

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

FILED-CLERK
U.S. DISTRICT COURT
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TX EASTERN-MARSHALL

PSKS, Inc. d/b/a Kay's Kloset...Kay's Shoes;
and Toni Cochran, L.L.C., d/b/a Toni's

Plaintiffs,

v.

Leegin Creative Leather Products, Inc.

Defendant.

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Civil Action No. 02-03CV-107 TJW

BY _____

**REQUEST FOR ENTRY OF JUDGMENT
AND APPLICATION FOR ATTORNEY FEES AND COSTS**

The Plaintiff request that the Court enter final judgment in favor of PSKS, Inc., and against Leegin Creative Leather Products, Inc., in an amount that is three times the verdict found by the jury, and also that the Court award fees and expenses in an amount of \$484,390.80.

1. 15 U.S.C. § 15(a) provides in part: "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor * * * and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee." Under this statute, trebling of the damages amount is automatic, and is an obligation of the Court. *Pollock & Riley, Inc. v. Pearl Brewing Co.*, 498 F.2d 1240 (5th Cir. 1974).

2. That statute also establishes a mandatory award of attorney fees to a prevailing plaintiff. See, *Alyeska Pipeline Serv. Co. v. Wilderness Society*, 421 U.S. 240, 261 (1975) ("Under the antitrust laws, for instance, allowance of attorneys' fees to a plaintiff awarded treble damages is mandatory.") A reasonable attorney fee is "properly calculated by multiplying the

number of hours reasonably expended on the litigation times a reasonable hourly rate.” *Blum v. Stenson*, 465 U.S. 886, 888 (1984). This amount should be adjusted by excluding hours not reasonably expended, and then adjusted upward or downward to reflect other considerations. *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). The reasonableness of the fee request is judged by the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). Although the Act only mentions “attorneys’ fees,” fees for non-lawyers, such as paralegals, who assisted the successful attorney are also to be awarded. *Missouri v. Jenks ex rel. Agyei*, 491 U.S. 274 (1989).

3. Reasonable litigation expenses are ordinarily included in an award of a statutory attorneys’ fee. *See, e.g., Dowdell v. City of Apopka, Fla.*, 698 F.2d 1181, 1190 (11th Cir. 1983). That reimbursement includes expenses “for travel, meals, lodging, photocopying, long-distance telephone calls, computer legal research, postage, courier service, mediation, exhibits, document scanning, and visual equipment.” *Wales v. Jack M. Berry, Inc.*, 192 F.Supp.2d 1313, 1329 (M.D. Fla. 2001) *citing*, *Calderon v. Witvoet*, 112 F.3d 275, 276 (7th Cir. 1997); *Colunga v. Young*, 722 F.Supp. 1479, 1488 (W.D. Mich. 1989), *aff’d*, 914 F.2d 255 (6th Cir. 1990); *Certilus v. Peebles*, 1984 WL 3192 (M.D. Fla. 1984); *Cappeletti Bros., Inc. v. Broward County*, 754 F.Supp. 197 (S.D.Fla.,1991)(“These nonstatutory costs subsumed within the reasonable attorney’s fee could include compensation for postage, long distance calls, photocopying, travel, paralegals, expert witnesses, and computerized legal research. However, contrary to what the defendant seems to be contending, these nonstatutory costs are only recoverable if the party is entitled to attorney’s fees under 42 U.S.C. § 1988”); *American Civil Liberties Union of Georgia v. Barnes*, 168 F.3d 423, 438 (11th Cir. 1999).

4. Because it is unclear that expert fees are permitted to be recovered as attorney fees

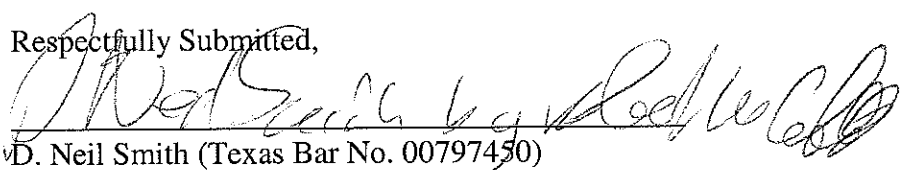
under Section 4 of the Clayton Act, 15 U.S.C. § 15, the plaintiff do not seek to tax that amount as costs to the defendant.

5. The fees sought by the plaintiff are based upon the time spent in the prosecution of this case, and upon the application of reasonable rates. This case represented in excess of 2,000 hours of attorney and paralegal time. Counsel carefully staffed the case so that the litigation was handled efficiently. For example, the only staffing by the plaintiff at all the depositions was one attorney. The total requested in attorney fees, \$424,961.25, is reasonable in light of the total recovery achieved in this case. In support of the request for fees and expenses, the Plaintiff submits the affidavit of Robert W. Coykendall.

6. The total expenses requested are \$59,429.55. This amount represents the out-of-pocket charges incurred in the course of this case, and are all charges of the type normally charged to the client in cases handled on an hourly basis. The amount requested does not include expert fees.

For the foregoing reasons, the Plaintiff requests that the Court enter judgment in the total amount of \$4,084,390.80 in favor of the Plaintiff, PSKS, Inc., and against the Defendant, Leegin Creative Leather Products, Inc.

Respectfully Submitted,


D. Neil Smith (Texas Bar No. 00797450)

Nix, Patterson & Roach, LLP

205 Linda Dr.

Daingerfield, Texas 75638

Phone: (903) 645-7333

Facsimile: (903) 645-4415

And

Ken M. Peterson, Kansas State Bar No. 07499
Robert W. Coykendall, Kansas State Bar No. 10137

MORRIS, LAING, EVANS, BROCK
& KENNEDY, CHARTERED
300 N. Mead, Suite 200
Wichita, Kansas 67202-2722
Phone: (316) 262-2671
Facsimile: (316) 262-5991

ATTORNEYS FOR PLAINTIFFS

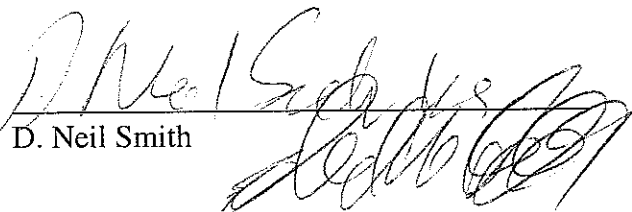
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Request for Entry of Judgment and Application for Attorney Fees was served on the parties listed below via facsimile and by first-class mail, on this the 27th day of April, 2004.

Otis Carroll
Wesley Hill
Ireland, Carroll & Kelley, P.C.
6101 South Broadway, Suite 500
Tyler, TX 75703
Facsimile 903-561-1600

Christopher J. Akin
Jennifer Salisbury
Carrington, Coleman, Sloman & Blumenthal, L.L.P.
200 Crescent Court, Suite 1500
Dallas, TX 75201
Facsimile 214-855-1333

Tyler Baker
Fenwick & West, L.L. P.
Silicon Valley Center
801 California Street
Mountain View, CA 94041
Facsimile 650-938-5200


D. Neil Smith

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BY _____

AFFIDAVIT OF ROBERT W. COYKENDALL

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

Robert W. Coykendall, being of lawful age and being first duly sworn upon his oath, states as follows:

1. I am a licensed attorney, residing in Wichita, Kansas, practicing law with the firm of Morris, Laing, Evans, Brock & Kennedy, Chtd. ("Morris Laing"). I have practiced with the firm since 1981, after leaving a judicial clerkship with United States District Court Judge Frank G. Theis. My practice is has included participating in class action suits, both in federal and in state court, as well as extensive involvement in other complex civil matters. I am admitted to practice in all state courts in Kansas, in the United States District Court for the District of Kansas, the 5th and 10th Circuit Courts of Appeals; and the United States Supreme Court. I am submitting this Affidavit in support of this firm's application for an award of attorney fees in connection with services rendered and the reimbursement of expenses incurred by my firm in the course of this litigation.

2. The chart attached hereto as Exhibit A is a summary indicating the amount of time

spent by the attorneys and paralegals of my firm on this litigation, and the lodestar calculation. The chart includes the name of each attorney and paralegal who has worked on this matter, the hourly billing rate for that person, and a breakdown of the hours expended by each attorney and paralegal. The chart was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm which are available for submission to the Court at its request. Excluded from the time calculation was 34.3 hours of attorney and paralegal time that was identifiable as attributable to the preparation of the case for Toni Cochran, LLC.

3. The total number of hours spent on this litigation by my firm from its initial involvement through April 14, 2004, excluding that time attributable to the separate claim of Toni Cochran, LLC was 1957.71 total attorney and paralegal hours. The total lodestar amount for attorneys and paralegal time based upon the firm's rates for this type of work is \$365,636.25. The hourly rates set out in the chart as Exhibit A are the same rates which Morris Laing charges its hourly clients paying for its services on a monthly basis in cases of similar complexity and magnitude.

4. The firm of Nix Patterson & Roach have reviewed their files and records and have determined that they have spent on this litigation a total of 192 hours of attorney time. This results in a lodestar for this firm's work on this case as follows:

Attorney	Total Hours	Hourly rate	Total
Nelson Roach	69	325	\$22,425.00
Neil Smith	123	300	\$36,900.00
		Total	\$59,325.00

5. The total requested by the attorneys for the plaintiff as fees in this case is: \$424,961.25.

6. Morris Laing expended a total of \$53,627.87 in unreimbursed expenses in

connection with the prosecution of this litigation, exclusive of expert fees, broken down as follows:

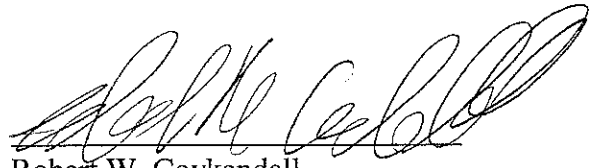
CATEGORY	AMOUNT
Meals, hotel, transportation	20,367.73
Reproduction	19,068.09
Telephone and facsimile	239.16
Postage and Federal Express	627.85
Messenger/courier/process fees	375.00
Computer Legal Research	1,581.41
Court Fees, Court Reporting	11,368.63
TOTAL	\$53,627.87

7. The Nix Patterson & Roach incurred expenses of \$5,801.68, consisting of \$3,750.00 in mediation expense; \$20.00 in court fees; \$1,400 in Audio/Video charges; and \$631.68 in meals and travel expenses.

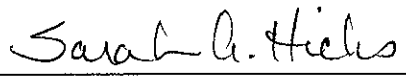
8. The expenses incurred pertaining to this case are reflected on the books and records of the respective firms. These books and records are prepared from expense vouchers, receipts, and check records and are an accurate record of the expenses incurred.

9. The total requested by the plaintiff in attorney fees and expenses is: \$484,390.80.

FURTHER AFFIANT SAYETH NOT.


Robert W. Coykendall

Subscribed and sworn to before me this 26th day of April, 2004


Notary Public

My commission expires:



Exhibit A

Timekeeper	Position	Hours	Rate	Total
Ken M. Peterson	Partner	228.5	325	74,262.50
Robert W. Coykendall	Partner	624.1	300	187,230.00
Tim Moore	Partner	52.9	300	15,870.00
James D. Young	Partner	5.9	250	1,475.00
Luke A. Sobba	Assoc	32.3	175	5,652.50
Ryan M. Peck	Assoc	101.91	125	12,738.75
Rita Lowe	Paralegal	737.1	75	55,282.50
Kate Brubacher	Paralegal	110	75	8,250.00
Linda S. Vrana	Paralegal	65	75	4,875.00
				\$365,636.25