IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SKF USA INC.,	)	
	)	
Plaintiff,	)	Case No. 08 CV 4709
	)	
v.	)	Consolidated with
	)	Case No. 09 CV 2232
DALE H. BJERKNESS, *et al*,	)	
	)	
Defendants.	)	Judge Pallmeyer
	)	Magistrate Judge Denlow

REPLY IN SUPPORT OF SKF'S FEE PETITION

Defendants willfully and maliciously misappropriated SKF trade secrets and caused SKF to incur in excess of $1.3 million in attorney fees over the course of two years to obtain judgment. Defendants have no basis now arbitrarily to request a $1 million discount in fees for which they are responsible. Defendants' own evidentiary support contradicts repeated arguments in the opposition brief ("Opposition" or "Opp." at 1, 7, 8) about SKF's purported refusal to participate in settlement discussions, because Mr. Bjerkness concedes, under penalty of perjury, that SKF delivered a proposal that could have settled this matter in November, 2008. (Opp. Ex. H at ¶4). Furthermore, defendants could have spared litigation expenses by agreeing to SKF's request to consolidate the preliminary injunction hearing into a trial on the merits. Instead, defendants rejected the settlement opportunity and the consolidation opportunity and gambled on forcing SKF to litigate through trial at the risk of exposure to substantial attorney fees. Defendants lost that gamble.

In Section I of this Reply, SKF explains why this Court should not consider defendants' insubstantial settlement proposal and should not discontinue fees after January 6, 2009. In Section II, SKF refutes, with Seventh Circuit authority, defendants' imaginary rule that a fee

award can be no greater than two to three times the amount of a plaintiff's recovery. In Section III, SKF addresses defendants' disingenuous arguments regarding SKF's staffing and alleged excessive hours, especially because defendants deployed more timekeepers and roughly equivalent hours to perpetuate this action. Finally, in Section IV, SKF refutes defendants' arguments regarding certain non-taxable costs, which defendants raised for the first time in the Opposition, in violation of Local Rule 54.3.

I. DEFENDANTS' SETTLEMENT PROPOSALS DO NOT WARRANT A REDUCTION IN SKF'S LODESTAR CALCULATION.

Defendants contend that SKF should not receive any fees or costs incurred after January 6, 2009, because defendants made a purported "substantial offer" to settle this case in a November, 2008 mediation session with Magistrate Judge Denlow. This Court should reject defendants' argument for at least three reasons, discussed below.

A. Defendants Violate Magistrate Judge Denlow's Confidentiality Orders.

This Court should ignore defendants' references to settlement offers made in connection with the mediation, because such references violate Magistrate Judge Denlow's confidentiality orders. Defendants' own submissions provide the Court with undisputed evidence of their promise to refrain from using settlement communications outside the mediation process. Defendants attach the unrebutted Declaration of Terrence P. Canade (Opp. Ex. F at ¶13) that states:

> Magistrate Judge Denlow commenced the mediation with a joint session with all parties and counsel. During that joint session, Magistrate Judge Denlow announced special ground rules for the process. In particular, Magistrate Judge Denlow required the parties to agree that the mediation process, including all communications, would be confidential and would not be used in the court case.

Defendants do not argue and cannot argue that SKF mischaracterized Magistrate Judge Denlow's special ground rules for the mediation. Instead, defendants argue (Opp. at 4-5) that §4

of Magistrate Judge Denlow's standing order relating to settlement conferences, which is appropriately entitled "Statements Inadmissible," does not expressly prohibit the use of settlement discussions in the fee petition process. (Opp. at 5; Opp. Ex. D at §4.) Defendants should not find relief from their misconduct by referring to a document that apparently does not apply to the mediation at issue. Furthermore, the standing order does not grant defendants permission to disclose information in violation of the undisputed and unambiguous in-person promise to Magistrate Judge Denlow to refrain from using mediation information outside the mediation. Defendants' lack of respect for Magistrate Judge Denlow's confidentiality orders should not be rewarded.[1]

B. Defendants Never Made A "Substantial Offer."

Several Courts of Appeals have held that, given the availability of Fed. R. Civ. P. 68, trial courts may not use informal settlement offers and negotiations to cut off plaintiffs' attorney fees.[2] *Berkla v. Corel Corp.*, 302 F.3d 909, 921-22 (9th Cir. 2002); *Clark v. Sims*, 28 F.3d 420, 423-24 (4th Cir. 1994); *Ortiz v. Regan*, 980 F.2d 138, 140-41 (2d Cir. 1992); *Cooper v. State of Utah*, 894 F.2d 1169, 1172 (10th Cir. 1990). One court explained the rationale for this rule as follows:

> The very existence of Rule 68, with its precise requirements, creates a negative implication as to offers of settlement that do not comply with its terms. Moreover, . . . [a] rule giving trial judges discretion to deny [post-settlement offer] fees where the refusal of an offer is shown after the fact to have been unwise might well lead to very uneven results and even misuse in cases in which judges become involved in settlement negotiations. It may be that our legal

[1] SKF will continue to respect Magistrate Judge Denlow's requirements for the mediation and will not introduce evidence in this process regarding the mediation. Instead, SKF will limit discussion in this Reply to addressing material that defendants have improperly introduced to demonstrate that defendants' own submissions undermine and contradict defendants' arguments.

[2] The Seventh Circuit appeared to adopt this rule in *Cole v. Wodziak*, a case defendants cite (Opp. at 3), when it held that the trial court erred by giving "oral negotiations the same effect as a written offer of judgment" under Rule 68. 169 F.3d 486 (7th Cir. 1999).

> system badly needs a mechanism to encourage early settlement, but that mechanism ought to emerge either from the rule-making process or directly from Congress.

Cowan v. Prudential Insurance Co. of America, 728 F. Supp. 87, 92 (D. Conn. 1990).[3] These cases recognize that it is improper for a court to "rely on informal negotiations and hindsight to determine whether further litigation was warranted and, accordingly, whether attorney's fees should be awarded. Otherwise, plaintiffs with meritorious claims may be improperly dissuaded from pressing forward with their litigation." *Ortiz*, 980 F.2d at 140-41.

The Seventh Circuit, in *Moriarty v. Svec*, did not address the above authority in holding that a district court can consider whether "substantial" settlement offers were rejected by the party claiming attorney fees. 233 F.3d 955, 967 (7th Cir. 2000). Based on the ruling in *Moriarty v. Svec*, this Court first must determine whether the total relief SKF obtained by going to trial exceeds the offered amount. *Shott v. Rush-Presbyterian-St. Luke's Medical Center*, 338 F.3d 736, 743-44 (7th Cir. 2003) (refusing to reduce lodestar based on settlement offer that was slightly less valuable than amounts recovered by going to trial). If the relief exceeds the offer, then this Court should refrain from considering defendants' settlement offers in the fee petition process. Defendants' own materials provide all the information that this Court needs to reject defendants' argument and to decline to consider settlement proposals.

Defendants' own calculations demonstrate that SKF is entitled to receive no less than **$271,565.10** or $352,631.10 by the conclusion of this fee petition process. This amount includes the judgment (unchallenged, $81,068.40); the bill of costs (SKF seeks $44,852.84; defendants agree to $28,357.70 and object to remainder); and the award of attorney fees (SKF seeks

[3] *Cowan* was reversed on other grounds at 935 F.2d 522 (2d Cir. 1991). The Second Circuit opinion in *Ortiz* cites *Cowan* with approval. *See, Ortiz*, 980 F.2d at 141.

approximately $1.3 million; defendants agree to $162,139[4] or $243,205 and object to remainder). (Opp. at 15; Opp. Ex. F at ¶26.)

Defendants also provide the value of their November, 2008 mediation proposal: **$173,256.47**. (Opp. at 5.) Defendants' November, 2008 offer cannot be substantial, because that offer is substantially *less* than the lowest amount ($271,565.10) that defendants concede that SKF should be awarded by the conclusion of this process. *See Moriarty v. Svec supra.*

Defendants' description (Opp. at 5) of subsequent offers undercuts their position. Defendants' January 22, 2010 offer *reduced* the November, 2008 proposal by more than one-half – to $75,000 with no restraints regarding return or use of trade secrets – on the last business day before the trial. (Opp. Ex. F at ¶20). The parties did not engage in further settlement discussions until after this Court issued its August 9, 2010 final judgment. (Opp. Ex. F at ¶23-24.) On September 1, 2010, defendants offered $250,000 "to settle all claims." (Opp. at 5; Opp. Ex. F at ¶5.) Even this post-judgment offer, which does not support defendants' argument to suspend fees as of January 6, 2009, was not substantial, because the post-judgment offer still was *less* than the $271,565.10 that defendants acknowledge as the minimum that SKF should receive.

Defendants argue without merit that attorney fees should not be included when analyzing whether defendants made a substantial settlement offer. (Opp. at 7-8.) Given defendants' admitted misconduct, there was a reasonable probability that this Court would find "willful and malicious" trade secret misappropriation to support SKF's recovery of attorney fees. Accordingly, SKF properly considered what it already had been compelled to expend in fees when SKF evaluated defendants' settlement proposals.

[4] Defendants either erred in the Opposition or improperly reduced this number from the $176,808.47 reflected in the Local Rule 54.3 Joint Statement. (SKF opening brief Appendix, Ex. E.)

Contrary to defendants' argument, courts routinely have held that settlement proposals which do not account for fees are not substantial and should not be used to reduce a fee award. For example, in *United Auto. Workers Local 259 Social Sec. Dept. v. Metro Auto Center*, 501 F.3d 283 (3d Cir. 2007), the defendants offered to settle an ERISA claim for unpaid benefit contributions for the precise amount that the plaintiff claimed had gone unpaid, but the offer did not include costs, fees, or interest incurred up to that point. *Id*. at 291. The court relied on *Moriarty v. Svec* to hold that the offer was not substantial and did not justify reducing the fee award. *Id*.; *see also, Needham v. Innerpac, Inc.*, No. 1:040-cv-393, 2008 WL 5411638, at *5 (N.D. Ind. Dec. 24, 2008) (fee reduction not warranted where plaintiff recovered $12,000 in damages, because it was reasonable for plaintiff to reject $50,000 settlement offer that did not include provision for attorney fees) (Exhibit A to this Reply ["Reply Ex."]).

Defendants unpersuasively attempt to distinguish the opinions in *Lightfoot v. Walker*, *Grosvenor v. Brienen*, and *Mohr v. Chicago School Reform Board of Trustees* as "irrelevant and inapplicable §1988 civil rights cases." (Opp. at 8.) But courts apply fee-shifting statutes uniformly and frequently follow §1988 precedents when analyzing fee claims under other statutes. *Crabill v. Trans Union, LLC*, 259 F.3d 662, 666-67 (7th Cir. 2001) (providing examples).

The opinion in *Needham v. Innerpac* – not a §1988 case – is instructive. The plaintiff in *Needham* rejected a $50,000 offer and ultimately recovered $12,000. 2008 WL 5411638, at *5. The court awarded $146,634.86 in attorney fees, pursuant to the below rationale that applies to this case:

> this case proceeded to trial wherein the plaintiff ultimately sought damages in good faith of nearly $100,000. There is absolutely no evidence that the plaintiff delayed unreasonably the resolution of the case by rejecting settlement offers that were half the amount the plaintiff sought in good faith and which did not include

> (at least it has not been represented to the court that the offer included) a provision for attorneys fees. Although the plaintiff did not prevail on the total value of his claim, he did present credible evidence on the items of damage he sought. Further, there is no evidence that the plaintiff's attorneys in this case delayed the matter of settlement in any way. Moreover, Innerpac could have made a strategic choice to make an offer under Fed.R.Civ.P. 68 which could have limited its attorney fee exposure. Instead, Innerpac took its chances and vigorously defended the lawsuit. Simply stated, "the defendant cannot litigate tenaciously and then be heard to complain about the time necessarily spent by the plaintiff in response." *City of Riverside v. Rivera*, 477 U.S. 561, 580 n. 11, 106 S.Ct. 2686, 91 L.Ed.2d 466 (1986). And, in this case Innerpac took this risk. Accordingly, the fact that Needham rejected settlement offers only to recover less at trial does not warrant, in this instance, any reduction to the lodestar.

Id. at *5. Similarly, SKF in good faith continuously, necessarily, and successfully litigated its trade secrets claim through the preliminary injunction, through discovery, and through trial on the merits,[5] over tenacious opposition. SKF is entitled to recover the full reasonable amount of attorney fees that it incurred to bring its trade secret claim to judgment.

C. Defendants Are Responsible For Much Of The Expense Of The Litigation.

Defendants baselessly suggest that SKF prosecuted this case to bankrupt the defendants. (Opp. at 5-7.) But defendants declined several opportunities to limit the expense of this action. Generally, as SKF described in its opening brief, defendants embarked on an expensive strategy, after being caught red-handed: deny everything and make SKF prove it. In addition, defendants declined an opportunity to limit the expense of the litigation by consolidating the preliminary injunction hearing with the trial on the merits.

Defendants' repeated arguments (Opp. at 1, 7, 8) that SKF prolonged litigation by failing to participate in settlement discussions is galling, because Mr. Bjerkness swears to the contrary. If the Court will consider settlement communications, this Court can consider defendants' own

[5] SKF bore the burden of proving all elements of its trade secret claim at trial on the merits, because this Court deferred ruling on that claim after presentation of evidence at the preliminary injunction hearing (Docket Entry No. 99), and because defendants never acknowledged that the SKF materials in issue were trade secrets or misappropriated.

evidence regarding SKF's reasonable proposal that defendants rejected. As Mr. Bjerkness explains, SKF offered to settle this case in the November, 2008 mediation process for a cash payment of approximately $215,595.48 and restrictions on certain activities, which Mr. Bjerkness now purports to value at $241,100,26. (Opp. Ex. H at ¶4.) Even if the Court accepts Mr. Bjerkness' never-tested valuation, the Court can recognize that Mr. Bjerkness concedes that defendants could have settled the case, in late November, 2008, for an amount roughly equal to the amount that defendants had already caused SKF to incur in attorney fees as of late November, 2008. Instead, defendants dug in their heels and spent hundreds of thousands of dollars in defense of this case. *Catalan v. RBC Mortgage Co.*, No. 05 cv 6920, 2009 WL 2986122, at *10 (Sep. 16, 2009) (Opp. Ex. K). Thus, the parties each faced risks after November, 2008 associated with failure to settle a case that included a statutory opportunity to recover attorney fees. Under these circumstances, the Court should not reward defendants and instead should award SKF fees incurred before and after January 6, 2009.[6]

II. DEFENDANTS' PROPORTIONALITY ARGUMENT LACKS MERIT.

Defendants argue that "proportionality requires that plaintiff's fees and cost petition be reduced to, at most, two to three times the amount of the $81,068 judgment, or $162,139 to $243,205." (Opp. at 11.) But the Seventh Circuit, on numerous occasions, has "rejected the notion that the fees must be calculated proportionally to damages." *Anderson v. AB Painting & Sandblasting Inc.*, 578 F.3d 542, 545 (7th Cir. 2009) (citing cases). As this Court recently explained, defendants cannot successfully argue that the size of SKF's recovery was not "worth" the costly effort, given the fee shifting provisions of the Illinois Trade Secrets Act ("ITSA"):

[6] Defendants' reliance (Opp. at 6) on the opinion in *Wickens* is puzzling, because that case did not involve a rejection of a settlement offer that exceeded the ultimate recovery. Moreover, in that case, the court refused to accept the defendant's attorney fee cut-off date, because the court found that the defendant was partly responsible for prolonging the litigation. *Wickens v. Shell Oil Co.*, 620 F.3d 747, 755 (7th Cir. 2010) (noting that defendant's refusal to accept the magistrate judge's recommended settlement prolonged the litigation). The same result is warranted here.

> Reasonableness has nothing to do with whether the district court thinks a small claim was "worth" pursuing at great cost. Fee-shifting statutes remove this normative decision from the court. If a party prevails, and the damages are not nominal, then Congress has already determined that the claim was worth bringing. The court must then assume the absolute necessity of achieving that particular result and limit itself to determining whether the hours spent were a reasonable means to that necessary end.

Garcia v. R.J.B. Props., Inc., No 06 C 4994, 2010 WL 2836749, at *4 (N.D. Ill. Jul. 19, 2010) (Pallmeyer, J.) (quoting *Anderson*) (Reply Ex. B). Similarly, in this case, the Illinois legislature has determined that trade secrets are worthy of protection. Plaintiffs, like SKF, who prove willful and malicious violations of the ITSA are entitled to recover their fees.

Defendants correctly observe that, in many of the cases that SKF cited, the fee award was approximately two to three times the damage award. Despite court holdings that reject formulas, defendants incorrectly attempt to turn their observation into a mathematical formula. To invent the formula, defendants had to ignore some of the cases that they cite. For instance, defendants cite cases outside the §1988 context which approve attorney fee amounts several times greater than the damage award. *See Altergott v. Modern Collection Techniques, Inc.*, 864 F. Supp. 778 (N.D. Ill. 1994) (awarding fees nearly 17 times greater than the damage award); *Catalan*, 2009 WL 2986122 at *11-12 (awarding fees nearly 15 times greater than the damage award). Only six months ago, this Court awarded $110,465.52 in fees and costs on a damages recovery of $12,024.60 – an award almost ten times greater than the recovery. *Garcia*, 2010 WL 2836749, at *4. No mathematical formula spares defendants from reimbursing the reasonable attorney fees that SKF had to expend to complete this case – including fees necessary to prove that defendants failed to comply with this Court's preliminary injunction order to return and to cease using SKF trade secrets – in light of the nature of the issues and the nature of the defense.

Contrary to defendants' argument (Opp. at 10), there is no rule requiring a court to reduce a fee award where a plaintiff recovers 10% or less of its claim, especially where, as here, there

was more at stake than monetary damages. The Seventh Circuit specifically noted that this type of analysis is "losing favor" in this Circuit. *Anderson*, 578 F.3d at 545. Indeed, recovery of damages was not the initial primary goal of this litigation. SKF brought this suit to protect its $22 million investment in Preventive Maintenance Company, Inc. ("PMCI"). SKF discovered that defendants downloaded mountains of data before they left their employ at SKF, and SKF moved quickly to stop them and to compel defendants to return what they took. SKF protected its trade secrets by filing this lawsuit to prevent further irreparable harm. SKF was justified in prosecuting this action through trial, especially after learning that defendants had not returned all of SKF's confidential information pursuant to this Court's preliminary injunction order. Viewed in this light, it is simply inappropriate and unfair to focus solely on SKF's damages recovery when determining a reasonable fee in this case.

III. DEFENDANTS FAIL TO SUPPORT THEIR CLAIM OF EXCESSIVE HOURS AND STAFFING.

The Opposition furthers defendants' practice of requiring SKF and this Court to incur resources, because defendants avoided their obligations to specify fee charges to which they object under Local Rule 54.3. Defendants argue that SKF excessively staffed and billed this case, but defendants do not cite any particular time entries as excessive. Instead, defendants ask the Court to compare SKF's fee request with a fee request in a different case from eight years ago, *RKI v. Grimes*, 223 F. Supp. 2d 1018 (N.D. Ill. 2002). As shown below, the record in *RKI v. Grimes* supports SKF's fee request here.

RKI filed its action against Steven Grimes and his new employer, Chicago Roll Co., Inc. ("CRC"), on November 6, 2001. (Reply Ex. C [RKI fee petition brief] at 2.) RKI did not face the same level of resistance that SKF faced here. Unlike defendants in this case, CRC and Grimes agreed to consolidate the preliminary injunction hearing with the trial on the merits and the parties completed a 4-day bench trial on December 20, 2001 – approximately 50 days after

the lawsuit was filed. (Reply Ex. D [RKI docket].) Despite the short duration of the RKI lawsuit, RKI incurred and sought to recover over $242,000 in costs and fees. (Reply Ex. C at 15.)

Defendants incredibly complain that SKF "deployed fully nine lawyers " to prosecute this case. (Opp. at 6). Fully? – defendants know, and the undisputed Joint Statement data show, that four attorneys, including two partners, performed 94% of SKF fee time. (SKF opening brief Appendix, Ex. E.) Yes, SKF's core litigation team had occasional help from other timekeepers, including two paralegals and two attorneys who assisted with short discrete projects (one for 1.7 total hours and one for 6.7 total hours). Defendants' incredible argument is consistent with defendants' "over-the-top-despite-the-evidence" approach that has caused SKF to incur the fees that it now is entitled to recover.

More than incredible, defendants' argument is disingenuous. Defendants themselves employed *14* timekeepers, including two partners and several junior associates. (Reply Ex. E [defendants' summary sheet and invoices].) Similarly, in *RKI v. Grimes*, RKI employed 9 timekeepers, including 4 partners and several associates. (Reply Ex. C at 10-11.) By any measure, SKF deployed an appropriate amount of timekeepers for this case.

Defendants' complaints of excessive hours are equally without merit. In *RKI v. Grimes*, RKI attorneys billed 915 hours in less than two months. (Reply Ex. C at 11.) Defendants cannot demonstrate that it was unreasonable for SKF to incur 2,700 hours for a case that lasted 8 times longer than *RKI v. Grimes* and required two separate lengthy evidentiary proceedings. After all, defendants devoted nearly 2,000 hours to this case and racked up $846,115.35 in attorney fees and related expenses in defense of what defendants characterize (Opp. at 13) as "a rather straightforward trade secret case." (Reply Ex. E.) It was irrational for defendants to devote that

level of resources and to take such a big risk of large damages and shifted attorney fees if, as defendants with the benefit of hindsight now claim, this case was an $80,000 case.[7] *Cunningham v. Gibson Electric Co.*, 63 F. Supp. 2d 891, 893-94 (N.D. Ill. 1999) (rejecting excessive hours argument where defendants spent more in fees than the claim was worth). In light of defendants' own fees, defendants cannot maintain an argument that SKF's $1.3 million is an unreasonable amount to spend to bring a two-year trade secret case with multiple evidentiary hearings to judgment.

Moreover, as numerous courts have noted, "[t]he reasonableness of the requested hours and fees varies in every case, *often in direct proportion to the ferocity of an adversaries handling of the case*." *Krumwiede v. Brighton Assocs.*, No. 05-C-3003, 2006 WL 2349985, at *1 (N.D. Ill. Aug. 9, 2006) (emphasis added) (Reply Ex. F). The court in *Catalan* explained,

> When parties that do not bear the burden of proof at trial mount a spirited defense of the case, they can hardly complain when their adversaries spend at least as much time and effort to surmount the defense, nor can they validly object to paying the adversaries' reasonable fees when the defense fails.

2009 WL 2986122 at *5.

Defendants contested, and continue to contest, every single issue from the beginning of this case through this post-judgment process. There is no evidence that SKF acted unreasonably under the circumstances presented here. *Mohr v. Chicago Sch. Reform Bd. of Trustees*, 194 F. Supp. 2d 786, 789 (N.D. Ill. 2002) ("If the winning counsel had taken less time, he might not be in position to ask for attorneys' fees as the prevailing parties' representative").

Defendants' cases are distinguishable. For example, *Vocca v. Playboy Hotel of Chicago, Inc.*, 686 F.2d 605 (7th Cir. 1982), involved misconduct by the plaintiff's attorneys, including the

[7] Defendants' November 2008 mediation offer, which does not include any provision for attorney fees, reflects the fact that the defendants themselves valued SKF's claim at much higher than $80,00. *Catalan*, 2009 WL 2986122 at *10.

submission of invoices for court appearances that never took place. No such improper activities are at issue here. Similarly, in *Pasternak v. Radek*, the court reduced the lodestar calculation by 50%, in part, because defendants sifted through the invoices and pointed out that a junior associate billed over 100 hours to draft a simple 11-page, one count complaint. No. 07 C 2858, 2008 WL 1788551, at *8 (N.D. Ill. Apr. 3, 2008) (Opp. Ex. C). Defendants have not pointed to any similar irregular entries on SKF's invoices. *Krumwiede*, 2006 WL 2349985 at *2 (refusing to reduce fee award for excessiveness where defendant failed to cite any particular time entries that were excessive).

In the final analysis, "the best evidence of whether attorney's fees are reasonable is whether a party has paid them." *Cintas Corp. v. Perry*, 517 F.3d 459, 469 (7th Cir. 2008). It is undisputed that SKF has paid the invoices that SKF presented in its fee petition. Here, SKF's hours were reasonably devoted to the case in light of the issues raised, their novelty and complexity, the lawyers' experience levels, the level of resistance from defendants, the burden of proof that SKF carried at the preliminary injunction hearing and at trial, and the risk that inadequate preparation at any stage could have led to no recovery – and no attorney fees.

IV. DEFENDANTS PROVIDE NO SUPPORT FOR THEIR REQUEST TO LIMIT COSTS TO THE AMOUNTS REQUESTED IN THE BILL OF COSTS.

Defendants argue (Opp. at 14) that the Court should decline to award SKF any fees for preparing its fee petition and that SKF's costs should be limited to those costs included in the Bill of Costs. Defendants do not cite any authority for these propositions, because there is none. For the reasons set forth in SKF's opening brief (at 8-10), SKF is entitled to fee petition fees and non-taxable expenses under Local Rule 54.3 and governing case law.

Defendants also argue that SKF's "non-taxable costs claim is overreaching," citing a meal between SKF's witnesses and counsel and a parking charge in connection with a

deposition. (Opp. at 14.) Defendants waived these arguments, which they raised for the first time in the Opposition in violation of Local Rule 54.3. *See*, N.D. Ill. L.R. 54.3(d) (requiring the parties to "specifically identify all hours, billing rates, or related nontaxable expenses (if any) that will and will not be objected to, the basis of any objections, and the specific hours, billing rates, and related nontaxable expenses that in the parties' respective views are reasonable and should be compensated."). Again, defendants could have spared SKF and the Court resources devoted to these points by complying with Local Rule 54.3.[8]

As to expert charges, defendants do not dispute that this Court has the inherent authority to award these costs. Notably, defendants concede (Opp. a 14) that SKF is entitled to receive the $32,900.66 incurred for SKF's computer forensic expert. The bulk of these charges were incurred before January 6, 2009 and should not be reduced under any of defendants' theories.

CONCLUSION

Defendants now face appropriate consequences for their choices. Defendants knew early that the evidence would prove that defendants stole SKF data and, as this Court found, that defendants lied about having it. Defendants knew early that SKF was fervent about defendants' theft and the resulting threat to SKF's $22 million investment in PMCI. Defendants knew early that SKF had committed significant resources toward prosecuting its claim, recovering its property, and preventing further improper use. Perhaps defendants believed that they could limit their obligations to pay damages and still use SKF's property for some time. However, from the day that SKF filed the Complaint, defendants knew that they faced a risk of large shifted attorney fees. Defendants could have chosen to de-escalate this case. Defendants could have consolidated the injunction and merits hearings and conceded liability to focus resources on

[8] For instance, upon objection, SKF could have clarified the nature of the parking charge (post-deposition Chicago garage) or provided additional details regarding the meal in question. SKF might have dropped these relatively small charges from the fee petition, if defendants persisted in their objections.

addressing the scope of the injunction and damages. Instead, defendants committed $846,115.35 to fight with fire. Defendants were entitled to fight with fire, and SKF was entitled to respond accordingly to protect its business. But now defendants must repay SKF for its fees and costs based upon the size of the fight that defendants fueled.

For all of the foregoing reasons, and for the reasons in SKF's opening brief, SKF requests that this Court grant its Fee Petition and enter an Order (1) granting judgment in favor of SKF and against defendants jointly and severally in the amount of $1,299,579.60 representing SKF's fees and non-taxable costs through September, 2009, pursuant to Local Rule 54.3; (2) awarding SKF's attorney fees incurred after September, 2009 in an amount to be established at the conclusion of this matter; and (3) granting such further relief as the Court deems just and proper.

Dated: December 13, 2010

SKF USA INC.

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CERTIFICATE OF SERVICE

I, Ernesto R. Palomo, the undersigned attorney, certify that on this 13th day of Deecmber, 2010, I filed the foregoing **REPLY IN SUPPORT OF SKF'S FEE PETITION** with the Clerk of Court via the CM/ECF system, which sent notification of such filing to the following:

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