

IN THE UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF INDIANA
 INDIANAPOLIS DIVISION

BRUCE TARVIN and MID CENTRAL)	
OPERATING ENGINEERS HEALTH AND)	
WELFARE FUND,)	
)	
Plaintiffs,)	
)	
vs.)	Cause No. 1:05-cv-01267-JMS-TAB
)	
BUNN EXCAVATING, INC.)	
)	
Defendant.)	

**REPORT AND RECOMMENDATION ON
 PLAINTIFFS’ MOTION FOR ATTORNEY’S FEES**

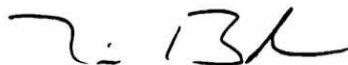
On February 1, 2006, the Court ordered Defendant Bunn Excavating, Inc. to remain current in its fringe benefit contributions to Plaintiffs Bruce Tarvin and Mid Central Operating Engineers Health and Welfare Fund. [Docket No. 15.] Despite this order, the Defendant failed to make contributions. [Docket No. 80 at 2.] On June 1, 2009, the Court granted Plaintiffs’ summary judgment motion to the extent it sought unpaid contributions in the amount of \$88,650.75. *Id.* Plaintiffs now request attorney’s fees incurred in litigating the unpaid contributions. [Docket No. 90.]

Plaintiffs brought this action under section 515 of the Employee Retirement Income Security Act, 29 U.S.C. § 1145, to recover unpaid contributions that Defendant agreed to make under the parties’ collective bargaining agreement. Plaintiffs prevailed on the merits of the case and moved for attorney’s fees under 29 U.S.C. § 1132(g)(2)(D), which permits the Court to award reasonable attorney’s fees and costs. The Court granted reasonable attorney’s fees and costs to Plaintiffs and ordered them to submit a statement supporting their claim. [Docket Nos. 87, 88.] The Plaintiffs have submitted the supporting statement and request attorney’s fees in

the amount of \$15,838.50 and costs in the amount of \$250. [Docket No. 90-2 (Ex. Spreadsheet).] Defendant does not explain why it should not owe attorney's fees and costs. [Docket No. 86 at 4.] The Court has reviewed Plaintiffs' supporting statement and concludes that in light of the relief sought and the time involved in seeking summary judgment, the fees requested are not unreasonable.¹

For these reasons, the Magistrate Judge recommends that Plaintiffs' request for attorney's fees and costs in the amount of \$16,088.50 be granted. Any objections to the Magistrate Judge's Report and Recommendation shall be filed with the Clerk in accordance with 28 U.S.C. § 636 (b)(1). Failure to file a timely objection within fourteen days after the service of this order shall constitute a waiver of subsequent review absent a showing of good cause for such failure.

Dated: 12/28/2010



Tim A. Baker
United States Magistrate Judge
Southern District of Indiana

Copies to:

Frederick W. Dennerline III
FILLENWARTH DENNERLINE GROTH & TOWE LLP
fdennerline@fdgtlaborlaw.com

Geoffrey S. Lohman
FILLENWARTH DENNERLINE GROTH & TOWE LLP
glohman@fdgtlaborlaw.com

Bart Bunn
3204 Lower Huntington Road
Fort Wayne, IN 46809

¹ However, the Court notes that Plaintiffs' supporting statement would have benefitted from a bit more specificity. For example, several line items only said, "Work on Bunn." [Docket No. 90-2 at 4-6 (Ex. Spreadsheet).] Because Defendant has not challenged the amount of the attorney's fees, the Court will not order the Plaintiffs to submit a more specific supporting statement.