

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

---

Daniel Hall,	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	NO. 96-CV-8103
American Honda	:	
Motor Co., Inc.,	:	
Defendant.	:	
	:	
	:	

---

MEMORANDUM OF DECISION

McGlynn, J. November , 1997

Before the court are plaintiff Daniel Hall's Petition for Counsel Fees and All Court Costs, and defendant American Honda Motor Company's response thereto. For the reasons that follow, the court will award plaintiff attorneys' fees and costs in the amount of \$2,862.95.

**I. Background**

On December 6, 1996, plaintiff brought this suit in connection with his lease of a new 1995 Honda Passport. His complaint alleged three causes of action: (1) violation of the Magnuson-Moss Trade Commission Improvement Act ("Magnuson-Moss Act"), 15 U.S.C. § 2301 et seq.; (2) breach of warranty under Pennsylvania's Uniform Commercial Code, Pa. Stat. Ann. tit. 13, §§ 1101 et seq.; and (3) violation of Pennsylvania's Unfair Trade Practices and Consumer Protections Law, Pa. Stat. Ann. tit. 73, §§ 201-1 - 201-9. In accordance with Local Rule of Civil Procedure 53.2, the case was referred to arbitration, in which

plaintiff was awarded \$4,000. The court subsequently entered judgment in the amount of \$4,000 for plaintiff on July 28, 1997.

Plaintiff now seeks attorneys' fees and court costs under the fee-shifting provision of the Magnuson-Moss Act, 15 U.S.C. § 2310(d)(2). Attached to plaintiff's motion is a log of the 31.6 hours his attorney allegedly expended on the case.<sup>1</sup> In total, plaintiff requests \$4,740.00 in fees at an hourly rate of \$150.00 an hour, as well as \$155.75 in costs. Plaintiff further asks the court to enhance the requested award by a multiplier it deems appropriate. In response, Honda argues that plaintiff should be awarded no fees whatsoever because of the inadequacy of plaintiff's submitted fee schedule. Honda alternatively contends that plaintiff's request for fees should be adjusted downward because: (1) plaintiff's attorneys' hourly rate is higher than hourly rates in other, similar litigation; (2) the number of hours allegedly expended on certain tasks was excessive and certain tasks could have been handled by secretaries or paralegals; and (3) plaintiff achieved only a limited degree of success in this matter, warranting a reduction in the lodestar amount or a total denial of attorneys' fees.

## **II. Discussion**

In a civil suit brought under the Magnuson-Moss Act, the court may award to a prevailing consumer "a sum equal to the

---

<sup>1</sup> At all times relevant to this litigation, plaintiff has been represented by attorney Glenn Gerber of the firm Power & Gerber, P.C.

aggregate amount of costs and expenses . . . determined by the court to have been reasonably incurred by the plaintiff" unless the court determines that an award of attorneys' fees is inappropriate. 15 U.S.C. § 2310(d)(2).

**A. Standard for Awarding Attorneys' Fees**

Case law construing what constitutes a reasonable attorneys' fee applies uniformly to all fee-shifting statutes. Burlington v. Dague, 505 U.S. 557, 562 (1992). The normal fee award, or "lodestar," is calculated by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate, and adding to that the cost of reasonable expenses. Blum v. Stevenson, 465 U.S. 886, 888 (1984). If warranted, the court may adjust the basic lodestar amount upward or downward in consideration of the unique factors of the case. Hensley v. Eckerhart, 461 U.S. 424, 434 (1983).

The party seeking fees bears the burden of proving that the fee request is reasonable by submitting evidence to support the number of hours worked and the rates charged. Id. at 433. In doing so, counsel should make a good faith effort to exclude hours that are "excessive, redundant, or otherwise unnecessary." Id. at 434. In response, the party challenging the reasonableness of the fee petition must make specific objections that are sufficient to give the fee applicant notice of the objections to the requested fee. Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1989). Once the objections are raised, the court enjoys broad discretion to adjust the fee award in light of

those objections. Id.

### **B. Reasonable Hours**

Honda specifically challenges the reasonableness of seven entries in plaintiff's fee schedule. Where time was not reasonably expended, such as when an attorney fails to exercise billing judgment, the court may exclude it from calculation of the lodestar. Hensley, 461 U.S. at 433. The court will therefore reduce the following entries for excessiveness: (1) the time spent drafting plaintiff's Better Business Bureau ("BBB") Application will be reduced from 0.7 hours to 0.3 hours; (2) counsel's review of a standard BBB telefax received on 9/16/97 regarding the BBB arbitration will be reduced from 0.5 hours to 0.1 hours; (3) the time spent on 12/5/96 drafting the complaint in this matter will be reduced from 0.7 hours to 0.4 hours; (4) the time spent preparing the self-executed discovery form, interrogatories, and a request for production of documents will be reduced from 0.9 hours to 0.5 hours; and (5) the 4.8 hours spent attending and meeting with the client about the arbitration hearing will be reduced to 3.0 hours.

Honda has also challenged the entries dated 9/25/96 and 6/9/97, which include activities which are clerical and ministerial in nature. The court will address the issues raised by this objection in part II, E of this memorandum, infra, as they are not relevant to the reasonableness of hours expended.

Accordingly, the final tally for time reasonably expended by plaintiff's counsel in this matter will be reduced from

plaintiff's submission of 31.6 hours to 28.2 hours.

### **C. Reasonable Hourly Rate**

Plaintiff contends that an hourly rate of \$150.00 is reasonable in light of Mr. Gerber's seven years of experience in warranty and Lemon Law matters. The general rule is that a reasonable hourly rate is calculated according to the prevailing market rates in the community. Blum v. Stenson, 465 U.S. 886, 895-96 n.11 (1984); Student Public Interest Research Group, Inc. v. AT&T Bell Lab., 842 F.2d 1436, 1448 (3d Cir. 1988)(adopting the community market rule). The prevailing party bears the burden of establishing by way of satisfactory evidence, "in addition to [the] attorney's own affidavits," Blum, 465 U.S. at 895 n.11, that the requested hourly rates meet this standard.

Plaintiff has submitted the affidavit of attorney Glenn Gerber stating that \$150.00 is the standard hourly billing rate of his firm. In opposition, defendant argues that Mr. Gerber's rate must be reduced because he provides no information on other attorneys who worked on this case, while admitting that work was indeed performed by "other attorneys employed by the firm of Power & Gerber, P.C." Aff. of Glenn Gerber ¶ 4. Given Mr. Gerber's personal experience in this area of law, the court finds that \$150.00 is a reasonable hourly rate for his legal services. See Strachan v. Ford Motor Co., Civ. A. No. 96-5805, 1997 WL 379162, at 3 (E.D. Pa. July 1, 1997). The same, however, cannot necessarily be said of the other attorneys who performed work on this file. Because plaintiff has provided no information

regarding the time spent by other attorneys on this case and the experience of those attorneys, the court cannot fairly conclude that plaintiff is entitled to recover attorneys' fees at an hourly rate of \$150.00. Accordingly, the billing rate in this action will be calculated at \$120.00 per hour. See Allen v. Chrysler Corp., Civ. A. No. 96-702, 1997 WL 117015, at \*3 (E.D. Pa. March 13, 1997)(McGlynn, J.)(reducing hourly rate for attorneys with lesser experience).

#### **D. Lodestar**

The lodestar will be calculated as follows: \$120.00 per hour (see supra part II, C) multiplied by 28.2 hours (see supra part II, D), for a total of \$3,384.00.

#### **E. Lodestar Adjustment**

Because counsel accepted this case on a contingency basis, plaintiff asks the court to enhance the lodestar by an appropriate multiplier. While a district court may adjust an attorneys' fee upward to account for the risks a contingency attorney assumes, such enhancements are rarely granted. See Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1989)(citing Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 483 U.S. 711 (1987)). This court has previously held that the contingency factor alone does not support an upward adjustment of the lodestar. See Allen v. Chrysler Corp., Civ. A. No. 96-702, 1997 WL 117015, at \*3 (E.D. Pa. March 13, 1997). The instant case is a straightforward warranty claim where no multiplier is appropriate.

Instead, the court will reduce the lodestar by 20 percent. Because plaintiff's counsel has significant experience in the area of lemon law and warranty litigation, the court can surmise that counsel has streamlined its processes of representing plaintiffs in routine cases, such as this action. The court's presumption is further buttressed by counsel's use of form memoranda in this case.<sup>2</sup> In addition, many of the billing entries are duties which are more appropriately assigned to support staff.<sup>3</sup> Such work should not be compensated at the same rate as activity which requires legal training. See Allen v.

---

<sup>2</sup> Plaintiff's petition itself provides proof of Power & Gerber's use of form pleadings in this litigation. On page one of his memorandum in support of his request for fees and costs, plaintiff makes reference to four causes of action, while reciting only three. Normally, plaintiffs' complaints in defective motor vehicle claims include a count under Pennsylvania's Lemon Law, Pa. Stat. Ann. tit. 73, §§ 1951 - 63. That claim is absent here because plaintiff did not seek recovery under the Lemon Law.

<sup>3</sup> On this point, Honda's objection specifically addresses two entries: (1) "9/25/96 Organize, Make copies and prepare file for BBB Autoline Arbitration Hearing - 1.4 hours" and (2) "6/9/97 Collate all documents and prepare arbitration exhibits; telephone to Client re preparation for arbitration hearing, reviewed testimony and prepared client for cross examination - 3.6 hours." Def. Mem. in Supp. of Response at 5-6. Honda specifically contests Mr. Gerber's attribution of attorney time to organizing files, photocopying, and collating documents when such work is more properly assigned to a paralegal or secretary. Further, Honda notes that plaintiff aggregates the number of hours and tasks performed, making it difficult to determine how much time was devoted to each specific activity and by whom. The court concurs on both points. Entries for work done by paralegals and support staff are conspicuously absent from plaintiff's petition. According to plaintiff, ministerial tasks such as drafting letters, preparing exhibits, photocopying, and organizing files were all completed by attorneys billing \$150.00 per hour. That is both unlikely and unreasonable.

Chrysler Corp., Civ. A. No. 96-702, 1997 WL 117015, at \*3 (E.D. Pa. March 13, 1997); Rypinski v. Chevrolet Motor Div. of General Motors Corp., 1996 WL 432475 (E.D. Pa. July 2, 1996); Sullivan v. Chrysler Motors Corp., No. 94-5016, 1997 WL 94236, at \*6 (D.N.J. Feb. 28, 1997)(quoting Posner v. Mitsubishi Motor Sales of America, Civ. A. No. 95-6099 (E.D. Pa. May 23, 1996). The lodestar will accordingly be reduced by ten percent to reflect a lower compensation for repetitive work which counsel could have delegated to paralegals or support staff.

Moreover, the court agrees with defendant that the lodestar should be reduced for achieving only limited success in this matter. Plaintiff sought damages in this case in excess of \$50,000.00. He received a final judgment of \$4,000.00 -- eight percent of his requested damages. In light of the Supreme Court's instruction that "'the most critical factor' in determining the reasonableness of a fee award 'is the degree of success obtained,'" Farrar v. Hobby, 506 U.S. 103, 114 (1992)(quoting Hensley v. Eckerhart, 461 U.S. 424, 436 (1983)), the court concludes that plaintiff's fractional final recovery calls for reduction of the lodestar by an additional ten percent. See Farrar, 506 U.S. at 114 (in fixing fees under 42 U.S.C. § 1988, district court must give primary consideration to amount of damages awarded as compared to amount sought); see also Hilferty v. Chevrolet Motor Div. of the General Motors Corp., Civ. A. No. 95-5324, 1996 WL 287276, at \*6-7 (E.D. Pa. May 30, 1996)(reducing fee award by approximately two-thirds where plaintiff recovered

only eight percent of damages sought), aff'd, 116 F.3d 468 (3d Cir. 1997); Taylor v. Chrysler Corp., Civ. A. No. 94-CV-6778, 1995 WL 635195, at \*2 (E.D. Pa. Oct 24, 1995)(reducing lodestar for limited success where plaintiff sought \$50,000.00, but recovered only \$5,000.00).

Therefore, the court will award a total of \$2,707.20 in counsel fees. As defendant has not made any objections to plaintiff's expenses incurred in this matter, the court will also award plaintiff the \$155.75 he has requested in costs.

### **III. Conclusion**

The court will grant plaintiff's petition for fees and costs to the extent that plaintiff's counsel will receive a total award of \$2,862.95. In all other respects, plaintiff's petition is denied. An appropriate order follows.