This offer from The Progressive Entities supersedes the previous offer made to you on June 1, 2004. Should you choose to accept the proposed settlement of the Bad Faith Case, you will need to sign below. By signing below, you are agreeing to accept the terms as outlined above and authorizes the PIP Firms to take whatever steps necessary to effectuate the settlement and ensure that the obligations of the parties are fulfilled. This authorization includes, but is not limited to, discharging the Stewart Firms if needed and filing any necessary documents in the Bad Faith Case.

Darin J. Lentner

Dr. Gregory Williams
This offer from The Progressive Entities supersedes the previous offer made to you on June 1, 2004. Should you choose to accept the proposed settlement of the Bad Faith Case, you will need to sign below. By signing below, you are agreeing to accept the terms as outlined above and authorize the PIP Firms to take whatever steps necessary to effectuate the settlement and ensure that the obligations of the parties are fulfilled. This authorization includes, but is not limited to, discharging the Stewart Firms if needed and filing any necessary documents in the Bad Faith Case.

DARIN J. LENITNER

[Signature]

LLOYD A. WRIGHT, D.C.
Should you choose to accept the PIP Settlement, it will be necessary for you to take various steps to ensure that the obligations of the parties under the PIP Settlement are fulfilled. If you wish to accept the PIP Settlement, you will need to sign below. By signing below, you are agreeing to accept the PIP settlement and are acknowledging that you want the Stewart Firm to dismiss the Bad Faith Case. Furthermore, your signature below authorizes the voluntary dismissal of the Bad Faith Case, and whatever steps are necessary to effectuate the PIP Settlement and ensure that the obligations of the parties are fulfilled. If that is your desire we will convey that to the Stewart Firm on your behalf.

DARIN J. LENTNER

DR. JOHN P. CHRISTENSEN
reason of the above described settlement in the Bad Faith Case.

This offer from the Progressive Entities supersedes the previous offer made to you in the prior letter agreement. Should you choose to accept the proposed settlement of the Bad Faith Case, you will need to sign below. By signing below, you are agreeing to accept the terms as outlined above and authorizes the PIP Flins to take whatever steps necessary to effectuate the settlement, and ensure that the obligations of the parties are fulfilled. This authorization includes, but is not limited to discharging the Stewart Trust, if needed and filing any necessary documents in the Bad Faith Case.

[Signature]

Marks & Fleischer

[Signature]

Silverman, Wender, Kohn, Epstein & Garcia, P.A.

by:
This offer from The Progressive Entities supersedes the offer made to you in the prior letter agreement. Should you choose to accept the proposed settlement of the Bad Faith Case, you will need to sign below. By signing below, you are agreeing to accept the terms as outlined above and authorizes the law firms to take whatever steps necessary to effectuate the settlement and ensure that all obligations of the parties are fulfilled. This authorization includes, but is not limited to, discharging the law firms if needed and filing any necessary documents in the Bad Faith Case.

MARKS & FLEISCHER
By: Amy Fleischer

Dr. David Dahmer/Family Chiropractic
This offer from The Progressive Entities supersedes the previous offer made to you in the prior letter agreement. Should you choose to accept the proposed settlement of the Bad Faith Case, you will need to sign below. By signing below, you are agreeing to accept the terms as outlined above and authorize the PIP Films to take whatever steps necessary to effectuate this settlement and ensure that the obligations of the parties are fulfilled. This authorization includes, but is not limited to, discharging the Stewart Films if needed and filing any necessary documents in the Bad Faith Case.

MARK L. FLEISCHER
By: [Signature]

CHRONED
By: [Signature]
reason of the above-described settlement in the Bad Faith Case.

This offer from The Progressive Entities supersedes the previous offer made to you in the prior letter agreement. Should you choose to accept the proposed settlement of the Bad Faith Case, you will need to sign below. By signing below, you are agreeing to accept the terms as outlined above and authorize the PIP Firms to take whatever steps necessary to effectuate the settlement and ensure that the obligations of the parties are fulfilled. This authorization includes, but is not limited to, discharging the Steward Firms, if needed and filing any necessary documents in the Bad Faith Case.

[Signature]

GAETA CHIROPRACTIC;
by:
This offer from The Progressive Entities supersedes the previous offer made to you in the prior letter agreement. Should you choose to accept the proposed settlement of the Bad Faith Case, you will need to sign below. By signing below, you are agreeing to accept the terms as outlined above and authorizes the PIP firms to take whatever steps necessary to effectuate the settlement and ensure that the obligations of the parties are fulfilled. This authorization includes, but is not limited to, discharging the Stewart Firm if needed and filing any necessary documents in the Bad Faith Case.

MARKS K. FLEISCHER
By: Amir Fleischer
St. Augustine Physicians Associates
This offer from The Progressive Entities supersedes the previous offer made to you.
In the prior letter agreement. Should you choose to accept the proposed settlement of the
Bad Faith Case, you will need to sign below. By signing below, you are agreeing to accept
the terms as outlined above and authorizes the PIF Firm to take whatever steps
necessary to effectuate the settlement and ensure that the obligations of the parties are
fulfilled. This authorization includes, but is not limited to discharging the Stowar Firm if,
needed and filling any necessary documents in the Bad Faith Case.

MARK S. FLEISCHER
By: Amir Fleischer

David Mallory/Mallory Chiropractic Clinic
This offer from The Progressive Entities supersedes the previous offer made to you. In the prior letter agreement, should you choose to accept this proposal, settlement of the Bad Faith Case you initiate in sign below, by signing below, you are agreeing to resolve the claims as detailed above and superseding the prior form. In case whatever work is necessary to settle the settlement and ensure that the obligations of the parties are fulfilled. The obligation includes, but is not limited to, discharging the Stewart Firm if needed and any necessary documentation in the Bad Faith Case.

MARKS FLEISCHER

By: Mark Fleischer
This offer from The Progressive Entities supersedes the previous offer made to you in the prior letter agreement. Should you choose to accept the proposed settlement of the Bad Faith Case, you will need to sign below. By signing below, you are agreeing to accept the terms as outlined above and authorize the PIP firms to take whatever steps necessary to effectuate the settlement and ensure that the obligations of the parties are fulfilled. This authorization includes, but is not limited to, discharging the Stewart Firms if needed and filing any necessary documents in the Bad Faith Case.

[Signatures]

MARKS & FLEISCHER
By: Amir Fleischer

DARREN I. ABRAMS/Corin Springs Therapeutics
This offer from The Progressive Entity supersedes the letter of intent mailed to You in the prior letter agreement. Should you choose to accept the proposal, settlement of the Bad Faith Case will need to sign below. By signing below, you are agreeing to accept the terms and clauses above and authorize the FIP firm to take whatever legal necessary to effectuate the settlement and ensure that the obligations of the parties are fulfilled. This authorization includes, but is not limited to, discovering the Stewart Firm's needs and filing any necessary documents in the Bad Faith Case.

[Signatures]

MARK FLEISCHER

Natural Healthcare Clinic
reason of the above-described settlement in the Bad Faith Case.

This offer from The Progressive Entities supersedes the previous offer made to you in the prior letter agreement. Should you choose to accept the proposed settlement of the Bad Faith Case, you will need to sign below. By signing below, you are agreeing to accept the terms as outlined above and authorize the PIP Firms to take whatever steps necessary to effectuate the settlement and ensure that the obligations of the parties are fulfilled. This authorization includes, but is not limited to, discharging the Stewart Firms if needed and filing any necessary documents in the Bad Faith Case.

[Signature]

By: Dr. Kenneth Williams
This offer from The Progressive Entities supersedes the previous offer made to
you in the prior letter, agreement. Should you choose to accept the proposed
settlement of the Bad Faith Case, you will need to sign below. By signing below, you
are agreeing to accept the terms as outlined above and authorizes the PRF Firm to
take whatever steps necessary to effectuate the settlement, and ensure that the
obligations of the parties are fulfilled. This authorization includes, but is not limited to,
discharging the Stewart Firm, if needed, and filing any necessary documents in the Bad
Faith Case.

[Signatures]

Mark A. Hebrank

Timothy Johnson, D.C., P.A.

by Dr. Timothy Johnson
This offer from The Progressive Entities superseded the previous offer made to you in the pre-letter agreement. Please do not consider the proposed settlement of the Bad Faith Case as final. If you choose to accept the proposed settlement of the Bad Faith Case, you will need to sign below. By signing below you are agreeing to accept the terms as outlined above and authorize the PIP Firm to take whatever steps necessary to effectuate the settlement and ensure that the obligations of the parties are fulfilled. This authorization includes, but is not limited to, discharging the Stewart Firm if needed and filling any necessary documents in the Bad Faith Case.

MARK & PENISHER
By: [Signature]

Ralph Wills/Clinic Center of 1020 Pain Care Medical

[Signature]
This offer from the Progressive Entities supersedes the previous offer made to you in the prior letter agreement. Should you choose to accept the proposed settlement of the Bad Faith Case, you will need to sign below. By signing below, you are agreeing to accept the terms as outlined above, and authorize the EIR Firms to take whatever steps necessary to effectuate the settlement and ensure that the obligations of the parties are fulfilled. This authorization includes, but is not limited to, discharging the Stewart Firm if needed and filing any necessary documents in the Bad Faith Case.

MARK I. KLEINBERG
By: Ajith N. Hamali
Lakewood Chiropractic
reason of the above-described settlement in the Bad Faith Case.

This offer from The Progressive Entities supersedes the previous offer made to you in the prior letter agreement. Should you choose to accept the proposed settlement of the Bad Faith Case, you will need to sign below. By signing below, you are agreeing to accept the terms as outlined above and authorize the PIP firms to take whatever steps necessary to effectuate the settlement and ensure that the obligations of the parties are fulfilled. This authorization includes, but is not limited to, discharging the Stewart Firm if needed and filing any necessary documents in the Bad Faith Case.

[Signature]

Physical Therapy Services
by.
This offer from The Progressive Entities supersedes the previous offer made to you in the prior letter(s). Agreement. Should you choose to accept the proposed settlement of the Bad Faith Case, you will need to sign below. By signing below, you are agreeing to accept the terms as outlined above and authorize the PIP entity to take whatever steps necessary to effectuate the settlement and ensure that the obligations of the parties are fulfilled. This authorization includes, but is not limited to, discharging the Stewart entity if needed and filing any necessary documents in the Bad Faith Case.

MARK S. FLEISCHER
by: Amir Fleischer

Orthopaedic Associates of South Broward, F.A.
This offer from the Progressive Entities supersedes the previous offer made to you in the prior letter agreement. Should you choose to accept the proposed settlement of the Bad Faith Case, you will need to sign below. By signing below, you are agreeing to accept the terms as outlined above and authorize the FIP Firm to take whatever steps necessary to effectuate the settlement and ensure that the obligations of the parties are fulfilled. This authorization includes, but is not limited to, discharging the Stewart Firm if needed and filing any necessary documents in the Bad Faith Case.

Mark A. Fleischer
Acrobiotic Chiropractic and Sports Medicine
by Dr. Petro
This offer from The Progressive Entities supersedes the previous offer made to you in the prior letter agreement. Should you choose to accept the proposed settlement of the Bad Faith Case, you will need to sign below. By signing below, you are agreeing to accept the terms as outlined above and authorize the PIP firms to take whatever steps necessary to effectuate the settlement and ensure that the obligations of the parties are fulfilled. This authorization includes, but is not limited to, discharging the Stewart Firm if needed and filing any necessary documents in the Bad Faith Case.

MARKS & FLEISCHER
By: Ari Fleischer

Chiropractic Wellness Centers of Boca Raton
This offer from the Progressive Entities supersedes the previous offer made to you in the prior letter agreement. Should you choose to accept the proposed settlement of the Bad Faith Case, you will need to sign below. By signing below, you are agreeing to accept the terms as outlined above and authorize the PIP Firm to take whatever steps necessary to effectuate the settlement and ensure that the obligations of the parties are fulfilled. This authorization includes, but is not limited to, discharging the Stewart Firm if needed and filing any necessary documents in the Bad Faith Case.

MARKS & FLEISCHER
By: Ann Fleischer

[Signature]
[Title: PIP Medical Therapist]
AGREEMENT FOR THE RESOLUTION OF CLAIMS INVOLVING PERSONAL INJURY PROTECTION AND/OR MEDICAL PAYMENTS BENEFITS

THIS AGREEMENT is entered into by and between Progressive American Insurance Company, Progressive Southeastern Insurance Company, Progressive Bayside Insurance Company, Progressive Consumers Insurance Company, Progressive Express Insurance Company, Progressive Auto Pro Insurance Company, Progressive Casualty Insurance Company, Progressive Specialty Insurance Company, and their subsidiaries and affiliates, including all of their respective officers, directors and employees, hereinafter collectively referred to as "Progressive", and Total Orthopaedic Care, and/or their subsidiaries and affiliates, including all of their respective officers, directors and employees, hereinafter collectively referred to as "Total Ortho", as related to all active lawsuits.

For valuable consideration, as set forth hereafter, the receipt of which is hereby acknowledged, the parties to this Agreement hereby stipulate and agree as follows:

1. The scope of this Agreement is to include all claims for Personal Injury Protection (PIP) benefits and/or Medical Payments (MedPay) benefits arising from the insurance policies issued by Progressive and currently in litigation. Furthermore, this Agreement is in resolution of all alleged penalties associated with all active lawsuits, specifically, but not limited to, all current litigation, rights, claims, interest, whether existing or contingent, bad faith claims, unfair claims practices, tort claims, contract claims, common law causes of action and statutory claims, PIP claims, MPC claims, and interest for files currently in litigation. This agreement is understood to be for claims, in which, a lawsuit has already been filed by Total Ortho against Progressive.

2. The purpose of this Agreement is twofold. First, it is to settle, in its entirety, all outstanding issues arising from PIP and/or MedPay insurance claims, between Progressive and Total Ortho as it relates to litigation currently filed against Progressive. Second, is to agree to attempt to resolve disputes through a structured process going forward.

3. Progressive shall pay to Total Ortho and the attorneys representing Total Ortho for active litigation the total sum of One Hundred Thousand Dollars ($100,000.00), upon execution of this Agreement by a duly authorized representative of both parties. This payment constitutes reimbursement to Total Ortho for all remaining benefits and interest incurred for the suits currently filed against Progressive. This sum further constitutes payment of all attorney fees and costs for said actions on behalf of Total Ortho.

4. The execution of this Agreement shall serve as a full and final release of all claims currently in litigation involving claims or disputes for PIP and/or MedPay benefits. Total Ortho shall cause its counsel to dismiss with prejudice all pending lawsuits.

5. Progressive and Total Ortho have entered into an understanding regarding future actions by each side for billing presented by Total Ortho. Upon a disputed reduction or nonpayment from Progressive, Total Ortho will attempt to contact an identified representative of Progressive, currently Deanna Difablo, but the representative may change with time, in an attempt to resolve fairly any reductions or nonpayment of services.
6. In exchange for five above, Progressive agrees to attempt further consideration disputes upon receipt of a telephone call from Total Ortho. Progressive agrees to attempt to offer a contact person, currently Deanna Difabio, but the representative may change with time, for telephone calls from Total Ortho in an attempt to resolve fairly any reductions or non-payment of services.

7. It is understood and agreed that the payment made herein is a resolution of a disputed claim and is not, and should not be construed as, an admission of any liability by or on behalf of Progressive. The parties stipulate and agree that this Agreement shall serve as a full and final release of any compensatory claims, actions, causes of action and damages, which have arisen or could have arisen, and which have been filed or could have been filed, that Total Ortho has or ever had, for benefits of active lawsuits.

8. This Agreement is STRICTLY CONFIDENTIAL, both as to its existence and its terms and shall not be disclosed, except for purposes of enforcement of the terms herein or as required by law, either directly or indirectly, by either Progressive or Total Ortho, without the prior written consent of the other. This Agreement is not a finding as to the validity or invalidity of any of the reductions or denials of charges or rates for the litigation resolved and shall not be offered or received in evidence in any proceeding for any purpose whatsoever except for purposes of enforcement of the specific terms herein.

9. This Agreement shall be interpreted, enforced and governed under the laws of the State of Florida.

10. This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter hereof. This Agreement merges all prior discussions, agreements, understandings, representations, conditions, warranties, covenants and all other communications between the parties related to this Agreement and its subject matter. This Agreement may not be altered, amended or terminated, except by a writing, which expressly refers to this Agreement and is signed by all parties to this Agreement after the execution of this Agreement.

Steve Scheldor
Claims Branch Manager II

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared

____________________________ to me known to be the person described in, or has produced identification in the nature of ________________, and who executed the foregoing instrument and who acknowledged before me that she/he executed same.

WITNESS my hand and seal in the County of _______________ and State of ________________ this day of ________________. 2003.
Notary Public

My Commission Expires: (Print, Type or Stamp Commissioned Name of Notary Public)

Authorized Representative for Total Orthopaedic Care and all of its subsidiaries and affiliates

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, personally appeared MAHALA , to me known to be the person described in, or has produced identification in the nature of , and who executed the foregoing instrument and who acknowledged before me that she/he executed same.

WITNESS my hand and seal in the County of , and State of , this day of June, 2003.

Notary Public

My Commission Expires: (Print, Type or Stamp Commissioned Name of Notary Public)

Agreement for the resolution of claims involving personal injury, property damage, and medical payments benefits X
EXHIBIT

"N"
IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. CA 01-11649

DRS. FISHMAN & STASHAK, M.D.s, P.A.
etc., et. al.

Plaintiffs

vs.

THE PROGRESSIVE CORPORATION, an
Ohio corporation, etc., et. al.

Defendants,

vs.

BEECH STREET CORPORATION, a
California corporation,

Third Party Defendant.

NOTICE OF CHARGING LIEN

NOTICE IS HEREBY GIVEN that the firms of Todd S. Stewart, P.A., William C.
Hearon, P.A., and Stewart Tilghman Fox & Bianchi, P.A. claim a charging lien against any
recovery herein for services rendered and costs incurred.

TODD S. STEWART, P.A.
Co-counsel for Plaintiffs
935 Military Trail, Suite 102
P.O. Box 491
Jupiter, Florida 33468
WILLIAM C. HEARON, P.A.
Co-counsel for Plaintiffs
One S.E. 3rd Avenue, Suite 3000
Miami, Florida 33131
Ph: (305) 579-9813
Fax: (305) 358-4707

STEWART TILGHMAN FOX & BIANCHI, P.A.
Co-counsel for Plaintiffs
One S.E. 3rd Avenue, Suite 3000
Miami, Florida 33131
Phone: 305-358-6644
Fax: 305-358-4707

By: Larry S. Stewart
Florida Bar # 078218
CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was sent via facsimile and mailed this 18th day of June, 2004, to: Francis Anania, Esq., Anania Bandklayder Blackwell Baumgarten & Torricella, Bank of America Tower, Suite 4300, 100 S.E. Second Street, Miami, Florida 33131; John W. Weihmuller and J. Pablo Caceres, Butler Pappas Weihmuller Katz Craig LLP, Bayport Plaza, Suite 1100, 6200 Courtney Campbell Causeway, Tampa, FL 33607-5946; Elliot H. Scherker, Esq., Greenberg Traurig, P.A., 1221 Brickell Avenue, Miami, Florida 33131; Irwin R. Gilbert, Esq., 1555 Palm Beach Lakes Blvd., West Palm Beach, Florida 33401, and John M. Quaranta, Esq., Tew Cardenas Rebak Kellogg Lehman DeMaria Tague Raymond & Levine, L.L.P., 201 South Biscayne Boulevard, Suite 2600, Miami, Florida 33131.

[Signature]

STEWART, TILGHMAN, FOX & BIANCHI, P.A., SUITE 3000, ONE S.E. 3RD AVE., MIAMI, FL 33131-1764
EXHIBIT

"0"
Well written!!! Laura
CONSTITUTIONAL REQUIREMENTS FOR PUNITIVE DAMAGES

by Larry S. Stewart

In the November 2003 article "Gore, Cooper Industries, and State Farm v. Campbell — Game, Set, and Match for Exorbitant Punitive Damage Awards," author John Kolinski prunes the Supreme Court's decision in State Farm v. Campbell, 123 S. Ct. 1518 (2003), into one of the most significant "decisions of the past quarter century" that revolutionized the law of punitive damages. Under his interpretation, Campbell becomes the "most powerful tool ever given" to limit discovery, requires "throughout the opinion that the jury must be specifically and meaningfully charged," and orders "lower courts to change dramatically the manner in which punitive damages are litigated." There is, however, a flaw in Kolinski's analysis. He has failed to follow his own admonishment about not confusing "zealous advocacy with misstating [the law]" because his claims find no support in the opinion.

Contrary to the author's claims, Campbell is not a watershed decision but rather a fact-bound application of existing precedent that did not fundamentally change the standards the Supreme Court had established seven years earlier in BMW of North America, Inc. v. Gore, 517 U.S. 569 (1996). Indeed, as the Court noted in Campbell, it was deciding the case "under the principles outlined in BMW," 123 S. Ct. at 1521. In Gore, the Court held that BMW could not be held liable for punitive damages in Alabama for conduct that was lawful in other states. The Court articulated three "guideposts" for judicial review of punitive damage awards: 1) the degree or "reprehensibility" of the defendant's conduct; 2) the ratio of punitive damages to compensatory damages; and 3) how punitive damages compare to civil or criminal penalties for comparable misconduct.

Gore was the culmination of a quarter-century-long public relations campaign by defendant interests to "rein in" punitive damage awards. While not initially successful in the legislative arena, in large part because empirical scholarly studies demonstrated that there was no truth to the claims of an explosion of cases with skyrocketing awards, by the late 1980s the Supreme Court began to grant relief. Beginning in 1988, the Court issued a string of rulings, on first procedural and later substantive due process grounds, holding that punitive damage awards must be scrutinized for excessiveness against safeguards designed to protect defendant rights.

State Farm v. Campbell

Campbell was a bad faith insurance claim based on State Farm's refusal to settle an accident claim that invoked the Gore elements of extra-state conduct and large punitive damages, both in terms of the gross amount and in relation to the compensatory damages. The Campbells contended that State Farm not only wrongly handled their case but also that State Farm had been "doing business [that way] for the last 20 years" and they introduced evidence of its nationwide claims practices. The jury awarded, and the Utah Supreme Court approved, punitive damages of $145 million that were 145 times the compensatory damages.

In reversing, the Supreme Court acknowledged that State Farm's conduct warranted punitive damages but found the Utah court's analysis flawed because it was based on State Farm's nationwide activities rather than conduct toward the Campbells or other similar conduct. The Court reiterated its holding in Gore that a state may not punish a party for conduct that may be lawful where it occurred, but did not bar all evidence of extra-state conduct. Similar or the same unlawful conduct may be relevant, regardless of where it occurs. The Court specifically noted that even "lawful out-of-state conduct may be probative when it demonstrates the deliberateness and culpability of the defendant's action in the state where it is tortuous," so long as "that conduct [had] a

Reality, Not Hyperbole—
The Real Import of State Farm v. Campbell
Beginning in 1988, the Court issued a string of rulings, on first procedural and later substantive due process grounds, holding that punitive damage awards must be scrutinized for excessiveness against safeguards designed to protect defendant rights. *Campbell* is the latest of those decisions.

The subject of jury instructions is a matter of state prerogative and, as long as the instructions

**Future Cases**

Two lessons seem obvious from *Campbell* and *Gore*: Cases involving large punitive awards, either in absolute amount or in ratio to compensatory damages, and/or evidence of out-of-state conduct that may be lawful in those other states, are going to provoke heightened judicial scrutiny. On the other hand, neither *Campbell* nor *Gore* addressed jury instructions, discovery or “gatekeeper” issues or the manner in which trial courts must conduct punitive damage trials. Although largely devoid of any specifics, Mr. Kolinski proclaims that *Campbell* requires “from this point forward” heightened review of evidence at trial, a de novo review of evidence rulings on appeal, full and specific jury instructions, new restrictions on discovery, and a dramatic change in the way punitive damage cases are tried. His claims do not, however, withstand analysis.

That the Court did not consider jury instruction issues in *Campbell* should not be surprising. *Campbell* came before the Court on a claim of excessiveness and error in the judicial application of the *Gore* guideposts. Nor does it seem likely that the Court will consider such issues in the future. Normally the language of jury instructions is a matter of state prerogative and, as long as the instructions.
tions cover basic principles, the Court probably will not attempt to delve into specific language. Beyond that, in forging a vigorous de novo review regime, the Court evidenced an implicit distrust of juries. It would therefore seem unlikely that the Court would place reliance on jury instructions in any remedial way.

The remainder of Mr. Kolinski’s other-meanings are not discussed, mentioned, or referred to in *Campbell*, *Gore*, or any of the other Supreme Court decisions. *Campbell* and other Supreme Court decisions do, however, set forth the types of constitutionally relevant evidence which, a priori, will be admissible in punitive damage trials. It is the very types of evidence that have historically been the basis for punitive damage claims: 1) "tortious conduct (evidencing) an indifference to or reckless disregard of the health or safety of others"; 2) conduct that causes physical harm; 3) conduct targeting financial vulnerability; 4) repeated misconduct; and 5) evidence of "intentional malice, trickery, or deceit." Constitutionally, not all are required to support an award of punitive damages but the absence of all five will render any award "suspect." 123 S. Ct. at 1521. The range of conduct that can be considered is not restricted to harms to the plaintiff but can also include evidence of "the magnitude of the potential harm that the defendant’s conduct would have caused to its intended victim if the wrongful plan had succeeded, as well as the possible harm to other victims that might have resulted if similar future behavior were not deterred." (Emphasis added.) *TXO Products Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 460 (1993); *Gore*, 517 U.S. at 581. And, it can include "wrongdoing in other parts of the country." *TXO*, 509 U.S. at 462 n.2. In the relatively rare business practices tort cases, such as *Campbell* and *Gore*, plaintiffs will have to provide proof that out-of-state conduct was unlawful or limit their use of such evidence to proof of in-state deliberateness and culpability and establish a similarity nexus to the harm suffered by the plaintiff, but that is the only limitation that the Supreme Court has placed on the type of evidence that can be used to establish punitive conduct.

As far as discovery issues are concerned, nothing in any of the Supreme Court’s decisions changes the standard rule that allows discovery of all matters relevant to the issues or which appear reasonably calculated to lead to the discovery of admissible evidence. Fla. R. Civ. P. 1.280(b)(1); Fed. R. Civ. P. 26(b)(1). Thus, all discovery efforts designed to uncover or lead to the type of evidence described above continue to be appropriate and enforceable.

Likewise, nothing in any of the Supreme Court’s decisions changes the way punitive damage cases will be tried. In one respect, however, *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), does change the burden of work that plaintiffs in punitive damage cases will face. Requiring de novo review means that punitive damage claims will be more protracted as plaintiffs have to prove their punitive damage cases potentially three times, and perhaps more. They will first have to convince a jury of the merits of their claim, then they will have to convince anew the trial court and, most probably, they will also have to again convince anew at least one appellate court. This is the mandated degree of constitutional review that the Supreme Court has imposed to ensure that punitive awards are not excessive or arbitrary. But, beyond this added burden of persuasion, the Supreme Court has not decreed that constitutional safeguards mandate any change in the manner in which punitive damage cases will be tried.

Much has been made about *Campbell’s* discussion of the amount of punitive damages. Clearly "the punitive punishment should fit the crime," *Gore*, 517 U.S. at 575, but the Supreme Court wisely declined to impose a bright line limit because punitive damages "should reflect 'the enormity of [the] offense' and "some wrongs are more blameworthy than others," *id.* at 595. Significantly, in *Campbell* the Court did not overrule its *TXO* decision, upholding a punitive damage award 526 times greater than the actual damages, and expressly held that a "particularly egregious act" can justify both a larger gross award and a higher ratio. 123 S. Ct. at 1524. Likewise, in *Gore* the Court noted that "repeatedly engaging in prohibited conduct" would warrant greater punishment. 517 U.S. at 577. Without question, plaintiffs will face a greater burden to justify punitive damages that are either very large or that have high ratios to actual damages, but the precise award in each case should be fact-specific.

Mr. Kolinski disagrees and claims the *Campbell* "rationals" are essentially binding. An inflexible rule of that nature would produce arbitrary results and undermines the fundamental principle that the punishment should "fit the crime." The Supreme Court decisions to date have involved only business practices tarts causing essentially economic harm, such as insurance claim practices, false advertising, consumer fraud, and slander of title. The Court has not yet considered claims of widespread reckless manufacturing or marketing causing enormous physical injuries and involving large profiteering from the egregious conduct, such as was the case with the Dalkon Shield, the Ford Pinto, and, the worst of all possible examples, asbestos. Nor has the Court considered mega-disaster cases where a single act has caused catastrophic damages and a jury has imposed mammoth punitive damages, such as the *Exxon Valdez* calamity.

Rational and just decisions in these cases will require flexible rules, consistent with the purpose of punitive damages, that allow account of the myriad circumstances that can be present. That is precisely what the Court has directed in *Campbell* when it stated that "because there are no rigid benchmarks that a punitive damages award may not surpass . . . [the] precise award in any case, of course, must be based upon the facts and circumstances of the defendant’s conduct and the
harm to the plaintiff.” 123 S. Ct. at 1524. Decisions of federal appellate courts are already reflecting that flexibility. See, e.g., Matthias v. Accor Economy Lodging, Inc. and Motel 6 Operating L.P., 2008 WL 22389863 (7th Cir. October 21, 2008), holding a punitive award of 37 times actual damages was not excessive in light of the defendant’s willful and wanton conduct and profiteering from its wrongful conduct; Williams v. Kaufman County, 343 F.3d 689 (5th Cir. 2003), holding an award of $15,000 in punitive damages not excessive even though there was only $100 in nominal damages.

Imposing an absolute limit in the form of an inflexible ratio would necessarily produce the very arbitrariness that punitive damages cannot constitutionally invoke. Furthermore, while defendants should not be subject to punitive damages solely because of wealth, it makes no societal sense to forge rules that would allow profiteering from wrongful conduct. Although defendant interests decry the unpredictability of punitive damages, it is that very feature that underlies their deterrent effect. Inflexible rules will only encourage the kind of economic calculus that results in decisions to pursue dangerous or unethical conduct rather than corrective safety measures.

The Reality of Punitive Damages in Florida

There seems little likelihood of “excessive” punitive damage awards in Florida. The right to punish punitive conduct, inherent in state’s rights under the federal system, implies the right to limit the punishment, and the Florida Legislature did just that in 1999 by enacting F.S. §768.72 et seq. to impose procedural and substantive limits on punitive damage claims. Thus, in Florida plaintiffs must establish entitlement to punitive damages by clear and convincing evidence; punitive damages are limited to intentional misconduct or gross negligence, are generally limited to the greater of three times compensatory damages or $500,000 unless the defendant had a specific intent to harm the plaintiff, and are not permitted if the defendant has already been found liable for punitive damages for the same conduct unless the court finds that the prior award was insufficient to punish that behavior. Additionally, in Florida punitive damages cannot financially destroy a defendant. Where applicable, these provisions have been incorporated into the Florida Standard Jury Instructions. Florida has additionally invested trial courts with remittitur authority, the bases of which closely mimic the Gore guideposts. F.S. §768.74. It is only after surviving this gauntlet that any Florida punitive award would face constitutional Campbell et al. review.

Bad Faith Claims

Mr. Kolinski also claims that Campbell might require legislative correction for Florida bad faith actions. He comes to this conclusion by taking the Campbell requirement for “similarity” out of context and claim-
ing that it is doubtful that it can be realigned with the "general business practice" exception for bad faith punitive damages contained in F.S. §624.155. To recount, F.S. §624.155 bars claims for punitive damages in bad faith insurance practices unless "the acts giving rise to the [bad faith] occur with such frequency as to indicate a general business practice."

Thus, to recover punitive damages, a plaintiff has to establish not only the insurance company's bad faith in his or her case, but also repeated acts of the same misconduct sufficient to establish a general business practice of the defendant. So far, this sounds strikingly similar to the Campbell criteria of "repeated actions." But Kolinski goes off course by taking what he calls "Campbell's exceedingly narrow definition" of "similarity" and using that to reach the conclusion that the Florida statute might require "extraneous and dissimilar" evidence.

This, he suggests, would be unconstitutional, could not be corrected by courts striking the allegedly offensive language because to do so would violate the constitutional doctrine of separation of powers, and therefore may require a legislative amendment. His reasoning is wrong. The Campbell discussion of similarity was in the context of what lawful out-of-state conduct can be constitutionally relevant, not in the context of a limitation on the use of unlawful in-state conduct. Nor was the Campbell description narrow, much less exceedingly so. 

Campbell defined dissimilar acts as acts "independent from... the acts upon which liability was premised." 123 S. Ct. at 1523. For other acts to be admissible, even out-of-state lawful conduct, Campbell only required "a nexus to the specific harm suffered by the plaintiff." Id. at 1522. There is nothing in F.S. §624.155 that requires or even allows totally independent acts as a predicate for punitive damages. To the contrary, the statute expressly refers to "the acts giving rise to the violation" which would more than adequately satisfy the "nexus" requirement of Campbell. There is, therefore, nothing that courts or the legislature need to correct.

Conclusion

Punitive damages date back to the Hammurabi Code and are firmly rooted in American jurisprudence. While the subject of much rhetoric, punitive damage awards are rare and the median amount of such awards is very low. Nonetheless, they play an important role in encouraging ethical and normative conduct and remain the one way that ordinary citizens can enforce community standards against outrageous and harmful actions. As governmental authority to regulate such conduct continues to be undermined through "deregulation," juries will increasingly be the last line of "regulation" to reign in unlawful and unethical conduct. That punitive damage awards for such conduct might face increased scrutiny does not subtract from their importance.

1 Special interest groups echo this interpretation. The National Association of Manufacturers hailed Campbell as "an important breakthrough in our continuing efforts to make judges more aware that punitive damages are out of control." Press Release, National Association of Manufacturers, "NAM Halts High Court Ruling" (Apr. 7, 2003), www.nam.org. The U.S. Chamber of Commerce extolled it as "a major victory for the business community's longstanding concern over... punitive damage awards," Press Release, U.S. Chamber of Commerce, Sup. Ct. Limits Size & Applicability... (Apr. 7, 2003), www.chamberofcommerce.com/politics/docs/ scler030407.pdf, and, the American Tort Reform Association boasted that it showed that the plaintiffs' lawyers' golden goose... is not dead, Press Release, ATRA, U.S. Supreme Court Action Confirms... (May 19, 2003), www.atra.org.

2 See, e.g., U.S. Dept. of Justice, Bureau of Justice Statistics, Tort Trials and Verdicts in Large Counties, 1999 (NCJ 179763) (Aug. 2001) (finding punitive awards in only three percent of cases with a median award of only $84,000); Theodore Eisenberg et al., Judges, Juries, and Punitive Damages: An Empirical Study, 87 CORNELL L. REV. 744 (2002); Neil Vidmar & Mary E. Rose, Punitive Damages by Jurors in Florida: In Territorial and in Reality, 39 FLA. J. LEGIS. 487 (2001) (finding punitive damage awards in Florida "strikingly low"); Michael L. Rustad, Unraveling Punitive Damages: Current Directions in the Law, 19 FLA. J. L. & POLICY 159 (1998); W.S. L. Rev. 15 ("Every empirical study of punitive damages demonstrates that there is no nationwide punitive damage crisis."); and Stephen Daniels & Jeanne Martin, Myth and Reality in Punitive Damages, 76 MICH. L. REV. 1, 64 (1990) (concluding that claims of a punitive damage crisis were "unfounded, and perhaps manufactured.").

3 For a full discussion of the Court's rulings, see Nad Miltenberg and Erwin Chemerinsky, Punitive Damages After Campbell, Smith, and Rome, TRIAL MAGAZINE 18 (August 2003).

4 See TXO Products Corp. v. Alliance Resource Corp., 509 U.S. 443 (1993), noting that a defendant's "wrongdoing in other parts of the country is a factor typically considered in assessing punitive damages." id. at 462 n.2.

5 The only time the Supreme Court considered punitive damage jury instructions, it approved instructions remarkably similar to the Florida Standard Jury Instructions, Pacific Mutual Life Insurance Co. v. Haslip, 499 U.S. 1, 19 (1990). In TXO, which affirmed a punitive award $268 times greater than actual damages, jury instructions were also challenged but the Court held that the issue had not been properly presented below and declined to consider it. 509 U.S. at 464.

6 At the time that it decided Campbell, the Court also issued memorandum decisions in Ford Motor Co. v. Smith, 123 S. Ct. 2073 (mem. 2003), and Ford Motor Co. v. Rome, 123 S. Ct. 2073 (mem. 2003), for "further consideration in light of Campbell." Under established precedent, these decisions are not a determination on the merits. Lawrence v. Chater, 516 U.S. 163 (1996); Florida v. Burr, 496 U.S. 918 (1999).

7 Exceptions from the requirement of clear and convincing evidence exist for actions involving child abuse, abuse of the elderly, abuse of the developmentally disabled, actions under ch. 400 and actions against defendants under the influence of alcohol or drugs. Fla. Stat. §§68.726, 63.026.

8 Punitive damages not to exceed the greater of four times the compensatory damages or $250,000 can be recovered if the defendant was motivated by financial gain and the likelihood of injury was known. See Fla. Stat. §§78.701(1).

9 Wranzy v. Defe, 801 So. 2d 223 (Fla. 4th D.C.A. 2001).

10 It is not a violation of the separation of powers for courts to consider and decide legitimate constitutional challenges. In doing so, they must, to the extent possible, adopt a statutory construction that will uphold, rather than invalidate, the legislation.

11 See supra note 2.

Larry S. Stewart received his law degree with honors from the University of Florida in 1963. He is a past president of the Association of Trial Lawyers of America and the Academy of Florida Trial Lawyers and a past chair of the Trial Lawyers Section of The Florida Bar. Mr. Stewart is board certified as a civil trial lawyer by The Florida Bar and the National Board of Trial Advocacy. He practices with Stewart, Highman, Fox & Blanchett in Miami. He has litigated in personal injury and wrongful death cases, particularly products liability and medical malpractice.
EXHIBIT

"P"
SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between Stewart Tilghman Fox & Bianchi, P.A., William C. Hearon, P.A. and Todd S. Stewart, P.A., Plaintiffs, and Marks & Fleischer, P.A., Gary H. Marks, and Amir Fleischer, Defendants, on June 5, 2006, as follows:

1. By executing the Settlement Agreement, the parties hereby settle all claims existing between them, including but not limited to the claims that Plaintiffs have asserted against Defendants in the case of Stewart Tilghman Fox & Bianchi, P.A., et al vs. Marks & Fleischer, P.A., et al, No. CA 006138XXXMB (Fla. 15th Jud. Cir. Ct.) for the total sum of Eight Hundred Twenty-two Thousand, Nine Hundred One and 47/100 Dollars ($822,901.47), payable by Defendants to Plaintiffs, said sum due and payable on June 5, 2006.

2. The parties hereto further agree to execute mutual releases in the form attached hereto as Exhibits 1 and 2 and the Plaintiffs agree to dismiss their claims against these Defendants in the above action with prejudice, each party to bear their own costs and attorneys' fees.

3. The sum of Eight Hundred Twenty-two Thousand, Nine Hundred One and 47/100 Dollars ($822,901.47) shall be payable by (A) cash in the sum of Five Hundred Seventy-seven Thousand Dollars ($577,000.00), (B) the sum of One Hundred Seventy-one Thousand, Six Hundred Sixty-six and 67/100 Dollars ($171,666.67) which is a portion of and included in the wire transfer of May 30, 2006 from the "Laura Watson Escrow Account"; and (C) a Promissory Note in the amount of Seventy-four Thousand, Two Hundred Thirty-four and 80/100 Dollars ($74,234.80). The Note shall be in the
form attached hereto as Exhibit 3, and the terms thereof are incorporated herein as integral terms of this Settlement Agreement.

4. Upon payment of these monies and receipt of the executed Promissory Note in paragraph 3 and the exchange of the mutual releases, the Plaintiffs shall file a motion for dismissal with prejudice of the claims against these Defendants in the above referenced case.

5. This Agreement is to be governed by the laws of Florida. In any action to enforce its terms, the prevailing parties shall be entitled to all the costs thereof, including reasonable attorneys' fees and interest.

AGREED AND ACCEPTED:

For Plaintiffs:

Stewart Tillghman Fox & Bianchi, P.A.

By: [Signature] Date: 6/28/06
Title: President

William C. Hearon, P.A.

By: [Signature] Date: 6/5/06
Title: President

Todd S. Stewart, P.A.

By: [Signature] Date: 6/26/06
Title: President

For Defendants:

Marks & Fleischer, P.A.

By: [Signature] Date: 6/26/06
Title: 

GARY H. MARKS, Individually, Date: 6/26/06

AMIR FLEISCHER, Individually, Date: 6/26/06
Via Facsimile

Mr. Peter R. Goldman  
Broad and Cassel  
P.O. Box 14010  
Ft. Lauderdale, Florida 33302

Mr. Irwin Gilbert  
Gilbert & Associates  
100 Village Square Crossing, Suite 207  
West Palm Beach, Florida 33410


Dear Peter and Irwin:

We have received wire transfers from Laura Watson Account Number 111012783 totaling $515,000. So that there will be no misunderstandings in the future concerning these monies, I ask that each of you execute this letter acknowledging and agreeing that the receipt and use of these funds by the plaintiffs is without prejudice to any rights or claims that plaintiffs have in Stewart Tilghman Fox & Bianchi, et al v. Marks & Flescher, et al.

Very truly yours,

[Signature]

Larry E. Stewart

LSS:je

Acknowledged and agreed:

[Signature]

Peter R. Goldman  
Counsel for Laura Watson  
d/b/a Watson & Lentner

Acknowledged and agreed:

[Signature]

Irwin Gilbert  
Counsel for Kane & Kane

cc: All counsel of record

We agree with the understanding that we intend to argue that these funds constitute a setoff in this case. We of course, are not waiving or prejudicing our right to assert this defense in the litigation.
See below.

---Original Message---
From: Irwin Gilbert [mailto:igilbert@bizlit.net]
Sent: Tuesday, June 06, 2006 11:28 AM
To: Larry Stewart
Cc: Harley Kane
Subject: Revision to May 31, letter

Mr. Stewart:

Is there any dispute from this plaintiffs that the payments recently made and/or proposed to be made at this time are a setoff against the claims asserted by plaintiffs against the remaining defendants, or at least, Charles Kane, Harley Kane and their law partnership? If there is no dispute, I propose the following...

I would like to sign a letter which recites that (i) these payments are a setoff; (ii) these payments do not constitute a waiver of any defense or claim by any party and that other than constituting a set off, the payments are without prejudice to the rights of the parties. Both plaintiffs and defendants should acknowledge this. All Mr. Goldman did was create a footnote which was not agreed to by the plaintiff.

Let me know if this would be ok and if you want me to write the letter.

Irwin Gilbert
ORDER ON MOTION TO COMPEL RELEASE OF ESCROW FUNDS

THIS CASE came before the Court on Defendants, Marks & Fleischer, P.A., Gary Marks, and Amir Fleischer's, Motion to Compel Release of Escrow Funds and the Court, having heard argument of counsel and being otherwise advised in the premises,

FINDS, ORDERS AND ADJUDGES as follows:

The Court has been advised by counsel that, in 2004, Defendants placed $710,000.00 in escrow in connection with the settlement of the case captioned Fishman & Stashak, M.D. v. The Progressive Corporation, et. al. ("the Progressive Action").

According to Defendants, this escrow account was created specifically for the purpose of setting aside an amount equal to a 40% contingent fee in connection with the settlement
of the Progressive Action. The Court is further advised that $515,000.00 was recently
transferred from the Laura Watson Escrow Account to a trust account of one of the
Plaintiff Law Firms, leaving a balance in the Laura Watson Escrow Account of roughly
$222,704.42. The Court is further advised that there is now a dispute between the
Defendant Law Firms concerning how the balance of the funds in the Laura Watson
Escrow Account should be disbursed and who has the right to control and direct how
those funds are disbursed and ultimately distributed. Defendants, Laura Watson and
Laura Watson, P.A., have, in view of this dispute, offered to make all future
disbursements or distributions from the Laura Watson Escrow Account subject to Court
control. Accordingly, the Court orders that no further distributions or disbursements
from the Laura Watson Escrow Account shall be made without further order of this
Court.

DONE AND ORDERED in Chambers at West Palm Beach County, Florida, this
_______ day of ____________, 2006.

SIGNED AND DATED
JUN 01 2006

Cc:  F. Gregory Barnhart
     Peter R. Goldman
     Irwin Gilbert
     Richard Zaden
     Robert Hauser
     William Hearon
     Larry Stewart
SUPPLEMENTAL AGREED ORDER ON MOTION TO COMPUL RELEASE OF ESCROW FUNDS

THIS CAUSE, originally came before the Court on Defendants, Marks & Fleischer, P.A., Gary Marks, and Amir Fleischer's, ("Marks & Fleischer") Motion to Compel Release of Escrow Funds. The Court heard argument on this Motion at a hearing conducted on June 1, 2006 and, at that time, entered an Order entitled, "Order on Motion to Compel Release of Escrow Funds." The Court, now being advised of an agreement between all parties concerning the granting of the motion and the release of the portion of the escrowed funds claimed by Marks & Fleischer; and otherwise being advised in the premises,

ORDERS AND ADJUDGES as follows:
That the motion of Marks & Fleischer be, and the same hereby is, granted and Laura Watson is authorized to immediately wire transfer $74,234.81 (consisting of 1/3 of the $222,704.42 balance in the Laura Watson Escrow Account) to the trust account of Stewart, Tilghman, et. al. in partial satisfaction of the settlement between Plaintiffs and Marks & Fleischer. Upon completion of the wire transfer authorized herein, Marks & Fleischer shall have no further interest in, or claim to, the balance of the funds held in the Laura Watson Escrow Account. The Court Orders that no further distributions or disbursements from the Laura Watson Escrow Account shall be made, without further order of this Court.

DONE AND ORDERED in Chambers at West Palm Beach County, Florida, this

JUN 08 2006

day of June, 2006.

JUDGE DAVID F. CROW

HONORABLE DAVID F. CROW
Circuit Court Judge

cc: F. Gregory Barnhart
    Peter R. Goldman
    Irwin Gilbert
    Richard Zaden
    Robert Hauser
    William Hearon
    Larry Stewart
EXHIBIT

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12/5/2001 LMW TCW KOPELMAN RE: BEECH STREET HAS PROVIDE ARGUMENT IF WANT TO BIND GROUPS - NEED DIRECT K 0.50

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1/4/2002 LMW R/R FAX OF 1-3-02 FROM MORGAN, COLLING & GILBERT & ATTACHED 8-17-01 LTR FROM ADAMS, BLACKWELL TO BEECH STREET PRESIDENT RE: CLAIM AGAINST BEECH STREET 0.25

1/8/2002 **LMW REV & RESPONSE TO ANN MARIE RE: RELEASE IN HEMMINGS FILE 0.75

1/1/2002 LMW R/R LTR FROM PROG RE: DEPT CRN / FAXED SAME TO TODD 0.40

1/11/2002 LMW R/R 1-9-02 FAX RE: DEF MT TO DISMISS / STRIKE IN CASE OF GOLD COAST V PROGRESSIVE 0.75

1/28/2002 LMW R/R MOTION FOR DISQUALIFICATION OF ATTORNEY, G. SIÉGEL AND FIRM OF KANE & KANE RCVD FROM LAWSON, CUNNINGHAM FIRM ON GOLD COAST V PROGRESSIVE CASE 0.75

1/31/2002 LMW R/R EMAIL FROM T STEWART RE: PUNITIVE DAMAGES 0.10

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2/6/2002 LMW FAXED TODD 1ST PAGE OF BRICKELL CASE 0.10

2/11/2002 LMW R/R 1-30-02 LTR TO V VINES @ BEECH STREET BY J. RINAMÁN, III 0.50

2/12/2002 LMW R/R EMAIL FROM T STEWART RE: DEFENSE MT DISMISS 0.10

2/19/2002 LMW REVIEWED CLIENT FILES FOR VARIOUS BEECH STREET K IN MY POSSESSION; NUMEROUS TYPES. SENT TO TODD 4.50

2/22/2002 LMW R/R FAX FROM LAWSON CUNNINGHAM OF PROG MEMO OF LAW IN SUPPORT OF MT DISMISS / STRIKE 1.75

2/24/2002 LMW R/R 1-20/02 LTR FROM L STEWART RE: FÓRMULA FOR FEE DIVISION 0.20

2/26/2002 LMW R/R SUBPOENA D.T. FOR DEPO OF DJL & LMW RE: DISQ. FAXED TO TODD RE: MPO 0.25

2/25/2002 LMW R/R FAX FROM L KOPELMAN : RIDER TO CRN 0.25

3/4/2002 LMW R/R LETTER FROM TS RE: CANCELLATION OF DEPO & AGREE 0.20

3/6/2002 LMW R/R PLAINTIFF’S RESP TO DEF RFP DATED 1/25/02 0.50

3/12/2002 LMW REV OF DJL FAX TO F/S RE: RICCI FIRM 0.25

5/14/2002 LMW LTR TO T STEWART W/ DOCS RE: BAD FAITH LITIGATION 10.50

5/15/2002 **LMW REVIEW OF FILES & LETTER TO TODD RE: CRN’S AND ANALYSIS OF CASES, PPO, UCR & CCS 4.20

5/15/2002 LMW REVIEW OF 21 FILES RE: BAD FAITH LITIGATION 3.70

5/16/2002 **LMW FOLLOW-UP LETTER TO TODD W/ ATTACHMENTS 0.60

5/16/2002 LMW TCW/ KIMBERLY SHAPIRO 0.75

5/21/2002 LMW MEETING W/ BH AND KIMBERLY SHAPIRO, HER HUSBAND 1.50

5/28/2002 LMW REV LS FACTUAL BACKGROUND MEMO 0.25

6/4/2002 **LMW FAX TO LS: RE: CCS CONTRACT 0.25

6/7/2002 LMW REVIEW VARIOUS FILES FOR DOC TO SUPP VENUE & SUPP OF CRN - FAXED SAME TO TILGHMAN 6.50

6/13/2002 LMW LETTER TO TODD RE: DR. JONES POSSIBLE CLIENT 0.50

6/13/2002 LMW REVIEW OF DELANEY CASE. LTR TO TS W/ ENCLOSURE 0.60

6/20/2002 LMW R/R H KANE LTR TO J. TILGHMAN RE: F/S VS PROGRESSIVE 0.30

6/23/2002 LMW DRAFTED NPN FOR KIMBERLY SHAPIRO 2.25

6/24/2002 **LMW FAXED DRAFT OF NPN TO BH FOR REVIEW & COMMENTS 0.20


6/2/2002 **LMW REVIEW BH’S RECOMMENDED CHANGES TO NPN TO KIMBERLY SHAPIRO 0.50

6/26/2002 LMW FAX TO LS - RE: DELETIONS & CHANGES TO 3RD AMENDED COMPLAINT 1.50
9/2002 LMW REV VARIOUS FILES AND IDENTIFIED ADDITIONAL DOCUMENTS RE: VENUE & CORP. ACTING AS ONE 6.00
6/29/2002 LMW R/R LTR FROM L STEWART RE: DRAFT OF 3RD AMENDED COMPLAINT 0.20
7/20/2002 LMW R/R LTR FROM T STEWART W/C OF SUMMONSES ON ADDIT DEFENDANTS 0.20
8/16/2002 **LMW R/R FAX FROM V. DANTE & ATTACHED DEF OBJ TO NOT OF PROD FROM NON-PARTY 0.20
8/19/2002 LMW R/R PROG ANS & AFFIR DEF TO PLTF 3RD AMEN COMPLAINT & 3RD PARTY COMPLAINT 0.50
8/19/2002 LMW R/R PROG MT TO DISMISS PLTF 3RD AMENDED COMPLAINT 0.25
8/19/2002 **LMW FAXED PROGRESSIVE'S OBJ RE: SHAPIRO NPN TO BH 0.20
8/30/2002 PLTF 1ST RFP OF DOCS 0.20
9/3/2002 LMW R/R FAX FROM LS RE: PROG RFP 0.20
9/13/2002 LMW R/R FAXED THIRD AMENDED COMPLAINT FROM W HEARON 0.26
9/17/2002 LMW R/R EMAIL FROM W HEARON RE: DISCOVERY 0.25
9/17/2002 LMW R/R EMAIL FROM T STEWART RE: PROG RFP 0.20
9/17/2002 LMW R/R E-MAIL T STEWART RE: PROG RFP 0.10
9/19/2002 LMW LTR TO B HEARON W/ DOCS IN RESP TO DEF RFP 8.50
9/20/2002 **LMW R/R DLJ EMAIL RE: DOCS IN RESP TO RFP 0.20
9/20/2002 LMW R/R LEE CHIRO BEECH STREET & CAPP CARE K 1.75
10/2/2002 LMW REV & ANALYSIS OF ADDIT BAD FAITH CASES - LTR TO BH RE: SAME 4.20
10/2/2002 LMW LTR TO B HEARON W/ ADDIT CASES RE: BAD FAITH LITIGATION 4.20
10/3/2002 LMW R/R DLJ EMAIL RE: DR. NEWMAN BEECH STREET K 0.10
10/10/2002 LMW R/R 10-9-02 FAX FROM A. SANTA ANA 0.60
10/17/2002 LMW R/R EMAIL FROM W HEARON RE: LIST OF CLAIMANTS & MISSING BILLS 0.50
10/18/2002 LMW REV HCFIA'S & FOLLOW-UP INFO RE: F/S; COASTAL; NEWMAN 0.80
10/21/2002 LMW R/R RE: DR. KOHL BEECH STREET K 1.80
10/23/2002 LMW R/R EMAIL FROM TS STEWART RE: ADDIT INFO ON TWO FILES 0.10
12/2/2002 LMW R/R EMAIL FROM WC HEARON OF 10-28-02 RE: DISCOVERY 0.50
12/28/2002 LMW REVIEWED DOCUMENTS AT LS OFFICE 1.50
11/9/2002 LMW R/R DOCS FROM DR. M NEWMAN 0.50
12/2/2002 LMW R/R LTR FROM B HEARON W/ REQ.COPIES OF DOCS 1.70
12/6/2002 LMW R/R BEECH STREET'S AMENDED ANS; DEFENSES & AFFIRMATIVE DEFENSES TO 2ND AMENDED THIRD PARTY COMPLAINT 0.50
12/6/2002 LMW R/R LS COVER LTR TO ABOVE 0.10
12/6/2002 LMW R/R 12-04-02 FAX FROM LS RE: PROG 1ST RFP OF DOCS TO PLAINTIFF 0.25
12/6/2002 LMW R/R LTR FROM B HEARON W/ COPIES OF ADDIT DOCS 0.75
12/8/2002 LMW REVIEW OF PROG TRAINING MANUAL & ADP PROV, BILL, AUDIT MATERIALS 6.50
12/20/2002 LMW R/R PLTF MEMO OF LAW IN OPP TO PROG CORP MT TO DISMISS 0.20
12/20/2002 LMW R/R LS LTR TO JDG LABARGA W/ DOCS IN CONNECTION TO 1-6-03 HRNG 0.20
1/3/2003 LMW R/R LTR FROM L STEWART RE: DISCOVERY REQ FROM PROGRESSIVE 0.10
1/3/2003 LMW R/R L STEWART LTR TO A RIVERO-ALEXANDER RE: PROG'THREE REQ FOR PROD 0.10
1/3/2003 **LMW R/R PROG THIRD PROD OF DOCS 0.30
1/9/2003 **LMW REV & FAX OF PADILLA V. LIBERTY RE: DOI APPROVAL OF STATUTORY SCHEME 0.25
1/9/2003 LMW R/R LS LTR OF 1-6-03 RE: JUDGES DENIAL OF MT TO DISMISS 0.10
1/13/2003 LMW R/R REVIEWED FILES FOR ADD. CLAIMS & DOCS 3.20
1/13/2003 LMW R/R LS FAX RE: PROG POSITION ON RFP ITEMS BEING "TRADE SECRET" 0.20
1/14/2003 **LMW LETTER TO BH RE: ADD CLAIMS & DOCS 1.50
1/20/2003 LMW R/R OF FOURTH AMENDED COMPLAINT 0.50
2/4/2003 LMW REVIEW & REVISED AFFIDAVIT 0.50
2/8/2003 LMW R/R LS 2-6-03 LTR RE: CONFIRMATION OF DEPO TIMES OF CLIENTS 0.20
2/17/2003 **LMW SENT TO LS DOCS RESPONSIVE TO TRADE SECRET 5.00
2/20/2003 **LMW ADDIT DOCS & CASE LAW FOR OBJ HEARING 0.60
2/20/2003 LMW R/R FAX TO LS RE: OUTSTANDING DISC RE: FEES 0.25
2/24/2003 LMW COVER LTR TO LS W/ AGREEMENTS ON VARIOUS FILES 2.50
6/2003 **LMW FAX TO LS RE: PRIV & RESP TO TS & TRADE SECRET MEMO 0.50
4/1/2003 LMW TCW LARRY KOPELMAN RE: DEPOS & COPIES OF SAME 0.25
4/3/2003 **LMW FAX TO LS RE: WORDING ON CHECK & ENCLOSURE LETTER 0.25
4/4/2003 **LMW SENT BH COPIES OF DEPOS OF JEFF WEST & JUAN ANDRADE 0.30
4/4/2003 **LMW COVER LTR TO BH W/ COPIES OF DEPÓS OF J. WEST & J. ANDRADE OF PROG 0.30
4/10/2003 **LMW LETTER TO BH W/ ATTACHMENT RE: K EXISTENCE & EXPIRATION OF K 0.25
4/10/2003 **LMW COVER LTR TO BH W/ LIST PROV TO US IN RESP TO DISCOVERY REQ IN ONE OF OUR FISHMAN CASES 0.25
4/16/2003 **LMW R/R ANANIA'S NOT OF DEPO FOR DR. CIMERBERG 0.10
4/16/2003 **LMW RE: DEPOS & COPIES OF SAME 0.25
4/21/2003 **LMW REVIEW OF VARIOUS CONTRACTS AND IDENTIFYING TERMS 4.20
4/21/2003 **LMW FAX TO LS RE: WORDING ON CHECK & ENCLOSURE LETTER 0.25
4/4/2003 **LMW SENT BH COPIES OF DEPOS OF JEFF WEST & JUAN ANDRADE 0.30
4/4/2003 **LMW COVER LTR TO BH W/ COPIES OF DEPÓS OF J. WEST & J. ANDRADE OF PROG 0.30
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4/1/2003 LMW REVIEW OF DS E-MAIL RE: CAMPBELL 0.75
4/25/2003 **LMW REVIEW OF BAD FAITH CASELAW & E-MAIL RE: CAMPBELL 0.50
5/22/2003 **LMW E-MAIL TO LS ET AL RE: HCA HEALTH SERVICES & SILENT PPO 0.50
5/23/2003 **LMW MEETING W/ BH & LS AT AMIR'S OFFICE RE: CAMPBELL ISSUES 5.20
6/8/2003 **LMW R/R 6-5-03 LTR FROM J. COLLINS W/ COPY OF REPORT & RECOMMENDATION ENTERED BY JDG STETTIN 5-19-03 0.25
6/14/2003 **LMW R/R 6-13-03 LTR FROM LS RE: NATIONWIDE CLAIMS 0.25
6/25/2003 **LMW REVIEW OF ARTICLE RE: JUDICIAL REVIEW OF FLORIDA'S TORT REFORM ACT 0.80
6/27/2003 **LMW REVIEW OF 5TH DCA OPINION AND E-MAIL FROM ME TO LS & BH RE: 5TH DCA 0.30
7/22/2003 **LMW DISCOVERY RESPONSES TO BH 0.70
7/22/2003 **LMW COVER LTR TO BH W/ DISCOVERY RESPONSES 0.70
7/27/2003 **LMW R/R 9-15-03 LTR FROM WH RE: FIRST SET OF BEECH STREET INT 0.10
7/27/2003 **LMW R/R BEECH STREET INT 0.50
7/10/2003 **LMW R/R BEECH STREET INT 0.60
7/17/2003 **LMW R/R PROGRESSIVE'S PETITION FOR WRIT OF CERTIORARI 0.40
7/13/2003 **LMW R/R TILGHMANN'S RESPONSE TO PET FOR WRIT OF CERTIORARI 0.40
11/9/2003 **LMW REVIEWED DOCUMENTS AT LS OFFICE 4.50
11/16/2003 **LMW LTR TO BH W/ ADP DISCOVERY RESP; MANUALS & TRAINING MANUAL 0.60
11/17/2003 **LMW R/R COPY OF DOUG HELTON DEPOSITION 1.75
12/5/2003 **LMW FAX TO LS RE: ORDER AWARDING APPELLATE FEES 0.25
12/5/2003 **LMW R/R 12-1-03 LTR FROM LS RE: PROG CORP INT 0.60
12/8/2003 **LMW TCW FIS RE: CONFLICT OF TEW CARDENAS 0.30
12/12/2003 **LMW LTR TO DR. WILLIAMS RE: ANS TO INT SERVED BY BEECH STREET 0.20
12/12/2003 **LMW LTR TO DR. CIMERBERG RE: ANS TO INT SERVED BY BEECH STREET 0.20
12/12/2003 **LMW LTR TO DR. RIVERO RE: ANS TO INT SERVED BY BEECH STREET 0.20
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1/2004 **LMW LTR TO DR. KOHL RE: ANS TO INT SERVED BY BEECH STREET 0.20
1/2004 **LMW LTR TO BH W/ COPY OF HRING TRANS BEFORE JDG TRACHMAN 0.50
1/16/2004 **LMW REV OF DAVIS CASE & FAX TO LS RE: ACKNOWLEDGEMENT IN S.C. 0.50
3/16/04 **LMW LTR TO DR. STASHAK REQ SIGNATURE ON NEW PROG INT 0.25
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1/16/04 **LMW LTR TO DR. WRIGHT REQ SIGNATURE ON NEW PROG INT 0.25
1/30/04 LMW LTR TO BH W/ COPY OF DEPO OF ADJ IN BAD FAITH CLAIM 0.60
2/10/04 LMW LTR TO BH RE: ATTY TIME IN PROG CASES 0.70
3-14-04 &
3-15-04 LMW START DRAFT OF LETTER TO BH RE: PROG BAD FAITH/ATTY FEES OWED 15.50
3/17/2004 LMW ORDERS ON FJ'S AS TO ATTY FEES 0.25
3/26/2004 LMW LTR TO LS W/ ATTACHMENTS 6.20
3/29/2004 **LMW FAX TO LS RE: 3-26-04 LTR & ATTACHMENTS 0.50

TOTAL 223.90

** - DENOTES RECONSTRUCTED TIME
RE: FISHMAN & STASHAK, M.D.'S, P.A, V. PROGRESSIVE

RECONSTRUCTED FROM BILL HEARON'S TIME SHEETS

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EXHIBIT

“R”
IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 502004 CA006138XXXMBAO

STEWART TILGHMAN FOX & BIANCHI, P.A.,
a professional association; WILLIAM C. HEARON, P.A.,
a professional association; and TODD S. STEWART, P.A.,
a professional association,

vs.

MARKS & FLEISCHER, P.A., a professional association,
KANE & KANE, a professional corporation; and LAURA M.
WATSON, P.A. d/b/a WATSON & LENTNER, a professional
corporation; GARY H. MARKS, AMIR FLEISCHER,
CHARLES J. KANE, HARLEY N. KANE, LAURA M.
WATSON and DARIN J. LENTNER,

and

AMERICAN NATIONAL BANK,

Garnishee;

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FINAL JUDGMENT IN GARNISHMENT

THIS MATTER came before the Court for hearing on December 21, 2010
on Garnishee, American National Bank's Motion for Final Judgment in
Garnishment and for Offset from Garnished Proceeds.

An Order was entered in May 2009 titled as follows: Order on Plaintiffs'
Emergency Motion to Compel American National Bank's (sic) to Comply with
February 6, 2009 Court Order; Garnishee's Motion for Attorneys' Fees and
Request for Declaration of Responsibilities; and Plaintiffs’ Ora Tenus Motion for Disbursement of Funds From the Registry of the Court. In pertinent part, this order granted Garnishee’s motion for attorneys’ fees and directed that Garnishee deposit $164,208.46 in the Court Registry. The order further directed the Clerk of Court to retain $20,000.00 pending further order to liquidate Garnishee’s attorneys’ fees and authorized the Clerk to remit the balance of the funds to Plaintiff, Stewart, Tilghman, Fox & Bianchi, P.A., Trust Account.

The Court subsequently entered an Order on Garnishee’s Attorneys’ Fees and Costs on October 30, 2009. In pertinent part, this order liquidated Garnishee’s attorneys’ fees through October 13, 2009 and directed the Clerk to release the remaining $20,000.00 in the Court Registry to Garnishee’s counsel, George H. Aslanian, P.A. d/b/a Aslanian & Aslanian. The Court retained jurisdiction to inter alia enter Final Judgment in Garnishment and to resolve additional issues between Plaintiff, Stewart, Tilghman, Fox & Bianchi, P.A. and Defendant, Laura M. Watson, P.A. relative to the garnishment proceedings.

The Court has reviewed the memoranda submitted by all parties, the documentary evidence and testimony of the witnesses and heard the arguments of counsel. It is thereupon,

ADJUDGED as follows:

1. Garnishee, American National Bank, is an innocent stakeholder in these proceedings and is entitled to reimbursement of its costs and attorneys’ fees in accordance with §77.28, Fla.Stat through the entry of Final Judgment in Garnishment.
2. Garnishment Plaintiff, Stewart, Tilghman, Fox & Bianchi, P.A., is granted Final Judgment of Garnishment against Garnishee, American National Bank, in the amount of $164,208.46 (escrow/commercial savings account #111012783) plus $135.73 (commercial check account #122123106) which sum has already been paid subject to a partial offset in the amount of $20,000.00 by American National Bank and received by the Plaintiff.

3. The Court finds and it has not been disputed that Garnishee's hourly attorney's fee rate of $275.00 charged to Garnishee is reasonable and that counsel reasonably expended an additional 17.4 hours to which Garnishee is entitled to be reimbursed.

4. Garnishee, American National Bank, is now owed the following sums, to wit: $7,267.59 remaining due and unpaid from the October 30, 2009 Order on Garnishee's Attorney's Fees and Costs; $684.94 in interest through December 21, 2010 in accordance with the October 30, 2009 Order; $264.00 in Court Reporting fees; and, additional attorneys' fees through the entry of Final Judgment in Garnishment in the amount of $4,785.00 for a total sum of $13,001.44.

5. Plaintiff, Stewart, Tilghman, Fox & Bianchi, P.A. shall pay $13,001.44 to George H. Asarian, P.A. Trust Account within 10 days of this Final Judgment in Garnishment.

6. The Court finds that Defendant, Laura M. Watson, P.A. failed to comply with the Court's February 6, 2009 Order, which Order directed Defendant, Laura M. Watson, P.A. d/b/a Watson & Lentner to take all steps
necessary for the transfer of the funds in the escrow account at American National Bank. Had Defendant complied with the February 6, 2009 Order, garnishee's fees would have been de minimis. Therefore, Defendant, Laura M. Watson, P.A. d/b/a Watson & Lentner, shall not receive a credit for any of the fees or costs paid to the Garnishee, American National Bank, in the garnishment proceedings.

7. Garnishee, American National Bank, is released from responsibilities to Plaintiffs, STEWART TILGHMAN FOX & BIANCHI, P.A., a professional association; WILLIAM C. HEARON, P.A., a professional association; and TODD S. STEWART, P.A., a professional association, for any debt to or property of Defendant, LAURA M. WATSON, P.A. d/b/a WATSON & LENTNER.

8. The Court reserves jurisdiction of the garnishment proceeding to enforce the requirements of this Final Judgment and to enter any and all Orders or Amended Final Judgments as may be appropriate.

DONE AND ORDERED in Chambers at Palm Beach County, Florida, this ___ day of December, 2010.

Honorable Thomas H. Barkdoll, Ill
Circuit Court Judge

Copies furnished to:
All counsel on attached service list.
EXHIBIT

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| Fishman - Erika Burton 01-10408 | Y | Y | Y | Y | Y | Y | N | Judgment 11/25/68 | N | N | N | Y | 1/14/63 Dismissed
| Fishman - Alex Eugene 01-10762 | Y | Y | Y | Y | Y | N | 2 | Benefits 2/11/67 | N | N | N | Y | 1/14/64 Sett. of Judgment |
| Fishman - Michelle Variola 01-01172 | Y | Y | Y | Y | Y | N | N | N | N | N | N | Y | 3/1/63 |

**Note:** The table content includes various case details such as names, CRNs, and dispositions along with dates related to the cases.
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- **Settled**: $3,250
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- Settlement Benefits: $1,650
- Initial M/Disq. Fees: $1,000
- Award of Fees: $4,165.72
- Settlement Corresp. w/Opp. Council: 1- Depo data
- Other Letters to Client: N
- Release: N
- Preserve Bad Faith Claims: N
- Time Sheets: N

- Settlement Benefits: $315.00
- Initial M/Disq. Fees: $4,342
- Award of Fees: $4,342
- Settlement Corresp. w/Opp. Council: 1- Depo data
- Other Letters to Client: N
- Release: N
- Preserve Bad Faith Claims: N
- Time Sheets: N

- Settlement Benefits: $2,400
- Initial M/Disq. Fees: $2,400
- Award of Fees: $2,400
- Settlement Corresp. w/Opp. Council: 1- Depo data
- Other Letters to Client: N
- Release: N
- Preserve Bad Faith Claims: N
- Time Sheets: N

- Settlement Benefits: $1,238.65
- Initial M/Disq. Fees: $2,200
- Award of Fees: $2,200
- Settlement Corresp. w/Opp. Council: 1- Depo data
- Other Letters to Client: N
- Release: N
- Preserve Bad Faith Claims: N
- Time Sheets: N

- Settlement Benefits: $2,500
- Initial M/Disq. Fees: $2,500
- Award of Fees: $2,500
- Settlement Corresp. w/Opp. Council: 1- Depo data
- Other Letters to Client: N
- Release: N
- Preserve Bad Faith Claims: N
- Time Sheets: N
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| 01-22689     | Y            | Y                   | Y                    | N               | Y            | N            | 0 Lt 
|              |              |                     |                      |                 |              |             | Settlement $ & confirm Atty Fees       | N                      | N       | Y (Final)                |            | Settled - Benefits | 4/28/03     |
| Christensen  |              |                     |                      |                 |              |             | 0 Lt 
| (Canalu - Mercede) |             |                     |                      |                 |              |             | Lt: Med Benefits                        | N                      | N       |                          |            | Settled - Benefits | 4/28/03     |
| 2001- C4-4984 | Y            | Y                   | Y                    | Y               | Y            | N            | 0 Lt 
| Cole Chirom  |              |                     |                      |                 |              |             | Settlement $ & confirm Atty Fees       | N                      | N       | Y (Final)                |            | Settled - Benefits | 4/28/03     |
| (Claude J.   |              |                     |                      |                 |              |             | 0 Lt 
| Rosc, Sp.    |              |                     |                      |                 |              |             | Lt: Atty Fees                          | N                      | N       |                          |            | Settled - Benefits | 4/30/04     |
| 01-29925     | Y            | Y                   | Y                    | N               |              |              | 0 Lt 
| Rivera       |              |                     |                      |                 |              |             | benefits $ /pall $                    | N                      | Y       | Y (Final)                |            | Settled - Benefits | 4/30/04     |
| (Angles      |              |                     |                      |                 |              |             | 0 Lt 
| Verges       |              |                     |                      |                 |              |             | AFR of Amnt Base                       | N                      | N       |                          |            | Settled - Benefits | 4/30/04     |
| 200-01-9342   | Y            | Y                   | Y                    | Y               | N            |              | 0 Lt 
| Weight       |              |                     |                      |                 |              |             | Atty Fees $9,800                        | N                      | N       | Y (Final)                |            | Settled - Benefits | 4/30/04     |
| (David H.    |              |                     |                      |                 |              |             | 0 Lt 
<p>| Nolan        |              |                     |                      |                 |              |             | Benefits $9,510.12                      | N                      | N       |                          |            | Settled - Benefits | 4/30/04     |</p>
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<th>Case Name/No</th>
<th>Standard CRN</th>
<th>Standard Complaint</th>
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<th>Standard M/Disq.</th>
<th>Award of Fees</th>
<th>Settlement Corresp. w/Client</th>
<th>Other Letters to Client</th>
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<td>Y</td>
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<td>Settled - Benefits $785 - 3/1/04</td>
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<td>Other Letters to Client</td>
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<td>2. LR - Attty Fees</td>
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<td>2. LR - Attty Fees</td>
<td>3. LR - Benefits &amp; Attty Fees</td>
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<td>$5,948.00</td>
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<td>02-1370 Baker, Heard &amp; Whittington</td>
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<td>2. LR - Attty Fees</td>
<td>3. LR - Benefits &amp; Attty Fees</td>
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<td>$9,335.10</td>
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<td>N</td>
<td>N</td>
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<td>Settlement Corresp. w/Client</td>
<td>Settlement Corresp. w/Opp. Council</td>
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<td>Release</td>
<td>Release Preserve Bad Faith Claims</td>
<td>Release Sheets</td>
<td>Disposition</td>
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<tr>
<td>01-7180 A Place for Health (Garrison)</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>N</td>
<td>N</td>
<td>1 &amp; 2: Benefits w/Client</td>
<td>N</td>
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<td>1/11/03</td>
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<td>Garafalo (St. Paul Corpelas) 2003</td>
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<td>Y</td>
<td>Y</td>
<td>N</td>
<td>N</td>
<td>1 &amp; 2: Benefits w/Atty Fees</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>Settled - Benefits $4,503</td>
<td>11/2-4/03</td>
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</table>
EXHIBIT

“T”
IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

STEWART TILGHMAN FOX & BIANCHI, )
P.A., a professional )
association; WILLIAM C. HEARON, )
P.A., a professional )
association; and TODD S. )
STEWART, P.A., a professional )
association, )
Plaintiffs, )
vs. ) Case No.: 50 2004- )
MARKS & FLEISCHER, P.A., a )
professional association, KANE &)
KANE, a professional )
corporation; and LAURA M. )
WATSON, P.A. d/b/a WATSON & )
LENTNER, a professional )
corporation, )
Defendants. )

West Palm Beach, Florida
June 23, 2004
2:00 o'clock P.M.

The above-styled cause came on for hearing
before the Honorable JEFFREY A. WINIKOFF, Presiding
Judge, at the Palm Beach County Courthouse, West Palm
Beach, Palm Beach County, Florida, on the 23rd day of
appearances on page two

PALM BEACH REPORTING SERVICE, INC. (561)471-2995
Q. Your voice carries into the federal courthouse.
A. I'm sorry.

The lawsuit was for the difference between what was submitted and what wasn't paid -- for the part that wasn't paid. That was the PIP lawsuit.

Then the attorneys were entitled to attorney's fees under the Florida Statute and that became a huge part of those cases. The predominant part of those cases were attorney's fees.

Q. So who is the -- who had the biggest stake in the PIP lawsuits, the lawyers or the health care providers?
A. By far the lawyers had the biggest stakes.

To give you an idea, at one point in time we did an analysis and the typical benefit claim was less than a thousand dollars whereas the typical fees was over $5,000.

Q. Would it be fair --
A. In the later years the fees, because more time had gone on, the fees were getting up to close to ten -- averaging $10,000 a claim.

Q. If you had the opportunity as a lawyer to move funds from a bad faith settlement into a PIP settlement, would that benefit a lawyer who did that?
EXHIBIT

“U”
March 29, 2004

VIA FACSIMILE 305 373-6914

Mr. Francis Anania
Anania, Bandklayder, Blackwell
Bauningarten, Torricella & Stein
100 S.E. Second Avenue
Suite 4300
Miami, Florida 33131

Re: Gold Coast v. Progressive

Dear Fran:

I am in receipt of your letter dated March 26, 2004 addressed to Larry Stewart. Since we wanted to get a response to you as soon as possible, I am writing to you in Larry’s absence.

With regard to the first list referencing 14 cases on the first page of your letter, the below chart will provide you with the information necessary to find 13 of those cases including, patient’s name, case number, and defense counsel’s name. It appears that one of the cases listed was erroneously picked up in our search because the plaintiff’s name contained the word “Progressive”.

<table>
<thead>
<tr>
<th>Patient</th>
<th>Case No.</th>
<th>Defense Counsel</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stephen Bosch</td>
<td>CCO 02-16821</td>
<td>George Milev – Adams, Blackwell &amp; Diaco, P.A.</td>
</tr>
<tr>
<td>Neville Demetrius</td>
<td>01-12754 COCE 50</td>
<td>James P. Murphy – Green, Murphy, Wilke, Murphy &amp; Spellacy</td>
</tr>
<tr>
<td>Elsa Edgemon</td>
<td>2003 25189 CC Div 1</td>
<td>Adam R. Filthaut – Adams, Blackwell &amp; Diaco, P.A.</td>
</tr>
<tr>
<td>Jacques Elie</td>
<td>00-16169 COCE 50</td>
<td>Robert Adams</td>
</tr>
<tr>
<td>Jeancilia Eloi</td>
<td>03-14600 COCE 56</td>
<td>Matt Hellman</td>
</tr>
<tr>
<td>Miriam Eterginio</td>
<td>MS-02-006921 RL</td>
<td>Samuel R. Guelli – Williams, Leininger &amp; Cosby, P.A.</td>
</tr>
<tr>
<td>Mark Kloberg</td>
<td>01-7145 COCE 55</td>
<td>James T. Sparkman</td>
</tr>
</tbody>
</table>
With regard to the nine cases referenced in the second list on page two of your letter, we have checked those references and found that most of the information was correct. I did find that two of the case numbers were off by a digit and those corrections are indicated. Other information, including defense counsel is listed below.

Ashley Abel 02-3411 COCE 55 James T. Sparkman
Rochenel Altema 03-10439 COCE 51 Matt Hellman
Theresa Bacon 01-11159 COCE 51 Candace Korthais - Barnett & Barnard
Juan Caba 03-14336 Rafael Katz
Michael Catalano 01-10421 COCE 56 James T. Sparkman
Bernadette Germaine 01-7681 COCE 52 Chad L. Christensen - Barnett & Barnard
Isabel Lieber 2000-391-CC-C James C. Rinaman, III (Clay County)
Willie Lockridge 03 11588 COCE 51 Patrick Shawn Spellacy - Kirwan & Spellacy, P.A.
Mary McGrew 02-8317 COCE 50 Steven J. Leiter -- Johnson, Leiter & Belsky, P.A.

With regard to the next to the last paragraph on page two of your letter, I do not believe that we ever indicated that all of the Watson & Lentner cases had been PPO/CCA cases. The basis of the bad faith claims are not limited to Beech Street and Cohan matters, but would encompass all computer program based reductions, including UCR reductions made through ADP. We do not believe that an attempt to reduce the universe of underlying cases by focusing only on PPO/CCA cases is a valid one for evaluating Progressive’s exposure in the bad faith matters.

With regard to the last paragraph on page two of your letter, I do not have a recollection that Larry had limited the time frame on the $800,000 in fees that had been awarded to Watson & Lentner. I believe that the referenced awards were over a period of years, not months. Whatever fees have been awarded in the past, those amounts will pale by comparison to the awards Progressive has starting seeing and will see in the future. Consider, for example, that Watson & Lentner has approximately 60 fee hearings scheduled in the fourth month period March – June, 2004. In addition, during the 17-day period of March 5-March 22, 2004 Watson & Lentner received nine orders awarding fees totaling $105,701.59. In five of the nine cases, a 1.75 multiplier was awarded and a 1.4 multiplier was awarded in another. The curve of the fees awarded in the underlying matters is going to start resembling a hockey stick, so focusing on the previous $800,000 is wasted effort.
These numbers also materially affect the value of the bad faith claims. Progressive should keep in mind that the numbers Larry initially utilized to present our demand in the bad faith matters are being greatly eclipsed in these underlying cases given the average fee awards now being entered by the Courts. As Larry previously indicated, the longer the underlying matters take to resolve, the greater the overall improper, negative economic impact caused by Progressive's business practices, and the larger the basis from which to assert our damage claims in the bad faith cases.

We look forward to hearing from you over the next several days.

Sincerely,

[Signature]

William C. Hearon

WCH:jc
EXHIBIT

"V"
IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

PROGRESSIVE BAYSIDE INSURANCE COMPANY,

Petitioner,

V.

FISHMAN AND STASHAK, M.D.'S, P.A.
d/b/a GOLD COAST ORTHOPEDICS also
d/b/a GOLD COAST ORTHOPEDICS AND
REHABILITATION (Danette L. Fitzgerald),

Respondent.

ORDER AWARDING APPELATE ATTORNEY'S FEES AND COSTS

THIS CAUSE having come before the Court on an evidentiary hearing on December 4, 2003, upon the Respondents' Motion for Attorney's Fees and Costs Pursuant to F.S. Section 57.105, and the Court having entered its "Order" on July 8, 2003, determining Respondents to be entitled to an award of attorney's fees and costs pursuant to Florida Statute §57.105, and that "Order" being applicable to the seventy three (73) Petitions for Writ of Certiorari referenced in that "Order," as consolidated by Order of the Administrative Judge on September 17, 2002, and the Court having reviewed the record, having considered the file, having further reviewed said Motion, having heard argument of counsel, and being otherwise fully and duly advised, hereby rules as follows:

A. The Petitioners filed seventy three (73) Petitions for Writ of Certiorari against various Respondents. All 73 Petitions were consolidated before this Court. Subsequently, the Petitioners dismissed all 73 Petitions. On July 8, 2003, this Court entered an "Order" determining that the Respondents were entitled to recover their attorney's fees and costs incurred in defending against and responding to all 73 Petitions. That "Order" is hereby incorporated by reference as if the same were fully set forth herein.

B. The matter is now before this Court for determination as to the reasonable attorney's fees and costs incurred by the Respondents in defending against the 73 Petitions.

C. The Petitioners do not dispute the authenticity of the Respondents' counsel's time records and bills, statements, and invoices. This Court finds that the Respondents' counsel, Laura M. Watson, Esquire and Kate G. Burnett, Esquire, reasonably expended Five Hundred and Thirteen (513) hours representing the various Respondents in the 73 Petitions for Writ of Certiorari.

D. The Court further finds that the hourly rate of Two Hundred Seventy Five ($275.00) Dollars charged by Laura M. Watson, Esquire and Kate G. Burnett, Esquire, is a reasonable hourly rate in this community for these attorneys, based upon their experience, reputation and ability for working on these cases.

E. The Court further finds that it was necessary for the Respondents to retain an expert to testify on the amount of the reasonable attorney's fees and cost to be awarded by virtue of this Court's July 8, 2003 "Order." The Respondents retained Gary M. Farmer, Jr., Esquire, to serve as
their expert witness on the amount of reasonable attorney's fees and costs to be awarded. Gary M. Farmer, Jr., Esquire was required to take three (3) hours away from his practice to confer with counsel and witnesses, begin review of the files, and otherwise prepare for the hearing specially set, scheduled and noticed for December 4, 2003. The Court finds that Gary M. Farmer, Jr., Esquire is entitled to three (3) hours for reasonable time spent in this case and that an hourly rate of Three Hundred Twenty Five ($325.00) Dollars is reasonable, based upon community standards for attorneys with similar experience, education, and training, for Gary M. Farmer, Jr., Esquire.

Therefore it is, upon consideration, ORDERED AND ADJUDGED:

1. This Court, for the 73 consolidated Petitions referenced in this Court’s July 8, 2003 “Order,” hereby awards Respondents the principal amount of One Hundred Forty One Thousand Seventy Five ($141,075.00) Dollars for reasonable attorney’s fees incurred in all 73 Petitions, plus prejudgment interest of six (6%) percent from the date of July 8, 2003, or a total of Three Thousand Fifty Six and 87/100 ($3,526.87) Dollars for prejudgment interest.

2. This Court hereby further awards costs in the amount of Nine Hundred and Seventy Five ($975.00) Dollars, representing all taxable costs on appeal and the expert witness fees for the services of Gary M. Farmer, Jr., Esquire. Pursuant to Florida Rule of Appellate Procedure 9.400(a), the Court remands to the trial court in Fishman & Stashak (Danneke Fitzgerald) v. Progressive Bayside Insurance Co., Case No. 01-10763 COCE 50, this portion of this ORDER AWARDING APPELLATE ATTORNEY’S FEES AND COSTS awarding these taxable costs on appeal, for the entry of a Judgment in favor of the Respondent therein, and against the Petitioner therein, covering these taxable costs on appeal in these consolidated proceedings.

3. The parties have stipulated that pursuant to Florida Rule of Appellate Procedure 9:400(h), this Court has proper jurisdiction to enter this ORDER AWARDING APPELLATE ATTORNEY’S FEES AND COSTS, and to assess the attorney’s fees awarded. This Court therefore awards a total of One Hundred Forty Five Thousand, Five Hundred Eighty Six and 87/100 ($145,586.87) Dollars representing all attorney’s fees and costs incurred by the Respondents in these consolidated cases, that shall bear interest at the rate of 6% per year or as set from year to year by law, for which let execution issue.

4. The parties shall otherwise go henceforth without day.

DONE AND ORDERED in Chambers at the Broward County Courthouse in Fort Lauderdale, Broward County, Florida, this 4th day of December, 2003.

ROBERT LANCE ANDREWS
HONORABLE ROBERT LANCE ANDREWS
CIRCUIT COURT JUDGE
IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

PROGRESSIVE BAYSIDE
INSURANCE COMPANY,
Petitioner

CASE NO.: 02-04566 (09)

vs.

FISHMAN & STASHAK, M.D.'S,
P.A., d/b/a GOLDCOAST
ORTHOPEDICS,
(Danielle Fitzgerald)
Respondent

ORDER

THIS CAUSE having come before the Court upon the Respondent's Motion for Attorneys Fees and Costs Pursuant to F.S. Section 57.105, and the Court having considered same, having heard argument of counsel, and otherwise being duly advised in premises, finds and decides as follows:

The Petitioner, comprised of various Progressive corporations, filed 73 Petitions for Writ of Certiorari against various Respondents/Plaintiffs. The filing of the Petitions by the various Progressive corporations arises from the employment of Glenn Siegel (Siegel) by Progressive Express Insurance Company and Progressive Southeastern Insurance Company, as a medical claims litigation specialist/adjuster during the period March 1999 to October 2000. As a condition of his employment, Siegel signed a confidentiality agreement. Although a member of the Florida Bar, he did not act as an attorney for any Progressive corporation, but rather his job duties consisted of overseeing and monitoring the litigation in Personal Injury Protection ("PIP") claims.1

1 According to his supervisors at Progressive, Joyce Richardson and Don Matthews, they did not consider him to be an attorney acting on behalf of Progressive in any way, shape, or form. See Order Denying Motion to Disqualify on Fort
All aspects of the legal representations of the various Progressive Insurance companies were handled by in-house or outside counsel. It is important to note that, while there are at least seven different Progressive insurance corporations which are incorporated in the State of Florida, Siegel only worked for Express and Southeastern.

On October 31, 2000, Siegel joined the law firm of Kane & Kane (Kane), which is primarily engaged in the representation of plaintiffs against third party tortfeasors and insurance companies. Approximately 11 months later, the attorneys for the various Progressive insurance corporations moved to disqualify Siegel and Kane as attorneys in cases wherein they had sued any Progressive insurance company. While the allegations in the motions to stay and motions to disqualify assert that Siegel allegedly obtained confidential information regarding a Preferred Provider ("PPO") arrangement with his former employer, motions have been filed in virtually every type of claim filed against the various Progressive insurance corporations. The attorneys for the various Progressive insurance corporations argue that Siegel and Kane should be barred from representing plaintiffs in such claims against it on grounds that the Florida Rules of Professional Conduct preclude Siegel and Kane from representing plaintiff in PIP cases against any Progressive insurance corporations; and that as an adjuster/litigation specialist, Siegel was privy to confidential information and breached his confidentiality agreement with Progressive. Subsequently, attorneys for the various Progressive insurance corporations began filing Motions for Disqualification against the firm of Watson & Lerner, alleging that the Kane firm may have co-counsel agreement with Watson & Lentner, and Kane's hiring of Siegel should disqualify Watson & Lentner. Additionally, although Siegel only worked for Express and Southeastern, Progressive filed their Motions to Stay and Motions for Disqualification in all cases where the law firm of Watson &

Lauderdale Center for Chiropractic Care, Inc. v. Progressive Express Insurance Company, 55-00-135564-RD, 15th Judicial Circuit Court, filed as an exhibit with Respondent's motion. Both parties refer to the Order of Judge Burton in their respective pleadings.
Lentner appeared as counsel, regardless of the Progressive corporation sued or the issues involved in the lawsuit. Progressive also filed Motions to Stay the Proceedings to investigate and corroborate its motion for disqualification; and so that courts in other jurisdictions could decide the question of disqualification. All of the motions to stay and the motions to disqualify were denied by the trial courts. Progressive then filed the Petitions for Writ of Certiorari that form the basis for the instant motion. Subsequently, the Petitioners voluntarily dismissed all 73 petitions on August 21, 2002, and withdrew with prejudice any pending motions to stay or disqualify the firm of Watson and Lentner filed at the trial level. On September 17, 2002, the matters were consolidated and transferred to this division.

Respondents now moves for sanctions under §57.105(1) and (3) Florida Statutes (Supp. 2000). Respondents argue that, at the time the petitions were filed by the various Progressive corporations, they or their attorney knew or should have known this particular claim or defense was not supported by the material facts necessary to establish the claim or defense; or would not be supported by the application of then-existing law to those material facts. §57.105 Florida Statutes. Respondents further argue that the action taken in this proceeding was "primarily for the purpose of delay," and therefore they are entitled to sanctions under §57.105(3).

At the outset, Progressive argues that this Court does not have jurisdiction to award attorneys fees pursuant to §57.105 Fla. Stat., as the various Progressive insurance corporations had voluntarily dismissed the petitions. This argument is without merit. It is well settled that a voluntary dismiss will not oust the trial court of jurisdiction to entertain §57.105 motions. Froman v. Kirland, 746 So.2d 1120 (Fla. 4th DCA 1999); Westwood Community Two Association, Inc. v. Lewis, 662 So.2d 1011 (Fla. 4th DCA 1995). Moreover, a motion for attorney's fees pursuant to §57.105 Fla. Stat., may be employed by the appellate court against a party for taking a frivolous
disqualification. In fact, every Broward County Court that entertained Progressive's motions to
disqualify denied the motions and found either that Progressive did not establish a *prima facie* case
of disqualification or that the grounds were insufficient because they were neither supported by
material facts nor law. Some judges subsequently sanctioned the Defendant pursuant to §57.105
for filing a motion not supported by the material facts necessary to establish the claim nor
supported by the application of then-existing law.

Upon a review of the record, it is clear that Progressive had no basis for seeking
disqualification of Watson & Lentner. Although Progressive argued that based on the sworn
testimony of Glenn Siegel, it appeared that confidential and/or privileged information may have
been shared with the firm Watson & Lentner, a review of the transcript reveals that the evidence is
to the contrary and that no information was shared as Glen Siegel's deposition states. Moreover,
assuming *arguendo* that Siegel was acting as an attorney for Progressive (although the evidence
clearly shows that at no time did Siegel work for Progressive in the capacity of attorney), and Kane
should have been disqualified, even if Kane had a co-counsel agreement with Watson & Lentner,
such disqualification would not extend to Watson & Lentner. "As a general rule, the courts do not
impute the disqualification of a person in one firm to a person in another firm, even where the
members of the two firms are working together, so long as there is only a small actual risk of
confidential client information spreading from the primarily conflicted lawyer to the second
1444 (M.D. Fla. 1997). As the Court in *Baybrook* reasoned, "[i]mputing knowledge to an attorney
who acts as co-counsel from another attorney in a separate firm who himself possessed only
imputed knowledge would result in unnecessary disqualification's." *Id.* at 1442. "A 'reasonable
possibility' of impropriety must exist to necessitate disqualification under the appearance of
Based on the foregoing, this Court finds that Progressive knew or should have known that the Petitions for Writ of Certiorari were not supported by the materials facts necessary to establish their claim; or were not supported by the law to those facts. Additionally, after carefully considering the record, it does not appear that the Petitions for Writ of Certiorari were filed in good faith but rather, with the primary purpose of delay. Therefore, this Court finds that the Respondents are entitled to attorneys' fees and costs incurred in defending these Petitions, pursuant to §57.105(1) and (3).

Accordingly, it is hereby

ORDERED AND ADJUDGED that Respondent's Motion for Attorney's Fees and Costs pursuant to §57.105(1) and (3), Fla. Stat., is GRANTED.

This Court reserves jurisdiction to determine the amount of reasonable attorneys' fees and costs to be awarded.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 8th day of July, 2003.

ROBERT LANCE ANDREWS
Circuit Court Judge

Copies to Counsel of Record
EXHIBIT

"W"
FINAL JUDGMENT AND ORDER ON PLAINTIFF’S MOTION TO SET REASONABLE ATTORNEY’S FEES AND COSTS

THIS CAUSE came on to be heard before me, the undersigned Judge of the above-entitled Court, upon Plaintiff’s Motion for Attorney’s Fees; and the Court having reviewed said Motion; having reviewed the Affidavits filed by the Plaintiff and having heard testimony of the Attorney for the Plaintiff and Experts for both parties and argument of counsel for the respective parties; and being otherwise fully advised in the premises, the Court, utilizing the criteria set forth in Florida Patient’s Compensation Fund v. Rowie, 472 So.2d 1145 (Fla. 1985), Standard Guar. Ins. Co. v. Quanstrom, 555 So.2d 828 (Fla. 1990), and its progeny, makes the following,

FINDINGS OF FACT:

A. Plaintiff’s counsel, Laura M. Watson, Esq., reasonably expended $15 hours representing the Plaintiff in this cause.

B. The hourly rate, in the sum of $25.00 charged by Laura M. Watson, Esq., is reasonable for this type of case, in this community, considering the experience, reputation and ability of Laura M. Watson, Esq.
C. Plaintiff's Expert Lawrence Kopelman, Esq., was necessary to render an opinion relating to the reasonable number of hours, a reasonable hourly rate and the applicability of a contingency fee multiplier. Lawrence Kopelman, Esq. was required to take time away from his practice and is entitled to \( 0.0 \) hours for reasonable time spent in this case. An hourly rate of $300.00 is reasonable for Lawrence Kopelman, Esq.

D. After considering the factors enunciated in Quanstrom and Rowe, this Court finds that a contingency fee multiplier of \( \frac{7.5}{0} \) is applicable to this case. The Court finds that the relevant market required a contingency fee multiplier to obtain competent counsel; that the attorney was unable to mitigate the risk of nonpayment in any way; and that the factors set forth in Rowe were considered the following were found to be applicable: The time and labor and novelty and difficulty of the question involved and the skill required to perform the legal service; the amount involved and the results obtained; the type of fee arrangement between the attorney and his client; the nature and length of the professional relationship with the client; and the experience, reputation, and ability of the lawyer performing the services.

E. The Plaintiff is awarded taxable costs of $229.00

Therefore, it is, upon consideration,

ORDERED AND ADJUDGED:

1. That Plaintiff's Motion for Attorney's Fees be, and the same is hereby granted.

Judgment against the Defendant is GRANTED in the principal amount of $21,716.50 plus prejudgment interest of \( \frac{7\%}{0} \) from the date of \( \frac{7\%}{0} \) for an amount of $7,657.71 for
prejudgment interest. The total amount of $22,485.27 is due the Plaintiff, for which let execution issue.

DONE AND ORDERED, in Chambers Ft. Lauderdale, Broward County, Florida, this 15 day of August, 2003.

JERRY POLLOCK
A TRUE COPY
JUDGE OF THE COUNTY COURT

cc: Laura M. Watson, Esq.
Gregory P. Hengber, Esq.
IN THE COUNTY COURT OF THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO.: 01-10593 COCE 56

WESTERN COMMUNITIES FAMILY
PRACTICE ASSOCIATES, INC.
(Cheryl Tenore).

Plaintiff.

v.

PROGRESSIVE BAYSIDE INSURANCE COMPANY

Defendant.

FINAL JUDGMENT AND ORDER ON PLAINTIFF'S MOTION TO SET
REASONABLE ATTORNEY'S FEES AND COSTS

THIS CAUSE came on to be heard before me, the undersigned Judge of the above-entitled
Court, upon Plaintiff's Motion for Attorney's Fees; and the Court having reviewed said Motion:
having reviewed the Affidavits filed by the Plaintiff and having heard testimony of the Attorney for
the Plaintiff and Experts for both parties and argument of counsel for the respective parties; and
being otherwise fully advised in the premises, the Court, utilizing the criteria set forth in Florida
Quannstrom, 555 So.2d 828, (Fla. 1990), and its progeny, makes the following:

FINDINGS OF FACT:

1. The Plaintiff's Motion to set reasonable attorney's fees is granted.

2. Laura M. Watson, Esq., is entitled to $ 1 hours for reasonable time spent in this case.

   An hourly rate of $ 360 is reasonable for Laura M. Watson.

3. Robert G. Nichols, Esq., is entitled to $ 16.1 hours for reasonable time spent in this case.

   An hourly rate of $ 360 is reasonable for Robert G. Nichols.
4. Thomas Parisi, Esq., is entitled to 3.5 hours for reasonable time spent in this case. An hourly rate of $800 is reasonable for Thomas Parisi.

5. Plaintiff's Expert Witness, Lawrence Kopelman, Esq., was necessary to render an opinion relating to the reasonable number of hours, a reasonable hourly rate and the applicability of a contingency fee multiplier. Lawrence Kopelman was required to take time away from his practice and is entitled to 2.5 hours for reasonable time spent in this case. An hourly rate of $300 is reasonable for Lawrence Kopelman.

6. After considering the factors enunciated in Quanstrom and Rowe, this Court finds that a contingency fee multiplier of 1.5 is applicable to this case. The Court finds that the relevant market required a contingency fee multiplier to obtain competent counsel; that the attorney was unable to mitigate the risk of nonpayment in any way; and that the factors set forth in Rowe were considered the following were found to be applicable: The time and labor and novelty and difficulty of the question involved and the skill required to perform the legal service: the amount involved and the results obtained; the type of fee arrangement between the attorney and his client; the nature and length of the professional relationship with the client; and the experience, reputation and ability of the lawyer performing the services.

7. The Plaintiff is awarded taxable costs of $965.

8. Judgment against the Defendant is GRANTED in the principal amount of $9,175 plus prejudgment interest of 6% from the date of June 19, 2003 for an amount of $845.28 for prejudgment interest. The total amount of $9,121.78 is due the Plaintiff, for which let execution issue.
DONE AND ORDERED, in Chambers Ft. Lauderdale, Broward County Florida, this
day of , 2003.

JUDGE OF THE COUNTY COURT

cc: Laura M. Watson, Esq.
James Sparkman, Esq.

TRUE COPY
IN THE COUNTY COURT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO.: 01-11592 (56) COCE

FISHMAN AND STASHAK, M.D.,'S,
P.A., d/b/a GOLD COAST ORTHOPEDICS
also d/b/a GOLD COAST ORTHOPEDICS
AND REHABILITATION,
(Karen Green)

Plaintiff,

vs.

PROGRESSIVE BAYSIDE
INSURANCE COMPANY,

Defendant.

FINAL JUDGMENT FOR ATTORNEY'S FEES AND COSTS

This cause is before the court on plaintiff's motion for attorney's fees and costs. Upon
consideration of the record and evidence and arguments of counsel, and using the criteria set
forth in Florida Patients' Compensation Fund v Rowe, 472 So 2d 1145 (Fla. 1985), Standard
Guaranty Insurance Company v Quanstrom, 555 So 2d 828 (Fla. 1990) and the rules regulating
the Florida Bar, the court finds as follows:

Plaintiff's counsel, Laura Watson, reasonable expended 41.4 hours representing plaintiff
in this case, which encompassed 2 ½ years of litigation.

An hourly rate of $250.00 per hour is on the lower end of reasonable for Ms. Watson,
considering her experience, reputation, and superior ability, and the skill requisite to perform the
legal services properly.¹

¹ A rate of $200-$250 per hour seems to have become the mode for PIP attorneys in Broward
County. Higher rates have been awarded in Dade and Palm Beach. See eg. Lichtblau v
This was not an ordinary PIP case, but was one of several hundred raising the complex issue of "PPO reductions". The evidence showed that taking on these cases precluded other employment, and counsel had to work quickly in initiating the cases because of the statute of limitations. Plaintiff recovered $2,865 for the client in this suit, which was one of several hundred involving claims from a few hundred to a few thousand dollars.

Because the fee contract in this case is contingent, the court has carefully considered whether a contingency risk multiplier is appropriate using the Rowe criteria as modified in Quanstrom.

In Rowe, the Supreme Court recognized that an attorney who is not paid unless his client wins must necessarily charge more than if his payment is guaranteed. In Quanstrom, the court explained that applying a multiplier is not automatic in contingency fee cases, but is to be used in those cases where 1) the risk multiplier is needed to obtain competent counsel, 2) there is no way to mitigate the risk of loss and 3) other Rowe factors are present. The primary rationale of the risk multiplier is to provide access to counsel for those who otherwise could not afford it. See USB Acquisition Company, Inc. v. 734 Sc 2d 403 (Fla 1999).

The court finds that this case for this client required a contingency risk factor because without it plaintiff would not have been able to obtain competent counsel. No attorney could or would take on this client and these hundreds of cases except upon a contingency fee basis because the amount at issue in each case was very small relative to the work involved in recovering it. Attorneys other than Ms. Watson had declined to represent plaintiff in these cases. Furthermore, Ms. Watson met with defendant and its counsel prior to filing suit in an effort to

Progressive Express Insurance Company (11 Fla L. Weekly Supp. 140 County Court 15th Jud. Cir., Oct. 9, 2003.) Ms. Watson is one of the best in this field, and has been awarded $275.00 per hour by the Circuit Court for appellate work.
resolve the parties dispute without litigation, to no avail. Thus, counsel knew that representing this client meant filing hundreds of lawsuits in a short period of time with knowledge that each case would be highly contested, and if she ever got paid, it would not be quickly.

Unlike the situation where risk of loss may be mitigated by having a volume of similar suits from a client with some easy and some difficult cases mixed in, all of plaintiff's cases were going to be time consuming and unique. Thus the contingency risk was not mitigated in any way, but was aggravated.

Defendant argues that a multiplier was not needed because Ms. Watson's firm, along with two others, were actively marketing her skills in the PIP arena to healthcare providers in an effort to attract this very type of case. While true, this fact begs the question of whether these firms would have been interested in this business if it were not for the possibility of receiving a greater reward for taking a greater risk. The fact remains in this case that Ms. Watson knew at the outset that these cases would not settle, like the majority of PIP cases do; that the cases would consume a lot of her firm's resources, and there was no way to mitigate this risk. Although there are a number of firms doing PIP cases, few were handling PPO suits in 2001; plus few have the resources to litigate hundreds of cases simultaneously on multiple fronts. Although a number of attorneys file dozens of cases on small claims dockets where the majority settle before or at pretrial, that can't be equated with this case and the others in this group because of the fact that these cases were not going to settle.

Having determined to apply a risk factor, the courts finds a multiplier of 1.75 to be appropriate. Notwithstanding the complexity and difficulty of many of the defenses raised,

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1 See Ft. Lauderdale Center for Chiropractic Care, Inc., 11 Florida Law Weekly Supp. 140 (County Court 15th Judicial Circuit Dec. 19, 2003).
plaintiff had at least an even chance to win, given that the main defense to the claim was a reliance on a "PPO contract" which did not exist as to this plaintiff.

The Court is aware that a question has been certified to the Florida Supreme Court as to whether or not a multiplier is appropriate in statutory fee shifting cases pursuant to Florida Statute 627.428. See Holiday v Nationwide Mutual Fire Insurance, 2004 Florida App Lexis 479 (5th DCA Jan. 23, 2004). The court has set the hourly rate at the lower end of the reasonable range here in anticipation of the application of a multiplier. If the court were not applying a multiplier, then it would have set the hourly rate at the higher end of the range, given the facts of this case, as described herein.

Plaintiff's expert witness is entitled to 3 hours time at a rate of $300.00 per hour for his testimony.

Therefore, it is

ORDERED AND ADJUDGED that plaintiff is granted judgment against defendant in the principal sum of $18,112.50 plus pre judgment interest of $507.00, plus costs in the sum of $1,431.50 for a total of $19,851.00, plus interest at the legal rate of 7% thereafter, for which let execution issue.

DONE AND ORDERED in Chambers at Ft. Lauderdale, Broward County, Florida on 8th day of March, 2004.

LINDA R. PRATT
COUNTY COURT JUDGE

Copies Furnished: parties
IN THE COUNTY COURT OF THE
17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NO: 01-11646 COCE 56

FISHMAN AND STASHAK M.D.'S P.A. d/b/a
GOLD COAST ORTHOPEDICS also d/b/a
GOLD COAST ORTHOPEDICS AND REHABILITATION
(Kailash Upadhyay)
Plaintiff

V.

PROGRESSIVE BAYSIDE INSURANCE COMPANY
Defendant.

FINAL JUDGMENT AND ORDER ON PLAINTIFF'S MOTION TO SET
REASONABLE ATTORNEY'S FEES AND COSTS

THIS CAUSE came on to be heard before me, the undersigned Judge of the above-entitled
Court, upon Plaintiff's Motion for Attorney's Fees; and the Court having reviewed said Motion;
having reviewed the Affidavits filed by the Plaintiff and having heard testimony of the Attorney for
the Plaintiff and Experts for both parties and argument of counsel for the respective parties; and
being otherwise fully advised in the premises, the Court, utilizing the criteria set forth in Florid
Patient's Compensation Fund v. Rowe, 472 So.2d 1145 (Fla. 1985), Standard Guar. Ins. Co. v.
Quaustrom, 555 So.2d 828, (Fla. 1990), and its progeny, makes the following,

FINDINGS OF FACT:

A. Plaintiff's counsel, Laura M. Watson, Esq., reasonably expended 38 hours
representing the Plaintiff in this cause.

B. The hourly rate, in the sum of $250, charged by Laura M. Watson, Esq., is
reasonable for this type of case, in this community, considering the experience, reputation and ability
of Laura M. Watson, Esq., for the reasons expressed in this court's decision
in case no. C1-11552 (52) re: creating these same points,
C. Plaintiff's counsel, Kate G. Burnett, Esq., reasonably expended ____ hours representing the Plaintiff in this cause.

D. The hourly rate, in the sum of $_______, charged by Kate G. Burnett, Esq., is reasonable for this type of case, in this community, considering the experience, reputation and ability of Kate G. Burnett, Esq.

E. Plaintiff's Expert Lawrence Kopelman, Esq., was necessary to render an opinion relating to the reasonable number of hours, a reasonable hourly rate and the applicability of a contingency fee multiplier. Lawrence Kopelman, Esq. was required to take time away from his practice and is entitled to ____ hours for reasonable time spent in this case. An hourly rate of $_______ is reasonable for Lawrence Kopelman, Esq.

F. After considering the factors enunciated in Quanstrom and Rowe, this Court finds that a contingency fee multiplier of ___ is applicable to this case. The Court finds that the relevant market required a contingency fee multiplier to obtain competent counsel; that the attorney was unable to mitigate the risk of nonpayment in any way; and that the factors set forth in Rowe were considered the following were found to be applicable: The time and labor and novelty and difficulty of the question involved and the skill required to perform the legal service; the amount involved and the results obtained; the type of fee arrangement between the attorney and his client; the nature and length of the professional relationship with the client; and the experience, reputation, and ability of the lawyer performing the services.

G. The Plaintiff is awarded taxable costs of $_______.
Therefore, it is, upon consideration,

ORDERED AND ADJUDGED:

1. That Plaintiff’s Motion for Attorney’s Fees be, and the same is hereby granted.

Judgment against the Defendant is GRANTED in the principal amount of $16,672.50 plus prejudgment interest of 8% from the date of 11/13/03 for an amount of $345,584 for prejudgment interest. The total amount of $18,119.09 is due the Plaintiff, for which let execution issue.

DONE AND ORDERED, in Chambers Ft. Lauderdale, Broward County Florida, this day of [illegible], 2004.

LINDA R. PRATT
JUDGE OF THE COUNTY COURT

cc: Laura M. Watson, Esq.
Gregory P. Hengber, Esq.
IN THE COUNTY COURT OF THE
17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NO.: 01-29061 COCE 56

CENTRAL PALM BEACH PHYSICIANS
(Marion Hardy)
Plaintiff,

v.

PROGRESSIVE EXPRESS INSURANCE COMPANY
Defendant.

FINAL JUDGMENT AND ORDER ON PLAINTIFF'S MOTION TO SET
REASONABLE ATTORNEY'S FEES AND COSTS

THIS CAUSE came on to be heard before me, the undersigned Judge of the above-entitled Court, upon Plaintiff's Motion for Attorney's Fees; and the Court having reviewed said Motion; having reviewed the Affidavits filed by the Plaintiff and having heard testimony of the Attorney for the Plaintiff and Experts for both parties and argument of counsel for the respective parties; and being otherwise fully advised in the premises, the Court, utilizing the criteria set forth in Florida Patient's Compensation Fund v. Rowe, 472 So.2d 1145 (Fla. 1985), Standard Guar. Ins. Co. V. Quanstrom, 555 So.2d 828, (Fla. 1990), and its progeny, makes the following

FINDINGS OF FACT:

A. Plaintiff's counsel, Laura M. Watson, Esq., reasonably expended 7.9 hours representing the Plaintiff in this cause.

B. The hourly rate, in the sum of $550, charged by Laura M. Watson, Esq., is reasonable for this type of case, in this community, considering the experience, reputation and ability of Laura M. Watson, Esq.
of the question involved and the skill required to perform the legal services; the amount involved and
the results obtained; the type of fee arrangement between the attorney and his client; the nature and
length of the professional relationship with the client; and the experience, reputation, and ability of
the lawyer performing the services.

I. The Plaintiff is awarded taxable costs of $ ____________

Therefore, it is, upon consideration,

ORDERED AND ADJUDGED:

1. That Plaintiff's Motion for Attorney's Fees be, and the same is hereby granted.

Judgment against the Defendant is GRANTED in the principal amount of $ 12 1/6 plus
prejudgment interest of $3 2/3 from the date of 1/1/02 for an amount of $120 5/6 for
prejudgment interest. The total amount of $73 3/6 is due the Plaintiff, for which let
execution issue.

DONE AND ORDERED, in Chambers Ft. Lauderdale, Broward County Florida, this ___________ day of ______________, 2004.

LINDA R. PRATT
JUDGE OF THE COUNTY COURT

A TRUE COPY

cc: Laura M. Watson, Esq.
    Matt Hellman, Esq.
    G:\WPFILES\SUITS\HARDY,MAR\ATT\FEE.ORD
of the question involved and the skill required to perform the legal service; the amount involved and the results obtained; the type of fee arrangement between the attorney and his client; the nature and length of the professional relationship with the client; and the experience, reputation, and ability of the lawyer performing the services.

I. The Plaintiff is awarded taxable costs of $215.

Therefore, it is, upon consideration,

ORDERED AND ADJUDGED;

1. That Plaintiff's Motion for Attorney's Fees be, and the same is hereby granted.

Judgment against the Defendant is GRANTED in the principal amount of $11,250, plus prejudgment interest of $3,733.51 from the date of 12/16/63 for an amount of $14,983.51 for prejudgment interest. The total amount of $733.51 is due the Plaintiff, for which let execution issue.

DONE AND ORDERED, in Chambers Ft. Lauderdale, Broward County Florida, this day of [Month], 2004.

LINDA R. PRATT
JUDGE OF THE COUNTY COURT

A TRUE COPY

cc: Laura M. Watson, Esq.
Matt Hellman, Esq.
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IN THE COUNTY COURT OF THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO: 01-10408 COCE 56

FISHMAN & STASHAK, M.D.'S, P.A. d/b/a
GOLD COAST ORTHOPEDICS also d/b/a
GOLD COAST ORTHOPEDICS AND REHABILITATION
(Erika Burton)

Plaintiff,

v.

PROGRESSIVE BAYSIDE INSURANCE COMPANY
Defendant.

FINAL JUDGMENT AND ORDER ON PLAINTIFF'S MOTION TO SET REASONABLE ATTORNEY'S FEES AND COSTS.

THIS CAUSE came on to be heard before me, the undersigned judge of the above-entitled Court, upon Plaintiff's Motion for Attorney's Fees, and the Court having reviewed said Motion, having reviewed the Affidavits filed by the Plaintiff and having heard testimony of the Attorney for the Plaintiff and Experts for both parties and argument of counsel for the respective parties; and being otherwise fully advised in the premises, the Court, utilizing the criteria set forth in Florida Patient's Compensation Fund v. Rowe; 472 So.2d 1145 (Fla. 1985), Standard Guar. Ins. Co.V. Quanstrom, 555 So.2d 828, (Fla. 1990), and its progeny, makes the following:

FINDINGS OF FACT:

1. The Plaintiff's Motion to set reasonable attorney's fees is granted.

2. Laura M. Watson, Esq., is entitled to $19,560 hours for reasonable time spent at the trial court in this case. An hourly rate of $250 is reasonable for Laura M. Watson.

3. Robert G. Nichols, Esq., is entitled to $31,395 hours for reasonable time spent at the trial court in this case. An hourly rate of $825 is reasonable for Robert G. Nichols.
4. Thomas Parisi, Esq., is entitled to $3 hours for reasonable time spent in
the trial court in this case. An hourly rate of $225 is reasonable for Thomas Parisi.

5. The Court awards the Plaintiff $0 hours for reasonable time spent in at the
appellate court in this case. An hourly rate of $1 is reasonable for the appellate time.

6. Plaintiff's Expert Witness, Lawrence Kopelman, Esq., was necessary to render an
opinion relating to the reasonable number of hours, a reasonable hourly rate and the applicability of
a contingency fee multiplier. Lawrence Kopelman was required to take time away from his practice
and is entitled to $2 hours for reasonable time spent in this case. An hourly rate of
$200 is reasonable for Lawrence Kopelman.

7. After considering the factors enunciated in Quistrom and Rowe, this Court finds that
a contingency fee multiplier of is applicable to this case. The Court finds that the relevant
market required a contingency fee multiplier to obtain competent counsel, that the attorney was
unable to mitigate the risk of nonpayment in any way; and that the factors set forth in Rowe were
considered the following were found to be applicable: The time and labor and novelty and difficulty
of the question involved and the skill required to perform the legal service; the amount involved and
the results obtained; the type of fee arrangement between the attorney and his client; the nature and
length of the professional relationship with the client; and the experience, reputation, and ability of
the lawyer performing the services.

8. The Plaintiff is awarded taxable costs of $546.75

9. Judgment against the Defendant is GRANTED in the principal amount of
$20,124.16 plus prejudgment interest at the statutory rate from the date of entitlement for an
amount of $10,471.40 for prejudgment interest. The total amount of $12,595.56 is due the
Plaintiff, for which let execution issue.

DONE AND ORDERED, in Chambers Ft. Lauderdale, Broward County Florida, this 5 day of Jan., 2004.

LINDA R. PRATT
JUDGE OF THE COUNTY COURT

cc: Laura M. Watson, Esq.
James T. Sparkman, Esq.
C. Plaintiff's Expert Lawrence Kopelman, Esq., was necessary to render an opinion relating to the reasonable number of hours, a reasonable hourly rate and the applicability of a contingency fee multiplier. Lawrence Kopelman, Esq. was required to take time away from his practice and is entitled to 3 hours for reasonable time spent in this case. An hourly rate of $300 is reasonable for Lawrence Kopelman, Esq.

D. After considering the factors enunciated in Quarstrom and Rowe, this Court finds that a contingency fee multiplier of ___ is applicable to this case. The Court finds that the relevant market required a contingency fee multiplier to obtain competent counsel; that the attorney was unable to mitigate the risk of nonpayment in any way; and that the factors set forth in Rowe were considered the following were found to be applicable: The time and labor and novelty and difficulty of the question involved and the skill required to perform the legal service; the amount involved and the results obtained; the type of fee arrangement between the attorney and his client; the nature and length of the professional relationship with the client; and the experience, reputation, and ability of the lawyer performing the services.

E. The Plaintiff is awarded taxable costs of $215.

Therefore, it is; upon consideration,

ORDERED AND ADJUDGED:

1. That Plaintiff's Motion for Attorney's Fees be, and the same is hereby granted.

Judgment against the Defendant is GRANTED in the principal amount of $881.5 plus prejudgment interest of 6% from the date of 2 for an amount of $ for
prejudgment interest. The total amount of $8815 is due the Plaintiff, for which let execution issue.

DONE AND ORDERED, in Chambers Ft. Lauderdale, Broward County, Florida, this 30 day of January 2004.

cc: Laura M. Watson, Esq.
Charles B. Green, Jr., Esq.
IN THE COUNTY COURT OF THE
17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NO.: 01-14272 COCE 50

JOEL D. STEIN, D.O., P.A.
(Verona Ebanks)
Plaintiff,

v.

PROGRESSIVE EXPRESS INSURANCE COMPANY
Defendant.

__________________________________________

FINAL JUDGMENT AND ORDER ON PLAINTIFF'S MOTION TO SET
REASONABLE ATTORNEY'S FEES AND COSTS

THIS CAUSE came on to be heard before me, the undersigned Judge of the above-entitled
Court, upon Plaintiff's Motion for Attorney's Fees; and the Court having reviewed said Motion;
having reviewed the Affidavits filed by the Plaintiff and having heard testimony of the Attorney for
the Plaintiff and Experts for both parties and argument of counsel for the respective parties; and
being otherwise fully advised in the premises, the Court, utilizing the criteria set forth in Florida
Patient's Compensation Fund v. Rowe, 472 So.2d 1145 (Fla. 1985), Standard Guar. Ins. Co. v.
Quanstrom, 555 So.2d 828, (Fla. 1990), and its progeny, makes the following,

FINDINGS OF FACT:

A. Plaintiff's counsel, Laura M. Watson, Esq., reasonably expended 38 hours
representing the Plaintiff in this cause.

B. The hourly rate, in the sum of $275, charged by Laura M. Watson, Esq., is
reasonable for this type of case, in this community, considering the experience, reputation and ability
of Laura M. Watson, Esq.