SUPERIOR COURT
OF THE
STATE OF DELAWARE

CHARLES E. BUTLER
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Date Submitted: May 23, 2013
Date Decided: July 10, 2013

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Re: ***Teressa M. Jones v. State Farm Insurance Company***
C.A. No. N11C-09-140 CEB
Upon Consideration of Plaintiff's Motion for Costs.
GRANTED in Part and DENIED in Part.

Dear Counsel:

Plaintiff has moved the Court for an award of costs after a May, 2013 jury verdict. The verdict was the result of a brief trial between plaintiff and her insurance provider after an automobile accident involving an uninsured motorist. The jury found for the plaintiff and awarded her $150,000. This award was reduced to $44,500 to reflect the insurance policy limits and previous payments

made by the defendant. Plaintiff now seeks an award of $3,810.20 in costs. For the reasons that follow, plaintiff's motion for costs is **GRANTED** in part and **DENIED** in part.

10 *Del. C.* § 5101 and Superior Court Civil Rule 54(d) allow for costs to be awarded to the "prevailing party." The Supreme Court of Delaware has held "in considering an award of costs the prevailing party for such purposes is the one in whose favor a verdict is returned."[1] There is no question, and indeed defendant does not deny, that plaintiff is the prevailing party. And while defendant's response to the motion requests that it be denied, her arguments are for a reduction of costs and not an outright denial.

Defendant first takes issue with the $2,475.00 associated with the deposition testimony of Dr. Arnold Glassman, D.O., alleging the fee is unreasonable. The Court finds that nearly $2,500.00 for a 52 minute deposition that was conducted at Dr. Glassman's office at the Delaware Back Pain and Rehabilitation Center is excessive. In *Miller v. Williams*, the party seeking costs requested $5,500.00 for one medical expert who was deposed at his own office for less than two hours and $2,500.00 for a second medical expert who testified for approximately 60 minutes.[2] The Court in *Miller* found these costs to be excessive and awarded the

[1] *Graham v. Keene Corp.*, 616 A.2d 827, 829 (Del. 1992).

[2] 2012 WL 3573336 (Del. Super. Aug. 21, 2012).

moving party $1,500.00 for each expert taking into consideration the length of the deposition and whether or not the expert had to travel.[3] Further, as many Delaware courts have done when assessing the reasonableness of medical expert fees,[4] the Court in *Miller* relied upon the 1995 study conducted by the Medical Society of Delaware's Medico–Legal Affairs Committee.[5] More recently, in *Williams v. Rivas*, the Court addressed a nearly identical factual scenario as it now faces.[6] The moving party in *Williams* also sought $2,500.00 in costs for the video deposition of a medical expert who testified for less than one hour at his own office.[7] The Court, relying in part on *Miller* found $2,500.00 to be excessive and awarded $1,500.00.[8] So informed, the Court here finds $1,500.00 to be an appropriate fee considering the length and location of the deposition.

Defendant next disputes the $1,010.20 in costs plaintiff has identified as "Court Reporter and Video Costs" associated with Dr. Glassman's deposition. The

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[3] *Id.*

[4] *See e.g.*, *Hineman v. Imber*, 2012 WL 1415810 at * 1 (Del. Super. Mar. 22, 2012); *Bond v. Yi*, 2006 WL 2329364 at * 3 (Del. Super. Aug. 10, 2006); *Kerr v. Onusko*, 2004 WL 2744607 at * 1 (Del. Super. Oct. 20, 2004).

[5] *Miller*, 2012 WL 3573336 at *2. The Court in *Miller* modified its award based on the 1995 study due to inflation which was calculated using the inflation calculator provided by the Bureau of Labor Statistics. *Id*. at n. 38.

[6] 2013 WL 422130 (Del. Super. Jan. 28, 2013).

[7] *Id.*

[8] *Id.*

language of Superior Court Rule 54(f) clearly states "[t]he fees paid court reporters for the Court's copy of transcripts of depositions shall not be taxable costs unless introduced into evidence." In the present case, the transcript was not admitted into evidence or even marked as a court exhibit.[9]

Moreover, the request is duplicative. In *Summerhill v. Iannarella*, the Court held that costs associated with the transcription of a medical expert's deposition testimony were duplicative and not recoverable where the video of that deposition was played at trial.[10] Further the Court held in *Gress v. Viola*, "that awarding costs for the videotaping of a deposition introduced at trial and the preparation of the transcript are duplicative, and therefore both are not permitted."[11] Here, plaintiff introduced Dr. Glassman's video deposition into evidence and now seeks to recover the costs for recording the deposition and then transcribing it. The Court cannot allow plaintiff to collect fees for both the video and the transcript and therefore limits plaintiff's award to the video costs.

[9] Tr. ID 52148820. As reflected on the Civil Trial Activity Sheet, there were no exhibits introduced at trial and the court exhibits were limited to defendant's trial binder and a jury rights pamphlet.

[10] 2009 WL 891048 (Del. Super. Apr. 1, 2009).

[11] 2007 WL 1748657 (Del. Super. May 31, 2007).

In conclusion, the plaintiff is awarded $325.00 in filing and trial fees,[12] $1,500.00 in connection with Dr. Glassman's expert testimony, and the video costs associated with Dr. Glassman's video deposition. The plaintiff is to provide the amount of his video costs to the Court and opposing counsel no later than July 17, 2013. Upon receipt of plaintiff's filing, the Court will enter an order reflecting the final award.

IT IS SO ORDERED.

Very truly yours,

/s/ Charles E. Butler

Charles E. Butler

[12] Defendant does not address the filing and trial fees in his brief and the Court in its discretion finds these fees appropriate.