THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS **SUPERIOR COURT**
NORTHERN DISTRICT

Vermont Telephone Company, Inc.

v.

FirstLight Fiber, Inc.

Docket No. 216-2020-CV-00312

Order on Parties' Cross Motions for Costs

Plaintiff Vermont Telephone Company, Inc. ("VTel") brought this action against Defendant FirstLight Fiber, Inc. ("FirstLight") arising out of FirstLight's termination of the parties' contract. VTel's amended complaint alleges a claim for breach of contract. Defendant filed a counterclaim for breach of contract. The Court held a nine-day jury trial beginning on September 25, 2023. On October 11, 2023, the jury returned a verdict in VTel's favor on its breach of contract claim and awarded it $1,235,000 in consequential damages. The jury also returned a verdict in favor of FirstLight on its counterclaim and awarded it $33,729.56 for unpaid rent under the Lease. VTel now asks the Court to award its costs incurred during the present case. (Pl.'s Mot. (Doc. 249.)) FirstLight objects and cross moves for its own costs incurred throughout litigation. (Def.'s Obj. & Cross Mot. (Doc. 251.)) VTel objects to FirstLight's cross motion. (Pl.'s Obj. (Doc. 257.)) For the reasons set forth below, VTel's motion is GRANTED in part and DENIED in part and FirstLight's motion is DENIED.

Factual and Procedural History

By way of brief background, FirstLight terminated the Dark Fiber Lease Agreement ("the Lease") in July 2019 after VTel employee Samuel Coleman escorted newspaper reporter Colin Meyn into a collocation facility owned by Consolidated Communications ("Consolidated") at which both parties maintained equipment. FirstLight cited VTel's act of escorting Meyn into the collocation facility to photograph FirstLight's equipment as a breach of the Lease's confidentiality provision, entitling it to terminate the Lease. At trial, the parties had their respective experts testify as to the confidential nature of FirstLight's equipment configuration. VTel's expert, Fred Goldstein, testified that the equipment configuration was not confidential and that Meyn's photographs did not pose a security risk because they did not provide any information that potential hackers could use to access FirstLight's sensitive information. On the other hand, FirstLight's expert, Robert Renzulli, testified that the configuration was confidential and Meyn's entrance into the facility and his photographs posed a risk to FirstLight's critical infrastructure.

At trial, VTel sought consequential damages based on a lost profits calculation done by its damages expert, Brian Pitkin. Pitkin calculated VTel's lost profits based on two potential business opportunities that VTel alleges it lost because of FirstLight's breach: enterprise opportunities along the fiber route and long-haul service between Boston and Montreal. Ultimately, Pitkin calculated VTel's total lost profits to be $24,700,000. FirstLight countered with its own expert, Kenneth Martin, who opined that Pitkin's calculation was flawed and was too speculative to support an award for lost profits. The jury awarded VTel $1,235,000, which the parties stipulated was the amount

of damages that Pitkin calculated that VTel lost for the long haul opportunity. The jury also awarded FirstLight $33,729.56 for its counterclaim, representing the amount of rent under the Lease that VTel stopped paying after September 2019 until the termination's effective date of December 14, 2019.

Analysis

New Hampshire Superior Court Rule 45 governs taxation of costs and provides that "[c]osts shall be allowed as of course to the prevailing party . . . unless the court otherwise directs." In accordance with Rule 45(b), the prevailing party shall be allowed:

> [f]ees of the court, fees for service of process, witness fees, expense of view, cost of transcripts, and such other costs as may be provided by law. The court, in its discretion, may allow the stenographic cost of an original transcript of a deposition, plus one copy, including the cost of videotaping, and may allow other costs including, but not limited to, actual costs of expert witnesses, if the costs were reasonably necessary to the litigation.

N.H. Sup. Ct. R. 45(b). "[T]he award of costs lies within the sound discretion of the trial court." *Van Der Stok v. Van Voorhees*, 151 N.H. 679, 686 (2005).

VTel seeks $1,396.50 as a matter of course, $14,120.05 for deposition and stenographic costs, $3,718.14 for Goldstein's expert testimony, and $84,657.16 for Pitkin's expert testimony. (Doc. 249 at 13.) Thus, VTel seeks a total of $103,891.85 in costs. *Id*. FirstLight objects on multiple grounds, including: (1) VTel's actual costs should be offset by FirstLight's actual costs because FirstLight is also a prevailing party; (2) VTel has failed to show that it needed to use all the deposition testimony for which it requests costs; and (3) neither Goldstein's nor Pitkin's testimony were reasonably necessary for the litigation. (Doc. 251 at 3–12.)

FirstLight also seeks its costs for the present litigation as a prevailing party. As a matter of course, FirstLight seeks $1,254.53. (*Id*. at 4.) Next, FirstLight argues that if the Court were to award VTel its costs for depositions, FirstLight likewise should be entitled to $12,492.33 for its deposition costs. (*Id*. at 7.) In a similar vein, FirstLight maintains that if the Court were to award VTel its costs for Pitkin's testimony, the Court should likewise award FirstLight $45,657.00 for Martin's expert testimony. (*Id*. at 12.) VTel objects and argues that FirstLight is not a prevailing party for purposes of Rule 45(b) because VTel is owed the balance of each parties' verdict. (Doc. 257 ¶ 4.) To the degree that the Court may find FirstLight to be a prevailing party, according to VTel, the most that the Court can award FirstLight as a matter of course is $285 for its filing fee. (*Id*. ¶ 5.) VTel also contends that FirstLight is not entitled to the rest of the costs it seeks because they are not related to FirstLight's counterclaim and instead only go towards its defense of VTel's claim, where VTel, and not FirstLight, was the prevailing party. (*Id*.)

I. Prevailing Party

As an initial matter, the Court must determine which party is considered a prevailing party under Rule 45. FirstLight agrees that for purposes of Rule 45, VTel is a prevailing party. (Doc. 251 at 3.) Thus, the Court must ascertain whether FirstLight is also a prevailing party. "The 'prevailing party' in any case is the person who establishes a superior right over the claim of the person's adversary." 5 R. Wiebusch *N.H., Civil Practice and Procedure*, § 50.05 (2024). "Where both parties obtain a verdict, the one to whom a balance is owed is entitled to costs." *Id*. "When the case contains several claims and each party wins some, so that it cannot be definitely established that one

party has prevailed over the other on the case as a whole, neither party will be allowed costs against the other and each will pay his or her own." *Id*. Ultimately, however, "[t]he prevailing party concept of Superior Court Rule 87(a)[1] incorporates the general rule [the court] stated long ago: [I]f the plaintiff succeed on any issue entitling him to any part of his claim, he alone is permitted to tax cost[s]." *Laramie v. Sears, Roebuck & Co.*, 142 N.H. 653, 661 (1998) (quotations omitted).

Relying on the above language from the New Hampshire Practice Series, VTel argues that it is the sole prevailing party because it is owed the balance of the verdict as the jury awarded it $1,235,000 whereas it awarded FirstLight only $33,729.56. (Doc. 257 ¶ 4.) FirstLight contends that the above language essentially presents the Court with three options: (1) award neither VTel nor FirstLight their costs; (2) award FirstLight its costs as a prevailing party and provide an offset to VTel's costs; or (3) reduce VTel's costs to reflect FirstLight's success at trial. (Def.'s Surreply (Doc. 260) at 4.)

The Court is not persuaded by FirstLight's positions and does not find FirstLight to be a prevailing party. The Court finds *Laramie* particularly instructive. There, the New Hampshire Supreme Court ruled that the trial court did not err in denying defendant its claimed costs where plaintiff prevailed on only one of its counts and the jury returned a verdict in defendant's favor on the two other counts. *Laramie*, 142 N.H. at 661. The supreme court reasoned that although plaintiffs failed on two-thirds of their claims, the fact that they prevailed on at least one precluded defendant from being entitled to fees as a prevailing party. *Id*. Here, the fact that VTel succeeded on its sole

[1] Superior Court Rule 87(a) was the predecessor of the currently enacted Rule 45(b).

claim in front of the jury establishes it as the prevailing party, similar to plaintiffs in *Laramie*. *Id*.

The Court recognizes that here, FirstLight also prevailed on its counterclaim and won a verdict in its favor. However, the Court is not persuaded that this renders FirstLight a prevailing party under Rule 45. FirstLight won a verdict considerably less than the amount that VTel won on a discrete issue in the case, thus demonstrating that VTel is owed a balance of the verdict. *N.H., Civil Practice and Procedure*, § 50.05. Thus, the considerable balance owed in VTel's favor makes the current situation more akin to *Laramie* than one where the court cannot determine the party who ultimately prevailed because VTel clearly established a superior right in this case. *Id*.; *compare Laramie*, 142 N.H. at 661 (finding defendant not a prevailing party even though the jury found in its favor on two out of three claims) *with Clarke v. Clay*, 31 N.H. 393, 404 (1855) (declining to award costs to either party where the appellant technically succeeded in its claim but where appellee prevailed on a major issue in the case). In a similar vein, because the Court can easily determine that VTel prevailed on the overall balance of the case and the issues therein, the Court finds that VTel alone is entitled to its costs and declines FirstLight's invitation to make both parties pay their own costs. *See N.H., Civil Practice and Procedure*, § 50.05; *see also Clarke*, 31 N.H. at 404.

Accordingly, FirstLight's cross-motion is DENIED because for purposes of Rule 45, it is not a prevailing party. *Laramie*, 142 N.H. at 661. Thus, the Court will not address any of FirstLight's arguments as to recovery of its costs as a matter of course, deposition costs, or expert witness costs. *See Antosz v. Allain,* 163 N.H. 298, 302

(2012) (declining to address parties' other arguments where the court's holding on one issue was dispositive).

II. Costs Available as a Matter of Course

First, VTel requests the following costs as a matter of course under Rule 45: (1) $280 for a civil filing fee; (2) $70 in subpoena fees to AT&T; and (3) $1,046.50 for transcripts. (Doc. 249 ¶ 8.) As a matter of law, Rule 45(b) provides that a prevailing party is entitled to costs for court fees, fees incurred in connection with service of process, and costs for transcripts. VTel's above claimed costs fall within the scope of Rule 45 and FirstLight does not argue otherwise. Accordingly, VTel, as a prevailing party, is entitled to $1,396.50 as a matter of law. *Super. Ct. R.* 45.

III. Deposition and Stenographic Costs

Next, pursuant to Rule 45, VTel also seeks $14,120.05 in deposition and stenographic costs. In particular, VTel seeks the following deposition and stenographic costs: (1) $576.00 for Brian Kurkowski; (2) $480.00 for Patrick Coughlin; (3) $1,420.80 for Kurt Van Wagenen; (4) $1,847.60 for Jill Sandford; (5) $1,344.00 for Brandon Peyton; (6) $1,040.80 for Maura Mahoney: (7) $230.40 for Sean Socha; (8) $1,010.00 for Kenneth Martin; (9) $520.00 for Robert Renzulli; (10) $630 for Brian Lippold; (11) $1,031.00 for Colin Meyn; (12) $1,185.00 for Brian Pitkin; (13) $754.45 for Fred Goldstein; and (14) $2,050 in total for stenographic attendance fees. (Doc. 249 ¶ 10.) Rule 45 provides that a trial court has discretion to award the stenographic costs of deposition plus one copy. In *Vention Medical Advanced Components v. Pappa*s, Judge McNamara, considering a request for deposition transcript costs under Superior Court Rule 45, adopted the following bright line rule:

> First, if the witness did not testify, and the deposition was submitted in lieu of live testimony, then the deposition transcript is a taxable cost. If a witness testified, the deposition transcript would be useful or cross-examination of the witness, is reasonably necessary, and a taxable cost. However, if a witness did not testify, unless [the prevailing party] can make a strong showing that the deposition resulted in admission or exclusion of evidence or otherwise streamlined the trial, it is not a reasonably necessary cost.

No. 2014-CV-00604, 2016 N.H. Super. LEXIS 19, at *11–12 (N.H. Super. Ct. Nov. 29, 2016). Finding this methodology persuasive and in the spirit of Rule 45 and within the Court's discretion, the Court applies the same rule. *Van Der Stok*, 151 N.H. at 686.

Utilizing the *Vention* rule, VTel is entitled to the costs for Brian Kurkowski and Colin Meyn's transcripts because their depositions were submitted in lieu of their live, in-court testimony. 2016 N.H. Super. LEXIS 19 at *11–12. Similarly, with the exception of Sean Socha and Brian Lippold, VTel is entitled to the rest of the deposition costs it seeks because all of these witnesses testified at trial, and therefore the Court finds that having these depositions available for direct or cross-examination was useful and reasonably necessary for VTel to prove its claim. *Id*.

Contrary to FirstLight's claims, so holding does not render all deposition testimony recoverable because the Court is limiting VTel to costs only for deposition transcripts to testifying witnesses. VTel explains in its pleadings that these deposition transcripts were necessary at trial because of its concerns throughout litigation of FirstLight's witnesses' potentially shifting answers and explanations and that, as a result, VTel's counsel had to refer to said transcripts routinely throughout the trial. Thus, this is not a situation where VTel simply listed the name of witnesses and the associated costs without any rationale or explanation as to why the deposition transcripts were necessary. *Cf*. *Weinhold v. RS Audley, Inc.*, No. 218-2014-CV-01169,

2018 WL 6932926, at *5 (N.H. Super. Ct. June 11, 2018) (declining to award deposition costs where "the plaintiffs' motion simply lists the names of the deposed witnesses, and the costs associated therewith" because doing so "would render all deposition transcript fees recoverable in every case.").

The Court, however, declines to award VTel its deposition costs for Socha and Lippold. Neither testified at trial nor were the transcripts of their depositions submitted in lieu of live testimony. VTel contends that it deposed Socha because he was allegedly at a meeting with members of FirstLight executive team where the team decided to terminate the Lease. At his deposition, Socha disavowed any knowledge of attending such a meeting. VTel's arguments here fall below what it would need to recover Socha's costs because he did not testify at trial nor did VTel use his deposition testimony to help with issues of admissibility at trial or that it otherwise streamlined the trial. *Vention*, 2016 N.H. Super. LEXIS 19, at *12–13. Likewise, Lippold, one of FirstLight's expert witnesses, did not testify at trial and VTel failed to make the necessary showing described above. *Id*. (denying costs for plaintiff's retained witness where witness did not testify at trial).

Next, FirstLight argues that VTel is not entitled to recover attendance costs for stenographers. In support thereof, FirstLight points out that Rule 45 does not specifically authorize parties to collect said fees, rendering the fees non-collectable. *See Lydford v. Nissan Motor Co.*, No. 00-C-0068, 2006 WL 4665423, at *1 (N.H. Super. Ct. May 23, 2006) ("A party may not recover any costs that are not specifically authorized by some statute or by Superior Court Rule 87."). The Court is not so convinced. In *Lydford*, the very case that FirstLight cites for the above proposition, the

court actually awarded plaintiff costs for both the stenographer's attendance fees and mileage costs. *Id*. Thus, the Court finds that it is within its discretion to award VTel costs for the stenographer's attendance fees. *Id*.

VTel is thus entitled to $13,259.65 for its costs associated with deposition transcripts and stenographic attendance fees.

IV. Costs for Expert Witnesses

VTel next seeks $3,718.14 in actual costs for Goldstein's testimony and $84,657.16 for Pitkin's testimony. The supreme court has defined "actual costs" of expert witnesses to be "limited to those charges directly related to the witness's appearance and testimony in court." *Martinez v. Nicholson*, 154 N.H. 397, 402 (2006) (quotations omitted); *see also Cutter v. Farmington*, 126 N.H. 836, 843 (1985). "An expert's testimony is reasonably necessary to the litigation if it may be relied upon in resolving the issues presented by the case." *Ins. Sols. Corp. v. Hampstead Ins. Agency, Inc.*, No. 218-2012-CV-01584, 2015 WL 12967717, at *4 (N.H. Sup. Ct. Mar. 18, 2015). "New Hampshire courts have generally adhered to the traditional view that any pretrial work must be directly related to trial" and have accordingly limited awards of expert witness fees. *Vention*, 2016 N.H. Super. LEXIS 19, at *13-14; *see O'Callaghan v. Town of Warren*, No. 2006-C-064, 2008 N.H. Super. LEXIS 67, at *2-3 (N.H. Super. Ct. Aug. 29, 2008) (holding that a "plaintiff is not entitled to recover fees attributable to such things as initial investigation, report preparation or preparing for deposition").

A. Fred Goldstein

VTel argues that Goldstein's expert testimony about the confidentiality of FirstLight's equipment configuration is a taxable cost that was reasonably necessary for

litigation because the testimony touched on one of the seminal issues in the case. (Doc. 249 ¶ 18.) FirstLight instead contends that VTel is not entitled to recover costs for Goldstein's testimony because it maintains that VTel was not successful in proving liability on the issues that he so testified. (Doc. 251 at 9–10.) According to FirstLight, the fact that the jury found that both VTel and FirstLight breached the Lease indicates that the jury must have determined that FirstLight was correct in determining that VTel breached the confidentiality provision. (*Id*.) Otherwise, or so FirstLight argues, the jury would not have concluded that VTel was still obligated to pay FirstLight under the Lease. (*Id*.)

FirstLight is correct that the jury found that VTel breached its obligation to pay FirstLight for continued use of the fiber route for three months in 2019. FirstLight is also correct that VTel largely argued that it did not have to continue making payments under the Lease because of FirstLight's breach. The confidentiality of FirstLight's critical infrastructure—the focus of Goldstein's testimony—was crucial to both of the above arguments because VTel argued that FirstLight was not justified in terminating the lease on the basis of the Lease's confidentiality provision because FirstLight's equipment was not confidential. The Court, however, disagrees with FirstLight because FirstLight's argument presupposes that Goldstein's testimony could only be relevant regarding VTel's legal obligation to make payments to FirstLight under the Lease.

Although, as FirstLight contends, there is an interconnectedness between confidentiality and VTel's obligations to continue payments, the jury's verdicts on these two issues are not their only verdicts that heavily relied upon the issue of confidentiality. The jury also found that FirstLight breached the Lease in bad faith. As the Court has

previously recounted in its order on FirstLight's motion for judgment notwithstanding the verdict, the issue of confidentiality was central to both parties' arguments regarding whether FirstLight acted in bad faith. (*See generally* Doc. 246 at 6–12.) In fact, Goldstein testified that, pursuant to common industry standards, it was unreasonable for FirstLight to believe its equipment configuration was confidential. This is because, according to Goldstein, the equipment did not contain any information that hackers or other malevolent forces could have used to attack FirstLight's critical infrastructure. VTel relied on the above testimony in arguing that FirstLight terminated the Lease in bad faith because FirstLight's belief that its equipment configuration was unreasonable and essentially served as pretext to terminate the Lease. The above thus demonstrates that Goldstein's testimony was reasonably necessary to the jury's determinations of bad faith. *See Martinez*, 154 N.H. at 401 (finding that surveyor's expert testimony was reasonably necessary for resolving an adverse possession claim where his testimony that neither survey conducted accurately described the boundary line at question).

It then follows that regardless of the interconnectedness of the parties' arguments regarding VTel's legal obligation to continue making payments under the Lease and the confidentiality of VTel's equipment, Goldstein's testimony was nevertheless reasonably necessary given its centrality to the issue of bad faith. *See id*. The mere fact that the jury found that VTel breached its obligations to continue making payments under the Lease does not negate the usefulness of Goldstein's testimony as to the issue of bad faith, especially where VTel retained use and control of the fiber route through the end of 2019. In other words, contrary to FirstLight's contentions, the

jury could have relied on Goldstein's testimony regarding bad faith while simultaneously finding VTel liable for unpaid rent under the Lease.

As to the issue of bad faith, the Court can glean that the jury relied on Goldstein's testimony because the jury awarded VTel damages for its breach of contract claim. As the Court has previously explained in prior orders, under the Lease, VTel would only be entitled to damages if FirstLight breached the Lease in bad faith. (*See, e.g.*, Doc. 246 at 4–6.) The fact that the jury relied on Goldstein's testimony for at least one of the central issues in the case, even with the jury finding in FirstLight's favor on its counterclaim, distinguishes this from a scenario where the expert testimony was wholly unrelated to the issues in the case. *See Martinez*, 154 N.H. at 401; *cf. Ins. Sols. Corp.*, 2015 WL 12967717 at *5 (finding expert testimony was not reasonably necessary for litigation where the issue at trial was over a purchase agreement for a business but the testimony was generally about the sale of insurance companies). Therefore, the Court finds that Goldstein's testimony, especially as it pertains to the issue of bad faith, to be reasonably necessary for litigation. *See Martinez*, 154 N.H. at 401.

As to the amount that VTel claims for Goldstein, FirstLight argues that the invoice Goldstein sent to VTel was inflated because the invoice claims that he testified for eight hours whereas his actual testimony took only between one to two hours. (Doc. 251 at 9–10.) VTel presents no argument about or explanation as to why it is entitled to those additional six hours as actual costs when Goldstein neither testified nor prepared to testify in that time. *See Vention*, 2016 N.H. Super. LEXIS 19, at *13-14. Thus, the Court agrees with FirstLight that Goldstein's costs should be reduced by $1,500 to reflect his actual time testifying at trial. The balance of VTel's sought costs—Goldstein's

preparation for trial, his mileage reimbursement, his lunch, and lodging—are directly related to Goldstein's appearance and testimony at trial and FirstLight does not argue otherwise. *Id*. Accordingly, VTel is entitled to $2,218.14 in costs for Goldstein's testimony. *Martinez*, 154 N.H. at 401.

B. Brian Pitkin

Lastly, VTel seeks a total of $84,657.16 in costs for Pitkin's testimony and preparation for a pre-trial hearing on July 31, 2023 and for trial. VTel further breaks down Pitkin's expenses as follows: (1) $12,254.65 for Pitkin's appearance, testimony, travel, lodging, and meals for the July 31 hearing; (2) $7,727.51 for Pitkin's appearance, testimony, travel, lodging, and meals for trial; (3) $20,994.5 in preparation for the July 31 hearing; and (4) $43,680.50 in preparation for trial. (Doc. 249 at 12–13.) VTel argues that Pitkin's testimony was reasonably necessary to prove its case because he provided the jury with useful information about VTel's claimed lost profits damages, evidenced by the jury's decision to award VTel $1,235,000.00 in lost profit damages. (*Id*. ¶ 22.)

FirstLight does not challenge the reasonableness of Pitkin's rate or any of the specific costs which VTel seeks. However, FirstLight argues that Pitkin's overall costs should be reduced by ninety-five percent because VTel only recovered five percent of its requested damages. (Doc. 251 at 11.) According to FirstLight, because VTel sought a total of $24,700,000 in lost profits, the fact that the jury only awarded $1,235,000 demonstrates that Pitkin's testimony was overall unsuccessful in advancing VTel's damages theory. (*Id*.) Thus, FirstLight argues that if the Court were to award VTel any of Pitkin's costs, the most that VTel could recover is $4,232.86, which is roughly five

percent of the total costs VTel seeks. (*Id*.) VTel responds that FirstLight's position is without legal support and is based on speculation. (Doc. 257 ¶¶ 17, 18.)

The Court agrees with FirstLight. Unlike with Goldstein's testimony above, here, FirstLight points to concrete evidence to show that the jury rejected the bulk of Pitkin's testimony. Also dissimilar to Goldstein, Pitkin's testimony was only relevant to one issue: VTel's entitlement to lost profits damages. During deliberations, the jury specifically asked the Court how much of Pitkin's expert report and testimony related to long-haul damages. In response, the parties entered into a stipulation whereby they agreed that Pitkin testified that VTel's long-haul damages amounted to $1,235,000.00. Later that same day, the jury returned a verdict in VTel's favor for that very amount. Thus, contrary to VTel's position, the jury's decision to award VTel the same amount of damages that the parties stipulated to for long haul damages demonstrates that the jury rejected Pitkin's testimony as to lost enterprise opportunities. Given that the overwhelming majority of Pitkin's testimony was only relevant to a damages theory that the jury rejected, the Court finds that roughly ninety-five percent of Pitkin's testimony was not reasonably necessary for litigation. *Martinez*, 154 N.H. at 401.

Moreover, the Court disagrees with VTel's suggestion that reducing a prevailing party's costs is "inconsistent with recognized equitable principles." (Pl.'s Surreply (Doc. 263) ¶ 5.) First, as FirstLight points out, courts have previously reduced the amount of recoverable costs where the circumstances of a particular case warranted such a reduction. *See Merkes v. Foley*, No. 03-C-383, 2004 WL 5352541, at *1 (N.H. Super. Ct. Dec. 6, 2004) (utilizing the court's discretion in awarding costs to reduce costs for an expert witness from $2,575.00 to $750 where plaintiff failed to show that the balance of

the costs was reasonably necessary for the expert's testimony); *cf*. *Piroso v. Ross*, No. 05-C-467, 2009 WL 6038664, at *1 (N.H. Super. Ct. Aug. 5, 2009) (reducing total costs to which plaintiff was entitled by ten percent to reflect plaintiff's level of comparative fault).

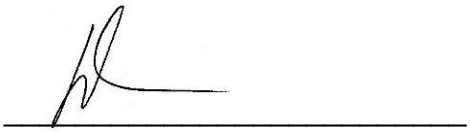
Although the present situation is not one where comparative fault is at issue, the Court nevertheless finds the above cases instructive for the proposition that the Court has the discretion to adjust a costs award to reflect the circumstances of a particular case. Given that the jury largely did not credit or rely on Pitkin's testimony about lost enterprise opportunities in awarding VTel its damages, the Court in its "broad discretion" finds that awarding VTel the entire amount of Pitkin's costs would be against principles of equity. *See Amabello v. Colonial Motors*, 120 N.H. 524, 525–26 (1980) ("Although costs generally are awarded to the prevailing party. . .the trial court possesses a broad discretion in this area."); *see also Tau Chapter of Alpha XI Delta Fraternity v. Town of Durham*, 112 N.H. 233, 236–37 (1972) (commenting that always charging a losing party with the totality of his or her opponent's costs could discourage the use of courts to resolve disputes). Accordingly, the Court finds that VTel is entitled to $4,232.86 for Pitkin's testimony. *See Amabello*, 120 N.H. at 525–26; *see also Merkes*, 2004 WL 5352541, at *1.

Conclusion

In sum, VTel is entitled to the following costs: (1) $1,396.50 as a matter of course; (2) $13,259.65 for deposition and stenographic costs; (3) $2,218.14 for Goldstein's expert testimony; and (4) $4,232.86 for Pitkin's expert testimony. In total, VTel is entitled to a total of $21,107.15 in costs. Accordingly, consistent with the

foregoing, VTel's motion is GRANTED in part and DENIED in part. FirstLight's motion is DENIED.

SO ORDERED.



May 1, 2024

David A. Anderson
Associate Justice