

1992 WL 205796

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UNPUBLISHED OPINION. CHECK COURT RULES  
BEFORE CITING.

Court of Chancery of Delaware, New Castle County.

DICKERSON, et al.

v.

CASTLE, et al.

Civ. A. No. 10256. | Submitted: June 8, 1992. |

Decided: Aug. 21, 1992.

#### Attorneys and Law Firms

Neilson Himelein, Community Legal Aid Society, Inc.,  
Wilmington.

Ben T. Castle, ACLU of Delaware, Wilmington.

Elizabeth Alexander, Alvin J. Bronstein, Mark Lopez,  
ACLU National Prison Project, Washington, D.C.

David A. White, Department of Justice, Wilmington.

Thomas J. Capano, Office of the Governor, Wilmington.

#### Opinion

CHANDLER, Vice-Chancellor.

\*1 In an earlier decision, I concluded that under its inherent equitable powers this Court should award reasonable attorneys' fees to plaintiffs' counsel because there were reasonable grounds for plaintiffs' filing of a motion for contempt and because the motion and ensuing litigation resulted in certain benefits for the class represented by plaintiffs. *See Dickerson v. Castle*, Del.Ch., C.A. No. 10256, Chandler, V.C. (Oct. 15, 1991) slip op. at 13-14. As a result, plaintiffs seek a lodestar figure of \$311,405 in attorneys' fees, enhanced by 50% in view of the contingent risk of loss and other factors. Thus, plaintiffs seek attorneys' fees in the total amount of \$467,107.25, together with \$14,584.89 in expenses.

#### I.

The parties devote considerable energy arguing the propriety of fees under 42 U.S.C. § 1988, as well as under the inherent powers of this Court. Defendants also spend considerable time rearguing the proposition whether the

motion for contempt (and the benefits achieved as a result of it) warrants an award of fees. The parties, therefore, have ignored the very explicit findings and conclusions set forth in my October 15, 1991, decision. That decision very clearly held that there was a reasonable basis for the contempt motion when it was filed and that it resulted, at least in part, in the achievement of important benefits for the class. Moreover, the decision made it clear that I was granting plaintiffs' application for fees with respect to the contempt motion. I stated as follows:

There remains one issue to be dealt with in connection with plaintiffs' motion for an order to show cause. The plaintiffs have requested attorneys' fees in connection with this motion. Chancery Court Rule 88 provides for attorneys' fees to be shifted under certain circumstances. Where a suit by one member of a class results in a benefit to all members of the class, an exception may be made, at the Court's discretion, to the general rule that litigants must pay their own expenses, and the Court may award attorneys' fees to the plaintiffs....

Considering the benefits obtained for the class and the causal connection of those benefits to this litigation, I conclude that reasonable attorneys' fees are appropriate.

*Dickerson v. Castle, supra*. I then directed that plaintiffs "submit an affidavit, with a form of Order, stating the amount of attorneys' fees incurred, pursuant to Chancery Court Rule 88." *Id.* at 14. Thus, I do not consider defendants' effort to reargue the October 15 decision with respect to the propriety of granting attorneys' fees either timely or appropriate.

#### II.

Because I already have found that plaintiffs' attorneys are entitled to attorneys' fees with respect to the contempt litigation, I turn to an evaluation of the amount of the fee request. First, I agree with defendants that a lodestar approach to the attorneys' fee issue is inappropriate. *See Chalfin v. Hart Holdings Company, Inc.*, Del.Ch., C.A. No. 11611, Jacobs, V.C. (Nov. 13, 1990), slip op. at 10. In determining what fee is appropriate, the Court typically considers the nature of the benefit created and the quantity and quality of the legal work that produced it. *See In re MacMillan Inc. Shareholders Litig.*, Del.Ch., C.A. Nos. 9909, 9953, Jacobs, V.C. (Nov. 16, 1989), slip op. at 12. Typically, the benefit achieved by the action is accorded the greatest weight. *Sugarland Industries, Inc. v. Thomas*, Del.Supr., 420 A.2d 142, 150 (1980). However, this case does not involve a quantifiable benefit.

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Therefore, a *quantum meruit* approach is appropriate. *In re MacMillan Inc. Shareholders Litig., supra*. The quantum meruit approach gives the Court a more equitable means of determining a reasonable fee.

\*2 In this case, attorneys for the plaintiffs have supplied the Court with detailed affidavits regarding their fees. I also have reviewed affidavits detailing the number of hours expended by law clerks and paralegals in connection with the contempt proceedings. Because the contempt proceedings spanned several months, including extended settlement conferences with the Court, the number of hours expended by attorneys and others is much higher than would be the case with a typical contempt motion. I do not believe, however, that a simple multiplication of hours by an hourly rate is a reasonable method to determine the amount of a reasonable fee in this case. Instead, I have considered the number of hours expended, the effect of the contempt litigation on the class of Delaware prisoners and pretrial detainees, the quality of the effort by plaintiffs' counsel, their expertise and experience in the prison litigation context and the unique difficulty of the issues presented on this motion. Having carefully weighed each of these factors, I conclude that \$15,000 for the Community Legal Aid Society, Inc. and \$15,000 for the National Prison Project, is adequate and reasonable compensation for the class plaintiffs' attorneys in connection with the motion for contempt. I also find that expenses should be awarded in the amount of \$1,000 to the National Prison Project and \$1,000 to the Community Legal Aid Society, Inc.

**III.**

In their fee request, plaintiffs argue that they are entitled to the lodestar figure (\$311,405) based on 42 U.S.C. § 1988 and various decisions applying that statute for fees and expenses incurred from the inception of this lawsuit.<sup>1</sup> I note, however, that plaintiffs' motion for attorneys' fees refers only to Chancery Court Rule 88. *See* Plaintiffs' Application for Award of Attorneys' Fees and Expenses, January 29, 1992. This is understandable since the Court's October 15 decision expressly refers to Rule 88 as the basis for an award of attorneys' fees. Thus, the October 15, 1991, decision provides no basis for plaintiffs' counsel to claim fees under 42 U.S.C. § 1988. Furthermore, since the October 15 decision directs plaintiffs to submit a form of order with respect to attorneys' fees incurred with respect to the *contempt litigation*, the decision provides no basis for awarding fees incurred from the inception of this litigation.

Nevertheless, because the parties have briefed at length this particular issue, I will consider plaintiffs' argument under 42 U.S.C. § 1988 for attorneys' fees since the

inception of this lawsuit. To address this particular issue, I need only refer to paragraph 45 of the Settlement Agreement, which provides:

In consideration of the defendants' agreement to this settlement, Legal Aid and the ACLU waive any right to attorneys' fees and costs with regard to work performed in connection with this litigation, including the negotiation process. This waiver shall not apply, however, if defendants fail to comply with the terms of this settlement and Legal Aid and/or the ACLU initiate further proceedings in this Court because of such violation.

\*3 This straightforward provision operates as a waiver of attorneys' fees and costs "with regard to work performed in connection with this litigation, including the negotiation process." The second sentence provides that the waiver shall not apply if the defendants fail to comply with the agreement and the plaintiffs initiate further proceedings to enforce the agreement. This language effectively preserves for plaintiffs the right to seek attorneys' fees, despite the earlier waiver, in connection with motions for contempt made after the settlement and in furtherance of it. The Court has not found that the defendants have failed to comply with the Settlement Agreement. Thus, by the express terms of the Settlement Agreement plaintiffs' waiver of the right to attorneys' fees and costs for work performed in connection with this litigation, including the negotiation process, applies to the fees or costs to which they would otherwise be entitled under 42 U.S.C. § 1988.

**IV.**

For the reasons set forth above in the Court's October 15, 1991 decision, I award plaintiffs reasonable attorneys' fees, pursuant to Chancery Court Rule 88, in the amount of \$15,000 to the National Prison Project and \$15,000 to the Community Legal Aid Society, Inc., together with expenses in the amount of \$1,000 to the National Prison Project and \$1,000 to the Community Legal Aid Society, Inc. Plaintiffs' application for attorneys' fees in the amount of \$311,405 and expenses in the amount of \$14,584.89 in accordance with 42 U.S.C. § 1988 is denied.

IT IS SO ORDERED.

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<sup>1</sup> In light of the United States Supreme Court's decision in *City of Burlington v. Dague*, 60 U.S.L.W. 4717 (June 23, 1992), plaintiffs have withdrawn the request for attorneys' fees enhancement under § 1988.