RENEE C. PEREZ, Plaintiff, vs. COZEN & O'CONNOR GROUP LONG TERM DISABILITY COVERAGE, an employee welfare benefit plan under ERISA, Defendant.

CASE NO. 05cv0440 DMS (AJB)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

2007 U.S. Dist. LEXIS 53996

March 27, 2007, Decided
March 27, 2007, Filed

PRIOR HISTORY: *Perez v. Cozen & O'Connor Group Long Term Disability Coverage, 2006 U.S. Dist. LEXIS 90356 (S.D. Cal., Dec. 13, 2006)*

COUNSEL: [*1] For Renee C Perez, Plaintiff: Thomas M. Monson, LEAD ATTORNEY, Susan Lee Horner, Miller Monson Peshel Polacek and Hoshaw, San Diego, CA.

For Cozen & O'Connor Group Long Term Disability Coverage, an employee welfare benefit plan under ERISA, Defendant: Ammon Louis Dorny, LEAD ATTORNEY, Wilson Elser Moskowitz Edelman and Dicker, Los Angeles, CA.

JUDGES: HON. DANA M. SABRAW, United States District Judge.

OPINION BY: DANA M. SABRAW

OPINION

ORDER GRANTING PLAINTIFF'S MOTION FOR ATTORNEYS FEES

[Docket No. 97]

Plaintiff Renee Perez filed the present case on March 4, 2005, pursuant to the Employee Retirement Income Security Act ("ERISA") seeking to recover benefits under her former employer's benefit plan. After a motion for summary judgment on the standard of review, a motion for summary judgment on the ultimate issue of disability, a motion for leave to expand the record, and limited discovery, the parties proceeded to a bench trial before this Court on December 4, 2006. The Court thereafter issued a Memorandum of Decision and Order finding Plaintiff was entitled to past benefits in the amount of $ 79,594.58, plus interest, and reinstatement of her claim under the policy, including her life insurance coverage.

Plaintiff has [*2] now filed a motion for attorneys fees and costs. Defendant has filed an opposition to the motion, and Plaintiff has filed a reply. For the reasons set out below, the Court grants Plaintiff's motion.

I.

DISCUSSION

Plaintiff seeks to recover $ 446,435.75 in attorney's fees and $ 2,459.36 in costs related to this action. She asserts she is entitled to these fees and costs, and they are reasonable. Defendant disputes both of Plaintiff's assertions.

A. Entitlement to Fees and Costs

Pursuant to *29 U.S.C. § 1132(g)(1)*, the court may award a "reasonable attorney's fee and costs of action to either party" in an ERISA case. *29 U.S.C. § 1132(g)(1)*. Courts usually engage in the five-factor test set out in *Hummell v. S.E. Rykoff & Co., 634 F.2d 446 (9th Cir. 1980)*, to determine whether a party is entitled to fees and costs in an ERISA action. However, the Ninth Circuit has held that where "the fact that the plaintiff prevailed 'is evident from the order of the district court, it is unnecessary for the court to engage in a discussion of the factors enumerated in *Hummell*.'" *Grosz-Salomon v. Paul Revere Life Ins. Co., 237 F.3d 1154, 1164 (9th Cir. 2001)* (quoting *Nelson v. EG & G Energy Measurements Group, Inc., 37 F.3d 1384 (9th Cir. 1994))*. [*3] In this case, it is evident from the Court's Memorandum of Decision and Order that Plaintiff prevailed in this action. After a bench trial, the Court found Plaintiff was entitled to past benefits and reinstatement of her claim, including her life insurance coverage. Defendant also implicitly admits Plaintiff is the prevailing party. (*See* Opp'n to Mot. for Attorney's Fees at 8.) Under these circumstances, an analysis of the *Hummell* factors is unnecessary to the Court's finding that Plaintiff is entitled to attorney's fees and costs.

B. Reasonableness of Fees

District courts in the Ninth Circuit apply a "two-step hybrid lodestar/multiplier approach" to calculate a "reasonable" attorney's fee. *Welch v. Metropolitan Life Ins. Co., 480 F.3d 942, 945, 2007 WL 656390, at *2 (9th Cir. 2007)*. "First, the court establishes a lodestar by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate." *Id.* The lodestar amount is presumptively the "reasonable" fee amount. *Van Gerwen v. Guarantee Mutual Life Co., 214 F.3d 1041, 1045 (9th Cir. 2000)*. However, in "rare and exceptional cases," the court may use a multiplier to adjust the lodestar amount upward or [*4] downward. *Id.* Use of a multiplier must be "supported by both specific evidence on the record and detailed findings by the lower courts' that the lodestar amount is unreasonably low or unreasonably high." *Id.*

The party seeking fees bears the burden of proving the lodestar amount. *Welch, 480 F.3d at 945, 2007 WL 656390, at *2*; *Cortes v. Metropolitan Life Ins. Co., 380 F.Supp.2d 1125, 1129 (C.D. Cal. 2005)* (quoting *Blum v. Stenson, 465 U.S. 886, 895, 104 S. Ct. 1541, 79 L. Ed. 2d 891 & n.11 (1984))*. This means the party seeking fees must show the hours it expended on the litigation were reasonable. Hours that are "'excessive, redundant, or otherwise unnecessary'" may be excluded from the fee request. *Welch, 480 F.3d at 946, 2007 WL 656390, at *2* (quoting *Hensley v. Eckerhart, 461 U.S. 424, 434, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983))*. The party seeking fees must also demonstrate its attorney's hourly rate is reasonable. A reasonable hourly rate is determined "'by reference to the fees that private attorneys of an ability and reputation comparable to that of prevailing counsel charge their paying clients for legal work of similar complexity.'" *Id. 480 F.3d at 946, at *3* (quoting *Davis v. City and County of San Francisco, 976 F.2d 1536, 1545 (9th Cir. 1992))*. The quality of counsel's representation is inherent [*5] to this determination. *Van Gerwen, 214 F.3d at 1046*.

1. Reasonable Hourly Rate

Plaintiff asserts the reasonable hourly rates for her attorneys, Thomas M. Monson and Susan L. Horner, are $ 495 and $ 450, respectively. In support of these hourly rates, Plaintiff has provided the Court with several declarations from other attorneys that represent plaintiffs in ERISA matters. (*See* Decl. of Susan L. Horner in Supp. of Mot. for Attorney's Fees ("Horner Decl."), Exs. A-I.) The hourly rates charged by these attorneys range from $ 400 to $ 525. The attorney with the most experience, Charles Fleishman, who has been practicing since 1970, states his hourly rate is $ 450. (Horner Decl., Ex. B.) Ronald Dean, who has been practicing since 1971, states his hourly rate is $ 525, (Horner Decl., Ex. A), and Geoffrey V. White, who has been practicing since 1975, states his hourly rate is $ 425. (Horner Decl., Ex. F.) Mr. Monson has been practicing since 1976, and based on his years of experience and the rates charged by Messrs. Fleishman, Dean and White, the Court finds $ 425 to be a reasonable hourly rate for Mr. Monson.

Ms. Horner has been practicing since 1990. Plaintiff does not provide the Court with [*6] any declarations from attorneys with this same amount of experience, but the Declarations provided show that attorneys with more experience than Ms. Homer charge from $ 400 to $ 495 per hour. (*See* Horner Decl., Exs. C-E, H-I.) Based on these Declarations, and the Court's finding that Mr. Monson's reasonable hourly rate should be $ 425, the Court finds $ 375 is a reasonable hourly rate for Ms. Horner.

Defendant argues the Court should look to the *Laffey*

Matrix to determine counsel's reasonable hourly rates. "The *Laffey* Matrix is a rate schedule established by the United States Department of Justice that establishes what the department believes to be a reasonable rate for corresponding legal experience in Washington, D.C." *American Canoe Ass'n, Inc. v. United States Environmental Protection Agency, 138 F.Supp.2d 722, 741 (E.D. Va. 2001)*. According to that Matrix, and making adjustments for locale, Defendant asserts a reasonable hourly rate for Mr. Monson is $ 361, and a reasonable hourly rate for Ms. Horner is $ 319. (*See* Decl. of Gerald G. Knapton ("Knapton Decl."), Ex. 27.) However, Defendant fails to cite any legal authority stating the *Laffey* Matrix should be used in an ERISA case, [*7] or that it is applicable to any market outside of the Washington, D.C. area. Indeed, despite its close proximity to Washington, D.C, the Eastern District of Virginia has declined to use the *Laffey* Matrix. *See American Canoe, 138 F.Supp.2d at 741-42*. Furthermore, use of the *Laffey* Matrix in this case would be contrary to Ninth Circuit law, which "instructs district courts to use 'the rate prevailing *in the community* for *similar work* performed by *attorneys of comparable skill, experience, and reputation.*'" *Farhat v. Hartford Life and Accident Ins., No. C 05-0797 PJH, 2006 U.S. Dist. LEXIS 64865, 2006 WL 2521571, at *2 (N.D. Cal. Aug. 30, 2006)* (quoting *Chalmers v. City of Los Angeles, 796 F.2d 1205, 1211 (9th Cir. 1986))* (emphasis added). The *Laffey* Matrix does not take any of these factors into account, and thus, the Court declines to consider it in determining the reasonable hourly rates for counsel in this case.

2. Reasonable Number of Hours

Having determined a reasonable hourly rate for Mr. Monson and Ms. Horner, the Court must now consider whether the hours they expended on this case were reasonable. Defendant hired an expert to review counsel's billing records and offer his opinion on this issue, (*see* Knapton [*8] Decl.), and it argues the Court should adopt this opinion in making its decision. However, the reasonableness of hours spent litigating a case is not an issue that requires expert opinion. On the contrary, it is an issue "about which the district court possesses sufficient expertise[.]" *Thompson v. Pharmacy Corp. of America, Inc., 334 F.3d 1242, 1245 (11th Cir. 2003)*. Accordingly, although the Court has carefully considered the opinions of Mr. Knapton, the weight to which those opinions are entitled is tempered by the Court's expertise.

Turning to counsel's billing records, the Court makes the following general observations: First, although the nature of Plaintiff's disability is complex and complicated, this was a relatively straightforward ERISA case. Plaintiff sought to recover benefits under her former employer's long-term disability policy. As in most ERISA cases, the Court had to decide the applicable standard of review based on the plan language, whether, and how much, discovery should be allowed, and ultimately, whether Plaintiff was disabled under the policy based on the record before the plan administrator. Under these circumstances, the Court finds it was unnecessary to have [*9] two partners perform the overwhelming majority of work in this case. *See Kuhn v. Unum Provident Corp., No. CV 04-368 TUC DCB, 2007 U.S. Dist. LEXIS 9184, 2007 WL 446359, at *2 (D. Ariz. Feb. 7, 2007)* (citing *Hensley, 461 U.S. at 434*) (stating court should exclude hours not reasonable expended due to overstaffing); *Vigilant Ins. Co. v. EEMAX, Inc., 362 F.Supp.2d 225, 227 (D.D.C. 2005)* (finding straightforward work should have been performed primarily by associate and reviewed by partner). Accordingly, the Court will reduce the number of hours where appropriate.

Second, Ms. Horner spent a substantial amount of time researching Dr. Amy Hopkins. Although this research generated a bevy of information about Dr. Hopkins, all of that information was outside the administrative record. As indicated in this Court's previous orders, and as clearly stated by the Ninth Circuit, the administrative record furnishes the primary basis for review in ERISA cases such as this one. *Kearney v. Standard Ins. Co., 175 F.3d 1084, 1090 (9th Cir. 1999)*. Evidence outside the administrative record is admissible "only when such evidence is needed to conduct an adequate de novo review." *McCoy v. Federal Ins. Co., 7 F.Supp.2d 1134, 1141 (E.D. Wash. 1998)* [*10] (citing *Mongeluzo v. Baxter Travenol Long Term Disability Benefit Plan, 46 F.3d 938, 943-44 (9th Cir. 1995))*. In light of these presumptions, and Plaintiff's failure to overcome them in this case, the Court finds the time counsel spent researching Dr. Hopkins was unnecessary.

Third, Plaintiff fails to provide any evidence supporting recovery of fees for work performed by paralegals, law clerks, or secretaries. Specifically, there is no evidence concerning the experience of the persons identified as paralegals and law clerks, *i.e.*, an affidavit

from these individuals detailing their experience, the work performed, and their normal hourly rate, or that the hourly rates for these persons are "reasonable." Furthermore, Plaintiff fails to provide any evidence of the reasonableness of billing for secretarial time. Accordingly, those hours will be excluded.

With these observations in mind, the Court has thoroughly reviewed counsel's billing records to determine the reasonable number of hours expended in this litigation. A copy of the Court's analysis of these records is attached as Attachment A. As indicated therein, the Court finds that 800.10 hours were reasonably expended litigating this [*11] case and preparing the instant motion, 733.90 hours attributed to Ms. Horner, and 66.20 hours attributed to Mr. Monson. When multiplied by the hourly rates set out above, the result is an award of reasonable attorney's fees in the amount of $ 303,347.50. [1]

1 Neither party requests the use of a multiplier in this case. Therefore, the Court does not address this factor.

C. Costs

In addition to attorney's fees, Plaintiff requests costs in the amount of $ 2,459.36. The evidence provided to the Court, however, does not support this amount. Rather, the evidence shows costs in the amount of $ 1,495.35. Accordingly, the Court awards Plaintiff costs in this amount.

III.

CONCLUSION

In light of the above, the Court GRANTS Plaintiff's motion for attorneys fees. The Court awards counsel $ 303,347.50 in reasonable attorney's fees, and $ 1,495.35 in costs. The Clerk of Court shall amend the judgment accordingly, and Defendant shall pay the entire judgment within two weeks of this Order being stamped "Filed."

IT IS SO ORDERED.

DATED: March 27, 2007

HON. DANA M. SABRAW

United States District Judge