For Publication

IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

HIROSHI ISHIMATSU, BERNARDO A. HIPONIA, and SERAFIN ESPERANCILLA Plaintiffs, v. **ROYAL CROWN INSURANCE CORP.** Defendant.	**CIVIL ACTION NO. 02-0065** **OMNIBUS ORDER IN RESPONSE TO VARIOUS POST TRIAL MOTIONS**

THIS MATTER was last before the Court on April 26, 2005 on defendant's motion for judgment notwithstanding the verdict and motion for remittitur or a new trial and on plaintiffs Bernardo A. Hiponia's and Serafin Esperancilla's (jointly, "plaintiffs") joint motions for award of attorney's fees and liquidated damages and for award of costs.[1] In addition, the plaintiffs later submitted on the pleadings a motion for prejudgment interest. Representing plaintiffs jointly were Eric D. Bozman and David G. Banes and representing defendant was G. Anthony Long. After carefully reviewing the pleadings and the arguments presented at the motion hearing, the court is prepared to rule. The Court will begin with a recitation of the relevant facts.

FACTUAL CONSIDERATIONS

This case arises originally from an automobile accident in which Mr. Esperancilla struck and damaged a car owned by Mr. Hiponia. Mr. Esperancilla admitted responsibility for the accident and both Mr. Hiponia and Mr. Esperancilla made claims for damage against defendant, Mr. Esperancilla's insurer. At the time, Mr. Esperancilla was an employee of Jen-Marz automobile

[1] Mr. Ishimatsu is no longer a party to this action. His case was dismissed on an unopposed summary judgment motion by defendant. Mr. Ishimatsu has apparently left the Commonwealth and his attorneys previously withdrew because of his absence.

repair shop and Mr. Hiponia was his boss. Royal Crown denied repeated demands to pay the claim and on February 4, 2002, the plaintiffs filed the instant suit.

In due time, the matter came on for trial, a jury was empaneled, both sides presented their evidence, and the jury retired to consider their verdict, using a jury form prepared by the Court and approved by the parties. On March 7, 2005, the jury returned a verdict as follows:

1. $2150 to Mr. Esperancilla for breach of contract. According to a note on the verdict form this amount was reached by subtracting the $500 deductible on the policy from the total repair costs of $2650.

2. $3383.07 to Mr. Esperancilla for breach of the covenant of good faith and fair dealing. According to a note on the verdict form, this amount was calculated by assessing the repair costs $2150 with simple interest calculated at 12% per year, compounded annually.

3. $85,000 to Mr. Esperancilla in punitive damages after finding that defendant acted in bad faith in breaching the covenant of good faith and fair dealing and should be required to pay such damages.

4. $25,000 to Mr. Esperancilla and $5000 to Mr. Hiponia for violations of the CNMI Unfair Claims Settlement Act.

5 $4300 to Mr. Esperancilla and $4647.04 to Mr. Hiponia for willful violations of the CNMI Consumer Protection Act.

At the close of plaintiffs' case in chief, defendant moved for judgment as a matter of law, which was denied. This motion was renewed at the close of all the evidence.

LEGAL CONCLUSIONS

I. Defendant has not shown Entitlement to Judgment as a Matter of Law on Most Issues

A. A Jury Could Reasonably Conclude that Mr. Esperancilla did not Violate the Cooperation Clause.

Com. R. Civ. Pro. 50(b) allows a motion for judgment as a matter of law to be brought within 10 days after judgment, so long as it is a renewal of such motion brought at the close of the

evidence. A jury's verdict may be overturned under this rule if a party was "fully heard on an issue and there is no legally sufficient basis for a reasonable jury to find for that party on that issue." *City Solutions, Inc., v. Clear Channel Communications*, 365 F.3d 835, 838 (9th Cir. 2004). In this case, defendant argues that it is entitled to judgment as a matter of law in its favor on all of Mr. Esperancilla's claims because he allegedly violated the cooperation clause in the insurance contract by admitting liability.

In support of this portion of its motion, Royal Crown cites numerous cases stating that voluntarily assumption of liability by the insured violates the cooperation clause of an automobile insurance policy.[2] A cooperation clause operates to "protect the insurer's interests and prevent collusion" between the insured and the other party. *American Country Ins. Co., v. Bruhn*, 682 N.E. 2d 366, 372 (Ill. App. 1997). Usually such clauses contain a specific ban on admitting liability, including all the clauses involved in the cases cited in footnote 2. However, in this case, the cooperation clause contains no specific provision barring the insured from admitting liability. In addition, it is not a violation of a cooperation clause, no matter what the clause says, to make an honest statement of fact, even if that statement could lead to a clear inference of negligence. *Wenig v. Glens Falls Indemnity Co.*, 61 N.E.2d, 442, 445-446 (N.Y. 1945). In this case, the Court concludes that a reasonable jury could have found that Mr. Esperancilla's conduct did not violate the cooperation clause, either because the jury concluded that it was not covered by the clause, or because they concluded that it was merely an honest statement of fact. Therefore, defendant is not entitled to a new trial on that basis.

B. A Jury Could not Reasonably Conclude, Based on Plaintiffs' Evidence, that Defendant Violated the Unfair Claims Settlement Practices Act.

The Unfair Claims Settlement Practices Act, 4 CMC § 7302(g), prohibits insurers from, among other things, failing to promptly settle claims. A single act is not enough to violate the

[2] The citations are: *Wenig v. Glens Falls Indemnity Co.*, 61 N.E.2d, 442, 445-446 (N.Y. 1945), *Kindervater v. Motorists Casualty Ins. Co.*, 199 A. 606, 607 (N.J.Err & App. 1938), *Ohio Casualty Ins Co. v. Ross*, 222 F. Supp. 292, 297 (D.C. Md. 1963), *Brodsky v. Motorists' Casualty Ins. Co.*, 170 A. 243, 244 (N.J. Sup. 1934), and *American Ins. Co. and Fidelity & Casualty Co.*, 152 A. 523, 526-527 (Md. 1930).

provision. *Id* at § 7302(g)(2). Instead the prohibited act must be "performed with such frequency as to indicate a general business practice." *Id* at § 7302(g)(1). In this case plaintiffs presented evidence that 14 complaints against Royal Crown had been filed with the CNMI Insurance Commissioner. However, plaintiffs did not offer evidence as to the type of claim involved for most of these 14, did not state the outcome of the complaints, and did not show the time frame in which they occurred. While plaintiffs presented sufficient evidence of acts occurring in this case that would be a violation of the Act if they were a general business practice, they did not introduce evidence sufficient for a reasonable jury to conclude that they were general business practices. Therefore, judgment as a matter of law in favor of defendant on this claim is warranted. Defendant's motion for judgment as a matter of law on each plaintiff's claim under 4 CMC § 7302(g) is granted and judgment in favor of Royal Crown on those claims is hereby entered.[3]

C. A Jury Could Reasonably Conclude that Royal Crown Acted in Bad Faith.

To prove bad faith in the context of a denial of an insurance claim, the claimant must show that the denial was "unreasonable and not [the] result of mere negligence or bad judgment." *Adams v. Allstate Ins. Co.,* 187 F. Supp. 2d 1207, 1214 (C.D. Cal. 2002). In this case, the defendant repeatedly refused to pay Mr. Esperancilla's claim on the ground that he had improperly admitted liability in violation of the cooperation clause in his policy. However, the evidence showed that such an admission is not specifically prohibited in his policy and, considering that Mr. Esperancilla hit a parked car, his "admission" was little more than a reasonable statement of fact. Given these facts a reasonable jury could have concluded, as this one did, that Royal Crown's repeated denials of Mr. Esperancilla's claim were in bad faith. Judgment as a matter of law in defendant's favor on this issue must be and is denied.

[3] It should be noted that the Court believes that violations of the Act allow recovery only of actual damages. In this case actual damages are only the repair costs of the vehicles involved and compensation for Mr. Hiponia's rental car expenses. Because compensation for these actual damages was awarded under other claims, neither plaintiff would have been entitled to additional damages under this claim even if it had been proven.

D. A Jury Could Reasonably Have Found in Favor of Mr. Hiponia on his Consumer Protection Act Claim

Defendant advances two arguments in favor of its motion for judgment as a matter of law on Mr. Hiponia's claim. First, Royal Crown argues that, under Mr. Esperancilla's policy, it is obligated only to pay damages that Mr. Esperancilla becomes "legally obligated to pay." Because the jury did not explicitly find Mr Esperancilla liable to Mr. Hiponia for Mr. Hiponia's damages, defendant argues that Mr. Esperancilla has never become "legally obligated to pay" Mr. Hiponia, thus relieving Royal Crown of any such obligation. The Court finds this argument unconvincing. While it is true that the question was not squarely presented to the jury, the jury must have necessarily concluded that Mr. Esperancilla was liable to Mr. Hiponia before any damages could be awarded to Mr. Hiponia and the jury did award damages. Therefore, the Court must infer that the jury did conclude that Mr. Esperancilla was liable to Mr. Hiponia. In addition, the Court finds in the record more than sufficient evidence that Mr. Esperancilla was at fault in the accident and so was legally obligated to pay damages. Defendant is not entitled to judgment as a matter of law on this basis.

Second, Royal Crown argues that Mr. Hiponia may not recover under the Consumer Protection Act, 5 CMC § 5101 *et seq*, because there was no buyer-seller relationship between Royal Crown and Mr. Hiponia. However, there is no explicit provision in the law that requires such a relationship. Instead our law allows "any person aggrieved as a result of a violation of this act" to bring suit." *Id* at § 5112(a). If Mr. Hiponia has demonstrated to a preponderance of the evidence that Royal Crown's violations of the Act harmed him, as the jury clearly concluded he had, then he is entitled to recover under the Act. Therefore, judgment as a matter of law in favor of Royal Crown on this issue must be and is denied.

E. A Jury could have Reasonably Concluded that Mr. Esperancilla was Entitled to Punitive Damages.

Punitive damages may not be awarded for acts that are merely mistakes or errors in judgment. RESTATEMENT (SECOND) OF TORTS § 908 cmt. b. (1977). They may be awarded for acts

that are "outrageous or done with evil motive or with reckless indifference to the rights of others." *Id* at § 908(2). Such outrageous or reckless acts must be proven by clear and convincing evidence. *Thompson v. Better-Bilt Aluminum Products Co.*, 832 P. 2d 203, 210 (Ariz. 1992). Clear and convincing evidence is an intermediate standard of proof, greater that the preponderance of the evidence standard that governs most civil matters, but less than the proof beyond a reasonable doubt required in criminal cases. It is that degree of proof that produces in the mind of the jurors a firm conviction as to the allegations sought to be established and requires the existence of a fact to be highly probable. *See id.*

Royal Crown argues that this standard of proof was not met for three reasons. First, it argues that it had a good reason to deny the claim - Mr. Esperancilla's admission of guilt. However, the Court finds this argument unconvincing for reasons already mentioned - Mr. Esperancilla's policy did not specifically require him not to admit fault and, given the nature of the accident, his statement is more reasonably interpreted as a statement of fact, and not merely an admission. Under those circumstances, a jury might reasonably conclude that Royal Crown lacked a good faith reason to deny the claim.

Second, Royal Crown argues that Mr Esperancilla did not prove that it acted outrageously with evil motive or with reckless indifference. However, most of the facts in this case were essentially undisputed. The details of the accident were well established, as was Royal Crown's conduct in relation to the claim that followed. Therefore, there is no problem of proof of the underlying facts. The only question is whether a jury could reasonably conclude that this evidence clearly and convincingly showed that Royal Crown acted with the required mens rea. Given the multiple denials of this seemingly simple claim, the Court concludes that a reasonable jury could so find.

Third, Royal Crown argues that Mr. Esperancilla's claim for punitive damages must fail because he offered no proof of Royal Crown's financial resources. Royal Crown noted that at least one jurisdiction that has adopted the Restatement approach to punitive damages requires such proof. However, the Court's reading of the Restatement reveals that the defendant's wealth is merely a

factor that a fact-finder may consider in deciding whether to award punitive damages and in what amount. *See* RESTATEMENT (SECOND) OF TORTS § 908(2). Therefore, Mr. Esperancilla's failure to introduce evidence of defendant's wealth is not fatal to his claim. Defendant's motion for judgment as a matter of law on the issue of punitive damages must be and is denied.[4]

II. Defendant has Not Demonstrated that it is Entitled to a New Trial

A. Attorney Misconduct did not Permeate the Entire Proceeding

Defendant's first ground for a new trial is that an act by counsel for the plaintiffs Eric D. Bozman improperly influenced the jury in reaching its verdict. Specifically, Mr. Bozman asked a question of a witness that implied that defense counsel, Anthony Long, had prevented another potential witness from testifying at the trial. Mr. Long immediately objected to the question and the question was never answered. Instead, the Court sustained the objection and chastised Mr. Bozman in front of the jury for asking an improper question. The Court then instructed the jury to disregard the question. To justify a new trial, the attorney misconduct must be such that it "so [permeates] the trial that the jury was necessarily prejudiced." *Kehr v. Smith Barney, Harris Upham & Co.*, 736 F. 2d 1283, 1286 (9th Cir. 1984). In this case, there was a single statement made by counsel that was immediately objected to and the jury was instructed to disregard it. Under the circumstances this statement cannot be said to have permated the entire proceedings. Therefore, it is not grounds for a new trial and defendant's motion for a new trial on that basis must be and is denied.

B. The Verdict was not Against the Weight of the Evidence

Defendant also seeks a new trial on the basis that the verdict was against the weight of the evidence. The Court has already discussed in detail above its view of the various causes of action and the arguments made in the motion for a new trial are largely duplicative of those made in favor of the motion for judgment as a matter of law. Therefore, the Court will not rehash them. The Court has concluded that the verdicts in favor of Mr. Esperancilla on his claims for breach of contract, breach of the covenant of good faith and fair dealing in willful bad faith, and violations of the

[4] However, the amount of punitive damages to be awarded must be reduced for due process reasons. See the "Damages" section below.

Consumer Protection Act were well founded and should not be overturned. Similarly, Mr. Hiponia's claim under the Consumer Protection Act was found by this Court to be well founded. The Court did find that the verdict in favor of plaintiffs on the Unfair Claims Settlement Practices Act was against the weight of the evidence, but the Court has elected to grant judgment as a matter of law on that claim instead of tossing out the entire verdict and starting over. Defendant's motion for a new trial on the grounds that the verdict was against the weight of the evidence must be and is denied.

C. Defendant has Provided no other Legitimate Grounds for a New Trial

Finally, defendant has argued for a new trial on the basis that the punitive damages award was excessive and that the jury committed misconduct in awarding reasonable prejudgment interest. The first has already been discussed - the Court found adequate evidence to support the award of punitive damages. As to the second, the Court has concluded that the jury may award prejudgment interest and did not err in doing so in this case. The reasons for this conclusion are explained in detail below.

III. Defendant has Demonstrated Entitlement to Remittitur of Damages

A. Compensatory Damages to Mr. Esperancilla must be Reduced to Avoid Double Recovery

It was clear from the evidence that each plaintiff had only one injury. In Mr. Esperancilla's case, it was the damage to his vehicle. Despite this, the jury awarded Mr. Esperancilla damages for each of the several causes of action he alleged. These damages are clearly duplicative and Mr. Esperancilla is only allowed to recover once for his injury. *See Diversified Graphics Ltd., v. Groves*, 868 F. 2d. 293, 295 (8th Cir. 1989).

In this case, the jury calculated Mr. Esperancilla's damages for breach of contract as $2150. The jury then added interest to this amount, at 12% per annum, as part of its award for breach of the covenant of good faith and fair dealing, for a total of $3383.07. In addition, they awarded Mr. Esperancilla actual damages of $25,000 for violations of the Unfair Claims Settlement Practices Act, which the Court has already reversed, and $4300 for violations of the Consumer Protection Act, a

figure the jury apparently reached by doubling Mr. Esperancilla's initial damages of $2150. In total, Mr Esperancilla received an award of $34,837.07 as compensatory damages even though the clear evidence at trial was that his only injury was the uncompensated repair costs and these costs totaled only $2150. This is clearly improper and must be reduced.

The baseline for Mr. Esperancilla's damages is simple. He is clearly entitled to recover $2150. In addition, the Court has concluded that there is no case or statutory law in the Commonwealth that prevents a jury from awarding reasonable prejudgment interest as part of its damage calculations. In this case, the jury added interest, applying a rate of 12% per annum, and reaching total damages of $3383.07. The Court finds this reasonable and will to uphold it.

In addition, the Court notes that our law, 7 CMC § 7505(h), requires a court to award prejudgment interest of 12%, as well as reasonable attorney's fees, where a loss occurs and the insurer who is liable fails to pay within the time called for in the policy. The policy in this case required Royal Crown to pay within 30 days of the time proof of loss is filed and the amount of loss is determined. When Royal Crown and the insured disagree on the amount, either one may demand a neutral appraisal, but neither one made that demand in this case. Because there was never an appraisal by a neutral appraiser, Royal Crown argues that its duty to pay was never triggered.

The Court finds this argument unconvincing. The policy provides that payment must be made within 30 days of the time the amount of loss is determined, but a neutral appraisal is not required, it is simply an option if the insurer and the insured disagree. In this case, the evidence at trial demonstrated that there was little controversy concerning the amount of loss. Rather, Royal Crown disputed, rather unreasonably, that it was liable to pay at all. Where proof of loss is provided, the amount of the loss is clear, and the insurer has no reasonable basis for disputing the claim, the Court concludes that the duty to pay is triggered, notwithstanding an ongoing legal challenge. Therefore, Mr. Esperancilla is entitled as a matter of law to both 12% interest on his loss and to reasonable attorney's fees. The Court must sustain the jury's award of actual damages of $3383.07.

Mr. Esperancilla also has argued that he is entitled to liquidated damages equal to the amount

of actual damages for breach of the Consumer Protection Act. A successful plaintiff is entitled to such damages for willful violations of the Act. 4 CMC § 5112(a). In this case, the jury specifically found that Royal Crown had acted willfully and the Court has sustained the evidentiary basis for that verdict. Therefore, Mr. Esperancilla is entitled to an additional award of $3383.07.[5] In total, he is entitled to compensatory damages of $6766.14 and Court awards him damages in that amount.

B. No Additional Reduction of Mr. Hiponia's Damages is Necessary

Mr. Hiponia was awarded a total $9647.04. Of this, $5000 was awarded for the Unfair Settlement Practices Act claim that the Court has already rejected as unsupported by the evidence. The rest is for violation of the Consumer Protection Act - $3147.04 for the costs of repairs plus interest over 4 years at 12% per annum and $1500 for 3 months of car rentals. The Court concludes that Mr. Hiponia is entitled to this entire amount, including the reasonable interest assessed by the jury. In addition, Mr. Hiponia is entitled to liquidated damages in an equal amount for Royal Crown's willful violation of the Consumer Protection Act. Therefore, his total compensatory damages are $9294.08 and the Court awards him this amount.

C. Reduction of the Punitive Damages Award is Necessary to Avoid Violating Due Process

In addition to the award of compensatory damages, the jury also awarded Mr. Esperancilla $85,000 in punitive damages for breach of the covenant of good faith and fair dealing. The Court has previously concluded that the award of punitive damages was appropriate. However, the Court must consider whether the amount awarded was proper because punitive damage awards that grossly exceed the amount of compensatory damages violate the due process clause of the 14th Amendment. *State Farm v. Campbell*, 538 U.S. 408, 416, 123 S. Ct. 1513, 1519-1520, 155 L. Ed. 2d 585 (2003). Courts are to apply three factors in determining whether a punitive damages award violates due process: "(1) the reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded... and the civil penalties authorized or imposed in

[5] Royal Crown argues that only $2150 is subject to doubling as liquidated damages. However, the Court has sustained the jury verdict of prejudgment interest as a part of Mr. Esperancilla's actual damages. As actual damages, the entire amount, including interest, is subject to doubling.

comparable cases." *Id* 538 U.S. at 418, 123 S. Ct. at 1520.

In this case, the harm caused to Mr. Esperancilla was merely economic. The refusal to pay his claim neither physically harmed no threatened to physically harm him. At the same time the punitive damage award is more than 25 times his actual damages. While the U.S. Supreme Court has never imposed a bright-line test, punitive damage awards exceeding a single digit ratio between punitive and actual damages are rarely proper. *Id* 538 U.S. at 424-425, 123 S. Ct. at 1524. In this case, the Court does not find the sort of extraordinary circumstances that would allow a 25 to 1 ratio to survive. Finally, neither party submitted much evidence about comparable cases. However, the Court notes that the normal civil penalty for violations of the Consumer Protection Act is liquidated damages equal to the amount of actual damages, a mere $3383.07 in this case. Applying the three factors, the Court concludes that the damage award must be reduced to satisfy due process. The Court further concludes that the proper balancing of the factors allows an award of no more than 7 times actual damages. Therefore, the Court reduces the amount of punitive damages to $23.681,49.

D. Plaintiffs May Elect to have a New Trial

When a trial court determines that a damages award is improper, as this Court has done, the Court may grant remittitur instead of requiring a new trial. Having done so, the party whose damages were reduced has a choice. The party may either accept the lowered award or it may demand a new trial. *Fenner v. Dependable Trucking Inc.*, 716 F. 2d 598, 603 (9th Cir. 1983). The Court will allow plaintiffs 30 calendar days to make that decision. If the plaintiffs do not notify the Court of their decision within that time, the Court will treat plaintiffs as having elected to accept the verdict as modified by the Court. In the meantime, the Court will issue as part of this order a preliminary award of attorney's fees and costs, with this award being final and binding if plaintiffs do not elect a new trial. Note that the Court takes no position on whether plaintiffs could recover their fees and costs for the trial just concluded at the successful conclusion of a new trial. The Court merely concludes that in electing a new trial, plaintiffs have rejected the entire jury verdict and the Court's subsequent modification thereof, including any present entitlement the jury's verdict created to an award of fees and costs.

IV. Plaintiffs have Demonstrated Entitlement to Reasonable Attorney's Fees

Plaintiffs in this action have requested attorney's fees in the amount of $46,644.20 for work up to and including the trial and an additional $28,139.95 for post trial work. Plaintiffs base their entitlement to fees on two statutory provisions. The first is 4 CMC § 5112(a) of the Consumer Protection Act, which requires a court to "award costs and reasonable attorney's fees if the plaintiff prevails" in the suit. In this case, the jury found in favor of both plaintiffs on their claims under that Act. The second is 4 CMC § 7504(h), which requires a court to award "all reasonable attorney's fees for prosecution and collection of the loss," where an insurer has failed to timely pay a valid claim and the insured has been forced to sue. In this case, the jury's verdict in favor of the plaintiffs clearly shows a conclusion that the loss was proved and should have been paid, and the Court has already rejected the notion that this statute does not apply in the instant matter.

In addition, the plaintiffs have noted that attorney's fees may be awarded in the absence of specific statutory authorization in certain circumstances, including when it is alleged that the losing party acted in bad faith. *Reyes v. Reyes*, 2004 MP 1, ¶ 79 & n.16. In this case, the jury specifically found that Royal Crown acted in bad faith in breaching the covenant of good faith and fair dealing with Mr. Esperancilla. To the degree that the statutes above do not support an award of the entire fee sought, the Court concludes that Royal Crown's bad faith acts do support such an award. Furthermore, the Court has examined the billing summaries and finds the work therein sufficiently well documented and finds the total amount sought for pre-trial and trial work reasonable. Therefore, the Court awards Mr. Esperancilla and Mr. Hiponia jointly $46,644.20 in attorney's fees for pre-trial and trial work.

As noted above, the plaintiffs also seek $28,139.95 in fees for post trial work. The Court has trouble with this number because it seems excessive. More importantly, the post-trial motions for which plaintiffs seek fees raised serious questions about the propriety of the damage awards and resulted in a substantial reduction in those awards. The Court concludes that an award of only 2/5 of the total expended on post-trial work is justified and therefore awards plaintiffs jointly an additional $11,255.98 in attorney fees, for a total award of $57900.18. This award is conditional

on plaintiffs not electing a new trial because of remittitur of damages.[6]

V. Plaintiffs have Demonstrated Entitlement to Costs

Plaintiffs have also asked to be reimbursed for their costs. Award of costs to the prevailing party is essentially automatic under our rules. *See* Com. R. Civ. Pro. 54(d). In this case, plaintiffs prevailed on all but one of their claims and won a substantial judgment, so there can no question that they are the prevailing party. The plaintiffs now seek $8219.76 in costs. In addition, plaintiffs note that defendant is liable to pay for the cost of the translator used at trial, but state that they have received no billing from the translator.

Defendant essentially concedes that it is liable for costs, but challenges some of the cost calculations. In particular, defendant argues that it is not required to pay expert witness fees beyond the amount normally paid to lay witnesses. Defendant also objects to paying for any computerized research and for what it calls excessive photocopying expenses. As to the witness fees, the Court notes that 7 CMC § 3207 allows it to "tax any additional items of cost or actual disbursement, other than fees of counsel, which it deems just and finds have been necessarily incurred for services which were actually and necessarily performed." In this case, the Court finds that the expert witness fees were reasonable, were for necessary services actually performed and the Court deems it just that defendants should pay those costs. In addition, the Court will allow recovery of computer research costs because they are a part of modern practice and tend to save attorneys fees. Finally, with one exception, the Court has examined the other costs and found them reasonable in amount and adequately described.

The one exception is for the witness fees paid to Jenny Ariar and Cheong Pui Ng, who each received and cashed checks for $25. Defendant argues that it should not be required to pay for these witnesses as they not only did not testify, but, according to defendant, were never even subpoenaed. Plaintiffs attempt to rebut this argument by stating that these two were subpoenaed and by providing the Court with copies of the endorsed checks made over to the two witnesses in question. The Court

[6] As noted above, the Court has no position on whether these fees could be recovered by plaintiffs at the successful end of a new trial.

has reviewed its own file and can find no subpeona for either Jenny Ariar or Cheong Pui Ng and the plaintiffs did not provide the Court with copies as part of their declaration in support of their motion for costs. Because the Court is unwilling to tax the losing party with costs for unsubpoenaed lay witnesses, whether the witnesses were paid or not, and because plaintiffs have not proven that Jenny Ariar or Cheong Pui Ng were subpoenaed, the Court will not require defendant to reimburse plaintiffs for the witness fees of these two individuals. This reduces plaintiffs otherwise valid demand for costs by $50 to a total of $8169.76, which the Court awards plaintiffs jointly as costs. In addition, the Court awards plaintiffs such reasonable compensation as the translator shall demand if and when the translator provides either the Court or one of the parties with a bill. As noted above, these awards are conditional on plaintiffs not electing a new trial because of remittitur of damages.[7]

CONCLUSION

For the reasons stated above, defendant Royal Crown's Motion for a New Trial must be and hereby is DENIED.

For the reasons stated above, defendant Royal Crown's Motion for Judgment as a Matter of Law is GRANTED as to the claim for violation of the Unfair Claims Settlement Act, but DENIED as to all other matters.

For the reasons stated above, JUDGMENT IN FAVOR OF DEFENDANT Royal Crown is hereby entered on plaintiffs' claim for violation of the Unfair Claims Settlement Act.

For the reasons stated above, defendant Royal Crown's Motion for Remittitur of Damages is GRANTED.

For the reasons stated above, compensatory damages awarded to plaintiff Serafin Esperancilla are hereby REDUCED to $6766.14.

For the reasons stated above, compensatory damages awarded to plaintiff Bernardo A. Hiponia are hereby REDUCED to $9294.08.

For the reasons stated above, punitive damages awarded to plaintiff Serafin Esperancilla are

[7] Again, the Court has no position on whether these costs could be recovered by plaintiffs at the successful end of a new trial.

hereby REDUCED to $23,681.49.

Plaintiffs shall each have 30 calendar days to decide whether to accept remitted damages or to elect to have a new trial. Failure to make the election within the time period will be treated as acceptance of remitted damages.

For the reasons stated above, plaintiffs' motion for liquidated damages must be and hereby is GRANTED. Liquidated damages have been included in the compensatory awards above.

For the reasons stated above, and conditioned on accepting remitted damages, plaintiffs' joint motion for attorney's fees is hereby GRANTED and plaintiffs are jointly awarded $57900.18 in attorney's fees.

For the reasons stated above, and conditioned on accepting remitted damages, plaintiffs' joint motion for costs is hereby GRANTED and plaintiffs are jointly awarded $8169.76 in costs.

For the reasons stated above, plaintiffs' motion for prejudgment interest is hereby GRANTED and such interest has been included in the compensatory damages above.

Plaintiffs' motion to exclude is DENIED.

SO ORDERED this 26th day of August 2005.

/s/_____

JUAN T. LIZAMA, Associate Judge