

STATE OF VERMONT  
WINDSOR COUNTY, SS.

JEFFREY HANKINS : WINDSOR COUNTY SUPERIOR COURT  
: :  
v. : DOCKET NO. 102-2-01 Wrcv  
: :  
CONNECTICUT RIVER : :  
DEVELOPMENT CORPORATION :

**ENTRY ORDER RE: DEFENDANT'S MOTION FOR COSTS**

This case was tried to a jury, and the jury rendered a verdict for the Defendant on December 5, 2003. On December 22, 2003, Defendant filed a Motion for Costs. The motion cites to provisions of V.R.C.P. 54, and to [32 V.S.A.] § 1551, which allow for an award of costs to the prevailing party.

Defendant has submitted a Schedule A, listing "Defendant's Expenses." Schedule A lists various expenses associated with depositions, mediation, acquisition of tax transcripts, expert consultation, and witness fees. Defendant has also provided copies of invoices and receipts for the various expenses. However, Defendant has not explained why any of the items on the schedule qualify as necessary "costs" of the litigation (for which a party may seek reimbursement) as opposed to the more general "expenses" (which might or might not qualify for reimbursement).

"Costs" are allowed to the prevailing party under V.R.C.P. 54(d), (e) and (g). Under Rule 54(g), taxing of costs in the taking of depositions is subject to the discretion of the court, and shall not be allowed "unless the court finds that the taking of the deposition was reasonably necessary, whether or not the deposition was actually used at trial. The determination of what is "reasonably necessary" is made within the context of the American Rule, under which each party bears its own litigation expenses.

A similar standard applies in the federal courts with respect to deposition costs. After summarizing the application of the standard in a variety of circumstances, Wright, Miller and Kane write:

Perhaps the soundest, although not the simplest, approach is to require a deliberate, careful, and patient consideration of the reasonableness of the discovery effort in light of the circumstances of the particular case, as well as a determination of the deposition's utility in assisting a resolution of the contested issues. This analysis requires the court to consider the necessity and propriety of incurring the expense, as well as other equitable considerations, in terms of the situation existing at the time the deposition was taken.

Wright, Miller & Kane, Federal Practice and Procedure, Civil 3d § 2676, at 429-32.

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It is incumbent upon the moving party to explain the reasonable necessity of any deposition expenses, in view of the nature of the claims, the availability of the information, the complexity of the facts and issues, and the relationship of the testimony to the result at trial, and in view of the norm that each side bears its own standard litigation expenses. Here the Defendant has simply listed the deposition expenses, without any explanation for why they qualify as reasonably necessary costs.

According to V.R.C.P. 16.3(e)(1)(C) (in both the experimental rule and the recently adopted permanent rule), payments made to a mediator may be taxed as costs to the prevailing party in the discretion of the court. Given the background context of the American Rule, and the discretionary nature of the request, the moving party bears the burden of explaining why an order of reimbursement would be appropriate in this case. Defendant has simply listed the expense. Absent any explanation for why reimbursement is appropriate in this case, the court will deny the request.

Defendant's payments for acquisition of tax transcripts, and for expert consultation, appear to be ordinary costs of litigation. Absent any explanation why these expenses were out of the ordinary, or especially necessary for this litigation, the court will deny these requests.

Witness fees are generally allowed as costs, if the attendance at trial is reasonably necessary for the litigation, and the expenses are incurred according to the statute. Under 32 V.S.A. § 1551, witnesses are allowed \$10.00 per day, plus \$0.08 per mile for travel within the state. According to 32 V.S.A. § 1471(a), the prevailing party may recover "the total amount of the certificate of witness fees paid." However, Defendant has not submitted any witness certificate (see 32 V.S.A. § 1553), nor has Defendant provided any clear explanation of the necessity for these costs. Defendant has submitted copies of check stubs, showing fees totaling \$85 were paid to four separate witnesses. However, these fees were paid on September 4, 2003, approximately three months prior to trial. Defendant has not stated whether each witness actually appeared and testified, or how much was paid for travel. Absent a witness certificate or other clear explanation, Defendant's request for reimbursement of these fees will be denied.

Defendant's Motion for Costs is DENIED.

Dated at Woodstock, Vermont, this 28<sup>th</sup> day of January, 2004.

Mary Miles Teachout  
Hon. Mary Miles Teachout,  
Presiding Superior Court Judge

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