

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT – 8th DIVISION
CIVIL ACTION No. 99-CI-3699

JAMES M. WELLS

PLAINTIFF

vs.

**MEMORANDUM IN SUPPORT OF MOTION FOR
AWARD OF ATTORNEY'S FEES AND LITIGATION COSTS**

COLUMBIA GAS OF KENTUCKY, INC.

DEFENDANT

Plaintiff James M. Wells tender this memorandum in support of his motion for an award of attorney's fees and litigation expenses.

I

In *Meyers v. Chapman Printing Co., Inc.*, Ky., 840 S.W.2d 814, 826 (1992), the Supreme Court of Kentucky approved use of the "lodestar" method developed in *Hensley v. Eckerhart*, 461 U.S. 424 (1983), to calculate the appropriate attorney's fees awardable by statute. The "lodestar" is equal to plaintiff's counsel's reasonable hours multiplied by a reasonable hourly rate plus (or minus) further special factors. *Meyers*, 840 S.W.2d at 826. The "reasonable" hours should exclude those hours which are "excessive, redundant, or otherwise unnecessary," *Hensley*, 461 U.S. at 431, but may include all time expended for which "a reasonable attorney would have believed [reasonably necessary to achieve] success at the point in time when the work was performed." *Wooldridge v. Marlene Industries Corp.*, 898 F.2d 1169, 1177 (6th Cir. 1990). The "reasonable" hourly rate is to be determined through use of "prevailing market rates," in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Blum v. Stenson*, 465 U.S. 886, 895 n. 11 (1984).

Where a party advances a number of claims and is successful on some but not all and counsel's time is devoted generally to the litigation as whole, the court "should focus on the significance of the overall relief obtained by the plaintiff in relation to the

hours reasonably expended on the litigation." *Hensley*, 461 U.S. at 435. Use of a mathematical approach comparing the total number of issues with those prevailed upon to determine a reasonable fee is improper; the court should assess whether the relief justified the expenditure of attorney time. *Id.* at 435 n.11. Excellent results normally warrant a fully compensatory fee, encompassing all hours expended on the litigation. *Id.* at 435. On the other hand, where counsel's time can be identified as devoted to claims unrelated to those on which plaintiffs succeeded, no fee should be awarded as to the unsuccessful, unrelated claims. *Id.* The court must consider the relationship of the claims that resulted in judgment with the claims that were rejected and the contribution, if any, made to success by the investigation and prosecution of the entire case. *Jones v. Diamond*, 636 F.2d 1364, 1382 (5th Cir. 1981)(en banc), *cert. dismissed*, 453 U.S. 950 (1981), *overruled on other grounds*, 790 F.2d 1174 (5th Cir. 1986); *Williams v. Roberts*, 904 F.2d 634, 640 (11th Cir. 1990).

The development and prosecution of the claims on which plaintiffs did not succeed were related to and contributed to the success of plaintiffs' on some of their claims. First, the jury, in accordance with Kentucky law, see *Beatrice Foods Company v. Chatham*, Ky., 371 S.W.2d 17 (1963), was instructed to consider all the evidence in rendering its verdict. Therefore, it must be concluded that all evidence developed and presented by plaintiffs contributed to their successes. Second, Kentucky courts have acknowledged that a wide field of evidence is relevant and probative of employment discrimination. *Kentucky Center for the Arts v. Handley*, Ky.App., 827 S.W.2d 697, 701 n.5 (1991).

The plaintiff's development and presentation of evidence regarding his claim against defendant Kathy Hardin as well as in defense of her claim against him surely contributed to the plaintiff's success. Defendant sought to evade liability on plaintiff's discrimination claim based on Hardin's complaint against him. Thus, evidence most directly related to Hardin's claim against Wells and his claim against her was integrally

related to plaintiff's principal claim against Columbia Gas. Accordingly, plaintiffs' claims and evidence were all sufficiently related to support a finding that all hours are compensable.

On the other hand, the precedents would indicate that the Court should consider that plaintiff withdrew claims against Columbia Gas, defendant Judith Christopher and that the time devoted with the Hardin claims is not compensable in any event. Accordingly, it is submitted that a reduction of 20% of counsel's time is appropriate, in addition to that reduced as clearly devoted to legal aspects of unsuccessful claims.

As set forth in the *Affidavit of Robert L. Abell*, the Court should conclude that plaintiffs' counsel reasonably expended a total of 238.5 hours toward plaintiffs' success in this case. In addition, based on the affidavits of Edward E. Dove, Elizabeth S. Hughes and Andrew J. Ruzicho, prior orders of this and other courts, the Court should conclude that \$150 per hour is the applicable hourly rate for plaintiffs' counsel in this case. Therefore, the Court should award plaintiffs' attorney's fees in the sum of \$35,775. The Court should further award plaintiffs their costs and expenses in prosecuting this case in the sum of \$2789.82, as they are recoverable under KRS 344.450. *Meyers, supra*.

CONCLUSION

For all the foregoing reasons, the Court should award plaintiffs' attorney's fees in the amount of \$35,775 and costs and expenses in the sum of \$2789.82.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I verify that a true and correct copy of the foregoing was hand-delivered this _____
day of _____, 2001 to the following:

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