Prepared by the court

TAG REALTY, LLC, CROWN PRODUCTS, INC., and TAG REALTY II, LLC,

Plaintiffs,

v.

FIRESTONE BUILDING PRODUCTS COMPANY, LLC, ABOVE IT ALL LIMITED LIABILITY COMPANY, JOHN and JANE DOES 1-10 (fictitious parties), and ABC COMPANIES 1-10 (fictitious parties),

Defendants.

and

ABOVE IT ALL LIMITED LIABILITY COMPANY,

Third-Party Plaintiff,

v.

ORR & ASSOCIATES INSURANCE SERVICES, ABC CORPORATION(S) 1-5,

Third-Party Defendant,

and

ORR & ASSOCIATES INSURANCE SERVICES,

Fourth-Party Plaintiff,

v.

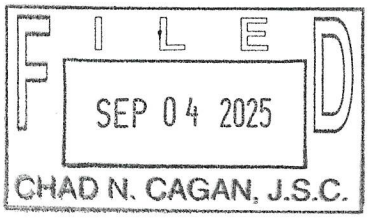
UNITED SPECIALTY INSURANCE COMPANY,

Fourth-Party Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MONMOUTH COUNTY

CIVIL ACTION

DOCKET NO. MON-L-888-20 (CBL)



FINAL JUDGMENT

THIS MATTER having come before the court in the presence of Plaintiff Tag Realty II, LLC, represented by Matthew K. Blaine, Esq. and Brian W. Keatts, Esq., of the law firm Davison Eastman Munoz Paone, P.A., and Defendant Firestone Building Products Company, LLC, now

known as Holcim Solutions and Products US, LLC, represented by Gerhard P. Dietrich, Esq., Amy L. Hansell, Esq., and Dennis Callahan, Esq., of the law firm Freeman Mathis & Gary LLP, and the court having conducted a jury trial on February 3, 4, 5, 6, 10, 11, 12, 13, 18, 19, 20, 21, 24, 25, 26, 27, 28, March 3, 4, 5, 6 and 7, 2025, and the court having considered the parties' post-verdict submissions, and for those reasons stated in the attached Statement of Reasons, and for good cause having been shown,

IT IS HEREBY ORDERED AND ADJUDGED ON THIS 4th day of September, 2025 as follows:

1. Damages shall be, and are hereby, entered against defendant, in favor of plaintiff, in the amount of $913,198.39.
2. Pre-judgment interest shall be, and is hereby, entered against defendant, in favor of plaintiff, in the amount of $150,890.39 calculated as follows from August 2, 2021 through September 4, 2025:
    a. 2021: 3.5% x $913,198.39= $31,961.94 x 151/365= $13,222.61
    b. 2022: 2.25% x $913,198.39= $20,546.96 (full year)
    c. 2023: 2.25% x $913,198.39= $20,546.96 (full year)
    d. 2024: 5.5% x $913,198.39= $50,225.91 (full year)
    e. 2025: 7.5% x. $913,198.39= $68,489.88 x 247/365= $46,347.95.
3. Attorney's fees and costs shall be, and are hereby, entered against defendant, in favor of plaintiff, in the amount of $250,000.
4. Judgment shall be, and is hereby, entered against defendant, in favor of plaintiff, in the amount of $1,314,088.78 ($913,198.39 + $150,890.39 + $250,000).

5. Post-judgment interest of 7.5% shall be incurred from the date of this final judgment until the judgment is paid, or a per diem charge of $270.02 (7.5% x $1,314,088.78 = $98,556.66/365).

6. **IT IS FURTHER ORDERED** pursuant to R. 1:5-1(a) that a copy of this final judgment will be served on all parties not served electronically within seven (7) days of the date of this final judgment.

HON. CHAD N. CAGAN, J.S.C.

See Attached Statement of Reasons

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Plaintiffs,

v.

FIRESTONE BUILDING PRODUCTS COMPANY, LLC, ABOVE IT ALL LIMITED LIABILITY COMPANY, JOHN and JANE DOES 1-10 (fictitious parties), and ABC COMPANIES 1-10 (fictitious parties),

Defendants.

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ORR & ASSOCIATES INSURANCE SERVICES, ABC CORPORATION(S) 1-5,

Third-Party Defendant,

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ORR & ASSOCIATES INSURANCE SERVICES,

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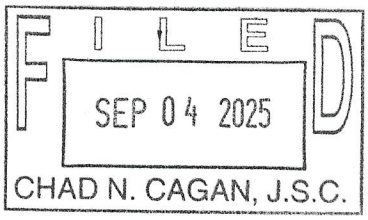

STATEMENT OF REASONS

Decided: September 4, 2025

Matthew K. Blaine, Esq., and Brian W. Keatts, Esq. on behalf of Plaintiff Tag Realty II, LLC

Gerhard P. Dietrich, Esq., Amy L. Hansell, Esq., and Dennis Callahan, Esq. on behalf of Defendant Firestone Building Products Company, LLC, now known as Holcim Solutions and Products US, LLC

CAGAN, J.S.C.

I. BACKGROUND

On March 11, 2020 plaintiffs Tag Realty, LLC ("Tag I") and Crown Products, Inc. ("Crown") filed the instant complaint alleging, *inter alia*, wrongful conduct arising from the sale and installation of a spray foam and silicone coating roofing system manufactured by defendant Firestone Building Products, LLC ("Firestone") and applied by defendant Above It All, LLC ("AIA") on the roof of a commercial warehouse building located at 1302 S. Roller Road, Ocean, New Jersey. The complaint asserted claims for breach of implied warranties of merchantability and fitness for a particular purpose, violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), breach of the implied covenant of good faith and fair dealing, fraud, negligent misrepresentation, breach of contract, negligence, aiding and abetting, civil conspiracy and RICO violations.

Approximately seventeen months after filing the complaint, on August 2, 2021, plaintiffs filed an amended complaint adding Tag Realty II, LLC ("Tag II") as a plaintiff and a claim for violation of express warranty.

On September 3, 2024 plaintiffs settled their claims against AIA. The settlement was embodied in a confidential settlement agreement.

By order filed November 1, 2024, the court granted in part defendant's motion for summary judgment and dismissed with prejudice plaintiffs' claims for aiding and abetting, civil conspiracy and RICO violations.

A five-week jury trial was held on February 3, 4, 5, 6, 10, 11, 12, 13, 18, 19, 20, 21, 24, 25, 26, 27, 28, March 3, 4, 5, 6 and 7, 2025. Approximately four weeks into the trial, on February 27, 2025, plaintiffs voluntarily dismissed all claims asserted by Tag I and Crown. The sole remaining plaintiff was Tag II. On March 4, 2025, the court granted defendant's motion to involuntarily dismiss

plaintiff's claim for negligence pursuant to R. 4:37-2. The jury deliberated for three days on March 5, 6 and 7 and rendered its verdict on March 7, 2025.

The jury found in favor of Tag II on the claims for breach of labor and materials warranty, breach of express warranty, breach of contract with a finding that AIA acted with apparent authority to act as agent of Firestone, breach of implied covenant of good faith and fair dealing, negligent misrepresentation, and violation of the CFA. The jury denied plaintiff's claims for breach of implied warranty for fitness for particular purpose, breach or implied warranty of merchantability, and fraud. The jury found ascertainable losses of $53,200 on the CFA claim. The jury found the settled defendant AIA was a proximate cause for plaintiff's harm. The jury found the total damages sustained by plaintiff on all claims, including the ascertainable losses under the CFA, was $2,142,857. The jury found plaintiff failed to mitigate damages and apportioned plaintiff 30% responsible for damages, resulting in an amount of $1,499,999.99 to be allocated between defendant Firestone and settled defendant AIA. The jury apportioned the percentage of fault to defendant Firestone and settled defendant AIA and found AIA to be 42% liable for plaintiff's damages.

By order filed March, 7, 2025 the court denied Firestone's motion for judgment pursuant to R. 4:40-1.

By order filed March 7, 2025, the court directed plaintiff's counsel to file a certification of services pursuant to the rules of court in support of plaintiff's request for an award of attorney's fees and costs pursuant to the CFA no later than March 21, 2025, with defendant's opposition due no later than April 4, 2025. By order dated March 21, 2025, the court granted plaintiff's request to extend the deadline to submit its supporting attorney fee certification to March 25, 2025, with opposition extended to April 8, 2025. By order dated March 26, 2025, the court granted plaintiff another extension to March 26, 2025, with opposition due April 9, 2025.

On March 27, 2025 plaintiff's counsel, Matthew Blaine, Esq., submitted his certification of services. On April 9, 2025 defendant submitted opposition to plaintiff's application for fees and costs. By order dated April 21, 2025, the court granted plaintiff's request for leave to submit a supplemental reply in support of their fee application, to be submitted no later than April 25, 2025. The April 21 order also directed plaintiff to submit a proposed form of judgment no later than April 25, 2025, with defendant's response due no later than May 1, 2025.

On April 25, 2025 plaintiff submitted its proposed form of judgment, along with plaintiff's counsel's supplemental certification in support of plaintiff's attorney fee application. On April 26, 2025 plaintiff submitted a brief in support of the damages sought in its proposed form of judgment.

By order dated April 28, 2025 the court granted defendant's request for an extension of time to respond to plaintiff's proposed order of judgment to May 9, 2025 and granted defendant's request to submit a sur-reply to plaintiff's counsel's supplemental certification in support of plaintiff's attorney fee application, limited to five pages, to be submitted by May 5, 2025.

On May 1, 2025 defendant filed a notice of motion to compel production of the release and settlement agreement between plaintiffs and settled defendant AIA, and to reset deadlines for filing of sur-reply to plaintiff's application for fees and costs and response to proposed final order of judgment.

On May 5, 2025 defendant filed a sur-reply in further opposition to plaintiff's application for fees and costs.

On May 9, 2025 defendant submitted an alternative proposed final order entering judgment, and brief in support of its alternative proposed judgment.

On May 16, 2025 plaintiff filed opposition to defendant's motion to compel. On May 19, 2025 defendant filed a reply in further support of its motion to compel production of plaintiff's settlement agreement with AIA.

On June 6, 2025 the court heard oral argument on defendant's motion to compel production of the release and settlement agreement entered between plaintiffs and AIA. By order dated June 6, 2025 the court granted defendant's motion and directed plaintiff to produce an unredacted version of the release and settlement agreement to defendant and the court by June 9, 2025. The June 6 order granted defendant leave to file a brief of no more than 10 pages within 10 days of receipt of the settlement agreement, and granted plaintiff leave to respond with no more than 5 pages within 7 days of receipt of defendant's brief. By correspondence dated June 9, 2025, plaintiff's counsel forwarded the settlement agreement entered between plaintiffs and AIA to the court and defendant's counsel.

On June 18, 2025 defendant filed a brief addressing the unredacted release and settlement agreement between plaintiff and AIA. Plaintiff did not reply to defendant's June 18, 2025 brief.

II. PLAINTIFF'S REQUEST FOR ATTORNEY'S FEES AND COSTS UNDER THE CFA

a. Plaintiff's Application

In his March 27, 2025 certification, plaintiff's counsel Matthew Blaine, Esq. requests an award of $746,000.24 in attorney's fees and $79,392.78 in costs for a total award of $825,393.02 incurred from March 10, 2020, the day before the initial complaint was filed through the reading of the jury's verdict on March 7, 2025. Plaintiff's counsel asserts the fees and costs were reasonable and necessary to secure the results obtained at trial, prevail on plaintiff's CFA claim, and prevail on plaintiff's five common core CFA related claims.

Mr. Blaine asserts that multiple attorneys worked on this matter. Mr. Blaine, the lead attorney, asserts his regular hourly rate is $450 but for this matter he charged a reduced hourly rate of $325.

Mr. Blaine asserts he billed 1,273 hours for a total of $404,215.61. Brian Keatts, Esq. charged a reduced hourly rate of $425 and billed a total of 388.5 hours for a total of $165,112.50. Timothy Moriarty, Esq., charged $325 per hour and billed 421 hours for a total of $126,729.63. Katherine Galdieri, Esq., charged $375 per hour and billed 59.5 hours for a total of $20,782.50. Michael Connolly, Esq. charged $400 per hour and billed 25.5 hours for a total of $10,200. Zachary Styczysnki, Esq. charged the hourly rate of $300 and billed 26.1 hours for a total of $7,830. Rajeev Venkat, Esq. charged $300 per hour and billed 18.9 hours for a total of $5,670. Kaitlyn Campanile, Esq. charged $300 per hour and billed 18.2 hours for a total of $5,460.

Addressing the time and labor required pursuant to RPC 1.5(a)(1), Mr. Blaine states,

> Plaintiff's counsel expended the time and labor during the near five-year period referenced in the current fee application in this hotly contested litigation to:
>
> a. Craft the claims in the initial complaint that, with the exception of the claim for breach of express warranty by affirmation or promise that was added in 2021, prevail on Plaintiff's consumer fraud claim and four remaining common core CFA related claims at trial;
>
> b. Establish and modify Plaintiff's litigation strategy in relation to the CFA claim and five common core CFA-related claims that prevailed at trial;
>
> c. Compile, review, and/or analyze the tens of thousands of pages of documents, including discovery, pleadings, motion records, and trial exhibits, that were produced, exchanged, filed, or submitted by Plaintiff, Firestone, or other third parties, over the course of the five-year period;
>
> d. Take, defend, or otherwise participate in 21 depositions of: Daria Tagliareni (Plaintiff - 2 days); Joe Cannon (Above It All- 2 days); Frank Venezia (Above It All); Charlie Stapleton (Firestone); Melanie Frieszell (Firestone); Michael Huber (Firestone); Bob Kirkholder (Firestone); Joe Gift (Firestone); Rinor Rafuna (Firestone); Stephanie Gssime (Firestone – 2 days); a designee for a company called Best Brothers that worked on Plaintiff's roof in 2012 (subpoenaed and taken by Firestone); Valentin Otero who was the owner of Best Brothers and worked on Plaintiff's roof in 2012 (subpoenaed and taken by Firestone); Nestor Maldonado who was Crown Product's former employee at the property (subpoenaed and taken by Firestone); Michael Manna who provided real estate brokerage/agent

services to Plaintiff (subpoenaed and taken by Firestone); Carlos Castro who was a contractor who worked for Plaintiff, Tag Realty, Crown Products, and Ms. Tagliareni in 2017 and on (subpoenaed and taken by Firestone– 2days);David Hawn who was Plaintiff's roofing and building envelope expert; Lee Wasserman who was Plaintiff's mold expert; Harold Tepper who was Plaintiff's building restoration expert; Colin Seybold who was Firestone's HVAC expert; and Gregory Doelp who was Firestone's roofing and building envelope expert;

e. File or oppose numerous motions, including Firestone's initial motion to dismiss; Plaintiff's motion to quash Firestone's subpoenas served upon Plaintiff's, Crown Product's, Tag Realty's, and Daria Tagliareni's banking institution (Wells Fargo) and accounting firm for protected financial / banking records and tax returns; Plaintiff's motion to amend its complaint to add more specific facts concerning Firestone's misrepresentations and marketing / advertising materials as well as Plaintiff's claim for breach of express warranty by affirmation or promise; numerous pre-motion letter applications under the CBL Rules; Firestone's continued attempts to take my deposition; Plaintiff's filing of a motion for reconsideration to obtain a protective order confirming that it was inappropriate to take my deposition; Firestone's unsuccessful motion to assert a counterclaim against Tag Realty and Crown Products for mitigation of damages; Firestone's summary judgment motion that was unsuccessful as to Plaintiff's CFA claim and five common core CFA-related claims; Plaintiff's motion to bar Firestone from belated discovery amendments that was successful; Firestone's motion for reconsideration concerning its belated discovery amendments that was unsuccessful; Firestone's ten motions in limine; Plaintiff's three motions in limine; Firestone's offer of proof seeking a second reconsideration of the barring of its belated discovery amendments that was filed in the midst of trial; and Firestone's ten motions for involuntary dismissal;

f. Address numerous discovery issues raised regularly by Firestone or, on some occasions, by Plaintiff in relation to Firestone;

g. Organize, conduct and participate in three joint inspections with Firestone in October of 2020, April of 2021, and November of 2023;

h. Work associated with Plaintiff's four experts: David Hawn and his two expert reports on roofing and building envelope issues, Lee Wasserman and his two expert reports on mold, Harold Tepper and his two expert reports on restoration costs, the expert report of Plaintiff's initial market rent and operating cost real estate expert (Thomas Lee), and the expert report of Plaintiff's trial testifying expert, Robert Gagliano, on the issues of market rent and operating cost damages after Mr. Lee left his consulting practice in midstream of Plaintiff's case to work for the NJDEP;

i. Work associated with reviewing and understanding the reports, opinions, and positions of Firestone's four experts: Gregory Deolp and his three expert reports on roofing and building envelope issues; Michael Holton and his three expert reports on mold, Michael Hedden and his two real estate damages reports, and Colin Seybold;

j. Firestone's service of dozens of subpoenas duces tecum and service of extensive responsive documents in relation to same; and

k. Legal research concerning the details and nuances of Plaintiff's CFA claim and its interrelation with the law and facts of Plaintiff's five common core CFA-related claims on which Plaintiff prevailed at trial;

l. Legal research concerning Firestone's numerous fact-based and legal defenses that applied to Plaintiff's CFA claim and Plaintiff's five interrelated CFA-related claims on which Plaintiff prevailed at trial;

m. Legal research concerning Plaintiff's damages against Firestone on its CFA claim and its five common core CFA-related claims; and

n. Against this backdrop preparing for and participating in a nearly five-week jury trial with Firestone.

In its supporting brief, plaintiff argues that an award of attorney's fees is required pursuant to N.J.S.A. 56:8-19. Further, "[i]n cases like this, '[w]hen separate claims in a complaint share a common core of facts with the consumer fraud claim, or are based on related legal theories, the trial judge, when awarding fees, must focus on the significance of the overall relief obtained by plaintiff in relation to the hours reasonably expended.'" Silva v. Autos of Amboy, Inc., 267 N.J. Super. 546, 551 (App. Div. 1993). Plaintiff contends that the six claims that plaintiff prevailed upon at trial involve a common core of CFA related facts and are inextricably intertwined. As such, plaintiff requests the court consider the attorney's fees incurred in prosecuting the CFA claim and the five related claims in calculating the fee award.

b. Defendant's Opposition

Defendant argues that plaintiff was awarded attorney's fees for one cause of action, CFA, not twelve causes of action. Defendant contends that plaintiff also ignores that only one of three plaintiffs was a prevailing party under the CFA, and that Plaintiffs Tag I and Crown, who were the sole plaintiffs until August 2021, were unsuccessful on all eleven counts filed in this matter. Defendant argues that Tag I and Crown suffered no damages under the CFA and they are not entitled to attorney's fees.

Defendant contends that Tag II while successful on the CFA claim, was unsuccessful on more claims than it was successful. It filed an 11-count complaint when added as a party in August 2021, 3 of 11 counts were dismissed on summary judgment, 1 count was dismissed during trial, and the jury found in favor of defendant on 2 of the remaining 7 counts. Defendant contends Tag II was unsuccessful on 6 of its 11 causes of action. Defendant asserts that 2 plaintiffs were voluntarily dismissed after it was shown Tag I and Crown sustained no damages. Thus, defendant contends Plaintiff's overall success rate was 5 out of 33 claims.

Defendant contends that Tag II's CFA claim was not only a small part of the litigation, it was also a small portion of the overall damages. The jury awarded ascertainable damages on the CFA claim in the amount of the price plaintiffs paid AIA for the roofing project - $53,200, as compared to the $2,089,657 gross damage award on the remainder of the claims.

As to costs, defendant contends that, based on information provided by plaintiff, it is impossible for the court to determine what charges were related to the CFA claim, and as such, plaintiff's claim for costs must be discounted.

Defendant also contends that plaintiff's billing records are reconstructed and are not the actual bills that were sent and paid, because 102 time entries had incorrect billing rates. Plaintiff does not

advise if it worked on a fixed fee or contingent basis. Defendant argues that plaintiff's application does not reflect that plaintiff brought this action against two defendants, Firestone and AIA, and fails to include any accounting in pursuing one defendant as opposed to the other.

Defendant further argues that the gross damages award was reduced by plaintiff's failure to mitigate and AIA's comparative fault.

Defendant disputes that the five other claims that plaintiff prevailed upon were inextricably intertwined with the CFA claim. Defendant asserts the breach of contract, breach of warranty, and breach of implied covenant of good faith and fair dealing required consideration of events occurring after June 2018 when the roof was installed. Defendant contends the jury's decision awarding ascertainable damages in the amount of the roofing contract indicates the only unconscionable commercial practice made by defendant occurred in relation to the sale or installation of the spray foam and silicone roof and warranty, not its conduct after the roof was installed. Only 5 depositions out of 24 taken in this matter related to plaintiff's decision to use AIA to install the Gaco spray foam and silicone roof. Defendant argues most of the time entries in plaintiff's counsel's billing have no bearing on the CFA claim.

Defendant suggests several methods by which the court could calculate recoverable attorney's fees and costs, to wit,

> First, based on the damages awards ($53,200 for CFA and $2,089,657 gross for the remaining claims), the applicable ratio is 2.55% (53,200 divided by 2,089,657). Based on counsels' claim to have expended a total of $746,000.24 in billed time and $79,392.79 in expenses, applying the suggested ratio would result in a total fee and cost award to Plaintiffs in the amount of $21,013.45.
>
> Second, the Court could consider that the successful CFA claim for Tag II was just one of 11 Counts brought by 3 separate plaintiffs and apply a ratio of 3.03% (1 divided by 33). Even giving Plaintiffs, all benefits of the doubt, on their negligent misrepresentation claim, only 1 of the 6 categories of damages claimed by Plaintiffs Count Five related to the cost of the spray

foam roof and ten-year warranty. Accordingly, the success on the negligent misrepresentation claim does not significantly move the needle. Applying this ratio would result in a total fee and cost award to Plaintiffs in the amount of $25,011.91.

Three, should the Court consider the "total" damages awarded for the CFA claim, $159,600 based on the statute's requirement that the damages be trebled, the ratio between the CFA damages and the gross damages of $2,089,657 would be 7.6%. Applying this ratio would result in a total fee and cost award to Plaintiffs in the amount of $63,040.36.

Four, considering the Court's instruction that attorney's fees were awarded for consumer fraud, not for 12 other causes of action, the Court could apply a ratio of 8.3%. Applying this ratio would result in a total fee and cost award to Plaintiffs in the amount of $68,782.75.

Finally, anticipating that the Court may be inclined to accept Plaintiffs' argument regarding common cores, the Court should still consider the success ratio and discount Plaintiffs' fees and costs appropriately. A discount is still warranted because there is no evidence that any fees and costs were removed from the billing and cost sheets submitted by Plaintiffs to the Court and there is no doubt that Plaintiffs were pursuing 11 Counts up and until November 2024, when 3 were dismissed on summary judgment, and continued to pursue 9 remaining claims (breach of contract, breach of warranty, breach of implied covenant, breach of implied warranty of fitness for a particular purpose, breach of implied warranty of merchantability, negligence, negligent misrepresentation, fraud, and CFA) up to and throughout trial. Indeed, it is hard to find evidence of anything in this matter which is not reflected in some way or form on the billing records. At best, Count Two, Consumer Fraud, shared a common core with Count Five, Negligent Misrepresentation. Applying a ratio of 16% (2 divided by 12), the resulting award should be $137,565.50.

c. Plaintiff's Reply

In reply, plaintiff argues defendant does not challenge counsels' reasonable hourly rates. Plaintiff argues that defendant's argument that fees should be awarded based on the number of counts in the complaint has been rejected by the courts. Plaintiff argues that plaintiff's claims share an inseparable common core of facts involving the same discovery and same witnesses.

Plaintiff argues that AIA's 42% apportionment of fault must be imputed in its entirety to Firestone as its agent.

Plaintiff disputes it submitted reconstructed records.

In his supplemental certification filed April 25, 2025, Mr. Blaine requested an additional $14,690 in legal fees and $716.96 in costs, increasing the fee and cost application to $840,799.98.

III. THE FORM OF JUDGMENT

a. Plaintiff's Proposed Form of Judgment

Plaintiff requests entry of final judgment that awards total damages against defendant in the amount of $1,865,844.96. In calculating the amount, plaintiff argues the jury determined total damages of $2,142,857 including ascertainable loss, plus $106,400 to account for CFA treble damages, less $674,777.10 for plaintiff's failure to mitigate, equals $1,574,479.90. Plaintiff then added prejudgment interest of $291,365.06 pursuant to R. 4:42-11(b) from March 2020 through March 7, 2025 which adds to the total sum of $1,865,844.96.

Plaintiff again argues that AIA's 42% apportionment of fault must be imputed in its entirety to defendant in accordance with principles of apparent agency.

b. Defendant's Proposed Form of Judgment

Defendant contends that plaintiff's proposed form of judgment seeks to hold defendant responsible for an amount in excess of the jury's verdict by disregarding the 42% of fault the jury attributed to AIA, essentially doubling the jury's verdict against defendant.

Defendant argues the jury found that $53,200 would compensate plaintiff for ascertainable losses resulting from the violation of the CFA. Defendant contends the jury stated the total damages, including ascertainable loss, was $2,142,857. Defendant argues the jury reduced this figure by 30% based on plaintiff's failure to mitigate damages, and thus, the jury found that $1,499,999.99 should

be allocated between defendant and AIA. Defendant contends the jury then found AIA's conduct proximately caused plaintiff's damages and apportioned 42% fault to AIA. Accordingly, defendant asserts that the total damages that plaintiff is entitled to from defendant must be reduced to $869,999.99.

Defendant contends that $106,400 (2x $53,200) must be added to the total damages pursuant to the CFA to include the treble damages, with $53,200 already included in the total damages found by the jury. Defendant contends this portion of the trebled damages must be reduced by 30% due to plaintiff's failure to mitigate and 42% due to AIA's comparative fault. As such, defendant argues that $43,198.40 must be added to the total damages. As a result, defendant argues the total damages owed by defendant to plaintiff, before interest and attorney's fees and costs, is $913,198.39.

Defendant contends that it is not responsible for AIA's allocated share of damages.

Defendant argues that prejudgment interest should run from the date Tag II became a party, not when the original complaint was filed. Defendant argues that R. 4:42-11(b) provides for prejudgment interest runs from the date of institution of the action. Defendant asserts Tag II instituted this action on August 2, 2021 and is the date from which prejudgment interest should run. Further, defendant contends that post-judgment interest runs when the judgment is entered. R. 4:42-11(a).

IV. PLAINTIFF'S SETTLEMENT WITH AIA

By order dated June 6, 2025, the court granted defendant's motion to compel the production of the unredacted settlement agreement between plaintiff and AIA. By correspondence dated June 9, 2025 plaintiff produced a copy of the settlement agreement dated October 10, 2024 to defendant and the court. The release provision in paragraph 1 states in part, "We [plaintiffs] give up any and all rights and claims which we may have against You [AIA] arising out of or in any way related to the facts and circumstances including but not limited to those arising from the Underlying Litigation

referred to below … instituted in the Superior Court of New Jersey, Monmouth County, bearing Docket Number: MON-L-888-20." The payment provision in paragraph 3 of the settlement agreement states in part,

> Tag Realty II, LLC ("Tag II") has been paid a total of $760,000 (seven hundred sixty thousand dollars) (hereinafter the "Settlement Payment") in full and final payment for the Releasees agreeing to and executing this Settlement Agreement. The Parties acknowledge that the Settlement Payment is for reimbursement of Tag II's alleged property damage and repair and restoration costs associated with its building located at 1302 S. Roller Road in Ocean, New Jersey. We agree that we will not seek anything further including any other payment(s) from You….

By correspondence dated June 18, 2025 defendant argues that the settlement agreement establishes beyond question that plaintiff has been made more than whole and now seeks a double recovery for AIA's conduct. Further, the release clearly states that the settlement constituted full satisfaction of plaintiff's claims against AIA.

The court's June 6, 2025 order permitted plaintiff to respond to defendant's June 18 correspondence. Plaintiff did not respond and thus, did not oppose defendant's contention that plaintiff seeks a double recovery.

V. ANALYSIS

"New Jersey generally follows the 'American Rule,' which requires that each party pay its own legal costs." Garmeaux v. DNV Concepts, Inc., 448 N.J. Super 148, 159 (App. Div. 2016) (citing Rendine v. Pantzer, 141 N.J. 292, 322 (1995)). "Fees may be shifted when permitted by statute, court rule, or contract." Ibid. (citing Packard-Bamberger& Co. v. Collier, 167 N.J. 427, 440 (2001)). "Regardless of the source authorizing fee shifting, the same reasonableness test governs. Ibid. (citing Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 386 (2009))

An attorney seeking counsel fees must comply with the procedures set forth in R. 4:42-9(b), which states in pertinent part:

> Except in tax and mortgage foreclosure actions, all applications for the allowance of fees shall be supported by an affidavit of services addressing the factors enumerated by RPC 1.5(a). The affidavit shall also include a recitation of other factors pertinent in the evaluation of the services rendered, the amount of the allowance applied for, and an itemization of disbursements for which reimbursement is sought. If the court is requested to consider the rendition of paraprofessional services in making a fee allowance, the affidavit shall include a detailed statement of the time spent and services rendered by paraprofessionals, a summary of the paraprofessionals' qualifications, and the attorney's billing rate for paraprofessional services to clients generally. No portion of any fee allowance claimed for attorney's services shall duplicate in any way the fees claimed by the attorney for paraprofessional services rendered to the client…

R.P.C. 1.5(a), in turn, provides:

> (a) lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
>
> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) the fee customarily charged in the locality for similar legal services;
>
> (4) the amount involved and the results obtained;
>
> (5) the time limitations imposed by the client or by the circumstances;
>
> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
>
> (8) whether the fee is fixed or contingent

The New Jersey Supreme Court "strongly discourage[d] the use of an attorney-fee application as an invitation to become mired in a second round of litigation." Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 24 (2004). The court in Furst held that "a plenary hearing should be conducted only when

the certifications of counsel raise material factual disputes that can be resolved solely by the taking of testimony" and "such hearings will be a rare, not a routine, occurrence." Ibid.

"Fee shifting is permitted statutorily by the CFA." Garmeaux, 448 N.J. Super. at 156 (citing N.J.S.A. 56:8-19). N.J.S.A. 56:8-19 states,

> Any person who suffers any ascertainable loss of moneys or property, real or personal, as a result of the use or employment by another person of any method, act, or practice declared unlawful under this act or the act hereby amended and supplemented may bring an action or assert a counterclaim therefor in any court of competent jurisdiction. In any action under this section the court shall, in addition to any other appropriate legal or equitable relief, award threefold the damages sustained by any person in interest. In all actions under this section, including those brought by the Attorney General, the court shall also award reasonable attorneys' fees, filing fees and reasonable costs of suit.

"Our Supreme Court has noted that the CFA's fee-shifting provision advances the statute's policy of ensuring that plaintiffs with bona fide claims are able to find lawyers to represent them and encourages counsel to take on private cases involving an infringement of statutory rights." Garmeaux, 448 N.J. Super. at 156 (citing Coleman v. Fiore Bros., Inc., 113 N.J. 594, 598 (1989)).

"When fee shifting is permissible, a court must ascertain the 'lodestar', that is, the 'number of hours reasonably expended by the successful party's counsel in the litigation, multiplied by a reasonable hourly rate.'" Id. at 159 (quoting Litton Indus., Inc., 220 N.J. at 386) (other citations omitted). "To compute the lodestar, the trial court must first determine the reasonableness of the hourly rates charged by the successful party's attorney in comparison to rates "for similar services by lawyers of reasonably comparable skill, experience and reputation in the community." Ibid. (citing Rendine, 141 N.J. at 337) (other citations omitted). "After evaluating the hourly rate, the trial court must then determine the reasonableness of the hours expended on the case." Id. at 159-160 (citing Furst, 182 N.J. at 22) "'Whether the hours the prevailing attorney devoted to any part of a

case are excessive ultimately requires a consideration of what is reasonable under the circumstances' and should be informed by the degree of success achieved by the prevailing party." Id. at 160 (quoting Furst, 182 N.J. at 22-23). "The award need not be proportionate to the damages recovered." Ibid. (quoting Furst, 182 N.J. at 22).

Addressing the circumstance, as here, where different claims for relief are sought in one lawsuit, the court in Garmeaux held,

> However, where a party presents "distinctly different claims for relief" in one lawsuit, work on those non-CFA claims are not counted against a defendant. Silva v. Autos of Amboy, Inc., 267 N.J. Super. 546, 556 (App. Div. 1993) (quoting Hensley v. Eckerhart, 461 U.S. 424, 435, 103 S. Ct. 1933, 1940, 76 L. Ed. 2d 40, 51 (1983)). A court may shift fees on the CFA claim or claims that involve the common core of CFA-related facts. See ibid. Such a suit should not be viewed as a series of discrete claims, rather the attorney's fees related to the common core of CFA-related work may be considered by the court when calculating the award. See ibid.

Id. at 156.

When a plaintiff presents claims for which fees are permitted by statute along with claims for which such fees cannot be awarded, attorney's fees for all the time devoted by counsel to the case can be awarded if the work on the unrelated claims "can[] be deemed in pursuit of the ultimate result achieved." Silva v. Autos of Amboy, Inc., 267 N.J. Super. 546, 556 (App. Div. 1993) (citing Hensley, 461 U.S. at 434-35). A suit will not be considered a collection of separate discrete claims if it rests on "a common core of facts" or is "based on related legal theories." Ibid. "In such a case, the court must focus on the 'significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation.'" Ibid. "If a plaintiff achieves excellent results in a lawsuit, counsel fees should not be reduced on the ground that the plaintiff did not prevail on each claim advanced." Ibid.

"By contrast, when a plaintiff achieves only partial or limited success, the lodestar may be excessive even if plaintiff's claims were interrelated and raised in good faith." Ibid. "While there is no requirement that counsel fees be proportionate to damages, the amount of damages a plaintiff recovers is relevant to the amount of attorney's fees to be awarded. Silva, 267 N.J. Super. at 557 (citing Chattin v. Cape May Greene, Inc., 243 N.J. Super. 590, 616 (App. Div. 1990)).

Here, as an initial matter, the court finds the rates charged by the plaintiff's attorneys who worked on the matter, ranging from $300 to $425 per hour depending on the attorney, were reasonable.

Plaintiff's counsel initially requested an award of $746,000.24 in attorney's fees and $79,392.78 in costs for a total award of $825,393.02 incurred from March 10, 2020, the day before the complaint was filed through the reading of the jury's verdict on March 7, 2025. Plaintiff's counsel later requested $760,690.24 in fees and $80,109.74 in costs for a total award of $840,799.98. Plaintiff's counsel asserts the fees and costs were reasonable and necessary to secure the results obtained at trial, prevail on plaintiff's CFA claim, and prevail on plaintiff's five common core CFA related claims.

The court finds that the claims on which plaintiff prevailed, including CFA, breach of labor and material warranty, breach of express warranty, breach of contract, breach of implied covenant of good faith and fair dealing, and negligent misrepresentation, share a common core of operative facts or were premised on related legal theories. Regarding the CFA claim, as stated in the verdict form, the jury found, in part, that "...plaintiff prove[d] by a preponderance of evidence that: defendant Firestone engaged in an[] unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation or knowing concealment, suppression or omission of any material fact in connection with the sale or installation of Firestone's spray foam and silicone and warranty." The

court finds, like the CFA claim, the causes of action for breach of labor and material warranty, breach of express warranty, breach of contract, breach of implied covenant of good faith and fair dealing, and negligent misrepresentation, also stem from the sale or installation of Firestone's spray foam and silicone and warranty, and, as such, share a same common core of facts.

Notwithstanding the common core of operative facts or related legal theories, the court finds plaintiff's request for attorney's fees and costs in the total sum of $840,799.88 is unreasonable, excessive and should be reduced for several reasons.

Plaintiff's initial complaint was brought by Tag I and Crown against two defendants, Firestone and AIA. Plaintiff's counsel's billing entries do not distinguish time or costs incurred representing Tag I or Crown over the course of five years of litigation in claims against AIA or Firestone. Similarly, the time entries do not identify time and costs incurred representing Tag II against AIA or Firestone. Claims by Tag I and Crown were dismissed. Unequivocally, Tag I and Crown did not prevail on a CFA claim and, thus, are not entitled to an award of attorney's fees and costs incurred over approximately five years of litigation. As such, Tag II's request for attorney's fees and costs must be reduced to not award fees on claims ie, Tag I and Crown claims, to which fees are not entitled. Grubbs v. Knoll, 376 N.J. Super. 420, 431 (App. Div. 2005) ["In fixing counsel fees, a trial judge must ensure that the award does not cover effort expended on independent claims that happen to be joined with claims for which counsel is entitled to attorney's fees."]

Fees should be reduced also because the billing records reflect time that was incurred beginning on March 19, 2020, the day before the complaint was filed on behalf of Tag I and Crown. Tag II did not become a party until August 2, 2021. The court finds no basis to award counsel fees and costs to Tag II incurred by other parties for approximately seventeen months prior to Tag II becoming a party in this litigation.

Plaintiff's counsel's billing also does not differentiate time expended on the claims asserted in the complaint, including time expended for causes of action that were dismissed by court order including RICO violations, aiding and abetting, civil conspiracy, and negligence as well as causes of action denied by the jury including breach of implied warranty for fitness for particular purpose, breach of implied warranty of merchantability, and fraud.

The court also finds plaintiff had limited success in its CFA claim and had greater success on the common-core claims. The jury found ascertainable losses of $53,200 on the CFA claim. The jury found total damages of $2,089,657 on the other prevailing claims. The $53,200 constitute 2.48% of the total gross damages, including ascertainable losses ($53,200/$2,142,857), and constitute 2.54% of the $2,089,657 gross damages on the remainder of the claims ($53,200/$2,089,657). If based on treble damages pursuant to statute of $159,600 ($53,200 x 3), the trebled damages constitute 7.64% of the gross damages of the remainder of the claims ($159,600/$2,089,657). Unquestionably, the ascertainable losses under the CFA are a small fraction of the total damages awarded by the jury. The court finds plaintiff's limited success on the CFA claim warrants downward adjustment in the attorney fee award. See, Silva, 267 N.J. Super at 560 ["The nominal amount of the damages award alone justifies a substantial downward adjustment in the counsel fee award."]

The CFA was only one of eleven pled causes of action, with breach of implied warranty of fitness for particular purpose and implied warranty of merchantability combined in one count, brought by three separate plaintiffs. Claims brought by plaintiffs, Tag I and Crown, were dismissed after approximately five years of litigation. As to the remaining plaintiff, Tag II, four causes of action were dismissed by the court and three causes of action were denied by the jury. Thus, in terms of success, out of approximately thirty-six causes of action brought by three plaintiffs, one plaintiff, Tag II, prevailed on six counts. The overall success rate of this litigation based on the number of

prevailing causes of action was approximately 16.67% (6/36), which, in turn, amounts to $140,161.36 of the total fees and costs of $840,799.98 requested by plaintiff. The court, however, declines to calculate the attorney fee award based on a ratio of the total number of claims to the claims that prevailed. Silva, 267 N.J. Super. at 555-556 ["Hensley expressly rejected "a mathematical approach comparing the total number of issues in the case with those actually prevailed upon" because "[s]uch a ratio provides little aid in determining what is a reasonable fee in light of all the relevant factors."]

Further diminishing plaintiff's level of success, the jury found plaintiff failed to mitigate damages and apportioned plaintiff 30% responsible for damages. The jury also apportioned the percentage of fault to defendants AIA and Firestone and found AIA to be 42% liable for plaintiff's damages.

The court also recognizes the extent of the legal services rendered. This matter was a complex business dispute managed under the Complex Business Litigation Program. Again, there were twelve causes of action pled in eleven counts involving three plaintiffs, Tag I, Crown, and Tag II, and two defendants, Firestone and AIA. The matter also included third and fourth-party complaints involving Orr and Associates Insurance Services and United Specialty Insurance Company relating to insurance coverage disputes. There was motion practice and extensive discovery. As indicated in the parties' submissions here, this matter involved tens of thousands of pages of documents. Twenty-four depositions were conducted. Both sides had numerous lawyers working on the matter. In fact, virtually every day for five weeks at trial, Firestone had three attorneys present in court and plaintiff had at least two lawyers present. Twenty witnesses, including seven experts, testified at trial. Approximately 193 exhibits were admitted at trial. Due to the sheer volume of witnesses and exhibits, both sides divided responsibility for examining witnesses among the lawyers.

As noted above, in determining a reasonable attorney's fee and cost award, "[t]he court must focus on the significance of the overall relief obtained … in relation to the hours reasonably expended on the litigation." Silva, 267 N.J. Super. at 556. "When fee-shifting is permitted, the public policy of the enabling statute is a relevant factor to be considered in conjunction with the factors enumerated in RPC 1.5(a) in determining the award." Garmeaux, 448 N.J. Super. at 161-162.

Here, based on the foregoing considerations, the public policy of the CFA, the factors in RPC 1.5(a), and the Silva analysis, the court finds a reasonable attorney's fee and costs award is $250,000. This amount represents approximately 469.92% of $53,200, almost 5x the amount of ascertainable losses awarded by the jury. The court finds $250,000 to be reasonable to compensate Tag II for fees and costs in view of its overall limited success on the CFA claim, greater success on the common core claims, lack of success on numerous claims, the reduction of damages of 30% due to plaintiff's failure to mitigate and 42% apportionment of fault to AIA, and without awarding fees and costs to Tag I and Crown whose claims were dismissed after approximately five years of litigation.

As to the form of judgment, the court finds plaintiff's request for total damages against defendant in the amount of $1,865,844.96 to be excessive and unreasonable.

The jury found total damages, including ascertainable loss under the CFA, of $2,142,857. The jury reduced this figure by 30% due to plaintiff's failure to mitigate damages. Therefore, the jury found that $1,499,999.99 should be allocated between defendant Firestone and settled defendant AIA. The jury also found AIA's conduct proximately caused plaintiff's damages and apportioned 42% fault to AIA. Accordingly, plaintiff is entitled to total damages from defendant in the amount of $869,999.99.

The court shall add $106,400 (2x $53,200) to the total damages pursuant to the CFA to include the treble damages, with $53,200 already included in the total damages as found by the jury. After

reducing the trebled damages by 30% due to plaintiff's failure to mitigate and 42% due to AIA's comparative fault, a total of $43,198.40 must be added to the total damages. As a result, the total damages owed by defendant to plaintiff, before interest and attorney's fees and costs, is $913,198.39.

The damages of $1,865,844.96 sought by plaintiff is excessive because it fails to deduct the 42% apportionment of fault to AIA. Prior to being compelled to produce a copy of the settlement agreement entered between plaintiff and AIA, plaintiff argued that AIA's 42% apportionment of fault must be imputed in its entirety to Firestone in accordance with principles of apparent agency. As directed in the court's June 6, 2025 order, plaintiff produced a copy of the settlement agreement to the court and defendant which revealed that plaintiff was compensated by AIA in the amount of $760,000 in full satisfaction of plaintiff's claims in this matter. After receipt of the settlement agreement, by correspondence dated June 18, 2025 defendant argued that the settlement agreement establishes beyond question that plaintiff has been made more than whole and now seeks a double recovery for AIA's conduct, and the release clearly states that the settlement constituted full satisfaction of plaintiff's claims against AIA. The court's June 6, 2025 order permitted plaintiff to respond to defendant's June 18 correspondence. Plaintiff elected not to respond to defendant's June 18 correspondence and thus, did not challenge defendant's contention that plaintiff is seeking a double recovery, ostensibly abandoning its argument that AIA's 42% apportionment of fault should be imputed to defendant.

Nonetheless, the court finds that plaintiff is not entitled to be paid twice for the same injuries caused by the same tort feasor. In view of the $760,000 payment from AIA in full satisfaction of claims in this case, imputing AIA's 42% of fault to Firestone would lead to an inequitable and impermissible double recovery of damages for the same injury caused by AIA. "'It is fundamental that no matter under what theories liability may be established, there cannot be any duplication of

damages.'" Ptaszynski v. Atlantic Health Sys., 440 N.J. Super. 24, 39-40 (App. Div. 2015) (quoting P. v. Portadin, 179 N.J. Super. 465, 472 (App. Div. 1981). "The common law prohibits a double recovery for the same injury." Ptaszynski, 440 N.J Super. at 40 (citing Buccheri v. Montgomery Ward & Co., 19 N.J. 594, 605 (1955). New Jersey courts have routinely upheld the policy of precluding impermissible double recoveries for the same injuries. Pool v. Morristown Mem. Hosp., 400 N.J. Super. 572, 576 (App. Div. 2008) (holding that "[t]he policy of avoiding double recovery is a strong one[.]")

Here, AIA's 42% apportionment of fault amounts to $629,999.99 ($1,499,999.99 x 42%). Plaintiff's receipt from AIA of $760,000 is more compensation than the jury awarded for the same injuries. In effect, if the court were to permit plaintiff to recover both the $760,000 from AIA and impute AIA's 42% apportionment of liability to Firestone, plaintiff will receive more than a double recovery for the same injury – plaintiff will receive an additional approximate 120% ($629,999.99 x 120.6% = $759,779.99). Under these circumstances, the court rejects plaintiff's request to impute AIA's 42% apportionment of liability to Firestone, even if the argument were not abandoned by plaintiff, as such an outcome would result in an impermissible double recovery for the same injury caused by the same tort feasor.

Prejudgment interest shall run from the date Tag II became a party on August 2, 2021, not when the original complaint was filed. R. 4:42-11(b). Post-judgment interest shall run upon entry of this final judgment. R. 4:42-11(a).

VI. CONCLUSION

Based on the foregoing, the court shall enter final judgment as follows:

1. Damages shall be, and are hereby, entered against defendant, in favor of plaintiff, in the amount of $913,198.39.

2. Pre-judgment interest shall be, and is hereby, entered against defendant, in favor of plaintiff, in the amount of $150,890.39 calculated as follows from August 2 through September 4, 2025:

    a. 2021: 3.5% x $913,198.39= $31,961.94 x 151/365= $13,222.61

    b. 2022: 2.25% x $913,198.39= $20,546.96 (full year)

    c. 2023: 2.25% x $913,198.39= $20,546.96 (full year)

    d. 2024: 5.5% x $913,198.39= $50,225.91 (full year)

    e. 2025: 7.5% x. $913,198.39= $68,489.88 x 247/365= $46,347.95.

3. Attorney's fees and costs shall be, and are hereby, entered against defendant, in favor of plaintiff, in the amount of $250,000;

4. Judgment shall be, and is hereby, entered against defendant, in favor of plaintiff, in the amount of $1,314,088.78 ($913,198.39+150,890.39+250,000).

5. Post-judgment interest of 7.5% shall be incurred from the date of this final judgment until the Judgment is paid, or a per diem charge of $270.02 (7.5% x $1,314,088.78 = $98,556.66/365).

[END]