

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

EDWARD PUGLIESE,	:	
	:	CIVIL ACTION
	:	
Plaintiff	:	
v.	:	No. 95-2771
	:	
CHRYSLER CORPORATION,	:	
	:	
Defendant.	:	

MEMORANDUM

ROBERT F. KELLY, J.

JANUARY 29, 1998

This action involves a petition for attorneys' fees and court costs pursuant to the Pennsylvania Automobile Lemon Law, 73 P.S. § 1958, and the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 et seq. Plaintiff's counsel, the firm of Kimmel & Silverman ("K&S"), initially sought fees for 32.4 hours at an hourly rate of \$150 along with \$279.75 in costs. After an unsuccessful attempt at settlement before a Magistrate Judge, K&S now seeks payment for 11.9 additional hours and \$53.00 in additional costs. In total, K&S seeks \$6,977.75, an amount that the Defendant argues is excessive.

The starting point for determining the amount of reasonable attorneys' fees is "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate," or the lodestar. Hensley v. Eckerhart, 461 U.S. 424, 434 (1983). The party seeking attorneys' fees has the burden of proving that its request is reasonable. Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1990). The opposing party has the

burden to challenge the reasonableness of the fees requested with specificity sufficient to give the fee applicant notice that he or she must defend the contested portion of the fee petition. Id.; Bell v. United Princeton Properties, Inc., 884 F.2d 713 (3d Cir. 1989). Once objections are raised, a court "has a great deal of discretion to adjust the fee award in light of those objections." Rode, 892 F.2d at 1183. But the Third Circuit has held that a district court may not decrease a fee award based on factors not raised by the adverse party. Bell, 884 F.2d at 719; Cunningham v. City of McKeesport, 753 F.2d 262, 267 (3d Cir. 1985), vacated on other grounds, 478 U.S. 1015 (1986).

The Defendant objects to the inclusion by K&S of time relating to the preparation and explanation of fee arrangements, claiming that such time is not ordinarily billable to a client. K&S claims 1.7 hours for services including a conference with the client regarding the case, reviewing the client's file, and drafting the fee agreement and reviewing it along with the client. Because the portion of the 1.7 hours devoted to drafting the fee agreement and reviewing it with the client is not ordinarily billable, this entry will be reduced by 0.5 hours to 1.2 hours. Likewise, K&S claims 0.2 hours for a letter to the client confirming acceptance of the case and setting forth the fee agreement. This is also time for which K&S cannot recover fees. Finally, K&S seeks fees for 0.3 hours which includes letters to the Defendant and a letter to the client explaining

the litigation and attaching another copy of the signed fee agreement. The correspondence with the client in this entry is also not billable, and accordingly, this entry will be reduced to 0.1 hours.

The Defendant further challenges various entries in K&S's fee schedule as excessive or unnecessary. K&S claims 0.6 hours to draft and review two letters to Chrysler and to call the client about settlement demands. This will be reduced to 0.4 hours. The Defendant also challenges 1.2 hours to draft the complaint, including supporting documentation and confirming it with the client. This Court has previously held that given K&S's high-volume practice and use of form documents, preparation of a complaint should take no more than one hour. See Hollinsworth v. Hyundai Motor America, No. 93-3407, 1996 WL 58065, at *2, (E.D. Pa. Feb. 12, 1996). Accordingly, this entry will be reduced to 1 hour.

The Defendant challenges an entry of 0.9 hours to read a letter and Motion to Dismiss, perform legal research, and to discuss the motion with the client. This is excessive and will be reduced to 0.5 hours. K&S further claims 0.8 hours to call opposing counsel and to draft a Motion for Enlargement of Time to respond to the Motion to Dismiss. In light of the fact that opposing counsel stipulated to the motion, this is also excessive and will be reduced to 0.3 hours. K&S also claims 0.9 hours to

draft the Amended Complaint. I believe this is not billable because K&S should have drafted the complaint properly the first time. Therefore, I will eliminate this entry.

The Defendant objects to K&S's entry of 0.5 hours to draft and review the Plaintiff's self-executing disclosure. I believe this is excessive and will reduce it to 0.3 hours. K&S also requests payment for 2.1 hours to draft the arbitration memorandum and prepare exhibits. This is excessive, particularly because K&S uses a form memorandum, and will be reduced to 1.2 hours. See Id. (allowing one hour to draft an arbitration memorandum and .2 hours to prepare exhibits). Further, the Defendant challenges 0.3 hours for an internal memo regarding settlement. This will be reduced to 0.1 hours. K&S also claims 1.8 hours to review and draft the bill. This is excessive and will be reduced to 1 hour. Finally, K&S claims 1.3 hours to draft the fee petition. As in Hollinsworth, this will be reduced to 1 hour. Thus, K&S's request for 44.3 hours will be reduced by 5.5 hours to 38.8 hours.

Additionally, the Defendant contests the hourly rate of \$150 requested by K&S. Reasonable hourly rates in this district for K&S have ranged from \$100 to \$150. See Hollinsworth, 1996 WL 58065, at *1; Ianelli v. Chrysler Corp., No. 95-2723, 1996 WL 200601, at *2 (E.D. Pa. Apr. 26, 1996). I believe that a reasonable hourly rate for the services rendered by K&S in this

case is \$125. Multiplying this amount by the total hours, the lodestar will then be \$4,850. This Court finds that there is no reason to adjust the lodestar in this case.

In conclusion, the 44.3 hours claimed by K&S in its initial and supplemental fee petitions will be reduced to 38.8 hours. Further, K&S's hourly rate will be reduced to \$125. Therefore, K&S will be awarded \$4,850 in fees, as well as \$332.75 in costs.

An appropriate Order follows.

