

**IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA**

MAX LAGUERRE,)	
)	
Plaintiff,)	CIVIL ACTION FILE
)	NO.: 17A64087
v.)	
)	
PEACHTREE PROPERTY SUB, LLC,)	
d/b/a CROWNE PLAZA HOTEL)	
ATLANTA-MIDTOWN; FO)	
PEACHTREE PROPERTY, LLC, d/b/a)	
CROWNE PLAZA HOTEL ATLANTA-)	
MIDTOWN; AWH PARTNERS, LLC,)	
d/b/a CROWNE PLAZA HOTEL)	
ATLANTA-MIDTOWN; CAJUN)	
CONTRACTORS, INC.; CAJUN)	
BUILDERS, INC.; CAJUN)	
DEVELOPMENT, LLC, and JOHN DOES)	
1 – 5,)	
)	
Defendants.)	

**ORDER GRANTING PLAINTIFF’S MOTION FOR ATTORNEY FEES AND
LITIGATION EXPENSES PURSUANT TO O.C.G.A. § 9-11-68**

This case came before this Court on Plaintiff’s Motion for Attorney Fees and Litigation Expenses Pursuant to O.C.G.A. § 9-11-68. After reviewing the submissions of the parties and the applicable law, this Court finds that Plaintiff has met the statutory requirements of O.C.G.A. § 9-11-68, and therefore, under O.C.G.A. § 9-11-68(b)(2), Plaintiff shall “recover attorneys’ fees and expenses of litigation incurred . . . from the date of rejection [May 26, 2018] through the entry of judgment.” Accordingly, Plaintiff’s Motion for Attorney Fees and Litigation Expenses Pursuant to O.C.G.A. § 9-11-68 (“Plaintiff’s Motion for Attorney Fees”) is hereby **GRANTED**, and the

Court will issue a final judgment that includes the pro-rata value of legal services, in accordance with Georgia Dep't of Corr. v. Couch, 295 Ga. 469, 472 (2014).

FACTUAL BACKGROUND

This is a premises liability action for a permanent traumatic brain injury suffered by Plaintiff Max Laguerre on July 20, 2015, after an eight-foot metal pipe fell four stories from Defendant's construction site and struck Plaintiff in the head. This lawsuit was filed on April 21, 2017. On January 24, 2018, Plaintiff served a global Offer of Judgment pursuant to O.C.G.A. § 9-11-68 on all Defendants in the amount of \$250,000.00. See Ex. A to Plaintiff's Motion for Attorney Fees, Davis Affidavit, at ¶ 12; see also Ex. B to Plaintiff's Motion for Attorney Fees, 1/24/18 Offer of Judgment. At this time, only written discovery had been conducted. See id. Defendants made no counter-offer at this time, and Plaintiff's offer was rejected after the passage of the statutory thirty days. See Ex. A at ¶ 11. After the Plaintiff's deposition, on April 24, 2018, Plaintiff served a second Offer of Judgment pursuant to O.C.G.A. § 9-11-68 on Defendant Cajun Contractors *only* for \$75,000.00. See id. at ¶ 11; see also Ex. C to Plaintiff's Motion for Attorney Fees, 4/24/18 Offer of Judgment. Defendant Cajun Contractors did not respond to the offer, and the offer was deemed rejected as of May 26, 2018, per O.C.G.A. § 9-11-68(c).

On April 27, 2018, Defendants sent a global Offer of Judgment to Plaintiff for \$25,000.00. See Ex. D to Plaintiff's Motion for Attorney Fees, 4/27/18 Defendants' Offer of Judgment. On June 20, 2018, Defendants sent a second global Offer of Judgment to Plaintiff in the amount of \$50,000.00. See Ex. E to Plaintiff's Motion for Attorney Fees, 6/20/18 Defendants' Offer of Judgment. At the trial of this matter, Plaintiff obtained a verdict (and resulting judgment) greater than 125% of Plaintiff's April 24, 2018 Offer of Judgment. Therefore, under O.C.G.A. § 9-11-

68(b)(2), Plaintiff “shall be entitled to recover attorneys’ fees and expenses of litigation incurred . . . from the date of rejection [May 26, 2018] through the entry of judgment.”

FEES AND WORK PERFORMED BY PLAINTIFF’S COUNSEL

Plaintiff’s attorney fee is a 40% contingent fee. See Ex. A at ¶ 5; see Ex. F to Plaintiff’s Motion for Attorney Fees, Schneider Affidavit, at ¶ 6. In support of Plaintiff’s motion, Plaintiff submits affidavits by Plaintiff’s counsel and an affidavit by an experienced and well-respected Georgia lawyer stating that the forty percent (40%) contingent fee in this case is usual and customary and is reasonable under the circumstances. See Ex. G to Plaintiff’s Motion for Attorney Fees, Shigley Affidavit, at ¶¶ -7; see also Ex. A at ¶¶ 7-8; Ex. F at ¶¶ 8-9.

Plaintiff argues that the circumstances of the case, including the complexities and volume of the medical evidence, the multiple sophisticated corporate defendants with complicated liability issues, including apportionment and non-party fault, the risk of attorney time and litigation expenses, the Defendants’ low offers in the case, and the need to pursue the case through verdict and judgment, justify the forty percent contingent fee. See Ex. G, Shigley Affidavit, at ¶¶ 5-7; see also Ex. A at ¶ 8; Ex. F at ¶ 9.

Moreover, Plaintiff argues that the 40% contingency fee is warranted based on the amount of work and effort that went into this case by Plaintiff’s counsel. Specifically, Plaintiff’s counsel and professional staff spent more than 700 hours on this case after the rejection of Plaintiff’s offer of judgment. See Ex. A at ¶ 4; Ex. F at ¶ 4. After the rejection of Plaintiff’s offer of judgment, Plaintiff’s counsel spent more than \$45,000 on litigation expenses. See Ex. A at ¶ 9; Ex. F at ¶ 10. Between the rejection of Plaintiff’s Offer of Judgment and the verdict, Plaintiff conducted substantial discovery including several depositions of fact and expert witnesses alike.

The time, resources, and work Plaintiff's counsel expended on this case generated such additional value to the case that the result was a verdict 73 times the Offer of Judgment that was rejected by Defendant Cajun Contractors a little over a year earlier.

AUTHORITY

O.C.G.A. § 9-11-68 provides, in pertinent part:

If a plaintiff makes an offer of settlement which is rejected by the defendant and the plaintiff recovers a final judgment in an amount greater than 125 percent of such offer of settlement, the plaintiff shall be entitled to recover **reasonable** attorney's fees and expenses of litigation incurred by the plaintiff or on the plaintiff's behalf from the date of the rejection of the offer of settlement through the entry of judgment.

O.C.G.A. § 9-11-68(b)(2) (emphasis added).

In this case, 125% of Plaintiff's \$75,000 offer is \$93,750. The \$5,500,336 verdict rendered in this case, and subsequent \$5,250,000 judgment, is greater than \$93,750. The award of attorney fees and costs to Plaintiff is authorized by the Offer of Settlement statute. Based on the verdict and the \$5,250,000 judgment, the attorney fees incurred by Plaintiff, in accordance with the contingency fee agreement, total \$2,100,000.

The Court also finds that based on Georgia Dep't of Corr. v. Couch, 295 Ga. 469, 472 (2014) (discussing that the offer which was significantly less than the ultimate verdict was "indisputably" in good faith), the offer to settle for \$75,000 was made in good faith, as it was well within the foreseeable verdict range based on the facts known at the time.

When awarding fees and expenses pursuant to O.C.G.A. § 9-11-68:

A court may consider a contingent fee agreement and the amount it would have generated as evidence of usual and customary fees in determining both the reasonableness and the amount of an award of attorney fees. When a party seeks fees based on a contingent fee agreement, [however,] the party must show that the contingency fee percentage was a usual or customary fee for such case and that the contingency fee was a valid indicator of the value of the professional services rendered. In addition, the party seeking fees must also introduce evidence of hours,

rates, or some other indication of the value of the professional services actually rendered.

Id. at 483 (quoting Brock Built, LLC v. Blake, 316 Ga. App. 710, 714–715 (2012) (citation omitted)).

Couch is the leading case providing guidance to courts determining § 9-11-68 attorney's fees based on a contingency contract. In that case, the Georgia Supreme Court reversed the trial court's award of attorney's fees because the trial court relied *only* on the contingency agreement and nothing more, despite the attorneys submitting additional evidence, such as "the hours worked and rates charged, substantiating the value and reasonableness of the services thereof." See id. (internal quotations omitted). Couch did not hold that § 9-11-68 fees based on contingency agreements are improper, nor did Couch mandate strict formulas for courts to follow when determining the reasonable value of attorneys' fees. See Shiv Aban, Inc. v. Ga. Dep't of Transp., 336 Ga. App. 804, 820 (2016) (affirming the trial court's award of attorney fees based on a contingency arrangement where the trial court received evidence regarding the reasonableness of the fees, "evaluated the value of the services for which contingency fees were sought based on information other than the contingency fee agreement itself and therefore properly followed Couch in determining the amount of the fee award").

The trial court can award the contracted contingency (prorated after the expiration of the § 9-11-68 offer) as long as the party seeking fees submits evidence regarding the number of hours performed, rates *or* "some other indication of the value of the professional services actually rendered." Id. The Court must have evidence of some indication – separate and apart from the contingency fee agreement itself – that the contingency fee is usual and customary and is a reasonable reflection of the value of the services performed given the facts and circumstances of the case.

In Couch, however, the Supreme Court also noted that although a contingency fee agreement is “certainly a guidepost to the reasonable value of the services the lawyer performed,” such an agreement “is not conclusive, and it cannot bind the court in determining that reasonable value, nor should it bind the opposing party required to pay the attorney fees, who had no role in negotiating the agreement.” Couch, 295 Ga. At 484(3)(a). In essence, Couch left intact the broad discretion a trial court has when determining § 9-11-68 attorney fees.

Here, given the risk, time, and expense involved, and based on the evidence submitted by Plaintiff, including the affidavits by Plaintiff’s counsel and Mr. Shigley, the Court finds that the 40% contingency fee (\$2,100,000) is usual and customary and is reasonable under the circumstances in this case. See Ex. G at ¶¶ 5-7; see also Ex. A at ¶¶ 7-8; Ex. F at ¶¶ 8-9. The evidence provided of the value of professional services rendered to Plaintiff satisfies all the requirements of O.C.G.A. § 9-11-68 and Couch.

Because the Court finds that the contingency fee agreement was usual and customary and is a valid indicator of the value of professional services rendered, it must determine the pro-rata portion earned after the rejection of the offer through the date of the entry of judgment. Id. at 485.

Methods to Determine Amount Incurred After Expiration of Plaintiff’s Offer

In Plaintiff’s Motion for Attorney Fees, Plaintiff outlines the following approaches the Court should consider in determining what reasonable fees should be awarded in this case.

“Value Added Over Defense Offer” Approach. The first approach considers the value added to the case after the Defendant’s global offer on June 20, 2018, of \$50,000 to obtain the judgment of \$5,250,000. Such value takes into account all of the work Plaintiff’s counsel performed between the June 20, 2018, offer and the ultimate verdict and resulting judgment. Using that analysis, the Court would find that the difference between the 40% fee that is due on the

judgment of \$5,250,000 (\$2,100,000) and the fee that would have been due had the Defendant's \$50,000 offer been accepted (\$20,000) is the reasonable value of the attorney fees post-rejection of the Defendant's offer of judgment. Thus, the fee due under that approach would be **\$2,080,000** (*i.e.* \$2,100,000 minus \$20,000).

“Value Added Over Plaintiff’s 9-11-68 Offer” Approach. The second approach considers the value added to the case after Defendant rejected the Plaintiff’s \$75,000 offer on May 26, 2018. Such value also takes into account all of the work Plaintiff’s counsel performed between the May 26, 2018, offer and the ultimate verdict and resulting judgment. If that analysis is used, the Court would find that the difference between the 40% that is due on the judgment (\$2,100,000) and the 40% fee that would have been due had Plaintiff’s Offer of Judgment been accepted (\$30,000) is the reasonable value of the attorney fees post-rejection of the Plaintiff’s offer of judgment. Thus, the fee due under this approach would be **\$2,070,000** (*i.e.* \$2,100,000 minus \$30,000).

“Percentage of Work Performed” Approach. The third approach considers the portion of the total work performed after expiration of the offer. 100% of the work done by Schneider Law, P.C., was done after the rejection of the offer of settlement. See Ex. F at ¶ 3. This amounted to 450 hours. See id. at ¶ 4. Approximately 75% of the work done by the Davis Injury Firm was done after the rejection of the offer of settlement. See Ex. A at ¶ 4. This amounted to 250 hours, as compared to 62.5 hours prior to the offer of settlement. See id. Comparing the 62.5 hours worked prior to the offer of settlement to the 700 total hours worked after the rejection of the offer, 91% of the work performed on this case was done after the rejection of settlement. Thus, the fee due under this approach would be **\$1,911,000** (*i.e.* 91% of \$2,100,000).

Expenses Incurred After Rejection of the Plaintiff's Offer. In addition to fees, the litigation expenses incurred after the rejection of the offer of settlement are estimated to be \$45,049.64 for Davis Injury Firm and \$146.83 for Schneider Law, P.C. See Ex. A at ¶ 9; Ex. F at ¶ 10. Thus, Plaintiff's total expenses after the rejection of the offer of settlement are \$45,196.47. These amounts were reasonable and expended in good faith as part of the litigation and trial of Plaintiff's claims. This amount is therefore statutorily authorized to be recovered in addition to the attorney fees.

After considering each of the approaches submitted by Plaintiff, the Court has a concern of a potential double recovery by Plaintiff's counsel. That concern arises from the fee agreement itself which allows Plaintiff's counsel to recover both the full amount of the 40% contingency fee from the Plaintiff *in addition* to any award made by the Court. Thus, in determining what a reasonable award should be in this matter that properly compensates Plaintiff's counsel for the extraordinary result achieved in this matter, but that is also just to the Defendants who did not have a say in the fee agreement, the Court will use the number of hours expended in this case as a guidepost. To that end, the Court will multiply the number of hours expended (700) with an hourly rate it believes is reasonable in this case (\$500) for a total of \$350,000. This amount, however, is just the starting point.

Given that Plaintiff's counsel obtained a result worth 73 times more than the Offer of Judgment, the Court will add a multiplier of three times the \$350,000 guide for a total of \$1,050,000 in recognition of the outstanding work by Plaintiff's counsel in obtaining such a substantial verdict on behalf of the Plaintiff.

Given the foregoing, the Court hereby awards Plaintiff \$1,050,000 in attorney's fees, as well as litigation expenses in the amount of \$45,196.47. See O.C.G.A. § 9-11-68(d)(1) ("The court

shall order the payment of attorney's fees and expenses of litigation upon proof that the judgment is one to which . . . this Code section apply . . .").

SO ORDERED, this 30th day of January, 2020.



Dax E. López, Judge
State Court of DeKalb County

cc: All parties

STATE COURT OF
DEKALB COUNTY, GA.
1/30/2020 7:51 AM
E-FILED
BY: Kelly Flack