

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,) AC 2012-051
)
Complainant,)
)
v.) (IEPA No. 87-12-AC)
) (Administrative Citation)
)
NORTHERN ILLINOIS)
SERVICE COMPANY,)
)
Respondent.)

NOTICE OF FILING

TO: John T. Therriault (E-FILED)
Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, IL 60601-3218

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, IL 60601-3218

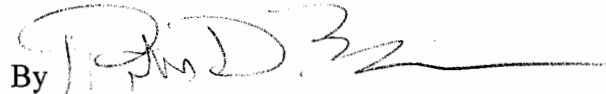
Scott B. Sievers
Special Assistant Attorney General
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have electronically filed with the Office of the Clerk of the Pollution Control Board Respondent Northern Illinois Service Company's Opposition to Complainant's Statement of Hearing Costs, a copy of which is served upon you.

December 29, 2014

NORTHERN ILLINOIS SERVICE
COMPANY, Respondent,

By Peter DeBruyne, P.C.

By 
Peter DeBruyne, Its Attorney

Peter DeBruyne
A.R.D.C. #0599840
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CERTIFICATE OF SERVICE


Peter DeBruyne hereby certifies that he has served a copy of the foregoing Notice of Filing upon:

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by e-filing true costs thereof with the Assistant Clerk of the Illinois Pollution Control Board and mailing true copies thereto to Bradley P. Halloran and Scott B. Sievers at the addresses referred to above in envelopes duly addressed bearing proper first class postage and deposited in the United States mail at Rockford, Illinois, on December 29, 2014.



Peter DeBruyne

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**RESPONDENT NORTHERN ILLINOIS SERVICE COMPANY'S OPPOSITION
TO COMPLAINANT'S STATEMENT OF HEARING COSTS**

Respondent Northern Illinois Service Company, by and through its counsel, Peter DeBruyne, P.C., responds to Complainant's Statement of Hearing Costs as follows:

1. Complainant cites the Illinois Environmental Protection Act and certain rules thereunder as support for its recovery of five items of costs referenced in his Statement of Hearing Costs. Nevertheless, the cited references only state the words "hearing costs" and "associated hearing costs." Complainant's citation of Illinois Supreme Court Rule 208(d) does reference the discretionary, but not mandatory, possibility of recovering deposition costs.

2. Under EPA law and rules, then, the first three items on Complainant's Statement of Hearing Costs which relate solely to prehearing discovery depositions of two witnesses for respondent and one witness for complainant, are not "hearing costs" or "associated hearing costs." Nor, as commonly understood, are the hotel expenses and "per day reimbursement" for complainant's attorney commonly understood as related to "hearing costs." Complainant has cited no case law, neither PCB decisions nor Illinois court decisions, supporting its request for reimbursement of these costs.

3. In *In re Marriage of Tiballi*, 2014 IL 116319, 6 N.E.3d 172 (2014), the Supreme Court explained what traditionally are considered costs to be taxed against a losing litigant.

In *Vicencio v. Lincoln-Way Builders, Inc.*, 204 Ill.2d 295, 301, 273 Ill.Dec. 390, 789 N.E.2d 290 (2003), this court considered the meaning of the term “costs.” It began by noting the familiar rule that when construing a statute, the court should look first to the language of the statute, giving the terms their plain and ordinary meaning. But this court found that the plain and ordinary meaning of the term “costs” does “not enlighten us” and that it was a term of art that had acquired a fixed and technical meaning in the law. *Id.* This court also noted that statutes allowing the recovery of costs are in derogation of the common law and therefore must be narrowly construed. *Id.* at 300, 273 Ill.Dec. 390, 789 N.E.2d 290.

Vicencio interpreted the same term “costs” in section 5–108 of the Code (735 ILCS 5/5–108 (West 2010))—which is section 5–116's companion section and deals with the recovery of costs by plaintiffs—to mean “‘court costs,’ such as filing fees, subpoena fees, and statutory witness fees.” *Vicencio*, 204 Ill.2d at 302, 273 Ill.Dec. 390, 789 N.E.2d 290. *Vicencio* referred approvingly to the Black's Law Dictionary definition of “court costs,” as “‘charges or fees taxed by the court, such as filing fees, jury fees, courthouse fees, and reporter fees.’” *Id.* at 302, 273 Ill.Dec. 390, 789 N.E.2d 290 (quoting Black's Law Dictionary 350 (7th ed. 1999)). . . . (6 N.E.3d 172, 178).

Thus costs relating to pretrial discovery depositions and hotel expenses and reimbursement expenses for an attorney are not considered “hearing costs.”

4. With respect to certain expenditures related to the taking of depositions, Illinois Supreme Court Rule 208(d) provides in relevant part that such charges “may in the discretion of the trial court be taxed as costs.” But also with respect to this Rule, the Supreme Court rejects complainant's position. In *Vicencio v. Lincoln-Way Builders, Inc.*, 204 Ill.2d 295, 789 N.E.2d 290 (2003), the Court directly addressed complainant's argument here that expenses related to depositions were recoverable. In *Vicencio*, costs associated with an evidence deposition of a doctor were at issue, a more serious argument for inclusion as expense as opposed to the discovery deposition expenses in this case. The Supreme Court stated:

... , we concluded that the “test for when the expense of a deposition is taxable as costs is its necessary use at trial.” *Galowich*, 92 Ill.2d at 167, 65 Ill.Dec. 405, 441 N.E.2d 318.

Although we noted that it might be possible for the use of a discovery deposition to become a necessity, such as when the deposed witness died or disappeared before trial, we concluded that, in general, the cost of taking a discovery deposition is one of the ordinary expenses of litigation and, therefore, not recoverable by the prevailing party. *Galowich*, 92 Ill.2d at 166, 65 Ill.Dec. 405, 441 N.E.2d 318. (204 Ill.2d 295, 306).

The Court then went on to hold against the complainant’s argument here:

Thus, we must now address the question that was not squarely presented in *Galowich*—when is a deposition necessarily used at trial?

The trial court in the present case determined that Dr. Wolin's deposition was necessarily used at trial because his testimony was essential to the plaintiff's ability to prove his case. We hold that necessity requires more than mere significance of the deposition in terms of its evidentiary value. A deposition is necessarily used at trial only when it is relevant and material and when the deponent's testimony cannot be procured at trial as, for example, if the deponent has died, has disappeared before trial, or is otherwise unavailable to testify. . . . (204 Ill.2d 295, 308).

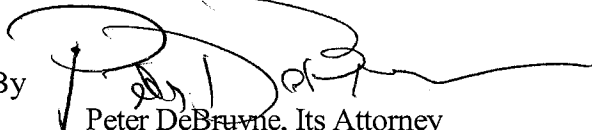
Because all of the witnesses referenced in Complainant’s Statement of Hearing Costs testified at trial, recovery of expenses in connection with their depositions is not permitted.

5. In *Miller v. PCB*, 267 Ill.App.3d 160, 642 N.E.2d 475 (4th Dist. 1994) the court described the PCB’s administrative citation process as “the administrative citation proceeding is to the Act as traffic citations are to the body of criminal law.” (267 Ill.App.3d 160 at 167). An “AC” case such as this is designed to be a low budget, informal matter. Complainant’s insistence upon engaging in extensive discovery, including the taking of depositions with respect to this “traffic ticket” case, was, apart from the Supreme Court ruling above which is determinative, neither prudent nor “necessary” in any general sense to the prosecution of its case.

6. The Complainant’s Statement of Hearing Costs should be denied and not taxed as costs in this proceeding.

NORTHERN ILLINOIS SERVICE
COMPANY, Respondent,

By Peter DeBruyne, P.C.

By 
Peter DeBruyne, Its Attorney

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Peter DeBruyne hereby certifies that he has served a copy of the foregoing Respondent Northern Illinois Service Company's Opposition to Complainant's Statement of Hearing Costs upon:

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Clerk of the Board

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A handwritten signature in black ink, appearing to read 'P. DeBruyne', is written over a horizontal line.

Peter DeBruyne