

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND
FOR NEW CASTLE COUNTY

EDWARD A. WRIGHT and BRENDA)
WRIGHT, husband and wife,)

Plaintiffs,)

v.)

STATE FARM MUTUAL)
AUTOMOBILE INSURANCE)
COMPANY, a foreign corporation,)

Defendants.)

C. A. No. 03C-10-14 CLS

Date Submitted: March 1, 2007

Date Decided: March 7, 2007

Upon Plaintiffs' Motion for Costs

GRANTED in the amount of \$4,355

plus

interest accrued on the \$25,000 arbitration award.

ORDER

Gary Nitsche, Esquire, Weik, Nitsche, Dougherty & Componovo,
Wilmington, Delaware, Attorney for Plaintiffs.

Danielle K. Yearick, Esquire, Tybout, Redfearn & Pell, Wilmington,
Delaware, Attorney for Defendant.

SCOTT, J

1. Plaintiffs Edward and Brenda Wright (“Plaintiffs”) have filed a Motion for Costs under Superior Court Civil Rule 54. Upon a review of this motion, the Court concludes that it should be **GRANTED** in the amount of \$4,355 plus interest accrued on the \$25,000 arbitration award.

2. This case arises from injuries Plaintiff Edward Wright suffered as a result of an automobile accident with an insured client of Defendant State Farm Mutual Automobile Insurance Company (“Defendant”). On October 26, 2005, Plaintiffs received an arbitration award in the amount of \$25,000. Subsequently, Defendant requested a trial de novo. The Court, therefore, held a jury trial from January 29, 2007 through February 1, 2007. Ruling in favor of Plaintiffs, the jury returned a verdict in the amount of \$75,000 less \$15,000 which had previously been paid to Mr. Wright. Plaintiffs subsequently filed a Motion for Costs on February 7, 2007 and an Amended Motion for Costs on February 9, 2007. Defendant has not opposed the motion.

Plaintiffs, as the prevailing party, have requested reimbursement for the following:

- (1) Superior Court filing fee in the amount of \$205.00.
- (2) Arbitration costs paid by Plaintiffs in the amount of \$150.00.
- (3) Interest on the \$25,000.00 arbitration award on October 26, 2005, from which Defendants appealed.

(4) Expert Testimony by Dr. Grossinger, D.O. in the amount of \$3,000.00.

(5) Expert Testimony by Dr. Steven Diamond, D.O. in the amount of \$3,000.00.

3. Delaware Superior Court Civil Rule 68 provides in part “If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer.” This award of costs under Rule 68 is mandatory.¹ Under Rule 68, however, costs are not recoverable if the plaintiff receives no judgment from defendant, i.e. judgment is for defendant.² Delaware Superior Court Civil Rule Delaware Superior Court Civil Rule 54 provides that “costs shall be allowed... to the prevailing party upon application to the Court within ten (10) days of the entry of final judgment unless the court otherwise directs.”³ The Court may, therefore, award costs to plaintiff under Rule 54, when as here, plaintiff is the prevailing party.

4. As a preliminary matter, the Court finds that the Plaintiffs may recover the \$205 uncontested filing fee for the original complaint. Next, the Court will address Plaintiffs’ request for reimbursement of \$150 in arbitration expenses. Superior Court Rule 16.1(k)(11)(D)(iii) provides that,

¹ *Mulford v. Haas*, 2001 WL 541023 at *4 (Del. Super.).

² *Hercules, Inc. v. AIU Ins. Co.*, 784 A.2d 481, 509-10 (Del. 2001).

³ Super. Ct. Civ. R. 54(d).

“If the party who demands a trial de novo fails to obtain a verdict from the jury or judgment from the Court... more favorable to the party than the arbitrator’s order, that party shall be assessed the costs of the arbitration, and the ADR Practitioner’s total compensation.” In the case at bar, Defendant requested a trial de novo, and the jury awarded an amount in favor of Plaintiffs greater than the \$25,000 arbitration award. Thus, the Court finds that Plaintiffs are entitled to \$150 for their share of the arbitration fee.

In addition to the \$150 arbitration fee, Plaintiffs ask to recover interest accrued from October 26, 2005 on the \$25,000 arbitration award. Superior Court Civil Rule 16.1(k)(11)(D)(iii) also provides that, “(I)f the plaintiff obtains a verdict from the jury or judgment from the Court more favorable than the arbitration order, and the defendant demanded a trial de novo, interest on the amount of the arbitration order shall be payable in accordance with 6 Del. C. §2301 beginning with the date of the order.” Hence, the Court also finds that Plaintiffs are entitled to recover interest accrued on the \$25,000 arbitration award starting from October 26, 2005, the date of the arbitration order.

6. The award of costs for expert witness testimony is committed to the sound discretion of the trial court.⁴ When determining reasonable reimbursement for expert costs, the court must “recognize that a significant disruption to a physician’s practice occurs when a physician is called to testify as an expert witness and that such testimony is important to the court since it assists the trier of fact and serves a significant public interest.”⁵

There is no fixed formula to determine reasonable expert fees.⁶

Nevertheless, in 2002, the Court held that a fee of \$1,800 was appropriate for expert medical testimony that lasted about an hour and a half plus travel time for a total of a half-day of the witness’ time.⁷ In 2003, the Court further held that a medical expert could receive \$2,000 for three hours of testimony and two hours of travel time.⁸

Here, the Court finds that Plaintiffs’ request for \$3,000 in medical expert fees per doctor is exceedingly high. Therefore, in accordance with the Court’s prior decisions, Plaintiffs are only entitled to collect \$2,000 per doctor.

⁴ See *Donovan v. Delaware Water & Air Res. Comm’n.*, 358 A.2d 717, 723 (Del. 1976); 10 *Del. C.* §8906 (1999).

⁵ *Silwinski v. Duncan*, 1992 WL 21132 at *3 (Del.).

⁶ *Id.* at *2.

⁷ *Dunkle v. Prettyman*, 2002 WL 833375 at *4 (Del. Super.).

⁸ *Patterson v. Coffin*, 2003 WL 22853657 at *6 (Del. Super.).

7. In sum, Plaintiffs' Motion for Costs is **GRANTED** in the amount of \$4,355. Plaintiffs may also collect interest accrued from October 26, 2005 on the \$25,000 arbitration award.

IT IS SO ORDERED.

Judge Calvin L. Scott, Jr.