IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

CHRISTIANA MARINE SERVICE CORPORATION,	)	
Plaintiff,	)	C.A. No. 98C-02-217 WCC
v.	)	
TEXACO FUEL AND MARINE MARKETING INC. and TEXACO INC.,	)	
Defendants.	)	

Submitted: August 14, 2003
Decided: January 8, 2004

MEMORANDUM OPINION

Defendants' Motion for Judgment After Trial - Denied.
Plaintiff's Motion for Prejudgment Interest - Denied.
Plaintiff's Motion for Costs - Granted in Part.

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CARPENTER, J.

I. Introduction

Defendants have filed a Motion for Judgment After Trial pursuant to Superior Court Civil Rule 50(b). In addition, Plaintiff has filed a Motion for Prejudgment Interest and a Motion for Costs pursuant to Superior Court Civil Rule 54(d) and title 10, sections 5101 and 8106 of the Delaware Code. For the reasons set forth below, the Motion for Judgment After Trial and for Prejudgment Interest are DENIED and the Motion for Costs is GRANTED IN PART.

II. Background

This case arose out of an alleged oral, long-term requirements contract between Christiana Marine Service Corporation ("Christiana") and Texaco Fuel and Marine Marketing, Inc. ("Texaco"). Christiana filed suit against Texaco for breach of an oral, long-term requirements contract and for promissory estoppel. Christiana sought compensatory and consequential damages for its economic losses arising from Texaco's breach or in the alternative, for the loss caused by Christiana's reasonable and detrimental reliance upon Texaco's repeated assurances and promises.

Christiana was incorporated in 1986 after its successor corporation, Compass Marine Corporation, ceased doing business. Christiana was a barge contractor that transported marine bunker fuel, a low grade black oil, in the Delaware River. Usually, when ships are at sea and need fuel, they will notify the oil providers in a

particular port, such as Texaco or its competitors. The oil provider is informed of the ships' arrival dates and submits a bid to provide bunker fuel to those ships. Once a contract is awarded, the oil company hires a barge contractor to transport the oil to the ships.[1]

In 1988, Texaco purchased a new supply facility, the Delaware Terminal Corporation ("DTC") in Wilmington, Delaware to increase Texaco's bunker fuel market share in the Delaware River area.[2] Because DTC was in Wilmington and not in or very close to Philadelphia, it was slightly alienated from the highest business activity where most other supply facilities were located and where most of the ships that needed service were located.[3] Bunker fuel deliveries from a more distant area, such as Wilmington, were assessed higher rates to transport bunker fuel, as compared to the established rates in the Delaware River zone. In addition, DTC was not equipped to handle bunkers and had experienced substantial congestion problems

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[1] Christiana had two locations. One location was in Chester, Pennsylvania, where delivery vessels were berthed during non-use and repair and the other location was in Wilmington, Delaware, where orders were received, invoices were sent and where payments were received from Texaco.

[2] *See* Bruce Bond Dep. at 51. Barge contractors, like Christiana, pick up the bunker fuel at the oil company's terminal and deliver the fuel to the ship at sea. Thus in this situation, Texaco would pay Christiana, Christiana's barges would go to DTC to pick up the bunker fuel, and then with the aid of its tugboats, Christiana would take the barges full of bunker fuel out to the ships, who paid Texaco for the fuel.

[3] Most supply facilities are located in Philadelphia, Pennsylvania.

because of this. To solve these problems, Texaco needed a barge carrier who would agree to provide below market prices for fuel deliveries from DTC and who would also agree to exclude demurrage for loading delays at Texaco's congested terminal.[4] It was in this environment that the business relationship between Texaco and Christiana began.

Before the alleged agreement with Texaco in dispute in this litigation, Christiana had a virtual monopoly of small to medium size bunker jobs in the Delaware River area[5] and had sufficient equipment to conduct its usual business successfully. According to Christiana, in November 1988, Texaco proposed a long-term agreement, which provided that Texaco would employ Christiana as its exclusive bunker barge contractor for all of its marine bunker fuel requirements, in exchange for Christiana's commitment to have ample equipment on hand to deliver Texaco's requirements upon demand.[6] In addition to these terms, Christiana and Texaco allegedly agreed that Texaco would receive discounted delivery charges, at below market rates, along with no additional penalties for loading delays at DTC.[7]

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[4] *See* Plaintiff's Response Brief at 2.

[5] *See* York's Report at 6 (citing the 10/28/99 Bruce R. Bond Dep. at 238).

[6] *See* Trial Tr. 12/11/02 at 23, lines 7-17.

[7] *See id.* Because barge carriage is generally a small margin, fixed cost business, Christiana would have a unique opportunity to secure a steady, expanding stream of business from Texaco, if it entered into this "agreement."

In 1990, the parties apparently orally modified their business relationship and agreed that Christiana would "load and hold," pay ship demurrage, and pay extra unusual costs, which Texaco may have encountered, in return for Texaco's commitment to put through an average 200,000 barrels of oil per month.[8] Christiana considered the 200,000 quote as an expected minimum average, with Texaco anticipating 225,000 or 250,000 barrels a month in throughput. Regardless, Texaco did not meet this alleged "guaranteed" minimum monthly average, as it only put through 200,000 barrels for eight months out of the forty-eight months of Christiana and Texaco's subsequent business relationship. Neither the initial agreement nor the subsequent modifications were in writing, and the relationship was based strictly on the parties' oral understandings.

Based upon Texaco's alleged representations that it planned to put through 200,000 barrels of oil per month, Christiana went to the First National Bank of Maryland ("FNBM") and secured loans to purchase additional barges, tugboats, and equipment that would be required for the job Texaco and Christiana anticipated. George Wood, the loan officer at FNBM, was responsible for handling and securing approval for Christiana's loans and testified that he sensed that "understandings" existed between the two parties as to future business. However, he did not know the

[8] *See* William S. Bates Dep. at 86.

terms of the agreement, nor did he investigate or require that Christiana produce an agreement to approve the loans. Loan documents evidence that FNBM received a "favorable reference from Mr. Bruce Bond of Texaco," that Texaco referred to Mr. Bates as a "no-nonsense businessman who always gets the job done," that on a "monthly basis, Christiana moves roughly 150,000 barrels of bunkers and [Texaco] wants to increase this to 200,000," and that "Texaco is looking for a long term relationship with Christiana."[9]

The relationship between Christiana and Texaco ensued until Christiana wrote a letter to Texaco in August of 1995, which informed them that Christiana could not continue to provide bunker transportation because of the lack of Texaco's business and the cost of providing the service.[10]

III. Procedural Posture

During trial, Defendants made a Motion for Judgment on the Complaint and a Motion for Directed Verdict and the Court reserved decision on both.[11] Following a three-week trial, the jury found Texaco liable for promissory estoppel and awarded

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[9] 06/20/89 loan document.

[10] "It is with regret that [Christiana] had to inform Texaco last week that we could no longer provide bunker transportation in Philadelphia. The volume had gotten so small and the costs so high . . . ." 08/16/95 letter from William Bates to C. Michael Bandy of Texaco.

[11] *See* Trial Tr. 12/19/02 at 68, lines 15-18; Trial Tr. 12/23/02 at 84, lines 7-9 and at 90, lines 16-19.

Christiana $111,852 in damages.[12] Thereafter, Defendants renewed their Motions for Judgment and for Directed Verdict pursuant to Superior Court Civil Rule 50(b). In addition, Plaintiff filed a Motion for Prejudgment Interest and a Motion for Costs.

IV. Discussion

A. Motion For Judgment After Trial

Defendants have renewed their Motion for Judgment on the Complaint and their Motion for Directed Verdict. In doing so, Defendants filed a Motion for Judgment After Trial, which upon consideration the court does not weigh the evidence, nor does it pass on the credibility of the witnesses.[13] Rather, the court is required to view the evidence, as well as all reasonable inferences that may be taken therefrom, in the light most favorable to the non-moving party.[14] Therefore, a Rule 50(b) motion should be granted only if the jury could reach but one conclusion, one in favor of the moving party.

The Defendants present three arguments in support of their Motion. First, they

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[12] The jury decided against the Plaintiff on its contract theory.

[13] *See Chaplake Holdings, Ltd. v. Chrysler Corp.*, 2002 WL 148088, at *24 (Del. Super.), *aff'd in part, rev'd in part*, 822 A.2d 1024 (Del. 2003) (*citing McClosky v. McKelvey*, 174 A.2d 691, 693 (Del. Super. Ct. 1961); 9 Wright and Miller, *Federal Practice and Procedure*, section 2524).

[14] *See Chaplake Holdings, Ltd.*, 2002 WL 148088, at *24 (*citing Rumble v. Lingo*, 147 A.2d 511, 513 (Del. Super. Ct. 1958)).

argue that the Plaintiff failed to prove a promise that is sufficiently definite to support a verdict for promissory estoppel. Second, Defendants argue that the Plaintiff failed to prove reasonable detrimental reliance. Third, the Defendants argue that the Plaintiff failed to prove damages that could be recovered on a promissory estoppel claim. The Court will now address these arguments seriatim.

I. The Promise

The Defendants' first argument is that the Plaintiff failed to prove a promise specifically definite to support a verdict for promissory estoppel. Specifically, the Defendants argue that the Plaintiff failed to prove a fixed period of time that the promise was to last and that there was no proof of a fixed price for the services that were allegedly promised for the commitment of a minimum or estimated throughput over a long period of time.

The doctrine of promissory estoppel is triggered when there is a promise, which the "promiser should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance" and is binding if injustice can be avoided only by enforcement of the promise.[15] To prevail on a theory of promissory estoppel, the Plaintiff must

[15] *Metropolitan Convoy Corp. v. Chrysler Corp.*, 208 A.2d 519, 521 (Del. 1965) (*quoting* The Restatement of Contracts, section 90).

first prove a promise existed and the Plaintiff "in reliance upon that promise took action to his detriment."[16] Distinguishing a promise from a non-promise must be done through a reasonable interpretation of the parties' expressions in light of the surrounding circumstances.[17] Determining this "depends in part of such factors as what the Defendant said, in what manner he said it and how many times such assurances were made."[18] Whether a promise was made is a question of fact to be determined by the jury.[19]

Viewing the evidence in the light most favorable to Christiana Marine, the record clearly supports the jury's finding that definite promises were made by Texaco to Christiana continuously throughout their relationship. At trial, evidence was submitted that Texaco's representatives made continual promises to Christiana as to their business plan for bunker fuel on the Delaware River, the significant role that Christiana would play in this plan and even represented to others in an advertisement the unique relationship they had with Christiana to ensure the delivery of fuel. Discussions also occurred regarding the adequacy of Christiana's fleet and the unique

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[16] *Id*.

[17] *See* CORBIN ON CONTRACTS § 8.9 (1996).

[18] *Konitzer v. Carpenter*, 1993 WL 562194, at *7 (Del. Super.).

[19] *See id.*

demands of the DTC terminal for which Texaco expected economic concessions from Christiana for using that facility. Texaco even had discussions with Christiana's bank to assist Christiana obtain financing for additional equipment. Relying on the testimony of Mr. Bates, the jury could have easily found that Texaco had expressed a commitment to act in a specified way and that Texaco knew its assurances would induce action on the part of Christiana.

Despite Defendants' contentions to the contrary, the Court finds this case distinguishable from *Metropolitan Convoy Corporation*. There, the Supreme Court of Delaware found that the record lacked evidence of a definite promise by Chrysler to Metropolitan that it would continue to receive a portion of Chrysler's shipments.[20] However, in *Metropolitan Convoy Corporation*, the Plaintiff was only one of four possible common car carriers available to Chrysler and the selection of which carrier was to perform a particular service was left to the discretion of Chrysler. There was no unique or special relationship between Chrysler and Metropolitan that reasonably could have been a promise to exclusively use Metropolitan's services.

Here, however, both privately and publicly Texaco pronounced its unique business relationship with Christiana in which definite promises as to the exclusive use of Christiana's services and the expectations it demanded of Christiana were

[20] *See Metropolitan Convoy Corp.*, 208 A.2d at 521.

communicated. To the Court, the facts of this case presented a classic promissory estoppel matter and the evidence supports the jury's conclusion.

II. Reliance

Defendants' second argument is that the Plaintiff failed to prove reasonable and detrimental reliance on Defendants' alleged promise. They contend this is supported by the fact that Christiana had many other customers, including major oil companies that competed with Texaco and that Texaco never had an exclusive relationship with Christiana that prevented Christiana from working for other customers. Therefore, the Defendants argue that it was reasonably foreseeable that when Defendants reneged in 1992 the Plaintiff would continue to conduct business with its other customers. Further, they contend that Mr. Bates did not rely on Texaco's promises to acquire extra equipment, but instead he testified that he acquired all of his equipment for his other customers.

Despite Defendants' arguments and given the standard of review, the Court cannot agree that the evidence supports the conclusions argued by Texaco. Viewing the evidence in the light most favorable to Christiana as well as the inferences derived there from, Christiana reasonably relied upon the promises made by Texaco and took action to their detriment.

Mr. Bates testified that representatives from Texaco, in particular Bruce Bond

and Michael Bandy, discussed Texaco's long-term growth plans at a June 1990 meeting, where they promised to utilize Christiana's services provided Christiana was committed to service Texaco's additional growth by obtaining additional equipment. Texaco then indicated its desire to stay in the market for the long-term by providing examples of Texaco's relationships with other companies. Texaco further discussed the need for Christiana to acquire additional equipment because it lacked the equipment capacity to support Texaco's plan.

> Mr. Kahana: Was there discussion about equipment at the meeting?
> Mr. Bates: There was – as I recollect. . . . The concern that Texaco expressed was whether or not I [Christiana] had the financial wherewithal to get the additional equipment that would be necessary. It was generally understood that we did not have the capacity at that time in June of 1990 to be anywhere near the 300 and 350,000 barrel range that they were discussing.[21]

Then, in reliance on Texaco's promises, Christiana purchased additional equipment, with Texaco's knowledge, to support Texaco's expected growth requirements. Subsequently, Bates testified that Texaco's plans for increasing its share of the bunker fuel market in the Philadelphia market and Christiana's unique role in this effort was subsequently confirmed by Bond's successors, William Allen and Maureen Caro. Finally, Mr. Bates testified that despite continuous drop-offs in throughputs below 200,000 barrels, beginning in July 1991, Texaco repeatedly reassured

[21] Trial Tr. 12/11/02 at 31-32, lines 18-23 and 1-4.

Christiana through 1995 that it was still committed to the business plan which it expected to result in the promised levels of throughput. Subsequently, Mr. Bates testified that as a result of Christiana's reliance on Texaco's repeated assurances about promised levels of throughput and the necessity of him having to give priority to Texaco's business and to always be available to service Texaco's business needs, Christiana lost business with other major suppliers.

The jury, aware of these promises and the business circumstances between the parties, chose to find that Christiana did reasonably and detrimentally rely on Texaco's promises. The Court finds that there was sufficient evidence to support such a conclusion. In response to the promises of Texaco, Christiana expanded its operational capacity in order to accommodate Texaco's needs and expectations. However, in doing so, Christiana lost business from its other customers, obtained equipment not otherwise needed and accumulated a significant amount of debt. There is no question that the facts support a reasonable reliance by Christiana and in fact no other reasonable conclusion could have been rendered by the jury based upon the evidence presented.

III. Damages

The Defendants' third argument is that the Plaintiff failed to prove damages that are recoverable on a promissory estoppel claim. They allege that the Plaintiff did not offer any evidence relating to costs incurred or damages sustained in reliance on

any particular promise. They argue that Plaintiff presented evidence of damages based exclusively on the difference in the value of Christiana at the end of 1991 when the barrel throughput had met the alleged promises by Texaco to the value in August 1995 when the company ceased operation. The Defendants further argue that these damages are not recoverable, as they were not reasonably foreseeable at the time of the alleged promise. In essence, the Defendants argue that since the Plaintiff chose to present expert evidence based solely and exclusively on the lost value economic theory, it would be inappropriate for the jury to award damages based on some other basis.

It is an understatement to say that the proper method of calculating damages was an area of significant dispute in this litigation. Economic theories from the lost value of the company to lost profits by Texaco's failure to generate the alleged agreed barrel throughput were discussed in detail by experts with further explanations given by each as to why one method was preferred over the other. The jury had before it a range of damages from a lost value figure submitted by the Plaintiff's expert of $945,000.00 to a lost profit figure by the Defendants' expert of $22,007.00. It was within this context that the jury was asked to evaluate the reasonableness of these values taking into account the various other economic and business factors that were occurring during this four year period. The Court does not know how the final

damage figure of $111,852.00 was determined by the jury, but several points are worth noting. First, the award was within the range of damage estimates provided by the experts that testified during the trial. Second, the damage arguments made by counsel and their experts to a significant degree were argued in the context of the contractual allegations by the Plaintiff. Since this theory was rejected by the jury, it was only logical that the damages relating to the promissory estoppel theory would be less than a total termination of a contractual relationship. Finally, the relationship between the parties was complex, astonishingly based on oral not written documentation and included an undertone of a small business mesmerized by the possibility of economic fortune in a business relationship beyond any of its expectations and a multi-national company playing that dream for its own economic benefit.

What appears to have occurred is that the jury properly evaluated this economic testimony in light of the business climate between these parties and came to a reasonable damage figure. The jury was not required to accept one theory over the other nor were they required to believe all or nothing of the experts' testimony. What they were required to do was put these economic assertions in the context of all the facts presented during the trial. In spite of the arguments now made by counsel, this was the appropriate role for the jury and from the Court's perspective, they got it

exactly right. The Court made clear rulings on the admissibility of the damage testimony by these experts that are fully set forth in the record, and the Court stands by those rulings. The jury was properly instructed in this area and resolved a dispute that the parties have been unable to accomplish for years. While it appears that neither party is happy with the end result, this case was fairly and appropriately presented to the jury, and the damage award is supported by that evidence. As such, it will not be disturbed by this Court.

Finally, Defendants argue that for damages to be recoverable, they must have been reasonably foreseeable at the time of the alleged promise. There is no question that the damages awarded by the jury could have been reasonably foreseeable by the Defendants. If the jury believed the testimony of Mr. Bates there would have been no other reason for Texaco to have made such statements other than to influence the actions of the Plaintiff. Texaco made demands that Christiana answered and to argue that those statements had no foreseeable economic consequence is corporate arrogance at its worst. The record does not support the heavy burden that Defendants must meet, namely that the jury could have only found for Texaco. Defendants' Motion for Judgment After Trial is DENIED.

B. Motion for Prejudgment Interest

The Court also has before it Christiana Marine's Motion for Prejudgment

Interest. In Delaware courts, prejudgment interest is awarded as a matter of right.[22] The standard applied is to award prejudgment interest "where the type of damages permitted testimony from which the amount of the recovery was calculable, that is, testimony of a pecuniary nature."[23] However, for a party to be entitled to such an award, it must be affirmatively requested.[24] This may be accomplished through a general allegation of damages in an amount sufficient to cover the principal loss plus interest.[25] "Prejudgment interest is appropriate 'if a plaintiff requests such an award in its pleadings or raises the issue at trial.'"[26]

Plaintiff argues that it is entitled to prejudgment interest because it prayed for actual compensatory damages and for "such other relief as may be just and proper" as well as including a non-arbitration "Certificate of Value" which stated that the damages were "exclusive of costs and interests." Further, Christiana contends that the issue was "raised or discussed at trial" as they contend the parties raised the issue in settlement negotiations.

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[22] *Citadel Holding Corp. v. Roven*, 603 A.2d 818, 826 (Del. 1992) (citing *Moskowitz v. Mayor and Council of Wilmington*, 391 A.2d 209 (Del. 1978)).

[23] *Transamerica v. Tevebaugh*, 1987 WL 8670, at *4 (Del. Super.) (quoting *Rollins Environmental, etc. v. WSMW Industries*, 426 A.2d 1363, 1366 (Del. Super. Ct. 1980)).

[24] *See Chrysler Corp. v. Chaplake Holdings*, 822 A.2d 1024 (Del. 2003).

[25] *See Collins v. Throckmorten*, 425 A.2d 146, 152 (Del. 1980).

[26] *Chrysler Corp.,* 822 A.2d at 1037 (quoting *Collins*, 425 A.2d at 152).

The Court must disagree for several reasons. First, Plaintiff has failed to either affirmatively request or request through a general allegation that it is entitled to prejudgment interest. Plaintiff's complaint prays:

> B. That the Court order the defendants to pay plaintiff compensatory damages including, without limitation, lost profits suffered by Christiana as a result of TFMM's tortious conduct and breach of contractual relationships;
>
> C. That the Court order the defendants to pay plaintiff damages, consisting of losses suffered in reliance on TFMM's unfulfilled promises – including, without limitation, losses suffered by Christiana because of its having to purchase/lease additional equipment at the request of TFMM, and losses suffered because of its having to forego other business opportunities;
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> D. That the Court order the defendants to pay plaintiff consequential damages, consisting of economic losses of Christiana from having to go out of business and being unable to profit in its business in the future;
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> E. That the Court award plaintiff reasonable costs and attorneys' fees incurred in this action; and
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> F. That the Court grant such other relief as may be just and proper.[27]

Attached to Plaintiff's Complaint is a Certificate of Value which provides "that the sum of the damages of the plaintiff is in excess of $100,000, exclusive of costs and

[27]Plaintiff Christiana Marine's Complaint.

interest."[28] Additionally, the Pretrial Stipulation does not mention or ask for prejudgment interest.[29] As addressed by the Supreme Court in *Collins*, where the complaint simply requests "reasonable attorney's fees and costs," this is insufficient to preserve plaintiff's right to prejudgment interest.[30]

Second, while the parties may have raised the issue of prejudgment interest during settlement negotiations,[31] the Court can find no point during the course of the trial where the issue was raised and thus cannot be considered to have been affirmatively requested. Third, the Plaintiff's argument based on the Certificate of Value is unfounded. As explained by Judge Herlihy in *Chaplake Holdings*, the purpose of the certificate of value is to avoid the Court's mandatory pretrial arbitration, and is thus "not a mechanism to request prejudgment interest."[32] Finally,

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[28] *Id.*

[29] The Court notes that the Pretrial Stipulation, although received by the Court and reviewed prior to trial, was never docketed with the Superior Court's Prothonotary's office. While the Court has reviewed the Pretrial Stipulation for purposes of this Motion, the parties may desire to submit a copy for docketing should they decide to (once again) pursue an appeal with the Supreme Court.

[30] *Collins*, 425 A.2d at 152.

[31] The Court will accept Plaintiff's representations that interest was discussed during settlement negotiations. However, the Court has no independent recollection of this being an area of dispute or discussion. In essence, the parties sought the Court's assistance since counsel believed the cost of trial would be more than the difference in the settlement posture of the parties before trial. Unfortunately the Court's attempts also proved to be unpersuasive.

[32] *Chaplake Holdings*, 2002 WL 148088 at *45.

the facts in this case are distinguishable from the recent decision of the Supreme Court in *Chrysler Corporation*.[33] There, the Supreme Court's reversal was premised on specific language in the Pretrial Stipulation that merited the award of prejudgment interest. As noted previously, in the case at bar, the Pretrial Stipulation does not include any such language. Therefore, for the reasons stated above, the Motion for Prejudgment Interest is DENIED.

C. Motion for Costs

Christiana has applied for an award of costs pursuant to Superior Court Civil Rule 54(d) and title 10, sections 5101 and 8106 of the Delaware Code. As the prevailing party, Christiana is entitled to costs as a matter of course. While the imposition of costs is routine, there is discretion given to the Court regarding the amount to award. As such, the Court will address each category of cost set forth in the Plaintiff's Motion.

First, there appears to be no dispute that the Plaintiff is entitled to its filing and service fees. As such, the Court will award $980.00 for these fees. The Plaintiff has also requested the fees paid for *pro hac* admissions. These fees are not permissible since they could have been avoided by the Plaintiff selecting a Delaware attorney to bring this litigation. Since the choice of counsel was solely that of the Plaintiff, it

[33] *See Chrysler Corp. v. Chaplake Holdings*, 822 A.2d 1024 (Del. 2003).

would be unfair to force the Defendants to bear these costs.[34]

The next area of cost requested by the Plaintiff relate to the Bruce Bond deposition video and transcription. Since both mediums were utilized during the trial, the Court will approve the transcription and video recording costs totaling $2,573.50. As to the editing costs, it is the Court's recollection that the delays surrounding the appropriate designations were shared equally by the parties and therefore the Court will only approve a prorated cost of $1,562.50 for this editing. This figure was derived by taking the 25 hours to perform this service multiplied by the standard fee of $125 represented in the Plaintiff's response and then dividing that figure in half.

The third area of cost relates to the testimony of Plaintiff's expert, Robert York. Mr. York's expertise in the shipping industry is sufficiently unique that the Court finds a courtroom fee of $2,000.00 to be reasonable. Therefore, the fee plus travel expenses of $30.44 will be approved.

The final cost relates to the testimony of the economist/accountant expert, Samuel Kursh. The Court will approve the trial fee of $2,000.00, as the presentation of Dr. Kursh was critical to the Plaintiff's case and the fee is not unreasonable in light of Dr. Kursh's background and experience. The Court will also approve an expense for parking of $8.50 while Dr. Kursh was at the courthouse. However, the trial

[34] *See Chaplake Holdings,* 2002 WL 148088 at *46.

preparation fee of $1,943.75 is not an appropriate cost to be assessed.[35]

In summary, the following costs have been approved to be assessed against the Defendants.

A.	Filing and Service fees	$ 980.00
B.	Bruce Bond deposition	$4,136.00
C.	Robert York	$2,030.44
D.	Samuel Kursh	$2,008.50
	Total	$9,154.94

IV. Conclusion

Based upon the above, the Defendants' Motion for Judgment After Trial is DENIED; Plaintiff's Motion for Prejudgment Interest is DENIED; and Plaintiff's Motion for Costs is GRANTED IN PART. The Court does want to take a moment to apologize to counsel and the parties for the delay in issuing this opinion. Unfortunately, the writing of this opinion has been regularly disrupted by a series of capital murder cases that had to be tried once the delay associated with the U.S. Supreme Court decision in *Ring v. Arizona* had been sorted out as to its effect on our capital murder statute. Candidly, I had also hoped that the delay would have

[35] *See Sliwinski v. Duncan*, 1992 WL 21132, at **4 (Del. Supr.)(explaining that 10 *Del. C.* §8906 does not permit award of costs for trial preparation time).

allowed the rigid opinions of the parties to soften and that a reasonable settlement would perhaps materialize. It appears the Court has struck out on both fronts.

In the event that the clients read this opinion, let me make several unsolicited comments about the case. First, I do not believe in my ten years on the bench I have had finer attorneys practice before me. Both Mr. Wallace and Mr. Kahana were not only gentlemen but excellent advocates for their clients, and I do not believe the case could have been better presented to the jury. While not regular practitioners in this Court, they both exhibited the highest degree of advocacy and civility expected of our profession and will always be welcome in my Court. They did a good job for their clients, and regardless of their clients' opinion of the outcome, they should be pleased with the dedication and effort, which was committed on their behalf.

While I also expect that the jury's verdict is somewhat disappointing to both parties, the Court finds the verdict just and a fair resolution of this conflict. You have fought the good fight, but it is time to quit. The Court appreciates that this will require compromises by both the parties and the attorneys because of the enormous costs associated with litigating this matter, but spending more money with the likelihood that the outcome will never be changed makes little sense. From the Court's perspective as an outside observer, it is time for you to move on

to other matters and for the parties to close this chapter in their history. I again appreciate the courtesy and respect counsel has shown the Court.

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.