

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT
OCALA DIVISION

CASE NO: 5:13 CV 00623 WTH-PRL

CARVER MIDDLE SCHOOL GAY-STRAIGHT ALLIANCE,

Plaintiffs,

vs.

SCHOOL BOARD OF LAKE COUNTY, FLORIDA,

Defendant.

DEPOSITION OF: ROBERT BONNER

DATE TAKEN: AUGUST 14, 2017

TIME: 2:00 p.m. - 4:10 p.m.

PLACE: Meier, Bonner, Muszynski,
O'Dell & Harvey P.A.
260 Wekiva Springs Road, Suite 2000
Longwood, FL 32779

REPORTED BY: Emonica Araya
Court Reporter & Notary Public

1 A P P E A R A N C E S:

2 Benjamin Stevenson (via telephone)
3 Daniel Tilley (via telephone)
4 AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF FLORIDA
5 3 West Garden Street, Suite 712
6 Pensacola, FL 32502
7 786-363-2738

8 Attorney for the Plaintiff,

9 Stephen Johnson
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12 1000 West Main Street
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15 Attorneys for the Defendant.

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1 WHEREUPON,

2 ROBERT BONNER

3 having first been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. STEVENSON:

6 Q. Good morning. I'm Benjamin Stevenson. I represent
7 the plaintiffs, Carver GSA in this case. How much time did you
8 spend preparing for the deposition?

9 A. About an hour and a half.

10 Q. Did you bring anything to the deposition?

11 A. I brought the things you asked me to bring.

12 Q. The things identified in the email?

13 A. Correct.

14 Q. Do you have anything else before you?

15 A. I've got my laptop in front of me because I was
16 checking my email before we started the deposition. And I have
17 an extra copy of the documents that you requested so that I can
18 refer to them after the court reporter marks the ones that I
19 already made.

20 Q. Great. Is your laptop up? Have you closed it and put
21 it to sleep?

22 A. I haven't closed it. I've got it up.

23 Q. Would you close it?

24 A. Sure. Why not?

25 Q. Would you please describe where you are and what the

1 setting is?

2 A. We are at 260 Wekiva Springs Road, Suite 2000 in
3 Longwood, Florida. We are in the conference room. And I'm
4 seated to the left of the court reporter. And Mr. Johnson and
5 his associate are seated across the table.

6 Q. How much time did you devote to this case through the
7 filing of the School Board's response to the motion for
8 attorney's fees?

9 A. Twenty three point four hours.

10 Q. Did anyone in your firm assist you?

11 A. No.

12 Q. Your rate on this matter is \$250 per hour?

13 A. Correct.

14 Q. Have you submitted a bill for your services?

15 A. Yes, I have.

16 Q. To whom did you submit the bill?

17 A. I submitted it to Mr. Johnson by email.

18 Q. Do you have an agreement with someone related to your
19 work as an expert in this matter?

20 A. I don't have a written contract. I have an
21 understanding.

22 Q. With whom do you have an understanding?

23 A. With Mr. Johnson.

24 Q. Is the understanding and the payment for your services
25 contingent in any way on the outcome of the case or the motion?

1 A. None, whatsoever.

2 Q. Have you been paid for the 23.4 hours you've spent
3 thus far in this case?

4 A. I've got no idea if it's been paid or not.

5 Q. You reviewed the Carver GSA time records in the
6 district court, correct?

7 A. Yes, I did.

8 Q. You also reviewed the Carver GSA appellate time
9 records, correct?

10 A. That is correct.

11 Q. How long did you spend reviewing those records?

12 A. Something short of 23.4 hours.

13 Q. I guess I'm trying to get you to make a distinction in
14 your mind between the amount of time that you spent drafting
15 the affidavit, preparing exhibits, and how much time you
16 actually spent reviewing the time records to decide whether or
17 not each individual time record was excessive or unreasonable?

18 A. I do not have that information in front of me.

19 Q. In reviewing the time records, you identified numerous
20 time entries that the Carver GSA sought compensation that you
21 believe should be eliminated, correct?

22 A. Correct.

23 Q. You viewed the individual time records by category?

24 A. Yes, I did.

25 Q. Then you attached to your affidavit exhibits listing

1 specific time records that should be eliminated by these
2 categories, right?

3 A. Correct.

4 Q. In this time, at the end of each exhibit is what you
5 contend is extensive and should be eliminated?

6 A. Correct.

7 Q. In doing so, you attempted to identify time entries
8 for which the Carver GSA had not already eliminated through
9 billing judgment?

10 A. Correct.

11 Q. That is to say, you eliminated time that we hadn't
12 eliminated, so your proposed eliminations should be subtracted
13 from not the total hours, but the requested hours, right?

14 A. Correct.

15 Q. Is it fair to say you took time and you were thorough
16 in this process?

17 A. I tried to be.

18 Q. Is it fair to say that any time you did not identify
19 as unreasonable or excessive, you took no issue with it?

20 A. Correct.

21 Q. It's your opinion that the Court should take the
22 number of hours Carver GSA requested, subtract the hours you
23 identified for elimination and the result would be the
24 reasonable number of hours in this matter?

25 A. I believe I had a range of a reasonable number of

1 hours, and that is correct.

2 Q. I think we had a disturbance in the telephone. Would
3 you repeat that.

4 A. I had a range of what would be a reasonable number of
5 hours for each attorney based on my review of the time and
6 billing records that were attached as exhibits to the
7 plaintiff's motions for attorney's fees.

8 Q. Are you board certified?

9 A. I'm board certified civil trial lawyer by the Florida
10 Bar, Board Legal Specialization. I'm also certified as a civil
11 trial advocate by the National Board of Trial Advocacy.

12 Q. What are the requirements of each of those board
13 certifications?

14 A. With respect to the Florida bar, the board
15 certification requirements, I do not know exactly what the
16 requirements are anymore. I've been board certified by the
17 Florida bar since 1989. There was a minimum number of the
18 trials I had to have completed as lead counsel. There was a
19 written examination that I had to pass, with respect to various
20 legal issues as well as a evidence examination. Then, there
21 was a vetting process whereby they reached out to references
22 and to people against whom I had tried cases and to judges
23 before whom I had tried cases in order to get the opinions of
24 those individuals as to whether I possessed the quality for
25 board certification. With respect to the National Board of

1 Trial Advocacy -- again, there was a minimal number of jury
2 trials I had to have completed. There was a vetting process
3 whereby the national board reached out to lawyers and judges to
4 get their opinions as to whether or not I should become board
5 certified. And the written exam was waived because of my
6 successful completion of the Florida certification examination
7 and my years of certification in Florida.

8 Q. It's a badge of honor to be board certified, right?

9 A. It's an accomplishment.

10 Q. You're able to use that in advertising, correct?

11 A. We don't advertise, but I suppose you could.

12 Q. A board certification may help to attract clients,
13 correct?

14 A. It could.

15 Q. It's fair to say you became board certified to attract
16 clients?

17 A. I became board certified because my partners at my
18 initial law firm encouraged me to become board certified.
19 There were no board certified lawyers in my firm at the time
20 and I was trying more cases than anyone else in the firm. They
21 suggested I take the exam.

22 Q. Would you agree the School Board and district judge
23 both believe the Equal Access Act did not apply to middle
24 schools?

25 A. Off the top of my head, I don't remember.

1 Q. You don't remember what position the School Board took
2 at trial and how the district court ruled with respect to the
3 Equal Access Act?

4 A. If I recall correctly, the School Board prevailed at
5 the trial on all issues and the 11th Circuit held the Equal
6 Access Act did apply.

7 Q. That would be the opposite position the School Board
8 was taking at trial?

9 A. That's why it was reversed.

10 Q. Also, the district court's initial ruling was the
11 Equal Access Act did not apply, right?

12 A. I believe so.

13 Q. Is it also fair to say that they both believed that
14 the case was moot and not right?

15 A. In all honesty, I don't remember. All I remember is
16 that there was -- I think -- a first amendment issue that the
17 plaintiff did not prevail on. I could be wrong. Then the
18 plaintiff prevailed on the Equal Access Act. That's my
19 recollection of it.

20 Q. Is it fair to say that in as much as the School Board
21 and the district court initially got it wrong -- initially took
22 the wrong position with respect to the Equal Access Act; that
23 this is was a difficult case?

24 A. In some respects there were issues that were
25 difficult. In some respects there were issues that were not

1 difficult.

2 Q. Does the bulk of your practice involve civil rights
3 litigation?

4 A. For approximately the last 25 years it has.

5 Q. You generally represent defendants?

6 A. I generally represent defendants. I did represent the
7 plaintiff on one sexual harassment employment case in the
8 Middle District of Florida.

9 Q. How many years ago was that?

10 A. I believe the case went to trial in 2006.

11 Q. Of the roughly 110 cases you've tried, how many times
12 have you represented a plaintiff?

13 A. Actually, I've tried about 80 cases. I've had 110
14 cases where I have represented defendants in federal court
15 litigation. Of the cases I've tried in my lifetime, I've
16 represented the plaintiff on maybe three to four of those
17 cases.

18 Q. Of the 110 cases in district court, is it fair to say
19 those were civil rights litigation cases?

20 A. Not all of them. Some of them were cases under
21 diversity jurisdiction, product liability cases, insurance
22 coverage cases. Well, the 110 were civil rights cases. There
23 were also some diversity cases that I didn't include in that
24 number.

25 Q. How many of the clients are government clients that

1 you have represented in the civil rights litigation as opposed
2 to a private client?

3 A. I'd say all but two or three.

4 Q. So if my math is right, we are looking at the 110
5 federal middle district court cases that you've done, right?

6 A. I believe there have been about 110 cases in the
7 middle district in which I have represented parties and
8 probably 108 or 107 of those have been governmental clients of
9 one sort or the other.

10 Q. Do you prefer to represent defendants?

11 A. Our firm has a policy where we no longer do
12 plaintiff's practice.

13 Q. Before that policy was implemented, did you prefer to
14 represent defendants?

15 A. Not really.

16 Q. It just happened that that's who you represented?

17 A. Correct. I started out with a firm that did primarily
18 defense work. We did occasional plaintiff practice. We made a
19 business decision maybe 10 years ago to stop doing plaintiff's
20 work.

21 Q. Have you actively sought out plaintiff work before the
22 policy went into play?

23 A. No. We never advertised.

24 Q. Is advertising the principle way that plaintiff's
25 attorneys attract clients?

1 A. From what I've seen on television, it appears to be.

2 Q. Have you preferred to represent government clients as
3 opposed to a private client?

4 A. I have no preference as to who I represent as long as
5 they're willing to pay my bill.

6 Q. Are you a member of the American Civil Liberties
7 Union?

8 A. No, I'm not.

9 Q. Have you litigated cases against the American Civil
10 Liberties Union?

11 A. I have litigated cases against lawyers who are members
12 of the American Civil Liberties Union. I have never litigated
13 a case against ACLU itself.

14 Q. Do you understand that ACLU generally sues government
15 entities and government officials?

16 A. I have no idea what the ACLU does in terms of who it
17 sues or who it doesn't sue. I assume that since it is engaged
18 in issues pertaining to civil liberties, that governmental
19 clients may be a target. I really haven't stopped to ponder
20 about that one way or the other.

21 Q. You read the initial answer and reply briefs that were
22 submitted to the 11th Circuit, right?

23 A. I would have to say I skimmed through them.

24 Q. How much time did you spend reviewing those briefs?

25 A. No idea.

1 Q. Given the complexity of the case, how long do you
2 contend you would have spent drafting the initial briefs?

3 A. I'm trying to think about the cases I handled before
4 the 11th Circuit. I don't think I have ever spent more than
5 25 or 30 hours between the initial brief and the reply brief on
6 anything I've done before the 11th Circuit.

7 Q. Does that sound like a fair amount of time to spend on
8 the initial brief in this case?

9 A. No. I'm saying between somewhere in that amount for
10 both briefs -- the initial brief and the reply brief -- that
11 would be the amount that I generally spend on an appeal to the
12 11th Circuit.

13 Q. That's the amount of time you would expect to spend on
14 the reply and initial brief in this case?

15 A. I can't see spending much more than between 25 and 30
16 hours for the two briefs. That's correct.

17 Q. How much time would you have spent preparing this case
18 for oral argument?

19 A. I don't think I've ever spent more than three or four
20 hours preparing for an oral argument. And usually it's closer
21 to two hours.

22 Q. I would like you to take a look at docket entry 113-8.

23 A. Okay. Are you going to have these marked for
24 identification?

25 Q. No.

1 A. I've got it.

2 Q. I want you to look at the last page. Is it fair to
3 say you identify 17.9 hours of work on the preparing for and
4 arguing of oral arguments that you believe to be eliminated as
5 excessive?

6 A. Correct.

7 Q. Look at Exhibit 111-6. That's the categorization of
8 the appellate time. The sixth exhibit to Carver GSA's motion
9 for attorney's fees.

10 A. Okay.

11 Q. Is it fair to say that Carver GSA requested
12 compensation for 19.4 hours for the oral argument category?

13 A. Correct.

14 Q. If my math is right -- if we requested 19.4 hours in
15 the oral argument category and you proposed an elimination as
16 excessive 17.9, you're essentially contending that only 1.5
17 hours are appropriate for Mr. Tilley to prepare and argue at
18 oral arguments, right?

19 A. Let me take a look at the original breakdown of that
20 time that was submitted, I believe, to the 11th Circuit in the
21 motion for attorney's fees.

22 Q. If you have that in front of you, I can direct you to
23 the individual pages.

24 A. I'm looking through that right now trying to find it.

25 Q. It should begin on page 28 of document 106.

1 Q. I'm looking at Mr. Tilley's time records for the
2 appeal, case No. 15-14183, page 23 of 71 from the motion for
3 attorney's fees that was filed with the 11th Circuit. That's
4 where I went through to look at the time on behalf of
5 Mr. Tilley and to also look at the other time records
6 pertaining to the appeal to see what I thought was or was not
7 appropriate for the time spent on the appeal of that case.

8 Q. I would like to direct your attention to page 28
9 through 31. These are the summary or categorizations of
10 individual time records or timekeeper's records.

11 A. What docket were you looking at? I'm looking at the
12 appellate court docket.

13 Q. It's the same one. If you go to page 31, that's
14 Daniel Tilley's categorization of time.

15 A. Okay.

16 Q. The fifth column down, it says preparing for and
17 attending oral arguments, 19.4 hours; do you see that?

18 A. I've got that.

19 Q. Then look at the three pages before, 28 through 30,
20 you'll notice there is no time requested for oral arguments
21 from any of the other timekeepers, do you see that?

22 A. I do see that.

23 Q. That 19.4 hours also correlates with the document
24 number 111-6, that 6th exhibit, to the attorney's fees motion?

25 A. Okay.

1 Q. You see the same 19.4 appears under the column of
2 requested hours in the row of oral arguments?

3 A. Correct.

4 Q. Is it your contention that -- if my math is correct --
5 that 19.4 hours is what we requested compensation for and you
6 propose eliminating 17.9 that you believe no more than 1.5
7 hours would be reasonable for Carver GSA's counsel to prepare
8 for and attend oral arguments?

9 A. No. My number on that was mistakenly based on looking
10 at the individual time entries for Mr. Tilley and not looking
11 at the compilation.

12 Q. Look at docket entry 113-7. That is the exhibit to
13 your affidavit relating to the initial brief.

14 A. Okay.

15 MR. JOHNSON: What's the title on it, Ben?

16 Excessive billing appeal to 11th Circuit?

17 MR. STEVENSON: Yes. That's it.

18 BY MR. STEVENSON:

19 Q. On Page 3 there, if we added the four numbers, 13.9,
20 plus 25.2, plus .4, and 4.7, this is the time you proposed
21 eliminating from the requested hours for the initial brief,
22 right?

23 A. Correct.

24 Q. You may have a calculator or maybe you're good enough
25 to do it in your head, but I added those four numbers to equal

1 44.2 hours, does that sound about right to you?

2 A. I don't have a calculator and I can't do that math in
3 my head.

4 Q. I will submit to you that it is 44.2.

5 A. Okay.

6 Q. I'd like you to switch back to docket entry 111-6.

7 That's the sixth exhibit to the motion for attorney's fees, the
8 summary of the times on the appellate court.

9 A. Okay.

10 Q. As you can see from this summary, we requested 51.6
11 hours on the initial brief; do you see that?

12 A. I do.

13 Q. If my math is correct, if we take 44.2 from 51.6, we
14 get 7.4 hours. Is it your contention that only 7.4 hours were
15 appropriate for Carver GSA's counsel to spend on the initial
16 brief?

17 A. No. Again, my calculation of that was based upon going
18 through the time records and looking at the total time that was
19 billed for preparation of the initial brief on the attorney
20 time records that were attached as an exhibit to the motion for
21 attorney's fees, which would include your time, Ms. Cooper's
22 time, Ms. Abidu's time and Mr. Tilley's time from the motion
23 for attorney's fees. It was not based on the categorized
24 summary of fees that is there at 111-6.

25 Q. Is it fair to say your proposed eliminated time

1 deserves an adjustment upwards, at least with respect to the
2 initial brief in the oral arguments?

3 A. That would be correct. Again, I was basing those on
4 the actual time records not based upon your categorized summary
5 of attorney fees because I couldn't tell what was what from
6 them. I just looked at the actual time.

7 Q. You searched for cases, in which the individual
8 timekeepers in this case were awarded attorney's fees, right?

9 A. Yes. I couldn't find anything.

10 Q. You're not saying that the individual timekeepers have
11 never been awarded fees?

12 A. No. What I was saying is there's nothing in the West
13 Publishing system where I could find you or Mr. Tilley or
14 Ms. Abidu or Ms. Cooper were awarded fees in U.S. District
15 Court in the state of Florida. Likewise, I could find nothing
16 in Pacer in which there was an award of attorney's fees.

17 Q. How would you come to serve as an expert in this case?

18 A. I received a telephone call asking if I was willing to
19 serve as an attorney's fee expert.

20 Q. From who?

21 A. From Mr. Johnson.

22 Q. Have the two of you worked together before?

23 A. No. I think I might have had a personal injury case
24 years ago where he represented the plaintiff and I represented
25 the defendant. That was probably 25 years ago. But otherwise,

1 I have not had any other cases with him.

2 Q. Have you spoken with anyone at the School Board
3 insurer CCMSI?

4 A. I have not.

5 Q. Do you do any work for CCMSI?

6 A. I do not.

7 Q. What about your firm?

8 A. We do not. I'm the only one here that does
9 governmental work or federal court work.

10 Q. When preparing for trial, how do you develop your
11 theme for trial?

12 A. I try to develop my theme for trial when the case
13 first comes in the door because if you don't have a theme for
14 trial at the beginning, it's going to be difficult to conduct
15 discovery to build towards that at the end.

16 Q. Do you ever discuss your theme with colleagues?

17 A. I do.

18 Q. Maybe debate the risks or benefits of a particular
19 argument at trial with them to get their perspective on a
20 strategy?

21 A. Absolutely.

22 Q. You would agree that when you're doing this, you are
23 working on the case, right?

24 A. I am but it's what's considered a non-billable
25 activity for my clients.

1 Q. That helps in your preparation for the case, correct?

2 A. It does. But they don't pay me to kick the case
3 around with my colleagues or to bounce ideas off my colleagues.

4 Q. Why do they not pay you for that?

5 A. Because most litigation guidelines that my clients
6 have do not provide for round-tabeling that for interoffice
7 conferences and things of that nature. And for the last 25
8 years, I haven't charged my clients for that.

9 Q. When you say litigation guidelines, whose litigation
10 guidelines?

11 A. Frequently, both insurance companies and institutional
12 clients have litigation guidelines that they expect their
13 counsel to follow.

14 Q. It identifies a certain time that is expensatory and
15 other time that will not be compensated?

16 A. Right. For example, when I get up in the morning and
17 go out on the stair climber for two hours, I often think about
18 strategies and cases but I don't bill my clients for that time.

19 Q. If you prepared and developed a theme for trial by
20 yourself brainstorming about an idea, would you bill for that
21 time?

22 A. Nope.

23 Q. You don't bill for brainstorming and thinking about
24 best strategies at trial?

25 A. Back in 1982 when I had been practicing about a year,

1 one of the young lawyers at my firm submitted a time entry for
2 thinking about file. And the ridicule that came down from that
3 was enough to let me know that you don't bill for that.

4 Q. Maybe I'm misunderstood here. I'm not proposing an
5 individual time entry of, quote, thinking about the case, end
6 quote. I'm thinking about considered benefits and risks of
7 examining a witness on a particular subject at trial, would
8 that be expensatory in your view?

9 A. I wouldn't bill for it.

10 Q. You don't bill for that time?

11 A. I do not.

12 Q. Would you bill for time related to a research question
13 that if you were simply thinking about the research and how to
14 put pieces together and drawing diagrams, would you bill for
15 that?

16 A. No.

17 Q. You do agree that a certain amount of collaboration is
18 to be expected in the preparation for trial and for briefs,
19 right?

20 A. It's not unusual for there to be collaboration. It's
21 unusual to get paid for it and unusual to bill for it.

22 Q. I understand you've prepared hundreds of litigation
23 budgets?

24 A. Yes, I have.

25 Q. This for the benefit of the insurer?

1 A. It's for the benefit of whoever pays my bill, be it a
2 school board or a municipality or a county or sheriff or an
3 insurance company. People generally want to know how much it's
4 going to cost to take the case from it's inception to its
5 conclusion, which includes going up on appeal so they can
6 determine what decisions they need to make from a financial
7 standpoint with respect to settlement, so they can set side
8 reserves. There's a number of reasons for that. I don't think
9 I have any clients who don't insist on litigation budgets
10 within the first 30 to 60 days of an assignment.

11 Q. How many of them were you within five percent of an
12 accuracy? Meaning, the budget litigation cost was within five
13 percent of the actual cost?

14 A. I don't know how many because I don't keep the numbers
15 on those. I can think of maybe three times in the last 15
16 years where I received a phone call from either the client who
17 was handling the case with its own money or the insurance
18 carrier who was paying for it asking me to submit a revised
19 budget because the case had gone over budget. One case in
20 particular was a case that involved a trial plus three appeals
21 to the 11th Circuit so it went over the budget somewhere around
22 the second appeal. But I don't recall going over budget except
23 on maybe three cases.

24 Q. You contend the market rate Mr. Stevenson and
25 Ms. Cooper are around 300 to 350, right?

1 A. Just a second. Let me take a look at my affidavit.

2 Yes. Ms. Cooper I'd say 300 to 350 an hour. And you're

3 Mr. Stevenson?

4 Q. Yes.

5 A. I would also say Stevenson 300 to 325 an hour.

6 Q. Okay. Is it fair to say that they each have less
7 experience than you do?

8 A. Correct.

9 Q. Does an insurance company usually pay for the services
10 that you perform on behalf of a client?

11 A. I would say about it's 50/50. Insurance company and
12 self insured. Self insured entity being school boards and
13 municipalities and county governments.

14 Q. Help me out. I know you charge private clients \$225,
15 are those self-insured clients?

16 A. No. Those are corporate clients, businesses that
17 don't have insurance.

18 Q. Okay.

19 A. Or claims that aren't covered by insurance.

20 Q. Is it fair to say you charge the contract rate for
21 cases in which an insurer is paying for your services is lower
22 than the 250, right?

23 A. The institutional clients like the insurance companies
24 and governmental entities have lower rates. Correct.

25 Q. That's because of the volume of business they can

1 bring, right?

2 A. That's the theory. It's also because they have the
3 leverage to get the lower rates.

4 Q. Do you agree the compensation arrangement for
5 plaintiff and clients defendants differ?

6 A. It depends.

7 Q. I think we can agree there's a competitive market for
8 civil rights attorneys in the middle district, right?

9 A. What do you mean?

10 Q. Have you seen their ads on television? That's what I
11 mean.

12 A. You know, that's the nice thing about having a DVR,
13 you can fast forward through the ads. I don't know to what
14 extent the Morgan and Morgans of the world are soliciting civil
15 rights litigation. I do know I usually see a lot of the same
16 people on the civil rights cases.

17 Q. Is it fair to say that they're advertising on
18 television to attract clients, right?

19 A. I'm sure that's why they advertise is to get business
20 in the door.

21 Q. It's expensive to advertise on television, right?

22 A. It might be expensive to advertise on television but
23 it must have a good cost benefit ratio, because the last time I
24 saw, John Morgan was doing real well.

25 Q. Yes. It's also fair to say civil rights plaintiff

1 attorneys usually do not charge by the hour, right?

2 A. The answer to that question is, I don't know. The
3 last case that I tried down in the southern district, it's my
4 understanding that the plaintiff's lawyer was charging by the
5 hour on that case and actually ended up taking out a second
6 mortgage on his client's house. I would have to say that's
7 probably the exception. I do know that on those occasional
8 cases when I lost trials in federal court or lost on a summary
9 judgment and the other side moved for attorney fees, they go
10 for the fees under 42 USC 1988 or whatever other statute might
11 be applicable.

12 Q. Sure. Are you familiar with how the typical
13 contingency contract is written with respect to a claim in
14 which there is availability of attorney's fees pursuant to
15 section 1988?

16 A. I can guarantee you that I have not written one of
17 those in probably 20 years. I can't tell you how it reads.

18 Q. With respect to contingency on the damages and the
19 attorney's fees, how that mix works out in the wash?

20 A. All I know is that the Court determines what a
21 reasonable hourly rate is and what a reasonable amount of hours
22 is and they do the math and enter an award of attorney's fees.
23 And hopefully my client writes a check and satisfies the
24 judgment.

25 Q. Is it fair to say that we can deduce the hourly rate

1 and those contingency cases if we divided the total
2 compensation by the total number of hours the attorney spent on
3 the case?

4 A. No.

5 Q. Why not?

6 A. Because usually the Court bases the award on what a
7 reasonable number of hours is as opposed to the total number of
8 hours.

9 Q. I apologize. I'm trying to move outside of the award
10 from in court. Image a case where there is no entitlement to
11 fees in section 1988, but it's a civil rights case, the
12 plaintiff prevails and the defendant pays damages.

13 A. Okay.

14 Q. Some of those damages are portioned to the attorney as
15 attorney's fees under the contingency contract, are you
16 following me so far?

17 A. No. Because I'm not aware of any situation where
18 there would be a civil rights claim and there wouldn't be
19 statutory entitlement to attorney's fees.

20 Q. Do you think civil rights litigation is more complex
21 than typical personal injury litigation?

22 A. Each have their own nuances. Personal injury
23 litigation requires a certain degree of skill and ability. You
24 have to have knowledge of medical issues. You have to have
25 knowledge of sometimes physics, with respect to motor vehicle

1 accidents. You have to have knowledge of engineering if it's a
2 products liability case. There are certain complex factors
3 with respect to personal injury litigation, just like there are
4 certain complex factors with respect to civil rights
5 litigation. I would say civil rights litigation just like
6 personal injury litigation is a niche practice, which has its
7 own specialized set of skills.

8 Q. Is there any reason to think that the market rates for
9 someone in the personal injury world is different than the
10 market rates for people in a federal civil rights practice?

11 A. Absolutely. Because if you look at the attorney's
12 fees that are awarded in circuit court in personal injury cases
13 through, for example, proposals for settlement and you look at
14 the hourly rates awarded by federal courts in civil rights
15 litigation under 42 USC 1988 or awarded by federal courts under
16 the Fair Labor Standard's Act or awarded by federal courts
17 under any other statute providing for entitlement to attorney's
18 fees, you will see that the reasonable hourly rates awarded by
19 federal courts are routinely hundreds of dollars less than
20 hourly rates awarded by state courts.

21 Q. Why is that?

22 A. That's one of the great mysteries of our time. I have
23 no explanation other than the fact that federal courts take a
24 closer look and are less likely to award windfall attorney's
25 fee rates as opposed to circuit courts. I have seen circuit

1 court rates five and six hundred dollars per hour in personal
2 injury litigation or insurance litigation and I can guarantee
3 you're never going to see that contemporaneous rate in a
4 federal court.

5 Q. You would agree that both state and federal courts are
6 mandated to look at what is the relevant market rates, right?

7 A. That would be a yes -- but -- with a caveat. I
8 believe that the case law in federal court in the 11th Circuit
9 in the state of Florida indicates that the reasonable hourly
10 rate is not to be considered the top-of-the-market hourly rate
11 but to be a reasonable hourly rate for a competent attorney of
12 similar skills, abilities, and experience.

13 Q. In state court they're looking at what is the relevant
14 market on the high end? That's what they're judging? I'm just
15 trying to figure out how different judges are coming to -- as
16 you point out -- fairly different conclusions on what a
17 reasonable market rate is.

18 A. You have to ask them. I have not been involved in a
19 case where somebody was seeking attorney's fees from my client
20 in state court for -- geez -- I don't know -- maybe 15 years.
21 I have had quite a few attorney's fee cases in federal court
22 since that time. There are a lot of other differences too.
23 You will get multipliers in state court if you meet certain
24 criteria. You will not get a multiplier in federal court.

25 Q. You have settled civil rights cases, right?

1 A. Yes, I have.

2 Q. Those are civil rights cases for damages, correct?

3 A. Correct.

4 Q. When you settle, typically there's an agreement that
5 this is all you get and the plaintiff will not be able to seek
6 attorney's fees after the settlement, correct?

7 A. The majority of the time we offer a flat sum and it's
8 between the lawyer and his client as to how it's divided
9 amongst them. I had occasions where we settled cases and a
10 certain amount is set aside for the plaintiffs and we have
11 agreed to submit the issue of attorney's fees to the Court for
12 determination.

13 Q. That's a fair minority of the cases that you've
14 settled, right?

15 A. Correct.

16 Q. It's also fair to say that in majority of these cases
17 where there's just a global settlement, you anticipate there's
18 some contingency fee arrangement between the client and the
19 attorney, right?

20 A. I don't worry about what the fee arrangement is
21 between the plaintiffs and their attorneys. That's a matter
22 for them to --

23 Q. I'm not asking if you're --

24 A. Pardon?

25 Q. I'm not asking if you're worried about it. You say

1 that you're very familiar with the market and how the attorneys
2 should be compensated in this market, so clearly you must know
3 that majority of these plaintiffs are working on a contingency,
4 right?

5 A. Some of them work on a contingency. Some of them work
6 on an hourly-plus contingency. Some of them work on an hourly.
7 That is correct.

8 Q. I'm saying the norm is the contingency or contingency
9 plus availability of fees if that is prospect awarded from the
10 Court?

11 A. I assume that's what it is. I haven't seen a fee
12 agreement attached to a motion for attorney's fees in probably
13 15 or 20 years of federal court.

14 Q. Okay. Is it fair to say that you don't know exactly
15 how agreements are structured, generally speaking, for civil
16 rights attorneys and their clients?

17 A. Correct.

18 Q. You don't know how those are structured?

19 A. I don't know how those are structured these days.

20 Q. Is it fair to say when you do enter into a civil
21 rights settlement -- a global settlement -- you don't know how
22 many hours the attorney has put into the case?

23 A. Sometimes we do because sometimes they bring that
24 information to the mediation so we can come up with a number.
25 Sometimes we don't.

1 Q. I think you testified to this. I want to be clear you
2 don't know -- when you hand over a hundred thousand dollars in
3 a settlement -- a global settlement, you really have no opinion
4 or idea how that will be divided between the attorney and the
5 client, correct?

6 A. Correct.

7 Q. Therefore, you don't know how much the attorney will
8 take home as opposed to the client?

9 A. That is also correct.

10 Q. It's probably also fair to say that it's impossible
11 for you to say what a typical hourly rate is for these
12 attorneys because you don't know what they bring in and you
13 don't necessarily know how much hours they put into the case?

14 A. I would disagree with that. My familiarity is with
15 the attorney's fee awards that are given by the judges and the
16 magistrates in the United States District Court for the middle
17 district of Florida including the Ocala division of the United
18 States District court for the middle district of Florida. And
19 it's also based upon my experience in addressing claims for
20 attorney's fees that are asserted by opposing parties in cases
21 where I have represented a defendant who ended up losing at
22 trial.

23 Q. Those are the cases in which a plaintiff has prevailed
24 at trial and moved the Court for attorney's fees?

25 A. Prevailed at trial. Prevailed on summary judgment.

1 Sometimes cases where a settlement had been reached and the
2 issues of attorney's fees has been left for the Court to
3 determine all of those scenarios.

4 Q. You would agree that that represents probably -- it
5 does represent majority of the cases you've handled because the
6 majority of the cases you handle end with a global settlement?

7 A. Actually, the majority of the cases I've handled have
8 ended in summary judgment.

9 Q. Let me rephrase. In majority of the cases -- I do
10 appreciate, Mr. Bonner, your great experience. I didn't mean
11 to diminish it. The majority of the cases in which the
12 plaintiff prevails are resolved through a global settlement as
13 opposed to a district court judgment?

14 A. No. The majority of the cases -- I've had more cases
15 that result in jury verdicts that I've had end up in
16 settlements just because the nature of the cases I handle is
17 such that my clients are often not inclined to settle.

18 Q. Mr. Bonner, I appreciate your time this afternoon.
19 That concludes my examination.

20 CROSS-EXAMINATION

21 BY MR. JOHNSON:

22 Q. Mr. Bonner, you indicated you were a certified civil
23 trial lawyer. Are you also an advocate level member of the
24 American Board of Trial Advocate?

25 A. Correct.

1 Q. Are you a member of the trial section of the Florida
2 Bar?

3 A. Yes, I am.

4 Q. The Claims in Litigation Alliance?

5 A. Yes.

6 Q. The Florida Defense Lawyer's Association?

7 A. Yes. I'm the president.

8 Q. You've been the president-elect and secretary treasure
9 and board director in that organization?

10 A. Yes, I have.

11 Q. Member of the Florida's Association of Police,
12 Attorneys, and Florida Municipal Attorneys Association?

13 A. Yes.

14 Q. Are you rated AV by Martindale-Hubbell?

15 A. Yes, I am.

16 Q. Has the majority of your representation over the
17 course of your practice been the United States District courts?

18 A. In the last 20 to 25 years it has. Yes.

19 Q. In your affidavit that has been provided as an exhibit
20 to defendant's response to the motion for attorney's fees in
21 this case, there were several case citations that you noted in
22 there, is that research that you personally did to determine
23 what was the standard in the middle district for a reasonable
24 number of hours and/or reasonable hourly rate for the types of
25 cases we're involved with today?

1 A. Yes. I looked at West Law and did a search for
2 attorney's fee awards in the U.S. District Court in Florida as
3 well as in the 11th Circuit. After pulling those cases, I
4 looked at what the hourly rates were that were awarded by those
5 courts. Then some of those were cases based on my own personal
6 experience like the Hazelton case that was the \$300 per hour.
7 That was an excessive force case that we tried in front of
8 Judge Honeywell back in 2013. Some of the other cases were
9 cases where I served as an expert and submitted my opinions.

10 Q. Earlier you were asked about some differences in the
11 numbers in the calculation of hours for specific items in the
12 various time records that were provided by plaintiff's counsel,
13 could you clarify what you believe to be the reason for any
14 miscommunication about those couple of specific items that were
15 discussed?

16 A. Yes. I pulled the times for those events off of the
17 attorney time record complete sheets that were attached in the
18 appellate court and I looked at the things they listed as
19 eliminated there. I didn't consider those. And then I went
20 through and looked at some of the time for the briefs and
21 reduced what I thought needed to be reduced. I inadvertently
22 didn't look at the summary sheet, which extensively cut the
23 actual time for those activities.

24 Q. You testified as to a couple of the attorney hourly
25 rates, and based upon your affidavit, was the reasonable hourly

1 rate that you opined be appropriate for Mr. Stevenson in this
2 case, between \$300 and \$325 per hour?

3 A. Correct. That's based on prevailing market rate and
4 attorney fee awards in the middle district.

5 Q. Then would the reasonable hourly rate for Mr. Tilley
6 you indicated in the affidavit be between \$150 to \$175 per
7 hour?

8 A. Yes. That's correct.

9 Q. If you look up at the top of page eight, paragraph 23,
10 was it your opinion based on your education and training and
11 experience that a reasonable number of hours for Mr. Stevenson
12 in the trial court level and appeal would range between 220 and
13 250 hours?

14 A. That's correct.

15 Q. For Mr. Tilley?

16 MR. STEVENSON: Mr. Johnson, I appreciate this
17 testimony. This is all stuff that's in the deposition
18 already -- or in his affidavit and declaration already.
19 I'd rather not burn up pages of this deposition with stuff
20 that was already covered in the affidavit. Could you
21 please put your questions or rebuttal on examination based
22 amongst my examination.

23 MR. JOHNSON: No. I'm focusing on cross examination
24 and number of hours and hourly rates you asked about.
25

1 BY MR. JOHNSON:

2 Q. Was it your testimony in your affidavit, Mr. Bonner,
3 that Mr. Tilley's appropriate number of reasonable hours for
4 handling both the trial and appeal in this case would be
5 between 190 and 230 hours?

6 A. Correct.

7 Q. Was it your conclusion, Mr. Bonner, that a reasonable
8 attorney's fee for the award of all fees related to both the
9 appeal and trial court in this matter would range between
10 \$98,100 and \$135,250?

11 A. Correct.

12 Q. Were those opinions that you gave in the affidavit all
13 based upon your years of professional experience, time, and
14 labor involved and novelty and difficulty of questions
15 presented, the skill requisite to perform the legal services
16 properly, the preclusion of other employment by attorneys due
17 to this case, customary fee, whether that fee was fixed on
18 contingent, time limitations, the amount involved, the results
19 obtained, the experience, reputation, and ability of counsel,
20 the undesirability of the case, the nature and length of the
21 professional relationship with the client and the awards in
22 similar cases?

23 A. That would sum it up.

24 Q. Thank you, sir. I don't have any further questions.

25 MR. STEVENSON: Thank you, Mr. Bonner. That concludes

1 the deposition.

2 (Off the record at 3:10 p.m.)

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CERTIFICATE OF OATH

STATE OF FLORIDA
COUNTY OF OSCEOLA

I, EMONICA ARAYA, Court Reporter and Notary Public State of Florida, certify that ROBERT BONNER personally appeared before me on the 14th day of AUGUST, 2017 and was duly sworn.

Signed this 17th day of AUGUST, 2017.



Emonica Araya
Notary Public State of Florida
Commission No. EE117773
Expires August 1, 2019

1 CERTIFICATE OF REPORTER

2

3 STATE OF FLORIDA
4 COUNTY OF OSCEOLA

5 I, EMONICA ARAYA, a Certified Shorthand
6 Reporter, and Notary Public within and for the State
7 of Florida, do hereby certify that I was authorized to and
8 did stenographically report the foregoing proceedings,
9 and that pages 1 through 38, inclusive, are a true
10 record of my stenographic notes.

11 I further certify that I am not a
12 relative, employee, or attorney to any party, nor to
13 the attorneys of said action, nor in any way interested
14 in the outcome thereof.

15 Dated this 17th day of August, 2017.

16

17

18

19

20 Emonica Araya
21 Notary Public State of Florida
Commission #EE 117773
Expires: August 01, 2019

22

23

24

25

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