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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FAR NORTHWEST DEVELOPMENT CO.,
LLC, and FARAMARZ GHODDOUSSI,

Plaintiffs,

v.

COMMUNITY ASSOCIATION OF
UNDERWRITERS OF AMERICA, INC., *et*
al.,

Defendants.

CASE NO. C05-2134RSM

ORDER GRANTING PLAINTIFF'S
MOTION FOR ATTORNEY FEES

I. INTRODUCTION

This matter comes before the Court on plaintiff Faramarz Ghoddoussi's Motion for *Olympic Steamship* Fees and Expenses.¹ (Dkt. #47). Plaintiff argues that he is entitled to his fees and expenses incurred in pursuing relief on the issue of defendants' duty to defend. Defendant Community Association Underwriters of America, Inc. ("CAU") responds that this motion is premature, and that plaintiff's requested fees are unreasonable in any event. (Dkt. #48). For the reasons set forth below, the Court disagree with defendant and GRANTS

¹ In *Olympic Steamship v. Centennial Ins. Co.*, 117 Wn.2d 37 (1991), the Washington Supreme Court established exceptions in the insurance context to the standard principle that each party in a lawsuit is typically responsible for payment of his or her own legal fees.

1 plaintiff's motion for fees and costs.

2 **II. DISCUSSION**

3 **A. Background**

4 This action arises from a construction defect lawsuit that had been proceeding in King
5 County Superior Court until recently settling. The underlying facts are set forth in this Court's
6 previous Order on the parties' cross-motions for summary judgment, and will not be repeated
7 here except to set the context for the instant motion.

8 Plaintiffs Far Northwest Development, LLC ("Far Northwest") and Faramarz
9 Ghoddoussi were the developer and managing member, respectively, of a new construction
10 condominium project known as the Somerset Village Townhomes Condominium. Plaintiff
11 Ghoddoussi also served as an officer and director of the Somerset Village Townhomes
12 Homeowners' Association ("Association") from the date of formation on April 13, 2001, until
13 January 30, 2002. Defendants insured Mr. Ghoddoussi under a liability insurance policy.

14 On July 29, 2005, the Association filed a First Amended Complaint in King County
15 Superior Court, alleging, *inter alia*, that Mr. Ghoddoussi breached his fiduciary duties by failing
16 to maintain the common elements of the Somerset Village Townhomes Condominium during the
17 time that he acted as a director and officer of the Association. Mr. Ghoddoussi tendered the
18 lawsuit to defendants and requested that they defend him. Defendants denied the tender, and the
19 instant action followed.

20 Mr. Ghoddoussi subsequently filed a motion for partial summary judgment, which this
21 Court granted, finding that the owned property exclusion contained in the liability insurance
22 policy does not bar coverage for the claims asserted against Mr. Ghoddoussi in his capacity as
23 manager and director of the Association in the underlying state construction defect action. After
24 this Court issued its Order, defendant CAU extended an offer to defend Mr. Ghoddoussi in the
25 underlying action.

1 **B. *Olympic Steamship Fees***

2 In *Olympic Steamship v. Centennial Insurance Co.*, the Washington Supreme Court held
3 that “an award of fees is required in any legal action where the insurer compels the insured to
4 assume the burden of legal action, to obtain the full benefit of his insurance contract” 117
5 Wn.2d 37, 53 (1991). Plaintiff argues that because defendant CAU did not offer to defend him
6 until after he prevailed on partial summary judgment in this Court, he is now entitled to his fees
7 and costs in this action. Defendant responds that plaintiff’s motion is premature because “the
8 duty to defend – as opposed to the duty to ultimately indemnify – was never really at issue in the
9 present case and ‘establishing’ its existence has resulted in no actual benefit to plaintiff.” (Dkt.
10 #48 at 3). The Court is not persuaded.

11 First, the Court does not agree with defendant that because another insurance company,
12 Essex, had already agreed to defend plaintiff in the underlying action, coverage for defense was
13 never really at issue. Defendant argues that because Essex had already agreed to defend
14 plaintiff, and had not actually asked CAU to contribute to that defense, establishing the existence
15 of CAU’s duty to defend resulted in no actual benefit to plaintiff. That argument is misguided.
16 Whether an insurer will ever actually pay out any defense costs is not the issue under *Olympic*
17 *Steamship*. Instead, *Olympic Steamship* focuses on whether fees are available to an insured who
18 is forced to sue its insurer in order to obtain a benefit, such as the benefit of a defense. Further,
19 in Washington, an insurer who has a contractual duty to defend continues to have that duty
20 regardless of the existence of other insurance, and may be liable for breach of contract for
21 wrongfully refusing to aid in that defense. See *Western Pacific Ins. Co. v. Farmers Ins. Exch.*,
22 69 Wn.2d 11, 18 (1966); *Clow v. Nat’l Indem. Co.*, 54 Wn.2d 198, 207-08 (1959). In the
23 instant case, there is no dispute that defendant did not agree to defend plaintiff until this Court
24 ruled in plaintiff’s favor on summary judgment.

25 Second, neither Washington case law nor Ninth Circuit case law supports defendant’s
26

1 argument. For example, in *Heringlake v. State Farm Fire & Cas. Co.*, 74 Wn. App. 179
2 (1994), the Washington Court of Appeals held that *Olympic Steamship* fees were available when
3 “the party seeking fees prevails on some claim.” *Heringlake*, 74 Wn. App. at 196. While the
4 court went on to state that the Heringlakes were not entitled to any fees because no coverage
5 existed under the policy, it is important to note that coverage for defense costs was never at
6 issue in that action. Similarly, in *Mercer Int’l v. United States Fid. & Guar. Co.*, 1999 U.S.
7 App. LEXIS 18506 (9th Cir. 1999), the court explained that “[t]he *Olympic Steamship* doctrine
8 ‘has been read broadly by Washington courts, even to include cases in which there is no
9 contractual basis for the awarding of fees.’” *Mercer Int’l*, LEXIS 18506 at *5 (citation omitted).

10 More importantly, *Olympic Steamship* itself contradicts defendant’s argument. In that
11 case, the court extended “the right of an insured to recoup attorney fees that it incurs because an
12 insurer refuses *to defend or pay* the justified action or claim of the insured, regardless of whether
13 a lawsuit is filed against the insured.” *Olympic Steamship*, 117 Wn.2d at 52 (emphasis added).

14 The court explained:

15 Other courts have recognized that disparity of bargaining power between an
16 insurance company and its policyholder makes the insurance contract
17 substantially different from other commercial contracts. When an insured
18 purchases a contract of insurance, it seeks protection from expenses arising
19 from litigation, not ‘vexatious, time-consuming, expensive litigation with his
20 insurer.’ Whether the insured must defend a suit filed by third parties, appear
21 in a declaratory action, or as in this case, file a suit for damages to obtain the
22 benefit of its insurance contract is irrelevant. In every case, the conduct of the
23 insurer imposes upon the insured the cost of compelling the insurer to honor
24 its commitment and, thus, is equally burdensome to the insured.

25 *Olympic Steamship*, 117 Wn.2d at 52-53 (citations omitted). Further, the court explicitly
26 overruled its decision in a prior case, *Farmers Ins. Co. v. Rees*,² where it had determined that
the insured was not entitled to attorney fees because he was not suing over the duty to defend.
Olympic Steamship, 117 Wn.2d at 53. Accordingly, the Court agrees with plaintiff that fees are

² 96 Wn.2d 679 (1982).

1 allowed in this instance. Thus, the Court now turns to the amount of fees owed.

2 **C. Reasonableness of Attorney Fees**

3 Plaintiff initially asked for attorney fees and costs in the amount of \$60,004.94.

4 Defendant responded that such fees were unreasonably high, and that \$10,800 of those fees
5 were either not easily identifiable as being related to the instant matter, or were disallowed
6 because they related to the settlement of the underlying construction defect case. Plaintiff
7 concedes that approximately \$9,100 were incurred in drafting the settlement, and should not be
8 recovered on this motion. Plaintiff does not agree that the other \$1,701.60 is not related to this
9 matter, but will concede that amount “for purposes of making the facts undisputed.” (Dkt. #50
10 at 6 n. 22). Thus, fees and costs in the amount of \$49,203.24 are now at issue.

11 In determining an appropriate award, the Court must segregate time spent on successful
12 claims from hours spent on unsuccessful claims, duplicated effort, or otherwise unproductive
13 time. *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597 (1985). As noted, plaintiff
14 has conceded that a portion of his request is not recoverable, and the Court will not award that
15 amount. However, the Court is not persuaded that the remainder of plaintiff’s request is
16 unreasonably high. The sole basis upon which defendant opposes plaintiff’s fees is that
17 defendant’s counsel was able to complete its own legal work at less than half the total amount
18 that plaintiff claims. Defendant provides no legal authority in support of that argument. Simply
19 because defendant’s counsel does not believe plaintiff’s counsel should have spent as much time
20 on their efforts as they did, does not alter the fact that the time and costs requested are
21 straightforward and adequately supported in the record. As this Court has recently stated,
22 “estimating attorneys’ fees in a retrospective evaluation of time entries is largely unhelpful and
23 irrelevant.” *St. Paul Fire & Marine Ins. Co. v. Hebert Constr., Inc.*, 2007 U.S. Dist. LEXIS
24 11616, at *11-12 (W.D. Wash. 2007). Accordingly, the Court will grant plaintiff’s request for
25 fees and costs.
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1 **III. CONCLUSION**

2 Having reviewed plaintiff's motion for attorney fees, defendant's opposition, plaintiff's
3 reply, the declarations and exhibits in support of those briefs, and the remainder of the record,
4 the Court hereby ORDERS:

5 (1) Plaintiff's Motion for *Olympic Steamship* Fees and Costs (Dkt. #47) is GRANTED.
6 For the reasons set forth above, the Court finds that plaintiff is entitled to \$49,203.24 in attorney
7 fees and costs.

8 (2) The Clerk shall forward a copy of this Order to all counsel of record.

9 DATED this 16th day of March, 2007.

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11 RICARDO S. MARTINEZ
12 UNITED STATES DISTRICT JUDGE
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