2017 IL App (2d) 160720-U
No. 2-16-0720
Order filed May 11, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

SABAS SOTO, as assignee of Country Side Pet Motel,	)	Appeal from the Circuit Court of De Kalb County.
Plaintiff-Appellee/Cross-Appellant,	)	
v.	)	No. 13-LM-78
COUNTRY MUTUAL INSURANCE COMPANY,	)	
Defendant-Appellant/Cross-Appellee,	)	
and	)	
STEPHEN TALLITSCH and GAVIN WILSON,	)	Honorable William P. Brady,
Defendants.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Burke and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not err in: awarding attorney fees to plaintiff for defendant's vexatious and unreasonable conduct; setting the amount of the fee award; or declining to award additional sanctions. Affirmed.

¶ 2 Defendant, Country Mutual Insurance Company, appeals the trial court's grant of summary judgment to plaintiff, Sabas Soto, finding defendant acted vexatiously and unreasonably and awarding plaintiff attorney fees under section 155 of the Illinois Insurance Code (Code) (215 ILCS 5/155 (West 2014)). Plaintiff cross-appeals, arguing that the court erred in reducing the attorney-fee award and in failing to award him additional statutory damages available under section 155. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 This is the second appeal originating from the death of Boris, plaintiff's pure-bred giant schnauzer. *Soto v. Country Mutual Insurance Co.*, 2015 IL App (2d) 141166-U (*Soto I*) (unpublished order under Supreme Court Rule 23) (*pet. for leave to appeal denied*, No. 120152 (Jan. 20, 2016)). While in the Country Side Pet Motel's care, Boris was struck and killed by an automobile. Plaintiff sued the Pet Motel for negligence, alleging that, while Boris was in its "exclusive care, custody, and control," the Pet Motel failed to exercise reasonable care for his safety, directly resulting in his death. The complaint requested $30,000 in damages (in part based upon the loss of Boris's future "stud services").

¶ 5 The Pet Motel submitted the lawsuit to defendant, requesting defense and indemnification under an existing policy. On September 11, 2012, defendant wrote to the Pet Motel, denying coverage and declining to hire an attorney to represent it or to pay for any settlement, judgment, or verdict amount. According to the rejection letter, because of a policy exclusion that did not cover "personal property" in the insured's "care, custody, or control," there was no coverage for the alleged negligence under the policy's "Commercial General Liability Coverage." However, according to defendant, the "Building and Personal Property Coverage Form, Coverage

Extensions" provided for a "personal property of others" payment to plaintiff in the maximum amount of $2500.

¶ 6 Consistent with its letter, defendant did not thereafter defend the lawsuit, nor did it file a declaratory action to determine any existing rights or responsibilities under the policy. On November 15, 2012, a consent judgment was entered against the Pet Motel and in plaintiff's favor in the amount of $45,000. In exchange for a limited release, the Pet Motel executed an assignment to plaintiff of all of its rights against defendant.

¶ 7 Accordingly, plaintiff sued defendant, alleging breach of contract by virtue of its failure to defend or indemnify the Pet Motel in the negligence lawsuit. As a result, plaintiff alleged, the Pet Motel suffered damages in the amount of $45,000, and it assigned those damages to plaintiff. The parties subsequently filed cross-motions for summary judgment, and defendant appealed the trial court's August 27, 2014, rulings which: (1) found that defendant had a duty to defend the Pet Motel in plaintiff's negligence action; (2) found that it breached its duty to defend and was, therefore, estopped from asserting any policy defenses in the coverage dispute; and (3) entered judgment against defendant and in plaintiff's favor in the amount of $60,810.72.[1]

¶ 8 In *Soto I*, this court affirmed. In sum, we concluded that it was not "clear" from the face of the complaint that there was "no potential coverage" for the complaint allegations such that defendant was justified in neither seeking a declaration as to coverage or defending under a reservation of rights. *Soto I*, 2015 IL App (2d) 141166-U ¶¶ 43. We noted that defendant's unilateral decision to refuse to defend was a calculated gamble and, ultimately, an improvident one, as we disagreed with defendant's position and it was, therefore, estopped from raising any

[1] This amount included the judgment, a settlement, the Pet Motel's attorney fees and costs, interest, and other costs. See *Soto I*, 2015 IL App (2d) 141166-U, ¶ 29, n.3.

policy defenses to coverage, even those that might have been successful. *Id.* We noted that the question of *actual* coverage under the policy was not before us and, "while it very well might be that the policy does *not*, ultimately, cover the claim, the threshold for the complaint to present a claim of *potential* coverage is low." (Emphasis in original.) *Id.* at ¶ 40. Defendant, therefore, remained liable for the judgment. *Id.* at 44.

¶ 9 After the supreme court denied defendant's petition for leave to appeal, plaintiff filed for summary judgment on count II of his complaint, which alleged that defendant's actions in failing to defend its insured constituted vexatious and unreasonable conduct and warranted to plaintiff an award of attorney fees, costs, and statutory damages of $60,000 under section 155 of the Code. Defendant filed a cross-motion for summary judgment, arguing that it had a *bona fide* defense to the insured's claim for coverage and, therefore, that the court should find its actions were not vexatious and unreasonable. Plaintiff replied that whether defendant had a *bona fide* defense to *coverage* was irrelevant because it chose not to litigate coverage; rather, when defendant chose not to *defend* the insured *or* seek relief from defending the insured through a declaratory judgment or otherwise, it acted vexatiously and unreasonably.

¶ 10 After hearing argument, the court granted summary judgment in plaintiff's favor and denied defendant's cross-motion for summary judgment. The court noted that one of the most valuable benefits of a liability policy is a defense and that, in determining whether conduct was vexatious and unreasonable, it was to consider the totality of circumstances, including the insurer's attitude, whether the insured was forced to file suit, and whether the insured was deprived of his or her property. The court reasoned that, here, defendant:

> "[I]gnored a clear potential for coverage and just told the insured to go hire an attorney, which he did, and which led to this suit being filed against [defendant].

> Additionally, [defendant] needlessly made discovery difficult by not voluntarily presenting an employee who could provide information requested by the assignee [*i.e.*, plaintiff]. These factors seem to meet the criteria set out in the [*Peerless Enterprise, Inc. v. Kruse*, 317 Ill. App. 3d 133 (2000) decision] and other cases where unreasonableness and vexatiousness findings were upheld.
>
> Based on the results in those cases, and the Appellate Court's observation in this case that the decision by [defendant] was improvident, this Court can only come to a conclusion that the defendant's actions here were unreasonable and vexatious."

The court further decided to "use its discretion" to *not* impose any of the additional sanctions available under section 155.

¶ 11 The court awarded attorney fees in the amount of $49,000. In doing so, it reduced the award from the requested $65,794.50 by: (1) reducing plaintiff's counsel's hourly rate from $355/$385 hourly to $300 per hour; and (2) not awarding plaintiff time for drafting certain pleadings that were filed against defendants Stephen Tallitsch and Galvin Wilson (insurance agents who sold the Pet Motel the policy). In reducing counsel's hourly rate, the court noted that the reasonable customary rate in De Kalb County was around $250 hourly, but it recognized that plaintiff's counsel was skilled and that the insurance matters here required a bit of expertise and experience. Accordingly, the court awarded fees at a rate of $300 per hour, which was the "upper edge" in the county and, it stated, was the most it had ever awarded.

¶ 12 Defendant appeals the court's entry of summary judgment in plaintiff's favor and the denial of its cross-motion for summary judgment. Plaintiff cross-appeals, arguing that the court erred in reducing its attorney-fee award and its decision to not award additional section 155 sanctions.

¶ 13 II. ANALYSIS

¶ 14 A. Defendant's Appeal

¶ 15 Defendant argues on appeal that the trial court erred in awarding attorney fees to plaintiff under section 155. Defendant argues that the issue of estoppel differs from the vexatious-and-unreasonable standard under section 155. Defendant asserts that something more is required for section 155 sanctions than the same conduct that led to estoppel. It argues that, alone, a failure to defend or file a declaratory judgment action is insufficient to justify section 155 sanctions, particularly where it had *bona fide* reasons for not defending, *i.e.*, it compared the clarity of the policy exclusion to the complaint allegations and determined there was no coverage and, therefore, no need to seek declaratory relief or defend under a reservation of rights. As such, defendant argues, section 155 sanctions are inappropriate because its *bona fide* actions cannot be considered vexatious and unreasonable. For the following reasons, we disagree and affirm.

¶ 16 Section 155 of the Code provides that, in an action against an insurance company where the company's liability under a policy is at issue, or the amount of loss payable under the policy is at issue and:

> "it appears to the court that such action [by the company] *** is vexatious and unreasonable, the court may allow as part of the taxable costs in the action reasonable attorney fees, other costs, plus an amount not to exceed any one of the following amounts:
>
> (a) 60% of the amount which the court or jury finds such party is entitled to recover against the company, exclusive of all costs;
>
> (b) $60,000;

(c) the excess of the amount which the court *** finds such party is entitled to recover, exclusive of costs, over the amount, if any, which the company offered to pay in settlement of the claim prior to the action." 215 ILCS 5/155(1) (West 2014).

¶ 17 The purpose of section 155 is to provide a remedy to insureds who encounter unnecessary difficulties resulting from an insurance company's vexatious and unreasonable refusal to honor its contract with the insured.[2] *Korte Construction Co. v. American States Insurance*, 322 Ill. App. 3d 451, 459 (2001). Section 155 was intended to make lawsuits by policyholders economically feasible and to punish insurers. *Cramer v. Insurance Exchange Agency*, 174 Ill. 2d 513, 520 (1996). Further, by holding insurance companies responsible for the expense resulting from an insured's efforts to prosecute claims, section 155 discourages insurance companies from exploiting their superior financial position and vexatiously failing to perform legitimate contractual obligations. See *Cook v. AAA Insurance Co.*, 2014 IL App (1st) 123700, ¶ 47.

¶ 18 However, "an insurer will not be liable for fees and costs merely because it litigated and lost the issue of insurance coverage." *John T. Doyle Trust v. Country Mutual Insurance Co.*, 2014 IL App (2d) 121238, ¶ 28; see also *West Bend Mutual Insurance v. Norton*, 406 Ill. App. 3d 741 (2010) ("An insurance company does not violate section 155 merely by unsuccessfully challenging a claim."). "If a *bona fide* dispute existed regarding insurance coverage, the insurer's delay in settling a claim does not violate section 155." *American States Insurance Co. v. CFM Construction Co.*, 398 Ill. App. 3d 994, 1003 (2010). In determining whether section 155 applies, the trial court "must consider the totality of the circumstances, including the

[2] "Vexatious" means lacking sufficient grounds and serving only to annoy. See www.Merriam-Webster.com/dictionary/vexatious (last visited April 25, 2017). Synonyms include vexing, frustrating, aggravating, and irritating. *Id.*

insurer's attitude, whether the insured was forced to sue to recover, and whether the insured was deprived of the use of her or his property." *Id.*

¶ 19 We note first that the parties disagree over the standard of review. As defendant notes, some cases have applied *de novo* review to summary judgment rulings that involved section 155 sanctions. See, *e.g.*, *Korte*, 322 Ill. App. 3d at 460 ("It is well-settled that the proper standard of review to be applied to an award under section 155 pursuant to a summary judgment is the standard of review that is appropriate for any summary judgment."); *Employers Insurance of Wausau v. Ehlco Liquidating Trust*, 186 Ill. 2d 127, 160 (1999) (although the abuse-of-discretion standard usually applies to a decision to award fees under section 155, the appeal arose after judgment on the pleadings and, therefore, *de novo* review was deemed appropriate).

¶ 20 As plaintiff notes, however, other cases have explained that, although review of summary judgment is *de novo*, whether an insurer's actions are unreasonable and vexatious is a question of fact and, therefore, the trial court's determination on that question, even when made in a summary-judgment context, should be upheld absent an abuse of discretion. See, *e.g.*, *Doyle Trust*, 2014 IL App (2d) 121238, ¶ 30 (although section 155 decision was made at summary judgment, applied the abuse-of-discretion standard, particularly because the trial court drew on its knowledge of the proceedings in deciding the issue); *Auto-Owners Insurance Co. v. Yochum*, 2013 IL App (2d) 111267, ¶ 29 (applying abuse-of-discretion standard to section 155 determination made in summary-judgment context (although parties agreed that abuse of discretion was the appropriate standard to apply)); *CFM Construction*, 398 Ill. App. 3d at 1003-04 (although section 155 decision was made at summary judgment, applied the abuse-of-discretion standard); *Norton*, 406 Ill. App. 3d at 744 ("Thus, we note that the abuse-of-discretion standard of review applied [to the section 155 ruling] even though the court granted summary

judgment.").[3]

¶ 21 In our view, reviewing the section 155 decision for an abuse of discretion is appropriate, even though the decision was made in a summary-judgment context. Here, the parties agreed that there were no issues of fact concerning the relevant events, such that it was proper for the court to resolve their cross-motions for summary judgment. Nevertheless, section 155 remains inherently replete with discretion. It provides that the court "may" impose attorney fees and/or a variety of other sanctions when it "finds" the conduct vexatious and unreasonable. Indeed, it is clear that a trial court's section-155 determination requires its review of the totality of the circumstances, including its own knowledge of the case. See, *e.g.*, *Peerless*, 317 Ill. App. 3d at 144-45; see also *Gaston v. Founders Insurance Co.*, 365 Ill. App. 3d 303, 325 (2006) ("While the question of whether the insurer's action and delay is vexatious and unreasonable is a factual one, it is a matter for the discretion of the trial court; the trial court's determination will not be disturbed unless an abuse of discretion is demonstrated[.]"). Accordingly, as the facts here were undisputed, rendering ruling on cross-motions for summary judgment appropriate, the court's ultimate section 155 ruling, deciding that defendant's actions satisfied the statute and justified attorney fees, but not additional sanctions, reflected an exercise of discretion. Therefore, we will apply the abuse-of-discretion standard to the trial court's decision to award attorney fees under

[3] Defendant suggests that we should apply the *de novo* standard here because the court granted sanctions, whereas in other cases, such as *Doyle Trust*, the court denied sanctions. Even if it were clear to us why the distinction would matter so as to affect the standard of review, we note that other cases, albeit not explicitly, applied the abuse-of-discretion standard to uphold section 155 sanctions that were awarded in a summary-judgment context. See, *e.g.*, *Bedoya v. Illinois Founders Insurance Co.*, 293 Ill. App. 3d 668, 674, 680 (1997).

section 155. A court abuses its discretion "only if it acts arbitrarily, without the employment of conscientious judgment, exceeds the bounds of reason and ignores recognized principles of law; or if no reasonable person would take the position adopted by the court." *Payne v. Hall*, 2013 IL App (1st) 113519, ¶ 12.

¶ 22 Here, we cannot conclude that the trial court abused its discretion in finding that, under the totality of circumstances, defendant's failure to defend under a reservation of rights or file a declaratory judgment action was vexatious and unreasonable. Defendant argues that it raised a *bona fide* defense to coverage and, therefore, its behavior cannot be found to be vexatious and unreasonable. We disagree. Defendant did not "raise" or "litigate" its alleged *bona fide* defense to coverage. Here, there was no *bona fide* (*i.e.*, real or genuine) challenge because defendant did not engage in one. It simply denied coverage and informed its insured that it would not defend or pay for any settlement, judgment, or verdict amount (although it offered $2500 under the policy). Plaintiff was then forced to file suit, at great personal expense, to compel defendant to perform under its contract.[4] The cases upon which defendant relies are distinguishable; the defendants in those cases were able to escape liability under section 155 in part because they filed declaratory judgment actions or otherwise litigated their defenses to coverage or other obligations. See, *e.g.*, *State Farm Mutual Automobile Insurance Co. v. Smith*, 197 Ill. 2d 369, 371 (2001) (insurer filed a declaratory judgment action arguing that it had no duty to defend or

[4] We note that there is no question that, as the Pet Motel assigned its rights to plaintiff, plaintiff is in the same position as the Pet Motel and may seek section 155 sanctions on its behalf. See *CFM Construction*, 398 Ill. App. 3d at 1002-03; see also *Peerless*, 317 Ill. App. 3d at 142 ("It is well settled that the rights and remedies available under section 155 can be extended to assignees of insureds.").

indemnify); *Golden Rule Insurance Co. v. Schwartz*, 203 Ill. 2d 456, 460 (2003) (insurer filed declaratory action to determine obligations under the policy); *Medical Protective Co. v. Kim*, 507 F. 3d 1076, 1080 (2007) (insurer filed declaratory action to determine obligations under the policy); *CFM Construction*, 398 Ill. App. 3d at 1003-04 (insurer's actions, including seeking declaratory relief, were not unreasonable or vexatious, particularly given that the duty at issue was one to indemnify, which is not as broad as the duty to defend); *Doyle Trust*, 2014 IL App (2d) 121238, ¶ 8 (insurer ultimately filed a counterclaim for declaratory judgment on the issue of coverage, and the issue of duty-to-defend was litigated). Here, although the trial court and this court acknowledged defendant's position in the *Soto I* proceedings, whether defendant in fact had a *bona fide* defense to coverage has never been litigated or decided, *i.e.*, neither court ever ruled on the merits of the coverage question. Thus, for purposes of section 155 here, that defendant believed it had a *bona fide* defense to coverage is considered only as it is relevant to defendant's attitude, under the totality of the circumstances, in refusing to defend or seek declaratory relief.

¶ 23 In that regard, because the legitimacy or merits of defendant's alleged coverage defenses have not been squarely before us, the issue *here* concerns whether defendant's decision that it was clearly not required to seek declaratory relief or defend under a reservation of rights was unreasonable and vexatious (not whether its position that there was no actual coverage was *bona fide*). Relying on caselaw reflecting that there is no duty to defend if, after comparing the policy to the complaint, there is clearly no coverage or potential for coverage (see *Wausau*, 186 Ill. 2d at 151), defendant explains that its reason for not defending or seeking declaratory relief was its belief that it had a *bona fide* defense to coverage (the policy exclusion was, in its view, clear). However, as we noted in our prior decision, the law in this regard is well-settled: "the duty to

defend arises if, liberally construing the allegations in the underlying complaint in the insured's favor and against the insurer, there are factual allegations that *potentially* fall within coverage." (Emphasis added.) *American States*, 398 Ill. App. 3d at 1001. The duty-to-defend threshold is low: the complaint need present only the possibility, not probability, of recovery under the policy. *Bituminous Casualty Corp. v. Gust K. Newberg Construction Co.*, 218 Ill. App. 3d 956, 960 (1991). Thus, even though the threshold is low and the complaint and policy should be compared liberally in the insured's favor to consider whether there is a *potential* for coverage, defendant determined, under the circumstances of this case, that it was *so clear* that there was *no* potential for coverage that it did not need a neutral arbiter to decide whether its interpretation was correct. This approach *here* and under these circumstances, as we held previously, was ultimately improper and, indeed, can justify the award of section 155 sanctions. For example, in *Korte*, the insurer did not seek declaratory relief or defend under a reservation of rights because it, too, believed it had a *bona fide* dispute concerning the scope and application of coverage. Nevertheless, the court, considering the issue as a matter of law, rejected the defendant's argument that, because there existed *bona fide* disputes, its conduct could not be found unreasonable and vexatious. *Korte*, 322 Ill. App. 3d at 460-61. "[Defendant] should have raised these disputes in a declaratory judgment action or defended [plaintiff] under a reservation of rights, instead of simply denying its duty to defend, abandoning its insured, and forcing the insured to file [a complaint.]" *Id.* at 461.

¶ 24 We emphasize that we do not dispute defendant's caselaw, such as *Wausau*, reflecting that, when it is *clear* that there is no potential coverage, the insurer need not seek declaratory relief or defend under a reservation of rights. However, this black letter law is tempered by an interpretation of what is "clear." Thus, we cannot dispute or find an abuse of discretion the trial

court's finding that defendant's application of that authority *under the facts of this particular case* was vexatious (annoying and frustrating) and unreasonable. Here, defendant issued a liability policy to a dog kennel, a business which boards and cares for animals belonging to others. The complaint alleged negligence due to the death of an animal boarded there. As explained in *Soto I*, the policy here covers negligence and property damage, but then has various exclusions and other inclusions which resulted in it *not* being "clear" that there was "no potential coverage." *Soto I*, 2015 IL App (2d) 141166-U, ¶¶ 10-24, 38-40. As such, even if it were likely that there was no actual coverage under the policy, defendant's actions to not defend or seek relief from defending through a declaratory action were improvident (*i.e.*, shortsighted) because the nature of the policy, business purposes of the insured, and the complaint allegations were simply not, under these circumstances, clearly divorced from any potential of coverage.

¶ 25 The facts of this case are, therefore, very different from the hypothetical scenario posed by defendant at the hearing below. There, defendant suggested that, if it is found to be vexatious and unreasonable here, then an insurer must *always* seek declaratory relief or defend under a reservation of rights or be found vexatious and unreasonable under section 155. To illustrate that such a result would be untenable, defendant posed a hypothetical: "If they [the Pet Motel] tendered [the complaint about Boris's death] under the boat policy we'd say, well this coverage is only watercraft liability. Should we file a declaratory on the watercraft policy because they're tendering under that policy, otherwise we're estopped?" Defendant reiterated that applying section 155 to the facts here would imply that, even where an insurer compares a complaint to a policy and it appears clear that there is no potential coverage, it must nevertheless file a declaratory judgment action or risk being penalized twice, once via estoppel and again via section 155. Such a result, defendant argued, would overload the court dockets with declaratory-

judgment actions.

¶ 26 Under the scenario as posed, however, the insurer would not need to seek declaratory relief because there, it is *clear* there is *no potential coverage* under a watercraft policy for Boris's death at the Pet Motel. The case before us is nothing like the scenario defendant posed, nor like other cases where courts found that there was clearly no possibility of coverage or duty to defend. See *Soto I*, 2015 IL App (2d) 141166-U (citing case where the lawsuit concerned Medicare fraud but the policy was one for personal injury). It is for that reason, *i.e.*, this case being nothing like obvious cases where it is clear that there is no potential coverage, that defendant's unilateral coverage determination and its decision to not defend its insured were unreasonable and vexatious actions. Again, defendant's position was that it was "clear" to *it* that the policy did not provide coverage for the insured dog kennel in the negligent death of a dog in its care – although caring for others' dogs was the insured's primary business purpose and the policy covered negligence and property damage. The decision to not request a neutral arbiter to declare that defendant's position was correct was its choice, but the consequence to defendant of being wrong was estoppel from raising coverage defenses (we note that estoppel was a consequence, not as defendant repeatedly asserts, a penalty). In addition, the consequence to *plaintiff* was that he was required to file suit, hire an attorney at significant personal expense, provide his own defense, and, initially, pay the judgment. The purpose of section 155 is to punish the insurer for acting vexatiously and unreasonably by compensating the insured for the inconvenience and expense of having to prosecute the claim. See *Cook*, 2014 IL App (1st) 123700, ¶ 47. By awarding attorney fees under section 155, the court here fulfilled the objective of the statute and made plaintiff whole for the burden he shouldered to force defendant to perform under its contract.

¶ 27 Defendant makes much of the fact that, when presented with the complaint, it responded to the insured (as opposed to completely ignoring it) and offered $2500, the maximum relief under one policy provision, without even requiring proof that the dog was worth that amount. When we consider that the insured was being sued for $30,000 in damages, this is not particularly praiseworthy. Further, that is *all* defendant did, as in the same letter it stated that it would not hire an attorney or provide any defense to the complaint the insured faced. "[I]t would defeat the purpose of the statute [section 155] to allow an insurer to escape any penalty when it fails to provide one of the most important benefits of a liability policy – a defense." *Shell Oil Co. v. AC&S, Inc.*, 271 Ill. App. 3d 898, 909 (1995).

¶ 28 In sum, contrary to defendant's suggestion, affirming the trial court's ruling here is not equivalent to a finding that, as a matter of law, behavior that results in estoppel *automatically* constitutes vexatious and unreasonable conduct. Rather, we hold that it was not an abuse of discretion for the trial court to find, under the totality of the circumstances *here*, that defendant's decision not to seek declaratory relief or defend under a reservation of rights was vexatious and unreasonable. The nature of the policy when compared to the complaint and business purpose of the insured was unlike other cases that clearly required no action by the insurer. Further, the circumstances reflect that defendant's sole response to its insured was to offer $2500, less than 10% of the damages the insured was facing in the complaint alone, let alone any attorney fees or costs. Finally, we note that the trial court further found, based upon its knowledge of the case, that defendant was vexatious and unreasonable during discovery. Accordingly, the court's attorney-fees award under section 155 was not an abuse of discretion.

¶ 29 B. Plaintiff's Cross-Appeal

¶ 30 In his cross-appeal, plaintiff argues that the trial court abused its discretion in its attorney-

fees award to the extent it: (1) reduced counsel's hourly rate; and (2) did not award fees for certain work that was completed. Further, plaintiff argues that the trial court erred in failing to award the extra statutory damages that were available under section 155. For the following reasons, we affirm.

¶ 31 1. Attorney Fees

¶ 32 Plaintiff argues first that the court erred in reducing counsel's hourly rate, where he presented uncontested testimony regarding the fee agreement with his client and three uncontested affidavits reflecting hourly rates of attorneys who practice in the insurance coverage field. Plaintiff argues that the court's decision to choose a rate based on what it has awarded in the past, as opposed to the evidence before it, rendered the award arbitrary, and he asserts that the court's decision to award a lower rate simply because of the county wherein counsel accepted the case creates a disincentive for city attorneys to accept cases outside of Cook County. Further, plaintiff challenges the court's decision to reduce the total award by not awarding time for certain filings related to the individual defendants.

¶ 33 We give considerable deference to the judgment and discretion of the court when reviewing an attorney-fees award under section 155, and an increase or decrease of a fee award will be granted only if there has been a clear abuse of discretion. *Marcheschi v. Illinois Farmers Insurance Co.*, 298 Ill. App. 3d 306, 315 (1998). Generally, when considering an attorney-fees award, courts must consider factors such as the skill of the attorney employed, the nature of the case, the novelty and difficulty of the issue involved, the usual and customary charge for the same or similar services in the community, and whether there is a reasonable connection between the fees charged and the litigation. See, *e.g.*, *Harris Trust and Savings Bank v. American National Bank and Trust Co. of Chicago*, 230 Ill. App. 3d 591, 595-9 (1992). However, in

Marcheschi, 298 Ill. App. 3d at 311, the court considered that section 155 contains permissive, rather than mandatory, language and that it "does not *require* the court to provide such relief even in the face of the most unreasonable and vexatious delay by an insurance company[.]" (Emphasis in original.) *Id.* at 311. Therefore, the court reasoned, "[i]t follows that the amount of fees to be granted is also not mandated and after review of the totality of the circumstances, the trial court clearly has discretion to determine the appropriate amount." *Id.* at 315.

¶ 34 Considering the foregoing authority, the attorney-fees award in this case clearly fell within the trial court's discretion. In reducing plaintiff's counsel's hourly rate, the court carefully considered the parties' written and oral arguments. The court took into account plaintiff's counsel's skill and expertise, the nature of the case, the novelty and difficulty of the issue involved, the usual and customary charge for the same or similar services in the community, and whether there is a reasonable connection between the fees charged and the litigation. Further, the court explained that its customary award in De Kalb County did not exceed $250 per hour and that the "upper edge" in the county, the highest rate that the court had ordered, was $300 per hour. Recognizing, however, plaintiff's counsel's skill and expertise, the nature of the litigation, as well as the fact that plaintiff and his counsel had agreed to a higher rate, the court exercised its discretion to award the "upper edge" rate, *i.e.* $300 hourly, as opposed to the customary $250 rate. With respect to its decision to eliminate some of the charges connected with the litigation involving the individual defendants, we note that the trial court had familiarity with the underlying litigation that allowed it to assess the necessity and reasonableness of the legal services rendered. It was not limited to the evidence presented by the parties at the time the fee petition was litigated to arrive at a reasonable award, and it had broad discretion to exercise independent judgment in fashioning the award. See, *e.g.*, *Wildman,*

Harrold, Allen & Dixon v. Gaylord, 317 Ill. App. 3d 590, 595 (2000). In sum, we affirm the attorney-fees award.

¶ 35 2. Additional Section 155 Sanctions

¶ 36 Plaintiff argues next that the court should have awarded additional sanctions as available under section 155. Plaintiff asserts that there is no clear existing standard or factors delineated for determining whether a case warrants additional sanctions under section 155 and whether the court, therefore, erred in failing to award them.

¶ 37 As previously stated, sanctions under section 155 are within the trial court's discretion. See *Marcheschi*, 298 Ill. App. 3d at 311. We do not find it an abuse of discretion for the court to refuse other statutory damages under section 155. The court carefully considered the parties' arguments, drew upon its knowledge of the case, and considered the totality of the circumstances. After doing so, it reviewed the potential sanctions and determined that attorney fees were appropriate, but that defendant's conduct did not warrant additional sanctions. We cannot conclude that the court's decision was fanciful or exceeded the bounds of reason. *Payne*, 2013 IL App (1st) 113519, at ¶ 12.

¶ 38 III. CONCLUSION

¶ 39 For the foregoing reasons, we affirm the judgment of the circuit court of De Kalb County.

¶ 40 Affirmed.