

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
FT. LAUDERDALE DISTRICT OFFICE

Donald Turner, Jr.,)	
Employee/Claimant,)	
)	
vs.)	
)	OJCC Case No. 08-023523GBH
O2 HR, LLC,)	
Employer,)	Accident date: 4/15/2008
)	
and)	Judge: Geraldine B. Hogan
)	
Providence Property and Casualty,)	
Carrier/Servicing Agent.)	

ORDER AWARDING ATTORNEY'S FEES AND COSTS

After due and proper notice to the parties, the above entitled cause came before the undersigned Judge of Compensation Claims on September 12, 2011. This matter was set for hearing pursuant to a Verified Petition for Attorney Fees and Costs (Verified Petition) filed with the Judge of Compensation Claims on December 23, 2010.

The Employer/Carrier (E/C) stipulated to fee entitlement but contested the number of hours expended and the hourly rate. E/C also stipulated to costs in the amount of \$4,064.61.

A. Documentary Evidence: The following documents were offered into evidence by the Claimant (C) and the Employer/Carrier (E/C).

Exhibit #

1. Claimant's Verified Petition (C)
2. Deposition Transcript of Angel Morgan (C)
3. Employer/Carrier's Motion to Compel/Motion to Dismiss (C)

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4. Response to Claimant's Emergency for Advance (C)
5. Response to Claimant's Motion for Protective Order and Sanctions (C)
6. Letter to Mr. Berman from Gregory D. White dated October 1, 2008 (C)
7. Response to Claimant's Motion to Compel Response to Request to Produce Dated 9/17/08 (C)
8. Order on Claimant's Motion to Strike Defenses and Sanctions (C)
9. Fee Orders (composite) (C)
10. Employer/Carrier's Verified Response to Claimant's Verified Petition for Attorney Fees and Costs (E/C)

B. Live Testimony: Richard B. Berman, Esq.

C. Findings of Fact and Conclusions of Law: Upon consideration of the evidence presented, the argument of counsel and the stipulations of the parties, the undersigned finds as follows:

1. Mr. Berman, Claimant's counsel, testified that the value of benefits secured could not be determined, especially in light of the fact that he was able to get the fraud defense stricken. However, he secured a \$2,000.00 advance plus a \$9,000.00 settlement. A statutory fee pursuant to sec. 440.34 Fla. Stat. (2007) would total \$1,850.00.
2. E/C agreed that Claimant's counsel was entitled to fees and costs for successfully litigating the claim for compensability of the claimant's neck and back complaints, which the carrier initially denied. E/C also agreed that Claimant's counsel was entitled to an E/C paid fee for successfully defending against the fraud claim. Additionally, E/C conceded to fee entitlement for securing a disputed advance as well as a small amount of past due indemnity benefits. Finally, E/C agreed with Claimant's counsel that the JCC should consider the Lee Engineering¹ factors in awarding a reasonable fee.
3. In determining the amount of the fee, it is proper to consider: (1) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause; (2) whether the acceptance of employment in the particular case will preclude the lawyer's appearance for others in cases likely to arise out of the transaction and in which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other employment while employed in the particular case or antagonisms, with other clients; (3) the customary charges of the Bar for similar services; (4) the amount involved in the controversy and the benefits

¹ E/C cited Murray v. Mariner Health, 994 So. 2d 1051 (Fla. 2008) for the assertion that the JCC should to look to the Lee Engineering factors to determine a reasonable fee.

resulting to the client from the services; (5) the contingency or the certainty of the compensation; and (6) the character of the employment, whether casual or for an established and constant client. No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service. Lee Engineering & Construction, Co. v. Fellows, 209 So. 2d 454, 458-459 (Fla. 1968).

4. The following factors were considered in determining a reasonable fee in this particular case:

(a) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly: Claimant's Counsel expended 201.5 litigation hours in this matter. E/C agreed that there was significant time and labor required with regard to securing benefits on behalf of the Claimant. However, E/C asserted that this was due more to the fact that the Claimant's counsel had taken an aggressive litigation approach on this claim, which appears to have lead to more time and expenses than otherwise would have been necessary on this matter. The evidence supports a finding that all parties aggressively litigated this matter. Although E/C asserted that several time entries should be reduced, the evidence did not support a finding that the hours expended by Claimant's counsel were not reasonable.

Additionally, the evidence supports a finding that the EMA initially determined that the [neck and back] injuries were not related to the accident. However, when questioned by Claimant's counsel during his deposition, the doctor changed his opinion and agreed that the injuries were compensable. Claimant's counsel also prevailed on a Motion to Strike Defenses. The foregoing are examples of novel or difficult issues addressed in this case and establish that Claimant's counsel demonstrated the requisite skills to perform the legal service properly.

I find that the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly are positive factors that support an upward deviation from the statutory fee.

(b) The likelihood, if apparent to the claimant, that the acceptance of the particular employment will preclude employment of the lawyer by others or cause antagonisms with other clients: The evidence does not support a finding that this factor is either positive or negative in considering whether to increase or decrease the statutory fee.

(c) The fee customarily charged in the locality for similar legal services: Claimant's

counsel asserted that the fee customarily charged in the locality for similar legal services is between \$250.00 and \$400.00 per hour. He was previously awarded or had hourly fees of \$275.00 to \$400.00 approved by other judges. He is seeking an hourly rate of \$400.00 in this matter.

Pursuant to Exhibit #9 Claimant's counsel was awarded a fee of \$400.00 an hour on OJCC case #92-005243HHH. However, that case involved five different accidents and 25 to 40 outstanding issues that required the application of both the pre and post 1994 workers' compensation statute. For reasons including, but not limited to the foregoing, OJCC 92-005243HHH involved issues that exceeded the complications of this case. I agree with E/C's assertion that the fee should not exceed \$325.00 per hour.

The fee customarily charged in the locality for similar legal services is a positive factor to support an upward deviation from the statutory fee. I find that \$325.00 is a reasonable fee for the services provided in this matter.

(d) The amount involved in the controversy and the benefits resulting to the claimant: Claimant's counsel testified that the value of the benefits could not be quantified, especially considering criminal ramifications of the fraud defense. E/C asserted that the amount involved in controversy was probably less than \$5,000. The amount involved in controversy and the benefits resulting to the claimant are positive factors that support an upward deviation from the statutory fee.

(e) The time limitation imposed by the claimant or the circumstances: I find that this is a neutral factor, as asserted by E/C in Exhibit #10.

(f) The nature and length of the professional relationship with the claimant: Claimant's counsel has represented him since 7/22/08. I find that this is a neutral factor.

(g) The experience, reputation, and ability of the lawyer or lawyers performing services: E/C concedes that this is a positive factor. Additionally, the evidence supports a finding that the experience, reputation and ability of Claimant's counsel are positive factors that support an upward deviation from the statutory fee.

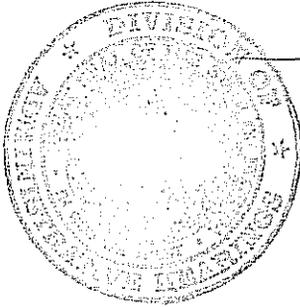
(h) The contingency or certainty of a fee: Pursuant to Exhibit #1 this case was completely contingent. Claimant's counsel averred that the contingency factor in this case should be considered of the highest level. The contingency of the fee is a positive factor that supports an upward deviation from the statutory fee.

5. I find that Claimant's counsel is entitled to a reasonable fee of \$65,487.50. This fee is calculated pursuant to 201.5 hours at a rate of \$325.00 per hour. He is also entitled to taxable costs in the amount of \$4,064.61, which were not contested.

WHEREFORE, IT IS ORDERED and ADJUDGED that:

1. The E/C shall pay Claimant's counsel \$65,487.50 as an attorney's fee.
2. The E/C shall reimburse Claimant's counsel costs in the amount of \$4,064.61.

DONE AND ORDERED this 14th day of November, 2011, in Lauderdale Lakes, Broward County, Florida.



Geraldine B. Hogan

Geraldine B. Hogan
Judge of Compensation Claims
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ADDENDUM TO ORDER

Counsel shall furnish a copy of this Order to their respective clients to ensure timely compliance.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Order was furnished this 14th day of September, 2011 by electronic transmission to the parties' counsel of record and by U.S. Mail to the parties.

Joseph H. Hylton

Assistant to the Judge of Compensation Claims

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