

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

SIGNATURE COMBS, INC.,)	
f/k/a AMR COMBS, INC., et al.,)	
)	
Plaintiffs,)	
)	
vs.)	CIVIL CASE No. 98-2777 D
)	CIVIL CASE No. 98-2968 D
)	CIVIL CASE No. 00-2245 D
)	(Consolidated Cases)
)	
UNITED STATES OF AMERICA,)	
et al.,)	
)	
Defendants.)	

ORDER GRANTING ATTORNEY FEES AND COSTS
FOR PLAINTIFFS' MOTION FOR ENTRY OF DEFAULT AND FOR SANCTIONS

Before the court is the plaintiffs' request for attorney fees and costs in the amount of \$6,919.93 pursuant to a March 27, 2003 order of the court awarding the same as a sanction against nineteen defendants for their failures to timely file answers and initial disclosures. The request was referred to the United States Magistrate Judge for determination. For the reasons that follow, the court finds that a reasonable award of attorney fees and costs is \$4,503.61.

The procedural history leading to this fee award is detailed in the March 27, 2003 order of District Judge Bernice B. Donald. In short, pursuant to the Comprehensive Environmental Response

Compensation and Liability Act ("CERCLA"), the plaintiffs seek environmental response costs from other potentially responsible parties in association with the cleanup of two hazardous waste disposal sites. Nineteen of the defendants failed to answer the plaintiffs' third amended complaint by the deadline set forth by the court and also failed to make the initial discovery disclosures required by Federal Rule of Civil Procedure 26(a).¹ On May 30, 2002, the plaintiffs moved for entry of default judgments and for sanctions against the nineteen defendants. On July 16 and 17, 2002, the nineteen defendants submitted their initial disclosures and their answers. On March 27, 2003, the court denied the plaintiffs' motion for default judgments but granted the plaintiffs' motion for sanctions pursuant to Federal Rule of Civil Procedure 37.² On April 25, 2003, counsel for the plaintiffs

¹ The nineteen defendants bound by that order are 1) Colvett Chrysler-Plymouth; 2) Continental General Tire, Inc.; 3) Dean Foods Products Co.; 4) Ferguson Harbor, Inc.; 5) Fineberg Packing Co.; 6) Frito-Lay, Inc.; 7) Jim Keras Buick Co.; 8) Lewis Ford, Inc.; 9) Lone Star Industries, Inc.; 10) Pat Patterson Motor Sales, Inc.; 11) Scruggs Equipment Company, Inc., 12) Southern Cab Corp.; 13) The Southern Co., Inc.; 14) Super Service Motor Freight, Inc.; 15) Tate Logistics, Inc.; 16) Turner Dairies, Inc.; 17) Whittington Trucks, Inc.; 18) Wooten Oil Co.; and 19) Wooten Truck and Tractor Co.

² Order Denying Plaintiffs' Motion for Entry of Default and Granting Plaintiffs' Motion for Sanctions and Costs Against Defendants, *Signature Combs v. United States*, Civil Case No. 98-CV-2777 (W.D. Tenn. Mar. 27, 2003) (Court File Docket No. 472).

submitted this application for fees and costs in the amount of \$6,919.93.

The defendants object to the application on several grounds. First, they argue that the nineteen defendants entered into alternative dispute resolution agreements in September of 2002 and therefore attorney fees should not be assessed. This argument is untimely; it should have been raised in response to the plaintiffs' initial motions for an award of sanctions, not in response to the plaintiff's application for fees after the plaintiffs were awarded sanctions. In addition, the defendants adduce no law for the proposition that agreements to mediate would render them exempt from Rule 37 sanctions for failure to comply with procedural rules.

The defendants also argue that the plaintiffs should be estopped from receiving fees because they made no motions to compel discovery. This argument also should have been raised at the time the court determined whether or not to award sanctions, not when the court is determining how much to award.

Finally, the defendants claim that \$6,919.93 is an excessive and unreasonable fee in light of the fact that plaintiffs' counsel did not appear in court or consult with defendants' counsel. The defendants specifically object to redundant billing for consultations among the plaintiffs' four attorneys, although they do not object to the attorneys' hourly rates.

When awarding attorney fees, the court should exclude from its calculation hours that are "excessive, redundant, or otherwise unnecessary." *Hensley v. Eckhart*, 461 U.S. 424, 433 (1983). *Accord Northcross v. Board of Education*, 611 F.2d 624, 636 (6th Cir. 1980); *Singer v. Machining Bd. of Mental Retardation*, 519 F.2d 748 (6th Cir. 1975). A court denying compensation for excessive hours must identify the hours and state why they are being reduced. *Northcross*, 611 F.2d at 637. Interoffice conferences are considered excessive; they lead to "inefficiency and duplication of services" that may occur in cases where more than one attorney is used." *Schultz v. Amick*, 955 F. Supp. 1087, 1115 (N.D. Iowa 1997) (internal citation omitted). In addition, disproportionate amounts of time are excessive. The inquiry is whether the time expended comports with the reasonable billing practices of the profession. *Coulter v. Tennessee*, 805 F.2d 146, 151 (6th Cir. 1986). Excessive hours are a particular problem when firms use legal research to train relatively new associates, because "using less experienced attorneys at a lower hourly rate actually may increase the total number of hours expended . . ." *Ottis v. Shalala*, No. 1:92cv426, 1994 U.S. Dist. LEXIS 16325, n. 1 (S.D. Mich. October 20, 1994).

In this case, the court finds both redundant activity and excessive hours. When multiple attorneys have billed for

overlapping calls or conferences, the court will permit full remuneration for the attorney billing at the higher rate. One additional attorney, billing at an equal or the next lower rate, will be entitled to one-half of his claimed remuneration for the overlapping hours.

In addition, the time spent on research and drafting appears excessive. The plaintiffs submitted 9.9 hours for research and drafting, which appears to primarily consist of basic research into the federal rules of civil procedure, sanctions, and attorney fee awards, and a memorandum supporting a motion for default judgment. In light of the relative simplicity of these issues and the extensive conferences and consultations with other attorneys during the research process, the court finds that a reduction of fifty percent is appropriate.

Accordingly, the court reduces the hourly attorney fees as shown on the attached appendix to a total of \$4,200.43. The court approves the submitted expenses of \$213.18 and the paralegal billing of \$90.00, because the defendants did not object to either of these items. The nineteen defendants are instructed to pay to the plaintiffs the total of \$4,503.61 within ten (10) days of the date of this order.

IT IS SO ORDERED this 18th day of June, 2003.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE