



LEXSEE 2003 U.S. DIST. LEXIS 4406

**KATHLEEN MADALINE JARVIS, Plaintiff, - against - FORD MOTOR
COMPANY, Defendant.**

92 Civ. 2900 (NRB)

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
NEW YORK**

2003 U.S. Dist. LEXIS 4406

**March 20, 2003, Decided
March 21, 2003, Filed**

PRIOR HISTORY: *Jarvis v. Ford Motor Co.*, 283 F.3d 33, 2002 U.S. App. LEXIS 1916 (2d Cir. N.Y., 2002)

DISPOSITION: [*1] Plaintiff's request to recover expert fees in excess of statutory amount of \$ 40.00 per day was denied.

COUNSEL: For Kathleen Madaline Jarvis, PLAINTIFF: George N Tompkins, Jr, Schnader Harrison Segal & Lewis LLP, New York, NY USA.

For Ford Motor Company, DEFENDANT: Howard L Wexler, Herzfeld & Rubin, PC, New York, NY USA.

JUDGES: NAOMI REICE BUCHWALD, UNITED STATES DISTRICT JUDGE.

OPINION BY: NAOMI REICE BUCHWALD

OPINION

MEMORANDUM AND ORDER

NAOMI REICE BUCHWALD

UNITED STATES DISTRICT JUDGE

On January 8, 2002, the Clerk of the Court entered a bill of costs following the decision of the Second Circuit to reinstate the jury's verdict in plaintiff's favor. Plaintiff

has objected to three aspects of the bill of costs. We have carefully considered all of plaintiff's objections and address them in turn.

I. Videotaped Deposition of Alan Updegrove

First, plaintiff asks this court to modify the costs taxed so as to include the additional costs of depositing Mr. Updegrove beyond the cost of the deposition transcript itself. Specifically, plaintiff requests that she be awarded the additional costs incurred in videotaping the deposition, in obtaining a conference room for the deposition, [*2] and in the rush editing of the videotape. We note that the statutory standard in 28 U.S.C. § 1920 for recovery of costs of transcripts, depositions, pretrial proceedings, or trials, is whether they were "necessarily obtained for use in the case", 28 U.S.C. § 1920(2)&(4). *See also Gemveto Jewelry Co. Inc. v. Jeff Cooper Inc.*, No. 81 Civ. 3447, 1990 U.S. Dist. LEXIS 763 at * 6 (S.D.N.Y. Jan. 25, 1990)(noting that "it is within the discretion of the district court to allow as costs and expenses incurred in taking a deposition, as long as the deposition appeared to be reasonably necessary when it is taken.") We find that the overall necessity of Mr. Updegrove's testimony warrants the exercise of our discretion to award the costs associated with the videotaping of his deposition and the obtaining of a conference room in which to do so. However, we will not permit the plaintiff to recover costs associated with the "rush editing" of the tape. We agree with Ford that "proper questioning of the witness at the time of the

deposition was taken would have eliminated the need for such extensive last-minute editing of Mr. Updegrove's [*3] testimony." Ford's Mem. of Law in Opp'n to Mot. to Modify Bill of Costs at 2.

II. Expert Witness Fees

Next, plaintiff argues we should exercise our discretion to allow her to recover expert witness fees, beyond the \$ 40.00 daily witness fee applicable to lay witnesses, as "the verdict and judgment indicate that the testimony of her experts was necessary to the jury, the trial court, and the Court of Appeals' resolution of the issues." Jarvis' Reply Mem. at 4. We reject plaintiff's application. Both the Supreme Court and the Second Circuit have spoken directly on this issue and have indicated that expert witness fees, beyond the statutory witness fees, are not taxable. *See Crawford Fitting Co. v. J.T. Gibbons Inc.*, 482 U.S. 437, 442, 96 L. Ed. 2d 385, 107 S. Ct. 2494 (1987)("We think that it is clear that in §§ 1920 and 1821, Congress comprehensively addressed the taxation of fees for litigants' witnesses It is ... clear that when Congress meant to set a limit on fees, it knew how to do so. We think that the inescapable effect of these sections in combination is that a federal court may tax expert witness fees in excess of the [daily] limit set out [*4] in § 1821 (b) only when the witness is court-appointed. The discretion granted by Rule 54(d) is not a power to evade this specific congressional command. Rather, it is solely a power to decline to tax, as costs, the items enumerated in § 1920."); *United States ex rel. Evergreen Pipeline Constr. Co. v. Merritt Meridian Constr. Corp.*, 95 F.3d 153 (2d Cir. 1996)("The types of witness fees which may be shifted are limited by 28 U.S.C. § 1821 We are at a loss to see how [plaintiff] could seek [expert witness fees] in light of *Crawford*". Thus, we find that the statutorily permitted \$ 40.00 daily fee for plaintiff's expert witnesses was appropriately taxed by the Clerk of the Court.

III. Model Costs

Finally, plaintiff argues that we should exercise our discretion to include the cost of the model, created by one of her expert witnesses, Samuel Sero, which demonstrated the Aerostar's speed/cruise control system. The Second Circuit has allowed recovery for expenses associated with the preparation of such models, where such materials are reasonably necessary for use in trial. *See In re Air Crash Disaster at John F. Kennedy Intern.*

Airport, 687 F.2d 626, 631 (2d Cir. 1982) [*5] ("Under § 1920(4) a prevailing party is entitled to the reasonable expense of preparing maps, charts, graphs, photographs, motion pictures, photostats and kindred materials. This has been construed to permit awards of costs for statistical consulting costs and computer expenses, for *demonstration models and exhibits*, for maps and aerial photos, for a scientific survey of oil wells, and for technical drawings On the other hand, the expense of an expert's research and analysis in preparing for trial, as distinguished from producing an exhibit, is not a recoverable cost.") (internal citations omitted) (emphasis added).

While it is true that the \$ 3,200 receipt submitted by Jarvis does not identify or itemize the various costs in creating the model, we find that such itemization is not necessary where, as here, all costs clearly fall under the category of "producing an exhibit." Indeed, in assessing this receipt, we find no difference between a model created by an outside contractor and a model created by an expert witness himself. Indeed, as this model was reasonably necessary to explain the intricacies of the speed/cruise control system, and the creation of such a model by plaintiff's [*6] expert witness was not merely "research and analysis in preparing for a trial", we award plaintiff the costs associated with its production.

CONCLUSION

For the reasons stated above, we deny plaintiff's request to recover expert fees in excess of the statutory amount of \$ 40.00 per day awarded by the Clerk of the Court. We also will not permit plaintiff to recover any "rush editing" charges associated with the videotaped deposition of Alan Updegrove. We will, however, permit plaintiff to recover the \$ 775.00 cost of videotaping Mr. Updegrove's deposition, the \$ 454.56 cost of obtaining a conference room for this deposition, as well as the \$ 3,200 cost associated with the creation of the Aerostar speed/cruise control model. A judgment consistent herewith should be submitted on notice.

IT IS SO ORDERED.

DATED: March 20, 2003

NAOMI REICE BUCHWALD

UNITED STATES DISTRICT JUDGE