

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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BRONSON METHODIST HOSPITAL,

Plaintiff-Appellee,

v

STEVEN B. KURTZ, d/b/a MIDWEST  
COMMUNICATIONS,

Defendant-Appellant.

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UNPUBLISHED

May 27, 2008

No. 274938

Kalamazoo Circuit Court

LC No. 03-000054-CZ

Before: O’Connell, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Following a jury trial, the trial court entered a final judgment in the amount of \$820,373.52 in favor of plaintiff Bronson Methodist Hospital (Bronson). Defendant Steven B. Kurtz, d/b/a Midwest Communications, (Kurtz) appeals as of right the final judgment. Kurtz also appeals the trial court’s order denying his motion for new trial or remittitur. Because the trial court did not err in denying Kurtz’s motion for a directed verdict, nor did it abuse its discretion in refusing to instruct the jury on the statute of frauds or to amend question one of the special verdict form, in denying Kurtz’s motion for new trial or remittitur, in setting aside the parties’ stipulation regarding the verdict, and in granting case evaluation sanctions in the amount requested by Bronson, we affirm.

I. Background

In January 2001, Kurtz sold a 400-foot communications tower to Midwest Tower Partners for \$700,000.<sup>1</sup> Bronson sued Kurtz for the \$700,000, the \$50,075 Kurtz received in rental income from renting space on the tower to third parties, and the \$5,000 Kurtz received for selling a smaller tower. In its complaint, Bronson asserted claims for unjust enrichment and breach of fiduciary duty.

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<sup>1</sup> When we refer to the “tower,” we also refer to the equipment building and the related equipment, such as the generator. The sale of the tower closed in April 2001.

In 1992, Art Littlefield, then responsible for communications at Bronson, expressed to Kurtz his desire for Bronson to have its own paging system. Kurtz subsequently submitted proposals to Bronson to build the 400-foot tower, and Bronson approved the expenditure of capital funds to establish its own paging system. In January 1995, Kurtz secured a 30-year lease on a 4.7-acre piece of land, on which he would build the tower. From November 1994 through December 1995, Kurtz sent invoices to Bronson relating to the construction of the tower, and Bronson paid the invoices. Although Kurtz had completed building the tower by December 1995, the tower was not yet operational by the summer of 1996. In August 1996, Bronson decided not to invest any more money into the paging system project. Thereafter, and over the next several years, Bronson, through Mike Way, who took over supervision of the paging system project after Littlefield's retirement in 1995, offered to sell the tower to Kurtz. Kurtz never agreed to buy the tower, but he informed Way that he knew of a potential buyer. Way authorized Kurtz to sell the tower on Bronson's behalf, and, according to Way, it was agreed that, upon the sale of the tower, Kurtz would pay Bronson. When Kurtz sold the tower to Midwest Tower Partners in 2001, he never informed Bronson of the sale, nor did he forward to Bronson the \$700,000 he received from Midwest Tower Partners.<sup>2</sup>

According to Kurtz, he was entitled to the \$700,000 he received from the sale of the tower,<sup>3</sup> along with the \$50,075 he received in rental income because, pursuant to his agreement with Littlefield, he owned the tower. He and Littlefield agreed that, in exchange for Bronson "fronting" the money to build the tower, Bronson would be able to place its equipment on the tower rent free. Bronson would save approximately \$43,000 a year in paging service costs.

The jury, finding that Kurtz acted as Bronson's agent and that he violated a fiduciary duty arising from the agency relationship, awarded Bronson \$700,000 in damages on the breach of fiduciary duty claim. The jury also awarded Bronson \$55,075 in damages on the unjust enrichment claim. The trial court subsequently entered a final judgment against Kurtz in the amount of \$820,373.52, which included case evaluation sanctions.

## II. Motion for Directed Verdict

Kurtz claims that because Bronson presented insufficient evidence to establish that he was an agent of Bronson, the trial court erred in denying his motion for a directed verdict on the breach of fiduciary duty claim. This Court reviews de novo a trial court's ruling on a motion for a directed verdict. *Coates v Bastian Bros, Inc*, 276 Mich App 498, 502; 741 NW2d 539 (2007). The motion is properly granted if, after viewing the evidence in the light most favorable to the nonmoving party, there is no factual question on which reasonable minds could differ. *Id.* at 502-503.

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<sup>2</sup> The sale of the tower also included an assignment of the 30-year lease.

<sup>3</sup> Kurtz denied that he ever had any conversations with Way about him selling the tower on Bronson's behalf.

The existence of an agency relationship is a question of fact. *Hertz Corp v Volvo Truck Corp*, 210 Mich App 243, 246; 533 NW2d 15 (1995). An agency relationship arises when there is a manifestation by the principal that the agent may act on its behalf. *Meretta v Peach*, 195 Mich App 695, 697; 491 NW2d 278 (1992). The test whether an agency relationship has been created is whether the principal has a right to control the actions of the agent with respect to the entrusted matters. *St Clair Intermediate School Dist v Intermediate Ed Ass'n/Michigan Ed Ass'n*, 458 Mich 540, 557-558; 581 NW2d 707 (1998). The parties' designation of the relationship is not controlling. *Van Pelt v Paull*, 6 Mich App 618, 624; 150 NW2d 185 (1967). “[I]f an act done by one person in behalf of another is in its essential nature one of agency, the one is the agent of such other notwithstanding he is not so called.” *Id.*, quoting 3 Am Jur 2d, Agency, § 21, p 430.

Bronson presented evidence that it owned the 400-foot tower. Mary Meitz, the vice president of finance at Bronson, testified that upon receiving and paying the invoices submitted by Kurtz, Bronson entered the tower as an asset it owned in its fixed asset system. Way testified that in 1996, after Bronson decided not to invest further money into the paging system project, Bronson attempted to sell the tower to Kurtz. While Kurtz never agreed to buy the tower, he informed Way that he knew of an interested third party. In a desire for Bronson to recover its investment into the paging system project, Way authorized Kurtz to sell the tower on Bronson's behalf. According to Way, it was agreed that, after Kurtz sold the tower, he would pay Bronson. Looking at this evidence in the light most favorable to Bronson, *Coates, supra*, a reasonable trier of fact could conclude that Kurtz acted as Bronson's agent in the sale of the tower. A reasonable trier of fact could conclude that Way's authorization to Kurtz to sell the tower was a manifestation by Bronson that Kurtz could sell the tower, an asset owned by Bronson, on Bronson's behalf. *Meretta, supra*. The trial court did not err in denying Kurtz's motion for a directed verdict.

### III. Instructional Issues

Kurtz next claims the trial court erred in refusing to instruct the jury on the statute of frauds. This Court reviews de novo a claim of instructional error, *Rose v State Farm Mut Automobile Ins Co*, 274 Mich App 291, 294; 732 NW2d 160 (2006), although whether a supplemental instruction is accurate and applicable to a case is within the trial court's discretion, *Silberstein v Pro-Golf of America, Inc*, \_\_ Mich App \_\_; \_\_ NW2d \_\_ (2008). A trial court abuses its discretion when it fails to select a principled outcome. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). Instructional error does not require reversal unless failure to reverse would be inconsistent with substantial justice. MCR 2.613(A); *Ward v Consolidated Rail Corp*, 472 Mich 77, 84; 693 NW2d 366 (2005).

During trial, Kurtz asked the trial court to instruct the jury on the statute of frauds. His proposed instruction read:

Bronson Hospital claims an interest in the Kurtz-Martin Lease. Michigan has a Statute that provides:

. . . “no interest in lands, other than Leases for a term not more than one (1) year . . . Shall be created or declared unless by operation of law or in writing.”

If Bronson is not a party to the written Kurtz-Martin Lease, you should find that Bronson Hospital has no interest in the Kurtz-Martin Lease.

According to Kurtz, the statute of frauds was “clearly applicable” under Bronson’s theory of the case: Kurtz, acting as Bronson’s agent, entered into a lease on its behalf and it was “a lease that was part of the assets or the proceeds that [Bronson] was seeking to recover.” Objecting to the instruction, Bronson claimed that because the statute of frauds “addresses the issue of when a party claims an interest in land” and because Bronson was not claiming an interest in land—it was “claiming a right to proceeds based on the breach of the fiduciary duty”—the instruction was inappropriate. The trial court refused to give the instruction, finding that the statute of frauds was not relevant to the parties’ theories and that, even if the statute of frauds was relevant, the instruction “would be far more confusing than helpful.”

Generally, a trial court must give a supplemental instruction requested by a party if the instruction properly informs the jury on the applicable law. MCR 2.516(D)(4); *Burnett v Bruner*, 247 Mich App 365, 375; 636 NW2d 773 (2001). However, a supplemental instruction does not need to be given if the instruction adds nothing to a balanced and fair jury charge or if the instruction does not enhance the jury’s ability to decide the case intelligently, fairly, and impartially. *Central Cartage Co v Fewless*, 232 Mich App 517, 527-528; 591 NW2d 422 (1998).

Whether Bronson was entitled to any damages in the present case depended on the jury’s factual findings regarding agency and unjust enrichment. The jury needed to decide whether Kurtz was Bronson’s agent and, if during the course of the agency relationship, Kurtz violated his fiduciary duty to Bronson by keeping the rental income or the profit from the sale of the tower. Kurtz’s proposed statute of frauds instruction did not enhance the jury’s ability to decide these claims intelligently, fairly, and impartially. *Id.* If, upon receiving the proposed instruction, the jury found that Bronson had no interest in the lease, the instruction provided no guidance as to how this finding affected the breach of fiduciary duty and unjust enrichment claims. For example, the instruction did not explain whether the finding that Bronson had no interest in the lease limited Bronson’s damages to its initial investment in the paging system project or whether the finding precluded Bronson from recovering any of the proceeds that Kurtz received from renting space on and selling the tower. In addition, the instruction did not explain whether the finding that Bronson had no interest in the lease precluded the jury from considering all the claims or whether the finding only precluded consideration of one of the claims. There is no obvious connection between an interest in the lease, in which the current lessee was Midwest Tower Partners, and the claims before the jury. Because the proposed instruction provided no guidance to the jury on how to apply a finding that Bronson had no interest in the lease to the breach of fiduciary duty and unjust enrichment claims, the trial court correctly concluded that, even if the statute of frauds applied, Kurtz’s proposed instruction “would be far more confusing than helpful.” The trial court did not abuse its discretion in refusing to give Kurtz’s proposed statute of frauds instruction. *Silberstein, supra*.<sup>4</sup>

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<sup>4</sup> In addition, we question the propriety of submitting to the jury a question regarding whether the  
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Kurtz also claims the trial court erred in refusing to amend question one of the special verdict form from asking if Kurtz was an agent of Bronson to asking if Kurtz was an agent of Bronson in the sale of the tower. Accordingly to Kurtz, the amendment was necessary because the evidence presented by Bronson and the statements of Bronson's counsel consistently focused on whether Kurtz was Bronson's agent in the sale of the tower. The verdict form is, in essence, a jury instruction. *Bieszck v Avis Rent-A-Car Sys, Inc*, 224 Mich App 295, 302; 568 NW2d 401 (1997), rev'd on other grounds 459 Mich 9 (1998). Jury instructions should not omit any material issues, defenses, or theories that are supported by the evidence. *Ward, supra* at 83-84. It is error to instruct a jury on an issue not sustained by the pleadings or the evidence. *Murdock v Higgins*, 454 Mich 46, 60; 559 NW2d 639 (1997).

In its complaint, Bronson alleged that Kurtz acted as its agent "in purchasing and constructing" the tower, "in the operation" of the tower, and when he "sold" the tower. Bronson further alleged that Kurtz had a fiduciary duty to pay to Bronson any rental income he received while operating the tower and the proceeds he received from the sale of the tower. In its opening statement, Bronson informed the jury that Kurtz "act[ed] as its agent in establishing and running and selling" the tower. Accordingly, if the trial court amended question one of the special verdict form as requested by Kurtz, the question would have omitted a material theory asserted by Bronson, i.e., that Kurtz acted as its agent in the construction and operation of the tower. We reject Kurtz's contention that Bronson presented no evidence about Kurtz being its agent in any facet of the paging system project other than in the sale of the tower. Bronson presented evidence that Kurtz submitted proposals to construct the tower, Bronson approved the expenditure of funds to establish a paging system, Bronson issued purchase orders to Kurtz for equipment to construct the system, and Bronson paid invoices submitted by Kurtz. Kurtz then constructed the tower. Thus, Bronson presented evidence to support its claim that Kurtz acted as its agent in the construction of the tower. Because Bronson claimed that Kurtz acted as its agent in the construction and operation of the tower and there was evidence to support this theory, the trial court did not abuse its discretion in refusing to amend question one of the special verdict form. *Ward, supra* at 83-84.

Moreover, even if the trial court abused its discretion in refusing to amend question one, reversal is not required. The failure to reverse would not be inconsistent with substantial justice. MCR 2.613(A); *Ward, supra* at 84. The jury found that Bronson suffered \$700,000 in damages for Kurtz's breach of fiduciary duty. Because this amount equaled the price for which Midwest Tower Partners bought the tower, the jury found that Kurtz only acted as Bronson's agent in the sale of the tower. The jury awarded Bronson the \$50,075 Kurtz received in rental income as damages on the unjust enrichment claim. Consequently, even if the trial court had amended question one on the special verdict form as requested by Kurtz, the jury's verdict would not have been different. The damages requested by Bronson that it claimed arose from a breach of Kurtz's fiduciary duty arising from the operation of the tower were not awarded as damages on the breach of fiduciary duty claim.

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statute of frauds applies to the lease. The determination whether the statute of frauds applies to a transaction or contract is a question of law, *In re Handelsman*, 266 Mich App 433, 435; 702 NW2d 641 (2005), rather than a factual question to be decided by the trier of fact. Kurtz should have raised the statute of frauds issue in a motion for summary disposition.

#### IV. Motion for Remittitur

Kurtz claims the trial court erred in denying his motion for remittitur. According to Kurtz, remittitur is required because the jury's award of \$700,000 on the breach of fiduciary duty claim was clearly excessive. Kurtz claims the jury used an improper method in calculating the damages when it failed to deduct his construction and labor expenses, lease payments, and capital gains taxes. Kurtz also argues that remittitur is required because the award is outside the limits of what reasonable minds would deem just compensation for the injury inflicted. This Court reviews a trial court's decision on a motion for remittitur for an abuse of discretion. *Coble v Green*, 271 Mich App 382, 392; 722 NW2d 898 (2006).

Kurtz, in response to Bronson's claim that he acted as its agent in the sale of the tower and he was therefore required to account to Bronson for the \$700,000 that he received from Midwest Tower Partners, claimed in his closing statement that his defense was "pretty simple," he never acted as Bronson's agent. He then stated that, if the jury found he acted as Bronson's agent, he did not have "any qualms" with the damages Bronson was requesting. With this statement, Kurtz agreed that, if the jury found he breached his fiduciary duty to Bronson, he was required to account to Bronson the \$700,000 he received from Midwest Tower Partners. "A party is not allowed to assign as error on appeal something which his or her own counsel deemed proper at trial since to do so would permit the party to harbor error as an appellate parachute." *Dresselhouse v Chrysler Corp*, 177 Mich App 470, 477; 442 NW2d 705 (1989). Accordingly, Kurtz is precluded from arguing on appeal that the jury used an improper method in calculating the damages on the breach of fiduciary duty claim and that the jury's award of \$700,000 on the claim was outside the limits of what reasonable minds would deem just compensation.

Nevertheless, the trial court did not abuse its discretion in denying Kurtz's motion for remittitur. In determining whether remittitur is appropriate, the trial court must decide whether the jury award was supported by the verdict. *Diamond v Witherspoon*, 265 Mich App 673, 693; 696 NW2d 770 (2005). The trial court's determination is limited to objective considerations regarding the evidence adduced and the conduct of the trial. *Palenkas v Beaumont Hosp*, 432 Mich 527, 532; 443 NW2d 354 (1989).

[A] court may consider whether the verdict was the result of improper methods, prejudice, passion, partiality, sympathy, corruption, or mistake of law or fact, whether it was within the limits of what reasonable minds would deem to be just compensation for the injury inflicted, and whether the amount actually awarded is comparable to other awards in similar cases. [*Diamond, supra* at 694.]

"The agreement to act on behalf of the principal causes the agent to be a fiduciary." *In re Susser Estate*, 254 Mich App 232, 235; 657 NW2d 147 (2002), quoting 1 Restatement Agency, 2d, § 13, comment a, p 58. A fiduciary "is not permitted to act for himself at his principal's expense during the course of his agency." *Central Cartage Co, supra* at 524. "[A]ll profits made in the execution of a fiduciary's agency belong to the principal. Accordingly, [i]f an agent acquires any pecuniary advantage to himself from third parties by means of his fiduciary character, he is accountable to his employer for the profit made." *Id.* at 524-525 (quotations omitted). See also *Michigan Crown Fender Co v Welch*, 211 Mich 148, 160; 178 NW 684 (1920) ("[A]ll profits made and advantage gained by the agent in the execution of the agency belong to the principal") (quotations omitted). The jury found that Kurtz acted as

Bronson's agent in the sale of the tower. Therefore, all profits made by Kurtz in the sale of the tower belonged to Bronson, *id.*, and Kurtz was required to give the \$700,000 he received from the sale of the tower to Bronson, *Central Cartage Co, supra* at 524-525. Because Kurtz failed to give any of the \$700,000 he received from Midwest Tower Partners to Bronson, the jury did not use an improper method in calculating Bronson's damages on the breach of fiduciary duty claim, nor was the award beyond what reasonable minds would deem just compensation.

## V. Verdict Stipulation

Kurtz claims the trial court erred in setting aside the parties' stipulation that the amount of the jury verdict would equal the amount entered by the jury on question three of the special verdict form, the amount of damages Bronson suffered as a result of Kurtz's breach of fiduciary duty, or on question eight, the amount of damages Bronson suffered as a result of Kurtz's unjust enrichment, whichever amount was larger. This Court reviews a trial court's determination to set aside a stipulation for an abuse of discretion. *Limbach v Oakland Co Bd of Co Rd Comm'rs*, 226 Mich App 389, 394; 573 NW2d 336 (1997).

After the trial court entered the final judgment, Kurtz filed for bankruptcy. The bankruptcy court, upon stipulation of the parties, entered an order limiting the nondischargeable amount of any judgment in the present case to \$700,000. This order from the bankruptcy court renders the present issue moot. An issue is moot if an event has occurred which renders it impossible for this Court to grant relief. *Attorney Gen v Pub Service Comm*, 269 Mich App 473, 485; 713 NW2d 290 (2005). Even if we were to conclude that the trial court erred in setting aside the parties' stipulation, we could not grant Kurtz any relief beyond that already granted to him by the bankruptcy court. If we were to conclude that the trial court erred in setting aside the parties' stipulation, we would remand for correction of the final judgment to reflect a jury verdict of \$700,000, which equals the larger amount of the two amounts entered by the jury on questions three and eight. However, such a correction would not reduce the amount of the final judgment to under \$700,000, the maximum nondischargeable amount in the bankruptcy proceedings.

Nonetheless, we disagree with Kurtz that the trial court abused its discretion in setting aside the parties' stipulation. "A stipulation is an agreement, admission, or concession made by the parties in a legal action with regard to a matter related to the case." *People v Metamora Water Service*, 276 Mich App 376, 385; 741 NW2d 61 (2007). While a stipulation is generally binding on the parties, *Blue Cross & Blue Shield of Michigan v Eaton Rapids Community Hosp*, 221 Mich App 301, 307; 561 NW2d 488 (1997), "[a] stipulation is a type of contract, and contract defenses are available to a party who seeks to avoid a stipulation," *Limbach, supra* at 394. A stipulation may be set aside where there is evidence of mutual mistake. *Id.* In requesting the trial court to set aside the parties' stipulation, Bronson asserted that the stipulation was based on the parties' agreement that, in order to prevent Bronson from receiving a windfall, Bronson could not recover more than the amount of total damages requested, but if the jury awarded two separate amounts on questions three and eight, Bronson would be entitled to the larger amount. Bronson further asserted that the discussions which led to the stipulation focused solely on the need to prohibit the amounts entered by the jury on questions three and eight from being added together to equal a verdict that exceeded the total amount of damages requested by Bronson. In opposing Bronson's request to set aside the stipulation, Kurtz offered no assertion or evidence to contradict Bronson's assertions that the stipulation was made to prevent Bronson from receiving a windfall. Likewise, even after the trial court, who was a party to the discussions which led to

the stipulation, found that the stipulation only addressed “the possibility of a double recovery,” Kurtz has offered this Court no assertion or evidence to suggest that the stipulation was meant to cover the situation that actually resulted, i.e., the jury’s answers on questions three and eight equaled the maximum amount of damages requested by Bronson. Under these circumstances, we are unable to conclude the trial court abused its discretion in setting aside the parties’ stipulation. *Limbach, supra*.

## VI. Case Evaluation Sanctions

Kurtz claims the trial court erred in awarding case evaluation sanctions in the amount requested by Bronson. Kurtz makes three specific arguments: (1) the trial court erred in granting attorney fees for time billed on the bankruptcy proceedings; (2) the trial court erred in granting attorney fees for time billed during the automatic stay; and (3) the hourly fee charged by Bronson’s lead counsel was an unreasonable fee.

The order from the bankruptcy court limiting the nondischargeable amount of any judgment in the present case to \$700,000 also renders this issue moot. Any decision on the present issue in favor of Kurtz would not reduce the final judgment to under \$700,000. Thus, we are unable to grant Kurtz any relief on this issue beyond that already granted to him by the bankruptcy court. *Attorney Gen, supra*.

Regardless, the trial court did not err in granting case evaluation sanctions in the amount requested by Bronson. While this Court reviews de novo a trial court’s decision whether to grant case evaluation sanctions, *Great Lakes Transmission Ltd Partnership v Markel*, 226 Mich App 127, 129; 573 NW2d 61 (1997), it reviews for an abuse of discretion a trial court’s determination of the amount of sanctions, *Maryland Cas Co v Allen*, 221 Mich App 26, 32; 561 NW2d 103 (1997). This Court reviews for an abuse of discretion the trial court’s determination of a reasonable hourly rate for attorney fees. *Zdrojewski v Murphy*, 254 Mich App 50, 72; 657 NW2d 721 (2002).

We find no merit to Kurtz’s claim that some of the time billed by Bronson’s counsel concerned only the bankruptcy proceedings. Our review of the billing records submitted by Bronson reveals that the work, the descriptions of which referenced the bankruptcy proceedings, was work done in determining how the bankruptcy filing affected an entry of judgment. Such work had a “causal nexus” to Kurtz’s rejection of the case evaluation. *Haliw v Sterling Heights*, 471 Mich 700, 711 n 8; 691 NW2d 753 (2005). By rejecting the case evaluation, Kurtz elected to go to trial and, at the conclusion of trial, a judgment needed to be entered to reflect the jury’s verdict.

We also find no merit to Kurtz’s claim that the case evaluation award should not have included attorney fees for the 17 hours Bronson’s counsel billed after Kurtz filed for bankruptcy. After Kurtz filed for bankruptcy, the bankruptcy court entered an automatic stay, prohibiting all persons from “commencing or continuing any suits” against Kurtz. The purpose of the automatic stay in a bankruptcy proceeding is to provide the debtor “a breathing spell from his creditors . . . to be relieved of the financial pressures that drove him into bankruptcy.” *In re Dungey*, 99 BR 814, 815 (SD Ohio, 1989) (quotations omitted). Bronson’s counsel did not violate the automatic stay. While the automatic stay was in effect, Bronson’s counsel took no action to reduce the jury verdict to a final judgment that, in any manner, affected Kurtz. While

Bronson's counsel prepared a motion for entry of judgment, the motion was not filed until May 17, 2006, almost a month after the stay was lifted. The internal communications of Bronson's counsel and its preparation of the motion for entry of judgment did not impinge on the "breathing spell" the automatic stay afforded Kurtz. *Id.* Accordingly, the trial court did not abuse its discretion by including within the case evaluation award the attorney fees incurred by Bronson during the period in which the automatic stay was in effect. *Maryland Cas Co, supra.*

Finally, the trial court did not abuse its discretion in finding that the hourly fee of \$325 to \$350 charged by Craig Lubben, Bronson's lead counsel, was a reasonable hourly fee. While there is no precise formula for calculating the reasonableness of an attorney's fee, *Crawley v Schick*, 48 Mich App 728, 737; 211 NW2d 217 (1973), a trial court must consider the following factors:

(1) the professional standing and experience of the attorney, (2) the skill, time, and labor involved, (3) the amount in question and the results achieved, (4) the difficulty of the case, (5) the expenses incurred, and (6) the nature and length of the professional relationship with the client. [*Campbell v Sullins*, 257 Mich App 179, 199; 667 NW2d 887 (2003).]

In addition, a trial court should utilize empirical data regarding the hourly rates charged by attorneys contained in reliable studies or surveys. *Temple v Kelel Distributing Co, Inc*, 183 Mich App 326, 333; 454 NW2d 610 (1990).

Based on the empirical data submitted to the trial court, we agree with the trial court that the hourly fee charged by Lubben was at the "high end" of what a client would expect a similarly situated attorney to charge. However, the trial court also found that Lubben "has a high professional standing and a high level of experience," Lubben's presentation in the complicated case "reflect[ed] a high level of skill and labor," the case involved a "significant" amount of money, and the results obtained by Lubben "could not [have] be[en] better" as the jury awarded Bronson all the damages it sought. Based on these factual findings, the trial court did not abuse its discretion in concluding that Lubben's hourly fee, while at the "high end," was a reasonable fee. *Zdrojewski, supra.*

Affirmed.

/s/ Peter D. O'Connell  
/s/ Joel P. Hoekstra  
/s/ Michael R. Smolenski