

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
Civil Action No. 05-1360-BLS1

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MARCIA RHODES, HAROLD RHODES, REBECCA RHODES	)
	)
Plaintiffs,	)
	)
v.	)
	)
AIG DOMESTIC CLAIMS, INC. f/k/a AIG TECHNICAL	)
SERVICES, INC., NATIONAL UNION FIRE INSURANCE	)
COMPANY OF PITTSBURGH, PA, and	)
ZURICH AMERICAN INSURANCE COMPANY	)
	)
Defendants.	)

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**REQUEST OF DEFENDANTS, AIG DOMESTIC CLAIMS, INC. AND NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., FOR MORE COMPREHENSIBLE DETAILS OF THE NATURE OF THE LEGAL SERVICES PROVIDED BY PLAINTIFFS’ COUNSEL OR IN THE ALTERNATIVE TO STRIKE BILLING RECORDS**

AIG Domestic Claims, Inc. (“AIGDC”) and National Union Fire Insurance Company of Pittsburgh, Pa. (“NUFIC”) (collectively, “AIGDC”), respectfully move that the Court order Plaintiffs to submit more comprehensible details regarding the attorney’s fees for which they seek recovery within 10 days after the date of this motion.

Without providing more detailed information regarding the billing entries submitted to the Court, the Plaintiffs will not be able to carry their burden of establishing the reasonableness of the fees sought. See Watts Water Techs., Inc. v. Fireman’s Fund Ins. Co., 22 Mass. L. Rptr. 659, No. 05-2604-BLS2, 2007 WL 2083769, at \*1 (Mass. Super. July 11, 2007) (citing Snow v. Mikenas, 373 Mass. 809, 812 (1977)) (attached hereto as composite Exhibit B) (The “burden of proving the reasonableness of the attorney’s fees incurred rests with the party seeking payment of those fees[.]”).

Nonetheless, to the extent that AIGDC is expected to contest the reasonableness of the attorney’s fees claimed, AIGDC is unable to determine the sufficiency or adequacy of the Plaintiffs’ fee request because of the incomprehensible and vague billing records Plaintiffs have submitted to the Court. In Twin Fires Inv., LLC v. Morgan Stanley Dean Witter & Co., 445 Mass.

411 (2005), the Supreme Judicial Court noted that when confronted with inadequately detailed billing entries purporting to support a petition for fees, the party opposing the fee petition may, “seek an order from the judge requiring the plaintiffs to submit more comprehensible details of the nature of the work performed.” *Id.* at 429 n.32.

In the alternative, AIGDC moves to strike such records if the Plaintiffs fail to submit sufficient clarification. Given the briefing schedule set by the Court, this Request has been filed as an Emergency Motion because compliance with Superior Court Rule 9A would render it moot.

On June 3, 2008, the Court entered an Order which, *inter alia*, found that the plaintiffs are entitled to recover “the reasonable attorney’s fees and costs incurred in prosecuting this action against National Union and AIGDC.” Pursuant to the Court’s Order, Plaintiffs filed a Request for Attorney’s Fees and Costs on June 27, 2008. AIGDC’s Opposition is due by July 25, 2008. A hearing regarding the fee application is scheduled for July 30, 2008.

Plaintiffs produced billing records in support of their attorneys’ fees petition. These records, however, are hopelessly vague and are inadequate to determine the nature of the work that was performed and the amount of time that was spent on each task. With respect to most of the billing records, it is impossible to ascertain whether: (a) the entries relate to Plaintiffs’ claims against AIGDC, Zurich or both; and (b) the entries relate in whole or in part to liability and damages theories that the Plaintiffs asserted against AIGDC that were unsuccessful or abandoned by the Plaintiffs prior to trial.

Many of the entries are clearly solely related to Plaintiffs claims against Zurich, and therefore they should not be part of the fee application against AIGDC. Other entries concern litigation against Zurich, but they are buried within “block billed”<sup>1</sup> descriptions making it impossible to determine how much time was spent on any AIGDC-related work. Furthermore, many entries simply list legal work (such as “drafted interrogatory answers”) without any

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<sup>1</sup> As described by Superior Court Judge Francis R. Fecteau in Ellis v. Varney, 19 Mass. L. Rptr. 260, 2005 WL, 1009634, \* 3 n. 6 (Mass. Super. March 22, 2005) (attached hereto as composite Exhibit B), “‘block billing,’” “refers to either a large number of distinct events that are grouped together without distinction as to time within a single, large block of time, or a single, large block of time containing a single event, vaguely or over simply described, e.g., ‘research,’ ‘trial preparation,’ ‘conference’ or ‘document review,’ to name a few.”

indication if the work involved AIGDC or Zurich. Many entries are for “strategizing,” “team meetings” or other intra-office conferences <sup>2</sup> amongst Brown Rudnick personnel, without sufficient detail to indicate whether the entries are properly part of the fee petition. Finally, much of the work for which Plaintiffs seek recovery is duplicative or redundant.<sup>3</sup>

Plaintiffs have already provided the Court with a courtesy copy of Plaintiffs’ Request for Attorney’s Fees and Costs. As an example of the difficulty that will be faced by AIGDC and the Court in analyzing the time entries, AIGDC has attached hereto as Exhibit A the time entries submitted by the Plaintiffs in support of their fee petition. Virtually all of the billing entries are block-billed and contain vague and incomprehensible billing descriptions. Neither AIGDC nor the Court should be required to try to read Plaintiffs’ Counsel’s minds to determine what work they were doing.

Clearly, Plaintiffs knew how to enter time without block billing. For example, prior to August 22, 2005, attorney Brown did not “block-bill” his billing entries. Yet, from August 22, 2005, forward, Mr. Brown “block-billed” all time spent on the Rhodes matter each day.

Massachusetts courts have recognized that the practice of “block billing” in fee shifting cases is inherently unreasonable. As explained by Judge Fecteau in Ellis, 2005 WL 1009634, at \*\* 3-4:

Upon examination, the court finds that the invoices are largely block-billed, with many individual entries having been made in blocks of time of 4 hours or more, relating to vaguely described services without further itemization of time within the block for each item of service within each block of time in some, and with only a single item referenced as consuming such amounts of time in others. I find that block-billing, certainly as regards segments of time in excess of four hours or more, and likely less, to be commercially unreasonable, as it is bound to lead to uncertainty at least, and a likelihood of inaccuracies, such as by exaggeration of absolute time spent, by failing to deduct for the occurrence of non-billable events within the time, by failing to itemize time spent on individual

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<sup>2</sup> Other examples of vague language routinely used by the Plaintiffs to describe their time include references to “conferring,” “updating,” and “communicating” with each other and third parties.

<sup>3</sup> See T&D Video, Inc. v. City of Revere, 66 Mass. App. Ct. 461, 476, 848 N.E.2d 1221, 1235 (Mass. App. Ct. 2006) (In determining the amount of an attorney’s fee award, “the court should consider the time counsel has spent on the case exclusive of hours that are excessive, redundant, duplicative or unproductive.”).

functions, and to have failed to itemize the amount of particular time spent towards particular claims.

The Supreme Judicial Court has held that it is the obligation of a plaintiff seeking attorney's fees "to submit sufficient documentation to enable the judge to evaluate the hours spent on particular aspects of the case or the precise nature of the work." Twin Fires Inv., LLC v. Morgan Stanley Dean Witter & Co., 445 Mass. 411, 428 (2005); see also Roberts v. Department of State Police, 15 Mass. L. Rptr. 462, 2002 WL 31862711, at \*4 (Mass. Super. Ct. September 26, 2002) (Houston, J.) (attached hereto as composite Exhibit B) ("In the fee shifting context, prevailing counsel understandably are held to a much more exacting standard for record keeping and accounting for expenditures of time and money than might be required in general practice ... In order to recover fees, attorneys must submit a full and precise accounting of their time, including specific information about the number of hours, dates, and, most relevant to the discussion herein, the nature of the work performed.").

In Twin Fires, although "the detail submitted by the plaintiffs was overwhelming, . . . the substance of the work was elusive." Id. at 429. As here, the plaintiffs provided the Superior Court judge with a "data dump." Id. Although the Supreme Judicial Court noted that the defendants generally objected to the time records submitted by the plaintiffs, the defendants' "opposition to the lack of detail in the fee petition was stated in conclusory terms only." Id. The Supreme Judicial Court noted that, "[t]he defendants did not, for example, seek an order from the judge requiring the plaintiffs to submit more comprehensible details of the nature of the work performed, nor did they inform the judge that they were unable to challenge the sufficiency or adequacy of the plaintiffs' fee request in light of the incomprehensible data that had been delivered to them. We have every confidence that had they done so, [Superior Court judge Gants] would have awarded appropriate relief." Id. at 429 n.32.

As recommended by the Supreme Judicial Court, AIGDC requests that the Court order the Plaintiffs to clarify all of the time entries to indicate: (a) in block-billed entries, how much time was spent on each task; (b) for all entries, to indicate against which defendant the legal work was directed and to otherwise provide comprehensible details of the work that was performed. Ten days is a reasonable time for Plaintiffs to complete this task, especially considering that Brown Rudnick has been drafting the Motion for Attorney's Fees for more than one year (Mr. Brown's billing records indicate that he has been working on the Motion for Fees since May 3, 2007). In the alternative, should Plaintiffs fail to submit appropriate billing records, AIGDC

requests that the court strike Exhibit B to the Plaintiffs' Request for Attorney's Fees and Costs in its entirety.

WHEREFORE, this Court should allow AIGDC's Request for More Comprehensible Details of the Nature of the Legal Services, or in the alternative to Strike Billing Records.

Respectfully Submitted,

AIG DOMESTIC CLAIMS, INC. and  
NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH, PA,