

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED VACCINES, INC.,

Plaintiff,

v.

DIAMOND ANIMAL HEALTH, INC.
and HESKA CORPORATION,

Defendant.

ORDER

05-C-0604-C

On December 28, 2006 at 11:04 a.m., plaintiff United Vaccines filed electronically a notice of appeal from the final judgment entered in this case on October 18, 2006 and amended on November 30, 2006. That appeal was assigned appeal no. 06-4421 in the Court of Appeals for the Seventh Circuit. Discovering that the original notice of appeal did not record the full and complete address of the attorneys of record for plaintiff, plaintiff filed an amended notice of appeal three hours later at 2:02 p.m. by electronic means. That appeal was assigned appeal no. 06-4434. On December 29, 2006, plaintiff paid the \$455 fee for filing its original notice of appeal. It declined to pay a second fee for filing the amended notice of appeal and now has moved this court to grant a waiver of the fee.

The only authority this court has to waive the fee for filing an appeal or an amended notice of appeal is the authority to waive prepayment under 28 U.S.C. § 1915. Plaintiff is not asking for waiver of prepayment of the fee under this statute. Rather, it seeks to avoid a duplication of filing fees where its second notice of appeal does nothing more than cure a simple error in the original filing. It may be within the discretion of the court of appeals to waive a filing fee in such a circumstance, but plaintiff does not suggest what authority this court has to grant such a waiver and I am aware of none.

Accordingly, IT IS ORDERED that plaintiff's motion to waive the docketing fee for its amended notice of appeal is DENIED without prejudice to plaintiff's renewing its motion in the court of appeals.

Entered this 8th day of January, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge