

EXHIBIT “J”

AMERICAN ARBITRATION ASSOCIATION

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|---------------------------------------|---|--------------------------------|
| Piotr Nowak, | : | |
| Claimant/Counterclaim | : | CASE NO. 14 166 01589 12 |
| Respondent | : | |
| v. | : | |
| | : | Arbitrator: Margaret R. Brogan |
| Pennsylvania Professional Soccer LLC | : | |
| and Keystone Sports and Entertainment | : | |
| LLC, | : | |
| Respondent/Counterclaim | : | |
| Claimant | : | |
| v. | : | |
| Pino Sports LLC | : | |
| Counterclaim Respondent | : | |

**RESPONDENT/COUNTERCLAIM CLAIMANT'S REPLY TO CLAIMANT'S
MEMORANDUM IN OPPOSITION TO RESPONDENT'S
PETITION FOR FEES AND COSTS**

Respondent/Counterclaim Claimant, Pennsylvania Professional Soccer LLC, and Respondent, Keystone Sports and Entertainment LLC (hereinafter, collectively referred to as the “Philadelphia Union”), respectfully submit this Reply to Claimant Piotr Nowak’s (hereinafter, “Nowak”) “Memorandum in Opposition to Respondent’s Petition for Attorneys’ Fees and Costs” (hereinafter, “Memorandum in Opposition”).

As noted within the Arbitrator’s October 7, 2015 Order, the Philadelphia Union, in submitting its Fee Petition on June 19, 2015, provided the Arbitrator with “unredacted” invoices for an *in camera* review. The Philadelphia Union provided its invoices in this fashion as it is well settled that a Court—or Arbitrator—has the discretion to permit an *in camera* review of a law firm’s billing invoices in order to, *inter alia*, protect the attorney-client privilege and minimize or “avoid the time consuming and costly process of requiring line-by-line redactions.”

D'Onofrio v. Borough of Seaside Park, 2012 WL 6672303, *4 (D.N.J. Dec. 20, 2012); *Frenkel v. Klein*, 2014 WL 3900777, *7 (E.D. Pa. Aug. 11, 2014) (permitting *in camera* review of “a very detailed accounting of the hours spent on the litigation” that was attached to the fee petition and finding such fees to be reasonable); *In re Johnson & Johnson Derivative Litigation*, 900 F. Supp. 2d 467, 499 (D.N.J. 2012) (exercising discretion and appointing a special master for an *in camera* review of time records); *Super 8 Motels, Inc. v. B and J (Radha), LLC*, 2006 WL 3256828, *7 n.9 (D.N.J. Nov. 9, 2006) (requiring plaintiff to produce descriptive time entries from counsel’s billing records for “an *in camera* review to accommodate counsel’s attorney-client privilege concerns.”)

An *in camera* review is absolutely appropriate under the circumstances of this matter. Indeed, the time descriptions within the invoices provided by the Philadelphia Union contain descriptive information concerning the defense strategy employed by the Philadelphia Union in this matter as well as the nature of the services performed by counsel on behalf of the Philadelphia Union. It is well established in this regard that a law firm’s invoices for attorney fees are records that are subject to the attorney-client privilege “to the extent that they reveal litigation strategy and/or the nature of services performed.” *Hyman Co., Inc. v. Brozost*, 1997 WL 535180, *3 (E.D. Pa. Aug. 8, 1997).

The Philadelphia Union’s concerns regarding preservation of the attorney-client privilege are particularly justified here—where Nowak has already appealed the Arbitrator’s Initial Award to the United States District Court for the Eastern District of Pennsylvania. In short, it appears clear at this juncture that the dispute will continue to be litigated in federal court. Nowak should not be permitted in this regard to breach the attorney-client privilege in order to gain advantage in such litigation under the guise that he needs the unredacted invoices to assess the Philadelphia

Union's Fee Petition. As is discussed below, Nowak has been provided with adequate information to assess the Philadelphia Union's fee claim and an *in camera* review by the Arbitrator is all that is required and appropriate in this circumstance.

It is worth noting here, in conjunction with the Philadelphia Union's concerns regarding the attorney-client privilege, that on several occasions during the pendency of this matter, Nowak submitted documents and/or provided confidential information through federal court filings. Considering it was expected that Nowak would be appealing the Interim Award—an expectation that came to fruition when Nowak appealed the Interim Award—the Philadelphia Union was and still is also concerned that attorney-client privileged information will ultimately end up in the public domain given Nowak's history of ignoring the confidentiality restrictions previously put in place by the Arbitrator.

Moreover, and considering that the instant matter involved the accumulation of attorney fees and costs over a now 40-month period, it would be extremely burdensome and costly to require counsel for the Philadelphia Union to perform a line-by-line redaction analysis of its invoices to determine what specific information is subject to the attorney client privilege and/or the work product doctrine. Such a burdensome and costly line-by-line analysis is absolutely unnecessary in this matter considering that the parties collectively chose this particular Arbitrator due to her vast experience in dealing with arbitrations involving professional sports. In other words, the Arbitrator, who has extensive experience dealing with similar matters, is in the best position to review and assess the reasonableness of the attorneys' fees and costs submitted by the Philadelphia Union. This fact, in conjunction with the time and cost saved by avoiding a line-by-line redaction analysis, render this an ideal matter for the Arbitrator to exercise her discretion and perform an *in camera* review of the attorneys' fees and costs submitted by the Philadelphia

Union. *See D'Onofrio*, 2012 WL 6672303 at *4 (agreeing with the Magistrate Judge's Order which held that "at this time the Court shall not require Plaintiff to submit unredacted billing statements . . . Moreover, in order to promote efficiency and avoid the time consuming and costly process of requiring line-by-line redactions, the Court shall . . . permit Plaintiff to provide detailed summaries of his legal bills . . .")

In assessing the reasonableness of the attorneys' fees and costs submitted, it is well settled that a district court, or, as in the instant matter, an arbitrator, will determine whether the party seeking attorneys' fees "submit[ed] evidence supporting the hours worked and rates claimed." *Rode v. Dellarciprete*, 892 F.2d 1177, 1183 (3d Cir. 1990). Additionally, it must be determined whether the attorneys seeking compensation documented the hours for which payment is sought "with sufficient specificity." *Washington v. Phila. Co. Court of Common Pleas*, 89 F.3d 1031, 1037 (3d Cir. 1996). "[S]pecificity should only be required to the extent necessary for the district court 'to determine if the hours claimed are unreasonable for the work performed.'" *Id.* (emphasis added) (quoting *Rode*, 892 F.2d at 1190). Specifically, "a fee petition should include 'some fairly definite information as to the hours devoted to various general activities, e.g., pretrial discovery, settlement negotiations, and the hours spent by various classes of attorneys, e.g., senior partners, junior partners, associates.' However, 'it is not necessary to know the exact number of minutes spent nor the precise activity to which each hour was devoted nor the specific attainments of each attorney.'" *Id.* at 1037-38 (emphasis added) (quoting *Rode*, 892 F.2d at 1190); *see also Keenan v. City of Phila.*, 983 F.2d 459, 473 (3d Cir. 1992) (finding the computer-generated summaries of time spent by each attorney and paralegal met the standards of sufficient specificity under *Rode*); *D'Onofrio*, 2012 WL 6672303 at *2-4 (rejecting defendants' argument that plaintiff had to provide complete, unredacted billing

statements in order to assess pertinence and reasonableness of fees and, instead, found detailed summaries of billing statements to meet the specificity standards under *Rode*).

Here, the Philadelphia Union clearly met its burden in establishing the reasonableness of its fees and costs by providing the Arbitrator with unredacted copies of its legal invoices for her *in camera* review. Indeed, in submitting its Fee Petition, the Philadelphia Union not only provided the Arbitrator with “evidence supporting the hours worked and [the reduced hourly] rates claimed,” but it, in providing complete unredacted invoices, indisputably provided enough “specificity” to allow for the Arbitrator to assess the reasonableness of the hours claimed. To put another way, the evidence provided the Arbitrator, by the Philadelphia Union, clearly demonstrates that the attorneys’ fees and costs claimed are absolutely reasonable under the circumstances. There is simply no requirement that Nowak receive unredacted invoices in conjunction with the Fee Petition process.

Notwithstanding, it is worth noting here that the redacted invoices provided by the Philadelphia Union to Nowak provided him, and his counsel, with enough information to assess in fact the reasonableness of the attorneys’ fees and costs submitted to the Arbitrator under the applicable standard.¹ Indeed, in addition to the information provided in the Fee Petition—which, *inter alia*, established the reasonableness of the hourly rates charged—the redacted invoices provided by the Philadelphia Union to Nowak provided Nowak with: (1) the date the legal work was performed; (2) the attorney(s) performing each specific task in regards to the legal work; (3) the number of hours expended by each attorney on each individual task; (4) the specific hourly rate charged by each attorney; and (5) in accordance with the Uniform Task-Based Management System (“UTBMS”), the Activity and Task Codes associated with each specific billing entry. By

¹ It is worth reiterating that Nowak did not submit any objection to the Fee Petition submitted by the Philadelphia Union on June 19, 2015 for almost four (4) months – not until October 6, 2015.

way of brief explanation, the UTBMS, which is contained on the website of the American Bar Association, is a set of codes designed to standardize categorization and facilitate analysis of legal work and expenses. In other words, the UTBMS allows a party to utilize certain codes to describe and classify the specific legal services being performed by attorneys on behalf of a client. As it relates to this matter, in providing the UTBMS codes to Nowak, the Philadelphia Union provided Nowak – without violating the attorney client privilege and/or the work product doctrine – with the general information he required to assess the reasonableness of the attorneys' fees and costs submitted for each time entry. (Attached hereto as Exhibit "A" is a copy of the Uniform Task-Based Management System Codes, which was obtained directly from the American Bar Association website, at:

http://www.americanbar.org/groups/litigation/resources/uniform_task_based_management_system/litigation_code_set.html (last visited October 22, 2015)).

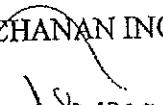
Simply put, at the time the Philadelphia Union submitted its Fee Petition on June 19, 2015, it provided Nowak with enough information—through the redacted invoices—for him to assess the reasonableness of the attorneys' fees and costs submitted.

To that end, the Arbitrator should absolutely exercise her right to perform an *in camera* review of the attorneys' fees and costs submitted by the Philadelphia Union. Moreover, the unredacted evidence attached to the Philadelphia Union's Fee Petition indisputably establishes the reasonableness of the attorneys' fees and costs submitted. Finally, the Fee Petition submitted by the Philadelphia Union on June 19, 2015 absolutely provided Nowak with the information he needed to assess the reasonableness of the attorneys' fees and costs submitted by the Philadelphia Union. Thus, for the reasons set forth above and within its June 19, 2015 Fee Petition, the Philadelphia Union respectfully requests that the Arbitrator include in the Final

Arbitration Award attorneys' fees and costs, in the amounts identified in the June 19, 2015 correspondence, which were expended in the Arbitration and as a result of the prior Eastern District Litigation.²

Respectfully submitted,

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Dated: October 23, 2015

² To the extent necessary, the Philadelphia Union can perform a line-by-line analysis of its invoices. However, should this be required, the Philadelphia Union respectfully requests at least two (2) weeks to complete the analysis, as it will take a significant amount of time to analyze and redact approximately forty (40) months of invoices.

EXHIBIT “A”

[Home](#) > [ABA Groups](#) > [Section of Litigation](#) > [Resources & Key Subjects](#) > [Uniform Task-Based Management System](#) > [Litigation Code Set](#)

Litigation Code Set

Uniform Task-Based Management System

Litigation Code Set

L100 Case Assessment, Development and Administration

- L110 Fact Investigation/Development
- L120 Analysis/Strategy
- L130 Experts/Consultants
- L140 Document/File Management
- L150 Budgeting
- L160 Settlement/Non-Binding ADR
- L190 Other Case Assessment, Development and Administration

L200 Pre-Trial Pleadings and Motions

- L210 Pleadings
- L220 Preliminary Injunctions/Provisional Remedies
- L230 Court Mandated Conferences
- L240 Dispositive Motions
- L250 Other Written Motions and Submissions
- L260 Class Action Certification and Notice

L300 Discovery

- L310 Written Discovery
- L320 Document Production
- L330 Depositions
- L340 Expert Discovery
- L350 Discovery Motions
- L390 Other Discovery

L400 Trial Preparation and Trial

- L410 Fact Witnesses
- L420 Expert Witnesses
- L430 Written Motions and Submissions
- L440 Other Trial Preparation and Support
- L450 Trial and Hearing Attendance
- L460 Post-Trial Motions and Submissions
- L470 Enforcement

L500 Appeal

L510 Appellate Motions and Submissions
L520 Appellate Briefs
L530 Oral Argument

A100 Activities

A101 Plan and prepare for
A102 Research
A103 Draft/review
A104 Review/analyze
A105 Communicate (in firm)
A106 Communicate (with client)
A107 Communicate (other outside counsel)
A108 Communicate (other external)
A109 Appear for/attend
A110 Manage data/files
A111 Other

E100 Expenses

E101 Copying
E102 Outside printing
E103 Word processing
E104 Facsimile
E105 Telephone
E106 Online research
E107 Delivery services/messengers
E108 Postage
E109 Local travel
E110 Out-of-town travel
E111 Meals
E112 Court fees
E113 Subpoena fees
E114 Witness fees
E115 Deposition transcripts
E116 Trial transcripts
E117 Trial exhibits
E118 Litigation support vendors
E119 Experts
E120 Private investigators
E121 Arbitrators/mediators
E122 Local counsel
E123 Other professionals
E124 Other

E100 Expenses

Resources

- [Litigation Code Set](#):
- [Overview](#)
- [Litigation Code Set](#)

- Litigation Code Set Sample Budget Format
- Litigation Code Definitions
- Background, Definitions, Principles, and Assumptions
- Participants and Liasons

Download the Codeset

CERTIFICATE OF SERVICE

I hereby certify that I am this day filing a copy of Respondent/Counterclaim Claimant's Reply to Claimant's Memorandum in Opposition to Respondent's Petition for Fees and Costs by Electronic Mail with the American Arbitration Association and serving a copy via electronic mail, upon the persons indicated below:

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Date: October 23, 2015