

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARK MAKSYMOWICZ, ROBERT
LARIMORE and STEVEN OBERDING)

Plaintiffs,)

v.)

ZOOM GRAPHICS, LLC., et al.)

Defendants.)

2009 C 5365
JUDGE MANNING

Maksymowicz v. Zoom Graphics, LLC. et al

Doc. 22 Att. 4

AFFIDAVIT OF ERNEST T. ROSSIELLO

ERNEST T. ROSSIELLO, being first duly sworn upon oath, states the following
to be true and correct:

1. He is principal in the law firm of ERNEST T. ROSSIELLO & ASSOCIATES,
P.C., which chiefly concentrates its practice in employment discrimination law under Title VII of
the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(a) and the maximum hours provisions (overtime
wage) of the Fair Labor Standards Act, 29 U.S.C. 207(a) and other discriminatory discharge
cases.

2. He is a 1965 graduate of St. Francis College in Brooklyn, New York, which
conferred the degree of Bachelor of Arts upon him on June 5, 1965. At graduation, he was the
first place recipient of the Francis X. Delaney Oratorical Award. He is a June 20, 1970 graduate
of The John Marshall Law School, Chicago. He has been licensed to practice law in the State of
Illinois since November 15, 1971. Since 1974, he has handled more than 550 employment
related suits, almost all of which have been in the United States District Court for the Northern
District of Illinois, Eastern Division. He has handled more than 42 appeals in the Seventh
Circuit, and five cases in the Supreme Court of the United States.

3. He has had, in 39 years, almost no clients which pay the firm on an hourly



billing, fee paying basis and, as such, most of the clientele of his firm retains him on a contingent fee basis, where no retainer or costs are paid. In this case, co-plaintiffs retained him on a contingency fee contract of 33.33% of any amounts recovered, plus an assignment of rights to the statutory fee-shifting against the employer. Co-plaintiffs have paid him nothing in advance towards either fees or expenses of suit. As of this date, counsel has received nothing for his time or expenses. However, he has billed his clients based on the hours worked using "Timeslips" software, approved by the American Bar Association. He has billed the plaintiffs in accordance with the rates he has billed and collected from court-awarded orders and settlement achieved over the past 15 years. Such actual billing rate is presumptively appropriate. People Who Care v. Rockford Board of Education, 90 F.3rd 1307, 1310-11 (7th Cir. 1996).

4. Counsel also has litigated some of the leading cases in the United States Court of Appeals for the Seventh Circuit under Title VII and the Fair Labor Standards Act: Emmel v. Coca-Cola Bottling Company, 95 F.3d 627 (7th Cir. 1996) (promotion and punitive damages); Troupe v. The May Department Stores, 20 F.3d 734 (7th Cir. 1994) (pregnancy discrimination and burden of proof in summary judgment under Title VII); Avitia, et al. v. The Metropolitan Club, 49 F.3d 1219 (7th Cir. 1995) (FLSA overtime wage suit and claim for retaliatory discharge and compensatory damages); Soto v. Adams Elevator Equipment Company, 941 F.2d 543 (7th Cir. 1991) (punitive damages under the Equal Pay Act amendment to the FLSA); Ellerth v. Burlington Industries, Inc. 123 F.3d 490 (7th Cir. 1997) *en banc*, affirmed 524 U.S. 724(1998) establishing vicarious liability of the employer for sexual harassment under Title VII; Joy Shea v. Galaxie Lumber, 152 F.3rd 729 (7th Cir. 1999) [punitive damages recoverable in FLSA discharge case without necessity to prove compensatory damages].

5. In other employment suits since 1990, ERNEST T. ROSSIELLO has billed and collected hourly rates of between \$250.00.00 and approximately \$620.00 per hour for similar services. Such historical rates awarded in similar cases are clearly evidence of an attorney's

market rate. People Who Care v. Rockford Board of Education, 90 F.3rd 1307, 1312 (7th Cir. 1996) citing Tolentino v. Friedman, 46 F.3rd 645, 652 (7th Cir. 1995). The district court should award the rates requested.

6. In Gonzalez, et al. v. Glenwood Oaks, Inc., Civil No. 90 C 1573 (N.D. Ill.), an overtime wage case which settled, he was paid, in the year 1990, \$6,500.00 for 26 hours of time (\$250.00 per hour); in Lambropoulos v. 560 Restaurant, Inc., Civil No. 90 C 6675, another overtime wage case settled in 1991, he was paid (in 1991) at \$250.00 per hour for services rendered; in Palmer v. Ponderosa, Inc., Civil No. 88 C 3803 (N.D. Ill.), an age discrimination case which was settled, he was paid in 1990 at a rate of \$272.00 per hour; in Irvine, et al. v. American National Bank, Civil No. 84 C 497 (N.D. Ill.), a Title VII class action for sex discrimination, he was paid (in June, 1991) a fee of \$150,000.00 for approximately 600 hours of work (approximately \$250.00 per hour). In Anderson v. Northern Credit Services, 96 C 4508, he settled his fees for a 1997 hourly rate of \$345.00 per hour.

6. In recent court orders and out-of-court settlements, affiant was paid the following rates in the following cases:

- (a) Avitia, et al. v. The Metropolitan Club, Civil No. 88 C 6965 (N.D. Ill.) (Norgle, A.), order April 4, 1996: the equivalent of \$285.00 per hour (1994 rate of \$260.00 per hour enhanced by 8.46% prejudgment interest from January 27, 1995).
- (b) Doden v. Plainfield Fire Protection District, Civil No. 94 C 6294, (Marovich, J.) April 11, 1996 (N.D., Ill.): \$280.00 per hour for ERNEST T. ROSSIELLO, \$180.00 per hour for MARGARET A. ZULEGER and \$90.00 per hour for DINA M. CAVICO, paralegal.
- (c) Dunning v. Simmons Airlines, Civil No. 92 C 2604, March 15, 1996 (N.D.Ill.) (Plunkett, J.), aff'd, 62 F.2d 863 (7th Cir. 1995): \$276.00 per hour for appellate services

rendered in 1993-94, based upon a 1992-93 hourly rate of \$230.00 enhanced 10% per year for each of two years for delay in payment between 1994-95;

(d) Angulo v. Expert Services, Inc., (FLSA/overtime) Civil No. 94 C 4861, (Hart, J.) June 28, 1995 (N.D. Ill.): \$270.00 per hour;

(e) Hampton v. American Plumbing, (FLSA/overtime) Civil No. 95 C 1836, July 6, 1995 (N.D. Ill.) (Hart, J.): \$275.00 per hour;

(f) Schrieber V. REB Investment Group d/b/a/ Clear Shot Technologies, (FLSA/overtime case) Civil No. 94 C 6709, (Castillo, J.). October 30, 1995 (N.D. Ill.): \$280.00 per hour;

(g) Emmel v. Coca-Cola Bottling Co. of Chicago, 904 F.Supp. 723 (N.D.Ill. 1995) (Holderman, J.), a Title VII case for sex discrimination, affiant at the trial level was awarded a 1994 rate of \$275.00 per hour for his services and \$165.00 per hour for his associate's, Margaret A. Zuleger's, services; after affirmance of the district court's judgment, he settled his fees for \$305.00 per hour, and \$165.00 per hour for Elena M. Dimopoulos' services.

(h) Barnett v. Sandpiper One, Inc., Civil No. 95 C 7547, (USDC, N.D. Ill.) (Anderson, J.), he was awarded \$305.00 per hour on October 30, 1996. (Ex. 20).

(i) In Re Monica DeStefano, Illinois Human Rights Commission ALS No. 12079, he received an award of fees of \$500.00 per hour on November 12, 2003. Ex. 15.

(j) LeTourneau, et al. v. Pan American Financial Services, 96 C 619, (Aug. 27, 1997) (Plunkett, J.) \$320.00 per hour for him, and \$220.00 per hour for Elena M. Dimopoulos;

(k) In Davis v. Electrical Insurance Trustees, No. 06C5913 (N.D. Ill.) he was paid a fully compensatory fee of \$137,000.00 at the hourly rate of \$620.00 in November, 2008 following a two day jury trial where the plaintiff obtained a \$25,000.00 verdict on July 22, 2008.

(l) In Karen Baker v. Purcell & Wardrope, Chartered, No. 96 C 6892 on March

- 31, 1997, he received \$102.50 per hour for the services of DINA M. CAVICO, certificated paralegal; and he received the rate of \$190.00 per hour for MELINDA HIGGINS BROM a first year associate.
- (m) In Fowlkes, et al. v. Professional Protection Specialists, No. 01C6042 (N.D. Ill.), counsel on October 10, 2002 was awarded his requested \$475.00 per hour for obtaining a consent judgment for the plaintiff in an FLSA case.
- (n) In Armando Garcia, et al. v. Car Enterprises, Inc. No. 97CH01763 (Cook Co., Ill.), an overtime wage case, he was awarded his requested \$375.00 then current market hourly rate for obtaining summary judgment for the plaintiffs.
- (o) In Anderson v. Garvey, No. 99C2827 (N.D. Ill.), counsel, on July 28, 1999, was awarded \$350.00 per hour for his services in an FLSA case.
- (p) On December 20, 2006, the Honorable Bernetta Bush approved rates of between \$560.00 and \$585.00 per hour for Mr. Rossiello's services in an overtime wage suit under the Illinois Minimum Wage law. The court awarded the full fee requested, albeit that only one of the two plaintiffs prevailed (the other plaintiff could not be found to execute his affidavit of damages). See, Knapik, et al. v. DWAYNE RONCZKOWSKI, No 06CH0471 (Cook Co., Ill.).
- (q) On April 8, 2005 Judge Holderman approved \$525.00 per hour for Mr. Rossiello's services in an action for overtime and minimum wages under the Fair Labor Standards Act. Lott v. Bolzano's of East Hazel Crest, et al., No. 04C3597 (N. D. Ill.).
- (r) In an October, 2007 settlement in James v. Illinois Mentor, No. 05L014284 (Cook Co., Ill.), an Illinois Whistleblower Act suit, 740 ILCS 174/30(1)-(3), Judge Daniel Kelly of the Law Division of the Circuit Court of Cook County,

Illinois, approved \$150,000.00 in statutory fees for hourly rates between \$540.00 and \$585.00 per hour for Mr. Rossiello's services, plus contingent fee on client's settlement.

(s) In another settlement in Wide v. DNI Intermodal, No. 06L11345 (Cook Co., Ill.), under the Illinois Whistleblower Act, 740 ILCS 174/30(1)-(3), hourly fees for Mr. Rossiello's services of between \$585.00 and \$625.00 per hour were paid.

(t) In the settlement of Gonzalez v. Riad Ghani, et al., No. 06C4383 (N.D. Ill.), a suit for overtime and minimum wages under both federal and state law, combined with an Illinois Whistleblower Act claim and one for retaliatory discharge for complaining about cash payments and no overtime for the plaintiff, counsel obtained hourly rates of between \$585.00 and \$615.00 for Mr. Rossiello's services in December, 2007.

7. Mr. Rossiello is familiar with the Chicago market for attorneys' fees and is of the opinion that rates of between \$565.00 and \$700.00 per hour or more is the market rate for the services of a practitioner as himself with fully 38 years litigation experience concentrating in employment discrimination suits, as is he.

8. Mr. Rossiello's current (2009) hourly billing rate is \$620.00 to \$625.00 per hour for employment discrimination cases.

9. In connection with his practice, he and his staff maintain contemporaneous time and expense records for each case. These have been attached hereto as Exhibits 4-5.

10. All of the time and costs incurred were necessarily and reasonably expended in connection with the prosecution of plaintiff's claim. He has derived no fee or cost