

Judge Candela – Law & Motion – Wednesday, November 2, 2022 @ 9:00 AM
TENTATIVE RULINGS

1-2. 17CV03462 Williams, Barnet Thomas v. Pantaleoni, Victor S. et al.

EVENT: (1) Reconsideration of Attorney Fee Award

(2) Defendant National Western Life Insurance Company's Motion to Tax Costs

Upon reconsideration of the attorney fee award ordered by the Court on November 14, 2019, Plaintiff is awarded attorney fees in the amount of \$842,380 as discussed herein.

Attorney Fees

Multiplier

The court is not persuaded by Plaintiff's argument that the Court did not give much consideration to the punitive damage award in awarding a multiplier. The court is persuaded where Defendant points out that before the judgment was modified on appeal, the \$2.5 million dollar punitive damage award constituted roughly 85% of the total recovery. As a result, it is illogical to believe punitive damages were not a significant consideration in awarding the 1.5 multiplier.

As Defendant notes, the degree of success is a factor in determining whether the lodestar figure should be adjusted. (*Mann v. Quality Old Time Service, Inc.*, 139 Cal. App. 4th 328, 342) The Court agrees with Plaintiff that even setting aside punitive damages, Plaintiff obtained a successful result. However, the \$2.5 million dollar punitive damage award which was in existence at the time the Court awarded the 1.5 multiplier cannot be ignored.

Lodestar

The Court declines Defendant's request to reduce the lodestar figure from the Court's 2019 ruling. As Plaintiff notes, attorney fees do not need to be proportional to damages, see *Arace v. Medico Investments, LLC* (2000) 48 Cal.App.5th 977, 981-982. This is also supported by common sense especially where, as here, Defendant rejected reasonable settlement offers and elected to extensively litigate the case. While it is certainly Defendant's right to do so, Defendant elected to take a calculated risk as it knew that

attorney fees were potentially on the table. To hold otherwise would discourage settlement, encourage unnecessary litigation, and undermine the purpose of the fee shifting statute by burdening Plaintiff with fees it had no choice in incurring to respond to Defendant's litigation tactics. As Plaintiff correctly noted, it was Defendant who voluntarily chose to litigate this case in the manner it did.

As a result, Plaintiff is awarded the sum of \$842,380 in attorney fees.

Defendant's Motion to Tax Costs

As Defendant correctly noted, where a party properly objects to claimed costs through a motion to tax, such costs are put at issue and the burden of proof is on the party claiming them as costs. (*Ladas v. California State Auto Ass'n* (1993) 19 Cal.App.4th 761, 774) Here Plaintiff fails to meet his burden. Plaintiff has essentially provided lump sum numbers without any itemization. Without itemization, the Court cannot cross-reference individual items with the claimed total. Although Plaintiff offers to reduce some costs in his opposition, the Court is still left with the uncertainty as to how the remaining costs are broken down.

Additionally, Plaintiff has provided no documentation supporting preparation of the reporter's transcript. As a result, Defendant's Motion to Tax Costs is Granted and Plaintiff's memorandum of costs is taxed to zero, with the exception of the attorney fee award.

Plaintiff shall prepare and submit a form of order consistent with this ruling as to the order on attorney fees. Defendant shall prepare and submit a form of order consistent with this ruling as to the order granting the motion to tax costs.