

Do Not Bet on Block Billing Just Yet

Virginia Rocket Docket Blog

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In *Colonial River Wealth Advisors, LLC v. Cambridge Investment Research, Inc.*, No. 3:22cv717, 2024 U.S. Dist. LEXIS 3058 (E.D. Va. Jan. 5, 2024), Judge Young granted the prevailing defendant's fee petition, awarded \$227,357 in attorneys' fees, and [concluded](#) that block billing records provided by the defendant's counsel "sufficiently permit[ed] the Court to assess the hours expended and the nature of the work completed." Judge Young rejected the plaintiff's argument that the block billing practices made it impossible to determine which attorneys' fees were reasonable. Judge Young acknowledged that, though no per se rule against block billing exists, "in some instances, block billing may inhibit a court from accurately assessing the reasonableness of a fee request," where lumped fee entries lacked sufficient detail and obscured the amount of time actually spent on the billed-for tasks. When block billing prevents the assessment of the reasonableness of the fees, a reduction of the fee award is appropriate. But in the case of the defendant's fee petition, Judge Young was able to assess the reasonableness of the fee request, given the level of detail in the defendant's counsel's time entry descriptions. Using one example, the court noted that one 8.3 hour entry encompassed 11 discrete tasks, including review of a 309-page deposition transcript, the document production of another party, documents for use in upcoming deposition, and motion to quash various subpoenas. The court found it not unreasonable for the defendant's counsel to have spent 8.3 hours on those tasks.

However, key to the court's reasonableness conclusion and the willingness to accept of the block billed time entries were the facts that:

1. Defense counsel had taken additional steps to ensure the reasonableness of its fee request, such as providing services at a discounted rate and writing off excessive time;
2. Most of the billing records did not contain as many lumped entries as the cited example;
3. Defense counsel's expert opinion — that the overfall fees charged were reasonable — was well-supported and un rebutted by the plaintiff; and,
4. At an earlier stage in the litigation, the plaintiff represented it would seek \$782,376 in legal fees in the event that *it* prevailed, which the court found supported the defendant's contention for the sought award.

Counsel seeking to take advantage of the *Colonial River* decision, and to begin using block billing as opposed to billing in shorter time increments for each task, should be wary of the myriad facts that counseled in favor of the finding of the reasonableness of the fee request: (1) the un rebutted expert opinion, (2) the corresponding prior (and higher) fee request from the plaintiff, and (3) the steps the defendant's counsel took to ensure the reasonableness of its fee request, including providing services at a discounted rate, writing off time, and the fact that most of the entries were not large lumped entries of many tasks. The *Colonial River Wealth Advisors* decision

likely does not signal a sea change in the court's treatment of block billing in fee petitions, though parties and counsel are sure to rely on it in future litigation, and try to convince the court and future adversaries it is a boon for block billing.

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