

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

LORENE B. WOODS

CIVIL ACTION NO. 11-cv-1910

VERSUS

JUDGE HICKS

USA, ET AL

MAGISTRATE JUDGE HORNSBY

MEMORANDUM ORDER

Before the court is Plaintiff's **Motion Requesting Reimbursement for Expert Fees.**

Doc. 33. The motion arises out of the deposition of Dr. Plotkin, Plaintiff's expert witness. The deposition fees at issue total \$850. The Government opposes the motion. After considering all of the parties' arguments, the court finds that Plaintiff's motion should be **granted.**

Contrary to the Government's argument, Plaintiff's fee agreement with Dr. Plotkin is not dispositive of the issue of who is required to pay for his deposition under the Federal Rules of Civil Procedure. Rule 26(b)(4)(E) requires that, unless manifest injustice would result, the party seeking the deposition of an opponent's trial expert must pay that expert's fee. Absent a finding of manifest injustice, payment of such fees by the party taking the deposition is *mandatory*. Hittner, Federal Civil Procedure Before a Trial, § 11:458. It is not surprising that Dr. Plotkin put the ultimate responsibility for the payment of his expenses on Plaintiff, the party retaining him, to ensure that he would be paid.

The Government's argument that the rules contemplate that Plaintiff must seek relief on this issue prior to the expert's deposition, and not after, is also unpersuasive. No rule requires that an opposing expert's deposition fees be tendered to the witness in advance. Hittner, Federal Civil Procedure Before a Trial, § 11:458.1. Simply put, timing is not the issue here.

Accordingly, the Government is ordered to reimburse Plaintiff \$850 for the expenses associated with the Government's deposition of Dr. Plotkin. Unless otherwise agreed by the parties, the Government shall tender payment to Plaintiff no later than **April 29, 2013** (the first day of trial).

THUS DONE AND SIGNED in Shreveport, Louisiana, this 11th day of April, 2013.



MARK L. HORNSBY
UNITED STATES MAGISTRATE JUDGE