1999 WL 33485560
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United States District Court, W.D. Michigan,
Southern Division.

KALAMAZOO RIVER STUDY GROUP, Plaintiff,
v.
ROCKWELL INTERNATIONAL, et al.,
Defendants.

No. 1:95–CV–838.
|
Dec. 22, 1999.

OPINION

BELL, J.

***1** This matter is before the Court on Defendant Eaton Corporation's bill of costs and Plaintiff Kalamazoo River Study Group's motion to disallow part of those costs.

Eaton submitted a bill of costs in the amount of $72,594.78. It appears that Eaton and KRSG are in agreement as to the following categories of costs:

Fees of the Clerk	$2.50
Court Reporter Fees	$24,005.54
Witness Fees	$6,267.47
Other	$60.00

The only categories of expenses on which the parties have not agreed are exemplification and printing. Eaton has requested reimbursement in the amount of $39,394.73 for exemplification and copying. This figure includes $32,523.40 for photocopies and $6,871.33 for printing. KRSG objects to these figures on several grounds. First, KRSG contends that attributing 50% of the "Kalamazoo River Defense Group" exemplification costs to Eaton is not reasonable in light of Rockwell's "more prominent role during discovery and trial." Second, KRSG objects to Eaton's failure to submit proof that the photocopies were necessarily obtained for use in the case. Third, KRSG objects to the lack of supporting documentation for the $6,871.33 in printing costs.

As a preliminary matter, the Court agrees with KRSG that although Eaton has listed the printing charges under the heading "exemplification and copying," these two categories of expenses must be considered separately under 28 U.S.C. § 1920(3) & (4).

The Court is permitted to tax as costs "[f]ees for exemplification and copies of papers necessarily obtained for use in the case." 28 U.S.C. § 1920(4). The party seeking costs has the burden of establishing that the expenses he seeks to have taxed as costs are "authorized by applicable federal law, including proof of necessity and reasonableness under 28 U.S.C. § 1920." *Berryman v. Hofbauer,* 161 F.R.D. 341, 344 (E.D.Mich.1995).

Based upon this Court's review of the affidavit of Kathryn Humphrey, and the Court's familiarity with the quantity of information presented in motions and at trial in connection with the three Eaton facilities, the Court is satisfied that it was reasonable for counsel to divide the "Kalamazoo River Defense Group" costs evenly between Eaton and Rockwell.

KRSG's second objection relates to the lack of proof that the photocopies were necessarily obtained for use in the case. As this Court stated in *Glidden v. Jandernoa,* Case No. 1:96–CV–72 at *11 (W.D.Mich. February 19, 1999), exemplification costs are generally limited to "those costs incurred for copies of documents prepared for the court's consideration or for the opposing party," or for documents "served and filed in the case." *Id.* at *11 (quoting *Pion v. Liberty Dairy Co.,* 922 F.Supp. 48, 53 (W.D.Mich.1996); *Endress + Hauser, Inc. v. Hawk Measurement Sys. Pty. Ltd.,* 922 F.Supp. 158, 160 (S.D.Ind.1996)).

Eaton has not submitted a description of what documents were copied, or how those copies were used. Eaton has merely provided a gross number for photocopy charges, with a 10% reduction for duplicate internal and client convenience copies, and a vague explanation that "in many instances" copies made for convenience of counsel were not billed to any client account, and were not included in the bill of costs.

***2** This Court recognizes that this was a complicated and protracted case that necessarily involved large exemplification costs. Nevertheless, because Eaton has not given the Court any specificity regarding its exemplification charges, and because the Court believes that a 10% reduction for convenience copies is an unduly conservative estimate, the Court will reduce Eaton's exemplification charges by one-third, for a total of $21,693.11.

This Court noted in *Glidden,* that costs associated with demonstrative exhibits are only recoverable to the extent the exhibits were necessary to an understanding of an issue, a material aid, and not merely illustrative of other evidence. *Glidden, supra,* at *16 (citing *Endress + Hauser, Inc.,* 922 F.Supp. at 162). This Court further noted that to the extent charts and models serve to summarize evidence, they are not taxable. *Id.* (citing *Fulton Fed. Sav. & Loan Ass'n of Atlanta v. American Ins. Co.,* 143 F.R.D. 292, 300 (N.D.Ga.1991)).

Despite KRSG's objection to the lack of documentary support for Eaton's printing costs, Eaton has not produced any evidence detailing the nature of those expenses. The Court observes that Eaton produced many demonstrative charts at trial, the cost of which would not be recoverable under the authority cited above. Because Eaton has not met its burden of establishing that the printing costs are authorized by applicable federal law, the Court will not tax any of the costs attributable to printing.

In light of the foregoing discussion, the Court will tax costs in favor of Defendant Eaton and against Plaintiff KRSG as follows:

Fees of the Clerk	$2.50
Court Reporter Fees	$24,005.54
Witness Fees	$6,267.47
Other	$60.00
Printing	$0.00
Exemplification	$21,693.11

TOTAL TAXABLE COSTS	$52,028.62

An order consistent with this opinion will be entered.

ORDER TAXING COSTS

In accordance with the opinion entered this date,

IT IS HEREBY ORDERED that Plaintiff's motion to disallow part of Eaton Corporation's bill of costs (Docket # 886) is GRANTED IN PART AND DENIED IN PART.

IT IS FURTHER ORDERED that COSTS ARE TAXED in favor of Defendant Eaton and against Plaintiff KRSG in the amount of $52,028.62

All Citations

Not Reported in F.Supp.2d, 1999 WL 33485560