



STERLING ANALYTICS

Sterling Analytics Group, LLC  
135 Crossways Park Drive  
Woodbury, NY 11797  
(646) 863-9433  
info@sterlinganalytics.com

[www.sterlinganalytics.com](http://www.sterlinganalytics.com)

## District Court Reduces Fee Award by Over \$30,000 for Unrelated Billing and Excessive Hourly Billing Rates

In a recent District Court of Oregon case, the court ordered the plaintiff to pay the defendant's reasonable costs and attorneys' fees arising directly from the plaintiff's conduct. The court assessed the defendant's request for attorneys' fees and costs, totaling \$108,197, as a result of defendant's successful sanctions motion against the plaintiff. The court granted the defendant's request in part, and denied it in part, reducing the request by approximately \$33,000. In doing so, the court analyzed the percentage of recoverable hours attributed to the successful claims and the reasonable rates in the community.

Specifically, the defendant stated that the hours were expended as follows: (1) 111.7 hours related to discovery and review of plaintiff's emails; (2) 208.1 hours related to the motion for sanctions; and (3) 79.6 hours relating to the taking of plaintiff's deposition. The plaintiff challenged each set of hours on different grounds and the court discussed each one in part.

For example, the defendant requested 79.6 hours relating to the plaintiff's deposition because it did not believe it was "feasible to identify a percentage of the disposition attributable to plaintiff's misconduct." In contrast, the plaintiff argued that only 59 pages (7.8% of the total) of the 756-page deposition relate to his misconduct, and as such the defendant should only be awarded 7.8% of 79.6 hours requested. The court noted that as the fee applicant, the defendant "bears the burden of documenting the appropriate hours expended in litigation and must submit evidence in support of those hours worked" – a burden the defendant did not meet.

Next, the plaintiff asked the court to reduce, by one-half, the defendant's travel time because that travel would have been made regardless of the sanctions imposed. The court was inclined to agree, and disallowed 16.6 hours for preparing for an unsuccessful summary judgment motion and reduced related travel time by one-half.

# BILLING FOR WORK UNRELATED TO THE ISSUE AT HAND WILL GENERALLY BE DISALLOWED

Then the court turned to the reasonableness of the hourly rate set by the defendant's attorneys and supporting staff in light of prevailing market rates in the relevant community. The test for a reasonable hourly rate is determined by looking at the prevailing rate in the relevant community for similar work performed by attorneys with similar experience. The court found that the requested hourly rates of \$384 and \$336 for the two senior partners were reasonable but reduced the hourly rates for one junior associate and one paralegal.

Finally, the court determined in light of all adjustments and reductions that the defendant should be awarded attorneys' fees and costs in the amount of \$74,964.50 as opposed to the \$108,197 originally requested.

**Implications for Legal Billing:** The analysis of requested attorneys' fees in this case demonstrates that billing for

work unrelated to the issue at hand will generally be disallowed. This is even true in situations where the attorney feels the work cannot be adequately apportioned from other work. Here, the court explained it has a general duty to apportion fees, absent a situation where the claims are so intertwined that separation would be useless.

The court also discussed how reasonable hourly rates should be calculated and what evidence is necessary to show that a reasonable rate has been set. The standard is based on prevailing rates by attorneys in that area displaying similar experience. If the standard is not met, the court will not hesitate to adjust rates accordingly.

\* U.S. ex rel. Berglund v. Boeing Co., 2012 WL 1902599 (D. Or. 2012). Full copies of court decisions may be available through counsel or through various Internet links or paid services.

By Derek R. Garman

**Sterling Analytics** is a consulting and advisory firm that helps companies reduce their legal expenses. Our proven methodologies are based on legal precedent, guidelines and ethical standards that compel law firms to significantly modify improper billing practices. Although our clients come from a broad range of industries with different legal budgets, they share a concern about their legal expenses and are looking for solutions to manage outside counsel while maintaining the highest service level standards. We are able to audit legal fees based on our extensive database of proprietary benchmark data and our solid understanding of traditional legal practices. Our process is fair, independent, cost effective and maintains attorney-client privilege. We are able to measure the extent to which our clients' legal expenses exceed industry standards, and will manage the negotiation and recovery of excessive fees. To institutionalize cost controls, we assist clients by installing systems and protocols that monitor billing activity and catch improper practices.

Sterling Analytics Group, LLC  
135 Crossways Park Drive  
Woodbury, NY 11797  
(646) 863-9433  
info@sterlinganalytics.com

© 2012 Sterling Analytics Group, LLC.  
All Rights Reserved.

[www.sterlinganalytics.com](http://www.sterlinganalytics.com)