

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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U.S. BANK NATIONAL ASSOCIATION,

Plaintiff,

v.

SUN LIFE ASSURANCE COMPANY OF  
CANADA,

Defendant.

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ORDER

14-cv-562-wmc

As a result of a finding of defendant's bad faith, the court previously awarded plaintiff attorney's fees and costs in the amount of \$1,003,728.76. (12/23/16 Op. & Order (dkt. #141).) That award compensated plaintiff for fees and costs incurred in this matter through December 31, 2015. Plaintiff has now filed a supplemental brief and supporting materials seeking additional attorney's fees and costs incurred since January 1, 2016, in the amount of \$838,810.23. (Pl.'s Br. (dkt. #144); Failla Decl. (dkt. #145); Wilson Decl. (dkt. #146).)

Defendant Sun Life opposes plaintiff's motion largely on the same grounds advanced in its unsuccessful opposition to plaintiff's first motion for attorney's fees. More specifically, defendant argues that plaintiff's fee request is unreasonable because of the amount of time plaintiff spent on the appeal, including participation in mediation and preparation of its fee petitions. As the court explained in its earlier opinion, the best measure of whether fees are reasonable is whether they were actually incurred and paid. (12/23/16 Op. & Order (dkt. #141) 3-6.) *See Medcom Holding Co. v. Baxter Travenol Labs*, 200 F.3d 518, 521 (7th Cir. 1999) (best evidence of fees is the amount that commercial parties incurred and paid knowing that they had to cover the outlays themselves).

Moreover, for the court to give defendant's argument any weight, it would have had to provide the timesheets and invoices of its own counsel. Since defendant failed to do even this (unlike its original challenge), a claim that plaintiff's counsel's time was unreasonable rings particularly hollow.

Second, defendant regurgitates its argument that the court should not award fees for bringing and pursuing a bad faith claim. (Def.'s Opp'n (dkt. #151) 3-4.) The court sees no basis for reconsidering its prior decision, rejecting this argument (12/23/16 Op. & Order (dkt. #141) 2-3), though defendant certainly preserves that argument for any further appeal.

#### ORDER

IT IS ORDERED that:

- 1) Plaintiff U.S. Bank National Association supplemental request for attorney's fees is GRANTED.
- 2) The clerk of court is directed to enter judgment in the amount of \$1,842,538.99 in favor of plaintiff on plaintiff's bad faith claim and close this case.

Entered this 2nd day of May, 2017.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge