

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES JARDINE,)	Case No. 10-3335 SC,
)	consolidated for all
Plaintiff,)	purposes with:
)	Case No. 10-3319 SC,
v.)	Case No. 10-3335 SC, and
)	Case No. 10-3336 SC
MARYLAND CASUALTY COMPANY, and)	
DOES 1 through 50,)	
)	ORDER DENYING MOTION FOR
Defendants.)	<u>COST BOND</u>
<hr/>		
JAMES JARDINE,)	
)	
Plaintiff,)	
)	
v.)	
)	
EMPLOYERS FIRE INSURANCE)	
COMPANY, and DOES 1 through 50,)	
)	
Defendants.)	
<hr/>		

I. INTRODUCTION

Defendant Employers Fire Insurance Company ("Employers") now moves for a cost bond against Plaintiff James Jardine ("Jardine") under Federal Rule of Appellate Procedure ("FRAP") 7 and Civil Local Rule ("Civ. L.R.") 65.1-1(a). ECF No. 82 ("Bond Mot."). The

1 Motion is fully briefed. ECF Nos. 83 ("Opp'n"), 86 ("Reply"). The
2 Court finds the matter appropriate for decision without oral
3 argument.

4
5 **II. DISCUSSION**

6 The Court concludes that Employers' motion for a cost bond
7 lacks merit. The Court previously denied Employers' Motion for
8 Attorney Fees without prejudice on the ground that Jardine's
9 pending appeal in this matter "may substantially affect Employers'
10 eligibility to recover attorney's fees." ECF No. 81 ("Atty. Fees
11 Order") at 2. Now Employers is again asking the Court to rule on
12 issues that it expressly declined to decide until after the
13 resolution of Jardine's appeal. For example, central to both the
14 instant motion and Employers' previous Motion for Attorney Fees is
15 the issue of whether Employers is entitled to recover attorney fees
16 under Section 13 of the Settlement Agreement entered into by the
17 parties. The Court stands by its previous order and declines to
18 decide the issue of attorney fees until the Ninth Circuit reaches a
19 decision on Jardine's appeal.

20 The Court also notes that the authority relied upon by
21 Employers gives the Court discretion to grant or deny a request for
22 bond. See FRAP 7 ("the district court may require an appellant to
23 file a bond" (emphasis added)); Civ. L.R. 65.1-1(a) ("the Court may
24 require any party to furnish security for costs" (emphasis added)).
25 In its discretion, the Court finds that a bond would be
26 inappropriate under the circumstances. Employers is effectively
27 asking that the Court require Jardine to post a \$119,419.11 bond
28 before he can fully prosecute his appeal. See Bond Mot. at 7.

1 This would be a burdensome requirement for many appellants to meet.
2 The Court finds it would be especially burdensome for an appellant,
3 such as Jardine, who claims that an insurer failed to pay out all
4 that was due under its policy.

5

6 **III. CONCLUSION**

7 For the foregoing reasons, the Court DENIES Employers' Motion
8 for a Cost Bond.

9

10 IT IS SO ORDERED.

11

12 Dated: May 30, 2012

13


UNITED STATES DISTRICT JUDGE

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28