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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

WALTER L. TAMOSAİTIS, PHD,
an individual, and SANDRA B.
TAMOSAİTIS, representing the
marital community,

Plaintiffs,

vs.

URS CORPORATION a Delaware
Corporation; URS ENERGY &
CONSTRUCTION, INC., an Ohio
Corporation, and the DEPARTMENT
OF ENERGY,

Defendants.

No. CV-11-5157-LRS
**ORDER DENYING
MOTION FOR DECISION
REGARDING ATTORNEY
FEE ALLOCATION,
INTER ALIA**

BEFORE THE COURT is “Plaintiff’s Motion For Decision Regarding Attorney Fee Allocation (ECF No. 185).”

I. BACKGROUND

Calling this “Plaintiff’s” motion is a misnomer because the fee dispute here is actually between Plaintiff’s counsel, John Sheridan of the Sheridan Law Firm, P.S. (SLF), and MacDonald, Hoague & Bayless (MHB). Mr. Sheridan was a partner with MHB from January 1, 2013 until July 31, 2014. Mr. Sheridan represented Plaintiff, Walter L. Tamosaitis, PHD, from the inception of the captioned litigation in November 2011, through the settlement and dismissal of the same in September 2015

1 (ECF Nos. 183 and 184). Mr. Sheridan brought this litigation with him when he
2 joined MHB in January 2013, and took it with him when he left in July 2014. Mr.
3 Sheridan asserts MHB has received full payment for work on the captioned federal
4 case and is making a claim in *quantum meruit* that it should receive an additional
5 \$73,000 for work performed on an appeal from a related state case which was
6 unsuccessful.

7 Pursuant to 28 U.S.C. §2201, SLF seeks a declaratory judgment
8 from the court “that under the ERA [Energy Reorganization Act, 42 U.S.C. §5801 *et*.
9 *seq.*], reasonable attorney fees are appropriate for work done in the federal litigation,
10 and appropriate for work done in the state litigation if the work done directly related
11 to the federal trial (like work done on depositions and other discovery), but not for
12 work done on the separate state appeal, which failed.” (ECF No. 200 at pp. 2-3).
13 More precisely, SLF seeks a declaration that MHB hourly billings on the state claims
14 that applied to the state appeal of the summary judgment dismissal of Bechtel
15 National, Inc., under a common law tortious interference claim, did not further the
16 federal case against Defendant URS, and thus are not attorney fees reasonably
17 incurred under the ERA. (ECF No. 200 at p. 7). According to SLF:

18 This motion is being filed because each law firm has
19 an interest in the proceeds of the settlement reached in
20 this case, and the allocation between the firms [SLF and
21 MHB] **may** be determined by this Court’s ruling regarding
22 which fees generated in the related state case against
23 Bechtel National, Inc. (“BNI”) should be applied as
24 reasonable fees in this case.

25 (ECF No. 185 at p. 2)(Emphasis added).

26 MHB asserts that pursuant to a contract between Mr. Sheridan and MHB, and
27 equitable principles of *quantum meruit*, the court “should direct Mr. Sheridan to pay
28 to MHB its *pro rata* share of the fee, calculated at either \$334,560 (if the Court
counts all work on both cases) or \$606,308 (if the Court counts work on the federal
case only).” (ECF No. 198 at p. 10).

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**ORDER DENYING
MOTION FOR DECISION - 2**

1 **II. DISCUSSION**

2 As the court pointed out in its order allowing MHB to intervene (ECF No.
3 197), while the Declaratory Judgment Act, 28 U.S.C. §2201, creates a federal remedy,
4 it is not an independent basis for federal jurisdiction. Before declaratory relief can
5 be granted, federal subject matter jurisdiction requirements must be satisfied. *Skelly*
6 *Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671, 70 S.Ct. 876 (1950). That
7 being the case, SLF and MHB were directed to address the issue of whether the court
8 retains supplemental jurisdiction pursuant to 28 U.S.C. §1367(a) to adjudicate their
9 dispute. §1367(a) vests jurisdiction in district courts having original jurisdiction of
10 an action “over all other claims that are so related to claims in the action within such
11 original jurisdiction that they form part of the same case or controversy under Article
12 III of the United States Constitution.” This court had original federal question over
13 the ERA claim brought by Dr. Tamosaitis against the Defendants. 28 U.S.C. §1331.

14 Upon further review, it appears it is more appropriate to analyze this as a matter
15 of “ancillary jurisdiction,” as opposed to supplemental jurisdiction under 28 U.S.C.
16 §1367(a). In *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 379-80, 114 S.Ct.
17 1673 (1994), the Supreme Court explained the doctrine of ancillary jurisdiction as
18 follows:

19 Generally speaking, we have asserted ancillary jurisdiction
20 (in the very broad sense in which that term is sometimes used)
21 for two separate, though sometimes related, purposes: (1) to
22 permit disposition by a single court of claims that are, in
23 varying respects and degrees, factually interdependent, and
24 (2) to enable a court to function successfully, that is, to manage
25 its proceedings, vindicate its authority, and effectuate its
26 decrees.

27 The first “purpose” is now largely embraced by §1367. Under the second prong,
28 courts have exercised broad powers both during the pendency of a proceeding and

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1 following its termination.¹

2 “There is no debate that a federal court properly may exercise ancillary
3 jurisdiction ‘over attorney fee disputes collateral to the underlying litigation.’” *K.C.*
4 *ex rel. Erica C. v. Torlakson*, 762 F.3d 963, 968 (9th Cir. 2014)(quoting *Fed. Sav. &*
5 *Loan Ins. Corp. v. Ferrante*, 364 F.3d 1037, 1041 (9th Cir. 2004)). “Moreover, such
6 ancillary jurisdiction exists even after the underlying litigation has concluded.” *Id.*
7 “Thus, even years after the entry of a judgment on the merits[,] a federal court could
8 consider an award of counsel fees.” *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,
9 395, 110 S.Ct. 2447 (1990). It is, however, also true that “the exercise of ancillary
10 jurisdiction over an attorney’s fees dispute is discretionary.” *Torlakson*, 762 F.3d at
11 791

12 This court finds the *Kokkonen* factors do not support the exercise of ancillary
13 jurisdiction over SLF’s motion. The same reasons the Fourth Circuit Court of
14 Appeals gave in *Taylor v. Kelsey*, 666 F.2d 53 (4th Cir. 1981)(per curiam) for not
15 exercising ancillary jurisdiction over a fee dispute between attorneys apply here. The
16 fee dispute between SLF and MHB “did not arise as a matter of necessity from
17 anything which occurred in the underlying proceedings.” *Id.* at 54. There was a
18 settlement in the underlying proceedings which did not leave any fee issue for this
19 court to decide. SLF recognizes this by acknowledging that “[h]ad the case gone to
20 trial in this Court, and had Dr. Tamosaitis prevailed, this Court would have
21 determined whether an award of reasonable attorney fees against Defendant would
22 have included fees generated during the state law appeal.” (Emphasis added). As in
23 *Taylor*, this court did not “have control over the fee in the sense that [it] was required
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25 ¹ There appears to be a question whether supplemental jurisdiction can
26 attach following the final termination of the underlying action, which is the
27 circumstance presented in this case. *Fed. Sav. & Loan Ins. Corp. v. Ferrante*, 364
28 F.3d 1037, 1039 (9th Cir. 2004).

1 to establish and distribute a fee.” 666 F.2d at 54.² Instead, the instant controversy
2 arises from a private dispute between two Washington residents, SLF and MHB. *Id.*

3 The dispute between SLF and MHB also bears some similarities to the situation
4 in *Womack v. Dolgencorp., Inc.*, 957 F.Supp.2d 1350 (N.D. Ala. 2013). In that case,
5 attorneys who were not party to a class action sought a portion of the fee awarded to
6 class counsel following the settlement award in the class action, prompting class
7 counsel to move to enforce the settlement agreement that purportedly exclusively
8 awarded them the fee. The district court held it lacked supplemental jurisdiction to
9 adjudicate the dispute, finding that neither of the *Kokkonen* “purposes” was presented
10 by the dispute. The reasons given by the *Womack* court, 957 F.Supp.2d at 1358, also
11 apply here. First, the facts underlying Plaintiff’s ERA claims and those underlying
12 MHB’s claims for fees having nothing to do with each other. Secondly, the fee
13 dispute between SLF and MHB was not made part of the settlement agreement or the
14 order of dismissal and indeed, this court was wholly unaware of that potential dispute
15 at the time it entered the order of dismissal based on the stipulation of the parties (Dr.
16 Tamosaitis and URS Energy & Construction, Inc.) pursuant to their settlement. And

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18 ² The settlement agreement between Dr. Tamosaitis and Defendant URS
19 Energy & Construction, Inc., did not acknowledge any fee dispute and did not
20 include a provision for resolving it, unlike the situation in *Baer v. First Options of*
21 *Chicago, Inc.*, 72 F.3d 1294, 1301 (7th Cir. 1995), where the Seventh Circuit
22 concluded the district court “had [ancillary] jurisdiction to approve the parties’
23 independently negotiated settlement, and that jurisdiction of necessity
24 encompassed the terms of the settlement agreement.” And the captioned case is
25 unlike *Grimes v. Chrysler Motors Corp.*, 565 F.2d. 841, 844 (2nd Cir. 1977), where
26 the Second Circuit concluded the district court had ancillary jurisdiction to resolve
27 a fee dispute between attorneys where the disputed funds had been deposited in
28 the court registry.

1 as in *Womack*, no decision by this court on counsels' fee dispute will impact the
2 settlement in any way. *Id.* at 1357.

3 Furthermore, even if this court were to determine the issue presented by SLF
4 and did so in favor of SLF- that the MHB hourly billings on the state claims that
5 applied to the state appeal of the summary judgment dismissal did not further the
6 federal case- it would not necessarily resolve the ultimate issue of how the fee should
7 be allocated between SLF and MHB. This is apparent from the contract claims
8 asserted by MHB and its position that it is entitled to significantly more than \$73,000,
9 as well as SLF's acknowledgment that "the allocation between the firms may be
10 determined by this Court's ruling," not that it "will" be determined. Thus, even if this
11 court decided SLF's motion, such a decision would likely not "permit disposition by
12 a single court" of the entirety of the fee dispute, *Kokkonen*, 511 U.S. at 379-80, and
13 would amount to no more than an advisory opinion. "In order for a case to be more
14 than a request for an advisory opinion, there must be an actual dispute between
15 adverse litigants **and a substantial likelihood that a favorable federal court**
16 **decision will have some effect."** *Westlands Water District Distribution District v.*
17 *Natural Resources Defense Council, Inc.*, 276 F.Supp.2d 1046, 1050 (E.D. Cal,
18 2003), citing *Calderon v. Ashmus*, 523 U.S. 740, 118 S.Ct. 1694 (1998). (Emphasis
19 added).

20 Finally, even if this court had ancillary or supplemental jurisdiction over
21 MHB's contract claims, it would exercise its discretion to decline such jurisdiction.³
22 As SLF notes, resolving such claims may well involve extensive discovery and fact-
23 finding by this court, a task better suited to a state court in a new proceeding rather
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25 ³ SLF contends the court should not exercise supplemental jurisdiction over
26 MHB's contract claims because the underlying case is over and because those
27 claims do not arise from the same transaction or occurrence. For reasons set forth
28 herein, *supra*, the court agrees.

**ORDER DENYING
MOTION FOR DECISION -**

1 than in a proceeding which has already concluded because of the resolution of the
2 federal claims over which this court had original jurisdiction.

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4 **III. CONCLUSION**

5 “Plaintiff’s Motion For Decision Regarding Attorney Fee Allocation (ECF No.
6 185)” is **DENIED**. SLF and MHB will need to resolve their dispute in state court,
7 should judicial resolution be necessary. MHB’s “Motion To Strike Parol Evidence
8 And Statements Made In Settlement Negotiations” (ECF No. 201), is **DISMISSED**
9 as moot.

10 **IT IS SO ORDERED.** The District Executive shall forward copies of this
11 order to counsel for Plaintiff and to Timothy K. Ford, Esq., counsel for MHB.

12 **DATED** this 20th of January, 2016.

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14 *s/Lonny R. Suko*

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16 LONNY R. SUKO
17 Senior United States District Judge
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