IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

CONSUMER PLUMBING RECOVERY CENTER, INC.,	)	
PLAINTIFF,	)	
v.	)	NO: 2:07-cv-02764-JDB-egb
PAVILLION MANAGEMENT COMPANY,	)	
DEFENDANT.	)	

ORDER GRANTING ATTORNEY FEES

Before the Court is the request for attorney fees filed by Hoechst Celanese Corporation, Shell Oil Company, and the Consumer Plumbing Recovery Center, Inc. ("Movants"), which was referred to the Magistrate Judge for determination on November 25, 2008 (Doc. 41). The basis for Movants' request is that this action was removed improvidently because there is no federal question and no diversity jurisdiction. After considering the pleadings and the entire record in this case, this Court finds that assessing attorney fees against Pavillions Management Company ("Pavillions") is proper.

The procedural history of this case is summarized in Judge Breen's Order Granting Motion to Remand and Referring Request for Attorneys' Fees and Costs to the Magistrate Judge (Doc. 41) and need not be repeated in this Order. Since that Order was entered, the Court has denied Pavillions' Motion to Reconsider. Additionally, on June 11, 2009, Movants filed their Declarations in Support of their Request for Award of Attorneys Fees and Costs for Improper Removal by Pavillion Management Company.

Section 1447 provides that this Court may order that Defendants be required to pay "just costs and any actual expenses, including attorney fees, incurred as a result of the removal." 28 U.S.C. § 1447(c) (2002). The Supreme Court has held that "[a]bsent unusual circumstances, courts may award attorney's fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal." Martin v. Franklin Capital Corp., 546 U.S. 132, 141 (2005). Accord Chase Manhattan Mortgage Corp. v. Smith, 507 F.3d 910 (6th Cir. 2007). As this Court has explained, "[t]he decision to award attorney fees is within the district court's discretion." *Matthews v. Kindred Healthcare, Inc.*, 2005 U.S. Dist. LEXIS 38295, *16 (W.D. Tenn. Dec. 7,2005) (citing *Morris v. Bridgestone/Firestone, Inc.*, 985 F.2d 238,240 (6th Cir. 1993)).

Here, it is clear that Pavillions lacked an objectively reasonable basis for seeking removal. In his November 25, 2008 Order, Judge Breen found that the removal sought by Pavillions was tantamount to forum shopping. As the Court noted, Pavillions had clearly submitted to the jurisdiction of the state court, even acknowledging in one of its pleadings that provisions of the parties' Settlement Agreement "empower[ed] the [chancery court] to affirm, vacate, or modify any arbitral award." (Mem. Of Law in Opp'n to Mot. For Clarification Submitted by the Bd. Of Dir. Of the Consumer Plumbing Reovery Center, Inc.). After submitting to state court jurisdiction, and in an obvious attempt to avoid an unfavorable state court ruling, Pavillions then sought removal to federal court. Such a removal attempt was unreasonable, and further, a waste of the parties' and this Court's resources.

Accordingly, IT IS HEREBY ORDERED that Pavillions must pay Movants' attorneys' fees and costs, in the amount set forth in Movants' declarations (Exhibits A-D to Doc. 47). Specifically, Pavillions must pay the following fees:

1. $23,364.38 charged by Kasowitz, Benson, Torres & Friedman LLP to Celanese for services relating to the improper removal;
2. $6,510 charged by D. Todd Smith, Esq. to Consumer Plumbing Recovery Center, Inc. ("CPRC") for services relating to the improper removal;
3. $1,762.50 charged by Charles Anthony Maness to Shell Oil Company and CPRC for services relating to the improper removal; and
4. $12,525.00 charged by Thomason, Hendrix, Harvey, Johnson & Mitchell, PLLC to Shell Oil Company and CPRC for services relating to the improper removal.

IT IS SO ORDERED.

s/ Edward G. Bryant
EDWARD G. BRYANT
United States Magistrate Judge

July 10, 2009
Date