

IN THE IOWA DISTRICT COURT FOR LINN COUNTY

LORIANN BUSSE and LISA CARPENTIER)
ALEXANDRA RENEE CARPENTIER; DEVAN)
MICHELE CARPENTIER; and MARIE)
JOSEE CARPENTIER, A Minor Through)
Her Mother and Next Best Friend)
LISA CARPENTIER,)

LACV083022

Plaintiffs,)

vs.)

JEFFREY BUSSE; LAVERN T. BUSSE;)
BUSSE FINANCIAL ADVISORS, LLC;)
BUSSE FAMILY LIMITED PARTNERSHIP;)
AB BI NOTE LIMITED PARTNERSHIP;)
LAVERN T. BUSSE and AUDREY BUSSE)
FOUNDATION and Nominal Defendants;)
LTB 2002 IRREVOCABLE TRUST; LTB)
2002 IRREVOCABLE TRUST U/D/O)
DECEMBER 20, 2002 LORIANN BUSSE;)
LTB 2002 IRREVOCABLE TRUST U/D/O)
DECEMBER 20, 2002 F/B/O ALEXANDRA)
RENEE CARPENTEIR; LTB 2002)
IRREVOCABLE TRUST U/D/O DECEMBER)
20, 2002 F/B/O DEVAN MICHELE)
CARPENTIER; and LTB 2002)
IRREVOCABLE TRUST U/D/O DECEMBER)
20, 2002 F/B/O MARIE-JOSE)
CARPENTIER,)

RULING AND ORDER ON
DEFENDANT JEFFREY
BUSSE AND LAVERN
BUSSE'S APPLICATION FOR
ATTORNEY'S FEES

Defendants.)

JEFFREY BUSSE,)

Third Party Plaintiff,)

vs.)

BUSSE INVESTMENTS, INC.,)

Third Party Defendant.)

Defendant Jeffrey Busse and Lavern Busse's Application for
Attorney's Fees comes before the Court for consideration. The

Court has reviewed said Application for Attorney's Fees, Plaintiffs' Resistance and the Reply.

This matter was before the Court and jury on January 23 through February 8, 2017. Following thirteen trial days, the jurors were given 48 Instructions and a 47 Question Verdict Form to help them reach a decision. On February 9, 2017, the jury returned a unanimous Verdict in favor of Defendants on all of Plaintiffs' claims submitted to the jury. Additionally, the jurors unanimously found that Jeffrey Busse ("Jeff") and Lavern Busse ("Lavern") proved they did not intend Plaintiffs, LoriAnn Busse and Lisa Carpentier, to retain or obtain collective voting control over the approximate \$20 million real estate business Busse Investments, Inc.

In the Court's Findings of Fact, Conclusions of Law and Judgment Entry entered May 22, 2017, the Court entered an Order regarding the many issues which were not submitted to the jury and remained for the Court's consideration. The Court dismissed Count II of Plaintiffs' Amended Petition seeking to remove Jeff Busse as Trustee of the Grantor Trusts, the Court dismissed Count IV of the Petition seeking to void Lavern Busse's optional capital contribution to BFLP, the Court dismissed Count V which sought judicial dissolution of BFA and the Court dismissed Count VI asserting that Jeffrey Busse breached a fiduciary duty to BFA in making distributions from BFLP or ABBI to support a

derivative claim. Further, with respect to Count II of Defendants' Jeffrey Busse and Lavern Busse's Counterclaim seeking equitable relief for unjust enrichment, the Court ordered that Plaintiffs return their voting shares of Busse Investment stock to their respective Grantor Trusts. The only portions of Plaintiffs' Petition which were successful were Count IX, with regard to whether LoriAnn's Dynasty Trust was admitted as a substituted limited partner in BFLP and ABBI and Count XIII in which the Court found that a foundation pledge was unenforceable as to LoriAnn Busse and Lisa Carpentier. The claims on which Plaintiffs were successful were rather minor in comparison to the claims in which Defendants prevailed.

The Court will not rehash the detailed Findings of Fact, Conclusions of Law and Judgment Entry previously entered nor will the Court rehash the Facts and Conclusions set forth in a number of Summary Judgment Rulings but a brief overview is appropriate.

The focal point of the wealth accumulated by Lavern and Audrey Busse is the two entities within which that wealth has grown since 1990: the securities trading limited partnership Busse Family Limited Partnership ("BFLP") and the commercial real estate enterprise Busse Investments ("BI"), collectively worth in the vicinity of \$60 million. The claims brought in Plaintiffs' expansive lawsuit against Jeff and Lavern and the

entity Defendants involved what all parties to this case acknowledge was an incredibly complex series of trusts and partnerships arrangements and estate planning vehicles including a series of intentionally defective Grantor Trusts, Dynasty Trusts and the Busse Foundation. This lawsuit arose after the majority voting control of BI was mistakenly placed in the collective hands of Plaintiffs, who had theretofore for an excess of 25 years served only as passive owners of the operating entities.

For approximately two years before filing suit, Plaintiffs made a series of demands for effective control over both operating entities as well as their parents' estate plan in return for surrender of the voting control of BI. Those efforts were not successful. Plaintiffs thereafter exercised their power by shrinking the size of the BI Board and refusing to reconfirm their father's position as manager of the securities partnership. Defendants responded by taking steps such as removing several million dollars of cash from Plaintiffs' discretionary use within BI, Lavern exercised a retained swap power and placed more conservative but more highly discounted assets in Plaintiffs' Grantor Trusts. This lawsuit followed.

Plaintiffs bought an expansive lawsuit against Jeff and Lavern which ran parallel to other lawsuits regarding the complex trust and partnership arrangements. Plaintiffs sought

millions of dollars in alleged compensatory damages, punitive damages and declaratory orders designed to wrest control of entities managing tens of millions of dollars in assets from Defendants. Plaintiffs' claims involved a common core of facts centered around the following allegedly interrelated series of transactions Plaintiffs alleged were designed to carry out a scheme of retribution:

- Swaps to and loans from the Grantor Trusts benefitting Lisa Carpentier's daughters and LoriAnn;
- Transactions allegedly direct at altering Control of Busse Family Limited Partnership ("BFLP");
- Distributions and loans from BFLP and ABBI Note Limited Partnership ("ABBI");
- Loans from/to BFLP and ABBI;
- Loans to Busse Investments, Inc. ("BI"); and
- Life insurance premium payments for the Lavern T. Busse and Audrey F. Busse Irrevocable Trust Agreement ("ILIT").

Plaintiffs alleged that the actions of Defendants were oppressive, breaches of fiduciary duties, or the product of broad conspiratorial conduct (Lavern Busse either being unduly influenced by his son or, alternatively, aiding and abetting Jeff in these actions). As noted above, Plaintiffs' suit failed almost in its entirety. The jury rejected all of Plaintiffs' claims as did the Court, with the exception of the two claims noted above.

Stepping back for a moment from the specifics of Plaintiffs' claims and the defenses, it is important to note in considering the fee claims that this was an extraordinarily complex and sophisticated litigation. The stakes were high, what some trial attorneys refer to as "bet the company" litigation. Further, the quality of the legal representation provided by both the attorneys for Jeffrey and Lavern Busse and the entity Defendants was extraordinary throughout every aspect of this case. Given the extraordinary complexity of the issues, the attorney time required, the amount of money at stake, the control of the various entities that was at stake, the total fees and expenses submitted by Defendants' counsel of \$1,223,582.03 appears to the Court to be quite reasonable. Simply put, defense counsel delivered very good value to their clients in exchange for their fees.

Before delving further into Defendants' attorney fee claim, the Court also wishes to note what is not at issue here. In post-trial discovery related to the attorney fee claims, Plaintiffs objected to Defendants' request that Plaintiffs' counsel produce their own attorney fee billing records. Plaintiffs moved for a protective order. In resisting Defendants' Motion to Compel, Plaintiffs' counsel states "Plaintiffs have not challenged the amount of time expended by Defendants' counsel on any particular task as excessive.

Rather, Plaintiffs questioned whether various categories of legal work were recoverable." Also notably absent from Plaintiffs' Resistance to Defendants' Application for Attorneys' Fees is any argument that the overall time spent by defense counsel was excessive. Finally, Plaintiffs' only objection to the hourly rate charged by defense counsel is an assertion that Mr. Visser's hourly rate of \$410 is too high but Plaintiffs acknowledge that \$350 per hour would be reasonable. The Court understands that Plaintiffs' lead counsel billed at approximately \$350 per hour. One of Plaintiffs' experts charged \$800 per hour. In the scheme of things Plaintiffs' objection to Mr. Visser's hourly rate is not terribly significant. What the Court is left with is analyzing an attorney fee claim in complex, risky litigation where the result was extraordinary, the overall amount of time spent by defense counsel is not in dispute and there is only minor disagreement concerning the hourly rate of one of the Defendants' attorneys.

Plaintiffs sued Jeff and Lavern in capacities which entitled Jeff and Lavern to shift fees incurred in their defense to Plaintiffs as well as indemnification for fees and expenses from the family entities and Trusts. The determination and imposition of fees and costs is not intended to become a "second major litigation."

Plaintiffs originally filed a thirteen count Petition and later amended to add an additional count and alternative request for relief. Plaintiffs allege that Jeff and Lavern orchestrated a series of retaliatory transactions involving a number of Busse Family entities and trusts. The Court agrees with Defendants' assertions that among these transactions and constituted the bulk of the time and expense involved in defending against Plaintiffs' allegations were (1) swaps with and loans from Plaintiffs' Grantor Trusts; (2) distributions and loans from AB BI Note Limited Partnership ("ABBI") and BFLP; and (3) transactions alleging directed at altering control over BFLP. To a lesser extent, loans made to BI; premiums allegedly not paid to Insurance Trusts; Jeff's counterclaim for his termination; Jeff and Lavern's counterclaim seeking equitable relief for unjust enrichment (return of the voting shares) and issues related to the family foundation were also involved in this case.

Jeff and Lavern responded to Plaintiffs' allegations by asking that, among other relief requested, Plaintiffs pay Jeff and Lavern's attorneys' fees. Additionally, request for contractual and statutory indemnification were made against Busse Financial Advisors, LLC ("BFA"), BFLP; AB BI; LTB 2002 Irrevocable Trust; LTB 2002 Irrevocable Trust U/D/O December 20, 2002 F/B/O LoriAnn Busse; LTB 2002 Irrevocable Trust U/D/O

December 20, 2002 F/B/O Alexandra Renee Carpentier; LTB 2002 Irrevocable Trust U/D/O December 20, 2002 F/B/O Marie-Josée Carpentier (collectively, the "Grant Trusts"); and BI.

At trial, Plaintiffs argued that Jeff and Lavern lost control of BI and acted in retribution when Plaintiffs would not take the steps necessary to return control of BI to Jeff. Plaintiffs asserted that a number of actions undertaken by Busse family entities violated duties owed to Plaintiffs by the representatives of the entities. Plaintiffs' narrative of alleged retribution and the three primary categories of transactions above are the common factual core of their claims. The jury's February 9, 2017, verdict rejected all claims Plaintiffs asserted against Jeff and Lavern.

CONTRACTUAL AND STATUTORY BASIS FOR AWARDING ATTORNEYS' FEES TO LAVERN BUSSE AND JEFFREY BUSSE

The Court concludes that statutory and contractual basis exists to require Plaintiffs to pay the fees and expenses associated with the defense of the claims related to the Grantor Trusts, BFLP, AB BI and the Insurance Trust. With regard to BI, a statutory basis for indemnification exists.

BUSSE FAMILY LIMITED PARTNERSHIP ("BFLP") AND AB BI NOTE LIMITED PARTNERSHIP ("AB BI")

Article XIX(D) of each of BFLP's Amended and Restated Agreement of Limited Partnership dated on or about March 15, 2006 ("BFLP Partnership Agreement") and AB BI's Agreement of

Limited Partnership dated on or about May 5, 2011 (the "AB BI Partnership Agreement") provide:

... in the event a dispute arises between any Partner(s)³ and the Partnership or between the Partners themselves, the prevailing party *shall* be entitled to recover reasonable attorney's fees and court costs incurred.

(Trial Exhibits 1d, p. 39 and 1e, p. 40, BFLP and AB BI Partnership Agreements Art. XIX(D) (emphasis supplied)).

Jeff and Lavern are the appointed managers of the General Partner of each of BFLP and AB BI. Plaintiffs Lisa and LoriAnn are each individual limited partners in BFLP. The Dynasty Trusts of each of Lisa and LoriAnn hold limited partnership interests in AB BI. Plaintiffs brought claims relating to various transactions or actions taken (or not taken in the case of distributions) by each of the partnerships through Jeff and Lavern acting on behalf of the General Partner. The claims brought by Plaintiffs against each of Jeff and Lavern, as managers of the General Partner, and BFLP and AB BI arise from a dispute between the Plaintiffs as Partners and each respective Partnership, as well as a dispute among the Plaintiffs and Jeff and Lavern as Partners of the Partnerships (Lavern as to BFLP only). BFLP, AB BI, Jeff and Lavern have prevailed in the defense of all claims brought by Plaintiffs relating to any dispute between BFLP, AB BI and Plaintiffs or between Jeff and Lavern and Plaintiffs and are therefore entitled to the

reimbursement of their attorneys' fees and expenses directly from the Plaintiffs.

Alternatively, the BFLP Partnership Agreement and AB BI Partnership Agreement each provides in relevant part:

Article VII

H. Indemnification and Limitations on General Partner's Liability.

. . . .
6. Pursuant to the Act, the Partnership *shall* indemnify, save and hold harmless the General Partner, its affiliates, officers, directors, partners, employees, and agents from any loss, damage, claim or liability, including but not limited to direct and indirect costs and reasonable attorneys' fees and expenses incurred by them by reason of any act performed by the General Partner on behalf of the Partnership or in furtherance of the Partnership Purposes other than an act of gross negligence, fraud, misconduct, or bad faith, provided, however, that this indemnity from the Partnership shall be satisfied out of Partnership assets only.
... (Emphasis supplied.)

To the extent not paid by Plaintiffs directly pursuant to the fee shifting provisions of Article XIX(D) of each of the BFLP Partnership Agreement and AB BI Partnership Agreement, Jeff and Lavern are entitled to be indemnified by BFLP and AB BI for any loss, damage, claim or liability, including but not limited to direct and indirect costs and reasonable attorneys' fees and expenses incurred by them in defending the claims involving these partnerships.

Jeff and Lavern are also entitled to statutory indemnification from BFLP and AB BI:

A limited partnership shall reimburse a general partner for payments made and indemnify a general partner for liabilities incurred by the general partner in the ordinary course of the activities of the partnership or for the preservation of its activities or property.

Iowa Code § 488.406(3) (emphasis added).

THE GRANTOR TRUSTS

At all times relevant, Jeff was the trustee and Lavern the grantor of the Grantor Trusts. Plaintiffs' asserted claims against Jeff and Lavern by reason of acts performed by Jeff as trustee and Lavern as a holder of certain powers under these trusts. Jeff and Lavern prevailed on all claims. As such, they are entitled to indemnification from the trusts pursuant to the terms of the Grantor Trust Agreement, Article V, including indemnification for all costs and expenses, including attorneys' fees, which may be imposed upon or reasonably incurred by them in connection with or arising out of any claims included in Plaintiffs' Petition by reason of Jeff having served as a trustee and Lavern as a holder of certain powers under the Grantor Trusts.

The Grantor Trust agreement provides:

Article V

F. Every person who is or has been a Trustee of any Trust created hereunder or a holder of any power under this Trust

shall be indemnified and held harmless by such Trust from and against all costs and expenses which may be imposed upon or reasonably incurred by such person in connection with or arising out of any claim, action, suit or proceeding in which such person may be involved by reason of his or her being or having been a Trustee of any Trust hereunder, whether or not such person continues to be a Trustee at the time such costs and expenses are imposed or incurred. As used herein, the term "costs and expenses" shall include, but not be limited to, attorneys' fees and amounts of judgments against and amounts paid in settlement by or on behalf of any such Trustee or holder of any power, including amounts paid to the Trust itself, provided, however, no such person shall be so indemnified: (1) with respect to any matter as to which such person, in any action, suit or proceeding, be finally adjudged to be liable for willful misconduct in the performance of his or her duties as Trustee; or, (2) in the event of a settlement of any such claim, action, suit or proceeding, unless (a) such settlement shall, with the knowledge of the indemnification provided for hereby, be approved by the court having jurisdiction of such action, suit or proceeding; or (b) such settlement shall have been made upon the written opinion of independent legal counsel selected by or in a manner determined by the current independent Trustee or Trustees of said Trust to the effect that there is no reasonable ground of liability for misconduct on the part of such person and that the entire cost of such settlement will not substantially exceed the estimated cost of defending such class action, suit or proceeding to a final conclusion. The foregoing rights of indemnification shall not be exclusive of any other rights to which any such person may be entitled under law.

(Trial Exhibit 1b, pp.16-17, Grantor Trust Art. V(F) (emphasis supplied)).

LAVERN T. BUSSE AND AUDREY F. BUSSE IRREVOCABLE TRUST
AGREEMENT ("ILIT")

Jeff requests an award of his costs, expenses and attorney fees from Plaintiffs pursuant to Iowa Code § 633A.4507 which provides:

In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

"Our supreme court has interpreted the phrase 'justice and equity' to encompass two determinations: the initial determination of whether a party is entitled to recover costs and expenses, and, if so, the secondary determination of the amount of the costs and expenses." *Cooper v. Jordan*, No. 14-0157, 2015 WL 1815996, at *4 (Iowa Ct. App. Apr. 22, 2015) (citing *In re Trust No. T-1 of Trimble*, 826 N.W.2d 474, 491 (Iowa 2013)).

In determining whether a prevailing party is entitled to recover attorney's fees under Iowa Code Section 633A.4507, Iowa Courts examine the following criteria: (a) reasonableness of the parties' claims, contentions, or defenses; (b) unnecessarily prolonging litigation; (c) relative ability to bear the financial burden; (d) result obtained by the litigation and prevailing party concepts; and (e) whether a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons in the bringing or conduct of the litigation. *In re Trust No. T-1 of Trimble*, 826 N.W.2d 474, 491 (Iowa 2013) (quoting *Atwood v. Atwood*, 25 P.3d 936, 947 (OK Civ. App.)).

Plaintiffs added Count XIV to the Petition alleging that Jeff as trustee of the ILIT breached his fiduciary duties by failing to pay premiums owed under two life insurance policies held in the ILIT for the benefit of each of LoriAnn and Lisa, respectively. The Court found that Jeff was entitled to summary judgment on Count XIV as a matter of law as "Plaintiffs' harm is entirely speculative. It is undisputed that the life insurance premium payments in question may be made up." (January 5, 2017 Ruling on Defendants Jeffrey Busse and Lavern Busse's Motion for Partial Summary Judgment at p. 75). Not only was there no damage to Plaintiffs from the failure to pay premiums, the ILIT Agreement plainly provided that Jeff as trustee had no such duty to pay premiums.

The Trustee shall be under no obligation to pay the premiums, dues, assessments or other charges which may become due and payable with respect to any insurance coverage which may become owned by this Trust, nor to see that such payments are made, nor to notify the Grantors or any other person that such payments are or will become due, and the Trustee shall be under no liability to anyone in case such premiums, dues, assessments or other charges are not paid, nor for any result of the failure to make such payments. ILIT, Article II, B.

(Defendants' September 8, 2016, Appendix Part 2, pp. 214 ILIT, Article II(B)).

Jeff prevailed on this claim, the dismissal of the claim by Summary Judgment in his favor shortened rather than prolonged the litigation and it is apparent from the evidence at trial

that LoriAnn and Lisa can bear the financial burden. The Court does not find that LoriAnn and Lisa acted in bad faith, vexatiously or wantonly in bringing this claim but it was directly at odds with the terms of the trust that plainly provided Jeff as Trustee had no duty to pay premiums. Balancing these factors, the Court concludes an award of attorney's fees against Plaintiffs is warranted.

BUSSE INVESTMENTS, INC. ("BI")

Jeff is entitled to indemnification from BI pursuant to Iowa Code § 490.852 which provides:

A corporation *shall* indemnify a *director* who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding.

Iowa Code § 490.852 (2017) (emphasis added).

Iowa Code § 490.856(1) (a) provides for statutory indemnification for an officer of corporations "[t]o the same extent as to a director." Iowa Code § 490.856(1) (a) (2017). Therefore, by the plain language of those statutes, statutory indemnification is available for "reasonable expenses" that are incurred by a corporation's director or officer for defending claims that are asserted against them because of their status as a director or officer. This Court previously ruled that Jeff was "fully successful" in his defense of claims brought against him

in his capacity as an officer and director of BI. (January 19, 2017 Ruling on Third Party Defendant Busse Investment Inc.'s Motion for Partial Summary Judgment). As such, he is entitled to indemnification from BI for his reasonable expenses, including attorneys' fees, incurred in connection with the defense of Count X.

APPLICABLE ATTORNEYS' FEES CASE LAW

The trial court has discretion over the amount of a fee award. *Smith v. Iowa State Univ. of Sci. & Tech.*, 885 N.W.2d 620, 624 (Iowa 2016). "[T]he district court is an expert on the issue of reasonable attorney fees." *Landals v. George A. Rolfes Co.*, 454 N.W.2d 891, 897 (Iowa 1990). "The court had the benefit of observing a lengthy trial. Thus, it was in an ideal position to judge the necessity of time and effort spent by counsel and the rationality of the relationship between the services rendered" and the action for which fees were recoverable. *Lynch v. City of Des Moines*, 464 N.W.2d 236, 240 (Iowa 1990); see also *Evans v. Jeff D.*, 475 U.S. 717, 735-36 (1986) (quoting *Hensley*, 461 U.S. at 436) ("There is no precise rule or formula for determining attorney's fees," rather the process entails a "succession of necessarily judgmental decisions.").

Iowa courts have embraced a two-step process to analyze a fee award where a portion of the claims entitle a party to an

award of fees. See *Smith*, 885 N.W.2d at 625-26; *Lee v. State*, 874 N.W.2d at 648-49. First, the fee award for time "devoted generally to the litigation as a whole" is subject to "an appropriate reduction for unrelated time" spent on claims that are either unsuccessful or are ineligible for fee recovery. *Smith*, 885 N.W.2d at 625. Second, "the court must consider the reasonableness of the hours expended in light of" the result, which "may warrant a further reduction." (*Id.* at 625-26).

Claims that involve "a common core of facts or will be based on related legal theories" require attorneys to devote time "generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis." *Hensley*, 461 U.S. at 435. "Such a lawsuit cannot be viewed as a series of discrete claims." (*Id.* at 435). A court may award "any fees incurred in the litigation involving 'a common core of facts' or 'based on related legal theories.'" *Lee*, 874 N.W.2d at 649 (quoting *Hensley*, 461 U.S. at 435)). The underlying purpose of determining whether claims with and without recoverable fees arise out of a common core of facts is to determine "whether the work for which recovery is sought can be 'deemed to have been "expended in pursuit of"' a claim for which attorney fees are recoverable." *Smith*, 885 N.W.2d at 624 (quoting *Hensley*, 461 U.S. at 435 (quoting *Davis v. Cty. of Los*

Angeles, No. 73-63-WPG, 1974 WL 180, at *3 (C.D. Cal. June 5, 1974))).

Attorneys' fees need not be reduced "simply because the district court did not adopt each contention raised." *Smith*, 885 N.W.2d at 626 (quoting *Hensley*, 461 U.S. at 440). Thus, "dollar-by-dollar attorney fee reductions" are not required for work believed to be unnecessary. See *Smith*, 885 N.W.2d at 626-27. "Rarely is litigation an unbroken string of successes. Just about every legal proceeding involves setbacks." (*Id.* at 626). To reach a conclusion regarding an appropriate reduction in fees, the District court need not "sift through all the legal work done." *Vaughan v. Must, Inc.*, 542 N.W.2d 533, 541 (Iowa 1996). In *Vaughan*, for instance, the Iowa Supreme Court ruled that the district court properly exercised its discretion when it "examined the case as a whole and the success (and failures)" of the party seeking fees and awarded 75 percent of the amount requested. (*Id.* at 541-42).

PLAINTIFFS' "CHILLING EFFECT" ARGUMENT

One of the principle arguments advanced by Plaintiffs is that a full award of fees would have a "chilling effect" that would cause future plaintiffs in similar circumstances to forego exercising their legal rights. They argue Jeff's conduct was less than admirable, the claims brought by Plaintiffs related to incredibly complex trust and partnership arrangements for which

there was little or no precedential guidance and the Court should significantly reduce the fees Defendants seek so as not to punish Plaintiffs for seeking vindication of their legal rights and chill future plaintiffs in similar circumstances from seeking to vindicate their legal rights. Plaintiffs have no Iowa case law, no Iowa statutory authority nor any support in the relevant partnership or trust documents for this argument but cite *CF Rounsville v. Zahl*, 13 Fed.3rd 625, 632 (2nd Circuit 1994). Based on this line of argument, Plaintiffs seek a 50 percent reduction in fees.

The circumstances of this case are not remotely similar to the circumstances of victims of an uncertain civil rights violation that were at issue in *CF Rounsville v. Zahl*. In *Rounsville*, the court was concerned about the potential chilling effect on Section 1983 plaintiffs - who are "the chosen instruments of congress to vindicate a policy of the **highest national priority**" and the court stated it was hesitant to award attorney's fees to victorious defendants in Section 1983 actions. *CF Rounsville v. Zahl*, 13 Fed.3rd 625, 632 (2nd Circuit 1994) (emphasis added). In the present case, Plaintiffs are millionaires who had received inter vivos gifts of millions of dollars and ongoing distributions of vast sums of money. They are certainly not a tool chose by congress to vindicate any public interest. Plaintiffs concede that they could not make

"precise evaluation of the merits of their claims" given the "highly uncertain legal environment." Plaintiffs also acknowledge that their claims were founded on theories that "inherently made it impossible to access their likelihood of succeeding on the merits until the evidence was closed." Plaintiffs certainly had at their disposal very skilled and experienced lawyers, experts and other professionals to help them evaluate their claims. The Court does not see why presenting claims that involve a great deal of uncertainty should be afforded more protection, especially in the absence of any statutory authority or support in the applicable agreements. Plaintiffs' argument that Defendants' fees should be reduced because of the alleged "chilling effect" is rejected.

THE PARTIES' COMPETING METHODOLOGIES

Jeff and Lavern submitted invoices for total fees incurred of \$1,093,702.08 and total expenses incurred of \$129,879.95 for total fees and expenses of \$1,223,582.03. Defendants then went through a methodology of reducing the fee claim for unrelated or unreimbursable time by dividing the case into five time periods during which the proportional amount of time spent on certain issues changed significantly, and then after a review of time entries allocated attorney's fees in each time period according to particular Busse family entities according to the transactions that affected each and removing fees related to

unreimbursable claims such as the counterclaim. Defendants also declined to seek reimbursement for fees related to defending claims related to the Busse Foundation. Based on this methodology as set forth on pages 15 through 21 of Defendants' Fee Application, the Defendants seek an award of attorney's fees and expenses totaling \$965,533.87. This is a reduction of \$258,048.16.

In resisting the Fee Application, Plaintiffs not surprisingly used an entirely different methodology. Plaintiffs reviewed Defendants' 246 pages of time entries and identified entries they allege should not be used to calculate Defendants' hourly "Loadstar". Plaintiffs identify matters such as pre-litigation fees and expenses, fees related to Jeff's termination and protective order, unwinding of BI information co-mingled with other Busse family entities, BI corporate disputes, the alleged unreasonable inclusion of trust protector matter issues, Grantor Trust fee litigation and the assignment and consent issue. See generally pages 11-12 of Plaintiffs' Resistance. Plaintiffs also assert that Mr. Visser's hourly rate should be reduced (seeking a fee reduction of \$50,000) and argue for a 50 percent reduction due to the "chilling effect" issue which the Court addressed above. Plaintiffs urge a fee award of no more than \$245,971.

Setting aside the proposed reductions for (1) "chilling effect"; (2) time attributable to Grantor Trusts; and (3) the reasonableness of lead counsel's hourly rates, Plaintiffs' propose reductions of \$250,838. This is actually quite similar to Defendants' proposed reductions of \$258,048.16.

The Court will briefly address the reasonableness of Mr. Visser's hourly rate of \$410 per hour. The Court is familiar with the hourly rates charged by a number of top tier attorneys in Iowa and finds that Mr. Visser's hourly rate, while perhaps somewhat on the high side, is nonetheless well within the range of rates charged by attorneys with his experience and expertise. The Court accepts his affidavit indicating that he has a single hourly rate for work performed on an hourly basis. Further, his hourly rate has been the subject of regular fee awards to prevailing parties. Plaintiffs' argument does stand against the weight of the marketplace. There is no suggestion that \$410 was not in fact the rate paid by Lavern and Jeff. Moreover, as noted above, this was an extremely demanding, complex and almost one-of-a-kind litigation. The results were extraordinary. The Court therefore rejects Plaintiffs' assertion that Mr. Visser's hourly rate was too high.

A district court need not "sift through all the legal work done" to reach a conclusion regarding an appropriate reduction in fees. *Vaughn v. Must, Inc.*, 542 N.W.2d 533, 531 (Iowa 1996).

Looking at the big picture, Defendants' fees and expenses were quite reasonable and necessarily incurred in defending claims that all arose out of a common core of facts and which were incurred in defending Jeff and Lavern in capacities which entitled Jeff and Lavern to shift fees incurred in their defense to Plaintiffs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendants Jeffrey Busse and Lavern Busse's Application for Attorneys' Fees is GRANTED and judgment is entered against Plaintiffs and in favor of Defendants Jeffrey Busse and Lavern Busse for attorneys' fees and expenses as follows:

(a) \$479,486.57 jointly and severally against each of Plaintiffs LoriAnn Busse, Alexandra Renee Carpentier, Devan Michele Carpentier, and Marie-Josée Carpentier's Grantor Trusts (the LTB 2002 Irrevocable Trust U/D/O December 20, 2002 F/B/O LoriAnn Busse; LTB 2002 Irrevocable Trust U/D/O December 20, 2002 F/B/O Alexandra Renee Carpentier; LTB 2002 Irrevocable Trust U/D/O December 20, 2002 F/B/O Devan Michele Carpentier; LTB 2002 Irrevocable Trust U/D/O December 20, 2002 F/B/O Marie-Josée Carpentier);

(b) \$87,395.17 jointly and severally against each of Plaintiffs LoriAnn Busse and Lisa Carpentier's Dynasty Trusts' capital accounts in the AB BI Note Limited Partnership;

(c) \$330,050.62 jointly and severally against each of Plaintiffs LoriAnn Busse and Lisa Carpentier's capital accounts in the Busse Family Limited Partnership;

(d) \$50,988.96 against Busse Investments, Inc.; and

(e) \$17,612.55 jointly and severally against each of Plaintiffs LoriAnn Busse and Lisa Carpentier.



State of Iowa Courts

Type: OTHER ORDER

Case Number LACV083022
Case Title (BC)LORIANN BUSSE & LISA CARPENTIER ET AL VS JEFFREY BUSSE

So Ordered



John Telleen, District Court Judge,
Seventh Judicial District of Iowa