FILED

AUG 25 2016

Hon. Philip Lewis Paley

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Attorneys for Defendant, State Farm Indemnity Company (Improperly pleaded as State Farm Insurance Company)

SHARON SEAMON,	: SUPERIOR COURT OF NEW JERSEY LAW DIVISION - MIDDLESEX COUNTY
Plaintiff,	: DOCKET NO. MID-L-3172-14
vs.	:
STATE FARM INSURANCE COMPANY, JOHN DOES 1-4, ABC CORPORATIONS 1-4,	:
Defendants.	:

#198

CIVIL ACTION - ORDER MOLDING JUDGMENT

This matter having been opened to the court by Soriano, Henkel, Biehl and Matthews, attorneys for the defendant, State Farm Indemnity Company, for an Order molding the jury verdict rendered in favor of the plaintiff to be consistent with the policy of insurance issued by the defendant, and the court having considered the moving papers, and good cause having been shown, it is on this 25th day of August, 2016; **ORDERED**,

1. That the prior Order of this Court dated June 13, 2016 is molded to reflect a judgment in favor of the plaintiff, Sharon Seamon against the defendant, State Farm Indemnity Company, in the amount of $85,000, the available insurance coverage on the policy of insurance issued by State Farm Indemnity Company;

DENIED

2. That the Order of June 13, 2016, to the extent that it

DENIED

entered judgment against the defendant, State Farm Indemnity Company, improperly pleaded as State Farm Insurance Company, is vacated; DENIED

3. That prejudgment interest is awarded to the plaintiff in the amount of $, for interest from May 6, 2014 until April 26, 2016 at a rate of 2.25%; DENIED

4. That a copy of this Order be served upon the attorneys for all parties within 10 days of the date hereof.

J.S.C.

This Motion was ✓ opposed.

____ unopposed.

HON. PHILLIP LEWIS PALEY, J.S.C.

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
PHILLIP LEWIS PALEY
JUDGE

MIDDLESEX COUNTY COURT HOUSE
P.O. BOX 964
NEW BRUNSWICK, NEW JERSEY 08903 - 0964

August 25, 2016

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Re: Seamon v. State Farm Insurance Co., MID-L-3172-14

Dear counsel:

Trial on this automobile collision case took place between March 21, 2016, and March 24, 2016, when a jury awarded Sharon Seamon $375,000 against defendant State Farm Insurance Company. Ms. Seamon had settled her case against the tortfeasor for $15,000 - the limit of the insurance policy maintained by that party - and sued here under the Underinsured Motorist's provision of her own insurance policy, which limited coverage to $100,000. No one disputes that Ms. Seamon was a named insured on her State Farm policy; in light of the settlement for $15,000 with the tortfeasor, State Farm had $85,000 available under its policy.

On June 10, 2016, this court denied Ms. Seamon's motion to amend the complaint to include a bad faith count; that ruling was confirmed by a letter opinion explicating its reasons. The court's denial was based on procedural grounds and was without prejudice to Ms. Seamon's ability to file a bad faith complaint. On June 13, 2016, the court entered an Order for Judgment in favor of Ms. Seamon for $375,733.36, incorporating taxed costs. Prior to the entry of that Order for Judgment, State Farm had submitted a proposed form of judgment, limiting the amount to $85,000. The court executed the form of judgment reflecting the jury's verdict.

State Farm now seeks to mold the judgment to $85,000. Ms. Seamon cross-moves for attorney's fees and costs of $36,035.83 and pre-judgment and post-judgment interest amounting to $11,589.04.

State Farm argues that because the amount of UIM coverage is based on contract, it may not be compelled to pay more than the $85,000.

Ms. Seamon argues that State Farm has at all times refused to negotiate in good faith. In Taddei v. State Farm, 401 N.J. Super. 449, 463 (App. Div. 2008), the court recognized the common practice of molding judgments "to reflect the rights and duties of the parties under the insurance policy." Here, Ms. Seamon's rights were infringed by State Farm's bad faith. State Farm intentionally breached its policy by failing to live up to the duty it owed to Ms. Seamon.

There is no authority requiring a court to mold a judgment to reflect the benefits available under an insurance policy, rather than to reflect a jury verdict. The issue rests within the court's discretion. The court correctly recognized that State Farm should be responsible for the entire judgment of $375,000, plus attorney's fees, costs, and pre-judgment and post-judgment interest.

The cross-motion for attorney's fees and costs seeks an award of fees under R. 4:58-2 – the Offer of Judgment Rule. That Rule provides that the offeror of a pre-trial offer of judgment which is rejected and results in a monetary award that exceeds 120% of the value of the offer is entitled to: (1) all reasonable litigation expenses incurred following non-acceptance of the offer; (2) 8% prejudgment interest on the amount of any recovery from the date of the offer or the date of completion of discovery – whichever is later; and (3) reasonable attorney's fees and costs for services compelled by the non-acceptance. Id. State Farm rejected the $85,000 Offer of Judgment, and the monetary award was more than 120% of that value. The amount of legal fees reflects trial counsel's services. Cynthia Liebling, Esquire – trial counsel for Ms. Seamon – received her J.D. in 1978, was admitted to the

Mississippi bar in 1979 and the New Jersey bar in 1985. Based on her work experience and the amount of time devoted to this matter, her services on this matter reflect a $375 hourly rate for a total of $36,035.83 for attorney services, $1,875 for support staff services, and $4,029.58 in actual litigation costs.

ANALYSIS:

"It is common practice in New Jersey to reduce the jury's damages award in a UM/UIM case to reflect the policy limits of one's UM/UIM coverage." Taddei, supra, at 463, citing McMahon v. N.J. Mfrs. Ins. Co., 364 N.J. Super. 188, 193 (App. Div. 2003); Krohn v. Full Ins. Underwriters Ass'n, 316 N.J. Super. 477, 485 (App. Div. 1998). The Taddei decision reasoned that jurors are not made aware of the insured's existing policy coverage when rendering their verdicts; in that regard, courts "have appropriately recognized the need to mold jury verdicts in these cases to reflect the rights and duties of the parties under the insurance policy." Taddei, supra, at 464. This is not mandatory; Taddei, supra, supports the proposition that the reviewing court will ordinarily uphold a trial court's decision to mold the judgment to reflect the policy limits. Wadeer v. New Jersey Mfrs. Ins. Co., 220 N.J. 591, 611 (2015), affirms that proposition: "We find that the molding of a monetary jury award is appropriate when done to conform with and reflect allocation of liability." Nevertheless, our courts do not expressly **require** trial courts to mold the judgment in such circumstances. See id. On the contrary, the Wadeer court noted: "However, in the UM/UIM context, where reduction is based not on a tortfeasor's comparative negligence but instead on the policy limits of a given carrier, we find that the current construction of Rule 4:58-2 provides no incentive for such carriers to settle." Id.

R. 4:58-2(a) provides:

> If the offer of a claimant is not accepted and the claimant obtains a money judgment, in an amount that is 120% of the offer or more, excluding allowable prejudgment interest and counsel fees, the

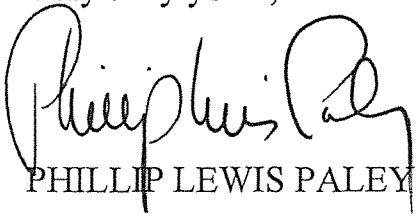
> claimant shall be allowed, in addition to costs of suit: (1) all reasonable litigation expenses incurred following non-acceptance; (2) prejudgment interest of eight percent on the amount of any money recovery from the date of the offer or the date of completion of discovery, whichever is later, but only to the extent that such prejudgment interest exceeds the interest prescribed by R. 4:42-11(b), which also shall be allowable; and (3) a reasonable attorney's fee for such subsequent services as are compelled by the non-acceptance.

This court discerns no basis to modify the verdict reached by the jury. When it executed the order for judgment, it considered the position of State Farm that the order for judgment should reflect the $85,000 limit. In this court's view, accepting State Farm's position would effectively reward State Farm for its "scorched-earth" attitude regarding settlement. See Wadeer, supra (commenting upon the absence of incentives for insurance carriers to settle). The prevailing authorities, Taddei, supra, Krohn, supra, and Wadeer, supra, recognize that a trial court has discretion to mold the verdict, but do not mandate it.

On this application, the court will award plaintiff's counsel $32,500 for attorney's fees, $1,500 for staff services, and $3,500 for court costs, based on the obtaining of a verdict substantially greater than the offer to take judgment, filed pursuant to R. 4:58-2(a). No certification addressing the quantum of legal fees or costs was submitted on behalf of defendant.

A form of order conforming to this award accompanies this letter. The court greatly appreciates the quality of the argument.

Very truly yours,



PHILLIP LEWIS PALEY