

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO City and County Building 1437 Bannock, Denver, CO 80202	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Plaintiffs: ANANDA MARGA, INC. , a Colorado Nonprofit Corporation, et al.; v. Defendants: ACHARYA VIMALANANDA AVADHUTA , an individual, et al.; And Intervenor: ANANDA MARGA PRACARAKA SAMGHA-RANCHI .	Case Number: 10CV1867 Courtroom: 259
ORDER RE: MOTION FOR ATTORNEYS' FEES AND BILL OF COSTS	

THIS MATTER is before the Court on Plaintiffs' Objection to the Reasonableness and Necessity of the Fees Requested by Defendants, filed on May 9, 2012.

Defendants/Counterclaim-Plaintiffs Acharya Vimalananda Avadhuta, Clark E. Forden, Dipendra Kumar Singh, Dirk Duill, Shyam Sundar Kaushesh and Piyush Bhatnagar (collectively "Defendants") and Intervenor Ananda Marga Pracaraka Samgha-Ramchi ("Intervenor") filed their Reply on May 21, 2012. The Court has reviewed the Motion for Attorneys' Fees and Bill of Costs, the briefs in support and opposition, the objection to the reasonableness and necessity of the fees, the reply to the objection, the case file, and the relevant authority, and being fully informed finds and orders as follows:

PROCEDURAL BACKGROUND

Defendants and Intervenor filed a Motion for Attorneys' Fees and Bill of Costs on June 13, 2011. Plaintiffs filed their opposition to Defendants' Motion and Bill of Costs on July 15,

2011. Defendants' filed their Reply on July 29, 2011. On March 9, 2012, this Court held a hearing regarding Defendants' Motion for Attorneys' Fees and the parties filed Proposed Findings of Fact in support of and in opposition to the Motion thereafter. On April 25, 2012, this Court entered an Order containing the Findings of Fact and granting Defendants' Motion for Attorneys' Fees and Bill of Costs. In its Order, the Court gave Plaintiffs fourteen days to file an objection to the reasonableness and necessity of the fees requested by Defendants. Plaintiffs filed the instant Objection on May 9, 2012.

DISCUSSION

A. *Standard of Review and Burden*

C.R.S. § 13-17-102(2) provides for an award of attorney fees against an attorney or party who asserts a claim or defense that "lacked substantial justification." In that context, "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious. C.R.S. § 13-17-102(4). "A party seeking attorney fees bears the burden of proving, by a preponderance of the evidence, its entitlement to an award under § 13-17-101, *et seq.*" *City of Holyoke v. Schlachter Farms R.L.L.P.*, 22 P.3d 960, 962-3 (Colo. App. 2001) (citing *American Water Development, Inc. v. City of Alamosa*, 874 P.2d 352 (Colo. 1994)).

Awards of attorney's fees must be reasonable. *Tallitsch v. Child Support Svcs., Inc.* 926 P.2d 143, 147 (Colo. App. 1996). Determinations about the reasonableness of fees are questions of fact for the Trial Court, whose rulings will not be disturbed on review unless patently erroneous and unsupported by the evidence. *Id.* Initial estimates of reasonable attorney fees are reached by calculating the "lodestar" amount, which is found by multiplying the number of hours reasonably expended by a reasonable hourly rate. *Id.* The amount may then be adjusted upward

or downward by the trial court based upon several factors, including the amount in controversy, length of time required to represent the client efficiently, the complexity of the case, the value of the legal services to the client, awards in similar cases, and the degree of success achieved. *Id.*

If an attorney provides a reasonable and rational basis for the work done, he or she should be compensated accordingly. *Spenseri v. Farmers Alliance Mut. Ins. Co.*, 804 P.2d 268, 271 (Colo. App. 1990) (citation omitted). Likewise, if the attorney fails to establish such a basis, limiting attorney fees is proper. *Id.* If a party is able to carry the burden to show that the claimed rates and numbers of hours spent are reasonable, the product is presumed to be the reasonable fee. *Blum v. Stenson*, 465 U.S. 886, 897 (1984).

If a party requests a hearing on the reasonableness of the fees, then the trial court must hold a hearing on the matter. *Pedlow v. Stamp*, 776 P.2d 382, 385-6 (Colo. 1989). However, lacking a specific, timely filed request for a hearing, the trial court has no obligation to conduct a hearing *sua sponte*. *Schmidt Constr. Co. v. Becker-Johnson Corp.*, 817 P.2d 625, 628 (Colo. App. 1991). In this case, neither party requested a hearing on the reasonableness of the fees, so the Court is proceeding to rule on the instant objection without conducting a hearing on the matter.

B. Analysis

In its April 25, 2012, Order, the Court granted Defendants and Intervenor's request for attorneys' fees incurred in defending this action under C.R.S. § 13-17-101, *et seq.* In that Order, the Court found that Plaintiffs had advanced claims that ignored controlling authority and were not supported by any credible evidence at trial. The Court further found that the individual Plaintiffs were personally liable for Defendant and Intervenor's attorney fees. Plaintiffs now

object to the reasonableness and necessity of the fees requested by Defendants and Intervenor on three grounds: (1) Plaintiffs allege that Defendants and Intervenor have failed to establish the reasonableness and necessity for retaining two separate local counsel law firms, while retaining singular lead counsel representation without conflict; (2) Plaintiffs allege that Defendants and Intervenor have failed to establish the reasonableness of the rates for the nineteen timekeepers who billed time related to this matter; and, (3) Plaintiffs claim that additional factors weigh in favor of reducing the amount of fees awarded. The Court addresses each issue in turn, below.

1. Reasonableness of Retaining Separate Local Counsel

The first issue before the court is the reasonableness of Defendants and Intervenor's decision to retain separate local counsel, while maintaining singular lead counsel.

Plaintiffs ask the Court to reduce the fee award by \$31,959.10, the amount billed by the Pendleton Firm, because they claim Defendants and Intervenor unnecessarily retained two separate local law firms while sharing singular lead counsel representation without conflict. Conversely, Defendants and Intervenor assert that the possibility of a conflict between Defendants and Intervenor justified the retention of separate local counsel for Intervenor and the individual Defendants.

Rule 1.7 of Colorado's Rules of Professional Conduct prohibits counsel from representing a client if doing so will be directly adverse to another client.

In this case, although Defendants and Intervenor maintained a single lead counsel, they retained separate local counsel to protect against the possibility of a conflict arising during the course of the litigation. The record demonstrates that this was a complex litigation with extensive discovery that involved six different Defendants and an Intervening Party. Although

no conflict ultimately arose during the course of the litigation, none of the parties, or their counsel, could have anticipated when or if a conflict may arise between any of the individual Defendants and the Intervenor. Additionally, the retention of separate local counsel was more cost-effective and better served the interest of judicial economy than maintaining singular counsel because of the possibility of an unforeseen conflict arising during the course of the litigation. If a conflict had arisen while the parties were maintaining singular counsel, the litigation would have been delayed while the conflicting parties searched for new counsel. Furthermore, the local law firms made a good faith effort to reduce their fees, by charging reduced rates and minimizing their billable hours when possible. Finally, when discovery ended a mere two weeks prior to trial, and no conflicts had arisen, both local counsel firms requested that this Court excuse them from attending the trial, and both firms renewed their requests periodically throughout the trial. All of the requests were denied by this Court. After the trial had ended, one of the local counsel firms withdrew its representation of the individual defendants. These efforts to reduce the amount of fees billed by the separate local law firms support Defendants and Intervenor's position that their usage of separate local counsel was reasonable.

Therefore, the Court finds that Defendants and Intervenor's usage of separate local counsel was not unreasonable in light of the potential conflicts that could have arisen during this complex litigation, along with the costs and time that would have been associated with hiring new counsel in the middle of the litigation had a conflict arisen. Accordingly, Plaintiffs' request that the Court reduce the fees award by \$31,959.10, the amount billed by the Pendleton Firm, is denied.

2. Reasonableness of Amount of Time Billed and Hourly Rates Billed by Timekeepers

The next issue before the Court is the reasonableness of the fees billed by all nineteen of the timekeepers in the three law firms that represented Defendants and Intervenor.

Plaintiffs claim that the fee award should be reduced by one-third because the documentation for the fees is inadequate to establish the reasonableness of the hours expended and the rates charged. Specifically, Plaintiffs allege that the attorneys' usage of "block-billing," or entering multiple tasks into a single time entry without specifying how much time was spent on each task, obscures an analysis of the reasonableness of fees charged because the block entries make it impossible to determine how much time was spent on each task. Conversely, Defendants and Intervenor assert that the hours expended were reasonable in light of the complexity of this case. Defendants and Intervenor claim that block-billing is not *per se* unreasonable, and that in this case, their billing entries are detailed enough to be analyzed for reasonableness.

A reasonable hourly rate is determined by the market rate charged in the community for "similar services by lawyers of reasonably comparable skill, experience, and reputation." *Blum v. Stenson*, 465 U.S. 886, 895 (1984). The "burden is on the fee applicant to provide satisfactory evidence – in addition to the attorney's own affidavit – that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonable comparable skill, experience and reputation." *Id.* at 896. In order for billing records to be deemed reasonable, attorneys do not need to record in great detail how every minute of their time is spent. *Am. Water Dev., Inc. v. City of Alamosa*, 874 P.2d 352, 383 (Colo. 1994). However, attorneys should at least identify the general subject matter of their time expenditures. *Id.* The practice of lumping

multiple tasks into one time entry, or “block-billing” is not prohibited by either the Colorado Rules of Civil Procedure or the Colorado Rules of Professional Conduct. *Crow v. Penrose-St. Francis Healthcare Sys.*, 262 P.3d 991, 1000 (Colo. App. 2011). Although block-billing can constitute a justifiable challenge to the reasonableness of fees, a court considers the entire billing statement in determining whether the referenced tasks and the time spent on them are reasonable in light of the particular issues in an action. *Id.*

In this case, the Court has reviewed all of the billing records filed as attachments to the Motion for Attorneys Fees, and has determined that a reasonable amount of time was expended on this litigation by all three law firms representing Defendants and Intervenor. Here, the record demonstrates that this case has been anything but the simple piece of litigation described by Plaintiffs in their Objection. Although Plaintiffs are correct that this case was a “single issue, declaratory action with no monetary damages,” the Court does not agree with Plaintiffs’ implication that this was a simple case. The record reveals that this was a complex litigation that involved 23 named plaintiffs, six defendants, and an intervening party. The LexisNexis File and Serve record for this case shows 192 total filing transactions. The substantial pleadings in this case, including complaints, counterclaims, motions for summary judgment, and their accompanying briefs, were unusually lengthy, and some of them totaled more than 100 pages. Discovery in this case involved the exchange of more than 24,000 pages of documents, and continued until two weeks before trial. Furthermore, in addition to the voluminous nature of the pleadings and discovery in this case, the record demonstrates that this case was complicated by the international nature of the organizations and individuals involved. Because Plaintiffs raised Intervenor’s legal proceedings in India as a motivation for the individual Plaintiffs’ actions,

counsel for Defendants and Intervenor were forced to spend a large amount of time learning about the Indian judicial system, reviewing pleadings from several parallel Indian cases, and retaining an expert on Indian law. The Court, therefore, does not agree with Plaintiffs that this case was a simple litigation. Instead, as the record makes abundantly clear, this case was an instance of complex litigation with international characteristics that presented unique and unforeseen challenges for counsel on both sides. Therefore, the Court finds that the amount of time spent on the case by all three law firms representing Defendants and Intervenor was reasonable.

Plaintiffs also allege that Defendants and Intervenor failed to provide adequate documentation establishing the reasonableness of the hourly rates billed by all nineteen timekeepers at the three law firms. The Court notes that at the time Plaintiffs' Objection was filed, Defendants and Intervenor had not yet filed documentation establishing the credentials of the timekeepers who billed time on this matter because the reasonableness of the fees had not yet been challenged. After the objection was filed, Defendants and Intervenor filed a reply, to which they attached three affidavits, one from each law firm that had charged legal fees to Defendants and Intervenor. The affidavits conclusively establish that the rates billed were reasonable and were at least equivalent to, if not below, prevailing hourly rates in the Denver legal market. The affidavits establish that the hourly rates charged by all of the law firms working on this case on behalf of Defendants and Intervenor ranged from \$40 per hour for legal assistant work to \$400 per hour for Partner work. These rates are consistent with ordinary rates charged by law firms in the Denver legal market for litigation services. Additionally, the affidavits set forth the credentials of all of the timekeepers who worked on this matter, and establish that the hourly

rates of each individual were substantially connected to the individual's experience and education, thereby making each individual's hourly billing rate reasonable. The Court has reviewed all of the affidavits, and agrees with Defendants and Intervenor that the hourly rates were all reasonable.

Finally, the Court finds that the usage of block-billing in this case does not obscure the billing records to the point where a reduction in a fee award would be necessary or proper. Block-billing is a regular practice among Denver-area law firms. Although block-billing can constitute a justifiable challenge to the reasonableness of fees, in this case, the Court has reviewed all of the billing statements and has determined that the referenced tasks and the time spent on them are reasonable in light of the particular issues in this action. Furthermore, the Court has determined that the billing records sufficiently identify the subject matter of the time expenditures, *see City of Alamosa*, 874 P.2d at 383, and that the time spent on the referenced tasks was reasonable in light of the particular facts of this litigation.

Therefore, the Court finds that the amount of time spent on this case by all three law firms and the billing rates of all of the timekeepers were reasonable. The Court further finds that the usage of block-billing did not obscure the billing records to the requisite level in order for reduction of a fee award to be proper. Accordingly, Plaintiffs request to reduce the fee award by one-third for lack of documentation is denied.

3. Additional Factors

The final issue before the court is whether additional factors justify reducing the amount of fees awarded.

Plaintiffs claim that additional factors such as the alleged simplicity of the litigation and the financial constraints of the individual Plaintiffs weigh in favor of reducing the amount of fees awarded. Defendants and Intervenor assert that additional factors such as the complexity of the case, the Plaintiffs' behavior, and the degree of success and value of services weigh in favor of a full award of the requested amount.

After the Court determines what hours were reasonably expended and multiplies that by a reasonable hourly rate, the amount may then be adjusted upward or downward by the Trial Court based upon several factors, including the amount in controversy, length of time required to represent the client efficiently, the complexity of the case, the value of the legal services to the client, awards in similar cases, and the degree of success achieved. *Tallitsch* 926 P.2d at 147.

Here, as discussed above, the record demonstrates that this case has not been the simple litigation described by Plaintiffs in their Objection. The Court, therefore, does not agree with Plaintiffs that the fees in this case were "extremely high for the number of claims and time spent on discovery and at trial." Instead, as the record makes abundantly clear, this case was an instance of complex litigation with international characteristics that presented unique and unforeseen challenges for counsel on both sides. As such, it required a large amount of work on the part of all of the attorneys involved in the case in order to ensure effective representation. Therefore, it would not be proper for the Court to reduce the fee award because of the alleged simplicity of the case.

Plaintiffs also argue that the financial constraints of the individual defendants justify a reduction in any fee award, because the individual Plaintiffs were members of a non-profit organization, and cannot afford to pay a large attorney fee award. However, Plaintiffs are the

parties who initiated this action, in which the Court has found that their claims ignored controlling case law and were not supported by any credible evidence at trial. Although these Plaintiffs “served in good faith for many years,” the record demonstrates that their adherence to unsupported positions maintained throughout the course of the litigation increased the legal fees incurred by Defendants and Intervenor. In the interest of judicial fairness, parties who initiate actions and insist on adhering to unsupportable positions should not be allowed to avoid paying reasonable attorneys fees simply because they are not wealthy. Therefore, the award of attorneys’ fees should not be reduced because of the financial situations of the individual Plaintiffs.

Accordingly, Plaintiffs’ request to reduce the fee award based on additional factors is denied.

CONCLUSION

WHEREFORE, based upon the reasoning set forth above, the Court hereby ORDERS as follows:

1. Plaintiffs Objection to the Reasonableness and Necessity of the Fees Requested by Defendant is **OVERRULED** in its entirety.
2. Defendants’ and Intervenor’s Motion for Attorneys’ Fees is **GRANTED** in the amount of \$422,086.65.

DONE this 12th day of July, 2012.

BY THE COURT:



MICHAEL A. MARTINEZ

District Court Judge