THIRD CIRCUIT MAKES CLEAR THAT DISTRICT JUDGES CAN REJECT OUTRAGEOUS FEE PETITIONS OUTRIGHT

Date: 30 October 2018

U.S. Appellate Litigation Alert

By: David R. Fine

It is common for courts to trim attorney's fee awards when they conclude that fee petitions are excessive or poorly documented, but the Third Circuit has recently made clear that courts may go much further and deny fees altogether when what is requested is particularly excessive and poorly documented.

Consider *Clemens v. New York Central Mutual Insurance Co.*. [1] A jury awarded the plaintiff $100,000 in punitive damages on his bad-faith claim against his insurer. His lawyer then filed a fee petition seeking more than $900,000. In a 100-page opinion, the district judge considered every time entry for which the plaintiff's lawyers sought fees, and the judge concluded that the petition was so "outrageously excessive" that he awarded no fees at all.

According to the court of appeals, the plaintiff's lawyers did not keep contemporaneous time records but instead had a single lawyer try to "recreate" those records based on her estimation not only of the time she spent but that others in her firm spent — including some lawyers who had left the firm since the trial so they could not provide input. A great many of the entries were unduly vague. Counsel sought fees for 562 hours of trial preparation time, even though the trial took only four days and the district judge repeatedly admonished the plaintiff's lawyer "for not being prepared because he was obviously unfamiliar with the Federal Rules of Evidence, the Federal Rules of Civil Procedure and the rulings of this court." After finding these and other deficiencies, the district judge simply decided to reject the fee petition entirely.

The Third Circuit agreed with the district judge's criticism and then held that, although it had never formally endorsed an approach by which a district judge could deny a fee petition *in toto* if it sought "outrageously excessive fees," other federal courts of appeals embraced such a rule, and the Third Circuit would join them. To do otherwise, the court held, would encourage claimants to make unreasonable demands knowing that the only consequence would be a reduction.

Just two weeks after deciding *Clemens*, the Third Circuit decided *Young v. Smith* [2] and made clear that *Clemens* was no outlier. In *Young*, a district judge denied an attorney's fee petition in a civil rights suit. The lawyer represented a group of students who sued their school district and a teacher. The plaintiffs prevailed in a jury trial, but the district judge vacated the verdict because of plaintiffs' counsel's "outrageous conduct" throughout the trial. Before the second trial, the plaintiffs settled with the teacher for $25,000. At the trial, the school district prevailed. The plaintiffs' lawyer nonetheless submitted a petition seeking $733,002.23 in fees.

The district judge rejected the fee petition entirely after noting that it was "single-spaced, in either 6 or 8-point font that consumed forty-four pages and included hundreds of inappropriate, unethical entries that would likely be

illegal if billed to a client." For example, the lawyer sought fees for the first trial even though its result was vacated because of her misconduct. She sought fees for the second trial even though the result of that proceeding was a defense verdict. The district judge concluded that at least some of the time entries were fraudulent. He refused to award any fees, sanctioned the plaintiffs' lawyer $25,000, and referred the matter to the lawyer disciplinary board.

The Third Circuit affirmed and concluded that the plaintiffs' lawyer's conduct was "offensive and unprofessional." The court noted that it had not previously decided whether 42 U.S.C. § 1988 allows a court to deny any fees to a prevailing plaintiff when the request was "so outrageously excessive it shocks the conscience of the court" — recall that *Clemens* dealt with rejection of a fee petition in the context of a Pennsylvania statute rather than the federal civil-rights statutes — but the Third Circuit had no trouble joining the First, Fourth, and Seventh Circuits in holding that a court has that discretion.

Neither *Clemens* nor *Young* suggests that the Third Circuit has a generally negative view of fee petitions. However, the decisions make clear that the court will not countenance wildly excessive, poorly documented, or potentially fraudulent petitions and that counsel on the receiving end of such fee petitions should not hesitate to object.

Notes:
[1] No. 17-3150 (3d Cir. Sept. 12, 2008).
[2] No. 17-3190 (3d Cir. Sept. 25, 2018).

KEY CONTACTS

DAVID R. FINE
PARTNER
HARRISBURG
+1.717.231.5820
DAVID.FINE@KLGATES.COM

