

<b>DISTRICT COURT CITY &amp; COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202</b>	DATE FILED: December 20, 2019 2:30 PM CASE NUMBER: 2019CV32714
<b>Plaintiff:</b>  <b>ELIZABETH MORIN,</b>  <b>v.</b>  <b>Defendants:</b>  <b>ISS FACILITY SERVICES, INC., and CITY AND COUNTY OF DENVER.</b>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> <hr/> <b>Case Number: 2019CV32714</b>  <b>Courtroom: 414</b>
<b>ORDER RE: DEFENDANTS' MOTION FOR ATTORNEY FEES AND BILL OF COSTS</b>	

**THIS MATTER** comes before me on Defendants ISS Facility Services, Inc. and City and County of Denver's Motion For Attorney Fees And Bill Of Costs ("Defts' Mot. Att'y Fees"), filed on November 12, 2019. Plaintiff Elizabeth Morin did not file a responsive pleading. Having reviewed the parties' filings, the court's file, and applicable law, I **FIND** and **ORDER** as follows:

**I. BACKGROUND**

Plaintiff Morin brought this lawsuit alleging that she suffered injuries and damages when she slipped in an unmarked water hazard at Denver International Airport. It is undisputed that the alleged events occurred on July 13, 2017. Plaintiff Morin filed this lawsuit on Monday, July 15, 2019. Defendants moved to dismiss Plaintiff Morin's claims under C.R.C.P. 12(b)(5) for having been filed after the statutory period had run. I granted the dismissal on the grounds that, despite the conflicting language of C.R.C.P. 6(a)(1), under *Williams v. Crop Prod. Servs., Inc.*, 361 P.3d 1075, 1077-78 (Colo. App. 2015), the statute of limitations for filing her claims expired on Sunday, July 14, 2019. Order Re: Defendants' Motion To Dismiss Plaintiff's Complaint Pursuant To Colo R. Civ. P. 12(B)(5) And Request For Oral Argument (Denver Dist. Ct., Oct. 29, 2019).

## II. STANDARDS OF REVIEW

### A. AWARD OF ATTORNEY FEES

Pursuant to C.R.S. § 13-17-201:

In all actions brought as a result of a death or an injury to person or property occasioned by the tort of any other person, where any such action is dismissed on motion of the defendant prior to trial under rule 12(b) of the Colorado rules of civil procedure, such defendant shall have judgment for his reasonable attorney fees in defending the action.

An award of attorney fees under this section is mandatory. The only limitation on the requirement for an award of fees is that they must be reasonable, as determined by the court. See *Stauffer v. Stegemann*, 165 P.3d 713, 718-19 (Colo. App. 2006).

### B. REASONABLENESS OF ATTORNEY FEES

An award of attorney's fees must be reasonable. *Double Oak Const., L.L.C. v. Cornerstone Dev. Int'l, L.L.C.*, 97 P.3d 140, 152 (Colo. App. 2003). The determination of reasonableness is a question of fact for the court, and its ruling will not be disturbed on review unless patently erroneous and unsupported by the evidence. *Tallitsch v. Child Support Servs., Inc.*, 926 P.2d 143, 147 (Colo. App. 1996). The initial estimate by the court of a reasonable attorney's fee is reached by calculation of the "lodestar" amount, which represents the number of hours reasonably expended multiplied by a reasonable hourly rate and carries with it a strong presumption of reasonableness. *Spensieri v. Farmers Alliance Mut. Ins. Co.*, 804 P.2d 268, 270 (Colo. App. 1990).

Colo. R. Civ. P. 1.5(a) sets forth eight factors, among others, which a court must consider in determining whether an attorney's fee is reasonable. See C.R.C.P. 1.5(a); *City of Wheat Ridge v. Cervený*, 913 P.2d 1110, 1115-16 (Colo. 1996). The eight factors set forth in C.R.C.P. 1.5(a) to be considered in determining the reasonableness of attorney's fees are:

(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.

### **III. ANALYSIS**

Three attorneys, from the law firm Hall & Evans, L.L.C., worked on this matter on Defendants' behalf: Cash K. Parker, Clinton L. Coberly, and Brenden W. Desmond. Defts' Mot. Att'y Fees, 3. Messrs. Parker and Coberly each billed at a rate of \$200.00 per hour. Mr. Desmond billed at a rate of \$170.00 per hour. I find that these rates are reasonable for civil litigation legal services in the Denver metropolitan area.<sup>1</sup> In reviewing, analyzing, and drafting the Motion to Dismiss in this matter, Mr. Parker expended 1.6 hours of time; Mr. Coberly, 12.9 hours; and Mr. Desmond, 5.3 hours. Defts' Mot. Att'y Fees, 4. The time expended is reasonable in light of the issues presented in this personal injury litigation, which also included claims for vicarious liability. See Compl., 4-7. These times expenditures are adequately supported by the billing records accompanying Defendants' fee motion. Ex. A to Defts' Mot. Att'y Fees. I find that the \$3,801.00 in attorney fees incurred by Defendants' counsel was necessarily and reasonably incurred.

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<sup>1</sup> See, e.g., *MemoryTen, Inc. v. LV Admin. Servs., Inc.*, 2013 WL 1154492, at \*3 (D. Colo. Mar. 19, 2013) (finding \$465–\$495 is a reasonable hourly rate for an attorney with over 25 years of experience); *Hitchens v. Thompson Nat'l Properties, LLC*, 2014 WL 2218094, at \*2 (D. Colo. 2014) (collecting cases holding \$400 to \$550 as a reasonable hourly fee for experienced litigators, and finding \$405 to \$430 an hour to be reasonable rates); *Nero v. Am. Family Mut. Ins. Co.*, 2013 WL 5323191, at \*9 (D. Colo. 2013) (collecting cases holding \$430 to \$495 to be a reasonable rate and finding \$500 an hour a reasonable rate for a lead attorney in a case); *Barnett v. Bd. of Cnty. Comm'rs of Montrose*, 2015 U.S. Dist. LEXIS 173770, \*15 (D. Colo. Dec. 14, 2015) (reasonable hourly rate for lead counsel with nine years experience was \$400 per hour and \$300 was a reasonable hourly rate for co-counsel with seven years experience); *DeVaul v. TK Mining Servs. L.L.C.*, 2014 WL 3861111 (D. Colo. Aug. 6, 2014), at \*3 (collecting cases holding at least \$400 an hour as a reasonable fee for experienced litigators).

Defendants further seek to recover their filing fees incurred in this matter, under C.R.S. § 13-16-122. These costs are supported by Defendants' pleadings. Ex. A to Defts' Mot. Att'y Fees. I find that the filing fees in the amount of \$219.00 were reasonably and necessarily incurred in the course of this litigation.

#### **IV. CONCLUSION AND ORDER**

For the foregoing reasons, I hereby award Defendants ISS Facility Services, Inc. and City and County of Denver **\$3,801.00** in attorney fees and **\$219.00** in costs, to be paid by Plaintiff Elizabeth Morin.

As ordered in my Order Re: Defendants' Motion To Dismiss Plaintiff's Complaint Pursuant To Colo R. Civ. P. 12(B)(5) And Request For Oral Argument, issued October 29, 2019, Plaintiff Morin's claims against Defendants have been dismissed with prejudice. This Order is hereby the **FINAL ORDER** in this matter. The time for filing any notice of appeal shall run from the issuance of this Order.

**SO ORDERED** this Friday, December 20, 2019.

BY THE COURT:



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Judge Robert L. McGahey, Jr.  
Denver District Judge