

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

CARRIE FINCH, Individually and *
as Executor of the Estate of *
Juvay Finch, *

Plaintiff, *

v. *

CV 616-169

OWNERS INSURANCE COMPANY, *

Defendant. *

ORDER

The Court's Order of December 6, 2017, found Plaintiff violated Federal Rule of Civil Procedure 26(a)(2)(B)'s disclosure requirements and missed the Court's deadline to disclose expert witness reports. (Doc. 65, at 7-11, 19.) When a party fails to properly disclose an expert witness report, Federal Rule of Civil Procedure 37(c)(1) allows a court to prevent the use of that witness to supply evidence. "In addition to or instead of this sanction, the court . . . may order payment of the reasonable expenses, including attorney's fees, caused by the failure." FED. R. Civ. P. 37(c)(1)(A).

In this case, the Court choose the latter path. Rather than exclude the testimony of Frank Parson and Stuart Gregory, the Court reopened discovery and allowed Defendant to depose both experts.

(Order of Dec. 6, 2017, at 9, 11.) The Court then allowed Defendant to "submit an itemized list of the costs incurred, which will be borne by Plaintiff," for the two depositions. (Id.)

Subsequently, Defendant's counsel Maureen E. Murphy and Seretha Howell, Ms. Murphy's paralegal, submitted affidavits with an itemized list of the costs incurred in preparing for and taking the depositions of Frank Parson and Stuart Gregory. (Murphy Aff., Doc. 69, ¶ 5; Howell Aff., Doc. 70, ¶ 5.) Ms. Murphy billed 30.2 hours at a rate of \$150.00 per hour and incurred \$483.84 in mileage expenses. (Murphy Aff., ¶ 5.) Ms. Howell billed 2.2 hours at a rate of \$65.00 per hour. (Howell Aff., ¶ 5.) Defendant also incurred \$49.15 in copying costs. (Id.)

Plaintiff makes two objections to the costs and fees claimed. First, they argue the Court should not award attorney's fees for the time Ms. Murphy spent traveling from her office in Douglasville, Georgia to Statesboro, Georgia to take the two depositions. In Plaintiff's view, the costs of Defendant's decision to retain out-of-town counsel when there are qualified attorneys in the Statesboro area should not be borne by Plaintiff. The Court is inclined to agree. See, e.g., Martin v. Augusta-Richmond Cnty., Ga., Comm'n, 2012 WL 5950408, at *7 n.4 (S.D. Ga. Nov. 28, 2012) (reducing attorney's fees award for counsel's travel time from Atlanta to Augusta where there was no evidence that the plaintiff "could not have hired competent local counsel"); Kearney

v. Auto-Owners Ins. Co., 713 F. Supp. 2d 1369, 1379 (M.D. Fla. 2010) (same). Accordingly, the Court will subtract six hours of round-trip travel¹ from Ms. Murphy's fees for attending the depositions of Mr. Parson and Mr. Gregory.

Second, Plaintiff contends she should not be required to pay for the hours billed preparing for and conducting Mr. Gregory's deposition. In her view, these costs represent a windfall for Defendant because Plaintiff made Mr. Gregory available for deposition before the end of discovery and it was Defendant's decision to not depose him. Plaintiff forgets, however, that part of the reason Defendant chose to not depose Mr. Gregory during discovery was because Plaintiff failed to timely disclose his expert witness report. Defendant reasonably believed that a motion to exclude Mr. Gregory would succeed based on Plaintiff's failure to comply with Rule 26 and the Court's deadlines. Accordingly, the Court will not reduce the fees for preparing and conducting Mr. Gregory's deposition.

In sum, after subtracting the fees for Ms. Murphy's travel time, the Court awards Defendant \$2,873.00 in attorney's fees and \$532.99 in costs incurred for the depositions of Frank Parson and Stuart Gregory.

¹ Six hours represents the approximate round-trip travel time between defense counsel's office in Douglasville and Statesboro where the depositions were held.

ORDER ENTERED at Augusta, Georgia, this 4th day of
February, 2019.



J. RANDAL HALL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA