

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: UNISYS CORPORATION	:	MDL DOCKET
RETIREE MEDICAL BENEFITS ERISA	:	
LITIGATION	:	NO. 969
ADAIR, HARLEY, J., <u>et al.</u>	:	CIVIL ACTION
	:	
v.	:	NO. 03-3924
	:	
UNISYS CORPORATION	:	

MEMORANDUM AND ORDER

Kauffman, J.

**June
26,
2008**

Now before the Court is the Petition of the Prevailing Plaintiffs for Attorney’s Fees and Costs (the “Petition”). For the reasons discussed below, the Petition will be granted with the reductions addressed herein.

I. BACKGROUND

This litigation arises from the 1986 merger of Sperry Corporation (“Sperry”) and Burroughs Corporation (“Burroughs”) into Unisys Corporation (“Unisys” or “Defendant”). Prior to the merger, both Sperry and Burroughs provided retiring employees with post-retirement medical coverage at little or no cost. After the merger, Unisys maintained these “predecessor plans” and created a revised plan to cover employees who retired after April 1, 1989. On January 1, 1993, Unisys terminated the predecessor plans and the revised plan, replacing them with a new

plan that made retirees responsible for increasing levels of financial contribution until January 1, 1996, at which time they were required to begin paying the full cost of plan coverage. As a result of this reduction in medical benefits, a number of lawsuits were filed in different jurisdictions and later were consolidated in the Eastern District of Pennsylvania by the Judicial Panel on Multidistrict Litigation.¹

In early 2003, after an extended period of litigation involving several appeals to the Third Circuit, Unisys and the plaintiff retirees settled most of the claims, including all claims brought by the Sperry retirees. When attempts to settle the remaining cases failed, the parties agreed to sever and try the claims of the Trial Plaintiffs, a group of fourteen individuals who were employed by Burroughs prior to the merger and who later retired from Unisys between 1987 and 1989. Pursuant to a stipulation and Federal Rule of Civil Procedure 53, the claims of the Trial Plaintiffs were referred to Magistrate Judge Thomas J. Rueter to conduct a trial and issue a Report and Recommendation.

The Trial Plaintiffs alleged that Unisys breached its fiduciary duty under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1104(a)(1), in two ways. First, they alleged that Unisys employees affirmatively misrepresented to them that their free or low-cost medical benefits would be maintained throughout their retirement. Second, they alleged that Unisys failed to disclose adequately material information about retiree medical benefits. The Trial Plaintiffs alleged that they relied on these

¹ On June 9, 1993, the parties stipulated that the action could proceed as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2). The class consisted of approximately 21,000 former employees of Sperry, Burroughs, and Unisys. In 2003, the Court decertified the class, finding that the claims of the remaining individual plaintiffs lacked the cohesiveness required for Rule 23(b)(2) class actions. In re Unisys Corp. Retiree Med. Benefits Litig., 2003 U.S. Dist. LEXIS 1577 (E.D. Pa. Feb. 4, 2003).

misrepresentations and inadequate disclosures when making retirement and other important life decisions, and retired earlier than they would have if they had known that Unisys reserved the right to terminate benefits at any time.

On September 29, 2006, after a bench trial and oral argument, Magistrate Judge Rueter issued a Report and Recommendation in which he found that twelve of the fourteen Trial Plaintiffs² had proven their breach of fiduciary duty claims under ERISA and were therefore entitled to an injunction compelling Unisys to re-enroll them in a reconstituted medical plan. Adair v. Unisys Corp. (In re Unisys Corp. Retiree Med. Benefits ERISA Litig.), 2006 U.S. Dist. LEXIS 72026 (E.D. Pa. Sept. 29, 2006). On July 16, 2007, this Court adopted the Report and Recommendation in part and modified it in part.³ Adair v. Unisys Corp. (In re Unisys Corp. Retiree Med. Benefits ERISA Litig.), 2007 U.S. Dist. LEXIS 51906 (E.D. Pa. July 16, 2007). Unisys has appealed this Court's July 16, 2007 Order, and the Trial Plaintiffs have filed a cross-appeal. On August 31, 2007, the Prevailing Plaintiffs filed the instant Petition.⁴ Defendant filed its response on January 3, 2008,

² The twelve plaintiffs who prevailed at trial (the "Prevailing Plaintiffs") are: Theodore Botzum, Mary Castorani, Eugene Endress, Dennis Gallagher, Henry Geneva, Elihu Ginsberg, Howard Hansell, Vernon Horshaw, Helen Peterman, Robert Schieman, Ruth Stringer, and Thomas Yeager. The remaining two plaintiffs, Ernestine DiLoreto and Anne Walnut, did not prevail at trial.

³ The Court modified the Report and Recommendation with respect to the recommendation that the reconstituted plan be reformed to remove Unisys's right to reduce or terminate benefits. The Court instead permanently enjoined Unisys from reducing or terminating benefits in the reconstituted plan. The Court adopted all other aspects of the Report, including all factual findings, without change.

⁴ On October 10, 2007, Unisys moved to stay consideration of the Petition until the Third Circuit resolved the pending appeal. On December 4, 2007, the Court denied the motion to stay. Adair v. Unisys Corp. (In re Unisys Corp. Retiree Med. Benefits ERISA Litig.), 2007 U.S. Dist. LEXIS 89317 (E.D. Pa. Dec. 4, 2007).

and the Prevailing Plaintiffs filed their reply on March 25, 2008.

II. THE FEE PETITION

The Court has discretion to award attorney's fees to prevailing parties in actions brought pursuant to ERISA. See 29 U.S.C. § 1132(g)(1); McPherson v. Employees' Pension Plan of Am. Re-Ins. Co., 33 F.3d 253, 254 (3d Cir. 1994).⁵ In order to determine whether to award fees, the Court must consider five factors:

- (1) the offending party's culpability or bad faith;
- (2) the ability of the offending party to satisfy an award of attorney's fees;
- (3) the deterrent effect of an award of attorney's fees against the offending party;
- (4) the benefit conferred on members of the pension plan as a whole; and
- (5) the relative merits of the parties' positions.

Ursic v. Bethlehem Mines, 719 F.2d 670, 673 (3d Cir. 1983). In weighing the five Ursic factors, the Court "must articulate its considerations, its analysis, its reasons and its conclusions touching on each of the five factors," and "furnish a reasoned basis for its ultimate determination . . . grounded in the policy factors enumerated in Ursic." Anthuis v. Colt Indus. Operating Corp., 971 F.2d 999, 1012 (3d Cir. 1992). The Prevailing Plaintiffs need not show that all five factors weigh in their favor in order to prevail on a petition for attorney's fees. See Fields v. Thompson Printing Co., 363 F.3d 259, 275 (3d Cir. 2004) ("[T]he Ursic factors are not requirements in the sense that a party must demonstrate all of them in order to warrant an award of attorney's fees, but rather they are elements a court must consider in exercising its discretion.").

⁵ "A prevailing party must succeed on 'any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit.'" Wheeler v. Towanda Area Sch. Dist., 950 F.2d 128, 131 (3d Cir. 1991) (quoting Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). Defendant does not dispute that the Prevailing Plaintiffs are "prevailing parties," although it characterizes their success as "limited."

A. Defendant's Culpability or Bad Faith

Under Ursic, the Court need not find that Defendant acted in bad faith in order to find that this factor favors the Prevailing Plaintiffs. As the Third Circuit has explained,

[a] losing party may be culpable . . . without having acted with an ulterior motive. In a civil context, culpable conduct is commonly understood to mean conduct that is 'blameable; censurable; . . . at fault; involving the breach of a legal duty or the commission of a fault. . . . Such conduct normally involves something more than simple negligence. . . . [On the other hand, it] implies that the act or conduct spoken of is reprehensible or wrong, but not that it involves malice or a guilty purpose.'

McPherson, 33 F.3d at 256-57 (quoting Black's Law Dictionary (6th ed. 1990)). "In short, culpability is less than bad faith and more than mere negligence." Addis v. Ltd. Long-Term Disability Program, 2006 U.S. Dist. LEXIS 57856, at *3 (E.D. Pa. Aug. 3, 2006). The Prevailing Plaintiffs argue that Defendant is culpable because it breached its fiduciary duty to describe accurately and adequately the promised retiree medical benefits, thereby inducing the Burroughs retirees to retire and take other financially detrimental actions.

In opposition to the Petition, Defendant argues that because the plans and other contemporaneous documents contained a written reservation of rights that allowed it to change the terms of the plans at any time, its verbal omissions as to the reservation of rights are insufficient to establish culpable conduct.⁶ Defendant further explains that it cannot be held culpable "merely because it has taken a position that did not prevail in litigation." McPherson, 33 F.3d at 257. Accordingly, Defendant argues that even though its conduct was found to violate

⁶ In many respects, Defendant's position as to this factor raises the same arguments it made in its objections to Magistrate Judge Rueter's Report and Recommendation.

ERISA, it is not the type of conduct that warrants imposition of attorney's fees.⁷

As Magistrate Judge Rueter and this Court found, Defendant "misrepresented the cost and duration of retiree medical benefits under the Burroughs Plan despite [Defendant's] reserved right to amend or terminate retiree medical benefits," and "each Trial Plaintiff's potential reliance in making a decision regarding retiree medical benefits based upon [Defendant's] misrepresentations was reasonably foreseeable given the content and context of the statements made to the Trial Plaintiffs." Adair, 2006 U.S. Dist. LEXIS 72026, at *132, *134. Defendant knew that medical benefits played an important role in its employees' retirement decisions, see id. at *135, and it also knew "that by failing to qualify [misleading] statements with the caveat that [it] could modify or terminate the retirees' medical benefits at any time, its employees would be misled when they made the important decision to retire." Id. at *138. Likewise, Defendant "failed to adequately inform each of the Trial Plaintiffs about the cost and duration of retiree medical benefits under the Burroughs Plan," and it "knew of the confusion generated by its silence." Id. at *145.⁸ As a result of this deliberate conduct, the Prevailing Plaintiffs retired

⁷ Defendant also emphasizes that in the course of the litigation, the Prevailing Plaintiffs' other claims for vested benefits under the Burroughs Medical Plan and for estoppel were dismissed, and that the Prevailing Plaintiffs only received a small portion of the relief they sought. Defendant argues that the "limited" success the Prevailing Plaintiffs achieved demonstrates that its conduct was not culpable. The Court disagrees. The previous findings that the Prevailing Plaintiffs had failed to establish other claims and that ERISA § 502(a)(3) limits the types of relief available to them are irrelevant to the determination of whether the conduct giving rise to the successful breach of fiduciary duty claims was culpable.

⁸ For example, even though Defendant relied on a written reservation of rights to justify the changes to retiree benefits, it "failed to present this information in a sufficiently clear manner," by, inter alia, downplaying the significance of previous medical benefit changes, portraying such changes in a positive light, and referring to retiree medical benefits as a separate plan from the active employee benefit plan. Adair, 2006 U.S. Dist. LEXIS 72026, at *146-47.

prematurely, thereby permitting Defendant to reap financial benefits by cutting the salaries of its most senior employees. See id. at *26 (“When staffing levels did not coincide with [Defendant’s] desired financial position, there were financial advantages to . . . encouraging early retirement. [Defendant] could realize a financial savings if senior employees retired . . . because their salaries were typically higher than that of junior employees.” (citation omitted)); see also Adair, 2007 U.S. Dist. LEXIS 51906, at *13 (“The company knew its employees were confused and that this confusion would benefit the company financially.”).

In short, “this case does not appear to involve a simple lapse of judgment or care on the part of [Defendant].” McPherson, 33 F.3d at 258. Although the legal framework for the breach of fiduciary duty claim in this case was not clarified until the Third Circuit’s decision in In re Unisys Corp. Retiree Medical Benefit ERISA Litigation, 57 F.3d 1255, 1264 (3d Cir. 1995), Defendant was aware that its actions were likely to result in employee unrest and litigation. See Adair, 2006 U.S. Dist. LEXIS 72026, at *45 (concluding that Defendant “was aware that employees and retirees would respond to the announced changes to retiree medical benefits by questioning [its] legal right to make such changes” and citing documents from 1991 and 1992 in which Defendant forecasted the possibility of litigation based on unfavorable reactions to the changes).

The duty of a fiduciary to convey complete and accurate information to beneficiaries was established long before Defendant engaged in the conduct at issue in this case. See, e.g., Restatement (Second) of Trusts § 173 cmt. d (1959); Eddy v. Colonial Life Ins. Co., 919 F.2d 747, 750 (D.C. Cir. 1990) (“The duty to disclose material information is the core of a fiduciary’s responsibility, animating the common law of trusts long before the enactment of ERISA. At the

request of a beneficiary (and in some circumstances upon his own initiative), a fiduciary must convey complete and correct material information to a beneficiary.”); Peoria Union Stock Yards Co. Retirement Plan v. Penn Life Mut. Ins. Co., 698 F.2d 320, 326 (7th Cir. 1983) (“[T]here is little doubt that if Penn Mutual was a fiduciary, the alleged misrepresentations and omissions were breaches of its fiduciary obligations. Lying is inconsistent with the duty of loyalty owed by all fiduciaries and codified in section 404(a)(1) of ERISA.”).⁹ Rather than fulfill this duty, Defendant perpetuated the confusion it knew existed by continuing to mislead its employees. Accordingly, the first Ursic factor weighs in favor of an award of attorney’s fees.

B. Ability of Defendant to Satisfy a Fee Award

Plaintiff argues that Defendant, a large corporation with billions of dollars in assets, can satisfy a fee award. Defendant does not contest this assertion. Accordingly, the Court finds that this factor also weighs in favor of a fee award. See, e.g., Ellison v. Shenango, Inc. Pension Bd., 956 F.2d 1268, 1277 (3d Cir. 1992) (“Since Shenango does not dispute the sufficiency of the

⁹ Courts have long recognized that ERISA’s fiduciary duty provisions are based on the common law of trusts. See, e.g., Cent. States v. Cent. Transp., Inc., 472 U.S. 559, 570 (1985); Bixler v. Cent. Pa. Teamsters Health & Welfare Fund, 12 F.3d 1292, 1299 (3d Cir. 1993); Rosen v. Hotel & Restaurant Employees & Bartenders Union, 637 F.2d 592, 599-600 (3d Cir. 1981). Thus, even if courts had not decided whether a breach of fiduciary duty claim would arise under ERISA based on the facts of this case, the common law of trusts provided clear guidance that a breach of fiduciary duty could result from misrepresenting or omitting material information when communicating with beneficiaries. Moreover, as reflected in Judge Cahn’s opinion reinstating the Sperry retirees’ breach of fiduciary claims, law review articles from the mid-1980s warned against the conduct Defendant practiced in this case: “Management should have its exit interview personnel adopt a simple mantra, to be repeated religiously and without deviation: Retiree welfare benefits are subject to change or termination.” In re Unisys Corp. Retiree Med. Benefits Litig., 1994 U.S. Dist. LEXIS 8549, at *100 (E.D. Pa. June 23, 1994) (quoting E. Van Olsen, Nonpension Retiree Benefits: Are They For Life? Management Guidelines to the Issue, 36 Lab. L.J. 402, 407 (1985)). Accordingly, to the extent Defendant argues that it is not culpable because it is being held to an unforeseeable standard, the Court rejects this argument.

Plan's assets to cover an award of fees in this case, the district court should have resolved the second Ursic factor in favor of an award of fees to Ellison.”).

C. Deterrence

As the Third Circuit has explained, the Court must consider “whether it would serve the objectives of ERISA to award counsel fees in an effort to deter conduct of the kind in which [Defendant] engaged.” McPherson, 33 F.3d at 258; see also Addis, 2006 U.S. Dist. LEXIS 57856, at *6 (“In weighing the deterrence factor, the court looks not only to bad faith conduct but to any behavior that should be avoided in the context of achieving ERISA’s objectives.”). The award of attorney’s fees is designed not to punish prior behavior but to encourage future fairness. See Addis, 2006 U.S. Dist. LEXIS 57856, at *6. The Prevailing Plaintiffs argue that awarding attorney’s fees in this case is appropriate to deter Defendant and other fiduciaries from engaging in similar conduct, and to ensure compliance with ERISA generally by encouraging plan participants to bring cases even when the costs of litigation may outweigh any potential recovery.

Defendant argues that because any misrepresentations or omissions it made are non-culpable, an award of fees would have no deterrent effect. See, e.g., Small v. First Reliance Standard Life Ins. Co., 2005 U.S. Dist. LEXIS 7942, at *6 (E.D. Pa. May 4, 2005); Maiuro v. Fed. Express Corp., 843 F. Supp. 935, 944 (D.N.J. 1994).

As explained above, however, Magistrate Judge Rueter and this Court found that Defendant’s culpable conduct was undertaken knowingly. Accordingly, an award of attorney’s fees would deter such knowing conduct in the future. See Smith v. Contini, 2003 U.S. Dist. LEXIS 14336, at *8-9 (D.N.J. Aug. 19, 2003) (“For deterrence to be effective . . . the conduct to be deterred must have been undertaken knowingly.”). Defendant knew that its employees were

confused about retiree medical benefits and that such benefits played an integral role in their employees' retirement decisions. Defendant also knew that early retirement decisions would benefit it financially by reducing staffing levels and eliminating higher salaries for senior employees. Despite this confusion, Defendant continued to make misleading and incomplete representations, and the Court finds that an award of attorney's fees will "encourage the offending party to comply with the general objectives of ERISA and treat plan participants fairly in the future." Music v. Prudential Ins. Co. of Am., 2007 U.S. Dist. LEXIS 77771, at *8 (M.D. Pa. Oct. 19, 2007).

D. Benefits to Other Plan Members

In the instant case, the Prevailing Plaintiffs are twelve of the original fourteen "test cases" of the remaining Burroughs retirees. Although the Prevailing Plaintiffs brought claims asserting only their individual rights, the rulings in this case have established a legal framework for the claims of the remaining Burroughs retirees and demonstrated that, depending on the circumstances of each individual retiree, a breach of fiduciary duty claim may be viable.¹⁰ Based on the efforts of the Prevailing Plaintiffs, the parties have a better understanding of the strengths and weaknesses of the remaining claims, thus allowing for prompt resolution or settlement. Defendant does not contest the assertion that the Prevailing Plaintiffs have conferred a benefit on other plan members, and the Court concludes that this factor also weighs in favor of a fee award.

E. Relative Merits of the Parties' Positions

"As with the first Ursic factor, the fact that [Defendant's] positions have not been

¹⁰ As the results of the trial before Magistrate Judge Rueter demonstrate, not all breach of fiduciary claims will be successful, depending on facts particular to each individual Burroughs retiree.

sustained does not alone put the fifth factor in the column favoring an award.” McPherson, 33 F.3d at 258. Likewise, it is unnecessary to find that Defendant litigated in bad faith to justify a fee award. Id. The Court’s inquiry focuses on “the losing party’s position relative to the prevailing plaintiff’s. The question is not whether, but how much, this factor weighs in favor of the prevailing party.” Addis, 2006 U.S. Dist. LEXIS 57856, at *7-8. The Prevailing Plaintiffs argue that because the merit of their position has been confirmed by this Court and the Court of Appeals, this factor weighs in favor of a fee award.

In response, Defendant contends that because the Prevailing Plaintiffs did not succeed on the majority of their claims, this factor weighs against a fee award. Defendant explains that the Prevailing Plaintiffs originally brought claims for vested benefits and for estoppel, and that during the course of the litigation, these claims were dismissed on summary judgment. Defendant also argues that only twelve of the fourteen Trial Plaintiffs actually prevailed before Magistrate Judge Rueter, and that even those twelve were denied much of the relief they sought, including all claims for monetary damages and claims seeking a constructive trust or accounting for profits. Defendant explains that because the Prevailing Plaintiffs only succeeded in obtaining approximately one-quarter of the value of the total relief sought, their success is limited and warrants a denial of a fee award.¹¹

Although the Court recognizes that Defendant’s legal position was not wholly without

¹¹ Defendant bases this percentage on the fact that the Trial Plaintiffs sought retroactive restitution in the amount of \$2,301,565.90 plus interest, in addition to other prospective and injunctive relief. When compared to the Prevailing Plaintiffs’ valuation of the injunctive relief they received (\$833,000), Defendant explains that the relief ultimately obtained is approximately one-fourth of that which was sought.

merit,¹² it finds that on balance, this factor weighs slightly in favor of an award of attorney's fees. The fact that the Prevailing Plaintiffs have succeeded after over a decade of hard-fought, extensive litigation involving several dispositive motions and decisions by the Third Circuit demonstrates that their legal position has significant merit.¹³

F. Conclusion

After analyzing the Ursic factors, the Court concludes that a fee award is appropriate in this case. No factor weighs against a fee award, and the Court finds no reason to deviate from the principle that “the defendant in an ERISA action usually bears the burden of attorney’s fees for the prevailing plaintiff or plaintiff class, thus ‘encouraging private enforcement of the statutory substantive rights, whether they be economic or noneconomic, through the judicial process.’” Brytus v. Spang & Co., 203 F.3d 238, 242 (3d Cir. 2000) (quoting Report of the Third Circuit Task Force, Court Awarded Attorney Fees 15 (Oct. 8, 1985)).

¹² A number of courts have found that where a company clearly communicates its right to change or terminate benefits in writing, verbal omissions of the same information do not constitute a breach of fiduciary duty. See, e.g., Frahm v. Equitable Life Assurance Soc’y of the U.S., 137 F.3d 955, 958-60 (7th Cir. 1998); Sprague v. Gen. Motors Corp., 133 F.3d 388, 404-05 (6th Cir. 1998). Notwithstanding the factual differences between the instant case and such cases, the fact that other courts have reached differing conclusions demonstrates that Defendant did not take a wholly meritless legal position.

¹³ To the extent that analysis of this factor entails equitable considerations, the Court finds no conduct by the Prevailing Plaintiffs that weighs against a fee award. See Brown v. Cont’l Cas. Co., 2005 U.S. Dist. LEXIS 16681, at *7-8 (E.D. Pa. Aug. 11, 2005) (analyzing the fifth Ursic factor under a “holistic equitable analysis” and finding that because “there is no indication in the record of any misconduct or undesirable behavior by [the plaintiff] that might detract from the merits of her claim,” this factor favored a fee award).

III. REASONABLENESS OF THE FEE REQUEST

The Prevailing Plaintiffs seek attorney's fees in the amount of \$2,315,066.50, as well as reimbursement of expenses totaling \$97,779.98.¹⁴ In support of the Petition, they have attached a series of affidavits detailing the background and experience of each attorney who has performed work in this litigation, the specific services each attorney provided to the Prevailing Plaintiffs, chronological itemizations of each task performed, explanations of the services excluded from the fee calculations, each attorney's hourly billing rate and the reasonableness of that rate when compared to lawyers of similar experience in the relevant legal market,¹⁵ and the documented expenses incurred during the course of the litigation. See Aff. of Alan M. Sandals, attached to the Pet. at Ex. B; Aff. of Jonathan D. Berger, attached to the Pet. at Ex. C; Aff. of Clayton H. Thomas, Jr., attached to the Pet. at Ex. D; Aff. of Joseph A. Golden, attached to the Pet. at Ex. E; Aff. of Charles Gottlieb, attached to the Pet. at Ex. F; Decl. of Henry H. Rossbacher, attached to the Pet. at Ex. G.

The Prevailing Plaintiffs also have submitted a declaration by Arlin M. Adams, a retired Judge of the Third Circuit who currently is in private practice. In this declaration, Judge Adams explains that based on his familiarity with the legal fees traditionally charged in complex litigation, his review of the recent schedule of fees compiled by Community Legal Services of

¹⁴ The Prevailing Plaintiffs originally sought attorney's fees in the amount of \$2,320,384.25 and costs totaling \$97,955.28. After Defendant filed its opposition challenging some of the specific entries in the fee itemizations, the Prevailing Plaintiffs have adjusted their calculations and removed certain entries originally included in error.

¹⁵ Because this litigation developed in the Philadelphia area, the "forum rate rule" requires the Court to examine the fees charged in light of the prevailing rate in Philadelphia. See, e.g., Interfaith Cmty. Org. v. Honeywell Int'l, Inc., 426 F.3d 694, 705 (3d Cir. 2005).

Philadelphia, and his review of the qualifications of Plaintiffs' counsel, he concludes "that the hourly rates charged by each of the attorneys and utilized in computing the lodestar value of the services rendered by plaintiffs' counsel . . . are comparable to those of other similarly situated lawyers in the Philadelphia legal marketplace and that they are reasonable." Decl. of Arlin M. Adams ¶ 26, attached to the Pet. at Ex. H. Judge Adams also finds that the fees charged for services performed by paralegals, legal assistants, and other support staff "are reflective of the rates charged in Philadelphia and reasonable on their face." Id. ¶ 50.

A. Attorney's Fees

"A useful starting point for determining the reasonableness of the fee is the lodestar calculation." Hahnemann Univ. Hosp. v. All Shore, Inc., 514 F.3d 300, 310 (3d Cir. 2008) (citing United Auto. Workers Local 259 Soc. Sec. Dep't v. Metro Auto Ctr., 501 F.3d 283, 290 (3d Cir. 2007)). To calculate the lodestar, the Court must determine "the reasonable number of hours expended on the litigation multiplied by a reasonable hourly rate." Id. (citing United Auto. Workers, 501 F.3d at 290). "The product of this calculation 'is a presumptively reasonable fee, but it may still require subsequent adjustment.'" Id. (quoting United Auto. Workers, 501 F.3d at 290); see also Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1990) ("The lodestar is presumed to be the reasonable fee."). The Court is required to exclude hours not reasonably expended, including hours that are "excessive, redundant, or otherwise unnecessary" as well as hours spent on unsuccessful claims unrelated to the prevailing claims. Id. To adjust for the delayed payment of fees, the lodestar must be calculated according to the current market rate for the services provided. See, e.g., Lanni v. New Jersey, 259 F.3d 146, 149-50 (3d Cir. 2001).

Defendant does not challenge the reasonableness of the hourly rates, and after considering

the affidavits submitted with the Petition, the Court concludes that the rates are reasonable. Defendant does, however, raise three main objections to the Petition: (1) the fee request is unreasonable because it does not take into account the limited success the Prevailing Plaintiffs obtained and includes work performed for unsuccessful claims; (2) the Petition improperly seeks fees and costs for unrelated work performed during the pendency of the now-decertified class action; and (3) the Petition seeks excessive and unreasonable fees for services that were described vaguely, administrative in nature, or overstuffed. “Where an opposing party lodges a sufficiently specific objection to an aspect of a fee award, the burden is on the party requesting the fees to justify the size of its award.” Interfaith Cmty. Org., 426 F.3d at 713.

1. Unsuccessful Claims/Limited Success

Defendant argues that because the Prevailing Plaintiffs achieved only “limited” success,¹⁶ any fees awarded should be reduced to reflect this lack of complete success.¹⁷ Defendant

¹⁶ Defendant bases its definition of “limited” success on the fact that the Prevailing Plaintiffs lost on two out of the three original class action claims and that, as described above, they achieved only one-fourth of the monetary value of the relief originally sought. To the extent Defendant seeks to apply a mathematical formula comparing the number of claims won and lost, “[s]uch a ratio provides little aid in determining what is a reasonable fee in light of all the relevant factors.” Hensley, 461 U.S. at 435 n.11. Rather, the Court will consider the overall result of the litigation in determining whether, as Defendant argues, the success achieved was “limited.” See id. at 435 (“The result is what matters.”).

¹⁷ The Third Circuit has rejected the notion that the amount of attorney’s fees awarded should be proportional to the relief obtained in an ERISA case. See, e.g., Hahnemann, 514 F.3d at 311; United Auto. Workers Local 259, 501 F.3d at 295. However, the amount of relief obtained remains relevant to the fee inquiry “not because of some ratio that the court ought to maintain between damages and counsel fees,” but because of the longstanding principle that “counsel fees should only be awarded to the extent that the litigant was successful.” Washington v. Phila. County Court of Common Pleas, 89 F.3d 1031, 1042 (3d Cir. 1996). “Because the focus is on the ‘degree of success,’ and not success as defined in absolute numbers, this comparison does not necessitate proportionality.” United Auto. Workers Local 259, 501 F.3d at 296.

identifies three aspects of the Petition that should be reduced in light of the Prevailing Plaintiffs' limited trial success: (1) time spent calculating or analyzing the unsuccessful requests for monetary damages and retroactive relief; (2) work performed for the two Trial Plaintiffs who did not prevail at trial; and (3) time spent formulating objections to the Report and Recommendation.

a. Work on Monetary Damages and Retroactive Relief

Defendant contends that time spent calculating or analyzing the Prevailing Plaintiffs' monetary damages and retroactive relief should be excluded because they were denied all such damages and relief. As the Supreme Court has explained, however, in cases where "a plaintiff has obtained excellent results . . . the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit." Hensley, 461 U.S. at 435. Rather than apply a rigid formula to determine what claims succeeded and what percentage of relief was obtained, the Court instead notes that the twelve Prevailing Plaintiffs have, after more than a decade of hard-fought litigation involving three interlocutory decisions by the Third Circuit and several sets of summary judgment motions, established valid breach of fiduciary claims, thereby creating precedent for future ERISA cases as well as a framework for the prompt resolution of the remaining individual claims against Defendant.

When considered in the context of the litigation as a whole, the Court finds that the Prevailing Plaintiffs achieved "excellent results" and therefore declines to strike the fees incurred pursuing ultimately unsuccessful claims for relief. See id. at 435 n.11 ("Nor is it necessarily significant that a prevailing plaintiff did not receive all the relief requested. For example, a plaintiff who failed to recover damages but obtained injunctive relief, or vice versa, may recover a fee award based on all hours reasonably expended if the relief obtained justified that

expenditure of attorney time.”).¹⁸ As the Hensley Court explained, “[w]here a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee.” Id. at 435.

b. Work Performed for Non-Prevailing Trial Plaintiffs

Defendant also contends that the Petition improperly includes work performed for Trial Plaintiffs Walnut and DiLoreto and that because they did not prevail at trial, fees attributable to work performed on their behalf should be stricken from the Petition. Defendant maintains that because Walnut and DiLoreto had distinct but ultimately unsuccessful claims, work performed for them did not further the case of the Prevailing Plaintiffs and therefore cannot be included in the Petition.

In order to demonstrate that the failed claims of Walnut and Diloreto should not be included in the Petition, Defendant “must show not only that the [claims were] unsuccessful, but also that the claims ‘were distinct in all respects from the claims on which the party did succeed.’” N. Am. Specialty Ins. Co. v. Chichester Sch. Dist., 2001 U.S. Dist. LEXIS 24116, at *22 (E.D. Pa. Oct. 4, 2001) (internal quotation marks omitted) (quoting Rode, 892 F.2d at 1183). Defendant cannot make such a showing because the claims of the successful and unsuccessful Plaintiffs arose from the same set of core facts and involved allegations that Defendant behaved similarly with respect to each of them. See, e.g., W. Va. Univ. Hosps. Inc. v. Casey, 898 F.2d 357, 361 (3d Cir. 1990) (“One useful ‘starting point’ for separating an unrelated, unsuccessful

¹⁸ The Court notes that the “excellent results” achieved extend beyond the injunctive relief obtained by the twelve Prevailing Plaintiffs. At trial, they demonstrated that Defendant breached its fiduciary duty by making material representations and omissions about retirement medical benefits, thus furthering the claims of the remaining individual plaintiffs. Given the “test case” context of the trial before Magistrate Judge Rueter, the Court concludes that the results were “excellent.”

claim from a related unsuccessful claim is to determine whether a particular unsuccessful claim shares a ‘common core of facts’ with the successful claim or is based on a ‘related legal theory.’” (quoting Hensley, 461 U.S. at 435)).

Indeed, the interrelatedness of the claims is evident in light of Magistrate Judge Rueter’s factual findings at trial. Although Walnut and DiLoreto were unable to establish the detrimental reliance element required for successful individual claims, their testimony and evidence were used collectively to demonstrate Defendant’s pervasive misconduct toward all Trial Plaintiffs. See Adair, 2006 U.S. Dist. LEXIS 72026, at *126-28, *132 (finding that Walnut and DiLoreto credibly testified that human resources officials had apparent authority to communicate information about benefits and that Defendant misrepresented the cost and duration of retiree medical benefits). Thus, work performed on behalf of Walnut and DiLoreto furthered the claims of the Prevailing Plaintiffs, and the Court declines to strike these fees from the Petition. See, e.g., In re Unisys Corp. Retiree Med. Benefits ERISA Litig., 886 F. Supp. 445, 470, 474 (E.D. Pa. 1995) (finding that, in the context of a class settlement, “hours expended on behalf of both the settlement class and other plaintiffs” warranted full compensation and citing cases supporting the conclusion that claims brought “on behalf of both successful and unsuccessful plaintiffs” should be compensated fully).

c. Unsuccessful Objections to the Report and Recommendation

Defendant also argues that fees incurred in preparing the Trial Plaintiffs’ objections to Magistrate Judge Rueter’s Report and Recommendation should not be included in the fee award. The Court agrees. While the Prevailing Plaintiffs achieved excellent trial results, the Trial Plaintiffs’ objections—which asked the Court to conclude that Walnut and DiLoreto had

established valid claims and that the Prevailing Plaintiffs were entitled to damages—unsuccessfully attempted to revive failed claims and did not further the successful claims in any way. While the work performed in preparation for trial—including work estimating damages and other retroactive relief—can be justified by the excellent results obtained, the objections to the Report and Recommendation were entirely unsuccessful and do not qualify for inclusion in the Petition.¹⁹ The same holds true with respect to the Trial Plaintiffs’ reply in further support of their objections: this reply did not contribute to the Prevailing Plaintiffs’ success and therefore will not be included in the fee award.

The Court disagrees, however, with Defendant’s argument that all work labeled “objections” should be stricken from the Petition. As the Court’s Memorandum and Order dated July 16, 2007 reflects, the Court also overruled Defendant’s objections, which, if successful, would have defeated the claims of the Trial Plaintiffs. Accordingly, the Court finds that the Trial Plaintiffs’ responses to Defendant’s objections did contribute to their success and are fully compensable.

Defendant has identified what it believes to be improper objections-related work in

¹⁹ The Hensley Court explained that in many cases, “[m]uch of counsel’s time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis. Such a lawsuit cannot be viewed as a series of discrete claims. Instead the district court should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation.” 461 U.S. at 435. While separating out the unsuccessful work from the successful work at the pretrial stage would be a difficult, if not impossible, task to perform fairly, the Court finds that because the Trial Plaintiffs’ objections were overruled completely, it can separate these claims from the remainder of the action. The Court believes that because the pretrial work achieved excellent results, whereas the post-trial work achieved no success, differentiating between the two for the purpose of attorney’s fees is a fair method to compensate the Prevailing Plaintiffs’ counsel for their success while ensuring that Defendant is not required to pay excessive fees for unsuccessful work.

Exhibit E to its Response. In determining which entries should be stricken from Exhibit E, the Court will proceed as follows. First, the Court will allow the entries in Exhibit E dated 10/2/06 to 10/4/06, which include entries for reading the Report and Recommendation, participating in conference calls among co-counsel, and informing the Trial Plaintiffs of Magistrate Judge Rueter's decision.²⁰ Second, the Court will exclude all entries in Exhibit E dated 10/5/06 to 10/23/06, which relate to the Trial Plaintiffs' objections to the Report and Recommendation.²¹ Third, with four exceptions,²² the Court will include all entries in Exhibit E dated 10/24/06 to 11/13/06, which relate to the Trial Plaintiffs' response to Defendant's objections. Fourth, with three exceptions,²³ the Court will exclude all entries in Exhibit E dated 11/14/06 through 12/1/06,

²⁰ Defendant concedes that a reasonable amount of time spent reading the Report and Recommendation is compensable. The Court has reviewed these entries and concludes that the time spent was reasonable for reviewing and discussing Magistrate Judge Rueter's decision.

²¹ Both parties filed their objections on October 23, 2006. Accordingly, any "objections" work performed for the Trial Plaintiffs prior to that date was related to their objections, as Defendant's objections had not been filed.

²² Because they clearly relate to the Trial Plaintiffs' objections, the Court will strike the following four entries:

(1) Scott Lempert: 0.3 hours billed at \$320 per hour on 10/24/06 for "Telephone call with co-counsel re Plaintiffs' Objections to Judge Rueter's Report and Recommendation";

(2) Scott Lempert: 0.3 hours billed at \$320 per hour on 10/24/06 for "Prepare Plaintiffs' objections to Judge Rueter for distribution";

(3) Charles Gottlieb: 1.6 hours billed at \$375 per hour on 10/26/06 for "Review Trial Plaintiffs' objections to [Rueter's] recommendation and letters to Trial Plaintiffs advising of the objections and status"; and

(4) Charles Gottlieb: 0.2 hours billed at \$375 per hour on 10/26/06 for "Telephone conference with Trial Plaintiff—discuss Plaintiff objections and possible time line."

²³ The Court will include the following entries because they clearly relate to the Trial Plaintiffs' response to Defendant's objections:

(1) Alan Sandals: 0.4 hours billed at \$500 per hour on 11/14/06 for "Review Plaintiffs' Responses on Unisys Objections"

(2) Clayton Thomas Jr.: 0.5 hours billed at \$350 per hour on 11/29/06 for "Receipt of E-

which relate to the Trial Plaintiffs' reply in support of their objections.

After making the aforementioned adjustments, the Court concludes that \$48,072.58 will be stricken from the Petition.

2. Unrelated Work

Defendant next argues that all work performed prior to the filing of the Adair complaint in 2003 should not be compensated. The Prevailing Plaintiffs are seeking compensation for fees and costs incurred as early as 1994, and Defendant argues that the Prevailing Plaintiffs have not met their burden of showing that all pre-Adair work was used in this case. In support of its argument that the pre-Adair work should not be compensated, Defendant relies on the Third Circuit's decision in Gulfstream III Associates, Inc. v. Gulfstream Aerospace Corp., 995 F.2d 414, 420 (3d Cir. 1993), which explained:

[I]f the plaintiff can prove that the fees and expenses incurred in the [related] litigation resulted in work product that was actually utilized in the instant litigation, that the time spent on [the related] litigation was 'inextricably linked' to the issues raised in the present litigation, and that plaintiff has not previously been compensated for those fees and expenses, then the district court may include those fees and expenses in its fee award.

Defendant's argument that the Prevailing Plaintiffs have not shown that the work is "inextricably linked" to the instant litigation is misplaced, however, in light of one crucial fact: the Adair litigation is not "related" to the original class action, but is instead the same litigation proceeding

Mail . . . with Unisys Reply Memorandum to Defendant's Objections"

(3) Clayton Thomas Jr.: 0.3 hours billed at \$350 per hour on 11/29/06 for "Receipt and Review Notice of Filing from E.D. Pa. of Defendant's Objections"

To the extent that some of the remaining entries in this time period, such as "Analyze Unisys Brief; Analyze Defense Cases" and "Review Plaintiffs and Unisys Answering Briefs," are ambiguous as to which objections the entries refer, the Court will read the ambiguity against the Prevailing Plaintiffs because "the burden is on the party requesting the fees to justify the size of its award" in the face of Defendant's specific objections. Interfaith Cmty. Org., 426 F.3d at 714.

under a different caption. After the original class action was decertified, the parties agreed by stipulation to continue the class litigation as individual actions, and Defendant acknowledged as much at the trial before Magistrate Judge Rueter. See Oct. 20, 2005 Trial Tr. 155, attached to the Prevailing Plaintiffs' Reply at Ex. B (explaining that because of the Court's decertification ruling, the case "was refiled" and that out of the original class of "7,000 or so Burroughs regular retirees, now we're down to a group of a few hundred who decided to actually pursue their claims on an individual basis. The action in which the plaintiffs asserted their claims is the Adair case"). Accordingly, the work performed pre-decertification was continued after decertification. The Court therefore rejects Defendant's argument that all pre-Adair work should be excluded.

Defendant next argues that even if pre-Adair work can be included in the Petition, specific tasks from that time period must be excluded. Defendant raises four interrelated challenges to specific work performed: (1) time spent opposing Defendant's 2000 summary judgment motion; (2) depositions and other work performed for plaintiffs who did not go to trial; (3) settlement negotiations; and (4) work allegedly performed solely on behalf of Sperry retirees.

a. The Summary Judgment Motion

Defendant argues that the fee request for work performed in opposition to its 2000 summary judgment motion is overbroad because it includes work performed for Burroughs retirees who may or may not prevail, depending on the specific factual circumstances of each case. As the Prevailing Plaintiffs explain, however, Defendant's summary judgment motion was filed when the action was proceeding as a class. Therefore, a ruling in favor of Unisys would have defeated all claims, including those of the Prevailing Plaintiffs. In response to this

dispositive motion, the class submitted evidence from various class members as well as evidence obtained from Defendant in discovery. The cumulative effect of this evidence led to the denial of Defendant's motion, thus preserving the class claims. The fact that the response to Defendant's summary judgment motion also provided benefits to other class members—some of whom, as Defendant correctly points out, may or may not achieve success on their pending claims—does not mean that the work was redundant or unnecessary with respect to the Prevailing Plaintiffs.²⁴ Cf. In re Unisys, 886 F. Supp. at 475 (rejecting the argument that recovery of fees expended on both settling and non-settling plaintiffs would be premature “in the event that the present settlement turns out to be the only victory” because the challenged work “fully, albeit not solely, benefitted the settlement class”). Rather than attempt to structure a piecemeal award based on the percentage of summary judgment work that directly benefitted the Prevailing Plaintiffs and no other parties,²⁵ the Court concludes that the fee award should include a one-time only award for the work that preserved the ultimately prevailing claims, whether or not claims of other retirees succeed as a result.

²⁴ In order to prevent duplicative recovery, the Prevailing Plaintiffs' counsel will seek these fees one time only.

²⁵ As discussed above, the Supreme Court has noted that in many cases, “[m]uch of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis.” Hensley, 461 U.S. at 435. In the context of the challenged summary judgment work, it is equally difficult to divide the hours expended on a plaintiff-by-plaintiff basis. Defendant offers no method to determine how to apportion the summary judgment fees fairly between the twelve Prevailing Plaintiffs and the remaining individual plaintiffs. Rather, it urges the Court simply to deny all such fees as premature, despite the fact that the summary judgment work was a “but for” cause of the Prevailing Plaintiffs' victory.

b. Work for Non-Trial Plaintiffs

Defendant also challenges work performed specifically for non-trial plaintiffs, arguing that this work should be excluded because it was unrelated to the claims of the Prevailing Plaintiffs. To some extent, the Prevailing Plaintiffs agree with this assessment and have reduced their fee request accordingly.²⁶ The Prevailing Plaintiffs note that the remaining items identified by Defendant relate either (1) to work related to the evidence from Unisys benefits manager Ronald Cheroske, who was familiar with company practices and provided documents and deposition testimony used at trial, or (2) to work performed in response to Defendant's 2000 summary judgment motion. As discussed above, the fact that such work either involved non-trial plaintiffs or preserved their claims does not detract from the fact that this work also directly benefitted the Prevailing Plaintiffs. Accordingly, the Court rejects Defendant's challenge to inclusion of this work.

c. Settlement Negotiations

Defendant next argues that settlement negotiations for the "prior" class action are not recoverable in the Petition because these negotiations "obviously did not benefit Trial Plaintiffs" at trial. As explained above, the Court rejects Defendant's characterization of the class action as a "prior" case. Further, Defendant cites no case law to support its argument that fees incurred during settlement negotiations should be excluded from the Petition. Public policy has long favored settlement of disputes, *see, e.g., Edwards v. Born, Inc.*, 792 F.2d 387, 390 (3d Cir. 1986), and various courts have awarded fees for settlement negotiations, both in ERISA actions and in

²⁶ The Prevailing Plaintiffs have agreed to eliminate fees for work performed on behalf of non-trial plaintiffs Camille Nuzzo, Robert Culp, and Albert Shaklee. These fees total \$1,187, and this reduction is reflected in the adjusted request of \$2,315,066.50 discussed above.

other contexts. See, e.g., Couch v. Cont'l Cas. Co., 2008 U.S. Dist. LEXIS 2327, at *12 (E.D. Ky. Jan. 11, 2008) (“This court finds that settlement discussions are an ordinary part of the litigation process. Thus, the court holds that awarding attorney fees incurred as a result of reasonable settlement efforts is proper under 29 U.S.C. § 1132(g)(1).”); Soberman v. Groff Studios Corp., 2000 U.S. Dist. LEXIS 10145, at *9 (S.D.N.Y. July 20, 2000) (including mediation discussions in a fee award based on a lease dispute because “any rule to the contrary would discourage the pursuit of settlements”).

d. Sperry Work

Defendant objects to the inclusion of four entries relating to work allegedly performed on behalf of the Sperry retirees and unrelated to the Prevailing Plaintiffs. The Prevailing Plaintiffs have agreed to eliminate two of the challenged entries²⁷ and argue that the remaining two entries relate to time spent reviewing briefs submitted relating to the motions for summary judgment filed on behalf of the Sperry retirees. The Prevailing Plaintiffs explain that these briefs, which addressed the breach of fiduciary claims by the Sperry retirees, were reviewed in drafting the motion to reinstate the breach of fiduciary duty claims of the Burroughs retirees. Because the Sperry briefs were pertinent to the motion to reinstate the Burroughs retirees’ claims, the Court declines to strike the remaining two entries.

3. Excessive and Unreasonable Fees

Finally, Defendant raises three additional challenges to various entries in the Petition: (1) entries that are too vague to evaluate for reasonableness; (2) entries for clerical or administrative work; and (3) entries that reflect overstaffing at trial.

²⁷ These entries total 0.9 hours and \$292.00 in fees.

a. Entries Challenged as Vague

“Attorneys seeking compensation must document the hours for which payment is sought ‘with sufficient specificity.’” Washington, 89 F.3d at 1037 (quoting Keenan v. City of Philadelphia, 983 F.2d 459, 472 (3d Cir. 1992)). “A fee petition is required to be specific enough to allow the district court ‘to determine if the hours claimed are unreasonable for the work performed.’” Rode, 892 F.2d at 1190 (quoting Pawlak v. Greenawalt, 713 F.2d 972, 978 (3d Cir. 1983)). As the Third Circuit has explained, “a fee petition should include ‘some fairly definite information as to the hours devoted to various general activities, e.g., pretrial discovery, settlement negotiations, and the hours spent by various classes of attorneys, e.g., senior partners, junior partners, associates.’” Id. (quoting Lindy Bros. Builders, Inc. of Phila. v. Am. Radiator & Standard Sanitary Corp., 487 F.2d 161, 167 (3d Cir. 1973)). Moreover, the Third Circuit has “found sufficient specificity where [a] computer-generated time sheet provided ‘the date the activity took place.’” Keenan, 983 F.2d at 473 (quoting Rode, 892 F.2d at 1191).

Defendant challenges a number of entries for tasks such as “research,” “phone calls,” and “draft [or review] interrogatories” as insufficiently specific. However, each challenged entry lists the general task performed, the attorney or paralegal who performed the task, and the date and time spent in fractional hours. While some of the challenged entries “could have benefitted from added specificity,” United Auto. Workers Local 259, 501 F.3d at 291, the Third Circuit does not require fee petitions to delineate the “exact number of minutes spent nor the precise activity to which each hour was devoted nor the specific attainments of each attorney.” Rode, 892 F.2d at 1190 (quoting Lindy Bros., 487 F.2d at 167). It is enough that the entries document what generally was performed, by whom it was performed, and when it was performed. See Keenan,

983 F.2d at 473 (approving as sufficiently specific a fee summary that “gave in chronological order the date, the time consumed, and a general description of the activities provided by each lawyer”); Burris v. Richards Paving, Inc., 472 F. Supp. 2d 615, 622 (D. Del. 2007) (awarding fees entered as “research,” despite the defendant’s argument that the entries were too vague to determine reasonableness); Garner v. Meoli, 1998 U.S. Dist. LEXIS 14126, at *6-7 (E.D. Pa. Aug. 31, 1998) (rejecting a vagueness challenge to time sheets that included entries such as “research” and “background” because “[t]he records disclose with sufficient specificity who worked on what aspect of the case and for how long, [and] they also conform to the practice of other law firms in recording billable hours”); see also Imwalle v. Reliance Med. Prods., Inc., 515 F.3d 531, 553-54 (6th Cir. 2008) (rejecting vagueness challenges to entries such as “research,” “review documents,” and “review file” because the entries were contained in “itemized billing records that specify, for each entry, the date that the time was billed, the individual who billed the time, the fractional hours billed (in tenths of an hour), and the specific task completed”).²⁸

²⁸ As the Court in Imwalle noted, the billing entries are not viewed in isolation, but “in the context of the billing statement as a whole and in conjunction with the timeline of the litigation.” 515 F.3d at 554. In their Reply in support of the Petition, the Prevailing Plaintiffs point to specific tasks encompassed by the challenged entries based on the timeline of the litigation. For example, they explain that, in context, the challenged entries from 8/14/03 through 11/25/03 for “Review File” relate to work performed by paralegal Margaret Rhodes in drafting the amended Adair complaint, which was filed on January 9, 2004. Likewise, they explain that the challenged “Research” work performed by attorney Carl Downing was related to, inter alia, the 1994 motion (renewed in 1996) to reinstate the Burroughs and Unisys retirees’ breach of fiduciary duty claims, oppositions filed in 1997 to Defendant’s motion for partial summary judgment, and drafting and developing discovery-related plans and requests during 1997 to 1999. After reviewing the Prevailing Plaintiffs’ explanations for the challenged entries in conjunction with the timeline of the litigation, the Court is satisfied that the challenged entries correlate to time expended reasonably for tasks necessary to the litigation. See, e.g., Sheffer v. Experian Info. Solutions, Inc., 290 F. Supp. 2d 538, 549 (E.D. Pa. 2003) (rejecting a vagueness challenge for “research” where the plaintiffs subsequently explained what items were researched).

Moreover, in Washington, the Third Circuit rejected a similar argument, holding that the district court erred by finding itemized, dated billing records to be vague where the records included entries such as “research,” “review,” and “prepare.” 89 F.3d at 1037-38.

b. Clerical Tasks

Generally, “it is not reasonable to bill attorney time for . . . administrative tasks that can easily be performed by non lawyers.” Walton v. Massanari, 177 F. Supp. 2d 359, 365 (E.D. Pa. 2001) (citing Coup v. Heckler, 706 F. Supp. 405, 408 (W.D. Pa. 1989)); see also Ursic, 719 F.2d at 677 (“Nor do we approve the wasteful use of highly skilled and highly priced talent for matters easily delegable to non-professionals or less experienced associates.”). Defendant challenges a series of tasks that, in its opinion, should have been performed by support staff rather than attorneys.

As an initial matter, the majority of challenged entries were performed by paralegals and other support staff rather than attorneys. The remaining entries include allegedly “administrative” tasks such as drafting and reviewing letters and court filings, reviewing and organizing case files, and preparing written discovery objections. As the Prevailing Plaintiffs explain, these tasks were not administrative in nature and were billed appropriately to attorneys performing substantive work on the case. Given the volume of files generated in this document-intensive litigation, the Court concludes that it is not unreasonable for experienced counsel to organize or review files in preparing court filings or readying for trial. See, e.g., Sheffer, 290 F. Supp. 2d at 549 (“[I]t is reasonable for lead trial counsel to desire to expend his or her own time on some activities that, although within the competency of less highly paid associates, are better performed by the lead counsel to ensure the smooth functioning at trial.”); Richerson v. Jones,

506 F. Supp. 1259, 1264 (E.D. Pa. 1981) (awarding fees for “preparation for argument, motions, and letters, and review of files, briefs, and letters” because they “are tasks which must be accomplished to prepare for court proceedings and to control litigation”). However, the Court agrees with Defendant that a number of challenged entries reflect purely clerical tasks, such as researching hotels and planning various travel arrangements.²⁹ See, e.g., Missouri v. Jenkins, 491 U.S. 274, 288 n.10 (1989) (“[P]urely clerical or secretarial tasks should not be billed at a paralegal rate, regardless of who performs them.”); Harris v. L&L Wings, 132 F.3d 978, 985 (4th Cir. 1997) (upholding the district court’s decision to “eliminate[] hours spent on secretarial tasks from its calculation of the lodestar”); Sheffer, 290 F. Supp. 2d at 549 (“Since the costs of clerical work, such as filing and copying, are ordinarily considered to be part of an attorney’s rate as office overhead, they will not be compensated.”); Coup, 706 F. Supp. at 408 (disallowing time

²⁹ Because the Court finds the following entries purely clerical, it will strike them in their entirety:

(1) Support Staff: 1 hour billed on 10/4/05 at \$90 per hour for “paralegal: searched for airfare and hotel in Philadelphia to attend client appointments”;

(2) Edna Del Valle: 0.1 hours billed on 10/10/05 at \$130 per hour for “E-mails . . . re: transportation issues for plaintiffs”;

(3) Edna Del Valle: 0.3 hours billed on 10/11/05 at \$130 per hour for “E-mails . . . re: transportation of retirees”;

(4) Edna Del Valle: 2.1 hours billed on 10/12/05 at \$130 per hour for “E-mail . . . re: court information for trial plaintiffs and car transportation services; calls to car companies re: same; e-mail . . . re: pricing of car service per location”; and

(5) Edna Del Valle: 0.2 hours billed on 10/16/05 at \$130 per hour for “Calls . . . re: car service.”

Further, because three remaining entries (Edna Del Valle: 3.7 hours on 10/7/05, 1.6 hours on 10/11/05, and 0.5 hours on 10/13/05) appear to contain both clerical (such as calling car services) and nonclerical (such as reviewing trial schedules and discussing trial arrangements with plaintiffs) tasks without specifying the time spent on each, the Court will strike an additional 1.5 hours billed at \$130 per hour based on an estimate of the nonclerical work included in these entries. Adding the entries together, the Court will remove a total of \$636 from the Petition, based on 4.2 hours billed at \$130 per hour and 1 hour billed at \$90 per hour.

spent “making plane reservations”). Because Defendant is not required to pay for this nonlegal work, the Court will reduce the lodestar by \$636.

c. Overstaffing

Defendant’s last challenge to the Petition pertains to the number of attorneys attending the trial before Magistrate Judge Rueter. Defendant argues that for seven out of the eight days at trial, the Prevailing Plaintiffs had between six and eight attorneys present in the courtroom. Defendant explains that, in comparison, “Unisys never had more than three Morgan Lewis attorneys attending the trial on any given day.” Accordingly, Defendant urges the Court to strike some of these fees as excessive.

After reviewing the challenged entries, the Court declines to strike them for excessiveness. As an initial matter, Defendant inaccurately characterizes all of the challenged entries as those of “attorneys,” where in reality, two members of the trial team were paralegals who split trial coverage on only three of the eight days spent at trial. Further, three of the remaining six attorneys did not attend all eight days of trial or all parts of trial, and as the Prevailing Plaintiffs explain, a number of challenged entries dealt specifically with the task of preparing fourteen lay witnesses to testify. Of the “six to eight” attorneys Defendant identifies as having attending all or most of the trial, only three attended the complete trial. When compared to the “three Morgan Lewis” attorneys attending each day of trial,³⁰ the number of attorneys

³⁰ As the Prevailing Plaintiffs point out, Defendant fails to mention that in-house counsel for Unisys also attended trial, and it does not disclose the fact that a paralegal assisted defense counsel at various parts of the trial. *Cf. In re Unisys*, 886 F. Supp. at 468 & n.49 (questioning Unisys’ argument that class counsel’s charges were excessive in comparison to its own legal charges because “Unisys did not submit its counsel’s billable hours or rates, and also failed to include the time spent by in-house counsel to assist with the case”).

present on behalf of the Prevailing Plaintiffs is not unreasonable. The Court finds that given the complexity of this litigation, the coordination required to present the testimony of fourteen lay witnesses, and the large number of individual claims being “tested” at trial by the Trial Plaintiffs, the number of attorneys at trial was not excessive.

B. Costs

In addition to attorney’s fees, a prevailing party under ERISA also may recover costs incurred during the action. See 29 U.S.C. § 1132(g)(1). The Third Circuit has explained that, as with attorney’s fees, documentation of costs must be sufficiently specific to permit the Court to determine whether the costs are reasonable. See Loughner v. Univ. of Pittsburgh, 260 F.3d 173, 181 (3d Cir. 2001). The Prevailing Plaintiffs seek reimbursement for a number of expenses, including printing and copying fees, online research charges, long-distance telephone calls, and postage. Although Defendant argues that costs should not be awarded and vaguely asserts that certain tasks and associated costs are improper, it offers no specific objections to the itemized costs submitted by the Prevailing Plaintiffs. Having reviewed the entries in the absence of any specific challenge by Defendant, the Court finds that the costs are reasonable and reimbursable. See, e.g., Gorini v. AMP, Inc., 2004 WL 1354465, at *7 (M.D. Pa. Mar. 14, 2004) (awarding under ERISA taxable costs listed under 28 U.S.C. § 1920 as well as “charges for service and witness fees, transcripts, facsimiles, postage, telephone bills, express mail, meals, supplies and copying”), aff’d, 117 F. App’x 193 (3d Cir. 2004); Algie v. RCA Global Commc’n, Inc., 891 F. Supp. 875, 898 & n.13 (S.D.N.Y. 1994) (awarding “reasonable out-of-pocket expenses associated with this lawsuit” and noting that “Section 502(g)(1) of ERISA refers to an award of ‘costs,’ but that term apparently covers not only taxable costs under 28 U.S.C. § 1920, but also

other disbursements that are customarily charged to the client.” (listing cases)).

IV. CONCLUSION

Under the Ursic factors, a fee award is justified in this complex litigation that has spanned over a decade. As required by the Third Circuit, the Court has gone “‘line, by line, by line’ through the billing records supporting the fee request,” Evans v. Port Auth. of N.Y. and N.J., 273 F.3d 346, 362 (3d Cir. 2001), and concludes that a total of \$48,708.58 should be stricken from the Petition. Given Defendant’s failure to make specific objections to the costs incurred, the Court, after examining the records for reasonableness, will award all costs sought by the Prevailing Plaintiffs. An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: UNISYS CORPORATION	:	MDL DOCKET
RETIREE MEDICAL BENEFITS ERISA	:	
LITIGATION	:	NO. 969
ADAIR, HARLEY, J., <u>et al.</u>	:	CIVIL ACTION
	:	
v.	:	NO. 03 - 3924
	:	
UNISYS CORPORATION	:	

ORDER

AND NOW, this 26th day of June, 2008, upon consideration of the Petition of the Prevailing Plaintiffs for Attorney's Fees and Costs (docket no. 67), Defendant's Response thereto (docket no. 78), and the Prevailing Plaintiffs' Reply (docket no. 81), it is **ORDERED** that:

1. Pursuant to 29 U.S.C. § 1132(g)(1) and Federal Rule of Civil Procedure 54(d)(2), the Petition is **GRANTED**.

2. Defendant Unisys Corporation is hereby **ORDERED** to pay to the Prevailing Plaintiffs and their counsel the total sum of \$2,266,357.92 in attorney's fees, and the total sum of \$97,779.98 in taxable and non-taxable costs and expenses of litigation. Unisys shall make these payments of fees and expenses within 30 days of the date of entry of this Order to lead counsel Alan M. Sandals, who shall be responsible for disbursing the award to each of the petitioning law firms.

3. In the event that these awards of fees and expenses are not paid by Unisys within 30 days of the date of entry of this Order, they shall accrue interest in the manner specified in 28 U.S.C. § 1961, calculated from the date of entry of this Order.

BY THE COURT:

/s/ Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.