

**IN THE SUPREME COURT  
STATE OF GEORGIA**

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CASE NO. S09C1710

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STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Petitioner

versus

RANDOLPH ADAMS

Respondent

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**BRIEF OF AMICUS CURIAE  
GEORGIA DEFENSE LAWYERS ASSOCIATION  
IN SUPPORT OF PETITIONER**

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Edward M. Hughes, President  
Georgia Defense Lawyers Association

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I.

**STATEMENT OF INTEREST**

The Georgia Defense Lawyers Association (“GDLA”) is an organization composed of Georgia lawyers who devote a substantial amount of their practice to representing defendants in civil litigation. The GDLA has an interest in the outcome of this matter because the parties its members represent include insurers.

II.

**ARGUMENT AND CITATION OF AUTHORITY**

The rule announced by this Court in Thurman v. State Farm Mutual Automobile Insurance Company, 278 Ga. 162, 598 S.E.2d 448 (2004), and reiterated in Toomer v. Allstate Insurance Company, 292 Ga. App. 60, 663 S.E.2d 763 (2008), should not be extended to hospital or medical liens that arise under O.C.G.A. § 44-14-470(b), such as the lien at issue here, because fundamental distinctions exist between Thurman’s rationale and that used by the Court of Appeals in reversing the trial court’s grant of summary judgment to Petitioner in the instant case.

As more fully set forth below, the Court of Appeals’ decision in this case fundamentally misconstrued Thurman in at least three ways. First, the Court of Appeals virtually ignored the central role in Thurman of the Complete Compensation Rule, which does not apply here. Second, the Court of Appeals

erred in facilely dismissing the role that federal law played in Thurman. Third, the Court of Appeals ignored the material differences between the statutory mandate at issue in Thurman and the security interest at issue here.

The Court of Appeals' decisions here and in Floyd v. American International South Insurance Company, 298 Ga. App. 771, 681 S.E.2d 216 (2009), should also be rejected because they are bound to lead to manipulation of the Uninsured Motorist Statute and to inequitable results that the Legislature could not have intended when it enacted this law.

A. **Unlike *Thurman*, the Instant Case Does Not Involve the Complete Compensation Rule**

In extending Thurman to the instant case, the Court of Appeals overlooked the central role that Georgia's Complete Compensation Rule, as embodied in O.C.G.A. §§ 33-24-56.1 and 34-9-11.1, played in the Thurman decision. In Thurman, this Court was confronted with a situation in which a plaintiff was denied the benefit of the Complete Compensation Rule due to an overriding federal law. It was to ameliorate this result and effectuate the Complete Compensation Rule that the Thurman Court decided a reduction should be made to reflect the federal payments when determining the available liability coverage for purposes of the Uninsured Motorist ("UM") Statute, O.C.G.A. § 33-7-11. In the instant case, however, the Complete Compensation Rule does not apply, and thus neither does

Thurman's rationale for making a reduction to account for payments to benefit providers when determining the available liability coverage. Instead, the question whether the payment of a medical lien should serve to reduce the amount of available liability coverage for purposes of the UM Statute must be answered by reference to that statute's underlying policy of putting the insured in the position he would have occupied had the tortfeasor obtained the legally required minimum liability insurance coverage. Under that policy, a reduction should not be made to reflect the payment of a medical lien when determining the available liability coverage.

In Thurman, an employee of the United States Postal Service was injured in an automobile accident while on the job and received benefits from the Postal Service's workers' compensation and medical insurance carriers. 278 Ga. at 162, 598 S.E.2d at 449-50. The postal employee and her husband subsequently settled their lawsuit against the tortfeasor for \$95,554.19, which represented the tortfeasor's liability insurance policy limits of \$100,000 less \$4,445.81. 278 Ga. at 162, 598 S.E.2d at 449-50. Under the Complete Compensation Rule prescribed by Georgia law, neither the worker's compensation carrier nor the medical insurance carrier would have been entitled to reimbursement from the settlement proceeds unless the amount of the settlement exceeded the employee's economic and noneconomic damages. 278 Ga. at 164, 598 S.E.2d at 451 (citing O.C.G.A. §§ 33-

24-56.1(b) and 34-9-11.1(b)). Because the employee worked for a federal agency, however, the settlement proceeds were subject to the Federal Employees Compensation Act and the Federal Employees Health Benefits Act, which give priority to reimbursement of the medical and workers' compensation benefits: "No court, insurer, attorney, or other person shall pay or distribute to the beneficiary or his designee the proceeds of such suit or settlement without first satisfying or assuring satisfaction of the interest of the United States." 5 U.S.C. § 8132; see Thurman, 278 Ga. at 162, 598 S.E.2d at 450. As a result, the employee and her husband received only \$60,887.87 from the settlement proceeds.

They therefore sought \$14,112.13 in compensation from their uninsured motorist carrier, contending that the tortfeasor was underinsured because the amount of their uninsured motorist coverage, \$75,000, exceeded the \$60,887.87 in net proceeds they had received from the tortfeasor's liability carrier. Thurman, 278 Ga. at 163, 598 S.E.2d at 450. They argued that the reimbursement paid to the worker's compensation and medical insurance carriers had to be excluded when calculating the available liability coverage under Subsection 33-7-11(b)(1)(D)(ii) of Georgia's Uninsured Motorist Statute, which defined "available coverages" as "the limits of coverage [of the tortfeasor's liability insurance] less any amounts by which the maximum amounts payable under such limits of coverage have, *by reason of payment of other claims or otherwise*, been reduced below the limits of

coverage.” Thurman, 278 Ga. at 163, 598 S.E.2d at 450 (quoting O.C.G.A. § 33-7-11(b)(1)(D)(ii)) (emphasis supplied by the Court).

On appeal, this Court agreed. The Court reasoned that, but for the federal law, the postal employee and her husband would not have owed any reimbursement for the worker’s compensation and medical insurance benefits until they had been made whole under Georgia’s Complete Compensation Rule. Thurman, 278 Ga. at 164, 598 S.E.2d at 450-51. Because federal law trumped Georgia law, however, they were denied the benefit of the Complete Compensation Rule. 278 Ga. at 164, 598 S.E.2d at 451. To mitigate the financial harm inflicted by federal law “and effectuate, as best it can under the circumstances, Georgia’s public policy of complete compensation,” the Court decided that a reduction should be made to reflect the mandatory federal reimbursement payments when determining the available liability coverage for purposes of the Georgia UM Statute. The Court therefore ruled that the federal reimbursement payments came within the “or otherwise” language of Subsection 33-7-11(b)(1)(D)(ii), making them excludable for purposes of determining the available liability coverage under the statute. Thurman, 278 Ga. at 164, 598 S.E.2d at 451.

In the instant case, the Complete Compensation Rule does not apply. The voluntary payment at issue was made to a hospital to satisfy its lien for medical services provided to the Plaintiff. See O.C.G.A. § 44-14-470(b) (providing that a

hospital that provided care to an injured person has a lien on a cause of action accruing to the injured person on account of the injury). As the Court of Appeals recognized in Holland v. State Farm Mutual Automobile Insurance Co., 236 Ga. App. 832, 513 S.E.2d 48 (1999), the Complete Compensation Rule “only applies to the subrogation rights of an insurance carrier who has received payments from the injured party,” and does not apply to liens for medical services. 236 Ga. App. at 834, 513 S.E.2d at 50. Grady Hospital is not a “benefit provider” covered by the Complete Compensation Rule of O.C.G.A. § 33-24-56.1(b), and it merely had a lien, not a right of subrogation. See O.C.G.A. § 44-14-476.<sup>1</sup>

Because the Complete Compensation Rule does not apply, the Thurman Court’s rationale for reducing the available liability coverage to account for payments to benefit providers is equally inapplicable. Under Georgia law, Grady Hospital was entitled to assert its lien against the Plaintiff’s cause of action and to seek satisfaction from the proceeds thereof without regard to whether the Plaintiff had been fully compensated for his economic and noneconomic damages. Holland, 236 Ga. App. at 834, 513 S.E.2d at 50. Therefore, reducing the available liability coverage to account for the payment to Grady would not serve to

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<sup>1</sup> As one respected secondary source on Georgia insurance has noted, “in absence of a subrogation interest, it would seem that any *Thurman*-based argument advanced by a personal injury claimant should tumble like a house of cards.” Frank E. Jenkins III & Wallace Miller III, *Georgia Automobile Insurance Law*, § 32.3, p. 408 (2009-2010 ed.).

effectuate the Complete Compensation Rule. The Plaintiff had no right to rely on the Complete Compensation Rule as a basis for refusing to make payment in satisfaction of Grady's lien, and thus reducing the available liability coverage to account for such payment would not restore to him a benefit to which he was entitled under the Rule but had been deprived.

Because Thurman's rationale does not apply here, the Plaintiff cannot rely on Thurman as a basis for arguing that a reduction should be made to account for his payment to Grady when determining the available liability coverage for purposes of the UM Statute. Vindication of the Complete Compensation Rule was fundamental to this Court's reasoning in Thurman, and thus the inapplicability of the Complete Compensation Rule in the instant case makes the Thurman holding equally inapplicable.

Instead, the Court must look to the underlying policy of the Uninsured Motorist Statute to determine whether a reduction to account for payment of a medical lien is appropriate when calculating the amount of available liability coverage. As Judge Johnson recognized in his dissent below—and as Georgia courts have repeatedly ruled—“the legislative intent of the UM statute is not to make insureds whole, but ‘to place insureds in the same position they would be in relation to coverage if the tortfeasors causing the injuries had obtained at least the minimum prescribed liability insurance.’” Adams v. State Farm Mut. Auto. Insur.

Co., 298 Ga. App. 249, 254, 679 S.E.2d 726, 729-30 (2009) (Johnson., P.J., dissenting) (quoting Crafter v. State Farm Ins. Co., 251 Ga. App. 642, 644, 554 S.E.2d 571 (2001)); see also State Farm Mut. Auto. Ins. Co. v. Murphy, 226 Ga. 710, 714, 177 S.E.2d 257, 260 (1970) (“[T]he purpose of the Uninsured Motorist statute is to place the insured in the same position as if the tortfeasor had the . . . minimum coverage.”); Young v. Maryland Cas. Co., 228 Ga. App. 388, 390, 491 S.E.2d 839, 841 (1997); American Protection Ins. Co. v. Parker, 150 Ga. App. 732, 732-33, 258 S.E.2d 540, 541 (1979). Because the insured is obligated to pay his medical bills regardless of whether the tortfeasor has the statutory minimum coverage, there is no justification for making a reduction to account for such payments when determining the amount of available liability coverage for purposes of the UM Statute.

**B. Unlike *Thurman*, the Instant Case Does Not Involve an Issue of Federal Supremacy**

The above discussion points to another fundamental difference between Thurman and the instant case. In Thurman, the payment at issue was required by a federal statute that overrode Georgia law pursuant to the Supremacy Clause of the United States Constitution (as well as the terms of the statute itself). In contrast, the instant case involves no issue of federal law. Although the Court of Appeals summarily dismissed this distinction as insignificant, examination of this Court’s

opinion in Thurman reveals that the involvement of federal law was fundamental to the Thurman decision.

As the Thurman Court expressly recognized, Georgia's rule requiring complete compensation of injured parties had to yield to the federal mandate that the United States have priority in reimbursement for benefits it paid to an injured federal employee: "Georgia law cannot bar the federal government and its insurance carriers from obtaining reimbursement from the federal worker injured in a motor vehicle collision on the job for benefits paid to her regardless of whether she has been fully compensated for the injuries sustained." Thurman, 278 Ga. at 164, 598 S.E.2d at 451. The Court further recognized, however, that it could construe and apply Georgia law in a manner that would ameliorate the plaintiffs' loss of a right granted under state law: "Georgia law can mitigate the financial harm inflicted by the federal policy and effectuate, as best it can under the circumstances, Georgia's public policy of complete compensation." Id. It was for these purposes that the Court interpreted the Uninsured Motorists Statute as it did: "The legislature has provided the means by its use of the phrase 'reduced by payment of claims or otherwise' to describe payments that reduce the amount of 'available coverages' under the tortfeasor's liability policy." Id. Accordingly, the Court ruled that the federal reimbursements would constitute "a reduction in the

‘limits of coverage [of the tortfeasor’s liability insurance] ... by reason of ... or otherwise.’” Id.

The instant case does not involve the displacement of Georgia’s Complete Compensation Rule by a federal statute. Instead, the payment at issue was made to satisfy a lien created by Georgia law itself. Thus, reducing the amount of the available liability coverage to account for this payment cannot be justified on the ground of restoring the benefits of a state-law right that the Plaintiff had lost due to an overriding federal law.

**C. Unlike *Thurman*, the Payment Here Was Not Made Pursuant to a Statutory Mandate**

Thurman is also distinguishable from the instant case on the ground that the medical lien at issue here is materially different from the federal claims on the liability insurance that were at issue in Thurman. In that case, the liability insurer made payment to the federal insurance carriers pursuant to a federal statute that unequivocally required the liability insurer to satisfy the interests of the federal government before paying the injured party a dime. Here, Grady Hospital merely held a security interest in the liability insurance proceeds, and the liability insurance carrier was not statutorily obligated to satisfy the lien before paying those proceeds to the Plaintiff.

In Thurman, federal law *prohibited* the liability insurer from paying any proceeds to the injured party without first reimbursing the federal carriers: “No court, insurer, attorney, or other person shall pay or distribute to the beneficiary or his designee the proceeds of such suit or settlement without first satisfying or assuring satisfaction of the interest of the United States.” 5 U.S.C. § 8132; see Thurman, 278 Ga. at 162, 598 S.E.2d at 450. In contrast to this unequivocal statutory mandate, Georgia Code Section 44-14-470 merely provides (in relevant part) that a hospital owed payment for medical care “shall have a lien . . . upon any and all causes of action accruing to the person to whom the care was furnished . . . on account of injuries giving rise to the causes of action and which necessitated” the medical care. O.C.G.A. § 44-14-470(b). Unlike the federal statute at issue in Thurman, Section 44-14-470 does not include mandatory language requiring a liability insurer to satisfy the hospital’s lien before paying insurance proceeds to the injured party.

The language of the federal statute, 5 U.S.C. § 8132, requires an affirmative act by the liability insurer to satisfy the interest of the United States before paying any funds to the injured party. Section 44-14-470 imposes no such obligation on the liability insurer. Instead, Section 44-14-470 simply creates a security interest in the injured party’s cause of action.<sup>2</sup>

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<sup>2</sup> Black’s Law Dictionary defines “lien” as a “legal right or interest that a creditor

**D. The Court of Appeals' Decisions in this Case and *Floyd* Open the Door to Manipulation of the Uninsured Motorist Statute**

In Floyd v. American International South Insurance Company, 298 Ga. App. 771, 681 S.E.2d 216 (2009), which is also presently before this Court on certiorari, the Court of Appeals was faced with a nearly identical situation as that involved in the instant case, except that there was clear evidence that the hospital's lien had not actually been satisfied. Floyd, 298 Ga. App. at 773, 681 S.E.2d at 218. The Court of Appeals reached the same flawed conclusion as it did in the instant case, and held that the hospital lien reduced the amount of available liability coverage for purposes of evaluating the availability of UM coverage. Id. Like the instant case, moreover, Floyd did not involve the Complete Compensation Rule, which was central to this Court's reasoning in Thurman.

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has in another's property, lasting usu. until a debt or duty that it secures is satisfied." Black's Law Dictionary (8th ed. 2004). The lien itself imposes no affirmative duty to repay but instead represents a security interest in the proceeds. A helpful analogy is found in the context of real property. For example, a deed to secure debt on realty is the record of the debtor's debt to his mortgage company, whereas the promissory note creates the obligation to repay the debt. They are independent documents that have independent effects on the real property transaction. In the instant case, the lien created by O.C.G.A. §44-14-470 clearly creates a lien in favor of the hospital or medical provider, but it does not create an independent obligation or agreement between the insured and the provider that the debt be repaid out of the settlement proceeds with the tortfeasor. In contrast, the federal statute does create such an obligation by its clear language.

What is more troubling about the holding of Floyd is that, if not reversed, it will allow a personal injury claimant to obtain payment directly from his UM carrier up to the full amount of the outstanding hospital lien and then negotiate a compromise settlement with that provider, while keeping the difference for himself.<sup>3</sup> Surely, this Court did not intend its decision in Thurman to create opportunities for such manipulation. This Court should clarify its holding in Thurman and rule that the rationale of that decision does not apply to the facts of this case and Floyd.

In fact, the three-judge panel in Floyd implicitly invited this Court to clarify the holding of Thurman in light of the Court of Appeals' decisions in Floyd and in the instant case. See Floyd, 298 Ga. App. at 773 n. 9 (noting that the Adams decision garnered dissent and that it would be a disservice to the bar, bench, and integrity of the Court if it were to abandon the principle of stare decisis and disregard it as precedent).

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<sup>3</sup> See Frank E. Jenkins III & Wallace Miller III, Georgia Automobile Insurance Law, § 32.3, p. 409 (2009-2010 ed.) (recognizing that, under Floyd, “the personal injury claimant can obtain payment directly from his UM carrier up to the full amount of an outstanding hospital lien and then turn around and negotiate a compromise settlement with the hospital and pocket the change.”).

**E. The Court of Appeals' Reasoning Would Lead to the Absurd Result of Attorney's Fees Being Taken into Account in Determining the Amount of Available Liability Coverage**

If a plaintiff can direct payment of liability insurance proceeds to satisfy a medical provider's bills and then successfully assert that this payment should be taken into account in determining the amount of available liability coverage for purposes of the UM Statute, there is no reason that the plaintiff could not also direct payment of liability insurance proceeds to satisfy his or her attorney's bill and then claim this payment as a reduction of the available liability coverage as well. Such a result would be absurd on its face, and yet would be required by the Court of Appeals' rulings in this case and Floyd because attorneys also have liens on causes of action to ensure payment of their fees and litigation expenses—liens that are, in fact, superior to medical liens.

Under Georgia law, an attorney has a lien “[u]pon actions, judgments, and decrees for money” to ensure payment of his or her fee, and “no person shall be at liberty to satisfy such an action, judgment, or decree until the lien or claim of the attorney for his fees is fully satisfied.” O.C.G.A. § 15-19-14(b). This lien also covers litigation expenses advanced by the attorney on the client's behalf. Lewis v. Smith, 274 Ga. App. 528, 532, 618 S.E.2d 32, 36 (2005). Furthermore, an attorney's lien is “superior to all liens except tax liens.” O.C.G.A. § 15-19-14(b).

Of particular significance here, an attorney's lien is superior to a hospital lien. O.C.G.A. § 44-14-470(b); Ramsey v. Sumner, 211 Ga. App. 202, 204, 438 S.E.2d 676, 678 (1993). In Holland v. State Farm Mutual Automobile Insurance Co., 236 Ga. App. 832, 513 S.E.2d 48 (1999), for example, the Court of Appeals ruled that the trial court should have applied the proceeds of the tortfeasor's liability insurance to pay the lien of the injured party's attorney before paying liens for the costs of the injured party's medical care. 236 Ga. App. at 834, 513 S.E.2d at 50.

Under the Court of Appeals' reasoning in the instant case and in Floyd, an injured party could pay his attorney's fees and litigation expenses from the proceeds of the tortfeasor's liability insurance and then have that payment applied to reduce the available liability coverage for purposes of the UM Statute. There is no material difference between the attorneys' lien statute and the medical lien statute that could be used as a basis for avoiding this absurd result. If anything, the attorneys' lien statute creates a stronger basis for reducing the available liability coverage to account for payment of attorneys' fees and litigation expenses, given that an attorney's lien is superior to a medical lien. See Holland, 236 Ga. App. at 834, 513 S.E.2d at 50; Ramsey, 211 Ga. App. at 204, 438 S.E.2d at 678. Surely, this Court did not intend such an absurd result when it decided Thurman.

Even if a plaintiff and his attorney did not have the audacity to engage in such extreme overreaching, however, there are other situations in which they might

be tempted to assert that the available liability coverage for purposes of the UM Statute should be reduced to reflect a payment made to satisfy an attorneys' lien. Plaintiffs sometimes fire their attorneys in the midst of lawsuits, and, in that situation, the fired attorney has a lien for at least the quantum meruit value of the services provided up to the point of termination, as well as litigation expenses. See, e.g., Howe & Associates P.C. v. Daniels, 280 Ga. 803, 631 S.E.2d 356 (2006); Greer, Klosik & Daugherty v. Yetman, 269 Ga. 271, 496 S.E.2d 693 (1998); Lewis, supra, 274 Ga. App. at 530-33, 618 S.E.2d at 34-36; Ellerin & Associates v. Brawley, 263 Ga. App. 860, 589 S.E.2d 626 (2003). In that situation, the plaintiff and his replacement counsel could pay the fired attorney from the liability insurance proceeds to satisfy his or her lien and then assert that a reduction should be made to account for this payment when calculating the available liability coverage for purposes of the UM Statute. Under the Court of Appeals' reasoning in the instant case, they would succeed in obtaining this reduction. Such a result is clearly at odds with the policy underlying the UM Statute, however, and could not have been intended by this Court's ruling in Thurman.

### **III.**

#### **CONCLUSION**


As demonstrated above, the Court of Appeals' extension of Thurman to medical liens was unwarranted because such liens are not subject to the Complete

Compensation Rule that was so central to this Court's reasoning in Thurman. In addition, the Court of Appeals erred in facilely dismissing the role that federal law played in Thurman and in ignoring the material differences between the statutory mandate at issue in that case and the security interest at issue here. If allowed to stand, moreover, the Court of Appeals' decision would open the door to manipulation and lead to the absurd result of an insured claiming additional UM benefits because he had to pay attorney fees. Therefore, this Court should reject the Court of Appeals' unwarranted extension of Thurman and reverse its decision.

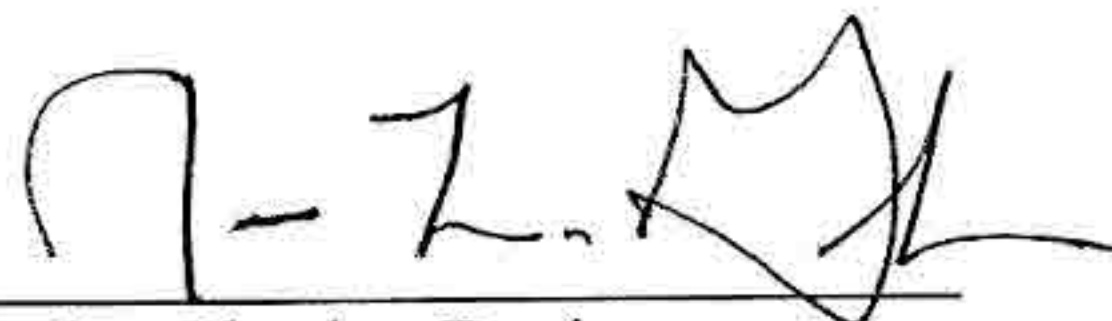
Respectfully submitted this 25th day of June, 2010.

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I hereby certify that I have this day served the within and foregoing **BRIEF OF AMICUS CURIAE GEORGIA DEFENSE LAWYERS ASSOCIATION IN SUPPORT OF PETITIONER** on all counsel of record by mailing copies of same through the United States mail in properly addressed envelopes with sufficient postage affixed thereto to the following:

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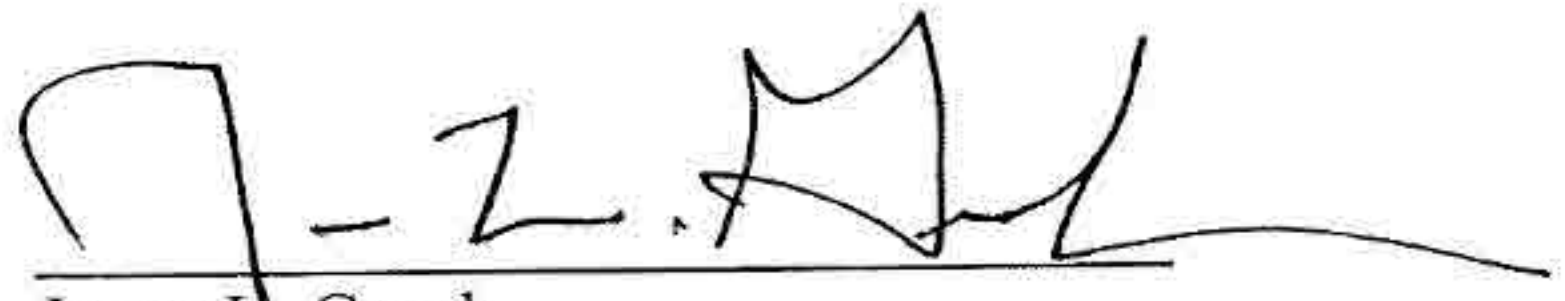
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