

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

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SHARON MONDRY,

Plaintiff,

v.

AMERICAN FAMILY MUTUAL  
INSURANCE COMPANY and  
AMERIPREFERRED PPO PLAN,

Defendants.  
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ORDER

06-cv-320-bbc

In an order entered on December 10, 2010, I determined that plaintiff Sharon Mondry was entitled to reasonable attorney fees for some of the work that her counsel performed in this case involving claims brought under ERISA. As explained in that order, I limited the compensable work to that done after the Court of Appeals for the Seventh Circuit issued its opinion in the case. At that point, it could be said that defendant American Family Mutual Insurance Company's opposition was not substantially justified, as it was earlier in the case.

Plaintiff sought an award of \$383,235 for all of the work done in the case, including her representation in administrative proceedings, for which an award of fees is not

authorized under ERISA. Her counsel submitted an itemization of fees but it was incomplete; it was not possible to determine from the itemization of fees submitted what work her counsel had performed in connection with the proceedings that followed the court of appeals' decision and the necessity of that work. It raised many other questions, some of which I discussed in the December 10 order. Rather than deny the fee request out of hand for inadequate justification, I gave plaintiff a choice: she could submit a new and more detailed itemization of the work her counsel had done or she could accept a fee award of \$37,500 for work done in responding to defendant's petition for a writ of certiorari to the United States Supreme Court and in representing plaintiff at trial following remand.

In response to the December 10 order, plaintiff's counsel has filed a new itemization of time spent in representing plaintiff, in which she seeks fees in the amount of \$245,820.63. She has included with the itemization a motion "to reserve right to appeal award for attorney's fees," dkt. #167, which will be granted. The submission does a better job of explaining what was done at different times, but the request is wholly unreasonable.

Plaintiff's counsel is asking for fees for 1,528 hours of work done after the court of appeals' decision. Plaintiff's request shows no billing judgment. No private client would honor it if it came from a private law firm, when it is so obviously out of proportion both to what was at stake and to the minimal difficulty of the legal and factual issues. Plaintiff's counsel is asserting that it was necessary to put in the equivalent of 38 40-hour weeks to

draft a response to defendant's petition for a writ of certiorari and prepare for a two-day non-jury trial with no experts. That makes no sense. Even a non-profit organization cannot afford to allocate so many resources to one small case. After all, the great majority of the trial discovery had been done in connection with the first trial in 2008.

In my view, the new billing submission represents plaintiff's implicit choice to accept the award of \$37,500 that I offered her. This is the amount she will be awarded.

#### ORDER

IT IS ORDERED that plaintiff Sharon Mondry's request for attorney fees is GRANTED in part; she is awarded attorney fees in the amount of \$37,500 and costs in the amount of \$1917.83. Defendant American Family Mutual Insurance Company may have until March 18, 2011 in which to pay this amount to plaintiff.

FURTHER, IT IS ORDERED that plaintiff's motion to reserve right to appeal award

for attorney fees is GRANTED.

Entered this 16th day of February, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge