NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2016 CA 1293

FIRST AMERICAN TITLE INSURANCE COMPANY AND FIRST AMERICAN TITLE INSURANCE COMPANY OF LOUISIANA

VERSUS

CALVIN V. HOWELL, BRENDA HOWELL, MURRAY H. GIBSON, ANITA S. GIBSON, CONTINENTAL CASUALTY COMPANY, ABC INSURANCE COMPANY, XYZ INSURANCE COMPANY, CASHE COUDRAIN & SANDAGE, LLP, ANDRE G. COUDRAIN, AND ASHLEY E. SANDAGE

Judgment rendered AUG 30 2017

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On Appeal from the
Twenty-First Judicial District Court
In and for the Parish of Tangipahoa
State of Louisiana
No. 2014-0002136, Div. C

The Honorable Robert H. Morrison, Judge Presiding

* * * * *

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* * * * *

BEFORE: WELCH, CRAIN, AND HOLDRIDGE, JJ.

HOLDRIDGE, J.

In this appeal, a title insurance company seeks indemnification for the losses it sustained due to a defect in title to property it insured in a real estate sale. Based on a careful review of the record before us, we affirm.

FACTS AND PROCEDURAL HISTORY

On September 5, 2013, Calvin V. Howell and Brenda Howell (the Howells) sold in a cash sale about 4,000 acres of timber property in Livingston and Ascension Parishes, Louisiana, to Murray H. Gibson and Anita S. Gibson (the Gibsons) for $2,410,104.00. On the same date, the Gibsons then sold in a cash sale the same property to Conn Properties, L.L.C. (Conn), for $3,001,208.00. Andre' G. Coudrain, a general partner at Cashe Coudrain and Sandage, LLP (CCS), was the closing attorney[1] and provided the relevant deeds and closing documents; CCS and Coudrain were also title insurance agents for First American Title Insurance Company of Louisiana (First American Louisiana).[2] They issued a policy of title insurance from First American Louisiana to Conn for $3,001,208.00, insuring Conn's fee simple interest in the property. In connection with their respective closings, the Gibsons and the Howells each executed a "Seller's/Owner's Affidavit and Indemnity" in favor of First American Louisiana. The affidavits provided in pertinent part that the affiants did not know of any facts that might give rise to an adverse claim to the property and that they agreed to indemnify First American Louisiana from any loss it sustained due to any misrepresentation.

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[1] Kelly Bellard was a former employee of CCS. As a notary public and licensed title agent, she did the abstract of the property involved in the sales and she handled the closings.

[2] The limited agency agreement between First American Louisiana, First American Title Insurance Company, and the limited title agent, CCS, defines "company" without a state designation as First American Louisiana and First America Title Insurance Company. The agreement also states that "First American" without a state designation shall mean First American Title Insurance Company, a California corporation, and First American Louisiana collectively.

After the closing, Coudrain notified First American Title Insurance Company (First American) that a representative of a third party, Rhino Enterprises II Inc. (Rhino II), informed him that it claimed superior title to two tracts of the property (the Conflicting Properties) constituting about 520 acres. On March 7, 2014,[3] Rhino II filed a declaratory judgment suit against Conn, seeking, among other things, a declaration that Rhino II was the true owner of the Conflicting Properties. Conn and Rhino II settled the suit with Conn by executing a quitclaim deed for the Conflicting Properties to Rhino II. On June 3, 2014, Conn settled its claim under its title insurance policy with First American for $400,000.00.

First American and First American Louisiana[4] then filed the suit that is the subject of this appeal against the Howells for breach of warranty and for indemnification.[5] [6] Following a trial, the court issued reasons for judgment wherein it found, in part, that the Howells were liable to First American Louisiana and First American based on their awareness of and their failure to disclose Rhino II's competing claims to the property, which contradicted their statements in their affidavit that title to the property had never been disputed. The parties separately submitted the issue of attorney's fees and the settlement on briefs with stipulations

[3] The parties entered into a joint stipulation of facts and documents before trial. The stipulation refers to March 7, 2013 as the date the declaratory judgment suit was filed, but the reference to 2013 appears to be a typographical error.

[4] We note that the trial court in its reasons for judgment refers to both "plaintiff" and "plaintiffs," but the suit was brought by both First American Louisiana and First American; however, as noted in footnote 2, a reference to First American Title Insurance Company without a state name means both First American and First American Louisiana.

[5] In the trial court's reasons for judgment, the court states that First American and First American Louisiana did not set forth an indemnity claim against the Howells, but the Howells did not object to the trial of this issue; however, in paragraph 73 of the petition, First American and First American Louisiana allege that the Howells agreed to indemnify First American Louisiana from any loss due to misrepresentation.

[6] First American and First American Louisiana also named as defendants the Gibsons, CCS, Coudrain, Ashley E. Sandage (a partner at CCS), and Continental Casualty Company (their professional liability insurer). Thereafter, they voluntarily dismissed their suit against the Gibsons, and shortly before the trial, settled their claims with Coudrain, Sandage, CCS, and Continental Casualty.

of facts and additional evidence. The trial court then rendered judgment for First American and First American Louisiana against the Howells for $266,194.58 together with legal interest on $89,871.82 from May 22, 2014[7] until the date the judgment was paid in full, and legal interest on $176,322.76 from the date of the final judgment, April 1, 2016, until the judgment was paid in full. The principal amount was derived from the price the Howells received per acre, $309,871.00, less the $220,000.00 amount First American and First American Louisiana received from CCS, Coudrain, Sandage, and Continental Casualty Company, to which was added attorney's fees, an expert witness fee, and costs of $176,322.76. The Howells filed a motion for new trial, which the trial court denied.

The Howells appeal the judgment, raising three assignments of error. The Howells[8] assert that the trial court erred as a matter of law in finding that they were liable to First American under the indemnity agreement in the Sellers/Owners affidavit; that the trial court erred as a matter of law in finding that knowledge of the alleged title dispute could be attributed to the Howells through their former attorney; and in awarding an unreasonable amount in attorney's fees and costs pursuant to the indemnity agreement.

STANDARD OF REVIEW

A reviewing court may not disturb the factual findings of the trier of fact in the absence of manifest error. Lafayette City-Parish Consol. Government v. Person, 2012-0307 (La. 10/16/12), 100 So.3d 293, 297; Thomas v. A. Wilbert & Sons, LLC, 2015-0928 (La. App. 1 Cir. 2/10/17), 217 So.3d 368, 379. The Louisiana Supreme Court has set forth a two-part test for the appellate review of facts: 1) the appellate court must find from the record that there is a reasonable

[7] May 22, 2014 is the date that First American paid Conn $400,000.00 on its claim.

[8] Calvin Howell and Brenda Howell both signed the act of sale and affidavit, both were cast in judgment, and both filed the motion for appeal, but in their brief, they only refer to Calvin Howell. In this opinion, however, we refer to the Howells.

factual basis for the finding of the trial court; and 2) the appellate court must further determine that the record establishes the finding is not clearly wrong or manifestly erroneous. Lafayette City-Parish Consol. Government, 100 So.3d at 297-98. If the trial court's findings are reasonable in light of the record reviewed in its entirety, the appellate court may not reverse, even if convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Id. at 298. Consequently, when there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. Id. Mixed questions of law and fact are subject to the manifest error standard of review. Marietta Trust v. J. R. Logging, Inc., 2016-1136 (La. App. 1 Cir. 5/11/17), ___ So.3d ___.

ASSIGNMENTS OF ERROR ONE AND TWO

In the Howells' first assignment of error, they contend that the negligence of First American Louisiana's title insurance agent, Coudrain, was a cause-in-fact of the loss in this matter so that First American Louisiana could not require the Howells to indemnify it for its own negligence. In their motion for new trial, the Howells raised the same issues they raise in their first two assignments of error. In denying the motion, the trial court commented:

> Mr. Coudrain's negligence was based on an assumption that he made that acquisitive prescription ran in favor of Mr. Howell, believing that he had uninterrupted possession. And the--nothing as far as the Rhino II was anything that [Coudrain] had knowledge of at the time. And I think, also, that there was evidence that the levee board is the one that came up with this dual chain and that, that was--to my satisfaction, was communicated to Mr. Howell.
>
> So I feel like there were two separate things involved in the indemnification. Obviously, Mr. Coudrain had the obligation to do that and settle and I--in the judgment, I gave Mr. Howell a credit for the amount. I insisted on doing that because I didn't think they could be indemnified twice. And so I believe that the evidence did show that he had knowledge, and I would deny the new trial.

The obligation to indemnify may be express, as in a contractual provision, or may be implied in law, even in the absence of an indemnity agreement. Nassif v. Sunrise Homes, Inc., 98-3193 (La. 6/29/99), 739 So.2d 183, 185. As such, the contract of indemnity forms the law between the parties and must be interpreted according to its own terms and conditions. See Naquin v. Louisiana Power & Light Company, 2005-2103 (La. App. 1 Cir. 9/15/06), 943 So.2d 1156, 1161, writ denied, 2006-2476 (La. 12/15/06), 945 So.2d 691. A contract of indemnity will not be construed to indemnify the indemnitee against losses resulting from his own negligence unless such an intention is expressed in unequivocal terms. See Berry v. Orleans Parish School Board, 2001-3283 (La. 6/21/02), 830 So.2d 283, 285; Barnett v. American Construction Hoist, Inc., 2011-1261 (La. App. 1 Cir. 2/10/12), 91 So.3d 345, 349. This rule is equally applicable whether the damage is caused by the sole negligence of the indemnitee or the concurrent negligence of the indemnitee and indemnitor. Green v. TACA Int'l Airlines, 304 So. 2d 357, 361 (La. 1974).

As to the Howells' contentions in their first assignment of error, we have thoroughly reviewed the record, and we cannot say that the trial court was manifestly erroneous in finding that Coudrain had no knowledge of Rhino II's assertion of a superior title to the property; therefore, Coudrain's knowledge could not be imputed to First American Louisiana to preclude its recovery on its indemnity claim. Additionally, the trial court gave the Howells full credit in the final judgment for the $220,000.00 Coudrain, Sandage and CCS paid to First American Louisiana and First American; therefore, the Howells are not indemnifying First American Louisiana for any negligence attributable to it through the acts of its agent, Coudrain, and are only indemnifying First American

Louisiana for loss it sustained due to the Howells' misrepresentation, as required by the owner's affidavit.

We also reject the Howells' alternative contention that the damages were not covered by the indemnity agreement because the agreement obligates the Howells to indemnify First American Louisiana for any and all loss incurred due to misrepresentations. After carefully reviewing the record and the trial court's detailed reasons for judgment, we find that the Howells' first assignment of error lacks merit.

In the Howells' second assignment of error, they contend that the trial court erred in finding that they breached their representation in the indemnity agreement that they were not aware of any dispute or claims concerning the properties based on knowledge of the Rhino II claims that was made known to their former attorney, Larry Buquoi. We disagree, and find no manifest error in the trial court's conclusion that First American Louisiana and First American met its burden of proof on this issue with the unrebutted testimony of Stephen Marx, Rhino II's attorney, and evidence submitted in conjunction with his testimony. The Howells did not testify at the trial or offer any contrary evidence. The Howells' second assignment of error has no merit.

ASSIGNMENT OF ERROR NUMBER THREE

In the Howells' third assignment of error, they contend that the award of attorney's fees for the Gordon Arata law firm, the abstract fee, and the expert witness fee are excessive. The trial court has great discretion in setting attorney's fees, and its award will not be disturbed on appeal absent a showing of an abuse of discretion. Gillio v. Hanover American Insurance Co., 2016-0640 (La. App. 1 Cir. 1/31/17), 212 So.3d 588, 592, writ denied, 2017-0393 (La. 4/24/17), 219 So.3d 1098.

The trial court specifically considered the factors set forth in the Code of Professional Responsibility and reduced the fee charged by Gordon Arata. The indemnity agreement in this case specifically states that the Howells would indemnify First American Louisiana for attorney's fees. We also note that the Howells were notified of these claims and given the opportunity to resolve the matter themselves, but they did not respond. The trial court did not abuse its great discretion in the award of attorney's fees.

The amount of expert witness fees lies within the sound discretion of the trial court and will not be disturbed absent an abuse of discretion. Albin v. Illinios Central Gulf R. Co., 607 So.2d 844, 845 (La. App. 1 Cir. 1992). See also La. R.S. 13:3666. We have reviewed the expert witness' testimony and his abstract, and we conclude that the trial court did not abuse its discretion in its award of expert witness fees and costs. Assignment of Error Number Three has no merit.

DECREE

Thus, after a thorough review of the evidence and the applicable law, we find the trial court's judgment signed April 1, 2016, and his reasons for judgment signed January 15, 2016 and March 17, 2016 are correct.[9] We affirm the trial court's judgment and issue this memorandum opinion in compliance with Uniform Rules--Courts of Appeal, Rule 2-16.1(B). In doing so, we adopt the trial court's written reasons as our own, attaching those reasons hereto as Appendix A and Appendix B.

[9] This court issued a rule to show cause on October 4, 2016, stating that the appeal appeared to be filed untimely. This court maintained the appeal, noting, however, that a final determination on maintaining the appeal was reserved for this panel. We maintain the appeal.

The costs of this appeal are assessed to Calvin V. Howell and Brenda Howell.

AFFIRMED.

APPENDIX A

REASONS FOR JUDGMENT

This is a suit by a title insurance company to recover losses it sustained in insuring title to property in conjunction with a sale of real estate. The parties entered into a stipulation of certain facts, which included the following:

- On September 5, 2013, Murray H. Gibson and Anita S. Gibson (the "Gibsons") purchased sever[al] tracts of timber property in Livingston and Ascension Parish, Louisiana, from Calvin V. Howell and Brenda Howell (the "Howells") via a cash deed executed by the Howells and the Gibsons . . [..]
- ... The purchase price paid by the Gibsons to the Howells was $2,410,104.[00].
- Also on September 5, 2013, Conn Properties, LLC ("Conn") then purchased the Property from the Gibsons via a Cash Deed executed by Conn and the Gibsons...[.]
- The purchase price paid by Conn to the Gibsons was $3,001,208.00.
- Coudrain, (Andre' Coudrain) while engaged in the practice of law and acting in his professional capacity as an attorney, and while a general partner in CCS, (Cashe, Coudrain and Sandage) drafted or caused to be drafted the relevant Cash Deeds and other related closing documents, and was the closing attorney in the transaction between the Howells, the Gibsons, and Conn, for the conveyance of the property.
- On September 5, 2013, CCS and Coudrain issued a Pro Forma Owners Policy of Title Insurance to Conn in the amount of $3,001,208 insuring Conn's fee simple interest in the Property.

- On September 5, 2013, in connection with the Gibsons' closing and relevant Cash Deed, the Gibsons executed before a notary the "Seller's /Owner's Affidavit and Indemnity" in favor of First American, Louisiana.
- On September 5, 2013, in connection with the Howells' closing and relevant to the Cash Deed, the Howells executed before a notary the "Sellers/Owners Affidavit and Indemnity["] in favor of First American, Louisiana.
- After the September 5, 2013 closing, Coudrain notified First American that a representative of a third party, Rhino Enterprises II Inc. ("Rhino II") informed Coudrain that it claimed superior title to two of the tracts of the Property (the "Conflicting Property")[.]
- On March 7, 2013 (sic) Rhino II filed a "Petition for Declaratory Judgment" against Conn (Probably March 7, 2014)[.]
- The Rhino II Lawsuit sought, among other things, a declaratory judgment that Rhino II was the "true and lawful owner" of the Conflicting Properties.
- Conn and Rhino II agreed upon and executed a settlement of the Rhino II Lawsuit and a release, and Conn executed a quitclaim of the Conflicting Properties to Rhino II.
- On June 3, 2014, First American and Conn agreed upon and executed a final settlement and release for Conn's claim under its Policy related to the Conflicting Properties, which included a one-time payment from First American to Conn of $400,000.00.

The stipulation also included an agreement to the admissibility of numerous documents.

Based upon the facts stipulated to as set forth above, which are not a complete list of stipulated facts, First American filed the present lawsuit, naming the Howells, the Gibsons, [Coudrain], Cashe, Coudrain and Sandage and their

professional liability insurer as defendants. Citing the above factors, First American made claims of breach of contract against CCS and its insurer based on its agency contract, professional negligence and malpractice against CCS and Coudrain and their insurer, indemnity against *CCS* only, for loss due to negligence leading to loss under the agency contract, and for breach of warranty against the Howells and the Gibsons under the warranty of title provisions contained in the two acts of cash sale.

Thereafter, Plaintiffs voluntarily dismissed the Gibsons, and shortly before the trial, settled its claims with Coudrain, Cashe, Coudrain and Sandage, and their [insurer]. The case then proceeded to trial against the Howells, only. No evidence was presented as to the terms or amount of the settlement with Coudrain, CCS, or their insurer.

The evidence showed that the total transaction in the deeds amounted to some 4,000 acres. The "conflicting properties" to which Rhino II claimed superior title amounted to approximately 520 acres. Prior to closing, Coudrain's then-abstractor examined title to the properties. A preliminary title report (Ex. J-3) was prepared, dated August 27, 2013. This title report notes gaps in the chain of title as to the "conflicting properties[,"] which were included in the prior transfers of bulk properties in some conveyances, and not in others. Apparently, as set forth hereafter, the abstractor must not have picked up a prior sell off by a former owner of the "conflict[ing] properties[,"] which constituted one of the transactions in Rhino II's chain of title.

Coudrain testified that he notified the Gibsons, and thinks that he told the real estate agent and Conn's attorney of these findings, but does not remember conveying this information to the Howells. He stated that they seemed to want only property to which title could be insured.

Coudrain thereafter made a further evaluation of the titles to the "conflicting properties[."] He testified that he determined that the Howells did have a solid basis of titles to the property over the preceding years, had leased the lands for hunting on several occasions, and had paid taxes on the properties during their period of ownership. Based upon these factors, Coudrain testified that he determined that the Howells had a valid claim to the "conflict[ing] properties" through acquisitive prescription, and chose not to take exception to this issue in the title insurance policy.

While, as noted above, the petition contained only a claim of warranty for breach of title against the Howells under the warranty provisions of the deed. However, without objection additional evidence was presented by Plaintiffs as an indemnity claim, based upon certain documents the Howells had signed at the time of the closing. There was no evidence presented which would show that the Howells were aware that the Gibsons were going to "flip" the properties conveyed, on the same day, to Conn, for a profit of some $600,000.00, less expenses.

In one of these documents (J-12) entitled "Seller's/Owner's Affidavit and Indemnity[."] In this document, the Howells made certain representations and certifications, including statements that their "...enjoyment [thereof ...] has been peaceable and undisturbed [,] and the title to said property has never been disputed to their knowledge, nor do the undersigned know of any facts by reason of which the title to, or possession of, said property might be disputed or by reason of which any claim to any of said property might be asserted adversely to them ..." and goes on to indemnify First American for any loss, cost, damage and expense of any kind, including attorney's fees that First American might suffer "... as a result of any misrepresentation herewith." The second document (J-13) is entitled "Sellers'

Affidavit" and contains the same assertions as J-12. [The second document is a sellers' affidavit executed by the Gibsons.]

Stephen Marx, an attorney who had represented Rhino II, testified that his client had asked him to check out a possible claim with the Howells as to the "conflict[ing] properties[,"] and that he had contacted Larry Buquoi, an attorney whom he believed represented the Howells, with regard to the conflicting claims of ownership. This issue arose when a levee district's abstractor determined that [there] were dual claims to the 'conflicting property[.]"

Marx wrote Buquoi a letter dated May 23, 2013, setting forth the conflict, and providing Buquoi with the results of abstracts he had run, which he claimed showed an unbroken chain of title to Rhino II, and a questionable title, with gaps and omissions, in the Howells' chain[.] He testified that he had several conversations with Buquoi (though none directly with the Howells) and that several efforts were made to meet over the issue, with Mr. Howell attending, but that these meetings were postponed for various reasons. The last meeting was set for August, 2013, but Marx stated that Buquoi called him prior to the meeting and advised him that Mr. Howell had told him he had sold the property, and that Buquoi sounded "surprised" by this development.

Marx later represented Rhino II in the litigation with Conn, and testified as to its outcome. He further testified that Rhino II had also paid taxes and entered into hunting leases on the "conflict[ing] property[."]

Plaintiff next called Drue Fournet, a Certified Professional Land Man, as an expert on real estate titles. Mr. Fournet testified to his methodology, and testified that he ran abstracts on both the Rhino II and the Howells['] chain of title. Ultimately, he ran yet a third abstract on the "Alcus" chain from which the

Howells['] title derived. Giving reasons for his conclusions, Fournet's opinion was that Rhino II's chain of title was superior to the Howells' chain.

Plaintiff last called Warren Robinson, a claims director for First American. Robinson testified as to his efforts to resolve this claim. An additional abstractor had been engaged, whose conclusion coincided with that of Coudrain's title report, and found an unbroken chain of title in the Rhino II chain. Robinson stated that Rhino II did not want to sell the land, and ultimately, he negotiated a settlement whereby Conn was paid $400,000.00 in settlement, which was based on the price per acre they had paid for the land, and that as part of the settlement, Conn quitclaimed any interest in the title to the "conflict[ing] properties[."]

Robinson also testified and verified certain correspondence addressed to the Howells, calling upon them to defend the title, to which no responses were ever received.

Howell, though present, did not testify at the trial, and no evidence was presented by the defense other than through the joint exhibits.

Given this evidence, this Court makes the following findings:

1- Coudrain breached the standard of care in not taking exception to the gaps in the chain of title of the Howells, and issuing the policy of title insurance on the property.

2- The uncontroverted evidence shows that the Howells were aware of the competing claim to the property in dispute by Rhino II at the time of the closing of the sale to the Gibsons, and failed to reveal this, which contravened their statements that "title to [said] property has never been disputed to their knowledge, nor ...(did they) ... know of any facts by reason of which the title to, or possession of, said property might be disputed or by reason of which any claim to any of said property might be asserted

adversely to them ..." in their affidavits executed at the time of the closing (J-12 & J-14). It is at least possible that, had they done so, Coudrain would have reconsidered his decision to approve title insurance to the disputed tracts. Nevertheless, Coudrain was also aware of the gaps in the title, and chose to issue the title insurance policy based on his assumption of title by acquisitive prescription.

3- The Howells were unaware of the "flip" of the properties at a higher price, nor of the amount of coverage provided under the title insurance policy, and their liability should be limited to the price per acre they actually received in the sale to the Gibsons.

4- Plaintiffs' indemnity claims are limited to the amount of their actual loss. The Court assumes that Coudrain and CCS and their insurer paid some amount to Plaintiffs in exchange for their release from these claims. Plaintiffs are not entitled to indemnity beyond the amount of their actual loss.

5- No evidence was presented to support Plaintiffs' claims for attorney's fees, and since this was an issue claimed by Plaintiffs, the liability of the Howells would be limited to the cost per acre of the disputed property, based upon their per acre sale price to the Gibsons, less any amount paid in indemnification from the settlement confected with Coudrain and CCS.

Since this Court has not been provided with any evidence as to any settlement amount received by Plaintiffs in return for the dismissal of claims against Coudrain and/or CCS or their insurer, under the provisions of Article 1971 of the Code of Civil Procedure, the Court, on its own motion, will order a new trial, strictly limited to this issue, and will hold rendition of a final judgment in abeyance until this evidence is presented.

Amite, Louisiana, this 15th day of January, 2016.

/s/ Robert H. Morrison, III

Judge, Division "C"

APPENDIX B

REASONS FOR JUDGMENT

This matter is before the Court on partial new trial, ordered by the Court following a trial on the merits. The case involves a claim for indemnity for amounts paid by Plaintiff in a title dispute. Plaintiff sued both the Howells, under a written indemnity agreement executed at the time of the closing, and the attorney and law firm which handled the acquisition of title insurance and closed the sale on the property. The issue of the amount of indemnity for attorney[']s fees and court costs was bifurcated, pending the Court's ruling on the indemnity claim.

Shortly prior [to] trial, Plaintiff settled its claims against the attorney and law firm and their insurer, and the case proceeded against the Howells. Following trial, the Court ruled that the Howells were liable under the indemnity agreement. It noted, however, that as indemnitee, Plaintiff's claims would necessarily be offset by amounts received in settlement from the other defendants, and that the amount of liability for the loss of the property in dispute would be limited to the price per acre paid the Howells for the initial sale of the property, rather than the higher price paid the buyer in that transaction in the sale which took place the same day to Plaintiff's insured. A partial new trial was then ordered as to the remaining issues.

The parties agreed to submit these issues on the record, certain stipulations, and written memoranda. Specifically, the parties have stipulated that Plaintiff received $220,000.00 in the settlement with the attorneys and their insurer, that Plaintiff incurred $16,435.65 in fees and costs paid to the Steeg Law Firm which represented Plaintiff's insured in litigation with the adverse claimant to the

property, and incurred $192,62[6].11 paid to the Gordon, Arata firm for representing Plaintiff throughout these proceedings.

While the calculations vary slightly, Plaintiff states in memoranda that the amount paid its insured for the property lost in the dispute, at the price per acre received by the Howells would be $309,871.00. As stated, it was stipulated that the settlement received from the law firm was $220,000.00. The Howells do not contest the reasonableness of the fees and costs of $16,435.65 paid to the Steeg law firm. Therefore, the only issue is as to the fees and costs paid to the Gordon, Arata firm.

Both parties concede that courts have discretion to determine the reasonableness of attorney[']s fees, and to set reasonable expert witness fees. Both parties cite authority that a court should consider Rule 1.5 of the Rules of Professional Conduct as to fees, which include factors to be considered as the amount involved and the results obtained, and the fee customarily charged in the locality for similar legal services.

The Howells note that the billing records stipulated to show that the Gordon, Arata firm charged $390.00/hour for partner time, $285.00/hour for associate time, and $100.00/hour for paralegal time, as opposed to the Steeg firm['s] charges of $325.00/hour for partner time, $210.00/hour for associate time, and $145.00/hour for paralegal time. The Howells also argue that these rates are excessive and that the fees of Gordon, Arata are disproportionate to the amount involved in the controversy and the recovery made. While the Court regards the firm with a high level of skill and confidence, the legal fees charged are fairly high given the amount in controversy. Plaintiff's own claims adjuster testified at the trial that he elected to settle the case rather than continuing to spend money on what he determined had become a losing cause.

Given these factors, the Court determines that a reasonable attorney['s] fee for the Gordon Arata Firm would be $325/hour for partners, $250/hour for associates and $100/hour for paralegals. According to the Court's calculations, this would total attorney time in the amount of $139,182.50.

Further, Plaintiff paid costs through Gordon, Arata, totaling $36,835.11. These costs included approximately $8,500.00 for a second abstract on the disputed property. Thereafter, Plaintiff paid Drue [Fournet], a professional land man, accepted as an expert in the field of land titles a total of over $30,000.00 for his review of the abstract, on[-]site investigation, trial preparation, and testimony at trial. Given the amount in dispute, this likewise seems to be extremely high, and the Court will limit fees and costs associated with Mr. [Fournet] to $15,000.00. Consequently, the net costs awarded, including expert fees, is set at $20,704.61.

The Court[']s calculations are therefore as follows:

Paid by Plaintiff to settle claim, attributable to Howells-	$309,871.82
Attorney's fees to Steeg Law Firm-	16,435.65
Attorney's fees, costs and expert fee paid through Gordon Arata	159,887.11
Subtotal-	$486,194.58
Less settlement from law firm	220,000.00
NET DUE	$266,194.58

In addition, Plaintiff is entitled to legal interest on the amount paid to settle the claim from the date of such payment, and for the remainder awarded herein from date of judicial demand.

Judgment to be prepared by Plaintiff and circulated to counsel for the Howells.

Amite, Louisiana, this 17th day of March, 2016.

/s/ Robert H. Morrison, III

Judge, Division "C"