

I. INTRODUCTION

On August 3, 2011, the Court entered Final Judgment against Defendants, Kenneth Lee “Ken” Salazar, in his official capacity as Secretary, United States Department of Interior, United States Department of Interior, Michael Bromwich, in his official capacity as Director, Minerals Management Service (now known as the Bureau of Ocean Energy Management Regulation and Enforcement (BOEMRE)), and Minerals Management Service (now known as BOEMRE) (collectively “Defendants”) and in favor of Hornbeck Offshore Services, L.L.C., the Chouest Entities and the Bollinger Entities (collectively “Plaintiffs”).¹ This is a nationally significant case and the parties to this case incurred substantial costs during the litigation. As the prevailing parties, Plaintiffs seek to recover the taxable costs in the amount of \$3,986.89 associated with this litigation from Defendants pursuant to Federal Rule of Civil Procedure 54(d) and Local Rule 54.3 and 54.3.1.

II. LEGAL STANDARD

The prevailing party to a lawsuit is entitled to recover taxable. *Fed. R. Civ. P. 54 (d)*. As acknowledged on the Court’s Bill of Costs form, 28 U.S.C. § 1920 allows the Court to tax the following as costs against the losing party:

1. Fees of the clerk and marshal;
2. Fees for printed or electronically recorded transcripts obtained for use in the case;
3. Fees and disbursements for printing and witnesses;
4. Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;
5. Docket fees under 28 U.S.C. § 1923; and
6. Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under 28 U.S.C. § 1828.

¹ Rec. Doc . 280

The Court's August 3, 2011 Judgment assessed Plaintiffs' taxable costs of court against Defendants.² As the following authorities and the supporting Affidavit of Carl D. Rosenblum show, Plaintiffs are entitled to recover the following costs from Defendants.

III. ARGUMENT AND AUTHORITIES

A. Fees of the Clerk

As the first entry on the Court's docket shows, Plaintiffs paid the \$350 filing fee when they filed this lawsuit. These costs are taxable as a matter of law.

B. Plaintiffs are entitled to recover \$659.29 in "fees for printed or electronically recorded transcripts necessarily obtained for use in the case."

Plaintiffs incurred \$659.29 in costs for transcripts necessarily obtained for use in the case. These costs included transcription fees paid to Toni Doyle Tusa, CSR in order to obtain transcripts from several hearings. Following the subject hearings, the parties submitted extensive post-hearing motions and responses, all of which relied heavily on hearing testimony reflected in the transcripts. The Court's June 22, 2010 Preliminary Injunction Order cites directly to "receiving evidence at a hearing,"³ further showing how critical the testimony was to the issues decided in this case.

28 U.S.C. § 1920 allows the prevailing party to recover "[f]ees for printed or electronically recorded transcripts obtained for use in the case" as taxable costs.

C. Plaintiffs are entitled to recover \$2,977.60 for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case.

Plaintiffs incurred \$2,977.60 for exemplification and the costs of making copies that were necessary for use in the case. Under 28 U.S.C. § 1920 (4), the prevailing party may recover costs for copies of documents "necessarily obtained for use in the case ... provided that the

² Rec. Doc. 280 at ¶3.

³ Rec. Doc. 68

prevailing party demonstrates that necessity.” To show that the copy was “necessarily obtained for use in the case” and, thus, to recover these costs, the prevailing party must at least describe the type or category of document copied and the reason it was copied, as it is not sufficient to simply state the copy rate and the number of copies made.⁴ Stated differently, the Court must have some information indicating the necessity of the copies, such as a description of what was copied and how it was used. This necessity, however, may be shown where the prevailing party’s counsel’s affidavit “identifies generally the purpose of the copies, such as disclosures, discovery, file copies and a summary judgment motion.”⁵ Here, the copies were made for use at the hearing on the preliminary injunction motion, the hearing to enforce the preliminary injunction order and for the hearing at the United States Court of Appeals for the Fifth Circuit on Defendants’ Motion to Stay. Accordingly, the Court should award plaintiffs \$2,977.60 in costs for the photocopies of documents “necessary for use in the case.”

IV. CONCLUSION AND PRAYER

Wherefore, consistent with the Court’s Judgment,⁶ Plaintiffs pray that the Court tax costs against Defendants and in favor of Plaintiffs in the total amount of \$3,986.89 consistent with this Brief and the Bill of Costs filed concurrently herewith.

⁴ *Kellogg Brown & Root Int’l, Inc. v Altanmia Commercial Mktg Co.*, Civil Action No. H-07-2684, 2009 WL1457632, at *6 (S.D. Tex. May 26, 2009).

⁵ *Allen v. Price*, 2010 WL 609371, at *2 (N.D. Tex. Feb 19, 2010)

⁶ Rec. Doc. 280 at ¶3.

Respectfully submitted,

s/ Carl D. Rosenblum

CARL D. ROSENBLUM, T.A. (2083)
ALIDA C. HAINKEL (24114)
JONES, WALKER, WAECHTER, POITEVENT,
CARRÈRE & DENÈGRE
201 St. Charles Avenue, 49th Floor
New Orleans, Louisiana 70170
Telephone: (504) 582-8000
Fax: (504) 589-8170
crosenblum@joneswalker.com

And

JOHN F. COONEY
(admitted Pro Hac Vice)
Venable LLP
575 7th Street, N.W.
Washington, D.C. 20004
Telephone: (202) 344-4812

**Attorneys for Plaintiffs,
Hornbeck Offshore Services, L.L.C.,
The Chouest Entities, and
The Bollinger Entities.**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served upon all parties by email or by using the CM/ECF system which will send a Notice of Electronic filing to all counsel of record, this 19th day of August, 2011.

s/ Carl D. Rosenblum
