

**SUPREME JUDICIAL COURT FOR THE
COMMONWEALTH OF MASSACHUSETTS**

Appeals Court
No. 2026-P-1099

AMY TISHELMAN,
Plaintiff-Appellant,

v.

BOSTON CHILDREN'S HOSPITAL,
Defendant-Appellee.

On appeal from a Judgment of the Suffolk County Superior Court,
CA No. 2584cv00434

Plaintiff-Appellant's Application for Direct Appellate Review

Patrick J. Hannon (BBO# 664958)
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Dated: August 18, 2026

REQUEST FOR DIRECT APPELLATE REVIEW

Amy Tishelman, a former psychologist at Boston Children's Hospital ("BCH"), asks the Supreme Judicial Court to grant direct appellate review of her appeal in order to resolve a question of first impression concerning whether, and if so when, Massachusetts Rule of Civil Procedure 68 can be applied to negate the statutory command of the Fair Employment Practices Act, M.G.L. c. 151B, § 9, which makes violators liable for a successful Plaintiff's reasonable attorney's fees and costs.¹

STATEMENT OF PRIOR PROCEEDINGS

This case was tried to verdict in late 2024. Plaintiff claimed that BCH discriminated against her based on age and gender, and that she was unlawfully terminated by BCH in retaliation for raising those discrimination complaints. The jury found in BCH's favor on the underlying discrimination claims, but found in Plaintiff's favor on the retaliation claim. On November 7, 2024, the Court entered judgment against BCH in the amount of \$1,872,386.17.

Both parties filed timely motions seeking their attorney's fees and costs. Plaintiff sought her fees and costs under M.G.L. c. 151B, § 9, which provides for recovery of a successful Plaintiff's reasonable attorney's fees and costs. BCH

¹ While the appeal raises other issues, we focus here only on the issue that merits direct appellate review.

requested its fees and costs under Mass. R. Civ. P. 68, which allows for the recovery of costs in some circumstances based upon a pre-judgment “offer of judgment.”

After full briefing and oral argument, the Court (Campo, J.) entered an Order granting both motions in part. Specifically, the Court held that—while Plaintiff was generally entitled to recover her fees and costs under M.G.L. c. 151B, § 9—application of Rule 68 precluded Plaintiff from recovering any fees and costs incurred after she rejected BCH’s offer of judgment. With respect to BCH’s motion, the Court held that Plaintiff was obligated to pay a portion of BCH’s costs at trial.

Plaintiff timely filed her notice of appeal 9 days later, on April 10, 2025.

FACTS RELEVANT TO THE APPEAL

Plaintiff is a renowned psychologist who was employed by BCH for decades. In October 2020, she filed this lawsuit against BCH claiming that she was being subjected to various forms of adverse treatment based upon her age and gender. After filing the lawsuit, BCH commenced a sham investigation against Plaintiff, purportedly to determine whether she he had violated federal health privacy laws. Following the sham investigating, Plaintiff was fired.

The termination was devastating to Plaintiff’s career on multiple levels. She was not only forced to abandon years of critical research, but the false reason given for her termination left an indelible stain on what was otherwise an stellar record of

professional achievement. Accordingly, Plaintiff amended her complaint to add a claim for retaliation in hopes of clearing her good name.

As trial eventually approach, BCH tried desperately to conceal its wrongdoing. Using Rule 68 of the Massachusetts Rules of Civil Procedure as a cudgel, BCH tried to compel Plaintiff to trade her statutory rights for a sum of money—\$3.2 million dollars, plus fees and costs. But there was one critical thing that BCH was unwilling to do—admit that it had broken the law. To that end, the “Offer of Judgment” came with two significant terms and conditions. First, that BCH “denies and disclaims any wrongdoing as alleged by Plaintiff” and, second, that “[e]ntry of judgment against Defendant pursuant to this offer shall not preclude or limit Defendant from asserting any defense or disputing any facts in this proceeding or any pending or subsequent action brought by or on behalf of any other individual.”

BCH also peppered its “Offer of Judgment” with a litany of threats. If Plaintiff dared take the case to trial, BCH asserted, she would be forced to pay for a laundry list of expenses. These included various unnamed “vendors” to be used at trial, “costs for security,” and even the fees charged by BCH’s own attorneys. In sum, the “Offer of Judgment” purported to leave Plaintiff with a perilous choice: Settle on the terms presented by BCH or risk financial ruin.

Choosing vindication over wealth, Plaintiff took her case to trial.

LEGAL ISSUES

Whether, and if so when, Massachusetts Rule of Civil Procedure 68 can be applied to negate the statutory command of the Fair Employment Practices Act, M.G.L. c. 151B, § 9, which makes violators liable for a successful Plaintiff's reasonable attorney's fees and costs.²

Plaintiff preserved this issue below by timely seeking her full fees and costs, opposing BCH's motion to apply Rule 68, and filing a timely notice of appeal following the Trial Court's ruling.

ARGUMENT

A key feature of Chapter 151B is the statutory fee-shifting provision, which makes violators liable for a successful Plaintiff's reasonable attorney's fees and costs. M.G.L. c. 151B, § 9. As with Chapter 151B generally, this provision "shall be construed liberally for the accomplishment of its purposes," and "any law inconsistent with [it] shall not apply...." *Id.*

Relying upon this statutory edict, Courts have taken an expansive approach to protecting the rights of a plaintiff under Chapter 151B to pursue claims to adjudication, and have made clear that limitations on the ability to vindicate claims are disfavored. *See Warfield*, 454 Mass. at 398 (noting that the command of Section

² As noted above, the appeal raises other issues as well, but we focus here only on the issue that merits direct appellate review.

9 to construe the statute liberally and not to apply inconsistent law established a high bar for waiver of an employee’s right to litigate through use of a mandatory arbitration agreement); Simmons, 459 Mass. at 95 (stating that even where the high bar for an employee waiving their own right to pursue claims through litigation has been met, the MCAD would not be precluded from pursuing the claims on their own); Gasior, 446 Mass. at 654–55 (relying on Section 9 of c. 151B to allow an employee’s claim of discrimination to continue to a final resolution despite the employee dying prior to trial).

“Though one statute may override another, a court rule generally may not override a statute.” LaRoche v. Flynn, 55 Mass. App. Ct. 419, 420–21 (2002). Applying Rule 68 to claims brought under Chapter 151B would do just that—overriding the statutory scheme aimed at “eradicating systemic discrimination” in favor of a rule that blindly seeks to avoid adjudication of claims. It would also run afoul of the statutory command that “any law inconsistent with any provision of [Chapter 151B] shall not apply[.]” Accordingly, the Trial Court erred in finding that Rule 68 could be applied to trump the fee-shifting mandate contained in Chapter 151B.³

³ While application of Rule 68 to Chapter 151B claims appears to be an issue of first impression, at least one Massachusetts court has recognized that the threat of payment of costs should not be used to deter Plaintiffs from pursuing potentially viable Chapter 151B claims. See Rochat v. L.E.K. Consulting, LLC, No. SUCV200702749, 2015 WL 3384766, at *2–3 (Mass. Super. Apr. 9, 2015).

But even if Rule 68 could be applied to Chapter 151B claims in some instances, the Trial Court erred in applying it here. Under the plain language of Rule 68, the cost shifting mechanism becomes operative only if the judgment that an offeree receives after rejecting the offer is not “more favorable” than the offer. The burden rests upon the offeror (BCH) to show that the judgment is not as favorable as the offer. See King v. Rivas, 555 F.3d 14, 19 n. 5 (1st Cir. 2009) (stating that defendants bear the burden of establishing comparability under the offer of judgment versus actual judgment analysis); see also Reiter v. MTA New York City Transit Auth., 457 F.3d 224, 231 (2d Cir. 2006) (“[i]n determining the value of the relief, the defendant bears the burden of showing that the Rule 68 offer was more favorable than the judgment.” (citing Wright & Miller, *Consequences of Rejection of Offer—Determination Whether Offer of Judgment More Favorable*, 12 Fed. Prac. & Proc. Civ. § 3006.1 (3d ed.)). This burden is not lightly met, and the Court’s analysis is not concluded solely after comparing the financial details of the offer and the judgment. See Chestnut Hill Gulf, Inc. v. Cumberland Farms, Inc., 749 F. Supp. 331, 333 (D. Mass. 1990) (emphasizing that “[f]inancial compensation ... is not the “be all and end all[,]””), rev’d on other grounds, 940 F.2d 744 (1st Cir. 1991); see also Reiter, 457 F.3d at 227 (taking issue with lower court’s decision to ignore the non-monetary relief that the plaintiff sought); Prison Legal News v. Columbia Cnty., No. 3:12-CV-00071-SI, 2014 WL 1225100, at *5 (D. Or. Mar. 24, 2014) (finding that

plaintiff who prevailed in obtaining declaratory relief in protection of free speech and due process rights did not receive a judgment less favorable than an earlier received offer of judgment, even where the financial component of the offer was greater than the amount the plaintiff received in judgment).

Thus, to determine which is “more favorable,” the Court must look at all benefits that Plaintiff reaped “as a result of the litigation,” including both pecuniary and non-pecuniary benefits. See Chestnut Hill Gulf, Inc., 749 F. Supp. at 333 (holding that an offer of greater financial value than the judgment did not bar plaintiff’s motion for attorneys’ fees and costs where it can be concluded that “[plaintiff] received more *as a result of the litigation* than that which was offered by way of a pretrial settlement.”) (emphasis added). Speaking to the importance of non-pecuniary benefits, in Chestnut Hill Gulf, Inc. v. Cumberland Farms, Inc., a decision reversed on other grounds unrelated to its Rule 68 analysis, the court concluded that a plaintiff received a more favorable judgment than an offer that included a higher monetary value in light of considerations like the value of being vindicated by a jury’s finding that the defendant had acted unlawfully, the value of the defendant changing its procedure as a result of the litigation, and the value of being able to pursue a livelihood in the form of being allowed to maintain franchises for a three-year period. See id. (“Those successes suffice to demonstrate that plaintiffs received more than just the actual damages awarded.”)

Here, the Court failed to consider whether BCH met its burden of showing that the judgment secured by Plaintiff was less favorable than the March 28, 2024 offer. The judgment, while presenting a lower monetary award than what was offered by BCH on March 28, 2024, provided benefits as a result of the litigation that far outweighed the number that BCH placed on her claim. In addition to a sizable monetary award of \$1,490,000, Plaintiff was also able to receive vindication from the jury's finding that BCH unlawfully retaliated against her. As a public person, this was extremely valuable to Plaintiff, as BCH's retaliatory conduct had left Plaintiff with a tarnished reputation and was causing her to suffer continuing emotional distress. These benefits provided by the jury's verdict stand in stark contrast to the offer presented by BCH, which expressly disclaimed any wrongdoing and the acceptance of which would do nothing to cure Plaintiff's tarnished reputation (or prevent her from continuing to endure continued emotional distress).

As BCH failed to show that the judgment was "not more favorable" than its offer, the Trial Court erred in refusing to award Plaintiff her full fees and costs, and by allowing BCH to recover its statutory fees against Plaintiff.

Reasons Why Direct Appellate Review Is Appropriate

The question presented is not just a matter of first impression—it is a question of vital importance to any person in the Commonwealth who seeks to vindicate their

statutory rights under Chapter 151B. As such, it is an appropriate question for direct appellate review.

Respectfully submitted,
Amy Tishelman,
By her attorneys,

/s/ Patrick J. Hannon

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Attorneys for Appellant Amy
Tishelman

CERTIFICATE OF SERVICE

I, Patrick J. Hannon, certify that a true copy of the above document was served on counsel for the Appellee in this litigation, listed below, by email on August 18, 2026.

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/s/Patrick J. Hannon

Patrick J. Hannon

Rule 16(k) Certificate of Compliance

Pursuant to Mass. R. App. P. 16(k), I, Patrick Hannon, hereby certify on this 18th day of August 2026, that the foregoing document complies with the Massachusetts Rules of Appellate Procedure that pertain to the filing of applications for direct appellate review, including Rules 11, 16(k) and 21(a), and was prepared using Microsoft Word using 14-point Times New Roman proportional font and complies the applicable limitations set forth in Mass. R. App. P. 11, as it contains 1, 125 non-excludable words.

/s/ Patrick J. Hannon

Patrick J. Hannon

ADDENDUM

2084CV02310 Tishelman, Ph.D., Amy vs. Boston Children's Hospital

- Case Type:
Equitable Remedies
- Case Status:
Open
- File Date
10/07/2020
- DCM Track:
F - Fast Track
- Initiating Action:
Injunction
- Status Date:
10/07/2020
- Case Judge:
-
- Next Event:
-

[All Information](#) [Party](#) [Judgment](#) [Event](#) [Tickler](#) [Docket](#) [Disposition](#)

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Judgments

Date	Type	Method	For	Against
11/07/2024	Judgment on Jury Verdict	By Clerk	Tishelman, Ph.D., Amy	Boston Children's Hospital
11/07/2024	Judgment on Jury Verdict	By Clerk	Tishelman, Ph.D., Amy	Boston Children's Hospital

Events

Date	Session	Location	Type	Event Judge	Result
12/07/2020 02:30 PM	Civil H	BOS-13th FL, CR 1309 (SC)	Motion Hearing	Ricciuti, Hon. Michael D	Held via Video/Phone
05/06/2021 10:00 AM	Civil H	BOS-10th FL, CR 1015 (SC)	Motion Hearing	Buckley, Hon. Elaine M	Rescheduled
05/06/2021 02:00 PM	Civil H	BOS-10th FL, CR 1015 (SC)	Motion Hearing	Buckley, Hon. Elaine M	Not Held
06/08/2021 10:00 AM	Civil H	BOS-10th FL, CR 1015 (SC)	Motion Hearing	Buckley, Hon. Elaine M	Held via Video/Phone
07/28/2022 02:00 PM	Civil H	BOS-13th FL, CR 1309 (SC)	Final Pre-Trial Conference	Krupp, Hon. Peter B	Rescheduled
07/28/2022 02:00 PM	Civil H	BOS-13th FL, CR 1309 (SC)	Rule 16 Conference	Connolly, Hon. Rosemary	Not Held

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
06/05/2023 02:00 PM	Civil H	BOS-13th FL, CR 1309 (SC)	Final Pre-Trial Conference		Not Held
06/20/2023 02:00 PM	Civil H	BOS-13th FL, CR 1309 (SC)	Final Trial Conference		Not Held
06/26/2023 09:00 AM	Civil H	BOS-13th FL, CR 1309 (SC)	Jury Trial		Not Held
07/13/2023 02:00 PM	Civil H	BOS-13th FL, CR 1309 (SC)	Conference to Review Status	Belezos, Hon. Christopher	Held as Scheduled
04/17/2024 02:00 PM	Civil H	BOS-13th FL, CR 1309 (SC)	Motion Hearing to Amend Complaint	Sisitsky, Hon. Adam	Not Held
05/07/2024 02:00 PM	Civil H	BOS-13th FL, CR 1309 (SC)	Final Pre-Trial Conference	Sisitsky, Hon. Adam	Held as Scheduled
05/07/2024 02:00 PM	Civil H	BOS-13th FL, CR 1309 (SC)	Motion Hearing	Sisitsky, Hon. Adam	Held as Scheduled
05/16/2024 02:00 PM	Civil H	BOS-13th FL, CR 1309 (SC)	Final Pre-Trial Conference	Sisitsky, Hon. Adam	Held as Scheduled
07/10/2024 02:00 PM	Civil H	BOS-13th FL, CR 1309 (SC)	Final Trial Conference		Held as Scheduled
07/16/2024 09:00 AM	Civil H	BOS-13th FL, CR 1309 (SC)	Jury Trial		Not Held
07/17/2024 10:00 AM	Civil G	BOS-10th FL, CR 1008 (SC)	Hearing on Motion(s) in Limine	Campo, Hon. Anthony M.	Held as Scheduled
07/22/2024 10:00 AM	Civil G	BOS-10th FL, CR 1008 (SC)	Hearing on Daubert/Lanigan	Campo, Hon. Anthony M.	Held as Scheduled
07/26/2024 09:00 AM	Civil H	BOS-13th FL, CR 1309 (SC)	Hearing on Proposed Settlement	Ricciuti, Hon. Michael D	Held as Scheduled
08/06/2024 09:00 AM	Civil H	BOS-13th FL, CR 1309 (SC)	Jury Trial	Campo, Hon. Anthony M.	Not Held
09/19/2024 02:00 PM	Civil G	BOS-10th FL, CR 1008 (SC)	Conference to Review Status	Campo, Hon. Anthony M.	Rescheduled
10/02/2024 10:00 AM	Civil G	BOS-10th FL, CR 1008 (SC)	Rule 16 Conference	Campo, Hon. Anthony M.	Held as Scheduled
10/15/2024 09:00 AM	Civil G	BOS-10th FL, CR 1008 (SC)	Jury Trial	Campo, Hon. Anthony M.	Held as Scheduled
03/11/2025 02:00 PM	Civil G	BOS-10th FL, CR 1008 (SC)	Motion Hearing	Belezos, Hon. Christopher	Held as Scheduled

Ticklers				
<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Service	10/07/2020	01/05/2021	90	
Answer	10/07/2020	02/04/2021	120	
Rule 12/19/20 Served By	10/07/2020	02/04/2021	120	05/07/2024
Rule 12/19/20 Filed By	10/07/2020	03/08/2021	152	05/07/2024
Rule 12/19/20 Heard By	10/07/2020	04/05/2021	180	05/07/2024
Rule 15 Served By	10/07/2020	02/04/2021	120	05/07/2024
Rule 15 Filed By	10/07/2020	03/08/2021	152	05/07/2024
Rule 15 Heard By	10/07/2020	04/05/2021	180	05/07/2024
Discovery	10/07/2020	06/23/2023	989	11/07/2024
Rule 56 Served By	10/07/2020	08/03/2023	1030	05/07/2024
Rule 56 Filed By	10/07/2020	07/17/2023	1013	05/07/2024
Final Pre-Trial Conference	10/07/2020	06/05/2023	971	05/07/2024
Judgment	10/07/2020	10/07/2022	730	11/07/2024

Tickler	Start Date	Due Date	Days Due	Completed Date
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Docket Information				
<u>Docket</u>	<u>Date</u>	<u>Docket Text</u>	<u>File</u>	<u>Nbr.</u>
			<u>Ref</u>	<u>Avail.</u>
10/07/2020	Attorney appearance On this date Wendy Anne Kaplan, Esq. added for Plaintiff Amy Tishelman, Ph.D.			
10/07/2020	Case assigned to: DCM Track F - Fast Track was added on 10/07/2020			
10/07/2020	Original civil complaint filed.			1
10/07/2020	Civil action cover sheet filed.			2
10/07/2020	Demand for jury trial entered.			
10/14/2020	Amended: First amended complaint filed by Amy Tishelman, Ph.D. Jury Demand			3
10/19/2020	Plaintiff Amy Tishelman, Ph.D.'s Motion to File Case Under Impoundment: ALLOWED in part. Complaint and additional case materials may be submitted to the court by the plaintiff may be impounded pending notice to the defendant pursuant to Rule 3(a) of Trial Court Rule VIII, the court finding that immediate and irreparable injury may result and that good cause is preliminarily found. The court further finds good cause to extend the duration of this order until the defendant has been service with the complaint and related materials and this motion and supporting materials, and has responded to them, and the court has conducted a hearing under Rule 7(a) (dated 10/8/20) notice sent 10/16/20			4
10/22/2020	Attorney appearance On this date Lisa J Damon, Esq. added for Defendant Boston Children's Hospital			
10/22/2020	Attorney appearance On this date Sara E Sweeney, Esq. added for Defendant Boston Children's Hospital			
11/13/2020	Defendant Boston Children's Hospital's Response to Plaintiff's Motion for Impoundment			5
11/19/2020	Answer to amended complaint			6
11/20/2020	The following form was generated:			
11/20/2020	Notice to Appear Sent On: 11/20/2020 13:24:31 Notice Sent To: Wendy Anne Kaplan, Esq. Law Office of Wendy A. Kaplan 1530 Beacon St 703, Brookline, MA 02446-2644 Notice Sent To: Lisa J Damon, Esq. Seyfarth Shaw Seaport East Two Seaport Lane Suite 300, Boston, MA 02210-2028 Notice Sent To: Sara E Sweeney, Esq. Seyfarth Shaw 2 Seaport Lane Suite 300, Boston, MA 02210			
12/03/2020	Endorsement on Response to Plaintiff's Motion for Impoundment (#5.0): Other action taken Clerk shall Schedule a Hearing (dated 11/20/20) notice sent 12/1/20			
12/07/2020	Event Result: Motion Hearing scheduled on: 12/07/2020 02:30 PM Has been: Held via Video Conference Hon. Michael D Ricciuti, Presiding Staff: Steven J Masse, Assistant Clerk Magistrate			
12/29/2020	ORDER: Order Impounding Complaints, Answer, Impoundment Filings and Recording of the Impoundment Hearing (see P#7 for order) (dated 12/9/20) notice sent 12/23/20			7
03/17/2021	General correspondence regarding Defendant Boston Children's Hospital notification that it does not oppose Plaintiff's Motion to Amend the Complaint.			8
03/26/2021	Plaintiff Amy Tishelman, Ph.D.'s Motion to Terminate Order Impounding Complaints, Answers, Impoundment Filings and Recording of the Impoundment Hearing			9
04/06/2021	Reply/Sur-reply			10
DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO TERMINATE IMPOUNDMENT ORDER				

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/12/2021	Endorsement on Motion to terminate order (#9.0): DENIED 04/06/2021 DENIED without prejudice to re-filing in accordance with rule 9A. (Cowin, J)		
04/26/2021	Plaintiff Amy Tishelman, Ph.D.'s Motion to amend the complaint	11	 
04/29/2021	Endorsement on Motion to amend complaint (#11.0): ALLOWED As it appears that the defendant does not oppose this motion (see page #8). (notice sent on 04/29/21)		 
05/04/2021	Event Result:: Motion Hearing scheduled on: 05/06/2021 10:00 AM Has been: Rescheduled For the following reason: By Court prior to date Comments: Chge time only Hon. Elaine M Buckley, Presiding Staff: Beatriz E Van Meek, Assistant Clerk Magistrate		
05/04/2021	Plaintiff(s) Amy Tishelman, Ph.D.'s Motion to TERMINATE ORDER IMPOUNDING COMPLAINTS, ANSWER, IMPOUNDMENT FILINGS AND RECORDING OF THE IMPOUNDMENT HEARING	12	 
05/06/2021	Event Result:: Motion Hearing scheduled on: 05/06/2021 02:00 PM Has been: Not Held For the following reason: No Proper Notice to Parties Hon. Elaine M Buckley, Presiding Staff: Beatriz E Van Meek, Assistant Clerk Magistrate		
05/07/2021	The following form was generated: Notice to Appear Sent On: 05/07/2021 15:26:10 Notice Sent To: Wendy Anne Kaplan, Esq. Law Office of Wendy A. Kaplan 1530 Beacon St 703, Brookline, MA 02446-2644 Notice Sent To: Lisa J Damon, Esq. Seyfarth Shaw Seaport East Two Seaport Lane Suite 300, Boston, MA 02210-2028 Notice Sent To: Sara E Sweeney, Esq. Seyfarth Shaw 2 Seaport Lane Suite 300, Boston, MA 02210		
05/20/2021	Plaintiff Amy Tishelman, Ph.D.'s Motion to Amend Complaint under Impounded	13	
05/20/2021	Affidavit of Plaintiff's Counsel Supplemental 9A	13.1	 
05/20/2021	Plaintiff Amy Tishelman, Ph.D.'s Submission of List of Documents for filing.	13.2	
05/20/2021	Plaintiff Amy Tishelman, Ph.D.'s Certificate of Service	13.3	 
06/02/2021	Endorsement on Motion to amend the complaint (#13.0): ALLOWED this is the third motion by the plaintiff to amend the complaint, which appears to be un-opposed by counsel for the defendant. the motion is ALLOWED. (dated 5/25/21) notice sent 6/02/21		 
06/02/2021	Amended: third amended complaint filed by Amy Tishelman, Ph.D.	14	
06/08/2021	Event Result:: Motion Hearing scheduled on: 06/08/2021 10:00 AM Has been: Held via Video/Teleconference Hon. Elaine M Buckley, Presiding Staff: Beatriz E Van Meek, Assistant Clerk Magistrate		
06/10/2021	Affidavit of plaintiff's counsel 9(a).; ORDER: after hearing, ALLOWED. as the plaintiff no longer works at BCH, the answers previously received and addressed by the court in it's order allowing impoundment are no longer applicable. the order of impoundment is hereby VACATED. (dated 6/08/21) notice sent 6/10/21 Judge: Buckley, Hon. Elaine M	15	 
07/09/2021	Answer to amended complaint (Third Amended Complaint)	16	 

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
07/27/2021	Defendant, Plaintiff Boston Children's Hospital, Amy Tishelman, Ph.D.'s Joint Motion to Extend Discovery Deadlines	17	 Image
07/30/2021	The following form was generated: Notice to Appear for Final Pre-Trial Conference Sent On: 07/30/2021 14:15:08 Notice Sent To: Wendy Anne Kaplan, Esq. Law Office of Wendy A. Kaplan 1530 Beacon St 703, Brookline, MA 02446-2644 Notice Sent To: Lisa J Damon, Esq. Seyfarth Shaw Seaport East Two Seaport Lane Suite 300, Boston, MA 02210-2028 Notice Sent To: Sara E Sweeney, Esq. Seyfarth Shaw 2 Seaport Lane Suite 300, Boston, MA 02210		
08/05/2021	Endorsement on Motion to Extend Discovery Deadlines (#17.0): ALLOWED (dated 07/29/21) notice sent 08/03/21		 Image
12/06/2021	Attorney appearance electronically filed. Attorney appearance of Katherine J. Michon, Patrick J. Hannon, and Sujin Han added for Plaintiff Amy Tishelman, Ph.D. (E-Filed on 12/06/2021)		 Image
02/02/2022	Plaintiff, Defendant Amy Tishelman, Ph.D., Boston Children's Hospital's Joint Motion to Modify Tracking Order. E-Filed on 12/08/2022.	18	 Image
02/03/2022	Event Result:: Final Pre-Trial Conference scheduled on: 07/28/2022 02:00 PM Has been: Rescheduled For the following reason: Converted to status conference Hon. Rosemary Connolly, Presiding Staff: Steven J Masse, Assistant Clerk Magistrate		
02/03/2022	The following form was generated: Notice to Appear Sent On: 02/03/2022 15:57:59		
02/17/2022	Endorsement on Motion to Modify Tracking Order (#18.0): ALLOWED Joint motion allowed, to the extent that all fact discovery shall be completed by no later than July 1, 2022. Dates for other tracking events DENIED without prejudice pending Rule 16 conference to be scheduled by the "H" Session clerk for July 2022 dated 2/3/22) notice sent 2/9/22		 Image
07/28/2022	Event Result:: Rule 16 Conference scheduled on: 07/28/2022 02:00 PM Has been: Not Held For the following reason: Request of Plaintiff Hon. Patrick Haggan, Presiding Staff: Steven J Masse, Assistant Clerk Magistrate		
07/28/2022	Plaintiff Amy Tishelman, Ph.D.'s Assented to Motion to Modify Tracking Order. After review, and by agreement of the parties, the Motion is ALLOWED. Notice sent 7/28/22	19	 Image
10/26/2022	Plaintiff, Defendant Amy Tishelman, Ph.D., Boston Children's Hospital's Joint Motion to Extend discovery deadlines	20	 Image
10/27/2022	The following form was generated: Notice to Appear for Final Pre-Trial Conference Sent On: 10/27/2022 15:23:38		
10/28/2022	Endorsement on Motion to extend discovery deadlines (#20.0): ALLOWED in part. see court's scheduling order. (dated 10/27/22) notice sent 10/28/22		 Image
10/28/2022	ORDER: Scheduling Order (dated 10/27/22) notice sent 10/28/22	21	 Image
03/27/2023	Attorney appearance electronically filed.		 Image
05/02/2023	Plaintiff, Defendant Amy Tishelman, Ph.D., Boston Children's Hospital's Joint Motion to Amend Scheduling Order and Request for Status Conference to Set Pretrial/Trial Dates and Address Security Concerns	22	 Image
05/11/2023	Endorsement on Motion to Amend Scheduling Order and Request for Status Conference to Set Pretrial/Trial Dates and Address Security Concerns (#22.0): ALLOWED The matter will be heard by the court for status on July 13, 2023 to address trial date and other outstanding issues (dated 5/8/23) notice sent 5/11/23		 Image
05/12/2023	Event Result:: Final Pre-Trial Conference scheduled on: 06/05/2023 02:00 PM Has been: Not Held For the following reason: Joint request of parties		

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	Hon. Christopher Belezos, Presiding Staff: Brenda Shisslak, Assistant Clerk Magistrate		
05/12/2023	Event Result:: Final Trial Conference scheduled on: 06/20/2023 02:00 PM Has been: Not Held For the following reason: Joint request of parties Hon. Christopher Belezos, Presiding Staff: Brenda Shisslak, Assistant Clerk Magistrate		
05/12/2023	Event Result:: Jury Trial scheduled on: 06/26/2023 09:00 AM Has been: Not Held For the following reason: Joint request of parties Hon. Christopher Belezos, Presiding Staff: Brenda Shisslak, Assistant Clerk Magistrate		
07/13/2023	Event Result:: Conference to Review Status scheduled on: 07/13/2023 02:00 PM Has been: Held as Scheduled Hon. Christopher Belezos, Presiding Staff: Brenda Shisslak, Assistant Clerk Magistrate		
07/20/2023	Party(s) file Stipulation of Dismissal pursuant to the provisions of Mass.R.Civ.P. Rule 41(a)(l)(ii), as to Count III of Third Amended Complaint Applies To: Tishelman, Ph.D., Amy (Plaintiff); Boston Children's Hospital (Defendant)	23	 Image
10/17/2023	Plaintiff, Defendant Amy Tishelman, Ph.D., Boston Children's Hospital's Joint Motion for Short Order of Notice	24	 Image
12/01/2023	Defendant Boston Children's Hospital's Motion to Impound	25	 Image
12/01/2023	Boston Children's Hospital's Memorandum in support of Motion to Impound	26	 Image
12/01/2023	Affidavit filed by Defendant Boston Children's Hospital in support of Motion to Impound	27	 Image
12/01/2023	Opposition to Motion to Impound filed by Amy Tishelman, Ph.D.	28	 Image
12/01/2023	Defendant Boston Children's Hospital's Reply to Defendant's Motion to Impound	29	
12/01/2023	Rule 9A Notice of Filing		 Image
12/01/2023	Plaintiff Amy Tishelman, Ph.D.'s Motion to Amend Complaint	30	 Image
12/01/2023	Opposition to Plaintiff's Motion for Leave to File Fourth Amended Complaint filed by Boston Children's Hospital	31	
12/01/2023	Affidavit filed by Defendant Boston Children's Hospital in support of Opposition to Plaintiff's Motion for Leave to File Fourth Amended Complaint filed by Boston Children's Hospital	32	
12/01/2023	Plaintiff Amy Tishelman, Ph.D.'s Reply in Support of Motion to Amend Complaint	33	
12/01/2023	Defendant Boston Children's Hospital's Motion for Leave to File Sur-Reply to Plaintiff's Reply in Support of Motion to Amend	34	 Image
12/01/2023	Defendant Boston Children's Hospital's Notice of Filing Rule 9A		 Image
04/09/2024	Event Result:: Motion Hearing to Amend Complaint scheduled on: 04/17/2024 02:00 PM Has been: Not Held For the following reason: Request of Plaintiff Hon. Adam Sisitsky, Presiding Staff: Brenda Shisslak, Assistant Clerk Magistrate		
04/30/2024	Conference Memorandum Joint Pre-Trial Memorandum	35	 Image
05/07/2024	Event Result:: Motion Hearing scheduled on: 05/07/2024 02:00 PM Has been: Held as Scheduled		

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	Hon. Adam Sisitsky, Presiding Staff: Brenda Shisslak, Assistant Clerk Magistrate		
05/07/2024	Event Result:: Final Pre-Trial Conference scheduled on: 05/07/2024 02:00 PM Has been: Held as Scheduled Hon. Adam Sisitsky, Presiding Staff: Brenda Shisslak, Assistant Clerk Magistrate		
05/16/2024	Event Result:: Final Pre-Trial Conference scheduled on: 05/16/2024 02:00 PM Has been: Held as Scheduled Hon. Adam Sisitsky, Presiding Staff: Brenda Shisslak, Assistant Clerk Magistrate		
05/17/2024	Attorney appearance On this date Alison H Silveira, Esq. added for Defendant Boston Children's Hospital		
05/17/2024	Attorney appearance electronically filed.		
06/06/2024	Defendant Boston Children's Hospital's Motion to exclude testimony of Peter Glick, Ph.D	36	 Image
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06/06/2024	Opposition to Defendant's Motion to exclude testimony of Peter Glick, Ph.D. filed by Amy Tishelman, Ph.D.	38	 Image
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06/18/2024	Defendant's Status Report to Court in Advance of Trial Regarding Updated on Sequence of Witnesses	40	 Image
06/24/2024	Defendant Boston Children's Hospital's Motion to Appoint Court Reporter	41	 Image
06/24/2024	Superior Curt Rule 9A Affidavit Of No Opposition		 Image
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06/25/2024	Defendant Boston Children's Hospital's Motion in limine to Exclude Testimony and Argument that Implores Jurors to Rely on the "Golden Rule," Uses "Reptile" Tactics, Or Refers to Social Movements	42	 Image
06/25/2024	Opposition to Motion in Limine RE: "Golden Rule," "Reptile Tactics" and "Social Movements" (Partial) filed by Amy Tishelman, Ph.D.	43	 Image
06/25/2024	Reply/Sur-reply Reply in Support of Defendant's Motion in Limine to Exclude Testimony and Argument that Implores Jurors to Rely on the "Golden Rule," Uses "Reptile" Tactics, or Refers to Social Movements	44	 Image
06/25/2024	Rule 9A Notice of Filing		 Image
06/26/2024	Defendant Boston Children's Hospital's Motion for Attorney's Fees and Costs	45	 Image
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06/26/2024	Affidavit filed by Defendant Boston Children's Hospital in support of Motion for Attorney's Fees and Costs	47	 Image
06/26/2024	Opposition to Motion for Attorney's Fees and Costs filed by Amy Tishelman, Ph.D. (Filed Under Seal)	48	 Image
06/26/2024	Defendant Boston Children's Hospital's Reply in Support of Its Motion for Attorney's Fees and Costs	49	 Image
06/26/2024	Notice of Filing Applies To: Boston Children's Hospital (Defendant)		 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
06/28/2024	Defendant Boston Children's Hospital's Motion in limine to preclude mention of James "Jay" Downing's private medical information	50	 Image
06/28/2024	Affidavit of Alison H. Silveira, Esq. in Support of Defendant's motion in limine preclude mention of James Downing's private medical information	51	 Image
06/28/2024	Response to Motion in limine RE: James Downing's medical information filed by Amy Tishelman, Ph.D.	52	 Image
06/28/2024	Rule 9A Notice of Filing		 Image
06/28/2024	Defendant Amy Tishelman, Ph.D.'s Motion in limine to preclude evidence or argument regarding settlement discussions, other lawsuits, or the hospital's insurance policy	53	 Image
06/28/2024	Affidavit of Alison H. Silveira, Esq. in support of Defendant's motion in limine to preclude evidence or argument regarding settlement discussions, other lawsuits, or the hospital's insurance policy	54	 Image
06/28/2024	Response to Motion in limine RE: settlement offers filed by Amy Tishelman, Ph.D.	55	 Image
06/28/2024	Rule 9A Notice of Filing		 Image
07/02/2024	Event Result:: Jury Trial scheduled on: 07/16/2024 09:00 AM Has been: Not Held For the following reason: By Court prior to date Comments: jury selection 8/6 Hon. Anthony M. Campo, Presiding Staff: Brenda Shisslak, Assistant Clerk Magistrate		 Image
07/02/2024	Defendant Boston Children's Hospital's Motion in limine to Preclude Plaintiff or Her Counsel From Referring to Reinstatement	56	 Image
07/02/2024	Opposition to Motion in limine to Preclude Plaintiff or Her Counsel From Referring to Reinstatement filed by Amy Tishelman, Ph.D.	57	 Image
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07/02/2024	Defendant Boston Children's Hospital's Motion in limine to Preclude plaintiff from (1) calling the Hospital's in-House Counsel, James Horgan, as a Witness in this case, and (2) Suggesting a negative interference premised on the Hospital's Invocation of privilege	59	 Image
07/02/2024	Affidavit of Alison H. Silveira, Esquire in support of Defendant Boston Children's Hospital's Motion in limine to Preclude plaintiff from (1) calling the Hospital's in-House Counsel, James Horgan, as a Witness in this case, and (2) Suggesting a negative interference premised on the Hospital's Invocation of privilege	60	 Image
07/02/2024	Opposition to to Motion in Limine seeking to exclude James Horgan as a witness and Prohibit plaintiff from asking the Jury to draw a negative inference from defendant's assertion of privilege filed by Amy Tishelman, Ph.D.	61	 Image
07/02/2024	Reply/Sur-reply Reply to Defendant's Boston Children's Hospital's Motion in limine to Preclude plaintiff from (1) calling the Hospital's in-House Counsel, James Horgan, as a Witness in this case, and (2) Suggesting a negative interference premised on the Hospital's Invocation of privilege	62	 Image
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07/02/2024	Opposition to Motion in Limine Re: Punitive Damages filed by Amy Tishelman, Ph.D.	64	 Image
07/02/2024	Reply/Sur-reply Reply in Support of Defendant Boston Children's Hospital's Motion in limine to Exclude Evidence and Argument Regarding Punitive Damages until the Court Determines that Punitive Damages will be Jury Question in this Case	65	 Image
07/02/2024	Defendant Boston Children's Hospital's Notice of Filing Rule 9A		 Image
07/02/2024	Defendant Boston Children's Hospital's Motion in limine to Preclude Evidence of alleged Damages that plaintiff filed to Produce during Discovery	66	 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/02/2024	Affidavit of Alison H. Silveira, Esquire in Support of Defendant Boston Children's Hospital's Motion in limine to Preclude Evidence of alleged Damages that plaintiff filed to Produce during Discovery	67	 Image
07/02/2024	Opposition to to Motion in Limine Re: Supplemental Production filed by Amy Tishelman, Ph.D.	68	 Image
07/02/2024	Reply/Sur-reply Reply in Support of Defendant Boston Children's Hospital's Motion in limine to Preclude Evidence of alleged Damages that plaintiff filed to Produce during Discovery	69	 Image
07/02/2024	Defendant Boston Children's Hospital's Notice of Filing Rule 9A		 Image
07/02/2024	Defendant Boston Children's Hospital's Notice to preclude Evidence, Testimony or Argument about Legal Claims that are not before the Jury	70	 Image
07/02/2024	Affidavit of Alison H. Silveira Esquire in Support of Defendant Boston Children's Hospital's Notice to preclude Evidence, Testimony or Argument about Legal Claims that are not before the Jury	71	 Image
07/02/2024	Opposition to Motion in Limine Re: "Claims not before the Jury" filed by Amy Tishelman, Ph.D.	72	 Image
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07/02/2024	Defendant Boston Children's Hospital's Notice of Filing Rule 9A		 Image
07/02/2024	Defendant Boston Children's Hospital's Motion in limine to preclude plaintiff from calling or introducing argument of evidence about Beza Tadess	74	 Image
07/02/2024	Affidavit of Alison H. Sileira, Esquire in Support of Defendant Boston Children's Hospital's Motion in limine to preclude plaintiff from calling or introducing argument of evidence about Beza Tadess	75	 Image
07/02/2024	Opposition to Motion in Limine Re: Beza Tadess filed by Amy Tishelman, Ph.D.	76	 Image
07/02/2024	Reply/Sur-reply Reply to Defendant Boston Children's Hospital's Motion in limine to preclude plaintiff from calling or introducing argument of evidence about Beza Tadess	77	 Image
07/02/2024	Defendant Boston Children's Hospital's Notice of Filing Rule9A		 Image
07/09/2024	Defendant Boston Children's Hospital's EMERGENCY Motion for Continuance of the Trial Due to Significant Conflicts for Witnesses (Including Medical Providers) and Trial Counsel (Including Lead Trial Counsel)	78	 Image
07/09/2024	Exhibits/Appendix Additional Exhibits Applies To: Tishelman, Ph.D., Amy (Plaintiff)		 Image
07/09/2024	Defendant Boston Children's Hospital's Submission in Regarding Joint Statement Of Case To Be read To the Jury	79	 Image
07/09/2024	Proposed Filings/Orders Proposed Voir Dire	80	 Image
07/09/2024	Defendant Boston Children's Hospital's Submission of Joint Witness List	81	 Image
07/09/2024	Proposed Filings/Orders Proposed Supplemental Juror Questionnaire Applies To: Boston Children's Hospital (Defendant)	82	 Image
07/09/2024	Proposed Filings/Orders Proposed Jury Instructions Applies To: Boston Children's Hospital (Defendant)	83	 Image
07/09/2024	Proposed Filings/Orders Proposed Verdict Form	84	 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Applies To: Boston Children's Hospital (Defendant)		
07/09/2024	Plaintiff, Defendant Amy Tishelman, Ph.D., Boston Children's Hospital's Submission of Joint Stipulated Exhibits	85	 Image
07/09/2024	Defendant Boston Children's Hospital's Submission of Contested Trial Exhibit List	86	 Image
07/10/2024	Event Result:: Final Trial Conference scheduled on: 07/10/2024 02:00 PM Has been: Held as Scheduled Comments: parties to contact judge r to schedule mediation. trial date set for October 2024 (j campo presiding) Hon. Anthony M. Campo, Presiding Staff: Brenda Shisslak, Assistant Clerk Magistrate		
07/11/2024	Event Result:: Jury Trial scheduled on: 08/06/2024 09:00 AM Has been: Not Held For the following reason: By Court prior to date Hon. Anthony M. Campo, Presiding Staff: Brenda Shisslak, Assistant Clerk Magistrate		
07/17/2024	Event Result:: Hearing on Motion(s) in Limine scheduled on: 07/17/2024 10:00 AM Has been: Held as Scheduled Hon. Anthony M. Campo, Presiding Staff: Erin Coronado, Assistant Clerk Magistrate Timothy C Walsh, Assistant Clerk Magistrate		
07/19/2024	ORDER: Order on Motions in Limine See paper #87 (Dated 7/17/24) Notice sent 7/19/24	87	 Image
07/22/2024	Attorney appearance On this date Austin W Smith, Esq. added for Plaintiff Amy Tishelman, Ph.D.		
07/22/2024	Attorney appearance electronically filed.		 Image
07/22/2024	Event Result:: Hearing on Daubert/Lanigan scheduled on: 07/22/2024 10:00 AM Has been: Held as Scheduled Hon. Anthony M. Campo, Presiding Staff: Erin Coronado, Assistant Clerk Magistrate Timothy C Walsh, Assistant Clerk Magistrate		
07/26/2024	Event Result:: Hearing on Proposed Settlement scheduled on: 07/26/2024 09:00 AM Has been: Held as Scheduled Hon. Michael D Ricciuti, Presiding Staff: Brenda Shisslak, Assistant Clerk Magistrate		
08/13/2024	Plaintiff, Defendant Amy Tishelman, Ph.D., Boston Children's Hospital's Joint Motion to extend time to conduct the deposition of Beza Tadess	88	 Image
08/28/2024	Plaintiff Amy Tishelman, Ph.D.'s Assented to Motion for Two-Day Extension of Time for Parties to File Supplemental Briefing on Daubert/Lanigan Motion	89	 Image
08/29/2024	Endorsement on Motion for Two-Day Extension of Time for Parties to File Supplemental Briefing on Daubert/Lanigan Motion (#89.0): ALLOWED (dated 8/29/24) Notice sent 8/29/24		 Image
08/30/2024	Boston Children's Hospital's Memorandum in support of motion to exclude testimony of Peter Glick, Ph.D. (Supplemental memorandum)	90	 Image
08/30/2024	Affidavit of Alison H. Silveira, Esq. in Support of Defendant's Supplemental Memorandum of Law in Support of its Motion to Exclude Testimony of Peter Glick, Ph.D.	91	 Image
08/30/2024	Reply/Sur-reply Plaintiff's Reply to Defendant's Supplemental Brief Concerning Admissibility of Expert Testimony by Dr. Peter Glick	92	 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
08/30/2024	Exhibits/Appendix Exhibit A to Plaintiff's Reply to Defendant's Supplemental Brief Concerning Admissibility of Expert Testimony by Dr. Peter Glick		 Image
08/30/2024	Rule 9A Notice of Filing		 Image
09/16/2024	Defendant Boston Children's Hospital's Submission of Supplemental Briefing in Support of Defendants' Motion in Limine to Preclude Plaintiff from Calling or Introducing Argument of Evidence about Beza Tadess	93	 Image  Image
09/18/2024	Event Result:: Conference to Review Status scheduled on: 09/19/2024 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Anthony M. Campo, Presiding Staff: Erin Coronado, Assistant Clerk Magistrate Timothy C Walsh, Assistant Clerk Magistrate		
10/02/2024	Event Result:: Rule 16 Conference scheduled on: 10/02/2024 10:00 AM Has been: Held as Scheduled Hon. Anthony M. Campo, Presiding Staff: Erin Coronado, Assistant Clerk Magistrate Timothy C Walsh, Assistant Clerk Magistrate		
10/04/2024	Plaintiff Amy Tishelman, Ph.D.'s Supplemental, Submission in Regards to Testimony of Dr. Peter Glick	94	 Image
10/08/2024	Defendant Boston Children's Hospital's Response to Plaintiff's Supplemental Submission Regarding Testimony of Dr. Peter Glick	95	 Image
10/14/2024	Defendant's Witness List		 Image
10/14/2024	Agreed-Upon Statement Concerning Witness's Medical Condition to be Read to the Jury		 Image
10/15/2024	Proposed Filings/Orders Plaintiff's Proposed Jury Instructions		 Image  Image
10/15/2024	Proposed Filings/Orders Plaintiff's Proposed Verdict Form		 Image
10/15/2024	Plaintiff's Revised Witness List		 Image
10/15/2024	Plaintiff Amy Tishelman, Ph.D.'s Supplemental, Submission in Regards to Testimony of Beza Tadess		 Image  Image
10/15/2024	Event Result:: Jury Trial scheduled on: 10/15/2024 09:00 AM Has been: Held as Scheduled Hon. Anthony M. Campo, Presiding Staff: Erin Coronado, Assistant Clerk Magistrate Timothy C Walsh, Assistant Clerk Magistrate		
10/16/2024	MEMORANDUM & ORDER: On Defendant's Motion in Limine to Exclude Testimony of Dr. Peter Glick CONCLUSION & ORDER: For the foregoing reasons, the Defendants' Motion to Exclude Testimony of Peter Glick, Ph.D. shall be ALLOWED IN PART as to the underlined portions of paragraphs 1. 3.4.9.13. and 14 of Dr. Glick's disclosure. Defendant's Motion to Exclude Testimony of Peter Glick shall be DENIED IN PART to the extent it seeks to exclude Dr. Glick's testimony in its entirety. (Dated: 10/15/24) Judge: Campo, Hon. Anthony M. Notice Sent 10/16/24	96	 Image
10/17/2024	Endorsement on Submission of Supplemental Briefing in Support of Defendants' Motion in Limine to Preclude Plaintiff from Calling or Introducing Argument of Evidence about Beza Tadess (#93.0): Other action taken The testimony of Beza Tadess, while not excluded, is of no probative value as presented at this time M. G. Cv. 401. The burden is on the plaintiff to demonstrate the probative value of any testimony offered by		 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Beza Tadess. (dated 10/15/2024) Notice sent 10/18/2024.		
10/18/2024	Defendant Boston Children's Hospital's Response to Plaintiff's Supplemental Briefing Regarding Testimony of Beza Tadess.	97	 Image
10/22/2024	ORDER: Order Regarding Media Protocol and Coverage See paper #98 (Dated 10/17/24) Notice sent 10/22/2024.	98	 Image
10/22/2024	ORDER: Order on Plaintiff's Supplemental Submission Regarding Testimony of Beza Tadess See paper #99 (Dated 10/21/24) Notice sent 10/22/2024.	99	 Image
10/29/2024	Defendant Boston Children's Hospital's Motion for Reconsideration	100	 Image
11/04/2024	Opposition to Plaintiff's Memorandum Concerning Admission of Financial Information in Defendant's Tax Returns filed by Boston Children's Hospital	101	 Image
11/04/2024	Defendant Boston Children's Hospital's Motion for Directed Verdict	102	 Image
11/04/2024	Objection to Plaintiff's Proposed Jury Instructions filed by Boston Children's Hospital	103	 Image
11/07/2024	Verdict of jury for party (Dated 11/7/24)	104	 Image
11/07/2024	JUDGMENT entered on this date.: Judgment on Jury Verdict By Clerk Presiding: Hon. Anthony M. Campo Judgment For: Amy Tishelman, Ph.D. Judgment Against: Boston Children's Hospital Terms of Judgment: Interest Begins: 10/07/2020 Jdgmnt Date: 11/07/2024 Interest Rate: .12 Daily Interest Rate: .000329 Damages: Damage Amt: 779000.00 Other Costs: 711000.00 Judgment Total: 1,872,386.17 Entered on docket pursuant to Mass R Civ P 58(a) And notice sent to parties pursuant to Mass R Civ P 77(d)	105	 Image
11/18/2024	Defendant Boston Children's Hospital's Notice of Motion		 Image
11/18/2024	Defendant Boston Children's Hospital's Notice of Petition		 Image
12/04/2024	Defendant Boston Children's Hospital's Notice of Appeal	106	 Image
12/04/2024	Notice of appeal filed. (See p#106) Notice sent 12/5/24 Applies To: Boston Children's Hospital (Defendant)		
12/18/2024	Defendant Boston Children's Hospital's Submission of Transcript Order Certification Transcript of trial ordered	107	 Image
12/19/2024	Defendant Boston Children's Hospital's Motion to Mass. R. Civ. P. 50(b) for Judgment Notwithstanding the Verdict (Pursuant)	108	 Image
12/19/2024	Opposition to Defendant's Motion for Judgment Notwithstanding the Verdict filed by Amy Tishelman, Ph.D.	109	 Image
12/19/2024	Reply/Sur-reply Reply in Support of Boston Children's Hospital's Motion for Judgment Notwithstanding the Verdict	110	 Image
12/19/2024	Rule 9A Notice of Filing		 Image
12/19/2024	Defendant Boston Children's Hospital's Petition for Assessment of Costs Pursuant to MRCP 68	111	 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
12/19/2024	Affidavit in Support of Defendant's Petition for Assessment of Costs Pursuant to MRCP 68 Applies To: Boston Children's Hospital (Defendant)	112	 Image
12/19/2024	Opposition to Petition for Assessment of Costs Pursuant to MRCP 68 and Request for Hearing filed by Amy Tishelman, Ph.D.	113	 Image
12/19/2024	Defendant Boston Children's Hospital's Reply to Petition for Assessment of Costs Pursuant to MRCP 68	114	 Image
12/19/2024	Defendant Boston Children's Hospital's Notice of Filing		 Image
01/03/2025	Rule 9A Notice of Filing		 Image
01/03/2025	Plaintiff Amy Tishelman, Ph.D.'s Motion for Award of reasonable Attorney's fees and costs, and request for briefing scheduling regarding amount thereof	115	 Image
01/03/2025	Plaintiff Amy Tishelman, Ph.D.'s Application for Attorney's fees and costs	116	 Image
01/03/2025	Affidavit of Patrick J. Hannon	117	 Image
01/03/2025	Affidavit of Amy Tishelman	118	 Image
01/03/2025	Opposition to Plaintiff's Application for Attorney's fees and costs filed by Boston Children's Hospital	119	 Image
01/03/2025	Reply/Sur-reply Plaintiff's Reply to Defendant's Partial Opposition to Plaintiff's Application for Attorney's fees and costs	120	 Image
03/11/2025	Event Result:: Motion Hearing scheduled on: 03/11/2025 02:00 PM Has been: Held as Scheduled Hon. Christopher Belezos, Presiding Staff: Timothy C Walsh, Assistant Clerk Magistrate		
04/01/2025	ORDER: Memorandum of Decision and Order on Post Trial Motion. Conclusion and Order: The Plaintiff's motion for award of reasonable attorney's fees and costs is ALLOWED IN PART and DENIED IN PART. The Plaintiff may recover \$39,411.83 in costs and \$277,082.35 in attorney's fees. The Plaintiff may not recover attorney's fees following March 28, 2024. The Hospital's petition for costs is ALLOWED IN PART and DENIED IN PART. The Hospital may recover \$4,886.38 in costs. The Hospital's motion for judgment notwithstanding the verdict is DENIED. SO ORDERED. Dated 04/01/25 (See P#121 for complete Order) Notice sent 04/01/25	121	 Image
04/30/2025	Plaintiff Amy Tishelman, Ph.D.'s Notice of Appeal	122	 Image
04/30/2025	Notice of appeal filed. (See p#122) Notice sent 5/1/25 Applies To: Tishelman, Ph.D., Amy (Plaintiff)		
05/14/2025	Plaintiff Amy Tishelman, Ph.D.'s Notice of Ordering Transcripts for Appeal Transcript of 10/21/24 10/22/24 10/23/24 10/24/24 10/25/24 10/28/24 10/29/24 10/30/24 10/31/24 11/04/24 11/05/24 11/06/24 11/07/24 3/11/25 ordered	123	 Image
09/23/2025	Attorney withdrawal electronically filed.		 Image
06/23/2026	Transcript of 10/21/24 10/22/24 10/23/24 10/24/24 10/25/24 10/28/24 10/29/24 10/30/24 10/31/24 11/4/24 11/5/24 11/6/24 11/7/24 3/11/25 received from Superior Court Reporters Inc (via email)		 Image
07/13/2026	Appeal: Statement of the Case on Appeal (Cover Sheet).		 Image
07/13/2026	Notice of assembly of record sent to Counsel		 Image
07/13/2026	Notice to Clerk of the Appeals Court of Assembly of Record		 Image
07/29/2026	Notice of Entry of appeal received from the Appeals Court In accordance with Massachusetts Rule of Appellate Procedure 10(a)(3), please note that the above-referenced case (2026-P-1099) was entered in this Court on July 28, 2026.	124	 Image

Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Judgment after Jury Verdict	11/07/2024	

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2084CV02310

AMY TISHELMAN

vs.

BOSTON CHILDREN'S HOSPITAL

MEMORANDUM OF DECISION
AND ORDER ON POST TRIAL MOTIONS

Following a jury trial, the Defendant, Boston Children's Hospital (the "Hospital") filed a motion pursuant to Mass. R. Civ. P. 50(b) for judgment notwithstanding the verdict. Plaintiff Amy Tishelman (the "plaintiff") moved the court to award reasonable attorney's fees and costs as the prevailing party pursuant to G. L. c. 151B amounting to \$674,422.79. The Hospital opposed plaintiff's motion and petitioned for the plaintiff to pay costs incurred, amounting to \$225,726, after it proffered an offer of judgment on March 28, 2024, pursuant to Mass. R. Civ. P. 68. On March 11, 2025, the court held a hearing on the motions. For the following reasons, the plaintiff's motion is **ALLOWED** in part and **DENIED** in part. The Hospital's petition for costs is **ALLOWED** in part and **DENIED** in part. The Hospital's motion for judgment notwithstanding the verdict is **DENIED**.

BACKGROUND

The plaintiff worked for the Hospital for many years. After the Hospital terminated the plaintiff from her position, the plaintiff filed a civil complaint against the Hospital alleging gender discrimination, age discrimination, and retaliation pursuant to G. L. c. 151B.

Prior to trial, on March 28, 2024, the Hospital served the plaintiff with a formal offer of

judgment pursuant to Mass. R. Civ. P. 68, offering to resolve the case for \$3,200,000 plus reasonable attorneys' fees and costs incurred as of the date of the offer. The plaintiff declined the Hospital's offer.

Months later, the parties tried the case before a jury. On November 7, 2024, the jury found that the Hospital had not discriminated against the plaintiff on the basis of gender or age but had retaliated against the plaintiff. The jury awarded the plaintiff \$379,000 in back pay damages, \$711,000 in front pay damages, and \$400,000 in emotional distress damages, for a total of \$1,490,000. Before interest, less than half the Offer of Judgment.

DISCUSSION

The court evaluates the impact of Rule 68 on the plaintiff's request for attorney's fees and costs¹ and the Hospital's request for costs accruing from the date of the offer of judgment.

I. Judgment Notwithstanding Verdict

Massachusetts Rule of Civil Procedure 50(b) provides that a party which has previously moved for a directed verdict "at the close of all the evidence," may serve a motion for judgment notwithstanding the verdict ("JNOV") within ten days of judgment. "[N]ullifying a jury verdict is a matter of utmost judicial circumspection." *Cahaly v. Benistar Prop. Exch. Trust Co.*, 451 Mass. 343, 350 (2008). The standard of review is generous to the plaintiff and asks – "whether, construing the evidence most favorably to the plaintiff, and 'without weighing the credibility of the witnesses or otherwise considering the weight of the evidence, the jury reasonably could have returned a verdict for the plaintiff.'" *Id.*, quoting *Phelan v. May Dep't Stores Co.*, 443

¹ The Hospital does not dispute that the plaintiff is entitled to recover reasonable attorney's fees and costs pursuant to her successful retaliation claim up until the day of the offer of judgment on March 28, 2024. The parties dispute whether the plaintiff is entitled to attorney fees and costs thereafter.

Mass. 52, 55 (2004). The standard for obtaining a judgment notwithstanding a verdict is the same as for summary judgment, in which the Court “ask[s] whether, construing the evidence most favorably to the plaintiff, and ‘without weighing the credibility of the witnesses or otherwise considering the weight of the evidence, the jury reasonably could have returned a verdict for the plaintiff.’” *Bulwer v. Mount Auburn Hosp.*, 473 Mass. 672, 682 n. 8 (2016), quoting *Cahaly v. Benistar Prop. Exch. Trust Co.*, 451 Mass. 343, 350 (2008) and Phelan, 443 Mass. at 55. “The verdict must be sustained if the plaintiff offered any evidence from which the jury could have reasonably reached their verdict.” *Zaniboni v. Massachusetts Trial Court*, 81 Mass. App. Ct. 216, 217-218 (2012).

The jury rendered a verdict in favor of the plaintiff on the claim for retaliation. “‘In the absence of direct evidence of a retaliatory motive,’ a plaintiff asserting relation must allege facts showing that [s]he engaged in a protected activity, that [s]he suffered an adverse action, and that there was a causal connection between the protected activity and the adverse action.” *Sabatini v. Knouse*, 105 Mass. App. Ct. 174, 184 (2025), quoting *PsyEd Corp. v. Klein*, 459 Mass. 697, 707 (2011). “Protected activities are ‘reasonable acts meant to protest or oppose [harassing conduct].’” *Sabatini*, 105 Mass. App. Ct. at 184, quoting *Verdrager v. Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.*, 474 Mass. 382, 406 (2016). “To be protected, a communication must be reasonably read as raising a complaint that the supervisor or coworker engaged in harassing conduct.” (Citation and quotation omitted). *Sabatini*, 105 Mass. App. Ct. at 184. The jury was instructed regarding the elements of retaliation. Thus, the Court considers “whether anywhere in the evidence from whatever source derived, any combination of circumstances could be found from which a reasonable inference could be drawn in favor of the non-moving party.” *Cambridgeport Sav. Bank v. Boersner*, 413 Mass. 432, 438 (1992) (internal quotes

omitted). “A jury verdict must be sustained,” and a motion for JNOV must be denied, if the record contains “any evidence from which the jury reasonably could have arrived at that verdict,” “view[ing] the evidence in the light most favorable” to the nonmoving party, “and disregard[ing] evidence favorable” to the moving party. *Labonte v. Hutchins & Wheeler*, 424 Mass. 813, 820-821 (1997). In other words, it is not enough for the moving party to argue that there was evidence warranting a contrary finding by the jury. *Tosti v. Ayik*, 394 Mass. 482, 494 (1985) (“Conflicting evidence alone does not justify judgment notwithstanding the verdict. [I]t is of no avail for the defendant to argue that there was some or even much evidence which would have warranted a contrary finding by the jury.”) (internal citation and quotes omitted).

The plaintiff presented ample evidence, during the trial to support the jury’s verdicts in her favor the retaliation claim. The jury heard evidence satisfying each element of each of retaliation: that the Hospital knew the plaintiff complained of discrimination both to the Hospital directly and in filing her MCAD complaint, that she was subsequently terminated from her position, and that the jury could infer from the evidence that the plaintiff was terminated from her position due to her complaints of discrimination. This standard was particularly met when viewing the evidence in a light most favorable to the plaintiff. Due to the plethora of evidence before them, the jury’s verdicts were reasonably reached in favor of the plaintiff. Therefore, the Hospital’s motion for judgment notwithstanding the verdict must be denied.

II. Costs and Fees

a. Plaintiff’s Attorney’s Fees

The plaintiff contends that as the prevailing party she is entitled to reasonable attorney’s fees amounting to \$531,142.47. She contends that although the jury verdict (\$1,490,000) was less than the March 28, 2024, offer of judgment (\$3,200,000), the court must not follow Rule 68

because it conflicts with the purpose of G. L. c. 151B. The court disagrees, as G. L. c. 151B does not conflict with Rule 68 and therefore the plaintiff's request for attorney's fees must be capped as of the date of the offer of judgment on March 28, 2024, therefore she may only recover \$277,082.35.

To the greatest extent possible, the court "construe[s] the rule and the statute to constitute a harmonious whole consistent with the legislative purposes disclosed . . . to give reasonable effect to both." *Perez v. Department of State Police*, 491 Mass. 474, 486 (2023), quoting *Boston Police Patrolmen's Ass'n v. Boston*, 367 Mass. 368, 373 (1975). Under Rule 68², a party who rejects a formal offer of judgment and subsequently fails to obtain greater relief cannot recover fees and costs accruing after the date of rejection. The plain purpose of Rule 68 is to "encourage settlement and avoid protracted litigation." *Nortek, Inc. v. Liberty Mut. Ins. Co.*, 65 Mass. App. Ct. 764, 774 (2006). See *Marek v. Chesny*, 473 U.S. 1, 11 (1985) (regarding federal analog, stating Rule 68 is a rule which encourages the plaintiff to "'think very hard' about whether continued litigation is worthwhile").

Under G. L. c. 151B, § 9, a prevailing plaintiff is entitled to attorney's fees "unless special circumstances render the award unjust." The court is persuaded that Rule 68's provisions regarding offer of judgment provide such circumstances that would render an award of attorney's fees unjust. Here, the plaintiff rejected an offer of judgment for \$3,200,000 and ultimately a jury

² In relevant part, Rule 68 provides:

"At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. . . . An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. *If the judgment exclusive of interest from the date of offer finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer* ... [emphasis added]."

awarded the plaintiff \$1,490,000. This is a lesser relief. The plaintiff's position is self-serving and specious.

The plaintiff contends that, despite the disparity in monetary awards, the ultimate jury award cannot be construed as a lesser favorable relief than the offer of judgment, because while she may have received a lesser monetary award than the offer of judgment, by proceeding to trial and prevailing on her retaliation claim, she received vindication in a jury finding the Hospital's wrongdoing. As the offer of judgment disclaimed any admission of wrongdoing by the Hospital, the jury verdict granted her greater relief. If the court followed plaintiff's reading of Rule 68, any plaintiff could claim that any offer of judgment lacking an admission of liability was invalid because it failed to provide such vindication. Such a reading of the rule would render Rule 68 toothless. At its heart, Rule 68 is a rule of compromises. It cannot be construed to only empower offers of judgments that provide plaintiffs with their every possible desire. See *Childress v. DeSilva Automotive Servs., LLC*, 494 F. Supp. 3d 1163, 1173 (D. N. M. 2020), citing *Simmons v. United Mtge. & Loan Inv., LLC*, 634 F.3d 754, 764, n.6 (4th Cir. 2011) ("A valid rule 68 offer allows judgment against the defendant, but such an offer does not require an admission of liability").

For the forgoing reasons, the court finds that as the offer of judgment (\$3,200,000) was significantly greater than the ultimate jury verdict (\$1,490,000), the plaintiff is not entitled to recover attorney's fees following the date of the offer of judgment on March 28, 2024. See *Bogan v. City of Boston*, 489 F.3d 417, 431 (1st Cir. 2007) ("The parties correctly agree, that under Rule 68, a prevailing party is not permitted to recover fees or costs incurred after an offer of judgment, where the judgment obtained is less than the offer").

Additionally, the Hospital asserts that plaintiff's attorney's fees must be reduced because

she only prevailed on one of three theories. Where claims are sufficiently interconnected, a plaintiff is warranted a full award of attorney's fees whether the plaintiff prevails on one or all theories. See *Quarterman v. City of Springfield*, 91 Mass. App. Ct. 254, 265 (2017), citing *Killeen v. Westban Hotel Venture, LP*, 69 Mass. App. Ct. 784, 792 (2007). The plaintiff's efforts expended on the unsuccessful discrimination claims are so interconnected to the retaliation claim that the claims cannot be parsed. The evidence as presented on the various theories was interconnected and presented the necessary, totality of circumstances. To suggest otherwise is contrary to the evidence as presented in this case. Additionally, the plaintiff's MCAD fees are likewise recoverable. See *Fryer v. A.S.A.P. Fire & Safety Corp.*, 750 F. Supp. 2d 331, 336 (D. Mass. 2010) ("Inasmuch as the filing with the MCAD was a prerequisite to the discrimination claim in this court, these hours are appropriately and reasonably included in the fee request").

The Hospital also contends that the plaintiff's request for attorney's fees is not reasonable. In calculating a fee award in a case under G. L. c. 151B, courts use a "lodestar" method, "multiplying the number of hours reasonably spent on the case times a reasonable hourly rate," then enhancing or reducing that figure based on case-specific factors. In calculating a fee award, courts should consider "(1) how long the trial lasted, (2) the difficulty of the legal and factual issues involved, and (3) the degree of competence demonstrated by the attorney." *Fontaine v. Ebttec Corp.*, 415 Mass. 309, 324-325 (1993). The petitioning party, here the plaintiff, bears the burden of demonstrating that the attorney's fees sought are reasonable. See *Soc'y of Jesus v. Boston Landmarks Com.*, 411 Mass. 754, 759 (1992). A prevailing party seeking attorney's fees is also entitled to reasonable attorney's fees for work required to recover attorney's fees. See *Stratos v. Department of Pub. Welfare*, 387 Mass. 312, 325 (1982). This court, after a close review of the attorney's fees as submitted, find them to be reasonable.

There is no question that the plaintiff is the prevailing party on one count in this case and is thus entitled to reasonable attorney's fees and costs until the date of the Offer of Judgment. The plaintiff has submitted a petition for attorney's fees, requesting \$277,082.35, representing fees for 535.3 hours of work among seven individuals, including lead counsel, associates, and support staff.³ In support of this request, the plaintiff filed an affidavit with attached dated and itemized invoices of hours worked on the plaintiff's case. The affidavit also detailed reasons supporting the fees for each attorney working on the plaintiff's case. Again, after careful review of the plaintiff's petition, affidavit, and itemization of attorney's fees, the court finds that plaintiff may recover \$277,082.35, that is the attorney's fees up until the date of the offer of judgment on March 28, 2024.

b. Plaintiff's Costs

Plaintiff requests an award for costs up to the date of trial. The plaintiff may recover taxable costs in her prevailing retaliation claim. See G. L. c. 151B, § 9 (prevailing plaintiff may recover reasonable costs); G. L. c. 261, § 1 (“[i]n civil actions the prevailing party shall recover his costs, except as otherwise provided”);

The plaintiff may recover the following costs:

1. Deposition fees (\$14,455.70). See Mass. R. Civ. P. 54(e); *Waldman v. American Honda Motor Co.*, 413 Mass. 320 (1992).
2. Cost for production of medical records requested by the Hospital (\$106.37).
3. Dr. Peter Glick expert witness fees (\$24,839.76).

³ These numbers reflect the requested attorney's fees until March 28, 2024. The plaintiff's requested attorney's fees until the date of the jury verdict were calculated to be \$531,142.47 for 1077.4 hours of work. As discussed, the court finds that the plaintiff is entitled to attorney fees only until the date of the offer of judgment, therefore the court must reduce the amount of attorney's fees requested by the plaintiff.

The plaintiff may not recover the following costs:

1. Courier services (\$140). See *Styller v. National Fire & Marine Ins. Co.*, 95 Mass. App. Ct. 538, 544 (2019).
2. Court filing fee (\$275). See *id.*
3. Delivery fees (\$87.66). See *id.*
4. Parking fees for counsel (\$349). See *id.*

For these reasons, the court will award the plaintiff's requested costs of \$39,411.83.

c. The Hospital's Costs

The Hospital moves pursuant to Mass. R. Civ. P. 68, to recover \$225,726.77 in costs incurred after it made a \$3,200,000 offer of judgment on March 28, 2024.

Rule 68 states that where a party rejects a properly served offer of judgment: "[i]f the judgment exclusive of interest from the date of offer finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer." Here, the jury awarded the plaintiff \$1,490,000 after she rejected the Hospital's offer of \$3,200,000. There is no question that an award of costs to the Hospital is appropriate. The Hospital may recover certain taxable costs. See G. L. c. 261, § 1 ("[i]n civil actions the prevailing party shall recover his costs, except as otherwise provided"); *Shorr v. Professional Photographers of America, Inc.*, 1997 Mass. App. Div. 61, 1997 WL 271757 at *3 (Mass. App. Div. May 14, 1997) (costs and expenses requested by defendant under Rule 68 may include taxable costs under G. L. c. 261, § 1, Mass. R. Civ. P. 54(d) and (e)).

The court concludes that the Hospital may recover the following as costs:

1. Deposition costs (\$600.95). See Mass. R. Civ. P. 54(e); *Boston v. United States Mineral Prods. Co.*, 37 Mass. App. Ct. 933 (1994).

2. Travel expenses for defense witnesses (\$3,634.58).
3. Medical records (\$150.85).
4. Trial technology (\$500). See G. L. c. 261, § 25A (“unless the court shall otherwise determine, the prevailing party shall be allowed a sum not exceeding five hundred dollars for expenses actually incurred for plans, drawings, photographs and certified copies of public and court records, necessary and used at the trial”). See also *Speranzo v. Northeastern University*, 2023 WL 2989789 (Mass. Super. Ct. Apr. 3, 2023) (Leighton, J.) (nominal recovery permitted for trial presentation).

In total, this amounts to \$4,886.38.

The Hospital may not recover the following expenses:

1. Transcript costs (\$95,051.50). See *DeMoulas v. DeMoulas*, 432 Mass. 43, 64 (2000).
2. Discovery and document maintenance system costs (\$8,893.50). See *Protege Software Servs. v. Colameta*, 32 Mass. L. Rptr. 165, 2014 Mass. Super. LEXIS 61, *17 (Mass. Super. April 14, 2014) (Budd, J.) (normal overhead costs are not recoverable); *Admiral Metals Servicenter Co. v. Micromatic Prods. Co.*, 25 Mass. L. Rptr. 489, 2009 Mass. Super. LEXIS 138, *20 (Mass. Super. March 26, 2009) (Lauriat, J.) (fees otherwise part of “an attorney’s overhead included in his hourly rate and cannot be separately recovered as costs”).
3. Temporary workspace and/or travel and lodging for the legal team (\$25,499.86). See *Protege Software Servs.*, 2014 Mass. Super. LEXIS 61, *17 (Mass. Super. April 14, 2014) (Budd, J.) (defense counsels’ travel costs during trial are “normal overhead costs and are not recoverable”).
4. Research (\$910.60). See *Admiral Metals Servicenter Co.*, 2009 Mass. Super. LEXIS

- 138, *20 (fees for research “are part of an attorney's overhead included in his hourly rate and cannot be separately recovered as costs”).
5. Copies, delivery, and courier services (\$7,794.91). See *Evans v. Lorillard Tobacco Co.*, 29 Mass. L. Rptr. 226, 2011 Mass. Super. LEXIS 293, *22 (Mass. Super. November 30, 2011) (Fahey, J.) (treating expenses associated with copying and delivery as unrecoverable overhead); *Admiral Metals Servicer Co.*, 2009 Mass. Super. LEXIS 138, *20 (fees for photocopies “are part of an attorney's overhead included in his hourly rate and cannot be separately recovered as costs”).
 6. Expert witness fees (\$13,799). See *Styller*, 95 Mass. App. Ct. at 544 (taxable costs do not ordinarily include expert fees except as nominally allowed pursuant to statutory provision for witness fees); *Waldman*, 413 Mass. at 322.
 7. Mediation fees (\$593.25). See *Marengi v. 6 Forest Road LLC*, 491 Mass. 19, 32 (2022) (no recovery where no statute, valid contract or stipulation providing for such costs).
 8. Jury impact consultation fees (\$22,175.94). See *Sullivan v. Five Acres Realty Tr.*, 487 Mass. 64, 76 (2021) (jury consultant fees are not recoverable).
 9. Trial technology (\$45,151.67). See G. L. c. 261, § 25A (“unless the court shall otherwise determine, the prevailing party shall be allowed a sum not exceeding five hundred dollars for expenses actually incurred for plans, drawings, photographs and certified copies of public and court records, necessary and used at the trial”).

For the forgoing reasons the Hospital is entitled to recover \$4,886.38 total in costs.

CONCLUSION AND ORDER

The Plaintiff's motion for award of reasonable attorney's fees and costs is **ALLOWED**

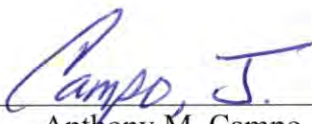
IN PART and **DENIED IN PART**. The plaintiff may recover \$39,411.83 in costs and \$277,082.35 in attorney's fees. The plaintiff may not recover attorney's fees following March 28, 2024.

The Hospital's petition for costs is **ALLOWED IN PART** and **DENIED IN PART**.
The Hospital may recover \$4,886.38 in costs.

The Hospital's motion for judgment notwithstanding the verdict is **DENIED**.

SO ORDERED.

Date: April 1, 2025



Anthony M. Campo
Justice of the Superior Court