

No. _____

In the Supreme Court of the United States

JOSHUA COLLETT,

Petitioner,

v.

WEYERHAEUSER COMPANY, THORNHILL FORESTRY SERVICE
INCORPORATED,

Respondent.

*On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit*

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Should the district court be allowed to consider plaintiff/appellant Joshua Collett's notable indigency (\$1,140/mo. – income), medical condition and physical disability (double amputee) as well as the considerable wealth of the prevailing parties in deciding whether to relieve Mr. Collett of court costs under the broad grant of discretion in Rule 54(d)(1)?
2. Is it proper for the circuit court to preemptively exclude broad categories of reasons to relieve losing parties of court costs, thereby restricting the discretion of the district court granted by Rule 54(d)(1)?
3. Where the Fifth Circuit Court of Appeals conflicts with most other circuit courts on the availability of indigency as a basis to relieve the losing party of costs under Rule 54(d)(1), should this Court resolve that conflict?

**PARTIES TO THE PROCEEDING IN THE COURTS BELOW
AND CORPORATE DISCLOSURE STATEMENT**

Joshua Collett is the Petitioner in this case, and he was represented in the court below by Counsel of Record, David C. Forrester.

Weyerhaeuser Company, is a Respondent and was represented in the court below by Charles H Abbott, Joshua J. Metcalf, and Chelsea C. Lewis. The stock symbol for Weyerhaeuser is “WY”.

Thornhill Forestry Service, Inc. is a Respondent and was represented in the court below by Kraig T. Streng.

Lafayette Insurance Company is a Respondent and was represented in the court below by Travis Simmons.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Joshua Collett respectfully prays that a Writ of Certiorari issue to review the judgment that the United States Court of Appeals for the Fifth Circuit entered in this case.

OPINIONS BELOW

The published panel decision of the Fifth Circuit Court of Appeals can be found at *Collett v. Weyerhaeuser* 2:19-cv-11144 cw 2:19-cv-12252 (5th Cir. 3/30/26), and is contained in Appendix A. The Order and Reasons of the District Court for the Eastern District of Louisiana is contained in Appendix B. The Clerk of Court's ruling for the Eastern District of Louisiana is contained in Appendix C. Joshua Collett's Motion to Proceed in Forma Pauperis is Appendix D. The Order granting the Motion to Proceed in Forma Pauperis (09/30/25) is Appendix E.

JURISDICTIONAL STATEMENT

This Court has jurisdiction under 28 U.S.C. § 1254(1) to review this Petition. On March 30, 2026, the Fifth Circuit Court of Appeals affirmed the district court's denial of plaintiff Joshua Collett's Motion to Review Costs Assessment and Plaintiff's Indigency. Joshua Collett requests review of that Judgment.

STATEMENT OF THE CASE

A. Factual Background

This matter involves a personal injury action brought by Dorothy Gail Collett and her son, Joshua Collett alleging injury and mental anguish as a result of the spraying of herbicide on timberland owned by Weyerhaeuser and its spray contractor Thornhill Forestry Service, Inc., in 2017.

For many years, the Colletts had lived on 2 acres of land situated several miles from Pine, Louisiana (population 250). Their property was directly across the road from a large tract of timberland owned by Weyerhaeuser.

In the 1980's Ms. Collett and, to a lesser extent, her son Joshua suffered a severe reaction to high levels of formaldehyde after moving into a new mobile home. After that exposure, Ms. Collett has suffered from a severe hypersensitivity to chemicals. Her husband and oldest son were not affected. Her son Joshua was affected, though to a lesser degree than his mother. As a result, Ms. Collett lives a very limited lifestyle rarely going to public places and risking inadvertent exposure. She is also included on the Louisiana Registry of Hypersensitive Individuals ("Registry") maintained by the state departments of health and forestry.

Years ago, she approached the state highway department, the local electrical cooperative and Weyerhaeuser and requested that they not spray any chemicals near her house. They were very understanding and all agreed. In depositions,

Weyerhaeuser employees also testified that in 2004, after a crop duster accidentally sprayed over the Colletts' property, its local managers promised that they would not spray within $\frac{1}{4}$ mile of the Collett property and they made a map confirming those promises which hung in the local Weyerhaeuser office for thirteen years.

Then, in July, 2017 Weyerhaeuser's spray company Thornhill appeared early one morning, without warning, and began spraying herbicide directly across the road. A neighbor and Mrs. Collett's husband approached the spray crew informing them of Mrs. Collett's condition but the Thornhill crew refused to stop spraying. Thornhill returned the next morning and continued spraying in the vicinity of the Colletts' property.

Both Weyerhaeuser and their spray company admitted that they did not provide notice to Mrs. Collett in violation of the guidelines requiring 48 hours prior notice to those vulnerable individuals listed on the Registry. Both companies also admitted that they were not even aware of those guidelines in spite of the fact that Weyerhaeuser owned over 1 million acres of timberland in the area.

Shortly after the spray activity, Ms. Collett was treated by her family physician Mark James, M.D. He diagnosed "chemical bronchitis" after examining her nose, throat, and chest x-ray. At the time, Dr. James was also treating Joshua Collett for passing kidney stones, which is one of his chronic conditions.

After the spraying activity, Ms. Collett reminded the Weyerhaeuser manager of the company's long term promises not to spray near her house, but the company's attitude had changed. She did not contact a lawyer. Instead, she tearfully repeated

her requests for minimal consideration of her vulnerable health conditions. She also had Dr. James write two letters, but Weyerhaeuser refused to offer any help.

B. Proceedings Below

Months later, Ms. Collett filed suit in Washington Parish. The matter was then removed to federal court under diversity of citizenship jurisdiction. A few months after, Joshua Collett filed suit in state court alleging damages below the jurisdictional threshold of \$75,000 but it too was removed and consolidated with his mother's case. The matter was aggressively litigated by defendants who filed multiple summary judgments, which were denied. It is fair to say that the Colletts established credible evidence supporting the defendants' tort liability.

The Colletts' case did not stumble until the district court sustained the defendants' Daubert motion on the opinions of Dr. James regarding the herbicide and its connection to the Colletts' objective medical symptoms.

After the defendants' successful Daubert motion, the district court granted summary judgment dismissing plaintiffs' cases. When that dismissal was affirmed on appeal, defendants presented Bills of Costs which were considered by the Clerk of Court. The Clerk eventually approved costs totaling \$37,683.85.

The Colletts sought a review of costs by the district court pleading for relief due to their indigency, disability and the large disparity of wealth between the parties. The district court then sent the matter back to the Clerk of Court to consider the Colletts' claims relating to indigency and the wealth of the defendants. After some delay, the Clerk of Court issued a written ruling denying the Colletts'

request for relief. (Appendix C) The Clerk commented that the Colletts' indigency and medical issues were compelling, but the Clerk was precluded from considering indigency or wealth of the defendants and granting relief under Fifth Circuit law citing *Moore v. Citgo Refining and Chemical Company*, 735 F.3d 309 5th Cir. 2013.

The Colletts then renewed their Motion to Review Costs Assessment and Plaintiff's Indigency to the district court. In seeking the review, Colletts again sought the district court's relief due to their indigency, physical disability and the defendants' significant wealth. The Colletts also demonstrated that their suit was brought in good faith, which was never challenged by defendants, nor did the defendants challenge the Colletts' indigency or Joshua's severe disability.

During the proceedings on costs, Joshua's disabilities worsened. A MRSA infection developed in his right ankle. Surgical efforts failed and his lower leg was amputated. A similar infection occurred in his wrist. Fortunately, that hand was saved by two complicated surgeries. A third infection attacked his left ankle. It could not be contained and that lower leg was also amputated. (Appendix D) Joshua has always been disabled. Now, he relies even more on his elderly parents.

In its Order and Reasons, the district court denied relief of costs to the Colletts under Rule 54(d)(1). (Appendix B) From the language and tone of the district court's written ruling, it is clear that it would have granted the Colletts relief if not for restrictions on its discretion imposed by Fifth Circuit precedent.

The district court's Order and Reasons concluded as follows:

Overall, because “the denial of costs is ‘in the nature of a penalty’ ” and the Court cannot find a reason to penalize Defendants even through Pacheco's equitable considerations, the Court must reluctantly deny plaintiff's motion. *Pacheco v. Minetta*, 448 F.3 783,794 (5th Cir. 2006) (quoting Schwarz, 767 F.2d at 131. This Court, like the Clerk of Court, notes the difficult medical battles faced by Joshua and the impact of his declining health on the family business. See. R. Doc. 233 at 5-6. The Fifth Circuit, however, clearly cautioned in Moore that district courts “err as a matter of law in relying on [a defendant's] ‘enormous wealth’ - - or the comparative wealth of the parties – as a basis for reducing the cost award”. *Moore*, 735 F.3d at 319-20.

Unfortunately, Plaintiffs have not advanced any arguments for their entitlement to a reduction or elimination of the costs award based on any factors beyond their indigency and the relative wealth of Weyerhaeuser and Thornhill. See generally R. Doc. 239. As the Clerk concluded, under present Fifth Circuit law, this Court cannot deny or reduce the awarded Rule 54 costs based on plaintiffs' indigency alone. R. Doc. 233 at 6. (“The undersigned...is firmly left with the conclusion that, while certainly compelling, the personal, financial and medical circumstances of the Plaintiffs are not factors upon which denial or reduction of Rule 54(d) costs in favor of wealthier defendants can be based under Fifth Circuit law”). Perhaps an appeal of this case will allow the Circuit to reconsider its present position and create a category of “special exceptions” for those cases in which their current rule produces such severe results. But this Court is bound by their current rule and must reluctantly deny Plaintiffs' motion.

The Fifth Circuit affirmed the district court's denial of relief to Mr. Collett. It held that the district court's reasoning was “consistent with our precedent” and concluded with the following, “Therefore, in analyzing the relevant factors and following our established precedent, the district court did not abuse its discretion in denying Joshua Collett's motion...” (Appendix A)

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW IS AT ODDS WITH THE LANGUAGE AND INTENT OF RULE 54(d)(1)

A. Rule 54(d)(1) Grants Broad Discretion to the District Court

Rule 54(d)(1) states: “unless a Federal Statute, these Rules or a Court order provides otherwise costs - - other than attorney’s fees - - should be allowed to the prevailing party”.

The courts widely agree that the plain wording of the statute affords district courts a broad grant of authority to decide whether the presumption in favor of the prevailing party should be followed, or not. See *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 48 U.S. 437 (1987); *Taniguchi v. Kan Pacific Siapan, Lt.*, 566 U.S. 560 (2012).

Indeed, circuit courts have consistently held that Rule 54(d)(1) grants district courts “great latitude” in determining the costs to be assessed, even the Fifth Circuit. *Fogleman v. RAMCO*, 920 F.2d 278,286-86 (5th Cir. 1991); *Carter v. Gen. Motors. Corp.*, 983 F.2d 4044 (5th Cir. 1993). Further, the appellate court’s review of the district court’s decisions on costs are reviewed for a “clear abuse of discretion”. *Fogleman* at 285. And the “abuse of discretion” standard is generally defined, as

“only when no reasonable person could take the view adopted by the trial court”.
U.S. v. Santiago, 826 F.2d 499 (7th Cir., 1987).

A survey of the different federal courts of appeal shows that a “a wide range of reasons have been invoked to justify withholding costs from the prevailing party” under Rule 54(d)(1). 10 Wright and Miller, Federal Practice and Procedure § 2668 (3rd Ed. 1998). According to Wright and Miller, the various reasons the circuit courts have withheld costs from the prevailing party included: (1) the losing party’s limited financial resources; (2) misconduct by the prevailing party; (3) close and difficult legal issues presented; (4) substantial benefit conferred to the public; and (5) the prevailing party’s enormous financial resources.

Plainly, the list of reasons reported by Wright and Miller was only illustrative, with the wide range of reasons only underscoring the fact that Rule 54(d)(1) left the decision on costs to the sound discretion of the district courts, without qualification, as long as the district court’s rationale was reasonable and did not reflect an abuse of discretion.

In *Pacheco v. Minetta*, 448 F.2d 783 (5th Cir. 2006), the Fifth Circuit observed that costs were withheld from the prevailing party, “on the basis of both the losing party’s good faith and some other one or more of the factors listed above”, quoting those same five factors listed by Wright and Miller.

Since *Pacheco*, the Fifth Circuit has provided contradictory and confusing decisions in applying Rule 54(d)(1). While continuing to cite *Pacheco*, the Court has morphed those five illustrative factors into semi-requirements, at the same time

expressly eliminating two of the five (“limited financial resources” (indigency) and “enormous resources”). And, in the process, the Fifth Circuit added that the district court must also find a reason to “penalize” the prevailing party, as the present district court observed.

B. The Fifth Circuit’s Preemptive Limitation on the District Court’s Discretion Is Improper

Joshua Collett suffers from a number of physical and medical conditions which prompted his doctor to describe him as a “medical train wreck”. Since summary judgment, his medical problems have multiplied. He has suffered devastating MRSA infections in his wrist and both ankles, which resulted in amputation of both lower extremities. His income is limited to \$1,140 per month. He lives in an old single-wide mobile home that he inherited from his grandfather. It is situated on two acres of land that his parents put in his name when it was purchased years ago, due to his disabilities. His parents also live on that two-acre tract in a modified double wide mobile home that they fixed up.

Only Joshua Collett brought this appeal, because his indigency and disabilities are so severe and he has the most to lose (the two-acre family land). The district court found the Colletts’ financial and medical circumstances to be “compelling” and that the sizeable Judgment in favor of the prevailing defendants produced “severe results”. The District Court was clearly inclined to grant relief from costs to the Colletts but felt “bound” by the “current rule” from the Fifth

Circuit. The District Court suggested that the Colletts appeal and urge the Fifth Circuit to “create a ‘category of special exceptions’” in cases like the Colletts.

It is striking that the Fifth Circuit has plainly excluded indigency and the relative wealth of the parties from the district court’s broad discretion to address costs under Rule 54(d)(1). The Fifth Circuit also confirmed that the district court’s view that, in this circuit, costs cannot be withheld from the prevailing party, under any rationale, without finding a reason to “penalize” the prevailing party.

This Fifth Circuit precedence at issue reflects a judicial amendment to Rule 54(d)(1). Further, the Fifth Circuit offers no legal justification for these preemptive restrictions on Rule 54(d)(1), such as legislative history or guidance from this Court.

On indigency, this Court has not squarely addressed the issue, but it has not been completely silent either. In *Marx v. General Revenue Corp.*, 568 U.S. 371, 2013, footnote 9, this Court upheld the assessment of costs to the losing plaintiff, holding that the requirements of bad faith in 15 U.S.C. § 1692 (k)(a)(3) did not displace the district court’s broad discretion to award costs under Rule 54(d)(1). Notably, in the course of the discussion, Justice Thomas commented specifically on the indigency exception in footnote 9, as follows:

Rule 54(d)(1) does not require courts to award costs to prevailing defendants. District Courts may appropriately consider an FD CPA plaintiff’s indigency in deciding whether to award costs. See *Badillo v. Central Steel and Wire Company*, 1717 F.2d 1160,1165 (CA 7th, 1983); (“It is within the discretion of the district court to consider a plaintiff’s indigency in denying costs under Rule 54(d).”)

II. THE CONFLICT BETWEEN THE FIFTH CIRCUIT AND OTHER COURTS OF APPEAL REGARDING APPLICATION OF RULE 54(d)(1) SHOULD BE RESOLVED

As Justice Thomas noted in *Marx*, the Seventh Circuit allows the district court to consider plaintiff's indigency in addressing costs under Rule 54(d)(1). In *Rivera v. City of Chicago*, 469 F.3d 631 (7th Cir. 2006) the Seventh Circuit affirmed the *Badillo* decision and addressed the indigency exception at greater length. In surveying other circuits, it found that seven other circuits permit the district courts to consider the losing parties' indigence, citing the following decisions: *Rodriguez v. Whiting Farms*, 360 F.3d 1180, 1190 (10th Cir. 2004); *Lampkins v. Thompson*, 337 F.3d 1009,1017 (8th Cir. 2003); *Whitfield v. Scully*, 241 F.3d 264-273 (2nd Cir. 2001); *Chapman v. AI Transportation*, 229 F.3d 1012,1039 (11th Cir. 2000); *In Re Paoli Railroad Yard*, 221 F.3d 449 (3rd Cir. 2000); *Cherry v. Champion International Corp.*, 186 F.3d 442 (4th Cir. 1999); *Stanley v. University of Southern Cal.*, 178 F.3d 1069 (9th Cir. 1999).

In the course of its survey, the Seventh Circuit found that only the Sixth Circuit prohibited consideration of the losing party's indigency when considering costs under Rule 54(d). Later the Fifth Circuit added that limitation.

Oddly enough, the Fifth Circuit continues to cite *Pacheco* in discussing issues relating to Rule 54(d)(1). As discussed above, *Pacheco* listed five illustrative factors for relieving losing parties of costs, which list was borrowed from 10 Wright and Miller § 2668. What is curious is that the Fifth Circuit, in the interim, has expressly

removed two of those five factors from the district court's discretion ("limited financial resources" and "the prevailing parties' enormous financial resources"). Furthermore, the Fifth Circuit added that the district court must not deny costs unless it has a reason to "penalize" the prevailing party. In adding that requirement, the Fifth Circuit has eliminated two more *Pacheo* factors ("close and difficult legal issues" and "substantial benefit to the public") from the district court's available rationale. And, in the course of removing those four factors, the Fifth Circuit has offered no legal justification for severely limiting Congress' broad grant of discretion by Rule 54(d)(1). Further, there is nothing in the language of Rule 54(d)(1) that suggests it is a penal statute.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that this Court grant Petitioner's petition and issue a writ of certiorari to review the decision of the Fifth Circuit; or grant this petition and summarily reverse and render; or reverse and remand to the district court to consider any reasonable factor in deciding cost issues, without the restrictions on its discretion imposed by the Fifth Circuit.

Respectfully submitted,

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