

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

VERIZON NEW ENGLAND, INC. :  
 :  
 v. : C.A. No. 10-336S  
 :  
 UNITED STATES OF AMERICA :

**MEMORANDUM AND ORDER**

Pending before me for determination (28 U.S.C. § 636(b)(1)(A); LR Cv 72(a)) is Defendant's Motion to Compel Payment of Expert Witness Fees and Expenses pursuant to Fed. R. Civ. P. 26(b)(4)(E)(i). (Document No. 20). Plaintiff objects in part. (Document No. 22).

Under Fed. R. Civ. P. 26(b)(4)(E)(i), the party deposing an expert is responsible for paying the expert a "reasonable fee for time spent in responding to discovery." See Stewart v. City of Houston, C.A. No. H-07-4021, 2010 WL 1524015 at \*1 (S.D. Texas April 14, 2010) ("fees awarded...include time spent in preparing for the deposition, in traveling to the deposition, and in the deposition."). Plaintiff agrees that it is responsible for paying "reasonable" fees and expenses but objects to the fees and expenses sought by Defendant's expert as "unreasonable." (Document No. 22, p. 1).

This dispute involves the deposition of Defendant's expert, Mr. James Courtney, which took place on December 21, 2011 in Rhode Island. Mr. Courtney traveled from Norfolk, Virginia to Rhode Island on December 20, 2011 with a flight change in Baltimore, Maryland. Mr. Courtney was deposed by Plaintiff's counsel on December 21, 2011 from 10:00 a.m. to 1:30 p.m. Thereafter, he flew back to Norfolk, again through Baltimore.

On January 18, 2012, Mr. Courtney submitted an invoice to Plaintiff's counsel for the deposition in the amount of \$2,183.26 which consisted of \$1,560.00 in "labor costs" (twenty-six hours at \$60.00 per hour), \$285.17 for the round-trip airfare and \$338.09 for food and one night's lodging. The Court finds the hourly rate, airfare and food and lodging expense to be reasonable. Thus, the only open issue is the reasonableness of the twenty-one hours<sup>1</sup> of billable time requested by Mr. Courtney.

Plaintiff's primary argument is that, since the deposition was only three and one-half hours, Mr. Courtney should have limited his travel to a single day and not have arrived on the day prior to the deposition. Plaintiff's position is unreasonable. First, Defendant has represented that Mr. Courtney's flight up (with a stop in Baltimore to change planes) was approximately five hours from airport departure to airport arrival, and his flight back (again with a stop in Baltimore) was approximately six hours from airport departure to airport arrival. Although physically possible, it is unreasonable to expect someone to travel well over twelve hours (including transportation to and from the airport) and sit for a deposition in a single day. Thus, it was not unreasonable for Mr. Courtney to fly up on the day before the deposition, particularly in the absence of direct flights between Norfolk and Providence. In addition, the length of the deposition (subject to the Rule 30(d)(1) durational limit) was controlled by Plaintiff's counsel, and Mr. Courtney would not know in advance if the deposition would be one hour or several hours. Finally, on November 7, 2011, Defendant's counsel sent an email to Plaintiff's counsel regarding Mr. Courtney's expenses which

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<sup>1</sup> Although the invoice is for twenty-six hours, the dispute is only over twenty-one hours since Defendant agreed to pay for five hours to cover time spent by the expert inspecting the air dryer in issue and conferring with Defendant's counsel in the afternoon on December 20, 2011.

included “hotel expense.” (Document No. 24-1). Thus, Plaintiff was on notice that Mr. Courtney planned to stay overnight, and it did not object at the time.

Plaintiff has not shown that twenty-one hours of total time including travel is unreasonable under these circumstances. Mr. Courtney’s total round-trip flight time from departure to arrival was eleven hours. In addition, it is reasonable to estimate another two hours of travel time each way to get to and from the airport and through security screening. Finally, he was deposed for three and one-half hours. This totals eighteen and one-half hours so, with other preparation and incidental time, a total of twenty-one hours is not patently unreasonable. Finally, if the cost of Mr. Courtney’s deposition was an overriding concern for Plaintiff, it could have deposed Mr. Courtney at his office in Virginia or by alternative means such as video conference.

For the foregoing reasons, Defendant’s Motion to Compel Payment of Expert Witness Fees and Expenses in the amount of \$1,883.26 (Document No. 20) is GRANTED. Plaintiff shall promptly make payment of that portion of Mr. Courtney’s invoice, and Defendant shall forward partial payment to Mr. Courtney of \$300.00 as agreed.

SO ORDERED

/s/ Lincoln D. Almond  
LINCOLN D. ALMOND  
United States Magistrate Judge  
March 7, 2012