

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
ORLANDO DISTRICT OFFICE

JOELLE MERCIER,)
)
Employee/Claimant)
)
vs.) OJCC Case No. 93-004293-TWS
)
WALT DISNEY PARKS & RESORTS,) Accident date: 5/10/1993
U.S., INC.)
)
Employer)
)
and)
)
WALT DISNEY WORLD CO./WC)
) **Judge: Thomas W. Sculco**
Self-Insurer)
)
_____ /

ORDER ON VERIFIED PETITION FOR APPELLATE ATTORNEY'S FEES AND COSTS

After proper notice to all parties, a hearing was held on this claim in Orlando, Orange County, Florida on March 6, 2012. Present at the hearing was Attorney Mitchell Wyle for the employee. The Self-Insurer was represented by Attorney Edward Kuhn.

This order addresses the Verified Motion/Petition for Attorney's Fees filed with DOAH on January 17, 2012.

Testimony: William Rogner, Esq., Mitchell Wyle, Esq.

DOCUMENTARY EVIDENCE:

#1 Claimant's: Verified Petition for Appellate Attorney's Fees/Costs

#2 E/C's: E/C's Verified Response

After hearing all of the testimony and evidence presented, and after having resolved any and all conflicts therein, the undersigned Judge of Compensation Claims makes the following findings of fact and conclusions of law: It is well settled that the starting point for determining an award of appellate attorney's fees is the reasonable number of hours expended on the appeal multiplied by an appropriate hourly rate. Metric Constructors, Inc., v. Bovles, 633 So.2d 1167 (Fla. 1st DCA 1994). On this question, I accept the testimony and opinions of William Rogner, who testified that Mr. Wyle reasonably expended 2.8 hours on the appeal, and that a reasonable hourly rate for his services is \$225.00 per hour.

I have considered the contrary testimony and argument of Mr. Wyle, and find that Mr. Rogner's testimony is more logical and reasonable under the circumstances of this case. I specifically accept Mr. Rogner's testimony that time spent by Mr. Wyle pursuing a privacy issue relating to the OJCC website was not

reasonable and necessary as it relates to the appeal in this case.

While I do not question whether Mr. Wyle actually spent the time he alleged in his motion, I agree with Mr. Rogner that only 2.8 hours of that time was reasonable and necessary as it relates to the appeal. I also note that Mr. Wyle alleged that he incurred significantly more time on the appeal than was claimed by Bill McCabe, the attorney that actually wrote the briefs and filed pleadings with the appellate court, which I find not to be reasonable.

I have also considered Lee Engineering & Const. Co. v. Fellows, 209 So. 2d 454 (Fla. 1968) in determining the fee award in this case. Pursuant to the Lee Engineering factors, based on the evidence and argument presented, I find that a reasonable appellate fee for Mr. Wyle in this case is \$630.00. As noted above, I find that Mr. Wyle reasonably spent 2.8 hours defending the E/C's appeal. Based on the testimony of Mr. Rogner, as noted above, I conclude that \$225.00 is a reasonable and appropriate hourly rate considering the totality of the circumstances in the case.

I find that the remainder of the Lee Engineering factors are neutral with respect to the fee award. Therefore, I award Mr. Wyle \$630.00 in attorneys' fees.

With regard to costs, claimant alleges only a \$15.00 charge

for a "copy of the 8/8/2012 status conference". Aside from the apparent typographical error regarding the date, it is not clear precisely what this cost represents - perhaps the cost of the transcript? In any event, this does not appear to be a properly awardable cost under Appellate Rule 9.400 or Section 440.34, Florida Statutes. As such, the claim for costs is denied.

WHEREFORE it is hereby **ORDERED** and **ADJUDGED** that:

1. The E/C shall pay \$630.00 to attorney Wyle for appellate attorney's fees.
2. The claim for appellate costs is DENIED.

DONE and ORDERED in Orlando, Orange County, Florida.

This 8th day of March, 2012

Thomas W. Sculco



Thomas W. Sculco
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
Orlando District Office
www.jcc.state.fl.us

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that the above Order was entered by the Judge of Compensation Claims and that a copy was served to the parties via electronic mail through their respective attorney of record or by U.S. Mail if unrepresented.



Digitally signed by Marla Miller
Date: 2012.03.08 14:12:35
-05'00'

Assistant to Judge Sculco

Served by Electronic Mail:

counsel