

**USL Mar., LLC v  
Adirondack Wild: Friends of the Forest**

2024 NY Slip Op 35025(U)

October 6, 2024

Supreme Court, Franklin County

Docket Number: Index No. E2024-53

Judge: John T. Ellis

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At a Term of the Supreme Court of the State of New York, held in and for the County of Franklin, at Tupper Lake, New York on June 23, 2025.

**STATE OF NEW YORK  
SUPREME COURT**

**COUNTY OF FRANKLIN**

**USL MARINA, LLC,**

Plaintiff,

-against-

**ADIRONDACK WILD: FRIENDS OF THE FOREST  
PRESERVE and ADIRONDACK EXPLORER, INC.,**

Defendants.

**DECISION & ORDER UPON  
HEARING**

Index No: E2024-53

RJI No.:16-1-2024-0097

**APPEARANCES:** *Norfolk Beier PLLC*, Lake Placid (*Matthew D. Norfolk, Esq.*, of counsel) for Plaintiff USL Marina, LLC;

*Whiteman Osterman & Hannah LLP*, Albany (*Anna V. Seitelman, Esq.*, of counsel) for Defendant Adirondack Wild: Friends of the Forest;

*Schoeman Updike & Kaufman LLP*, New York (*Charles B. Updike, Esq.*, and *Christopher M. McFadden Esq.*, of counsel) for Defendant Adirondack Explorer, Inc.;

**HON. JOHN T. ELLIS, J.S.C.:**

Plaintiff USL Marina, LLC (hereinafter, "Plaintiff") commenced the instant action by summons with notice on January 18, 2024. The Amended Complaint which was thereafter filed stated claims for defamation and related injunctive relief against Defendants Adirondack Wild: Friends of the Forest Preserve (hereinafter "Adk. Wild") and Adirondack Explorer, Inc. (hereinafter "Adk. Explorer") (collectively, "Defendants"). Pursuant to a Decision and Order signed on August 22, 2024 (NYSCEF Doc Nos. 52-54; Motions # 1, 2 & 3), the Court, *inter alia*, granted Defendants' motions to dismiss Plaintiff's Amended Complaint, deeming same a SLAPP

(“Strategic Lawsuit Against Public Participation”) suit, and awarded Defendants their actual costs and reasonable attorney’s fees, which were to be determined upon further proceedings.

Following the submission of papers addressing the issue of costs and attorney’s fees, the Court issued a Decision and Order dated January 15, 2025 (NYSCEF Doc Nos. 96 and 97; Motions # 1 & 2). Among other things, the Court found and determined that while Defendants were entitled to an award of costs and attorney’s fees in accordance with the mandatory language of Civil Rights Law (“CRL”) § 70-a(1)(a), triable issues of fact existed which necessitated a hearing on the subject (*see* CPLR 2218). More specifically, the Court, citing *Lehman Commercial Paper, Inc.* (146 AD3d 1192 [3d Dept 2017]), among other authorities, held that a hearing was necessary to elicit evidence which would aid the Court in properly determining the reasonableness of the requested fees (*see id.* at 1194-1196). Inasmuch as the findings and determinations set forth herein flow directly from, and are informed by, the Court’s previous Decisions and Orders, the instant Decision and Order assumes the reader’s familiarity with the Court’s prior Decisions and incorporates same by reference as if fully set forth herein.

At the hearing scheduled pursuant to the Court’s prior Decision and Order, Plaintiff’s counsel, Matthew D. Norfolk, Esq., appeared on behalf of Plaintiff and presented the testimony of Professor Michael J. Hutter, Esq. Adk. Wild appeared by Anna Seitelman, Esq., who offered the testimony of Philip H. Gitlen, Esq. and Professor Todd Ommen, Esq. Adk. Explorer appeared by Christopher M. McFadden, Esq. and Charles B. Updike, Esq., the latter of whom also testified in this matter, and Tracy Ormsby, Publisher of the Adk. Explorer. Defendants’ Exhibits “A”-“K” were admitted in evidence upon the consent of the parties, as was Plaintiff’s Exhibit “1”. Upon the invitation of the Court and the agreement of the parties, post-hearing

papers were also read and considered (*see* NYSCEF Doc Nos. 117-125).<sup>1</sup> Having had an opportunity to observe the demeanor of the witnesses and having generally found them to be credible and, where applicable, qualified, and having had an opportunity to consider the papers and the proofs submitted, and due deliberation having been had thereon, the Court makes the following findings and determinations.

Generally speaking, and as one might hope of witnesses consisting solely of attorneys, all of the witnesses called were knowledgeable and well-versed in the realm of attorney's fees and billing practices, and the fact witnesses were particularly knowledgeable with respect to the fees and billing at issue here. Moreover, the detailed testimony and invoices, statements, and time summaries before the Court provide ample evidence upon which to base a reasoned determination regarding an award of counsel fees.

Philip Gitlen testified as to his long experience in environmental law dating back to 1974. He further testified that for Adk. Wild, Whiteman, Osterman & Hannah ("WOH") reduced Attorney Gitlen's regular hourly rate from \$450.00 to \$350.00 owing to its not-for-profit status. Attorney Gitlen described WOH's relationship with Pace Environmental Litigation Clinic ("Pace") and how the two entities coordinated in their representation of Adk. Wild. Attorney Gitlen indicated that there was little to no duplication of efforts by the student interns at Pace, it being agreed that the law students would be tasked with initial factual and legal research, as well as the drafting of papers, while WOH would largely be responsible for general strategy, reviewing the law students' work, and finalizing papers for submission. Attorney Gitlen indicated that this approach was efficient and effectively lowered the cost of representation. In addition to the 49.5 hours of time billed to Adk. Wild by WOH as of the Court's prior Decision

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<sup>1</sup> NYSCEF Doc Nos. 124 and 125 appear to be duplicates of one another.

and Order of January 15, 2025 (totaling \$15,423.82, which amount includes \$91.32 in disbursements), WOH seeks to be awarded its fees for legal work performed post-Decision and Order (*see* Exhibit “B” and NYSCEF Doc Nos. 117, ¶ 15; 119). Finally, while Attorney Gitlin acknowledged that SLAPP suits are not necessarily unique, he further indicated that such suits do require particularized knowledge, and that it was his belief that the hours expended by WOH were reasonable and necessary, to include instances where attorneys may have performed minor or administrative tasks, since this too only streamlined processes.

Professor Todd Ommen testified with respect to the legal services provided to Adk. Wild by Pace and its law students. Professor Ommen testified that the students who work at Pace’s Clinic are either second semester 2Ls or 3Ls, that some environmental law knowledge is a prerequisite to clinic work, and that the positions are highly competitive. The students are permitted to practice law pursuant to a Student Practice Order of the Appellate Division, Second Department dated January 10, 2024 (*see* Exhibit “C”). Professor Ommen acknowledged that the students do not have experience litigating and that the basic role envisioned for them in this litigation was for them to do the “heavy lifting” with respect to records review, fact gathering, and initial legal research and drafting. Per Professor Ommen, the law students did the initial drafting on the motions/cross-motion filed in this action. They would then hand off their product to WOH which finalize same. Professor Ommen, as with Attorney Gitlen, indicated that there was little if any duplication of work/roles between Pace and WOH. Professor Ommen also testified that he supervised the three law students who worked on the matter, meeting with them regularly and ensuring that they were trained in how track and bill hours, among other things.

Respecting rates, Professor Ommen indicated that he matched the rates of the law students to that of a WOH paralegal, billing their time at \$180.00 per hour, and that their time

totaled 125.6 hours, for a grand total of \$22,608.00 in fees. In all, Professor Ommen testified that he personally billed 15 hours of time at a rate which he matched to Attorney Gitlen's, \$350.00 per hour, for a total of \$5,250.00 in billable hours (\$27,858.00 in total).<sup>2</sup> Professor Ommen, while generally asserting that the services performed by Pace for Adk. Wild were reasonable, readily acknowledged that the law students required more time to do tasks which an experienced attorney or paralegal might accomplish more quickly. He estimated that it took the students 25% more time to do the tasks which they performed relative to a more experienced legal professional. In fact, Professor Ommen consents to have the law students' hours reduced by half, and further agrees to reduce their hourly rate from \$180.00 per hour to \$120.00 per hour (*see* NYSCEF Doc No. 120). As with WOH, Pace also seeks to recoup attorney's fees incurred which post-dated the Court's prior Decision and Order (*see* Exhibit "D"). Any fees recovered would go to Pace insofar as it does not bill clients and performs work on a pro bono basis.

Charles Updike then testified in support of Schoeman Updike & Kaufman LLP's fee request on behalf of Adk. Explorer. Attorney Updike testified to, among other things, his long experience in the legal profession dating back more than fifty years, similar to Attorney Gitlen. Attorney Updike testified that Adk. Explorer's insurer was covering Adk. Explorer's reasonable and necessary legal bills, with certain exceptions for pre-notice fees and a deductible (totaling \$11,732.50, payable by Adk. Explorer), and that Attorney Updike and his firm were representing Adk. Explorer in part owing to Attorney Updike's status as a board member of Adk. Explorer. Attorney Updike testified that while he did not have any particular knowledge with SLAPP suits, as with other legal matters in the course of his career, he familiarized himself with this area of

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<sup>2</sup> Professor Ommen did not bill for time spent actually instructing or teaching the law students as part of their clinical coursework.

the law. Attorney Updike confirmed that as of the date of the Court's prior Decision and Order, his firm has billed 122.2 hours and that he believed this was a reasonable expenditure of time and that the rates were reasonable as well. Attorney Updike further indicated that this belief was buttressed by the fact that the insurer took few exceptions to the bills submitted to them by Attorney Updike's firm.

Attorney Updike and his partners billed at rates of \$525.00 or \$530.00 and paralegal rates ranged from \$185.00 to \$230.00 (*see* Exhibit "G"). At the time of the Court's prior Decision and Order, Schoeman Updike & Kaufman LLP sought \$58,843.82 (inclusive of \$350.32 in disbursements) as and for costs and fees in this matter on behalf of Adk. Explorer. As with the WOH and Pace, Schoeman Updike & Kaufman LLP seek to recoup their fees which post-date the Court's previous Decision and Order. As and for its fees through May 31, 2025, Schoeman Updike & Kaufman LLP seeks \$83,030.12, and further seeks to recoup fees which were incurred from June 1, 2025, onward (*see* Exhibit "J"; NYSCEF Doc No. 122 at 11). Finally, Attorney Updike indicated that his firm would not inflate hours merely because said hours might be reimbursable and there was little coordination with WOH or Pace in connection with the matter.

Professor Michael Hutter testified on behalf of Plaintiff as an expert in opposition to the fees requests made by Defendants' counsel.<sup>3</sup> Professor Hutter indicated he has testified in this capacity before, that he has long years of experience with attorney's fees and billing, and that he was paid for his services by Plaintiff. Professor Hutter testified that he has more than a passing

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<sup>3</sup> Adk. Wild objected to Professor Hutter's testifying as an expert witness. Adk. Explorer, while not expressly objecting, expressed reservations with respect to Professor Hutter's being qualified as an expert. The Court overruled the objection. As indicated at the hearing, having established his basic qualifications on the relevant subject, the objection goes to the weight to be accorded Professor Hutter's testimony, not to its admissibility (*see Pember v Carlson*, 45 AD3d 1092, 1093-1094 [3d Dept 2007]). With respect to the weight given to Professor Hutter's testimony, it is fair to say that based upon the wealth of experience and knowledge displayed by all of the witnesses, no particular weight was accorded any testimony, and each was viewed in a similar light.

familiarity with SLAPP suits, having paid particular attention to this area of the law and its developments for several years. With respect to the instant matter, Professor Hutter opined that the matter was “very straightforward” in terms of its defamation allegations and the application of the anti-SLAPP CRL provisions. Thus, he was “taken aback” by the over 300 hours and approximately \$100,000.00 in legal fees which it took to obtain a dismissal. Professor Hutter focused in particular upon the 122.2 hours expended by Schoeman Updike & Kaufman LLP in representing Adk. Explorer and upon the efforts of the Pace’s law students amounting to more than 100 hours of billable time, which he described as excessive. More specifically, Professor Hutter viewed the amount of time devoted to researching SLAPP/Anti-SLAPP law and the drafting of motion papers as excessive, asserting among other things that the issues were straightforward and resolution of same would have proven more efficient had the participants been more familiar with the law and/or more experienced.

With respect to the hourly rates charged, Professor Hutter opined that \$350.00 is a reasonable hourly rate for the locality, basing this figure not on recent Third Department precedent but more on what he understands is customary in the Northern District of New York. \$250.00 per hour was indicated as appropriate for an associate. With respect to the Pace law students, Professor Hutter stated that \$85.00 was a reasonable hourly rate for this locality, and that for paralegals, a reasonable rate would range from \$80.00-\$150.00. With respect to Schoeman Updike & Kaufman LLP’s fees, Professor Hutter opined that 45.0 hours would be reasonable at a rate of \$350.00 for partners. With respect to Pace’s fees, Professor Hutter indicated that the students simply did not know when to stop researching and writing, pointing to, among other things, the hours spent on a relatively simple cross-motion. Thus, their hours should be halved in his opinion.

Professor Hutter did not, however, find much to fault in WOH's fee request or Professor Ommen's 15.0 hours of time.<sup>4</sup> On both scores, Professor Hutter viewed the time spent and the hourly rate of \$350.00 (for partners anyways) as reasonable. Indeed, Professor Hutter had high praise for Attorney Gitlen in general and for Professor Ommen's apparent reasonableness in the number of hours he personally billed. Professor Hutter also did not appear to take issue with the collaborative effort between WOH and Pace on behalf of Adk. Wild, noting that arrangement fitted well with Attorney Gitlen's expertise.

To summarize, the updated fee requests are as follows. At the time of the Court's Decision and Order of January 15, 2025, based upon 49.5 hours billed, WOH sought \$15,423.82, (inclusive of \$91.32 in disbursements). As of the date of the hearing, the hours billed had increased by 29.9 hours and \$9,637.50, for a total of \$25,061.32 (*see* Exhibit "B"). As of the date of the instant Decision and Order, WOH's fee request stands at **\$38,817.62** (*see* NYSCEF Doc Nos. 117, ¶ 15; 119).<sup>5</sup>

Likewise, at the time of the Court's Decision and Order of January 15, 2025, based upon 125.6 hours of student time billed at \$180.00 per hour (\$22,608.00) and Professor Ommen's 15.0 hours at \$350.00 per hour (\$5,250.00), Pace sought \$27,858.00 in fees. As of the date of the instant Decision and Order, taking into account Professor Ommen's voluntary reduction by half of the student hours billed, together with the rate decrease to \$120.00, Pace requests an award of fees totaling **\$19,271.07**. Accordingly, while WOH's and Pace's combined fee request on behalf

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<sup>4</sup> Obviously, Professor Hutter did not have the benefit of the post-hearing submissions such that he was aware of the final hours billed and at what rate. Indeed, based upon his testimony, Professor Hutter appears to have based his testimony with respect to the hours billed/hourly rate on the figures set forth in the Court's prior Decision and Order. However, the fact remains that as of the date of his testimony, Professor Hutter did not take issue with either WOH's or Professor Ommen's time or rates.

<sup>5</sup> Though it goes without saying, the bulk of counsels' additional time devoted to the case following the Court's Decision and Order of January 15, 2025 was spent in addressing the fee request (*see e.g.* NYSCEF Doc No. 119). WOH alone expended dozens of hours in drafting papers and on hearing related tasks in connection with fee issue (*id.*).

of Adk. Wild stood at \$43,281.32 as of the Court's prior Decision and Order (*see* NYSCEF Doc No. 96 at 5), as of the date of the instant Decision and Order, the adjusted combined fee request on behalf of Adk. Wild stands at **\$58,088.69**.

Finally, as indicated, at the time of the Court's prior Decision and Order, Schoeman Updike & Kaufman LLP sought \$58,843.82 (inclusive of \$350.32 in disbursements). As and for its fees through May 31, 2025, Schoeman Updike & Kaufman LLP seeks **\$83,030.12** on behalf of Adk. Explorer, and further seeks to recoup fees incurred from June 1, 2025, onward (*see* Exhibit "J"; NYSCEF Doc No. 122 at 11). Thus, while the total fee request on behalf of both Adk. Explorer and Adk. Wild totaled \$102,125.14 as of the date of the Court's prior Decision and Order, as of the instant Decision and Order, the total fees requested by Defendants amounts to **\$141,118.81**, *excluding* any consideration of Schoeman Updike & Kaufman LLP's fees from June 1, 2025, onward.<sup>6</sup> With the foregoing in mind, the Court turns to its analysis of the fee requests.

The statutes and caselaw guiding the Court in its examination of the issue raised are largely set forth in the Court's prior Decisions, but for ease of reference, the Court sets forth certain foundational authorities here as well. CRL § 70-a(1)(a) entitles Defendants to a mandatory award of costs fees based upon the Court's previous determinations and states:

1. A defendant in an action involving public petition and participation, as defined in paragraph (a) of subdivision one of section seventy-six-a of this article, *may maintain an action, claim, cross claim or counterclaim to recover damages, including costs and attorney's fees*, from any person who commenced or continued such action; provided that [*emphasis added*]:

(a) *costs and attorney's fees shall be recovered upon a demonstration, including an adjudication pursuant to subdivision (g) of rule thirty-two hundred eleven or subdivision (h) of rule thirty-two hundred twelve of the civil practice law and rules, that the action involving public petition and participation was commenced or*

<sup>6</sup> The Court's prior Decision and Order recited the total fees sought by Defendants as "\$102,125.64." This was in error, and upon recalculation, the Court arrived at the \$102,125.14 figure set forth herein.

*continued without a substantial basis in fact and law* and could not be supported by a substantial argument for the extension, modification or reversal of existing law [*emphasis added*];

It is well-established that in awarding attorney's fees pursuant to contract or statute, the Court is bound to award same only to the extent they are reasonable and for services actually rendered (*Vigo v 501 Second St. Holding Corp.* 121 AD3d 778, 779 [2d Dept 2014]). Courts assess the reasonableness of fees based upon a number of factors and must have the requisite information to enable a thorough examination, including but not limited to: (1) counsel's experience, ability, and reputation; (2) prevailing hourly rate in the community;<sup>7</sup> (3) the necessity of services rendered; (4) the benefit achieved; (5) the difficulty/complexity of the questions presented and the effort and skill involved; (6) contingency or certainty of compensation; and (7) itemized invoices and/or billing statements (*see Lehman Commercial Paper, Inc.*, 146 AD3d at 1194-1196; *see also O'Malley v Town of Vestal Police Department*, 226 AD3d 1204, 1206 [3d Dept 2024] [noting that the party seeking fees bears the burden of establishing their reasonableness], quoting *Hinman v Jay's Vil. Chevrolet*, 239 AD2d 748, 749 [3d Dept 1997] and citing *Imrie v Ratto*, 187 AD3d 1344, 1351 [3d Dept 2020]; Robert L Haig, Commercial Litigation in New York State Courts § 61:7 [5th ed, 4B West's NY Prac Series, October 2025 Update]). A trial court is vested with wide discretion in determining the reasonableness of a fee (*see Hinman v Jay's Vil. Chevrolet*, 239 AD2d at 748 [internal citations omitted]).

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<sup>7</sup> The Court's review of caselaw on the subject of attorney's fees and the testimony in this matter indicates some confusion over whether the "prevailing hourly rate in the community" or "fee customarily charged in the locality for similar legal services" (*Law Office of Thaniel J. Beinert v Litinskaya*, 43 Misc 3d 1205[A], 2014 NY Slip Op 50504[U], \*17-18 [Civ Ct, Kings County 2014]) means the community wherein the firm/attorney is based, or the community where the action is tried. The rates prevailing in the community in which the action is tried controls (*see id.*; *see also Davis-Fisk v Overton, Russell, Doerr & Donovan, LLP*, US Dist Ct, ND NY, 2018 WL 4509489, 1:17-CV-1047, \*7, Scullin, Jr., J., 2019 [noting that the relevant rates are those employed within the district of the reviewing court; *Moon v Gab Kwon*, US Dist Ct, SD NY, 2002 WL 31512816, 99-cv-11810, \*2, Lynch, J., 2002 [noting the Southern District's customary rates controlled]).

A number of other principles are also applicable to the instant fee requests and guide the Court accordingly. First, as the Court indicated in its prior Decision and Order (*see* NYSCEF Doc No. 96 at n 6), a movant on an Anti-SLAPP application for costs/fees is entitled to attorney's fees for time spent in proving the value of their services, a so-called "fee on a fee" award (*see Golan v Daily News, L.P.*, 2023 NY Slip Op 33135[U], \*2 [Sup Ct, New York County 2023], citing *Sage Realty Corp. v Proskauer Rose LLP*, 288 AD2d 14, 15 [1st Dept 2001]; *see also Troy v Oberlander*, 181 AD2d 557, 557-558 [1st Dept 1992]).<sup>8</sup> Also settled previously is the fact that recovery of attorney's fees for the work of unpaid students, pro bono work, or the work of a director/managing attorney of a not-for-profit legal corporation utilizing student interns is not precluded and courts have awarded fees for such services in the past (*see DiGennaro v Bowen*, 666 F Supp 426, 431-432 [ED NY 1987] [holding that unpaid law students working in a clinical program under the supervision of an attorney pursuant to a student practice order could recover counsel fees]; *see also Medina v Buther*, US Dist Ct, SD NY, 2019 WL 4370239, 15-cv-1955, \*11, Preska, J., 2019 [noting that law students are usually billed at a rate similar to paralegals]; *Burr by Burr v Sobol*, 748 F Supp 97, 100 [SD NY 1990] [noting that duplication of efforts and certain ineffectiveness among law students is, to some extent, inevitable and deductions should be made accordingly]).

Finally, while the Court is cognizant that its overarching task on the instant application is to award reasonable fees supported by a reasoned analysis (*see O'Malley v Town of Vestal Police Department*, 226 AD3d at 1206; *see also Imrie v Ratto*, 187 AD3d at 1351-1352 [remitting the matter where the trial court reduced the requested attorney's fees from \$145,000.00 to

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<sup>8</sup> The wisdom underlying a fee on fee award is to prevent a situation where attorneys are forced into "extensive, uncompensated litigation in order to gain fees [under a fee shifting statute]" *McIntyre v Manhattan Ford, Lincoln Mercury*, 176 Misc 2d 325, 332 [Sup Ct, New York County 1997 [internal citations omitted]].

\$25,000.00 and failed to explain the basis for same other than a broad reference to the factors considered]), courts assessing fees have long recognized the impracticability in some cases of “set[ting] forth item-by-item findings concerning what may be countless objections to individual billing items” (*Greenman v Miller*, 2024 NY Slip Op 30709[U], \* 2 [Sup Ct, New York County 2024], quoting *Reyeyoso v Town Sports Int’l. LLC*, 2018 NY Slip Op 32939[U], \*7 [Sup Ct, New York County 2018]; see also *Medina v Buther*, US Dist Ct, SD NY, 2019 WL 4370239, \*8 [internal citations omitted] [noting that a court need not become “enmeshed” in a meticulous analysis of every facet of an attorney’s billing]). Indeed, “the essential goal in shifting fees is to do rough justice, not to achieve auditing perfection” (*Fox v Vice*, 563 US 826, 838 [2011]). It is equally clear that that a defendant entitled to fees pursuant to a fee-shifting statute should be awarded their fair and just compensation, not an amount which equates to a windfall (*Law Office of Thaniel J. Beinert v Litinskaya*, 43 Misc 3d 1205[A], 2014 NY Slip Op 50504[U], \*16 [Civ Ct, Kings County 2014]).

That Defendants are entitled to an award of costs and fees pursuant to CRL § 70-a(1)(a) has been established. What is reasonable is the only question before the Court. The Court has been presented with an abundance of proof by Defendants on this subject in an attempt to meet their burden and support their requests. Thus, this is not a matter wherein the Court is lacking in the requisite information based upon the failure of the parties to supply same, which caselaw makes clear is an all too common an occurrence.

With respect to the criteria set forth by the Court in *Lehman*, the Court finds and determines as follows. With respect to counsels’ experience, ability, and reputation, the factor tilts in support of the fees requested by Defendants. It strikes the Court that Attorney Gitlen, Attorney Updike, and Professor Ommen, as well as their partners and/or associates, as

appropriate, are all experienced and able attorneys who themselves, together with their respective firms/programs, all enjoy a solid reputation in the legal community. In fact, this may be somewhat of an understatement. If the Court calculates correctly, Attorney Gitlen, Attorney Updike, and Professor Hutter can claim over 150 years of legal experience on their own. Combined with Attorney Norfolk, Attorney Seitelman, Attorney McFadden, the Court thinks it fair to say that it has rarely, if ever, seen such collective legal experience gathered together in one courtroom as on the date of the fee hearing. Thus, to the extent counsel's experience, ability, and reputation factor into hourly rates charged, the fees claimed are not unreasonable.

As to the prevailing hourly rate in the community — which is Northern/Upstate New York, as alluded to in footnote 7, *supra* — the Court's thinking is much in line with Professor Hutter's. That is to say, the \$350.00 per hour charged by Attorney Gitlen and Professor Ommen strike the Court as very reasonable, and something in the realm of \$200.00-300.00 for an associate's time — depending upon the associate's junior or more senior status — is reasonable, with perhaps \$250.00 being a typical hourly rate. Relying on its own experience in this realm, the Court routinely sees hourly rates in the \$300.00-400.00 range for partners in a variety of matters which come before it, and does not think a rate within this range to be atypical for the legal community in Upstate New York. The rates obviously vary hugely depending upon the firm and the matter. In a simple matrimonial matter in this county, the Court might still see \$200.00 per hour charged for a partner's time. But those days are waning and on the flip side of the coin, the Court routinely sees hourly rates in excess of \$350.00 for partner-level attorneys in connection with all types of matters. The Court need not delve too deep down this rabbit hole, however.

A review of caselaw reveals that courts themselves are somewhat inconsistent in valuing professional services, however, the foregoing figures are not unreasonable (*see e.g. 407 East 81 Realty LLC v Creighton*, 36 Misc 3d 1220[A], NY Slip Op 51405[U], \*1, 4 [Civ Ct, New York County 2012] [finding the following rates to be reasonable: (1) \$375.00 for a partner; (2) \$250.00 for a senior associate; (3) \$200.00 for junior associate; (4) \$125.00 for a law graduate; and (5) \$95.00 per hour for law students or legal assistants]; *Medina v Buther*, US Dist Ct, SD NY, 2019 WL 4370239, \*11 [finding \$400.00 per hour to be appropriate for a partner and \$125.00 per hour to be appropriate for a law student]; *Moon v Gab Kwon*, US Dist Ct, SD NY, 2002 WL 31512816, \*3 [likening the reasonable hourly rate of a law school clinical professor to that of a partner with similar experience, and finding \$200.00-300.00 to be appropriate]). Further, based upon the foregoing caselaw, the testimony adduced at the hearing, and Professor Ommen's revised hourly rate as set forth in his post-hearing submission (*see* NYSCEF Doc No. 120), the Court finds and determines that \$120.00 is a reasonable hourly rate for law students.

With respect to the necessity of legal services rendered, WOH's and Pace's legal services are the most straightforward to pass upon, if for no other reason than the witnesses appeared to agree with respect to important aspects of the fee requests. As a starting point, the Court notes that Professor Hutter took no issue with WOH's initial fee request as of the date of the hearing (49.5 hours billed at \$350.00 totaling \$15,423.82) and similarly found no fault with Professor Ommen's 15.0 billable hours at a rate of \$350.00 totaling \$5,250.00. Having found that \$350.00 is an appropriate rate for both Attorney Gitlen and Professor Ommen, the Court likewise does not find fault in the number of hours billed by either WOH or Professor Ommen, same being reasonable and necessary by all appearances. With respect to the law students, the number of hours charged to the matter is excessive, even if it is understandable since they are, after all,

students and not seasoned hands. Professor Ommen's post-hearing submission (*see* NYSCEF Doc 120) only serves to confirm the Court in its view of the law students' efforts. The voluntary reduction in hours by half, and the \$120.00 per hour for the students, strikes the Court as eminently sensible and reasonable.<sup>9</sup>

With respect to Schoeman Updike & Kaufman LLP's requested fees on behalf of Adk. Explorer, the rates of each of the attorneys who rendered legal services must be reduced to \$350.00, since that is what the Court determined to be reasonable for this matter and for this community. Further, the Court declines to base its fee award to Schoeman Updike & Kaufman LLP upon the 122.2 hours of time expended, which time is only inclusive of the firm's efforts as of the date of the Court's prior Decision and Order. Put simply, the Court believes the number of hours billed to be excessive, but does not believe this to be the result of "padding" or any other intentional attempt to inflate the fee award. Rather, the Court believes that the hours spent upon the litigation are more reflective of, among other things, the importance of the matter to the Adk. Explorer, the seriousness with which Attorney Updike and his firm approached their work, and the need to, among other things, become familiar with SLAPP litigation. It appears to the Court that Schoeman Updike & Kaufman LLP expended the time they believed necessary to achieve the results which their client desired. While Schoeman Updike & Kaufman LLP can hardly be faulted for their diligence — their results speak for themselves — and while the Court does not

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<sup>9</sup> The Court rejects Plaintiff's argument that no fees should be awarded to Adk. Wild because the Student Practice Order for the Pace students (*see* Exhibit "C") did not permit the students to practice in this Court, thereby rendering the law students' services in violation of Judiciary Law § 478. Plaintiff's argument is essentially that the Appellate Division, Second Department authorized the law students' practice of law, and that such Order is limited to the confines of that Department. The Order contains no such limitation however, and expressly permits Pace's students to engage in the practice of law (assuming proper supervision) in "[c]ivil matters" before "Supreme and County Courts" in "[p]ublic interest matters" (*see* Exhibit "C"). Further, this argument appears to run counter to Judiciary Law § 484(2), which contains no limiting language on an Appellate Division's authority to approve the otherwise unauthorized practice of law. Finally, even *arguendo* that the foregoing is in error, it does not follow, as Plaintiff would have it, that Professor Ommen's and WOH's fees would fail upon this same basis as well. It is not disputed that WOH's attorneys and Professor Ommen are all authorized to practice law in New York State.

wish to imply in any way that Attorney Updike did anything other than his ethical duty in seeking to educate himself regarding SLAPP litigation (*see* Rules of Prof Conduct [22 NYCRR 1200.0] rule 1.1 [describing an attorney's duty to be competent]), Plaintiff should not be made to bear the brunt of anything more than was necessary. What was necessary in this case is best measured by the efforts of WOH and Pace, which achieved the same results on behalf of their client at a lower cost. Their efforts amounted to \$58,088.69 in fees and the Court finds this amount to be reasonable. Rather than engage in a line-by-line analysis, this method, while admittedly imperfect, takes into account the reduced \$350.00 hourly rate while bringing Schoeman Updike & Kaufman LLP's hours in line with what the Court determines to be reasonable. While not surgical in its precision, the result is just.<sup>10</sup>

With respect to the benefit achieved, the results obtained by Defendants' attorneys cannot be doubted. The amended complaint was dismissed with prejudice in the early stages of litigation through the combined efforts of the Defendants, a result that can only be described as a success. Whatever else Plaintiff might argue regarding excessive time and issues of that nature, the fact remains that counsel for the Defendants obtained a favorable result for the clients in the form of an early dismissal on the merits, to be accompanied by an award of costs, disbursements and attorney's fees. Moreover, and lest it be forgotten in this discussion of fees, Defendants had a keen interest in seeing the exercise of their free speech rights vindicated and this litigation accomplished that goal. The work of Adk. Wild and Adk. Explorer, by its very nature, involves routine public engagement on matters which they believe are of importance to the public. As such, the benefits achieved by this litigation are hard to overstate from their perspective.

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<sup>10</sup> Similarly, the Court will not bog down in its analysis of the time expended in connection with the hearing or on post-hearing submissions. It cannot be doubted that significant fees accrued in connection with the fee request itself, if for no other reason than the travel time, preparatory time, and courtroom time involved.

As to the difficulty or complexity of the questions presented, both Attorney Updike and Professor Hutter agreed that the matter was factually straightforward. The Court concurs on this score. The Court is also of the view that while this may not have been the most complex SLAPP litigation, SLAPP suits and attempts to “SLAPP back,” while not necessarily unique, do not normally lend themselves to easy resolution by an inexperienced and/or unwary attorney. Further, Attorney Updike made an astute point in noting that the complexity of the matter is, to some extent, driven by the parties involved. Here, a plaintiff believed its business interests to be falsely maligned and at risk, and thus filed a lawsuit which was not without risk against two organizations which similarly believed their vital interests to be threatened. In short, as is so often the case and as was alluded to at the hearing, a dispute with seemingly small roots can often grow much larger and more quickly than anticipated.

Having engaged in the requisite analysis, as indicated above, the Court awards \$58,088.69 to Schoeman Updike & Kaufman LLP as and for its reasonable attorney’s fees in this matter, together with any disbursements which the foregoing award does not take into account upon presentation of an appropriate statement for judgment/bill of costs. Schoeman Updike & Kaufman LLP is further entitled to costs in the amount of \$200.00 pursuant to CPLR 8105, 8106, 8108, 8201(1), and 8202. With respect to WOH’s and Pace’s representation of Adk. Wild, the Court awards \$19,271.07 to Pace as and for its reasonable attorney’s fees and awards WOH \$35,080.12, together with any disbursements which the foregoing award does not take into account upon presentation of an appropriate statement for judgment/bill of costs.<sup>11</sup> WOH is

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<sup>11</sup> From WOH’s requested \$38,817.62, the Court deducted \$3,737.50, the amount of time (11.5 hours) (*see* Exhibit “B”) dedicated to the research and drafting of reply papers in connection with the fee request. WOH explicitly disclaimed reimbursement for this sum on behalf of itself and Pace (*see* NYSCEF Doc No. 93, ¶ 5) and it does not appear that this figure was discounted from WOH’s adjusted fee request. Based upon Pace’s billing records, it does not appear that Pace billed time in connection with reply papers, thus no similar reduction was made as to Pace.

further entitled to costs in the amount of \$200.00 pursuant to CPLR 8105, 8106, 8108, 8201(1), and 8202. Accordingly, the total fee award for WOH's and Pace's representation of Adk. Wild is \$54,351.19. Thus, the total award of reasonable attorney's fees to Defendants in this matter amount to \$112,439.88.

**ACCORDINGLY, IT IS HEREBY**

**ORDERED AND ADJUDGED** that Defendants Adk. Wild and Adk. Explorer are entitled to judgment consistent with the findings and determinations set forth herein and consistent with the findings and determinations set forth in the prior Decisions and Orders of the Court; and it is further

**ORDERED**, that WOH, Pace, and Schoeman Updike & Kaufman LLP are entitled to their reasonable attorney's fees, costs, and disbursements consistent with the findings and determinations set forth herein; and it is further

**ORDERED**, that pursuant to the Uniform Rules for Trials Courts (22 NYCRR) § 202.48(a), counsel for Adk. Wild shall submit a proposed judgment which is in accordance with the instant Decision and Order on notice for the Court's consideration within sixty (60) days from the filing of same; and it is further

**ORDERED**, that this original Decision and Order shall be filed with the County Clerk by the Court via NYSCEF, and pursuant to CPLR 2220, counsel for Adk. Wild shall serve a copy of this Decision and Order, together with Notice of Entry, on all persons and entities entitled to notice under the law, and thereafter file proof of service with the County Clerk's Office.

**THE FOREGOING CONSTITUTES THE DECISION AND ORDER OF THE COURT**

Signed and Dated: October 6, 2024  
Tupper Lake, New York

ENTER

Hon. John T. Ellis, J.S.C.