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IN THE COURT OF APPEALS OF INDIANA

Roadsafe Holdings, Inc. d/b/a Roadsafe Traffic Systems,
Appellant-Third-Party Defendant,

v.

Walsh Construction Company,
Appellee-Defendant/Third-Party Plaintiff.

January 28, 2021

Court of Appeals Case No. 20A-CT-1308

Appeal from the Lake Superior Court

The Honorable Bruce D. Parent, Judge

Trial Court Cause No. 45D11-1104-CT-82

Najam, Judge.

Statement of the Case

[1] Boguslaw Maczuga sued Walsh Construction Company ("Walsh") for negligence. In turn, Walsh filed a third-party complaint against Roadsafe Holdings, Inc. d/b/a Roadsafe Traffic Systems ("Roadsafe"), its subcontractor, alleging breach of Roadsafe's duty to defend and indemnify Walsh in the

Maczuga litigation. The trial court entered summary judgment in favor of Walsh, which Roadsafe appeals. Roadsafe presents five issues for our review, which we consolidate and restate as the following three issues:

1. Whether the trial court erred when it concluded that Roadsafe had a duty to indemnify Walsh for $60,000 Walsh paid in settlement of Maczuga's claims against Walsh.

2. Whether the trial court erred when it awarded attorney's fees and costs to Walsh related to its third-party complaint against Roadsafe.

3. Whether the trial court erred when it awarded prejudgment interest on Walsh's damages award.

[2] We affirm.

Facts and Procedural History

[3] This Court set out some of the facts and procedural history in this case in a prior related appeal as follows:

> In January of 2009, Walsh, a general contractor, hired Roadsafe . . . to be Walsh's subcontractor in the construction of a traffic exchange involving Interstates 65 and 80 in Lake County. Roadsafe's work obligations included providing a safe traffic pattern through the work zone. Walsh's contract with Roadsafe required Roadsafe to indemnify Walsh for any liability resulting from Roadsafe's failure or negligence in its work. Accordingly, Walsh's contract required Roadsafe to procure a commercial general liability insurance policy ("CGL policy") that named Walsh as an additional insured on a primary and noncontributory basis.

Roadsafe obtained its CGL policy from Zurich. The CGL policy defined Roadsafe as the "Named Insured" and stated that, "[t]hroughout this policy[,] the words 'you' and 'your' refer to the Named Insured. . . . The word 'insured' means any person or organization qualifying as such under Section II—Who Is An Insured." Appellant's App. Vol. 3 at 72. An endorsement attached to the CGL policy named as additional insureds any "person and organization where required by written contract," such as Roadsafe's contract with Walsh, "but only with respect to liability for 'bodily injury' . . . by your [Roadsafe's] acts or omissions. . . ." *Id.* at 99. The CGL policy then provided as follows: "We [Zurich] will pay those sums that the insured becomes legally obligated to pay as damages because of 'bodily injury' . . . to which this insurance applies. We will have the right and duty to defend the insured against any 'suit' seeking those damages." *Id.* at 72.

However, Roadsafe also obtained a $500,000-per-occurrence self insured retention endorsement ("the SIR endorsement") to the CGL policy. The SIR endorsement amended the CGL policy as follows:

> The insurance provided by this policy is subject to the following additional provisions, which in the event of conflict with any other provisions elsewhere in the policy, shall control the application of the insurance to which this endorsement applies:
>
> 1. Self Insured Retention and Defense Costs—Your Obligations
>
> A. The "self insured retention" amounts stated . . . apply as follows:
>
> 1. If a Per Occurrence Self Insured Retention Amount is shown in this

> endorsement, you shall be responsible for payment of all damages and "pro rata defense costs" for each "occurrence"[ ] until you have paid damages equal to the Per Occurrence amount. . . .
>
> * * *
>
> B. Defense Costs
>
> Except for any "defense costs" that we may elect to pay, you shall pay "pro rata defense costs" as they are incurred. . . .
>
> C. Settlement of Claim
>
> > 1. Within Self Insured Retention
> >
> > *If any final judgment or settlement is less than the "self insurance retention" indicated . . . above, you shall have the right and obligation to settle all such claims or suits*. . . .
>
> * * *
>
> Definitions—
>
> A. "Self insured retention" means:
>
> the amount or amounts which you or any insured must pay for all compensatory damages and "pro rata defense costs" which you or any insured shall

> become legally obligated to pay because of damages arising from any coverage included in the policy. . . .

Id. at 68-71. . . .

On June 15, 2009, Boguslaw Maczuga was injured while operating his motor vehicle through the work zone's traffic pattern. On June 27, 2011, Maczuga served Walsh with a Second Amended Complaint in which Maczuga alleged that Walsh had negligently created an unsafe traffic pattern.[] As a result of Maczuga's complaint, on January 18, 2012, Walsh filed a third-party complaint against Roadsafe. In its complaint, Walsh alleged, in relevant part, that Roadsafe had failed to indemnify Walsh and that Roadsafe had breached its contract with Walsh. Specifically, Walsh's third-party complaint stated that "[t]he Maczuga lawsuit seeks recovery from Walsh for its alleged negligence in connection with work that was to be performed by Road[s]afe" and that, "[f]ollowing service of process of the Maczuga lawsuit, Walsh tendered its defense and indemnity to Road[s]afe" but Roadsafe had "failed to either agree to indemnify or undertake Walsh's defense." Appellant's App. Vol. 2 at 54-55.

Thereafter, Walsh notified Zurich, pursuant to the terms of the CGL policy, of Maczuga's lawsuit and requested that Zurich defend Walsh in that suit. Zurich denied Walsh's request, and Walsh filed a complaint for declaratory judgment against Zurich in which Walsh alleged that Zurich had a duty to defend and indemnify Walsh. *Id.* at 61-62. Roadsafe intervened in the declaratory judgment action, and the parties moved for summary judgment. After a hearing, the trial court entered summary judgment for Zurich, stating:

> Zurich has no contractual obligation to cover Walsh as an additional insured at this time. First of all, the policy is a liability policy between Zurich and Roadsafe and no person or entity has sued or even

> made a claim against Roadsafe for any type of negligence. Also there is a [SIR endorsement] that requires the insured to pay the first $500,000.00 of costs and damages of any claim before Zurich becomes obligated to pay out on the policy. Since there has been no claim for negligence against Roadsafe, Roadsafe has paid nothing and has made no claim under the policy.

Id. at 7.

Walsh Constr. Co. v. Zurich Am. Ins. Co., 72 N.E.3d 957, 958-961 (Ind. Ct. App. 2017 ("*Walsh I*") (some emphases removed), *trans. denied*. Walsh appealed the trial court's grant of summary judgment for Zurich, which we affirmed. *Id.* at 965. Specifically, we held that, "under the plain language of the SIR endorsement, Zurich ha[d] no obligation under the CGL policy to defend or indemnify Walsh until Roadsafe ha[d] satisfied the $500,000 SIR amount." *Id.*

[4] Because Roadsafe had breached its duty to defend Walsh in the Maczuga litigation, Walsh proceeded on its own and eventually executed an agreement with Maczuga to settle his claims against Walsh for $60,000. Thereafter, Walsh moved for summary judgment against Roadsafe alleging that, under the terms of the SIR endorsement in the CGL policy, Roadsafe was required to pay the $60,000 for the settlement between Walsh and Maczuga, as well as Walsh's attorney's fees and costs in litigating the Maczuga claim and the declaratory judgment action against Zurich. The trial court granted summary judgment in favor of Walsh. Following a damages hearing, the trial court ordered Roadsafe to pay to Walsh the following:

A. Settlement costs of [the] Maczuga lawsuit in the amount of $60,000.00;

B. Total fees and costs incurred in the Maczuga lawsuit in the amount of $201,603.80;

C. Total fees and costs incurred in the declaratory judgment action in the amount of $28,240.96; and

D. Prejudgment interest in the amount of $134,169.43.

Appellant's App. Vol. II at 13-14.[1] This appeal ensued.

Discussion and Decision

Standard of Review

[5] Roadsafe appeals the trial court's grant of summary judgment for Walsh. As our Supreme Court has stated:

> This Court reviews summary judgment orders *de novo*. Summary judgment is appropriate if the designated evidence shows there is no genuine issue as to any fact material to a particular issue or claim, and the moving party is entitled to judgment as a matter of law. In viewing the matter through the same lens as the trial court, we construe all designated evidence and reasonable inferences therefrom in favor of the non-moving party. Legal questions, such as contract interpretation, are well-suited for summary judgment. The party appealing the trial court's

[1] In its order, the trial court stated that this was "a final and appealable order" and that "no just reason for delay in seeking an appeal exists. Either party is free to appeal this matter immediately[.]" Appellant's App. Vol. II at 14. Maczuga named defendants other than Walsh in his complaint, and the status of those other claims is unknown. In any event, we assume the trial court used the "magic language" here because there are unresolved claims in the underlying litigation. *See* Ind. Trial Rule 56(C).

> summary judgment determination bears the burden of persuading us the ruling was erroneous. Nonetheless, we "carefully scrutinize[ ] the trial court's decision to assure that the party against whom summary judgment was entered was not improperly prevented from having its day in court."

Ryan v. TCI Architects/Engineers/Contractors, Inc., 72 N.E.3d 908, 912-13 (Ind. 2017) (citations omitted; alteration original to *Ryan*). Here, the trial court made findings and conclusions to support its summary judgment order, which are not binding on this Court. *See Global Caravan Technologies, Inc. v. Cincinnati Ins. Co.*, 135 N.E.3d 584, 588 (Ind. Ct. App. 2019), *trans. denied*. Rather, "we may affirm a grant of summary judgment upon any theory supported by the evidence." *Miller v. Danz*, 36 N.E.3d 455, 456 (Ind. 2015).

Issue One: Indemnity

[6] Roadsafe first contends that the trial court erred when it concluded that Roadsafe was required to indemnify Walsh for the $60,000 settlement in the Maczuga lawsuit. Initially, we note that, while Roadsafe sets out the summary judgment standard of review in its brief on appeal, it does not expressly frame its argument on this issue in terms of genuine issues of material fact[2] or questions of law. In any event, Roadsafe appears to argue that summary

[2] In its statement of the issues, Roadsafe asserts that there is a genuine issue of material fact precluding summary judgment.

judgment is precluded based on contract interpretation principles, which means this issue presents a question of law.

[7] When Walsh hired Roadsafe, the parties executed an agreement ("the agreement") that provided in relevant part that Roadsafe would indemnify Walsh "against all claims, damages, losses, or injuries arising out of [Roadsafe's] negligent acts or omissions and shall save [Walsh] harmless from any and all liability which might be asserted against [Walsh] in connection therewith." Appellant's App. Vol. IV at 15. In essence, Roadsafe interprets this provision to mean that it did not have a duty to indemnify Walsh without an adjudication that Roadsafe was negligent in causing Maczuga's injuries.[3] Roadsafe then suggests, without citing any designated evidence, that Walsh was negligent and that Roadsafe has no duty to indemnify Walsh for its own negligence.

[8] However, Roadsafe concedes that it had a duty to defend Walsh in the Maczuga litigation and that it breached that duty. *See* Reply Br. at 4. It is well settled that the doctrine of collateral estoppel

> applies to insurance contracts[,] and an insurer is ordinarily bound by the result of litigation to which its insured is a party, so long as the insurer had notice and the opportunity to control the proceedings. *Hoosier Casualty Co. v. Miers* (1940), 217 Ind. 400, 27

[3] Neither party directs us to a copy of Walsh's settlement agreement with Maczuga, if one was included in their appendices on appeal. In any event, it is undisputed that the settlement agreement did not identify a negligent party.

> N.E.2d 342, *Snodgrass v. Baize* (1980), Ind. App., 405 N.E.2d 48, *reh. denied*.
>
> * * *
>
> An insurer, after making an independent determination that it has no duty to defend, must protect its interest by either filing a declaratory judgment action for a judicial determination of its obligations under the policy or hire independent counsel and defend its insured under a reservation of rights. *See* [*State Farm Mut. Auto. Ins. Co. v. Glasgow*, 478 N.E.2d 918, 923 (Ind. Ct. App. 1985)]; *Snodgrass*, *supra*. As we have indicated, "[An insurer] can refuse to defend or clarify its obligation by means of a declaratory judgment action. If it refuses to defend it does so at its peril. . . ." [*Cincinnati Ins. Co. v.*]*Mallon*, 409 N.E.2d [1100,] 1105[(Ind. Ct. App. 1980)], citing 7C Appleman, Insurance Law & Practice, § 4683 at 53. . . . *An insurer, having knowledge its insured has been sued, may not close its eyes to the underlying litigation, force the insured to face the risk of that litigation without the benefit of knowing whether the insurer intends to defend or to deny coverage, and then raise policy defenses for the first time after judgment has been entered against the insured*.

Liberty Mut. Ins. Co. v. Metzler, 586 N.E.2d 897, 902 (Ind. Ct. App. 1992) (emphasis added), *trans. denied*. Further, this Court has held that "[a]n indemnitor who denies liability on an indemnity contract thereby confers on the indemnitee the right to exercise reasonable judgment *in settling the case* without further consultation with the indemnitor." *Sink & Edwards, Inc. v. Huber, Hunt & Nichols, Inc.*, 458 N.E.2d 291, 297 (Ind. Ct. App. 1984) (emphasis added), *trans. denied*.

[9] In *Metzler*, Liberty Mutual breached its duty to defend its insured in a negligence action, and it "did not protect its interest by filing a declaratory judgment action for a judicial determination of its obligation under the policy of insurance, nor did it defend [the insured] under a reservation of rights." 586 N.E.2d at 902. We held that "Liberty Mutual must now suffer the peril of its unilateral decision, namely: it is collaterally estopped from challenging whether [its insured] acted negligently or intentionally in causing the [plaintiffs'] damages." *Id.*

[10] Likewise, here, Roadsafe did not protect its interest by either filing a declaratory judgment action for a determination of its obligations under the SIR endorsement to the CGL policy or defending Walsh under a reservation of rights. Accordingly, we hold that Roadsafe is collaterally estopped from asserting that it has no duty to indemnify Walsh. Walsh was left to litigate the Maczuga lawsuit by itself, and it reached a settlement agreement.[4] Under the SIR endorsement to the CGL policy, Roadsafe had the "right and obligation to settle" the Maczuga lawsuit. *See Walsh I*, 72 N.E.3d at 959. The trial court did not err when it granted Walsh's motion for summary judgment.

[4] Roadsafe did not challenge the amount of the settlement agreement at the damages hearing, and it makes no contention on appeal that the amount of the settlement is unreasonable.

Issue Two: Attorney's Fees and Costs

[11] Roadsafe next contends that, while it does not contest Walsh's damages "directly incurred in defending against" the Maczuga litigation, Walsh is not entitled to attorney's fees and costs it incurred before Walsh had filed its third-party complaint or those incurred in pursuing its third-party complaint against Roadsafe, including the declaratory judgment action against Zurich. Appellant's Br. at 20. Roadsafe maintains that the terms of the parties' agreement do not provide for these damages and, accordingly, each party is responsible for its own attorney's fees and costs under the American Rule. We address each contention in turn.

Maczuga Defense

[12] Roadsafe contends that Walsh is not entitled to attorney's fees or costs incurred in the course of the Maczuga litigation prior to the date Walsh filed its third-party complaint against Roadsafe. In support of that contention, Roadsafe, citing *Walsh I*, first asserts that its duty to defend was not "triggered" until Walsh filed its third-party complaint. Appellant's Br. at 24. But Roadsafe mischaracterizes our opinion in *Walsh I*.

[13] Contrary to Roadsafe's assertion, in *Walsh I* we did not consider, let alone address, whether Walsh was entitled to defense costs incurred before it filed its third-party complaint. That issue was not before us, even by implication. Rather, we merely said that Walsh's third-party complaint alleging Roadsafe's negligence was "sufficient for Walsh *to invoke* the CGL policy and its

endorsements." *Walsh I*, 72 N.E.3d at 962 n.3 (emphasis added). Whether Walsh was entitled to coverage under the CGL policy and SIR endorsement is an issue wholly distinct from the breadth of that coverage. And Roadsafe does not direct us to any part of its agreement with Walsh or the CGL policy that limits Walsh's damages to those incurred after filing the third-party complaint.

[14] Other than *Walsh I*, the only legal authority Roadsafe cites in support of its contention on this issue is *Travelers Ins. Companies v. Maplehurst Farms, Inc.*, 953 N.E.2d 1153, 1160 (Ind. Ct. App. 2011), *trans. denied*, where we held that, under an indemnity provision of the applicable insurance policy, an insured was not entitled to recover costs that the insured had incurred before it had notified the insurer of a claim. However, our holding in that case turned on the specific notice provision in the CGL policy. *Id.* Here, Roadsafe does not direct us to any provision in either the parties' agreement or the CGL policy regarding a notice requirement, let alone a requirement that Walsh file a third-party complaint to trigger Roadsafe's duty to defend. In sum, Roadsafe has not shown that the trial court erred when it ordered Roadsafe to pay Walsh's attorney's fees and costs that predated the third-party complaint.

Third-Party Action

[15] Roadsafe also contends that the trial court erred when it awarded Walsh its attorney's fees and costs related to its third-party complaint against Roadsafe. Roadsafe asserts that, under the terms of the parties' agreement, Walsh is not entitled to those fees and costs. We cannot agree.

[16] This Court has held that "an indemnitee is entitled to recover attorney's fees expended defending the underlying claim *and* prosecuting the claim for indemnification." *Bethlehem Steel Corp. v. Sercon Corp.*, 654 N.E.2d 1163, 1168 (Ind. Ct. App. 1995) (emphasis added), *trans. denied*. In particular, we held that:

> "[a]n indemnitee, who incurs legal expenses through defending an action against him for which he is entitled to indemnification, is entitled to recover the expense of creating his defense, including reasonable attorney fees. This is especially true where the indemnitor has been notified of the suit and refuses the opportunity to defend it. The indemnitee may recover attorney fees from the indemnitor incurred through an original action which is settled, *and also for the cost of prosecuting the indemnity clause*."

Id. at 1169 (quoting *Zebrowski & Assoc. v. City of Indianapolis*, 457 N.E.2d 259, 264 (Ind. Ct. App. 1983)) (emphasis added). We hold that the trial court did not err when it awarded Walsh attorney's fees and costs related to its third-party complaint against Roadsafe.

Walsh v. Zurich Declaratory Judgment

[17] Roadsafe also contends that the trial court erred when it awarded Walsh attorney's fees and costs it incurred in pursuing the unsuccessful declaratory judgment action against Zurich. Roadsafe asserts that nothing in the parties' agreement provides for recovery of those fees and costs and that, therefore, the American Rule applies. We cannot agree.

[18] Again, Walsh filed its third-party complaint against Roadsafe in 2012 to compel it to honor its duty to defend and indemnify Walsh in the Maczuga litigation.

Three years later, because Roadsafe still had not assumed Walsh's defense, Walsh sought to compel Zurich to honor Roadsafe's duty to defend and indemnify Walsh under the CGL policy. In other words, as the trial court found, it was Roadsafe's breach of its duty to defend and indemnify that led to the declaratory judgment action against Zurich. Walsh had no other reason to seek Zurich's help in the Maczuga litigation. Accordingly, Walsh's attorney's fees and costs related to the declaratory judgment action are recoverable as "cost[s] of prosecuting the indemnity clause." *Bethlehem Steel Corp.*, 654 N.E.2d at 1168-69. The trial court did not err when it awarded these attorney's fees and costs to Walsh.

Issue Three: Prejudgment Interest

[19] Finally, Roadsafe contends that the trial court erred when it awarded prejudgment interest on the damages award to Walsh. As this Court has explained,

> [p]rejudgment interest is appropriate in a breach of contract action when "the amount of the claim rests upon a simple calculation and the terms of the contract make such a claim ascertainable." *Olcott Int'l & Co. v. Micro Data Base Sys., Inc.*, 793 N.E.2d 1063, 1078 (Ind. Ct. App. 2003), *trans. denied*. The award of prejudgment interest is considered proper when the trier of fact does not have to exercise judgment in order to assess the amount of damages. *Town of New Ross v. Ferretti*, 815 N.E.2d 162, 170 (Ind. Ct. App. 2004) (citing *Noble Roman's, Inc. v. Ward*, 760 N.E.2d 1132, 1140 (Ind. Ct. App. 2002)). Examples of such cases where prejudgment interest is appropriate include . . . an amount stipulated to at a damages hearing[.] *Noble Roman's, Inc.*, 760 N.E.2d at 1140. In all of these cases, the amount of damages

> was clear and did not require any interpretation or judgment on the part of the trier of fact.

Kummerer v. Marshall, 971 N.E.2d 198, 201 (Ind. Ct. App. 2012), *trans. denied*.

[20] Roadsafe asserts that Walsh's damages were not readily ascertainable because "it is uncontested that Walsh never submitted its bills for attorney's fees for Roadsafe's review until September of 2019" and because Roadsafe "possessed good faith arguments as to why a substantial portion of those damages were not *recoverable*." Appellant's Br. at 30 (emphasis added). But Roadsafe's contentions miss the mark. Roadsafe does not direct us to any case law to support its suggestion that, to be ascertainable, Walsh's attorney's fees had to be submitted by a certain date. Indeed, our Court has observed that, to support an award of prejudgment interest, damages need only be "ascertainable at a particular time[.]" *Harlan Sprague Dawley, Inc. v. S.E. Lab Group, Inc.*, 644 N.E.2d 615, 619 (Ind. Ct. App. 1994), *trans. denied*. And Roadsafe confuses the issues of whether all of the attorney's fees were "recoverable," which turns on Roadsafe's obligation under the indemnity clause, and whether they were "ascertainable," which turns on whether the award can be determined by "a simple mathematical computation[.]" *Bopp v. Brames*, 713 N.E.2d 866, 872 (Ind. Ct. App. 1999), *trans. denied*.

[21] In its brief on appeal, Walsh contends that Roadsafe stipulated to the amount of its attorney's fees at the damages hearing, and Roadsafe does not dispute that contention in its reply brief. Indeed, at the damages hearing, the parties discussed an "agreement" they had made regarding Walsh's defense costs:

Counsel for Roadsafe: . . . And I will be frank with your Honor . . . . And what I will say and maybe this wasn't put in the records close enough and I wasn't at that hearing where this was discussed so maybe it wasn't made clear, is that the agreement that we had reached, in principle, was that we wouldn't—we weren't challenging necessarily their billable rate or their necessarily their entries. . . .
THE COURT: Okay. So, that actually helps me. So, you are not questioning the bills that were actually paid. You're saying you shouldn't have to pay them, but the . . .

Counsel for Roadsafe: We're not questioning that they're . . . . We're not frankly . . . *because this is what we agreed to. We aren't questioning the rate, and we're not questioning that the bills themselves were reasonable for the rates.*

* * *

THE COURT: So, that I'm clear and I can put it in my order, [the] parties reached certain agreements related to [the] damages hearing. They were . . . . So that I have them all, what have you guys agreed to?

* * *

Counsel for Walsh: Roadsafe agreed to not dispute the rate or time on task.

THE COURT: Roadsafe agreed not to dispute — What was it?

Counsel for Walsh: The hourly rate charge or the time on task.

THE COURT: Walsh's hourly rate charge or its time on task. Is that it?

Counsel for Roadsafe: Yes.

Tr. at 21-26 (emphasis added). In light of Roadsafe's stipulation that Walsh's attorney's fees were reasonable, the trial court did not exercise its discretion in awarding those fees, and, therefore, they were readily ascertainable. *See Noble Roman's, Inc.*, 760 N.E.2d at 1140 (affirming prejudgment interest award where parties stipulated to amounts of "majority of the damages").

[22] Further, as this Court held in *Thomson, Inc. v. Insurance Company of North America*, where an insurer breaches its duty to defend, a trial court may presume that defense costs are reasonable and necessary because of "two principles." 11 N.E.3d 982, 1024 (Ind. Ct. App. 2014), *trans. denied*.

> First, the policyholder, which is defending itself without an assurance it will be reimbursed, provides a market-based check on the amounts spent, a better check than any court can provide after-the-fact. Second, it is unfair to let a breaching insurer nit-pick costs later when it could have—had it honored its duty to defend—initially directed the defense in any reasonable way it wished.

Id. Given the presumption, we held that the trial court did not err when it awarded prejudgment interest on the award of defense costs. *Id.* at 1033.

[23] For these reasons, we hold that Walsh's defense costs were readily ascertainable, and the trial court did not err when it awarded prejudgment interest on Walsh's damages.

Conclusion

[24] Roadsafe has not satisfied its burden on appeal to persuade us that the trial court's grant of summary judgment for Walsh was erroneous. *See Ryan*, 72 N.E.3d at 913. The trial court did not err when it concluded that Roadsafe had a duty to indemnify Walsh for the $60,000 it paid to Maczuga in settlement of his claims. And the trial court did not err when it ordered Roadsafe to pay Walsh's attorney's fees and costs related to the Maczuga litigation, including those incurred before Walsh filed its third-party complaint against Roadsafe. Neither did the trial court err when it ordered Roadsafe to pay Walsh's attorney's fees and costs related to its third-party complaint, including the declaratory judgment action against Zurich. Finally, the trial court did not err when it awarded prejudgment interest on Walsh's damages. Accordingly, we affirm the trial court's grant of summary judgment in favor of Walsh.

[25] Affirmed.

Riley, J., and Crone, J., concur.