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January 4, 2010

Presiding Justice David G. Sills
Associate Justice William F. Rylaarsdam
Associate Justice William W. Bedsworth
Associate Justice Kathleen O'Leary
Associate Justice Eileen C. Moore
Associate Justice Richard M. Aronson
Associate Justice Richard D. Fybel
Associate Justice Raymond J. Ikola

Court of Appeal
Fourth Appellate District, Division Three
601 W. Santa Ana Boulevard
Santa Ana, California 92701

Re: ***Worley v. Storage USA, Inc. et al.***
4 Civil No. G041170
Request for Publication of Unpublished Decision
Rendered December 21, 2009

Dear Justices:

Pursuant to California Rules of Court 8.1120 and 8.1105, the National Association of Legal Fee Analysis ("NALFA")[1] requests the Court to certify for publication its opinion in the above-referenced case, a copy of which is attached.

The central holding of the *Worley* opinion – that the trial court was required to calculate reasonable attorney fees using the lodestar approach given that no common fund was created in the underlying class action settlement – is an issue of broad interest to California's class action and attorney fee community. It is especially worthy of publication because the Court engaged in a meaningful analysis of the factors used to determine a "reasonable fee" under the lodestar methodology and discouraged *ad hoc* fee determinations by trial courts.

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[1] NALFA is a flagship organization for experts specializing in attorney fees and legal billing. It is an independent group not affiliated with the defense or plaintiffs' bar. Its fee experts are the pioneers in advancing the attorney fee practice and leaders in shaping the growing body of attorney fee jurisprudence.

Since the California Supreme Court's *Ketchum* decision in 2001, very few published decisions have addressed the discretionary standards that trial courts should follow in determining appropriate awards for attorney fees in class actions. Part of the reason, of course, is that very few attorney fee applications are litigated at the trial court level; instead, most fee requests are unopposed by the defense as part of the settlement between the parties. Trial court decisions, even if based upon erroneous factors, are rarely taken up by class or fees counsel because of the severe negative consequences delay can bring upon the small law firms that often litigate these types of cases. If published, this would be one of the first cases to analyze when trial courts should utilize the lodestar approach, as opposed to the common fund analysis, to determine contested fees in the class action context.

In *Worley*, this Court thoroughly examined the trial court's deductions for "overlitigating" the case but faulted the court for not quantifying -- or putting a number on -- the specific instances of excess work. *Worley* correctly announces that trial courts may not simply toss out the lodestar method altogether whenever they feel it would be "unjust."

Such appellate decisions in class actions are particularly rare and worthy of publication because such a high percentage of the cases settle before full appellate review is possible.

It would be helpful to trial courts throughout the State to receive further guidance from an appellate court that the attorney fee application process is complex and subject to well-reasoned, multi-factor tests that depend upon the type of settlement proffered by the parties – i.e., common fund or separate fund settlements.

In sum, the Worley opinion strongly merits publication because, as provided for in Rule 8.1105, it (i) provides much needed clarification of attorney fee applications in the class action context; (ii) involves a legal issue of continuing public interest; and (iii) applies an existing rule of law to a set of facts significantly different from those stated in published opinions, including *Ketchum*.

Very truly yours,

Aashish Y. Desai
MOWER, CARREON & DESAI, LLP

AYD:kds

cc: Jeffrey Wilens, Esq.
Robert S. Beall, Esq.
Karen Dougan Vogel, Esq.
Ruben D. Escalante, Esq.
The Honorable Gail A. Andler

PROOF OF SERVICE
C.C.P. §§ 1011, 1013, 1013a and 2015.5

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the county of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 8001 Irvine Center Drive, Suite 1450, Irvine, California 92618. On January 4, 2010, I served the foregoing document described as:

REQUEST FOR PUBLICATION OF UNPUBLISHED DECISION RENDERED DECEMBER 21, 2009

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as set forth below:

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The Honorable Gail A. Andler
Judge of the Superior Court
Orange County Superior Court, Dept. CX102
751 West Santa Ana Blvd.
Santa Ana, CA 92701

[X] **BY MAIL** - I deposited such envelope in the mail at Irvine, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 4, 2010, at Irvine, California.

Karen Dodson Stewart

KAREN DODSON STEWART

Filed 12/21/09 Worley v. Storage USA, Inc. CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

GERALD WORLEY et al.,	
Plaintiffs and Appellants,	G041170
v.	(Super. Ct. No. 04CC10904)
STORAGE USA, INC., et al.,	O P I N I O N
Defendants and Respondents.	

Appeal from a judgment of the Superior Court of Orange County, Gail Andrea Andler, Judge. Reversed with directions.

Lakeshore Law Center and Jeffrey Wilens for Plaintiffs and Appellants.

Sheppard, Mullin , Richter & Hampton, Robert S. Beall, Karen Dougan Vogel and Ruben D. Escalante, for Defendants and Respondents.

Gerald Worley and Glendy Worley (collectively, Worley) appeal from a judgment that approved a class action settlement and set attorney fees. The action was brought against Storage USA Partnership, LP, doing business as Storage USA, Inc. and Extra Space Management, Inc. (collectively, Storage USA). Worley argues the fee award is inadequate and came about because an impermissible method was used to make the determination. We agree and reverse with directions to redetermine fees.

FACTS

The complaint alleged Worley rented space at a self-storage facility owned by Storage USA, which operates many such facilities in California. His rental agreement incorporated the provisions of the Self-Storage Facility Act (Bus. & Prof. Code, § 21701 et seq.), which specifies what notice must be given before a renter's property can be sold for nonpayment of rent, and limits late charges. The complaint alleged Storage USA failed to give adequate notice prior to selling Worley's property and charged excessive late fees. It alleged Storage USA did the same thing to several thousand other individuals throughout California who had rented space at its facilities.

Four causes of action were set out. Individually, Worley claimed conversion and breach of contract. On behalf of the class, Worley claimed each violation of the Self-Storage Facilities Act (inadequate notice and excessive fees) was an unfair business practice under the Unfair Competition Law. (Bus. & Prof. Code, § 17200 et seq.) The relief sought was certification as a class action, a declaration of rights, an injunction against continuing the illegal practices, an accounting of money received as a result of those practices, restitution of profits, damages, and, on the contract claim, reasonable attorney fees and costs.

The settlement agreement provided Storage USA would pay $125 to each class member who filed a timely claim. (Worley estimated the average proceeds from sale of a delinquent renter's property was $308, while Storage USA put it at $245.) Storage USA agreed to pay the cost of identifying class members, providing notice, and

administering the settlement. It was agreed Worley would apply to the court for an award of attorney fees and costs, which would be paid by Storage USA separate and apart from settlement payments to class members.

In August 2008, Worley moved to approve the settlement and determine reasonable fees and costs. According to a declaration accompanying the motions, 2,103 individuals had been approved as class members. Valid claims were submitted by 355, 509 notices were returned as undeliverable, and the remaining class members had not filed claims as of that date. Worley states – without citation to the record – the deadline to file claims came after hearing on the fee motion and ultimately 437 claims were paid. The motion sought recovery for fees in an action on a contract (Civ. Code, § 1717) or, alternatively, on the common fund theory.

Worley asked for $266,221, consisting of $263,606 fees and $2,615 costs. In a supporting declaration, class counsel Jeffrey Wilens said he spent 448.8 hours on the case, at a reasonable hourly rate of $495 ($246,906). Attorney Richard Hornbeck, admitted in Utah but not California, put in 83.5 hours at $200 per hour ($16,700). Detailed billing records accompanied the motion, and Wilens' declaration described the work his firm had done.

Storage USA's opposition argued fees should be discounted for unnecessary litigation. It explained depositions took only five hours, and Worley's two motions to interpret the settlement agreement (prior to approval) were unnecessary and unsuccessful.[1] Storage USA also argued Worley was not entitled to class action fees for prevailing on the rental contract (which had a fee clause), because the contract claim was brought individually and not on behalf of the class.

The judge awarded fees of $20,000, plus costs of $2,615. We set out her findings and reasoning in some detail, *post*. The judge found class counsel was entitled

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[1] No supporting declaration was offered to provide factual support for these claims.

to "some reasonable amount of attorney's fees," and said "[t]he court has looked at the method for determining fees, and considered the common benefit approach, the lodestar method, and the other appropriate methods."

The judge found the requested fee was excessive because the case was overlitigated, but she did not quantify the excess. "[T]he court finds . . . the case was overlitigated. . . . [T]here was work that . . . had to be redone, or had to be supplemented because it wasn't done right the first time. [¶] [F]or example, the latest round of motions. There were violations of the California Rules of Court, because points and authorities longer than allowed were filed, declarations were not attached that were referenced, ex partes were brought that the court didn't think really needed to be brought. [¶] When I look . . . at the nature of this case, and the complexity of this case, and on the billing, . . . the case was over-litigated. [¶] . . . [¶] [W]hen I look at . . . the causes of action in the complaint that didn't yield fruit, that maybe should not have even been there . . . it didn't start out as a clean narrow case . . . . [T]here was a lot in this case that didn't need to be there.

One item that was quantified – and excluded – was the $16,700 fee requested for work performed by Utah attorney Hornbeck. As the judge put it, "I would not . . . permit any recovery for the out-of-state attorney not licensed in . . . California who . . . billed for work as associate counsel."

The judge said "in California we don't really [use] . . . the value of the case, [but] the court still, in . . . looking at it under the lodestar method, . . . has to look at the reasonable . . . hours spent . . . a reasonable hourly rate, and . . . the quality of the representation and the results obtained. [¶] . . . [¶] [U]nder the lodestar approach, a negative multiplier could arguably be warranted for a settlement that brought money to only a handful of the class members."

Noting the declarations showed 355 claims received to date, at a settlement of $125 per claim, the court found "a total of $44,375 will likely be paid out under this

settlement. [¶] I understand the number is growing . . . . But, as of the date of [the] declaration, the $226,221 in attorney fees sought were over five times the total amount . . . likely to be recovered . . . by the claimants. . . . And the court believes that [is] excessive."

Ultimately, the judge fell back on the common fund approach in setting fees. "The court believes, taking into consideration the totality of the circumstances, the evidence, and the case law, that an award . . . more along the lines of a common fund approach is more appropriate, or a percentage approach . . . . [¶] [T]aking into account a combination of all of the approaches . . . I've discussed, taking a look at the hours that should have been expended, reasonably, the result obtained, the reasonable billing rate – and I don't have any quarrel with . . . Wilens' billing rate . . . [¶] But, taking into account those factors, the lodestar method, and looking at it along the other ways the court has indicated . . . an appropriate legal fee in this matter is $20,000."

The judge added a $20,000 award was consistent with what counsel would recover under a standard contingency fee agreement: "If, for example, 400 claims were submitted at $125 each, that would be a total recovery of $50,000, giving . . . Wilens more than perhaps the usual contingency fee of a third. If it were 40 percent, that would be $20,000."

I

Worley argues the trial judge was required to calculate reasonable attorney fees using the lodestar approach and did not do so, instead adopting the common fund method or using a contingency percentage. We agree.

A

"[A] court assessing attorney fees begins with a touchstone or lodestar figure, based on the 'careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case.' [Citation.]

[¶] [T]he lodestar is the basic fee for comparable legal services in the community; it may be adjusted by courts based on factors including . . . (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award. [Citation.] The purpose of such adjustments is to fix a fee at the fair market value for the particular action." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131-1132.) There is no all-encompassing list of adjustments, and any reasonable factors may be considered: As put in another case, "'[t]he trial court makes its determination after consideration of a number of factors, including the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case' [Citation.]" (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096.)

A negative multiplier is permissible. (*Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 160-161.) But it cannot be used to justify limiting fees to a contingency percentage: "[W]hile . . . it is permissible for a court to 'cross-check' the lodestar against the amount of recovery, in this case the trial court did not perform a cross-checking function. Rather, it calculated [a] reasonable attorney fee and imposed a downward adjustment based on its notion of an appropriate contingent fee percentage, regardless of the amount of attorney fees . . . counsel assertedly incurred." (*Id.* at p. 164.)

In making adjustments to the lodestar, the trial judge must do more than simply state the factors considered and announce a deduction. (*Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615, 620, 629 [abuse of discretion to provide no more detail than saying an increase was warranted by risks taken, complexity of issues, skill of counsel, etc].) Beyond that, there is great leeway, and it is sufficient to identify each factor and state a dollar amount without being more precise. (See, e.g., *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 63-64 [permissible to reduce lodestar by $308,000 with explanation that document reviews by partners could have been done by

associates or paralegals, and excess time was spent responding to discovery]; *EnPalm, LLC v. Teitler* (2008) 162 Cal.App.4th 770 [permissible to reduce $50,000 fee to $5,000 because action could have been resolved early on had client been more truthful].)

The common fund method is available only where a separate or common fund is established for the benefit of a class *and* counsel's fee is to be paid from the fund. (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26.) Unless both criteria are present, the common fund approach is unavailable: "'[W]here plaintiff's efforts have not effected the creation or preservation of an identifiable "fund" of money out of which they seek to recover their attorney fees, the "common fund" exception is inapplicable.' [Citation.]" (*Id.* at pp. 38-39.)

The common fund method may be used to "'cross-check[]' the lodestar against the value of the class recovery." (*Lealao v. Beneficial California, Inc., supra*, 82 Cal.App.4th at p. 45; accord, *Chavez v. Netflix, Inc., supra*, 162 Cal.App.4th at p. 65.) In other words, "in cases in which the value of the class recovery can be monetized with a reasonable degree of certainty . . ., a trial court has discretion to adjust the basic lodestar, through application of a positive or negative multiplier where necessary to ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." (*Lealao v. Beneficial California, Inc., supra*, 82 Cal.App.4th at pp. 49-50.)

B

Here, it appears the trial judge did not employ the lodestar method to set fees. Admittedly, she went back and forth in her comments, mentioning the lodestar and common fund methods. But in the end, she was frank in saying she found the common fund method was more appropriate, and she did not believe $266,221 was warranted for a class recovery of $44,375 (355 claims at $125 each). Since there was *no* common fund out of which fees were to be paid – the settlement agreement provided Storage USA

would pay fees in addition to the class recovery – the common fund method was impermissible.

We are also concerned that the judge may have improperly calculated the $20,000 award as a contingency fee of 40 percent of an assumed maximum class recovery of $50,000. It is difficult to tell. She first announced the award and then said it was consistent with such a contingency fee so she may have just been cross-checking the fee she had arrived at against the contingency fee as a way of reassuring herself of its validity. In any event, she can make this clear upon recomputation.

C

Worley argues the fee award must also be reversed because the deduction for overlitigating the case was not quantified, and it was wrong to eliminate the fees of Utah Attorney Hornbeck. To guide the decision on remand, we address both points.

It is within a trial judge's discretion to reduce the lodestar for excessive work or overlitigating the case. The judge went into more than sufficient detail in explaining why she found the case was overlitigated. What she did not do was take the next step and put a number on the excess. If on remand the judge again finds there was excessive time spent, she must specify a dollar amount of the reduction for this factor.

A deduction for Hornbeck's time is proper. An attorney cannot recover fees for work performed in California if he is not a member of the State Bar. (*Birbrower, Montalbano, Condon & Frank v. Superior Court* (1998) 17 Cal.4th 119.) Worley argues the work could have been done by a paralegal, but there is no evidence to support the claim. Wilens made the point at argument on the motion, but provided no support for the claim. Moreover, Wilens' declaration in support of the fee motion described Hornbeck as "an 8-year Utah attorney with moderate class action experience [who] assisted me on this case." It said his $200 hourly rate was "consistent with the prevailing rate in the community for attorneys with that level of experience." Since the only evidence is Hornbeck performed legal services in California while not admitted to practice in this

state, there can be no "prevailing rate in the community" for such services, and fees for those services cannot be recovered.

D

Storage USA's several arguments to support the award are unpersuasive. We consider – and reject – each in turn.

The first argument is the judge did use the lodestar method, citing to her various comments that mentioned it. And Storage USA may be right; she may have used it. All we can be sure of is that she mentioned it. It will be easy enough to clarify this.

Storage USA contends a court may depart from the lodestar method in exceptional cases, and this is such a case. Again, Storage USA may be correct about the case, but it is mistaken on the law.

The cases relied on do not recognize an exceptional circumstances exception to the lodestar requirement. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084 held in-house counsel, as well as outside counsel, may recover prevailing party fees. It was argued in-house fees should be calculated on a cost-plus basis, and in this context the court said the lodestar is presumed reasonable but other methods may be used in exceptional circumstances. (*Id.* at p. 1097.) What those circumstances might be was not explored. We do not understand the case to say anything more than cost-plus might be used to calculate in-house fees in an unusual case.

Horsford v. Board of Trustees of California State University (2005) 132 Cal.App.4th 359 reversed a fee award for abuse of discretion where the trial judge set fees without calculating a lodestar or considering factors that might warrant an adjustment. The court summarized those omissions by saying there was no finding full compensation would be unjust in the circumstances (*id.* at p. 395) – which we understand to be another way of saying the lodestar method was not used. The case does not stand for the broader proposition the lodestar method may be tossed overboard whenever a judge feels it would be unjust.

Storage USA contends "equitable principles" were properly used to set the fee award. There are two prongs to the point. One collates the judge's remarks about the ways the case was overlitigated, along with comments that she considered billing records and hours spent, and asserts the statements show it was proper to reduce the fee to $20,000. But this overlooks the basic problem – the judge appears not to have used the lodestar method. Instead, she relied on a combination of the common fund method and simply fixing what she regarded as a reasonable contingent fee, neither of which is allowable in a case such as this one.

The second prong argues the fee was properly reduced because Wilens' time records were unreliable. As an example, Storage USA contends Wilens billed a minimum .2 hour regardless of the task performed, many of these entries are for work that took only 30 seconds (such as a voice mail message), and taken together the .2 hour minimum accounted for 20 percent of the time billed. While such overbilling may be a proper reduction – if the amount is quantified based on analysis of the billing records – evidence of a 20 percent error does not justify ignoring the remainder of the billing entries. So we cannot really say equitable principles warranted the fee reduction.

Finally, Storage USA gets to the nub of the case, arguing the judge had the discretion to reduce the lodestar by 90 percent based on the results obtained, and in any event, a percentage fee was proper. We cannot agree.

The 90 percent argument relies on *EnPalm, LLC v. Teitler, supra*, 162 Cal.App.4th 770, a case that is distinguishable. There, the trial judge reduced a $50,000 lodestar fee to $5,000 upon finding the prevailing party intentionally lied about material matters, and her conduct prevented an early resolution of the case. The court held deducting unnecessary fees from the lodestar was a proper exercise of discretion; it did not rest the decision on the ground there may be a reduction based on the result obtained.

Beyond that, the fact that a court *may* make a reduction on the order of 90 percent does not establish one of that magnitude was warranted here, where there was no finding of how much excessive time was spent on the case.

Similarly, the cases cited to show a percentage fee is allowable in fact did not award one. *Chavez v. Netflix, Inc., supra*, 162 Cal.App.4th 43 held it was permissible to consider a contingency fee *as a cross-check* to verify an enhanced fee was in line with a typical contingency fee for similar work. (*Id.* at pp. 49-50, 64-65.) But, as noted earlier, we cannot be sure that was done here. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 affirmed a class action settlement that awarded fees based on the lodestar method. In dicta, citing a federal case, it said courts recognize both the lodestar and percentage methods for setting fees in class actions. But it was dicta, and California courts have not rushed to adopt it.

In *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1809-1811, this court *reversed* a fee award based on a percentage of a fund established for the benefit of class members. We explained fees were not to be paid out of the fund, but separately by the settling defendant, so the common fund or percentage method was not available. The same is true here, where the settlement agreement provides Storage USA will pay attorney fees separate and apart from the settlement payment to class members. So the fee award cannot be sustained as a proper exercise of discretion in awarding a percentage of the class recovery, or on any other basis argued by Storage USA.

II

Storage USA argues Worley was not entitled to any fee at all. It reasons fees were sought for prevailing in an action on a contract (the rental agreement), but the class claims were not based on the rental agreement, and in any event, Worley was not the prevailing party. We disagree.

Where a party prevails in an action that alleges a contract claim and others, apportionment is not required where there are issues common to both the contract

and non-contract claims, and fees applicable to the common issues are recoverable. (See, e.g., *Korech v. Hornwood* (1997) 58 Cal.App.4th 1412, 1422.) That is the case here.

The contract and non-contract claims raised the same issues, so fees for litigating those issues are recoverable. Worley alleged breach of the rental agreement because Storage USA sold his property in violation of the notice requirements and late fee limitations of the Self-Storage Facilities Act. The class claims alleged the same violations of the Self-Storage Facilities Act, asserting they were unfair business practices under the Unfair Competition Law. So the fact the class claims were not based on the rental agreement does not matter, since they raised the same issues as the contract claims for which fees are recoverable.

No more persuasive is the argument Worley was not the prevailing party. Storage USA contends Worley did not prevail because neither he, nor the class, recovered all they sought. It points out Worley asked for $25,000 damages for breach of contract and got only the same $125 as other class members, and class members did not receive the full restitution, an accounting, or an injunction requested in the complaint. But that does not show Storage USA was the prevailing party as a matter of law.

Civil Code section 1717, subdivision (b)(1) provides "[t]he party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract." The court may also find there was no prevailing party: "If neither party achieves a complete victory on all the contract claims, it is within the discretion of the trial court to determine which party prevailed on the contract or whether, on balance, neither party prevailed sufficiently to justify an award of attorney fees." (*Scott Co. v. Blount, Inc.* (1999) 20 Cal.4th 1103, 1109.)

The finding Worley was the prevailing party is reasonable, and it was a proper exercise of the judge's discretion. Worley alleged Storage USA engaged in illegal conduct that harmed himself and others in California, and ultimately secured a recovery on behalf of all. Granted it was not all he sought, but the judge was satisfied it was the

greater relief and we see no reason to second-guess that decision. There was no abuse of discretion in awarding Worley attorney fees as the prevailing party on the contract claim.

III

Worley argues that if we reverse, he is entitled to fees on appeal under the rule that a statute allowing fees at trial includes appellate fees unless excluded. (See, e.g., *Akins v. Enterprise Rent-A-Car* Co. (2000) 79 Cal.App.4th 1127, 1134.) We agree. Civil Code section 1717 does not preclude fees on appeal, and Storage USA does not contest the request. Accordingly, Worley is entitled to reasonable fees incurred on this appeal, in an amount to be determined by the trial judge.

In fine, the fee award cannot stand since it appears it was based on a combination of the common fund and percentage methods, neither of which is applicable in this case. We do not express any opinion on whether the trial court's fee award was appropriate – only a need to have its basis more clearly articulated so that we can evaluate it. The judgment is reversed and the matter is remanded with directions to redetermine reasonable attorney fees under the lodestar method, with appropriate adjustments clearly stated on the record, which shall include reasonable attorney fees on appeal. Worley is entitled to costs on appeal.

BEDSWORTH, ACTING P. J.

WE CONCUR:

O'LEARY, J.

MOORE, J.