

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

CIRCUIT CIVIL DIVISION

CASE NO. 10-33653 CA 04
JUDGE BRONWYN C. MILLER

INSTITUTO NACIONAL DE SEGUROS,

Plaintiff,

vs.

HEMISPHERIC REINSURANCE GROUP,
L.L.C., and HOWDEN INSURANCE
BROKERS LIMITED,

Defendants.

**FINAL JUDGMENT AWARDING ATTORNEY'S FEES AND COSTS TO
DEFENDANT HOWDEN INSURANCE BROKERS LIMITED**

This cause having come before the Court upon a motion by Defendants Howden Insurance Brokers Limited (hereinafter "Howden") and Hemispheric Reinsurance Group, LLC (hereinafter "HRG") for a determination of reasonable attorneys' fees and costs, the Court having conducted an evidentiary hearing on December 18 and 19, 2014, considered the procedural history, the court file, memoranda of the parties, testimony adduced, all exhibits, and all relevant legal authority, including the factors set forth in section 768.79(7)(b), Florida Statutes and *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985), the Court hereby **ORDERS** and **ADJUDGES** as follows:

1. On May 30, 2014, this Court's predecessor, the Honorable Beth Bloom, found that Howden and HRG were entitled to recover attorney's fees and costs pursuant to a proposal for settlement that was timely and properly served upon Plaintiff, Instituto Nacional de Seguros (hereinafter "INS"), on August 19, 2011.

2. Accordingly, Judge Bloom entered a Standing Order on Motion for Entitlement to Attorney's Fees and Costs, intended to narrow the issues in dispute between the parties.

FINDINGS OF FACT – FEES

1. Howden demonstrated that the attorney's fees it seeks have been paid by its client.

2. INS has stipulated to the hourly rate charged by Howden's counsel.

3. Howden initially presented a motion for fees in the amount of **\$2,608,181.50**; which when supplemented to carry through to the applicable date of May 30, 2014, for a requested total of **\$2,656,247.00**.

4. Howden's expert, Michael Higer, Esquire, testified at the fee hearing that the number of hours sought by Howden were excessive and incorporated reductions, accordingly. Mr. Higer reduced the hours and commensurate rate for a final total of **\$2,467,319.25**. The Court finds that Mr. Higer appropriately applied the relevant standards and case law in taking these reductions and that this amount should be deducted from the final award. With the exception of these reductions, Mr. Higer opined that the staffing of this case, and the number of hours spent, were reasonable.

5. INS, through its expert Tony Castro, Esquire, challenged other items. The Court concurs with some reductions proposed by Mr. Castro, particularly with regards to travel time of counsel. The Court finds that Howden's association with expert Michael Elkin was reasonably necessary in light of the complexity of financial issues presented in the case. The Court further finds that the retention of Steven Matanle as an expert was reasonably necessary in light of the fact that INS retained two liability experts.

6. The Court also finds that INS consistently referred to the defendants Howden and HRG as a single unit ("HRG/Howden"), a strategy that ultimately led to the brokers filing

crossclaims against one another in an effort to distinguish their identities before the trier of fact. There was no evidence presented that the brokers would have filed crossclaims against each other in the absence of INS's claim against them. The record reveals INS vigorously opposed severing the crossclaims for the purposes of trial, asserting that the crossclaims were inextricably intertwined with the primary allegations and that all claims involved a common set of facts. Moreover, the testimony adduced at the fee hearing established that the determination of the primary allegations would necessarily have disposed of the crossclaims. *See Effective Teleservices, Inc. v. Smith*, 132 So. 3d 335 (Fla. 4th DCA 2014) (Claims are "inextricably intertwined" for purposes of allocation of attorney's fees when a determination in one action would necessarily have been dispositive of the issues raised in the other); *Shoenlank v. Shoenlank*, 128 So. 3d 118 (Fla. 3d DCA 2013) (Where the claims litigated are "inextricably intertwined" or involve a common core of facts, an award of attorney's fees may be appropriate as to the entire litigation).

7. Finally, the Court finds that the billing statements reflect sufficient detail to discern those activities worthy of reasonable compensation.

FINDINGS OF FACT – COSTS

1. Howden incurred total costs of **\$648,327.58**, of which it asserted **\$517,703.50** were compensable under the Uniform Guidelines.

2. INS challenged all of the costs claimed by Howden, asserting **\$180,802.57** were subject to general objections (only) and **\$336,900.93** were subject to general and specific objections.

3. Howden proved it incurred **\$96,297.00** in expert costs associated with Michael Higer, Esquire, none of which have been paid by INS.

CONCLUSIONS OF LAW

1. Howden had the burden to present evidence detailing the nature and extent of services performed, and to present expert testimony on reasonableness. *Morton v. Heathcock*, 913 So. 2d 662 (Fla. 3d DCA 2005) Howden met this burden through the production of detailed time records, kept contemporaneously as services were performed, and evidence that it paid the invoices for services. *Haines v. Sophia*, 711 So.2d 209 (Fla. 4th DCA 1998); *M. Serra Corp. v. Garcia*, 426 So.2d 1118 (Fla. 1st DCA), *review denied*, 434 So.2d 887 (Fla. 1983); *Brevard County School Board v. Walters*, 396 So.2d 1197 (Fla. 1st DCA 1981). It further met this burden through the expert testimony on reasonableness offered by Michael Higer, which included a reduction in the total hours claimed. *Sunshine State Ins. Co. v. Davide*, 117 So.3d 1142 (Fla. 3d DCA. 2013)

2. The Florida Supreme Court, in *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985) directed the trial courts follow a lodestar approach in computing a reasonable fee. Thus, the Court has determined the criteria set forth in the Rules Regulating Florida Bar, section 4-1.5(b):

(b) Factors to Be Considered in Determining Reasonable Fees and Costs.

(1) Factors to be considered as guides in determining a reasonable fee include:

(A) the time and labor required, the novelty, complexity, and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(B) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;

(C) the fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature;

(D) the significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained;

(E) the time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client;

(F) the nature and length of the professional relationship with the client;

(G) the experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services; and

(H) whether the fee is fixed or contingent, and, if fixed as to amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation.

3. Moreover, the Court has considered those factors delineated in section 768.79(7)(b), Florida Statutes:

1. The then apparent merit or lack of merit in the claim.
2. The number and nature of offers made by the parties.
3. The closeness of questions of fact and law at issue.
4. Whether the person making the offer had unreasonably refused to furnish information necessary to evaluate the reasonableness of such offer.
5. Whether the suit was in the nature of a test case presenting questions of far-reaching importance affecting nonparties.
6. The amount of the additional delay cost and expense that the person making the offer reasonably would be expected to incur if the litigation should be prolonged.

4. The Court notes that the Honorable Beth Bloom previously found that the offer of judgment was rendered in good faith. Moreover, there is no assertion by INS that Howden unreasonably refused to furnish information to INS to allow it to evaluate the proposal for settlement it made in August 2011. There is no record indication that this constituted a “test case.” There was evidence that INS’s rejection of the proposal for settlement did result in Howden’s sustaining substantial additional costs and fees. The Court does not find that there are any equities involved which would reasonably justify a fee award of zero. Taking into consideration all the relevant criteria from the statute and the case law, the Court rules that the lodestar amount is the amount reasonably to be assessed against INS as attorney’s fees. Applying these criteria the Court finds that the number of hours reasonably expended by Howden’s counsel, during the relevant time period, to be **7916.80**. Multiplying these hours by the actual hourly rates charged results in a lodestar amount of **\$2,456,131.10**. *Valdes v. Estate of Valdes*, 935 So.2d 71 (Fla.3d DCA 2006). This breaks down as follows:

<u>Timekeeper</u>	<u>Position</u>	<u>Reasonable Hourly Rate</u>	<u>Hours Awarded</u>	<u>Fees Awarded</u>
Ramon Abadin	Partner	\$350	685.5	\$239,925.00
Valerie Shea	Partner	\$340	702.8	\$238,952.00
Valerie Shea	Partner	\$350	1115.6	\$390,460.00
Al Warrington	Partner	\$340	619.35	\$210,579.00
Al Warrington	Partner	\$350	1180.4	\$413,140.00
Charles Davant	Associate	\$285	996.15	\$283,902.75
Charles Davant	Associate	\$295	1533.65	\$452,426.75
Jeannine Jacobson	Associate	\$285	105.3	\$30,010.50
Jeannine Jacobson	Associate	\$295	253.55	\$74,797.25
Suzette Russomanno	Associate	\$295	168.2	\$49,619.00
Johnet Grimm	Paralegal	\$130	494.5	\$64,285.00

Ellie Wheeler	Paralegal	\$130	61.8	<u>\$8,034.00</u>
Lodestar Amount			7916.80	\$2,456,131.10

6. With respect to Howden’s taxable costs, this Court is guided by the Supreme Court’s opinion *In Re Amendments to Uniform Guidelines for Taxation of Costs*, 915 So. 2d 612 (Fla. 2005) wherein Florida adopted an amended version of the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions. Under the guidelines, it is Howden’s burden to “show that all requested costs were reasonably necessary either to defend or prosecute the case at the time the action precipitating the cost was taken.” *Id.* at 614.

7. As a threshold matter, this Court has considered INS’s general objection to Howden’s costs claim. Howden filed a timely motion for costs under Rule 1.525, Florida Rules of Civil Procedure, and is entitled to such costs as the Uniform Guidelines permit irrespective of the proposal for settlement. *See Lewis v. Yale*, 4 Fla. 441 (Fla. 1851) (“The general rule in regard to costs is, that they follow the result of the suit”); *Martin v. Martin*, 26 So. 2d 183 (Fla. 1946) (“general rule is that the loser must pay the costs”); *Arellano v. Bisson*, 761 So. 2d 365 (Fla. 3d DCA 2000) (“Section 57.041 creates a general right in a prevailing party for costs following judgment as a matter of course”) (quoting *Department of Health & Rehab. Servs. v. Crossdale*, 585 So.2d 481, 483 (Fla. 4th DCA 1991)).

8. Therefore, INS’s general objections to Howden’s costs claim are overruled.

9. The Court, having considered INS’s specific objections to costs items, recognizes that the Statewide Uniform Guidelines for Taxation of Costs is “not intended to be mandatory.” 915 So. 2d at 614. Moreover, the Court notes that the Uniform Guidelines do not serve to “limit the amount of costs recoverable under a contract or statute.” *Id.* Noting that INS’s retention of

experts led to Howden’s retention of experts, and the decision not to call expert witnesses was made on the last day of trial, this Court carefully exercises its discretion in sustaining certain objections relating to items designated as not properly compensable under the Uniform Guidelines, including certain travel expenses and expenses relating to consulting but non-testifying experts. *See Albanese Popkin Hughest Cove, Inc. v. Scharlin*, 141 So. 3d 743 (Fla. 3d DCA 2014) (Statewide Uniform Guidelines for Taxation of Costs in Civil Actions excluded expenses of non-testifying experts from list of taxable costs, but allowed taxation of the costs of preparation of any court ordered report); *Delmonico v. Crespo*, 127 So. 3d 576 (Fla. 4th DCA 2012) (Trial court erroneously taxed expenses for accountants at certified public accounting firm as component of award of defendant’s costs incurred, where such experts were consulting expert rather than testifying experts).

10. Accordingly, the Court finds that the amount of taxable costs to be awarded to Howden is **\$497,469.32** under the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions.

10. The Court also finds the fees and cost incurred by Howden with respect to its fee expert, Michael Higer, Esquire to be reasonable and finds these fees and costs, in the amount of **\$96,297.00**, are properly charged to INS in this matter.

11. Howden is entitled to prejudgment interest on the fees and costs incurred at a rate of 4.75% since May 30, 2014 (the date on which entitlement was determined). *Butler v. Yusem*, 3 So. 3d 1185 (Fla. 2009).

WHEREFORE IT IS ORDERED AND ADJUDGED THAT FINAL JUDGMENT IS ENTERED IN FAVOR OF HOWDEN INSURANCE BROKERS LIMITED AGAINST INSTITUTO NACIONAL DE SEGUROS the sum of **\$2,456,131.10** for attorney’s fees;

\$497,469.32 for taxable costs; \$96,297.00 for expert fees; and \$84,561.98 for prejudgment interest on the attorney’s fees and taxable costs, for a total amount of \$3,134,459.30, which sum shall bear interest at the legal rate, for which sum let execution issue; and

IT IS ADJUDGED THAT the judgment debtor shall complete under oath Florida Rule of Civil Procedure Form 1.977, including all required attachments, and serve it on the judgment creditor’s attorney, within 45 days from the date of this final judgment, unless the final judgment is satisfied or post-judgment discovery is stayed. Jurisdiction of this case is retained to enter such further orders as are proper to compel the judgment debtor to complete Form 1.977 and serve it on the judgment creditor’s attorney at Sedgwick LLP, One Biscayne Tower, Suite 1500, Two South Biscayne Blvd Miami FL 33131.

This Court reserves jurisdiction as to the issues of attorney’s fees and costs incurred on appeal.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 01/05/15.



BRONWYN C. MILLER
CIRCUIT COURT JUDGE

FINAL ORDERS AS TO ALL PARTIES
SRS DISPOSITION NUMBER 12
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 BCM

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.

Conformed copies:

Ramon A. Abadin, Esq.

Pieter Van Tol, Esq.

Robert Harris, Esq.