UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RAND-WHITNEY CONTAINERBOARD LIMITED PARTNERSHIP, PLAINTIFF	:	
V.	:	CIV. NO. 3:96CV413 (HBF)
TOWN OF MONTVILLE and TOWN OF MONTVILLE WATER POLLUTION CONTROL AUTHORITY DEFENDANTS	:	

RULING ON PLAINTIFF'S APPLICATION FOR
INDEMNIFICATION FOR FEES AND COSTS

I. INTRODUCTION

While this case has been extensively litigated over the past ten years, the end of this protracted litigation is in sight, at least in this Court. The impassioned controversy culminates with plaintiff's application for fees and costs.

On November 16, 2005, the plaintiff, Rand-Whitney Containerboard Limited Partnership, filed an application for indemnification for fees and costs [Doc. #508], together with supporting exhibits contained in five separate appendices. This application is based upon the Court's finding that the defendants breached the Supply Agreement, and is made in accordance with the Court's September 29, 2005 ruling which held that plaintiff was entitled to make an application for attorney's fees and costs pursuant to Section 11.1 of the Supply Agreement. [Doc. #502]. On February 2, 2006, the defendants, Town of Montville and Town of Montville Water Pollution Control Authority, filed an opposition to plaintiff's Application for Indemnification for

Fees and Costs. [Doc. #516]. On February 15, 2006, plaintiff responded. [Doc. #522]. Not surprisingly, defendants filed a motion to file a sur-reply in response to plaintiff's response to defendants' opposition to plaintiff's application. [Doc. #523]. As the law had been adequately addressed, the Court denied defendants' motion and requested that the parties focus their energy on narrowing the issues and arguments to be presented to the Court at the hearing on the application for fees and costs. [Doc. #526].

On May 16, 2006, a hearing was conducted on plaintiff's application for fees and costs and defendants' opposition to plaintiff's application. For the reasons that follow, plaintiff's application [Doc. #508] is **GRANTED** to the extent set forth below.

II. BACKGROUND

The Court assumes familiarity with the background facts of this case and will discuss only those facts essential to the disposition of this application for fees and costs.

This case was filed in 1996, and arose from a dispute over agreements entered into by the plaintiff, Rand-Whitney Containerboard, and the defendants, the Town of Montville (the "Town") and the Town of Montville Water Pollution Control Authority (the "Authority"), to operate a paper manufacturing plant in the Town. Plaintiff alleged, *inter alia,* that defendants breached certain sections of the Water Supply Agreement. Plaintiff's complaint also included a count for

indemnification under Section 11.1 of the Supply Agreement.[1]

On summary judgment, the Court determined as a matter of law that the defendants breached the Water Supply Agreement, and that the defendants had several defenses to liability that would require a trial. See Ruling on Cross Motions For Summary Judgment, and Plaintiff's Motion For Order Discharging it from Settlement Bond Obligations (March 4, 2002). [Doc. #106]. A jury trial was held from July 15 through August 9, 2002. The first jury found in favor of defendants on the fraud counterclaim, and thus never reached the indemnification issue.

Distinct from the issue of the breach of the Supply Agreement, the first jury found that the Town breached the Service Fee provision of the Modification Agreement by overcharging Rand-Whitney and awarded Rand-Whitney damages of $344,872 on that claim.

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[1] Section 11.1(a) provides, in relevant part, that:

> each party shall indemnify ... the other party ... against all damages, losses or expenses suffered or paid as a result of any and all claims, demands, suits penalties, causes of action, proceedings, judgments, administrative and judicial orders and liabilities (including reasonable counsel fees incurred in any litigation or otherwise) assessed, incurred or sustained by or against such other party ... with respect to or arising out of ... any breach by the indemnifying party of its warranties, representations, covenants or agreements ..., including ... the failure to deliver Treated Water which complies with the volume and quantity standards set forth [in the Supply Agreement]...

On September 30, 2003, the Court set aside the jury's verdict on the fraud counterclaim, ruling that there was insufficient evidence to support its finding. See Ruling on Plaintiff's Motion for Judgment, or, in the Alternative, for a New Trial (September 30, 2003). [Doc. #316]. As defendants had no remaining defenses to liability, a second trial on plaintiff's damages and defendants' defenses to damages was held in May, 2005. The second jury delivered a verdict in favor of plaintiff in the amount of $10 million. As part of their deliberations, the Court asked the second jury, by interrogatory, to determine whether Section 11.1 of the Water Supply Agreement applied to "claims between Rand Whitney and Montville." [Jury Instruction 5].[2] The jury's response to this question was understood by the

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[2] The Court instructed the jury:

"You must determine what the parties intended by this provision, and specifically whether, at the time of the contract, the parties intended it to apply to claims between Rand-Whitney and Montville. Intent is determined from the language used in the agreement, interpreted in light of the surrounding circumstances, and in light of the motives of the parties and the purposes which they sought to accomplish ...."

The court also instructed the jury on giving a "a fair and reasonable construction of the written words;" construing Section 11.1 in light of the other contract provisions; the parole evidence rule; "reading each provision in light of the other provisions, and giving effect to every provision if it is possible to do so, so that the contract as a whole makes sense;" integration clauses; the circumstances surrounding the drafting of the term ("when choosing among reasonable meanings of an ambiguous agreement or term, where both parties have not had input into the drafting, you may choose the meaning that operates against the party that supplied the words you are considering. This may not apply when the contract terms have been negotiated. It is up to you to decide what significance, if any, to attach to any evidence you heard about how this provision came into

parties to be determinative on the question of whether attorneys' fees and costs could be recovered by a party to this litigation. The jury found that Section 11.1 did apply to claims between Rand-Whitney and Montville.

Throughout this entire process, the parties participated in voluminous discovery practice, including the production of approximately 75,000 pages of documents, an estimated 18 depositions, and preparation of approximately 19 discovery requests and responses. Additionally, the complex nature of the claims, as well as the high stakes and the thoroughness and creativity of counsel, resulted in the filing of over eighty (80) motions, both dispositive and non-dispositive. These motions led to over 40 substantive rulings, as well as numerous rulings and orders on non-substantive issues. This contentious litigation is evidenced by the fifty-four page docket sheet which contains 530 docket entries to date.

Having prevailed on the breach of the Supply Agreement claim, and pursuant to Sections 11.1 and 11.4[3] of the Supply Agreement, plaintiff filed a Motion for Entitlement to Recover

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being."). Finally, the court instructed the jury that, "[d]epending on your finding, the court will determine what amount is due Rand-Whitney under Section 11.1." Jury Charge.

[3] Section 11.4(a) states, in pertinent part, that:

> Except as set forth in Section 11.4(b), in the event that party is obligated to indemnify and hold the other Party ... harmless under Section 11.1 hereof, the amount owing to the indemnified party will be the amount of such Party's actual out-of-pocket loss net of any insurance or other recovery.

Costs and Fees on June 15, 2005. [Doc. #454]. After considering numerous oppositions, replies, and sur-replies, the Court granted plaintiff's motion for entitlement to recover fees and costs on September 29, 2005. [Doc. #502].

On November 16, 2005, plaintiff filed this application for indemnification for fees and costs. In its application, plaintiff seeks $3,831,633 in attorney fees and $474,649.91[4] in costs. In support of its application, plaintiff submitted five appendices. A sixth appendix was attached to plaintiff's reply to defendants' opposition.[5] Plaintiff's fees include billable hours for approximately twenty-five attorneys and paralegals.

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[4] Plaintiff's original claim for costs totaled $474,699. However, plaintiff conceded that deductions from its Hotel and Travel Costs were appropriate for three expenses inadvertently submitted as costs, namely: 1) a $36.93 movie charge; 2) a $10.65 gift shop charge; and 3) a $1.48 stamp charge. Phelan's Second Aff. at 6.

[5] The First Appendix contains an affidavit of Attorney Andrew C. Phelan, a copy of the court docket sheet, and several letters from plaintiff's counsel to the Court. The Second Appendix is a document containing line-by-line billing entries for plaintiff's 312-page bill, with information such as the date, name of the attorney performing the work, description of the work, the time charged, and the billing rate. The Third Appendix consists of three volumes of supporting documentation for plaintiff's costs. The Fourth Appendix contains a sampling of the voluminous discovery requests and responses prepared and exchanged between the parties. The Fifth Appendix contains forty (40) of the Court's more significant rulings in this case.

The Sixth Appendix, attached to plaintiff's response to defendants' opposition, contains a Second Affidavit of Attorney Phelan. The Sixth Appendix also contains excerpts of fee petitions submitted to bankruptcy courts in Massachusetts, Connecticut, and New York. Petitions submitted to these bankruptcy courts by defense counsel's law firm are part of this Appendix.

The majority of the billable hours, however, are attributable to the senior litigation partner, Dan Goldberg; junior partners, Ben Krowicki and Andrew C. Phelan; three associates, Susan Kim, Ann Siczewicz, and Brian Hole; and two paralegals, Gina Palmieri and Melissa Brennan. In preparing its fee application, plaintiff represents that it either reduced hours or eliminated hours for matters which were not covered by the indemnification agreement, such as: "Beloit [issues], noise disputes, tax issues, Secretary of State filings, Stone Container, arbitration preparation work, Service Fee overcharges, failure to provide Capacity Report required by the Treatment Agreement, and DEP enforcement matters".[6] Phelan Aff. at 6.

Defendants do not attempt to relitigate plaintiff's entitlement to fees and costs. Instead, defendants oppose plaintiff's application by arguing that it is both excessive and unreasonable. Specifically, defendants argue that plaintiff's application for fees must be reduced on five grounds: 1) that plaintiff is not entitled to compensation for defending against defendants' counterclaims for fraudulent inducement/ misrepresentation, breach of covenant of good faith and fair dealing, breach of contract, Connecticut Unfair Trade Practices Act ("CUTPA"), quantum meruit, and nuisance/violation of

[6] At the hearing, the Court asked Attorney Phelan whether he kept track of the number of hours eliminated from the bill. Attorney Phelan stated that he tracked partial deductions but did not track instances where hours were completely eliminated. From plaintiff's itemized submission, it appears the partial deductions total approximately 271 hours.

ordinances and regulations (the "Diamond Reduction");[7] 2) as plaintiff's attorneys fees are "excessively high", an excessive rate reduction should apply; 3) as a number of plaintiff's billing entries are inadequately vague, a vagueness reduction is proper; 4) a deduction for excessive time/overstaffing by plaintiff's counsel is necessary; and 5) a 5% reduction is necessary to balance against plaintiff's improper charge for travel time. From plaintiff's $3,831,633 in fees, the defendants seek a total reduction of $2,794,970, which includes:

1) a Diamond Reduction of $1,228,353;
2) an excessive rate reduction of $1,307,458;
3) a 10% reduction for vagueness totaling $129,579;
4) a 5% excessive hours/overstaffing reduction totaling $64,790; and
5) a 5% reduction for travel costs totaling $64,790.

Defendant concludes that the Court should grant plaintiff's application for attorney's fees in the amount of $1,036,633.

Plaintiff also seeks costs in the amount of $474,649.91. A specific breakdown of these costs includes:

Deposition Transcripts -	$40,649.17
Third-Party Copy Services -	$49,761.36
Electronic Research -	$137,107.95
Travel & Hotel Costs -	$69,487.66

[7] This terminology was created and utilized by the defendants based on the case of Diamond D Enterprises USA, Inc. v. Steinsvaag, 979 F.2d 14 (2d Cir. 1992).

Third Party Professional Services -	$25,020.30
In-House Photocopying -	$78,254.02
Expert Costs -	$74,369.59

Plaintiff represents that it deducted $27,571.02 for costs incurred prior to April 1988, as the underlying invoices could not be located. Phelan Aff. at 19.

Defendants object to certain costs, arguing that: 1) plaintiff is not entitled to recover the cost of electronic research ($137,107.95); 2) plaintiff's copying costs -- both in-house and by third parties -- are administrative costs and, therefore, should be reduced by a total of $103,698, or, alternatively, an across the board reduction of 75% should be applied; 3) plaintiff's coding costs of $18,007 are also an administrative cost and should be disallowed; 4) plaintiff should bear its own costs of mediation totaling $4,467.29; and 5) plaintiff's travel costs should not include various items such as the car rental, supplies, and laundry, and, therefore, should be reduced by $5,332.35. At the hearing, defendants' counsel conceded that an error occurred when challenging plaintiff's cost for the rental of banquet rooms.[8] Originally, defendants sought a reduction of $7,912 for the rental of these rooms. During the

[8] Defendants originally claimed that the bills indicated that plaintiff rented two rooms during both the 2002 and 2005 trials. At the hearing, defense counsel conceded that the bills indicated that only one room was rented during these time periods.

hearing, defense counsel stated that the room rental reduction sought was actually in the amount of $4,728. In total, defendants seek a reduction in costs of $268,837, conceding a total costs award of $205,862.00.

III. DISCUSSION

A. Standard of Review

It is a well-established principle that "[i]n diversity cases, attorney's fees are considered substantive and are controlled by state law." Bristol Tech., Inc. v. Microsoft Corp., 127 F. Supp. 2d 64, 66 (D. Conn. 2000) (quoting One Parcel of Property Located at 414 Kings Highway, No. 5:91-CV-158, 1999 WL 301704, at *4 (D. Conn. May 11, 1999)). See also, Kaplan v. Rand, 192 F.3d 60, 70 (2d Cir. 1999); Northern Heel Corp. v. Compo Indus., Inc., 851 F.2d 456, 475 (1st Cir. 1988). The application of Connecticut state law to this fee petition is the only issue on which the parties agree.

Connecticut follows the common law "American" rule in assessing the award of attorney fees. Under the "American" rule, "attorneys fees and ordinary expenses and burdens of litigation are not allowed to the successful party absent a contractual or statutory exception." Ames v. Comm'r. of Motor Vehicles, 267 Conn. 524, 532, 839 A.2d 1250 (2004). "A successful litigant is entitled to an award of attorneys fees if they are provided by contract ...." Jones v. Ippoliti, 52 Conn. App. 199, 209, 727 A.2d 713 (1999) (citations omitted); see also, MD Drilling &

Blasting v. MLS Construction, LLC, 93 Conn. App. 451, 457-58, 889 A.2d 850 (2006). Here, the indemnification clause, found in Section 11.1(a) of the Supply Agreement, controls the compensability of fees and costs to the plaintiff. Specifically, Section 11.1(a) provides in relevant part:

> each party shall indemnify ... against all damages, losses, or expenses suffered or paid as a result of any and all claims, demands, suits, penalties causes of action, proceedings, judgments ... and liabilities (including ***reasonable*** counsel fees incurred in any litigation or otherwise) ... with respect to or arising out of (a) any breach by the indemnifying party ...

Section 11.1(a) (emphasis added). According to these terms, the defendants must indemnify plaintiff for reasonable counsel fees and costs arising out of the breach. Plaintiff claims that the reasonableness of fees can be measured by the language in Section 11.4(a) of the Supply Agreement. Section 11.4(a) states, in part:

> [the] amount owing to the indemnified party will be the amount of such Party's actual out-of-pocket loss net of any insurance or other recovery.

Id. While Section 11.4(a) identifies the reimbursable amount as "out-of-pocket" losses, the Court finds that Section 11.1(a) still requires a determination that the "out-of-pocket" losses claimed by plaintiff for counsel fees are reasonable.

Connecticut law has also established that, where there is a contractual provision for attorney's fees, the term "reasonable" is implied by law. Crest Plumbing and Heating, Co. v. DiLoreto,

12 Conn. App. 468, 480, 531 A.2d 177 (1987) (citing Storm Assoc. Inc. v. Baumgold, 186 Conn. 237, 245-46, 440 A.2d 306 (1982). There must be an evidentiary showing of reasonableness, "with the award to be based on a number of considerations not limited to the actual fee incurred by the party." DiLoreto 12 Conn. App. at 480 (citing Bizzoco v. Chinitz, 193 Conn. 304, 310, 476 A.2d 572 (1984)); Copeland v. Marshall, 641 F.2d 880, 899-900 (D.C. Cir. 1980) ("attorney's fees should not be based on the costs of the successful party ... [but] should be based on the market value of the legal services rendered.").

Thus, the issue becomes what constitutes "reasonable" fees and costs under Connecticut law. Storm Assoc., 186 Conn. at 245-46. ("[Connecticut law] requires an evidentiary showing of reasonableness where recovery is sought under a contract clause which provides for payment of reasonable attorney's fees.").

It is a firmly established principle under Connecticut law that there is an "undisputed requirement that the reasonableness of attorney's fees and costs must be proven by an appropriate evidentiary showing." Smith v. Snyder, 267 Conn. 456, 471, 839 A.2d 589 (2004) (quoting Hartford Elec. Light Co. v. Tucker, 183 Conn. 85, 91, 438 A.2d 828, cert. denied, 454 U.S. 837 (1981)); accord Barco Auto Leasing Corp. v. House, 202 Conn. 106, 121, 520 A.2d 162 (1987); see also Appliances Inc. v. Yost, 186 Conn. 673, 680-81, 443 A.2d 486 (1982); Stelco Industries, Inc. v. Cohen, 182 Conn. 561, 567-68, 438 A.2d 759 (1980). "Courts have a general knowledge of what would be reasonable compensation for

services which are fairly stated and described." Smith, 267 Conn. at 471 (quoting Shapero v. Mercede, 262 Conn. 1, 9, 808 A.2d 666 (2002)). Therefore, "[c]ourts may rely on their general knowledge of what has occurred at the proceedings before them to supply evidence in support of an award of attorney's fees." Smith, 267 Conn at 471-72 (quoting Andrew v. Gorby, 237 Conn. 12, 24, 675 A.2d 449 (1996)).

However, courts may not rely on their general knowledge alone. Evidence, in addition to the court's knowledge, is necessary to support a finding of reasonableness. Appliances, Inc., 186 Conn. at 680-81 (supplement of attorney's itemized services combined with court's knowledge was sufficient); Piantedosi v. Floridia, 186 Conn. 275, 279, 440 A.2d 977 (1982) (evidence of services "fairly stated and described" combined with court's knowledge was sufficient, and expert testimony was not needed); Miller v. Kirshner, 225 Conn. 185, 199-01, 621 A.2d 1326 1993) (sworn affidavit with attached itemization together with the court's knowledge supported the award for attorney's fees); Shapero, 262 Conn. at 10 (the Court's general knowledge together with the evidentiary findings as to counsel's experience, reputation, novelty and complexity of issues, and the prevailing rates in the community supported the award of attorney's fees). While the courts have been "careful not to limit the contours of what particular factual showing may suffice ... a threshold evidentiary showing is a prerequisite to an award of attorney's fees." Smith, 267 Conn. at 477.

1. Movant's Burden

Plaintiff argues that, once the moving party makes "an appropriate evidentiary showing, the burden shifts to the opposing party to object and show that [the requested fees and costs] are unreasonable." Plf's. Memo. at 4; Plf's Reply Memo. at 6. In support of this argument, plaintiff cites Storm Associates, 186 Conn. at 246. Defendants object to this position, claiming that the burden remains on the moving party to prove the reasonableness of the requested attorney fees while providing sufficient information for the opposing party to object.

In Storm Associates, the plaintiff filed an action to recover a commission provided for in a real estate contract. Id. at 238. Under the listing contract, plaintiff was entitled to recover "all costs, disbursements and attorney's fees incurred in any action to collect any commission earned pursuant to the above." Id. at 245-46. Based on that language, plaintiff submitted a bill in the amount of $1,200 for attorney's fees. Id. Defendant never objected to this amount. Id. The trial court denied attorney's fees, holding that the plaintiff did not provide evidentiary support as to the bill's reasonableness. Id. The Supreme Court of Connecticut overturned this ruling based on the terms of the contract. Id. Specifically, the Supreme Court stated that, "[u]nder the contract, the plaintiff was entitled to an attorney's fee which it had 'incurred' without express regard to its reasonableness." Id. Thus, where the contract does not

expressly call for attorney's fees to be reasonable and where defendant fails to object to the reasonableness,

> proof of expenses paid or incurred affords some evidence of the value of the services, and if unreasonableness in amount does not appear from other evidence or through application of the trier's general knowledge of the subject-matter, its reasonableness will be presumed.

Id. (quoting Carangelo v. Nutmeg Farm, Inc., 115 Conn. 457, 462 162 A. 4 (1932) (presuming the reasonableness of a physician's bill submitted absent objection).

The facts presented in this case, however, can be distinguished from Storm Associates. First, Section 11.1(a) of the Supply Agreement expressly requires that the attorney fees be "reasonable". Second, defendants have objected to the reasonableness of plaintiff's fees on several grounds. As stated in Smith, 267 Conn. at 479:

> ... when a court is presented with a claim for attorney's fees, the proponent must present to the court at the time of trial or, in the case of a default judgment, at the hearing in damages, a statement of the fees requested and a description of services rendered. Such a rule leaves no doubt about the burden on the party claiming attorney's fees and affords the opposing party an opportunity to challenge the amount requested at the appropriate time.

Id. Therefore, under prevailing Connecticut law, the burden of proving the reasonableness of an attorney's fee application rests with the moving party. The fee application must have sufficient evidentiary support so as to afford the non-moving party a reasonable opportunity to object. If the non-moving party fails

to object, he/she will be considered to have "effectively acquiesced in the request, and consequently, ... [on appeal] will not be heard to complain about that request." Id. at 481. However, the burden does not shift to the non-moving party to present countervailing evidence of the application's unreasonableness. Plaintiff retains the burden to prove the reasonableness of the fees it seeks.

2. Reasonableness of Fees

"There are no certain or scientific rules to govern the determination of a reasonable attorney's fee." Bridgeport Singer Emp. Fed. Credit Union v. Piczko, 3 Conn. Cir. Ct. 621, 622, 222 A.2d 749 (1966).[9] Instead, it is an issue that has "plagued and

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[9] When attorney's fees are awarded by way of a fee shifting statute under federal law, the lodestar method of determining reasonable attorney's fees is utilized. The lodestar figure is calculated by multiplying the number of hours reasonably expended in the litigation by a reasonable hourly rate. Hensely v. Eckerhart, 461 U.S. 424, 433 (1983). In determining the reasonable hourly rates, the Court must determine the "prevailing market rates for the type of services rendered, i.e. the fees that would be charged for similar work by attorneys of like skill in the area." Bristol Tech., Inc., 127 F. Supp. 2d at 67. "There is a strong presumption that the lodestar figure represents a reasonable fee." Quaratino v. Tiffany & Co., 166 F.3d 422, 425 (2d Cir. 1997). Connecticut law uses this lodestar calculation in analyzing reasonable fees under the Connecticut Unfair Trade Practices Act. Bristol Tech., Inc., 127 F. Supp. 2d at 67. See also, Societa Bario E Derivatti v. Kaystone Chem., Inc., No. 5:90-CV-599, 1998 WL 182563, at *11 (D. Conn. Apr. 15, 1998); Kaplan v. Gruder, No. CV960334308S, 2000 WL 767679, at *1 (Conn. Super. May 25, 2000).

Plaintiff argues that under Connecticut contract law the lodestar method does not apply, and therefore, evidence of prevailing rates is not necessary. Connecticut law does require a plaintiff to meet a sufficient evidentiary burden, but does not

perplexed the legal system". Id. Regardless, the majority of courts agree that "attorney's fees should be awarded 'with an eye towards moderation' seeking to avoid either the reality or the appearance of awarding 'windfall fees.'" Ham v. Greene, No. 322775, 2000 WL 872707, at *14-15 (Conn. Super. Ct. June 12, 2000) (citing Smart SMR of New York, Inc. v. Zoning Com'm., 9 F. Supp. 2d 143, 147 (1998)) (quoting New York State Ass'n. for Retarded Children, Inc. v. Carey, 711 F.2d 1136, 1139 (2d Cir. 1983)). "A court has few duties of a more delicate nature than that of fixing [reasonable] counsel fees." Laudano v. New Haven, 58 Conn. App. 819, 822, 755 A.2d 907 (2000) (internal quotations omitted).

Connecticut courts determine the reasonableness of fees by reviewing the twelve factors cited in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974). These twelve guidelines, which essentially parallel Rule 1.5(a) of the Rules of Professional Conduct, include:

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specify how this burden must be met. Appliances, Inc., 186 Conn. at 680 (plaintiff satisfied its evidentiary burden by providing an itemized list of services, and evidence of the attorney's ordinary rate or prevailing rates from the community was not necessary).

While plaintiff is correct in stating that the lodestar method does not apply, the Court notes that the Johnson factors, discussed infra., utilized in determining reasonable fees under Connecticut law parallel the lodestar approach. Specifically, Factor 5 looks to the prevailing rates in the community. Therefore, evidence of prevailing rates is one factor that will be considered by the Court.

(1) the time and labor required;

(2) the novelty and difficulty of the questions;

(3) the skill requisite to perform the legal service properly;

(4) the preclusion of other employment by the attorney due to acceptance of the case;

(5) the customary fee for similar work in the community;

(6) whether the fee is fixed or contingent;

(7) the time limitations imposed by the client or the circumstances;

(8) the amount involved and the results obtained;

(9) the experience, reputation and ability of the attorneys;

(10) the undesirability of the case;

(11) the nature and length of the professional relationship with the client; and

(12) awards in similar cases.

Id. See also, Simms v. Chaisson, 277 Conn. 319, 332, 890 A.2d 548 (2006) ("Connecticut courts traditionally examine the factors enumerated in Rule 1.5(a) of the Rules of Professional Conduct in calculating a reasonable attorneys fee award"); Steiger v. J.S. Builders, Inc., 39 Conn. App. 32, 38, 663 A.2d 432 (1995) (a motion for attorney's fees is analyzed under the Johnson factors); Shoonmaker v. Lawrence Brunoli, Inc., 265 Conn. 210, 259, 828 A.2d 64 (2003) ("it is well established that a trial court calculating a reasonable attorney's fee makes its determination while considering the factors set forth under rule 1.5(a)"); Rodriguez v. Ancona, 88 Conn. App. 193, 202-03, 868

A.2d 807 (2005); Burrell, v. Yale, (X02)CV000159421S, 2005 Conn. Super. LEXIS 1529, at *10 (Conn. Super. May 26, 2005); Sorrentino v. All Services, Inc., 245 Conn. 756, 775, 717 A.2d 150 (1998). In determining reasonableness, "[t]he court ... [is] not required to consider each of the twelve factors individually, but instead [is] required to consider the full panoply of factors and not base its decision solely on one of the elements." Riggio v. Orkin Exterminating Co., 58 Conn. App. 309, 318, 753 A.2d 423 (2000).

Following the above standard, the Court will first consider the reasonableness of the rates charged by plaintiff's counsel before evaluating the reasonableness of the hours billed.

B. Reasonable Attorney Rates

The rates plaintiff's attorneys seek can be broken into three categories: partners, associates, and paralegals. There were three primary partners assigned to handle the litigation in this matter. The experience of these partners varied, and their charged rates ranged from $240.00 to $607.50 per hour, over a nine year period.[10] Approximately 17 associates performed work in this case over the years. The associates had varying degrees of experience (0-23 years), with rates ranging from $125.00 to $318.75 per hour. Approximately five different paralegals, with

[10] At oral argument, plaintiff's counsel stated that his law firm had negotiated rates with their client, and these rates were below the rates normally charged during each year of the litigation.

levels of experience extending from 2 to 11 years, worked on this case. The hourly rates charged for their work ranged from $93.50 to $148.75.

Defendants object to the above rates, claiming they are excessive and unreasonable. Defendants cite only one factor, out of the twelve listed in Johnson, in making this argument. Defs'. Opp. at 18-27. Specifically, defendants argue that the "average prevailing rate in this community between 1996 and 2005 for experienced trial attorneys is $224."[11] Defs'. Opp. at 24. Defendants also argue that the average prevailing rates for associates and paralegals during this time period were $145 and $75, respectively. Defs'. Opp. at 26-27. Based on the above, defendants seek "Excessive Rate Reductions" of $1,017,637 for partners, $190,840 for associates, and $98,981 for paralegals.

Having presided over this case since 1996, the Court is all too familiar with its history, the experience of counsel, the course of this litigation, and the conduct of the litigants and counsel. Although a detailed analysis of the Johnson factors will follow, it is worth noting that the case, from beginning to end, involved: 1) extremely complex issues, including opinions/testimony from several expert witnesses; 2) voluminous discovery on factual, causation, and damage issues; 3) megalithic efforts by both parties to litigate every minute issue, even

[11] Defendants allege the $224 figure represents the average billing rate applied by the courts in the cases cited by defendants on pages 22-24 of their opposition memorandum.

relitigating some issues repeatedly, as evidenced by the 530 entries on the 54-page docket sheet; 4) very high stakes, as evidenced by the amount actually awarded by the jury; and 5) highly skilled, experienced, and reputable attorneys from prominent law firms on both sides. The Court will now turn to the applicable Johnson factors.[12]

1. The Time and Labor Required, the Novelty and Difficulty of the Questions, and the Experience and Expertise of Counsel

This lawsuit, spanning a period of ten years, involved complex issues not normally found in an ordinary breach of contract case. As such, the time and labor required of counsel were extensive. The briefings filed and arguments presented to the Court involved many diverse issues, such as jurisdictional challenges, amended pleadings, discovery disputes, multiple dispositive motions, and two preliminary injunctions. The affirmative defenses presented by the defendants included fraud, mistake, legal impossibility, physical impossibility, breach of covenant, breach of municipal regulations. The counterclaims raised included fraudulent inducement/misrepresentation, breach

[12] Several of these factors are not pertinent to the issues presented here and were not raised or contemplated by the parties. The factors that were considered by the Court, but will not be discussed in depth, include: (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or the circumstances; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

of covenant of good faith and fair dealing, breach of contract discharge of excessive waste, failure to comply with local ordinances, prevention of performance; CUTPA, quantum meruit, and nuisance/violation of ordinances and regulations.

This case climaxed with two complex, lengthy trials of approximately five weeks and three weeks, respectively. The factual issues presented -- that is the amount of TDS in the papermill water and how this TDS affected plant and waste treatment operations -- required significant technical evidence. The parties' experts presented scientific evidence regarding the corrosion of steel, the effect of the mill effluent on wastewater treatment, and available water treatment alternatives. During each trial, numerous evidentiary issues arose including several motions in limine, motions for protective orders, the admissibility of expert evidence, missing witnesses, preclusion of testimony, the binding effect of prior proceedings, and the admissibility of voluminous reports. Many issues were also raised as to the appropriate remedy including the amount of damages, declaratory relief, injunctive relief, reformation, and rescission. Finally, post-trial briefing was very intensive and included a motion for judgment, an attempt at an interlocutory appeal, and several miscellaneous motions.

In total, the Court ruled on approximately eighty (80) motions. Numerous rulings, orders, and endorsements were entered on non-substantive issues. The high degree of skill and expertise both parties' counsel possessed was certainly necessary

to effectively litigate this case. The complexity, as well as the volume, of issues presented undoubtedly resulted in an increase in both the time and labor spent by counsel. In fact, the Court, itself, spent a considerable amount of time presiding over this case, and hearing, analyzing, and ruling on each of the issues presented.

2. Prevailing Market Rates in Connecticut[13]

Plaintiff claims that, if the Court were to consider the prevailing market rates, the rates to be applied should be from Massachusetts. In support of this argument, plaintiff claims that defendants knew plaintiff's counsel were Massachusetts attorneys and continued to negotiate the contract with these attorneys despite their location. Plaintiff argues that the defendants should have, or could have, requested that the indemnification clause limit attorney's fees to the prevailing rates in Connecticut if that is what the defendants had desired or intended.

What plaintiff disregards is Connecticut law. Under Connecticut law, absent a showing of specialized expertise, an attorney who handles a case in Connecticut is subject to the prevailing market rates in Connecticut. Kaplan, 2000 WL 767679, at * 7 (in order to obtain prevailing New York rates, attorney

[13] Plaintiff argues that prevailing rates should not be a consideration since the "lodestar" method of determining reasonable attorney's fees does not apply. This argument fails, as prevailing rates are one of the Johnson factors considered under Connecticut law. See, supra, n. 9.

would have to demonstrate that no competent attorney in Connecticut could have handled the case); Tsombanidis v. City of West Haven, 208 F. Supp. 2d 263, 277 (D. Conn. 2002) (although $225 may be a reasonable rate for Washington, D.C. attorneys, it is not the prevailing market rate in Connecticut); Dobson v. Hartford Financial Serv. Group, No. 3:99CV2256, 2002 U.S. Dist. LEXIS 17682, *9 (D. Conn. Aug. 2, 2002) (exceptions to the general rule regarding prevailing market rates "have been made upon a showing that the special expertise of counsel from a distant district is required") (quoting Polk v. New York State Dep't of Correctional Servs., 722 F.2d 23, 25 (2d Cir. 1983)).

Here, the cause of action centered on breach of contract. Despite the complexity of the issues surrounding the subject matter of this contract litigation and related claims, the underlying legal theories were not novel. Plaintiff's attorneys have failed to demonstrate that their firm possessed any specialized knowledge that would require out-of-state rates. In fact, plaintiff's law firm has an office in Connecticut, and one of the primary participating partners in this case, Ben Krowicki, was from the Connecticut office. Therefore, when examining the prevailing rates factor, the Court will look to the prevailing rates in Connecticut for attorneys with similar expertise.

From 1996 through 2005, courts in Connecticut have recognized reasonable attorney rates in varying amounts. See Evans v. State of Connecticut, 967 F. Supp. 673 (D. Conn. 1997) (in Title VII action, rates of $200 for attorney and $50 for law

students/paralegals were reasonable); Wallace v. Fox, 7 F. Supp. 2d 132 (D. Conn. 1998) (in class action shareholder derivative suit, average rate of $300 to $375 was reasonable); Jacques All Trades Corp. v. Laverne Brown, et al, CV 900381618S, 1998 WL 161228 (Conn. Super. Mar. 17, 1998) (in CUTPA action, $150 for partners, $100 for associates, and $55 for paralegals was reasonable); Hardy v. Saliva Diagnostic Sys., Inc., 52 F. Supp. 2d 333 (D. Conn. 1999) (in breach of employment contract case, rates of $185 to $200 were reasonable); St. George v. Mak, No. 5:92CV587, 2000 WL 305249 (D. Conn. Feb. 15, 2000) (in § 1983 action, rates of $250 and $175 were not challenged as unreasonable); Kaplan, 2000 WL 767679, at * 7 (in CUTPA case, reduced reasonable rate for NY attorney was $350); Evanauskas v. Strumpf, No. 3:00CV1106, 2001 WL 777477, at *23 (D. Conn. June 27, 2001) (in a Fair Debt Collections Act case, an attorney with "extensive experience" was entitled to $275 per hour); Tsombanidis, 208 F. Supp. 2d at 275-77 (in motion for attorney's fees under § 1988, partner rate of $275, associate rate of $165, and paralegal rate of $50 were reasonable); Petronella v. Acas, No. 3:02cv1047, 2004 WL 1688525 (D. Conn. Jan. 23, 2004) (in an interpleader action $225 was a reasonable rate which could be reduced to $113 after a deduction for travel time was made); Stanley Shenker & Assoc., Inc. v. World Wrestling Fed'n. Entm't., No. X05CV000180933S, 2005 WL 758135 (Conn. Super. Mar. 1, 2005) (in a complex secured transactions case, $285 for a partner and $195 for an associate was reasonable); Sony Electronics, Inc. v.

Soundview Tech., 389 F. Supp. 2d 443, (D. Conn. 2005) (in complex trademark litigation, $400 is the highest rate Connecticut has allowed for an attorney with vast experience); Galazo v. Pieksza, No. 4:01-CV-01589, 2006 WL 141652 (D. Conn. Jan. 19, 2006) (in § 1983 case, $350 for partner and $250 for associate were reasonable rates).

Additionally, plaintiff has submitted fee petitions filed with the United States Bankruptcy Court for the District of Connecticut by attorneys from various Connecticut law firms.[14] These petitions include rates requested by various associates and partners from the law firm of Robinson & Cole, defendants' law firm.[15]

At the hearing, defendants argued that these petitions should not be considered in determining the prevailing market rates. In support of this argument, defendants claim that bankruptcy law requires "specialized knowledge", the bankruptcy fee petitions were made without objection, and that the bankruptcy court does not make a determination of reasonableness in bankruptcy cases.

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[14] Plaintiff also submitted fee petitions submitted to the United States Bankruptcy Courts for the Districts of Massachusetts and New York. The Court will only consider the prevailing rates in Connecticut, for the reasons previously stated.

[15] At oral argument, defense counsel stated that the rates charged by defense counsel in this case ranged from $130 to $250 an hour. Defense counsel agreed that these were negotiated rates with the Town and were not the normal market rates charged by the law firm.

Plaintiff contests the defendants' analysis. First, plaintiff points out that the bankruptcy fee petitions, even those filed by defendants's law firm, contain language stating that, "[t]he fees R&C is applying for in this case are charged ***at the same hourly rates that it charges for similar cases***, ***for other matters outside the bankruptcy field***, and for bankruptcy matters that are not compensated by the bankruptcy estate." Plf's. Sixth Appendix at C2 (emphasis added); see also Plf's. Sixth Appendix at C1, C3, C6, C11, C18, etc. Second, plaintiff argues that creditors who believe that attorney's fees are too high would surely object to the petition, as an unreasonable amount paid to attorneys would affect the percentage that the creditor would obtain from the bankruptcy estate. Third, plaintiff argues that the bankruptcy judge has to approve the fee applications, and therefore, a determination of reasonableness is made. Defendants' counsel did not respond to these arguments.

Most of the fee petitions contain assertions by the submitting attorney that the rate charged in the bankruptcy petition was the same rate charged for non-bankruptcy work. As such, the Court will consider the following partner rates sought in the Connecticut bankruptcy petitions, namely:

CT Law Firm	Year Work Performed & Range of Rates	
Robinson & Cole	2004 2003	$490 - $330 $430 - $320
Greenberg Traurig	2004	$575 - $515
Day, Berry & Howard	2004 2003 2002 2001	$450 $475 - $420 $450 - $350 $335
Paul Hastings	2001	$535 - $380
Stroock & Stroock[16]	2000 1999 1998 1997	$585 - $425 $550 - $410 $550 - 405 $505 - $395
Akin, Gump	1999	$540 - $275
Caplin & Drysdale	1999 1998 1997 1996	$530 - $305 $530 - $290 $515 - $270 $475 - $270

Similarly, the Court will consider the following associate rates charged in the Connecticut bankruptcy petitions, namely:

CT Law Firm	Year Work Performed & Range of Rates	
Robinson & Cole	2005 2004 2003	$380 - $160 $320 - $170 $200 - $160
Greenberg Traurig	2004	$400 - $340

[16] Plaintiff has submitted fee petitions filed in the United States Bankruptcy Court for the District of Connecticut by the firms of Stroock & Stroock; Akin, Gump; and Caplin & Drysdale. Although referenced in the table, the Court will not consider the prevailing rates of these out-of-town firms in determining the prevailing rates in Connecticut.

CT Law Firm	Year Work Performed & Range of Rates	
Day, Berry & Howard	2004 2003 2002 2001	$335 - $180 $320 - $255 $225 - $195 $245 - $170
Paul Hastings	2001	$370 - $220
Stroock & Stroock	2000 1999 1998 1997	$395 - $115 $375 - $120 $350 - $140 $335 - $140
Akin, Gump	1999	$275 - $195
Caplin & Drysdale	1999 1998 1997 1996	$200 - $150 $200 - $180 $170 $220

3. Rates to be Applied

Determining the "reasonable" rates in this case, when compared to the "prevailing" rates charged in Connecticut by similarly experienced counsel performing complex and significant litigation, is also complicated by the fact that both parties were represented by large, full-service law firms with national reputations and offices around the country.[17] As Judge Underhill observed in Connecticut State Department of Social Services v. Thompson, 289 F. Supp. 2d 198 (D. Conn. 2003):

> There are several [additional] factors that affect actual billing rates by attorneys in this District. First, large firms generally bill at higher rates than do small firm lawyers or solo practitioners .... Second, lawyers at firms with offices in major metropolitan areas outside this state

[17] For example, the law firm of Bingham McCutchen was created during this litigation by the merger of east and west coast-based law firms.

> generally charge higher rates than do lawyers from firms that practice almost exclusively within Connecticut .... [A]nd hourly rates charged by lawyers in the larger cities in Connecticut are higher than the hourly rates charged by lawyers based in smaller towns. Each of these factors reflect, in large part, the dramatically different overhead expenses shouldered by lawyers in different practice settings and in different parts of the state.

Id. at 206.

Clearly, the hourly rates charged to clients are impacted by the significant overhead of maintaining large offices in multiple locations. Corporate and other institutional clients engage such firms in part because they are full-service firms which are staffed to enable the firm to devote whatever resources are necessary to the client's matters. Prevailing fees for this kind of service are surely greater than the fees charged by an equally skilled litigator practicing in a smaller firm. As such all-consuming litigation requires full-time services and counsel available to perform such services are most often located in these big firms, these skilled and experienced litigators can charge a premium for their time because it is a scarce commodity.

Another complication illustrated by this case is that corporate and other institutional clients may gravitate to firms with which they have had an on-going relationship. While a history of dealings may well benefit the client and justify a premium rate, that history -- and the extent of the client's business -- also provides leverage which the client may use to negotiate a fee for a particular matter below the firm's retail

or general market rates. Both parties in this litigation paid their attorneys less than market rates, according to counsel.

Based on the decisions cited above; my specialized knowledge regarding this litigation, the parties, and the law firms involved; the analysis of the applicable Johnson factors; and my knowledge of prevailing rates for legal services in the District of Connecticut, I find that reasonable hourly rates for plaintiff's counsel, broken down by year, are the following amounts:

	1996	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**
PARTNERS										
Goldberg	314.50	321.72	296.25[18]	333.95	345.18	355.00	360.61	368.83	378.45	391.48
Krowicki	240.00	212.50	212.50	206.25	263.41	270.91	275.19	281.46	288.80	298.74
Phelan						270.91	275.19	281.46	288.80	298.74
ASSOCIATES 1-3 YEARS OF EXPERIENCE										
Hole, Brian (571.3)									142.50	150.00
Short, Brian						122.00	129.00	135.00		
Tymchenko, Tanya						122.00	129.00	135.00		
White, Kimberly								135.00		
Bigelow, Brandon							129.00			
Elizabeth Calvert						122.00	129.00			

[18] The actual rate charged by Attorney Goldberg decreased from 1997 to 1998. Likewise, the actual rate charged by Attorney Krowicki decreased from 1998 to 1999. The Court incorporated these decreases in calculating the reasonable rates. As a result, the rates awarded for Attorney Goldberg in 1998 and Attorney Krowicki in 1999 also decreased.

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Erich Gaston							129.00			
Hackett, Virginia (22.6)							129.00			
Eggert, Celia						122.00				
Kim, Susan (166.3 hrs.)						122.00				
Downie, Marianne	94.50									
ASSOCIATES 4-8 YEARS OF EXPERIENCE										
Kim, Susan (237.5) & (97.4)							150.00	158.00		
Baxter, Larry							150.00	158.00		
Savery, Donald							150.00			
Goldberg, Gerald	110.00									
ASSOCIATES WITH OVER 8 YEARS EXPERIENCE										
Siczewicz, Ann	150.00					190.00	200.00	210.00		
PARALEGALS AND LAW CLERKS										
Brennan, Melissa										75.00
Curran, Theresa						60.75	67.50	67.50		75.00
Palmieri, Gina					55.00	60.75	67.50	67.50	75.00	75.00
Lindsay, Gretchen						60.75	67.50	67.50		
Blake, Thomas						60.75				
Hackett, Virginia (12.2)						60.75				
Gelbwasser, Lara							67.50			
Gibbs, Michael							67.50			

Now that the reasonable rates have been set, the court must determine the reasonable number of compensable hours.

C. **Reasonable Billable Hours**

With respect to the reasonable number of billable hours, defendants seek reductions on a number of different grounds: 1) the "Diamond Reduction";[19] 2) vague entries; 3) excessive time/ overstaffing; and 4) travel time.

1. **The Diamond Reduction**

Defendants argue that a reduction in hours must be taken for time spent by plaintiff's counsel in defending against the defendants' counterclaims, for fifty percent of the activities aimed at settlement, for plaintiff's efforts to block defendants' interlocutory appeal, and for permit applications and dealings with the DEP - all termed the "Diamond Reduction". Fisher Aff. 6. Defendants allege that working on these matters did not involve prosecution of plaintiff's breach of contract claim and, therefore, the hours billed are not compensable under the indemnification provision. Defs'. Opp. at 6. Defendants argue that 4,256.65 hours must be deducted as non-compensable activity under the Diamond Reduction. Defs'. Opp. Exhibit C at 34.

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[19] Once again, this terminology was created and utilized by the defendants based on the case of Diamond D Enterprises USA, Inc. v. Steinsvaag, 979 F.2d 14 (2d Cir. 1992).

Plaintiff argues that the defendants' counterclaims[20] and settlement discussions are "inextricably linked" to the breach of contract claim. In support of this argument, plaintiff points to the fact that four of the six counterclaims were identical to corresponding affirmative defenses. Plaintiff claims that if it did not prevail in defending against these counterclaims and affirmative defenses, it would not have prevailed on its breach of contract claim.[21] Lastly, plaintiff alleges that it has already reduced or eliminated fees allocated to non-recoverable items. Phelan Aff. at 6-9.[22]

In Diamond D Enterprises USA, Inc. v. Steinsvaag, 979 F.2d 14 (2d Cir. 1992), the United States Court of Appeals for the Second Circuit dealt directly with the issue of non-compensable billing. In Diamond, the plaintiff sued the defendant for the breach of a franchise agreement, and the defendants asserted three affirmative defenses and eight counterclaims. Id. at 16.

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[20] The counterclaims include: 1) fraudulent inducement/misrepresentation, (2) breach of the covenant of good faith and fair dealing, (3) breach of contract (discharge of excessive waster, failure to comply with local ordinances, prevention of performance), (4) CUTPA, (5) quantum meruit, and (6) nuisance/violation of ordinances and regulations.

[21] Defendants pled fraud as affirmative defenses #1 and #10; breach of covenant as affirmative defense #12; and breach of contract and nuisance as affirmative defenses #3, #4, and #5.

[22] At the hearing, plaintiff's counsel stated that if the entire time entry was related to non-compensable issues the entire entry was deleted. Plaintiff did not keep a running total of completely eliminated entries. If only a portion of the time entry was related to non-compensable issues, a reduction in billable hours was taken. This reduction is evidenced on Plaintiff's Exhibit B and totals approximately 212 hours.

Although the counterclaims alleged various theories of liability including contract, tort, and statutory violations, the claims shared the same factual basis and, therefore, had a "common nucleus". Id. Ultimately the jury returned a verdict for plaintiff and rejected all of the counterclaims. Id. at 17. Plaintiff then moved for attorney's fees, which were awarded by the court. Id. Defendant appealed, arguing that plaintiff was not entitled to recover for defending against the counterclaims.

The Second Circuit rejected this argument. Specifically, the Court stated that it is the "nature - not the nomenclature- of a claim [that] is controlling". Id. at 18.

> Thus ..., where a fee applicant recovers on a claim subject to a contractual attorney's fee provision and in the process litigates a counterclaim on which he must prevail in order to recover on his claim, then the fee applicant is entitled to his attorney's fees for both the claim and the counterclaim.

Id. (quoting Singer v. Shannon & Luchs Co., 670 F. Supp. 1024, 1028 (D.D.C. 1987)); Towers Charter & Marine Corp. v. Cadillac Ins. Co., 894 F.2d 516, 525 (2d Cir. 1990) (affirming contractual award of attorney's fees to party "required to defend each action in order to establish its right to recover"); Burger King Corp. v. Mason, 710 F.2d 1480, 1496-97 (11th Cir. 1983) ("affirming award of fees incurred developing overlapping issues relevant to both compensable and non-compensable matters."). The Court also found the fact that most of these counterclaims never went to the jury irrelevant, stating, "[that] fact ... affects the amount of

the fee award, not whether their defense was compensable." Diamond 979 F.2d at 18.

Defendants argue that Diamond is not the prevailing law in Connecticut and thus, should not be applied to this fee petition. The Court finds to the contrary. The law in Connecticut clearly follows the analysis applied in Diamond. In Atlantic Pipe Corp. v. Quadrangle Ltd. P'ship, No. CV 87-0336982, 1993 WL 454203 (Conn. Super. Oct. 27, 1993), plaintiff filed an action seeking to foreclose on a mechanic's lien and for damages on a breach of contract claim. The defendants responded by filing a multiple count counterclaim, alleging that plaintiff breached its contract, breached various warranties, and negligently performed the contract. The Court held that

> [t]he counterclaim and a third-party complaint filed by the defendants transformed a relatively straightforward mechanic's lien foreclosure and contract action into a protracted, tortuous thicket which spanned six years ...

Id. at *1. Thus, "[w]here a party with a contractual right to recover legal fees must incur attorney's fees to preserve his contractual rights and interest, he may recover those legal fees and damages." Id. at *2. (citing Fullerton v. McGowan, 6 Conn. App. 624, 631, 507 A.2d 473 (1986) (when plaintiff sought specific performance of a breach of contract, fees in defending foreclosure action were recoverable); Mechanics Sav. Bank v. Tucker, 178 Conn. 640, 647-48, 425 A.2d 124 (1979) (in foreclosure action, plaintiff was awarded attorneys fees in

defending against antitrust claim); J.P. Sedlak Assoc. v. Connecticut Life & Cas. Ins. Co., No. 3:98CV145 (DFM), 2000 WL 852331, at *6 (D. Conn. Mar. 31, 2000) (adopting the same line of reasoning applied by the Connecticut Superior Court and finding that plaintiff was entitled to attorney's fees for defending against counterclaims).

In this case, all but two of defendants' counterclaims were raised as affirmative defenses. Whether couched in terms of affirmative defenses or counterclaims, if plaintiff had not prevailed on the fraud, breach of covenant, CUTPA, breach of contract, and nuisance counterclaims, plaintiff would have been defeated on its breach of contract claim and would have ultimately lost this lawsuit. Although plaintiff did not necessarily have to win the quantum meruit counterclaim to prevail, the Court finds the cost of defending this counterclaim also recoverable. The quantum meruit counterclaim arose out of the parties' failed settlement agreement relating to efforts to obtain a WPCF permit to separate treatment of plaintiff's discharge into the WPCF. The Court finds that the settlement efforts were certainly interrelated with plaintiff's breach of contract claim.

Clearly, a common nucleus binds all of these counterclaims. In fact, defense counsel admitted at the hearing that it was likely that defendants would not have brought these counterclaims had they not been sued by the plaintiff. Therefore, plaintiff is

entitled to seek compensation for the hours spent defending these claims.

Additionally, by repeatedly attempting to resurrect counterclaims and re-litigate issues previously decided by the Court, defendants exacerbated the amount of time plaintiff's counsel spent in litigating this case and defending against these counterclaims.[23] A review of the Court's rulings demonstrates that, even when the counterclaims and defenses were denied and dismissed, defendants did not acquiesce. Rather, the defendants wholly disregarded the Court's rejection(s) and dismissal(s), and continually fought to reinstate the claims. See Ruling on Plaintiff's Motion to Strike or Dismiss (May 23, 2002) [Doc. #135]; Ruling on Defendants' Motion for Reconsideration (June 2002) [Doc. #154]; Ruling on Defendants' Motion to Amend Answer (June 26, 2002) [Doc. #153]; and Ruling on Defendants' Motion for Leave to File Amended Counterclaim (July 10, 2002) [Doc. #178]. In fact, the Court was "puzzled" by defendants' reassertion of rejected defenses. See Ruling on Plaintiff's Motion to Strike or Dismiss (May 23, 2002) [Doc. #135]. As such, defendants cannot now be heard to complain generally about the amount of time expended by plaintiff in defending against these aggressive

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[23] Defendants argue that allowing plaintiff the entire amount sought in the fee petition would be punitive in nature, only punishing the defendants for defending the case. The Court does not agree. The magnitude of the fees sought is the unfortunate, but inevitable, result when counsel from two large law firms choose to extensively litigate and relitigate every minute detail.

tactics. Defendants' strategy undoubtedly exacerbated this controversy and expanded the work for plaintiff to defend against these repeated attempts. As best stated by Judge Tierney of the Connecticut Superior Court,

> [t]his case was bitterly contested. Appellants mounted a Stalingrad defense, resisting [plaintiff] at every turn and forcing her to win her hard-earned victory from rock to rock and from tree to tree. Since a litigant's staffing needs often vary in direct proportion to the ferocity of her adversaries' handling of the case, this factor weighs heavily in the balance.

Anom v. Ofori-Tenkorang, FA010184721S, 2005 Conn. Super. LEXIS 419, at *23-24 (Conn. Super. Feb. 18, 2005) (quoting Johnson v. Spencer Press of Maine, Inc. No. 02-73-P-H, 2004 WL 1859791, at *4 (D. Me. Aug. 19, 2004)) (citing Lipsett v. Blanco, 975 F.2d 934, 939 (1st Cir. 1992)). See also, City of Riverside v. Rivera, 477 U.S. 561, 581 n. 11 (1986) ("[t]he government cannot litigate tenaciously and then be heard to complain about the time necessarily spent by the plaintiff in response.") (quoting Copeland, 641 F.2d at 904).

The Court declines to impose a further, so-called "Diamond Reduction" to plaintiff's billable hours than those plaintiff has already made. We must now turn to the defendants other bases for challenging the fee petition.

2. Vagueness

Defendants claim that plaintiff's fee application "reveals a significant number of instances in which billing entries

inadequately identify the subject matter of the work performed." Defs'. Opp. at 29. The defendants, in a marked-up version of plaintiff's Exhibit B, have identified approximately 613 allegedly vague time entries. Based on the volume of allegedly vague entries, the defendants seek a ten (10) percent reduction, for a total of $129,579, from plaintiff's fee application.

Conversely, plaintiff argues that most of the time entries are adequately detailed. Plf's. Reply Mem. at 11, n. 10. Plaintiff also contends that the limited entries which do not contain specific details can only be considered vague "by ignoring adjacent billing entries and the docket sheet." Id. Plaintiff states that the defendants cannot rely on such segregated time entries, and, instead, the time sheets for each attorney must be read in conjunction with the whole application.

Counsel applying for fees are "not required to record in great detail how each minute of [their] time was expended." Hensley v. Eckerhart, 461 U.S. 424, 437 n.12 (1983). However, counsel should at least "identify the general subject matter of his time expenditures." Id. Specifically, counsel are:

> obliged 'to keep and present records from which the court may determine the nature of the work done, [and] the need for and the amount of time reasonably required; where adequate contemporaneous records have not been kept, the court should not award the full amount requested.'

Rabin v. Wilson-Coker, 425 F. Supp. 2d 269, 272 (D. Conn. 2006) (quoting F.H. Krear & Co. v. Nineteen Named Trustees, 810 F.2d

1250, 1265 (2d Cir. 1987)). See also, Ham, 2000 WL 872707, at *13 n. 4; N.Y. State Ass'n for Retarded Children, 711 F.2d at 1148 (billing entries should specify the attorney, the date, the time expended, and the "nature of the work done sufficient to evaluate its appropriateness").

"A court may ... refuse to award fees based on time entries that provide a vague description of the work performed." Smart SMR of New York, Inc., 9 F. Supp. 2d at 150. "Entries stating such vague references as 'review of file', 'review of correspondence', 'research', 'conference with client', and 'preparation of brief' do not provide an adequate basis upon which to evaluate the reasonableness of the services and hours expended on a given matter." Rabin, 425 F. Supp. 2d at 273 (quoting Mr. & Mrs. B. v. Weston Bd. of Educ., 34 F. Supp. 2d 777, 781 (D. Conn. 1999)).

A court may attempt to clarify vague entries by looking at the context of adjacent entries. Conn. Hosp. Ass'n v. O'Neill, 891 F. Supp. 687, 691 (1994). However, courts have stated that it is "neither practical nor desirable" to review each entry in a massive case. Copeland, 641 F.2d at 903 ("a district court [should not], in setting an attorney's fee, become enmeshed in a meticulous analysis of every detailed facet of the professional representation."). Instead, the Second Circuit has approved a percentage reduction method "as a practical means of trimming fat from a fee application". Conn. Hosp. Ass'n 891 F. Supp. at 691 (citations omitted) (court reduced attorney fee petition by ten

percent for vague entries); Wilder v. Bernstein, 725 F. Supp. 1324, 1337 (S.D.N.Y. 1989), rev'd. on other grounds, 944 F.2d 1028 (2d Cir. 1991) (reducing the amount of fee request by twenty percent for vague entries); Grogg v. General Motors Corp., 612 F. Supp. 1375, 1380 (D.C.N.Y. 1985) (reducing attorney fee award by fifty percent for vague entries); Gonzalez v. Town of Stratford, 830 F. Supp. 111, 114 (D. Conn. 1992) (reducing fee petition by ten percent to account for vague entries).

The court has undertaken a painstaking review of the time records submitted by plaintiff's counsel. This review included the estimated 613 challenges made by defendants for vagueness.[24] In some instances, the allegedly vague entry can be clarified by reviewing adjacent time entries. For example, in 1996, there were numerous billing entries that described the work performed as either "review agreements", "review and revise pleadings and correspondence", "conferences with Mr. Cobery", "conferences with Mr. Kraft", "internal strategy conference", and "attention to hearing issues."[25] See Defs'. Ex. B at pp. 1-10.[26] The court

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[24] Due to the length of the submitted bill, 304 pages, and the number of challenged entries, the Court will not discuss each allegation of vagueness. Instead, the Court has extracted examples of contested entries from different time periods and will analyze these samples in group fashion.

[25] Whether these entries constitute duplicative billing or overstaffing will be discussed infra.

[26] Specific dates include 1/22/96; 1/24/96; 1/26/96; 1/29/96; 1/30/96; 2/6/96; 2/7/96; 2/8/96; 2/20/96; 2/23/96; 2/29/96; 3/4/96; 3/5/96; 3/6/96; 3/7/96; 3/8/96; 3/11/96; 3/13/96; 3/14/96; 3/15/96; 3/18/96; 3/19/96; 3/20/96; 3/21/96; 3/23/96; 3/24/96; 3/25/96; 3/26/96; 3/27/96; 3/28/96; 3/29/96 ...

agrees that these time entries are vague when read in isolation. However, when viewed in conjunction with the surrounding time entries, it is clear that these descriptions, and the hours billed, relate to plaintiff's review, strategy, and drafting of the preliminary injunction/initial pleadings -- as well as attendance at the preliminary injunction hearing conducted on June 4, 1996. As time entries do not have to be considered in a segregated manner, these descriptions are not vague.

In June of 1999, there are several entries detailed as "review and revise letter to Judge Fitzsimmons" and "attention to status report."[27] Once again, a review of the surrounding entries establishes that these hours were billed in preparation for a settlement conference and in preparation of plaintiff's response to the Court's Order for a status report. Read in this context, the entries are not vague.

Likewise, in 2001, there are several allegedly vague descriptions such as, "review documents", "attention to document review", "review documents received", and "letter to Ms. Fisher". Defs.' Opp. Ex. B at 27-42.[28] It is evident from the adjoining

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[27] See 6/30/99; 7/6/99; 7/7/99; 9/3/99; 9/8/99; 9/9/99; 9/10/99; 9/15/99; 9/16/99; 9/28/99; 10/11/99; 10/12/99; 10/13/99. There was also a "review and revise status report" billed on 9/13/99. Surprisingly, defendants did not challenge this entry as vague.

[28] See 5/23/01; 5/24/01; 5/30/01; 5/31/01; 6/4/01; 6/5/01; 6/11/01; 6/13/01; 6/14/01; 6/15/01; 6/18/01; 6/19/01; 6/20/01; 6/22/01; 6/25/01; 6/26/01; 6/27/01; 6/28/01; 6/29/01; 7/5/01; 7/9/01; 7/10/01; 7/12/01; 7/16/01; 7/17/01; 7/18/01; 7/19/01; 7/24/01; 7/25/01; 7/26/01; 7/31/01; 8/1/01; 8/2/01; 8/3/01; 8/6/01; 8/7/01 ...

entries that plaintiff was engaged in extensive discovery during this time period. Defendants were engaged in this same discovery process and likely produced some of the documents identified by plaintiff's counsel as "documents received". These identified time entries clearly relate to this exchange of discovery. The defendants cannot now claim that these entries are vague or do not provide sufficient information to challenge the time charged.

Also, defendants claim that Attorney Krowicki's description which states, "[a]ttend Bowen deposition, conference with Judge Fitzsimmons; conference with Mr. Goldberg" is vague. There is nothing unclear about the description of the work performed that day. Attorney Krowicki attended the deposition of Mr. Bowen and had a conference with Judge Fitzsimmons. Undoubtedly, defendants participated in this conference and are aware of its content. As for the conference with Attorney Goldberg, it is reasonable to infer that the purpose of this conversation was to advise him of the day's events.

The last examples extracted by the Court deal with entries from 2002. These entries include descriptions such as, "attention to expert reports", "attention to trial outline", "review of deposition transcripts", "prepare for trial", "conference with [ ]", and "trial preparation".[29] Defs'. Ex. B

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[29] See 1/30/02; 2/1/02; 2/8/02; 2/11/02; 2/12/02; 2/13/02; 2/14/02; 2/15/02; 2/15/02; 2/19/02; 2/20/02; 2/21/02; 2/22/02; 2/25/02; 2/26/02; 2/27/02; 2/28/02; 3/1/02; 3/3/02; 3/4/02; 3/5/02; 3/6/02; 3/7/02; 3/8/02; 3/9/02; ... 6/3/02; 6/6/02; 6/7/02; 6/9/02; 6/10/02; 6/11/02; 6/13/02; 6/14/02; 6/18/02 ...

at 91-164. Defendants may have a valid challenge to the number of hours billed by plaintiff's counsel in preparation for the five-week trial held in July 2002. This does not mean, however, that the references to trial preparation are vague. While not detailing their trial preparation in detail, this general description is certainly sufficient to survive a vagueness challenge.

There are instances, however, where plaintiff's counsel do not adequately describe their time expenditures, and the time entries are too vague to justify the time claimed. For example, on June 2, 1999 and June 4, 1999, Attorney Ben Krowicki spent a combined total of 5.4 hours to "review orders", with no further detail of what "orders" were reviewed. A comparison of the time entries with the court docket revealed that the only order issued between January and August of 1999 was an Order for a Status Report [Doc. # 28]. Since it would not take 5.4 hours to review such a basic Order, the Court is uncertain as to what "Orders" Attorney Krowicki reviewed. Other such examples include:

1) On June 5, 2001, Attorney Krowicki spent 4.1 hours "atten[ding] to brief". Reviewing surrounding time entries as well as cross-referencing the docket did not shed any light on what brief the attorney was working on.

2) There are several instances in which attorneys/paralegals "obtain[ed] documents for Mr. Krowicki".[30] Preceding and subsequent entries do not explain which documents were obtained, from where, and for what purpose.

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[30] See 3/6/02; 3/29/02/ 4/12/02; 8/13/02 ...

3) On April 24, 2002, Attorney Krowicki spent 1.4 hours on "attention to materials received." There is no indication from surrounding entries as to what these material were, who they were from, or to what they related.

4) Attorney Goldberg has several time entries which state, "attention to developments" and "attention to various conferences".[31] Even a review of the adjacent time entries does not enlighten the Court as to which developments Attorney Goldberg was referring.

While not substantial, the Court agrees that these time entries are too vague "to enable the court to consider whether the time was reasonably spent." Gonzalez, 830 F. Supp. at 114. Therefore, a percentage reduction is in order. While defendants seek a ten (10) percent reduction, the Court does not find a sufficient number of vague entries to justify such a steep percentage reduction. Instead, the Court will reduce the award of attorney fees by three (3) percent for vague entries. The fees awarded are reduced by $84,531.52.

3. Excessive Hours/Overstaffing

In addition to the vagueness challenges, defendants also claim that "the time spent on certain tasks was excessive, warranting an across-the-board reduction." Defs'. Opp. at 32. The defendants also allege that these excessive hours were caused by overstaffing -- "having multiple attorneys working on a single issue or having all three partners review a particular motion." Id. at 33. Defendants cite several examples in their opposition,

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[31] See 10/10/97; 7/6/99; 11/20/01; 1/8/02; 2/7/02; 3/22/04; 2/4/05 ...

including 1) work performed on its Opposition to the Motion to Preclude Woodard; 2) hours expended on discovery; 3) time spent drafting and responding to the motion for summary judgment;[23] 4) hours spent taking ten depositions; and 5) time spent on trial preparation. Defendants seek a five (5) percent reduction from the fee petition, a total of $64,790, for these excessive hours/overstaffing.

Plaintiff opposes this reduction, claiming that the staffing was appropriate and that the hours billed were not excessive. For example, plaintiff claims that the trial team structure was such that from 1996 to 2001 only two partners, Attorneys Goldberg and Krowicki, were primarily responsible for the work performed in this case. Phelan Second Aff. at 1. Attorney Phelan joined the trial team in 2001. Id. Thus, while some overlap did occur, plaintiff contends that this happened only on substantial, complex issues. Id. Plaintiff also alleges that the staffing of the Opposition to the Motion to Preclude Woodard was appropriate, that is, with the majority of the work performed by one associate and one partner. Id. at 2. Likewise, plaintiff's counsel claims that only three attorneys spent a significant amount of time on the preliminary injunction portion of this lawsuit and such staffing was appropriate. Id. at 2-3.

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[23] In 2001, plaintiff's counsel spent approximately 132 hours researching and drafting a motion for summary judgment. Based on the complexity of the complaint and on the number of cross-claims filed by defendants, this time does not appear to be excessive or redundant.

As "[c]ases may be overstaffed, and the skill and experience of lawyers vary widely ... [c]ounsel for the prevailing party should make a good-faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary ...." Hensley, 461 U.S. at 434. In that vein, an award of attorney fees is not "to serve as full employment or continuing education programs for lawyers and paralegals." Lipsett v. Blanco, 975 F.2d 934, 938 (1st Cir. 1992). Thus, a "trial court should ordinarily greet a claim that several lawyers were required to perform a single set of tasks with healthy skepticism." Id. at 938-39 (citing United Nuclear Corp. v. Cannon, 564 F. Supp. 581, 590 (D.R.I. 1983)).

"It is well recognized that when more lawyers than are necessary are assigned to a case, the level of duplication of effort increases ...." Farmington Sav. Bank v. Patriot Mech. Servs., LLC, CV0308273578, 2004 WL 422954, at *9 (Conn. Super. Ct. Jan. 26, 2004) (quoting Gatti v. Community Action Agency of Greene County, Inc., 263 F. Supp. 2d 496, 518 (N.D.N.Y. 2003)). On the other hand, courts should be mindful of the fact that complex modern litigation may require multiple attorneys to handle even seemingly simple tasks. Meriwether v. Coughlin, 727 F. Supp. 823, 827-28 (S.D.N.Y. 1989) ("[t]he practice of dividing work among various attorneys in a complex and lengthy litigation is a common place."); Conn. Hosp. Ass'n, 891 F. Supp. at 691 (the personnel turnover at large firms over an extended period of time justifies having several members of the firm work on the case);

Seigal v. Merrick, 619 F.2d 160, 164 (2d Cir. 1980) (appearance of more than one attorney at conferences and court proceedings does not automatically preclude an award of fees for time spent by each of those attorneys); Conn. State Dept. of Soc. Servs., 289 F. Supp. 2d at 208 ("[p]articipation by several attorneys on conference calls is often the most efficient means of communicating ....").

Most courts agree that percentage reductions are proper when determining an appropriate decrease in hours for excessive hours/overstaffing. "[I]n many cases in which prevailing parties seek an award of attorneys fees, it is unrealistic to expect a trial judge to evaluate and rule on every entry in an application ... For that reason, many courts have endorsed percentage cuts as a practical means of trimming ... a fee application." Farmington Sav. Bank, 2004 WL 422954, at *9 (internal quotations and citations omitted).

This case was bitterly contested, and the nature of the litigation was complex. While plaintiff's counsel were highly professional and performed excellent work, the Court is skeptical about some entries in the fee petition. For example:

In 1996 alone, plaintiff's counsel billed over 278 hours to strategize, research, and draft the preliminary injunction. This time did not include correspondence, meetings with the client/witnesses, or reviewing documents.

From May of 2001 through October 2001, during the initial discovery phase of this litigation, plaintiff's counsel billed

well over 800 hours. This did not include time spent on preparing for or taking depositions or subsequent discovery.

From January to March of 2002, plaintiff's counsel spent over 121 hours researching and drafting a motion to strike or dismiss plaintiff's affirmative defenses and counterclaims. Some claims for which plaintiff sought dismissal had previously been briefed, argued, and decided in the summary judgment ruling. While the Court agrees that defendant prompted the accrual of hours by repeatedly relitigating these issues, the research to rebut these claims had previously been completed, and little additional time should have been necessary to defend against these claims. Counsel should not have had to spend time reinventing the wheel.

The Court also notes the following examples:

1) On October 8 and October 9, 2001, Attorney Krowicki spent a combined 9.3 hours in "preparation for hearing." While the surrounding time entries do not reveal for which hearing Attorney Krowicki was preparing, a review of the docket evidences that a hearing on a motion to amend the complaint took place on October 10, 2001.

2) In January of 2002 Attorneys Krowicki and Phelan spent a combined 52.4 hours preparing for and attending the hearing on the motions for summary judgment and defendants' motion to dismiss, which according to the docket sheet lasted approximately three and a half hours.

3) On December 22, 2004, Attorney Krowicki spent 1.2 hours "review[ing] court orders." The only order issued by the Court during this time period was a Scheduling Order entered December 17, 2004.

All the motions and orders discussed above were important and the hearing(s) intense. However, it is not obvious from the

entries, read in context with the docket sheet, why Attorney Krowicki spent the designated time. Additionally, while prevailing on dispositive motions is crucial, it should not take two seasoned attorneys over 50 hours[24] to prepare for and argue a motion for summary judgment.

In early 2002, one associate spent over 40 hours preparing and drafting two motions in limine to preclude certain evidence. This effort resulted in two, two-page orders [Docs. #176 and 200] denying the motions. When deciding the need to staff with multiple attorneys, counsel should take extreme precautions to ensure that an excessive amount of time is not spent on each issue. Plaintiff's counsel did not always practice such caution. Even if the hours billed appeared higher because drafts were prepared by lower echelon associates and then reviewed by the partners, the Court cannot and should not reward the inexperience of the attorney or summer associate performing the work in determining reasonable billable hours. Fee petitions are not meant to be a venue for continuing legal education or training.

Based on the Court's knowledge of the issues presented and its familiarity with the practice of the law, the Court finds that some of the hours expended by plaintiff's counsel "[w]ere excessive, redundant, or otherwise unnecessary." Orchano v. Advanced Recovery, Inc., 107 F.3d 94, 98 (2d Cir. 1997)

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[24] This 50 hours does not include the 464 hours charged researching and writing the motion as well as its reply to defendants' objection.

(citations omitted). Accordingly, a five (5) percent reduction for excessive hours/overstaffing is appropriate. This reduction totals $140,885.87.

4. Travel Time Reduction

Defendants claim that plaintiff's fee petition contains "unreasonable charges for travel time." Defs'. Opp. at 28. From the billing records, defendants cite 91 dates where plaintiff's counsel billed for travel. Id. Defendants allege that this time was billed at the attorney's "regular hourly rates." Id. Defendants argue that an across-the-board reduction of five (5) percent, or $64,790, is necessary because the specific number of hours spent traveling cannot be determined from the time entries. Id.

Although plaintiff appears to agree that it is appropriate to reduce the fee petition for billed travel time, plaintiff's counsel disagrees with the proposed five (5) percent across-the-board reduction. First, plaintiff's counsel allege that some of the entries claimed by defendants to include travel time did not. Phelan Second Aff. at 4. Second, many of the travel dates cited by defendants were instances where plaintiff's counsel stayed overnight, and round-trip travel did not occur. Id.

Plaintiff's counsel also allege that most of the billed travel was conducted by Attorney Phelan. Id. Attorney Phelan claims that his usual billing practice was to deduct two hours from each trip, which totaled the time it would ordinarily take

for him to travel from home to work and back. Id. Thus, even assuming defendants are correct in alleging that there were 91 trips consisting of two-hour, round-trip travel from Boston to Hartford/Montville/Bridgeport or between Hartford and Montville/Bridgeport, plaintiff's counsel already deducted any and all time charged above and beyond the two-hour travel time to and from these work-related destinations. Attorney Pehlan deducted for all travel to/from home or any other location. Id. Therefore, the total trips taken (91) must be multiplied by the deducted time it took to conduct the trips (2 hours), making the total billed travel time 182 hours. Id. at 5. Plaintiff claims a fifty (50) percent reduction to this travel time is appropriate.

There are cases where courts will not award fees for travel time. Chrapliwy v. Uniroyal, Inc., 509 F. Supp. 442, 225-55 (N.D. Ind. 1981), rev'd. in part, 670 F.2d 760 (7th Cir. 1982). Most courts, however, allow counsel to recover the "[t]ravel time spent working and preparing the ... case." Fabri v. United Techs. Int'l, Inc., 193 F. Supp. 2d 480, 489 (D. Conn. 2002). "Travel time spent resting or not working is not appropriately billed at the full rate." Id. (citing Williams v. N.Y. City Hous. Auth., 975 F. Supp. 317, 324 (S.D.N.Y. 1997) (50% reduction of hourly travel rate)). This district has adopted this fifty (50) percent reduction method. Rose v. Heintz, 671 F. Supp. 901, 905 (D. Conn. 1987); Petronella, 2004 WL 1688525, at *4-5. The Court of Appeals for the Second Circuit has affirmed the fifty

(50) percent reduction method. In re A.H. Orange Product Liability Litigation, 818 F.2d 226, 238 (2d Cir. 1987). Likewise, Connecticut state courts have recognized this approach. Carr v. Town of Bridgewater, No. CV86 004 36 33 S, 1991 WL 57802, at *4 (Conn. Super. Ct. Apr. 9, 1991) (although finding travel time was not supported by the evidence, the court recognized the fifty (50) percent reduction method).

In this case, defendants have not presented sufficient evidence to justify a deviation from this practice which has been accepted by the Second Circuit, this court, and the Connecticut state courts. Defendants request for a five (5) percent across-the-board reduction is denied. Instead, the Court will reduce plaintiff's counsel's travel hours by fifty (50) percent. There are 91 dates on which defendants claim plaintiff's counsel traveled the two-hour round-trip from the Boston office to the Connecticut office or from the Connecticut office to the defendant plant, making the total travel time 182 hours. Fifty percent of 182 is 91. Plaintiff's billable hours must be reduced by 91 hours.

The issue then becomes: from whose time entries will the deduction be taken and in what years? As Attorney Phelan admitted that the bulk of the travel was done by him, the Court deems it appropriate to deduct the entire 91 hours from Attorney Phelan's time entries. Phelan Second Aff. at 4. However, due to the volume of this fee petition, the Court will not delve into individual time entries to determine in which years the 91 hours

will be deducted. Instead, the Court finds it appropriate to multiply the travel hours (91) by the average hourly rate for Attorney Phelan over the course of his involvement in this litigation ($283.02). This equals a reduction in attorney's fees in the amount of $25,754.82.

D. Costs

Plaintiff's counsel also seek costs in the amount of $474,649.91. A specific breakdown of costs include:

Deposition Transcripts -	$40,649.17
Third-Party Copy Services -	$49,761.36
Electronic Research -	$137,107.95
Travel & Hotel Costs -	$69,487.66
Third Party Professional Services -	$25,020.30
In-House Photocopying -	$78,254.02
Expert Costs -	$74,369.59

Plaintiff states that it did not claim $27,571.02 of the costs incurred prior to April 1988, as the underlying invoices could not be located. Phelan Aff. at 19.

Defendants object to certain costs, alleging that:

1) plaintiff is not entitled to recover the cost of the electronic research ($137,107.95); 2) plaintiff's copying costs -- both in-house and by third parties -- are administrative costs, and therefore, total copying costs should be reduced by $103,698 or, alternatively, an across-the-board reduction of 75%

should be applied; 3) plaintiff's coding and scanning costs are also administrative costs, and a reduction of $18,007 is necessary; 4) plaintiff should bear their own costs of mediation, totaling $4,467.29; 5) plaintiff's miscellaneous travel costs should not include the car rental, supplies, and laundry, and miscellaneous travel costs must be reduced by $5,332.35, and 6) the room rental cost should be reduced by $4,728.[25] In total, defendants seek a reduction in costs of $273,340.59, conceding a total costs award of $201,309.32.

Once again, the Court will evaluate the appropriateness of costs under the "reasonableness" standard discussed above.

1. Electronic Research

Section 11.1(a) of the Indemnification Agreement states the moving party is entitled to "all ... expenses ... paid as a result of any claims, demands ...." Therefore, plaintiff seeks recovery for electronic research in the amount of $137,107.95. Defendants object, stating that electronic research is not a recoverable cost. Defs'. Opp. at 36.

The question of whether computerized legal research is recoverable under Connecticut law, either as an item of cost or as a component of attorney fees, appears to be unresolved by any published decision. Defendants argue that the United States

[25] Originally, defendants sought a room rental reduction in the amount of $7,912. At the hearing, however, defense counsel conceded that an error occurred and stated that the room rental reduction sought was actually in the amount of $4,728.

Court of Appeals for the Second Circuit has held that "computer research is merely a substitute for an attorney's time that is compensable under an application for attorneys' fees and is not a separately taxable cost." U.S. ex rel Evergreen Pipeline Const. Co., Inc. v. Merritt Meridian Const. Corp., 95 F.3d 153, 173 (2d Cir. 1996). Evergreen, however, is distinguishable from this case. The cause of action in Evergreen did not involve a contract provision or fee shifting statute but, instead, involved Rule 11 sanctions. The Second Circuit held that the district court did not abuse its discretion in finding that reimbursement for electronic research was not an appropriate Rule 11 sanction. Id.

Here, the Court is presented with a fee petition under an indemnification agreement and is not presented with a Rule 11 motion. Evergreen is not controlling.

There appears to be some disagreement amongst the courts regarding the treatment of electronic research costs. Some courts view the costs of legal research as part of a law firm's overhead, and, as such, "are a factor to be included in the setting of attorneys fees as opposed to ordinary costs." DFS Group L.P. v. Paiea Properties, 131 P.3d 500, 507 (S. Ct. Haw. 2006) (quoting In re San Juan Dupont Plaza Hotel Fire Litigation, 142 F.R.D. 41, 47 (D.P.R. 1992). See also, Sulkowska v. City of New York, 170 F. Supp. 2d 359 (S.D.N.Y.2001) (while an attorney can be reimbursed for time spent performing computerized research, the cost of the computer service used in the research

is not); Ciraolo v. City of New York, No. 97 Civ. 8208(RPP), 2000 WL 1521180 (S.D.N.Y.2000) (electronic research costs are simply an item of overhead, and as such should be built into the fees charged). In Haroco, Inc. v. American Nat'l Bank and Trust Co. of Chicago, 38 F.3d 1429, 1440-41 (7th Cir. 1994), the Seventh Circuit adopted this line of reasoning, stating that:

> [t]he added cost of computerized research is normally matched with a corresponding reduction in the amount of time an attorney must spend researching. Therefore, we see no difference between a situation where an attorney researches manually and bills only the time spent and a situation where the attorney does the research on a computer and bills for both the time and the computer fee. In both cases the total costs are attorney's fees and may not be recovered as costs.

Id.

Other courts have reached a different result, holding that charges for electronic research should be allowed because these "services presumably save money by making legal research more efficient." Role Models Am., Inc. v. Brownlee, 353 F.3d 962, 975 (D.C. Cir. 2004). See also, Robinson v. Ariyoshi, 703 F. Supp. 1412, 1436-37 (D. Haw. 1989).[26] The Second Circuit has adopted

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[26] The Robinson court agreed with the analysis set forth in United Nuclear Corp. v. Cannon, 564 F. Supp. 581 (D.R.I.1983), namely that:

> Lexis is an essential tool of a modern efficient law office. As such, it saves lawyers' time by increasing the efficacy of legal research. Denial of reimbursement for Lexis charges in a proper case would be an open invitation to law firms to use high-priced attorney time to perform routine research tasks that can be accomplished quicker and more economically with Lexis. This, in turn, would lead inevitably to increased

this line of reasoning, holding that:

> the use of online research services likely reduces the number of hours required for an attorney's manual search, thereby lowering the lodestar, and that in the context of a fee-shifting provision, the charges for such online research may properly be included in a fee award.

Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of Albany, 369 F.3d 91, 98 (2d Cir. 2004).

The Court finds this reasoning persuasive. Rather than conducting manual research in the stacks at a law library, an attorney charging an hourly rate saves time doing research electronically. The attorney, therefore, loses some economic benefit by not charging for the time saved. It would be inequitable to require attorneys to absorb, in addition to the lost time, the expense of computer generated research assistance programs such as Westlaw or LexisNexus.

The Court awards plaintiff's counsel $137,107.95, the full cost for their electronic research.

2. Copying Costs

Plaintiff seeks copying costs in the amount of $128,015.38 - $49,761.36 for third party copying services and $78,254.02 for in-house copying. Defendants claim that copying is an administrative cost constituting routine overhead and is not

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> staffing of civil right cases, and thus to larger fee awards.

Id. at 591-592.

recoverable. Defs'. Opp. at 37. While acknowledging that defendants were charged for large copying jobs[27], defendants claim that plaintiff's counsels' charge for ordinary copying is "patently unreasonable". Id. Defendants seek a reduction in copying costs of $103,698, or alternatively, a 75 percent across-the-board reduction, which totals $96,011.

"[P]laintiff is entitled to recover reasonable out-of-pocket expenses that were incurred during the litigation and that are normally charged to a fee-paying client." Ham, 2000 WL 872707, at *13 (internal citations and quotations omitted). Recoverable expenses include those items not associated with an attorney's routine overhead, "such as duplicating, postage and telephone costs." Smart, 9 F. Supp. 2d at 153-54 (describing recoverable expenses under fee shifting statute); Tsombanidis, 208 F. Supp. 2d at 286 ("[i]dentifiable, out-of-pocket disbursements for items such as photocopying, travel and telephone costs are generally taxable ... and are often distinguished from nonrecoverable routine office overhead") (quotations omitted); Lambert v. Fulton County, GA, 151 F. Supp. 2d 1364, 1370 ("[i]n short, with the exception of routine office overhead normally absorbed by the practicing attorney, all reasonable expenses incurred in case preparation, during the course of litigation, or as an aspect of settlement of the case may be taxed as costs ....") (internal citations and quotations omitted). Whether photocopying costs

[27] Defense counsel's firm charged $6,118.90 for in-house copying and $18,198.42 for third-party copying.

are recoverable depends, in part, on whether the fee shifting statute or local rule allows for such recovery.

Here, the indemnification agreement provides that "all ... expenses ..." are recoverable. The Court finds that the only limitation as to costs under Section 11.1(a) is that they must be "reasonable". Reasonable costs awarded under a contract may cover a more comprehensive range of expenses than those taxable under local rules. J.P. Sedlak Associates, 2000 WL 852331 (finding that costs awarded in certain types of cases are broader than in other instances).

Due to the magnitude of this case and the voluminous documents produced both in discovery and for trial, the Court finds that plaintiff's cost of $49,761.36 for third-party copying services is reasonable and recoverable. However, the Court finds the cost of $78,254.02 for in-house copying unreasonable.

Plaintiff's counsel claim that the firm charged the market rate of 20 cents per page for in-house copying. Counsel could not provide the exact number of pages copied. Dividing the amount charged per page (20 cents) by the total cost of in-house copying ($78,254.02), the Court estimates the number of pages allegedly copied in-house totals 391,270.01.

This total is both troubling and questionable. For example, plaintiff alleges to have produced an estimated 75,000 pages during initial discovery. Phelan Aff. at 4. Plaintiff also states that more boxes of documents were subsequently provided to defendants. Id. Undoubtedly, many of these documents were later

copied to be used as exhibits at the two trials. However, the Court finds it likely that at least some of these copies had to have been made by third-party copying services, and that amount has been submitted as a separate cost. It would be unreasonable to hold defendants responsible for additional in-house photocopying totaling close to 300,000 pages. Therefore, the Court finds that the number of reimbursable pages for in-house copying must be cut in half. The Court also finds that the prevailing rate in Connecticut for copying is 15 cents per page. To summarize, plaintiff is entitled to recover the cost of copying 195,635 pages in-house at 15 cents per page for a total of $29,345.25. Combining both in-house and third-party copying, plaintiff's recovery for photocopying costs totals $79,106.61.

3. **Coding/Scanning**

Plaintiff claims coding and scanning costs in the amount of $18,007. Plf's. Ex. 3, Tab 5. Defendants claim that these are administrative costs and are not recoverable.

The Court finds that coding and scanning documents into software for both case management and trial presentation are administrative costs. Administrative costs are considered an attorney's overhead and are not recoverable. Therefore, plaintiff's request for costs for coding/scanning in the amount of $18,007 is denied. St. George v. Mak, Civ. No. 5:92CV587 (HBF), 2000 WL 303249, at *5 (D. Conn. Feb. 15, 2000).

4. **Mediation Costs**

Plaintiff claims mediation costs totaling $4,467.29. Defendants object to this claim, alleging that prior to the mediation the parties agreed to bear their own mediation costs. Fisher Aff. at 8. Plaintiff alleges that while it agreed to pay the mediation entity directly, it never agreed to forfeit any right to indemnification for such expense. Phelan Second Aff. at 8.

The main purpose of mediation is to facilitate a neutral environment for parties to meet and discuss whether an alternative resolution of the case can be agreed upon prior to incurring the costly expense of trial. To encourage participation in this mediation practice, the Court finds it important that parties bear their own costs of mediation. Doing so will deter the unnecessary and excessive expenditure of money by parties during settlement negotiations. Thus, the Court declines to award the cost of mediation, and defendants' request to deduct $4,467.29 from the total costs is granted.

5. **Miscellaneous Travel/Room Related Costs**

Plaintiff submits miscellaneous travel costs totaling $69,536.75. Defendants challenge the following costs: movie rentals ($36.92); gift shop charge ($10.65); a work room at the Connecticut hotel during each trial ($7,831.24 for the 2005 trial and $12,652 for the 2002 trial); a one-month minivan rental ($1,465.71); laundry costs ($733.60); supplies, photocopying, and

telephone charges ($1,583.97); mileage/parking ($1,130.21); and a New York hotel room charge for Attorney Goldberg ($371.28). Defs'. Exhibit G. Defendants claim that $5,332.35 should be deducted from the total costs.

As to the above listed miscellaneous charges, the Court finds as follows:

1. Plaintiff conceded that the movie and gift shop charges were inadvertently left in the bill. This amount has already been deducted from the costs originally sought.

2. Plaintiff asserts that the van was necessary to transport electronic equipment and documents to court for trial. After the initial setup, however, all the equipment and documents were left in the locked courtroom at night. One of the benefits of electronic scanning and trial presentation software is to make voluminous cases more manageable by storing all the data/evidence on a laptop. Giving this technology, transporting the necessary materials to the hotel on a laptop to facilitate preparation for the next day of trial should not have been onerous. The Court finds that the $1,465.71 cost of a monthly minivan rental unreasonable and deducts it from the total cost.

3. With respect to the laundry expense, plaintiff's counsel have failed to offer any evidence to support the conclusion that this expense was incurred solely because counsel were living in a Connecticut hotel during the pendency of the civil trials conducted in this case. Plaintiff's counsel have not claimed that this laundry expense would not have been

incurred had they been living at home. In the absence of such proof, the Court finds that the $733.60 in laundry costs must be deducted from the total costs.

4. Plaintiff claims that Attorney Goldberg, who was in New York on October 30, 2003, had a hearing in Bridgeport on October 31, 2003. To avoid duplicative and unnecessary travel, Attorney Goldberg stayed in New York on the night of the 30th, instead of traveling back to Boston. This is not unreasonable, and plaintiff is entitled to the cost of the hotel room - $371.28.

5. Plaintiff's costs for supplies, photocopying, and telephone charges ($1,583.97), as well as mileage/parking ($1,130.21) are reasonable. It is well recognized that unforeseen events occur during trial which can result in the need for additional supplies and photocopying. It is also reasonable that counsel be reimbursed for mileage and parking costs.

6. Originally, defendants stated that, as they occupied one work room during the trials, plaintiff's counsel were entitled to seek reimbursement for the cost of one room. Defendants claimed, however, that plaintiff was charging for two work rooms for both the 2002 and 2005 trials. At the hearing, defense counsel conceded that this was a mistake, and that, in fact, plaintiff's counsel only rented one work room during each trial. Defense counsel, however, still sought a reduction in the amount of $4,728. Although uncertain how this figure was derived, the Court finds that plaintiff's costs for procuring one work room during the 2002 trial and 2005 trial were reasonable.

Plaintiff is entitled to reimbursement in the total amount of $20,483.24 for the rental of these rooms.

IV. Conclusion

Plaintiff's motion for fees and costs is granted. To summarize, the attorneys fees awarded are calculated as follows:

Attorney/ Paralegal/ Law Clerk	Year	Hours	x Rate/Hour =	Total
Goldberg	1996	170.9	$314.50	$53,748.05
	1997	1.65	$321.72	$530.84
	1998	4.2	$296.25	$1,244.25
	1999	24.95	$333.95	$8,332.05
	2000	6.65	$345.18	$2,295.45
	2001	70.15	$355.00	$24,903.25
	2002	669.65	$360.61	$241,482.49
	2003	69.95	$368.83	$25,799.66
	2004	27.40	$378.45	$10,369.53
	2005	374.2	$391.48	$146,491.82
			Total	$515,197.39
Krowicki	1996	212.70	$240.00	$51,048.00
	1997	32.70	$212.50	$6,948.75
	1998	24.1	$212.50	$5,121.25
	1999	120.20	$206.25	$24,791.25
	2000	33.6	$263.41	$8,850.58
	2001	899.40	$270.91	$243,656.45
	2002	1027.70	$275.19	$282,812.76
	2003	107.30	$281.46	$30,200.66
	2004	15.20	$288.80	$4,389.76
	2005	410	$298.74	$122,483.40
			Total	$780,302.86

Attorney/ Paralegal/ Law Clerk	Year - Hours x Rate/Hour =	Total
Phelan	2001 580.20 $270.91 2002 1729.50 $275.19 2003 174.70 $281.46 2004 82.20 $288.80 2005 1133.50 $298.74 Total	$157,181.98 $475,941.11 $49,171.06 $23,739.36 $338,621.79 $1,044,655.30
Hole	2004 32.8 $142.50 2005 571.3 $150.00 Total	$4,674.00 $85,695.00 $90,369.00
Short	2001 22 $122,00 2002 19.3 $129.00 2003 13.8 $135.00 Total	$2,684.00 $2,489.70 $1,863.00 $7,036.70
Tymchenko	2001 13.2 $122.00 2002 .4 $129.00 2003 7.9 $135.00 Total	$1,610.40 $51.60 $1,066.50 $2,728.50
White	2003 14.9 $135.00 Total	$2,011.50 $2,011.50
Bigelow	2002 21.9 $129.00 Total	$2,825.10 $2,825.10
Calvert	2001 44.64 $122.00 2002 73.18 $129.00 Total	$5,446.08 $9,440.22 $14,886.30

Attorney/ Paralegal/ Law Clerk	Year - Hours x Rate/Hour =	Total
Gaston	2002 16.10 $129.00 Total	$2,076.90 $2,076.90
Hackett	2001 12.20 $60.75 2002 22.6 $129.00 Total	$741.15 $2,915.40 $3,656.55
Eggert	2001 315.89 $122.00 Total	$38,538.58 $38,538.58
Kim	2001 166.83 $122.00 2002 237.5 $150.00 2003 97.4 $158.00 Total	$20,353.26 $35,625.00 $15,389.20 $71,367.46
Downie	1996 20.90 $94.50 Total	$1,975.05 $1,975.05
Baxter	2002 59.6 $150.00 2003 71 $158.00 Total	$8,940.00 $11,218.00 $20,158.00
Savery	2002 68.8 $150.00 Total	$10,320.00 $10,320.00

Attorney/ Paralegal/ Law Clerk	Year - Hours x Rate/Hour =	Total
Goldberg	1996 44.9 $110.00	$4,939.00
	Total	$4,939.00
Siczewicz	1996 30.20 $150.00 2001 74.50 $190.00 2002 570.50 $200.00 2003 2.0 $210.00	$4,530.00 $14,155.00 $114,100.00 $420.00
	Total	$133,205.00
Brennan	2005 725.1 $75.00	$54,382.50
	Total	$54,382.50
Curran	2001 13.50 $60.75 2002 26.10 $67.50 2003 2.3 $67.50 2005 22.7 $75.00	$820.13 $1,761.75 $155.25 $1,702.50
	Total	$4,439.63
Palmieri	2000 .20 $55.00 2001 209.80 $60.75 2002 978.70 $67.50 2003 24.30 $67.50 2004 4.5 $75.00 2005 83.4 $75.00	$11.00 $12,745.35 $66,062.25 $1,640.25 $337.50 $6,255.00
	Total	$87,051.35

Attorney/ Paralegal/ Law Clerk	Year - Hours x Rate/Hour =	Total
Lindsay	2001 17.20 $60.75 2002 81.90 $67.50 2003 9.0 $67.50 Total	$1,044.90 $5,528.25 $607.50 $7,180.65
Blake	2001 279.10 $60.75 Total	$16,955.33 $16,955.33
Gelbwasser	2002 39.9 $67.50 Total	$2,693.25 $2,693.25
Gibbs	2002 13.5 $67.50 Total	$911.25 $911.25
	TOTAL ATTORNEY FEES	**$**2,919,863.15

From the award of attorney's fees the following deductions must be taken:

Attorney's Fees Total $2,919,863.15

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Vague Entries $84,531.52

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Excessive Hours $140,885.87

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Travel Deduction $25,754.82

Total Fees $2,668,690.94

To repeat, costs are awarded as follows:

Total Claimed Costs	$474,649.91
-	
Photocopying Deduction	$48,908.77
-	
Coding/Scanning	$18,007.00
-	
Mediation Costs	$4,467.29
-	
Miscellaneous Travel Expenses	$2,199.31
Total Costs	**$401,067.54**

SO ORDERED and entered this 5th day of September, 2006, at Bridgeport, Connecticut.

/s/
HOLLY B. FITZSIMMONS
UNITED STATES MAGISTRATE JUDGE