NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0736-12T2

COLONIAL SURETY COMPANY,

Plaintiff-Respondent/
Cross-Appellant,

v.

GMT CONTRACTING CORP.,
MOHAN JOSHI and MEGHA JOSHI,

Defendants-Appellants/
Cross-Respondents.

Argued November 18, 2013 – Decided June 4, 2014

Before Judges Yannotti and St. John.

On appeal from Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-5329-10.

Gerard J. Onorata argued the cause for appellants/cross-respondents (Peckar & Abramson, P.C., attorneys; Mr. Onorata and Christian J. Harvat, on the briefs).

Kevin S. Brotspies argued the cause for respondent/cross-appellant (McElroy, Deutsch, Mulvaney & Carpenter, LLP, attorneys; Mr. Brotspies and Adam R. Schwartz, on the briefs).

PER CURIAM

This breach-of-contract matter reaches us following a modified bench trial upon a Joint Statement of Undisputed Facts

(the Stipulated Facts) and appended exhibits. Defendants GMT Contracting Corp. (GMT), Mohan Joshi and Megha Joshi appeal from an August 30, 2012 order of the Law Division granting judgment for plaintiff Colonial Surety Company (Colonial) on its contract claim and awarding it over $93,000 in attorney's fees and costs. Colonial cross-appeals from the same order, challenging only the trial judge's reduction of its fees and costs from the nearly $131,000 sought in its certifications. For the reasons set forth below, we affirm on the appeal and the cross-appeal.

I.

We first summarize the factual background of this matter as discerned from the Stipulated Facts and exhibits presented at the bench trial. Defendant GMT is a New Jersey corporation engaged in public and private construction contracting, of which individual defendants Mohan and Megha Joshi serve as corporate officers. In January 2002, GMT and Colonial executed two written agreements in connection with GMT's bid on a construction project at Fort Dix. The first, a "Service Undertaking" executed on January 23,[1] specified the premium rates

[1] On January 23, 2004, the parties executed another Service Undertaking agreement. The Stipulated Facts do not explain why this second execution was necessary. Nevertheless, the 2002 and 2004 documents are identical in all respects relevant to this appeal. Thus, for simplicity purposes, our opinion will refer only to a single "Service Undertaking."

and method of computation for future surety bonds on the project if sought by GMT from Colonial as surety. The other document, a "General Indemnity Agreement," executed in favor of Colonial as indemnitee on January 25,[2] contained various provisions governing the suretyship. Because the particulars of those two documents are germane to the resolution of this contract dispute, we will describe them in greater detail.

The Service Undertaking recited that GMT "has or will obtain" bid and performance bonds from Colonial, and that GMT "will in all probability" be seeking further suretyship from Colonial "in the ensuing years." Accordingly, the document provided that "the rate charged for contract bonds" would be as follows:

> The first $100,000 at a rate of 2%, from $100,001 to $500,000 at a rate of 1.5% and anything over $500,000 at a rate of 1%. Premium is computed on the contract price or Bond Liability, whichever is greater. The final contract price of the complete project is subject to audit by [Colonial]. All Contract overruns will be charged at the above rates. There are no Premium returns for contract underruns.
>
> [Emphasis added.]

[2] On January 9, 2009, GMT executed a second "General Indemnity Agreement," which is likewise identical in all respects relevant to this appeal. Again, for purposes of simplicity, we will refer only to a single "General Indemnity Agreement" in this opinion.

The General Indemnity Agreement also included provisions related to bond premiums. First, among several terms it defined were the following:

> Bond - Any contractual obligation undertaken by [Colonial as surety] for [GMT], before or after the date of this Agreement, and any renewal, alteration, modification or extension of said obligation.
>
> . . . .
>
> Contract - Any agreement of or other undertaking by [GMT], the performance of which is bonded by [Colonial as surety] and all extensions, modifications and renewals thereof, whether made before or after the date of this Agreement, and all agreements between the [defendants] and [Colonial].

Additionally, the document contained a paragraph entitled "PREMIUM," which provided in pertinent part:

> [Defendants as indemnitors] will pay, or cause to be paid, to [Colonial], as and when each and every Bond is executed the premium therefore calculated on the contract price in accordance with the regular scheduled rates of [Colonial] then in force, and annually thereafter (except when the initial premium is scheduled as term premium) shall pay or cause to be paid to [Colonial] the annual premium therefore (and for any and all renewals, contract billing overruns or extensions thereof) in accordance with such rates until [GMT] shall serve upon [Colonial] competent, written, legal evidence satisfactory to [Colonial] of the final discharge from suretyship. All premium shall be considered earned when due. In the event of contract overruns, [defendants as indemnitors] shall pay to

> [Colonial], upon audit, any additional premium which is due to [Colonial] as a result of a contract overrun. It is understood and agreed that all premium is FULLY EARNED UPON issuance of the Bond AND IS NOT REFUNDABLE. Non-Payment of premium obligation by [defendants as indemnitors] constitutes default of the obligations as outlined in this agreement. There are no premium returns for contract underruns.

On December 10, 2003, GMT was awarded a contract (the Contract or Army Contract) by the Department of the Army (Army) to perform certain construction work in connection with a project known as "Fort Dix JOC Contract No. W911S1-04-D-0004." As reflected in the Stipulated Facts, in formulating its bid for the project, GMT did not account for the cost of the bond premiums sought by Colonial in this litigation.

The Contract was an indefinite delivery-indefinite quantity (IDIQ) contract, in which the Army was committed to purchasing only a minimum amount of materials and services, but also held options to increase its requirements beyond that amount. The minimum price and duration of the Contract was $200,000 and one year. However, the Contract gave the Army options to extend the initial one-year term by up to four additional one-year periods, with the initial and option-years each having an "estimated" maximum price of $10 million. Thus, at the time of the award, the Contract had potential maximum value of $50,000,000. The Contract provided that all supplies and services furnished by

GMT would be requested by way of delivery orders issued by the contracting officer, and that each delivery order "constitutes a firm, fixed price contract."

The Army issued GMT the first Contract delivery order, DO #1, on or about March 4, 2004. In connection with the Contract, GMT sought and received multiple bonds at different times from Colonial, bonds which eventually amounted to a cumulative penal sum of $6,750,000.

On December 31, 2003, Colonial issued a performance and payment bond (collectively, the First Bond), both bearing bond number "CSC-209896" and having a stated penal sum of $750,000, on behalf of GMT, as principal, for the benefit of the Army as obligee. The First Bond forms referenced contract number "W911S1-04-D-0004" and contract date "12/10/03." GMT paid $10,500 in premium, calculated based on the penal sum amount.

On December 15, 2004 and January 1, 2006, the Army exercised its first and second option periods under the Contract. GMT paid $38,800.15 in premium on August 14, 2006, though the Stipulated Facts do not indicate exactly to which bond or time period this payment corresponded.

On October 6, 2006, Colonial executed a "Consent of Surety and Increase of Penalty" numbered "CSC-211239" (the First Consent), which increased the penal sums of the First Bond by

$1.25 million. The standard-form document, which like the First Bond referenced the same contract number "W911S1-04-D-0004," stated in pertinent part: "The Surety . . . hereby consents . . . to the foregoing contract modification and agrees . . . that its . . . bond or bonds shall apply and extend to the contract as thereby modified or amended." GMT paid premium of $16,000 in connection with the First Consent which, like the First Bond, was calculated by applying the Service-Undertaking rates by the penal sum.

On October 18, 2006, Colonial issued a second performance and payment bond (collectively, the Second Bond), bearing bond number "CSC-213729" and having a penal sum of $3.5 million. Like the previous bond and consent, the Second Bond referenced the same contract number "W911S1-04-D-0004." GMT paid premium of $38,500 in connection with the Second Bond, once more based on the penal sum. On October 22, 2006, GMT paid $12,500 premium, though the Stipulated Facts once again fail to explain how this payment related to the issued bonds.

The Army exercised its third option period on October 27, 2006, followed by the issuance by Colonial of a second "Consent of Surety and Increase of Penalty" numbered "CSC-211239" (the Second Consent) on November 20, 2006. Though the record does not make it clear to which bond the consent applied, it appears

that the Second Consent had the effect of increasing the penal sum of the Second Bond by $1.25 million.

On October 23, 2007, the Army exercised its fourth and final option on the Contract. Colonial did not issue any other bonds or consents after the Second Consent, and the Stipulated Facts state that no other bonds were requested by the Army in connection with the Contract. The Stipulated Facts also make clear that GMT never provided Colonial with the contractual notice of discharge of the suretyship "at any time prior to GMT's completion of all work under the Contract."

The Army's exercise of each of its four option periods extended the Contract through December 31, 2008. On December 22, 2008, GMT received the final Contract delivery order, DO #282. The 282 delivery orders issued over the Contract's duration totaled $39,144,505.83.

In July 2009, Colonial requested and received from Mohan Joshi a spreadsheet listing all delivery orders and the final price under the Contract. After a subsequent audit, Colonial invoiced GMT for premium in the amount of $272,644.91, representing one percent of the Contract price for which premium purportedly had not been paid. Colonial later tendered a notice of default. Defendants have never paid that premium, nor reimbursed Colonial for the costs of prosecuting this dispute.

On May 25, 2010, Colonial filed a complaint in Superior Court, Law Division, Bergen County, against defendants alleging two counts of breach of contract and seeking compensatory damages as well as attorneys' fees and costs. Both parties moved for summary judgment, and both motions were denied by the trial court by orders entered on October 14, 2011, for reasons not disclosed by the record. The parties then agreed to a bench trial on stipulated facts.

Following oral argument and additional briefing upon the Stipulated Facts, the judge granted judgment for Colonial on May 25, 2012, awarding damages of $272,633.91, and finding Colonial to be entitled to attorneys' fees and costs. In his oral decision, the judge initially determined that the terms of the Service Undertaking and General Indemnity Agreement concerning premium calculation were clear and unambiguous. The judge reasoned that if the parties had intended for the premium to be calculated based on the bonds' penal sums alone, they could have provided so in the contractual documents.

The judge then determined that each delivery order "cannot be considered contracts completely independent of" the parties' agreements:

> If each contract were completely independent then pursuant to the indemnity agreement, the contract price would not be the total

> price of all the delivery orders GMT performed for the Army. The Army contract . . . does state that each delivery order constitutes a firm fixed price contract.
>
> The Court however, cannot find that each delivery order constitutes a completely independent contract. The delivery orders cannot be understood without reference to the Army contract under which they were entered.

Therefore, considering the increased assumption of risk by Colonial as the Army exercised its options, the judge determined that the additional orders had "increased the total risk [to] Colonial that a default would occur."

While acknowledging that Colonial's monetary liability was limited to the penal sums of the collective bonds rather than the total contract price, the judge nevertheless reasoned that "the risk that Colonial would have to pay out on a penal sum" increased as the scope of the Contract expanded. Rejecting the argument that additional premiums would work a "windfall" upon Colonial, the judge therefore concluded that the extra risk justified additional premiums pursuant to the parties' unambiguous agreements.

Following Colonial's certification of fees and costs in the amount of $130,976.63, the judge, by an undated order, awarded Colonial $93,709.49. On August 30, 2012, the judge entered a final order memorializing both the trial judgment and fee award.

On October 12, 2012, defendants filed a notice of appeal from that order, and Colonial filed a notice of cross-appeal on October 23, 2012.

On appeal, defendants contend that each delivery order under the IDIQ Contract constituted a separate "contract" for bonding purposes and that the Army did not require GMT to procure additional coverage beyond the $6.75 million penal sum of the issued bonds. Defendants argue that, because contradictory terms within the Service Undertakings, bond forms and Army Contract rendered the suretyship contract ambiguous, the judge erred by not construing the agreement against Colonial. Accordingly, defendants assert that Colonial was not entitled to the claimed premiums "for bonds that it never provided, and for risks that it never assumed."

Colonial responds that the Service Undertakings and Indemnity Agreement unambiguously state that premium would be calculated by the greater of the total Contract price or the penal sum of all outstanding bonds. Colonial asserts that even though the penal sum of the collective bonds did not reach the final Contract price, it nonetheless remained liable for every dollar of work performed by GMT over the life of the Contract. GMT's obligation to pay premium remained in effect throughout,

Colonial maintains, because GMT never discharged the suretyship by submitting the required documentation.

II.

Our starting point is the recognition that construction of the terms of a contract is a question of law for the court. Kieffer v. Best Buy, 205 N.J. 213, 223 (2011); Ohio Cas. Ins. Co. v. Island Pool & Spa, Inc., 418 N.J. Super. 162, 168 (App. Div.), certif. denied, 206 N.J. 329 (2011). Accordingly, we undertake a de novo and plenary review of the trial judge's application of the law, mindful that the judge's "interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Selective Ins. Co. of America v. Hudson E. Pain Mgmt. Osteopathic Med., 210 N.J. 597, 604 (2012)(quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

"Suretyship is a contractual relation resulting from an agreement whereby one person, the surety, engages to be answerable for the debt, default or miscarriage of another, the principal." Amelco Window Corp. v. Fed. Ins. Co., 127 N.J. Super. 342, 346 (App. Div. 1974). Surety bonds are contracts, and thus the rights and obligations flowing therefrom are governed by principles of contract law. See, e.g., id. at 346-

47; Graybar Elec. Co. v. Cont'l Cas. Ins. Co., 50 N.J. Super. 289, 294-95 (1958).

Courts enforce contracts in accordance with the parties' intentions when considered in the context of the circumstances at the time of formation and in keeping with their expressed general purpose. Conway v. 287 Corp. Ctr. Assocs., 187 N.J. 259, 269 (2006). Where a contract's terms are clear and unambiguous, there is no room for interpretation and contracts will be enforced as written. See Kampf v. Franklin Life Ins. Co., 33 N.J. 36, 43 (1960); B.D. v. Div. of Med. Assistance & Health Servs., 397 N.J. Super. 384, 391 (App. Div. 2007). To ascertain the intention of the parties, and to determine if an ambiguity exists, a court may, if necessary, consider extrinsic evidence offered to support conflicting interpretations. Conway, supra, 187 N.J. at 270. Our task is "simply interpretative" and we will not "rewrite a contract for the parties better than or different from the one they wrote for themselves." Kieffer, supra, 205 N.J. at 223; see also Kaur v. Assured Lending Corp., 405 N.J. Super. 468, 477 (App. Div. 2009).

Here, defendants contend that the language in the Service Undertaking is ambiguous as to which "contract" would be used to compute premium, and therefore argue that the agreement should

be construed against Colonial as the drafter and insurer. We disagree, and concur with the trial judge's finding that the challenged language is clear and unambiguous.

As described above, the disputed provision reads as follows:

> Premium is computed on the contract price or Bond Liability, whichever is greater. The final contract price of the complete project is subject to audit by [Colonial]. All Contract overruns will be charged at the above rates. There are no Premium returns for contract underruns.

Considering, as the Court has advised us, "all of the relevant evidence that will assist in determining the intent and meaning of the contract," Conway, supra, 187 N.J. at 269, we do not find it reasonable to suggest that the terms "contract" and "final contract price" in the above provision refer to anything other than the entire IDIQ Contract designated "W911S1-04-D-0004."

The parties' suretyship contract here actually consisted of multiple documents: the Service Undertaking, the General Indemnity Agreement and the bonds themselves. The rights and liabilities of the parties under the suretyship cannot be determined without looking to each of those several documents, and to the underlying Army Contract as well. See, e.g., United States ex rel. Cortez III Serv. Corp. v. PMR Const. Servs.,

Inc., 117 Fed. App'x 661, 665 (10th Cir. 2004)("In addition to the terms of the bond itself, courts must examine the terms of the accompanying contract to determine the scope of a surety's obligation under [applicable law]."); United States ex rel. B & M Roofing of Colo., Inc. v. AKM Assocs., Inc., 961 F. Supp. 1441, 1444 (D. Colo. 1997)(analyzing the extent of the surety's liability under a payment bond by reading not only the bond itself, but also the underlying contract and applicable statutes and regulations); cf. Amelco Window, supra, 127 N.J. Super. at 347 (explaining that where "the surety bond incorporates the prime construction contract by reference, the two being integrated, must be considered together").

The Army Contract documents themselves make it clear that, while indefinite in both quantity and duration, and generated by individual delivery orders, this was a single contract. For example, the pre-construction-conference memorandum appended to the Stipulated Facts contained the following description of "W911S1-04-D-0004":

> It is an indefinite quantity type contract with a guaranteed minimum amount of $200,000.00 and a maximum amount of $10,000,000 per year. The contract is for a broad range of maintenance, repair and minor construction work on real property at various Government facilities located within the zones identified in the contract.
>
> [Emphasis added.]

Moreover, the Contract solicitation contained a clause delineating the ordering process, which stated in pertinent part:

> (a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. . . .
>
> (b) All delivery orders or task orders are subject to the terms and conditions of this contract.
>
> [Emphasis added.]

In addition, as reproduced in full above, the definition of "Contract" in General Indemnity Agreement included "[a]ny agreement of or other undertaking by [GMT], the performance of which is bonded by [Colonial as surety] and all extensions, modifications and renewals thereof, whether made before or after the date of this Agreement."

Absent ambiguity in the language of an insurance contract, courts should neither "engage in a strained construction" of, nor write for the insured a better contract than, the agreement entered into. Progressive Cas. Ins. Co. v. Hurley, 166 N.J. 260, 273 (2001). As we have previously stated, in interpreting a suretyship contract, the language therein "should be given a common sense meaning and not tortured to reach a particular result." V. Petrillo & Son, Inc. v. American Constr. Co., 148

N.J. Super. 1, 5 (App. Div.), certif. denied, 75 N.J. 4 (1977). We discern but one reasonable, common-sense meaning of challenged language contained in the Service Undertaking. Thus, we conclude it is unambiguous that the Service Undertaking referred to the final price of the completed Contract numbered "W911S1-04-D-0004" for purposes of calculating premium. Any other conclusion would be to rewrite for defendants an agreement better than the one to which they assented.

Defendants also contend that the several bonds issued during the IDIQ contract provided coverage for only particular portions of the Contract.[3] According to defendants, "[a]lthough the Contract contained an initial bonding requirement, and additional bonding was required with respect to certain job orders, the Contract did not require GMT to secure bonding relating to the work for which Colonial now seeks additional premiums." Since the bonds were limited to specific delivery orders and the Army never required bonding over and above what was provided, defendants maintain the trial judge erred by finding Colonial entitled to collect additional premium for coverage it did not provide.

[3] As we understand it, defendants take the position to the effect that the bonds, whose collective penal sums totaled $6.75 million, provided coverage for only that corresponding amount of the Contract.

After perusing the various documents comprising the parties' suretyship agreement in light of the Stipulated Facts, we find no support for defendants' position. Neither the suretyship documents nor the bonds themselves contain a termination date or ceiling on the contract coverage. The General Indemnity Agreement provided that premium would be due on every bond at the scheduled rates, both at execution and "annually thereafter," unless the initial premium was paid for a specific term, until GMT served satisfactory notice of Colonial's discharge from the suretyship.

The bonds and consents all reference the same umbrella contract number "W911S1-04-D-0004," rather than specific delivery orders or option years, and none of them contain language limiting their duration. Indeed, both the First and Second Bonds provided that Colonial's suretyship would become void only if GMT performed and fulfilled all of its contractual obligations "during the original term of the contract and any extensions thereof" and also "any and all duly authorized modifications of the contract that hereafter are made." The bonds stated that notice of any modifications to the surety was waived.

Courts from other jurisdictions have noted and struggled with the complications that sometimes arise when parties utilize

standardized contract and bond forms in the context of IDIQ contracts. See, e.g., Cortez, supra, 117 Fed. App'x at 666; B & M Roofing, supra, 961 F. Supp. 1441; United States ex rel. Modern Elec., Inc. v. Ideal Elec. Sec. Co., 868 F. Supp. 10 (D.D.C. 1994), rev'd on other grounds, 81 F.2d 240 (D.C. Cir. 1996). We find those same problems present in the matter before us as well.

However, whether described as "extensions" of the original contract term or as "duly-authorized modifications," we determine that the options exercised by the Army and the individual delivery orders thereunder above $6.75 million were covered by Colonial's bonds because the bonds were never terminated. As the Stipulated Facts state, GMT never provided Colonial with notice of discharge prior to completion of all work under the Contract.

There is nothing in the Stipulated Facts or exhibits supporting defendants' argument that the Army did not request additional bonding for work above and beyond the $6.75 million. In fact, the record contains a July 2006 letter from defendant Mohan Joshi disputing an invoice for additional premiums, in which he wrote that, "GMT at this time is willing to pay a small surcharge for using this bond for an extended period of time."

As reflected in the Stipulated Facts, GMT ultimately paid that disputed invoice of $38,800.15 in August 2006. At the time, the only bond in existence was the First Bond, with a penal sum of $750,000. According to the list of all delivery orders under the Contract and corresponding order dates,[4] by the second half of the first contract year 2004, the cumulative total of the delivery orders had far surpassed the penal sum of $750,000. The preceding facts, particularly the admission by Mohan Joshi that GMT had extended the First Bond's coverage, contradict defendants' position that the several bonds covered only specific delivery orders, and only up to the amount of their penal sums.

Thus, the evidentiary record demonstrates that the bonds were extant throughout the entire course of the Contract, and Colonial was therefore entitled to collect premium on its bonds under the unambiguous terms of the Service Undertaking and General Indemnity Agreement.

Defendants' position on this issue suffers from a faulty premise that premium on surety bonds may only be computed based upon the amount of the penal sum. Not only does the Service Undertaking here explicitly provide otherwise, but it appears to

[4] The list of all Contract delivery orders was attached to the Stipulated Facts as "Exhibit F."

be common practice for sureties to compute bond premiums based on the ultimate contract price, rather than its liability limit reflected in the penal sum. See, e.g., Jeffrey S. Russell, Surety Bonds for Construction Contracts 103 (1999).

As one federal court has elucidated the process:

> In simplified terms, the surety calculates the original premium by multiplying the original contract price by the appropriate premium rate.
>
> If the contract price goes up during the contractor's performance of the contract, the surety is entitled to collect an additional premium from the contractor. The surety is entitled to more premium because the increase in the contract price indicates an increase in the surety's risk of loss.
>
> . . . .
>
> The surety usually makes a final adjustment of the premium after the contract is completed. The surety is entitled to more premium if the final cost is more than the original contract price, and the contractor is entitled to a refund if the final cost is less than the original contract price.
>
> [In re Tech. for Energy Corp., 140 B.R. 214, 216 (Bankr. E.D. Tenn. 1992).]

We find defendants' remaining arguments that equity should preclude Colonial from receiving additional premiums to be without sufficient merit to warrant discussion in this opinion. R. 2:11-3(e)(1)(E).

In sum, we concur the trial judge's determination that the contract language is clear and unambiguous and that Colonial is entitled to premium under the terms of the suretyship contract. Accordingly, we affirm the entry of judgment for Colonial.

Turning next to the award of counsel fees and costs, defendants argue that the trial judge committed a clear abuse of discretion in awarding attorney fees because the fee provisions in the General Indemnity Agreement are purportedly inapplicable to disputes over premiums and thus should have been strictly construed against Colonial.

Colonial responds that the clear and unambiguous terms of the General Indemnity Agreement hold defendants jointly and severally liable for litigation fees and expenses, and that the trial judge therefore correctly decided that Colonial was contractually entitled to fees in this matter. On cross-appeal, Colonial contends that the judge abused his discretion by awarding less than the amount it sought in its certifications.

We review a trial court's award of counsel fees for a clear abuse of discretion and will disturb that determination "'only on the rarest of occasions.'" Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 386 (2009)(quoting Packard-Bamberger & Co., Inc. v. Collier, 167 N.J. 427, 444 (2001)); see also Rendine v. Pantzer, 141 N.J. 292, 334-35 (1995). A prevailing

party may only seek attorney fees "if they are expressly provided for by statute, court rule, or contract." Litton, supra, 200 N.J. at 385. A party seeking attorney fees in a contract case must successfully bring a breach of contract claim, and the contract must have included a provision stipulating that the opposing party is liable for attorney fees. Id. at 386. Therefore, if a party has prevailed on a breach of contract claim over a contract that included an attorney fee provision, that party may seek attorney fees under the contract. Ibid.

In calculating the amount of reasonable attorney's fees, courts determine the lodestar, defined as the number of hours reasonably expended by the attorney, multiplied by a reasonable hourly rate. See ibid.; Rendine, supra, 141 N.J. at 334-35. "The court must not include excessive and unnecessary hours spent on the case in calculating the lodestar." Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 22 (2004). The lodestar may be enhanced or reduced based upon a number of factors, including a reduction for hours spent on unsuccessful or meritless claims that are independent, factually or legally, of the meritorious claims. R.M. v. Supreme Court of N.J., 190 N.J. 1, 11 (2007). The court is required to make findings on each element of the lodestar fee. Ibid.

Applying these principles to the record, we find that the judge did not abuse his discretion by awarding fees in the first place or by reducing the amounts certified by Colonial. We find no merit to defendants' contentions, as counsel fees were clearly warranted here because Colonial had prevailed on its breach-of-contract claim, and the General Indemnity Agreement plainly required defendants to reimburse Colonial for prosecuting "any action arising out of or relating to [the General Indemnity Agreement] or other Contract with [defendants]." See Litton, supra, 200 N.J. at 386.

Likewise, we are not persuaded by Colonial's arguments on cross-appeal that the trial judge abused his discretion by awarding approximately $40,000 less in fees than Colonial had certified. Colonial simply contends that it was entitled to such additional fees because of the supposed complexity of the underlying litigation and extensive discovery process, but neglects to explain why the particular reductions were made in error.

Affirmed on the appeal and the cross-appeal.