

COLLETTE JOSEY COVINGTON : 14TH JUDICIAL DISTRICT
AND JADE COVINGTON

VS. NO. 2001-2355 : PARISH OF CALCASIEU

MCNEESE STATE UNIVERSITY : STATE OF LOUISIANA
AND THE BOARD OF SUPERVISORS
FOR THE UNIVERSITY OF
LOUISIANA SYSTEM

FILED _____ : _____
DEPTUY CLERK

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WRITTEN REASONS FOR JUDGMENT

This matter is before the Court on a Motion for Attorneys' Fees. A six day trial was held on this matter alone concluding January 4, 2011. After carefully reviewing all submitted evidence and memoranda, the Court is prepared to publish a ruling.

BACKGROUND

This case arose while Collette Covington (Covington) was a student attending McNeese State University (McNeese). At that time, Covington required an electric wheelchair to get around campus due to a seizure disorder and orthopedic problems. In January 2001, she sustained injuries while attempting to exit a restroom in the Holbrook Student Union (hereinafter Old Ranch), the doorway of which was too narrow for her wheelchair to easily negotiate. As was later discovered, there was not a single restroom in the entire Old Ranch building that was properly accessible to handicapped individuals. Covington brought suit against McNeese and the University of Louisiana System under the Americans with Disabilities Act (ADA).

During years of protracted litigation, it was discovered that numerous ADA violations existed across the McNeese Campus. In fact, no effort had been made to bring the campus into compliance with the ADA since the law was passed in 1990, despite renovations during which federal law mandated compliance.

On a motion for summary judgment in 2007, the Court found there was no genuine issue of material fact in dispute regarding the following issues: 1.) McNeese did not have immunity

On appeal, the Third Circuit affirmed the decision of the Trial Court in a strongly worded opinion, finding it “[unfathomable] that McNeese felt no need, regardless of whether it was required by law, to upgrade a single women’s restroom into ADA compliance in a building that houses *inter alia*, the two main student cafeterias on campus, offices for student government and activities, and a state-of-the-art computer laboratory.” The Third Circuit went on to state that McNeese’s deliberate ignorance of the federal mandate to provide accessibility to handicapped persons is “reminiscent of the intolerance of the past”, and expressed amazement at the audacity of the university’s bringing the case into an appellate court “where a published, written opinion will forever memorialize its discrimination against this country’s disabled citizens.”

McNeese ultimately agreed to settle the personal injury claim of Covington; and, after a Department of Justice investigation spurred by this lawsuit, McNeese also agreed to bring its campus into compliance with the ADA.

Plaintiff has now brought a motion seeking an award of attorneys’ fees from Defendant. The only issue remaining in this case is that of a reasonable fee award.

ATTORNEYS’ FEE AWARDS IN CIVIL RIGHTS LITIGATION

In *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240 (1975) the Supreme Court recognized the general principle that each party in a lawsuit ordinarily bears its own attorneys’ fees unless there is express statutory authorization to the contrary. Congress has provided, however, that in civil rights cases, it is necessary to allow a prevailing plaintiff to be awarded attorneys’ fees in order “to ensure effective access to the judicial process.” *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983). In ADA actions, 42 U.S.C. §12205 provides authority to the court to award a reasonable attorneys’ fee to a successful plaintiff. Federal jurisprudence has established that interpretation of §12205 is analogous to that of The Civil Rights Attorney’s Fees Awards Act of 1976, codified under 42 U.S.C. §1988. *No Barriers, Inc. v. Brinker Chili’s Tex., Inc.*, 262 F.3d 496, 498 (5th Cir. 2001).

Extensive case law exists on the methods courts are to utilize in their determination of

prevailing market rates in the relevant community, *Blum v. Stenson*, 465 U.S. 886 (1984). The burden is on the fee applicant to demonstrate that a requested fee is appropriate considering the prevailing rates in the community for similar services by lawyers of reasonably comparable skill, experience and reputation. *Id.*

The total attorneys' fee awarded to a prevailing plaintiff must be sufficient to induce capable attorneys to undertake representation of meritorious civil rights claims, but should not provide a windfall to the attorneys. *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986). While a court does have authority to enhance an award in rare and exceptional circumstances, there is a strong presumption that the lodestar method yields a sufficient fee. *Perdue v. Kenny A. ex rel. Winn.*, 130 S.Ct. 1662 (2010); *City of Burlington v. Dague*, 505 U.S. 557 (1992). If any enhancement to the lodestar calculation is granted, it cannot be based upon a factor which is subsumed in the lodestar calculation. *Perdue*, at 1667. Although the Fifth Circuit laid out twelve factors upon which to base an award in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (1974), most, if not all, of these factors are taken into consideration in the lodestar calculation. *Pennsylvania*, at 566. An applicant seeking an enhancement must produce specific evidence supporting the award that is objective and capable of appellate review. *Perdue*, at 1667.

PLAINTIFF'S MOTION FOR ATTORNEYS' FEES

Time Expended

From the inception of this litigation, Plaintiff's case has been handled primarily by Seth Hopkins (Hopkins). Hopkins began his involvement in this case a young attorney, having graduated from Louisiana State University Law Center in 1999. He has logged in excess of 5,400 hours of legal work in this litigation alone, thus far without compensation. In order to support himself while working on this case, he took employment as a staff attorney at a large law firm in Houston, Texas. Hopkins maintained his involvement nearly throughout the entirety of the case.

timesheets reflect that, over the last decade, he has worked tirelessly in the face of aggressive opposition, and he ultimately has prevailed.

The Court does recognize that Hopkins' initial inexperience both with ADA law and as an attorney, having begun this litigation less than two years out of law school, likely contributed to the number of hours spent researching and preparing pleadings, memoranda and other case materials. While certainly not intending to discourage diligence or attention to detail, the Court finds that, had an attorney more experienced in ADA law been lead counsel in this case, significantly fewer hours would have been billed. Thus, the Court finds it appropriate to reduce Hopkins' time by 20% in order to arrive at a reasonable number of hours expended for purposes of a lodestar calculation.

As for the five other attorneys representing Plaintiff in this matter, the Court accepts that each exercised reasonable billing judgment and the Court finds their time reasonable. Their time as submitted to the Court will be used in the calculation of an award.

Hourly Rate

While five attorneys served as counsel for Plaintiff in this case, Plaintiff's Motion for Attorneys' Fees requests a single hourly rate of \$265 per hour be applied uniformly to all hours recorded. Plaintiffs submitted expert witness affidavits and deposition testimony from several attorneys from Lake Charles and the surrounding area, as well as one attorney from Houston, in which the attorneys affirmed that \$265 is a reasonable hourly rate for the work performed in this case. Defendants countered arguing that, based on federal case opinions, the prevailing market rates in Lake Charles range between \$105 and \$200 and one of Plaintiff's own expert, who has been practicing for over 40 years, regularly charges his clients \$180 per hour. However, while three of Defendants cases are relatively recent, from 2007 and 2008, the only cited case that was actually published was decided in 1996. The 1996 case finds \$120 and \$140 to be reasonable hourly rates in an ERISA action. The Court will not opine as to why the more recent cases were not published, but also will not rely on them. Based on the testimony and authority submitted to

Plaintiff's counsel in this case requests an attorneys' fee award of approximately \$5.1 million. This amount is based upon a total of 6,481.8 hours worked (by six attorneys) multiplied by the requested hourly rate of \$265 per hour, further increased by an upward adjustment of 300%. Plaintiff argues for this enhancement based on every one of the twelve *Johnson* factors along with an argument for sanctions against Defendant McNeese for its conduct prior to and throughout this litigation.

The Court recognizes that McNeese was disdainfully defensive of its unacceptable condition, in spite of a federal mandate to make its facilities accessible to the disabled. The Court further recognizes the militant defense taken by Defendant throughout this litigation in the face of its obvious error. The number of hours which Plaintiff's counsel was required to expend prosecuting this case has certainly been increased by defendant's constant attempts to prolong this litigation, and this will be taken into account in the lodestar determination of the fee awarded; however, it cannot be ignored that McNeese is a publicly funded university. Thus, those responsible for the seemingly deliberate disregard for the responsibilities of McNeese will not bear the burden of any sanction imposed upon this state university; it will instead be borne by Louisiana taxpayers. For this reason, the Court declines to enhance the award of attorneys' fees based upon the conduct of the defendant.

Plaintiff also requests an enhancement based upon the twelve *Johnson* factors; however, plaintiff relies primarily on the following four: 1) time and labor required for the litigation; 2) the customary fee; 3) the amount involved and the results obtained; and 4) the experience, reputation and ability of counsel. Time and labor required to litigate the action is clearly taken into account in the lodestar calculation, as the number of hours reasonably expended is one of the two named factors in lodestar. Clearly the "customary fee" is also subsumed by the lodestar as the reasonable fee is the second named lodestar factor. The experience, reputation and ability of counsel is also very evidently taken into account in the lodestar calculation, as it is an important factor in the determination of a reasonable hourly rate. Accordingly, the Court does not find these factors to be an appropriate basis for enhancing the lodestar award

exceptional circumstances”, and the Court believes it important to note that the Supreme Court has *never* sustained an enhancement of a lodestar award for performance. *Perdue v. Kenny A.*, 130 S.Ct. 1662, 1667 (2010). Accordingly, the Court declines to grant Plaintiff’s request for an enhancement of the attorneys’ fee award as calculated by the lodestar method.

Expenses

Plaintiff has also asked for compensation for their expenses in this litigation. Plaintiff submit an itemized list of expenses totaling \$41,570.47. The Court accepts Plaintiff’s expense list and awards the same.

ORDER

FOR THESE REASONS, Plaintiff is hereby awarded attorneys’ fees in the following amounts:

Seth Hopkins: \$1,053,984

Representing 5,489.5 hours submitted, reduced by 20% for a total of 4391.6 hours at \$240 per hour.

James Hopkins: \$149,928

Representing 624.7 hours submitted at \$240 per hour.

James Doyle: \$6,864

Representing 28.6 hours submitted at \$240 per hour.

Heath Dorsey: \$18,444

Representing 76.85 hours submitted at \$240 per hour.

Robert Breen: \$27,576

Representing 114.9 hours submitted at \$240 per hour.

Lee Archer: \$35,340

Representing 147.25 hours submitted at \$240 per hour.

Plaintiff is hereby ordered to prepare a judgment consistent with the court's ruling herein and forward the same to Defendant for approval as to form, then to this court for signature.

It is so ordered, this, the 24th day of February 2011, at Lake Charles, Calcasieu Parish, Louisiana.

A handwritten signature in black ink, appearing to read 'G. Michael Canaday', written over a horizontal line.

**G. MICHAEL CANADAY
DISTRICT JUDGE
14TH JUDICIAL DISTRICT COURT**

