

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

IMPACT GEL CORPORATION

and

MATTHEW KRIESL,

Plaintiffs,

and

STEVE GLAZIK, GARY GLAZIK,
MARK DECKER and
PLASTIC DESIGNS, INC.,

Involuntary Plaintiffs,

v.

GERALD R. RODEEN,

Defendant.

In an order dated September 1, 2005, I remanded this case to the Circuit Court for Jackson County, Wisconsin. Also, I concluded that plaintiffs Impact Gel Corporation and Matthew Kriesl were entitled to an award of attorney fees and costs. 28 U.S.C. § 1447(c) (“An order remanding the case may require payment of just costs and any actual expenses,

including attorney fees, incurred as a result of the removal.”). Plaintiffs filed a bill of costs and an itemization of attorney fees on September 8, 2005 and defendant filed an objection on September 27, 2005.

My conclusion that plaintiffs were entitled to attorney fees was based primarily on a series of decisions by the Court of Appeals for the Seventh Circuit holding that plaintiffs who demonstrate that removal is improper are *presumptively* entitled to an award of fees. Sirotzky v. New York Stock Exchange, 347 F.3d 985, 987 (7th Cir. 2003) (citing cases). Sirotzky and its predecessors were the law in this circuit at the beginning of this week, but they are not the law at present. On December 7, 2005, the Supreme Court issued a decision in Martin v. Franklin Capital Corp., No. 04-1140, 2005 WL 3299410. In Martin, 2005 WL 3299410 at *5, the Court held that, absent “unusual circumstances, courts may award attorney’s fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal.” The Court rejected the argument that the statute creates a presumption in favor of an award of attorney fees when removal is found to be improper.

In light of the decision in Martin, I believe it is necessary to re-examine the earlier conclusion that plaintiffs are entitled to attorney fees in this case. Therefore, I will give the parties a short time to submit their views on the applicability of Martin to this case.

ORDER

IT IS ORDERED that the parties may have until December 15, 2005, in which to state their views concerning how the decision in Martin v. Franklin Capital Corp. affects plaintiffs' request for attorney fees and costs. Once I have received the parties' input, I will reconsider plaintiffs' request for attorney fees and costs in light of Martin.

Entered this 8th day of December, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge