

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

ARANDELL CORPORATION, *et al.*,

Plaintiffs,

v.

XCEL ENERGY INC., *et al.*,

Defendants.

ORDER

07-C-076-C

On June 12, 2007, this court denied plaintiffs' motion to preserve evidence and shifted costs to plaintiffs pursuant to Rule 37(a)(4)(B). Defendants timely submitted an itemized claim for a total of \$17,300.50. *See* dks. 131-134. Although I agree with plaintiffs that it would be unreasonable to shift this entire cost to plaintiffs I do not agree that *no* costs should be shifted or that payment should wait until the end of the case. From the court's perspective, preserving the status quo means you pay as you go (although nothing prevents the parties from reaching an informal consensus to keeping a running tab and settle up at the close of this lawsuit).

Plaintiffs lost their motion and they would lose again if the court were to reconsider its decision in light of the arguments plaintiffs raise in their opposition to paying costs. Obviously the court weighed the pros and cons of each party's arguments, and I understood why plaintiffs filed their motion, but this does not make the motion "substantially justified." The point of cost-shifting is not to punish the losers on a discovery motion because their motion was ill-conceived or improper, it is simply to return to the pre-motion status quo, or as close to it as the court deems reasonable under the circumstances.

So what's reasonable here? I'm going with \$8000, to be split among the defendants' law firms in whatever proportion they agree. Whether the parties want to view this as the court's endorsement of 20 hours' work at \$400/hr. as the blended rate, 16 hours at \$500, or something else, the point is that this dispute was easily grasped, easy to research and easy to present to the court in short opposition briefs. Certainly the attorneys for both sides are entitled to spend as much time as they see fit on a motion or response in order to get it as close to perfect as time allows, but as the pending fee request illustrates, this likely will surpass the court's line of demarcation between enough and too much.

Pursuant to Rule 37(a)(4)(B), it is ORDERED plaintiffs and their attorneys are jointly and severally liable to pay to defendants' attorneys \$8000 that not later than August 10, 2007.

Entered this 11th day of July, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge