

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
DISTRICT OF IDAHO

CLAY BEACH, et al,	)	
	)	No. CV-08-416-JLQ
Plaintiffs,	)	MEMORANDUM OPINION RE:
vs.	)	ATTORNEY FEES AND ORDER FOR
JD LUMBER, INC.,	)	ENTRY OF JUDGMENT
Defendant.	)	

---

Following trial of the above-entitled matter to the court, the findings for the Plaintiffs, and the determination by the court that the Plaintiffs are entitled to recover reasonable attorney fees, the parties have submitted numerous affidavits and documents concerning the amount of reasonable attorneys fees that should be awarded to the Plaintiffs. Briefing was completed on September 9, 2010 and the matter was deemed submitted to the court on that date.

At the conclusion of the bench trial of this matter the court cited the parties to that portion of Justice Lewis Powell’s opinion in *Hensley v. Ekerhart*, 461 U. S. 424, 433 (1983) which cautioned that the determination of the amount of an award of a reasonable attorney fee should not become a “second trial.” The court suggested to counsel that they should attempt to agree on the reasonable amount of Plaintiffs’ attorney fees. While this court is satisfied that counsel for all parties have observed the admonition of Justice Powell and this court, there was no suggestion of negotiation or agreement on the attorney fee issue. A substantial volume of materials and objections have been submitted to the court for its consideration and decision.

1 While the total award to the lumber mill worker Plaintiffs is somewhat less than  
2 \$100,000 plus interest, the full and complete litigation of the Plaintiffs' Worker  
3 Adjustment and Retraining Notification Act ( WARN), 29 U.S.C. § 210, claims were  
4 not only of import to each of the 26 individual mill workers terminated from their jobs  
5 in violation of the WARN Act, but the claims were likewise an important matter of  
6 public policy in enforcing the law which protects workers from mass layoffs without  
7 proper forewarning. The Defendant fully and completely defended this matter from the  
8 start to the finish of the matter and rejected what now appears, in hindsight, to have been  
9 reasonable efforts by the Plaintiffs to resolve this matter without the time and expense  
10 of necessary pretrial discovery, motions, and trial. The litigation posture of the losing  
11 party is a matter that the court may consider in determining the reasonableness of the  
12 number of hours expended by counsel for the prevailing party.

13 As directed and guided by *Hensley v. Eckerhart, supra*, and *Kerr v. Screen Extras*  
14 *Guild, Inc.*, 526 F.2d 67 (9<sup>th</sup> Cir. 1975), the court must first determine the "lodestar"  
15 amount of fees by determining the reasonable number of hours expended multiplied by  
16 the reasonable hourly rate for the attorney.

17 **REASONABLE HOURS EXPENDED BY PLAINTIFFS' ATTORNEYS**

18 The Plaintiffs and their attorneys claim the following hours as being reasonably  
19 expended in the preparation, pretrial, and trial phases of this case:

20 Mel Crawford:	361.9 hours
21 David Whedbee	401.4 hours
22 Robert Huntley	47.4 hours
Julie Gambino (paralegal)	54.1 hours
La Rond Baker (law student)	6.8 hours

23 The Defendant contends that the Plaintiffs' claimed hours are unreasonable,  
24 particularly in view of the defense expenditure of only 463.1 billable hours. The court  
25 notes, however, that in addition to the 463.1 hours of attorney time, the Defendant was  
26 billed for an additional 130.3 hours of paralegal time. This reference to time spent by  
27 the defense is an appropriate one in view of this court's suggestion at the conclusion of

1 the trial that some courts look at the hours billed by both sides of a matter in determining  
2 if the claimed hours by the successful party appear to be unreasonable. However, in this  
3 case, the prevailing parties are the Plaintiffs and those Plaintiffs had the burden of proof  
4 in this case. The Plaintiffs were required to pursue formal pretrial discovery procedures  
5 and motions, rather than having the relevant information furnished without demand as  
6 is the intent of F. R. Civ. P. 26. The court determines that the fact that the defense  
7 attorneys expended a less amount of time than the Plaintiffs' attorneys is not a valid  
8 basis, in this case, for reducing the Plaintiff's hours.

9 The Defendant also contends that the Plaintiffs have failed to reduce the time spent  
10 by their attorneys on claims presented in the complaints that were dismissed, either  
11 voluntarily or by the court on summary judgement citing *McCown v. City of Fontana*,  
12 565 F. 3d 1097, 1103 (9<sup>th</sup> Cir. 2009). However, this court finds that the claims against  
13 the principal owner of JD Lumber, Inc., Jeff Weimer, and the claims against JD Lumber  
14 that were dismissed prior to trial, involved the same facts and circumstances upon which  
15 the Plaintiffs' successful WARN claims were based. For that reason, the court rejects  
16 the suggestion that the Plaintiffs hours should be reduced because of the dismissed  
17 claims.

18 The Defendant next contends there was duplication by Mr. Crawford and Mr.  
19 Whedbee in various pretrial proceedings as set forth on page 8 and 9 of the Defendant's  
20 Response To Plaintiff's Motion For Attorney Fees. (C. R. 126). The court has reviewed  
21 that claim and the billings of Mr. Crawford and Mr. Whedbee and agrees with the  
22 defense contentions in part. The court finds that the hours claimed by Mr. Crawford  
23 should be reduced by 31.1 hours and those billed by Mr. Whedbee should be reduced by  
24 26 hours.

25 The JD Lumber, Inc., also contends that the billings of Messrs. Crawford and  
26 Whedbee of 21.5 hours overstates the actual time spent in trial. The court agrees and  
27 reduces the reasonable hours for trial time to 12.5 hours.

1 Finally, the defense challenges the association by the Plaintiffs of attorney Robert  
2 Huntley of Boise, Idaho arguing that the Plaintiffs should have associated a Coeur d'  
3 Alene, Idaho attorney rather than one in Boise. While this is a north Idaho case and was  
4 tried in Coeur d'Alene, the entire state of Idaho is one federal district and the judge  
5 originally assigned this matter, Judge Lodge, has his chambers in Boise. The court also  
6 observes that the Defendant did not hire a north Idaho law firm to defend it, but rather  
7 retained and was represented throughout by a Boise law firm. Mr. Huntley's appearance  
8 and attendance were required by Idaho Local Rule 83.4(e) which requires that an  
9 attorney admitted in the District of Idaho and maintaining an office in the District, be  
10 associated by *pro hac vice* counsel. The local attorney is required be named on and sign  
11 all pleadings and personally appear on "all matters heard and tried." The court finds Mr.  
12 Huntley's billed time of 47.4 hours to be reasonable.

13 Based on the court's review of all the pleadings filed and reviewed by the court  
14 in connection with the hours claimed by the Plaintiffs, the court finds the following to  
15 be the reasonable hours expended by Plaintiff's attorneys:

16	Mel Crawford	321.8 hours
	David Whedbee	366.4 hours
17	Robert Huntley	47.4 hours
	Julie Gambino (paralegal)	54.1 hours
18	La Rond Baker (law student)	6.8 hours

19 **REASONABLE HOURLY RATES**

20 Plaintiffs seek an hourly rate for attorney Mel Crawford of \$350 per hour and for  
21 David Whedbee of \$225 per hour. Mr. Crawford and Mr. Whedbee are both members  
22 of a respected Seattle, Washington law firm, MacDonald, Hoague, & Bayless. Mr.  
23 Crawford has been a member of that firm since 1993 and is presently the managing  
24 partner. Mr. Whedbee has been an associate with the MacDonald firm since his  
25 graduation from the University of Washington law school in 2005. Mr. Crawford's  
26 Seattle billing rate which he seeks in this case is \$350/hour and Mr. Whedbee's billing  
27 rate is \$225/hour in the Seattle area. However, the court determines that the reasonable

1 hourly rate for these attorneys should be based upon reasonable rates in the District of  
2 Idaho, where this action was commenced, prosecuted, and tried. The court rejects the  
3 Defendant's contentions that it should apply the northern Idaho rates which it claims are  
4 less than the Boise-southern Idaho rate. The court finds that a reasonable District of  
5 Idaho hourly rate for the time spent by Mr. Crawford is \$275/hour and for Mr. Whedbee  
6 \$200/hour. The reasonable hourly rate for attorney Robert Huntley is also determined to  
7 be \$275/hour. The distinguished career and experience of Mr. Huntley speaks for itself  
8 and could well justify a higher hourly rate. However, in its discretion the court sets Mr.  
9 Huntley's hourly rate at that set for Mr. Crawford. The reasonable hourly rate for the  
10 paralegal Julie Gambino is found to be \$75/hour and for the recent law school graduate  
11 La Rond Baker \$100/hour. These rates take into consideration the fact that the  
12 Plaintiffs' attorneys have expended their time over a period in excess of two years  
13 without receiving any compensation therefor. The fact that the hourly rates awarded to  
14 Plaintiffs' counsel is somewhat higher than that billed by the attorneys for the Defendant  
15 does not adversely reflect upon the quality of legal skills evidenced by Messrs. Brian  
16 Julian and Stephen Adams. These attorneys fully and competently represented the  
17 Defendant JD Lumber, Inc., and the finding for the Plaintiffs herein was based strictly  
18 on the court's determinations of the facts and not on any inadequate legal representation  
19 of the Defendant.

20 **COMPUTATION OF ATTORNEY FEES AWARDED**

21 Based upon the foregoing, the court determines the Plaintiffs are entitled to  
22 recover attorney fees in the amount of \$179,547, computed as follows:

23	Mel Crawford	\$ 88,495
24	David Whedbee	\$ 73,280
24	Robert Huntley	\$ 13,035
25	Julie Gambino (paralegal)	\$ 4,057
25	La Rond Baker (law graduate)	\$ 680
26	Total	<u>\$179,547</u>

1 **NON-TAXABLE EXPENSES**

2 The Plaintiffs also seek to recover their attorneys’ expenses not included in their  
3 statutory cost bill in the amount of \$ 9,361.36. The Defendant asserts that such non-  
4 taxable costs, primarily for travel and housing, should not be included in an award of  
5 reasonable attorney fees under the WARN statute. However, in this case, the court finds  
6 that the claimed non-taxable expenses were reasonably and necessarily expended in the  
7 prosecution of this action subject to reduction in the amount of \$1,246.69 representing  
8 duplicative travel expenses for Mr. Crawford and Mr. Whedbee. The court rejects the  
9 Defendant’s challenges to the travel and housing expenses of Mr. Huntley since Idaho  
10 Local Rule 83.4(e) required his attendance at all court proceedings. Mr. Huntley  
11 traveled from Boise to Coeur d’ Alene as did both of the Defendant’s attorneys. The  
12 court finds the Plaintiffs should be compensated from their attorneys’ Non-Taxable  
13 Expenses in the amount of \$8,114.67.

14 **INTEREST COMPUTATION**

15 To the credit of the parties and their attorneys they did stipulate to the amount of  
16 lost wages suffered by the Plaintiffs if the Plaintiffs prevailed that being \$86,220. (See  
17 Clerk’s Record 68). The WARN Act is silent as to the award of interest on lost wages.  
18 Therefore the court applies the law of the forum state, in this case the state of Idaho.  
19 Idaho Code § 28-22-104 provides for prejudgment interest on “money after the same  
20 become due” at the rate of 12 % per annum, which is not to be compounded. The court  
21 therefore determines that the Plaintiffs are entitled to interest on their unpaid wages from  
22 October 3, 2008, the date of the plant closing, at \$28.35/day to the date of this Order and  
23 the entry of judgment in the total amount of \$20,871.

24 **ENTRY OF JUDGMENT**

25 The Plaintiffs are entitled to judgment against the Defendant JD Lumber, Inc. in  
26 the amount of \$ 294,663 composed of the following:  
27

1	Lost Wages	\$ 86,220
	Interest on Lost Wages	\$ 20,781
2	Non-taxable Expenses	\$ 8,115
	Attorney Fees	\$ 179,546
3	Total judgment to be entered	\$ 294,663

4 The Clerk shall enter this Order, enter judgment for the Plaintiffs in the amount  
5 of \$294,663 plus Plaintiffs' statutory costs, distribute this Order to counsel, and close the  
6 file.

7 Dated this 5<sup>th</sup> day of October, 2010.

8 s/ Justin L. Quackenbush  
9 JUSTIN L. QUACKENBUSH  
10 SENIOR UNITED STATES DISTRICT JUDGE

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28