

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ESTATE OF SYLVIA F. MINOR, by and through
Co-Executors KATHRYN MINOR and
STEPHEN MINOR
V.

PLAINTIFF

Civil Action No. 2008-00204

UNITED SERVICES AUTOMOBILE ASSOCIATION

DEFENDANT

POST-TRIAL MOTION FOR ATTORNEYS' FEES AND EXPENSES

COMES NOW the Plaintiff with this Motion for Attorneys' fees and expenses pursuant to Miss.R.Civ.P. 59, and in support states the following:

1. This matter came on for trial at the conclusion of which the jury, after being appropriately instructed on punitive damages and extracontractual damages, returned a verdict in favor of Plaintiff and against USAA for punitive damages in the amount of \$10,000,000.00 and extracontractual damages in the amount of \$457,858.89.

2. Thereafter, on September 28th, 2022, the court entered a Judgment [Doc. 432] in favor of Plaintiff confirming the jury verdict for punitive damages in the amount of \$10,000,000.00 and extracontractual damages in the amount of \$457,858.89.

3. Under Mississippi law, a party successful in obtaining a judgment for punitive damages is entitled to seek an award of attorneys' fees and expenses incurred in the prosecution of the claim that led to the award of punitive damages. *Mississippi Power & Light Co. v. Cook*, 832 So. 2d 474, 486 (Miss. 2002) ("Where punitive damages are awarded by the jury, attorneys' fees are justified.")

4. Though the jury in this matter awarded Plaintiff extracontractual damages for attorneys' fees previously paid after the 2013 jury verdict, there has been no consideration of the attorneys' fees incurred by Plaintiff's current counsel for prosecution of the appeal of the 2013 jury verdict, or for the prosecution of this case after remand through trial.

5. As set forth in the affidavit of David Baria attached hereto as Exhibit “A,” Plaintiff retained counsel pursuant to a contingency fee agreement providing that in the event of a recovery on Plaintiff’s behalf, counsel for the Estate will be paid 45% of such recovery after deduction for expenses of litigation for the appeal of the 2013 jury verdict and for prosecution of this case on remand. The expenses incurred by Estate in the prosecution of the appeal and the case on remand were incurred by the Estate and its attorneys, David Baria and Jim Reeves. See Exh. “A” and Affidavit of James R. Reeves, Jr., Esq. attached as Exhibit “B.” Plaintiff now seeks an award of \$4,500,000.00 against USAA for attorneys’ fees and \$208,452.92 for expenses as provided by law. Documents supporting these requests will be made available to the Court upon request.

6. The Fifth Circuit Court of Appeals and the Mississippi Supreme Court have held that the existence of a contingency fee agreement is one of the factors the court can consider in determining the proper amount of attorneys’ fees. *Shipes v. Trinity Industries*, 987 F.2d 311, 320 n. 6 (5th Cir.1993); *Mississippi Power & Light Co. v. Cook*, 832 So. 2d 474 (Miss. 2002). In this case, there is a contingency fee agreement between Plaintiff and undersigned counsel. Under the facts of this case, it is appropriate to award attorneys’ fees based in part on the existence of the contingency fee agreement between the Estate and its counsel. See also *Indus. Clearinghouse, Inc. v. Browning Mfg.*, No. 3:94CV1325-P, 1998 WL 34001126, at *4 (N.D. Tex. Jan. 14, 1998), decision clarified (Jan. 20, 1998).

7. The fees and expenses requested herein are reasonable and were necessary to achieve the result obtained in the trial of this cause. See Affidavit of Wynn Clark, Esq. (Exhibit “C”) and Affidavit of Charles Mikhail, Esq. Exhibit “D”) attesting to the *McKee* factors to be considered by the court in determining whether fees and expenses are to be awarded by the court after a jury verdict for punitive damages.

8. As stated by the Mississippi Supreme Court:

The reasonableness of an attorney's fee award is determined by reference to the factors set forth in Rule 1.5 of the *Mississippi Rules of Professional Conduct*. This Rule provides in pertinent part:

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

Miss. R. Prof'l Conduct 1.5. *See also Richardson v. Canton Farm Equip., Inc.*, 608 So.2d 1240, 1256 (Miss.1992); *Carter v. Clegg*, 557 So.2d 1187, 1192 (Miss.1990); *McKee v. McKee*, 418 So.2d 764, 767 (Miss.1982). These factors are sometimes referred to as the *McKee* factors. In addition to these factors, the Legislature gives additional guidance to courts in determining the reasonableness of attorney's fees by instructing the court to "make the award based on the information already before it and the court's own opinion based on experience and observation..." Miss.Code Ann. § 9-1-41 (1991).

Mississippi Power & Light Co. v. Cook, 832 So. 2d 474, 486-87 (Miss. 2002).

9. A contingency fee of one-third of the Judgment rendered is presumptively reasonable for certain cases. *Gulf City Seafoods, Inc. v. Oriental Foods, Inc.*, 986 So. 2d 974, 979 (Miss. Ct. App. 2007). This presumption may be impacted by the *McKee* factors cited above. However, the

Court has wide discretion regarding an award of attorneys' fees so long as such an award is based upon "substantial evidence" that the award is reasonable. *Gulf City Seafoods, Inc., Id.*

10. "In addition to these factors, the Legislature gives additional guidance to courts in determining the reasonableness of attorney's fees by instructing the court to 'make the award based on the information already before it and the court's own opinion based on experience and observation....'" *Mississippi Power & Light Co. v. Cook*, 832 So. 2d 474, 487 (Miss. 2002), citing Miss.Code Ann. § 9-1-41 (1991).

11. In addition to the existence of a reasonable contingency fee, Plaintiff provides herewith a summary of time spent by Estate attorneys on remand in preparation for and the trial of this matter, together with time spent involving post-trial matters. See Exh. "A" and Exh. "B." Thus, the Court has before it substantial evidence supporting an award of attorneys' fees based on the contingency fee agreement, based upon reasonable hourly fees using the Lodestar method, or based on the information already before the Court and the Court's own opinion based on experience and observation.

For the reasons stated above, Plaintiff is entitled to an award of attorneys' fees in the amount of \$4,500,000.00, or such other amount the Court determines to be reasonable, together with an award of expenses in this matter in the amount of \$208,452.92.

RESPECTFULLY SUBMITTED, this the 13th day of October, 2022.

/s/ David Baria

David Baria

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