

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

JOHN A. PARKINS, JR.
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Re: Elsie Taveras and Juan Taveras v. Jose I. Mesa, M.D.
C.A. No. 07C-04-438 JAP

Submitted: December 10, 2008
Decided: December 15, 2008

On Defendant's Motion for Costs
**GRANTED in part and
DENIED in part.**

Dear Counsel:

On November 11, 2008, after a four day trial, a jury returned a verdict for Defendant Jose I. Mesa, M.D. in this medical negligence case.

Defendant now seeks to recover \$6,750 in costs for the trial testimony of his two medical experts, Gary S. Karlin, M.D. and Daniel A. Small, M.D.

Plaintiffs contend that the Court should either deny the motion in its entirety, or reduce the requested costs as being excessive. The Court agrees that the fees for expert testimony are excessive, and therefore Defendant's motion for costs is **GRANTED in part** and **DENIED in part**.

Under 10 *Del. C.* § 5101 and Superior Court Civil Rule 54, the Court may award costs to a prevailing party in any civil action.¹ Additionally, under 10 *Del. C.* § 8906, fees for witnesses testifying as experts shall be fixed by the Court in its discretion, and taxed as costs.² Such expert witness fees, however, are limited to actual time spent testifying or waiting to testify, as well as reasonable travel expenses.³ The award of costs for expert witness testimony is committed to the sound discretion of the trial court.⁴

¹ 10 *Del. C.* § 5101 (“Generally a party for whom final judgment in any civil action, or on a writ of error upon a judgment is given in such action, shall recover, against the adverse party, costs of suit, to be awarded by the court.”); Super. Ct. Civ. R. 54(d) (“Except when express provision therefor is made either in a statute or in these Rules or in the Rules of the Supreme Court, costs shall be allowed as of course to the prevailing party upon application to the Court within ten (10) days of the entry of final judgment unless the Court otherwise directs.”).

² 10 *Del. C.* § 8906 (“The fees for witnesses testifying as experts . . . in the Superior Court . . . shall be fixed by the court in its discretion, and such fees so fixed shall be taxed as part of the costs in each case and shall be collected and paid as other witness fees are now collected and paid.”).

³ *Campbell v. Whorl*, 2008 WL 4817078, at *6 (Del. Super.).

⁴ *Donovan v. Delaware Water & Air Resources Comm'n*, 358 A.2d 717, 722-23 (Del. 1976).

When assessing the reasonableness of medical experts' testimonial fees, this Court frequently relies upon rates set forth in a 1995 study conducted by the Medical Society of Delaware's Medico-Legal Affairs Committee, as adjusted to reflect increases in the consumer price index for medical care.⁵ The Medico-Legal Study reported that fees for a half-day of medical expert testimony ranged from \$1,300 to \$1,800.⁶ Here, the Court finds that there has been an increase of 49.4% in the consumer price index for medical care from the beginning of 1996 to October 2008.⁷ Therefore, the applicable range of reasonable half-day testimony fees would be \$1,942.20 to \$2,689.20.

Defendant seeks to recover \$3,000 for Dr. Karlin's courtroom testimony, representing a half-day of services, and \$3,750 for Dr. Small's courtroom testimony, representing a three-eighths day of services. In light of the price-adjusted rates given by the Medico-Legal Study, both of these fees are unreasonable. Dr. Karlin testified at trial for 57 minutes and Dr. Small's testified for 2 hours and 24 minutes. Assuming both fees also includes time spent traveling (both experts travelled from New Jersey to

⁵ *Campbell*, 2008 WL 4817078, at *7 (citing *Bond v. Yi*, 2006 WL 2329364, at *1 (Del. Super. 2006)).

⁶ *Id.*

⁷ See Bureau of Labor Statistics, U.S. Dep't of Labor, *Archived News Releases for Consumer Price Index*, available at http://www.bls.gov/schedule/archives/cpi_nr.htm (last visited Dec. 11, 2008). The Court calculated the change in consumer price index for medical care until October 2008 because data for November 2008 is not yet available.

testify) and waiting to testify, the Court will award Plaintiffs \$2,500 for Dr. Karlin's testimony and \$2,500 for Dr. Small's testimony.

IT IS SO ORDERED.

cc: Prothonotary