#### SUPERIOR COURT OF THE STATE OF DELAWARE

WILLIAM C. CARPENTER, JR. JUDGE

NEW CASTLE COUNTY COURTHOUSE 500 NORTH KING STREET, SUITE 10400 WILMINGTON, DE 19801-3733 TELEPHONE (302) 255-0670

July 24, 2013

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RE: Crystal Moyer v. Jonathan N. Saunders, MD, and Christiana Cosmetic Surgery Consultants, LLC Civil Action No. N10C-02-069 WCC

Submitted: April 30, 2013 Decided: July 24, 2013

#### On Defendants' Motion for Costs - GRANTED IN PART.

### Dear Counsel:

The Court has before it Defendants' Motion for Costs filed in the above-captioned matter. As the prevailing party, the Defendants are entitled to costs pursuant to Rule 54 (d) of the Superior Court Civil Rules. The following is the Court's decision regarding the costs that are requested.

# a. Filing Fees

The Court filing fees and costs associated with service of process are generally recoverable. In addition, the Court has previously ruled that the costs associated with the LexisNexis filing process are recoverable. As such, the costs of \$80.00 paid to Brandywine Process Servers as well as the LexisNexis fees of \$844.50 are awarded.

### b. Deposition Transcripts

Rule 54(f) provides that fees paid court reporters for the Court's copy of transcripts of depositions shall not be taxable costs unless they are introduced into evidence. During the trial the deposition transcripts of Patricia Hartsell and Alfred Jackson were read into evidence and therefore the costs associated with the preparation of those transcripts will be awarded. The cost associated with the Jackson transcript is \$206.16 and the Hartsell transcript is \$150.27. The remaining transcript fees requested by the defendant are of testimony not introduced into evidence and therefore will not be awarded.

## c. Deposition of Dr. Glat

In December of 2011 the Court held a hearing regarding the motion to compel the deposition of Dr. Glat and to establish a reasonable fee schedule for that deposition. Dr. Glat was demanding \$4,400.00 for a half day of testimony regardless of the actual amount of time the deposition took. The Court eventually held that the defendant should pay for the cost of the deposition and it would consider a request for fees associated with that deposition if they were successful at trial. Having now heard the testimony of Dr. Glat as well as the circumstances surrounding his deposition, the Court believes it is fair and appropriate that the parties split the deposition cost charged by Dr. Glat. As such, the fee of \$2200 is hereby awarded to the defendant.

# d. Expert Witness Testimony

Delaware permits the taxing of fees for witnesses testifying as experts in the Superior Court, but the Court fixes those fees in its discretion. Even then, there are constraints to the Court's discretion: case law clarifies that experts fees should be limited to time spent attending court for the purpose of testifying. It follows, then, that a party may not recover for time the expert may spend listening to other

witnesses for orientation or consulting with a party, counsel, or other witnesses during the trial. And outside of trial, a party may not recover for the expert's preparation for trial except for reasonable costs the witnesses incurred traveling to and from the courthouse.

First, the Court finds that the half day of time charged by Dr. Abdel-Misih and Dr. Brenman is unreasonable. The fees are well in excess of what is normally charged for a half day appearance, and they have no reasonable relationship to the actual testimony. As such, the Court will reduce each of their bills to \$2500.00. Dr. Abdel-Misih has also indicated that she charged \$250 for travel time. Since her office is in Newark and the travel time billing has no relationship to the actual cost associated with her traveling to and from the courthouse, that amount will not be awarded.

Based upon the above, the following amounts are awarded to the defendants.

Court Costs	<b>Brandywine Process Servers</b>	80.00
	LexisNexis filing fees	844.50
Depositions	Patricia Hartsell	150.27
	Alfred B. Jackson, III	206.16
	Paul M. Glat, M.D.	2200.00
Expert Testimony	Abdel-Misih, M.D.	2500.00
	Scott Brenman, M.D.	2500.00
Total		8480.93

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
\_Judge William C. Carpenter, Jr.

WCCjr:twp

cc: Christy Magid, Civil Case Manager