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.

OPINION AND ORDER

06-cv-320-bbc

- -

Plaintiff Sharon Mondry has submitted a request for $383,235 in attorney fees and $3,627.18 in costs incurred in the pursuit of claims arising under the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001-1461, against defendants and Connecticut General Life Insurance Company (CIGNA), the claims administrator for defendant's Ameripreferred PPO Plan. (CIGNA was named initially as a defendant but the district court dismissed it from the case at the outset and the court of appeals refused to reinstate it. The plan itself plays no active role in this controversy and will not be referred to as a defendant in this opinion).

I conclude that plaintiff is not entitled to any award of fees or costs for work

undertaken on plaintiff's behalf before this suit was filed, because § 1132(g) authorizes such awards only for work done in connection with court proceedings and not for administrative proceedings that take place before the suit is filed. In addition, she is not entitled to fees for work done in court proceedings before the court of appeals ruled in her favor because she has not shown that before that point, defendant lacked substantial justification for its position.

When it comes to deciding the amount of the attorney fees to which plaintiff is entitled for the work done after the court of appeals' ruling, however, plaintiff's counsel's submission is inadequate. Plaintiff was represented by a non-profit organization, ABC for Health, which provides legal assistance to persons who need help obtaining health care or health care benefits and cannot afford the cost of private counsel. ABC does not identify the nature of the work its lawyers and legal interns performed at any time beyond a broad description such as research and writing, and it makes no attempt to justify the rates attributed to the many different persons who worked on the case. Moreover, the billing leaves me with serious questions about the reasonableness of the hours claimed to have been spent on the case after the court of appeals had ruled, For these reasons, I will offer plaintiff a choice of taking $37,500 in fees or submitting an itemization of hours worked that provides enough information for a fair review.

A. Background

Plaintiff was an employee of defendant American Family Mutual Insurance Company and a participant in its Ameripreferred Plan. She sought reimbursement for medical costs she had incurred for speech therapy treatment provided her young son in 2003. Although the language of the plan seemed to cover such charges, CIGNA refused repeatedly to reimburse plaintiff, maintaining that the services were not covered. At different times, it advised plaintiff that it was relying on certain documents it referred to as "resource tools" for its interpretation of the relevant plan language.

With the help of ABC for Health, plaintiff worked doggedly to obtain the resource tools so that she could understand the reasons for the denials and determine what she needed in order to appeal them, as the plan allowed her to do. In April 2005, she learned that she had prevailed; ten months later, she received a reimbursement check.

In June 2006, plaintiff initiated this suit under 29 U.S.C. § 1024(b)(4) against defendant American Family, the plan and CIGNA, contending that they had (1) failed to provide her information she was entitled to receive; (2) breached their fiduciary duty in violation of § 1024(a)(1); (3) made false statements relating to health care matters in violation of 18 U.S.C. § 1035; (4) committed mail fraud in violation of 18 U.S.C. § 1341; (5) engaged in wire fraud in violation of 18 U.S.C. § 1343; and (6) engaged in prohibited racketeering activities in violation of 18 U.S.C. § 1962(c). The case was assigned to Judge Shabaz, who dismissed CIGNA from the suit after finding that it was not an administrator

of the plan in which plaintiff was a participant. He concluded that a claims administrator could not be held liable under 29 U.S.C. § 1024(b)(4) for failing to provide plan information to a plan participant at her request. In addition, he dismissed counts 3-5 on the ground that the statutes on which plaintiff relied did not provide a private right of action. He dismissed count 6 because he found that plaintiff's allegation of the enterprise element of a racketeering claim was inadequate under § 1962(c). Mondry v. American Family Mutual Insurance Co., 2006 WL 2787867 (Sept. 26, 2006). In a subsequent opinion, Judge Shabaz found that defendant had not violated a fiduciary duty to plaintiff because the 1996 Claims Administration Agreement between it and CIGNA was not a statutorily defined plan document under § 1024(b)(4). He granted summary judgment to defendant on this claim, but he denied defendant's motion for summary judgment on plaintiff's second claim after finding that the two resource tools used by CIGNA were plan documents that defendant was obligated to turn over to plaintiff under § 1024(b)(4). Mondry v. American Family Mutual Insurance Co., 2006 WL 3883601 (Nov. 21, 2006).

In his final opinion in the case, Judge Shabaz reversed his decision on the resource tools. After reviewing more evidence produced by defendant, he found that the tools were not plan documents because they were used only to provide guidance on the construction of the formal language of the benefits plan and were not contractually binding in and of themselves. Thus, although plaintiff was entitled to have the guidelines in order to insure

that she received a full and fair review of her claim under 29 U.S.C. § 1132(2), she was not entitled to them under § 1024(b), which is what she had contended. Mondry v. American Family Mutual Insurance Co., 2006 WL 5942162.

Plaintiff appealed to the Court of Appeals for the Seventh Circuit, which upheld the district court's finding that CIGNA was not a plan administrator and thus under no obligation to disclose any plan documents, but reversed the findings that the claims administration agreement and the resource tools were not documents that defendant was required to disclose under § 1024(b)(4). Mondry v. American Family Mutual Insurance Co., 557 F.3d 781 (7th Cir. 2009). The court acknowledged that the resource tools were not in defendant's possession and that defendant's efforts to obtain them on plaintiff's behalf had been rebuffed by CIGNA, but it held, nevertheless, that once defendant was placed on notice that CIGNA was relying on language not found in the plan document, it had a duty to obtain them for plaintiff. Accordingly, defendant was liable to plaintiff for statutory penalties under 29 U.S.C. § 1132(c)(1)(B), with the amount of the penalty to be determined by the district court. Id. at 803.

The court of appeals held that if plaintiff proved that defendant had breached its fiduciary duty to her, she had a viable claim for the lost time value of the money she was forced to expend on her son's speech therapy services until she prevailed on her appeal to CIGNA. It directed the district court to hold a trial to determine whether defendant had

breached it fiduciary duty to plaintiff as the plan administrator by not taking additional steps to obtain the documents that she needed to enforce her rights under the plan.

A two-day trial of the remanded issues was held in August 2010. At the conclusion, the parties agreed to file post-trial briefs. In an order entered September 20, 2010, I found that plaintiff was entitled to statutory damages of $9,270 for defendant's violation of its duty under § 1024(b)(4) to produce documents ($30 a day for 309 days) and to an award of $603.25 for defendant's breach of its fiduciary duty, noting that it was a very close question whether a breach had occurred. I reserved a ruling on attorney fees until the parties had briefed that issue, which they have now done.

B. Plaintiff's Motion to Strike Defendant's Spreadsheet

As an initial matter, plaintiff has moved to strike an Excel spread sheet filed by defendant on October 22, 2010, intended as a conversion of the billing record that plaintiff had submitted to the court. Plaintiff wants this struck because defendant omitted billed hours, made spelling errors and generally produced a flawed document.

I appreciate defendant's attempt to assist the court, but I am not persuaded that use of the spreadsheet will reduce the work involved in reviewing plaintiff's counsel's billing records. This is particularly true if the work involves checking both documents against each other for each of the hundreds of entries within them. Plaintiff's motion to strike the spread

sheet, dkt. #157-2, will be granted.

C. Fee Request

Defendant calls plaintiff's request for fees of $383,235 audacious, saying it is entirely disproportionate to the results achieved, unsupported by factual evidence of time actually and necessarily spent on the case, inadequately documented and exhibiting no indication of any billing judgment by plaintiff's counsel. Defendant opposes any award for time spent by plaintiff's counsel helping plaintiff obtain reimbursement of her medical expenses and opposes an award of any fees at all on the ground that defendant's position was justified by the state of the law at the time plaintiff brought her suit.

In replying to defendant's arguments, plaintiff takes umbrage at defendant's efforts to point out examples of what defendant believes to be evidence of poor billing judgment. Much of that umbrage is misplaced, including plaintiff's suggestion that defendant's counsel, Earl Munson, should not have participated in this litigation because he was the president of the board of the Wisconsin Trust Account Foundation when he became lead counsel in this case. Apparently plaintiff thinks this was a conflict of interest because Munson's position as board president would have given him "access to . . . vital financial and operational information about" plaintiff's counsel. Apart from the fact that the time is long past for conflict of interest objections, plaintiff has not shown that any "inside" information Munson had about plaintiff's counsel would have played a role in defendant's objections to plaintiff's

fee request. It is obvious to any interested person that plaintiff's counsel is a non-profit firm that makes heavy use of student interns to assist its paid staff, that it provides valuable legal skills training to those interns and that the use of interns allows counsel to provide legal services to many people, like plaintiff, who could never afford to pay the full legal rates at private law firms.

The work that plaintiff's counsel performs is admirable and badly needed. Still, plaintiff's counsel is held to the same standards as any other firm when it is seeking an award of attorney fees. However egregious plaintiff's counsel believes defendant's conduct to have been, plaintiff is not entitled to a greater award from defendant than a private firm could have collected for the same services.

D. Fees and Costs Expended in Obtaining Reimbursement from CIGNA

One issue can be cleared away at the outset: whether plaintiff is entitled to an award of attorney fees or costs for ABC for Health's efforts to help her obtain reimbursement of her son's medical costs. The Court of Appeals for the Seventh Circuit has not had occasion to consider the question, but the appellate courts that have addressed the issue have agreed unanimously that no such reimbursement is allowable. The governing statute, 29 U.S.C. § 1132(g), provides that "(1) In 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." The appellate courts have interpreted the word "action" in this statute as referring to proceedings in court and not to administrative proceedings that took place before the court action was filed. The one exception the courts have recognized is for administrative proceedings that occurred after the litigation and were necessary to enforce a final judgment that had been already obtained. Parke v. First Reliance Standard Life Insurance Company, 368 F.3d 999, 1011 (8th Cir. 2004) (citing Anderson v. Procter & Gamble Company, 220 F.3d 449, 455 (6th Cir. 2000)); see also Kahane v. Unum Life Insurance Co. of America, 563 F.3d 1210, 1215 (11th Cir. 2009); Hahnemann University Hospital v. All Shore, Inc., 514 F.3d 300, 313 (3d Cir. 2008); Rego v. Westvaco Corp., 319 F.3d 140, 150 (4th Cir. 2003); Peterson v. Continental Casualty Co., 282 F.3d 112, 121 (2d Cir. 2002); Cann v. Carpenters' Pension Trust Fund, 989 F.2d 313, 316-17 (9th Cir. 1993)); Huss v. IBM Medical and Dental Plan 2010 WL 2836743, *5 (N.D. Ill.,2010).

Plaintiff has not suggested any reason for distinguishing her case from those cited above so as to entitle her to reimbursement for the work done on her behalf in attempting to obtain reimbursement for her son's medical expenses. She has said only that defendant's breach of fiduciary duty occurred during the administrative process, as did "most of the transgressions that were identified," Plt.'s Br., dkt. #154, at 7, such as the failure to provide documents, and that the court has discretion to award fees for the work done during this phase of the litigation. Her argument is not persuasive. Taking the second argument first,

this court does not have discretion to award fees for the prior work. The general rule is that parties are liable for their own costs unless a statute provides otherwise. In this instance, § 1132(g) does provide otherwise, but only as to work done in connection with court proceedings. It does not extend to work done before then, except in the limited circumstances described above. Second, it is essentially irrelevant that the breach occurred during the administrative proceedings; it is the normal pattern for the tort to occur before the case is filed.

Plaintiff's case does not fall within any recognized exception to the holding that fees are to be awarded only for work done in connection with court proceedings. The administrative proceedings she pursued did not take place after the court proceedings to affirm a judgment. The merits of the two proceedings did not overlap. Plaintiff sought administrative relief well before she filed suit in federal court and *after* she had obtained full reimbursement of her medical costs, minus only interest. This suit was filed solely to enforce her rights under 29 U.S.C. § 1024(b)(4) to certain documentation and to assert a claim of violation of fiduciary duty against defendant and CIGNA. I conclude, therefore, that plaintiff is not entitled to any award of attorney fees for any work done on her behalf before she filed suit.

E. Standard for Fee Award

29 U.S.C. § 1132(g)(1) allows an award of reasonable attorney fees and costs to "either party." Unlike similar attorney fee statutes, such as 42 U.S.C. § 1988, the party need not be the prevailing party. The Supreme Court has interpreted the statute to allow attorney fee awards to persons who have obtained "'some degree of success on the merits'" of a suit" brought under § 1132(a). Hardt v. Reliance Standard Life Insurance Co., 130 S. Ct. 2149, 2158 (2010) (quoting Ruckelshaus v. Sierra Club, 463 U.S. 680, 684, n.3 (1983)). In addition, the persons must show that the defendant's litigating position was not substantially justified, an approach adopted by the Court of Appeals for the Seventh Circuit because it recognizes that in most instances awards will be paid out of the plan assets "to the possible harm of the other participants and beneficiaries." Lowe v. McGraw-Hill Companies, Inc., 361 F.3d 335, 339 (7th Cir. 2004) ("prevailing plaintiffs in ERISA cases are not awarded attorneys' fees as a matter of course, as in civil rights litigation. Instead, they must show that the plan's litigating position was not 'substantially justified.'"); Harris Trust and Savings Bank v. Provident Life and Accident Insurance Company, 57 F.3d 608, 616 (7th Cir. 1995) (under substantially justified standard, "a court may decline to award fees and costs if it finds that: (1) the losing party's position had a reasonable or "solid" basis in law and fact; or (2) special circumstances make an award unjust"). Plaintiff has sued the plan administrator and not the plan, but the effect is essentially the same. Defendant is not required to pay the damages award out of non-plan funds.

There is no question but that plaintiff achieved success on her claims that she had been denied documentation to which she was entitled under § 1024(b)(4) and that defendant breached its fiduciary duty to her under 29 U.S.C. § 1104(a)(1). The next question is whether she can show that defendant's opposition to her claims was not substantially justified. Defendant maintains that it was justified in opposing plaintiff's claim that it was legally obligated to obtain and turn over to plaintiff the resource tools that it did not have in its possession, because no court had previously recognized such an obligation under § 1132(c). (The court of appeals found that defendant was required to turn over to plaintiff both CIGNA's resource tools and its own claims administration contract with CIGNA, but the evidence at trial showed that plaintiff never requested a copy of the contract from defendant and that defendant was not otherwise aware that plaintiff wanted it. Further discussion of "documentation" will be limited to the resource tools.)

Defendant's assertion of justification is well founded. The court of appeals characterized the question of plaintiff's entitlement to the resource tools as a closer question than whether she was entitled to a copy of the claims administration contract. Mondry, 557 F.3d 781, 797 (7th Cir. 2009). It cited its own previous opinion in Ames v. American National Can Co., 170 F.3d 751 (7th Cir. 1999), in which it held that it would interpret the term "instruments" to reach only formal legal documents governing a plan because reading it to reach any document that provided information about a plan and its benefits "would

make hash of the statutory language, which on its face refers to a specific set of documents: those under which a plan is established or operated." Id. at 758-59. The court noted that a number of other courts had concluded that internal guidelines or memoranda that a claims administrator uses in deciding whether a claim for benefits is covered by the plan are not "other instruments under which the plan is established or operated" within the meaning of § 1024(b)(4). Id. at 797-98 (collecting cases). It noted also that another statute, 29 U.S.C. § 1133, might entitle plaintiff to copies of the internal guidelines, but that this was a moot point. Plaintiff had not sought relief under this statute, presumably because the statute entitles benefit claimants to reasonable access to documents "relevant to the claimant's claim for benefits," 26 C.F.R. § 2560.503-1(h)(2)(iii), and by the time plaintiff filed suit, her claim had been granted. Id. at 799.

The court of appeal's opinion makes it clear that defendant had substantial justification for its position at the time plaintiff filed her suit and plaintiff acknowledged the need for clarifying the dueling opinions on the issue in her response to defendant's petition for a writ of certiorari to the Supreme Court. She agreed with defendant that the case law interpreting § 1024(b)(4) was not clear, Resp.'s Sup. Ct. Br., dkt. #147 (in district court file), at 22-34, and that guidance from the Supreme Court would be helpful, id., and she noted the number of cases in the Seventh Circuit and in other circuits that had interpreted the production requirement narrowly before the court ruled in her favor in 2009. Id.

Taking into consideration the lack of clear legal precedent on the issue of producing internal resource tools to participants; the significant case law supporting non-production of such documentation, as acknowledged by plaintiff herself in her Supreme Court filings; the court of appeals' characterization of the issue as "closer" than whether the formal claims administration contract should be produced; defendant's reasonable belief that the instruments were not covered by § 1024(b)(4) because they could not override the provisions of the benefits plan and therefore did not seem to qualify as "instruments under which the plan is established or operated"; the efforts on the part of defendant's benefit specialist, Stacy McDaniel, to help plaintiff pursue her claim for benefits and obtain copies of the resource tool (as outlined in the post-trial opinion, Mondry, 2010 WL 3730910, at *4, 6-7); I conclude that plaintiff has failed to show that defendant's opposition to plaintiff's suit was not substantially justified before the court of appeals issued its opinion on March 5, 2009.

In Lowe, 361 F.3d at 339, the court of appeals acknowledged that many courts have used a five-factor test "to structure or implement, rather than to contradict the 'substantially justified' standard." This test considers: "(1) the degree of the offending parties' culpability or bad faith; (2) the degree of the ability of the offending parties to satisfy personally an award of attorneys' fees; (3) whether or not an award of attorneys' fees against the offending parties would deter other persons acting under similar circumstances; (4) the amount of benefit conferred on members of the pension plan as a whole; and (5) the relative merits of

the parties' positions." Nichol v. Pullman Standard, Inc., 889 F.2d 115, 121 (7th Cir. 1989); see also Hardt, 130 S. Ct. at 2158 n.8 (once district court has found that claimant achieved substantial success on "a central issue," court may consider five-factor test). Brewer v. Protexall, Inc., 50 F.3d 453, 458 (7th Cir. 1995) (approving use of similar test to determination of attorney fee award to employee who prevailed on claim against former employer for health insurance benefits); see also Little v. Cox's Supermarkets, 71 F.3d 637, 644 (7th Cir. 1995) (whether losing part's position was "substantially justified" is "bottom-line" question to be answered even when more elaborate test is used). But see Sullivan v. William A. Randolph, Inc., 504 F.3d 665, 672 (7th Cir. 2007) (suggesting that five-factor test has outlived its usefulness, even as checklist of factors).

Whether the test is still operable or not, applying it would not change the result in this case. First, I cannot find that defendant acted in bad faith at any time during the suit; at most, it was negligent in not following up with additional requests to CIGNA to turn over the resource tools to plaintiff, which is the basis on which I found that it had breached its fiduciary duty to plaintiff. This conclusion conformed to the court of appeals' decision that defendant should have provided the instruments even if it believed that they were not documents that overrode the plan provisions and were therefore not binding when it came to interpreting the plan. Second, although defendant is capable of satisfying an award of attorney fees, this is not a reason to award them in the absence of other, more persuasive

reasons. Third, an award is not needed to deter other entities in defendant's position from refusing to turn over documents. Now that the court of appeals has made it clear that claims administration contracts and internal resource tools must be produced upon demand, insurance companies will have sufficient incentive in the form of statutory penalties to make them available. Fourth, plaintiff's suit may help other participants in the future, to the extent that plan administrators in this circuit will know that they must insure that claims administrator turn over internal plan documents if the documents are requested and if the claims administrator is using them in any way to determine benefit payments. Fifth, looking at the state of the law at the outset of the suit, the merits of plaintiff's position were far from obvious. Therefore, I will confine the review of the fee request to the work done on plaintiff's behalf after the court of appeals' opinion issued on March 5, 2009.

F. Plaintiff's Fee Request

Unfortunately, the fee request that plaintiff has submitted is not presented in a format that facilitates review. For starters, plaintiff lists many pages of work done on various days, running from October 3, 2007 to August 30, 2010, without saying what stage of the proceedings the lawyers and interns were working on at any particular time. On page 16, plaintiff shows a total number of hours of 2402.3. On the following page, plaintiff sets out the total hours that various people worked and labels this table "Post-Appeals Court," without

defining it by dates. This table shows the same total of 2402.3 hours as the 16 previous pages setting out enumerated hours. This seems odd, because the 16 preceding pages include time for work hours preceding the court of appeals argument on November 6, 2007. If the work set out in the table is supposed to exclude the hours worked before November 7, 2007, why is the total number of hours in the table equal to the enumerated hours worked "post-appeal" that includes these hours?

The next table on page 17 is headed "Table from Sheet 2, Pre-Appeals Court," with no explanation of what Sheet 2 is or what time is included in "Pre-Appeals Court." Presumably, it does not include all the work done on plaintiff's behalf in the administrative proceeding, in the district court and in the court of appeals. If it does, plaintiff has not explained why all the work done on plaintiff's behalf before the appeal amounted to only a little more than one-quarter of the work alleged to have been done after the appeal was decided. It is true that the work done after the appeal included a trial but it was a court trial that lasted only two days. Parsing the number of hours charged by plaintiff's counsel for work done after the appeal was decided, it appears that counsel has devoted an average of 31 hours a week to plaintiff's case for 18 months. That is not feasible, given counsel's own description of the nature of its clientele and its obligation to respond to their needs. It is hard to imagine why plaintiff's counsel would have needed this much time to prepare for a short court trial with no discovery. (Plaintiff lists no time spent in this period for discovery.)

Plaintiff's counsel has not supported its fee request with a careful and candid explanation of the time its lawyers spent on the two issues on which they prevailed. Its fee request gives almost no explanation of what its lawyers were doing. It says only that they were engaged in "legal research or writing," for example, or "trial strategy." It is impossible to tell from this what the lawyer or legal intern was researching or writing or what aspect of trial strategy they were discussing. (It is particularly odd that the time of three interns was billed for June 4, 2009 for "trial strategy"; one would not think that trial strategy would be delegated to interns. What they did that day is unknowable, but apparently it did not involve research on the topic, because none is identified.)

Rather than attempt to resolve these questions, I will give plaintiff a choice. They may accept a fee award of $35,000 for trial and trial preparation, plus $2500 for work done in responding to defendant's petition for a writ of certiorari. This is a reasonable fee for the modest amount that plaintiff recovered at trial. Sullivan, 504 F.3d at 672 (attorney fee award should be proportional to degree of success that suit achieves). Plaintiff achieved the major goal of her suit on appeal, by establishing that plans are obligated to obtain from their claims administrators resource tools if the claims administrator cites such a tool expressly and treats it as equivalent of plan language in ruling on a claimant's entitlement to benefits; in doing so, the claims administrator "renders that document one that in effect governs the operation of the plan for purposes of section 1024(b)."

A fee award of $37,500 is a reasonable estimate of the number of hours reasonably required for filing the response to the cert petition, preparing the case for trial and then trying it. Alternatively, plaintiff's counsel may submit a revised fee request, setting out in detail the work done by each lawyer or intern, and why it was done. If, for example, it was research, plaintiff's counsel should identify the topic being researched and why and provide a statement of the rate ordinarily charged by the lawyer doing the work or evidence of the rates that lawyers of equal skill and experience command in the Madison market, or both. Counsel should trim its billing by deducting time spent educating new interns or lawyers about the case. It should deduct any charges for relying on more than one lawyer to try what was a straightforward case. Although it was a valuable and appropriate experience for young lawyers to participate in the trial, the cost of that experience is not one that defendant should bear. Counsel should also explain, or excise from the bill, any time charged by legal interns to work on trial strategy. Overall, it should exercise the kind of billing judgment that lawyers in private firms would exercise when charging their clients for services rendered. Those clients would expect that counsel would handle their legal problems in the most efficient and effective manner possible. That may not be possible for plaintiff's counsel to do, given its structure and its teaching function. When it cannot, plaintiff's counsel should make the necessary downward adjustments to the bill.

Defendant objects to paying *any* of the fees and costs of plaintiff's suit, including those

incurred after the appeal had been decided. It alleges that it tried to settle the case before the appeal was even heard. Apparently, its argument is that once it had agreed to settle the case for a reasonable amount and was rebuffed, it was substantially justified in continuing its defense. Certainly, if defendant's attempt had been successful, plaintiff could have avoided the resulting expense. If defendant had raised this issue at trial, when the underlying facts could have been determined, it could have been considered. It is too late to do that now. I do not know what defendant's offer was or what plaintiff was demanding or the reasons plaintiff had for rejecting the offer defendant made.

G. Plaintiff's Request for Costs

Plaintiff submitted a request for reimbursement of costs in the amount of $3,627.18. After deducting expenses that were not explained adequately; the expense of obtaining admission to the court of appeals for more than one lawyer; the expense of joining the bar of the Western District of Wisconsin, because that is a personal benefit to the lawyers; the expenses of mailing materials to plaintiff, as well as the expenses plaintiff incurred in coming to the trial or participating in settlement conferences; and the trial expense reimbursement for Rick Lavigne, who participated in the trial as a lawyer, I will award costs in the amount of $1917.83.

ORDER

IT IS ORDERED that

1. Plaintiff Sharon Mondry's motion to strike the Excel spread sheet submitted by defendant American Family Mutual Insurance Company is GRANTED;

2. Plaintiff is awarded costs in the amount of $1917.83.

3. Plaintiff may have until January 7, 2011, in which to either advise the court that it will accept the $37,500 fee award or to submit a new billing statement conforming to the court's instructions.

4. If plaintiff chooses the second option, defendant may have until January 21, 2011, in which to object to the revised billing statement.

Entered this 10th day of December, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge