

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD R. COOCH
RESIDENT JUDGE

**NEW CASTLE COUNTY COURTHOUSE
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WILMINGTON, DELAWARE 19801
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**Re: *Rashida Berry and Larry Pipes v. Paula Seramone-Isaacs*
C.A. No. 01C-06-132 RRC**

Submitted: January 28, 2003
Decided: January 31, 2003

On Plaintiffs' "Motion to Recover Costs."
GRANTED IN PART, DENIED IN PART.

Dear Counsel:

Currently before the Court is Plaintiffs' "Motion to Recover Costs" through which Plaintiffs, as the party prevailing at trial, seek to recover a total of \$5,450 in filing and expert witness fees. Defendant concedes that Plaintiffs are entitled to \$1,750 of the claimed amount, but disputes the \$3,700 that Plaintiffs claim they are entitled to recover for the trial testimony of their expert, Emmanuel Devotta, M.D.; Defendant instead seeks to limit Dr. Devotta's fees for testifying to \$1,500.¹ For the reasons that follow, the Court has determined that the \$3,700 sought as expert witness fees shall be

¹ Def.'s Opp'n to Pls.' Mot. ¶ 5.

reduced to \$1,700, thereby reducing Plaintiffs' entire costs recovery to \$3,450.

This automobile personal injury case was tried before a jury in December 2002 after Plaintiffs demanded a trial *de novo* from a pretrial arbitration decided in Defendant's favor. Defendant admitted liability, so the sole issues litigated at trial were the nature and extent of plaintiff Rashida Berry's injuries, and the amount of plaintiff Larry Pipe's consortium claim. The jury returned a \$26,000 verdict in favor of the Plaintiffs, \$1,000 of which was for plaintiff Larry Pipe's loss of consortium.

Following the jury's rendering of its verdict, Plaintiffs' filed the motion under consideration, which contained the following requested amounts:

Filing Fees for Prothonotary-Trial fee	\$150.00
Demand for Trial de novo	\$100.00
Expert Witness Fee-live appearance/Dr. Emmanuel Devotta	\$3,700.00
Expert Witness Fee-live appearance/Dr. Stephen Rodgers	<u>\$1,500.00</u>
[Total:	\$5,450.00] ²

With regard to the amount of time that Dr. Devotta spent in traveling to the New Castle County Courthouse and the amount of time he then spent testifying at trial, Plaintiffs represented only that "the medical experts for the [P]laintiffs appeared live at trial."³

In response, Defendant "acknowledges liability for the Trial fee (\$150.00), the Demand for Trial De Novo fee (\$100.00) and Dr. Rodgers[']s expert witness fee (\$1,500.00)[]"⁴ but suggests that "a reasonable allowance for Dr. Devotta's expert witness fee would be \$1,500.00."⁵

² Pl.'s Mot. ¶ 4.

³ Id. ¶ 3.

⁴ Def.'s Opp'n to Pls.' Mot. ¶ 2.

⁵ Id. ¶ 5.

Defendant arrives at this number by “submit[ting] that Dr. Devotta was in [c]ourt for approximately 2 hours...and [that he] probably sustained some minimal travel time to and from...his North Wilmington office.”⁶

Under title 10, section 8906 of the Delaware Code, “[t]he fees for witnesses testifying as experts...shall be fixed by the [C]ourt in its discretion[] and...taxed as part of the costs in each case....” Superior Court Civil Rule 54(d) provides, in pertinent part, “costs shall be allowed as of course to the prevailing party upon application to the Court...unless the Court otherwise directs.” Traditionally, there was no fixed formula used by this Court when determining the amount to be paid an expert.⁷

Despite lacking a “fixed formula” for determining expert witness compensation, the Delaware Supreme Court has held that “when a physician testifies as an expert, for three hours or less, a minimum witness fee should be allowed based upon a flat amount for a one-half day interruption in the physician’s usual schedule.”⁸ This Court has recently held “that a reasonable range of fees for a court appearance [by an expert medical witness] is currently between...\$1,677 and \$2,322 per half[-]day.”⁹ Accordingly, the Court will use those figures in disposing of the current motion.

Plaintiffs have not precisely or sufficiently accounted for the amount of time that Dr. Devotta spent in traveling to the New Castle County Courthouse and the amount of time he then spent testifying at trial. In light

⁶ Id. ¶ 4.

⁷ Sliwinski v. Duncan, No. 260, 1991, 1992 WL 21132, at *2 (Del. Jan. 15, 1992).

⁸ Id. at *3.

⁹ Preux v. Leap, C.A. No. 99C-11-211 JRJ, 2002 WL 31819250, at *1 (Del. Super. Dec. 11, 2002).

of Defendant's concession that Dr. Devotta was in court "for approximately 2 hours," and that he should be awarded expenses for "no more than 3 hours,"¹⁰ the Court, factoring in the doctor's travel time, believes a figure on the low end of the half-day scale to be appropriate; accordingly, the Court will award Plaintiffs \$1,700 of the requested \$3,700. Thus, Plaintiffs costs award breaks down as follows:

Filing Fees for Prothonotary-Trial fee	\$150.00
Demand for Trial de novo	\$100.00
Expert Witness Fee-live appearance/Dr. Emmanuel Devotta	\$1,700.00
Expert Witness Fee-live appearance/Dr. Stephen Rodgers	<u>\$1,500.00</u>
Total:	\$3,450.00

IT IS SO ORDERED.

Very truly yours,

Richard R. Cooch

/jkk

oc: Prothonotary

¹⁰ Def.'s Opp'n to Pls.' Mot. ¶ 4.