

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION

PLAINTIFF,

VS.

EQUINOX INTERNATIONAL ET
AL

DEFENDANTS,

2:99-cv-969-KJD-PAL

MINUTES OF THE COURT

DATED: January 18, 2007

PRESENT:

THE HONORABLE **KENT J. DAWSON**, UNITED STATES DISTRICT JUDGE

DEPUTY CLERK: PEGGIE VANNOZZI, COURT REPORTER: NONE

PRESENT FOR PLAINTIFF: NONE APPEARING

PRESENT FOR DEFENDANT: NONE APPEARING

MINUTE ORDER IN CHAMBERS:

Presently before the court is the States' Application for Costs, Expenses and Attorney Fees (#347). The court has reviewed the Opposition (#368, in part), the Reply to Opposition (#379), the Supplement to Application (#553) the Reply to the Supplement (#560), and the Reply to the Reply (#561). The court also received oral argument on January 16, 2007.

Initially, eight states filed the combined application for costs, expenses and attorney fees (#347). All except Maryland and Nevada settled for 70% of their respective attorney fees, plus expenses. The State of Maryland waived attorney fees, requesting payment of expenses only. The State of Nevada requests full compensation for three attorneys whose billings total 1,530.75 hours at the hourly rate of \$150.00 or \$229,612.50, together with 584 hours of investigator time at \$75.00 per hour or \$43,837.50, plus 454 hours of legal research at \$50.00 per hour or \$22,700.00. Costs submitted by Nevada total \$15,398.61. Accordingly, the State of Nevada seeks a total of \$311,548.61 in fees and expenses from the common fund.

In Hensley v. Eckerhart, the Supreme Court established that in fee-shifting cases the thrust of a fee award is the "lodestar" or number of hours reasonably expended multiplied by the applicable

hourly market rate for legal services. 461 U.S. 424, 433 (1983). The burden of establishing the lodestar rests on the fee applicant who must provide appropriate documentation of the hours spent and the market rate. The market rate takes into account variation in the skill and experience of counsel. The rate for established, experienced practitioners is likely to be greater than the rate for new attorneys in the same market. Where billing documentation is inadequate, the district court may reduce the award accordingly. Courts have also reduced fee awards where there is duplication of services, excessive total time, use of too many attorneys, failure to set out time expenditures with sufficient particularity that the district court can assess the time claimed for each activity, and otherwise unnecessary work.

In considering the affidavits of counsel for the respective states regarding experience and hourly rates for attorney time, it was noted that attorney experience for all states except Nevada ranged from 8 to 14 years. Nevada's lead attorney claimed only 3 years' experience. The billing rate of \$150 per hour for Hawaii's attorney with 8 years of experience is the same as that for Nevada's attorney with 3 years experience. As stated above, most of the other states billed at \$150 per hour for attorneys with far more experience than the 3 years of Nevada's lead attorney. Accepting the market rate for common fund litigation at the time services were rendered, a reduction in the rate for the services of Nevada to \$100.00 per hour would be in order based on experience of counsel. For that reason and those set out below, it is unnecessary to address the position of Counsel for the Receiver that it is inappropriate in a common fund case, where the legal fee will be borne by the defrauded consumers rather than the wrongdoing defendants, to award government counsel attorney's fees based upon private marketplace rates when private marketplace rates factor in a profit margin and government counsel does not.

The documentation submitted by Nevada as Exhibit D to the Application (#347) includes blocks of time billed in minimum increments of one half-hour. The other participating states billed in increments of .10 to .25 hours. The Nevada entries include as many as 17 hours on a single day with little, if any, specification of the activity being performed. The descriptions of activity are almost invariably general. For many entries, a single word is used to support multiple hours. For example, in the entry of Attorney Brierly for October 26, 1999, the word "Discovery" is used to support a billing of 5.5 hours. No other explanation is given for the activity. For the vast majority of entries, the description is too abbreviated to permit the court to determine whether the time billed is appropriate for the task described. In attempting to compare the amount of time spent on a particular task, the court noted numerous examples where Nevada billed more for the same task than attorneys from other states. For example, on July 28, 1999, the attorneys for Hawaii, Michigan, North Carolina, Tennessee and Virginia each billed one hour for a conference call between counsel for those states and Nevada. The two attorneys representing Nevada who participated in the same call billed two hours each. The same parties again participated in a conference call on August 24, 1999. Again, all attorneys except Nevada recorded one hour while the two attorneys from Nevada billed two hours each. For the period April 10-12, 2000, the attorney for Hawaii recorded 10 hours per day for trial and trial prep. During the same period, the lead Nevada attorney billed 11, 12.5 and 10.5 under the singular entry "Trial." A second Nevada attorney recorded 8, 8 and 9 hours for trial on those same days. On April 13, 2000, the attorney for Hawaii billed a total of 10.3 hours, ten of which were for trial and the remainder for various tasks. On the same day Nevada recorded 12 hours for one attorney and 11 hours for

another under the single entry "Trial." Thus, there also appears to be duplication of effort among the attorneys representing Nevada.

Hawaii submitted 46 pages of detail in support of its application for 1146.5 hours of attorney time. Nevada submitted 10 pages for 1,530.75 hours of attorney time. The Nevada entries are so lacking in detail that in most instances it is impossible to ascertain what was being worked on and for what increment of time. Many activities are grouped into a single time entry, preventing audit or cross-check. For example, on November 23, 1999, North Carolina Attorney Kristine Lanning recorded 1.50 hours for a conference call with Nevada, and preparation. On the same day the Nevada attorney recorded 5.5 hours for the same conference call, and preparation. On January 12, 2000, Kristine Lanning recorded a telephone call with the Nevada Attorney General; consultation on discovery; and a meet and confer, for a total of 2.25 hours. On that same day the Nevada attorney billed 4.0 hours for the same conference call and "Discovery Review" without detailing the amount of time spent on either, and without specifying the nature of the "discovery" being reviewed.

As with the scarcity of descriptive information regarding attorney time, the entries for investigator and legal research work are insufficiently documented. Almost every daily entry is for 8.0 hours without any specification of who was interviewed or what issues were researched.

In conclusion, the general subject matter of the Nevada time expenditures is not set out with sufficient particularity to permit the district court to assess the time claimed for each activity. For those services that could be audited, there is evidence of duplication and excessive time being billed. Given the inadequacies of Nevada's billing documentation and further considering the difference in experience among counsel, keeping in mind that this is a common fund case where investors will recover only ten cents for each dollar invested, the offer of Counsel for the Receiver to pay 70% of Nevada's fees, plus costs, is more than generous.

Accordingly, it is ordered that the application of Nevada for costs, expenses and attorney fees (#347) is granted in part. Nevada is approved to receive from the common fund, \$207,305 for attorney fees, investigator fees and legal research, together with costs of \$15,398.61.

LANCE S. WILSON, CLERK
U.S. DISTRICT COURT

/s/ Peggie Vannozi
Deputy Clerk