

1
2
3
4 IN THE UNITED STATES DISTRICT COURT
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA
6

7 EDWARD ALVARADO, *et al.*,

No. C 04-0098 SI, No. C 04-0099 SI

8 Plaintiffs,

**ORDER DIRECTING CLERK TO
DISBURSE INTERPLED FUNDS TO
EDWARD ALVARADO AND
CHARLOTTE BOSWELL**

9 v.

10 FEDERAL EXPRESS CORPORATION,

11 Defendant.
_____ /

12
13 In an order filed October 12, 2010, the Court interpled \$356,492.05, which consisted of plaintiff
14 Edward Alvarado's jury award plus accrued interest. Docket No. 1617. The Court ordered that 50%
15 of that amount, or \$178,246.03, be immediately disbursed to Mr. Alvarado. In an order filed February
16 4, 2011, the Court interpled \$656,609.69, which consisted of plaintiff's Charlotte Boswell's jury award
17 plus accrued interest. Docket Nos. 1681 & 1692. On March 3, 2011, the Court ordered that 50% of that
18 amount, or \$328,304.85, be disbursed immediately to Ms. Boswell. The Court retained the remaining
19 50% of the interpled funds in the Court's registry pending resolution of the statutory fee petitions filed
20 by Mr. McCoy and Ms. Parker, as well as any claims by Mr. McCoy and Ms. Parker to the interpled
21 funds.

22 On September 30, 2011, the Court issued an order resolving the statutory fee petitions,¹ and on
23 October 12, 2011 the Court issued an Order to Show Cause re: Claims to Interpled Funds. Ms. Parker
24 and Mr. McCoy have filed responses to the Order to Show Cause.

25 Ms. Parker asserts that the Court should retain the interpled funds until any appeal of the
26 September 30, 2011 order is resolved in order to preserve her ability to seek her fees in *quantum meruit*

27 _____
28 ¹ Ms. Parker has filed a motion to alter that order, and that motion will be addressed in a separate order.

1 from plaintiffs in the event the Ninth Circuit should find that she is not entitled to a statutory fee. The
2 Court finds Ms. Parker's arguments unpersuasive. Plaintiffs have waited years to receive their damages
3 awards, and the Court is unwilling to further delay plaintiffs' receipt of their jury awards because of the
4 theoretical possibility that the Ninth Circuit may, after a lengthy appeal, completely eliminate Ms.
5 Parker's statutory fee award.

6 Mr. McCoy seeks the following amounts out of the interpled funds: (1) \$37,678.50 of expert fees
7 paid to Carlene Young, (2) \$24,000² in compensatory sanctions that the Court awarded against Mr.
8 McCoy in connection with the proceedings before the Special Master, and (3) approximately
9 \$293,955.13 in attorneys' fees incurred by Mr. McCoy in connection with litigating Mr. McCoy's
10 amended statutory fee petition.³

11 The Court finds that Mr. McCoy is not entitled to recover these amounts from the interpled
12 funds. With regard to the expert fees of Carlene Young, neither plaintiff benefitted from Ms. Young's
13 work as the Court struck her designation as an expert witness because she was not disclosed in a timely
14 and appropriate manner. Ms. Young did not interview Ms. Boswell, and while she interviewed Mr.
15 Alvarado, she did not testify at his trial. Moreover, Mr. McCoy did not make any attempt to apportion
16 Ms. Young's fees to Ms. Boswell and Mr. Alvarado, as opposed to the seven settlement plaintiffs for
17 whom Mr. McCoy waived his costs. At the hearing Mr. McCoy asserted that the Court denied his
18 request for Ms. Young's fees in his amended statutory fee petition. However, a review of that amended
19 fee petition and supporting declarations shows that Mr. McCoy did not specifically seek Ms. Young's
20 expert fees in the amended fee petition. *See* Docket No. 1731 at ¶ 41 & Ex. D. With regard to the
21 compensatory sanctions, the Court has previously explained why those costs should be paid by Mr.
22 McCoy and not plaintiffs. *See* Docket No. 1681 at 6:11-8:2. Finally, the Court has already awarded
23 \$231,292.75 in statutory fees-on-fees and expenses to Mr. McCoy's former fees counsel, Mr. Bass. Mr.

24
25 ² Mr. McCoy states that the Court imposed \$24,000 in compensatory sanctions. The ultimate
26 amount of compensatory sanctions imposed, however, was \$20,225.72. *See* Docket No. 1681 at 7:8.

27 ³ Mr. McCoy states that the lawyer who litigated his amended fee petition, Mr. Bass, claims that
28 Mr. McCoy owes him a total of \$525,247.38 in fees pursuant to a fee agreement between Mr. McCoy
and Mr. Bass. The Court's September 30, 2011 order awarded Mr. Bass \$231,292.75 in statutory fees-
on-fees and expenses.

1 McCoy provides no authority to support his contention that plaintiffs should be required to pay
2 additional, non-statutory legal fees that Mr. McCoy incurred and that Mr. Bass claims is owed to him
3 pursuant to a fee agreement between Mr. McCoy and Mr. Bass and to which neither plaintiff was a
4 party.

5 Accordingly, the Court directs the Clerk of the Court to immediately disburse the previously
6 interpled funds (\$178,246.03 plus accrued interest for Mr. Alvarado, and \$328,304.85 plus accrued
7 interest for Ms. Boswell). The Clerk shall issue two checks payable as follows: (1) Edward Alvarado
8 and his attorney Stephen M. Murphy and (2) Charlotte Boswell and her attorney Stephen M. Murphy.

9
10 **IT IS SO ORDERED.**

11
12 Dated: December 19, 2011



SUSAN ILLSTON
United States District Judge