

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

PLAYTEX PRODUCTS, INC.,)
) C.A. No. 00A-02-002
 Employer-Below/
 Appellant,)
)
 v.)
)
LOTTIE LEWIS,)
)
 Claimant-Below/
 Appellee.)

Submitted: March 3, 2002
Decided: June 19, 2002

J.R. Julian, Esq., Wilmington, Delaware. Attorney for Appellant.

William F. Jaworski, Jr., Esq., Dover, Delaware. Attorney for Appellee.

Upon Consideration of Claimant's
Application For Attorney's Fees
GRANTED

VAUGHN, Resident Judge

Playtex v. Lottie Lewis
C.A. No. 00A-02-002
June 19, 2002

ORDER

Upon consideration of claimant Lottie Lewis' application for attorney's fees pursuant to 19 *Del. C.* § 2350(f), the employer's opposition, and the record of the case, it appears that:

1. On January 14, 2000 the Industrial Accident Board ("the Board") awarded the claimant compensation for replacement surgery to her knee arising out of a work-place accident. The employer appealed to this Court. The only material issue was whether the knee injury was caused by the accident at the work-place. The claimant was successful in this Court. The employer then appealed to the Supreme Court. The claimant again successfully defended the Board's award. She has now filed a petition for attorney's fees for the proceedings in this Court and the Supreme Court.

2. The amount sought by the claimant breaks down as follows: \$200 per hour for 41.9 hours spent in the proceedings on appeal in this Court, 32.4 hours in the proceedings in the Supreme Court, 3.2 hours in preparing the application for attorney's fees, and an additional 10.1 hours in the current proceedings for attorney's fees in this Court. That total time is 87.6 hours, which at \$200 per hour, comes to \$17,520. She also seeks \$501.30 for document reproduction costs and binding fees, for a total of \$18,021.30. The employer opposes this request as excessive.

3. Of the 41.9 hours for the appeal in this Court, 2.2 hours relates to a motion to affirm filed in this Court after the employer's opening brief was submitted. The motion was denied. I am not inclined to award attorneys for the filing of that motion. After carefully considering the application for fees, the employer's opposition, and

Playtex v. Lottie Lewis

C.A. No. 00A-02-002

June 19, 2002

the factors in *General Motors v. Cox*¹, I have concluded that 39 hours in the appeal in this Court, 30 hours in the appeal to the Supreme Court, and 2 hours in the proceedings now before the Court should be allowed and reasonably compensated at \$200 per hour. The award of attorney's fees will be \$14,200. The \$501.30 for document reproduction and binding is also awarded, for a total award of \$14,701.30. It is noted that the Court has previously found \$200 an hour to be reasonable.² In fact, in at least one case, the Court found \$300 an hour to be reasonable.³

4. Compensation for the 10.1 hours litigating the issue of attorneys fees is denied. When the initial application for fees was filed, an order approving the request was signed by the Court. The employer objected, claiming that it had not had an opportunity to be heard. The 10.1 hours was spent for the most part in litigating whether the employer should have filed an answer to the request for attorney's fees within ten days and conducting discovery of the amount of time spent on the case by the employer's attorney. The claimant received no significant benefit

from this litigation, and it was of little help to the Court in deciding the amount of attorney's fees to be awarded.

5. Therefore, the claimant's application for attorney's fees and costs is ***granted***, in the amount of is \$14,701.30.

¹ 304 A.2d 55, 57 (Del. 1973).

² *Butler v. Speakman*, Del. Super. C.A. No. 91A-08-007, Babiartz, J. (June 22, 1994) (Letter Op.) at 2-3.; *State v. Cornish*, 1995 Del. Super. LEXIS 628 (Del. Super.); *Bedwell v. Brandywine Carpet Cleaners*, 1996 Del. Super. LEXIS 385 (Del. Super.).

³ *Kelly v. ILC of Dover, Inc.*, 1998 Del. Super. LEXIS 97 (Del. Super.).

Playtex v. Lottie Lewis

C.A. No. 00A-02-002

June 19, 2002

IT IS SO ORDERED.

Resident Judge

oc: Prothonotary

cc: Order Distribution