

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

HOSPIRA, INC.,

Plaintiff,

v.

FRESENIUS KABI USA, LLC,

Defendant.

Civil Action Nos. 1:16-cv-00651

1:17-cv-07903

Hon. Judge Rebecca R. Pallmeyer

HOSPIRA'S OBJECTIONS TO FRESENIUS KABI'S BILL OF COSTS

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Fresenius Kabi requests \$138,106.74 in costs. For the reasons discussed below, Fresenius Kabi is entitled to only \$49,690.72, and the Court should reduce Fresenius Kabi's request to this amount.

Costs that may be taxed for the prevailing party are limited to: (1) select clerk fees; (2) certain fees for transcripts necessarily obtained for use in the case; (3) fees and disbursements for printing and witnesses; (4) fees for exemplification and copying concerning materials necessarily obtained for use in the case; (5) docket fees; and (6) compensation of court appointed experts and for interpretation services. 28 U.S.C. § 1920 (2012). Costs beyond these specified categories may not be awarded. *See Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 445 (1987) (superseded by statute on other grounds). “The prevailing party bears the burden of demonstrating the amount of its recoverable costs because the prevailing party knows, for example, how much it paid for copying and for what purpose the copies were used.” *First Midwest Bank v. City of Chicago*, 337 F. Supp. 3d 749, 782 (N.D. Ill. 2018). As discussed below, some of Fresenius Kabi's requests fail to meet this standard.

I. Fees of the Clerk Should Not Be Included

Fresenius Kabi requests \$100.00 for the *pro hac vice* applications for two of its counsel. (Dkt. 185 at 2.) This fee is not recoverable. *SP Techs., LLC v. Garmin Int'l, Inc.*, No. 08 CV 3248, 2014 WL 300987, at *1 (N.D. Ill. Jan. 10, 2014) (Pallmeyer, J.). Fresenius Kabi relies on dicta from *United States v. Emergency Med. Assocs. of Illinois, Inc.*, 436 F.3d 726, 730 (7th Cir. 2006) for its request, but that dicta has not changed the settled law in this District.. (Dkt. 185 at 2.) *See e.g., Garmin Int'l, Inc.*, 2014 WL 300987; *Oleksy v. Gen. Elec. Co.*, No. 06-CV-1245, 2016 WL 7217725, at *2 (N.D. Ill. Dec. 12, 2016); *Abrams v. Van Kampen Funds, Inc.*, No. 01 C 7538, 2006 WL 452419, at *5 (N.D. Ill. Feb. 21, 2006).

II. Fees for Transcripts Should be Reduced from \$36,807.51 to \$21,578.82

Hospira does not object to the majority of Fresenius Kabi's costs in this category. However, Fresenius Kabi's request concerning transcripts includes the following non-taxable costs: costs for (a) realtime transcripts; (b) unnecessary video depositions; (c) deposition exhibit copies; and (d) unnecessary expedited transcripts. These costs should not be awarded.

A. Fees for Realtime Transcripts Should Not Be Included

Realtime services are obtained for the convenience of the attorneys and are not taxable. *Cascades Computer Innovation, LLC v. Samsung Elects. Co.*, No. 11-CV-4574, 2016 WL 612792, at *4 (N.D. Ill. Feb. 16, 2016). Fresenius Kabi concedes as much but still included this cost in its request, presumably by error. (*See* Dkt. 185 at 3; Dkt. 185, Ex. 4.) The cost for realtime services, which should be excluded from Fresenius Kabi's award, is **\$1,780.80**. (*See* Ex. 1.)

B. Fees for Videotaping Certain Depositions Should Not Be Included

"Generally, [c]ourts in this circuit will not award costs for videotaping depositions where a transcript was also purchased." *Garmin Int'l, Inc.*, 2014 WL 300987, at *5 (internal quotes omitted). Only costs for video depositions actually played at trial as affirmative testimony will be taxed. *Chamberlain Group, Inc. v. Techtronic Industries Co., Ltd.*, 315 F.Supp.3d 977, 1023 (N.D. Ill. 2018). But Fresenius Kabi's request includes the videotape costs for twelve depositions—including three of its own witnesses (James Kipp, Shweta Mowli and Abby Hickman)—that were never played at trial. The videotape costs for these twelve depositions are not recoverable. Fresenius Kabi's costs should be reduced by **\$7,500.00**. (*See* Ex. 2.)

C. Fees for Exhibit Copies Should Not Be Included

The requesting party must demonstrate that copies of deposition exhibits for which it seeks costs were reasonable and necessary, and not merely made for attorney convenience.

Garmin Int'l, Inc., 2014 WL 300987, at *6; *Nilssen*, 2007 WL 257711 at *3. In *Nilssen*, the requesting party used 837 pages of exhibits for a two-day deposition. *Nilssen*, 2007 WL 257711 at *3. The court held the associated cost non-recoverable because the party failed to demonstrate that the exhibits were reasonable and necessary. Here, by way of example, Fresenius Kabi's request is even more excessive—it seeks costs for 953 pages of exhibits printed for a single 5.5 hour deposition. (*See, e.g.*, Dkt. 185-6 at 2.) Fresenius Kabi, like the party in *Nilssen*, “has not demonstrated that copies of the exhibits were reasonable and necessary for the depositions, especially in light of the number of exhibits copied by the court reporter services.” *Id.* Fresenius Kabi's costs should be reduced by **\$3,963.57**. *See e.g., Garmin Int'l, Inc.*, 2014 WL 300987, at *6. (*See Ex. 3.*)

D. Certain Fees for Expedited Transcripts Should Not Be Included

Courts generally decline to award costs for expedited transcripts unless the party “articulates some specific necessity.” *First Midwest Bank*, 2018 WL 4126570, at *20. Fresenius Kabi fails to do so. Instead, it provides only a blanket assertion that the 5-day expedited transcripts were necessary to prepare for trial. (Dkt. 185 at 6.) But each of the depositions for which it ordered expedited transcripts took place many weeks before trial. If that is not enough, many of these expedited transcripts were not relevant to subsequent depositions. For example, Fresenius Kabi seeks to be reimbursed for expediting the transcript of the June 13, 2018, deposition of Hospira's licensing expert (Dkt. 185-6 at 1), which took place *after* the deposition of Fresenius Kabi's licensing expert on June 7, 2018 (Dkt. 185-7 at 1) and more than a month before trial began.

Fresenius Kabi should not be awarded costs for the expedited transcripts of the following witnesses that were not relevant to subsequent depositions: Christopher Seaton, Eric Sheinin,

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