

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

BRENDA MERCED, )  
)  
Plaintiff, )  
) C.A. No. 07C-10-012 PLA  
v. )  
)  
MELISSA HARRISON, )  
)  
Defendant. )

Submitted: August 20, 2009  
Decided: September 1, 2009

UPON DEFENDANT HARRISON'S MOTION FOR COSTS  
**GRANTED**

This 1st day of September, 2009, upon consideration of Defendant Melissa Harrison's ("Harrison") Motion for Costs, it appears to the Court that:

1. This case arises from an October 2005 automobile accident in which a vehicle driven by Harrison rear-ended Plaintiff Brenda Merced's ("Merced") vehicle. In a two-day jury trial in this Court, Harrison contended that the collision was the result of an unavoidable accident or emergency. On August 12, 2009, the jury returned a verdict in Harrison's favor.

2. Harrison now moves for costs pursuant to Superior Court Civil Rule 54(d) and 10 *Del. C.* § 8906. Specifically, Harrison seeks

reimbursement of a \$2,500.00 fee for the trial testimony of Dr. David C. Stephens, her medical expert.

3. Under Rule 54(d) and 10 *Del. C.* § 8906, a prevailing party may recover expert witness testimony fees to an amount fixed in this Court's discretion.<sup>1</sup> The prevailing party may only recover fees associated with the expert's time spent testifying or waiting to testify, along with reasonable travel expenses.<sup>2</sup>

4. In assessing the reasonableness of medical experts' fees, this Court has frequently relied 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.<sup>3</sup> The Medico-Legal Study reported that fees for a half-day of medical expert

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<sup>1</sup> See 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."); 10 *Del. C.* § 8906 ("The fees for witnesses testifying as experts or in the capacity of professionals in cases in the Superior Court . . . within this State, 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.").

<sup>2</sup> *Spencer v. Wal-Mart Stores East, LP*, 2007 WL 4577579, at \*1 (Del. Super. Dec. 5, 2007).

<sup>3</sup> See *Bond v. Yi*, 2006 WL 2329364, at \*3 (Del. Super. Aug. 10, 2006) (collecting cases); *Gates v. Texaco, Inc.*, 2008 WL 1952164, at \*1 (Del. Super. Mar. 20, 2008); *Fellenbaum v. Ciamaricone*, 2002 WL 31357917, at \*6 (Del. Super. Oct. 16, 2002).

testimony ranged from \$1,300 to \$1,800.<sup>4</sup> Here, the Court finds that there has been an increase of 51.9% in the consumer price index for medical care from the beginning of 1996 to July 2009.<sup>5</sup> Therefore, current reasonable fees for a half-day of expert testimony would range from \$1,974 to \$2,734.

5. Neither the invoice nor the Defendant's Motion details the length of Dr. Stephens's trial testimony and waiting time or the amount of any travel expenses. Dr. Stephens's trial testimony took significantly less than half a day, and thus his invoice for \$2,500 appears excessive in light of the range suggested by the Medico-Legal Study. In the absence of a more specific invoice, and accounting for a reasonable projection of waiting time and travel expenses, the Court will adjust the recoverable amount to \$1,800.

6. For the foregoing reasons, Harrison's Motion for Costs is **GRANTED**. Harrison is hereby awarded costs in the amount of \$1,800.

**IT IS SO ORDERED.**

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Peggy L. Ableman, Judge

Original to Prothonotary  
cc: Stephen P. Casarino, Esq.  
Tabatha L. Castro, Esq.

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<sup>4</sup> See *Gates*, 2008 WL 1952164, at \*1.

<sup>5</sup> Consumer price index figures for August 2009 have not been released as of the date of this order. 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](http://www.bls.gov/schedule/archives/cpi_nr.htm) (last visited September 1, 2009).