

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

LANDS' END, INC.,

Plaintiff,

v.

TRILOGY SOFTWARE, INC.,

Defendant.

ORDER

06-C-132-C

In response to this court's order allowing fee-shifting on plaintiff's motion to compel discovery, plaintiff has submitted a bill for \$29,599.71. Defendant objects, claiming that it was not reasonable for plaintiff's attorneys to spend 76 + hours on the motion, briefs and supporting documents. I agree with defendant that, at least for cost-shifting purposes, it is not reasonable to foist this entire bill onto defendant and its attorneys.

The amount claimed is not the issue; this court routinely awards higher amounts under Rule 37 when the circumstances so militate. My concern is that 76.9 hours—almost two weeks' work for a 2000 hr./yr. attorney—is too much time for two garden variety discovery briefs totaling about 25 substantive pages. I do not doubt that plaintiff's four attorneys put in the time that they claimed, that they deemed their time necessary to maximize the possibility of a favorable outcome, and that they would have expected plaintiff to pay this amount in the ordinary course. Also, I acknowledge that the luxury of a hindsight review of finished briefs might cause a reviewer to underestimate the effort necessary to complete the task. All this being so, 76 hours is too much time reasonably to shift to defendants on plaintiff's winning motion.

At *most*, I can accept about one week's worth of work, plus legal research fees, as reasonable for the preparation of plaintiffs' submissions. Apportioning this deduction evenly among the four billing attorneys leads me to cut their total bill in half. Using the numbers from Brian Werner's first affidavit (dkt. 36) leads to \$14,288 in attorneys' fees, plus \$1,023.71 in electronic research fees, for a total of \$15,311.71 in expenses reasonably incurred in making the motion.

Therefore, pursuant to Rule 37(a)(4)(A), it is ORDERED that defendant and its attorneys are jointly and severally liable to pay \$15,311.71 to attorneys for plaintiff not later than January 29, 2007.

Entered this 29th day of December, 2006.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge