

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

THE WILLOW INN, INC.,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
PUBLIC SERVICE MUTUAL	:	
INSURANCE COMPANY,	:	No. 00-CV-5481
Defendant.	:	

MEMORANDUM AND ORDER

SCHILLER, J.

April , 2002

Plaintiff Willow Inn, Inc. (the “Willow Inn”) brought this action in diversity alleging, *inter alia*, breach of contract and bad faith conduct, in violation of 42 PA. CONS. STAT. § 8371 (2001), against Defendant Public Service Mutual Insurance Company (“PSM”). This case proceeded to trial, and the Court entered judgement in favor of the Willow Inn in the amount of \$152,000, including compensatory and punitive damages. Remaining at issue in this case are Plaintiff’s petition for attorney’s fees and costs, Defendant’s motion for approval of a supersedeas bond, and the parties’ motions for amendment of the Court’s judgement and other forms of post-trial relief.

I. ATTORNEY’S FEES AND COSTS UNDER SECTION 8371

Entitled “Actions on Insurance Policies,” the Pennsylvania “bad faith” statute provides:

In an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith toward the insured, the court may take all of the following actions:

- (1) Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%.
- (2) Award punitive damages against the insurer.
- (3) Assess court costs and attorney fees against the insurer.

42 PA. CONS. STAT. ANN. § 8371. Under section 8371, “[t]he decision to assess attorney’s fees and costs against an insured upon a finding of bad faith is wholly within the discretion of the trial court. . . .” See *Polselli v. Nationwide Mut. Fire Ins. Co.*, 126 F.3d 524, 537 (3d Cir. 1997); accord *Birth Ctr. v. St. Paul Cos.*, 727 A.2d 1144 (Pa. Super. Ct. 1999), *affirmed on other grounds*, 787 A.2d 376 (Pa. 2001). As I indicated in the Order accompanying my Findings of Fact and Conclusions of Law, an award of attorney’s fees is appropriate in this case.¹ Specifically, PSM’s conduct forced Willow Inn to hire an attorney in order to enforce its rights under the insurance contract. Because I awarded punitive damages solely to punish PSM, a separate award of attorney’s fees is necessary to make the Willow Inn whole. See *Polselli v. Nationwide Mut. Fire Ins. Co.*, No. 91-1365, 1998 U.S. Dist. LEXIS 19396, at *3-4 (E.D. Pa. Dec. 10, 1998).²

In determining the amount of attorney’s fees, I must consider, *inter alia*, the factors set forth in Rule 1716 of the Pennsylvania Rules of Civil Procedure: (1) the time and effort reasonably expended by the attorney in the litigation; (2) the quality of the services rendered; (3) the results achieved and benefits conferred upon the class or upon the public; (4) the magnitude, complexity and uniqueness of the litigation; and (5) whether the receipt of a fee was contingent on success. See also *Polselli*, 126 F.3d 524, 532-39; *Birth Ctr.*, 727 A.2d at 1160. Applying the lodestar method, I multiply the hours reasonably spent litigating the case by a reasonable hourly rate to determine the

¹The Order, dated January 2, 2002, stated: “Plaintiff’s counsel shall submit a petition for attorney’s fees and costs. Any fees collected by virtue of Court Order shall be credited against any amounts agreed to by Plaintiff and Plaintiff’s counsel.”

²When a plaintiff prevails on a claim for bad faith conduct pursuant to section 8371, the plaintiff may recover attorney’s fees against an insurer for time spent prosecuting the bad faith claim itself, in addition to those fees attributable to prosecuting the underlying breach of contract claim. See *Polselli*, 126 F.3d at 532.

amount of the fee. *See Polselli*, 1998 U.S. Dist. LEXIS 19396, at *6. In arriving at this calculation, “[b]oth the number of hours and the rate per hour shall be calculated on a basis reasonably reflective of the relevant market and the magnitude, complexity and uniqueness of the claim and the related task.” *Birth Ctr.*, 727 A.2d at 1161.

A. Hours Expended

Mr. Howard Silverman, attorney for the Willow Inn, states that he has performed 512.3 hours of billable legal work. PSM contends that Mr. Silverman is not entitled to fees for this number of hours because his time entries are excessively vague. Although I agree that in many instances Mr. Silverman could have been more specific in describing the tasks he performed, this lack of detail does not rise to the level of inadequacy. No single entry is plainly unreasonable, and the total number of hours claimed is reasonable given the nature, scope, and complexity of the litigation. Plaintiff is therefore entitled to compensation for 512.3 hours spent litigating the case.

B. Hourly Rate

PSM also contends that Mr. Silverman’s \$300 hourly rate is excessive. In support of its position, PSM submitted the affidavit of attorney Robert Horst, who frequently litigates section 8371 cases: Mr. Horst opined that the prevailing hourly rate in the Philadelphia area for prosecuting such cases is in the range of \$125 to \$200. However, because Mr. Horst’s failed to state whether this range covers those cases taken on a contingency fee basis, the affidavit is of limited usefulness.

Nevertheless other considerations reveal that the \$300 per hour rate is excessive. Mr. Silverman’s proposed \$300 hourly rate is outside of the applicable range in the Community Legal Services, Inc.’s fee schedule. *See Maldonado v. Houston*, 256 F.3d 181, 187 (3d Cir. 2001) (describing fee schedule established by Community Legal Services, Inc. as fair reflection of

prevailing market rates in Philadelphia). According to the schedule, as an attorney who has been practicing for approximately fifteen years, Mr. Silverman's hourly rate should be between \$220 and \$270. Furthermore, in correspondence addressed to PSM's attorneys' shortly before the trial in this case, Mr. Silverman indicated that his rate was \$250 per hour. (Def.'s Answer to Pl.'s Revised Pet., Ex. A.) In view of the above considerations, the nature of the litigation, the fact that the case was taken on a contingency fee basis, and Mr. Silverman's performance, I find the rate of \$250 per hour to be appropriate.³

C. Costs

Section 8371 also authorizes an award of costs against the insurer, and in its petition, the Willow Inn seeks to recover a wide array of expenses. *See* 42 PA. CONS. STAT. § 8371(3). Under Pennsylvania law, generally, the imposition of costs is within the discretion of the trial court. *See, e.g., Larry Pitt & Assocs. v. Long*, 716 A.2d 695, 702 (Pa. Commw. Ct. 1998). Although section 8371 does not expressly set forth the costs that may be recovered in a bad faith action, a federal statute, 28 U.S.C. § 1920 (2002), provides guidance in this regard. The following costs are recoverable under § 1920:

³Plaintiff argues that the lodestar fee should be enhanced under the second and fifth factors of Rule 1716 because of the quality Mr. Silverman's representation and the risks to counsel in litigating the case on the contingency-fee basis. Because I took these factors into consideration in arriving at the lodestar fee, Plaintiff is not entitled to a fee multiplier. *See Polselli*, 126 F.3d at 527.

- (1) Fees of the clerk and marshal;
- (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and copies of papers necessarily obtained for use in the case;
- (5) Docket fees under section 1923 of this title;
- (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

28 U.S.C. § 1920. In light of § 1920's provisions, a total of \$13,445.85 of the Willow Inn's expenses are not costs and therefore are non-recoverable. (Def.'s Answer to Pl.'s Revised Pet., at 14-15) (listing certain costs as non-recoverable under § 1920). Most of these expenses are excluded because they relate to the Willow Inn's expert fees; under § 1920, only the costs of court appointed experts are recoverable. The Willow Inn is entitled, however, to recover a total of \$7,372.45 for copying and transcription costs, as well as witness and filing fees. (Def.'s Answer to Pl.'s Revised Pet., at 15-16) (listing certain costs as "insufficiently supported"). Because all of these costs are recoverable under § 1920's provisions and appear reasonable in amount, PSM's argument that these costs should be denied for lack of sufficient documentation is misplaced.

II. POST-TRIAL MOTIONS

The parties have filed cross-motions seeking amendment or alteration of the Court's judgement and other forms of post-trial relief. Having considered the contentions of counsel, which rehash the evidence and arguments presented at trial, I deny the parties' motions. The reasons for this decision are amply stated in the Court's Memorandum dated January 4, 2002. Additionally, PSM moves for a stay of the enforcement of the judgement following appeal upon the filing of a supersedeas bond. *See* FED. R. CIV. P. 62(d). While Plaintiff does not oppose the stay, Plaintiff takes the position that the amount PSM proposes for the bond is too low. (Pl.'s Mem. of Law in

Supp. Resp. to Def.'s Motion for Stay, at 1.) I agree with Plaintiff because the amount proposed by PSM fails to take into consideration the award of costs and attorney's fees. *See North River Ins. Co. v. Greater N.Y. Mut. Ins. Co.*, 895 F. Supp. 83, 84 (E.D. Pa. 1995) (stating that plaintiff "should be able to obtain immediate protection for the full amount that may ultimately be due"). The amount of the Bond is set at \$345,000.⁴

III. CONCLUSION

Accordingly, Plaintiff is awarded \$128,075.00 in attorney's fees and \$7,372.45 in costs. If Defendant chooses to appeal this matter, Defendant may obtain a stay of proceedings pending appeal by posting a supersedeas bond in the amount of \$345,000. The parties' other post-trial motions are denied.

An appropriate Order follows.

⁴This amount was computed by taking 120% of the total of the judgement and the award of attorney's fees and costs, then rounding to the nearest thousand. Both parties suggested employing the 120% figure in making calculating the amount of the bond.

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PUBLIC SERVICE MUTUAL	:	
INSURANCE COMPANY,	:	No. 00-CV-5481
Defendant.	:	

ORDER

AND NOW, this day of April, 2002, upon consideration of Plaintiff's Petition and Revised Petition for Attorney's Fees and Costs, Plaintiff's Motion to Alter or Amend Judgement, Defendant's Motion for Post-Trial Relief, Defendant's Motion to Strike Plaintiff's Post-Trial Motion, all the responses thereto, and the oral argument held on February 14, 2002, it is hereby

ORDERED that:

- I. Plaintiff's Motion to Alter or Amend Judgement (Document No. 40) is **DENIED**.
- II. Defendant's Motion for Post-Trial Relief (Document No. 41) is **DENIED**.
- III. Defendant's Motion to Strike Plaintiff's Post-Trial Motion (Document No. 43) is **DENIED as moot**.
- IV. Defendant's Motion for Approval of Security Pending Appeal (Document No. 42) is **GRANTED IN PART AND DENIED IN PART**. If Defendant should pursue an appeal in this matter, Defendant may obtain a stay of enforcement proceedings pending

appeal by posting a supersedeas bond in the amount of \$345,000.00 pursuant to Federal Rule of Civil Procedure 62(d). Defendant's Motion is **DENIED** in all other respects.

- V. Plaintiff's Petition for Attorney's Fees and Costs (Document No. 39) is **GRANTED IN PART AND DENIED IN PART** as follows: Plaintiff is awarded \$128,075.00 in attorney's fees and \$7,372.45 in costs.

BY THE COURT:

Berle M. Schiller, J.