

Date: 20080730

Docket: T-371-03

Citation: 2008 FC 929

BETWEEN:

**FOURNIER PHARMA INC. and
LABORATOIRES FOURNIER S.A.**

Applicants

and

**THE MINISTER OF HEALTH and
CIPHER PHARMACEUTICALS LIMITED**

Respondents

ASSESSMENT OF COSTS - REASONS

**Charles E. Stinson
Assessment Officer**

[1] The Respondent, Cipher Pharmaceuticals Limited (Cipher), served a Notice of Allegation (NOA) alleging that marketing of its fenofibrate drug (Cipher capsules) did not infringe Canadian Patent 2,219,475 (the '475 Patent). Fenofibrate is a cholesterol-reducing drug. The Applicants brought this application for judicial review (the judicial review proceeding) for an order prohibiting the Respondent, the Minister of Health (the Minister), from issuing a Notice of Compliance (NOC) permitting marketing of the Cipher capsules. The Court dismissed the judicial review proceeding with costs to Cipher at the upper end of Column III. As well, the Court directed that Cipher recover second counsel fees for attendance at the cross-examinations and the hearing, reasonable fees for preparation of its expert affidavit, reasonable travel expenses "for the attendance of the respondents"

counsel on the cross-examinations” and “reasonable disbursements...with respect to the respondents’ expert.” I issued a timetable for written disposition of the assessment of CIPHER’s bill of costs.

I. CIPHER’S POSITION

[2] CIPHER argued generally further to Rule 400(3)(c) (importance and complexity) that the CIPHER capsules were its first product in the pharmaceutical market (annual sales in 2002 of about US\$449.9 million in the USA and about \$35 to 40 million in Canada). As well, being a recent and public company, success in this litigation was critical for CIPHER in attracting investors. The Applicants should not be surprised that significant litigation costs resulted. The number of patents in issue does not determine complexity. The Applicants led no evidence that patent validity issues are more complex than patent infringement issues. The Applicants’ submissions on an alleged agreement permitting CIPHER to market the CIPHER capsules are flawed because the agreement fell apart due to CIPHER’S inability to obtain final government approval until this litigation was resolved.

[3] CIPHER argued further to Rule 400(3)(a) (result) that its success and the acceptance by the Court of its expert warrants the costs claimed. CIPHER argued further to Rule 400(3)(g) (amount of work), (i) (mode of conduct) and (k) (improper steps) that higher costs are warranted because the fees claimed (\$46,216.20) are less than 10 percent of the actual counsel fees paid and because the Applicants’ conduct in bringing four of five motions, listing a second patent and pursuing an unsuccessful appeal lengthened the process. CIPHER argued generally further to *Carlisle v. Canada* (1997), 97 D.T.C. 5284 (T.O.) [*Carlisle*] that absolute proof of all amounts is not required. The

general practice of counsel for Cipher was to pay directly any invoice under \$5,000 and then bill the client. Any invoice over \$5,000, i.e. for the expert Dr. Christopher T. Rhodes, was passed directly to the client for payment.

[4] Cipher argued that as the hearing judge here did not decide any of the cases cited by the Applicants on the meaning of upper end, they are irrelevant for the interpretation of the wording of the award here of costs. “Top end” is a synonym of “upper end.” Several tariff items, such as counsel fee item 4 (preparation of uncontested motion) with a range of 2 - 4 units, have only three numbers and therefore as the only possible upper end value is 4, the award clearly contemplated maximum values. If the award of costs had intended that only travel disbursements were recoverable, it would have used that specific language. The term “travel expenses” can include both disbursements and fees for the time of counsel in transit.

[5] Cipher argued that the record, including the Court’s decision, acknowledged the credentials, relevance for the outcome, and varied work required of Dr. Rhodes, i.e. foremost expert, literature search, document review, affidavit preparation, response to the Applicants’ expert and two days of cross-examination. The relative costs of the Applicants’ expert are irrelevant for the assessment of Dr. Rhodes’ costs, as is the Applicants’ assertion that Dr. Rhodes was a “Cadillac” sort of expert. The Applicants spent less for its expert whose relevance for the outcome was deemed of little value. By contrast, Cipher spent a reasonable amount (\$60,863.55) for its expert which compares favourably to the final total allowance of \$205,062.91 for experts in *Merck & Co. v. Apotex Inc.*, [2007] F.C.J. No. 1337 (F.C.) [*Merck*].

[6] Cipher argued that the travel expenses (\$16,526) for two counsel to get to four locations (Providence, New York, San Francisco and Montreal) for cross-examinations and for one counsel to get to Washington, D.C. were reasonable. The photocopies charged to the client at \$0.25 per page were reasonable. It is not always possible to distinguish between in-house copies and those from commercial sites.

II. The Applicants' Position

[7] The Applicants argued generally that Cipher's bill of costs should be significantly reduced because of insufficient evidence and absence of complexity. This proceeding addressed infringement of a single patent as opposed to issues of validity which tend to be more complicated. Cipher's expert, Dr. Rhodes, charged (\$60,863.55) considerably more than the Applicants' expert, Dr. Arthur H. Goldberg (\$32,992.68 at US\$300 per hour).

[8] The Applicants argued that the evidence undermines Cipher's assertion that its fortunes hinged on the success of this litigation. That is, Cipher entered into a distribution and supply agreement during this litigation and before approval for sale of the Cipher capsules. As well, because Cipher planned to market the Cipher capsules as a brand product as opposed to a generic product interchangeable with the Applicants' brand name product, it would not have been able to take advantage of the interchangeability provision in provincial formulas relative to health plans permitting pharmacists to dispense a generic product when presented with a prescription for a brand name product. As Cipher would have had to convince physicians to specify the Cipher capsules in

any prescription, Cipher's potential sales would have been much smaller in turn precluding any significant market share.

[9] The Applicants argued that the reference to "upper end" in the award of costs does not necessarily mean the maximum value in the range for each fee item as the Court specifically mentions "maximum end" or "top end" if maximum values are intended, i.e. *Rolls-Royce plc v. Fitzwilliam*, [2003] F.C.J. No. 499 at para. 5 (F.C.) [*Rolls-Royce*] and *Apotex Inc. v. Syntex Pharmaceuticals International Ltd. et al.* (2000), 2 C.P.R. (4th) 368 at para. 13 (F.C.T.D.) [*Apotex*] varied on other grounds [2001] F.C.J. No. 727 (F.C.A.). The same point in the range for each fee item in turn need not be used as there may be varying elements of difficulty from step to step and the same unit value need not be allowed for each hour if the characteristics of a task vary throughout its duration: see *Starlight v. Canada*, [2001] F.C.J. No. 1376 (A.O.) [*Starlight*]. Cipher did not lead evidence to justify maximum values. Therefore, Cipher's claim should be reduced by 64.3 units (\$120 per unit) further to an allowance of one unit less than the maximum for fee items 5 (preparation of contested motion), 8 and 9 (preparation for and attendance on cross-examinations respectively), 13 (preparation for hearing) and 15 (preparation of factum).

[10] The Applicants argued that the record confirms that Dr. Ian W. French was not offered as an expert. Therefore, the fee item 2 claim for the preparation of his affidavit and that of Dr. Rhodes should be reduced to 3 or 4 units. The fee item 4 claim should be disallowed because the order was silent on costs. The fee item 6 (attendance) claims for appearance on three motions at 12 units per hour should be reduced to the maximum in the range (3 units per hour) and applied to 5.25 hours

(total for three hearings) thereby reducing the claim by 47.25 units. The Applicants argued that the Court awarded reasonable travel expenses as opposed to fees for the time of counsel and therefore the three claims for fee item 24 should be disallowed. Alternatively and further to submissions above on the meaning of upper end, the claimed total of 15 units for these fee items should be reduced to 10 units. The Applicants argued that the total reduction of fees should be \$16,146 before taxes (\$40,188 claimed). Further to the submissions on disbursements below, the Applicants suggested a lump sum award of \$50,000 inclusive of taxes.

[11] The Applicants argued further to *Allied Signal Inc. v. Du Pont Canada Inc.*, [1997] F.C.J. No. 993 at para. 20 (T.O.) [*Allied Signal*] and *Dableh v. Ontario Hydro*, [1994] F.C.J. No. 1810 at paras. 15 and 17 [*Dableh*] that scanty proof should or may result in reduced costs. The claim for Dr. Rhodes should be reduced to \$30,000 by means of a benchmark comparison as in *Merck* at para. 37 to the charge (\$32,992.68 including disbursements) for the Applicants' expert.

[12] The Applicants argued that Cipher's evidence is insufficient and vague. For example, the expert's account, which included a charge for "outside professionals", is supported by invoices adding up to only \$55,868.70. The shortfall is inadequately supported by the bald assertion of the reasonableness of the total \$60,863.55 claimed and that there may be, not are, other invoices which could not be located. The evidence does not identify the outside professionals, and of the \$3,979 paid to them, \$1,200 was subject to GST perhaps indicating payments to one or more unidentified persons additional to Dr. Rhodes, who was the only expert to testify on behalf of Cipher. There was no evidence that certain invoices (April 30 and May 31, 2004) were paid or reasonable.

[13] The Applicants argued further to Tariff A3(4) that Cipher led no evidence of a contract establishing a rate for Dr. Rhodes in lieu of \$100 per day. The evidence was vague as to his rate, i.e. what constitutes a full day or how partial days were counted. The invoice for May 12-27, 2003 charged US\$10,500 for three days' work at US\$3,500 per day, identified only May 23 as one of the days worked and did not explain how the figure of three days was calculated. The invoice for June 23-27, 2003 (US\$10,000) asserted work on four days (limited to notarization of his affidavit on the fourth day), yet at US\$3,500 per day (not specified on this invoice) works out to less than three days' work if compared to the first invoice (US\$10,500). His remaining two invoices were also vague and inconsistent.

[14] The Applicants argued further to *Halford v. Seed Hawk Inc.*, [2006] F.C.J. No. 629 (A.O.) at paras. 79, 80, 82 and 86 [*Halford*] that the claim for Dr. Rhodes should be reduced given the lack of evidence of details of what he did and its relevance and of supervising counsel's instructions to him and that it was not work more properly to be done by counsel. The brevity of and lack of detail in his invoices, such as the one dated May 27, 2003 for "examining various documents pertinent to the...case...work on an expert report", are insufficient for an assessment of the reasonable necessity of his work.

[15] The Applicants argued that the evidence indicates repetitive work by Dr. Rhodes. For example, the invoice for May 12-27, 2003 indicated review of "pertinent" documents and a meeting with counsel after work on his expert report. Yet, the invoice for June 23-27, 2003 charged for more review of "background" documents and considerable work on his expert report.

The Applicants should not have to indemnify unpaid fees nor the costs of an expert's review of background information in a field in which he purports to be an expert: see *Biovail Corp. v. Canada (Minister of National Health and Welfare)* (2007), 61 C.P.R. (4th) 33 at paras. 32 and 34 (A.O.) [*Biovail*] affirmed by [2008] F.C.J. No. 342 (F.C.).

[16] The Applicants noted the claims of \$3,063.33 and \$1,373.93 (\$4,437.26 total) in the June 25, 2003 law firm's billing to Cipher for what appears to be respectively return flights between Toronto and Providence, Rhode Island for two counsel to apparently meet with Dr. Rhodes in May 2003 and for an unexplained flight to Washington D.C. The Applicants argued that the \$4,437.26 should be disallowed given the absence of evidence of the necessity for a meeting in person with Dr. Rhodes and for two counsel. As well, there is no evidence that requisite economy fares were used: see *Halford* at paras. 105 and 120. There is no evidence of the use of economy fares (six return flights, two each to New York, San Francisco and Montreal respectively averaging about \$2,000 for each flight) and therefore the claim of \$12,088.74 should be reduced.

[17] The Applicants argued further to *Diversified Products Corp. v. Tye-Sil Corp.* (1991) 34 C.P.R. (3d) 267 (F.C.T.D.) and *Merck & Co. v. Canada (Minister of Health)*, [2007] F.C.J. No. 428 (A.O.) [*Merck* assessment], varied on other grounds by *Merck* that the photocopying claim (\$17,526.90) should be reduced given absence of evidence of reasonableness, necessity, actual cost of each copy, number of copies and type and purpose of the documents. Cipher has claimed costs further to two orders silent on costs, i.e. March 25, 2003, amended April 8, 2003 (the protection

order) and May 9, 2003 (the scheduling order), which must be disallowed further to *Ruckpaul v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 755 (A.O.).

[18] The Applicants argued that there were inconsistencies in Cipher's evidence for photocopying costs. The invoices fell \$2,203 short of the \$17,526.90 claimed. The Applicants argued that the total of \$3,010.75 for photocopies from the invoices dated January 31 and February 28, 2005 may not have related to this matter given the timing of the hearing and decision, i.e. November 9-10 and December 9, 2004 respectively. The balance (\$127.38) of disbursement totals of \$1,425.62 and \$1,712.51 respectively for these two invoices should be completely disallowed because of the absence of evidence justifying the other items, i.e. facsimile, service, filing fees and research.

[19] The Applicants argued that the \$17,526.90 claimed for photocopies should be reduced to \$3,412.50 (13,650 pages x \$0.25 per page) per *Merck* assessment at para. 36 as follows. Cipher's motion records, books of authorities and application record total about 1,600 pages and its affidavits about 490 pages. Cipher claimed eight copies (the allowance in *Merck* assessment) for each of the motion records and application record, i.e. three filed, one served, one for the client and three for Cipher's counsel. Since *Halford* at para. 247 held that a client copy is not assessable, the allowable total should be 11,200 pages based on seven copies each. The total for affidavits is 2,450 pages based on five copies each as three filed copies were not required.

[20] The Applicants argued that Cipher's evidence did not contain any proof of reasonable necessity and simply took the form of limited and unexplained invoices and receipts resulting in gaps as follows (Applicants' written submissions, para. 58):

Disbursement Item	Amount Claimed	Total from Invoices	Shortfall
Courier	\$1,760.18	\$1,546.46	-\$ 213.72
Faxes	\$ 258.75	\$ 244.00	-\$ 14.75
Meals	\$1,670.73	\$1,646.07	-\$ 24.66
Printing & Reproduction	\$1,150.16	\$ 82.79	-\$1,067.37
Process Server	\$1,019.21	\$ 840.21	-\$ 179.00
Research	\$ 616.51	\$ 571.89	-\$ 44.62
Searches	\$ 19.02	\$ 9.51	-\$ 9.51
Taxi	\$ 831.17	\$ 794.16	-\$ 37.01
Filing Fees	\$ 160.00	\$ 35.00	-\$ 125.00
		Total shortfall	-\$1,715.64

[21] Some of the underlying receipts indicated unreasonable and lavish expenditures, i.e. CAN\$301.93 for a meal in Rhode Island; CAN\$371.64 and CAN \$440.78 (CAN\$812.42 total) for two meals in New York and CAN\$227.26 for three breakfasts in New York.

[22] Some expenditures, i.e. car/limo, car rental, conference room, court reporter, courier, facsimiles, postage, printing and reproduction, parking, process server, patent services, research, searches, supplies, taxi, long distance, transcripts and filing fee, lack evidence and may relate to orders silent on costs. Patent searches are not recoverable. The costs for electronic legal research should be sharply reduced given the absence of evidence of its parameters.

[23] The Applicants argued that the accommodation claim of \$5,875.61 should be reduced as follows. As above, there was no evidence of the relevance of the May 2003 meeting in Rhode Island with Dr. Rhodes, including the need for second counsel, two nights' accommodation and time in Washington D.C. Therefore, \$1,731.43 should be removed. The hotel rates for each of the two counsel for Cipher (the November 2003 cross-examination in New York) were US\$350 (four nights) and US\$225 (two nights) per night respectively. Each counsel should be restricted to two nights at US\$225 per night for a total of CAN\$1,351.07. Only CAN\$574.91 should be allowed for the cross-examination in San Francisco for similar reasons. That means a reduction of CAN\$2,218.20 to an assessed total of CAN\$1,925.98 for accommodation in November 2003 in turn meaning a total reduction of CAN\$3,949.63.

III. Assessment

[24] I rely on my analysis in *Abbott Laboratories v. Canada (Minister of Health)*, [2008] F.C.J. No. 870 (A.O.) [*Abbott*] (currently under appeal) of the case law led here. I think that *Abbott*, *Biovail* and *Halford* adequately lay out my approach to assessments of costs and which I will apply here.

[25] My analysis in para. 18 of *Mitchell v. Canada (Minister of National Revenue – M.N.R.)*, [2003] F.C.J. No. 1530 (A.O.) of the meaning of the terms “towards” the higher end versus “at” the higher end as applied there to Column V sufficiently disposes of the intent here of the award of costs. Cipher may claim the maximum value from the range for each permissible fee item, except for fee items beyond the jurisdiction of the judgment for costs, i.e. such as interlocutory orders silent

on costs or not leaving it to the trial judge to set the level of costs associated with given motions: see para. 73 of *Abbott*. Accordingly, I disallow the claim for item 4 (preparation of uncontested motion) as the protection order was silent on costs.

[26] The fee item 5 (preparation of contested motion) and 6 (appearance) claims for three interlocutory hearings associated with orders giving costs to Cipher are not subject to the reach of the trial judge's award of costs because the motion judge did not in each instance make the respective interlocutory awards of costs subject to further directions. The only effect of the judgment here on the August 19, 2003 interlocutory award of costs in the cause was to confirm that Cipher was entitled to the costs of that motion. The judgment could not purport to award costs of the motion at the upper end of Column III. The Applicants' submissions conceded 6 units (\$120 per unit) (available range = 4-7 units) for fee item 5 and appeared to concede the maximum 3 units per hour for fee item 6 and total combined duration of the 5.25 hours claimed. I allow these items on that basis.

[27] The Court used the term "counsel fees" in directing recovery for second counsel. As fee item 2 would include preparation of an expert affidavit, I think that the use by the Court of the term "fees" for the "preparation of the respondents' expert affidavit" and of the term "disbursements" for the "respondents' expert" likely referred respectively to the expert's hourly rate and number of hours and to any related costs such as for travel. That use of those terms therefore does not assist in determining whether the Court's use of the term "travel expenses" for the "attendance of the respondents' counsel on the cross-examinations" addressed fee item 24 (travel time of counsel). I

concluded in *Marshall v. Canada*, [2006] F.C.J. No. 1282 at para. 6 (A.O.) that there must be a visible direction by the Court to the assessment officer specifically authorizing fees for the time of counsel in transit. Such a direction is not however necessary to assess the associated travel disbursements, the authority being Tariff B1(4): see also para. 75 of *Abbott*. Strictly speaking, Tariffs A3(4) and B1(4) make a direction to assess the costs of an expert unnecessary. An argument that the visible direction here for “travel expenses” for attendance must include fee item 24 is undercut by the presence of directions to assess disbursements for the expert and the absence of the term “counsel fee” other than for second counsel. That is, it might be difficult to conclude that the term “travel expenses” includes counsel fees and is not limited to disbursements. I do not think that the Court had in mind fee item 24 and I therefore disallow the three fee item 24 claims.

[28] In *Abbott*, I expressed concerns about the use of benchmarks in assessing the accounts of experts. I think that benchmarking somewhat presumes homogeneous approaches to given subjects meaning individuals of the obvious calibre of Dr. Goldberg for the Applicants and Dr. Rhodes for Cipher should arrive at comparable conclusions with perhaps minor differences. This latter occurrence is infrequent in my experience. Dr. Goldberg responded (p. 80 of the transcript of his cross-examination on November 18, 2003 on his affidavit) to a question on whether Dr. Rhodes disagreed with him concerning a certain property of fenofibrate by stating that “Dr. Rhodes has made mistakes before, so has Linus Pauling, but __”. This and other instances (pp. 21-23 of the transcript of his cross-examination) indicate divergence in the results of their work. Divergence in results does not necessarily mean differences in methods and amount of work. It does indicate to me that consideration of whether the amount claimed for Dr. Rhodes is reasonable in the circumstances

of what he did may be the preferred tool of assessment rather than simply benchmarking him against Dr. Goldberg's work not ultimately relied upon by the Court. I did however use Dr. Goldberg's affidavit in assessing the challenges posed by the Applicants' case.

[29] After a series of questions establishing the history and possible connections of Dr. Rhodes to the proceeding, the Applicants' counsel addressed (pp. 17-22 of the transcript of his cross-examination on November 25-26, 2003 on his affidavit) the manner of writing his affidavit and the nature of his instructions from supervising counsel. He made at least two drafts of his report, but was uncertain as to the exact number of drafts. His instructions flowed from a number of telephone calls from supervising counsel and at some point from facsimile transmissions. His cross-examination included (p. 207 for example) questions concerning Dr. Goldberg.

[30] The charge of \$3,979 for "outside professionals" might have addressed services other than those associated with Dr. Rhodes. If I can recognize a reasonable charge given an invoice, I can likely recognize one without an invoice, albeit with more difficulty. Paragraphs 59-61 inclusive of the Court's decision noted considerable divergence between the opposing experts. The evidence was unclear on how Dr. Rhodes calculated his fees. One invoice charged US\$3,500 per day, which might work to about US\$400 per hour. I conclude that \$49,000 for experts is reasonable in the circumstances here.

[31] The evidence for most of the other disbursements essentially consisted of redacted law firm billings to the client, as in *Abbott*, leaving only the category, i.e. research, and the amount displayed.

Abbott sufficiently sets out my approach in those circumstances. Some categories such as courier, facsimiles, photocopies and others were marked as GST exempt for some but not all of the associated charges. Some research claims were marked as Quicklaw or as Patent Pursuit and others were not marked with anything. Patent services was also a category. Sometimes a category, such as meetings in *Abbott*, is too obscure on its face to permit reasonable speculation in the absence of evidence as to purpose and relevance. Others such as conference room here are apparently obscure but permit reasonable speculation on purpose and relevance, i.e. venue for US deposition. The category travel appeared to be reserved for airfares given some charges under categories such as accommodation, meals, taxis and car rental were marked as GST exempt and therefore likely were for charges outside Canada.

[32] I allow the following items as presented: car/limo (\$287.50); car rental (\$169.13); conference room (\$1,207.61); court reporter (\$226); postage (\$2.21); parking (\$103.93); patent services (\$500); searches (\$19.02); supplies (\$53.76); long distance (\$71.20); transcripts (\$1,053.48) and filing fees (\$160). The claimed amounts of given disbursement categories may or may not have included charges associated with interlocutory orders silent on costs. As in *Abbott*, *Biovail* and *Halford*, there were gaps in the proof requiring conservative allowances. I allow couriers (\$1,760.18); facsimiles (\$258.75); photocopies (\$17,526.90); printing and reproduction (\$1,150.16) and process server (\$1,019.21) at the reduced amounts respectively of \$1,375.00; \$200.00; \$13,500.00; \$900.00 and \$650.00. Paragraph 111 of *Abbott* outlined my usual concerns with computer research. I think that the claim (\$616.51) here for research was substantially for case preparation as opposed to interlocutory events. I allow the \$616.51 as presented.

[33] As noted above, the law firm billings to Cipher are in a redacted form removing all details of the professional services rendered by counsel and leaving only a list of disbursements. The June 25, 2003 billing disclosed disbursements for travel by counsel to Washington D.C. on May 21, 2003. Information on purpose may have been in the redacted portion. The impetus for this trip may have flowed from the May 9, 2003 order directing the Applicants' evidence to be served and filed by May 12, 2003, to be followed within 45 days by Cipher's evidence. The meals claimed (\$27.28), other than for Toronto, in this billing seem insufficient for this trip coupled with another trip by two counsel around that time perhaps to meet with Dr. Rhodes, whose May 27, 2003 invoice referred to a meeting in Kingston, Rhode Island on May 23, 2003, without specifying the other participants. Other than the accommodation (\$538.68) identified specifically for this trip, the evidence was unclear as to ground transportation and meal charges attributable to this trip. The evidence did not state that superfluous charges were factored out of invoices but I note some statements have been marked up as if that was done. There were unexplained taxi charges to and from the Registry office in Toronto.

[34] I disallow the Washington D.C. airfare (\$1,373.93). On its face, the \$15,152.07 remaining for airfare for four trips each by two counsel is in the range of what I might expect, but the absence of booking statements and boarding passes, other than for a roundtrip between Toronto and Washington D.C. on a regional carrier unlikely to have business class seats, makes reasonableness somewhat obscure. Full fare economy tickets offer flexibility should hearings or depositions be cancelled, shorter or longer: see *Abbott* at para. 105. There was no hint in the evidence on the need

for meals in Toronto. I allow accommodation (\$5,875.61); meals (\$1,670.73); travel/airfares (\$16,526) and taxis (\$831.17) at the reduced amounts respectively of \$5,000.00; \$1,400; \$15,152.07 and \$750.

[35] The bill of costs claimed \$7,825.48 GST relative to a claimed subtotal for disbursements which as in *Abbott* included charges not subject to GST such as for Dr. Rhodes and US hotels. As noted above, some - but not all - charges in disbursement categories such as couriers and photocopies not obviously outside Canada (such as Dr. Rhodes) were marked as GST exempt. I do not have information permitting a GST exemption calculation as in *Abbott*. The record here requires a certain imprecision for this calculation which should result in a conservative allowance in these circumstances. I allow 7% GST on \$33,000 of the assessed subtotal of \$92,247.42 for disbursements. Cipher's bill of costs, presented at \$165,994.29, is assessed and allowed at \$131,417.12.

"Charles E. Stinson"
Assessment Officer

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-371-03

STYLE OF CAUSE: FOURNIER PHARMA INC. et al. v.
THE MINISTER OF HEALTH and
CIPHER PHARMACEUTICALS LIMITED

**ASSESSMENT OF COSTS IN WRITING WITHOUT PERSONAL APPEARANCE OF
THE PARTIES**

REASONS FOR ASSESSMENT OF COSTS: CHARLES E. STINSON

DATED: July 30, 2008

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