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Case Name: S. LAVON EVANS, JR., S. LAVON EVANS, JR. OPERATING COMPANY,
VS
BAKER & MCKENZIE, LLP. ET AL

Case Number:2008-979-CV11

Comments:

173/230

IN THE CIRCUIT COURT OF JONES COUNTY, MISSISSIPPI
SECOND JUDICIAL DISTRICT

S. LAVON EVANS, JR., ET AL.

PLAINTIFFS

VERSUS

CIVIL ACTION NO. 2008-979-CV11

BAKER & MCKENZIE, LLP, ET AL.

DEFENDANTS

LAREDO ENERGY HOLDINGS, LLC, ET AL.

CROSS-PLAINTIFFS

VERSUS

BAKER & MCKENZIE, LLP, ET AL.

CROSS-DEFENDANTS

**ORDER ON CROSS-PLAINTIFFS' MOTION FOR ATTORNEYS'
FEES AND EXPENSES**

This cause this day came on for hearing Cross-Plaintiffs' Motion for Attorneys' Fees and Expenses filed in this matter, and the Court, having reviewed same and the responses thereto, along with evidence presented in Court, finds as follows:

Attorneys' fees and expenses are recoverable upon proof of conduct that would permit an award of punitive damages. *Pride Oil Co. v. Tommy Brooks Oil Co.*, 761 So.2d187, 192 (Miss. 2000); *Aqua-Culture Techs v. Holly*, 677 So.2d 171, 185 (Miss. 1996). The Court finds that the Cross-Plaintiffs presented clear and convincing evidence that supports an award of punitive damages in this cause. As such, pursuant to Mississippi law, the Cross-Plaintiffs would be entitled to recover attorneys' fees and expenses.

Any assessment of attorneys' fees must be an amount the Court deems to be reasonable. *See* Sections 11-55-5 and 31-5-57, Mississippi Code of 1972, as amended. The United States Supreme Court has said that the amount of attorneys' fees understandably has to be determined based on the facts of each case. *Hensley v. Eckerhart*, 461 U.S. 424 (1983). In the *Hensley* case, the Court listed the twelve factors to be considered in determining a reasonable attorneys'

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fee to be awarded: “(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 employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) 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.* at 1938.

Additionally, Rule 1.5 of the Mississippi Rules of Professional Conduct lists the factors which the trial court should consider in determining the reasonableness of the amount of attorneys’ fees. These factors are similar to the *Hensley* factors and include:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

Miss. R. Prof. Conduct 1.5(a)

The Mississippi Supreme Court has also addressed the factors for trial courts to consider in awarding attorneys' fees in the case of *McKee v. McKee*, 418 So.2d 764, 767 (Miss. 1982). The factors listed in *McKee* include "the relative financial ability of the parties, the skill and standing of the attorney employed, the nature of the case and novelty and difficulty of the questions at issue, as well as the degree of responsibility involved in the management of the cause, the time and labor required, the usual and customary charge in the community, and the preclusion of other employment by the attorney due to the acceptance of the case." *Id.* at 767.

The controlling factor for the trial court in determining an award of attorneys' fees is what is "reasonable." *Mabus v. Mabus*, 910 So.2d 486, 488 (Miss. 2005), quoting *Mosley v. Atterberry*, 819 So.2d 1268, 1272 (Miss. 2002). The United States Supreme Court opined that "the most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation, multiplied by a reasonable hourly rate." *BellSouth Pers. Commun., LLC v. Bd. of Supervisors*, 912 So.2d 436, 446 (Miss. 2005). Therefore, the trial court must start with the number of hours reasonably spent on the litigation, multiplied by a reasonable hourly rate; then, the issue of attorneys' fees must be appropriately considered in light of *Miss. R. Prof. Conduct 1.5(a)* and the *McKee* factors. *Id.* at 477.

The Court presided over the above-styled cause for approximately two (2) weeks, heard a tremendous amount of testimony from the Plaintiffs, Cross-Plaintiffs, and Defendants, and viewed volumes of exhibits. The Court, in considering the appropriate amount to award in attorneys' fees in this matter will start with the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. *See BellSouth*, 912 So.2d at 522. Based upon the information submitted by the Cross-Plaintiffs, the Court has reached a figure of \$885,000.00, based upon the hours worked by Cross-Plaintiffs' attorneys.

Next, the Court must consider the *McKee* factors, along with *Mississippi Rule of Professional Conduct 1.5(a)*, in determining any additional amounts to be awarded in attorneys' fees. After reviewing the *McKee* factors and *Mississippi Rule of Professional Conduct 1.5(a)*, along with the Court's knowledge based on the length of the trial of this matter and a review of the Court file for years prior to the trial of this matter, the Court has determined that a reasonable amount of attorneys' fees in this matter would be 10% of the verdict of \$22,475,000.00 awarded to Cross-Plaintiffs, bringing the total attorneys' fee award to \$2,532,819.50, which represents 10% of the verdict awarded plus the \$285,319.50, based upon hours expended in the litigation.

Further, the Court awards expenses in the amount of \$203,113.03, based upon the Cross-Plaintiffs' affidavits and proof.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Cross-Plaintiffs in the above-styled cause shall receive attorneys' fees in the amount of \$2,532,819.50 and expenses in the amount of \$203,113.03.

SO ORDERED AND ADJUDGED this the 27 day of January, 2011.


CIRCUIT COURT JUDGE