



IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA

VELIE & VELIE, P.L.L.C. }  
STATE OF OKLAHOMA } S.S.  
CLEVELAND COUNTY }  
Plaintiff, )  
FILED )

vs. )

AUG 21 2013 )

Case No. CJ-2007-498 )

THE UNITED KEETOOWAH )  
BAND of the CHEROKEE )  
INDIANS OF OKLAHOMA, )  
Defendant. )  
Assigned to The Honorable George Butner  
District Judge of Seminole County  
In The Office of the  
Court Clerk RHONDA HALL

ORDER AWARDING ATTORNEY FEES

Now, this 20 day of August, 2013, the Motion to Spread Mandate of Record and Issue an Order in Compliance With the Court of Civil Appeals Decision and the Supplemental Application for Attorney fees filed by Defendant, the United Keetowah Band of the Cherokee Indians of Oklahoma ("the UKB") comes on for hearing. Plaintiff, Velie & Velie, P.L.L.C. ("Velie"), appears by and through Counsel of Record, Jon Velie. The UKB appear by and through Counsel of Record, Eugene K. Bertman.

The Oklahoma Court of Civil Appeals previously held that the award of attorney fees was proper in this matter, which now constitutes the law of the case. However, the Court of Civil Appeals remanded the matter to this Court for entry of an order specifically considering and itemizing the findings necessary under *State ex rel. Burk v. City of Oklahoma City*, 1979 OK 115, 598 P.2d 659. Pursuant to *Burk*, the method for calculating the total dollar amount of fees and costs due in an action is to add up the number of hours worked and multiply that number by a reasonable hourly rate. *Id.* at ¶ 9. The Court must then address the following factors prior to making a final determination as to the general reasonableness of a fee request:

1. 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 other 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.
12. Awards in similar cases.

*Id.* at ¶8.

Having reviewed the transcript of the prior evidentiary hearing, including the prior testimony, analyzing the briefs and exhibits submitted by the parties, hearing argument of Counsel and with premises considered, the Court hereby FINDS as follows:

1. The UKB has presented ample admissible evidence, as well as expert testimony, in support of its fee request in the amount of \$45,373.25 and costs of \$4,456.45. The hours the attorneys worked were reasonable in light of the claims and defenses in this case and the hourly rates were reasonable. The Court finds the reasonable rates, which are commensurate with the experience of the attorney, and reasonable hours worked by the attorney as follows:

Name	Initials	Rate	Hours	Total
Michael D. McMahan	MDM	\$185-\$190	117.1	\$21,976.00
Jennifer H. McBee	JHM	\$165	13	\$2,145.00
Sandra Benischek Harrison	SBH	\$175	8.5	\$1,487.50
Jennifer Scott Moradi	JSM	\$150	1.7	\$255.00
Ken M. Bellmard	KMB	\$195-190	37.95	\$6,692.50
Jacqueline Duffy	JVD	\$120	11.8	\$1,497.00

Eugene K. Bertman	GKB	\$190 - \$200	32	\$5,900.00
J. Kacey Goss	JKG	\$190	3	\$285.00
<b>TOTAL</b>			<b>225.05</b>	<b>\$40,238.00</b>

\*Ken M. Bellmard charged 6 hours of travel time at \$95.00/hr, Eugene K. Bertman charged 2.5 hours for travel to and from Seminole, OK at \$95.00/hr, and J. Kacey Goss charged 2 hours for travel from Edmond to Norman at a rate of \$95.00/hr.

The paralegals charged reasonable rates between \$20 - \$100 depending on the work they performed. There were 18.6 hours at \$100.00 per hour for 1,860.00, 34.15 hours at \$85.00 per hour for a total of \$2,902.75, 0.3 hours at \$75.00 per hour for a total of \$22.50, 7 hours at \$40.00 per hour for a total of \$280.00, and 3.5 hours at a rate of \$20.00 per hour for a total of \$70.00. For paralegal time, the total is \$5,135.25. Thus, the total attorney's fee GRANTED is \$45,373.25 and costs are GRANTED in the amount of \$4,456.45.

3. As further evidence of the reasonableness of the rates, Plaintiff's attorney charged \$250.00 per hour;

4. The amount of the requested fee award is reasonable, given the novelty of the legal questions presented and the level of skill required to properly address those issues;

5. The amount of the requested fee award is reasonable when compared to the amount at issue in the underlying case, the persistence of the Plaintiff in prosecuting its case, and the ultimate results obtained by Counsel on behalf of the UKB;

6. The additional fees and costs incurred by the UKB since the prior evidentiary hearing were necessary and reasonable;

7. Based on the expert testimony presented by the UKB and analysis by this Court, the work performed on 7/14/2007, 7/23/2007, 10/3/2007, 11/13/2007 and 11/26/2007 regarding the Tribal Court matter was an integral part of the defense of Plaintiff's claims and is therefore recoverable;

8. Plaintiff has failed to properly identify the time entries it is challenging regarding the time spent on the third-party claims. Moreover, based on the expert testimony presented by the UKB and analysis by this Court, the time spent litigating matters regarding the third-party claims was an integral part of the defense of this matter and are therefore recoverable; and

9. Based on the expert testimony and analysis of the Court, the time spent by legal assistants on 6/24/2009 and 12/15/2009 was reasonable.

THEREFORE, this Courts ORDERS, ADJUDGES and DECREES that the Defendant, the United Keetoowah Band of the Cherokee Indians of Oklahoma is GRANTED JUDGMENT for attorneys' fees of \$45,373.25 and costs of \$4,456.45 against the Plaintiff, Velie & Velie, P.L.L.C.

SO ORDERED this 20<sup>th</sup> day of August, 2013.

  
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JUDGE OF THE DISTRICT COURT