

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PHILADELPHIA WORKFORCE DEVELOPMENT CORPORATION	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 09-cv-05261-WB
KRA CORPORATION	:	
Defendant.	:	

MEMORANDUM OPINION

Plaintiff seeks discovery in aid of their motion for attorneys' fees. Doc. No. 204. The defendant has objected on several grounds. Doc. No. 206. For the reasons explained below, I will deny the defendant's request for a trial of the attorneys' fees issue, and direct that the defendant supply limited discovery on the issue.

1. The attorneys' fee issue will be resolved by motion, not by bench trial.

The issue in this case is the scope of the parties' stipulation that the attorneys' fees would be resolved by the court after the jury trial. In the ordinary case attorneys' fees petitions are resolved by motion, not by a bench trial. *See Vizant Technologies, LLC v. Whitchurch*, 2016 WL 7042218, at *1 (E.D.Pa. 2016). While the Third Circuit has not decided whether there is a Constitutional right to a jury trial of a contractual right to attorneys' fees, other circuits have decided there is none, and the issue should be decided by the court after trial. *Id.* (citing to *Eastern Trading Co. v. Refco, Inc.*, 229 F.3d 617, 626–27 (7th Cir. 2000); *McGuire v. Russell Miller, Inc.*, 1 F.3d 1306, 1313 (2d Cir. 1993); *Ideal Electronic Sec. Co., Inc. v. International Fidelity Ins. Co.*, 129 F.3d 143, 150 (C.A.D.C. 1997).

The parties here did not specify the fact-finding procedure to be adopted, only that the court was to be the fact-finder. I find that the parties made their stipulation

against the background of ordinary, nearly universal practice. A jury trial was imminent. If the parties actually thought a trial was needed to determine the attorneys' fees issue, the jury trial would have sufficed, and been more efficient than convening another trial after the main event.¹ A party who wished to vary from the ordinary practice of resolving attorneys' fee disputes by post-trial motion was under an obligation to make that wish explicit. KRA did not. Its request for a trial on the attorneys' fee issue is denied.

2. PWDC will be permitted limited discovery concerning KRA's legal rates and attorney time expended.

PWDC wants information about KRA's attorneys' time and rates in connection with various aspects of this litigation. *See* Doc. 204; Exhibit "A," Doc. No. 204-1. KRA objects to this request as improper, non-probative, and disproportionate. Doc. No. 206.

Information on an objecting party's legal fees may be relevant and helpful during a fee dispute. *See In re Fine Paper Antitrust Litigation*, 751 F.2d 562, 587 (3d Cir. 1984) (such discovery is permissible for the "purpose of enlightening the court as to reasonable hours and hourly rates for comparable lawyers in complex litigation."). The rates charged by the defendant's attorneys, and the time spent on various portions of the litigation, are likely to be helpful in deciding whether plaintiff's attorneys' rates and time spent on the same aspects of the litigation were appropriate. While information about the defendant's attorneys' time spent and rates charged may not be directly comparable to plaintiffs' attorneys', direct comparability is quite rare, and not a *sine qua non* for either relevance or probative value. The information will assist me in assessing how a sophisticated Philadelphia commercial lawyer might reasonably handle this complicated

¹ I doubt that a trial judge would have assented to a bench trial of the attorneys' fee issue, had the stipulation explicitly called for one.

commercial litigation, and what such a lawyer might charge.² As for the proportionality of the discovery, the plaintiffs seek more than a million dollars in attorneys' and costs. The discovery sought is not particularly exotic or difficult to produce, and is "proportional to the needs of the case," considering the various factors identified in Fed. R. Civ. Pro. 26(b)(1).

The plaintiff has already turned over their attorneys' invoices, pursuant to a previous order. Doc. No. 196. I will direct the defendant to turn over to the plaintiff's counsel their attorneys' invoices, under the same conditions, with a caveat. The defendant is concerned about the time involved in weeding through its invoices, many of which concerned representation not directly related to this suit. I will allow them to elect whether to turn over all invoices, and let the plaintiff do the weeding, or only those related to the issues identified in Exhibit "A." Doc. No. 204-1. In either event, the information turned over in discovery will be kept confidential by the plaintiff's counsel, pursuant to the confidentiality order previously entered in this case. *See* Doc. No. 52.

An appropriate Order is entered along with this Memorandum Opinion.

BY THE COURT:

s/Richard A. Lloret

HON. RICHARD A. LLORET
U.S. Magistrate Judge

DATE: July 21, 2017

² For instance, the defendants criticize the plaintiff's counsel for preparing for oral argument in the Third Circuit, because oral argument was apparently dispensed with by the Court of Appeals. If the defendant's counsel also prepared for oral argument, this criticism might have less force. If the defendant's counsel did not prepare for oral argument, this would tend to validate the criticism.