

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
ST. JOHNS COUNTY, FLORIDA

CASE NO.: CA06-815
DIVISION: 55

JAMES T. TREACE and
ANGELINE G. TREACE,
Plaintiffs,

vs.

HARBOUR ISLAND JOINT VENTURE III; et al.,
Defendants.

FILED 1-17-14
CHERYL STRICKLAND
CLERK CIRCUIT COURT
ST. JOHNS COUNTY
BY Tom Wetherbee
DEPUTY CLERK

STEVENSON DESIGN AND DEVELOPMENT OF
JACKSONVILLE, INC., a Florida corporation,
Third-Party Plaintiff,

vs.

RYSKCON CONSTRUCTION, INC., et al.,
Third-Party Defendants.

HARBOUR ISLAND JOINT VENTURE III, et al.,
Cross-Claim Plaintiffs,

vs.

STEVENSON DESIGN AND DEVELOPMENT OF
JACKSONVILLE, INC., a Florida corporation,
Cross-Claim Defendant.

JAMES T. TREACE and
ANGELINE G. TREACE,
Plaintiff Garnishors,

vs.

HANCOCK BANK OF FLORIDA; JEFFREY CHEFAN, an individual; JUDY CHEFAN, an individual; STEPHAN CHEFAN, an individual, LAW OFFICE OF BOHDAN NESWIACHENY; LEE RAUTENBERG, an individual; LOUIS N. SCHOLNIK, P.A.; MID-CONTINENT CASUALTY COMPANY,

Defendant Garnishees.

**ORDER GRANTING MID-CONTINENT CASUALTY COMPANY'S
MOTION IN LIMINE PLAINTIFFS' UNDERLYING ATTORNEYS' FEES
ARE NOT RECOVERABLE UNDER ANY MID-CONTINENT POLICY OF
INSURANCE**

THIS CAUSE came before the Court pursuant to Mid-Continent Casualty Company's Motion in Limine Plaintiffs' Underlying Attorneys' Fees are not Recoverable Under any Mid-Continent Policy of Insurance. (Dkt. #645) The Court has reviewed and considered the motion as well as Plaintiffs' response to the motion, the arguments of counsel, and being otherwise fully advised in the premises finds as follows.

On June 26, 2012, the Court entered a Final Judgment in favor of Plaintiffs, James T. Treace and Angeline G. Treace (hereinafter collectively "Treaces"), and against Stevenson Design and Development of Jacksonville, Inc. (hereinafter "Stevenson Design") in the sum of \$1,016,187.00. On April 29, 2013, the Court determined that the Treaces shall recover attorneys' fees, post-judgment interest on such fees, and costs from Stevenson Design in the total amount of \$379,076.00.

Defendant Garnishee, Mid-Continent Casualty Company (hereinafter “Mid-Continent”), insured Stevenson Design under a commercial general liability insurance policy (hereinafter “Policy”) and Mid-Continent defended Stevenson Design in the underlying action under a reservation of rights. Mid-Continent now seeks a ruling that the attorneys’ fees awarded to the Treaces are not recoverable under any Mid-Continent policy of insurance issued to Stevenson Design.

In *Scottsdale Ins. Co. v. Haynes*, the Fifth District Court of Appeal addressed the issue “whether or not attorney’s fees, which might be awarded against [an insured] in a suit brought on behalf of [an injured party] are covered under [the insurer’s] liability policy issued to [the insured].” 793 So. 2d 1006, 1007 (Fla. 5th DCA 2001). The court held that “attorney’s fees are a separate type of relief requiring special language before they may be assumed to have been included in a ‘damage’ award in an insurance policy.” *Id.* at 1010.

The Treaces beseech the Court to apply the reasoning articulated in *Assurance Co. of Amer. v. Lucas Waterproofing*, 581 F.Supp.2d 1201 (S.D.Fla. 2008), to find that the attorneys’ fees awarded in this case are recoverable under the policy issued by Mid-Continent. However, as stated in the concurring opinion in *GEICO Gen. Ins. Co. v. Williams*, the holding in *Lucas Waterproofing* “does not accurately reflect the state of Florida law.” 111 So. 3d 240, 248 (Fla. 4th DCA 2013) (Gross, J., concurring specially). This Court is bound to follow the holding in *Haynes, Int’l. Ass’n. of Bridge, Structural & Ornamental Ironworkers, AFL-CIO v. Mid-Continent Casualty Co.*

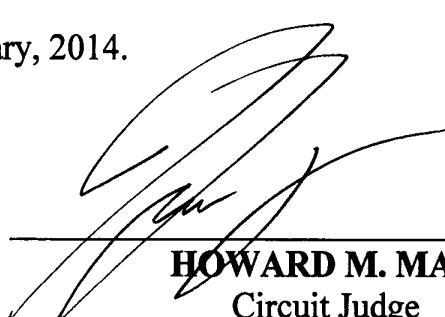
CIO v. Blount Intern., Ltd., 519 So. 2d 1009 (Fla. 2d DCA 1987) (“In adhering to the interpretation by the Florida courts of the applicable law in this state, we are mindful of the rule that state courts, in construing and interpreting state law, are not bound by the decisions of federal courts.”)

Therefore, absent special language in the Policy to include coverage for attorneys' fees, as required by *Haynes*, the underlying attorneys' fees are not recoverable by the Treaces from Mid-Continent. Accordingly, it is;

ORDERED AND ADJUDGED that:

Mid-Continent Casualty Company's Motion in Limine Plaintiffs' Underlying Attorneys' Fees are not Recoverable Under any Mid-Continent Policy of Insurance is GRANTED, and absent special language in the insurance policy issued by Mid-Continent to the Treaces, the underlying attorneys' fees are not recoverable by the Treaces from Mid-Continent.

DONE AND ORDERED in Chambers, in St. Johns County, St. Augustine, Florida, this 14th day of January, 2014.



HOWARD M. MALTZ
Circuit Judge

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