Third District Court of Appeal

State of Florida

Opinion filed October 28, 2026.
Not final until disposition of timely filed motion for rehearing.

No. 3D25-1097
Lower Tribunal No. 21-1806-CA-01

Citizens Property Insurance Corporation,
Appellant,

vs.

Mirna Rodriguez,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Daryl E. Trawick, Judge.

Traub Lieberman Straus & Shrewsberry, LLP, and C. Ryan Jones, and David T. Burr (St. Petersburg); Simms Goatache, P.A., and Lesley Simms (Hollywood), for appellant.

Robert J. Lee, P.A., and Robert J. Lee, Steven C. Silverberg and Samuel Perez, for appellee.

Before FERNANDEZ, MILLER, and LOBREE, JJ.

MILLER, J.

Appellant, Citizens Property Insurance Corporation, challenges a trial court order ratifying a general magistrate's recommendation and awarding attorney's fees to appellee, Mirna Rodriguez, under the fee shifting framework in section 627.428, Florida Statutes (2021). The court awarded lead counsel his current market billing rate rather than his historical one and then added prejudgment interest from the date of entitlement. On appeal, Citizens contends this approach compensates the same harm—a delay in payment—twice. We agree with Citizens and, in so doing, we adopt the reasoning of our sister court in Philip Morris USA, Inc. v. Brown, 313 So. 3d 898 (Fla. 1st DCA 2021).

I

The facts require little elaboration. This is a first-party homeowners insurance dispute arising out of a Tropical Storm Eta claim. The parties settled on the eve of a 2022 trial and stipulated that the insured was entitled to fees. They then spent the better part of two years litigating how much those fees should be.

After an evidentiary hearing, the general magistrate recommended current market rates for lead counsel, plus prejudgment interest from the date of entitlement. Citizens filed exceptions, arguing that this combination

produced an impermissible windfall. The trial court overruled the exceptions and entered judgment. This appeal followed.

II

A

The question presented in this appeal is a pure issue of law: may a prevailing insured recover both current market billing rates for its counsel and prejudgment interest, where each is designed to compensate for the same harm—a delay in payment? We thus conduct a de novo review. See G4S Secure Sols. USA, Inc. v. Golzar, 208 So. 3d 204, 207–08 (Fla. 3d DCA 2016).

B

In Florida, prejudgment interest is not a penalty. It is "merely another element of pecuniary damages." Argonaut Ins. Co. v. May Plumbing Co., 474 So. 2d 212, 214–15 (Fla. 1985). Once a plaintiff establishes a liquidated loss, prejudgment interest ordinarily follows as a matter of course.

Attorney's fees are no exception. In Quality Engineered Installation, Inc. v. Higley South, Inc., 670 So. 2d 929 (Fla. 1996), the Florida Supreme Court held that prejudgment interest accrues from "the date the entitlement to attorney fees is fixed through agreement, arbitration award, or court determination, even though the amount of the award has not yet been

determined." Id. at 930–31. The court's reasoning was twofold. Accrual from entitlement "serves as a deterrent to delay by the party who owes the attorney fees and is appropriate in conjunction with our decision that attorney fees are not to be assessed for litigating the amount of an attorney-fee award." Id. at 931.

In a parallel line of authority, Florida courts have approved fee awards calculated at current rather than historical billing rates in cases involving substantial delay. See Fla. Dep't of Agric. & Consumer Servs. v. Bogorff, 132 So. 3d 249, 257 (Fla. 4th DCA 2013). This practice is not limited to Florida. A myriad of opinions from around the country have authorized this practice. See, e.g., Vega v. Chi. Park Dist., 12 F.4th 696, 706 (7th Cir. 2021); L.H. v. Hamilton Cnty. Dep't of Educ., 356 F. Supp. 3d 713, 723 (E.D. Tenn. 2019); Radtke v. Caschetta, 254 F. Supp. 3d 163, 182 (D.D.C. 2017); Parkinson v. Hyundai Motor Am., 796 F. Supp. 2d 1160, 1174 (C.D. Cal. 2010); JHC Indus. Servs., LLC v. Centurion Cos., 263 A.3d 1105, 1111 n.5 (N.J. Super. Ct. App. Div. 2021).

Consequently, each remedy is lawful standing alone. The difficulty arises only when one is stacked on top of another, which is exactly what happened here. The First District confronted this approach in Brown and resoundingly rejected it. 313 So. 3d at 900. There, the trial court awarded

current rates because "the litigation spanned the better part of a decade during which the billing rates for the attorneys increased." Id. at 899. In approving that decision, the Brown court relied on Bogorff, which had itself relied on Perdue v. Kenny A., 559 U.S. 542 (2010), and Gray v. Bostic, 613 F.3d 1035 (11th Cir. 2010). Both decisions approved of current market rates where the prevailing party demonstrates exceptional, unanticipated delay. Bogorff, 132 So. 3d at 257.

But Brown refused to sanction an award of prejudgment interest on top of current market rates. The court's reasoning was mathematical; "[t]he current rate approach . . . tacitly includes an adjustment for the time value of money." Brown, 313 So. 3d at 900. That "approach—which will generally result in a higher fee award—already includes the time value of money that an award of prejudgment interest would partially replicate or possibly duplicate." Id.

But the Brown court candidly acknowledged that the methodology was not perfect, noting that the current market rate merely provides "an approximation of what the more analytically-intense [present value] approach would produce." Id. But approximate or not, current rates compensate for the same harm prejudgment interest addresses. Thus,

simultaneously awarding both "overcompensates the fee award by compounding the interest component of [the] award." Id.

The federal courts reached this conclusion long ago. The Supreme Court has told us in no uncertain terms that "[i]nterest and a delay factor share an identical function. They are designed to compensate for the belated receipt of money." Libr. of Cong. v. Shaw, 478 U.S. 310, 322 (1986). Fee enhancements are included among acceptable delay factors. See Missouri v. Jenkins, 491 U.S. 274, 282 (1989).

Because both remedies compensate for the same harm, they function as substitutes rather than supplements. Judge Richard Posner, a leading economics expert, cogently explained why a choice between the two is economically sound:

> The judge refused to award the lawyers prejudgment interest. His reason was that he was using as the lodestar their 1988 billing rates and thus automatically compensating them for the loss of the use of their money. The alternative . . . would have been to base the award on the rates the lawyers charged when they rendered the services to the class and to add interest on that amount to the present. Both approaches have been deemed acceptable. In many, perhaps most, cases the second is more straightforward. The cost of delay in receiving money to which one is entitled is the loss of the time value of money, and interest is the standard form of compensation for that loss. Changes in billing rates from year to year reflect at most only one component of an interest rate—the rate of inflation—and that component may be swamped by factors having nothing to do with the time value of money, such as the demand for and supply of the services of particular lawyers, firms, or specialties, or of the

> profession as a whole. Suppose that, because of the troubled state of the legal-services market today, the billing rates of the class counsel have actually fallen since the time when they rendered their services to the class. In that event, to award them a fee on the basis of the current rates would be in effect to award them negative interest. Yet—to recur to the essential touchstone of analysis in these cases—if the lawyers had rendered the services to paying clients, their fees would have been computed and paid at the lawyers' then current billing rates, and the lawyers would have earned interest on those fees to the present. A further consideration is that there may be better information about past than about current billing rates. Past rates are rates that were actually charged to paying clients; current rates may be mere estimates of rates to be charged to those clients.

Matter of Cont'l Ill. Sec. Litig., 962 F.2d 566, 570–71 (7th Cir. 1992) (citations omitted).

We recognize that neither method is perfect. "The use of current rates is, at best, an imperfect proxy for the loss to counsel from a delay in payment. It will undercompensate counsel when interest rates exceed the rate of inflation of attorney's fees, just as it will overcompensate counsel when the inflation rate exceeds the interest rate." M.H. v. N.Y.C. Dep't of Educ., 20-cv-1923, 2021 WL 4804031, at *31 (S.D.N.Y. Oct. 13, 2021). But imperfection is a reason to carefully exercise a choice of remedies, not a license for double recovery. Attorneys are best situated to assess the market

and elect the avenue that will most fully compensate them for delay in a given case.[1]

C

Armed with these principles, we turn to this case. By awarding lead counsel both current rates and prejudgment interest, the trial court effectively compensated him twice for the loss of use of his fee. In our view, this created an unwarranted windfall. The error, however, was confined, as it only infected the award to lead counsel. All other legal professionals were compensated at rates below their current market rates. We therefore affirm the order under review in all respects, save the prejudgment interest awarded on lead counsel's fees.

Affirmed in part; reversed in part; remanded.

[1] Rodriguez's reliance on United Auto. Ins. Co. v. Coastal Radiology, LLC, 340 So. 3d 528 (Fla. 3d DCA 2022), does not invalidate Brown. The opinion is devoid of any facts or analysis bearing on this issue. Nor does the argument that current rates reflect only market appreciation while interest compensates for loss of use carry the day.