This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1385

Twin City Underwriters, Inc.,
Respondent,

vs.

Heppner Insurance Agency, LLC, et al.,
Appellants.

Filed September 3, 2024
Affirmed in part and reversed in part
Segal, Chief Judge

Ramsey County District Court
File No. 62-CV-19-4420

Michael D. O'Neill, Thomas C. Atmore, Martin & Squires, P.A., St. Paul, Minnesota (for respondent)

Matthew J. Schaap, Cassandra C. Wolfgram, Dougherty, Molenda, Solfest, Hills & Bauer P.A., Apple Valley, Minnesota (for appellants)

Considered and decided by Ede, Presiding Judge; Segal, Chief Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

This is an appeal from judgment following a jury verdict in favor of respondent on its claims against one or more of the appellants for breach of contract, breach of the covenant of good faith and fair dealing, theft by swindle, and an award of attorney fees to

respondent. Appellants challenge the district court's (1) denial of judgment as a matter of law (JMOL), (2) rulings on the admissibility of certain evidence and witness testimony, and (3) denial of appellants' motion for remittitur or a new trial. We affirm in part and reverse in part.

FACTS

This dispute arises out of the breakdown of a sales representative relationship between respondent Twin City Underwriters, Inc. (TCU), and appellant Laurel Heppner.[1] TCU is an insurance brokerage authorized by insurance carriers to sell health-insurance policies. Laurel was initially an employee-agent of TCU. In 2009, Laurel entered into an independent contractor agreement with TCU to sell insurance policies as a subagent of TCU. She subsequently entered into additional subagent contracts with TCU up through 2017. In April 2018, however, her 2017 contract was terminated.[2]

After the 2017 contract was terminated, TCU and Laurel engaged in negotiations for a new subagent contract. Laurel was "anxious" to sign a new contract because, due to changes in federal law, the 2018 enrollment period was going to be a "big year" in Medicare insurance sales. The options proposed by Laurel included a term for "[m]onthly payment to TCU of 10% for full book of business for 5 years," but the parties were unable to reach an agreement concerning the purchase of Laurel's "book of business" from TCU.

[1] Because both Laurel Heppner and her husband, appellant Ronald Heppner, are parties to this suit, for ease of reference we will refer to them by their first names.

[2] The parties dispute who was responsible for terminating the 2017 contract. But there is no dispute that the 2017 contract was terminated, and which party terminated that contract is not material to any claims or arguments on appeal.

Instead, the parties entered into a new contract under which Laurel would continue to act as a subagent for TCU through her business, appellant Heppner Insurance Agency, LLC (HIA).[3] The new contract was more financially favorable to Laurel than prior contracts but maintained the requirement that she sell insurance policies exclusively for TCU. The contract did not contain a sales quota or requirement that Laurel actively attempt to sell insurance policies.

In June 2018, Laurel's husband, Ronald, created his own insurance business, appellant H&HIG, LLC. H&HIG stands for "Heppner & Heppner Insurance Group." Ronald had no prior experience selling insurance and did not obtain a license to sell insurance until August 2018. But he sold numerous insurance policies during the 2018 enrollment period. By contrast, Laurel sold very few insurance policies on behalf of TCU during the 2018 enrollment period. She testified that she chose just to engage in the educational part of the business by presenting at informational seminars. The evidence reflects, however, that Laurel sent invitations for these seminars to the people who she had previously sold policies through TCU. And the only insurance agents present at the seminars were Ronald and his H&HIG associates. The evidence also reflects that H&HIG's primary sales method was to sell policies at the informational seminars where Laurel was a presenter.

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[3] The agreement and attachments have several signature pages with different dates; the signature page for the agreement itself lists July 6, 2018, as the date of signature, but the signature page for Addendum B lists May 24, 2018, as the signature date.

In February 2019, Blue Cross and Blue Shield of Minnesota notified Laurel and TCU that Laurel's appointment as an agent with Blue Cross was being terminated because she had "engaged in fraudulent and dishonest practices." The termination letter stated that Blue Cross was "in receipt of member applications which contain [Protected Health Information] and [the] signature of another Blue Cross agent"—Ronald. The members had informed Blue Cross that they had not met with that agent, but rather met with Laurel. Blue Cross also terminated Ronald's appointment as an agent with the company. The termination letter to Ronald advised that Blue Cross had member applications with his information and signature, but that the members had informed Blue Cross that they did not recognize his name and did not meet with him.[4] TCU requested a response from Laurel concerning the termination from Blue Cross, but she did not provide one. Consequently, TCU terminated the subagent contract effective March 1, 2019.

In May 2019, TCU commenced this action. Its amended complaint asserted claims against Laurel and her company—HIA—and Ronald and his company—H&HIG (collectively appellants). TCU generally alleged that Laurel and HIA stole client information and breached the subagent contract by diverting business away from TCU to Ronald and H&HIG, and that Ronald and H&HIG were aware of the subagent contract and

[4] Laurel and Ronald were ultimately reinstated with Blue Cross, but it is unclear exactly when that occurred. When asked about the decision to reinstate them, a representative from Blue Cross testified that she did not "think anything changed" about the situation, but indicated that Blue Cross was "willing to partner" because "[p]eople make mistakes all the time, so [Blue Cross] always tr[ies] to give second chances when [it has] had relationships and [has not] had further issues."

aided in this misconduct. Laurel and HIA asserted counterclaims, including a claim for breach of the subagent contract by TCU.

Following extensive discovery and delays related to the COVID-19 pandemic, the case proceeded to a jury trial in February 2023. Prior to trial, appellants filed a motion in limine to exclude certain evidence, including a number of summary exhibits offered by TCU purporting to identify Laurel's TCU clients who became clients of H&HIG. Appellants asserted that they had never been provided with a list of TCU's clients, and therefore could not "determine the truth or falsity of [the] document." TCU responded that the information was contained in Laurel's commission reports that were produced in discovery. Appellants also moved to exclude evidence and testimony related to TCU's request for attorney fees. The district court denied both motions but ordered that TCU's "trial attorneys shall not be witnesses at trial."

Six claims were submitted to the jury, including the counterclaim for breach of contract brought by Laurel and HIA against TCU. The claims brought by TCU that were submitted to the jury included: (1) breach of contract (against Laurel and HIA); (2) breach of the covenant of good faith and fair dealing (against Laurel and HIA); (3) theft by swindle (against Laurel, HIA, and Ronald[5]); (4) fraud (against Laurel and HIA); and (5) interference with contractual relations (against Ronald and H&HIG). The jury found in favor of TCU on its claims for breach of contract, breach of the covenant of good faith and fair dealing, theft by swindle, and interference with contractual relations. The jury also

[5] The claim as to Ronald was whether he had aided and abetted the alleged theft by swindle.

found in favor of TCU on Laurel and HIA's counterclaim for breach of contract, but determined that Laurel and HIA did not engage in fraud. The jury determined that TCU suffered $202,000 in damages. It attributed $55,000 of those damages to Laurel and $147,000 to H&HIG; the jury found zero dollars of damages were attributable to Ronald and HIA. Finally, the jury awarded $175,000 in attorney fees to TCU, all attributed to Laurel.

Appellants filed posttrial motions for JMOL, remittitur, or a new trial. Appellants asserted that TCU's claims against HIA and Ronald failed as a matter of law because the jury did not attribute any damages to HIA or Ronald, and therefore HIA and Ronald were entitled to judgment against TCU. Appellants also argued that the evidence was insufficient to support the determination that Laurel stole clients from TCU, and that remittitur or a new trial was necessary because the damages and attorney fees awarded were excessive and unsupported by the record. The district court denied the posttrial motions, but issued an amended judgment clarifying that TCU was "not entitled to judgment" against Ronald or HIA. The district court provided no memorandum with its order explaining the reasons for the denial.

DECISION

I. The district court did not err in denying appellants' motion for JMOL, except we reverse on the narrow issue of the entry of judgment to clarify that HIA and Ronald are entitled to judgment in their favor.

If a party moves for JMOL after a jury returns a verdict, the district court may "(1) allow the judgment to stand, (2) order a new trial, or (3) direct entry of judgment as a matter of law." Minn. R. Civ. P. 50.02. This court reviews the denial of a motion for

JMOL de novo and views the evidence in the light most favorable to the nonmoving party. *Vermillion State Bank v. Tennis Sanitation, LLC*, 969 N.W.2d 610, 618 (Minn. 2022). "We affirm the denial of a motion for judgment as a matter of law unless no reasonable theory supports the verdict." *Id.* at 618-19. "This means that to reverse, the evidence must be so overwhelming on one side that reasonable minds cannot differ as to the proper outcome." *Id.* at 619 (quotations omitted).

Appellants make two arguments relating to their JMOL motion. First, HIA and Ronald argue that they are entitled to JMOL in their favor on TCU's claims against the two of them because the jury attributed zero dollars in damages to them on those claims. Ronald and HIA argue that TCU thus failed to prove a necessary element of its claims against the two of them—damages. Second, Laurel and H&HIG argue that they are entitled to JMOL in their favor because TCU failed to prove two essential elements of its theft-by-swindle claim: (1) that Laurel stole personal property, and (2) that she did so wrongfully and surreptitiously. We address each argument in turn.

A. HIA and Ronald

HIA and Ronald argue that the district court erred in denying their motion for JMOL because TCU failed to prove damages. In the JMOL motion, appellants sought an amendment to the district court's order for judgment to add a new fifth conclusion of law stating: "Plaintiff [TCU] is not entitled to judgment against Defendants HIA or Ronald Heppner. Judgment is entered in favor of Defendants HIA and Ronald Heppner." The initial conclusions of law contained no reference to HIA or Ronald. In its amended order, the district court added the first sentence requested by appellants—that "TCU is not entitled

to judgment against" HIA or Ronald; but not the second sentence—that "judgment is entered in favor of" HIA and Ronald. Appellants now seek a determination that the district court erred by not including the second sentence in its order for judgment.

In its complaint, TCU asserted claims against HIA for breach of contract and breach of the covenant of good faith and fair dealing. As to Ronald, TCU alleged claims for tortious interference with contract and aiding and abetting theft by swindle (referring to the alleged "theft" of TCU's personal property—its list of clients). In its answers on the special-verdict form, the jury answered "yes" to the questions asking whether HIA and Ronald committed the acts alleged in the causes of action asserted against them and also answered "yes" to the questions asking whether TCU suffered damages as a result. But when the jury was asked to apportion damages among the four defendants, the jury wrote zero in answering questions about the amount of damages "attributable" to HIA and Ronald. HIA and Ronald argue that without an award of damages, TCU failed to prove an essential element of its claims against them. They claim that the district court therefore erred by failing to amend the order for judgment to include the sentence stating that they are entitled to judgment in their favor.

Here, it is undisputed that damages were an essential element of TCU's claims against HIA and Ronald. *See Sysdyne Corp. v. Rousslang*, 860 N.W.2d 347, 351 (Minn. 2015) (noting that damages are one of the five elements of a tortious-interference-with-contract claim); *Sneve v. First Nat'l Bank & Tr. Co. of Minneapolis*, 261 N.W. 700, 700 (Minn. 1935) (rejecting a claim for conversion based on lack of damages because "[d]amage is an essential element to every cause of action"); *Evelyn I. Rechtzigel Tr. v.*

Fid. Nat'l Title Ins. Co. of N.Y., 748 N.W.2d 312, 316 (Minn. App. 2008) (stating "without damages, a breach-of-contract action fails as a matter of law"), *rev. denied* (Minn. July 15, 2008); *see also Gieseke ex rel. Diversified Water Div., Inc. v. IDCA, Inc.*, 844 N.W.2d 210, 220-23 (Minn. 2014) (determining that the district court erred in denying a party's posttrial motion for JMOL because the plaintiff had failed to prove damages). The district court recognized this in its amended order for judgment by amending its conclusions of law to specify that TCU was not entitled to judgment on its claims against HIA and Ronald. But the district court also denied appellants' motion for JMOL and did not specify that HIA and Ronald were entitled to judgment in their favor. While this seems to be a dispute over semantics, we nevertheless reverse the district court's denial of the JMOL motion on this one narrow issue to make clear that judgment is entered in favor of HIA and Ronald.[6]

B. Laurel and H&HIG

Next, Laurel and H&HIG argue that "TCU failed to prove Laurel Heppner stole TCU's personal property wrongfully and surreptitiously, which were essential elements of TCU's claim of theft by swindle, entitling Laurel Heppner and H&HIG to judgment in their favor against TCU." As stated above, to reverse the denial of a motion for JMOL following a jury verdict, "the evidence must be so overwhelming on one side that

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[6] In so ruling, however, we express no opinion on the question of whether either HIA or Ronald would qualify as a "prevailing party" for the purpose of seeking to tax litigation costs. Appellants separately appealed the district court's award of costs and disbursements, but this court dismissed the appeal as premature because the district court had not entered judgment on the award. *Twin City Underwriters v. Heppner Ins. Agency, LLC*, No. A24-0074 (Minn. App. Jan. 19, 2024) (order). Issues relating to costs and disbursements are therefore not presently before this court.

reasonable minds cannot differ as to the proper outcome." *Vermillion State Bank*, 969 N.W.2d at 619 (quotations omitted).

At the outset, we note that TCU did not assert a theft-by-swindle claim against H&HIG. TCU asserted a claim for aiding and abetting theft by swindle against Ronald, but not against H&HIG. Rather, H&HIG's liability stems from the jury's determination that H&HIG interfered with the contractual relations between TCU and Laurel or HIA, and that the interference damaged TCU. This determination is not dependent on the finding that Laurel stole personal property from TCU, and we thus reject H&HIG's argument for relief.

As to Laurel, she cites to testimony by TCU's owner as support for her argument. At trial, TCU's owner was asked about TCU's position toward the disputed clients in 2018. The owner agreed that TCU was not trying to go after the clients and that it would have been a problem if another TCU agent had started calling the clients. Laurel maintains that this is proof that the clients belonged to her, not TCU.

But TCU's owner also testified that Laurel "stole clients of TCU" and "stole them without reimbursing, even though at one point she had offered to set a value." And, when Laurel was engaged in negotiations for a new subagent contract following the termination of her 2017 contract, there is evidence that she made an offer to TCU to buy her "full book of business" from TCU by making payments to TCU over five years. In addition, prior to the termination of the subagent contract, Laurel was required to sell insurance exclusively for TCU. There is also evidence that Laurel used TCU's customer relationship management software, HighRise, to send informational mailings to clients about the need

to sign up for new insurance policies during the 2018 enrollment period. From this evidence, the jury could, and apparently did, infer that Laurel herself understood that the list of clients—the "book of business"—belonged to TCU and that she had misappropriated TCU's personal property.

Laurel's argument that she did not misappropriate client information through wrongful actions appears to be premised on her assertion that she was not involved in H&HIG during the 2018 enrollment period. The evidence presented at trial, however, supports the opposite inference—that Laurel used the information she obtained through her contractual relationship with TCU to notify clients of educational seminars and that, at those seminars, business was diverted to H&HIG. This is supported by the termination letters from Blue Cross to the Heppners, in which Blue Cross advised Laurel and Ronald that they were being terminated as agents because Blue Cross members complained that they met with Laurel and believed she was the agent on their insurance policies, later discovering that Ronald was the listed agent despite never meeting with him.

In addition, there is undisputed evidence that Laurel sold a minimal number of policies on behalf of TCU during a watershed year for the industry, while at the same time her husband, who had no prior insurance sales experience, sold numerous policies. There is also evidence that these sales were at the seminars where Laurel invited clients and presented, and where H&HIG was the sole insurance agent. In addition, the bulk of H&HIG's sales were to clients to whom Laurel had previously sold policies for TCU. This evidence supports the inference that the Heppners were engaged in a scheme to sell insurance while circumventing TCU. Because there is evidence in the record to support

the jury's verdict, and there is not overwhelming evidence to the contrary, the district court did not err in denying Laurel's motion for JMOL.

II. The district court did not abuse its discretion in its evidentiary rulings.

Appellate courts "review evidentiary rulings of the district court, including the admission of expert testimony, for an abuse of discretion." *City of Moorhead v. Red River Valley Coop. Power Ass'n*, 830 N.W.2d 32, 39 (Minn. 2013). Even if a party demonstrates that the district court erred in admitting evidence, such an error "will only compel a new trial if it results in prejudicial error to the complaining party." *George v. Est. of Baker*, 724 N.W.2d 1, 9 (Minn. 2006). "An evidentiary error is prejudicial if it might reasonably have influenced the jury and changed the result of the trial." *Kedrowski v. Lycoming Engines*, 933 N.W.2d 45, 62 (Minn. 2019) (quotation omitted).

Appellants argue that the district court erred in admitting: (a) summary exhibits created by TCU using a "HighRise list" that was purportedly never disclosed to appellants; (b) evidence relating to claimed damages for overrides, administrative fees, and overpayments to Laurel; (c) evidence concerning lost profits; and (d) testimony from an attorney at the firm representing TCU regarding the claim for attorney fees.

A. The "HighRise list"

Appellants argue that the district court erred in denying their motion in limine to exclude TCU's proposed trial exhibits 46-54 because they were created based on a "HighRise list" that was never disclosed by TCU. Exhibit 46 is a graph showing the number of bills and commissions collected by H&HIG between 2018 and 2020 from former TCU clients; and exhibits 47-54 purport to list clients of TCU that became clients

of H&HIG. TCU sought to admit, and the district court received, the exhibits as summary exhibits pursuant to rule 1006 of the Minnesota Rules of Evidence, which provides for "voluminous" records to be presented "in the form of a chart, summary, or calculation." Minn. R. Evid. 1006. TCU maintains that there is no "HighRise list" and that the summary exhibits were created from data in the monthly summaries of Laurel's commissions, which summaries were disclosed to appellants during discovery.

The parties engaged in a lengthy discussion before the district court about what was meant by the "HighRise list" and whether the information summarized in the challenged exhibits was disclosed to appellants. According to testimony provided by TCU's owner, HighRise is a software system utilized by TCU for records management and the information in the system is derived from an agent's commission sales. The phrase "HighRise list" was used generally to refer to the information in HighRise and was not a reference to a specific list. TCU explained to the district court that the summary information contained in the challenged exhibits was the result of comparing information about the clients Laurel had while working for TCU with the client information disclosed in discovery by H&HIG. The record supports TCU's explanation. Appellants have failed to identify any specific information contained in the summary exhibits that was not contained in information previously produced by TCU or disclosed by appellants to TCU. We thus discern no abuse of discretion by the district court in its denial of appellants' motion in limine to exclude these exhibits.

B. Monetary Damages

Appellants next argue that "TCU forced appellants to proceed to trial on new allegations of damages," alleged for the first time at trial. Appellants contend that the only evidence disclosed during discovery related to allegations of "lost clients," but that TCU alleged, at trial, "new damages" for "overrides," administrative fees, and overpayments to Laurel. In support of their claim, appellants cite to trial testimony by TCU's owner stating that TCU overpaid Laurel and that TCU "would have gotten at least $500,000" for overrides but for appellants' actions.

The record contradicts appellants' argument. In the deposition of TCU's owner taken almost two years before trial, TCU's owner provided almost identical damages testimony that appellants argue was asserted for the first time at trial. The owner testified in his deposition that TCU "actually overpaid" Laurel because TCU "continued to pay her when [it] should not have" due to the breach, and that TCU's damages included "$500,000 from the override that [TCU] would have received." And in TCU's supplemental answer to interrogatories, which was served on appellants' attorneys in August 2020, over two years before the February 2023 start of trial, TCU advised: "TCU also figures $510,000 in losses for business written by the 17 sub agents [Laurel] recruited averaging 200 applications per year times $150 override or service fees."[7] Accordingly, the claim for damages was not new, and we discern no error in the district court's admission of evidence relating to TCU's claim for damages.

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[7] The supplemental answer was filed with the court by TCU in an attorney affidavit submitted with its memorandum of law opposing appellants' motion in limine prior to trial.

C. Lost Profits

Appellants argue that they "were prejudiced by admission of allegations of lost profits." "A plaintiff seeking damages for lost profits must prove the amount of such damages only to a reasonable probability, and the law does not require mathematical precision in proving lost profits." *Lagoon Partners, LLC v. Silver Cinemas Acquisition Co.*, 999 N.W.2d 113, 121 (Minn. App. 2023) (quotations omitted), *rev. denied* (Minn. Mar. 19, 2024). "Damages for lost profits may be awarded even if the amount of lost profits depends on future events." *Id.*

Appellants filed a motion in limine to exclude evidence of lost profits. Appellants asserted in its motion to the district court that "TCU failed to produce any evidence supporting its damages" and that TCU was "at maximum capacity in 2018 and could not have taken on additional clients," so "even assuming [appellants] took some of TCU's clients . . . TCU could not have had any lost profits because it was incapable of providing those clients services." Appellants do not repeat this argument on appeal. Instead, appellants argue that the lost-profits evidence was improperly presented to the jury because the subagent contract contained a 90-day noncompete clause, after which Laurel could solicit clients from TCU, and therefore TCU could not have incurred damages for lost profits after that period expired.

We generally do not consider arguments asserted for the first time on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that an appellate court "must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it" (quotation omitted)). But

even if we were to consider the argument, we would reach the same conclusion. TCU's damages claim was not premised only on future losses. TCU consistently maintained that it suffered damages from business diverted by Laurel before the termination of her contract. As such, we discern no abuse of discretion in the district court's denial of appellants' motion to exclude lost-profits evidence.

D. Attorney Fees

Appellants' final evidentiary challenge relates to their claim that TCU should not have been allowed to present testimony by a lawyer from the law firm of TCU's trial attorneys concerning TCU's contractual claim for attorney fees. They maintain that TCU never provided an expert-witness disclosure and that the testimony violated the district court's pretrial order directing that TCU's "trial attorneys shall not be witnesses at trial" on the issue of attorney fees. At trial, TCU called John Martin to testify about the reasonableness of the claimed attorney fees. Martin is an attorney at the firm that represented TCU and his name appears on a number of the filings in this case, including the summons and complaint and the signature block of TCU's motions in limine. But Martin did not actually try the case to the jury.

Appellants seem to argue that, because Martin's name appears on filings for this case, he was a trial attorney and was therefore prohibited from testifying based on the district court's pretrial ruling. This is apparently how the district court interpreted its ruling and such an interpretation appears reasonable because Martin did not try the case. He was also identified on TCU's pretrial witness list as a witness who may testify "as to attorney's fees and costs." And because Martin was not "retained or specifically employed to provide

expert testimony in the case," he was not required to provide a written report under Minn. R. Civ. P. 26.01(b)(2). The district court thus acted within its discretion in allowing Martin to testify on the issue of attorney fees.

III. The district court did not abuse its discretion in summarily denying appellants' motion for remittitur or a new trial.

Appellants argue that the district court abused its discretion by summarily denying their posttrial motions for remittitur or a new trial. The district court has wide discretion "in determining if damages are excessive and whether the cure is a remittitur or a new trial." *Hanson v. Chicago, Rock Island & Pac. R.R. Co.*, 345 N.W.2d 736, 739 (Minn. 1984).

"A motion for remittitur requires that the district court consider all of the evidence and determine whether the verdict is within the bounds of the highest sustainable award under the evidence." *Border St. Bank of Greenbush v. Bagley Livestock Exchange, Inc.*, 690 N.W.2d 326, 336 (Minn. App. 2004) (quotation omitted), *rev. denied* (Minn. Feb. 23, 2005). The purpose of remittitur is "to avoid the delay and expense of an appeal or a new trial." *Jangula v. Klocek*, 170 N.W.2d 587, 593 (Minn. 1969) (quotation omitted). "To warrant overturning a verdict on appeal, the damages must so greatly exceed adequate compensation as to be accounted for on no other basis than that of passion or prejudice." *Border St. Bank*, 690 N.W.2d at 336 (quotation omitted).

Here, the district court denied the posttrial motions for remittitur of the damages and award of attorney fees without providing an explanation of its decision. In *Myers v. Hearth Technologies, Inc.*, this court held that "the trial court's failure to explain its reasons for its

decision on the motion for new trial on damages or for remittitur does not require us to alter our standard of review or remand." 621 N.W.2d 787, 793 (Minn. App. 2001), *rev. denied* (Minn. Mar. 13, 2001). This court affirmed the denial of the motion despite the lack of findings or analysis to support the denial. *Id.* at 794. We explained that, ultimately, "[t]he test for setting aside a verdict as excessive by the trial court is whether it shocks the conscience." *Id.*

A. General Damages

Here, the jury's $202,000 damages award does not shock the conscience. Appellants argue that TCU was entitled to a maximum of $34,548.15 in damages, but that figure appears to be based on a very narrow calculation of lost profits from former TCU clients who purchased insurance from H&HIG in 2018 and 2019. As TCU notes, the claim for damages presented at trial went beyond merely the percentage of a sale TCU would have received had Laurel sold insurance through TCU.

As discussed above, TCU claimed that it suffered damages in the form of overpayments made to Laurel and the loss of override fees. At trial, Ronald testified that H&HIG received $318,000 in overrides from one insurance company in 2018. TCU's owner explicitly referenced that testimony and figure when testifying that TCU "would have gotten at least $500,000" for overrides in 2018. TCU also claimed to have overpaid Laurel by more than $280,000 between June 2018 and April 2019. Based on this evidence, as well as the evidence relating to the commissions that H&HIG received from former TCU clients, the jury's award of $202,000 is within the bounds of what may be sustained under the evidence presented.

B. Attorney Fees

Appellants next argue that the district court abused its discretion in denying the motion for remittitur of the jury's award to TCU of $175,000 in attorney fees. The issue of attorney fees was submitted to the jury, which was instructed to determine the reasonableness of the requested fees. The district court specifically instructed the jury:

> To determine the reasonableness of the hours expended and the hourly rate, you must consider all relevant circumstances, including the time and labor required, the nature and difficulty of the responsibilities assumed, the amount involved, the results obtained, the fees customarily charged for similar legal services, the experience, reputation, and ability of counsel, and the fee arrangement existing between counsel and the client.

Thus, the district court instructed the jury to evaluate the reasonableness of the requested attorney fees using the factors relevant to the lodestar method. *See Milner v. Famers Ins. Exch.*, 748 N.W.2d 608, 621 (Minn. 2008) (describing the lodestar method).

Appellants argue that the award of attorney fees is unsupported by the record because Martin was unqualified to testify, and TCU failed to meet the requirement to support its request for attorney fees with expert testimony. In addressing whether expert testimony was required, both parties cite to *Suncom, LLC v. Feuling*, a nonprecedential opinion from this court.[8] No. A17-1983, 2018 WL 4201183 (Minn. App. Sept. 4, 2018). That opinion references the discretion accorded to district courts "to determine whether [a non-expert witness] could provide competent testimony on the key issue of the

[8] Nonprecedential opinions of this court may be cited for their persuasive value. Minn. R. Civ. App. 136.01, subd. 1(c).

reasonableness of [attorney] fees." *Id.* at *2. Like the district court in *Suncom*, the district court here had the discretion to decide whether Martin could provide competent testimony on the issue of reasonableness of attorney fees. And the district court seemingly determined that Martin could provide such competent testimony. Additionally, the district court properly instructed the jury on the relevant factors to consider when evaluating TCU's claim for attorney fees.

Based on the evidence presented, the jury's award of attorney fees does not shock the conscience. Appellants' argument that the fee award was unreasonable is based on the fact that TCU only recovered $55,000 in damages from Laurel and recovered significantly less than the requested amount of damages. But this ignores the close relationship between the four appellants and the fact that TCU recovered $202,000 in damages in total, which is a greater sum than the award of attorney fees. This action was premised on the allegation that Laurel and Ronald were engaged in a scheme involving their respective businesses to steal clients from TCU. Under these facts, the district court did not abuse its discretion in denying appellants' posttrial motion for remittitur of the award of attorney fees.

C. New Trial

Finally, appellants argue that the district court abused its discretion in denying their motion for a new trial because they "were prejudiced by TCU's trial by ambush and when damages were based upon lost profits, which were not recoverable." As discussed in the prior section of this opinion, we are not persuaded that TCU engaged in trial by ambush or that the district court abused its discretion in denying the motion in limine to exclude evidence of lost profits. Although the district court summarily denied the motion for a new

trial, the record as a whole demonstrates that the district court acted within its discretion in making its evidentiary rulings. The district court therefore did not abuse its discretion in denying the posttrial motion for a new trial premised on the allegedly improper admission of evidence.

Affirmed in part and reversed in part.