

Chapter 11 Seeking Attorney Fees Pursuant to Fee Shifting Statute

11.1 Attorney Fees Motion With Memorandum of Law and Attorney's Affidavit in Settled Truth in Lending Case

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MONTIEL

Plaintiff

[vs.]

METROPOLITAN MORTGAGE COMPANY and DAVID E. WELLS, TRUSTEE,

Defendants

CASE NO.

Magistrate Judge L. Johnson

PLAINTIFFS MOTION FOR ATTORNEY'S FEES AND COSTS, WITH INCORPORATED
MEMORANDUM OF LAW

MOTION

Plaintiff ("Montiel") moves this Court for an award of attorney's fees and costs and states as follows:

1. In the Agreed Final Judgment entered herein on February 4, 1994, this Court retained "jurisdiction for the purpose of awarding Montiel her reasonable attorney's fees and costs under the provisions of 15 U.S.C. §1640 (a) (3)." (J. at 2,3.)

2. In supporting affidavits filed contemporaneously herewith, Montiel has shown that she should be awarded the following amounts:

<i>Attorney</i>	<i>Hours</i>	<i>Rate</i>	<i>Award</i>
Charles M. Baird	187.25	\$200	\$37,450.00
Ana I. Segura	68.35	\$175	\$11,961.25
Cecily Robinson-Duffie	12.5	\$150	\$ 1,875.00

Total Attorney's Fees¹ \$51,286.25

Costs

<i>Item</i>	<i>Amount</i>
Filing Fees	\$120.00
Process Server Fees	\$ 50.00
Transcript of Montiel deposition	\$126.90
Transcript of Wells deposition	\$200.90
Photocopying of court filings (four copies each of 268 pages filed = 1072 pages @ \$.15 per page)	\$160.80
Total Costs	\$658.60
Total Attorney's Fees and Costs	\$51,944.85

WHEREFORE Montiel prays that this Court enter an order awarding in her favor and against Defendants the monetary sum of \$51,286.25 in attorney's fees, payable to Legal Services of Greater Miami, Inc., plus the monetary sum of \$658.60 in costs, also payable to Legal Services of Greater Miami, Inc., for a total award of \$51,944.85.

MEMORANDUM OF LAW

I. THE LANGUAGE OF THE AGREED FINAL JUDGMENT, THE RESULT OBTAINED BY MONTIEL, AND CONTROLLING CASE AUTHORITY ALL GIVE MONTIEL THE RIGHT TO REASONABLE ATTORNEY'S FEES AND COSTS EVEN THOUGH THE CONTROVERSY WAS RESOLVED BY SETTLEMENT

¹Attorney's fees for additional services in connection with the attorney's fees issue will be requested in a supplemental submission to the Court when such services are completed.

In the Agreed Final Judgment entered herein on February 4, 1994, this Court retained "jurisdiction for the purpose of awarding Montiel her reasonable attorney's fees and costs under the provisions of 15 U.S.C. §1640(a) (3)." (J. at 2,3.) Thus the judgment clearly acknowledges that Montiel has a right to seek fees and costs even though the controversy was resolved by settlement rather than court decision. In agreeing to the language employed in the judgment, Defendants have conceded that the present action has been a "successful action to enforce" the Truth in Lending Act ("TILA") in which Montiel has been "determined to have a right of rescission", thus triggering the TILA attorney's fees and costs provision² at 15 U.S.C. s1640(a)(3).

In addition, the record and judgment show that Montiel obtained the maximum recovery that was available to her under the TILA statutory damages provision and the maximum reduction of her mortgage obligation that the TILA rescission remedy normally allows. Thus Montiel's lawsuit was an unqualified success. As against Defendant Metropolitan Mortgage Company, Montiel obtained a TILA statutory penalty of \$1000, which is the maximum amount allowed by 15 U.S.C. §§1640(a), 1640(g) for TILA disclosure violations. (J. at 2.) As against Defendant David E. Wells, Trustee ("Wells"), Montiel obtained a reduction of roughly \$15,000 from the amount claimed to be owing on her mortgage, and in addition obtained a stipulation that Wells would not seek attorney's fees or costs from Montiel under the mortgage or note, (J. at 2). The reduction in the mortgage obligation included a \$1,000 credit for TILA statutory damages against Wells.

The amount of the reduction in the claimed mortgage obligation can be computed as follows. First, the amount claimed by Wells as the principal balance of the mortgage as of October 19, 1993 was \$34,467.74. (Def. Wells' Answer to Am. Compl., Affirm. Defenses &

²In the Agreed Final Judgment, the amount owed by Montiel on the mortgage, reduced substantially below the amount previously claimed by Defendant Wells (see pages 4-6 of this Memorandum), was "the result of Montiel's election to rescind under the Truth in Lending Act," (J. at 2) .

Countercl. at 4, Docket No. 71.) Second, Wells claimed that Montiel owed interest on the principal balance at an annual rate of 11.9 per cent from March 15, 1992. (Id.) The amount of such interest, computed through February 28, 1994 (assuming for simplicity of calculation a 360-day year comprising twelve thirty-day months) would be $\$34,467.74$ (principal) \times .119 (annual interest rate) \times 23.5 (months in term) $-$ 12 (months in year) $=$ $\$8032.42$. Adding the $\$8032.42$ in interest to the $\$34,467.74$ claimed as principal gives a total of $\$42,500.16$ that would have been owed by Montiel as of February 28, 1994 -according to the allegations in Wells' counterclaim. Yet in the Agreed Final Judgment the total amount that Montiel has to pay to satisfy the mortgage is $\$26,707.10$, with no interest accruing until June 1, 1994. (J. at 3 .) Thus under the terms of the judgment herein, Montiel is obligated to pay roughly $\$15,000$ less (more precisely, $\$42,500.16 - 26,707.10 = \$15,793.06$ less as of February 28, 1994) to satisfy her mortgage than the amount claimed by Wells in his counterclaim. Additionally, Wells previously claimed that Montiel was required under the terms of the mortgage to pay for attorney's fees and costs incurred by Wells in the present litigation. (Def. Wells' Answer to Am. Compl., Affirm. Defenses & Countercl. at 4,6; Docket No. 71.) The amount of such fees and costs would certainly exceed $\$10,000$, since Wells stipulated on September 27, 1993 that as of then the amount of his attorney's fees was $\$8,287.50$ (Bilateral Pretrial Stip. at 10; Docket No. 58.)

The above analysis shows, therefore, that under the terms of the Agreed Final Judgment the amount previously claimed by Wells to be owed by Montiel is reduced by more than $\$25,000$ (more than a $\$15,000$ reduction in the mortgage balance, plus elimination of more than $\$10,000$ in attorney's fees and costs). Thus the settlement was undeniably a successful one for Montiel.

For Montiel, the settlement represented not merely a success but the *most successful result normally possible* in a TILA rescission. Under *Williams v. Homestake Mortgage Co.*, 968 F.2d 1137 (11th Cir. 1992), Montiel could not realistically expect this Court both to declare her mortgage unenforceable and also to excuse her from ever having to repay the net loan proceeds. Rather, the best result that Montiel could realistically expect was elimination of all accrued interest from the mortgage, along with the brokers fee, all closing costs, and all other charges,

including attorney's fees, plus a credit for the entirety of her payments (i.e., with the full amount of each payment applied against principal) and a credit for statutory damages under TILA. *See Williams*, 968 F.2d at 1138 n.3; *Semar v. Platte Valley Fed. Sav. & Loan Ass'n*, 791 F.2d 699 (9th Cir. 1986); *Mayfield v. Vanguard Sav. & Loan Ass'n*, 710 F.Supp. 143, 148-49 (E.D. Pa. 1989).

This best realistic result was *exactly* the result that Montiel obtained. The amount of \$26,707.10 that Montiel is obligated to pay under the Agreed Final Judgment was computed precisely according to the formula enunciated in *Williams*, *Semar*, and *Mayfield*. First, the amounts paid directly to Montiel or on Montiel's behalf to her direct benefit were totaled. These amounts are \$2,746.67 paid to Montiel, \$25,022.75 paid to satisfy a prior mortgage, \$1,883.06 paid for real property taxes, and \$779.88 paid for condominium association assessments, for a total of \$30,432.36. (Def. Wells' Answer to Am. Compl., Affirm Defenses & Countercl. Ex. D; Docket No. 71.) From this total were subtracted six monthly payments of \$454.21 amounting to \$2,725.26, plus TILA statutory damages in the amount of \$1,000, for a total subtraction of \$3,725.26. Subtracting \$3,725.26 from the loan proceeds amount of \$30,432.36 gives a remainder of \$26,707.10.

Finally, there can be no doubt in the Eleventh Circuit that TILA attorney's fees are available to a consumer even if the TILA claim is resolved by settlement rather than court decision. The Eleventh Circuit has stated in a TILA case that "[t]he fact that a [TILA] plaintiff prevails through settlement should not weaken (his or her) claim to fees. *James v. Home Constr. Co.*, 689 F.2d 1357, 1358 (11th Cir. 1982). The James court cites a United States supreme court decision, *Maher v. Gayne*, 448 U.S. 122, 129 (1980), in which the Court held that a plaintiff was a "prevailing party" entitled to attorney's fees under 42 U.S.C. §1988, even though the case was settled.

To the same effect as James is the decision in *Gram v. Bank of Louisiana*, 691 F.2d 728 (5th Cir. 1982). The Gram court observes that TILA - is intended to be enforced by "private attorneys general" and that this Policy would be seriously undermined if attorney's fees could be

denied to a TILA plaintiff who obtained a favorable settlement. "Awarding Attorney's fees only in cases where rights are vindicated after a full-blown trial would discourage consumer from seeking judicial relief for violations of [TILA]. This would defeat §1640's [i.e., 15 U.S.C. §1640) *raison d'etre*, a result we cannot abide." 691 F.2d at 729.

II. THE FACT THAT MONTIEL WAS REPRESENTED
BY A LEGAL SERVICES PROGRAM DOES NOT PREVENT HER FROM OBTAINING
STATUTORY ATTORNEY'S FEES AT THE MARKET RATE

It is settled law in this Circuit that TILA attorney's fees are awardable to a party represented by a legal services organization. *Harris v. Tower Loan of Mississippi, Inc.*, 609 F.2d 120, 123-24 (5th Cir. 1980).³ Furthermore, the United States Supreme Court has held in a civil rights case that legal services attorneys are entitled to fees at the full market rate. *Blum v. Stenson*, 465 U.S. 886 (1984). For an example of the application of *Blum* in a TILA case, see *Mattera v. Blum (In re Mattera)*, 128 B.R. 107, 119 (Bankr. E.D. Pa. 1991), in which the court held that a legal services attorney representing the consumer was entitled to fees at the rate of \$230 per hour.⁴

III. A TILA ATTORNEY'S FEE AWARD IS MANDATORY,
AND THE AMOUNT OF FEES SHOULD NOT BE ARTIFICIALLY LOWERED

The TILA attorney's fees provision is mandatory, not discretionary. *DeJesus v. Banco Popular de Puerto Rico*, 918 F.2d 232 (1st Cir. 1990). *See also Alyeska Pipeline Serv. Co. v. Wilderness, Society*, 421 U.S. 240- 261 n.34 (1975) ("statutes which are mandatory in terms of awarding attorneys' fees include the Truth in Lending Act"). Under TILA, "any creditor" who fails to comply with the Act "is liable," without qualification, for "a reasonable attorney's fee" in

³Decisions of the former Fifth Circuit rendered prior to October 1, 1981 are binding precedent in the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981).

⁴For general policy considerations regarding awarding attorney's fees to Legal Services programs, see comment, *Award of Attorney's Fees to Legal Aid Offices*, 87 Harv. L. Rev. 411, 414 (1973).

"any successful action" to enforce the TILA penalty or "in any action in which a person is determined to have a right of rescission." 15 U.S.C. §1640. Upon gaining relief under TILA, a consumer has a right to attorney's fees "no matter what the equities of the situation," because TILA is an "objectively mandatory" fee-shifting statute. 1 M. Derfner & A. Wolf, *Court Awarded Attorney Fees* §5.02(2) (1993).

Given the policy underlying TILA, it would be inappropriate for Montiel to be denied attorney's fees for any portion of the time necessary to prosecute her TILA claim. The "remedial machinery" of TILA was passed in "rigorous regard" for consumer protection. *Sosa v. Fite*, 498 F.2d 114, 117 (5th Cir. 1974). Consequently, TILA "should be construed liberally in light of its broadly remedial purposes." *Thomas v. Myers-Dickson Furn. Co.*, 479 F.2d 740, 748 (5th Cir. 1973). A too-restrictive reading of what constitutes a "reasonable" TILA attorney's fee under 15 U.S.C. §1640 would undercut the policy of the Act. That policy favors strong private enforcement of the Act as a major deterrent to non-compliance. *Buford v. American Fin. Co.*, 333 F.,Supp. 1243, 1248 (N. D. Ga. 1971) . A "critical and integral part" of the TILA civil penalty is the attorney's fee award. *Plant v. Blazer Fin. Services, Inc.*, 598 F.2d 1357, 1365 (5th Cir. 1979). Accordingly, the Eleventh Circuit "will not tolerate artificially low computations of TIL attorney fees." *Varner v. Century Fin. Co.*, 738 F.2d 1143, 1148 (11th Cir. 1984). "[I]t is not the province of federal courts to undermine the congressional policy of promoting the informed use. of credit, 15 U.S.C. §1601 (1976), through parsimonious attorney's fees award gifts in those instances where the courts find only technical violations." *Reneau v. Mossy Motors*, 622 F.2d 192, 196 (5th Cir. 1980).⁵

IV. THE PROPER METHOD FOR CALCULATING ATTORNEY'S FEE AWARDS UNDER TILA IS THE LODESTAR METHOD.

In *Hensley v. Eckerhart*, 461 U.S. 424 (1983) and *Blum v. Stenson*, 465 U.S. 886 (1984), the Supreme Court established the framework and methodology for the calculation of the amount

⁵See note 3 supra.

of a "reasonable attorney's fee" under federal fee-shifting statutes.⁶ The starting point for this calculation is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. *Blum*, 465 U.S. at 888; *Hensley*, 461 U.S. at 433. This calculation yields the "lodestar" figure, which may be adjusted depending on the results obtained. Usually, however, there is no adjustment. There is a "strong presumption" that the lodestar figure represents a reasonable fee. *Pennsylvania v. Delaware Valley Citizens Council*, 478 U.S. 546, 565 (1986). The presumption should be especially strong in a TILA case. "Recognizing the goal of encouraging 'private attorneys general'... to bring suits to enforce [TILA], reduction of the [attorney's fee] award below the standard hours-times-rates formula would be inappropriate." *Dougherty v. Hoolinhan, Neils & Boland, Ltd.*, 531 F.Supp. 717, 723 (D. Minn. 1982).

The lodestar may be adjusted downward to exclude hours on unsuccessful claims that are wholly unrelated in law and fact to the successful claims. *Hensley*, 461 U.S. at 434. No such adjustment would be appropriate in the present case, however, since Montiel sought only TILA relief and fully obtained it.

The lodestar may also be adjusted downward when there has been only "partial or limited success" on a prevailing claim. 461 U.S., at 436. This adjustment would be inappropriate herein, since, as shown above in section I of this memorandum, Montiel has achieved total success.

The lodestar may also be adjusted upward. As stated in *Hensley*, "in some cases of exceptional success an enhanced award may be justified." 461 U.S. at 435. In the present case Montiel may well be entitled to such an enhancement, since she has challenged with complete success the TILA disclosures of a major statewide home equity lender. However, to remain conservative in her fee request, Montiel has not sought an upward adjustment of the lodestar.

⁶Hensley and Blum were decided under the Civil Rights Attorney's Fees Awards Act, codified in 42 U.S.C. §1988. The methodology of those cases is used for other federal fee-shifting statutes as well. See e.g. Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546 (1986) (Clean Air Act); Henson v. Columbus Bank & Trust Co., 770 F.2d 1566, 1574 (11th Cir. 1985) ("In considering awards for TIL cases, we consider the same factors and concerns that we consider in other attorneys' fees cases").

V. THE NUMBER OF ATTORNEY HOURS CLAIMED BY MONTIEL
HAS BEEN REDUCED FROM THE NUMBER OF HOURS ACTUALLY EXPENDED
AND IS REASONABLE

In affidavits submitted in support of Plaintiff's Motion for Attorney's Fees and costs, Montiel has documented many more attorney hours expended than she is claiming in the Motion. Montiel has made a special effort to eliminate any attorney time that might be duplicative of work done by other attorneys or might have been avoided by optimum economy. Montiel's attorneys claim only the time stated in the "hours billed" column of their affidavits, which is less than the actual, documented time in the "hours expended" column. Attorney Baird claims only 187.25 hours out of 209.30 hours expended, attorney Segura only 68.35 hours out of 93.3 hours expended, and attorney Robinson-Duffie only 12.5 hours out of 20 hours expended. These reductions lower the total attorney hours from 322.60 to 268.1 and constitute the exercise of "billing judgment" recognized as appropriate in *Hensley*, 461 U.S. at 434. *See also National Ass'n of Concerned Veterans v. Secretary of Defense*, 675 F.2d 1319, 1327-28 (D.C. Cir. 1982). Montiel's attorneys have, in short, already eliminated the "fat" from their documented hours and no, further reduction is necessary or appropriate. The attorney hours claimed by Montiel are "reasonable" as they stand. *See Perkins v. Mobile Housing Board*, 847 F.2d 735, 738 (11th Cir. 1988) (attorney hours sworn to are "evidence of considerable weight on the issue of the time required in the usual case" and should not be reduced unless "the time claimed is obviously and convincingly excessive under the circumstances").

VI. THE HOURLY RATES CLAIMED BY MONTIEL
FOR HER ATTORNEYS ARE REASONABLE

In the supporting affidavits establishing the attorney hours claimed-"by montiel, the reasonableness of the hourly rates sought is substantiated by reference to the experience and expertise of the attorneys. Furthermore, the expert affidavit of David J. Lillesand, submitted contemporaneously herewith, states that these hourly rates are the same as those charged in the community for similar service.

VII. THIS COURT SHOULD AWARD MONTIEL \$51,286.25
IN ATTORNEY'S FEES AND \$658.60 IN COSTS, FOR A TOTAL AWARD OF
\$51,944.85, PAYABLE TO LEGAL SERVICES OF GREATER MIAMI, INC.

Montiel has shown above that she should be awarded the full amount of attorney's fees and costs under TILA that she seeks in her Motion. These amounts are \$51,286.25 in attorney's fees and \$658.60 in costs, for a total award of \$51,944.85.⁷ This award should be payable directly to Legal Services of Greater Miami, Inc. *Harris*, 609 F.2d at 124 (judgment should provide that lender shall pay attorney's fees "directly to Legal Services").

CERTIFICATION OF COUNSEL

In accordance with Local Rule 7.3, the undersigned counsel certify that they have fully reviewed the time records and supporting data and that Plaintiff's Motion for Attorney's Fees and Costs is well grounded in fact and justified.

Respectfully submitted,
Attorneys for Plaintiff

VERIFICATION

Undersigned counsel verifies that the allegations in the foregoing Motion are true and accurate and that they are supported by the sworn affidavits of attorneys Baird, Robinson-Duffie, Segura, and Lillesand, filed contemporaneously herewith.

⁷See note 1 supra.

11.2 Attorney's Affidavit in Support of Fees in Settled TIL Case

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MONTIEL

Plaintiff

[vs.]

METROPOLITAN MORTGAGE COMPANY and DAVID E. WELLS, TRUSTEE,

Defendant

CASE NO.

Magistrate Judge L. Johnson

AFFIDAVIT OF CHARLES M. BAIRD IN SUPPORT OF PLAINTIFF'S MOTION FOR
ATTORNEY'S FEES AND COSTS

STATE OF FLORIDA

COUNTY OF DADE

CHARLES M. BAIRD, being first duly Sworn, states as follows:

1. I am an attorney for the Plaintiff in the above case.
2. I have been a practicing attorney for more than twenty- one years and am a member of the Florida and Georgia bars.
3. Throughout my career I have specialized in the representation of consumers in cases involving the statutory regulation of consumer credit terms and disclosures. More than thirty of these cases have resulted in reported appellate decisions.
4. From December, 1973 to July, 1983, I was the statewide consumer law specialist attorney for the Georgia Legal Services Program.
5. I have served as staff attorney at the National Consumer Law Center in Boston, Massachusetts and frequently contribute to NCLC publications as researcher, writer, and editor. I was co-author of *Usury and Consumer Credit Regulation* (Supp. 1990) and will be listed as a

contributing author in *Truth in Lending* (supp. 1994, forthcoming), having been given the responsibility of re-writing the chapter on the Truth-in-Lending rescission remedy.

6. I am currently employed by Legal Services of Greater Miami, Inc. to assist other attorneys in housing cases that contain consumer law issues. my cases often involve the Truth-in-Lending rescission remedy, and I was lead counsel in an Eleventh Circuit appeal, *Williams v. Homestake Mortgage Co.*, 968 F.2d 1137 (11th Cir. 1992), in which the main issue was the nature of that remedy.

7. I have served as both a statewide and a nationwide trainer on the Truth in Lending Act for attorneys in Legal Services programs. My next appearance as a statewide trainer in Florida will be on March 17, 1994.

8. In *American Investment Services, Inc. v. Hart*, No. 91- 49774 (28) (Fla. 11th Cir. Ct. May 3, 1993) (order awarding attorney's fees), the court ordered statutory attorney's fees at the rate of \$200 per hour for my work in successfully defending a foreclosure by establishing a rescission under the Truth in Lending Act.

9. Based on the order in the *Hart* case cited above and on my knowledge of the market rates in the community for attorneys of similar skill and reputation, I seek attorney's fees at the rate of \$200 per hour.

10. I seek fees for the services listed below. As indicated, I do not seek fees for all hours expended in connection with the present case, but only those hours that I believe are reasonably billable. Hours expended and hours billed are listed and totaled separately.

DATE OF SERVICE	DESCRIPTION OF ACTIVITY	HOURS EXPENDED	HOURS BILLED
5/7/92	Review file	.50	.40
6/17/92	Review file, write rescission letter to Metropolitan	.50	.50
6/18/92	Rescission letter to Wells	.30	.30
6/30/92	Review file, write letter to Spieler in	.50	.50

	response to his letter, confer with CRD		
7/30/92	Review file, draft complaint	1.00	1.00
8/4/92	Review complaint	.25	.25
9/23/92	Research, outline memo random of law opposing Metropolitan motion to dismiss	.75	.75
9/23/92	Research, outline memo random of law opposing Wells motion to dismiss	.50	.50
9/24/92	Revise memorandum opposing Metropolitan	1.75	1.75
9/24/92	Write memorandum opposing Wells	.50	.50
9/28/92	Write memorandum opposing Wells	.80	.80
9/29/92	Write memorandum opposing Wells	2.30	2.30
9/30/92	Revise memorandum opposing Wells	2.20	2.20
10/1/92	Revise, proof opposing memoranda	1.00	1.00
10/2/92	Write notice of pendency of Daniels	.10	.10
10/22/92	Research re offer of judgment	1.25	1.25
10/22/92	Confer with CRD	.50	.25
10/22/92	Confer with client	.75	.25
11/18/92	Read answers, draft memorandum to CRD	.50	.25
11/19/92	Review file re defendants' contention re different mortgages, disclosure statements	.50	.50

11/20/92	Review file, copy depo exhibits, confer with CRD	.75	.50
11/23/92	Research re rescission, draft new rescission letters	.75	.75
11/24/92	Draft Reply	.50	.50
2/17/93	Draft Reply	1.00	1.00
2/22/93	Call from Spieler, confer with CRD re settlement	.25	.25
2/25/93	Confer with CRD re settlement	.50	.25
3/16/93	Write motion to amend and amended complaint	1.00	1.00
3/17/93	Revise motion to amend, write supporting memorandum	1.00	1.00
3/18/93	Complete amended complaint, motion to amend, supporting memorandum	2.50	2.50
3/23/93	Review file, draft request for admission to Metropolitan	1.00	1.00
3/23/93	Read depo, review file	.50	.50
3/24/93	Revise request for admission to metropolitan	.25	.25
3/24/93	Draft request for admission to Metropolitan	.50	.50
3/24/93	Draft request for admission to Wells	.50	.50
3/24/93	Complete requests for admission	1.50	1.00
3/25/93	Assemble requests for admission	.25	0
4/22/93	Confer with Segura	1.00	.25
4/29/93	Review file, research	1.25	1.25

	for memorandum opposing Metropolitan m/s/j		
4/30/93	Research, write memorandum opposing m/s/j	2.50	2.50
5/3/93	Research, write opposing memorandum	4.50	4.50
5/4/93	Write, revise opposing memorandum	3.25	3.25
5/4/93	Write, revise Rule 7.5 statement	1.00	1.00
5/5/93	Revise opposing memorandum	2.50	2.50
5/5/93	Revise Rule 7.5 statement	.25	.25
5/11/93	Read discovery, subpoena, confer with Segura and CF	1.00	.50
5/12/93	Discuss my depo with Associate Director	.25	.25
5/13/93	Discuss my depo with Associate Director	.25	0
5/13/93	Confer with Segura re discovery	1.00	.50
5/17/93	Confer with VS re motion for protective order	.10	.10
5/17/93	Read client's depo, confer with Segura re memorandum opposing motion to compel	.50	.50
5/18/93	Discuss depositions with SB, Segura	.50	.25
5/18/93	Call National Consumer Law Center	.50	.25
5/18/93	Draft motion for protective order and supporting memorandum	3.30	3.30

5/19/93	Revise motion and memorandum, discuss research with Segura and SB	1.50	1.00	
5/19/93	Discuss issues, plans, and CRD	1.75	.50	strategy with Segura
5/20/93	Revise motion and memorandum	.50	.50	
5/25/93	Review and revise memorandum opposing motion to compel	2.25	2.25	
5/25/93	Revise client, affidavit	.25	.25	
5/26/93	Revise client affidavit, discuss with Segura	.25	.25	
5/26/93	Research, revise motion for protective order and supporting memorandum	3.00	3.00	
5/26/93	Interview client, revise affidavit, draft notice of filing	1.25	1.25	
5/27/93	Revise memorandum opposing motion to compel	3.35	3.35	
5/27/93	Revise motion for protective order and supporting memorandum	2.85	2.85	
5/28/93	Revise memorandum opposing motion to compel	1.40	1.40	
5/28/93	Revise motion for protective order and supporting memorandum	1.25	1.25	
5/28/93	Confer with Segura	.30	.30	
5/28/93	Revise, proof, assemble motion and memoranda; confer with Segura	2.00	1.75	
6/1/93	Discuss strategy with SB	.25	0	
6/2/93	Research basis for attorney's fees in discovery disputes confer with Segura	.50	0	

and MB

6/7/93	Review draft of response to request for admission and draft of answers to interrogatories	1.35	1.35
6/8/93	Discuss answers to interrogatories with client, revise; research rules	2.00	1.50
6/9/93	Review file, revise response to request for admission; confer with Segura	1.00	.50
6/10/93	Read reply to memorandum opposing motion to compel, memorandum opposing motion for protective order, and amended motion to compel	.25	.25
6/10/93	Make notes for drafts of memoranda, m opposing amended motion to compel and reply in support of motion for protective order	1.00	1.00
6/11/93	Write reply in support of motion for protective order, read Magistrate Judge's order, confer with Segura re motion for attorney's fees	1.00	.50
6/14/93	Review amended motion to compel and draft opposing memorandum	.25	.25
9/14/93	Confer with Segura re bilateral stipulation	1.00	1.00
9/14/93	Review file, draft letter to Spieler	.50	.50
9/14/93	Revise stipulation	2.75	2.75
9/16/93	Revise second draft of stipulation	.50	.50

9/17/93	Review file, confer with Segura re stipulation, prepare for Wells depo	2.25	1.50		
9/20/93	Review file, revise stipulation	.50	.50		
9/20/93	Confer with Segura re stipulation			.50	.50
9/20/93	Phone conversation with Spieler	.10	.10		
9/20/93	Confer with Segura re settlement and rescheduling of deposition	.30	.30		
9/20/93	Revise stipulation	1.50	1.50		
9/21/93	Confer with client, read S.D. rules, write notice of attempt in good faith	.40	.25		
9/22/93	Confer with Segura, revise and proof notice	.25	.25		
9/23/93	Confer with client and MW re options	.80	.50		
9/23/93	Memorandum to file re conference	.50	.50		
9/23/93	Conversation with Spieler re stipulation	.25	.25		
9/23/93	Confer with Segura re stipulation, attorney's fees, attorney's fees research	1.00	.50		
9/27/93	Redraft stipulation, confer with Segura, call Spieler	1.90	1.75		
10/12/93	Read order setting pretrial conference, research local rules, review file, confer with Segura and PB	1.75	1.00		

10/13/93	Revise motion for continuance	1.50	1.50
10/13/93	Draft affidavits, order re continuance	1.00	1.00
10/13/93	Revise motion for continuance	.30	.30
10/13/93	Revise affidavit	.20	.20
10/13/93	Revise motion, affidavit, order	1.25	1.25
10/18/93	Confer with client, review and sign notices of deposition	.30	.30
10/18/93	Review file, call spieler	.25	.25
10/19/93	Memo to PB re pretrial conference, research re offer of judgment and attorney's fees, review file and depo transcript, prepare for 10/20 meeting with Spieler, confer with PB	2.30	1.50
10/20/93	Research, review file	.50	.50
10/20/93	Meeting with spieler	1.60	1.10
10/21/93	Review Wells answer and counterclaim, compare with amended complaint; research equitable subrogation; phone call from Spieler; review file; confer with Segura re settlement	2.70	2.25
10/21/93	Read offer, read local rules and Fed. R.Civ.P. re depo notice requirements, confer with Segura, research re equitable subrogation	.70	.50
10/21/93	Review draft of settlement response, confer with client and Segura, research re equitable lien	1.25	1.00

10/26/93	Review file	.50	.50
10/26/93	Meet with client re settlement, confer with Segura	1.25	1.00
10/26/93	Review file, call from Spieler, confer with Segura, letter to Spieler	1.00	.75
10/26/93	Phone message for Spieler, attorney's fees research (Metropolitan), revise letter, confer with Segura	1.40	1.25
10/27/93	Discuss attorney's fee research with LS	.50	.25
10/27/93	Reread <i>Fishbein</i> decisions, confer with Segura re strategy	.50	.25
10/27/93	Phone conversation with Spieler, letter re depo postponement	.30	.30
11/4/93	Read counteroffer, call Spieler	.10	.10
11/5/93	Confer with Segura and client	.50	.50
11/5/93	Read Fishbein briefs, draft letter to Spieler rejecting 11/1 offer	.75	.75
11/8/93	Research re equitable lien	.50	.50
11/8/93	Revise letter rejecting 11/1 offer, draft reply to counterclaim	.50	.50
11/8/93	Research re second depo of client	.50	.50
11/8/93	Confer with client and Segura re second depo and strategy	.75	.25
11/8/93	Continue drafting reply	.50	.50

11/9/93	Review file, discuss with client and Segura, revise reply	3.00	2.00
11/9/93	Second request for production	.75	.50
11/10/93	Letter to Spieler re depo	.10	.10
11/10/93	Revise second request for production	.50	.50
11/10/93	Review file, revise reply	1.50	1.00
11/15/93	Review file, research re recording fee violation, call JB	2.00	1.50
11/17/93	Review LS memo re attorney's fees and interest	.25	0
11/17/93	Draft motion for summary judgment	1.75	1.75
11/18/93	Review file, research, write memorandum of law in support of m/s/j	4.00	4.00
11/19/93	Revise m/s/j, continue drafting mem/law	2.75	2.75
11/22/93	Confer with Segura re depo and request for production	.25	.25
11/22/93	Research, write mem/law	5.00	5.00
11/23/93	Write, revise mem/law, write motion for excess pages, request for oral argument	7.25	7.25
11/24/93	Revise and proof motion and mem/law	9.00	9.00
12/2/93	Confer with Segura re depositions and settle- ment	.75	.50

12/6/93	Prepare for -depo	2.00	2.00
12/8/93	Call to Spieler	.10	.10
12/8/93	Confer with Segura, PB re settlement	.25	.25
12/8/93	Prepare for Wells depo	.50	.50
12/8/93	Wells depo	1.30	1.30
12/8/93	Travel to and from Montiel depo site, wait in Spieler lobby (depo canceled: no reporter)	.50	.25
12/8/93	Postmortem with Segura	.25	.10
12/9/93	Draft motion for continuance	1.75	1.75
12/13/93	Research, revise motion for con- tinuance, draft affidavit and order	2.00	2.00
12/15/93	Settlement discussion with Spieler	1.25	1.25
12/15/93	Discuss settlement with client and Segura	.90	.50
12/16/93	Two discussions with Spieler re settlement	.35	.35
12/16/93	Two discussions with real estate broker re feasibility of selling property as part of settlement	.35	.35
12/20/93	Discuss settlement with client, then Spieler	.25	.25
12/22/93	Read proposed judgment, discuss with client, two calls from Spieler	.60	.60
12/22/93	Revise proposed judgment	1.75	1.75
12/23/93	Revise proposed judgment,	1.25	1.25

	draft stipulation of settlement, letter to Spieler		
12/27/93	Review proposed judgment, stipulation of settlement	1.00	1.00
12/28/93	Research re attorney's fees and settlement, revise proposed judgment and fax to Spieler	.50	.50
12/28/93	Letter and phone message to Spieler	.25	.25
1/3/94	Review draft of judgment	.25	.25
1/4/94	Call to Spieler	.25	.25
1/5/94	Confer with Segura re settlement	.25	.25
1/5/94	Call to Magistrate Judge's law clerk re notice of rescheduling of hearing	.10	.10
2/10/94	Confer with Segura, research, call and letter to Lillesand re attorney's fee motion	.50	.50
2/17/94	Prepare attorney's fees affidavit	1.00	1.00
2/18/94	Prepare attorney's fees affidavit	3.70	3.70
2/22/94	Prepare attorney's fees affidavit	1.50	1.50
2/22/94	Review and revise attorney's fees affidavit	.50	.50
2/22/94	Confer with segura	.10	.10
2/23/94	Call Lillesand re reviewing file	.10	.10
2/24/94	Call Lillesand re expert affidavit	.25	.10

2/24/94	Prepare rough draft of expert affidavit	.50	.25
2/28/94	Take file to Lillesand and confer with him about history of case	1.75	1.25
2/28/94	Confer with Segura and PB	.50	0
3/1/94	Costs research	.25	0
3/1/94	Attorney's fees research	3.00	3.00
3/1/94	Outline and begin writing attorney's fees motion and memorandum	.40	.40
3/1/94	Confer with Segura	.30	0
3/2/94	Draft attorney's fees motion and memorandum	8.90	8.90
3/3/94	Do additional research, revise attorney's fee motion and memorandum	3.00	3.00
3/3/94	Revise attorney's fees affidavit	.25	.25
3/4/94	Revise, proof, cite check memorandum of law	3.25	2.00
	TOTAL		209.30 187.25

Plaintiff seeks a fee for my services at \$200.00 per hour for 187.25 hours, resulting in a total amount of \$37,450.00.

FURTHER AFFIANT SAYETH NOT.

CHARLES M. BAIRD, Affiant

[notarized]

11.3 Attorney Fees Petition for Successful Appeal of TIL Decision

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

RODASH

Plaintiff-Appellant,

[vs.]

AIB MORTGAGE COMPANY and EMPIRE OF AMERICA, REALTY CREDIT
CORPORATION,

Defendants-Appellees.

CASE No. 93-4125

APPELLANT'S PETITION FOR ATTORNEY'S FEES

I. INTRODUCTION

On March 21, 1994, this court decided the present appeal favorably to the Appellant ("Rodash"). The entire basis of the appeal was Rodash's contention that the district court erred in holding that there had been no violations of the Truth in Lending Act, 15 U.S.C. §§1601-1641 ("TILA") in connection with the transaction at bar. Rodash not only obtained a reversal; she was completely successful With regard to all TILA issues addressed by this Court. No hours expended by Rodash's attorney can be discounted as having been devoted to non-successful issues.

II. STATUTORY BASIS FOR AWARD OF ATTORNEY'S FEES AND TOTAL AMOUNT SOUGHT

For bringing a successful claim under TILA, Rodash is entitled to "a reasonable attorney's fee." 15 U.S.C. §§1640(a) (3). As shown in the Affidavit of Charles M. Baird in Support of Petition for Attorney's Fees ("Baird Affidavit"), Rodash seeks a total amount of \$29,190 in attorney's fees for services rendered by her counsel in the present appeal. (*See Baird Aff.* at 7.) The reasonableness of this amount will be shown below.

III. THE FACT THAT RODASH IS REPRESENTED BY LEGAL SERVICES PROGRAM DOES NOT PREVENT HER FROM OBTAINING STATUTORY ATTORNEY'S FEES AT MARKET RATE

It is settled law in this Circuit that TILA attorney's fees are awardable to a party represented by a Legal Services program. *Harris v. Tower Loan of Mississippi, Inc.*, 609 F.2d 120, 123-24 (5th Cir. 1980).⁸ Furthermore, the United States Supreme Court has held in a civil rights case that Legal Services attorneys are entitled to fees at the full market rate. *Blum v. Stenson*, 465 U.S. 886 (1984). For an example of the application of *Blum* in a TILA case, see *Mattera v. Blum (In re Mattera)*, 128 B.R. 107, 119 (Bankr. E.D. Pa. 1991), in which the court held that a Legal Services attorney representing the consumer was entitled to fees at the rate of \$230 per hour.⁹

IV. A TILA ATTORNEY'S FEE AWARD IS MANDATORY, AND THE AMOUNT OF FEES SHOULD NOT BE ARTIFICIALLY LOWERED

The TILA attorney's fees provision is mandatory, not discretionary. *DeJesus v. Banco Popular de Puerto Rico*, 918 F.2d 232 (1st Cir. 1990). *See also Alyeska Pipeline Serv. Co. v.*

⁸Decisions of the former Fifth Circuit rendered prior to October 1, 1981 are binding precedent in the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (en banc).

⁹For general policy considerations regarding awarding attorney's fees to Legal Services programs, see Comment, *Award of Attorney's Fees to Legal Aid Offices*, 87 Harv. L. Rev. 411, 414 (1973).

Wilderness Society, 421 U.S. 240, 261 n.34 (1975) ("statutes which are mandatory in terms of awarding attorneys' fees include ... the Truth in Lending Act"). Under TILA, "any creditor" who fails to comply with the Act "is liable," without qualification, for "a reasonable attorney's fee" in "any successful action" to enforce the TILA penalty or "in any action in which a person is determined to have a right of rescission." 15 U.S.C. §§1640. Upon gaining relief under TILA, a consumer has a right to attorney's fees "no matter what the equities of the situation," because TILA is an "objectively mandatory" fee-shifting statute. 1 M. Derfner & A. Wolf, *Court Awarded Attorney Fees* §5.02(2) (1993).

Attorney's fees for successful pursuit of a TILA claim should be awarded for work at the appellate as well as the trial level. *Varnier v. Century Fin. Co.*, 738 F.2d 1143, 1149 (11th Cir. 1984). Statutory fees also should be awarded for hours spent on the issue of fees. *Johnson v. University College of the University of Alabama in Birmingham*, 706 F.2d 1205, 1207 (11th Cir. 1983).

Given the policy underlying TILA, it would be inappropriate for Rodash to be denied attorney's fees for any portion of the time necessary to prosecute her TILA claim in the present appeal. The "remedial machinery" of TILA was passed in "rigorous regard" for consumer protection. *Sosa v. Fite*, 498 F.2d 114, 117 (5th Cir. 1974).¹⁰ Consequently, TILA "should be construed liberally in light of its broadly remedial purposes." *Thomas v. Myers-Dickson Furn, Co.*, 479 F.2d 740, 748 (5th Cir. 1973).¹¹ A too-restrictive reading of what constitutes a "reasonable" TILA attorney's fee under 15 U.S.C. §1640 would undercut the policy of the Act. That policy favors strong private enforcement of the Act as a major deterrent to non-compliance. *Buford v. American Fin. Co.*, 333 F.Supp. 1243, 1248 (N.D. Ga. 1971). A "critical and integral part" of the TILA civil penalty is the attorney's fee award. *Plant v. Blazer Fin. Services, Inc.*, 598 F.2d 1357, 1365 (5th Cir. 1979).¹² Accordingly, this Circuit "will not tolerate artificially low

¹⁰See supra note 1.

¹¹See supra note 1.

¹²See supra note 1.

computations of TIL attorney fees." *Varner*, 738 F.2d at 1148. "It is not the province of federal courts to undermine the congressional policy of promoting the informed use of credit, 15 U.S.C. §1601 (1976), through parsimonious attorney's fees awards in those instances where the courts find only technical violations." *Reneau v. Mossy Motors*, 622 F.2d 192, 196 (5th Cir. 1980).¹³ The *Reneau* decision applies a fortiori herein, since the TILA violations in the present case were not merely technical but involved two of the most fundamental disclosures required by TILA, the right of rescission and the finance charge.

V. THE PROPER METHOD FOR CALCULATING ATTORNEY'S FEE AWARDS UNDER TILA IS THE LODESTAR METHOD

In *Hensley v. Eckerhart*, 461 U.S. 424 (1983) and *Blum v. Stenson*, 465 U.S. 886 (1984), the Supreme Court established the method for calculating the amount of a "reasonable attorney's fee" under federal fee-shifting statutes.¹⁴ The starting point for this calculation is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. *Blum*, 465 U.S. at 888; *Hensley*, 461 U.S. at 433. This calculation yields the "lodestar" figure, which may be adjusted depending on the results obtained. Usually, however, there is no adjustment. There is a "strong presumption" that the lodestar figure represents a reasonable fee. *Pennsylvania v. Delaware Valley Citizens Council*, 478 U.S. 546, 565 (1986). The presumption should be especially strong in a TILA case. "Recognizing the goal of encouraging 'private attorneys general'... to bring suits to enforce [TILA], reduction of the [attorney's fee] award below the standard hours-times-rates formula would be inappropriate." *Dougherty v. Hoolihan, Neils & Boland, Ltd.*, 531 F.Supp. 717, 723 (D. Minn. 1982).

¹³See supra note 1.

¹⁴Hensley and Blum were decided under the Civil Rights Attorney's Fees Awards Act, codified in 42 U.S.C. §1988. The methodology of those cases is used for other federal fee-shifting statutes as well. See e.g. Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546 (1986) (Clean Air Act); Henson v. Columbus Bank & Trust Co., 770 F.2d 1566, 1574 (11th Cir. 1985) ("In considering awards for TIL cases, we consider the same factors and concerns that we consider in other attorneys' fees cases").

VI. THE NUMBER OF ATTORNEY HOURS CLAIMED BY RODASH
HAS BEEN REDUCED FROM THE NUMBER OF HOURS ACTUALLY EXPENDED
AND IS REASONABLE

The Baird Affidavit documents a number of attorney hours that were actually expended in the appeal but are not being "billed" in the sense of being claimed in the present Petition. Rodash does not seek fees for attorney hours that her counsel believes could have been avoided without prejudice to Rodash by greater efficiency. Rodash claims only the 145.95 total attorney hours shown in the Baird Affidavit as billed, rather than the 159.45 total attorney hours actually expended. (*See Baird Aff. at 7.*) This reduction in hours reflects an exercise of "billing judgment" recognized as appropriate in *Hensley*, 461 U.S. at 434. *See also National Ass'n of Concerned Veterans v. Secretary of Defense*, 675 F.2d 1319, 1327-28 (D.C. Cir. 1982). Thus counsel for Rodash has already eliminated the "fat" from his documented hours and no further reduction is necessary or appropriate. The attorney hours claimed by Rodash are "reasonable" as they stand. *See Perkins v. Mobile Housing Board*, 847 F.2d 735, 738 (11th Cir. 1988) (attorney hours sworn to are "evidence of considerable weight on the issue of the time required in the usual case" and should not be reduced unless "the time claimed is obviously and convincingly excessive under the circumstances").

VII. THE HOURLY RATE CLAIMED BY RODASH FOR HER ATTORNEY
IS REASONABLE

The reasonableness of the \$200 hourly rate of attorney's fees sought by Rodash is substantiated in the Baird Affidavit by reference to counsel's experience and expertise generally in regard to litigation on behalf of consumers and specifically with regard to TILA. (*See Baird Aff. at 1-3.*) The Affidavit also establishes that a \$200 hourly rate is reasonable in light of the market rate for attorneys in Miami, Florida with skill and reputation comparable to those of Rodash's counsel. (*Id. at 2-3.*)

VIII. CONCLUSION

In view of the foregoing discussion, Rodash is entitled to an award of \$29,190 in attorney's fees for services rendered in the present appeal.

WHEREFORE, Appellant petitions this Court for an award of \$29,190 in attorney's fees.

11.4 Affidavit in Support of Appellate Attorney Fees

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

RODASH

Plaintiff-Appellant,

[vs.]

AIB MORTGAGE COMPANY and EMPIRE OF AMERICA, REALTY CREDIT
CORPORATION,

Defendants-Appellees.

CASE No. 93-4125

AFFIDAVIT OF CHARLES M. BAIRD IN SUPPORT OF PETITION FOR ATTORNEY'S FEES

STATE OF FLORIDA

COUNTY OF DADE

CHARLES M. BAIRD, being first duly sworn, states as follows:

1. I am counsel for the Plaintiff-Appellant in the above case.
2. I have been a practicing attorney for more than twenty- one years and am a member of the Florida and Georgia bars.
3. Throughout my career I have specialized in the representation of consumers in cases involving the statutory regulation of consumer credit terms and disclosures. More than thirty of these cases have resulted in reported appellate decisions.
4. From December, 1973 to July, 1983, I was a statewide consumer law specialist attorney for the Georgia Legal Services Program.

5. I have served as staff attorney at the National Consumer Law Center in Boston, Massachusetts and have contributed to NCLC publications as researcher, writer, and editor. I was co-author of *Usury and Consumer Credit Regulation* (supp. 1990) and will be listed as a contributing author in *Truth in Lending* (Supp. 1994, forthcoming), having been given the responsibility of re-writing the chapter on the rescission remedy under the Truth-in-Lending Act ("TILA").

6. I am currently employed by Legal Services of Greater Miami, inc. to assist other attorneys in housing cases that contain consumer law issues. My cases often involve the TILA rescission remedy, and I was lead counsel in an Eleventh Circuit appeal, *Williams v. Homestake Mortgage Co.*, 968 F.2d 1137 (11th Cir. 1992), in which the main issue was the nature of that remedy.

7. I have served as both a statewide and a nationwide trainer on TILA for attorneys in Legal Services programs. My most recent appearance as a statewide trainer in Florida was on March 17, 1994.

8. In *American Investment Services, Inc. v. Hart*, No. 91- 49774 (28) (Fla. 11th Cir. Ct. May 3, 1993) (order awarding attorney's fees), the court ordered statutory attorney's fees at the rate of \$200 per hour for my work in successfully defending a foreclosure by establishing a rescission under TILA.

9. I know from the Bilateral Pretrial stipulation in *Montiel v. Metropolitan Mortgage Co.*, No. 92-1841-Civ-Aronovitz (S.D. Fla. Feb. 4, 1994) (agreed final judgment) that a Miami, Florida attorney who has less experience than I have in TILA litigation recently billed his creditor client at \$195 per hour for defending against a TILA action in federal court.

10. Based on the order in the Hart case cited above and on my knowledge of the market rates in Miami, Florida for attorneys of similar skill and reputation, I seek attorney's fees at the rate of \$200 per hour.

11. I seek fees for the services listed below. As indicated, I do not seek fees for all hours expended in connection with the present appeal, but only those hours that I believe were

reasonably expended. Hours expended and hours "billed" (i.e., claimed in the Petition) are listed and totaled separately.

<i>DATE OF SERVICE</i>	<i>DESCRIPTION OF ACTIVITY</i>	<i>HOURS EXPENDED</i>	<i>HOURS BILLED</i>
01/26/93	Read 11th Cir. Rules, draft notice of appeal and 10(b) certificate, draft letter to Clerk	.50	.25
02/10/93	Review file, prepare civil appeal statement form, research TILA itemization issue	1.50	.75
03/30/93	Research, outline brief	2.50	2.50
03/31/93	Review file, research, continue outlining brief, begin writing letter to National Consumer Law Center on issues	3.75	3.00
04/01/93	Research, write brief, revise letter to NCLC	3.50	3.00
04/02/93	Complete letter to NCLC, write brief	1.75	1.50
04/05/93	Research, write brief	4.00	4.00
04/06/93	Research, write brief	4.00	4.00
04/07/93	Call NCLC re issues	.30	.30
04/07/93	Research, write brief	6.00	6.00
04/08/93	Research, write brief	6.25	6.25
04/08/93	Revise first portion of brief	1.25	1.25
04/09/93	Research, write brief	5.25	5.25
04/11/93	Revise brief	3.50	3.50
04/12/93	Research, write brief	5.25	5.25
04/13/93	Write brief	6.75	6.75

04/14/93	Write brief	2.70	2.70
04/14/93	Revise brief, assemble record excerpts, check citations and cross-references	6.25	5.00
04/15/93	Make final revisions to brief, check citations, assemble record excerpts and brief, write letter to 11th Cir. Clerk	11.25	10.00
05/13/93	Call from Lumpkin re adding Rodash depo to record; review depo, return call	.50	.25
05/17/93	Conversation with Lumpkin re supplementing record with depo	.25	.10
06/01/93	Notes and research for reply brief	1.75	1.75
06/01/93	Call to Berger, write motion for extension of time for filing reply brief	.30	.30
06/02/93	Notes and research for reply brief	.50	.50
06/02/93	Discussion of brief with KK at NCLC	.75	.25
06/07/93	Research re FRB Commentary on taxes, write memo to legal intern	.50	.25
06/07/93	Research re reply brief, discussion with KK and SG	1.7	1.25
06/16/93	Research, write reply brief	2.00	2.00
06/17/93	Research, write reply brief	3.40	3.40
06/18/93	Research, write reply brief	4.50	4.50

06/20/93	Write reply brief	12.00	12.00
06/21/93	Research, write, revise reply brief	9.00	9.00
06/22/93	Research, writing, revise reply brief	8.50	8.50
06/22/93	Revise reply brief, check citations	3.00	2.00
06/23/93	Revise reply brief	9.75	9.75
06/28/93	Discuss, research, write motion for expedited appeal	1.25	.75
06/28/93	Revise motion for expedited appeal	1.25	.75
06/29/93	Complete motion for expedited appeal	1.00	.75
09/28/93	Research re retro- activity of amendment to FRB Commentary	.50	.50
09/28/93	Review briefs and authorities, prepare for oral argument	.50	.50
09/29/93	Prepare for oral argument	1.00	1.00
09/29/93	Moot court	.50	.50
10/02/93	Review file, prepare for oral argument	1.50	1.00
10/03/93	Review file, prepare oral argument	3.00	2.00
10/04/93	Research, prepare oral argument	1.00	.50
10/05/93	Prepare for oral argument	1.50	1.00
10/05/93	Attend oral argument, present argument	3.00	3.00
10/05/93	Call client's daughter	.50	0
11/01/93	Discussion with BGG,	.50	.10

Lumpkin re settlement			
11/01/93	Letter to client, review file, run amortization tables	.50	.25
11/08/93	Discussion with client	.25	.10
11/09/93	Discussion with client's daughter	.25	.10
01/31/94	Call from Empire's general counsel	.25	.25
03/09/94	Read <i>Equity Plus</i> decision, write notice of supplemental authority re <i>Equity Plus</i> and <i>Porter</i>	.75	.50
03/11/94	Revise notice of supple- mental authority	.25	.10
03/23/94	Read 11th Cir. opinion	.25	0
03/29/94	Write attorney's fee affidavit	1.75	1.75
03/29/94	Write petition for attorney's fees	2.00	2.00
03/30/94	Revise petition	.50	.50
03/30/94	Revise affidavit	.50	.50
03/30/94	Prepare Bill of Costs	.25	.25
03/31/94	Proofread petition and affidavit	.25	.25
	TOTAL	159.45	145.95

Plaintiff-Appellant seeks a fee for my services at \$200 per hour for 145.95 hours,
resulting in a total amount of \$29,190.

FURTHER AFFIANT SAYETH NOT.

CHARLES M. BAIRD, Affiant

[notarized]

11.5 Expert's Affidavit in Case Seeking Appellate Attorney Fees

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

RODASH

Plaintiff-Appellant,

[vs.]

AIB MORTGAGE COMPANY and EMPIRE OF AMERICA, REALTY CREDIT
CORPORATION,

Defendants-Appellees.

CASE No. 93-4125

**EXPERT AFFIDAVIT OF AMY D. RONNER
IN SUPPORT OF APPELLANT'S ORIGINAL
AND SUPPLEMENTAL PETITIONS FOR ATTORNEY'S FEES**

AMY D. RONNER, after being duly sworn, states as follows:

1. I am an attorney licensed to practice in the State of Florida. I was admitted to the bar in 1985. I am presently a full-time Associate Professor of Law at St. Thomas University School of Law, where I supervise the St. Thomas University School of Law Appellate Litigation Clinic. The appellate clinic is responsible for representing indigent clients in actual cases on appeal in Florida appellate courts. I also teach property and appellate practice at St. Thomas University School of Law and have taught legal writing and research at the University of Miami School of Law. I am attaching and incorporating into my affidavit a copy of my resume [not reprinted *infra*].

2. Before becoming a law professor, I engaged in the private practice of law for approximately six years. During that time, I handled many different kinds of appeals before the

Third, Fourth, and Fifth District Courts of Appeal for Florida, the Florida Supreme Court, and the United States Courts of Appeals for the Fourth and Eleventh Circuits. I have also assisted in a consultant capacity with two matters that were before the United States Supreme Court. In addition, I have given several Continuing Legal Education Seminars on appellate issues.

3. I am familiar with the hourly rates for commercial and appellate litigation charged in Miami, Florida by attorneys with experience, skill, and reputation similar to those of counsel for appellant. My familiarity with such rates derives from my knowledge of the billing practices of private law firms in Miami, Florida and from my own experience in billing clients in commercial and appellate litigation.

4. The market rate in Miami, Florida for federal appellate litigation of commercial law issues that are similar in difficulty and complexity to the issues herein is a range extending from \$150 to \$300 per hour, depending on the skill, experience, and reputation of the attorney.

5. I am familiar with the skill, experience, and reputation of Charles M. Baird, counsel for the Appellant herein, and have reviewed the briefs, motions, petitions, responses, and affidavits filed in the appeal. It is my professional opinion that Mr. Baird's requested hourly rate of \$200 us entirely reasonable.

6. My review of the appellate record indicates that Mr. Baird claims 180.65 compensable hours for work done on the appeal. In my professional opinion, considering the difficulty and importance of the issues and the quality of Mr. Baird's work, 180.65 hours was a necessary, reasonable, and proper amount of time to expend.

AMY D. RONNER, Affiant

[notarized]