IN THE CIRCUIT COURT OF
FOURTH JUDICIAL CIRCUIT, IN AND
FOR [redacted] COUNTY, FLORIDA

CASE NO. [redacted]

CIVIL DIVISION

[redacted]
Plaintiff,

vs.

[redacted]
Defendant.
_____/

ORDER AND JUDGMENT FOR ATTORNEY'S FEES AND COSTS AGAINST DEFENDANT, [redacted]
AND IN FAVOR OF [redacted]

This matter came before the Court on December 3, 2015, on Plaintiff's Motion for Order Taxing Attorney's Fees and Costs with an Award of a Contingency Fee Multiplier and Interest Thereon, pursuant to Section 627.428. After conducting a hearing to fix an amount for attorney fees, weighing the evidence, and hearing argument on the cause, and having applied the factors set forth in *Florida Patient's Compensation Fund v. Rowe,* 472 So. 2d 1145 (Fla. 1985), and the factors from Florida Bar Rule 4-1. 5(b)(A), and being otherwise fully advised in the premises, the Court makes the following findings:

1. This action arises from Plaintiff's automobile insurance claim for a one car accident in which his car was destroyed by fire on March 11, 2012. Plaintiff sat for an Examination Under Oath (EUO) with no counsel and he voluntarily turned over possession of his vehicle for inspection to Defendant [redacted]. Following Plaintiff's demand for full payment on August 2, 2012 submitted via mail, Defendant responded by its August 9, 2012 letter that its Special Investigations Unit (SIU) was conducting an investigation under a reservation of rights because

evidence gathered at the scene of the accident reflected inconsistencies that it decided required the assistance of the State Fire Marshall Department. Defendant further informed Plaintiff that "until it received the results of the State Fire Marshall Department investigation we will not make any voluntary payments." On September 7, 2012, Plaintiff filed suit against defendant who on October 10, 2012, answered the complaint, along with affirmatively alleging, in part: "that intentional act and fraudulent conduct of the Plaintiff, [redacted] was the sole cause of the auto damage… Under the terms and exclusions of [redacted]'s policy of insurance no coverage is afforded to the Plaintiff." On March 30, 2015, after two and a half years of litigation, the parties partially resolved the issue of liability at mediation; and subsequently, Defendant [redacted] made a payment in the total amount of $10,000.00 to Plaintiff [redacted].

2. [redacted] have stipulated to the following:

   a. Plaintiff is entitled to attorney's fees pursuant Fla. Stat. 627.428.

   b. Plaintiff's counsel, J.P. Gonzalez Sirgo's reasonable hourly rate is $450.00 and his associate attorney's reasonable hourly rate is $275.00.

   c. Admission into evidence of the contingency fee contract entered into between Plaintiff and his counsel, along with counsel's time records.

   d. The qualifications of both Plaintiff's and Defendant's expert witness.

   e. Plaintiff is entitled to an award of compensable costs in the total amount of $6,191.94.

Plaintiff [redacted]

At the December 3, 2015 hearing, the Court received and reviewed Plaintiff [redacted] deposition testimony, as translated by a Spanish interpreter, taken post settlement in regards to the issue of attorney's fees. At his deposition, [redacted] was questioned extensively about his efforts to consult an attorney subsequent to his submission of a demand letter to Defendant [redacted]. At his deposition, [redacted] explained that the demand letter was written on

his behalf by his wife's friend because he did not speak English and that he had recently arrived in the U.S. [redacted] further testified that it was impossible for him to count the number of attorneys he reached out to following submission of the demand letter to [redacted]. He explained that he received publications from many attorneys and he "would call them they didn't take the case, they said that they didn't like the case or also because of the language." Page 13, L 17-19. [redacted] testified that these consultations were only over the telephone and he does not remember how many. He further stated that before meeting attorney Gonzalez-Sirgo, he "spoke with many asking for help because the insurance didn't want to help me; they even stopped communicating with me. They didn't even answer their phone." Page 16, L 16-19. [redacted] also testified that the other attorneys "didn't want to take the case and also I didn't have money to pay them." Page 23, L 17-19. Again, [redacted] repeated that "I think I received a letter from an attorney but I don't remember well. And most of them asked for money that I do not have." Page 29, L19-21. When he was questioned further about whether any attorneys rejected his request for representation, [redacted] testified that "some of them rejected. We talked, I told them what happened and they said no." Page 30, L 20-21 and L25-Page 30 L1.

J.P. Gonzalez-Sirgo

3. Mr. Gonzalez-Sirgo testified that he has been a member of the Florida Bar since 1994 and that he is an AV rated insurance litigator who represents insurance policy holders. He explained that he met with Plaintiff [redacted] who told him that he had no money to hire a lawyer. Mr. Gonzalez-Sirgo also testified that [redacted] informed him that he spoke to other lawyers who didn't want to take the case due to the posture of the case, i.e. that the claim had been referred to the State Department of Insurance, Division of Insurance Fraud; Division of State Fire Marshall, Bureau of Fire and Arson Investigations; and the State Attorney. He further testified that he

believed the Plaintiff's version of events and he agreed, on August 21, 2012, to accept the case on a pure contingency fee basis, notwithstanding the latter actions taken by Defendant.

Mr. Gonzalez-Sirgo also testified that Defendant [redacted] served Plaintiff with its twenty-one day Safe Harbor letter, along with the first of four Proposals for Settlement dated February 18, 2013, requesting that he dismiss the complaint against Defendant. He stated that Defendant [redacted] served two Motions for Attorney's Fees pursuant to 57.105 Fla. Stat. which sought attorney's fees against plaintiff and counsel. Mr. Gonzalez-Sirgo further stated that plaintiff was served with four proposals of settlement in the following amounts: $500.00, dated February 18, 2013; $500.00, dated March 22, 2013; $200.00, dated July 11, 2014; and $1,000.00 ($500.00 to settle all attorney's fees and costs and $500.00 to settle contract damages claim) dated March 11, 2015.

Mr. Gonzalez-Sirgo further testified that on March 30, 2015, the case was mediated and settled for $10,000.00, two weeks after Defendant's March 11, 2015 Offer of Judgment to the Plaintiff. He noted that the latter amount was for more than the combined purchase price of $6,500.00 Plaintiff paid for his Dodge Durango destroyed by the fire and the $1,000.00 deductible under the insurance policy. Consequently, Mr. Gonzalez-Sirgo stated that he is seeking 162 hours (the equivalent of 5.4 hours per month) in the total amount of $67,879.50 with a 2.5 multiplier for two and a half (2 and ½) years of litigation. He further explained that during the course of this litigation, the parties participated in twelve (12) depositions; four extensive hearings; the filing of numerous motions; that he retained two experts; and that he dealt with a total of five (5) separate defense lawyers.

4. Both parties presented expert testimony.

Joel H. Brown's Testimony

Joel H. Brown, a former Circuit Court Judge for twenty-two years and practicing civil trial attorney for 19 years before being appointed to the Court, testified on behalf of the Plaintiff. He is a Board Certified Civil Trial Lawyer and Peer-Review Rated AV. In support of his opinion, he reviewed the court filings in this case, including two 57.105 motions filed against Plaintiff and counsel, the proposals for settlement, depositions, detailed timesheets setting out the hours expended, Fire Marshall Report, and the relevant case law (*i.e. Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145 (Fla. 1985) and Standard Guaranty Ins. Co. v. Quanstrom, 555 So. 2d 828 (Fla. 1990)), and Florida Bar Rule 4-1.5(b).* He also stated that he met with Mr. Gonzalez-Sirgo at his office where he conducted a review of the electronic file of the plaintiff. Mr. Brown testified that based on his review of the above referenced materials and the extent and quality of services provided to Mr. [redacted] by Mr. Gonzalez-Sirgo, this case required a significant amount of time. It was Mr. Brown's objective, expert opinion that a reasonable number of hours expended in representing Mr. Santos' insurance case was 162 attorney hours. He indicated that he found no excessive billing and spot checked the hours expended on the pleadings. Specifically, he stated that counsel for plaintiff expended extensive time taking 11-12 depositions and participating in extensive hearings on September 7, 2012 and March 30, 2015.

Mr. Brown, an attorney with extensive experience in litigation in the local area, further testified that it was his expert opinion that the reasonable rates for the attorneys and time expended in this case were as follows:

a. J.P. Gonzalez-Sirgo, Esquire, 130.2 hours, at $450.00 per hour;

b. [redacted] Esquire, 27.3 hours, at $275.00 per hour;

c. [redacted] Esquire, 4.5 hours, at $400.00 per hour;

Counsel for Defendant conceded the hourly rates were objectively reasonable. Therefore, Mr. Brown concluded that $67,897.50 was a reasonable fee for the two and one-half years of litigation in this case.

With regard to the application of a contingency multiplier, Mr. Brown again testified that he reviewed *Florida Patient's Compensation Fund v. Rowe, 472 So.2d 1145 (Fla. 1985); Standard Guaranty Ins. Co. v. Quanstrom, 555 So.2d 828 (Fla. 1990), and Florida Bar Rule 4-1.5(b).* He explained that Plaintiff lacked the ability to find or obtain competent counsel. He testified that the Plaintiff was repeatedly turned down by attorneys who told him the case was complicated. Mr. Brown also explained that the case was too risky for an attorney to accept as evidenced by Defendant's filing of two (2) 57.105 motions and four separate Proposals for Settlement. Additionally, he stated that an attorney would not be able to mitigate the risk of nonpayment because the Plaintiff had no money to pay an attorney to accept his case.

Mr. Brown stated that another important factor that impeded Plaintiff's ability to obtain counsel was the posture of the case at the time it was presented to counsel. Specifically, Plaintiff, before ever having retained legal representation or advice, was told the fire was suspicious; he gave an Examination Under Oath where he was directly confronted and accused of fraud; he was told that if he continued with his claim he would be criminally prosecuted; he voluntarily gave possession of his vehicle to defendant; he purchased the vehicle for $6,500; and the case was referred to not only the Defendant's Special Investigations Unit but three separate governmental entities: (1) the State Department of Insurance, Division of Insurance Fraud; (2) Division of State Fire Marshall, Bureau of Fire and Arson Investigations; and (3) the State Attorney.

Mr. Brown further explained that the amount involved was $6,500.00. He indicated that the defendant's expert valued the vehicle at $8,500.00 and at mediation the plaintiff settled for

$10,000.00 which was a spectacular result under a scenario of a true "David and Goliath case." He noted that Plaintiff actually obtained a result that was greater than the actual value of his vehicle and a result valued at $11,000.00 since Defendant waived plaintiff's $1,000.00 deductible under the insurance policy. After considering all factors set forth in the aforementioned case law, Mr. Brown recommended that the Court apply a multiplier of 2.0 to 2.5 since success was unlikely at the outset of the case and the Courthouse doors were kept open only because of the excellent legal service and resilience of plaintiff's counsel.

Dawn N. Jayma

Dawn N. Jayma, a Florida attorney for 13 years, testified on behalf of the defendant. In support of her opinions regarding attorney's fees in this case, she stated that she reviewed the Defendant's file, Mr. Gonzalez-Sirgo's timesheets and relied on her independent study of the attorney's market in Miami-Dade County. In her review of the Plaintiff's timesheets and Defendant's file she concluded that a substantial reduction of the number of billed hours was warranted due to excessive billing that occurred during pre-suit and that the instant matter was a simple case involving a battle of the experts. Additionally, she opined that the arson investigation was justified due a number of inconsistencies in the statements taken from the Plaintif and his wife and sister, and due to fraud being very common in automobile cases.

With regard to the application of a multiplier, Ms. Jayma opined that a multiplier is not appropriate in this case and "is the exception, not the rule", quoting *State Farm v. Alvarez, 175 So.3d 352 (Fla.3d DCA 2015).* She stated that there is no evidence to support the application of a multiplier, and that other lawyers were available to take on the case.

Attorney's Fees – The Lodestar

The Court has reviewed the factors to be considered in determining reasonable fees as set forth in Rule 4-1.5, Rules Regulating the Florida Bar, and as otherwise discussed in Florida

Patient's Compensation Fund v Rowe, 472 So.2d 1145 (Fla. 1985) and *Standard Guaranty Insurance Co. v. Quanstrom, 555 So.2d 828 (Fla. 1990)*. Mr. Brown offered extensive testimony to support his opinion that the factors set out in Rule 4-1.5, Rules Regulating The Florida Bar were met. Therefore, the Court, considering the evidence and expert testimony offered to the Court, finds the following amounts as reasonable number of hours expended and hourly rates for each attorney:

a. J.P. Gonzalez-Sirgo, Esquire, 130.2 hours, at $450.00 per hour, $58,590.00;

b. [redacted] Esquire, 27.3 hours, at $275.00 per hour, $7,507.50;

c. [redacted] Esquire, 4.5 hours, at $400.00 per hour; $1,800,00.

The total objectively reasonable number of hours for the attorneys referenced above is 162 together with the rates set out above, as determined by Mr. [redacted] expert witness, lead to a lodestar amount of $67,879.50.

Multiplier

The Court has reviewed the considerations for applying a contingency risk multiplier, as set forth in *Standard Guaranty Insurance Co. v. Quanstrom, 555 So.2d 828 (Fla. 1990)*; *State Farm v. Alvarez, 175 So.3d 352 (Fla.3d DCA 2015)*and Citizens v. Pulloquinga, *District Court of Appeal, Third District, December 30, 2015, --- So.3d --- 2015WL 9584387*. Based on the definition of "contingency" as provided in *Quanstrom*, [redacted] has a "contingency" fee arrangement with Mr. Gonzalez-Sirgo. *Quanstrom*, at 833. Specifically, he would not be required to pay any sums to Gonzalez-Sirgo, win or lose. An enhancement of the lodestar figure is allowed due to the risk of nonpayment.

A contingency fee multiplier is appropriate in cases involving public policy enforcement or tort and contract cases. *Id* at 833. An automobile insurance claim case falls into the latter.

The protection of Mr. Santos' case involved both public policy and contract of attorney's fee case.

In public policy cases, the same factors considered to determine the Lodestar amount are considered. These factors have been addressed above.

In contract cases the trial court should also consider the following factors in determining whether a multiplier is necessary: (1) whether the relevant market requires a contingency fee multiplier to obtain competent counsel; (2) whether the attorney was able to mitigate the risk of nonpayment in any way; and (3) whether any of the factors set forth in Rowe are applicable, especially, the amount involved, the results obtained, and the type of fee arrangement between the attorney and his client. Evidence of these factors must be presented to justify the utilization of a multiplier. *Quamstrom*, at 834.

Mr. Brown testified that the relevant market would require a contingency fee contract and a multiplier for Mr. [redacted] to be able to obtain competent counsel. Specifically, it is Mr. Brown's expert opinion that given Mr. [redacted]' very limited means, no other attorney would take this case without a contingency fee arrangement.

Mr. Brown further testified that Mr. Gonzalez-Sirgo would not be able to mitigate, in any way, the risk of nonpayment based upon the attorneys' fee arrangement Mr. [redacted] had with Mr. Gonzalez-Sirgo. Mr. Brown found the subject agreement to be a contingency fee agreement.

As described above, [redacted]' fee expert Mr. Brown thoroughly testified regarding specific case facts to support the applicability of the factors outlined in Rule 4-1.5, *Rowe* and *Quanstrom*.

The trial court must consider whether to apply a contingency fee multiplier when awarding statutorily directed reasonable attorney fees. *Quanstrom*, at 831. 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. *Id at 824*. Mr. Brown testified that [redacted]' chances of success, without the work provided by

Mr. Gonzalez-Sirgo, was virtually none and it is his opinion that a 2.0 to 2.5 multiplier is appropriate for this case.

Application of the Multiplier Analysis to the Instant Case

In light of the foregoing, the court applies a contingency fee multiplier of 2.0 under the circumstances of this case. Specifically, the Court finds that competent counsel could not be retained without a multiplier; that success was unlikely at the outset of the case; the matter involved was a question of difficulty; and the result obtained was significant. The court further concludes that a contingency risk fee is applicable because an hourly rate is not reasonably viable for the extreme amount of time and labor invested in the case. As such, the Court determines that J. P. Gonzalez-Sirgo is entitled to attorney's fees, with a multiplier of 2.0, in the total amount of $135,795.00 (2.0 x $67,897.50). It is therefore,

ORDERED AND ADJUDGED

A. Having found a loadstar of $67,897.50 to be an objectively reasonable amount of hours at the objectively reasonable rate and a multiplier of 2.0 to be reasonable and necessary, the Court orders [redacted] Insurance Company to pay attorney's fees to [redacted]' counsel, J.P. Gonzalez, P.A., in the total amount of $135,795.00.

B. The Court finds Joel H. Brown, Esquire is entitled to expert witness fees in the amount of $5,100.00, representing 8.5 hours of work at $600.00 per hour.

C. Final Judgment for Attorney's Fees is hereby entered against [redacted] Insurance Company, and in favor of J.P. Gonzalez-Sirgo, P.A., for the sum of $135,795.00, for reasonable attorney's fees, with prejudgment interest thereon, and the sum of $6,191.94 for costs, and the sum of $5,100.00 for expert witness fees for a grand total judgment sum of $147,086.94, which grand total sum defendant [redacted]

Insurance Company shall pay to J.P. Gonzalez-Sirgo, P.A. within thirty (30) days, and for which grand total sum let Execution and other final process issue.

F. The Court reserves jurisdiction to enforce any provisions of its Order.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 01/29/16.

JERALD BAGLEY
CIRCUIT COURT JUDGE

No Further Judicial Action Required on THIS MOTION
CLERK TO RECLOSE CASE IF POST JUDGMENT

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.

Jerald Bagley
Circuit Court Judge

Copies Furnished to:

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jp@yourattorneys.com

[redacted]

S[redacted]