

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

LAWRENCE G. RUPPERT and
THOMAS A. LARSON,
on behalf of themselves and on behalf
of all others similarly situated,

Plaintiffs,

v.

ALLIANT ENERGY CASH
BALANCE PENSION PLAN,

Defendant.

ORDER

08-cv-127-bbc

On September 6, 2012, judgment was entered in favor of the plaintiff class in this case brought under the Employee Retirement Income Security Act. 29 U.S.C. §§ 1001-1461. Now the parties have turned their attention to the issue of attorney fees. A threshold question raised by plaintiffs is whether they are entitled to obtain discovery of *defendant's* attorney fees in this case so that plaintiffs may use that information as part of a showing that their own fees are reasonable. Dkt. #574. Also before the court is defendant's motion to stay the judgment pending appeal and for the approval of defendant's proposed bond. Dkt. #579.

I am granting defendant's motion as unopposed, along with plaintiffs' motion for leave to file a reply brief in support of their discovery motion. As for the discovery motion

itself, I will grant it with respect to the narrowed request in plaintiffs' reply brief.

In their opening brief, plaintiffs ask for the following information from defendant:

all bills and/or invoices reflecting its counsel's billing rates and fees billed in connection with this action since 2008 to the present (whether sent to Defendant, Defendant's sponsor or one or more insurance companies responsible or potentially responsible for some or all of the cost of defending this action) and all of its counsel's internal billing records, including final and draft descriptions of time billed by attorneys, paralegals, and other support personnel that was and was not actually billed to the Plan or the Plan's sponsor. All time spent by in-house counsel on this case should also be included.

Dkt. #574 at 2. This request was both narrowed and enlarged in plaintiffs' reply brief. It is narrowed in part because in the interim defendant provided its billing rates for this case and in part because plaintiffs withdrew their request for "detailed billing records or drafts of the same" and for "information regarding the time . . . in-house counsel spent working on this matter." Dkt. #584-1 at 2. Thus, with respect to the original request, plaintiffs now seek only the total hours billed by defense counsel in this case, "broken down by each partner, associate (including contract attorney) and paralegal assigned to the case" and the total amount defense counsel billed for this case, "broken down by month or however frequently a bill was sent." Id. Plaintiffs also broadened their request to include "the current customary billing rates the partners, associates (including contract attorneys) and paralegals charge other clients for similar (ERISA class action litigation) work." Id. at 1.

In support of their request, plaintiffs cite Chrapliwy v. Uniroyal, Inc., 670 F.2d 760, 768 & n.18 (7th Cir. 1982), in which the court of appeals upheld the district court's reliance on the rate charged by defense counsel in finding the rates charged by plaintiff's counsel to

be reasonable, stating that “[t]he rates charged by the defendant's attorneys provide a useful guide to rates customarily charged in this type of case.” In addition, plaintiffs cite Lynch v. City of Milwaukee, 747 F.2d 423, 428 n.4 (7th Cir. 1984), in which the court listed “the number of hours or rates charged by the opposing party” as one type of evidence that counsel may use to show the reasonableness of their fee and Farfaras v. Citizens Bank and Trust of Chicago, 433 F.3d 558, 569 (7th Cir. 2006), in which the court stated that a rule requiring the other side to produce billing records “avoid[s] . . . hypocritical objections” to the prevailing party’s fee. For its part, defendant cites Ohio-Sealy Mattress Manufacturing Co. v. Sealy Inc., 776 F.2d 646, 659-60 (7th Cir. 1985), in which the court of appeals upheld the district court’s decision to deny the plaintiff’s motion to compel defense counsel to provide information about the number of hours it billed. The court stated that such information may “have little relevance to the number of hours reasonably expended by the plaintiff’s counsel” because defending a case may require greater resources than prosecuting it. Id. The court did not distinguish or acknowledge Chrapliwy or Lynch.

Although there may be some tension between these cases, I read them to mean that opposing counsel’s hours and rates generally are discoverable in the context of a fee petition, but their relevance in a particular case may be limited. Because defendant does not raise any specific objections regarding relevance in this case, I see no reason to keep defendant’s billing records off limits entirely, particularly because defendant already has provided its rates. Further, the only objections defendant raises regarding the burden of plaintiffs’ request relate to the requests for individual billing entries and the records of in-house counsel, which

plaintiffs have now withdrawn. Accordingly, I will grant plaintiffs' motion as it relates to hours defense counsel worked and the total amount billed. Of course, I do not determine at this stage the extent to which defense counsel's hours or rates may show the reasonableness (or unreasonableness) of plaintiffs' hours or rates.

I am denying plaintiffs' request as it relates to defense counsel's "customary" billing rates because plaintiffs did not include that in their original request. Plaintiffs say that they want the additional information because they believe that the rates defendants provided in this case are lower than usual, but they cite no authority for the view that they may expand a request in a reply brief because they do not like the answer they received from their original request. Further, unless defense counsel charges the same rate in all of its other ERISA cases, plaintiffs provide no way to define the meaning of "customary." I decline to create yet another opportunity for further motion practice in this case.

ORDER

IT IS ORDERED that

1. Defendant Alliant Energy Cash Balance Pension Plan's motion to stay the judgment pending appeal and to approve its proposed bond, dkt. #579, is GRANTED.
2. The motion filed by plaintiffs Lawrence Ruppert and Thomas Larson for leave to file a reply brief, dkt. #584, is GRANTED.
3. Plaintiffs' motion to compel discovery, dkt. #574, is GRANTED IN PART. Defendant may have until November 5, 2012, to provide plaintiffs (1) the total amount

defense counsel billed for this case, broken down by month or however frequently a bill was sent; and (2) the total hours billed by defense counsel in this case, broken down by each partner, associate (including contract attorney) and paralegal assigned to the case.

Entered this 22d day of October, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge