

6-18-2012

Silicon Intern. Ore, LLC v. Monsanto Co. Augmentation Record Dckt. 39409

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In the Supreme Court of the State of Idaho

SILICON INTERNATIONAL ORE, LLC, an)
Idaho limited liability company,)

Plaintiff-Appellant,)

v.)

MONSANTO COMPANY, a Delaware)
corporation, and WASHINGTON GROUP)
INTERNATIONAL, INC., an Ohio)
corporation,)

Defendants-Respondents.)

ORDER GRANTING MOTION TO
AUGMENT

Supreme Court Docket No. 39409-2011
Caribou County Docket No. 2009-366

LAW CLERK

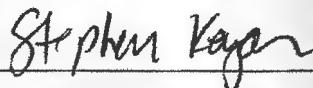
RESPONDENT WASHINGTON GROUP INTERNATIONAL, INC.'S MOTION TO AUGMENT was filed by counsel for Respondent Washington Group International Inc. on June 12, 2012. Therefore, good cause appearing,

IT HEREBY IS ORDERED that RESPONDENT WASHINGTON GROUP INTERNATIONAL INC.'S MOTION TO AUGMENT be, and hereby is, GRANTED and the augmentation record shall include the documents listed below, file stamped copies of which accompanied this Motion:

1. Memorandum Decision and Order on Defendants' Motions for Costs and Attorney Fees, file-stamped March 9, 2012; and
2. Judgment, file-stamped March 20, 2012.

DATED this 18th day of June, 2012.

For the Supreme Court



Stephen W. Kenyon, Clerk

cc: Counsel of Record

AUGMENTATION RECORD

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DEPUTY

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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CARIBOU

SILICON INTERNATIONAL ORE, LLC, AN IDAHO LIMITED LIABILITY COMPANY,)	
)	Case No: CV-2009-0000366
PLAINTIFF,)	
VS)	MEMORANDUM DECISION AND ORDER ON DEFENDANTS' MOTIONS FOR COSTS AND ATTORNEY FEES
MONSANTO COMPANY, A DELAWARE CORPORATION AND WASHINGTON GROUP INTERNATIONAL, INC., AN OHIO CORPORATION,)	
)	
DEFENDANTS.)	

This matter is before the Court on Defendants', Monsanto Company (Monsanto) and Washington Group International, Inc. (WGI), respective motions for attorney fees and costs. Plaintiff, Silicon International Ore, LLC (SIO), objected to both Monsanto's and WGI's requests for attorney fees and costs, filing a memorandum in opposition to both parties' motions. This matter was argued to the Court on February 10, 2012. Following argument, the Court took this matter under advisement. The Court has considered the parties' arguments, both set forth in their respective briefing and as presented at oral argument, and now issues its Memorandum Decision and Order.

COURSE OF PROCEEDING

SIO filed its Complaint in this matter on December 31, 2009. SIO's Complaint asserted four (4) separate claims for relief against Monsanto and two (2) separate claims

for relief against WGI. Both parties moved for summary judgment against SIO and its various claims. On September 21, 2011, the Court entered its Memorandum Decision and Order on Defendants' Motions for Summary Judgment (MD&O). The Court's MD&O granted summary judgment to both Monsanto and WGI with respect to each of the claims SIO asserted against them. Judgment was entered pursuant to the MD&O on October 7, 2011. SIO has appealed from the Court's Judgment as well as its MD&O dismissing SIO's Complaint and claims for relief against Monsanto and WGI.

Both Monsanto and WGI have requested an award of costs and attorney fees pursuant to Idaho Code §§12-120(3) and 12-121, claiming to be the prevailing parties in the litigation pursuant to Rule 54(d)(1)(B) of the Idaho Rules of Civil Procedure.

DISCUSSION

Pursuant to the Court's MD&O on summary judgment and its subsequent entry of Judgment dismissing SIO's claims, both Monsanto and WGI have asserted that they are the prevailing party in this litigation pursuant to I.R.C.P. 54(d)(1)(B), and thereby are entitled to an award of costs pursuant to I.R.C.P. 54(d) and attorney fees pursuant to I.R.C.P. 54(e) and I.C. §§12-120(3) and 12-121.

A prerequisite to any award of costs and attorney fees is a determination by the Court concerning prevailing party status. See Idaho Code §§12-120 and 12-121; and I.R.C.P. 54(d)(1) and (2) and I.R.C.P. 54(e)(1).

I. Prevailing Party.

Monsanto and WGI both claim that they are the prevailing party in their litigation with SIO. Rule 54(e)(1) of the Idaho Rules of Civil Procedure provides that the Court must utilize the definition found in I.R.C.P. 54(d)(1)(B) in determining whether a litigant is the

prevailing party and entitled to an award of attorney fees. I.R.C.P. 54(d)(1)(B) defines prevailing party as follows:

In determining which party to an action is a prevailing party and entitled to costs, the trial court shall in its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respective parties. The trial court in its sound discretion may determine that a party to an action prevailed in part and did not prevail in part, and upon so finding may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resultant judgment or judgments obtained.

In *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.*, 141 Idaho 716, 719, 117 P.3d 130, 133 (2005) (*Eighteen Mile Ranch*), the Idaho Supreme Court held, “in litigation, avoiding liability is as good for a defendant as winning a money judgment is for a plaintiff.” Therefore, the Court has little difficulty concluding that both Monsanto and WGI are the prevailing parties in their litigation with SIO, having obtained a defense verdict on all of the claims SIO brought against them respectively. Neither, Monsanto or WGI brought a counterclaim against SIO. *See also Oakes v. Boise Heart Clinic Physicians PLLC*, 2012 WL 695074, *6.¹

2. Costs.

Rule 54(d)(1)(A) of the Idaho Rules of Civil Procedure provides that “except when otherwise limited by these rules, costs shall be allowed as a matter of right to the prevailing party or parties, unless otherwise ordered by the court.”

The Court, having determined that Monsanto and WGI were the prevailing party in their litigation with SIO, will now consider Monsanto’s and WGI’s respective claims for costs.

¹SIO has not contested either Monsanto’s or WGI’s claim of prevailing party status.

Monsanto is seeking \$1,143.92 in costs as a matter of right. These costs include a \$58.00 filing fee to Caribou County District Court (Monsanto's Answer) and deposition expenses for four (4) depositions: (1) James R. Smith (\$424.23); (2) David Farnsworth (\$384.89);² (3) Mitchell J. Hart and; (4) John Rosenbaum (\$234.50).

Court filing fees (I.R.C.P. 54(d)(1)(C)1.) and charges for one (1) copy of depositions taken by any of the parties to the action in preparation for trial of the action (I.R.C.P. 54(d)(1)(C)10.) fall within the parameters of Rule 54(d)(1)(C) of the Idaho Rules of Civil Procedure and are properly characterized as a "cost as a matter of right." Therefore, the Court **GRANTS** Monsanto's requested costs in the total amount of **\$1,143.92**.

Similarly, WGI has made a request for the same items of cost. The only difference between WGI's claimed costs and Monsanto's is WGI's claim for \$125.00 for service of a subpoena upon the Southeast Idaho Council of Government. This claimed item of cost has not been objected to by SIO, and does, on its face, appear to fall within the provision of I.R.C.P. 54(d)(1)(C) subparagraph 2. This subparagraph provides for the recovery of "fees [incurred] for service of any pleading or document in the action whether served by a public officer or other person." Therefore, the Court will **GRANT** WGI's claimed costs of right in the amount of **\$1,281.83**.

Neither party has made a request for "discretionary costs" pursuant to I.R.C.P. 54(d)(1)(D).³

²David Farnsworth and Mitchell J. Hart's deposition costs were combined into one amount.

³Monsanto has included its claim for attorney fees as an item of discretionary cost. SIO has devoted a section, in Plaintiff's Memorandum in Opposition to Defendant Monsanto Company's Motion for Order Awarding Attorney Fees and Costs, to Monsanto's inclusion of attorney fees as a discretionary cost item. The Court will analyze Monsanto's claim for attorney fees separately, pursuant to I.R.C.P. 54(e) and I.C. §§ 12-120(3) and 12-121 – not I.R.C.P. 54(d)(1)(D).

3. Attorney Fees.

Both Monsanto and SIO seek an award of attorney fees pursuant to I.R.C.P. 54(e)(1), 54(e)(5), and Idaho Code §12-120(3).⁴ Pursuant to I.C. §12-120(3), the prevailing party in a commercial transaction is allowed “a reasonable attorney’s fee to be set by the court.” I.C. §12-120(3) provides as follows:

In any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney’s fee to be set by the court, to be taxed and collected as costs.

I.C. §12-120(3) has also defined a “commercial transaction” as being “all transactions except transactions for personal or household purposes.”

A review of Idaho’s appellate case law regarding the application of the “commercial transaction” language of I.C. §12-120(3) reveals that its definition and application are expansive rather than restrictive; therefore, the Court concurs with the argument presented to the Court by Monsanto and found in the Idaho Court of Appeals decision in *Ericksen v. Blue Cross of Idaho Health Servs., Inc.*, 116 Idaho 693, 695, 778 P.2d 815, 817 (Ct.App.1989). The evolution of this expansive approach to the definition of “commercial transaction” is most readily and recently established in the Idaho Supreme Court cases of *Carrillo v. Boise Tire Co., Inc.*, 2012 WL 666038 (*Carrillo*); *Garner v. Povey*, 151 Idaho 462, 259 P.3d 608, 615 (2011) (*Garner*); and *Blimka v. My Web Wholesaler*, 143 Idaho 723, 152 P.3d 594 (2007) (*Blimka*).

⁴Monsanto and WGI also assert that they are entitled to an award of attorney fees pursuant to I.C. §12-121. Because this Court concludes that the gravamen of SIO’s Complaint and claims involved a claimed commercial transaction, the Court will award Monsanto and WGI their reasonable attorney fees pursuant to I.C. §12-120(3). Therefore, the Court will not engage in an analysis of I.C. §12-121 and whether Monsanto and WGI are entitled to an award of attorney fees and costs pursuant to I.C. §12-121.

The analysis a trial court must undertake in determining whether a prevailing party is entitled to an award of attorney fees under I.C. §12-120(3) was addressed by the Idaho Supreme Court in *Garner*. In *Garner*, the Idaho Supreme Court stated as follows:

Whether a district court has correctly determined that a case is based on a commercial transaction for the purpose of I.C. § 12-120(3) is a question of law over which this Court exercises free review. *Great Plains*, 136 Idaho at 470, 36 P.3d at 222. Idaho Code § 12-120(3) allows for an award of attorney fees to the prevailing party in a civil action to recover "in any commercial transaction." A commercial transaction includes all transactions except those for personal or household purposes. I.C. § 12-120(3). In determining whether attorney fees should be awarded under I.C. § 12-120(3), the Court has conducted a two-step analysis: "(1) there must be a commercial transaction that is integral to the claim; and (2) the commercial transaction must be the basis upon which recovery is sought." *Great Plains*, 136 Idaho at 471, 36 P.3d at 223 (internal quotation marks omitted). "The commercial transaction must be an actual basis of the complaint.... [T]he lawsuit and the causes of action must be based on a commercial transaction, not simply a situation that can be characterized as a commercial transaction." *Id.* In other words, the relevant inquiry is whether the commercial transaction constituted "the gravamen of the lawsuit," and was the basis on which a party is attempting to recover. *Id.* at 472, 36 P.3d at 224.

259 P.3d at 615.

In the case at bar, there can be no doubt that this is a commercial transaction as that term has been defined by the Idaho Supreme Court in *Garner* and other Idaho appellate decisions. Both prongs of the test enunciated therein are clearly met. A commercial transaction was integral to each of SIO's claims against both Monsanto and WGI.⁵ Further, the commercial transaction was the very basis upon which recovery was being sought.

⁵With respect to Monsanto, it is of no moment that the Court determined that there was no valid or binding oral contract in place between SIO and Monsanto. What triggers the application of attorney fees, as it relates to SIO and Monsanto, is SIO's claim that there was a valid and enforceable oral contract in place between it and Monsanto for goods other than for personal or household purposes. See *Farmers Nat. Bank v. Shirey*, 126 Idaho 63, 73, 878 P.2d 762 772 (1994) ("Where a party alleges the existence of a contractual relationship of a type embraced by section 12-120(3), as the Shireys have done, that claim triggers the application of the statute and a prevailing party may recover fees even though no liability under a contract was established." *Twin Falls Livestock Comm'n Co. v. Mid-Century Ins. Co.*, 117 Idaho 176, 184, 786 P.2d 567, 575 (Ct.App.1989) (*rev. denied*).)

Therefore, the Court has no difficulty concluding that a commercial transaction constituted the “gravamen” of SIO’s lawsuit.⁶

Therefore, the Court concludes that both Monsanto and WGI, as prevailing parties in this litigation, are entitled to an award of reasonable attorney fees pursuant to I.C. §12-120(3).

4. Reasonableness of Attorney Fees.

Once the Court has identified a statutory or contractual entitlement to attorney fees, the Court must determine the amount of attorney fees to award. Rule 54(e)(1) charges the Court with the responsibility of awarding a “reasonable attorney fee[]” when attorney fees are provided by statute or contract. This analysis is controlled by Rule 54(e)(3) of the Idaho Rules of Civil Procedure. This Rule provides as follows:

In the event the court grants attorney fees to a party or parties in a civil action it shall consider the following factors in determining the amount of such fees:

- (A) The time and labor required.
- (B) The novelty and difficulty of the questions.
- (C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law.
- (D) The prevailing charges for like work.
- (E) Whether the fee is fixed or contingent.
- (F) The time limitations imposed by the client or the circumstances of the case.
- (G) The amount involved and the results obtained.

⁶This conclusion is equally applicable to the claims asserted by SIO against Monsanto and SIO for Breach of the Implied Covenant of Good Faith and Fair Dealing, Equitable Estoppel, Quasi Estoppel, and Tortious Interference with Contract. Each of these claims fit within the two (2) prong analysis enunciated in *Garner*.

- (H) The undesirability of the case.
- (I) The nature and length of the professional relationship with the client.
- (J) Awards in similar cases.
- (K) The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case.
- (L) Any other factor which the court deems appropriate in the particular case.

When determining the amount of attorney fees to be awarded, the district court must, at a minimum, provide a record which establishes that the Court considered the factors found in I.R.C.P 54(e)(3). *Building Concepts, Ltd v. Pickering*, 114 Idaho 640, 645, 759 P.2d 931, 936 (Ct.App,1988). A trial court need not specifically address all of the factors contained in I.R.C.P 54(e)(3) in writing, so long as the record clearly indicates that the Court considered them all. *Brinkman v. Aid Ins. Co.*, 115 Idaho 346, 351, 766 P.2d 1227 (1988).

The Court "has discretion, after considering the factors contained in I.R.C.P. 54(e)(3), to determine the amount of attorney fees that should be awarded." *Young v. State Farm Mut. Auto Ins. Co.*, 127 Idaho 122, 128, 898 P.2d 53 (1995). In analyzing a trial court's exercise of its discretion, the appellate courts apply an abuse of discretion standard. *Schroeder v. Partin*, 151 Idaho 471, ___, 259 P.3d 617, 624 (2011). In application, this means that the appellate court will defer to the trial court's discretion if: "(1) the court correctly perceived the issue as one of discretion; (2) the court acted within the boundaries of such discretion and consistently with legal standards applicable to specific choices; and (3) the court reached its decision by an exercise of reason." *Id.*

quoting *Henderson v. Henderson Investment Properties, L.L.C.*, 148 Idaho 638, 227 P.3d 568 (2010).

As stated by the Idaho Court of Appeals in *Action Collection Services, Inc. v. Bigham*, 146 Idaho 286, 290, 192 P.3d 1110, 1114 (Ct.App.2008), “a court need not blindly accept the figures advanced by the attorney and may disallow fees that were unnecessarily and unreasonably incurred.” In considering the factors of I.R.C.P. 54(e)(3), the Court may use information from its “own knowledge and experience,” or from information contained in the record, or information supplied by the party requesting the fees. *Hackett v. Streeter*, 109 Idaho 261, 264, 706 P.2d 1372, 1375 (Ct.App.1985).

The Court has considered the factors set forth in 54(e)(3), and specifically subparagraphs (A), (B), (C) (D), (E), (G), (I), (J), (K), and (L).⁷

a. Attorneys and Paralegal Rates.

First, the Court finds that the hourly rates for attorney fees and paralegal fees by Monsanto’s counsel are reasonable when compared to those normally and customarily charged by counsel in Southeastern Idaho.

This Court has previously held that a reasonable and customary rate for seasoned trial counsel in Southeastern Idaho was between \$185.00 and \$225.00 per hour.⁸ See *Hard Rock Horizontal Boring, Inc. v. Edstrom Construction, Inc. and Insurance of the West*, Franklin County Case No. CV-2006-342, Memorandum Decision and Order on Attorney Fees and

⁷Although the Court considered subparagraphs (F) and (H), both were found to be of little assistance to the Court in determining a reasonable amount for the attorney fees in this particular case. Further, there was little, if any, discussion regarding these factors in either the briefing or the parties’ argument.

⁸At oral argument, Counsel for SIO argued that local counsel, David P. Gardner, when queried by counsel regarding the reasonableness of counsel for Monsanto’s attorney fee rate, responded that it was a little bit high. Such a conclusion would not be consistent with this Court’s experience and previous determinations. It is also noteworthy that this Court recently received a cost bill from Mr. Gardner’s firm on a Motion to Compel, reflecting that a colleague of Mr. Gardner’s, Ed Cather, was charging attorney fees of \$200.00 per hour in the case of *D.L Evans Bank v. Clark*, Bannock County Case CV-2010 1114. The Court would note that Mr. Cather, while very competent and skilled, has considerably less experience than either Mr. Budge or Mr. Nyc.

Costs, p. 13. The Court has previously upheld requests for attorney fees by seasoned trial counsel in other proceedings. These awards include the following: Randall C. Budge (\$195.00 per hour in *Stoddard v. Beus*, Caribou County Case CV-2009-0000357; Ron Kerl (\$200.00 per hour in *Jimerson v. Boyack*, Franklin County Case CV 2010-286); James G. Reid (\$225.00 per hour in *Shore v. Bokides*, Franklin County Case CV-2008-327); Michael D. Gaffney (\$200.00 per hour in *Hard Rock Horizontal Boring Inc. v. Edstrom Construction, Inc.*, Franklin County Case No. CV-2006-342); and Matthew L. Walter (\$185.00 in *Daryl Godfrey and Sons v. Scoular Inc.*, Caribou County Case No. CV-2009-191). This is a small, but representative, sample of fee awards that this Court has considered and granted.⁹

The Court also concludes that the rates charged by associate attorneys and paralegals are also reasonable and within the range charged by counsel with similar experience and paralegals in Southeastern Idaho. See Court's decisions in *Hard Rock Horizontal Boring Inc. v. Edstrom Construction, Inc. and Insurance of the West*, Franklin County Case No. CV-2006-342 and *Daryl Godfrey and Sons v. Scoular Inc.*, Caribou County Case No. CV-2009-191.

Second, the Court also concludes that the hourly rates for attorney fees and paralegal fees by WGI's counsel are reasonable. SIO argues that WGI's attorney fees are not reasonable for the geographic area, Southeastern Idaho, and relies upon the case of *Letunich*

⁹The Court does not find persuasive SIO's comparison between the rates charged by Monsanto's counsel's firm in the present case and the rates it charged in *Shields v. GMAC Mortgage, LLC*. There can be a multitude of reasons why a law firm would charge one (1) client a different rate than another. Because of the competition for the work and industry standards, law firms frequently charge less for insurance defense work than other commercial litigation. It was represented that Monsanto and its law firm in this litigation have a longstanding attorney/client relationship. It is certainly expected in a longstanding relationship, where both parties have a mutual satisfaction regarding the relationship and the quality of the work product, that there will be an expectation that there will be periodic reviews and increases in the cost of services. Whereas other clients, who may be new or less established, may be charged a lesser rate to retain the work and achieve the recognition necessary for long term retention and establishment of the relationship. As such, comparing the rates charged in one (1) case, such as *Shields v. GMAC Mortgage, LLC*, is certainly not determinative and without more information is of marginal value in the Court's LR.C.P. 54(e)(3) analysis.

v. *Lettunich*, 145 Idaho 746, 185 P.3d 258 (2008) (*Lettunich*) to support this contention.

However, in *Lettunich*, the Idaho Supreme Court stated as follows:

The bottom line in an award of attorney fees is reasonableness.... The pertinent geographic area is the area from which it would be reasonable to obtain counsel. Judicial Districts were drawn in order to facilitate court administration, not to provide a factor for determining a reasonable attorney fee. Attorneys routinely practice law in more than one judicial district.

145 Idaho at 750-51. This Court concludes that it is not unreasonable, considering the facts of this case and the factors outlined in I.R.C.P. 54(e)(3), for WGI to obtain counsel from Boise, Idaho to represent its interest in this proceeding. The amount in controversy was alleged to be in excess of \$25,000,000.00. In light of the potential exposure, one cannot be faulted in seeking out competent and qualified counsel. The Court concludes that it was not unreasonable, in light of the issues in dispute and the amount in controversy, for WGI to seek out counsel that it had a longstanding relationship with, as well as a high level of confidence and trust. Similarly it would not be unreasonable in a case such as this to seek out counsel in Salt Lake City, Utah. This Court has been involved in complex litigation with counsel from both Salt Lake City, Utah and Boise, Idaho. The Court concludes that the rates charged by WGI's counsel in this case, are consistent with the rates charged by Boise and Salt Lake City Counsel. These include Hawley Troxell Ennis & Hawley (separate litigation); Elam Burke, PA; Moffat Thomas Barrett Rock & Fields; and Ringert Law Chartered (Boise firms) and Ray Quinney & Nebeker; Dart Admson & Donovan; Durham Jones & Pinegar, P.C.; and Van Cott, Bagley, Cornwall & McCarthy (Salt Lake City Firms).

b. Reasonableness of Attorney Fees

The Court finds, upon a complete and exhaustive review of the attorney fees Monsanto paid to its counsel in defense of this litigation, as well as the factors set forth in

I.R.C.P. 54(e)(3) as addressed above, that Monsanto's claimed fees will be reduced. Monsanto has requested that it receive attorney and paralegal fees in the sum of \$106,714.50. See Monsanto's Memorandum of Fees and Costs, p.2. The support for this request for attorney fees is contained in Exhibit "A" to the Affidavit of Randall C. Budge in Support of Motion for Fees and Costs. Again, after consideration of the factors set forth in I.R.C.P. 54(e) and a complete review of the time records, the Court will award Monsanto the sum of \$76,928.50 in attorney fees. The Court concludes that this is a reasonable sum for attorney fees expended by Monsanto to defend this litigation and obtain dismissal of SIO's various claims by way of summary judgment.

It is not the intent of the Court to go through and itemize, entry by entry, how the Court reached this determination. However, the Court will attempt to give some insight by way of example. The Court determined that some time entries appeared to be excessive based upon the work product in the Court's file and this Court's experience with what time should be expended on these types of issues.¹⁰ The Court, in evaluating the entire cost bill, determined that there appeared to be instances of duplication of time and effort and the Court made appropriate adjustments. There were time entries that the Court concluded were more clerical or paralegal in nature and therefore, more properly the function of clerical staff rather than attorneys.¹¹ There were many entries which were block billed in such a manner that it made it extremely difficult for the Court to determine whether the amounts billed were reasonable in light of the work recorded. In some instances, the Court made what it felt to be

¹⁰The Court reduced the time associated with preparation of the summary judgment motion. In some instances it appeared that this work was duplicative and excessive. The same can be said for preparation of discovery and receipt and review of discovery responses from SIO. Again, there appeared to excessive work and often multiple attorneys were working on the same discovery, in some instances three (3) different attorneys.

¹¹The majority of these reductions, but not all, involved what SIO referenced to be a "massive indexing" project undertaken by Mark Schaefer. The Court agrees that this project did appear to be a project more in line with the functions of a paralegal and the Court reduced sixty-seven (67) of these hours from Mr. Schaefer's attorney rate to the standard paralegal rate of \$85.00 per hour.

appropriate adjustments. In a very few instances there were billings that appeared to have been incorrectly billed to this file.¹²

In considering the factors set forth in I.R.C.P. 54(e)(3) generally, the time and labor required, the skill requisite to perform the legal service properly, the amount involved and the results obtained, the Court concludes, in the exercise of its discretion and with knowledge and understanding of the applicable legal standards, that a reasonable attorney fee in the amount of **\$76,928.50** will be awarded to Monsanto as the prevailing party in its litigation with SIO, pursuant to I.C. §12-120(3).

The Court also finds, upon a complete and exhaustive review of the attorney fees WGI paid to its counsel in defense of this litigation, as well as the factors set forth in I.R.C.P. 54(e)(3) as addressed above, that WGI's fees will be reduced. WGI has requested that it receive attorney and paralegal fees in the sum of \$103,310.88. *See* WGI's Memorandum of Costs and Attorney Fees p.3. The support for this request for attorney fees is contained in Exhibit "E" to the Affidavit of Eugene A. Ritti in in Support of Washington Group International's Motion for Costs and Attorney Fees. Again, after consideration of the factors set forth in I.R.C.P. 54(e) and a complete review of the time records, the Court will award WGI the sum of **\$85,200.00** in attorney fees. The Court concludes that this is a reasonable sum for attorney fees expended by WGI to defend this litigation and obtain dismissal of SIO's various claims asserted against it by way of summary judgment.

As with the Court's analysis regarding adjustments made to Monsanto's request for attorney fees, the Court will not itemize, entry by entry, how the Court reached this

¹²Two such instances are the time entries on August 8, 2011 and September 14, 2011. The first of these entries reflects a "telephone conference and letter to R. Ling – follow up on Basterechea Temporary Access Agreement" and the second, a time entry on September 14, 2011, where the time entry reflects, "communicate (outside counsel) – telephone conference with and letter to D. Howell and Pacifcorp counsel regarding removal of irrelevant record material from Appellate record."

determination. However, the Court similarly determined that some time entries appeared to be excessive based upon the work product in the Court's file and this Court's experience with what time should be expended on these types of issues. See footnote 9. The Court, in evaluating the entire cost bill, determined that there appeared to be instances of duplication of time and effort and the Court made appropriate adjustments. There were time entries that the Court concluded were more clerical or paralegal in nature and therefore more properly the function of clerical staff rather than attorneys. There were many entries which were block billed in such a manner that it made it extremely difficult for the Court to determine whether the amounts billed were reasonable in light of the work recorded.¹³ In some instances the Court made what it felt to be appropriate adjustment.

In considering the factors set forth in I.R.C.P. 54(e)(3) generally, the time and labor required, the skill requisite to perform the legal service properly, the amount involved and the results obtained, the Court concludes, in the exercise of its discretion and with knowledge and understanding of the applicable legal standards, that a reasonable attorney fee in the amount of \$85,200.00 will be awarded to Monsanto as the prevailing party in its litigation with SIO, pursuant to I.C. §12-120(3).

CONCLUSION

Based upon the foregoing, and pursuant to Rule 54(d) and (e) of the Idaho Rules of Civil Procedure and Idaho Code §12-120(3), the Court concludes that Monsanto and WGI are both the prevailing party in their respective litigation with SIO. As the prevailing party in this litigation, Monsanto's and WGI's request for costs and attorney fees are **GRANTED**. Based upon the reasoning set forth above, the Court concludes that Monsanto is entitled to an

¹³However, in many instances where block billing occurred, the block bill was broken down within the entry into multiple tasks with an appropriate time entry for each task. This was noted and appreciated by the Court.

award of costs in the sum of **\$1,143.92**. Likewise, WGI is entitled to an award of costs in the sum of **\$1,281.83**. In addition, as the prevailing party in this litigation, Monsanto is entitled to an award of reasonable attorney fees pursuant to I.C. §12-120(3) and I.R.C.P. 54(e) in the sum of **\$76,928.50**. WGI is entitled to an award of reasonable attorney fees pursuant to I.C. §12-120(3) and I.R.C.P. 54(e) in the sum of **\$85,200.00**.

This results in a total award of costs and attorney fees in favor of Monsanto and against SIO in the amount of **\$78,072.42** and a total award of costs and attorney fees in favor of WGI against SIO in the amount of **\$86,481.83**.¹⁴ The Court, upon submission of an appropriate form of judgment pursuant to I.R.C.P 77(d), reflecting the foregoing award of costs and attorney fees, will review and sign the same.

IT IS SO ORDERED.

Dated this 8th day of March 2012.



MITCHELL W. BROWN
District Judge

¹⁴The Court recognizes that this matter was resolved at the summary judgment stage. This issue was raised and argued by SIO in support of its claims that the attorney fees of both parties are excessive for a case which was concluded at the summary judgment stage. However, the Court also notes that this matter involved claims of SIO wherein it claimed damages in excess of \$25,000,000.00. Significant effort was expended by both Monsanto and WGI to defend against these claims. Despite the fact that Monsanto and WGI were dismissed incident to summary judgment, one cannot expect them to rely upon obtaining summary judgment. In other words it was not only prudent, but necessary that they continue to prepare for trial while pursuing summary judgment.

CERTIFICATE OF MAILING/SERVICE

The undersigned certifies that on the 8th day of March, 2012, she caused a true and correct copy of the foregoing Memorandum Decision and Order on Defendants' Motions for Costs and Attorney to be served upon the following persons in the following manner:

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VEDA MASCARENAS, Clerk

By: *Adace Ingersoll*
Deputy Clerk

2012 MAR 20 AM 9 08

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Attorneys for Defendant Washington Group International, Inc.

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CARIBOU

SILICON INTERNATIONAL ORE, LLC,)
An Idaho limited liability company,)

Plaintiff,)

vs.)

MONSANTO COMPANY, a Delaware)
Corporation, and WASHINGTON GROUP)
INTERNATIONAL, INC., an Ohio)
Corporation,)

Defendants.)

CASE NO. CV-2009-366

JUDGMENT

Pursuant to the Memorandum Decision and Order on Defendants' Motions for Costs and Attorney Fees entered on March 8, 2012 in the above captioned case ("Memorandum Decision"), the Court awarded attorney fees and costs against Plaintiff Silicon International Ore, LLC and in favor of Defendant Monsanto Company ("Monsanto") in the amount of \$78,072.42, and also in favor of Defendant Washington Group International, Inc. ("WGI") in the amount of \$86,481.83. Based upon the Memorandum Decision and the record herein, Defendants Monsanto and WGI are entitled to Judgment according to law for said amounts together with interest at the statutory rate from March 8, 2012, until paid.

WHEREFORE, by virtue of the law and by reason of the premises aforesaid;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That judgment is hereby entered against Plaintiff Silicon International Ore, LLC in favor of Defendant Monsanto in the sum of **SEVENTY-EIGHT THOUSAND SEVENTY-TWO AND 42/100 DOLLARS (\$78,072.42)** lawful money of the United States of America together with interest at the statutory rate from March 8, 2012, until said Judgment and all post-judgment interest, fees and costs are paid.

2. That judgment is hereby entered against Plaintiff Silicon International Ore, LLC in favor of Defendant WGI in the sum of **EIGHTY-SIX THOUSAND FOUR HUNDRED EIGHTY-ONE AND 83/100 DOLLARS (\$86,481.83)** lawful money of the United States of America together with interest at the statutory rate from March 8, 2012, until said Judgment and all post-judgment interest, fees and costs are paid.

3. The Clerk is directed to issue such Writs of Execution, Orders for Possession, Writs of Assistance and/or other such documents and/or orders as necessary to enforce and effectuate the terms of this Judgment.

4. Defendants Monsanto and WGI are further entitled to recover all additional costs incurred after the date of this Judgment for execution and enforcement of this Judgment as may hereafter approved by the Court, which amount shall be deemed added to the Judgment and collected by the Sheriff, in addition to the amount stated herein in favor of Monsanto and WGI, under applicable law including, but not limited to, Idaho Code § 12-120(5).

LET EXECUTION ISSUE HEREON.

DATED this 20th day of March, 2012.

Mitchell W. Brown

STATE OF IDAHO }
COUNTY OF CARIBOU } ss.

MITCHELL W. BROWN

District Judge

I HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS A FULL TRUE AND
CORRECT COPY OF THE ORIGINAL AS THE SAME APPEARS OF RECORD OR
ON FILE IN THIS OFFICE.
IN WITNESS THEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED THE
OFFICIAL SEAL OF THIS OFFICE AT SODA SPRINGS, IDAHO, THIS 20th
DAY OF March 20 12

Veda Mascareñas
Clerk of the District Court
Veda Mascareñas
Deputy Clerk

STATE OF IDAHO }
COUNTY OF CARIBOU } ss.

I HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS A FULL TRUE AND
CORRECT COPY OF THE ORIGINAL AS THE SAME APPEARS OF RECORD OR
ON FILE IN THIS OFFICE.
IN WITNESS THEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED THE
OFFICIAL SEAL OF THIS OFFICE AT SODA SPRINGS, IDAHO, THIS 20th
DAY OF April 20 12

Veda Mascareñas
Clerk of the District Court
Veda Mascareñas
Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 20th day of March, 2012, I served a true and complete copy of the foregoing document on the following persons in the manner indicated:

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Adami Rogers
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