UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
CASE NO.: 19-CV-61516-MATINEZ-SNOW

SUNFARI EXPERIENCES, LLC,

Plaintiff,

vs.

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON SUBSCRIBING TO YACHTINSURE POLICY NUMBER ASP00154700, INCLUDING ASPEN SYNDICATE 4711 AND ITS CORPORATE MEMBER, ASPEN UNDERWRITING LIMITED, BARBICAN SYNDICATE 1955 AND ITS CORPORATE MEMBER, BARBICAN CORPORATE MEMBER LIMITED, YACHTINSURE LTD., and INTERNATIONAL RISK SOLUTIONS LTD.,

Defendants.
_____/

ORDER GRANTING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

THIS MATTER comes before the Court upon the Partial Motion for Summary Judgment filed by Defendant, Certain Underwriters at Lloyd's London Subscribing to Policy Number ASP00154700 ("Underwriters"). (Defs.' Mot. Summ. J. ("Mot."), ECF No. 83). The Court has reviewed the Motion, the Response and Reply thereto, and all pertinent portions of the record. After careful consideration, the Motion for Partial Summary Judgment is granted.

I. Background

Sunfari Experiences, LLC, ("Sunfari"), owns a 2008 model 55-foot Sea Ray motor yacht, ("Vessel"), which it operated primarily in the United States Virgin Islands, ("USVI"), and the British Virgin Islands. Neither party disputes the following facts.

Sunfari insured the Vessel with a marine insurance policy ("Policy") issued by Defendants from April 1, 2017 until April 1, 2018. (Defs.' Statement of Material Facts ("Defs.' Statement") ¶ 2, ECF No. 84; Pl.'s Statement of Material Facts ("Pl.'s Statement") ¶ 2, ECF No. 88). Sunfari maintains its address in the U.S. Virgin Islands, while Underwriters, including Yachtinsure Ltd., maintain their principal places of business in England. (Defs.' Statement, Ex. A at 1, ECF No. 84-1.) The Policy was delivered and issued to Sunfari in St. Thomas, U.S.V.I. (Defs.' Statement ¶ 3; Pl.'s Statement ¶ 3). In preparation for Hurricane Irma, Sunfari had its Vessel either berthed, (Defs.' Statement ¶ 4), or hauled out of the water and dry secured at Virgin Gorda Yacht Harbour in Virgin Gorda, British Virgin Islands, (Pl.'s Statement ¶ 4). Nonetheless, when the storm passed over the island, the Vessel sustained damage. (Defs.' Statement ¶ 4; Pl.'s Statement ¶ 4).

A dispute arose regarding the scope of coverage under the Policy for the damage resulting from the hurricane, and Sunfari filed its Amended Complaint on March 27, 2020 asserting a breach of contract claim against Defendants, (Am. Compl. ¶¶ 93–98). Sunfari also alleges that it is entitled to attorneys' fees and costs. (Defs.' Statement ¶ 7; Pl.'s Statement ¶ 7). This allegation serves as the basis for the Motion at issue, and on April 4, 2021, Underwriters filed a Motion for Partial Summary Judgment on Sunfari's claim for attorneys' fees and costs.

II. Legal Standard

Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact is material if its resolution would affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). On reviewing a motion for summary judgment, the Court is not to "weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Id.* at 249. The Court must resolve all reasonable inferences in favor of the nonmoving

party and construe the evidence in favor of same. *S.E.C. v. Monterosso*, 756 F.3d 1326, 1333 (11th Cir. 2014). "If reasonable minds could differ on the inferences arising from undisputed facts, then a court should deny summary judgment." *Carlson v. FedEx Ground Package Sys. Inc.*, 787 F.3d 1313, 1318 (11th Cir. 2015) (quoting *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997)).

III. Analysis

Sunfari's Amended Complaint asserts two bases from which this Court can establish jurisdiction–diversity jurisdiction pursuant to 28 U.S.C. § 1332 and admiralty jurisdiction under 28 U.S.C. § 1333(1). Nonetheless, because neither party disputes that the Policy at issue here is maritime in nature, the current action falls under this Court's admiralty jurisdiction. *See GEICO Marine Ins. v. Shackleford*, 945 F.3d 1135, 1139 (11th Cir. 2019) ("Marine insurance contracts qualify as maritime contracts, which fall within the admiralty jurisdiction of the federal courts and are governed by maritime law."); *All Underwriters v. Weisberg*, 222 F.3d 1309, 1312 (11th Cir. 2000) ("Federal courts have long considered actions involving marine insurance policies to be within the admiralty jurisdiction of the federal courts and governed by federal maritime law."); *Misener Marine Const., Inc. v. Norfolk Dredging Co.*, 594 F.3d 832, 836 (11th Cir. 2010) (finding dredging contract was brought case under maritime jurisdiction because the work contracted for and performed by defendant had a direct effect on maritime services and commerce); *Offshore Logistics Servs., Inc. v. Mut. Marine Off., Inc.*, 639 F.2d 1168, 1170 (5th Cir. 1981) ("This case was brought, however, under the district court's admiralty jurisdiction as well as under its diversity jurisdiction. The invocation of admiralty jurisdiction was proper, as this is a suit on a contract of marine insurance.").

"Federal courts have long considered actions involving maritime insurance policies to be within the admiralty jurisdiction of the federal courts and governed by federal maritime law." *Weisburg*, 222 F.3d at 1312. "With admiralty jurisdiction comes the application of substantive admiralty law." *E. River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 864 (1986). "The law in this Circuit regarding attorneys' fees in maritime disputes is clear. 'The prevailing party in an admiralty case is not entitled to recover its attorneys' fees as a matter of course.'" *Misener Marine*, 594 F.3d at 838 (quoting *Natco Ltd. P'ship v. Moran Towing of Fla., Inc.*, 267 F.3d 1190, 1193 (11th Cir. 2001)). But exceptions to the rule exist when "(1) they are provided by the statute governing the claim, (2) the nonprevailing party acted in bad faith in the course of the litigation, or (3) there is a contract providing for the indemnification of attorneys' fees." *Id.*

Sunfari's Amended Complaint alleges that it is entitled to recover attorneys' fees and costs under at least one of three alternative theories: general maritime bad faith, Florida Statute section 627.428, or Title 5, Virgin Islands Code, section 541. (Am. Compl. ¶ 98). Sunfari has not contested Defendants' assertion that no provision for attorneys' fees and costs exists in the policy agreement, so the Court will only address whether a statute provides for attorneys' fees or Underwriters acted in bad faith. (*See* Defs.' Statement 1, Ex. A).

The Eleventh Circuit regularly holds "[t]here exists no specific and controlling federal law relating to attorney's fees in maritime insurance litigation." *E.g.*, *Weisburg*, 222 F.3d at 1313; *RMI Holdings v. Aspen Am. Ins.*, No. 20-14525, 2021 WL 2980528, at *2 (11th Cir. July 15, 2021) ("[B]ecause this case arises under maritime insurance law, and no established federal maritime policy exists as to awards of attorneys' fees in maritime insurance disputes, state law applies."). Therefore, the Court must apply either the laws of Florida or of the United States Virgin Islands.

a. Determining Which Law Applies

When analyzing a choice-of-law issue in a maritime contract dispute like the one at bar, the Eleventh Circuit implements the Restatement. *See Dresdner Bank AG v. M/V Olympia Voyager*, 446 F.3d 1377, 1381–82 (11th Cir. 2006). Specifically, "[t]o determine *which* state's law applies, we apply the Restatement (Second) Conflict of Law's 'most significant relationship' test." *RMI Holdings*, 2021 WL 2980528, at *2 (quoting *Dresdner Bank*, 446 F.3d at 1381). Because the issue of attorneys' fees arises out of a contract dispute, courts consider the fact-intensive test outlined in Section 188. *Id.* (citing *Am. Family Life Assur. Co. of Columbus v. U.S. Fire Co.*, 885 F.2d 826, 833 (11th Cir. 1989)). The five-factor test includes "(a) the place of contracting; (b) the place of negotiation; (c) the place of performance; (d) the locus of the subject matter of the contract; and (e) the domicile of the parties." *Id.*[1]

Applying the "most significant relationship" test here, the Court determines that the laws of the U.S. Virgin Islands apply. First, under the Restatement, the place of contracting is the place where the last act necessary occurred, under the forum's rules of offer and acceptance, to give the contract binding effect. Restatement (Second) Conflict of Laws, § 188 cmt. e. (1971). Because the forum in which Sunfari chose to sue Defendants is Florida, Florida's rules of offer and acceptance will be used. In Florida, "[t]he determination of where a contract was executed is fact-intensive, and requires a determination of 'where the last act necessary to complete the contract [wa]s done.'"

[1] In *RMI Holdings*, the Eleventh Circuit affirmed the trial court's determination that Florida law applied to the determination of attorneys' fees instead of Georgia law. *RMI Holdings*, 2021 WL 2980528, at *3. Applying the factors, the court found that the place of contracting was Florida because the contract was delivered to plaintiff's broker in Florida. *Id.* The place of performance, however, was Georgia because that was where payment was to be received by RMI under the policy. *Id.* Weighed significantly, the locus of the subject matter was Florida because that the ship covered under the policy was moored in Florida and the policy contemplated that the vessel would be used in Florida, the Gulf of Mexico, and the Bahamas. *Id.* The domiciles of the parties were not weighed heavily in the circuit's determination because RMI, domiciled in Georgia, was not seeking the benefit of Georgia law. *Id.*

Prime Ins. Syndicate, Inc. v. B.J. Handley Trucking, Inc., 363 F.3d 1089, 1092–93 (11th Cir. 2004). "The last act necessary to complete a contract is the offeree's communication of acceptance to the offeror." *Id.* (citing *Buell v. State*, 704 So. 2d 552, 555 (Fla. 4th DCA 1997) (citing legal encyclopedias)).

Underwriters assert that because neither party disputes that the Policy was delivered and issued to Sunfari in St. Thomas, U.S. Virgin Islands, Florida law cannot not govern the issue. (Mot. 6.) But delivery and issuance of the Policy does not always indicate the last act for contract formation in Florida. *See Sun Cap. Partners, Inc. v. Twin City Fire Ins.*, No. 12-CV-81397-KAM, 2015 WL 4648617, at *6 (S.D. Fla. Aug. 5, 2015) ("Where the facts indicate that a fully consummated contract existed prior to delivery of the policy, the last act for contract formation may be found prior to delivery."). Courts interpreting the *Prime Insurance Syndicate, Inc.* ruling have found that the last act necessary to complete an insurance contract can occur where the insured completed the insurance application, *see, e.g.*, *Am. United Life Ins. v. Martinez*, 480 F.3d 1043, 1059 (11th Cir. 2007), where the insurance agent accepts the offer from the insured to purchase insurance, *see, e.g.*, *Nat'l Tr. Ins. v. Graham Bros. Const.*, 916 F. Supp. 2d 1244, 1252 (M.D. Fla. 2013); *Granite State Ins. v. Am. Building Materials, Inc.*, No. 8:10-cv-1542, 2011 WL 6025655, at *4 (M.D. Fla. Dec. 5, 2011), or where the policy is delivered to the insured, *see e.g.*, *AIG Premier Ins. v. RLI Ins.*, 812 F. Supp. 2d 1315, 1321 (M.D. Fla. 2011).

The Policy at issue here was offered by Underwriters, which maintains its principal places of business in London, England, and accepted by Sunfari, which maintains its address in the U.S. Virgin Islands. Both the delivery and issuance of the Policy occurred in the U.S. Virgin Islands, but the Court cannot say for sure that the Policy was accepted in the U.S. Virgin Islands because, even though Sunfari's address on the contract is the U.S. Virgin Islands, no facts indicate whether

Sunfari in fact accepted the contract there. Nonetheless, because the facts available to the Court indicate the contract was indeed delivered in the U.S. Virgin Islands, this factor weighs in favor of applying the territory's law.

Second, the parties do not indicate where the contract was negotiated. Negotiations may have taken place in the U.S. Virgin Islands, in England, or both. Because the evidence does not reveal how or where the contract was negotiated, the Court will not assign any weight to this factor.

Third, the place of performance is London, because that is where payment would be received by Yachtinsure Ltd. under the policy. The Court weighs this factor lightly because Underwriters do not seek the benefit of English law. *See RMI Holdings*, 2021 WL 2980528, at *4.

Fourth, the locus of the subject matter is the U.S. Virgin Islands. According to the Policy, the Vessel's main mooring was American Yacht Harbour, St. Thomas, USVI. (Defs.' Statement, Ex. A at 2.) The policy contemplated that it would be navigated in the waters of the Caribbean Sea not exceeding 250 miles offshore. (*Id.*)

Fifth, and finally, the parties are domiciled in the U.S. Virgin Islands and England.

After weighing the factors provided, the Court finds no reason to apply Florida Statute section 627.428 to the issue of attorneys' fees, so the Court will apply the Virgin Islands Code if a statute provides for attorneys' fees in the maritime insurance context.

b. 5 V.I. Code § 541 Applies in This Maritime Insurance Contract Dispute

Underwriters asserts that the Virgin Islands Code does not entitle Sunfari to attorneys' fees and costs as a matter of law because the plain language of Title 5, section 541 does not provide the statutory language. (Mot. 11.) "In matters of state law, federal courts are bound by the states' highest court." *Veale v. Citibank, F.S.B,* 85 F.3d 577, 580 (11th Cir. 1996) (citing *Huddleston v.*

Dwyer, 322 U.S. 232, 236 (1944)). "If a state's highest court has not ruled on the issue, a federal court must look to the intermediate state appellate courts." *Id.*

Before applying the rule from *Veale* to this case, the judicial history of the U.S. Virgin Islands should be explained. Prior to January 29, 2007, the U.S. Virgin Islands had no territorial courts of review—all trial court decisions were reviewed by the U.S. District Court of the Virgin Islands and the Third District Court of Appeals. *See* Judiciary of the U.S. Virgin Islands, *History of the V.I. Judiciary*, Judicial Branch of the U.S. Virgin Islands, https://www.vicourts.org/about_us/overview_of_judiciary_of_the_virgin_islands/history_of_the_v__i__judiciary (last visited Aug. 6, 2021). After that date, appellate jurisdiction was divested from the federal courts and given to the newly created Supreme Court of the Virgin Islands. *Id.* Amendments to the Revised Organic Act, passed by Congress in 1984, provided that the Third Circuit Court of Appeals would review decisions of the Supreme Court of the Virgin Islands for the first fifteen years of its existence. *Id.* In 2012, however, President Barack Obama signed a bill eliminating the oversight period and placing the Supreme Court of the Virgin Islands in parity with the highest courts of the several states, subject to review only by the United States Supreme Court. *Id.* Applying the rule from *Veale* to this case, therefore, the functional highest court of the U.S. Virgin Islands was the Third Circuit Court of Appeals until 2012, and since then, it was the Supreme Court of the Virgin Islands.

The relevant section of the Virgin Islands Code provides that "costs which may be allowed in a civil action include . . . [a]ttorney's fees as provided in subsection (b) of this section." V.I. Code Ann. tit. 5, § 541(a)(6) (2019). Subsection (b) states:

> The measure and mode of compensation of attorneys shall be left to the agreement, express or implied, of the parties; but there shall be allowed to the prevailing party in the judgment such sums as the court in its discretion may fix by way of indemnity for his attorney's fees in maintaining the action or defenses thereto; provided,

> however, the award of attorney's fees in personal injury cases is prohibited unless the court finds that the complaint filed or the defense is frivolous.

§ 541(b).

Notwithstanding the statute, however, the U.S. District Court of the U.S. Virgin Islands has applied the American Rule—the principle that each party should bear its own attorneys' fees—when determining whether to award attorneys' fees in marine insurance claims because such claims exist under federal admiralty law. *See, e.g.*, *Great Lakes Reinsurance (UK) PLC v. Kranig*, Civil No. 2011-122, 2013 WL 5811929, at *1 (D.V.I. Oct. 29, 2013); *AGF Marine Aviation v. Cassin*, Civil No. 2001-49, 2008 WL 413304, at *1 (D.V.I. Jan. 29, 2008) ("[T]he Virgin Islands attorneys' fees statute [may] not be applied in a case cognizable in admiralty, because of its inconsistency with admiralty law principles.") (internal quotation marks omitted). The Third Circuit Court of Appeals provides an explanation:

> Under the Virgin Islands statute . . . attorneys' fees may be awarded to prevailing parties by the district court in its discretion without finding that one party acted in bad faith. Thus a general award of attorneys' fees pursuant to a state statute which does not require a finding of bad faith directly conflicts with federal admiralty law.

Sosebee v. Rath, 893 F.2d 54, 56 (3d Cir. 1990). The *Sosebee* court considered whether to apply the Virgin Island attorneys' fee statute to a negligence case. According to the *Sosebee* opinion, the strong interest in maintaining a uniform body of maritime law would be undermined if the availability of attorneys' fees depended on where the plaintiff filed suit. *Id.* The *Sosebee* court held that "where a case arises under the federal maritime law . . . a local statute awarding attorneys' fees should not be applied." *Id.* at 57.

Sunfari urges the court to follow the decision in *All Underwriters v. Weisburg*, where the Eleventh Circuit decided that in the marine insurance context, a district court may award attorneys' fees pursuant to a *Florida* statute against an insurer. 222 F.3d at 1315. The *Weisberg* court reversed

the district court's decision to deny attorneys' fees in a maritime insurance contracts dispute, finding that the Florida attorneys' fees statute was substantive law and that applying it in a maritime insurance contract dispute would not improperly disrupt the uniform body of admiralty law. *See id.* at 1314 ("Underwriters does not provide any reason, nor have we found one, to require a unitary and uniform federal rule respecting attorney's fees in a maritime insurance litigation.").[2]

Considering the history of the judiciary of the U.S. Virgin Islands, the Court must follow the precedent from *Sosebee* because the Third Circuit was the highest court of review at the time the decision was issued. Neither party has provided, nor has this Court found, any relevant decisions issued by the Supreme Court of the U.S. Virgin Islands since it became the territory's highest court. Thus, pursuant to Virgin Islands precedent, the American Rule seems to apply.

Having found that the Virgin Island attorneys' fees statute does not apply to this maritime insurance dispute, the Court will analyze whether attorneys' fees can be awarded under the American Rule's bad faith exception.

c. The Bad Faith Exception Does Not Warrant Attorneys' Fees

Underwriters also asserts that attorneys' fees and costs cannot be awarded under the bad faith theory of federal maritime law because (1) federal maritime law generally precludes recovery of attorneys' fees, even to the prevailing party; and (2) Plaintiff's Amended Complaint does not

[2] Interestingly, the Eleventh Circuit later held in *Misener Marine Construction* that the "statutes governing the claim" exception only applies to federal statutes. 594 F.3d at 839 (citing *Noritake Co. v. M/V Hellenic Champion*, 627 F.2d 724, 730 (5th Cir. 1980)). In affirming the district court's order to deny attorneys' fees in a dredging contract dispute, the circuit held that the American Rule "is a characteristic feature of substantive maritime law." *Id.* at 841. Concurring, Judge Black added that applying the state statute would "disrupt the proper harmony and uniformity of admiralty law." *Id.* at 841–42 (Black, J., concurring). The Eleventh Circuit, in a footnote, emphasized that the Supreme Court has ruled that states have a strong interest in the regulation of insurance, and therefore, "the determinative issue in *Weisberg* was insurance, not attorneys' fees." *Id.* at 838 n.13. Based on *Misener*'s federal-statutes-only holding, however, the cases nonetheless seem at odds with one another.

raise bad faith. (Mot. 3–5.) The Court agrees with Underwriters' conclusion. Although attorneys' fees are not generally recoverable in admiralty cases, "[o]ne exception to this rule is when the losing party has 'acted in bad faith, vexatiously, wantonly, or for oppressive reasons.'" *Esoteric, LLC v. One (1) 2000 Eighty-Five Foot Azimut Motor Yacht*, 478 F. App'x 639, 643 (11th Cir. 2010) (quoting *Chambers v. NASCO*, 501 U.S. 32, 54 (1991)).

The bad faith exception and other exceptions are "unquestionably assertions of inherent power in the courts to allow attorneys' fees in particular situations, unless forbidden by Congress." *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 259 (1975). When the court finds that "fraud has been practiced upon it, or that the very temple of justice has been defiled, it may assess attorney's fees against the responsible party . . . as it may when a party shows bad faith by delaying or disrupting the litigation or by hampering enforcement of a court order." *Chambers*, 501 U.S. at 46 (quotations omitted).

"In determining the propriety of a bad faith fee award, 'the inquiry will focus primarily on the conduct and motive of a party, rather than on the validity of the case.'" *Esoteric, LLC*, 478 F. App'x at 643 (quoting *Rothenberg v. Sec. Mgmt. Co.*, 736 F.2d 1470, 1472 (11th Cir. 1984)). In *Esoteric LLC*, a maritime salvage case, the trial court determined that the defendant acted in bad faith because he had no basis for disputing the plaintiff's salvage claim. *Id.* As the Eleventh Circuit noted, however, the defendant presented evidence to support his defense. *Id.* The Eleventh Circuit concluded that "[b]ecause the requisite success of a salvage effort is a fact-intensive inquiry, [the defendant] did not abuse the legal system by insisting on proceeding to trial and putting [the plaintiff] to its factual burden of proof." *Id.*

Sunfari raises some instances of Underwriters' conduct to support its argument that it is entitled to attorneys' fees based on Underwriters' bad faith. According to Sunfari, Defendants did

not provide verified answers to its First and Second Sets of Interrogatories or produce documents responsive to Sunfari's First Request for Production until it filed a Motion to Compel. (Pl.'s Resp. in Opp'n to Defs.' Mot. Summ. J. ("Resp.") 4.) Additionally, according to Sunfari, Underwriters raised untimely objections to Plaintiff's discovery requests after the Court ordered their discovery responses and wrongfully denied Sunfari's requests for admission. (*Id.*) Plaintiff also alleges to have learned of a second written report issued by Underwriters' surveyor that had not been produced with its original response to Sunfari's First Request for Production. (*Id.*) Finally, Sunfari contends that Underwriters "made Sunfari litigate this action for 14 months before they paid what was admitted was owed under the policy by the February 15, 2019 Yachtinsure Letter." (Resp. 3.)

As Underwriters correctly points out, some of this conduct was addressed by the Court's Omnibus Order, issued on October 15, 2020. In the Order, for example, the Court found that Defendants' failure to admit or deny the specific admissions at issue was reasonable at the time the admissions were served. (Omnibus Order at 3, ECF No. 76) The Court also "[did] not find that "[Defendant's] counsel was willful in its failure to provide the January 3, 2018 Report at issue." (*Id.* at 7).

Sunfari filed a Motion for Sanctions to rectify Underwriters' late discovery responses, but three days later, the parties filed a Joint Motion to Extend the Discovery Deadline, requesting an extension to complete discovery due to the Covid-19 pandemic. (ECF No. 35). According to both parties' counsel, it became "necessary to extend the discovery deadline as the COVID-19 global pandemic has created an exceptional hindrance in the parties' ability to schedule and make available witnesses and persons necessary to properly appear at depositions and mediation." (*Id.* 5). Sunfari's Motion for Sanctions was then denied as moot because the Court extended discovery deadlines from April 9, 2020 to July 8, 2020. (ECF No. 37). Ultimately, since the discovery

deadline was extended three months due to COVID-19, the alleged tardinesss of Underwriters' responses did not change the trajectory of the litigation nor substantially delay it.

Underwriters also rejects Sunfari's contention that it "engaged in bad faith litigation by requiring Sunfari to sue, in part, for what they admitted was owed under the policy before the suit was filed." (Reply 7). On its face, the February 15, 2019 letter acknowledges that a Payment on Account of $111,790.66 was approved by Charles Taylor Adjusting, Underwriters' agent, to cover the invoices sent by Sunfari, but in no way does the letter admit that "other expenses" were "owed under the policy." (*See* Decl. of Alex Golubitsky Ex. 1, ECF No. 52-1.) The specific items covered by the $111,790.66 payout are itemized in Defendant's Verified Answers to Plaintiff's Second Set of Interrogatories. Underwriters have always disputed that the Policy covers "other expenses" requested by Sunfari. (*See* Defs.' Affirmative Defenses ¶ 12, ECF No. 10; Defs.' Statement ¶¶ 28, 29.)

Sunfari further contends it sued Underwriters because Underwriters did not send payment to Sunfari within the "60-day safe harbor provided under Florida Statute § 624.155." (Resp. 3). But neither the original Complaint nor the Amended Complaint against Underwriters refer to the February 15, 2019 letter or the expiration of any safe harbor period as the basis for bringing the action. On the contrary, Sunfari seeks damages in the amount of $320,009.88—damages beyond what Underwriters agreed to pay in the letter. (*See* Pl.'s Initial Disclosures 8, ECF No. 15.) A check in the amount of $111,790.66 was eventually paid to Sunfari on August 14, 2020, after fourteen months of litigation. (Decl. of Alex Golubitsky ¶ 33). Upon receipt of the payout, Sunfari continued litigating to recover what it believed was covered by the Policy.

Thus, it is likely Sunfari would have sued Underwriters even had Underwriters paid the approved funds immediately, because Sunfari and Underwriters still dispute whether Sunfari's

remaining expenses are covered under the Policy. Further, Sunfari's contention that Underwriters delayed the litigation was rendered moot when the Court granted counsel's Joint Motion to Extend the Discovery Deadline. Sunfari, therefore, is not entitled to attorneys' fees and costs on the basis of bad faith.

d. 28 U.S.C. § 1920

Finally, Sunfari contends that Underwriters' Motion attempts to deprive Sunfari of recovering costs under 28 U.S.C. § 1920, and thus is another example of litigating in bad faith (Resp. 11.) Underwriters, however, does not address this issue nor does it move for summary judgment on this basis. As such, the Court will not address it either. *But see, e.g.*, *Joseph v. J.P. Yachts, LLC*, 436 F. Supp. 2d 254, 273–74 (D. Mass. 2006) (granting motion for costs under § 1920 in admiralty case).

IV. Conclusion

Based on the foregoing, it is **ORDERED and ADJUDGED** that

1. Defendants' Motion for Summary Judgment on Plaintiff's Claims for Attorneys' Fees and Costs, [ECF No. 83], is **GRANTED**.

DONE AND ORDERED in Chambers, at Miami, Florida, this 6th day of August 2021.

JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
All counsel of record
Magistrate Judge Snow