

the court . . . , together with expenses.” 10 M.R.S.A. § 1118(4) (1997). In retrospect, I suppose one might argue whether a plaintiff who tries to persuade a court that \$403,431 (initially more, but stipulated to that amount) was improperly delayed is in fact a “substantially prevailing party” where it succeeds in proving improper delay as to only \$83,431. The defendant has not made such an argument, and I concluded that the plaintiff was “substantially prevailing” as to the amount it proved was improperly delayed. But the question remains what is a reasonable attorney’s fee to recover such an amount. (I reject the defendant’s argument that the fee application is untimely.) NDI seeks \$159,411.39 in attorney’s fees and \$5,989.42 in expenses as well as \$802.50 in costs it expended on appeal. (The costs on appeal are awarded by virtue of the Court of Appeals’ directive.) NDI argues that the statute says nothing about apportionment and that in any event this is the amount it spent even after subtracting unrelated time. ISSI has given no reason to challenge the accuracy of NDI’s lawyers’ time records or the reasonableness of their rates, but it does challenge the reasonableness of the total in light of NDI’s limited recovery on the prompt payment issue.

Assuming that I correctly interpreted the statute in determining what makes a “substantially prevailing party,” I conclude that the defendant’s argument is well taken concerning apportionment. Prompt payment was a relatively minor focus of this hotly litigated case. Instead, this was at bottom a good faith dispute over what had actually been accomplished out of sight under water under extreme climatic circumstances on a difficult blasting job. The

parties legitimately and energetically disagreed over whether NDI had performed its subcontract and who was at fault for the delayed completion of the overall project. Although I must award fees under the statute for the delay in payment, I find that a reasonable amount, given the focus of the dispute, the good faith defense of the defendant and the reduced amount actually recovered on this claim, is \$28,000. I award all the expenses and costs, for lack of any basis advanced by the defendant to apportion them or to suggest that they are unrelated to the prompt payment claim.

Accordingly, the Clerk shall enter judgment for the plaintiff in the amount of \$28,000 in attorney's fees and \$6,791.92 in expenses and costs.

So ORDERED.

DATED THIS 26TH DAY OF JUNE, 2001.

D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE

U.S. District Court
District of Maine (Portland)
Civil Docket For Case #: 99-CV-173

NORTHEAST DRILLING INC.
plaintiff

JERROL A. CROUTER
DEIRDRE M. SMITH, ESQ.
DRUMMOND, WOODSUM & MACMAHON
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v.

INNER SPACE SERVICES INC.
defendant

NEAL F. PRATT, ESQ.
VERRILL & DANA
P.O. BOX 586
PORTLAND, ME 04112 (207) 774-4000

NATIONAL GRANGE MUTUAL
INSURANCE COMPANY
defendant

NEAL F. PRATT, ESQ.
(see above)

RANGER INSURANCE COMPANY INC
counter-defendant

NEAL F. PRATT, ESQ.
(see above)