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County of Santa Clara
18CV336755
Reviewed By: R Jimenez

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SANTA CLARA

11 MALTE SELCK, California individual;
12 and VAN TRAN, a California individual,

13 Plaintiffs,

14 v.

15 GEICO CASUALTY COMPANY, a
16 Maryland Corporation; DAVID A.
17 MCDOWELL, a California individual;
18 MCDOWELL SHAW GARCIA &
19 MIZELL, a California Professional Law
20 Corporation; and DOES 1 through 50,
inclusive,

21 Defendants.
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Case No.: 18CV336755

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

1. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
2. BREACH OF CONTRACT
3. PROFESSIONAL NEGLIGENCE
4. BREACH OF FIDUCIARY DUTY

JURY TRIAL DEMANDED



I.

INTRODUCTION

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3 1. On December 3, 2012, Malte Selck was operating a Yamaha motorcycle on
4 Highway 101 in the City of San Jose, California, when he was rear ended by a 2009
5 Honda Accord being operated by Van Tran. As a result of the collision, Selck suffered
6 catastrophic injuries including spinal fractures, a femoral neck fracture, a clavicle
7 fracture, rib fractures, foot fracture, and other injuries.

8 2. At the time of the collision, Tran was covered by an automobile insurance
9 policy issued by Geico Casualty Company, with liability limits of \$100,000 per person.

10 3. Following the collision, Selck made a reasonable policy limit demand to
11 Geico for Geico to pay Tran's available policy limits in exchange for a release of liability.
12 Despite liability being reasonably clear and Selck's damages being far in excess of the
13 policy limits demanded, Geico rejected the offer.

14 4. After expiration of the demand, a lawsuit was filed by Selck against Tran.
15 Geico eventually retained attorney David McDowell of McDowell Shaw Garcia &
16 Mizell (collectively referred to as "McDowell Shaw") to defend Tran in the lawsuit.

17 5. While the lawsuit was pending, Selck made additional offers to settle to
18 Geico and McDowell Shaw, and also suggested that the matter proceed by court trial
19 with a high/low proposal of \$1,500,000/\$100,000. These offers were not communicated
20 to Tran and were not accepted by McDowell Shaw or Geico.

21 6. Additionally, McDowell Shaw and Geico retained various accident
22 reconstruction experts who all determined that Selck was rear ended by Tran, however,
23 on the eve of trial, McDowell Shaw and Geico concocted a new story that Selck had
24 caused the collision by lane splitting. Neither the expert opinions that Tran had rear
25 ended Selck or the lane splitting theory was communicated to Tran.

26 7. On several occasions after Selck's demand had expired, and without
27 consulting Tran, McDowell Shaw advised Geico that liability should be admitted,
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1 despite the fact that Tran was now exposed to personal liability for any damages over
2 \$100,000.

3 8. On November 28, 2017, following a jury trial, the jury returned a verdict in
4 favor of Selck and against Tran in the amount of \$6,945,526.

5 9. Geico's failure to accept a reasonable policy limits demand was a breach
6 of Tran's insurance policy and a breach of the implied covenant of good faith and fair
7 dealing owed to Tran. In addition, McDowell Shaw's failure to properly communicate
8 with Tran, among other failures, amounts to professional negligence and a breach of the
9 fiduciary duty owed to Tran. As a result, Geico and McDowell Shaw are liable for all
10 damages proximately flowing from those breaches, including, but not limited to,
11 payment of the entire amount of the judgment in the underlying action.

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13 **II.**
14 **PARTIES**

15 10. Plaintiff Malte Selck is a resident of Santa Clara County, California.

16 11. Plaintiff Van Tran is a resident of Santa Clara County, California.

17 12. Defendant, Geico Casualty Company, at all times relevant to this lawsuit,
18 was and is a corporation, with headquarters based in the State of Maryland, and
19 authorized to transact and transacting the business of insurance in the State of
20 California, and doing business in the County of Santa Clara.

21 13. Defendant, David A. McDowell, at all times relevant to this lawsuit, was
22 and is an attorney licensed to practice law in the State of California, including the
23 County of Santa Clara.

24 14. Defendant, McDowell, Shaw, Garcia & Mizell, at all times relevant to this
25 lawsuit, was and is a California professional law corporation, operating as a law office,
26 and doing business in the County of Santa Clara.

1 hip "Pauwels Type 3" femoral neck fracture; (4) Clavicle fracture; (5) rib fractures; (6)
2 foot fracture; and (7) blunt head trauma including loss of consciousness at the scene of
3 the accident.

4 21. Because of where Mr. Selck's motorcycle ultimately landed, there was
5 initially confusion by investigating officers as to whether Selck had rear ended Tran, or
6 vice versa. However, pictures taken of the vehicles involved clearly show damage to the
7 rear of Selck's motorcycle and to the front of Tran's vehicle. There was no damage to the
8 front of Selck's motorcycle or the rear of Tran's vehicle. Further, notwithstanding the
9 initial confusion of the investigating officers as to the position of the vehicles, the traffic
10 collision report still determined that Tran was the cause of the collision.

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12 **C. Policy Limit Demand**

13 22. In December 2012, Geico took the recorded statement of Tran and Tran's
14 boyfriend, Tony Do, who was a passenger in Tran's vehicle at the time of the collision.
15 In his recorded statement, Do told Geico that the Selck motorcycle was in front of Tran's
16 vehicle when he first saw it. During her recorded statement, Tran offered to send Geico
17 photos that were taken after the accident; however Geico declined the offer, stating that
18 it was not necessary at that time.

19 23. Had Geico properly investigated and reviewed the photographs, they
20 would have clearly seen the damage to the back of Selck's motorcycle and the
21 corresponding lack of damage to the back of Tran's car.

22 24. On January 21, 2013, Selck wrote Geico a handwritten demand letter,
23 enclosing the traffic collision report and his medical bills totaling \$281,944.51 from
24 Valley Medical Center. He requested payment of the insurance policy limits, and stated
25 that "the police report says I may be at fault but I think the accident really happened
26 because of the Tran car."

27 25. Geico did not transmit this offer to settle to Tran.
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1 26. On February 2, 2013, while the policy limit demand was still open, Geico
2 sent a letter to Dinh Nguyen asserting that Geico “ha[s] completed our investigation of
3 the accident and have made our decision about liability.... In this case, our investigation
4 shows Van Tran was principally at fault for the auto accident that occurred on
5 December 3, 2012 because the driver of your vehicle was not travelling at a safe distance
6 from the traffic ahead. When traffic stopped/slowed, your vehicle collided with the
7 vehicle ahead of it.”

8 27. On February 6, 2013, just sixteen days after the date of Selck’s policy limits
9 offer and four days after admitting that Tran was at fault for the collision, Geico refused
10 Selck’s settlement offer in writing.

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12 **D. Lawsuit and Excess Judgment against Tran.**

13 28. On May 9, 2013 Selck filed a complaint for motor vehicle negligence
14 against Tran in Santa Clara County Superior Court, Case No. 2013-1-cv-246033, seeking
15 damages arising out of the December 3, 2012 collision (the “Underlying Lawsuit”).

16 29. Geico hired McDowell Shaw to defend Tran in the Underlying Lawsuit.

17 30. During litigation, Selck made numerous attempts to resolve this case with
18 Geico and McDowell Shaw, including making three decreasing offers pursuant to
19 California Code of Civil Procedure section 998, and a proposal for a high low
20 \$1,500,000/\$100,000 court trial. Each of these offers was rejected by Geico and McDowell
21 Shaw, without ever communicating them to Tran.

22 31. In the Underlying Lawsuit, Geico and McDowell Shaw hired several
23 consultants who advised them that Tran’s vehicle had rear ended Selck. However,
24 shortly before trial, Geico and McDowell Shaw, conspired with an expert to create a
25 “new story” that Selck was splitting lanes at a high rate of speed, which caused the
26 collision. This theory was not supported by the evidence, or even by the other
27 consultants that Geico and McDowell Shaw had retained.

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1 32. Neither the consultants’ opinions that Tran had rear ended Selck, or the
2 “new story” was ever communicated to Tran by McDowell Shaw or Geico.

3 33. At several points throughout the litigation, McDowell Shaw advised
4 Geico that liability should be admitted. McDowell Shaw never communicated or
5 advised Tran of this recommendation, despite that she faced personal exposure for any
6 damages above \$100,000.

7 34. Counsel for Selck advised McDowell Shaw that they would pay for Tran
8 to have independent counsel representing her to aid in settlement negotiations.
9 McDowell Shaw advised Geico of the offer, but failed to advise Tran, who would be the
10 beneficiary of the independent counsel. Geico declined counsel for Selck’s offer without
11 reasonable basis, and without advising Tran of the offer.

12 35. On November 6, 2017, trial commenced against Tran in Department 2 of
13 the Santa Clara County Superior Court before the Honorable Mark H. Pierce. During
14 trial, the jury was shown ten animations of the accident that were in the defense
15 experts’ file showing that the defendant was at fault, and that were prepared before the
16 "new story" was concocted by McDowell Shaw and Geico without consulting Tran.

17 36. On November 28, 2017, the jury returned a verdict in favor of Selck and
18 against Tran in the amount of \$6,945,526. The verdict was 12-0 on all issues.

19 37. On December 7, 2017, judgment was entered in favor of Selck and against
20 Tran.

21 38. In addition to the judgment, Selck was awarded \$260,991.12 in costs, plus
22 interest on the judgment and costs accruing at 10 percent per annum from February 12,
23 2016, the date of one of Selck’s Section 998 offers, until satisfaction of the judgment.

24 39. As a result of Geico's failure to accept a reasonable offer to settle within
25 policy limits and McDowell Shaw’s failure to properly communicate with Tran, and
26 thus protect Tran from an adverse judgment, Tran is now exposed to damages far in
27 excess of her available insurance limits.

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1 43. As a result of defendants' breach of the implied covenant of good faith
2 and fair dealing, plaintiffs have suffered and continue to suffer damages, including, but
3 not limited to, indemnification and protection from the entire judgment, attorneys' fees
4 incurred to both obtain policy benefits and protect from execution, consequential and
5 economic damages, and emotional distress on behalf of Tran.

6 44. As a result of defendants' breaches of the implied covenant of good faith
7 and fair dealing, plaintiffs were compelled to retain legal counsel to obtain the benefits
8 due under the policy. Therefore, defendants are liable to plaintiffs for those attorneys'
9 fees incurred by plaintiffs to obtain policy benefits.

10 45. Defendants' and Does 1 through 25's conduct was intended by Defendants
11 to cause injury to Tran or was despicable conduct carried on by Defendants with a
12 willful and conscious disregard of the rights of Tran, subjected Tran to cruel and unjust
13 hardship in conscious disregard of Tran's rights, or was an intentional
14 misrepresentation, deceit, or concealment of a material fact known to defendants with
15 the intention to deprive Tran of property or legal rights or to otherwise cause injury,
16 such as to constitute malice, oppression or fraud under California Civil Code section
17 3294, thereby entitling Tran to punitive damages in an amount appropriate to punish or
18 set an example of defendants.

19 46. Defendants engaged in this bad-faith conduct knowing that plaintiff
20 would be harmed by the conduct. Defendants' conduct was undertaken by the
21 defendants' officers or managing agents who were responsible for claims supervision,
22 handling, underwriting, communications, and/or decisions of the defendants. This
23 conduct was undertaken on behalf of Geico, and was part of a pattern and practice of
24 the defendants. Geico ratified, authorized, and approved the bad-faith conduct.

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1 53. Selck made a claim against Tran for his injuries sustained as a result of the
2 underlying collision, which Tran tendered to Geico. Geico retained McDowell Shaw to
3 defend Tran and represent her interests.

4 54. Defendants failed to use the skill and care that a reasonably careful
5 attorney and/or law firm would have used in similar circumstances by failing to
6 effectuate settlement and properly communicate with their client, Tran, including as to
7 reasonable settlement options.

8 55. Defendants' breaches to Tran include, but are not limited to:

- 9 a. Failing to properly communicate settlement offers to Tran
10 throughout the litigation;
- 11 b. Failing to advise Tran of the ramifications of failing to accept an
12 offer pursuant to California Code of Civil Procedure section 998;
- 13 c. Failing to properly communicate with Tran as to the retained
14 experts and consultants' findings;
- 15 d. Advising Geico to admit liability, without consulting Tran, despite
16 that Tran was McDowell Shaw's client rather than Geico;
- 17 e. Failing to keep Tran reasonably informed during the course of the
18 litigation;
- 19 f. Advising Geico that liability should be admitted without properly
20 advising and communicating with Tran as to her potential
21 exposure above the Geico policy limits;
- 22 g. Failing to advise Tran that Selck's counsel had offered to pay for
23 her own independent counsel to advise her; and
- 24 h. Promulgating a theory on liability that was unsupported by the
25 evidence and experts without communicating or advising Tran

26 56. As a result of the defendants' professional negligence, Plaintiffs have
27 suffered damages in an amount to be determined at the time of trial.

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1 **FOURTH CAUSE OF ACTION**

2 **(Breach of Fiduciary Duty)**

3 PLAINTIFF, VAN TRAN, FOR BREACH OF FIDUCIARY DUTY AGAINST
4 MCDOWELL, MCDOWELL, SHAW, GARCIA & MIZELL, AND DOES 26 THROUGH
5 50, ALLEGES:

6 57. Plaintiffs refer to each and every paragraph above and incorporate those
7 paragraphs as though set forth in full in this cause of action.

8 58. McDowell Shaw and Does 26 through 50 were Tran’s attorneys, and, as a
9 result, owed a fiduciary duty to Tran.

10 59. Defendants breached the fiduciary duty owed to Tran in the following
11 respects:

- 12 a. Failing to properly communicate settlement offers to Tran
13 throughout the litigation;
- 14 b. Failing to advise Tran of the ramifications of failing to accept an
15 offer pursuant to California Code of Civil Procedure section 998;
- 16 c. Failing to properly communicate with Tran as to the retained
17 experts and consultants’ findings;
- 18 d. Advising Geico to admit liability, without consulting Tran, despite
19 that Tran was McDowell Shaw’s client rather than Geico;
- 20 e. Failing to keep Tran reasonably informed during the course of the
21 litigation;
- 22 f. Advising Geico that liability should be admitted without properly
23 advising and communicating with Tran as to her potential
24 exposure above the Geico policy limits;
- 25 g. Failing to advise Tran that Selck’s counsel had offered to pay for
26 her own independent counsel to advise her; and
- 27 h. Promulgating a theory on liability that was unsupported by the
28 evidence and experts without communicating or advising Tran.

1 60. Defendants' conduct was a substantial factor in causing harm to plaintiffs.

2 61. As a result of defendants' breach of the fiduciary duty owed to Tran,
3 plaintiffs have suffered damages in an amount to be determined at the time of trial.

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PRAYER FOR RELIEF

6 WHEREFORE, Plaintiffs pray for judgment against defendants, and each of
7 them, as follows:

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9 **AS TO THE FIRST CAUSE OF ACTION BY PLAINTIFFS AGAINST GEICO
10 AND DOES 1 THROUGH 25 FOR BREACH OF THE IMPLIED COVENANT OF
11 GOOD FAITH AND FAIR DEALING:**

- 12 1. For payment of the entire judgment, including post-trial interest;
- 13 2. Damages for failure to indemnify Plaintiffs from the existing claims, plus
14 interest, in a sum to be determined at the time of trial;
- 15 3. For attorneys' fees, witness fees, and costs of litigation incurred by
16 Plaintiffs to obtain the Geico policy benefits in an amount to be determined at trial;
- 17 4. For economic and consequential damages arising out of the Defendants'
18 failure to provide a defense and indemnification under the Geico policy;
- 19 5. For non-economic damages for emotional distress on behalf of plaintiff
20 Tran only;
- 21 6. For punitive and exemplary damages in an amount appropriate to punish
22 or set an example of defendants on behalf of plaintiff Tran only;
- 23 7. Prejudgment interest pursuant to California Civil Code sections 3287,
24 3288, and/or 3289;
- 25 8. For costs of suit incurred herein; and
- 26 9. For such other and further relief as the Court deems just and proper.

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**AS TO THE SECOND CAUSE OF ACTION BY PLAINTIFFS AGAINST
GEICO AND DOES 1 THROUGH 25 FOR BREACH CONTRACT:**

- 10. For payment of the entire judgment, including post-judgment interest;
- 11. Prejudgment interest pursuant to California Civil Code sections 3287, 3288, and/or 3289;
- 12. For costs of suit herein; and
- 13. For such other and further relief as the Court deems just and proper.

**AS TO THE THIRD CAUSE OF ACTION BY PLAINTIFF VAN TRAN
AGAINST MCDOWELL, MCDOWELL, SHAW, GARCIA & MIZELL, LLP, AND
DOES 26 THROUGH 50 FOR PROFESSIONAL NEGLIGENCE:**

- 14. For economic damages resulting from the breaches of their duties to Van Tran;
- 15. Prejudgment interest pursuant to California Civil Code sections 3287, 3288, and/or 3289;
- 16. For costs of suit herein; and
- 17. For such other and further relief as the Court deems just and proper.

**AS TO THE FOURTH CAUSE OF ACTION BY PLAINTIFF VAN TRAN
AGAINST MCDOWELL, MCDOWELL, SHAW, GARCIA & MIZELL, LLP, AND
DOES 26 THROUGH 50 FOR BREACH OF FIDUCIARY DUTY:**


- 18. For economic damages resulting from the breaches of their duties to Van Tran;
- 19. Prejudgment interest pursuant to California Civil Code sections 3287, 3288, and/or 3289;
- 20. For costs of suit herein; and

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21. For such other and further relief as the Court deems just and proper

DATED: October 18, 2018

SHERNOFF BIDART ECHEVERRIA LLP

By: 
RICARDO ECHEVERRIA
KRISTIN HOBBS
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial.

DATED: October 18, 2018

SHERNOFF BIDART ECHEVERRIA LLP

By: 
RICARDO ECHEVERRIA
KRISTIN HOBBS
Attorneys for Plaintiffs



EXHIBIT 1

AGREEMENT

This Agreement (hereinafter "Agreement") is made by and between Malte Selck ("Selck"), on the one hand, and Van Tran ("Tran"), on the other hand, who are collectively referred to as "the Parties."

RECITALS

1. On December 3, 2012, Selck was operating a Yamaha motorcycle on Highway 101 in the City of San Jose, California, when he was rear ended by a 2009 Honda Accord being operated by Tran. Tony Do was a passenger in the Accord, which was owned by Dinh Nguyen. As a result of the collision, Selck suffered catastrophic injuries including spinal fractures, a femoral neck fracture, a clavicle fracture, rib fractures, foot fracture, and other injuries.

2. In the traffic collision report, the investigating officer erroneously stated that Selck had rear ended Tran, however pictures from the collision clearly show front end damage to Tran's vehicle and rear end damage to Selck's motorcycle.

3. At the time of the collision, Tran was covered by an automobile insurance policy issued by Geico Casualty Company ("Geico"), with liability limits of \$100,000 per person (the "Policy"). Tran did not have any other liability insurance that would provide coverage for the December 3, 2012 collision.

4. In December 2012, Geico took the recorded statement of Do, who stated that the Selck motorcycle was in front of Tran's vehicle. Geico also took Tran's recorded statement, where she offered to provide Geico photographs from the collision, however Geico stated that they did not need the photos at that time.

5. On January 21, 2013 Selck sent Geico an offer to settle his claim against Tran for Tran's available insurance policy limits. Selck included with the offer a copy of the traffic collision report and his medical bills from Valley Medical Center that totaled \$281,944.51. Selck's letter further stated that he believed the "accident really happened because of the Tran car."

6. Geico did not send a copy of Selck's January 21, 2013 policy limit offer to Tran nor did they advise Tran of the offer before it expired.

7. On February 2, 2013, Geico sent a letter to Tran and Nguyen stating that Geico had "completed our investigation of the accident and have made our decision about liability. California law requires that we inform you when the driver of your vehicle has been determined to be principally at fault for an accident. ¶ In this case, our investigation shows Van Tran was principally at fault for the auto accident that occurred on December 3, 2012 because the driver of your vehicle was not traveling at a safe distance from the traffic ahead. When traffic stopped/slowed, your vehicle collided with the vehicle ahead of it."

8. On February 6, 2013, after Geico had sent the February 2, 2013 letter to Tran and Nguyen, Geico rejected Selck's offer in writing, stating that "based on these facts, it does not appear that our insured is legally liable for damages as a result of this loss. We are, therefore, unable to issue any payment at this time."

9. On May 9, 2013, Selck filed a complaint for motor vehicle negligence against Tran in Santa Clara County Superior Court, Case No. 2013-1-cv-246033, seeking damages arising out of the December 3, 2012 collision (the "Underlying Lawsuit").

10. Geico first retained in-house counsel, Ed Hawkyard, who was an employee of Geico, to defend Tran. Thereafter, Geico retained attorney David McDowell to represent Tran in the Underlying Lawsuit.

11. During the pendency of the Underlying Lawsuit, Geico and McDowell hired three separate accident reconstruction experts, each of whom concluded that Tran had rear ended Selck.

12. On August 30, 2015 McDowell suggested that Geico consider admitting liability at trial.

13. In the Underlying Lawsuit, Selck made various offers to settle pursuant to California Code of Civil Procedure section 998, including one such offer on February 12, 2016.

14. In addition to the offers pursuant to Section 998, prior to commencement of trial, Selck made settlement offers to McDowell and Geico, including a suggested court trial with a high/low proposal of \$1,500,000/\$100,000. Neither McDowell nor Geico communicated this offer or the subsequent offers to Tran.

15. Prior to commencement of the Mandatory Settlement Conference and also trial, Selck's counsel requested that Geico provide independent counsel to Tran at Geico's expense. Selck's counsel further offered to pay for the cost of Tran's independent counsel if Geico was unwilling to pay. Geico refused Selck's request and offer, refused to provide independent counsel to Tran, and failed to timely communicate Selck's request and offer regarding independent counsel to Tran.

16. On November 6, 2017, trial commenced against Tran, and on November 28, 2017 the jury returned a verdict in favor of Selck and against Tran in the amount of \$6,945,526.

17. On December 7, 2017, judgment was entered in favor of Selck and against Tran.

18. In addition to the judgment, Selck was awarded \$260,991.21 in costs, plus interest on the judgment and costs accruing at 10 percent per annum from February 12, 2016, the date of one of Selck's Section 998 offers.

19. Following post-trial motions, McDowell and Geico filed an appeal on behalf of Tran, but Geico has refused to post a bond that would stay execution of the judgment against Tran.

20. Selck and Tran believe that Geico's failure to accept the January 21, 2013 policy limit demand breached Geico's obligations to Tran under the Policy, including, without limitation, the implied covenant of good faith and fair dealing to accept reasonable settlement offers within policy limits in order to avoid the risk of exposing their insured to personal liability in excess of policy limits.

21. In addition, Selck and Tran believe that Tran's counsel, McDowell, was negligent in his representation of Tran including but not limited to failing to properly and timely communicate with Tran regarding exposure, the need for independent counsel, and potential settlement opportunities.

22. NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises contained in this Agreement, the sufficiency of which consideration is acknowledged, Selck and Tran understand, acknowledge, and agree that it is in the mutual interests of each of them to enter into this Agreement, as provided as follows:

AGREEMENT

23. Tran hereby assigns, transfers, conveys, relinquishes, or grants to Selck any and all assignable rights, claims, interests, or causes of action that Tran may now have or hereafter acquire against Geico, its agents, employees, successors, assigns, subsidiaries, related entities, or others based on, arising from, or related to Geico's failure to defend, failure to settle, failure to investigate, and/or failure to indemnify Tran in the Underlying Lawsuit as set forth above, except any rights, claims, or interests for emotional distress or punitive damages against Geico based on said acts, which rights, claims, or interests are otherwise not assignable, and which will remain with Tran (the "assigned Geico claims"). The proceeds of any net recovery resulting from prosecuting the assigned Geico claims shall be shared between Selck and Tran as set forth in this agreement.

24. Tran agrees to diligently prosecute her non-assignable claims for emotional distress and punitive damages against Geico its agents, employees, successors, assigns, subsidiaries, related entities, or others based on, arising from, or related to Geico's failure to defend, failure to settle, and/or failure to indemnify Tran in the Underlying Lawsuit (the "non-assigned Geico claims"). The proceeds of any net recovery resulting from prosecuting the non-assigned Geico claims shall be shared between Selck and Tran as set forth in this agreement.

25. Tran agrees to diligently prosecute her non-assignable claims that Tran may now have or hereafter acquire against McDowell, his agents, employees, successors, assigns, subsidiaries, related entities, or others based on, arising from, or related to McDowell's professional negligence in the Underlying Lawsuit as set forth above (the "non-assigned Malpractice claims"). The proceeds of any net recovery resulting from prosecuting the non-assigned Malpractice claims shall be shared between Selck and Tran as set forth in this agreement.

26. Selck covenants, promises, and agrees that, he will not, nor shall anyone on his behalf, levy an execution against Tran, and will not attempt to collect any judgment in the Underlying Lawsuit from Tran personally during the pendency of the action by Selck and Tran against Geico for bad faith and against McDowell for legal malpractice.

27. In consideration for Selck not enforcing the judgment in the Underlying Lawsuit against any real or personal property of Tran during the pendency of the action by Selck and Tran against Geico for bad faith and against McDowell for legal malpractice, Tran assigns to Selck her assignable rights against Geico, and further agrees to diligently prosecute her non-assigned Geico claims and non-assigned Malpractice claims, as set forth above. Tran further agrees that she will only seek to enforce the non-assigned Geico claims and the non-assigned Malpractice claims in a joined action with Selck against Geico and/or McDowell. Tran understands and acknowledges that any attempt by Tran to enforce the non-assigned Geico claims and the non-assigned Malpractice claims in an action separate from Selck's action would constitute an improper "splitting" of a cause of action as held in the California Court of Appeals decision of *Purcell v. Colonial Insurance Company* (1971) 20 Cal.App.3d 807 and *Cain v. State Farm Mutual Automobile Insurance Company* (1975) 47 Cal.App.3d 783, and that to seek enforcement of any non-assigned rights or claims of interest against Geico and/or McDowell in a separate action is materially adverse to Selck.

28. To carry out the intent of the Parties and the purpose of this Agreement, Tran will do each and all of the following, to the extent that she is capable:

- a) Provide Selck, upon request, with any and all documents, documentation, and correspondence by and between Tran, on the one hand, and Geico and/or McDowell, on the other hand, relating to the Underlying Lawsuit;
- b) Provide Selck, upon request, with any and all available documents or documentation, if any, or to execute any additional documentation reasonably necessary for Selck to evidence, establish, or enforce the rights assigned by Tran under this Agreement;
- c) To cooperate fully and as reasonably necessary in any action or proceeding to enforce the assigned and non-assigned rights that are the subject of this Agreement; and
- d) Not to take any actions to defeat the purpose and intent of this Agreement, assignment and/or any claims asserted hereunder.

29. The Parties represent and warrant that no other person or entity has or has had any interest in the claims, demands, obligations or causes of action referred to in this Agreement and that the Parties have the sole right and exclusive authority to

execute this Agreement and receive the consideration specified in it; and that the Parties have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Agreement other than as set forth in this Agreement.

30. The Parties acknowledge that Shernoff Bidart Echeverria LLP will prosecute the action against Geico arising out of Geico's failure to investigate and failure to accept a reasonable settlement offer in the Underlying Lawsuit that was within the Policy limits ("Bad Faith Action"), and/or an action against McDowell arising out of his professional negligence ("Legal Malpractice Action") on behalf of Selck and Tran, jointly. This will include prosecuting the assigned Geico claims, the non-assigned Geico claims, and the non-assigned Malpractice claims. The Parties knowingly and voluntarily consent to such representation by Shernoff Bidart Echeverria LLP and expressly acknowledge that they have been advised of the right to seek independent counsel in connection with the advisability of waiving any and all conflict of interests, if any, and that they have had a reasonable opportunity to do so prior to signing this Agreement. Tran shall immediately dismiss her appeal of the judgment and shall immediately direct her counsel to file a dismissal of the appeal, with prejudice.

31. The Parties acknowledge and agree that the terms of the representation of Selck and Tran by Shernoff Bidart Echeverria LLP in the Bad Faith Action and/or Legal Malpractice Action, including attorney fees, are set forth in the Retainer Agreement, the terms of which are incorporated herein by reference. The Parties further acknowledge and agree that any fee collected for legal services rendered in the Bad Faith Action and/or Legal Malpractice Action will be divided as follows: 1) fifty percent (50%) to Shernoff Bidart Echeverria LLP; and 2) fifty percent (50%) to Corsiglia McMahon & Allard. The Parties each understand that the total fee charged in the Bad Faith Action and/or the Legal Malpractice Action will not be increased by reason of the aforementioned fee division agreement.

32. The Parties acknowledge and agree that the recovery of the ultimate net proceeds from the Bad Faith Action and/or Legal Malpractice Action, after deduction of attorney fees and costs, shall be allocated as follows: 1) For any net recovery, seventy-five percent (75%) to Selck, and 2) twenty-five percent (25%) to Tran. To the extent Tran owes any attorney fees to Dennis Ward that were incurred in the defense of the underlying action, such reasonable fees will be paid from the proceeds of any eventual settlement or judgment.

33. Selck and Tran understand and agree that the allocation of the recovery of the ultimate net proceeds after deduction of attorney fees and costs from the Bad Faith Action and/or the Legal Malpractice Action creates a potential conflict of interest between the Parties. The Parties agree by their respective signatures on this Agreement that they are providing their respective informed written consent as required by Rule 3-310 of the Rules of Professional Conduct of the State Bar of California to this potential conflict and representation in the Bad Faith Action and/or Legal Malpractice Action. The Parties, having been given an opportunity to consult with independent counsel concerning the terms of this Agreement, by signing this Agreement below, consent to the distribution of any recovery between the Parties as described herein.

34. The Parties agree that Selck, as the judgment creditor, shall have full settlement authority in the Bad Faith Action and/or Legal Malpractice Action.

35. This Agreement is executed voluntarily by the Parties without any duress or undue influence on the part of, or on behalf of, any of them. Selck and Tran acknowledge that they have been represented by counsel of their own choice or that they have willingly chosen not to be represented by any counsel, and that they have read this Agreement in its entirety.

36. This Agreement shall bind and inure to the benefit of the respective successors, successor corporations, assigns, legatees, heirs and personal representatives of each of the Parties hereto. This Agreement shall not be construed against the Party preparing it, but shall instead be construed as if the Parties jointly prepared this Agreement, and any uncertainty or ambiguity shall not be interpreted against any one party.

37. The Parties agree that this Agreement may be signed in several counterparts, each of which shall operate as an original against the party signing it. The Parties also agree that signatures received by fax or email scan transmittal shall operate as originals.

38. If any provision of this Agreement is found to be invalid or unenforceable, the remaining provisions shall nevertheless be enforced to the full extent permitted by law.

39. This Agreement is to be performed, interpreted, and enforced by and under the laws of the State of California.

Dated: 10/5/2018



Malte Selck

Dated: 10/4/2018



Van Tran

SHERNOFF BIDART ECHEVERRIA LLP

Dated: 10/5/18



RICARDO ECHEVERRIA

ROPERS MAJESKI KOHN BENTLEY

Dated: 10/8/18



DENNIS J. WARD

CORSIGLIA MCMAHON & ALLARD

Dated: 10-5-18



TIMOTHY D. MCMAHON