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A Cautionary Tale About Lodestars, Over-Litigation and Having to Pay the "Other Guy's" Attorneys' Fees

When the plaintiff files a case with the prospect of recovering fees, the defense is fully entitled to fight hard." This was the opening sentence of a recent appellate decision, seemingly a favorable beginning for the defendant opposing the plaintiff's request for an award of statutory fees following a jury verdict in favor of plaintiff.

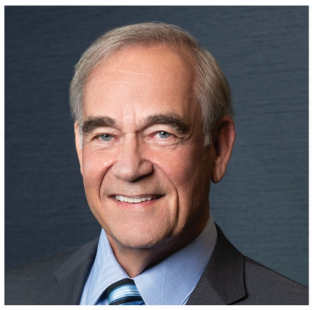
But the line was a eulogy for the defendant's opposition. Three paragraphs later the appellate court upheld the trial court's award of a whopping attorney's fee of $4,889,786.03, substantially more than the underlying damage award of $3,324,262.00. The fees included per hour lodestars ranging from a high of $1,200 for the senior partner to a low of $225 for paralegal and legal assistants, plus a multiplier of 1.75 for work prior to the verdict and a reduced multiplier of 1.25 for work after the verdict. *Bronshteyn v. Department of Consumer Affairs,* 2025 DJDAR 9062.

The plaintiff's law firm had taken the case on a contingent fee basis, devoting about 3,000 hours over several years to the matter, and had kept meticulous time records that included precise descriptions of work done, the lawyers doing the work, recorded in six-minute increments. Sworn declarations supporting the request for fees described the biographies of the lawyers preforming the individual tasks and attested that the requested rates were market rates for lawyers of similar background and reputation in the Los Angeles area (where the case was litigated), and the type of case being litigated.

Liability had been disputed and up to the moment of the jury verdict, questionable. The litigation was contentious if not bitter, resulting in extensive motion practice, much of which the court seemed to believe was unnecessary if not borderline frivolous.

In opposition to plaintiff's application for fees, the defendant argued, among other things, that the requested lodestar amount was grossly excessive, the requested multiplier (it was 2.0) would add insult to injury, and the hours spent on the case were excessive, essentially claiming the plaintiff's law firm over-litigated the case.

The court noted that fee awards are reviewed for abuse of discretion. A reviewing court should accept the trial court's findings when supported by substantial evidence. "The burden



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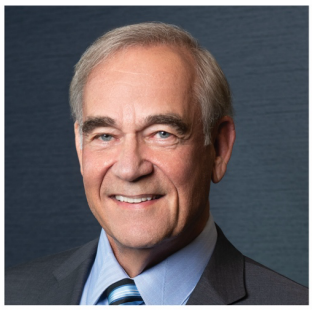
is on the objector to show error." "Appellate courts indulge all presumptions to support the judgment as to matters on which the record is silent."

With specific regard to the requested lodestar with a multiplier on top of that, the appellate court cautioned against double-counting, pointing out that if the requested hourly rate already includes a built-in enhancement for the contingency, then it would be inappropriate to enhance it again by a multiplier. The requested lodestar hourly rates, however, were within the market range and, therefore, it was appropriate to apply a multiplier to account for the risk that counsel might not receive any compensation. But a lower multiplier (1.25) was appropriate for work after the verdict because there was less risk at that point that plaintiff would not recover.

The appellate court also rejected the defendant's argument that plaintiff had over-litigated the case. The court cautioned that when a party is objecting on the basis the total hours incurred by the other side is a result of "over-litigation," it would be wise for the objecting party to disclose the number of hours its own lawyers worked. "This would have supplied a logical and objective factor for evaluating [the plaintiff's] claims [for fees]." The defendant in *Bronshteyn* did not make this disclosure; it offered instead argument and expert declaration testimony. Without the disclosure, the court viewed "with skepticism" the defendant's argument, citing the usual jury instruction: "If a party provided weaker evidence when it could have provided stronger evidence, you may distrust the weaker evidence."

Based on the evidentiary record before it, the appellate court concluded the trial court had not abused its discretion when it determined the requested lodestar rates were reasonable, the pre-verdict multiplier of 1.75 and the post-verdict multiplier of 1.25 were both reasonable, and the number of hours spent on the case were appropriate and reasonable given that the litigation was contentious and complex.

In other words, "the defense is fully entitled to fight back" as the court wrote in its first sentence of its opinion. But then in a rather brutal smackdown the court continued: "But the defense does so knowing it might end up paying for all the work for both sides. Filing a flood of unselected and fruitless motions can be counterproductive if the plaintiff ultimately prevails, for the bill for that flood will wash up on the defense footstep. Then the court may look with a wary eye at defense complaints about a whopping plaintiff's bill.



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