

Austin & Laurato

*A Professional Association
Attorneys At Law*

PERSONAL INJURY, WRONGFUL DEATH, AND FIRST PARTY INSURANCE MATTERS
EXCLUSIVELY REPRESENTING PLAINTIFFS

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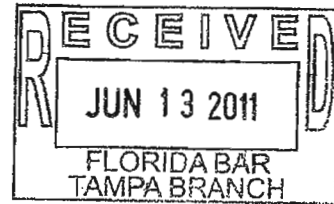
Brooksville Office

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REPLY TO: TAMPA

June 10, 2011

Troy Matthew Lovell
The Florida Bar
4200 George J. Bean Parkway, Ste. 2850
Tampa, Florida 33607



Re: Complaint of Susan DeMichelle
TFB: 2011-11,020(13D)

Dear Mr. Lovell:

I received your letter of June 8, 2011. Based on your request, it appears you may have misapprehended the nature of the underlying claim. I have attached a copy of the release, which may clarify matters for you. In addition, in order to fully address the issues raised in your correspondence, a brief discussion of the applicable legal framework is required.

The underlying case involved a first party insurance coverage action, governed by the attorney fee provisions of F.S. 627.428. When an insurer settles a coverage claim prior to judgment by paying the insured's claim, insured counsel is entitled to fees. *Wollard v. Lloyd's*, 439 So.2d 217 (Fla. 1983)(holding that where insurer has agreed to settle a disputed claim, settlement between insured and insurer provides basis for award of attorney fees under F.S. 627.428). The amount of fees paid to insured's counsel under the statute is not dependent upon the principal amount of the insured's claim. Thus, if the insurer settles the insured's claim for \$1 after having denied the claim, the statute requires the insurer, in addition to paying the amount to the insured, to pay insured's counsel for the attorney fees incurred in prosecution of the claim. *State Farm Fire v. Palma*, 629 So.2d 830 (Fla. 1993)(holding that terms of statute requiring insurer to pay attorneys fees are implicit part of every insurance policy in Florida and when insured sues to enforce policy relief sought is both policy proceeds and attorney fees). The amount owed to the client on the policy bears very little, if any, relationship to the amount of the attorney's fees paid by the insurer. The purpose behind the statute requiring an award of attorney fees to counsel for the insured is plainly to place the insured or beneficiary in the place she would have been if the carrier had seasonably paid the claim or benefits without causing the payee to engage counsel and incur obligations for attorney fees. *Travelers of Florida v.*

SCANNED
6/13/2011

Stormont, App. 3 Dist., 43 So.3d 941 (2010). Thus, the fee-shifting statutory scheme clearly countenances the insurance company's payment of the full value of the claim to the insured, with no liability for attorney fees, followed by payment of fees to insured's counsel.

As is evident from the release, the claim was handled under this statutory framework. The client received one check directly from the insurance company made payable to him, representing the policy benefits he agreed to accept in settlement. Once the insurance company agreed to settle the client's claim, the holding of Wollard's required the insurance company to pay the insured's counsel attorney fees under the statute. Accordingly, the law firm received one check directly from the insurance company made payable to the firm, representing the attorney's fee under F.S. §627.428. Thus, there is no "settlement document," other than the release, signed by the client approving fees and costs to the firm, because the client paid no fees or costs to the firm. In any event, under F.S. §627.428, the client does not approve or disapprove of either entitlement to, or the amount of, the fee received by the firm. Rather, Florida follows the Federal lodestar approach, as modified by the Florida Supreme Court holding in Quanstrom, to determine a "reasonable fee" under F.S. §627.428. *Standard Guaranty Ins. Co. v. Quanstrom*, 555 So.2d 828 (Fla. 1990). For your reference, this claim was a Type II case for Quanstrom purposes, where the lodestar figure was eligible to be enhanced by 1.5 to 2.5.

Ultimately, I believe your correspondence seeks to determine whether or not I sought specific reimbursement from my client, the insurer, or the court for Ms. DeMichelle's bill. I did not. In addition, Ms. DeMichelle's bill is simply immaterial to the F.S. 627.428 calculus for one simple reason. While F.S. 627.428 does provide for fee entitlement, it does not provide for cost entitlement. Thus, the amount of F.S. 627.428 fees my firm ultimately accepted to satisfy the fee claim could not have been increased by Ms. DeMichelle's bill. And, even assuming F.S. 57.105 applied post-judgment—which it did not--to tax this cost against the insurance company, the firm would have had to pay for the cost in order for it to be taxed against the adversary or charged to the client. Ms. DeMichelle's bill has not been paid by the firm and, accordingly, has not been charged to any adverse party or the client, although, as I mentioned, the client did not pay either fees or costs.

All of this aside, I could not have used Ms. DeMichelle's bill to influence the amount of the settlement. The final settlement agreement on the fee claim was reached on August 24, 2007. Ms. DeMichelle's invoice was not created until August 29, 2007. I have attached a copy of that invoice for your review. Because I do not handle payment of court reporter invoices at my office, I was completely unaware of Ms. DeMichelle's invoice, her dispute with the accounts' receivable staff, and the circumstances of any claim for monies owed until well after the claim was settled. It was a sheer impossibility for me to have used her bill to extract more money for the firm in the settlement, because her bill did not exist at the time I finalized the settlement.

I hope this letter addresses the issues raised in your correspondence.

Sincerely,

AUSTIN & LAURATO, P.A.

A handwritten signature in black ink, appearing to read "Austin & Laurato", is written over the typed name of the law firm.

Michael V. Laurato, Esq.

MVL/
Encl: per above

GENERAL RELEASE AND SETTLEMENT AGREEMENT

This General Release and Settlement Agreement (the "Agreement") is entered into by and between **USF&G SPECIALTY INSURANCE COMPANY**, ("RELEASEE"), and **DAVID GONZALEZ** ("RELEASOR").

WHEREAS, RELEASEE issued an Insurance Policy bearing Policy No. GH20038063 ("The Policy") to RELEASOR for property located at 8810 Memorial Highway, Tampa, Florida ("The Property");

WHEREAS, RELEASOR alleges that The Property suffered damage as the result of a covered event ("The Casualty Event"); and

WHEREAS, on or about January 6, 2005, RELEASOR commenced an action against **USF&G SPECIALTY INSURANCE COMPANY** styled *David Gonzalez v. USF&G Specialty Insurance Company*, Case No. 05-00154 in the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, seeking damages in connection with The Casualty Event at The Property, referred to herein as "**The Coverage Action**"; and

WHEREAS, RELEASOR and RELEASEE are desirous of settling all disputes in connection with The Coverage Action and The Casualty Event; and

WHEREAS, in consideration of RELEASEE's agreement to pay the amount set forth in this Agreement, RELEASOR has agreed to release RELEASEE from any further obligations under The Policy arising out of or in connection with The Casualty Event, including all claims asserted or that could have been asserted in The Coverage Action, and all claims for personal injuries and pain and suffering.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, RELEASOR and RELEASEE agree as follows:

1. RELEASEE shall pay to RELEASOR the total sum of ONE HUNDRED AND TEN THOUSAND (\$110,000.00) DOLLARS within TWENTY (20) days after the execution of this Agreement. This sum will be paid as follows:

- a. 1 check payable to "David Gonzalez" in the amount of \$20,000;
- b. 1 check payable to "Austin & Laurato, P.A." in the amount of \$90,000.

2. In exchange for the settlement amount, RELEASOR, for himself, his heirs, agents, and representatives hereby releases and forever discharge **USF&G SPECIALTY INSURANCE COMPANY** and its respective present, former and/or future parents, subsidiaries, member companies, affiliates, successors, predecessors, assigns, heirs, associates, agents, representatives, employees, directors, officers, insurers and reinsurers and all persons acting by, through, under or in concert with them or any of them, from any and all manner of action or

actions, cause or causes of action, in law or in equity for indemnity or otherwise, suits, debts, liens, contracts, agreements, promises, liabilities, claims (including any and all Claims as provided in The Policy), demands, damages, losses, costs, charges or expenses of any nature whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, under The Policy in connection with, arising out of or in any way related to The Casualty Event and/or The Coverage Action and any matters alleged or that could have been alleged therein, including but not limited to: (a) claims for "bad faith" or unfair claims handling practices, including claims for breach of fiduciary duty; (b) common law claims for "bad faith" insurance practices or breach of the implied covenant of good faith and fair dealing; (c) all rights and claims which RELEASOR may have under The Policy pursuant to any applicable statute and/or case law for any alleged failure to effectuate prompt, fair and equitable settlement of any claim relating to The Casualty Event which such releasing parties now have, claim to have or may have in the future; and d) any and all claims for personal injuries, pain and suffering and any other economic and non-economic damages arising therefrom.

3. RELEASOR represents and warrants that he is the sole owner of all claims, demands, actions and/or causes of action which are released by him herein.

4. With respect to the releases set forth herein, RELEASOR hereto acknowledges that it is possible that unknown losses or claims exist or that known losses may have been underestimated in amount or severity and agrees that this release shall apply to all unknown and anticipated damages or injuries resulting from any claim or claims, as well as those that are now disclosed. The RELEASOR expressly accepts and assumes the risk that facts now believed to be true may actually not be true or be different than currently believed. This release shall remain effective notwithstanding such differences in fact.

5. Neither the execution of this Agreement nor compliance with any of its terms is intended to constitute, nor shall it constitute, an admission of fault, liability or coverage under The Policy by any party to this Agreement, nor shall it have any precedential value as such. The payments and agreements recited herein are for the purpose of resolving all claims and potential claims that are the subject of this Agreement.

6. RELEASOR hereby expressly covenants and agrees to indemnify and hold harmless RELEASEE from and against any and all liens and claims of any kind asserted by anyone against RELEASOR or RELEASEE including but not limited to any claims or demands for proceeds arising out of or as a result of The Casualty Event and the actions of RELEASEE, its attorneys, and agents at any time related to this loss and claims and the payment of this compromised settlement for said loss. As further consideration for said payment and settlement, RELEASOR, his successors and assigns, shall bear full responsibility for all attorney's fees and costs for services rendered to RELEASOR or any of them, incurred or yet to be incurred, as a result of or arising from The Casualty Event and The Coverage Action, and hereby expressly covenants and agrees to indemnify and hold harmless RELEASEE from and against any and all claims or demands for attorney's fees and costs for services rendered to RELEASOR or any of them arising from The Casualty Event and The Coverage Action.

7. The RELEASOR agrees to execute a Notice of Voluntary Dismissal With Prejudice of case number 05-00154 and file same with the Clerk of the Court, Hillsborough County within ten (10) days of receipt of the settlement proceeds referenced in paragraph 1 of this Agreement.

8. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes any and all prior or contemporaneous written or oral agreements. RELEASOR acknowledges and agrees that he has not relied upon any representations, written or oral, in entering into this Agreement other than as expressly set forth herein. No modification or amendment of this Agreement shall be valid unless made in writing and signed by or on behalf of each party hereto.

9. RELEASOR represents and warrants that he has had an opportunity to review the terms of this Agreement, and has been represented by and consulted with counsel of his choice regarding the provisions, rights, risks, and legal effects of this Agreement. It is further agreed that this Agreement shall be construed without regard to the identity or affiliation of its drafters and as if this Agreement was jointly prepared.

10. This Agreement shall be interpreted, enforced and governed by and under the laws of the State of Florida without regard to Florida's conflicts of laws provisions.

11. This Agreement may be executed in multiple counterparts, each of which shall be an original, and such counterparts together shall constitute one and the same instrument, and facsimile signatures shall have the same effect as originals.

12. RELEASOR further represents and warrants that this Release is executed and delivered for adequate consideration and value, and is valid, binding and enforceable in accordance with its terms.

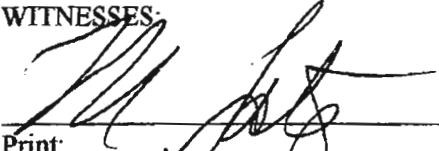
13. RELEASOR further represents and warrants that this Release is executed without any duress or wrongful pressure imposed by any party or person, and that this Release has been executed as the free act and deed of RELEASOR.

14. This Release may be pled in any action or other proceeding which may be brought, instituted or taken in connection with the matters addressed herein.

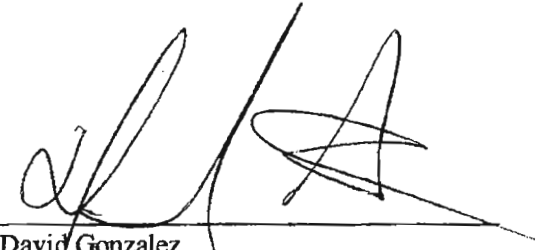
15. This Release shall be binding upon the successors and assigns of the RELEASOR hereto and shall inure to the benefit of the successors and assigns of the RELEASOR hereto.

16. Should any provision of this Release be invalid or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

WITNESSES:



Print: Michael LAURATO
Print:




David Gonzalez

STATE OF FLORIDA)
)
COUNTY OF HILLSBOROUGH)

The foregoing instrument was acknowledged before me by David Gonzalez, who further acknowledged that he executed the foregoing General Release and Settlement Agreement for the uses and purposes stated therein. He is personally known to me or has produced a Florida driver's license as identification.

WITNESS my hand and official seal in the County and State aforesaid this 10 day of September 2007.





NOTARY PUBLIC

My Commission Expires: _____

DeMichelle Deposition Reporters of Northern CA
Corporate Receiving
700 Webster Street
Fairfield, CA 94533
(707) 425-6000 Fax (707) 425-6019

INVOICE

INVOICE NO.	DATE	JOB NUMBER
30581	08/29/2007	04-6334
JOB DATE	REPORTER(S)	CASE NUMBER
08/10/2007	CECIL	05-00154
CASE CAPTION		
D. Gonzales v USF&G Spec. Insur. Co.		
TERMS		
NET15 DAYS		

Michael Laurato, Esq.
Austin & Laurato, P.A.
Attorneys at Law
1902 West Cass Street
Tampa, FL 33606

ORIGINAL AND 1 CERTIFIED COPY OF TRANSCRIPT OF:
Scott Garfield

43 Pages	217.15
REPORTER ATTENDANCE	85.00
ASCII Diskette: Final	25.00
E-Transcript:	45.00
Reporter Certificate	15.00
UPS 2-Day Delivery	28.15
UPS 2-Day Delivery	19.15
TOTAL DUE >>>>	434.45

UPS 2-Day Delivery, with COD: 08/22/2007
UPS 2-Day Delivery: 08/29/2007

** Applicable Late fees and interest charges of 1.5% will accrue after each 15 days.**

Our Mission:

- * Develop techniques and technologies to deliver services more efficiently
 - * Establish priorities and client satisfaction in the delivery of our services
 - * Function with integrity, openness and honesty
 - * Serve our clients to the best of our ability
- If we ever disappoint you, we hope you will let us know.
It is our desire to always meet your expectations.

TAX ID NO.: 20-1423223

(813) 258-0624 Fax (813) 258-4625

Please detach bottom portion and return with payment.

Michael Laurato, Esq.
Austin & Laurato, P.A.
Attorneys at Law
1902 West Cass Street
Tampa, FL 33606

Invoice No.: 30581
Date : 08/29/2007
TOTAL DUE : 434.45

Job No. : 04-6334
Case No. : 05-00154
D. Gonzales v USF&G Spec. Insur. Co.

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Fairfield, CA 94533