



STERLING ANALYTICS

Sterling Analytics Group, LLC  
135 Crossways Park Drive  
Woodbury, NY 11797  
(646) 863-9433  
info@sterlinganalytics.com

[www.sterlinganalytics.com](http://www.sterlinganalytics.com)

## Federal District Court Finds Fee to be Excessive Where Billing Records Contain Tasks Performed in a Previous Action

Earlier this year, the U.S. District Court for the Northern District of New York applied a 20% reduction to a plaintiff's request for attorney's fees. After reviewing the billing records submitted by the plaintiff's attorney, the court found that multiple entries were vague, duplicative and excessive. In particular, the court identified four entries that represented an excessive amount of time because the attorneys in this case were counsel for a group of plaintiffs in a nearly identical action. The court noted that the documents submitted by counsel in this action were virtually identical to those submitted in the previous action. In fact, three sections of the plaintiff's memorandum in this case were copied verbatim from the memorandum submitted in the earlier case. Moreover, the time records indicated that the plaintiff's counsel billed for time spent researching issues that were addressed in the previous action. The court concluded that it would be inappropriate to "compensate counsel twice for the same work" and that to hold otherwise would permit "double recovery."

Additionally, the court found that some entries were vague and "d[id] not adequately describe the nature of the work performed." The court noted that entries such as "worked on memorandum of law," "drafted affidavits," or "drafted letters to [various individuals]" do not provide an adequate description of the services rendered. Instead, these types of entries "contain a boilerplate explanation that was copied and pasted verbatim throughout the billing statements." Furthermore, the court found that some entries were "questionable" because they did not relate to the issues in the case.

Based on the above, the court found it appropriate to apply a 20% reduction to the plaintiff's application for attorney's fees.

# IT WOULD BE INAPPROPRIATE TO “COMPENSATE COUNSEL TWICE FOR THE SAME WORK” AND TO HOLD OTHERWISE WOULD PERMIT “DOUBLE RECOVERY”

## **Implications for Legal Billing:**

Excessive fees can arise by an attorney's use of a number of impermissible billing practices. For example, overstaffing, spending too much time on a relatively simple task, and performing the same task multiple times can all lead to excessive fees. This case recognizes that work that has been performed and billed by an attorney in a previous matter cannot be billed for again in a subsequent matter. To bill for the same task twice would represent an excessive fee, and an unfair practice. This is true even where the work performed in the previous action was completed for a different client. Undoubtedly, it would be difficult to determine if an attorney has performed the same work for a previous client or has

used part of a brief or memorandum that was submitted in another case. However, many companies hire counsel for matters that are similar in nature and would include performing repetitive tasks. By conducting a review of the billing records from a previous matter, a client may be able to determine if he or she is being double billed in a subsequent matter. Though time consuming, this type of review may save a company a significant amount of money in legal fees.

\* Central New York Laborers' Health and Welfare, Pensions, Annuity and Training v. Five Star Constr. Services, Inc. 2011 WL 167236 (N.D.N.Y. 2011). 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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