

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

REYNALDO PEDRERO,

Plaintiff,

CIRCUIT CIVIL DIVISION

CASE NO.: 16-006136 CA 34

v.

CITIZENS PROPERTY INSURANCE
CORPORATION,

Defendant.

FINAL JUDGMENT AWARDING PLAINTIFF'S ATTORNEY'S FEES AND COSTS

THIS CAUSE comes before the Court on Plaintiff's, REYNALDO PEDRERO ("Plaintiff"), *Motion to Determine Amount of Attorney's Fees and Costs, for Lodestar Multiplier, and for Entitlement to Prejudgment Interest*. After holding an evidentiary hearing on November 2, 2018 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) and otherwise having heard the arguments of counsel and being fully advised in the premises, this Court grants said motion as follows:

It is **ORDERED AND ADJUDGED** that:

I. PLAINTIFF'S ENTITLEMENT TO FEES, COSTS, AND EXPENSES

The claim for attorney's fees and costs in this case arise out of Plaintiff's position as the prevailing party after bringing a successful action against Defendant, CITIZENS PROPERTY INSURANCE CORPORATION ("Defendant.") The Court is authorized to award reasonable attorney's fees to be paid by the defendant insurer pursuant to Section 627.428, Florida Statutes and the settlement agreement between the parties.

II. AMOUNT OF REASONABLE ATTORNEY'S FEES

Based on the record evidence, testimony, and findings set forth on the record, the Court finds the reasonable number of attorney hours expended in this matter is **799** hours. 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 factors¹ in determining the number of hours reasonably expended on the litigation and the reasonable hourly rate for the legal services provided. See *Id.*; see also *Quanstrom*, 555 So. 2d at 830. There is no requirement that each and every factor be satisfied; rather, the Court determines and weighs each individual factor exclusive of the others. However, each prong was addressed and satisfied during the hearing on November 2, 2018 via Plaintiff's corporate representative and expert witness testimony.

Based on the foregoing, the Court finds the following to be reasonable average hourly rates for each of Plaintiff's counsel:

Benjamin R. Alvarez, Esq.: **\$650.00**

Leonardo H. Da Silva, Esq.: **\$550.00**

Brian C. Costa, Esq.: **\$425.00**

Christopher A. Martinez, Esq.: **\$350.00**

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.

J. Bruno de la Fuente, Esq.: **\$350.00**

Miguel Lara, Esq.: **\$475.00**

Jennifer C. Guardia, Esq.: **\$250.00**

Rafael Mas, Esq.: **\$250.00**

Ryan LeMontang, Esq.: **\$350.00**

Juan Carlos Quintana, Esq.: **\$300.00**

The Court finds that Benjamin Alvarez, Esq. reasonably incurred **205** hours on this case for a total amount of **\$133,990.00**.

The Court finds that Leonardo Da Silva, Esq. reasonably incurred **125** hours on this case for a total amount of **\$68,750.00**.

The Court finds that Brian C. Costa, Esq. reasonably incurred **85** hours on this case for a total amount of **\$36,125.00**.

The Court finds that Christopher Martinez, Esq. reasonably incurred **93** hours on this case for a total amount of **\$32,550.00**.

The Court finds that J. Bruno de la Fuente, Esq. reasonably incurred **75** hours on this case for a total amount of **\$26,250.00**.

The Court finds that Miguel Lara, Esq. reasonably incurred **12** hours on this case for a total amount of **\$5,700.00**.

The Court finds that Jennifer Guardia, Esq. reasonably incurred **40** hours on this case for a total amount of **\$10,000.00**.

The Court finds that Rafael Mas, Esq. reasonably incurred **11** hours on this case for a total amount of **\$2,750.00**.

The Court finds that Ryan LeMontang reasonably incurred **90** hours on this case for a total amount of **\$31,500.00**.

The Court finds that Juan Carlos Quintana reasonably incurred **7** hours on this case for a total amount of **\$2,700.00**.

Accordingly, the cumulative lodestar for Plaintiff's attorneys is **\$349,715.00**.

III. PARALEGALS

Plaintiff's attorneys employed paralegals to handle the matters. Based on the evidence, the Court finds the reasonable number of hours expended in this matter for paralegals is **65** hours. Further, based on the evidence presented, the Court finds that a reasonable hourly rate for the paralegals on this matter is **\$150.00**. Accordingly, the lodestar for the paralegals is **\$9,750.00**.

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 instant hearing and takes judicial notice of the entire case file, including discovery. The evidence shows that Plaintiff is a disabled retired welder, and he could not have hired competent attorneys in this market on an hourly basis. The case began in 2016 as a breach of contract action and was vigorously litigated through trial. Plaintiff had sustained Hurricane Wilma damage to his property in 2005 and reported the claim to his insurer, CITIZENS PROPERTY INSURANCE CORPORATION ("Defendant"). Defendant acknowledged coverage and issued payment in the amount of \$8,012.51 after applicable deductible. In 2010, Plaintiff retained an appraisal company to assist with appraising his claim. Plaintiff demanded appraisal and Defendant did not agree to same. As a result, Plaintiff brought the instant lawsuit against Defendant to compel appraisal or otherwise secure his insurance benefits.

This case was heavily litigated. Defendant filed multiple dispositive motions throughout the pendency of the case, and Defendant served a proposal for settlement in the amount of \$1,000.00, inclusive of attorney's fees, which is indicative of Defendant's position that it had a high likelihood of prevailing against the Plaintiff in this case. Further, if Plaintiff failed to prevail at any of the dispositive hearings or at trial, his potential financial exposure of Defendant's attorney's fees and costs far outweighed what he recovered for his claim. On the fifth and last day of trial, Plaintiff secured a settlement in the amount of \$35,000.00, exclusive of Plaintiff's attorney's fees and costs. This is an extraordinarily

favorable outcome for Plaintiff, as the full scope of his indemnity demand was \$29,703.60. The litigation was extensive and nearly every issue was hotly contested. The litigation consisted of substantial discovery and motion practice, failed mediation, several motion for summary judgment hearings based on changes in the law that were highly disadvantageous to Plaintiff, and jury trial. Substantively, the case was both complex and document intensive. The result obtained by the law firm exceeded 100% of Plaintiff's claim, including applicable interest. This is especially significant in light of the fact that Defendant is generally immune to actions for bad faith. The result obtained was over thirty-five times that of Defendant's proposal for settlement, and many hundreds of times greater when considering the subject attorney's fees and costs.

As Plaintiff's expert explained, very few competent attorneys in South Florida would have taken this matter on a contingency basis but for the availability of a fee multiplier. The nature of Plaintiff's claim required an attorney with extensive knowledge of and experience in first-party property insurance, and the willingness and ability to try such a matter without hesitation. While the South Florida legal community consists of many thousands of lawyers, only certain few lawyers possess the skill, competence and temerity to prepare and argue such a case at the trial level. In this matter, Plaintiff's prior firm withdrew from representation and did not impose a charging lien. This is indicative of the case's difficulty from the onset. At the time Alvarez, Feltman & Da Silva was substituted in as counsel, Defendant had already pled multiple affirmative defenses asserting exclusions to coverage and a failure to comply with post-loss obligations. As a result, the law firm took on the case with the understanding that they were required to

overcome all of Defendant's plead defenses to prevail, rendering the case even more difficult.

The Court further finds that the imposition of a contingency multiplier will further the public policy cited in *Joyce v. Federated Nat'l Ins. Co.*, 228 So. 3d 1122 (Fla. 2017). 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 had meritorious claims as evidenced through the eventual settlement agreement that amounted to over seventy times the original indemnity payment. However, without the imposition of a contingency multiplier, very few attorneys would have taken this matter. Mr. Alvarez testified that without the availability of a multiplier, the firm would have no incentive to take on these sorts of cases over standard hourly cases. This was reiterated by Plaintiff's expert, Mr. Lopez, who testified that the market required the availability of a multiplier for competent attorneys such as those named during the fee hearing, to accept these cases on a contingency basis. This Court finds that the relevant market requires same.

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 **2.01** multiplier because success was unlikely at the outset.

V. COSTS

Based on stipulation between the parties, the Court awards Plaintiff costs, exclusive of expert witness fees, in the amount of **\$31,938.00**. 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 **19.8** hours expended in this matter as Plaintiff's fee expert is also reasonable for a total of **\$11,880.00**. Based on the foregoing, the Court hereby awards costs in the amount of **\$43,818.00**.

VI. FEES AND COSTS FINAL JUDGEMENT

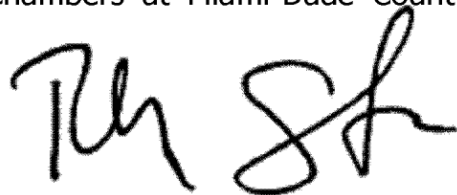
Based on the foregoing the Court hereby awards the following:

- Attorneys' fees in the amount of **\$702,927.15**;
- Paralegal fees in the amount of **\$9,750.00**;
- Costs in the amount of **\$43,818.00**.

The final judgment for fees and costs is **Seven Hundred Fifty-Six Thousand, Four Hundred Ninety-Five Dollars and Fifteen cents (\$756,495.15)** and shall bear interest at the statutory rate of 5.97% until paid in full, all for which let execution issue forthwith. Defendant shall make the amount payable to Alvarez, Feltman & Da Silva, P.L.

This Court shall retain jurisdiction of this matter for all purposes, including but not limited to the enforcement of this judgment and to enter post-judgment relief.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on
02/12/19.



RODNEY SMITH
CIRCUIT COURT JUDGE

FINAL ORDERS AS TO ALL PARTIES

SRS DISPOSITION NUMBER 2

**THE COURT DISMISSES THIS CASE AGAINST
ANY PARTY NOT LISTED IN THIS FINAL ORDER
OR PREVIOUS ORDER(S). THIS CASE IS CLOSED
AS TO ALL PARTIES.**

Judge's Initials RS

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.
Copies provided:

Alvarez, Feltman & Da Silva, PL.
Ryan Jones, Esq.