

IN THE SUPREME COURT OF FLORIDA  
TALLAHASSEE, FLORIDA

Case No. SC17-2058

L.T. Case No. 2D13-6051 Consolidated With L.T. Case No. 2D14-86

L.T. Case No. 06-CA-5366 Consolidated With L.T. Case No. 13-CA-5139

TRIAL PRACTICES, INC.	vs.	HAHN LOESER & PARKS LLP, as Substitute Party for Jack J. Antaramian
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Petitioner

Respondent

**RESPONDENT'S RESPONSE IN OPPOSITION TO  
PETITIONER'S MOTION FOR APPELLATE ATTORNEY'S FEES**

RESPONDENT, HAHN LOESER & PARKS LLP ("Hahn Loeser"), responds to Petitioner's, Trial Practices, Inc. ("TPI"), Motion for Appellate Attorney's Fees dated July 10, 2018, and shows:

1. In addition to Lower Tribunal Second District Case Nos. 2D13-6051 and 2D14-86, this Case arises from the same underlying facts as Second District Case No. 2D11-5673: *Trial Practices, Inc. v. Antaramian*, 97 So. 3d 228 (Fla. 2<sup>nd</sup> DCA 2012) (table decision), wherein the jury verdict Final Judgment in Favor of Jack J. Antaramian ("Antaramian") (R7018 - 7020<sup>1</sup>) was Per Curiam Affirmed by

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<sup>1</sup> The trial court transmitted a portion of its case file for L.T. Case Number 06-CA-5366 to the Second District on June 18, 2014, as the Original Record on appeal in Case Nos. 2D13-6051 and 2D14-86, which consists of 13,473 numbered pages. The Original Record transmitted by the trial court to the Second District will be

the Second District *See* R9554; Mandate at R9535 – 9536; and *see also Trial Practices, Inc. v. Antaramian*, 97 So. 3d 228 (Fla. 2<sup>nd</sup> DCA 2012) (table decision).

2. As more fully set forth in Hahn Loeser’s Motion for Appellate Attorneys’ Fees in this Case, dated June 19, 2018, which is incorporated herein by reference, Hahn Loeser (as substitute party for Antaramian) is the prevailing party in the lower court proceedings. *See* Opinion at DCA R1569 – 1587<sup>2</sup>; *Trial Practices, Inc., v. Hahn Loeser & Parks, LLP*, 228 So. 3d 1184 (Fla. 2<sup>nd</sup> DCA 2017); and *Trial Practices, Inc. v. Antaramian*, 97 So. 3d 228 (Fla. 2<sup>nd</sup> DCA 2012) (table decision).

3. The trial court has already determined that Hahn Loeser (as substitute party for Antaramian) is entitled to the recovery of attorneys’ fees and costs as the prevailing party by way of its Order Awarding Attorneys’ Fees and Costs in Favor of Antaramain (R13276 - 13289) and the Attorneys’ Fees and Costs Judgment against TPI (R13312 – 13313).

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cited to with the abbreviation “R” followed by the Original Record page number (*e.g.*, R4080).

<sup>2</sup> Citations to the Record of the Second District shall to be to the Record in the main Second District case, Case No. 2D13-6051, which consists of 1,657 PDF pages. The Second District’s Record for Case No. 2D13-6051 will be cited to with the abbreviation “DCA R” followed by the Second District’s PDF Record page number (*e.g.*, DCA R1581).

4. The Second District ruled that Antaramian was entitled to the recovery of his appellate attorneys' fees from TPI in TPI's appeal of the jury verdict Final Judgment, Case No. 2D11-5673 (*see* order at R9555). The Second District's Order provides, in part, as follows:

Appellant's motion for prevailing party appellate attorneys' fees is denied.

Appellee has also filed a motion for appellate attorneys' fees both as prevailing party and pursuant to a proposal for settlement. See §768.79, Fla. Stat. (2006). Because appellee has prevailed both in the underlying litigation and on appeal, he is entitled to prevailing party appellate attorneys' fees. . . .

R9555. *See* also trial court's Order Awarding Attorneys' Fees and Costs at R13277, ¶ 6 – 8; and R13278, ¶ 12.

5. The Second District later stated, through its Opinion in Lower Tribunal Case Nos. 2D13-6051 and 2D14-86, with respect to Case No. 2D11-5673, that “Antaramian was also successful on appeal and was awarded appellate attorneys' fees by this court due to his status as the prevailing party. See Trial Practices, Inc. v. Antaramian, 97 So. 3d 228 (Fla. 2<sup>nd</sup> DCA 2012) (table decision).” Opinion at DCA R1571 ¶1 and footnote 1; *and see also Trial Practices, Inc., v. Hahn Loeser & Parks, LLP*, 228 So. 3d 1184 (Fla. 2<sup>nd</sup> DCA 2017) at 1186, footnote 1.

6. The Second District, in Lower Tribunal Second District Case Nos. 2D13-6051 and 2D14-86, left intact a substantial portion of the Attorneys’ Fees and Costs Judgment against TPI. Through the Opinion (DCA R1569 – 1587), the Second District reversed and remanded only with respect to itemization of a portion of the cost award (the portion of the awarded amount being \$317,873.64) and for re-calculated prejudgment interest (the awarded amount being \$462,709.81). (*See* Opinion at DCA R1586, ¶2; Order Awarding Attorneys’ Fees and Costs at R13288, ¶43(vii) and ¶44 – 45; and Attorneys’ Fees Judgment at R13312 – 13313, ¶4 – 5). The Second District specifically held: “In all other respects, we affirm.” Opinion at DCA R1586, ¶2; and *see also Trial Practices, Inc., v. Hahn Loeser & Parks, LLP*, at 1194.

7. TPI, through its Motion, claims it is entitled to appellate attorneys’ fees in this Case pursuant to an alleged Proposal for Settlement served on January 26, 2018.<sup>3</sup> The Notice of Serving Proposal for Settlement, attached to TPI’s Motion as Exhibit “1,” shows that the Proposal for Settlement was served on behalf of lower tribunal trial court Defendants “Harvey Moore, Harvey Moore and Associates, Inc., and Trial Practices, Inc.”

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<sup>3</sup> The Proposal for Settlement post-dates the Attorneys’ Fees and Costs Judgment against TPI (R13312 – 13313), post-dates the lower tribunal Second District Case Numbers 2D13-6051 and 2D14-86 and the Second District’s Opinion of October 25, 2017 (DCA R1569 – 1587), and post-dates TPI’s initiation of this Case.

8. Hahn Loeser disputes the validity of the alleged Proposal for Settlement (which TPI does not attach to its Motion). Further, the alleged Proposal for Settlement cannot serve as a basis for appellate attorneys' fees where the issue to be addressed by this Court is the certified question propounded by the Second District (*see* Opinion at DCA R1581, ¶3), which if answered in the negative, would only affect the amount of money, if any, that Respondent should be entitled to receive for the costs incurred in retaining professionals to provide assistance with case and discovery preparation. Regardless of whether this Court answers the Second District's certified question in the affirmative or in the negative, Hahn Loeser remains the prevailing party. (*See* Respondent's Amended Answer Brief on the Merits at pgs. 6 - 9; and pgs. 46 – 48).

WHEREFORE, RESPONDENT, HAHN LOESER & PARKS LLP, respectfully requests this Court to deny Petitioner's Motion for Appellate Attorney's Fees, grant Hahn Loeser's Motion for Appellate Attorneys' Fees in this Case, and award Hahn Loeser any further relief the Court deems just and appropriate.

#### **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 13<sup>th</sup> day of July, 2018, I transmitted a true and correct copy of the foregoing document by electronic mail, through the Florida Courts E-Filing Portal, to:

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