

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

MARGARET STRACHAN,	:	CIVIL ACTION
	:	
Plaintiff,	:	
V.	:	
	:	
FORD MOTOR COMPANY,	:	
	:	
Defendant.	:	NO. 96-5805
	:	
Newcomer, J.	:	July , 1997

M E M O R A N D U M

Presently before the Court are Plaintiff's Petition for an Award of Counsel Fees and All Court Costs, and defendant's response thereto. Plaintiff seeks to recover seven thousand, four hundred and thirty-one dollars, and twenty-five cents (\$7,431.25). For the reasons that follow, this Court will award plaintiff counsel fees and costs in the amount of seven thousand, and three hundred and five dollars, and zero cents (\$7,305.00).

A. Background

Plaintiff Margaret Strachan filed the instant action against defendant Ford Motor Company ("Ford"), asserting four claims against Ford, in connection with her lease of a 1994 Ford Explorer. Count I alleged a violation of the New Jersey Lemon Law, 56 N.J. Stat. Ann. § 12-29, et seq. ("Lemon Law"). Count II asserted a violation of the Magnuson-Moss Federal Warranty Act, 15 U.S.C. § 2301, et seq. Count III alleged a violation of the New Jersey Uniform Commercial Code, 56 N.J. Stat. Ann. § 8-1, et seq., and Count IV alleged a violation of the New Jersey Unfair Trade Practices and Consumer Fraud Law, 12A N.J. Stat. Ann. § 1-101, et seq.

Following extensive negotiations, the parties stipulated that judgment would be entered in favor of the plaintiff on the Lemon Law count. Under the terms of the settlement, plaintiff voluntarily dismissed Counts II-IV. Although the parties were able to resolve the issue of liability, the parties were unable to agree upon the appropriate measure of damages. Therefore a trial was held on April 10, 1997, solely on the issue of damages.

On April 18, 1997, this Court entered judgment in favor of plaintiff and against defendant. The Court ordered Ford to reimburse plaintiff in the total amount of \$15,864.25 pursuant to 56 N.J. Stat. Ann. § 12-32(b). In addition, the Court directed plaintiff to return the subject vehicle to the manufacturer and terminated plaintiff's lease without an assessment of a penalty for early termination. Finally, the Court ordered defendant to pay directly to First Fidelity, the lienor, the amount of \$22,961.03 in satisfaction of the remaining obligations under plaintiff's lease. Because the parties were unable to agree on the amount of reasonable attorney's fees and costs due plaintiff, the parties agreed to submit the fee issue to this Court for its resolution.

Presently before the Court is Plaintiff's Petition for an Award of Counsel Fees and All Court Costs, pursuant to the New Jersey Lemon Law, 56 N.J. Stat. Ann. § 12-42. Plaintiff seeks an award of reasonable attorney's fees and all costs incurred in connection with this litigation, as specifically enumerated in

the attached schedule of fees. Plaintiff further requests that this Court enhance the requested award by a multiplier it deems appropriate. In response, defendant argues that plaintiff's request for fees and costs should be adjusted downward because the number of hours expended on particular tasks was excessive and some of the costs were excessive. Additionally, defendant requests that the Court reduce the award by an appropriate multiplier to be determined by the Court due to the relative lack of success achieved by plaintiff's counsel.

B. Standard for Awarding Attorneys' Fees

The New Jersey Lemon Law provides for the payments of attorneys' fees:

In any action by a consumer against a manufacturer brought in Superior Court or in the division pursuant to the provisions of this act a prevailing consumer shall be awarded reasonable attorney fees, fees for expert witnesses and costs.

56 N.J. Stat. Ann. § 12-42. "Attorney fees and costs are awarded to a plaintiff who prevails by way of judgment or settlement." Taylor v. Chrysler Corp., No. CIV.A.94-6778, 1995 WL 635195, at *1 (E.D. Pa. Oct. 24, 1995) (citation omitted). Plaintiff was a prevailing party within the meaning of § 12-42, judgment having been entered in her favor.

Case law construing what is a reasonable attorney's fee applies uniformly to all fee-shifting statutes. City of Burlington v. Dague, 505 U.S. 557, 562 (1992). A reasonable attorney's fee is one that is "adequate to attract competent counsel, but . . . [that does] not produce windfalls to

attorneys." Blum v. Stenson, 465 U.S. 886, 897 (1984). The normal fee award, called the "lodestar," is calculated by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate, and adding to that the reasonable expenses. Id. at 888; Brokerage Concepts, Inc. v. U.S. Healthcare, Inc., No. 95-1698, 1996 WL 741885, at *15 (E.D. Pa. Dec. 10, 1996). Because each litigation involves unique factors, in some situations the basic fee lodestar may be adjusted upward or downward. Hensley v. Eckerhart, 461 U.S. 424, 434 (1983).

The party requesting attorneys' fees bears the burden of proving that the request is reasonable. Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1990). To satisfy this burden, the fee petitioner must "submit evidence supporting the hours worked and rates claimed." Hensley, 461 U.S. at 424. In response, the party challenging the fee petition must make specific objections that are sufficient to give the fee applicant notice of the objections to the requested fee. Rode, 892 F.2d at 1183 (citing Bell v. United Princeton Properties, Inc., 884 F.2d 713, 721 (3d Cir. 1989)). After objections are made, the district court has a great deal of discretion to adjust the fee award so long as the adjustments are based on the challenger's objections. Id.

C. Calculation of Lodestar

As stated previously, the lodestar is calculated by multiplying the number of hours reasonably expended on the

litigation by a reasonable hourly rate, and adding to that the reasonable expenses. Blum, 465 U.S. at 888; Brokerage Concepts, 1996 WL 741885, at *15.

Plaintiff asserts that she should be compensated for her attorney's fees at a rate of \$150.00 per hour. Plaintiff further asserts that her attorney expended 47.9 hours, yielding a total dollar figure of \$7,185.00.¹ Plaintiff also contends that it should be compensated for costs in the amount of \$246.25.

Defendant objects to the number of hours expended by plaintiff's attorney and to one part of plaintiff's costs.

1. Hourly Rate

"The general rule is that a reasonable hourly rate is calculated according to the prevailing market rates in the community." Washington v. Philadelphia Court of Common Pleas, 89 F.3d 1031, 1035 (3d Cir. 1996). "[A] district court may not set attorneys' fees based upon a generalized sense of what is customary or proper, but rather must rely upon the record." Smith v. Philadelphia Housing Auth., 107 F.3d 223, 225 (3d Cir. 1997) (quoting Coleman v. Kaye, 87 F.3d 1491, 1510 (3d Cir. 1996), cert. denied, 117 S. Ct. 754 (1997)). "The plaintiff bears the burden of producing sufficient evidence of what constitutes a reasonable market rate for the essential character and complexity of the legal services rendered in order to make out a prima facie case." Smith, 107 F.3d at 225 (citing

1. This figure is derived as follows: (47.9 hours x \$150.00/hour) = \$7,185.00.

Washington, 89 F.3d at 1035). "Once the plaintiff has carried this burden, defendant may contest that prima face case only with appropriate record evidence." Smith, 107 F.3d at 225 (citing Washington, 89 F.3d at 1035). Where defendant "has not produced contradictory evidence, the district court may not exercise its discretion to adjust the requested rate downward." Washington, 89 F.3d at 1036. Instead, "the plaintiff must be awarded attorney's fees at her requested rate." Smith, 107 F.3d at 225 (citing Washington, 89 F.3d at 1036). If hourly rates are disputed, that is, if contradictory evidence is produced, "the district court must conduct a hearing to determine the reasonable market rates." Id. (citing Coleman, 87 F.3d at 1510).

Plaintiff has submitted the affidavit of attorney Michael Power, Esq. In his affidavit, Mr. Power affirms that \$150.00 per hour is his standard billing rate and that the majority of courts which have ruled on his fee applications have approved the billing rate of \$150.00 per hour. The Court finds that this evidence is sufficient to support plaintiff's claim that \$150.00 per hour is a reasonable market rate for her attorney's services.

In its response, defendant does not contest the reasonableness of the hourly rate requested by plaintiff and does not offer any evidence to contradict the reasonableness of the hourly rate requested. That being the case, this Court "may not exercise its discretion to adjust the requested rate downward." Washington, 89 F.3d at 1036. Instead, "the plaintiff must be

awarded attorney's fees at her requested rate." Smith, 107 F.3d at 225. Accordingly, compensation for the services of plaintiff's attorney will be awarded at the rate of \$150 per hour.

2. Reasonable Hours

Defendant next challenges the number of hours expended by plaintiff's attorney. The number of hours included in the calculation of the lodestar must reflect the amount of time "reasonably expended on the litigation." Hensley, 461 U.S. at 433. Hours not reasonably expended, such as where an attorney lacks skill or experience or fails to exercise billing judgment, must be excluded from the calculation. Id. at 434. The plaintiff has the burden of proving the reasonableness of the hours to be compensated. Northeast Women's Ctr. v. McMonagle, 889 F.2d 466, 477 (3d Cir. 1989), cert. denied, 494 U.S. 1068 (1990). Hours which are "excessive, redundant, or otherwise unnecessary" must be excluded by the court. Hensley, 461 U.S. at 434.

Defendant objects to a total of 7.1 hours, expended by Mr. Power, on the ground that said hours are "excessive."² This Court determines that none of the 7.1 hours delineated by defendant were excessive. Accordingly, this Court will not reduce the number of hours requested by plaintiff.

2. For a breakdown of the specific hours to which defendant objects, see Defendant's Objections to Plaintiff's Attorney's Bill of Fees and Costs.

3. Expenses

In addition to counsel fees, plaintiff is entitled to recover reasonable and well-documented expenses incurred in connection with this action. Marks v. Stinson, No. 93-6157, 1994 WL 396417, at *4 (E.D. Pa. July 21, 1994), aff'd in part and rev'd in part, 60 F.3d 816 (3d Cir. 1995) (noting that photocopying, postage, long distance telephone calls, messenger service, transportation, and parking are compensable expenses).

Plaintiff asserts that its counsel incurred \$246.25 in expenses. Defendant presents two objections to this expense request. Defendant asserts that plaintiff is entitled to no costs relating to photocopying due to plaintiff's failure to provide any evidence that 505 documents were actually photocopied. In the alternative, defendant argues that plaintiff's photocopying costs should be reduced by \$75.75, so that plaintiff would be compensated at \$.10 per page as opposed to its requested rate of \$.25 per page.

Since plaintiff has provided this Court with no evidence supporting its claim that 505 documents were photocopied, or for that matter that any documents were photocopied, the Court will not award costs for photocopying. Accordingly, this Court will deduct \$126.25 from plaintiff's expense request.

4. Lodestar

The calculation of the lodestar follows.

Total Fees Listed by Plaintiff:	\$ 7,185.00
MINUS Hourly Rate Reduction: (Pursuant to Section C.1.)	(\$ 00.00)
MINUS Hours Reduction: (Pursuant to Section C.2.)	(\$ 00.00)
Total Expenses Listed by Plaintiff:	\$ 246.25
MINUS Photocopying Reduction: (Pursuant to Section C.3.)	(\$ 126.25)
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TOTAL (Lodestar)	\$ 7,305.00

D. Adjustments to the Lodestar

Once the lodestar has been calculated, the district court may look to various factors to adjust the lodestar upward or downward. Hensley, 461 U.S. at 434. In this case, plaintiff primarily requests a multiplier because her attorney accepted this case on contingency. Additionally, plaintiff argues that an enhancement of the lodestar is appropriate based upon the risks assumed by plaintiff's counsel in developing the case³ and the time delay in receipt of payment by plaintiff's counsel. Defendant argues that the lodestar should be adjusted downward due to the limited success that plaintiff's counsel achieved in this case.

3. These risks include (1) the number of hours of labor risked without remuneration and (2) the out-of-expenses incurred by plaintiff's counsel. Plaintiff also notes that her counsel has prior expertise in Lemon Law cases which assisted the Court in the efficient conduct of this litigation.

Ordinarily, the lodestar is presumed to be reasonable compensation. Pennsylvania v. Delaware Valley Citizen's Council, 478 U.S. 546, 565 (1986). Only in exceptional cases is a quality enhancement justified. The quality of services rendered by plaintiff's attorney, the results obtained, and the contingency nature of plaintiff's agreement with her attorney does not justify an upward enhancement of the lodestar in this case. Indeed, a reasonable person would properly expect the quality of services rendered in this case in light of the hourly rates charged and the success obtained. See Blum, 465 U.S. at 899. Furthermore, an upward enhancement of the lodestar based solely on the contingency factor would produce a windfall to plaintiff's attorney that the fee-shifting statute never intended. Thus, the Court will not adjust the lodestar upward.

Finally, the Court will not adjust the lodestar downward. Defendant cannot seriously argue that plaintiff's counsel achieved limited success in this case. Under the Lemon Law Count, plaintiff's counsel achieved a full repurchase of the subject vehicle, the lease was terminated without penalty and Ford was required to pay plaintiff's remaining obligations under the lease. Under these circumstances, the Court finds that it would be inappropriate to adjust the lodestar downward.

E. Conclusion

In conclusion, this Court will award plaintiff's counsel fees and costs in the amount of seven thousand, and three hundred and five dollars, and zero cents (\$7,305.00).

An appropriate Order follows.

Clarence C. Newcomer, J.

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	:	
Defendants.	:	NO. 96-5805

O R D E R

AND NOW, this day of July, 1997, upon consideration of Plaintiff's Petition for an Award of Counsel Fees and All Court Costs, and defendant's response thereto, and consistent with the foregoing Memorandum, it is hereby ORDERED that plaintiff is awarded counsel fees and costs in the amount of seven thousand, and three hundred and five dollars, and zero cents (\$7,305.00).

AND IT IS SO ORDERED.

Clarence C. Newcomer, J.