IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,)
)
Plaintiffs,)
) No. 66 C 1459
vs.)
)
CHICAGO HOUSING AUTHORITY,)
)
Defendant.)

REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR FEE AWARD

Few would deny that this case, Gautreaux v. CHA, is extraordinary in the annals of Chicago's civil rights litigation, if not the nation's. Governmental, legal and housing development experts around the nation recognize the name in an instant. Everyday citizens in this region also know of Gautreaux and that it stands for the simple but breathtaking proposition that a housing authority may not build and maintain a racially segregated public housing system. The case has become so well known not merely because it stands for an abstract principle, but because its innovative remedies have resulted in desegregated housing opportunities for many thousands of public housing families who would otherwise have continued to be warehoused in concentrated, segregated developments.

Moreover, what has been achieved was not done with a perpetually cooperative CHA. The very creation and continuation of the Receivership over the past ten years is one indication of the difficulty that plaintiffs' counsel have faced in their efforts to ensure that the plaintiff class reap the full benefits of the Judgment Order in this case.

In the context of this history, plaintiffs' request for a fee award in the amount of $1,274,179.83, to compensate plaintiffs' attorneys for time spent over 14 years, is modest. Plaintiffs request this award only after months of painstaking negotiations with the CHA, wherein CHA was given every opportunity to scrutinize every quarter hour entry, and where plaintiffs acceded on numerous occasions to CHA's request that hours be removed from the request. See Joint Statement at 1-2. Given the substantive results achieved, the period of time at issue, the discretion employed in the submission of the original fee request to CHA, and the concessions already made in the spirit of cooperation, the fee request can only be regarded as modest and reasonable, with the requested multiplier a fair upward adjustment merited by the special quality of, and results achieved in, this case.

ARGUMENT

Plaintiffs respond in order to CHA's three arguments: (1) plaintiffs' work on private management is unworthy of recompense; (2) a 10% reduction in the lodestar should be made; and (3) no multiplier should be awarded.

A. The Time Expended by Plaintiffs on Private Management Activities Was Important, Appropriate and Reasonable in Amount and Should be Compensated.

Although CHA "generally disputes all time related to the monitoring of private management activities," CHA's Response to Plaintiffs' Memorandum in Support of Motion for Fee Award (hereinafter "Resp.") at 4, CHA specifically addresses only a portion of that time to explain why it believes this activity is not compensable. CHA disputes a total of $97,230 of private management time, yet its three categories of alleged "objectionable" activities add up only to $32,297.50, and even these three categories are inadequately discussed. See Resp. at 3-6.

The history and importance of private management to full implementation of the Judgment Order is set out in Plaintiffs' Memorandum in Support of Motion for Fee Award (hereinafter "Mem."). The parties agree that the transfer of management authority to private managers is a positive outcome, yielding better living conditions for plaintiff class families, see Resp. at 3, and facilitating the work of the Receiver by reducing community opposition to proposed scattered sites.

CHA's first point, however, seems to be that it wants credit for thinking of the idea first. For this proposition, it attaches an affidavit in which Mr. Whitfield speculates CHA "would have" pursued the transfer to private management even "without Gautreaux plaintiffs' funds." See Whitfield Affidavit at Par. 4. However, as Mr. Polikoff's Affidavit, attached hereto as Exhibit A, indicates, CHA did not initiate private management but responded, eventually, to a proposal from plaintiffs' counsel long before Vincent Lane became CHA Chairman. See Exhibit A, Par. 3-4. Thereafter, the expansion of private management to the whole of the scattered site program was achieved only because, pursuant to a written agreement with CHA, the Gautreaux plaintiffs, with HUD and Court approval, contributed $9.5 million of funding to enable CHA to repair scattered site buildings which CHA was otherwise unwilling to attempt to transfer to private managers. See Exhibit A, Par. 4-5.

However, Plaintiffs are not arguing, as CHA suggests, that they have a "right" to compensation for private management time simply because they "initiated" this process. Nor are plaintiffs suggesting that this Court must decide, based on the two affidavits before it, who initiated this process, and that that decision governs this fee petition. Rather, plaintiffs are demonstrating that they have been aggressively pursuing -- and urging and helping CHA to pursue -- a method of public housing management that is beneficial to plaintiff class families,

thereby enhancing the judicial desegregation remedy, and that facilitates the work of the Receiver.

This type of activity is in keeping with the case law on fee awards for post-judgment implementation work. The Supreme Court has held that post-judgment work is compensable even where it "did not occur in the context of traditional judicial litigation." Pennsylvania v. Delaware Valley Cit. Council, 478 U.S. 546, 560 (1986). Further, an important part of monitoring compliance post-decree includes "an opportunity for constructive exchanges" between the parties. See Alexander v. Hill, 625 F. Supp. 567, 570 (W.D.N.C. 1985). In Alexander, the Court noted approvingly that "[t]hroughout the monitoring process, plaintiff's counsel shared information with local officials who often agreed, prior to any court ruling, to adjust their procedures . . . ." Alexander, 625 F. Supp. at 570 (emphasis added).

Similarly, in a recent case in this district, Alliance to End Repression v. City of Chicago, Judge Williams discussed at length the quality of lawyering expected in the post-judgment decree context, albeit in the context of considering the question of whether plaintiffs in that case were "prevailing parties." The Alliance discussion is instructive here, for the Court, reviewing multiple decisions on this matter, emphasized that lawyers enforcing consent decrees are entitled to recompense for their time if their work is "useful," assists the relief in "more speedily and reliably" occurring, is "effectively catalytic" in ensuring relief, and represents a "productive" involvement of time. See Alliance, 1994 W.S. 86690, *5-*6 (N.D. Ill. 1994).

It was in this manner and spirit that plaintiffs in this case attempted to work with CHA on private management issues. Like the plaintiffs in Alliance and Alexander, they deserve to be compensated for this "value-added" activity. Neither Delaware Valley Cit. Council, Alliance, nor Alexander hold, as CHA seems to suggest, that a court order on every particular issue is

required to justify time expended; in fact, these cases take a much broader view. The point, after all, concerning private management, is that plaintiffs' involvement occurred not just to "initiate" the idea, but to see the idea through to its effective, prompt, "best-possible" implementation. The success of scattered site housing depends on effective management, and private management has been found to be very effective, including in reducing community opposition to scattered sites, thereby facilitating the job of the Receiver. Thus, the private management efforts of plaintiffs were directly linked to the successful pursuit of the judicial remedy in this case. CHA Chairman Lane acknowledged as much in the 1990 Agreement (see Mem. Ex. 1), wherein the parties stated that private management was "a step expected to benefit present tenants and improve the representation and image of the scattered site program." See Exhibit A at Par. 5 (quoting 1990 Agreement).

Any comparison of the private management initiative to a computer system or staff reorganization is certainly not fair (see Resp. at 5); there is no agreement, for example, transferring $9.5 million for purposes of computer systems or staff reorganization. Nor is it fair to call plaintiffs' time a "tax" upon CHA's activities. See Resp. at 4. The actions of both CHA and plaintiffs demonstrate how important they both thought private management was to the improvement of scattered site housing; and CHA should not be permitted to rewrite that history for purposes of this fee petition.

CHA's second contention is that plaintiffs' advocacy for tenant participation in the private management process was not "necessary" to achieving the specific remedies in this case. Plaintiffs' attorneys advocated for their clients' participation on management boards because the literature and experience suggests that this improves the likelihood of success of public housing projects for the same reasons cited for private management above. CHA concedes the "value" of

such participation. See Resp. at 5. Thus, this activity, too, is in keeping with plaintiffs' overarching responsibility to help create a sustainable, working desegregated system.

CHA's third point, that some of the work performed was somehow not "legal," is unclear. See Resp. at 5. Certainly, attorneys are not restricted to courtroom work in petitions for post-decree fee awards. See Pennsylvania v. Dela. Valley Cit. Council, 478 U.S. at 560. Further, lawyers cannot monitor a case in a fact-vacuum, but must inform themselves of the situation so as to contest or assist in implementation of remedial steps. Discovery of information concerning how private management worked in this case was essential to assisting in its success. Nor has CHA claimed that this time was excessive -- rather, plaintiffs performed the minimally adequate investigation necessary to inform themselves on these issues.

CHA's reliance on Alberti v. Klevenhagen as authority for the notion that its private management work was beyond the scope of the remedy, is misplaced. In this Fifth Circuit case, the court reduced an inexperienced, young plaintiffs' attorneys' hours because he billed time for reading books and consulting with various persons on very general and tangential matters. See Alberti, 896 F.2d at 933. Here, plaintiffs' attorneys were seasoned, veteran lawyers who directed their attention to the actual business of the CHA, working with CHA employees, contractors and tenants to help ensure that a vital new method of doing CHA's business would work well from the start and in the long run. This is a far cry from the situation described in Alberti.

Finally, on any view monitoring managers' compliance with court orders, for example, concerning community area outreach procedures, is compensable. While not disputing the appropriateness of this activity, CHA notes that "Plaintiffs could have done so by requesting that CHA submit regular progress reports to the Court . . . ." See Resp. at 4, n. 2. Apart from the fact

that this alternative procedure would itself have generated compensable time, it is a belated suggestion from CHA at whose request "plaintiffs' attorneys explained and discussed Gautreaux rules at private manager meetings." Mem. at 6.

B. CHA's Proposed 10% Reduction is Justified Neither by its Alleged Incapacity to Analyze the Time Submitted nor by its Alleged Use of a "Sampling" Technique.

CHA's claim that a 10% across-the-board reduction in plaintiffs' requested fee is justified because CHA allegedly lacks the capacity to assess certain time records is misguided for several reasons. First, personal knowledge of the hours and activities claimed in a fee petition is not required to determine whether such time was necessarily and reasonably expended. The issue is "not whether hindsight vindicates an attorney's time expenditures, but whether at the time the work was performed, a reasonable attorney would have engaged in similar time expenditures." Awarding Attorneys' Fees, at 24-25 n. 116, quoted in El Tabech v. Gunter, 869 F. Supp. 1446, *1456 (D. Neb. 1994). Thus, not personal knowledge, but a lawyer's professional knowledge of the time appropriate to certain legal tasks is required. It is this precept that allows courts who, after all, do not have personal knowledge of legal work performed outside their presence, to assess petitions that come before them.

Second, CHA's assertion that it does not have records on which to base its review is unpersuasive. As noted above, such records are not necessary. Further, even if they were, plaintiffs should not be made to pay for CHA's record-keeping failings. Most importantly, plaintiffs have in fact supplied CHA with all the information which CHA has requested concerning time entries, especially about the early years which CHA references. There is not a

question which CHA has asked that has gone unanswered.[1] (Pursuant to one of these questions, for example, plaintiffs agreed to withdraw certain hours from the fee petition that had been inadvertently included in CHA's, rather than HUD's, petition.) Thus, CHA's request that this Court arbitrarily cut 10% from the fee petition amounts to a request that the Court assume errors or problems exist where CHA could find none. Neither the case law (which requires specificity by opposing counsel, see Continental), nor the new Local Rules 46 and 47 (which describe a system where only matters negotiated but unresolved by the parties be filed), impose such measures on a Court.

Third, CHA's suggestion -- that because plaintiffs agreed to remove certain hours from their fee petition, or to transfer hours to HUD's petition, a shadow is now cast over the remaining hours, entitling this Court to take an additional 10% off of the fee request -- defies logic and debases the negotiations of the parties. Plaintiffs' concessions (and removal of inadvertently included time) -- all made in an attempt to resolve this matter amicably -- are hardly proof that the time now submitted to this Court is flawed. CHA has the burden of demonstrating to the Court which hours it objects to and why; it should not be allowed to pawn this responsibility off onto this Court.[2]

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[1] Notwithstanding CHA's suggestion to the contrary, see Resp. at 7, plaintiffs have met every burden of proof respecting their fee request. They have submitted detailed contemporaneous time records to CHA, and affidavits supporting those records and their hourly rates. See Joint Statement at 1-2. The standard imposed both by the case law and the new Local Rules 46 and 47 clearly shifts the burden in such circumstances to the opposing party to oppose with specificity any and all particular time entries and to state their reasons for doing so.

[2] Similarly, CHA erroneously suggests that this Court should sua sponte reduce the award below the amount to which CHA has agreed. See Resp. at 2. The very case cited by CHA on this point stands for the contrary proposition. In McDonald, the appellate court held that a trial court should not disregard uncontested affidavits where the opposing party had been given the opportunity to respond and has failed to do so. McDonald v. McCarthy, 966 F.2d 112, *118-*119 (3d Cir. 1992). Similarly, the new Local Rules governing fee petitions stand for the same proposition -- that the parties are to bring before the court unresolved matters only, and not, wherever possible, the entire fee petition.

Fourth, CHA argues that its proposed 10% discount is not arbitrary, but in fact a kind of "sampling" supported by this Circuit in Evans. See Resp. at 8-9. The Seventh Circuit in Evans did not appear to think highly enough of the "sampling" device under review in that case to actually recommend it, finding only that it was "unable to conclude that the sampling technique ... falls below" the standard of arbitrariness. See Evans, 941 F. 2d at 477. One year later, in the seminal Continental Illinois Securities Litigation case, the Seventh Circuit referred glancingly to Evans, but continued to emphasize that a "judge is not permitted to destroy substantial entitlements to attorneys' fees on the basis of his inarticulable and unsubstantiated dissatisfaction . . . ." Continental, 962 F.2d at 569 (emphasis added). Further, it is not clear how "sampling" might be used in connection with the Northern District's new Local Rules governing fee petitions.

Nonetheless, even if "sampling" is somehow appropriate in this case, CHA's rationale for its proposed 10% across-the-board reduction hardly measures up to the painstaking sampling procedure employed in Evans. See Evans, 941 F.2d at 476. In Evans, the court allowed the parties to select a section of time to be "sampled" by the court and completed meticulous calculations regarding the remainder of the fees based on findings made from the sample. CHA has employed no such mathematical precision here.

In short, CHA cannot identify a single additional hour that should be cut. It is well aware, however, that plaintiffs' counsel exercised tremendous billing judgment in this matter, voluntarily omitting from their request a great deal of time that would unquestionably be compensable, including the time of numerous lawyers who devoted a substantial amount of time to this case during the relevant period, and several years of lead counsel's time for which records

were lost. Just as plaintiffs' counsel have not asked this court to award a lump sum for that time based on a hunch or suspicion of its value, so CHA may not ask for a lump sum reduction based on mere hunch or suspicion.

C. Plaintiffs' Counsel Are Entitled to a Multiplier in this Exceptional Case.

The multiplier of ten percent that plaintiffs seek as a small enhancement on their work of the past fourteen years in this ground-breaking case should be awarded in full. CHA dances around the edges of the special and unique character of this case, claiming that a multiplier is inappropriate because plaintiffs have not put forth "proof" of the case's significance, arguing that any "external" benefits achieved were only to be expected, and playing semantic games with the words "exceptional" and "modest." See Resp. at 9-11. Notably, CHA does not substantially distinguish a single case cited by plaintiffs, including the two cases, Shakman and Liberles, in which courts in this district (including this Court) recently awarded multipliers in larger percentages than that requested here.

The submission of "proof" at this juncture is an unnecessary exercise. This Court has supervised this case for many years, and can take judicial notice of its course of conduct, plaintiffs' performance and the Judgment Order's importance to this city and to national public housing policy. Further, the Shakman court explicitly found that that case "resulted in substantial political, social and economic benefits not only for members of the plaintiff class, but also for all who are affected by the public officers and entities named as defendants . . . . " Shakman, 677 F. Supp. at 947. This Court is well aware, and plaintiffs have included explanations and citations in the Memorandum, concerning Gautreaux's "external benefits," which are not only beyond what might have been expected by the filing of the complaint 30 years ago, but appear equal to Shakman's in scope and import.

Finally, CHA's implication that the award of a multiplier might mean less housing for the plaintiff class, see Resp. at 10, is unfair. Plaintiffs, like all prevailing parties, are entitled to a reasonable fee, including -- if a Court in its discretion so holds -- a multiplier, without being forced to consider the payment of that fee as some sort of loss to the plaintiff class. Indeed, any such cost in this case is dwarfed by the hundreds of millions of dollars added to Chicago-area public housing through the relief obtained in the consent decree with HUD, which has funded thousands of scattered site units and Section 8 certificates that would not otherwise have been provided to Chicago families. The requested multiplier is modest in comparison with other multipliers recently awarded, as noted above, and that is the only appropriate comparison to make.

CONCLUSION

Wherefore, based on compensable time expended by plaintiffs' attorneys from 1984 to the present, plaintiffs request an Order from this Court awarding plaintiffs' counsel a fee of the lodestar amount, \$1,158,345.30, augmented by a factor of ten percent, \$115,834.53, for a total of \$1,274,179.83, to be paid by CHA to the plaintiffs' counsel in a timely manner.

Dated: October 24, 1997.

DOROTHY GAUTREAUX, et al.,

Jeanne L. Nowaczewski

One of the Attorneys for the Plaintiffs

Alexander Polikoff
Jeanne L. Nowaczewski
Business and Professional
People for the Public Interest
17 East Monroe Street, Suite 212
Chicago, Illinois 60603
(312) 641-5570

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

AFFIDAVIT

Alexander Polikoff, being duly sworn, says:

1. I am and have been since its inception lead counsel for plaintiffs in the Gautreaux litigation.

2. In 1981 I proposed to the then Executive Director of the Chicago Housing Authority, Gustave Master, that management of CHA scattered sites be privatized. I further proposed that the Housing Resource Center of Hull House (HRC) would be an appropriate entity with which to initiate privatization on a demonstration basis respecting certain north side scattered site units.

3. After extended discussions, CHA did contract with HRC for the management of certain scattered sites on the north side of Chicago beginning in August, 1983.

4. Following the initial management contract between CHA and HRC I persistently but unsuccessfully requested CHA management to enlarge the HRC private management demonstration to include all CHA scattered sites. In 1987 CHA contracted with Hispanic Housing Development Corporation for private management of a small number of additional scattered site units, but declined to expand the HRC demonstration further.

5. When Vincent Lane assumed office with CHA in 1988, I renewed my request. Mr. Lane responded that the deteriorated physical condition of many of the older scattered site buildings would make it impossible to secure private management, and that

EXHIBIT A

CHA lacked the funds for the needed repairs and rehabilitation.

6. Negotiations then ensued between CHA and the Gautreaux plaintiffs as a result of which CHA agreed to place all scattered site units under private management if the Gautreaux plaintiffs made $9.5 million of funds available under the Gautreaux Consent Decree for scattered site repairs. This agreement was embodied in the letter agreement of March 1, 1990, attached as Exhibit 1 to Plaintiffs' Memorandum, reading in part as follows:

> "CHA proposes to enter into contracts with qualified private management firms to manage approximately 1,400 existing units, a step expected to benefit present tenants and improve the reputation and image of the scattered site program. Because CHA lacks funds for the major repairs that are needed for the units, plaintiffs have agreed to seek the allocation under the Gautreaux Consent Decree of up to $9.5 million . . . for this purpose." (Page 1.)

7. Both parts of this agreement were subsequently carried out -- the Gautreaux plaintiffs did secure such funds, obtaining HUD and Court approval (this Court's order of May 24, 1990) to make them available to CHA, and CHA did place all remaining scattered site units under private management.

Further affiant sayeth not.

Alexander Polikoff

Subscribed and sworn to before me this 24th day of October, 1997.

Notary Public

"OFFICIAL SEAL"
MARISSA ANN MANOS
Notary Public, State of Illinois
My Commission Expires Aug. 19, 1998

IN THE UNITED STATES DISTRICT COURT
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DOROTHY GAUTREAUX, et al.,	)	
Plaintiffs,	)	
	)	No. 66 C 1459
vs.	)	
	)	
CHICAGO HOUSING AUTHORITY,	)	
Defendant.	)	

RECEIVED

OCT 24 1997

MICHAEL W. DOBBINS
CLERK, U. S. DISTRICT COURT

NOTICE OF FILING

To: Jerome M. Butler
Mia Barricini
Chicago Housing Authority
200 West Adams Street, Suite 2100
Chicago, Illinois 60606

The undersigned attorney hereby certifies that on this 24th day of October, 1997, she filed Reply in Support of Plaintiffs' Motion for Fee Award with the United States District Court for the Northern District of Illinois, Eastern Division.

Jeanne L. Nowaczewski
One of the Attorneys for Plaintiffs

October 24, 1997

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CERTIFICATE OF SERVICE

I, Jeanne L. Nowaczewski, an attorney, certify that on October 24, 1997, I caused copies of the foregoing Plaintiffs' Reply in Support of Plaintiffs' Motion For Fee Award to be served by hand delivery on the persons listed on the attached Notice.

Jeanne L. Nowaczewski

Business and Professional People
for the Public Interest

October 24, 1997

Via Hand Delivery

Judge Marvin E. Aspen
United States District Court
219 South Dearborn Street
Room 2548
Chicago, Illinois 60604

Re: Dorothy Gautreaux, et al. v. Chicago Housing Authority, et al., No. 66 C 1459

Dear Judge Aspen:

Enclosed please find a courtesy copy of Plaintiffs' Reply in Support of Plaintiffs' Motion for Fee Award which we have filed today with the Clerk of the Court.

Sincerely,

Jeanne L. Nowaczewski

Jeanne L. Nowaczewski

JLN/pk
Enclosure

cc: Mia Barricini (With enclosure)

17 East Monroe Street, Suite 212, Chicago, Illinois 60603 312.641.5570 *phone* 312.641.5454 *fax*

Bob

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question which CHA has asked that has gone unanswered.[1] (Pursuant to one of these questions, for example, plaintiffs agreed to withdraw certain hours from the fee petition that had been inadvertently included in CHA's, rather than HUD's, petition.) Thus, CHA's request that this Court arbitrarily cut 10% from the fee petition amounts to a request that the Court assume errors or problems exist where CHA could find none. Neither the case law (which requires specificity by opposing counsel, see Continental), nor the new Local Rules 46 and 47 (which describe a system where only matters negotiated but unresolved by the parties be filed), impose such measures on a Court.

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[1] Notwithstanding CHA's suggestion to the contrary, see Resp. at 7, plaintiffs have met every burden of proof respecting their fee request. They have submitted detailed contemporaneous time records to CHA, and affidavits supporting those records and their hourly rates. See Joint Statement at 1-2. The standard imposed both by the case law and the new Local Rules 46 and 47 clearly shifts the burden in such circumstances to the opposing party to oppose with specificity any and all particular time entries and to state their reasons for doing so.

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Fourth, CHA argues that its proposed 10% discount is not arbitrary, but in fact a kind of "sampling" supported by this Circuit in Evans. See Resp. at 8-9. The Seventh Circuit in Evans did not appear to think highly enough of the "sampling" device under review in that case to actually recommend it, finding only that it was "unable to conclude that the sampling technique ... falls below" the standard of arbitrariness. See Evans, 941 F. 2d at 477. One year later, in the seminal Continental Illinois Securities Litigation case, the Seventh Circuit referred glancingly to Evans, but continued to emphasize that a "judge is not permitted to destroy substantial entitlements to attorneys' fees on the basis of his inarticulable and unsubstantiated dissatisfaction . . . ." Continental, 962 F.2d at 569 (emphasis added). Further, it is not clear how "sampling" might be used in connection with the Northern District's new Local Rules governing fee petitions.

Nonetheless, even if "sampling" is somehow appropriate in this case, CHA's rationale for its proposed 10% across-the-board reduction hardly measures up to the painstaking sampling procedure employed in Evans. See Evans, 941 F.2d at 476. In Evans, the court allowed the parties to select a section of time to be "sampled" by the court and completed meticulous calculations regarding the remainder of the fees based on findings made from the sample. CHA has employed no such mathematical precision here.

In short, CHA cannot identify a single additional hour that should be cut. It is well aware, however, that plaintiffs' counsel exercised tremendous billing judgment in this matter, voluntarily omitting from their request a great deal of time that would unquestionably be compensable, including the time of numerous lawyers who devoted a substantial amount of time to this case during the relevant period, and several years of lead counsel's time for which records

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C. Plaintiffs' Counsel Are Entitled to a Multiplier in this Exceptional Case.

The multiplier of ten percent that plaintiffs seek as a small enhancement on their work of the past fourteen years in this ground-breaking case should be awarded in full. CHA dances around the edges of the special and unique character of this case, claiming that a multiplier is inappropriate because plaintiffs have not put forth "proof" of the case's significance, arguing that any "external" benefits achieved were only to be expected, and playing semantic games with the words "exceptional" and "modest." See Resp. at 9-11. Notably, CHA does not substantially distinguish a single case cited by plaintiffs, including the two cases, Shakman and Liberles, in which courts in this district (including this Court) recently awarded multipliers in larger percentages than that requested here.

The submission of "proof" at this juncture is an unnecessary exercise. This Court has supervised this case for many years, and can take judicial notice of its course of conduct, plaintiffs' performance and the Judgment Order's importance to this city and to national public housing policy. Further, the Shakman court explicitly found that that case "resulted in substantial political, social and economic benefits not only for members of the plaintiff class, but also for all who are affected by the public officers and entities named as defendants . . . . " Shakman, 677 F. Supp. at 947. This Court is well aware, and plaintiffs have included explanations and citations in the Memorandum, concerning Gautreaux's "external benefits," which are not only beyond what might have been expected by the filing of the complaint 30 years ago, but appear equal to Shakman's in scope and import.

Finally, CHA's implication that the award of a multiplier might mean less housing for the plaintiff class, see Resp. at 10, is unfair. Plaintiffs, like all prevailing parties, are entitled to a reasonable fee, including -- if a Court in its discretion so holds -- a multiplier, without being forced to consider the payment of that fee as some sort of loss to the plaintiff class. Indeed, any such cost in this case is dwarfed by the hundreds of millions of dollars added to Chicago-area public housing through the relief obtained in the consent decree with HUD, which has funded thousands of scattered site units and Section 8 certificates that would not otherwise have been provided to Chicago families. The requested multiplier is modest in comparison with other multipliers recently awarded, as noted above, and that is the only appropriate comparison to make.

CONCLUSION

Wherefore, based on compensable time expended by plaintiffs' attorneys from 1984 to the present, plaintiffs request an Order from this Court awarding plaintiffs' counsel a fee of the lodestar amount, \$1,158,345.30, augmented by a factor of ten percent, \$115,834.53, for a total of \$1,274,179.83, to be paid by CHA to the plaintiffs' counsel in a timely manner.

Dated: October 24, 1997.

DOROTHY GAUTREAUX, et al.,

Jeanne L. Nowaczewski

One of the Attorneys for the Plaintiffs

Alexander Polikoff
Jeanne L. Nowaczewski
Business and Professional
People for the Public Interest
17 East Monroe Street, Suite 212
Chicago, Illinois 60603
(312) 641-5570

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

AFFIDAVIT

Alexander Polikoff, being duly sworn, says:

1. I am and have been since its inception lead counsel for plaintiffs in the Gautreaux litigation.

2. In 1981 I proposed to the then Executive Director of the Chicago Housing Authority, Gustave Master, that management of CHA scattered sites be privatized. I further proposed that the Housing Resource Center of Hull House (HRC) would be an appropriate entity with which to initiate privatization on a demonstration basis respecting certain north side scattered site units.

3. After extended discussions, CHA did contract with HRC for the management of certain scattered sites on the north side of Chicago beginning in August, 1983.

4. Following the initial management contract between CHA and HRC I persistently but unsuccessfully requested CHA management to enlarge the HRC private management demonstration to include all CHA scattered sites. In 1987 CHA contracted with Hispanic Housing Development Corporation for private management of a small number of additional scattered site units, but declined to expand the HRC demonstration further.

5. When Vincent Lane assumed office with CHA in 1988, I renewed my request. Mr. Lane responded that the deteriorated physical condition of many of the older scattered site buildings would make it impossible to secure private management, and that

EXHIBIT A

CHA lacked the funds for the needed repairs and rehabilitation.

6. Negotiations then ensued between CHA and the Gautreaux plaintiffs as a result of which CHA agreed to place all scattered site units under private management if the Gautreaux plaintiffs made $9.5 million of funds available under the Gautreaux Consent Decree for scattered site repairs. This agreement was embodied in the letter agreement of March 1, 1990, attached as Exhibit 1 to Plaintiffs' Memorandum, reading in part as follows:

> "CHA proposes to enter into contracts with qualified private management firms to manage approximately 1,400 existing units, a step expected to benefit present tenants and improve the reputation and image of the scattered site program. Because CHA lacks funds for the major repairs that are needed for the units, plaintiffs have agreed to seek the allocation under the Gautreaux Consent Decree of up to $9.5 million . . . for this purpose." (Page 1.)

7. Both parts of this agreement were subsequently carried out -- the Gautreaux plaintiffs did secure such funds, obtaining HUD and Court approval (this Court's order of May 24, 1990) to make them available to CHA, and CHA did place all remaining scattered site units under private management.

Further affiant sayeth not.

Alexander Polikoff

Subscribed and sworn to before me this 24th day of October, 1997.

Marissa Manos

Notary Public

"OFFICIAL SEAL"
MARISSA ANN MANOS
Notary Public, State of Illinois
My Commission Expires Aug. 19, 1998

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	No. 66 C 1459
vs.	)	
	)	
CHICAGO HOUSING AUTHORITY,	)	
	)	
Defendant.	)	

CERTIFICATE OF SERVICE

I, Jeanne L. Nowaczewski, an attorney, certify that on October 24, 1997, I caused copies of the foregoing Plaintiffs' Reply in Support of Plaintiffs' Motion For Fee Award to be served by hand delivery on the persons listed on the attached Notice.

Jeanne L. Nowaczewski

Bob

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	)	
Defendant.	)	

NOTICE OF FILING

To: Jerome M. Butler
Mia Barricini
Chicago Housing Authority
200 West Adams Street, Suite 2100
Chicago, Illinois 60606

The undersigned attorney hereby certifies that on this 24th day of October, 1997, she filed Reply in Support of Plaintiffs' Motion for Fee Award with the United States District Court for the Northern District of Illinois, Eastern Division.

Jeanne L. Nowaczewski
One of the Attorneys for Plaintiffs

October 24, 1997

Alexander Polikoff
Jeanne L. Nowaczewski
Business and Professional People
For the Public Interest
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In the context of this history, plaintiffs' request for a fee award in the amount of $1,274,179.83, to compensate plaintiffs' attorneys for time spent over 14 years, is modest. Plaintiffs request this award only after months of painstaking negotiations with the CHA, wherein CHA was given every opportunity to scrutinize every quarter hour entry, and where plaintiffs acceded on numerous occasions to CHA's request that hours be removed from the request. See Joint Statement at 1-2. Given the substantive results achieved, the period of time at issue, the discretion employed in the submission of the original fee request to CHA, and the concessions already made in the spirit of cooperation, the fee request can only be regarded as modest and reasonable, with the requested multiplier a fair upward adjustment merited by the special quality of, and results achieved in, this case.

ARGUMENT

Plaintiffs respond in order to CHA's three arguments: (1) plaintiffs' work on private management is unworthy of recompense; (2) a 10% reduction in the lodestar should be made; and (3) no multiplier should be awarded.

A. The Time Expended by Plaintiffs on Private Management Activities Was Important, Appropriate and Reasonable in Amount and Should be Compensated.

Although CHA "generally disputes all time related to the monitoring of private management activities," CHA's Response to Plaintiffs' Memorandum in Support of Motion for Fee Award (hereinafter "Resp.") at 4, CHA specifically addresses only a portion of that time to explain why it believes this activity is not compensable. CHA disputes a total of $97,230 of private management time, yet its three categories of alleged "objectionable" activities add up only to $32,297.50, and even these three categories are inadequately discussed. See Resp. at 3-6.

thereby enhancing the judicial desegregation remedy, and that facilitates the work of the Receiver.

This type of activity is in keeping with the case law on fee awards for post-judgment implementation work. The Supreme Court has held that post-judgment work is compensable even where it "did not occur in the context of traditional judicial litigation." Pennsylvania v. Delaware Valley Cit. Council, 478 U.S. 546, 560 (1986). Further, an important part of monitoring compliance post-decree includes "an opportunity for constructive exchanges" between the parties. See Alexander v. Hill, 625 F. Supp. 567, 570 (W.D.N.C. 1985). In Alexander, the Court noted approvingly that "[t]hroughout the monitoring process, plaintiff's counsel shared information with local officials who often agreed, prior to any court ruling, to adjust their procedures . . . ." Alexander, 625 F. Supp. at 570 (emphasis added).

Similarly, in a recent case in this district, Alliance to End Repression v. City of Chicago, Judge Williams discussed at length the quality of lawyering expected in the post-judgment decree context, albeit in the context of considering the question of whether plaintiffs in that case were "prevailing parties." The Alliance discussion is instructive here, for the Court, reviewing multiple decisions on this matter, emphasized that lawyers enforcing consent decrees are entitled to recompense for their time if their work is "useful," assists the relief in "more speedily and reliably" occurring, is "effectively catalytic" in ensuring relief, and represents a "productive" involvement of time. See Alliance, 1994 W.S. 86690, *5-*6 (N.D. Ill. 1994).

It was in this manner and spirit that plaintiffs in this case attempted to work with CHA on private management issues. Like the plaintiffs in Alliance and Alexander, they deserve to be compensated for this "value-added" activity. Neither Delaware Valley Cit. Council, Alliance, nor Alexander hold, as CHA seems to suggest, that a court order on every particular issue is

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REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR FEE AWARD

Few would deny that this case, Gautreaux v. CHA, is extraordinary in the annals of Chicago's civil rights litigation, if not the nation's. Governmental, legal and housing development experts around the nation recognize the name in an instant. Everyday citizens in this region also know of Gautreaux and that it stands for the simple but breathtaking proposition that a housing authority may not build and maintain a racially segregated public housing system. The case has become so well known not merely because it stands for an abstract principle, but because its innovative remedies have resulted in desegregated housing opportunities for many thousands of public housing families who would otherwise have continued to be warehoused in concentrated, segregated developments.

Moreover, what has been achieved was not done with a perpetually cooperative CHA. The very creation and continuation of the Receivership over the past ten years is one indication of the difficulty that plaintiffs' counsel have faced in their efforts to ensure that the plaintiff class reap the full benefits of the Judgment Order in this case.

In the context of this history, plaintiffs' request for a fee award in the amount of $1,274,179.83, to compensate plaintiffs' attorneys for time spent over 14 years, is modest. Plaintiffs request this award only after months of painstaking negotiations with the CHA, wherein CHA was given every opportunity to scrutinize every quarter hour entry, and where plaintiffs acceded on numerous occasions to CHA's request that hours be removed from the request. <u>See</u> Joint Statement at 1-2. Given the substantive results achieved, the period of time at issue, the discretion employed in the submission of the original fee request to CHA, and the concessions already made in the spirit of cooperation, the fee request can only be regarded as modest and reasonable, with the requested multiplier a fair upward adjustment merited by the special quality of, and results achieved in, this case.

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The history and importance of private management to full implementation of the Judgment Order is set out in Plaintiffs' Memorandum in Support of Motion for Fee Award (hereinafter "Mem."). The parties agree that the transfer of management authority to private managers is a positive outcome, yielding better living conditions for plaintiff class families, see Resp. at 3, and facilitating the work of the Receiver by reducing community opposition to proposed scattered sites.

CHA's first point, however, seems to be that it wants credit for thinking of the idea first. For this proposition, it attaches an affidavit in which Mr. Whitfield speculates CHA "would have" pursued the transfer to private management even "without Gautreaux plaintiffs' funds." See Whitfield Affidavit at Par. 4. However, as Mr. Polikoff's Affidavit, attached hereto as Exhibit A, indicates, CHA did not initiate private management but responded, eventually, to a proposal from plaintiffs' counsel long before Vincent Lane became CHA Chairman. See Exhibit A, Par. 3-4. Thereafter, the expansion of private management to the whole of the scattered site program was achieved only because, pursuant to a written agreement with CHA, the Gautreaux plaintiffs, with HUD and Court approval, contributed $9.5 million of funding to enable CHA to repair scattered site buildings which CHA was otherwise unwilling to attempt to transfer to private managers. See Exhibit A, Par. 4-5.

However, Plaintiffs are not arguing, as CHA suggests, that they have a "right" to compensation for private management time simply because they "initiated" this process. Nor are plaintiffs suggesting that this Court must decide, based on the two affidavits before it, who initiated this process, and that that decision governs this fee petition. Rather, plaintiffs are demonstrating that they have been aggressively pursuing -- and urging and helping CHA to pursue -- a method of public housing management that is beneficial to plaintiff class families,

thereby enhancing the judicial desegregation remedy, and that facilitates the work of the Receiver.

This type of activity is in keeping with the case law on fee awards for post-judgment implementation work. The Supreme Court has held that post-judgment work is compensable even where it "did not occur in the context of traditional judicial litigation." Pennsylvania v. Delaware Valley Cit. Council, 478 U.S. 546, 560 (1986). Further, an important part of monitoring compliance post-decree includes "an opportunity for constructive exchanges" between the parties. See Alexander v. Hill, 625 F. Supp. 567, 570 (W.D.N.C. 1985). In Alexander, the Court noted approvingly that "[t]hroughout the monitoring process, plaintiff's counsel shared information with local officials who often agreed, prior to any court ruling, to adjust their procedures . . . ." Alexander, 625 F. Supp. at 570 (emphasis added).

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required to justify time expended; in fact, these cases take a much broader view. The point, after all, concerning private management, is that plaintiffs' involvement occurred not just to "initiate" the idea, but to see the idea through to its effective, prompt, "best-possible" implementation. The success of scattered site housing depends on effective management, and private management has been found to be very effective, including in reducing community opposition to scattered sites, thereby facilitating the job of the Receiver. Thus, the private management efforts of plaintiffs were directly linked to the successful pursuit of the judicial remedy in this case. CHA Chairman Lane acknowledged as much in the 1990 Agreement (see Mem. Ex. 1), wherein the parties stated that private management was "a step expected to benefit present tenants and improve the representation and image of the scattered site program." See Exhibit A at Par. 5 (quoting 1990 Agreement).

Any comparison of the private management initiative to a computer system or staff reorganization is certainly not fair (see Resp. at 5); there is no agreement, for example, transferring $9.5 million for purposes of computer systems or staff reorganization. Nor is it fair to call plaintiffs' time a "tax" upon CHA's activities. See Resp. at 4. The actions of both CHA and plaintiffs demonstrate how important they both thought private management was to the improvement of scattered site housing; and CHA should not be permitted to rewrite that history for purposes of this fee petition.

CHA's second contention is that plaintiffs' advocacy for tenant participation in the private management process was not "necessary" to achieving the specific remedies in this case. Plaintiffs' attorneys advocated for their clients' participation on management boards because the literature and experience suggests that this improves the likelihood of success of public housing projects for the same reasons cited for private management above. CHA concedes the "value" of

such participation. See Resp. at 5. Thus, this activity, too, is in keeping with plaintiffs' overarching responsibility to help create a sustainable, working desegregated system.

CHA's third point, that some of the work performed was somehow not "legal," is unclear. See Resp. at 5. Certainly, attorneys are not restricted to courtroom work in petitions for post-decree fee awards. See Pennsylvania v. Dela. Valley Cit. Council, 478 U.S. at 560. Further, lawyers cannot monitor a case in a fact-vacuum, but must inform themselves of the situation so as to contest or assist in implementation of remedial steps. Discovery of information concerning how private management worked in this case was essential to assisting in its success. Nor has CHA claimed that this time was excessive -- rather, plaintiffs performed the minimally adequate investigation necessary to inform themselves on these issues.

CHA's reliance on Alberti v. Klevenhagen as authority for the notion that its private management work was beyond the scope of the remedy, is misplaced. In this Fifth Circuit case, the court reduced an inexperienced, young plaintiffs' attorneys' hours because he billed time for reading books and consulting with various persons on very general and tangential matters. See Alberti, 896 F.2d at 933. Here, plaintiffs' attorneys were seasoned, veteran lawyers who directed their attention to the actual business of the CHA, working with CHA employees, contractors and tenants to help ensure that a vital new method of doing CHA's business would work well from the start and in the long run. This is a far cry from the situation described in Alberti.

Finally, on any view monitoring managers' compliance with court orders, for example, concerning community area outreach procedures, is compensable. While not disputing the appropriateness of this activity, CHA notes that "Plaintiffs could have done so by requesting that CHA submit regular progress reports to the Court . . . ." See Resp. at 4, n. 2. Apart from the fact

that this alternative procedure would itself have generated compensable time, it is a belated suggestion from CHA at whose request "plaintiffs' attorneys explained and discussed Gautreaux rules at private manager meetings." Mem. at 6.

B. CHA's Proposed 10% Reduction is Justified Neither by its Alleged Incapacity to Analyze the Time Submitted nor by its Alleged Use of a "Sampling" Technique.

CHA's claim that a 10% across-the-board reduction in plaintiffs' requested fee is justified because CHA allegedly lacks the capacity to assess certain time records is misguided for several reasons. First, personal knowledge of the hours and activities claimed in a fee petition is not required to determine whether such time was necessarily and reasonably expended. The issue is "not whether hindsight vindicates an attorney's time expenditures, but whether at the time the work was performed, a reasonable attorney would have engaged in similar time expenditures." Awarding Attorneys' Fees, at 24-25 n. 116, quoted in El Tabech v. Gunter, 869 F. Supp. 1446, *1456 (D. Neb. 1994). Thus, not personal knowledge, but a lawyer's professional knowledge of the time appropriate to certain legal tasks is required. It is this precept that allows courts who, after all, do not have personal knowledge of legal work performed outside their presence, to assess petitions that come before them.

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The multiplier of ten percent that plaintiffs seek as a small enhancement on their work of the past fourteen years in this ground-breaking case should be awarded in full. CHA dances around the edges of the special and unique character of this case, claiming that a multiplier is inappropriate because plaintiffs have not put forth "proof" of the case's significance, arguing that any "external" benefits achieved were only to be expected, and playing semantic games with the words "exceptional" and "modest." See Resp. at 9-11. Notably, CHA does not substantially distinguish a single case cited by plaintiffs, including the two cases, Shakman and Liberles, in which courts in this district (including this Court) recently awarded multipliers in larger percentages than that requested here.

The submission of "proof" at this juncture is an unnecessary exercise. This Court has supervised this case for many years, and can take judicial notice of its course of conduct, plaintiffs' performance and the Judgment Order's importance to this city and to national public housing policy. Further, the Shakman court explicitly found that that case "resulted in substantial political, social and economic benefits not only for members of the plaintiff class, but also for all who are affected by the public officers and entities named as defendants . . . . " Shakman, 677 F. Supp. at 947. This Court is well aware, and plaintiffs have included explanations and citations in the Memorandum, concerning Gautreaux's "external benefits," which are not only beyond what might have been expected by the filing of the complaint 30 years ago, but appear equal to Shakman's in scope and import.

Finally, CHA's implication that the award of a multiplier might mean less housing for the plaintiff class, see Resp. at 10, is unfair. Plaintiffs, like all prevailing parties, are entitled to a reasonable fee, including -- if a Court in its discretion so holds -- a multiplier, without being forced to consider the payment of that fee as some sort of loss to the plaintiff class. Indeed, any such cost in this case is dwarfed by the hundreds of millions of dollars added to Chicago-area public housing through the relief obtained in the consent decree with HUD, which has funded thousands of scattered site units and Section 8 certificates that would not otherwise have been provided to Chicago families. The requested multiplier is modest in comparison with other multipliers recently awarded, as noted above, and that is the only appropriate comparison to make.

CONCLUSION

Wherefore, based on compensable time expended by plaintiffs' attorneys from 1984 to the present, plaintiffs request an Order from this Court awarding plaintiffs' counsel a fee of the lodestar amount, $1,158,345.30, augmented by a factor of ten percent, $115,834.53, for a total of $1,274,179.83, to be paid by CHA to the plaintiffs' counsel in a timely manner.

Dated: October 24, 1997.

DOROTHY GAUTREAUX, et al.,

Jeanne L. Nowaczewski

One of the Attorneys for the Plaintiffs

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Chicago, Illinois 60603
(312) 641-5570

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

AFFIDAVIT

Alexander Polikoff, being duly sworn, says:

1. I am and have been since its inception lead counsel for plaintiffs in the Gautreaux litigation.

2. In 1981 I proposed to the then Executive Director of the Chicago Housing Authority, Gustave Master, that management of CHA scattered sites be privatized. I further proposed that the Housing Resource Center of Hull House (HRC) would be an appropriate entity with which to initiate privatization on a demonstration basis respecting certain north side scattered site units.

3. After extended discussions, CHA did contract with HRC for the management of certain scattered sites on the north side of Chicago beginning in August, 1983.

4. Following the initial management contract between CHA and HRC I persistently but unsuccessfully requested CHA management to enlarge the HRC private management demonstration to include all CHA scattered sites. In 1987 CHA contracted with Hispanic Housing Development Corporation for private management of a small number of additional scattered site units, but declined to expand the HRC demonstration further.

5. When Vincent Lane assumed office with CHA in 1988, I renewed my request. Mr. Lane responded that the deteriorated physical condition of many of the older scattered site buildings would make it impossible to secure private management, and that

EXHIBIT A

CHA lacked the funds for the needed repairs and rehabilitation.

6. Negotiations then ensued between CHA and the Gautreaux plaintiffs as a result of which CHA agreed to place all scattered site units under private management if the Gautreaux plaintiffs made $9.5 million of funds available under the Gautreaux Consent Decree for scattered site repairs. This agreement was embodied in the letter agreement of March 1, 1990, attached as Exhibit 1 to Plaintiffs' Memorandum, reading in part as follows:

> "CHA proposes to enter into contracts with qualified private management firms to manage approximately 1,400 existing units, a step expected to benefit present tenants and improve the reputation and image of the scattered site program. Because CHA lacks funds for the major repairs that are needed for the units, plaintiffs have agreed to seek the allocation under the Gautreaux Consent Decree of up to $9.5 million . . . for this purpose." (Page 1.)

7. Both parts of this agreement were subsequently carried out -- the Gautreaux plaintiffs did secure such funds, obtaining HUD and Court approval (this Court's order of May 24, 1990) to make them available to CHA, and CHA did place all remaining scattered site units under private management.

Further affiant sayeth not.

Alexander Polikoff

Subscribed and sworn to before me this 24th day of October, 1997.

Marissa Manos

Notary Public

"OFFICIAL SEAL"
MARISSA ANN MANOS
Notary Public, State of Illinois
My Commission Expires Aug. 19, 1998

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	No. 66 C 1459
vs.	)	
	)	
CHICAGO HOUSING AUTHORITY,	)	
	)	
Defendant.	)	

CERTIFICATE OF SERVICE

I, Jeanne L. Nowaczewski, an attorney, certify that on October 24, 1997, I caused copies of the foregoing Plaintiffs' Reply in Support of Plaintiffs' Motion For Fee Award to be served by hand delivery on the persons listed on the attached Notice.

Jeanne L. Nowaczewski