

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

JOSEPH HINEMAN,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. N10C-03-014 CLS
)	
PAUL M. IMBER, D.O., and EAR,)	
NOSE, THROAT AND)	
ALLERGY ASSOCIATES, LLC, a)	
Delaware company,)	
)	
Defendant.)	

ORDER

AND NOW, TO WIT, this 22nd day of March, 2012, **IT IS HEREBY**

ORDERED as follows:

Plaintiff identified neurologist Richard J. Meagher, M.D., (“Dr. Meagher”) as an expert on causation and damages. Dr. Meagher’s deposition was scheduled for March 1, 2012. Defendants were informed that the deposition fee was \$5,250.00 which consisted of a \$5,000.00 deposition fee and an administrative fee of \$250.00.

Defendants filed a motion to reduce the expert deposition fees of Dr. Meagher. They contend in their motion that their deposition of Dr. Meagher should last approximately two hours. Additionally, Defendants argue that pursuant to Superior Court Civil Rule 26(b)(4)(c), the expert deposition fee of \$5,250 is

unreasonable and must be reduced according to the 1995 study by the Medical Society of Delaware.

Plaintiff responded to Defendants' motion claiming that the deposition fee has been used by Dr. Meagher's practice prior to his deposition taken on March 1, 2012. Plaintiff argues that the fee reflects the time spend away from his practice which included not being able to schedule patients in the morning of March 1, 2012. Additionally, Plaintiff submits that neurosurgeons typically charge more than a general practitioner in part because of the additional education and training required.

Dr. Meagher's fee of \$5,250.00 is not reasonable and is substantially above the applicable ranges set forth in the 1995 study by the Medical Society of Delaware. Pursuant to Superior Court Civil Rule 26(b)(4)(c):

Unless manifest injustice would result, (i) the Court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A)(ii) and (b)(4)(B).¹

The issue in this motion is what constitutes a reasonable fee under Super. Ct. Civ. R. 26(b)(4)(c). Generally, to calculate reasonable fees for expert witness testimony and depositions, this Court has used the figures reflected in a 1995 report from the Medical Society of Delaware's Medico-Legal Affairs Committee.²

¹ Super. Ct. Civ. R. 26(b)(4)(c).

² *Gates v. Texaco, Inc.*, 2008 WL 1952164, at *1 (Del. Super. Mar. 20, 2008) *aff'd Texaco Inc. v. Gates*, 962 A.2d 257 (Del. 2008) (TABLE).

The Court then calculates a reasonable fee by adding the current percentage increase to the fee range from 1995.³

The Medico-Legal Study in 1995 reported that fees for a two hour deposition ranged from \$500.00 to \$900.00 with an additional charge of \$159.00 to \$250.00 for each additional hour.⁴ From 1995 to December 2011, the medical care price index has increased by 57.3%.⁵ Accordingly, the range for a two hour deposition with the 57.3% increase ranges from \$786.50 to \$1,415.70. Each subsequent hour of deposition testimony ranges from \$250.11 to \$393.25 per hour. Thus, a reasonable fee for Dr. Meagher is \$1,400.00 for a two hour deposition and \$390.00 for each additional hour.

IT IS SO ORDERED.

/S/CALVIN L. SCOTT
Judge Calvin L. Scott, Jr.

cc: Prothonotary's Office
Richard Galperin, Esq.
Allyson Britton DiRocco, Esq.
Bruce Hudson, Esq.

³ *Id.*

⁴ See *Lurch v. Roberts*, 2001 WL 238158, at *1 (Del. Super. Jan. 25, 2001).

⁵ See U.S. Department of Labor, Bureau of Labor Statistics, *Archived News Released for Consumer Price Index*, available at http://www.bls.gov/schedule/archives/cpi_nr.htm (last visited March 20, 2012).