IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

ALANA SINGLETON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 96 L 12072**
	)	
RIVER OAKS TOYOTA, INC., *et al.*,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER ON ATTORNEYS' FEES

This matter comes before the Court on plaintiff's Petitions for Attorneys Fees and Costs pursuant to the Illinois Consumer Fraud Act, 815 ILCS 505/10a ("the CFA"), and the Magnuson-Moss Consumer Warranty Act, 15 U.S.C. § 2310(d)(2) ("Magnuson-Moss").

Background

Plaintiff prevailed on claims against defendants River Oaks Toyota, Inc. and Toyota Motor Credit Corporation (collectively "River Oaks") under both the CFA and Magnuson-Moss, as well as on a claim of common-law fraud. Both statutes provide for an award of attorneys' fees to a prevailing plaintiff. *See* 815 ILCS 505/10a; 15 U.S.C. § 2310(d)(2). I have before me three fee petitions -- one by plaintiffs' original counsel Edelman & Combs (including in particular Michelle Weinberg, Esq., then an associate with that firm), covering the period from the inception of this suit to August 30, 1997; another by Ms. Weinberg for work done on the case in her capacity as a sole practitioner between September 1, 1997 and September 30, 1999; and a third by Horwitz, Horwitz & Associates (which Ms. Weinberg then joined) for work beginning October 1, 1999.

Legal Fees

The traditional "American rule" is that each side bears its own legal fees. That rule can be varied by agreement (not claimed here) or by statute. Under Magnuson-Moss § 2310(d)(2), when "a consumer finally prevails in any action brought under [that Act], he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses." CFA § 10a(c) similarly provides that the court "may award, in addition to the relief provided in this Section, reasonable attorney's fees and costs to the prevailing party." Under both statutes, the party seeking fees bears the burden of showing that the fees requested are reasonable. *Kaiser v. MEPC American Properties, Inc.*, 164 Ill. App 3d 978, 983 (1st Dist. 1988) (citing *Fiorito v. Jones*, 72 Ill. 2d 73 (1978)); *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983).

As noted in *Chesrow v. DuPage Auto Brokers, Inc.*, 200 Ill.App.3d 72, 76 (2d Dist. 1990),

the fee award is limited to fees incurred in connection with the statutory portion of the case. *Chesrow* involved fees on appeal, however, where it is considerably easier to identify and separate out issues pertaining to a particular statutory claim. Here, the facts which had to be proved at trial substantially overlapped as between the CFA, Magnuson-Moss, and common-law fraud claims, all of which were tried in a single trial. To force plaintiff to separate simultaneously-tried, factually similar claims for fee purposes would be artificial. It would also, I believe, be counterproductive, to the extent that it might lead plaintiffs to avoid the efficiency of a single trial in order to preserve a future fee claim. Under the circumstances, I believe it is unnecessary and inappropriate to require plaintiffs to separate the statutory claims from the common-law fraud claim. *See Ciampi v. Ogden Chrysler Plymouth, Inc.*, 262 Ill.App.3d 94, 114-15 (2d Dist. 1994).

Under Magnuson-Moss, the court calculates the fee by multiplying the hours worked by a reasonable hourly rate, and then adjusting the total fee in accordance with a group of factors, including *inter alia* the time and labor required; the novelty and difficulty of the questions involved; the skill required; the attorney's "opportunity cost" (*i.e.*, the extent to which taking the case in question prevented the attorney from taking other employment, perhaps at a higher fee); the customary fee in similar cases; whether the fee is fixed or contingent; the amount in dispute, and result obtained, in the case; and the attorney's experience, reputation and ability. *Hensley v. Eckerhart*, 461 U.S. 424, 430 n.3 (1983); *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-719 (5th Cir. 1974). A similar formula is used in cases under the CFA. *See Cruz v. Northwestern Chrysler Plymouth Sales, Inc.*, 179 Ill. 2d 271, 280-81 (1997), citing *Chesrow v. DuPage Auto Brokers, Inc.*, 200 Ill.App.3d 72, 76 (2d Dist. 1990).

---Hourly Rate

The initial step is to determine a reasonable hourly rate. This should not be merely the average of fees charged by all attorneys in the area; rather, one must begin with the rate charged by the petitioning firm to its paying clients. *Miller v. Neathery*, 1995 WL 151772 at *1-2 (N.D. Ill., April 4, 1999); *Gusman v. Unisys Corp.*, 986 F.2d 1146, 1148-50(7th Cir. 1993). If the rate actually charged is within the range charged by other firms, however, that supports the reasonableness of the rate. *See Shortino v. Illinois Bell Telephone, Inc.*, 279 Ill App 3d 769, 772 (1st Dist. 1996). The court may also consider its own experience in evaluating the reasonableness of a rate. *Chicago Title & Trust Co. v. Chicago Title & Trust Co.*, 248 Ill. App. 3d 1065, 1073 (1st Dist. 1993).

- **Edelman, Combs & Latturner:** River Oaks does not contest the majority of the rates specified by Edelman, Combs & Latturner ("ECL"). River Oaks does protest that Mr. Maramba and Ms. Weinberg should be billed at $175 per hour rather than the claimed $200 per hour. There is no allegation that the rate claimed is not the rate ECL normally charges its clients. "[T]he best measure of an attorney's time is what that attorney could earn from paying clients." *Gusman v. Unisys Corp.*, 986 F.2d 1146, 1150 (7th Cir. 1993). This is because fees, even those paid under fee shifting devices, are a method of compensating attorneys for the opportunity costs of working for a given client. *See Miller v. Neathery*, 1995 WL 151772 at *2 (N.D. Ill., April 4, 1999).

Nevertheless, the survey of attorney's hourly rates ECL has submitted clearly pegs $200 as in the upper range even as of July 1999. That was almost two years after Ms. Weinberg left ECL,

and reflects escalation in large-firm associate salaries. In contrast (albeit at the other end of the time frame involved here), Judge Kocoras found that $135 was a reasonable rate for Ms. Weinberg for work done at ECL in 1993-94. *Altergott v. Modern Collection Techniques, Inc.*, 864 F.Supp. 778, 780, 782-83 (N.D.Ill. 1994).

I may not reject a lawyer's actual rate just because I can identify a different average rate. *Gusman, supra,* 986 F.2d at 1150-51; *see Pressly v. Haeger,* 977 F.2d 295, 299 (7th Cir. 1992) (plaintiff is "entitled not to a 'just' or 'fair' price for legal services, but to the *market* price," which, *see Gusman*, is presumptively what the lawyer actually charged at the time).[1] But I am "not limited to the evidence presented" in arriving at a reasonable fee. *Wildman, Harrold, Allen & Dixon v. Gaylord,* 317 Ill.App.3d 590, 596 (1st Dist. 2000). Of course that does not mean I can ignore the evidence. It does mean, however, that I am not shackled by the particular numbers. Based on all of the evidence, I believe $180 is a reasonable hourly rate for Ms. Weinberg for the 1996-97 period in question. There does not appear to be a sound reason to find differently as to Mr. Maramba.

River Oaks also claims that the rate claimed for the legal assistants at ECL should be reduced, as much of the work in question was "secretarial." River Oaks has a point. Normally, secretarial work is treated as included in the attorney's fee, and is thus non-compensable overhead. Non-legal work generally would tend to reduce the hourly rate rather than eliminate the hours billed altogether. *See In re Busy Beaver Building Centers Inc.*, 19 F.3d 833, 853 (3d Cir. 1994). In this case, however, it is not difficult to separate the work that is essentially clerical in nature from that which is properly billable. *See* page 5 *infra*. I believe that is a simpler and more accurate approach than reducing overall hourly rates by what is inherently a somewhat arbitrary amount.

- **Law offices of Michelle A. Weinberg:** Ms. Weinberg claims a $250 hourly rate as a sole practitioner from September 1, 1997 to October 1, 1999. River Oaks asserts that $150 is more appropriate. Yet River Oaks itself proposed a larger amount ($175) for Ms. Weinberg as an ECL associate. Common sense suggests Ms. Weinberg was worth no less as a sole practitioner than as an associate in a firm. In addition, her expenses (much of which must be defrayed by fees earned) were probably greater during her sole proprietorship. I have no basis on which to find that the $250 claimed by Ms. Weinberg was not what she actually charged. According to the *Illinois Legal Times* data submitted by ECL, that rate is at the lower end of partners' rates as of July 1999. On the other hand, there are significant differences between partners and sole practitioners. Based on the evidence and my "independent judgment" (*Wildman, Harrold, Allen & Dixon, supra,* 317 Ill.App.3d at 596), I believe $235 per hour is a reasonable rate for this 1997-1999 period.

- **Horwitz, Horwitz & Associates:** River Oaks' sole objection to the rates charged by Horwitz, Horwitz & Associates ("HH&A") is that Ms. Weinberg's rate should be $175 per hour. Here again, however, River Oaks is somewhat undercut by its own position. If $175 was a fair rate

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1. Though these cases enunciate the Federal standard, I do not believe Illinois law is significantly different. The CFA fee provisions are to be interpreted in light of its "'broad remedial purposes,'" *Chesrow, supra,* 200 Ill.App.3d at 76, and "the customary fees charged" are clearly part of the inquiry. *Id.*; *Cruz, supra,* 179 Ill.2d at 280.

for Ms. Weinberg as a 4th year associate at ECL (as River Oaks suggests), surely it is low for the same lawyer several years later and with substantially greater experience, including an intervening two-year stint as a sole practitioner. Here again, there is no suggestion that $250 is not the rate actually charged by HH&A for Ms. Weinberg (who notes in her Supplemental Declaration that even though she is technically termed an associate, she brought "about 30 cases" to HH&A and "work[s] with a very high degree of ... autonomy"). I decline to disturb that rate.

---Hours Worked and Nature of Work

River Oaks objects to many of the hours billed as excessive, as "block billing" and thus too vague, and as reflecting non-compensable clerical tasks.

- **Block Billing and Vague Entries:** Vague or incomprehensible time entries, including "block" time entries aggregating multiple tasks, may be inadequate to support a fee request if the nature of the entry impairs the court's ability to assess the reasonableness of the time expended. *See Toys "R" Us v. NBD Trust*, 1996 WL 745300 at *4-5 (N.D.Ill., Dec. 23, 1996) (discussing the purposes of fee petitions, and finding that daily billing entries did not render a fee petition insufficient). But surgical precision is not required. Such entries are impermissible only to the extent that they prevent a proper assessment of reasonableness. The court has reviewed the time entries presented here in light of that pragmatic test, and finds that some -- though not as many as River Oaks challenges -- fail to pass muster.

As to **ECL**, most entries are adequate. A number of entries, however, are effectively unreviewable. "Trial prep," without more, is unhelpful (though to some extent one can at least judge whether the aggregate time devoted to that activity appears reasonable). Though conferences among attorneys are generally allowable, *see Miller v. Neathery*, 1995 WL 151772 at *5 (N.D. Ill. Apr. 4, 1999), entries such as "tk to MAW" are hopelessly vague. "Attn to file" or "log" is equally opaque. "Stuff for MAW" surely needs no further comment. In this regard, I reduce Mr. Maramba's time by 5 hours (entry of 12/23/99); Ms. Newlin's time by 3.5 hours (various entries); Mr. Franklin's time by 1.5 hours (all entries *except* 6/23/98, 6/24/98, 7/31/98, 8/5/98, 2/8/99); Mr. Sell's time by .5 hour (entries of 3/11/98, 5/29/98, 6/9/98); Ms. Arnston's time by .3 hour (all entries *except* 7/1/97); Mr. Klaves' time by .5 hour (entry of 3/6/98); and Ms. Sexton's time by 1.5 hours (entries of 6/10/99, 6/14/99, 9/15/99, 11/9/99. 11/18/99).

In addition, some of ECL's entries appear duplicative or otherwise inappropriate. In light of the senior partners' (and Mr. Robinson's) trial preparation work in June 1999 and Ms. Weinberg's work in January 2000, I do not understand what was gained by Mr. Maramba's "trial prep" (deducted above as unexplained) and reading of depositions during the 1999 Christmas holiday. Nor do I understand Ms. Klein's deposition review, or Ms. Sexton's "calls to various Wisconsin courts." I reduce Mr. Maramba's time by a further 8 hours (entries of 12/24/99, 12/26/99, and 12/27/99), Ms. Klein's time by .2 hour (entry of 3/3/98), and Ms. Sexton's time by .8 hour (entry of 12/22/99).

As to **Ms. Weinberg** as sole practitioner, the entries are comprehensible, if terse.

As to **HH&A**, a significant number of entries (almost all of them for "Katy," whom I take

to be a paralegal) have been withdrawn in light of River Oaks' criticism. In light of the personnel (Ms. Weinberg and Mr. Luchsinger, who tried the case), I find the several "trial prep" entries vague but reasonable. The balance of the entries are comprehensible (*but see* below).

• **Non-Compensable Clerical Tasks:** River Oaks complains that much of the work listed in the fee petitions is not work that required legal skill, and thus should be regarded as falling within non-compensable overhead rather than being reimbursable as fees. While the federal cases River Oaks cites tend toward a different definition of what is non-compensable (*see In re CF&I Fabricators of Utah, Inc.*, 131 B.R. 474, 489 n.14 (Utah 1991), defining "overhead" as "all *continuous* administrative or general costs or expenses incident to the operation of the firm *which cannot be attributed to a particular client or case*" [emphasis added]), they also suggest that even with regard to a particular case, unskilled clerical work is not compensable, as opposed to"substantive or procedural legal work." *See CF&I, supra,* at 491; *see also Id.* at 489-90.

A review of the supplied documentation discloses a sizable number of entries which appear clerical rather than legal in nature. These entries concern such tasks as sending faxes, delivering documents, making copies,[2] and making reservations for court reporters. It would be inappropriate to recover such essentially secretarial overhead by labeling the personnel involved "paralegals." I find that such work is non-compensable.

As to **ECL,** many of the entries which may fall in this category have already been excluded as vague. *See* page 4 *supra*. "Logging" and copying, as well as other plainly non-legal tasks, are not compensable. I reduce Ms. Arnston's time by .3 hr. (entry of 7/1/97); Ms. Miller's time by 1.6 hrs. (entries of 6/3/97, 6/5/97, 6/12/98, and 6/16/98); Mr. Klaves' time by .5 hr. (entry of 3/9/98); and Ms. Sexton's time by 1.4 hrs. (entries of 6/14/99, 9/15/99, 11/9/99, 11/18/99, and 11/18/99). ECL's fee petition is therefore reduced by 3.8 hours of paralegal time.

As to **HH&A,** I find non-compensable the following entries: 3.8 hrs. by Ms. Hoying (entries of 10/19/00, 10/18/00, 10/13/00, 9/25/00, 9/22/00 [two entries], 9/7/00 [two entries], 9/1/00, 8/31/00, 8/28/00, 8/23/00 [two entries], 5/23/00, and 5/18/00); 1.6 hrs. by "Jim" (entries of 8/30/00 [two entries] and 8/28/00 [four entries]); .7 hr. by "Marisa" (entries of 1/20/00 and 1/11/00 [two entries]); .8 hr. by "Val" (entry of 5/1/00); 2.6 hrs. by "Roger" (entries of 1/31/00 and 1/26/00); and .8 hr. by Ms. Weinberg (entries of 8/17/00, 1/21/00, 12/10/99, and 11/24/00). HH&A's fee petition is therefore reduced by 9.5 hours of paralegal time and .8 hour of time for Ms. Weinberg.

---Lodestar Adjustment

A final consideration regarding fees (as opposed to costs) is whether some "lodestar" adjustment is appropriate. An increase may be warranted if (*e.g.*) counsel obtained a particularly

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2. Under some circumstances, the cost of copies themselves may be recoverable, if the purpose is appropriate and clearly identified (not the case here, on the whole). In my view, however, the time spent in making copies is purely clerical, unless there is a specific demonstration that legal judgment was involved in the actual copying process.

good result; a decrease may be warranted if (*e.g.*) counsel could have obtained the same result with less work. *See, e.g., Altergott v. Modern Collection Techniques, Inc.*, 864 F.Supp.778, 783 (N.D.Ill. 1994); *Hensley v. Eckerhart*, 461 U.S. 424, 430 n.3 (1983) (listing twelve pertinent factors). I do not believe a lodestar adjustment is warranted in this case.

Costs

The common-law general rule is that each party must bear its own costs. That rule has been eroded by statute, and in some instances by court rules and judicial decisions, in both state and federal courts. It remains broadly true, however, that the costs of photocopying, faxes, postage and phone calls are "overhead" and not recoverable in a fee petition. *See Harris Trust v. American National Bank*, 230 Ill.App.3d 591, 599 (1st Dist. 1992); *Altergott v. Modern Collection*, 864 F. Supp. 778, 783 (N.D.Ill. 1994); *cf. Losurdo Bros. v. Arkin Distributing Co.*, 125 Ill.App.3d 267, 276 (2d Dist. 1984). While the federal courts often (though not always) allow recovery of deposition and trial transcript costs, Illinois typically does not. *See Galowich v. Beech Aircraft Corp.*, 92 Ill.2d 157, 166 (1982). Even the federal courts require an indication of what the particular court reporting or transcript charge is for, a specificity generally lacking here.

As to **ECL,** most of the claimed costs appear to fall in the "overhead" category or to be insufficiently described. I will allow, however, the following:

Oct. 16, 1996	Clerk of Court/ Complaint	$420.00
Oct. 16, 1996	Sheriff of Cook Co./Summons	$23.40
Oct. 16, 1996	Sheriff of Du Page Co./Summons	$32.00
Oct. 2, 1997	Cook Co. Sheriff/Service of Subp.	$41.80
Oct. 17, 1997	Sheriff of DuPage County	$32.00
June 26, 1999	Airfare, Tom Thorman	$169.00
	TOTAL	$718.20

As to **Ms. Weinberg** as sole practitioner, I will allow the following:

1/6/98	Witness fees	$25.00
6/23/99	Secretary of State (title)	$4.00
2/1/00	Expert witness	$675.00[3]
2/10/00	Expert witness	$150.16[3]
9/13/00	Bracket Exhibit	$225.09[4]
	TOTAL	$1,079.25

As to **HH&A,** I will allow the following:

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3. The larger of these two expert witness items represents fees; the smaller is a travel reimbursement. Both pertain to Tom Thorman. *See Pl. Reply* at 25.

4. This presumably refers to the large automobile front-end exhibit which was used at trial.

Here, the total fees and costs awarded (*see infra*) exceed the recovery by roughly 60%. Accordingly, I have carefully weighed all of the considerations described above. I do not believe the fees and costs are so out of line relative to this case, in terms of the nature of the claim, the difficulty of the litigation, or the results achieved, as to require any further adjustment.

ORDER

Based on the foregoing discussion, **IT IS HEREBY ORDERED** as follows:

1. Plaintiff's fee petitions are GRANTED IN PART:

   (a) Edelman, Combs & Latturner is awarded the following amounts:

Attorneys' Fees:		$17,190.00
Paralegal Fees:		$4,596.50
Costs		$718.20
	TOTAL	$22,504.70

   (b) Michelle Weinberg, Esq. is awarded the following amounts:

Attorneys' Fees:		$14,922.50
Costs:		$1,079.25
	TOTAL	$16,001.75

   (c) Horwitz, Horwitz & Associates is awarded the following amounts:

Attorneys' Fees:		$97,572.50
Paralegal Fees:		$1,955.00
Costs:		$4,042.57
	TOTAL	$103,590.07

Judgment is therefore entered against defendants in the further sum of $142,096.52.

2. This ruling on plaintiff's fee petitions disposes of the last remaining issue in the case.

DATED: May 1, 2001

ENTER:

Circuit Judge

JUDGE PETER FLYNN

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Circuit Court - 1784