

Phillips v. Platt, et al.

Defendant Platt's Motion For Attorneys' Fees under Rule 54(d) and D.C.Colo.L Civ. R 54.3

Page 2

C.R.S. §13-17-201 provides in part:

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....

When Colorado state law tort claims are dismissed under Fed. R. Civ. P.

12(b).Federal courts are to use §13-17-201 as a fee recovery provision. *Jones v.*

Denver Post Corp., 203 F.3d 748, 757 (10th Cir. 2000).

The action brought by the Plaintiffs was clearly brought "as a result of a death or injury to person." Plaintiffs alleged that the death occurred as a result of torts committed by the Defendants. The statute therefore applies and entitles Platt to an award of attorneys' fees.

II. ATTORNEYS' FEES CLAIMED

In defending the action, two law firms provided Platt with legal services: (1) Sasscer, Clagett & Bucher, of Upper Marlboro, Maryland and (2) Messner Reeves LLP of Denver Colorado.

A. Services by Sasscer, Clagett & Bucher ("SCB")

Attached is the affidavit of Phillip R. Zuber, Esquire, which describes under oath the summary of the relevant qualifications and experience of each person at SCB providing legal services for Platt; a description of the services rendered; the amount of

Phillips v. Platt, et al.

Defendant Platt's Motion For Attorneys' Fees under Rule 54(d) and D.C.Colo.L Civ. R 54.3

Page 3

time spent; the hourly rate charged; and the total amount claimed. The total amount claimed for services and costs by SCB is \$23,714.99.

B. Services by Messner Reeves, LLP

Attached is the affidavit of Bruce A. Montoya, Esquire, which describes under oath the summary of the relevant qualifications and experience of each person at Messner, Reeves providing legal services for Platt; a description of the services rendered; the amount of time spent; the hourly rate charged; and the total amount claimed. The total amount claimed for services and costs by Messner Reeves is \$9,854.90.

III. REQUEST FOR RELIEF

Having successfully defended on a Rule 12(b)(6) Motion the Plaintiffs' action brought "as a result of the death" of a person and sounding in tort, Platt is entitled to an award of attorneys' fees. Platt requests the entry of judgment against the Plaintiffs in the amount of **\$33,569.89**.

Phillips v. Platt, et al.

Defendant Platt's Motion For Attorneys' Fees under Rule 54(d) and D.C.Colo.L Civ. R
54.3

Page 4

I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

Executed on this 10th day of April 2015.

Respectfully submitted,

/s/ Phillip R. Zuber (w/consent)

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Arms*

Phillips v. Platt, et al.

Defendant Platt's Motion For Attorneys' Fees under Rule 54(d) and D.C.Colo.L Civ. R 54.3

Page 5

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of April 2015, I electronically filed the foregoing **Defendant Platt's Motion For Attorneys' Fees under Rule 54(d) and D.C.Colo.L Civ. R 54.3** was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filings to the following:

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