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

SUNSET 102 OFFICE PARK CONDOMINIUM ASSOCIATION, INC.,

Plaintiff(s),

v.

Case No.: 3D22-0248
L.T Case No.: 2018-042359-CA-01

UNIVERSAL INSURANCE COMPANY OF NORTH AMERICA,

Defendant(s),
_____/

DEFENDANT'S NOTICE OF FILING

Defendant, UNIVERSAL INSURANCE COMPANY OF NORTH AMERICA ("UNA"), files the following:

1. May 7, 2024 Defendant's Letter to Judge
2. Defendant's Proposed Order on Plaintiff's Motion for Attorney's Fees and Costs
3. Plaintiff's Proposed Order on Plaintiff's Motion for Attorney's Fees and Costs

/s/ Nicole M. Fluet

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Counsel for Defendant, Universal Insurance Company of North America.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following via the Florida E-Filing Portal and electronic mail delivery on September 11, 2024:

Brittany Quintana Marti, Esq.
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Counsel for Plaintiff

/s/ Nicole M. Fluet
NICOLE M. FLUET, ESQ.

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May 7, 2024

Via CourtMap
The Honorable Tanya Brinkley
Dade County Courthouse
73 West Flagler St.
Miami, Florida 33130
Room: DCC 1407

Re: *Sunset 102 Office Park Condominium Association, Inc. v. Universal Insurance Company of North America*
Venue: Eleventh Circuit, Miami – Dade County
Case No.: 2018-042359-CA-01

Dear Judge Brinkley:

Pursuant to the Court's instructions to the parties to submit proposed orders at hearing on May 1, 2024, Defendant submits the attached proposed order on Plaintiff's Motion for Attorney's Fees and Costs. Plaintiff has submitted its competing Order separately to this Court.

If the Order meets the Court's approval, please execute, and have your judicial assistant forward copies.

Thank you for your time and consideration.

Sincerely,

/s/ Nicole M. Fluet

Nicole M. Fluet

NMF

EXHIBIT C

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

SUNSET 102 OFFICE PARK CONDOMINIUM ASSOCIATION, INC.,

Plaintiff(s),

v.

Case No.: 2018-042359-CA-01

UNIVERSAL INSURANCE COMPANY OF NORTH AMERICA,

Defendant(s),
_____/

ORDER ON PLAINTIFF'S MOTION FOR ATTORNEY FEES AND COSTS

THIS CAUSE having come before the Court at two evidentiary hearings on April 29, 2024 and May 1, 2024, the Court having reviewed the written submissions by the parties, including the records, documentation, and exhibits submitted at and before the hearings, hearing testimony from Brittany Quintana-Marti, Randy Weber, Yelena Schneyderman, Pelayo Vigil, Plaintiff's expert Benjamin Alvarez, and Defendant's expert Chandra Miller, having reviewed the applicable case law, having heard argument of the parties, and having been otherwise fully advised in the premises, the Court makes the following findings of fact and law:

I. Relevant Facts to Fee and Cost Determination.

This lawsuit arises out of a first party insurance claim for Hurricane Irma damage at the Plaintiff's commercial units ("Property"). The claim was reported by Plaintiff's public adjuster, Tony Quintana, notably an owner of a commercial unit located on/at the Property. The Property was insured by Universal Insurance Company of North America n/k/a Universal North America ("UNA") under a commercial insurance policy. Following an inspection by UNA's field adjuster, on January 23, 2018, UNA accepted coverage for the Hurricane Irma damage to the roof and interior, which fell below the applicable deductible. Following acceptance of coverage, Mr. Quintana prepared an estimate for complete roof replacement and interior repairs, and retained Al Bruziela to prepare an engineering evaluation. Following receipt of the additional documentation, UNA retained SDII Global and Mortensen Roofing, and ultimately issued a second correspondence dated November 26, 2018 confirming that coverage was accepted and indicated it fell under the deductible.

In December 2018, Plaintiff determined it necessary to retain an attorney. Plaintiff, through argument and testimony, indicated attorneys were invited to a special meeting, but did not provide

any names or information regarding the attorneys other than that one was the husband of a unit owner, Linda Baer, and the other was Brittany Quintana-Marti, who was recommended by her father and the public adjuster handling the claim, Tony Quintana. Brittany Quintana-Marti attended the meeting and presented to the Board. The Board hired Ms. Quintana-Marti to represent the association in a lawsuit, which was filed shortly thereafter.

The Complaint alleged one count of breach of contract, specifically alleging that UNA accepted coverage but that in Plaintiff's view, underpaid the claim. The parties engaged in litigation from January 2019 until June 30, 2021, when the case was tried before a jury. The jury ultimately found in favor of Plaintiff, awarding $555,365.79 in damages across the four buildings. Following a Motion for New Trial, which was denied by the Court, UNA appealed the trial verdict. After briefing, the 3rd DCA affirmed the verdict and ultimately, Plaintiff was awarded entitlement to fees and costs for the underlying litigation and appeal.

II. Lodestar Calculation

a. *Analysis Relevant to Lodestar*

In determining the lodestar calculation, the Court considered all of the evidence presented and applied such evidence to the factors set forth in *Florida Patient's Comp. Fund v. Rowe*, 472 So. 2d 1145, 1150 (Fla. 1985), *holding modified by Standard Guar. Ins. Co. v. Quanstrom*, 555 So. 2d 828 (Fla. 1990).

The Court considered the time and labor required for the subject litigation and appeal. The docket evidenced two and a half years of litigation by both parties' attorneys up until and through trial and appeal, including several depositions and motion practice. While the Plaintiff's evidence commented several times during the hearing on the number of docket entries, the Court acknowledges following review of the docket that more than 50 of the entries were related to filing of exhibits for trial purposes. Ultimately, this litigation arose out of a commercial first party claim for hurricane damage, much like many other lawsuits filed by Miami-Dade County following Hurricane Irma. Coverage was accepted by UNA prior to the involvement of counsel, as articulated in the Complaint allegations and the opening statements made by Plaintiff's counsel at trial. From the inception of this lawsuit through trial, Plaintiff's counsel maintained that this was a covered loss, with a dispute over the amount paid – a scope and price dispute between the insurance company and its insured. While there were legal issues involved in the litigation, including issues dealings with the concurrent cause doctrine and spoliation of evidence, these legal issues alone do not elevate this matter to the level of complexity suggested by Plaintiff.

As acknowledged by both parties' experts, the writings contained within the docket, and the results obtained in the litigation and trial, the Court acknowledges that the attorneys handling the case possessed the requisite skill necessary to assist their clients in a successful manner, which is reflected in the hourly rate awarded by this Court herein. The Court notes that testimony of the

experts that the attorneys involved in this matter have shown their ability to successfully take a case to verdict and appeal for their client in the first party arena. That said, Ms. Quintana-Marti and her client made the decision to bring in not only trial counsel through Mr. Weber, which based upon the *Williams v. Universal Property & Cas. Insurance Co.* order submitted by Plaintiff has happened in the past, but also felt the need to bring in a third attorney to assist with trial advice and guidance. *See* Case No. 2021-013207-CA-01.

In determining the reasonable hours expended, the Court performed the exercise of reviewing the time records in detail. The Court notes that Plaintiff's expert did not place into evidence any documentation related to the actual time reduced, other than noting that travel time was removed from the fee records. In reviewing the fee records closely, the Court notes that there are several areas for necessary reduction. First, although Plaintiff and its counsel are entitled to determine that additional attorneys are necessary for the handling of this matter, the non-prevailing party should not be forced to compensate Plaintiff for such a decision. *See Zuckerman v. Zuckerman,* 676 So. 2d 41, 43 (Fla. 3d DCA 1996) (noting that a "party has a right to hire as many attorneys as it desires, but the opposing party is not required to compensate for overlapping efforts, should they result"); *Baratta v. Valley Oak Homeowners' Association*, 928 So. 2d 495, 499 (Fla. 2d DCA 2006) (noting that "as a general rule, duplicative time charged by multiple attorneys working on a case is usually not compensable"); *North Dade Church of God, Inc. v. JM Statewide, Inc.,* 851 So. 2d 194 (Fla. 3d DCA 2003)(noting that with respect to the timesheet entries reflecting "conferences between the partner and the associate," as well as "multiple attorneys performing or reviewing the same items," duplicative line items by multiple attorneys is "generally not compensable"). Although the attorneys attempted to testify regarding separate purposes for certain line items, the billing records failed to provide the specificity necessary for the Court to make such a determination, a burden that must be met by the Plaintiff. Accordingly, the Court made appropriate reductions for such duplicity.

Second, the Court made appropriate reductions related to pre-suit time. *SE Painting and Waterproofing, Inc. v. Travelers Indemnity Company of Connecticut,* 2019 WL 721337 (S.D. Fla. 2019). The Court notes that much of the pre-suit time either lacks specificity required in order for the Court to determine whether necessary for prosecution of the action or occurs prior to the retention of Ms. Quintana-Marti by Plaintiff. As a result, the Court made necessary reductions accordingly.

With respect to the time associated with the Civil Remedy Notice, the Court notes that this time is not compensable, as it is unrelated to the underlying action. *Ottaviano v. Nautilus Ins. Co.,* 717 F.Supp.2d 1259 (M.D. Fla. 2010). The Court does not find the *Sunshine State v. Dande* case cited by Plaintiff to be relevant, as while the Court notes a trial court commentary on the "bad faith time," the trial court ultimately cut the associated time, which the Court has similarly done here.

Additionally, the Court made several reductions related to lack of specificity and vagueness, excessiveness based upon the information provided, administrative, and travel time based upon the Court's analysis of the time records and testimony received during the hearings. *Haines v. Sophia,* 711 So. 2d 209 (Fla. 4th DCA 1998); *SE Painting and Waterproofing, Inc. v. Travelers Indemnity Company of Connecticut,* 2019 WL 721337 (S.D. Fla. 2019). The Court notes the agreement between the parties related to the appellate hours expended in this matter and as a result, declines to comment on the reasonableness of the hours expended during the actual appeal. The analysis does include, however, ruling on reasonableness of the hours expended by appellate counsel and trial counsel related to the appeal that were included in the underlying trial records.

With respect to hourly rate, the Court acknowledges the experience level of each of the attorneys involved in the case, along with the Court's knowledge of the relevant market. "The reasonable hourly rate is one that is adequate to attract competent counsel in the relevant legal market, yet does not produce a windfall to that attorney." *Beach Bars USA, LLC v. Indemnity Insurance Corp. of DC,* 2015 WL 11422318, *2 (S.D. Fla. 2015). The Court finds that the relevant market for first party property litigation expands outside of Miami-Dade, with made first party property attorneys traveling throughout the state to take cases in areas outside of their immediate locale. Within the Miami-Dade arena, there are many first party property firms handling matters on a regular basis, as evidenced by the testimony of Ms. Miller related to the recent Miami-Dade docket filings. The Court's findings below therefore take into consideration of the information provided, along with the Court's own knowledge of reasonable hourly rates within the community.

Although all three attorneys testified to the amount of time devoted to the underlying litigation, which is evidenced in the amount of hours spent over the course of the litigation and appeal, the Court is not swayed by the testimony regarding the inability to accept additional employment. Ms. Quintana-Marti testified that she was unable to take more than 45 cases at a time, purportedly due to the handling of the subject case, yet was able to take hundreds of other first party matters and bring them to what she described was successful resolution. Mr. Weber was able to take other work but simply missed out on an opportunity during trial, something all trial attorneys face at one point or another in their career due to the "all in" nature of trial. Ms. Schneyderman testified to spending several weeks of time on the underlying trial assistance but failed to identify any missed opportunities during that time in her testimony.

Further, the Court notes that the time records of the defense counsel have been placed into evidence for consideration but does not find them to be relevant other than to show that both parties engaged in active litigation up through trial and through the appellate process. While Plaintiff's expert appears to be taking the records into consideration, he did not provide any evidence or testimony regarding whether the time was reasonable or excessive. The Court similarly did not review the records to provide a lodestar calculation. Accordingly, the Court's reliance on such records is minimal in the determination of a reasonable fee for Plaintiff in this matter.

b. Lodestar Findings

Based on the evidence presented at the hearing, analysis of the relevant case law, and the analysis set forth above, the Court makes the following findings related to Lodestar for Plaintiff's counsel in this matter:

1. Trial Time

Attorney	Hourly Rate	Reasonable Hours	Total
Brittany Quintana-Marti	$375	538.7	$202,012.50
Brigette Quintana	$150	0	$0.00
Randy Weber	$525	275.8	$144,795.00
Yelena Schneyderman	$425	139.4	$59,245.00
Paralegal	$120	94	$11,280

2. Appellate Time

Attorney	Hourly Rate	Agreed Hours	Total
Brittany Quintana-Marti	$375	26.4	$9,900.00
Randy Weber	$525	32.1	$16,852.50
Yelena Schneyderman	$425	128.5	$54,712.50

III. Contingency Fee Multiplier

a. Analysis Relevant to Multiplier Consideration

Plaintiff has requested a contingency fee multiplier for the time expended in this matter.[1] First and foremost, Plaintiff failed to place the purported contingency fee agreement into evidence. Not only can this Court not confirm whether a pure contingency fee agreement existed, it cannot determine whether, if at all, the contract allowed for any mitigation of risk. As it is Plaintiff's burden to provide such evidence, and Plaintiff failed to do so, Plaintiff has failed to meet the requirements under Florida law to warrant a multiplier in this matter.

Even if the Court assumes that a contingency fee contract exists, Plaintiff still has failed to meet the burden, as Plaintiff failed to submit substantial, competent evidence to substantiate the need for application of a multiplier. In determining the applicability of a fee multiplier, the Court must consider the following factors: (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 either factors outlined in Rule 4-1.5(1), Florida Rules of Professional Conduct apply, especially, amount involved, results obtained, and the type of fee arrangement between the attorney and his client. *Standard Guar. Ins. Co. v. Quanstrom*, 555

[1] The Court notes that Plaintiff's expert noted that a contingency fee multiplier is not warranted for the appellate time expended in this matter and specifically does not include a recommendation for a contingency fee multiplier for Ms. Schneyderman's time in his affidavit for the trial time.

So. 2d 828 834 (Fla. 1990). The Court has reviewed the relevant case law, including the Florida Supreme Court decision in *Joyce v. Federated National Ins. Co.,* 228 So. 3d 122 (Fla. 2017), along with the recent statutory changes under Florida Statute 57.104. The Court finds the standard in Florida Statute 57.104 to be retroactive, as a procedural analysis that does not impair contractual rights. *See Miami Children's Hospital v. Tamayo,* 529 So. 2d 667 (Fla. 1988) The recent statutory changes codified the presumption that the lodestar fee is sufficient and reasonable, only to be rebuttal in a rare and exceptional circumstance. *See* Fla. Stat. 57.104. The multiplier determination is properly viewed through the lens of the attorney at the time the case was taken. Regardless, under either standard, the Court finds that Plaintiff failed to meet the burden to prove that a multiplier is warranted in this matter pursuant to the analysis below.

First, Plaintiff failed to provide substantial competent evidence to support the need for a multiplier to obtain competent counsel. Plaintiff presented testimony from Mr. Vigil, the Board President during the claims process, regarding the retention of Ms. Quintana-Marti as counsel in this matter. While Mr. Vigil testified that the Board contacted a few attorneys, including the husband of a unit-owner, Mr. Vigil was unable to identify the names of any of the individuals and did not provide the qualifications of any of the individuals. No rejection letters were placed into evidence, nor any information regarding whether any of the purported attorneys contacted had the competency to handle a first party matter. While he noted that the attorneys he spoke to on the phone "wanted to be paid hourly," he did not indicate whether they were not willing to take the case on a contingency fee basis without promise of a multiplier. In reality, the evidence supports that Ms. Quintana-Marti attended the special meeting, made a presentation, presumably in an effort to secure a client, and the Board hired her. Furthermore, while Plaintiff's expert testified that he spoke with a few colleagues who purportedly would not take the case without a multiplier, he failed to indicate what information about the underlying matter he provided to those attorneys. Regardless, the statements from both witnesses were hearsay and wholly unsubstantiated by any documentation or admissible evidence before the Court. It is Plaintiff's burden to place substantial, competent evidence into the record, which Plaintiff failed to do. *Citizens Prop. Ins. Corp. v. Casanas,* 336 So. 3d 746 (Fla. 3d DCA 2021); *Impex Caribe Corp. v. Levin*, 338 So. 3d 13, 15 (Fla. 3d DCA 2022); *Universal Prop. & Cas. Ins. Co. v Deshpande*, 314 So. 3d 416 (Fla. 3d DCA 2020); *USAA Cas. Ins. Co. v. Prime Care Chiropractic Centers*, 93 So. 3d 345 (Fla. 2d DCA 2012) (finding that the prevailing party failed to provide evidence to support broad assertions related to the relevant market requirement).

As noted above, the relevant market for first party property matters, whether commercial or residential, extends outside of Miami-Dade County. Attorneys who handle first party work are abundant, filing cases and taking such cases to trial on a regular basis, including in Miami-Dade. Plaintiff's speculative and conclusory evidence on this point did not provide substantial, competent evidence to meet this first prong. As noted by Second DCA in *Florida Peninsula Ins. Co. v. Wagner*, "[c]ertainly most (all?) attorneys would *prefer* to collect twice their market rate at the conclusion of a successful contingency fee case, a point that perhaps needed no expert testimony

to illuminate. It does not follow, though, that that preference would create a dearth of competent lawyers who *would* have taken this case at the prevailing rate." 196 So. 3d 419, 422 (Fla. 2d DCA 2016). Furthermore, summary conclusions by an expert that the relevant market required a multiplier does not provide evidence to overcome the presumption against a multiplier. See *USAA Cas. Ins. Co. v. Prime Care Chiropractic Enters. P.A.* 93 So.3d 345, 347 (Fla. 2d DCA 2012). Accordingly, the Court finds that the first prong has not been met.

As to the ability for Plaintiff's attorney to mitigate the risk of nonpayment, Plaintiff similarly failed to meet the burden of proof in this matter. This is a scope and price dispute where under Florida Statute 627.428, if Plaintiff recovered any amount above the deductible from the insurance company, there would be entitlement to fees and costs. Under Florida law, "the likelihood of success is something considered in determining the range of the multiplier rather than whether risk of non-payment is mitigated." *Wesson v. Florida Peninsula Ins. Co.,* 296 So. 3d 572, 573-74 (Fla 1st DCA 2020). Similarly, Plaintiff's reference to a Proposal for Settlement in litigation is irrelevant, as the multiplier consideration is made from the lens of the attorney taking the case, not with the hindsight of litigation. *Joyce v. Federated National Ins. Co.,* 228 So. 3d 1122 (Fla. 2017). Plaintiff presented speculative testimony at the hearing from Mr. Vigil that the association purportedly did not have the funds to pay an hourly rate for an attorney, yet Plaintiff failed to provide any information, substantiation, or documentation regarding how the association functions, what funds are or are not available to the association, and what requirements the unit owners have with respect to the association. Instead, Mr. Vigil acknowledged that the unit owners were professionals, including lawyers, engineers, accountants, architects, dentists, insurance professionals, and the like, without providing any substantiation as to how such an association could not collect the funds necessary to pay an hourly rate, nor what hourly rate any attorneys had suggested they pay for services. Accordingly, the conclusory and speculative testimony provided by Plaintiff without evidentiary support fails to meet the requirements under Florida law related to the second prong.

The Court notes, related to the third prong, that while the results obtained is relevant to the determination and the results were positive in both the underlying trial case and the appeal, Florida law does not allow a multiplier to be used as a "surrogate for a sanction, and it should not be applied based solely, and in hindsight, upon how far along in the civil adjudication process a particular case happened to resolve." *Florida Peninsula,* 196 So. 3d at 422. Furthermore, the Court does not find Plaintiff's arguments related to the "scorched earth defense" to be compelling related to the fee multiplier. The Court finds the decisions in *Progressive Exp. Ins. Co. v. Schultz*, 948 So. 2d 1027 (5th DCA 2007) and *State Farm Fire & Casualty Co v. Palma,* 555 So. 2d 836 (Fla. 1990) to be distinguishable. While those two cases commented on the defense of the matter in relatively minor cases, one related to $1,315 in damages and one related to $600 in damages, the case at bar had far greater amounts at issue and this Court does not find the zealous advocacy of the defense to be a factor in whether a fee multiplier is warranted. *See also Michnal v. Palm Coast Development, Inc.,* 842 So. 2d 927, 935 (Fla. 4th DCA 2003) (denouncing the trial court's reliance

upon "scorched earth" defense in support of a multiplier determination). Moreover, the Court's decision in *Palma* whether thermograms were a medical necessary treatment had significant impact beyond that case, an issue not present here. And in *Schultz*, the court did not award a multiplier.

Based on the foregoing, the Court finds that Plaintiff is not entitled to a fee multiplier under Florida law.

IV. Taxable Costs

Plaintiff submitted invoices and line items related to taxable costs. To determine taxable costs, the Court has considered the evidence presented by Plaintiff, along with the relevant case law and the Florida Uniform Guidelines for the Taxation of Costs. It is Plaintiff's burden to show costs were reasonably necessary and accordingly, taxable under the guidelines. *Delmonico v. Crespo*, 127 So. 3d 676 (Fla. 4th DCA 2012). The Court finds that the following interest and rush fees, along with routine costs and travel expenses are not compensable under Florida law:

Cost Description	**Date**	**Amount**
L&L Process Server Rush Fee	January 8, 2020	$40.00
L&L Process Server Rush Fee	January 8, 2020	$40.00
L&L Process Server Rush Fee	January 8, 2020	$40.00
L&L Process Server Rush Fee	January 8, 2020	$40.00
L&L Process Server Rush Fee	January 8, 2020	$40.00
L&L Process Server Rush Fee	January 8, 2020	$40.00
Deposition Transcript Interest Fee	December 10, 2019	$130.17
Deposition Services Interest Fee	January 14, 2020	$44.74
Records Custodian Cancellation Fee	December 23, 2019	$165.00
Hearing Transcript Interest Fee	January 8, 2020	$20.21
Deposition Attendance Interest Fee	December 10, 2019	$5.02
Site Inspection Videography Interest	January 7, 2020	$6.53
Deposition Attendance Interest Fee	January 9, 2020	$13.28
Deposition Transcript Interest Fee	January 9, 2020	$14.96
Rush Document Delivery	January 9, 2020	$77.90
Amazon Supplies	June 18, 2021	$134.64
Trial Expenses	June 18, 2021	$64.11
Parking Charge	December 2, 2019	$17.00
Food Charge (Coffee)	December 2, 2019	$2.39
Parking Charge?	November 6, 2019	$15.00
Courthouse Parking	June 15, 2021	$10.00
Courthouse Parking	June 14, 2021	$10.00
Parking Charge	July 16, 2021	$14.00
Uber Charge	December 2, 2019	$15.09
Uber Charge	December 2, 2019	$13.80
AA Flight		$75.00

AirportOne Express	June 25, 2021	$113.47
AirportOne Express	June 25, 2021	$230.94
AirportOne Express	June 29, 2021	$109.47
AirportOne Express	June 22, 2021	$115.47
AirportOne Express	May 15, 2021	$280.33
AirportOne Express	June 13, 2021	$118.47
Parking Fee	June 26, 2019	$22.00
Sarasota Hotel for Deposition	July 16, 2019	$137.60
Gas for Deposition	July 25, 2019	$259.84
Parking Fee	December 18, 2019	$15.00
Parking Fee	December 20, 2019	$15.00
Parking Fee	January 10, 2020	$18.00
Expense	January 21, 2020	$110.70
Parking Fee	February 7, 2020	$15.25
Total		**$2,650.38**

Id. at 579. With respect to expert costs, it is Plaintiff's burden to introduce evidence regarding reasonableness of such costs. *Citizens v. Casanas,* 336 So. 3d 746 (Fla. 3d DCA 2021) (reversing an award of litigation costs because while two expert invoices were submitted, no evidence was presented on reasonableness of those costs). While Plaintiff's expert acknowledged that he spoke with Tony Quintana and Al Bruziela regarding the substance of the file, he did not comment on whether he spoke with them regarding the reasonableness of their services provided. Lastly, Plaintiff is not entitled to consulting expert costs who did not testify in this matter. *Woodbridge Holdings, LLC v. Prescott Group Aggressive Small Cap Master Fund,* 193 So. 3d 2 (Fla. 4th DCA 2015). Accordingly, Plaintiff failed to meet the burden of showing the reasonableness of the expert costs sought:

Cost Description	**Date**	**Amount**
Seacoast Construction Expert Trial Testimony	July 9, 2021	$14,602.50
Seacoast Construction Expert Trial Preparation	May 18, 2020	$3,540.00
Invoice from GC	March 18, 2019	$1,000.00
Consulting Fee with Roof Consulting Expert	September 30, 2019	$450.00
Romano Roofing – Trial Costs	July 17, 2021	$3,381.00
Seacoast Construction	September 20, 2021	$10,000.00
Romero Trial Fees	November 17, 2021	$4,031.00
Al Bruziela Trial Fees	January 26, 2022	$17,500.00
Total		**$54,504.50**

Next, Plaintiff's invoices and fee records indicate several duplicative cost charges without any description or testimony as to the necessity of the multiple charges for the same events. Therefore, the Court determines those amounts to be nontaxable towards the non-prevailing party:

Cost Description	Date	Amount
Seacoast Expert Inspection	December 26, 2019	$590.00
Seacoast Expert Inspection	May 11, 2021	$525.00
Pistorino Deposition Transcript	June 14, 2021	$926.88
Dorn – Service Fee	December 16, 2019	$59.00
PA and Vigil Deposition Transcripts	February 13, 2020	$1,735.59
PA and Vigil Deposition Transcripts	June 3, 2020	$1,684.30
Marcos Romero Deposition Transcript	June 3, 2020	$712.60
Pistorino Deposition Testimony	October 12, 2021	$1,000.00
Total		**$7,233.37**

Lastly, on the Friday before the hearing, Plaintiff submitted three additional invoices not previously included in Plaintiff's fee and cost records, all related to the deposition of Chandra Miller related to the present fee dispute. Plaintiff is also not entitled to amounts for litigating the amount of fees, commonly known as fees for fees, resulting in the following reductions from Plaintiff's taxable costs.

Chandra Miller Deposition	January 11, 2024	$1,050.00
Chandra Miller Transcript	January 8, 2024	$968.75
Chandra Miller Court Reporter Attendance	January 8, 2024	$160.00
Total		**$2,178.75**

Based on the foregoing reductions, the Court has reduced Plaintiff's cost request from $114,961.49 to **$50,573.60.**

The Court also acknowledges that Plaintiff's expert witness is entitled to be compensated for his reasonable time. While he testified to time in preparing for his testimony, along with his hourly rate, he failed to provide any documentation to support his time records. Therefore, the Court is without reference or substantiation to the time purportedly expended by Plaintiff's expert. The Court therefore determines a reasonable amount of time to be 50 hours, at a rate of $575/hour, comparable to Mr. Weber's hourly rate awarded above, totaling **$28,750.**

IV. Interest

Plaintiff seeks interest associated with the fee and cost award. Given Plaintiff is seeking the reasonable hourly rate as of today's date, Plaintiff is not entitled to both the present hourly rate and interest. *Citizens Prop. Ins. Corp. v. Amat,* 198 So. 3d 730 (Fla. 2d DCA 2016). Therefore, this Court declines to award interest in this matter.

V. Conclusion

Based on the foregoing analysis, the Court enters judgment in favor of Plaintiff as follows:

Total Lodestar	$498,797.50
Total Taxable Costs	$50,573.60
Total Fee Expert Costs	$28,750.00
Total Fees and Costs Awarded	**$578,121.10**

DONE AND ORDERED in Chambers in Miami-Dade County, Florida this _____ day of May, 2024.

_____
The Honorable Tanya Brinkley
Circuit Court Judge

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

GENERAL JURISDICTION DIVISION

CASE NO.: 2018-042359-CA-01

SUNSET 102 OFFICE PARK CONDOMINIUM ASSOCIATION, INC.

Plaintiff,

vs.

UNIVERSAL INSURANCE COMPANY OF NORTH AMERICA,

Defendant.
_____/

FINAL JUDGMENT

This cause came before the Court on Plaintiff SUNSET 102 OFFICE PARK CONDOMINIUM ASSOCIATION, INC's Motions to Determine Amount of Attorneys' Fees, Costs and Interest and for Lodestar Multiplier as to trial and appellate court attorneys' fees and costs. On April 30, 2024 and May 1, 2024, the Court conducted and completed a five-hour evidentiary hearing. The Court grants the Plaintiff's Motions for Attorneys' Fees and Costs for the grounds set forth herein, after becoming familiar with the Court file and having heard testimony from Pelayo Vigil, Plaintiff's Corporate Representative and former President of the Plaintiff's Board, Plaintiff's attorneys and the experts hired by Plaintiff and Defendant, 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).

ANALYSIS

Plaintiff seeks reasonable fees for the retained attorneys that litigated Plaintiff's case and

handled the subsequent appeal filed by the Defendant. 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[i] 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. Additionally, *Quanstrum* requires a separate, but related, analysis based upon which this Court determines that a multiplier is applicable.[ii]

Each prong was addressed at the evidentiary hearing that the parties stipulated would address both trial court and appellate fees and costs, and will be addressed herein. The Court was presented with testimony from Brittany Quintana Marti, Esq., (as the corporate representative for Quintana Law, PA), Randy Weber, Esq. (as corporate representative for Pita, Weber Del Prado), Yelena Shneyderman, Esq., Pelayo Vigil (as Corporate Representative for Plaintiff and former President of the Board), Benjamin Alvarez, Esq. (as the expert witness for Plaintiff), and Chandra Miller, Esq. (as the expert witness for Defendant). The Court considered all evidence presented at the two-day hearing, including testimony and documentary evidence.

I. <u>Lodestar Evaluation as to Trial Court Case.</u>

a. ***Time and Labor Required***

Plaintiff's counsel reasonably and efficiently incurred 1,327.6 hours litigating this matter and taking the same through and beyond trial, including the reconstruction of trial exhibits apparently lost by Defendant's counsel. The Court's review of Plaintiff's statements of fees and Defendant's billing records, which exceed 1800 hours before briefing began on the appeal, accompanied by the testimony of Plaintiff's counsel, Plaintiff's corporate representative, and Plaintiff's fee expert, supports a finding that the time was reasonable in light of the work performed and description of the tasks. Given the method and manner of Defendant's litigation strategies, this case required significant time and labor to prevail. *See e.g. Roco Tobacco (USA), Inc. v. Fla. Div. of Alcoholic Beverages*, 934 So.2d 479, 482 (Fla. 3d DCA 2004). This is reflected in the number of hours incurred on the case and novelty of the issues presented, factual background

of the case, and notably, the "moving target" defense advanced by Defendant. The litigation included 17 depositions (fact and expert combined), at least 25 hearings, multiple motions involving alleged spoliation and motions for sanctions, and significant post-trial litigation including extensive efforts by both sides to reconstruct lost trial exhibits after trial.

Ms. Quintana Marti further testified that from the onset this was not a case that would settle quickly, but rather had a high likelihood of trial. Ms. Quintana Marti further testified that she agreed to take the case with a reasonable expectation of a contingency fee multiplier being awarded if Plaintiff was successful. Ms. Quintana Marti based this opinion on her prior experience with tactics utilized by Defendant for the fourteen months the claim was being investigated pre-suit, and by all accounts this proved itself to be true throughout the five-year period between when the lawsuit was filed and the Plaintiff prevailed on the Defendant's appeal. Additionally, both sides' experts testified that the case was capably handled from the onset and throughout the pendency of litigation. Distinct tasks were performed by each of the billers, and even where more than one attorney billed for a similar task, the purpose for that task differed. Overall, the Court finds that this case required significant time and labor.

b. ***Difficulty of the Question Involved***

The Court heard a significant amount of testimony with respect to the difficulty of the question involved in this case. As an initial matter, the Court places a high amount of significance on Ms. Quintana Marti's legal and factual assessment regarding the outlook of the case at its onset. Plaintiff's counsel's analysis prudently and carefully exceeded a mere review of the initial carrier correspondence and coverage determinations. At the onset of the case, Ms. Quintana Marti identified that, despite the initial acknowledgement of coverage, there was a high likelihood that Defendant would nevertheless morph this case into one involving coverage of the claim, thereby significantly increasing the difficulty of and time necessary to prosecute the case. Ms. Quintana Marti was able to accurately anticipate the course of this litigation based upon her prior similar experiences with tactics she anticipated would be used by Defendant.

Indeed, Defendant attempted to inject coverage-based defenses, allegations of Plaintiff's

alleged non-compliance with the Policy and destruction of evidence, attempts to swap out experts at trial and attempts to inject complicated legal issues into the case. Relying upon the Complaint, Defendant suggested at the fee hearing that this case was a simple scope and pricing dispute involving underpayment of a covered loss to insured property. The evidence and a review of the records established that the case was neither simple nor limited to a scope and pricing dispute. Furthermore, given the complex legal issues in the case stipulated to by both parties' fee experts, coupled with navigating potential fee-related ramifications associated with the filing of Defendant's sizeable proposal for settlement, a policy deductible in excess of $80,000.00, the complexity of the legal issues and potential risks to Plaintiff and Plaintiff's lawyers created significant concerns regarding Plaintiff's likelihood of prevailing here and recovering for the Plaintiff.

c. ***Skill Requisite to Perform Legal Services Properly***

Both parties' experts stipulated to the competency of the lawyers involved in this matter. Given the difficulty of questions involved in this case, it required a high level of skill to perform the proper legal services and provide competent counsel. Additionally, despite the number of pending insurance claims in the state of Florida or the number of lawyers who market themselves as lawyers who handle first-party insurance disputes, significantly fewer lawyers are competent to take a case that was expected to involve shifting legal defenses, offers of judgment, a jury trial, and significant post-trial litigation. The efforts by Plaintiff's counsel ultimately contributed to entry of a Final Judgment to the Plaintiff that was affirmed by the Third District Court of Appeal.

d. ***Likelihood that Acceptance of Employment Would Preclude other Employment by the Lawyers***

At the fee hearing, Plaintiff's Corporate Representative, the former President of the Plaintiff's Board at the time the lawsuit was initiated, testified that he knew this case would preclude other employment for Brittany Quintana Marti, Esq., a sole practitioner. Brittany Quintana Marti, Esq. also testified that the size and significant expenses associated with the case indeed precluded other employment to her firm. Similarly, Randy Weber, Esq. testified that this case precluded additional possible work to his firm after the Surfside collapse. Furthermore,

Yelena Shneyderman, Esq. testified that this case was a "drop everything" case that required her full time and attention, thereby precluding her from focusing her time and attention on other matters that she was handling as a sole practitioner at the time. The time required to handle the case precluded Plaintiff's counsel from accepting cases, which would have been less difficult and/or paid on an hourly basis so that counsel would not have been exposed to the risk of non-payment.

e. ***Fee Charged in the Locality for Similar Legal Services***

Mr. Alvarez provided credible testimony that the fees charged by Plaintiff's counsel are similar to that in the locality for similar services. Similarly, the Plaintiff's attorneys testified regarding hourly rates previously awarded to them in Miami-Dade. Defendant's expert, Chandra Miller, testified that she did not take into consideration other courts' orders for similar cases in the area. Instead, she testified that she relied upon a survey that did not delineate the area of practice involved when developing her opinion regarding reasonable hourly rates for the billers involved in this matter. This evidenced that the fees awarded in this case were neither the highest, nor the lowest, for attorneys with similar qualifications as Plaintiff's counsel; rather, the hourly rate awarded herein was within the range of what has been found to be reasonable by other judges and what is being charged by other attorneys in this industry. The hourly rates charged by counsel in this matter reflect those of similarly competent counsel in the locality.

f. ***Time Limitations Imposed by the Clients or Circumstances***

Ms. Quintana Marti and Mr. Vigil (on behalf of the Plaintiff) testified that the Plaintiff in this matter was extremely persistent and needed an expeditious result due to the lack of funds to conduct repairs and the liability exposure being created by the damaged property. After a portion of a ceiling collapsed in the conference room of one of the Plaintiff's unit owners and the Plaintiff was threatened with litigation, Plaintiff was persistent about getting a swift resolution to the matter and in frequent communication with Plaintiff's counsel. Due to the difficulty of the case, Defendant's aggressive litigation strategy, and the property's deteriorating condition, counsel faced a significant risk of losing the commercial client unless the matter was resolved quickly.

g. ***Nature and Length of the Professional Relationship with the Client***

There was no preexisting relationship between Plaintiff and its counsel. A failure to prevail could have significant adverse consequences for counsel both with respect to the subject case and the likelihood of securing more work from Plaintiff and the professionals engaged by Plaintiff for this loss.

h. ***Amount Involved***

Plaintiff, which had a large policy deductible to contend with, was ultimately awarded a Final Judgment in the amount of $884,371.90 after five-years of litigation and a protracted appeal. The competent, substantial evidence presented at the fee hearing established that it would have been difficult, if not impossible, for Plaintiff to retain competent counsel without the ability for the attorneys' fees to shift to the Defendant and for the Plaintiff's counsel to seek a multiplier particularly as Plaintiff's counsel was aware from the onset that payment, of even undisputed insurance benefits, would take a great deal of time and effort litigating the matter.

i. ***Results Obtained***

Plaintiff's counsel obtained a very favorable verdict for Plaintiff as was stipulated to by both parties' fee experts. Based on the testimony and evidence presented at the fee hearing, this constitutes an extraordinary outcome for Plaintiff. The amount recovered was significant to Plaintiff, whose corporate representative testified it could not afford to conduct repairs and needed to impose a special assessment and obtain a loan to begin a portion of the repairs to the property.

j. ***The Experience, Reputation, and Ability of the Lawyers Performing the Services***

The Court further notes that all of the attorneys representing the Plaintiff handled the litigation, trial and appeal in a manner which reflected the level of skill and reputation in the community as testified to by both fee experts. Overall, Plaintiff's attorneys had the combined and individual experience, reputation and ability necessary to tackle the difficult task of litigating against an insurance company (and its resources), not only to completion, but with a high level of success.

k. ***Whether the Fee is Fixed or Contingent***

As established by the testimony presented to the Court, the retention in this matter was on a pure contingency basis. Plaintiff's counsel would not and could not recover from the Plaintiff if Plaintiff had lost. The testimony of Mr. Vigil established that the Plaintiff did not have the ability to pay competent legal counsel to represent its interests for the course of years of litigation against the Defendant. Notably, before initiating the litigation, the Plaintiff called a special meeting for the unit owners to select a lawyer and communicated with lawyers to try to get them to take the case. No lawyer other than Brittany Quintana Marti agreed to take the case on a pure contingency basis and agree to cover the costs of litigation which the Plaintiff could not afford to pay. These court costs ultimately exceeded $100,000.00. Plaintiff's fee expert, a first party lawyer in the area, also testified he would not take the case without the expectation of receiving a multiplier.

l. ***Lodestar Determination for the Trial Court Case.***

Based on the evidence presented, review of the record, and analysis set forth above, the Court finds the following reasonable hours and rates for Plaintiff's attorneys and paralegals:

Biller	Hourly Rate	Hours	Total Lodestar Fee
Brittany Quintana Marti, Esq.	$550	703.5	$386,925.00
Brigitte Quintana, Esq.	$300	12.1	$3,630.00
Yelena Shneyderman, Esq.	$650	174.4	$113,360.00
Randy Weber, Esq.	$800	437.6	$350,080.00
Nicole Garcia-Paralegal	$150	94	$14,100.00
Fernando Guerrero-Paralegal	$150	5.5	$825.00

The sum of the lodestar for the Trial Court case is $868,920.00.

II. Contingent Fee Multiplier Evaluation for the Trial Court Case.

Quanstrom dictates that this court should consider certain factors in determining whether a

multiplier is appropriate. These factors are addressed below and considered in conjunction with the *Rowe* factors.

1. ***Whether the Relevant Market Requires a Contingent Fee Multiplier to Obtain Competent Counsel.***

While the South Florida legal community consists of more than 20,000 lawyers, only certain few lawyers possess the skill, competency, and temerity to prepare and argue a case such as this through the trial level. Based on the record evidence, counsel for Plaintiff are some of those few lawyers. To prevail on a case such as this requires significant skill to perform the legal service properly, especially in light of the challenging legal issues and anticipated litigation at the onset. This differentiation, between the litany of attorneys that will accept first-party property insurance cases and those that are competent and willing to take a case to trial, is significant, and the Court assigns considerable weight to the reputation and evidence that counsel for Plaintiff are *trial* lawyers. *See TRG Columbus Development Venture, Ltd. v. Sifontes*, 163 So. 3d 548 (Fla. 3d DCA 2015). In addressing the "relevant market" prong, the Third District Court of Appeal held as follows:

> In this case, however, evidence was adduced during an evidentiary hearing that many South Florida lawyers were taking condominium deposit recovery cases on a contingency fee basis, intending to settle those cases for a tiny percentage of the full deposit without going to trial. The trial court heard direct evidence that competent counsel willing both to take such cases on a contingency fee basis *and* to try such cases to final judgment were few in number. Thus, with particular regard to *Quanstrom*'s first prong, the trial court's finding in favor of a contingency fee multiplier is supported by competent substantial evidence.

Id. at 533.

As Ms. Quintana Marti and her expert witness testified, very few competent attorneys in South Florida would have taken this matter on a pure contingency basis without the expectation of a multiplier. The expert conducted a market survey and identified that competent counsel (as opposed to attorneys that merely accept any first-party property insurance case) would not accept difficult cases such as the one at bar without the possibility of a multiplier.

While testimony was given regarding the numerous firms that purportedly practice first-party property insurance law, merely advertising and providing basic services does not rise to the level of "competent counsel". The Court recognizes, and Plaintiff's counsel demonstrate, that there is a significant difference between *litigation* counsel and *trial* counsel, with Plaintiff's counsel clearly falling into the latter category.

Additionally, the Court does not place weight on the amount of first-party property insurance cases filed in South Florida. Nor does the Court place weight on the number of attorneys advertising or otherwise seeking out first party cases. The key distinction between them is whether or not counsel is competent, not just to sign up and settle a case, but competent to effectively take a case to verdict.

The nature of Plaintiff's claim required counsel with extensive knowledge of and experience in first-party property insurance, and the ability to try such a matter without hesitation. Without the imposition of a contingency multiplier, very few attorneys would have taken this matter and shouldered over $100,000.00 in costs for the Plaintiff which was unable to pay the same. As such, the Court finds that relevant market for Plaintiff's case requires a multiplier to obtain competent counsel.

2. ***Whether the Attorneys were able to Mitigate the Risk of Nonpayment in Any Way***

There was significant risk of non-payment placed on the Plaintiff's attorneys. Simply put: if the attorneys did not prevail, they would not get paid. Further increasing this risk was a sizeable Proposal for Settlement, which put these attorneys at significant risk of non-payment, even if they won.

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 Attorneys and their Clients.***

The Court adopts its prior evaluation of the *Rowe* factors and notes that these factors weigh in favor of a multiplier. As for the specific *Rowe* factors discussed by *Quanstrom's* coverage of the multiplier issues, the Court notes that the amount involved was such that merely earning a contingency fee based upon the amounts adjusted by Defendant would be insufficient for Plaintiff

to have retained competent counsel. Further, the results obtained were stellar - - multiples of any amount adjusted by Defendant and more than double the Proposal for Settlement served by Defendant. Finally, the type of fee arrangement (contingency) placed great risk of non- or under-payment for counsel, further warranting a multiplier.

4. ***Contingent Fee Multiplier Evaluation***

Based upon the evidence presented, the likelihood of success by Plaintiff at the outset was unlikely. For this reason and the basis set forth herein, the Court finds that a 2.25 multiplier is proper.

III. Taxable Costs

1. ***Litigation Costs***

The Court finds that the total amount of costs incurred by Plaintiff (not including the cost of Plaintiff's fee expert) is $119,281.18.

2. ***Expert Witness Fees***

The Court further finds, based on the evidence and the law, Benjamin Alvarez Esq.'s expert hourly rate in the amount of $975.00 to be reasonable and that 81 hours expended in this matter as Plaintiff's fee expert is also reasonable. Based on the foregoing, the Court hereby awards Benjamin Alvarez, Esq. fee expert costs in the amount of $78,975.00.

IV. Lodestar Determination for the Appellate Case.

As to appellate attorneys' fees and costs to which Plaintiff is entitled, Defendant stipulated to the Plaintiff's expert reductions as to the reasonable amount of hours billed but did not stipulate to any of the hourly rates. Based on the evidence presented, review of the record, and analysis set forth above, the Court finds the following reasonable hours and rates for Plaintiff's attorneys and paralegals for the appellate court case:

Biller	Hourly Rate	Hours	Total Lodestar Fee
Brittany Quintana Marti, Esq.	$550	26.4	$14,520.00

Yelena Shneyderman, Esq.	$650	168.6	$109,590.00
Randy Weber, Esq.	$800	32.1	$25,680.00

V. Final Judgment Fees, Costs, and Interest

The final judgment amount is as follows. Final Judgment is entered in favor of Plaintiff against Defendant, UNIVERSAL INSURANCE COMPANY OF NORTH AMERICA, as follows:

Attorneys' Fees for Trial Case (Including Multiplier for the Trial Court Case)	$1,955,070.00
Taxable Costs	$198,256.18
Interest on Attorneys' Fees for Trial Court Case (From Date of Entitlement, 2/18/2022 to 5/10/2024[iii])	$274,993.40
Attorneys' Fees for Appellate Case	$149,790.00
Interest for Appellate Case (From Date of Entitlement, 2/13/2023 to 5/10/2024)	$5,512.82
Total Amount of Judgment as of May 10, 2024	$2,583,622.40

and the Total Judgment shall bear interest at the rate of 9.34%, all for which good cause shown execution shall issue forthwith. Defendant shall make the amount payable to Quintana Law, PA IOLTA.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida this ___ day of May, 2024.

_____
The Honorable Tanya Brinkley
Electronically Signed

[i] (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 lawyers performing the services.
(8) Whether the fee is fixed or contingent.

[ii] (1) Whether the relevant market requires a contingency fee multiplier to obtain competent counsel.

(2) Whether the attorneys were able to mitigate the risk of nonpayment in any way.

(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 attorneys and their clients.

[iii]The following interest rates were applied to the attorneys' fees and costs from the date of entitlement in the trial court case:

2/18/2022-3/31/2022	4.25%
4/1/2022-6/30/2022	4.25%
7/1/2022-9/30/2022	4.34%
10/1/2022-12/31/2022	4.75%
1/1/2023-3/31/2023	5.52%
4/1/2023-6/30/2023:	6.58%
7/1/2023-9/30/2023:	7.69%
10/1/2023-12/31/2023:	8.54%
1/1/2024 to 3/31/2024:	9.09%
4/1/2024 to 5/10/2024	9.34%