

2. On June 17, 2008, Costco and three other defendants filed a motion [D.E. 204] with this Court requesting a finding that this case is exceptional and seeking an award of reasonable attorneys' fees and non-taxable expenses pursuant to 35 U.S.C. § 285.

3. Following briefing on defendants' motion, on November 24, 2008, this Court entered a Memorandum Opinion and Order (hereinafter the "Exceptional Case Order") holding, among other things, that this case is exceptional and awarding Costco its reasonable attorneys' fees and non-taxable expenses. The Court instructed the defendants to file a petition for fees and non-taxable expenses pursuant to Local Rule 54.3 setting forth the amounts sought to be awarded.

4. Subsequently, Costco provided Nilssen with documents required by Local Rule 54.3(d) in support of its request for attorneys' fees and non-taxable expenses, and the Parties engaged in discussions in an attempt to reach agreement on the amount of reasonable attorneys' fees and non-taxable expenses to be awarded to Costco.

5. On or about April 29, 2009, Nilssen and Costco orally agreed to a stipulated amount for the awarded attorneys' fees and non-taxable expenses. This stipulation memorializes that agreement and seeks the Court's endorsement in the form of an order.

6. The Parties hereby stipulate and agree that: (a) Costco reasonably incurred attorneys' fees and non-taxable expenses in the amount of Six Hundred Forty Two Thousand Five Hundred U.S. Dollars (\$642,500.00) in defense of this case through resolution of its motion to have the case declared exceptional and the award of its attorneys' fees and non-taxable expenses; (b) Costco shall be and hereby is awarded the amount of ~~U.S. Nine Hundred Ninety-Four Thousand Two Hundred Forty One Dollars~~ (U.S. \$642,500.00) as its reasonable attorneys' fees and non-taxable expenses incurred through the date of the Court's order on this Stipulation

and in satisfaction of any claim to prejudgment interest accrued during the same period of time; and (c) Ole K. Nilssen and Geo Foundation, Ltd. shall be jointly and severally liable for this award.

7. The Parties hereby further stipulate and agree that Costco does not waive its rights to seek from this Court or any other court an additional award of attorneys' fees and non-taxable expenses, taxable costs and interest for work incurred: (a) on any appeal pertaining to this action; and (b) in any further district court proceedings going forward related to this action. Nilssen waives no right to oppose, for any reason, any such request by Costco for an additional award of attorneys' fees and non-taxable expenses, taxable costs and interest, and makes no admission that Costco has any right to seek such attorneys' fees and non-taxable expenses, taxable costs and interest from this Court.

8. This Stipulation regarding the amount of Costco's attorneys' fees and non-taxable expenses, taxable costs and interest is not a waiver of (a) Nilssen's right to challenge on appeal the Exceptional Case Order finding this case exceptional and awarding Costco its attorneys' fees, or (b) Costco's right to oppose any such appeal, including the right to argue that such appeal is untimely in whole or in part.

9. The Parties further stipulate and agree that, subject to the stay procedures of paragraph 10 below, execution on this Stipulation and Order awarding Costco the stipulated amount of attorneys' fees and non-taxable expenses specified in Paragraph 6 above shall be stayed for 40 days from the date this Order is entered. If Nilssen does not file a notice of appeal as to the Exceptional Case Order, then Nilssen agrees to pay the stipulated amount of Costco's attorneys' fees and non-taxable expenses in the amount of Six Hundred Forty Two Thousand Five Hundred U.S. Dollars (\$642,500.00) and the additional taxable costs awarded by the Court

in the amount of Six Thousand U.S. Dollars (U.S. \$6,000.00) [D.E. 219] to Costco within 41 days after the Court's entry of this Order.

10. In the event Nilssen files a notice of appeal as to the Court's decision that the case is exceptional and that attorneys' fees and expenses should be awarded, the execution of this Stipulation and Order shall be stayed if, on or before the date Nilssen files the notice of appeal, Nilssen also files with this Court a surety bond, unconditional letter of credit or other undertaking authorized by Local Rule 65.1(b)(1)-(4) ("Undertaking") in the amount of U.S. Six Hundred Fifty Two Thousand One Hundred Twelve Dollars and Eighty Cents (U.S. \$652,112.80), which represents the sum of the stipulated amount of Costco's attorneys' fees and non-taxable expenses herein (U.S. \$642,500.00) and the costs previously awarded by the Court in the amount of Six Thousand U.S. Dollars (U.S. \$6,000.00), together with one year of interest at 0.48% and costs of Five Hundred U.S. Dollars (U.S. \$500.00), as prescribed by the Federal Rules and Local Rules 62.1 and 65.1(b). Any disagreement as to the form or sufficiency of the Undertaking (other than the total amount set forth in this paragraph) that the Parties are in good faith unable to resolve shall be submitted to the Court for resolution. While the Court resolves any such disagreement, Nilssen shall not alter or rescind in any way the Undertaking posted pursuant to this paragraph and Costco shall not seek to execute or enforce this Stipulation and Order against Nilssen.

11. The Parties also agree that the present Stipulation and Proposed Order regarding the amount of Costco's attorneys' fees and non-taxable expenses moots the Court's April 15, 2009 Order Referring a Civil Case to the Designated Magistrate Judge [D.E. 269] insofar as that Order applies to Costco.

12. Costco waives no right to any post-judgment interest accrued on such fees and costs listed in Paragraph 10 herein, from the date of entry by the Court of this Stipulation and Order to the date of payment by Plaintiffs to Costco of the awarded attorneys' fees and non-taxable expenses stipulated and agreed to herein and taxable costs awarded by the Court [D.E. 240].

STIPULATED AND AGREED TO:

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July 7, 2009

ENTERED:

Dated: July 7, 2009

Robert W. Gettleman
The Honorable Robert Gettleman
United States District Judge