IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MAID OF THE MIST CORPORATION and MAID OF THE MIST STEAMBOAT COMPANY, LTD.,	)	
Plaintiffs,	)	**Civil Action No.**
v.	)	**1:06-CV-0714-ODE**
ALCATRAZ MEDIA, LLC, ALCATRAZ MEDIA, INC., and WILLIAM M. WINDSOR,	)	
Defendants.	)	

PLAINTIFFS' MOTION FOR POST-JUDGMENT ATTORNEY'S FEES AND EXPENSES PURSUANT TO 28 U.S.C. § 1927, THIS COURT'S INHERENT AUTHORITY, AND O.C.G.A. § 13-6-11, AND INDWELLING MEMORANDUM OF LAW

COME NOW MAID OF THE MIST CORPORATION ("Corporation") and **MAID OF THE MIST STEAMBOAT COMPANY, LTD.** ("Steamboat"), Plaintiffs hereinabove (collectively, "Plaintiffs" or "Maid"), by and through counsel, and, pursuant to 28 U.S.C. § 1927, Rule 54 of the Federal Rules of Civil Procedure ("FRCP"), this Court's inherent authority, O.C.G.A. § 13-6-11, and LR 7.1A, NDGa., and LR 54.2, NDGa., file their Motion for Post-Judgment Attorney's Fees and Expenses Pursuant to 28 U.S.C. § 1927, this Court's Inherent Authority,

and O.C.G.A. § 13-6-11, and Indwelling Memorandum of Law, and show the Court as follows:

PREFACE

28 U.S.C. §1927 authorizes this Court to impose liability against attorneys and other persons who "unreasonably and vexatiously" multiply the proceedings in any case. *See* 28 U.S.C. §1927. Moreover, federal courts have the inherent authority to assess attorney's fees against a party who has acted in bad faith, vexatiously, wantonly or for oppressive reasons. *See Kreager v. Solomon & Flanagan, P.A.*, 775 F.2d 1541, 1543 (11th Cir. 1985). That power includes the ability to assess attorney's fees for "bad faith acts preceding and during litigation." *Id.* Here, William M. Windsor ("Windsor") has already had attorney's fees and costs assessed against him for his pre-litigation conduct pursuant to O.C.G.A. § 13-6-11. (*See* Docket No. 325). Now his post-judgment and post-termination conduct justifies attorney's fees and costs assessed against him pursuant to 28 U.S.C. §1927, this Court's inherent authority, and O.C.G.A. § 13-6-11.

Windsor is a dissatisfied party bent on re-litigating claims and defenses that this Court and the Eleventh Circuit Court of Appeals have already disposed of. Although he voluntarily agreed to the Consent Final Order and Judgment (Docket No. 354), Windsor is incapable of accepting the finality of this Court's judgment.

He has embarked on an expensive campaign of harassment to further his own purposes, which involve unfounded, scurrilous, scandalous, and felonious accusations against this Court, Judge William S. Duffey, Jr., the United States Attorney's Office, the Eleventh Circuit, Plaintiffs and their counsel. Unquestionably, since April 24, 2009, when Windsor first attempted to reopen this closed case pursuant to Rule 60(b), he has unreasonably and vexatiously multiplied the proceedings, has acted in bad faith, wantonly and for oppressive reasons, and has been stubbornly litigious, as further described herein.

I. STATEMENT OF PROCEEDINGS

The Court granted summary judgment in this case on August 9, 2007 (Docket No. 251) and entered a final judgment on October 16, 2007 (Docket No. 281). On December 3, 2007, the Court granted Maid's Motion for Attorney's Fees and Expenses Under O.C.G.A. § 13-6-11, finding that Windsor had been "stubbornly litigious" as defined under the Act. (*See* Docket No. 325, p. 2). Those Orders were appealed to the Eleventh Circuit. (*See* Docket Nos. 293, 329). On September 19, 2008, the Court of Appeals affirmed the Court's granting of summary judgment to Maid on its claim for tortious interference with business operations and the Court's issuance of a permanent injunction against Defendants. (*See* Docket No. 344). The Court of Appeals also affirmed the Court's granting of

summary judgment in Maid's favor on Alcatraz's counterclaims and concluded that Maid was entitled to recover attorney's fees and expenses under O.C.G.A. § 13-6-11. (*See Id*.) On October 28, 2008, this Court issued an Order making the Court of Appeals' Mandate the judgment of this Court. (*See* Docket No. 346).

On November 20, 2008, Windsor signed a Consent Final Order and Judgment, which this Court granted on December 9, 2008. (*See* Docket No. 354). The Consent Final Order and Judgment disbursed the negotiated sum of attorney's fees and expenses to Maid, and provided, "The case is hereby closed all issues having been decided….No appeals shall be taken from this Judgment, and the parties waive all rights to appeal." (*Id*., p. 4).

On April 24, 2009, Windsor began an onslaught of filings in Civil Action No. 1:06-CV-0714-ODE, attempting to resuscitate this closed case pursuant to Rule 60(b). Windsor began with his Motion for Recusal (Docket No. 361) and Motion to Reopen Case (Docket No. 362), then his Motion for Sanctions Against Plaintiffs and Counsel under Rule 37 (Docket No. 363), his Motion for Sanctions Against Plaintiffs and Counsel under Rule 11 (Docket No. 364), and his Motion for Discovery (Docket No. 374).

On May 22, 2009, the Court issued an Order denying the above motions and dismissing Windsor's Motion for Discovery (Docket No. 374) as moot. (*See*

Docket No. 390). Windsor appealed this Order to the Eleventh Circuit on June 15, 2009. (*See* Docket No. 418).

Since this Court's May 22, 2009 Order rejecting his efforts to reopen the case (Docket No. 390),[1] Windsor continued his deluge of filings in this Court, including at least eight motions for hearing (Docket Nos. 395, 398, 402, 408, 414, 466, 488, and 513), two motions for conferences (Docket Nos. 464 and 490), seven additional motions for sanctions against Plaintiffs, their counsel, this Court (Docket Nos. 393, 396, 400, 472, 474, 486, and 515), one motion to compel (Docket Nos. 404), and two additional motions for recusal (Docket Nos. 406 and 470).

On July 15, 2009, Maid filed a Motion for Permanent Injunction Restricting Future Filings By Windsor (Docket No. 458).

On September 9, 2009, the Eleventh Circuit dismissed Windsor's appeal as frivolous *sua sponte* pursuant to Eleventh Circuit Rule 42-4. (*See* Docket No. 545).

Nonetheless, even after the Eleventh Circuit's dismissal, Windsor continued filing multiplicitous pleadings in the closed district court case, including at least eight more motions for hearing (Docket Nos. 565, 592, 610, 618, 631, 665, 690,

[1] But prior to the Eleventh Circuit's September 9, 2009 Order dismissing Windsor's appeal as frivolous *sua sponte* pursuant to Eleventh Circuit Rule 42-4 (Docket No. 545), Windsor inundated the Court and Maid's counsel with meaningless, baseless, and redundant filings.

and 704), six more motions for conference (Docket Nos. 563, 590, 616, 633, 663, and 692), another motion for sanctions against Plaintiffs and their counsel (Docket No. 635), two more motions to compel or lift the seal from Docket No. 168 (Docket Nos. 561 and 675), another motion for recusal/disqualification of the Court (Docket No. 673), two motions to modify the injunction (Docket Nos. 547 and 606), and other various motions for relief or otherwise revisit the substantive merits of the closed case (Motions to Vacate Orders and Judgment (Docket No. 567), Motion for Judicial Intervention (Docket No. 569), Motion for Relief from Violation of Constitutional Rights (Docket No. 571), Emergency Motion to Clear the Docket of this Court (Docket No. 702)).

On December 23, 2009, this Court issued an Order dismissing all of Windsor's pending motions and permanently enjoining Windsor and any parties acting in concert with him or at his behest from filing any motion, pleading or other paper in Civil Action No. 1:06-cv-0714-ODE and from filing in any court any new lawsuit involving claims arising from the same factual predicate or nucleus of operative facts as the instant case. (*See* Docket No. 723).

Plaintiffs have had to respond to most of Windsor's filings because the Local Rules provide that the failure to respond indicates no opposition to the motion. *See* LR 7.1B, NDGa. Moreover, Windsor's motions and supporting

declarations were replete with hearsay, speculation, opinion, innuendo, argument, conclusion, mischaracterization, misstatement, and other infirmities that render them meaningless from an evidentiary standpoint. Until November 20, 2009,[2] Plaintiffs had refrained from cluttering the docket with objections under the Federal Rules of Evidence; however, Maid began filing Notices of Objection and/or Motions to Strike addressing the evidentiary and other infirmities contained within Windsor's motions and supporting declarations in order to preserve these objections on the record.

As set forth below, Maid asks the Court to issue an Order allowing it to recover against Windsor some or all of its of its post-judgment and post-termination costs, pursuant to 28 U.S.C. §1927, this Court's inherent authority and/or O.C.G.A. § 13-6-11.

II. ARGUMENT AND CITATION OF AUTHORITY

28 U.S.C. §1927, this Court's inherent powers, and O.C.G.A. § 13-6-11 allow Maid to recover the costs incurred by it as a result of Windsor's multiplicitous and vexatious post-judgment and post-termination conduct. The record in this case shows that Windsor's litigation tactic was and is to financially drain or exhaust Maid in the hope that Maid will then bend to his will. Maid did

[2] *See* Docket No. 619.

not do so and has had to incur significant attorney's fees and expenses to prevail in the underlying proceeding (*see* Docket No. 344), only to have Windsor try to increase those attorney's fees and expenses with his post-consent-judgment antics. Such behavior is unconscionable and must be sanctioned.

A. IN THE ELEVENTH CIRCUIT, THE CONDUCT OF *PRO SE* LITIGANTS IS SANCTIONABLE UNDER 28 U.S.C. § 1927

28 U.S.C. §1927 authorizes this Court to impose liability upon Windsor for his unreasonable and vexatious post-termination and post-judgment conduct:

> Any attorney or other person admitted to conduct cases in any court of the United States…who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

28 U.S.C. §1927.

There is a split among the circuits as to whether a pro se litigant is sanctionable under 28 U.S.C. § 1927. According to the Third Circuit in *Institute for Motivational Living v. Doulos Institute for Strategic Consulting, Inc.*, No. 03-4177, 110 Fed. Appx. 283, 2004 U.S. App. LEXIS 20834 (3d Cir., October 5, 2004),

> This is a matter of first impression in our circuit. We have held that a represented party cannot be punished under § 1927. (Citations omitted). But that situation is distinguishable because it is an attorney who is conducting the case, not the party. Here, we face a circumstance in which the party himself is conducting the case in court. One could reasonably read the language of the statute as embracing non-attorneys who conduct cases in court – a category that

> includes (if it is not limited to) pro se litgants.
> Nevertheless, there is a split among the circuits on this issue. *Compare Sassower v. Field*, 973 F.2d 75, 80 (2d Cir. 1992) (section not applicable to pro se litigants) with *Wages v. IRS*, 915 F.2d 1230, 1235-36 (9th Cir. 1989) (section does apply to pro se litigants); *see also Alexander v. United States*, 121 F.3d 312, 316 (7th Cir. 1997) (declining to take sides on this conflict). The Supreme Court has noted in passing that § 1927 "says nothing about a court's power to assess fees against a party." *Chambers v. Nasco, Inc.*, 501 U.S. 32, 48, 111 S. Ct. 2123 (1991). But that statement did not arise in the context of a specific discussion of pro se litigants.

Id. at 286.

The Eleventh Circuit has interpreted this statute to impose three requirements for awarding sanctions: "an attorney must engage in unreasonable *and* vexatious conduct; this conduct must multiply the proceedings; and the amount of the sanction cannot exceed the costs occasioned by the objectionable conduct." *Schwartz v. Million Air, Inc.*, 341 F.3d 1220, 1225 (11th Cir. 2003). Not only is "something more than a lack of merit" required to award sanctions, but also § 1927 "was designed to sanction attorneys who willfully abuse the judicial process by conduct tantamount to bad faith." *Id.* (internal quotations omitted). "Bad faith is the touchstone." *Id.* "A determination of bad faith is warranted where an attorney knowingly or recklessly pursues a frivolous claim or engages in litigation tactics that needlessly obstruct the litigation of non-frivolous claims." *Amlong & Amlong, P.A. v. Denny's, Inc.*, 457 F.3d 1180, 1193 (11th Cir. 2006).

This statute requires an "egregious" level of conduct. *See Sixtos v. Crocker*, No. 1:06-cv-1028-RLV, 2007 U.S. Dist. LEXIS 4636, at *7 (N.D. Ga., January 22, 2007). Unreasonable and vexatious conduct has been defined as conduct that multiplies the proceedings. *See Schwartz*, 341 F.3d at 1225 (construing 28 U.S.C. § 1927).

The Eleventh Circuit has held that § 1927 awards may only be imposed against the offending attorney; clients may not be saddled with such awards. *See Byrne v. Nezhat*, 261 F.3d 1075, 1106 (11th Cir. 2001). However, *Byrne* does not address the scenario (similar to *Doulos* above) in which a party proceeds without an attorney. However, in *Anjuluchuku v. Southern New England School of Law* [multiple civil actions], 2006 U.S. Dist. LEXIS 68684, at *20 (N.D. Ga., September 14, 2006), Judge Julie E. Carnes ruled that "Enough is enough" and levied § 1927 sanctions for attorney's fees against a pro se litigant.

Here, the Court has agreed with Maid that "Enough is enough" with respect to Windsor's unreasonable and vexatious post-termination conduct. (*See* Docket No. 723).[3] He has repeatedly filed duplicative or substantially identical pleadings even after the Court has issued an Order denying them (*see* Docket No. 390) and

[3] This Court has already found that "[n]othing in the record suggests that, absent extraordinary steps taken to stem Windsor's excessive litigiousness, he will cease his demands on the Court's, Plaintiffs', and Plaintiffs' counsel's time and resources in this closed case." [Docket No. 723, p. 17].

after his appeal of such Order was dismissed by the Eleventh Circuit. (*See* Docket No. 545). He has often failed to comply with Court rules and procedures. His pleadings are long, rambling and devoid of evidentiary value. The sheer volume of his filings since April 24, 2009 is remarkable. Windsor's opinion that he should not have been found culpable for his outrageous and stubbornly litigious behavior, which gave rise to this litigation, and which continues to drive Windsor's campaign of harassment, has been quite an expensive and exhausting ordeal for Maid and its counsel.[4]

Windsor's filings since April 24, 2009 have been nothing more than a malicious attempt to improperly harass Maid, its attorneys, and the Court and to needlessly increase the cost of litigation. There was no reasonable basis, other than harassment, for Windsor to continue to file the same duplicative motions, levying the same baseless charges of misconduct, criminal acts, violation of Constitutional rights, and so forth, against Maid, its counsel, the Court, and the Eleventh Circuit, in an effort to re-litigate the substantive merits of this CLOSED case.

B. THIS COURT HAS AUTHORITY TO SANCTION WINDSOR PURSUANT TO ITS INHERENT POWERS

Federal courts are vested with inherent power to impose sanctions against

[4] This Court has already found that "Windsor's continued filing of frivolous, improper post-judgment motions also continues to subject Plaintiffs to needless trouble and expense." [Docket No. 723, p. 19].

both attorneys and parties for "bad faith" conduct in litigation. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43, 111 S. Ct. 2123, 2132 (1991). "[F]ederal courts possess inherent power to assess attorney's fees and litigation costs when the losing party has 'acted in bad faith, vexatiously, wantonly or for oppressive reasons.'" *Batson v. Neal Spelce Assoc.*, 805 F.2d 546, 550 (5th Cir. 1986) (quoting *F.D. Rich Co. v. United States ex rel. Industrial Lumber*, 417 U.S. 116, 129, 94 S. Ct. 2157 (1974)). The essential element in triggering the award of fees is therefore the existence of "bad faith" on the part of the unsuccessful litigant. *See Hall v. Cole*, 412 U.S. 1, 6, 93 S. Ct. 1943 (1973).

In *Kreager v. Solomon & Flanagan, P.A.*, 775 F.2d 1541, 1543 (11th Cir. 1985), the Eleventh Circuit reaffirmed the inherent power of a court to assess attorney's fees against a party who has acted in bad faith, vexatiously, wantonly or for oppressive reasons. In *Kreager*, the court added that a court's inherent power to assess attorney's fees applies not only to suits filed in bad faith, but to "bad faith acts preceding and during litigation." *Id*. To impose sanctions under these inherent powers, the court first must find bad faith. *See In re Mroz*, 65 F.3d 1567, 1575 (11th Cir. 1995).

While the Court must find that a lawyer or party "acted in bad faith, vexatiously, wantonly, or for oppressive reasons" to impose sanctions, "the key to

unlocking a court's inherent power is a finding of bad faith." *In re Sunshine Jr. Stores, Inc.*, 456 F.3d 1291, 1304 (11th Cir. 2006). "Bad faith" may be found not only in the claims asserted, but also in the conduct of the litigation. *See Roadway Express, Inc. v. Piper*, 447 U.S. 752, 766, 100 S. Ct. 2455, 2464 (1980). Where there is bad faith conduct during litigation, the court may consider the pre-litigation misconduct in deciding whether to impose sanctions. *See Lamb Engineering & Const. Co. v. Nebraska Public Power Dist.*, 103 F.3d 1422, 1435-36 (8th Cir. 1997); *Assoc. of Flight Attendants, AFL-CIO v. Horizon Air Industries, Inc.*, 976 F.2d 541, 548-50 (9th Cir. 1992). When a person has engaged in extended misconduct, the court may properly impose sanctions for the entire course of conduct under the court's inherent powers. *See Chambers*, 501 U.S. at 51-52, 111 S. Ct. at 2136; *see also Woodson v. Surgitek, Inc.*, 57 F.3d 1406-1418 (5th Cir. 1995).

"A finding of bad faith is warranted where an attorney or a client knowingly or recklessly raises a frivolous argument, or argues a meritorious claim for the purpose of harassing an opponent." *Byrne v. Nezhat*, 261 F.3d 1075, 1121 (11th Cir. 2001). The standard for bad faith is necessarily stringent. *See Roadway Express Inc. v. Piper*, 447 U.S. 752, 766, 100 S. Ct. 2455 (1980) ("Because inherent powers (to levy attorney's fees for bad faith) are shielded from direct democratic controls,

they must be exercised with restraint and discretion.") A party should not be penalized for maintaining an aggressive litigation posture. *See Batson*, 805 F.2d at 550. "But advocacy simply for the sake of burdening an opponent with unnecessary expenditures of time and effort clearly warrants recompense of the extra outlays attributable thereto." *Lipsig v. National Student Marketing Corp*., 663 F.2d 178, 181 (D.C. Cir. 1980).

It is well settled that the district court may, in its informed discretion, rely on inherent power rather than the federal rules or § 1927. *See Chambers v. NASCO*, 501 U.S. 32, 50, 111 S. Ct. 2123 (1991). "A court must, of course, exercise caution in invoking its inherent power, and it must comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees." *Id*. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893 (1976) (internal quotation marks omitted). Due process does not require an actual hearing. *See Merriman v. Sec. Ins.*, 100 F.3d 1187, 1192 (5th Cir. 1996) (affirming the award of sanctions despite the fact that the district court did not conduct an evidentiary hearing because "due process does not demand an actual hearing"). A court "should be cautious in exerting its inherent power and 'must comply with the mandates of due process, both in

determining that the requisite bad faith exists and in assessing fees.'" *Byrne,* 261 F.3d at 1106 (quoting *Chambers,* 501 U.S. at 50).

In *Woodruff v. McLane,* No. 7:04-ccv-96 (HL), 2006 U.S. Dist. LEXIS 2872, at *13 (M.D. Ga., January 19, 2006), the district court found that "an award of attorney's fees is appropriate as to those fees that were generated as a result of [pro se] Plaintiff's litigious conduct following the dismissal of his complaint." The court directed Defendants to "submit to the Court billing statements and affidavits showing the fees incurred as a result of Plaintiff's unnecessary filings occurring after judgment was entered for Defendants…" *Id*.

Windsor has engaged in bad faith by failing to accept the judgment of this Court and the Eleventh Circuit. He has engaged in bad faith in refusing to accept the finality of those judgments. He engaged in frivolity when he appealed this Court's order on his post-judgment filings and the Eleventh Circuit dismissed it. Maid (and this Court) have had to endure an avalanche of meritless filings and scandalous accusations. Windsor's pleadings since April 24, 2009 have been a continual and seemingly unending re-argument of his philosophical disagreement and displeasure with the judicial rulings in this CLOSED case and his disdain for Plaintiffs, their counsel, and this Court. This Court has had to issue a permanent injunction in order to end Windsor's campaign of harassment. (*See* Docket No.

723).

C. THIS COURT CAN AWARD ATTORNEY'S FEES AND EXPENSES PURSUANT TO O.C.G.A. § 13-6-11

On August 9, 2007, this Court granted summary judgment to Maid on its claim for tortious interference with business relations and the Court's issuance of a permanent injunction against Defendants. (*See* Docket No. 251). The Court also concluded that Maid was entitled to recover attorney's fees and expenses under O.C.G.A. § 13-6-11, finding that Windsor had been "clearly stubbornly litigious". (*See Id*. at p. 43). These findings were upheld by the Eleventh Circuit. (*See* Docket No. 344).

Under O.C.G.A. § 13-6-11, expenses of litigation can be awarded where the defendant "has acted in bad faith, has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense". With regard to Maid's request for attorney's fees and costs pursuant to O.C.G.A. § 13-6-11, the Court found that "it was Alcatraz's and Windsor's stubbornly litigious actions that gave rise to this litigation." (Docket No. 251, p. 43).

With regard to Maid's claim for tortious interference with business relations, the Court stated in its August 9, 2007 Order

> To establish a claim of intentional interference with business relations, a plaintiff must prove that the defendant: '(1) acted improperly and without privilege, (2) purposefully and with malice with the intent to

> injure, (3) induced a third party or parties not to enter into or continue a business relationship with the plaintiff, and (4) for which the plaintiff suffered some financial injury.' Hayes v. Irwin, 541 F. Supp. 397, 429 (N.D. Ga. 1982).

(Docket No. 251, p. 20).

The Court went on to say on Page 25 of its Order, "The Court finds that Alcatraz acted purposefully and with malice with the intent to injure…." in granting Maid's claim for tortious interference with business relations. (*See* Docket No. 251, p. 25).

Here, the Court's granting of Maid's tortious interference claim is a finding of bad faith. *Fertility Technology Resources, Inc. v. Lifetek Medical, Inc*., 282 Ga. App. 148, 153, 637 S.E.2d 844 (2006) ("Because tortious interference is an intentional tort, which indicates bad faith, the award on that claim authorized an award under OCGA § 13-6-11. *Witty v. McNeal Agency*, 239 Ga. App. 554, 556 (1) (b) (521 SE2d 619) (1999)). Windsor's post-judgment and post-termination conduct justifies attorney's fees and costs assessed against him pursuant to 28 U.S.C. §1927, this Court's inherent authority, and/or O.C.G.A. § 13-6-11.

D. PLAINTIFFS' FEES AND EXPENSES ARE REASONABLE

An attorney cannot recover for professional services without presenting proof of the value of those services. *See Brandenburg v. All-Fleet Refinishing, Inc*., 252 Ga. App. 40, 555 S.E.2d 508 (2001). Thus, an award of attorney's fees is determined upon evidence of the reasonable value of the professional services that

underlie the claim for attorney's fees. *See Patton v. Turnage*, 260 Ga. App. 744, 580 S.E.2d 604 (2003). An award of attorney's fees is thus not authorized unless the party proves the actual costs incurred and the reasonableness of those costs. *See 4WD Parts Center, Inc. v. Mackendrick*, 260 Ga. App. 340, 579 S.E.2d 772 (2003).

In or about August, 2005, Maid employed the law firm of Hawkins & Parnell, LLP ("HP") to prosecute Maid's claims against Defendants and to defend Alcatraz's counterclaims. (*See* **Exhibit "1"**, Declaration of Robert J. Schul ("Schul Decl."), ¶ 4). In December 9, 2008, the Court entered a Consent Final Order and Judgment [Docket No. 354] ending the litigation except for certain administrative matters such as the payments out of the registry of the Court. Beginning in April, 2009, Windsor began his fusillade of filings and Maid incurred additional attorney's fees and expenses defending itself and the integrity of the underlying judgment in the post-judgment-and-post-mandate phase ("PJPM Phase"). (Schul Decl., ¶ 5). The total amount of attorney's fees HP has invoiced Maid for protecting the judgment in the PJPM Phase that it obtained from the successful prosecution of its lawsuit is $170,159.50. (Schul Decl., ¶ 6).[5] The total amount of expenses HP has invoiced Maid for this lawsuit through November 30, 2009 is $2,819.51. (Schul Decl., ¶ 6). Maid has paid HP for all such attorney's fees and

[5] Maid provides the figures as estimates of its attorney's fees and expenses as required under FRCP 54(d)(2)(B)(iii).

expenses that HP has invoiced since November 30, 2009. (Schul Decl., ¶ 6).

In addition to the fees and expenses paid to HP, Maid also retained the law firm of Phillips Lytle, LLP ("PL") to serve as counsel for Maid in New York in connection with the PJPM Phase of the lawsuit. (Schul Decl., ¶ 7). The total amount of attorney's fees PL has invoiced Maid for this lawsuit through November 30, 2009 is $12,075.89. (Schul Decl., ¶ 8). The total amount of expenses PL has invoiced Maid for the PJPM Phase of the lawsuit through November 30, 2009 is $45.20. (Schul Decl., ¶ 8). Maid has paid PL for all such attorney's fees and expenses that PL has invoiced since November 30, 2009. (Schul Decl., ¶ 8).

Carl H. Anderson, Jr. ("Anderson") is the attorney at HP who is most familiar with this case having spent numerous hours working on this file. (*See* **Exhibit "2"**, Declaration of Carl H. Anderson, Jr. ("Anderson Decl."), ¶ 7). The billing rate for senior partners on this file is $315.00 per hour, the billing rate for partners on this file is $275.00 per hour, the billing rate for of counsel is $260.00 per hour, the billing rate for associates is $225.00 per hour, and the billing rate for paralegals on this file is $145.00 per hour. (See Anderson Decl., ¶ 9). These rates have not changed in 2009. (See Anderson Decl., ¶ 9).[6]

[6] Both this Court and the Eleventh Circuit have previously found that Maid's counsel's rates were reasonable. [Docket Nos. 325, p. 4 ("The Court also finds that these amounts were reasonable and consistent with the requirements of this case and the billing judgment exercised in similar cases in the Atlanta market for comparable legal services.") and 344, p. 6 (". . .the district court properly found that the hourly rates were reasonable, . . ")].

Anderson has prepared a table using information available in the Fulton County Daily Report and through Martindale-Hubbell to help him establish that the HP timekeepers' rates are reasonable. (Anderson Decl., ¶ 6). A copy of the table is attached to the Anderson Decl. and incorporated therein as Exhibit "B".

Anderson has reviewed the file in which HP keeps the bills that it generates. Affiant derived the information in billing abstract from the billing files so that he can provide an estimate for fees and expenses from April through November 30, 2009. (Anderson Decl., ¶ 9). The Excel® billing abstracts will be attached to the supplemental Declaration of Anderson that will be filed under LR54.2A(2).

It is Anderson's experience and opinion that the quantity of time worked by Plaintiffs' counsel for which compensation is sought is reasonable and consistent with the requirements of this case and the billing judgment exercised in comparable cases in the Atlanta market for comparable legal services. (Anderson Decl., ¶ 6). The staffing on these cases and the time charges resulting from these staffing decisions appear, in Anderson's judgment, to be reasonable, necessary, and consistent with the prevailing market conditions in 2009 for the delivery of comparable legal services in comparable cases. (Anderson Decl., ¶ 6). Based on Anderson's review of the table attached to his Affidavit as Exhibit "B" and his knowledge of rates in the Atlanta area, HP timekeepers' rates are reasonable (if not

low). (Anderson Decl., ¶ 6).

Lawrence E. Newlin ("Newlin") is an Atlanta lawyer personally familiar with hourly billing and collection rates and practices of Atlanta's lawyers in cases comparable to this one. (See **Exhibit "3"**, Declaration of Lawrence E. Newlin ("Newlin Decl"), ¶ 7). It is Newlin's experience and opinion that the hourly rates sought by Plaintiffs' counsel in their motion for attorney's fees are comfortably within the ranges currently being billed and collected under similar circumstances in cases demanding comparable legal services and presenting complexity comparable to this case in Atlanta, Georgia. (Newlin Decl., ¶ 9). In Newlin's opinion, the hourly rates sought in the motion for attorney's fees are reasonable and consistent with market rates in effect, charged and collected in 2009. (Newlin Decl., ¶ 10).

It is Newlin's experience and opinion that the quantity of time worked by Plaintiffs' counsel for which compensation is sought is reasonable and consistent with the requirements of this case and the billing judgment exercised in comparable cases in the Atlanta market for comparable legal services. (Newlin Decl., ¶ 11). The staffing on these cases and the time charges resulting from these staffing decisions appear, in his judgment, to be reasonable, necessary, and consistent with the prevailing market conditions in 2009 for the delivery of

comparable legal services in comparable cases. (Newlin Decl., ¶ 11).

Marc W. Brown ("Brown") is the lawyer at PL who is most familiar with this case having spent numerous hours working on this file. (See **Exhibit "4"**, Declaration of Marc W. Brown ("Brown Decl."), ¶ 9). Brown has reviewed the file in which PL keeps the bills that it generates. Brown derived the information in billing abstract from the billing files so that he can provide an estimate for fees and expenses from April through December 31, 2009. (Brown Decl., ¶ 11). The Excel® billing abstracts will be attached to the supplemental Declaration of Brown that will be filed under LR54.2A(2).

It is Brown's experience and opinion that the quantity of time worked by Plaintiffs' counsel for which compensation is sought is reasonable and consistent with the requirements of this case and the billing judgment exercised in comparable cases in the Buffalo market for comparable legal services. (Brown Decl, ¶ 8). The staffing on these cases and the time charges resulting from these staffing decisions appear, in his judgment, to be reasonable, necessary, and consistent with the prevailing market conditions from 2005 through 2007 for the delivery of comparable legal services in comparable cases. (Brown Decl, ¶ 8). Based on Brown's review of the billing records and his knowledge of rates in the Buffalo area, PL timekeepers' rates are reasonable. (Brown Decl, ¶ 8).

Maid estimates and anticipates that the amount that it will seek in its LR54.2A(2) supplemental filing will be less than those amounts paid to HP and PL because these payment may include payments for related matters in other Georgia courts, New York courts, or Canadian courts. Accordingly, Maid estimates that its billed attorney's fees ($182,235.39) and expenses ($2,944.73) through November 30, 2009 are $185,180.12 or possibly less. Maid estimates that there are unbilled attorney's fees ($58,393.50) and expenses ($1,045.05) totaling $59,438.55 or possibly less for December, 2009. Not including the expenses associated with the preparation of this Motion in 2010, Maid will be seeking approximately $244,618.67 from Windsor.

III. CONCLUSION

Plaintiffs ask that the Court **GRANT** their Motion for Post-Judgment Attorney's Fees and Expenses Pursuant to 28 U.S.C. § 1927, this Court's Inherent Powers and O.C.G.A. § 13-6-11. Windsor's conduct since April 24, 2009 has been the epitome of bad faith and has been designed to cause needless trouble and expense to Maid.

WHEREFORE, Maid prays that:

(a) the Court **GRANT** their Motion for Post-Judgment Attorney's Fees and Expenses Pursuant to 28 U.S.C. § 1927, this Court's Inherent

Powers and O.C.G.A. § 13-6-11;

(b) the Court award Maid its attorney's fees and expenses (including those for having to bring this motion);

(c) the Court enter a separate judgment for the amount of any award; and

(d) the Court grant such other and further relief as is just and equitable under the circumstances.

This 6th day of January, 2010.

HAWKINS & PARNELL, LLP

s/ Carl H. Anderson, Jr.
Carl H. Anderson, Jr.
Georgia Bar No. 016320
Sarah L. Bright
Georgia Bar No. 082069

Attorneys for Plaintiffs

4000 SunTrust Plaza
303 Peachtree Street, N.E.
Atlanta, Georgia 30308-3243
Telephone: (404) 614-7400
Telecopier: (404) 614-7500
E-mail: canderson@hplegal.com
sbright@hplegal.com

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MAID OF THE MIST CORPORATION and MAID OF THE MIST STEAMBOAT COMPANY, LTD.,	)	
Plaintiffs,	)	**Civil Action No.**
v.	)	**1:06-CV-0714-ODE**
ALCATRAZ MEDIA, LLC, ALCATRAZ MEDIA, INC., and WILLIAM M. WINDSOR,	)	
Defendants.	)	

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that he has prepared the within and foregoing document in accordance with LR 5.1, NDGa., and LR 7.1D, NDGa. Specifically, counsel certifies that he has used 14 point Times New Roman as the font in these documents except for footnotes that use 10 point Times New Roman as the font.

This 6th day of January, 2010.

HAWKINS & PARNELL, LLP

s/ Carl H. Anderson, Jr.
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Defendants.	)	

CERTIFICATE OF SERVICE

This is to certify that I have this day served opposing counsel(s) in the above-referenced matter with the foregoing **PLAINTIFFS' MOTION FOR POST-JUDGMENT ATTORNEY'S FEES AND EXPENSES PURSUANT TO 28 U.S.C. § 1927, THIS COURT'S INHERENT POWERS, AND O.C.G.A. § 13-6-11, AND INDWELLING MEMORANDUM OF LAW** by electronic filing and/or by certified U.S. mail, return receipt requested, and/or by regular U.S. mail, addressed as follows:

William M. Windsor
3924 Lower Roswell Road
Marietta, Georgia 30068

This 6th day of January, 2010.

HAWKINS & PARNELL, LLP

s/ Carl H. Anderson, Jr.
Carl H. Anderson, Jr.
Georgia Bar No. 016320
Sarah L. Bright
Georgia Bar No. 082069

Attorneys for Plaintiffs

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