

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

WILLIAM HOWE, et al.,	)	CASE NO. 5:06 CV 2779
	)	
Plaintiffs,	)	JUDGE JOHN R. ADAMS
	)	
v.	)	<u>ORDER</u>
	)	<u>[Resolving Doc. 361]</u>
CITY OF AKRON,	)	
	)	
Defendant.	)	

This matter is before the Court upon Plaintiffs' Interim Motion for Attorney Fees (Doc. 361) filed June 27, 2011. Defendant City of Akron ("Akron") responded in opposition on July 5, 2011 (Doc. 388) stating that Plaintiffs had failed to establish that interim fees are warranted and failed to support the amount of fees requested. Alternatively, Akron requests that any interim award of attorney fees or costs be substantially reduced and conditioned on the plaintiffs' posting of a bond. Plaintiffs' motion is hereby GRANTED for the following reasons.

This case has been pending since November 16, 2006. On December 23, 2008, a jury returned a verdict in favor of the Plaintiffs' on the issue of liability. Thereafter, this Court entered findings of fact and conclusions of law consistent with the jury verdict. Doc. 277. Plaintiffs filed a Motion for Attorney Fees and Costs and estimated that the

costs and fees incurred through October 19, 2009 to be in excess of \$825,000. Doc. 281. The Court granted Plaintiff's Motion for Attorney Fees and Costs but declined to determine the amount awarded until a later date. Doc. 307. A new trial on damages will commence on July 15, 2011.

This Court has the authority to order an interlocutory award of attorney fees to a party who has established his entitlement to some relief on the merits of his claims. *Hanrahan v. Hampton*, 446 U.S. 754, 757-758 (1980). It is worth repeating that Plaintiffs have had a jury verdict in their favor on the issue of liability since December 23, 2008, and an Order granting Plaintiffs attorney fees and costs since September 30, 2010. Since the first trial, Plaintiffs have engaged in additional discovery, court proceedings and motion practice while receiving nothing for attorney fees and costs. Most recently, in preparation for the upcoming damages re-trial, Plaintiffs filed ten motions in limine and will likely have to respond to the six motions filed by Akron. The Court feels that considering the nature of this matter, the jury verdict in Plaintiffs' favor, the likelihood of Plaintiffs incurring additional fees and costs while preparing for the upcoming trial, and the public policy encouraging counsel to bring such discrimination cases, Plaintiffs are deserving of some award of fees.

Akron opposes Plaintiffs' motion arguing that (1) Plaintiffs have not shown that absent the interim fee award Plaintiffs would suffer "extreme hardship and inability to continue representation"; (2) Plaintiffs have not provided adequate documentation to support their request; and (3) Plaintiffs' request is premature. Doc. 388.

First, there is no requirement that a party show extreme hardship or an inability to continue representation before a court may award interim attorney fees. The only

requirement is that the party seeking the fees clearly establishes that it has “prevailed on the merits of at least some of [its] claims.” *Hanrahan*, 446 U.S. at 758. Although the matter of damages remains to be litigated, Plaintiffs are clearly entitled to relief on the merits of at least some of their claims. As such, Plaintiffs are a “prevailing party” as contemplated by the Supreme Court in *Hanrahan v. Hampton*, and an award of interim attorney fees is warranted.

Second, Plaintiffs have provided adequate documentation to support their motion for interim fees. Plaintiffs support their Motion for Interim Attorneys Fees and Costs with a Declaration by Attorney Bruce Elfvin. Doc. 361-3. Attorney Elfvin declared under penalty of perjury that Plaintiffs’ estimated attorney fees through the end of May 2011, to be approximately \$1,075,000 plus costs. By October 2009, Plaintiffs had incurred costs of at least \$95,000.

At the conclusion of this matter, Plaintiffs will submit full documentation to support the final award amount. However, at this time, this Court finds that Attorney Elfvin’s declaration is sufficient to support Plaintiffs’ motion for interim fees.

Third, Plaintiffs’ request is not premature. This matter has been pending for over four years. Plaintiffs succeeded on their liability claims in December 2008. Since the original trial, Plaintiffs have engaged in additional discovery and preparation for the upcoming damages trial. An interim award requiring Akron to pay fees previously incurred is not premature.

Akron alternatively requests that this Court enter an award of interim fees substantially lower than Plaintiffs’ request of \$500,000, and that Plaintiffs be required to post a bond to “ensure [Akron’s] recovery of the award, plus interest, should liability be

reversed on appeal.” Doc. 388. The Court disagrees with Akron’s suggestion that Plaintiffs should post a bond pending a final determination of damages. The basis for the interim award of fees is that the Plaintiffs have succeeded on the merits in some part of this litigation. The Court, therefore, declines to require Plaintiffs to post a bond in order to receive an interim award of attorney fees.

Finally, this Court notes that Akron’s suggestion that it did not have enough time to respond to Plaintiffs’ motion is entirely without merit. The issue of Plaintiffs’ attorney fees was fully briefed upon Plaintiffs’ original motion. The Court found that attorney fees and costs will be awarded. Doc. 307. During the June 15, 2011, telephone conference the Court informed the parties that it was contemplating an award of interim fees to Plaintiffs. Counsel for Plaintiffs indicated he would file a motion requesting interim fees. The Court sees no reason that counsel for Akron had to wait until after Plaintiffs filed their motion before researching the issue regarding a court’s authority to award interim fees to a prevailing party. Akron lists seven attorneys, from two firms (Tucker, Ellis and West in Cleveland and Roetzl & Andress in Akron) and the civil division of the City of Akron, as counsel of record in this matter. Counsel for Akron knew on June 15, 2011, that the Court was contemplating an immediate award of interim fees. Akron’s opposition to Plaintiffs’ motion on the basis of its own failure to expediently research the issue of interim fees is disingenuous.

For these reasons, and the reasons set forth by this Court during the telephone conference on June 15, 2011, and the pretrial on July 7, 2011, Plaintiffs’ motion is hereby GRANTED. Plaintiffs are awarded interim attorneys’ fees in the amount of Two

Hundred and Fifty Thousand Dollars (\$250,000). Akron shall make payment of the interim award to Plaintiffs' counsel within fourteen (14) days of this Order.

IT IS SO ORDERED.

July 7, 2011  
Date

/s/ Judge John R. Adams  
JUDGE JOHN R. ADAMS  
UNITED STATES DISTRICT COURT