

FILED



June 12, 2017

Board of Disciplinary Appeals

No. 58334

**Before the Board of Disciplinary Appeals
Appointed by
The Supreme Court of Texas**

JAY STEVEN PEARLMAN,

APPELLANT

V.

COMMISSION FOR LAWYER DISCIPLINE,

APPELLEE

*On Appeal from the Evidentiary Panel
For the State Bar of Texas District 5-1
Nos. 201503981 and 201503982*

BRIEF OF APPELLEE

**COMMISSION FOR LAWYER DISCIPLINE
(ORAL ARGUMENT REQUESTED)**

LINDA A. ACEVEDO
CHIEF DISCIPLINARY COUNSEL

CYNTHIA CANFIELD HAMILTON
SENIOR APPELLATE COUNSEL

LAURA BAYOUTH POPPS
DEPUTY COUNSEL FOR
ADMINISTRATION

OFFICE OF THE CHIEF DISCIPLINARY
COUNSEL

STEPHANIE PAN
ASSISTANT DISCIPLINARY COUNSEL

COMMISSION FOR LAWYER DISCIPLINE
STATE BAR OF TEXAS

P.O. Box 12487
AUSTIN, TEXAS 78711-2487
cynthia.hamilton@texasbar.com
512.427.1350; 1.877.953.5535
FAX: 512.427.4167

IDENTITY OF PARTIES AND COUNSEL

APPELLANT

JAY STEVEN PEARLMAN
214 Morton Street
Richmond, Texas 77469
Telephone: 832.449.7920
Fax: 832.449.7924
Email: jaypearlman@jaypearlmanlawfirm.com

CO-COUNSEL FOR APPELLANT

PAUL B. ROSEN
The Rosen & Rosen Law Firm, L.P.
7650 West Loop South, Suite 800
Bellaire, Texas 77401
Telephone: 713.222.1502
Fax: 713.665.6818
Email: paul@rosenfirm.com

APPELLEE

COMMISSION FOR LAWYER DISCIPLINE
STATE BAR OF TEXAS
P.O. Box 12487
Austin, Texas 78711

COUNSEL FOR APPELLEE

LINDA A. ACEVEDO
Chief Disciplinary Counsel

LAURA BAYOUTH POPPS
Deputy Counsel for Administration

STEPHANIE PAN
ASSISTANT DISCIPLINARY COUNSEL

CYNTHIA CANFIELD HAMILTON
Senior Appellate Counsel
STATE BAR CARD NO. 00790419
Email: cynthia.hamilton@texasbar.com

State Bar of Texas
P.O. Box 12487
Austin, Texas 78711-2487
512.427.1350; 1.877.953.5535
Fax: 512.427.4167

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BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

Appellee, the Commission for Lawyer Discipline, submits this brief in response to the brief filed by Appellant, Jay Steven Pearlman. For clarity, this brief refers to Appellant as “Pearlman” and Appellee as “the Commission.” References to the record are labeled CR (clerk’s record), RR (reporter’s record), Pet. Ex. (Petitioner’s exhibit to reporter’s record), Resp. Ex. (Respondent’s exhibit

to reporter's record), and App. (appendix to brief). References to rules refer to the Texas Disciplinary Rules of Professional Conduct¹ unless otherwise noted.

¹ *Reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G app A-1. (West 2015).

STATEMENT OF THE CASE

Type of Proceeding: Attorney Discipline

Petitioner/Appellee: The Commission for Lawyer Discipline

Respondent/Appellant: Jay Steven Pearlman

Evidentiary Panel: 5-1

Judgment: Judgment of Disbarment

*Violations found (Texas
Disciplinary Rules of
Professional Conduct):*

Rule 1.03(a): A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

Rule 1.03(b): A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.14(b): Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

Rule 1.15(d): Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing

time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law only if such retention will not prejudice the client in the subject matter of the representation.

Rule 8.04(a)(3): A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

SOLE ISSUE PRESENTED

Whether it is within an evidentiary panel's discretion to ignore a timely motion for new trial that fails to satisfy all three prongs of the *Craddock* standard after the entry of a no-answer default judgment.

STATEMENT OF FACTS

On November 11, 2015, the Office of the Chief Disciplinary Counsel (CDC) sent Pearlman notice that it had found just cause to believe he had committed professional misconduct in his representation of Veronica Yañez and his representation of Yumira Contreras (CR 6-8, 11-13). The notices described the allegations of misconduct and informed Pearlman of his duty to respond by electing whether to have the allegations tried in district court or heard by an evidentiary panel (CR 6-8, 11-13). Pearlman received the notices via personal service on November 11, 2015 (CR 9). Pearlman did not sign the officer's return for either notice. Instead, there is a handwritten note on each notice stating "Defendant [too] busy to sign – football game" on Pearlman's signature line (CR 9, 14).

On December 14, 2015, the chair of the District 5 Grievance Committee assigned an evidentiary panel to preside over both the Yañez and Contreras complaints (CR 32, 37). CDC sent Pearlman notice of the assignment on the same date (CR 41-42, 48-49).

The Commission first served its evidentiary petition by certified mail, return receipt requested (CR 55-60). Alicia Rubio signed for the petition on February 1, 2016, at Pearlman's office (CR 61; RR 7; Pet. Ex. 5). Pearlman failed to file an answer as required by the disciplinary rules, so on March 17, 2016, the

Commission personally served Pearlman with a letter regarding his failure to answer (CR 63). The letter warned that the Commission would seek a default judgment if Pearlman did not file an answer immediately (CR 63). The letter also reminded Pearlman that discovery responses would be due on March 22, 2016 (CR 63). An officer's return reflects that Pearlman received the letter via personal service on March 17, 2016 (CR 64). Pearlman signed the return (CR 64).

Despite the additional notice to Pearlman, he still did not file an answer (CR 66-87). Accordingly, on April 15, 2016, the Commission filed a motion for default judgment and a notice that a default hearing would take place on June 8, 2016 (CR 66-87, 91).² On May 27, 2016, the Commission filed an Amended Notice of Default Evidentiary Hearing, moving the hearing to Wednesday, August 10, 2016 (CR 95). On June 8, 2016, the Commission personally served Pearlman with a copy of the Motion for Default Judgment and the Amended Notice of Default Evidentiary Hearing (CR 99).³ In addition, on July 22, 2016, the Commission personally served Pearlman with a letter notifying him that the composition of the

² There is no record of service of the notice of hearing filed on April 15, 2016. The next document in the appellate record is an amended notice of evidentiary hearing (CR 95), which moved the evidentiary hearing from June 8, 2016, to August 10, 2016, and was served on June 8, 2016 (CR 99). A likely explanation for this series of filings is that the Commission was unable to effectuate service of the April 15th notice at least 45 days ahead of the scheduled hearing date and, therefore, had to move the June hearing to a later date.

³ The return of service incorrectly identifies May 16, 2016, as the date that the process server received the service documents (CR 99). The incorrect date appears to be the result of a typographical error.

Evidentiary Panel had changed and that he had the right to move to recuse a panel member under Rule 2.06 of the Texas Rules of Disciplinary Procedure (CR 101-03).

On August 3, 2016, the Commission again personally served Pearlman with notice of the pending proceedings and the upcoming August 10th hearing (CR 105-38). Service included Petitioner's Original Evidentiary Petition, Petitioner's Motion for Default Judgment, and the Amended Notice of Default Evidentiary Hearing (CR 105-38). That same day, the Commission attempted to send Pearlman a copy of a subpoena via facsimile, but the transmission did not go through (CR 140-42). Thus, the Commission sent the subpoena to Pearlman via email, with a request that he confirm his receipt (CR 142). The record does not reflect any response, though the Commission emailed the subpoena to the same email address that appears on the cover letters that Pearlman sent with his post-judgment motions (CR 142, 178, 214, 282).

Despite ample notice, Pearlman failed to file an answer or appear at the scheduled hearing (RR 10-14, 20). Accordingly, the Evidentiary Panel proceeded with the hearing and rendered judgment by default in favor of the Commission (CR 152-63; App. 1). The Commission sent Pearlman a copy of the judgment by first class mail, certified mail (return receipt requested), and facsimile on August 15,

2016 (the same day the judgment was entered) (CR 165-66). The Commission also personally served the judgment on August 23, 2016 (CR 173).

On September 13, 2016, Pearlman filed a timely Motion to Set Aside Default Judgment and Grant New Trial (“Motion for New Trial”), which argued that the Panel should grant Pearlman a new hearing (CR 180-211; App. 2). On September 14, 2016, Pearlman filed a timely Motion to Modify Default Judgment, which argued that the Evidentiary Panel should change the sanction for Pearlman’s misconduct from disbarment to probation (CR 215-24).

On October 17, 2016, after the Commission filed responses to Pearlman’s post-judgment motions, Pearlman filed an untimely First Amended Motion to Set Aside Default Judgment and Grant New Trial/Hearing (CR 285-331). On the same date, the Chair of the Evidentiary Panel notified the parties that the Panel would not rule on the untimely motion, causing it to be overruled by operation of law (CR 387). This appeal followed (CR 390-409).

SUMMARY OF THE ARGUMENT

To obtain a new trial in this case, Pearlman was required to file a motion for new trial that satisfied all three prongs of the standard set forth in *Craddock v. Sunshine Bus Lines*. Pearlman's Motion for New Trial was woefully inadequate and failed to satisfy any of the three prongs.

Pearlman did not satisfy the first prong of the *Craddock* standard because the record demonstrates that he acted with conscious indifference in failing to file an answer to the Commission's evidentiary petition and his Motion for New Trial did not show otherwise. Pearlman was personally served with numerous documents in the case but never took any action despite the passage of more than six months between the time he first received service of the petition and the date that the Commission took a default judgment. His behavior in the case demonstrated a pattern of ignoring deadlines and warnings from the other party, and his failure to file an answer demonstrated that he knew he was sued but did not care. His excuses, which were stated in general terms without any specific details, could not overcome his obvious indifference toward the pending disciplinary action.

Pearlman failed to satisfy the second prong of *Craddock* because the facts alleged in his Motion for New Trial were not supported by affidavits or other evidence. Moreover, the facts did not demonstrate that he had a meritorious

defense to the violations established by default. Even if true, the facts set forth in the Motion for New Trial failed to address many of the pertinent allegations of misconduct. And where Pearlman's facts did address the facts established by default, they were insufficient to serve as a meritorious defense.

Pearlman did not satisfy the third prong of *Craddock* because he failed to allege that he filed the motion for new trial at a time when a decision to grant a new trial would "occasion no delay or otherwise work an injury to" the Commission. Pearlman should have indicated that he was ready to go to trial immediately, but he did not do so.

Because Pearlman failed to satisfy any of the three prongs of the *Craddock* standard, the Evidentiary Panel did not abuse its discretion by declining to grant him a new trial. Thus, the Board should affirm the Judgment of Disbarment.

ARGUMENT

I. Standard of Review

The gist of Pearlman’s position in this appeal is that the Evidentiary Panel erred by failing to grant him a new evidentiary hearing.

The Board reviews an Evidentiary Panel’s denial of a motion for a new evidentiary hearing under the abuse-of-discretion standard of review that applies to motions for new trial. *See Cliff v. Huggins*, 724 S.W.2d 778, 778–79 (Tex. 1987) (describing standard of review for motion for new trial after default judgment). The test for an abuse of discretion is whether the trial court acted arbitrarily or unreasonably and without reference to guiding rules or principles. *Cire v. Cummings*, 134 S.W.3d 835, 838-39 (Tex. 2004).

In the case of a no-answer default judgment, a trial court abuses its discretion by failing to grant a new trial when the appellant satisfies the three-prong standard set forth in *Craddock v. Sunshine Bus Lines, Inc.*, 133 S.W.2d 124 (Tex. 1939). *Levine v. Shackelford, Melton & McKinley, L.L.P.*, 248 S.W.3d 166, 167 (Tex. 2008). *Craddock* provides for a new trial when the appellant (1) demonstrates that the failure to answer before judgment “was not intentional, or the result of conscious indifference on his part, but was due to a mistake or an accident,” (2) sets up a meritorious defense, and (3) files the motion for new trial at

a time when a decision to grant a new trial “will occasion no delay or otherwise work an injury to the plaintiff.” *Craddock*, 133 S.W.2d at 126.

II. Pearlman did not satisfy the first prong of the *Craddock* standard because he did not demonstrate that his failure to file an answer was a mistake or accident rather than the result of conscious indifference.

Pearlman contends that his failure to answer or appear was due to excusable mistake or accident because he was under “undue emotional and mental stress due to personal and family related matters” and “as a direct result accidentally failed to calendar the evidentiary hearing/trial date of August 10, 2016.” Appellant’s Br. 5. But assuming for the sake of argument that Pearlman’s accidental failure to calendar the hearing date is sufficient to excuse his failure to attend the hearing, it still does not explain his failure to file an answer. It was his failure to answer that caused judgment to be rendered by default. *See* TEX. RULES DISCIPLINARY P. R. 2.17C (authorizing evidentiary panel to enter default order if respondent attorney fails to file a timely answer to an evidentiary petition).

Moreover, the record clearly demonstrates that Pearlman acted with conscious indifference in failing to file an answer to the evidentiary petition. Consciously indifferent conduct occurs when “the defendant knew it was sued but did not care.” *Fid. & Guar. Ins. Co. v. Drewery Constr. Co.*, 186 S.W.3d 571, 576 (Tex.2006) (per curiam). It includes behavior such as a “pattern of ignoring deadlines and warnings from the opposing party.” *Levine*, 248 S.W.3d at 169.

In *Levine*, three law firms sued the Levines for legal fees. *Levine*, 248 S.W.3d at 168. Before filing an answer, the Levines’ attorney requested a “standstill agreement” while the parties attempted to work out a solution in mediation. *Id.* The law firms refused, so the Levines’ attorney agreed to file an answer by the deadline, but he failed to do so. *Id.* The law firms contacted the Levines’ attorney to notify him that they would take a default if no answer was filed, and the Levines’ attorney again said he would file an answer but again failed to do so. As a result, the trial court granted a default judgment. *Id.*

The Levines alleged in their Motion for New Trial that their failure to file an answer was due to mistake or accident because their attorney had “placed the answer, along with a filing letter, in his ‘outgoing mail bin’ four days before the trial court signed the original default judgment on December 17, 2004.” *Id.*

The court found that the Levines’ attorney had acted with conscious indifference in failing to file an answer, noting that he knew of the November 29th answer deadline, received several extensions and several chances to file, and still failed to file an answer. *Levine*, 248 S.W.3d at 169. The court further found that while the Levines’ attorney “eventually emailed a draft denial to the parties, he never attempted to confirm that an answer was filed, despite repeated discussions, emails, and contact with the opposing party warning him that if he did not file an answer, the law firms would take a default judgment.” *Id.* The court stated that

“[t]his pattern of ignoring deadlines and warnings from the opposing party amounts to conscious indifference.” *Id.*

As in *Levine*, the record in the instant appeal demonstrates that Pearlman exhibited a pattern of ignoring deadlines and warnings from the opposing party. The Commission filed its Original Evidentiary Petition in January 2016 and served Pearlman with the petition by certified mail, return receipt requested, on February 1, 2016 (CR 55-60). The disciplinary rules mandated that Pearlman file an answer “no later than 5:00 p.m. on the first Monday following the expiration of twenty days after service” of the petition. TEX. RULES DISCIPLINARY P. R. 2.17B. The rules also provided for the Commission to seek a default judgment if Pearlman failed to file an answer by the deadline. TEX. RULES DISCIPLINARY P. R. 2.17C.

Pearlman did not file an answer by the deadline (CR 63). But rather than immediately taking a default judgment, on March 17, 2016, the Commission personally served Pearlman with a letter regarding his failure to answer and warning that the Commission would seek a default judgment if he did not file an answer immediately (CR 63). Pearlman still did not file an answer. As a result, on April 15, 2016, the Commission filed a motion for default judgment (CR 66-87).

On June 8, 2016, Pearlman was personally served with a copy of the Motion for Default Judgment, as well as notice of a default hearing set for August 10, 2016 (CR 99). At that point, Pearlman should have realized that his answer deadline had

long since passed and that he was at serious risk of a default judgment. Still, however, he did nothing.

On July 22, 2016, Pearlman received yet another reminder of the pending disciplinary action – a letter regarding the composition of the Evidentiary Panel (CR 101-03). And on August 3, 2016, Pearlman was personally served with additional copies of the evidentiary petition, the motion for default judgment, and the notice of hearing (CR 105-38). That same day, the Commission also attempted to fax Pearlman a copy of a subpoena for witness testimony, but the fax transmission did not go through (CR 140-42). Accordingly, the Commission sent the subpoena to Pearlman via email, with a request that he confirm receipt (CR 142).⁴

The hearing took place on August 10, 2016, as scheduled (RR 1). Pearlman failed to answer or appear despite the multiple reminders he had received and the passage of nearly five months since the Commission warned him that if he did not file an answer, a default judgment would be taken (RR 4-5). After the hearing, the Evidentiary Panel rendered judgment in favor of the Commission and disbarred Pearlman (CR 152-63).

⁴ There is no record of the requested confirmation. However, the Commission emailed the subpoena to the same email address that appears on the cover letters that Pearlman sent with his post-judgment motions (CR 142, 178, 214, 282).

In short, the record clearly reflects that Pearlman received proper service *plus* multiple additional notices of the pending proceedings *and* an extended period of time in which to file an answer. Thus, like the attorney in *Levine*, he was on clear notice of his obligation to respond, yet he failed to take any action. The excuse that he provided for his inaction, even if directed toward his failure to file an answer, could not negate his consciously indifferent conduct.

In addition, Pearlman failed to provide any affidavit or other evidence to support his statements regarding the stress he was experiencing and the resulting calendaring error (CR 180-211; App. 2). *See Freeman v. Pevehouse*, 79 S.W.3d 637, 645 (Tex.App.—Waco 2002, no pet.) (noting that “the defendant must explain *under oath* what mistake or accident caused the failure to timely file the answer”) (emphasis added); *BancTEXAS McKinney, N.A. v. Desalination Sys., Inc.*, 847 S.W.2d 301, 302-03 (Tex.App.—Dallas 1992, no writ) (explaining that there must be “competent proof” of the mistake or accident alleged by the defaulting party in its motion for new trial). The lack of support for Pearlman’s statements regarding his excuse for ignoring the disciplinary action provided yet another reasonable basis for the denial of his Motion for New Trial.

III. The cases cited by Pearlman do not support his position.

Pearlman cites *Director, State Employee Workers’ Compensation Division v. Evans*, 889 S.W.2d 266 (Tex. 1994), in support of the proposition that “[g]eneral

forgetfulness or failure to calendar qualify as sufficient reasons to satisfy the first element of *Craddock*.” Appellant’s Br. 5. The facts of *Evans*, in which a lawyer failed to appear at trial because her predecessor abruptly quit three days before trial and failed to calendar or notify the successor lawyer of the correct trial date, are inapposite to the present appeal. Likewise, the other case that Pearlman cites – *Jackson v. Mares*, 802 S.W.2d 48 (Tex.App.—Corpus Christi 1990, writ denied) – is distinguishable. The defaulting party in *Jackson* received service of a lawsuit on May 26, 1989, and the plaintiff took a default judgment less than thirty days later on June 22, 1989, without any additional communication to prompt the defaulting party to file an answer. *Id.* at 49. Moreover, unlike Pearlman, the defaulting party in *Jackson* provided a specific explanation for his failure to file an answer. Pearlman provided no explanation for his failure to file an answer.

Additionally, Pearlman’s interpretation of *Evans* and *Jackson* contradicts established case law. In *Sutherland v. Spencer*, the Texas Supreme Court stated that “[w]e do not hold that forgetfulness alone is sufficient to satisfy the first *Craddock* element.” *Sutherland v. Spencer*, 376 S.W.3d 752, 755 (Tex. 2012). And though merely providing “some excuse” is often sufficient to set aside a default judgment, the Texas Supreme Court “has never held that *any* excuse will negate a defaulting party’s intentional or consciously indifferent conduct.” *Dodd v. Savino*, 426 S.W.3d 275, 289 (Tex. App.—Houston [14th Dist.] 2014, no pet.).

In *Dodd v. Savino*, the defaulting party's attorney (Faraj) received notice of a lawsuit on December 6, 2011. *Dodd*, 426 S.W.3d at 288. At the time, Faraj was involved in a different "high-profile case involving allegations of sexual assault in the military." *Id.* Faraj was also the victim of a cyber attack the following month, which resulted in the release of "more than three gigabytes worth of confidential email communications, client files, and financial records." *Id.* Faraj claimed that this breach of security required immediate attention and contributed to his delay in filing an answer. *Id.*

Despite Faraj's excuses, he was unable to satisfy the first *Craddock* prong because the record showed that Faraj had disregarded multiple deadlines and warnings. Thus, his conduct "fell within the rule stated in *Levine*, where the supreme court held that a 'pattern of ignoring deadlines and warnings from the opposing party amounts to conscious indifference.'" *Id.*

In addition, Faraj failed to provide sufficient information to show that his situation satisfied *Craddock*:

Faraj claimed in non-specific terms that he was preoccupied with remedying the damage caused by the hacking incident, but Faraj never explained when the hacking incident occurred or how much time his remedial efforts actually consumed. The timing of such matters is critical to a *Craddock* analysis, but Faraj's affidavit is completely silent on this point.

Dodd, 426 S.W.3d at 289. The court concluded that while the hacking incident was serious, "when viewed in the context of the entire record, Faraj has

not established that this excuse negates his conscious indifference to the warnings from opposing counsel.” *Id.*

As with the attorney in *Dodd*, Pearlman’s conclusory excuse of “emotional and mental stress” was not sufficient to demonstrate that his inaction was due to mistake or accident. He stated in non-specific terms that he was “under undue emotional and mental stress due to personal and family related matters, including, but not limited to a pending divorce, handling all matters related to his daughter, Skyler R. Pearlman, a sophomore at Texas Tech University, maintaining his family’s household, and maintaining his law practice” (CR 181; App. 2). However, Pearlman provided no time frame or specific information regarding how his “emotional and mental stress” caused him to be unable to respond to the disciplinary action. Pearlman did not state when the divorce was filed, nor did he give any other specific date pertaining to the divorce to show that it actually affected his ability to respond. Pearlman also provided no specific information about how “handling all matters” related to his daughter—an adult attending college more than five hundred miles away from his principal place of practice—affected his ability to respond. Finally, Pearlman did not explain how “maintaining his law practice” prevented him from responding.

Pearlman’s situation is not similar to those in the cases he cites – *Evans* and *Jackson*. Rather, as in *Dodd* and *Levine*, the record here demonstrates conscious

indifference because it shows a pattern of ignoring deadlines and warnings. And Pearlman's claim that he was under "undue emotional and mental stress" lacks necessary specificity. Thus, Pearlman's excuse, even if considered in connection with his failure to file an answer, would not be sufficient to show mistake or accident under *Craddock*.

IV. Pearlman did not satisfy the second prong of the *Craddock* standard because he failed to set up a meritorious defense.

The second prong of the *Craddock* standard requires a defaulting defendant to "set up" a meritorious defense in his motion for new trial. *Craddock*, 133 S.W.2d at 126. In order to "set up" a meritorious defense under *Craddock*, "[t]he motion must allege [f]acts in law which would constitute a defense to the cause of action asserted by the plaintiff, and must be supported by affidavits or other evidence proving prima facie that the defendant has such meritorious defense." *Ivy v. Carrell*, 407 S.W.2d 212, 214 (Tex. 1966). "This does not mean that the motion should be granted if it merely [a]lleges that the defendant 'has a meritorious defense.'" *Id.*

The Evidentiary Panel found that Pearlman violated Rules 1.03(a), 1.14(b), 1.15(d), and 8.04(a)(3) as alleged in the evidentiary petition (CR 160). Pearlman attempted to set up a meritorious defense in his Motion for New Trial (CR 181-87; App. 2). However, he failed to provide affidavits or other evidence sufficient to support the facts that he alleged in the Motion for New Trial (CR 180-212; App.

2).⁵ Therefore, even if Pearlman’s alleged facts constituted a meritorious defense, the Motion for New Trial still could not satisfy the second prong of *Craddock*. *Id.*; *see also Dolgencorp v. Lerma*, 288 S.W.3d 922, 927-28 (Tex. 2009) (explaining that a motion for new trial “sets up a meritorious defense” under *Craddock* “if it alleges facts which in law would constitute a defense to the plaintiff’s cause of action *and is supported by affidavits or other evidence proving prima facie that the defendant has such a defense*”) (emphasis added). Pearlman’s unsupported motion simply could not satisfy *Craddock*.⁶

Moreover, for the reasons discussed below, the facts alleged by Pearlman, even if properly supported, would not constitute a meritorious defense.

A. Rule 1.03(a)

The Evidentiary Panel found that Pearlman violated Rule 1.03(a), which requires a lawyer to keep clients reasonably informed about the status of their legal

⁵ Pearlman supported his Motion for New Trial with a settlement statement for the Contreras matter (CR 189-91); a copy of the front of a check to Contreras dated 6/26/15 (CR 192); a copy of the front of a check to Contreras dated 4/12/16 (CR 193); a letter and emails dated 2/14/16 to Farmers Insurance notifying Farmers that he would continue to represent Yañez (CR 194-97); a copy of an original petition filed on behalf of Yañez on 7/8/16, together with a citation and affidavit of service (CR 198-210); and an affidavit signed by Pearlman that purportedly averred to facts “stated in this affidavit” but did not set forth any facts (CR 211). None of the documents attached to the Motion for New Trial arguably provided the support necessary to set up a meritorious defense under *Craddock*.

⁶ Pearlman did attach an affidavit to his untimely First Amended Motion to Set Aside Default Judgment and Grant New Trial/Hearing (CR 285-331). However, an untimely motion for new trial is a nullity that cannot be considered on appeal. *Moritz v. Preiss*, 121 S.W.3d 715, 720-21 (Tex. 2008).

matters and comply with reasonable requests for information (CR 160). Pearlman did not set up a meritorious defense to the charge that he violated Rule 1.03(a) because the facts alleged in his Motion for New Trial did not demonstrate that he communicated with his clients as required by the rule.

The facts established by default include that Contreras and Yañez retained Pearlman in July 2014 and that Pearlman settled at least some of their claims in March 2015 (CR 107). However, the Motion for New Trial only described communications with Contreras and Yañez that occurred in June 2015 and later. Pearlman provided no facts describing any effort he made to communicate with Contreras and Yañez for the eleven months between July 2014 and June 2015 (CR 181-86; App. 2). Nor did he address his failure to communicate with the clients between the time that he settled their legal matters in March 2015 and his conversation with Contreras on June 17, 2015. He had an obligation to communicate with both clients promptly upon settling their claims.

Pearlman tried to excuse his lack of communication by stating that communication “became strained for a brief period of time” because Pearlman’s long-time legal secretary, a relative of both Contreras and Yañez, left Pearlman’s employ (CR 182; App. 2). Pearlman further stated that Yañez spoke very little English and most communication with her was through the legal secretary (CR 185; App. 2). However, Pearlman’s legal secretary did not leave his employ until

June 8, 2015, nearly a year after Contreras and Yañez retained Pearlman and approximately two months after he settled their claims (CR 182; App. 2). Pearlman presented no facts demonstrating that he did communicate with Contreras and Yañez between July 2014 and June 2015, when his legal secretary was still employed by him.

Additionally, Pearlman admitted that after he spoke to Yañez on June 26, 2015, he did not communicate with her about her case for another eight months. Specifically, Pearlman “did not discuss the status of her claim until a telephone conversation between [Pearlman] and a daughter of Ms. Yañez took place on or about February 14, 2016” (CR 186; App. 2). Pearlman also did not explain his failure to respond to Yañez’s request for her file.

In short, the facts set forth in Pearlman’s Motion for New Trial did not set up a meritorious defense to the charge that he violated Rule 1.03(a) because even if true, Pearlman’s facts did not sufficiently address the facts established by default that demonstrated he violated the rule.

B. Rule 1.03(b)

The Evidentiary Panel found that Pearlman violated Rule 1.03(b), which requires a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation (CR 160). Pearlman did not set up a meritorious defense to the charge that he violated Rule

1.03(b) because the facts alleged in his Motion for New Trial did not address the pertinent facts established by default, namely that Pearlman reached a settlement of Contreras' claims without first consulting with Contreras (CR 57). Pearlman's Motion for New Trial wholly ignored this issue (CR 180-211; App. 2).

C. Rule 1.14(b)

The Evidentiary Panel found that Pearlman violated Rule 1.14(b), which requires a lawyer to (1) promptly notify a client upon receipt of funds in which the client has an interest and (2) promptly deliver such funds to the client (CR 160). As with Rule 1.03(b), Pearlman's Motion for New Trial did not address pertinent facts established by default.

The facts established by default included that Pearlman failed to promptly notify both clients of settlements that took place in March 2015 and failed to promptly deliver the settlement funds to the clients (CR 57-58). With regard to Yañez, Pearlman wholly failed to address his handling of the PIP settlement funds that he received on her behalf in March 2015 (CR 185-87; App. 2). With regard to Contreras, Pearlman stated only that “[p]rior to June 26, 2015,” he spoke to Contreras and “confirmed that the case was settled and that it was his understanding that reductions had been obtained by the secretary, but he needed to confirm these amounts before he prepared a final settlement statement” (CR 181-84; App. 2). Given that the case settled in March 2015, Pearlman's statement that

he communicated with Contreras “prior to June 26, 2015” did not establish that he promptly notified her of the settlement.

Also, in the Motion for New Trial, Pearlman conceded that he did not prepare a check for Contreras until June 26, 2015, three months after the settlement funds were received. Pearlman explained that he prepared the check and the final settlement statement only *after* Contreras came to his office in person on June 26th and requested that he issue her a check (CR 182-84; App. 2). And the timeline provided in the Motion for New Trial demonstrates that it took Pearlman only thirty minutes to complete the settlement statement and write a check to Contreras (CR 182-83; App. 2). That Pearlman was able to complete the settlement statement so quickly after months of delay suggests that he already had all the information he needed at hand but simply did not complete the settlement statement or issue the check until Contreras forced the issue.

D. Rule 1.15(d)

The Evidentiary Panel found that Pearlman violated rule 1.15(d), which requires a lawyer, upon termination of representation, to surrender papers and property to which a client is entitled (CR 160). Again, Pearlman’s Motion for New Trial did not address pertinent facts established by default, namely that Yañez demanded that Pearlman turn over her file so that she could hire a new lawyer but Pearlman, as of the date that the Commission filed its evidentiary petition, had

failed to turn over the file (CR 57). The Motion for New Trial made no mention of the charge that, upon termination of representation, Pearlman failed to surrender the file to Yañez (CR 184-87; App. 2).

E. Rule 8.04(a)(3)

The Evidentiary Panel found that Pearlman violated Rule 8.04(a)(3), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation (CR 160). The facts established by default included that “[o]n March 26, 2015, either [Pearlman] or someone acting at his discretion signed Contreras’s name to an Underinsured Motorist Release in regard to Contreras’s claim against the other driver” (CR 57-58). But as with Rules 1.03(b), 1.14(b), and 1.15(d), Pearlman’s Motion for New Trial did not address the conduct related to Rule 8.04(a)(3) (CR 181-84; App. 2). Pearlman simply ignored the issue. Accordingly, as with Rules 1.03(b), 1.14(b), and 1.15(d), under *Ivy v. Carrell*, Pearlman failed to set up a meritorious defense to the claim that he violated Rule 8.04(a)(3).

V. Pearlman did not satisfy the third prong of the *Craddock* standard because he failed to state that he was ready for trial.

The final prong of the *Craddock* standard requires a defaulting party to allege that the motion for new trial has been filed at a time when a decision to grant a new trial “will occasion no delay or otherwise work an injury to the plaintiff.” *Craddock*, 133 S.W.2d at 126. The motion for new trial should state that the

defaulting party is ready to go to trial immediately and will pay the expenses of the default judgment. *Evans*, 889 S.W.2d at 270 n.3. Although willingness to go to trial and pay expenses are not prerequisites to the grant of a new trial, they are important factors for the trial court to consider in its assessment of a motion for new trial. *Id.*

In this case, Pearlman's Motion for New Trial did not express his ability to go to trial immediately (CR 180-211; App. 2). Pearlman's failure to state that he was ready to go to trial provided yet another reasonable basis for the denial of the Motion for New Trial.

VI. The Board cannot consider documents attached to a party's brief that are not part of the appellate record.

With few exceptions, none of which is relevant here, a reviewing court cannot consider matters outside the appellate record. *Sabine Offshore Service v. City of Port Arthur*, 595 S.W.2d 840 (Tex.1979); *Adams v. Reynolds Tile and Flooring, Inc.*, 120 S.W.3d 417, 423 (Tex.App.—Houston [14th Dist.] 2003, no pet.); *Siefkas v. Siefkas*, 902 S.W.2d 72, 74 (Tex.App.—El Paso 1995, no writ). Therefore, the psychiatrist's letter dated February 17, 2017, and appended to Pearlman's brief cannot be considered and should be stricken.

CONCLUSION AND PRAYER

Because Pearlman's Motion for New Trial failed to satisfy all three of the factors set forth in *Craddock v. Sunshine Bus Lines*, he was not entitled to a new hearing. Thus, the Evidentiary Panel did not abuse its discretion by declining to grant a new hearing, and the Board should affirm the Judgment of Disbarment in all respects.

RESPECTFULLY SUBMITTED,

LINDA A. ACEVEDO
CHIEF DISCIPLINARY COUNSEL

LAURA BAYOUTH POPPS
DEPUTY COUNSEL FOR ADMINISTRATION

STEPHANIE PAN
ASSISTANT DISCIPLINARY COUNSEL

CYNTHIA CANFIELD HAMILTON
SENIOR APPELLATE COUNSEL

OFFICE OF THE CHIEF DISCIPLINARY
COUNSEL
STATE BAR OF TEXAS
P.O. BOX 12487
AUSTIN, TEXAS 78711
cynthia.hamilton@texasbar.com
TELEPHONE: 512.427.1350; 1.877.953.5535
FAX: 512.427.4167

/s/ Cynthia Canfield Hamilton
CYNTHIA CANFIELD HAMILTON
STATE BAR CARD No. 00790419
ATTORNEY FOR APPELLEE

CERTIFICATE OF COMPLIANCE

Pursuant to the Board of Disciplinary Appeals Internal Procedural Rules, the foregoing brief on the merits contains approximately 5,590 words (total for all sections of brief that are required to be counted), which is less than the total words permitted by the Board's Internal Procedural Rules. Counsel relies on the word count of the computer program used to prepare this petition.

/s/ Cynthia Canfield Hamilton
CYNTHIA CANFIELD HAMILTON

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing brief of Appellee, the Commission for Lawyer Discipline, has been served on Appellant, Mr. Jay Steven Pearlman, 214 Morton Street, Richmond, Texas 77469, by email to jaypearlman@jaypearlmanlawfirm.com and his co-counsel, Mr. Paul B. Rosen, The Rosen & Rosen Law Firm, L.P., 6750 West Loop South, Suite 800, Bellaire, Texas 77401, by email to paul@rosenfirm.com on the 12th day of June 2017.

/s/ Cynthia Canfield Hamilton
CYNTHIA CANFIELD HAMILTON

No. 58334

**Before the Board of Disciplinary Appeals
Appointed by
The Supreme Court of Texas**

**JAY STEVEN PEARLMAN,
APPELLANT**

V.

**COMMISSION FOR LAWYER DISCIPLINE,
APPELLEE**

*On Appeal from the Evidentiary Panel
For the State Bar of Texas District 5-1
Nos. 201503981 and 201503982*

**APPENDIX TO BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE**

LINDA A. ACEVEDO
CHIEF DISCIPLINARY COUNSEL

LAURA BAYOUTH POPPS
DEPUTY COUNSEL FOR
ADMINISTRATION

STEPHANIE PAN
ASSISTANT DISCIPLINARY COUNSEL

CYNTHIA CANFIELD HAMILTON
SENIOR APPELLATE COUNSEL

OFFICE OF THE CHIEF DISCIPLINARY
COUNSEL

COMMISSION FOR LAWYER DISCIPLINE
STATE BAR OF TEXAS
P.O. Box 12487
AUSTIN, TEXAS 78711-2487
512.427.1350; 1.877.953.5535
FAX: 512.427.4167

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**APPENDIX TO BRIEF OF APPELLEE
COMMISSION FOR LAWYER DISCIPLINE**

TO THE HONORABLE BOARD OF DISCIPLINARY APPEALS:

The Commission for Lawyer Discipline attaches the following documents in support of the foregoing brief:

APPENDIX 1: Judgment of Disbarment (CR 158-63)

APPENDIX 2: Motion to Set Aside Default Judgment and Grant New Trial (CR 180-211)

Appendix 1

BEFORE EVIDENTIARY PANEL 5-1 OF THE
STATE BAR DISTRICT NO. 5 GRIEVANCE COMMITTEE

FILED

AUG 15 2016

COMMISSION FOR LAWYER DISCIPLINE, §
Petitioner, §

201503981 [YANEZ]

STATE BAR OF TEXAS
HOUSTON CDC

v. §

201503982 [CONTRERAS]

JAY STEVEN PEARLMAN, §
Respondent. §

FORT BEND COUNTY, TEXAS

JUDGMENT OF DISBARMENT

Parties and Appearance

On the 10th day of August, 2016, came to be heard the above-captioned cause. Petitioner, the Commission for Lawyer Discipline, appeared through its attorney of record and announced ready. Respondent, Jay Steven Pearlman, Texas Bar Number 15689950, although duly served with Petitioner's Original Evidentiary Petition and notice of this default and sanctions hearing, failed to appear.

Jurisdiction and Venue

Evidentiary Panel 5-1, having been duly appointed to hear this complaint by the chair of the Grievance Committee for State Bar of Texas District No. 5, finds that it has jurisdiction over the parties and the subject matter of this action and that venue is proper.

Default

The Evidentiary Panel finds that Respondent was properly served with Petitioner's Original Evidentiary Petition and that Respondent failed to timely file a responsive pleading to the petition as required by Rule 2.17B of the Texas Rules of Disciplinary Procedure. Accordingly, the Evidentiary Panel finds Respondent in default and further finds that all facts alleged in Petitioner's Original Evidentiary Petition are deemed true pursuant to Rule 2.17C of the Texas Rules of Disciplinary Procedure.

Professional Misconduct

The Evidentiary Panel, having deemed all facts as alleged in the Evidentiary Petition true, finds that Respondent has committed Professional Misconduct as defined by Rule 1.06W of the Texas Rules of Disciplinary Procedure.

Findings of Fact

The Evidentiary Panel, having considered the allegations as deemed true, the pleadings, evidence, and argument of counsel, makes the following findings of fact and conclusions of law:

1. Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas.
2. Respondent maintains his principal place of practice in Fort Bend County, Texas.
3. The Chief Disciplinary Counsel of the State Bar of Texas has incurred reasonable and necessary attorneys' fees in the amount of \$1,125.00 and direct expenses in the amount of \$340.00 associated with this Disciplinary Proceeding.

201503981 Veronica Yañez matter

4. Respondent failed to keep Veronica Yañez reasonably informed about the status of her legal matter and failed to comply with reasonable requests for information.
5. Upon receiving funds in which Veronica Yañez has an interest, Respondent failed to promptly notify Yañez and failed to promptly deliver the funds to Yañez.
6. Upon termination of representation, Respondent failed to surrender papers to Yañez to which she was entitled.
7. Respondent owes restitution in the amount of \$10,000.00 to Veronica Yañez.

201503982 Yumira Contreras matter

8. Respondent failed to keep Yumira Contreras reasonably informed about the status of her legal matter and failed to comply with reasonable requests for information.
9. Respondent failed to explain a legal matter to the extent reasonably necessary to permit Yumira Contreras to make informed decisions regarding the representation.
10. Upon receiving funds in which Yumira Contreras has an interest, Respondent failed to promptly notify Contreras and failed to promptly deliver the funds to Contreras.

Default Judgment of Disbarment

11. Respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in regard to his representation of Yumira Contreras.
12. Respondent owes restitution in the amount of \$14,283.00 to Yumira Contreras.

Conclusions of Law

The Evidentiary Panel concludes that, based upon the foregoing findings of fact, the following Texas Disciplinary Rules of Professional Conduct have been violated: Rules 1.03(a), 1.03(b), 1.14(b), 1.15(d), and 8.04(a)(3).

Sanction

The Evidentiary Panel, having found that Respondent has committed Professional Misconduct, heard and considered additional evidence regarding the appropriate sanction to be imposed against Respondent. After hearing evidence and argument and after considering the factors in Rule 2.18 of the Texas Rule of Disciplinary Procedure, the Evidentiary Panel finds that the proper discipline of the Respondent for each act of Professional Misconduct is Disbarment.

Disbarment

It is therefore ORDERED, ADJUDGED, and DECREED that Respondent, Jay Steven Pearlman, State Bar Number 15689950, is hereby DISBARRED from the practice of law in the State of Texas, effective on the date this judgment is signed.

It is further ORDERED that Respondent is prohibited from practicing law in Texas, holding himself out as an attorney at law, performing any legal services for others, accepting any fee directly or indirectly for legal services, appearing as counsel or in any representative capacity in any proceeding in any Texas court or before any administrative body or holding himself out to others or using his name, in any manner, in conjunction with the words "attorney at law," "attorney," "counselor at law," or "lawyer."

Notification

It is further ORDERED that Respondent shall, on or before thirty (30) days from the signing of this judgment by the Panel chair, notify in writing each of his current clients in writing of this disbarment. In addition to such notification, Respondent is ORDERED to return any files, papers, unearned monies, and other property belonging to clients and former clients in the Respondent's possession to the respective clients or former clients or to another attorney at the client's or former client's request. Respondent is further ORDERED to file with the State Bar of Texas, Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), within thirty (30) days of the signing of this judgment by the Panel Chair, an affidavit stating that all current clients have been notified of Respondent's disbarment and that all files, papers, unearned monies, and other property belonging to all clients and former clients have been returned as ordered herein.

It is further ORDERED that Respondent shall, on or before thirty (30) days from the signing of this judgment by the Panel Chair, notify in writing each and every justice of the peace, judge, magistrate, administrative judge or officer, and chief justice of each and every court or tribunal in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing. Respondent is further ORDERED to file with the State Bar of Texas, Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) within thirty (30) days of the signing of this judgment by the Panel Chair, an affidavit stating that each and every justice of the peace, judge, magistrate, administrative judge or officer, and chief justice has received written notice of the terms of this judgment.

Surrender of License

It is further ORDERED that Respondent shall, within thirty (30) days of the signing of this judgment by the Panel Chair, surrender his law license and permanent State Bar Card to the State Bar of Texas, Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701), to be forwarded to the Supreme Court of the State of Texas.

Restitution, Attorneys' Fees, and Expenses

It is further ORDERED that Respondent shall pay restitution on or before October 1, 2016, to Veronica Yanez in the amount of \$10,000.00. Respondent shall pay the restitution by certified or cashier's check or money order made payable to Veronica Yanez and delivered to the State Bar of Texas, Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further ORDERED that Respondent shall pay restitution on or before October 1, 2016, to Yumira Contreras in the amount of \$14,283.00. Respondent shall pay the restitution by certified or cashier's check or money order made payable to Yumira Contreras and delivered to the State Bar of Texas, Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further ORDERED that Respondent shall pay reasonable and necessary attorneys' fees in the amount of \$1,125.00 and direct expenses in the amount of \$340.00 to the State Bar of Texas. The total payment of \$1,465.00 shall be due and payable on or before December 1, 2016, and shall be made by certified or cashier's check or money order. Respondent shall forward the funds, made payable to the State Bar of Texas, to the Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701).

It is further ORDERED that all amounts ordered herein are due to the misconduct of Respondent and are assessed as a part of the sanction in accordance with Rule 1.06Z of the Texas Rules of Disciplinary Procedure. Any amount not paid shall accrue interest at the maximum legal rate per annum until paid and the State Bar of Texas shall have all writs and other post-judgment remedies against Respondent in order to collect all unpaid amounts.

Publication

It is further ORDERED that this disbarment shall be made a matter of record and appropriately published in accordance with the Texas Rules of Disciplinary Procedure.

Condition Precedent to Reinstatement

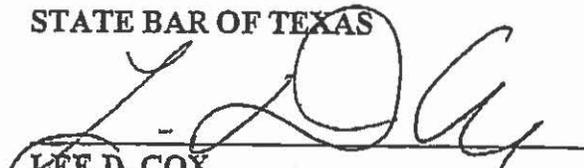
It is further ORDERED that payment of the foregoing restitution and attorneys' fees and direct expenses shall be a condition precedent to any consideration of reinstatement from disbarment as provided by Rules 2.19, 2.20 and 11.02D of the Texas Rules of Disciplinary Procedure.

Other Relief

All requested relief not expressly granted herein is expressly DENIED.

SIGNED this 15 day of August, 2016.

EVIDENTIARY PANEL 5-1
DISTRICT NO. 5
STATE BAR OF TEXAS


LEE D. COX
Panel 5-1 Chair

Appendix 2

**BEFORE EVIDENTIARY PANEL 5-1 OF THE
STATE BAR DISTRICT NO. 5 GRIEVANCE COMMITTEE**

COMMISSION FOR LAWYERS DISCIPLINE	§	201503981 [YANEZ]
Petitioner	§	
	§	
V.	§	201503982 [CONTRERAS]
	§	
JAY STEVEN PEARLMAN	§	
Respondent	§	FORT BEND COUNTY, TEXAS

**RESPONDENT’S MOTON TO SET ASIDE DEFAULT JUDGMENT
AND GRANT NEW TRIAL**

This Motion to Set Aside Default Judgment and Grant New Trial is brought by Jay Steven Pearlman, Respondent, who shows in support:

1. This motion is presented within the time allowed by law on motions for new trial, the default judgment in this case having been rendered on August 15, 2016.

2. The failure of Respondent to file an answer before judgment/appear on the trial date was the result of accident and mistake, rather than Respondent’s intentional or conscious indifference, because:

(a) After discussing with the clients, Contreras and Yanez, their respective cases, including the grievances filed with the State Bar of Texas, and resolving any problems or concerns, Contreras and Yanez advised Respondent, Jay Steven Pearlman, attorney for Contreras and Yanez, to continue to represent them. Additionally, Contreras and Yanez indicated to Respondent that they would no longer pursue their grievances filed with the State Bar of Texas.

(b) Respondent accidentally failed to calendar the hearing/trial date of August 15, 2016.

(c) Respondent has been under undue emotional and mental stress due to personal and family related matters, including, but not limited to a pending divorce, handling all matters

related to his daughter, Skyler R. Pearlman, a sophomore at Texas Tech University, maintaining his family's household, and maintaining his law practice.

3. Petitioner's cause of action is based on the complaints of Yumira Contreras and Veronica Yanez. Such complaints are as follows:

COMPLAINTS OF YUMIRA CONTRERAS:

(1) Respondent failed to keep Yumira Contreras reasonably informed about the status of her legal matters and failed to comply with reasonable requests for information; (2) Failed to explain a legal matter to the extent reasonably necessary to permit Yumira Contreras to make informed decisions regarding the representation; (3) Upon receiving funds in which Yumira Contreras has an interest, Respondent failed to promptly notify Contreras and failed to promptly deliver the funds to Contreras; and, (4) Respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in regard to his representation of Yumira Contreras. To this cause of action, Respondent can and does set up the meritorious defense that all of the complaints Yumira Contreras are unfounded. Respondent offers the following facts and information to each such complaint:

RESPONDENT'S RESPONSE TO COMPLAINTS OF CONTRERAS:

Respondent's representation of Yumira Contreras arises from her claim for personal injuries resulting from a vehicular accident that occurred on June 9, 2014. Ms. Contreras was referred by my then legal secretary who is a relative of Ms. Contreras. This case was handled in the normal manner in which other personal injury/automobile claim were handled by Respondent's office, including, but not limited to filing a with the insurance company (uninsured claim), making medical care and treatment available to Ms. Yanez by providing a Letter of Protection and/or advanced payments to medical providers that treated Ms. Yanez for her

injuries. After Ms. Contreras completed her medical treatment, Respondent's office obtained all medical bills and records and forward them along with a settlement demand to the insurance company (adjuster). After lengthy negotiations between Respondent and Farmers, Ms. Contreras' case was settled. After the case was settled, Respondent's office, on behalf of Ms. Contreras, negotiated reductions for medical bills with medical providers who provided treatment to Ms. Contreras. Due to the fact that Respondent's then legal secretary of 12 years [a relative of both Yumira Contreras and Veronica Yanez] and Respondent parted ways, communication between Respondent and Ms. Contreras became strained for a brief period of time. Prior to June 26, 2015, Respondent spoke with Ms. Contreras and had explained to her that due to the fact his secretary (her cousin) terminated her employment with him on June 8, 2015, he doing my best to get to all my existing cases without any secretarial assistance, including her case. Ms. Contreras stated she was aware that Respondent's secretary left her employment. Respondent confirmed that the case was settled and that it was his understanding that reductions had been obtained by the secretary, but he needed to confirm these amounts before he prepared a final settlement statement. On or about June 26, 2015 at 10:30 a.m., Respondent was leaving his office for an appointment when Ms. Contreras, her mother, Veronica Yanez, and other family members, appeared at Respondent's office without an appointment or any prior notice to Respondent. Respondent apologized for not completing a final settlement statement and he would do so immediately. Respondent explained to Ms. Contreras was leaving his office for an appointment and Respondent asked Contreras to come back to his office at 1:00 p.m. on the same day. Respondent told Ms. Contreras he would have a final settlement statement completed for her to approve and signature. In addition, Respondent would provide Ms. Contreras a check for her [client] share of the total settlement in accordance with the Final Settlement Statement. Ms.

Contreras agreed to be back in my office that afternoon at 1:00 p.m. After Respondent returned from his morning appointment, he promptly completed a Final Settlement Statement and wrote a check from his Client-Trust Account made payable to Yumira Contreras in the amount due the client [\$11,818.34] and left the Final Settlement Statement and a Client-Trust check made payable to Yumira Contreras in the amount \$11,818.34 with the receptionist. A true and correct copy of the Final Settlement Statement and Client-Trust check made payable to Yumira Contreras in the amount of \$11,818.34 is attached hereto as Exhibit "A" and incorporated herein by reference, as if fully copied and set forth at length. Respondent had to leave the office at 1:30 p.m. to attend to a personal matter. Respondent assumed Ms. Contreras came back to sign the Final Settlement Statement and pick up her check. The next morning, Respondent was surprised to discover Ms. Contreras did not come back to his office. The office was open and the receptionist was available from 1:00 p.m. - 5:00 p.m. Furthermore, Respondent did not receive a call or message from Ms. Contreras as to why she did not come back to the office that afternoon. Respondent contacted Ms. Contreras to inquire why she did not come back to the office the afternoon of June 26, 2015 to approve and sign the Final Settlement Statement and pick up her check as agreed. She did not offer an explanation why she did not return that day. I told her the Final Settlement Statement and Client-Trust check would continue to remain with the receptionist and she could come to the office at her convenience to sign the Final Settlement Statement and pick up the Client-Trust check made payable to her in the amount of \$11,818.34. Respondent did not hear back from her for an extended period of time. Some period of time later, Ms. Contreras contacted Respondent. It was during this telephone conversation that Ms. Contreras stated to Respondent she returned to the office in the afternoon of June 26, 2015 and was informed by the receptionist that Respondent did not leave a Final Settlement Statement for

her to sign and a check for her. The receptionist has conveyed to me that this is completely false. During the same conversation, Ms. Contreras requested that Respondent send the Final Settlement Statement and the check in the amount of \$11,818.34 to her by mail. Respondent informed Ms. Contreras she would have to sign the Final Settlement Statement before Respondent could send her the check. Respondent forwarded the Final Settlement Statement to Ms. Contreras for her approval and signature. The Final Settlement Statement included a detailed explanation of the total settlement amount, deductions, including, but not limited to, attorney's fees, payments to medical providers, case expenses, and the amount to be paid to client [Yumira Contreras] from the total settlement [\$11,818.34]. Ms. Contreras failed to approve and sign and return the Final Settlement Statement forwarded to her by Respondent. Respondent did not hear from Ms. Contreras until some later date. At such time, Ms. Contreras communicated her desire to meet at Respondent's office and finalize her case. On or about April 12, 2016, Ms. Contreras came to Respondent office, signed the Final Settlement Statement and Respondent issued her a Client-Trust check in the amount of \$11,818.34 [client's share of the total settlement with Farmers]. A true and correct copy of the Final Settlement Statement and Client-Trust check made payable to Yumira Contreras in the amount of \$11,818.34, dated April 12, 2016, is attached hereto as Exhibit "B" and incorporated herein by reference, as if fully copied and set forth at length. Ms. Contreras expressed to Respondent that she was glad this matter was finally resolved to her satisfaction. Furthermore, Ms. Contreras stated she did not want to go forward with her grievance filed against Respondent with the State Bar of Texas.

COMPLAINTS OF VERONICA YANEZ:

(1) Respondent failed to keep Veronica Yanez reasonably informed about the status of her legal matters and failed to comply with reasonable requests for information; (2) Upon

receiving funds in which Veronica Yane has an interest, Respondent failed to promptly notify Contreras and failed to promptly deliver the funds to Contreras; and, (3) Upon termination of representation, Respondent failed to surrender papers to Yanez to which she was entitled. To this cause of action, Respondent can and does set up the meritorious defense that all of the complaints Veronica Yanez are unfounded. Respondent offers the following facts and information to each such complaint:

RESPONDENT'S RESPONSE TO COMPLAINTS OF YANEZ:

Respondent's representation of Veronica Yanez arises from her claim for personal injuries resulting from a vehicular accident that occurred on June 9, 2014. Ms. Yanez was referred by my then legal secretary who is a relative of Ms. Yanez. Ms. Yanez's English is very limited and most communications went through the legal secretary. This case was handled in the normal manner in which other personal injury/automobile claim were handled by Respondent's office, including, but not limited to filing a with the insurance company (uninsured claim), making medical care and treatment available to Ms. Yanez by providing a Letter of Protection and/or advanced payments to medical providers that treated Ms. Yanez for her injuries. After Ms. Yanez completed her medical treatment, Respondent's office obtained all medical bills and records and forward them along with a settlement demand to the insurance company (adjuster). Due to the fact that my Respondent's legal secretary of 12 years and Respondent parted ways, communication became somewhat strained for a brief period of time. On or about June 26, 2015, Respondent was leaving his office for an appointment when Ms. Yanez, Ms. Contreras, and other family members appeared at Respondent's office without an appointment or any prior notice to Respondent to discuss her case. Respondent explained to Ms. Yanez and her family members that Respondent had forwarded a Settlement Brochure to Farmers Texas County Mutual

Insurance Company on February 27, 2015, but has been unable to negotiate a fair and reasonable settlement with Farmers Texas County Mutual Insurance Company. Ms. Yanez and Respondent did not discuss the status of her claim until a telephone conversation between Respondent and a daughter of Ms. Yanez took place on or about February 14, 2016. During this conversation, Respondent again explained that he had been unable to negotiate a fair and reasonable settlement with Farmers Texas County Mutual Insurance Company and told the daughter of Ms. Yanez that Respondent would file a lawsuit if she was not satisfied with the offer to settle her claim by Farmers Texas County Mutual Insurance Company. Furthermore, Respondent advised the daughter of Ms. Yanez that Farmers Texas County Mutual Insurance Company would require Ms. Yanez submit to an Examination Under Oath ("EUO"), as required by the insurance policy under which her was pursuing an uninsured motorist claim, before a lawsuit could be filed on her behalf. Any and all problems between Ms. Yanez and Respondent were resolved and Respondent was asked to continue his legal representation. Respondent agreed to continue his representation. On or about February 14, 2016, Respondent sent a letter to Kellie Cmkovic-obey, claims adjuster for Farmers Texas County Mutual Insurance Company, and Sherra V. Gilbert, legal counsel for Farmers Texas County Mutual Insurance Company advising them I would continue to represent Veronica Yanez. A true and correct copy of this letter is attached hereto as Exhibit "C" and incorporated herein, as if fully copied and set forth at length.

The EUO of Ms. Yanez was performed on May 5, 2016 at the law office of the insurance company's legal counsel. In attendance were Veronica Yanez, her daughter, Cindy, and Respondent. After the EUO, Respondent was still unable to negotiate a fair and reasonable settlement and a lawsuit was filed on behalf of Ms. Yanez. At all times, Ms. Yanez was well informed of her case and advised of her rights and options. She was informed of all monetary

offers made by the insurance company to settle her case. She agreed that the offers were not fair and reasonable and authorized Respondent to file a lawsuit on her behalf. This lawsuit is pending in the 113th District Court, Harris County, Texas, Cause No. 2016-45593, styled, "Veronica Yanez v. Farmers Texas County Mutual Insurance Company." A true and correct copy of the lawsuit is attached hereto as Exhibit "D" and incorporated herein by reference, as if fully copied and set forth at length.

4. A new trial/hearing in this case will neither occasion delay nor prejudice Yumira Contreras and/or Veronica Yanez, for the following reasons:

Ms. Contreras has already received and accepted a check on April 12, 2016 for her share of the total settlement as set forth in the Final Settlement Statement and signed the Final Settlement Statement.

Ms. Yanez's case is pending in the 113th District Court, Harris County, Texas, Cause No. 2016-45593, styled, "Veronica Yanez v. Farmers Texas County Mutual Insurance Company."

5. Jay Steven Pearlman will tender reasonable costs and expenses incurred by reason of this motion.

Jay Steven Pearlman, Respondent, prays that the Court/Evidentiary Panel grant the Motion to Set Aside Default Judgment and grant a new trial/hearing.

Respectfully submitted,

Jay S. Pearlman

Jay S. Pearlman
 Attorney at Law
 SBN: 15689950
 214 Morton Street
 Richmond, Texas 77469
 Telephone: (832) 449-7920
 Facsimile: (832) 449-7924
 E-mail: jaypearlman@jaypearlmanlawfirm.com
PRO SE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of *Respondent's Motion to Set Aside Default Judgment and Grant a New Trial* has been served to all parties and counsel of record in the manner indicated below, in compliance with Rule 21a of the Texas Rules of Civil Procedure on September 13, 2016.

Via Regular U.S. Mail
& Facsimile: (713) 758-8292
Timothy R. Bersch
Assistant Disciplinary Counsel
State Bar of Texas
Office of the Chief Disciplinary Counsel
4801 Woodway Drive, Suite 315-W
Houston, Texas 77056

/s/ Jay S. Pearlman
Jay S. Pearlman

JAY S. PEARLMAN
Attorney At Law

214 Morton Street • Richmond, Texas 77469
713-802-9990 Houston • 832-449-7920 Richmond
713-869-7379 Fax • 1-800-580-2828
jaypearlman@jaypearlmanlawfirm.com
Member of State Bar of Texas & The Florida Bar

Re: Claimants/Clients : Yumira Contreras
Insured : Fermin Valdez
Date of Accident : July 9, 2014
Claim Number : 3001055372

FINAL SETTLEMENT STATEMENT OF YUMIRA CONTRERAS

I. SETTLEMENT: \$ 36,500.00

- 1. **Uninsured Settlement-----\$26,500.00**
- 2. **Personal Injury Protection----- \$10,000.00**

II. DEDUCTIONS:

1. **ATTORNEY FEES: \$ 12,166.66**

2. **MEDICAL BILLS INCURRED:**
[Proposed Medical Bill Reduction not included]

MEDICAL PROVIDER

CYPRESSWOOD CLINIC ASSOCIATES/----- \$ 980.00
AIRLINE PHYSICAL THERAPY & REHAB

CHANNELVIEW FIRE DEPARTMENT/FIRE RECOVERY USA \$ 435.00

INTERVENTIONAL SPINE OF TEXAS/KENNETH LE, M.D.---- \$ 20,475.30

MARK S. SANDERS, M.D.----- \$ 1,100.00

ADVANCED DIAGNOSTICS HEALTHCARE----- \$ 2,098.98

PHIL CONKLIN, D.C.----- \$ 4,060.00

EMERIT "A"

TOTAL MEDICAL BILLS INCURRED: \$ 29,149.28

2.2 MEDICAL BILLS WITHHELD:

[Proposed Medical Bills Reduction included]

MEDICAL PROVIDER

INTERVENTIONAL SPINE OF TEXAS/KENNETH LE, M.D.----- \$ 7,000.00

MARK S. SANDERS, M.D.----- \$ 1,100.00

ADVANCED DIAGNOSTICS HEALTHCARE----- \$ 1,000.00

PHIL CONKLIN, D.C.----- \$ 2,000.00

CYPRESSWOOD CLINIC ASSOCIATES/----- \$ 980.00
AIRLINE PHYSICAL THERAPY & REHAB

CHANNELVIEW FIRE DEPARTMENT/FIRE RECOVERY USA- \$ 435.00

TOTAL MEDICAL BILLS WITHHELD: \$ 12,515.00

[Medical Bills Reduction included]

3. CASE EXPENSES/ADVANCES TO CLIENT:

TOTAL CASE EXPENSES: \$ 25.00

1. Accident Report Fee, Postage, Copies, Etc.----- \$ 25.00

III. CLIENT'S NET PAYMENT: \$ 11,818.34

V. ACKNOWLEDGEMENTS:

Client, Yumira Contreras, acknowledges and agrees that Jay S. Pearlman, Attorney at Law, will withhold money from settlement of the above-referenced claim and make payment in the amount withheld on any and all medical bills incurred by Yumira Contreras for treatment of the injuries she sustained in the vehicular accident of July 9, 2014; and, made a part of the above-referenced claim, that the Law Office of Jay S. Pearlman is legally obligated to withhold from the settlement and pay pursuant to contractual obligation (Letter of Protection), statutory hospital

lien(s), or Federal Medicare/Medicaid lien(s) as set forth in Section II - Deductions, Subsection 2.2. – Medical Bills Withheld.

Client, Yumira Contreras, acknowledges and agrees that she is solely responsible for payment of any and all medical bills, statutory hospital liens, and Federal Medicare/Medicaid liens incurred as a result of the treatment for injuries sustained in the above-referenced accident that are not withheld from the total settlement amount by Jay S. Pearlman, Attorney at Law, in Section II -Deductions, Subsection 2.2. – Medical Bills.

Client, Yumira Contreras, acknowledges and agrees that to the best of her knowledge there are not any additional statutory hospital liens, Federal Medicare/ Medicaid liens, or that any health insurance carrier has an indemnity and/or subrogation right to the settlement funds received from the above-referenced claim.

By my signature below, I, Yumira Contreras, agree to this Final Settlement Statement of Yumira Contreras and acknowledge the above-referenced claim was settled for the total amount of \$36,500.00. Furthermore, I, Yumira Contreras, acknowledge that after all deductions [Paragraph II –Deductions] I received \$11,818.34 as my portion from the total settlement amount of \$36,500.00 by Jay S. Pearlman, Attorney at Law, Client-Trust Account, Check No. 7063.

SIGNED on June 25, 2015.

YUMIRA CONTRERAS

PAY TO THE ORDER OF YUMIRA CONTRERAS

Every thousand Eight hundred Eighty one and 34/100 DOLLARS

FOR FINAL SETTLEMENT - YUMIRA CONTRERAS

CHASE  JP Morgan Chase Bank, N.A. www.Chase.com

JAY STEVEN PEARLMAN
TRUST ACCOUNT
214 MORTON ST. 713-802-9990
RICHMOND, TX 77489-3117

DATE 6-26-15

\$ 1,818.34

7063

⑆007083⑆ ⑆111000614⑆ ⑆1700059356⑆

PAY TO THE ORDER OF <i>Yumina Contreras</i> Eleven Thousand Eight Hundred Eighty Four DOLLARS \$ 11,818.34		JAY STEVEN PEARLMAN TRUST ACCOUNT 214 MORTON ST. 713-802-9890 RICHMOND, TX 77469-3117	DATE 4-12-16	7081
FOR CONTRERAS YUMINA CHASE Pearlman Chase Bank, N.A. www.chase.com	#007081# : 111000614# : 1700059360#	ANP		

EXHIBIT 124

JAY S. PEARLMAN*Attorney At Law*

214 Morton Street • Richmond, Texas 77469
 713-802-9990 Houston • 832-449-7920 Richmond
 713-869-7379 Fax • 1-800-580-2828
 jaypearlman@jaypearlmanlawfirm.com
 Member of State Bar of Texas & The Florida Bar

February 14, 2016

Via Regular U.S. Mail, CM/RRR #
& E-mail: kellie.crnkovic-obey@farmersinsurance.com

Kellie Crnkovic-obey
 Farmers Texas County Mutual Insurance Company
 National Document Center
 P.O. Box 268993
 Oklahoma City, OK 73126-8994

Re: Claimant/Client : Veronica Yanez
 Insured : Fermin Valdez
 Date of Accident : July 9, 2014
 Claim Number : 3001055372-1-1

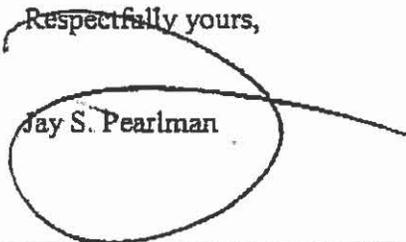
Dear Ms. Crnkovic-obey:

Please be advised that I will continue to represent Veronica Yanez in the above-referenced claim. Farmers Texas County Mutual Insurance Company ("Farmers") has requested that Veronica Yanez submit to an Examination Under Oath ("EUO") pursuant the terms and conditions of the Farmers automobile policy number 0045731981 ("Policy") under which Veronica Yanez has made an uninsured claim.

In order that Veronica Yanez comply with the term and conditions set forth the Policy, please have your legal counsel contact my office to make arrangements to have my client, Veronica Yanez, submit to an EUO. Please make note that Ms. Yanez will require an interpreter.

Upon completion of the EUO, I will be filing a lawsuit on behalf of Veronica Yanez. If Farmers would prefer to forego the pre-litigation EUO and take Veronica Yanez's deposition after litigation has commenced, please advise my office.

Respectfully yours,


 Jay S. Pearlman

JSP/at

Page 1 of 2

Veronica Contreras vs. Farmers Insurance Company
Letter to Farmers - Examination Under Oath

EXHIBIT "C"

0194

Cc: **Via Regular U.S. Mail**
& E-mail: houstonlegal@farmersinsurance.com
Sherra V. Gilbert
Attorney at Law
Fanaff & Baldwin
P.O. Box 258829
Oklahoma City, OK 73125-8829

Jay Pearlman

From: Jay Pearlman <jaypearlman@jaypearlmanlawfirm.com>
Sent: Sunday, February 14, 2016 8:12 PM
To: kellie.crnkovic-obey@farmersinsurance.com
Cc: houstonlegal@farmersinsurance.com
Subject: Re: Claim No. 3001055372-1-1
Attachments: Letter to Farmers - EUO.pdf

Ms. Crnkovic-obey,

Please see the attached letter.

Respectfully,

Jay S. Pearlman
Attorney at Law
SBN: 15689950
214 Morton Street
Richmond, Texas 77469
Telephone: (713) 802-9990 [Houston]
Telephone: (832) 449-7920 [Richmond]
Facsimile: (713) 869-7379
E-mail: jaypearlman@jaypearlmanlawfirm.com

Jay Pearlman

From: Jay Pearlman <jaypearlman@jaypearlmanlawfirm.com>
Sent: Sunday, February 14, 2016 8:18 PM
To: legaldocs@farmers.com
Subject: FW: Re: Claim No. 3001055372-1-1
Attachments: Letter to Farmers - EUO.pdf

Sherra,

Please see the attached letter.

Jay

Jay S. Pearlman
Attorney at Law
SBN: 15689950
214 Morton Street
Richmond, Texas 77469
Telephone: (713) 802-9990 [Houston]
Telephone: (832) 449-7920 [Richmond]
Facsimile: (713) 869-7379
E-mail: jaypearlman@jaypearlmanlawfirm.com

From: Jay Pearlman [<mailto:jaypearlman@jaypearlmanlawfirm.com>]
Sent: Sunday, February 14, 2016 8:12 PM
To: kellie.crnkovic-obey@farmersinsurance.com
Cc: houstonlegal@farmersinsurance.com
Subject: Re: Claim No. 3001055372-1-1

Ms. Crnkovic-obey,

Please see the attached letter.

Respectfully,

Jay S. Pearlman
Attorney at Law
SBN: 15689950
214 Morton Street
Richmond, Texas 77469
Telephone: (713) 802-9990 [Houston]
Telephone: (832) 449-7920 [Richmond]
Facsimile: (713) 869-7379
E-mail: jaypearlman@jaypearlmanlawfirm.com

2016-45593 / Court: 113

CAUSE NO. _____

VERONICA YANEZ
Plaintiff

VS.

**FARMERS TEXAS COUNTY
MUTUAL INSURANCE COMPANY**
Defendant

§
§
§
§
§
§
§
§
§
§

IN THE CIVIL DISTRICT COURT

OF HARRIS COUNTY, TEXAS

JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE COURT:

NOW COMES, **VERONICA YANEZ** (hereinafter referred to as "Plaintiff"), complaining of **FARMERS TEXAS COUNTY MUTUAL INSURANCE COMPANY** (hereinafter referred to as "Defendant Farmers"), and for cause of action would respectfully shows the Court and jury the following:

I.
DISCOVERY CONTROL PLAN

1.1 Plaintiff intends to conduct discovery under a Level Two (2) discovery control plan pursuant to Rule 190 of the Texas Rules of Civil Procedure.

II.
CLAIM FOR RELIEF

2.1 Plaintiff seeks damages for personal injuries she sustained as a direct and proximate cause of a vehicular accident more specifically set forth in Paragraph 5.1 herein below.

2.2 Plaintiff seeks only monetary relief aggregating \$100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney's fees.

EXHIBIT "A" 0198

2.3 The damages sought are within the jurisdictional limits of the court.

2.3 Plaintiff requests that this claim for relief be prosecuted pursuant to Rule 169 of the Texas Rules of Civil Procedure (Expedited Actions).

III. PARTIES AND SERVICE

3.1 Plaintiff is an individual and resident of Harris County, Texas, residing at 13117 Verdun Drive, Houston, Texas 77049.

3.2 Defendant Farmers is a domestic county mutual insurance company located in Austin, Texas, duly licensed and lawfully doing business in the State of Texas and duly authorized to issue automobile insurance in the State of Texas. Service on Defendant Farmers may be obtained by serving its registered agent/attorney for service, Chris Granger, 15700 Long Vista Drive, Austin, Texas 78728 or wherever he may be found.

IV. JURISDICTION AND VENUE

4.1 This Court has personal jurisdiction over Defendant Allstate because it avails itself of the privilege of doing business in the State of Texas, and the subject matter of this action arises under the common law and statutes of the State of Texas. Furthermore, the amount in controversy is within the jurisdictional limits of this Court.

4.2 Venue is proper in this Court because suit on a policy against an insurance carrier may be brought in the county in which the policyholder or beneficiary instituting the suit resided at the time the cause of action accrued, pursuant to Texas Civil Practice & Remedies Code § 15.032.

V.
FACTS

5.1 Plaintiff sustained personal injuries as a direct and proximate cause of a motor vehicle accident that occurred on July 9, 2014. At the time of the motor vehicle accident, Plaintiff was a front seat passenger in a 2002 GMC Yukon motor vehicle being driven by her daughter, Yumira Contreras. While the 2002 GMC Yukon traveled north bound upon the 5800 block of E. Sam Houston Parkway North, a vehicle pulled out from the underpass of the freeway and violently and unexpectedly struck the 2002 GMC Yukon motor vehicle in which Plaintiff was a passenger, causing the 2002 GMC Yukon motor vehicle to loss control and flip over. The "unknown vehicle" fled the scene of the accident.

5.2 At the time of the motor vehicle accident, Plaintiff was insured by Defendant, **FARMERS TEXAS COUNTY MUTUAL INSURANCE COMPANY** under Policy Number xxxxxxxxxxxx, for injuries and damages proximately caused by the negligent conduct of uninsured motorists.

VI.
NEGLIGENCE OF "UNKNOWN DRIVER"

6.1 Plaintiff incorporates all other paragraphs as if fully set forth here verbatim.

6.2 The "unknown driver" committed the following acts and omissions, which singularly or in combination with others, constitutes negligence, which was the proximate of the motor vehicle accident made the basis of this lawsuit, and the injuries and damages sustained by Plaintiff:

- (1) Failing to keep a proper lookout;
- (2) Failed to make a timely application of the brakes to his/her vehicle to avoid the collision in question;

(3) Failing to operate his/her motor vehicle as a reasonable driver of ordinary prudence would do in the same or similar circumstances;

(4) Failing to turn his/her vehicle in order to avoid the collision in question;

(5) Failing to keep his/her vehicle under control; and,

(6) Failed to control the speed of his/her vehicle.

**VII.
DAMAGES**

7.1 Plaintiff incorporates all other paragraphs as if fully set forth here verbatim.

7.2 As a direct and proximate cause of the "unknown driver's" aforementioned actions and/or omissions, Plaintiff sustained the following damages:

7.3 Past reasonable and necessary medical expenses:

- 1. Cypresswood Clinic Associates / Airline Physical Therapy & Rehab----- \$ 1,080.00
- 2. Midtown Psychiatry and TMS Center / Daniella M. White, M.D.----- \$ 450.00
- 3. Phil Conklin, D.C.----- \$ 4,473.00
- 4. Mark S. Sanders, M.D.----- \$ 1,100.00
- 5. Advanced Diagnostics Healthcare----- \$ 4,626.52
[08/13/14 Lumbar MRI - \$2,528.52 & 09/02/14 Neck/Spine - \$2,098.00]
- 6. Bayshore Medical Center----- \$ 3,752.00
- 7. Bucking Horse ER Physicians, PLLC----- \$ 1,190.00
- 8. United Northeast Radiology, LLP----- \$ 43.00
- 9. Alliance Pathology Consultants, P.A.----- \$ 13.70
- 10. South Lake Houston EMS----- \$ 3,405.46
- 11. Houston MRI-East / DRH & Associates----- \$ 1,725.00

7.4 As a further result of the injuries sustained by Plaintiff, there is a reasonable probability that she will require further medical care and attention and will incur medical specials for future reasonable and necessary expenses for her medical care and attention.

7.5 Past other out-of-pocket expenses/losses;

7.6 Past and, in all reasonable probability, future physical pain and suffering;

7.7 Past and, in all reasonable probability, future physical impairment;

7.8 Past and, in all reasonable probability, future physical disfigurement; and,

7.9 Past and, in all reasonable probability, future mental anguish.

7.10 By reason of the above and foregoing, Plaintiff has been damaged in a sum within the jurisdictional limits of this Court.

VIII.
**CAUSES OF ACTION AGAINST FARMERS TEXAS
COUNTY MUTUAL INSURANCE COMPANY**

A. Uninsured Motorist

8.1 Plaintiff incorporates all other paragraphs as if fully set forth here verbatim.

8.2 At the time of the motor vehicle accident, an "unknown driver" was operating an uninsured motor vehicle, as the term is defined in the applicable insurance policy.

8.3 Plaintiff was an insured under a Texas personal automobile insurance policy issued by Defendant Farmers, which provided, among other things, uninsured motorist bodily injury coverage of up to \$50,000.00 per person.

8.4 Plaintiff timely and properly notified Defendant Farmers of the motor vehicle accident made the basis of this lawsuit. Plaintiff has fully complied with all terms and conditions of the insurance policy prior to bringing this lawsuit. Nevertheless, Defendant Farmers has failed to effectuate a prompt, fair, and equitable settlement of

Plaintiff claim, with respect to which Defendant Farmers' obligation has become reasonably clear, and its failure to promptly pay any compensation to Plaintiff under Plaintiff's coverage. Defendant Farmers continues to fail and refuse to tender any additional compensation to Plaintiff under Plaintiff's underinsured motorist bodily injury coverage. By reason of this failure, Plaintiff hereby sues for payment of an amount within the underinsured motorist coverage to which he is entitled by the terms of his Texas personal automobile insurance policy issued by Defendant Farmers to Plaintiff, as well as for all other monetary damages and remedies to which he is entitled by law by reason of Defendant Farmers' failure and refusal.

8.5 As a necessary and proximate result of the "unknown driver's" aforementioned acts and omissions, Defendant Farmers is liable for the damages sustained by Plaintiff as set forth in Paragraph 7.2.

B. Breach of Duty of Good Faith and Fair Dealing

8.6 Under the established common law and judicial precedent in the State of Texas, Defendant Farmers owes its insured a duty of good faith and fair dealing, due to the special relationship that exists between and insurance carrier and its' insured. An insurance carrier is liable for breaching its duty of good faith and fair dealing owed to its insured when it fails to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim, as Defendant Farmers has done in this case.

8.7 As a result, Plaintiff has suffered damages, including but not limited to: medical expenses; damage to their credit history due to unpaid medical expenses; loss of income; and, additional interest due to delay in payment of this claim.

B. Violations of Texas Insurance Code

8.8 Defendant Allstate's failure to attempt to effectuate a prompt, fair, and equitable settlement of Plaintiff's claim, with respect to which Defendant Allstate's obligation has become reasonably clear, and its failure to promptly pay additional compensation pursuant to Plaintiff's coverage, constitute violations of Texas Insurance Code §§ 541 & 542, et seq. Specifically:

(a) It is a violation of Chapter 541 for an insurer to engage in the following:

(i) Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which the insurer's liability has become reasonably clear;

(ii) Refusing, failing, or unreasonably delaying an offer of settlement under applicable first-party coverage on the basis that other coverage may be available or that third-parties are responsible for the damages suffered, except as may be specifically provided in the policy; and/or,

(iii) With respect to a Texas personal auto policy, delaying or refusing settlement of a claim solely because there is other insurance of a different type available to satisfy all or part of the loss forming the basis of that claim.

(b) It is an "unfair claim settlement practice" and violation of Chapter 542 for an insurer to engage in the following:

(i) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims submitted in which liability has become reasonably clear; and/or,

(ii) Compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them.

(c) Defendant has violated the aforementioned statutory provisions and engaged in unfair claim settlement practices, by:

(i) Unreasonably delaying in response to Plaintiff's initial detailed proof of loss and demand for underinsured motorist benefits;

(ii) Further unreasonably delaying and altogether failing to respond to Plaintiff's subsequent extended deadline after providing additional documentation;

(iii) Soliciting detailed documentation from Plaintiff about health insurance coverage payments (i.e., explanation of benefits forms) made toward Plaintiff's voluminous medical expenses, and using such request for documentation as a basis for unreasonably delaying and/or denying Plaintiff's underinsured motorist claim, in direct violation of the aforementioned provisions of Chapter 541 of the Texas Insurance Code; and,

(iv) Forcing Plaintiff to institute the present cause of action to recover not only the only an amount within the \$50,000.00 policy limits, all interest, all attorneys' fees, all court costs, and other such expenses, in an amount that would be substantially more than simply paying actual compensatory damages due under Defendant Farmers insurance policy, in direct violation of the aforementioned provisions of Chapter 542 of the Texas Insurance Code.

(d) In a lawsuit filed under the aforementioned subchapters of the Texas Insurance Code, Plaintiff may obtain:

(i) The amount of actual damages, plus interest thereon at the rate of eighteen percent (18%) per annum;

(ii) On a finding by the trier of fact that Defendant knowingly committed the act(s) complained of, an amount not to exceed three (3) times the actual damages;

(iii) Reasonable and necessary attorneys' fees, which are to be taxed as court costs, along with all other taxable court costs; and,

(iv) Any other relief which the Court deems proper.

(e) Furthermore, pursuant to Texas Insurance Code § 542.061, the remedies provided under this subchapter are not exclusive and are in addition to any other remedy provided by statute or at common law.

C: Breach of Contract

8.9 Plaintiff would show that they entered into a binding agreement with Defendant Farmers for automobile insurance under a policy number 036100846, and that there existed a meeting of the minds as to the premiums to be paid by Plaintiffs, and all actions to be taken by Plaintiff upon suffering a covered loss, and the duties and obligations of Defendant Allstate toward Plaintiff. Defendant Allstate breached the contract by failing to pay on a covered claim. Defendant Allstate's breach has proximately caused Plaintiff's damages, to include the policy amount, interest on the policy amount at eighteen percent (18%) per annum, reasonable and necessary attorneys' fees in prosecuting this claim to seek the policy amount, and Court costs.

IX.
NOTICE AND CONDITIONS PRECEDENT

9.1 Plaintiff has served Defendant Allstate with notice of this claim, including documentation and detailed proof of loss. All other conditions precedent to maintaining this cause of action have been performed or have otherwise occurred.

X.
AUTHENTICATION OF DOCUMENTS

10.1 Notice is given to Defendant that any and all documents produced during discovery may be used and produced at any pretrial proceeding and/or trial of this matter without the necessity of authenticating the document. This notice is given pursuant to Rule 193.7 of the Texas Rules of Civil Procedure.

XI.
DEMAND FOR JURY

11.1 Plaintiff respectfully demands his right to have a trial by jury and will tender the appropriate jury fee to the District Clerk of Harris County, Texas.

XII.
PRAYER

12.1 WHEREFORE Plaintiff request that Defendant Farmers be cited to appear and answer herein; and that on final trial of this cause, Plaintiff recover:

1. Judgment against Defendant for Plaintiffs' damages as set forth above, a sum within the jurisdictional limits of the Court,
2. Interest on the judgment at the legal rate from the date of the judgment,
3. Pre-judgment interest on Plaintiff's damages as allowed by law,
4. Post-judgment interest on the above amounts, compounded annually;
5. Statutory damages in the amount of three (3) times the actual damages

- 6. Reasonable and necessary attorneys' fees;
- 7. Taxable court costs; and,
- 8. Such other and further relief, general or special, at law or in equity, to

which the Court finds Plaintiff justly entitled.

Respectfully submitted,

BY: /s/ Jay S. Pearlman
Jay S. Pearlman

Jay S. Pearlman
 Attorney at Law
 SBN: 15689950
 214 Morton Street
 Richmond, Texas 77469
 Telephone: (832) 449-7920
 Facsimile: (832) 449-7924
 E-mail: jaypearlman@jaypearlmanlawfirm.com
 ATTORNEY FOR PLAINTIFF

Unofficial Copy Office of the Daniel District Clerk

CAUSE NO. 201645593

RECEIPT NO. 0.00 ATY

 TR # 73267364

PLAINTIFF: YANEZ, VERONICA
 vs.
 DEFENDANT: FARMERS TEXAS COUNTY MUTUAL INSURANCE COMPANY

In The 113th
 Judicial District Court
 of Harris County, Texas
 113TH DISTRICT COURT
 Houston, TX

CITATION

THE STATE OF TEXAS
 County of Harris

TO: FARMERS TEXAS COUNTY MUTUAL INSURANCE COMPANY BY SERVING ITS
 REGISTERED AGENT/ATTORNEY CHRIS GRANGER
 15700 LONG VISTA DRIVE AUSTIN TX 78738

Attached is a copy of PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION

This instrument was filed on the 12th day of July, 2016, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 10 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This citation was issued on 15th day of July, 2016, under my hand and seal of said Court.

Issued at request of:
 PEARLMAN, JAY STEVEN
 214 MORTON STREET
 RICHMOND, TX 77469
 Tel: (713) 802-9990
 BAR NO.: 15689950



Chris Daniel
 CHRIS DANIEL, District Clerk
 Harris County, Texas
 241 Caroline Houston, Texas 77002
 P.O. Box 4651, Houston, Texas 77210

GENERATED BY: CARRILLO, CARLA ELIE 9YM//10434452

OFFICER/AUTHORIZED PERSON RETURN

Came to hand at _____ o'clock _____ .M., on the _____ day of _____.

Executed at (address) _____ in

_____ County at _____ o'clock _____ .M., on the _____ day of _____.

_____ by delivering to _____ defendant, in person, a true copy of this Citation together with the accompanying _____ copy(ies) of the _____ Petition

attached thereto and I endorsed on said copy of the Citation the date of delivery.

To certify which I affix my hand officially this _____ day of _____.

Fee: \$ _____

_____ of _____ County, Texas

By _____ Deputy

Affiant

On this day, _____ shown to me to be the person whose signature appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME, on this _____ day of _____

Notary Public

SERVICE RETURN ATTACHED

AUSTIN PROCESS, LLC
 809 NEUCES
 AUSTIN, TX 78701

SEP/13/2016/TUE 02:35 PM

Jay Pearlman Law

FAX No. 713-861-8379

P. 033

AFFIDAVIT OF SERVICE

State of Texas

County of Harris

113th Judicial District Court

Case Number: 2016-45593

Plaintiff:
Veronica Yanez

vs.

Defendant:
Farmers Texas County Mutual Insurance Company

For:
Jay S. Pearlman
214 Morton Street
Richmond, TX 77489

Received by Austin Process LLC on the 24th day of August, 2016 at 9:41 am to be served on Farmers Texas County Mutual Insurance Company by serving Registered Agent, Chris Granger, 15700 Long Vista Drive, Austin, TX 78728.

I, Kelly Lindsley, being duly sworn, depose and say that on the 9th day of September, 2016 at 9:41 am, I:

served a CORPORATION by delivering a true copy of the Citation and Plaintiff's First Amended Original Petition with the date and hour of service endorsed thereon by me, to Julie Huerta as Authorized Agent, at the address of: 15700 Long Vista Drive, Austin, TX 78728, and informed said person of the contents therein, in compliance with state statutes.

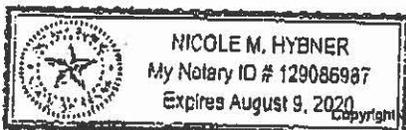
I certify that I am over the age of 18, of sound mind, have no interest in the above action, and am a Certified Process Server, in good standing, in the judicial circuit in which the process was delivered. The facts stated in this affidavit are within my personal knowledge and are true and correct.

Subscribed and Sworn to before me on the 9th day of September, 2016 by the affiant who is personally known to me

[Signature]
NOTARY PUBLIC

[Signature]
Kelly Lindsley
SCH - 9135; EXP 12/31/18
Austin Process LLC
809 Nueces
Austin, TX 78701
(512) 480-8071

Our Job Serial Number: MST-2016006260



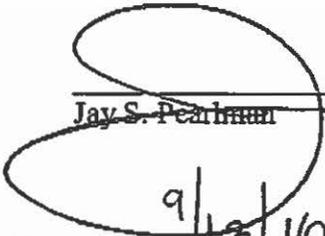
**BEFORE EVIDENTIARY PANEL 5-1 OF THE
STATE BAR DISTRICT NO. 5 GRIEVANCE COMMITTEE**

COMMISSION FOR LAWYERS DISCIPLINE	§	201503981 [YANEZ]
Petitioner	§	
	§	
V.	§	201503982 [CONTRERAS]
	§	
JAY STEVEN PEARLMAN	§	
Respondent	§	FORT BEND COUNTY, TEXAS

AFFIDAVIT OF JAY S. PEARLMAN

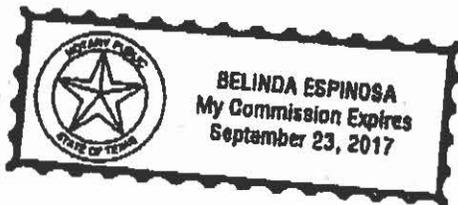
Jay S. Pearlman appeared before me in person today and stated under oath as follows:

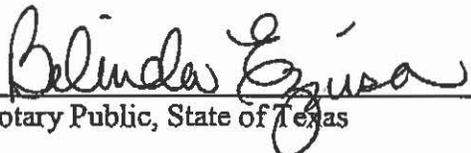
“My name is Jay S. Pearlman. I am above the age of eighteen years, and I am fully competent to make this affidavit. I am the movant in this Motion to Set Aside Default Judgment. The facts stated in this affidavit are within my personal knowledge and are true and correct.



 Jay S. Pearlman
 9/13/16

SIGNED under oath before me on _____, 2016.





 Notary Public, State of Texas