

Reasonable Attorney Fees Not Defined by Insurer's Billing Guidelines

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In June 2012, the Northern District of **Illinois** entered partial judgment in favor of an insured against its insurer for unpaid defense expenses. See ***Philadelphia Indemnity Ins. Co. v. Chicago Title Ins. Co.***, No., 09-C-7063, 2012 U.S. Dist. LEXIS 82751 (N.D. Ill. June 10, 2012). Among the defenses raised by the insurer in response to the insured's motion for judgment was the unreasonableness of the defense expenses, and that the insured's defense attorneys had not complied with the insurer's billing guidelines. The court rejected the insurer's argument regarding billing guidelines, observing that the insurer "provides no support for its indication that later-provided conditions can govern the amount to which an insured is entitled when those guidelines were not a part of the original insurance contract" and, therefore, "any noncompliance with the billing guidelines does not render the fees legally unreasonable and does not otherwise affect the amount that [the insurer] owes." *Id.* at *15-*16.

In ruling that the defense expenses were not unreasonable, the *Philadelphia Indemnity* court followed the reasoning of the court in ***Taco Bell Corp. v. Continental Cas. Co.***, 388 F.3d 1069 (7th Cir. 2004) and held that close review of the invoices was unnecessary because at the time the insurer incurred the defense expenses, it was "vigorously" denying that they had a duty to defend, thereby "providing a significant market incentive [for the insured] to minimize defense costs." *Philadelphia Indemnity Ins. Co.*, 2012 U.S. Dist. LEXIS 82751 at *19-20. In what the *Philadelphia Indemnity* court described as a "similar situation," the *Taco Bell* court had held that when an insured incurs defense costs at a time when the insurer is contesting its duty to defend, the "resulting uncertainty about reimbursement" provides the insured with "an incentive to minimize its legal expenses (for it might not be able to shift them); and where there are market incentives to economize, there is no occasion for painstaking judicial review." *Id.* (quoting *Taco Bell Corp.*, 388 F.3d at 1075-76. The *Philadelphia Indemnity* court also awarded prejudgment interest on unpaid defense invoices.

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