

NO. 58334

BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS

JAY STEVEN PEARLMAN

Appellant,

v.

COMMISSION FOR LAWYERS DISCIPLINE

Appellee.



FILED

APR 12 2017

Board of Disciplinary
Appeals

BRIEF OF APPELLANT
(ON APPEAL FROM THE EVIDENTIARY PANEL 5-1 OF THE
STATE BAR DISTRICT NO. 5 GRIEVANCE COMMITTEE
NOS. 201503981 AND 201503982)

ORAL ARGUMENT REQUESTED

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The following is a complete list of the names and addresses of all parties to the final decision and their counsel to Rule 4.06 (c)(1), Internal Procedural Rules, Board of Disciplinary Appeals:

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<i>Strackbein v. Prewitt</i>	671 S.W.2d 37, 38-39 (Tex. 1984)

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BRIEF OF APPELLANT
(ON APPEAL FROM THE EVIDENTIARY PANEL 5-1 OF THE
STATE BAR DISTRICT NO. 5 GRIEVANCE COMMITTEE
NOS. 201503981 AND 201503982)

Appellant, Jay Steven Pearlman, files his Brief. Appellant will be referred to as Pearlman. Appellee, Commission for Lawyer Discipline, will be referred to as Commission.

**BRIEF GENERAL STATEMENT OF THE
NATURE OF THE CASE OR OFFENSE AND THE RESULT**

Pursuant to Rule 4.06(c)(3), *Internal Procedural Rules, Board of Disciplinary*

Appeals, Appellant states:

<i>Type of Proceeding:</i>	Attorney Discipline
<i>Petitioner/Appellee:</i>	The Commission for Lawyer Discipline
<i>Respondent/Appellant:</i>	Jay Steven Pearlman
<i>Evidentiary Panel:</i>	State Bar District No. 5, Grievance Committee
<i>Judgment:</i>	Judgment of Disbarment
<i>Violations Found:</i>	201503981-Veronica Yanez: Rules 1.03(a), 1.14(b), and 1.15(d). 201503982-Yumira Contreras: Rules 1.03(a), 1.03(b), 1.14(b), and 8.04(a)(3)

ISSUES PRESENTED FOR REVIEW

Pursuant to Rule 4.06(c)(4), *Internal Procedural Rules, Board of Disciplinary*

Appeals, the following issues are presented for review:

1. Appellant's Motion to Set Aside Default Judgment (Judgment of Disbarment) of the Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee was overruled by operation of law. Did the trial court (Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee err in failing to grant Appellant's Motion to Set Aside Default Judgment and Grant New Trial contrary to *Craddock v. Sunshine Bus Lines, Inc.* 134 Tex. 188, 133 S.W.2d 124, 126 (1939).

STATEMENT OF FACTS

A. CHRONOLOGY

Yumira Contreras and Veronica Yanez each filed grievances with the State Bar of Texas against Respondent, Jay Steven Pearlman.

The Commission for Lawyers Discipline filed an Original Evidentiary Petition.

An Evidentiary Hearing was set for August 10, 2016. Respondent failed to appear. An evidentiary hearing was held before Panel 5-1 and a default judgment (Judgment of Disbarment) was rendered on August 10, 2016.

The Judgment of Disbarment was signed by the chair of Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee on August 15, 2016.

Appellant filed Respondent's Motion to Set Aside Default Judgment and Grant New Trial/Hearing on September 13, 2016 and perfected this appeal (CR 23, 0178-0212). The motion was filed within the time limits prescribed by the Texas Rules of Civil Procedure.

Appellant filed Respondent's Motion to Modify Judgment on September 13, 2016 (CR 24, 0214-0248). The motion was filed within the time limits prescribed by the Texas Rules of Civil Procedure.

Appellant filed Respondent's First Amended Motion to Set Aside Default Judgment and Grant New Trial/Evidentiary Hearing on October 17, 2016 (CR 28, 0282-331).

E-mail from Maribelle Hernandez, Legal Assistant, forwarding an e-mail from Lee Cox, Panel 5-1 informing Maribelle Hernandez to advise all parties the Panel 5-1 will not rule on Respondent's First Amended Motion to Set Aside Default Judgment and

Grant New Trial/Evidentiary Hearing and it will be overruled by operation of law (CR 30, 0387-0388).

Respondent's Motion to Modify Default Judgment of Disbarment was overruled by operation of law.

Appellant filed Respondent's Notice of Appeal to Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee's Overruling by Operation of Law Respondent's Motion to Modify Default Judgment of Disbarment on November 9, 2016 (CR 33, 0390-0395).

Appellant filed Respondent's Notice of Appeal of Default Judgment of Disbarment on November 9, 2016 (CR 32, 0397-402).

Appellant filed Respondent's Notice of Appeal to Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee's Overruling by Operation of Law Respondent's Motion to Set Aside Default Judgment and Grant New Trial/Hearing on November 9, 2016 (CR 33, 0404-0409).

BRIEF OF THE ARGUMENT

A. STANDARD OF REVIEW

A default judgment should be set aside and a new trial should be ordered in any case in which the failure of the defendant [Appellant] to answer before judgment was not intentional, or the result of conscious indifference on his part, but was due to mistake or accident; provided the motion for a new trial set up a meritorious defense and is filed at a time when granting thereof will occasion no delay or otherwise work an injury to the plaintiff [Petitioner, Commission for Lawyer Discipline] [Yumira Contreras and Veronica Yanez]. *Craddock v. Sunshine Bus Lines, Inc.* 134 Tex. 188, 133 S.W.2d 124,

126 (1939); *see also Bank One, Texas, N.A. v. Moody*, 830 S.W.2d 81, 85 (Tex. 1992); *see also Dolgencorp of Texas, Inc., d/b/a Dollar General Store v. Maria Isabel Lerma, Individually, et al.*, No. 08-0032 (Tex. 2009) (per curium). The *Craddock* elements apply to both no-answer and post-answer default judgments based on non-appearance at trial. *Director, State Employees Workers' Compensation Division v. Evans*, 889 S.W.2d 266, 268 (Tex. 1994);

1. *Craddock* – 1st Element:

Appellant's failure to file an answer before judgment was the result of an accident or mistake, rather than due to an intentional act or the result of conscious indifference.

The accident or mistake that prevented Appellant from filing an answer is:

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 and as a direct result accidentally failed to calendar the evidentiary hearing/trial date of August 10, 2016. A true and correct copy of a letter from Barry F. Gritz, M.D., Board Certified Diplomate of the American Board of Psychiatry and Neurology, is attached hereto as Exhibit "H" and incorporated herein by reference as if fully copied and set forth at length.

General forgetfulness or failure to calendar qualify as a sufficient reasons to satisfy the first element of *Craddock*. *See Director, State Employees Workers' Compensation Division v. Evans*, 889 S.W.2d 266, 268 (Tex. 1994); *Jackson v. Mares*, 802 S.W.2d 48, 52 (Tex. App. – Corpus Christi 1990, writ denied).

Furthermore, where the factual allegations in a movant's affidavit are not controverted, it is sufficient that the motion and affidavit set forth facts, if true, would negate intentional or consciously indifferent conduct. *Strackbein v. Prewitt*, 671 S.W.2d 37, 38-39 (Tex. 1984).

It is clear that Respondent has met the first element of *Craddock*.

2. *Craddock* – 2nd Element:

Respondent has a meritorious defense to any and all complaints. Setting up a meritorious defense does not require proof “in the accepted sense.” *Ivy v. Carrell*, 407 S.W.2d at 214 (Tex. 1996). Rather the motion sets up a meritorious defense if it alleges facts which in law would constitute a defense to plaintiff's [Commission for Lawyers Discipline/Yanez and Contreras] cause of action and is supported by affidavits or other evidence providing prima facie proof that defendant [Respondent, Jay Steven Pearlman] has such a defense. *Id.* (testimony given at the motion for new trial hearing used to determine whether defendant provided prima facie evidence of a meritorious defense); *see Guar. Bank v. Thompson*, 632 S.W.2d 338,339 (Tex. 2006). Once such requirements are met, controverting evidence offered by the non-movant [Plaintiff] should not be considered. *Ivy* 407 S.W.2d, at 214 (Tex. 1996).

The meritorious defense to the complaints of the Petitioner, Commission for Lawyers Discipline [Yumira Contreras and Veronica Yanez], is as follows:

Complaints of Petitioner, Commission for Lawyers Discipline [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:

Response to complaints of Petitioner, Commission for Lawyers Discipline [Yumira 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 he was leaving his office for an appointment and he asked Ms. Contreras to come back to his office that afternoon at 1:00 p.m. Respondent told Ms. Contreras he would have a final settlement statement completed for her approval and signature. In addition, Respondent told Ms. Contreras he would provide her a Client-Trust Account check for her share of the total settlement in accordance with the Final Settlement Statement. Ms. Contreras agreed to come back to Respondent's 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]. Because Respondent had to leave his office at 1:30

p.m. to attend to a personal matter, Respondent left the Final Settlement Statement and the Client-Trust check made payable to Yumira Contreras in the amount \$11,818.34 with the receptionist, Alicia Rubio. 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 to Respondent's First Amended Motion to Set Aside Default Judgment and Grant New Trial/Hearing as Exhibit "A-1" and "A-2" and incorporated herein as if fully copied and set forth at length. The next morning, Respondent was surprised to discover Ms. Contreras did not come back to his office that afternoon to sign the Final Settlement Statement and/or pick up the Client-Trust Account check. The office was open and the receptionist was available from 1:00 p.m. - 5:00 p.m. In response to questioning from Mr. Lee Cox during the evidentiary hearing on August 10, 2016, Yumira Contreras testified that Mr. Pearlman never gave her a final accounting or breakdown of the settlement (RR 19, line 25, RR 20, lines 1-10) when in fact a final settlement statement was provided to Ms. Contreras on June 26, 2015. In response to questioning from Mr. Lee Cox during the evidentiary hearing on August 10, 2016, Yumira Contreras testified that she tried to contact Mr. Pearlman and never got any money until the Petition and Motion for Default Judgment were filed (RR 23, line 25, RR24, lines 1-9) when in fact a settlement check in the amount of \$11,818.34 was left for Ms. Contreras at the front receptionist's desk for her upon her agreed return to my office on June 26, 2015 at 1:00 p.m. Furthermore, Respondent did not receive a telephone call or written communication from Ms. Contreras as to why she did not come back to the office that afternoon. Respondent contacted Ms. Contreras to inquire as to 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 Client-Trust Account 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 Client-Trust Account check for her to pick up. Respondent spoke with the receptionist regarding this matter. The receptionist told Respondent she never saw Ms. Contreras at the office or spoke with Ms. Contreras that afternoon. An Unsworn Declaration of Alicia Rubio is attached to Respondent's First Amended Motion to Set Aside Default Judgment and Grant New Trial/Hearing as Exhibit "B" and incorporated herein by reference, as if fully copied and set forth at length. During the same telephone conversation Respondent had with Ms. Contreras, Ms. Contreras requested that Respondent send the Final Settlement Statement and the Client-Trust 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 Client-Trust 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. Ms. Contreras never provided Respondent's office with a signed Final Settlement Statement. Respondent did not have any communication with 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 Texas County Mutual Insurance Company]. 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 to Respondent's First Amended Motion to Set Aside Default Judgment and Grant New Trial/Hearing as Exhibit "C-1" and "C-2" 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 would not proceed forward with her grievance filed against Respondent with the State Bar of Texas.

Complaints of Petitioner, Commission for Lawyers Discipline [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 Yanez 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:

Response to complaints of Petitioner, Commission for Lawyers Discipline
[Veronica
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 with the insurance company an 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 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 had been unable to negotiate a fair and reasonable settlement with Farmers Texas County Mutual Insurance

Company. Ms. Yanez and Respondent did not have any further conversations regarding the status of her claim until a telephone conversation between Respondent and a daughter of Ms. Yanez 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. Respondent 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 to submit to an Examination Under Oath (“EUO”), as required by the terms and conditions set forth in the insurance policy prior to filing a lawsuit on her behalf. Ms. Yanez, by and through her daughter, asked Respondent set up an EUO with the attorney for Farmers Texas County Mutual Insurance Company and to proceed forward with her claim/case Respondent agreed to continue his representation. On or about February 14, 2016, Respondent sent a letter to Kellie Crnkovic-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 Respondent would continue to represent Veronica Yanez. A true and correct copy of this letter is attached to Respondent’s First Amended Motion to Set Aside Default Judgment and Grant New Trial/Hearing as Exhibit “D” and incorporated herein, as if fully copied and set forth at length. Furthermore, Respondent and legal counsel for Farmers Texas County Mutual Insurance Company agreed to a date for the EUO of Veronica Yanez.

The EUO of Ms. Yanez was taken 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 with Farmers Texas County Mutual Insurance Company. On July 8, 2016, Respondent filed a lawsuit on behalf of Ms. Yanez against Farmers Texas County Mutual Insurance Company. 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 to Respondent's First Amended Motion to Set Aside Default Judgment and Grant New Trial/Hearing as Exhibit "E" and incorporated herein by reference, as if fully copied and set forth at length.

In addition to the uninsured coverage provided by Farmers insurance policy, the policy included personal injury protection coverage ("PIP") in the amount of \$10,000.00. PIP coverage is for medical bills incurred and/or loss wages as a direct and proximate cause of a motor vehicle accident. Although Farmers Texas County Mutual Insurance Company paid the maximum amount of the available PIP coverage [\$10,000.00], Farmers has a statutory offset [for the \$10,000.00 paid under the PIP coverage] for any settlement/judgment amount paid under the uninsured motorist coverage claim made on behalf of Ms. Yanez. Furthermore, the payment made by Farmers Texas County Mutual Insurance Company was for medical bills incurred by Ms. Yanez. Ms. Yanez was able to

receive medical treatment for her injuries as a result of Letters of Protection sent by his office to medical providers for Ms. Yanez and treatment paid by the law office of Jay Steven Pearlman, Respondent. Since there are Letters of Protection and hospital liens on Ms. Yanez's claim, and expenses incurred by Respondent, the PIP money was not released nor would be released to Ms. Yanez until a final resolution of her claim by settlement or trial. Ms. Yanez was advised of this by Respondent and his law office.

It is abundantly clear that Respondent has a meritorious defense to the complaints made by the Petitioner, Commission for Lawyers Discipline on behalf of Yumira Contreras and Veronica Yanez and has met the second element of *Craddock*.

3. *Craddock* – 3rd Element:

Setting aside the default judgment and granting a new trial [evidentiary hearing] in this case will occasion no delay or otherwise work an injury to plaintiff [Petitioner, Commission for Lawyer Discipline, on behalf of Yumira Contreras and Veronica Yanez], for the following reasons:

(1) Yumira Contreras case was settled and she signed a Final Settlement Statement and received and accepted a Client-Trust check in the amount of \$11,818.34 on April 12, 2016 for her share of the total settlement as set forth in the Final Settlement Statement.

(2) A lawsuit was filed on behalf of Veronica Yanez on July 8, 2016, The 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."

(3) Respondent, Jay Steven Pearlman, will tender reasonable costs and expenses incurred by reason of this motion.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Appellant prays that the Board of Disciplinary Appeals reverse the Judgment of Disbarment in this case and remand this case for another evidentiary hearing before the Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee for another determination of any disciplinary sanctions, if any, should be applicable to the violation(s), if any it affirms upon, and for such other relief as may be appropriate

Respectfully submitted,

By: *Jay S. Pearlman*

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E-mail: jaypearlman@jaypearlmanlawfirm.com
Lead Counsel, Pro Se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of *Brief of Appellant* 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 April 12, 2017.

Via Regular U.S. Mail

& E-mail: filing@txboda.org

Ms. Christine E. McKeeman
Board of Disciplinary Appeals ("BODA")
State Bar of Texas
P.O. Box 12426
Austin, Texas 78711

Via Regular U.S. Mail

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Ms. Cynthia Hamilton
Senior Appellate Counsel, State Bar of Texas
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State Bar of Texas
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/s/ *Jay S. Pearlman*
Jay S. Pearlman

APPENDIX

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- B. Respondent's Motion to Set Aside Default Judgment and Grant New Trial/Hearing; w/attached Exhibits
- C. Respondent's Motion to Modify Judgment; w/attached Exhibits
- D. Respondent's First Amended Motion to Set Aside Default Judgment and Grant New Trial/Hearing; w/attached Exhibits
- E. Respondent's Notice of Appeal of Default Judgment of Disbarment
- F. Respondent's Notice of Appeal to Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee's Overruling by Operation of Law Respondent's Motion to Set Aside Default Judgment and Grant New Trial/Hearing.
- G. Respondent's Notice of Appeal to Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee's Overruling by Operation of Law Respondent's Motion to Modify Default Judgment of Disbarment.
- H. Letter from Barry F. Gritz, M.D., Board Certified Diplomat of the American Board of Psychiatry and Neurology

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

FILED



April 13, 2017

Parties and Appearance

Board of Disciplinary Appeals

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.

EXHIBIT

A

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

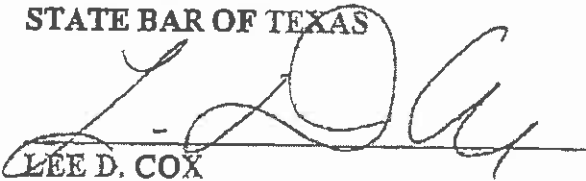
It is further ORDERED that payment of the foregoing restitution and attorneys' fees and direct expenses shall be a condition precedent to any consideration of reinstatement from disbarment as provided by Rules 2.19, 2.20 and 11.02D of the Texas Rules of Disciplinary Procedure.

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

SEP 13 2016 TUE 02:23 PM Jay S. Pearlman Law

FAX No. 713-869-7379

P.001

JAY S. PEARLMAN*Attorney At Law*

214 Morton Street • Richmond, Texas 77469

• 832-449-7920

jaypearlman@jaypearlmanlawfirm.com

Member of State Bar of Texas & The Florida Bar

FILED

SEP 13 2016

STATE BAR OF TEXAS
HOUSTON CDC

FILED

April 13, 2017



Board of Disciplinary Appeals

FACSIMILE TRANSMITTAL FORM**NOTICE OF CONFIDENTIALITY**

THE DOCUMENTS ATTACHED TO THIS COVER SHEET ARE INTENDED BY THE SENDER TO REMAIN CONFIDENTIAL AND TO BE REVIEWED ONLY BY THE SPECIFIC ADDRESSEE INDICATED BELOW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED ADDRESSEE, OR AN AUTHORIZED EMPLOYEE OR AGENT OF SAME HAVING THE RESPONSIBILITY TO DELIVER IT TO THE INTENDED ADDRESSEE, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. THE CLIENT OF THE LAW FIRM SENDING THIS INFORMATION INTENDS THE CONTENTS OF THIS DOCUMENT TO REMAIN CONFIDENTIAL AND NOT TO BE PUBLISHED OR DISSEMINATED TO ANY THIRD PARTIES IN ANY MANNER. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY THE SENDER BY TELEPHONE AND RETURN THE ORIGINAL FACSIMILE GENERATED IN YOUR OFFICE TO JAY S. PEARLMAN AT THE ABOVE ADDRESS VIA U.S. POSTAL SERVICE AT OUR EXPENSE. THANK YOU VERY MUCH FOR YOUR ANTICIPATED COOPERATION.

TO: TIMOTHY R. BERSCH
ASSISTANT DISCIPLINARY COUNSEL
STATE BAR OF TEXAS

FACSIMILE: (713) 758-8292**DATE SENT: SEPTEMBER 13, 2016****PAGES INCLUDING COVER PAGE: 35**

**Re: Case Nos. 201503981 [Yanez] & 20503982 [Contreras]; Commission for
Lawyer Discipline v. Jay Steven Pearlman; Before Evidentiary Panel 5-1 of the
State Bar District No. 5 Grievance Committee**

Respectfully yours,

Jay S. Pearlman

IF YOU DO NOT RECEIVE ALL PAGES INDICATED, OR IF ANY PART OF THE FACSIMILE IS
FOR A CORRECTION

EXHIBIT

B

0178

SEP 13 2016 TUE 02:13 PM Jay S. Pearlman Law

FAX No 713-869-7378

P.002

JAY S. PEARLMAN

Attorney At Law

214 Morton Street • Richmond, Texas 77469

• 832-449-7920

jaypearlman@jaypearlmanlawfirm.com

Member of State Bar of Texas & The Florida Bar

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

Re: Case Nos. 201503981 [Yanez] & 20503982 [Contreras]; *Commission for Lawyer Discipline v. Jay Steven Pearlman*; Before Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee

Dear Counselor:

Enclosed please find the following document to be filed in the above-styled and numbered cause:

- 1. Respondent's Motion to Set Aside Default Judgment and to Grant a New Trial.

Please forward a copy to each of the Panel's members.

Respectfully yours,

Jay S. Pearlman

JSP/lap

FORT BEND COUNTY, TEXAS

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 Crnkovic-obey, claims adjuster for Farmers Texas County Mutual Insurance Company, and Sherri 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

SEP 13 2016 TUE 02:30 PM Jay S. Pearlman Law

FAX No. 713-869-7379

P. 011

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

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 CONKLEN, 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

JAY STEVEN PEARLMAN
TRUST ACCOUNT
214 MORTON ST. 713-802-9990
RICHMOND, TX 77469-3117

7063

PAY TO THE ORDER OF Yumira Contreras \$ 11,818.34

CHASE
McAllister Chase Bank, N.A.
www.Chase.com

FOR FINAL SETTLEMENT - Y. CONTRERAS

DATE 6-26-15

10070631 1110006141 1700059358

SEP/13/2016/TUE 02:31 PM Jay S. Pearlman Law

FAX No 713-802-9890

8.016

PAY TO THE ORDER OF *Yumma Cantor*

Eleven thousand five hundred and thirty four \$ *11,818.34*

CHASE
JPMorgan Chase Bank, N.A.
www.chase.com

FOR *CONTRAST-FINANCE*

7081

JAY STEVEN PEARLMAN
TRUST ACCOUNT
214 MORTON ST. 713-802-9890
RICHMOND, TX 77489-3117

DATE *4-12-16*

11007081 111000614 1700059360

EXHIBIT D

SEP 13 2016 TUE 02:31 PM Jay S. Pearlman Law

FAX No. 713-869-7379

P. 017

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

FHAIT 11

0194

SEP 13 2016 TUE 02:31 PM Jay S. Pearlman Law

FAX No. 713-889-1173

P. 016

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

SEP 13 2016 TUE 02:32 PM Jay Pearlman Law

FAX No 713-869-7379

P.013

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

SEP 13 2016 TUE 02:32 PM Jay Pearlman Law

FAX No: 713-360-879

P 080

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>]
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Please see the attached letter.

Respectfully,

Jay S. Pearlman
Attorney at Law
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214 Morton Street
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Telephone: (713) 802-9990 [Houston]
Telephone: (832) 449-7920 [Richmond]
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E-mail: jaypearlman@jaypearlmanlawfirm.com

SEP 13 2016 TUE 02:32 PM Jay Pearlman Law

FAX No. 713-851-573

P. 021

7/8/2016 4:12:23 PM
 Chris Daniel - District Clerk Harris County
 Envelope No. 11546008
 By: Bonnie Lugo
 Filed: 7/8/2016 4:12:23 PM

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.

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 xxxxxxxxxx, 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.

VII. **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 an 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

SEP 13 2016 TUE 02:35 PM

Jay Pearlman Law

FAX No 713-561-1179

P 032

CAUSE NO 201645533

RECEIPT NO

0 00

ATY

TR 3 73167354

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 11th 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 30 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.: 15689730



CHRIS DANIEL, District Clerk
Harris County, Texas
291 Caroline Houston, Texas 77002
P.O. Box 4631, Houston, Texas 772101

GENERATED BY: CARRILLO, CARLA ELIZ 9YM//10434453

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, _____, I, _____, being sworn 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

NOTARY

NOTARY

SERVICE RETURN ATTACHED

AUSTIN PROCESS, LLC
809 NEUCES
AUSTIN TX 78701

0209

SEP 13 2016 TUE 02:35 PM

Jay S. Pearlman Law

FAX No. 713-861-0273

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.

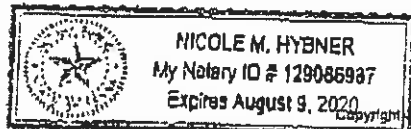
I, Kelly Lindsley, being duly sworn, depose and say that on the 9th day of September, 2016 at 9:41 am, I:


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.


NOTARY PUBLIC




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

SEP 13 2016 TUE 02:35 PM Jay Pearlman Law

FAX No. 713-869-1379

P. 034

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

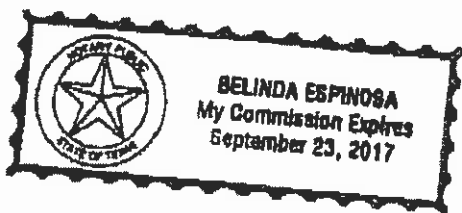
AFFIDAVIT OF JAY S. PEARLMAN

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

SIGNED under oath before me on 9/13/16, 2016.



Belinda Espinosa
Notary Public, State of Texas

**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

NOTICE OF HEARING

The above motion is set for hearing on _____ at _____ .M.
before the Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee, Fort Bend
County, Texas.

SIGNED on _____, 2016

Judge or Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of *Respondent's Notice of Hearing on 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

SEP/14/2016/WED 06:55 PM Jay S. Pearlman Law

FAX No. 713-869-7379

P. 001

JAY S. PEARLMAN*Attorney At Law*

214 Morton Street • Richmond, Texas 77469

• 832-449-7920

jaypearlman@jaypearlmanlawfirm.com

*Member of State Bar of Texas & The Florida Bar***FACSIMILE TRANSMITTAL FORM****NOTICE OF CONFIDENTIALITY**

THE DOCUMENTS ATTACHED TO THIS COVER SHEET ARE INTENDED BY THE SENDER TO REMAIN CONFIDENTIAL AND TO BE REVIEWED ONLY BY THE SPECIFIC ADDRESSEE INDICATED BELOW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED ADDRESSEE, OR AN AUTHORIZED EMPLOYEE OR AGENT OF SAME HAVING THE RESPONSIBILITY TO DELIVER IT TO THE INTENDED ADDRESSEE, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. THE CLIENT OF THE LAW FIRM SENDING THIS INFORMATION INTENDS THE CONTENTS OF THIS DOCUMENT TO REMAIN CONFIDENTIAL AND NOT TO BE PUBLISHED OR DISSEMINATED TO ANY THIRD PARTIES IN ANY MANNER. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY THE SENDER BY TELEPHONE AND RETURN THE ORIGINAL FACSIMILE GENERATED IN YOUR OFFICE TO JAY S. PEARLMAN AT THE ABOVE ADDRESS VIA U.S. POSTAL SERVICE AT OUR EXPENSE. THANK YOU VERY MUCH FOR YOUR ANTICIPATED COOPERATION.

TO: TIMOTHY R. BERSCH
ASSISTANT DISCIPLINARY COUNSEL
STATE BAR OF TEXAS

FACSIMILE: (713) 758-8292**DATE SENT: SEPTEMBER 14, 2016****PAGES INCLUDING COVER PAGE: 35**

**Re: Case Nos. 201503981 [Yanez] & 20503982 [Contreras]; Commission for
Lawyer Discipline v. Jay Steven Pearlman; Before Evidentiary Panel 5-1 of the
State Bar District No. 5 Grievance Committee**

Respectfully yours,**Jay S. Pearlman****EXHIBIT****C**

IF YOU DO NOT RECEIVE ALL PAGES INDICATED, OR IF ANY PART OF THE FACSIMILE IS FAULTY OR ILLEGIBLE, PLEASE CALL FOR A CORRECTION.

0214

SEP/14/2016/WED 06:55 PM Jay S. Pearlman Law

FAX No. 713-869-0379

P. 002

JAY S. PEARLMAN

Attorney At Law

214 Morton Street • Richmond, Texas 77469
• 832-449-7920

jaypearlman@jaypearlmanlawfirm.com
Member of State Bar of Texas & The Florida Bar

September 14, 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

Re: Case Nos. 201503981 [Yanez] & 20503982 [Contreras]; *Commission for Lawyer Discipline v. Jay Steven Pearlman*; Before Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee

Dear Counselor:

Enclosed please find the following document to be filed in the above-styled and numbered cause:

1. Respondent's Motion to Modify Default Judgment.

Please forward a copy to each of the Panel's members.

Respectfully yours,

Jay S. Pearlman

JSP/

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

COMMISSION FOR LAWYERS DISCIPLINE §
Petitioner §

201503981 [YANEZ]

V. §

201503982 [CONTRERAS]

JAY STEVEN PEARLMAN §
Respondent §

FORT BEND COUNTY, TEXAS

MOTION TO MODIFY DEFAULT JUDGMENT

This Motion to Modify is brought by Jay Steven Pearlman, Respondent, who shows in support:

1. This motion is presented within the time allowed by law on motions to modify pursuant to Rule 329b of the Texas Rules of Civil Procedure the default judgment in this case having been rendered on August 15, 2016.
2. Respondent requests that the Default Judgment be modified; and, that Respondent be placed on probation. In support of Respondent's request to modify the Default Judgment, Respondent offers the following:
 - (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 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 Crnkovic-obey, claims adjuster for Farmers Texas County Mutual Insurance Company, and Sherri 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. 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 Modify the Default Judgment and place Respondent on probation.

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 Modify Default Judgment* 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 14, 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

SEP/14/2016/WED 06:57 PM Jay Pearlman Law

FAX No. 713-869-7379

P. 012

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

EXHIBIT "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

JAY STEVEN PEARLMAN		7063
TRUST ACCOUNT		
214 MORTON ST. 713-802-9990		
RICHMOND, TX 77469-3117		
DATE <u>6-26-15</u>		32-61 118 347
PAY TO THE ORDER OF <u>Yum/RA CONTRERAS</u>		\$ <u>1,1818.34</u>
<u>Eleven Thousand Eight Hundred and Eighty Dollars</u>		
CHASE 		
JPMorgan Chase Bank, N.A. www.Chase.com		
FOR <u>FINAL SETTLEMENT - Y. CONTRERAS</u>		
⑆007063⑆ ⑆1211000614⑆ ⑆1700059368⑆		

JAY STEVEN PEARLMAN
TRUST ACCOUNT
214 MORTON ST. 713-802-9980
RICHMOND, TX 77489-3117

PAY TO THE ORDER OF *Yumina Contreras*
Eleven thousand five hundred fifty four
\$11,518.34

CHASE
JPMorgan Chase Bank, N.A.
www.chase.com

FOR *CONTRERAS-YUMINA*
⑈00708 ⑈ ⑆141000611⑆

DATE *4-12-16*

7081

⑆1700059360⑈

[Signature]

EXHIBIT *D*

SEP/14/2016/WED 06:58 PM Jay S. Pearlman Law

FAX No. 713-869-7379

P. 017

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

FAXIT "C"

0230

SEP/14/2016/WED 06:58 PM Jay S. Pearlman Law

FAX No. 713-869-379

P. 018

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

SEP/14/2016/WED 06:59 PM Jay S. Pearlman Law

FAX No. 713-869-7379

P. 019

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

SEP/14/2016/WED 06:59 PM Jay S. Pearlman Law

FAX No. 713-869-7379

P. 020

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

SEP/14/2016/WED 06:59 PM Jay S. Pearlman Law

FAX No. 713-869-1379

P. 021

Chris Daniel - District Clerk Harris County
Envelope No. 11546008
By: Bonnie Lugo
Filed: 7/8/2016 4:12:23 PM

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.

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's 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 an 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 proceedings 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

SEP/14/2016/WED 07:01 PM Jay S. Pearlman Law

FAX No. 713-861-7379

P. 032

CAUSE NO. 201645993

RECEIPT NO.

0.00

ATY

TR # 73287354

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 HarrisTO: FARMERS TEXAS COUNTY MUTUAL INSURANCE COMPANY BY SERVING ITS
REGISTERED AGENT/ATTORNEY CHRIS GRANGER
15702 LONG VISTA DRIVE AUSTIN TX 78728Attached is a copy of PLAINTIFF'S FIRST AMENDED ORIGINAL PETITIONThis 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) 832-9990
Bar No.: 13689950CHRIS DANIEL, District Clerk
Harris County, Texas
201 Caroline Houston, Texas 77002
P.O. Box 4611, Houston, Texas 77210

GENERATED BY: CARRILLO, CARLA ELIZ 9YN//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 this Citation the date of delivery.

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

Fee: \$ _____

_____ of _____ County, Texas

Affiant

By _____ Deputy

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 required by law
return.

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

Notary Public

HINT: CITE

HINT: CITE

AUSTIN PROCESS, LLC
809 NEUCES
AUSTIN, TX 78701

0245

SEP/14/2016/WED 07:01 PM Jay S. Pearlman Law

FAX No. 713-869-1379

P. 033

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 77469

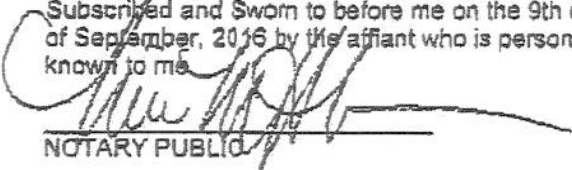
Received by Austin Process LLC on the 24th day of August, 2016 at 9:41 am to be served on Farmers Texas County Mutual Insurance Company by serving Registered Agent, Chris Granger, 15700 Long Vista Drive, Austin, TX 78728.

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.

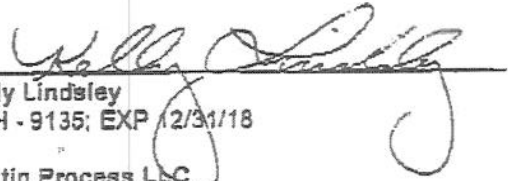
I certify that I am over the age of 18, of sound mind, have no interest in the above action, and am a Certified Process Server, in good standing, in the judicial circuit in which the process was delivered. The facts stated in this affidavit are within my personal knowledge and are true and correct.

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


 NOTARY PUBLIC


NICOLE M. HYBNER
 My Notary ID # 129086987
 Expires August 9, 2020

Copyright © 1992-2016 Delatasa Services, Inc. - Process Server's ToolBox V7.1a


 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

0246

**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

SIGNED under oath before me on 9/13/16, 2016.



Belinda Espinosa
Notary Public, State of Texas

**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

NOTICE OF HEARING

The above motion is set for hearing on _____ at _____ M.

before the Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee, Fort Bend County, Texas.

SIGNED on _____, 2016

Judge or Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of *Respondent's Notice of Hearing on 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

OCT/17/2016/MON 10:42 AM Jay S. Pearlman Law

FAX No. 713-869-7379

P. 001

JAY S. PEARLMAN

Attorney At Law

214 Morton Street • Richmond, Texas 77469

jaypearlman@jaypearlmanlawfirm.com

Member of State Bar of Texas & The Florida Bar

RECEIVED

OCT 17 2016

STATE BAR OF TEXAS
HOUSTON CDC**FACSIMILE TRANSMITTAL FORM****NOTICE OF CONFIDENTIALITY**

THE DOCUMENTS ATTACHED TO THIS COVER SHEET ARE INTENDED BY THE SENDER TO REMAIN CONFIDENTIAL AND TO BE REVIEWED ONLY BY THE SPECIFIC ADDRESSEE INDICATED BELOW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED ADDRESSEE, OR AN AUTHORIZED EMPLOYEE OR AGENT OF SAME HAVING THE RESPONSIBILITY TO DELIVER IT TO THE INTENDED ADDRESSEE, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. THE CLIENT OF THE LAW FIRM SENDING THIS INFORMATION INTENDS THE CONTENTS OF THIS DOCUMENT TO REMAIN CONFIDENTIAL AND NOT TO BE PUBLISHED OR DISSEMINATED TO ANY THIRD PARTIES IN ANY MANNER. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY THE SENDER BY TELEPHONE AND RETURN THE ORIGINAL FACSIMILE GENERATED IN YOUR OFFICE TO JAY S. PEARLMAN AT THE ABOVE ADDRESS VIA U.S. POSTAL SERVICE AT OUR EXPENSE. THANK YOU VERY MUCH FOR YOUR ANTICIPATED COOPERATION.

TO: TIMOTHY R. BERSCH
ASSISTANT DISCIPLINARY COUNSEL
STATE BAR OF TEXAS

FACSIMILE: (713) 758-8292

DATE SENT: OCTOBER 17, 2016

PAGES INCLUDING COVER PAGE: 50

Re: Case Nos. 201503981 [Yanez] & 20503982 [Contreras]; *Commission for Lawyer Discipline v. Jay Steven Pearlman*; Before Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee

1. First Amended Respondent's Motion to Set Aside Default Judgment and Grant New Trial; and,
2. Order Granting Respondent's Motion to Set Aside Default Judgment and Grant New Trial.

Respectfully yours,


Jay S. Pearlman

IF YOU DO NOT RECEIVE ALL PAGES INDICATED, OR
FAULTY OR ILLEGIBLE, PLEASE CALL FOR A CORRECT

EXHIBIT


0282

OCT/17/2016/MON 10:42 AM Jay S. Pearlman Law

FAX No. 713-869-7379

P. 002

JAY S. PEARLMAN

Attorney At Law

214 Morton Street • Richmond, Texas 77469

jaypearlman@jaypearlmanlawfirm.com

Member of State Bar of Texas & The Florida Bar

October 17, 2016

RECEIVED

OCT 17 2016

STATE BAR OF TEXAS
HOUSTON CDC

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

Re: Case Nos. 201503981 [Yanez] & 20503982 [Contreras]; *Commission for Lawyer Discipline v. Jay Steven Pearlman*; Before Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee

Dear Counselor:

Enclosed please find the following document to be filed in the above-styled and numbered cause:

1. Respondent's First Amended Motion to Set Aside Default Judgment and to Grant New Trial; and,
2. A proposed Order Granting First Amended Respondent's Motion to Set Aside Default Judgment and to Grant New Trial.

Please forward a copy to each of the Panel's members.

Respectfully yours,

Jay S. Pearlman

JSP/lap

OCT/17/2016/MON 10:42 AM Jay S. Pearlman Law

FAX No. 713-869-7379

P. 003

Cc:

Ms. Linda A. Acevedo

E-mail: Linda.Acevedo@texasbar.com

Ms. Maribelle Hernandez

E-mail: Maribelle.Hernandez@Texasbar.com

OCT/17/2016/MON 10:43 AM Jay S. Pearlman Law

FAX No. 713-869-7379

P. 004

FILED

OCT 17 2016

STATE BAR OF TEXAS
HOUSTON CDC

**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 FIRST AMENDED MOTON TO SET ASIDE
DEFAULT JUDGMENT AND GRANT NEW TRIAL/HEARING**

TO THE HONIRABLE 5-1 EVIDENTIARY PANEL OF THE STATE BAR DISTRICT NO. 5
GRIEVANCE COMMITTEE:

COMES NOW, Jay Steven Pearlman, Respondent, and files this, his First Amended Motion to Set Aside Default Judgment and Grant New Trial, and moves this Honorable 5-1 Evidentiary Panel of the State Bar District No. 5 Grievance Committee to set aside the judgment rendered against Respondent on August 10, 2016, and grant Respondent a new trial in this cause, and in support thereof shows the following:

**I.
INTRODUCTION**

On or about August 15, 2016, a Default Judgment of Disbarment was signed by the chair of Panel 5-1. Respondent's motion was presented within the time limits prescribed by the Texas Rules of Civil Procedure for a Motion for New Trial and is requested for good cause. Respondent's motion satisfies all three (3) elements of the *Craddock* standard as set forth herein below. *Craddock v. Sunshine Bus Lines, Inc.* 134 Tex. 188, 133 S.W.2d 124, 126 (1939). Therefore, Respondent respectfully requests that his Motion to Set Aside Default Judgment and Grant New Trial be granted.

II.

CHRONOLOGY

Yumira Contreras and Veronica Yanez each filed grievances with the State Bar of Texas against Respondent, Jay Steven Pearlman.

The Commission for Lawyers Discipline filed an Original Evidentiary Petition.

An Evidentiary Hearing was set for August 10, 2016. Respondent failed to appear. An evidentiary hearing was held an before Panel 5-1 and a default judgment was rendered on August 10, 2016.

The Judgment for Disbarment was signed by the chair of Panel 5-1 of the State Bar District No. 5 Grievance Committee.

III.

ARGUMENT AND AUTHORITY

A. Standard to Set Aside Default Judgment and Grant New Trial – “Craddock” 3 Elements or Factors:

A default judgment should be set aside and a new trial should be ordered in any case in which the failure of the defendant [Respondent] to answer before judgment was not intentional, or the result of conscious indifference on his part, but was due to mistake or accident; provided the motion for a new trial set up a meritorious defense and is filed at a time when granting thereof will occasion no delay or otherwise work an injury to the plaintiff [Petitioner, Commission for Lawyer Discipline] [Yumira Contreras and Veronica Yanez]. *Craddock v. Sunshine Bus Lines, Inc.* 134 Tex. 188, 133 S.W.2d 124, 126 (1939); *see also Bank One, Texas, N.A. v. Moody*, 830 S.W.2d 81, 85 (Tex. 1992); *see also Dolgencorp of Texas, Inc., d/b/a Dollar General Store v. Maria Isabel Lerma, Individually, et al.*, No. 08-0032 (Tex. 2009) (per curium). The *Craddock* elements apply to both no-answer and post-answer default judgments based on

non-appearance at trial. *Director, State Employees Workers' Compensation Division v. Evans*, 889 S.W.2d 266, 268 (Tex. 1994);

1. Craddock – 1st Element:

Respondent's failure to file an answer before judgment was the result of an accident or mistake, rather than due to an intentional act or the result of conscious indifference.

The accident or mistake that prevented Respondent from filing an answer is:

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 and as a direct result accidentally failed to calendar the evidentiary hearing/trial date of August 10, 2016. General forgetfulness or failure to calendar qualify as sufficient reasons to satisfy the first element of *Craddock*. See *Director, State Employees Workers' Compensation Division v. Evans*, 889 S.W.2d 266, 268 (Tex. 1994); *Jackson v. Mares*, 802 S.W.2d 48, 52 (Tex. App. – Corpus Christi 1990, writ denied).

Furthermore, where the factual allegations in a movant's affidavit are not controverted, it is sufficient that the motion and affidavit set forth facts, if true, would negate intentional or consciously indifferent conduct. *Strackbein v. Prewitt*, 671 S.W.2d 37, 38-39 (Tex. 1984).

It is clear that Respondent has met the first element of *Craddock*.

2. Craddock – 2nd Element:

Respondent has a meritorious defense to any and all complaints. Setting up a meritorious defense does not require proof "in the accepted sense." *Ivy v. Carrell*, 407 S.W.2d at 214 (Tex. 1996). Rather the motion sets up a meritorious defense if it alleges facts which in law would constitute a defense to plaintiff's [Commission for Lawyers Discipline/Yanez and Contreras]

cause of action and is supported by affidavits or other evidence providing prima facie proof that defendant [Respondent, Jay Steven Pearlman] has such a defense. *Id.* (testimony given at the motion for new trial hearing used to determine whether defendant provided prima facie evidence of a meritorious defense); see *Guar. Bank v. Thompson*, 632 S.W.2d 338,339 (Tex. 2006). Once such requirements are met, controverting evidence offered by the non-movant [Plaintiff] should not be considered. *Ivy* 407 S.W.2d, at 214 (Tex. 1996).

The meritorious defense to the complaints of the Petitioner, Commission for Lawyers Discipline [Yumira Contreras and Veronica Yanez], is as follows:

Complaints of Petitioner, Commission for Lawyers Discipline [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:

Response to complaints of Petitioner, Commission for Lawyers Discipline [Yumira 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 he was leaving his office for

an appointment and he asked Ms. Contreras to come back to his office that afternoon at 1:00 p.m. Respondent told Ms. Contreras he would have a final settlement statement completed for her approval and signature. In addition, Respondent told Ms. Contreras he would provide her a Client-Trust Account check for her share of the total settlement in accordance with the Final Settlement Statement. Ms. Contreras agreed to come back to Respondent's 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]. Because Respondent had to leave his office at 1:30 p.m. to attend to a personal matter, Respondent left the Final Settlement Statement and the Client-Trust check made payable to Yumira Contreras in the amount \$11,818.34 with the receptionist, Alicia Rubio. 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-1" and "A-2" and incorporated herein by reference, as if fully copied and set forth at length. The next morning, Respondent was surprised to discover Ms. Contreras did not come back to his office that afternoon to sign the Final Settlement Statement and/or pick up the Client-Trust Account check. The office was open and the receptionist was available from 1:00 p.m. - 5:00 p.m. Furthermore, Respondent did not receive a telephone call or written communication from Ms. Contreras as to why she did not come back to the office that afternoon. Respondent contacted Ms. Contreras to inquire as to 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 Client-Trust Account 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

OCT/17/2016/MON 10:44 AM Jay S. Pearlman Law

FAX No. 713-869-7379

P. 010

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 Client-Trust Account check for her to pick up. Respondent spoke with the receptionist regarding this matter. The receptionist told Respondent she never saw Ms. Contreras at the office or spoke with Ms. Contreras that afternoon. An Unsworn Declaration of Alicia Rubio is attached hereto as Exhibit "B" and incorporated herein by reference, as if fully copied and set forth at length. During the same telephone conversation Respondent had with Ms. Contreras, Ms. Contreras requested that Respondent send the Final Settlement Statement and the Client-Trust 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 Client-Trust 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. Ms. Contreras never provided Respondent's office with a signed Final Settlement Statement. Respondent did not have any communication with 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 Texas County Mutual Insurance Company]. 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 "C-1" and "C-2" 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 would not proceed forward with her grievance filed against Respondent with the State Bar of Texas.

Complaints of Petitioner, Commission for Lawyers Discipline [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 Yanez 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:

Response to complaints of Petitioner, Commission for Lawyers Discipline [Veronica 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 with the insurance company an 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 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 had been unable to negotiate a fair and reasonable settlement with Farmers Texas County Mutual Insurance Company. Ms. Yanez and Respondent did not have any further conversations regarding the status of her claim until a telephone conversation between Respondent and a daughter of Ms. Yanez 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. Respondent 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 to submit to an Examination Under Oath ("EUO"), as required by the terms and conditions set forth in the insurance policy prior to filing a lawsuit on her behalf. Ms. Yanez, by and through her daughter, asked Respondent set up an EUO with the attorney for Farmers Texas County Mutual Insurance Company and to proceed forward with her

claim/case Respondent agreed to continue his representation. On or about February 14, 2016, Respondent sent a letter to Kellie Crnkovic-obey, claims adjuster for Farmers Texas County Mutual Insurance Company, and Sherri V. Gilbert, legal counsel for Farmers Texas County Mutual Insurance Company advising them Respondent would continue to represent Veronica Yanez. A true and correct copy of this letter is attached hereto as Exhibit "D" and incorporated herein, as if fully copied and set forth at length. Furthermore, Respondent and legal counsel for Farmers Texas County Mutual Insurance Company agreed to a date for the EUO of Veronica Yanez.

The EUO of Ms. Yanez was taken 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 with Farmers Texas County Mutual Insurance Company. On July 8, 2016, Respondent filed a lawsuit on behalf of Ms. Yanez against Farmers Texas County Mutual Insurance Company. 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 "E" and incorporated herein by reference, as if fully copied and set forth at length.

In addition to the uninsured coverage provided by Farmers insurance policy, the policy included personal injury protection coverage ("PIP") in the amount of \$10,000.00. PIP coverage is for medical bills incurred and/or loss wages as a direct and proximate cause of a motor vehicle

accident. Although Farmers Texas County Mutual Insurance Company paid the maximum amount of the available PIP coverage [\$10,000.00], Farmers has a statutory offset [for the \$10,000.00 paid under the PIP coverage] for any settlement/judgment amount paid under the uninsured motorist coverage claim made on behalf of Ms. Yanez. Furthermore, the payment made by Farmers Texas County Mutual Insurance Company was for medical bills incurred by Ms. Yanez. Ms. Yanez was able to receive medical treatment for her injuries as a result of Letters of Protection sent by his office to medical providers for Ms. Yanez and treatment paid by the law office of Jay Steven Pearlman, Respondent. Since there are Letters of Protection and hospital liens on Ms. Yanez's claim, and expenses incurred by Respondent, the PIP money was not released nor would be released to Ms. Yanez until a final resolution of her claim by settlement or trial. Ms. Yanez was advised of this by Respondent and his law office.

It is abundantly clear that Respondent has a meritorious defense to the complaints made by the Petitioner, Commission for Lawyers Discipline on behalf of Yumira Contreras and Veronica Yanez and has met the second element of *Craddock*.

3. *Craddock* – 3rd Element:

Setting aside the default judgment and granting a new trial [evidentiary hearing] in this case will occasion no delay or otherwise work an injury to plaintiff [Petitioner, Commission for Lawyer Discipline, on behalf of Yumira Contreras and Veronica Yanez], for the following reasons:

(1) Yumira Contreras case was settled and she signed a Final Settlement Statement and received and accepted a Client-Trust check in the amount of \$11,818.34 on April 12, 2016 for her share of the total settlement as set forth in the Final Settlement Statement.

OCT/17/2016/MON 10:46 AM Jay S. Pearlman Law

FAX No. 713-889-7379

P. 015

(2) A lawsuit was filed on behalf of Veronica Yanez on July 8, 2016, The 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."

(3) Respondent, Jay Steven Pearlman, will tender reasonable costs and expenses incurred by reason of this motion.

IV. CONCLUSION

In order to obtain a new trial after either a no-answer or post-answer default judgment based on non-appearance at trial, Respondent must satisfy all three elements of Craddock. Respondent's motion and affidavit have satisfied all three elements of the Craddock standard and therefore should be granted.

PRAY FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Jay Steven Pearlman, Respondent, prays that his Motion to Set Aside Default Judgment and Grant New Trial be granted and that Respondent receive such other and further relief to which he may show himself to be justly entitled.

Respectfully submitted,

Jay S. Pearlman

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

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FAX No. 713-869-7379

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of *Respondent's First Amended Motion to Set Aside Default Judgment and Grant 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 October 16, 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

Via Regular U.S. Mail**& Facsimile: (713) 758-8292**

Linda A. Acevedo
Chief 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

OCT/17/2016/MON 10:46 AM Jay S. Pearlman Law

FAX No. 713-869-7379

P. 017

JAY S. PEARLMAN*Attorney At Law*

214 Morton Street • Richmond, Texas 77469
 713-802-9990 Houston • 832-449-7920 Richmond
 713-869-7379 Fax • 1-800-530-2828
 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

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

I. 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

OCT/17/2016/MON 10:47 AM Jay S. Pearlman Law

FAX No. 713-869-7379

P. 019

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

JAY STEVEN PEARLMAN
TRUST ACCOUNT
214 MORTON ST. 713-802-8900
RICHMOND, TX 77468-3117

7063

PAY TO THE ORDER OF Yumira Cantreos \$ 11,818.34

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

FOR FINAL SETTLEMENT - Yumira Cantreos

DATE 6-26-15

⑆007063⑆ ⑆11100061⑆ 1700059356⑆

EXHIBIT
"A-2"

OCT/17/2016/MON 10:47 AM Jay S. Pearlman Law

FAX No. 713-869-7379

P. 021

**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

UNSWORN DECLARATION OF ALICIA RUBIO

"My name is ALICIA RUBIO, my date of birth is July 11, 1993, and my address is 1818 Mustang Drive, Apt. 2409, Richmond, Texas 77469. I am above the age of eighteen years, and I am fully competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct."

"I am employed by Steven Rocket Rosen, Attorney at Law, 214 Morton Street, Richmond, Texas 7749. I am a receptionist and my desk is situated directly in front of the entrance to the office. It is my understanding that Mr. Pearlman leases office space from Mr. Rosen, the owner of the building."

"On or about June 26, 2015, I was in the usual course and scope of my employment when group of people entered the office. They told me they were here to see Jay S. Pearlman, Attorney at Law. I let Mr. Pearlman know that he had some clients who were here to see him. Mr. Pearlman met with these people. After Mr. Pearlman spoke with his clients, Mr. Pearlman and the entire group of people left the office. Mr. returned to the office at approximately 12:30 p.m. He left the office at approximately 1:30 p.m. Before Mr. Pearlman left the office, he handed me a document and a check. He told me his clients were supposed to return at 1:00 p.m. He stated he had a matter to attend to and could not wait any longer for the clients. He told me that the file contained a settlement statement and a check. He asked me if I could have his client sign the settlement statement and give her the check once the settlement statement was signed. I told this would not be a problem. I worked until 5:00 p.m. and did not see his clients return to the office. The next day, Mr. Pearlman asked how everything went with his clients. I told him they did not return to the office. He was very surprised to hear they did not return."

Alicia Rubio

Alicia Rubio
Declarant

OCT/17/2016/MON 10:47 AM Jay S. Pearlman Law

FAX No. 713-869-7379

P. 023

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
 CHANNEL VIEW 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

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 CONKLEN, 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

OCT/17/2016/MON 10:48 AM Jay S. Pearlman Law

FAX No. 713-869-7379

P. 025

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

7081

JAY STEVEN PEARLMAN
TRUST ACCOUNT
214 MORTON ST. 713-802-9980
RICHMOND, TX 77469-3117

DATE 4-12-16

PAY TO THE ORDER OF YUMIRA CONTRERAS
Eleven Thousand Eight hundred Eighty Dollars \$11,880.34

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

FOR CONTRERAS-FINANCE

1700059360

17007081 1110006112

EXHIBIT
J-STATE LEGAL

OCT/17/2016/MON 10:48 AM Jay S. Pearlman Law

FAX No. 713-869-7379

P. 027

JAY S. PEARLMAN

Attorney At Law

214 Morton Street • Richmond, Texas 77467
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.crnovic-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 : 3001053372-1-1

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.

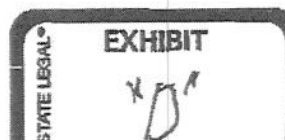
Respectfully yours,

Jay S. Pearlman

JSP/at

Page 1 of 2

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



0308

OCT/17/2016/MON 10:49 AM Jay S. Pearlman Law

FAX No. 713-869-7379

P. 028

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

OCT/17/2016/MON 10:49 AM Jay S. Pearlman Law

FAX No. 713-869-7379

P. 029

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: 15639950
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

OCT/17/2016/MON 10:49 AM Jay S. Pearlman Law

FAX No. 713-869-7379

P. 030

מחלקת המידע - 052-9999999

Envelope No. 11546008

By Bonnie Lugo

Filed: 7/8/2016 4:12:23 PM

2016-45593 / Court: 113

CAUSE NO.

VERONICA YANEZ
Plaintiff

VS.

FARMERS TEXAS COUNTY
MUTUAL INSURANCE COMPANY
Defendant

[illegible]

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:

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.

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

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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.

3.5 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

3.6 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 an 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.

3.7 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

38 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,

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(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 proceedings 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

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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

OCT/17/2016/MON 10:52 AM Jay S. Pearlman Law

FAX No. 713-869-7379

P. 041

CAUSE NO. 10.945591

RECEIPT NO. 9 30 ATY TR # 73361354

PLAINTIFF: YAREZ, VERONICA
vs
DEFENDANT: FARMERS TEXAS COUNTY MUTUAL INSURANCE COMPANY
In The 113th
Judicial District Court
of Harris County, Texas
111TH 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 78728

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

This instrument was filed on the 17th 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 30 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 17th 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) 302-9996
Bar No. 15839950



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

GENERATED BY: CARRILLO, CARLA ELIZ 9CM//10414452

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 _____

Affiant

Deputy

On this day, _____, I, _____, do hereby certify 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 required by law.
return.

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

Notary Public

SERVICE RETURN ATTACHED

AUSTIN PROCESS, LLC
809 NEUCES
AUSTIN, TX 78701

OCT/17/2016/MON 10:52 AM Jay S. Pearlman Law FAX No. 713-869-7379 P. 042

State of Texas County of Harris 113th Judicial District Court

Case Number: 2016-46693

Plaintiff:
Veronica Yanez

vs.

Defendant:
Farmers Texas County Mutual Insurance Company

For:
Jay S. Pearlman
214 Morton Street
Richmond, TX 77469

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.

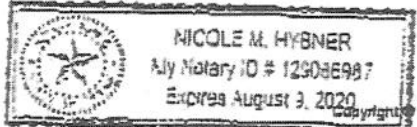
I, Kelly Lindsley, being duly sworn, depose and say that on the 9th day of September, 2016 at 9:41 am, I:

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.

NOTARY PUBLIC



Kelly Lindsley
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 Petitioner	§ § § § § § § §	201503981 [YANEZ] 201503982 [CONTRERAS] FORT BEND COUNTY, TEXAS
V. JAY STEVEN PEARLMAN Respondent		

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."

"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 he was leaving his office for an appointment and he asked Ms. Contreras to come back to his office that afternoon at 1:00 p.m. Respondent told Ms. Contreras he would have a final settlement statement completed for her approval and signature. In addition, Respondent told Ms. Contreras he would provide her a Client-Trust Account check for her share of the total settlement in accordance with the Final Settlement Statement. Ms. Contreras agreed to come back to Respondent's 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]. Because Respondent had to leave his office at 1:30 p.m. to attend to a personal matter, Respondent left the Final Settlement Statement and the Client-Trust check made payable to Yumira Contreras in the amount

OCT/17/2016/MON 10:53 AM Jay S. Pearlman Law

FAX No. 713-869-7379

P. 045

\$11,818.34 with the receptionist, Alicia Rubio. 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-1" and "A-2" and incorporated herein by reference, as if fully copied and set forth at length. The next morning, Respondent was surprised to discover Ms. Contreras did not come back to his office that afternoon to sign the Final Settlement Statement and/or pick up the Client-Trust Account check. The office was open and the receptionist was available from 1:00 p.m. - 5:00 p.m. Furthermore, Respondent did not receive a telephone call or written communication from Ms. Contreras as to why she did not come back to the office that afternoon. Respondent contacted Ms. Contreras to inquire as to 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 Client-Trust Account 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 Client-Trust Account check for her to pick up. Respondent spoke with the receptionist regarding this matter. The receptionist told Respondent she never saw Ms. Contreras at the office or spoke with Ms. Contreras that afternoon. An Unsworn Declaration of Alicia Rubio is attached hereto as Exhibit "B" and incorporated herein by reference, as if fully copied and set forth at length. During the same

telephone conversation Respondent had with Ms. Contreras, Ms. Contreras requested that Respondent send the Final Settlement Statement and the Client-Trust 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 Client-Trust 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. Ms. Contreras never provided Respondent's office with a signed Final Settlement Statement. Respondent did not have any communication with 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 Texas County Mutual Insurance Company]. 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 "C-1" and "C-2" 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 would not proceed forward with her grievance filed against Respondent with the State Bar of Texas."

"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 with the insurance company an 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 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 had been unable to negotiate a fair and reasonable settlement with Farmers Texas County Mutual Insurance Company. Ms. Yanez and Respondent did not have any further conversations regarding the status of her claim until a telephone conversation between Respondent and a daughter of Ms. Yanez 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. Respondent 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 to submit to an Examination Under Oath ("EUO"), as

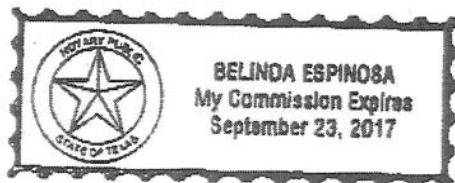
required by the terms and conditions set forth in the insurance policy prior to filing a lawsuit on her behalf. Ms. Yanez, by and through her daughter, asked Respondent set up an EUO with the attorney for Farmers Texas County Mutual Insurance Company and to proceed forward with her claim/case Respondent agreed to continue his representation. On or about February 14, 2016, Respondent sent a letter to Kellie Crnkovic-obey, claims adjuster for Farmers Texas County Mutual Insurance Company, and Sherri V. Gilbert, legal counsel for Farmers Texas County Mutual Insurance Company advising them Respondent would continue to represent Veronica Yanez. A true and correct copy of this letter is attached hereto as Exhibit "D" and incorporated herein, as if fully copied and set forth at length. Furthermore, Respondent and legal counsel for Farmers Texas County Mutual Insurance Company agreed to a date for the EUO of Veronica Yanez.

The EUO of Ms. Yanez was taken 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 with Farmers Texas County Mutual Insurance Company. On July 8, 2016, Respondent filed a lawsuit on behalf of Ms. Yanez against Farmers Texas County Mutual Insurance Company. 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 "E" and incorporated herein by reference, as if fully copied and set forth at length.

In addition to the uninsured coverage provided by Farmers insurance policy, the policy included personal injury protection coverage ("PIP") in the amount of \$10,000.00. PIP coverage is for medical bills incurred and/or loss wages as a direct and proximate cause of a motor vehicle accident. Although Farmers Texas County Mutual Insurance Company paid the maximum amount of the available PIP coverage [\$10,000.00], Farmers has a statutory offset [for the \$10,000.00 paid under the PIP coverage] for any settlement/judgment amount paid under the uninsured motorist coverage claim made on behalf of Ms. Yanez. Furthermore, the payment made by Farmers Texas County Mutual Insurance Company was for medical bills incurred by Ms. Yanez. Ms. Yanez was able to receive medical treatment for her injuries as a result of Letters of Protection sent by his office to medical providers for Ms. Yanez and treatment paid by the law office of Jay Steven Pearlman, Respondent. Since there are Letters of Protection and hospital liens on Ms. Yanez's claim, and expenses incurred by Respondent, the PIP money was not released nor would be released to Ms. Yanez until a final resolution of her claim by settlement or trial. Ms. Yanez was advised of this by Respondent and his law office."

Jay S. Pearlman

SIGNED under oath before me on October 17th, 2016.



Belinda Espinosa
Notary Public, State of Texas

OCT/17/2016/MON 10:54 AM Jay S. Pearlman Law

FAX No. 713-869-7379

P. 050

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

**COMMISSION FOR LAWYERS DISCIPLINE §
Petitioner §**

201503981 [YANEZ]

V.

**JAY STEVEN PEARLMAN §
Respondent §**

201503982 [CONTRERAS]

FORT BEND COUNTY, TEXAS

**ORDER GRANTING RESPONDENT'S MOTION TO SET ASIDE DEFAULT
JUDGMENT AND GRANT NEW TRIAL**

BE IT REMEMBERED that on the date indicated below Respondent's Motion to Set Aside Default Judgment and Grant New Trial came on for consideration, and Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee, having considered Respondent's motion and first amended motion and the response filed by Petitioner, is of the opinion that the motion should be GRANTED.

IT IS, THEREFORE ORDERED that Respondent's Motion to Set Aside Default Judgment and Grant New Trial is hereby GRANTED.

SIGNED this _____ day of _____, 2016

**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 NOTICE OF APPEAL
OF DEFAULT JUDGMENT FOR DISBARMENT**

This Notice of Appeal of Default Judgment for Disbarment is filed by JAY STEVEN PEARLMAN, Respondent, a party to this proceeding who seeks alter the ruling (Default Judgment of Disbarment) by the Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee.

1. The trial court, cause number, and style of this case are as shown in the caption above.
2. The Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee entered an Order that was signed by Lee D. Cox, Panel 5 Chair, on August 15, 2016
3. Respondent timely filed a Motion to Set Aside Default Judgment and Grant New Trial/Hearing and a Motion to Modify in the above-styled and numbered cause.
4. The Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee failed to rule on Respondent's Motion to Set Aside Default Judgment and Grant New Trial/Hearing and Respondent's Motion to Modify Default Judgment; therefore, both motions were overruled by operation of law on October 29, 2016.
5. Respondent, Jay Steven Pearlman, timely files this, his appeal to the Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee's Default Judgment for Disbarment.

NOV/09/2016/WED 01:37 PM Jay Pearlman Law

FAX No. 713-869-7379

P.005/012

6. This appeal is being taken to the Board of Disciplinary Appeals ("BODA").

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, JAY S. PEARLMAN, hereby certify that a true and correct copy of *Respondent's Notice of Appeal to the Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee's Default Judgment for Disbarment* 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 and in accordance with rule 9.5 of the Texas Rules of Appellate Procedure on November 9, 2016.

Via Regular U.S. Mail**& Facsimile: (512) 427-4130**

Board of Disciplinary Appeals ("BODA")
State Bar of Texas
P.O. Box 12426
Capitol Station
Austin, Texas 78711

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

Telephone: (832) 449-7920

Facsimile: (832) 449-7924

jaypearlman@jaypearlmanlawfirm.com

Member of State Bar of Texas & The Florida Bar

RECEIVED

NOV 09 2016

STATE BAR OF TEXAS
HOUSTON CDC

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NOTICE OF CONFIDENTIALITY

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TO: TIMOTHY R. BERSCH
ASSISTANT DISCIPLINARY COUNSEL
STATE BAR OF TEXAS

FACSIMILE: (713) 758-8292

DATE SENT: NOVEMBER 9, 2016

PAGES INCLUDING COVER PAGE: 12

Re: Case Nos. 201503981 [Yanez] & 20503982 [Contreras]; *Commission for Lawyer Discipline v. Jay Steven Pearlman*; Before Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee

Respectfully yours,

Jay S. Pearlman

IF YOU DO NOT RECEIVE ALL PAGES INDICATED, OR IF ANY PART OF THE FACSIMILE IS FAULTY OR ILLEGIBLE, PLEASE CALL FOR A CORRECTION.

NOV/09/2016/WED 01:36 PM Jay Pearlman Law

FAX No. 713-869-379

P. 002/012

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STATE BAR OF TEXAS
HOUSTON CDC

November 9, 2016

Via Regular U.S. Mail& Facsimile: (512) 427-4130

Board of Disciplinary Appeals ("BODA")

State Bar of Texas

P.O. Box 12426

Capitol Station

Austin, Texas 78711

Re: Case Nos. 201503981 [Yanez] & 20503982 [Contreras]; *Commission for Lawyer Discipline v. Jay Steven Pearlman*; Before Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee

Dear Board of Disciplinary Appeals ("BODA")

Enclosed please find the following:

1. Respondent's Notice of Appeal to Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee's Default Judgment for Disbarment;
2. Respondent's Notice of Appeal to Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee's Overruling by Operation of Law Respondent's Motion to Set Aside Default Judgment and Grant a New Trial/Hearing;
3. Respondent's Notice of Appeal to Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee's Overruling by Operation of Law Respondent's Motion to Modify Default Judgment for Disbarment.

Respectfully yours,

Jay S. Pearlman

JSP/lap

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FAX No. 713-869-879

P. 003/012

Cc:

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

5. Respondent, Jay Steven Pearlman, timely files this, his appeal to the overruling by operation of law of Respondent's Motion to Set Aside Default Judgment and Grant New Trial/Hearing.

6. This appeal is being taken to the Board of Disciplinary Appeals ("BODA").

Respectfully submitted,

Jay S. Pearlman

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Facsimile: (832) 449-7924
E-mail: jaypearlman@jaypearlmanlawfirm.com
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CERTIFICATE OF SERVICE

I, JAY S. PEARLMAN, hereby certify that a true and correct copy of *Respondent's Notice of Appeal to Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee's Overruling by Operation of Law Respondent's Motion to Set Aside Default Judgment and Grant a New Trial/Hearing* 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 and in accordance with rule 9.5 of the Texas Rules of Appellate Procedure on November 9, 2016.

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Austin, Texas 78711

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4801 Woodway Drive, Suite 315-W
Houston, Texas 77056

/s/ Jay S. Pearlman
Jay S. Pearlman

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TO: TIMOTHY R. BERSCH
ASSISTANT DISCIPLINARY COUNSEL
STATE BAR OF TEXAS

FACSIMILE: (713) 758-8292**DATE SENT: NOVEMBER 9, 2016****PAGES INCLUDING COVER PAGE: 12**

**Re: Case Nos. 201503981 [Yanez] & 20503982 [Contreras]; Commission for
Lawyer Discipline v. Jay Steven Pearlman; Before Evidentiary Panel 5-1 of the
State Bar District No. 5 Grievance Committee**

Respectfully yours,


Jay S. Pearlman

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Austin, Texas 78711

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Respectfully yours,

Jay S. Pearlman

JSP/lap

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P. 003/012

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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

**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 NOTICE OF APPEAL TO EVIDENTIARY PANEL 5-1 OF THE
STATE BAR DISTRICT NO. 5 GRIEVANCE COMMITTEE'S OVERRULING BY
OPERATION OF LAW RESPONDENT'S MOTION TO MODIFY DEFAULT
JUDGMENT FOR DISBARMENT**

This Notice of Appeal is filed by JAY STEVEN PEARLMAN, Respondent, a party to this proceeding who seeks to alter the overruling by operation of law of Respondent's Motion to Modify Default Judgment for Disbarment by the Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee.

1. The trial court, cause number, and style of this case are as shown in the caption above.
2. The Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee entered an Order that was signed by Lee D. Cox, Panel 5 Chair, on August 15, 2016
3. Respondent timely filed a Motion to Modify Default Judgment for Disbarment in the above-styled and numbered cause.
4. The Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee failed to rule on Respondent's Motion to Modify Default Judgment for Disbarment; therefore, Respondent's Motion to Modify Default Judgment for Disbarment was overruled by operation of law on October 29, 2016.
5. Respondent, Jay Steven Pearlman, timely files this, his appeal to the overruling by operation of law of Respondent's Motion to Modify Defi

EXHIBIT
G

6. This appeal is being taken to the Board of Disciplinary Appeals ("BODA").

Respectfully submitted,

Jay S. Pearlman

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Attorney at Law
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Facsimile: (832) 449-7924
E-mail: jaypearlman@jaypearlmanlawfirm.com
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CERTIFICATE OF SERVICE

I, JAY S. PEARLMAN, hereby certify that a true and correct copy of *Respondent's Notice of Appeal to Evidentiary Panel 5-1 of the State Bar District No. 5 Grievance Committee's Overruling by Operation of Law Respondent's Motion to Modify Default Judgment for Disbarment* 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 and in accordance with rule 9.5 of the Texas Rules of Appellate Procedure on November 9, 2016.

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Board of Disciplinary Appeals ("BODA")
State Bar of Texas
P.O. Box 12426
Capitol Station
Austin, Texas 78711

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

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STATE BAR OF TEXAS

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DATE SENT: NOVEMBER 9, 2016

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Respectfully yours,

Jay S. Pearlman

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Respectfully yours,

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P. 003/012

Cc:

Via Regular U.S. Mail

& Facsimile: (713) 758-8292

Timothy R. Bersch

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230 Westcott Street, Suite 210
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(713) 869-7400

Tax ID # 126549629
NPI # 1487635892 BG
NPI# 1821157363 CW
NPI# 183156901 AW

February 17, 2017

By Fax:
Board of Disciplinary Appeals

RE: PEARLMAN, JAY
DOB: 03/04/1955

To Whom it May Concern:

This letter is being written in regard to support of any considerations that can be shown Mr. Pearlman in regard to possibly reinstating his legal law license pending his continued treatment.

The above person has been a patient of mine since the year 2000 and still remains a patient of mine currently. He has been treated by me for attention deficit disorder and is still currently being treated for that. Throughout the course of time that I have known this patient, I have not known him to exhibit any evidence that showed that he was not fit to practice law and, in fact, I always found him to be extremely caring and interested in going the extra mile for his clients, which I always remarked on and was impressed by from my knowledge of him. I was made aware, as I did see him back on 02/10/2017 in the presence of Paul Rosen, attorney, regarding the loss of his law license.

The above individual does have ADD, but the ADD is felt to be relatively well treated and has been stable; but what has been a continued problem in this patient's life is his marriage which has been extremely tumultuous where he has played the role of an over-extended caretaker and according to multiple people who know him has exhibited poor judgment in his decision making in regard to that relationship, i.e. staying in the relationship, and becoming overly involved with trying to help his spouse to the extent of not helping himself at times. Part of my recommendations should the Board find it within their heart to consider granting him his law license back would be that he receives regular individual therapy, and I did refer him to Jonathan Morris for therapy, and I would like to see it court-mandated that he do the above; but I do think he is motivated to do the above, but I certainly feel that the court-mandate would further accentuate that process.

EXHIBIT

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PEARLMAN, JAY

02/17/2017

PAGE 2 of 2

Breaking habits for any person and any patient is difficult, and I do think that continued therapy and the full acknowledgement of the extent that becoming over-involved in his relationship has brought into his life is very well apparent to the patient, and I am optimistic that with individual therapy and the continuation of his medication that he has been adherent to with me, his likelihood of being able to return to practicing law in a successful manner and a professional manner and without endangering the legal endeavors of any client that he represents is felt to be good. I have known this patient a long time and have never known him to have any incidents like this in the past.

Any and all considerations that can be shown this very nice, kind, and caring individual in regard to helping him take steps towards achieving the reacquisition of his law license is appreciated. This letter is being written by Dr. Barry F. Gritz. I am a board-certified psychiatrist who has been practicing psychiatry for over 25 years and your help in this matter is much appreciated.

Thank you for taking the time to peruse this document.

Cordially,


Barry F. Gritz, M.D.

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