

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHELLE V. BAKER, INDIVIDUALLY : CIVIL ACTION  
AND AS EXECUTRIX OF THE ESTATE :  
OF ROBERT W. BAKER :  
 :  
v. :  
 :  
RAYTHEON ENGINEERS & :  
CONSTRUCTORS, INC., et al. : NO. 96-721

MEMORANDUM AND ORDER

Fullam, Sr. J.

May , 1997

Plaintiff, a beneficiary under an ERISA plan, achieved partial success in this action to recover benefits stemming from the unfortunate death of her husband while employed overseas by the defendant Raytheon Engineers & Constructors, Inc. She asserted a claim for \$150,000 in death benefits, and for an additional \$150,000 for accidental death while on "foreign travel," for a total claim of \$300,000. By Memorandum and Order of March 4, 1997, I entered summary judgment in plaintiff's favor for the \$150,000 death benefit, but dismissed the additional claim. Rather than appeal that decision, the parties reached a settlement, pursuant to which plaintiff obtained a total judgment of \$150,000, having withdrawn certain other claims asserted in the action. The question of counsel fees was reserved for later decision, and that matter is now before me for decision.

The applicable statute, 29 U.S.C. § 1132(g)(1) provides that "the Court in its discretion may allow a reasonable attorney's fee and cost of action to either party." The pertinent factors are (1) the offending party's culpability or bad faith; (2) ability to

pay; (3) deterrent effect an award of attorney's fees would have against the offending party; (4) the benefit conferred on members of the plan as a whole; and (5) the relative merits of the parties' positions. See generally Ursic v. Bethlehem Mines, 719 F.2d 670 (3d Cir. 1983).

Plaintiff seeks a total of \$92,074.75 in counsel fees plus \$4,460.03 in costs, and has expressed an intent to seek further fees for litigating the counsel fee issue. Defendants contend that no fees at all should be awarded. Alternatively, defendants contend that the fees sought are grossly excessive.

Initially, defendants argue that, since this Court's March 4, 1997 order did not award counsel fees, and did not expressly authorize an application for counsel fees, the record should be interpreted as reflecting that this Court has already denied plaintiff's application for counsel fees. I reject that contention. The March 4th order dealt only with a motion for partial summary judgment, and did not purport to be a final resolution of this litigation. It certainly was not my intention to address the counsel fee question at that time; indeed, until that order was entered, there was no prevailing party entitled to seek counsel fees.

Applying the Ursic factors, I find that, while neither side is totally blameless, the defendants' "culpability" is somewhat greater than plaintiff's, at least with respect to the \$150,000 death benefit claim. In my view, the defendants should have realized, at an early stage, that plaintiff's claim was

meritorious. Defendants were not very forthcoming in providing information to plaintiff and her counsel concerning the circumstances of decedent's accident and the facts relevant to coverage under the plan. Whether this was the result of bad faith, as argued by plaintiff, or - as seems at least equally probable - a result of defendants' completely erroneous view that only the "administrative record" before the plan administrator was relevant, the fact remains that plaintiff's counsel were forced to expend unnecessary time and effort in pursuit of discovery.

With respect to the second Ursic factor, it seems clear that the defendants are better able to bear the financial burden of counsel fees than is the plaintiff. And there may be some slight deterrent effect, and some ensuing potential benefit to other plan beneficiaries if, as a result of a counsel fee award, defendants take a more realistic approach in future cases.

Finally, the relative merits of the parties' positions are now clear: Plaintiff prevails on the death benefit issue, and defendants on the foreign travel issue. Unquestionably, however, plaintiff is the prevailing party in this litigation, since she has obtained a judgment for \$150,000. The fact that she did not achieve total success is, of course, relevant to the amount to be awarded, but does not justify denial of counsel fees altogether.

I conclude, therefore, that plaintiff is entitled to an award of counsel fees and expenses. But I agree with defendants' challenge to the amount sought. Plaintiff was represented by five attorneys at three different law firms, located in Williamsburg,

Virginia, Wilmington, Delaware, and Philadelphia, Pennsylvania. The record provides no justification whatever for this multiplicity of lawyers, and the billing records submitted clearly demonstrate a great amount of duplication of services.

This case has been over-litigated from start to finish, and I decline to add to the prolixity by detailing the many specific instances of such unnecessary duplication (hence, unreasonable time-charges), except to note that, in substance, I agree with the defendants' detailed challenges to plaintiff's fee application in this regard. Experienced lawyers, in a case of this kind, should not need to spend countless hours "reviewing" each others' work, re-examining pleadings prepared by fellow counsel, doing work which paralegals should readily have been assigned to do, et cetera, et cetera.

In my view, an important factor to be considered is the nature of the litigation and the degree of success achieved. After reviewing plaintiff's time records, I conclude that, if plaintiff had succeeded in recovering the \$300,000 she claimed, a reasonable counsel fee for that recovery would have been approximately \$80,000. Plaintiff achieved a 50 percent result. I therefore conclude that a reasonable counsel fee in this case is \$40,000.

This calculation is based upon a finding that the hourly rates claimed by plaintiff's attorneys are, in each instance, reasonable and the prevailing rate in that community. But I further conclude that a substantial portion of the claim for costs includes items of ordinary overhead, which should have been

subsumed in the hourly rates charged. Plaintiff will be awarded \$2,500 in costs. An order follows.

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ORDER

AND NOW, this day of May 1977, upon consideration of Plaintiff's Motion and Supplemental Motion for an Award of Attorney's Fees and Costs, and defendants' response, IT IS ORDERED:

1. Plaintiff's motion is GRANTED IN PART. Plaintiff is awarded the sum of \$40,000 in counsel fees and \$2,500 in costs, for a total award of \$42,500.

2. Judgment is therefore entered in favor of the plaintiff and against the defendants in the sum of \$42,500 for counsel fees and costs.

3. The clerk is directed to close the file.

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John P. Fullam, Sr. J.