UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
IN ADMIRALTY

Case No. 23-cv-61616-Singhal/McCabe

CENTURY BANK,

Plaintiff,

v.

M/V SUMMER 69, a 2003 130' Westport Motor Yacht Official No. 1143060, along with her boats, engines, boilers, tackle, equipment, apparel, furnishings, freights, and appurtenances, etc. *in rem*,

and

M/V 689, a 2016 42' Scout 420 LXF Official No. 1261594, along with her boats, engines, boilers, tackle, equipment, apparel, furnishings, freights, and appurtenances, etc. *in rem*,

Defendants.
_____/

REPORT & RECOMMENDATION

THIS CAUSE comes before the Court on three motions filed by Plaintiff Century Bank:

(1) a Motion for Bill of Costs (DE 54),

(2) a Verified Motion for Attorneys' Fees and Taxable Costs, Additional Interest, and Continued Accrual of Interest Against the M/V Summer 69 and for Entry of Amended Final Judgment (DE 58), and

(3) a Supplemental Motion for Attorneys' Fees (DE 120).

The District Judge referred all three motions to the undersigned for resolution. (DE 69, DE 123). Because these motions arose post-judgment, the Court regards the referrals as falling within the scope of 28 U.S.C. § 636(b)(3). *See State Contracting & Eng'g Corp. v. Condotte Am., Inc.*, No. 97-7014-CV, 2005 WL 8165478, at *2 (S.D. Fla. Aug. 12, 2005) (recognizing that post-trial

motions can be referred under § 636(b)(3)). The Court therefore resolves these motions by way of Report and Recommendation. As set forth below, the undersigned **RECOMMENDS** that the motions be **GRANTED IN PART AND DENIED IN PART** and that an Amended Final Judgment be entered in the amount of $1,968,558.35.

I. BACKGROUND

This is an admiralty case brought to foreclose two preferred ship mortgages. The mortgages arose from a $5.9 million loan that Plaintiff Century Bank made in or around 2019 to a borrower, Marine Biology Research, LLC ("MBR"). (DE 7 ¶ 9). MBR agreed to secure the loan with two preferred ship mortgages against, respectively, a 130-foot luxury yacht known as the M/V SUMMER 69 (hereafter the "Yacht") and a 42-foot center-console sportfishing boat known as the M/V 689 (hereafter the "Scout"). (DE 7-1 at 4, 19).

In or around August 2023, Century Bank brought this action to foreclose the preferred ship mortgages against the Yacht and the Scout (collectively the "Vessels"), both of which were located in the Southern District of Florida at the time. (DE 1). The Complaint named the Vessels as *in rem* defendants. (DE 1). The Complaint did not name MBR as an *in personam* defendant. (DE 1).

On or about August 28, 2023, the District Judge issued warrants to arrest the Vessels, after which, the U.S. Marshal seized and took custody of both Vessels. (DE 13, DE 14, DE 18). Thereafter, the U.S. Marshal turned over custody to G. Robert Toney and Associates, Inc. d/b/a National Liquidators (hereafter "National Liquidators"), a substitute custodian appointed by the District Judge at the request of Century Bank. (DE 16).

On May 7, 2024, the District Judge granted summary judgment in favor of Century Bank against the Vessels, ordering as follows:

- Finding both mortgages to be valid and enforceable;
- Awarding Final Judgment against the Vessels in the amount of $6,438,103.31, comprised of the following amounts:
    - $6,237,188.93 for the Yacht mortgage, including principal, interest, and late fees through and including February 1, 2024;
    - $8,982.86 for the Scout mortgage in principal, interest, and late fees;
    - $188,724.54 in *custodia legis* expenses; and
    - $3,630.00 for reimbursement of expenses incurred for vessel appraisal surveys;
- Awarding per diem interest from February 2, 2024 and forward in the amount of $3,033.61;
- Authorizing both Vessels to be sold at auction to satisfy the Final Judgment; and
- Retaining jurisdiction to award further relief against the two vessels in the future, including court costs, attorneys' fees, and subsequently incurred *custodia legis* expenses.

(DE 37 at 7-9, DE 38).

Thereafter, on August 13, 2024, the U.S. Marshal sold both Vessels at auction. (DE 47, DE 50). The Yacht sold for $5,600,000. (DE 53). The Scout sold for $295,000. (DE 53). Pursuant to 28 U.S.C. § 1921(c)(1), the District Judge authorized the U.S. Marshal to retain its statutory commissions and costs of $61,001.66. (DE 53). The District Judge instructed the remaining funds, $5,837,498.34, to be distributed to the trust account of Century Bank's counsel. (DE 53).

Notably, the post-auction funds distributed to Century Bank's counsel ($5,837,498.34) fell short of the Final Judgment amount entered against the Vessels ($6,438,103.31). This left a substantial deficiency, even without consideration of the amounts left open for future

determination by the District Judge, i.e., court costs, attorneys' fees, and subsequently incurred *custodia legis* expenses.

By way of the pending motions, Century Bank seeks to modify the Final Judgment of $6,438,103.31 by making the following adjustments:

1. Subtracting $5,895,000 to account for the combined sales price of the two Vessels;
2. Adding $54,440.00 to reimburse Century Bank for the U.S. Marshal's commission;
3. Adding $7,416.84 in taxable costs;
4. Adding $724,328.92 for additional *custodia legis* and other expenses;
5. Adding $209,278.50 in attorneys' fees;
6. Adding $715,931.96 in additional interest.

(DE 58-1, DE 120, DE 121 at 34).

In total, Plaintiff seeks entry of an Amended Final Judgment against the Vessels in the amount of $2,254,499.53. (DE 58-1, DE 120, DE 121 at 34). Plaintiff also requests the Court to reserve jurisdiction to award additional amounts in the future. (DE 58 at 18).

The Court will address each step of these calculations in turn.

II. SUBTRACTION OF VESSELS' SALES PRICE

Century Bank first seeks to subtract the combined sales price of the Vessels ($5,895,000) from the Final Judgment amount. (DE 58 at 18). The Vessels do not dispute this reduction. (DE 61 at 2). As such, the combined sales price of $5,895,000 should be subtracted from the Final Judgment.

III. ADDITION OF U.S. MARSHAL'S COMMISSION

Century Bank next seeks to add the commission charged by the U.S. Marshal to sell the Vessels on the courthouse steps, i.e., $54,440.00. (DE 58 at 18). The Vessels do not dispute this

addition. (DE 61 at 2). As such, the U.S. Marshal's commission of $54,440.00 should be added to the Final Judgment.

IV. ADDITION OF TAXABLE COSTS

Century Bank next seeks to add $7,416.84 in taxable costs by way of a Bill of Costs. (DE 54, DE 58 at 12). By way of previous Order, the District Judge already granted the Bill of Costs. (DE 78 at 6). As such, taxable costs in the amount of $7,416.84 should be added to the Final Judgment.

V. ADDITIONAL *CUSTODIA LEGIS* & RELATED EXPENSES

Century Bank next seeks to add $724,328.92 for additional *custodia legis* and related expenses not included in the Final Judgment and/or incurred after the date of the Final Judgment. (DE 58 at 15). As further described below, these expenses include costs incurred to maintain and repair the Vessels, costs incurred to insure the Vessels, and a brokerage commission (separate from the U.S. Marshal's commission) incurred to sell the Vessels at auction. The Vessels contest many of these expenses. As a result, the Court conducted an evidentiary hearing that spanned across portions of five days, with multiple fact and expert witnesses, and almost one hundred exhibits. (DE 118).

A. Legal Authority for Expenses

Century Bank points to three sources of authority to add these expenses to the Final Judgment.

1. *Custodia Legis*

First, Century Bank points to the *custodia legis* doctrine, under which an admiralty court enjoys equitable power to compensate court-appointed custodians for "expenses incurred in operating and caring for a vessel while in the custody of a court." *M&M Private Lending Grp.,*

LLC v. M/Y CIAO BELLA, No. 19-cv-62350, 2020 WL 5499102, at *1 (S.D. Fla. Sept. 3, 2020). The Eleventh Circuit has recognized that *custodia legis* expenses may be recovered as "expenses of justice." *Dresdner Bank AG v. M/V OLYMPIA VOYAGER*, 465 F.3d 1267, 1272 (11th Cir. 2006). Court-appointed custodians may generally recover these expenses out of the sales proceeds of an arrested vessel with priority over all other liens, including preferred ship mortgage liens. *See Donald D. Forsht Assocs., Inc. v. Transamerica ICS, Inc.*, 821 F.2d 1556, 1561 (11th Cir. 1987) (recognizing the right to recover *custodia legis* expenses from the sale proceeds "ahead of all lienors"); *Helm v. Vahle*, No. 3:16-cv-630, 2017 WL 1352225, at *4 (N.D. Fla. Apr. 7, 2017) (explaining order of priority of competing maritime lien claims).

In this case, the District Judge appointed National Liquidators, not Century Bank, as the substitute custodian. (DE 16). As further explained below, however, the record shows that Century Bank entered into a contract with National Liquidators whereby Century Bank agreed to pay National Liquidators a fee for its substitute custodian services over the Vessels. (PX 6, PX 7).[1] In such cases, courts in this district have allowed a lien-holding bank to seek recovery of *custodia legis* expenses where the bank hired and paid the substitute custodian for its services. *See*, *e.g.*, *Seacoast Nat'l Bank v. M/Y VIAGGIO*, No. 22-cv-62311, 2023 WL 6930685, at *7 (S.D. Fla. Oct. 2, 2023), *R. & R. adopted*, 2023 WL 6908985 (S.D. Fla. Oct. 19, 2023). As the party moving for *custodia legis* expenses, Century Bank bears the burden to prove the subject costs were equitably incurred. *See Springleaf Fin. Servs. of Ala. v. F/V WHITEWATER*, No. CA 12-00579-C, 2013 WL 3008414, at *2 (S.D. Ala. June 14, 2013) (discussing *custodia legis* burden of proof).

[1] The Court will refer to Century Bank's exhibits as "PX" and the Vessels' exhibits as "DX." As of the date of this Report and Recommendation, the parties have not yet filed their exhibits into the record. The Court directs the parties to do so.

More to the point, the Eleventh Circuit has explained that the underlying policy of the *custodia legis* doctrine is to "contro[l] custodial expenses and preserv[e] the *res* for valid lienholders." *Dresdner*, 465 F.3d at 1274. As such, *custodia legis* expenses must be reasonable, and courts have broad authority to approve or reject such expenses. *See Robbie's of Key West v. M/V Komedy III*, No. 19-cv-10193, 2020 WL 13389894, at *3 (S.D. Fla. Nov. 4, 2020) (recognizing that "the Court must still use its 'broad equitable powers' to ensure that the expenses are reasonable, and that justice is served") (cleaned up); *Julien v. M/Y Pacific II*, No. 09-cv-22457, 2010 WL 11647170, at *5 (S.D. Fla. July 2, 2010) ("*Custodia legis* expenses are paid from the fund within the court's control only to the extent that they are reasonable.") (cleaned up).

To this end, our Court has adopted Local Admiralty Rules to define the role of substitute custodians and limit the expenses they incur. Specifically, Local Admiralty Rule E(11)(b) provides as follows:

> **Preservation Expenses for the Vessel and Cargo.** The Marshal, *or substitute custodian*, is authorized to incur expenses *reasonably deemed necessary in maintaining the vessel*, cargo and/or property in custody *for the purpose of preventing the vessel*, cargo and/or property *from suffering loss or undue deterioration*.

(emphasis added). Notably, our Local Rules do not allow substitute custodians to *improve* the quality or condition of vessels under their care. Instead, substitute custodians are charged solely with the task of maintaining vessels in their arrested condition and preventing "undue deterioration." *See* S.D. Fla. Adm. R. E(11)(b).

To help substitute custodians draw the line between maintenance and improvement, our Local Rules provide a simple procedure: ask the Court first. Local Rule E(10)(b) provides as follows:

> **Limitations on the Handling, Repairing and Subsequent Movement of Vessels or Property**. Subsequent to the arrest or attachment of a vessel or property, and except as provided in Local Admiralty Rule E(10)(a), *no person may* handle cargo, *conduct repairs*, or move a vessel without prior order of Court.

(emphasis added). The Local Rules also create an exception for emergency repairs:

> **Limitations on Reimbursement for Services and/or Supplies Provided to a Vessel or Property in Custody**. *Except in cases of emergency or undue hardship*, no person will be entitled to claim as an expense of administration the costs of services or supplies furnished to a vessel, cargo and/or property unless such services or supplies have been furnished to the Marshal upon the Marshal's order, or pursuant to an order of this Court.

See S.D. Fla. Adm. R. E(11)(a) (emphasis added).

In the Court's view, these rules, taken together, mean that a substitute custodian who decides to make non-emergency repairs without prior court authority bears a substantial risk that those expenses will not be given priority over other liens and may never be recovered at all. In short, a substitute custodian acts at its own peril by making non-emergency repairs without prior court approval.

As further described below, the Court agrees that Century Bank incurred numerous legitimate *custodia legis* expenses related to the care and maintenance of the Vessels in this matter. The Court will calculate those expenses below and recommend that they be added to the Final Judgment.

2. Necessaries

Century Bank also seeks recovery of certain expenses as "necessaries." (DE 58 at 13-15). Pursuant to 46 U.S.C. § 31342, a person who provides necessaries to a vessel may, under certain circumstances, impose a maritime lien against the vessel. *See Thorsteinsson v. M/V Drangur*, 891 F.2d 1547, 1551 (11th Cir. 1990) (noting that "Congress has protected those who furnish supplies and other necessaries to vessels, granting such persons maritime liens against the vessel").

"Necessaries" includes "repairs, supplies, towage, and the use of a dry dock or marine railway ..." 46 U.S.C. § 31301(4). "The term has been liberally construed to include what is reasonably needed in the ship's business, such as goods or services that are useful to the vessel, keep her out of danger, and enable her to perform her particular function." *Bradford Marine Inc., v. M/V SEA FALCON*, 64 F.3d 585, 589 (11th Cir. 1995) (cleaned up). "Necessaries are the things that a prudent owner would provide to enable a ship to perform well the functions for which she has been engaged." *Id.*

To the extent Century Bank seeks to impose a maritime lien for necessaries in this case, the Court declines to recognize any such lien because "no lien can attach to a vessel while she is in judicial custody." *Dresdner*, 465 F.3d at 1272; *see also Donald D. Forsht Assocs., Inc*, 821 F.2d at 1560-61 ("Claims arising out of the care and operation of the vessel while it is in the custody of the court are not actually considered liens, as no lien can attach to a vessel while she is in judicial custody."). Instead, vendors who provide post-arrest necessaries to a vessel in custody must seek recovery from the custodial court as "expenses of justice," in a manner similar to the *custodia legis* doctrine. *See Dresdner*, 465 F.3d at 1272.

A custodial court has broad discretion to allow or deny the recovery of post-arrest necessaries, guided by two factors: (1) whether the expenditure benefited all claimants, and (2) the presence or absence of prior court approval. *Helm v. Vahle*, 2017 WL 1352225, at *5 (N.D. Fla. Apr. 7, 2017). As other courts have noted, "the result is that those furnishing custodial services to a ship in *custodia legis* 'are gambling on a wholly unpredictable result unless they take the precaution of having their services authorized in advance by an order of the custodial court.'" *Bassis v. Universal Line, S.A.*, 484 F.2d 1065, 1068 (2d Cir. 1973) (quoting Gilmore and Black, The Law of Admiralty, p. 497).

Given the similarity between post-arrest necessaries and *custodia legis*, the Court will analyze the two doctrines together. That is to say, the Court will analyze post-arrest necessaries as part and parcel of the *custodia legis* analysis below, and the Court will recommend no additional amounts be added to the Final Judgment under a separate category of post-arrest "necessaries."

3. The Preferred Ship Mortgages

Next, Century Bank points to the language of the preferred ship mortgages themselves, including provisions for "Additional Advances." (DE 121 at 5-6). These provisions allow Century Bank to incur certain expenses on behalf of the Vessels and pass those expenses on to the mortgagor, secured by a lien against the Vessels. Specifically, both preferred ship mortgages gave Century Bank wide discretion to, among other things, make repairs and provide insurance for the Vessels in the event the mortgagor, MBR, failed to do so itself:

> **ADDITIONAL ADVANCES FOR SPECIFIC PURPOSES**. [Century Bank] shall have the right, within [Century Bank's] *sole option and discretion*, to make Additional Advances on [MBR's] behalf for the following purposes:
>
> **Insurance**. If [MBR] should for any reason fail to maintain insurance on the Vessel as required under this Ship Mortgage, [Century Bank] may make Additional Advances on [MBR's] behalf for the sole purpose of purchasing and maintaining, and [Century Bank] may purchase and maintain, such insurance coverage (including insurance coverage protecting [Century Bank's] interest in the Vessel.
>
> …
>
> **Repairs**. If [MBR] should for any reason fail to make all necessary repairs to the Vessel and to keep the Vessel *in good working order and seaworthy condition* as required under this Ship Mortgage, [MBR] agrees that [Century Bank] may make Additional Advances on [MBR's] behalf for the purpose of making, and [Century Bank] may make, *such repairs and maintenance to the Vessel as [Century Bank] may deem to be necessary and proper within its sole discretion*. [Century Bank] and [Century Bank's] agents may board the Vessel at any time, and from time to time, for the purpose of accomplishing such repairs and maintenance.
>
> …

> **OBLIGATION TO REPAY ADDITIONAL ADVANCES; INTEREST**. [MBR] unconditionally agrees to repay any and all Additional Advances that [Century Bank] may elect to make on [MBR's] behalf, together with interest as provided herein immediately upon demand of [Century Bank]. … [MBR's] obligations to pay Additional Advances to [Century Bank], together with interest thereon, shall be secured by this Ship Mortgage ….

(DE 7-1 at 7, 22) (emphasis added).

In essence, these provisions gave Century Bank the right to keep its collateral fully insured and in seaworthy condition if the mortgagor failed to do so. In addition, both preferred ship mortgages provided that certain storage costs would become Additional Advances as follows:

> **Additional Expenses**. In the event it should become necessary for [Century Bank] … to store such Vessel, [MBR] agrees to reimburse [Century Bank] for the cost of … storing the Vessel, which additional expense *shall also be secured by the lien of this Ship Mortgage in the form of an Additional Advance as provided herein*.

(DE 7-1 at 9, 24)(emphasis added). As with other Additional Advances, these storage costs become part of Century Bank's secured lien against the Vessels. (DE 7-1 at 9, 24).

In the Court's view, the Ship Mortgage Act, 46 U.S.C. § 31301, *et seq.*, allows Century Bank to recover its Additional Advances out of the sales proceeds of the Vessels, just as Century Bank can recover its attorneys' fees and other mortgage-based sums out of the sales proceeds of the Vessels. *See, e.g., Provident Bank v. M/Y Relax*, No. 3:15-CV-127-MCR-EMT, 2015 WL 12711655, at *2 (N.D. Fla. June 3, 2015) (awarding attorneys' fees against *in rem* vessel where note and mortgage provided for recovery of reasonable attorneys' fees). Accordingly, the Court will calculate the sums due as Additional Advances below.

The Court has considered, but finds unpersuasive, the Vessels' argument that the Court should not calculate Additional Advances nor add those sums to the Final Judgment. (DE 125).

The Vessels make three inter-related arguments on this point, each of which the Court will address in turn.

First, the Vessels argue that Century Bank's original motion to revise the Final Judgment (DE 58) did not request sums due as "Additional Advances"; instead, it solely requested sums due as *custodia legis*. (DE 125 at 1-2). The Court rejects this argument as form over substance. The original motion requested $724,328.92 in expenses, supported by detailed invoices of the expenses incurred. (DE 58-6, DE 58-7). By way of this new argument, Century Bank has not altered the amount of money it seeks or the expenses at issue. Century Bank merely added an additional legal basis to support its motion, namely, the language of the preferred ship mortgages, which the Vessels have had in their possession since the outset of the case.

Second, the Vessels argue, as a matter of contract construction, that the provisions concerning Additional Advances apply only in situations where Century Bank elects to proceed with non-judicial repossession. (DE 125 at 2). Given that Century Bank elected to proceed with judicial foreclosure here, the Vessels argue, Century Bank forfeited its right to enforce the provisions for Additional Advances. (DE 125 at 2).

The Court disagrees. The Court finds nothing in the preferred ship mortgages that limits Century Bank's right to seek Additional Advances solely in the event of a foreclosure or any particular type of foreclosure. To the contrary, the mortgages seem to provide for the opposite, allowing Century Bank to pursue all available remedies simultaneously:

> **Election of Remedies**. Except as may be prohibited by applicable law, all of [Century Bank's] rights and remedies, whether advanced by this Ship Mortgage or by any other writing *shall be cumulative* and may be exercised singularly *or concurrently*. Election by [Century Bank] to pursue any remedy *shall not exclude pursuit of any other remedy*.... Nothing in this Ship Mortgage or otherwise shall be construed so as *to limit or restrict the rights and remedies available* to [Century Bank] following an event of default. …

(DE 7-1 at 9, 24) (emphasis added). As such, the Court rejects the Vessels' argument concerning construction of the contract.

Third, the Vessels argue that Century Bank's conduct in this case violated our Court's Local Admiralty Rules, which envision that the custodial court—not the bank or substitute custodian—should supervise non-emergency repairs to arrested vessels. (DE 125 at 3). As the Vessels correctly point out, Local Admiralty Rule E(10)(b) provides that "no person" can make non-emergency repairs to an arrested vessel without prior court approval. Despite this, Century Bank and National Liquidators made whatever repairs they pleased in an apparent belief that the mortgages allowed them to do so, regardless of our Local Rules and the District Judge's authority to supervise custody. The Vessels urge the Court not to condone this behavior by awarding Century Bank expenses incurred for non-emergency repairs made without court permission. (DE 125 at 4-5).

The Court shares the Vessels' frustration with the conduct of National Liquidators in this case. As further described below, National Liquidators wore two hats in connection with the Vessels: (1) National Liquidators wore the hat of court-appointed substitute custodian, with an obligation to maintain and preserve the Vessels in their arrested condition, and (2) National Liquidators wore the hat of sales broker, with responsibility for overseeing improvements to the Vessels in order to fetch a higher price at auction. The Court agrees that National Liquidators blurred the line between these two roles and violated our Local Rules by, among other things, making numerous non-emergency repairs without court permission.

In the Court's view, however, the penalty for National Liquidators' misconduct should not be the forfeiture of Century Bank's right to enforce the provisions of its preferred ship mortgages.

Instead, the penalty, hypothetically, would be a loss of priority to recover the disputed expenses at issue. In other words, if this were a case with multiple competing lien claims, National Liquidators' unapproved, non-emergency repair expense would lose their status as *custodia legis* expenses and thereby lose priority to other competing claims. *See Helm*, 2017 WL 1352225, at *4 (explaining that *custodia legis* claims enjoy priority over all other lien claims).

The Court recognizes that this penalty is hypothetical given that (a) the case had no competing lien claims at the time of sale, (b) Century Bank holds both of the "competing" claims now, and (c) at any rate, the Vessels are gone, having been sold at auction. Nevertheless, the Court will not disregard Century Bank's rights under its preferred ship mortgages, which enjoy the protection of the Ship Mortgage Act, 46 U.S.C. § 31301 *et seq.* As such, the Court will calculate the secured amounts due under the preferred ship mortgages and recommend that those amounts be added to the Final Judgment.

B. Findings of Fact & Conclusions of Law Concerning *Custodia Legis* & Related Expenses

After a thorough review of the evidence, the Court makes the following findings of fact and conclusions of law concerning *custodia legis* and related expenses.

Condition of the Vessels Upon Arrest

1. MBR purchased the Yacht and the Scout in or around January 2019.

2. Thereafter, on September 5, 2023, lightning struck the Yacht, causing substantial damage. Among other systems, the lightning damaged the Yacht's electrical system, its engine computers, its VIC monitoring system, and its house battery bank. The lightning also caused the engines to become inoperable.

3. Following the lightning strike, the Yacht became unseaworthy.

4. As a result, the Yacht's captain, Richard Dobkins, took the Yacht and the Scout to Universal Marine Center, a marina in Fort Lauderdale, Florida.

The Century Bank / National Liquidators Relationship

5. In or around August 2023, Century Bank brought this action to foreclose its preferred ship mortgages against the Yacht and the Scout. (DE 1).

6. On August 28, 2023, the District Judge, at the request of Century Bank, appointed National Liquidators to serve as substitute custodian of the Vessels. (DE 16).

7. National Liquidators had multiple contracts with Century Bank that called for National Liquidators to wear multiple hats.

8. First, National Liquidators had a Yacht Storage & Custody Agreement for each Vessel, requiring National Liquidators to, among other things, "take all reasonable measures to protect and maintain the value" of the Vessels. (PX 6, PX 7). National Liquidators likewise owed a duty to the Court as the substitute custodian under our Local Admiralty Rules.

9. Second, National Liquidators had an Exclusive Sales Agent Agreement with Century Bank that called for National Liquidators to promote the Vessels for sale in exchange for a 6% sales commission. (PX 8). Century Bank never obtained the District Judge's approval for this brokerage agreement.

10. National Liquidators operated under different, and sometimes conflicting, duties and incentives. As a substitute custodian, National Liquidators owed a duty to protect and preserve the Vessels in their arrested condition. Pursuant to its incentives as a sales broker, however, National Liquidators oversaw and engaged contractors to perform a great many repairs to improve the quality and condition of the Vessels. That is to say, National Liquidators did more than merely

protect and maintain the Vessels in their arrested condition. Instead, National Liquidators made significant improvements so that the Vessels would fetch a higher price at auction.

11. National Liquidators never requested or obtained approval from the District Judge to make any repairs to the Vessels.

12. National Liquidators sent monthly invoices to Century Bank for its services. (PX 15, PX 16). These invoices made no distinction between custodian-related services and sales-related services.

13. National Liquidators charged Century Bank a total of $913,053.42 in connection with the Vessels, invoiced from August 31, 2023 to August 15, 2024. (PX 15, PX 16, PX 17). By previous Order, the District Judge already awarded Century Bank $188,724.54, representing the amounts invoiced by National Liquidators from August 31, 2023 to January 25, 2024. (DE 37, DE 31-1 at 100-15 (supporting invoices for previous award)). By way of this motion, Century Bank seeks to add the remaining amounts invoiced from February 1, 2024 to August 15, 2024—a total of $724,328.92. (DE 58 at 15).

14. The Court rejects Century Bank's argument that the "law of the case" doctrine dictates how this Court and the District Judge must rule on the new expenses that Century Bank seeks to add. Specifically, Century Bank argues that the District Judge's prior Order on *custodia legis* expenses (DE 37)—which resulted from an unopposed motion—commands this Court and the District Judge to find that all of Century Bank's new expenses likewise qualify as legitimate *custodia legis* expenses. (DE 121 at 28).

15. The Court disagrees for two reasons. First, by filing this motion, Century Bank has chosen to reopen the Final Judgment and submit new evidence to the Court concerning new and different expenses. Unlike the previous motion, the Vessels have chosen to oppose this new

motion with evidence and argument of their own, leading the Court to conduct an extensive evidentiary hearing. In the Court's view, the District Judge's prior order on *custodia legis* expenses does not prohibit this Court or the District Judge from reaching new and different conclusions based on the new evidentiary record and arguments presented. (The District Judge's prior ruling on prior expenses will of course remain undisturbed).

16. Second, at any rate, the law-of-the-case doctrine applies only to bind a court to the "findings of fact and conclusions of law announced by a court which sits **above it** in the judicial hierarchy." *Club Madonna, Inc. v. City of Miami Beach,* No. 16-25378-CIV, 2023 WL 3534077, at *7 (S.D. Fla. May 18, 2023) (emphasis in original); *see also Williams v. Morgan*, 478 F.3d 1316, 1321 (11th Cir. 2007) ("Under the law-of-the-case doctrine, the findings of fact and conclusions of law *by an appellate court* are generally binding in all subsequent proceedings in the same case in the trial court or on a later appeal.") (cleaned up) (emphasis added). In other words, a district court remains free to reconsider *its own* prior rulings, especially where, as here, a party moves to reopen a Final Judgment. *See Oliver v. Orange Cty.*, 456 F. App'x 815, 818 (11th Cir. 2012) (noting that "a court's previous rulings may be reconsidered as long as the case remains within the jurisdiction of the district court") (cleaned up).

17. As further detailed below, the Court has reviewed all of the evidence submitted and finds that portions of National Liquidators' new expenses should be added to the Final Judgment as *custodia legis* expenses. The Court finds that other portions of the new expenses do not qualify as *custodia legis* expenses but should nevertheless be added to the Final Judgment under provisions of the preferred ship mortgages. The Court will address the new expenses below, starting with expenses that the Court excludes from the *custodia legis* doctrine.

Non-Emergency Repairs & Work

18. National Liquidators performed numerous non-emergency repairs and work on the Yacht, including the following:

Invoice Date and #	**Ex #**	**Amount**	**Work**
02/06/24 #3223	PX 15 at Century-0171	$31,146.50	Pumps, Chargers, Batteries, Terminals, Transfer Switches, Hubble Shore Receptacles, Labor
06/21/24 #520240175	PX 15 at Century-0176	$7,500.00	Bottom Clean with Video. Full exterior wash with teak cleaning
07/02/24 #520240248	PX 15 at Century-0178	$4,000.00	Replace 4 8D Batteries
07/12/24 #708240086	PX 15 at Century-0179	$64,441.68	Replace control consoles, displays and interfaces
07/18/24 #708240009	PX 15 at Century-0180	$6,300.00	2 Reman MMIM Marine Interface Modules
TOTAL		**$113,388.18**	

19. National Liquidators did not seek authorization from the District Judge to do any of the above work.

20. During the hearing, National Liquidators' representative attempted to justify the above expenses, sometimes referring to them as "emergency" repairs and other times referring to them as "necessary" repairs.

21. The Court finds this testimony unconvincing. Cross examination revealed that, at all relevant times, National Liquidators had less expensive options available to maintain the status quo rather than undertake expensive repairs.

22. Moreover, the contemporaneous email communications impeached the testimony of National Liquidators' representative and showed that National Liquidators and Century Bank performed the above work, not to address emergencies, but to improve the Yacht prior to sale, including, but not limited to, the following:

a. On February 28, 2024, National Liquidators' representative sent an email to Century Bank, stating, "I was on the vessel yesterday and was *making a prep list to get ready for sale*." (DX T at 1) (emphasis added).

b. On March 6, 2024, National Liquidators' representative reported to Century Bank that, "We have been making some necessary *repairs to ready the boat for sale*." (DX U at 1) (emphasis added).

c. On March 8, 2024, National Liquidators' representative reported to Century Bank that, "As we move *closer to sale*, we will *test the engines* and prepare for a complete walkthrough report of all systems with video for prospective buyers." (DX V at 1) (emphasis added).

d. On May 20, 2024, National Liquidators' representative emailed Century Bank as follows: "In preparation for a *retail sale*, we need to get the yacht ready as she has been dormant for several months. We have been exercising all systems, but *the engines need to be brought up by a qualified technician*. Our team has run the generators as they were required for some electrical testing. *The bottom may need a complete cleaning prior to sea trial that will most likely be required*." (DX W at 1) (emphasis added).

e. On July 2, 2024, National Liquidators' representative emailed Century Bank as follows: "All 4 of the AGM 8D Batteries are dead, We refilled

them with distilled water and had them on the charger for 24 hours and they will not hold amperage. *We need to replace them to prove the engines operational.* …." (DX AA at 1) (emphasis added).

f. During the hearing, National Liquidators' representative also admitted that National Liquidators cleaned the bottom of the Yacht and made a video to show the clean bottom to potential buyers.

23. In sum, the Court finds that National Liquidators and Century Bank did not incur the above expenses to maintain or preserve the Yacht in its arrested condition or to address emergencies. Rather, National Liquidators and Century Bank incurred the above expenses, without approval from the District Judge, in order to improve the quality and condition of the Yacht. As such, the Court finds these expenses non-allowable under the *custodia legis* doctrine and our Local Admiralty Rules.

24. Nevertheless, the Court finds these amounts should be added to the Final Judgment as Additional Advances under the Yacht's preferred ship mortgage. As set forth there, MBR agreed to repay Century Bank for the cost of repairs necessary, in Century Bank's "sole option and discretion," to make the Yacht seaworthy in the event MBR failed to make those repairs itself. (DE 7-1 at 7). MBR further agreed to have these expenses secured by a lien against the Yacht. (DE 7-1 at 7).

25. The evidence showed that the Yacht became unseaworthy prior to arrest and that MBR failed to make the repairs necessary to return the Yacht to seaworthy condition. The evidence further showed that Century Bank advanced the above sums necessary to restore seaworthiness.

26. Pursuant to the terms of the preferred ship mortgage, $113,388.18 should be added to the Final Judgment to account for Century Bank's non-emergency work on the Yacht.

Scout Storage

27. National Liquidators charged Century Bank a daily storage/moorage fee of $1.75 per foot per day for the Scout. (PX 7, PX 19). By previous Order, the District Judge already awarded Century Bank the amounts invoiced for Scout storage from August 31, 2023 to January 25, 2024. (DE 37, DE 31-1 at 100-15 (supporting invoices for previous award)). By way of this motion, Century Bank seeks to add the amounts invoiced from February 1, 2024 to August 5, 2024—a total of $15,729.00 for the Scout. (PX 19).

28. As witnesses explained, National Liquidators had a contract with Universal Marine Center to store the Yacht at the marina. National Liquidators paid Universal Marine Center a monthly moorage/storage fee for the Yacht and then passed those costs along to Century Bank, along with a markup.

29. At the hearing, National Liquidators' representative admitted that Universal Marine Center charged no additional moorage/storage fees for the Scout. As such, the monthly storage fees that National Liquidators charged to Century Bank amounted to 100% profit for National Liquidators.

30. At the hearing, National Liquidators attempted to justify the Scout storage charges by arguing that company employees provided additional services to the Scout such as boat washing. The Court finds this explanation unconvincing, given that National Liquidators also charged a monthly custodial fee of $1,500 for the Scout (DE 21), which also covered services such as boat washing.

31. In short, the Court finds the Scout storage fees to be unreasonable and not allowable as *custodia legis* expenses.

32. Nevertheless, the Court finds these amounts should be added to the Final judgment as Additional Advances under the Scout's preferred ship mortgage. As set forth there, MBR agreed to reimburse Century Bank for the cost of storing the Scout in the event it became necessary to do so and, moreover, to have these expenses secured by a lien against the vessel. (DE 7-1 at 24). The evidence showed that Century Bank incurred a cost to store the Scout (albeit an unreasonable cost not allowable as *custodia legis*).

33. Pursuant to the terms of the preferred ship mortgage, $15,729.00 should be added to the Final Judgment to account for Century Bank's costs to store the Scout.

Insurance

34. National Liquidators charged Century Bank a monthly insurance fee of, respectively, $8,250 for the Yacht and $750 for the Scout. (PX 22, PX 23). By previous Order, the District Judge already awarded Century Bank the amounts invoiced by National Liquidators from August 31, 2023 to January 25, 2024. (DE 37, DE 31-1 at 100-15 (supporting invoices for previous award)). By way of this motion, Century Bank seeks to add the amounts invoiced from February 1, 2024 to August 15, 2024—a total of $63,000. (PX 22, PX 23).

35. The Court agrees that insurance expenses incurred by a court-appointed custodian to protect an arrested vessel would normally be allowable under the doctrine of *custodia legis*. *See Bos. Safe Deposit & Tr. Co. v. Motor Yacht Dulcinea*, No. C-91-0362, 1991 WL 323126, at *2 (N.D. Cal. Sept. 30, 1991) ("*Custodia legis* claims must derive from services (maintenance, storage, insurance, etc.) provided subsequent to a vessel's arrest by court order.").

36. In this case, however, National Liquidators failed to support or otherwise explain how it derived its monthly insurance charges for the Vessels. During the hearing, the Court admitted into evidence an insurance policy issued by MSIG Insurance that supposedly covered both Vessels. (DX D). The Court has reviewed the policy multiple times but cannot find the premium rates for insurance on the Vessels at issue here.

37. On cross examination, National Liquidators' representative fared no better. After a lengthy period of questioning, the representative finally admitted that he did not know what National Liquidators actually paid for insurance on the Vessels; he only knew what National Liquidators charged to Century Bank. (DE 118-1 at 93:7–93:16).

38. As the party moving for *custodia legis* expenses, Century Bank bears the burden to prove the expenses were reasonable. *See Springleaf Fin. Servs. of Ala.*, 2013 WL 3008414, at *2. The Court finds that Century Bank failed to meet that burden here. National Liquidators' representative failed to explain the insurance charges, let alone prove their reasonableness. As such, the Court finds the insurance expenses to be non-allowable under the *custodia legis* doctrine.

39. Nevertheless, the Court finds these amounts should be added to the Final Judgment as Additional Advances under the preferred ship mortgages. As set forth there, MBR agreed to repay Century Bank for the cost of maintaining insurance on the Vessels in the event MBR failed to do so itself. (DE 7-1 at 7). MBR further agreed to have these expenses secured by a lien against the Vessels. (DE 7-1 at 7).

40. The evidence showed that MBR failed to insure the Vessels on its own. The evidence further showed that Century Bank incurred a cost, invoiced by National Liquidators, to maintain insurance on the Vessels. Unlike the *custodia legis* doctrine, the preferred ship mortgages do not require the Court to assess the reasonableness of the charges. To the contrary, the preferred

ship mortgages gave Century Bank "the sole option and discretion" to provide insurance as it saw fit. (DE 7-1 at 7).

41. Pursuant to the terms of the preferred ship mortgages, $63,000 should be added to the Final Judgment to account for the insurance expenses incurred by Century Bank.

National Liquidators' Sales Commission

42. National Liquidators charged Century Bank a 6% brokerage commission on the sale of the Yacht ($336,000) and the sale of the Scout ($17,700). (PX 15 at Century-0183, PX 16 at Century-0198). By way of this motion, Century Bank seeks to add the combined sales commission of $353,700 to the Final Judgment.

43. The Court finds these amounts do not qualify as *custodia legis* expenses. The Court acknowledges that situations may exist where the cost of hiring a qualified broker might qualify as *custodia legis* on the theory that the broker's services benefit all lien holders and increase the value of the *res*. Indeed, many custodial courts have expressly approved sales brokerage contracts for arrested vessels. *See*, *e.g.*, *Asaulenko v. M/V ATLANTICA*, No. 04-61257-CIV, 2005 WL 8155329, at *2-3 (S.D. Fla. Mar. 18, 2005) (approving broker's sales commission where court had previously approved the brokerage contract).

44. In this case, however, Century Bank never asked the District Judge to approve the Exclusive Sales Agent Agreement, and the District Judge never did so. Although Century Bank filed a copy of the agreement into the court file, it did so only *five days* before the U.S. Marshal's auction took place. (DE 46, DE 47).

45. Century Bank cites no cases where a custodial court allowed an unapproved sales commission to be awarded as a *custodia legis* expense, apart from *Seacoast National Bank,* 2023 WL 6930685, at *7. In that case, the court awarded *custodia legis* expenses of $84,200.00 with

no mention of an unapproved sales commission. *Id.* Century Bank nevertheless represents that this sum included an unapproved sales commission, apparently because National Liquidators (the same broker at issue here) was the broker who received the unapproved commission in *Seacoast*. (DE 66 at 6-7). Absent an express discussion of the legal issue at hand, the Court finds that *Seacoast* does not support Century Bank's argument. Moreover, the *Seacoast* court expressly noted that no response had been filed to the motion seeking *custodia legis* expenses in that case. *Id.* at *1.

46. Given the facts and circumstances of this case, the Court declines to recognize National Liquidators' 6% sales commission as a legitimate *custodia legis* expense.

47. Nevertheless, the Court finds that Century Bank can add this amount to the Final Judgment pursuant to the indemnification clause of the preferred ship mortgages, which provides as follows:

> **Indemnification of [Century Bank]**. [MBR] agrees to indemnify ... [Century Bank] ... from any and all ... expenses ... of any nature whatsoever … arising out of or in any manner occasioned by this Ship Mortgage and the exercise of the rights and remedies granted [Century Bank] hereunder, and obligation to so indemnify ... shall be secured by this Ship Mortgage ….

(DE 7-1 at 10, 25).

48. In the Court's view, this provision has the same effect as the provision for Additional Advances. Like the Additional Advances clause, the indemnification clause requires the mortgagor, MBR, to reimburse Century Bank for specified expenses, secured by a lien against the mortgaged property, i.e., the Vessels.

49. The evidence showed that Century Bank incurred the expense of the 6% sales commission in connection with the exercise of its rights and remedies under the preferred ship

mortgages. Accordingly, MBR owed a duty to indemnify Century Bank for the 6% sales commission, and MBR agreed to secure this debt with a lien against the Vessels.

50. Pursuant to the indemnification provision of the preferred ship mortgages, $353,700 should be added to the Final Judgment to account for the 6% sales commission.

***Custodia Legis* Expenses**

51. The Court has reviewed all of the invoices that National Liquidators submitted to Century Bank from February 1, 2024 to August 15, 2024. (PX 15, PX 16). As stated, these invoices reflect total billing of $724,328.92. (PX 20, PX 21).

52. With the exception of the charges detailed in paragraphs 18 - 50 above, the Court finds the invoices to be reasonable and allowable under the *custodia legis* doctrine.

53. As an example, National Liquidators charged Century Bank daily custodial fees of, respectively, $150.00 per day for the Yacht and $50.00 per day for the Scout. (PX 6, PX 7, PX 20, PX 21). According to witnesses, the daily custodial fee covered services such as daily checks of the Vessels' bilge pumps, power systems, battery systems, shore power systems, lines, fenders, water systems, interior cleanliness, security, and bi-weekly washes. The Court finds these expenses reasonable.

54. National Liquidators also charged Century Bank for storage/moorage of the Yacht. (PX 18). As witnesses explained, National Liquidators had a contract to store the Yacht at Universal Marine Center. The Court has reviewed and compared the invoices from Universal Marine Center to National Liquidators (PX 25) and from National Liquidators to Century Bank (PX 16). For the most part, the invoices show that National Liquidators passed on the monthly charges for moorage, electricity, water, trash, and taxes to Century Bank with a modest markup. The Court finds the charges to be reasonable, except as indicated above in paragraphs 18-50 above.

55. National Liquidators also charged Century Bank for maintenance work, including certain air conditioning work reflected in invoice number 2800 dated November 16, 2024 in the amount of $4,200.00 (PX 15 at Century-0166) and invoice number 3142 dated January 25, 2024 in the amount of $1,182.53 (PX 15 at Century-0169). During the hearing, the Vessels conceded that this work likely qualified as legitimate *custodia legis* expenses. (DE 119 at 20).

56. The evidence also showed that National Liquidators charged a 15% markup on all contractor invoices. The Vessels object to this markup as unreasonable. (DE 61 at 8). The Court disagrees and finds the markup to be a reasonable administrative expense, intended to account for National Liquidators' work in locating and hiring contractors and coordinating and supervising the work performed on the Vessels.

57. In short, the Court finds all of National Liquidators' invoices to be reasonable and allowable under the *custodia legis* doctrine with the exception of the expenses detailed in paragraphs 18 to 50 above. As set forth there, the non-allowable expenses total $545,817.18. The Court therefore recommends that *custodia legis* expenses be added to the Final Judgment in the amount of $178,511.74 (Amount Requested of $724,328.92 – Amount Excluded of $545,817.18 = $178,511.74).

VI. ADDITION OF ATTORNEYS' FEES

Century Bank next seeks to revise the Final Judgment to add attorneys' fees. By way of this motion, Century Bank requests $94,080.00 in fees, incurred from the outset of the case through October 22, 2024. (DE 58 at 4). On February 23, 2026, Century Bank filed a Supplemental Motion for Attorneys' Fees requesting an additional $115,198.50 incurred from October 23, 2024 to February 23, 2026. (DE 120). In total, Century Bank seeks $209,278.50 in attorneys' fees.

Courts analyze requests for attorneys' fees in two steps: entitlement and amount. The

Court will address each step in turn.

A. Entitlement

As to entitlement, the District Judge already determined, by way of previous Order, that Century Bank is entitled to prevailing party attorneys' fees under the terms of the preferred ship mortgages at issue in the case. (DE 37 at 6). As such, entitlement has been satisfied.

B. Amount

As to amount, courts calculate reasonable attorneys' fees by multiplying the number of hours reasonably expended by a reasonable hourly rate. *ACLU of Ga. v. Barnes*, 168 F.3d 423, 427 (11th Cir. 1999). This number, referred to as the "lodestar," carries a strong presumption of reasonableness, but may be adjusted by the court. *Id.* at 427; *Bivins v. Wrap It Up, Inc.*, 548 F.3d 1348, 1350 (11th Cir. 2008). A fee applicant bears the burden to prove reasonableness, which normally includes "supplying the court with specific and detailed evidence." *Norman v. Housing Auth. of City of Montgomery*, 836 F. 2d 1292, 1303 (11th Cir. 1988). In this case, Century Bank has provided billing records and supporting declarations. (DE 58, DE 120). As set forth there, Century Bank seeks a total of $209,278.50 in attorneys' fees. (DE 58, DE 120).

1. Hourly Rates

The first step in calculating the lodestar is to determine reasonable hourly rates. "A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by attorneys with reasonably comparable skills, experience, and reputation." *Van De Velde NV v. Felder*, No. 15-24096-CIV, 2017 WL 8895345, at *4 (S.D. Fla. May 25, 2017), *R. & R. adopted*, 2017 WL 8895340 (S.D. Fla. June 16, 2017). The Court may act as its own expert in making this determination. *See Norman*, 836 F. 2d at 1303 ("The court is itself an expert on the question and may consider its own knowledge and experience concerning reasonable and proper

fees and may form an independent judgment either with or without the aid of witnesses as to value.") (cleaned up).

Here, Century Bank seeks the following hourly rates for the following timekeepers:

Bobby Miller, Attorney	$300 - $350
Jineane McMinn, Attorney	$300 - $350
Allan Crane, Attorney	$300 - $350
Kent Ryan, Attorney	$300
Jennifer Christian, Attorney	$300
Trudi Elegino, Paralegal	$165
Elizabeth "Liz" Medley, Paralegal	$165 - $195
Jennifer Green, Paralegal	$165 - $195

(DE 58-4, DE 120 at 2). The Court finds these rates to be reasonable.

2. Hours Spent

The next step in calculating the lodestar is to determine the reasonable number of hours expended on the case. In making this determination, courts generally look to factors such as (1) the time and labor required; (2) the novelty and difficulty of the question; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorney; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Johnson v. Georgia Highway Exp., Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974); *see also In re Home Depot Inc.*, 931 F.3d 1065, 1091 (11th Cir. 2019) (noting that the *Johnson* factors

are typically subsumed within the lodestar analysis). Once again, courts may act as their own expert in making this determination. *Norman*, 836 F.2d at 1303.

Here, Century Bank requests attorneys' fees based on the following hours spent on the case:

Timekeeper	**Hours Outset to 10/22/24**	**Hours 10/23/24 to 12/31/24**	**Hours 1/1/25 to 12/31/25**	**Hours 1/1/26 to 2/23/26**	**Total Hours**
Bobby R. Miller, Jr., Attorney	122.3	12.2	106.3	22.5	263.3
Jineane McMinn, Attorney	147.1	22.2	97.4	56.2	322.9
Alan Crane, Attorney	8.9	4.2	12.7		25.8
Kent Ryan, Attorney	10.7				10.7
Jennifer Christian, Attorney	3.8				3.8
Trudi Elegino, Paralegal	12.7				12.7
Liz Medley Paralegal	24.7	.5	20	1	46.2
Jennifer Green, Paralegal	1.8		.8		2.6
Total					688

(DE 58-4, DE 120 at 2).

The Court has reviewed the billing records, as well as the *Johnson* factors. Based on the Court's review, the Court finds the hours to be excessive based on the following:

- As the record shows, the Vessels did not engage in substantial opposition to Century Bank's Complaint or Amended Complaint. They did not oppose the arrest of the Vessels and filed no opposition to Century Bank's motion for summary judgment. Indeed, when prompted by the District Judge to file a response, the Vessels reported they had no intention to oppose summary judgment, in part, out of a desire to keep Century Bank's future claim for attorneys' fees as low as possible. (DE 34 at 2).
- The billing records show numerous instances of billing for purely administrative tasks, including time billed by JRM on 8/22/23 (DE 61-1 at 3), time billed by TME on 10/12/23 (DE 61-1 at 8), time billed by TME on 10/16/23 (DE 61-1 at 8), time billed by TME on 3/6/24 (DE 61-1 at 11), time billed by TME on 9/23/24 (DE 61-1 at 20), time billed by LAM on 4/1/25 (DE 122-1 at 7), time billed by LAM on 7/7/25 (DE 122-1 at 13), time billed by JRM on 11/24/25 (DE 122-1 at 28), and time billed by LAM on 11/25/25 (DE 122-1 at 28).
- The billing records show numerous instances of billing for unnecessary, duplicative, or excessive work, including time billed by JRM on 8/22/23 (DE 61-1 at 3), time billed by BRM on 9/12/23 (DE 61-1 at 7), time billed by multiple partners from 1/23/24 - 2/7/24 to draft an affidavit in support of summary judgment (DE 61-1 at 9-11), time billed by JRM on 5/29/24 (DE 61-1 at 13), time billed by BRM on 7/10/24 (DE 61-1 at 8), time billed by BRM on 9/24/24 (DE 61-1 at 21),

time billed by LAM on 10/18/24 (DE 61-1 at 26), time billed by ACC on 10/4/24 (DE 61-1 at 24), time billed by JRM on 11/4/24 (DE 122-1 at 2), time billed by JRM on 11/21/24 (DE 122-1 at 3), time billed by BRM on 4/8/25 (DE 122-1 at 8), time billed by JRM on 8/13/25 (DE 122-1 at 17), time billed by JRM on 10/16/25 (DE 122-1 at 24), and time billed by JRM on 2/20/26 (DE 122-1 at 35).

- The billing records show numerous entries with insufficient detail to assess the reasonableness of the entries, including time billed by BRM on 8/23/23 (DE 61-1 at 3), time billed by BRM on 8/31/23 (DE 61-1 at 6), time billed by BRM on 2/26/24 (DE 61-1 at 11), time billed by BRM on 5/22/24 (DE 61-1 at 13), and time billed by BRM on 8/25/24 (DE 61-1 at 18).

In light of the above, the Court finds a downward adjustment should be made. In making such adjustments, courts need not make line-by-line reductions to billing entries but can instead apply an across-the-board cut. *Bivins*, 548 F.3d at 1350 ("When a district court finds the number of hours claimed is unreasonably high, the court has two choices; it may conduct an hour-by-hour analysis, or it may reduce the requested hours with an across-the-board cut."). As the Supreme Court has observed, courts reviewing fee applications "need not, and indeed should not, become green-eyeshade accountants." *Fox v. Vice*, 563 U.S. 826, 838 (2011). "The essential goal in shifting fees (to either party) is to do rough justice, not to achieve auditing perfection." *Id.*

Based on the Court's own independent review of the billing records, the Court finds a 15% reduction to be appropriate. The Court therefore recommends that attorneys' fees be added to the Final Judgment in the amount of $177,886.73 (Amount Requested of $209,278.50 × 85% = $177,886.73).

VII. ADDITIONAL INTEREST

Century Bank next seeks to revise the Final Judgment by adding $715,931.96 in additional interest. (DE 121 at 34). As set forth below, the Court agrees that interest should be added but disagrees with Century Bank's calculations.

By way of its summary judgment Order, the District Judge found that MBR owed a principal balance of $5,200,478.65 along with per diem accumulating thereafter in the amount of $3,033.61. (DE 37 at 5, 8). Century Bank provided these numbers to the Court, calculating the per diem amount based on the 21% interest rate set forth in the promissory note:

> **INTEREST AFTER DEFAULT.** Upon default, including failure to pay upon final maturity, the interest rate on this Note shall be increased to 21% per annum based on a year of 360 days. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

(DE 7-1 at 1, DE 31-1 at 40). Century Bank thus calculated the per diem amount of $3,033.61 by applying the 21% rate to the open balance of $5,200,478.65 and dividing by 360 days ($5,200,478.65 × 21% = $1,092,100.51 ÷ 360 days = $3,033.61). (DE 31-1 at 40).

The Court finds that the per diem amount calculated by Century Bank does not apply to all time periods moving forward in the case. The Court will address each time period in turn, beginning on the date last calculated and ordered by the District Judge, which was February 2, 2024. (DE 37 at 8).

1. February 2, 2024 – May 7, 2024

The Court finds that the per diem amount of $3,033.61 should continue to apply from February 2, 2024 up to the date of the Final Judgment on May 7, 2024—a period of 95 days. Accordingly, the Court finds that prejudgment interest should be added to the Final Judgment,

pursuant to terms of the preferred ship mortgages, in the amount of $288,192.95 to account for this time period ($3,033.61 × 95 days = $288,192.95).

2. May 7, 2024 to September 16, 2024

The Court finds that a different interest rate should be applied once the District Judge entered the Final Judgment on May 7, 2024. (DE 38). From that date forward, the contractual rate of 21% should no longer apply. Instead, the standard rate for post-judgment interest should be applied in accordance with 28 U.S.C. § 1961.

As the former Fifth Circuit recognized in *Gele v. Wilson*, 616 F.2d 146, 148 (5th Cir. 1980), § 1961 applies to judgments rendered in admiralty just as it does to judgments rendered in traditional civil litigation. Moreover, although parties may contract to, and agree upon, a post-judgment interest rate other than that specified in § 1961, the language of any such agreement must show a "clear, unambiguous and unequivocal" intent to displace § 1961 and specify some other post-judgment interest rate. *Walker v. Life Ins. Co. of N. Am.*, 59 F.4th 1176, 1195 (11th Cir. 2023). As the District Judge explained in a similar case:

> Ironstone argues that it is entitled to post-judgment interest at the contracted rate of 25% per year. This is incorrect. The parties' contract does not expressly provide that the contractual interest rate governs post-judgment interest and, therefore, post-judgment interest will be awarded at the statutory rate.

Ironstone Cap. Holdings, LLC v. Medx One, Inc., No. 20-61682-CIV, 2021 WL 7366510, at *2 (S.D. Fla. Aug. 31, 2021) (applying Florida law which follows the same rule).

Here, the parties' promissory notes provided that interest would accrue at a 21% rate upon default. (DE 7-1 at 1). The promissory notes did not, however, expressly provide for post-judgment interest at that rate. Absent an express provision, the Court finds that the 21% rate does not apply to post-judgment interest in this case. *See Walker*, 59 F.4th at 1195 (finding that § 1961

governed post-judgment interest where parties' agreement did not show a "clear, unambiguous and unequivocal" intent to displace § 1961).

The Court rejects Century Bank's argument that the "law of the case" doctrine dictates that post-judgment interest should continue at 21% until the judgment is satisfied. As Century Bank correctly points out, the District Judge previously found that per diem interest would accrue in the amount of $3,033.61 (which was based on the 21% rate) "from February 2, 2024 *and forward* …." (DE 37 at 8) (emphasis added). By moving to re-open the Final Judgment, however, Century Bank has invited the District Judge to reconsider this ruling. *See Oliver*, 456 F. App'x at 818 (noting that "a court's previous rulings may be reconsidered as long as the case remains within the jurisdiction of the district court"). The undersigned recommends that the District Judge apply the post-judgment statutory rate set forth in § 1961 in accordance with Eleventh Circuit case law.

Pursuant to § 1961, the post-judgment interest rate during the week that preceded the Final Judgment was 5.19%.[2] Given a Final Judgment amount of $6,438,103.31, this yields a per diem interest amount of $915.45 ($6,438,103.31 × 5.19% = $334,137.56 ÷ 365 days = $915.45). The Court therefore finds that per diem interest of $915.45 should apply from May 7, 2024 up to the date the Vessels sold at auction and the District Judge ordered the proceeds to be distributed to Century Bank, i.e., September 16, 2024 (DE 53)—a period of 132 days. Accordingly, the Court finds that post-judgment interest should be added to the Final Judgment, pursuant to 28 U.S.C. §

[2] The Court calculated the average rate for the week prior to May 7, 2024, using data from the Board of Governors of the Federal Reserve System. *See* 28 U.S.C. § 1961(a) (post-judgment interest "shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding[ ] the date of the judgment."); see also Board of Governors of the Federal Reserve System, Selected Interest Rates Data Download Program, https://www.federalreserve.gov/datadownload/Choose.aspx?rel=H15 (last visited May 21, 2026).

1961, in the amount of $120,839.40 to account for this time period ($915.45 × 132 days = $120,839.40).

3. September 16, 2024 to the Present

The Court finds that a different per diem amount should be applied once Century Bank received the sales proceeds from the Vessels. Specifically, on September 16, 2024, the District Judge ordered the Clerk of Court to transfer sales proceeds of $5,837,498.34 to Century Bank's counsel. (DE 53). This left a substantially reduced debt of $600,604.97 (Final Judgment of $6,438,103.31 - sales proceeds of $5,837,498.34 = $600,604.97).

Given the reduced debt, the per diem amount should be reduced to $85.40 ($600,604.97 × 5.19% = $31,171.40 ÷ 365 days = $85.40). The Court therefore finds that per diem interest of $85.40 should apply from September 16, 2024 up to the date of this Report and Recommendation, i.e., May 22, 2026—a period of 613 days. (DE 53). Accordingly, the Court recommends that post-judgment interest should be added to the Final Judgment, pursuant to 28 U.S.C. § 1961, in the amount of $52,350.20 to account for this time period ($85.40 × 613 days = $52,350.20).

VIII. FUTURE AMOUNTS TO BE AWARDED

Finally, Century Bank requests the District Judge to reserve jurisdiction to award additional amounts of money against the Vessels in the future. (DE 58 at 18). The Court recommends that the District Judge deny any such relief. The Vessels have been sold at auction and are gone. There are no defendants left against whom any judgment can be entered or satisfied. The case should be closed.

IX. SUMMARY

In summary, the undersigned recommends that the District Judge enter an Amended Final Judgment against the Vessels based on the following calculations:

Original Final Judgment	$6,438,103.31
Less sales price of the Vessels	($5,895,000.00)
Plus U.S. Marshal's commission	$54,440.00
Plus taxable costs	$7,416.84
Plus *custodia legis* expenses	$178,511.74
Plus amounts due under the preferred ship mortgages	
Additional Advances	
Scout Storage	$15,729.00
Non-Emergency Repairs	$113,388.18
Insurance	$63,000
Indemnification	
6% Sales Commission	$353,700
Attorneys' Fees	$177,886.73
Prejudgment Interest from 2/2/24 to 5/7/24 at 21%	$288,192.95
Plus post-judgment interest under § 1961 from 5/7/24 to 9/16/24	$120,839.40
Plus post-judgment interest under § 1961 from 9/16/24 to today[3]	$52,350.20
Revised Total	**$1,968,558.35**

X. RECOMMENDATION & NOTICE OF RIGHT TO OBJECT

Based on the foregoing, the undersigned **RECOMMENDS** as follows:

1. The Motion for Bill of Costs (DE 54) should be **GRANTED**.

[3] In addition, the District Judge should add the daily per diem amount of $85.40 for each day that expires between the date of this Report & Recommendation and the date the District Judge enters the Amended Final Judgment.

2. The Verified Motion for Attorneys' Fees and Taxable Costs, Additional Interest, and Continued Accrual of Interest Against the M/V Summer 69 and for Entry of Amended Final Judgment (DE 58) should be **GRANTED IN PART AND DENIED IN PART**.

3. The Supplemental Motion for Attorneys' Fees (DE 120) should be **GRANTED IN PART AND DENIED IN PART**.

4. The District Judge should enter an Amended Final Judgment against the Vessels in the amount of $1,968,558.35, with post-judgment interest accruing thereafter at the rate provided in 28 U.S.C. § 1961.

5. The District Judge should decline to reserve jurisdiction to award any further amounts of money to Century Bank in the future.

6. The parties shall have fourteen (14) days from the date of being served with a copy of this Report and Recommendation within which to file written objections, if any, with the United States District Judge. Failure to file objections timely shall bar the parties from a de novo determination by the District Judge of an issue covered in the Report and Recommendation and shall bar the parties from attacking on appeal unobjected-to factual and legal conclusions contained in this Report and Recommendation. *See* 28 U.S.C. § 636(b)(1); 11th Cir. R. 3-1.

RESPECTFULLY SUBMITTED in Chambers at West Palm Beach in the Southern District of Florida, this 22nd day of May 2026.

RYON M. MCCABE
U.S. MAGISTRATE JUDGE