

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

HERBERT SMITH : CIVIL ACTION
: :
v. : No. 95-2038
: :
INTERNATIONAL TOTAL :
SERVICES, INC. :

O'Neill, J.

October , 1997

MEMORANDUM

Plaintiff, Herbert Smith, has moved for an award of attorney fees and costs as a prevailing party in an action brought under the Pennsylvania Human Relations Act (PHRA), 43 P.S. §§ 951-63, and for pre- and post-judgement interest.¹ As described below, his motion is granted in part and denied in part.

Plaintiff filed this action alleging that defendant, International Total Services, Inc., violated three provisions of the Pennsylvania Human Relations Act by denying him a skycap position because of his age; retaliating against him for filing a complaint with the Pennsylvania Human Relations Commission; and aiding, abetting, or inciting violations of the PHRA or obstructing or preventing compliance therewith. (Mem. Opinion, August 7,

¹ Post-judgement interest is not a matter within my discretion, but follows entry of any money judgement as a matter of course under 28 U.S.C. § 1961. Accordingly, there is no need for a ruling on this portion of plaintiff's motion.

1997). Pretrial activity in the case consisted of defendant's motion to dismiss for lack of prosecution; plaintiff's motion to compel the deposition of Sam Jenkins and for sanctions; and plaintiff's motion to compel certain discovery and for sanctions. Each of these motions was denied.

After a four day trial, the jury returned a verdict for plaintiff on all three of his PHRA claims and awarded him \$464,000 in lost wages, \$60 in other compensatory damages, and \$500,000 in punitive damages. Subsequently, the plaintiff accepted a remittitur in the amount of \$114,000 on the compensatory damages and the court denied the defendant's post-trial motions. Plaintiff thus recovered a total of \$850,060 in compensatory and punitive damages from the defendant.

Mr. Smith has been represented throughout this litigation by the Penn Legal Assistance Office (PLAO), part of the University of Pennsylvania Law School's clinical education program.² Clinical faculty member Alan M. Lerner, Esquire, first served as Mr. Smith's counsel. Working under his supervision were PLAO law students Mark L. Rodio, Lisa Atkins, Rand Sacks, and Maureen Cafferty. Mr. Lerner transferred the case to another clinical faculty member, Colleen F. Coonelly, Esquire, in August, 1996. Working under her supervision were clinical students Carolyn Koegler, Barbara Oikle, Jeffrey Powell, and Bruce Bellingham.

I. Attorney's Fees

² See Local Rule 83.5.1.

As defendant concedes, plaintiff is a prevailing party in this action, and is therefore entitled to an award of attorney fees absent special circumstances that would make an award inequitable. 43 P.S. § 962 (c.2). See Hensley v. Eckerhart, 461 U.S. 424, 429 (1983); Walker v. Upper Merion Police Department, 1997 WL 37822, at *2 (E.D. Pa. 1996).³ Defendant points out no special circumstances in this case.

To calculate the fee award, I determine the number of hours reasonably expended on the case and counsel's reasonable hourly rates.⁴ Rode v. Dellaciprete, 892 F.2d 1177, 1183 (3d Cir. 1990). Hours or rates requested in the fee petition may not be reduced sua sponte unless they are within the Court's personal knowledge. Bell v. United Princeton Properties, 884 F.2d 713, 719-20 (3d Cir. 1989). Once the opposing party objects to the fee request, however, the Court "has a great deal of discretion to adjust the fee in light of the objections." Rode, 892 F.2d at 117 (citing Bell, 884 F.2d at 721).

Plaintiff requests attorney fees in the amount of \$180,210.35, representing 1555.46

³ The fee-shifting provision of PHRA is applied according to the same standards used with the analogous fee-shifting provisions of PHRA's federal counterpart, Title VII, Carter-Herman v. City of Philadelphia, 1997 W.L. 48942, at *1 (E.D. Pa. 1997), and other federal fee-shifting provisions, see Hensley, 461 U.S. at 433, n.7; Bell v. United Princeton Properties, 884 F.2d 713, 719 (3d Cir. 1989).

⁴ The product of counsel's reasonable hours and hourly rates is known as the "lodestar." While in some circumstances it may be adjusted up or down, Rode, 892 F.2d at 117, the lodestar is strongly presumed to properly compensate the prevailing party's counsel. Washington v. Philadelphia County Court of Common Pleas, 89 F.3d 1031, 1035 (3d Cir. 1996). Neither defendant nor plaintiff has identified any factors requiring adjustment of the lodestar.

hours of work, and costs of \$2,863.86.⁵ Defendant has challenged the attorney fees portion of the request on numerous grounds.⁶

A. Reasonableness of Rates Claimed

Plaintiff contends that reasonable hourly rates for his attorneys are \$180 (1996) and \$190 (1997) for Ms. Coonelly; \$250 for Mr. Lerner; and \$75 (pretrial) and \$100 (trial) for the law students. Defendant challenges the rates sought for Ms. Coonelly and the law students, but does not challenge the rate sought for Mr. Lerner.

Reasonable rates are to be determined by the prevailing market rates in this community. Washington v. Philadelphia Court or Common Pleas, 89 F.3d 1031, 1035 (3d Cir. 1996). “The hourly rate charged by the attorney must be reasonable in comparison with rates actually billed and paid in the market place for similar services rendered by lawyers of comparable skill, experience and reputation.” Kraemer v. Franklin & Marshall College, 1997 WL 89422, at *3 (E.D. Pa. 1997) (citing Rode, 892 F.2d at 1183). Plaintiff bears the burden of establishing, by evidence in addition to counsel’s own affidavits, that the requested rates are reasonable in the prevailing market. Washington, 89 F.3d at 1035. If this burden is met, defendant must come forward with its own affidavits or other

⁵ Plaintiff requested \$148,422.60 in his original fee petition, but in his reply brief reduced the request by 16 hours to \$147,222.60. Plaintiff then supplemented his request by \$32,989.75 for additional fee petition and post-trial motion activity, thereby arriving at \$180,212.35.

⁶ Defendant does not challenge plaintiff’s costs.

countervailing evidence to challenge the rates requested. Id. at 1036.

1. Ms. Coonelly's Rate

In support of the hourly rates sought for Ms. Coonelly, plaintiff offers the affidavits of Ms. Coonelly and Philip J. Katauskas, Esq., a partner in the Philadelphia office of Pepper, Hamilton, & Scheetz, LLP. Both affiants state that Ms. Coonelly, who was an associate at Pepper, Hamilton, & Scheetz for approximately seven years prior to joining the clinical faculty at Penn Law School, billed at hourly rates of \$180 in 1996 and \$190 in 1997 for her work defending corporate clients in complex litigation. (Coonelly Aff. at 2, 9; Katauskus Aff. ¶ 5). Defendant counters that the rates Ms. Coonelly billed corporate defendants are not indicative of the rates she would command representing plaintiffs in an employment discrimination suit such as this action.

I agree. The rates Ms. Coonelly billed corporate clients reflect her expertise in complex litigation developed over seven years of practice. Ms. Coonelly does not claim to have an expertise in employment law, or indeed any experience in employment law other than her discussions about this case with Mr. Lerner, an acknowledged expert in the field. See Tobin v. The Haverford School, 936 F. Supp. 284, 291-92 (E.D. Pa. 1996) (reducing hourly rate of attorney with 14 years experience but without extensive employment litigation experience from \$250 to \$165, then adjusting upward for difficulty of case). That Ms. Coonelly charged a certain rate in private practice in her area of specialty does not justify application of that rate to a case arising under employment discrimination law, in which she

had no experience prior to this case. Moreover, plaintiff has not offered any evidence that the rates Ms. Coonelly seeks are comparable to rates that persons with similar levels of experience in employment law command in this market.

In sum, plaintiff has failed to establish a prima facie case for the reasonableness of the rates sought, and I therefore must exercise my discretion to determine a reasonable rate. Washington, 89 F.3d at 1036 -37. In doing so, I have examined Ms. Coonelly's background and experience as a practitioner, lecturer, and faculty member of PLAO, considered the quality of her work in this case, and surveyed hourly rates approved for plaintiff attorneys with similar backgrounds in employment discrimination cases in this jurisdiction. On the one hand, Ms. Coonelly's lack of experience would support an hourly rate at the low end of the range prevailing in this market. Supporting a higher rate, on the other hand, is the high quality of plaintiff's filings and counsel's effective implementation of a well-conceived, thorough trial strategy, both of which must be credited to Ms. Coonelly's supervisory efforts. On balance, these considerations lead me to conclude that reasonable hourly rates for Ms. Coonelly are \$150 in 1996 and \$160 in 1997. See, e.g., Tobin, 936 F. Supp. at 292; Herkalo v. National Liberty Corp., 1997 WL 539754, at *3 (E.D. Pa. 1997) (approving hourly rates of \$195 to \$175 for experienced partners and \$125 to \$85 for associates for sex discrimination suit).

2. Law Students' Rates

In support of the hourly rates of \$75 (pretrial) and \$100 (trial) sought for law student

counsel, plaintiff offers the affidavits of Mr. Katauskas and Ms. Coonelly. Mr. Katauskas states that in 1997 his firm billed out the work of summer associates who had completed at least two years of law school at an hourly rate of \$75. (Katauskas Aff. ¶ 6). Ms. Coonelly states her opinion that the rates sought are reasonable in light of the difficulty and quality of the work done by the students. (Coonelly Aff. at 9-10). Defendant challenges the requested rates as excessive and unreasonable.

Plaintiff's evidence is not sufficient to carry his burden of establishing the reasonableness of the requested rates. For the summer associate rate billed by Mr. Katauskas' firm to be persuasive, plaintiff would also need to offer evidence that the billing judgement reflected in his fee petition is similar to that practiced by firms such as that of Mr. Katauskas. See Hensley, 461 U.S. at 434. In other words, plaintiff would have to show that summer associates' market billing rate is reasonable in the different context of clinical education.

Plaintiff has not produced such evidence and, in fact, plaintiff's fee petition does not demonstrate the degree of billing judgement expected of private firms billing private clients for the work of law students.⁷ Counsel have not culled or discounted their claimed hours to account for the relative inefficiency, inexperience, and high turnover of students assigned to

⁷ To cite but one example, counsel bill 85 hours for regular weekly meetings and case review conferences held from January 1997 to two weeks before trial in May 1997 (at a total cost of about \$9,600 at the rates requested by plaintiff), in addition to the 650.77 hours billed over the same period for pretrial activity, including substantial time spent in conference with counsel's client. The Court finds it inconceivable that a private firm would bill a client so many hours for such activity; certainly, a client would expect explanations of the purposes and results of these meetings. Yet, with rare exceptions, plaintiff's counsel provide no such explanations.

the case,⁸ for the more leisurely pace of clinical work (which is not, of course, subject to the pressures applied by the market or by individual clients), or for PLAO's practice of requiring that attorney supervisors review and approve all student work, regardless of whether such supervision is required by the litigation itself. (See Coonelly Aff. at 3, 9-10). Compare Jones v. Kriesel Co., 1995 WL 681095 (S.D.N.Y. 1995) (reducing hours claimed by clinical law student counsel by two-thirds after counsel had already discounted hours by nearly 50% in fee petition for time spent on clerical work, familiarization with the case by new students, and internal conferences among students and with faculty); cf. Strauss v. Springer, 817 F. Supp. 1237, 1244 (E.D. Pa. 1993) (finding partner's requested hourly rate of \$150 excessive for "services which almost exclusively involve[d] discussion with firm associates and review of their work"). In sum, plaintiff cannot reasonably claim the high rates billed in private practice when the students' time records reflect the relative inefficiencies and educational purposes inherent in law school clinical work.⁹

Since plaintiff has failed to meet his burden of demonstrating the reasonableness of the rates requested for law student counsel, I must again exercise my discretion to determine reasonable rates. Washington, 89 F.3d at 1036 -37. In doing so, I have examined counsel's time records and considered the quality of the students' work. I note that the students were

⁸ To their credit, counsel did exclude the hours of students with less than 20 hours on the case.

⁹ As another court has put it, I do "not doubt that the students worked diligently on this case and produced high quality work. However, students have different motivations and work habits than law firm associates. . . . The Court heartily approves of providing students with this valuable learning experience. It would be inequitable, however, to ask defendant to subsidize this portion of the students' education." Jones v. Kriesel Co., 1995 WL 681095, at *4 (S.D.N.Y. 1995).

well-prepared for trial, presented their arguments persuasively, and prevailed on all claims. Their written work was helpful to the court and, as Ms. Coonelly maintains, comparable to that of a seasoned attorney.

Based upon these considerations, I find that reasonable rates for work done in 1997 are \$55 for the third-year law students, \$45 for the second year students, and \$40 for the first year law students.¹⁰ See Walker v. Upper Merion Police Dept., 1996 WL 37822 (E.D. Pa. 1996) (allowing hourly rates of \$50 for third-year law students and \$35 for first year students in award to PLAO counsel); Jones v. Kreisel, 1996 WL 648858 (S.D.N.Y. 1996) (allowing \$50 hourly rate for clinical law students); Strauss v. Springer, 817 F. Supp. 1237, 1245 (E.D. Pa. 1993) (allowing \$35 hourly rate for student assistants employed by firm). Plaintiff has produced no evidence or precedent in support of his request that the law students be paid substantially more for trial work than for pretrial work, and I conclude that the same rates should apply to both.

B. Adequacy of Counsel's Time Records

A party seeking an award of attorney fees must provide documentation of the hours set forth in the fee petition sufficient to allow the court “to determine if the hours claimed are unreasonable for the work performed.” Pawlak v. Greenawalt, 713 F.2d 972 , 978 (3d Cir. 1983). If documentation of hours is inadequate, “the district court may reduce the

¹⁰ These rates will be reduced for the years 1996 and 1995. See the Appendix attached hereto.

award accordingly.” Hensley, 461 U.S. at 433; see also Rode, 892 F.2d at 1183.

The defendant asserts that the 365 hours claimed by Ms. Coonelly for the period of August 1996 through June 6, 1997 are inadequately documented in “expansive weekly blocks, with simple descriptions of activities she conducted” that fail to specify hours per day or hours per activity.¹¹ This lack of specificity, defendant argues, prejudices its attempt to scrutinize and object to the reasonableness of Ms. Coonelly’s work and precludes this Court from determining whether her hours were reasonably expended.¹² Accordingly,

¹¹ Plaintiff seems to think that defendant objects to the fact that Ms. Coonelly’s time records are after-the-fact reconstructions. By affidavit, Ms. Coonelly avers that her time records for work conducted prior to June 6, 1997 were reconstructed from her calendar, files of student work product, the case’s docket, contemporaneous time records of students working on the case, deposition transcripts, other documents in the PLA0’s files, and her personal recollection. (Coonelly Aff., at 3). (Hours spent on the case after June 6 were recorded contemporaneously and reported in a supplemental fee petition.) However, perhaps because courts in this district have previously accepted similar reconstructions, see Walker v. Upper Merion Police Dept., 1996 WL 37822, at *4 (E.D. Pa. 1996), defendant has not in fact objected to the records on grounds of their being reconstructed. Rather, defendant challenges their lack of specificity.

Nonetheless, it bears noting that courts in this jurisdiction have warned counsel that reconstructed records would not be accepted or would be subject to a substantial fee reduction because they may create the perception of unaccountability and unfairness and because of the potential for systematic, albeit unintended, overstatement or misclassification of hours. See Contractors Assoc. v City of Philadelphia, 1996 WL 355341, at *8, 9 (E.D. Pa. 1996); Fletcher v. O’Donnell, 729 F. Supp. 422, 428-29 (E.D. Pa. 1990). Moreover, in an action such as this in which counsel know from the beginning that they may recover fees, there is no excuse for failure to keep contemporaneous records from the start. I therefore warn counsel that, in my court at any rate, I do not expect to see reconstructed time records such as these again.

¹² While some weekly entries involve relatively small amounts of time and few categories of activities, entries of the following sort are typical and involve the greatest portion of Ms. Coonelly’s claimed hours (see Coonelly Aff. at 5-8):

Week Ending		Time (Minutes)

2/14/97	Reviewed case law cited in J. Powell’s research memo re: elements of plaintiff’s claim. Conference with J. Powell re: same and	1200

defendant asserts that Ms. Coonelly's claimed hours should be entirely or substantially rejected.

Ms. Coonelly's records are much less than optimal. They detail the activities pursued each week and hours expended, frequently in blocks of 15 to 25 hours, but do not apportion the hours by category of activity. (Indeed, while defendant has not challenged the students' records on specificity grounds, to a lesser degree they suffer from similar inadequacies.) I agree with defendant that the state of the records prejudices the defendant's attempt to scrutinize them. Had the records been more precise, they would almost certainly have been subject to more specific challenges by the defendant.

suggested additional research; revised and edited letter drafted by B. Oikle re: inadequacies in ITS's response to tour request for production of documents; conference with Oikle re: preparation for deposition of S. Jenkins; reviewed, revised and supplemented deposition questions for 30(b)(6) designee drafted by Bellingham; prepared for and participated in deposition of Price, the 309(b)(6) designee; conference with Bellingham re: remedies when opponent produces unknowledgeable corporate designee.

4/11/97 Conference with Powell, Bellingham and Oikle re: preparation of our jury instructions; reviewed pattern ADEA jury instructions and 3d circuit case law cited therein; reviewed case law on damages recoverable under PHRA; revised supplement to Motion to Compel Jenkins deposition. 1200

4/25/97 Reviewed memo re: Smith-Green's clarification of the chronology of letters to/from ITS during its PHRC investigation; revised, edited and supplemented reply brief in support of Motion to Compel; calls to Kirk to arrange meeting to resolve discovery disputes; reviewed transcript of Painter deposition; drafted letter to P.Kirk asking again for the documents I requested on 4/1/97 at Painter deposition and enclosing relevant portion of the transcript; drafted letter to Judge O'Neill enclosing Reply Brief and requesting one-week continuance of trial date. 800

Nonetheless, I find that the inadequacy of Ms. Coonelly's records is not fatal to the fee request.¹³ After review of counsel's records, I have drawn inferences concerning time spent on particular tasks that will allow me to determine the reasonableness of claimed hours in a manner which I consider fair to both parties.¹⁴ On this occasion, therefore, the Court will accept these records and determine the reasonableness of the hours claimed in them. I again caution counsel, however, that such records will not be acceptable in the future.

C. Reasonableness of Hours Claimed

Defendant objects generally to the total number of hours that plaintiff's counsel claim to have expended on this case as "clearly unreasonable and patently excessive" because the case involved "non-complex" issues, no dispositive pretrial motions, three depositions, no discovery propounded to the plaintiff, and a short trial involving only six witnesses. Defendant further asserts that many of the hours in the fee petition are excessive or duplicative, or represent work primarily involving the law students' education rather than the litigation itself. In addition, the defendant specifically objects to particular time entries

¹³ The state of Ms. Coonelly's records would have been even more problematic had plaintiff not prevailed on all his claims. Had plaintiff been only partially successful, the Court may have been unable to sort out the time that Ms. Coonelly spent on the successful versus unsuccessful claims, and may have been forced to strike all of her hours. See, e.g., Carter-Herman v. City of Philadelphia, 1997 WL 48942, at *4 (E.D. Pa. 1997).

¹⁴ In making these estimations required, particularly in Ms. Coonelly's case, by the state of the records, I have resolved any doubts in favor of the defendant. And while I provide examples of how I arrive at these estimates, I assume plaintiff is in no position to complain if he disagrees with the results.

and activities.¹⁵

I examine the hours claimed in light of defendant's objections, and am to exclude those hours that were not reasonably expended on the case -- i.e., those hours that are excessive, duplicative, or otherwise would not be billed to a private client in the exercise of good billing judgement. Hensley, 461 U.S. at 434 ("Hours that are not properly billed to one's *client* are also not properly billed to one's *adversary* pursuant to statutory authority.") (emphasis in original); see also Ursic v. Bethlehem Mines, 719 F.2d 670, 677 (3d Cir. 1983).

Having examined the time records submitted by plaintiff's counsel in light of the parties' contentions against and in support of the fee petition, and keeping in mind the hourly rates allowed counsel above, I will exclude portions of counsel's claimed hours as set forth below.

1. Supervisory work

Many of defendant's objections to the fee petition concern what it characterizes as educational or supervisory work not necessary to the litigation. Counsel's records make clear that significant time was spent reviewing, discussing, and double-checking students'

¹⁵ To effectively challenge the hours claimed in a fee petition, the opposing party must be specific enough in its objections to give notice to the plaintiff, but is not necessarily required to challenge particular time entries. Bell v. United Princeton Properties, 884 F.2d 713, 720-21 (3d Cir. 1989). The party seeking to challenge one or more "categories" of work "need only specify with particularity the reason for its challenge and the category (or categories) of work being challenged . . ." Defendant has clearly met these standards.

research, internal memos, and document drafts; conducting case review conferences and team meetings; and editing, supplementing, and re-writing pleadings and letters.¹⁶ Ms. Coonelly appears to have spent at least 40 to 50% of the total hours she has billed for this case on such supervisory activities. Time resulting from the unique clinical-education context rather than necessitated by litigation should not be charged to the defendant. See Walker, 1996 WL 38822, at *4 (E.D. Pa. 1996), citing Loney v. Scurr, 494 F. Supp. 928, 930 n.2 (S.D. Iowa 1980).¹⁷

I recognize that senior associates and partners in private firms engage in supervisory activities, but do not believe a firm would bill so many hours devoted to supervision of inexperienced lawyers in a relatively straight-forward case such as this. At any rate, the amount of time counsel has billed for such activities is excessive. See, e.g., Herkalo v. National Liberty Corp., 1997 WL 539754, at *5, *7-8 (E.D. Pa. 1997) (excluding 105.8 hours billed by attorneys for discussing scheduling matters, case status, and case strategy,

¹⁶ See supra note 12. See generally Coonelly Aff. at 4-8 (Coonelly time records); Plaintiff's Mot. For Award of Att'y Fees and Costs and Prejudgement and Post-judgement Interest, at ¶ 4 (describing supervisory activities undertaken by PLA0 faculty attorneys pursuant PLA0 policy).

¹⁷ Ms. Coonelly states that she excluded from the fee petition "time spent discussing the case that took place in class or time spent discussing non-case-specific practice issues (e.g., how to take a deposition, object at trial, etc.). Also not included is the substantial time I spent consulting with my colleague Alan Lerner regarding the history of this case or regarding the practice of employment discrimination law." (Coonelly Aff. at 3). However, Ms. Coonelly's time records show that she did include regular supervision meetings with her students and other supervisory activity not strictly necessitated by the case. Compare Walker, 1996 WL 37822, at *4 ("Mr. Lerner affirmed that his petition did not include such things as the time spent on discussion, planning, review, and preparation that took place in class or the regular weekly supervision sessions that he had with each law student."); cf. Plaintiff's Mot. For Award of Att'y Fees and Costs and Prejudgement and Post-judgement Interest, at ¶ 4.

and for reviewing each other's written work product); cf. Strauss v. Springer, 817 F. Supp. 1237, 1244, 1252 (E.D. Pa. 1993) (finding partner's requested hourly rate of \$150 excessive for "services which almost exclusively involve[d] discussion with firm associates and review of their work," reducing rate to \$100, and reducing hours claimed for reviewing associates' research). Moreover, counsel's records generally do not explain what the supervising and review activities accomplished. For these reasons, and after examination of both Ms. Coonelly's time records and her student-supervisees', I will reduce by 30% those of Ms. Coonelly's hours that are not specifically excluded or allowed below.

2. Deposition preparation and attendance

Defendant asserts that plaintiff may not recover fees for time Ms. Coonelly spent preparing for and attending depositions that were conducted by students. Plaintiff counters that it would be unfair to allow only the students conducting the depositions to recover fees, because if the depositions were not taken by students under Ms. Coonelly's supervision they would have been taken by Ms. Coonelly herself at her higher rate.

Plaintiff's argument does little to support the requested \$265 per hour (Ms. Coonelly's rate of \$190 plus the student's rate of \$75) that counsel wish to recover for the double-teamed depositions. Plaintiff's counsel chose to have supervised students take the depositions for the students' educational benefit.¹⁸ While this decision is to be commended and encouraged, the the extra staffing it entails should not be charged to defendant. See

¹⁸ Counsel do not contend that double-teaming was necessitated by the litigation itself.

Walker v. Upper Merion Police Dept., 1996 WL 37822, at *5 (E.D. Pa. 1996) (denying double-teaming fees for depositions in fee award to PLAO counsel in civil rights suit). I will therefore deduct 17.5 hours for Ms. Connelly's attendance at depositions.¹⁹

In addition, I will exclude time counsel spent preparing for depositions they did not conduct where the preparation is not justified by explanations in the time sheets. See Walker, 1996 W.L. 37822, at *5 (denying fees for time spent preparing for and attending depositions of witnesses never called to trial where the need for or benefit of the depositions was unexplained). For Ms. Coonelly, I exclude 18.3 hours for such activity.²⁰ As to the law students' hours, the hours spent by Mr. Bellingham (5.5. hours) and Ms. Oikle (6.5 hours) preparing for plaintiff's deposition were unnecessary and educational in nature and should not be charged to defendant.²¹ The court will also deduct time spent by Mr. Powell (2

¹⁹ Since Ms. Coonelly's records show that she attended the depositions but not how much time was expended in doing so, these hours are deduced from the time records of the students who took the depositions.

²⁰ Counsel's records indicate that Ms. Coonelly spent 3.3 hours in unexplained preparation for the deposition of plaintiff. As to the Painter deposition, Ms. Coonelly's records indicate only that she spent parts of 45 hours expended over the weeks of 3/28 - 4/4/97 preparing for the Painter deposition. The court is thus forced to estimate the hours Ms. Coonelly spent on this activity based on the time she spent preparing for plaintiff's deposition (3.3 hours), and will deduct 5 hours of her time. Similarly, in the case of the other two depositions, Ms. Coonelly's records inform us only that she spent unspecified parts of several weeks' worth of hours preparing for the depositions, and I will again deduct 5 hours for each deposition. Thus I exclude a total of 18.3 hours from Ms. Coonelly's time.

²¹ Mr. Bellingham's records indicate his preparation for plaintiff's deposition was entirely duplicative of Mr. Powell's (i.e., the two students double-teamed in prepping plaintiff for deposition). The 6.5 hours excluded from Ms. Oikle's time were spent researching and preparing memos on how to conduct and make objections in a deposition. (In his reply brief in support of the fee petition, plaintiff withdrew 2 other hours previously claimed for such work.) Plaintiff's counsel have implicitly recognized that such time is educational in nature and not properly chargeable to the defendant. See Coonelly Aff., at 3, stating that she excluded from her fee request time spent on "non-case-specific practice issues (e.g., how to take a deposition . . .)". Mr. Powell attended plaintiff's deposition as lead

hours) in unjustified preparation for the Price deposition.

Defendant objects to all of the 41.1 hours that Ms. Oikle spent preparing for the deposition of Sam Jenkins, a former employee of ITS and witness at the trial, on grounds that the deposition never took place, and, in the alternative, argues that the hours are excessive. The court finds that some hours were warranted because of defendant's initial representations that it would produce Mr. Jenkins for deposition. However, in light of the hours spent by Mr. Powell (19.75) and Mr. Bellingham (27.75)²² in preparing their depositions, Ms. Oikle's 34.6 hours are excessive and I will subtract 14.6 hours from her total.

3. Motion to Compel Discovery

Defendant argues that time spent on plaintiff's motion to compel discovery should be excluded because the motion was unsuccessful. In the alternative, defendant argues that the time spent on the motion and supporting briefs was excessive. Plaintiff counters that the motion was a reasonable response to the defendant's dilatory and inadequate discovery production and that the motion was not unsuccessful, but merely denied without prejudice in an Order which observed that "after an initial review not all of defendant's responses appear to be adequate." (Order, April 24, 1997.) In addition, plaintiff argues that the motion was an

counsel and his 8 hours of preparation will be allowed.

²² Mr. Bellingham deposed Mr. Price for 7.5 hours in the course of two sittings, so some additional preparation time between sittings is expected and recoverable.

exhaustive document reasonably requiring the time expended on it.²³

While I denied the motion to compel, I did observe that the motion appeared to have been filed after good faith attempts by counsel to resolve the dispute themselves. Id. However, I also noted that plaintiff appeared to have contributed to the controversy by making excessive discovery requests.²⁴ Thus, while it cannot be said that the motion was filed unnecessarily or did not achieve beneficial results for plaintiff's case (the parties resolved the dispute themselves after the Order denying the motion was issued), plaintiff was partially culpable for creating the dispute in the first place and the motion was not wholly successful. Accordingly, I will reduce by one-third the hours counsel reasonably expended on the motion.

As to the time claimed for the motion, it is excessive. Counsel's records indicate that students spent 79.25 hours,²⁵ and Ms. Coonelly approximately 48 hours,²⁶ on the motion and supporting briefs. Cf. Herkalo, 1997 WL 539754, at *6, *8 (excluding 130 of 229 hours sought for brief in opposition to motion for summary judgement); Schofield v. Trustees of the Univ. of Pennsylvania, 919 F. Supp. 821, 829 (E.D. Pa. 1996) (allowing 30

²³ The motion was accompanied by a 7 page proposed order, 35 page memorandum of law, and 23 exhibits. Plaintiff's reply memorandum in support of the motion was 8 pages with another 5 exhibits.

²⁴ Preceding the statement quoted by plaintiff, the Order also noted "with some concern that the volume of plaintiff's discovery requests (at least 279) appears to be out of proportion to the complexity of the case (which has an estimated trial time of 3 to 4 days)." Order, April 24, 1997.

²⁵ See Bellingham Aff. at 5-6 (weeks ending 4/4 - 4/25/97); Powell Aff. at 4-5 (weeks ending 2/28 - 4/4/97).

²⁶ See Coonelly Aff. at 6-7 (weeks ending 3/7/97 to 4/25/97).

hours for researching and drafting motion in limine and supporting memoranda). I will reduce the students' hours by 19.25 hours, and Ms. Coonelly's hours by 33 hours. The 75 combined hours thus allowed for this activity should have been more than sufficient. Making the additional one-third reduction leaves Ms. Coonelly with 10 hours and the students with 40 hours for the motion.

4. Motion to Compel the Jenkins Deposition

Defendant challenges the time that plaintiff's counsel spent preparing a motion to compel the deposition of Sam Jenkins, a former ITS employee, whom the defendant refused to produce on grounds that it had no control over its former employee and that plaintiff could subpoena him for his testimony. Plaintiff's motion to compel was denied. The time that counsel spent on this meritless motion (23 hours for Ms. Oikle and 25 hours for Ms. Coonelly²⁷) will be excluded. See Herkalo, 1997 WL 539754, at *6; Rush v. Scott Sanitary Servs., 934 F. Supp. 152, 155-6 (E.D. Pa. 1996); Sinclair v. Insurance Co. of North Am., 609 F. Supp. 397, 404-5 (E.D. Pa. 1984).

5. Case review conferences and team meetings

Defendant challenges the amount of time that counsel spent attending team meetings and supervisor-supervisee conferences as excessive, unnecessary, and for the student's educational benefit rather than required for litigation of the case. Between January 1997 and May 2, 1997 (ten days before trial), the three students on the case spent a total of 56.75

²⁷ See Coonelly Aff. at 6-7 (weeks ending 3/28 to 4/11/97).

hours attending “Smith team meetings” or conferences with Ms. Coonelly. Deduction from these records suggests that Ms. Coonelly spent 28.15 hours in these meetings and conferences. Counsel do not explain what purposes these conferences and meetings served, but a significant portion of this time was clearly devoted to review and other educational purposes not necessary to the litigation. Accordingly, I will deduct 75% of these hours as excessive or otherwise unnecessary. See Herkalo, 1997 WL 539754, at *5, *7-8. The approximately 90 minutes of combined meeting time per week that this reduction allows counsel should have been sufficient for pretrial litigation.

6. Specific time entry objections

As to other, more specific objections made by the defendant, I agree that time spent by Mr. Bellingham and Ms. Cafferty preparing affidavits for two potential witnesses whom they had not yet interviewed, and never did interview, and preparing questions for the interviews, was not reasonably expended and will exclude 4 hours for Mr. Bellingham²⁸ and 2.4 hours for Ms. Cafferty.²⁹ Counsel fails to explain why the interviews did not take place or what purpose the preparation served for the litigation. See Walker, 1996 WL 37822, at *5 (excluding hours spent on depositions for witnesses never called at trial where records failed to show how depositions related to plaintiff’s ultimate success). I also agree with defendant

²⁸ See Bellingham Aff. at 5.

²⁹ Again, I am forced to estimate due to the lack of specificity of the student’s time records. See Pl.’s Mem. in Support of Att’y Fees and Costs, Ex. I (Cafferty time records).

that the 3.6 hours claimed by Ms. Koegler for preparing and sending a one-sentence notice of Mr. Lerner's withdrawal of appearance is excessive, even in light of the reduced student hourly rate I have allowed, and will exclude 3.1 hours. Nor should fees be recovered for the 2 hours that Ms. Coonelly spent opposing dismissal for lack of prosecution of the case under Local Rule 41, since it was counsel's own lack of diligence that led to the Rule 41 notice. Finally, I will exclude all but 2 hours of the time claimed for Mr. Sacks.³⁰

Defendant's remaining objections, concerning the amount of time counsel seek for reviewing and organizing the file, for case planning, and for drafting various letters, have merit but are appropriately accounted for in light of the reductions in hourly rates and recoverable hours set forth above.

7. Post-trial motions³¹

In the supplemental fee petition, plaintiff seeks fees for 173 hours expended on his brief in opposition to defendant's motion for a new trial or judgement as a matter of law.³²

While counsel's brief was thorough, well-written, and helpful to the court, the amount of

³⁰ The two hours allowed were spent on research that conceivably may have been useful to subsequent student counsel. Otherwise, Mr. Sacks' 23 hours of work appear in no way to have furthered the litigation of this case. See Pl.'s Mem. in Support of Att'y Fees and Costs, Ex. I (Sacks time records).

³¹ Defendant did not file an additional brief in opposition to the fees sought in plaintiff's supplemental fee petition, but I find that the categorical objections made in defendant's opposition to the original fee petition were sufficient to put plaintiff on notice regarding the hours claimed in the supplemental petition. See Bell v. United Princeton Properties, 884 F.2d 713, 719-20 (3d Cir. 1989) (purpose of requiring party opposing fee petition to make objections, and prohibiting sua sponte reductions, is to put "the [fee] applicant on notice that it must defend its fee petition").

³² Ms. Coonelly claims 56.4 hours; Mr. Bellingham, 73.1 hours; and Ms. Gemeiner, 43.5 hours.

time claimed is excessive. I will allow 20 hours for Ms. Coonelly, 50 hours for Mr. Bellingham, and 20 hours for Ms. Gemeiner.

In sum, plaintiff will be awarded attorney fees of \$75,732, exclusive of fees awarded for the fee petition. (For detailed calculations, see the Appendix attached hereto.)

8. The fee petition

Fees sought for work on a fee petition are generally recoverable, but are to be analyzed separately from the rest of the fee award determination. Carter-Herman, 1997 WL 48942, at *8 (citing Student Public Interest Research Group of New Jersey v. AT&T Bell Lab., 842 F.2d 1436, 1455 (3d Cir. 1988)). “The hours claimed for preparing a fee petition should be reduced if the petition is only partly successful. . . . In fact, a district court abuses its discretion when it fails to make an appropriate reduction.” Id. (citations omitted). Plaintiff claims a total of 141.6 hours for the fee petition.³³ Defendant challenges these hours as excessive or otherwise unnecessary.³⁴

I agree with defendant that the amount of time claimed for the fee petitions and supporting briefs is excessive. See, e.g., Herkalo, 1997 WL 539754, at *7 (excluding as

³³ This represents 69.17 hours for the original petition; 8.5 hours for the supplemental petition (which accounted for time expended on the case from June 6, 1997 to July 17, 1997); and 65.9 hours on the reply brief. The breakdown by counsel is as follows: Mr. Lerner (2.5); Ms. Coonelly (60.3); Mr. Bellingham (43.7); Ms. Gemeiner (35.1).

³⁴ Defendant challenged the time that plaintiff’s counsel claimed for the first fee petition in its brief opposing the plaintiff’s original fee petition. While defendant has not filed a supplemental brief to challenge the additional hours claimed in the supplemental petition, defendant’s objections to the original petition remain effective against the supplemental petition. See supra note 31.

excessive 28.1 of 56.1 hours spent by partner preparing fee petition, supplemental petition, and reply brief); Sinclair, 609 F. Supp. at 408 (excluding 34.4 hours of 66.4 hours claimed for preparation of fee petition, two reply briefs, and oral argument); cf. Walker, 1996 WL 38822, at *5 (allowing 18.5 hours claimed by Mr. Lerner and 37.6 hours claimed by student for fee petition work). Taking into account the hourly rates allowed counsel, the quality of the petition work, and that some work on the petition was necessitated only by the lack of contemporaneous documentation or inadequate specificity,³⁵ I find that a reasonable allowance for the fee petition is 10 hours for Ms. Coonelly, 30 hours for Mr. Bellingham, and 20 hours for Ms. Gemeiner, in addition to Mr. Lerner’s 2.5 hours, for a total of \$4,875.³⁶ See Sinclair, 609 F. Supp. at 408; Herkalo, 1997 WL 539754, at *7. Because the petition has been only partially successful, I will reduce the award by 25% for a final award of \$3,656. See Carter-Herman, 1997 WL 48942, at *8.

II. Prejudgement Interest

Whether to award prejudgement interest³⁷ is “committed to the sound discretion of the trial court.” Green v. USX Corp., 843 F.2d 1511, 1530 (3d cir. 1988). Ordinarily, prejudgement interest compensates a victim of discrimination for the loss of use of money

³⁵ For example, I estimate that Ms. Coonelly and Ms. Gemeiner devoted approximately 10 hours to defending the lack of specificity of Ms. Coonelly’s records.

³⁶ This includes 2.5 hours claimed for Mr. Lerner.

³⁷ Plaintiff seeks prejudgement interest only on the back pay portion of his award.

he or she would have had but for the unlawful discrimination. Booker v. Taylor Milk Company, 64 F.3d 860, 868 (3d Cir. 1995). To fulfill this “make-whole” purpose, prejudgement interest is to be “given in response to considerations of fairness [and] denied when its exaction would be inequitable.” Green, 843 F.2d at 1530, n. 16, citing Board of Comm’rs of Jackson County v. United States, 308 U.S. 343 (1939).

In this case, plaintiff has recovered \$500,000 in punitive damages as well as \$350,000 in compensatory damages. He has therefore been adequately compensated. An additional award of interest would serve no “make-whole” purpose and would be inequitable. See Harley v. Atlantic City Police Dept., 933 F. Supp. 396, 430 (D.N.J. 1996) (finding that an award of prejudgement interest would result in “unusual inequity” where plaintiff had recovered \$700,000 in punitive damages in addition to compensation for her injuries). Accordingly, I conclude that an award of prejudgement interest in this case is unwarranted. See id.; Hogan v. Bangor and Aroostook Railroad Company, 61 F.3d 1034, 1038 (1st Cir. 1995) (affirming lower court’s decision not to award prejudgement interest on back pay where total damages awarded were nearly three times amount of back pay award).

APPENDIX:

Calculations of fee award, exclusive of work on fee petition.

Attorneys

Ms. Coonelly: (1996) 25.17 hours claimed
 - 2 (opposing dismissal under Local Rule 41.1)
 = 23.17 x 0.70 (30% reduction) x \$150 = \$ 2,433

(1997) 375.4 hours claimed
 -149 excluded (depositions (35.8); motions to compel (63); case review/meetings (14.07); post-trial brief (36.4))
 - 44 allowed (motion to compel (10); case review/meetings (14.07); post-trial brief (20)) x \$160 = \$ 7,040
 = 182 x 0.70 (30% reduction) x \$160 = \$ 20,384

Mr. Lerner 26.8 hours claimed x \$250 = \$ 6,700

Students

1997

Mr. Bellingham and Mr. Powell (3d yrs.) 581 hours claimed
 -29.4 (75% case review and meetings)
 -7.5 (deposition preparation)
 -39.25 (motion to compel discovery)
 -4 (unexplained, aborted interview and affidavit preparation)
 -23.1 (post-trial brief)
 477.75 x \$55 = \$ 26,276

Ms. Oikle (2d yr.) 121 hours claimed
 -13.16 (75% meeting/case review hours)
 -6.5 (plaintiff's deposition preparation)
 -14.6 (Jenkins' deposition preparation)
 -23 (motion to compel Jenkins deposition)
 63.74 x \$45 = \$ 2,868

Ms. Gemeiner (1st yr.) 43.5 hours claimed
 -23.5 (post-trial brief)
 = 20 x \$40 = \$ 800

1996

Ms. Koegler (2d yr.) 77 hours claimed
 -3.1 (withdrawal of appearance)
 73.9 x \$40 = \$ 2,952

Ms. Cafferty (3d yr.) 69.8 hours claimed
 -2.4 (unexplained aborted interview and affidavit preparation)

	=67.4	x \$50 =	\$ 3,370
<u>1995</u>			
Mr. Sacks (3d yr.)	23 hours claimed		
	<u>-21 excluded</u>		
	2	x \$45 =	\$ 90
Mr. Rodio (3d yr.)	33	x \$45 =	\$ 1,485
Ms. Atkins (1st yr.)	38	x \$35 =	\$ 1,330

		TOTAL =	\$ 75,732

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

HERBERT SMITH	:	CIVIL ACTION
	:	
v.	:	
	:	
INTERNATIONAL TOTAL	:	
SERVICES, INC.	:	No. 95-2038

ORDER

AND now this day of October, 1997, upon consideration of Plaintiff's Motion for an Award of Attorney Fees and Costs and for Prejudgement and Post-judgement Interest and the parties' filings related thereto, it is hereby ORDERED that plaintiff's motion is GRANTED IN PART and DENIED IN PART.

Plaintiff is awarded \$2,863.86 in costs and \$79,388 in attorney fees. Judgement is entered in favor of plaintiff and against defendant in the amount of \$82,251.96.

THOMAS N. O'NEILL, JR., J.