Design and Construction Management Professional Reporter

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Attorneys' Fees – How Much Can I Recover?

By Justin R. Giles, III, Esq.

IT IS NO SECRET THAT LITIGATION CAN be expensive. Attorneys' fees are typically calculated on an hourly basis at an hourly rate that, depending on the complexity of the litigation and the attorney retained, can range anywhere from $200 to $1,000 an hour. For many potential litigants, the costs associated with litigation can act as a roadblock or deciding factor in whether or not to prosecute or defend a claim.

Unfortunately, the total cost of litigation is impossible to determine at the onset of the case. No one knows how the litigation will proceed. There are factors that can drive up or down the cost of litigation, including opposing counsel's practice style, the cooperativeness of witnesses, the amount of documents discovered, etc.

What frustrates this process even more is that most states follow the "American Rule" which provides that attorneys' fees are recoverable only by contract or statute. Therefore, unless the parties have previously agreed that the prevailing party in litigation will recover its fees and costs, or the claim is being asserted pursuant to a statute that allows for the recovery of fees and costs, no recovery of fees and costs will be allowed. Given the uncertainty of the total cost of litigation, coupled with the burden of bearing one's own fees and costs, more than 96% of disputes settle.

Even when attorneys' fees and litigation costs are recoverable, it is rare that a party will ever recover all

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Architect Succeeds in Limiting Liability by Memorializing Agreement for Changes in Scope

By Justin M. Jagher, Esq.

AN ARCHITECT RECENTLY SUCCEEDED IN SETTLING AN ACTION for a nominal sum despite significant demands to the contrary. The matter began with a claim by a design-builder against an owner of an industrial project for outstanding fees in the amount of $800,000. Not surprisingly, the owner asserted a counter-claim for nearly the same amount based on allegations of flooring failures allegedly resulting from the absence of a vapor barrier and failure to conduct moisture testing. The design-builder then asserted a third party claim against the architect alleging breach of the standard of care due to deficiencies in plans, drawings and specifications concerning the flooring. The day before arbitration was to commence, the parties settled all claims in exchange for a global release. For the reasons set forth below, the architect contributed the least to the settlement.

In July 2008, the design-builder was retained by the owner to inspect a building it hoped to purchase and to submit a due diligence report. The design-builder and the owner subsequently entered into an agreement to renovate the building for use in office manufacturing and clean room operations ("Project"). The architect entered into an agreement with the design-builder for design and construction administration services. The architect's agreement excluded any responsibility for construction means and methods.

In the summer of 2009, the design-builder and flooring contractor communicated with each other by email concerning issues with the flooring, but they did not join the architect in the communications. Despite their communications, there was an apparent misunderstanding between the design-builder and the flooring contractor as to whether the contractor was to engage in moisture testing. Although the architect had been consulted by the design-builder concerning other aspects of the Project, it was not included in any flooring discussions. The architect was not asked to, nor did it, perform any invasive testing of the floor slab, since that was the province of the design-builder or the flooring contractor. The architect's role was limited to the site observations identified in its agreement. Although the design-builder had advised the architect that it would follow the manufacturer's recommendations, neither the design-builder nor the flooring contractor ever performed the moisture testing dictated by the manufacturer.

In September 2009, the design-builder sued the owner for breach of contract and in *quantum meruit*. In its answer and counterclaim, the owner alleged that, because the resilient and epoxy flooring systems had begun to fail, it was not obligated to pay the balance of the funds allegedly due and owing. The design-builder then filed a third-party action against the flooring contractor and the architect alleging breach of contract, breach of warranty and negligence; it also moved to compel mediation and arbitration. Generally, the design-builder alleged that the third parties' design, specifications and/or installation of the flooring systems were defective.

After a failed mediation in the fall of 2010, the owner filed an arbitration demand against the design-builder who, in turn, filed a demand for arbitration against the architect alleging breach of contract, breach of warranty and negligence.

In its defense, the architect asserted that the flooring deficiencies were caused by circumstances beyond its control after the owner changed the floor selection in the middle of the project. The revised material and specifications were dictated to the design-builder who conveyed them to the architect. After conveying the modification, the design-builder expressly advised the architect that it was not required to provide detailed specifications for the installation because it intended to rely on the manufacturer's recommendations. As such, the architect incorporated the revised material selections into the project's finish schedule on the

construction drawings. At no time did the architect engage in direct communications with the owner. Rather, the design-builder served as the liaison between the parties.

In the end, the architect was able to successfully settle the claim because: 1) the owner selected the new flooring to reduce project costs; 2) the design-builder advised the architect, in writing, that it would follow the manufacturer's recommendations for installing the flooring; 3) the design-builder expressly limited the architect's role to identification of the new product in the finish schedules; and 4) all communications concerning the flooring took place solely between the design-builder and the owner, or the design-builder and the flooring contractor. As such, the architect was able to demonstrate that it had no liability for the damages sustained by the owner for the deficient floor finish. Contrary to the design-builder's allegations, because the revised flooring product was an accepted alternate issued by the owner and design-builder during the construction phase, it was not within the architect's scope to provide a detailed specification.

To limit one's potential liability for deficiencies, all communications concerning modifications to a project, or to one's scope of work, during the course of a project should always be clearly identified and always memorialized in writing.

Absolute Legislative Immunity Regarding Alleged False Statements Pertaining To a Bidder's Credentials Is Not Extended to Engineer Retained By City

By Matthew F. Lenzi, Esq.

A KENTUCKY APPELLATE COURT RECENTLY HELD THAT ABSOLUTE legislative immunity afforded to a mayor and council members regarding alleged false statements is not extended to an independent contractor hired to perform engineering services, where the contractor was not a member of the city council, and had no duties imposed upon it by statute. The dispute in *D.F. Bailey, Inc. v. GRW Engineers, Inc.*, 350 S.W.3d 818 (2011) stems from statements GRW Engineer's ("GRW") president, Ron Gilkerson, made in a letter to the City of Liberty, Kentucky's ("City") mayor pertaining to the reputation of D.F. Bailey, Inc. ("D.F. Bailey") and its ability to provide construction services to the City.

The City contracted with GRW to provide engineering services to expand its water treatment plant ("Project"). According to the contract terms, GRW was retained as engineer for the City, which included the responsibility to obtain and evaluate the bids for the Project, as well as investigate the low bidders' qualifications and references.

Following the bidding process, D.F. Bailey was the lowest bidder having submitted a bid only $123 below the next lowest bid. GRW's project manager sent a letter to the City's mayor stating, in relevant part:

D.F. Bailey has listed several projects they had performed that were designed by Strand Engineers. We contacted Mark Askin of Strand Engineers to discuss the projects that Bailey had been awarded. Mr. Askin reported that the Water Line project in Owen County had been completed a year behind schedule, and there were many complaints and issues with completion of the work and cleanup of the construction areas. They had also received calls from suppliers indicating that their invoices had not been paid by Bailey. A Pump Station and Water Line project in Johnson County was also "way behind

> schedule," and the owners had begun charging liquidated damages. Bailey has responded with an attorney's notice disputing those. More recently, Bailey performed water and sewer work for the Bourbon County Fiscal Court. Mr. Askin reported that the work was performed primarily by sub-contractors.
>
> Based upon the references provided and the results of the references check, we are unable to recommend that the City of Liberty award Contract No.2 to D.F. Bailey, Inc.

GRW's letter was read by the mayor at the City council meeting, after which the council voted to accept the second lowest bidder. Subsequently, Mark Askin of Strand Associates, Inc. sent a letter to GRW complaining that it had made false representations in its report to the mayor:

> Your letter [to the City's mayor] references construction projects in Owen, Bourbon and Johnson Counties. First of all, the Owen County project was completed behind schedule as noted in the letter, however, it should also be noted that no liquidated damages were issued and we did not comment on payment to suppliers. The Bourbon County project was completed on time and the contractor used local labor to perform some of the work and we made no comment on the use of subcontractors. Finally, the Johnson County project is not closed out to date and once again we have made no comments to you regarding this project.

Bailey then sued GRW for defamation, libel, and tortious interference with business relations and with business expectancy. GRW moved to dismiss the claims arguing that it was absolutely privileged to make the statements since they were made during the course of a legislative decision-making process. The trial court entered judgment for GRW and dismissed D.F. Bailey's claim.

On appeal, the Kentucky Court of Appeals reversed the ruling claiming immunity is "not only limited to actual members of a legislative body but also only to statements made while acting within the scope of the duties imposed upon them by statute." The court explained that congressmen are immune from suits for either prospective relief or damages under the Speech or Debate clause found in the U.S. Constitution, Art. 1, § 6, as well as the Kentucky Constitution, to insure legislative independence. The Kentucky courts have since interpreted the foregoing article and extended in several instances. For example, in *Jacobs v. Underwood,* 484 S.W.2d 855 (Ky. 1972), the court applied legislative immunity to city council members and city commission members. The court further extended immunity to members of boards established by the legislature. In *Gray v. Central Bank & Trust Co.* 562 S.W.2d 656 (Ky. App. 1978), the court applied immunity to statements made "while acting within the scope of the duties imposed upon them by statute."

Although GRW relied on the foregoing decisions in support of its position that parties supplying information to government entities during a decision-making process are absolutely protected, the *Bailey* Court declined to expand the privilege as interpreted by GRW. Rather, the court held that absolute immunity is limited to statements made by persons "acting within the scope of the duties imposed upon them by statute" thereby strictly interpreting the holdings in *Jacobs* and *Gray*.

Based on the ruling entered in *Bailey*, design professionals in Kentucky are held to a higher standard in their communications than persons authorized to act by statute that otherwise enjoy absolute immunity under similar circumstances. As such, at the time of contracting, it is important to determine whether a particular state's immunity statutes also encompass design professionals retained to act on behalf of a governmental entity.

Wisconsin Appellate Court Holds Contract Claims are Barred by the Statute of Limitations and Contracts Incorporating both Products and Professional Services May be Encompassed within the Economic Loss Rule under the "Predominant Purpose" Test

By Pamela Selvarajah, Esq.

A WISCONSIN APPELLATE COURT RECENTLY ENTERED SUMMARY judgment for a contractor in a dispute with the owner of a project. The court held that (1) claims arising from the provision of both a product and professional services can be barred by a statute of limitations prior to expiration of a longer statute of repose; (2) the economic loss doctrine applies to claims involving a contract with both products and services if the predominant purpose of the contract is to provide a "product"; and (3) tort claims arising from the provision of professional services are encompassed within the economic loss doctrine.

In *Kalahari Development, LLC v. Iconica, Inc.,* 2012 WL 569368 (Wis. App. Feb. 23, 2012), a resort owner brought an action against a design-build contractor that provided architectural, engineering and construction services for a $26 million dollar water park resort and convention center ("Project"). The contractor was retained in May 1999, and the Project was substantially completed by May 2000. In May 2008, eight years later, the owner discovered moisture damage to the building walls. The owner filed suit against the contractor and its insurer in April 2010, almost ten years after substantial completion, asserting claims for breach of contract and professional negligence pertaining to architectural and construction services under the contract. The trial court granted the contractor's motion for summary judgment on the grounds that the claims were barred by the expiration of the statute of limitations and by the economic loss doctrine. The owner appealed from the entry of judgment.

The owner first alleged that Wis. Stat. §893.89(1) established a 10-year period of repose for all claims arising from improvements to real property and, therefore, its claim was not time-barred. It argued that, based on its interpretation of the law, the owner had ten years after substantial completion of the Project to bring an action against a builder or designer. The appellate court disagreed with this broad interpretation of the statute, and cited subsection (3)(a) which provides that the statute does not extend the time for commencing lawsuits that are already time-barred by the applicable statutes of limitation. Because the owner's breach of contract claim was governed by a six-year statute of limitation, which had long-since expired, the owner's claim was time-barred. The owner then asserted a technical argument that the statute referenced by the court was inapplicable because it referred to statutes of limitation applicable to "damages," whereas the statute he wanted to apply pertained to "causes of action." The court rejected this argument because the owner sought to recover monetary damages for breach of contract.

The owner then argued that the 10-year statute of repose applied on the grounds that a portion of the statute provides that, if a person suffers damages as a result of a defect in real property within three years of the expiration of the 10-year period (i.e. in years 7-10), the time to file suit is extended for three years after the damage is discovered. The court again disagreed, finding that the referenced provision was inapplicable to suits already barred by a statute of limitation. The court stated further that the owner's interpretation would frustrate the legislature's intent to provide protection from

long-term liability for those involved in improvements to real property.

The appellate then turned its attention to the lower court's ruling that the economic loss doctrine barred the professional negligence claim. The court ultimately held that the doctrine applied to contracts involving both products and services where the "predominant purpose" of the contract was to provide a product. Although the court found that the contractor had provided architectural, engineering and construction services as well as construction materials to the Project, under *Linden v. Cascade Stone Co.,* 699 N.W.2d 189 (Wis. 2005) and *1325 N. Van Buren, LLC v. T-3 Group, Ltd,* 716 N.W.2d 822 (Wis. 2006), the predominant purpose of the contract was to provide a product, namely, the final structure. The owner disagreed, arguing that its contract with the contractor was for architectural and engineering services and, as such, the economic loss doctrine was inapplicable. The court rejected the argument holding that the predominant purpose of the contract was to provide a product - the water park resort and convention center. The owner argued that the "predominant purpose test" did not apply if a contract involves *professional* as opposed to nonprofessional services. The appellate court disagreed, citing *Insurance Co. of North America v. Cease Electric Inc.,* 688 N.W.2d 462 (Wis. 2004), which refused to distinguish between professional and nonprofessional services for purposes of applying the economic loss doctrine. Therefore, the economic loss doctrine applied.

Recent Client Experience Reminds Companies to Take Care With "Form" Contracts of All Types

By Peter C. Lenart, Esq.

DONOVAN HATEM LLP RECENTLY RESOLVED A COMPLEX COMMERCIAL litigation matter on very favorable terms for its client. The client, the construction division of a prominent New England engineering firm, found itself sued in Florida over a waste water treatment project which it undertook in New Hampshire. The manufacturer of a component used in the project alleged that it was entitled to full payment for the component, despite the fact that the component experienced complete structural failure, had to be re-designed and replaced in full and continued to suffer mechanical and performance issues over the course of several years. The successful result was not gained easily, and it was necessary to overcome multiple unfavorable contractual provisions which appeared in the opposing party's standard contact documents.

The operative contract was a proposal-styled Purchase Order for the component in question. It contained significant, small print "boilerplate" language favorable to the Florida-based manufacturer. Among them, was the application of Florida law to the dispute, a (contested) provision that Florida was the only appropriate venue for lawsuits pertaining to the contract, payment terms and schedules favorable to the manufacturer and a provision requiring binding arbitration. This contentious matter found resolution only through the investment of significant investigation, multiple site visits and many days of lengthy out-of-state depositions. This article focuses on some of the lessons learned from this case.

I. Beware of Boilerplate!

Form or Boilerplate contracts, including Purchase Orders, are written for the benefit of the party offering the terms. Small print provisions should be read and understood before signing. Unacceptable terms can be negotiated or rejected. Unacceptable paragraphs can be crossed out, initialed, dated and returned with the remainder of the document signed and agreed to. Doing so might not completely invalidate the term in all cases, as contract offer and acceptance is fact based, but it at least sets forth that a party did not agree to a specific term, and did not intend to be bound by it.

II. Arbitration? Yes or No?

Arbitration provisions are almost universally enforceable. It is important to know whether a contract contains an arbitration provision. If it contains such a provision, a party must decide if it is willing to waive its right to litigation in the event of a contractual breach. Arbitration has its advantages, but they are typically in favor of a party pursuing a claim. In addition, while arbitrations can be faster than legal remedies given court backlogs delaying adjudications and trials, arbitrations are not necessarily a less expensive option as many believe. Arbitrators are paid by the parties involved in a given dispute. It is quite common for arbitrators in commercial disputes to charge $300 to $550 an hour for their services. The risk of this cost must be considered before agreeing to an arbitration provision. In general, arbitration provisions are not advantageous to design professionals as defendants unless there are significant and compelling counterclaims involved.

III. Forum Selection Clauses and Litigation in Distant States

Forum selection clauses dictate where a dispute over a contract must be litigated. Such clauses have been upheld by the Supreme Court of the United States, and are thus nearly impossible to circumvent if included in a valid contract. As a result, a company operating in only one state might have to defend an action in a far away location where it has never done business simply because of a few unnoticed sentences in a form contract.

An action can also be maintained by a Plaintiff in its home state if it can show that the entity it is suing has sufficient business contacts with that jurisdiction. The simple act of sending a payment to a company in a distant state could be deemed by a court as a significant enough act of "doing business" in a state to maintain an action in a distant jurisdiction. With vendors and suppliers located all across the country, companies can easily find themselves subject to legal actions in unanticipated locations. In order to avoid this, companies should try to employ their own business documents, including contracts. Those documents should contain favorable venue language so that a company cannot be sued outside of its places of business. Such clauses can be added to business contracts with the assistance of counsel.

IV. Choice of Law Provisions

Choice of law provisions dictate what jurisdiction's law will be applied. It is possible to have a lawsuit in one jurisdiction, with the disputed contract interpreted under the laws of another jurisdiction. Needless to say, lack of awareness regarding these clauses can be problematic. They can lead to additional litigation costs, and they can have the unfavorable law of another state applied to the detriment of one party to a contract. Some states are business friendly and have well-developed business case law. Others simply do not. Agreeing to the use of the law of another jurisdiction, without knowing whether it is advantageous or detrimental, can be a costly oversight in finalizing and executing a business contract.

V. Conclusion

Should any of the contractual provisions discussed above appear in a form contract or Purchase Order, they should be read, understood and incorporated only after careful consideration and, ideally, with the input of counsel. Business counsel can almost always provide appropriate pre-contracting guidance in a cost-effective manner. In entering form contracts it is prudent to remember the old adage that "an ounce of prevention is worth a pound of cure." The risk of not seeking two or three hours of legal advice (and often even less) can easily result in two to three years of costly, aggravating, and disruptive commercial litigation.

Supreme Judicial Court Rules Valid Contractual Limitation Period

By Colin M. Black, Esq.

WHILE THE MASSACHUSETTS LEGISLATURE HAS ENACTED STATUTES that govern the timeframe within which a claim must be brought, the Supreme Judicial Court ("SJC") recently held that businesses may bargain for more advantageous limitation periods in the contracts they negotiate. In a November 21, 2012 slip opinion, the SJC found valid and enforceable a contractual provision that shortened the time within which claims must be brought.

In *Creative Playthings Franchising Corp,* et al. *v. Reiser,* the Supreme Judicial Court answered a question that was certified by the District Court for the District of Massachusetts. The underlying case involved a dispute between a franchisor and one of its Florida franchisees. Creative Playthings, the franchisor, filed a civil action in federal court in Massachusetts against James Reiser, for, among other things, failing to pay royalties and other fees. Mr. Reiser filed counterclaims for breach of the covenant of good faith and fair dealing, fraudulent inducement, and violations of G.L. c. 93A and Florida's corresponding unfair trade practices statute. Creative Playthings moved for summary judgment on Reiser's counterclaims asserting that they were time barred under the contractual limitations provision in the franchise agreement. The Federal District Judge declined to decide the motion in reliance on the limitations provision because Massachusetts courts had not yet decided the question of whether bargained for limitation provisions were generally enforceable under Massachusetts law. Thereafter, the Federal District Judge certified the question to the SJC.

At issue before the SJC was whether a limitation period in a franchise agreement was valid and enforceable. In answering the question in the affirmative, the SJC relied on long-standing common law principles permitting such contractual provisions. Noting that "[o]riginally there was no limitation to actions," the SJC ruled that limitations of actions were permissible by agreement of the parties. Moreover, the SJC found that the Massachusetts Legislature has accepted contractual limitation periods because, in certain circumstances and industries, it chose to establish minimum time periods but failed to do so in others, which it could have done. The SJC further emphasized that under Federal law, contractual limitation periods shorter than statute of limitation periods are permissible, provided they are reasonable. In doing so, it established reasonableness as a criterion for a valid and enforceable limitation provision.

The SJC, however, cautions negotiating parties from drafting limitation periods that (1) do not permit the operation of the discovery rule, and (2) act as statutes of repose - effectively eliminate any claim regardless of when discovered. In short, the discovery rule operates to suspend a limitations period until a plaintiff learns or should have learned of the cause of action. A limitation of repose extinguishes a cause of action after a fixed period of time, regardless of when the cause of action was discovered. Contractual limitations of repose are *per se* invalid and unenforceable because only the Legislature may impose repose limitations.

In sum, design professionals that negotiate shortened contractual limitation period can be assured that the courts will uphold such a limitation provisions as valid and enforceable provided that the provision is reasonable, not limited by a controlling statute and not contrary to public policy. Shortened contractual limitation provisions require the contracting parties to be alert and diligent with respect to their respective obligations and potential causes of action. The upside to shorter limitations periods is clear – potential claims extinguish sooner. For example, a design professional could try to negotiate a limitation period geared toward completion of the design work on a project, even if the project had not yet reached substantial completion. Limitation provisions are a double-edged sword, however, as they apply equally to both parties. Accordingly, a thorough analysis of advantages and potential disadvantages is warranted before negotiating a contractual limitation provision.

Attorneys' Fees – How Much Can I Recover? *continued from page 1…*

of its fees and costs. This is because recovery of fees and costs is typically limited by the courts to the "reasonable" amount of fees and costs generated. Inevitably, some fees and costs generated during litigation will be determined to be duplicative or unsupportable. A case that highlights the reasonable approach to the recovery of attorneys' fees and litigation costs is the recent case of *Tampa Bay Water v. HDR Engineering, Inc.,* 2012 WL 5387830 (M.D. Fla.).

In *Tampa Bay Water,* Tampa Bay Water ("TBW") retained HDR Engineering, Inc. ("HDR") to design and act as Engineer of Record for the C.W. Bill Young Reservoir Project ("Project"). The Project was unique because a reservoir of its size (1,000 acres and 15,500,000,000 gallons of water) had never been constructed. Unfortunately, once construction was completed, an unexpected cracking occurred in the flat-plate soil cement. TBW subsequently sued HDR claiming design errors. TBW's initial demand exceeded $225 million.

The case was lengthy and contentious. Litigation lasted approximately five years. In the litigation, there were approximately 17 million pages of documents, more than 20 experts, 35 depositions, 49 witnesses, 1279 exhibits and 678 separate docket entries, including numerous motions for sanctions, to compel discovery and for summary judgment. There were settlements with various co-defendants, the settlement and subsequent withdraw of settlement with HDR and the appeal. As a result, HDR expended $10,474,291.50 in attorneys' fees using two law firms and over 40 different lawyers and 28 paralegals. HDR also expended $11,878,959.95 in litigation expenses and taxable costs. Ultimately, the jury returned a verdict in favor of HDR. What made this case so compelling was the fact that the parties' contract contained the following provision: "In any litigation arising out of this Agreement or in any way related to the performance of the Work, the prevailing party shall be entitled to recover all costs and expenses incurred, including, without limitation, attorneys' and legal assistants' fees and costs incurred prior to trial, at trial, on any appeal, and in any bankruptcy proceedings." Based on this contractual provision, HDR sought its fees and litigation expenses.

The court held that the parties expressly agreed in their contract that the prevailing party would be entitled to recover all costs and expenses incurred but, consistent with Florida law, HDR would be entitled to recover only a reasonable fee for the work performed. The court noted that fee applicants must use "billing judgment." This simply means that excessive, redundant or unnecessary hours should be excluded. After an *in camera* review of the unredacted billing invoices, and based on the affidavits submitted by HDR's attorneys, the court was satisfied that HDR's attorneys used billing judgment. After determining that HDR satisfied its initial burden of supplying the court with detailed evidence of the fees and costs, the court awarded HDR $9,249,219.85 in attorneys' fees and $10,898,186.22 in litigation expenses and taxable costs.

In explaining the basis for its award, the court first noted that the contentious nature of the litigation, the issues involved in the case and the length of trial generated extraordinary attorneys' fees for both sides (TBW spent $5,347,233.00 in attorneys' fees and $6,281,116.97 in costs and expenses). While the parties agreed that the attorney's fees were reasonable, TBW disputed the amount of time HDR's attorneys reasonably expended. TBW also generally objected to several categories of services HDR's attorneys and experts provided. TBW requested a reduction based on those categories.

In examining the various categories, the court found no justification for excluding expert fees for experts excluded or withdrawn, as those fees were necessary and reasonable. HDR's technology expenses, transcript costs, service costs, with the exception of multiple attempts, pro hac vice costs, allowable witness costs and detailed copying costs were all allowed. In essence, the court found that all supported costs were recoverable. The determining factor with respect to almost all fees and costs was whether they were duplicative and/or properly supported.

The court held that the use of multiple attorneys was common place in litigation of this nature, and HDR bore

the burden of showing only that the time spent by those attorneys reflected a distinct contribution to the case. As such, the hours for multiple attorneys should be reduced only if the attorneys were performing the same work. Ultimately, the court did reduce a portion of HDR's claim because it found that the second firm engaged by HDR spent time "getting up to speed" when it was brought into the litigation. The court determined that costs associated with becoming familiar with the case had already been incurred by the initial law firm and, as such, TBW should not be required to pay for the second law firm to learn the facts.

Additionally, the court reduced HDR's claim for an associate's time spent summarizing the case. The court stated that the associate's time was in essence duplicative of other attorneys' time in the case, as the associate attended events in a non-essential capacity.

While the court allowed out of town counsel's travel expenses, it did reduce the fee for the virtual office that out of town counsel set up in Tampa. The court reasoned that, because local counsel had offices in Tampa, there was no need for a second office and equipment.

Tampa Bay Water instructs that billing should be detailed enough to enable a court to determine whether the work performed was reasonable. Moreover, it highlights that a court will be hesitant to second guess a party's and their attorneys' decisions on how to manage a case. Absent clearly duplicative work, and assuming the fee is reasonable, the court will allow recovery if the parties have agreed to such recovery.

Notes:

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