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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 11333, Inc., f/k/a Investors Mortgage  
10 Holdings, Inc.,

11 **Plaintiff,**

12 v.

13 Certain Underwriters at Lloyd's, London,  
14 Subscribing to Policy Numbers  
15 MBB0756586A08, MBB0856586A09, and  
16 B066456586B09; HUB International  
Insurance Services, Inc.,

**Defendants.**

No. CV-14-02001-PHX-NVW

**ORDER**

17 Before the Court is Defendant Certain Underwriters at Lloyd's, London  
18 Subscribing to Policy Number MBB0756586A08's Supplemental Motion for Award of  
19 Attorneys' Fees (Doc. 214), 11333 Incorporated's response, and Underwriters' reply.

20 **I. BACKGROUND**

21 On March 30, 2018, the Court granted Underwriters' motion for award of attorney  
22 fees under A.R.S. § 12-341.01(A) in the amount of \$1,099,011.50 so far. (Doc. 211.) In  
23 their motion Underwriters had excluded most of the amounts charged to and paid by  
24 Underwriters for attorney time incurred during air travel. The Court overruled 11333's  
25 objections to the amounts charged for attorney air travel time that Underwriters had  
26 claimed, invalidating the Local Rule that purported to exclude such attorney fees from  
27 awards under that state statute. The Court permitted Underwriters to file a supplemental  
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1 request for attorney fees to include previously omitted attorney air travel time and any  
2 additional services incurred on their fee motion.

3 Underwriters' supplemental motion requests an additional \$56,820.00 for attorney  
4 air travel time that was withheld from their initial fee motion and \$47,828.50 for attorney  
5 fees incurred on the initial fee motion. 11333 objects that attorney air travel time  
6 ordinarily should not be charged unless other work was done at the same time. Local  
7 Rule LRCiv 54.2(e)(2)(D). 11333 also contends some of the attorney air travel time was  
8 unreasonable and unnecessary. Finally, 11333 requests reduction of the award because  
9 same of the services are inadequately described. Local Rule LRCiv 54.2(e)(2).

10 **II. FEE AWARDS UNDER ARIZONA LAW FOR ATTORNEY TRAVEL**  
11 **TIME**

12 Federal courts sitting in diversity apply state substantive law and federal  
13 procedural law. *CRST Van Expedited, Inc. v. Werner Enterprises, Inc.*, 479 F.3d 1099,  
14 1111 (9th Cir. 2007). State statutes are substantive when they authorize fee awards to  
15 litigants in a particular class of cases, as A.R.S. § 12-341.01 does for actions arising out  
16 of contract. *See id.*

17 Federal district courts may “prescribe rules for the conduct of their business,” that  
18 is, local rules of procedure. 28 U.S.C. § 2071(a). No rule may be prescribed by a district  
19 court other than under 28 U.S.C. § 2071. 28 U.S.C. § 2071(b). A district court must  
20 enforce local rules prescribed under § 2071 if substantial rights are at stake. *Prof'l*  
21 *Programs Grp. v. Dep't of Commerce*, 29 F.3d 1349, 1353 (9th Cir. 1994); *All. of*  
22 *Nonprofits for Ins., Risk Retention Grp. v. Kipper*, 712 F.3d 1316, 1327 (9th Cir. 2013).  
23 But 28 U.S.C. § 2071 only authorizes district courts to prescribe rules for “the conduct of  
24 their business.” It gives no authority to district courts to prescribe rules that modify the  
25 substantive law to be applied.

26 Arizona substantive law provides district courts with discretion to award  
27 reasonable attorney fees in contract litigation. A.R.S. § 12-341.01(A) states: “In any  
28 contested action arising out of a contract, express or implied, the court may award the

1 successful party reasonable attorney fees.” The statute provides broad judicial discretion:  
2 “The award of reasonable attorney fees pursuant to [§ 12-341.01] should be made to  
3 mitigate the burden of the expense of litigation to establish a just claim or a just defense.  
4 It need not equal or relate to the attorney fees actually paid or contracted, but the award  
5 may not exceed the amount paid or agreed to be paid.” A.R.S. § 12-341.01(B).

6 “Once a litigant establishes entitlement to a fee award, the touchstone under  
7 § 12-341.01 is the reasonableness of the fees.” *Assyia v. State Farm Mut. Auto. Ins. Co.*,  
8 229 Ariz. 216, 222, 273 P.3d 668, 674 (Ct. App. 2012). Reasonableness of fees is a fact  
9 question based on the market and practices of attorneys and clients. It is customary and  
10 routine for commercial attorneys working on an hourly rate basis, including insurance  
11 attorneys, to charge their clients for their time necessarily traveling on the matter,  
12 whether or not other legal work is done on the airplane. Clients universally pay for that  
13 time, as did Underwriters here. That is part of the “reasonable” fee that the Court may  
14 award in its discretion, provided it does “not exceed the amount paid or agreed to be  
15 paid.” A.R.S. § 12-341.01(A) and (B).

16 Local Rule LRCiv 54.2 establishes the procedure for requesting award of attorney  
17 fees and related non-taxable expenses in the U.S. District Court for the District of  
18 Arizona. LRCiv 54.2(d) requires movants to submit supporting documentation, including  
19 a task-based itemized statement of attorney fees and expenses. LRCiv 54.2(e)(2) states:  
20 “The party seeking an award of fees must adequately describe the services rendered so  
21 that the reasonableness of the charge can be evaluated.” It further states: “If the time  
22 descriptions are incomplete, or if such descriptions fail to adequately describe the service  
23 rendered, the court may reduce the award accordingly.”

24 For this case the Arizona statute gives the court substantive discretion to award  
25 fees up to the lower of what is “reasonable” or what does “not exceed the amount paid or  
26 agreed to be paid.” A.R.S. § 12-341.01(A) and (B). Local Rule LRCiv 54.2(e) provides  
27 the procedure to supply the district court with the information it needs to decide whether  
28 the requested fees are reasonable.

1           However, LRCiv 54.2(e)(2)(D) goes beyond enabling the court to determine  
2 reasonableness. It also excludes fees for attorney air travel time as beyond what the  
3 Arizona statute authorizes for compensation, though the market shows them to be  
4 reasonable and charged and paid in fact. The rule states:

5           (D) Travel Time. Ordinarily air travel time should not be charged. If  
6 services were performed during such time, then describe such services  
7 rather than charging for the travel time.

8 In this case under A.R.S. § 12-341.01(A), this application of LRCiv 54.2(e)(2)(D) to  
9 exclude fees that are compensable under A.R.S. § 12-341.01(A) exceeds the district  
10 court's authority under 28 U.S.C. § 2071(a) to prescribe procedural rules. As applied  
11 here, the local rule is invalid.

### 12 **III. OBJECTIONS TO SPECIFIC FEES**

13           11333's objections to specific services are all unmeritorious. Some of the  
14 objections have already been rejected in the first order awarding fees. (Doc. 211.)

15           Occasional travel by counsel for in-person strategy sessions and conferences with  
16 opposing counsel was reasonable. 11333 says all such meetings should have been by  
17 video conference. In-person meeting is much more productive, depending on the nature  
18 and length of the meetings. Those meetings were justified.

19           The Court has already found the division of labor between the out-of-state and the  
20 local law firms reasonable and justified. Major litigants like Underwriters may use their  
21 regular litigation counsel and local counsel as well.

22           The multiple lawyers attending the depositions of Jerome Joseph, William J. Lutz,  
23 Plaintiff's corporate representatives, and Underwriters' representatives were all  
24 warranted in light of the division of responsibilities among their lawyers. (Doc. 217 at 4-  
25 5.) It was especially justified for Mr. West to travel to London, though he did not attend  
26 the Rule 30(b)(6) depositions, in light of his participation in the preparation of the  
27 deponents and his extensive history with the major representatives of Underwriters.  
28 11333's principal's belated announcement that he would attend the deposition and  
wished to discuss settlement made Mr. West's presence all the more beneficial.


1 11333 objects again to ten time entries, as it did before, for preparation of  
2 identified court papers. Use of the word “prepare” can sometimes be unclear about what  
3 is being done. But it is utterly clear here what preparation of the attorney fees motion and  
4 the reply refers to. Those objections are overruled also.

5 The Court finds that the \$56,820.00 for attorney fees for air travel time, originally  
6 omitted from Underwriters’ fee motion and now sought, is reasonable. 11333’s  
7 objections to the reasonableness of attorney air travel time are overruled. All the travel  
8 was reasonable. Further, 11333’s objections to Underwriters’ request for \$47,828.50 for  
9 attorney fees incurred on the initial fee motion are overruled for reasons stated herein and  
10 previously in the March 30, 2018 order (Doc. 211).

11 IT IS THEREFORE ORDERED that Defendant Certain Underwriters at Lloyd’s,  
12 London Subscribing to Policy Number MBB0756586A08’s Motion for Award of  
13 Attorneys’ Fees (Doc. 214) is granted in the amount of \$104,648.50 in addition to the  
14 previously awarded amount of \$1,099,011.50.

15 IT IS FURTHER ORDERED that the Clerk enter judgment in favor of Certain  
16 Underwriters at Lloyd’s, London Subscribing to Policy Number MBB0756586A08  
17 against Plaintiff 11333, Inc., in the amount of \$1,203,660.00 for attorney fees, plus  
18 interest thereon at the federal rate of 2.31% from the date of this judgment until paid.

19 Dated this 22nd day of May, 2018.

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23 Neil V. Wake  
24 Senior United States District Judge  
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