

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

**THOMAS LAMBERT,** )  
 )  
 *Plaintiff* )  
 )  
 v. )  
 )  
 **BLACK & DECKER (U.S.) INC. d/b/a** )  
 **DEWALT INDUSTRIAL TOOL CO.,** )  
 )  
 *Defendant* )

**No. 2:10-cv-283-JAW**

**MEMORANDUM DECISION ON MOTION FOR AWARD OF EXPENSES**

The defendant moves for an award of attorney fees incurred in connection with its motion to strike (Docket No. 15), which was granted in part on October 18, 2010 (Docket No. 24). Defendant’s Motion for Award of Reasonable Expenses (Docket No. 25) at 1. The plaintiff opposes the motion. Plaintiff’s Response to Defendant’s Motion for Award of Reasonable Expenses (“Opposition”) (Docket No. 26).

When I ruled on the motion to strike, I also said: “To the extent that the defendant presses for an award of its expenses incurred in bringing the motion to strike, I conclude that such an award is justified.” Report of Hearing and Order Re: Discovery Dispute (Docket No. 24) at 2. The defendant’s motion has been filed in accordance with the terms of that report and order.

The defendant seeks an award of \$2,419 in attorney fees in this regard. Affidavit of Erik Peters (Docket No. 25-1) ¶ 5. The plaintiff contends that the amount of fees sought is unreasonable. Opposition at 5-6. Specifically, he attacks 1.8 hours devoted to correspondence

and a telephone conversation with opposing counsel as “an altogether regular occurrence, and . . . not the type of expense associated with the reasonable expenses contemplated by Rule 37.” *Id.* at 6. He finds five hours for drafting the motion to strike to be unsupported by the length and tenor of the motion, *id.*, and 2.5 hours for preparation for the telephone conference on the motion simply excessive. *Id.*<sup>1</sup>

I agree that 2.5 hours represents too much time in preparation for a 30-minute telephone conference based on a 7-page motion (Docket No. 15) to which counsel has already devoted five hours. In addition, time spent in activities directed toward resolution of this discovery dispute before counsel started researching and writing a motion to strike is not an expense “incurred in bringing the motion to strike.” Accordingly, I have deleted 1.5 hours of “preparation” time and 1.8 hours of pre-motion correspondence and conversation time from the defendant’s request, resulting in an award of \$1,742.50 (\$2,419 minus (3.3 hours times \$205.00)).

The plaintiff shall pay the defendant this amount forthwith.

Dated this 16th day of December, 2010.

/s/ John H. Rich III  
John H. Rich III  
United States Magistrate Judge

**Plaintiff**

**THOMAS LAMBERT**

represented by **DANIEL JOSEPH KLEBAN  
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<sup>1</sup> The plaintiff devotes the majority of his opposition to a discussion of reasons why no award should be made. Opposition at 3-5. As noted in the text, I have already decided that an award is justified, and, therefore, I will not consider these arguments.

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V.

**Defendant**

**BLACK & DECKER (U S) INC**  
*doing business as*  
DEWALT INDUSTRIAL TOOL  
COMPANY

represented by **ERIK PETERS**  
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