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United States District Court, District of Columbia.

Alma STREICHER, *et al.,* Plaintiffs,
v.
Robert WASHINGTON, Ph.D., *et al.,* Defendants.

Civ.A. Nos. 83–3295 (JHG), 84–1538 (JHG). |
March 20, 1992.

Opinion

ORDER

JOYCE HENS GREEN, District Judge.

***1** These consolidated proceedings concern the legality of involuntary civil commitments to Saint Elizabeths Hospital, a public mental health facility located in the District of Columbia, and the constitutionality of the lack of continuing judicial review of such commitments. Presently pending are Defendants' Motion to Remand Remaining Cause of Action to the Superior Court of the District of Columbia, Plaintiffs' Motion for Leave to Assert Supplemental Claim, Plaintiffs' Motion for Supplementary Attorneys Fees, Federal Defendants' Motion for Determination of No Just Reason for Delay of Entry of Final Judgment and for Entry of Final Judgment, Plaintiffs' Motion for Payment of Fee Award, and Plaintiffs' Motion for Discovery.

BACKGROUND

Plaintiffs, patients committed to Saint Elizabeths Hospital ("Saint Elizabeths" or "the Hospital") under the District of Columbia Hospitalization of the Mentally Ill Act, D.C.Code §§ 21–501, *et seq.,* commenced the action entitled *Streicher v. Dobbs* in the Superior Court of the District of Columbia by filing a petition for a writ of *habeas corpus* against the Superintendent of Saint Elizabeths as plaintiffs' immediate custodian and the Mayor of the District of Columbia as their ultimate custodian. The petition sought immediate release from the Hospital and, in the event that defendants certified that they believed plaintiffs should be civilly committed, requested that any release order be stayed for 10 days during which time defendants could initiate new civil commitment proceedings.

At the time the action was filed, Saint Elizabeths was a federal facility and its Superintendent was a federal officer. Consequently, the defendants successfully petitioned to remove the case to this Court pursuant to D.C.Code § 16–1901. Upon removal on November 4, 1983, the case was assigned to District Judge Barrington Parker. On May 16, 1984, plaintiffs James McDonald and Oscar Holt filed in the District Court a separate action entitled *McDonald v. Prescott,* seeking a writ of *habeas corpus* against the same defendants in the *Streicher* case and alleging the same violations. Less than one week later, the plaintiffs in *Streicher* moved for class certification. In June, 1984, Judge Parker consolidated the *Streicher* and *McDonald* cases and, in November, 1984, certified a class consisting of those persons who are committed or who will be committed pursuant to D.C.Code §§ 21–501, *et seq.,* or its predecessor statute D.C.Code §§ 21–301, *et seq.,* to Saint Elizabeths Hospital for more than six months and whose commitments had not been judicially reviewed within the past six months. Judge Parker also certified a subclass consisting of those persons committed to Saint Elizabeth's Hospital pursuant to D.C.Code §§ 21–501, *et seq.,* or its predecessor statute D.C.Code §§ 21–301, *et seq.,* prior to the issuance of a decision by the United States Court of Appeals for the District of Columbia Circuit changing the evidentiary standard under which patients may be involuntarily committed to public mental health facilities, and whose initial commitments have never been judicially renewed since the issuance of the appellate decision.

***2** On May 19, 1987, Judge Parker issued an opinion holding that members of the subclass, *i.e.,* patients who were civilly committed to Saint Elizabeths prior to 1973, were entitled to judicial review of their commitments under the prevailing constitutional "clear and convincing" evidentiary standard. *Streicher v. Prescott,* 663 F.Supp. 335 (D.D.C.1987). In furtherance of his opinion, Judge Parker issued an Order of Reference on November 1, 1988 which transferred the portion of the consolidated actions involving the subclass to the Superior Court of the District of Columbia for the purpose of providing commitment hearings. The Order required, *inter alia,* that the defendants file a minimum of five petitions a week in the Superior Court and file a report with this Court every three months addressing the status of each subclass member. As of this date, petitions for review of commitments on behalf of almost all members of the subclass have been filed and adjudicated. Judge Parker, however, never ruled on the claim of the larger class that

all civilly committed patients, regardless of when they were committed, are entitled to automatic judicial recommitment hearings every six months. That issue remains unresolved as of this date.

On October 1, 1987, the responsibility for the operation of Saint Elizabeths was transferred from the United States government to the District of Columbia government by an Act of Congress. *See* 24 U.S.C. §§ 225, *et seq.;* D.C.Code §§ 32–621, *et seq.* Consequently, the federal government filed a motion to substitute the District of Columbia's Commissioner on Mental Health Services, Dr. Robert Washington, for the Superintendent of Saint Elizabeths as the custodial defendant. Judge Parker granted the motion on November 3, 1987.

Although the causes of action in these cases after November 3, 1987 were solely against local officials, on February 20, 1990, counsel for members of the subclass filed a motion pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, to recover attorneys' fees and costs from the federal defendants that were parties to the case when the subclass issue was resolved. Plaintiffs claimed that St. Elizabeths was a federal institution at the time of Judge Parker's opinion and, therefore, that the United States remained liable for fees incurred in seeking and implementing the relief granted in the November, 1987 judgment. The United States opposed the motion. Judge Parker retired from the bench before resolving the motion and these cases were reassigned to Judge Gerhard Gesell. On May 15, 1990, Judge Gesell granted plaintiffs' motion and awarded $167,584 in attorneys' fees and costs to be paid by the United States with interest from the date of the Order. On June 18, 1990, plaintiffs filed a motion for immediate payment of Judge Gesell's interim award. The United States opposed the motion and, without seeking a stay of the May 15 Order, appealed the award. These cases were transferred to this Judge while the appeal was pending. On November 26, 1990 the Court of Appeals dismissed the United States' appeal on the basis that Judge Gesell's Order was neither a final order nor an appealable collateral order.

***3** Subsequently, the federal defendants filed a Motion for Determination of No Just Reason for Delay of Entry of Final Judgment and for Entry of Final Judgment in all respects relating to the federal defendants, stating that all substantive claims against the federal defendants were finally decided either in the Order granting partial summary judgment in favor of the subclass or in the November 4, 1987 Order substituting the District of Columbia defendants for the federal defendants. That motion was opposed and is addressed in this Order. Also addressed is a motion filed by plaintiffs seeking supplemental attorneys' fees for work incurred in drafting the reply memorandum in support of the original motion for a fee award, for work done to oppose the federal defendants' appeal of the fee award, and for efforts made to secure immediate payment of the award.

On July 20, 1990, more than two and one-half years after Saint Elizabeths was placed under the jurisdiction of the District of Columbia government, defendants filed a motion to remand the remaining cause of action to the Superior Court of the District of Columbia, arguing that remand is required under the District of Columbia's *habeas corpus* statute, D.C.Code § 16–1901(c), and emphasizing that the federal character of Saint Elizabeths was extinguished in 1987. Plaintiffs opposed the motion to remand, and on December 14, 1990, more than seven years after *Streicher* was filed and more than three years after Saint Elizabeths came under local jurisdiction, they filed a motion for leave to assert a federal claim under 42 U.S.C. § 1983. The defendants opposed that motion.

Plaintiffs have also filed a motion for leave of the Court to obtain discovery of certain facts relevant to their remaining claim and alleged to be uniquely known by defendants. Defendants have requested that the Court address their motion for remand before addressing the discovery motion.

DISCUSSION

A. Defendant's Motion To Remand Remaining Cause Of Action To The Superior Court Of The District Of Columbia

Although plaintiffs could have filed their original petition for a writ of *habeas corpus* in this Court, they chose to do so in the Superior Court of the District of Columbia; this Court obtained jurisdiction over the *Streicher* case only because the federal defendants successfully petitioned to remove the action pursuant to 28 U.S.C. §§ 1441, 1442, and 1446 and D.C.Code § 16–1901(b).[1] Had the petitions for writs of *habeas corpus* been filed after jurisdiction over Saint Elizabeths was transferred to the local government in 1987, however, the federal government would not have been a defendant to these actions and D.C.Code § 16–1901(c) would have required that the actions be resolved in Superior Court.

When the basis for federal jurisdiction over a case no longer exists, a District Court has broad discretion to remand the case to state court, even if the case was initially removed from a local tribunal to the District

Court. *See District of Columbia v. Merit Syst. Protection Bd.,* 762 F.2d 129, 133 (D.C.Cir.1985) ("federal courts in this circuit and elsewhere regularly remand cases removed under section 1442(a)(1) once the federal party is eliminated"); *Swett v. Schenk,* 792 F.2d 1447, 1450 (9th Cir.1986) ("it is within the district court's discretion, once the basis for removal jurisdiction is dropped, whether to hear the rest of the action or remand it to the state court from which it is removed"). *See also Lovell Mfg. v. Export–Import Bank of the United States,* 843 F.2d 725, 735 (3d Cir.1988) (holding that absent extraordinary circumstances, District Courts in the Third Circuit *must* remand cases once all federal claims have been dropped from a case, regardless of the time already invested in litigating the state claims in federal court). Accordingly, because Judge Parker's November 3, 1987 Order substituting the District of Columbia's Commissioner on Mental Health Services for the federal Superintendent extinguished the basis for federal jurisdiction over these cases, the Court has the authority to remand the cases to the Superior Court of the District of Columbia. Upon examination of the underlying circumstances of these cases, the Court finds that remand to the Superior Court is particularly appropriate.

***4** The District of Columbia has an exceptionally strong interest in the resolution of plaintiffs' remaining claim. The central issue to be resolved concerns civil commitments of District of Columbia residents to the District of Columbia's psychiatric hospital which were ordered by the Superior Court of the District of Columbia pursuant to District of Columbia commitment law. Additionally, granting the relief plaintiffs seek would require the Superior Court to periodically review the civil commitments of patients held in Saint Elizabeths. Pursuant to Judge Parker's Memorandum Opinion of May 19, 1987, the Superior Court has already held hundreds of hearings concerning the pre–1973 commitments of the members of the plaintiff subclass. Furthermore, D.C.Code § 16–1901(c) clearly expresses a strong intent that the independent local court system review petitions for writs of *habeas corpus.* Given the multiple and dominant interests of the District in resolving these cases and in creating and following its own system of periodic judicial review (if such review is found to be constitutionally mandated), remand of the remaining portions of these cases to the Superior Court best serves the principles of comity and the interests of justice and, therefore, will be so ordered.

B. Plaintiffs' Motion for Leave to Assert Supplemental Claim

Pursuant to Fed.R.Civ.P. 15, plaintiffs seek leave to supplement their complaints with a claim under 42 U.S.C. § 1983 which requests the following relief: (1) a declaration that defendants' enforcement of plaintiffs' civil commitments for periods exceeding six months without judicial review violates plaintiffs' constitutional rights to due process of law; (2) an order enjoining defendants from enforcing plaintiffs' civil commitments for periods exceeding six months absent judicial review thereof; (3) compensatory damages in excess of $50,000; (4) exemplary and punitive damages in excess of $150,000; and (5) costs and attorney fees. Upon consideration of the relevant factors, plaintiffs' motion for leave to file a supplemental complaint is denied.

A court may deny a motion to supplement or amend a complaint if it finds that there exists undue delay in the filing of the motion for leave, that the motion has been filed in bad faith, that there is significant potential for undue prejudice to the opposing party if leave is granted, or that the proposed amendment or supplement is futile. *See Foman v. Davis,* 371 U.S. 178 (1962). A court may deny a motion to supplement or amend a complaint upon finding undue delay even if it fails to find that granting the motion would prejudice the opposing party. *See Tamari v. Bache & Co.,* 838 F.2d 904, 909 (7th Cir.1988) (court may refuse to allow an amendment "even if the amendment would cause no hardship at all to the opposing party"). In addition, a court may deny a motion to supplement if it finds that no significant transactions or occurrences have taken place since the filing of the pleading warranting leave to supplement. *See* Fed.R.Civ.P. 15(d). When determining whether to grant leave, a court should also consider whether the denial of the amendment or supplement compromises plaintiffs' chances of recovery. *See Chitimacha Tribe of Louisiana v. Harry L. Laws Co., Inc.,* 690 F.2d 1157, 1163 (5th Cir.1982), *reh'g denied,* 697 F.2d 1092 (1983), *cert. denied,* 464 U.S. 814 (1983).

***5** Although the record does not establish that plaintiffs' attempt to assert a supplemental complaint at this late stage in the proceedings is the product of bad faith or dilatory motive,[2] the submission of the motion for leave more than seven years after the first petition was filed and more than three years after the transfer of jurisdiction over Saint Elizabeths clearly constitutes undue delay within the meaning of caselaw interpreting Fed.R.Civ.P. 15. *See Tamari* at 909 (waiting ten years after case was brought to attempt to change theories to be litigated was undue delay); *Andrews v. Bechtel Power Corp.,* 780 F.2d 124, 139 (1st Cir.1985), *cert. denied,* 476 U.S. 1172 (1986) (filing a motion to add state law claim seven years after the filing of the complaint and twenty-four days prior to scheduled start of trial constituted undue delay);

Chitimacha Tribe at 1164 (requesting leave to amend two years and three months after filing of original complaint was undue delay).

The explanations proffered by plaintiffs for their delay in moving to supplement their initial complaints are not persuasive. Plaintiffs allege that they did not include a civil rights action in their original complaints because 42 U.S.C. § 1983 did not allow them to sue the federal government, their immediate custodian at the time the cases were brought. Even if this assertion is accepted, however, plaintiffs concede that they could have asserted a § 1983 claim against the District of Columbia from the time the initial petitions were filed. District of Columbia agents have always been the plaintiffs' ultimate custodians and plaintiffs themselves argued early in the proceedings that "Just as [the Mayor of the District of Columbia] has the duty to provide hospitalization for petitioners, it follows, ineluctably, that when petitioners no longer require hospitalization [the Mayor] should cause them to be removed from Saint Elizabeths Hospital to a less restrictive environment." *McDonald v. Prescott,* Habeas Corpus No. 84–1538, Memorandum of Points and Authorities in Support of Petition for Writ of Habeas Corpus, filed May 16, 1984 at 4. Plaintiffs even concede that they made a calculated decision not to bring a § 1983 suit against the District when *Streicher* was filed. *See* Reply to Defendants' Opposition to Plaintiffs' Motion for Leave to Assert Supplemental Claim, filed March 3, 1991 at 5.

While it is true that at the time of filing plaintiffs could only bring a § 1983 suit against the District of Columbia as an *ultimate* custodian, plaintiffs could have attempted to assert a § 1983 action against the District as an *immediate* custodian once jurisdiction over Saint Elizabeths was transferred in 1987. Plaintiffs waited more than three years before doing so but explain their delay by emphasizing the complexity of these cases and the substantial amount of time and effort required to carry out the hundreds of commitment hearings for members of the subclass ordered by Judge Parker in November 1987. Notwithstanding the complexities of these cases and the amount of time necessary to participate in hundreds of civil commitment hearings, however, the Court simply cannot find that the amount of work required by the Order of Reference was so overwhelming as to prevent plaintiffs from filing at an earlier time their motion for leave to supplement.

***6** Although denying leave to file a supplemental complaint under the Civil Rights Act will prevent plaintiffs from attempting to obtain money damages from the District of Columbia, the injunctive relief plaintiffs seek in their proposed supplemental complaint is substantially similar to the relief plaintiffs may obtain under their original petitions. Other than money damages, the main relief sought in the proposed supplemental complaint is a declaration of a constitutional right to judicial review of civil commitments every six months and an injunction preventing defendants from enforcing plaintiffs' civil commitments for periods exceeding six months absent judicial review. Resolution of the petitions for writs of *habeas corpus* will require similar inquiries into whether plaintiffs are entitled to periodic judicial review and if so, how often. Should it be determined that due process requires periodic review, defendants will be constitutionally prohibited from enforcing civil commitments without such review.

C. Plaintiff's Motion For Supplementary Attorney Fees

On May 15, 1990, pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), Judge Gesell awarded plaintiffs $167,584 in attorneys' fees and costs with interest from the date of the Order. Judge Gesell specifically found that "plaintiffs prevailed to an extraordinary and significant respect" with regard to the subclass issue and that the federal government's resistance to plaintiffs' subclass claims was not substantially justified. Memorandum Opinion of Judge Gesell, filed May 15, 1990 at 4–5. Instead of immediately paying the award, however, the federal defendant appealed Judge Gesell's Order. Plaintiffs moved to dismiss the appeal, claiming that no final order had been entered in these cases and that the Court of Appeals therefore lacked jurisdiction. On November 26, 1990, the Court of Appeals granted plaintiffs' motion and dismissed the appeal.

Plaintiffs now seek to recover attorneys' fees which were incurred since the filing of the initial motion for fees and costs, and which were expended to draft the reply to the federal government's opposition to the initial motion for fees, to defend against the federal government's appeal of the initial fee award, and to assert a motion for the immediate payment of the fee award. The federal government opposes an award of fees for work done on the reply memorandum, claiming that plaintiffs have not accounted for the hours worked with the requisite degree of specificity. In addition, the government objects to payment of supplementary fees for work done opposing the appeal, arguing that plaintiffs did not "prevail" on the appeal within the meaning of the EAJA because the Court of Appeals has not yet reached the merits of the award. The government's objections are rejected below.

To be eligible for reasonable attorneys' fees and costs

against the United States under 28 U.S.C. § 2412(d), a plaintiff must timely file an application which establishes that he or she is a "prevailing party," that the position of the United States taken in the litigation was not "substantially justified," and that there are no "special circumstances" which would make an award "unjust." Though a plaintiff may be eligible for compensation of expenses incurred in seeking attorneys' fees or defending an award of attorney fees on appeal, a court may refuse to award an amount expended or requested if it finds that the amount of fees sought is unreasonable, or that the fees incurred could have been avoided or were unrelated to the initial fee award. *See Grano v. Barry,* 783 F.2d 1104, 1113–14 (D.C.Cir.1986). Additionally, a court may refuse to award fees if the plaintiffs have failed to provide "sufficiently detailed information about the hours logged and the work done ... to permit the District Court to make an accurate and equitable award [and] to place government counsel in a position to make an informed determination as to the merits of the application." *Nat'l Ass'n of Concerned Veterans v. Secretary of Defense,* 675 F.2d 1319, 1327 (D.C.Cir.1982).

***7** A District Court's findings that a plaintiff is a "prevailing party" and that the government's opposition to the plaintiff's claim "lacks substantial justification" under the EAJA operate as one-time thresholds for fee eligibility. *See Commissioner, Immigration and Naturalization Service v. Jean,* 496 U.S. 154, —— (1990), 110 S.Ct. 2316, 2320. Accordingly, once a Court determines for the purpose of granting an initial fee award that a plaintiff has "prevailed" on its claim and that the government's opposition to the claim "lacked substantial justification," the Court may grant supplemental fees incurred in obtaining the initial award without determining that the plaintiff "prevailed" on the initial motion for fees or that the government's opposition to the original motion for fees "lacked substantial justification." To hold otherwise "theoretically can spawn a 'Kafkaesque judicial nightmare' of infinite litigation to recover fees for the last round of litigation over fees." *Id.* at 110 S.Ct. 2321, citing *Cinciarelli v. Reagan,* 729 F.2d 801, 810 (D.C.Cir.1984). Judge Gesell has already determined that plaintiffs prevailed in asserting their subclass claim and that the federal defendants' opposition to the claim lacked substantial justification. Consequently, plaintiffs are eligible for reasonable fees incurred in the drafting and filing of the reply to the opposition to the initial motion for fees and expended in defending the award on appeal, and plaintiffs need not establish that the government's decision to take the appeal "substantial justification" or that plaintiffs "prevailed" when the Court of Appeals dismissed the appeal. Of course, should the Court of Appeals reach the merits of the attorneys' fees issue and reverse Judge Gesell's findings of eligibility, then any supplementary award would likely have to be reexamined. Under the law of the case as it now stands, however, plaintiffs are clearly eligible to recover reasonable supplementary fees.

Review of plaintiffs' Motion For Supplementary Attorneys' Fees and of the reply in support of the motion reveals that the supplementary fees sought by plaintiffs have been accounted for with the requisite degree of specificity, relate to services performed in furtherance of obtaining and defending the initial fee award, and are reasonable. Though the government objected to the lack of detail in the listing of twelve hours spent in "Proceedings in the district court to seek payment of the award," any possible defect in specificity was cured by the Declaration of Leonard S. Rubenstein, attached to the plaintiffs' reply, which provided an hourly account of work done in furtherance of plaintiff's Motion For Payment Of Fee Award. Expenditure of fifty-seven hours to draft and file a reply in support of the initial fee petition, to seek immediate payment of the initial fee award, to defend the award on appeal, and to assert a claim for supplementary fees is far from unreasonable. In terms of the hourly rate sought, Judge Gesell has already ruled that this is a wholly appropriate case for adjusting the $75 hourly fee provided by EAJA to reflect increased cost of living from the 1981 enactment date of the EAJA to the year in which the legal services were performed. Accordingly, the Court will apply a rate of $108 per hour, the adjusted EAJA rate for 1990, to the fifty-seven hours worked. When computed, the supplementary award to which plaintiffs are entitled amounts to $6,156.[3]

D. Plaintiff's Motion For Payment Of Fee Awards and Defendant's Motion For Determination Of No Just Reason For Delay Of Entry Of Final Judgment

***8** Approximately one month after Judge Gesell issued the interim attorneys' fees award, plaintiffs moved for immediate payment of the award, alleging that the United States had unduly delayed compliance with Judge Gesell's Order. The government opposed the motion on July 9, 1990, asserting that payment should not be required until after an appeal of the award was taken and resolved. On July 13, 1990 the government filed a Notice of Appeal of the award and, therefore, Judge Gesell never addressed the motion. After the appeal was dismissed for lack of jurisdiction based on the absence of a final judgment, the plaintiffs renewed their motion and the government again filed an opposition. The government also filed a motion pursuant to Fed.R.Civ.P. 54(b) for entry of a final judgment against the United States so that an appeal of the fee award could be taken before the

remaining claim on the merits is resolved. In the memorandum accompanying the motion for entry of final judgment, the government represented that it would not appeal approximately $46,000 of the award. It is unclear, however, whether that sum has been paid to the plaintiffs.

Because this Order remands these cases to the Superior Court of the District of Columbia, the Court considers the order a final judgment in this Court and, therefore, the fee award may be appealed without obtaining a Rule 54(b) certification. Given the extreme likelihood that the government will appeal at least a portion of the award, the initial fee award and this Judge's supplementary fee award will be stayed until the fees issues are resolved by the Court of Appeals. Should the awards be upheld on appeal, the United States will be liable for interest from the dates the awards were ordered. See 28 U.S.C. § 2412(f).

E. Plaintiff's Motion For Discovery

In light of the remand of these cases to the Superior Court, this Court will abstain from resolving plaintiffs' Motion For Discovery.

CONCLUSION

For the reasons stated above, it is hereby ORDERED that Defendant's Motion to Remand Remaining Cause of Action to the Superior Court of the District of Columbia is granted. With the exception of attorneys' fees issues relating to the federal defendants, the cases are remanded for all purposes to the Superior Court for the District of Columbia. It is

FURTHER ORDERED that Plaintiffs' Motion for Leave to Assert Supplemental Claim is denied. It is

FURTHER ORDERED that Plaintiff's Motion for Supplementary Attorneys Fees is granted in the amount of $6,156 with interest from the date of this Order. It is

FURTHER ORDERED that Federal Defendants' Motion for Determination of No Just Reason for Delay Of Entry of Final Judgment and for Entry of Final Judgment is denied as moot. It is

FURTHER ORDERED that Plaintiff's Motion for Payment of Fee Award is denied. It is

FURTHER ORDERED that payment of the outstanding portion of Judge Gesell's fee award of May 14, 1990 and payment of the supplementary fee award granted this date are stayed pending resolution of any appeal of the awards taken by the federal defendants. The federal defendants shall pay at the earliest date possible and no later than May 20, 1992 those portions of the fee awards which are not appealed.

***9** IT IS SO ORDERED.

[1] D.C.Code § 16–1901 provides in relevant part:
(b) Petitions for writs [of *habeas corpus*] directed to Federal officers and employees shall be filed in the United States District Court for the District of Columbia.
(c) Petitions for writs directed to any other person shall be filed in the Superior Court of the District of Columbia.

[2] It is worth noting, however, that plaintiffs filed their Motion for Leave to Assert Supplemental Claim seven months after defendants submitted their motion to remand, that plaintiffs opposed the motion for remand, and that the granting of plaintiffs' motion to file its supplemental complaint would substantially impede or prevent these cases from being remanded to Superior Court.

[3] Although plaintiffs' Motion For Supplementary Attorneys Fees asks for a lump sum of $5,928, they have requested an hourly rate of $108 be applied to fifty-seven hours worked. Plaintiffs appear to have miscalculated the lump sum by applying the EAJA rate for a previous year, a rate which Judge Gesell used to determine fees for work done prior to 1990.