

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:	:	
	:	
APPLICATION OF INTERNATIONAL	:	
MINERAL RESOURCES, B.V. FOR AN	:	Miscellaneous Case No. 14-mc-340 (GK)
ORDER TO TAKE DISCOVERY	:	
PURSUANT TO 28 U.S.C. § 1782,	:	
	:	
Applicant.	:	

MEMORANDUM ORDER

On May 15, 2015, Respondent Rinat Akhmetshin, filed a Motion to Recover Costs of Compliance with International Mineral Resources B.V.’s (“IMR”) subpoena [Dkt. No. 25]. IMR filed its Opposition on June 1, 2015 [Dkt. No.31], and Respondent filed his Reply on June 12, 2015 [Dkt. No. 35]. For the following reasons, the Motion is **granted in part and denied in part**.

I. FACTUAL BACKGROUND

Mr. Akhmetshin, who is a non-party to the underlying dispute between two foreign corporations, is an American citizen who provides strategic communications and consulting services to clients worldwide. He has governmental and private clients. He is also Director of the Washington office of International Eurasian Institute for Economic and Political Research (“IEI”). IEI works to expand democracy and the rule of law in Eurasia.

Mr. Akhmetshin is fluent in Russian, has extensive experience in Eurasia, and has numerous contacts throughout that part of the world. He is considered an expert on the legal, political, social, cultural, and economic characteristics of many of the countries that formerly comprised the Soviet Union.

On or about July 26, 2012, he was retained by the law firm of Salisbury & Ryan LLP to provide expert consulting research and related services with respect to the legal dispute between the two corporation – EuroChem Volga-Kaliy, LLC (“ECVK”) and International Mineral Resources (“IMR”). Mr. Akhmetshin’s work with Salisbury & Ryan was terminated on or about May 27, 2013.

The underlying dispute between ECVK and IMR relates to IMR’s involving in issuing an allegedly fraudulent guaranty of or from its subsidiary Shaft Sinkers (Pty) Ltd. The litigation focuses on the construction failure of a \$350 million shaft intended to be used to access a deep potash mine near Kotelnikovo in southern Russia, where ECVK’s \$2.5 billion mining project is located.

ECVK sued IMR on or about March 25, 2013. The Dutch Court, in which the case was being litigated, thereafter issued a pre-judgment attachment against IMR of approximately \$1.2 billion. On June 25, 2014, the Court issued a final decision in favor of IMR and against all the claims made by ECVK. ECVK then filed an appeal.

IMR claims that on appeal, it hopes to introduce new evidence demonstrating that ECVK engaged in litigation misconduct that gave ECVK, the losing party, some unfair and unidentified litigation advantage. Decl. of Robbert DeBree, sworn to October 27, 2014 [Dkt. No. 18-1]. On April 3, 2014, during the litigation, IMR applied to this Court to obtain discovery from Mr. Akhmetshin for use in the litigation with ECVK. IMR claimed that Mr. Akhmetshin “hacked” into its computer system and disseminated the information it obtained to Salisbury & Ryan and ECVK “in an unlawful attempt to gain an unfair advantage” in the pending litigation. Application at 1-2.

Mr. Akhmetshin opposed IMR's application [Dkt. No. 10] and the Court denied it without prejudice on September 23, 2014 [Dkt. No. 17]. IMR filed a second application on October 30, 2014 [Dkt. No. 18], which Mr. Akhmetshin also opposed [Dkt. No. 19]. On February 5, 2015, the Court issued its Memorandum Order granting IMR's application for discovery [Dkt. No. 22]. IMR served Mr. Akhmetshin with its *subpoena duces tecum* and *ad testificandum* the same day the Court granted its application for discovery. On March 17, 2015, Mr. Akhmetshin and IMR moved for entry of a consent order granting IMR leave to deposit \$37,250 into escrow with this Court as security for Mr. Akhmetshin's fees and expenses. The Consent Order contained procedures by which Mr. Akhmetshin could see, reimbursement for fees and expenses [Dkt. No. 24]. On March 24, 2015, IMR deposited the \$37,250 with the Court. On March 27, 2015, Mr. Akhmetshin produced to IMR's counsel 957 pages of responsive non-privileged documents and a 31-page privilege log¹ with 265 separate entries, and shortly thereafter produced an additional 34 pages. Mr. Akhmetshin was deposed on April 7, 2015, and following a request by IMR, produced additional documents on April 27, 2015, and a revised privilege log on May 4, 2015.

II. ANALYSIS

A. Fed. R. Civ. P. 45(d)(2)(B) Requires IMR to Pay Attorney's Fees and Costs to Mr. Akhmetshin

Rule 45(d)(2)(B) provides that when a subpoena is served on a non-party, as in this case, the Court "must protect a person who is neither a party nor a party's officer from significant expenses resulting from compliance [with the subpoena.]" The law is clear in this Circuit that the Court must then determine "whether the subpoena imposes expenses on the non-party, and whether those expenses are significant." Linder v. Calero Portocarrero, 251 F.3d 178, 182 (D.C. Cir. 2001)

¹ The Court later found the vast majority of Mr. Akhmetshin's assertions of privilege to be meritless. See Mem. Op. of Aug. 19, 2015.

(internal quotation marks omitted). The Linder Court also stated that “[i]f they are, the court must protect the non-party by requiring the party seeking discovery to bear at least enough of the expense to render the remainder non-significant.” Id. (internal quotation marks omitted). Mr. Akhmetshin’s request for the costs of his compliance with IMR’s subpoena fits squarely into the requirements listed by the Court of Appeals.

B. Fed. R. Civ. P. 45 Requires IMR to Pay Mr. Akhmetshin Reasonable Expenses for Complying with Its Subpoena

Mr. Akhmetshin seeks reimbursement for (1) the reasonable costs of his compliance with IMR’s subpoena, and (2) an award for the expenses he incurred for the three month period from February to April 30, 2015, during which he spent large amounts of his own time responding to the subpoena and requests for discovery.

Mr. Akhmetshin is requesting a total amount of \$111,580.33, to recover his costs for complying with IMR’s subpoena and discovery requests, pursuant to Fed. R. Civ. P. 45(d)(2)(B)(ii), IMR argues that he is not entitled to any costs whatsoever incurred in responding to its subpoena. That position is simply wrong.

In determining what amount of compensation to order, our Court of Appeals laid out three factors the trial court should consider in determining how much of the subpoenaed part’s costs should be paid: “[1] whether the non-party actually has an interest in the outcome of the case, [2] whether the non-party can more readily bear its costs than the requesting party, and [3] whether the litigation is of public importance.” Linder, 251 F.3d at 178 (quoting Linder v. Calero-Portocarrero, 180 F.R.D. 168, 177 (D.D.C. 1998)).

Mr. Akhmetshin's request for compensation meets all three of these requirements. As a non-party, non-testifying expert consultant,² whose work was completed on May 27, 2013, less than a year from the date he was retained, Mr. Akhmetshin has no interest in the final outcome of the underlying dispute between IMR and ECVK.

As to whether IMR can more readily bear the costs than the requesting party, there is no question whatsoever. As noted earlier, Mr. Akhmetshin provides strategic communications and consulting services to clients all over the world both private and governmental. He has his own firm with a variable income which depends on the services he provides clients. While there is some dispute, it appears that he earns no more than \$200,000 a year. IMR, on the other hand, is a private investment company based in the Netherlands, wholly owned by three billionaires, namely, Alexan Mashkivitch, Patokh Chodiev, and Alijan Ibragimov. There is absolutely no question that IMR is fully capable of paying the entire amount of costs sought should the Court determine it is appropriate. Nor is there any evidence, as IMR argues, that Mr. Akhmetshin was in any way "intertwined" with the underlying litigation.

Finally, this particular litigation is of little or no public importance.

Despite the three factors' uniform support for Mr. Akhmetshin's position, IMR fully believes, for the following reasons that it should not have to pay Mr. Akhmetshin any money at all.

First, IMR claims that Mr. Akhmetshin should not receive any money because of his "own apparent wrongdoing in connection with the Dutch litigation." Pet'r's Opp'n at 3. Although there is some evidence to support IMR's allegations, see Mem. Op. of Aug. 19, 2015 at 12-15, that

² During its *in camera* review, the Court concluded that Mr. Akhmetshin performed both strategic communications and expert consultant duties while working on behalf of ECVK. Mem. Op. of Aug. 19, 2015 at 6-10, 12.

evidence is far from conclusive. Moreover, there is no case law whatsoever to support IMR's argument, and it has no merit.

Second, IMR also argues that Mr. Akhmetshin is not entitled to recover any expenses because "he may seek to recover such costs from [Salisbury & Ryan] and/or ECVK." Pet'r's Opp'n at 7. That claim has no more substance than the previous one. First, it is pure speculation. Second, there is no support, in this jurisdiction, for denying recovery of costs in the hope that a different payor can be found.

Third, IMR argues that Mr. Akhmetshin is not entitled to recover costs at his ordinary professional rate of \$450 per hour for the 57 hours he spent responding to IMR's subpoena, complying with discovery requests, and preparing for his deposition.

While the costs of Mr. Akhmetshin at his ordinary professional rate of \$450 per hour are compensable under Hina v. Anchor Glass Container Corp., 2008 WL 2201479, at *8 (S.D. Ohio May 22, 2008), that does not mean that he must be reimbursed in full. While he claims to have spent 57 hours in order to fully comply with the subpoena and discovery requests, and while he examined well over 1,200 pages, he objected to 265 other pages on the basis of assertions of privilege many of which the Court later rejected. Mem. Op. IMR claims that in actuality, of the 991 pages that Mr. Akhmetshin produced, 760 of them (over 75 percent) were simply copies of two documents: the Dutch version of the summons served on IMR by ECVK and the English translation of that summons. Scanlon Decl. at ¶ 3 [Dkt. No. 31-1]. It is doubtful that the 760 duplicate pages produced could have been of utility to IMR and, more importantly, it could not have taken Mr. Akhmetshin very much time to amass and examine those two documents.

Consequently, the Court concludes that Mr. Akhmetshin should be reimbursed for \$12,285 or 50 percent of what he would have earned at his usual professional rate of \$450 per hour.

Fourth, IMR claims that the request for legal fees paid to Salisbury & Ryan, as well as costs, are “an unreasonably high figure for the work (if any) a lawyer needed to do to assist him [Mr. Akhmetshin] in responding to IMR’s subpoena.” Pet’r’s Opp’n at 14. The Court disagrees. See Georgia-Pacific LLC v. Am. Intern. Specialty Lines, 278 F.R.D. 187, 190 (S.D. Ohio 2010).

In order to comply with IMR’s subpoena, Mr. Akhmetshin’s counsel completed the 14 tasks set forth on pages 11-12 of the pending Motion. Those tasks, with the exception of efforts to negotiate a Protective Order, were certainly reasonable and necessary to comply with the subpoena and protect the client. Preparation of a fairly lengthy privilege log takes time, even if many of the privileges asserted were later found to be overbroad.

The rates which Salisbury & Ryan charged were, for a Washington, D.C. law firm, not unusually high. Mr. Sperduto billed at \$600 per hour (which is certainly common for a partner in a Washington, D.C. law firm), Mr. Kauke billed at \$300 per hour (a modest fee for an associate even in Washington, D.C.), and a paralegal/law clerk, Eliza Bikvan, billed at \$150 per hour. See LSI Laffey Matrix, submitted as Ex. G to Kauke Decl. [Dkt. No. 25-4].

In sum, the Court concludes that the legal fees charged by Salisbury & Ryan are fair and reasonable. The rates being charged are consistent with those charged by other firms in the city. The amount of hours is not overly high in view of all the tasks the firm had to undertake, especially those relating to the determination of whether a privilege applied to any particular document. Therefore, the Court will award Mr. Akhmetshin the full amount charged for the legal services provided by Salisbury & Ryan of \$85,930.33, less \$12,390.00 for time spent on the production and negotiation of a Protective Order, for a total of \$73,540.33.

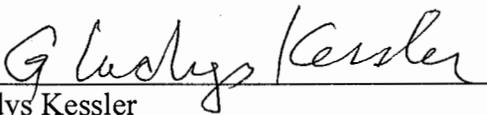
Fifth, IMR argues that Mr. Akhmetshin is not entitled to recover any fees relating to his request for a confidentiality agreement and/or protective order. IMR is correct that under Fed. R.

Civ. P. 45(d)(2)(B), reimbursement of costs of protective orders or confidentiality agreements is not appropriate because such documents are solely for the protection of the person who has been subpoenaed. “[Rule 45(d)(2)(B)] does not establish a blanket requirement that all of a nonparty’s legal fees are reimbursable so long as they are somehow related to its efforts in responding to a subpoena. Reimbursable fees are those that are necessary to the third party’s compliance and thus benefit the requesting party or are of assistance to the court.” In re Am. Hous. Found., No. 09-20232-RLJ-11, 2013 WL 2422706, at *2 (Bankr. N.D. Tex. June 4, 2013). In this case, the costs involved efforts of Mr. Akhmetshin to obtain a protective order and confidentiality agreement which benefitted him and him alone. Consequently, he is not entitled to recover them.

Finally, Mr. Akhmetshin may recover the amount of \$3,370.33 spent in various disbursements, which is already included in Mr. Akhmetshin’s award for legal services provided by Salisbury & Ryan of \$73,540.33. The majority of those costs were incurred by Salisbury & Ryan for computerized research service. The remaining costs were for copying. All of this work was done solely for the purpose of responding to the subpoena and shall be reimbursed.

WHEREFORE, it is this 18th day of November, 2015, hereby

ORDERED, that Mr. Akhmetshin shall be awarded a total of \$85,825.33 (that is \$12,285.00 plus \$73,540.33) for his costs and fees.



Gladys Kessler
United States District Judge

Copies via ECF to all counsel of record