In the United States Court of Federal Claims

NOT FOR PUBLICATION
No. 07-693L and No. 07-675L
CONSOLIDATED
(Filed: January 24, 2014)

DOROTHY L. BIERY, et al.,	)
and	)
JERRAMY and ERIN PANKRATZ, et al.,	)
Plaintiffs,	)
v.	)
THE UNITED STATES,	)
Defendant.	)

OPINION ON ATTORNEYS' FEES AND COSTS

Pending before the court is plaintiffs' motion for recovery of attorneys' fees and costs under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4654(c) (2012) ("URA") and the United States' ("the government") cross-motion for summary judgment on the issue of the proper hourly rate. Plaintiffs in these consolidated cases initially filed separate complaints in 2007 alleging that they were the fee simple owners of land that was subject to railroad easements in Butler County, Kansas (in Pankratz) and Reno County, Kansas (in Biery), and that by operation of the National Trails System Act, 16 U.S.C. § 1247(d) (2012) ("Trails Act"),

their property was taken. The court granted the defendant's unopposed motion to consolidate the two cases for further proceedings on May 9, 2008. Biery v. United States, No. 07-693, Order Granting Mot. to Consolidate (Fed. Cl. May 9, 2008). The consolidated case encompassed the claims of thirteen plaintiffs: seven in Biery and six in Pankratz.[1]

The parties filed motions for summary judgment on liability. On summary judgment, the court rejected the takings claims for five plaintiffs based on their individual property interests. With respect to the remaining eight plaintiffs, the court certified questions to the Kansas Supreme Court under Kan. Stat. Ann. §§ 60-3201 to 60-3212 with regard to the scope of railroad easements in Kansas. The Kansas Supreme Court initially accepted the certified questions, ordered briefing and held oral argument. However, the Kansas Supreme Court subsequently determined that it lacked jurisdiction to accept certified questions from the Court of Federal Claims and dismissed the case on September 23, 2010. Thereafter, this court set a schedule for supplemental briefing and argument on liability with regard to the remaining eight plaintiffs.

On June 9, 2011, the court issued an opinion granting plaintiffs' motion for summary judgment on liability as to the eight remaining plaintiffs. Following that ruling, the parties employed a joint appraiser to determine just compensation. While the

[1] The named plaintiffs in Pankratz moved for certification as a class, but later withdrew their motion. Pls.' Mot. to Withdraw, Pankratz v. United States, No. 07-675 (Fed. Cl. Mar. 17, 2009), ECF No. 53. The Court granted the withdrawal motion on March 18, 2009. Order, Pankratz v. United States, No. 07-675 (Fed. Cl. Mar. 18, 2009), ECF No. 54. A separate group of landowners subsequently filed a new class action complaint involving the same railroad corridor at issue in Pankratz; fees for that case have been dealt with separately and are not part of this motion. See Bishop v. United States, No. 10-594L, 2013 WL 4505991 (Fed. Cl. Aug. 19, 2013).

properties were being appraised, the court allowed the plaintiffs to proceed on briefing with regard to the proper interest rate to be applied to any final judgment and on the proper methodology for determining attorneys' fees.

The court determined in the November 27, 2012 opinion on interest rate and fees that interest should be set using Moody's Aaa bond index yield rate. With regard to attorneys' fees, the court agreed with both parties that the lodestar method should be applied, but rejected plaintiffs' contention that fees based on the "national rate" of the law firm handling the case for plaintiffs should be employed. The court agreed with the government that if the "bulk" of the work in the case was done in St. Louis, Missouri—the home office of the law firm originally hired by plaintiffs to take these cases and then one of the locations of the firm that took over the cases—the national rate sought by the plaintiffs as the "forum rate" might not apply. Specifically, the court held that "[i]n light of the evidence presented, . . . assuming the bulk of the hours worked were incurred in St. Louis, the plaintiffs will be entitled to attorneys' fees based on the rates for attorneys of comparable skill and experience who practice in St. Louis, Missouri." Biery v. United States, No. 07-693, 2012 WL 5914260, at *6 (Fed. Cl. Nov. 27, 2012) (footnote omitted). Finally, the court determined that attorneys' fees would have to be calculated using historical rates.

The parties eventually reached a settlement on just compensation in the amount of $270,316, including both principal and interest. On April 1, 2013, the court issued an order dismissing the claim of Dorothy L. Biery with prejudice and directing the Clerk of the Court to enter final judgment as to the five unsuccessful claims pursuant to Rule

54(b) of the Rules of the United States Court of Federal Claims, with each party to bear its own costs.[2] Partial final judgment in favor of the United States was entered on April 9, 2013. The five unsuccessful plaintiffs filed their Notice of Appeal to the United States Court of Appeals for the Federal Circuit on April 11, 2013; that appeal is currently pending.

In their present motion, plaintiffs request attorneys' fees of $2,017,987 and costs of $201,924. In their request, the plaintiffs argue that they are entitled to reimbursement based on Washington, D.C. forum rates, on the grounds that the Davis exception[3] to the forum rule does not apply because the evidence does not support a finding that the legal work was done primarily in St. Louis. The plaintiffs have provided documentation to support the hours requested.[4] For the reasons set forth below, the plaintiffs' motion is

[2] On September 2, 2009, the five unsuccessful plaintiffs filed an appeal to the United States Court of Appeals for the Federal Circuit following the court's August 20, 2009 order on liability. The appeal was dismissed as premature by the Federal Circuit on December 18, 2009. Biery v. United States, 358 F. App'x 172 (Fed. Cir. 2009).

[3] In most cases, attorneys' fees are awarded at the forum rate. E.g. Bywaters v. United States, 670 F.3d 1221, 1232-33 (Fed. Cir. 2012) (quoting Avera v. Sec'y of Health and Human Servs., 515 F.3d 1343, 1348 (Fed. Cir. 2008)). However, the Federal Circuit has adopted the reasoning known as the "Davis exception," based on Davis Cnty. Solid Waste Mgmt. & Energy Recovery Special Serv. Dist. V. United States Envtl. Prot. Agency, 169 F.3d 755, 758 (D.C. Cir. 1999), under which the trial court should not follow the forum rate for attorneys' fees where the "bulk of the work" was performed outside the forum and the rate outside the forum is significantly lower than the forum rate. Hall v. Sec'y of Health and Human Servs., 640 F.3d 1351, 1353 (Fed. Cir. 2011) (quoting Avera, 515 F.3d at 1349); see also Bywaters, 670 F.3d at 1232-33 (discussing Davis exception). The forum for this court is Washington, D.C.

[4] Plaintiffs have the burden in this case of "establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." Hensley v. Eckerhart, 461 U.S. 424, 437 (1983). This burden includes providing sufficient evidence of the reasonableness of the attorneys' hourly rate. Id. at 433.

GRANTED-IN-PART and **DENIED-IN-PART**, and the government's cross-motion is **GRANTED-IN-PART** and **DENIED-IN-PART**.

DISCUSSION

Under the fee-shifting authorized by the URA, the trial court may award attorneys' fees to a prevailing party using the lodestar method, which is based on the hours reasonably expended multiplied by a reasonable hourly rate. Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). The court may also award costs. The government argues that the amount of compensable hours sought by plaintiffs should be significantly reduced because plaintiffs did not prevail in 5 of their 13 claims. Further, the government argues that the billing rates should be reduced because the "bulk of the work" in this case was performed by attorneys in St. Louis at a significantly lower hourly rate than the Washington D.C. forum rate and thus the forum rate should not be applied. The government also argues that additional reductions are appropriate in the number of hours claimed on the grounds that many were vague and non-specific, duplicative and excessive, related to other cases, related to this request for attorneys' fees and costs, or non-compensable secretarial or administrative tasks. Finally, the government seeks a reduction in the costs claimed by plaintiffs. In response, plaintiffs argue that there is significant overlap in the work done for the successful and unsuccessful claims, that the majority of the work was done outside of St. Louis, and that the proposed reductions in hours are not supported by law. The court turns first to deciding the number of hours reasonably expended, next to the question of reasonable billing rate, and finally to the issue of costs.

A. Number of Reasonable Hours

Here, plaintiffs seek reimbursement of attorneys' fees based on over 3,900 hours of work by 16 attorneys and 7 paralegals. The government has proposed various adjustments to these hours based on the type of work performed, as well as a general deduction to the overall number of hours. The court will first address the specific adjustments before addressing the general adjustment.

1. Vague and Non-Specific Entries

With respect to later periods in the litigation, the government argues that the hours should be reduced on the grounds that there are a number of vague and non-specific entries on plaintiffs' spreadsheets that make it impossible to determine whether the hours incurred relate specifically to the instant cases and whether the hours are reasonable. They point, for example, to the 55.4 hours reported by Joseph Cavinato, which were allegedly spent reviewing pleadings, formulating case strategy, and attending internal strategy meetings that were also attended by several other attorneys and paralegals. See Def. Ex. 1. The government also challenges the bulk of the 186.6 hours reported by Debra Albin-Riley on the same grounds. The government argues that such vague entries are not compensable under fee-shifting statutes. See Avogoustis v. Shinseki, 639 F.3d 1340, 1344-45 (Fed. Cir. 2011) (affirming deduction of hours for entries that simply stated "draft client correspondence" as too vague); Greenhill v. United States, 96 Fed. Cl. 771, 781 (2011) (deducting 6.5 hours because they were billed to activities not

sufficiently well-described). In total, the government seeks to reduce the hours expended based on vague and non-specific entries by 147 hours. The plaintiffs argue in response that the government is simply nitpicking. The court disagrees with plaintiffs. The court has reviewed the records and finds in its discretion that only 50% of the hours identified above are compensable.

2. Duplicative and Excessive Hours

The government also seeks hour reductions for duplicative and excessive hours for certain tasks. The government notes that plaintiffs' attorneys spent approximately 115 hours to prepare for and to attend oral argument on the cross-motions for partial summary judgment scheduled on December 18, 2008 and also seek reimbursement for hours spent preparing the same issues when the claims were later heard by the Kansas Supreme Court. The government claims the additional 168 additional hours spent by counsel to prepare for and to attend the hearing before the Kansas Supreme Court are duplicative and excessive. The plaintiffs argue in response that the time spent on this portion of the litigation relating to the Kansas Supreme Court proceeding was justified. The court agrees with the government that some reduction in hours is appropriate given the initial work done on summary judgment, and that the number of hours spent on the Kansas Supreme Court litigation is excessive in light of the 115 hours spent preparing for and arguing the initial summary judgment motion. See Gardner-Cook v. Sec'y of Dep't of Health & Human Servs., No. 99-480, 2005 WL 6122520, at *2-3 (Fed. Cl. June 30, 2005) (18 hours spent preparing for oral argument held excessive); Impresa Construzioni Geom. Demenico Garufi v. United States, 110 Fed. Cl. 750, 772 (2011) (56 hours spent by three

attorneys in preparation and travel for oral argument presented by one attorney held "duplicative or unnecessary"). Thus, the court in its discretion finds that only 25% of the 168 hours spent on preparing for and attending the Kansas Supreme Court argument is compensable.

The government also argues that plaintiffs' attorneys spent an excessive number of hours researching and drafting the Kansas Supreme Court briefs given the time spent on the initial summary judgment motions in this court. Plaintiffs' attorneys expended approximately 115 hours of time for the filing of their initial summary judgment briefs on liability and over 290 hours preparing their summary judgment response brief. The plaintiffs are now seeking an additional 295 hours for time preparing the plaintiffs' opening brief on the certified questions in the Kansas Supreme Court and an additional 161 hours on their reply brief in the Kansas Supreme Court. The government contends that these hours were excessive and unreasonable given that the briefing before the Kansas Supreme Court included a subset of the liability issues that the parties had already fully briefed and argued to this Court on summary judgment. The court agrees with the government that the 456 hours sought for briefing before the Kansas Supreme Court on a subset of issues that were already briefed to this Court is excessive; as a result, only 25% of the hours requested for briefing before the Kansas Supreme Court are compensable. See Davis v. Sec'y of Health & Human Servs., 105 Fed. Cl. 627 (2012) (reducing from 45 hours to 20 hours the time incurred on drafting an opening brief that was largely derived from a previously filed brief); Caves v. Sec'y of Health & Human Servs., No. 07-443V, 2012 WL 6951286, at *8-9 (Fed. Cl. Dec. 20, 2012) (reducing from 49.8 hours to

16.3 hours the compensable time incurred on a motion for review that borrowed heavily from previously filed papers).

3. Work Related to Other Cases

The government also seeks to eliminate hours that plaintiffs have included for work related to other cases. For example, Mr. Hearne lists 1.9 hours on June 12, 2013 for "Work on settlement and review additional details needed to consummate and class notice and schedule." Pls.' Request, Ex. A at 127, ECF No. 195-2. Ms. Albin-Riley lists .2 hours on April 25, 2013 for "Conferences re class issues." Id. at 123. As these two entries do not appear to relate to this case, which is not a class action with class issues, this time is not compensable. Similarly, Ms. Albin-Riley's entry for .3 hours on June 18, 2013 references the review of a joint motion for preliminary approval. Id. at 128. As there was no such motion in this case, this time is similarly not compensable.

4. Work Related to Request for Attorneys' Fees and Costs

The government further argues that the hours devoted to calculating the attorneys' fees and costs are excessive. Plaintiffs' records indicate that their attorneys expended approximately 700 hours to put together their request for reimbursement. The government argues that to the extent it is successful in reducing the amount awarded for fees and costs, the hours spent by plaintiffs in seeking those fees and costs must be eliminated from award. The government also argues that most of these hours relate to plaintiffs' earlier motion for partial summary judgment in support of their requested hourly rates. The government acknowledges that courts will typically award some fees for work necessary to prepare a fee petition. For example, in Gregory v. United States,

the court found that the 10.3 hours billed by the plaintiffs' counsel for preparing its fee petition was reasonable. 110 Fed. Cl. 400, 406 (2013). The court finds that the 700 hours related to their claim for attorneys' fees and costs in this case is excessive and that it is appropriate to make a significant adjustment to arrive at a reasonable number of hours for "fees on fees" work, especially in light of the court's rejection of plaintiffs' arguments in support of their claim for "national fees." Moreover, there is no basis for finding that the hours claimed for fees should exceed the hours spent on establishing liability in this court. As a result, the court in its discretion finds that 80 hours of this time is compensable, as follows: 20 hours of paralegal time, 30 hours of associate time, and 30 hours of partner time.

5. Secretarial and Administrative Tasks

The government further argues that the Court of Federal Claims has consistently denied reimbursement for hours devoted to secretarial and administrative tasks as non-compensable overhead costs. Hopi Tribe v. United States, 55 Fed. Cl. 81, 100 (2002). Tasks such as proofreading, assembling, photocopying, and mailing have been considered non-compensable secretarial and administrative work. Id. at 99. Even if a paralegal performs such tasks under the guise of compensable paralegal work, if the nature of the task is secretarial, it is non-compensable. Lawrence v. Sec'y of Health & Human Servs., 2013 WL 3146775, at *4 (Fed. Cl. May 28, 2013) (deducting all hours billed as paralegal time that was secretarial in nature); Yang v. Sec'y of Health & Human Servs., 2013 WL 4875120, at *6 (Fed. Cl. Aug. 22, 2013) (deducting paralegal time spent on saving and filing orders and placing an event on the calendar as non-compensable

secretarial tasks). The government contends that a review of plaintiffs' fee spreadsheet reveals that most of the hours charged by paralegals Alexandrea Barney and David Yearwood were for clerical work, and has calculated that the entries for paralegal work on such clerical duties totaled 160 hours. The government has also identified examples of clerical work billed out at attorney rates that it argues should be excluded as an unreasonable charge. For example, plaintiffs seek reimbursement of $68 for Ms. Largent to "Send payment to R. Greever" on August 28, 2008. Pls.' Request, Ex. A at 20, ECF No. 195-2. The cost spreadsheet indicates that Greever's invoice for this date was for $100. Pls.' Request, Ex. G at 17, ECF No. 195-7. The court agrees with the government that charging attorneys' fees of $68 to pay a $100 invoice is patently excessive and unreasonable. For these reasons, the government asks that these hours should be excluded from the lodestar calculation. The court agrees and finds in its discretion that none of the hours identified above with regard to administrative and secretarial tasks are compensable.

6. Overall Adjustments

The parties both recognize that the overall hours should be split into separate time periods based on phases of the litigation for the purposes of any general adjustments. Litigation proceeded in two main phases: the first phase includes the beginning of the litigation until the court's ruling on liability on February 19, 2009; the second phase includes everything following that ruling. The government argues that the number of hours in both of these periods should be reduced for various reasons.

With respect to the first phase, the government argues that the court should reduce the hours sought by plaintiffs to reflect the fact that plaintiffs ultimately were not successful on 40% of their claims. Accordingly, the government proposes an across-the-board reduction of 40% for the hours charged to the case during this period. In response, plaintiffs argue that the government's recommendation is legally and factually unsupported. Plaintiffs argue that the threshold liability issues were the same for both the successful and unsuccessful plaintiffs and that any differences with regard to the status of individual properties—which led to the rejection of the claims of 5 out of 13 plaintiffs—would not justify a 40% reduction.[5] The court, while noting that there is no feasible way to separate out the hours spent by counsel on individual parcels,[6] agrees with the government that a percentage reduction in hours for this period is appropriate. See, e.g., Gregory, 110 Fed. Cl. at 404 (finding that "[i]t is appropriate, therefore, to reduce the number of hours to a level that would be 'reasonably expended' in litigating the 26

[5] The government also notes that for the period after February 19, 2009, plaintiffs' initial fee spreadsheet included an additional 13 hours of work that was specific to Dorothy Biery's unsuccessful claim and that plaintiffs also sought reimbursement for attorneys' fees related to work spent on preparing a motion for reconsideration of the court's February 19, 2009 ruling, which they did not file, and for hours spent on the appeal from the court's decision, which was rejected by Federal Circuit as premature. The government further notes that for the period from March 2013 to the present, plaintiffs included hours for preparation of a motion to sever the unsuccessful claims, a reply in support of that motion, and work related to their appeal of these claims. The government argues that none of these 125 hours of work is compensable under the URA and thus that all of these hours should be eliminated from the Court's lodestar calculation. The plaintiffs appear to have eliminated these 138 hours from their final spreadsheets. To the extent that they remain in plaintiffs' request, however, the court finds that these 138 hours are not compensable.

[6] Although it may not be possible to separate the time spent establishing liability for each individual parcel, each property represents as an individual claim and must be treated as such in a takings case. See Am. Pelagic Fishing Co. v. United States, 379 F.3d 1363, 1372 (citing Maritrans Inc. v. United States, 342 F.3d 1344, 1351 (Fed. Cir. 2003)) (discussing threshold matter of determining an individual property interest in a takings case).

successful takings claims" out of 331 total claims). Recognizing the validity of plaintiffs' contention that there were overlapping issues between the successful and unsuccessful plaintiffs, the court in its discretion reduces the hours for the first phase of the litigation by 30%.

With respect to the second phase of the litigation, the government proposes that the court apply an overall 25% reduction in hours to account for plaintiffs' generally excessive hours. While the court finds that some reduction in hours is appropriate, the court does not believe that an overall 25% reduction in hours is justified. Rather, given the limited number of properties at issue, the court finds that an overall 10% reduction in the remaining hours is appropriate for the second phase of the litigation.

B. Reasonable Billing Rate

The court turns now to the issue of billing rate. The court has reviewed the parties' submissions and has determined that it is similarly appropriate to divide the issue of billing rate into phases. Plaintiffs in these consolidated cases retained attorneys from the law firm Lathrop & Gage LLP in St. Louis to represent them in this matter. In 2010, when plaintiffs' lead counsel moved to Arent Fox LLP, plaintiffs moved with him. After examining the billing records, it appears that all of the work by plaintiffs' attorneys prior to the move to Arent Fox was performed by attorneys based in St. Louis, while a substantial portion of work after the move was performed in locations outside of St. Louis. The court finds based on these facts that it is appropriate to divide the billing rate between those periods. Accordingly, for the period up until lead counsel, Mr. Hearne, moved to Arent Fox in 2010, St. Louis rates shall be used because the work was

performed in St. Louis and St. Louis rates are significantly lower than the Washington D.C. forum rates. See supra note 3. After the move to Arent Fox, the court in its discretion finds that the standard Laffey rate—and not the adjusted Laffey rate proposed by plaintiffs—is the appropriate rate to apply.

1. Reasonable Hourly Rates for the St. Louis Market

The court finds, contrary to plaintiffs' contentions, that there is ample evidence available to determine reasonable hourly rates for the St. Louis market for use in the lodestar calculation for the first period identified above. Specifically, the court has available to it several decisions from the United States District Court for the Eastern District of Missouri in St. Louis in which the district court determined reasonable hourly rates for the St. Louis market. In Ancona v. Templeton, the plaintiff prevailed in bringing civil rights claims under federal law against state actors. No. 4:10-cv-626, 2012 WL 4324916, at *1 (E.D. Mo. Sept. 20, 2012). The plaintiff's application for an award of attorneys' fees under 42 U.S.C. § 1988 sought fees calculated using hourly rates for the attorneys of $200, $225 and $400. Id. at *2. The court approved the rate of $225 for the plaintiff's lead counsel, who was the legal director of the American Civil Liberties Union of Eastern Missouri and performed most of the legal work in the case, as well as the rate or $200 for a second attorney. Id. at *2. The plaintiff sought $400 per hour for Robert L. King, a partner from Korein Tillery LLC with 20 years of experience handling "a wide variety of complex civil cases in both state and federal courts" with a focus on

class action litigation.[7] Affidavit of Robert L. King at ¶ 1, Ancona v. Templeton, No. 4:10-cv-626 (E.D. Mo. Feb. 16, 2012). Mr. King stated in his supporting affidavit that his firm charged $500 per hour for his time in 2012 but submitted that, based on his knowledge of "prevailing market rates," an hourly rate of $400 was reasonable for an attorney with his background and experience.[8] Id. at ¶ 5. However, the court found that the role of this attorney "was primarily confined to reviewing documents and attending meetings" and reduced the requested rate of $400 to $225 to arrive at a reasonable hourly rate. Ancona, 2012 WL 4324916, at *2.

In Lakeside Roofing Company v. Nixon, the plaintiff prevailed in an employment discrimination suit brought under 42 U.S.C. § 1983 that sought to declare a state law unconstitutional. No. 4:10-cv-1761, 2013 WL 74371 (E.D. Mo. Jan. 7, 2013). In seeking an award of attorneys' fees under the applicable fee-shifting statute, the lead attorney, a partner in the St. Louis office of Greensfelder, Hemker & Gale[9] with approximately 30 years of experience, sought fees based on hourly rates of $425 in 2010, $440 in 2011, and

[7] Korein Tillery is a 20-attorney law firm based in St. Louis and Chicago that specializes in complex litigation. The firm touts its "national reputation" in such cases, including a $10 billion trial verdict against Philip Morris. See About Us, http://www.koreintillery.com/general.php?category=About+Us&headline=Korein+Tillery (last visited January 15, 2014).

[8] In the 2012 Billing Rate Survey published in the Missouri Lawyer's Weekly, Robert King's hourly billing rate of $500 for his plaintiffs' class action practice was listed as one of the top ten in-state billing rates in Missouri, and was the highest reported hourly rate for St. Louis. Def.'s Ex. 2. Mr. King's affidavit in Ancona demonstrates that the "billing rate" used by a law firm reports to billing surveys may be higher than the prevailing market rate.

[9] The Greensfelder firm has more than 160 attorneys, with offices in St. Louis, Chicago, and Belleville. See Firm Overview, http://www.greensfelder.com/firm.aspx (last visited January 15, 2014). An attorney with that firm has represented plaintiffs in three Trails Act cases in this court. See Def.'s Cross-Mot. & Resp., Ex. 5, ECF No. 149-1.

$460 in 2012. Affidavit of Michael E. Wilson at ¶ 9, Lakeside Roofing Co., No. 4:10-cv-1761 (E.D. Mo. Mar. 26, 2012). The court's decision, which focused on the $460 rate, relied on the Billing Rates 2012 Special Section to the Missouri Lawyers Weekly to support its finding that this hourly rate was excessive and would place the attorney "third on the list of 'Top St. Louis Rates' for 2012 and would make his hourly billing rates the highest at his firm." Lakeside Roofing, 2013 WL 74371, at *3. The court reduced the attorney's hourly rate to $350 and approved a rate of $200 for the second attorney who worked on the case. Id.

In Lupo v. Hooter's of St. Peters, LLC, the court ordered an award of fees to the plaintiff in a disability discrimination suit due to the defendant's improper removal of the case from state to federal court. No. 4:13-cv-601, 2013 WL 3229602, at *1 (E.D. Mo. June 24, 2013). The court's consideration of the plaintiff's request for fees calculated using an hourly rate of $450 included a review of the federal court's recent decisions in the same district in employment cases. The court noted that such decisions had "awarded a fairly wide range of hourly fees . . . based on the experience, skill and usual hourly rate of the attorneys involved, and the nature and difficulty of the case." Id. at *2. Based on the court's survey of decisions and the attorney's twenty-one years of experience in federal litigation, the court in Lupo found that an hourly rate of $325 was reasonable. Id. at *3.

In West v. Matthews International Corporation, the plaintiff sued his employer for discrimination following a reduction in force and secured a favorable decision following a four-day jury trial. No. 4:09-CV-1867, 2011 WL 3904100 (E.D. Mo. Sept. 6, 2011).

Seeking an award of attorney's fees under the applicable fee-shifting statute, the plaintiff's proposed lodestar calculation used hourly rates of $400 for a partner with thirty years of experience and $300 for an associate with six years of experience. Id. at *2. The court, recognizing that hourly rates between $195 and $450 had been found reasonable in other cases, held that

> [b]ased on plaintiff's counsel's experience, expertise, and performance in this case, consistent with the hourly rates recently approved by the court in sufficiently similar cases and consistent with the quality and expertise of counsel in the St. Louis metropolitan area, the court concludes that hourly rates of $350 for law firm partner attorney George Suggs and $250 for law firm associate attorney Christopher Chostner are reasonable in this case.

Id. at *3.

Taking all of these decisions into account, the court in its discretion finds that rates of $375 for partners, $200 for associates, and $100 for paralegals are reasonable for the period preceding the move of the lead counsel, Mr. Hearne, to Arent Fox.

2. The Standard Laffey Matrix

With respect to the period following lead counsel's move to Arent Fox, the court finds that the full amount of the standard Laffey matrix rate[10] should be applied for the

[10] The Laffey Matrix table is set forth below:

	Years (Rate for June 1 - May 31, based on prior year's CPI-U)									
Experience	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13
20+ years	380	390	405	425	440	465	465	475	495	505
11-19 years	335	345	360	375	390	410	410	420	435	445
8-10 years	270	280	290	305	315	330	330	335	350	355
4-7 years	220	225	235	245	255	270	270	275	285	290
1-3 years	180	185	195	205	215	225	225	230	240	245
Paralegals & Law Clerks	105	110	115	120	125	130	130	135	140	145

Laffey Matrix, http://www.justice.gov/usao/dc/divisions/Laffey_Matrix_2003-2013.pdf (last visited January 15, 2014).

time periods at issue. The government argues that, should the court award fees to Arent Fox attorneys based on the forum rate, the standard Laffey rates should be applied. The court finds that the standard Laffey rates, rather than the adjusted Laffey rates, should be applied for the period following lead counsel's move to Arent Fox in 2010, after the court's 2009 liability ruling. See Allen v. Ghoulish Gallery, No. 06-cv-371, 2008 WL 802980 (S.D. Cal. Mar. 24, 2008) (awarding fees to Arent Fox attorneys that are below the adjusted Laffey rate); House v. Wackenhut Services, Inc., No. 10-civ-9476, 2012 WL 4473291 (S.D.N.Y Sept. 27, 2012) (same). Accordingly, the court rejects the plaintiffs' suggestion that the adjusted Laffey rate should be used to benchmark their requested fees.

C. Plaintiffs' Requested Costs

Finally, the court turns to plaintiffs' requested costs. The URA allows for reimbursement to a prevailing plaintiff of reasonable costs actually incurred in connection with the successful claims, assuming that those expenses are reasonable. Plaintiffs contend that they are entitled to be reimbursed for expenses in the amount of $201,924.

As discussed above, the court must recognize that plaintiffs were successful on only eight out of thirteen claims, or approximately 60% of the total claims filed. Consistent with the proposed adjustment relating to fees, and subject to the other costs disallowed, as discussed below, the court in its discretion finds that expenses incurred prior to the court's February 2009 decision be reduced by 30% to account for expenses incurred on claims that were unsuccessful. The court also finds that for the period after

February 2009, plaintiffs' request for reimbursement of expenses related to plaintiffs' appeal of those unsuccessful claims should be denied.

In addition to the reduction for unsuccessful claims, the court finds that plaintiffs' request for reimbursement for approximately $44,000 in Westlaw and other commercial database research expenses, which represent approximately 22% of their total requested costs, should be denied. It is the court's understanding that "many firms pay a flat rate to Lexis and Westlaw regardless of their usage, and . . . counsel cannot claim such flat rate payments as an out-of-pocket expense." Carpenters Health & Welfare Fund v. Coca-Cola Co., 587 F. Supp. 2d 1266, 1272 (N.D. Ga. 2008). The government notes in this regard that the fee agreement signed by plaintiffs identifying the types of "actual expenses" that the plaintiffs will be responsible for if they prevail does not directly identify online legal research costs such as Westlaw. See Fee Agreement With Jerramy and Erin Pankratz at 3-4, No. 07-693 (Fed. Cl. Jan. 4, 2012), ECF 127-10; Fee Agreement With Dorothy L. Biery at 3-4, No. 07-693 (Fed. Cl. Jan. 4, 2012), ECF 127-11. As a result, the court finds that commercial database research costs should not be included within the costs to be reimbursed under the URA.

Further, plaintiffs retained Dr. Malowane to support their motion for partial summary judgment seeking approval of their requested "national" hourly rates based on a "national" market. As plaintiffs did not prevail on this issue, the expenses associated with this expert's work, including the report, may not be reimbursed under the URA.

The court has reviewed the government's other objections and finds that the remaining costs are supported and compensable.

CONCLUSION

For the reasons set forth above, the court **GRANTS-IN-PART** and **DENIES-IN-PART** plaintiffs' motion for fees and costs and **GRANTS-IN-PART** and **DENIES-IN-PART** the government's cross-motion for summary judgment. As the court has made various adjustments to plaintiffs' request for attorneys' fees and costs, the plaintiffs shall have until **January 31, 2014** to submit revisions to their request for fees and costs consistent with this opinion.[11] The government shall have until **February 7, 2014** to submit any challenge to plaintiffs' revised calculations. If necessary, the court will schedule a status conference to resolve any disagreements between the parties over these revised calculations, but urges the parties to work together to resolve any differences.

IT IS SO ORDERED.

s/Nancy B. Firestone
NANCY B. FIRESTONE
Judge

[11] In calculating the revised attorneys' fees and costs, any reductions should be applied before percentage adjustments are applied.