STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR OAKLAND COUNTY
IN THE BUSINESS COURT

INTERNATIONAL OUTDOOR, INC.,

Plaintiff,

v.

Case No. 2016-155472-CB
Hon. Victoria A. Valentine

SS MITX, LLC and LAMAR ADVERTISING OF MICHIGAN, INC,

Defendants.

and

LAMAR'S POST-HEARING REPLY BRIEF IN SUPPORT OF ITS REQUEST FOR ATTORNEY FEES AND COSTS

LAMAR ADVERTISING OF MICHIGAN, INC., d/b/a THE LAMAR COMPANIES and SS MITX, LLC, d/b/a SIMPLY SELF STORAGE,

Plaintiffs,

v.

Case No. 2016-155489-CB
Hon. Victoria A. Valentine

INTERNATIONAL OUTDOOR, INC.,

Defendant.

____/

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I. Attorney Fees Incurred Vs. Attorney Fees Shown As Paid On A Statement: International's Misleading Calculations.

Having conceded the reasonableness of the rates charged; and offering no specific objection to the reasonableness of the time presented in the invoices, International Outdoor, Inc. ("International") relies on a combination of goal-shifting, and mischaracterization of hearing testimony to create a misleading cap on the attorney fees requested by Lamar Advertising of Michigan, Inc. ("Lamar"). International says Lamar only proved that it paid $840,670.61 in attorneys' fees. That is both irrelevant and wrong.

First, International improperly shifts the goalposts on the motion by claiming that Lamar may only recover the attorney fees that it actually paid to Altior Law. That's wrong on the law. *Woodman v Dep't of Corrections*, 511 Mich 427, 454; 999 NW2d 463 (2023) ("We conclude that whether an attorney represents a client pro bono is not a valid consideration under the *Smith*/*Pirgu* framework because it is not relevant to the reasonableness of a fee."). This Court recognized and relied on that proposition when it quashed the subpoena to Altior Law to produce proof of payment by Lamar for the Altior Law invoices. (1/21/26 Order at p. 2)("IT IS HEREBY FURTHER ORDERED that the subpoenas to Kenneth Neuman and Stephen McKenney are quashed to the extent that they request copies of payment records[.]") Legally, the question of how much Lamar paid Altior is irrelevant. *Woodman, supra*. The inquiry is what attorney fees Lamar incurred and whether those fees were or were not reasonable under *Smith/Pirgu*. *Id*.

Nevertheless, International claims that Lamar changed the scope of the legal inquiry based on the testimony of its counsel at trial. In particular, International says that when Lamar's attorney Kenneth Neuman testified, he said that Lamar was "only seeking to recover the amount of fees for which they paid." (International Br. at p. 3). International then takes Exhibit 2 – the invoices – and ignores the "balance due" on each invoice and focuses solely on the "payment" listed on each invoice. (*Id*. at pp. 7-8 and Ex. B). But this is misleading for two reasons.

First, it misrepresents Mr. Neuman's testimony by omitting the context for his statement that Lamar was "only seeking to recover the amount of fees for which they paid." Here is the entire exchange:

> Q: I think you had mentioned earlier you had given courtesy discounts to Lamar for some of the time on the case; is that correct?
>
> A: That is correct.
>
> Q: And who made the decision as to what courtesy discount would be given?
>
> A: I did.
>
> Q: Are you seeking -- or is Lamar seeking to recover any of the discounted fees in this action?
>
> A: They are only seeking to recover the amount of fees for which they paid due to the tortious misconduct by International Outdoor[.] [(International Br. Ex,. A; Hrg. Tr. at p. 47)].

Mr. Neuman's testimony was that Altior Law had discounted some fees it charged to Lamar and that Lamar was not "seeking to recover any of the discounted fees in this action." (*Id*.).

Second, International's argument – that this Court rely solely on the "payment" and ignore the "balance due" for each invoice - does not accurately reflect the number of hours worked in the case. Lamar introduced into evidence invoices – showing the number of hours spent and the description of the tasks accomplished – the two things that are relevant to determining the "reasonable number of hours expended in the case." *Pirgu v United Servs Auto Ass'n*, 499 Mich 269, 281; 884 NW2d 257 (2016); *see also* (Hrg. Ex. 2).

Here, Lamar did not introduce all of the lengthy portions of Altior Law's invoices that detailed payments made over time. So, for some months, there is an invoice – showing in detail all the time worked for each month – but the portion invoice showing payment of the prior invoice was not introduced. *See, e.g.* (Lamar 506-530).[1] Of course, that was because this Court correctly ruled at proof of payment is irrelevant to the *Smith*/*Pirgu* factors. *Woodman, supra*; *see also* (1/21/26 Order).

The effect of what International does in its brief - counting only the "payment" and not the "balance due" - is that it omits several entire months of work performed, billed to Lamar, and paid by Lamar. For example, International's Exhibit B, which purports to show all payments made by Lamar, significantly understates the hours worked and fees incurred by Lamar during the second trial. International claims that Lamar only paid $35,301.35 – for the whole year – in 2021, which was the year of the second trial. (International Br. at Ex. B). That's implausible.

Ultimately, International's analysis fails to account for work performed by Altior Law and billed to Lamar for: Sep. 2018 ($7,405) (Lamar 414); Aug. 2021 ($125,739) (Lamar 506); Sep. 2021 ($26,843) (Lamar 511); Oct. 2021 ($14,917.50) (Lamar 513); Nov. 2021 ($8,304) (Lamar 515); Dec. 2021 ($8,444.50) (Lamar 517); Jan. 2022 ($11,509) (Lamar 519); Feb. 2022 ($3,092) (Lamar 520); Mar. 2022 ($25,988) (Lamar 523); Apr. 2022 ($39,244) (Lamar 525); Jul. 2022 ($23,936) (Lamar 530); Aug. 2024 ($577.50) (Lamar 539); Sep. 2024 ($1,423.50) (Lamar 540); Jan. 2025 ($13,919.50) (Lamar 547); Jul. 2025 ($9,624.50) (Lamar 557); Nov. 2025 ($1,579.50) (Lamar 563); and Dec. 2025 ($2,325) (Lamar 564).

The total value of the invoiced amounts that International ignores in its analysis is $324,872. International's claim that Lamar only presented evidence of $826,670.61 in fees that Lamar incurred is the wrong analysis (as a matter of law) and ignores and completely fails to account for evidence of $324,872 in fees incurred by Lamar. That analysis should be rejected.

[1] The references to the "Lamar" bates stamp numbers are to the bates numbers that appear on Exhibit 2 that was admitted at the January 29 evidentiary hearing.

II. International Still Has Not Identified Any Legal Basis For Limiting The Award Of Fees To The First Trial Only.

International continues to claim that Lamar's attorney fees are limited to the fees incurred until the first jury verdict was set aside. As Lamar wrote in is opening brief, there is no legal support for such a distinction. In response, International identified no authority for such a position. There simply isn't any. The Court of Appeals in this case made it clear that a plaintiff may recover its attorney fees as an element of damages based on a litigant's fraudulent or unlawful conduct in "prior litigation" ***or*** "in an action in which the moving party incurred the fees." *Int'l Outdoor, Inc v SS MITX, LLC*, 349 Mich App 212, 243; 27 NW3d 365 (2023). Here, Lamar incurred all of the fees it seeks "in an action in which the moving party incurred the fees" (i.e., this action). The Court of Appeals never ruled – expressly or by implication – that the fees could only relate to the first trial. The Court of Appeals remanded the entire issue of attorney fees to this Court and specifically held that the attorney fees could include the fees incurred in this action.

III. Fees After Remand.

International conceded that the statutory basis on which it previously claimed that Lamar was not entitled to attorney fees incurred after remand from the Supreme Court, because they were so-called "fees on fees", was repealed and has no application. Now International asserts that awarding fees after remand is not mandatory. That's right. It is what Lamar said in its opening brief: "the default principle is that an award of such fees remains within the trial court's discretion." *Tooles Contracting Group, LLC v Washtenaw Co Rd Comm*, unpublished opinion per curiam of the court of Appeals dated Apr. 4, 2024 (Docket No. 363005) at p. 14.[2]

[2] This opinion was attached to Lamar's opening brief as exhibit 5.

But International does not articulate any particular reason why this Court should not use its discretion to award fees after remand in this action. The fees after remand argument only effects the attorney fees incurred since the remand from the Supreme Court in September 2024. As this Court knows, Lamar proceeded with reasonable dispatch since the matter was remanded by the Supreme Court. It promptly produced its invoices and pushed for resolution of the attorney fee issue expeditiously. At every turn International met Lamar with objections, raising numerous collateral issues, and delay. International delayed in making any specific objections to Lamar's request for fees; changed defenses on numerous occasions; and dragged out the attorney fee issues as long as possible with numerous delays and requests for extensions.[3] And now International says Lamar should not be able to recover its attorney fees caused by all this obfuscation. But that argument has things backward. A party whose fraudulent and unlawful conduct laid the foundation for an award of attorney fees, should not be able to use scorched earth litigation tactics to further drive up attorney fees for the victimized party. That rewards abusive behavior. This Court should use its discretion to award Lamar its attorney fees incurred on remand in this action.

IV. Spectrum's Fees Are Reasonable.

International objects that taxation of Spectrum's fees should be limited solely to preparing the report and testifying at trial in this matter. But as Lamar argued in its opening brief, that is too narrow a read of the Court of Appeals' opinion in this case. In particular:

> Matthews testified about his investigation of the computer devices at issue and informed the court about the observations and reports that he made in his

[3] In its response brief, International seeks yet another delay by asking this Court to appoint a "discovery master" to review all the bills in this case and to review Altior Law's billing software. That request should be rejected for three reasons: (1) there is no discovery for which "discovery master" is needed; (2) there is no reason to believe this Court needs the help of master to understand the issues in this straight-forward request for attorney fees; and (3) this is, yet again, delay for delay's sake. This Court held a hearing, it took evidence, it is ready to make a decision.

> investigation. The trial court qualified him as an expert in computer forensics, and he offered opinion testimony about his observations throughout the hearing.
>
> ***
>
> In its motion to tax costs, Lamar submitted documentation that showed that Matthews's charges included time and expenses arguably not compensable as costs, such as hardware that he purchased as part of his investigation and telephone conversations apparently for the purpose of educating counsel. [*Int'l Outdoor, supra*. at 250].

Here, Lamar removed time from Spectrum's bills that related to conferences with counsel, and, instead, focused on the time Matthews spent imaging the computer and server and conducting his analysis that he used in his report and to testify at the evidentiary hearing. Matthews' testified that his preparation for testimony would have been impossible without that imaging and analysis.

> Q: And then I think you described before you had to image the computer in order to prepare for your testimony as well; what -- what did that entail?
>
> A: So, it depends on the device in question. Device as in whether it's a server, whether it's an external hard drive or flash drive, or whether it's a computer. For a computer, the general methodology is impossible to remove the hard drive from the computer enclosure, connect it to a device that prevents any changes to that hard drive, and then use forensic software to create what's called a forensic capture of that hard drive. So that's, in a nutshell, what we did with most of the devices at International Outdoor.
>
> Q: And without doing that work, could you have given testimony at the hearing in this case?
>
> A: It would not be possible. [(International Br. at Ex. B 1/29/26 Hrg. Tr. pp. 22-23)]

The work Matthews performed imaging and analyzing the computer was necessary preparation for his trial testimony; it was not work performed to educate counsel. This Court should tax all of Matthews' fees as requested by Lamar.

Dated: March 20, 2026

Respectfully submitted,

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