

**In the Circuit Court of Jackson County, West Virginia**

**Southern Jackson County Public  
Service District,**  
Plaintiff,

v.

Case No. CC-18-2022-C-91  
Judge Michael Lorensen

**C.J. Hughes Construction Company,  
Inc.,  
Tri-State Pipeline, Inc.,  
Ferguson Enterprises, LLC,  
Master Meter, Inc.,**  
Defendants

**Order Granting C.J. Hughes Construction Company, Inc.'s Request for Attorneys'  
Fees**

On January 3, 2024, Defendant, C.J. Hughes Construction Company, Inc. (“C.J. Hughes”), by and through counsel, filed its “*Request for Attorneys’ Fees*” (the “Request”) in accordance with this Court’s December 19, 2023 Order directing C.J. Hughes to submit an accounting of its costs and fees relating to C.J. Hughes’ motion to compel answers to discovery from Plaintiff. On January 5, 2024, the parties gathered, *via* Microsoft Teams, and requested, *inter alia*, the Court stay any further proceedings related to discovery in order to facilitate the parties’ decision to attempt to mediate the dispute, which the Court granted. Following several extensions a status conference amongst all parties was held on July 29, 2024 wherein the Court lifted the discovery stay and directed C.J. Hughes to file a proposed order on the Request.

After having reviewed the pleadings, all briefs on the issue and being otherwise sufficiently advised, the Court is of the opinion to, and hereby does, **GRANT** the Request and awards C.J. Hughes the requested fees and costs in the collective amount of \$11,690.00 in accordance with this Court’s prior December 19, 2023 Order directing C.J. Hughes to submit the same. In further support of the Court’s decision, the Court makes the following findings of facts

and conclusions of law:

1. On July 11, 2023, C.J. Hughes served Plaintiff with “*Defendant C.J. Hughes Construction Company, Inc.’s First Set of Interrogatories and Request for Production of Documents to Plaintiff*” (the “Discovery Requests”). *See* Docket.

2. On September 7, 2023, Plaintiff served “*Plaintiff’s Answers and Responses to Defendant C.J. Hughes Interrogatories and Requests for Production of Documents to Plaintiff*.” *See* Docket.

3. C.J. Hughes claimed Plaintiff’s discovery responses were deficient as outlined in its September 15, 2023 five (5) page letter requesting a meet and confer. *See* C.J. Hughes Motion to Compel and attached Exhibits. *See* Docket.

4. Following an unsuccessful attempt to resolve any discovery dispute without Court intervention, C.J. Hughes filed its Motion to Compel on October 17, 2023. *See* Docket.

5. On November 7, 2023, Plaintiff filed “Supplemental Responses” to the Discovery Requests as well as their Response to the Motion to Compel. *See* Docket.

6. On November 9, 2023, C.J. Hughes filed its Reply in further support of its Motion to Compel and addressed the continued deficiencies in Plaintiff’s initial responses and supplemental responses to the Discovery Requests. *See* Docket.

7. On December 19, 2023, this Court entered an Order granting C.J. Hughes’ Motion to Compel, ordering Plaintiff to fully respond to the Discovery Requests and directing C.J. Hughes to submit its accounting of costs and fees relating to the motion to compel answers to the Discovery Requests. *See* Docket.

8. On January 3, 2024, C.J. Hughes submitted the Request outlining its attorneys’ fees and costs which was supported by an Affidavit of Daniel J. Konrad of Dinsmore & Shohl LLP.

9. When granting a request for attorneys’ fees, the Supreme Court of Appeals of

West Virginia (the “Supreme Court”) has held as follows:

Where attorney's fees are sought against a third party, the test of what should be considered a reasonable fee is determined not solely by the fee arrangement between the attorney and his client. The reasonableness of attorney's fees is generally based on broader factors such as: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

*Syl. Pt. 4, Aetna Casualty & Surety Co. v. Pitrolo*, 342 S.E.2d 156 (W.Va.1986).

10. In analyzing the requested attorneys’ fees under the guidance set forth by the Supreme Court, the Request argues as follows:

a. The total time required to obtain the December 19, 2023 Order was 35.1 hours (including motion, analyzing the response and preparing a reply) which is reasonable when considering this matter is a complicated contract dispute involving a construction contract containing over 300 pages collectively;

b. The Discovery Requests made (i) inquiry into specific sections of the Contract, all of which are related to the defenses that C.J. Hughes will rely upon in defending Plaintiff’s lawsuit; and (ii) the specific contractual provision C.J. Hughes is alleged to have violated. Plaintiff’s responses were nonexistent or contrary to the claims made by Plaintiff;

c. The novelty and difficulty of those questions raised and the legal skill required to analyze and outline why the information is germane to this litigation clearly supports the requested fees, and time required, especially when the Court considers that Plaintiff’s responses argued that Plaintiff is unsophisticated and is not capable of responding to the Discovery Requests. Plaintiff filed the pending action and given that Plaintiff is alleging a breach of contract, Plaintiff should at the very least be

able to point to the exact provisions of the contract which it alleges were violated and how they were violated. Similarly, the Interrogatories of C.J. Hughes were tailored to the contract between the parties and Plaintiff should be able to answer the requests of C.J. Hughes;

d. The hourly rate agreed upon between C.J. Hughes and its counsel is customary and in accordance with the prevailing market. *See Fairmont Tool, Inc. v. Davis*, 868 S.E.2d 737, 753-54 (W.Va. 2021) (*upholding an award of \$350/hour in attorneys' fees in Marion County*); *Griffith v. Alc*, 2013 W.Va. Cir. LEXIS 8041, \*23-24 (Circuit Court Jackson County, WV 2013) (*awarding attorneys' fees at an hourly rate of \$350 and \$400 respectively*);

e. The attorneys representing C.J. Hughes have extensive experience in contract litigation containing over 45 years of experience between the two of them; and

f. Daniel Konrad and the firm of Dinsmore & Shohl LLP (and its predecessor Huddleston Bolen LLP) has represented C.J. Hughes for more than thirty (30) years.

11. In reviewing the arguments set forth by C.J. Hughes as well as the Affidavit of Daniel J. Konrad with regard to the relevant attorneys billing rates and time involved in pursuing the motion to compel, the Court agrees with the analysis of C J Hughes.

12. Therefore, the Court **FINDS** the amount of attorneys' fees requested is reasonable in accordance with the requirements set forth by *Syl. Pt. 4, Aetna Casualty & Surety Co. v. Pitrolo*, 342 S.E.2d 156 (W.Va.1986).

Accordingly, it is hereby **ORDERED, ADJUDGED and DECREED**, that C J Hughes' Request for Attorneys' Fees is hereby **GRANTED**;

It is **FURTHER ORDERED, ADJUDGED and DECREED** that Plaintiff is to tender the amount of \$11,690 payable to C.J. Hughes within thirty (30) days from the entry hereof and deliver said funds to the attorney of record for C.J. Hughes at their office located at 611 Third Avenue, Huntington, West Virginia 25701;

The Clerk is directed to send a copy of this Order to all parties of record.

Enter: September 16, 2024

/s/ Michael Lorensen  
Judge, Business Court Division

Prepared and submitted by:

/Matthew L. Ward/

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Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit [www.courtswv.gov/e-file/](http://www.courtswv.gov/e-file/) for more details.