IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

CLAYTON WOODRUM, ET AL.,	)	
	)	
Plaintiffs,	)	
v.	)	NO. CIV-04-0835-HE
	)	
INTEGRIS HEALTH, INCORPORATED, ET AL.,	)	
	)	
	)	
Defendants.	)	

ORDER

The Court previously granted plaintiffs' motion to dismiss this case as to defendant Integris Health Incorporated ("Integris").[1] Order, Sept. 27, 2004. Pursuant to Fed. R. Civ. P. 41(a)(2), the Court imposed conditions on the dismissal and ordered that Integris be awarded its reasonable attorney's fees expended in connection with the then-pending motion to dismiss. Id. Integris has now filed its motion for attorney's fees, seeking $77, 713.00, which amount it states was incurred in connection with the motion to dismiss.[2] Plaintiffs object to the request on the grounds the fees sought are excessive and that recovery of fees, or at least fees of that amount, are inappropriate under the circumstances of this case.

Given the stage of the case at which it was dismissed, the fees sought are remarkably large. It is the rare case indeed that would justify the expenditure of over 350 lawyer hours

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[1] *Co-defendant American Hospital Association was dismissed by plaintiffs prior to the filing of an answer or motion for summary judgment, hence an order of court was required only as to defendant Integris. Fed. R. Civ. P. 41(a)(1).*

[2] *Integris' reply brief indicates that certain time related to the defense of co-defendant American Hospital Association was erroneously included in the amount originally sought by motion and that, after excluding that time, the amount sought is $77,713.00.*

in connection with a motion to dismiss.[3] However, this is far from an ordinary case. The claims against Integris, asserted in connection with a request for class action status, no doubt translate into claims for many millions of dollars. They put in question, directly or indirectly, the tax exempt status of defendant, and broadly attacked many of its alleged business practices. Further, defendant had every reason to assume the case would be pursued seriously, by counsel with the background and ability to do so.[4] Given these circumstances, the Court cannot say that the requested fees, though substantial, are necessarily unreasonable or that is was unreasonable for Integris to immediately invest substantial resources in the defense of the case.

In the ordinary circumstance, an award of attorney's fees would require application of the familiar "lodestar" method. See, e.g., Ramos v. Lamm, 713 F.2d 546 (10th Cir. 1983), *overruled on other grounds by* Pennsylvania v. Del. Valley Citizens' Council for Clear Air, 483 U.S. 711 (1987). Application of that method requires determination of the hours reasonably expended by counsel multiplied by a reasonable hourly rate or rates. Id. Many of plaintiffs' objections to the size of the requested award (duplicate activity by counsel, excessive time, etc.) go to the hours reasonably expended and would ordinarily require resolution by the Court. Plaintiffs' general objection to the requested rates would be

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[3] *The briefing included that filed with the motion and a reply brief.*

[4] *This case was one of over forty similar cases filed around the country challenging practices like, or similar to, those alleged to have been employed by Integris. Plaintiffs are represented by multiple counsel, some or all of whom have substantial experience in class action proceedings of this kind. Those counsel were alleged to be "committed to the vigorous prosecution of this action." Amended Complaint, para. 46.*

addressed similarly. Here, however, the Court concludes rigid application of the usual lodestar method is not required. The attorney's fees issue presently before the Court does not arise in the context of the usual fee shifting circumstances. Rather, it arises in the context of a Rule 41(a)(2) dismissal, where the issue is whether a plaintiff's effort to dismiss a case should be granted and, if so, whether special "terms and conditions" should be imposed. Such terms and conditions may be imposed, in the court's discretion, where necessary to protect a party from unfair prejudice or other harm. Am. Nat'l Bank and Trust Co. of Sapulpa v. BIC Corp., 931 F.2d 1411, 1412 (10th Cir. 1991).

The determination of what constitutes "unfair prejudice" or harm sufficient to warrant the imposition of conditions under Rule 41 is not an easy one and the Court does not view it as a determination which can be made by any formula. Here, there are multiple and important considerations.

Any defendant is likely to have incurred some expense at the time a dismissal is sought. The existence of such expense, in and of itself, does not constitute unfair prejudice or harm. Rather, the issue is whether, under all the circumstances, the expense is sufficiently substantial as to make a protective award appropriate. Here, the Court concludes the nature of the plaintiffs' claims reasonably required, or at least warranted, a substantially more involved and expensive response than would be true in the "ordinary" case. As noted above, the plaintiffs' claims likely amounted to millions of dollars and would have, at a minimum, forced major changes in the financial operations and structure of defendant. It would be unfair to put a defendant's operations, and perhaps its continued existence, in issue, force it

to expend substantial sums in responding to such claims, and then dismiss the case.

In this case, the Court concludes the dismissal unfairly prejudices the defendant in another way. The complaint in this case did not confine itself to a "short and plain statement" of the claims as contemplated by Fed. R. Civ. P. 8(a), but included lengthy, pointed and serious accusations of misconduct on the part of defendant which were not essential to statement of the claims but which did tend to discredit the defendant in ways that would reasonably be expected to garner substantial public attention.[5] To make such accusations under circumstances where substantial public knowledge and discussion of them could be expected and then, via dismissal, to remove the forum in which the truth of the allegations might be contested by the defendant, involves a significant element of unfairness.

The Court is mindful of the risk that an award of attorneys' fees in this context might unreasonably chill the prospect of these or other potential plaintiffs bringing an otherwise reasonable class action. Although the Court finds unpersuasive plaintiffs' argument that either the Constitution or the law generally prohibits the award of attorney's fees against putative class representatives, it nonetheless acknowledges the risk that appropriate use of the class action device could be discouraged by substantial awards in this context. It also recognizes, however, that those who bring lawsuits, including class actions proceedings, must bear some responsibility for the impact of their actions.

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[5] *Among other things, the Amended Complaint alleged "unconscionable and oppressive business practices," millions of dollars maintained in offshore accounts, the use of "Enron-style accounting tricks," and conduct the complaint described as "unfair, unethical, immoral, unscrupulous and oppressive."* See *paras. 9, 16 and 76, among others.*

Also of concern is the fact that the plaintiffs in this case are alleged to be indigent. If so, they have little or no ability to respond to an award of attorney's fees. Depending on how it is structured, such an award has the potential to preclude, or at least significantly discourage, the further pursuit of what may be valid claims.[6] However, that concern is ameliorated somewhat here by the fact this case is apparently one of many being filed as part of a coordinated, nationwide effort to attack various practices of non-profit hospitals. The circumstances present here strongly suggest that this case is one which is more attorney driven than client driven. As noted below, the Court concludes this reality should impact the nature of the relief granted.

Taking into account the above considerations, the considerations noted in the Court's September 27, 2004, order, and all the circumstances, the Court concludes and orders as follows:

(1) An attorney's fees award of Forty Thousand Dollars ($40,000.00) is a reasonable amount to award defendant as a condition to the dismissal of this case; any effort to collect that amount is stayed pending further order of the Court;

(2) If, after resolution of the various strategic and tactical issues which prompted the dismissal of this case and within one year from the date of this order, plaintiffs elect to re-file in this Court a case asserting the same or substantially similar claims as this case, this order

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[6] *Obviously, the merit or lack of merit of the claims asserted in this case is not at issue in this motion.*

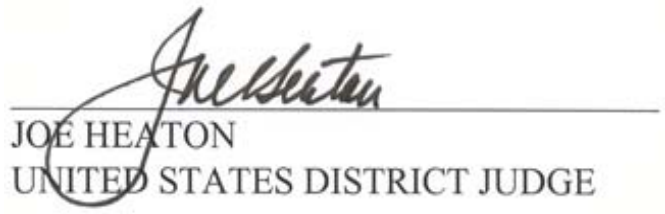
for attorney's fees will be set aside in its entirety.[7] In such event, the appropriate award of attorney's fees, if any, will be determined in the context of the resolution of the re-filed suit;

(3) If this case is not re-filed within the indicated one year period, the Court will then enter judgment for the attorney's fees determined here in favor of defendant and against the named plaintiffs and all attorneys for plaintiffs who have entered their appearances in this case as of the date of the dismissal order, jointly and severally; and

(4) Notwithstanding the dismissal order entered September 27, 2004, this Court will retain jurisdiction of the case to the extent necessary to implement the terms of this Order.

IT IS SO ORDERED.

Dated this 30th day of November, 2004.



JOE HEATON
UNITED STATES DISTRICT JUDGE

[7] *As plaintiffs correctly note, if the case is re-filed defendant will have the benefit of the research and other services rendered to date. See generally McLaughlin v. Cheshire, 676 F.2d 855, 856 (D.C. Cir. 1982).*