

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED

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CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT
TOLEDO, OHIO

MARY A. DENDINGER, et al.,)

Plaintiff(s),)

-vs-)

CHRYSLER PLASTIC PRODUCTS)
CORP., et al.,)

Defendant(s).)

* * *

Case No. C 87-7117

MEMORANDUM and ORDER

WALINSKI, J.

This cause is before the Court on defendants' motion for an order requiring plaintiffs to pay expert witness fees incurred during discovery and plaintiffs' opposition thereto. For the following reasons, defendants' motion is partially granted and partially denied.

Federal Rule of Civil Procedure 26(b)(4) authorizes the taking of experts' depositions. Subdivision 26(b)(4)(C) specifically reads:

Unless manifest injustice would result, (1) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery

The rule was adopted in order to avoid the injustice of one party benefiting from the other's expert witnesses without contributing to their costs. See Moore's Federal Practice, §26.66(5) (2d ed. 1984). Moreover, the language of the rule is mandatory, absent a finding of manifest injustice. 10 Fed. Proc. L.Ed §26:134.

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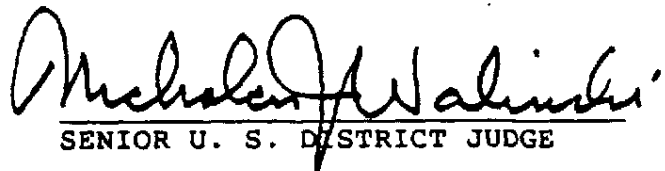
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Shindell's, Dr. Harbison's, Dr. Chiazze's, Dr. Zenz's, or Peterson Associates' fees.

Defendants assert that plaintiffs used one of the depositions in issue in their case in chief. It would be unfair and contrary to 26(b)(4)(c) if defendants were forced to pay for plaintiffs case preparation. Therefore, with respect to that single deposition, plaintiffs are required to pay Dr. Monson's fees of \$1,000.00.

It is therefore,

ORDERED that defendants motion is DENIED with respect to \$6,966.71 of the request, and GRANTED in the amount of \$1,000.00.


SENIOR U. S. DISTRICT JUDGE

Toledo, Ohio.
June 6, 1989

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