

1 Following the jury verdict awarding plaintiffs \$510,308.00, the parties filed their
2 submissions on the issue of attorney fees. The court ordered a total of \$276,893.50 in attorney
3 fees and costs to plaintiff as the prevailing party. Defendants have moved the court to
4 reconsider its order awarding fees and costs.
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6 The court has reconsidered its order concerning attorney fees and costs. In addition to
7 considering the pleadings and argument related to the motion for reconsideration, the court has
8 conducted a further review of the procedural history of this case and the trial evidence and the
9 specific submissions of counsel on the issue of attorney fees and costs, including billing
10 statements.
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12 The court remains convinced that plaintiffs are the prevailing party in this case. The
13 combination of the jury verdict and plaintiffs' earlier success on summary judgment, as
14 evidenced by Judge Erlick's order of February 8, 2007, confirm that plaintiffs did indeed prevail
15 in this suit and are entitled to reasonable attorney fees and expenses, as authorized by the
16 contract between the parties. While defendants did have some measure of success in some
17 pretrial motions and in the jury verdict finding no liability on the negligent misrepresentation
18 claim, that success pales in comparison to plaintiffs' more significant overall success. For the
19 reasons stated in the court's order of May 15, 2007, plaintiffs status as the prevailing party is
20 reaffirmed.
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24 The court has also reexamined the lodestar calculation in this case and finds that the 1%
25 adjustment was unnecessarily added. The lodestar calculation appears to be a reasonably
26 approximate determination of the basis for plaintiffs' fees. On further review, the 1%
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ORDER

1 adjustment was an unnecessary addition to reflect the nature and the extent of trial risk in this
2 case.

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4 Attorney fees have therefore been further reviewed and calculated as follows:

5	Attorney Fees	\$206,144.55
6	(includes the \$17,016.50 deduction for the negligent misrepresentation claim)	
7	Subtotal	\$206,144.55

8 Counsel has provided further documentation through the Declaration of Todd Skoglund
9 concerning the basis for the time devoted to the negligent misrepresentation claim.

10 EXPERT WITNESS EXPENSES

11 Defendants argue that RCW 4.84.330 does not authorize the award of expert witness
12 fees in this case, citing Wagner v. Foote, 128 Wn. 2d 408, 416-17, 908 P. 2d 884 (1996). It is
13 indeed true that expert witness fees are not authorized under RCW 4.84.330 nor are they
14 recoverable under RCW 4.84.030 or 4.84.010, as Wagner noted.

15 However, as the Supreme Court observed in Panorama Village Condominium Owners
16 Association Board of Directors v. Allstate Insurance Company, 144 Wn. 2d 130, 142, 26 P.3d
17 910 (2001), the phrase “reasonable attorney fees” in and of itself supports an award that is not
18 limited by RCW 4.84.01. Louisiana Pacific Corp., v. Asarco Inc., 131 Wn. 2d 587, 934 P.2d
19 685 (1997). In Asarco, the Supreme Court noted that “the court is authorized to additionally
20 award other reasonably necessary expenses of litigation based upon such equitable factors as the
21 court determines are appropriate”. Asarco at 604.

22 In this case, the equities strongly support the inclusion of expert witness fees in
23 plaintiffs’ favor. It was defendants’ negligent workmanship that gave rise to this suit. In order
24 to present their well-justified claims to the jury, plaintiffs were required to hire experts to

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29 ORDER

1 demonstrate before the jury the extent of the scope of repair necessary to remedy the
2 deficiencies caused by defendants negligent work. To exclude these costs from the award would
3 be to deny plaintiffs the full benefit of the jury verdict by significantly diminishing the value of
4 the verdict by requiring plaintiffs to pay expert witness expenses which in fairness should be
5 borne by the defendants. Asarco Inc., at 606. It is clear that the presentation of the expert
6 witness testimony was a reasonable and necessary part of the plaintiffs' case. Reimbursing
7 plaintiffs the expert witness fees would also serve the important equitable purpose of making the
8 plaintiffs whole.
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11 Defendants argue that, unlike Panorama Village, a contract addressed attorney fees and
12 expenses in this case. In the court's view, that is simply another reason to justify the inclusion
13 of expert witness fees in this award. As noted in Panorama Village, in order to make a plaintiff
14 whole, it is important that "reasonable attorney fees" be broadly construed to encompass
15 expenses other than billed hours. Id at 144. The presence of an attorney fees/expenses clause in
16 a contract drafted by defendants is a further indication that an award of reasonable attorney fees
17 and expenses to the prevailing party was actually contemplated by the parties. Expert witness
18 fees clearly fall within the category of litigation expenses.
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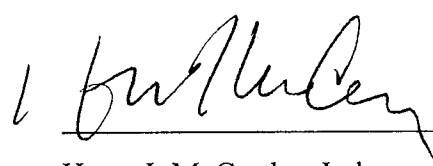
21 Therefore, the court reaffirms that an award of the expert witness fees is a necessary part
22 of reimbursable litigation costs, totaling \$68,687.51. The total amount of attorney fees and
23 costs, with the deduction noted above, is \$274,832.06. The total judgment is \$785,140.06
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25 Plaintiffs' request for an additional \$24,962.00 in attorneys fees associated with post-
26 trial motions is denied. To impose extra fees would be an inappropriate penalty to the
27 defendants who have exercised their right to request reconsideration of the court's order
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29 ORDER

1 awarding attorney fees and costs. The parties shall bear their own costs concerning litigation
2 related to this motion for reconsideration.
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6 DATED this 14 day of August, 2007
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Harry J. McCarthy, Judge
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ORDER