IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT—CHANCERY DIVISION

JONATHAN HUNLEDE	)	
Plaintiff,	)	
v.	)	**15 CH 18654**
	)	**Hon. Kathleen M. Pantle**
UNIQUE INSURANCE COMPANY	)	
Defendant.	)	

ORDER

Following the granting of Plaintiff Johnathan Hunlede's request for section 155 sanctions (215 ILCS 5/155) against Defendant Unique Insurance Company, Hunlede presented this Court with a Petition for Attorney Fees, Costs, and Other Damages[1] Pursuant to Section 155 and This Court's January 3, 2017 Order. Unique responded and Hunlede replied. The issues are (1) whether the requested attorney fees are reasonable; (2) whether Hunlede's request for sanctions in the amount of $60,000.00 should be granted; (3) whether the Court should defer ruling on the sanctions pending outcome of the uninsured motorist arbitration; and (4) whether an evidentiary hearing is needed.

Plaintiff's Petition for Attorney Fees and Costs and Other Damages Pursuant to Section 155 is granted.

Background

The Court will not repeat the lengthy background as the facts are set out in detail in its Order of January 3, 2017. However, as explained more fully below, the findings in that Order are incorporated into this Order as support for the amounts awarded. The Court would note that this case involves a policy of automobile insurance with policy limits of $20,000.00 and a claim that appears to be less than the policy limits.

[1] The title of the Petition is not quite accurate as Hunlede does not seek "damages" as that term is commonly understood; rather, he seeks sanctions pursuant to 215 ILCS 5/155.

Analysis

Section 155 of the Insurance Code

Section 155 of the Insurance Code provides in relevant part:

> (1) In any action by or against a company wherein there is in issue the liability of a company on a policy or policies of insurance or the amount of the loss payable thereunder, or for an unreasonable delay in settling a claim, and it appears to the court that such action or delay is vexatious and unreasonable, the court may allow as part of the taxable costs in the action reasonable attorney fees, other costs, plus an amount not to exceed any one of the following amounts:
>
> (a) 60% of the amount which the court or jury finds such party is entitled to recover against the company, exclusive of all costs;
> (b) $60,000;
> (c) the excess of the amount which the court or jury finds such party is entitled to recover, exclusive of costs, over the amount, if any, which the company offered to pay in settlement of the claim prior to the action.

215 ILCS 5/155.

"The purpose of section 155 is to discourage the insurer from using its superior financial position to profit at the insured's expense. Section 155 is of particular importance in the context of small cases where vexatious, unreasonable delay can have devastating financial results. Section 155 is intended to prevent insurers from profiting by their superior financial position by delaying payment of legitimate contractual obligations." *Estate of Price v. Universal Cas. Co.*, 334 Ill. App.3d 1010, 1016 (1st Dist. 2002).

Attorney Fees

Hunlede has presented a petition for attorney fees which is supported by two affidavits (one from each of the attorneys who work for the law firm representing Hunlede) and a detailed billing log which shows the work performed, the date it was performed, the time allotted to each task, who performed the work, and the amount billed. In his Petition, Hunlede seeks $27,228.75 in attorney fees and $1,905.60 in costs. Hunlede also filed a reply and supplemental petition seeking an additional sum of $2,375.00 in attorney fees. The affidavit of attorney E. Steven Yonover is attached to the supplemental petition.

Unique has several objections to the petition. Unique complains that the retainer agreement between Hunlede and his lawyers is not attached so it is not known whether he

entered into a contingent fee agreement or an hourly fee structure. Unique also objects on the grounds that the actual billing statements are not attached, some of the time entries are excessive, and that the hourly rates charged by Nicholas Kreitman ($225 per hour) and Neal Gainsberg ($350 per hour) are excessive. Unique also contends that decision as to what a "customary and reasonable" hourly rate for new associates in Cook County for disputes of this nature should be determined with reference to the salary paid by the Cook County State's Attorney's Office to its new lawyers. Though in the next sentence Unique acknowledges that $27 per hour is not customary and reasonable (even though that is what the hourly break-down of a new assistant State's Attorney's salary comes to), Unique asks the Court to reduce the Kreitman's hourly rate to $125 per hour. Unique also attaches the affidavit of Kelly Llorens in support of its argument that the hourly rates charged by Kreitman and Gainsberg are excessive. Llorens identifies $145 per hour as the going rate for a partner in a small law firm. Unique also asks for an evidentiary hearing.

A trial court's decision to award attorney fees is a matter within its discretion. *Johns v. Klecan,* 198 Ill. App. 3d 1013, 1018-1019 (1st Dist. 1990). The burden is on the part of the party seeking the fees to present the court with sufficient evidence from which it can determine the reasonableness of the fees. *Mercado v. Calumet Federal Sav. & Loan Ass'n,* 196 Ill. App. 3d 483, 493 (1st Dist. 1990).

In seeking attorney fees, the petitioner must present the court with detailed records. *Id. citing Kaiser v. MEPC American Properties, Inc.,* 164 Ill. App. 3d 978, 984 (1st Dist. 1987). These records must specify the services performed, by whom they were performed, the time expended thereon, and the hourly rate charged therefore. *Id.* In addition to considering the detailed records presented by the petitioner, the court should also consider additional factors, such as skill and standing of the attorneys, nature of the case, the novelty/difficulty of the issues, the importance of the matter, the usual and customary charges for comparable services, the benefit to the client and whether there is a reasonable connection between the fees and the amount involved in the litigation. *Id.* A trial court is not limited to the evidence presented in arriving at a reasonable fee but may also use the knowledge it has acquired in the discharge of professional duties to value legal services rendered. *Johns,* 198 Ill.App.3d at 1022.

Courts have taken different approaches regarding the amount of detail required in records presented for a determination of the reasonableness of attorneys' fees. For example, in *Kaiser*, 164 Ill. App. 3d 978, a case where a lessor sought legal fees from its lessees under a lease on an hourly basis rate, the court held that the descriptions provided by the lessor were too vague and general to satisfy its burden and demonstrate its entitlement to compensation. The *Kaiser* court held that "the petition for fees must specify the services performed, by whom they were performed, the time expended thereon and the hourly rate charged thereof." *Id.* at 984.

The Billing Log Sufficiently Identifies the Basis of the Fees Sought

The billing logs submitted by Hunlede meet the standards enunciated in *Kaiser* in terms of showing the necessary details. Though Unique contends that production of the original billing records is necessary to a determination of the reasonableness of the fees, such production is not necessary in this case. This Court also has been presiding over the case since its inception, and therefore can independently evaluate the necessity and reasonableness of the legal services rendered. *Estate of Price,* 334 Ill. App.3d at 1015. The legal services rendered were necessary and reasonable as Unique had wrongfully denied uninsured motorist coverage to its insured despite the fact that it was clearly established that the tortfeasor was uninsured. Further, Unique forced Hunlede to engage in expensive and time-consuming discovery despite the fact that it knew or should have known that that its claims adjuster had not done a proper job of evaluating Hunlede's claim.

Unique makes an argument that is not supported by any facts, *i.e.* that the original agreement between Hunlede and his lawyers was a contingent fee agreement. The billing log, however, establishes that the fee agreement was a lodestar agreement. Moreover, it would not matter even if the original agreement was a contingency agreement. Limiting the recovery of attorney fees under section 155 to what had been agreed to under a contingent fee agreement would frustrate the purpose of section 155. *Keller v. State Farm,* 180 Ill. App.3d 539, 557 (5th Dist. 1989). In *Keller,* the appellate court reversed the trial court's decision to award section 155 fees based on the contingent fee agreement between the insured and his lawyer, not on a lodestar calculation, finding that the trial court was not constrained to award section 155 attorney fees based on the contingent fee agreement where the recovery would be unreasonably small. *Id.* at 556-57. In this case, like *Keller*, it would be inequitable to award section 155 attorney fees based

on a contingent fee agreement (if one even existed) due to the fact that any recovery awarded to Hunlede against Unique is capped at the policy limits of $20,000.00. One-third of $20,000.00 is unreasonably small, and therefore an award of reasonable attorney fees based on a lodestar calculation is warranted.

Also, though the Court has no doubt that the hourly rates reflected in the billing log are the hourly rates actually charged by Hunlede's lawyers, the hourly rates Hunlede's attorneys actually billed are not the issue in cases involving statutory awards of "reasonable attorney fees". *Palm v. 2800 Lake Shore Drive Condo. Ass'n,* 2015 IL 110505, ¶ 51. As noted above, section 155 is a statute which allows for an award of "reasonable attorney fees" when an insurer is found by a court to have engaged in vexatious and unreasonable conduct. 215 ILCS 5/155. "The phrase 'reasonable attorney fees' has generally been interpreted to require use of the prevailing market rate in calculating a fee award." *Palm,* 2015 IL 110505 at ¶ 51. Thus, when the language of a statute does not indicate that recoverable attorney fees are limited to those actually invoiced or paid by the plaintiff in the litigation then the use of the phrase "reasonable attorney fees" indicates an intent by the legislature to allow recovery based on the prevailing market rate for the attorney's services. *Id.*

Section 155 contains no language that would indicate that the recoverable attorney fees are limited to those actually invoiced or paid by the insured. Certainly, had the legislature intended to place such a limitation on the recovery of attorney fees, it could easily have done so. The legislature did place limitations on the recovery of sanctions in section 155 (215 ILCS 5/155(1)(a) and (c)), so it was aware of its ability to limit attorney fees, but chose not to do so.

Moreover, this is not a complicated case—essentially, Hunlede made a claim against his policy, specifically the uninsured motorist provision, which Unique denied after a lengthy delay. Despite the fact that Unique's denial was completely wrongful, Hunlede was then forced to file suit to compel Unique to honor its contractual obligations. Unique then continued its wrongful conduct by seeking dismissal of the complaint on the grounds that Hunlede had not joined necessary parties, an argument this Court rejected in its Order of January 3, 2017.

An Evidentiary Hearing is Not Warranted

Unique requests an evidentiary hearing on the issue of the reasonableness of the fees. This request is made in one sentence at the end of the Response ("Alternatively, set this matter

for an evidentiary hearing as to Attorney's fees") and Unique does not support its request with any argument or identify any facts which need resolution by an evidentiary hearing.

"Generally, in protracted litigation involving multiple complex issues, an evidentiary hearing should be conducted on the request of the losing party, especially if the prevailing party was represented by multiple attorneys, which may have resulted in duplicative charges, and where the prevailing party was entitled to fees and costs with respect to some claims, but not others." *Bank of America v. WS Mgmt.*, 2015 IL App (1st) 132551, ¶ 127. The Illinois Supreme Court has noted that "courts frequently award attorney fees without discovery by the party charged with paying them and without holding evidentiary hearings." *Raintree Health Care Ctr. v. Ill. Human Rights Comm'n*, 173 Ill.2d 469, 495 (1996); *see also Cnty Line Nurseries & Landscaping, Inc. v. Glencoe Park Dist.*, 2015 IL App (1st) 143776, ¶ 46 (trial courts faced with fee petitions are not required to hold evidentiary hearings as a matter of course); *Young v. Alden Gardens of Waterford, LLC*, 2015 IL App (1st) 131887, ¶ 113 ("[A] fee petition warrants an evidentiary hearing only when the response of the party to be charged with paying the award raises issues of fact that cannot be resolved without further evidence.")

Here, Unique identifies no issues of fact that can only be resolved with further evidence. Moreover, as stated above, the facts and law in this matter are relatively straightforward. This litigation was not protracted. This is not a case involving multiple complex issues and the law relied upon by Hunlede in connection with the issue that he was not obligated to seek a determination whether Direct Auto's denial of coverage to the tortfeasor was wrongful was established decades ago. Indeed, Unique acknowledges the lack of complex issues in connection with insurance coverage because it concedes that "The law in this area is well established" and further complains that Neal Gainsberg's services are not worth $350 per hour because "this matter did not require a heighten (*sic*) degree of knowledge or experience as demonstrated by the associate performing 79% of the work." (Resp. p. 5). Hunlede is represented by a two-person law firm whose billing log clearly identifies which lawyer performed each task. Both lawyers submitted affidavits as to their backgrounds. The billing log is sufficiently detailed such that the Court can weigh the objections made by Unique and perform an analysis of the reasonableness of the fees. Under the circumstances of this case, no evidentiary hearing is warranted.

Kreitman's hourly rate of $225 is customary and usual; Gainsberg's hourly rate is also usual and customary

Unique challenges Kreitman's hourly rate of $225 as not being customary and usual. Unique's argument is based on the fact that Kreitman has been practicing since October 2013. Unique also challenges Gainsberg's hourly rate as being excessive.

As a preliminary matter, the Court would note that the salaries of new Cook County Assistant State's Attorneys are irrelevant to the question of prevailing market rate in insurance coverage disputes for a number of reasons, not the least of which is that they are not in private practice. Overhead, research costs, salaries for support staff, rent, and other costs paid in the private sector necessary to run a law firm are not paid by any ASA (or even the elected State's Attorney), so there is no need to increase their salaries on the grounds that they are liable for business expenses. Government offices, unlike law firms, do not exist to make a profit. Also, in order to fully appreciate total compensation of an ASA, one must take into account other benefits. ASAs also receive generous benefits, including health care, vacation days, sick time, short and long term disability benefits, defined benefit pensions (which are becoming increasingly rare in the private sector), and student loan forgiveness. Therefore the starting salaries of government lawyers are meaningless to the analysis of prevailing market rates. Moreover, should a court award statutory attorney fees to a government lawyer in connection with that lawyer's representation of a prevailing party who is entitled to an award of reasonable attorney fees, it is arguable that the award would be made under the prevailing market rate and not at the salary of the government attorney. See generally *Blum v. Stenson,* 465 U.S. 886, 894-95 (1984) (Calculation of fee awards (under 42 U.S.C.S § 1988) do not vary depending on whether plaintiff was represented by private counsel or by a nonprofit legal services organization as it is in the interest of the public that public interest law firms be awarded reasonable attorney fees to be computed in the traditional manner when counsel performs legal services otherwise entitling him or her to the award of attorney fees.)

Though Kelly Llorens attests to what she considers a reasonable hourly rate of a partner in a small firm, ultimately the size of the law firm representing Hunlede is irrelevant. *Beverly Bank v. Bd. of Review,* 193 Ill. App.3d 130, 138 (3d Dist. 1989). Rather, the prevailing community rate standard is based upon the skill and qualifications of the individual attorney, and not upon the size of the attorney's firm. *Id.* Here, Gainsberg has been practicing law for about

twenty years, having been licensed in November 1996. He has been a member of the federal trial bar in the Northern District of Illinois since 2008. He is an experienced practitioner, having served as a judicial law clerk in the Illinois Appellate Court and having been a named partner in a law firm from October 2001 through March 2014. Presently, he runs his own law firm. He has substantial experience in insurance dispute litigation, representing individuals who have been denied benefits under their insurance policies. He has represented clients in both the Chancery Division of the Circuit Court of Cook County and the federal district court in the Northern District of Illinois. Gainsberg has also represented hundreds of clients in personal injury matters, bankruptcy matters, and ERISA insurance cases.

Kreitman graduated law school in 2013. Prior to law school he worked with the United Auto Workers. After graduation he worked for ASFCME and the Teamsters. He joined Gainsberg Law, P.C. in 2015, and has worked on a variety of matters, including insurance disputes.

It has been the Court's experience presiding over these types of cases (for over ten years) that prevailing market rates in insurance coverage disputes are, at a minimum, what is sought by Hunlede's attorneys. It is beyond dispute that the prevailing market rate for an attorney with Gainsberg's skill, qualifications, and experience is at or above $350 per hour.

The $225 per hour rate for Kreitman's work is also reasonable and in accordance with the prevailing market rate for an attorney with his experience. Kreitman was the attorney who most often appeared in court and the Court had ample opportunity to observe his work and professionalism. Kreitman was always well-prepared, knowledgeable about the facts and the law, punctual, and diligent. He did not waste time or string out the proceedings in an effort to inflate his fees. Additionally, the Honorable Patricia O'Brien Sheahan of the Circuit Court of Cook County recently approved Kreitman's rate of $225 an hour as reasonable after a hearing on an attorney fee petition in an Illinois Wage Payment and Collection Act case.

The affidavit of Kelly Llorens, an attorney who shares office space with Unique's attorneys and who almost exclusively represents insurance companies in personal injury and vehicle-related claims, is not sufficient to establish that the hourly rates sought by Hunlede's attorneys are excessive. Aside from the fact that her attestation that $145 an hour is a reasonable and customary rate in Chicago for a partner at a small law firm is at odds with just about every

fee petition that this Court has seen in the past several years, that figure, on its face, is too low given the cost involved in running a law firm and the fact that law firms are intended to make a profit. Moreover, the affidavit of E. Steven Yonover provided by Hunlede is in line with the usual and customary rates in Cook County. Yonover, who has been licensed in Illinois for over 40 years and who has been the principal and owner of a small law firm for the majority of his career, attests that the rate of $350 an hour for the principal and owner of a small firm is reasonable, customary, and market rate. He further attests that the rate of $225 an hour is reasonable, customary, and market rate for an associate with similar experience in the Chicagoland area.

The Fees are Reasonable

In assessing the reasonableness of attorney fees courts also consider nature of the case, the novelty/difficulty of the issues, the importance of the matter, the benefit to the client and whether there is a reasonable connection between the fees and the amount involved in the litigation. *Kaiser,* 164 Ill. App.3d at 984. Here, as the Court explained in its Order of January 3, 2017, this matter is extremely important to Hunlede. Hunlede paid the premiums on a policy of automobile insurance with Unique, but Unique failed to honor its contractual obligations to Hunlede. This matter is important to the public also. As noted by the Seventh Circuit, "Illinois disincentivizes stingy coverage determinations ... through the attorney fee's provision of the Illinois Insurance Code 215 ILCS 5/155 (providing for attorney's fees, costs, and sanctions where an insurance company's conduct in delay in resolving a claim is vexatious and unreasonable)." Clearly, the legislature has expressed through the passage of section 155 that insurers should not be acting in an unreasonable and vexatious manner as shown in this case as such behavior, if not curtailed by a court, would encourage insurers to unlawfully and unfairly deny legitimate claims to insureds who do not have the financial means to contest the wrongful denial of coverage. Needless to say, Hunlede benefitted directly and substantially from his attorney's work in this case. The pursuit of the case resulted in Hunlede finally getting the benefit of the contractual bargain. Though, as stated above, the case itself was not particularly complex with regard to the insurance coverage issues, Hunlede had to aggressively pursue his rights in order to prevail in a case wherein he had a clear right to benefits under his policy of automobile insurance. Though the issues were not particularly complex, Unique's positions on legal issues and discovery issues made the case difficult for Hunlede. Hunlede had to brief and

argue issues in a case (including but not limited to the necessary parties issue) that he never should have been forced to file.

Additionally, though the attorney fees exceed whatever recovery Hunlede could hope to achieve because the policy limits are $20,000.00, the fees are still reasonable. Section 155 sanctions are penalties. An insurer who displays the attitude displayed by Unique should suffer a penalty for the kind of unreasonable and vexatious behavior displayed here; otherwise, insurers will gamble that their bad behavior will, in the end, not cost them the loss of significant amounts of money. As the appellate court stated in *Keller*, "The purpose of section 155 of the Insurance Code is not only to aid the insured, but also to discourage insurers from profiting by their superior financial positions while delaying in the payment of contractual obligations." *Id.*, 180 Ill. App.3d at 556.

The Hours Expended Are Reasonable

Unique challenges the some of the billing as excessive. Contrary to Unique's arguments, the time entries are reasonable. The Complaint is not a template as one might see in a traffic accident case. It contained detailed facts concerning the history of Hunlede's attempts to access arbitration, and contained a number of exhibits. Unique complains about the amount of time expended on its motion to vacate a default. However, Unique would not have had to pay a dime towards this entry had Unique timely filed its appearance after having been served. It is significant to note that Unique never claimed that service was faulty which leads to the conclusion that Unique merely thought that filing its appearance in a timely fashion was not important. Certainly, Hunlede should not have to pay for the cost of Unique's disregard of the law. The time expended on discovery is also reasonable as Hunlede was forced to answer a number of interrogatories and produce a number of documents, including a case file of correspondence between Unique, Direct Auto, IDOT, and Hunlede. Hunlede also had to prepare discovery to be propounded on Unique, including discovery related to section 155. Section 155 claims are not particularly common as they often do not survive a motion to dismiss. Hunlede is correct that Unique identified others as the "persons most knowledgeable" as Unique complained to the court on at least one occasion that Hunlede wanted to take the deposition of Blake Smith instead of who Unique thought was the person most knowledgeable. The deposition of Smith was extremely important to Hunlede as Smith confirmed that Unique's claims-handling practices

were abysmal. As it turned out, contrary to Unique's position, Smith was indeed the "person most knowledgeable" about what occurred. Moreover, the time spent on the successful summary judgment motion and in successfully defending Unique's motion to dismiss was reasonable. In short, the Court has reviewed the billing logs and finds that none of the billing entries are excessive.

The $60,000.00 Sanction

In addition to an award of attorney fees and costs, Hunlede seeks a sanction of $60,000.00 pursuant to 215 ILCS 5/155(1)(b). The Court will not repeat its extensive findings contained in the Order dated January 3, 2017, but adopts them as reasons why the additional sanction of $60,000.00 is appropriate. The Court would note that Unique's behavior in this litigation has been extraordinarily vexatious and unreasonable. Not only did Unique fail to honor its contractual obligations and continually delay beyond any reasonable point, it attempted to divert Hunlede's attention from Smith as the person most knowledgeable about what actually occurred during the claims-handling of Hunlede's uninsured motorist claim. Unique tried to force Hunlede to litigate a claim against Direct Auto as to whether the denial of coverage to its insureds was proper even though the appellate court made it clear nearly 40 years ago that insureds do not bear the burden of proving that the tortfeasor was uninsured. *Zurich v. Country Mut. Ins. Co.*, 65 Ill. App.3d 608 (2d Dist. 1978).

Finally, Unique asks that this Court stay proceedings until after the uninsured motorist arbitration has proceeded to an award. Presumably, this request is being made so that, if the award is small, Unique can argue that the sanctions far exceed the ultimate award. However, this request is more evidence that Unique's attitude is to continually delay with the hope that it can put itself in a better financial position at the expense of its insured. There is no reason why Unique should be allowed, after having acted in a vexatious and unreasonable manner towards one of its insureds, to await the outcome of the arbitration so as to try to mitigate the sanctions award to Hunlede.

Plaintiff's Petition for Attorney Fees and Costs and Other Damages pursuant to Section 155 and this Court's January 3, 2017 Order is granted, and Plaintiff is awarded the following:

(1) Attorney Fees in the amount of $29,493.75;

(2) Costs in the amount of $1,905.60; and

(3) Additional sanctions in the amount of $60,000.00.

This is a final Order disposing of all matters in this litigation.

DATE: April 5, 2017

Judge Kathleen M. Pantle