COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
Civil Action No. 05-1360-BLS1

MARCIA RHODES, HAROLD RHODES, REBECCA RHODES)
Plaintiffs,)
v.)
)
AIG DOMESTIC CLAIMS, INC. f/k/a AIG TECHNICAL)
SERVICES, INC., NATIONAL UNION FIRE INSURANCE)
COMPANY OF PITTSBURGH, PA, and)
ZURICH AMERICAN INSURANCE COMPANY)
)
Defendants.)

PLAINTIFFS' OPPOSITION TO REQUEST OF DEFENDANTS FOR MORE COMPREHENSIBLE DETAILS OF THE NATURE OF THE LEGAL SERVICES PROVIDED BY PLAINTIFFS' COUNSEL, OR IN THE ALTERNATIVE TO STRIKE BILLING RECORDS

Defendants AIG Domestic Claims, Inc. and National Union Fire Insurance Company of Pittsburgh, PA (collectively "AIG") continue to adhere to the adage that the best defense is a strong offense. In the face of Plaintiffs' production of both the chronological billing entries of attorney time and costs in this case, as well as reports of each timekeeper's entries on the file and costs organized by category, AIG claims the information provided is "incomprehensible." That claim and the requested relief are wholly unwarranted, misleading and without merit, and therefore, the Motion should be denied. Specifically, AIG's claim that the billing records submitted with Plaintiffs' *Request for Attorneys' Fees* are "hopelessly vague" is simply untrue given the amount of detail provided in each entry of those records (the same type and amount of detail that this court approved of in *Brooks Automation, Inc. v. Blueshift Technologies, Inc.*, C.A. No. 05-3973-BLS2) plus the additional detailed explanations provided by Plaintiffs' counsel in their affidavits and in the *Memorandum in Support of Plaintiffs' Request for Attorneys' Fees and Costs*. Given that AIG ignores the additional information submitted by Plaintiffs in further support their request for fees, including explanations of the significant deductions Plaintiffs already made in the fee request, AIG's current request is

also disingenuous. Furthermore, the relief requested by AIG is completely unwarranted as the bases appear to go to the merits of Plaintiffs' fee request, but are couched in a request for additional information. In that regard, AIG's *Request* is reminiscent of the tactical maneuvers employed throughout the litigation including moving to disqualify Attorney Pritzker, even though there was no real intention of calling him as a witness, and using motions in limine to purportedly preclude evidence but really only arguing the weight of the evidence, even after the same arguments were denied at summary judgment (*e.g., AIG's Motion in Limine to Preclude Statements by Anthony Bartell, Esq., Concerning Alleged Violations of MGL c. 93A and c. 176D*). In sum, the relief requested by AIG is inappropriate and should be given little if any attention by this Court.

Discussion

The large packet of information served on AIG is much more detailed than AIG claims. Just looking at the billing records that AIG attached to its Motion demonstrates that AIG's requested relief is unwarranted. Those detailed records provide a substantial amount of information about the legal services performed. In fact, the amount of detail and the descriptions are strikingly similar to the billing records recently provided to and approved by this Court. *Brooks Automation, Inc. v. Blueshift Technologies, Inc*., 21 Mass. L. Rptr. 53 (April 6, 2006). Attached hereto as Exhibit A are true and accurate copies of Goodwin Procter billing records submitted to this Court in support of the *Application for Attorneys' Fees and Costs* in *Brooks Automation, Inc. v. Blueshift Technologies, Inc*.

Even a cursory review of the time entries demonstrates the fallacy of AIG's characterization as the overwhelming majority of time entries include the name of the party (ies) and/or witnesses that were the subject of the work being performed, or can be readily determined with reference to other time entries or based on knowledge of the litigation, with which AIG is intimately familiar. For example, the first page of Exhibit A to AIG's Motion contains Attorney Pritzker's time entries for the first 7 months of the case. In late July, Attorney Pritzker made a time entry for "work on answers to interrogatories." AIG presumably contends that this time entry is "hopelessly vague," yet both National Union and AIGDC each served interrogatories on the three plaintiffs in July 2005. As such, AIG is not required to "read minds" as it claims. Similarly, while AIG may protest that Attorney Pritzker billed 5 hours for "team conference and

deposition preparation" on March 8, 2006 without identifying the witness (Ex. A to AIG's Motion, at 3), the time entry for March 9 is "preparation for and take Fuell deposition in Boston . . ." Page 4 of Ex. A to AIG's Motion includes time entries relating to "review drafts of interrogatory answers." Clearly Attorney Pritzker could only have been reviewing the Plaintiffs' draft answers to interrogatories. Therefore, just reviewing the one set of records relied on by AIG, which is only a portion of the evidence submitted by Plaintiffs, demonstrates that AIG's request is without merit.

Additionally, the cases cited by AIG do not support its claim that the Plaintiffs' records are "hopelessly vague" or that they are entitled to the requested relief. AIG relies heavily on *Ellis v. Varney*, 19 Mass. L. Rptr. 260, 2005 WL 1009634 (Mass. Super. 2005) quoting Judge Fecteau at length with respect to "block billing." Without the benefit of seeing the time records at issue in that case, based on the description provided, those records did not provide the same level of detail that was provided in this case. In describing the time, Judge Fecteau did note that as a general rule, entries that were "block billed" in lumps in excess of four hours were unreasonable. However, that did not lead him to require new timesheets or strike the records. Instead, Judge Fecteau awarded fees based on the information provided. More importantly, there is a drastic difference between the records described in *Ellis* and those provided here. Specifically, Judge Fecteau noted that there were a significant number of entries that exceeded 13 hours or more and even a series of 12 entries that added up to be more than 113 hours, "including one showing a 24-hour block." *Id.* at *4. Even with that minimal description, it is clear that Plaintiffs' records here are not in the same category as those submitted in *Ellis*.[1]

AIG also relies on *Twin Fires Inv., LLC c. Morgan Stanley Dean Witter & Co.*, 445 Mass. 411 (2005), claiming that it is entitled to more detailed information because in that case the Supreme Judicial Court suggested that a defendant might make such a

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1 While there are entries that are long and include multiple tasks, AIG cannot complain that they are too vague because they deal with such things as attending trial and then preparing for the next day, or include other things such as travel, all of which, of course, take time. For example, Attorneys Pritzker, Pinkham and Brown all have entries in excess of 10 hours for each trial day, which include attending trial and preparing for the next day. As another example, Attorneys Pinkham and Brown billed 14 hours on July 25, 2006, but that day included travel from Boston to Newark to attend the deposition of Robert Manning, actually attending the deposition and traveling back to Boston. AIG can hardly claim that such entries, which are clearly related tasks, are "hopelessly vague" or deny them an opportunity to respond.

request if the information provided is indecipherable, rather than risk challenging the requested fees only in conclusory fashion. *See AIG's Request* at 4-5. The SJC, however, did not make any suggestion that the court should strike any records that the opposing party feels might be lacking. Regardless of the SJC's suggestion, AIG's request is unwarranted because the detail provided by Plaintiffs in all of its forms (i.e. affidavits, briefs, multiple records) is hardly "incomprehensible data" and provides AIG with sufficient information to make any challenges it wishes. Unlike the situation in *Twin Fires*, Plaintiffs' did not submit redacted billing records. *See* 445 Mass. at 428. Instead, as stated above, Plaintiffs' counsel provided the same type of detail that this court previously approved in *Brooks Automation, Inc. v. Blueshift Technologies, Inc*., 21 Mass. L. Rptr. 53.

Furthermore, AIG completely ignores the additional information provided by Plaintiffs, making its Request misleading.[2] Despite AIG's attempt to present only a small portion of the information that Plaintiffs provided and claim that it is not enough, those records cannot be looked at in a vacuum. Included in the additional information provided by Plaintiffs is the 27-page Affidavit of Margaret M. Pinkham, which provides a significant amount of detail regarding the history of this litigation, and the services provided by Plaintiffs' counsel throughout the case including the involvement of each timekeeper and the actions Plaintiffs had to take to pursue their claim against AIG. In claiming that the billing records are not enough, AIG has simply ignored Attorney Pinkham's detailed explanation.

Plaintiffs also provided a comprehensive *Memorandum in Support of their Request for Attorneys' Fees and Costs*, which provides additional information regarding the history of this case, an explanation of the interrelated nature of Plaintiffs' claims against Zurich and AIG, as well as explanations of time spent on Zurich related tasks and the related deductions. As described in greater detail in Plaintiffs' *Memorandum*, this case involved one long chain of events beginning with the initial handling of the claim on January 9, 2001, the date of the crash, proceeding all the way to the final resolution. Discovery from Zurich and third parties was necessary to prove Plaintiffs' claims against

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2 As noted by AIG in passing, on the same date that Plaintiffs served their Request for Attorneys' Fees on Defendants, a courtesy copy of *Plaintiffs' Request* and all of the supporting documentation was delivered to the Court.

AIG, which were based on the entire chain of events, and most of the litigation activity throughout this case would have been necessary regardless of the number of defendants (*see Memorandum* at 6-10).

AIG omits the fact that in their *Fee Request*, Plaintiffs took significant deductions for work related solely to claims against Zurich. Those deductions are explained in detail in the supporting *Memorandum* and include deductions for: discovery discounted because of the unsuccessful claim against Zurich (*Memorandum* at 10); opposing Zurich's motion for summary judgment (*Memorandum* at 12); opposing Zurich's motions in limine; and preparing arguments in the post-trial brief related to Zurich (*Memorandum* at 18-20). In other words, Plaintiffs have already subtracted from their request to account for Zurich, and AIG is no way prejudiced in its ability to argue this point.

Ultimately, AIG is arguing the merits of Plaintiffs' Request for fees, but labeling it is a request for more information or to strike. If AIG wishes to argue that the actions taken by Plaintiffs' counsel regarding discovery from Zurich and third parties, and motion practice throughout the case were not necessary parts of the Plaintiffs' claim against AIG, it is entitled to do so by July 25 as ordered by the Court. However, just because AIG might disagree with Plaintiffs does not mean that the supporting documentation is deficient—especially given the amount of detail already provided in the various records, affidavits and *Memorandum*—and definitely does not warrant striking the records. Instead, determining what is reasonable is for the Court to decide based on the evidence that Plaintiffs have already submitted, as is the case in every fee application.

Conclusion

For the reasons stated above, the Court should deny AIG's request for more detailed information and deny AIG's alternative request to strike Plaintiffs' billing records.

MARCIA RHODES, HAROLD RHODES,
AND REBECCA RHODES,
By their attorneys,

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DATED: July 11, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this day, a true and accurate copy of the above document was served via hand delivery on the following counsel:

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