

1994 WL 396417

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United States District Court,
E.D. Pennsylvania.

Bruce S. MARKS, et al.
v.
William STINSON, et al.

Civ. A. No. 93-6157. | July 21, 1994.

Attorneys and Law Firms

Paul R. Rosen, Spector, Gadon & Rosen, P.C., Philadelphia, PA, John P. Krill, Jr., Kirkpatrick & Lockhart, Harrisburg, PA, Jeffrey M. Goldstein, Spector, Gadon and Rosen, P.C., Philadelphia, PA, Linda J. Shorey, Robert L. Byer, Kirkpatrick and Lockhart, Harrisburg, PA, for plaintiff Bruce Marks.

Bruce Marks, pro se.

Paul R. Rosen, Jeffrey M. Goldstein, Spector, Gadon & Rosen, P.C., Philadelphia, PA, for plaintiff Kathy Steck, on behalf of Voters of Second District.

Paul R. Rosen, Spector, Gadon & Rosen, P.C., Michael J. Rotko, Drinker, Biddle & Reath, Jeffrey M. Goldstein, Spector, Gadon & Rosen, P.C., Philadelphia, PA, for plaintiff Republican State Committee of PA.

James B. Jordan, City of Philadelphia Law Dept., Michael F. Eichert, Deputy City Solicitor, Frederick C. Hanselmann, Mylotte, David & Fitzpatrick, Philadelphia, PA, for defendants Philadelphia County Bd. of Elections, John F. Kane.

Ralph J. Teti, Deborah R. Willig, Catherine Merino Reisman, Willig, Williams & Davidson, Frederick C. Hanselmann, Mylotte, David & Fitzpatrick, Philadelphia, PA, for defendant William Stinson.

A. Charles Peruto, Sr., James B. Jordan, City of Philadelphia Law Dept. Michael F. Eichert, Deputy City Sol., Frederick C. Hanselmann, Mylotte, David & Fitzpatrick, Philadelphia, PA, for defendant Margaret M. Tartaglione.

Luther E. Weaver, Bowser, Weaver & Cousounis, P.C., James B. Jordan, City of Philadelphia Law Dept., Michael F. Eichert, Deputy City Sol., Frederick C. Hanselmann, Mylotte, David & Fitzpatrick, Philadelphia, PA, for defendant Alexander Z. Talmadge, Jr.

Paul R. Rosen, Spector, Gadon & Rosen, P.C., Philadelphia, PA, for respondents Manuel Lorenzo, Lydia

Colon, Lillian Cruz, Diana Irizarry, Ruth Martinez, Zoraida Rodriguez and Yesenia Vasquez.

Arthur Makadon, Darryl J. May, Ballard, Spahr, Andrews and Ingersoll, Philadelphia, PA, for movants PA State Senators Mellow, Lincoln, Bodack, O'Pake, Afflerbach, Stapleton, Reibman, Fumo, Andrezeski, Belan, Bortner, Dawida, Fattah, Jones, Lavalley, Lewis, Musto, Pecora, Porterfield, Scanlon, Schwartz, Stewart, Stout, Williams.

Thomas A. Allen, Laura W. Brewer, White and Williams, Philadelphia, PA, for amicus curiae Committee of Seventy.

Richard A. Sprague, Sprague, Creamer & Sprague, Denise Pallante, Sprague & Sprague, Charles Hardy, Philadelphia, PA, for movants Ida Dougherty, Daniel J. Sears, Josephine Martin, Mary Martin, Joseph J. Jordan, Anne Jordan, Mary Sullivan, Mary Mendoloski, Anna Hagan, Robert W. Les.

Teresa Carr Deni, Renee Cardwell Hughes, Law Office of Willie Lee Nattiel, Jr., Philadelphia, PA, for intervenor-defendant Matthew Gogojewicz.

Teresa Carr Deni, Philadelphia, PA, for intervenors-defendants Mark Lopez, Mary Coyle, Mary McCauley, Greg Hampson, Don Brophy, Patricia Hughes, John P. Rooney, Geraldine Penn, Daniel J. Haney, IV, Joseph Larry Geek, Rosemary Farnon, Meyer Eikov, Al Savran, Felix Saldutti, Anthony Ianarelli, Olga Slatylak, et al.

Douglas B. MacBeth, Chester Springs, PA, for movant Republican Caucus of PA Senate.

Opinion

MEMORANDUM

NEWCOMER, District Judge.

*1 Presently before the court are plaintiffs' post-trial motions for Incentive Awards and Quality Enhancement, as well as plaintiffs' demand for damages, fees, and costs.

I. Background

Plaintiffs Bruce S. Marks and a group of Latino voters in the Second Senatorial District (Kathy Steck, Emanuel Lorenzo, Lydia Colon, Lillian Cruz, Diana Irizarry, Ruth Martinez, Zoraida Rodriguez, and Yesenia Vasquez), and the Republican State Committee brought this case against defendants William Stinson, the William Stinson

Campaign, and the Philadelphia County Board of Elections alleging massive voter fraud and civil conspiracy. Following a series of hearings, the court issued permanent injunctive relief against defendants and found defendants liable to plaintiffs under several different theories.

A permanent injunction ordered that defendant Stinson's victory in the November 18, 1993 Special Election was void, as contrary to law and that plaintiff Bruce Marks received a plurality of the legally cast ballots. Consequently, defendant Stinson was removed from office and Marks was instated as the Senator from the Second Senatorial District of Philadelphia, Pennsylvania.

Defendant County Board of Commissioners, acting in the capacity of the Board of Elections, was found to have violated plaintiffs' First Amendment rights, Fourteenth Amendment substantive due process and equal protection rights, the Civil Rights Act, and the Voting Rights Act.

II. Plaintiffs' Motion for Incentive Awards

Certain plaintiffs request \$5,000 as an incentive award for their roles in filing this suit which allegedly benefitted all of the voters in the Second Senatorial District of Pennsylvania. This motion is made by eight individually named plaintiffs: Kathy Steck, Manuel Lorenzo, Lydia Colon, Lillian Cruz, Diana Irizarry, Ruth Martinez, Zoraida Rodriguez, and Yesenia Vasquez. The plaintiffs assert that it is a well-established principle in civil rights cases that individuals who devote considerable time and energy to obtaining a legal remedy from which others benefit are entitled to incentive awards. Although plaintiffs prevailed and in effect benefitted persons not parties to the suit, an incentive award is not instantly appropriate especially in light of the other damages, costs, and fees which will be awarded.

Plaintiffs cite *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400 (1968) as support for their claim for an incentive award. In *Newman* the Court held that a civil rights plaintiff is entitled to attorney's fees if he prevails. The case, while focusing on attorney's fees, does not discuss whether incentive awards are appropriate in such an action as is presently before the court. Furthermore, incentive awards are usually limited to class actions. *In re Jackson Lockdown/MCO Cases*, 107 F.R.D. 703 (E.D.Mich.1985); *Bryan v. Pittsburgh Plate Glass Co.*, 59 F.R.D. 616 (W.D.Pa.1973), *aff'd*, 494 F.2d 799 (3d Cir.1974), *cert. denied*, 419 U.S. 900 (1974).

III. Claim for Attorneys' Fees and Costs Pursuant to 42 U.S.C. § 1988 and Fed.R.Civ.P. 54(d)

*2 Prevailing plaintiffs are entitled to a reasonable

attorney's fee as part of the cost of litigation. 42 U.S.C. § 1988. Plaintiffs are also entitled to costs pursuant to Fed.R.Civ.P. 54(d). Defendants have requested that the amount of the award granted the plaintiffs be reduced in certain respects. For the reasons which follow, the court will award the following fees and costs: Specter, Gadon & Rosen will be granted \$437,318.00 in fees and \$137,625.70 in costs; Kirkpatrick & Lockhart will be granted \$93,397.00 in fees and \$17,771.32 in costs.

A. 42 U.S.C. § 1988

Title 42, United States Code, Section 1988 indicates that the plaintiffs in a civil rights action are entitled to be reimbursed for attorneys' fees, secretarial, out-of-pocket, and messenger expenses. Time spent drafting a fee application should be included in the request.

The rate the attorneys and their staff charge, however, must be reasonable. *See, e.g., Delaware Valley Citizens' Council for Clean Air v. Pennsylvania*, 581 F.Supp. 1412, 1419 (E.D.Pa.1984). The United States District Court for the Eastern District of Pennsylvania has outlined a two step procedure for determining a reasonable attorney's fee award. First, the number of hours reasonably expended on litigation is multiplied by a reasonable hourly rate to determine the fee amount to which the plaintiffs are entitled (lodestar). Second, the court can then adjust the fee upwards or downwards by "results obtained" such as the quality of work and the complexity of the issues. *Id.* The plaintiffs bear the burden of "establishing entitlement to the award claimed and any adjustment to the 'lodestar.'" *Id.* (quoting *Hensley v. Eckerhart*, 461 U.S. 424 (1983)).

B. Marks' Pro Se Representation

Defendants object to plaintiffs' request for legal fees for Bruce Marks' time on the grounds that he is not entitled to fees as a pro se litigant. Plaintiffs have requested \$188,420.00 as the amount that represents the fee for Marks' pro se efforts. Marks contends that he is not seeking attorney's fees for the services he rendered on his own behalf. Rather, Marks claims that he ought to be reimbursed for the work he completed on behalf of the other plaintiffs. The defendants assert that Marks ought only be entitled to an award of the fees which the firm Kirkpatrick & Lockhart requested. Kirkpatrick & Lockhart, hired by Marks in November of 1993, represented Marks solely at the final hearing and was not involved with the state court proceedings.

The Supreme Court has interpreted 42 U.S.C. § 1988 to assume a paying relationship between an attorney and a client. *Kay v. Ehrler*, 499 U.S. 432 (1991). The "purpose of the statute was best served when plaintiff hired an

objective attorney—rather than serving as both claimant and advocate—to provide a ‘filtering of meritless claims.’ ” *Id.* at 435. In light of the purpose of section 1988, Marks’ pro se representation would disqualify him from receiving an award of attorney’s fees for his own legal work.

*3 Further, a primary reason for section 1988 is to “provide access to the courts to those individuals who have ‘little or no money with which to hire a lawyer.’ ” *Lawrence v. Staats*, 586 F.Supp. 1375 (10th Cir.1984) (quoting S.Rep. No. 94–1011, 94th Cong., 2d Sess. 2 (1976), U.S.C.C.A.N. 1978, pp. 5908, 5910). In addition, “a pro se plaintiff, especially an attorney, is not hampered from obtaining counsel and gaining access to the courts by poverty; he appears himself.” *Id.*

Marks’ legal efforts were instrumental in the plaintiffs’ successes. Even though Marks expended significant time and energy in his legal efforts, the court cannot consider his efforts as an exception to the rule. A party in an action is expected to work toward a common goal in the litigation’s preparation and proceedings. As a plaintiff, Marks, even if he had not been an attorney, would have been expected to cooperate with the lawyers in developing his case.

C. Amount Payable to Plaintiffs Must Be Reduced to Exclude Expenses Related to Other Proceedings.

Defendants argue that plaintiffs should not receive attorneys’ fees for time spent on related state court actions. The court agrees. In order to determine if the legal efforts employed for the administrative proceedings may be compensable under section 1988, the test is whether the work was “ ‘both useful and of a type ordinarily necessary to advance the ... litigation’ to the point where the party succeeded.” *Pennsylvania v. Delaware Valley City Council*, 478 U.S. 546, 556 (1986) (quoting *Webb v. Board of Ed. of Dyer County*, 471 U.S. 234 (1985)). The plaintiffs’ legal work which was completed for the initial state court proceedings was distinct from the legal work needed for the federal court action. While both cases arise from the same set of facts, each action involved a

Calculation of Attorneys’ Fees

different set of claims. While the initial work may have been useful, it was not, however, necessary to advance the litigation to the point where the party succeeded. *Id.*

D. Attorneys’ Fees Pursuant to 42 U.S.C. § 1988

The firms of Specter, Gadon & Rosen and Kirkpatrick & Lockhart were very successful in their representation. Plaintiffs’ counsel were well-organized, successfully coordinated dozens of witnesses and volumes of documents, and conducted their case within an extremely abbreviated time frame. However, the court will reduce all but one of plaintiffs’ counsels’ rates because of the number of attorneys and the overwhelming nature of the evidence in favor of the plaintiffs. Accordingly, counsels’ rates will be reduced to reflect a reasonable rate in light of similar rates charged for comparable work and the specific circumstances of this case. Accordingly, approximately sixty percent of the rate requested by the attorneys and paralegals of Specter, Gadon & Rosen and Kirkpatrick & Lockhart will be awarded.

There is, however, one exception to the reduction in award of counsels’ fees. J.P. Krill of Kirkpatrick & Lockhart will be awarded his full fee request. While Krill’s participation at trial was limited as compared to Rosen’s, his trial work was exemplary. Krill’s effective and concise cross-examination of the defendants’ expert witness Dr. Shaman was exemplary and dealt with one of the most critical issues before the court. The court will therefore compensate Krill at the rate he requested.

*4 The court acknowledges that the plaintiffs are entitled to reasonable paralegal and para-professional expenses. *Turner v. Carothers*, 1986 WL 1433 (N.D.Ill.1986) (citing *Cameo Convalescent Center, Inc. v. Senn*, 738 F.2d 836, 846 (7th Cir.1984)). The court will award the plaintiffs approximately sixty percent of those fees requested by the para-professionals.

Marks v. Stinson, Not Reported in F.Supp. (1994)

NAME	RATE CHARGED	AMT AWARDED	HOURS	TOTAL
ATTORNEYS & PARALEGALS				
P.R. Rosen	325.00	200.00	943.4	188,680.00
D.J. Dugan	225.00	140.00	144.6	20,244.00
N. Korup	225.00	140.00	9.3	1,302.00
B.S. Marks	200.00	0.00	942.1	0.00
J.M. Goldstein	200.00	120.00	779.5	93,540.00
G.M. Vinci, Jr.	180.00	110.00	359.6	39,556.00
M.M. Stuski	175.00	110.00	455.5	50,105.00
S.K. Gibson	135.00	80.00	39.2	3,136.00
				396,563.00

NON-LAWYERS

R.J. Weitzman	90.00	50.00	28.7	1,435.00
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Marks v. Stinson, Not Reported in F.Supp. (1994)

M. Camlin	90.00	50.00	609.0	30,450.00
C.A. Siderio	75.00	50.00	4.0	200.00
J.C. Lawson	90.00	50.00	43.1	2,155.00
C. McQuillen	90.00	50.00	1.1	55.00
R. Colantuono	90.00	50.00	129.2	6,460.00
				40,755.00

TOTAL AWARDED

Calculation of Attorneys' Fees
 SPECTER, GADON & ROSEN
 NAME RATE CHARGED AMT AWARDED
 HOURS TOTAL
 ATTORNEYS & PARALEGALS
 P.R. Rosen 325.00 200.00 943.4 188,680.00
 D.J. Dugan 225.00 140.00 144.6 20,244.00
 N. Korup 225.00 140.00 9.3 1,302.00
 B.S. Marks 200.00 0.00 942.1 0.00
 J.M. Goldstein 200.00 120.00 779.5 93,540.00
 G.M. Vinci, Jr. 180.00 110.00 359.6 39,556.00
 M.M. Stuski 175.00 110.00 455.5 50,105.00
 S.K. Gibson 135.00 80.00 39.2 3,136.00

---- 396,563.00
 NON-LAWYERS
 R.J. Weitzman 90.00 50.00 28.7 1,435.00
 M. Camlin 90.00 50.00 609.0 30,450.00
 C.A. Siderio 75.00 50.00 4.0 200.00
 J.C. Lawson 90.00 50.00 43.1 2,155.00
 C. McQuillen 90.00 50.00 1.1 55.00
 R. Colantuono 90.00 50.00 129.2 6,460.00

 ---- 40,755.00 TOTAL AWARDED \$437,318.00

KIRKPATRICK & LOCKHART

PRE-INJUNCTION

	RATE CHARGED	AMT AWARDED	HOURS	AMT GRANTED
R.L. Byer	225.00	140.00	89.60	12,544.00
	240.00	140.00	3.50	490.00
H.W. Turner	250.00	150.00	9.20	1,380.00

Marks v. Stinson, Not Reported in F.Supp. (1994)

W.E.D. Smith	170.00	100.00	71.70	7,170.00
M.K. Willard	95.00	60.00	26.05	1,563.00
E.W. Diggs	90.00	50.00	40.40	2,020.00
Para-				
professionals	25.00 to	30.00	2.50	75.00
	30.00			

TRIAL REPRESENTATION

R.L. Byer	240.00	140.00	92.40	12,936.00
J.P. Krill	220.00	220.00	165.30	36,366.00
W.E.D. Smith	180.00	110.00	3.90	429.00
L.J. Shorey	135.00	80.00	163.60	13,088.00
D.R. Overstreet	90.00	50.00	97.70	4,885.00
V. Marsico	75.00	50.00	3.80	190.00
M. Rizzuto	50.00	30.00	0.40	12.00
Para-				
professionals	25.00 to	30.00	8.30	249.20
	75.00			

TOTAL AWARDED

KIRKPATRICK & LOCKHART PRE	INJUNCTION				
RATE CHARGED	AMT AWARDED	HOURS	AMT		
GRANTED	R.L. Byer	225.00	140.00	89.60	12,544.00
		240.00	140.00	3.50	490.00
	H.W. Turner	250.00	150.00		
		9.20	1,380.00	W.E.D. Smith	170.00 100.00 71.70
		7,170.00	M.K. Willard	95.00 60.00 26.05	1,563.00
	E.W. Diggs	90.00 50.00 40.40	2,020.00	Para-professionals	
		25.00 to 30.00	2.50 75.00 30.00	TRIAL	
	REPRESENTATION	R.L. Byer	240.00 140.00 92.40		
			12,936.00	J.P. Krill	220.00 220.00 165.30
			36,366.00	W.E.D. Smith	180.00 110.00 3.90 429.00
				L.J. Shorey	135.00 80.00 163.60 13,088.00
				D.R. Overstreet	90.00 50.00 97.70 4,885.00
				V. Marsico	75.00 50.00 3.80
					190.00
				M. Rizzuto	50.00 30.00 0.40
					12.00
				Para-professionals	25.00 to 30.00 8.30 249.20
					75.00-----
				TOTAL AWARDED	\$93,397.00

E. Costs Pursuant to 42 U.S.C. § 1988 and Fed.R.Civ.P. 54(d)

Plaintiffs seek various out-of-pocket costs incurred by their counsel in the course of the litigation. Section 1988 authorizes the court to shift the out-of-pocket expenses which are customary elements of the attorney's fee. The court also has wide discretion in granting costs and attorneys' fees. Fed.R.Civ.P. 54(d)(2). Defendants make several objections attacking the reasonableness of time spent by plaintiffs' counsel in performing certain tasks related to the prosecution of the case.

The court acknowledges that the plaintiffs are entitled to recover fees and expenses associated with the costs of litigation. Those costs which are traditionally included in the calculation of an attorney's fee can be recovered by the plaintiffs either in whole or part. Further, reasonable photocopying, postage, long distance telephone calls, messenger, and transportation and parking costs are

TOTAL REQUESTED COSTS:

183,000.28

TOTAL COSTS GRANTED:

137,625.70

traditionally considered part of a reasonable attorney's fee. If the plaintiffs' request for these costs is reasonable and well-documented, then the plaintiffs may recover those out-of-pocket expenses pursuant to the statutory authority of section 1988 to shift attorney's fees. *Sexcius v. District of Columbia*, 839 F.Supp. 919, 927 (D.D.C.1993).

1. Spector, Gadon & Rosen's Costs

***5** The court does not consider the plaintiffs' claims for counsels' meals, overdue library books, video tapes, and newspapers to be justifiable expenses under section 1988. Further, the court finds the plaintiffs' counsels' expenditures on local transportation and photocopying to be unreasonable and excessive.

Defendants contest the \$61,861.86 charge for duplication. Defendants assert that the charge ought to be itemized more specifically. The court recognizes that the length of this proceeding, the volume of documents, and the number of parties involved necessitated a large reproduction expenditure. While the court does not take issue with the plaintiffs' volume of copies, the court will only award fees in the amount of \$0.15 per copy as compared with the \$0.25 charge Spector, Gadon and Rosen requested. The plaintiffs will be awarded \$37,117.12.

Therefore, Spector, Gadon & Rosen's request for costs will be granted in the amount of \$137,625.70, representing a reduction of \$45,374.58.

Itemized expenses which are not covered.

Library fine for Marks' overdue books	\$ 20.00
Newspapers	27.75
Meals	913.20
Paul Rosen's tickets	480.00
Videotapes	255.00

TOTAL DEDUCTED

Costs which will be granted.

	Amount Requested	Amount Granted.
Transportation	3,656.10	\$ 1,218.70
Duplicating	61,861.86	20,620.62
Other expenses	115,786.38	115,786.38

TOTAL GRANTED

TOTAL REQUESTED COSTS: 183,000.28
 TOTAL COSTS GRANTED: 137,625.70
 Itemized expenses which are not covered. Library fine for Marks' overdue books \$ 20.00
 Newspapers 27.75
 Meals 913.20
 Paul Rosen's tickets 480.00
 Videotapes 255.00

 TOTAL DEDUCTED \$1,695.95
 Costs which will be granted. Amount Requested Amount Granted.
 Transportation 3,656.10 \$ 1,218.70
 Duplicating 61,861.86 20,620.62
 Other expenses 115,786.38
 115,786.38

 TOTAL GRANTED \$137,625.70

TOTAL REQUESTED:	Pre-injunction	\$ 5,115.51
	Trial Representation	12,655.81
TOTAL GRANTED:		\$17,771.32

F. Rosen's Fees and Expenses

The plaintiffs claim that they ought to be reimbursed for Rosen's travel fees. Rosen lists his travel expenses as part of his legal fees. Rosen asserts that he had to shorten and change his vacation in Florida so that he could return to a hearing in Philadelphia. Rosen, however, knew of his legal obligation to his clients when he embarked on his trip. He was aware that there was a significant possibility that he would have to return to Philadelphia to represent his clients. Accordingly, the court will not award him the difference it cost him to change his flight.

G. Margaret Stuski's Fees

Defendants object to plaintiffs' request for attorneys' fees for Margaret Stuski. Defendants contend that this time should be excluded because Stuski is not associated with Specter, Gadon & Rosen. As a lawyer licensed to practice in Pennsylvania, Stuski was affiliated with Specter, Gadon & Rosen in connection with prosecuting plaintiffs'

2. Kirkpatrick & Lockhart's Costs

In light of the fact that Kirkpatrick & Lockhart had to travel from Pittsburgh to Philadelphia, and their expenses are reasonable, the court will grant the firm their total cost request.

case. Specter, Gadon & Rosen employed Stuski specifically for her expertise in election law and Senate procedures. Those legal fees associated with Stuski's work will be awarded to the plaintiffs.

H. Motion for a Quality Enhancement

*6 Plaintiffs contend that their counsel deserve additional compensation for their skillful legal efforts. While upward enhancements of the lodestar amount are permissible, "such modifications are proper only in certain 'rare' and 'exceptional' cases, supported by both 'specific evidence' on the record and detailed findings by the lower courts." *Pennsylvania v. Delaware Valley City Counsel*, 478 U.S. 546 (1986). While the plaintiffs' counsel were indeed successful and their representation noteworthy, especially chief trial counsel Paul Rosen, the evidence was overwhelmingly in favor of the plaintiffs. Accordingly, plaintiffs' motion for a quality enhancement will be denied.

IV. Claim for Punitive Damages

Plaintiffs cite eight counts which the defendants allegedly violated. As a result of each alleged violation, the plaintiffs seek punitive damages pursuant to 42 U.S.C. § 1983.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and the laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983.

Plaintiffs allege that they suffered irreparable harm for which there is no adequate legal remedy and that the defendants' acts were intentional, malicious, abusive, heinous, and so far beyond the bounds of reasonableness as to entitle plaintiffs to an award of punitive damages.

The Supreme Court has held that punitive damages in actions under 42 U.S.C. § 1983 are "available when defendant's conduct is shown to be motivated by evil motive or intent or when it involves reckless or callous indifference to federally protected rights of others." *Smith v. Wade*, 461 U.S. 30 (1983). The "threshold standard for allowing punitive damages for reckless or callous indifference applies even in a case ... where the underlying standard of liability for compensatory damages is also one of recklessness." *Id.* at 31.

After considering all the testimony and the nature of the conduct of defendant Stinson, plaintiffs will be awarded punitive damages. Private parties involved in a conspiracy can be liable under 42 U.S.C. § 1983. To act under color of state law, the fact that the actor willfully participated in joint activity with the state or its agents is sufficient. *Adickes v. Fress & Co.*, 398 U.S. 144, 152 (1970). *See also Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 941 (1982). Although Stinson is a private party, his

involvement in the civil conspiracy with State actors made him subject to punitive damages available under section 1983. Stinson knew of the conspiracy and knowingly and willfully participated in it. Stinson could have prevented much of the illegal activity previously described in the court's Findings of Fact and Conclusions of Law. However, Stinson participated, organized, and openly ratified illegal activities in furtherance of the conspiracy. In light of this and the previously outlined findings, the plaintiffs' request for an award of punitive damages will be granted. Defendant Stinson will be ordered to pay the plaintiffs \$25,000 in punitive damages.

V. Conclusion

*7 Plaintiffs' demand for an award of attorneys' fees will be granted in an amount as previously discussed. Plaintiffs' motions for an incentive award and an enhancement, however, will be denied. In addition the court will levy punitive damages against William Stinson.

ORDER

AND NOW, this 21st day of July, 1994, upon consideration of the following motions, and responses thereto, and consistent with the foregoing Memorandum Opinion, it is hereby ORDERED as follows:

1. Plaintiffs' Motion for an Incentive Award is DENIED;
2. Plaintiffs' Motion for Quality Adjustment is DENIED.

IT IS FURTHER ORDERED that plaintiffs' are awarded fees and costs in the amount of SIX HUNDRED EIGHTY SIX THOUSAND ONE HUNDRED TWELVE DOLLARS AND TWO CENTS (\$686,112.02).

IT IS FURTHER ORDERED that defendant William Stinson is liable to plaintiffs for punitive damages in the amount of TWENTY FIVE THOUSAND DOLLARS (\$25,000).

AND IT IS SO ORDERED.