

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Nationwide Mutual Ins. Co. v. Zurich American Ins. Co.

No. 1:21-cv-00944-TLN-CSK, United States District Court for the Eastern District of California (April 18, 2025)

SUMMARY

The United States District Court for the Eastern District of California considered objections to Defendants’ Bill of Costs in an insurance coverage dispute. The Court overruled the objections and granted the Bill of Costs in the amount of \$6,369.25, including mediator fees and an attorney service fee.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Troy L. Nunley
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 18, 2025
DOCKET	1:21-cv-00944-TLN-CSK
DISPOSITION	other
PROCEDURAL POSTURE	The court considered Defendants and Counter-Claimants' Bill of Costs and Plaintiffs' objections to requested mediator and attorney-service fees.
STANDARD OF REVIEW	The taxation of costs under Federal Rule of Civil Procedure 54(d)(1) is discretionary, subject to a presumption in favor of awarding costs to the prevailing party. A district court that declines to award costs must specify its reasons; it need not specify reasons when following the presumption and taxing costs.
PRECEDENTIAL VALUE	unpublished district court order

TOPICS

- costs
- civil procedure
- mediation
- insurance
- commercial litigation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Plaintiffs' objection to taxing the requested mediator fees should be sustained.
2. Whether Plaintiffs' objection to taxing the Ace Attorney Service fee for insufficient documentation should be sustained.
3. Whether Defendants' Bill of Costs should be granted under Federal Rule of Civil Procedure 54(d)(1), 28 U.S.C. § 1920, and Eastern District of California Local Rule 292.

HOLDINGS

1. Rule 54(d)(1) creates a presumption that the prevailing party may recover costs other than attorney's fees, subject to the limitations in 28 U.S.C. § 1920 and Eastern District of California Local Rule 292.
2. The objection to the requested mediator fees was overruled, and the mediator-fee request was included in the granted Bill of Costs.
3. The objection to the \$231.75 Ace Attorney Service fee was overruled because Defendants provided supplemental documentation supporting the requested fee.

KEY QUOTATIONS

“By its terms, the rule creates a presumption in favor of awarding costs to a prevailing party, but vests in the [Court] discretion to refuse to award costs.” (at 1)

“If the Court declines to award costs to the prevailing party, the Court must “specify reasons” for denying costs.” (at 1)

“Not only is the instant case not a prison civil rights case, but Plaintiffs fail to discuss this Court’s Local Rules or cite any authority from this District.” (at 2)

FACTUAL BACKGROUND

Defendants sought \$6,369.25 in costs, including \$3,175 in mediator fees and \$231.75 for an Ace Attorney Service fee. Plaintiffs argued that mediator fees could not be taxed and that the attorney-service fee lacked sufficient supporting information and documentation. Defendants submitted supplemental documentation supporting the attorney-service fee request.

PROCEDURAL HISTORY

After the underlying litigation, Defendants and Counter-Claimants Zurich American Insurance Company and American Guarantee and Liability Insurance Company filed a Bill of Costs seeking \$6,369.25. Plaintiffs and Counter-Defendants Nationwide Mutual Insurance Company and Amco Insurance Company objected to a \$3,175 mediator fee and a \$231.75 Ace Attorney Service fee. Defendants responded with supplemental documentation, and the court overruled both objections and granted the Bill of Costs.

DISPOSITION

other

CASES CITED

- Ass'n of Mexican-Am. Educators v. State of Cal., 231 F.3d 572, 591 (9th Cir. 2000)
- Save Our Valley v. Sound Transit, 335 F.3d 932, 945 (9th Cir. 2003)
- Crane-McNab v. Cnty. of Merced, No. 1:08-cv-1218-WBS-SMS, 2011 WL 794284, at *1 (E.D. Cal. Mar. 1, 2011)
- Brisco-Wade v. Carnahan, 297 F.3d 781, 782 (8th Cir. 2002)
- English v. Colo. Dep't of Corr., 248 F.3d 1002, 1013 (10th Cir. 2001)

OPINION

Nationwide Mutual Ins. Co. v. Zurich American Ins. Co.

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10

11 NATIONWIDE MUTUAL INSURANCE No. 1:21-cv-00944-TLN-CSK

COMPANY, et al., 12 Plaintiffs,

13 ORDER

v. 14

ZURICH AMERICAN INSURANCE

15 COMPANY, et al., 16 Defendants. 17 18 This matter is before the Court on Defendants and
Counter-Claimants Zurich American 19 Insurance Company and American Guarantee and
Liability Insurance Company's ("Defendants") 20 Bill of Costs. (ECF No. 98.) Defendants seek
costs in the total amount of \$6,369.25. (Id. at 1.) 21 Plaintiffs and Counter-Defendants Nationwide
Mutual Insurance Company and Amco Insurance 22 Company ("Plaintiffs") filed objections to the
Bill of Costs. (ECF No. 99.) Specifically, 23 Plaintiffs object to Defendants' request for a mediator
fee in the amount of \$3,175, arguing 24 mediator fees may not be taxed. (Id. at 2.) Plaintiffs also
object to the \$231.75 that Defendants 25 request for an "Ace Attorney Service fee," which
Plaintiff argues lacks sufficient information and 26 documentation showing it was a necessary
expense. (Id.) Defendants filed a response. (ECF No. 27 100.) 28 /// 1 Under Federal Rule of Civil
Procedure ("Rule") 54(d)(1), the prevailing party in a lawsuit 2 may recover its costs, other than
attorney's fees, "[u]nless a federal statute, [the civil rules], or a 3 court order provides otherwise."
Fed. R. Civ. P. 54(d)(1). "By its terms, the rule creates a 4 presumption in favor of awarding costs
to a prevailing party, but vests in the [Court] discretion to 5 refuse to award costs." Ass'n of
Mexican-Am. Educators v. State of Cal., 231 F.3d 572, 591 (9th

6 Cir. 2000). If the Court declines to award costs to the prevailing party, the Court must “specify 7 reasons” for denying costs. *Id.* However, the Court need not “specify reasons for its decision to 8 abide [by] the presumption and tax costs to the losing party.” *Save Our Valley v. Sound Transit*, 9 335 F.3d 932, 945 (9th Cir. 2003). 10 A prevailing party’s ability to recover costs under Rule 54(d) (1) is limited by 28 U.S.C. § 11 1920 and, in this District, by Local Rule 292. 28 U.S.C. § 1920 (specifying taxable costs); L.R. 12 292(f) (same); see also *Crane-McNab v. Cnty. of Merced*, No. 1:08-cv-1218-WBS-SMS, 2011 13 WL 794284, at *1 (E.D. Cal. Mar. 1, 2011) (“Rule 54(d) (1) of the Federal Rules of Civil 14 Procedure and Local Rule 292 govern the taxation of costs to losing parties, which are generally 15 subject to limits set under 28 U.S.C. § 1920.”). 28 U.S.C. § 1920 enumerates which fees and 16 expenses the Court may tax as costs. Local Rule 292(a) prescribes that “[c]osts shall be taxed in 17 conformity with the provisions of 28 U.S.C. § 1920,” and Local Rule 292(f) provides a list of 18 specific fees and expenses that are taxable as costs. L.R. 292(a), (f). 19 Plaintiffs’ objections are unpersuasive. See *Save Our Valley*, 335 F.3d at 945 (“[T]he 20 losing party must show why costs should not be awarded.”). As to Plaintiffs’ first objection to 21 the requested mediator fees, Plaintiffs cite a single, out-of-circuit case to support their argument 22 that mediator fees may not be taxed. (ECF No. 99 at 2 (citing *Brisco-Wade v. Carnahan*, 297 23 F.3d 781, 782 (8th Cir. 2002)).) Plaintiffs do not provide any analysis of *Brisco-Wade*, and the 24 case is distinguishable from the instant case. In *Brisco-Wade*, the Eighth Circuit held a district 25 court abused its discretion in taxing mediator’s fees because: (1) “the Eastern District of Missouri 26 Local Rules do not permit prisoner civil rights cases to be referred for mediation”; and (2) the 27 court “found no statutory authority (nor did the district court cite to any) permitting the taxation 28 of mediation fees in [§] 1983 litigation.” 297 F.3d at 782. Not only is the instant case not a 1 | prison civil rights case, but Plaintiffs fail to discuss this Court’s Local Rules or cite any authority 2 | from this District. Accordingly, the Court **OVERRULES** Plaintiffs’ first objection. 3 As to Plaintiffs’ second objection to the “Ace Attorney Service fee,” Plaintiffs again cite a 4 | single, out-of-circuit case to argue the claimed cost lacks sufficient documentation. (ECF No. 99 5 | (citing *English v. Colo. Dep’t of Corr.*, 248 F.3d 1002, 1013 (10th Cir. 2001)).) Plaintiffs again 6 | fail to provide meaningful analysis of their cited case and fail to cite authority from this District. 7 | Moreover, in response, Defendants provide supplemental documentation to support their request 8 | of these fees. (ECF No. 100.) Therefore, the Court **OVERRULES** Plaintiffs’ second objection. 9 For the foregoing reasons, the Court **GRANTS** Defendants’ Bill of Costs in the amount of 10 | \$6,369.25. (ECF No. 98.) 11 IT IS SO ORDERED. 12 | Date: April 17, 2025 13 14 7, IS TROY L. 16 CHIEF UNITED STATES DISTRICT JUDGE 17 18 19 20 21 22 23 24 25 26 27 28