

IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

TRIAL PRACTICES, INC.,
Petitioner,

vs.

HAHN LOESER & PARKS, LLP, as
substitute party for Jack J. Antaramian,
Respondent.

CASE NO.: SC17-2058

Lower Tribunal No(s):
2D13-6051; 2D14-86;
292006CA005366A001HC

AMENDED APPENDIX TO
PETITIONER'S INITIAL BRIEF ON THE MERITS

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May 9, 2018

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INDEX OF PETITIONER'S AMENDED APPENDIX
Case No. SC17-2058

This Amended Appendix is filed pursuant to this Court's order dated May 8, 2018, in support of Petitioner's Initial Brief. The Amended Appendix contains selected records from the consolidated appeals, Case Nos. 2D13-6051 and 2D14-86 (Appx. 1 through 3) and the Second Districts Opinion dated October 25, 2017 (Appx. 4), *Trial Practices, Inc. v. Hahn Loeser & Parks, LLP for Antaramian*, 228 So.3d 1184 (Fla. 2d DCA 2017). Petitioner will replace this Amended Appendix with pinpoint citation to the record of the Second District to be indexed by June 4, 2018.

CORRECTION: The citation on page 17 of the Initial Brief to Appx. 1 at AX004 (in the stricken Appendix) is at page 6 in this Amended Appendix.

Item	Filed Date	Instrument	Page
Appx. 1	12/17/2014	Confidential Settlement Agreement describing the treatment of claims held by Hahn Loeser & Parks, LLP against Antaramian Properties, LLC, Antaramian Family, LLC, and Antaramian Family Trust.	3 - 11
Appx. 2	12/17/2014	Assignment and Absolute Assignment of Judgment Between Jack J. Antaramian (Assignor) and Hahn Loeser & Parks, LLP (Assignee).	12 - 29
Appx. 3	7/7/2016	2d DCA Order substituting Hahn Loeser & Parks, LLP as the Appellee in Appeals 2D13-6051 and 2D14-86.	30 - 30
Appx. 4	10/25/2017	2d DCA Opinion— <i>Trial Practices, Inc. v. Hahn Loeser & Parks, LLP for Antaramian</i> , 228 So.3d 1184 (Fla. 2d DCA 2017)	31 - 39

JENNIS & BOWEN

ATTORNEYS

Chad S. Bowen

cbowen@jennisbowen.com

December 17, 2014

Via E-Mail -dad@hahnlaw.com
Via E-Mail -ttripp@hahnlaw.com

Daniel DeMarco
Theodore L. Tripp, Jr.
Hahn Loeser & Parks LLP
2400 First Street, Suite 300
Fort Myers, FL 33901

CONFIDENTIAL SETTLEMENT
COMMUNICATION SUBJECT TO PROTECTION UNDER
FEDERAL RULE EVIDENCE 408
AND OTHER APPLICABLE FEDERAL AND STATE LAW.

RE: In re Antaramian Properties, LLC - Case No. 9:14-bk-10145-FMD
In re Antaramian Family, LLC - Case No. 9:14-bk-10146-FMD
In re Antaramian Family Trust - Case No. 9:14-10148-FMD
(collectively, the "Bankruptcy Cases")

Dear Dan and Ted:

Following our recent discussions, please let this correspondence serve as a plan support agreement (this "Agreement") describing the treatment of claims held by Hahn Loeser & Parks LLP ("Hahn Loeser") against (1) the chapter 11 debtors, Antaramian Properties, LLC ("Properties"), Antaramian Family, LLC ("Family"), and Antaramian Family Trust ("Family Trust") (collectively, the "Debtors") in connection with the referenced Bankruptcy Cases and (2) the individuals, Jack and Mona Antaramian (collectively, the "Antaramians").

By signing this Agreement, the undersigned parties agree to be bound by its terms and may draft and execute such other documents as may be reasonably necessary to effectuate its terms, including without limitation, the releases and assignment contemplated herein. Moreover, in accordance with this Agreement, the Debtors shall file one or more amended chapter 11 disclosure statements and/or amended chapter 11 plans which shall include the material terms set forth herein (collectively, the "Amended Plan") on or before Wednesday, December 17, 2014, whereupon Hahn Loeser shall timely vote the full amount of its claim(s) in these Bankruptcy Cases to accept such Amended Plan and shall actively support the Debtors' effort to obtain timely confirmation of the Amended Plan. To the extent that the Amended Plan is further amended, modified, supplemented in any way after December 17, 2014, Hahn Loeser shall likewise vote the full amount of its claim(s) in these Bankruptcy Cases to accept any such Amended Plan and shall actively

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support the Debtors' effort to obtain timely confirmation of any Amended Plan, so long as the Amended Plan the Debtors seek to confirm is substantially consistent with the material terms of this Agreement.

This Agreement is being provided in confidence and should not, until further written notice from the Debtors, be discussed with or disclosed to any party or person other than you and Hahn Loeser's representatives. This Agreement is in furtherance of our continuing settlement discussions and is entitled to protection from any use or disclosure to any party or person pursuant to Federal Rule of Evidence 408 and other applicable rules of evidence. This Agreement is not intended to and does not constitute an offer with respect to any securities or a solicitation of votes for the Amended Plan for purposes of Sections 1125 and 1126 of the Bankruptcy Code.¹ Any such offer or solicitation will be conducted in accordance with the Bankruptcy Code and/or applicable securities laws. Notwithstanding the foregoing, the Debtors intend to file this Agreement in conjunction with, and as the basis for, the Amended Plan.

I. TREATMENT OF HAHN LOESER'S CLAIMS AND INTERESTS UNDER THE AMENDED PLAN

Subject to Hahn Loeser's execution of this Agreement where indicated below (and delivery of the same to the undersigned Debtors' counsel):

(A) The Antaramians will cause to be paid to Hahn Loeser the sum of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) on or before December 17, 2014 (the "Personal Payment");

(B) The Debtors will pay \$3 million in cash to Hahn Loeser on the Effective Date of the Debtors' confirmed chapter 11 plan (the "Plan Payment") on account of Hahn Loeser's Allowed Secured Claim.² The Debtors will fund that amount through an exit financing (likely from EFO Financial Group, LLC, with whom this matter has been discussed) and/or from the Debtors' cash on-hand on the Effective Date. The balance of Hahn Loeser's Allowed Claim after receipt of the \$3 million in cash set forth above shall be treated (and voted) as a general unsecured claim;

(C) As security for the Plan Payment, Jack Antaramian personally hereby assigns his entire right, title and interest in and to the judgment he owns against Trial Practices, Inc.,

¹ As you are well aware, the Debtors filed their Joint Plan of Reorganization of Antaramian Properties, LLC, Antaramian Family, LLC, and Antaramian Family Trust (Doc. No. 139) and Joint Disclosure Statement in Connection With Joint Plan of Reorganization of Antaramian Properties, LLC, Antaramian Family, LLC, and Antaramian Family Trust (Doc. No. 140), which has served as the basis for a settlement discussions to this point.

² All capitalized terms not specifically defined herein shall have the meaning ascribed to them in the Plan.

entered in Case No. 06-CA-005366, which is pending in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, together with all supplemental proceedings, complaints, causes of action, known and unknown, against any of the affiliates, successors or assigns of or from Trial Practices, Inc. (the "TPI Judgment"), subject to the existing charging lien filed in those proceedings, a copy of which is attached as Exhibit A, *provided however*, that Jack Antaramian shall remain solely responsible for, and shall timely pay, all costs and all attorney fees in the appeal from the TPI Judgment, including without limitation the costs and fees of Coleman Yovanovich Koester;

In the event the Debtors' Amended Plan is confirmed and the Plan Payment is made to Hahn Loeser, then Hahn Loeser shall thereupon assign to Jack Antaramian, or to any third party he directs in a signed writing, its interests in the TPI Judgment. In the event Hahn Loeser elects to settle, dismiss, or compromise the TPI Judgment before the Backstop Date (as defined below), then Hahn Loeser will be deemed to have elected to accept the same in full satisfaction of its Allowed Secured Claim against the Debtors and to have waived its right to receive the Plan Payment from the Debtors pursuant to the Amended Plan;

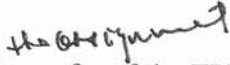
In the event the Debtors are not able to confirm an Amended Plan and make the Plan Payment by the earlier of (i) March 31, 2015; (ii) the conversion or dismissal of any of the Bankruptcy Cases; (iii) the appointment of a trustee or of an examiner with extended powers for any of the Debtors; (iv) stay relief affecting a substantial portion of the Debtors' tangible assets that are necessary to the Debtors' successful reorganization pursuant to the Amended Plan being granted to PZS, Knightsbridge, NBR Shoppes, or NB Financial; (v) the sale of any substantial portion of the Debtors' assets being approved; (vi) the sale of (A) any membership units in any of the Debtors, (B) the Developer Rights, the Shared Facilities, the Commercial Component or any portion thereof; or (C) residential units, hotel condominiums or boat slips other than in the ordinary course of business, being approved (the "Backstop Date"), then Hahn Loeser shall be deemed to be released from any obligation hereunder to assign its interest in or to the TPI Judgment. To ensure timely performance, the parties shall draft and execute such additional documents as may be necessary to ensure that the Parties' respective obligations are met with respect to the TPI Judgment;

(D) In the event the Debtors fail to make the Plan Payment by the Backstop Date, and one year and one day pass after the later of the transfer of the TPI Judgment and the Personal Payment, then the transfer of the TPI Judgment and the Personal Payment shall constitute a full and complete satisfaction of any claims of Hahn Loeser may have against the Antaramians;

(E) Notwithstanding the foregoing, however, Hahn Loeser shall retain its full claim against the Debtors until its claim(s) are fully satisfied as provided in a confirmed Amended Plan;

(F) If the Debtors' Amended Plan is confirmed, and the Debtors sell, assign or transfer all or a substantial portion of the assets (or their membership units) to or for the benefit of an unrelated third party during the twenty-four (24) months following the Effective Date for an amount that provides a payment to the Debtors' equity holder(s) that exceeds \$3 million (after repayment of all the Debtors' debts and related reasonable closing costs), Properties shall pay to Hahn Loeser one-half of any such amounts over \$3 million until Hahn Loeser receives the full balance of its claim (which the parties will agree for purposes of this Agreement is \$6,326,852.77), after crediting all amounts and other consideration previously received by Hahn Loeser. If during the twenty-four (24) months following the Effective Date, the Debtors do not sell, assign or transfer all or a substantial portion of the assets (or their membership units) for an amount that provides a payment to the Debtors' equity holder(s) that exceeds \$3 million (after repayment of all the Debtors' debts and related reasonable closing costs), at the end of that twenty-four (24) month period, Hahn Loeser shall have no more right, claim, or interest against the Debtors or their assets;

(G) Upon execution of this Agreement, Jack Antaramian and Mona Antaramian, for themselves and on behalf of all entities that they have the authority to bind, including their respective heirs, executors, administrators, parent, subsidiary, and/or affiliate entities, shareholders, officers, directors, joint venturers, trustees, receivers, attorneys, insurers, agents, servants, successors and assigns, hereby waive, release and forever discharge Hahn Loeser, and Hahn Loeser's current and former partners, employed attorneys, members, servants, agents, officers, directors, employees, affiliates, attorneys, insurers, trustees, receivers, successors, and assigns from any and all claims, demands, damages, actions, causes of action or suits of any kind of nature, whether known or unknown, whether existing or hereafter arising, or whatever nature of description, including without limitation those which are based directly or indirectly upon facts, events, transactions or occurrences related to, alleged, embraced by or otherwise referred to in connection with Hahn Loeser's representation of Jack Antaramian, Mona Antaramian, the Antaramian Family Trust, Antaramian Family LLC and/or Antaramian Properties, LLC. Upon execution of this Agreement, the Antaramians and Hahn Loeser shall promptly request the appropriate Court to abate the pending lawsuit against the Antaramians styled Hahn Loeser and Parks, LLP v. Antaramian Properties, LLC, et al., Case No. 2014-CA-002535, currently pending against the Antaramians in the Twentieth Judicial Circuit in and for Collier County, Florida;


Upon timely payment of the Personal Payment and transfer of the TPI Judgment, and the passing of one year and one day after the later of the transfer of the TPI Judgment and the Personal Payment, Hahn Loeser shall release the Antaramians from any and all claims

(except those arising under the Agreement). Hahn Loeser shall immediately thereupon (1) deliver the original promissory note, marked paid in full, to the Antaramians, and (2) dismiss, with prejudice, the pending lawsuit against the Antaramians styled Hahn Loeser & Park, LLP v Antaramian Properties, LLC, et. al., Case No. 2014-CA-002535 currently pending against the Antaramians in the Twentieth Judicial Circuit in and for Collier County, Florida. Hahn Loeser shall not issue the Antaramians a Form 1099 in connection with the satisfaction of the claims or the release;

(H) Upon confirmation of the Amended Plan and upon receipt of the Plan Payment prior to the Backstop Date, Hahn Loeser, on its own behalf and on behalf of its respective predecessors in interest, successors and assigns, hereby waives, releases and discharges the Debtors from any and all claims demands, rights, actions, causes of action, attorneys' fees, and costs, of any nature whatsoever, in law or in equity (except as provided in the Amended Plan, to be consistent with this Agreement) and the Debtors, on their own behalf and on behalf of their respective predecessors in interest, heirs, successors and assigns, shall each waive, release and forever discharge Hahn Loeser, and Hahn Loeser's current and former partners, employed attorneys, members, servants, agents, officers, directors, employees, affiliates, attorneys, insurers, trustees, receivers, successors, and assigns from any and all claims, demands, damages, actions, causes of action or suits of any kind of nature, whether known or unknown, whether existing or hereafter arising, or whatever nature of description, including without limitation those which are based directly or indirectly upon facts, events, transactions or occurrences related to, alleged, embraced by or otherwise referred to in connection with Hahn Loeser's representation of Jack Antaramian, Mona Antaramian, the Antaramian Family Trust, Antaramian Family LLC and/or Antaramian Properties, LLC. Hahn Loeser shall thereupon dismiss, with prejudice, the action styled Hahn Loeser & Parks, LLP v. Antaramian Properties, et. al., Case No. 14-CA-001465, which is pending in the Circuit Court of the Twentieth Judicial Circuit of the State of Florida, in and for Lee County;

(I) So long as the treatment of Hahn Loeser's claim is not materially inconsistent with the treatment as described in this Agreement, Hahn Loeser shall actively support the Debtors' Amended Plan(s) and will timely vote in favor of any Amended Plan on account of all of its claim(s) that provides the aforementioned treatment of Hahn Loeser and actively oppose any competing plans, including, without limitation, any plan filed by NB Financial, PZS, or a chapter 11 trustee. Moreover, Hahn Loeser will, upon request, support any objection by Debtors to the allowance of the claim of Jeff Jones and/or Blackhill Partners, LLC, described in the Disclosure Statement;

(J) Hahn Loeser will support the Amended Plan so long as it provides the foregoing treatment to Hahn Loeser to describe and effectuate the proposed treatment of Hahn Loeser's claim. In addition, in light of the Court's comments at the December 8, 2014 hearing, the Debtors anticipate amending the Plan and to materially modify the treatment provided to PZS, Knightsbridge, NBR Shoppes, and the general unsecured creditors

proposed in the initial Plan, which the Debtors represent can and shall be done in a manner that will not diminish the treatment to Hahn Loeser. Prior to the Backstop Date, Hahn Loeser will not solicit any further offers relating to the resolution of its claim, including, without limitation, any proposals from NBR Shoppes, Knightsbridge, PZS, or NB Financial;

(K) The Antaramians severally represent and warrant to each particular transferee (with respect to themselves and with respect to property in which that transferor has an ownership interest) as of the date of this Agreement and the date of transfer:

(i) Except for the Bankruptcy Cases, there are no bankruptcy, reorganization, or receivership proceedings pending, being contemplated by, or to the knowledge of transferor, threatened against any transferor;

(ii) There is (i) no litigation, arbitration proceeding, governmental investigation or (ii) other proceeding has been served on any transferor and is pending or is threatened that would adversely affect the interests being conveyed;

(iii) The TPI Judgment is wholly owned by Jack Antaramian and to the best of his knowledge, information or belief is not subject to any lien, claim, interest or encumbrance of any kind except for the single charging lien of record in those proceedings, a copy of which is attached as Exhibit A. The Parties acknowledge that, although no other lien exists to any Parties' knowledge, information or belief, third parties may seek to assert an interest in the TPI Judgment arising from (i) that certain *Amended Judgment of Attorney's Fees* (Doc. No. 410) in favor of PZS, entered by the Bankruptcy Court in the Adversary Proceeding styled *Antaramian Properties, LLC v. Basil Street Partners, LLC, et al.*, Adv. Proc. No. 9:12-ap-863-FMD, or (ii) potential claims involving Jeff Jones and/or Blackhill Partners. Notwithstanding the foregoing, however, none of the Parties to this Agreement believe, acknowledge, agree, or concede that liens or encumbrances exist in the TPI Judgment other than the aforementioned charging liens.

As principal of the Debtors, Jack Antaramian on behalf of the Debtors, represents and warrants that he is unaware of any act or omission that would give rise to any claim by any of the Debtors against Hahn Loeser and will not hereafter testify in a manner inconsistent with this representation and warranty.

Moreover, the Amended Plan will consider a number of provisions similar to the current version of the Plan. These are fairly standard provisions and probably do not warrant detailed discussion at this point. For example:

Daniel DeMarco
Theodore L. Tripp, Jr.
December 17, 2014
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The Plan may provide that the Debtors will retain any assets and causes of action not specifically conveyed to creditors, and will likewise reserve the right to object to claims after the Effective Date.

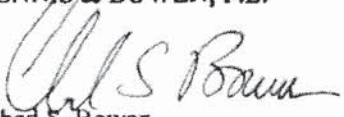
The Plan may provide for a "non-debtor release" of the Antaramians by all other creditors (remember, Hahn Loeser will be consensually releasing them as described above) in consideration of, among other things, their waiver of distribution rights under the Plan.

The Debtors may want to substantively consolidate their respective cases upon the Effective Date or may elect to file separate plans for the Debtors and will preserve the right to make that election prior to confirmation.

Please review the above terms carefully. If they are acceptable, please have a duly authorized representative of Hahn Loeser execute this Agreement below where indicated. Once we receive a signed copy from Hahn Loeser and the Debtors, we will prepare the Amended Plan and other documentation necessary to effectuate the terms of this Agreement. Copies of this Agreement shall constitute originals for all purposes and it can be executed in multiple counterparts, which together shall constitute a single instrument.

I look forward to your prompt response and your client's agreement so that we can continue to move towards confirmation and efficiently conclude these Bankruptcy Cases to the benefit of all stakeholders.

Sincerely,
JENNIS & BOWEN, P.L.


Chad S. Bowen

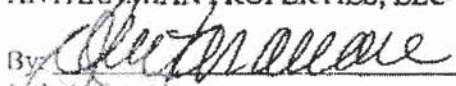
[SIGNATURES APPEAR ON NEXT PAGE]

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Daniel DeMarco
Theodore L. Tripp, Jr.
December 17, 2014
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ACKNOWLEDGED AND AGREED:

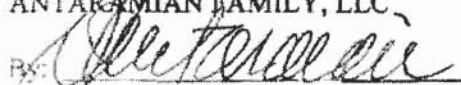
ANTARAMIAN PROPERTIES, LLC

By: 
Jack Antaramian
Its: Manager

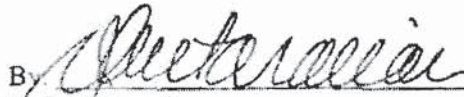
HAHN LOESER PARKS LLP

By: _____
Name: _____
Its: _____

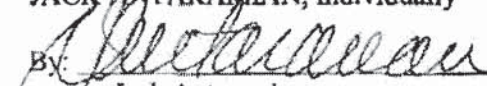
ANTARAMIAN FAMILY, LLC

By: 
Jack Antaramian
Its: Manager

ANTARAMIAN FAMILY TRUST

By: 
Jack Antaramian
Its: Trustee

JACK ANTARAMIAN, Individually

By: 
Jack Antaramian

MONA ANTARAMIAN, Individually

By: 
Mona Antaramian

Daniel DeMarco
Theodore L. Tripp, Jr.
December 17, 2014
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ACKNOWLEDGED AND AGREED:

ANTARAMIAN PROPERTIES, LLC

By: _____
Jack Antaramian
Its: Manager

HAHN LOESER PARKS LLP

By: Lawrence E. Oscar
Name: Lawrence E. Oscar
Its: CEO + Managing Partner

ANTARAMIAN FAMILY, LLC

By: _____
Jack Antaramian
Its: Manager

ANTARAMIAN FAMILY TRUST

By: _____
Jack Antaramian
Its: Trustee

JACK ANTARAMIAN, Individually

By: _____
Jack Antaramian

MONA ANTARAMIAN, Individually

By: _____
Mona Antaramian

THIS IS NOT A
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AGREEMENT AND ABSOLUTE ASSIGNMENT OF JUDGMENT

THIS ASSIGNMENT dated as of this 17th day of December, 2014,

BETWEEN: Jack J. Antaramian ("Assignor"),
and
Hahn Loeser & Parks LLP ("Assignee");

WHEREAS:

- (A) Trial Practices, Inc. (the "Debtor") is indebted to Assignor in a sum not less than of \$2,467,142.39 (together with interest and other charges and additional attorneys' fees as may be permitted by the Judgment (as defined below) and Florida law, the "Debt"), as evidenced by that certain judgment dated December 19, 2013 entered in Case No. 06-CA-005366 (the "Case") in the Circuit Court of the Thirteenth Judicial District in and for Hillsborough County, Florida (the "Court") against the Debtor and in favor of Assignee (the "Judgment"), with the Judgment lien recorded on December 20, 2013 in Official Record Book 22324, Page 525 (Instrument No. 2013474567), in the Public Records of Hillsborough County, Florida, subsequently re-recorded on April 10, 2014 in Official Record Book 22513, Page 660 (Instrument No. 2014119265), in the Public Records of Hillsborough County, Florida and also recorded April 4, 2014 with the State of Florida Secretary of State (the "Secretary of State") as Judgment Lien Certificate J14000426089 (collectively, the "Judgment Lien"); and
- (B) Assignor desires to transfer by way of an absolute and irrevocable assignment to Assignee, and Assignee desires to receive an absolute and irrevocable assignment of the Judgment, Judgment Lien and the corresponding Debt, including without limitation any other rights and remedies against any and all of Trial Practices, Inc., Trial Simulations, Inc., Trial Visualization, Inc., Harvey Moore and Associates, Inc. and Harvey Moore (together with their heirs, personal representatives, successors and assigns, the "Liable Parties") arising from or related to the Case, the Judgment, Judgment Lien and the corresponding Debt;

NOW THEREFORE in consideration of the recitals, the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

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1. Assignor hereby absolutely and irrevocably assigns, sells, conveys, transfers and sets over unto Assignee the Judgment, Judgment Lien and the corresponding Debt, including without limitation any other rights and remedies against any and all of the Liable Parties arising from or related to the Case, the Judgment, the Judgment Lien and/or the corresponding Debt.
2. Assignor hereby represents, warrants, covenants and agrees that the Debt is justly and truly owed by the Debtor to the Assignor, and that the full amount of the Debt as evidenced by the Judgment and the Judgment Lien is and remains unpaid, due and owing, together with interest as provided in the Judgment and other charges as may be permitted under Florida law.
3. Assignor hereby represents and warrants to Assignee that (a) he is the sole owner of the entire Judgment, Judgment Lien and corresponding Debt; (b) he has not assigned, sold or otherwise transferred to any person or entity the Judgment, Judgment Lien and corresponding Debt (or any part thereof) or any other claims, causes of action, rights and/or remedies against any of the Liable Parties; or (c) he has not waived, released or discharged the Judgment, Judgment Lien or the corresponding Debt or any Liable Party responsible or liable for said Judgment, Judgment Lien and corresponding Debt or any other claims, causes of action, rights and/or remedies against any of the Liable Parties.
4. Assignor hereby represents and warrants that the Judgment, Judgment Lien and corresponding Debt are not subject to any lien, claim, encumbrance or interest other than as identified in paragraphs (C) and (K)(iii) of that certain letter agreement dated of even date herewith (December 17, 2014) by and between Assignor and Assignee, among others.
5. Assignor hereby represents and warrants that he has no agreement, oral or written, with or obligation to any of the Liable Parties that adversely affects the Judgment, Judgment Lien or corresponding Debt. Until such time as the full amount of the Debt is received by Assignee, Assignor agrees that he shall not pursue, and shall not cause or assist any affiliated person or entity, including persons and entities employed or engaged by Assignor or under control of Assignor to pursue, any Liable Party for any monetary or other damages that may have an adverse effect on the ability of Assignee to collect the full amount of the Debt.
6. Assignor hereby agrees to cooperate with Assignor in connection with Assignor's pursuit of payment of the Debt as evidenced by the Judgment and the Judgment Lien. If Assignor or any person or entity employed or engaged by or under control of Assignor receives any payment from any Liable Party or any other person or entity related to the Judgment, Judgment Lien and/or the corresponding Debt on or after the date of this Agreement, Assignor shall hold, or shall cause to be held, said

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payment in trust for the benefit of Assignor and immediately deliver said payment to Assignor.

7. Contemporaneously with the execution and delivery of this Agreement by the parties, Assignor shall execute and deliver to Assignee (a) that certain "Assignment of Judgment" in the form attached hereto as Exhibit "A-1" and incorporated herein by reference (the "Recordable Assignment"); (b) that certain Judgment Lien Amendment Statement in the form attached hereto as Exhibit "A-2" and incorporated herein by reference (the "Recordable Amendment"); and (c) that certain Stipulation for Substitution of Party Plaintiff in the form attached hereto as Exhibit "A-3" and incorporated herein by reference (the "Stipulation"). Assignor hereby authorizes Assignee to file the Recordable Assignment with the Court; record a copy of the Recordable Assignment in the Public Records of Hillsborough County, Florida; file the Recordable Amendment with the Secretary of State; and file the Stipulation with the Court. In addition, Assignor hereby represents, warrants, covenants and agrees that at the request of Assignee and without any additional consideration, Assignor shall execute and deliver to Assignee any other and further document, instrument, pleading or agreement Assignee may from time to time reasonably request to evidence the assignment of all of his right, title and interest in respect of the Judgment, Judgment Lien and the corresponding Debt assigned by this Agreement.
8. Assignor acknowledges and agrees that, after the date of this Agreement, Assignor shall not take any action to collect the Debt.
9. It is the express intent of the parties that this Agreement, which resulted out of free negotiations, and for which each party had the opportunity to obtain the advice and representation of counsel of his, her or its own choosing, is valid, binding and enforceable under the laws of the State of Florida. This Agreement itself may be used as evidence in subsequent proceedings in which any party alleges a breach of this Agreement.
10. This Agreement shall be governed by the laws of the State of Florida. The parties agree that exclusive venue with respect to any litigation arising out of relating to this Agreement shall be the State Courts in Lee County, Florida. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.
11. The non-individual party represents and declares to each other party that the person signing this Agreement on its behalf is duly authorized to do so and to bind it with respect to all covenants, representations, agreements, releases and declarations contained in this Agreement. Each individual party represents and declares to each other party that he or she has the capacity and legal right and authority to sign this

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Agreement and bind himself or herself with respect to all covenants, representations, agreements, releases and declarations contained in this Agreement.

12. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement. To facilitate execution and delivery of this Agreement, the parties may execute and exchange executed counterparts by facsimile or e-mail in a PDF file to the other party or to the other party's counsel. Facsimile or signatures in a PDF file shall have the same legal effect as original signatures.
13. No waiver of any provision of this Agreement shall be effective unless it is in writing signed by the party against whom it is asserted, and any waiver of any provision of this Agreement shall be applicable only to the specific instance to which it is related and shall not be deemed to be a continuing or future waiver as to such provision or a waiver as to any other provision.
14. In the event of any litigation arising from or related to this Agreement, the prevailing party shall be entitled to reimbursement of attorneys' fees and costs incurred at all proceedings, including, without limitation, before trial, at trial and all appellate levels, from the non-prevailing party.

[signature pages follow]

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CERTIFIED COPY

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of
the date first above written.

WITNESSES:

ASSIGNOR:

JACK J. ANTARAMIAN
Print Name: JACK J. ANTARAMIAN

RENAE D FLIFLET
Print Name: RENAE D FLIFLET

ASSIGNEE:

HAHN LOESER & PARKS LLP,
an Ohio limited liability partnership

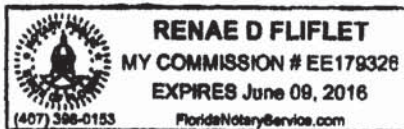
Print Name: _____

By: _____
Lawrence E. Oscar, Managing Partner and
Chief Executive Officer

Print Name: _____

STATE OF Florida
COUNTY OF Collier

Before me, a Notary Public, the foregoing instrument was acknowledged this 23rd day of
December, 2014, by JACK J. ANTARAMIAN, who X is personally known to me or who
____ has produced a driver's license as identification, and who did not take an oath.



RENAE D FLIFLET
Notary Public

My Commission Expires: June 09, 2016

THIS IS NOT A CERTIFIED COPY

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of
the date first above written.

WITNESSES:

ASSIGNOR:

JACK J. ANTARAMIAN
Print Name: JACK J. ANTARAMIAN

Renae D Fliflet
Print Name: RENAE D FLIFLET

ASSIGNEE:

HAHN LOESER & PARKS LLP,
an Ohio limited liability partnership

Alda M. Tavares
Print Name: Alda M. Tavares

By: Lawrence E. Oscar
Lawrence E. Oscar, Managing Partner and
Chief Executive Officer

Helena M. Hoogstraten
Print Name: HELENA M. HOOGSTRA滕

STATE OF Florida
COUNTY OF Collier

Before me, a Notary Public, the foregoing instrument was acknowledged this 23rd day of
December, 2014, by JACK J. ANTARAMIAN, who X is personally known to me or who
— has produced a driver's license as identification, and who did not take an oath.



Renae D Fliflet
Notary Public

My Commission Expires: June 09, 2016

THIS IS NOT A CERTIFIED COPY

STATE OF _____
COUNTY OF _____

Before me, a Notary Public, the foregoing instrument was acknowledged this ____ day of December, 2014, by Lawrence E. Oscar, Managing Partner and Chief Executive Officer of Hahn Loeser & Parks LLP, an Ohio limited liability partnership, on behalf of said partnership, who ___ is personally known to me or who ___ has produced a driver's license as identification, and who did not take an oath.

Notary Public

My Commission Expires:

DISCLAIMER

I, Mona Antaramian, acknowledge that I have no right, title or interest in or to the Judgment, Judgment Lien or the corresponding Debt assigned by this Agreement, and hereby disclaim any such right, title or interest.

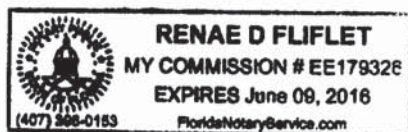
WITNESSES:

Debra Antaramian Mona Antaramian
Print Name: DEBRA ANTARAMIAN MONA ANTARAMIAN

Renae D. Fliflet
Print Name: Renae Fliflet

STATE OF Florida
COUNTY OF Collier

Before me, a Notary Public, the foregoing instrument was acknowledged this 23rd day of December, 2014, by MONA ANTARAMIAN, who X is personally known to me or who ___ has produced a driver's license as identification, and who did not take an oath.



Renae D. Fliflet
Notary Public

My Commission Expires: June 09, 2016

THIS IS NOT A CERTIFIED COPY

STATE OF Ohio
COUNTY OF Cuyahoga

Before me, a Notary Public, the foregoing instrument was acknowledged this 24th day of December, 2014, by Lawrence E. Oscar, Managing Partner and Chief Executive Officer of Hahn Loeser & Parks LLP, an Ohio limited liability partnership, on behalf of said partnership, who X is personally known to me or who has produced a driver's license as identification, and who did not take an oath.



ALDA M. TAVARES
Notary Public, State of Ohio
My Commission Expires
October 17, 2016
Recorded in Geauga County

Alda M. Tavares
Notary Public

My Commission Expires: 10.17.2016

DISCLAIMER

I, Mona Antaramian, acknowledge that I have no right, title or interest in or to the Judgment, Judgment Lien or the corresponding Debt assigned by this Agreement, and hereby disclaim any such right, title or interest.

WITNESSES:

[Signature]
Print Name: MONA ANTARAMIAN MONA ANTARAMIAN

[Signature]
Print Name: RENAE D FLIFLET

STATE OF Florida
COUNTY OF Collier

Before me, a Notary Public, the foregoing instrument was acknowledged this 23rd day of December, 2014, by MONA ANTARAMIAN, who X is personally known to me or who has produced a driver's license as identification, and who did not take an oath.



[Signature]
Notary Public

My Commission Expires: June 09, 2016

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EXHIBIT A-1

RECORDABLE ASSIGNMENT

THIS IS NOT A
CERTIFIED COPY

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR
HILLSBOROUGH COUNTY, FLORIDA

TRIAL PRACTICES, INC.,
Plaintiff,

vs.
JACK J. ANTARAMIAN,

Defendant.

Case No. 06-CA-005366
Division L
Complex Litigation Division

Case No. 13-CA-005139

CONSOLIDATED CASE

JACK J. ANTARAMIAN,
Plaintiff,

vs.
TRIAL PRACTICES, INC., a Florida corporation,
TRIAL SIMULATIONS, INC., a Florida
corporation, TRIAL VISUALIZATION, INC.,
a Florida corporation, HARVEY MOORE AND
ASSOCIATES, INC., a Florida corporation, and
HARVEY MOORE, an individual,
Defendants.

ASSIGNMENT OF JUDGMENT

Jack J. Antaramian, 1530 Fifth Avenue South, #207, Naples, Florida 34102 ("Assignor") has assigned to Hahn Loeser & Parks LLP, 200 Public Square, Suite 2800, Cleveland, Ohio 44114 ("Assignee") all of Assignee's rights under that certain judgment dated December 19, 2013 entered in the above-referenced Case No. 06-CA-005366 in the Circuit Court of the Thirteenth Judicial District in and for Hillsborough County, Florida against Trial Practices, Inc. (the "Judgment"), together with any related debt, claim or lien, including without limitation the Judgment lien recorded on December 20, 2013 in Official Record Book 22324, Page 525 (Instrument No. 2013474567), in the Public Records of Hillsborough County, Florida, subsequently re-recorded on April 10, 2014 in Official Record Book 22513, Page 660 (Instrument No. 2014119265), in the Public Records of Hillsborough County, Florida.

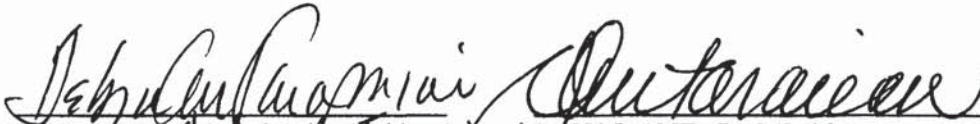
The assignment of this Judgment referenced above includes an assignment of the Judgment Lien Certificate recorded April 4, 2014 with the State of Florida Secretary of State as Judgment Lien Certificate J14000426089.

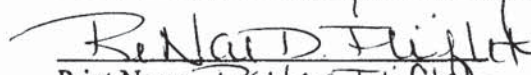
[Signature page follows]

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WITNESSES:

ASSIGNOR:


Print Name: ~~DEBRA ANTARAMIAN~~ JACK J. ANTARAMIAN


Print Name: ~~RENAE FICKET~~

CHEFFY PASSIDOMO, P.A.
P.A.

COLEMAN, YOVANOVICH & KOESTER,

By: _____
Edward K. Cheffy
Co-counsel for Assignor

By: _____
Edmond E. Koester
Co-counsel for Assignor

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EXHIBIT A-2

RECORDABLE AMENDMENT

THIS IS NOT A

JUDGMENT LIEN AMENDMENT STATEMENT

THE FOLLOWING INFORMATION IS SUBMITTED IN ACCORDANCE WITH § 55.206, FLORIDA STATUTES, TO AMEND INFORMATION SHOWN ON THE RECORDS OF THE DEPARTMENT OF STATE.

JUDGMENT DEBTOR(S)

- 1.
- JUDGMENT DEBTOR (DEFENDANT) NAME AS SHOWN ON THE RECORDS OF THE DEPARTMENT OF STATE:**

Trial Practices, Inc.

INDIVIDUAL OR BUSINESS ENTITY NAME

101 E. Kennedy, Suite 3040

MAILING ADDRESS

Tampa

CITY

FL

ST

33602

ZIP

- 2.
- ADDITIONAL JUDGMENT DEBTOR, IF APPLICABLE:**

INDIVIDUAL OR BUSINESS ENTITY NAME

MAILING ADDRESS

CITY

ST

ZIP

JUDGMENT CREDITOR(S)

- 3.
- JUDGMENT CREDITOR (PLAINTIFF) NAME AS SHOWN ON THE RECORDS OF THE DEPARTMENT OF STATE:**

Jack J. Antaramian

CREDITOR NAME(S)

1530 Fifth Avenue South, #207

MAILING ADDRESS

Naples

CITY

FL

ST

34102

ZIP

DO NOT PHOTOCOPY THIS FORM PRIOR TO USE.
BAR CODE MUST BE LEGIBLE.

THIS SPACE FOR USE BY FILING OFFICER

- 4.
- J14000426089

ENTER FILE NUMBER ASSIGNED TO ORIGINAL JUDGMENT LIEN BY DEPARTMENT OF STATE

- 5.
- 04/14/2014

DATE JUDGMENT LIEN FILED WITH DEPARTMENT OF STATE

- 6.

☐

AMENDMENT

THE JUDGMENT LIEN BEARING THE FILE NUMBER INDICATED ABOVE IS AMENDED AS SET FORTH BELOW.

☐

PARTIAL RELEASE

THE JUDGMENT LIEN BEARING THE FILE NUMBER INDICATED ABOVE HAS BEEN PARTIALLY RELEASED AND THE VALUE OF THE LIEN REMAINING UNPAID AS OF THE DATE OF THIS STATEMENT \$ _____.

☒

ASSIGNMENT

ALL OF THE JUDGMENT CREDITOR'S RIGHTS UNDER THE JUDGMENT LIEN CERTIFICATE INDICATED ABOVE HAVE BEEN ASSIGNED TO THE NEW JUDGMENT LIENOWNER WHOSE NAME AND ADDRESS ARE LISTED BELOW.

☐

TERMINATION

THE JUDGMENT CREDITOR NO LONGER CLAIMS A LIEN ON THE PERSONAL PROPERTY UNDER THE JUDGMENT LIEN BEARING THE NUMBER INDICATED ABOVE.

- 7.
- SHOW NAME AND ADDRESS OF ASSIGNEE AND/OR AMENDMENT INFORMATION HERE: (ATTACH PAGE, IF NECESSARY)**

Hahn Loeser & Parks LLP
200 Public Square, Suite 2800
Cleveland, OH 44114
Attention: General Counsel

UNDER PENALTY OF PERJURY, I hereby certify that: (1) All of the information set forth above is true, correct, current and complete; and (2) I have complied with all applicable laws in submitting this Judgment Lien Amendment Statement for filing.

Signature of Judgment Creditor or Authorized Representative

Jack J. Antaramian

Printed Name

OWNER'S ATTORNEY OR AUTHORIZED REPRESENTATIVE TO WHOM ACKNOWLEDGMENT/CERTIFICATION OF FILING WILL BE MAILED.

Robert Frazitta

NAME

Antaramian Properties, LLC, P.O. Box 2307

MAILING ADDRESS

Naples

CITY

FL

ST

34106

ZIP

NON-REFUNDABLE PROCESSING FEE:

JUDGMENT LIEN AMENDMENT STATEMENT \$20.00

EACH ATTACHED PAGE, IF NECESSARY \$ 5.00
IF MORE THAN ONE DEBTOR BEING ADDED, FOR EACH ADDITIONAL \$5.00CERTIFIED COPY REQUESTED \$10.00 ☒

CR2E094 (10/09)

Division of Corporations • P.O. Box 6250 • Tallahassee, FL 32314 • 850-245-6011
Make Checks Payable to: Florida Department of State

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EXHIBIT A-3

STIPULATION

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR
HILLSBOROUGH COUNTY, FLORIDA CIVIL ACTION

TRIAL PRACTICES, INC.,

Plaintiff,

vs.

Case No. 06-CA-005366

JACK J. ANTARAMIAN,

Division L
Complex Litigation Division

Defendant.

Case No. 13-CA-005139

JACK J. ANTARAMIAN,

CONSOLIDATED CASE

Plaintiff,

vs.

TRIAL PRACTICES, INC., a Florida corporation,
TRIAL SIMULATIONS, INC., a Florida
corporation, TRIAL VISUALIZATION, INC.,
a Florida corporation, HARVEY MOORE AND
ASSOCIATES, INC., a Florida corporation, and
HARVEY MOORE, an individual,

Defendants.

STIPULATION FOR SUBSTITUTION OF PARTY PLAINTIFF

JACK J. ANTARAMIAN and HAHN LOESER & PARKS LLP hereby file their
Stipulation to the entry of an Order Substituting HAHN LOESER & PARKS LLP as the
Plaintiff in the above captioned matter and state:

THIS IS NOT A

1. That certain Judgment dated December 19, 2013, together with all liens arising from the Judgment, and all rights, claims, causes of action or interest arising from or related that Judgment have been assigned by JACK J. ANTARAMIAN to HAHN LOESER & PARKS LLP.

2. Because of this Assignment, the parties stipulate to the entry of the following Order substituting HAHN LOESER & PARKS LLP as Plaintiff.

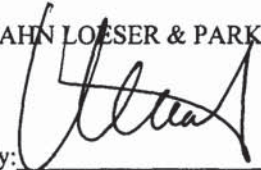
WHEREFORE, and by reason of the foregoing, the parties pray this Honorable Court will enter the following Order.


Jack J. Antaramian

CHEFFY PASSIDOMO, P.A.
P.A.

By: _____
Edward K. Cheffy

HAHN LOESER & PARKS LLP


By: _____
Theodore L. Tripp, Jr.

COLEMAN, YOVANOVICH & KOESTER,

By: _____
Edmond E. Koester

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7117011.2

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR
HILLSBOROUGH COUNTY, FLORIDA
CIVIL ACTION

TRIAL PRACTICES, INC.,

Plaintiff,

vs.

Case No. 06-CA-005366

JACK J. ANTARAMIAN,

Division L
Complex Litigation Division

Defendant.

Case No. 13-CA-005139

JACK J. ANTARAMIAN,

CONSOLIDATED CASE

Plaintiff,

vs.

TRIAL PRACTICES, INC., a Florida corporation,
TRIAL SIMULATIONS, INC., a Florida
corporation, TRIAL VISUALIZATION, INC.,
a Florida corporation, HARVEY MOORE AND
ASSOCIATES, INC., a Florida corporation, and
HARVEY MOORE, an individual,

Defendants.

ORDER GRANTING SUBSTITUTION OF PARTY PLAINTIFF

THIS CAUSE came on before the Court upon the foregoing Stipulation. The Court having been advised that the claims of the Plaintiff against TRIAL PRACTICES, INC., as well as any claims, causes of action or rights arising therefrom or related thereto

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have been assigned by JACK J. ANTARAMIAN to HAHN LOESER & PARKS LLP, it is thereupon

ORDERED AND ADJUDGED that HAHN LOESER & PARKS LLP be and it is hereby substituted as the Plaintiff for all purposes in the above captioned matter.

DONE AND ORDERED in Chambers at Tampa, Hillsborough County, Florida, this ____ day of December, 2014.

Circuit Court Judge

Conformed copies furnished to:

G. DONOVAN CONWELL, JR., ESQUIRE
JOHN F. ROMANO, ESQUIRE
EDMOND E. KOESTER, ESQUIRE
EDWARD K. CHEFFY, ESQUIRE

Pursuant to Rule 1.080, Florida Rules of Civil Procedure, conformed copies have been mailed to the above addressees this ____ day of _____, 2014.

By: _____
Judicial Assistant to Judge

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

July 7, 2016

****CONSOLIDATED****

CASE NO.: 2D13-6051

CASE NO.: 2D14-86

L.T. No. : 06-CA-005366

Trial Practices, Inc.

v. Hahn, Loeser & Parks, L L P Et Al.,

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

The motion to substitution of Hahn, Loeser & Parks, LLP, for appellee, Jack J. Antaramian is granted. Hahn, Loeser & Parks, LLP, is hereby substituted as the appellee in this appeal.

If at any time during the remainder of this appeal a claim or issue is raised requiring the participation of the estate of Jack J. Antaramian, the affected person may file an appropriate motion pursuant to Florida Rule of Appellate Procedure 9.360(c)(3).

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

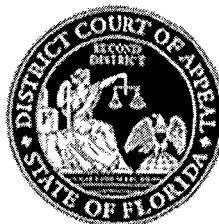
G. Donovan Conwell, Jr., Esq.
Matthew M. Jackson, Esq.
Rebecca M. Vaccariello, Esq.

G. Wrede Kirkpatrick, Esq.
Joseph D. Stewart, Esq.
Edmond E. Koester, Esq.

Leo J. Salvatori, Esq.
Pat Frank, Clerk

ec

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk





KeyCite Yellow Flag - Negative Treatment

Review Granted by Trial Practices, Inc. v. Hahn Loeser & Parks, LLP,
Fla., April 3, 2018

228 So.3d 1184

District Court of Appeal of Florida,
Second District.

TRIAL PRACTICES, INC., Appellant,

v.

HAHN LOESER & PARKS, LLP, as Substitute
party FOR Jack J. ANTARAMIAN, Appellee.

Case Nos. 2D13-6051, 2D14-86

|

Opinion filed October 25, 2017

Synopsis

Background: Trial consultant filed action against former client to recover unpaid fees for services rendered. Law firm was substituted for former client following his death. The Circuit Court, Hillsborough County, Herbert J. Baumann, Jr., J., entered judgment in favor of former client and awarded him prevailing party attorney fees, costs, and prejudgment interest. Consultant appealed.

Holdings: The District Court of Appeal, Morris, J., held that:

[1] former client was entitled to recover attorney fees and costs incurred in litigating entitlement to and amount of attorney fees under fee-shifting provision in consulting agreement;

[2] former client was entitled to recover, as costs, fees he paid to witnesses for their assistance with case and discovery preparation;

[3] trial court erred in failing to itemize costs awarded to former client; and

[4] former client was entitled to recover his attorneys' overhead expenses under fee-shifting provision in consulting agreement.

Affirmed in part, reversed in part, and remanded; question certified.

West Headnotes (8)

[1] Costs

🔑 Contracts

Former client, as prevailing party in breach of contract action brought by trial consultant, was entitled to recover from consultant attorney fees and costs incurred in litigating the issues of his entitlement to and amount of attorney fees, under broad fee-shifting provision permitting "prevailing party in any action arising from or relating to" the consulting agreement to recover "all expenses of any nature incurred in any way," including attorney fees.

Cases that cite this headnote

[2] Costs

🔑 Contracts

Parties may freely contract on the issue of attorney fees, and the court will not rewrite a contract in order to relieve a party of the result of its obligation under such an agreement.

Cases that cite this headnote

[3] Costs

🔑 Contracts

Former client was entitled to recover, as prevailing party costs, the fees he paid to witnesses for their assistance with breach of contract action brought by trial consultant and discovery preparation, under fee-shifting provision in consulting agreement permitting prevailing party in action arising from consulting agreement to recover all expenses, though former client was not entitled to pay attorney fact witnesses at expert witness rates. Fla. Stat. Ann. § 92.142; Fla. Bar Rule 4-3.4(b).

Cases that cite this headnote

[4] Appeal and Error

 Verdict, findings, and judgment

Trial court erred in failing to itemize costs awarded to former client, as prevailing party in breach of contract action brought by trial consultant, under fee-shifting provision in consulting agreement permitting prevailing party in action arising from consulting agreement to recover all expenses, and thus remand was warranted; trial court disallowed costs related to former client's office overhead expenses, it was unclear costs trial court deemed taxable and which it deemed nontaxable, and absent itemization, award could be interpreted to include costs for disallowed expenses.

Cases that cite this headnote

[5] Costs Duties and proceedings of taxing officer

Where a trial court reviews a motion to tax costs, it should consider each item of cost and determine whether it should be allowed in whole or in part or disallowed.

Cases that cite this headnote

[6] Appeal and Error Costs and fees

A trial court's failure to itemize costs, especially where a motion to tax costs is denied in part, can result in a reversal.

Cases that cite this headnote

[7] Costs Contracts

Former client, as prevailing party in breach of contract action brought by trial consultant, was entitled to recover from overhead expenses former client's attorneys incurred, including postage, office supplies, and travel expenses, under broad fee-shifting provision permitting "prevailing party in any action arising from or relating to" the consulting agreement to recover "all expenses of any nature incurred in any way," including attorney fees, though consultant asserted that

such expenses were nontaxable as they were not reasonably necessary to prosecute or defend the case, since those expenses fell within broad scope of fee-shifting provision and did not exist independently of action.

Cases that cite this headnote

[8] Interest Particular cases and issues

Fees awarded pursuant to a prevailing party fee provision in a contract are not damages because the party requesting them is not entitled to the fees until he becomes the prevailing party, and therefore, prejudgment interest does not accrue prior to the date that entitlement to attorney fees is fixed by agreement, an arbitration award, or by a court determination.

Cases that cite this headnote

***1185** Appeal from the Circuit Court for Hillsborough County; Herbert J. Baumann, Jr., Judge.

Attorneys and Law Firms

G. Donovan Conwell, Jr., of Conwell Business Law, P.A., Tampa, for Appellant.

***1186** Edmond E. Koester of Coleman, Yovanovich & Koester, P.A., Naples, for Appellee.

Opinion**BY ORDER OF THE COURT:**

Upon consideration of the appellant's motion for clarification filed April 27, 2017, it is

ORDERED that the appellant's motion for clarification is granted as it relates to the issues of the trial court's cost award including reimbursement for payments made to fact witnesses for their assistance with case and discovery preparation. The appellant's motion to certify questions of great public importance is granted in part. However, we deny both the appellant's motion for rehearing and motion for rehearing en banc. Accordingly, we withdraw our prior

opinion of April 12, 2017, and substitute this opinion in its place.

MORRIS, Judge.

Trial Practices, Inc. (TPI), appeals a final judgment awarding attorneys' fees, costs, and prejudgment interest to Hahn Loeser & Parks, LLP (Hahn), as substituted for Jack J. Antaramian who is deceased. The underlying litigation began when TPI brought suit against Antaramian to recover fees it alleged it was owed for various trial support services that TPI provided to Antaramian in his suit against a third party. Antaramian successfully defended against TPI's suit, and as a result, he sought prevailing party attorneys' fees and costs in the trial court.¹ Ultimately, the trial court awarded him prevailing party attorneys' fees, costs, and prejudgment interest.

On appeal, TPI argues that the trial court erred by awarding attorneys' fees and costs for litigating the amount of attorneys' fees. As will be discussed herein, we disagree with that argument and we therefore affirm that portion of the award. TPI also argues that Hahn is not entitled to prevailing party attorneys' fees because Antaramian improperly paid expert witness fees to fact witnesses. And TPI challenges the inclusion of overhead expenses within the cost award. While we find no error in the trial court's ultimate conclusion regarding the propriety of payments to the fact witnesses for their assistance with case and discovery preparation or in the trial court's award of costs for overhead expenses to Antaramian's attorneys, we conclude that the trial court's failure to itemize an award of \$317,873.64 within the overall cost award requires reversal. We also agree with TPI that the trial court erred in awarding prejudgment interest running from the time the attorneys' fees and costs were incurred rather than from the time when they were awarded. Additionally, it is unclear whether the prejudgment interest award was based, in part, on disallowed office overhead expenses. Consequently, we must reverse the trial court's prejudgment interest award. We affirm all other issues without further comment.

BACKGROUND

In August 2005, TPI entered into its contract with Antaramian to perform litigation support services in Antaramian's lawsuit against a third party (the "Consulting Agreement"). TPI was required to assist

Antaramian and his counsel in preparing for trial and in presenting the case during trial. The Consulting Agreement required Antaramian to compensate TPI five percent of any gross recovery that Antaramian obtained as a result of a verdict in his favor or settlement. Ultimately, Antaramian and the third party settled the *1187 lawsuit with each party agreeing to drop their claims against the other party. Thereafter, Antaramian refused to pay TPI the five percent fee pursuant to the Consulting Agreement under the theory that Antaramian did not obtain a gross recovery and, therefore, did not owe anything to TPI.

In June 2006, TPI sued Antaramian for breach of the Consulting Agreement. The issue to be decided was whether Antaramian obtained a gross recovery through his settlement with the third party thereby obligating him to pay TPI its fee. The jury returned a verdict in favor of Antaramian. TPI appealed, but this court affirmed the final judgment.

Antaramian then sought prevailing party attorneys' fees and costs pursuant in part to a provision in the Consulting Agreement. The provision provides in relevant part that the

prevailing party in any action arising from or relating to this agreement will be entitled to recover all expenses of any nature incurred in any way in connection with the matter, whether incurred before litigation, during litigation, in an appeal, ... or in connection with enforcement of a judgment, including, but not limited to, attorneys' and experts' fees.

Antaramian sought \$2,551,796.26, exclusive of prejudgment interest. After a hearing, the trial court granted Antaramian's motion, though in a reduced amount of \$2,004,432.58. The trial court also awarded prejudgment interest in the amount of \$462,709.81 "from the date the attorneys' fees and costs were incurred." Thus the total award was \$2,467,142.39.

In making the award, the trial court found that the majority of Antaramian's witnesses were fact witnesses and that Antaramian had improperly paid them as if they were expert witnesses, which was prohibited by section 92.142(1), Florida Statutes (2013). The trial court also

found that the prevailing party provision in the Consulting Agreement did not entitle Antaramian to recover the full amount paid to the fact witnesses because TPI could not have foreseen that Antaramian would have paid the witnesses at a rate higher than what they were entitled to be compensated. However, the court noted that the fact witnesses also “assisted in both case and discovery preparation” thereby rendering them consulting experts. Consequently, the trial court permitted Antaramian to recover “certain fees charged.” Those fees were apparently part of a \$317,873.64 cost award.

Additionally, the trial court found that Antaramian could recover attorneys' fees and costs for his attorneys' litigation of the issues of entitlement to and the amount of attorneys' fees and costs. The trial court explained that the attorneys' fees and costs provision in the Consulting Agreement is broad enough to encompass such an award.

The trial court also found that Antaramian was entitled to recover his costs incurred in connection with the action, but the court noted that the Consulting Agreement did not extend so far as to require payment for “an ‘overhead allocation’ of [Antaramian's] staff and rent paid on [his] behalf.” While the trial court awarded separate cost awards for various attorneys who represented Antaramian, TPI contends that the \$317,893.64 cost award erroneously includes or at least fails to indicate whether it includes \$255,000 of Antaramian's office overhead expenses which the trial court expressly disallowed.

ANALYSIS

I. Award of Attorneys' Fees and Costs for Litigating the Amount of Attorneys' Fees and Costs

[1] TPI challenges the award of \$40,346 which was the portion of the final ***1188** judgment attributed to Antaramian's attorneys' litigation of the issue of the amount of attorneys' fees and costs. TPI contends that Antaramian was not entitled to recover attorneys' fees and cost for litigating the amount of fees to be recovered,² even though a fee-shifting provision in the parties' contract provides that such fees and costs may be recovered.

[2] Both the Florida Supreme Court and this court have recognized that when parties are seeking attorneys' fees pursuant to a statute, the parties are not necessarily entitled to recover attorneys' fees for litigating the amount

of fees. See, e.g., State Farm Fire & Cas. Co. v. Palma, 629 So.2d 830, 833 (Fla. 1993); Wight v. Wight, 880 So.2d 692, 694 (Fla. 2d DCA 2004). But in this case, the attorneys' fees and costs were not awarded pursuant to a statute. Instead, they were awarded pursuant to the fee-shifting provision in the Consulting Agreement. And we agree with the trial court that the provision is broad enough to encompass the award of fees and costs for litigating the amount of attorneys' fees. Parties may “freely contract on the issue of attorney[s] fees,” Precision Tune Auto Care, Inc. v. Radcliffe, 815 So.2d 708, 710 (Fla. 4th DCA 2002), and we will not rewrite a contract in order to relieve TPI of the result of its obligation under the Consulting Agreement, see Beach Resort Hotel Corp. v. Wieder, 79 So.2d 659, 663 (Fla. 1995).

We are not persuaded by the cases cited by TPI: Oquendo v. Citizens Property Insurance Corp., 998 So.2d 636, 638 (Fla. 3d DCA 2008), Paladyne Corp. v. Weindruch, 867 So.2d 630, 634 (Fla. 5th DCA 2004), and Mangel v. Bob Dance Dodge, Inc., 739 So.2d 720, 723–24 (Fla. 5th DCA 1999). In those cases, the parties seeking the awards of fees relied on retainer agreements with their attorneys as the basis for the parties' recovery of fees from the opposing parties. But here, Antaramian did not rely on a retainer agreement with his counsel as the basis for recovery of attorneys' fees and costs. Rather, he relied on the Consulting Agreement which was an agreement between himself and TPI. As already discussed herein, the Consulting Agreement includes a very broad fee-shifting provision which permits an award of fees that were incurred by the prevailing party in any matter that is connected with the Consulting Agreement.

We find Waverly at Las Olas Condominium Ass'n v. Waverly Las Olas, LLC, 88 So.3d 386 (Fla. 4th DCA 2012), to be instructive to our case. In Waverly, a tenant sued a condominium association in a dispute over parking spaces, and the association filed a third-party complaint against the developer. After the third-party complaint was dismissed, the developer sought prevailing party attorneys' fees against the association pursuant in part to an agreement between the developer and the individual unit owners. As part of the fee request, the developer sought to recover fees that were expended on litigating the amount of fees. Id. at 388. Because the trial court concluded that the association's claims were all inextricably intertwined with one set of core facts, the trial

court awarded all fees incurred to the developer, including fees for time spent on litigating the amount. Id.

On appeal, the Fourth District upheld the fee award. The Fourth District explained that “[t]he various third-party complaints focused on a common core set of facts” and that although it might have been possible to apportion the fees between the breach of contract claims and ***1189** the other claims, “the broad language in the fee provision contemplate[d] its application to more than breach of contract claims.” Id. Specifically, the fee provision at issue in Waverly “provided for an award of fees for ‘any litigation between the parties under this Agreement.’” Id. The Fourth District also upheld the trial court's decision to award fees for litigating the amount of attorneys' fees. The court concluded that the contractual provision was “broad enough to encompass fees incurred in litigating the amount of fees.” Id. at 389. In doing so, the court distinguished Palma on the basis that it involved a request for fees pursuant to a statute. Waverly, 88 So.3d at 389.

Similarly here, the fee-shifting provision was drafted in such a way that it broadly encompasses all claims that were connected in any way to the Consulting Agreement. Further, the fee-shifting provision permits recovery of “all expenses of any nature incurred in any way” including attorneys' fees. Consequently, as the Fourth District did in Waverly, we conclude that the language in the fee-shifting provision is “broad enough to encompass fees incurred in litigating the amount of fees.” Id. We hold that the trial court did not err in including an award of attorneys' fees and costs for time spent on litigating the amount of fees.

II. The Cost Award's Inclusion of Recoverable Payments to Fact Witnesses for Assistance with Case and Discovery Preparation and Possible Inclusion of Antaramian's Office Overhead Expenses

[3] TPI argues that payment to the fact witnesses of more than \$5 per day violates section 92.142(1) and constitutes sanctionable conduct. Thus TPI contends that the trial court should have rejected Antaramian's total request for prevailing party attorneys' fees and costs based on this alleged misconduct. TPI also asserts that payment of prevailing party attorneys' fees and costs under these circumstances was not reasonably contemplated by the parties at the time they entered into the Consulting Agreement. TPI further contends that the trial court's award of costs improperly included Antaramian's office overhead expenses.

Below, the trial court agreed that attorneys who testify at trial as fact witnesses are not entitled to the same hourly fee as an expert witness and, instead, that they are entitled only to \$5 per day, the amount of witness compensation provided for in section 92.142. The trial court also agreed that the fee-shifting provision in the Consulting Agreement does not entitle Antaramian to recover the full amount paid to the attorney witnesses because TPI could not have foreseen that the witnesses would have been paid at a rate higher than that to which they were entitled. However, the trial court did permit recovery of “certain fees charged” by the witnesses because the trial court found that they also acted as consulting experts who “assisted in both case and discovery preparation.”

At the time of trial, rule 4–3.4(b) of the Rules Regulating the Florida Bar provided that a lawyer could pay witnesses in the following manner: “reasonable expenses incurred by the witness attending or testifying at proceedings; a reasonable noncontingent fee for professional services of an expert witness; and reasonable compensation to reimburse a witness for the loss of compensation incurred by reason of preparing for, attending, or testifying at proceedings.” Subsequently, in 2014, the rule was amended to omit the explicit reference to payment for loss of compensation. The relevant portion of the rule now provides that a lawyer may pay “reasonable compensation to a witness for time spent preparing for, attending, or testifying at proceedings.” R. Regulating Fla. Bar 4–3.4(b); ***1190** In re Amendments to the Rules Regulating the Fla. Bar, 140 So.3d 541, 567 (Fla. 2014). Notably, while eliminating the explicit reference to “loss of compensation,” the court left intact the portion of the rule permitting payment of reasonable compensation for the witness's time spent preparing for, attending, or testifying at the proceedings. Such payments have long been permitted as long as the payment is not conditioned on the content of the testimony. See ABA Formal Op. 96–402 (1996), Propriety of Payments to Occurrence Witnesses. Thus both versions of the rule acknowledge the value of a witness's time as it relates to preparing for, attending, and testifying at trial. And while the amended rule does not govern this case, we emphasize that neither version of the rule makes it unethical or illegal for a party to pay fact witnesses for their expenses incurred in attending or testifying at trial or reasonable compensation for their time spent in preparing for, attending, or testifying at trial.

In this case, Antaramian requested \$715,467.61 for legal expenses, litigation support, lodging, fuel, and airfare as listed in the spreadsheet attached to the affidavit of Robert Frazitta, Antaramian's controller. Of this amount, \$255,000 appears to be litigation support expenses as incurred by Antaramian Development Corporation of Naples (ADCN), which TPI argues were Antaramian's office overhead expenses that were nontaxable. This leaves an amount of \$460,467.61 in fees, expenses, and costs that were charged to Antaramian by other entities for legal services, litigation support, and related charges (such as lodging, fuel, and airfare). However, after considering this amount as well as the assistance provided by the fact witnesses in case and discovery preparation, the trial court found—consistent with rule 4–3.4(b)—that Antaramian could not recover all of the requested costs for the payments to the witnesses. Thus the trial court awarded Antaramian costs to recover his payments to the fact witnesses but did so in a reduced amount. The trial court awarded \$317,873.64 “with ... respect [to] fees, costs[,] and expenses for which Antaramian is indebted or has paid as testified to by Robert Frazitta and as introduced at the evidentiary hearing.”

We agree with the trial court's analysis of section 92.142 as well as the trial court's conclusion that Antaramian was entitled to recover (as costs) the fees paid to witnesses for their assistance with case and discovery preparation. In doing so, we reject TPI's argument that Antaramian's conduct of paying the attorney fact witnesses anything more than \$5 per day constituted illegal conduct that negated his right to recover prevailing party attorneys' fees and costs. We find no conflict between the statute and the rule. The statute restricts payments to witnesses for their attendance and thus presumably their actual testimony at trial. But the rule addresses payments for entirely different and compensable items: witnesses' expenses incurred in connection with their attendance and testimony at trial and reasonable compensation for the time spent by the witnesses in preparing for, attending, and testifying at trial so long as the payments are not conditioned on the content of the witnesses' testimony.³ Thus we interpret ***1191** the rule to mean that witnesses may be compensated not only for travel related expenses, such as airfare, car rentals, and hotel expenses, but also for a witness's time spent in responding to discovery and appearing at depositions. At least some of the witnesses in this case testified that they billed for their time spent in responding to discovery

and appearing at depositions, and we find no error in the trial court's conclusion that Antaramian was entitled to be reimbursed for his payments to the witnesses for those items, especially where there was no evidence presented that the payments constituted any sort of bonus or that they were contingent on any type of recovery made by Antaramian.

The trial court's recognition of the limitation on payments to witnesses for their attendance and testimony at trial as set forth in section 92.142 indicates that the award for “certain fees charged” was not meant to be compensation for the witnesses' trial testimony. Indeed, when the award provision relating to the witnesses is read in full context, it is apparent that that portion of the award was based only on the witnesses' time spent in preparing for trial, i.e., their assistance with case and discovery preparation.

To the extent that TPI argues that it could not have reasonably foreseen that Antaramian would pay the attorney fact witnesses anything more than \$5 per day, we likewise reject that assertion based on our conclusion that rule 4–3.4(b) permits the payment of reasonable compensation to witnesses for preparing for, attending, and testifying at proceedings which, in this case, includes assistance with case and discovery preparation.

We acknowledge that the rule does not expressly state that witnesses may be paid for “assistance with case and discovery preparation.” But for the reasons we explained, we hold that the rule's language is broad enough to encompass such payments. Nevertheless, we agree with TPI that this is an issue that should be presented to the Florida Supreme Court. We therefore certify the following question as one of great public importance:

DOES RULE 4–3.4(B) OF THE RULES REGULATING THE FLORIDA BAR PERMIT A PARTY TO PAY A FACT WITNESS FOR THE WITNESS'S ASSISTANCE WITH CASE AND DISCOVERY PREPARATION?

[4] Despite our conclusion that Antaramian was entitled to be reimbursed for the payments made to the fact witnesses, TPI has raised another argument related to the costs that were awarded to Antaramian which requires us to reverse the \$317,873.64 cost award. From the

record before us, we cannot conclude that the award is supported by competent, substantial evidence. This is because the trial court failed to itemize the award, and we cannot determine which costs the trial court deemed taxable and which it deemed nontaxable. Although the trial court made the finding that Antaramian was not entitled to recover costs for “ ‘overhead allocation’ of the normal staff and rent paid” on his behalf, the trial court's order also awarded costs to Antaramian as set forth in his hearing exhibits 1 and 13. A comparison of the two exhibits reveals that Antaramian's prejudgment interest calculation spreadsheet contained figures matching figures on the attachment to Frazitta's affidavit and that attachment included Antaramian's office overhead expenses. Thus Antaramian's prejudgment interest calculation appears to be based on an amount which includes the disallowed office overhead *1192 expenses. And if the trial court awarded prejudgment interest that was calculated based on amounts that included Antaramian's office overhead expenses, that fact necessarily implies that those office overhead expenses are part of the cost award itself. Although Antaramian's prejudgment interest calculation spreadsheet indicates that there was an adjustment made discounting Frazitta's costs, that fact does not save the \$317,873.64 cost award. Absent an itemization, the award on its face could be interpreted to include costs for the disallowed office overhead expenses.⁴ Similarly, we are unable to discern what portion of the award was for the payment to fact witnesses for their assistance with case and discovery preparation. For this reason, we reject TPI's assertion that we must offer guidance to the trial court as to the reasonableness of the amounts paid to the fact witnesses.

[5] [6] Where a trial court reviews a motion to tax costs, it “should consider each item of cost and determine whether it should be allowed in whole or in part or disallowed.” Northbrook Life Ins. Co. v. Clark, 590 So.2d 528, 528 (Fla. 2d DCA 1991). And a trial court's failure to itemize costs, especially where a motion to tax costs is denied in part, can result in a reversal. See id. (“Because [the appellant] failed to itemize these costs, there was no way to determine whether they were all taxable.”); Winn–Dixie Stores, Inc. v. Reddick, 954 So.2d 723, 730 (Fla. 1st DCA 2007) (holding that the trial court erred by failing to itemize which costs it chose to allow or disallow, thereby precluding intelligent appellate review of the awarded costs); Kirkland v. Thurmond, 519 So.2d 717, 718 (Fla.

1st DCA 1988) (explaining that “unless the trial court grants or denies [a] motion to tax costs in its entirety,” the trial court should itemize those costs “allowed and those disallowed [] and the amounts approved for each item” in order to facilitate appellate review). Thus because the trial court failed to itemize the \$317,893.64 cost award and because it could be construed to include disallowed costs, we must reverse this award and remand for the trial court to determine which costs were taxable and which costs were nontaxable.

III. Challenge to Inclusion of Costs to Counsel for Overhead

[7] TPI also challenges the various cost awards to Antaramian's attorneys in the total amount of \$89,415.48 to the extent that the awards include overhead expenses such as postage, Westlaw research, office supplies, an iPad, travel expenses, telephone calls, courier service, and photocopies. TPI cites cases that stand for the proposition that such overhead expenses are nontaxable unless there is evidence that they are reasonably necessary to prosecute or defend the case. See Lewis v. Thunderbird Manor, Inc., 60 So.3d 1182, 1182 (Fla. 2d DCA 2011); Bolton v. Bolton, 412 So.2d 72, 73 (Fla. 2d DCA 1982); Landmark Winter Park, LLC v. Colman, 24 So.3d 787, 789 (Fla. 5th DCA 2009). However, courts have acknowledged that a party may recover overhead expenses as part of a cost award where a contract between the parties permits such an award. See In re Amendments to Unif. Guidelines for Taxation of Costs, 915 So.2d 612, 614 (Fla. 2005) (recognizing that “guidelines are advisory only” and “are not intended to ... limit the amount of costs recoverable under a contract or statute”); *1193 Panama City–Bay Cty. Airport & Indus. Dist. v. Kellogg Brown & Root Servs., Inc., 136 So.3d 788, 788 n.1 (Fla. 1st DCA 2014) (“The parties' contract broadly allows for the prevailing party to recover on ‘any and all claims actions, damages, losses and costs’ and ‘all costs, expenses, and attorney's fees,’ without specifying limits, such as those provided under the Statewide Uniform Guidelines of Taxation of Costs in Civil Cases.”). And here, we construe the fee-shifting provision in the Consulting Agreement to be broad enough to include such expenses. Our treatment of these overhead expenses—versus Antaramian's personal office overhead expenses—is different because the fee-shifting provision here permit the recovery of “all expenses of any nature incurred in any way in connection with the matter,” and the attorneys' overhead expenses as described fall within that definition. But the reason

why we (and presumably the trial court) concluded that Antaramian's personal office overhead expenses are not recoverable is because the expenses related to his staff and rent are expenses that exist independently of the action. We find no error in the distinct treatment of the types of overhead expenses, and we conclude that the trial court did not err in awarding costs related to Antaramian's attorneys' overhead expenses that were related to this action.

IV. Prejudgment Interest Award

[8] In awarding prejudgment interest on the award of attorneys' fees and costs, the trial court found that the attorneys' fees and costs were an element of damages. The trial court therefore found that the interest accrued from the date that the fees and costs were incurred. However, fees awarded pursuant to a prevailing party fee provision in a contract are not damages because the party requesting them is not entitled to the fees until he becomes the prevailing party, and therefore, interest does not accrue prior to the date that entitlement to attorneys' fees is fixed by agreement, an arbitration award, or by a court determination. See Butler v. Yusem, 3 So.3d 1185, 1186 (Fla. 2009); Quality Engineered Installation, Inc. v. Higley S., Inc., 670 So.2d 929, 930–31 (Fla. 1996). We reject Hahn's argument that entitlement to fees was fixed on the date that the Consulting Agreement was signed in this case. While the fee-shifting provision is broad and establishes a right to prevailing party attorneys' fees, that right was not vested on the date that the Consulting Agreement was signed. Rather, that right was established on the date that the trial court determined that Antaramian was the prevailing party. Consequently, the trial court erred by awarding prejudgment interest running from the date that the fees were incurred rather than from the date that Antaramian was deemed to be the prevailing party.

There is an additional reason for reversal relating to the prejudgment interest award. In rendering its order, the trial court expressly relied on Antaramian's prejudgment interest calculation spreadsheet. In fact, the trial court's prejudgment interest award amount of \$462,709.81 is the exact amount of interest listed on Antaramian's prejudgment interest calculation spreadsheet. But as

we discussed in relation to the award of costs, the prejudgment interest calculation spreadsheet appears to include the disallowed office overhead expenses as the basis for the prejudgment interest calculation, and it is unclear whether the trial court's \$317,873.64 cost award included all or a portion of Antaramian's disallowed office overhead expenses. If the cost award included such disallowed expenses, then the award of prejudgment interest was incorrectly calculated. Accordingly, we reverse the trial court's award of prejudgment interest, and we remand for a recalculation of the award running from the date that ***1194** the attorneys' fees and costs were awarded rather than from when they were incurred. Additionally, if the trial court's prejudgment interest calculation included interest on disallowed office overhead expenses, it should omit that portion of the award on remand.

CONCLUSION

The trial court correctly determined that Antaramian is entitled to recover his attorneys' fees and costs for time spent litigating the amount of attorneys' fees. Similarly, the trial court was correct in its finding that Antaramian's fact witnesses are entitled to receive compensation for their assistance with case and discovery preparation, but we certify a question on this issue as previously detailed herein. However, because the trial court failed to itemize the cost award of \$317,873.64, thereby precluding effective appellate review, we must reverse that portion of the cost award and remand for further proceedings. We likewise reverse the prejudgment interest award because the trial court erred in its method of calculation and because it is unclear if the interest award is based, in part, on disallowed office overhead expenses. In all other respects, we affirm.

Affirmed in part; reversed in part; remanded for further proceedings; question certified.

WALLACE and SLEET, JJ., Concur.

All Citations

228 So.3d 1184, 42 Fla. L. Weekly D2264

Footnotes

- 1 Antaramian was also successful on appeal and was awarded appellate attorneys' fees by this court due to his status as the prevailing party. See Trial Practices, Inc. v. Antaramian, 97 So.3d 228 (Fla. 2d DCA 2012) (table decision).
- 2 TPI presents no argument on the propriety of awarding attorneys' fees and costs for litigating entitlement to attorneys' fees. Since there is no dispute on this issue, we do not address it.
- 3 We conclude that both the applicable and the newly amended versions of the rule permit payments for a witness's time spent in preparation for trial. While the applicable version of the rule more explicitly referred to payments for a witness's loss of compensation incurred by reason of the witness's preparation for trial, we do not think "loss of compensation" is the determinative factor. As previously noted, payments for a witness's time spent preparing for trial have long been permitted so long as the payments are not conditioned on the witness's testimony. Further, the fact that the amended version of the rule removed the reference to "loss of compensation" and now refers to compensation for "time spent preparing for, attending, or testifying at proceeding," leads us to conclude that the focus is on the value of the witness's time, even where no lost monetary amount is proven.
- 4 We acknowledge that the award could also be interpreted to exclude the office overhead expenses, but it is precisely because the award could be construed in two different ways that renders the award problematic.

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Dated: May 9, 2018.

Respectfully Submitted,

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