

explaining those reasonable costs pursuant to requirements in the statute. 16 M.R.S. § 251 (“no more than \$10 per day may be allowed or taxed . . . unless the affidavit is filed”).

Itemized Objections to TMF Defendant Costs

Plaintiffs specifically object to certain costs, as itemized by TMF Defendants as follows:

Expert Witness Fees and Expenses: Plaintiffs object to costs as outlined in TMF Defendants’ Bill of Costs for “expert witness fees and expenses.” First, the TMF Defendants never used an expert witness at trial so they cannot recover costs for a witness they didn’t use. Second, costs for expert witnesses requested pursuant to either 14 M.R.S. § 1502-B or § 1502-C are available only to the extent allowed by 16 M.R.S. § 251. Since the TMF Defendants failed to file an affidavit adequately explaining all costs pursuant to § 251, “no more than \$10 per day may be allowed.” *Id.* This point is, of course, *arguendo* because the TMF Defendants never called an expert to testify at trial.

To the extent that the TMF Defendants consider Robert Yarumian to be their expert for the purposes of a prescriptive easement, this court deemed Mr. Yarumian’s potential testimony inadmissible and therefore, TMF Defendants cannot recover *any* costs associated with his attempted testimony. By law, costs associated with experts’ inadmissible testimony are not recoverable. *See* 14 M.R.S.A § 1502-B n.2 (“If a party summons witnesses to prove certain facts, under the direction of his counsel, and their testimony is rejected as inadmissible without being offered, he will not be allowed to tax their travel and attendance, if he prevails against the other party, in his bill of costs.”) (citing *Grover v. Drummond*, 25 Me. 185 (Me. 1845)).

As a general matter, “Expert fees and expenses beyond those associated with trial attendance” are “not recoverable.” *See* 16 M.R.S.A § 251 n.9 (citing *McCarthy v. U.S.I. Corp.*, 678 A.2d 48 (Me. 1996)). “The court allows reasonable expenses for expert testimony at trial;

however, time spent in reviewing the case for deposition testimony and preparing for trial is not recoverable.” See *Camp Takajo, Inc. v. Simplexgrinnell LP*, 2007 Me. Super. LEXIS 173, *3–4 (citing *Poland v. Webb*, 1998 ME 104, ¶¶ 14, 15, 711 A.2d 1278, 1281-82 (stating that statutes authorize only fees directly related to attendance at trial and not for attendance at a deposition or for records review and travel time)). For these reasons, the court should deny Mr. Yarumians’ costs.

Visual Aids and Trial Exhibits. Trial exhibit costs are not recoverable by statute or rule. TMF Defendants have not provided any information as to what portion of the \$3,983.57 they claim relate to visual aids and what portion relate to trial exhibits. Therefore, the court should deny the TMF Defendants’ “visual aids and trial exhibit” costs in total. To the extent the TMF Defendants do claim costs associated with visual aids alone, by statute TMF Defendants cannot recover more than \$500 by statute. 14 M.R.S. § 1502-C (costs for visual aids are “not to exceed \$500”).

Depositions. Plaintiffs object to the TMF Defendants’ requested costs for depositions. As outlined in 15 M.R.S. § 1502-C, these costs are discretionary. First, the TMF Defendants have failed to show how such costs were “reasonable” for their preparation for trial and therefore their costs must be denied. Second, the TMF Defendants have included costs for depositions of title witnesses² that it never intended to use at trial. These deposition costs are not recoverable at this time.

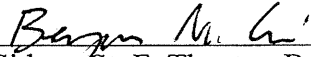
Discovery Referee. Costs for referees are not recoverable under the Maine Rules or by statute. In fact, the Law Court has specifically stated that referee costs cannot be recovered because

² TMF Defendants include deposition costs for: Steven Ross, J. Gordon Scannel, M.J. Buisman, and Robert Yarumian. These are title experts, not prescriptive easement witnesses.

referee hearings are not considered a “trial of cause” in the Superior Court. *Newell v. Stanley*, 15 A.2d 30 (Me. 1940).

For the above referenced reasons, Plaintiffs respectfully object to the TMF Defendants’ Bill of Costs because not all included costs are recoverable and to the extent some costs are recoverable, Plaintiffs request this court reduce the recoverable amount to reflect Plaintiffs’ opposition.

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