

Travis Lurch v. Kenneth Roberts, et al.
C.A. No. 96C-06-004
January 25, 2001

Counsel for Travis G. Lurch ("Plaintiff") has requested the opportunity to take the deposition of Defendants' expert, Dr. Bean, a pediatric neurologist who practices medicine with Neurology Associates here in Delaware. Dr. Bean's customary charge for depositions is \$1,200 for the first hour and \$1,000 for each hour thereafter. Plaintiff contends that this fee is unreasonable and brings this motion for determination of expert fees with respect to the deposition fees of Dr. Bean. *Superior Court Civil Rule 26(b)(4)(c)* states that,

Unless manifest injustice would result, (i) the Court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A)(ii) and (b)(4)(B).

The issue raised by the parties in this case is what constitutes a "reasonable fee" under *Superior Court Civil Rule 26*. In *Clough v. Wal-Mart Stores, Inc.*,¹ this Court looked to the Delaware Supreme Court decision of *Sliwinski v. Duncan*² for guidance in determining appropriate expert fees. *Sliwinski* noted that no fixed formula exists for determining what a reasonable expert fee should be. The Court then used numbers from a 1984 study and adjusted them for economic changes over the years.³ In so doing, the Court stated they were striving "for some uniformity in the setting of such

¹*Clough v. Wal-Mart Store, Inc.*, Del. Super., C.A. No. 94C-05-030, Ridgely, R.J. (Sept. 9, 1997)(ORDER).

²*Sliwinski v. Duncan*, Del. Supr., No. 260, 1991, Christie, J. (January 15, 1992)(ORDER).

³*Id.* at 6-7.

Travis Lurch v. Kenneth Roberts, et al.
C.A. No. 96C-06-004
January 25, 2001

court costs."⁴ Using similar reasoning, this Court in *Clough* analyzed expert witness fees under a 1995 study by the Medical Society of Delaware and again adjusted the numbers for any change in the medical care price index.⁵ The 1995 report gave the following guidelines for expert witness fees:

"[A] reasonable range of fees for court appearances was from \$1,300 to \$1,800 per half day. For depositions a range of \$500 to \$900 for a two hour deposition was given as a guideline with a \$159 to \$250 charge for each additional hour."⁶

Therefore, in striving for a more uniform approach, the Court will again use the most recent study, which is the 1995 study performed by the Medical Society of Delaware, and make adjustments by using the medical care price index. The Court takes note that the medical care price index has increased by 18.3% from December 1995 to December 2000, according to the U.S. Bureau of Labor Statistics. This would

⁴*Id.*

⁵*Clough* at 2.

⁶*Id.*

Travis Lurch v. Kenneth Roberts, et al.
C.A. No. 96C-06-004
January 25, 2001

mean that for a two hour deposition, a range of \$591.50 to \$1,064.70 would be a reasonable fee with \$188.10 to \$295.75 for each hour thereafter. It is especially noted that it would have been helpful if the Medical Society of Delaware would have seen fit to update their study concluded in 1995. A more local review would, of course, be preferred over a national price index.

Accordingly, a reasonable fee for Dr. Bean will be \$1,100 for the first two hours or any part thereof and \$300 for every hour thereafter.

IT IS SO ORDERED.

J.

dmh

oc: Prothonotary
xc: Order Distribution
File