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HARVEY RUVIN, CLERK OF COURT, MIA-DADE CTY

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

CIRCUIT CIVIL DIVISION

LUIS RENE MARTINEZ,

Plaintiff,

CASE NO. **17-002228 CA 30**

v.

CITIZENS PROPERTY INSURANCE CORPORATION,

Defendant.
_____/

FINAL JUDGMENT AWARDING ATTORNEY'S FEES AND COSTS

THIS CAUSE comes before the Court on Plaintiff's, *Motion to Determine Amount of Attorney's Fees and Costs*. After holding an evidentiary hearing on February 7, 2019 and closing arguments on February 25, 2019, and considering the requirements set forth in *Florida Patient's Comp. Fund. v. Rowe*, 472 So. 2d 1145 (Fla. 1985), *Standard Guaranty Ins. Co. v. Quanstrom*, 555 So. 2d 828 (Fla. 1990), and *Joyce v. Federated Nat'l Ins. Co.*, 228 So. 3d 1122 (Fla. 2017), this Court finds as follows:

It is **ORDERED AND ADJUDGED** that Defendant, **CITIZENS PROPERTY INSURANCE CORPORATION**, shall pay reasonable attorney's fees and costs to Plaintiff in the amount set forth below:

I. Entitlement

As an initial matter, Plaintiff is entitled to reasonable attorney's fees and costs pursuant to stipulation between the parties.

II. Attorney's Fees

Plaintiff seeks reasonable attorney's fees for the retained attorneys who litigated the case. The attorneys were Benjamin R. Alvarez, Leonardo H. Da Silva, Bryant Paris, Nicholas Grandal, and Christopher A. Martinez. The Florida Supreme Court adopted the federal lodestar method as the starting point for determining reasonable attorney's fees. *See Rowe*, 472 So. 2d at 1150. The lodestar method requires the trial court to consider certain factors[1] in determining the number of hours reasonably expended on the litigation and the reasonably hourly rate for the legal services provided. *See Id.; see also Quanstrom*, 555 So. 2d at 830. There is no requirement that every factor be satisfied; rather, the Court determines and weighs each individual factor exclusive of the others. However, each prong was addressed and/or satisfied during the hearing on January 24, 2018 via Plaintiff's corporate representative and expert witness testimony. The Court's findings of fact are set forth more fully below.

Based on the evidence presented and review of the record, the Court finds that Plaintiff's attorneys reasonably expended a total of **312 hours** in prosecuting this matter.

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[1] (1) The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly.
(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
(3) The fee customarily charged in the locality for similar legal services.
(4) The amount involved and the results obtained.
(5) The time limitations imposed by the client or by the circumstances.
(6) The nature and length of the professional relationship with the client.
(7) The experience, reputation, and ability of the lawyer or lawyers performing the services.
(8) Whether the fee is fixed or contingent.

As it relates to Benjamin R. Alvarez, the Court finds the hours reasonably expended to be **25.0.** As it relates to Leonardo H. Da Silva, the Court finds the hours reasonably expended to be **132.0** As it relates to Bryant Paris, the Court finds the hours reasonably expended to be **120.0.** As it relates to Nicholas Grandal, the Court finds the hours reasonably expended to be **30.0**. As it relates to Christopher A. Martinez, the Court finds the hours reasonably expended to be **5.0.** This Court next considers the reasonable hourly rate[2] for Plaintiff's attorneys. Based on the evidence presented and the factors set forth in *Rowe*, the Court finds that the reasonable blended rate for Plaintiff's attorneys is **$505.00** in the South Florida community by lawyers of reasonably comparable skills, experience, and reputation for similar service, and applies this blended rate to the reasonable hours[3].

Accordingly, the cumulative lodestar for Plaintiff's attorneys is **$157,560.00.**

III. Paralegal Fees

Plaintiff's attorneys also employed paralegals to handle the matter. Based on the evidence, the Court finds that the paralegals reasonable hours expended were **18.00**. Further, based on the evidence presented, the Court finds that a reasonable hourly rate

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[2] Prevailing "market rate," that is, the rate charged in the community by lawyers of reasonably comparable skills, experience, and reputation for similar services. Assumes fee will be paid irrespective of result and takes in all Disciplinary Rule 2-106 factors except "time and labor involved", "novelty and difficulty of the question", "results obtained", and "whether fee is fixed or contingent." *Rowe*, 472 So. 2d 1145, 1150-51 (Fla. 1985).

[3] The Court Agrees with Plaintiff's expert's opinion as to the reasonableness of the following hourly rates as of 2019: Benjamin Alvarez at $725; Leonardo H. Da Silva at $675; Bryant Paris at $500; Nicholas Grandal at $400; and Christopher Martinez at $400. The Court notes that the $525 blended rate is conservative considering that a precise mathematical blend of the aforementioned individual rates would yield a blended rate of $540.00 per hour.

for the paralegals on this matter is **$150.00** per hour. Accordingly, the lodestar for the paralegals is **$2,700.00**.

IV. Contingency Risk Multiplier

Once the court arrives at the lodestar figure, it may add or subtract from the fee based upon a "contingency risk" factor and the "results obtained." *Rowe*, 472. So. 2d at 1151. The primary rationale for the contingency risk multiplier is to "provide access to competent counsel for those who could not otherwise afford it." *Bell v. U.S.B. Acquisition Co.*, 734 So. 2d 403, 411 (Fla. 1999); *see also Joyce v. Federated Nat'l Ins. Co.*, 228 So. 3d 1122 (Fla. 2017) ("In those cases, we authorized the use of a multiplier to promote access to courts by encouraging lawyers to undertake representation at the inception of certain cases.")

A court may consider applying a multiplier as a "useful tool" in determining a reasonable fee if the evidence in the record establishes that (1) the relevant market requires a contingency multiplier to obtain competent counsel; (2) the attorney was unable to mitigate the risk of nonpayment in any other way; and (3) the use of a multiplier is justified based on factors such as the amount of risk involved, the results obtained, and the type of fee arrangement between attorney and client. *Bell*, 734 So. 2d 403, 412.

The Court finds that a multiplier is appropriate in this case. The Court considered all evidence presented at the hearing and takes judicial notice of the case file. The evidence shows that Plaintiff, Luis Rene Martinez is a blue-collar worker and he could not have hired competent attorneys in this market on an hourly basis. There was no preexisting relationship between Plaintiff and Plaintiff's counsel. The case began in 2017 as an action for declaratory relief and breach of contract and was vigorously and

expeditiously litigated. This is evidenced by the substantial amount work performed by all parties in this litigation. The time required to handle the case precluded Plaintiff's counsel from accepting other, less difficult cases. Defendant's payment to Plaintiff prior to the inception of the suit and after application of the deductible was $13,031.49. Plaintiff's attorneys, after numerous hearings, depositions, mediation, and after an offer of judgment that could have bankrupted Plaintiff and yielded no attorney's fees, obtained a net recovery of $60,000.00 for their client as well as entitlement to attorney's fees and costs.[4] Additionally, Plaintiff's attorneys were successful in avoiding a claw-back of the initial determination of coverage and payment of $13,031.49. While there was originally a partial acknowledgement of coverage on the underlying claim, Plaintiff's corporate representative and expert both testified that the partial denial as to certain coverages and scope were aggressively litigated by the Defendant. An initial acknowledgment of coverage for a claim does not establish insurance by estoppel, nor can waiver create coverage absent detrimental reliance. *See Axis Surplus Ins. Co. v. Caribbean Beach Club Ass'n, Inc.*, 164 So. 3d 684 (Fla. 2d DCA 2014); *Hydraulic Equipment Systems & Fabrications, Inc. v. Pennsylvania Millers Mut. Ins. Co.*, 277 So. 2d 53, 57 (Fla. 3d DCA 1973). Thus, at the onset of this case, Plaintiff's counsel maintained well-founded concern as to the difficulty and complexity of the matter. There was a significant likelihood regarding the application of a variety of insurance policy exclusions. By pleading its defenses so open-endedly and contemplating the pre-suit concerns of the carrier – as inferred from the carrier's initial inspection – the exclusions that may have been raised at

[4] With respect to the results obtained, this number amounts to approximately ninety percent (90%) of the amount in dispute.

trial included earth movement, constant and repeated seepage or leakage of water, mold, along with the application of the matching statute and "tear our" provisions. Additionally, the collapse and sinkhole coverages – and potential exceptions and limitations to same – interjected additional intricate policy analysis and application.

Defendant further contested liability through its Answer and Affirmative Defenses, discovery efforts, and, more subtly, by raising questions of scope. The potential issue of liability was evidenced at the onset of the case from the photographs presented at the evidentiary hearing. Based on the nature of Defendant's payment, the pleadings, and affirmative defenses, the case was not a mere monetary dispute. As Plaintiff's expert explained, while the South Florida legal community consists of tens of thousands of lawyers, only a few lawyers possess the skill, competence and willingness to prepare and argue such a case at or approaching trial. The Court notes that in analyzing "whether the relevant market requires a contingency fee multiplier to obtain competent counsel," in addition to the available pool of attorneys to choose from, the quality and experience of counsel chosen is of marque importance. The law may be changing in this area, but the majority opinion in *Joyce v. Federated Nat'l Ins. Co.*, 228 So. 3d 1122 (Fla. 2017), strongly favors Plaintiff's position.

Further, few competent attorneys in South Florida would have taken this matter on a contingency basis. The nature of Plaintiff's claim required an attorney with extensive knowledge of and experience in first-party property insurance, and the ability to prepare or try such a matter without hesitation. For these reasons, the Court considers all necessary prongs met and the likelihood of success at the onset of the case "approximately even" to succeed at the onset.

The Court further finds that the imposition of a contingency multiplier will further the public policy cited in *Joyce*. In order to promote access to courts, it is important that members of the bar, such as Plaintiff's attorneys, take on meritorious matters despite the risks. Plaintiff prosecuted meritorious claims, which is evidenced through the eventual settlement agreement that amounted to over five times the original indemnity payment. However, without the imposition of a contingency multiplier, very few attorneys would have taken this matter. Testimony from the Plaintiff's attorney's corporate representative laid out that without a multiplier, they would have no incentive to take on these sorts of cases over standard non-contingent hourly cases.

Once the Court has determined that a contingency risk multiplier is appropriate, the Court must consider the appropriate range of the multiplier. "If the trial court determines that success was more likely than not at the outset, it may apply a multiplier of 1 to 1.5; if the trial court determines that the likelihood of success as approximately even at the outset, the trial judge may apply a multiplier of 1.5 to 2.0; and if the trial court determines that success was unlikely at the outset of the case; it may apply a multiplier of 2.0 to 2.5." *Quanstrom*, 555 So. 2d at 834. Based on the evidence presented and a review of the record in this action, the Court finds that a 1.**5** multiplier because success was even at the outset.

After applying the multiplier, the total fee awarded to Plaintiff is **$239,040.00**, which is itemized as follows: attorney fees in the amount of **$236,340.00** and paralegal fees in the amount of **$2,700.00**.

V. Costs

Based on stipulation between the parties, the Court awards Plaintiff costs, exclusive of expert witness fees, in the amount of **$7,248.00**. The Court further finds, based on the evidence and the law, that Javier Lopez's expert hourly rate in the amount of **$600.00** to be reasonable and that **24** hours expended in this matter as Plaintiff's fee expert is also reasonable. Based on the foregoing, the Court hereby awards costs in the amount of **$14,400.00**.

VI. Final Judgment Fees, Costs, and Interest

The final judgment for fees and costs is Two **Hundred and sixty-one Thousand, Two Hundred and Eighty-Eight Dollars and Zero Cents ($261,288.00)** and shall bear interest at the rate of 5.35%, all for which good cause shown execution shall issue forthwith. Defendant shall make the amount payable to Alvarez, Feltman & Da Silva, P.L.

DONE AND ORDERED in Chambers, in Miami Dade County, Florida on this 14th day of March, 2019.

Reemberto Diaz
Circuit Court Judge

Copies provided:

Leonardo H. Da Silva, Esq.
C. Ryan Jones, Esq.