

**SECOND DIVISION
DOYLE, P. J.,
DAVIS, J., and SENIOR JUDGE FULLER**

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June 11, 2026

In the Court of Appeals of Georgia

A26A0733. MAG MUTUAL INSURANCE COMPANY v.
PERERA.

DOYLE, Presiding Judge.

Ganesh Perera sued Mag Mutual Insurance Company (“Mag Mutual”) for breach of contract based on its failure to defend him in a wrongful death medical malpractice action and ultimately obtained a jury verdict in excess of \$12 million, consisting of \$9,109,775 in damages and \$3,120,711 in bad-faith litigation expenses pursuant to OCGA § 13-6-11. After the trial court denied its motion for judgment notwithstanding the verdict (“JNOV”), Mag Mutual filed this appeal, in which it contends that the evidence at trial was insufficient to support (1) the damage award for Perera’s breach of contract claim and (2) the award of bad-faith litigation expenses under OCGA § 13-6-11. For the reasons that follow, we affirm.

The standard of appellate review of a trial court’s denial ... of a motion for [JNOV] is the ‘any evidence test,’ and the evidence is construed most favorably toward the party opposing the motion. ‘The question before this court is not whether the verdict and judgment of the trial court were merely authorized, but is whether a contrary judgment was demanded.’

Certain Underwriters at Lloyd’s of London v. Rucker Constr., Inc., 285 Ga. App. 844, 845-46(2) (648 SE2d 170) (2007) (citation omitted).

So viewed, the evidence at trial shows that Perera is a board-certified vascular surgeon who was employed at University Hospital in Augusta, Georgia, from 2014 to August 2020. During this period, Perera enjoyed a clean professional record, never having any performance, credentialing, or disciplinary issues and never having his professional privileges challenged, suspended, or revoked.¹ Prior to the events precipitating this lawsuit, Perera had never applied and interviewed for a professional position without receiving an offer of employment, and he had never experienced a period of prolonged unemployment.

During his employment at University Hospital, Perera was covered by a professional liability insurance policy (“the Policy”) issued by Mag Mutual and paid

¹ In 2016, Perera was named as a defendant in a medical malpractice action from which he was eventually dismissed.

for by University Medical Group, LLC. Under the Policy, Mag Mutual insured University Hospital and its employees against claims arising out of their professional activities and agreed to provide “limited regulatory defense” in the context of certain medical licensing proceedings and other professional administrative actions. Pursuant to the Policy, Mag Mutual promised “to provide [the insured] with the strongest defense we can[,]” including the payment of all expenses, costs, and reasonable attorney fees (for an attorney selected by Mag Mutual) incurred in the defense of a covered claim. Perera’s coverage under the Policy had a \$1 million per-loss limit.

In 2018, Perera treated Barbara Bowen, an 82-year-old lifelong smoker suffering from chronic obstructive pulmonary disease, atherosclerotic cardiovascular disease, and critical limb ischemia. Bowen’s conditions restricted blood flow to her feet, which caused constant pain and would lead to gangrene without intervention. Due to these conditions, Bowen had already undergone two unsuccessful procedures on her left leg from other providers prior to coming into the surgical care of Perera, who initially performed a successful below-the-knee amputation of her left leg.

Bowen eventually began suffering from pain in her right leg due to ischemia. Attempting to save her remaining foot, Perera performed a balloon angioplasty in her femoral artery to enlarge the blood vessels and increase blood flow, which surgery

proceeded without complication. Several hours later, nurses removed the sheath Perera had used to access the femoral artery, and Bowen appeared to be doing well. Later in the evening, Bowen began experiencing drops in blood pressure and pain in her groin area. Upon learning this, Perera returned to the hospital and assessed a retroperitoneum bleed, consequently ordering blood transfusions, administering intravenous fluids, bringing Bowen to the intensive care unit, and consulting with other physicians, who agreed with the course of treatment. Perera monitored Bowen all night, but despite his efforts, she passed away the next morning. Bowen's autopsy confirmed that she had suffered a retroperitoneal bleed² but revealed that she had a dead colon, which is not a survivable condition.

In October 2018, counsel for Bowen's estate emailed University Hospital a copy of an unfiled complaint against Perera for medical malpractice, expressing the family's preference for pre-suit mediation. University Hospital immediately forwarded the email, including the draft complaint and mediation request, to Mag Mutual. Mag Mutual eventually assigned the matter to Benjamin Torres, a claims analyst.³ In

² Perera testified that bleeding is a known risk associated with any surgical procedure.

³ Torres, who was barred only in Puerto Rico, placed the initials, "J.D.," after his name in his communications with Perera. Mag Mutual authorized Torres to represent to its insureds that he was an attorney. Perera testified that Torres's

November 2018, Torres emailed Perera to inform him of Mag Mutual's receipt of the draft complaint.⁴

On November 29, 2018, Bowen's estate filed the wrongful death medical malpractice complaint against Perera. On December 7, Perera was served with the complaint and discovery requests. At this point, Mag Mutual had not assigned defense counsel to Perera. Perera did not hear from Torres again until December 21, when Torres sent Perera an email in which he informed Perera that Bowen's family was interested in mediation and willing to stay the litigation for 60 days.⁵ Perera was reluctant to attend mediation because he believed it implied settlement and, thus, an admission of wrongdoing, which he denied.

On January 7, 2019, Jackie Kendinger, assistant general counsel for University Hospital, sent Torres an email in which she stated that she had received a notice of hearing in Perera's case and inquired who was representing Perera. Notwithstanding

communications with him initially gave him the impression that Torres was his attorney. However, when Perera realized that this was not the case, he repeatedly requested an attorney, which requests were ignored.

⁴ In the email, Torres relayed that University Hospital was of the opinion that there was no merit to Bowen's claim because Perera's treatment of Bowen was within the appropriate standard of care.

⁵ In this email, Torres also stated that it was Mag Mutual's position that this was "a highly defensible case."

the fact Perera's answer was now overdue, Torres responded, indicating that Mag Mutual had still not assigned Perera counsel. Alarmed, Kendinger emailed Torres's supervisor, requesting that Mag Mutual immediately assign Perera counsel and replace Torres with another claims handler.

Mag Mutual assigned Perera's file to another claims representative, Ken Warner, on January 16, 2019, five days before Perera's deadline to open the default. Meanwhile, Torres had obtained a stipulation extending Perera's deadline to answer the complaint until February 28, 2019, on the condition that Perera agreed to attend mediation in early February 2019.⁶ Without the authorization of Perera, who was still unrepresented, Torres had also scheduled a mediation for February 15, and selected a specific mediator. Despite being aware that Perera's file required immediate attention upon inheriting it, Warner did not secure defense counsel for Perera until January 28, 2019, seven days after the deadline for Perera to open what was a default, but for the stipulation. The same day, Warner had a phone conversation with Bowen's counsel in which Warner stated that Torres had "gotten too far out on his skis" by agreeing to mediation on February 15, 2019, that Perera had not authorized settlement, and that the scheduled mediation would be unproductive based on the lack

⁶ Perera testified that he did not know about the stipulation prior to its negotiation and that he had never agreed to attend mediation in early February 2019.

of settlement authority.

Bowen's counsel considered these representations to be a repudiation of the agreement on which the stipulation had been based, consequently filing a motion to set aside the stipulation and for default judgment. Although Perera's counsel eventually filed an answer and motions to open the default and to withdraw deemed admissions, on March 27, the trial court denied Perera's motions, set aside the stipulation, and entered a judgment of default against Perera, finding him liable for Bowen's death and that the only remaining issue for trial was damages.

In May 2019, Mag Mutual settled Bowen's case for \$1.7 million. Mag Mutual admitted that, had the case not gone into default, any settlement "would have been nominal, at best." Mag Mutual fully paid the settlement, despite Perera's \$1 million per-loss liability limit. Although Perera did not approve of the settlement, he acknowledged that his employer had the right to settle the case without his consent.

As required by 42 USC §§ 11131 and 11134, Mag Mutual reported the settlement to the National Practitioner Data Bank ("NPDB"), as well as the Georgia Composite Medical Board ("GCMB"), per OCGA § 33-3-27. The NPDB and GCMB maintain online repositories of information on medical malpractice payments and other adverse actions involving licensed healthcare professionals. Hospitals have

access to NPDB information for purposes of credentialing decisions, and certain information is available to the public through the GCMB. Reports of malpractice settlements to the NPDB are permanent, and records of malpractice settlements in a physician's GCMB profile remain as long as the physician is licensed in Georgia.

In reporting the Bowen settlement to the NPDB, Mag Mutual described it as due to the entry of a default judgment “as a result of [an] administrative mistake in handling of [the] claim by [the] insurer that resulted in [a] delayed filing of [a] responsive pleading on behalf of the [p]ractitioner.” The description further stated that “[t]here was no determination made of any deviation from the standard of care by [the p]ractitioner in this case or proximate causation of injury or death, all of which were contested by [the p]ractitioner.” Samuel McEwen, a former senior vice president of claims for Mag Mutual, testified that Mag Mutual provided this description with the intention of doing “the least harm” possible to Perera and to indicate that the settlement was a result of “Mag Mutual’s mistake rather than ... Perera’s failure to properly render care to the patient.” Although this description is included in the settlement report maintained by the NPDB, Perera’s physician profile with the GCMB, which is publicly available, lists only a medical malpractice settlement amount of \$1.7 million without explanatory information.

The Bowen settlement report triggered an inquiry from the GCMB. To assist Perera in responding to this inquiry, Mag Mutual assigned him a lawyer, who prepared a letter to the GCMB in which he described the circumstances of the settlement, indicated that Perera was not professionally negligent, and attributed the fact of the settlement to Mag Mutual's error in allowing the case to go into default. Following receipt of this letter, the GCMB conducted no further investigation of Perera and took no action against him.

Perera had been working at University Hospital pursuant to a contract, which expired in February 2019. Thereafter, Perera continued working there until August 2020, when he received notice that his employment would be terminated. Perera immediately began searching for a new job. He applied for some 30 full-time positions as a vascular surgeon in Georgia, North Carolina, South Carolina, Virginia, Kentucky, and Florida but was unable to secure any full-time employment offers. Job postings for positions for which Perera was otherwise eligible indicated that candidates with malpractice settlements on their records were excluded from consideration.

When it became clear that hospitals would not hire him, Perera started his own practice. In 2021, Perera's first year of private practice, his wages were \$46,588. In 2022 and 2023, Perera's second and third years of private practice, his wages were

\$100,385 and \$195,140, respectively. By comparison, Perera's salary from University Hospital had been \$579,310 in 2019 and \$561,819 in 2020, and the average base salary for a vascular surgeon employed at a hospital was approximately \$615,000 at the time of trial.

Perera sued Mag Mutual, alleging claims for breach of contract; breach of fiduciary duty; bad faith refusal to provide a defense; negligence; and gross negligence; and seeking damages, litigation expenses under OCGA § 13-6-11, and punitive damages. Mag Mutual moved to dismiss each of Perera's claims other than breach of contract, arguing that punitive damages would be unavailable for this claim. After a hearing, the trial court dismissed Perera's request for punitive damages and each of his claims except breach of contract. The case eventually proceeded to trial on Perera's remaining claims of breach of contract and litigation expenses under OCGA § 13-6-11.

At trial, Perera advanced the theory that he could have successfully defended the Bowen lawsuit at trial, but for Mag Mutual's error leading to his default. According to him, with either no reporting or minimal reporting of any malpractice payment on his record, he would have secured a full-time position after leaving University Hospital, given that he had never had any trouble finding a job before.

Perera acknowledged that he had no direct evidence that any of the prospective employers to whom he had applied rejected him on account of the Bowen settlement but explained that such employers do not normally provide or keep records of the reasoning behind their hiring decisions.

Stuart Rosenberg provided expert testimony as to Perera's past and future lost wages. Rosenberg opined that the total amount of lost wages for Perera was \$9,109,775. To arrive at this figure, Rosenberg used annual projections based on what Perera would have earned at University Hospital or another job with an equivalent salary until 2038, when Perera intended to retire. Included in this calculus were, among other things, Perera's earnings from private practice, lost appreciation on certain assets, and prejudgment interest.

In support of Perera's claim for litigation expenses, Cary Ichter, one of Perera's attorneys, testified. Perera had initially agreed to pay his counsel \$5,000 monthly plus a 33 percent contingency fee, but the terms of engagement were eventually updated to raise the contingency fee to 35 percent and eliminate the monthly payment. Ichter testified that Perera had paid \$67,710 under the original agreement. Ichter further testified that the value of the services rendered to Perera after the fee agreement was updated was roughly \$222,000, based on hourly rates of \$650 for himself, \$450 to

\$550 for other attorneys at his firm, and \$200 for paralegals. Thus, although the attorney fees were approximately \$285,000 in total, Ichter argued in closing statements that the jury should award Perera \$3,120,711 in attorney fees based on the 35 percent contingency fee and Perera's claimed damages of \$9,109,775..

After trial, the jury found in favor of Perera, awarding \$9,109,775 in damages and \$3,120,711 in litigation expenses, and the trial court entered judgment on the verdict. Mag Mutual moved for JNOV, asserting that there was no evidence that Perera's damages were contemplated by the parties at the time of contracting; there was no evidence that the Bowen settlement was the sole reason for his inability to find employment; Perera's claimed damages improperly included lost profits, and his private practice had no history of profitability; and there was no evidence of bad faith to justify the award of attorney fees under OCGA § 13-6-11.

The trial court denied the motion, finding that there was evidence that the parties contemplated Perera's damages at the time of contracting in the form of testimony that insuring a doctor's reputation and ability to continue practicing at the same level was a substantial part of insuring a doctor; the settlement resulting from Mag Mutual's breach was the cause of Perera's inability to find employment, given that he had been gainfully employed for 20 years with no professional issues but was

fired after the settlement and could not find a job despite applying to numerous positions; Perera did not improperly seek lost profits, but rather sought lost earnings, the value of which his expert witness testified to; and the award of bad-faith litigation expenses under OCGA § 13-6-11 was supported by evidence that Mag Mutual employees had actively ignored Perera's requests for an attorney. The trial court acknowledged that while there was not necessarily direct evidence of all Perera's claims, there was sufficient circumstantial evidence to support the jury verdict in all respects. Mag Mutual now appeals.

1. Mag Mutual contends that the evidence was insufficient to support Perera's damages because (a) there was no evidence his damages were contemplated in the event of a breach of the duty to defend; (b) there was no evidence that its breach of its duty to defend Perera was the sole cause of his inability to find employment; and (c) there was no evidence supporting Perera's damages based on lost profits from his private practice. These contentions lack merit.

(a) Mag Mutual contends that the evidence was insufficient to support the jury's verdict because there was no evidence that the parties to the insurance contract contemplated harm to Perera's professional reputation and livelihood as a natural and probable consequence of Mag Mutual's breach of the contract. We disagree.

“Damages recoverable for a breach of contract are such as arise naturally and according to the usual course of things from such breach and such as the parties contemplated, when the contract was made, as the probable result of its breach.” OCGA § 13-6-2. “Usually, the question of what matters reasonably may be said to have been in the contemplation of the parties when the contract was made is one of fact for jury determination.” *Walter v. Orkin Exterminating Co., Inc.*, 192 Ga. App. 621, 623(1) (385 SE2d 725) (1989). In cases in which an insurer breaches its duty to defend an insured, “the insurer [i]s not necessarily protected by the policy limits, and ... recovery beyond the policy limits [i]s a jury question depending on what damages flowed from the breach of the duty to defend.” *Khan v. Landmark Am. Ins. Co.*, 326 Ga. App. 539, 543-44(3) (757 SE2d 151) (2014) (citing *Leader Nat’l Ins. Co. v. Smith*, 177 Ga. App. 267, 279-80(2) (339 SE2d 321) (1985) and *Leader Nat’l Ins. Co. v. Kemp & Son, Inc.*, 259 Ga. 329, 330-31 (380 SE2d 458) (1989)).

There was at least some evidence introduced at trial authorizing the jury to find that the parties contemplated reputational and financial injury to an insured to be a likely consequence of a breach of the duty to defend. Perera introduced evidence that Mag Mutual advertised its professional liability insurance to physicians as instrumental in “[p]rotecting yourself and your reputation[.]” Further, McEwen, a

former senior vice president of claims for Mag Mutual, testified that protection of a physician's reputation and livelihood is a "very large component of malpractice insurance." Additionally, Warner, a Mag Mutual claims handler, testified that Mag Mutual is aware that malpractice judgments and settlements affect a physician's reputation and are matters of permanent record.

Nevertheless, Mag Mutual asserts that the language of the policy itself proves that the parties did not contemplate the damages sought by Perera because it excludes payment for certain lost earnings. This assertion is unavailing. The referenced language states that Mag Mutual includes in its defense the payment of "[a]ll reasonable expenses you incur at our request while helping us to investigate or defend a claim against you. We will reimburse you for lost earnings up to \$1,000 a day for your attendance at trial, but we will not pay for any additional lost earnings." This language presupposes that Mag Mutual has honored its duty to defend its insured and has no bearing on what the parties may have contemplated as damages in the event that Mag Mutual breached its duty to defend.

Mag Mutual also asserts that Perera's damages are unrecoverable as a matter of law because they are too remote to be a natural result of a breach of the duty to defend, citing then-Judge Boggs's full and special concurrence in *Khan*, 326 Ga. App

at 546 (Boggs, J., concurring), for the proposition that “[g]enerally, where the insured has settled with the injured party and seeks damages for the insurer’s breach of its duty to defend, the damages are limited to the amount of settlement, expenses[,] and attorney fees.” This assertion fails. In the first place, “a special concurrence is not binding precedent.” *Shoenthal v. DeKalb County Emps. Retirement System Pension Bd.*, 343 Ga. App. 27, 33 (805 SE2d 650) (2017). Moreover, the point of this concurrence was to emphasize that an insured may “seek only those damages that are *directly traceable* to [the insurer]’s breach of its duty to defend[.]” *Khan*, 326 Ga. App. at 545 (emphasis in original). Unlike the present case, in *Kahn*, the insured was not damaged beyond the amount of the settlement resulting from the insurer’s breach of its duty to defend. See *id.* Mag Mutual has cited no binding authority, and we are aware of none, for the proposition that Perera’s damages are unrecoverable as a matter of law solely because they were above and beyond the \$1.7 million settlement reached here.

(b) Mag Mutual contends that there was no evidence that its breach of its duty to defend Perera was the sole cause of Perera’s inability to find employment. We disagree.

“Remote or consequential damages are not recoverable unless they can be traced solely to the breach of contract[.]” OCGA § 13-6-8. See also *Knaack v. Henley*

Park Homeowners Ass’n, Inc., 365 Ga. App. 375, 382(2) (877 SE2d 821) (2022) (“To prove resultant damages ‘growing out of a breach of contract,’ they ‘must be such as can be traced solely to the breach.’”). “The issue of ... causation that can be traced directly to the failure to defend [is a] matter[] for jury determination.” *Khan*, 326 Ga. App. at 545(3) (quoting *Thomas v. Atlanta Cas. Co.*, 253 Ga. App. 199, 204(3)(d) (558 SE2d 432) (2001)).

There was evidence introduced at trial authorizing the jury to find that Mag Mutual’s breach of its duty to defend Perera was the sole cause of his inability to find employment. Perera testified that prior to the settlement, he had never had any trouble finding a job; and he had never experienced any significant periods of unemployment, enjoying a clean professional record with no performance, credentialing, disciplinary, or licensure issues. After the settlement, however, Perera was terminated from his position at University Hospital and rejected by approximately 30 prospective employers for positions for which he was otherwise qualified based on his experience and credentials. Additionally, Edward Burr, former general counsel for the parent organization of University Hospital, testified that “physicians do anything possible to avoid a report to the [NPDB] about ... malpractice payment information that has to be submitted ... because ... it’s going to have an adverse impact on their ability to move

to other positions, change hospitals.”

Mag Mutual argues that this circumstantial evidence is insufficient as a matter of law to show causation. However, “the question as to the sufficiency of the circumstantial evidence, and its consistency or inconsistency with alternative hypotheses, is a question for the jury.” *S. Ry. Co. v. Ga. Kraft Co.*, 258 Ga. 232, 232 (367 SE2d 539) (1988).

Mag Mutual’s reliance on *Knaack*, 365 Ga. App. at 377, 382-84, is misplaced. In *Knaack*, this Court affirmed a grant of summary judgment against a homeowner seeking contract damages based on a homeowner association’s adoption of rules that allegedly caused a buyer to terminate an agreement to purchase her house. *Id.* at 376-77, 382-84(2). The Court reasoned that mere temporal proximity between the adoption of the rules and termination of the agreement, coupled with an email exchange with the buyer’s agent in which the agent expressed a subjective belief that the rules were an impediment to the sale, constituted speculative circumstantial evidence that was insufficient to survive summary judgment. *Id.* at 382-84(2).

Here, by contrast, the circumstantial evidence introduced by Perera showed more than temporal proximity and subjective belief. Prior to the settlement, Perera had uninterrupted success in obtaining and maintaining employment, whereas

afterwards he experienced continuous failure in these endeavors. There was testimony that such settlements adversely affect a physician's employment opportunities, and there was no evidence that Perera's inability to find a job was due to anything other than the settlement. Indeed, this Court in *Knaack* recognized that "a plaintiff in a civil case can have a verdict in [his] favor supported solely by circumstantial evidence, [provided that] such evidence [is] such as to reasonably establish the theory relied upon, and to preponderate to that theory rather than to any other reasonable hypothesis." *Id.* at 383(2). Under these circumstances, the jury was authorized to conclude that Perera's inability to find a job after the settlement was not mere coincidence.

Mag Mutual's reliance on *Singleton v. Phillips*, 229 Ga. App. 286 (494 SE2d 66) (1997) is similarly misplaced. In *Singleton*, this Court reversed the trial court's denial of a motion for directed verdict on a plaintiff's claim that injuries she sustained in a car accident caused her to be denied a promotion. *Id.* at 286-88(1). Because the evidence showed that the plaintiff's injuries prevented her from completing a residency that was only "one of many factors affecting her eligibility for promotion," the Court held that the plaintiff's claim that the injuries had caused her not to receive the promotion was "purely speculative." *Id.* at 287(1).

Here, however, there was no evidence of factors other than the settlement hindering Perera's job prospects. Moreover, while the plaintiff in *Singleton* was passed over for one promotion, Perera was consecutively rejected by some 30 prospective employers. Under these circumstances, the jury was authorized to conclude that this unbroken pattern of employment rejections, given Perera's prior employability, was solely due to the settlement.

(c) Mag Mutual contends that there was no evidence to support Perera's claim for lost profits from his private practice. This contention fails.

"[G]enerally speaking, lost profits may be recovered by a business only if 'the business has a proven track record of profitability.'" *EZ Green Assocs., LLC v. Ga.-Pac. Corp.*, 331 Ga. App. 183, 188(2) (770 SE2d 273) (2015). Mag Mutual argues that because Perera's private practice had no history of profitability, and because Perera's expert witness considered Perera's income from his private practice in his damages calculation, this calculation was "inherently speculative" and could not support the jury's verdict.

This argument is meritless because Perera sought only lost income as a wage earner, not lost profits, and his expert considered his private practice only to the extent that it related to Perera's income as an employee thereof. Perera provided

evidence of his income prior to the settlement, the date on which his income diminished, the amount of his diminished income, and the fact that he intended to practice medicine until 2038. This evidence allowed the jury to calculate Perera's income with a reasonable degree of certainty. See *T & M Invs., Inc. v. Jackson*, 206 Ga. App. 218, 220(4) (425 SE2d 300) (1992) (holding that evidence of the plaintiff's continuous work history, the date upon which he last worked, and his unsuccessful efforts to find work was sufficient to permit the jury to calculate his lost wages with a reasonable degree of certainty).

2. Mag Mutual contends that the award of bad-faith litigation expenses under OCGA § 13-6-11 is improper because (a) there was no evidence of bad faith and (b) it was based on a contingency fee agreement. These contentions lack merit.

(a) Mag Mutual contends that the award of litigation expenses under OCGA § 13-6-11 was improper because the evidence did not show bad faith but instead showed mere negligence on Mag Mutual's part. We disagree.

The expenses of litigation generally shall not be allowed as part of the damages; but where the plaintiff has specially pleaded and has made prayer therefor and where the defendant has acted in bad faith, has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense, the jury may allow them.

OCGA § 13-6-11. “The issue of attorney fees under OCGA § 13-6-11 is a question for the jury and an award will be upheld if there is any evidence to support it.” *Duffy Street S.R.O, Inc. v. Mobley*, 266 Ga. 849, 850(4) (471 SE2d 507) (1996) “Bad faith warranting an award of attorney fees must have arisen out of how the defendant acted in dealing with the plaintiff.” *City of Atlanta v. Landmark Env’t Indus., Inc.*, 272 Ga. App. 732, 744(11) (613 SE2d 131) (2005).

Here, there was evidence permitting the jury to conclude that Mag Mutual refused to assign Perera defense counsel because it did not want to incur defense costs. Torres indicated to Perera that he was pushing for mediation because the case was not about “whether we obtain a defense verdict. Instead, it is about costs, expenses[,] and time lost in the process.” Another Mag Mutual claims handler testified that at this time, Mag Mutual “was interested in exploring ways to control the cost of defense and were encouraging us to make just a very limited assignment to counsel initially to attempt to engage in a little very informal pre-discovery, pre-answer workup of the claim.” This is the type of conduct that shows bad faith. See *Jordan Bridge Co., Inc. v. I.S. Bailey, Jr., Inc.*, 164 Ga. App. 124, 126(5) (296 SE2d 107) (1982) (“[B]ad faith in a breach of contract other than mere refusal to pay a just debt may authorize the jury to award attorney fees, provided it is not prompted by an

honest mistake as to one's rights or duties but by some interested or sinister motive.”) (emphasis omitted).

As evidence of its good faith, Mag Mutual points to the facts that after its breach resulting in Perera's default, it assigned him counsel, reached and paid for a settlement beyond his policy limits, disclaimed any wrongdoing by him in the NPDB settlement report, and assigned defense counsel to him in the GCMB investigation. Nevertheless, even though “there is some evidence to support [Mag Mutual]'s argument that it acted in good faith, if there is also evidence that would support a claim under OCGA § 13-6-11, the issue must be resolved by a jury.” *Buckley v. Turner Heritage Homes*, 248 Ga. App. 793, 796(5) (547 SE2d 373) (2001). And a jury is entitled to award litigation expenses under OCGA § 13-6-11 if there is “even slight evidence of bad faith.” *Fertility Tech. Res., Inc. v. Lifetek Med., Inc.*, 282 Ga. App. 148, 153(3) (637 SE2d 844) (2006). Under these circumstances, the issue of attorney fees under OCGA § 13-6-11 was properly submitted to the jury.

(b) Mag Mutual asserts that the evidence was insufficient to support the award of litigation expenses under OCGA § 13-6-11 as a matter of law because it was based on a contingency fee agreement. We disagree.

A plaintiff seeking attorney fees under OCGA § 13-6-11 must “prove the actual

costs of his attorneys and the reasonableness of those costs.” *Sims v. GT Architecture Contractors Corp.*, 292 Ga. App. 94, 96(1) (663 SE2d 797) (2008). Mag Mutual cites *Ga. Dep’t of Corr. v. Couch*, 295 Ga. 469, 483-84(3)(a) (759 SE2d 804) (2014),⁷ for the proposition that in the determination of the reasonable value of the professional services underlying a claim for attorney fees under OCGA § 13-6-11, “evidence of the existence of a contingent fee contract, without more, is not sufficient to support the award of attorney fees,” nor is “a naked assertion that the fees are ‘reasonable,’” absent other evidence of the value of counsel’s services.

Here, however, Perera introduced evidence of more than just the existence of the contingent fee contract and an unsupported assertion that such an arrangement was reasonable. Perera’s counsel testified that the contingency fee percentage applicable to Perera was “standard” and within the customary range of contingency fee percentages for cases like Perera’s proceeding to trial. Further, Perera’s counsel testified that based on the risk and opportunity costs shouldered by the law firm in undertaking such an arrangement, as well as the fact that the firm had been working on the case for five years, the contingency fee was a fair and reasonable indicator of the

⁷ Although *Couch* addressed an award of attorney fees under OCGA § 9-11-68, this Court has previously applied it in the context of an attorney fee award under OCGA § 13-6-11. See *Wimpy v. Martin*, 356 Ga. App. 55, 58-60(3)(a) (846 SE2d 230) (2020).

value of the services rendered. Additionally, Perera introduced evidence and testimony showing the value of the professional services actually rendered by way of the hourly rates of the attorneys and paralegals working on the matter and the total hours the firm spent doing so. Perera introduced evidence demonstrating “that the contingency fee percentage was a usual or customary fee for such [a] case and that the contingency fee was a valid indicator of the value of the professional services rendered[, as well as] evidence of hours [and] rates ... indicat[ing] the value of the professional services actually rendered.” *Couch*, 295 Ga. at 483(3)(a) (punctuation omitted; quoting *Brock Built, LLC v. Blake*, 316 Ga. App. 710, 714-15(2)(b) (730 SE2d 180) (2012)). Accordingly, the evidence supported the jury’s award of litigation expenses under OCGA § 13-6-11.

Judgment affirmed. Davis, J., and Senior Judge C. Andrew Fuller concur.