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should be denied.

I. ARGUMENT

With respect to Janicek's Motions to supplement its request for attorney fees for additional fees incurred after August 28, 2008, both parties have extensively briefed and argued whether Janicek is entitled to an award of attorney fees in this subcase. Thus, for the sake of judicial economy, NMID hereby incorporates by this reference the record already before this Court, including, but not limited to the parties summary judgment briefs, affidavits and NMID's Memorandum in Opposition to Janicek Properties' Request for Attorney Fees and Costs, and NMID's Motion to Alter or Amend Special Master's Report and Recommendation Re: Janicek's Request for Attorney Fees. For the reasons stated therein, Janicek is not entitled to attorney fees in this subcase and any request for additional fees incurred after August 28, 2008 should be denied.

With respect Janicek's Motions to supplement its request for costs for additional costs incurred after August 28, 2008, NMID again incorporates by reference the record already before this Court, including, but not limited to the parties summary judgment briefs, affidavits and NMID's Memorandum in Opposition to Janicek Properties' Request for Attorney Fees and Costs, and NMID's Motion to Alter or Amend Special Master's Report and Recommendation Re: Janicek's Request for Attorney Fees. In addition, Janicek is requesting an additional \$193.52 in discretionary costs for photocopy and long distance charges. As previously discussed in NMID's prior briefing, in order to award discretionary costs such costs must be necessary and exceptional. Photocopy and long distance charges are not exceptional in any case and Janicek has made no showing why such costs should be considered as exceptional. Accordingly, for the reasons previously stated in the

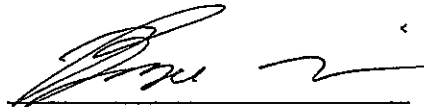
record, and for those stated herein, Janicek's Motions for supplemental discretionary costs should be denied.

II. CONCLUSION

For the reasons stated herein, Janicek's Motions should be denied.

DATED this 23rd day of January, 2009.

RINGERT LAW, CHTD.

A handwritten signature in black ink, appearing to read 'S. Bryce Farris', is written over a horizontal line.

S. BRYCE FARRIS
Attorneys for the NMID

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of January, 2009, a true and correct copy of the foregoing was served upon all parties listed below by:

☒ U. S. mail, postage prepaid
☐ hand delivery

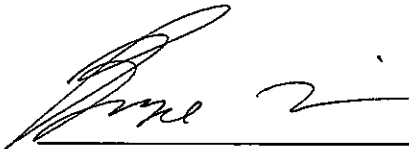
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☐ facsimile

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