

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>UNITED STATES FOR THE USE AND</b>	)	
<b>BENEFIT OF:</b>	)	
<b>TERRY RICHARDSON, individual</b>	)	
<b>D/B/A TERRY RICHARDSON</b>	)	
<b>CONCRETE, LLC,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Case No. 2:12-cv-00109</b>
	)	
<b>v.</b>	)	<b>Judge Sharp</b>
	)	<b>Magistrate Judge Holmes</b>
<b>MACK MECHANICAL, INC., and</b>	)	
<b>AMERICAN SAFETY CASUALTY</b>	)	
<b>INSURANCE COMPANY,</b>	)	
	)	
<b>Defendants.</b>		

**MEMORNADUM AND ORDER**

Pending before the Court is Plaintiff Terry Richardson d/b/a Terry Richardson Concrete, LLC’s (“Richardson”) unopposed<sup>1</sup> Motion for Award of Attorney Fees. (Docket No. 159). On October 21, 2016, the Court granted Plaintiff Richardson’s Motion for Summary Judgment on his Miller Act claim. (Docket No. 147). Subsequently, the Court awarded damages to Plaintiff Richardson in the amount of \$39,489.12 after holding a damages hearing. (Docket No. 169). For the reasons stated herein, the Court will grant Plaintiff Richardson’s Motion subject to adjustments.

**LEGAL STANDARD**

Because the Miller Act does not provide for an award of attorney’s fees to a successful litigant, “the traditional American rule applies that each party bears its own legal costs absent an

---

<sup>1</sup> In this Court’s Order awarding damages to Plaintiff Richardson, the Court ordered Defendant Mack Mechanical (“Mack”) to file any Response in Opposition to Plaintiff Richardson’s Motion for Attorney Fees within seven days of entry of that Order. (Docket No. 169). Defendant Mack has not done so.

enforceable contractual provision or evidence of bad faith.” U.S. for Use & Benefit of Ken’s Carpets Unlimited, Inc. v. Interstate Landscaping Co., 1994 WL 481684, \*8 (6th Cir. 1994) (citing F. D. Rich Co. v. U. S. for Use of Indus. Lumber Co., 417 U.S. 116, 126 (1974)). Here, however, Section VIII of the subcontract between Plaintiff Richardson and Defendant Mack states, “Attorney fees for both parties and court costs shall be paid by the non-prevailing party.” (Docket No. 126-5 at 2).

As the prevailing party, Plaintiff Richardson is entitled to an award of attorney’s fees. “A reasonable fee is one that is ‘adequately compensatory to attract competent counsel yet which avoids producing a windfall for lawyers.’” Dowling v. Litton Loan Servicing LP, 320 F. App’x 442, 446 (6th Cir. 2009) (quoting Geier v. Sundquist, 372 F.3d 784, 791 (6th Cir. 2004)). Determining a reasonable fee starts with calculating the lodestar amount—“the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). “The party seeking an award of fees should submit evidence supporting the hours worked and rates claimed.” Hensley, 461 U.S. at 433. The Court should not consider hours “not reasonably expended” or that were “excessive, redundant, or otherwise unnecessary.” Id. at 434. And the Court may exercise its discretion to reduce an award “where the documentation of hours is inadequate.” Id. at 433.

To establish the lodestar amount and any adjustments to it, the Court considers the following factors:

- (1) the time and labor required by a given case;
- (2) the novelty and difficulty of the questions presented;
- (3) the skill needed to perform the legal service properly;
- (4) the preclusion of employment by the attorney due to acceptance of the case;
- (5) the customary fee;
- (6) whether the fee is fixed or contingent;
- (7) time limitations imposed by the client or the circumstances;
- (8) the amount involved and the results obtained;
- (9) the experience, reputation, and ability of the attorneys;
- (10) the “undesirability” of the case;
- (11) the nature and length of the professional relationship with the client; and
- (12) awards in similar cases.

Adcock–Ladd v. Sec’y of Treasury, 227 F.3d 343, 349 n.8 (6th Cir. 2000) (citing Johnson v. Ga. Highway Express, Inc., 488 F.2d 714, 717–19 (5th Cir. 1974)).

## ANALYSIS

Plaintiff Richardson requests attorney’s fees and expenses, (Docket No. 167 at 2, ¶ 9), for his attorneys Tyce S. Smith and Mark Turley, one certified paralegal Leatta Nichols, and Smith’s personal paralegal/legal assistant JoAnna Exendine (collectively, “Smith & Turley group”). He further requests attorney’s fees and expenses, (Docket No. 167-2 at 3-4, ¶ 17), for local counsel J. Brad Scarbrough and Adam O. Knight, junior associate Timothy Bishop, and paralegal Julie Long (collectively, “Scarbrough group”).

### I. Smith & Turley Group

With respect to the Smith & Turley group, Plaintiff Richardson calculates the amount sought by multiplying the number of hours worked by a reasonable hourly rate. Based on the document setting out the Smith & Turley group’s professional service charges and expenses, (Docket No. 167-1), the hourly rates charged for attorneys were \$225/hour and \$220/hour. The Court finds that the hourly rates of \$225/hour and \$220/hour for Attorneys Smith and Turley (presumably designated by the initials “TSS” and “MT”) are reasonable given that Smith has practiced law for forty-five years and Turley has practiced for over thirty years. (Docket No. 167 at 1-2, ¶¶ 3, 18). However, the Court observes that there are \$220/hour charges for work performed by an individual whose initials appear to be “PMR,” and one such charge for an individual with the initials “CBW.”

In the Second Affidavit of Tyce S. Smith, (Docket No. 167), Smith refers to himself, his law partner Turley, and paralegals Nichols and Exendine, but there is no mention of any attorneys with the initials “PMR” and “CBW.” Furthermore, no individuals with the initials

“PMR” or “CBW” are listed in the docket among the lawyers representing the parties. Presumably, those individuals are Peter Rohrich and Carrie Williamson, as there is an entry in the professional service charges and expenses document that includes those two names. (Docket No. 167-1 at 8). Because no affidavit was submitted on behalf of Rohrich and Williamson, the Court will decline to award attorney’s fees associated with “PMR” and “CBW,” which is \$9,992 for 49.96 hours worked.<sup>2</sup>

Regarding Attorneys Smith and Turley, Plaintiff Richardson seeks attorney’s fees for 141.65 hours worked at \$225/hour (\$31,871.25) and 42.5 hours worked at \$200/hours (\$8,500), for a total of 184.15 hours worked for \$40,371.25. Those hours are comprised of appropriate legal work and time spent traveling, which this Court has the discretion to compensate. See Perotti v. Seiter, 935 F.2d 761, 764 (6th Cir. 1991) (“We believe that matters of [time spent in travel] are within the discretion given [sic] the district court . . .”). While only some hours are specifically linked to either Smith or Turley with the designation “TSS” or “MT,” the Court will allow all 184.15 hours because presumably those were hours worked by Smith, who submitted the invoice with the professional service charges.

Plaintiff Richardson requests fees for 163 hours worked at a rate of \$50/hour for legal assistant Exendine, which is \$8,150. Even though the Court finds that \$50/hour is a reasonable hourly rate, the Court will reduce the amount of legal assistant time that is compensable because Exendine may not recover for the purely clerical/secretarial work she performed. See Missouri v. Jenkins, 491 U.S. 274, 288 n.10 (1989) (“Of course, purely clerical or secretarial tasks should not be billed at a paralegal rate, regardless of who performs them.”); B & G Min., Inc. v. Dir., Office of Workers’ Comp. Programs, 522 F.3d 657, 666 (6th Cir. 2008) (“While reviewing

---

<sup>2</sup> This comprises some of the charges from the following dates: 1/26/2016, 1/29/2016, 2/2/2016, 2/3/2016, 2/4/2016, 2/5/2016, 2/6/2016, 2/7/2016, 5/6/2016, 5/12/2016, and 5/13/2016. (Docket No. 167-1 at 7-9).

correspondence can constitute legal work, receiving and filing correspondence presumably constitutes clerical work.”); E.E.O.C. v. Whirlpool Corp., No. 3:06-CV-0593, 2011 WL 3321291, at \*7 (M.D. Tenn. Aug. 2, 2011) (“[T]he Court will decline to award fees to Plaintiff for hours billed by her attorneys that amount to clerical tasks and constitute the overhead cost normally expected in legal practice.”); Lay v. Astrue, No. CIV.A. 10-346-DLB, 2012 WL 5988822, at \*5 (E.D. Ky. Nov. 29, 2012) (“Clerical work involves tasks that do not require legal knowledge, such as filing motions, preparing or reviewing summons, and receiving and filing correspondence.”). Because each clerical activity performed by Exendine is not specifically separated from other compensable activities she performed, the Court uses its discretion to reduce her fees by 20% to account for clerical work performed. Therefore, the Court finds that \$6,520 is a reasonable amount (80% of \$8,150).<sup>3</sup> Furthermore, the Court finds that \$2,964.50 for 42.35 hours worked at a rate of \$70/hour for certified paralegal Nichols is reasonable and fully compensable.

In addition to the aforementioned, Plaintiff Richardson seeks costs and expenses incurred by the Smith & Turley group. Plaintiff Richardson has submitted a Bill of Costs, (Docket No. 171), in the total amount of \$2,510.50, which is comprised of fees of the clerk (\$350), fees for service of summons and subpoena (\$210), and fees for printed or electronically recorded transcripts necessarily obtained for use in the case (\$1,950.50). Plaintiff Richardson may not recover these costs because the supporting documentation is inadequate; a reference to a check number without the attached check is insufficient. (Docket Nos. 171-1, 171-2). Furthermore, Plaintiff Richardson may not recover for costs associated with having originally filed this suit in Missouri.

---

<sup>3</sup> The Court also declines to consider the legal assistant time of “YB,” whose activities—filing complaint, preparing and emailing summons to clerk, and setting up video depositions—constitute clerical work. (Docket No. 167-1 at 1).

In the document setting out the Smith & Turley group's professional service charges and expenses, (Docket No. 167-1), pages 15-18 contain "additional charges" in the amount of \$7,928.85, which Plaintiff Richardson seems to be considering expenses. Some of the additional charges include items already accounted for in the Bill of Costs, which are nonrecoverable. After reviewing the remaining additional charges, the Court finds that Plaintiff Richardson may not recover most of the funds sought because of inadequate documentation. Plaintiff Richardson has not submitted a single receipt or copy of a check written to cover expenses, yet seeks to recover for his attorneys' charges for postage, mileage, gas, hotel rooms, and other items. The Court will use its discretion to award only fees incurred from PACER Service Center and the fees from this Court, which amounts to \$172.60.

## **II. Scarbrough Group**

As with the Smith & Turley Group, Plaintiff Richardson calculates the amount in attorney's fees sought for the Scarbrough group by multiplying the number of hours worked by a reasonable hourly rate. The Court finds that the hourly rate of \$250/hour for Attorneys Scarbrough and Knight is reasonable given that they have, respectively, over fifteen and twenty years of experience practicing law. (Docket No. 167-2 at 2-3, ¶¶ 3, 11). Based on the document labeled Exhibit A, (Docket No. 167-2 at 5-25), which contains the specific charges and expenses, Plaintiff also seeks to recover fees for work performed by Timothy Bishop and Julie Long. Even though the Second Affidavit of J. Brad Scarbrough specifically references by name only Scarbrough and Knight, it appears to the Court that the unnamed junior associate referenced is Bishop and the unnamed paralegal referenced is Long. (Docket No. 167-2 at 4, ¶ 18). The Court finds that the hourly rate of \$150/hour for Bishop is appropriate in light of the fact that the normal hourly rate for a junior associate is between \$175 and \$225. (Id.). However, the Court is

offered no explanation as to the reasonableness of the \$100/hour rate for Long. Therefore, the Court will allow only \$75/hour of work performed by Long to be compensable. See Hall v. City of Clarksville, No. 3:03-1229, 2006 WL 2038004, at \*3 (M.D. Tenn. July 19, 2006) (“The Court also finds that \$100 per hour is not a reasonable rate for the work done by the paralegal working on this case. The Court finds that \$75 per hour for paralegal time is a more appropriate rate.”).

Regarding Attorneys Scarbrough, Knight, and Bishop, Plaintiff Richardson requests fees for 11 hours worked by Scarbrough ( $\$250 \times 11 = \$2,750$ ), 32.2 hours for Knight ( $\$250 \times 32.2 = \$8,050$ ), and 56.1 hours worked by Bishop ( $\$150 \times 56.1 = \$8,415$ ). Furthermore, Plaintiff Richardson requests fees for 4.95 hours worked by Long ( $\$75 \times 4.95 = \$371.25$ ) and an additional \$875 for an estimated 3.5 hours of work ( $\$250 \times 3.5 = \$875$ ) that will be required to enforce this Order. Having reviewed the description of the work performed and that will be performed, the Court finds reasonable the aforementioned fees sought for the Scarbrough group.

Plaintiff Richardson also requests \$305.36 in expenses, which is comprised of a filing fee, travel mileage, and a delivery charge. Because Plaintiff Richardson has not submitted any receipts and there is insufficient information, the Court will allow recovery only on the \$75 filing fee.

### III. Total Award

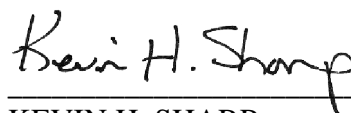
	<b>Item</b>	<b>Amount</b>
Smith & Turley Group	Smith & Turley	\$40,371.25
	Exendine	\$6,520
	Nichols	\$2,964.50
	Expenses	\$172.60
	<b>Total</b>	<b>\$50,028.35</b>

Scarborough Group	Scarborough	\$2,750
	Knight	\$8,050
	Bishop	\$8,415
	Long	\$371.25
	Additional Time	\$875
	Expenses	\$75
	<b>Total</b>	<b>\$20,536.25</b>
	<b>Grand Total</b>	<b>\$70,564.60</b>

### CONCLUSION

For the foregoing reasons, and considering that Defendant Mack has not responded to Plaintiff Richardson's Motion, Plaintiff is entitled to the award he seeks subject to adjustments. Accordingly, Plaintiff Richardson's Motion for Award of Attorney Fees, (Docket No. 159), is hereby GRANTED. Plaintiff shall be awarded \$70,564.60 in attorney's fees, costs, and expenses.

It is SO ORDERED.




---

KEVIN H. SHARP  
UNITED STATES DISTRICT JUDGE