

**UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION**

OWNER-OPERATOR INDEPENDENT)	CIVIL NO. 3-01-CV-80179
DRIVERS ASSOCIATION, INC., et al.,)	
)	
Plaintiffs,)	
)	
vs.)	REPORT AND RECOMMENDATION
)	ON ATTORNEY FEES AND
HEARTLAND EXPRESS, INC. OF)	EXPENSES
IOWA,)	
)	
Defendant.)	

This report and recommendation relates solely to the issue of attorney fees and expenses claimed by plaintiffs' attorneys, Paul D. Cullen, Sr., David A. Cohen, Paul D. Cullen, Jr., hereinafter referred to as Attorneys and Kevin M. Reynolds. The Court has filed this same day another Report and Recommendation on Acceptance of Settlement and Distribution. The factual background and bases for this lawsuit set forth in that partial report and recommendation are adopted verbatim, and made a part of this partial report and recommendation.

Attorneys request \$375,895 in fees, and \$47,036 in expenses. See, Plaintiffs' Brief in Support of Motion for Award of Attorney Fees and Costs (Clerks' No. 126). Whitfield & Eddy, P.L.C., plaintiffs' local counsel, seeks \$10,937 in fees and \$575.18 in expenses. See, Clerk's No. 126, Exhibit 1, 2 and 3.

The undersigned magistrate judge has been directed to file a report and recommendation on the issues of attorney fees and expenses (Clerk's No. 117), pursuant to 28 U.S.C. § 636(b)(1)(B).

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BACKGROUND

The Attorney's claims for fees and expenses arise out of an Offer to Confess Judgment Pursuant to Fed. R. Civ. P. 68 by Heartland Express, Inc. (Heartland). A copy of that offer is attached to the motion for fees and expenses now under consideration (Clerk's No. 117).

Plaintiffs conditionally accepted the offer, in the amount of \$250,000, and that conditional acceptance was ratified by order of this Court, by District Judge Charles R. Wolle, on March 4, 2004 (Clerk's No. 124).

The Offer of Judgment, communicated in letter form by Heartland's counsel to plaintiffs' attorneys stated in pertinent part

Pursuant to Fed. R. Civ. P. 68, defendant hereby makes an Offer of Judgment in the amount of \$250,000 plus reasonable attorneys' fees as may be permissible under the applicable law to be approved by the Court in this matter...

Thereafter, the parties on January 5, 2004, filed their Joint Notice of Acceptance of Offer of Judgment (Clerk's No. 115).

Attorneys make their claim for fees and expenses pursuant to Fed. R. Civ. P. 54(d)(1) and (2) and 49 U.S.C. § 14704(e).

Rule 54(d)(1) and (2) provides in pertinent part that

(d) Costs; Attorneys' Fees.

(1) Costs Other Than Attorneys' Fees. Except when express provision therefor is made either in a statute of the United States or in these rules, costs other than

attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs ...

(2) Attorneys' Fees.

(A) Claims for attorneys' fees and related non-taxable expenses shall be made by motion ...

(B) Unless otherwise provided by statute or order of the court, the motion must be filed no later than 14 days after entry of judgment; must specify the judgment and the statute, rule, or other grounds entitling the moving party to the award; and must state the amount ... sought....

49 U.S.C. §14704(e) states

(e) Attorney's fees - - The district court shall award a reasonable attorney's fee under this section. The district court shall tax and collect that fee as part of the costs of the action.

In general, 49 U.S.C. § 14704 permits a person to bring a civil action against a motor carrier providing transportation or service for amounts charged that exceed the applicable rate for transportation or service contained in a tariff. See, 49 U.S.C. § 14704(a) and (b).

The undersigned magistrate judge is satisfied that plaintiffs are the prevailing party in this action by virtue of the joint acceptance of the Offer to Confess Judgment, resulting in Heartland's agreement to pay \$250,000 to members of the three subclasses; and allowing a judgment to be entered against it. This has changed, voluntarily, the status that the owner-operator class members had, or have, with Heartland. Consequently, attorneys are entitled to be awarded fees and expenses in some amount.

Buckhamon Board and Care Home, Inc., et al. v. West Virginia Department of Health and Human

Resources, et al., 532 U.S. 598, 600 121 S.Ct. 1835, 1838, 149 L.Ed.2d 855 (2001); Little Rock School District v. Pulaski County School District #1, 17 F.3d 260, 263, n.2 (8th Cir. 1994).

At the outset, the undersigned magistrate judge needs to make it clear that he is troubled that the requested legal fees in this case far exceed the recovery achieved. This concern is underscored by the language in 49 U.S.C. § 14704(e) which mandates that the district court "shall award a reasonable attorney's fee." Unfortunately, the statute, and cases construing it thus far, do not lend any assistance as to defining or calculating a "reasonable attorney's fee."

On the other hand, there are numerous federal cases which have construed fee-shifting statutes, and the Court can and does rely heavily on those decisions.

Coupled with the Court's concern about the size of the fees when compared to the amount of the judgment, is the fact that attorneys, with the exception of local counsel, are seeking to have their fees calculated on a lodestar formula (multiplying hours worked by prevailing hourly rate) utilizing Washington, D.C. rates. This litigation was centered in Iowa and Missouri.

A further reason of concern to the undersigned magistrate judge is the fact, as established by the Declaration of Paul D. Cullen, Sr. (Clerk's No. 126, Exhibit A), that he is general counsel to OOIDA, and has been for years. The expertise that he has developed in trucking-related litigation, his working knowledge of federal statutes and regulations governing and affecting the trucking industry, and his litigation experience on behalf of not only the OOIDA, but others opposing various actions taken by motor carriers undercuts the very arguments utilized by the Attorneys to bolster their arguments in support of their claimed fee requests. This particular suit was neither novel, nor complex. The likelihood of a substantial recovery was somewhat low, as evidenced by the acceptance of the Rule 68 offer.

The foregoing recitation is made in the context of the Attorneys' argument that their fee request is consistent with the lodestar formula approved in Hensley v. Eckerhart, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983), relying on the twelve-factor test enunciated in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974), utilized by many courts in determining appropriate fees to be awarded utilizing the lodestar formula.

While the *Johnson* factors have been discussed with approval in Hensley v. Eckerhart, 461 U.S. at 433, the Eighth Circuit rejected them in Martin v. Arkansas Blue Cross and Blue Shield, 299 F.3d 966 (8th Cir. 2002), an *en banc* decision, which affirmed the district court's decision to deny attorney fees in an Employee Retirement Income Security Act (ERISA) case, 29 U.S.C. § 1001 *et seq.* Martin discussed the awarding of attorney fees in ERISA cases, citing Lawrence v. Westerhaus, 749 F.2d 494, 495-96 (8th Cir. 1984). Martin, 299 F.3d at 969.

Generally, the Eighth Circuit in determining fee awards under ERISA has utilized a five-factor evaluation: (1) the degree of culpability of bad faith of the opposing party; (2) the ability of the opposing party to pay attorney fees; (3) whether an award of attorney fees against the opposing party might have a future deterrent effect under similar circumstances; (4) whether the parties requesting attorney fees sought to benefit all participants and beneficiaries of a plan, or to resolve a significant legal question regarding ERISA itself, and (5) the relative merits of the parties' positions. Martin, 299 F.3d at 969; Westerhaus, 749 F.2d at 496. See also, Lutheran Medical Center v. Contractors, Labors, Teamsters and Engineers Health and Welfare Plan, 25 F.3d 616, 623-24 (8th Cir. 1994); and Stanton v. Larry Fowler Trucking, Inc., 52 F.3d 723, 730 (8th Cir. 1995).

However, because the ERISA fee shifting statute is not mandatory, the district court has discretion in whether to award attorney fees to the prevailing party. The question arises, therefore, as to whether the five-factor test utilized by the Eighth Circuit in ERISA cases is more appropriate than the twelve-factor formula announced in Johnson. The Eighth Circuit, in analyzing all these issues in Martin, 299 F.3d at 970-71, discussed Hensley v. Eckerhart, noting that the latter case clarified attorney fee standards in civil rights cases, recognizing that the prevailing party ordinarily might recover attorney fees unless special circumstances would make an award unjust.

The fee award statute in this case, in the opinion of the undersigned magistrate judge, is more similar to goals set forth in the ERISA fee shifting scheme than in those provisions in civil rights statutes. That conclusion arises because of the fact that ERISA protects statutorily-created economic interests, while the civil rights statutes protect constitutionally based dignitary and individual economic interests, which are uniquely important to the nation as a whole. Martin, 299 F.3d at 970-971, citing Eddy v. Colonial Life Ins. Co. of Amer., 59 F.3d 201, 204-05 (D.C. Cir. 1995). Both Hensley v. Eckerhart, and Johnson v. Georgia Highway Express, Inc. involved civil rights claims, not purely economic issues, such as are present in this case.

In Gumbhir v. Curators of University of Missouri, 157 F.3d 1141, 1146 (8th Cir. 1998), the Eighth Circuit gives guidance in terms of how reasonable attorney fees are to be calculated, noting

The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. Hensley v. Eckerhart, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983); see, City of Riverside v. Rivera, 477 U.S. 561, 569 n.4, 106 S.Ct. 2686, 91 L.Ed.2d 466 (1986). "In determining what hours were reasonably expended in this case, the district court properly examined whether particular claimed hours were

unreasonable, and the question of limited success. But it overlooked another aspect of reasonableness - - the question of whether the requested fee award when based upon hours allegedly expended exceeds the amount that ever could be reasonable for a case of this nature. This question is relevant because attorneys should not be permitted to run up bills that are greatly disproportionate to the ultimate benefits that may be reasonably attainable." Copeland v. Marshall, 641 F.2d 880, 908 (D.C. Cir. 1980) (*en banc*).

The undersigned magistrate judge, therefore, is utilizing the five factors identified in Lawrence v. Westerhaus, 749 F.2d at 495-96, and the guidance of the Eighth Circuit in Gumbhir, 157 F.3d at 1146, as to the issue of reasonableness in determining the Attorneys' request for fees and expenses in this case. It is important to note, also, that the Westerhaus factors are not exclusive, and are not to be applied mechanically. Martin, 299 F.3d at 972. They are to be used as general guidelines. *Id.*

One fact that the Court cannot overlook at this juncture is the limited success of the result achieved in this case. The fact that this case was resolved through a Rule 68 Offer to Confess indicates to the Court that plaintiffs had doubts as to the ultimate likelihood of any substantial verdict if the matter proceeded through discovery and to trial. Second, when one considers the fact that there are nearly 3,000 members of the three subclasses (*see*, plaintiffs' memorandum (Clerk's No. 126) at p. 17), the average recovery per member of the class is only slightly more than \$80. Yet, the Court is asked to award three attorneys in excess of \$375,000 for this result.

The Court also takes into account the fact that this case did not go to trial, although there is much made of the ferocity of the litigation itself, including, but not limited to interlocutory appeal, motions to compel and motions for certification of the class. It remains true, however, that for the nearly three years this case has been on file, it took a very languid course.

Likewise, there were only two, non-substantive objections filed. Attorneys were, therefore, not required to litigate or defeat objections to the proposed settlement.

The undersigned has substantial concerns that this file was overworked by Attorneys, and that excessive billing is reflected in the documents provided in support of the fee requests. (See, Clerk's No. 126, Exhibit 1)

Bolstering this conclusion are two important factors. One is that there has been no individual breakdown in the billing statement as to how many hours each of the three primary attorneys billed. It is not the Court's responsibility to perform the bookkeeping functions. Additionally, the descriptions on most of the time entries are minimal or cursory; the block method of time billing is utilized. All these factors combine to compel the undersigned to recommend that the fee requests be reduced.

Some examples of why the undersigned believes that the fee request is too high are listed below:

1. More than 50 hours was spent in drafting the Complaint. The Complaint consisted of 14 pages. Some of the hours billed for drafting and revising the Complaint occurred after the Complaint had been filed.
2. More than 80 hours was spent by attorneys in drafting, revising and conferring about a resistance to an interlocutory appeal filed by defendant. The issues were quite succinct in that interlocutory appeal, and probably the number of hours spent reflects the fact that three lawyers were involved primarily in this file.
3. In several instances two attorneys billed exactly the same number of hours for the same type of work involving out-of-town travel and activities related to the litigation. While perhaps an accurate reflection of the time actually spent, nonetheless, entries of this type caused the Court to scrutinize the billing statement even more.
4. One junior attorney, or an employee of attorney's firm, billed six hours on four different days for exactly the same work, indexing retail fuel invoices. Because

the description is minimal, it is hard to determine exactly what occurred. Because the same person billed identical hours on four separate days, again the Court becomes skeptical.

5. One attorney spent over 61 hours preparing for depositions of Heartland employees on December 9 and 10, 2003. It appears those depositions took no more than a total of 16 hours. A second attorney in the firm billed over 19 hours for preparation of those depositions, and both attorneys traveled to Iowa City, Iowa to attend the depositions.
6. One of the attorneys spent in excess of 32 hours researching, and apparently drafting documents in resistance to a Motion to Strike Jury Demand filed by defendant (Clerk's No. 87). Because of the narrowness of that issue, and the availability of numerous case law decisions regarding that issue, the Court finds these time entries to be somewhat excessive.
7. In excess of 26 hours was spent drafting and revising updated disclosures pursuant to Fed. R. Civ. P. 26(a). These entries drew the attention of the undersigned because of the initial disclosure requirement contained in Rule 26(a), but also because of the fact that all of this work occurred not long before the case was settled, and after litigation had been underway for more than 18 months.

The foregoing examples are not isolated, and they are set forth to highlight why the Court has so much concern about the size of the fee request. Coupled with this is the fact that almost all Court appearance and depositions were attended by at least two attorneys on behalf of plaintiffs. While that certainly may be the custom with Attorneys' firm, the undersigned does not believe that every aspect of litigation, even in a class action, requires the attention of multiple attorneys from the same firm.

This foregoing analysis was made solely by the undersigned magistrate judge, and not in reliance upon, or reference to, any of the contested exhibits offered by defendant at the time of the evidentiary hearing on the issues of fees and expenses. Granted the issues are somewhat different in this case because the fees are not sought on a contingent fee basis, which would arguably, have reduced the distribution to the class members. The fact that defendant offered as part of its confession to be responsible

for payment of "reasonable attorneys' fees" does not, in the undersigned magistrate judge's opinion, indicate that a fee request should be approved without scrutiny. To do otherwise would invite future disaster in cases of this nature, leading to the likelihood that few cases would ever resolve voluntarily because of the concern over the amount of attorney fees to be awarded.

Regardless of whether the undersigned magistrate judge used the 12-factor test from Johnson v. Georgia Highway Express, Inc., 488 F.2d at 717-19, as proposed by Attorneys, or the 5-factor evaluation from Martin v. Arkansas Blue Cross and Blue Shield, 299 F.3d at 969, the directives laid down by the Eighth Circuit in Gumbhir, 157 F.3d at 1146, provide the ultimate guidance. A loadstar formula is followed, but tempered by the caveat that "attorneys should not be permitted to run up bills that are greatly disproportionate to the ultimate benefits that may be reasonably attainable." *Id.*

For these reasons, the undersigned magistrate judge recommends that the Washington lawyers not be compensated for the 1,500 hours they have claimed for work on this file. There is too much duplication, and too much "over work" to justify the claimed hours in light of the result obtained. If this litigation had been out of the ordinary for this law firm, given its expertise, when viewing these matters under the 5-factor evaluation of Westerhaus, the recommendation likely would be different. Recognizing also that the Court does not have to adhere to any formula or evaluation verbatim in granting fees, Martin, 299 F.3d at 972, nonetheless, reliance upon such factors further convinces the undersigned magistrate judge of the appropriateness in recommending compensation for a smaller number of hours involving the loadstar approach.

The undersigned magistrate judge recommends that plaintiffs' Washington counsel be paid based on the following hourly rates: Paul Cullen, Sr. \$250 an hour; David A. Cohen \$225 an hour; and

Paul Cullen, Jr. \$175 an hour. A reasonable hourly rate usually relates to the local legal market. Madison v. IBP, Inc., 149 F.Supp.2d 730, 807 (S.D. Iowa 1999); Forshee v. Waterloo Industries, Inc., 178 F.3d 527, 532 (8th Cir. 1999). But, see, Casey v. City of Cabool, 12 F.3d 799, 805 (8th Cir. 1993) (in specialized areas of law the national market may provide a reasonable hourly rate). Again, notwithstanding the specialized practice that the Washington lawyers apparently pursue, the undersigned, after reviewing the pleadings in this case, is satisfied that a locality fee structure is appropriate, as recommended above.

In evaluating the reasonable number of hours spent on litigation, unnecessary or redundant hours should be excluded. Madison v. IBP, Inc., 149 F.Supp. at 810; Hawkins v. Anheuser-Busch, Inc., 697 F.2d 810 (8th Cir. 1983). If a plaintiff fails to adequately document attorney fees and costs, a reduced fee may be warranted. Madison, 149 F.Supp. at 810; H.J., Inc. v. Flygt Corp., 925 F.2d 257, 260 (8th Cir. 1991).

As a result, it is the recommendation of this undersigned judge, based upon the hourly fees recommended above, that the Cullen Law Firm be awarded fees in the amount of \$188,837. The Court finds that the fees sought by local counsel, Whitfield & Eddy, P.L.C., in the amount of \$10,937, as documented by itemized billing statements to the Cullen Law Firm, are fair and reasonable and should be awarded in full.

The undersigned magistrate judge recognizes that this is a substantial reduction from the fees claimed by the Cullen Law Firm. On the other hand, the undersigned is convinced that this is a fair and reasonable fee based upon the result obtained without trial, and reliance upon the Westerhaus factors.

One overriding concern permeates the award of fees in this case to Attorneys. The Court notes the longstanding relationship between the law firm and the OOIDA, especially involving the status

of the law firm as general counsel to that organization. This fact belies any true independent undertaking of this litigation. Clearly, there is a symbiotic relationship between the firm and the organization; the declaration of Paul Cullen, Sr. amply demonstrates the ongoing litigation relationship between the two in a number of different jurisdictions. Thus, it is hard to believe that the law firm is not compensated on a number of different levels for different types of work that it performs for the organization, which ultimately may involve other payments by the organization for work on this very litigation.

Also at the forefront of this conclusion is the stark reality that the class members will receive on average \$80. For these further reasons, the recommended award of fees to the Washington, DC law firm appears fair and reasonable to the undersigned. Gumbhir, 157 F.3d at 1146.

This leaves the issue of expenses.

The expenses sought by Whitfield & Eddy, P.L.C. in the amount of \$575.18 are approved in full. Based on the fact that this case was filed in the Davenport Division of this district, and local counsel is located in Des Moines, added to the fact that the client and co-counsel were all located out of the state, these expenses, given the duration of this case, are fair and reasonable.

The expenses sought by Attorneys are problematic. First of all, as with the time entries, the expense entries are also of a "block" nature. Worse, their description is minimal at best. Numerous entries simply state "photocopy cost," with multiple entries on the same date, but absolutely no description as to why, and what was copied. Entries denominated "Federal Express," provide no explanation or the identity of the recipient. Some entries are identified only as "outside meals," and list an amount. The reason for outside meals and persons benefiting it are unknown. There are also entries for "other travel," with no explanation or identity of the person benefiting from such expense.

There are also other troubling expense claims. One was on October 3, 2002, in the amount of \$1,242.20 and identified as air travel on that date by Paul Cullen, Jr. No destination is given. On October 7, 2002, David A. Cohen claimed air travel for that same date in the amount of \$1,271.40. Yet, on October 11, 2002, both David A. Cohen and Paul Cullen, Sr. claimed \$988.80 for travel on that date.

After that, on October 20, 2002, air fare to Orlando, Florida is claimed for a deposition in the amount of \$518, an entry that is duplicated for that same day, and yet there is no identity as to who was traveling, and which deposition was involved. While the Court can refer to the time records to determine who was traveling, it should not have to do so. Even when reference to the time records is made, they do not always correspond with the claimed travel expenses noted above. Further, on December 9, 2002, in addition to claimed air fare for the two named plaintiffs, Hinzman and Meck in an amount exceeding \$3,000, there are three separate entries for air fare from Washington, DC to Moline, Illinois, totaling more than \$1,600. Again, no description as to why the travel was made, or who was making it. There was a hearing in Davenport, Iowa on plaintiffs' Motion for Class Certification on December 18, 2002, which is revealed from the billing record, but it indicates that David A. Cohen and Paul Cullen, Jr. were the only Washington attorneys who attended that hearing, and thus a request for a third ticket is a total mystery.

A second entry for air fare from Moline, Illinois to Orlando for Plaintiff Meck on December 17, 2002 in the amount of \$742.40 heightens the Court's skepticism, especially in light of the fact that an earlier ticket was purchased for his travel in an amount exceeding \$1,500.

Two entries on January 30, 2003 also draw attention. On that day, one entry is made in the amount of \$136.67, identified as a "working lunch (all attorneys)." On the same day, a working lunch is expensed in the amount of \$37.30 for Paul Cullen, Sr., David A. Cohen and Paul Cullen, Jr. in reference to the Heartland appeal. Given the Cullen Law Firm's expertise in trucking industry matters, why every attorney in the firm was treated to a working lunch for the purpose apparently of working on a resistance to an interlocutory appeal is questionable.

In the opinion of the undersigned magistrate judge, the records of the expenditures made the Cullen Law Firm are woefully inadequate and of little value to the Court at this juncture. Further, there is great doubt as to whether the Cullen Law Firm should be allowed to include overhead costs in a billing of this nature. Such overhead costs, in the opinion of the undersigned magistrate judge, include photocopy, telephone and postage, and routine use of courier services, such as Federal Express.

When the billing records are read in conjunction with the expense accounts, the undersigned has great doubts as to the accounting of both

For these reasons, the undersigned magistrate judge recommends that no expenses be awarded to the Cullen Law Firm unless and until specific explanations are provided to the Court justifying and identifying the expenses requested, and explaining all discrepancies previously noted.

Plaintiffs have requested separate stipends to individual plaintiffs Hinzman and Meck in the amount of \$3,000. While there are suggestions that each of these class representatives made themselves available for various hearings and to give depositions, as well as assist counsel, there really is not much itemization as to what exactly they sacrificed in order to be a class representative. The undersigned is not satisfied that any party is entitled to be compensated for time spent in preparing for, and giving a deposition.

Likewise, it does not appear from the record that either Hinzman or Meck had any different or special claims than other class members, or that they provided any particular expertise for this litigation. While it may be true that they drew attention to the issues which later became the class action, that alone does not convince the undersigned that they are somehow entitled to separate compensation.

As noted above, there appears to be a discrepancy over payment of, and/or reimbursement to Meck for air fare from Florida to Moline. It would also appear from the expenses claimed by Attorneys that the out-of-pocket expenditures by both Hinzman and Meck have been advanced by the law firm.

As with the issue of expenses for the Attorneys, the undersigned magistrate judge believes that any extraordinary payments to Hinzman and Meck, as class representatives, will have to be based upon supplemental information that establishes the bases for such compensation.

CONCLUSION

IT IS RESPECTFULLY RECOMMENDED BY THE UNDERSIGNED
MAGISTRATE JUDGE THAT

1. The Cullen Law Firm, P.C. receive legal fees in the amount of \$188,837.00.
2. The law firm of Whitfield & Eddy, P.L.C. receive fees in the amount of \$10,937 and expenses in the amount of \$575.18.
3. The Cullen Law Firm not be awarded expenses in this case unless and until further detailed explanation of the expenses claimed is made to the Court with sufficient specificity to allow the Court to determine the nature of the charges made, and in the cases of transportation and/or meals, the persons benefiting from such expenditures, the reason for the expenditures, and locations of travel.
4. Designated class representatives William Meck and Kenneth Hinzman shall not receive requested payments in the amount of \$3,000 each for

services of class representatives, unless and until further itemization and description of their time and services is supplied to the Court.

5. Supplemental filings regarding expenses for the Cullen Law Firm, and the claims made by class representatives Meck and Hinzman, if plaintiffs choose to file such supplementations, shall be made on or before September 8, 2004.

IT IS ORDERED, in the event that plaintiffs do submit supplemental filings as identified in Paragraphs Nos. 3 and 4 above, then the parties shall have to and including September 21, 2004 in which to file written objections to this report and recommendation, pursuant to 28 U.S.C. §636(b)(1), unless an extension of time for good cause is obtained. Thompson v. Nix, 897 F.2d 356, 357 (8th Cir. 1990); Wade for Robinson v. Callahan, 976 F. Supp. 1269, 1276 (E.D. Mo. 1997). Such extensions will be freely granted. Any objections filed must identify the specific portions of the Report and Recommendation and relevant portions of the record to which the objections are made and must set forth the basis for such objections. See, Fed. R. Civ. P. 72; Thompson, 897 F.2d at 357. Failure to timely file objections may constitute a waiver of a party's right to appeal questions of fact. Thomas v. Arn, 474 U.S. 140, 155 (1985); Griffini v. Mitchell, 31 F.3d 690, 692 (8th Cir. 1994); Halpin v. Shalala, 999 F.2d 342, 345 & n.1, 346 (8th Cir. 1993); Thompson, 897 F.2d at 357.

Respectfully submitted,

Date August 31, 2004



THOMAS J. SHIELDS
UNITED STATES MAGISTRATE JUDGE