

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

R.J. ZAYED, In His Capacity as Court-Appointed Receiver for the Oxford Global Partners, LLC, Universal Brokerage, FX, and Other Receiver Entities,

Plaintiff,

vs.

ASSOCIATED BANK, N.A.,

Defendant.

Case No. 13-cv-00232 (DSD-SER)

**PLAINTIFF R.J. ZAYED'S RESPONSE IN OPPOSITION TO ASSOCIATED BANK, N.A.'S MOTION TO TAX COSTS**

The Receiver files this response in opposition to Associated Bank's submitted Bill of Costs (ECF No. 278).

**I. This Court Should Exercise Its Discretion and Deny the Bank's Request for Costs**

Federal Rule of Civil Procedure 54(d) gives courts the discretion to award costs to prevailing parties. *Lochridge v. Lindsey Mgmt. Co.*, 824 F.3d 780, 783 (8th Cir. 2016). However, a court has the "discretion to deny costs because a plaintiff is poor or for other good reason" upon a proper showing by the non-prevailing party. *Poe v. John Deere Co.*, 695 F.2d 1103, 1108 (8th Cir. 1982); *Washburn v. Fagan*, 2008 U.S. Dist. LEXIS 13049, 2008 WL 361048 at \*6 (declining to award costs as result of the "economic disparity between the parties," the existence of a "great public concern for the issues underlying" the action, and the "closeness of the case....").

The Receiver's status as the court-appointed representative of victims defrauded of over \$190 million by the Cook Ponzi scheme<sup>1</sup> provides the required good reason to deny the Bank's request for costs. By reducing the amount of money available to the Receivership, taxing costs would further financially harm the investors, who have already suffered immense financial losses, in favor of the Bank (which enjoyed a net income of over \$50 million in 2016<sup>2</sup>); it is hard to imagine a more clear economic disparity between the two parties. Thus, in this action, there is indeed "good reason" for the Court to exercise its discretion and not award costs to the Bank.

**II. The Bank Seeks Thousands in Costs That Are Not Taxable Under Fed. R. Civ. P. 54(d) And 28 U.S.C. § 1920**

Should this Court choose to tax costs, the Receiver objects to the Bank's items that are not taxable under Fed. R. Civ. P. 54(d) and 28 U.S.C. § 1920.

**A. Clerk Fees**

The Receiver does not object to the request for Clerk fees.

**B. Fees for Witnesses**

The Receiver does not object to the request for these fees.

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<sup>1</sup> Dan Browning, *Cook investors soon might see some pennies on their dollars*, STAR TRIBUNE, Oct. 10, 2010, available at <http://www.startribune.com/cook-investors-soon-might-see-some-pennies-on-their-dollars/105226834/> (Exhibit 1)

"Exhibit" refers to the exhibits to the Declaration of Keith Vogt, which is attached to this Objection.

<sup>2</sup> Melanie Lawder, *Associated Bank sees 29% rise in 4Q profits*, MILWAUKEE BUSINESS JOURNAL, Jan. 19, 2017, available at <http://www.bizjournals.com/milwaukee/news/2017/01/19/associated-bank-sees-29-rise-in-4q-profits.html> (Exhibit 2)

### C. Court Reporter and Deposition Cost

The Bank seeks to obtain \$22,532.50 in costs for 16 depositions taken in the action. While the Receiver does not object to the taking of the depositions, it does object to the Bank seeking \$13,207.05 in nontaxable costs associated with the depositions. As detailed in the Bank's Exhibit C (ECF No. 278-4), over one-half of the costs being sought by the Bank concern additional options ordered by the Bank for the convenience of its attorneys. These impermissible costs include lunch, document shredding, expedited delivery, rough transcripts, compressed transcripts, scanning services, and shipping and handling fees. These additional costs are as follows:

Witness	2-Day Delivery	Rough	Real Time	Scanning	S&H	Lunch	Shredding	Compressed	
Pettengill	\$1,107.00	\$369.00		\$45.45	\$17.50				
Ghiglieri	\$1,273.50	\$410.35	\$410.35	\$71.70		\$25.00	\$100.00		
Domenichetti		\$346.50			\$47.50				
Hlavacek		\$336.40	\$672.80	\$35.40	\$97.50				
Garman		\$145.50			\$15.00				
Loebel		\$351.00	\$351.00		\$75.00				
Gilsrud		\$535.50	\$535.50	\$46.80	\$95.00				
Espey		\$268.50	\$268.50	\$42.90	\$30.00				
Martens		\$144.00	\$144.00	\$7.50	\$30.00				
Cox		\$192.00	\$192.00	\$7.50	\$30.00				
Behm		\$157.00			\$30.00				
Kitowski		\$381.00	\$444.50	\$41.50	\$17.50			\$45.00	
Rasske		\$256.60	\$299.25		\$30.00			\$45.00	
Alberts		\$222.00		\$28.50	\$30.00			\$45.00	
Sarles		\$363.00	\$363.00	\$386.10	\$30.00			\$45.00	
Grice	\$497.25	\$221.85	\$221.85	\$58.50	\$17.50				
Behm #2		\$57.00							
Totals									
	\$2,877.75	\$4,757.20	\$3,902.75	\$771.85	\$592.50	\$25.00	\$100.00	\$180.00	\$13,207.05

(Exhibit 3)

The above-identified additional costs the Bank is seeking are not taxable. *See, e.g., Smith v. Tenet Healthsystem SL, Inc.*, 436 F.3d 879, 889 (8th Cir. 2006) (reversing award of delivery costs for deposition transcripts); *EEOC v. Hibbing Taconite Co.*, No. 09-729 (RHK/LIB), 2010 U.S. Dist. LEXIS 112436, at \*4-7 (D. Minn. Oct. 21, 2010) (holding that realtime and condensed transcripts are not taxable); *Hemminghaus v. Missouri*, No. 4:11 CV 736 CDP, 2013 U.S. Dist. LEXIS 51342, at \*2 (E.D. Mo. Apr. 10, 2013) (excluding rough transcript costs since the depositions were taken before the dispositive motion deadline).

Accordingly, the Bank's request should be reduced by \$13,207.50 because it includes non-taxable costs and because the Bank also failed to explain why the expedited and realtime costs it seeks were needed.

#### **D. Cost of Printing and Copying**

The Bank seeks \$10,979.49 in copying costs. ECF No. 278. To be entitled to these costs, the Bank is required to explain how a copy was necessary for use in the case. *Border State Bank, N.A. v. AgCountry Farm Credit Servs.*, No. 06-2611 (JNE/RLE), 2009 U.S. Dist. LEXIS 8397, at \*5 (D. Minn. Feb. 4, 2009)<sup>3</sup>.

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<sup>3</sup> The United States District Court for the District of Minnesota, Bill of Costs Guide (Nov. 2015), contains a similar requirement. While the Bill of Cost Guide is not legally binding and states that it should not be cited, numerous Courts in this district still have looked to it for guidance. *See, e.g., Mt. Mktg. Grp., LLC v. Heimerl & Lammers, LLC*, No. 14-cv-846 (SRN/BRT), 2016 U.S. Dist. LEXIS 14472, at \*1-2 n.1 (D. Minn. Feb. 3, 2016) (“Although this guide is not itself legal authority, it is persuasive evidence of the law as it exists within the District of Minnesota regarding the billing of costs.”); *Damgaard v. McKennan*, No. 13-cv-2192 (SRN/JSM), 2016 U.S. Dist. LEXIS 57487, at \*6 n.2 (D. Minn. Apr. 29, 2016).

Yet, the only explanation provided by the Bank states that “[p]ursuant to 28 U.S.C. § 1920(3), attached as Exhibit D are true and correct copies of invoices for Associated Bank’s taxable printing costs.” ECF No. 278-1, p. 2. Moreover, many of the copying costs appear to concern extra copies for the convenience of counsel. Lastly, the Bank improperly seeks costs for copying supplies such as binders, tabs and folders. *See Wood v. Robert Bosch Tool Corp.*, No. 4:13cv1888 TCM, 2015 U.S. Dist. LEXIS 161249, at \*4 (E.D. Mo. Dec. 2, 2015).

To the extent each invoice for cost is to be examined, the Receiver objects to each invoice in Bank Exhibit D as follows:

**Invoice No. 1602110 in the amount of \$567.53**

This invoice claims costs for two deposition outlines and exhibits as well as for supplies such as binders, tabs, and file folders. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel’s use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1603041 in the amount of \$218.90**

This invoice claims costs for a deposition preparation and indicates 5 copies (x5) were made, as well as claims costs for supplies such as binders and tabs. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel’s use and convenience. Nor does the Bank explain why all the copies were necessary to the

case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1603054 in the amount of \$281.03**

This invoice claims costs for a deposition outline and exhibits and indicates 2 copies (x2) were made, as well as claims costs for supplies such as binders, folders and tabs. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1603022 in the amount of \$80.15**

This invoice claims costs for unidentified documents as well as for supplies such as binders, folders, and tabs. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1603012 in the amount of \$260.65**

This invoice claims costs for a deposition outline and exhibits as well as for supplies such as binders and tabs. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1602219 in the amount of \$592.94**

This invoice claims costs for a deposition preparation as well as for supplies such as binders and tabs. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1602211 in the amount of \$76.09**

This invoice claims costs for a deposition outline and exhibits as well as for supplies such as binders, tabs, and file folders. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1602158 in the amount of \$469.90**

This invoice claims costs for a deposition documents as well as for supplies such as binders and tabs. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1604037 in the amount of \$267.37**

This invoice claims costs for printing a declaration as well as for supplies such as tabs. Engineer time of \$97.50 is being sought. This seeks non-taxable discovery related

copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1604026 in the amount of \$2,320.68**

This invoice claims costs for printing seven copies (x7) of a transcript as well as for supplies such as binders and tabs. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1603240 in the amount of \$375.18**

This invoice claims costs for a deposition outline and exhibits as well as for supplies such as binders, labels and file folders. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1603127 in the amount of \$203.46**

This invoice claims costs for a deposition outline and exhibits as well as for supplies such as binders and tabs. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank

explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1603126 in the amount of \$213.66**

This invoice claims costs for a deposition outline and exhibits as well as for supplies such as binders and tabs. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1605181 in the amount of \$42.03**

This invoice claims costs for a deposition preparation and indicates 2 copies (x2) were made as well as for supplies such as binders and tabs. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1605077 in the amount of \$135.87**

This invoice claims costs for a deposition preparation and indicates 4 copies (x4) were made as well as for supplies such as binders and tabs. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1605123 in the amount of \$101.90**

This invoice claims costs for a deposition preparation and indicates 3 copies (x3) were made as well as for supplies such as binders and tabs. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1605124 in the amount of \$265.52**

This invoice claims costs for a deposition preparation and indicates 4 copies (x4) were made as well as for supplies such as binders and tabs. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1604168 in the amount of \$141.37**

This invoice claims costs for a binder and indicates 4 copies (x4) were made as well as for supplies such as tabs and binders. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1605020 in the amount of \$132.57**

This invoice claims costs for account opening document and indicates 4 copies (x4) were made as well as for supplies such as binders and tabs. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1604238 in the amount of \$137.31**

This invoice claims costs for a deposition preparation and indicates 3 copies (x3) were made as well as for supplies such as binders and tabs. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1604197 in the amount of \$1,142.57**

This invoice claims costs for making 4 copies (x4) of unidentified Exhibits as well as for supplies such as binders and tabs. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1604136 in the amount of \$128.49**

This invoice claims costs for making 3 copies (x3) of Cox Exhibits as well as for supplies such as binders and tabs. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 30936 in the amount of \$1,073.67**

This invoice claims costs for unidentified documents as well as for supplies such as binders, folders, and tabs. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1605257 in the amount of \$21.15**

This invoice claims costs for unidentified documents. The Bank does not explain why the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1605197 in the amount of \$495.29**

This invoice claims costs for making 4 copies (x4) of Sarles Deposition Preparation Exhibits as well as for supplies such as binders and tabs. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank explain why all the copies were necessary to the case.

The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1605191 in the amount of \$292.55**

This invoice claims costs for making 2 copies (x2) of Crown Forex Depositions as well as for supplies such as binders and tabs. No such deposition took place. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1607004 in the amount of \$304.26**

This invoice claims costs for making Domenichetti Deposition Exhibits as well as for supplies such as binders, folders and tabs. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1607142 in the amount of \$94.65**

This invoice claims costs for making copies of Ghiglieri Articles as well as for supplies such as binders, covers and tabs. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1607144 in the amount of \$116.30**

This invoice claims costs for making copies of Ghiglieri Expert Reports and Testimony as well as for supplies such as binders, covers and tabs. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1608076 in the amount of \$1,807.00**

This invoice claims costs for making 2 copies (x2) of Ghiglieri Deposition Exhibits as well as for supplies such as binders, covers and tabs. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1608169 in the amount of \$116.66**

This invoice claims costs for making 4 copies (x4) of the Grice Rebuttal Report as well as for supplies such as tabs. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable. of copies claimed are taxable" as required by the Bill of Costs Guide.

**Invoice No. 1068179 in the amount of \$85.35**

This invoice claims costs for 5 copies (x5) of unidentified documents as well as for supplies such as binders, labels, and spines. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 3395 in the amount of \$960.25**

This invoice claims costs for copies of unidentified documents as well as for supplies such as custom labels and folders. Also included is non-taxable shipping charges of \$259.20. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1607180 in the amount of \$160.17**

This invoice claims costs for making 2 copies (x2) of Norton SJ Briefing as well as for supplies such as binders, covers and tabs. Norton is not a party to the case or even a witness. This also seeks non-taxable copying supplies and appears to be for counsel's use. Nor does the Bank explain why the copies were necessary to the case or fall within one of the enumerated allowable costs. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1607158 in the amount of \$335.82**

This invoice claims costs for making 2 copies (x2) of unidentified documents as well as for supplies such as binders and tabs. Nor does the Bank explain why all the copies

were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1609120 in the amount of \$43.84**

This invoice claims costs for making 2 copies (x2) of Zayed – Sackreiter – Exhibits as well as for supplies such as labels. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel’s use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1609030 in the amount of \$161.99**

This invoice claims costs for making 2 copies (x2) of Bianchi Dep Prep Exs as well as for supplies such, binders, spines, and tabs. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel’s use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1608184 in the amount of \$421.94**

This invoice claims costs for an oversized print of the Van Dusen Mansion RoomChart. The Bank fails to explain why the copies were necessary to the case.

**Invoice No. 1608171 in the amount of \$63.20**

This invoice claims costs for making 4 copies (x4) of the Jarek Expert Report as well as for supplies such as binders and tabs. This seeks non-taxable discovery related

copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Invoice No. 1612007 in the amount of \$234.28**

This invoice claims costs for making Medlock Binders an attorney for the Bank as well as for supplies such as binders and spines. This seeks non-taxable discovery related copying costs, copying supplies and includes copies for counsel's use and convenience. Nor does the Bank explain why all the copies were necessary to the case. The invoice further lacks sufficient information to determine whether all or a specific number of copies claimed are taxable.

**Faegre Invoice (ECF No. 278-5, p. 43) in the amount of \$336.45**

This invoice claims costs for making copies of unidentified documents. This seeks non-taxable copying costs for counsel's use. Nor does the Bank explain why the copies were necessary to the case or fall within one of the enumerated allowable costs. The invoice further lacks sufficient information to allow the Receiver and the Clerk to determine "whether all or a specific number of copies claimed are taxable" as required by the Bill of Costs Guide.

As a result of the Bank's failure to comply with the Bill of Costs Guide, the Bank's request for copying costs should be rejected.

Dated: March 14, 2017

Respectfully submitted,

/s/ William W. Flachsbart

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**CERTIFICATE OF SERVICE**

The undersigned attorney of record certifies that on March 14, 2017, a copy of the foregoing document was served upon counsel for Defendant via e-mail to the following addresses:

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