UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 18-CV-62975-COHN/STRAUSS

VERSILIA SUPPLY SERVICE SRL,

Plaintiff,

v.

M/Y WAKU, a 2016 model 209-foot Azimut Benetti motor yacht, which is Registered in the Cayman Islands as Official Number 747107, her boiler, engines, tackle, furniture, furnishings, apparel, equipment, machinery, appurtenances, tenders, etc., *in rem*,

Defendant.
_____/

REPORT AND RECOMMENDATION

THIS CAUSE comes before me upon Counter-Plaintiff/Defendant, M/Y WAKU, a 2016 model 209-foot Azimut Benetti motor yacht, which is registered in the Cayman Islands under Official Number 747107, her boiler, engines, tackle, furniture, furnishings, apparel, equipment, machinery, appurtenances, tenders, etc. (the "Vessel" or "M/Y WAKU"), and Claimant, MOCA LLC ("MOCA") (collectively, "Defendants'") motion to tax costs made pursuant to Federal Rule of Civil Procedure 54(d), Local Rule 7.3(c) and Local Rule E (14) against Intervening Plaintiffs, Joseph Williams and Thrive Maritime LLC ("Motion"). (DE 474). This case was referred to me for appropriate disposition, evidentiary hearing and/or report and recommendation of all post-judgment matters, including Defendants' Motion ("Referral").

(DE 475).[1] Intervening Plaintiffs, Alistair Andrew ("Andrew"), Gabriel Alphaeus Attenborough ("Attenborough"), Krzysztof Hanusiak ("Hanusiak"), Kristina Mikulic ("Mikulic"), Chloe Nicolaou ("Nicolaou"), Garrett Alexander Smith ("Smith"), Joseph Williams ("Williams"), and Thrive Maritime LLC ("Thrive") (collectively, "Intervening Plaintiffs") have filed a response ("Response"),[2] and Defendants have replied ("Reply"). (DE 481; DE 485). Having reviewed the Motion, the Response and the Reply and being otherwise fully advised, I respectfully **RECOMMEND** that the Motion be **GRANTED IN PART and DENIED IN PART**. Specifically, I recommend that costs be awarded to Defendants in the amount of **$29,606.55**.

BACKGROUND

This case arises from an action to enforce claims for maritime liens for unpaid wages and related amounts after Defendant MOCA purchased the Vessel on October 23, 2019 subject to all maritime liens. (DE 462 at 2). Following a nonjury trial, the Court entered various judgments (DE 463). In particular, the Court entered a judgment in favor of Intervening Plaintiff Joseph Williams in the amount of $24,803.70 against Defendant M/Y WAKU. *Id.* at ¶7. The Court found that Intervening Plaintiff Williams's damages of $24,803.70 consisted of: (1) unpaid wages of $18,500.00 (2) accrued, unpaid vacation of $4,933.33; and (3) prejudgment interest of $1,370.37. (DE 462 at 26, 30, 43).

Additionally, the Court entered judgment in favor of Defendants M/Y WAKU and MOCA against Intervening Plaintiff Williams in the amount of $69,399.87. (DE 463 at ¶¶7, 9).

[1] The Referral does not include any motions seeking reconsideration of the orders or judgments entered by the District Court in this case. *Id.* at n.1.

[2] Defendants correctly note that Intervening Plaintiffs other than Williams and Thrive lack standing to oppose Defendants' Motion because Defendants are not seeking to tax costs against Intervening Plaintiffs other than Williams and Thrive. (DE 485 at n.1).

Defendants' judgment against Williams resulted from their counterclaim for conversion. (DE 462 at 41-42). In finding for Defendants on their counterclaim, the Court stated:

> This claim is effectively uncontested. Mr. Williams admits that he took a fuel credit, parts, a carbon fiber ladder, and three Sea Bobs from the Vessel. That is why he agreed to reduce Thrive's claim. . . . Defendants are entitled to judgment in their favor on their conversion claim against Williams.

Id. at 41. The Court's calculation of Defendants' damages for the counterclaim included prejudgment interest of $473.61 to arrive at the $69,399.87 total. *Id.* at 43. Thus, Defendants' judgment of $69,399.87 against Intervening Plaintiff Williams exceeded Williams' judgment against Defendant M/Y WAKU of $24,803.70.

Furthermore, the Court entered judgement in favor of Defendant M/Y WAKU *alone* against Thrive Maritime, LLC, Mr. Williams' company. Thrive alleged that it was owed $131,319.36 for necessaries provided to the Vessel and $34,131.44 in accrued interest (for a total of $165,450.80). *Id.* at ¶¶2, 94; 37. The Court, however, found that Thrive "failed to establish that it possess[ed] a maritime lien on the Vessel for necessaries." *Id.* Therefore, Intervening Plaintiff Thrive recovered nothing in the instant action, and the Court entered judgment in favor of Defendant M/Y WAKU and against Thrive. (DE 472). Both Defendants now seek to tax costs against Intervening Plaintiffs Williams and Thrive jointly and severally in the amount of $29,766.55. (DE 474 at ¶¶3-4). Only Defendant M/Y WAKU, however, prevailed against Thrive. Therefore, I conclude that, for the purposes of determining liability for costs, Williams is liable to both Defendants, M/Y WAKU and MOCA, while Thrive is only liable to Defendant M/Y WAKU.[3]

[3] The practical effect of Thrive being liable solely to Defendant M/Y WAKU may be negligible because MOCA is the owner of M/Y WAKU. Nonetheless, the judgment was rendered only in favor of M/Y WAKU against Thrive.

Intervening Plaintiffs object to much of Defendants' costs, which objections are focused on expenses categorized as follows:

Category	Amount	Uncontested
Costs related to depositions	$ 19,844.30	$ 3,392.02
Costs related to trial transcripts	$ 2,101.68	$ 689.35
Costs related to service of subpoenas	$ 290.00	$ 290.00
Costs related to an admiralty bond	$ 7,530.57	$ 0.00
TOTAL:	**$ 29,766.55**	**$ 4,371.37**

(DE 481).

LEGAL STANDARD

"Unless a federal statute, [the Federal Rules of Civil Procedure], or a court order provides otherwise, costs . . . should be allowed to the prevailing party." Fed. R. Civ. P. 54(d)(1). "[T]here is a strong presumption that the prevailing party will be awarded costs" under Rule 54. *Yellow Pages Photos, Inc. v. Ziplocal, LP*, 846 F.3d 1159, 1166 (11th Cir. 2017) (quoting *Mathews v. Crosby*, 480 F.3d 1265, 1276 (11th Cir. 2007)). To qualify as a prevailing party under Rule 54(d):

> [a] party need not prevail on all issues to justify a full award of costs . . .. Usually the litigant in whose favor judgment is rendered is the prevailing party for purposes of rule 54(d).... A party who has obtained some relief usually will be regarded as the prevailing party even though he has not sustained all his claims.... Cases from this and other circuits consistently support shifting costs if the prevailing party obtains judgment on even a fraction of the claims advanced.

Lipscher v. LRP Publications, Inc., 266 F.3d 1305, 1321 (11th Cir. 2001) (quoting *Head v. Medford*, 62 F.3d 351, 354 (11th Cir. 1995)).

"There need not be only one prevailing party in an action, one party may prevail on one claim while the opposing party prevails on another." *St. Paul Fire & Marine Ins. Co. v. Lago Canyon, Inc.*, No. 06-60889-CIV, 2009 WL 10696246, at *4 (S.D. Fla. Jan. 27, 2009) (Cohn, J.) (citing *Powell v. Carey International, Inc.*, 548 F. Supp. 2d 1351, 1356 (S.D. Fla. 2008)).

Federal courts, however, exercise discretion to deny costs to either party in cases with mixed results. *Dear v. Q Club Hotel, LLC*, No. 15-CV-60474, 2017 WL 5665359, at *8 (S.D. Fla. Nov. 1, 2017), *report and recommendation adopted*, No. 15-60474-CIV, 2017 WL 5665361 (S.D. Fla. Nov. 20, 2017) (collecting cases and stating that "in cases resulting in split outcomes, federal courts have exercised that discretion to deny costs to either party"); *see also Allstate Fire & Cas. Co. v. Ho*, No. 11-60724-CIV, 2013 WL 12086658, at *2 (S.D. Fla. May 30, 2013) (Altonaga, J.) (quoting *Kearney v. Auto-Owners Ins. Co.*, No. 8:06-cv-00595-T-24-TGW, 2010 WL 3259702, at *4 (M.D. Fla. Aug. 16, 2010) for the proposition that federal courts generally award costs to one party so as to avoid cases being "'sliced into dozens of parts with parties fighting over who won each piece of a divided pie'").

While a trial court has some discretion in deciding whether to award costs to a prevailing party, such discretion is not unlimited. *Id.* A decision to deny full costs must be supported by a sound reason. *Id.* (citing *Chapman v. AI Transport*, 229 F. 3d 1012, 1039 (11th Cir. 2000)).

Nevertheless, the presumption favoring an award of costs generally applies to only those costs that are taxable under 28 U.S.C. § 1920. *Id.* (citing *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 441 (1987)). In other words, a court's discretion to award costs under Rule 54 is limited by the categories of taxable costs specified in section 1920. *Id.* (citing *Arcadian Fertilizer, L.P. v. MPW Indus. Servs. Inc.*, 249 F.3d 1293, 1296 (11th Cir. 2001)). Section 1920 specifically permits the taxation of the following costs:

> (1) Fees of the clerk and marshal;
>
> (2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;
>
> (3) Fees and disbursements for printing and witnesses;

> (4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;
>
> (5) Docket fees under section 1923 of this title;
>
> (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

28 U.S.C. § 1920. In addition, "Local Rule E (14) directs the Court to include in its final judgment all reasonable expenses paid by the prevailing party incidental to, or arising from the arrest or attachment of any vessel." *M&M Priv. Lending Grp., LLC v. M/Y Ciao Bella*, No. 19-CV-62350, 2020 WL 5499102, at *4 (S.D. Fla. Sept. 3, 2020), *report and recommendation adopted*, No. 19-62350-CIV, 2020 WL 5500734 (S.D. Fla. Sept. 11, 2020) (internal quotation marks and citation omitted). Furthermore, "there is no rule requiring courts to apportion costs according to the relative success of the parties" or on any other basis. *Kemin Foods, L.C. v. Pigmentos Vegetales Del Centro S.A. de C.V.*, 464 F.3d 1339, 1348 (Fed. Cir. 2006) (citing *Johnson V. Nordstrom-Larpenteur Agency, Inc.*, 623 F.2d 1279, 1282 (8th Cir. 1980). Rather, apportionment based upon the parties' relative success is limited to exceptional circumstances such as where the costs are vastly disproportional to the relief that was obtained. *Id.*

Although the burden falls on the losing party to demonstrate that a cost is not taxable, the prevailing party "still bears the burden of submitting a request for [costs] that [will] enable the Court to determine what [costs] were incurred and whether [the prevailing party] is entitled to them." *Ferguson v. North Broward Hosp. Dist.*, No. 10-61606-CIV, 2011 WL 3583754, at *3 (S.D. Fla. 2011) (Cohn, J.) (quoting *Lee v. Am. Eagle Airlines, Inc.*, 93 F. Supp. 2d 1322, 1335 (S.D. Fla. 2000)).

ANALYSIS

I. Prevailing Parties

The parties do not dispute that Defendants were the prevailing parties relative to Defendants' counterclaim against Intervening Plaintiff Williams.[4] (DE 474 at 2; DE 481 at 2-3). Rather, Intervening Plaintiffs argue that "Defendants prevailed *only* on their counterclaim for conversion" and should, therefore, only recover for costs associated with the conversion claim. (DE 481 at 2) (emphasis added).[5] Defendants argue, however, that they are also prevailing parties as to Thrive because the Court entered a final judgment in favor of Defendant M/Y WAKU against Thrive with respect to Thrive's claim for necessaries. (DE 474 at 2-3; DE 485 at 1-2).

Intervening Plaintiffs make no compelling arguments against finding that Defendant M/Y WAKU is a prevailing party against Thrive. While Intervening Plaintiffs acknowledge that Thrive lost on its claim for necessaries and concede that Defendants are entitled to costs for Thrive's deposition, they do not specifically affirm or deny that Defendants are a prevailing party with respect to Thrive's claim. (DE 481 at 2-4). Instead, Intervening Plaintiffs merely observe that Defendants' position as to prevailing on Thrive's claim (as well as on the conversion claim) may be moot should they obtain a favorable ruling on Motions for Reconsideration that they filed. *Id.* at 11-12. The District Court, however, denied the Motions for Reconsideration on April 12, 2021. (DE 491). Therefore, even if the Motions for

[4] Defendants' Certification of Good Faith Conferral states that counsel for Williams and Thrive agreed that the movants were prevailing parties entitled to recover Thrive deposition costs of $2,169.30 and service of process fees of $290. (DE 474 at 7).

[5] Intervening Plaintiffs assert that the counterclaim for conversion was a separate issue from the case in chief involving maritime liens for wages but fall short of arguing that Defendants are not prevailing parties with respect to the counterclaim. (DE 481 at 2). Indeed, Intervening Plaintiffs later explicitly acknowledge Defendants as "prevailing" with respect to the counterclaim specifically. *See id.* at 8.

Reconsideration were a reason to deny costs (and I do not find that they were), they are no longer a reason to do so.

Nor have the Intervening Plaintiffs otherwise raised any meritorious arguments for me to conclude that M/Y WAKU is not a prevailing party against Thrive. Therefore, because Thrive's claim for necessaries is distinct from the Intervening Plaintiffs' wage claims and judgement was entered in favor of Defendant M/Y WAKU against Thrive, I find that Defendant M/Y WAKU is a prevailing party with respect to Thrive's claim. *See St. Paul Fire and Marine Ins. Co.*, 2009 WL 10696246 at *4 (stating that "[a] prevailing party is defined as 'one who has been awarded some relief by the court'" and quoting *Morillo-Cedron v. District Director for the U.S. Citizenship and Immigration Services*, 452 F.3d 1254, 1257 (11th Cir. 2006)). Additionally, Intervening Plaintiffs' apparent acquiescence to Defendants' asserted position of prevailing with respect to Thrive's claim, by not presenting argument and authority to rebut Defendants' assertion, is not determinative on this issue. Rather, the fact that Thrive's claim for necessaries was one of the central issues in the case weighs in favor of finding that Defendant M/Y WAKU is a prevailing party with respect to Thrive's claim. *See Royal Palm Properties, LLC v Pink Palm Properties, LLC*, No. 17-80476-CV, 2021 WL 1056621, at *3 (S.D. Fla. Feb. 17, 2021) (citing *Sherry Mfg. Co. v. Towel King of Fla., Inc.*, 822 F.2d 1031, 1035 (11th Cir. 1987) and finding that courts must look to "central issues" and "not the periphery" in determining whether a party is a prevailing party for purposes of awarding costs under Rule 54(d)).

Thus, for the reasons stated above, I conclude that Defendants M/Y WAKU and MOCA are prevailing parties with respect to the counterclaim for conversion against Intervening Plaintiff Williams ("M/Y WAKU and MOCA v Williams") (DE 474 at 2; DE 481 at 2-3) and

that Defendant M/Y WAKU is a prevailing party against Thrive with respect to Thrive's claim for necessaries ("M/Y WAKU v Thrive") (DE 472).

II. Costs Related to Depositions

According to Defendants' Bill of Costs, the $19,844.30 in costs related to depositions consists of the following:

Date	Description	Amount
5/1/2020	Court Reporter Attendance re: Hanusiak & Attenborough	$ 830.00
5/1/2020	Compilation of Exhibits re: Hanusiak & Attenborough	$ 75.00
5/1/2020	Transcripts with Exhibits re: Hanusiak & Attenborough	$ 3,641.00
5/4/2020	Court Reporter Attendance re: Andrew	$ 362.50
5/4/2020	Transcript with Exhibits re: Andrew	$ 1,474.90
5/5/2020	Court Reporter Attendance re: Nicolaou & Smith	$ 460.00
5/5/2020	Transcript with Exhibits re: Smith	$ 1,875.05
5/6/2020	Court Reporter Attendance re: Mikulic	$ 290.00
5/6/2020	Transcript with Exhibits re: Mikulic	$ 1,541.60
5/8/2020	Court Reporter Attendance re: Williams	$ 630.00
5/8/2020	Transcript with Exhibits re: Williams	$ 1,565.30
5/28/2020	Transcript with Exhibits re: Nicolaou	$ 1,229.85
6/1/2020	Transcript with Exhibits re: Nicolaou	$ 349.95
6/3/2020	Transcript with Exhibits re: Thrive	$ 2,169.30
6/15/2020	Transcript with Exhibits re: Williams	$ 1,532.50
8/6/2020	Copy of Transcript w/Exhibits re: Brook O'Neill	$ 1,037.35
8/7/2020	Court Reporter Attendance re: Castillo	$ 780.00
	Total:	**$19,844.30**

(DE 474-1 at 3-4).

"[C]osts for deposition transcripts are generally taxable as long as the transcripts were 'necessarily obtained for use in the case.'" *Zendejas v. Redman*, 15-81229-CV, 2018 WL

5808705, at *2 (S.D. Fla. Nov. 6, 2018) (citing *U.S. E.E.O.C. v. W&O, Inc.*, 213 F.3d 600, 620–21 (11th Cir. 2000)). A deposition merely needs to have reasonably appeared necessary at the time taken. *Id.* Accordingly, "a deposition taken within the proper bounds of discovery will normally be deemed to be 'necessarily obtained for use in the case' and its costs will be taxed unless the opposing party interposes a specific objection that the deposition was improperly taken or unduly prolonged." *Joseph v. Nichell's Caribbean Cuisine, Inc.*, 950 F. Supp. 2d 1254, 1258 (S.D. Fla. 2013) (internal quotation marks and citation omitted). Additionally, a party challenging the costs of a deposition "'bears the burden of showing that specific deposition costs or a court reporter's fee was not necessary for use in the case or that the deposition was not related to an issue present in the case at the time of the deposition.'" *Zendejas*, 2018 WL 5808705 at *2 (quoting *George v. Fla. Dep't of Corr.*, No. 07-80019-CIV, 2008 WL 2571348, at *5 (S.D. Fla. May 23, 2008)).

A. M/Y WAKU and MOCA v Williams

Intervening Plaintiffs' arguments that Defendants are not entitled to certain costs relating to the counterclaim against Williams for conversion lack merit. As previously noted, Intervening Plaintiffs concede that Defendants are entitled to recover $2,169.30 for the deposition of Thrive with respect to the conversion counterclaim.[6] (DE 481 at 4). As to the deposition of Williams, Intervening Plaintiffs argue that Defendants should only partially recover 32.8% of those costs based upon the proportion of Williams' and Thrive's total claim amounts compared to the amount of the bond in this case. *Id.* With this reasoning, Intervening Plaintiffs argue that Defendants are entitled to $720.06 for Williams' 5/8/2020 deposition and $502.66 with respect to Williams' 6/15/2020 deposition. *Id.* at 4-5. Combined with the Thrive deposition cost,

[6] Intervening Plaintiffs do not explicitly state a reason for conceding that Defendants are entitled to costs related to the deposition of Thrive. (DE 481 at 4).

Intervening Plaintiffs concede that, relative to the counterclaim against Williams for conversion, Defendants are entitled to $3,392.02 for costs relating to depositions. *Id.*

Intervening Plaintiffs further argue that the depositions of witnesses other than Williams and Thrive were conducted only for investigative purposes and were not necessarily obtained for use in the "conversion case" against Williams because they were unrelated to Williams' intentional tort of conversion. *Id.* at 7-9. Indeed, Intervening Plaintiffs attempt to distinguish depositions other than Williams and Thrive as being only related to the case in chief regarding claims for maritime liens for wages. *Id.*

Defendants, on the other hand, argue that all of the depositions should be fully taxed because they were properly taken and were wholly or partially necessarily obtained for use in the case. *Id.* Defendants also argue that Intervening Plaintiffs cite no authority to support that the recovery of costs for Williams depositions should be reduced or allocated on the basis of their proportion to the amount of the bond in this case. (DE 485 at ¶8).

Here, as Defendants correctly argue, the deposition transcripts were necessarily obtained for use in the case because all of the witnesses deposed were parties in the case, the deponents were identified on the parties' respective witness lists and, except for Defendant MOCA's corporate representative, all of the witnesses testified at trial. (DE 474 at 4-5; DE 485 at 6-7). Furthermore, Intervening Plaintiffs do not argue "that the deposition[s] [were] not related to an issue present in the case at the time of deposition[s]." *Zendejas*, 2018 WL 5808705 at *2. Also, as Defendants note, Intervening Plaintiffs do not argue that the depositions were improper in any respect. (DE 485 at 5). Additionally, contrary to Intervening Plaintiffs' argument, the instant action is not comprised of a "conversion case" and a separate case relating to maritime liens. There is one case that is inclusive of all the claims as well as the counterclaim. Moreover,

Intervening Plaintiffs do not provide any grounds for finding that the circumstances of this case justify apportionment or a reduction of the costs, and I do not otherwise find that any such grounds exist. *Kemin Foods, L.C.*, 464 F.3d at 1348. Accordingly, I find that Defendants are entitled to fully recover the deposition costs of $19,844.30 with respect to Defendants' prevailing against Williams for their conversion counterclaim.

B. M/Y WAKU v Thrive

Intervening Plaintiffs' argument for not fully taxing deposition costs with respect to Defendant M/Y WAKU's judgment against Thrive, stemming from Thrive's claim for necessaries, is unavailing. The objection is to Defendants' recovery of deposition costs "that have no connection to [the] count for conversion." (DE 481 at 7). Intervening Plaintiffs thus seek to narrow the focus, for determining whether the depositions were necessarily obtained, to only Defendants' conversion claim. Such narrowing, however, is inappropriate. As noted above, Defendant M/Y WAKU is a prevailing party with respect to Thrive's claim for necessaries. Furthermore, "[d]eposition costs are taxable even if a prevailing party's use of a deposition is minimal or not critical to that party's ultimate success." *Adams v. Paradise Cruise Line Operator Ltd., Inc.*, No. 19-CV-61141, 2020 WL 4904195, at *2 (S.D. Fla. Aug. 20, 2020) (internal quotation marks and citation omitted).

Here, as previously discussed, the witnesses deposed were parties in the case, were identified on the parties' respective witness lists and, except for Defendant MOCA's corporate representative, testified at trial. (DE 474 at 4-5; DE 485 at 6-7). As Defendants also argue, Thrive identified several witnesses, in addition to Williams, as having knowledge about Thrive's claim, including Andrew, Nicolaou, Captain Brook O'Neill and Castillo. (DE 485 at ¶4; 485-1; 485-2). Moreover, Defendants argue that the depositions of all the witnesses were devoted in

significant part to questions about Thrive's credit card purchases, which purchases served as the basis for Thrive's claim. (DE 485 at ¶5). Thus, I find that Defendants demonstrate that the depositions were necessary for use in the case and relevant to the claim that Defendant M/Y WAKU prevailed upon against Thrive.

Furthermore, Intervening Plaintiffs do not carry their burden to show "that specific deposition costs or a court reporter's fee was not necessary for use in the case or that the deposition[s] [were] not related to an issue present in the case at the time of the deposition.'" *Zendejas*, 2018 WL 5808705 at *2. Also, nothing in the record indicates that the subject depositions were taken outside the bounds of the normal discovery process. Accordingly, I conclude that Defendant M/Y WAKU, as the prevailing party with respect to Thrive's claim, should recover the total costs for depositions of $19,844.30 against Intervening Plaintiff Thrive.

III. Costs Related to Trial Transcripts

Here, I find that the below listed $2,101.68 in costs for trial transcripts are recoverable:

1. Proceedings held on October 19, 2020: $984.96; and
2. Proceedings held on October 21, 22, and 26, 2021: $1,116.72.

(DE 474-1 at 4). "Trial transcript costs are . . . recoverable if they are necessarily obtained for use in the case, such as for post-trial motion practice." *Hughes v. Priderock Cap. Partners, LLC*, No. 9:18-CV-80110, 2020 WL 6491003, at *3 (S.D. Fla. Sept. 17, 2020), *report and recommendation adopted*, No. 9:18-CV-80110-RLR, 2020 WL 6487537 (S.D. Fla. Nov. 4, 2020) (citing *Fortran Grp. Int'l, Inc. v. Tenet Hosps. Ltd.*, No. 8:10-CV-1602-T-TBM, 2013 WL 12203233, at *2 (M.D. Fla. Sept. 30, 2013) (finding that trial transcripts were compensable because the court requested the parties to submit post-trial briefs)).

Intervening Plaintiff's argument that only 32.8% of these costs should be assessed is unavailing for reasons previously stated.[7] (DE 481 at 4-5). Intervening Plaintiffs object only to paying the full amount of costs for the trial transcripts and make no other objections. *Id.* Defendants correctly argue that the trial transcripts were necessary because they were heavily relied upon and cited to in the parties' post-trial proposed findings of fact and conclusions of law. Therefore, I find that the costs for the trial transcripts are recoverable in toto as to both Defendants M/Y WAKU and MOCA as prevailing parties against Williams and Defendant M/Y WAKU as a prevailing party against Thrive.

IV. Costs Related to Service of Subpoenas

I conclude that $130.00 of the $290.00 in costs for service of subpoenas that are listed below are recoverable for reasons that follow:

1. 6/10/2020 service upon Tropic Oil for $145.00; and
2. 6/11/2020 service upon National Marine Suppliers for $145.00.

Id. at 3-4, 20. Costs of service are recoverable under 28 U.S.C. § 1920 to the extent that the rate charged does not exceed the cost of having a U.S. Marshal effect service. *EEOC v. W & O, Inc.*, 213 F.3d 600, 624 (11th Cir. 2000). Per 28 C.F.R. § 0.114(a)(3), the current rate is "$65 per hour (or portion thereof) for each item served by one U.S. Marshals Service employee, agent, or contractor, plus travel costs and any other out-of-pocket expenses." Here, the two subject charges of $145.00 each exceed that amount. Defendants argue only that costs of private process servers are compensable and correctly note that Williams and Thrive have agreed that the total costs are taxable. (DE 474 at 5-6). Defendants provide no justification for the higher amount nor does the invoice provide any detail. (DE 474-1 at 20). Only $65 of the higher service fee is

[7] Having determined above that the argument Intervening Plaintiffs make – regarding allocation of costs at a 32.8% rate – is unavailing, I do not further repeat a discussion of my finding.

recoverable in these instances. Therefore, I find that only $130.00 of the total services fees are recoverable.

V. Costs Related to an Admiralty Bond

I find that the costs of $7,530.57 related to the Admiralty Bond Premium for which Defendants seek reimbursement are recoverable for the reasons stated herein. Under Admiralty and Maritime Local Rule E (14), titled "Expenses of Sureties as Costs," "[i]f costs are awarded to any party, then all *reasonable* premiums or expenses paid by the prevailing party on bonds, stipulations and/or other security shall be taxed as costs in the case." Admiralty and Maritime Rule E (14)(a) of the Local Rules for the United States District Court in the Southern District of Florida. (emphasis added).

Here, Defendants aver that the $7,530.57 Admiralty Bond Premium is the pro-rata premium paid for that portion of the admiralty bond that Defendants posted in this matter for the claims asserted by Williams and Thrive. (DE 474 at 3). Defendants' bill of costs includes an invoice in the amount of $14,649.00 from Matson Charlton Surety Group in support of their request for partial recovery of the bond premium paid. (DE 474-1 at 26).

Intervening Plaintiffs argue that the costs associated with the admiralty bond were unnecessarily incurred because Intervening Plaintiffs' counsel offered to hold funds in escrow. (DE 481 at 10-11). Defendants, in reply, argue that the Local E (14)(a) provides for mandatory taxation of reasonable premiums paid when costs are awarded to a party regardless of whether alternatives existed. (DE 485 at 6). Further, Defendants argue that "this Court ordered that an admiralty bond be posted in order to secure release of the Vessel" and that Defendant MOCA merely complied with the Court's order. (DE 485 at 5) (citing DE 283; DE 292). Defendants also argue that counsel for Intervening Plaintiffs refused to return the telephone call of

Defendants' counsel to discuss the matter and stated that the Vessel would be arrested in absence of the court-ordered security being posted. (DE 485 at 4-6; DE 485-4). Defendants attach email correspondence between counsel in support of their assertion. (DE 485-4). The email from Intervening Plaintiffs' counsel is dated March 25, 2020, is addressed to Defendants' counsel, and states that "the arrest will not be stopped for anything but the posting of the Court Ordered security." *Id.* Accordingly, I do not find it necessary to address whether the costs for the bond are reasonable and conclude that Intervening Plaintiffs' argument, that the costs for the bond were unnecessarily incurred, is without merit. Therefore, I find that Defendants are entitled to recover the $7,530.57 cost for the bond in accordance with Local Rule E (14).

CONCLUSION

For the reasons discussed above, I **RECOMMEND** that the District Court enter an Order **GRANTING IN PART and DENYING IN PART** the Motion (DE 474) and awarding Defendants costs in the amount of **$29,606.55** ($19,844.30 for deposition transcripts, $2,101.68 for trial transcripts, $130.00 for costs of service and $7,530.47 for their admiralty bond costs) as follows:

1. That costs of $29,606.55 be awarded in favor of M/Y WAKU against Williams and Thrive, jointly and severally;
2. That a separate Final Judgment taxing $29,606.55 in costs be entered in favor of M/Y WAKU against Williams and Thrive, jointly and severally;
3. That costs of $29,606.55 be awarded in favor of MOCA against Williams;
4. That a separate Final Judgment taxing $29,606.55 in costs be entered in favor of MOCA against Williams.

The parties will have fourteen (14) days from the date of being served with a copy of this Report and Recommendation within which to file written objections, if any, with the Honorable James I. Cohn, United States District Judge. Failure to timely file objections shall bar the parties from a *de novo* determination by the District Judge of an issue covered in the Report and shall bar the parties from attacking on appeal unobjected-to factual and legal conclusions contained in this Report except upon grounds of plain error if necessary in the interest of justice. *See* 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *Henley v. Johnson*, 885 F.2d 790, 794 (11th Cir. 1989); 11th Cir. R. 3-1.

DONE AND SUBMITTED in Fort Lauderdale, Florida, this 13th day of April 2021.

Jared Strauss

Jared M. Strauss
United States Magistrate Judge

Copies furnished to:

Honorable James I. Cohn
United States District Judge

All Counsel of Record