

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

KIM REINDL, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 04-2584-RDR
)	
CITY OF LEAVENWORTH, KANSAS,)	
et al.,)	
)	
Defendants.)	

ORDER

The undersigned U.S. Magistrate Judge, James P. O'Hara, has been informed that all of the claims and issues in this case have settled, except for one item. It concerns the amount that the plaintiffs, Kim Reindl and Mary Joan Reindl, are obligated to pay the defendants, the City of Leavenworth, Kansas, Lee Doehring, James Bridges, Wayne Flewelling, Sean Goecke, and Nicholas Nordmann, as a result of the order filed by the undersigned on August 23, 2005.¹ On October 19, 2006, at the request of the parties' respective attorneys, the undersigned held a telephone hearing to address the above-described issue. Plaintiffs appeared through counsel, Allen A. Ternent. Defendants appeared through counsel, Michael K. Seck. Messrs. Ternent and Seck acknowledged that the instant issue is non-dispositive within the meaning of 28 U.S.C. § 636 and agreed on behalf of their clients to submit the issue to the undersigned for clarification of his order and agree to be bound by such ruling. This

¹ Doc. 77.

is with the further understanding that, sometime within the next ten days, the parties will file a stipulation for dismissal with prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(ii) and, concurrent with said filing, tender a proposed corresponding order of dismissal to the chambers of the presiding U.S. Senior District Judge, Hon. Richard D. Rogers.

In addition to the court's order of August 23, 2005 (doc. 77), and the statements of counsel made during the October 19, 2006, hearing, the court has considered the letters submitted by counsel in advance of the hearing. For benefit of the record, a copy of Mr. Seck's letter dated September 22, 2006 is attached to this order as Exhibit 1; a copy of Mr. Ternent's letter dated September 25, 2006 is attached to this order as Exhibit 2. For the reasons explained below, the court generally concurs with the positions taken by Mr. Ternent on plaintiffs' behalf.

The facts material to the issue now before the court are as follows. On August 8, 2005, plaintiffs filed a motion for leave to designate expert witnesses out of time.² On August 23, 2005, the undersigned magistrate judge issued his order granting plaintiffs' motion on certain conditions.³ The relevant portions of that order are as follows:

Therefore, despite plaintiffs' failure to show good cause, the court will exercise its inherent discretion and grant plaintiffs' motion to designate expert witnesses out of time (**doc. 73**). However, in granting their motion, the court believes it entirely appropriate to place stringent requirements on plaintiffs.

....

Defendants will incur additional expert witness expenses, certainly in the hundreds of dollars and perhaps as much as a few

² Doc. 73.

³ Doc. 77.

thousand, in asking their previously retained and disclosed experts to modify their reports to take into account issues that presumably will be raised by plaintiffs' experts. The court believes it manifestly fair to try to ameliorate defendants' prejudice as a result of plaintiffs' above-described failure to meet the terms of the scheduling order. Therefore, plaintiffs shall be responsible for defendants' additional expenses. By **December 1, 2005**, defendants shall provide plaintiffs with a bill of expenses incurred in revising the defendants' expert reports. Plaintiffs shall pay defendants for all such costs by **December 15, 2005**, and shall file a certificate of service with the court indicating that the fees have been paid.

Defendants shall also have the opportunity, should they so choose, to depose any experts designated by plaintiffs. These depositions shall take place by **November 8, 2005**. As the discovery period has closed, however, and since plaintiffs are at fault for these delays, plaintiffs shall not be allowed to take any further discovery in this case, including but not limited to deposing defendants' experts.

The court is sensitive to the fact that plaintiffs might not be in the financial position to pay for defendants' expert fees in connection with revising reports. Nevertheless, the court's granting of plaintiffs' motion is specifically and expressly contingent upon plaintiffs timely payment of these expenses. If plaintiffs do not pay timely defendants' additional expert expenses, the court will not hesitate to strike the expert designations served by plaintiffs.⁴

Defendants assert that, in order to provide their experts sufficient information to update their reports, they needed to depose plaintiffs' experts, Dr. Peter Cristiano, who is located in Leavenworth, Kansas, and Edward Leach, who was located in Idaho. Thereafter, pursuant to the court's order, defendants filed their Notice of Bill of Expenses on November 30, 2005.⁵ Also on November 30, 2005, defendants sent plaintiffs' counsel a letter to which they attached

⁴ Doc. 77 at 10-11 (emphasis in original).

⁵ Doc. 82.

an itemization and receipts of the expenses they had incurred. Plaintiffs promptly paid the bill (\$7,555.51). However, plaintiffs now seek clarification of what expenses were intended by the court's ruling to be reimbursed. Plaintiffs have no objection to reimbursing defendants for the costs incurred for their experts to revise their reports (\$1,915.00).⁶ But they do object to paying the attorney's fees and expenses related to the depositions of Dr. Cristiano and Mr. Leach (\$5,640.51).⁷ Plaintiffs argue that these fees and expenses are normal and expected expenses of discovery to defendants and that they do not believe it was the intent of the court to require them to bear such cost. Plaintiffs further argue that to do so would constitute a "windfall" for defendants.

Upon review of the August 23, 2005 order, the court agrees that further clarification is warranted. For several reasons, the court agrees with plaintiffs that the language of the above-referenced order was not intended to require plaintiffs to pay the attorney's fees and expenses and related fees associated with deposing Dr. Christiano and Mr. Leach. Although the court's order did generally contemplate that defendants could depose plaintiffs' tardily disclosed experts if they so desired, the order expressly stated that the expenses in question were to relate to having defendants' previously disclosed experts revise the latter's reports to

⁶ November 30, 2005 letter from defendants' counsel to plaintiff's counsel: Item 2. Invoice of Dr. Stephen Hamburger, dated October 6, 2005- \$316.25; Item 4. Invoice of Dr. Stephen Hamburger, dated October 12, 2005-\$1,306.25; and Item 6. Expert fees-Steve Ijames-\$292.50.

⁷ November 30, 2005 letter from defendants' counsel to plaintiffs' counsel: Item 1. Deposition of Dr. Cristiano-court reporter fee- \$307.75; Item 3. Dr. Cristiano deposition fee- \$375.00; Item 5. Deposition of Edward Leach- court reporter fees- \$357.50; Item 7. Attorney fees- \$4,062.50; and Item 8. Leach deposition expenses (travel, airfare, etc.)- \$537.76.

take into account the opinions of plaintiffs' experts, i.e., there is no language in the order which implied or from which it could reasonably be inferred that defendants would get to take "free" depositions of plaintiffs' experts. Indeed, under Fed. R. Civ. P. 26(a)(2), the operating premise is that an expert's disclosure should be detailed enough that a subsequent deposition of the expert is the exception, not the norm. Even assuming for the sake of discussion that defendants legitimately perceived that plaintiffs' expert disclosures were so deficient that as a practical matter the experts had to be deposed, the record confirms that defendants never made that known to the court before deposing those experts. And finally, the \$7,555.51 claimed by defendants far exceeds what the court said in its order would be a reasonable remedial sanction ("hundreds of dollars" at the low end, and "perhaps as much as a few thousand" at the upper end). Therefore, out of the money previously paid by plaintiffs to defendants, within 11 days of the filing of this order, defendants shall return \$5,640.51 to plaintiffs.

IT IS SO ORDERED.

Dated this 19th day of October, 2006, at Kansas City, Kansas.

s/ James P. O'Hara
James P. O'Hara
U.S. Magistrate Judge



Fisher, Patterson, Sayler & Smith, LLP

9393 W. 110th Street, Suite 300
Building 51 - Corporate Woods
Overland Park, Kansas 66210

Tel: 913-339-6757
Fax: 913-339-6187
www.fisherpatterson.com

Offices located in Overland Park and Topeka, Kansas

September 22, 2006

VIA E-MAIL ONLY:

Hon. James P. O'Hara
United States Magistrate Judge
United States District Court
District of Kansas
500 State Avenue, Suite 208
Kansas City, Kansas 66101
(913) 551-6710/Fax: (913) 551-6532
KSD_OHara_Chambers@ksd.uscourts.gov

Re: *Kim Reindl and Mary Joan Reindl v. James Bridges, et al.*
Case No. 04-CV-2584-RDR-JPO, USDC for the District of Kansas;
Claim No. GP09306973 09T033; Tracking No. MJ11521
FPS&S File No. 40.25082 MKS

Dear Magistrate O'Hara:

As you are probably aware this case has been resolved through settlement with the exception of one item related to expenses. In this case, the Plaintiffs' moved for leave to designate experts witnesses out of time (Doc. 73). In ruling on the Plaintiffs' Motion this Court granted the Motion based upon certain conditions. Those conditions are contained in your Order (Doc. 77) at pp. 10-11.

As a result of the Court's Order, the Defendants' were required to depose Plaintiffs' experts Dr. Cristiano and Edward Leach in order to provide sufficient information for the update of expert opinions. Dr. Cristiano is located in Leavenworth, Kansas, and Edward Leach was located in Idaho.

Thereafter, pursuant to the Court's Order, the Defendants filed their Notice of Bill of Expenses (Doc. 82), on or about November 30, 2005. Separately, the Defendants' provided to Mr. Ternent correspondence dated, November 30, 2005, attached, itemizing the expenses incurred by the Defendants that they would not have been required to incur but for the Plaintiffs' failure to designate experts. A copy of that letter is attached. The Plaintiffs paid the entire amount requested.

Presently, the Plaintiffs ask this Court for clarification of its Order claiming that not all of the expenses paid should have been paid. The Defendants have no understanding of what portion of the list of expenses are in controversy. Nonetheless, the parties have agreed to submit this issue to the Court for clarification of its Order and agree to be bound by such clarification.

EXHIBIT 1

Hon. James P. O'Hara
Magistrate Judge
September 22, 2006
Page 2

It cannot be disputed that the Defendants were required to incur travel expenses to Leavenworth, Kansas and Idaho for the deposition of Plaintiffs' experts. It cannot be disputed that the Defendants were required to pay court reporter fees and expert deposition fees for these depositions. Finally, it cannot be disputed that the Defendants were required to pay the additional fees of their experts, Dr. Stephen Hamburger and Steve Ijames. Thus, the only presumed point of dispute lies in the attorney fees.

As of the date of that the Court considered Plaintiffs' Motion for Extension of Time, the Defendants had already served on July 12, 2005, their Expert Designation (Doc. 53), setting forth the opinions of their experts. Thus, as of the date of the Defendants' Designation, they had not had to incur the expense of the deposition of Plaintiffs' experts. With the Court's Order, however, the Defendants did have to incur the expense of attorneys' fees associated with these depositions. These are fees that but for the Plaintiffs' failure to designate experts would not have been incurred by the Defendants. They are properly included within the bill of expenses and have been properly paid by the Plaintiffs.

It is the Defendants' position that this Court's Order correctly contemplated that the Plaintiffs' pay the additional attorneys' fees associated with the expert depositions because they were required solely because the Plaintiffs failed to timely designate their experts.

Very truly yours,

FISHER, PATTERSON, SAYLER & SMITH, LLP

/s/ Michael K. Seck

Michael K. Seck
E-mail: mseck@fisherpatterson.com

MKS/fff
Enclosure

cc: (w/o encls.)
Chuck Kautz
Bob Beall
Lee Doerhing
Gary Ortiz
James Bridges
Wayne Flewelling
Sean Goecke
Nicholas Nordmann
Allen Ternent

Billing

LAW OFFICES OF
FISHER, PATTERSON, SAYLER & SMITH, L.L.P.

3550 SW 5th Street
Post Office Box 949
Topeka, Kansas 66601
(785) 232-7761
(785) 232-6604 - FAX
E-Mail: fpss@fisherpatterson.com

51 Corporate Woods, Suite 300
9393 West 110th Street
Overland Park, Kansas 66210
(913) 339-6757
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9233 Ward Parkway, Suite 240
Kansas City, Missouri 64114
(816) 822-8073
(913) 339-6187 - FAX
E-Mail: fpss@fisherpatterson.com

 Reply to: Overland Park Office

November 30, 2005

FAXED
11-30-05
@ 12:09 pm

VIA FACSIMILE:

Allen A. Ternent
TERNENT LAW OFFICE
321 N. 12th Street
PO Box 396
Atchison, Kansas 66002
(913) 367-1790/ Fax: (309) 214-9769
Ternentlaw@sbcglobal.net

Re: *Kim Reindl and Mary Joan Reindl v. City of Leavenworth, Kansas, et al.*
U.S. District Court for the District of Kansas; Case No. 04-CV-2584-RDR-JPO
FPS&S File No. 40.25082 DSB/MKS

Dear Mr. Ternent:

Pursuant to the Court's Order of August 23, 2005 (Doc. 77), the following are the additional expenses incurred by the Defendants' associated with updating their expert reports, together with the supporting documentation:

1.	Deposition of Dr. Cristiano- court reporter fees	\$307.75
2.	Invoice of Dr. Stephen Hamburger, dated October 6, 2005	\$316.25
3.	Dr. Cristiano deposition fee	\$375.00
4.	Invoice of Dr. Stephen Hamburger, dated October 12, 2005	\$1,306.25
5.	Deposition of Edward Leach court reporter fees	\$357.50
6.	Expert fees – Steve Ijames	\$292.50
7.	Attorney fees	\$4,062.50
8.	Leach Deposition expenses (travel, airfare, etc.)	<u>\$537.76</u>
	Total:	\$7,555.51

Very truly yours,

FISHER, PATTERSON, SAYLER & SMITH, LLP



Michael K. Seck
E-mail: mseck@fisherpatterson.com

MKS/fff
cc: Chuck Kautz

Metropolitan

COURT REPORTERS

Videography

Videoconferencing

9200 Indian Creek Parkway, Suite #205
Overland Park, KS 66210

PHONE: 913-317-8800

FID: 36-3600268

FAX: 913-317-8850

Michael K. Seck *
Fisher, Patterson, Sayler - OP
& Smith
51 Corporate Woods, Suite 300
9393 West 110th Street
Overland Park, KS 66210

SEPTEMBER 28, 2005

INVOICE# 5794712

BALANCE: \$307.75

RE: Kim and Mary Joan Reindl vs City of Leavenworth, Kansas, etal
on 09/20/05 by Marilyn Romine Mattix

INVOICING INFORMATION

CHARGE DESCRIPTION

AMOUNT

Deposition of Peter Christiano, MD

Transcript
Attendance
Signature
Exhibits
Postage/Delivery

204.45
60.00
20.00
15.30
8.00

1.50% PER MONTH ON UNPAID BALANCE

P L E A S E R E M I T - - - > TOTAL DUE:

\$307.75

PLEASE INCLUDE COPY OF INVOICE WITH REMITTANCE

OK

DUE UPON RECEIPT

A service charge of 1-1/2% per month, 18% APR, will be added to all overdue accounts.
Also liable for all legal and collection fees.

October 6, 2005

Fisher Patterson Sayler and Smith L.L.P.

c/o Michael Seck

51 Corporate Woods

Suite 300

9393 West 110th Street

Overland Park, Kansas 66210 Fax 913-339-6187

Re: Reinal

Dear Mr. Seck

I have had the opportunity to review the deposition of Peter Christman M.D. and the attachments. My opinions are unchanged - actually reinforced. I spent 1.5 hours in this review. My hourly fee for review is \$225.00. I would appreciate a check for \$316.25 being sent as follows:

Stephen Hamburger M.D.

434 Liberty Lake Drive

Vestavia Hills, Alabama 35242-7544

My Social Security Number is

Best Wishes

Stephen Hamburger M.D.

INVOICE

DATE: September 21, 2005
DUE DATE: Due upon receipt

DESCRIPTION	AMOUNT
Deposition - Kelly Reindl	\$ 375.00
TOTAL	\$ 375.00

If you have any questions concerning this invoice, contact Accounting at 913.682.5588 x4159

OK
12/15/13

October 12, 2005

Fisher, Patterson, Sayler & Smith, L.L.P.

c/o Michael Seck

51 Corporate Woods, Suite 300

9393 West 110th Street

Overland Park, Kansas 66210

Fax # 913-339-6187

Re: Remedy. City of Leavenworth, et al

Dear Mr. Seck,

I have had the opportunity to develop my opinion letter and discuss the same w. th. in reference to the above matter. I spent 4.75 hours in this activity. My hourly fee for this is \$275.00. I would appreciate a check for \$1306.25 being sent as follows:

Stephen Harnsburger M.D.

434 Liberty Lake DRIVE

Vestavia Hills, Alabama 35242-7544

My Social Security Number is

Best Wishes

Stephen Harnsburger MD



TOP IDAHO COURT REPORTING

CINDY F. HANOVER, C.S.R., R.P.R.

October 21, 2005

Michael K. Seck
Attorney at Law
51 Corporate Woods, Suite 300
9393 West 110th Street
Overland Park, Kansas 66210

Re: Reindl v. City of Leavenworth, etc., et al.
Case No. 04-02584-GTV-JPO

Pages	Charges	Witness	Amount
70(orig©)	\$3.25	Edward A. Leach October 13, 2005	\$227.50

Exhibits	5 (286 pgs.)		\$ 40.00
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Appearance fee			\$ 90.00
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E-Tran	October 21, 2005	N/C
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TOTAL DUE		\$357.50
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THANK YOU

ID CSR No. 689

18% annual (1.5% per month) and a \$4.00 monthly rebilling fee on unpaid balances.

OK MKS

11-28-05

**Mr. Mike Seck
Fisher, Patterson, Sayler, and Smith, L.L.P.
51 Corporate Woods, Suite 300
Overland park, Kansas, 66210**

Re: Riendl v. City of Leavenworth, Kansas, et al.

Dear Mr. Seck,

Pursuant to your request, I am submitting the following as additional time committed to supplementing my original report:

1.50 hours @ \$195.00 per hour.

Total due: \$292.50

Sincerely,

**Major Steve Ijames
515 E. Charles Street
Republic, Mo. 65738**

**417-864-1754
lesslethal@aol.com**

[REDACTED]

PROFESSIONAL SERVICES

Hours	Rate	Amount
-------	------	--------

09/14/05	MKS	Conference call with Dr Hamburger for review of points to cover in depo of plaintiff expert Christiano	0.50	\$125.00	\$62.50
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09/14/05	MKS	E-mail to atty Ternent re depo of expert Christiano	0.10	\$125.00	\$12.50
09/15/05	MKS	Telephone conference with atty Ternent re depo of Dr. Christiano and his opinions	0.20	\$125.00	\$25.00
09/15/05	MKS	Correspondence to company and clients re opinions and depo of Dr. Christiano	0.20	\$125.00	\$25.00
09/20/05	MKS	Preparation for depo of Dr Cristiano -- review SRS, Providence, Cushing, KUMC, Kindred, and Cristiano medical records and designate docs for use as exhibits	2.25	\$125.00	\$281.25
09/20/05	MKS	Preparation of outline for depo of Dr Cristiano	1.00	\$125.00	\$125.00
09/20/05	MKS	Travel from Overland Park to Leavenworth Ks for depo (.75) Representation at depo of plaintiff expert Dr Christiano (1.25) Travel from Leavenworth to Overland Park (.70)	2.70	\$125.00	\$337.50
10/11/05	MKS	Preparation for deposition of plaintiff expert Leach -- review discovery responses, expert report, internet search for published articles, arrest reports; outline key points to cover	1.10	\$125.00	\$137.50
10/12/05	MKS	Travel from Overland Park to KCI	0.75	\$125.00	\$93.75
10/12/05	MKS	Travel from Overland Park to Denver, Spokane, Coeur d'Alene, Idaho	9.00	\$125.00	\$1,125.00
10/12/05	MKS	Continued preparation for depo of expert Leach -- review video and identify key times on video; outline additional points to cover	0.50	\$125.00	\$62.50
10/13/05	MKS	Travel to and representation at deposition of plaintiff expert Leach (2.50); Travel from Coeur d'Alene, Spokane, Denver, to Kansas City following deposition (11.50)	14.00	\$125.00	\$1,750.00

10/26/05	MKS	E-mail to expert l James re plaintiffs expert opinions	0.20	\$125.00	\$25.00
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EXPENSES ADVANCED

10/12/05	Meals - meal for attorney Seck in Spokane, WA.	\$10.00
10/12/05	Meals - meal for attorney Seck in Spokane, WA.	\$6.00
10/12/05	Airfare - United Airlines (Expedia) - travel for attorney Seck KCI to Spokane, WA.	\$319.80
10/13/05	Parking Fees - KCI	\$36.00
10/13/05	Meals - Lefty's - meal for attorney Seck at Spokane Int'l Airport.	\$10.12
10/13/05	Hotel - AmeriTel Inns - lodging for attorney Seck in Coeur D'Alene, ID.	\$94.34
10/13/05	Car Rental - Hertz - rental car for attorney Seck at Spokane Int'l Airport.	\$55.78
10/13/05	Car Rental - Sunset Foods - fuel for rental car for attorney Seck at Spokane Int'l Airport.	\$5.72

Spokane, WA



Flight: Kansas City to Spokane

[back to top](#)

Expedia.com Itinerary number: 114034802491
Expedia.com booking ID: 74Q2C9 (1)
Airline ticket number(s): Check back in 24 hours
United Airlines confirmation code: T0T0S2

Main contact: MICHAEL Kenneth SECK
E-mail: mseck@fisherpatterson.com
Work phone: (913) 339-6767

Traveler and cost summary

MICHAEL SECK	Adult	Update Frequent Flyer number(s)	\$254.88
		Taxes & Fees	\$59.92
		Booking Fee	\$5.00
		Total (American Express)	\$319.80

[Exchange this ticket](#) [Request seat changes](#) [Print a receipt](#) [View cancellation information](#)

Flight summary

To verify flight information, you can check your flight status and departure gate online, or contact the airline directly. Seat assignments, meal preferences, and special requests must be confirmed with the airline; we cannot guarantee that they will be honored.

Wed Oct-12-2005

Kansas City (MCI)	to	Denver (DEN)	530 mi (853 km)	Flight: 369
Depart 9:40 am		Arrive 10:26 am	Duration: 1hr 46mn	
Terminal A				

Economy/Coach Class (18B), Boeing 737-300, 90% on time

Denver (DEN)	to	Spokane (GEG)	835 mi (1344 km)	Flight: 1211
Depart 11:30 am		Arrive 12:45 pm	Duration: 2hr 15mn	

Economy/Coach Class (13B), Boeing 737-300, 70% on time

Total distance: 1365 mi (2197 km) Total duration: 4hr 1mn (5hr 5mn with connections)

Thu Oct-13-2005

Spokane (GEG)	to	Denver (DEN)	835 mi (1344 km)	Flight: 496
Depart 2:15 pm		Arrive 6:24 pm	Duration: 2hr 9mn	

Economy/Coach Class (16C), Boeing 737-300, 80% on time

Denver (DEN)	to	Kansas City (MCI)	530 mi (853 km)	Flight: 724
Depart 6:50 pm		Arrive 9:23 pm	Duration: 1hr 33mn	
		Terminal A		

Economy/Coach Class (Seat assignments upon check-in [More Information](#)), Boeing 757-200, 20% on time

Total distance: 1365 mi (2197 km) Total duration: 3hr 42mn (5hr 8mn with connections)

Airline rules & regulations

- Ticket is nonrefundable. A fee of \$100.00 will be charged for itinerary changes after the ticket is issued.
- In addition to any penalties imposed by the airline, a processing fee of up to \$30.00 per ticket will be charged by Expedia for any changes you make to the flights in this itinerary. This fee is waived

RENTAL RECORD: L- 0240904-1

SECK/M
COMPLETED BY: JLM
RENTED: Spokane International Airport
RENTAL: 10/12/2005 13:09
RETURN: 10/13/2005 10:59
VEHICLE: 063640-A
05-JEP-BYI-RENTAL-400-0-100
MILES IN: 6000 4000 6000
MILES DRIVEN: 100
PLAN IN/OUT: NOVA NOVA
CLS: D

1 DAYS	41.99	41.99
SUBTOTAL		41.99
CONCESSION FEE		6.70
ADDITION CHARGES (TX)		.60
TX 15.910% ON 40.37		7.41
TOTAL		55.70
CHARGED ON A/R		55.70

KANSAS CITY
INTERNATIONAL AIRPORT
PARKING

Rcpt# 1354

10/13/05 22:30 L#10 A# 31 TX# 11845

10/12/05 08:19 In 10/13/05 22:30 Out

Tkt# 304715

CASH PAID \$ 35.00-

THANK YOU
QUESTIONS/COMMENTS
CALL 816-243-5870

SUNSET FOODS
2627 N. SUNSET BLVD

DATE 10/13/2005 THU TIME 10:41

GAS	\$14.28
TOTAL	\$14.28
CASH	\$20.00
CHANGE	\$5.72

CLERK 1 070371 00000

CA ONE SERVICES INC.
SPOKANE INTERNATIONAL AIRPORT
LEFTY'S

3002 LINDA

1

4863 OCT13'05 11:09AM

1 Server Soda	2.15
1 Chicken Caesar	7.35

Subtotal	9.50
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Total Tax	0.62
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Total Paid....	10.12
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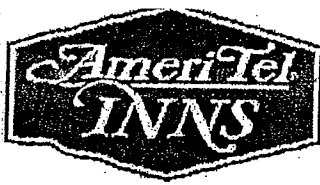
CASH (PRT)	20.00
------------	-------

Change Owed....	9.88
-----------------	------

—3002 CLOSED OCT13 11:35AM—

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TO PEOPLE AWAY FROM HOME

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Please call 800-610-4CA1 or log
on to www.CA1feedback.com with
your comments or suggestions.



AmeriTel Inns - Coeur d'Alene

333 Ironwood Ave.
Coeur d'Alene, ID 83814 (208) 665-9000

Michael Seck

10/13/05

Account #

Room # Room: 227

DATE	DESCRIPTION	CHARGES	PAYMENTS
10/13/05	American Express EXPRESS CHECKOUT - Oct 13 2005 1:24AM	\$0.00	\$94.34
10/12/05	Room Charge Room # 227	\$87.75	\$0.00
10/12/05	Sales Tax Room # 227	\$4.83	\$0.00
10/12/05	State Lodging Tax Room # 227	\$1.76	\$0.00

Balance Due \$0.00

In the event that I do not officially check out at my time of departure, or if I incurred charges subsequent to my checkout, I hereby authorize you to charge my credit card. I further acknowledge, regardless of billing instructions, that I am liable until the balance is paid in full.

X

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
AT KANSAS CITY

ECF FILING
DATED 11/30/05
@ 11:42am CS

KIM REINDL, and)
MARY JOAN REINDL,)
Plaintiffs,)
v.)
CITY OF LEAVENWORTH, KANSAS,)
et al.,)
Defendants.)

Case No. 04-02584-RDR-JPO

NOTICE OF SERVICE OF BILL OF EXPENSES

COMES NOW the Defendants, by and through their counsel of record, and certifies and notifies the Court and Plaintiffs' counsel that on this 30th day of November, 2005, he electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing and served via facsimile and U.S. Mail, postage prepaid, pursuant to this Court's Order of August 23, 2005 (Doc. 77), the Defendants' copy of their bill of expenses associated with costs incurred to update expert reports, and this Notice upon the following:

Allen A. Ternent, #16279
TERNENT LAW OFFICE
321 N. 12th Street
PO Box 396
Atchison, Kansas 66002
(913) 367-1790
Ternentlaw@sbcglobal.net
Attorney for Plaintiffs

Respectfully submitted,

FISHER, PATTERSON, SAYLER & SMITH, LLP

/s/ Michael K. Seck

David S. Baker, dbaker@fisherpatterson.com #70282

Michael K. Seck, mseck@fisherpatterson.com #11393

51 Corporate Woods, Suite 300

9393 West 110th Street

Overland Park, Kansas 66210

(913) 339-6757 / (913) 339-6187 (FAX)

ATTORNEYS FOR DEFENDANTS

Notices

2:04-cv-02584-RDR-JPO Reindl et al v. Leavenworth, Kansas, City of et al

U.S. District Court**District of Kansas**

Notice of Electronic Filing

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Case Name: Reindl et al v. Leavenworth, Kansas, City of et al

Case Number: 2:04-cv-2584

Filer: Leavenworth, Kansas, City of
Lee Doehring
James Bridges
Wayne Flewelling
Sean Goecke
Nicholas Nordmann
David O'Brien

Document Number: 82

Docket Text:

NOTICE OF SERVICE by Sean Goecke, Nicholas Nordmann, David O'Brien, Leavenworth, Kansas, City of, Lee Doehring, James Bridges, Wayne Flewelling of Bill of Expenses (Seck, Michael)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

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a25dddfc2aec8ec658436f10fd77c46031c5c8b7c593e2b404b8764bdade6]]

2:04-cv-2584 Notice will be electronically mailed to:

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2:04-cv-2584 Notice will be delivered by other means to:

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TO: Allen A. Ternent
 CC: Charles Kautz

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FROM: Faith Farlough for Michael K. Seck
 RE: *Kim Reindl and Mary Joan Reindl v. City of Leavenworth, Kansas, et al.*
 Case No. 04-CV-2584-GTV-JPO, USDC for the District of Kansas;
 Claim No. GP09306973 09T033; Tracking No. MJ11521
 FPS&S File No. 40.25082

DATE: 11/30/2005

MESSAGE: Please find enclosed Defendants' Notice of Service of Bill of Expenses, together with Mr. Seck's letter dated November 30, 2005 detailing the additional expenses incurred by Defendants in updating their expert reports and supporting documents.

We are transmitting 17 pages including this cover sheet.
 IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CONTACT (913) 339-6757 AS SOON AS POSSIBLE.

HARD COPY MAILED - YES x NO

TERNENT LAW OFFICE

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September 25, 2006

Honorable James P. O'Hara
United States Magistrate Judge
208 Robert J. Dole U.S. Courthouse
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Kansas City, Kansas 66101
(913) 551-6710
ksd_ohara_chambers@ksd.uscourts.gov

RE: CLARIFICATION OF THE COURT'S ORDER REGARDING REIMBURSEMENT FOR
THE COSTS OF DEFENDANTS' EXPERTS TO REVISE THEIR REPORTS IN REINDL
V. CITY OF LEAVENWORTH, ET AL (CASE NO. 04-2584-RDR)

Dear Judge O'Hara:

As I am sure you are aware, the Parties in Reindl v. City of Leavenworth et al Case No. 04-2584-RDR reached a settlement agreement in this case. The sole remaining issue, which the Parties agreed to submit to your Honor for clarification, involves the Parties' differing interpretations of your Order of August 23, 2005 providing for reimbursement of Defendants' costs relating to the modification of their experts witness reports.

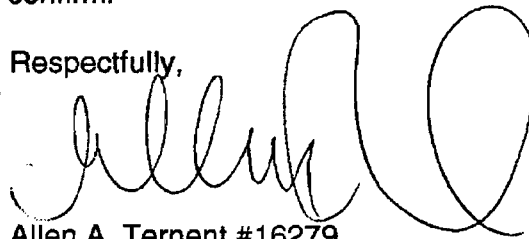
In very brief summary of the events leading to your Honor's ruling, Plaintiffs filed a Motion for leave to designate expert witnesses out of time to which Defendants objected. Your Honor granted Plaintiffs' Motion but observed that "[D]efendants will incur additional **expert witness expenses**, certainly in the hundreds of dollars and perhaps as much as a few thousand, **in asking their previously retained and disclosed experts to modify their reports** to take into account issues that presumably will be raised by plaintiffs' experts." (Order, Document 77, pg. 10, emphasis added.) In recognition of the same, your Honor ruled that "[T]he court believes it manifestly fair to try to ameliorate defendants' prejudice as a result of plaintiffs' above-described failure to meet the terms of the scheduling order. Therefore, plaintiffs shall be responsible for defendants' additional expenses. By December 1, 2005, defendants shall provide plaintiffs with a bill of **expenses incurred in revising the defendants' expert reports.**" (*Id.*, emphasis added.) Your Honor further ruled that "[T]he court is sensitive to the fact that plaintiffs might not be in the financial position to pay for **defendants' expert fees in connection with revising reports.** Nevertheless, the court's granting of plaintiffs' motion is specifically and expressly contingent upon plaintiffs timely payment of these expenses. (*Id.* at pg. 11, emphasis added.)

In conformance with your Honor's ruling and timeline, Defendants provided a bill of expenses to Plaintiffs. Though the bill contained expense items that Plaintiffs did not believe were intended by your Honor's ruling to be reimbursed, Plaintiffs promptly paid the bill in full with the intention of seeking clarification from your Honor at a later date as to what might constitute overpayment. We now seek such clarification.

Your Honor accurately predicted that a second set of reports would be generated by Defendants' experts in light of issues raised by Plaintiffs' expert witnesses and rightfully ruled that it was only fair for Plaintiffs to bear the cost for Defendants' experts to revise their reports as revisions would not have been necessary if Plaintiffs had designated their experts in conformance with the Pre-trial Order. Plaintiffs therefore have no objection to items 2, and 6 of Defendants' statement which represent the additional cost to Defendants for their experts to revise their reports (see attachment "A" expense statement). Similarly, though Dr. Stephen Hamburger indicated in his letter and bill to Defendants of October 6, 2005 that he had reviewed the deposition of Plaintiffs' non-retained medical expert and that his opinions were "unchanged" (arguably making revision of his initial report unnecessary), Plaintiffs do not object to paying for Dr. Hamburger's largely rhetorical analysis of Dr. Christiano's deposition represented by item number 4. Plaintiffs do not believe, however, that the balance of the expenses, consisting entirely of deposition related expenses and attorney time associated therewith, were intended by your Honor to be the burden of the Plaintiffs. Such would reduce the normal and expected expense of discovery to Defendants and would constitute a windfall rather than a fair amelioration of the prejudice to defendants represented by the additional expense of having their experts prepare revised reports.

In summary, at no point in your Honor's ruling did the Court order that Plaintiffs were to bear the cost for additional defense discovery. Plaintiffs believe that your Honor's ruling is clear and that it only requires reimbursement to Defendants of the expense of having their experts generate revised reports. We ask that you so confirm.

Respectfully,



Allen A. Ternent #16279

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cc: Michael K. Seck