

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

Edward C. Gill, Esquire
P.O. Box 824
Georgetown, DE 19947

Jeffrey A. Young, Esquire
Young & McNelis
300 South State Street
P.O. Box 1191
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Re: ***Brittingham v. Davis***
C.A. No. S08C-07-013 RFS

Upon Defendant's Motion for Costs. Granted.

Submitted: April 6, 2010
Decided: April 14, 2010

Dear Counsel:

I have before me Defendant Jeffrey Davis's Motion for Costs in regard to the above-referenced case and Plaintiff Stacie Brittingham's opposition to the Motion. Defendant seeks \$1400 for Dr. Barrish's trial deposition prepayment; \$255.25 for the court reporter's appearance and transcript of Dr. Barrish's deposition; and \$250 for Craig Karsnitz's reading in of Dr. Barrish's deposition testimony at trial. The total amount sought is \$1905.25. Plaintiff opposes the motion in its entirety, asserting that Defendant's insurer, State Farm, incurred the costs, not Defendant. Plaintiff makes this representation

on information and belief, which does not suffice to override the fact that costs are allowed as of course to a prevailing party.¹ For the reasons explained below, the Motion for Costs is granted.

Pursuant to Rule 54(d), costs are allowed when the prevailing party applies for said costs within ten days, as Defendant has done. Rule 54(h) provides that deposition fees for expert witnesses are recoverable if the deposition is introduced into evidence at trial, which it was in this case. Furthermore, Rule 68 provides that a plaintiff must pay costs where the defendant made a pre-judgment offer that is rejected and that exceeds the judgment obtained by the plaintiff. The purpose of Rule 68 is to encourage the settlement of litigation by shifting the risk of proceeding with the lawsuit to the offeree.² In this case, Defendant made a pre-trial offer of judgment in the amount of \$15,000, which Plaintiff rejected and which exceeded the zero recovery obtained at trial. Defendant is entitled to the recovery of his costs.

In addition to the rules pertaining to costs, the Court has discretion in determining the appropriate amount of costs due to the prevailing party.³ Here, Defendant has

¹Rule 54(d); 10 *Del. C.* § 5101. Alternatively, it is commonly known and not subject to reasonable dispute that insurance companies have a right of reimbursement for advanced litigation costs. DRE 201. Nor do the rules make a distinction between litigants who are insured or not for purposes of recovering costs. Rules 54(d), 68.

²*Wilhelm v. Ryan*, 903 A.2d 745, 757 (Del. 2006).

³*Christiana Marine Serv. Corp. v. Texaco Fuel & Marine Mktg*, 2004 WL 42611 (Del. Super.); *Donovan v. Delaware Water & Air Resources Comm'n*, 358 A.2d 717 (Del. 1976). In this case, Plaintiff has not questioned the reasonableness of the amounts.

submitted a copy of the bill for \$1400 received from Dr. Barrish's office and a copy of the invoice for \$255.25 from the reporting company. The Court finds the amounts to be reasonable for the taking of a deposition from an expert medical witness, and the motion is granted as to both. Defendant seeks to recover \$250 for the time taken for Craig Karsnitz, Esquire, to read Dr. Barrish's deposition testimony into the record at trial. The Court also finds this to be a reasonable amount for Mr. Kartsnitz's professional time. The motion for this portion of the costs is also granted.

For these reasons, Defendant's Motion for Costs is **GRANTED**.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

Original to Prothonotary