

NORTH CAROLINA
WAKE COUNTY

2014 MAR 13 PM 4:13

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
12-CVS-14344

LAWRENCE PIAZZA and
SALVATORE LAMPURI,

Plaintiff,

vs.

DAVID KIRKBRIDE, GREGORY
BRANNON, and ROBERT RICE,

Defendants.

ORDER FOR THE ENTRY OF AWARD
OF COSTS AND ATTORNEYS' FEES

This matter came on for hearing before the undersigned on March 13, 2014 on the Plaintiffs' Motion for Entry of Award of Costs and Attorneys' Fees, with Steven B. Epstein appearing for the Plaintiffs and Michael Lee Frazier appearing for the Defendants Gregory Brannon and Robert Rice.

The Court, having reviewed the motion, supporting affidavits, and the arguments of counsel, finds and concludes as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This case was tried to a jury during the February 10, 2014 term of civil superior court.
2. On February 18, 2014, the jury returned with its verdict finding Defendant Gregory Brannon liable to both Plaintiffs for securities fraud under N.C. Gen. Stat. § 78A-56(a)(2).
3. Pursuant to N.C. Gen. Stat. § 78A-56(a)(2), prevailing plaintiffs are entitled to an award of costs and "reasonable attorneys' fees."

4. Plaintiffs' primary counsel, Steven B. Epstein, has been practicing law for in excess of 23 years and is experienced in complex litigation. During the trial of this action, he exhibited the skill commensurate with an experienced attorney who practices regularly in complex litigation for large law firms and his skill assisted his clients in prevailing in this action.

5. Mr. Epstein's staff at Poyner Spruill LLP provided important assistance to him both prior to and during the trial of this action.

6. Mr. Epstein has submitted an affidavit detailing the work undertaken by himself and his staff at Poyner Spruill LLP on behalf of the Plaintiffs related to the claims brought against the Defendants. The affidavit details the time and labor expended in the investigation and prosecution of the Plaintiffs' claims against the Defendants, and, in particular, Defendant Gregory Brannon.

7. The time expended in the investigation and prosecution of the Plaintiffs' claims against the Defendants, and, in particular, Defendant Gregory Brannon, as is set forth in the summary attached as Exhibit A to the Affidavit of Steven B. Epstein, was reasonable and appropriate considering the novelty and complexity of those claims.

8. Mr. Epstein's affidavit also details work performed by the law firm of Murchison & Cumming, LLP in California regarding service of a subpoena on a key trial witness, John Cummings. The Court finds that work and related attorneys fees reasonable and appropriate considering the importance of Mr. Cummings as a witness in this case.

9. This case was originally brought against three Defendants: David Kirkbride, Gregory Brannon, and Robert Rice. David Kirkbride obtained summary judgment. The jury found only Gregory Brannon liable under N.C. Gen. Stat. § 78A-56(a)(2), and not Robert Rice. Nevertheless, as the Court observed from presiding over the trial, to prove their claims against

Defendant Gregory Brannon, Plaintiffs needed to develop discovery and evidence from and through Robert Rice and David Kirkbride, the two former chief executive officers of Neogen Enterprises, Inc.; both Rice and Kirkbride were important trial witnesses related to Plaintiffs' claims against Defendant Gregory Brannon and Brannon's defenses – irrespective of their role as parties. The Court finds that Plaintiffs' claims against all three Defendants arose from a common nucleus of operative fact and were inextricably interwoven with one another. Consequently, the Court concludes that it is fair and reasonable to tax all of Plaintiffs' requested attorneys' fees against Defendant Gregory Brannon, without any apportionment or reduction related to the

claims Plaintiffs unsuccessfully prosecuted against Defendants Rice and Kirkbride, *and without any apportionment or reduction related to the claims Plaintiffs dismissed against Defendant Brannon*
10. The rates charged by Mr. Epstein and his staff at Poyner Spruill are within the range of customary fees in Wake County for lawyers and legal professionals with similar experience for like work in complex, civil litigation. *→ BC*

11. The Affidavits of Steven B. Epstein, Mark E. Anderson, and Robert C. Van Arnam provide competent evidence supporting these findings.

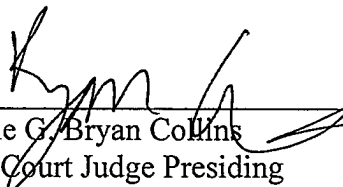
12. In view of the above findings, Plaintiffs are entitled to an award of 123,804.00 *BC* as reasonable attorneys fees for their counsel's work on their behalf in this case through the date of February 25, 2014. ~~122,044.00~~

13. Each of the items of costs detailed in the Affidavit of Steven B. Epstein is assessable pursuant to N.C. Gen. Stat. § 7A-305 and § 6-20 and should be taxed as costs to Defendant Gregory Brannon.

14. Plaintiffs are entitled to an award of \$ 8,493.79 in costs against Defendant Gregory Brannon through the date of February 25, 2014.

NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the judgment in this case shall include an award of reasonable attorneys' fees against Defendant Gregory Brannon, payable jointly and severally to both Plaintiffs, in the amount of \$ 123,804.00, and an award of costs against Defendant Gregory Brannon, payable jointly and severally to both Plaintiffs, in the amount of \$ 8,493.79.

This the 13th day of March, 2014.



Honorable G. Bryan Collins
Superior Court Judge Presiding