

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

STEPHEN GUTIERREZ,

Respondent.

Supreme Court Case
No. SC-

The Florida Bar File
No. 2018-70,160(11J)

COMPLAINT

The Florida Bar, Complainant, files this Complaint against Stephen Gutierrez, Respondent, pursuant to Chapter 3 of the Rules Regulating The Florida Bar and alleges:

JURISDICTION

1. Respondent is, and at all times mentioned in the Complaint was, a member of The Florida Bar, admitted on September 5, 2015, and is subject to the jurisdiction of the Supreme Court of Florida.

2. Respondent resided and practiced law in Miami-Dade County, Florida, at all times material.

3. The Eleventh Judicial Circuit Grievance Committee “J” found probable cause to file this Complaint pursuant to Rule 3-7.4 of the Rules

Regulating The Florida Bar, and this Complaint has been approved by the presiding member of that committee.

STATEMENT OF FACTS

4. On April 14, 2016, Claudy Charles (“Charles”) was arrested on suspicion of setting fire to his own vehicle in an attempt to defraud his insurer.

5. On May 2, 2016, Respondent filed a notice of appearance on Charles’s behalf in the criminal case, styled *State of Florida v. Claudy Charles*, Miami-Dade County Circuit Case No. F16-7813.

6. The trial information, filed on May 5, 2016, formally charged Charles with second-degree arson, submitting a fraudulent insurance claim in excess of \$100,000, and burning to defraud an insured. It alleged that Charles had set fire to his vehicle on January 9, 2016 with the intent to defraud GEICO and then submitted a false insurance claim representing that the vehicle caught fire after he turned on the ignition.

7. Along with the information, the state provided Respondent with a detailed arrest affidavit as a part of its initial discovery exhibit. It stated, in relevant part, as follows:

- On January 9, 2016 at 12:50 AM, video surveillance captured Charles unsuccessfully attempting to set his 2009 Honda Accord on fire in the parking lot of his apartment complex.

- After leaving to purchase \$3.00 worth of gasoline at a nearby Circle K gas station, Charles returned to the complex and parked his vehicle in the same spot.
- At 2:10 A.M., video surveillance showed Charles re-entering his car and sitting in the driver’s seat. Approximately twenty seconds later, a large flash was observed at which time the passenger compartment became engulfed in flames.
- Charles quickly exited the vehicle with visible burn marks to his right arm. He later received treatment for his injuries at Homestead Hospital.
- Subsequent investigation revealed that an open flame had been used to ignite a flammable liquid splashed about the passenger compartment of the vehicle.
- On January 13, 2016, Charles filed an insurance claim with GEICO claiming medical expenses in the amount of \$226,782 and vehicular losses in the amount of \$8,994.54.

8. On June 14, 2016, a little over a month after Respondent had received the information and initial discovery—and presumably had ample time to review it—he filed a civil suit on Charles’s behalf against GEICO in the case styled *Claudy Charles v. GEICO Indemnity Ins. Co.*, Miami-Dade County Circuit Case No. 2016-015231-CA-01.

9. In the initial complaint, Respondent represented that the damage to Charles’s vehicle on January 9, 2016 was “caused by a vehicle collision in such a fashion as to cause substantial damage to the risk property.” See ¶10 of Plaintiff’s First Complaint, attached as The Florida Bar’s Ex. 1.

10. The complaint alleged that Charles suffered losses in excess of \$200,000, that GEICO had failed to properly adjust his claim and, in denying it, had breached the terms of the underlying insurance policy. Curiously, however, the complaint omits any details regarding the alleged “collision”, the fire which caused the damages, or the active criminal case.

11. On July 17, 2016, the state filed a notice of intent to offer evidence of a business record in the criminal case. Specifically, the state indicated that it intended to introduce as evidence a DVD containing video surveillance recorded by Watchtower Security.

12. Three days later, on July 20, 2016, Respondent filed an amended complaint in the civil case which—despite the evidence to the contrary—again claimed that the damage was caused by a “vehicle collision.” See ¶10 of Plaintiff’s First Amended Complaint, attached as The Florida Bar’s Ex. 2.

The Criminal Trial

13. On March 7, 2017, just prior to the start of the criminal trial, the state filed an amended discovery exhibit notifying Respondent that the video surveillance from Watchtower Security was available for review. In the context of last-minute plea negotiations, the assigned felony division chief personally played the video for Respondent, highlighting its inculpatory nature. Despite this evidence, Charles rejected the state’s offer and proceeded to a jury trial.

14. During its case in chief, the state introduced the surveillance video depicting Charles igniting his own vehicle; testimony from the responding officer who observed burn marks on Charles's arm consistent with the fire; testimony from a lieutenant with Miami-Dade Fire Rescue who opined that the fire was the result of arson; and testimony from a GEICO claims adjuster who revealed that Charles had taken out his auto insurance policy just weeks before the fire.

15. Conversely, the defense presented no case, choosing instead to attack the sufficiency of the evidence put forward by the state to advance its theory of spontaneous combustion.

16. In his closing argument, the assigned prosecutor relied heavily on the video surveillance, painstakingly walking the jury through Charles's attempts to ignite the vehicle and the fire that eventually resulted. *See* pp. 11-19 of the closing argument transcript, attached as The Florida Bar's Ex. 3.

17. Just as Respondent stood and began giving his closing remarks, smoke began billowing from one of his pockets; he then immediately ran from the courtroom to the men's restroom to extinguish the fire.

18. Assistant State Attorney Nilo Cuervo, Jr. provided an affidavit in which he described Respondent placing his hand in his pocket several times as he began his closing argument. Shortly thereafter, Cuervo observed smoke coming

from the same pocket. *See* Affidavit of Nilo A. Cuervo, Jr., attached as The Florida Bar's Ex. 4.

19. Upon Respondent's return to the courtroom, the following discussion occurred at sidebar:

THE COURT: Mr. Gutierrez –

RESPONDENT: Yes, Judge.

THE COURT: What just happened?

RESPONDENT: A battery just --

THE COURT: Keep your voice down.

RESPONDENT: A battery just broke in my pocket. I was on fire.

THE COURT: A battery burned in your pocket?

RESPONDENT: Yes, Judge.

THE COURT: What kind of battery are you walking around with your in pocket (sic) during a trial?

RESPONDENT: It's just a regular battery for – to charge phones.

THE COURT: That doesn't look like a phone charge battery. What kind of battery is that?

RESPONDENT: It's for phones and for e-cigarettes.

THE COURT: What kind of phone would that battery go in?

RESPONDENT: No, you know, the external chargers.

THE COURT: And why are you carrying around a battery in your pocket?

RESPONDENT: Because I'm an idiot.

See The Florida Bar's Ex. 3 at pp. 21-22

20. At that point, the court excused the jury. However, upon being asked by the bailiff to proceed into the jury room, one of the jurors voiced discomfort, stating "I'm not going to be locking myself in a small room without an exit when someone's playing – with fire." *Id.* at p. 23.

21. Instead, the jury was led out to a hallway, after which the judge proceeded to question Respondent's actions:

THE COURT: -- I'm trying to give you the benefit of the doubt, but it seems to me like that was just a stunt.

RESPONDENT: It was not.

THE COURT: It seems to me very coincidental that in a case involving arson where you're trying to persuade the jury that there was some kind of instantaneous combustion in a vehicle, that you stand up to do your closing argument, and all of a sudden some battery in your pocket becomes flammable.

RESPONDENT: I swear --

THE COURT: Now, you're going to tell me that that was not a stunt, and you're going to tell me that it's just a matter of coincidence --

RESPONDENT: Yes.

THE COURT: -- that in my arson case, you happen to have a battery in your pocket that explodes or starts on fire in front of the jury.

Id. at p. 24.

22. The state moved for an order to show cause why Respondent should not be held in contempt. In reserving on the issue, the court stated:

I'm considering issuing an order to show cause. I find it to be bazar (sic) and extremely, extremely unlikely that in an arson case where your defense is spontaneous combustion, that you get up to give a closing argument, and all of the sudden without cause on your part, your pocket starts on fire with a battery that's supposedly sitting in your pocket. And all of the sudden, the minute you get up to talk to the jury, it decides to set itself on fire.

I'm going to take that battery, and we're going to take a look at that battery, and I'm going to reserve on an order to show cause.

Id. at p. 27

23. Over the state's objection, the court allowed Respondent to resume his closing argument. Following an uneventful summation, and after brief deliberations, the jury returned a verdict of guilty to the charge of second-degree arson.¹

24. Returning to the issue of the rule to show cause, the court encouraged the state to investigate Respondent's actions further. To that end, the court made the batteries available to the state for inspection and reset the case for status on March 15, 2016.

¹ The state *nolle prossed* the charges of insurance fraud and burning to defraud an insurer prior to trial.

Subsequent Events

25. At the status conference, the state announced that it was assigning prosecutors to conduct an investigation into the circumstances surrounding the battery fire. To accommodate the expanding investigation, the court granted the state additional time. In addition, the court rescheduled the case so that Charles could consider requesting the appointment of a new attorney.

26. The next day, March 16, 2017, Respondent filed a second amended complaint in the civil matter. Despite actual knowledge that a jury had found Charles guilty of setting fire to his vehicle, the latest complaint—like the previous ones—represented that the damage was the result of a “vehicle collision.” *See* ¶ 10 of Plaintiff’s Second Amended Complaint, attached as The Florida Bar’s Ex. 5.

27. On March 17, 2017, Charles requested new counsel in his criminal case and the court obliged, appointing the public defender’s office. After the court granted a motion for a new trial, Charles was given the option of engaging in renewed plea negotiations or potentially facing additional charges at a new trial. He ultimately pleaded guilty to second-degree arson on May 11, 2017 and was sentenced to 364 days in the county jail followed by five years of probation.

28. On May 15, 2017, the state issued a memorandum analyzing whether Respondent’s actions in the trial rose to the level of arson under Florida law. While noting that the state could likely establish that Respondent willfully caused the

courtroom fire, the memorandum concludes that it could not prove that Respondent did so unlawfully. Opining that Respondent ignited the battery as an attempt to demonstrate to the jury the feasibility of spontaneous combustion—a legitimate purpose, in theory—the memorandum concludes that Respondent’s actions, while ethically problematic, did not rise to the level of arson under the applicable case law.

29. Consequently, that state abandoned any efforts to hold Respondent in contempt or to seek criminal charges.

30. As for the civil case, despite the events in the criminal matter—most notably Charles’s formal adjudication of guilt—Respondent did not withdraw or seek to bring it to a prompt conclusion. Although Respondent eventually filed a notice of voluntary dismissal, he did not do so until May 30, 2018—over a year later and well after GEICO’s defense counsel had filed multiple motions to dismiss.

31. Significantly, at no point during that year-long period of time is there any indication that Respondent informed the civil court or opposing counsel of Charles’s adjudication of guilt.

COUNT I

RESPONDENT'S COMPLAINTS IN THE CIVIL CASE LACKED MERIT AND CONSTITUTE FRIVOLOUS PLEADINGS UNDER RULE 4-3.1

32. Complainant re-alleges and incorporates by reference each allegation contained in the previous paragraphs as if set forth fully herein.

33. R. Regulating Fla. Bar 4-3.1 prohibits a lawyer from bringing “a proceeding...unless there is a basis in law and fact for doing so that is not frivolous.” Lawyers are required to “inform themselves about the facts of their clients’ cases and the applicable law and determine that they can make good faith arguments in support of their clients’ positions.” Comment to R. Regulating. Fla. Bar 4-3.1.

34. All three complaints filed by Respondent in the civil action against GEICO claim that Charles suffered damages (medical and property) as a result of a vehicle collision on January 9, 2016. Notably, however, Respondent did not include the insurance claim Charles submitted to GEICO (which represented that the losses resulted from fire) or any of the related police incident reports (which indicated that Charles caused the fire intentionally).

35. Before Respondent filed the first complaint, he had actual knowledge that Charles had been criminally charged with setting fire to the vehicle and fraudulently submitting the losses to GEICO for coverage.

36. More significantly, before Respondent filed the second amended complaint on March 16, 2017, he had actual knowledge that a jury had found Charles guilty of second-degree arson.

37. No view of the facts, nor the development of any additional evidence, could support a good-faith claim that the damage to Charles's vehicle and his bodily injuries resulted from a vehicle collision.

38. Nonetheless, Respondent initiated the civil case and allowed it to linger long after Charles's adjudication of guilt, even as GEICO's defense counsel sought relief in the form of repeated motions to dismiss.

39. As a result of the foregoing, Respondent's actions constitute a violation of R. Regulating Fla. Bar 4-3.1.

COUNT 2

RESPONDENT'S ACTIONS IN THE CRIMINAL TRIAL AND THE CIVIL CASE CAUSED PREJUDICE TO THE ADMINISTRATION JUSTICE UNDER RULE 4-8.4(d)

40. Complainant re-alleges and incorporates by reference each allegation contained in the previous paragraphs as if set forth fully herein.

41. R. Regulating Fla. Bar 4-8.4(d) prohibits a lawyer from "engag[ing] in conduct in connection with the practice of law that is prejudicial to the administration of justice".

42. Such prohibited conduct includes actions which disrupt official proceedings. *See The Florida Bar v. Ratiner*, 46 So. 3d 35, revised on rehearing (Fla. 2010) (attorney interrupted deposition by running toward opposing counsel, ripping up an evidence sticker and flicking it); *The Florida Bar v. Burns*, 392 So. 2d 1325 (Fla. 1981) (attorney appeared in courtroom on a stretcher dressed in bedclothes, embarrassing the trial judge and bringing criticism upon the court).

43. It can also include instances where an attorney fails to apprise others of material information. *See, e.g., In Re: Decker*, 212 So. 3d 291 (Fla. 2017) (judge, while an attorney, violated Rule 4-8.4(d) by failing to inform opposing counsel that he and the presiding judge had a former attorney-client relationship).

44. In the criminal case, Respondent's actions directly interrupted the proceedings and caused at least one juror to vocalize concern over his physical safety. Indirectly, Respondent's conduct likely prejudiced his client's ability to receive a fair trial, a concern pressing enough that the court granted a motion for a new trial.

45. The fallout from Respondent's conduct consumed precious judicial and prosecutorial resources as the state was forced to dedicate attorneys to investigate the circumstances surrounding the courtroom fire.

46. In addition, Respondent's conduct triggered intense media interest, subjecting this state's legal profession to nationwide incredulity and mockery. *See,*

e.g., Joe Patrice, Arson Trial Ends with Lawyer's Pants on Fire – Not a Metaphor, His Pants Caught Fire, Above The Law (March 9, 2017), <https://abovethelaw.com/2017/03/arson-trial-ends-with-lawyers-pants-on-fire-not-a-metaphor-his-pants-caught-fire/> (last visited March 22, 2019); Jessica Schladebeck, Miami Lawyer Whose Pants Caught Fire During Arson Trial Asked To Leave Case, New York Daily News (March 15, 2017), <https://www.nydailynews.com/news/national/lawyer-pants-caught-fire-trial-asked-leave-case-article-1.2999046>, (last visited March 22, 2019); Daniel Starkey, Lawyer's Pants Catch Fire, Hilarity Ensues, Geek (March 15, 2017), <https://www.geek.com/culture/lawyers-pants-catch-fire-hilarity-ensues-1692471/> (last visited March 22, 2019).

47. Separately, but no less importantly, Respondent prejudiced the administration of justice in the civil proceedings by advancing a cause of action for which there was no good-faith factual basis and failing to disclose the true cause of the subject losses.

48. At all times during the pendency of the civil case, Respondent was on notice that the damages were caused by fire, not a vehicular collision. More importantly, he was on notice (and after the guilty verdict, had actual knowledge) that Charles intentionally caused the fire.

49. Nonetheless, he allowed the civil case to drag on for over a year after Charles was adjudicated guilty of arson before filing a notice of voluntary

dismissal. There is no indication that, at any point during that time, Respondent disclosed to opposing counsel or the court that his client had been found criminally responsible for the fire.

50. As a result of the foregoing, Respondent's actions constitute a violation of R. Regulating Fla. Bar 4-8.4(d).

COUNT III

RESPONDENTS ACTIONS ARE CONTRARY TO HONEST AND JUSTICE UNER RULE 3-4.3

51. Complainant re-alleges and incorporates by reference each allegation contained in the previous paragraphs as if set forth fully herein.

52. R. Regulating Fla. Bar 3-4.3 prohibits a lawyer from engaging in “any act that is unlawful or contrary to honesty and justice.”

53. The intent behind this rule is to express that “the enumerated categories of misconduct—specifically the Rules of Professional Conduct contained in Chapter 4 of the Rules Regulating The Florida Bar—are not intended to be an exhaustive list of unethical conduct that may provide grounds for imposing discipline.” *The Florida Bar v. Parrish*, 241 So. 3d 66, 73 (Fla. 2018) (quoting *The Florida Bar v. Draughon*, 94 So. 3d 566, 570 (Fla. 2012)).

54. As described more fully above, Respondent's actions in causing a fire during his closing argument, which interrupted the proceedings and potentially

prejudiced his client, and pursuing a cause of action without a good-faith factual basis qualify as acts contrary to honesty and justice.

55. As a result of the foregoing, Respondent's actions constitute a violation of R. Regulating Fla. Bar 3-4.3

WHEREFORE, The Florida Bar prays Respondent will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.



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CERTIFICATE OF SERVICE

I certify that this document has been efiled with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, with a copy provided via email to Stephen Gutierrez, Respondent, at sg@sglawfirms.com using the Efiling Portal, and that a copy has been furnished by United States Mail via certified mail No. 7017 1070 0000 4774 1800, return receipt requested to Stephen Gutierrez, Respondent, whose record bar address is 454 SW 8th St, Miami, FL 33130 and via email to Thomas Allen Kroeger, Bar Counsel, tkroeger@floribar.org, on this 8th day of April, 2019.

Adria E. Quintela

ADRIA E. QUINTELA
Staff Counsel

**NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY
EMAIL ADDRESS**

PLEASE TAKE NOTICE that the trial counsel in this matter is Thomas Allen Kroeger, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Miami Branch Office, 444 Brickell Avenue, Rivergate Plaza, Suite M-100, Miami, Florida 33131-2404, (305) 377-4445 and tkroeger@floridabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Adria E. Quintela, Staff Counsel, The Florida Bar, Lakeshore Plaza II, Suite 130, 1300 Concord Terrace, Sunrise, Florida 33323, aquintel@floridabar.org.

MANDATORY ANSWER NOTICE

RULE 3-7.6(h)(2), RULES OF DISCIPLINE, EFFECTIVE MAY 20, 2004,
PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN
AND FOR MIAMI-DADE COUNTY, FLORIDA

CIVIL CIRCUIT DIVISION

CASE NO.

CLAUDY CHARLES,

Plaintiff,

v.

GEICO INDEMNITY INSURANCE COMPANY,

Defendant

PLAINTIFF'S FIRST COMPLAINT

COMES NOW, CLAUDY CHARLES, (hereinafter "PLAINTIFF") and sues GEICO INDEMNITY INSURANCE COMPANY ("DEFENDANT") and says:

ALLEGATIONS COMMON TO ALL COUNTS AND INCORPORATED THEREIN

1 This is an action for damages in excess of this court's minimum jurisdictional limits and for Attorneys' fees and costs, and/or for declaratory and other relief.

2 PLAINTIFF is a unity, *sui generis*, an individual, *sui juris*, presently residing in Miami-Dade County, Florida.

3 Defendant, GEICO INDEMNITY INSURANCE COMPANY, (hereafter "Defendant") is a Florida corporation engaged in the sale and provision of homeowners insurance. It actively does business in Miami-Dade County, Florida.

4 The causes of action sued upon accrued in Miami-Dade County, Florida as these causes of action involve a purported property insurance contract that involves the parties with respect to a piece of real property located in said county.

Exhibit 1

5 All conditions precedent to suit have been complied with, substantially complied with or
waived. Defendant has not suffered any prejudice.

6 By virtue of the conduct of the Defendant as hereinafter alleged, Plaintiff has been
required to retain the services of the undersigned Counsel to represent the insured in this action
and is obligated to pay a reasonable fee for such services and is therefore entitled to recover such
fees from Defendant pursuant to Florida law.

7 The declarations page of Exhibit A expressly represents the existence and sale of
insurance coverage/protection by Defendant "GEICO INDEMNITY INSURANCE
COMPANY."

8 Defendant had the specific intent that Plaintiff, and others in like position, would repose
their confidence in the defendant as it relates to purchasing insurance coverage and protection for
the purposes which were communicated to the defendant at or shortly before the time of sale of
Exhibit "A" to Plaintiff.

9 Defendant had the willful and malicious intent that Plaintiff, and others in like position,
would repose their confidence in the defendant as it relates to entering into a contract for the
purposes which were communicated to the defendant at or shortly before the time of sale, August
21, 2015 (See Exhibit "A").

10 Plaintiff suffered a loss to its property and person on, or about January 9, 2016, for
damages to the risk property listed on the declarations of coverages page caused by a vehicle
collision in such a fashion as to cause substantial damage to the risk property.

11 The costs to replace or repair the casualty loss being approximately over \$200,000 and
pursuant to the rules set forth in the insurance policy writing attached as Exhibit "A", timely
reported it to Defendant.

12 Defendant assigned claim number 001-00-062445 to the sudden and unexpected loss.

13 Plaintiff's vehicle which is the subject of this lawsuit, located at 954 Davis Parkway, Florida City, FL 33034, suffered covered losses in the gross amount of over \$200,000 during the policy period, which Defendant totally refuses to pay.

COUNT 1

DECLARATORY JUDGMENT ACTION SEEKING A DECLARATION THAT THE LOSS PAYMENT CONDITION CONTAINING THE DUTY TO ADJUST IS A CONDITION PRECEDENT TO ANY DEFENDANT DUTY UNDER ANY OTHER CONDITION IN THE CONTRACT

14 Plaintiff re-alleges and re-avers the allegations common to all counts above as though restated fully herein.

15 Plaintiff seeks a declaration from this court that the duty to adjust a loss, which is contained in the loss payment condition of the policy, is a condition precedent to the payment of any sums under the loss settlement condition or any other claim of performance by Defendant under this insurance contract.

15.1 Plaintiff seeks a declaration that as a condition precedent, Defendant must allege and prove satisfaction of all conditions precedent before affirmatively asserting satisfaction by performance with the loss settlement condition or other conditions in the contract.

16 Plaintiff and Defendant entered into a contract which provided insurance over the Plaintiff's property at 954 Davis Parkway, Florida City, FL 33034, in Miami-Dade County, Florida, (Exhibit "A").

17 Plaintiff has attached a copy of the policy (Exhibit "A") Numbered 4332-77-05-87, to show coverages for the term 12/27/2015 to 6/27/2016

18 Defendant agreed to provide such coverages - on the date or dates of processing

indicated on the Declaration of Coverages page. (Exhibit "A").

19 Defendant rescinded coverage after initially agreeing to cover Plaintiff's loss.

20 Defendant was summoned to an Examination Under Oath (hereinafter, "EUO") by Defendant. (Exhibit "B").

21 Zonia Yolán Rigo, an agent of the Defendant, acting in her scope of employment, told Mr. Claudy he could not bring an Attorney to represent him in the EUO.

22 Plaintiff's Medical costs as a result of the exceeded over **\$200,000**.

23 Defendant claims full compliance with the loss settlement condition of the contract, ignoring its duty imposed by the loss payment condition in the contract, or has interposed another condition as a bar to any relief claimed by Plaintiff under the contract.

24 Plaintiff disagreed with defendant's estimate or claim of bar, further claiming that Defendant breached the loss payment condition because it failed to satisfy its duty to adjust the claim pursuant to the loss payment condition (and the law) which resulted in Defendant's denial of the claim - (a breach of the loss settlement condition).

25 Plaintiff submits that the satisfaction of the duty to adjust contained in the loss payment condition is a condition precedent to any other condition in the policy regardless of coverage.

26 Defendant simply ignores its duty to adjust or properly investigate claims under the loss payment condition - leap frogging to a conclusion that anything it decides, whether as to coverage, or as to payment, *ipse dixit*, constitutes full compliance.

27 There is a bona fide, actual, present and practical need for a declaration of rights as Plaintiff is unsure as to whether Defendant's denial on a claim exceeding **\$200,000.00** constitutes 'compliance' with the contract's loss settlement condition absent allegations of satisfaction with and proof of satisfaction of the loss payment condition [proof of a proper adjustment under law],

or absent an agreement from Plaintiff that the amount is the actual cash value or the claim was properly denied.

28 Defendant claims that its denial constitutes full compliance with the loss settlement condition of the contract, without alleging any compliance with the loss payment condition.

29 Plaintiff submits that where there is no agreement as to a denial of liability, or the actual cash value of the loss, Defendant cannot claim compliance with other conditions without first alleging compliance with the condition precedent and then proving compliance with the loss payment condition/duty to properly adjust the claim.

30 Logically, Plaintiff states that the loss payment condition/duty to adjust the loss must occur before any determination of the actual cash value or denial.

31 Plaintiff's request for the declaration deals with a present, ascertained or ascertainable state of facts in this present controversy as construction of the contract, and determination of whether the loss payment condition is a condition precedent to any other condition, including but not limited to the loss settlement condition in the contract.

32 Plaintiff's rights to a fair adjustment of the claim by law and under this insurance policy is dependent upon the facts and the law of contractual construction applicable to the facts. The court is vested with the jurisdiction to construe contracts.

33 The parties have adverse interests.

34 The issue of Defendant's interpretation of how actual cash value is determined represents an actual, present, adverse and antagonist interest in the subject matter, in both fact and law.

35 The proper parties are all before the court by proper process and the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity.

36 The parties have a stake in the outcome of the decision.

37 WHEREFORE, Plaintiff prays for a declaration of its rights which states:

37.1 that the loss payment condition is a condition precedent to the loss settlement condition.

37.2 that Defendant must allege and prove satisfaction of the loss payment condition duty to adjust the loss as a condition precedent to claiming satisfaction of the loss settlement condition.

37.3 Defendant cannot *ipse dixit* claim that its denial of the claim is sufficient by law absent allegations and proof of satisfaction of all conditions precedent to such a claim, and

37.4 That Plaintiff be awarded its attorney's fees and costs for seeking this declaration of rights.

COUNT 2 - BREACH OF CONTRACT

38 Plaintiff re-alleges and re-avers the allegations common to all counts (1-12) above as though restated fully herein.

39 Plaintiff and Defendant entered into a contract which provided insurance over the Plaintiff's vehicle which became the subject of this lawsuit.

40 Plaintiff suffered a loss at 954 Davis Parkway, Florida City, FL 33034, in Miami-Dade County, Florida, (Exhibit "A").

41 Plaintiff has attached a copy of the policy (Exhibit "A") Numbered 4332-77-05-87, to show coverages for the term 12/27/2015 to 6/27/2016

42 Defendant agreed to provide such coverages - on the date or dates of processing indicated on the Declaration of Coverages page. (Exhibit "A").

43 Defendant rescinded coverage after initially agreeing to cover Plaintiff's loss.

44 Defendant was summoned to an Examination Under Oath (hereinafter, "EUO") by Defendant (Exhibit "B").

45 Zonia Yolán Rigo, an agent of the Defendant, acting in her scope of employment, told
Mr. Claudy he could not bring an Attorney to represent him in the EUO.

46 Plaintiff incurred the claim (0491658560101025) and suffered damages in the amount of
at least over \$200,000 for the loss.

47 Defendant denied coverage for claim 0491658560101025 (Exhibit "C").

48 Plaintiff is entitled to coverage for claim 0491658560101025.

49 Defendant failed to properly adjust the claim pursuant to law and has breached the loss
payment condition of the policy, resulting in damages to the Plaintiff.

50 Furthermore, Defendant's Fraudulent Statements to Plaintiff were a violation of the terms
of the Contract and Florida Law.

51 Defendant misled Plaintiff, through its agent ZONIA YOLAND RIGO, and took an
EUO which deprived Plaintiff of Representation by an Attorney.

52 Defendant also took the EUO without a translator.

53 Defendant knew that Mr. Charles was not fluent in English at the time of the EUO.

54 Moreover, the breach of the loss payment condition triggered a violation of the loss
settlement condition and also a violation by Defendant to properly adjust the claim, resulting in
damages in the amount in controversy alleged above to Plaintiff.

WHEREFORE, Plaintiff demands judgment for damages in the above amounts or as the
proofs may show against Defendant, together with Attorney fees and costs, pursuant to Statute,
and such other relief as this Court deems meet and proper or equitable.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for those issues that are so triable against Defendant
pursuant to Florida law.

Respectfully Submitted,

Law Offices of Stephen Gutierrez, P.A..
/s/ Stephen Gutierrez

By: _____
Stephen Gutierrez, Esquire
2464 SW 137 Ave
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IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN
AND FOR MIAMI-DADE COUNTY, FLORIDA

CIVIL CIRCUIT DIVISION
CASE NO. 2016-015231-CA-01

CLAUDY CHARLES,

Plaintiff,

v.

GEICO INDEMNITY COMPANY,

Defendant

PLAINTIFF'S FIRST AMENDED COMPLAINT

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2 PLAINTIFF is a unity, *sui generis*, an individual, *sui juris*, presently residing in Miami-Dade County, Florida.

3 Defendant, GEICO INDEMNITY COMPANY, (hereafter "Defendant") is a Florida corporation engaged in the sale and provision of homeowners insurance. It actively does business in Miami-Dade County, Florida.

4 The causes of action sued upon accrued in Miami-Dade County, Florida as these causes of action involve a purported property insurance contract that involves the parties with respect to a piece of real property located in said county.

5 All conditions precedent to suit have been complied with, substantially complied with or

Exhibit 2

waived. Defendant has not suffered any prejudice.

6 By virtue of the conduct of the Defendant as hereinafter alleged, Plaintiff has been required to retain the services of the undersigned Counsel to represent the insured in this action and is obligated to pay a reasonable fee for such services and is therefore entitled to recover such fees from Defendant pursuant to Florida law.

7 The declarations page of Exhibit A expressly represents the existence and sale of insurance coverage/protection by Defendant "GEICO INDEMNITY COMPANY."

8 Defendant had the specific intent that Plaintiff, and others in like position, would repose their confidence in the defendant as it relates to purchasing insurance coverage and protection for the purposes which were communicated to the defendant at or shortly before the time of sale of Exhibit "A" to Plaintiff.

9 Defendant had the willful and malicious intent that Plaintiff, and others in like position, would repose their confidence in the defendant as it relates to entering into a contract for the purposes which were communicated to the defendant at or shortly before the time of sale, August 21, 2015 (See Exhibit "A").

10 Plaintiff suffered a loss to its property and person on, or about January 9, 2016, for damages to the risk property listed on the declarations of coverages page caused by a vehicle collision in such a fashion as to cause substantial damage to the risk property.

11 The costs to replace or repair the casualty loss being approximately over \$200,000 and pursuant to the rules set forth in the insurance policy writing attached as Exhibit "A", timely reported it to Defendant.

12 Defendant assigned claim number 001-00-062445 to the sudden and unexpected loss.

13 Plaintiff's vehicle which is the subject of this lawsuit, located at 954 Davis Parkway,

Florida City, FL 33034, suffered covered losses in the gross amount of over **\$200,000** during the policy period, which Defendant totally refuses to pay.

COUNT 1

**DECLARATORY JUDGMENT ACTION SEEKING A DECLARATION THAT THE
LOSS PAYMENT CONDITION CONTAINING THE DUTY TO ADJUST IS A
CONDITION PRECEDENT TO ANY DEFENDANT DUTY UNDER ANY OTHER
CONDITION IN THE CONTRACT**

14 Plaintiff re-alleges and re-avers the allegations common to all counts above as though restated fully herein.

15 Plaintiff seeks a declaration from this court that the duty to adjust a loss, which is contained in the loss payment condition of the policy, is a condition precedent to the payment of any sums under the loss settlement condition or any other claim of performance by Defendant under this insurance contract.

15.1 Plaintiff seeks a declaration that as a condition precedent, Defendant must allege and prove satisfaction of all conditions precedent before affirmatively asserting satisfaction by performance with the loss settlement condition or other conditions in the contract.

16 Plaintiff and Defendant entered into a contract which provided insurance over the Plaintiff's property at 954 Davis Parkway, Florida City, FL 33034, in Miami-Dade County, Florida, (Exhibit "A").

17 Plaintiff has attached a copy of the policy (Exhibit "A") Numbered 4332-77-05-87, to show coverages for the term 12/27/2015 to 6/27/2016

18 Defendant agreed to provide such coverages - on the date or dates of processing indicated on the Declaration of Coverages page. (Exhibit "A").

19 Defendant rescinded coverage after initially agreeing to cover Plaintiff's loss.

20 Defendant was summoned to an Examination Under Oath (hereinafter, "EUO") by Defendant. (Exhibit "B").

21 Zonia Yolán Rigo, an agent of the Defendant, acting in her scope of employment, told Mr. Claudy he could not bring an Attorney to represent him in the EUO.

22 Plaintiff's Medical costs as a result of the exceeded over **\$200,000**.

23 Defendant claims full compliance with the loss settlement condition of the contract, ignoring its duty imposed by the loss payment condition in the contract, or has interposed another condition as a bar to any relief claimed by Plaintiff under the contract.

24 Plaintiff disagreed with defendant's estimate or claim of bar, further claiming that Defendant breached the loss payment condition because it failed to satisfy its duty to adjust the claim pursuant to the loss payment condition (and the law) which resulted in Defendant's denial of the claim - (a breach of the loss settlement condition).

25 Plaintiff submits that the satisfaction of the duty to adjust contained in the loss payment condition is a condition precedent to any other condition in the policy regardless of coverage.

26 Defendant simply ignores its duty to adjust or properly investigate claims under the loss payment condition - leap frogging to a conclusion that anything its decides, whether as to coverage, or as to payment, *ipse dixit*, constitutes full compliance.

27 There is a bona fide, actual, present and practical need for a declaration of rights as Plaintiff is unsure as to whether Defendant's denial on a claim exceeding **\$200,000.00** constitutes 'compliance' with the contract's loss settlement condition absent allegations of satisfaction with and proof of satisfaction of the loss payment condition [proof of a proper adjustment under law], or absent an agreement from Plaintiff that the amount is the actual cash value or the claim was properly denied.

28 Defendant claims that its denial constitutes full compliance with the loss settlement condition of the contract, without alleging any compliance with the loss payment condition.

29 Plaintiff submits that where there is no agreement as to a denial of liability, or the actual cash value of the loss, Defendant cannot claim compliance with other conditions without first alleging compliance with the condition precedent and then proving compliance with the loss payment condition/duty to properly adjust the claim.

30 Logically, Plaintiff states that the loss payment condition/duty to adjust the loss must occur before any determination of the actual cash value or denial.

31 Plaintiff's request for the declaration deals with a present, ascertained or ascertainable state of facts in this present controversy as construction of the contract, and determination of whether the loss payment condition is a condition precedent to any other condition, including but not limited to the loss settlement condition in the contract.

32 Plaintiff's rights to a fair adjustment of the claim by law and under this insurance policy is dependent upon the facts and the law of contractual construction applicable to the facts. The court is vested with the jurisdiction to construe contracts.

33 The parties have adverse interests.

34 The issue of Defendant's interpretation of how actual cash value is determined represents an actual, present, adverse and antagonist interest in the subject matter, in both fact and law.

35 The proper parties are all before the court by proper process and the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity.

36 The parties have a stake in the outcome of the decision.

37 WHEREFORE, Plaintiff prays for a declaration of its rights which states:

37.1 that the loss payment condition is a condition precedent to the loss settlement condition.

37.2 that Defendant must allege and prove satisfaction of the loss payment condition duty to

adjust the loss as a condition precedent to claiming satisfaction of the loss settlement condition.

37.3 Defendant cannot *ipse dixit* claim that its denial of the claim is sufficient by law absent allegations and proof of satisfaction of all conditions precedent to such a claim, and

37.4 That Plaintiff be awarded its attorney's fees and costs for seeking this declaration of rights.

COUNT 2 - BREACH OF CONTRACT

38 Plaintiff re-alleges and re-avers the allegations common to all counts (1-12) above as though restated fully herein.

39 Plaintiff and Defendant entered into a contract which provided insurance over the Plaintiff's vehicle which became the subject of this lawsuit.

40 Plaintiff suffered a loss at 954 Davis Parkway, Florida City, FL 33034, in Miami-Dade County, Florida, (Exhibit "A").

41 Plaintiff has attached a copy of the policy (Exhibit "A") Numbered 4332-77-05-87, to show coverages for the term 12/27/2015 to 6/27/2016

42 Defendant agreed to provide such coverages - on the date or dates of processing indicated on the Declaration of Coverages page. (Exhibit "A").

43 Defendant rescinded coverage after initially agreeing to cover Plaintiff's loss.

44 Defendant was summoned to an Examination Under Oath (hereinafter, "EUO") by Defendant (Exhibit "B").

45 Zonia Yolán Rigo, an agent of the Defendant, acting in her scope of employment, told Mr. Claudy he could not bring an Attorney to represent him in the EUO.

46 Plaintiff incurred the claim (0491658560101025) and suffered damages in the amount of at least over **\$200,000** for the loss.

47 Defendant denied coverage for claim 0491658560101025 (Exhibit "C").

48 Plaintiff is entitled to coverage for claim 0491658560101025.

49 Defendant failed to properly adjust the claim pursuant to law and has breached the loss payment condition of the policy, resulting in damages to the Plaintiff.

50 Furthermore, Defendant's Fraudulent Statements to Plaintiff were a violation of the terms of the Contract and Florida Law.

51 Defendant misled Plaintiff, through its agent ZONIA YOLAND RIGO, and took an EUO which deprived Plaintiff of Representation by an Attorney.

52 Defendant also took the EUO without a translator.

53 Defendant knew that Mr. Charles was not fluent in English at the time of the EUO.

54 Moreover, the breach of the loss payment condition triggered a violation of the loss settlement condition and also a violation by Defendant to properly adjust the claim, resulting in damages in the amount in controversy alleged above to Plaintiff.

WHEREFORE, Plaintiff demands judgment for damages in the above amounts or as the proofs may show against Defendant, together with Attorney fees and costs, pursuant to Statute, and such other relief as this Court deems meet and proper or equitable.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for those issues that are so triable against Defendant pursuant to Florida law.

Respectfully Submitted,

Law Offices of Stephen Gutierrez, P.A..
/s/ Stephen Gutierrez

By: _____
Stephen Gutierrez, Esquire
BAR NO. 117515
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IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT, IN AND
FOR MIAMI-DADE COUNTY, FLORIDA
CASE NO: F16007813
JUDGE: HANZMAN

STATE OF FLORIDA,

Plaintiff,

vs.

CLAUDY CHARLES,

Defendant.

_____ /

EXCERPT OF COURT PROCEEDINGS

March 8, 2017

The above-styled cause came on for hearing before the HONORABLE MICHAEL HANZMAN, one of the Judges in the Circuit Court of the 11th Judicial Circuit, at the Richard E. Gerstein Justice Building, 1351 N.W. 12th Street, Miami, Florida on Wednesday, March 8, 2017, commencing at or about 2:30 p.m. and the following proceedings were had:

Transcribed by: Amber N. Gabel

APPEARANCES:

OFFICE OF THE STATE ATTORNEY, by,
NICOLE MILLER, ASA
On behalf of the Plaintiff

OFFICE OF THE STATE ATTORNEY, by,
WALLY HERNANDEZ, ASA
On behalf of the Plaintiff

OFFICE OF THE STATE ATTORNEY, by,
NILO CUERVO, ASA
On behalf of the Plaintiff

LAW OFFICE OF STEPHEN GUTIERREZ, by,
STEPHEN GUTIERREZ, ESQUIRE
On behalf of the Defendant

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MR. GUTIERREZ: Judge, Mr. Charles isn't going to be testifying.

THE COURT: Mr. Charles has changed his mind?

MR. GUTIERREZ: Yes, Judge.

THE COURT: And he's not going to testify?

MR. GUTIERREZ: Yes, Judge.

THE COURT: Okay. Is that correct, Mr. Charles, you've now made the decision not to testify?

THE DEFENDANT: Yes.

THE COURT: Okay. Is that decision one that you've made on your own?

THE DEFENDANT: Yes.

THE COURT: You were able to consult with lawyer regarding that decision?

THE INTERPRETER: I'm sorry, your Honor, because Mr. Charles was saying that reason why doesn't want to testify is that he's been so upset since this case. He doesn't feel well, and he doesn't think he would be able to.

THE COURT: Okay. Well, would you like a recess, kind of gather your thoughts, have a drink, we can come back in a half-an-hour, and you can testify maybe feeling better, or --

1 THE DEFENDANT: No, no.

2 THE COURT: No. Okay. So, Mr. Charles, you've
3 made this decision and you've made that after
4 consultation with your lawyer?

5 THE DEFENDANT: Yes.

6 THE COURT: You understand, as I told you
7 before, you have the absolute right to testify?

8 THE DEFENDANT: Yes, I understand.

9 THE COURT: Okay. All right. So,
10 Mr. Gutierrez, does the defense have any other witnesses or
11 testimony or evidence that it wishes to present in this
12 case?

13 MR. GUTIERREZ: No, we do not, Judge.

14 THE COURT: Okay. So the defense rests?

15 MR. GUTIERREZ: Yes.

16 THE COURT: All right. So since the defense
17 did not present a case, I assume there's no rebuttal
18 case.

19 State is ready to proceed to closing
20 argument.

21 MS. MILLER: We are.

22 THE COURT: Okay. So you're ready to proceed
23 with closing.

24 Who is going to be closing for the State.

25 MS. MILLER: Well, Mr. Hernandez will be doing

1 first closing. I'll be doing the second closing.

2 MR. GUTIERREZ: And, Judge --

3 THE COURT: And how long do you want for
4 closing?

5 MS. MILLER: How long does your Honor typically
6 prefer for closing?

7 THE COURT: I don't know. I mean, it wasn't a
8 particularly long case.

9 How long could you need to close this case?

10 MS. MILLER: If we can do 15 and 15, or --

11 THE COURT: You need a half-an-hour to close
12 this case?

13 MS. MILLER: Or 15 and 10, that's fine.

14 THE COURT: So I'll give you 15 minutes, and
15 then ten for rebuttal.

16 How long would you like, Mr. Gutierrez?

17 MR. GUTIERREZ: About 15 minutes, Judge, 20
18 minutes.

19 THE COURT: Fine.

20 MR. HERNANDEZ: Two questions, Judge. The
21 first one is

22 THE COURT: Sure. Well, why don't you give a
23 copy to Mr. Gutierrez. Let's make sure we're all on the
24 same page with all the jury instructions. Let me have a
25 copy.

1 MR. GUTIERREZ: And the second thing, Judge,
2 may I please go get our statute for closing? Mr. Cuervo
3 was supposed to bring it over, but he's not here yet.

4 THE COURT: How long is that going take?

5 MR. GUTIERREZ: I'll run, I'm going to run to your
6 JA to make sure the verdict form is printed, and I will --

7 THE COURT: How far is your office?

8 MR. GUTIERREZ: Its right across the street, it's
9 quick, I'm very agile.

10 THE COURT: Okay. Make it fast.

11 Dennis, please tell the jury we'll be with them
12 in about five minutes. The Court's in recess.

13 (Thereupon, a brief recess was had.)

14 THE COURT: Do you have a copy of the jury
15 instructions for me please?

16 MS. MILLER: Judge, we went over the jury
17 instructions, and can we address one matter before we
18 bring the jury in?

19 THE COURT: Okay. What would that be?

20 MS. MILLER: The State rests, and I'm not sure
21 the defendant, on the record yet, has rested, but no JOA
22 have made by the defense.

23 THE COURT: I agree, then file a JOA motion.

24 MS. MILLER: I just wanted to make sure that
25 the Court was aware.

1 THE COURT: I picked that up, but I don't tell
2 lawyers how to --

3 MR. GUTIERREZ: We're not filing a judgement of
4 acquittal.

5 THE COURT: Pardon?

6 THE COURT: We're not going to file a JOA
7 motion.

8 THE COURT: Okay.

9 MS. MILLER: Okay, I just wanted to make sure
10 that, it was on the record.

11 Your Honor, would you just mind colloquying the
12 defendant on the fact that his defense attorneys
13 are choosing not to raise any JOA arguments in this case?

14 THE COURT: And why would I do that?

15 MS. MILLER: In the event that this comes back on a
16 Rule Three.

17 THE COURT: I understand.

18 MS. MILLER: In terms of --

19 THE COURT: Counsel's made a strategic
20 decision. Maybe he doesn't think there's a legal basis
21 for a JOA motion. I think the elements of the crime
22 were established. Maybe he doesn't feel he has a good
23 faith motion for JOA. I mean, not every case warrants a
24 JOA.

25 MR. GUTIERREZ: We'll go ahead and argue it. I

1 mean --

2 THE COURT: Mr. Gutierrez, did you want to
3 argue a JOA motion? Do you want to make a JOA motion?

4 MR. GUTIERREZ: It would have to be sua sponte,
5 but --

6 THE COURT: Pardon.

7 MR. GUTIERREZ: It would have to sua sponte
8 right now -- I mean, I don't everything has been proven
9 beyond --

10 THE COURT: You're entitled to make it at the
11 close of the evidence, aren't you?

12 MR. GUTIERREZ: And I don't think it's been
13 established beyond a reasonable doubt that any
14 reasonable juror could decide that the only way the car
15 could have been started as a fire, would be through the
16 defendant's actions.

17 THE COURT: Okay. Motion for JOA is denied.

18 All right. State, ready to proceed to closing
19 argument?

20 MR. HERNANDEZ: Almost, Judge, we're just reviewing
21 the jury Instructions, I'll pass them to you right now.

22 THE COURT: Okay. I want look at those while
23 you're closing, so let me have the jury instructions.

24 Dennis, please bring in the jury.

25 THE BAILIFF: All rise for the jury.

1 (Thereupon, the jury enters the courtroom.)

2 THE COURT: Have a seat, ladies and gentlemen.

3 All right. Ladies and gentlemen, you've now
4 heard all the evidence that you're going to consider in
5 this case, and at this point, we're going to proceed to
6 closing arguments. Now, this is a chance where the
7 lawyers get to get up and talk to you, and summarize
8 what they believe the evidence shows in the case. The
9 State is going to get up and argue why they believe your
10 verdict should be one of guilt, and the defendant will
11 get a chance to get up and argue to why you believe --
12 why he believes the State has not proven its case beyond
13 and to the exclusion of every reasonable doubt.

14 So this is the lawyers last chance to get to
15 speak with you about the evidence in the case and
16 verdict that they're going to advocate that you should
17 reach. As I told you before, when the lawyers gave
18 their opening, what the lawyers say to you is not
19 evidence in the case, and what they tell you is not
20 evidence. The evidence is what coming from the
21 witnesses who have testified on the stand, and documents
22 and other tangible evidence that I've allowed in.

23 Having said that, they're going to summarize
24 that evidence. So it's very important that you pay
25 close attention. But if something they say conflicts

1 with your view or your memory of the evidence, it's the
2 actual evidence that is controlling in your
3 deliberation. Now, what's going to happen, I'm going to
4 let the State go first. They have the right to go first
5 in closing argument. Then the defense will make their
6 closing, and the State gets a very brief rebuttal. Once
7 we're done with closing, I'm going to instruction you on
8 the law that you are to follow in reaching your verdict,
9 and you'll be given a copy of those jury instructions.
10 And they'll be taken back with you in the jury room
11 where you deliberate until you've reached a verdict.

12 All right. Now, do both parties stipulate and
13 agree that the instructions can be read to the jury
14 after closing, or would either party like the
15 instructions read before closings?

16 MR. GUTIERREZ: After.

17 MR. HERNANDEZ: After, Judge, but there's small
18 issue that I would like the defense to come side bar
19 with.

20 THE COURT: Okay. Come side bar, please.

21 (Thereupon, a side bar conference wad had.)

22 THE COURT: All right. So both parties
23 stipulate to reading the instructions to the jury after
24 closing, correct?

25 State?

1 MR. HERNANDEZ: Yes, Judge.

2 THE COURT: Defense?

3 MR. GUTIERREZ: Yes, Judge.

4 THE COURT: Okay. Before closing, I just want
5 to make sure once again, the State has rested?

6 MS. MILLER: Yes, Judge.

7 THE COURT: Defense has rested?

8 MR. GUTIERREZ: Yes, Judge.

9 THE COURT: Okay. Very good. State, ready to
10 proceed with its closing argument?

11 MR. HERNANDEZ: Yes.

12 THE COURT: Okay.

13 JUROR: Are we allowed to ask
14 questions or not?

15 THE COURT: No.

16 Okay. Mr. Hernandez, you have the floor.
17 Please proceed.

18 MR. HERNANDEZ: Thank you, Judge.

19 Good afternoon. It is the State's burden to
20 prove beyond a reasonable doubt that the defendant,
21 Charles Claudy, committed the crime of arson in the
22 second degree. It is the State's contention that we
23 proved this and carried this burden beyond a reasonable
24 doubt.

25 To prove the crime of arson in the second

1 degree, the State must prove the following two elements
2 beyond a reasonable doubt. The first element is that
3 defendant, Charles Claudy, willfully and unlawfully
4 caused a fire or explosion. The second count is that
5 structure owned by the defendant or another was damaged
6 by that explosion.

7 Now, it doesn't matter that the car belonged to
8 him. You can't just go blow up your car. You heard
9 from the witness Zonia Rigo, of Geico, that this
10 individual, the defendant, took out an insurance policy
11 on this car December 27th of 2015. That is a little less
12 than a month from the date of this incident. Now, she
13 told you his claim was denied based on the facts that
14 she received.

15 You also heard from responding officer and
16 Officer Najera, and they told you consistently with the
17 other witnesses what took place. They arrived to the to
18 car covered in flames. The defendant had injuries
19 consistent with the crime that occurred. Now, you also
20 heard from Lieutenant Forester of the Miami-Dade Fire
21 Rescue. He told you that based on his investigation of
22 origin and cause as well as all of his other training
23 and experience, that there was only one way this crime
24 happened. The defendant on numerous times tried to
25 start a fire in his vehicle. And we're going to watch

1 how many times he tried to start a fire in his vehicle.

2 It's 7:21, you see the defendant driving his
3 car, and pulling into his parking spot.

4 MR. GUTIERREZ: Your Honor, I would object on
5 the basis that it would be impugning almost -- how would
6 I put this. I would object in the sense that it would
7 be basically speculating as to -- how would I put this,
8 state of mind at the time of the events.

9 THE COURT: Okay. It's --

10 MR. GUTIERREZ: This was not brought up
11 originally.

12 THE COURT: It's argument counsel. Obviously.
13 the State of mind it at issue.

14 MR. GUTIERREZ: An no foundation.

15 THE COURT: Okay. So I'm going to overrule the
16 objection.

17 MR. Hernandez, just please make sure your
18 arguments are tailored to the evidence in the case.

19 MR. HERNANDEZ: Yes, Judge.

20 THE COURT: And not your personal views or
21 opinions okay?

22 MR. HERNANDEZ: Yes, Judge.

23 THE COURT: All right. Good.

24 MR. HERNANDEZ: 7:21 pulling into his parking
25 spot.

1 The next we're going to see is 9:11 p.m. You
2 see the defendant just walking to his car. Again, the
3 defendant is walking to his vehicle, sitting inside,
4 getting out. At 9:26 p.m., again, walking to his
5 vehicle, getting out. Right now we can't tell what he's
6 doing inside his vehicle, but the car just started,
7 didn't blow up that time. He leaves his apartment
8 complex. 12:59 a.m., the defendant arrives at the
9 apartment complex and parks in the same exhibit spot as
10 to where this incident took place.

11 And I want you to pay attention -- pay
12 attention to his vehicle, both of the windows, gets out
13 of the vehicle. At 1:07 a.m., you're about to see his
14 first attempt at lighting the car.

15 MR. GUTIERREZ: Objection.

16 THE COURT: Overruled.

17 MR. HERNANDEZ: He gets inside the vehicle, and
18 1:08, and you see the first attempt. I want you to look
19 at the flash that takes place in this vehicle.

20 MR. GUTIERREZ: Objection, foundation. It
21 wasn't discussed in the case previously.

22 THE COURT: Overruled.

23 MR. HERNANDEZ: Right here, ladies and
24 gentlemen, this is the first attempt the defendant took
25 to lighting the car on fire.

1 MR. GUTIERREZ: Same objection.

2 MR. HERNANDEZ: He lights the fire, he gets out
3 of the vehicle.

4 MR. GUTIERREZ: Objection.

5 MR. HERNANDEZ: He even takes his time to lock
6 his doors.

7 THE COURT: Mr. Gutierrez --

8 MR. GUTIERREZ: I'm going to state --

9 THE COURT: -- in order to assert an objection
10 I need you to stand on your feet, and assert the
11 objection in a way that I can hear the objection.

12 MR. GUTIERREZ: I said objection. I --

13 THE COURT: I need a legal basis for the
14 objection.

15 MR. GUTIERREZ: Objection, there's no
16 foundation and that was speculation into the state of
17 mind of the Defendant, Mr. Claudy Charles, at the time
18 this was occurring --

19 THE COURT: Okay.

20 MR. GUTIERREZ: -- and it was not discussed.

21 THE COURT: Overruled. Let's proceed.

22 THE COURT: So just like he was checking food
23 in the oven, he was looking inside his car to see how
24 the fire that he started was taking place. 1:23 a.m.,
25 he's pacing. He's looking. He sees the fire. It's

1 1:23 a.m. It's one 1:30 now.

2 MR. GUTIERREZ: Objection.

3 MR. HERNANDEZ: The defendant checks his car
4 again, and I want you, again, to pay attention. When he
5 opens the car door smoke is billowing out.

6 MR. GUTIERREZ: Objection, your Honor. There's
7 no foundation in this case for smoke billowing out or
8 anything of that nature.

9 THE COURT: Okay. Overruled. Let's proceed.

10 MR. HERNANDEZ: He's checking for the fire he's
11 started. Smoke is billowing out of the driver's side
12 door. That's not good enough for him right now. It's
13 not the fire he thought would take place. We're are
14 1:39, he's still walking around, he's pacing. He's on
15 the phone with somebody.

16 MR. GUTIERREZ: Objection, your Honor. The
17 prosecutor said he thought, and now he's stating he's on
18 the phone with somebody. There's no direct knowledge of
19 what the defendant doing at that time or any evidence.

20 THE COURT: Mr. Gutierrez, have a seat.

21 Ladies and gentlemen, as I've explained to you
22 earlier, this closing argument. This is where the
23 lawyers get to argue their case and tell you what they
24 believe the evidence shows. Mr. Hernandez believes the
25 evidence -- the video here shows the defendant pacing

1 around on the phone. You're going to have the video in
2 the jury room when you deliberation, and, of course,
3 it's not Mr. Hernandez's view of the video that counts,
4 it's yours. So you will view the video and you'll draw
5 your own conclusion as to what it does or does not show.
6 This again, is just Mr. Hernandez's argument. What he
7 says is not the actual evidence.

8 Okay. Mr. Hernandez --

9 MR. HERNANDEZ: Thank you, Judge.

10 THE COURT: -- please proceed with your
11 argument.

12 MR. HERNANDEZ: Now, my first argument right
13 now is I want you to remember the opening argument from
14 defense counsel. I want you to remember that the
15 defendant, at the time, allegedly was looking for his
16 proverbial phone. We know where the proverbial phone
17 is. He's talking on it right now.

18 1:55 a.m., you again will see him checking on
19 the fire that he started. You see him stick his head in
20 the car, and, again, smoke billowing out of the vehicle.
21 1:59 a.m., the defendant walks back to the vehicle, gets
22 in the car, starts it, drives away. No explosion. No
23 boom. He drives right out of the apartment complex
24 unsuccessful in his first attempts to light the car on
25 fire.

1 2:08 a.m., he arrives back at the complex.
2 Parking, again, in the same exact location. 2:10, this
3 is when he is successful. This is when the defendant,
4 consistent with all testimony you heard today, enters
5 the vehicle. He lit the vehicle on fire from the
6 interior causing the explosion. And that's him shaking
7 off the fire on his arm and walking back to his parking
8 lot as fire rescue approaches the scene.

9 Now, you heard from Lieutenant Forester. You
10 saw the damage on the vehicle. Due to his
11 investigation, he determined, based with the fire
12 pattern, as well as the evidence, that this fire was
13 intentionally set from the interior of the vehicle.
14 Remember, he said if this was engine fire, there
15 wouldn't be moderate damage here. This was an exterior
16 fire, these tires wouldn't be here. This vehicle burned
17 from the interior out, and that's because the defendant,
18 Mr. Charles, started the fire.

19 The evidence showed today that when Lieutenant
20 Forester visited the defendant at the hospital, and he
21 informed the defendant that, "Hey, I'm going to be
22 checking the video cameras, because I don't know if you
23 know there's cameras facing where your car was parked,"
24 and that's when the defendant got nervous. The
25 defendant got nervous because he knew that jog was up.

1 Now, you also heard Lieutenant Forester talk
2 about sending that sample to the lab. He didn't ask for
3 that sample just to be tested just specifically for gas.
4 He had it tested for a number of possibilities, but the
5 one thing that came back in that lab result was
6 gasoline.

7 And, again, the State just has to prove that
8 the defendant, Claudy Charles, willfully and unlawfully
9 caused an explosion or fire, and that structure, even
10 owned by the defendant or another, was damaged by that
11 explosion or fire. You saw pictures of the defendant
12 and his arm when Lieutenant Forester went to the
13 hospital. He told you how the defendant got this
14 injury. He got this injury consistent with him
15 attempting to light the backseat on fire, but because of
16 the vapors that Lieutenant Forester described to you, he
17 didn't know the fire was going to go off the way it did,
18 and that's why his arm got burned and you saw him
19 running away from the explosion like a man on fire.

20 One moment. It is for the aforementioned
21 reasons that the State is confident that there is only
22 one verdict to return in this case, and that is that the
23 defendant, Claudy Charles, is guilty beyond a reasonable
24 doubt of arson in the second degree. Thank you.

25 THE COURT: Thank you, counsel.

1 Mr. Gutierrez, who will be closing for
2 defendant?

3 MR. GUTIERREZ: I will, Judge.

4 THE COURT: Okay. Please proceed.

5 MR. GUTIERREZ: Good afternoon, ladies and
6 gentlemen of the jury, the Judge -- oh, I mean, the
7 State.

8 This is the part that's a little bit difficult
9 for me where I feel like I'm handing off the
10 responsibility to somebody and having no power. It's
11 not usual.

12 MS. MILLER: Objection, your Honor.

13 THE COURT: Sustained.

14 MR. HERNANDEZ: Judge --

15 THE COURT: Okay. Sustained.

16 Mr. Gutierrez, first of all, where are you
17 going?

18 THE COURT: Pardon?

19 Okay. Everyone just stay seated. Maybe he
20 just needed to gather his thought. Let's see what's
21 going on.

22 MR. HERNANDEZ: Judge, may we go side bar,
23 Judge.

24 MS. TORRES: The box --

25 MR. HERNANDEZ: Judge, may we go side bar?

1 THE COURT: Okay. Let's go side bar.

2 (Thereupon, a side bar conference was had in
3 the presence of the court reporter.)

4 THE BAILIFF: Judge, I can smell the smoke. If
5 you go out there, it reeks of smoke.

6 THE COURT: What happened was he going to do a
7 demonstration for the jury on the match or something?

8 MS. TORRES: No, it's just --
9 e-cigarette.

10 MR. HERNANDEZ: No, he carries an e-cigarette.
11 He put it in his pocket.

12 THE COURT: A what?

13 MR. HERNANDEZ: Apparently, an e-cigarette
14 possibly exploded in his pocket.

15 MR. CUERVO: All I know, Judge --

16 (Thereupon, Mr. Gutierrez returns to the
17 courtroom.)

18 MR. GUTIERREZ: Judge, I'm sorry, I quite literally
19 caught on fire, Judge.

20 (Thereupon, the side bar conference continued.)

21 MR. HERNANDEZ: Why is he doing this in front
22 of the jury?

23 MR. GUTIERREZ: Judge, I'm sorry.

24 THE COURT: Mr. Gutierrez --

25 MR. GUTIERREZ: Yes, Judge.

1 THE COURT: What just happened?

2 MR. GUTIERREZ: A battery just --

3 THE COURT: Keep your voice down.

4 MR. GUTIERREZ: A battery just broke in my
5 pocket. I was on fire.

6 THE COURT: A battery burned in your pocket?

7 MR. GUTIERREZ: Yes, Judge.

8 THE COURT: What kind of battery are you
9 walking around with your in pocket during a trial?

10 MR. GUTIERREZ: It's just a regular battery for - to
11 charge phones.

12 THE COURT: That doesn't look like a phone
13 charge battery.

14 What kind of battery is that?

15 MR. GUTIERREZ: It's for phones and for
16 e-cigarettes.

17 THE COURT: What kind of phone would that
18 battery go in?

19 MR. GUTIERREZ: No, you know, the external
20 chargers?

21 THE COURT: And why are you carrying around a
22 battery in your pocket?

23 MR. GUTIERREZ: Because I'm an idiot.

24 MR. HERNANDEZ: Judge, we ask that you excuse
25 the jury please. Fine, just in the jury room.

1 THE COURT: Dennis, put the jury in the jury
2 room.

3 THE BAILIFF: Jurors, just step into the jury
4 room. There's a bathroom in there if you need to use
5 the bathroom.

6 THE COURT: Go back to counsel table.
7 (Thereupon, the side bar conference was
8 concluded.)

9 THE BAILIFF: All rise.
10 (Thereupon, the jury exits the courtroom.)

11 JUROR: -- I just don't feel comfortable staying inside
12 there, I'm sorry.

13 THE BAILIFF: Judge, we have one juror who
14 said he doesn't feel comfortable.

15 JUROR: I'm not going to be locking
16 myself in a small room without an exit when someone's playing
17 -- with fire.

18 THE COURT: Okay, sir, sir, go back in the jury
19 box.

20 Please escort the jury out.

21 THE BAILIFF: Go ahead and exit through that
22 door.

23 (Thereupon, the jury enters the courtroom.)

24 THE COURT: Ladies and gentlemen, please just
25 wait outside we're just going to be a couple of minutes.

1 (Thereupon, the jury exits the courtroom.)

2 THE COURT: Mr. Gutierrez --

3 MR. GUTIERREZ: Yes, Judge.

4 THE COURT: -- I'm trying to give you the
5 benefit of the doubt, but it seems to me like that was
6 just a stunt.

7 MR. GUTIERREZ: It was not.

8 THE COURT: It seems to me very coincidental
9 that in a case involving arson where you're trying to
10 persuade the jury that there was some kind of
11 instantaneous combustion in a vehicle, that you stand up
12 to do your closing argument, and all of the sudden some
13 battery in your pocket becomes flammable.

14 MR. GUTIERREZ: I swear --

15 THE COURT: Now, you're going to tell me that
16 that was not a stunt, and you're going to tell me that
17 it's just a matter of coincidence --

18 MR. GUTIERREZ: Yes.

19 THE COURT: -- that in my arson case, you
20 happen to have a battery in your pocket that explodes or
21 starts on fire in front of the jury.

22 MR. GUTIERREZ: Judge, -- were my keys hot?

23 MS. TORRES: Yeah it was, no, I didn't --

24 MR. GUTIERREZ: I didn't do it as a stunt,
25 Judge, and I swear --

1 MS. TORRES: And I apologize for not
2 asking for a side bar. This is my first time in
3 criminal -- in a court criminal trial. So I didn't --
4 I'm not familiar with the procedure, and I apologize for
5 that.

6 THE COURT: So this was just a matter of
7 coincidence?

8 MR. GUTIERREZ: I swear on my life, Judge.

9 THE COURT: You just happen to be walking
10 around with a battery --

11 MR. GUTIERREZ: And I --

12 THE COURT: And that battery starts on fire
13 with no combustion, no match, no nothing. That battery
14 just starts burning in your pocket coincidentally when you
15 stand up in front of the jury?

16 MR. GUTIERREZ: Yes, Judge. I know it sounds
17 insane. This is what I had in my pocket, this and two
18 of the three other batteries, Judge. I swear on my life
19 and everything, Judge, I would not do that. It's the
20 time that itself --

21 THE COURT: State, have any motions or any
22 relief it's seeking?

23 MS. MILLER: Judge, I find that this is
24 extremely problematic, but like your Honor had suggested
25 the fact -- the odds of this just happening. I mean,

1 this was clearly a stunt on behalf of defense counsel.
2 I don't understand why he would be carrying around
3 batteries in his pocket before he's doing closing
4 argument, and, "Oh, his pocket is on fire," just like
5 that.

6 Right, which your Honor has heard the facts of
7 the case, and you heard -- I mean, you heard his opening
8 of, you know, what it was and his cross-examining of the
9 witnesses. It's consistent with what he's trying to
10 show. This was clearly something he was trying to show
11 to the jury, which didn't work out very well. Because
12 then when he came back in, in front of the jury, he's
13 talking about a fire began in his pocket. He didn't ask
14 to come side bar to say that there was this emergency.
15 I mean --

16 MR. GUTIERREZ: Judge, I apologize.

17 THE COURT: Is the State seeking any relief?

18 MS. MILLER: I would ask your Honor, at this
19 point, to hold him in contempt.

20 THE COURT: Is the State seeking a mistrial?

21 MR. CUERVO: Well, the State is not seeking --

22 MS. MILLER: The State would not be seeking a
23 mistrial.

24 THE COURT: Okay.

25 MR. HERNANDEZ: We are seeking that you hold

1 him in contempt.

2 MR. GUTIERREZ: Your Honor, I --

3 THE COURT: Mr. Gutierrez --

4 MR. GUTIERREZ: Yes, Judge.

5 THE COURT: -- you're going to turn that
6 battery over to my bailiff.

7 MR. GUTIERREZ: Okay.

8 THE COURT: The State has filed a motion to
9 hold you in contempt.

10 MR. GUTIERREZ: Yes, Judge.

11 THE COURT: I'm considering issuing an order to
12 show cause. I find it to be bazar and extremely,
13 extremely unlikely that in an arson case where your
14 defense is instantaneous combustion, that you get up to
15 give a closing argument, and all of the sudden without
16 on cause on your part, your pocket starts on fire with a
17 battery that's supposedly sitting in your pocket. And
18 all of the sudden, the minute you get up to talk to the
19 jury, it decides to set itself on fire.

20 I'm going to take that battery, and we're going
21 to take a look at that battery, and I'm going to reserve
22 on an order to show cause.

23 What else was in your pocket at the time?

24 MR. GUTIERREZ: My keys.

25 THE COURT: There were no matches or any --

1 MR. GUTIERREZ: No, Judge.

2 MS. MILLER: And, your Honor, I believe he
3 indicated he had more than one battery, if I'm not
4 mistaken.

5 MR. GUTIERREZ: There was three altogether.

6 MS. MILLER: Three batteries.

7 THE COURT: Where are the other batteries?

8 THE BAILIFF: Empty your pockets, please.

9 THE COURT: Empty your pockets, please,
10 counsel.

11 THE BAILIFF: Empty out your pockets and put it
12 on the table right in front of me.

13 THE COURT: Dennis, check his pockets including
14 his jacket pocket. I want to see if there are any
15 matches or anything else there.

16 THE BAILIFF: Stand over here. I already told
17 you don't reach across.

18 THE COURT: No matches or anything?

19 THE BAILIFF: No matches.

20 THE COURT: Give him back anything that belongs
21 to him except those batteries.

22 What is that liquid?

23 THE BAILIFF: Lighter -- I guess, fluid for an
24 e-cigarette.

25 THE COURT: Fluid for an e-cigarette.

1 Was that in your pocket with the batteries,
2 Mr. Gutierrez?

3 MR. GUTIERREZ: It was in one of my pockets,
4 but not the same one.

5 THE COURT: Pardon?

6 MR. GUTIERREZ: It was one in my jacket pocket,
7 but not the same one. I actually always carry it
8 around. It's liquid for an e-cigarette, your Honor.

9 THE COURT: Is this liquid combustible?

10 MR. GUTIERREZ: No.

11 THE COURT: You hold onto this. Hold onto the
12 batteries.

13 Put your belongings back in your pocket,
14 Mr. Gutierrez. Everybody be seated.

15 MS. MILLER: Your Honor, I just ask one more
16 thing before we precede. I would just request that, at
17 this point, while you decide whether or not going to
18 hold the defendant in contempt, that you bar him from
19 him actually doing a closing argument and from the rest
20 of this trial. He does have co-counsel here that can
21 surely step in. She's been here from the beginning to
22 close and proceed with the rest of the trial.

23 THE COURT: Defendant wish to heard on this
24 request?

25 MR. GUTIERREZ: Yes, Judge, I know everything

1 that happened looks a little bit crazy and is a little
2 bit crazy, but it actually did happen. That was the
3 truth, Judge. I would never do anything like to try to
4 pull a stunt or something crazy in the courtroom and
5 prejudice the most important person, my client. I know
6 it sounds like it could never happen, but it did. And I
7 ask that if I am removed that he -- my defendant -- the
8 counsel -- my client be given permission to seek new
9 counsel elsewhere. That this could possibly prejudice
10 this case.

11 THE COURT: Okay. I'm denying the request that
12 you be precluded from delivering your closing argument,
13 because I don't want to prejudice your client given that
14 you have tried the entire case. But I'm giving you a
15 warning, Mr. Gutierrez. You're going to do a closing
16 based upon the evidence in this case. You're going to
17 keep your hands on the podium.

18 MR. GUTIERREZ: Judge, I didn't --

19 THE COURT: And if I hear you go out of line
20 for one second or do anything inappropriate, I'm going
21 to issue an order to show cause, and I'm going to
22 incarcerate you on the spot.

23 Do you understand me?

24 MR. GUTIERREZ: Yes, Judge.

25 THE COURT: So I better not have further

1 incidences. I better not have anything out of bounds in
2 this closing argument. No statements out of bounds.
3 Nothing but proper legal closing argument, and you
4 better deliver it perfectly.

5 MR. GUTIERREZ: Yes, Judge.

6 THE COURT: Because if you step outside the
7 lines where I have one more incident where I have to
8 excuse this jury or have a problem with you, I'm going
9 to issue a direct criminal contempt order.

10 MR. GUTIERREZ: Yes, Judge.

11 THE COURT: And I'm going to have you taken
12 right from here to the Dade County Jail.

13 Do you understand me?

14 MR. GUTIERREZ: Yes, Judge.

15 THE COURT: Now, have a seat.

16 Now, another thing, whatever happened in your
17 pocket or whatever incident just occurred is not going
18 to be mentioned to the jury. No apologies. No nothing.
19 You just get up and deliver your closing --

20 MR. GUTIERREZ: Yes, Judge.

21 THE COURT: -- without any side track.

22 Do you understand me?

23 MR. GUTIERREZ: Yes, Judge.

24 THE COURT: Not even so much as a benign
25 apology for having to excuse them.

1 MR. GUTIERREZ: Yes, Judge.

2 THE COURT: You just get up and start
3 immediately with your closing. Do not detour one iota.

4 MR. GUTIERREZ: Yes, Judge.

5 THE COURT: Understand?

6 THE DEFENDANT: Yes, Judge.

7 THE COURT: Fine. Have a seat.

8 MS. MILLER: Judge, I do plan on, in my second
9 close, to reiterate the fact that what the attorneys say
10 is not evidence, but I would request of your Honor it's
11 okay that I say, "What the attorneys say and do is not
12 clearly evidence or to be considered in" --

13 THE COURT: I would not over emphasize this,
14 but you're free to make whatever argument you want
15 that's within legal bounds.

16 Okay. Dennis, bring the jury back in and there
17 better not be any further distractions.

18 THE BAILIFF: All rise for the jury.

19 (Thereupon, the jury enters the courtroom.)

20 THE COURT: Thank you.

21 Ladies and gentlemen, I appreciate your
22 patience during this brief delay. We're ready to
23 proceed at this point.

24 Mr. Gutierrez, closing argument.

25 MR. GUTIERREZ: Yes, Judge.

1 Ladies and gentlemen, Judge, the State, my
2 client. Good afternoon. This is the last chance I'm
3 going to have to speak to everybody, so I'll make it
4 brief and succinct.

5 The State has the burden of proofing beyond any
6 exclusion of a reasonable doubt every bit and iota of
7 this case, every element of arson in the second degree,
8 which means that my client, Mr. Claudy Charles, the
9 defendant, knowingly and willfully set fire or caused to
10 explode a structure. Now, every single part of that
11 law, statute must be proven by the State beyond any
12 reasonable doubt.

13 You've heard from experts. You've heard from
14 police officers. You've heard from insurance agents,
15 and the only thing they have in common is that they've
16 all been in touch with each other for along time minus
17 Zonia Rigo, the insurance agent. This is about a group
18 of people that know each other, that work together
19 closely. This is about my client, the defendant, who
20 was -- and I would like to correct the initial closing
21 argument where I said there was going to be a cell
22 phone. I actually said proverbial i-Phone, which
23 referred to my client loosing his wallet and going back
24 and fourth, which is what happened that night.

25 There was no one there, so to prove his exact

1 intent in his mind would be almost -- I'll just leave it
2 at that. I know sometimes when putting together all of
3 the evidence it may not be common, but common sense is
4 the best thing that we all have, and you have to ask a
5 couple of questions. Why would my client want to blow
6 himself up? Was there sufficient evidence to prove that
7 the fire was intentionally caused by my client,
8 Mr. Charles? And, again, we contend that car was being
9 turn on which was supported Lieutenant Forester's
10 testimony when he said that Mr. Charles stated that to
11 him when he first met him in the hospital right after
12 the accident.

13 When the car was being turned on, it was
14 exploding. How do you light a match when you're turning
15 on a vehicle? And it just doesn't make sense, and that
16 was not discussed. Now beyond all and any reasonable
17 doubt, the car was not tested by Mr. Forester in any of
18 the other locations. It was only where the driver's
19 side was. There was no list of any other chemical
20 agents other than gasoline in the report that we got.
21 There was no smoking gun found, if you will, like a
22 match or lighter or anything. It was all based on a gut
23 feeling.

24 And the question today is, are we going to send
25 Mr. Charles him on a gut feeling? Was it sufficient to

1 prove every single element of this case? Is it logical
2 that my client wanted to blow himself up and injure half
3 the side of his body? I don't think so, but I don't
4 know. Thank you.

5 THE COURT: Brief rebuttal, State.

6 MS. MILLER: Thank you, Judge.

7 Members of the jury, please use your common
8 sense. Use your common sense. The Judge is going to
9 review the jury instruction, and you're going to be able
10 to bring back into the room with you, which says that
11 any person who willfully and unlawfully by fire or
12 explosion causes damage to a structure, and a structure
13 can be a vehicle.

14 The two main elements of this case were proven.
15 They were proven by the testimony that you heard today.
16 Remember in jury selection, we discussed that only
17 evidence that you consider is what comes off that
18 witness stand and physical evidence -- the physical
19 evidence, not what the attorneys say, not what they do.
20 It's only what comes off that witness stand. That's the
21 evidence that you're to consider.

22 The witnesses that testified, they didn't
23 testify that they were good friends with each other.
24 They testified they worked together, yes, because their
25 jobs all are interrelated. They investigate fires. So,

1 of course, they're going to work together. Of course,
2 they're going to have cases to work on together. Look
3 at all of the evidence and all of the testimony that you
4 heard together. You saw this video. You're going to
5 have the unredacted, full version of the video, as well
6 as the redacted copy that we showed -- that we have
7 shown you. The redacted one was just a little shorter,
8 but you'll be able to bring both back into the jury
9 room.

10 The defendant wanting to blow himself up, is
11 that what it is? Is it an i-phone? Is it a wallet?
12 You saw the video. You heard the testimony. What about
13 money, if that claim went through and wasn't denied.
14 You saw him on his phone in the video, so he wasn't
15 looking for his phone, right? You saw him driving back
16 and forth in the video. So he probably had his wallet
17 on him. You saw the car being started and driven away,
18 started and driven away, a few times. And, yes,
19 gasoline alone is enough to cause the explosion that you
20 saw in that video. It is. You heard Lieutenant
21 Forester testify that gas was inside the vehicle, and
22 there was an outside ignition source. Yes, a match
23 could have been an outside ignition source. Something
24 from the outside being brought into the vehicle causing
25 the gasoline to ignite.

1 Smoking gun, you have a video. There's no
2 smoking gun. You have it on video. You see what he's
3 doing.

4 And ladies and gentlemen, this is not a gut
5 feeling. There's a lab report. There's a lab report
6 that was entered into as evidence. You'll be able to
7 bring back with you a lab report that was drawn up after
8 the debris in this can that was collected from inside
9 the vehicle was tested. It tested positive for
10 gasoline. It's very logical. It's very logical.

11 The defendant made numerous trips back and
12 forth. You see him opening the door of the vehicle and
13 smoke billowing out, and yet he gets in the vehicle and
14 drives somewhere, and then he tries the process again
15 until it finally works, until it finally works.

16 You heard Lieutenant Forester testify that he
17 checked the engine block, that there -- that the origin
18 was not from the outside of the car. That there wasn't
19 an engine -- an internal problem with the vehicle.

20 The Judge is also going to read you an
21 instruction on credibility, and it's up to you to
22 determine the witness' creditability, and use your
23 common sense with that, because he's going to instruct
24 you as to what you should consider. But just keep in
25 mind, during voir dire, during our jury selection, we

1 spoke about beyond a reasonable doubt, and what's
2 reasonable and what isn't reasonable. And take that
3 with you when you go back into the jury room and you
4 think about all the evidence you've heard from this
5 witness stand today and all physical evidence you got as
6 well.

7 And not only injuries that the defendant
8 sustained as he's trying to get out of the car, clearly
9 not trying to blow himself up, because if he was, he would've
10 stayed in the car, right? That would be logical. He wasn't
11 trying to blow himself. He wanted to get out of there. He
12 realized, "Oh, this fire started way faster than I anticipated.
13 Now I'm on fire, so let me get out, and I'm going to
14 call the insurance company."

15 Look at the inside of this vehicle. It took a
16 couple of tries, but he succeeded eventually.
17 Eventually, this was the end result. When you go back
18 into the jury room to deliberate, we're confident that
19 you're going to find this defendant guilty of arson in
20 the second degree. Thank you.

21 THE COURT: Thank you, counsel.

22 Okay. Ladies and gentlemen, first of all, let
23 me thank you again for your attentiveness and
24 cooperation during this trial. Your time and effort is
25 greatly appreciated by the Court and I'm sure as well by

1 the parties.

2 Now, I'm going to give you some instructions
3 which are going to govern your deliberations. I'm going
4 to read those to you, but when I'm concluded you'll be
5 able to take these instructions back to the jury room
6 with you in case you need to refer to them during your
7 deliberations. You're also going to have in the jury
8 room with you all the evidence that's been introduced at
9 trial including the video, the photographs, and the
10 other tangible evidence that's been introduced. And, of
11 course, you're free to review that or re-review if you
12 wish. If you think it's necessary, you're free to
13 review the evidence for as long and as many times you'd
14 like.

15 Now, as I indicated to you earlier, Mr. Claudy
16 Charles, the defendant in this case, has been accused of
17 the crime of arson in the second degree. That's the
18 only charge that's been brought and that's the only
19 charge you're going to be considering. To prove the
20 crime of arson in the second, the State must prove the
21 following two elements beyond a reasonable doubt.
22 First, the State must prove that Mr. Charles willfully
23 and unlawfully by fire or explosion damaged or caused to
24 be damaged a structure.

25 So there's two components. There's a willful

1 and unlawful fire or explosion, and it had to damage a
2 structure.

3 Now, arson is a felony, and to prove that
4 somebody willfully intended to damage the structure it
5 is -- well, let me back. In order to convict for arson,
6 you don't have to show -- the State does not have to
7 prove that the person intended to damage the structure.
8 It only has to prove a willful and unlawful explosion or
9 fire which, in fact, did damage a structure.

10 Now, willfully, for purposes of the law, means
11 intentionally, knowingly, or purposely. And unlawfully
12 means without a legitimate lawful purpose. So the
13 conduct on the part of the defendant has to be both
14 willful, and that it was knowing, intentional, and
15 purposeful, and has to be unlawful. Meaning it was not
16 for any legitimate or lawful purpose. That's the
17 unlawful and willfulness competent.

18 For it to be a structure and, therefore,
19 subject to a charge of arson, it has to be a building of
20 any kind, any enclosed area with a roof over it, any
21 real property, any tent or other part of a building, and
22 any vehicle, vessel, watercraft, or aircraft. So a car
23 is a structure as defined by the law. And you'll have
24 the statute with you and these jury instructions.

25 The State must prove that the crime was

1 committed on January 9, 2016. That's the crime the
2 defendant has been charged with. So the State must
3 prove that the crime was committed at the time the State
4 charged.

5 Now, the defendant has entered a plea of not
6 guilty. As I indicated to you during jury instructions,
7 this means you must presume or believe that the
8 defendant is innocent. The presumption stays with the
9 defendant as to each material allegation in the
10 information through each stage of the trial unless it
11 has been over come by the evidence to the exclusion of
12 and beyond a reasonable doubt. To overcome the
13 defendant's presumption of innocence, the State has
14 burden of proofing, the crime with which the defendant
15 was charged was committed and that the defendant is the
16 person who committed the crime.

17 The defendant is not required to present
18 evidence or prove anything. So whenever the words
19 reasonable doubt are used, you should consider the
20 following -- and we talked about this a little bit in
21 jury selection, but I just want to remind you once
22 again. A reasonable doubt is not a mere possible doubt,
23 a speculative, imaginary, or forced doubt. Such not a
24 doubt must not influence you to return a verdict of not
25 guilty if you have an abiding conviction of guilt. On

1 the other hand, if after carefully, considering,
2 comparing and weighing all of the evidence, there is not
3 an abiding conviction, or if having a conviction it is
4 which is not stable, but one which waivers and
5 vacillates, then the charge is not proved beyond a
6 reasonable doubt then you must find the defendant not
7 guilty, because the doubt is reasonable.

8 It is to evidence introduce at trial, and to it
9 alone, that you are to look for that proof. A
10 reasonable doubt as to the guilt of the defendant may
11 arise from the evidence, conflict in the evidence, or
12 the lack of evidence. If you have a reasonable doubt,
13 you should find the defendant not guilty. If you have
14 no reasonable doubt you should find the defendant
15 guilty.

16 Now, part of the testimony in this case -- or
17 statements that have been made by the defendant outside
18 the court. There are statements that are outside the
19 court and they should always be considered with caution
20 and weighed with great care to make certain those
21 statements were freely and voluntarily made. Therefore,
22 your must determine from the evidence that the
23 defendant's alleged statement was knowingly,
24 voluntarily, and freely made. In making this
25 determination, you should consider the total

1 circumstances surrounding the defendant's making of the
2 statement including whether, at the time, the statements
3 were made the defendant had been threatened in order to
4 get the statements, and whether anybody had promised the
5 defendant anything in order to get him to make the
6 statement.

7 If you conclude that the defendant's
8 out-of-court statements were not freely and voluntarily
9 made, you should disregard those statements.

10 Now, as I talked you a little bit about in jury
11 selection, and I made very clear to you, and I want to
12 reiterate again. The constitution requires the State to
13 prove its accusations against the defendant. It is not
14 necessary for the defendant to prove anything or to
15 disprove anything, nor is the defendant required to
16 prove innocence. It's up to the State to prove the
17 defendant's guilt by evidence.

18 The defendant in this case, Mr. Charles,
19 exercised a fundamental right by choosing not to be a
20 witness in the case. You must not view as an admission
21 of guilt or be influenced in any way by his decision.
22 No juror should ever be concerned that the defendant did
23 or did not take the witness stand to give testimony in
24 the case.

25 As far as the evidence that was introduced in

1 this trial, it is up to you to decide what evidence is
2 reliable. You should use your common sense in deciding
3 which is the best evidence and which evidence should not
4 be reliable upon in considering your verdict. You may
5 find some of the evidence not reliable or less reliable
6 than other evidence. In evaluating the creditability of
7 a witness, you should consider how the witness acted as
8 well as what they said. Some things you should consider
9 are: Did the witness seem to have an opportunity to see
10 and know the things about which the witness testified?
11 Did the witness seem to have an accurate memory? Was
12 the witness honest and straightforward in answering the
13 attorney's questions? Did the witness have some
14 interest how the case should be decided? Did the
15 witness' testimony agree with other testimony and other
16 evidence in the case?

17 Those are just some of the factors you should
18 consider in deciding how much weight to give to any
19 witness' testimony.

20 Now, when you go back and deliberate there's
21 some general rules that apply to your discussion, and
22 you must follow these rules in order to return a lawful
23 verdict. First, You must follow the law as its set
24 forth out in these instructions. If you fail to follow
25 the law, your verdict will be a miscarriage of justice.

1 There is no reason for failing to follow the law in this
2 case. All of us depending upon you to make a wise and
3 legal decision in this matter. This case must be
4 decided only upon the evidence that you have heard from
5 the testimony of witnesses, and have seen in the form of
6 exhibits in evidence and as well as these instructions.
7 This case must not be decided for against anyone because
8 you feel sorry for anyone or are angry at anyone. You
9 also must remember the lawyers are not on trial, and
10 your feelings about them or whether you like or dislike
11 them or whether you think they did a good or poor job is
12 not to influence your decision in this case. Your
13 verdict must be unanimous and that is each juror must
14 agree on the same verdict.

15 Deciding a verdict in this case is exclusively
16 your job. I cannot not participate in that decision in
17 any way. If I said or done anything I in these
18 proceeding that make you believe I prefer one verdict to
19 the other, that is incorrect. I am here to just rule on
20 objections and preside over the trial, but I have no
21 feelings about this case one way or the other, and you
22 should not interpret from anything I have said or done,
23 whether I believe the evidence favors one party or the
24 other in this case.

25 Again, the decision whether or not the State

1 has proven its case beyond a reasonable doubt is yours
2 and yours alone to make, that is the province of the
3 jury.

4 Now, our verdicts are in writing, and you're
5 going to have what's called a verdict form in the jury
6 room with you. When you first go back and begin
7 deliberations, you need to select a fore person who is
8 going to run the jury deliberations. Now, that person
9 doesn't have anymore of say or anymore of a vote than
10 anybody else on the jury. They're just to act as your
11 spokesperson and to make sure the deliberations are
12 organized and efficient.

13 Please keep an open mind going into jury
14 selection. Pay attention to what your fellow jurors
15 have to say, and make sure that you all collaborate and
16 reach a verdict unanimously. Now, you can also feel
17 free to change your mind, but if you have convictions
18 and you're certain about how you're going to vote in a
19 case, you have the right to your own vote regardless of
20 what other jurors may think or believe. But at the same
21 time, keep an open mind, be collegial, talk to your
22 fellow jurors about the case, and do your best to reach
23 a unanimous verdict.

24 You're going to be given this form, when you
25 reach a verdict, you will date the form. It says, "We

1 the jury in Miami-Dade, Florida, this blank day or
2 blank," and you'll fill in the date, "hereby the find
3 defendant, Claudy Charles," There are two boxes. One
4 is guilty of arson in the second degree, and the other
5 is not guilty. Obviously, you can only check one box.
6 You can either find the defendant guilty or you find the
7 defendant not guilty. Once you have reached a verdict,
8 the fore person prints their name on the top line of the
9 verdict form and signs the verdict form. You'll then
10 knock on the door, you'll let us know that you've
11 reached a verdict, we'll bring you back in here and
12 we'll take your verdict.

13 At this time, ladies and gentlemen, I'm going
14 to have my bailiff escort you all to the jury room with
15 the exception of Mr. Besterman and Mr. Clavijo. I want
16 you stay here for just a minute. Those jurors that are
17 going to be going in there right now, I need you to
18 surrender your phones please. I don't take them during
19 the trial, but I don't let jurors have their phones
20 while they are deliberating. So all the jurors other
21 than Mr. Besterman and Mr. Clavijo, please, give Dennis
22 your electronics.

23 Okay. Now, ladies and gentlemen, Dennis is
24 going to take you into the jury room. We're going to
25 make sure there are drinks and things back there for

1 you, and if you still deliberating at or about dinner
2 time, we're going to order in some food. Okay. We're
3 going to let you work tonight as long as you would like
4 to work tonight to reach a verdict. If you're unable to
5 do so, and you want to come back tomorrow, we'll come
6 back tomorrow. Keep in mind, there is absolutely no
7 pressure on you by the Court or anybody else to either
8 reach a verdict quickly or to take time. You take as
9 much time or as little time as you need to review the
10 evidence and reach a verdict. That's totally within
11 your prerogative. Okay. All right. Please go in the
12 jury room and Dennis will bring you the instructions,
13 the verdict from, and the clerk will bring you the
14 evidence.

15 (Thereupon, the jurors exited the courtroom to
16 begin deliberations.)

17 THE COURT: Okay. Mr. Besterman and
18 Mr. Clavijo, you all are alternate jurors. So you were
19 here to hear the case and serve as alternate jurors and
20 pitch in the event one of the jurors was unable to serve
21 and deliberate. I hate telling people they were
22 alternate jurors, because it's like you've sat, you've
23 paid attention, you've listened to the case, and
24 unfortunately, you don't get to participate in the
25 deliberations. You're free to speak to the lawyers, if

1 you would like, about how the case went, what your views
2 and thoughts are on the case. You're not required to do
3 that, you're free to leave with our appreciation and
4 thanks for your service. You have done your jury duty.
5 Okay. You are excused gentlemen. Thank you.

6 (Thereupon, the alternate jurors exit the
7 courtroom.)

8 THE COURT: All right. I'll be in chambers.
9 We're in recess.

10 (Thereupon, a brief recess was had.)

11 THE COURT: Please bring in the jury, bring me
12 the verdict.

13 THE BAILIFF: All rise for the jury.

14 (Thereupon, the jury enters the courtroom.)

15 THE COURT: All right. Ladies and gentlemen,
16 please a have seat.

17 Okay. Please publish the verdict. Everybody
18 be seated.

19 THE CLERK: In the circuit Court for the 11th
20 judicial circuit in and for Miami-Dade county Florida,
21 State of FLorida, plaintiff, versus Claudy Charles, the
22 defendant, Case F167813, Judge Hanzman. Verdict, we the
23 jury in Miami-Dade County, Florida, this 8th day of
24 March, 2017, find the defendant, Claudy Charles, as to
25 Count I, guilty of arson in the second degree, so say we

1 all, fore person, Ms. Haydee Columbie.

2 THE COURT: Okay. Jose, would you please pole
3 the jury.

4 THE CLERK: Yes, sir.

5 Ladies and gentlemen of the jury, you've heard
6 me read the verdict. As I call your name, if this is
7 your verdict answer yes. If this is not your verdict,
8 answer no.

9 Lawerence Lahiff?

10 MR. LAHIFF: Yes.

11 THE CLERK: Luis Miguel?

12 MR. MIGUEL: Yes.

13 THE CLERK: Chintara Roundtree?

14 MS. ROUNDTREE: Yes.

15 THE CLERK: Enrique Badia?

16 MR. BADIA: Yes.

17 THE CLERK: Isbello Sicsic?

18 MR. SICSIC: Yes.

19 THE CLERK: And Haydee Columbie?

20 MS. COLUMBIE: Yes.

21 THE CLERK: All the jurors agree to the
22 verdict, your Honor.

23 THE COURT: Very good. Ladies and gentlemen of
24 the jury, I want to, again, thank you for your time and
25 consideration in this case. Before I discharge you, I

1 just want to advise you of a couple of points. You have
2 a privilege not to discuss this case with anybody. Not
3 to discuss what occurred in the jury room except by
4 court order. For many centuries, our society has relied
5 upon juries for consideration of difficult cases, and we
6 have recognized for hundreds of years that a jury's
7 deliberations, discussions, and votes should remain
8 their private affair as long as they wish. Therefore,
9 the law gives you a unique privilege not to speak about
10 your verdict or discuss the case.

11 Although, you are at liberty to speak with
12 anyone about your deliberations. You are also at
13 liberty to refuse to speak to anyone. A request may
14 come from those who are simply curious or from those who
15 seek to fault with you or your decision. So it's up to
16 you decide whether to preserve your privacy as a juror,
17 or whether to voluntarily discuss the case with anybody
18 who may inquire. Again, that is solely your prerogative.

19 I, again, thank you for your service in this
20 case and your attentiveness. The Court and the parties
21 greatly appreciate it, and, of course, the willingness
22 of jurors and citizens to be attentive and fully engaged
23 and hear disputes of this nature is what makes us such a
24 great country, and makes our constitution so important.
25 Because people have a right to trial of jury of their

1 peers when they are accused of a crime, and without
2 honorable citizens who will come in and devote their
3 time and attention, we cannot fulfill the guarantee of
4 due process and a right to a fair trial. And you've
5 enabled to fulfill that guarantee both to the State and
6 to Mr. Charles in this particular case.

7 And, again, the Court thanks you greatly for
8 your service. You are now free to go. All rise for the
9 jury please.

10 (Thereupon, the jury exited the courtroom.)

11 THE COURT: All right. Everybody have a seat.

12 Okay. Now, is a pre-sentence investigation
13 report mandatory in this particular case, State?

14 MS. MILLER: They're typically requested by the
15 defense in certain cases.

16 THE COURT: But they are certain cases where
17 they are mandatory, are there not, and is this one of
18 those cases?

19 Is this Mr. Charles' first felony conviction?

20 MR. GUTIERREZ: Yes, Judge.

21 MS. MILLER: Yes.

22 THE COURT: It is first felony conviction?

23 MS. MILLER: Yes.

24 THE COURT: So a pre-sentence investigation is
25 required unless it's waived by the defense, correct?

1 MS. MILLER: Yes, Judge.

2 THE COURT: Okay. Does the defense request a
3 pre-sentence investigation?

4 MR. GUTIERREZ: Yes, Judge.

5 THE COURT: Okay. So I will order a
6 pre-sentence investigation, and how long do they
7 typically take before I should set a sentencing hearing?

8 THE CLERK: Judge, this is going to print on
9 calendar tomorrow, and we're going to have, Pam, she's
10 the probation officer. She can process the paper work.

11 THE COURT: My understanding is they take about
12 six weeks generally, four to six weeks, from what I've
13 been told. So if I set this in 45 days or so for
14 sentencing, right?

15 THE CLERK: Right.

16 THE COURT: So presumably I'll have the PSI in
17 45 days or so, correct?

18 THE CLERK: Correct.

19 MR. CUERVO: While we're on the record, the
20 State announces a nolle pros to Count II and III of the
21 original information.

22 THE COURT: Okay. All right. So we need to
23 set this case in about 60 days or so, 45 to 60 days, for
24 sentencing. In the mean time, I'm going to have
25 Mr. Charles remanded. He'll be taken into custody. I

1 will set this case in about 45 to 60 days for a PSI.

2 THE CLERK: Judge, how about April 7th?

3 THE COURT: April 7th is on a Friday. So I
4 will set sentencing for April 7th --

5 MR. GUTIERREZ: Judge, given --

6 THE COURT: -- at nine a.m.

7 MR. GUTIERREZ: Given the defendant's good
8 record of his conditions of house arrest and everything,
9 we would ask that if wouldn't be too much to allow to
10 him to continue his house arrest to the date of
11 sentencing so he can wind up his affairs.

12 THE COURT: Well, what say the State?

13 MR. HERNANDEZ: Judge, absolutely not. This is
14 an individual has everything to gain by being let out of
15 custody. One of the reasons he took this case to trial
16 is because he is afraid of immigration consequences, and
17 the State is very firm in believing he's had his trial.
18 The jury delivered a verdict, and he should be remanded
19 into custody.

20 THE COURT: Okay.

21 MR. HERNANDEZ: He scores mandatory state
22 prison.

23 THE COURT: Okay. What are the guidelines for
24 him?

25 MR. HERNANDEZ: He scores 21 -- one moment,

1 Judge, 21.15 months to 15 years state prison.

2 THE COURT: Okay. Counsel, if this were a case
3 were the Court had some discretion on sentencing, and
4 there was a possibility he wasn't going to do state
5 prison time. I might entertain that request, but given
6 his immigration situation and given the fact he scores a
7 minimum of 21 months in state prison, there seems to no
8 point in not remanding him into custody. So I'm going
9 to remand. And, of course, he'll be given credit for
10 time served as well as in the county jail against his
11 eventual sentence.

12 Okay. So we will see this case again on April
13 7th at nine a.m. for sentencing. I except the
14 pre-sentence investigative report to be concluded a week
15 before that, and we will go from there. The Court is in
16 recess.

17 THE CLERK: Judge, are you going to adjudicate
18 now at this time, or at --

19 THE COURT: Well, I probably should wait until
20 sentencing. I guess, I can adjudicate him at this
21 point.

22 Does it matter?

23 THE CLERK: No, it doesn't matter.

24 THE COURT: Okay. All right. So I'll see
25 this case again on April 7th.

1 Now, do you have original verdict, Jose?

2 THE CLERK: Yes, sir, I do.

3 THE COURT: Okay. So make sure the original
4 verdict is placed where it's supposed to be in the file,
5 and I'll see the case for sentencing on April 7th. If
6 there are any motions to mitigate or any other
7 circumstances the defense wishes the Court to consider
8 on sentencing, please make sure you have the motion
9 filed timely so the State has an opportunity to respond.
10 I'm not sure if this defendant qualifies for any
11 statutory mitigators, but if you're going to file such a
12 motion it needs to be done well in advance of the April 7th
13 sentencing. Okay. All right.

14 THE CLERK: Judge, are you going to appoint the
15 PD?

16 THE COURT: Unless and until his private
17 counsel withdraws, I'm not going to appoint a PD, am I?

18 MR. CUERVO: Judge, if your Honor is going to
19 rule today based on --

20 THE COURT: I want to talk about that once
21 Mr. Charles is out of the courtroom.

22 Okay. Bruce, I need to deal with the lawyers
23 outside of Mr. Charles' presence. Is there anywhere
24 else you can take him for formalities, or can you take
25 him in the jury room?

1 LIAISON OFFICER: We'll bring him out in
2 the hallway, Judge.

3 THE COURT: Let's do that. I want to talk to
4 the lawyers a few minutes.

5 Okay. So the State moved for entry of an order
6 to show cause. Although, it hasn't articulated what
7 type of show cause order it's seeking, I assume it would
8 direct criminal since whatever occurred was in the
9 presence of the Court; is that correct, Mr. Cuervo?

10 MR. CUERVO: Yes, sir.

11 THE COURT: Okay. So I would have to have
12 probable cause to conclude that Mr. Gutierrez took
13 actions that were designed and intended to hinder and
14 interfere with the administration of justice, right?

15 MR. CUERVO: That's correct, Judge.

16 THE COURT: All right. Then he would entitled
17 to counsel, and he would be entitled to a hearing. In
18 which case, it would be up to the State to prove beyond
19 a reasonable doubt that what occurred was intentional
20 designed to hinder the administration of justice, right?

21 MR. CUERVO: That's correct, Judge.

22 THE COURT: Okay. All right. And the State
23 would like an opportunity to do that?.

24 MR. CUERVO: Judge, I would like the
25 opportunity, but before I go any further, I would like

1 for your Honor to set this on calendar early next week.
2 So I can run this by my supervisors, but I would like
3 for it to be placed on calendar. I certainly don't want
4 to --

5 THE COURT: Yeah, I just want you to think
6 about --

7 MR. CUERVO: Absolutely.

8 THE COURT: -- it and look a little bit down
9 the road before I issue an order to show cause.

10 MR. CUERVO: That's fair, Judge.

11 THE COURT: Because I don't want to do anything
12 that would be futile.

13 MR. CUERVO: I agree.

14 THE COURT: If you look at the facts of what
15 happened here, and you have access to the evidence,
16 which is the batteries and the liquid and everything,
17 and you think there's a good faith basis to contend and
18 you have a prospect of proving that this was done
19 intentionally to interfere with the administration of
20 justice or with this trial, then I want to give you
21 every opportunity to go forward. But if this just an
22 act of futility, and you look at it, and decide at the
23 end of the day, you cannot really prove that charge, I
24 would hate to issue an order to show cause against the
25 lawyer --

1 MR. CUERVO: I agree.

2 THE COURT: -- and hire a defense counsel and
3 go through all that. So why don't you think about it,
4 speak about it with your legal department. And if you
5 want access to the evidence, the batteries and the other
6 liquids, they're in my chambers and you can have access
7 to them. Mr. Gutierrez has represented on the record
8 that this was accidental -- is that correct?

9 MR. GUTIERREZ: Yes, Judge.

10 THE COURT: -- and this was not a stunt
11 designed to try interfere with this trial, and that what
12 he's told me. So based upon the unique circumstances
13 here and a chance neither nor State had a chance to
14 really reflect on it, I'm going to take the request for
15 rule to show cause under advisement. I'm going to set
16 this case in a week. So I'm going to set it next
17 Wednesday morning at nine o'clock on the rule to show
18 cause -- or the motion for rule to show cause, and then
19 we'll see where we go from there. Okay.

20 MR. CUERVO: I agree.

21 THE COURT: Now, Mr. Gutierrez --

22 MR. GUTIERREZ: Yes, judge.

23 THE COURT: -- I want to give you the benefit
24 of the doubt, but as I said before, I find more than
25 coincidental that in an arson case, where your defense

1 is spontaneous combustion, that you get up to deliver a
2 closing argument, and your pocket starts on fire. I
3 find that to be very bazar. I want to give you the
4 benefit of the doubt, but I'm just having a very hard
5 time grasping the concept that this was coincidence.

6 MR. GUTIERREZ: The types of batteries that
7 they are lithium ion batteries.

8 THE COURT: The types of battery that they are.

9 MR. GUTIERREZ: Commonly found in cameras.

10 THE COURT: Well, I don't know what types of
11 batteries they are, and I don't know whether they're
12 subject to spontaneous combustion or not, but I would
13 strongly suggest that you keep them out of your pocket
14 from now on.

15 MR. GUTIERREZ: Yes.

16 THE COURT: Okay.

17 MR. GUTIERREZ: Yes, Judge.

18 THE COURT: Okay. Anything else to be done in
19 this case between now and next Wednesday?

20 MS. MILLER: Not from the State.

21 THE COURT: From the defense?

22 MR. GUTIERREZ: No, Judge.

23 THE COURT: Very good. I'll see this case on
24 my calendar next Wednesday. The Court is in recess.

25 (Whereupon, the trial was concluded.)

CERTIFICATE

STATE OF FLORIDA:
COUNTY OF MIAMI-DADE:

I, Amber N. Gabel, Shorthand Reporter and
Notary Public for the State of Florida at large, do
hereby certify that the foregoing proceedings were taken
before me at the date and place as stated in
the caption hereto on Page 1; that the foregoing
computer aided transcription is a true record of my
stenographic notes taken at said proceedings.

WITNESS my hand this 9th day of March, 2017.

Amber N. Gabel
Court Reporter

AFFIDAVIT

STATE OF FLORIDA)


COUNTY OF MIAMI-DADE)

Before me the undersigned authority, this day personally appeared Nilo A. Cuervo, Jr, who being duly sworn stated:

1. My name is Nilo A. Cuervo, Jr. I have been a member of the Florida Bar since June 2008, and my membership is in good standing. My Florida Bar membership number is 53526.
2. I am currently an Assistant State Attorney for the Miami-Dade State Attorney's Office, located at 1350 NW 12th Avenue, Miami, FL, 33136.
3. Earlier this year I was State's attorney of record for a case involving an arson and filing a false insurance claim (State v. Charles Claudy, case #F16-7813). Attorney Stephen Gutierrez was the attorney for the defendant. Based on my observations of attorney Gutierrez's conduct and demeanor throughout the course of the trial, I suspected that attorney Gutierrez may have been under the influence of some unknown substance. I made a request to the judge in the case to conduct an in-camera conference in order to determine whether attorney Gutierrez was capable of proceeding. After that in-camera conference, the trial was allowed to proceed.
4. Throughout the course of the trial I observed attorney Gutierrez act erratically, and he constantly showed himself to me an incompetent and ineffective counsel. Attorney Gutierrez was constantly glassy-eyed, and sweated profusely. There were times when attorney Gutierrez would not show up for court proceedings at all, and he would leave hand-written notes explaining his absence. During his closing arguments, I witnessed attorney Gutierrez place his hand in his pocket several times as he gave his closing arguments. A short time later, I observed smoke billowing out of the pocket of attorney Gutierrez, and it appeared something had caught fire in his pants. I subsequently found out that attorney Gutierrez had multiple e-cigarette batteries in his pocket. Because of attorney Gutierrez's bizarre behavior, I had serious concerns about possible appeals issues if the defendant in this case was convicted.
5. As a member of the Florida Bar in good standing, it is my opinion that Attorney Stephen Gutierrez has not been a good advocate for his clients, nor has he shown he is competent to practice law in an effective manner.

Exhibit 4

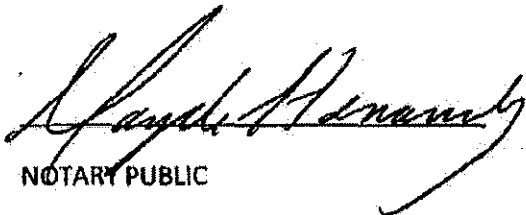
FURTHER AFFIANT SAYETH NAUGHT



Nilo A. Cuervo, Jr, Esq.

Sworn to and subscribed before

me this 22nd day of February 2017



NOTARY PUBLIC

My commission expires:



IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN
AND FOR MIAMI-DADE COUNTY, FLORIDA

CIVIL CIRCUIT DIVISION
CASE NO. 2016-015231-CA-01

CLAUDY CHARLES,

Plaintiff,

v.

GEICO INDEMNITY COMPANY,

Defendant

PLAINTIFF'S SECOND AMENDED COMPLAINT

COMES NOW, CLAUDY CHARLES, (hereinafter "PLAINTIFF") and sues GEICO INDEMNITY COMPANY ("DEFENDANT") and says:

ALLEGATIONS COMMON TO ALL COUNTS AND INCORPORATED THEREIN

1 This is an action for damages in excess of this court's minimum jurisdictional limits and for Attorneys' fees and costs, and/or for declaratory and other relief.

2 PLAINTIFF is a unity, *sui generis*, an individual, *sui juris*, presently residing in Miami-Dade County, Florida.

3 Defendant, GEICO INDEMNITY COMPANY, (hereafter "Defendant") is a Florida corporation engaged in the sale and provision of motor-vehicle insurance. It actively does business in Miami-Dade County, Florida.

4 The causes of action sued upon accrued in Miami-Dade County, Florida as these causes of action involve a purported motor-vehicle insurance contract that involves the parties with respect to a piece of real property located in said county.

5 All conditions precedent to suit have been complied with, substantially complied with or

Exhibit 5

waived. Defendant has not suffered any prejudice.

6 By virtue of the conduct of the Defendant as hereinafter alleged, Plaintiff has been required to retain the services of the undersigned Counsel to represent the insured in this action and is obligated to pay a reasonable fee for such services and is therefore entitled to recover such fees from Defendant pursuant to Florida law.

7 The declarations page of Exhibit A expressly represents the existence and sale of insurance coverage/protection by Defendant "GEICO INDEMNITY COMPANY."

8 Defendant had the specific intent that Plaintiff, and others in like position, would repose their confidence in the defendant as it relates to purchasing insurance coverage and protection for the purposes which were communicated to the defendant at or shortly before the time of sale of Exhibit "A" to Plaintiff.

9 Defendant had the willful and malicious intent that Plaintiff, and others in like position, would repose their confidence in the defendant as it relates to entering into a contract for the purposes which were communicated to the defendant at or shortly before the time of sale, August 21, 2015 (See Exhibit "A").

10 Plaintiff suffered a loss to its property and person on, or about January 9, 2016, for damages to the risk property listed on the declarations of coverages page caused by a vehicle collision in such a fashion as to cause substantial damage to the risk property.

11 The costs to replace or repair the casualty loss being approximately over \$200,000 and pursuant to the rules set forth in the insurance policy writing attached as Exhibit "A", timely reported it to Defendant.

12 Defendant assigned claim number 001-00-062445 to the sudden and unexpected loss.

13 Plaintiff's vehicle which is the subject of this lawsuit, located at 954 Davis Parkway,

Florida City, FL 33034, suffered covered losses in the gross amount of over \$200,000 during the policy period, which Defendant totally refuses to pay.

COUNT 1

**DECLARATORY JUDGMENT ACTION SEEKING A DECLARATION THAT THE
LOSS PAYMENT CONDITION CONTAINING THE DUTY TO ADJUST IS A
CONDITION PRECEDENT TO ANY DEFENDANT DUTY UNDER ANY OTHER
CONDITION IN THE CONTRACT**

14 Plaintiff re-alleges and re-avers the allegations common to all counts above as though restated fully herein.

15 Plaintiff seeks a declaration from this court that the duty to adjust a loss, which is contained in the loss payment condition of the policy, is a condition precedent to the payment of any sums under the loss settlement condition or any other claim of performance by Defendant under this insurance contract.

15.1 Plaintiff seeks a declaration that as a condition precedent, Defendant must allege and prove satisfaction of all conditions precedent before affirmatively asserting satisfaction by performance with the loss settlement condition or other conditions in the contract.

16 Plaintiff and Defendant entered into a contract which provided insurance over the Plaintiff's property at 954 Davis Parkway, Florida City, FL 33034, in Miami-Dade County, Florida, (Exhibit "A").

17 Plaintiff has attached a copy of the policy (Exhibit "A") Numbered 4332-77-05-87, to show coverages for the term 12/27/2015 to 6/27/2016

18 Defendant agreed to provide such coverages - on the date or dates of processing indicated on the Declaration of Coverages page. (Exhibit "A").

19 Defendant rescinded coverage after initially agreeing to cover Plaintiff's loss.

20 Defendant was summoned to an Examination Under Oath (hereinafter, "EUO") by Defendant. (Exhibit "B").

21 Zonia Yolán Rigo, an agent of the Defendant, acting in her scope of employment, told Mr. Claudy he could not bring an Attorney to represent him in the EUO.

22 Plaintiff's Medical costs as a result of the exceeded over **\$200,000**.

23 Defendant claims full compliance with the loss settlement condition of the contract, ignoring its duty imposed by the loss payment condition in the contract, or has interposed another condition as a bar to any relief claimed by Plaintiff under the contract.

24 Plaintiff disagreed with defendant's estimate or claim of bar, further claiming that Defendant breached the loss payment condition because it failed to satisfy its duty to adjust the claim pursuant to the loss payment condition (and the law) which resulted in Defendant's denial of the claim - (a breach of the loss settlement condition).

25 Plaintiff submits that the satisfaction of the duty to adjust contained in the loss payment condition is a condition precedent to any other condition in the policy regardless of coverage.

26 Defendant simply ignores its duty to adjust or properly investigate claims under the loss payment condition - leap frogging to a conclusion that anything its decides, whether as to coverage, or as to payment, *ipse dixit*, constitutes full compliance.

27 There is a bona fide, actual, present and practical need for a declaration of rights as Plaintiff is unsure as to whether Defendant's denial on a claim exceeding **\$200,000.00** constitutes 'compliance' with the contract's loss settlement condition absent allegations of satisfaction with and proof of satisfaction of the loss payment condition [proof of a proper adjustment under law], or absent an agreement from Plaintiff that the amount is the actual cash value or the claim was properly denied.

28 Defendant claims that its denial constitutes full compliance with the loss settlement condition of the contract, without alleging any compliance with the loss payment condition.

29 Plaintiff submits that where there is no agreement as to a denial of liability, or the actual cash value of the loss, Defendant cannot claim compliance with other conditions without first alleging compliance with the condition precedent and then proving compliance with the loss payment condition/duty to properly adjust the claim.

30 Logically, Plaintiff states that the loss payment condition/duty to adjust the loss must occur before any determination of the actual cash value or denial.

31 Plaintiff's request for the declaration deals with a present, ascertained or ascertainable state of facts in this present controversy as construction of the contract, and determination of whether the loss payment condition is a condition precedent to any other condition, including but not limited to the loss settlement condition in the contract.

32 Plaintiff's rights to a fair adjustment of the claim by law and under this insurance policy is dependent upon the facts and the law of contractual construction applicable to the facts. The court is vested with the jurisdiction to construe contracts.

33 The parties have adverse interests.

34 The issue of Defendant's interpretation of how actual cash value is determined represents an actual, present, adverse and antagonist interest in the subject matter, in both fact and law.

35 The proper parties are all before the court by proper process and the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity.

36 The parties have a stake in the outcome of the decision.

37 WHEREFORE, Plaintiff prays for a declaration of its rights which states:

37.1 that the loss payment condition is a condition precedent to the loss settlement condition.

37.2 that Defendant must allege and prove satisfaction of the loss payment condition duty to

adjust the loss as a condition precedent to claiming satisfaction of the loss settlement condition.

37.3 Defendant cannot *ipse dixit* claim that its denial of the claim is sufficient by law absent allegations and proof of satisfaction of all conditions precedent to such a claim, and

37.4 That Plaintiff be awarded its attorney's fees and costs for seeking this declaration of rights.

COUNT 2 - BREACH OF CONTRACT

38 Plaintiff re-alleges and re-avers the allegations common to all counts (1-12) above as though restated fully herein.

39 Plaintiff and Defendant entered into a contract which provided insurance over the Plaintiff's vehicle which became the subject of this lawsuit.

40 Plaintiff suffered a loss at 954 Davis Parkway, Florida City, FL 33034, in Miami-Dade County, Florida, (Exhibit "A").

41 Plaintiff has attached a copy of the policy (Exhibit "A") Numbered 4332-77-05-87, to show coverages for the term 12/27/2015 to 6/27/2016

42 Defendant agreed to provide such coverages - on the date or dates of processing indicated on the Declaration of Coverages page. (Exhibit "A").

43 Defendant rescinded coverage after initially agreeing to cover Plaintiff's loss.

44 Defendant was summoned to an Examination Under Oath (hereinafter, "EUO") by Defendant (Exhibit "B").

45 Zonia Yolán Rigo, an agent of the Defendant, acting in her scope of employment, told Mr. Claudy he could not bring an Attorney to represent him in the EUO.

46 Plaintiff incurred the claim (0491658560101025) and suffered damages in the amount of at least over **\$200,000** for the loss.

47 Defendant denied coverage for claim 0491658560101025 (Exhibit "C").

48 Plaintiff is entitled to coverage for claim 0491658560101025.

49 Defendant failed to properly adjust the claim pursuant to law and has breached the loss payment condition of the policy, resulting in damages to the Plaintiff.

50 Furthermore, Defendant's Fraudulent Statements to Plaintiff were a violation of the terms of the Contract and Florida Law.

51 Defendant misled Plaintiff, through its agent ZONIA YOLAND RIGO, and took an EUO which deprived Plaintiff of Representation by an Attorney.

52 Defendant also took the EUO without a translator.

53 Defendant knew that Mr. Charles was not fluent in English at the time of the EUO.

54 Moreover, the breach of the loss payment condition triggered a violation of the loss settlement condition and also a violation by Defendant to properly adjust the claim, resulting in damages in the amount in controversy alleged above to Plaintiff.

WHEREFORE, Plaintiff demands judgment for damages in the above amounts or as the proofs may show against Defendant, together with Attorney fees and costs, pursuant to Statute, and such other relief as this Court deems meet and proper or equitable.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for those issues that are so triable against Defendant pursuant to Florida law.

Respectfully Submitted,

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/s/ Stephen Gutierrez

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