

2015 WL 3812110 (Ariz.Super.) (Trial Motion, Memorandum and Affidavit)  
Superior Court of Arizona.  
Pima County

Ronald A. BERNSTEIN, M.D., Plaintiff,

v.

3. GORILLAS MOVING AND STORAGE, LLC, an Arizona limited liability company, Art Back and Jane Doe Back, husband and wife, and Troy Emerson and Jane Doe Emerson, husband and wife Defendants.

No. C20134264.  
February 23, 2015.

**Opposition to Renewed Motion for Attorney's Fees Incurred in Defense of Count Two - Elder Abuse**

JH Greenberg & Associates, PLLC, 1200 N. El Dorado Pl., Ste. G-700, Tucson, AZ 85715, (520) 209-1932, [Jeffrey H. Greenberg](#), Pima County Bar No. 21764, State Bar No. 7661, Email: [Jeff@jhga-law.com](mailto:Jeff@jhga-law.com), for plaintiff.

Judge Fields.

Plaintiff, by and through undersigned counsel, hereby opposes entry of a separate judgment for attorney's fees incurred in defense of Count Two - **elder abuse**. Instead, either a partial satisfaction of the existing judgment should be entered in the amount of \$1,612.50 as requested by the Defendants or the existing judgment should be amended to be reduced by the same amount.

This Opposition is supported by the accompanying Memorandum of Points and Authorities.

DATED this 23th day of February, 2015.

JH GREENTBERG & ASSOCIATES, PLLC

By: <<signature>>

Jeffrey Greenberg

Attorney for Plaintiff

**MEMORANDUM OF POINTS AND AUTHORITIES**

The issue presented by this Opposition is whether or not the Defendants should obtain a separate judgment against the Plaintiff in the amount of \$1,612.50 or whether such amount should be offset against the judgment for \$1,700,000,000 in favor of Plaintiff.

As discussed in *Langerman Law Offices, P.A. v. Glen Eagles at the Princess Resort LLC*, 220 Ariz. 252, 204 P.3d 1101 (2009), the concept of offsetting a judgment for sanctions in favor of the nonprevailing party against a judgment in favor of the prevailing party is to prevent the unwanted result that a solvent prevailing party pays the judgment for sanctions but the nonprevailing party is insolvent and does not pay the judgment in favor of the prevailing party.

In this case, the monetary judgment is against a limited liability company. The solvency or insolvency of that company is currently unknown. The wrong result would occur in the real world if Dr. Bernstein were required to pay 3 Gorillas the sanction award and 3 Gorillas is unable to pay the full judgment against it.

While the context of the *Langerman* decision revolved around an attorney's charging lien, the court's holding is clearly applicable to the situation before this court. As the court stated in conclusion:

We conclude that when a party is awarded sanctions under Rule 68(g), those sanctions should be applied to offset a verdict in favor of the party who rejected the settlement offer.

Such an offset would be the proper result here. Plaintiff should be ordered to enter a partial satisfaction of the judgment awarded in the offset amount requested of \$1,612.50.

DATED this 23 day of February, 2015.

JH GREENBERG & ASSOCIATES, PLLC

By:<<signature>>

Jeffrey H. Greenberg

Attorney for Plaintiff

Copy of the foregoing emailed and mailed this 23rd day of February, 2015 to:

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