

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LAWRENCE E. JAFFE PENSION PLAN, On)	Lead Case No. 02-C-5893
Behalf of Itself and All Others Similarly)	(Consolidated)
Situated,)	
) <u>CLASS ACTION</u>
Plaintiff,)	
) Judge Ronald A. Guzman
vs.)	
)
HOUSEHOLD INTERNATIONAL, INC., et)	
al.,)	
)
Defendants.)	
_____)	

PLAINTIFFS' MOTION FOR ENTRY OF BILL OF COSTS

I. INTRODUCTION

On October 17, 2013, this Court entered a final judgment pursuant to Fed. R. Civ. P. 54(b) in the amount of \$2,462,899,616.21 against defendants Household International, Inc., William F. Aldinger, David A. Schoenholz and Gary Gilmer. Dkt. No. 1898. The Court's final judgment also awarded plaintiffs postjudgment interest and taxable costs. *Id.* On November 18, 2013, pursuant to Fed. R. Civ. P. 54(d)(1) and Local Rule 54.1, plaintiffs timely filed a Bill of Costs, requesting that the Clerk tax certain costs totaling \$623,257.78 which plaintiffs incurred during the course of this 11-year case. *See* Dkt. No. 1913. The Court subsequently requested that plaintiffs file a motion for entry of plaintiffs' Bill of Costs. Pursuant to the Court's directive, this motion follows.

II. ARGUMENT

A. Relevant Legal Authority

Fed. R. Civ. P. 54(d)(1) provides that, "[u]nless a federal statute, these rules, or a court order provides otherwise, costs – other than attorney's fees – should be allowed to the prevailing party." Fed. R. Civ. P. 54(d)(1). "Rule 54(d) creates a presumption that the prevailing party will be awarded costs, which the losing party can overcome only by making 'an affirmative showing that [the] costs are not appropriate.'" *Baltimore v. Quinn-Mims*, 10 C 1031, 2012 U.S. Dist. LEXIS 149866, at *2 (N.D. Ill. Oct. 18, 2012) (Guzman, J.). Courts enjoy "wide latitude" in determining and awarding reasonable costs and need determine only that "expenses are allowable cost items, and that the amounts are reasonable and necessary." *Deimer v. Cincinnati Sub-Zero Prods.*, 58 F.3d 341, 345 (7th Cir. 1995) (affirming district court's award of costs).

The costs that may be recovered under Rule 54(d)(1) are enumerated in 28 U.S.C. §1920, which allows as taxable costs: (1) the fees of the clerk and the marshal; (2) fees for court reporters and transcripts; (3) fees for printing and witnesses; (4) fees for copies of papers necessarily obtained for use in the case; (5) docket fees; and (6) compensation of court appointed experts and interpreters.

28 U.S.C. §1920. Additionally, Local Rule 54.1 allows as taxable costs the expense of obtaining transcripts and the fees of a Special Master. LR 54.1(b) and (d). Finally, under Local Rule 54.1(a), the prevailing party must file a bill of costs with the clerk within 30 days of the entry of a judgment allowing costs. LR 54.1(a).

B. The Clerk Should Tax the Costs Identified in Plaintiffs' Bill of Costs

On October 17, 2013, pursuant to Fed. R. Civ. P. 54(b), this Court entered a final judgment against defendants in the amount of \$2,462,899,616.21. The Court also awarded plaintiffs prejudgment interest and taxable costs. On November 18, 2013, pursuant to Local Rule 54.1(a), plaintiffs timely filed a Bill of Costs. Dkt. No. 1913. Plaintiffs' Bill of Costs sets forth the following taxable costs: (1) fees for service of summons and subpoenas; (2) fees for printed and electronically recorded transcripts necessarily obtained for use in this case; (3) fees for deposition and trial witnesses; (4) fees for exemplification and the cost of making copies of materials necessarily obtained for use in this case; (5) compensation of the court-appointed Special Master; and (6) the cost of conducting legal research. Dkt. No. 1913. Each of the requested costs are allowable cost items under §1920 and LR 54.1(b) and (c) and are reasonable, both in amount and necessity to the litigation. *Deimer*, 58 F.3d at 345.

First, plaintiffs seek to recover the cost of service of summons of the [Corrected] Amended Consolidated Class Action Complaint for Violation of the Federal Securities Laws (Dkt. No. 54), along with the cost of serving witnesses with deposition and trial subpoenas. Such costs are explicitly provided for in §1920(1). Additionally, courts in this district routinely allow for the recovery of private service fees. *See Brook, Weiner, Sered, Kreger & Weinberg v. Coreq., Inc.*, No. 91 C 7955, 1995 U.S. Dist. LEXIS 3953, at *4-*6 (N.D. Ill. Mar. 29, 1995) (Guzman, J.) (allowing for recovery of private process server fees).

Second, plaintiffs seek to recover fees for printed or electronically recorded transcripts necessarily obtained for use in this case. Specifically, plaintiffs seek to recover court reporter appearance fees, deposition transcript costs and videographer fees for depositions taken in this case, along with trial transcript costs. *See* Dkt. No. 1913, Ex. A (columns 5-7); Ex. A at 7. Again, the costs of deposition and trial transcripts are explicitly provided for in both §1920(2) and Local Rule 54.1(b). *See Baltimore*, 2012 U.S. Dist. LEXIS 149866, at *4 (“The Court may award court reporter attendance fees in its discretion.”). Further, the deposition and trial transcripts for which plaintiffs seek to recover costs were necessarily obtained for use in this case. Indeed, courts have recognized that costs related to deposition transcripts are allowed where “the deposition appeared to be reasonably necessary in light of the particular situation at the time it was taken even if the witness was not called at trial or the deposition used at trial, and even if the deposition was for discovery purposes only.” *Brook*, 1995 U.S. Dist. LEXIS 3953, at *6-*7 (citation omitted) (finding that deposition and trial transcripts were necessary to the prosecution of the case); *Bloch v. Frishholz*, No. 06 C 4472, 2008 U.S. Dist. LEXIS 51429, at *8 (N.D. Ill. June 26, 2008) (noting that the proper inquiry is whether the deposition was “reasonably necessary to the case at the time it was taken, not whether it was used in a motion or in court”) (citation omitted). Each of the depositions taken in this case were reasonably necessary and obtained, *inter alia*, (a) to elicit testimonial evidence establishing defendants’ predatory lending, reaging practices and accounting manipulation; (b) to authenticate documents produced during discovery; (c) to establish loss causation; (d) to challenge defendants’ expert witnesses; (e) to assist plaintiffs in preparing for trial; and (f) to impeach certain witnesses at trial. The trial transcripts were also necessarily obtained and used by plaintiffs in opposing defendants’ post-trial motions and Phase II/presumption of reliance briefing.

Third, plaintiffs seek to recover the fees incurred for deposition and trial witnesses, as provided for in §1920(3). 28 U.S.C. §1920(3) (allowing recovery of “fees and disbursements for

witnesses”). The witness fee specified in §1920(3) is, in turn, defined by 28 U.S.C. §1821(b), which provides that “a witness shall be paid an attendance fee of \$40 per day for each day’s attendance.”¹ 28 U.S.C. §1821(b). Plaintiffs may also recover as taxable costs the travel expenses of non-party witnesses. *See* 28 U.S.C. §1821(c)(1)-(4). Here, plaintiffs seek to recover the \$40 fees paid to witnesses who testified at trial, along with the expenses plaintiffs paid those witnesses in connection with their travel to Chicago to testify at trial. *See* Dkt. No. 1913 (Exhibit A, column 3).²

Fourth, plaintiffs seek to recover the costs of making copies of materials necessarily obtained for use in this case, as permitted under §1920(4). Courts in this district have found that “[t]his includes not only the cost of items introduced at trial but also the cost of copying pleadings, correspondence, discovery documents, and other items ‘necessarily obtained for use in the case.’” *Brook*, 1995 U.S. Dist. LEXIS 3953, at *11 (citation omitted). Accordingly, plaintiffs request that the Clerk tax as costs (1) the cost of one copy of each pleading plaintiffs filed with the Court;³ (2) the cost of three copies of each of plaintiffs’ trial exhibits and demonstratives (for use by plaintiffs’ counsel, defense counsel and the witness);⁴ (3) the cost of three copies of each exhibit used at depositions (for use by plaintiffs’ counsel, defense counsel and the witness); (4) the cost of one copy

¹ *Brook*, 1995 U.S. Dist. LEXIS 3953, at *8 (“The logical conclusion from the language and interrelation of [§§1920 and 1821] is that §1821 specifies the amount of the fee that must be tendered to a witness, §1920 provides that the fee may be taxed as a cost, and Rule 54(d) provides that the cost shall be taxed against the losing party unless the court otherwise directs.”) (citation omitted).

² On March 11, 2009, the Court ordered plaintiffs to pay half of the expenses Robert O’Han incurred in traveling to Chicago to testify at trial. Dkt. No. 1500 at 3. Plaintiffs’ Bill of Costs seeks to recover as taxable costs the fees paid to Mr. O’Han.

³ *See Bloch*, 2008 U.S. Dist. LEXIS 51429, at *11 (allowing defendants to recover the cost of one copy of each document it prepared and delivered to the Court’s chambers).

⁴ *See Wahl v. Carrier Mfg. Co.*, 511 F.2d 209, 217 (7th Cir. 1975) (allowing demonstrative exhibits to be taxed as costs); *Merk v. Jewel Food Stores*, No. 85 C 7876, 1995 U.S. Dist. LEXIS 9316, at *10 (N.D. Ill. June 30, 1995) (Guzman, J.) (same).

of plaintiffs' production of documents to defendants in response to defendants' discovery requests;⁵ and (5) payments made to Cahill Gordon for copying charges.⁶ See Dkt. No. 1913 (Exhibit B); Declaration of Karen E. Cook, ¶¶5-7.

Fifth, plaintiffs seek reimbursement of plaintiffs' portion of the fees and expenses paid to the Court-appointed Special Master Philip S. Stenger. See Dkt. No. 1913 (Exhibit C). Such costs are explicitly recognized as taxable costs under §1920(6) and Local Rule 54.1(d). See §1920(6); Local Rule 54.1(d).

Finally, plaintiffs seek to recover the costs of conducting legal research during this 11-year litigation. Dkt. No. 1913 (Exhibit D). Courts in this District have recognized that the costs of electronic legal research may be reimbursed as a taxable cost. See *Scheib v. Grant*, No. 92 C 0513, 1993 U.S. Dist. LEXIS 10698, at *8-*9 (N.D. Ill. Aug. 3, 1993) (Guzman, J.) (awarding costs for Lexis research); *Bloch*, 2008 U.S. Dist. LEXIS 51429, at *12 (awarding costs for Westlaw research). From its inception, this case has involved extensive motion practice on a variety of complex and often novel legal issues, which required extensive legal research on the part of plaintiffs' counsel. For example, plaintiffs opposed five separate motions to dismiss the Consolidated Complaint – two of which were based on then-recent Seventh Circuit and Supreme Court authority, filed and/or opposed over 40 discovery-related motions, opposed defendants' summary judgment motion, filed and/or opposed numerous motions *in limine* and *Daubert* motions, opposed defendants' extensive post-trial motions and completed Phase II presumption of reliance briefing. The legal research plaintiffs conducted was necessary and essential to plaintiffs' successful prosecution of this case. Accordingly, the costs incurred by plaintiffs in conducting legal research should be entered as

⁵ See *Merk*, 1995 U.S. Dist. LEXIS 9316, at *10 (allowing as taxable costs the expenses incurred in producing documents in response to discovery).

⁶ *Phillips v. Wellpoint, Inc.*, No. 3:10-CV-00357-JPG-SCW, 2013 U.S. Dist. LEXIS 69830, at *8-*19 (N.D. Ill. May 16, 2013) (providing a detailed discussion on the types of ESI costs that are recoverable).

taxable costs. *Union Pac. R.R. Co. v. Kan. City S. Ry. Co.*, Case No. 07-CV-0320-MJR, 2009 U.S. Dist. LEXIS 111958, at *16 (S.D. Ill. Dec. 1, 2009) (allowing the recovery of the costs of legal research where the legal issues in the case “were both novel and complex and significant legal briefing was undertaken”).

III. CONCLUSION

Because plaintiffs were the prevailing party in this case, an award of taxable costs is presumed. Plaintiffs’ Bill of Costs seeks to recover allowable cost items under §1920 and Local Rule 54.1. These costs are both reasonable and necessary to the litigation. Accordingly, plaintiffs respectfully request that the Court enter an Order awarding plaintiffs the costs set forth in the Bill of Costs.

DATED: December 16, 2013

Respectfully submitted,

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DECLARATION OF SERVICE BY ELECTRONIC MAIL AND BY U.S. MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and employed in the City and County of San Diego, State of California, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 W. Broadway, Suite 1900, San Diego, California 92101.

2. That on December 16, 2013, declarant caused to be served by electronic mail and by U.S. Mail to the parties the following document:

PLAINTIFFS' MOTION FOR ENTRY OF BILL OF COSTS

The parties' e-mail addresses are as follows:

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and by U.S. Mail to:

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 16th day of December, 2013, at San Diego, California.

s/ TERESA HOLINDRAKE

TERESA HOLINDRAKE