

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Personal Injury

John Doe 76C,

Case No. 62-C9-06-3962

Judge Gregg E. Johnson

Plaintiff,

v.

Archdiocese of St. Paul and Minneapolis
and Diocese of Winona,

**DEFENDANT THE ARCHDIOCESE
OF ST. PAUL AND MINNEAPOLIS'
NOTICE OF TAXATION, BILL OF
COSTS AND DISBURSEMENTS, AND
AFFIDAVIT OF COUNSEL**

Defendants.

TO: PLAINTIFF JOHN DOE 76C AND HIS ATTORNEYS, JEFFREY R. ANDERSON, PATRICK W. NOAKER AND MICHAEL G. FINNEGAN, JEFF ANDERSON & ASSOCIATES, P.A., SUITE 100, 366 JACKSON STREET, ST. PAUL, MINNESOTA 55101.

PLEASE TAKE NOTICE, that application will be made pursuant to Rule 54.04 of the Minnesota Rules of Civil Procedure to the Court Administrator at the Ramsey County Courthouse, 600 Courthouse, 15 West Kellogg Boulevard, City of St. Paul, in the County of Ramsey and State of Minnesota, to have the within bill of costs and disbursements taxed and inserted in the judgment then and there to be entered herein.

AFFIDAVIT OF IDENTIFICATION

State of Minnesota)
) ss.
County of Ramsey)

Thomas B. Wieser, being duly sworn, on oath says: that he is the attorney for the Defendant, The Archdiocese of St. Paul and Minneapolis, in the action above entitled; that to the best of his knowledge, information and belief, the Plaintiff in said action is known by the pseudonym John Doe 76C. The true and correct name is confidential.

AFFIDAVIT OF NON-MILITARY STATUS

Plaintiff above named, is not now, as affiant verily believes, in the military service of the United States; that this affidavit is made in compliance with the Service Members Civil Relief Act of 2003.

AFFIDAVIT OF COSTS AND DISBURSEMENTS

Attached hereto as Exhibit A is a true and correct itemized statement of items of costs and disbursements by and on behalf of Defendant The Archdiocese of Saint Paul and Minneapolis, in said action. These costs and disbursements are just, true and correct and have been necessarily paid and incurred by Defendant The Archdiocese of Saint Paul and Minneapolis, in said action. Attached hereto as Exhibit B are true and correct copies of checks for payment of costs incurred by The Archdiocese of Saint Paul and Minneapolis including costs for depositions, witness fees and other costs and disbursements in connection with the *Frye-Mack* hearing and summary judgment proceedings herein.

Attached hereto as Exhibit C is a true and correct copy of the court's Order filed October 12, 2010 and Judgment filed October 14, 2010.

Attached hereto as Exhibit D is a true and correct copy of the Findings of Fact, Conclusions of Law and Order dated December 8, 2009.


The total costs and disbursements are as follows:

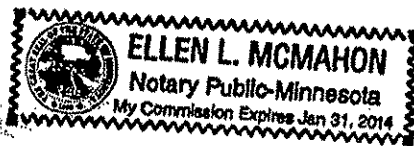
Statutory Costs (Minn. Stat. § 549.02, subd. 1)	\$ 200.00
Total from Exhibit A (Minn. Stat. § 549.04)	<u>\$63,876.75</u>
<u>TOTAL</u>	\$64,076.75

Further your affiant sayeth not.


Thomas B. Wieser

Subscribed and sworn to before me
this 22 day of November, 2010.


Notary Public



STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
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Case Type: Personal Injury

John Doe 76C,

Case No. 62-C9-06-3962
Judge Gregg E. Johnson

Plaintiff,

v.

Archdiocese of St. Paul and Minneapolis
and Diocese of Winona,

**DEFENDANT THE ARCHDIOCESE
OF ST. PAUL AND MINNEAPOLIS'
MEMORANDUM IN SUPPORT OF
APPLICATION FOR COSTS
AND DISBURSEMENTS**

Defendants.

Introduction

Defendant The Archdiocese of St. Paul and Minneapolis submits this memorandum in support of its notice of taxation and bill of costs and disbursements filed herein.

Facts

The proceedings in this matter included a three-day *Frye-Mack* hearing before The Honorable Gregg Johnson on June 1, 2 and 4, 2009.

During the three-day hearing, the court heard testimony from five expert witnesses:

- Dr. Constance Dalenberg, Ph.D. for Plaintiff
- Dr. James A. Chu, M.D. for Plaintiff
- Dr. Harrison G. Pope, Jr., M.D. for Defendants
- Dr. William M. Grove, Ph.D. for Defendants
- Dr. Elizabeth F. Loftus, Ph.D. for Defendants

In preparation for the *Frye-Mack* hearing the depositions of all five experts were taken by the parties.

The transcript of the *Frye-Mack* hearing consists of 559 pages.

The parties submitted extensive documentation as exhibits in connection with the testimony of the five expert witnesses at the *Frye-Mack* hearing.

The court issued Findings of Fact, Conclusions of Law and Order dated December 8, 2009. The court's Findings of Fact, Memorandum and Order consists of thirty pages and includes discussion of the extensive testimony of expert witnesses.

The court granted Defendants' motion to exclude Plaintiff's proffered expert testimony. Therefore, Defendants were the prevailing parties at the *Frye-Mack* hearing.

On July 21, 2010 the case came before the Honorable Gregg Johnson upon Defendants' motion for summary judgment seeking dismissal of Plaintiff's claims in their entirety.

Defendants submitted extensive documents as exhibits in support of the motion, including numerous deposition transcripts and the transcript of the *Frye-Mack* hearing.

On October 14, 2010 a judgment of dismissal of Plaintiff's claims was entered based upon the court's order dated October 12, 2010 granting Defendants' motion for summary judgment.

Therefore, Defendants are the prevailing parties in this matter.

Discussion

Under Minnesota Statutes Section 549.02 costs shall be allowed to defendant upon dismissal in the defendant's favor on the merits.

Under Minnesota Statutes Section 549.04 the prevailing party shall be allowed reasonable disbursements paid or incurred.

Defendants were the prevailing parties in the *Frye-Mack* proceedings and were ultimately the prevailing parties in the judgment of dismissal of Plaintiff's claims.

The expert witness expenses and deposition expenses and other disbursements incurred by Defendants are reasonable. Depositions were taken of all five experts and the experts testified at the *Frye-Mack* hearing. Therefore, expenses for depositions and expert witness fees for the *Frye-Mack* hearing are necessary and reasonable. Further, deposition transcripts, transcripts of the *Frye-Mack* hearing and other exhibits were filed in support of Defendants' motion for summary judgment. The court relied upon the transcripts and exhibits in its decision granting Defendants' motion for summary judgment. Therefore, these disbursements were also necessary and reasonable.


Conclusion

Defendants are the prevailing parties and are entitled to their costs and disbursements requested herein under Minn. Stat. § 549.02 and § 549.04.

Respectfully Submitted,

MEIER, KENNEDY & QUINN, CHARTERED

Dated: November 22, 2010



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