

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE, upon	)	
The Relation of the Secretary of the	)	
DEPARTMENT OF TRANSPORTATION,	)	
	)	
Plaintiff,	)	
	)	C.A. No.: S24C-07-019 CAK
v.	)	
	)	
LESLIE GAY KNAPP MARINI, <i>et al.</i> ,	)	
	)	
Defendants.	)	

Submitted: August 14, 2026
Decided: September 30, 2026

Defendants' Corrected Application for Reimbursement of Litigation Expenses

GRANTED IN PART AND DENIED IN PART

MEMORANDUM OPINION AND ORDER

E. Chaney Hall, Esquire and Kasey H. DeSantis, Esquire, Fox Rothschild LLP, 1201 North Market Street, Suite 1200, Wilmington, Delaware 19801, Attorneys for Plaintiff.

Bradley S. Eaby, Esquire, Deputy Attorney General, Department of Justice, 800 South Bay Road, Dover, Delaware, 19901, Attorney for Plaintiff.

John W. Paradee, Esquire, Mark A. Denney, Jr., Esquire, and Joseph S. Grubb, Esquire, Brockstedt Mandalas Federico, LLC, 6 South State Street, Dover, Delaware 19901, Attorneys for Defendants.

Timothy G. Willard, Esquire, Fuqua Willard & Schab PA, 26 The Circle, Georgetown, Delaware 19958, Attorney for Defendants.

KARSNITZ, R. J.

INTRODUCTION

The Fifth Amendment to the United States Constitution provides that no person shall be deprived of property without due process of law, nor shall private property be taken for public use without just compensation. Eminent domain is a constitutional power exercised in furtherance of building public infrastructure. It is in derogation of these constitutional private property ownership rights, and the costs of condemnation are ultimately borne by the taxpayers.

Our legislature has provided by statute that, in a just compensation trial, where the award of just compensation by the Commissioners is closer to the property owner's highest valuation evidence at trial than the State's offer of judgment, the property owner may apply to the Court for an order for the State to pay the property owner's reasonable litigation expenses. As a matter of public policy, this is an effort to balance the competing interests of the property owner and the public taxpayers by vesting discretion in the Court rather than mandating full reimbursement. An excessive fee award could chill the State's exercise of its eminent domain power, discourage the vigorous advocacy that the adversarial system requires for the proper determination of just compensation, and discourage the State from making an offer of judgment to resolve such actions before trial. An inadequate fee award could chill the property owner's exercise of his Fifth Amendment right to challenge the State's

taking and cause the property owner to pay fees he otherwise would have never incurred but for the taking.

The statute provides three bases for the State to challenge an application for fees and costs. It also requires that any fees and costs awarded must be reasonable and have been actually incurred because of the just compensation trial.

Overlaid on these constitutional and statutory factors is the common law requirement that the fee award be reasonable. Delaware case law has developed principles guiding the determination of reasonableness of fees based on the Delaware Rules of Professional Conduct.

All that being said, at the end of the day my review of a law firm's fees and costs is more of an art than a science. I will not second guess the minutiae of work in which I was not involved. Nonetheless, using the legal guardrails that are in place, I now step into this thicket.

PROCEDURAL BACKGROUND

On July 12, 2024, the Delaware Department of Transportation ("Plaintiff") commenced this condemnation action by filing a Complaint. Based upon an appraisal by its expert, on July 18, 2024, Plaintiff deposited six checks in the total amount of \$2,040,900.00 with the Court, and on November 4, 2025, Plaintiff deposited a check for an additional \$256,300.00 with the Court, for a total amount of \$2,297,200.00,¹

¹ There is a \$17,800.00 disparity in the record between this amount and Plaintiff's appraiser's fair

as just compensation for the properties being condemned (collectively, the “Property”). On August 13, 2024, I entered an Order entitling Plaintiff to immediate entry on and possession of the Property. Defendants filed their Answer to the Complaint on September 20, 2024.²

Five scheduling orders were entered (on October 22, 2024, April 30, 2025, July 2, 2025, September 24, 2025, and December 22, 2025), pursuant to the last of which Plaintiff and Defendants were required to identify all expert witnesses (appraisers) and produce any related reports (appraisals) by May 9, 2025, and December 31, 2025, respectively. Discovery was to be completed by January 30, 2026. Motions were to be finalized by March 13, 2026. Commissioners were to be designated by April 22, 2026, and a pretrial stipulation was required by April 29, 2026. The striking of Commissioners was to occur at the pretrial conference on May 5, 2026. All exhibits were to be filed ten days before trial. A two-day Commissioner’s trial was to begin on June 1, 2026.

On August 8, 2024, the law firm Fuqua, Willard & Schab, P.A. (“FWS”) entered its appearance as counsel for Defendants. On June 25, 2025, Brockstedt Mandalas Federico, LLC (“BMF”) entered its appearance on behalf of Defendants.

Plaintiff propounded two sets of requests for document production and three

market value of \$2,279,400.00, which is the amount I used in my Order of Confirmation and Entry of Judgment, as discussed later in this opinion. See footnote 6.

² Plaintiff filed an Amended Complaint on May 4, 2026, and Defendants filed an Answer to the Amended Complaint on May 5, 2026.

motions *in limine*.³ Plaintiff issued a combined sixteen individual written discovery requests. Defendants propounded four sets of requests for document production and two sets of interrogatories. Defendants filed three motions to compel.⁴ Defendants issued six sets of written discovery requests, or over one hundred individual written discovery requests.

In April 2026, Defendants produced another expert report, consisting of conceptual renderings and a conceptual video prepared by an engineer. Plaintiff took the deposition of the engineer on May 8, 2026, and subsequently sought to exclude his report, which request was denied. On May 15, 2026, Plaintiff served an Offer of Judgment⁵ on Defendants in the amount of \$3,250,000.00. On May 27, 2026, Defendants made a counteroffer to Plaintiff, which was summarily rejected.

Trial commenced on June 1, 2026, and concluded on June 3, 2026. At trial, Plaintiff's expert appraiser testified that the fair market value of the interests acquired was \$2,279,400.00,⁶ while Defendants' expert appraiser testified that the value was \$4,238,400.00. The Jury of Commissioners returned a verdict awarding

³ The Plaintiff's motions *in limine* sought to exclude foreign appraisals other than the Property, to exclude certain pictures, and a *Daubert* motion with respect to Defendants' appraiser. All these motions were denied.

⁴ Defendants' motions to compel sought appraisal reports for properties other than the Property, to be used to impeach Plaintiff's expert at trial. These motions were granted.

⁵ Pursuant to 10 *Del. C.* § 6111(1).

⁶ There is a \$17,800.00 disparity in the record between this amount and the amount of Plaintiff's deposit with the Court, \$2,297,200.00. See footnote 1.

just compensation to Defendants in the amount of \$4,238,400.00. On August 14, 2026, I entered an Order of Confirmation and Entry of Judgment, as follows:

The final award of just compensation for the real estate interests condemned is \$4,238,400.00.

The Prothonotary was directed to release and pay the additional amount of \$1,959,000.00⁷ to Defendants after such amount has been deposited by Plaintiff which, when added to the \$2,279,400.00⁸ previously deposited by Plaintiff and released to Defendants, will result in Defendants receiving a total just compensation amount of \$4,238,400.00.

Interest through the date of the entry of the Commissioners' verdict is awarded in the amount of \$470,240.51.

Post-judgment interest will accrue at a rate of \$724.56 per day beginning on June 4, 2026, until the just compensation amount is paid in full.

On June 12, Defendants filed their corrected Application for Reimbursement of Litigation Expenses (the "Application"), and requested reimbursement by Plaintiff of the following:

Attorneys' Fees and Costs	\$637,261.78
Expert Appraiser	\$ 26,360.00
Expert Engineer	\$ 41,054.78
Courtroom Technology Firm	\$ 10,169.24
 TOTAL	 \$714,845.80

On July 17, 2026, Plaintiff filed its Response in Opposition to the Application.

⁷ See footnotes 1 and 6.

⁸ See footnotes 1 and 6.

On July 30, 2026, Defendants filed their Reply to Plaintiff's Opposition to the Application. This is my decision on the Application.

LEGAL STANDARDS

Statutory Tests

Under the Delaware Code,⁹ where the award of just compensation is closer to the defendant's highest valuation evidence at trial than the plaintiff's offer of judgment, the defendant "may apply for an order for the plaintiff to pay the defendant's reasonable litigation expenses." I have broad discretion over the award of such expenses.¹⁰ The statute states three independent bases for reducing or denying a fee award: (1) the defendant, during the course of the proceeding, engaged in conduct which unduly and unreasonably protracted the final resolution of the action; (2) the Court finds that the position of the plaintiff was substantially justified; or (3) special circumstances make an award of expenses unjust.¹¹ In addition, under the statute the fees awarded must be limited to those actually incurred because of the compensation trial.

Reasonableness

The Delaware statute is in abrogation of the general rule Delaware courts use in determining the reasonableness of attorneys' fees and costs. Nonetheless, the

⁹ 10 *Del. C.* § 6111(2).

¹⁰ See *State ex rel. Secretary of Department of Transportation v. Melpar, LLC*, 2022 WL 17985491, at *2 (Del. Super. Dec. 28, 2022).

¹¹ 10 *Del. C.* § 6111(2).

Delaware common law rule is instructive in addressing the arguments of the parties here. Delaware follows the American Rule, under which litigants are normally responsible for paying their own litigation costs.¹² An exception arises in litigation involving a fee-shifting provision, whether statutory or contractual, where a trial judge may award the prevailing party all costs incurred during litigation.¹³ Here, a statute sets forth the standard. In such cases, Delaware law dictates that a judge determine whether the fees requested are reasonable.¹⁴

With respect to reasonableness, the Delaware Supreme Court established in *General Motors Corp. v. Cox*¹⁵ that the factors for determining the reasonableness of legal fees are found in Rule 1.5(a) of the Delaware Lawyers' Rules of Professional Conduct.¹⁶ These eight non-exclusive “Cox factors” are:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
2. The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
3. The fee customarily charged in the locality for similar legal services;
4. The amount involved and the results obtained;

¹² *Mahani v. Edix Media Group, Inc.*, 935 A.2d 242 (Del. 2007).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ 304 A.2d 55 (Del. 1973).

¹⁶ *Surf's Up Legacy Partners, LLC v. Virgin Fest, LLC*, 2025 WL 3232923 (Del. Super. Nov. 19, 2025); *Monheit v. Chalk*, 1985 WL 11556 (Del. Ch. April 16, 1985); *Meyers v. Chatham Cove Association of Unit Owners*, 2025 WL 1744378 (Del. Super. June 24, 2025).

5. The time limitations imposed by the client or by the circumstances;
6. The nature and length of the professional relationship with the client;
7. The experience, reputation, and ability of the lawyer or lawyers performing the services; and,
8. Whether the fee is fixed or contingent.

In reviewing a fee award pursuant to a prevailing party statutory or contractual provision, the court will generally exclude excessive, redundant, duplicative, or otherwise unnecessary hours.¹⁷ The party seeking an award of attorneys' fees and expenses shoulders the burden of establishing that the amount sought is reasonable.¹⁸ A trial court's consideration of the *Cox* factors may be brief, and it may even suffice for the court to state in conclusory fashion that it considered the factors.¹⁹ However, the record must contain some showing that the court considered them.²⁰ Delaware courts have confirmed that a judge must consider all of the factors listed in Section 1.5(a) of the Rules of Professional Conduct, rather than giving primary weight to any single factor such as the degree of likelihood of trial success.²¹

¹⁷ *Surf's Up Legacy Partners, LLC v. Virgin Fest, LLC*, 2025 WL 3232923 (Del. Super. Nov. 19, 2025).

¹⁸ *Id.*

¹⁹ *Meyers v. Chatham Cove Association of Unit Owners*, 2025 WL 1744378 (Del. Super. June 24, 2025).

²⁰ *Id.*

²¹ *Mahani v. Edix Media Group, Inc.*, 935 A.2d 242 (Del. 2007).

ANALYSIS

Statutory

Unreasonable Protraction of the Litigation by Defendants

The statute authorizes me to reduce the award of fees and costs “to the extent that the defendant, during the course of the proceeding, engaged in conduct which *unduly* and *unreasonably* protracted the final resolution of the action.”²² Mere protraction is not enough – the delay must be unreasonable.

Plaintiff first argues that Defendants’ adding new counsel nearly a year into the case resulted in duplicative work as new counsel had to review and redo work already performed, particularly in the months of June, July, August, and September 2025.

Second, Plaintiff argues that Defendants extended scheduling deadlines on four or more occasions, and at least three of these extensions were necessitated by Defendants’ delays in discovery, identifying experts, and producing expert reports.

Third, Defendants were several weeks late in producing their appraiser’s reports. They also retained an engineer a few weeks before trial and commissioned conceptual renderings and a video at a cost of \$41,054.78, which necessitated additional motion practice. This required Plaintiff to designate a rebuttal expert

²² 10 *Del. C.* § 6111(2) (emphasis added).

witness and attend his deposition.

Defendants counter these arguments. First, they argue that the addition of BMF as counsel during the pendency of this case did not protract the litigation, and the June, July, August, and September 2025 invoices of FWS and BMF are not duplicative. BMF's work was separate and distinct from any work done by FWS. All work conducted on this case would have been required regardless of which firm represented Defendant.

Second, with respect to delaying deadlines in the scheduling orders, Defendants point out that not all their four sets of requests for document production were answered, and some were withdrawn. Defendants' requests were necessary to preserve Defendants' rights to confront the government's expert witness on his prior inconsistencies. Defendants argue that their three motions to compel discovery were not duplicative but rather caused by Plaintiff's refusal to comply with reasonable discovery requests. As stated above, these motions sought appraisal reports for properties other than the Property, to be used to impeach Plaintiff's expert at trial. Every motion was granted. By contrast, Plaintiff's motions *in limine* sought to exclude foreign appraisals other than the Property, to exclude certain pictures, and a *Daubert* motion with respect to Defendants' appraiser. All these motions were denied.

Third, Defendants' appraisal reports were only a few weeks late and did not

significantly delay the proceedings. With respect to the engineer's report, Defendants gave notice of the engineer as a potential rebuttal witness four months before trial. Defendants intended to use the engineer's report only for demonstrative exhibits to aid their appraiser's testimony. Yet Plaintiff objected to the demonstrative exhibits, causing more motion practice. Plaintiff claims the engineer necessitated a rebuttal witness, which inflated costs, but Plaintiff itself called the engineer as a witness and never called a rebuttal witness.

In my view, Plaintiff complains about the duplication of law firms, the timeliness of Defendants' production, and a late appraisal and engineer's report, but it provides no adequate explanation of how any of these impacted costs or fees. Defendants were certainly entitled to the counsel of their choice. Most pre-trial deadlines were resolved and met without my intervention. The trial date that was set at the very beginning of the case, June 1, 2026, was never delayed. In short, Plaintiff does not demonstrate how the trial was protracted at all, let alone by Defendants' conduct.

Plaintiff's Position Substantially Justified

A position is substantially justified if it is "justified in substance or in the main; i.e., justified to a degree that could satisfy a reasonable person" or "if it has a

reasonable basis in both law and fact.”²³ To defeat Defendants’ application for fees, Plaintiff must establish substantial justification for its position by demonstrating “(1) a reasonable basis in truth for the facts alleged; (2) a reasonable basis in law for the theory it propounded; and (3) a reasonable connection between the facts alleged and the legal theory advanced.”²⁴ “[A] court cannot assume that the government’s position was not substantially justified simply because the government lost on the merits,”²⁵ as here.

Plaintiff argues that its position was substantially justified for three reasons. First, its position had a reasonable basis in the truth for the facts alleged. Its position as to the value of the Property was grounded in a professional appraisal prepared by a qualified expert appraiser. I accepted the appraiser as Plaintiff’s qualified expert, and Defendants did not object to the admission of his report or testimony. The appraiser’s opinion was based on real facts, and Defendants did not challenge the facts underlying his reports. In accordance with his estimate of value, Plaintiff deposited \$2,279,400.00 with the Court.

Second, Plaintiff argues that its position had a reasonable basis in law. Its appraiser’s methodology complied with all statutory and other requirements, and

²³ *Williams v. Astrue*, 600 F.3d 299, 301-02 (3d Cir. 2009) (citing *Pierce v. Underwood*, 487 U.S. 552, 565 (1988) and *Hanover Potato Prods., Inc. v. Shalala*, 989 F.2d 123, 128 (3d Cir. 1993)).

²⁴ *Williams*, 600 F.3d at 302 (citing *Morgan v. Perry*, 142 F.3d 670, 684 (3d Cir. 1998)).

²⁵ *Id.*

Defendants do not allege otherwise. The fact that Defendants' appraiser disagreed with Plaintiff's appraiser does not render Plaintiff's position unreasonable because in these types of complex valuation disputes reasonable experts may differ.²⁶ A significant spread between the parties' appraisals reflects the inherent uncertainty in valuing complex real property interests; it does not render either party's position unreasonable.

Third, there was a reasonable connection between the facts and the legal theory. Plaintiff's position was rooted in a credible appraisal report that was prepared in accordance with all statutory requirements. Plaintiff deposited the appraised amount with the Court. Plaintiff's Offer of Judgment in the amount of \$3,250,000 represented a 43% increase above its expert's appraised value. This significant upward adjustment demonstrates Plaintiff's good faith effort to resolve the case. Plaintiff argues that I cannot find that it took an unjustified position when it made such a substantial effort to compromise.

Defendants counter that the Commissioners clearly disagreed with Plaintiff's appraisal, as they made an award to Defendants in the full amount of Defendant's appraisal, almost \$2,000,000.00 above what Plaintiff presented as

²⁶ See *Twp. of Manchester Dep't of Utilities v. Even Ray Co.*, 315 N.J. Super. 122, 135 (App. Div. 1998) ("[t]here is no precise and inflexible rule for the assessment of just compensation"); *United States v. Fuller*, 409 U.S. 488, 490 (1973) (market value "is not an absolute standard nor an exclusive method of valuation").

"fair and just compensation" at trial, and roughly \$1,000,000.00 above Plaintiff's Offer of Judgment. Plaintiff's Offer of Judgment came two weeks before trial and well after most of the expenses had been incurred and paid for by Defendants. Defendants made a counteroffer to Plaintiff on May 27, 2026, which was summarily rejected. Plaintiff, therefore, chose to move to trial by rejecting Defendants' counteroffer, knowing the risk that Defendants might be reimbursed for their litigation expenses.

In my view, Plaintiff provides no persuasive explanation of the wide disparity between its determination of fair and just compensation and its Offer of Judgment and the Commissioners' verdict. In short, Plaintiff does not demonstrate a reasonable connection between the facts alleged and the legal theory advanced.

Special Circumstances Make an Award of Expenses Unjust

Plaintiff argues that several "special circumstances" militate against awarding the full amount claimed by Defendants. It claims that the requested fee award is grossly disproportionate to the benefit Defendants received. The incremental benefit Defendants obtained over Plaintiff's Offer of Judgment was approximately \$988,400.00. Defendants seek \$714,845.80 in litigation expenses – almost three-quarters of that incremental benefit. Plaintiff argues that this award would penalize it for attempting to resolve this action in good faith before trial by making an Offer of Judgment.

Second, Plaintiff argues that the public interest trumps the amount of the

requested fee award. The costs of condemnation are ultimately borne by the taxpayers. The statute is an effort to balance the competing interests of the property owner and the public taxpayers by vesting discretion in the Court rather than mandating full reimbursement. An excessive fee award in this case would chill the government's ability to exercise its eminent domain power, discourage the vigorous advocacy that the adversarial system requires for the proper determination of just compensation, and discourage the State from making an Offer of Judgment to resolve such actions before trial.

Third, Defendants have reserved the right to seek additional fees beyond this Application. Plaintiff argues that this open-ended and potentially increasing nature of Defendants' claim is itself a special circumstance weighing against the full award now requested.

Defendants argue that nothing in the statute itself requires that the fees and costs be proportionate to the incremental benefit achieved for Defendants. It clearly states that Plaintiff is required to pay Defendants' reasonable fees incurred because of the compensation trial if the verdict is closer to Defendants' evidence of value than Plaintiff's evidence of value. This is true whether Defendants beat that mark by \$1.00 or by \$1,000,000.00.

Defendants further argue that the public and taxpayers' interests do not overcome the fee award. To the contrary, denying reimbursement would chill the

exercise by property owners of their Fifth Amendment right to challenge the State's taking of their property without just compensation. Reimbursing fees in this type of trial encourages a just amount to be offered in the first place to avoid litigation.

Lastly, Defendants argue that the reason they reserve the right to seek additional fees is in anticipation of Plaintiff potentially appealing the Commissioners' verdict, with the concomitant costs of continuing litigation.

In my view, Plaintiff lays out no persuasive special circumstances which make an award of expenses unjust.

Fees Actually Incurred Because of the Compensation Trial

Under 10 *Del. C.* § 6111(2), the litigation expenses must be limited to those “actually incurred because of the compensation trial.” Plaintiff argues that the statute does not authorize the recovery of Defendants’ litigation expenses since the very beginning of the case – Defendants’ retention of counsel. As this Court emphasized in *Melpar*, not all work performed in a condemnation action qualifies. The Court “cannot agree the General Assembly shared [the] view” “that all actions taken by an attorney in a condemnation suit constitute costs ‘actually incurred because of the condemnation trial.’”²⁷ The court reasoned that, “[i]f that were true, then the limiting language ‘because of the condemnation trial’ would be superfluous.” The *Melpar* court divided the litigation into two phases: a first phase in which the defendant

²⁷ *Melpar*, 2022 WL 17985491, at *4.

attempted to force the State to restart its appraisal approach – which the court found was not “because of the condemnation trial” – and a second phase encompassing all work performed in preparation for and at trial.²⁸ The court excluded all attorney fees incurred during the first phase and awarded only those fees incurred during the second phase. Plaintiff argues that I should apply a similar analysis here, i.e., that fees and expenses that predate the July 12, 2024, filing of the Complaint should be excluded. Moreover, Plaintiff argues that not all the fees claimed from July 12, 2024, through June 3, 2026, were incurred because of the compensation trial. For example, Defendants did not complete production of their appraisal expert report until December 2025. Before that, Plaintiff argues, Defendants had no basis to contest Plaintiff’s appraisal expert report.

Defendants respond that *Melpar's* approach of dividing the litigation into two phases is not applicable to this case. Here there was no "first phase" during which "the defendant attempted to force the State to restart its appraisal approach." Rather, the entirety of the litigation fees for which Defendants incurred reimbursable fees in the instant case was "because of the condemnation trial."

Defendants further argue that their expert appraiser fees and engineering fees were plainly incurred "because of the compensation trial." Indeed, as discussed above, Plaintiff used the engineer as its own witness, so it cannot now assert that the

²⁸ *Id.*

engineer's work was unrelated to the trial.

Finally, Defendants refute Plaintiff's argument that preparation time for trial is not reimbursable and only time spent in trial is reimbursable. Delaware attorneys must prepare for trial as a matter of professional responsibility and to effectively represent their clients. Plaintiff's position is not supported anywhere in the statute, and one can assume that both Plaintiff and Defendants compensated their attorneys for preparation time.

In my view, and except as otherwise provided herein, the fees and costs for which Defendants have applied for reimbursement were incurred because of the compensation trial.

Reasonableness

Since I have determined that some award of fees and costs to Defendants is appropriate under the statute, I must independently scrutinize each category of expense for reasonableness. The statute limits recovery to "*reasonable* litigation expenses, including *reasonable* attorney, appraisal, engineering or other expert witness fees."²⁹

Attorneys' Fees (\$637,261.78)

Defendants seek \$637,261.78 in attorney fees for two law firms: FWS

²⁹ 10 *Del. C.* § 6111(2) (emphasis added); *see also Melpar*, 2022 WL 17985491, at *4 (recognizing that the Court has a duty to assess whether "the amount requested and time spent [are] reasonable.").

(\$35,398.10, consisting of \$34,510 in fees and \$888.10 in costs) and BMF (\$601,863.68, consisting of \$585,502.50 in fees and \$16,361.18 in costs). Plaintiff points to six areas where it asserts that these fees are unreasonable.

First, on January 23, 2026, BMF charged four hours of time at \$650 per hour for “travel to Georgetown and attend CLE seminar on courtroom technology in preparation for June trial.” Plaintiff argues that Continuing Legal Education is a professional responsibility of every member of the Delaware Bar, and should not be billed to a client, let alone compensated by the State.

Defendants have agreed to subtract the amount for this entry, \$2,600.00. I agree that amount should be deducted.

Second, BMF billed for time spent on phone calls with individuals Plaintiff claims are not related to the case, such as a realtor (4/28/26 “Lengthy telephone conference with Bob McVey”) and a local politician (4/24/26 “Telephone conference with Bill Landon”). Mr. McVey and Councilman Landon were not witnesses or experts in the case. The time entries contain no description of the content of the communications, or that such communications constituted legal work related to this case. On January 7, 2026, BMF charged a block billed entry for, in part, “Exchange correspondences (via e-mail) with Richard Forsten re: Oceans One property.” Mr. Forsten is not a counsel of record in this action and the Property in this case does not relate to Oceans One.

Defendants explain that Bob McVey was the realtor for a comparable sale by Plaintiff's appraiser. Counsel spoke to McVey at length to learn about the facts and circumstances of that sale, which were used to impeach Plaintiff's appraiser at both deposition and trial. Similarly, counsel did not speak to Landon because he was a Councilman, but rather because he was the owner of nearby Tax Parcel 32, and Landon purchased the office building that had been located on Tax Parcel 74 which Plaintiff had planned to demolish. Landon relocated that office building to Tax Parcel 32. He provided Defendants with important details about the value of the improvements on Tax Parcel 74, which value was subtracted from Plaintiff's total valuation to arrive at a value for the underlying real estate. This information ultimately assisted with the impeachment of Plaintiff's appraiser at trial. As for the January 7, 2026, time entry for exchanging correspondence with Richard Forsten regarding the Oceans One property, counsel reached out to Mr. Forsten to inquire if his client (Joel Sens of Oceans One) would be willing to share a copy of an appraisal which Defendants' appraiser had performed for Oceans One. This was prompted by Plaintiff's agreement to pay Oceans One a sum closer to Defendant's appraiser's appraised value than Plaintiff's initial offer to Oceans One, to avoid a condemnation trial over Oceans One's property on the southwest corner of the intersection of SRI and SRI 6, just a few miles up the road from Nassau Orchards. Defendant's appraiser was unable to provide Defendants with a copy of that appraisal absent

consent by Mr. Forsten's client. These efforts are illustrative of counsel's requisite due diligence in attempting to discover relevant and admissible subject areas for the cross-examination of Plaintiff's appraiser. Thus, this expense is reimbursable, as Defendants would not have sought a copy of that appraisal "but for" the compensation trial in this case.

I find that the entries for McVey, Landon, and Forsten to be appropriate and reasonable.

Third, Plaintiff argues that time spent by one firm reviewing the other's work, internal conferences between firms, or duplicative and overlapping tasks between the firms should be reduced or disallowed. Defendants' decision to change counsel mid-litigation was their own, and the resulting duplication should not be subsidized by Plaintiff.

Defendants respond that, although Plaintiff argues that time spent on conferences between Defendants' counsel at both law firms should be stricken, it states no reason why and offers no supporting law. Multiple attorneys on both sides of the case entered their appearances in this complex trial. Seeking compensation for each attorney who devoted time to attending, preparing for, and participating in conferences is reasonable. Defendants were represented by and paid for only one attorney at every deposition. Plaintiff, however, had multiple attorneys present for multiple depositions.

I find that the retention of two law firms did not result in unreasonable costs.

Fourth, Plaintiff complains that Defendants lump multiple tasks into a single time entry and contain general descriptions such as “review documents” or “case strategy,” which does not allow me to properly assess the reasonableness thereof.

Defendants respond that such “block billing” was recently approved by this Court.³⁰ I find that the expenses incurred by Defendants for the work performed because of the compensation trial do not require invoiced details of the granularity that Plaintiff suggests.

Fifth, Plaintiff asks that *all* fees for Mr. Willard be excluded, since he played no substantive role after BMF was retained and was a wholly passive spectator at trial.

Defendants have agreed to subtract FWS’s fees predating the July 12, 2024, filing of the Complaint, or \$3,570.00. I concur with this reduction.

Sixth, the Application includes the costs of travel (mileage), gasoline, and meals. Plaintiff argues that, in *Melpar*, this Court specifically held that “[c]ounsel’s travel costs (i.e., tolls and gas) and in-house costs for photocopying and postage are not reasonable litigation expenses.”³¹ Defendants do not directly respond to this argument.

³⁰ *DelDOT v. PITB, LLC*, 2024 WL 489062 (Super. Ct. Feb. 6, 2024). In that case, the defendants were awarded a reimbursement of litigation expenses totaling \$959,749.77, \$730,193.77 of which was apportioned to reimburse defendants for some of the types of costs Plaintiff complains of here, including expert appraiser fees, expert engineering fees, and courtroom technology fees.

³¹ *Melpar*, 2022 WL 17985491, at *5 n.15.

I follow *Melpar* and disallow Defendants' counsel's travel (mileage), gasoline, and meals. Defendants' counsel shall review their invoices and deduct all such amounts.

Defendants' Appraisal Expert (\$26,360.00)

Defendants' appraisal expert charged a total of \$26,360.00, billing \$350 per hour for 46.75 hours and a flat fee of \$5,000 for each of the two appraisal reports he issued. Delaware law limits expert witness fees in condemnation cases to "time necessarily spent in attendance upon the Court for the purpose of testifying"—including travel to and from court, waiting to testify, and time on the stand.³² Expert fees do not include "time spent in listening to other witnesses for orientation, or in consulting and advising with a party or counsel or other witnesses during the trial."³³ The 1994 amendments to the statute broadened recovery to include "reasonable . . . appraisal . . . fees actually incurred because of the compensation trial."

Plaintiff states that several of the appraiser's time entries do not match the time he spent on the task described. On January 20, 2026, he charged 9.5 hours for his deposition, but his deposition did not last 9.5 hours. He also charged 5.25 hours for a *Daubert* hearing that did not last 5.25 hours. Similarly, he charged for 10 and 8.75 hours of trial on June 1 and 2, 2026, respectively, but the trial time for the day did not exceed 8 hours.

³² *9.88 Acres of Land v. State ex rel. State Highway Dep't*, 274 A.2d 139, 140–41 (Del. 1971); *State ex rel. State Highway Dep't v. Lots Nos. 133, 134 & 135*, 238 A.2d 837, 838–39 (Del. 1968).

³³ *State ex rel. Price v. 0.0673 Acres of Land*, 224 A.2d 598, 602 (Del. 1966).

Defendants deny that their appraiser ever billed for time spent listening to other witnesses for orientation, or in consulting and advising with a party or counsel or other witnesses during trial. His time entries for his deposition and trial appearances are longer than his actual time in deposition or in court on those days due to travel. Plaintiff acknowledges in its Opposition that Delaware law allows expert witnesses in condemnation cases to bill time for travel to and from court, waiting to testify, and time on the stand.³⁴ In any event, such fees are reasonable and were actually paid by Defendants.

I will allow all of Defendants' expert appraiser's fees.

Defendants' Engineering Expert (\$41,054.78)

Defendants' expert engineer charged \$41,054.78, which includes two distinct components: (i) expenses relating to conceptual renderings and video in the amount of \$25,000.00; and (ii) expenses relating to expert witness testimony and additional services in the amount of \$16,054.78.

The conceptual renderings and video were used as demonstrative aids for the testimony of Defendants' expert appraiser. The statute authorizes recovery of "reasonable attorney, appraisal, engineering or other expert witness fees."³⁵ However, Plaintiff argues that these conceptual renderings and videos are litigation

³⁴ See fn 31.

³⁵ 10 *Del. C.* § 6111(2).

presentation tools, not engineering fees, and are analogous to trial exhibits, visual aids, or presentation graphics, which are routinely prepared at a party's own expense.³⁶

The engineer billed \$525 per hour for 25.75 hours of expert witness testimony time, totaling \$13,518.75. Additionally, a designer billed \$125 per hour for 14.75 hours, and an architect billed \$350 per hour for 1.5 hours, adding \$2,368.75 in “additional services.”

Defendants state that they gave notice of the engineer as a potential rebuttal witness four months before trial. Nonetheless, Defendants used the engineer's work as only demonstrative exhibits to aid their appraiser's testimony. The demonstrative exhibits employed at trial required the expertise of engineers and architects to prepare; therefore, they are not mere litigation tools.

Plaintiff objected to these demonstrative exhibits, resulting in motion practice, and its motion was denied. Plaintiff claims that the engineer necessitated the creation of a rebuttal witness, which inflated costs, but Plaintiff called the engineer as its own witness and never called a rebuttal witness of their own.

I will allow all of Defendants' expert engineer's fees.

³⁶ See *Sweren v. Sheehy*, 2001 WL 1783076, at *1 (Del. Super. Dec. 12, 2001) (“the costs of presenting trial exhibits at trial is traditionally borne by the party presenting the evidence”) (citing *Sliwinski v. Duncan*, 608 A.2d 730 (Del. 1992)).

Courtroom Technology Fees (\$10,169.24)

A vendor charged \$10,169.24 for courtroom technology fees. The statute authorizes recovery of reasonable attorney, appraisal, engineering or other expert witness fees. Plaintiff argues that a courtroom technology vendor does not fall within any of these categories. Moreover, the services which the vendor provided, such as courtroom technology setup and testing, creation and editing of PowerPoint presentations, foam board mounting, and travel time and gasoline, are litigation support services, not expert witness fees.

Specifically, Plaintiff objects to the following charges by this vendor:

- a. \$800.00 for foam board mounting and delivery, which is a trial supply cost;
- b. \$187.99 for gas, which is a travel cost;
- c. Overtime premium charges of \$250.00 per hour (versus the standard rate of \$225.00 per hour), which reflect Defendants' own scheduling choices; and,
- d. Preparation time, i.e., any time other than time spent in trial.

Defendants state only that Plaintiff employed and paid for an identical technology individual, and that technology expenses were reimbursed in the *PITB* case.

This Court has consistently recognized that the cost of trial technology is a proper and recoverable court cost, provided the services were rendered during trial

and significantly aided in the presentation of evidence. Reasonable trial technology fees are recoverable where the technology support staff significantly aided in the presentation of evidence at trial and the factfinder's navigation and understanding thereof.³⁷ A critical restriction is that the technology support services must have been provided during trial.³⁸ The court has affirmed that technology support expenses are reasonable and expected costs of litigation, and it encourages the use of technology and support personnel in the presentation and viewing of exhibits at trial.³⁹

Delaware courts have applied this framework consistently across multiple decisions. This Court awarded \$14,761 for trial technology support, calculated at the support person's hourly rate of \$290.00 multiplied by the 50.9 in-trial hours confirmed by trial transcripts, while disallowing pre-trial preparation time and time billed on a Sunday and a court holiday.⁴⁰ The court awarded \$14,801 as technical support staff costs because the trial technology support person was critical to the trial presentation and the viewing of the numerous exhibits introduced in the case.⁴¹

³⁷ (*River Valley Ingredients, LLC, et al. v. American Proteins, et al.*, 2026 WL 1182418 (Del. Super. Apr. 30, 2026) (granting a request for \$16,441.60 in trial technology support costs provided by Fulcrum Legal Graphics, finding those services met the applicable standard.)

³⁸ *In re Bracket Holding Corp. Litigation*, 2020 WL 764148 (Del. Super. Feb. 7, 2020). (reducing the requested technology fees because the billing records reflected significantly more time than the support staff could have spent in trial, including weekend days when trial was not in session.)

³⁹ *Id.*

⁴⁰ *NewWave Telecom & Technologies, Inc. v. Jiang*, 2024 WL 4564150 (Del. Super. Oct. 24, 2024).

⁴¹ *TranSched Systems Ltd. v. Versyss Transit Solutions, LLC*, 2012 WL 1415466 (Del. Super. March 29, 2012).

Similarly, the court awarded \$16,258.45 as computer exhibit operator fees because the operator helped to keep the multitude of documents organized and readily available for witnesses.⁴²

Not all technology-related services qualify. For example, the court declined to award the cost of trial consulting services, finding that such costs were not necessarily incurred to assert the party's rights and that reimbursement for such services was not authorized by statute.⁴³ This distinction underscores that the recoverable cost is specifically tied to in-court technology support for exhibit presentation, not broader litigation consulting.

I find that the four technology expenses listed by Plaintiff are not permissible under Delaware law and I disallow them.

CONCLUSION

For the foregoing reasons, Defendants' Corrected Application for Reimbursement of Litigation Expenses is **GRANTED IN PART** and **DENIED IN PART**. Defendants shall recalculate the amounts requested in their Application for Reimbursement of Litigation Expenses as provided in this opinion and submit the revised Application to Plaintiff and the Court for further review.

⁴² *Salt Meadows Homeowners Association, Inc. v. Zonko Builders, Inc.*, 2023 WL 1370997 (Del. Super. Jan. 31, 2023).

⁴³ *Payne v. Home Depot*, 2009 WL 659073 (Del. Super. March 12, 2009).

IT IS SO ORDERED.

/s/Craig A. Karsnitz
Craig A. Karsnitz

cc: Prothonotary