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District Court Finds That Unreasonably High Hourly Rates and Lack of Billing Judgment Warrants Fee Reduction

Last year, the U.S. District Court for the Western District of New York reduced a plaintiff's fee request by over \$25,000 due, in part, to the conclusion that the hourly rates charged by the plaintiff's attorneys were unreasonable. In addition, the court found that the hours were not "reasonably expended" and, therefore, a reduction in the hours requested was warranted.

The plaintiff sought attorney fees and costs in excess of \$46,000. Although the defendant did not object to the plaintiff's fee application, the court refused to grant this request without first reviewing the billing records. To do otherwise, the court noted, "would require [it] to accept such tactics as double-billing."

At the outset, the court reduced the hourly rates charged by the plaintiff's attorneys from \$425 to \$200 per hour and \$350 to \$200 per hour. Among the factors considered, the court afforded particular attention to the prevailing rate charged by attorneys in the community. The court found that hourly rates charged within the district, "for similar cases brought by attorneys of comparable experience, do not come close to the rates sought by Plaintiff's counsel." Moreover, the court found that the subject matter of the case was not unusually complex as to justify the requested rate.

The court also applied a percentage reduction to a number of time entries for counsel's lack of billing judgment. The maintenance of contemporaneous time records by an attorney is extremely important and is required "so the court can audit the hours and determine whether they were reasonably expended." Notably, the court recognized that a lawyer has an ethical obligation to exercise billing judgment and exclude any excessive, redundant and unnecessary hours. Finding that some hours were vague, excessive and double-billed, the court reduced the fee request by 16.3 hours. The reduction in the attorneys' hourly rates coupled with the reduction for unreasonably expended hours resulted in a decreased fee of more than one half of the fees requested.

A LAWYER HAS AN ETHICAL OBLIGATION TO EXERCISE BILLING JUDGMENT AND EXCLUDE ANY EXCESSIVE, REDUNDANT AND UNNECESSARY HOURS

Implications for Legal Billing: It is important to note the court's refusal to accept the plaintiff's fee request without reviewing the billing records. This seems to indicate that courts are taking the issue of attorneys' fees very seriously. One area where courts will not hesitate to address, as indicated by this decision, is the rate charged by an attorney. One of the main factors to be considered in determining the reasonableness of an attorney's hourly rate is the prevailing rate in the community charged by an attorney with comparable experience. An unreasonably high hourly rate is one of the most significant causes of an inflated legal bill. For example, 10 hours expended at a rate of \$425 totals \$4,250 in legal fees. However, if the hourly rate is reduced to \$200, as it was in this case, the legal fees total \$2,000. This results in a

savings of \$2,250 for just 10 hours. Legal bills with hundreds of hours expended can be dramatically reduced by decreasing hourly rates to reflect a more reasonable fee.

Moreover, as indicated above, courts will evaluate billing records to determine whether the billing attorney exercised billing judgment. Lawyers are ethically required to use billing judgment when maintaining time records. A client may not be billed for excessive, redundant or unnecessary hours. Lack of billing judgment can be identified by conducting a thorough review of the billing records and, if found, an attorney's fee should be reduced accordingly.

* Disabled Patriots of America, Inc. v. Niagara Group Hotels, LLC, 688 F. Supp. 2d 216 (W.D.N.Y. 2010). Full copies of court decisions may be available through counsel or through various Internet links or paid services.

By Laura R. Bugdin

Sterling Analytics is a consulting and advisory firm that helps companies reduce their legal expenses. Our proven methodologies are based on legal precedent, guidelines and ethical standards that compel law firms to significantly modify improper billing practices. Although our clients come from a broad range of industries with different legal budgets, they share a concern about their legal expenses and are looking for solutions to manage outside counsel while maintaining the highest service level standards. We are able to audit legal fees based on our extensive database of proprietary benchmark data and our solid understanding of traditional legal practices. Our process is fair, independent, cost effective and maintains attorney-client privilege. We are able to measure the extent to which our clients' legal expenses exceed industry standards, and will manage the negotiation and recovery of excessive fees. To institutionalize cost controls, we assist clients by installing systems and protocols that monitor billing activity and catch improper practices.

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