2013 WL 798211 (La.) (Appellate Brief)
Supreme Court of Louisiana.

Collette Josey COVINGTON and Jade Covington, Plaintiffs - Respondents,

v.

MCNEESE STATE UNIVERSITY and the Board of Supervisors for the University of Louisiana System, Defendants -Applicants.

No. 2012-C-2182.
January 25, 2013.

Civil Proceeding
On Writ of Certiorari and Review from the Third Circuit Court of Appeal, State of Louisiana, Docket No. CA 11-1077 (9/5/2012); Fourteenth Judicial District Court, Parish of Calcasieu, State of Louisiana, Docket No. 2001-2355, Division "G," the Honorable Michael Canaday, Judge Presiding

Original Brief on the Merits on Behalf of Plaintiff-Respondents Collette Covington and Jade Covington

Seth Hopkins, Appeal Counsel, Bar Roll No. 26341, 1318 Dowling Street, Houston, Texas 77003, Telephone: (337) 540-9120, Fax: (832) 426-7734.

James Hopkins, Bar Roll No. 06990, P.O. Box 205, Sulphur, Louisiana 70664, Telephone: (337) 527-7071, Fax: (337) 527-5711.

Lee Ann Archer, Bar Roll No. 16791, 1225 Rustic Lane, Lake Charles, Louisiana 70605, Telephone: (337) 304-6767, Fax: (337) 474-4712, Attorneys for Plaintiffs-Respondents, Collette Covington and Jade Covington.

***ii** TABLE OF CONTENTS

***v** TABLE OF AUTHORITIES

Cases

***1 COLLETTE COVINGTON AND JADE COVINGTON'S ORIGINAL BRIEF ON THE MERITS MAY IT PLEASE THE COURT:**

Plaintiffs-Respondents, COLLETTE JOSEY COVINGTON and JADE COVINGTON, (“Covington”) respectfully submit their Original Brief on the Merits, in compliance with the Rules of this Honorable Court.

INTRODUCTION

For 20 years, the Defendants (collectively, “McNeese”) misappropriated millions of dollars in public funds designated for Americans with Disabilities Act (“ADA”) compliance as it systematically excluded 75% of its disabled students from its campus. When Covington, a wheelchair-bound grandmother, requested a single accessible restroom so that she would no longer be forced to urinate on herself on campus, McNeese unleashed 12 lawyers to mount a vicious war of attrition on her and her solo-practitioner attorney. Covington ultimately prevailed and secured the largest single plaintiff Title II ADA judgment in history.[1] Her attorneys' work uncovered 15,000 violations in 1.35 million square feet of public buildings and resulted in McNeese receiving $13.8 million to virtually reconstruct its campus to comply with the law.

Unlike McNeese's lawyers, who lost this case but have been paid monthly for their work, Covington's attorneys have labored without pay for 12 years, even though they prevailed. They now place their faith in this Court to honor the sacred promise made by Congress in 42 U.S.C. § 1988 that they will be compensated for a job well done, and they have supplied overwhelming, uncontroverted, and objective evidence that they earned approximately $5 million for working longer than World War 1, World War II, the Civil War, the Persian Gulf War, the Spanish-American War, and the Mexican American Wars combined.[2] Their cause was honorable, their battles hard-fought, and their accomplishments significant. These attorneys' labor is not charity, and under well-settled law, their fees may not be arbitrarily denied or diminished.

Thus, it is crucial that this Court fulfill the important Congressional mandate of properly compensating Louisiana attorneys who forgo more lucrative opportunities to serve their state as private attorneys general. Doing so strengthens the legal profession and rewards hard work with fairness and consistency in fee awards.

*2 SUMMARY OF THE ARGUMENT

Covington's six attorneys recorded approximately 6,500 hours-45 per month - of work during 12 long years of litigation, substantiated by a 250,000 page client file, 17,684 electronic files, (R. 24:8400) 56 days of appearances, including 15 in court, and one of Calcasieu Parish's longest records. The timesheets did not capture all of the work required in this case, and lead counsel Seth Hopkins testified that there are 118 items of unbilled work product in his file from 2001-2003 alone. (R. 43:10727). (See also “there's a lot of time that I worked on this case that did not get put into the time entries”) (R. 42:10329) (“I haven't sat down to try and estimate all the time that wasn't captured by the time sheets, but I know that it was significant”) (R. 42:10334).

Covington submitted these records to four attorney experts (with a combined 120 years of litigation and billing experience) who universally opined that every hour was reasonable and consistent with local billing practices and that the market value of Covington's counsel's work exceeds $5 million. McNeese failed to dispute these findings and offered no expert report of its

own. Indeed, on September 1, 2010, McNeese judicially admitted that Covington was not only entitled to attorney's fees, but that "the fees in this case are likely to be Plaintiff's' single largest category of damages" and that Covington's attorneys' success would be the "most critical factor" in enhancing their fees beyond the lodestar. (R. 24:5813-15).

At trial, McNeese was presented with the opportunity to question Hopkins about any entry it wished to challenge, but it chose instead to spend six days hurling "insinuation" and "venom" at him. (Ruling, p. 11, 22). Its only real objection was to the clerical manner in which 1.5% of his entries were recorded (some daily entries were consolidated). Thus, in a show of "good faith and fair dealing," Hopkins removed not only the 70 hours McNeese complained about, but 710 earned hours to resolve any question about his records in a final effort to resolve this case. (R. 39:9671-40:9787). Yet, as part of its obstructionist strategy, McNeese refused to even acknowledge the amendments and failed to even suggest how many hours it believes were earned. Now it accuses the lower courts of "utterly failing" to review the very records that it ignored at trial.

In fact, the lower courts devoted "an exceptional number of judicial work hours" to reviewing the records and found, "Hopkins presented a well-orchestrated case worthy of emulation by the most seasoned attorneys" and that the fees were "neither exaggerated nor unexpected." (Ruling, p. 13). Six judges patiently listened to or read as McNeese launched one discredited attack after another in a "lengthy proceeding full of personal venom" (Ruling, p. 23) and not one found any merit to a single argument McNeese now raises.

Most of McNeese's arguments are not even properly before this Court. For example, it presents four "charts" to allegedly support its contention that time was "fabricated." But the documents McNeese relies upon ***3** were expired settlement offers that Covington withdrew seven years ago, are not in the record before this Court, were not questioned at the attorney's fee trial, and were not properly raised on appeal. Thus, Covington has moved to strike them. Likewise, McNeese's "catalyst theory" that Covington's injunction had nothing to do with her success in this case was not only abandoned on appeal, but affirmatively confessed when McNeese signed a Consent Injunction to the contrary on April 23, 2010. (R.20:4953-56; Covington's Motion to Strike).

McNeese's remaining claims are equally frivolous. Covington's private fee agreement with her counsel has nothing to do with the fees owed by McNeese in this case, and McNeese cannot provide any examples for its spurious allegation that Hopkins worked on claims for which he did not prevail, as he secured the largest ADA judgment of its kind in history and far exceeded his client's expectations. Finally, McNeese's arguments regarding Hopkins' experience run contrary to the law, expert opinions, and the monumental case success, especially in a highly specialized area of law which has undergone numerous amendments in the last 12 years.

McNeese's unrelenting accusations and its portrayal of itself as the victim in this case reveals the bitterness of a defendant still resisting even the most basic requirements of federal law. On one hand, McNeese rails against the appellate court for not giving enough deference to the trial judge. On the other hand, it implores this Court to give no deference whatsoever to the six lower court judges for awarding anything at all.

The issue is the appropriate compensation for 12 years of work in a landmark case. All evidence suggests this to be $5 million, yet the trial court awarded only 25% of that. Its first error was in reducing 1,098 earned hours without any basis in fact or law. Four of the five appellate judges recognized that to be a clear abuse of discretion which was further compounded by the trial court's own statement that it was convinced Hopkins had earned "5,000-some-odd hours" and no more proof was needed because the evidence was "beyond a reasonable doubt. (R. 41:10244-45; 43:10636). Under any system of due process, a court may not advise a party that he has won his case, persuade him to stop submitting evidence, and then rule against him.

Likewise, there was no basis for the trial court to reduce Covington's counsel's rate below the modest $265 per hour that four experts opined was already below the prevailing local rate for even a simple case with prompt payment. All of the evidence and cases unquestionably hold that $450-$805 per hour is appropriate in a case as complex and protracted as this, with a 12 year payment delay, contingent risks, and in which the value of Covington's counsel's services to the state as a private attorney

general far exceeds the lodestar. Indeed, the Louisiana Western District has already cited this case, holding $265 per hour to be "extremely reasonable" and a "modest base rate" for a one-year, ordinary, and non-protracted case in Lafayette and Lake Charles. *Leleux v. Assurance Co. of America* 2012 WL 5818226, at *4 (W.D.La.Nov. 15, 2012).

***4 STATEMENT OF THE CASE**

A history of discrimination. Covington's story typifies that of hundreds of disabled students, whose plights were documented by McNeese's student media for 20 years. (R. 23:5690-97). In 1995, Covington was a McNeese honor student and student senator and ambassador with 87 credits toward a degree in Early Elementary Education. She became confined to a wheelchair her senior year and could no longer access the classrooms on McNeese's non-compliant campus. This caused her 3.1 GPA to plunge to 2.07 and forced her to drop 92 of the 125 credit hours she attempted over the next four years. (R.2:358-84; 24:5751-54).

Covington witnessed other disabled students suffer the same fate and started a student organization to raise money for McNeese to provide minimal accommodations for disabled students, but McNeese simply took the students' money and demanded that they raise more. (R. 2:358-59; 22:5754-60).

McNeese's Director of Services for Students with Disabilities Tin Delaney, whose own office was not handicapped-accessible, refused Covington even modest accommodations such as first floor classes and unlocked doors at the only ramps into buildings. (R.2:358-84 at 361). He admitted that McNeese received $50,000 per disabled student in grant money but would not accommodate those in wheelchairs,[3] resulting in systematic discrimination that prevented 75% of McNeese's disabled population from receiving an education. (1 R. 2:482).[4] Not surprisingly, no wheelchair-bound student is known to have graduated from McNeese prior to 2004, and McNeese's own officials urged Covington to sue. (R. 22:5389; 24:5757-58).

Covington soldiered on, attempting to maneuver through obstacles such as sidewalks without curb cuts, buildings without ramps (or where the only ramp led to a locked door), narrow and heavy doors, and broken elevators with buttons too high for her to reach in her wheelchair. When she was strong enough to hobble from her wheelchair into a narrow stall, (without handrails) she could use the restroom. Otherwise, she was forced to urinate on herself and spend the rest of the day drenched, reeking, and humiliated on campus. (R. 2:358-84).

On January 31, 2001, Covington unsuccessfully attempted to use the McNeese Student Union ("Old Ranch") women's restroom. Urine-soaked and degraded, she tried to exit the restroom when her wheelchair became trapped in the heavy door, resulting in her falling and injuring her arm. McNeese admitted that this door was too narrow and three times too heavy for someone in a wheelchair to use. (1 R. 2:284-86, 343).

McNeese launches a "militant defense." Covington might have given up her dream of an education ***5** and a better life for herself and her daughter if she had not learned that Hopkins, a former McNeese classmate, had completed law school. He agreed to ask McNeese to spend $4,000 so that she would have one accessible restroom on campus. McNeese refused, and this case soon revealed the magnitude of its violations.

McNeese had not made even a basic survey of its buildings or drafted a transition plan as required by law.[5] Because McNeese would not identify its violations, it did not know how much ADA fending to request or what it would do if such funding were granted.[6] Instead, it spent its ADA money on "other things" and plastered signs falsely claiming that its buildings complied with the law despite the fact that not a single restroom on McNeese's 1.35 million square foot campus complied with the ADA or related statutes dating to the 1960s. McNeese's 15,000 violations were found even in public buildings which were brand new or still being planned for construction as recently as 2009 with a disregard for long-established building codes.[7]

Once Covington filed suit, McNeese accused her of fraud and claimed she was insane. It parked a black SUV outside her home for two years to film her 14-year-old daughter's ritual of loading her mother's wheelchair into the family car for grocery and medical appointments (2 R 1:208-214; 2:361) and sent her 400 miles round-trip to a "forensic psychiatrist" who refused to accept its hypothesis that she was crazy and faked her disabilities. McNeese claimed - with no evidence - an elaborate conspiracy between Covington, her physicians, and the Social Security Administration for Covington to endure painful and unnecessary surgeries so she could sue McNeese for a bathroom. [8] McNeese's unprovoked attacks were so vicious that the Third Circuit later held, *sua sponte,* that it would have sanctioned McNeese if Covington had requested. [9]

The taxpayers provided McNeese with money for ADA compliance, but McNeese President Dr. Robert Hebert vowed on February 2, 2005 to never use McNeese's $1.1 million in surplus ADA funds on compliance, refusing to spend even $4,000 to end this case. He kept his word and the idle fund doubled to $2 million [10] as this litigation raged. Hebert justified this pointless war of attrition against Covington by testifying that it was not part of the "role of the institution" or "fundamentally important" to allow disabled students ***6** access to the Ranch, which includes the cafeteria, student government, newspaper, and job placement offices:

Whether or not it's fundamental for them [those with disabilities] to get into that student union annex or that it's fundamentally important for them to obtain an education, I would question that. I'm not sure I would regard it as a high priority.

(I R. 3:501).

McNeese ridiculed the plight of those with disabilities and stated in court pleadings - without embarrassment or shame - that it did not need compliant bathrooms because the ADA did not protect the right to urinate. (R. 1:43-44; 35:8747). It blamed Covington, who now uses a catheter, for not learning to hold her bladder all day and stated on the record that it would simply not follow federal law despite receiving $61,878,859 in federal funding in the last seven years alone (R. 22:5362-74).

Hopkins pleaded with McNeese to accommodate Covington, but McNeese refused and obstructed this case, seeking eight continuances and requiring Hopkins to document 54 letters, emails, and Rule 10.1 conferences seeking basic discovery and corrections to blatantly untruthful discovery. (R. 1:242-43, 260-63; 40:9821-23). Hopkins finally had to file six motions to compel and threaten sanctions. [11]

Covington files summary judgment. In January 2006, Covington filed for summary judgment. After McNeese required a full year to research and respond, it claimed that Covington made a "mountain out of a molehill" and accused her of an "all out ADA assault" by asking McNeese to correct one of its 15,000 violations. (R. 1:35, 69). McNeese raised outrageous defenses which perplexed both the trial and appellate courts. [12] After three days of argument, the trial court praised Covington for bringing this problem to McNeese's attention, granted her summary judgment, and found on January 3, 2007 that McNeese would be required to pay "substantial" attorney's fees. Though Hopkins was entitled to his fees six years ago, he offered to defer them if McNeese would simply provide Covington with a restroom.

Rather than walk away with no liability, McNeese appealed. On November 5, 2008, the Third Circuit published its longest civil opinion of 2008 and concluded that McNeese's arguments were: sanctionable, "frivolous," a "concoction," "completely irrational," "indefensible," having "audacity," and "absurd." It held:

We cannot fathom 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. McNeese's decision to ignore a federal mandate is reminiscent of the intolerance of the past. We had hoped that the days where a court has to step in to ensure that people ***7** were treated equally under the laws of this country were gone. Yet, still, McNeese is emboldened enough to bring such a case to an appellate court where a published, written opinion will forever memorialize its discrimination against this country's disabled citizens. It is hoped that McNeese will reassess its attitude toward its disabled students. It is also hoped that McNeese will prepare and publish a transition plan as required by the ADA.

(R. 1:157).

This court denied McNeese's writ application.

McNeese retaliates and becomes the subject of a federal investigation. Under President Bush's Administration, the U.S. Department of Justice Civil Rights Division ("U.S. DOJ") reviewed Hopkins' evidence and flew three lawyers from Washington, D.C. to Lake Charles. The U.S. DOJ warned McNeese to cease retaliation against Covington and her counsel [13] and required it to send an email on October 2, 2008 to its 8,487 students and nearly 1,000 employees regarding the consequences of retaliation under 42 U.S.C. § 12203. (R.1:215-16; 23:5688-89). The ensuing investigation resulted in a compliance decree against the entire University of Louisiana System. [14] The U.S. DOJ then broadcast a nationwide press release identifying McNeese's counsel's unreasonable positions in Covington as the basis for its enforcement action. (R. 35:8713).

Yet, McNeese continued to retaliate against anyone associated with this case, including its own professors, such as Dr. Giovanni Santostasi, who became confied to a wheelchair in late 2009 and signed an affidavit for Covington. His campus email account was soon purged, and he received a death threat sent from the McNeese server instructing him to "shut up or you will die" and there would be "no cripples at McNeese." A second death threat ("Dego Die") was spray painted on his office door. McNeese responded by firing Dr. Santostasi, who has since brought his own ADA suit against McNeese. [15]

McNeese admits that it was wrong and credits Covington's counsel with providing it a $13.8 million windfall. After this Court denied McNeese's writ application, McNeese's counsel called Louisiana's courts "wrong" for ruling that Covington was entitled to attend college in a wheelchair. McNeese refused to accommodate her for another year, before finally agreeing to a 14-point Consent Injunction on April 23, 2010. For the first time-3,260 days after suit was filed - McNeese acknowledged that Covington is disabled, has a right to attend college in a wheelchair, and is a prevailing party entitled to attorney's fees. The Injunction provides Covington with the right to monitor and enforce $13.8 million in ADA compliance upgrades at ***8** McNeese. (R. 36:8773-85). Moreover, Covington received $400,000, a six year scholarship for tuition, books and supplies, and accommodations so she could graduate and enter the workforce. (R. 20:4953-54).

As a result of this case, McNeese is being provided with $13.8 million to fully comply with the ADA. (Judgment, R. 39:9665; 23:5590-5612). This is money McNeese would never have requested - much less received - had Covington's counsel not, in the words of Judge Canaday, "passionately pursued the interests of his clients" and "worked tirelessly in the face of aggressive opposition." (Judgment, p. 3-4). Moreover, McNeese has used Hopkins' work as a springboard to file its own ADA lawsuit against its own architects and contractors to gain a double recovery from its discrimination. *See Cowboy Facilities, Inc. and McNeese State University v. Ambling Development Company,* 2011-2407 (14th JDC, Calcasieu Parish, La. filed 5/25/11).

PROCEEDINGS BELOW

On May 19, 2010, Covington served a 1,072 page Application for Attorney's Fees and Sanctions and exhibits. Hopkins offered to review with McNeese any time entries it questioned and devoted months to self-auditing more than 6,000 hours of records over 10 years by comparing them against 17,684 electronic files (requiring 21.9 gigabytes of data) (R. 34:8400) and 55 boxes of paper work product containing a quarter of a million pages of time-stamped notes, letters, photos, filings, drafts, transcripts, logs, emails, memos, reports, affidavits, and other documents. Stacked end-to-end, these paper documents alone would extend nearly 50 miles - more than half the distance between the Supreme Court and the State Capitol. This audit confirmed each hour and identified hundreds of items never billed. (R. 43:10616-19; 10727-29; 10671-77; 10740).

McNeese spent four months reviewing the Application, deposed Hopkins and his four unpaid experts, and then judicially admitted on September 10, 2010 that, "McNeese does not dispute that Plaintiffs are entitled to an award of at least some of their [$5.1 million] attorneys' fees" and that these fees would be "Plaintiffs' single largest category of damages" in this $16 million case (R. 24:5812, 15). Yet, only five days later, McNeese demanded that the trial court "deny the plaintiff's fee application altogether" and has maintained this irrational position, even over its own expert's objection. McNeese is judicially estopped from making this argument, was admonished for making it on appeal, yet continues to advance it before this Court. [16]

In contrast, Hopkins exhibited the utmost of "good faith and fair dealing" and voluntarily eliminated every entry McNeese did not like - for any reason. (Ruling, p. 11-12). He sought 710 fewer hours than the ***9** four experts opined he should have requested and far less than courts award in analogous cases.

Yet, McNeese consumed six days for an attorney's fee trial, during which it presented no witnesses, no expert reports, and no affidavits and asked substantive questions about only two entries comprising 16.4 hours of Hopkins' time. Its only strategy was to brutally personally attack Hopkins, calling him obsessive, incompetent, and dishonest, accusing him of fraud and committing a felony, and suggesting he should be disbarred. McNeese' lawyers harassed Hopkins' former employer until it was forced to file a protective order against McNeese. (R. 24:5902-14). McNeese's lead counsel's conduct grew so outrageous that the trial court was forced to admonish him for his "offensive" outbursts which disrupted the proceedings. (R. 44:10761-62). By closing, McNeese had made such a mockery of the trial that it resorted to showing a cartoon depicting Hopkins as a liar in a desperate bid to persuade the judge not to award any fees. (R.45:11020-21).

The trial court found that Hopkins proved his hours "beyond a reasonable doubt." (R. 43:10636). Yet, it arbitrarily reduced the rate and deducted 1,098 earned hours without identifying any that were improper, despite unquestionable proof from the file, cases, McNeese's own records, and the unanimous opinions of four unpaid experts that Hopkins should have received 1,808 hours more than the court awarded, in addition to a fee enhancement. This deprived Covington' counsel of $3.8 million in earned fees, which the court admitted was to protect McNeese. Incredibly, McNeese - still unsatisfied with its own victory - appealed again.

McNeese used its appellate pleadings to make new arguments, which the appellate court found to be "offensive, insulting, abusive, discourteous, and irrelevant criticisms of Covington' counsel" which violated many Uniform Rules of Court. The appellate court declined to strike its brief only to show the world the "vitriolic behavior engaged in by McNeese on appeal." Even the dissent held that, "McNeese and its agents acted deplorably towards Covington, its lawyers used every dilatory tactic in the book to avoid compensating her or addressing her grievances, and... the abuse continued into this litigation over the attorney fees."

None of these attacks changed the fact that McNeese could not point to a single unreasonable entry in 6,500 hours of documented work. Likewise, neither the trial judge nor a single member of the five judge panel was critical of any of Hopkins' records. Even McNeese's own paid expert refused to dispute Covington's enhancement, acknowledged the enormous societal benefits from this case, and admitted that Hopkins had a right to be "really mad" at McNeese and its counsel for their misconduct. (R. 33:8098, 8238-42; 34:8256-58).

The Third Circuit published an eloquent, well-reasoned, and thorough opinion after the five judge panel devoted 245 days after oral argument to review an 11,000 page record - one of three in this case- an exceptional number of judicial work hours." The panel concluded that, "Hopkins presented a ***10** well-orchestrated case worthy of emulation by the most seasoned attorneys" and held that McNeese's conduct "shocked the conscience" and turned the six day trial into a "lengthy proceeding full of personal venom, extending even on this appeal." (Ruling, pp. 10, 23). The Third Circuit found Hopkins' records "neither exaggerated nor unexpected" (Ruling, p. 6) and restored the virtually uncontested hours, reinstated the modest $265 rate, and awarded a small 6% interest enhancement from 3.5% to 9.5% This "minimal remedy" (Ruling p. 24) is still $3 million less than the experts urged, yet McNeese is unhappy with yet another victory and again appeals, claiming that all of the judges below erred in awarding anything at all. Moreover, the tone of McNeese's Brief has scarcely changed, forcing Covington to file her fourth Motion to Strike in two years.

ARGUMENT

I. RESPONSE TO McNEESE'S FIRST ARGUMENT: THE LOWER COURTS PROPERLY ACCEPTED COVINGTON'S COUNSEL'S FEE APPLICATION (Response to McNeese Brief pages 2-6; 8-16; 18.)

A. Courts Must Consider All Submitted Evidence Supporting a Fee Award.

Once a plaintiff is determined to be a prevailing party under the ADA, a court's discretion is limited, and an award of attorney's fees is virtually obligatory. [17] The scope of a fee inquiry is limited and should not result in secondary protracted litigation, *Hensley v. Eckerhart,* 461 U.S. 424, 437 (1983), and the findings upon which a fee award is based cannot be overturned except upon abuse of discretion. *Kem Search v. Sheffield,* 434 So.2d 1067, 1070 (La.1983). Moreover, the "[r]eview of purportedly excessive attorney fees should be tempered with judicial restraint." *Oreck Direct v. Dyson,* 2009 WL 961276, at *5 (E.D.La. April 7,2009).

Last year, the U.S. Supreme Court held in *Fox v. Vice,* 131 S.Ct. 2205, 2216 (2011) that courts may not demand auditing perfection in timesheets and "may use estimates in calculating and allocating an attorney's time." The federal Third Circuit has likewise held, "it is not necessary to know the exact number of minutes spent nor the precise activity to which each hour was devoted nor the specific attainment of each attorney" and attorneys are expected to have only "some fairly definite information as to the hours devoted to various general activities" so that the court will understand "the nature of the services for which compensation is sought." *Lindy Bros. Builders v. American Radiator & Standard Sanitary,* 487 F.2d 161, 167 (3d Cir. 1973).

In *Rivet v. State Dept. of Tans. & Dev.,* 2001-0961(La.11/28/01), 800 So.2d 777, 780, 782, this Court awarded 950 hours of reconstructed time against the State, holding that an attorney's estimate of his time ***11** must be given great deference:

> [p]laintiffs' attorney, who had the benefit of his own file, DOTD's billing records, and court records, was obviously in the best position to calculate the amount of time he spent on the case for purposes of determining the fees actually incurred.

McNeese's own cases establish that courts are to consider any and all documentation in support of hours expended in a case. *Bode v. United States,* 919 F.2d 1044, 1047 (5th Cir. 1990). [18] Covington far exceeded these requirements and supplied not

only detailed, contemporaneous records, but an avalanche of un-rebutted supporting evidence establishing that more than 6,500 hours (45 per month) were earned over 12 years.

B. McNeese Misstated the Standard for Denying Attorney's Fees. (response to McNeese Brief pages 9-10; 15-16)

As discussed, infra, Covington submitted contemporaneous timesheets, four expert opinions, and a massive suit record and client file, as well as live testimony, comparable cases, and an offer to provide physical work product to substantiate any questioned entry. Conversely, McNeese failed to supply any meaningful evidence, and its own expert abandoned it when its positions became ethically unsustainable.

After admitting otherwise on September 1, 2010, (R. 24:5812, 15) McNeese now suggests Hopkins has not earned a dime, but it fails to even cite the standard to support this outrageous position. Prevailing parties are never denied fees in civil rights cases, except in rare and exceptional circumstances in which an award would be unjust [19] and a lawyer's conduct "shocks the conscience." *Scham v. Dist. Courts Trying Criminal Cases,* 148 F.3d 554 (5th Cir. 1988). The lower courts held that it was McNeese that "shocked the conscious" for refusing to concede a single hour, and that "[w]e cannot imagine a more compelling case than the one before us in which Plaintiff's attorneys should be fully compensated." (Ruling, p. 9).

Ignoring this high burden, McNeese tries to compare *Covington* with several inapposite cases. In the Scham case, a lawyer briefly worked on a case where he never met his opponents or appeared in court, failed to prevail on any federal issue, did not dispute any facts, and demanded $624,000 in fees with little supporting evidence (which made it "impossible to ascertain" the time spent on tasks). *Scham,* 148 F.3d at 558. When the court denied his fees, he contemptuously demanded $20 million. For McNeese to suggest these circumstances resemble the *Covington* facts is a sanctionable misrepresentation to this Court. (See R. 31:7672-73).

***12** Likewise, McNeese cites *Brown v. Stacker,* a case involving a lawyer who demanded 800 hours to prepare a six page complaint 612 F.2d 1057 (7th Cir. 1980). In the *No Barriers* case, a defendant sought sanctions against a plaintiff, a very different circumstance with a higher burden and in which courts generally award minimal or no fees. *No Barriers, Inc. v. Brinker Chili's Texas, Inc.,* 262 F.3d 496 (5th Cir. 2001). In the Fair Housing Council case, a plaintiff lost almost every part of trial, demanded $537,113 in fees, and submitted timesheets lacking any detail (i.e. "document production"). *Fair Housing Council of Greater Wa. v. Landow,* 999 F.2d 92, 98 (4th Cir. 1993). In the Lewis case, a plaintiff was denied fees for achieving minimal results with extremely poor trial performance. *Lewis v. Kendrick* 944 F.2d 949, 958 (1st Cir. 1991). These cases are clearly irrelevant and do not support an abuse of discretion.

C. McNeese Misrepresented the Facts in an Effort to Avoid Paying Attorney's Fees. (response to McNeese Brief pages 2-6; 8-14; 18)

1. McNeese Manufactured Its "24 hour" and "duplicative and excessive billing" Attacks to Avoid Paying Attorney's Fees. (response to Brief pages 2-6; 8-10)

As noted, in the months prior to trial, Hopkins reviewed 55 boxes of printed documents and 17,684 electronic files (R. 34:8400) to substantiate nearly every one of his entries with a specific piece of physical work product. (R.43:10616-19). The audit confirmed each hour and revealed significant amounts of unbilled work that attorneys customarily bill. ("there's a lot of time that I worked on this case that did not get put into the time entries" (R. 42:10327-29) and "I haven't sat down to try and estimate all the time that wasn't captured by the time sheets, but I know that it was significant.") (R. 42:10334). (See also 43:10671-77; 10740).

Hopkins illustrated his audit process by introducing an email sent to co-counsel Lee Archer at 6:24 a.m. June 24, 2008, in which he stated, "Sadly, I'm still up" and attached a copy of the brief he spent the night drafting. He then walked four blocks from his home to his firm for a full day's work. Hopkins identified 90 more emails-20 between midnight and 6 a.m. - sent to Ms. Archer that month. (R.35:8718; 44:10782-86). This physical, time-stamped evidence illustrated the sacrifices Hopkins made for his indigent client and proved that he worked at least 18 hours per day between Covington and his firm for 20 of the 30 days in June, 2008.

Unsatisfied, McNeese demanded unprecedented access to Hopkins' records, including files from ***"each and every*** case in which Seth Hopkins was counsel of record" and "any and all billing by Seth Hopkins to any other client" for 10 years. Hopkins complied and even acquired and produced 10,000 hours of raw time data from the Houston firm [20] where he worked to support himself while prosecuting this case. [21] However, the firm ***13** explained to McNeese that its data was not relevant in Covington because it did not contain descriptions, client information, or other context, was not subject to audit or verification, and had peculiarities such as a requirement that each day show **a minimum of eight hours** whether the time was worked or not. [22]

Robert Breen and Hopkins further testified that while the firm's data was generally accurate, the daily numbers were not always reliable because they reflected long, arduous hours with informal timekeeping rules [23] due to the firm's flat-fee billing arrangements with its clients, its internal policies, and the nature of its work (R.41:10009-11; 42:10256). For instance, they testified that at one point they were unable to access the firm's billing software for four straight months. (R. 42:10256; 44:10816). Moreover, because Hopkins worked on *Covington* at the firm, the two sets of data often overlapped. (R.41:10054-55; 10012-13; 40:9992-95). Finally, Hopkins explained that during a few periods of intense and sustained work in the last 10 years and after disruptive events such as Hurricane Ike, he occasionally consolidated several days of time into one entry.

McNeese was aware of this, yet attempted to add the firm's raw daily totals to the Covington daily totals to manufacture the appearance of an average of three clerical errors per year between the records. Though this was clearly a desperate ploy, Hopkins still agreed to eliminate these entries - affecting 1.5% of his hours - and provided McNeese with courtesy copies of his revisions "within days." [24] At one point, McNeese's counsel was satisfied with this, [25] yet when Hopkins submitted a draft of his amended time to McNeese, its counsel complained that Hopkins' good faith would make it harder to personally attack him at trial. (R. 32:7999-8000).

Still hoping to avoid a trial at all, Hopkins ultimately eliminated 710 earned hours, [26] cutting his time to the bone and leaving nothing for McNeese to possibly dispute. In an act of absurd dishonesty, McNeese still demanded a six day trial where it made no substantive challenge to Hopkins's time. Instead, it pretended the records had not been amended and used its clerical complaints from the **former** records to launch, "insinuations ***14** followed by verbal cries of dishonesty and like attacks on young Hopkins's character." (Ruling, p. 11).

For instance, while McNeese complains about Hopkins' "impossible" hours in which he could not sleep or do laundry on October 2-12, 2009, it fails to mention that not a single hour is billed for either Covington or the firm from October 17-31 as Hopkins migrated to a new computer. Most of the hours from these 14 days were never recorded, but a few were combined with the October 2-12 entries. Though this makes perfect sense, Hopkins still eliminated 60.7 earned hours from October and requested an average of only 3.4 hours per day for October - one of the busiest months in the case. (R.39:9743-45) Hopkins patiently offered to explain each entry with "absolute certainty," but McNeese insisted that was unnecessary and objected, noting:

> MR. VERON: Let us go through cross and then let them respond only to the objections we've raised rather than try to anticipate things that we probably won't go into. Our actual list on cross may not be nearly as long as they're trying to defend.

(R. 41:10233; *see also* 44:10779-82;10800-02; 43:10743-46; 24:5874-78).

That "list" on cross included substantive challenges to only two entries - June 1, 2003 and December 9, 2004. Even today, McNeese's only real objection relates to a few concocted clerical complaints which were amended two years ago. (R.43:10758-59).

2. McNeese's Arguments Regarding the 2006 Settlement Offers Are Not Properly Before This Court and Subject to a Motion to Strike. (response to pages 11-14)

On pages 11-14 of its Brief, McNeese presents several "charts" to attack 500 hours of Hopkins' time with false, abandoned, and insulting inferences regarding 2006 settlement offers which are not even in the record before this Court. McNeese never raised these arguments at trial or on appeal and cannot raise them now. Thus, Covington has filed a Motion to Strike but will briefly address the merits of this abandoned claim.

Hopkins testified about his offers to write off time in 2006 and resolve the case without undue expense.[27] These efforts included an unsigned January 23, 2006 offer,[28] multiple letters, and a December 13, 2006 Pre-Bill for 1,395 hours - including 755 of the 1,020.3 hours between 2001-2005 that McNeese now claims were "fabricated" in 2010. McNeese raised no objection to these 1,395 hours at hearings on December 14, 2006 and January 3 and 24, 2007. Even after Hopkins prevailed on summary judgment and established his right to 1,395 hours, he agreed to defer his award if McNeese would simply accommodate his client as required by law. The court praised Hopkins' reasonableness and warned McNeese not to squander the opportunity.

***15** Instead, McNeese litigated for another six years, and Hopkins supplemented in 2010, seeking 264 hours not included in the 2006 Pre-Bill offer, while eliminating hundreds of other hours (which McNeese conveniently fails to mention). McNeese raised no objection to these entries on appeal or at the six day trial and even strenuously fought to suppress any testimony about earlier fee negotiations, claiming that they were not being challenged and were *"beyond the scope of cross," and "irrelevant"* (R. 44:10762). Now McNeese suddenly claims (based only on its lawyers' personal opinion) that the 2006 offers were complete records and that the 2010 records are fraudulent. That should subject McNeese to extreme sanctions.

3. Hopkins'S Time Was Detailed, Necessary, and Contemporaneously Recorded. (response to McNeese Brief pages 2-6; 8-14)

Next, McNeese falsely asserts that Hopkins "did not maintain billing records," "did not retain copies of his timesheets," and "failed to provide any contemporaneous billing records" because he discarded his scratch pads after recording time from them into his computer. That argument is hard to follow. Hopkins testified that for 10 years he immediately wrote his time on a scratchpad and generally transcribed these notes into his computer within "two or three days." (R. 43:10742-43; 10746; 42:10440-43). McNeese fails to explain what could be more contemporaneous or why an attorney should keep scratch pads once they are no longer needed.

McNeese also complains that Covington should not be compensated for opposing its effort to recuse the trial judge. However, the new judge aggressively questioned Hopkins and agreed that he acted in his client's best interest by opposing the recusal at a crucial phase of the case - only hours before Covington's $13.8 million injunction trial and six motions to compel. (R. 43:10543-48; 10587; 44:10802-03). Moreover, the U.S. Supreme Court holds that when a party has a good overall result, "the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit."[29] Furthermore, Covington's counsel already eliminated far more earned hours than McNeese complains about in this argument.

II. RESPONSE TO McNEESE'S SECOND ARGUMENT: THE FEE AWARD IS SIGNIFICANTLY LOWER THAN THOSE AWARDED IN COMPARABLE CASES BASED ON COVINGTON'S COUNSEL'S SUCCESS (Response to Brief pages 16-18)

A. McNeese's Claim Reflects Its Fundamental Misunderstanding of Civil Rights Litigation and Proves Covington's Counsel was Under Compensated.

McNeese complains that Covington's counsel's fee award is somehow unreasonable because it is four times Covington's cash recovery. This not only fails to account for the $13.8 million injunction, scholarship, ***16** and other benefits to Covington and society as a whole, but it reflects McNeese's fundamental misunderstanding of how civil rights litigation works. In City of Riverside v. Rivera, 477 U.S. 561, 564 (1986), the U.S. Supreme Court held that it expected attorney's fees to eclipse a client's recovery in civil rights cases because such suits are filed to vindicate rights for the public, not recover monetary damages for one client:

Unlike most private tort litigants, a civil rights plaintiff seeks to vindicate important civil and constitutional rights that cannot be valued solely in monetary terms... Congress has determined that, 'the public as a whole has an interest in the vindication of the rights conferred by the statutes enumerated in Section 1988, over and above the value of a civil rights remedy to a particular plaintiff.'[30]

McNeese's own expert patiently explained to McNeese's lawyers that Covington's compensation must account for the benefits to an entire class of people, including "students getting off of welfare and being able to have jobs." (R. 33:8098; 34:8256-58), and McNeese conceded on September 1, 2010 that it expected Covington's fees to be her "largest category of damages." (R.24:5313). There are hundreds of similar cases where attorneys received at least 30 times[31] - and sometimes 40 times a client's recovery. *Humphries v. Powder Mill,* 35 A.3d 1177, 1193-96 (N.J. 2012) (ADA case awarding $97,706 fees for $2,500 recovery (40 to 1 ratio)).[32] Yet, McNeese complains about fees of only four times Covington's recovery? McNeese's argument just proves that the lower courts failed to adequately compensate Covington's counsel.

Indeed, in another landmark Title II ADA case, *Gaskin v. Pennsylvania,* 389 F.Supp.2d 628 (E.D.Pa. 2005), the parties settled for $350,000 after 11 years. The State of Pennsylvania then agreed to pay compromise attorney's fees of $1,825,000-5.2 times the client recovery. In contrast, McNeese argues Covington's $400,000 recovery and $13.8 million injunction merits *nothing* after 12 years of litigation, and it appeals a hard-fought award significantly less than most states would settle for if given the opportunity.

B. McNeese Judicially Admitted on April 23, 2010 That Covington's Counsel's Work Securing a $13.8 Million Injunction Satisfies Buckhannon, But Now Claims Otherwise.

After the Third Circuit pointed out that McNeese, "neither urges nor could it rely on the 'catalyst theory"' under Buckhannon v. W.Va., 532 U.S. 598 (2001) (Ruling, p. 11), McNeese decided to raise this issue now, forcing Covington to file a Motion to Strike. Still, this outrageous claim will be briefly addressed.

First, McNeese claims there is "no alteration of the legal relationship of the parties" sufficient for Covington to seek fees. Yet, it signed an April 23, 2010 Consent Injunction in which it judicially admitted: ***17** "The parties stipulate that **there has been an alteration in the legal relationship of the parties** thus establishing that Covington is a prevailing party under the ADA with standing to seek attorney's fees." (R. 20:4953-54).

Moreover, not only did the U.S. DOJ acknowledge Covington's role in its own case, (R. 35:8713) but McNeese stipulated that Covington's injunction secured "permanent, enforceable rights in connection with this case **which are specific to Covington"** and the trial court, "retains jurisdiction to the extent allowed by law to enforce this Injunction until the completion of all renovations required at McNeese under the terms of the U.S. Department of Justice settlement." (R. 20:4954-56). Finally, **"as a result"** of Covington's counsel's work:

[t]he Defendants will expend a substantial sum of money to bring the McNeese campus into compliance with the ADA for the benefit of Covington and other disabled students. The parties stipulate that Covington's actions have and will result in substantial changes both to the facilities at McNeese and McNeese's policies toward the disabled.

(R. 20:4953-56 at 4954).

McNeese next hypothesizes that Covington's counsel "expended substantial amounts of time on activities not remotely related to his clients ultimate success." Yet, McNeese has never identified a single such example. The 144 hours (12 per year) of campus inspections which McNeese references in a footnote directly led to Covington's injunction, which provides 14 different ongoing monitoring components. (R. 20:4953-56).

Finally, contrary to McNeese's assertions, Covington's settlement is not "modest" and is the largest of its kind in history (see fn. 1). Indeed, the Louisiana Advocacy Center opined in its appellate Amicus Brief:

> In our 33 years of advocating for those with disabilities, we find that the results achieved by the Plaintiffs in this case to be truly impressive. We regard this as a landmark Louisiana case, because of the intransigence of the defendants, the extreme dedication and perseverance of the plaintiff's counsel, and the excellent results achieved, not merely for the individual plaintiff, but for all persons with disabilities who use the campus of McNeese State University.

(Louisiana Advocacy Center Brief, p. 2, attached as Exhibit "G" to Covington's Writ Application).

III. RESPONSE TO McNEESE'S THIRD ARGUMENT: THE LOWER COURTS ADMITTED THAT THEIR OWN ENHANCEMENT WAS TOO LOW AND INFLUENCED BY AN IMPROPER CONCERN FOR THE DEFENDANT (response to Brief pages 18-20)

McNeese's third argument is that the Third Circuit's modest 6% interest enhancement should be reversed. Covington urges the granting of a writ to increase the enhancement. (See Docket No. 2012-C-2231).

42 U.S.C. § 1988 requires a court to set a fee high enough to "encourage qualified counsel to take on such complicated and time consuming cases" [33] and to "enable litigants to obtain competent counsel worthy ***18** of a contest with the caliber of counsel available to their opposition and to fairly place the economical burden" of litigation on the wrongdoer. *Johnson v. Georgia Highway Express,* 488 F.2d 714, 719-20.

Moreover, as the Supreme Court held in *Missouri v. Jenkins,* 491 U.S. 274, 281-83 (1989), "compensation received several years after the services were rendered - as it frequently is in complex civil rights litigation - is not equivalent to the same dollar amount received reasonably promptly as the legal services are performed." Thus, federal courts have considered thousands of fee enhancements since 1974. [34]

Both lower courts found a factual basis for awarding an enhancement but denied it out of concern that the "taxpayers" would be held responsible for McNeese's "shameful" behavior. However, justice must be blind, and the U.S. Supreme Court holds that a discriminator's status as a public entity must be of "no relevance" when a court calculates an enhancement. Missouri, 491 U.S. at 281-82.

As noted, *infra,* all case experts, including McNeese's own expert, as well as the Louisiana Advocacy Center and the National Association of Legal Fee Analysis - with their combined 200 years of experience - urge the award of an enhancement between $3 million and $12 million based on well-documented, objective evidence and irrefutable arguments. Covington seeks the midpoint of $5.1 million based on criteria explained in great detail in her writ application and briefly summarized below.

Covington's counsel's market value is $4.5 million. Perdue v. Keny A. provides for an enhancement when a party's "market value" exceeds the lodestar. 130 S.Ct. 1662, 1673 (2010). It is undisputed that Covington's work forced McNeese to identify and correct $13.8 million in ADA violations, and these benefits will help all of the State's disabled citizens - and McNeese itself. Dividing McNeese's windfall by Covington's counsel hours ($13,8000,000 divided by 6,482) yields a market value of $2,128.97 per hour, which far eclipses the modest $265 base rate. Certainly, even the most experienced attorneys would be proud to provide such value to their clients - much less their opponents. Using a customary 33% cross-check to determine the appropriate enhancement, Covington's counsel has earned $4.55 million.

The exceptional delay **mandates an award of at least $3 million. Perdue** also provides for an enhancement to compensate for the lost value of money caused by an exceptional payment delay. Civil rights attorneys are awarded their ending, rather than starting, hourly rates to account for normal payment delays. However, Perdue holds that this is inadequate when a payment delay is unexpected and exceptional, and that ***19** an award should be enhanced by an amount to roughly approximate the lost interest. **Perdue,** 130 S.Ct. at 1675-76. According to the Louisiana Judicial Interest Rate Calculator on the Louisiana Bar Association website (http://www.lsba.org/newintcalc.htm) McNeese's willful delays have resulted in Covington' counsel's lost interest **exceeding** their fees, suggesting a reasonable award of at least $3 **million:**

Base fees earned for 12 years work	$1,717,677.00
Expenses	$41,570.47
Louisiana judicial interest	$1,759,247.47
Total	$3,035,221.47

Attracting counsel to serve as future private attorneys general requires $5 million. *Perdue* further requires that courts analyze not only the compensation owed to the present attorneys, but what compensation is required to create market incentives for future attorneys to serve as private attorneys general and devote 12 years of their lives to such an expensive and highly contingent endeavor. As Covington analyzed in her Writ Application, this amount exceeds $5 million.

The lower courts never attempted to analyze these factors as required by the United States Supreme Court and allowed their sympathy for the taxpayer to override sound market principles. However, Covington's counsel represented Louisiana's taxpayers as private attorneys general and their work achieved significant economic benefits for the public. Louisiana must encourage its private bar to take these difficult and meritorious cases, but without proper incentives, that will never happen. The lower courts' failure to even attempt to analyze these factors while conceding that they were not awarding a proper enhancement solely out of concern for the taxpayer was an abuse of discretion.

IV. RESPONSE TO McNEESE'S FOURTH ARGUMENT: THE THIRD CIRCUIT PROPERLY HELD THAT THE TRIAL COURT ABUSED ITS DISCRETION IN ARBITRARILY REDUCING COVINGTON'S COUNSEL'S HOURS (Response to McNeese Brief pages 20-21)

A. The Trial Court Erred in Arbitrarily Reducing Hopkins' Hours Based on His Age. In a civil rights case, it is an abuse of discretion for a court to arbitrarily reduce an attorney's hours, and a court must "provide a concise but clear explanation of its reasons" for reducing fees. Hensley, 461 U.S. at 437. The federal Fifth Circuit Court recently overturned a 25% reduction for failing to provide a sufficient explanation. *McClain v. Lufkin Ind.,* 519 F.3d 264, 284 (5th Cir.2008) ('The court offered no reason ... to apply a blanket reduction of 25% of all of the billable hours reported by plaintiffs' counsel.")

Having presided only two weeks in this 12 year case when fees were requested, the trial judge accepted McNeee's unsupported hypothesis that an older attorney might have billed fewer hours, but it could not provide a single such example. Indeed, there was no basis whatsoever for it to reach this conclusion, other than ***20** Hopkins' age. That was clearly inappropriate, considering the quality of work product, the case results, and the significant time that Hopkins wrote off both through the years and immediately before trial. The record conclusively establishes that no attorney - no matter how experienced - would have requested so few hours while accomplishing so much, particularly in a case where the law was still developing. As four appellate judges correctly held, the trial court's finding has no basis in fact or law and was a clear abuse of discretion.

B. McNeese Stipulated and the Trial Court Agreed That Hopkins Established That He Reasonably Incurred 5,489.5 Hours, Which Were Never Challenged. (response to McNeese Brief pages 6-16)

As the federal courts hold, "[s]ubmission of itemized time records, coupled with counsel's affidavits that the work was performed, is certainly *prima facie* showing that the work and hours referenced in the fee petitions are accurate." *Liger v. New Orleans Hornets,* 05-1969, 2010 WL 3952006, at *10 (E.D. La. Aug. 3, 2010). When records are submitted, due process requires that the burden then shift to the opposing party to point out which entries it contests, explain why each is not reasonable in sufficient detail to allow the prevailing party the opportunity to respond, and propose a more reasonable amount As Louisiana Courts have explained:

> the Court charged the Hornets with identifying on a line-by-line basis every time entry with which the Hornets took exception. For, if it is impossible for counsel who are most familiar with the litigation to suggest what is improperly charged time and why that is, in fact the case, the Court is in no better position to second-guess what counsel are seeking [to have reduced] in fees.

Id. See also ADA Practice & Compliance Manual § 4:206.

In *Riddell v. Ntl Democratic Party,* 545 F.Supp. 252,260 (D.C.Miss.1982), *hours aff'd* at 624 F.2d 539 (5th Cir.1980), a federal Fifth Circuit district court noted that a fee opponent must take seriously his obligation to examine and dispute time and may not simply make a "blunderbuss" attack on his opponent:

> Counsel opposite failed to assist the Court in any manner with their "blunderbuss" attack which stated no more than that the hours claimed were excessive. This type of objection to a fee application is wholly insufficient.

As noted, McNeese deposed Hopkins and demanded a six day trial, during which it stipulated that Hopkins proved a prima facie case for 5,489.5 hours [35] and that its only objection would be to a few entries identified during its cross examination of him. [36] On cross, McNeese's substantively challenged only two entries comprising 16.4 hours [37] and devoted the bulk of the trial to hurling "vitriol" at Hopkins and grousing about the clerical details of time sheets which were amended months earlier and not even before the court.

***21** McNeese could not challenge Hopkins' time sheets because of their extraordinary detail and reasonableness and because he had already removed anything it could possibly object to. Yet, even without any meaningful challenge, Hopkins still offered to submit day-by-day physical evidence from his 55 boxes of paper files, 17,684 electronic files, and the second longest suit record in Calcasieu Parish. [38] But the court stated that Hopkins had proven his hours and, "if it wasn't covered in cross, we won't need to discuss it." (R. 43:10626-27; 41:10229-35; 10244-45). If the court had any doubt about the reasonableness of any hours, it should have allowed Hopkins the opportunity to respond, rather than inform him that he met his burden and then later eliminate 1,098 earned hours without sufficient explanation. That was clearly an abuse of discretion.

C. Hopkins Requested Less Time Than Louisiana's Most Experienced Attorneys. (response to McNeese Brief pages 20-21)

On appeal, one of McNeese's chief complaints is that Hopkins required 200 hours to prepare a 1,000 page summary judgment. There is nothing unreasonable about this, particularly after McNeese required a full year to respond - and then lost. Indeed, Louisiana's most experienced attorneys are routinely awarded far more time for less complex pleadings. One respected firm, which charges up to $1,075 per hour, recently required 1,098 hours to prepare one "simple" summary judgment on the issue of res *judicata,* including 103.25 hours to review a 10-page reply brief and 128 hours to prepare for oral argument. Even after an expert opined that was "manifestly unreasonable," the court reduced the award by only 30%, finding 768 hours to be appropriate. *Oreck Direct v. Dyson,* 2009 WL 961276 (E.D. La. April 7, 2009).

Given the time most attorneys require for comparable motions, how could any court conclude that 200 hours was unreasonable for Hopkins' mammoth filing? After the court's 20% reduction, he was awarded just 160 hours for a 1,000 page submission - only slightly more than the Louisiana Eastern District held to be reasonable for a 10 page reply brief. The only thing unbelievable about Hopkins' time is how little he seeks.

For example, in October, 2009, Hopkins reviewed 15,000 technical violations affecting his client and incorporated them into an injunction. He requested 18 seconds for every page he read, or six seconds per violation. Likewise, he reviewed 13,000 emails and incorporated several hundred into evidence - at a rate of a page every 23 seconds. If he were 30 years older, or charged more per hour, could he have worked any faster?

Hopkins even compared his Application against McNeese's heavily redacted and incomplete timesheets (containing glaring errors, such as missing time on eight of the 13 court dates, reflecting 24 lawyer-days of trial work). Even these incomplete records revealed that McNeese's lawyers - who had no burdens and ***22** litigated a $4,000 request into a $16 million liability - spent at least three hours (and more likely six) for every page they filed into the record. Hopkins requested only 0.69 hours for every page he filed to win this landmark case. If Hopkins had worked at the pace of McNeese's lawyers, he would have billed more than 25,000 hours. McNeese has no reason to complain about Hopkins' records, and clearly the trial court had no basis whatsoever to conclude that Hopkins requested more time than a more experienced attorney might have sought.

D. Four Experienced Attorneys Opined that Hopkins Earned 6,199.5 Hours but Sought Only 5,489.5 Hours. [39]

As if that were not enough, Hopkins' records were quadruple checked by four senior members of the bar, including the only other attorneys in Calcasieu Parish known to have handled an ADA case and a national attorney's fee expert who has evaluated 2,500 fee bills for a living. They all opined that Hopkins underreported his time and praised his efficiency. Significantly, this was before Hopkins discounted 710 hours. McNeese stipulated that the court should consider these opinions (R. 45:11663-64) and raised no objection when its own expert's opinion was stricken from the record on February 24,2011. (R.39:9636-68).

1. Louisiana ADA Expert Edward Fonti Submitted Two Affidavits and Opined "Approximately 6,000 Hours" Were Required in This Case.

Mr. fonti, who McNeese's expert conceded is more qualified than he is to handle an ADA case, (R.33:8186-88) signed two affidavits of reasonableness - in December, 2006 and May, 2010. He reviewed the record, briefs, and each line-by-line entry and affirmed each of Hopkins's "approximately 6,000" hours. (R. 20:4984-86). McNeese aggressively deposed Mr. Fonti and personally attacked him for rendering his opinion. Yet, Mr. Fonti repeatedly opined, "I didn't find anything inordinate at al," and, in response to Hopkins' 710 hour reduction, "I wouldn't cut anything at all." (R. 32:7887-88). Mr. Fonti further testified:

> I read every entry and I looked at the hours next to that entry... in my view from the beginning of the case until its culmination with the [3rd] Circuit's opinion, it appeared to me that all of the work described by Seth Hopkins in his entries was time necessary, necessarily devoted to either responding to McNeese's defenses or developing the law that would be needed to argue to prosecute his case. I didn't see anything in there - and there is lots of entries, six thousand hours. I didn't come across anything that caused me to question his time. (R.32:7884).

2. National Attorney's Fee Expert Jonathan Prejean, Who Evaluates Legal Bills for a Living, Opined that 6,000-6,500 Hours Was "Entirely Reasonable."

Mr. Prejean, a Harvard Law graduate who has evaluated 2,500 legal bills from global firms, followed this case from its inception. He reviewed the record, praised Hopkins' "lean staffing," traveled 740 miles round trip to testify that Hopkins's time was reasonable and that his work habits allowed him to "produce long stretches of sustained and productive activity" (R.40:9942-43,62-64,71) and swore in his affidavit:

> ***23** Based on my review of the complexity and detail of the Covington case and particularly the requirements for extensive expert testimony, appeals, and contested motions, I consider this case to reach a level of complexity that rivals other complex litigation like patent litigation. I consider 6000-6500 hours of attorney time entirely reasonable for such a case. I have also reviewed the billing summary for this case, and the billing entries appear to reflect reasonable tasks to be performed personally by an experienced attorney.

(R. 20:4987-94).

3. Former Southwest Louisiana Bar Association President and Current Member of the Louisiana Bar Association Board of Governors Winfield Little Opined that 6,000 hours is Consistent With Local Billing Practices.

Mr. Little, an unpaid expert with 36 years of experience and one of the few local attorneys to ever handle an ADAcase, opined, "I consider it completely reasonable and consistent with local billing practices for a case of this length and impact to require 6,000 or more hours of billable time to prosecute." (R. 20:4958-60).

4. Louisiana Bar Association Distinguished Attorney of 2007 Thomas Lorenzi Opined "6,000-6,500 or More Hours of Billable Time" Was Reasonable in this Case.

Mr. Lorenzi has handled many fee shifting cases in his 35 year practice, including "one of the few Title II ADA cases that I am aware of in Southwest Louisiana." He opined, "I consider it completely reasonable and consistent with local billing practices for a case of this length and impact to require 6,000-6,500 or more hours of billable time to prosecute during the last nine years." (R. 20:4977-83).

The trial court abused its discretion in reducing 1,097.9 hours based on its unexplained opinion that Hopkins was not as efficient as older attorneys, when the parish's three most experienced ADA attorneys and a national fee expert opined he earned up to 6,500 hours - not the 5,489.5 sought or the 4,391.6 awarded.

E. The Case Law Establishes Hopkins Earned More Than 25,000 Hours Over 12 Years.

Even a cursory comparison with other cases reveals that the trial court's award was a clear abuse of discretion and only a fraction of what courts customarily award within 200 miles of Lake Charles: [40]

Caldwell v. Janssen Pharm., 11-1184 & 11-1185 (La. App. 3 Cir. 8/31/12), 100 So.3d 865.	**None provided**	**None provided**	**$70,000,000 (Louisiana)**
Perdue v. Kenny A., 130 S.Ct.1662 (2010).	30,000 (8,571 per year)	$495 (base) $866 (enhanced)	$6,000,000 (base) $10,500,000
McClain v. Lufkin Industries, 2009 WL 921436 (E.D. Tex. Apr. 2, 2009), fees affirmed at 649 F.3d 374 (5th Cir.2011).	11,850 (987 per year)	$400 (local) $650 (national)	$4,740,195 (120 miles from Calcasieu Parish)
Altier v. Worley Catastrophe Response, 2012 WL 161824 (E.D. La. Jan. 18, 2012).	5,452 (5,452 per year)	$400 (base) $868 (enhanced)	est. $4,732,336 (Louisiana)

Corbello v. Iowa Prod, 2001-567 (La. App. 3 Cir. 12/26/01); 806 So. 2d 32, 51, fees aff'd.	4,970 (621 per year)	$805	$4,000,000 (Calcasieu Parish)
Gaskin v. Pennsylvania, 389 F.Supp.2d 628 (E.D. Pa. Sept. 16, 2005)	Title II ADA case settled-unknown	Title II ADA case settled-unknown	$1,825,000 (the state settled)
Vela v. Plaquemines Parish Gov't, 2000-2221, (La. App. 4 Cir. 3/13/02); 811 So. 2d 1263.	3,800 (543 per year)	$600 (enhanced)	$1,500,000 (Louisiana)
Liger v. New Orleans Hornets, 05-1969, 2010 WL 3951506 (Oct. 6,2010), affirming fees from 2010 WL 3952006 (Aug. 3,2010).	3,528.8 (1,176 per year)	$400	$1,303,788.25 (Louisiana)
Thompson v. Connick, 553 F.3d 836 (5th Cir. 2008), rev'd on other grounds	3,800 (950 per year)	$450	$1,166,177.45 (Louisiana)
Hutchinson v. Patrick, 683 F.Supp.2d 121, 128-129 (D. Mass.2010), aff'd at 636 F.3d 1, 13 (1st Cir. 2011).	2,388 (796 per year) Title II ADA case	$425 Title II ADA case	$1.1 million voluntarily reduced to $780,000 (“eminently fair” “laudable restraint”)
Oreck Direct v. Dyson, 2009 WL 961276 (E.D. La. April 7,2009).	768 (768 for a motion)	$400	$246,623 (one motion only)

Rohrer v. Astrue, No. 06-1242, 2009 WL 173829, at *5 and fn.4 (W.D. La. Dec. 7,2009).	-	$265 (base) $530 (enhanced)	(Calcasieu Parish)
Leleux v. Assurance Co. of America, 2012 WL 5818226 at 4 (W.D. La. Nov. 15, 2012), citing Covington v. McNeese, 2011-1077 (La. App. 3 Cir. 9/5/12), 98 So.3d 414.	-	Cites this case. $265 is "modest base rate" in Lafayette/ Lake Charles.	(Lafayette/ Lake Charles)
Average	-	-	-

***24** The average comparable case resulted in an award of 2,207 hours per year, yet the trial court awarded Covington's counsel only 450 hours per year-80% less than average. Likewise, the average unenhanced "low" rate was $446 per hour, yet the trial court awarded $240 per hour-47% less than average. Had they not kept timesheets at all and sought the average number of hours (2,207 per year times 12 years) and the average unenhanced rate awarded in similar cases, their total compensation would have been for 26,484 hours at $446 per hour, or $11.8 million. That is consistent with McNeese's own lawyers' work pace. (See Section "C", supra.) How could it not be an abuse of discretion for a court to award 89% less than the average award in analogous cases, especially for the most successful case of its kind in history? Even the Third Circuit's 540 hours per year and $265 per hour with a small interest enhancement is truly "minimal" compensation.

V. RESPONSE TO McNEESE'S FIFTH ARGUMENT: THE THIRD CIRCUIT PROPERLY HELD THAT THE TRIAL COURT ABUSED ITS DISCRETION BY ARBITRARILY REDUCING COVINGTON'S COUNSEL'S RATE (response to McNeese Brief pages 21-22)

McNeese incorrectly asserts that the Third Circuit "enhanced" Covington's rate to $265 per hour, but the Third Circuit simply awarded what four experts uniformly opined was the *lowest* possible base rate in Lake ***25** Charles - a rate which is far lower than Hopkins and most of the experts charge their own clients for simple cases. McNeese's own expert charged $350 per hour in this very case (R. 33:8179-80) and the other experts charge their promptly paying clients up to $385 per hour (R. 20:4958-70; 4977-94). Hopkins' standard rate is $325. (R. 44:10807; 34:8434-36). See *Carson v. Billings Police Dep't,* 470 F.3d 889, 892 (9th Cir. 2006).

McNeese claims Covington's counsel should be paid the lowest rate for "simple" cases in Louisiana's Western District. The chief judge of that District has already cited this very case, finding that the Third Circuit's $265 per hour award is an "extremely reasonable" "modest base rate" in the Lafayette/Lake Charles community for a simple one year case with no exceptional factors. *Leleux v. Assurance Co. of America,* 2012 WL 5818226, at *4 (W.D. La. Nov. 15, 2012), citing *Covington v. McNeese,* 2011-1077 (La. App. 3 Cir. 9/5/12), 98 So.3d 414. [41] But, unlike the *Leleux* case, *Covington* was not simple or short, and as the

table on the previous page demonstrates, a dozen recent, relevant, and local cases establish $400805 per hour as the appropriate local rate for complex litigation. Certainly, Covington's modest $265 was the absolute floor for the most simple cases in Lake Charles, and there was no basis in fact or law for the trial court to reduce it.

CONCLUSION

McNeese has launched another series of false attacks on its opposing counsel using arguments which are either brand new or have been so thoroughly disproven that McNeese was denounced for making them. Undeterred by the lower courts' admonishments, the discriminator which spent 12 years forcing these fees upon a disabled grandmother as it evaded its ADA obligations now attempts to likewise evade its obligations under 42 U.S.C. § 1988. McNeese seeks to nullify the ADA by punishing any hard-working attorney who prevails against it with harassing discovery and insulting, defamatory attacks which are so severe that no lawyer will ever again take such a case. This outrageous and unprofessional conduct has already resulted in its victims receiving only a fraction of what they objectively earned. That is clearly not what Congress intended.

Louisiana must create a climate which rewards hard, honest work undertaken by the private bar for the betterment of our State. In an age when this Court implores its attorneys to serve as a moral compass, Covington's counsel sacrificed immediate gratification and worked nights, weekends, and holidays for 12 years to secure Louisiana's disabled citizens the opportunity to escape economic imprisonment and public dependence and live meaningful and productive lives. Under the market incentives created by Congress, this sacrifice must be rewarded, and a victim's counsel's proven wages cannot be arbitrarily denied or diminished.

Footnotes

1 Covington received an injunction valued at $13.8 million, $400,000 cash, a six year scholarship, and attorney's fees (under appeal) of approximately $1.8 million. As a result of this case, McNeese will receive $13.8 million to update its campus, for a total case value of $16 million. The Equal Employment Commission's 2010 nationwide ADA analysis found the largest monetary relief provided to a single client in a Title I ADA case was $391,000. The largest class action judgment was $6.2 million with an average of $26,300 per plaintiff. See 'The U.S. Equal Employment Opportunity Commission: Twenty Years of ADA Enforcement, Twenty Significant Cases http:// wwweeoc.gov/eeoc/history/45th/ada20/ada_case.cfm. There has since been one larger class action, but the class members are not expected to receive a record-breaking amount Covington has identified cases in which plaintiffs received more attorney's fees or injunctive relief than Covington but only nominal client benefits and one Title II case with a $400,000 judgment but no injunction or scholarship. Thus, upon information and belief, this is the largest single plaintiff ADA judgment in history.

2 These wars lasted 11.9 years combined. See http:// en.wikipedia.org/wiki/Length_of_U.S._participation_in_major_wars

3 Delaney admitted that McNeese's disabilities office would not accommodate students in wheelchairs. Instead, he accused them of purchasing their wheelchairs at "pawnshops" to fake their disabilities and pretended not to know where the student union was located when asked why he could not help Covington. (1 R. 2:465-66, 472-78, 482. 1 R. 5:1004-05; R. 23:5695; R. 24:5764-68).

4 Record citations prefaced with a "1 R" are found in Louisiana Third Circuit Docket No. 08-505.

5 These were required before 1992 and 1995, respectively, under 28 CFR 35.105 and 28 CFR 35.150(d).

6 Prior to 2009, McNeese never asked for more than 20% of its ADA funding needs (R. 22:5343-48; 23:5695) even as it raised its administrators' salaries to the highest levels in Louisiana and accumulated massive surpluses. (R. 22:5377-83).

7 This case resulted in a 5,600 page evaluation documenting these violations. (R. 2:347-19:4651 and 26:6292-31:7608). This report was filed as one document but is split into two sections in the record.

8 Until 2009, McNeese concealed its own *Infirmary's* diagnosis of Covington's disabilities, even as it argued to this Court that she was not disabled because her "credibility is lacking" and she has a "significant problem with accuracy or the truth." (R.1:42, 208-14).

9 McNeese's "concoctions" were "completely unfathomable," "completely unsupported by any evidence in the record," and "[h]d Covington brought an action for frivolous appeal... it would seem that this court would have granted such a request." (R. 1:141-42).

10 McNeese's "Building Use Fund" rose from $1,094,952 in 2005 to $2,032,018 in 2010, even as it refused to upgrade a single restroom to end this litigation. In 2010, Covington's case forced McNeese to use $1.4 million for ADA upgrades. (R. 23:5600-12).

11 (R. 1:164-2:265). Incredibly, McNeese later blamed Hopkins for not asking for sanctions against it sooner and mocked him as a "pretty please" lawyer for extending professional courtesies and offering to settle this case rather than escalate it. (R. 42:10396-98).

12 For instance, McNeese first claimed that it could not find $4,000 in its $75 million budget to upgrade a bathroom. Then, it argued that it complied with the ADA after admitting that it did not On Nov. 13, 2008, McNeese's counsel wrote the Third Circuit to apologize for making this misrepresentation during oral argument, yet maintained the claim in its first writ application to this Court.

13 On Sept 30, 2008 - the day before the first Third Circuit oral arguments - McNeese attempted to file a grievance against Hopkins, alleging he "ruined" its "good name" in this case. The complaint was refused and both the U.S. DOJ and trial court warned McNeese to cease retaliation against counsel. (R 20:4950-57). As the Sept 5, 2012 ruling demonstrates, McNeese has flouted these orders.

14 The investigation expanded after Hebert testified in this case that the other colleges in the University of Louisiana System - one of the 20 largest in the nation - also violated the ADA. (R. 36:8785; 23:5678-80).

15 (R 20:4967-71; 2:385-389; 20:4967-71); *see also Sanosiasi v.McNeese,* 2:10-CV-01799 (W.D. La. filed Dec. 3,2010).

16 *See* *Jackson v. Host International,* 426 Fed.Appx. 215, 225-28 (5th Cir.2011). ("The district court calculated the lodestar amount using an hourly rate of $300. Not only did Host not object to this figure, in its supplemental response to the motion for attorney's fees, it abandoned its position that the rate should be $225 per hour and expressly stated that it did not object to the $300 per hour rate. Because Host now argues a position that is inconsistent with its position in the district court, it is foreclosed from arguing that the hourly rate was improper.")

17 "Although this fee-shifting provision is couched in permissible terminology, awards in favor of prevailing civil rights plaintiffs are virtually obligatory." *Gay Officers Action League v. Puerto Rico,* 247 F.3d 288, 293 (1st Cir. 2001). *See also* *Barrios v. Cal. Interscholastic Fed'n,* 277 F.3d 1128, 1134 (9th Cir.2002) ("'The Supreme Court has explained that in civil rights cases, the district court's discretion is limited. A prevailing party under the ADA 'should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust'")

18 *See also* *La. Power & Light v. Kellstrom,* 50 F.3d 319, 324 (5th Cir. 1995). ("[f]ailing to provide contemporaneous billing statements does not preclude an award of fees per se, as long as the evidence produced is adequate to determine reasonable hours.")

19 *Mendez v. County. of San Bernardino,* 540 F.3d 1109, 1125 (9th Cir. 2008) which holds that the "special circumstances" exception to deny attorney's fees is extremely narrow. ("We have firmly rejected the district court's authority to refuse a reasonable fee under the 'special circumstances' exception simply because it believes it 'would result in a windfall' to a plaintiff. 'Granting a windfall to plaintiffs was a concern echoed by Congress in enacting Section 1988, but Congress balanced that concern against the need to attract competent counsel to prosecute civil rights cases.'")

20 Hopkins worked for the firm between 110 and 295 hours per month depending on what was taking place in *Covington* and used his personal and vacation days to represent his indigent client. (R. 44:10766-70; 10049).

21 Hopkins was forced to thwart an unscheduled and unlawful clandestine plot by McNeese to acquire his medical records, personnel evaluations, and other privileged and confidential documents from his former employer. (24:5902-14).

22 (R.42:10263; 44:10740). The firm asserted that its daily records were not relevant in *Covington* in part because time was adjusted to show a minimum of eight hours per day. ("the daily hour totals starting in 2007 do not necessarily reflect work billed to either a KBTF matter or administrative file requiring Hopkins' attention to KBTF matters.") (R. 35:8559).

23 Breen testified that firm attorneys had "informal" billing rules and frequent all-night projects where days would overlap (R.40:9986-87; 41:10013-14) and that because of the nature of their work, they logged all time at the office, even while on breaks (R.40:10003-4). Hopkins testified that billing was "informal" (R.41:10049-50) and that, "[t]here was some entries that didn't necessarily collate [correlate] to files...some entries in their billing system that might be for sort of block projects that wouldn't collate [correlate] to a particular client or a particular file" (R.42:10257).

24 Hopkins testified at trial, I've corrected that. I've done what any lawyer would be expected to do, and I did it reasonably promptly, within days of finding the errors, and I let you guys know and I let the court know." (R. 42:10349) and "as a professional courtesy, was giving you guys the changes as we were making them, rather than dumping it on you at the end." (R. 42:10301; 44:10759).

25 "MR. PALERMO: obviously, if there is more than 24 hours in a day, I'm sure he wants to reduce that amount." (R. 25:6017-18).

26 For instance, he wrote-off 100 earned hours pertaining to McNeese's retaliation against he and his client. (R. 44:10759-60).

27 ("... we wanted to do anything possible to get accommodations for our client without the need for judicial intervention. That was our primary objective.") (R.42:10389-90). ("If we had been able to get a bathroom for this woman, or her classrooms moved, in prior to 2006, we wouldn't have filed. And what I was doing was showing them the law and explaining to them the position and showing them why they had to do what they had to do, and I was saying, you know, we're going to have to file a summary judgment if we can't get accommodations for her.") (R. 42:10395-6). (See also R. 23:5539-40).

28 This unsigned, unsworn settlement offer was never submitted to experts or at any hearing. It was clearly made in compromise, seeking only 553 hours for **five years** of work through six depositions and a 1,000 page summary judgment.

29 *Hensley,* 461 U.S. at 435. *See also* *Baker v. Windsor Republic Doors,* 414 Fed. Appx. 764, 769, 781 (6th Cir. 2011), where the plaintiff lost 50% of his claims but the court still awarded full fees and enhanced by 120%, holding, "because the plaintiff still obtained exactly the relief he sought, even after the district court's partial grant of Windsor Republic's motion for judgment as a matter of law, we cannot say that the district judge abused his discretion in denying

the defendant's request to reduce the attorneys' fees awarded the plaintiff."). *See also* *Goff v. John Hancock Mutual Life Insurance,* 497 So.2d 747 (La. App. 3 Cir. 11/5/86).

30 *In* *Blanchard v. Bergeron,* 489 U.S. 87 (1989), the U.S. Supreme Court again stated this important policy in holding that a contingency agreement between a prevailing plaintiff and his attorney may not be used to limit a fee in a civil rights case.

31 *Wyatt v. Ralphs Grocery,* 65 Fed. Appx, 589 (9th Cir.2003) (ADA case-32 to 1 ratio); *Small v. Dellis,* 211 F.3d 1265 (D. Md. Apr. 25, 2000) (ADA case-4.5 to 1 ratio); *Smith v. State,* 2003-1450, p. 10 (La. App. 3 Cir. 4/28/04); 872 So.2d 594, 601, *rev'd on other grounds* (5.2 to 1 ratio); and *Liger v. New Orleans Hornets,* Civ. No. 05-1969, 2010 WL 3951506 (Oct. 6, 2010), *aff. fees from* Civ. No. 05-1969, 2010 WL 3952006 (Aug. 3,2010) (2.5 to 1 ratio).

32 The Atlantic Reporter consolidated three cases into one citation. *Humphries* is third under the caption *Walker v. Giuffre.*

33 McClain v. Lufkin Ind, 649 F.3d 374, 379-82 (5th Cir.2011), affirming 97-063, 2009 WL 921436 (E.D. Tex. Apr. 2, 2009).

34 The Americans with Disability Practice & Compliance Manual Section 4:206 notes, "[t]he court starts with a lodestar" and may increase it based on the factors identified in Johnson v. Highway Express, 488 F.2d 714 (5th Cir.1974). See also Jankey v. Poop Deck, 537 F.3d 1122, 1129 (9th Cir.2008) (applying these principles to the ADA).

35 (R.41:10231-35). The trial court accepted McNeese's stipulation but erroneously referred to this as "5,306.5 hours."

36 "MR. VERON:... let us go through cross and then let them respond only to the objections we've raised rather than try to anticipate things that we probably won't go into. Our actual list on cross may not be nearly as long as they're trying to defend." (R.41:10233).

37 McNeese referred to other entries but made no objection to their substance. The only two entries questioned in any detail were June 1,2003 (research at LSU) and December 9,2004 (seeking a campus accessibility map) (R.42:10500-43:10507; 10512-13).

38 This Court holds that an attorney's file, record, and testimony are given great deference in establishing fees, Rivet, 800 So.2d at 782.

39 For a more detailed discussion, see R. 31:7644-61.

40 The Perdue case was filed in Atlanta but is included because it is a seminal fee-shifting case. The *Gaskin* and *Hutchinson* cases are out-of-state but included because they are extremely similar Title II ADA cases which best illustrate the work required in *Covington.*

41 *See also* *Wells Fargo Bank v. Jones,* 2009 WL 911011 (E.D.La. 2009) (lead counsel awarded $375 rate); *Peacock v. United States,* 2009 WL 3094953 (E.D.La. 2009) (lead counsel awarded $350 rate); and *In re Educational Testing Service Praxis Litigation,* 447 F.Supp.2d 612,633 (E.D.La. 2006) (Louisiana prevailing rate of $350 in common fund cross-check).

End of Document