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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

LYNN D. BECKER, Plaintiff, vs. UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, *et al.*, Defendants, Counterclaim and Third-Party Plaintiffs, vs. LYNN D. BECKER, *et al.*, Counterclaim and Third-Party Defendants.	**JURRIUS'S RESPONSE TO OBJECTION TO FEE CLAIM** Case No. 2:16-cv-958-CW Judge Clark Waddoups

John P. Jurrius submits this response to the Ute Indian Tribe's Objection to Mr. Jurrius' Application for an Award of Attorney Fees, filed May 6, 2021 (Dkt. 273). Contra-

dicting the claim in its motion for reconsideration that the sanctions were punitive in nature, the Tribe here accepts that they were compensatory, and argues instead that they are not causally related to the Tribe's bad faith conduct. The court should overrule the objection.

ARGUMENT

The Tribe begins its argument with out-of-context sound bites from several different cases. First, the Tribe cites *Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178 (2017), for the proposition that the sanctions here should be treated as compensatory in nature. *Goodyear* supports the court's inherent powers including "'the ability to fashion an appropriate sanction for conduct which abuses the judicial process.'" 137 S. Ct. at 1186 (quoting *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44–45 (1991)).

> We hold that such an order is limited to the fees the innocent party incurred solely because of the misconduct—or put another way, to the fees that party would not have incurred but for the bad faith. A district court has broad discretion to calculate fee awards under that standard.

Id. at 1184.

Contrary to the Tribe's characterization of the case, *Goodyear* adopts a causation standard that would endorse an award of all fees caused by the Tribe's misconduct. *See id.* at 1186 ("a sanction counts as compensatory only if it is 'calibrate[d] to [the] damages caused by' the bad-faith acts on which it is based. A fee award is so calibrated if it covers the legal bills that the litigation abuse occasioned."). The case at bar is unusual in that the misconduct is the retaliatory filing of arbitration: by definition, the fees incurred in the arbitration are all caused by the bad faith misconduct of the Tribe.

Nevertheless, this court did not award all damages "caused by" the Tribe's misconduct. Instead, the court only awarded the attorney's fees Mr. Jurrius incurred in dealing with the arbitration action's spill-over into this case. It left his remaining attorney's fees for determination by the arbitration panel. Thus, even though *Goodyear* holds that, "[i]n exceptional cases, the but-for standard even permits a trial court to shift all of a party's fees, from either the start or some midpoint of a suit, in one fell swoop," *id.* at 1187, this court has stopped well short of that line, and thus has stayed well within the "broad discretion" *Goodyear* affords.

Next, the Tribe turns to a soundbite from *Case v. Unified Sch. Dist. No. 233*, 157 F.3d 1243 (10th Cir. 1998), stating that the "court must arrive at a 'lodestar' figure by multiplying the hours plaintiffs' counsel reasonably spent on the litigation by a reasonable hourly rate." *Id.* at 1249. The case, however, was a civil rights case under 42 U.S.C. § 1983, and the court was not applying the compensatory standard of *Goodyear*. It had no evidence of what, if any, hourly rates had actually been charged the plaintiff, and so examined market evidence to ascertain a "lodestar" rate.

In this case, in contrast, attorney's fees are being imposed as a sanction, in order to compensate Mr. Jurrius for the amounts he expended as a result of the Tribe's bad faith actions. This is evident from this court's own order: "[T]he Tribe is HEREBY ORDERED to pay Becker and Jurrius the fees in prosecuting [t]his matter. This time shall include any and all time expended in, and otherwise related to" specific matters the court identified. (Dkt. 260, at p. 27.) In this circumstance, the objective of the sanction is not punitive, but rather is to make Mr. Jurrius whole. As stated in Mr. Parker's declaration (Dkt.

263), the hourly rates identified in the fee claim were taken directly from SC&M's accounting system, and "correspond to the amounts actually billed to the client for the services described." This is the causation standard of *Goodyear*. The lodestar analysis of the civil rights world has nothing to do with the compensatory sanction this court has imposed.

Against this backdrop, the Tribe makes the remarkable assertion that Mr. Jurrius has incurred *no* attorney's fees as a result of the Tribe's retaliatory and bad faith initiation of arbitration against him. The court can, and should, reject that argument on its face, as it is obviously false. Essentially, the Tribe's argument is that Mr. Jurrius was not required to call the Tribe's bad faith to the court's attention; even though he was the victim of the retaliation, he disclosed it to the court as a volunteer, and his expenses in doing so do not satisfy the standard of but-for causation. But once the Tribe chose to retaliate against Mr. Jurrius, it lost the benefit of that argument—everything that happened afterwards satisfies the but-for causation test. The idea that Mr. Jurrius's efforts in seeking protection from retaliation were voluntary is pure sophistry.

Next, the Tribe asserts that the rates claimed are not reasonable. Again, however, reasonableness is not necessarily the measure when compensation is the issue. Nevertheless, the rates charged in this case are well within the range of rates charged for commercial litigation in the local community.

The Tribe relies on a declaration from Brent Baker, a reputable securities attorney at Parsons, Behle & Latimer who has several years less experience than any attorney representing Mr. Jurrius. Mr. Baker cites his own rate of $395 per hour as evidence that Mr. Van Wagoner's rate of $410 and Mr. Parker's rate of $425 are not reasonable even though

the differentials are 3% and 7% respectively. Mr. Slaughter's rate is somewhat higher (it changed from $495 to $510 at the beginning of this year). There are many lawyers in Utah with hourly rates higher than Mr. Slaughter's, and he brings unique arbitration expertise to the team handling this case. Finally, Ms. Archibeque is a paralegal with 30 years of experience, and her rate of $175, like the others in this case, are the rates Mr. Jurrius has actually paid for the services rendered.

In claiming that the hourly rates charged here have not been adequately established, the Tribe cites *Parker v. CitiMortgage, Inc.*, 987 F. Supp. 2d 1224, 1238 (D. Utah 2013), aff'd, 572 F. App'x 602 (10th Cir. 2014). Ironically, in *Parker*, Judge Jenkins held that hourly rates of $395 and $425 were reasonable *in 2012*. *Id.* at 1236-37. Moreover, the evidence before Judge Jenkins was exactly the same kind of evidence as is before this court—an affidavit of counsel stating that the fees were reasonably and necessarily incurred and reflect prevailing rates for the kind of services rendered in the case. *Id.* at 1230. In rejecting a claim that such an affidavit was insufficient, Judge Jenkins noted, "'Where a district court does not have before it adequate evidence of prevailing market rates, the court may use other relevant factors, including its own knowledge, to establish the rate.'" *Id.* at 1236 (citing *Guides, Ltd. v. Yarmouth Grp. Prop. Mgmt., Inc.*, 295 F.3d 1065, 1079 (10th Cir. 2002)). Compounding the irony, the Tribe's declarations of Messrs. Baker and Bletzacker violate the rule the Tribe seeks to glean from *Parker*: they are anecdotal, lacking in foundation, and speculative.

Ignoring the fact that the court has found the Tribe's pursuit of arbitration to have been retaliatory, the Tribe argues that the fee claim includes "work that has no causal

connection to the Tribe's conduct." (Objection, p. 8.) Applying a but-for analysis, perhaps the court should have awarded Mr. Jurrius *all* the fees incurred both in this court *and* in arbitration, as the Tribe seems to not understand that it is being sanctioned for retaliating against—and causing actual injury to—a federal witness. The sanctions are not for conduct that occurred elsewhere. Nevertheless, the court has adopted a conservative view and restricted the sanction to expenses Mr. Jurrius incurred in connection with the motion to quash, motion for protective order, and order to show cause. Mr. Jurrius has appropriately limited his request as the court ordered.

Finally, the Tribe objects to five specific time entries (and one general category) as being work related to the arbitration. Two of the Tribe's objections to specific time entries (1 and 2 below) are well-taken:

1. Mr. Parker's time entry on August 28, 2020 appears to be partially related to a discovery dispute in the arbitration. While meet-and-confer calls with the Tribe's counsel have typically not been lengthy, Mr. Jurrius will concede one hour of time for the call in light of this oversight in the presentation of time entries. (1.0 hours, $425.)

2. Mr. Slaughter's September 30, 2020 time entry also appears to be related to the arbitration. (0.4 hours, $198.)

3. Mr. Parker's time entry on October 9, 2020 is causally related to the activities in this court, even though a portion of the time entry refers to the Tribe's effort to file a second amended statement of claims in arbitration. As this court knows, the second amended statement of claims was the Tribe's response to this court's order to show cause, and is the document in which the Tribe attempted to erase its most strident accusations from the arbitration by reducing the claims relating to Mr. Jurrius's participation in the Becker case to process violations. Previously, they had been characterized as so willful and malicious as to justify an award of punitive damages. This would not have happened absent this court's order to show cause.

4. The work on the motion to stay the arbitration on October 28, 2020 was the result of the overlap between this case and the arbitration. The motion sought to stay the arbitration pending this court's decision on the order to show cause, and so it was related to the motion to quash and order to show cause in the federal court action.

5. The Tribe's broad objection to all work after October 9, 2020 is without merit and ignores the obvious references to the *Becker* litigation in those time entries.

6. Similarly, the work on March 31, 2021—the day this court's ruling on the order to show cause was issued—relates to efforts to assess the impact of this court's order on the arbitration. Like other work discussed above, these are fees that Mr. Jurrius "would not have incurred but for the [Tribe's] bad faith." *Goodyear*, 137 S. Ct. at 1184.

CONCLUSION

For the foregoing reasons, Mr. Jurrius requests that the court overrule the Tribe's objections and enter the award of fees, reduced by $623 per the concessions above.

DATED: May 20, 2021.

SNOW, CHRISTENSEN & MARTINEAU

By 

Rodney R. Parker
Attorneys for John P. Jurrius and SCM

CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2021, a true copy of the foregoing JURRIUS'S RESPONSE TO OBJECTION TO FEE CLAIM was served by the method indicated below, to the following:

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/s/ Rodney R. Parker

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