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## THE BASSETT BULLETIN™

### ARE THE GUARDIAN AD LITEM'S FEES TOO HIGH?

Companies charged with absorbing the costs of a Guardian Ad Litem's fees during settlements often ask this question. The answer is usually dependent on the complexity of the facts of a particular case, but in every situation, there are clear-cut ways to try to reduce the fees.

The Texas Supreme Court recently issued an opinion discussing Guardian Ad Litem fees. *Ford Motor Company v. Richard H. Garcia*, No. 10-0953 (Tex. March 30, 2012). This case provides the blueprint on how to challenge – and possibly reduce - a Guardian Ad Litem's fees.

### THE GUARDIAN AD LITEM CHARGED \$28,260.00

In *Garcia*, a passenger sustained an incapacitating brain injury when his Ford pickup rolled over due to a tire tread separation. The passenger's wife sued Ford individually and as guardian of her husband. The parties reached a confidential settlement, but a conflict of interest arose between the husband and wife as to how the settlement would be divided between the wife and the incapacitated husband.

Pursuant to the parties' unopposed motion, the trial court appointed attorney Richard Garcia as a Guardian Ad Litem. Garcia's role was to represent the interests of the incapacitated husband and determine whether the division of the settlement was fair. He gave his approval and the court acquiesced.

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A significant portion of the *Garcia* opinion was devoted to whether Garcia was an "Attorney Ad Litem" or a "Guardian Ad Litem" due to the imprecise wording in the trial court's Order. *Id.* at 495-497. The *Garcia* court held that Garcia was a Guardian Ad Litem.

Garcia and Ford were unable to agree on Garcia's fees so the trial court held a hearing. At the hearing, Garcia produced an unverified invoice in the amount of \$28,260.00. The invoice contained 65 itemized charges from 12.09.08 through 12.19.08, but the itemized charges did not specify (1) the date of the services performed, (2) who performed the services, or (3) the time spent on the task. Garcia testified that his rate was \$300.00 an hour, but that he did not perform all of the 65 tasks and he was not sure how long each task took. The trial court and the Court of Appeals affirmed. Ford appealed and the Supreme Court granted Ford's petition for review.

**THE *GARCIA* COURT HELD THAT THE EVIDENCE WAS LEGALLY INSUFFICIENT TO SUPPORT THE FEES**

The basis of Ford's challenge of the fees was threefold. Ford argued that Garcia (1) did not perform all of the tasks, (2) there was no indication as to how much time was spent on the task, and (3) Garcia performed tasks outside the scope of his appointment as Guardian Ad Litem.

The *Garcia* Court noted the standard of reviewing a trial court's award of Guardian Ad Litem fees is whether the trial court abused its discretion. A trial court abuses its discretion when there is no evidence supporting its decision in awarding the amount of fees.

The Texas Rules of Civil Procedure codified how a Guardian Ad Litem is supposed to be compensated. A Guardian Ad Litem, upon request, may be reimbursed for "reasonable and necessary expenses incurred and may be paid a reasonably hourly fee for necessary services performed." The Guardian Ad Litem's fees must be verified and must "detail the basis for the compensation requested." Finally, the tasks performed must be "directly and materially bearing on the conflict of interest between [the parties] regarding division of the settlement [are] necessary."

Because Garcia submitted an unverified invoice that was neither itemized nor descriptive of the time of the service or who actually performed the service, the *Garcia* Court reversed the Guardian Ad Litem fees. The case was remanded back to the trial court so that the trial court could determine how much of the Guardian Ad Litem's bill was reasonable.

## WHAT CAN YOU DO IF A GUARDIAN AD LITEM'S FEES ARE TOO HIGH?

If you think that a Guardian Ad Litem's bills are too high, the *Garcia* Court lays out ways to attack the reasonableness of the fees. You should ask yourself these questions:

- Did the Guardian Ad Litem submit a bill?
- Was it verified and supported by affidavit?
- Was the bill itemized by task and time spent on each task?
- Did the bill state with specificity what tasks were performed?
- Did the bill state who performed the services?
- Were the tasks relevant to the scope of the Guardian's job duties?

If the answer to any of these questions is no, you may have a basis to attack the size of the Guardian Ad Litem's bill.



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