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United States District Court, N.D. Illinois, Western Division.

PEOPLE WHO CARE, et al., Plaintiffs,
v.
ROCKFORD BOARD OF EDUCATION, SCHOOL DISTRICT # 205, et al., Defendants.

No. 89 C 20168. | Feb. 23, 1990.

Attorneys and Law Firms

Robert C. Howard, Hartunian, Futterman & Howard, Chicago, Ill., for plaintiffs.

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Opinion

MEMORANDUM OPINION AND ORDER

ROSZKOWSKI, District Judge.

***1** This action comes before the Court on Plaintiffs' petition for attorney's fees and costs. Defendants have filed objections to Plaintiffs' petition. For the reasons set forth below, the Court grants Plaintiffs' petition for attorney's fees in the amount of $112,935.50 and costs in the amount of $14,765.54.

DISCUSSION

Fee petitions are turning into major lawsuits in themselves. Judge Posner of the Seventh Circuit Court of Appeals stated, and this court agrees, that:

> Fee litigation has become a heavy burden on the federal courts. It can turn a simple civil case into two or even more cases--the case on the merits, the case for fees, the case for fees on appeal, the case for fees for proving fees, and so on ad infinitum, or at least ad nauseam.

Ustrak v. Fairman, 851 F.2d 983, 985 (1988). The present case is no exception to the current trend.

Plaintiffs brought suit on May 11, 1989 challenging Defendant School Board's Reorganization Plan on equal protection grounds under 42 U.S.C. §1983. The plan was to be implemented by September 1989. An Interim Agreed Order was entered by this court on July 7, 1989. The order provided, inter alia, for systemwide integration and an equity planning process. Plaintiffs now seek an interim award of attorney's fees pursuant to the Civil Rights Attorney's Fees Awards Act of 1976. 42 U.S.C. §1988.

The Civil Rights Attorney's Fees Award Act, 42 U.S.C. §1988, (hereinafter "“§1988”) was enacted by Congress to encourage the representation of plaintiffs in civil rights cases. Section 1988 provides:

> In any action or proceeding to enforce a provision of section . . .1983 . . . of this title . . . the court, in its discretion, may also allow the prevailing parties . . . a reasonable attorney's fee as part of the costs.

A prevailing party is defined as one who succeeds "on any significant issue in litigation which achieves some of the benefit the parties sought in bringing the suit." Hensley v. Eckerhart, 461 U.S. 424, 433 (1983) (citation omitted). "The fact that [a plaintiff] . . . prevailed through a settlement rather than through litigation does not weaken [the plaintiff's] claim to fees." Maher v. Gagne, 448 U.S. 122, 129 (1980).

A plaintiff is entitled to fees in a settled case, such as this one, where (1) the lawsuit was causally linked to achievement of the relief obtained and (2) the defendant did not act wholly gratuitously. Lovell v. City of Kankakee, 783 F.2d 95, 96-97 (7th Cir. 1986). In the present case, the court finds it clear that the result obtained in this matter would not have been attained but for the bringing of the lawsuit by Plaintiffs. In other words, the lawsuit was causally linked to the preliminary injunction settlement. Without the lawsuit, there would have been no Interim Agreed Order. Furthermore, this court does not believe that Defendants acted gratuitously in settling the case. A defendant acts wholly gratuitously only where the plaintiff's claims are "frivolous, unreasonable, or groundless." Id. at 97. Such is not the case in the present cause of action.

***2** Plaintiffs seek an interim award of attorney's fees because they believe they have prevailed on a significant

issue in the litigation. Interim awards of attorney's fees are allowed under §1988. The legislative history surrounding the enactment of §1988 states:

> [T]he phrase 'prevailing party' should not be limited to a victor (sic) only after entry of a final judgment following a full trial on the merits . . . A fee award may thus be appropriate where the party has prevailed on an interim order which was central to the case . . .

H. R. Rep. No. 96-1418, p. 11 (1980), U.S.Code Cong. & Admin. News 1980, p. 4990. The United States Supreme Court has also recognized the appropriateness, in some cases, of an interim award of attorney's fees. In Texas State Teachers Association v. Garland, 489 U.S. 782, 109 S. Ct. 1486, 1492 (1989), the Court upheld an award of fees after final disposition of that case. The Court, however, noted:

> if petitioners' victory on the teacher-to-teacher communication issue had been only an interim one, with other issues remanded for further proceedings in the district court, petitioners would have been entitled to some fee award for their successful claims under §1988. Congress cannot have meant 'prevailing party' status to depend entirely on the timing of a request for fees: A prevailing party must be one who has succeeded on any significant claim affording it some of the relief sought, either pendente lite or at the conclusion of the litigation.

This court finds that Plaintiffs are entitled to an interim award of attorney's fees. As stated before, the filing of the lawsuit was related to the relief obtained and Defendants have not acted gratuitously. Furthermore, the court finds that Plaintiffs have achieved some of the benefits Plaintiffs sought in bringing the suit. Plaintiffs have, therefore, prevailed on at least one significant issue.[1] As such, Plaintiffs can be considered "prevailing parties" for purposes of an interim award of attorney's fees.

The question then becomes the amount of attorney's fees to be awarded. Plaintiffs usually cannot monitor the amount of hours and the quality of hours their attorneys spend in their particular cases. An incentive is thus created for attorneys to "run up hours" when working on cases where defendants may be required to pay the prevailing party's attorney's fees. See, e.g., Kirchoff v. Flynn, 786 F.2d 320, 324 (7th Cir. 1986). The court is, therefore, left with the duty of monitoring the amount and quality of time an attorney puts into a case reflected by the resulting fee petition. The only guideline a court has is that the fees must be "reasonable." This is indeed a vague guideline.[2]

***3** In Freeman v. Franzen, 695 F.2d 485, 494 (1982), cert. denied, 463 U.S. 1214 (1983), the Seventh Circuit held that a district court has discretion in setting the amount of attorney's fees awarded. In so doing, a judge must use his experience in deciding whether the requested number of hours were reasonably expended. See, e.g., Chrapliwy v. Uniroyal, Inc., 670 F.2d 760, 765 (7th Cir. 1982), cert. denied, 461 U.S. 956 (1983). Fee applicants bear the burden of proving to the satisfaction of the court the appropriate number of hours expended at reasonable hourly rates. In so doing, an applicant is expected to exercise "billing judgment." This means that no excessive, redundant or unnecessary hours should be included in the fee petition. Tomazzoli v. Sheedy, 804 F.2d 93, 96 (7th Cir. 1986). If such hours are included in a fee petition, the district court has the power to deduct the hours from the attorney's fees requested. Hensley v. Eckerhart, 461 U.S. 424, 434 (1983).

A district court in deciding fee petitions must make judgments based upon the nature of the case and the details of the petition requested. Heiar v. Crawford County, Wis., 746 F.2d 1190, 1204 (7th Cir. 1984), cert. denied, 472 U.S. 1027 (1985). The court must compensate an attorney for all hours reasonably expended. However, the court may exclude hours that are based on inaccurate or misleading records. Tomazzoli v. Sheedy, 804 F.2d 93, 96 (7th Cir. 1986). No precise rule or formula is available to a district court in reducing fee awards. Again, discretion lies in the district court because of the court's familiarity with the litigation. Hensley v. Eckerhart, 461 U.S. 424, 437 (1983). The Seventh Circuit has recognized, however, that it is unrealistic to expect a district court to evaluate and rule on every entry in an application for attorney's fees. Tomazzoli v. Sheedy, 804 F.2d 93, 98 (1986).

As stated above, the starting point for determining the amount of a reasonable fee "is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). This lodestar calculation is made considering the following factors: (1) the amount of time and labor expended and (2) the fees customarily charged in the locality for similar legal services. Waters v. Wisconsin Steel Works of Int. Harvester Co., 502 F.2d 1309, 1322 (7th Cir. 1974), cert. denied, 425 U.S. 997 (1976); Chrapliwy v. Uniroyal, Inc., 670 F.2d 760, 768-69 (7th Cir. 1982), cert. denied, 461 U.S. 956 (1983).

A. Time And Labor Expended

This court has already acknowledged the tremendous effort made by both parties in this litigation. At the proceedings in which the Interim Agreed Order was signed, the court stated:

> Each side, both the plaintiffs and the defendants, have worked untiringly throughout the past weeks giving unselfishly of their time, including the Fourth of July weekend, in order to resolve any differences which may have stood in the way of a fair and equitable settlement.
>
> ***4** The attorneys on both sides have worked and contributed mightily in the present and best traditions of the legal profession. Without such an outstanding effort, a long and protracted trial, followed by a difficult and lengthy decision, could not have been avoided . . .

Transcipt of proceedings, July 7, 1989 at 4. Accordingly, the court has no problems with most of the hours submitted by Plaintiffs' attorneys and their staff reflecting the time and labor they expended in this matter. The court, however, does have problems with the hours submitted by Mr. Robert Howard, Plaintiffs' lead counsel.

In Plaintiffs' fee petition, Mr. Howard states that he worked on this case a total of 681.3 hours from April 11, 1989 through July 31, 1989.[3] This period encompasses 16 weeks or 111 days. Assuming Mr. Howard worked 5 days per week, he worked 80 days during the relevant time period (5 days x 16 weeks). In order to total the number of hours Mr. Howard claims he worked, he would need to work an average of 8.5 hours per day of billable time. This seems patently incredible to this court. Mr. Howard's partner, Mr. Aram Hartunian, stated at his deposition that he can bill between 30 and 35 hours per week, with an average of 32.5 hours per week. Hartunian Deposition, October 6, 1989 at 42. Furthermore, this court knows from experience that many more hours of office or court time are required to achieve 8.5 billable hours. While Mr. Howard might have spent some extraordinarily long days working on this case, the court cannot believe that such extraordinary days, 5 days per week for sixteen weeks were spent on nothing but the present cause of action. Accordingly, the court finds it more reasonable to believe that Mr. Howard billed 32.5 hours per week for 16 weeks. Mr. Howard's billable hours for the relevant time period then becomes 520 hours. From this 520 hours, 23.3 hours must be subtracted as that is the number of hours Mr. Howard claims he spent preparing the fee petition during July. The court will not deal with the fees for preparing the fee petition in this order. Mr. Howard's total hours from April 11 to July 31, 1989, are, then, 496.7.

B. Fees Customarily Charged

Plaintiffs' fee petition requests hourly rates for attorneys ranging from $100 per hour to $225 per hour and hourly rates for paralegals of $60 per hour. The court finds these rates to be unreasonable.

The burden of establishing that the rate claimed is reasonable rests with fee applicants. Blum v. Stenson, 465 U.S. 886, 897 (1984); Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). Fee applicants generally satisfy this burden by presenting specific evidence of prevailing market rates within the relevant community of attorneys with similar skill and experience handling similar work. Blum v. Stenson, 465 U.S. 886, 895 (1984); Lightfoot v. Walker, 826 F.2d 516, 524 (7th Cir. 1987). In Chrapliwy v. Uniroyal, Inc., 670 F.2d 760, 769 (1982), cert. denied, 461 U.S. 956 (1983), the Seventh Circuit held that the relevant community for determining hourly rates is not always the place where the lawsuit is heard. If a case is so complex either factually or legally and of such a specialized nature that counsel with the required skills is not available locally, a plaintiff is justified in securing out-of-town counsel, and the relevant community for determining the fee customarily charged then becomes the place where such counsel normally practices. Id. Adjustments may be necessary, however. Id.

***5** The court agrees that Chicago may be considered the relevant community for determining reasonable hourly rates in this case. However, the court finds that Plaintiff's Plaintiffs' counsel lack the requisite experience in school desegregation cases to support the Chicago rates charged in their fee petition. For example, Attorney Robert Howard stated in his deposition that he has never, with the exception of a Chicago Board of Education case, handled a school desegregation case prior to the instant case. Furthermore, Mr. Howard knows of no other partner in his firm that has handled any other school desegregation cases. Howard's Deposition, October 18, 1989 at 16. The court believes that an attorney asking $210 to $225 per hour in attorney's fees should be very familiar with school desegregation law. Therefore, the court believes rate changes are necessary in this case in order to bring the fee award within a reasonable range.

The court awards the following reasonable hourly rates to the following respective attorneys and staff members:[4]

Once the lodestar calculation is made, the reasonableness of the lodestar figure can further be tested by considering: (1) the results obtained and (2) the experience, reputation and ability of Plaintiffs' counsel. Hensley v. Eckerhart, 461 U.S. 424, 434 (1983); Waters v. Wisconsin Steel Works of Int. Harvester Co., 502 F.2d 1309, 1322 (7th Cir. 1974), cert. denied, 425 U.S. 997 (1976).

C. Results Obtained

As stated previously, Plaintiffs are considered prevailing parties in this matter because they have achieved some of the benefits Plaintiffs sought in bringing the present cause of action and have, therefore, prevailed on at least one significant issue. The results that Plaintiffs have obtained, however, cannot be considered "exceptional", as stated below. Plaintiffs and Defendants have worked together to achieve a fair and equitable settlement. The lodestar calculation reflects Plaintiffs' counsels' efforts and yet does not overcompensate Plaintiffs' attorneys. Any award above the lodestar would, in effect, "punish" Defendants for their cooperation. The lodestar amount, therefore, is reasonable considering the results obtained.

D. Experience, Reputation, Ability

***6** Finally, the court believes the lodestar calculation adequately reflects the experience, reputation and ability of Plaintiffs' counsel. As stated above, Attorney Howard acknowledged at his deposition the fact that he and the other partners in his firm had very little, if any, experience in school desegregation matters. Therefore, the lodestar calculation certainly cannot be adjusted upward based upon counsels' experience. The court, however, does not believe a downward adjustment is required either. The court does not question Plaintiffs' counsels' reputation. The court further finds counsels' ability in the present cause of action, at least as reflected in the courtroom, to be very competent. Accordingly, the lodestar calculation survives a reasonableness test based upon the experience, reputation and ability of Plaintiffs' counsel.

E. Fee Enhancement

Plaintiffs also request a fee enhancement of 1.75 with respect to work performed up to the entry of the Interim Agreed Order. Plaintiffs make this request on three separate bases. First, Plaintiffs argue that due to the contingent risk of the case, including the complex nature of the case, fee enhancement is appropriate. Second, Plaintiffs argue that the undesirable nature of the case requires a multiplier. Finally, Plaintiffs contend that they were precluded from other employment and, therefore, fee enhancement is appropriate.

The calculation of hours reasonably expended at reasonable hourly rates is presumed to be the reasonable fee to which counsel is entitled. Blum v. Stenson, 465 U.S. 886, 898 (1984). The Supreme Court, however, in Hensley v. Eckerhart, 461 U.S. 424, 435 (1983) recognized that "in some cases of exceptional success an enhanced award may be justified." The burden of establishing that an adjustment of the lodestar figure is necessary in order to provide a reasonable fee rests with the fee petitioner. Blum v. Stenson, 465 U.S. 886, 898.

Section 1988 was enacted to provide adequate fee awards in order to attract competent counsel to handle a plaintiff's case. Section 1988, however, was not enacted to provide a windfall to a plaintiff's attorney. City of Riverside v. Rivera, 477 U.S. 561, 580 (1986). As stated above, the lodestar calculation is presumed to be a reasonable amount for attorney's fees purposes. The novelty and complexity of the issues, the special skill and experience of counsel, the quality of representation and the results obtained from the litigation are presumably fully reflected in the lodestar amount and, thus, cannot serve as independent bases for increasing the fee award. Pennsylvania v. Delaware Valley Citizens' Council, 478 U.S. 546, 565 (1986). In fact, the lodestar amount "includes most, if not all, of the relevant factors constituting a 'reasonable' attorney's fee." Id. at 566.[5]

In the opinion of this court, the present case does not fall under the "exceptional success" standard enunciated in Hensley. The present cause of action is neither a "rare" case nor an "exceptional" case. Pennsylvania v. Delaware Valley Citizens' Council, 478 U.S. 546, 565. While it is true that the filing of the lawsuit was causally linked to the results obtained, the court does not find that the results are in any way "exceptional". Plaintiffs and Defendants have entered into an Interim Agreed Order under which Defendant School Board must reexamine its Reorganization Plan and develop a plan that follows the provisions in the Interim Agreed Order. This is not "exceptional success" as that term is used for fee enhancement purposes. Furthermore, Section 1983 actions are a long way from being labelled "rare."

***7** The court is further of the opinion that the present case did not involve a high degree of contingent risk. In Pennsylvania v. Delaware Valley Citizens' Council, 483 U.S. 711, 107 S. Ct. 3078, 3086 (1987), four members of the United States Supreme Court were of the opinion that Congress did not intend that "the risk of losing a lawsuit to be an independent basis for increasing the amount of any otherwise reasonable fee for the time and effort expended in prevailing." The plurality rejected any notion that fee enhancement for risk is necessary or allowable. See, also, Bonner v. Coughlin, 657 F.2d 931, 936 (7th Cir. 1981); McKinnon v. City of Berwyn, 750 F.2d 1383, 1392 (7th Cir. 1984); In Re Burlington Northern, Emp. Practices Lit., 810 F.2d 601, 608 (7th Cir. 1986), cert. denied, 484 U.S. 821, 108 S. Ct. 82 (1987); Hagge v. Bauer, 827 F.2d 101, 111 (7th Cir. 1987).

This court also does not believe that the present action involves an undesirable case necessitating fee enhancement. This is not a case that has a stigma attached or a case which poses a real potential economic impact on Plaintiffs' attorneys' firm. Plaintiffs' attorneys have experienced no proven damage to their reputation by taking on a case of the nature presented here.

Finally, Plaintiffs' argument that fee enhancement is appropriate due to the preclusion of other employment must likewise fail. This fee petition covers only the time from April 11, 1989 to July 31, 1989. This is not a case, as it was in Independent Federation of Flight Attendants v. Zipes, 491 U.S. 754, 109 S. Ct. 2732 (1989), that counsel had to fight all the way to the United States Supreme Court in a hotly contested dispute. This is not a case that has gone on for years. Rather, the interim fee award covers a period of less than four months. Plaintiffs were not required to go to trial. An Interim Agreed Order was entered into between Plaintiffs and Defendants. Plaintiffs have submitted no evidence of potential clients being turned away due to the burdensome workload that has been brought about by this cause of action. Thus, fee enhancement in this case is inappropriate, at least at this stage of the proceedings and under the current circumstances surrounding this case.

F. Litigation Expenses

The final matter before the court is Plaintiffs' request for an award of $19,062.20 in litigation expenses for the time from April 11 to July 31, 1989.[6] The court allows Plaintiffs litigation expenses in the amount of $14,765.54. The court has subtracted the following amounts from the requested total: (1) $3,749.11 for expert witnesses. The court reserves ruling on this amount until it is provided with a satisfactory explanation from Plaintiffs that this amount was reasonably incurred.[7] (2) $189.80 for a subscription to the Rockford Register Star. The court finds this item is not a reasonable out-of- pocket expenditure normally charged to a client and, therefore, not recoverable under § 1988. (3) $357.75 for computer rental. The court also finds this item to be unreasonable.

SUMMARY

Attorney				Hours Allowed	
Partners					
Hartunian	$165.00	85.8[8]		$14,157.00	
Futterman		38.7 [9]		$150.00	$ 5,805.00
Howard		496.7	$150.00	$74,505.00	
Weissbourd		0.5	$125.00	$ 62.50	
Bradtke		19.3	$110.00	$ 2,123.00	
Associates					

Crocker	4.3	$ 80.00	$ 344.00
Spoto	176.9 [10]$ 75.00		$13,267.50
Petrini	2.5	$ 75.00	$ 187.50

Attorney Hours Allowed Hourly Rate Total PartnersHartunian 85.8 $165.00 $14,157.00 [FN8]Futterman 38.7 [FN9] $150.00 $ 5,805.00Howard 496.7 $150.00 $74,505.00Weissbourd 0.5 $125.00 $ 62.50Bradtke 19.3 $110.00 $ 2,123.00 AssociatesCrocker 4.3 $ 80.00 $ 344.00Spoto 176.9 [FN10]- $13,267.50 $ 75- .00Petrini 2.5 $ 75.00 $ 187.50FNFN8 Plaintiffs' original fee petition requested a total of 96.9 hours for Attorney Hartunian's work. However, Appendix 3, page 10 to Plaintiffs' reply memorandum states that the correct number of hours should be 85.8. FNFN9 Plaintiffs' original fee petition requested a total of 27.6 hours for Attorney Futterman's work. However, Appendix 3, page 10 of Plaintiffs' reply memorandum states that the correct number of hours should be 38.7FNFN10 This number does not include the hours requested for preparation of the fee petition. ParalegalsGronlund 50.8 $ 30.00 $ 1,524.00Haynes 13 [FN11] $ 30.00 $ 390.00Cervantes 19 $ 30.00 # 570.00 -------....Total 907.5 $112,935.50 Litigation Expenses « $ 14- ,765- .54 ------- $127,701.04

CONCLUSION

***8** For the reasons set forth herein, the court awards Plaintiffs a total of $112,935.50 in attorney's fees and $14,765.54 in costs.

Footnotes

1 For example, Plaintiffs prevented Defendants from implementing the School Board's Reorganization Plan to the extent that a number of Southwest Quadrant elementary schools remained operational during the 1989-90 school year. See Interim Agreed Order § III (B).

2 In determining what constitutes a "reasonable" fee, numerous courts have followed the twelve factors first enunciated in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-719 (5th Cir. 1974). The factors are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (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) the 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 attorneys; (10) the " "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) the fee awards in similar cases.

3 This total includes the 23.3 hours Mr. Howard claims for preparing the fee petition during this same time period.

4 The rates allowed by this court are approximately 75% of the amounts originally requested by Plaintiffs' counsel. The one exception is the rate awarded to the paralegals. The paralegal rate is one-half the amount requested. The court refuses to believe that $60.00 is a reasonable hourly rate for paralegal work. As such, the court declines to make paralegals a profit-making venture. The court, however, believes that the $30.00 per hour rate awarded for paralegal work still gives the Plaintiffs' law firm a reasonable profit.

Partners	
Aram Hartunian	$165.00
Ronald Futterman	$150.00

Robert Howard	$150.00
Robert Weissbourd	$125.00
James Bradtke	$110.00
Associates	
Phyllis Crocker	$80.00
Katie Mangold-Spoto	$75.00
Christopher Petrini	$75.00
Paralegals	
Valerie Cervantes	$30.00
Nancy Gronlund	$30.00
Helen Haynes	$30.00

5 For the relevant factors, see Johnson, supra at n.2.

6 In Plaintiffs' August 8, 1989 fee petition, the litigation expenses totalled $17,456.45. However, in Plaintiffs' reply memorandum in support of their petition for attorneys' fees, Plaintiffs claim additional July 1989 expenses in the amount of $1246.45. This amount, then, must be added to Plaintiffs' original request. Furthermore, in a letter to this court dated January 23, 1990, Plaintiffs informed the court of a clerical error in a xeroxing amount for depositions. The amount for this work in the fee petition was stated as $81.50. The amount actually should have been $440.80. The difference between the two amounts, $359.30, therefore, must also be added to Plaintiffs' original fee petition.

7 The court has read Plaintiffs' explanation of these charges in Plaintiffs' Appendix 4, page 7. The court finds, however, Plaintiffs' explanation to be inadequate to give this court a proper basis on which to decide if the expense was reasonably incurred.

FN[8] Plaintiffs' original fee petition requested a total of 96.9 hours for Attorney Hartunian's work. However, Appendix 3, page 10 to Plaintiffs' reply memorandum states that the correct number of hours should be 85.8.

FN[9] Plaintiffs' original fee petition requested a total of 27.6 hours for Attorney Futterman's work. However, Appendix 3, page 10 of Plaintiffs' reply memorandum states that the correct number of hours should be 38.7

FN[10] This number does not include the hours requested for preparation of the fee petition.

Paralegals				
Gronlund	50.8	$ 30.00	$ 1,524.00	
Haynes	13 [11]		$ 30.00	$ 390.00
Cervantes	19	$ 30.00	# 570.00	
....Total	907.5	$112,935.50		

Litigation Expenses

$127,701.04

FN[11] Plaintiffs' original fee petition requested a total of 16 hours for Paralegal Haynes' work. However, Appendix 3, page 10 of Plaintiffs' reply memorandum states that the correct number of hours should be 13.