

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

UNIEK, INC.,

Plaintiff,

v.

DOLLAR GENERAL CORPORATION,

Defendant.

ORDER

06-C-311-C

On March 2, 2007 I denied Uniek's motion for sanctions (dkt. 50) and ordered cost-shifting in favor of DG pursuant to Rule 37(a)(4)(B). *See* dkt. 101 at 10. DG has responded by requesting a total of \$9,447 for not quite 30 hours of work performed by four attorneys at two firms, three of whom discounted their rate by 10%, resulting in rates ranging from \$247.50/hr. to \$495/hr. Uniek objects to the court shifting costs on DG's unbidden surreply, one attorney's hourly rate, and another attorney's itemization of his hours.

Rule 37(a)(4) limits cost-shifting to "reasonable expenses incurred." This court's usual approach to cost-shifting on discovery motions is to consider the *gestalt* of the situation. Given this court's experience with other Rule 37(a)(4) claims in similar cases, it would not have surprised me if DG had claimed more. That said, I estimated this particular dispute to be worth about \$10K per side to get it before the court. DG came in under this threshold, so its fee request passes the initial sniff test. Reviewing the request more closely does not change the result. Although there were some high hourly rates involved and some of the time-keeping could have been more precise, it was reasonable for DG's lawyers to put forth about 30 hours at an

average rate of about \$320/hour to defend against a motion in which Uniek sought judgment in its favor in this multimillion dollar contract dispute.

Therefore, it is ORDERED pursuant to F.R. Civ. Pro. 37(a)(4)(B) that plaintiff Uniek, Inc. and its attorneys are jointly and severally responsible for paying \$9447 to counsel for Dollar General, Inc. not later than April 16, 2007.

Entered this 16th day of March, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge