of a loss?
> A. No.

Q. Was there any discussion about coinsurance at that meeting when you signed the application and the statement of values?
A. There was not.

(N.T. 135-136) (emphasis added) Boyer nevertheless agreed that the document's signature line stated:

> Strickler Agency makes no representation as to the accuracy of the replacement cost estimate now or in the future. The duty of establishing acceptable property values is your responsibility. If in doubt about the limits selected, the applicant/ policyholder should seek a professional appraisal or the assistance of a builder to assess reconstruction costs.

(N.T. 136; Exbt. P-37) Boyer confirmed that someone from Strickler went over this language with him but stated that his understanding was that he "had to be comfortable with the values that were being put there because those were the values .. that a potential claim would go up to." (N.T. 137) He denied that he tried to "game the system," noting that "I was told at our meetings when this was introduced to me that this was a better way of securing coverage and we would be paying a little more for it, but we would be granted better coverage because of it." (N.T. 137) After Boyer signed the Application, he gave it to Strickler to submit to Cincinnati. (N.T. 134)

Around late August 2017, Tony Miller dropped off a copy of the over 300-page **Policy** with Boyer. (N.T. 138-139, 281; Exbt. P-40) Miller stayed only a few minutes and they did not go over the Policy contents and Miller did not advise Boyer about any deviation from the BPP coverage included in the prior Proposals and Application. (N.T. 139, 281)

Boyer testified that he reviewed the Policy, including the table of contents and the declarations page, which he believed confirmed his understanding of Alvord-Polk's coverage as applied for, i.e. for "blanket building" and "blanket business personal property." (N.T. 140-141, 241; Exbt. P-40 p. 3358) Boyer agreed that in a column on the declarations page there was a notation of "90%" for "coinsurance," but he believed that looked like what he had seen previously. (N.T. 141, 241) With regard to the "X" marks in the remaining columns, Boyer did not understand to what they corresponded. (N.T. 141-142) Boyer thumbed through the Policy a little more and put it in a binder. (N.T. 142-143)

Boyer had no further contact with Strickler until the following year, when Olsen called to arrange a meeting, later held June 20, 2018. (N.T. 144) At the meeting, Strickler's Olsen and Miller presented Boyer with the 2018 Proposal. (N.T. 145; Exbt. P-41) Boyer recalled going over parts of it, including the premium summary, during which Boyer was advised of an increase in the premium due to a workers' compensation coverage adjustment and the need for a new cyber insurance carrier. (N.T. 144, 146)

Boyer testified that he asked the Strickler agents at this 2018 meeting if there were any changes in the Policy's property coverage and was told: "No, there's no changes. It's the same." (N.T. 145) Boyer testified as well that the Strickler representatives did not advise nor disclose to him that the BPP coverage had changed from that for which he applied and that Alvord-Polk might not have $7.175 worth of blanket BPP coverage or that Boyer needed to make sure that all individual values were accurate, otherwise Alvord-Polk could be subject to a penalty. (N.T. 148)

Boyer did recall reviewing a proposal outline page in the 2018 Proposal, which reflected Alvord-Polk had "Blanket Buildings" and "Blanket Contents." (N.T. 148; Exbt. P-41 p.11) Boyer did not take particular note of the indication on that page of a 90% "Colns" and that BPP was valued at "Replacement Cost" instead of "Replacement Cost, Agreed Value." (N.T. 149) Boyer testified that this language was not explained to him by Strickler. (N.T. 149) Boyer also recalled being shown an unsigned Statement of Values page, a version of which he signed at the end of the meeting. (N.T. 146; Exbt. P-41 p.12; Exbt. P-17) Boyer testified there were no changes in the Statement of Values from the one submitted in 2017. (N.T. 147) Boyer continued to believe that he had the same coverage as originally agreed. (N.T. 151)

On November 21, 2018, a fire completely destroyed the South Dakota building. (N.T. 154) Boyer toured the site a week later and met with Cincinnati adjusters. (N.T. 155, 159) During the adjustment period, Boyer was shocked to learn of a problem with BPP. (N.T. 161) Boyer then hired a public adjuster, Greenspan International, to handle Alvord-Polk's adjustment. (N.T. 162) Cincinnati later emailed Greenspan and Boyer to inform them that the Policy provided for 90% coinsurance for BPP, *without* agreed value. (N.T. 164; Exbt. P-43) As such, Cincinnati had to value Alvord-Polk's BPP at all locations to calculate a possible coinsurance penalty. (N.T. 164-165) Cincinnati appraised Alvord-Polk's BPP, at all locations, at over $32 million. (N.T. 260-

262) Alvord-Polk's own appraiser valued the BPP at just over $25 million. (N.T. 265) Boyer agreed that both figures were "significantly higher" than the total BPP values he submitted for Alvord-Polk, of $7.175 million. (N.T. 267)

In April 2019, Alvord-Polk and Strickler personnel held a meeting to see what could be done about the BPP problem. (N.T. 167) Boyer testified that Olsen told him that "something fell through the cracks and a mistake had happened on [Strickler's] end and [Olsen] was going to do his best to resolve it." (N.T. 167) Olsen tried but failed to persuade Cincinnati to honor the Application coverages. (N.T. 166)

Alvord-Polk later submitted its BPP loss claim to Cincinnati for $6.5 million. This figure was within the $7.175 million blanket coverage Alvord-Polk thought it had; however, Cincinnati paid only $1.9 million, applying the 90% coinsurance coverage with penalty, resulting in a $4.6 million shortfall. (N.T. 171) Boyer admitted that the coinsurance applied by Cincinnati to reduce Alvord-Polk's claim would not have applied had Alvord-Polk provided BPP values accurate for contents. (N.T. 267)

On cross examination, Boyer was asked about Alvord-Polk's insurance history with Purdy, brokered with Purdy agent Chris Fellon. Boyer stated that he met with Fellon about once or twice a year between 2012 and 2016. (N.T. 209-210) He admitted that Fellon would go over each page of any document they discussed. (N.T. 210-211, 213-214) Boyer agreed that during this time, Alvord-Polk's BPP was always covered at 90% coinsurance at all locations, including at the South Dakota facility, as reflected in six Purdy documents presented to him.[3]

During the time Alvord-Polk used Purdy to obtain insurance, Boyer never used an appraiser for BPP value. (N.T. 219) Boyer testified that he did notice coinsurance included in each of the Purdy documents but did not understand the term nor the concept, and admittedly never asked for an explanation. (N.T. 208, 213, 216-217, 223-225, 227) Boyer denied that Fellon's handwritten figures on a 2013 proposal had been Fellon's attempt to explain coinsurance to Boyer. (N.T. 217;

[3] The documents they reviewed included the Cincinnati policy effective from July 2011 to July 2014, a 2013 insurance schedule, a 2013 proposal, a 2013 statement of values, a 2015 proposal, and the Cincinnati policy effective from July 2014 to July 2017. (N.T. 204-207, 211-212, 214-217, 218-219, 220-224, 224-227; Exbts. P-27, P-28, P-29, P-31, P-32, P-6)

Exbt. P-29) Boyer also never recalled a discussion with Fellon about either coinsurance or agreed value, including blanket agreed value coverage. (N.T. 93, 276)

ii. Dave Boyer (N.T. 578-621)

Steve Boyer's brother Dave also worked at Alvord-Polk, where he was an owner. (N.T. 579-581) Dave testified that Steve discussed the First Proposal with him, noting that Strickler was proposing blanket coverage for both buildings and contents, which was new for Alvord-Polk. Both brothers were focused on the bottom line blanket coverage limit and not on individual values. (N.T. 586-588)

After the fire, Dave submitted the proof of loss to Cincinnati, totaling $16 million, with about $6.5 million for BPP loss. (N.T. 595-599; Exbt. P-295) Of the BPP submitted, Cincinnati paid only about $1.9 million due to the coinsurance penalty leaving a shortfall of roughly $4.602 million. (N.T. 599-601; Exbt. P-58) Dave did admit that the Statement of Values submitted by Alvord-Polk in 2017, with a total BPP value of $7.175 million, was probably too low. (N.T. 613-616; Exbt. P-37) He noted Cincinnati had in fact paid $2.9 million for the South Dakota building loss even though Alvord-Polk's Statement of Values undervalued that building at $750,000, applying the $4.475 million blanket value for buildings as submitted by Alvord-Polk. (N.T. 601-603)

iii. Erik Olsen

Olsen, Strickler's president and CEO since 2015, was called as Alvord-Polk's witness as on cross examination during which he discussed Strickler's standard practices when procuring insurance. (See N.T. 298-305, 287-288, 401, 407-416, 427-428) Of note, regarding agreed value, Olsen admitted that it was common practice to tell a customer that if they had agreed value coverage, the coinsurance penalty would not apply. (N.T. 414) Olsen testified that it was also standard procedure to advise a customer of the possibility of a penalty for significant undervaluation or underinsurance. (N.T. 412-413) Once a policy procured was procured, Strickler's practice was to make sure it was consistent with the proposal and the application. (N.T. 300, 303) If there was a discrepancy, Strickler would advise the client. Strickler would also advise a client if the insurer would not provide a coverage included in a proposal. (N.T. 301-304)

Following the initial meeting with Alvord-Polk, and following Strickler's in-depth analysis of Alvord-Polk's insurance needs, Olsen and Miller met with Boyer on June 8, 2017. At that meeting, Strickler's Olsen and Miller presented Boyer with an Initial Proposal, created by Jackie Antes. (N.T. 310-312, 425) The Initial Proposal reflected blanket coverage agreed value for buildings *and* BPP. (N.T. 314-315; Exbt. P-35 p.11)

Olsen recommended blanket BPP coverage at agreed value to Boyer because of Alvord-Polk's inventory flow between its buildings in Pennsylvania and South Dakota. (N.T. 316, 318-319) Olsen was aware that Alvord-Polk had never had blanket coverage. (N.T. 319) Olsen testified that he discussed agreed value, coinsurance, blanket coverage, and replacement cost concepts with Boyer, as was his practice with any client. (N.T. 412-413, 432) Olsen recalled reviewing the insurance outline (coverage limits) and the Statement of Values page in the Initial Proposal, including explaining to Boyer that they arrived at the coverage limits (including BPP blanket) based upon the Statement of Values Boyer had provided. (N.T. 431-432; Exbt. P-35 pp 11-12)

Olsen explained that coinsurance is a premium saving device whereby an insurer agrees it will not impose a penalty if the insured insures its property up to the coinsurance value, which was 90% of the actual property value in this case (N.T. 322-323, 432-433) Olsen testified that it is important, where coinsurance applies, for the insured to have coverage pretty close to actual value because the penalty imposed for undervaluation can be substantial. (N.T. 323) Olsen testified that he did explain the danger of underinsuring or providing inaccurate values to Boyer. (N.T. 347-348, 433)

Olsen stated that "agreed value ... removes the coinsurance clause, meaning [it removes] the requirement to insure the value to avoid a possible penalty in the event of a partial loss." (N.T. 324; see also N.T. at 347-348 ("there would be no coinsurance with agreed value") and at 432-433 ("agreed value will remove the coinsurance clause ... from the policy at the time of loss"). He stated that if the insured makes a fair representation of values the insurer will waive the coinsurance provision but that if the property is severely undervalued an insurer might deny a claim. (N.T. 325; see also N.T. at 323 ("when you have coinsurance, it's pretty important to get enough coverage that it's pretty close to the actual value of the property") Olsen agreed that Strickler's Initial Proposal did not include coinsurance coverage. (N.T. 344)

Olsen recalled that when discussing Statement of Values with Boyer, Boyer was not sure of the value of his machinery. (N.T. 436) Olsen advised him to call the manufacturers to get quotes or get an appraisal. (N.T. 436) He recalled that Boyer believed that one million dollars would be enough coverage for the South Dakota BPP. (N.T. 437) Olsen admitted that while he suggested Boyer get an appraisal to avoid coinsurance, that most times coinsurance would not apply where agreed value coverage existed, which he agreed was the coverage Strickler told Alvord-Polk it would be getting. (N.T. 493)

Regarding the Initial Proposal's disclaimer page (Exbt. P-35 p.4), Olsen disagreed that it was irrelevant to Alvord-Polk vis-à-vis its reference to coinsurance since, even though Strickler was proposing that Alvord-Polk obtain agreed value coverage, the insured still had to provide a Statement of Values to reflect 90% of agreed value. (N.T. 330)

Shortly after Strickler presented its Initial Proposal, Strickler's Antes and the Cincinnati underwriters exchanged emails. (N.T. 332, Exbt. P-9) Olsen admitted that in those emails, Cincinnati advised Strickler, on June 15, 2017, that Cincinnati would *not* provide blanket agreed value on BPP in its quote, changing it to blanket with coinsurance ("the BPP is blanketed but it isn't on agreed value like the buildings"). (N.T. 334-337) Cincinnati's next two quotes to Strickler reflected the removal of agreed value on BPP. (N.T. (N.T. 337-339; Exbt. P-10, 11) Olsen confirmed that he was copied on these emails (along with Tony Miller) and was specifically aware, as of June 16, 2017, that Cincinnati would not agree to BPP with agreed value. (N.T. 487-488)

Olsen variously described a change from BPP agreed value coverage to coinsurance as constituting a "fundamental difference" and a "dramatic change" in the coverage. (N.T. 343, 494) He also agreed that not telling Alvord-Polk about the change "was a mistake" and was "inconsistent" with insurance procedures and with his job as a licensed insurance broker. (N.T. 342-343; see also N.T. 336-337, 339, 340, 345) Olsen nevertheless testified that application of the coinsurance provision would not have been an issue if Alvord-Polk had supplied correct BPP values. (N.T. 345)

Olsen testified that the Revised Proposal , which Strickler emailed to Alvord-Polk on July 10, 2017, still included blanket agreed value for contents (BPP). (N.T. 351; Exbt. P-38 p.11) Olsen

testified that this inclusion was a "mistake" and "inaccurate." (N.T. 352) Strickler's agents did not inform Boyer about the mistake in July 2017 because they were not aware of it. (N.T. 353-354) Although Olsen initially characterized Strickler's error as a "clerical mistake," he later admitted it was more than a clerical error. (N.T. 295, 297-298, 494) Olsen testified that the July 26, 2017 Application prepared by Strickler further repeated the mistake by including blanket BPP at agreed value, to a limit of $7.175 million. (N.T. 355) Olsen agreed that "it was a mistake for Strickler not to tell [Alvord-Polk] at this time [of the Application] about the discrepancy...." (N.T. 357)

A month or two after the Application was submitted, Strickler received a copy of the Policy, effective July 27, 2017. (N.T. 360-361; Exbt. P-40) Olsen testified that the Policy reflected BPP at 90% coinsurance with a blanket limit of $7.175 million and replacement cost including stock. (N.T. 447) Olsen testified that Jackie Antes, the Strickler agent in charge of reviewing the Policy and checking its terms against the Application and Proposals, failed to notice the Policy's BPP coverage discrepancy as between those documents. (N.T. 363)

Olsen testified that Alvord-Polk would only notice the discrepancy in BPP coverage if it understood the significance of the "X" checked on the Policy, which Olsen believed was "self-explanatory," and that he believed most of his clients would understand. (N.T. 366) Olsen nevertheless admitted that he himself had not noticed the discrepancy on the Policy when compared to the Proposals and Application. (N.T. 367)

Olsen and Miller next met with Boyer to present him with the June 2018 Proposal. (N.T. 452) Olsen claimed that he reviewed the coverages with Boyer and told him Alvord-Polk had blanket BPP to $7,175,000, with 90% coinsurance. (N.T. 378, 453-454) Olsen agreed that this 2018 Proposal did not reflect agreed value blanket coverage on BPP, and Olsen further agreed that he never told Boyer that this was a change from the 2017 Revised Proposal. (N.T. 379)

When asked if Boyer should have caught the discrepancy during the 2018 presentation, Olsen answered "I don't know." (N.T. 379) Olsen also testified that he gave Boyer "no reason to think that this [2018 Proposal] was a corrected proposal and that [it] was a change" from the

Revised Proposal. (N.T. 380) Olsen admitted that he did not tell Boyer about any discrepancies or changes in 2018 because he did know of any. (N.T. 374-375, 377, 380)

Olsen testified that he reviewed the Statement of Values at the 2018 meeting and that Boyer verified the figures. (N.T. 456; Exbt. P-17) Olsen testified that he would have reminded Boyer at this time that his property needed to be insured to 90% of the replacement cost values and that it was his responsibility to provide accurate values. (N.T. 458)

After the fire, Olsen did not learn about the BPP coverage discrepancy until January 2019, after Alvord-Polk's adjuster alerted it that its 2017 Revised Proposal was inconsistent with the Policy. (N.T. 389-390). In an email to Cincinnati. Olsen admitted that Alvord-Polk "decided to go with us based on the [Revised Proposal]," and that Strickler's failure to update its proposal (removing agreed value) "fell through the cracks." (N.T. 391-393; Exbt. P-18)

Olsen testified that had Alvord-Polk insured its BPP to the true (agreed) value, of between $25 and $32 million, then its insurance policy would have increased by about $27,000. (N.T. 467) Olsen nevertheless admitted that he never initiated such discussions with Alvord-Polk. (N.T. 491) Olsen also admitted that the $7.1 million of agreed value blanket coverage that Alvord-Polk thought it had, would have fully covered its BPP loss in South Dakota. (N.T. 495) Olsen also admitted that Cincinnati ultimately paid out a substantially higher amount to Alvord-Polk for the South Dakota building loss (of $2.6 million) than it was valued for by Alvord-Polk in its Statement of Values ($675,000), agreeing that Cincinnati "pulled from the blanket [of $4.4 million] to fix the gap on what was shown on the statement of values." (N.T. 386)

iv. Jackie Antes

Antes, also called by Alvord-Polk as on cross, was a Strickler account executive and business insurance specialist (BIS). She solely prepared the Initial Proposal, presented to Alvord-Polk on June 8, 2017. (N.T. 501-504, 507; Exbt. P-35) She testified that it reflected blanket BPP coverage at agreed value, meaning coinsurance provisions would not apply. (N.T. 509, 545-546, 547-548) After the June 8, 2017 meeting, Strickler agents Olsen and Miller reported back to her with updated figures, which she included in the Revised Proposal. (N.T. 510)

On June 15, 2017, just a week after the meeting between Strickler and Alvord-Polk, Cincinnati underwriters informed Antes via email that Cincinnati would *not* provide BPP coverage based upon agreed value. Cincinnati declined Antes' request to reconsider and Cincinnati thus generated a quote on June 16, 2017, reflecting BPP without agreed value. (N.T. 510-512, 550-551, 553, 556-557; Exbt. P-9, 10) Cincinnati generated the identical quote for Antes again on July 7, 2017. (N.T. 514-515; Exbt. P-11) Antes understood that the removal of agreed value meant coinsurance would apply, which change she characterized as "pretty significant." (N.T. 515) Antes did not inform anybody about this change. (N.T. 515)

Antes then created the Revised Proposal dated July 10, 2017, providing copies to Olsen and Miller, who emailed it to Boyer. (N.T. 516; Exbt. P-38) Antes agreed that the Revised Proposal still showed that Strickler was proposing BPP with agreed value blanket coverage. (N.T. 517-518) Antes admitted that she neglected to remove agreed value from the Revised Proposal and that this was a "misrepresentation" of the coverage Cincinnati was willing to give. (N.T. 518-519)

After Boyer agreed to the Revised Proposal terms, Antes prepared and submitted the Application to Cincinnati on July 27, 2017, signed by Boyer, and consistent with the original proposals (BPP agreed value blanket coverage to $7.175 million). (N.T. 520-522; Exbt. P-13) Antes admitted that "I made a mistake" by including BPP with agreed value blanket coverage in the proposals. She further testified that it was reasonable for Alvord-Polk to believe it would have such coverage through July 27, 2017. (N.T. 523-524)

Antes testified that each Proposal included a Statement of Values provided by Alvord-Polk. (N.T. 540, 543-544, 548) These values helped establish Cincinnati's coverage limits and were required when blanket coverage is sought. (N.T. 548-549) According to Antes, the final Statement of Values Alvord-Polk submitted with the Application, via Boyer, verified that the values submitted by Alvord-Polk were correct. (N.T. 561; Exbt. P-561)

The Policy issued July 27, 2017 reflected BPP with agreed value removed and coverages subject to coinsurance. Antes testified that once she receives a policy copy, it is her duty as a BIS to review the policy against the proposal, application and quote to make sure it is accurate. (N.T.

526- 527) She did not notice any discrepancy concerning BPP coverage, which was "a mistake" on her part. (N.T. 526-528) She never advised Alvord-Polk about the discrepancy because she did not know about it. (N.T. 573)

In June 2018, Antes prepared the 2018 Proposal based upon a review of the existing Policy, endorsements and information in Strickler's system. (N.T. 531) Her 2018 Proposal reflected 90% coinsurance on blanket BPP. (N.T. 565-566) Antes agreed that during preparation, she did not notice the discrepancy in BPP coverage as between the Policy and her new 2018 Proposal, and the old proposals (Initial Proposal and Revised Proposal), which she characterized as "an oversight." (N.T. 531, 534) Antes agreed that the 2018 Proposal was neither considered nor labeled as a "corrected proposal," and could not have been because there was nothing to correct in her opinion, inasmuch as the 2018 Proposal was consistent with the 2017 Policy. (N.T. 533) Antes ultimately agreed that she "would not have expected [Boyer]" ... "to pick up on the discrepancy" missed by both herself, a licensed broker, as well as Strickler's agents Olsen and Miller. (N.T. 575)

Antes understood that after the fire, Cincinnati reduced Alvord-Polk's BPP loss claim from $6.5 million to $1.9 million because coinsurance applied, which occurred because agreed values had been removed from BPP. (N.T. 570-571) Antes testified that the $7.1 million blanket limit did not apply because of "a mistake." (N.T. 571-572)

v. Anthony (Tony) Miller

Miller testified that following his college graduation, he began to work for Strickler as a producer and later as an account executive. (N.T. 898-900, 909) Miller recalled that in June 2017, he and Olsen reviewed the Initial Proposal with Boyer including having a discussion about coinsurance and the Statement of Values. (N.T. 916-917; Exbt. P-8) Miller agreed that the 2017 Policy issued to Alvord-Polk did not include coverage as reflected in the Initial Proposal, Revised Proposal and the Application, which was for agreed value blanket coverage to a limit of $7.175 million on BPP. (N.T. 932, 938, 945-946) He further admitted that even though he had been copied on all emails with Cincinnati's underwriters, he failed to notice when Cincinnati told Strickler that it was removing agreed value blanket BPP coverage. (N.T. 938-940)

Miller testified that removal of agreed value was "clearly" significant and a "substantial change." (N.T. 941, 943) Miller also testified that the inclusion of agreed value BPP coverage in Strickler's Revised Proposal and the Application it prepared, which occurred after Cincinnati said it would not insure BPP to agreed value, was "a major error." (N.T. 946-947) He agreed that the discrepancy was "missed by myself" and by Olsen. (N.T. 956-958) Miller confirmed that no one at Strickler was aware of the removal of agreed value and of the discrepancy until after the fire. (N.T. 932-933, 942)

On June 20, 2018, Miller and Olsen attended a meeting with Boyer to go over the 2018 Proposal. Miller testified that they reviewed each page with Boyer, including that BPP had blanket coverage for $7.175 million with 90% coinsurance. (N.T. 926-927) They also reviewed the Statement of Values and Boyer reportedly agreed with the figures thereon. (N.T. 926-928) Miller agreed that the 2018 Proposal was not a "corrected" proposal because Strickler was not aware of a problem in 2018. (N.T. 951-952, 953-954)

Miller testified that he would not expect Boyer to figure out the discrepancy as between the Policy coverage and what was represented to him in 2017. (N.T. 950, 952) Miller agreed that Alvord-Polk's BPP claim was reduced because coinsurance applied and that all of the BPP loss would have been paid with agreed value coverage because it was under the blanket limit of $7.175 million. (N.T. 954-955)

vi. Chris Fellon

Purdy Insurance's broker, Chris Fellon, called as a defense witness, testified that he began meeting annually with Boyer in 2012-2013. (N.T. 866) Fellon recalled that he and Boyer usually met for about one or two hours at each meeting and discussed coverages, policies, premiums, coinsurance, agreed value, and replacement costs. (N.T. 867-868) Fellon later admitted that he might have met with Boyer as few as three times. (N.T. 880)

Fellon recalled discussing with Boyer the importance of coinsurance coverage being properly insured so as not to incur a penalty. (N.T. 868) Fellon also testified that he and Boyer frequently discussed agreed value and he told Boyer that if he had agreed value, that would suspend

the coinsurance clause or potential penalty. (N.T. 869) Fellon admitted he and Boyer never discussed blanket coverage. (N.T. 869-870)

Fellon testified that a 2013 Purdy insurance proposal separately listed Alvord-Polk's BPP for all locations with coinsurance at 90%. (N.T. 870-873; Exbt. P-29) Fellon noted that he handwrote figures on that proposal to explain coinsurance to Boyer. (N.T. 873) Fellon also recalled that in 2013, Boyer asked questions about his coinsurance explanation and seemed to understand it. (N.T. 874) Fellon also testified that in Purdy's 2015 proposal, he again provided a detailed discussion about coinsurance and again wrote changes on the proposal. (N.T. 874-875; Exbt. P-32) Fellon later admitted that the total amount of time he and Boyer may have discussed coinsurance, over the entire course of their relationship, might have been for as few as 15 minutes. (N.T. 880-881)

vii. Alvord-Polk's Expert - Bernd Heinze

Following voir dire on qualifications (N.T 633-667), and over Strickler's objection (N.T. 668-669), this Court admitted Heinze to testify as an expert "in the insurance industry, specifically the professional standards of care for independent commercial retail insurance agents and brokers."[4] (N.T. 669-670)

Heinze testified that one of the most important recommendations in Strickler's Initial Proposal to Alvord-Polk was for blanket coverage of buildings and BPP, which Alvord-Polk had not heard of before. (N.T. 686-687; Exbt. P-35) The Initial Proposal reflected BPP blanket coverage on a replacement cost basis, agreed value, without application of coinsurance, subject to a $10,000 deductible. (N.T. 687) According to Heinze, nothing in the Initial Proposal suggested to Boyer that he had to worry about how much he was allocating to each location as to blanket buildings or blanket contents (BPP) since "it's all agreed value on a blanket basis where the bottom line number are the limits of liability." (N.T. 688) Blanket coverage on BPP would provide Alvord-Polk with flexibility to move inventory between locations. (N.T. 686)

[4] For a more complete recitation of Heinze's relevant qualifications, see this Court's discussion *infra*, addressing Strickler's Post-Trial Motion challenging the admission of Heinze as an expert.

Heinze discussed the Strickler and Cincinnati communications, noting that in an email from Strickler/Antes to Cincinnati, marked "high importance," Antes informed Cincinnati that its quote was wrong ("BPP is not agreed value [in the quote]. Please amend."). (N.T. 696-696; Exbt. P-9) Cincinnati responded that "BPP is blanketed, but it isn't on agreed value like the buildings." (N.T. 697) Heinze stated that the significance of this email was that coinsurance would apply and that he would "absolutely" expect Antes, Olsen and/or Miller to respond back and alert Cincinnati that it was not providing the coverage the customer requested. (N.T. 698)

Heinze testified that the Policy issued by Cincinnati did not conform to Strickler's two Proposals and the Application it prepared, in that coinsurance was now being applied on blanket BPP, as depicted by the lack of an "X" under the agreed value column in the Policy for BPP. (N.T. 692, 694, 710-711; Exbts. P-35, 38, 13, 40) Heinze testified that it is industry standard for the broker to review a policy for accuracy against the proposals, application and quoting process communications, and that a failure to notice an inaccuracy during this process is a breach of the standard of care. (N.T. 712)

Heinze testified that the 2018 Proposal was not, as suggested by Strickler, a "corrected proposal." (N.T. 716) He explained that a correction should never be done by just submitting a piece of paper and saying here are the coverages without any notation of a correction thereon or without any communication that there was something Strickler was trying to fix. (N.T. 717)

Heinze summarized that Strickler had two basic duties to Alvord-Polk: to use reasonable care, skill, and diligence (1) to obtain the coverage recommended including to follow up and make sure that the promised coverage was obtained; and (2) if that coverage could not be obtained, then to inform the customer "so that other arrangements can be made and other actions can be taken to protect those risk exposures which are now left unprotected based upon that 90 percent coinsurance penalty." (N.T. 721; see also 675-676)

Heinze found seven specific breaches of these broader standards of care by Strickler: (1) failing to react to the June 15, 2017 email from Cincinnati changing BPP coverage from agreed value to coinsurance; (2) failing to react to Cincinnati's June 16, 2017 quote showing BPP with coinsurance and agreed value removed; (3) and (4) sending a Revised Proposal to Alvord-Polk,

and later an Application, both inaccurately reflecting BPP with agreed value blanket coverage given that Strickler had been told by Cincinnati (via its email and the two quotes) it would not provide such coverage; (5) failing to notice the mistake in BPP coverage in the Policy upon its receipt and review thereof; (6) failing to advise Alvord-Polk about the discrepancy in coverage reflected in the Policy; and (7) to the extent the 2018 Proposal was intended to "fix" a problem, Strickler failed to present that document to Alvord-Polk in a manner that would alert it that Strickler was correcting a mistake. (N.T. 703-705, 708, 712-714, 720-721) Heinze opined that these failures by Strickler caused the insurance coverage shortfall on its BPP claim. (N.T. 722)

Heinze testified about the significance of Strickler failing to obtain the promised coverage and advise Alvord-Polk about its failure:

> There is a fundamental -- a complete fundamental difference between agreed value and coinsurance, two completely different things in the way they operate. Agreed value, as we've seen and as Ms. Antes testified, takes the coinsurance penalty out, whereas the blanket coverage on agreed value is exactly what was recommended by the Strickler Agency to Alvord-Polk that's going to protect their interests. It's what they said, Yes, we agree, go out and procure that coverage.
>
> There was no follow-up or information back from the Strickler Agency to Alvord-Polk saying, Sorry, we've now had two -- we've now had an e-mail, two quotes that is completely different from what we first provided to you and we cannot give you the coverage that we recommended or that you've asked us to procure for you.

(N.T. 705-706)

Heinze admitted that Cincinnati also breached its standard of care to Alvord-Polk, finding three errors during the insuring process: unilaterally removing agreed value from Alvord-Polk's blanket BPP in June 2017, misunderstanding Strickler's direction in an email to add it back to the quote, and failing to compare the Application against its Policy to note the inconsistency. (N.T. 752) He testified, however, that Cincinnati's mistakes did not change his opinion that Strickler deviated from the standard of care, noting that Cincinnati informed Strickler three times it was applying BPP coverage at 90% coinsurance and that it was Strickler's obligation to fix the problem and tell Alvord-Polk they were not getting the coverage they were promised. (N.T. 824, 827-828)

Heinze further disagreed that Alvord-Polk's failure to place sufficient values on its BPP rendered it at fault for its loss. (N.T. 723) He explained that "the benefit of blanket coverage with

agreed value is that bottom line total number ... ensures ... that all locations are stacked; no matter what the values of the individual places are...." (N.T. 724)

Heinze did acknowledge that the post-fire BPP appraisals were $25 million by Alvord-Polk and $32.4 million by Cincinnati, and that the blanket figure Boyer provided in his Statement of Values represented 30% and 24%, respectively, of these appraisals, and that those figures were "not close." (N.T. 765-766, 770) Heinze agreed that Strickler relied upon Alvord-Polk's/Boyer's values in obtaining the insurance premium quote. (N.T. 758, 762, 776) Heinze disagreed that Boyer's Statement of Values constituted a material misrepresentation because Alvord-Polk had been offered a blanket policy on agreed terms, noting that Cincinnati and Strickler could have requested an evaluation of the BPP value prior to the fire. (N.T. 770, 775) Heinze nevertheless agreed that if Alvord-Polk had produced an accurate Statement of Values for BPP then the coinsurance would never have applied. (N.T. 783)

Heinze testified that Boyer was not required to be insured up to 90% of replacement cost value where the insurance was written on a blanket agreed value basis. (N.T. 766-767) He reasoned that the policy sought was intended by Alvord-Polk and Strickler to be on a blanket agreed value basis and that all values (including the blanket BPP figure) were agreed to by Alvord-Polk, Strickler and Cincinnati. (N.T. 767)

Heinze elaborated about the Statement of Values Boyer submitted in 2018, as follows:

> Q. Had [Alvord-Polk/Boyer] made a decision to get their stuff professionally appraised, they would have known it's worth 25 or $32 million. Correct?
> A. Correct. But Mr. Boyer's testimony was he wanted to have insurance coverage for $7.175 million on his ... business personal property.
> Q. It says, ["]all values submitted are correct to the best of my knowledge and belief.["] Do you see that?
> A. I do.
> Q. And is it your opinion that that's a truthful and accurate statement as it was signed by Mr. Boyer at this time in 2018?
> A. Yes, based upon the insurance policy and program that he was being sold and had instructed to be obtained, this is the amount of insurance that Mr. Boyer was requesting, that there was going to be no coinsurance penalty and, therefore, there was no issue with regard to any of these numbers that Mr. Boyer wanted to have in his limits of liability.
> Q. My question is different, though. My question is in your opinion, based on the evidence in this case, the statement that says ["] all values submitted are correct to

> the best of my knowledge and belief["]. do you agree with that and believe that to be accurate?
> A. I believe, as Mr. Boyer testified, that the information that was presented on this document in retrospect of the appraisal that was done after the fire was not accurate. But at the time he signed it and at the time he was looking at a blanket policy with agreed value, this document represents the amount of coverage he wanted to have in the event of the loss.

(N.T. 776-777) Heinze testified that Alvord-Polk met its responsibility of "providing accurate values" whereby Alvord-Polk "provided values of limits of liability that they wanted to obtain and paid a premium under this particular special, unique policy for blanket value ... based upon the specialized and unique knowledge of the Strickler Agency to provide them with this information to tailor-make the coverage for their needs." (N.T. 822)

Heinze disagreed that the coinsurance provision was triggered due to the BPP undervaluation, "because there never was supposed to be a coinsurance aspect on this at all." (N.T. 770, 784) He explained that had Strickler honored its commitment and promise to Alvord-Polk to provide BPP with agreed value blanket coverage to $7.175 million, then "regardless of what the numbers actually are" undervaluation would not have mattered. (N.T. 782-783) He stressed that agreed value blanket coverage in fact "worked like it was supposed to work" in the case of the South Dakota building loss where Cincinnati paid out the full loss of $2.9 million, even though the amount paid was significantly higher than the value for the building provided by Alvord-Polk ($750,000), because the payout was within the blanket value ($4.4 million). (N.T. 782-783, 833) Here, the BPP claim Alvord-Polk submitted, of $6.5 million, was within 90% of the blanket value of $7.175 million and, according to Heinze, Cincinnati reduced the BPP claim "for no other reason than applying that coinsurance penalty," with Cincinnati stating: "we will continue to handle this claim under the actual policy purchased for the period of the loss and that is for 90 percent coinsurance requirement for BPP." (N.T. 830-831; Exbt. P-43)

viii. Strickler's Expert - Thomas Ahart

Defense expert Ahart testified that it was Strickler's duty, as an insurance producer, to at a minimum "procure coverage as requested or to advise if you [ ] haven't procured such coverage," which he understood to be the duty imposed under Pennsylvania law. (N.T. 1003, 1004-1005) Ahart acknowledged that at the point when Strickler submitted the Revised Proposal in June 2017,

Strickler made a mistake whereby the Revised Proposal failed to include agreed value coverage (on BPP). (N.T. 1007-1008) Specifically, Strickler wrongly included agreed value blanket coverage even though it had been informed by Cincinnati, at least three times prior thereto, that Cincinnati would not provide that coverage and that Strickler never informed Alvord-Polk about the coverage issue. (N.T. 1046, 1049) He admitted this was "clearly" a breach of the standard of care. (N.T. 1007, 1049)

Ahart testified that Strickler made another "manual mistake," by failing to notice the lack of BPP agreed value coverage after the Policy was issued and never telling Alvord-Polk about it. (N.T. 1007-1008, 1052, 1057) He agreed that it is standard industry practice to review a policy for accuracy but that Strickler failed to catch the error concerning BPP coverage. (N.T. 1049-1050) He thus agreed that as of delivery of the Policy to Boyer in late August or early September 2017, there was a breach of the standard of care by Strickler. (N.T. 1051) Defense expert Ahart characterized all of Strickler's actions to this point as "clearly [ ] below the standard of care." (N.T. 1007)

Ahart testified, however, that the 2018 Proposal Strickler presented to Alvord-Polk on June 20, 2018 was "correct because it pulled information from the actual policy." (N.T. 1012) He explained that even though the coverage "is different from what was requested," Strickler showed Alvord-Polk a correct proposal in June 2018. (N.T. 1012) Ahart concluded that as such, "Alvord-Polk was aware of the coverage it had." (N.T. 1012) Ahart stated:

> My opinion is that Strickler did meet the standard of care. And again, looking at over the whole relationship of a year and a half, there were mistakes made. However, in 2018, a correct proposal was provided to Mr. Boyer. It was reviewed page by page with Mr. Boyer. It showed the coverages as they were on the policy and Mr. Boyer signed that accepting it.
>
> So with that, it then means that Strickler complied with procuring the coverage and they provided the advice by giving in writing the revised proposal. And I say revised only because it changed numbers on it. Whether they intentionally did it or not is not an issue to me. So the information was correct and accurate as the policy stated and it was signed and reviewed and signed by Mr. Boyer.

(N.T. 1038) Ahart recognized that nothing in language on the 2018 Proposal reflected that it was a "corrected proposal." (N.T. 1054-1055)

With regard to the conduct of Alvord-Polk/Boyer, Ahart found that its valuation of BPP as being between just 24% and 30% of the post-fire appraised values, was "grossly undervalued." (N.T. 1019, 1035) Ahart believed this undervaluation was a "material misrepresentation" and that Cincinnati could have voided coverage based upon it. (N.T. 1026-1027) He testified that had Alvord-Polk provided a proper Statement of Values then coinsurance would not have applied. (N.T. 1034)

On cross, Ahart admitted that based upon documents in the record, "Cincinnati denied the coverage on the BPP because there was no agreed value on the policy," and *not* because of the undervaluation. (N.T. 1064-1065, 1075-1076; Exbt. P-43) Ahart nevertheless opined that even if Alvord-Polk had obtained BPP agreed value coverage under the Cincinnati Policy, Cincinnati would have denied agreed value coverage and applied 90% coinsurance due to Alvord-Polk's gross undervaluation. Ahart drew this opinion from insurance treatises, Cincinnati's underwriting guidelines and his vast experience in the insurance industry and not from any representation made by Cincinnati to Alvord-Polk. (N.T. 1018-1019, 1063-1066, 1074)

Directed Verdict Motions

At the close of the evidence, both parties moved for directed verdicts. (N.T. 1085-1097) Strickler sought that this Court direct the jury to find that Strickler was not negligent. Strickler also sought a directed verdict as to contributory negligence, both for Alvord-Polk's failure to notice the BPP coverage discrepancy in the Policy and/or 2018 Proposal and its failure to submit accurate Statements of Values. Alvord-Polk filed a cross motion seeking a directed verdict as to as to Strickler's negligence. This Court held:

> ... With regard to [Strickler's] request for a directed verdict on negligence, that will be denied. There was ample testimony, even from the [Strickler's] own expert, that on at least three ... separate accounts that Strickler failed to meet the standard of care." (N.T. 1095-1096)
>
> I understand the significance of 2018 and what occurred at -- or did not occur at that meeting, but that, at least in my view, goes more toward what negligence, if any, was contributory negligen[ce]. Because this Court has already decided based on the claim and -- again, it's relevant to the directed verdict motion of the contributory claim that Mr. Boyer had no duty to read and comprehend the policies [to discover

> Strickler's errors]. There's nothing, certainly in 2017, and really nothing in 2018 that adequately put him on notice that he was getting anything other than what he had requested.
>
> So, in that regard, [Strickler's] motion for a directed verdict on contributory negligence has already been ruled on [5] and it, therefore, is denied in those regards.
>
> With regard to the claim of contributory negligence based on the statements of value, I'm going to defer ruling on that ... .
>
> With regard to [Alvord-Polk's] directed verdict on the negligence claim, the Court is going to grant a directed verdict on negligence. We heard testimony from the numerous fact witnesses about mistakes. And we heard, very importantly, the testimony of the [Strickler's] own expert who said there were -- I think he said clear breaches of the standard of care when specifically asked regarding the obligation to place the policy, to review the policy, and to explain any changes in the policy and that [Strickler] did not and that such was below the standard of care.

(N.T. 1095-1097) The following day, after additional argument, this Court denied Strickler's motion as to contributory negligence concerning the Statements of Values. (N.T. 1103-1109) After the jury was given final instructions, and began to deliberate, this Court denied Strickler's motion for reconsideration of the order directing a verdict on Strickler's negligence, setting forth its reasoning on the record (quoted *infra*). Thereafter, the jury deliberated for a short time after which it rendered a verdict finding Strickler's negligence a factual cause of Alvord-Polk's damages, finding no contributory negligence by Alvord-Polk and awarding Alvord-Polk $4.6 million.

Strickler filed a timely Post-Trial Motion seeking judgment n.o.v. or a new trial on numerous grounds. Alvord-Polk also filed a Post-Trial Motion seeking the imposition of a common law based pre-judgment interest upon its award. Following briefing and argument, this Court denied both sets of Post-Trial Motions on June 13, 2024. Judgment was thereafter entered for Alvord-Polk for $4.6 million, upon praecipe. Strickler filed a notice of appeal on June 26, 2024.

[5] This Court denied Strickler's motion for non-suit submitted at the close of Alvord-Polk's case in chief. (N.T. 847-852)

LEGAL DISCUSSION

In its Post-Trial Motion, Strickler raised the following issues (as refined in its brief in support):

1. A new trial is required because the Court erred or abused its discretion in limiting the scope of Defendant's contributory negligence defense, overruling Defendant's subsequent objection to the proposed special instructions for contributory negligence and charging the jury regarding an insured's duty to read and understand the insurance policy.

2. Judgment n.o.v. or a new trial is required because the jury's finding that Plaintiff was not contributorily negligent is unsupported by sufficient evidence or is, at a minimum against the weight of the evidence.

3. A new trial is required because the Court erred or abused its discretion in granting, over Defendant's objection, Plaintiff's motion for directed verdict as to Defendant's negligence where, at a minimum, a jury question existed as to this issue.

4. Judgment n.o.v. or a new trial is required because the jury's finding that Defendant caused Plaintiff's harm was unsupported by sufficient evidence or, at a minimum, against the weight of the evidence.

5. Judgment n.o.v. or a new trial is required because Plaintiff's liability expert, Mr. Heinze, was unqualified to render standard of care, breach or causation opinions and competent expert testimony was necessary to support Plaintiff's theory of professional negligence.

6. Whether a new trial is required because the Court erred or abused its discretion in denying Defendant's proposed amended verdict sheet.

A new trial is properly granted where the verdict is against the weight of the evidence. Thompson v. City of Philadelphia, 493 A.2d 669, 672 (Pa. 1985). Although a new trial should not be granted because of a mere conflict in testimony or because the trial judge would have arrived at a different conclusion, a new trial should be awarded where a jury's verdict is so contrary to the evidence as to shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail. Id. A new trial will not be granted where the evidence is conflicting and the fact finder could have decided in favor of either party. Pittsburgh Constr. Co. v. Griffith, 834 A.2d 572, 584 (Pa. Super. 2003).

A motion for judgment notwithstanding the verdict (n.o.v.) can be entered where the evidence is insufficient to support the verdict. Lilley v. Johns-Manville Corp., 596 A.2d 203, 206 (1991), app. den. 607 A.2d 254 (Pa. 1992).

> The entry of judgment notwithstanding a jury verdict is a drastic remedy. A court cannot lightly ignore the findings of a duly-selected jury. Thus, in considering a motion for judgment n.o.v., the court must view the evidence and all reasonable inferences that arise from the evidence in a light most favorable to the verdict winner. The court can enter judgment n.o.v. only if no two reasonable persons could fail to agree that the verdict is improper.

Nogowski v. Alemo-Hammond, 691 A.2d 950, 955 (Pa. Super. 1997). "[A] jury is entitled to reject any and all evidence up until the point at which the verdict is so disproportionate to the uncontested evidence as to defy common sense and logic." Neison v. Hines, 653 A.2d 634, 637 (Pa. 1995) (citations omitted).

Strickler's Negligence

The Court first addresses the third and fourth Post-Trial Motion issues raised by Strickler, in which Strickler (3) sought a new trial claiming that this Court erred or abused its discretion by granting Alvord-Polk a directed verdict as to Strickler's negligence "where, at a minimum, a jury question existed as to this issue," and (4) and that judgment n.o.v. or a new trial was required because the jury's finding that Strickler was negligent "was unsupported by sufficient evidence or, at a minimum, against the weight of the evidence."

The undisputed and overwhelming evidence presented was that Strickler was negligent by failing to initially procure the insurance coverage it had recommended, proposed and applied for on Alvord-Polk's behalf in 2017, which was blanket agreed value BPP coverage, and further failing to advise Alvord-Polk of its failure after it was told by Cincinnati such coverage would not be offered to Alvord-Polk. Strickler's expert Ahart confirmed such breaches:

> Q. As of the delivery of the policy in late August, early September 2017, there was a breach of the standard of care by Strickler?
>
> A. Correct.
>
> ...

Q. Okay. So you would agree with me, Mr. Ahart, that the failure to discover this discrepancy on the BPP coverage was an error. Correct?

A. In 2017 they made multiple errors.

Q. And -- correct? Is this an error?

A. Yes.

...

Q. From September 1st of 2017 through June 20th of 2018, you would agree with me, Mr. Ahart, that Strickler never corrected or told Alvord-Polk about the errors it had made prior to that time. Is that correct?

A. Agreed.

(N.T. 1050-1052) All of Strickler's agents admitted to these mistakes and were in agreement that a change of coverage from agreed value to coinsurance was substantial.[6] This Court relied upon these admissions in granting the directed verdict. See N.T. 1096-1097. Later, upon denying Strickler's motion for reconsideration as to this holding, this Court reasoned:

> ... the Court does not believe reasonable minds could differ with regard to the issue of negligence.
>
> In particular, the Court takes into consideration and puts great weight on the fact testimony of Ms. Antes, Mr. Miller, and Mr. Olsen, all of whom acknowledge that mistakes were made in the process of procuring the information, reviewing the policy, disclosing any discrepancy between that applied for and that provided.

[6] Olsen: the change to coinsurance was "fundamental" and "dramatic" and that not telling Alvord-Polk "was a mistake" and "inconsistent" with insurance procedures and licensed broker duties (N.T. 342-344, 494), inclusion of agreed value in the Revised Proposal was a "mistake" and "inaccurate" (N.T. 352), Strickler's Application further repeated the error and that "it was a mistake for Strickler not to tell [Alvord-Polk] at this time [of the Application] about the discrepancy...." (N.T. 357), Boyer had "no reason to think that [the 2018 Proposal] was a corrected proposal" (N.T. 380), and Olsen failed to tell Boyer about any discrepancies in 2018 because he did know of any (N.T. 374-375, 377, 380); Antes: removal of agreed value was a "pretty significant" change (N.T. 515), her failure to remove agreed value from the Revised Proposal was a "misrepresentation" of coverage (N.T. 518-519), she made a mistake by submitting the Application with BPP agreed value and it was reasonable for Alvord-Polk to believe it had that coverage through July 27, 2017 (N.T. 523-524), her failure to notice the BPP discrepancy upon reviewing the 2017 Policy and 2018 Proposal was "a mistake" and "an oversight" (N.T. 526-528, 531, 534), the 2018 Proposal was never considered nor labeled a "corrected proposal" (N.T. 533), Antes "would not have expected [Boyer] ... to pick up on the discrepancy" missed by all of the Strickler agents (N.T. 575); and Miller: removal of agreed value was a "substantial change" (N.T. 941, 943), the later inclusion of agreed value BPP coverage in the Revised Proposal and Application was "a major error" (N.T. 946-947), Miller and Olsen "missed" this discrepancy (N.T. 956-958), Miller would not expect Boyer to figure out the discrepancy (N.T. 950, 952), and the 2018 Proposal was not a "corrected" proposal because Strickler was not aware of a problem in 2018 (N.T. 951-952, 953-954).

> The Court also points to the Defendant's own expert [Ahart] who even before cross-examined acknowledged that in their review, discovery, and disclosure of the policy discrepancies between that which was applied for and that which was issued felt -- fell, quote, clearly below the standard of care.
>
> On cross examination that same expert had agreed that the Defendant's actions in the procurement, review, and disclosure of the coverage fell below the standard of care. So the Court believes that no reasonable minds can differ with regard to the issue of the Defendant's negligence.

(N.T. 1224-1225)

This Court's granting of Alvord-Polk's directed verdict as to Strickler's negligence was based upon application of Pennsylvania law: "Where a broker procures a policy differing from what the insured was promised or requested, "**there is clearly a duty to advise the insured of the changes so made**" and "[t]he burden is not on the insured to read the policy to discover such changes, or not read it at his peril." Tonkovic v. State Farm Mut. Auto. Ins. Co., 521 A.2d 920, 925 (Pa. 1987) (emphasis added). Strickler's expert confirmed a similar understanding of Pennsylvania law: "[I]t's my opinion that the duty of a producer is to procure coverage as requested or **to advise if you [ ] haven't procured such coverage.**" (N.T. 1003) (emphasis added).

Ahart nevertheless offered his ultimate opinion that Strickler did not breach the standard of care because, he surmised, that whatever errors Strickler had made in 2017 essentially disappeared, and Strickler's standard of care was met, when their agents provided Alvord-Polk's Boyer with the "correct" 2018 Proposal at a meeting that June, which Revised Proposal reflected the actual Policy terms. (N.T. 1038) Specifically, Ahart opined that Strickler met its professional duty when "**[it] provided the advice by giving in writing the revised proposal. ...** So the information was correct and accurate as the policy stated and it was signed and reviewed and signed by Mr. Boyer." (N.T. 1038) (emphasis added)

At the outset, this Court finds that this opinion by Ahart as to a broker's duty does not reflect Pennsylvania law, which this Court reads to clearly set forth an *affirmative* duty on a broker's part where the requested insurance is not procured, i.e. "a duty to advise the insured of

the changes so made."[7] Strickler's presentation of the written 2018 Proposal to Alvord-Polk's Boyer in June 2018, without making any effort to communicate to him that the BPP coverage it reviewed with him at that time (coinsurance at 90% for BPP) constituted *a change* from the BPP coverage previously promised in the Proposals and Application (agreed value blanket coverage for BPP), was unequivocally a failure by Strickler to satisfy this affirmative duty.

Furthermore, none of the Strickler agents considered the 2018 Proposal as correcting its prior failures, which they conceded would have been impossible because Strickler was unaware of its errors to that point. Nothing in the 2018 Proposal corrected anything; instead, it merely repeated the same insurance coverage as was included in the initial 2017 Policy. There was otherwise no dispute that no Strickler agent ever *affirmatively* advised Alvord-Polk of its prior errors to fail to procure the insurance promised.

This record established beyond dispute that Strickler was negligent for breaching its duty to advise Alvord-Polk that it was unable to obtain the promised BPP. As such, this Court's holding was not against the weight of the evidence nor so contrary to the evidence as to shock one's sense of justice. Additionally, this evidence was more than sufficient to support the verdict entered as to Strickler's negligence, viewing all evidence in a light most favorable Alvord-Polk. As such, this Court directed a verdict in Alvord-Polk's favor on the question of Strickler's negligence. Thereafter, the jury was charged with and deliberated on the contested question of whether Strickler's negligence was the factual cause of Alvord-Polk's damages, which it found in the affirmative.

[7] Ahart in fact more accurately characterized Pennsylvania law on this issue earlier in his testimony, noting that that where the promised coverage is not procured, there is a duty by the broker "to advise if you [ ] haven't procured such coverage." (N.T. 1003)

Contributory Negligence

The next issues raised by Strickler concern its contributory negligence defense (Post-Trial Motion Issues 1 and 2).

i. - Contributory Negligence - Jury Instructions

Strickler maintained that the Court erred and abused its discretion, warranting a new trial, by giving contributory negligence jury instructions that improperly limited the scope of that defense, including charging the jury regarding an insured's duty to read and understand the insurance policy. A trial court's jury instructions are reviewed to determine whether the trial court committed an abuse of discretion or error of law controlling the outcome of the case. Seels v. Tenet Health Sys. Hahnemann, LLC, 167 A.3d 190, 207 (Pa. Super. 2017) (citation omitted).

> Error in a charge is sufficient ground for a new trial, if the charge as a whole is inadequate or not clear or has a tendency to mislead of confuse rather than clarify a material issue. A charge will be found adequate unless the issues are not made clear to the jury or the jury was palpably misled by what the trial judge said or unless there is an omission in the charge which amounts to fundamental error. When reviewing a charge to the jury, we will not take the challenged words or passage out of context of the whole of the charge, but must look to the charge in its entirety.

Id. at 208 (citation omitted). A trial court has "wide discretion in phrasing jury instructions." Gaylord ex rel. Gaylord v. Morris Twp. Fire Dep't, 853 A.2d 1112, 1115-16 (Pa.Cmwlth. 2004).

Based upon pre-trial rulings and review of the applicable law, and after significant deliberation and discussion with the parties, this Court crafted contributory negligence instructions specific to the facts of this case, which fully addressed the defense as raised by Strickler:

> In this case, the Defendant Strickler Agency claims that the Plaintiff's own negligence was a factual cause of their harm. In this regard, they do have the burden of proof by a preponderance of the evidence that the Plaintiff was negligent and that the Plaintiffs own negligence was a factual cause in bringing about their harm.
>
> Defendant Stricker asserts that Alvord-Polk's own negligence caused its own damages. I'm going to provide you some further instruction on what is -- what is called contributory negligence.

The burden is not upon an insured to read and understand the policy to discover such changes in the coverage unless it would be unreasonable for the insured to have not read and understood it.

Plaintiff Steve Boyer did not initially have a duty to read and to understand the policy to discover the discrepancies from what was promised unless it would have been unreasonable for him to not read and understand the policy in light of the information available to him which may include the 2018 proposal presented to him in June of 2018.

It is the Defendants' burden to prove to you that Boyer acted unreasonably or negligently in failing to read and understand the policy.

In deciding whether or not it was unreasonable for Steve Boyer to have failed to read and understand the policy, you must consider whether Boyer acted in a manner a reasonably prudent business person would act, for the protection of their own property and business.

If you do not find the defendant has met this burden in proving that Steve Boyer acted unreasonably, you may then also consider whether Plaintiff through Boyer was negligent in failing to inform the Defendant about the discrepancy in the policy.

Finally, you may consider whether the Plaintiff Alvord-Polk acting through Steve Boyer was contributorily negligent in failing to accurately value the contents identified in the signed statements of value upon the policy limits -- upon which the policy limits were established.

If you find that Plaintiff was contributorily negligent under these scenarios, you will need not -- you will next need to consider whether the Plaintiff's own negligence was a factual cause in causing their own harm.

If you find that AP, Alvord-Polk, was contributorily negligent and that its contributory negligence was a factual cause of its damages, AP's negligence will act as a complete bar to its recovery even if you find that Strickler was also negligent.

(N.T. 1130-1131)

These jury instructions also fully expressed this Court's pre-trial decision as to the five specific duties Strickler submitted to the Court, which duties Strickler asserted Alvord-Polk had breached and upon which Strickler based its contributory negligence defense. Those duties were:

(1) Duty by Alvord-Polk to exercise care of a reasonably prudent business(man) for the protection of its own property and business;

(2) Duty by Alvord-Polk to notice the contents / BPP coverage discrepancy in the original Policy issued to Alvord-Polk in 2017, as forth on the Declarations page;

(3) Duty by Alvord-Polk to notice the contents / BPP coverage discrepancy a year later in 2018 when Defendant Strickler presented Alvord-Polk with an updated insurance Proposal, five months before the fire;

(4) Duty by Alvord-Polk to request changes to the contents / BPP coverage to resolve the discrepancy at any time before the fire (i.e., duty to request removal of co-insurance); and

(5) Duty by Alvord-Polk to accurately value the contents / BPP identified in the signed Statements of Values, upon which the policy limits were established.

As discussed above, in the pre-trial ruling, this Court refused to permit Strickler to submit these alleged contributory negligence grounds to the jury, as specifically stated in Duties (2) and (3), because the language did not conform to Pennsylvania law. As noted above, this Court held:

> (1) ... as to Duty #2 ([Alvord-Polk's] duty to notice coverage discrepancy in original policy) and Duty #3 ([Alvord-Polk's] duty to notice coverage discrepancy in updated 2018 proposal), Defendant is precluded from asserting these defenses as stated. The undisputed record reflects that Defendant failed to procure the insurance it promised to provide to Plaintiff in the 2017 Policy. The 2018 Proposal repeated the same coverage terms as included in the 2017 Policy. Where a broker procures a policy differing from what the insured was promised or requested, "there is clearly a duty to advise the insured of the changes so made" and "[t]he burden is not on the insured to read the policy to discover such changes, or not read it at his peril." Tonkovic v. State Farm Mut. Auto. Ins. Co., 521 A.2d 920, 925 (Pa. 1987). In such cases, our Courts have held that there is no specific duty to read (and comprehend) a policy, unless it was unreasonable for the insured to have not read (and comprehended it). Pressley v. Travelers Prop. Cas. Corp., 817 A.2d 1131, 1141 (Pa. Super. 2003) ...

(See discussion *supra* at p. 6)

Given the applicable legal concepts, it would have been error for this Court to submit jury instructions parroting Duties (2) and (3) as submitted by Strickler – i.e. that Alvord-Polk had a *duty to notice* the BPP coverage discrepancy in the 2017 Policy and 2018 Proposal - without acknowledging that under the law, because Strickler had procured an insurance policy coverage different than that promised, there was no duty upon Alvord-Polk's Boyer to *read* the policy and related documents to *discover* (or *understand*) the coverage error, unless it would have been unreasonable to do so. This legal standard was accurately expressed in the jury instructions crafted

by the Court. Furthermore, the *duty to notice* concept proposed by Strickler was adequately and correctly encompassed within the jury instructions submitted:

> Plaintiff Steve Boyer did not initially have a duty to read and to understand the policy to discover the discrepancies from what was promised unless it would have been unreasonable for him to not read and understand the policy in light of the information available to him which may include the 2018 proposal presented to him in June of 2018.

Id. at 208 (citation omitted). This Court further notes the minor semantic difference between a "duty to read and understand" a policy to discover discrepancies and a "duty to notice" such discrepancies. A trial court has "wide discretion in phrasing jury instructions." Gaylord ex rel. Gaylord v. Morris Twp. Fire Dep't, supra.

In any event, it was for the jury to decide, as the factfinder, whether Boyer acted unreasonably, under a prudent businessperson standard, for failing his "duty to read and understand" / "duty to notice" the BPP coverage discrepancy during his review of the 2017 Policy and 2018 Proposal. While Strickler argued that this discrepancy in coverage was "clearly visible" to Boyer in these documents, this same discrepancy was admittedly not discovered by the three Strickler agents who reviewed those same documents, and who had additional information that Boyer did not have, which was that Cincinnati had told Strickler that it was removing agreed value blanket coverage for BPP. Even with this additional information, which should have made the Strickler agents vigilant to verify coverage changes in the Revised Proposal and Application, none were able to discover the same discrepancy Strickler accused Boyer of not discovering. Furthermore, Strickler agents Antes and Miller testified that they would not have expected Boyer to discover the coverage discrepancy upon his review of the documents. (N.T. 575, 956-958) Clearly, the issue of Boyer's contributory negligence concerning whether he should have discovered any discrepancies was for the jury to decide.

This Court's jury instructions ultimately and properly weaved the applicable contributory negligence standard with the alleged breaches, and when read as a whole, clarified all relevant material issues for the jury.

ii. Contributory Negligence - BPP Valuation

Strickler also sought judgment n.o.v. or that a new trial was required, arguing that the jury's verdict finding that Alvord-Polk was not contributorily negligent was unsupported by sufficient evidence, or was at a minimum, against the weight of the evidence. Strickler argued that the jury wrongly failed to find contributory negligence under either of two theories: that Alvord-Polk, via Steve Boyer, failed "to review and notice" the BPP coverage discrepancy on at least two documents he admittedly read and reviewed, and also that Boyer failed to accurately value BPP on the Statements of Values, upon which the policy limits were established. This Court has already addressed above the first issue regarding Alvord-Polk's "duty to notice" coverage discrepancies, and thus focuses here on the BPP issue.

As Strickler accurately noted, the post-fire valuation for the South Dakota BPP was $6.9 million, and was approximately $25 million to $32 million for BPP across all Alvord-Polk locations. Pre-fire, Alvord-Polk valued its South Dakota BPP at $1 million and its total BPP across all locations at $7.175 million, as reflected in its Statements of Values (at 90% replacement cost). Boyer acknowledged that the post-fire appraisals for all BPP were "significantly higher" than his $7.175 million value. (N.T. 267) Dave Boyer also testified that the total BPP valuation submitted by Alvord-Polk was probably too low. (N.T. 613-616) Alvord-Polk's expert Heinze similarly testified that the total BPP valuation figures submitted by Alvord-Polk were "not close" to the appraised values. (N.T. 765-766, 770)

Boyer admitted that he filled out, reviewed and signed the Statement of Values forms submitted with the original Application (Exbt. P-37) and the 2018 Proposal (Exbt. P-17). (N.T. at 121, 135, 137) The forms admittedly included language, above the signature line, that "Property is insured to 90% of the Replacement Cost Value" and that "All values submitted are correct to the best of my knowledge and belief." (Exbts. P-37, 17). Directly under the signature line, the forms stated: "The duty of establishing acceptable Property Values is your responsibility. If in doubt about the limits selected, the applicant/policyholder should seek a professional appraisal or the assistance of a builder to assess reconstruction costs." (Id.; N.T. 136) Boyer admitted that he did not obtain any BPP appraisals but determined values on his own, or with input from his brother and father. (N.T. at 219, 230-231).

Finally, Boyer admitted that the Policy's coinsurance term would not have applied to reduce the claim on the BPP loss if Alvord-Polk had accurately valued the BPP. (N.T. 267) Heinze similarly testified that if Alvord-Polk had produced an accurate Statement of Values for BPP then the coinsurance would never have applied. (N.T. 783) Heinze also stated that Strickler relied upon Alvord-Polk's/Boyer's values in obtaining the insurance premium quote. (N.T. 758, 762, 776)

Strickler argued that this record, even when viewed most favorably to Alvord-Polk as the verdict winner, unequivocally showed that Alvord-Polk, through Boyer, knowingly provided grossly inaccurate BPP valuations. As such, Strickler claimed that Alvord-Polk acted unreasonably and negligently and that this record supported judgment n.o.v. as to the contributory negligence defense. It further argued that considering the entire record, including the credible testimony offered by its expert Ahart, this record supported an award of a new trial on the contributory negligence claim because the jury's decision to not find Alvord-Polk negligent was shocking to the conscience.

The record, viewed in a light most favorable to Alvord-Polk, supported this Court's denial of a judgment n.o.v. as to the jury's verdict finding Alvord-Polk not contributorily negligent. Alvord-Polk presented evidence that any failure to properly value its BPP was not material to Alvord-Polk's insurance claim. (See N.T. 770, 771 (per Heinze, the values were not a material misrepresentation)) Notably, Cincinnati *never* informed Alvord-Polk that it was adjusting Alvord-Polk's BPP claim with a coinsurance penalty due to undervaluation of its BPP values. Boyer testified that in an email from Cincinnati to him and Alvord-Polk's adjuster Greenspan, Cincinnati explicitly notified them that the Policy provided for 90% coinsurance for BPP, *without* agreed value, and as such Cincinnati had to value Alvord-Polk's BPP at all locations to calculate a possible coinsurance penalty. (N.T. 164-165; Exbt. P-43) Heinze similarly testified that Cincinnati reduced the BPP claim "for no other reason than applying that coinsurance penalty," informing Alvord-Polk: "we will continue to handle this claim under the actual policy purchased for the period of the loss and that is for 90 percent coinsurance requirement for BPP." (N.T. 830-831; Exbt. P-43) Strickler's expert Ahart further admitted that based upon documents in the record, "Cincinnati

denied the coverage on the BPP because there was no agreed value on the policy," and not because of the BPP undervaluation.[8] (N.T. 1064, 1075-1076)

Alvord-Polk's expert Heinze further testified that the coinsurance provision was not triggered by any BPP undervaluation, "because there never was supposed to be a coinsurance aspect on this at all." (N.T. 784) He explained that had Strickler honored its commitment and promise to Alvord-Polk to provide BPP with agreed value blanket coverage to $7.175 million, then "regardless of what the [values] actually are" undervaluation would not have mattered. (N.T. 782-783) Heinze further disagreed that Alvord-Polk's failure to place sufficient values on its BPP rendered it at fault for its loss because "the benefit of blanket coverage with agreed value is that bottom line total number ... ensures ... that all locations are stacked; no matter what the values of the individual places are...." (N.T. 723-724)

There was further circumstantial evidence supporting Alvord-Polk's argument that had Alvord-Polk obtained the promised agreed value blanket coverage for BPP, Cincinnati would not have applied a coinsurance penalty due to Alvord-Polk's BPP undervaluation. Specifically, as noted by a number of witnesses, Cincinnati paid Alvord-Polk a substantially higher claim for its South Dakota building loss ($2.6 million) than it was valued in Alvord-Polk's Statement of Values ($675,000), pulling from the blanket coverage for buildings ($4.4 million) to close the gap from what was shown on the Statement of Values for that building's value. (See N.T. 386 (Olsen), 782-783, 833 (Heinze)) Heinze testified that agreed value blanket coverage "worked like it was supposed to work" under the Policy for the building loss (N.T. 782), suggesting such blanket coverage would have been available to Alvord-Polk had it received the promised agreed value blanket coverage for the BPP loss. Given this evidence, a factfinder could have decided that any BPP undervaluation by Alvord-Polk was an irrelevant consideration to Cincinnati's adjustment of the loss, assuming Alvord-Polk received agreed value blanket coverage as promised.

[8] Ahart nevertheless speculated that even if Alvord-Polk had obtained BPP agreed value coverage, Cincinnati would have still denied agreed value coverage and applied 90% coinsurance because of Alvord-Polk's gross undervaluation. Ahart's opinion, however, was not based upon any representation made by Cincinnati to Alvord-Polk but upon his experience in the insurance industry. (N.T. 1018-1019, 1063-1066, 1074)

Finally, the jury was also presented with evidence, primarily from Boyer and Heinze, which it was free to believe or disbelieve, that Alvord-Polk/Boyer was either not required to provide accurate BPP values or that it did in fact provide sufficiently accurate values given the context of Strickler's communications with Boyer.

Heinze testified that because the insurance was proposed on a blanket agreed value basis, Boyer was not required to be insured up to 90% of replacement cost value where. (N.T. 766-767) He reasoned that the policy sought was intended to be on a blanket agreed value basis and that all values were agreed by Alvord-Polk, Strickler and Cincinnati. (N.T. 767) He elaborated that the BPP figures on 2018 Statement of Values submitted by Boyer were "truthful and accurate" ... based upon the insurance policy and program that he was being sold and had instructed to be obtained, this is the amount of insurance that Mr. Boyer was requesting, that there was going to be no coinsurance penalty and, therefore, there was no issue with regard to any of these numbers that Mr. Boyer wanted to have in his limits of liability." (N.T. 777)

Although Heinze at one point conceded that the BPP values were "inaccurate," "in retrospect of the appraisal that was done after the fire" (N.T. 777), he nevertheless opined that Alvord-Polk met its responsibility of "providing accurate values" whereby Alvord-Polk "provided values of limits of liability that they wanted to obtain and paid a premium under this particular special, unique policy for blanket value ... based upon the specialized and unique knowledge of the Strickler Agency to provide them with this information to tailor-make the coverage for their needs." (N.T. 822)

Boyer testified that blanket coverage was a new concept to him and that Strickler's agents "did not tell him anything about the importance of making sure the coverages at each location were accurate," but instead told him that what was important was being "comfortable with what it adds up to at the bottom line." (N.T. 114-115) He testified that he was never told by Strickler that he "should look at the values at each location for both buildings and content and make sure that is 100 percent accurate." (N.T. 120-121) Boyer recalled no specific discussions with Strickler that "valuation" of any property loss would be "replacement cost agreed value." (N.T. 123) He also testified that coinsurance was never discussed and he was never apprised that if the bottom line numbers were off, Alvord-Polk could be subject to a coinsurance penalty. (N.T. 121-122)

Regarding the Statement of Values he signed in 2017, he again testified that while he understood he was attesting to the values listed, his focus was on the bottom line and not individual values and that the Strickler agents did not tell him he had to make sure the values were accurate, nor that if they were inaccurate, Alvord-Polk could potentially face a coinsurance penalty. (N.T. 135-136)

Accordingly, based upon this record, this Court denied Strickler's Post-Trial Motion seeking a judgment n.o.v. and a new trial on the contributory negligence issue with regard to BPP valuation.

Alvord-Polk's Expert Qualifications

The fifth issue raised by Strickler in its Post-Trial Motion was that judgment n.o.v. or a new trial was required because Alvord-Polk's liability expert Bernd Heinze was unqualified to render standard of care, breach or causation opinions necessary to support Plaintiff's theory of professional negligence. Following voir dire of Heinze, and over Strickler's objection, this Court admitted Heinze "to testify as an expert in the insurance industry, specifically the professional standards of care for independent commercial retail insurance agents and brokers." (N.T. 668-670)

In its Post-Trial Motion, Strickler argued that Heinze was unqualified as an expert regarding the standard of care for an independent retail insurance agency because he has never been a licensed insurance producer nor sold commercial insurance as an agent or broker. Strickler further argued that Heinze could not establish on voir dire that he has ever been admitted to testify in Pennsylvania state court as a liability or standard of care expert regarding claims against an independent retail insurance agency/broker.

This Court rejected Strickler's argument because the record overwhelmingly supported that Heinze was qualified to render his expert opinion. This Court adopts the argument set forth in Alvord-Polk's brief as fully supporting this decision, as follows:

> As an initial matter, "[t]he qualification of a witness as an expert witness rests within the sound discretion of the trial court, and ... will not be disturbed absent an abuse of discretion[.]" Commonwealth v. Yale, 150 A.3d 979, 985 n.11 (Pa. Super. Ct. 2016) (internal citations omitted). In Pennsylvania, the standard for the qualification of an expert witness is not demanding, rather it is "a ***liberal*** one." Id. (emphasis added) (internal citations omitted). Specifically, the substantive test for expert qualification is well-established:

> the court is to examine whether the witness has any reasonable pretension to specialized knowledge on the subject under investigation. It is to ascertain the proposed witness has sufficient skill, knowledge, or experience in the field at issue as to make it appear that the opinion offered will probably aid the trier of fact in the search for truth.

George v. Ellis, 820 A.2d 815, 817 (Pa. Super. Ct. 2003) (internal citations omitted).

Heinze's qualifications well exceeded the foregoing standard and demonstrated that his opinion would be helpful to the jury. Heinze's testimony at trial specifically detailed his 41 years of specialized knowledge and experience in the insurance industry, including the applicable standard of care for insurance brokers. Since forming his own company in 2000, the Heinze Group LLC ("Heinze Group"), and through to the present, Heinze has:

> Served as a certified instructor to teach continuing education and professional development classes accredited by the Pennsylvania Insurance Department, as well as all of the other 49 states, to insurance agents and brokers to fulfill their professional state licensure requirements;
>
> Taught courses regarding standards of conduct applicable to insurance agents and brokers at St. Joseph's University, Temple University, Gallaudet University, Florida State University and Mississippi State University;
>
> Served as Executive Director of the American Association of Managing General Counsel, an organization that offers continuing education classes to insurance agents and brokers across the United States on a variety of issues, including professional negligence;
>
> Served as Executive Director of the American Association of Claim Professionals and held executive positions at the California Insurance Wholesalers Association, the Insurance Society of Pennsylvania and the Pennsylvania Surplus Lines Association, all of whom are involved in the regulation and conduct of insurance professionals, including brokers and agents;
>
> Acted as a private arbitrator and/or mediator to resolve insurance coverage disputes between insureds, insurance companies, insurance agents and/or brokers; and
>
> Testified before Congress and various state legislatures on behalf of the National Association of Insurance Commissioners on insurance and broker-related matters.

[N.T. 643-646]

Prior to forming the Heinze Group, Heinze served as Vice President and Chief Litigation Counsel at the Reliance Insurance Company ("Reliance") in Philadelphia from 1997-2000. In this capacity he was responsible for oversight of the conduct of various insurance agents and brokers located across the United States with whom Reliance transacted business. [N.T. 638]. From 1983 through 1997, he worked as a trial attorney for two large Philadelphia law firms representing insurance agents and brokers in various litigation matters. During this period, Heinze also served as an instructor for the American Association of Managing General Agents to provide continuing education classes to insurance agents and brokers. The program that Heinze taught was approved by the Pennsylvania Insurance Department, along with the insurance departments in all of the other 49 states. [N.T. 637].

Heinze further testified that he has been retained as an expert in insurance related matters over 300 times over the last 25 years. [N.T. 647-648]. Included in that vast experience are 25-30 retentions involving the standards of insurance brokers in matters across the country, including Pennsylvania. [N.T. 648, 664-665]. Heinze further testified that he has appeared in court or other formal proceedings about 130 times during this time in federal, state and other forums all over the country. [N.T. 648]. Heinze has been qualified as an expert in insurance cases on at least 15-20 occasions and has never been found unqualified. [N.T. 649]. Although not a broker, Heinze has vast relevant insurance experience, and testified *inter alia:*

> Q. But why is it that you believe you can testify here today relative to the standards and practices of brokers?
>
> A. I think based upon the education, experience, and knowledge that I've gained over the course of the last 41 years that I've been involved in this business, in the insurance business, and working with agents, brokers throughout that period. In light of my being an executive director of an agents and brokers organization that is nationwide and also has members in Australia and the United Kingdom, in the various retentions that I've had as an expert witness or as a consultant on behalf of agents and brokers, it has given me a unique perspective. And in also the audits that I do of agents and brokers, in looking at their files and meeting with their personnel, its given me a unique perspective of what the standard of care is, to understand what that standard of care is, and to make sure that what I'm testifying to meets those standards and is within the parameters of those standards within a reasonable degree of professional certainty.
>
> [N.T. 649-650]

In light of the foregoing testimony on Mr. Heinze's qualifications, the trial court clearly had an adequate basis in the trial record to find, under Pennsylvania's liberal standard for expert qualification, that Mr. Heinze is qualified to render an expert opinion on the standard of care for insurance brokers in this case. Moreover, Strickler's contention that this Court abused its discretion because Mr. Heinze's

could not recall whether he had been qualified as an expert on the insurance broker standard of care in another Pennsylvania trial has no basis in the law (and Strickler has provided none)--if that were a hard and fast rule then no expert could ever be qualified in Pennsylvania. As [this] Court recognized at sidebar, "you've got to begin somewhere[.]" [N.T. 670]. Simply put, Mr. Heinze easily met the standard for expert qualification under Pennsylvania law and thus this Court's decision to qualify and admit him as an expert in this case was neither legal error nor an abuse of discretion that controlled the outcome of this case.

(Alvord-Polk Brief, 4/1/24 at 38-41).

Verdict Sheet

The sixth and final issue raised by Strickler in its Post-Trial Motion was that a new trial was required because the Court erred or abused its discretion in denying Strickler's proposed amended verdict sheet. Specifically, prior to deliberations, this Court modified Question 3 on the Verdict Sheet, proposed by Strickler and addressing Alvord-Polk's contributory negligence, which asked: "Was Plaintiff negligent to any degree?" This Court removed the prepositional phrase "to any degree," over Strickler's objection. (See N.T. 1101) [9]

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[9] AMENDED VERDICT SHEET

Question 1:
Do you find that Strickler Agency, Inc. was negligent?

Yes X No _____ [*VERDICT DIRECTED BY COURT*]

If you answered "Yes" to the foregoing question, proceed to the next question. If you answered "No" to the foregoing question, cease deliberations and return to the courtroom.

Question 2:
Do you find that the negligence of Strickler Agency, Inc. was a factual cause of damages to Plaintiff?

Yes X No _____

If you answered "Yes" to the foregoing question, proceed to the next question. If you answered "No" to the foregoing question, cease deliberations and return to the courtroom.

Question 3:
Was Plaintiff negligent?

Yes _____ No X

If you answered "Yes" to the foregoing question, proceed to the next question. If you answered "No" to the foregoing question, proceed to question #5.

Question 4:
Was the negligence of Plaintiff a factual cause of damages to Plaintiff?

Strickler argued that the phrase was warranted, citing Pennsylvania cases, which note that under the contributory negligence defense, even 1% negligence by a plaintiff bars recovery. Strickler argued that the proposed language would have assisted the jury in weighing the evidence, and that denial of the proposed amendment was prejudicial.

Notably, Strickler provided no controlling law that the language "to any degree" must be included in a jury interrogatory addressing contributory negligence. See Seels v. Tenet Health System Hahnemann, LLC, 167 A.3d 190, 207 n.5 (Pa. Super. 2017) (standard of review of the trial court's verdict sheet is whether the court committed abuse of discretion or error of law controlling outcome of case). As noted by Alvord-Polk, the proposed language fully conformed with the Pennsylvania Suggested Standard Civil Jury Instructions. See Pa. SSJI (Civ.) § 13.310. This Court agreed as well with Alvord-Polk that Strickler's request for inclusion of the "to any degree" language would have been inappropriate because it could mislead the jury by mixing concepts of negligence and causation. See McCay v. Philadelphia Elec. Co., 291 A.2d 759, 761-62 (Pa. 1972) (doctrine of "slightest degree" is not the correct statement of Pennsylvania law as to the necessary causal relationship between plaintiff's negligence and the resultant injury). As such, Strickler was not entitled to post-trial relief on this issue.

Yes _____ No _____

If you answered "Yes" to the foregoing question, cease deliberations and return to the courtroom. If you answered "No" to the foregoing question, proceed to the next question.

Question 5:
State the amount of damages you award to Plaintiff.

$ **4.6 million**

A polling of the jury reflected that all 12 jurors found that Strickler's negligence was a factual cause of Alvord-Polk's damages (Q2), 10 of 12 jurors found that Alvord-Polk was not negligent (Q3), and all 12 jurors agreed on damages. (N.T. 1228-1230)

Accordingly, this Court issued its Order of June 13, 2024, denying Defendant Strickler's Post Trial Motion in its entirety.

September 6, 2024
Date

John J. McNally, III, Judge

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