

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

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H. JAMES WAYMAN and GLADYS G. WAYMAN,	:	
Plaintiffs	:	
	:	
vs.	:	CIVIL NO. 7/1982
	:	
CHARLES S. NICHOLSON and	:	
MARCELLA J. NICHOLSON,	:	
Defendants	:	

MARIA TANKENSON HODGE, ESQ.
P.O. Box 4511
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(Attorney for Plaintiffs)

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(Attorney for Defendants)

MEMORANDUM OPINION AND ORDER

(March 22, 1983)

FEUERZEIG, J.

After a two-and-one-half day trial on what the court perceives to have been novel issues in this jurisdiction, the jury awarded the plaintiffs a verdict of \$11,550. Plaintiffs' counsel has now submitted an affidavit regarding services provided and a bill of costs. Defendants have provided the court with their opposition.

Plaintiffs' counsel requests indemnification for attorney's fees in the amount of \$9,316.25, which was computed on the hourly rates agreed to by plaintiffs and counsel. Counsel also asks for \$887.49 in costs and one-half of the \$850 cost of an expert, who allegedly was to be shared by the parties.

As indicated in Estien, the fee agreed upon between the attorney and client is only one factor to consider. Moreover, the normal award under 5 V.I.C. §541 often is only a minor fraction of what an attorney may reasonably have charged a client for service. Smith v. Government of the Virgin Islands, 361 F.2d 469, 471 (3d Cir. 1966).

In making a just award, though, the court must consider the actual amount of time spent, the complexity of the issues and the quality of the legal work. Additionally, the contingent nature of the success of the work involved, the actual amount of recovery, and the degree of skill of counsel or the lack thereof that contributed to the outcome also influences an award.

The lead attorney for the plaintiff and her associate expended a total of ninety hours in the preparation and handling of this litigation. At their respective billable hourly rates this would amount to a combined fee of \$9,316.25. Given the complexity of the issues and the length of trial, the court cannot agree with defendants' counsel that this represents an extraordinarily excessive amount of time.

Defendants also argue that plaintiffs prayed for a \$106,850 judgment and only received a judgment of \$11,550. In considering the award of attorneys' fees the court observes that the trial presentation of plaintiffs' case in this instance was not only adequate, but indeed reflected careful pre-trial preparation and a careful attempt to marshal the facts in a light most favorable to the plaintiffs' case. As was stated by the District Court in King v. United States, Civil No. 79-3 (D.V.I. October 22, 1980), "The size of the recovery should not bear heavily on the fee award. The amount of the award in no way reflects adversely on the efforts of plaintiffs' counsel." Instead, it was the difficult burden put on plaintiffs shoulders in their attempts to prove fraudulent misrepresentation and breach of warranty.

The defendants are correct, though, in stating that the court should not give credit for time devoted to the filing of two complaints. In that regard the court will delete five hours devoted to research, drafting the complaint, completing the draft, drafting the motion to amend the complaint, and drafting the amended complaint. Because the attorney's certificate does not differentiate which of the two attorneys spent time on the various tasks, the court also will have to deduct the time from that of the principal attorney. Accordingly, five hours will be deducted from the 46½ hours devoted by plaintiffs' lead counsel.

In addition, "the controlling authority in this district dictates that in making an allowance for attorney's fees, the court will be limited by the hourly rate customarily charged by attorneys in the district for like service." Tyler v. American Airlines, No. 76-369 (D.V.I., June 21, 1979). The court does not question the propriety of the \$125 per hour billing rate of lead counsel, but believes the prevailing fee or customarily charged rate for like services is \$100 per hour and that the customarily charged rate for her associate is \$60 per hour for the 43 and 3/4 hours he devoted to this case. Therefore, the "lodestar" figure, in accordance with Lindy Bros. Inc. of Philadelphia v. American Radiator and Standard Sanitary Corp., 487 F.2d 161 (3d Cir. 1973), is \$6,750.

While defense counsel believes the award, in contrast to the prayer, should cause further reduction of this lodestar, the court disagrees. Although plaintiffs only prevailed on their negligent misrepresentation theory and not on their claim for fraudulent misrepresentation or express warranty, there was ample evidence by which the jury could have found a breach of warranty and/or fraudulent misrepresentation. It is, of course, for that reason that the court permitted the case to go to the jury on those issues as well as negligent

misrepresentation. Moreover, the fact that the plaintiffs only were awarded \$11,550 is no indication of the damages that plaintiffs could have been awarded under the facts as presented. Thus, the court will not reduce the lodestar and will award to the plaintiffs attorney's fees in the amount of \$6,750.

As for costs, the court is confronted with the sworn statements of counsel for the plaintiffs as opposed to a "categorical denial" of defense counsel with respect to an agreement to share the expenses of an expert witness, William McComb. The court believes that it is appropriate to split the costs for Mr. McComb, and costs for Mr. McComb in the amount of \$407.50 will be awarded to the plaintiffs. In its discretion the court also will award plaintiffs additional costs in the amount of \$129.34. No prior application having been made with respect to the depositions of the Weymans and Nicholsons and xeroxing expenses being an office item included in counsel's fees, those costs are not granted to plaintiffs.

Accordingly, judgment will be granted to the plaintiffs in the amount of \$11,550 plus attorney's fees in the amount of \$6,750 and costs in the amount of \$536.84.



HENRY L. FEUERZEIG

Judge of the Territorial Court