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STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ELIJAH SIMONE, in his capacity as Special Administrator for the Estate of Bruce Jameson, Plaintiff, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, an Illinois corporation; and DOES 1 through 50, Inclusive, Defendant.	NO. 20STCV14579 Date: February 8, 2023 Time: 8:30 a.m. Dept: 68 Hearing Judge: Hon. Douglas W. Stern - Dept. 68 Date Action Filed: April 15, 2020 Trial Date: August 8, 2022 [~~PROPOSED~~] JUDGMENT [Filed Concurrently with Memo of Pts & Auths ISO Objections; Appendix of Exhibits] SET BY COURT ON 12/13/2023

This action came on for a bench trial on August 8, 2022, in Department 68 of the above-entitled court, the Honorable Mark Mooney presiding. Plaintiff Elijah Simone, in his capacity as Special Administrator for the Estate of Bruce Jameson ("Plaintiff") was represented by Ricardo Echeverria and Kristin Hobbs of Shernoff Bidart Echeverria LLP, and Defendant State Farm Mutual Automobile Insurance Company ("State Farm") was represented by Stephen C. Pasarow and Robert D. Brugge of Knapp Petersen & Clarke.

Pursuant to stipulation by the Parties, the Honorable Mark Mooney agreed to try the cause. Witnesses were sworn and testified. The Court issued a Statement of Decision on

October 21, 2022.

The October 21, 2022 Statement of Decision is attached to this [Proposed] Judgment as Exhibit "1" and its contents are incorporated into this [Proposed] Judgment as though set forth fully herein.

As stated in the Statement of Decision, plaintiff is the prevailing party and is entitled to judgment in his favor and against defendant State Farm.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

Plaintiff Elijah Simone, in his capacity as Special Administrator for the Estate of Bruce Jameson, shall have a judgment for damages in the amount of $10,917,481 representing the unpaid amount of the judgment in the underlying action, plus attorney fees as damages in the amount of $684,841.75 for a total award of $11,602,322.80. Plaintiff is entitled to 10% interest, which is stipulated to be $4,345,336 through August 8, 2022, and interest shall continue to accrue at a rate of $2,991.09 per day until the judgment is paid in full.

Plaintiff shall further have and recover costs from defendant State Farm as awarded by the Court in the amount of $_____

SO ORDERED.

Dated: 02/08/2023, 2023

Hon. Douglas W. Stern - Dept. 68
Judge of the Superior Court of the State of California

KNAPP, PETERSEN & CLARKE

EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 68

20STCV14579 October 21, 2022
ELIJAH SIMONE vs STATE FARM AUTOMOBILE INSURANCE COMPANY, AN ILLINOIS CORPORATION 2:27 PM

Judge: Honorable Mark V. Mooney
Judicial Assistant: A. Williams
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter

Final Statement of Decision

The matter was tried to the court from August 8, 2022 through August 10, 2022. The parties submitted simultaneous closing briefs and replies. On September 30, 2022, the court issued its Tentative and Proposed Statement of Decision. The court also requested further briefing and evidence regarding the attorney fees requested by plaintiff. The court has considered the declarations submitted by plaintiff's council in support of the request for attorney fees as well as defendants objections thereto. Additionally, the court has considered defendant's objections to the Tentative and Proposed Statement of Decision. The court now issues its Final Statement of Decision.

Defendant's Objections to the Tentative and Proposed Statement of Decision

Defendant State Farm filed objections to the tentative and proposed statement of decision a statement on October 10, 2022. These objections indicate a fundamental misunderstanding as to the basic function and requirements of a statement of decision. The court is only required to state the ultimate, not the evidentiary facts. A judge is not required to make findings regarding detailed evidentiary facts or minute findings regarding individual items of evidence. Antelope Valley Groundwater Cases (2020) 59 Cal.App5th 241, 265). The statement need only specify the grounds on which the judgment is based, without necessarily specifying the particular evidence the judge considered in reaching a decision. Marriage of Williamson (2014) 226 Cal.App.4th 1303, 1318. An order that discloses the judge's determination as to the ultimate facts and material issues in the case satisfies the requirements of a statement of decision. Metis Dev. LLC v. Bobacek (2020) 200 Cal.App4th 679, 687.

With the above principles in mind, the court finds that its Statement of Decision adequately sets forth its findings as to the ultimate facts and the legal basis for the court's decision.

Background

Plaintiff's complaint sets forth two causes of action. The first cause of action is for breach of the implied covenant of good faith and fair dealing, while the second cause of action is for breach of contract. In the complaint it is alleged that on April 24, 2015, Elijah Simone was riding his bicycle when he was struck by a vehicle operated by Bruce Jameson. It is alleged that Simone suffered severe injuries and that Jameson caused the collision. At the time of the collision, Jameson was covered by an automobile insurance policy issued by State Farm Automobile Insurance Company, with a single person liability limit of $25,000 per person.

The complaint further alleges that Simone made a policy limits demand and that State Farm failed to timely accept the offer. A personal injury lawsuit was filed by Simone against Jameson in Orange County Superior Court. The jury returned a verdict in favor of Simone and against Jamison in the amount of $14,589,9674.76. This was reduced to $10,942,481.07 due to Simone's comparative fault. Defendant State Farm made a partial payment in the sum of $27,575.30 and paid plaintiff's costs.

While the personal injury action was pending, Jameson passed away for reasons unrelated to the collision. Simone petitioned the probate court in Arkansas (Jameson's home state) and was appointed

Special Administrator for the Estate of Bruce G. Jameson to pursue the instant bad faith action against defendant State Farm.

In its answer to the complaint, defendant State Farm denied the allegations that defendant breached the implied covenant of good faith and fair dealing and deny the allegations of breach of contract. Additionally, among the affirmative defenses asserted by defendant were defenses of Policy Compliance (fifth affirmative defense) and No Reasonable Settlement Demand Within Policy Limits (ninth affirmative defense).

Discussion

Under California law there is an implied covenant of good faith and fair dealing in each policy of

liability insurance. This implied covenant obligates an insurer, among other things, "to accept a reasonable offer to settle a lawsuit by a third party against the insured within policy limits when it ever there is a substantial likelihood of a recovery in excess of those limits." Rappaport-Scott v. Interinsurance Exchange of the Auto Club (2007) 146 Cal.App4th 831, 836.

The essential elements of bad faith claim for refusal to accept a reasonable settlement within policy limits are succinctly summarized in CACI 2334, which states:

Plaintiff claims that he was harmed by defendant's breach of the obligation of good faith and fair dealing because defendant failed to accept a reasonable settlement demand in a lawsuit against plaintiff. To establish this claim, plaintiff must prove all of the following:

1. That plaintiff in the underlying case brought a lawsuit against plaintiff for a claim that was covered by defendant's insurance policy;

2. That defendant failed to accept a reasonable settlement demand for an amount within policy limits; and

3. That a monetary judgment was entered against plaintiff for a sum greater than the policy limits.

"Policy limits" means the highest amount available under the policy for claims against plaintiff.

A settlement demand for an amount within policy limits is reasonable if defendant knew or should have known at the time the demand was rejected that the potential judgment is likely to exceed the amount of the demand based on plaintiff underlying case's injuries or loss and plaintiff's probable liability. However, the demand may be unreasonable for reasons other than the amount demanded.

The key terms in the above quoted jury instruction are "reasonable" and "unreasonable." Plaintiff must show that it made a reasonable settlement demand, and defendant was unreasonable in rejecting the settlement demand. Pinto V. Farmers Ins. Exchange (2021) 61 Cal.App.5th 676, 687 – 688.

On August 31, 2015, Elijah Simone and his mother Trudy Simone prepared and sent a handwritten letter to State Farm. The letter was in response to inquiries made by State Farm about the accident. Enclosed with the letter were Elijah Simone's medical records. In the letter it

was explained that it was being

written by Trudy because Elijah did not have use of his hands. Nevertheless, Elijah signed it to show that he authorized the letter.

The letter explained that it was being written for "settlement purposes" and requested that everything be sent in writing. Included in the letter were several questions. Specifically, the letter asked:

1. How much insurance does Mr. Jameson have? I want proof that he has insurance with you. Does he have other insurance? I want a copy of his insurance policy and proof of the amount of insurance he has. I don't have the money to do a search for this information. What kind of car was he driving? Was it a car for work? I need you and him to answer these questions in her writing.

2. I want to ask that you offer the maximum amount of money to my son for total amount of insurance Mr. Jameson has.

3. I want you to send my son the check for the maximum amount and only name my son on the check is the money belongs to him. Do not name me on the check either. My son is single and he only should be on the check, not be or is dad.

My son will only settle with you if you answered the questions that we have and agreed to what we pass. I need all of the answers in writing and I am giving you 15 days to give me all that I asked. Please do not call me.

State Farm's claims representative, Sabrina Morrison, marked it as a "policy limit demand." Due to the sizable amount of medical specials, and limited coverage available for the collision, Morrison contacted Jameson to advise him he was facing excess exposure for the accident with Simone. Morrison confirmed that there was no other insurance available, and that Jameson was not acting in the course and scope of his employment. She also confirmed that UC Irvine Medical Center was not pursuing a lien on the case.

Notwithstanding the Simone's request that contact only be in writing, Ms. Morrison called Elijah on September 2, 2015 and left him a voicemail. She followed that with a letter wherein she extended a $25,000 policy limits offer. Also, on the same date a letter was issued by the claims manager, confirming policy number, covering a 2005 Pontiac Vibe and that the "limits of

liability for this policy on that date were: A 25,000/50,000/25,000."

Neither Morrison's voicemail, nor the two letters sent on September 2, 2015, responded to all of Simone's questions. Specifically, defendants did not respond to the questions regarding a copy of Jameson's policy, the availability of other insurance or whether Jameson was using his car for work.

There appears to have been no further attempts to contact Simone until September 29, 2015. Ms. Morrison attempted to speak to Elijah by phone on this date to discuss the offer. She was unable to talk with him and left a voicemail requesting a call back. The court notes this is after the 15 day period set forth in Simone's demand letter for a response from defendant. Ms. Morrison followed up with a letter on September 29, 2015, requesting a call back but still did not provide the information requested in the September 2, 2015, letter.

On November 2, 2015, Ms. Morrison again sent a letter to Simone extending a policy limits offer of $25,000. This time Ms. Morrison included a request for a full and final release which she included for Simone's review. State Farm did not receive a anything further regarding the Simone claim until they received a letter of representation of counsel on behalf of Simone 2 ½ months later.

Counsel representing Simone took the position that the policy limits offer was untimely, and on that basis it was rejected. As set forth above, the case ultimately went to trial with Simone obtaining a net verdict $10,942,481.07 against Jameson.

Was Simone's Settlement Demand Reasonable?

Simone's August 2015 letter was a clear expression of Simone's desire to settle the case for policy limits. State Farm does not argue that the amount of the demand was not reasonable, nor does it argue that the 15 day time limit was not reasonable. Indeed, State Farm had already made the determination by September 2, 2015, that the potential existed for excess exposure to the insured. Authority was granted to extend a policy limits offer of $25,000.

In extending the policy limits offer, State Farm did not respond to Simone's other demands. Specifically, State Farm did not respond to the request that Simone be provided information regarding the proof of insurance, the existence of other insurance coverage and information regarding whether Jameson was acting within the whole course and scope of his employment. Simone clearly stated in the August 15 letter that he would not settle the matter unless those

questions were answered.

The court finds that Simone's demands were reasonable. Before any party accepts a policy limits offer, a party would want verification as to exactly what those policy limits are. Requesting a copy of the policy is reasonable way to obtain that verification. It is also entirely reasonable for a party to confirm that there is no other insurance coverage that may be available to cover this loss. Finally, if the Jameson was using his car for work, then there could be another source of coverage for the claim.

It was reasonable for Simone to make acceptance of any settlement offer contingent on the receipt of the information he requested. Certainly, no attorney would ever settle a personal injury case on behalf of a client without making the very same request. It would be clear malpractice for any attorney not to have made the very same inquiries. Simone should not be held to any different standard.

The court finds that the August 31, 2015, letter was a reasonable settlement demand capable of being responded to by defendant.

Was Defendant Unreasonable in Rejecting the Settlement Demand?

Although defendant made a policy limits offer on September 2, 2015, it did not provide all the information Simone had requested. Nor did State Farm provide the information at any time during the 15 day window afforded by the August 31 demand letter. The court finds that the failure to provide this information within the time requested operated as a rejection of Simone's settlement demand.

The court finds this rejection to have been unreasonable.

As of September 2, 2015, State Farm had all the information necessary to respond to Simone's questions. State Farm confirmed with Jameson that there was no other insurance coverage available and confirmed that Jameson was not acting within the course and scope of any employment. A copy of Jameson's policy of insurance with State Farm could have easily been produced by State Farm. This information could have easily been provided in either one of the two letters sent out by State Farm on September 2. Unfortunately, it was not.

Defendant argues that it could have provided this information over the telephone if Mr. Simone had merely called back in response to the message left for him. However, it should have been no

surprise to State Farm that Mr. Simone did not contact them by telephone. State Farm was informed that Simone was recovering from severe injuries and was specifically requested not to call and to put everything in writing. While it may not have been unreasonable to still try and contact Simone by telephone, it was unreasonable to believe Simone had the obligation to call State Farm. The reasonable course of conduct would have been to answer Simone's relatively simple questions in writing, just as he had requested.

State Farm places great stock in the argument that it could not have settled Simone's claim because the August 31 letter did not contain a release or discussion of satisfying any liens. This argument is undermined considerably by the fact that State Farm's September 2 policy limits offer was likewise silent on the need for a release. If State Farm believed this was an essential element without which no settlement could be achieved, State Farm would have included this element in its own settlement offer. It did not.

Very nature of a settlement infers that the party will release his claims upon effectuation of the settlement. But there could be no settlement in this case until State Farm confirmed the policy limits and that there was no other coverage, or potential parties. There was no reason for further discussion of a release or resolution of liens until Simone's express conditions had been met.

State Farm's primary obligation was to protect the interest of its insured, Bruce Jameson. State Farm was obligated to attempt to effect on a timely basis, a reasonable settlement of Simone's claim is within policy limits. (See, Crisci v. Security Ins. (1967) 66 Cal.2nd 425, 431.) "When a claim is based on the insurer's bad faith, ... the ultimate test is whether the insurer's conduct was unreasonable under all of the circumstances." (Graciano v. Mercury Cas. (2014) 231 Cal.App.4th 414, 427). In Graciano, the appellate court found the insurer did "all within its power to effect a settlement." (Graciano, at page 435). This court is unable to make a similar finding.

Considering all the circumstances, the court finds that defendant's conduct was unreasonable in protecting the interest of its insured. Simone made a reasonable settlement demand for the policy limits available. His request for additional information as a precondition of settlement was reasonable. State Farm had all the information necessary to evaluate the demand and to formulate a response. State Farm was aware of the potential excess exposure to its insured and it could have easily responded to Simone's condition of providing additional information.

Rather than provide Simone with the information requested, defendant allowed the time period to expire. This conduct exposed Jameson to an excess judgment. As a result, the insurer becomes liable for payment of the entire judgment as contract damages under its policy. (Communale v.

Traders and Gen. insurance Company (1958) 50 Cal.2d 654, 661.

Brandt Fees

Where an insured is forced to take legal action to obtain policy benefits, they may seek to recover the legal fees incurred in establishing the insured's right to contract benefits. (Brandt v. Superior Court (1985) 37 Cal.3rd 813, 817. The court finds Simone, in his capacity as Special Administrator for the Estate of Bruce Jameson, is entitled to an award of reasonable attorney's fees attributable to his counsel's efforts to obtain the rejected payment due under the insurance contract. This necessarily includes the

attorney's fees incurred to recover the entire underlying judgment. Once the insurer breaches the implied covenant by failing to accept a reasonable settlement offer within policy limits, the entire amount of the excess judgment may be recovered by the insured as a contract benefit. (Communale v. Traders and Gen. insurance Company (1958) 50 Cal.2d 654, 661. Unless Brandt fees are awarded, the underlying judgment would be diminished by legal fees and the policyholder would not have been made whole.

Plaintiff has requested an award of Brandt fees based upon the 45% contingency fee authorized by the Arkansas State Court in appointing Elijah Simone as special administrator. The court found this was not the appropriate method for determining the actual fees incurred in establishing the estate's rights to the contract benefits. The court therefore required additional evidence as to the hours worked and the hourly rate requested, to determine the appropriate amount of Brandt fees.

The court has reviewed the declarations submitted by Ricardo Echeverria, Kirsten Hobbs and Steven Schutze for plaintiff. The court has also reviewed the declaration submitted by Andre E. Jardini for defendant.

In determining reasonable attorney's fees, courts will typically compute the loadstar figure, which is "the number of hours reasonably expended multiplied by the reasonable hourly rate for each attorney." See PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095. Although contemporaneous time records are certainly the preferred method of establishing attorney fees, they are not required. The court has discretion to award fees based on the attorney's declaration describing the work they have done and the judge's own view of the number of hours reasonably spent. Syers Props. III, Inc. v. Rankin (2014) 226 Cal.App.4th 691, 698.

Trial courts are vested with discretion in determining appropriate hourly rates. Syers Props. III, Inc. v. Rankin (2014) 226 Cal.App.4th 691, 698. Hourly rates awarded by other courts, hourly rates charged by insurance defense firms, and the Laffey Matrix, can assist the court in its consideration, but are by no means determinative. The court may determine the value of the services without the necessity for, or even contrary to, expert testimony. PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1096

The court finds that the representation provided by Mr. Echeverria to have been excellent and will award an hourly rate of $900 per hour commensurate with that representation. Since this amount is approximately 65% less than what had been requested as Mr. Echeverria's hourly rate, the court will likewise reduce the hourly rates has requested for the other attorneys working on this case. The court determines that the appropriate hourly rate is $581.75 for Ms. Hobbs and Mr. Schuetze, and $325 for Mr. Ehrlich-Quinn. The court does not find that a reduction is necessary from the $175 per hour requested for non-attorney time.

Defendants do not appear to be challenging the total number of hours billed in this matter, rather their objection is as to what hours are compensable has Brandt fees. The Jardini declaration recognizes that "the 1,233 total hours billed in the approximate 24 months that the matter was pending, meant that with the possible exception of the time at, and in preparation for, the brief court trial, timekeepers worked only a few hours a month, and in many months, there was no work at all." Jardini Declaration, paragraph 80.

The court agrees that the time spent in Arkansas establishing the right to proceed as plaintiff as

Special Administrator is likely not a recoverable Brandt fee. The Arkansas probate action was not an action to obtain policy benefits. The Jameson Estate was opposed to plaintiff proceeding in this action and would not assign its rights. It was necessary for plaintiff to be appointed Special Administrator so that plaintiff would have standing to proceed with this action contrary to the wishes of the estate of the insured.

It appears that the bulk of the work related to the Arkansas probate action was performed by Mr. Schuetze. Mr. Echeverria declaration sets forth that Mr. Schuetze put in 95 hours of work on this case, which included a discovery motion heard in February of 2021. The court has reviewed the 2021 discovery motion and determines that it represents approximately 15 hours of work. It therefore appears that approximately 80 hours of Mr. Schuetze's time was attributable to the Arkansas probate action. The court has also reviewed Ms. Hobbs declaration wherein she identifies 9 hours of work related to the probate action. Mr. Echeverria declaration reflects that

he also reviewed the Arkansas probate action, and it is presumed that he spent approximately the same amount of time as Ms. Hobbs. For the reasons set for above, the court finds that these fees are not recoverable as Brandt fees.

Based upon the foregoing, the court will award branch fees in the following amounts:

Mr. Echeverria – 356 hours at $900/hour = $ 320,400.00

Ms. Hobbs - 506 hours at $581.75/hour = $ 294,365.50

Mr.Schuetze - 15 hours at $581.75/hour = $ 8,726.25

Mr. Ehrlich-Quinn – 108 hours at $325/hour = $ 35,100.00

Non-Attorney time – 150 hours at $175/hour = $ 26,250.00

Total - $ 684,841.75

The court has considered whether the fee award should be further enhanced by a multiplier. Having weighed the factors to be considered in awarding a multiplier, the court has determined that the fee award should not be further enhanced. The court declines to award a multiplier.

Award

The court finds in favor of plaintiff, and awards damages in the amount of $10,917,481 representing the unpaid amount of the judgment, plus attorney fees as damages in the amount of $684,841.75 for a total award of $11,602,322.80. The court further finds that plaintiff is entitled to 10% interest, which is stipulated to be $4,345,336 to August 8, 2022, and continuing to accrue interest at a rate of $2,991.09 per day until the judgment is paid in full.

The court determines plaintiff to be the prevailing party and is entitled to cost and fees.

Plaintiff is to submit a proposed judgment.

Certificate of Mailing is attached.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action. My business address is 550 North Brand Boulevard, Suite 1500, Glendale, California 91203-1922, and my electronic mail address is cac@kpclegal.com. On January 17, 2023, I caused the foregoing document(s) described as [PROPOSED] JUDGMENT to be served on the interested parties in this action as follows:

Ricardo Echeverria, Esq.
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Attornev for: Plaintiff

☒ **BY ELECTRONIC SERVICE VIA ACE ATTORNEY SERVICE:** On the interested parties in this action by electronic service pursuant to CRC 2.251. Based on the parties' consent to accept electronic service, I caused the document to be sent to the person(s) at the electronic service address(es) listed herein for each party through Ace Attorney Service's interface at https://efile.acelegal.com.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 17, 2023, at Glendale, California.

Cynthia A. Contreras	/s/*Cynthia A. Contreras*
(Type or print name)	(Signature)

KNAPP, PETERSEN & CLARKE