UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, ON BEHALF OF ITSELF AND ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,

v.

HOUSEHOLD INTERNATIONAL, INC., ET AL.,

Defendants.

Lead Case No. 02-C-5893
(Consolidated)

CLASS ACTION

Judge Ronald A. Guzman

DEFENDANTS' OBJECTIONS TO PLAINTIFFS' MOTION FOR ENTRY OF BILL OF COSTS

Defendants Household International, Inc., William F. Aldinger, David A. Schoenholz and Gary Gilmer ("Defendants") submit the following Objections to Plaintiffs' Motion for Entry of Bill of Costs.

INTRODUCTION

On December 16, 2013, Plaintiffs moved this Court for entry of their Bill of Costs in which they seek $623,257.78. By this Bill of Costs, Plaintiffs seek "costs" in the amount of $215,530.21 for "electronic legal research" fees. Pls.' Mot. 5. Such "electronic legal research" fees are not an item of "costs" under 28 U.S.C. § 1920, and Seventh Circuit precedent makes clear that legal research expenditures are not recoverable on a Rule 54(d) motion. These authorities hold that class counsel may recover such fees, if at all, in the context of an award of attorneys' fees rather than as costs. Indeed, the Motion by Class Counsel for an Award of Attorneys' Fees (Dkt. 1968) explicitly seeks to recover for "Westlaw" and "Online Legal Research" expenditures. (*E.g.*, Dkt. 1964 at 3.)

Although the other "costs" submitted by Plaintiffs are not categorically foreclosed as a matter of law, issues arise as to the sufficiency of the documentary support Plaintiffs have submitted to the Court in support of their proposed Bill of Costs. Defendants respectfully request that the Court ensure that the requisite standards are satisfied as to the documentation of such costs.

ARGUMENT

I. PLAINTIFFS MAY NOT RECOVER FOR THEIR CLAIMED COMPUTERIZED LEGAL RESEARCH EXPENDITURES

a. Computerized Legal Research Expenditures are not Recoverable Under § 1920

Section 1920 confines recoverable costs to the following categories: (1) the fees of the clerk and marshall; (2) fees for court reporters and transcripts; (3) fees for printing and witnesses; (4) fees for copies of papers necessarily obtained for use in the case; (5) docket fees; and (6) compensation of court appointed experts and interpreters. Expenses that fall outside those categories are not recoverable. *Republic Tobacco Co.* v. *North Atlantic Trading Co.*, 481 F.3d 442, 447 (7th Cir. 2007) (citing *Crawford Fitting Co.* v. *J.T. Gibbons, Inc.*, 482 U.S. 437, 441-42 (1987)). A series of Seventh Circuit authorities have confirmed that computerized legal research fees do not fall within any of the § 1920 categories, making such fees non-recoverable as "costs" on a Rule 54(d) motion. *See Tchemkou* v. *Mukasey*, 517 F.3d 506, 512-13 (7th Cir. 2008); *Montgomery* v. *Aetna Plywood, Inc.*, 231 F.3d 399, 409-10 (7th Cir. 2000); *Uniroyal Goodrich Tire Co.* v. *Mutual Trading Corp.*, 63 F.3d 516, 526 (7th Cir. 1995); *Haroco, Inc.* v. *Am. Nat'l Bank & Trust Co. of Chicago*, 38 F.3d 1429, 1440-41 (7th Cir. 1994).

Each of these cases observes that computerized legal research expenses are akin to attorneys' fees, not costs, and are compensable only on motions for attorneys' fees. As the *Haroco* court explained:

> Computerized legal research involves an attorney sitting down in front of a computer and researching legal issues by searching through a database which now includes almost every resource one would find in the country's largest law libraries. In addition to the attorney charging the client for the time he or she spends doing this research, the companies that offer the computerized legal research services also charge a fee. Theoretically, even though the clients now pay two fees, their ultimate bill should be lower because the attorney should be

> able to do the research more quickly and efficiently. If this research had been done manually by an attorney sitting in the library reading through books rather than sitting before a computer screen, nobody would dispute that the attendant fees would be properly classified as attorney's fees and ***not costs***.

38 F.3d at 1440 (emphasis added).

While Plaintiffs may therefore seek to recover electronic legal research expenses in connection with a motion for attorneys' fees, as they have now done (*see, e.g.*, Dkt. 1964) they cannot properly seek to recover such expenses as "costs," and indeed the Court lacks authority under the governing law to include such expenses in an award of "costs." *See Crawford*, 482 U.S. at 442 ("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."); *Feldman* v. *Olin Corp.*, 2011 WL 711054, at *3 (S.D. Ill. Feb. 22, 2011) ("Because the costs of computerized research are not specifically enumerated in § 1920 and this Court declines to interpret the statute such that they are included, there is no need to review the reasonableness of the charges submitted by Defendants.").

Plaintiffs cite to the decision in *Bloch* v. *Frishholz*, 2008 WL 4889091, at *4 (N.D. Ill. June 26, 2008), which included $5.99 in Westlaw fees in a "costs" award. *See* Pls.' Mem. 5.[1] *Bloch* in turn relied on the Seventh Circuit's per curiam opinion in *Little* v. *Mitsubishi Motors N. Am., Inc.*, 514 F.3d 699, 701 (7th Cir. 2008), which appeared to suggest in dicta that such fees may be considered taxable costs under § 1920. In the past five years, however, developments in the case law have made clear that *Little* did not reflect a change of course in the long line of Seventh Circuit authority, cited above, holding that computerized legal research

[1] Plaintiffs also cite to this Court's decision in *Scheib* v. *Grant*, 1993 U.S. Dist. LEXIS 10698 (N.D. Ill. Aug. 3, 1993), which also awarded legal expenses as costs. As discussed herein, the Seventh Circuit has clearly held since that time that such legal research expenses are not recoverable as costs.

costs are not authorized under § 1920. A more recent case from this district explained that authority:

> Plaintiffs object to [defendant's] request for reimbursement of the costs of computerized research (Lexis/Westlaw) in the amount of $547.67. [Defendant] relies on [*Little*], in which the court affirmed, without discussion, the district court's award of costs for computerized legal research. . . . [I]n affirming the district court's decision in *Little*, the court seems to have bypassed the significant Seventh Circuit authority providing that computerized legal research costs are only recoverable as part of an attorney fee award, rather than as costs of suit. . . .
>
> Conceptually, the conduct of computerized legal research (as opposed to manual research) ordinarily corresponds to a reduction in the amount of attorney time needed to do the research. . . . Therefore, there is no difference between a situation where an attorney researches manually and bills only the time spent and a situation where the attorney does the research on a computer and bills for both the time and the computer fee. In both situations, the costs amount to attorney's fees, and they are not recoverable as costs under section 1920.
>
> Furthermore, absent express statutory authority, a court may tax as costs only those expenses specifically enumerated under 28 U.S.C. § 1920. . . . Because the costs of computerized research costs are not included in section 1920, the Court reduces the amount [defendant] claims by $547.67.

Cleary v. *Philip Morris Inc.*, 2010 WL 4039793, at *1-2 (N.D. Ill. Oct. 14, 2010) (citations and quotation marks omitted); *see also U.S. ex rel. Yannacopoulos* v. *Gen. Dynamics*, 2012 WL 1748120, at *4 (N.D. Ill. May 15, 2012) (sustaining objection to bill of costs for computerized legal research); *Clarendon Nat. Ins. Co.* v. *Medina*, 2010 WL 3526515, at *2 (N.D. Ill. Sept. 1, 2010) (same); *Rogers* v. *Baxter Int'l Inc.*, 2011 WL 941188, at *5 (N.D. Ill. Mar. 16, 2011) (same).[2]

[2] *See also Feldman*, 2011 WL 711054, at *2-3; *Muhammad* v. *Caterpillar, Inc.*, 2012 WL 1893655, at *1 (C.D. Ill. May 23, 2012); *Rain* v. *Rolls-Royce Corp.*, 2010 WL 2990116, at *2 (S.D. Ind. July 27, 2010); *Thomas* v. *City of Peoria*, 2009 WL 4591084, at *2-3 (C.D. Ill. Dec. 3, 2009); *Mason* v. *Smithkline Beacham Corp.*, 2008 WL 5397579, at *4 (C.D. Ill. Oct. 7, 2008).

Plaintiffs fail to address the long line of Seventh Circuit authorities, and recent cases from this district, that hold legal research expenses to be outside the scope of recoverable costs. Those authorities make clear that Plaintiffs cannot recover the $215,530.21 in legal research expenses as taxable costs as they seek to do on this motion.[3]

II. THE COURT SHOULD EXERCISE ITS DISCRETION IN DETERMINING WHETHER PLAINTIFFS HAVE MET THEIR BURDEN AS TO THE REMAINDER OF THE REQUESTED COSTS

Although the remaining categories of "costs" sought by Plaintiffs are not foreclosed as a matter of law, Plaintiffs' burden of proof in seeking such "costs" is not a "mere formality." *Trading Technologies Int'l Inc.* v. *eSpeed, Inc.*, 750 F. Supp. 2d 962, 969 (N.D. Ill. Oct. 29, 2010). "[B]efore a prevailing party may require its adversary to pay costs, the prevailing party must prove with evidence and not merely with *ipse dixit* statements—that the costs were actually incurred, were reasonable in amount, and were necessary." *Id.* To ensure this burden is met, the Court must give "careful scrutiny" to proposed bills of costs. *Farmer* v. *Abrabian Am. Oil Co.*, 379 U.S. 227, 235 (1964); *see also Young* v. *City of Chicago*, 2002 WL 31118328, at *1 (N.D. Ill. Sept. 24, 2002) ("This court must review a prevailing party's bill of costs in scrupulous detail.").

Plaintiffs fall short of the requisite standard, and do not provide sufficient documentation to support the claimed costs, as to various items. For instance, Plaintiffs assert, unsupported by any documentation, that they are owed $13,229 for costs associated with the travel expenses of a single trial witness (Elaine Markell). *See* Cook Decl. ¶ 5, Ex. A.

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[3] In any event, Plaintiffs fail to demonstrate that any such expenses were reasonable and necessary. *Dupuy* v. *McEwen*, 648 F. Supp. 2d 1007, 1031 (N.D. Ill. 2009); *see also Williams* v. *Cmty. High Sch. Dist. 218*, 2006 WL 681045, at *2 (N.D. Ill. Mar. 13, 2006); *OneBeacon Ins. Co.* v. *First Midwest Bank*, 2009 WL 2612518, at *2 (N.D. Ill. Aug. 24, 2009).

Defendants take no position as to the merits of this assertion or as to the remainder of Plaintiffs' claimed costs, but respectfully suggest that the Court must carefully consider whether Plaintiffs have carried their burden as to these various costs.

CONCLUSION

For the foregoing reasons, Plaintiffs motion for entry of costs should be denied, at a minimum, as to their request for costs of computerized legal research.

Respectfully submitted,

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