

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ESTATE OF SYLVIA MINOR

PLAINTIFF

vs.

CIVIL ACTION NO. 30CI1:08-cv-00204

UNITED SERVICES AUTOMOBILE ASS'N

DEFENDANT

**MOTION FOR REMITTITUR
(PRESENTED IN THE ALTERNATIVE TO USAA'S
MOTION FOR NEW TRIAL)**

As explained in USAA's Motion for Judgment Notwithstanding the Verdict (MEC 443), the Estate did not satisfy the legal elements to satisfy the verdicts against USAA (MEC 428, 429) and corresponding judgment entered on October 3, 2022 (MEC 432). This Court should set those verdicts aside and enter judgment for USAA. USAA incorporates by reference all facts and arguments found in USAA's Motion for JNOV.

Alternatively, for the reasons stated in USAA's Motion for New Trial (MEC 444), this Court should set aside the verdict of the jury and the judgment entered on October 3, 2022 as to Plaintiff and grant USAA a new trial on all issues. USAA incorporates by reference all facts and arguments found in USAA's Motion for New Trial.

If this Court should elect to deny USAA's Motion for Judgment Notwithstanding the Verdict and Motion for New Trial, it should order a remittitur because the damages awarded are excessive, the jury was influenced by bias, prejudice, or passion, and the damages awarded were contrary to the overwhelming weight of credible evidence.¹

¹ Nothing about moving for remittitur "impinge[s] upon a party's right to appeal the jury verdict and trial court judgment on the issue of liability." *Dedeaux v. Pellerin Laundry, Inc.*, 947 So. 2d 900, 908-09 (Miss. 2007).

1. This court “may overrule a motion for new trial...upon condition of an additur or remittitur, if the court finds that the damages are excessive or inadequate for the reason that the jury or trier of the facts was influenced by bias, prejudice, or passion, or that the damages awarded were contrary to the overwhelming weight of credible evidence.” Miss. Code Ann. § 11-1-55.
2. The goal of remittitur is to arrive at “a suggested award which is fairly responsive to the evidence....” *Dedeaux*, 947 So. 2d at 908.
3. There was no evidence of reprehensible conduct sufficient for a punitive damage verdict, let alone a \$10 million dollar award. The evidence is discussed in greater detail in USAA’s Motion for Judgment Notwithstanding the Verdict and Motion for New Trial, and USAA incorporates by reference those facts and arguments. In summation, USAA’s conduct in investigating the claim consisted of:
 - a. Promptly investigating the Minors’ claim.
 - b. Having adjusters visit the property.
 - c. Hiring an engineer to determine what was the cause of the damage.
 - d. When questions arose about the extent of the wind- or water-caused damage, asking for and receiving clarification from the engineer.
 - e. Providing the Minors with direct access to the engineer.
 - f. Discussing the engineer’s findings with the Minors over the phone.
 - g. Providing the engineering report and estimates to the Minors.
 - h. Asking the Minors to cooperate with USAA’s claim investigation by providing information about their property (structure and personal property).
 - i. Reacting to the information provided by the Minors (including waiting for promised information, examining the information provided, and then

obtaining the 11- and 5-year-old underwriting files).

- j. Continuing to adjust the claim based on the changing information, making initial and then supplemental payments.
4. Until this litigation, the *only* expert opinions regarding causation concluded that the vast majority of the damage to the Minors' insured property was caused by storm surge. And the Estate did not introduce any expert opinion(s) to rebut those opinions.
5. The trial court must consider what was not paid without an arguable basis and while USAA "acted with actual malice, gross negligence which evidences a willful, wanton or reckless disregard for the safety of others, or committed actual fraud." Those amounts were never established with clear and convincing evidence to justify the jury's verdict.
6. Further, the trial court must consider whether the actionable "delay" in payment for what was withheld in bad faith warrants \$10,000,000.00. Not only did the Estate not establish amounts withheld in bad faith, but it also failed to establish actionable delay through clear and convincing evidence justifying the jury's verdict.

The extra-contractual damages award is excessive.

7. The \$457,858.89 awarded to the Estate as extracontractual damages is excessive. Indeed, no credible evidence that the Estate paid attorneys' fees was ever presented. The introduction of an improper factual finding by this Court after review of unsubstantiated hearsay resulted in an excessive and unreasonable amount. The only amount, based on admissible evidence, would have been \$0.00.

The punitive damages award is excessive.

8. The \$10 million in punitive damages awarded to the Estate is an excessive and unreasonable amount, is not rationally related to the punishment purpose of punitive

damages considering USAA's conduct and is not rationally related to the deterrence purpose of punitive damages as there was no evidence of other similar conduct by any entity. Miss. Code Ann. §11-1-65. *See also BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996).

9. The Mississippi Supreme Court often ordered remittitur of punitive damages awarded against insurers.

a. A jury awarded \$5 million in punitive damage against an insurer that had cut off all payments to an injured claimant despite having two reports stating the claimant had a permanent disability mandating payment. *Miss. Power & Light Co. v. Cook*, 832 So. 2d 474, 481 (Miss. 2002). Because MP&L acted “[i]n bad faith” and because the facts “show that MP&L should have paid Cook for his 15% impairment rating,” punitive damages were deemed appropriate. *Id.* However, although MP&L had proof that payment was owed, the Mississippi Supreme Court, in ordering remittitur, concluded that “the \$5,000,000 awarded in this case is excessive...[and] clearly based on prejudice and bias of the jurors because MP&L's conduct is not so reprehensible to demand this degree of punishment.” *Id.* at 485. The Court then ordered a remittitur of \$4.5 million, leaving an award of \$500,000 punitive damages. *Id.* at 485-86.

b. When a life insurance company failed to pay a valid claim because of its own “unilateral mistake” that “involved a large number of policies” and when the truth had long been known to the insurer, the Mississippi Supreme Court affirmed the award of punitive damages but ordered remittitur. *Mut. Life Ins. Co. v. Estate of Wesson*, 517 So. 2d 521, 528, 533 (Miss. 1987), overruled on other grounds by *Gen. Am. Life Ins. Co. v. McCraw*, 963 So. 2d 1111, 1114

(Miss. 2007). There, the \$8 million punitive award was reduced by \$6.5 million, leaving a punitive damages award of \$1.5 million. *Id.* at 533.

10. In *Cook*, punitive damages were remitted by 90% to \$500,000 even though MP&L had two reports that said it needed to pay Cook. Here, USAA also had two reports (one that the Estate introduced into evidence, one that it did not). The difference is that USAA did not ignore those reports the way MP&L did. Instead, USAA followed those reports, recognizing that the opinion was that the vast majority of the damage to the Minors' property was caused by the storm surge and offering payment accordingly. Despite MP&L's conduct, remittitur was warranted in *Cook*. Comparing MP&L's conduct to USAA's shows that remittitur is warranted here.
11. In *Estate of Wesson*, punitive damages were remitted by 81.25% to \$1.5 million even though the insurer's failure to pay the life insurance claim was due to its decision to ignore its own internal investigation that concluded claims like Dr. Wesson's were owed. USAA never ignored its own internal investigation regarding the policy. Unlike Mutual Life Insurance Company repeatedly refusing to pay the Estate of Wesson's claim, USAA never denied the Minors' claim but paid after proper consideration towards the expert opinions. Despite Mutual Life Insurance Company's conduct, remittitur was warranted in *Estate of Wesson*, and it is warranted here.

The verdicts reflect bias, passion, or prejudice.

12. A trial court may order a remittitur of a jury verdict after it makes an on-the-record finding that the verdict is so shocking to the conscience that it evidences bias, passion, or prejudice on the part of the jury. *Odom v. Roberts*, 606 So. 2d 114, 121 (Miss. 1992) and Miss. Code Ann. § 11-1-55 (2000). Both verdicts here reflect such bias, passion, and prejudice.

13. The extracontractual verdict in this case reflects bias, passion, or prejudice on the part of the jury. Considering the facts of this case supporting USAA's claims decisions and the lack of credible evidence regarding the attorneys' fees actually paid, the \$457,858.89 awarded to the Estate as extracontractual damages establishes that the jury was motivated by bias, passion, or prejudice.
14. The punitive damage award of \$10 million establishes that the jury was motivated by bias, passion, or prejudice. The Estate asked the jury to send a message to the entire insurance industry while projecting Hurricane Ian's projected path and saying, among other inflammatory comments, "In fact, there's a storm sitting out there right now that they say is coming into the Gulf," enflaming the jury to act quickly before "the next hurricane hits" without regard to whether this was a punitive damages case. As a result, the jury's verdict was influenced by bias, prejudice, and passion.
15. Both verdicts are born of bias, passion, and prejudice, enflamed by the Estate claiming, arguing, inferring, suggesting, and implying that USAA had been held liable for bad faith in other Hurricane Katrina cases but had not changed a thing, requiring the jury give a verdict that "hit[s] [USAA] in the pocketbook" or else "USAA will handle the next round of hurricane claims just the same."
16. Both verdicts are born of bias, passion, and prejudice, enflamed by the Estate arguing that USAA should have made some changes to its claims handling practices to benefit these jurors based on the compensatory-phase jury's verdict. While the 2013 jury did not agree with USAA's conclusion on what caused the damage to the Minors' house, there was no rejection of USAA's claims handling practices. Despite this, the Estate argued that USAA should be punished, and that its actions were "intolerable," and that the jury "shouldn't have to tolerate" USAA's decision to not change its claims

handling practices.

The verdicts are contrary to the overwhelming weight of the evidence.

17. The verdicts in this case are contrary to the overwhelming weight of the credible evidence. A trial court may order a remittitur of a jury verdict after it makes an on-the-record finding that the verdict is contrary to the overwhelming weight of the credible evidence. *Odom*, 606 So. 2d at 121; Miss. Code Ann. § 11-1-55.
18. The \$457,858.89 awarded to the Estate as extracontractual damages is contrary to the overwhelming weight of the credible evidence; indeed, no credible evidence that the Estate paid attorneys' fees was ever presented. As a result, the jury's award of extracontractual damages was contrary to the overwhelming weight of the evidence.
19. The \$10 million in punitive damages awarded to the Estate is contrary to the overwhelming weight of the credible evidence. As shown in Paragraph 3 above, USAA had credible evidence supporting every claim decision it made. However, the Estate's claims of USAA's ill-intentions were unsupported by credible evidence.
 - a. **The undisputed evidence** is that the document labeled "CONFIDENTIAL" was done so automatically by USAA's computer system because it included personally identifiable information about the Minors (specifically, their full names and member number). Moreover, the information found in the email was available to and, in fact, shared with the Minors.
 - b. **The undisputed evidence** is that the "he" in "he still won't be pleased" was Paul Minor, not the adjuster's team leader.
 - c. **The undisputed evidence** is that the only engineering reports USAA had prior to litigation concluded that the vast majority of the damage to the Minors' insured property was caused by the storm surge.

- d. ***The undisputed evidence*** is that the underwriting photos, which were 11 years and 5 years old, showed a few items of personal property but contained no details of any contents, let alone the required “quantity, description, actual cash value and amount of loss” along with “all bills, receipts and related documents....” Instead, the underwriting file expressly did not include an estimate of any personal property.
- e. ***The undisputed evidence*** is that the Minors had a contractual obligation to assist in the adjustment and investigation of their claim, which they repeatedly failed to do.

As a result, the jury’s award of punitive damages was contrary to the overwhelming weight of the evidence.

The \$ 10 million verdict violates USAA’s due process rights.

20. “[C]ourts reviewing punitive damages [must] consider three guideposts: (1) the degree of reprehensibility of the defendant’s misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.” *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 418 (2003). Addressing each of these guideposts, the punitive damages verdict is excessive.

- a. The Estate showed no reprehensible conduct, complaining only of instances of negligence that it claimed “added up.”
- b. The Estate showed no actual harm. The Minors were not harmed by the pre-suit offers; indeed, the Minors refused to accept any amount of money from USAA. And there was no proof that the dispute created any trouble for the

Minors. They lived elsewhere. They were not attempting to rebuild or replace anything lost in Katrina. Moreover, after the jury awarded compensatory damages of \$1,547,293.37, the Estate did not and could not show that it was harmed because it was not paid until the 2013 jury awarded it damages. The Estate could not and did not show that it has rebuilt, it has begun to rebuild, and it has plans to rebuild.

- c. The Estate has pointed to no civil penalties for actions comparable to USAA's actions.
21. In addition, "[w]hen compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee." *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003). Here, because the compensatory damages were substantial, a matching punitive damages verdict of \$1,547,293.37 is the most due process will allow.

WHEREFORE, PREMISES CONSIDERED, USAA respectfully moves that this Court order remittitur of the extracontractual verdict and the punitive damages verdict so as to arrive at an award that is responsive to and reflective of the credible evidence.

Respectfully submitted, this the 13th day of October, 2022.

**UNITED SERVICES AUTOMOBILE
ASSOCIATION, Defendant**

By: /s/ Timothy J. Sterling
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CERTIFICATE OF SERVICE

I, Timothy J. Sterling, do hereby certify that I have this date filed the foregoing with the clerk of this Court via MEC, which sent notification to all attorneys of record.

This, the 13th day of October, 2022.

/s/ Timothy J. Sterling
TIMOTHY J. STERLING (MSB#103063)