No. 90310

In the Supreme Court of Nevada

USAA CASUALTY INSURANCE CO.,
Defendant-Appellant,

v.

TIMOTHY TODD KUHN, individual,
Plaintiff-Respondent.

On Appeal from the Eighth Judicial District Court,
Clark County, Case No. A-20-821602-C

RESPONDENT'S ANSWERING BRIEF

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February 13, 2026 — *Counsel for Respondent*

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal. Gupta Wessler LLP, Bighorn Law, and Matthew L. Sharp, Ltd. are the only law firms that have appeared on behalf of the respondent, Timothy Todd Kuhn, in this matter or are expected to appear in this Court. Neither Mr. Kuhn nor his attorneys of record are publicly held or traded companies.

Dated: February 13, 2026

/s/ Deepak Gupta
Deepak Gupta

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INTRODUCTION

For nearly two decades, Tim Kuhn paid premiums to USAA for underinsured motorist coverage. Tim wanted to be certain that if he was ever injured in a serious crash and the at-fault driver's insurance didn't cover the damage, his family would remain protected. And even that wasn't enough for Tim, so he took out a second layer of excess coverage. Then, in October 2018, Tim's fears materialized: A rear-end collision at 45 miles per hour left Tim with what doctors would later diagnose as a "traumatic brain injury" that developed into post-concussive syndrome—stripping away his ability to treat his patients, volunteer as a soccer coach, and even reliably recall conversations he'd just had with his colleagues. Still, after intensive cognitive therapy, Tim experienced what his doctors called "significant improvement." Continued treatment would be expensive, and the at-fault driver only had $50,000 in coverage. But Tim had USAA. So he remained hopeful that he could get meaningful parts of his life back.

USAA extinguished that hope. Despite knowing Tim's injuries and the wide array of his symptoms—its internal records credited each one—and despite a medical consensus that he needed continued care for his brain injury, USAA offered Tim just $10,000 on a $250,000 policy. It reached that figure—and in doing so, rejected the opinions of Tim's treating physicians—without conducting any investigation, neither asking Tim a single question about his condition or treatment nor consulting its own

physicians. That lowball offer didn't just deny Tim the remaining $240,000 USAA owed; it also blocked his access to the second layer of $700,000 in coverage. And USAA adhered to that position through nearly four years of litigation, making only one change in its claims handling. Whereas initially, USAA simply disregarded Tim's medical records, after litigation commenced, the company's claims handler began to rely on litigation experts' reports to inform his reevaluations of Tim's claim, which he then predictably continued to deny. USAA only relented when the glare of the jury forced its hand, and it tendered the policy limits on the eve of trial. USAA tried to pass this off to the jury as a "good faith gesture" when, as the jury recognized, it was really an empty one—USAA maintained a request for fees that effectively encumbered the funds.

Tim made clear when he requested that USAA honor its promise that the consequences of denying his claim would be devastating, and they were. Unable to afford the treatment that his doctors recommended, Tim's condition deteriorated. The hopeful, energetic person that his friends and family knew became irritable, anxious, and withdrawn. His business suffered. His relationships frayed. At his lowest point, USAA's refusal to honor its promise sent the message that he was, as Tim put it, a "liar."

A Nevada jury unanimously found that USAA acted in bad faith. Although Tim sought $15 million in compensatory damages, the jury independently assessed the evidence and awarded $7 million—less than half of what was requested. It also awarded

$100 million in punitive damages to deter similar conduct. The district court carefully reviewed the verdict, rejected USAA's claims of trial error, and reduced the punitive award to $63 million to comport with due process. Nothing about this process evinces passion and prejudice; it reflects deliberation, care, and restraint.

USAA does not dispute that the evidence was sufficient to support the jury's finding of bad faith. Nor does it deny that the jury was properly instructed. Instead, it asks this Court to set aside the verdict based on arguments that are either waived, unsupported by the record, or inconsistent with settled Nevada law.

USAA's lead argument on appeal is its claim of juror misconduct—that a juror concealed material information during voir dire. But USAA never engages with—much less challenges—the district court's order rejecting that argument. That order found no intentional concealment, as Nevada law requires, because no one ever asked the juror the questions about the juror's insurance history that USAA now wishes had been posed. Having failed entirely to address the ruling below, USAA has waived the issue. It fails on the merits as well: There's no basis in Nevada law to reverse a jury verdict simply because one juror didn't volunteer information that was never clearly requested.

USAA's claim of attorney misconduct fares no better. Having lost before the jury, USAA cannot now recast ordinary advocacy—criticizing the selective presentation of evidence, challenging paid experts' credibility, and arguing reasonable inferences from

the record—as improper "attacks" on counsel. Nevada law affords attorneys wide latitude to present their cases, and nothing in this record approaches the kind of extreme, incurable misconduct that warrants setting aside a jury's verdict. Nor does the litigation privilege immunize USAA. USAA's own claims handler testified that he relied on litigation-generated reports. Having made that conduct relevant to the reasonableness of its claims handling, USAA can't shield it from the jury's consideration.

On compensatory damages, USAA's challenge ignores both the evidence and the deferential standard of review. The evidence showed that USAA's bad-faith denial foreclosed the treatment that Tim's doctors recommended, imposed severe financial stress, and thus contributed to a deterioration in Tim's health and well-being that witnesses described in detail at trial. The jury's decision to award substantially less than Tim's request underscores its independence and careful judgment.

Finally, the punitive damages, as remitted by the district court (to a 5.9:1 ratio), fall within the range that Nevada law and due process allow in bad-faith cases, where the Legislature has expressly removed statutory caps to ensure meaningful deterrence.

Despite its tacit concession of liability, and despite the careful review conducted below, USAA asks this Court to substitute its judgment for that of the jury and the trial court. Nevada law neither requires nor allows that result. What USAA seeks is not correction of error, but relief from a verdict it does not like. This Court should affirm.

STATEMENT

I. Legal background

People depend on insurance for "security, protection, and peace of mind." [1] *Ainsworth v. Combined Ins.*, 104 Nev. 587, 592, 763 P.2d 673, 676 (1988). But insurance "is not an ordinary contract." *Pemberton v. Farmers Ins. Exch.*, 109 Nev. 789, 793-94, 858 P.2d 380, 382 (1993). That's because one side (the insurer) may never have to perform. But when claims do arise, the other side (the insured) is at their most vulnerable. *See, e.g.*, *Albert H. Wohlers & Co. v. Bartgis*, 114 Nev. 1249, 1262, 969 P.2d 949, 958 (1998). If limited to ordinary contract damages, an insurer would be incentivized to exploit that vulnerability—lowballing, delaying, or even denying legitimate claims—because even if the policyholder sued, the insurer would be liable only for what it owed anyway. Stephen S. Ashley, *Bad Faith Actions Liability & Damages* § 2:2 (2025-26 ed.).

To avoid that outcome, Nevada law imposes a duty of good faith on insurers akin to "a fiduciary-type relationship," and exposes them to greater damages for a breach. *Allstate Ins. Co. v. Miller*, 125 Nev. 300, 311, 212 P.3d 318, 325 (2009). This relationship is non-adversarial: "[A]t a minimum, an insurer must equally consider the insured's interests and its own." *Id.* The insurer must conduct a prompt, thorough, and

[1] Unless otherwise specified, all internal quotation marks, emphases, alterations, and citations are omitted from quotations throughout.

objective investigation of a claim and must assist the insured in obtaining the benefits. *Powers v. United Servs. Auto. Ass'n*, 114 Nev. 690, 703, 962 P.2d 596, 604 (1998); NAC 686A.670; NAC 686A.665(4). During that investigation, the insurer must "fully inquire into possible bases" for paying a claim and investigate "the foundation for [any] denial." *Egan v. Mut. of Omaha Ins. Co.*, 620 P.2d 141, 145-46 (Cal. 1979). These obligations extend even when a dispute begins, including, if it occurs, through litigation. *See, e.g.*, *Hicks v. Progressive Cas. Ins. Co.*, 686 F. App'x 417, 418 (9th Cir. 2017).

Ultimately, the duty prohibits insurers from knowingly or recklessly delaying or denying claims without any reasonable basis—that is, from exploiting their position over a vulnerable insured to withhold payment and thereby increase profits. *Falline v. GNLV*, 107 Nev. 1004, 1009, 823 P.2d 888, 891 (1991). If the insurer violates this duty, it is liable in tort for full consequential damages, so the consequence of bad-faith claims handling is not just paying what was always owed in the first place. *U.S. Fidelity & Guaranty Co. v. Peterson*, 91 Nev. 617, 619-20, 540 P.2d 1070, 1071 (1975).

But because even consequential damages alone may not adequately deter misconduct by insurers, punitive damages play a special role in enforcing the duty of good faith. Although Nevada law generally caps punitive damages at three times compensatory damages, insurance bad-faith cases are different. NRS 42.005. In recognition of the "compelling public interest" in deterrence that punitive damages

provide, the legislature exempts bad-faith claims from these usual limits. Hearing on A.B. 307 Before the Assemb., 65th Leg. (Nev., March 2, 1989), reprinted in Assemb. Daily J. at 31, https://perma.cc/V4T4-ML4R. There is thus no cap on punitive damages in bad-faith cases.

II. Factual background

The crash and its aftermath. In October 2018, Tim Kuhn was struck from behind at about 45 miles per hour. 6-AA1301. The impact inflicted a "traumatic brain injury"—a concussion and, ultimately, post-concussive syndrome. RA9, 82; 4-AA904, 5-AA1003. Before the crash, Tim ran a growing physical-therapy business and volunteered as a soccer coach. 4-AA816, 6-AA1298, 6-AA1327, 6-AA1345. He was energetic, highly functional, and "constantly busy," "juggl[ing] 10 balls" at once. 4-AA825, 6-AA1286, 6-AA1306.

Afterward, that capacity evaporated. "All the things [he] was pretty much good at before, [he] was struggling with," as he endured persistent headaches, dizziness, difficulty concentrating, lapses in memory, and fatigue. 6-AA1303; RA8-9. At one point, he became so disoriented during an outing with his daughter that he was "insistent" that she was "driving on the wrong side of the road … despite all evidence that she was driving correctly." RA9. Over time, his symptoms began to take an emotional toll, too, leading to depression and irritability. RA10.

The need for continued care. Over the next eighteen months, Tim saw three neurologists. RA7-11. They agreed he would not return to his pre-injury baseline but recommended steps to maximize recovery, including avoiding stress and pursuing cognitive therapy. 5-AA980; RA8-9, 49. In June 2020, Tim attended a two-week cognitive-rehabilitation program at the Revive Center. RA10. The treatment was expensive—nearly $24,000 out of pocket—but it worked. 6-AA1320; RA5. Tim showed "significant improvement." RA11. He performed better on "neurocognitive testing" and enjoyed a "reduction in the frequency and severity" of his "attention and concentration difficulty, severe fatigue, and emotional l[i]ability." *Id.* Tim's physicians had also made clear, however, that "continued care would be necessary to reach maximum medical improvement" or even to maintain gains already achieved. RA10-11.

Still, Tim was ready. After feeling "out to lunch" for much of the time since the crash, he now had "clarity" and "hopefulness" that he could finally "get his life back." 6-AA1305. He was eager to "really push[]" forward. 6-AA1305.

USAA's lack of investigation and lowball offer. Years earlier, Tim had purchased $300,000 in uninsured/underinsured motorist coverage from USAA.[2]

[2] This coverage exists so that, in the event of an accident where the at-fault driver's insurance doesn't have enough money to cover the damage (whether medical bills or pain and suffering), the insured has guaranteed financial support when recovering; whatever the insured would be "legally entitled to recover" from the at-fault driver in

USAA's wasn't the cheapest, but Tim "purposely paid extra for a higher policy" to be protected "in case something happened to [his] family." 5-AA1157, 5-AA1160, 6-AA1308-09. And for Tim, even that extra protection wasn't enough, so he purchased a second layer of insurance that added $700,000 in coverage, which would become available once USAA paid its policy limits. 6-AA1272, 6-AA1311.

Tim expected USAA to honor its promise. 6-AA1309. Part of the reason he went to USAA was because it had billed itself as the "good guys of insurance" who "took care of the first responders [and] military." 6-AA1308-09. And he had done everything he was supposed to. He had paid premiums every year for nearly two decades. 5-AA1085. He had notified USAA immediately when the crash occurred and gave a "recorded statement," as USAA demanded, thirteen days later. 4-AA834.

Yet all Tim got when he put in his claim in June 2020 (the same month as his visit to the Revive Center) was silence. RA26-32. For five months, USAA ignored Tim. It did not reach out to Tim to request information about his medical condition, what care he had received, or what symptoms he had and was continuing to experience—no investigation at all. *Id.*

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tort, they can recover from the insurer (up to the policy limits). *See White v. Cont'l Ins. Co.*, 119 Nev. 114, 118, 65 P.3d 1090, 1092 (2003); 5-AA1160, 5-AA1162.

So, in November, Tim's counsel sent a demand letter for the policy limits. *See* RA3. The single-spaced ten-page letter provided a detailed history of Tim's physical and cognitive injuries from the crash, the continued cognitive impairments from his traumatic brain injury and post-concussive syndrome, that he was struggling at work and had to stop treating patients entirely, and the promise of his recent trip to the Revive Center, including its instruction that "continued care" was needed for "maximum" recovery. RA3-12. The letter also itemized Tim's care and the $68,183.39 he'd racked up in out-of-pocket costs. RA5-6.

A week later, still with zero investigation, USAA made a paltry $10,000 offer on a $250,000 policy limit—not even enough to cover his medical bills. RA14.[3] That decision not only denied Tim the additional $240,000 USAA owed him but also prevented him from accessing the $700,000 in excess coverage.

USAA's minimal valuation of Tim's pain and suffering wasn't because it doubted his cognitive injuries. Its internal records credited his injuries as including "concussion," "cognitive issues," "dizz[iness]," "double vision," and "balance problems," and the company realized that the "heavy impacts" of the crash and Tim's prior concussions

[3] Technically, because the at-fault driver's insurer already paid $50,000 (thus reducing the policy limit on the insurance, originally purchased in California, to $250,000 from $300,000), this valued Tim's claim at $60,000 total. *See also* 5-AA1013; Cal. Ins. Code § 11580.2(p)(4).

were (in its words) a "weakness" of its "negotiation points." RA17; 4-AA862, 875, 904, 908, 943-44. By contrast, the "strengths" that USAA noted were that Tim didn't have treatment for "soft tissue" injuries or explain how long he wore a "wrist brace or cervical collar"—a reference to impact injuries briefly mentioned in Tim's letter that had quickly subsided. RA7, 17. USAA would later claim (at trial) that it questioned the *severity* of his symptoms, pointing (at least after the fact) to brain scans that did not reveal any abnormality. 4-AA903-04, 5-AA1112, 5-AA1144. But Tim's letter explained that was perfectly consistent with post-concussive syndrome and the underlying records from his treating physician confirmed as much. RA9, 50, 66; 5-AA972-74. USAA never consulted a doctor or nurse before rejecting the opinions, from multiple treating physicians, about Tim's injuries. 4-AA944.

USAA also refused to credit his bills to address those injuries, declaring only $40,568 legitimate. 5-AA1158-59. One reason was that USAA wanted the underlying bill from the Revive Center—something USAA revealed only after making the meager offer and did not request in advance. *Id.*; RA14. Another was that USAA used a service, "auto injury solutions," to arbitrarily reduce the amounts of medical bills. 5-AA1155; RA16. But USAA never reached out to Tim in advance of making its lowball offer to give him a chance to explain those bills and later admitted they were reasonable. 4-AA875; RA26-32.

In the days that followed, Tim sent the Revive Center records to USAA. 5-AA1157. And he obtained a concrete treatment plan from MedTrak Diagnostics, which recommended that Tim commence an "immediate treatment plan" lasting about six months "as soon as possible" and a "long term care plan" thereafter. RA81-82. The near-term treatment would cost $62,400, excluding "psychological counseling [that was] also recommended." RA81. The long-term treatment would, over Tim's life, cost over $1 million. RA88.

But USAA didn't make another offer. 4-AA909. Instead, it intervened in this lawsuit, which Tim had previously filed only against the at-fault driver to preserve his rights as the statute of limitations approached. 1-AA8, 4-AA894. Tim, in turn, added a bad-faith claim against USAA. 5-AA1010.

USAA's litigation-driven evaluation. After becoming a party to this litigation, USAA reassigned the claim to Alan Bloodworth, a manager who oversaw the company's Nevada-based adjusters. 4-AA830, 4-AA884. Bloodworth understood that his duty to handle Tim's claim in good faith continued during the lawsuit. 4-AA879. But he didn't conduct any independent investigation. 4-AA837. Nor did he rely on what Tim had provided.

Instead, to evaluate Tim's claim, Bloodworth looked to the evidence produced in or created by USAA during the lawsuit. *See, e.g.*, 4-AA944-45. That meant that he

used USAA's paid-for expert reports to inform his "evaluation of [Tim's] claim." 5-AA1088, 6-AA1208, 6-AA1214. Unsurprisingly, those experts opined that Tim's "prognosis for recovery is excellent" and "just didn't agree with the injury" that Tim claimed. 6-AA1214-15. One even took the position that the "mental and cognitive symptoms" that Tim began reporting after the crash through trial were not caused by the crash but just happened to coincidentally develop "independently" in the six weeks that followed. 7-AA1438-40. The only independent cause he could identify was that Tim had "five to nine glasses of wine per week"—a drink a day. 7-AA1440. After reviewing their reports, Bloodworth adhered to the original adjuster's $10,000 offer. 4-AA934, 5-AA1088, 5-AA1090. And while Bloodworth credited USAA's experts, he didn't give the same attention to Tim's evidence. He never even completed an evaluation of whether USAA should pay for the MedTrak-recommended treatment plan. 6-AA1267.

Tim's condition deteriorates. As litigation dragged for four years, Tim's health declined. He'd been known as "[h]appy, optimistic, [and] excited"—the glue that held friends together for decades as "families and responsibilities, career, kids" threatened to see them drift apart. 6-AA1299, 6-AA1331. Simply put, "[p]eople loved him." 4-AA816. And not just in his personal life: At work, too, "[h]e was easy to work with," "[o]ne of the best … bosses," and had "compassion" for his employees. 5-AA956.

That would all change. During the four years that followed, Tim suffered from depression and anxiety so severe that USAA's own expert opined that those ailments, alone, rather than anything related to his head injury, could have been the cause of Tim's continued headaches, inability to focus, and fatigue. 7-AA1424, 7-AA1427.

It was unsurprising that Tim's emotional wellbeing unraveled after USAA denied his claim. "[M]any journal articles" have documented that "depression … can get worse over time if you don't improve like you thought you would." 7-AA1451. And Tim had left the Revive Center "hopeful[]" that he'd be able get his "life back" with treatment, but now USAA was denying him the resources he needed to obtain it. 6-AA1305. Having taken out a loan to pay for the Revive Center, Tim couldn't afford to pay for any continued treatment, including the plan that MedTrak recommended. 6-AA1320. So he couldn't follow the recommendations of his doctors: no immediate care; no long-term care; and no psychological care through four years of litigation.

USAA interfered with a second component of his doctor's advice, too: avoid stress. The financial strain that USAA's refusal to pay imposed had the opposite effect. 6-AA1309. Because of his cognitive injuries, Tim struggled at work, ended plans to expand his business to new locations, and saw his relationship with his business partner begin to fray. 6-AA1324-26, 6-AA1344-47. Though Tim was successful, he still needed the income from work—which is why he took out a loan to pay for the Revive Center.

9-AA1957. So when USAA denied his claim, it denied him much-needed financial security. Tim had paid premiums for decades in case "this happened to [his] family," and now USAA "didn't step up" when he needed it. 6-AA1309. "[T]he stress" that this inflicted "resulted in a lot of sleepless nights." *Id.*

Then there was the straightforward shock of what USAA's claim denial meant. Tim's injuries were significant and far-reaching. RA8-12. But USAA's refusal to pay, as Tim's business partner put it, sent the message that the company "didn't think that there was anything wrong with him." 6-AA1350. To Tim, that felt like USAA was "attacking [his] integrity and calling [him] a liar" at his lowest point. 6-AA1309.

The resulting changes to Tim's personality were drastic, as his friends, family, and colleagues all observed. Far from the "easy to get along with," "very positive," "calm person" everyone knew, 5-AA957, 5-AA963, 6-AA1288, Tim grew "irritable," "angry," and easily "frustrated." 4-AA817, 5-AA957. Ordinary events like being unable to switch lanes left him "really upset." 4-AA826. No longer the supportive boss, he "yell[ed]" at his employees, "which he never did before." 5-AA964. He was, in short, a "totally different person." 5-AA963.

USAA's last-minute tender and trial. With trial approaching, and after years of adherence to its $10,000 offer, USAA abruptly decided to tender the $250,000 policy limits to Tim in late 2024. 5-AA1089. Bloodworth would tell the jury that he did so as

a "gesture" of "good faith" and concern—four years into litigation—for the "hardships that [trial] would have on Mr. Kuhn," and to allow him to access the $700,000 in his second layer of insurance. 5-AA1088-89. Tim, however, was unable to use the money because USAA continued to assert a claim against him for attorneys' fees it incurred in the litigation, effectively encumbering the money. 4-AA915, 6-AA1310-11.

In the end, the jury didn't buy the "gesture." It returned a unanimous verdict against the at-fault driver, who defaulted, and against USAA on Tim's bad-faith claim. Although Tim's counsel sought $15 million in damages from USAA to compensate for four and half years of increased stress, anxiety, and increased isolation from family and friends, the jury awarded $7 million. 7-AA1587. It also awarded $7 million against the driver and found that USAA's conduct warranted punitive damages. 7-AA1586-7. In a second phase of trial, after hearing additional evidence, the jury unanimously awarded $100 million in punitive damages. 7-AA1588.

USAA moved for a new trial and to amend the judgment. USAA never claimed that there was insufficient evidence of bad faith. Instead, its main arguments asked the court to toss the verdict because a juror purportedly withheld information during voir dire and Tim's counsel, in USAA's view, improperly attacked USAA's counsel.

The district court rejected both claims. It explained that the juror was never actually questioned about the information that USAA claimed she withheld, and that

the purported misconduct, to the extent it was preserved through proper objections, did not "r[i]se to the level of prejudicial conduct." 10-AA2080.

The district court granted limited relief on damages, remitting the punitive award to $63 million to comport with due process while leaving the compensatory verdict intact. 10-AA2080.

SUMMARY OF ARGUMENT

USAA does not dispute that the jury heard sufficient evidence to find that it engaged in bad-faith conduct. It does not challenge the jury instructions. And it does not ask this Court to overturn any evidentiary rulings. Instead, USAA asks this Court to set aside a unanimous verdict, after full post-trial review, based on claims of juror misconduct, attorney misconduct, and excessive damages. Each fails under settled Nevada law and the deferential standards of review that govern this appeal.

I. USAA's juror-misconduct claim collapses at the threshold. The district court issued a reasoned order finding no intentional concealment and no prejudice. But USAA's opening brief does not mention that ruling, much less demonstrate that it was an abuse of discretion. That waiver is dispositive. In any event, Nevada law permits a verdict to be overturned only where a juror intentionally withholds clearly requested information and that information, if known, would have supported a challenge for cause. No such showing was made here. As the district court explained, the juror was

never asked about what USAA now says she withheld. Regardless, nothing about the juror's prior insurance history would have justified her removal for cause.

USAA's attorney-misconduct arguments fare no better. Most were never preserved through a contemporaneous objection and are therefore reviewed, at most, for plain error. The remainder are reviewed for abuse of discretion. Under either standard, USAA cannot prevail. The challenged advocacy—criticizing selective presentation of evidence, probing the basis of paid expert opinions, and urging reasonable inferences from the record—falls well within the wide latitude afforded trial counsel. The district judge, who observed the trial firsthand, did not abuse its discretion in finding that nothing rose to the level of prejudicial misconduct. USAA's related invocation of the litigation privilege likewise fails. This case did not seek to impose liability on attorneys for advocacy. Rather, USAA's own claims handler testified that he relied on litigation-generated expert reports in evaluating Tim's claim. Once USAA made those materials part of its claims-handling process, their relevance to the reasonableness of that process was unavoidable. The litigation privilege doesn't shield bad-faith evaluation of a claim from scrutiny simply because litigation was pending.

II. USAA's challenge to the compensatory award asks this Court to reweigh evidence that was squarely within the jury's province. The jury heard extensive testimony regarding the harm caused by USAA's four-year refusal to pay benefits: the

loss of access to recommended treatment, the financial strain, and the resulting psychological deterioration. Although Tim requested $15 million in compensatory damages, the jury awarded $7 million—less than half of what was sought. That measured award reflects independent judgment, not passion or prejudice, and the district court properly declined to disturb it.

III. Finally, the punitive damages award, which was remitted by the district court to $63 million, comports with constitutional limits. The evidence supported the jury's finding that USAA knowingly disregarded the interests of a financially vulnerable insured suffering from documented physical injury and in need of additional care. When properly calculated, the resulting ratio of punitive to compensatory damages falls within the single-digit range approved by the U.S. Supreme Court. Nevada's Legislature has expressly exempted insurance bad-faith claims from statutory punitive-damage caps, reflecting a considered policy judgment that meaningful deterrence is necessary in this context. The remitted award falls within that legislative and constitutional framework.

ARGUMENT

1. There is no basis to overturn the jury's liability finding.

USAA does not dispute that the jury had sufficient evidence to find bad-faith conduct. Nor does it dispute that the jury was properly instructed on the law. USAA nonetheless asks this Court to take the extraordinary step of setting aside the jury's verdict based on claims of juror misconduct and attorney misconduct. Those claims fail

at every level. The juror-misconduct claim fails because USAA waived it by failing to challenge the district court's findings that no juror intentionally concealed requested information and that, regardless, no prejudice occurred. The attorney-misconduct claims fare no better: most were never preserved, others were affirmatively waived by USAA's trial strategy, and none comes close to establishing misconduct, incurable prejudice, or an abuse of discretion. Nevada law does not require the drastic remedy of a new trial simply because the losing party regrets its voir dire or advocacy choices.

A. USAA's juror misconduct argument is forfeited and meritless.

USAA's juror-misconduct argument fails at the threshold. A verdict may be overturned for misconduct only if a juror intentionally conceals information that was clearly requested during voir dire and that concealment results in prejudice. The district court found neither—and USAA never challenges those findings on appeal.

Over two days of voir dire, the trial court imposed no restrictions on counsel's questioning. Defense counsel explored wide-ranging topics with the jurors, exploring their favorite "hidden gems" in Las Vegas, preferred home décor, and his explanation of how voir dire would work "if I was king." 3-AA613-16, 3-AA632, 3-AA635. But USAA never asked each juror whether they were previously insured by USAA or had claims filed against them or their family members.

That omission defeats USAA's lead argument on appeal: that a juror committed misconduct by not "volunteering" her prior membership and a claim related to her daughter—information that USAA raised only after trial but that was taken from its own records. 9-AA1860. Consistent with these facts, the district court correctly held that no misconduct occurred because the juror was simply never asked about the information USAA now claims was intentionally withheld. 10-AA2087.

1. USAA waived any challenge to the district court's ruling by not addressing it.

Reading USAA's brief, one would never know that the district court issued a reasoned explanation for rejecting the company's claim of juror misconduct. That order held, first, that no misconduct occurred because USAA never asked the juror about "the specific issue" that it now claims she "withheld" and, second, that there was no prejudice in any event. 10-AA2087. Both determinations are reviewed only for abuse of discretion. *See, e.g.*, *Nevins v. Martyn*, 140 Nev. Adv. Op. 66, 557 P.3d 965, 972 (2024). Yet USAA doesn't even mention them.

That constitutes waiver. *See Bongiovi v. Sullivan*, 122 Nev. 556, 569 n.5, 138 P.3d 433, 443 (2006) (arguments not raised in opening brief are waived). A party can't secure reversal without challenging the reasoning of the order it seeks to overturn. By "fail[ing] to address the propriety of the court's reasoning," USAA "has waived any challenge thereto." *Bonham v. State*, No. 86217, 2024 WL 3841725 at *3 (Nev. App. 2024)

(unpublished); *see also Scott v. First S. Nat'l Bank*, 936 F.3d 509, 522 (6th Cir. 2019) ("fail[ure] to address the district court's reasoning" "forfeit[s]" the claim).

2. The district court did not abuse its discretion in rejecting USAA's juror-misconduct claim.

Even if the issue weren't waived, USAA's misconduct argument would fail on the merits. Before a court will take the drastic step of overturning a verdict based on a juror's statements during voir dire, the moving party must demonstrate (1) a juror's intentional concealment of requested information, *see Nevins*, 140 Nev. Adv. Op. 66, 557 P.3d at 973 (2024), and (2) resulting prejudice—specifically, that the information would have provided a "valid basis for a challenge for cause," *Brioady v. State*, 133 Nev. 285, 286, 396 P.3d 822, 823 (2017). USAA can demonstrate neither.

a. The district court did not abuse its discretion in applying the clear-question requirement and finding no intentional concealment.

1. As a threshold matter, intentional concealment requires that the information at issue have been clearly requested. *See, e.g.*, *Maestas v. State*, 128 Nev. 124, 141, 275 P.3d 74, 85-86 (2012). "[V]ague" or "nonspecific" questions won't suffice; only a clear, unambiguous inquiry can support an inference of intentional concealment. *Id.* at 141, 275 P.3d at 85. After all, jurors can't "conceal information—whether intentionally or

not—when they fail to answer a question which they were never asked." *Jones v. Kent Cnty.*, 115 F.4th 504, 518 (6th Cir. 2024).[4]

USAA's urges this Court (at 13) to adopt a new standard instead: that jurors must "volunteer" information that is "clearly relevant." But USAA's only support for that request is *Brioady*, a case in which a juror was asked whether she had "been a victim of a crime" and failed to disclose childhood sexual abuse; it was undisputed that she had "withheld information," and the only question on appeal was intent. 133 Nev. at 286, 289, 396 P.3d at 823, 825. Nothing in *Brioady* announced a rule requiring jurors to "volunteer" information never requested. This Court's passing use of that word cannot bear the weight USAA assigns it or justify a standard that will invite after-the-fact attempts by losing litigants to dig up juror's pasts.

2. Under the proper standard, there's no basis to disturb the district court's holding. The juror in question was simply never asked about what USAA has accused her of withholding. Voir dire focused on whether jurors were *currently* insured by USAA—a question the court asked to determine whether any juror had a present

[4] *See also, e.g.*, *Johnson v. McCullough*, 306 S.W.3d 551, 555 (Mo. 2010) ("The question asked during voir dire must clearly and unambiguously trigger the juror's obligation to disclose the information requested."); *Logan v. State*, 465 So.2d 339, 340 (Miss. 1985) (no misconduct where juror did not disclose niece's rape because question about "close relatives" was "ambiguous"); *Gamsen v. State Farm Fire & Cas. Co.*, 68 So.3d 290, 294 (Fla. Dist. Ct. App. 2011) (question must be "straightforward and not reasonably susceptible to misinterpretation").

financial interest in the outcome (as USAA is member owned). 1-AA216-20, 2-AA268-69. USAA itself acknowledged post-trial that it was "clear" that the court sought only information about "who was *actively* insured." 10-AA2023 (emphasis added). So no one asked the juror whether she had been insured by USAA in the past. Nor did anyone ask whether an insurance claim had been filed against her or a family member. The court asked only whether she had "personally ever filed a claim or a lawsuit." 2-AA284. In other words, the court's questions didn't unambiguously call for information USAA now claims was withheld.[5] USAA had the opportunity to elicit that information; it chose not to.

That alone defeats any claim of concealment. The district court did not abuse its discretion in applying the clear-question requirement and finding none. 10-AA2088.

The record also dispels any hint of *intentional* concealment. *Id.* The juror disclosed several pieces of information that invited scrutiny, including that she knew someone by the same name as a witness, 1-AA222; that she had been sued and viewed the plaintiff as "just trying to get money" even though she "didn't even get hurt,"

[5] USAA provides (at 17) examples of how *other* jurors were asked about their claim and litigation history—but questions to others *after* the juror at issue answered can't establish that her answers were inaccurate. USAA also points to other questions posed to the juror at issue, but relies on assumptions that are unfounded (that the juror "deeply trusted" USAA) or belied by the record (that she felt "betrayed" by "unfair" claims handling). *See* 9-AA1860 (noting that "nothing was paid out" on the claim).

2-AA407; and that she had been fired from a job for alleged discrimination, 3-AA550-51. She also candidly shared her views on "lawsuit abuse"—"[p]eople always try[ing] to claim they get hurt" to "put a lawsuit up against[] the company," 3-AA589-90. A juror's disclosure of information that could prompt scrutiny from counsel during voir dire "weighs heavily against" any inference of intentional withholding. *Nevins*, 140 Nev. Adv. Op. 66, 557 P.3d at 973.

b. The district court did not abuse its discretion in finding no prejudice.

The district court also correctly found no prejudice. The juror affirmed her ability to be impartial. 2-AA285; *see Young v. State*, 141 Nev. Adv. Op. 47, 577 P.3d 691, 699 (2025) (crediting juror's "own assertions regarding the ability to be impartial" though she admitted "sympathy for the victims"). If anything, she expressed skepticism of plaintiffs in civil suits. 2-AA407. Nothing about her prior insurance history, including a claim involving her daughter (which was resolved in her favor), would have supported a challenge for cause, 9-AA1860 (USAA record stating that "nothing was paid out"), which is what USAA "must" establish to show prejudice. *See Brioady*, 133 Nev. at 286, 289 n.2, 396 P.3d at 823, 825 n.2 (following *McDonough*, which held that a peremptory strike was insufficient).

3. The district court did not abuse its discretion in denying an evidentiary hearing.

The district court also correctly denied an evidentiary hearing. Such hearings are appropriate only to (1) determine unknown or disputed facts about whether a voir dire answer was accurate or (2) explore a juror's intent. *See, e.g.*, *Echavarria v. State*, 108 Nev. 734, 740, 839 P.2d 589, 593-94 (1992). But the juror's history with USAA is in paper records and is undisputed. And there is no need (or way) to explore intent because there was no concealment to begin with.

B. USAA's attorney-misconduct arguments are forfeited and unfounded.

USAA next tries (at 22) to avoid the admittedly sufficient evidence of bad faith by claiming that Tim's counsel improperly and prejudicially "attacked" USAA's counsel at trial. These arguments fail under the governing standards of review: most were unpreserved and are therefore subject only to plain-error review, and none demonstrates misconduct, prejudice, or an abuse of discretion.

1. USAA failed to preserve its misconduct claims.

a. In reviewing claims of attorney misconduct, this Court places great weight on whether the misconduct was timely objected to and whether an admonishment was requested. *Lioce v. Cohen*, 124 Nev. 1, 17, 174 P.3d 970, 980 (2008). That's because the absence of a timely objection "strongly indicates that the party moving for a new trial did not consider the arguments objectionable at the time they were delivered, but made

that claim as an afterthought." *Ringle v. Bruton*, 120 Nev. 82, 95, 86 P.3d 1032, 1040 (2004). Enforcing the contemporaneous-objection requirement also "conserve[s] judicial resources" by affording the district court "an opportunity to correct any potential prejudice and to avoid a retrial." *Id.*

USAA never contemporaneously objected to the questions that it now describes as improper. Its main complaint is that questions by Tim's counsel characterized USAA's defense as "cherry-picking." But the only objection it made to questions about "cherry picking" came two days later. 6-AA1233. That's a far cry from the facts in *Virgin Valley Water Dist. v. Paradise Canyon, LLC*, on which USAA relies, where the objection was made at "a break shortly after the disputed statement[]." 141 Nev. Adv. Op. 19, 567 P.3d 962, 974 (2025).[6]

USAA also raises a laundry list of complaints (at 29) about statements that Tim's counsel made during his closing argument. But the company's counsel never objected to these statements; indeed, it did not object during closing argument at all. USAA tries to justify its silence by claiming (at 30) that repeated objections "might cast a negative

[6] USAA also cannot point to a sidebar that followed questions about cherry picking. The court (not USAA) called that sidebar to address a different issue: questions on whether USAA's attorneys are its agents. 4-AA864-68. During that sidebar, the court agreed with Tim's counsel—without disagreement from USAA—that "absolutely, there's nothing wrong" with raising USAA's selective presentation of evidence. 4-AA868; *see Evans-Waiau v. Tate*, 138 Nev. 423, 430, 511 P.3d 1022, 1029 (2022) (requiring distinct objections to different forms of alleged misconduct).

impression" with the jury. USAA Br. at 30 (quoting *Lioce*, 124 Nev. at 18, 174 P.3d at 981). The record shows otherwise. Closing arguments were on a Friday. 5-AA1589. USAA's last arguably related objection was two days earlier on Wednesday. 6-AA1233. Unlike *Lioce*, in which counsel raised three straight objections during closing before declining to raise a fourth, there was no risk of a negative impression here. 124 Nev. at 10-11, 174 P.3d at 976.

In the absence of a contemporaneous objection, USAA's argument is subject only to plain-error review, which requires USAA to show that there is "no other reasonable explanation" beyond counsel's summation. *Id.* at 16, 174 P.3d at 980. USAA doesn't even mention the plain-error standard, much less try to satisfy it.

4. The district court did not abuse its discretion in finding that the challenged advocacy fell well within permissible bounds.

Even if USAA had raised a timely objection, the verdict still could not be overturned unless "the misconduct [were] so extreme" that the objection (or admonishment, if there was one) "could not remove the misconduct's effect." *Id.* at 17, 174 P.3d at 981; *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 77, 319 P.3d 606, 613 (2014). Counsel "enjoy[] wide latitude in arguing facts and drawing inferences from the evidence." *Jain v. McFarland*, 109 Nev. 465, 476, 851 P.2d 450, 457 (1993). An attorney stays within the boundaries of permissible conduct so long as he "asks the jury to arrive at its decision *based on the evidence*." *Capanna v. Orth*, 134 Nev. 888, 891, 432 P.3d

726, 731 (2018). Counsel only "cross the line between advocacy and misconduct" when they "ask[] the jury to step outside the relevant facts" and reach a verdict based on its "emotions" rather than the evidence. *Cox v. Copperfield*, 138 Nev. 235, 246, 507 P.3d 1216, 1227 (2022).

Nothing here even approaches the sort of outlier comments that constitute misconduct at all, let alone misconduct so extreme that it would be incurable. Tim's counsel's questions about the selective presentation of evidence just highlighted for the jury that USAA's evidence didn't tell the full story—i.e., that it's cherry-picked. Remarks about opposing counsel cross the line to misconduct when they are disparaging and abusive, such as referring to opposing counsel as "lying sons of bitches," *Born v. Eisenman*, 114 Nev. 854, 861, 962 P.2d 1227, 1232 (1998); *Butler v. State*, 120 Nev. 879, 898, 102 P.3d 71, 84 (2004) (accusing counsel of trying to "fool" the jury and misusing taxpayer funds by overpaying experts in a death-penalty case); *see also People v. Lund*, 279 Cal.Rptr.3d 697, 723 (Cal. Ct. App. 2021) (a "sarcastic or biting" tone is not misconduct). USAA doesn't explain how "cherry-picking" counts as the type of disparaging, "inflammatory" rhetoric this Court has condemned. *Jain*, 109 Nev. at 476, 851 P.2d at 457.

As Tim's counsel told the court, his questions were not attacking USAA's counsel; they were "attacking USAA on how it put on its case"—in particular, its

selective use of evidence. 6-AA1233. That's exactly what counsel is supposed to do in zealously protecting their clients' interests: to urge the jury "*based on the evidence*" to rule in their clients' favor. *Capanna*, 134 Nev. at 891, 432 P.3d at 731. And counsel's questions were especially appropriate here, given that USAA's counsel, in his opening, told the jury that Tim's presentation was misleadingly selective but that USAA's wouldn't be. 4-AA783-84, 790. When one party makes a representation in its opening about what the trial will show, the other party doesn't commit misconduct by telling the jury that the evidence doesn't bear out those claims. *Jain*, 109 Nev. at 476, 851 P.2d at 457.

USAA also argues (at 26) that it was improper for Tim's counsel to ask two questions about whether the company's counsel acted as its agent. *See* 4-AA863. Nothing about these questions was disparaging either. USAA may regret not having raised a relevance objection, but it cannot make up for that failing now by attempting to characterize this as misconduct. The district court's concern about the agency questions was that they wrongly implied that counsel was involved in the decision to deny Tim's claim, not that they involved inflammatory rhetoric. 4-AA869.

USAA's remaining thirteenth-hour complaints about the advocacy at trial are equally meritless. For example, Tim's counsel criticized USAA's experts as biased

because they were paid. But that is perhaps the most standard line of criticism of another side's experts; if it's misconduct here, there's misconduct in virtually every trial.

5. The litigation privilege does not transform proper advocacy into misconduct.

USAA's attempt to recast its argument in terms of the litigation privilege gets it no further, and founders on the testimony of its own claims handler. Bloodworth testified repeatedly that he relied on the expert reports to evaluate Tim's claim once he took over as the adjustor. *See, e.g.,* 5-AA1092, 6-AA1208, 6-AA1213-14. And he also admitted that an insurer cannot rely on an expert it knows is biased when handling a claim. 4-AA888. It was thus perfectly legitimate for Mr. Kuhn to examine the biases of USAA's experts and to tell the jury that it could find for Mr. Kuhn if USAA "knowing[ly]" hired biased experts for Bloodworth to rely on. 8-AA1623; *see also, e.g.*, *Republic Ins. Co. v. Hires*, 107 Nev. 317, 320, 810 P.2d 790, 792 (1991) (investigator's misconduct supported liability even though investigator was hired by attorney).

That testimony made the experts' opinions—and their reliability—directly relevant to whether USAA conducted a reasonable investigation. When an insurer treats litigation-generated materials as part of its claims-handling process, it cannot then invoke the litigation privilege to shield that process from scrutiny.

This Court recognizes a "common law" litigation privilege subject to certain "limitations." *Greenberg Traurig v. Frias Holding Co.*, 130 Nev. 627, 630-31, 331 P.3d

901, 903 (2014). The privilege protects litigation conduct from being made "the basis of any civil liability" against the attorney. *Hampe v. Foote*, 118 Nev. 405, 409, 47 P.3d 438, 440 (2002). But USAA again failed to preserve its argument on this basis, making not even a single objection citing the litigation privilege. The "multiple objections" to which USAA refers went instead to the form of the question, foundation of evidence, or other inapposite grounds. *See* USAA Br. at 36 (citing 5-AA1074-76). And given that the district court *sustained* those objections, USAA cannot complain that the court committed any error—much less a prejudicial one warranting reversal.

In any event, this is not a case where litigation conduct was offered to impose liability on attorneys for advocacy. Liability was based on evaluation decisions by an insurer. Counsel's descriptions of USAA's defense—characterizing it as "cherry-picked," a "charade," not grounded in "science," and "invent[ed]" post hoc—just criticize gaps in USAA's evidence. USAA Br. at 29, 34. Likewise, the other statements about which USAA complains—including statements about the nature of *USAA's* investigation (5-AA1071, 5-AA1075) do not violate the litigation privilege because they do not ask for a finding of bad faith based on litigation conduct.[7]

[7] USAA suggests that it was improper to question Bloodworth about USAA's request for attorneys' fees. But Bloodworth told the jury that his eve-of-trial tendering of payment to Tim was a "good faith" gesture he made because he was "accused of acting in bad faith" (and USAA's counsel repeatedly questioned lay witnesses about that

USAA identifies (at 34-35) only one instance (also not objected to) in which counsel told the jury it could find bad faith based on what USAA frames as litigation conduct: its use of biased medical experts. But where, as here, a claims adjuster evaluates a claim by relying on experts, the litigation privilege does not allow the insurer to shield that core aspect of its claims handling from scrutiny by also using the experts at trial. For this reason, USAA's cases are inapposite. Each involved litigation conduct defending a discrete coverage decision, not, as here, a challenge to a coverage decision made based on information gathered through or later used in litigation. *See Palmer v. Farmers Ins. Exch.*, 861 P.2d 895, 914 (Mont. 1993); *Searcy v. Esurance Ins. Co.*, 243 F.Supp.3d 1146, 1155 (D. Nev. 2017); *Timberlake Const. Co. v. U.S. Fidelity & Guar. Co.*, 71 F.3d 335, 339 (10th Cir. 1995). It was that lack of connection to the underlying claim decision—a connection in no way lacking here—that meant the litigation conduct did "not relate to the reasonableness" of the coverage decision, and "therefore, ha[d] little or no relevance." *Palmer*, 861 P.2d at 916.

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tender, too). 4-AA819-20, 5-AA1089. Once USAA opened that door, Tim had little choice but to counter USAA's narrative. He did so by pointing out that the fees request encumbered that payment—rendering it useless to Tim—so USAA's "gesture" was meaningless, 4-AA915, 918-19, and that its mid-trial withdrawal of the fee request was simply another example, like the last-minute tender, of USAA changing course to avoid scrutiny from the jury, 5-AA1046-47.

Because USAA relied on information created in litigation to evaluate Tim's claim, it was not only appropriate, but necessary for Tim to show that this evaluation was unreasonable. Numerous courts have held that litigation conduct may be admissible, and the basis of liability, when it "bear[s] on the reasonableness of the insurer's decision and its state of mind when it evaluated and denied the underlying claim." *Id.* at 915. In that instance, because the evidence is used to examine the insurer's conduct, not the attorney's, it does not impair attorneys' ability to "engage in zealous advocacy." *Greenberg Traurig*, 130 Nev. at 630, 331 P.3d at 903 (recognizing a malpractice exception).[8]

6. USAA cannot show incurable prejudice.

Even if any statement were arguably improper, USAA cannot show that it caused incurable prejudice. USAA must show that there was "extreme" conduct that the objection (or an admonishment) could not cure—and it hasn't shown either. *Gunderson*, 130 Nev. at 77, 319 P.3d at 613. As USAA acknowledges (at 27-28), the district court even instructed the jury mid-trial that what an attorney does at trial is not

[8] *See also, e.g.*, *Searcy,* 243 F.Supp.3d at 1155 (rejecting that the privilege "necessarily mean[s] that evidence of what Esurance did in the litigation" is inadmissible"); *T.D.S. Inc. v. Shelby Mut. Ins. Co.*, 760 F.2d 1520, 1527 (11th Cir. 1985) ("Certainly the litigation conduct of Shelby was relevant to the claim that Shelby … dealt dishonestly with TDS."); *Pollock v. Fed. Ins. Co.*, 2025 WL 346080, at *6 (N.D. Cal. 2025).

evidence. 4-AA865, 4-AA867, 5-AA1053. USAA never suggested that this would be insufficient or asked for a separate admonishment.

III. There is no basis to overturn the jury's compensatory-damages award.

USAA also challenges the jury's compensatory-damages award. In doing so, it faces an exceedingly uphill battle—one of the most deferential standards of review in the law. For over a century, this Court has repeatedly admonished that courts cannot meddle with a damages award "on the ground that the verdict is excessive, unless it is so flagrantly improper as to indicate passion, prejudice, or corruption in the jury." *Forrester v. S. Pac. Co.*, 36 Nev. 247, 295-96, 134 P. 753, 768 (1913). That deeply rooted principle of Nevada law is now embodied in the Rules of Civil Procedure, which allow a court to grant a new trial on damages on this narrow basis alone. NRCP 59(a)(1)(F).

This Court has made clear that an award for pain and suffering, in particular, is "wholly subjective" and "falls peculiarly within the province of the jury." *Stackiewicz v. Nissan Motor Corp. in U.S.A.*, 100 Nev. 443, 454, 686 P.2d 925, 932 (1984). This Court may not disturb the jury's "wide latitude in awarding tort damages" unless it lacked substantial evidence, *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000). On appeal, deference is due not only to the jury, but also to the trial court, whose order on a motion for new trial or remittitur is reviewed for an abuse of discretion. *Wyeth v. Rowatt*, 126 Nev. 446, 473, 244 P.3d 765, 783 (2010).

USAA cannot overcome these two layers of deference. Far from being driven by passion and prejudice, the jury gave Tim less than half of what he asked for. That measured, independent judgment is amply supported by the record. The jury heard evidence that Tim's life was upended after the crash and that USAA's unjustified, bad-faith refusal to pay his claim made things worse just as he was starting to feel hopeful again—setting off four and a half years of heightened depression, stress, anxiety, and loss of self. Simply put, the jury acted not just rationally, but sensibly. And the trial court did not abuse its discretion in recognizing as much.

A. The jury's award was not tainted by passion and prejudice.

Rather than attack the sufficiency of the evidence supporting the damages award head on—a task that USAA leaves for the end of its brief (at 70)—USAA skips ahead (at 38) to arguing that it was tainted by passion and prejudice. That misunderstands how this Court reviews jury verdicts. If the evidence supports the award, this Court will not speculate that it was nonetheless motivated by passion and prejudice. *Beccard v. Nevada Nat. Bank*, 99 Nev. 63, 66 n.3, 657 P.2d 1154, 1156 n.3 (1983). Regardless, the district court did not abuse its discretion in rejecting USAA's arguments.

1. The clearest indication that the district court was right to reject speculation about whether passion and prejudice drove the award here is that it wasn't bigger. This Court has affirmed verdicts even that exceed what counsel requested. *See, e.g.*, *Sierra*

Health & Life Ins. Co., Inc. v. Eskew, No. 85369, 2024 WL 3665443 (Nev. Aug. 5, 2024) (unpublished) ($40 million awarded; $30 million requested); *Bongiovi*, 122 Nev. at 583, 138 P.3d at 452 (deviation of 50 percent). But here, counsel requested $15 million and the jury awarded only $7 million. As this Court has explained, when a jury does not award "all [that's] requested," that "evince[s]" that it was not "controlled by emotions and sympathies but rather a thoughtful contemplation of the evidence." *Capanna*, 134 Nev. at 892, 432 P.3d at 732; *see also Guar. Nat. Ins. Co. v. Potter*, 112 Nev. 199, 207, 912 P.2d 267, 273 (1996) (denial of future damages showed that the award "was not influenced by passion or prejudice"). USAA's contention that Tim's counsel drove the jury to act based on unchecked emotions simply cannot be reconciled with the jury's considered decision to cut his request in half.

2. USAA's lead argument to the contrary (at 39-43) is that the jury awarded only $2 million for past pain and suffering against the driver, and the injuries that USAA caused were (in its view) less serious than the injuries attributable to the crash. In other words, USAA tries to cast these verdicts as inconsistent. Yet it tellingly shies away from the doctrine that actually governs that type of argument. One reason is that, to be preserved, an inconsistent-verdict challenge must be raised before the jury is discharged. *See Eberhard Mfg. v. Baldwin*, 97 Nev. 271, 273, 628 P.2d 681, 682 (1981). The other is that "[c]ourts must make an effort to harmonize seemingly inconsistent special verdict

answers and must interpret them in a consistent way if possible." *Motor Coach Indus., Inc. v. Khiabani by & through Rigaud*, 137 Nev. 416, 425, 493 P.3d 1007, 1015 (2021).

That's easily done here. The jury heard that the cognitive symptoms of post-concussive syndrome come and go: there are "good days and bad days." 5-AA980; RA8-11 (detailing the ups and downs of Tim's cognitive recovery). The jury could have reasonably concluded that this was true of the immediate injuries caused by the crash, which Tim's doctors believed could meaningfully improve with continued care. RA12. But there was no evidence that Tim's heightened anxiety, stress, loss of sense of self, and depression—caused by USAA's bad-faith conduct over four years, as litigation dragged on—fluctuated in the same way. The jury could have reasonably concluded that the damage caused by USAA's conduct was therefore far worse.

Regardless, even if both were equally pervasive, the jury could have assigned greater value to the damage that USAA caused. That is the job of the jury in a case of personal injury—to place a value on an injury that is "wholly subjective." USAA's contrary argument depends on an unstated premise: that, as a matter of law, cognitive injuries are more valuable than emotional injuries. But no case supports that premise.

In the end, there's nothing more to USAA's argument than the company's own view that the cognitive injuries are worth more. That impermissibly asks this Court to substitute its (or USAA's) assessment for the jury's. And it lacks any judicially

manageable standards. What if the verdict were $3 million? Or even $2 million? Nothing would prevent USAA from making the exact same argument.[9]

b. USAA next points to a variety of unobjected-to comments that it mischaracterizes as misconduct that inflamed the jury. As an initial matter, USAA cannot avoid the exacting standard of review for unobjected-to misconduct by trying to smuggle its complaints through the passion-or-prejudice analysis. *See Bongiovi*, 122 Nev. at 576 n.46, 138 P.3d at 448. Because USAA did not object, it must show plain error. It hasn't even tried and has therefore waived the claim.

At any rate, its arguments are meritless. *First*, consider USAA's golden-rule complaint. USAA Br. at 49-51. A lawyer engages in a "golden rule" argument when she asks the jurors to consider "how they would feel if they were faced with the same challenges as" the plaintiff because it asks them to put personal interest above the evidence. *Capanna*, 134 Nev. at 891, 432 P.3d at 731. Here, counsel posed a conversation where a man explains to Tim the injuries he will endure and offers him $20 million, but "Tim says no" and "Tim goes to close the door." 8-AA1685. This argument—which apparently didn't work—never impermissibly asked the jurors to "trade places." *DuBois*

[9] The only decision that USAA cites in which this Court reduced an emotional-distress award, *Nev. Indep. Broad. Corp. v. Allen*, 99 Nev. 404, 663 P.2d 337 (1983), was a slander case where "First Amendment concerns were at the forefront of [this Court's] concern in reviewing the damages award," *Bongiovi*, 122 Nev. at 578, 138 P.3d at 449.

v. Grant, 108 Nev. 478, 481, 835 P.2d 14, 16 (1992). It simply declared that Tim wouldn't take the money if offered that choice. USAA complains (at 50) that counsel said "you" a lot. But it's the substance, not "the number of times the word 'you' was used" that matters. *Capanna*, 134 Nev. at 891, 432 P.3d at 731. As another court addressing a similar use of an imagined conversation found, it was "evident" that "counsel's use of the word 'you' referred to plaintiff, and not to the jurors." *Chen v. Herschel*, 2022 WL 610658, at *6 (Cal. Ct. App. 2022).

Second, USAA asserts (at 47-48) that it was improper for Kuhn's counsel to use the phrase "delay, deny, defend" on the theory that it impliedly referenced Luigi Mangione's murder of a health insurance executive. 3-AA647. But that is a common phrase in the insurance context that counsel tied to the evidence at trial, and Tim's counsel never once referred to Mangione during trial. *See* 8-AA1630. Mangione's heinous act did not have the effect of forever barring insurance lawyers from accurately discussing insurance companies' efforts to "delay, deny, defend" in particular cases.

Third, USAA contends (at 46-47) that counsel improperly inflamed the jury by saying that "99.9 percent" of the time USAA "get[s] away with this" when "no evidence" supported the claim. In fact, Bloodworth testified that "over 99 percent" of claims that go to litigation settle. 4-AA919. If USAA (wrongly) believes that Tim's counsel drew an improper inference, USAA should have objected that he misstated the evidence, not

belatedly shoehorned it into a passion-or-prejudice claim on appeal. *See Beccard*, 99 Nev. at 65-66, 657 P.2d at 1156.

Fourth, USAA points (at 44-46) to an array of statements as supposed proof of attempting to inflame the jury to punish USAA for its nationwide conduct. But each of these statements referenced testimony given by USAA's manager in charge of handling Nevada claims; each was proper in a case that asked the jury to assess reprehensibility; and counsel never asked the jury to punish USAA for nationwide conduct. *Infra* at 53-54. USAA points to *State Farm v. Campbell*, 538 U.S. 408 (2003), but *Campbell* did not hold that the jury's verdict was the product of passion or prejudice. To the contrary, in *Campbell* the evidence—of a "national scheme" based on witnesses "who had worked outside of Utah"—*was* the problem because it led a Utah jury to punish out-of-state conduct in violation of federalism principles. *Id.* at 420-21. That was a legal, not an evidentiary, shortcoming, and it did not happen here.

B. The jury's compensatory-damages award was supported by substantial evidence.

1. The jury's verdict, in the end, is easily explained: There was substantial evidence of Tim's pain and suffering to support it.

USAA's bad-faith denial of Tim's claim prevented him from pursuing essential cognitive rehabilitation. When Tim went to cognitive therapy—as his treating physician recommended, 5-AA1278—things got better, at least temporarily. After the

Revive Center, he saw "significant improvement," reduced "concentration difficulty," less fatigue, minimized "emotional l[i]ability," restored "hopefulness," and "clarity" for the first time in two years. RA11; 6-AA1305. But it was also clear that he needed to continue treatment not just to obtain "maximum medical improvement," but also for "maintenance" of any gains. RA9, 11. Indeed, MedTrak, the medical center he went to for a detailed treatment plan, recommended he begin "as soon as possible" while cautioning that he faced "a long term risk of developing Parkinsonism, Alzheimer's disease, dementia and other motor problems." RA82.

But because of USAA, Tim wasn't able to. He already had to take out a loan to go to the Revive Center; he couldn't afford more without the insurance money he was owed. 6-AA1320. So for years, Tim was forced to battle headaches, fatigue, difficulty concentrating, and the resulting toll on his work and personal life while knowing that he could improve if only USAA lived up to his promise. And on top of that daily frustration and anguish, Tim had to live with the fear that he wasn't doing what had been recommended—by multiple doctors—while at a long-term risk for the most severe of diseases. RA82; *see also* RA 9, 11; 6-AA1278. That "wholly subjective" damage cannot be precisely quantified, but the jury had every right to put substantial value on it.

Then there was the financial stress—stress that Tim's treating physician told him to avoid—that USAA inflicted. Because of his injuries, Tim's work, potentially his

financial future, was at risk. Not only did he end plans to expand his business, but his ability to even complete daily tasks depended on the day. 6-AA1324-27, 6-AA1344-49. All the while, USAA held up $940,000. That was money that would pay not just for treatment that Tim knew, from experience, would improve his ability to work, but also that would provide financial stability for his family. USAA's refusal predictably inflicted severe stress that added new ailments to Tim's life. *Compare, e.g.*, 6-AA1309 (difficulty sleeping because of USAA) *with, e.g.*, 5-AA1120 (no sleep issues from crash alone).

And then there was the attack on Tim's integrity. 6-AA1309. At the lowest point of his life—after he'd been to dozens of doctor's appointments, multiple neurologists, taken out a loan for treatment, spent tens of thousands in out-of-pocket costs—his insurer was saying that it wasn't real. Rather than live up to its promise, USAA was telling Tim he was a "liar." 6-AA1309. That was devastating, and it lasted for years.

This all, in turn, contributed to Tim's complete transformation as a person. By the time trial arrived, the jury learned that Tim was barely a shadow of the "[h]appy, optimistic, [and] excited" person that "[p]eople loved." 4-AA816, 6-AA1299, 6-AA1331. He had become, instead an "irritable," "withdrawn," "angry," and "bitter" person, who became easily upset and yelled at the people around him. 4-AA817, 5-AA964, 6-AA1332. USAA's own expert testified that Tim suffered from depression and anxiety severe

enough, on their own, to be the cause of Tim's headaches, difficulty concentrating, and other cognitive ailments. 7-AA1424, 1451.

And the jury could view these injuries as particularly substantial for Tim because he had taken unusual steps to avoid them. He didn't just have high-priced underinsured motorist coverage. He also went out of his way to purchase a second layer of insurance. *Supra* at 9. He was, in other words, the type of person who worried enough to prepare to unusual degrees—and that was all reduced to pointlessness by USAA.

Add that all up, and there is no basis to overturn the jury's award—especially given the doubly deferential standard of review. The jury learned that Tim had to live every day knowing that USAA was holding him back from repairing his cognitive injuries; that USAA inflicted severe stress when Tim was at his most vulnerable; and that USAA contributed to immense depression and anxiety. The jury could easily conclude that this daily pain is worth $7 million, and the district court certainly did not abuse its discretion in refusing to overturn that "wholly subjective" determination.

2. USAA's argument that this evidence was insufficient violates the basic rule that the evidence must be viewed in the light most favorable to the verdict. USAA claims (at 41, 71) that the only injury that USAA caused was "a sense of unfairness," an "increase in stress," and a loss in the time-value of money. As just recounted, the record showed

far more, and USAA makes no claim that the full scope of evidence the jury heard is insufficient.

USAA also claims (at 70) that the *evidence* was insufficient because counsel's *closing* did not precisely break apart what aspects of Tim's injuries USAA caused. But it's evidence, not attorney argument, that matters. *See Bongiovi*, 122 Nev. at 580, 138 P.3d at 450. Regardless, counsel *did* argue that USAA, specifically, caused Tim's "stress level [to be] sky high," had a "negative impact on everything" in his life, and caused him to "isolate" himself. 8-AA1684-85.[10]

IV. The punitive damages award is supported by substantial evidence and consistent with due process.

The jury awarded punitive damages based on overwhelming evidence that USAA denied Tim's claim despite knowing the extent of his injuries, his need for continued care, and his financial vulnerability. USAA now claims that the jury's assessment of the need for deterrence, even as reduced by the district court, must be overturned because

[10] USAA briefly speculates (at 72) that the verdict actually awards damages from the crash (not bad faith) and is thus "double recovery." The jury instructions on damages were jointly submitted, so, even if true, that would be a problem of USAA's own making and thus waived. 7-AA1578. In any event, the jury was instructed to award separate damages (including the distinct category of medical-expense damages) only against the driver, given special interrogatories, and told by counsel to make the distinction. 7-AA1586-87, 8-AA1608-09, 8-AA1646.

it is excessive, impermissibly based on extraterritorial considerations, and unsupported by sufficient evidence. USAA is wrong on each point.

A. The federal Constitution does not require this Court to further revise the jury's award.

States have a "legitimate interest[]" in imposing punitive damages to "punish[]" and "deter" misconduct. *BMW of N. Am. v. Gore*, 517 U.S. 559, 568 (1996). The Due Process Clause interferes with that power only when an award is so "grossly excessive" that the defendant lacked "fair notice." *Campbell*, 538 U.S. at 417. In that scenario, the deterrent effect is absent and the award "furthers no legitimate purpose." *Id.*

USAA received the requisite notice. Although Nevada generally limits punitive damages to three times the size of compensatory damages, the Legislature has exempted bad faith claims by statute since 1989. *Supra* at 6-7. And the Legislature crafted that exemption just one year after this Court sustained a punitive-damages award that was nearly 30 times the compensatory damages. *See Ainsworth*, 104 Nev. at 590, 763 P.2d at 674 (1988). Insurers thus know they may face punitive damages awards far greater than this one; indeed, they have continued to face them in the years since the statute was enacted. *See, e.g.*, *Bartgis*, 114 Nev. at 1268, 969 P.2d at 962 (1998) (13:1 ratio); *Republic*, 107 Nev. at 320-21, 810 P.2d at 792-93 (12:1 ratio); *Merrick v. Paul Revere Life Ins.*, 594 F.Supp.2d 1168, 1191 (D. Nev. 2008) (8:1 ratio).

Applying due process's three guideposts—reprehensibility, ratio, and comparable penalties—confirms that there's no constitutional prohibition on the award here.

Reprehensibility. "The most important indicium" in evaluating "a punitive damages award is the degree of reprehensibility of the defendant's conduct." *Campbell*, 538 U.S. at 419. In assessing reprehensibility, courts examine whether the at-issue conduct resulted in a personal or an economic injury; "evinced an indifference to or a reckless disregard of the health or safety of others"; was inflicted on the financially vulnerable; and was isolated and accidental or intentional and part of a pattern. *Id.*

Each factor cuts against USAA.

First, USAA exhibited an utter disregard for Tim's physical injuries and his need to fund his recovery. USAA took no action for five months after Tim first made his claim despite knowing he'd been in a serious crash. 4-AA834; RA27-32. When Tim then provided a demand letter with additional detail about the severity of his injuries (ten visits to three separate neurologists plus cognitive therapy) and his need for continued care, USAA summarily rejected it a week later—despite acknowledging internally that every one of the injuries Tim reported was real. RA7-11, 15, 17; 4-AA943. USAA never consulted a doctor or nurse before making a lowball offer that would not even cover his medical bills, to say nothing of his pain and suffering. 4-AA944. And when he later provided the Revive Center records that USAA claimed it needed—and internally

acknowledged added $20,000 to Tim's claim, RA46—USAA never changed its offer. AA1230. It denied first, asked questions later, and ignored the answers when they came.

Second, USAA didn't just disregard Tim's physical vulnerabilities; it brushed aside his financial ones, too. *See Campbell*, 538 U.S. at 419. Tim's letter made clear his entire financial future was in doubt. He couldn't treat patients at all, could only perform as a supervisor "for short periods of time," and suffered from ailments—difficulty focusing, attention difficulties, fatigue—that cast serious doubt on his ability to continue working. RA10. This didn't inadvertently slip by USAA—its internal notes acknowledge Tim was "unable to go to work." RA73. The company simply didn't care.

Third, this was no accident or isolated incident. Two different adjusters—the initial claims handler and then Bloodworth—separately denied relief. And Bloodworth, the supervisor for all adjusters in Nevada, made clear that he didn't just agree with the initial adjustor's end result based on some new information. He "agreed with [her] evaluation" and with the "offer that she made": "She was good." 5-AA1090. And nothing changed even as evidence came in during years of litigation that Bloodworth acknowledges he reviewed. That sort of "lack of repentance" evidences a "need for greater punishment and deterrence and add[s] to the sense that [the] conduct is highly reprehensible." *Merrick*, 594 F.Supp.2d at 1188. USAA's own cases make clear that's enough: "[R]epeated bad faith actions with respect to a single insured over a long period

of time enhances the reprehensibility." *See Mazik v. Geico Gen. Ins. Co.*, 247 Cal.Rptr.3d 450, 464 (Cal. Ct. App. 2019); *Goddard v. Farmers Ins. Co. of Oregon*, 179 P.3d 645, 665 (Or. 2008). But it's worse here. Bloodworth was in charge of all claims handling for Nevada and testified that everything was done properly, so the jury could reasonably infer that USAA's conduct was part of a pattern.

USAA tries to avoid this reality (at 57) on the theory that head injuries are "particularly difficult to evaluate." But that ignores that USAA credited Tim's many symptoms and that they persisted nearly two years after the crash. But even if it were true, that would only mean that USAA should have investigated the claim just as the duty of good faith requires. And it does nothing to explain why USAA sat on its hands after the severity was confirmed and persisted through four years of litigation.

USAA also contends (at 55) that this case involves "financial damages" because the "harm arose in the economic realm." But to determine the nature of harm, courts look not just to how the injuries "arose," but also how they manifested: "Psychological harm—such as anxiety, distress, and sleeplessness—is a form of injury that satisfies the first two factors of the reprehensibility analysis." *Kaytor v. S. Ill. Hosp. Servs.*, ---N.E.3d---, 2025 WL 2792977, at *22 (Ill. App. Ct. Oct. 1, 2025) (affirming 5.5:1 ratio in whistleblower's employment-retaliation suit); *see also Campbell*, 538 U.S. at

426. That makes sense. No one would describe Tim's heightened stress, anxiety, difficulty sleeping, bitterness, and anger as "financial."

Ratio. The second due-process guidepost looks to the ratio "between harm, or potential harm, to the plaintiff and the punitive damages award." *Campbell*, 538 U.S. at 424. Although there are no "rigid benchmark[s], "[s]ingle-digit multipliers are more likely to comport with due process." *Id.* at 425. The award here, as remitted by the district court, fits comfortably within the range of permissible ratios.

1. USAA's argument proceeds from the false premise that the ratio is nine to one. While that, too, would be constitutional, USAA omits two components. First, because the gravity of the misconduct is properly measured by "the magnitude of the potential harm" if "the wrongful plan had succeeded," the ratio must account for the $940,000 that USAA blocked until the eve of trial. *TXO Prod. Corp. v. All. Res. Corp.*, 509 U.S. 443, 460 (1993). Second, the pre-judgment interest of $2.7 million must also be factored in. *See Olson v. Mid-Century Ins. Co.*, No. 86892, 2025 WL 2554820, at *7 (Nev. Sept. 4, 2025) (unpublished). The resulting ratio is thus only 5.9 to one, not nine to one.

That accords with due process. This Court has, as noted, approved greater ratios. *Supra* at 46. So has the Supreme Court and others. *See, e.g.*, *Gore*, 517 U.S. at 581 (1996) (explaining that *TXO* approved a 10:1 ratio once potential harm was accounted for); *Mansfield v. Horner*, 443 S.W.3d 627, 645 (Mo. Ct. App. 2014) (11:1 ratio permissible

in case with "$8 million of non-economic damages"); *Campbell v. State Farm*, 98 P.3d 409, 418 (Utah 2004) (on remand, approving 9:1 ratio in bad-faith case limited to "emotional distress" damages).

2. USAA offers three faulty arguments why a one-to-one ratio is required. First, it points (at 59) to statements in the case law that "a ratio of 1:1 may be the most the Constitution will permit." The key is "may." "[T]he precise award in each case must be based upon the facts and circumstances of the defendant's conduct and the harm to the plaintiff." *Cote v. Philip Morris USA, Inc.*, 985 F.3d 840, 849 (11th Cir. 2021). And as USAA acknowledges (at 59), the more egregious the conduct, the more justifiable a higher ratio.

Next, USAA asserts (at 60-61) that the compensatory damages amount to merely "outrage and humiliation" and thus already contain a punitive element. That belittling of Tim's injuries has no basis in the record. And the jury instructions did not even mention "outrage" or "humiliation." 6-AA1383; *see also, e.g.*, *Boyd v. Goffoli*, 608 S.E.2d 169, 183 (2004) (rejecting that emotional distress damages necessarily contain a punitive element); *Century Sur. v. Polisso*, 43 Cal.Rptr.3d 468, 500 (Cal. Ct. App. 2006) (same). Equally telling, the jury departed downward from counsel's recommendation in awarding compensatory damages but upward in awarding punitives. That shows that the jury appropriately saved punishment for the punitive phase.

Finally, USAA compares (at 61) this case to *UnitedHealthCare Insurance Co. v. Fremont Emergency Services (Mandavia), Ltd*, 141 Nev. Adv. Op. 29, 570 P.3d 107 (2025). This Court reduced the award in *Fremont*—a business-versus-business case—because of "the economic nature of the harm and the [equivalent] sophistication of the parties." *Id.* at 127. Neither factor is present here. This Court's comment that reduction was warranted because the award in *Fremont* was "based in part on trial evidence about United's relationship with its insureds and United's conduct during litigation" also does not apply. *Id.* Focus on "insureds" was improper in that case because the plaintiff there was a business. And the "conduct during litigation" in *Fremont* didn't refer to speculative complaints about the impact of how questions were phrased (as here) but to a disputed fact issue about the destruction of evidence and a related spoliation instruction. *Id.* at 127, 124.

Comparable penalties. The final guidepost looks to "civil penalties authorized or imposed in comparable cases." *Gore*, 517 U.S. at 575. "[V]iolation[s] of common law tort duties," however, "do not lend themselves to a comparison with statutory penalties," *Cont'l Trend Res., Inc. v. OXY USA, Inc.*, 101 F.3d 634, 641 (10th Cir. 1996), which are often much lower, *see Gore*, 517 U.S. at 583. Recognizing this, courts "accord[] less weight" to this factor. *Ingham v. Johnson & Johnson*, 608 S.W.3d 663, 724 (Mo.

App. 2020); *Polisso*, 43 Cal.Rptr.3d at 501 (statutory penalty "not particularly useful" in bad-faith case).

At any rate, the statutory exception to the punitive-damages cap for bad faith claims serves the equivalent function: ensuring "reasonable notice." *OXY*, 101 F.3d at 641. The exception tells insurers that, once compensatory damages rise to $100,000, they are still subject to punitive damages awards of greater than three times. NRS 42.005. That makes "clear [] that the Nevada legislature considers insurance bad faith a serious matter." *Merrick.*, 594 F. Supp. 2d at 1191.

B. The verdict was not based on impermissible extraterritorial considerations.

1. There is no bar against "consideration[]" of a defendant's conduct outside state lines. USAA Br. at 64. "To the contrary … such evidence may be relevant to the determination of the degree of reprehensibility." *Gore*, 517 U.S. at 574 n.21; *TXO*, 509 U.S. at 462 n.28. The only thing that a state may not do is "impose economic sanctions on violators of its laws with the intent of changing the tortfeasors' lawful conduct in other States." *Id.* at 572. This "federalism"-based rule ensures "the flexibility for [each] state to have whatever policy it chooses" on punishment. *White v. Ford Motor Co.*, 312 F.3d 998, 1013 (9th Cir. 2002).

Neither counsel nor the jury crossed this line. As USAA acknowledges (at 66), counsel told the jury that what he called a "small to moderate" punitive-damages award

would "send a message to USAA here in Nevada very locally." 8-AA1717. The jury's award falls into the range of what counsel said would be a "small" award in view of USAA's size. 8-AA1719 (telling the jury that a "moderate" award would be "$500 million"). And counsel specifically told the jury that, if it awarded "$100 million," then USAA would create a "report" to acknowledge that it "did this, you know, *in Nevada*." 8-AA1719 (emphasis added). That's what the jury awarded (and counsel recommended less, AA1720). And the jury did so after being instructed not to punish USAA "for conduct injuring others who are not parties to this litigation." 8-AA1712.[11]

White (USAA's only case) is inapt. The plaintiffs there focused on what was happening "across the country," successfully fought off a proposed instruction about extraterritoriality, and then persuaded the jury, on $2,305,435 of compensatory damages, to award $150,884,840 in punitives, where the $884,840 "represented one dollar for each Ford vehicle of this type sold in North America." 312 F.3d at 1015; *see also id.* at 1029 (Graber, J., concurring in part and dissenting in part).

[11] The alignment of the jury's award with what counsel put in the range of "small" awards also disproves USAA's brief claim (at 51-52) that the punitive damages award was tainted by passion and prejudice.

C. The punitive damages award is supported by substantial evidence.

After mounting two constitutional attacks, USAA tries at the tail end of its brief to challenge the sufficiency of the evidence to even award punitive damages in the first place. Here, too, USAA cannot overcome the deferential standard of review.

1. A plaintiff in a bad-faith case may recover punitive damages if the defendant is "guilty of oppression." NRS 42.005(1). An insurer engages in oppressive conduct when it evinces "a conscious disregard for the rights of others which constitutes an act of subjecting plaintiffs to cruel and unjust hardship." *United Fire Ins. Co. v. McClelland*, 105 Nev. 504, 512-13, 780 P.2d 193, 198 (1989).

USAA's reprehensible conduct, recounted above, easily satisfies this standard. After doing nothing for months, when forced to take action by the demand letter, USAA "immediately" denied Tim's claim for the policy limits based on a cold paper record without any "independent inquiry." *Ainsworth*, 104 Nev. at 591, 763 P.2d at 675. And it did so knowing Tim's "unqualified and urgent need for the benefits," *id.*, including Tim's "medical history and the probable health complications"—inability to continue "necessary" cognitive therapy—"he could face in the event of a denial," *Eskew*, 2024 WL 3665443, at *2. And then it adhered to its lowball offer even as Tim corroborated his need for future medical care, and as more evidence of the severity of Tim's injuries came in through litigation. The trial court did not abuse its discretion in

concluding that the jury had sufficient evidence to find this exhibited a conscious disregard for Tim's rights and subjected Tim to unjust hardship.

2. USAA's contention otherwise is once again at war with the standard of review. Its lead argument (at 67) is that its own insurance expert said that its conduct "was very reasonable." 7-AA1509. The jury obviously rejected that. Nor does it matter that Tim's expert did not use the word "oppression." He testified that the only explanation for USAA's conduct was "trying to save money." 5-AA1023-24. Regardless, there was abundant other evidence demonstrating USAA was not merely "negligent." USAA Br. at 69.

USAA also offers (at 69) a faulty comparison to *Shade Foods, Inc. v. Innovative Prods.*, 93.Cal.Rptr.2d 364 (Cal. Ct. App. 2000). That case involved two sophisticated parties in a business dispute and "purely economic" damages. *Id.* at 395, 408. Even assuming *Shade Foods* comports with Nevada law, neither factor is present here.

V. The district court properly awarded pre-judgment interest.

A plaintiff is entitled to pre-judgment interest on all compensatory damages except amounts "representing future damages." NRS 17.130(2). When a jury returns a general verdict, the district court must examine whether there was anything "in the record to suggest that future damages were include in the award." *Hazelwood v. Harrah's*, 109 Nev. 1005, 1010-11, 862 P.2d 1189, 1193 (1993). Because the "jury is

presumed to have based its verdict solely on the evidence presented," if the "record does not indicate reference to future damages in evidence," an award of pre-judgment interest is proper. *Id.* (reversing denial of prejudgment interest where judge inferred that past emotional distress would persist post-judgment but there was no testimony to that effect). This Court reviews the award of pre-judgment interest for abuse of discretion. *See, e.g.*, *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 675, 137 P.3d 1110, 1130 (2006).

The record here concerned solely the effect that USAA had on Tim in the past, making the district court's prejudgment-interest award proper.[12] No one—not Tim, not anyone else—testified that Tim would suffer future injuries from USAA's conduct. *See Farmers Home Mut. Ins. v. Fiscus*, 102 Nev. 371, 375, 725 P.2d 234, 236 (1986) (prejudgment interest proper in bad-faith case where all testimony was about past emotional distress). Tim made this point below, and USAA was unable to identify to any evidence to the contrary. 6-AA1961, 6-AA2008. It hasn't tried here, let alone shown that the district court abused its discretion in evaluating the evidence.

Instead, USAA argues (at 74) that the prejudgment interest award is improper because the verdict form referenced future damages. But that does not change that there was no evidence of future damages, which is what matters. Indeed, prejudgment interest is warranted even when counsel argues in closing that the plaintiff's "life would forever

[12] Tim does not object to a variable rate for post-judgment interest.

be different"—something that did not happen here—if there's no evidence to support that claim. *Bongiovi*, 122 Nev. at 580, 138 P.3d at 450.

USAA also asserts (at 73) that prejudgment interest should run from the date USAA was added as a defendant rather than the date it intervened (a difference of $240,000). But the intervention motion functioned just like the "summons and complaint" contemplated in NRS 17.130(2). Bloodworth even testified that USAA intervened because "[i]f we didn't step into the shoes of the at fault driver, we were risking a default judgment and that would have been - it could have been used to collect money on the UI[M] side," i.e., against USAA. 4-AA930.

CONCLUSION

This Court should affirm the judgment below.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word version 16.37 in 14-point Adobe Garamond font.

2. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 13,979 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that if it does not, I may be subject to sanctions.

Dated: February 13, 2026

/s/ Matthew L. Sharp
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CERTIFICATE OF SERVICE

Under NRAP 25(b), I certify that on February 13, 2026, I submitted the foregoing brief for filing via the Nevada Supreme Court's eFlex electronic filing system. Electronic notification will be sent to the following counsel:

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