

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

DAVID K. MANN, ELIZABETH S.	)	CV 10-128-M-DLC
MANN, DELANEY MANN, and	)	
MAKENZIE MANN,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	ORDER
	)	
REDMAN VAN & STORAGE CO., INC.	)	
	)	
Defendant.	)	
_____	)	

Defendant Redman Van has filed a motion pursuant to Rule 68 to assess costs in addition to the costs already taxed in accordance with the procedures and authority of Rule 54(d)(1) and Local Rule 54.1.

The Defendant made a Rule 68 offer of judgment to the Plaintiffs on July 14, 2011. See Fed. R. Civ. P. 68. Plaintiffs refused the offer of judgment, and the

Court held a trial in this matter from January 23-28, 2012. The jury returned a verdict in favor of the Defendant and against the Plaintiffs.

Rule 68(a) allows a defendant to make an offer of judgment to an opposing party in a civil case. If the offeree refuses the offer of judgment and later obtains a judgment that is “not more favorable than the unaccepted offer,” Rule 68(d) requires the offeree to pay the costs incurred by the defending party after the offer was made. Rule 68(d)’s costs provision applies only if the offeree obtains a judgment for less than the amount of the offer; it has no application where the offeree loses the case. “Federal Rule 68 is inapplicable in a case in which the defendant obtains judgment.” MRO Communications, Inc. v. American Tel. & Tel. Co., 197 F.3d 1276, 1280 (9th Cir. 1999). Because the jury’s verdict found no negligence on the part of the Defendant and awarded no judgment to the Plaintiffs, the Defendant has no basis to recover costs under Rule 68.

Accordingly, IT IS HEREBY ORDERED that the Defendant’s Rule 68 motion to assess costs (Doc. No. 120) is DENIED.

Dated this 7<sup>th</sup> day of March, 2012.

  
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Dana L. Christensen, District Judge  
United States District Court