**UNITED STATES DISTRICT COURT**
**DISTRICT OF CONNECTICUT**

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| **Douglas DOBSON** | : | |
| | : | |
| **v.** | : | **No. 3:99cv2256 (JBA)** |
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| **THE HARTFORD FINANCIAL SERVICES GROUP, INC., et al.** | : | |

**RULING ON ATTORNEYS' FEES PETITION [# 100]**

Plaintiff Douglas Dobson filed this suit on behalf of a putative class, seeking interest on monthly long-term disability benefit payments which were withheld but eventually paid by defendant Hartford Life and Accident Insurance Company in a lump sum. Plaintiff sought recovery under two theories, one based on a claim of breach of the terms of the disability benefits plan, under ERISA, § 502(a)(1)(B), and one for a breach of fiduciary duty, under ERISA, § 502(a)(3). On cross-motions for summary judgment, the Court granted defendant's motion with respect to the ERISA § 502(a)(1)(B) class claim for interest as a term of the plan and denied the motion for class certification, but denied defendant's motion with respect to plaintiff's individual claim for relief under a breach of fiduciary duty theory, under ERISA § 502(a)(3). Following that ruling, the parties stipulated to judgment in plaintiff's favor on the individual (a)(3) claim. Plaintiff now seeks attorneys' fees in the amount of $214,528.11 and $12,193.46 in costs. As has occurred with every stage of this litigation, the availability and amount of fees claimed is

hotly disputed.

**A. Fees under ERISA**

ERISA provides that "[i]n any action under this subchapter . . . by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party." 29 U.S.C. § 1132(g)(1). The Second Circuit has directed district courts to consider five factors when evaluating a request for attorneys' fees and costs under ERISA:

> (1) the degree of the offending party's culpability or bad faith, (2) the ability of the offending party to satisfy an award of attorney's fees, (3) whether an award of fees would deter other persons from acting similarly under like circumstances, (4) the relative merits of the parties' positions, and (5) whether the action conferred a common benefit on a group of pension plan participants.

Miller v. United Welfare Fund, 72 F.3d 1066, 1074 (2d Cir. 1995) (quoting Chambless v. Masters, Mates & Pilots Pension Plan, 815 F.2d 869, 871 (2d Cir. 1987)). The Second Circuit appears to have contemplated that these factors will be weighed, rather than applied as a check list. See, e.g., Lauder v. First Unum Life Ins. Co., 284 F.3d 375, 383 (2d Cir. 2002). Here, plaintiff argues that he has met all five factors, while defendant claims that only one factor weighs in plaintiff's favor.[1]

First, plaintiff claims that the "degree of the offending

[1]The second factor, Hartford's ability to pay, is not disputed here.

party's culpability or bad faith" is satisfied because defendant stipulated to judgment on the breach of fiduciary duty claim. As plaintiff notes, this claim was based on defendant's unexplained decision to cut off plaintiff's disability benefits and subsequent failure to reinstate those benefits for thirteen months, notwithstanding evidence in the record before the Court on summary judgment that Hartford's nurse evaluator had determined that plaintiff was disabled under the terms of the plan three weeks after his benefits were terminated. Although defendant argues that the admission of liability for a breach of fiduciary duty is not the same as an admission of bad faith, under the circumstances here, where any explanation has yet to be given by Hartford for its termination of benefits, and in light of the evidence in the record before the Court on summary judgment, the Court concludes that this factor weighs in plaintiff's favor.[2]

Next, awarding fees in this case will contribute to deterring similar breaches of fiduciary duty. Individual claims for disgorgement of profits on improperly withheld benefits are likely, as here, to result in limited recovery. Absent an award of fees, fiduciaries could simply refuse to pay benefits until

[2]The Court also disagrees with Hartford's contention that the issue of bad faith or culpability relates only to its refusal to pay interest. The disgorgement of profits during the period of unreasonable delay in payment of benefits ordered here was necessary to remedy the unjustified termination of benefits.

immediately before a plan participant filed a suit for benefits, with only minimal risk of exposure for the disgorgement of its profits.[3] While the central legal issue in this case was the availability of interest under either 502(a)(1)(B) or 502(a)(3), Hartford's handling (or mishandling) of Dobson's claim gave rise to this litigation. Under these circumstances, awarding fees is necessary to deter plan administrators or fiduciaries from unjustifiably terminating and then refusing to reinstate disability benefits.

The fourth factor, the relative merits of the parties' positions, weighs marginally in plaintiff's favor. While the Court agrees with plaintiff that Hartford's stipulation to judgment in plaintiff's favor on the breach of fiduciary claim and failure to offer any defense of its claims handling does suggest that plaintiff's breach of fiduciary duty claim had merit, Hartford's stipulation expressly reserves its rights to appeal the Court's decision permitting plaintiff to recover under § 502(a)(3). Further, in light of the recent decisions in Great-West Life & Annuity Insurance Co. v. Knudson, __ U.S. __, 122 S.Ct. 708 (2002), and Dunnigan v. Metropolitan Life Ins. Co., 277 F.3d 223 (2d Cir. 2002), the scope of the remedies available

[3]Contrary to Hartford's position, awarding fees will not encourage frivolous suits; fees are awarded only where the plaintiff prevails. Hartford's argument conflates the issue of whether to award fees at all, the question under Chambless, with the issue of the reasonableness of the amount of fees claimed, which is discussed in section B, infra.

under ERISA may be said to be less than entirely clear.

Finally, although plaintiff did not prevail on his claim for class relief, a common benefit can be said to have been conferred on a larger class by this litigation. This appears to be the first decision since Knudson holding that disgorgement of profits earned on wrongfully withheld benefits is an equitable remedy under ERISA § 502(a)(3). If the rule of law announced by the Court in this litigation stands, it will confer a benefit on other plan participants in plaintiff's position.

In summary, weighing the Chambless factors, particularly the need for fees as deterrence under these circumstances, and bearing in mind the Second Circuit's concern that "ERISA's attorney's fee provisions must be liberally construed to protect the statutory purpose of vindicating retirement rights, even when small amounts are involved," Chambless, 815 F.2d at 872, the Court concludes that attorneys' fees are appropriately awarded in this case.

**B. Reasonable fees**

In determining "reasonable" attorneys' fees, a lodestar amount is calculated from the product of a reasonable hourly rate and the number of hours reasonably expended by each attorney. Hensley v. Eckerhart, 461 U.S. 424, 437 (1983). In calculating the number of hours reasonably expended, a court should not reimburse "excessive, redundant or otherwise unnecessary" hours,

or hours dedicated to severable unsuccessful claims. Id. at 434-35. However, fees may be awarded for unsuccessful claims when they are "inextricably intertwined" and "involve a common core of facts or are based on related legal theories." Reed v. A.W. Lawrence & Co., 95 F.3d 1170, 1183 (2d Cir. 1996).

Once calculated, the lodestar amount may be modified based on equitable "considerations that may lead the district court to adjust the fee upward or downward, including the important factor of the 'results obtained.'" Hensley, 461 U.S. at 434 (noting that most of these "factors usually are subsumed within the initial calculation of hours reasonably expended at a reasonable hourly rate.").

1. Reasonable rate

Plaintiff seeks $425 per hour for Mr. Lewis, $375 per hour for Mr. Feinberg, $300 per hour for Mr. DeBofsky, and $325 per hour for Ms. de Toledo. Defendant challenges the reasonableness of Mr. Lewis' $425 hourly rate and Mr. Feinberg's $375 rate, arguing that the prevailing rate of ERISA litigators in Connecticut, rather than San Francisco Bay area, must be considered in assessing whether the rate charged is reasonable. As a general rule, a reasonable hourly rate should be "in line with those [rates] prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." Blum v. Stenson, 465 U.S. 886, 896 n. 11

(1984); accord Luciano v. Olsten Corp., 109 F.3d 111, 115 (2d Cir. 1997). However, the Second Circuit has recognized that exceptions to this general rule "have been made upon a showing that the special expertise of counsel from a different district is required." Polk v. New York State Dep't of Correctional Servs., 722 F.2d 23, 24 (2d Cir. 1983).

While the Court agrees that $425 per hour is high for Connecticut, the affidavits submitted by plaintiff's counsel have shown that they have a nationwide ERISA practice and some degree of special expertise is necessary for complex ERISA litigation. Accordingly, in light of the submissions of Attorneys Moukawsher, de Toledo and Tucci, the Court finds that Attorney Lewis should be compensated at $395 per hour and Attorney Feinberg at $350 per hour.[4]

2. Reasonable hours expended

Preliminarily, the Court observes that the claims at issue here involved novel legal theories, extensive briefing on both motions to dismiss, cross motions for summary judgment and supplemental briefing following the decisions in Dunnigan and Knudson. In addition, because of defendant's extremely "vigorous" litigation approach, the Court anticipated an

[4]The Court has also considered the affidavit of Lissa Paris, filed in support of defendant's opposition, but concludes that the $265 per hour charged by Ms. Paris is low for an attorney with her expertise and experience in this community, and that her expertise is not exclusively in the ERISA area.

attorneys' fee claim of substantial proportions. Defendants "cannot litigate tenaciously and then be heard to complain about the time necessarily spent by the plaintiff in response." City of Riverside v. Rivera, 477 U.S. 561, 580 n. 11 (1986).[5]

However, the Court cannot ignore plaintiff's lack of success on the (a)(1)(B) class claim, which required very different discovery than the successful breach of fiduciary duty claim. While the relief sought under the § 502(a)(1)(B) claim was similar to that sought under § 502(a)(3), these were clearly distinct legal theories - one resting on defendant's misconduct and the other on plaintiff's theory of plan interpretation. Cf. Kirsch v. Fleet Street, Ltd., 148 F.3d 149, 173 (2d Cir. 1998).

Although the Court appreciates that counsel have already reduced the time claimed by the approximately $31,000 as time spent exclusively and identifiably on the class certification and ERISA § 502(a)(1)(B) claim, the nature of the time records submitted here claiming time for work on the summary judgment briefing in general convinces the Court that some further reduction in time is necessary to account for plaintiff's

[5]Indeed, as an example, the ex gratia § 502(a)(3) class claim argued by plaintiff on summary judgment became an issue in the case only after defendant moved for summary judgment in part on the ground that plaintiff had failed to exhaust his administrative remedies by applying for interest under that "policy." While the Court ultimately rejected both theories, defendant's late-advanced theory of a "policy" of awarding interest provided plaintiff with a reasonable basis for advancing a class claim for breach of fiduciary duty based on the failure to inform class members of that claimed policy.

somewhat limited success, although the Court disagrees with defendant that the reduction should be significantly more than 50%. First, the successful (a)(3) claim required more substantial supplemental briefing following the Supreme Court's Knudson decision than did the (a)(1)(B) claim. In addition, that claim required additional discovery directed to defendant's claims handling, as opposed to simply a matter of legal interpretation of the terms of the Plan, at issue under the (a)(1)(B) class claim. Under these circumstances, awarding plaintiff 60% of the hours billed by Attorneys Lewis and Feinberg will account for plaintiff's limited success as well as the overall increased complexity of the successful claim.[6]

On agreement of plaintiff, the Court will also reduce all travel time claimed for Mr. Lewis by 50%, resulting in a reduction of an additional 49 hours.[7] Plaintiff's counsel also claim to have eliminated 14.4 hours of Mr. Feinberg's time and 2.1 hours of Mr. Lewis's time as all time for which the entries

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[6]The time billed by these two attorneys represents a significant majority of the time billed in this case: 545.65 hours out of a total of 620.3 hours. Accordingly, the Court will not reduce the hours claimed by the other attorneys.

[7]The Court has reduced the time for travel to the April 25 settlement conference by only 50%, rather than discounting it in the entirety as defendant sought. While the Magistrate Judge presiding over the settlement conference permitted counsel to participate telephonically, this District has historically placed significant importance on physical presence at settlement conferences, and the Court will not second-guess plaintiff's counsel's determination that attendance in person could be more productive.

are insufficiently clear to permit meaningful review (e.g., "letter to attorney," "letter to co-counsel," "telephone call to attorney," "prepare for meeting"). Based on the Court's review of the attached timesheets, an additional 1.4 hours of Mr. Feinberg's time and 0.9 hours of Mr. Lewis' time also must be eliminated under this theory. However, the Court finds that as the vast majority of the entries are adequately detailed, no across the board reduction is warranted.

In conclusion, the Court finds that plaintiff is entitled to attorneys' fees for the following hours: 139.3 hours for Attorney Feinberg and 136.79 hours for Attorney Lewis, as well as the hours claimed by the other attorneys at the firm of Sigman, Lewis and Feinberg, Attorney DeBofsky's office and Attorney de Toledo.

**C. Calculation of lodestar**

In light of the reduction in the number of hours above, the Court will not further reduce the lodestar amount. Plaintiff is entitled to attorneys' fees as follows: $108,866.52 for work performed by Sigman, Lewis & Feinberg; $1,478.00 for work performed by Casper & de Toledo; and $9,330.00 for work performed by Daley, DeBofsky & Bryant.

**D. Conclusion**

Plaintiff's motion for attorneys' fees and costs is GRANTED IN PART. Plaintiff is awarded attorneys' fees in the amount of $119,674.52 and costs in the amount of $12,193.46.

IT IS SO ORDERED.

/s/

Janet Bond Arterton, U.S.D.J.

**Dated at New Haven, Connecticut, this 2nd day of August, 2002.**