

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

RELAX LIMITED,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. N10C-06-032 JRS CCLD
)	
ANIP ACQUISITION COMPANY,)	Complex Commercial
d/b/a ANI PHARMACEUTICALS,)	Litigation Division
INC.,)	
)	
Defendant.)	

Date Submitted: August 8, 2011

Date Decided: October 17, 2011

MEMORANDUM OPINION

*Upon consideration of the Plaintiff's
Motion in Support of Attorneys' Fees and Costs.*

GRANTED in part and **DENIED** in part.

John E. James, Esquire and John A. Sensing, Esquire, POTTER ANDERSON & CORROON, LLP, Wilmington, Delaware. William Choslovsky, Esquire and Eric Y. Choi, Esquire, NEAL GERBER & EISENBERG, LLP, Chicago, Illinois. Attorneys for Plaintiff.

Neal J. Levitsky, Esquire and Carl D. Neff, Esquire, FOX ROTHSCHILD LLP, Wilmington, Delaware. Michael J. Halaiko, Esquire and Matthew P. Phelps, Esquire, MILES & STOCKBRIDGE, P.C., Baltimore, Maryland. Attorneys for Defendant.

SLIGHTS, J.

I.

In this opinion, the Court considers whether plaintiff, Relax Limited (“Relax”), is entitled to attorneys’ fees and costs under the contractually designated “English Rule” following this Court’s order which: (1) granted partial summary judgment in favor of Relax on its breach of contract claim against defendant, ANIP Acquisition Company d/b/a ANI Pharmaceuticals, Inc. (“ANI”); and (2) granted summary judgment in favor of Relax on one count (seeking consequential damages) of ANI’s counterclaim.¹ Relax contends that, as the prevailing party, it is entitled to \$102,597.55 - - the entirety of the attorneys’ fees and costs it incurred in the litigation of this matter. Relax also seeks, in accordance with English Law, post-judgment interest at a rate of eight percent from the date of any judgment awarding it attorneys’ fees and costs, as well as post-judgment collection fees and costs incurred in satisfying the judgment.

Upon review of the parties’ submissions, the Court has determined that Relax is entitled to an award of attorneys’ fees and costs, discounted in proportion to the level of success it has achieved, with post-judgment interest to accrue in accordance with the terms of the parties’ contract. Accordingly, plaintiff’s motion is **GRANTED** in part and **DENIED** in part.

¹ *Relax Ltd. v. ANIP Acquisition Co.*, 2011 WL 2162915 (Del. Super. May 26, 2011).

II.

The underlying litigation arises out of a dispute between the parties regarding compliance with their supply agreement, where Relax was obligated to deliver goods (raw lactulose product) to ANI and ANI was obligated to pay for the goods. In its Complaint, Relax alleged that ANI breached the supply agreement by not paying for product shipments that Relax delivered to ANI in accordance with its contractual obligations. In its Answer, ANI claimed justification for its refusal to pay on the ground that Relax had refused to refund past overpayments ANI made to Relax based on Relax's misinterpretation of the profit sharing provisions of the parties' contract. ANI also brought a two count counterclaim in which it sought from Relax reimbursement of the overpayment (Count I) and lost profits and other damages caused by Relax's allegedly improper termination of the contract (Count II).

In its Memorandum Opinion, this Court granted summary judgment on Relax's breach of contract claim and on Count II of ANI's counterclaim that sought consequential damages, but denied summary judgment to the extent that Relax sought a final adjudication of Count I of ANI's counterclaim and Relax's claim for attorneys' fees and costs.² In seeking summary judgment, Relax disputed that the overpayment alleged in Count I of ANI's counterclaim occurred but, for the sole purpose of

² *Relax Ltd.*, 2011 WL 2162915, at *5.

bringing a complete resolution to this litigation, consented to offset its damages by the amount of the alleged overpayment. The Court noted, however, that such a concession may impact the extent to which Relax or ANI may be entitled to prevailing-party counsel fees, costs and interest. The Court directed counsel for the parties to meet and confer and then propose to the Court the process by which the Court should dispose of the issues that arise from Relax's concession regarding Count I of the counterclaim. The Court also requested further submissions addressing how and when the Court should exercise its discretion in awarding attorneys' fees and costs under the English Rule.

By stipulation dated July 11, 2011, the parties agreed, *inter alia*, that notwithstanding Relax's entitlement to judgment in the amount of \$384,374.80 on its breach of contract claim as per the Court's earlier order, judgment should be entered against ANI in the adjusted sum of \$361,564.27 plus any attorneys' fees and costs the Court may award to Relax.³ The parties further agreed to dismiss with prejudice the entirety of ANI's counterclaim; that attorneys' fees, if any, should be awarded only to Relax; and that "[ANI] shall not be deemed to have either prevailed or not prevailed on its first counterclaim, which counterclaim the parties are amicably resolving

³ Pl.'s Br. Supp. of Mot. ("Pl.'s Mot.") at Ex. A. Relax stipulated to reduce the amount of damages it obtained via summary judgment by the amount of the alleged overpayment in exchange for dismissal of the entirety of ANI's counterclaim. Relax admits in its briefing that Count I of ANI's counterclaim raised issues of fact.

herein.”⁴ The parties have now briefed the attorneys’ fees issue and it is ripe for decision.

III.

In support of its Motion, Relax contends, *inter alia*, that it “won” because it was awarded 100% of the damages it sought, while ANI “lost” because it recovered nothing that it sought (at least not as a result of any judgment of this Court).⁵ Relax further contends that, as the prevailing party, it should be awarded the entirety of attorneys’ fees and costs incurred as they are reasonable and proportionate to the total amount in controversy, the complexity of the matter and the degree of its attorneys’ specialized knowledge in application of the laws of England.⁶ It has submitted copies of attorney billing statements to substantiate the amount of attorneys’ fees and costs it now seeks. According to Relax, the steps it took to litigate this matter were required because ANI rejected Relax’s good faith attempts at settlement and, instead, raised and litigated “frivolous claims.”⁷ Relax contends, at least in its initial brief, that it is entitled to post-judgment interest on any judgment for fees at a rate determined by

⁴ *Id.*

⁵ Pl.’s Mot. at 5.

⁶ *Id.* at 6. Relax’s calculation of the total amount in controversy includes Relax’s breach of contract claim in which it sought \$384,374.80 in damages and ANI’s two-count counterclaim in which it sought \$37,272.67 and \$1,234,728.15 respectively.

⁷ *Id.* at 5.

English Law.⁸

In response, ANI contends, *inter alia*, that Relax did not prevail, but rather settled Count I of ANI's counterclaim by agreeing to a set-off against the breach of contract damages to which Relax was entitled.⁹ Accordingly, ANI contends that Relax is not entitled to receive attorneys' fees and costs in connection with Count I of ANI's counterclaim.¹⁰ ANI further contends that this litigation, and the attorneys' fees and costs incurred, could have been avoided but for Relax's unreasonable refusal to acknowledge ANI's alleged overpayment and rejection of ANI's pre-suit settlement offer, which consisted of a \$50,000.00 per month repayment plan with the outstanding balance to be repaid upon ANI raising additional capital.¹¹ ANI also contends that the hourly rates of Relax's out-of-state attorneys (located in Chicago, Illinois), as compared to ANI's (located in Baltimore, Maryland), as well as their division of work between partner and associate and travel costs to Delaware, were unreasonable.¹² Finally, ANI contends that any post-judgment interest on an award of attorneys' fees should be governed by the interest rate of general applicability as agreed to by the

⁸ *Id.* at 7.

⁹ Def.'s Resp. Pl.'s Mot. ("Def.'s Resp.") at 4.

¹⁰ *Id.*

¹¹ *Id.* at 2-3, 6, and Ex. B.

¹² *Id.* at 7-11. *See id.* at Ex. A.

parties within their supply agreement.¹³

In its reply, after re-asserting that it is the only prevailing party, Relax suggests that it may be reasonable for the Court to deduct a limited amount of fees and costs pertaining to Count I of ANI's counterclaim that the parties resolved by stipulation.¹⁴ Relax also contends that the time its counsel spent on this case (173 hours) was comparable to the time spent by ANI's counsel (143 hours).¹⁵ Relax does not address ANI's arguments regarding the appropriate measure of post-judgment interest within its reply.

IV.

Under the "American Rule," each party in a lawsuit, generally, must bear its own attorneys' fees.¹⁶ The parties in this case have, by their contract, opted out of the "American Rule" in favor of the so-called "English Rule." Under the "English Rule," the unsuccessful party generally pays the fees and costs of the successful party.¹⁷ The Court may order an award of full fees pursuant to the general rule, or issue another order upon consideration of factors including: the conduct of all the parties; whether

¹³ *Id.* at 2, n. 2.

¹⁴ Pl.'s Reply ("Reply") at 7, n. 3.

¹⁵ *Id.* at 4.

¹⁶ *See Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983); *Johnston v. Arbitrium (Cayman Is.) Handels AG*, 720 A.2d 542, 545 (Del. 1998).

¹⁷ Civil Procedure Rules (Eng.) ("CPR") 44.3(1)(a)-(c), 44.3(2)(a).

a party has succeeded in the prosecution or defense of any portion of his case (even if he has not been wholly successful); as well as attempted offers at settlement.¹⁸ Suffice it to say, it is well within the Court's discretion to order a party to pay the full amount or a portion of the prevailing party's costs.¹⁹

The Court has two bases by which to assess the amount of attorneys' fees and costs to award to a party: (1) the "standard basis;" or (2) the "indemnity basis."²⁰ In either case, the Court will not allow costs that have been unreasonably incurred or that are unreasonable in amount.²¹ Upon careful consideration of the parties' submissions and the record *sub judice*, the Court concludes that there is no basis on these facts to depart from the "standard basis" and will apply that construct to determine Relax's

¹⁸ CPR 44.3(4)(a)-(c). CPR 44.3(4)(c) contains a specific provision of English procedure regarding "any payment into court or admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 36 apply." The "conduct of the parties" includes: (a) conduct before, as well as during, the proceedings (including reference to another provision of English procedure "the extent to which the parties followed the Practice Direction (Pre-Action Conduct) or any relevant pre-action protocol"); (b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue; (c) the manner in which a party has pursued or defended his case or a particular allegation or issue; and (d) whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim. CPR 44.3(5)(a)-(d).

¹⁹ Senior Courts Act, 1981, c. 54, § 51 (Eng.) (granting the Court "full power to determine by whom and to what extent the costs are to be paid"); CPR 44.3(6)(a),(b) (same). *See, e.g., Whitecap Leisure Ltd. v. John H. Rundle Ltd.*, 2008 E.W.C.A. 1026 (Civ.) (discounting costs award for failure of successful party to secure total victory).

²⁰ CPR 44.4(1)(a),(b).

²¹ *Id.*

entitlement to counsel fees and costs.²² Under the standard basis, the Court will consider the factors enumerated by CPR 44.5(3) and only allow costs that are proportionate to the matters in issue.²³ The Court will resolve any doubt as to whether costs were reasonably incurred, or reasonable and proportionate in amount, in favor of the paying party.²⁴

V.

A. Relax is Entitled to an Award that Reflects its Level of Success

At issue is whether Relax, upon successfully obtaining partial summary judgment and resolving the remaining count of ANI's counterclaim via stipulation, should recover the entirety of its attorneys' fees and costs in litigating this matter. Under English Law, when evaluating who is the prevailing party within a costs analysis (in commercial litigation), success is generally measured by "who received

²² The Court rejects Relax's alternative argument that it is entitled to receive fees and costs under the "indemnity basis," as the Court is satisfied that ANI's conduct did not bring this matter "outside the norm." See *Lifeline Gloves Ltd. v. Richardson*, 2005 E.W.H.C. 1524 (Ch.), at ¶¶ 8-10 (applying indemnity basis to "unusual case" where party against whom costs awarded engaged in unreasonable behavior that included, with knowledge of urgency to opposing party, application of oppressive pressure in seeking security for costs and requiring person undergoing chemotherapy to accept settlement offer within three days); *Graham Charles Ashley-Carter v. Hoffman & Mountford Ltd.*, 2010 E.W.H.C. 2349 (Q.B.), at ¶¶ 129-131, 134 (applying indemnity basis against party whose manner of pursuing litigation included over fifteen instances of unreasonable conduct, including acts of dishonesty).

²³ CPR 44.4(2)(a),(b); 44.5(1)(a). The CPR 44.5(3) factors will be articulated and discussed below.

²⁴ *Id.*

the cheque.”²⁵ That said, English Courts prefer “partial orders for costs which more accurately reflect the level of success achieved by the receiving party.”²⁶

The Court previously determined that Relax succeeded, in part, on its motion for summary judgment.²⁷ Even though Relax is the only party that has been awarded monetary damages, it has not prevailed in all aspects of its claims and defenses in this matter. Specifically, Relax settled Count I of ANI’s counterclaim via stipulation wherein Relax agreed to reduce the amount of damages to which it was otherwise entitled in exchange for dismissal of the entirety of ANI’s counterclaim.²⁸ The stipulation states that, pursuant to this Court’s Memorandum Opinion of May 26, 2011, “Relax is entitled to judgment on its claim in the amount of \$384,374.80 plus applicable interest and attorneys [sic] fees, if any, which attorneys [sic] fees remain to be determined.”²⁹ The stipulation further states, in relevant part:

1. Upon the Court’s resolution of the “Attorneys’ Fee Issue” (as defined below), judgment shall be entered against [ANI] in Relax’s favor in the sum of \$361,564.27 plus whatever attorneys’ fee, if any, the Court awards

²⁵ *Whitecap Leisure Ltd.*, 2008 E.W.C.A. 1026 (Civ.). *See also Straker v. Tudor Rose (A Firm)*, 2007 E.W.C.A. 368 (Civ.) (“Where, particularly in a commercial context, the claim is for money, in deciding who is the successful party . . . ‘the most important thing is to identify the party who is to pay money to the other.’”)(citation omitted).

²⁶ *See* CPR 44.3(2)(b); Editorial Comments to CPR 44.3(1).

²⁷ *Relax Ltd.*, 2011 WL 2162915, at *8.

²⁸ Pl.’s Mot. at Ex. A.

²⁹ *Id.*

Relax (“the Judgment”). The Judgment shall also dismiss with prejudice [ANI’s] counterclaims.

2. The sole remaining issue for determination is Relax’s claim for attorneys’ fees (the “Attorneys’ Fee Issue”). Attorneys’ fees, if any, shall only be awarded to Relax. In determining what attorneys’ fees, if any, shall be awarded to Relax, [ANI] shall not be deemed to have either prevailed or not prevailed on its first counterclaim, which counterclaim the parties are amicably resolving herein.³⁰

Relax attempts to cast the set-off as a matter of “convenience and efficiency” and emphasizes the stipulation language that ANI would “not be deemed to have either prevailed or not prevailed” on ANI’s counterclaim in support of its argument that it is the sole prevailing party.³¹ The natural conclusion drawn from the clear language of the stipulation, however, is that neither ANI *nor* Relax “won” this counterclaim. Thus, having not prevailed, Relax is not entitled to the attorneys’ fees and costs incurred in the defense of Count I of ANI’s counterclaim.

Having determined that Relax did not prevail in all aspects of this litigation, the Court must now determine the extent to which its total fees and costs should be adjusted. In so doing, the Court must first attempt to determine which fees and costs Relax incurred in defending against Count I of ANI’s counterclaim so that those amounts can then be deducted from the total fees and costs incurred. The Court has reviewed the invoices submitted by Relax’s local and out-of-town counsel in its

³⁰ *Id.*

³¹ Reply at 1.

attempt to make this determination. Unfortunately, this effort yielded no definitive answer as there was insufficient detail in the billing entries to allow for a meaningful distinction to be drawn between those entries relating to Relax's prosecution of direct claims and its defense of, specifically, Count I of ANI's counterclaim. Nevertheless, upon review of the litigation efforts of both parties as reflected in Relax's bills, the docket sheets and the various submissions filed by both parties throughout the litigation, the Court is satisfied that Relax incurred the vast majority of its costs and fees in successful pursuit of its breach of contract claim and in defense of Count II of ANI's counterclaim. Accordingly, in exercise of the discretion afforded by the governing English law,³² the Court finds that the total amount of Relax's fees and costs must be reduced by 20% to reflect the percentage of fees and costs that Relax dedicated to the defense of Count I of ANI's counterclaim.³³

³² Senior Courts Act § 51. CPR 44.3 (1), (2), (6)(a). Editorial Comments to CPR 44.3(6) (authorizing Court to award a "percentage" of total fees and costs). *See, e.g., Whitecap Leisure Ltd.*, 2008 E.W.C.A. 1026 (Civ.).

³³ *See* Pl.'s Mot. at Exs. B, C. In an effort to clarify the percentage by which to adjust Relax's award, the Court has examined the content of the parties' submissions. Counsel for Relax either addressed, reviewed or sought to further discover the factual allegations that form the basis of Count I of ANI's counterclaim in each of the following: (1) ANI's Answer with Counterclaim; (2) Relax's Answer to ANI's Counterclaim (with Affirmative Defenses); (3) Relax's Opening Brief in Support of Summary Judgment; (4) ANI's Opposition to Relax's Motion for Summary Judgment; (5) Relax's Reply in Support of its Motion for Summary Judgment; (6) Relax's First Set of Interrogatories; and (7) Relax's First Set of Requests for Production of Documents.

B. Relax was Reasonable to Litigate Rather than Engage in Settlement

Now that the Court has decided that Relax's claim for counsel fees and costs must be reduced by the degree to which it did not "prevail" in the litigation, the Court next must consider whether any other factor exists which would justify a further reduction in Relax's claim for fees and costs. In making this determination, the Court must consider the conduct of the parties during the litigation and attempted offers to resolve the parties' dispute short of litigation.³⁴ The Court has considered the conduct of both parties during the litigation (aside from the rejection of settlement proposals) and finds that this factor does not favor Relax or ANI.³⁵ Accordingly, the Court focuses its attention on Relax's rejection of ANI's pre-suit offer of settlement.

In this regard, the parties have not provided the Court with (nor is the Court aware of) English legal authority that would *require* a party to negotiate a settlement with another party. In the absence of such a duty, the Court considers the reasonableness of settlement offers in determining whether Relax may have

³⁴ CPR 44.3(4)(a)-(c).

³⁵ Relax contends that ANI raised "frivolous claims," while Relax did not exaggerate the amount of its claim. Pl.'s Mot. at 5-6. ANI blurs any distinction between Relax's conduct and its rejection of ANI's pre-suit settlement offer. Def.'s Resp. at 2-3, 6-8. As stated, neither argument finds much traction. Both parties made principled, good faith arguments in support of their respective positions.

unreasonably protracted this litigation and thereby unnecessarily incurred counsel fees and costs.³⁶

ANI's pre-suit settlement offer was, in essence, a promise to repay an already outstanding debt on terms more favorable than those that gave rise to the debt. By accepting this offer, Relax would have agreed to accept extended repayment of what it already was owed as a result of ANI's material breach of the parties' contract. And repayment was by no means guaranteed; it was conditioned upon ANI's success in raising additional capital.³⁷ Staring in the face of ANI's apparent inability to repay as required by the contract, Relax rejected ANI's settlement offer and pursued litigation. Thereafter, Relax successfully obtained judgment (without conditions) for the entirety of the amount it was owed. Given the financial difficulties facing ANI and the security of a Court judgment, the Court is satisfied that Relax's rejection of ANI's pre-suit settlement offer and pursuit of litigation was reasonable and should not result in a denial or reduction of Relax's award of fees and costs.

³⁶ See *Carver v. B.A.A. Plc*, 2008 E.W.C.A. 1026 (Civ.), at ¶ 26 ("In these days where both sides are expected to conduct themselves in a *reasonable* way and to seek agreement where possible, it may be right to penalize a party to some degree for failing to accept a *reasonable* offer or for failing to come back with a counter offer." (emphasis supplied) (internal citations omitted)).

³⁷ See Def.'s Resp. at Ex. B (ANI admitted [and its financial statements clearly indicate] that during the relevant time period (2007-2010) ANI was in financial difficulty).

C. The Time Spent and Hourly Rates of Counsel for Relax Are Proportionate and Reasonable

The Court next considers whether the time spent and hourly rates of counsel for Relax are proportionate and reasonable in the context of this litigation. In making this assessment under the standard basis, the Court is to take a “global approach” and an “item-by-item approach” when reviewing the prevailing party’s (Relax) billing statements.³⁸ In conducting the global approach, the Court determines whether the total sum claimed is, or appears to be, disproportionate, having particular regard for the considerations set forth in CPR 44.5(3).³⁹ If the costs as a whole are proportionate, then the Court must confirm that the cost of each item is reasonable and that it has been reasonably incurred.⁴⁰ The Court is afforded very wide discretion in conducting

³⁸ *Lownds v. Home Office*, 1 W.L.R. 2450, 2456 (C.A. 2002).

³⁹ *Id.* CPR 44.5(3) provides that under the standard basis, the Court must consider: (a) the conduct of the parties, including in particular, (i) conduct before, as well as during, the proceedings and (ii) the efforts made, if any, before and during the proceedings in order to try to resolve the dispute; (b) the amount or value of any money or property involved; (c) the importance of the matter to all the parties; (d) the particular complexity of the matter or the difficulty or novelty of the questions raised; (e) the skill, effort, specialized knowledge and responsibility involved; (f) the time spent on the case; and (g) the place where and the circumstances in which work or any part of it was done.

⁴⁰ *Lownds*, 1 W.L.R. at 2456 (C.A. 2002).

the line-by-line assessment of costs.⁴¹

In litigating this matter, counsel for Relax spent a total of thirty hours more than counsel for ANI (Relax 173 hours, ANI 143 hours).⁴² Relax is able to account for this disparity by pointing to the time spent researching and preparing its complaint and researching and preparing its moving and reply papers in support of its successful motion for summary judgment.⁴³ ANI answers this argument by pointing the Court to *Sirious Int’l Ins. Corp. v. ERC Frankona Ruckversicherungs Aktien-Gesellschaft*, where the court ultimately reduced a fee award because the litigation was not “conducted in a proportionate manner.” Despite ANI’s urging, the Court disagrees that *Sirius* is dispositive here.⁴⁴ Specifically, in *Sirius*, despite the limited evidentiary record, “[a] large team of fee earners was employed [] and a total of 1,799 hours and 56 minutes [was] claimed by that team as spent in the preparation and perusal of

⁴¹ See CPR 44.7. *Morgan v. Spirit Group Ltd.*, 2011 E.W.C.A. 68 (Civ.) (“Naturally, any judge carrying out a summary assessment appropriately focused on the detailed breakdown of costs will have firmly in mind that the court’s discretion when carrying out such an assessment is very wide and that a minute examination of detail is not always required and a broad brush can, where appropriate, be used. It would be a great pity if the summary assessment procedure were to become bedeviled by formulaic and time consuming intricacy which would often be wholly disproportionate to the exercise being carried out and the nature of the litigation in hand.”)

⁴² Reply at 4.

⁴³ See *id.*

⁴⁴ *Sirius Int’l Ins. Corp. v. ERC Frankona Ruckversicherungs Aktien-Gesellschaft*, 2002 WL 2029249 (Sup. Ct. Costs Office, July 9, 2002).

documents alone....”⁴⁵ Upon finding that the amount of costs sought as a whole was disproportionate to the declaratory relief sought in the litigation, the court ordered that a detailed assessment be conducted on the basis that “reasonable costs will only be recovered for the items which were necessary if the litigation had been conducted in a proportionate manner.”⁴⁶ By contrast, in this case, the Court is satisfied that the difference in the total time spent by counsel does not reflect such a disparity in effort or expended resources as to justify either a discount or more rigorous judicial scrutiny of Relax’s fees and costs.

With respect to the hourly rates charged by Relax’s attorneys, the Court has received a sworn affidavit from Relax’s out-of-town counsel in which it is averred that the rates they charged to Relax are comparable to the rates charged by similar firms in Chicago.⁴⁷ ANI has not provided the Court with any evidence that comparable firms of similar competence would charge less than Relax’s out-of-town counsel.⁴⁸ Instead, ANI urges the Court to find that Relax’s attorneys’ fees are disproportionate because their out-of-town counsel is located in Chicago, which it contends is “well

⁴⁵ *Id.* at ¶ 26.

⁴⁶ *Id.* at ¶ 29.

⁴⁷ Pl.’s Mot. at Ex. B.

⁴⁸ *Higgs v. Camden and Islington Health Authority*, 2003 E.W.H.C. 15 (Q.B.), at 221, 223 (including hourly rates of comparable firms of similar competence within costs analysis).

known as being among the most expensive legal markets in the country.”⁴⁹ While that may well be true, the fact that Relax has elected to retain counsel from Chicago rather than Baltimore, Philadelphia or Kalamazoo is no basis to reduce Relax’s prevailing party counsel fees. The fees are proportionate to the scope of the litigation and they are otherwise reasonable.

Moreover, the Court does not find the division of hours between the partner and an associate of Relax’s out-of-town counsel, in light of the similarity in total hours spent by counsel for ANI, or counsel’s travel costs, to be persuasive bases to discount Relax’s fees.⁵⁰ Accordingly, the Court is satisfied that the fees and costs incurred by Relax, although greater than those incurred by ANI, are both proportionate globally and reasonable on an item-by-item basis.

⁴⁹ Reply at 9-10.

⁵⁰ ANI neither performs the line-by-line analysis that it contends is required under *Lownds*, nor introduces English case law in support of its contention that Relax’s fees and costs are unreasonable. See Def.’s Resp. at 10. Rather, it makes “observations” based upon Relax’s billing statements. The primary partner of Relax’s out-of-town counsel performed 58% of the total legal work and incurred over \$2,000.00 in travel costs between Chicago and Delaware, in comparison to 24% by that of ANI’s lead counsel and “the price of an Amtrak ticket (to and from Baltimore).” See *id.* at 10 and Ex. A. In its very wide discretion, the Court does not find this percentage of work performed by the primary partner of Relax’s out-of-town counsel or his travel costs to be outside the bounds of “reasonable.” See *Morgan*, 2011 E.W.C.A. 68 (Civ.) See also *Thornley v. Ministry of Def.*, 2010 E.W.H.C. 2584 (Q.B.) (reducing counsel’s hourly rate during travel in “exceptional case” with over 225 hours of travel). The primary partners of Relax’s out-of-town counsel, without an associate, traveled between Delaware and Chicago merely twice; to participate in mediation and to argue Relax’s motion for summary judgment. See Pl. Mot. at Ex. B.

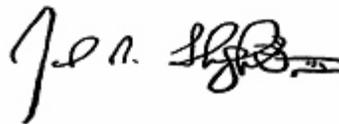
D. The Rate of Post-Judgment Interest is Controlled by Contract

Finally, upon a reading of the clear and unambiguous language of the parties' supply agreement, the Court is satisfied that section 10.3(E) indicates the agreed-upon interest rate to be applied to ANI's failure to make payments, as well as attorneys' fees and costs incurred in litigation arising out of that failure.⁵¹ Accordingly, interest shall accrue at the contractually-specified two percent above the prevailing Barclays Bank base rate.

VI.

Based on the foregoing, plaintiff's motion is **GRANTED** in part and **DENIED** in part. Relax is entitled to recover its total counsel fees and costs (\$102,597.55) less a twenty percent (20%) adjustment for the litigation related to Count I of ANI's counterclaim upon which it did not prevail. Relax may recover post-judgment interest at the rate set forth in the parties' supply contract. Counsel shall submit an implementing order within ten (10) days.

IT IS SO ORDERED.



Judge Joseph R. Slights, III

⁵¹ Section 10.3(E) of the supply agreement reads: “[i]nterest shall be charged at 2% above the prevailing base rate of [Barclays Bank plc] on payments not made by the due date. Interest shall run from the due date of payment until payment in full whether before *or after judgment*.” (emphasis supplied).