

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

SETH CIFERRI, an individual,)	Case No. 21CV14243
)	
Plaintiff,)	
)	FINDINGS OF FACT AND
v.)	CONCLUSIONS OF LAW
)	
STATE FARM FIRE AND CASUALTY)	
COMPANY, an Illinois insurance company,)	
)	
Defendant.)	
)	

After consideration of plaintiff’s Statement for Attorney Fees, defendant’s objections, plaintiff’s reply, all of the pleadings and papers on file, and the evidence and argument offered on behalf of the parties at a hearing held pursuant to Oregon Civil Procedure Rule 68C, the Court finds and concludes as follows:

I. Plaintiff’s Entitlement to Award of Attorney Fees Under ORS 742.061(1)

A. Findings of Fact:

1. Plaintiff Seth Ciferri timely filed proof of loss with defendant State Farm.
2. Plaintiff brought an action against defendant for its failure to settle the claim.
3. Defendant did not settle the claim within 6 months of the proof of loss.
4. After plaintiff initiated this action, plaintiff obtained a money recovery from defendant in excess of any tender by defendant within 6 months of the date plaintiff filed proof of loss.

B. Conclusions of Law:

1. Based on the foregoing findings, all of the factors establishing plaintiff’s entitlement to tax defendant with his reasonably incurred attorney fees under ORS 742.061(1) have been satisfied.
2. Accordingly, and as defendant concedes, plaintiff is entitled to an award

of attorney fees under ORS 742.061(1).

II. Calculation of the Lodestar Product

A. Findings of Fact:

1. Time and Labor

- a. Plaintiff seeks compensation for his counsel's expenditure of 450.73 hours on his behalf in this action, of which 354.45 hours were expended in connection with merits litigation and 96.28 hours were expended in connection with fees-on-fees litigation.
- b. Robert Bonaparte reasonably expended 64.4 hours of the 64.4 hours claimed in connection with merits litigation and 35.7 hours of the 35.7 hours claimed in connection with fees-on-fees litigation.
- c. Stephen Leggatt reasonably expended 72.0 hours of the 72.0 hours claimed in connection with merits litigation and 54.0 hours of the 54.0 hours claimed in connection with fees-on-fees litigation .
- d. Grant Engrav reasonably expended 82.99 hours of the 82.99 hours claimed in connection with merits litigation and 5.98 hours of the 5.98 hours claimed in connection with fees-on-fees litigation.
- e. Brooke Calcagno (legal assistant to Robert Bonaparte) reasonably expended 3.5 hours of the 3.5 hours claimed in connection with merits litigation and 0.6 hours of the 0.6 hours claimed in connection with fees-on-fees litigation.
- f. Rinnah Becker reasonably expended 12.49 hours of the 12.49 hours claimed (all of which is claimed in connection with merits litigation).
- g. Stephanie Gallegos reasonably expended 102.17 hours of the 102.17 hours claimed (all of which is claimed in connection with merits litigation).
- h. Matt McMillen reasonably expended 16.90 hours of the 16.90 hours claimed (all of which is claimed in connection with merits litigation).
- i. The findings above reflect consideration of State Farm's objections, plaintiff's reply to State Farm's objections, and plaintiff's voluntary reductions, exclusions, and corrections to the

hours actually expended by his counsel in the exercise of good billing judgment.

2. *Reasonable Hourly Rates*

- a. \$650/hour is a reasonable rate for Robert Bonaparte.
- b. \$550/hour is a reasonable rate for Stephen Leggatt.
- c. \$375/hour is a reasonable rate for Grant Engrav.
- d. \$175/hour is a reasonable rate for Brooke Calcagno.
- e. \$125/hour is a reasonable rate for Rinnah Becker.
- f. \$150/hour is a reasonable rate for Stephanie Gallegos.
- g. \$150/hour is a reasonable rate for Matt McMillen.
- h. The reasonable hourly rates set forth above are plaintiff's counsel's standard market rates.
- i. The findings above reflect the court's consideration of all of the evidence submitted, including the expert opinions presented by both plaintiff and defendant and the Oregon State Bar's 2017 Economic Survey, which collected data regarding hourly rates charged by Oregon lawyers in 2016.

B. Conclusions of Law:

1. The lodestar method (the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate) is both an appropriate method and the usual and customary method for determining a reasonable attorney fee under fee-shifting statutes such as ORS 742.061(1). As discussed separately below, it is likewise reasonable, appropriate, and customary to adjust the resulting lodestar product to reflect the risks associated with the representation.
2. Based on the foregoing findings, prior to any adjustment for the risks associated with the representation, the lodestar method yields a product of \$132,615.50 in connection with merits litigation and of \$55,252.50 in connection with fees-on-fees litigation.

III. Application of a Lodestar Enhancement

A. Findings of Fact:

1. Plaintiff's counsel undertook to represent plaintiff on a pure contingency basis, incurring the risk that counsel would receive no compensation for

their expenditures of time in the event that plaintiff failed to obtain a recovery from defendant.

2. This representation entailed a high degree of risk, in that the arguments in support of plaintiff's theory of defendant's liability were complex and counter-intuitive, as illustrated by defendant's initial success in obtaining a favorable decision from a court-annexed arbitrator.
3. Increasing the risk plaintiff's counsel incurred in undertaking this representation, defendant is a sophisticated and experienced litigant represented by sophisticated and experienced counsel who conducted a vigorous and uncompromising defense.
4. Further increasing plaintiff's counsel's risk, defendant has reserved the right to appeal this court's attorney fee award.
5. Only a limited number of attorneys practicing in Oregon have the skill, experience, and capacity to undertake a case of this nature.
6. Plaintiff's counsel achieved an excellent result on behalf of their client.

B. Conclusions of Law:

1. Based on the foregoing findings, plaintiff is entitled to an enhancement of the lodestar product in connection with merits litigation in the amount of a 1.25 x multiplier.
2. Based on the foregoing findings, plaintiff is entitled to an enhancement of the lodestar product in connection with fees-on-fees litigation in the amount of a 1.25 x multiplier.
3. Accordingly, after application of a reasonable and appropriate lodestar enhancement, plaintiff is presumptively entitled to a fee award of \$165,769.38 in connection with merits litigation and of \$69,065.63 in connection with fees-on-fees litigation.

IV. Reasonableness of the Fee Award Under ORS 20.075

A. Findings of Fact:

1. The time and labor required to obtain a successful result on behalf of plaintiff was reasonable, particularly in light of defendant's initial success in court-annexed arbitral proceedings.
2. This case raised a challenging and novel legal issue, namely the scope and applicability of an insurance policy's "business property" special liability

limit.

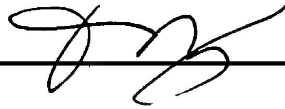
3. Plaintiff's counsel expended considerable time on this matter on a pure contingency basis, necessarily precluding counsel from spending that time on other matters, including non-contingent matters. As noted, defendant has reserved the right to appeal this court's attorney fee award, increasing the risk that plaintiff's counsel will receive no compensation for their legal services.
4. Calculation of a reasonable fee award is customarily performed according to the lodestar method. Where appropriate, it is likewise customary to adjust the lodestar product to compensate for the risk counsel incurred in agreeing to undertake the representation.
5. Plaintiff's counsel obtained an excellent result for plaintiff, namely a money recovery that reflected the full amount of plaintiff's damages over vigorous opposition and after defendant initially obtained a favorable arbitration decision.
6. It does not appear that the plaintiff or the circumstances of the case imposed particular time limitations in connection with counsel's representation of plaintiff.
7. It does not appear that plaintiff had a pre-existing relationship with his counsel in this action.
8. Plaintiff's counsel are highly skilled and experienced, and enjoy a stellar reputation in the legal community.
9. As noted, plaintiff's counsel undertook this representation on a pure contingency basis.
10. Award of fees in this matter would tend to promote access to justice, in that it would increase the likelihood that policyholders who do not receive all benefits due and owing from insurers under their policies will seek legal representation and fight to vindicate their contractual rights rather than accept less than their contractual due.
11. There is no indication in the record that either party acted recklessly, maliciously, in bad faith, or willfully illegally in connection with the dispute that gave rise to this action.
12. There is no indication in the record that either party asserted any objectively unreasonable claim or defense in this action.
13. Award of attorney fees in this action would not deter others from asserting good faith claims or defenses in similar cases, but rather would deter other defendants from asserting meritless defenses in similar cases.

14. Both parties litigated this matter objectively reasonably.
15. The parties pursued settlement in this matter with reasonable diligence.
16. No party has been awarded a prevailing party fee in this matter.

B. Conclusions of Law:

1. In light of the factors codified at ORS 20.075(1) and (2), the presumptive fee award set forth above is reasonable.
2. The record contains no grounds for imposing any cap on the fee award to which plaintiff is entitled, whether as a percentage of plaintiff's recovery, at a fixed amount, or as a matter of proportionality with the amount of plaintiff's recovery.
3. Accordingly, plaintiff is entitled to award of his reasonably incurred attorney fees in the total amount of \$234,835.00.

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Circuit Court Judge Melvin Oden-Orr