No. 10-___

IN THE

Supreme Court of the United States

KOUICHI TANIGUCHI,

Petitioner,

v.

KAN PACIFIC SAIPAN, LTD.,
doing business as Marianas Resort and Spa,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Section 1920 of 28 U.S.C. sets out the categories of costs that may be awarded to the prevailing party in a federal lawsuit. One of the listed categories is "compensation of interpreters." *Id.* § 1920(6).

The question presented is whether costs incurred in translating written documents are "compensation of interpreters" for purposes of section 1920(6).

PARTIES TO THE PROCEEDING

The parties to the proceeding below were Kouichi Taniguchi and Kan Pacific Saipan, Ltd. ("Kan Pacific"), doing business as Marianas Resort and Spa.

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PETITION FOR A WRIT OF CERTIORARI

Kouichi Taniguchi respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the court of appeals affirming the district court's award of costs is reported at 633 F.3d 1218. Pet. App. 1a. In a separate, unpublished memorandum disposition the court of appeals affirmed the district court's entry of summary judgment in favor of Kan Pacific. Pet. App. 9a. The district court's decisions granting summary judgment for the defendant, Pet. App. 12a, granting in part the defendant's bill of costs, Pet. App. 19a, and denying plaintiff's motion objecting to costs, Pet. App. 23a, are unreported.

JURISDICTION

The district court had jurisdiction over Mr. Taniguchi's complaint pursuant to 28 U.S.C. § 1332, because Mr. Taniguchi is a citizen of Japan, defendant Kan Pacific is a Northern Mariana Islands corporation, and the amount in controversy exceeded $75,000. The United States Court of Appeals for the Ninth Circuit entered its opinion on March 8, 2011 and denied Mr. Taniguchi's petition for rehearing on May 11, 2011. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291, and this Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Section 1920 of 28 U.S.C. provides:

> A judge or clerk of any court of the United States may tax as costs the following:

(1) Fees of the clerk and marshal;
(2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;
(3) Fees and disbursements for printing and witnesses;
(4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;
(5) Docket fees under section 1923 of this title;
(6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.

STATEMENT

A. Statutory Background

Section 1920 of 28 U.S.C. is the latest in a series of statutes governing costs in federal civil lawsuits. These statutes were passed to "enumerate[] the costs that ordinarily may be taxed to a losing party" in federal litigation, *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 757 (1980), and to exclude from cost recoveries expenses incurred of types not listed there, *see Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 440 (1987).

The first such statute was adopted in 1853, in order to eliminate the "great diversity in practice among the courts" at the time, and to prevent "losing litigants [from] being unfairly saddled with exorbitant fees." *Alyeska Pipeline Serv. Co. v.*

Wilderness Soc'y, 421 U.S. 240, 251 (1975).[1] An important impetus to this legislation was a perception that recoverable costs "ha[d] been swelled to an amount exceedingly oppressive to suitors, and altogether disproportionate to the magnitude and importance of the causes in which they [we]re taxed." Cong. Globe, 32d Cong., 2d Sess. app. 207 (1853) (remarks of Sen. Bradbury).

The content of the 1853 Act remained substantially unchanged in the Revised Statutes of 1874 and the Judicial Code of 1911. *Alyeska Pipeline*, 421 U.S. at 255. The text was revised and updated in the Revised Code of 1948, which enacted 28 U.S.C. § 1920. While the language of the statute differs from the original 1853 law, the intervening changes did not involve "any apparent intent to change the controlling rules." 421 U.S. at 255.

In 1978, the Congress, in enacting "The Court Interpreters Act," Public Law 95-539, amended section 1920 to add subparagraph (6).[2] The Act's primary purpose was to (1) "establish a program to facilitate the use of . . . interpreters" in judicial

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[1] The 1853 statute provided, in relevant part: "The bill of fees of the clerk, marshal, and attorneys, and the amount paid printers, and witnesses, and lawful fees for exemplifications and copies of papers necessarily obtained for use on trial in cases where by law costs are recoverable in favor of the prevailing party, shall be taxed by a judge or clerk of the court . . . ." Act of Feb. 26, 1853, 10 Stat. 168.

[2] The 1978 amendment added "the following new paragraph" to 28 U.S.C. § 1920: "(6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title." Court Interpreters Act, Pub. L. No. 95-539 § 7, 92 Stat. 2040 (1978).

proceedings instituted by the United States, 28 U.S.C. § 1827, and (2) further "establish a program for the provision of special interpretation services" in the federal courts to "provide a capacity for simultaneous interpretation services in multidefendant criminal actions and multidefendant civil actions," *id.* § 1828. In these respects, the legislation responded to court decisions which had pointed out the importance of in-court interpreters, and required the provision of interpretation services at government expense in criminal cases. *E.g., United States ex rel. Negron v. New York*, 434 F.2d 386 (2d Cir. 1970); *see* H.R. Rep. No. 95-1687 (1978). The legislation's sponsor in the Senate explained that the Act served to "insure[] that all individuals in Federal proceedings will be provided with a certified interpreter if their primary language is not English or if they have a hearing impairment." 124 Cong. Rec. S36685 (Oct. 13, 1978) (remarks of Sen. DeConcini).

The Act also provides for an interpreter in judicial proceedings, including non-criminal cases, where a party or witness "(a) speaks only or primarily a language other than the English language," or "(b) suffers from a hearing impairment," and might therefore be inhibited from understanding "the proceedings or communicati[ng] with counsel or the presiding judicial officer," or from "comprehen[ding] . . . questions and the presentation of . . . testimony." 28 U.S.C. § 1827(d).

Section 1827 specifies the nature of the interpretation services required to be made available:

> The interpretation provided by certified or otherwise qualified interpreters pursuant to this

> section shall be in the simultaneous mode for any party to a judicial proceeding initiated by the United States and in the consecutive mode for witnesses . . . .

Id. at § 1827(k). "Simultaneous" interpretation refers to the act of "interpret[ing] and speak[ing] contemporaneously with the individual whose communication is being translated." H.R. Rep. No. 95-1687 (1978). "Consecutive" interpretation, by contrast, involves "the speaker, whose communication is being translated, . . . paus[ing] to allow the interpreter to convey the testimony given." *Id.* The statute also provides for the appointment of "sign language interpreter[s]" for the hearing impaired. 28 U.S.C. § 1827(l).

In addition to its extensive provisions defining the rights to interpreters in federal court proceedings, the Court Interpreters Act contains language which expanded the federal taxation of costs statute, 28 U.S.C. § 1920, to allow recovery as costs of "compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title." 28 U.S.C. § 1920(6). The Act therefore provided that "[i]n civil actions, the costs incident to providing the services of an interpreter shall be paid by the parties in such proportion and at such time as the presiding judicial officer directs and may be taxed as costs in the action." S. Rep. No. 95-569 at 8 (1978).

B. Proceedings Below

Kouichi Taniguchi, a Japanese professional baseball player, was visiting the Marianas Resort and Spa in the Northern Mariana Islands when he fell through a wooden deck on its premises. Pet. App.

2a. Mr. Taniguchi brought this diversity lawsuit against the owner of the resort, Kan Pacific Saipan, Ltd., alleging negligence and seeking damages for losses he suffered as a result of the accident, including medical expenses and lost income. *Id.* During the course of the litigation, Kan Pacific incurred costs translating certain contracts and other documents from Japanese into English.

Following discovery, both parties moved for summary judgment. *Id.* The district court granted summary judgment for Kan Pacific in an unpublished opinion. *Id.* The district court also awarded costs to Kan Pacific. The district court's taxation of costs included Kan Pacific's document translation costs of $5,517.20, which the district court categorized as "compensation of interpreters" under section 1920(6). *Id.* at 21a-22a.

On petitioner's appeal, which addressed both the merits of the case and the award of costs, the Ninth Circuit affirmed the cost award in a published opinion. *Id.* at 1a-8a. The panel held that under section 1920(6), "the prevailing party should be awarded costs for services required to interpret either live speech or written documents into a familiar language, so long as interpretation of the items is necessary to the litigation." *Id.* at 7a.

The Ninth Circuit noted that "there is a circuit split concerning the statutory interpretation of § 1920(6)," and acknowledged the Seventh Circuit's decision in *Extra Equipamentos E Exportação Ltda. v. Case Corp.*, 541 F.3d 719, 727-28 (7th Cir. 2008), which "determined that 'interpretation' and 'translation' have distinct meanings" and "declined to award costs for translation services." Pet. App. 5a-

6a. But the Ninth Circuit aligned itself with the Sixth Circuit, which reached a contrary conclusion in *BTD Products, Inc. v. Lexmark Int'l, Inc.*, 405 F.3d 415, 419 (6th Cir. 2005). The court explained that, while the "Seventh Circuit relied on what it thought to be the common understanding of an 'interpreter' as one who translates the spoken word rather than the written word," the Sixth Circuit "concluded that 'translation' services and 'interpretation' services are interchangeable." Pet. App. 6a-7a.

Following the reasoning of the Sixth Circuit, the court explained that "[i]n § 1920(6), the word 'interpreter' can reasonably encompass a 'translator,' both according to the dictionary definition and common usage of these terms, which does not always draw precise distinctions between foreign language interpretations involving live speech versus written documents." Pet. App. 7a. The court found this conclusion to be more compatible with Federal Rule of Civil Procedure 54, which it stated "includes a decided preference for the award of costs to the prevailing party." *Id.* Since "it was necessary for Kan Pacific to have Taniguchi's documents and medical records translated to adequately prepare its defense," the Ninth Circuit found that "the district court acted within its discretion when it determined that translation services were necessary to render pertinent documents intelligible to the litigants." *Id.* at 8a.

In a separate, unpublished memorandum disposition, the Ninth Circuit affirmed the district court's entry of summary judgment for Kan Pacific on the merits of the action. *Id.* at 9a. The Ninth Circuit

denied Mr. Taniguchi's petition for rehearing on May 11, 2011. *Id.* at 27a.

REASONS FOR GRANTING THE PETITION

I. THE FEDERAL COURTS ARE SHARPLY DIVIDED OVER WHETHER TRANSLATORS OF A WRITTEN DOCUMENT ARE "INTERPRETERS" AS THAT WORD IS USED IN 28 U.S.C § 1920(6)

There is a clear split in the courts of appeals on the question whether the term "interpreters" in 28 U.S.C. § 1920(6) encompasses document translators. While the Ninth Circuit's decision in this case joins six other circuits in finding the statute to reach translators of documents, the Seventh Circuit has reached a contrary conclusion in a carefully reasoned opinion by Judge Posner, which forcefully demonstrates that the majority view is incorrect. Moreover, the significance of this circuit split is exacerbated by a deep and persistent division in the district courts, whose rulings on this issue are frequently not appealed.

1. In *Extra Equipamentos*, 541 F.3d 719, the Seventh Circuit reasoned that the statute authorizes taxation of "compensation of interpreters," and "[a]n interpreter as normally understood is a person who translates living speech from one language to another." *Id.* at 727. Conversely, "the translator of a document is not referred to as an interpreter." *Id.* (citing *Yu Cong Eng v. Trinidad*, 271 U.S. 500, 508-09 (1926)). The court explained that the dictionary definition of "interpreter" ordinarily applies to those who translate spoken language. *See id.* And in natural speech, "[i]f a judge translated the French Code of Criminal Procedure into English, we would

not say that he had 'interpreted' the French code into English." *Id.* at 728.

The court also underscored the serious dangers of stretching section 1920 beyond its plain meaning, because "while there is a natural limit to the expense of interpreters—the amount of time that witnesses (including deponents) undergo live examination—there is no natural limit on the number of documents that can be translated in aid of a claim or defense." *Id.* In addition, the court noted that "[t]o include translation fees would simply complicate the process of awarding court costs." *Id.* "Was all that translation of written documents necessary? We do not think a district judge should be required to wade into such issues without a clearer directive from Congress." *Id.*

The Seventh Circuit reached this decision "mindful that the Sixth Circuit in *BDT Products, Inc. v. Lexmark Int'l, Inc.*, 405 F.3d 415, 419 (6th Cir. 2005), [had] held that the statute allows the award of costs for translating documents." *Extra Equipamentos*, 541 F.3d at 728. Because this decision would "create[] a conflict with another circuit, [the panel] circulated the opinion . . . to the entire court," and "[n]o judge voted to hear the case en banc." *Id.*

2. The Sixth Circuit panel which had reached the opposite conclusion in *BDT Products*, reasoned that one dictionary definition of "interpret" is "to 'translate into intelligible or familiar language,'" with no reference or limitation as to the mode of communication. 405 F.3d at 419. The court also noted that there is some "case law holding that translation costs are taxable under § 1920." *Id.* (citing *Quy v. Air Am., Inc.*, 667 F.2d 1059, 1065-66

(D.C. Cir. 1981), and *Oetiker v. Jurid Werke, GmbH*, 104 F.R.D. 389, 393 (D.D.C. 1982)).

In addition to the Sixth Circuit, the First, Fifth, Eighth, D.C., and Federal Circuits have similarly held, albeit without significant analysis, that a federal court may tax translation costs under section 1920(6). *See Slagenweit v. Slagenweit*, 63 F.3d 719, 721 (8th Cir. 1995) (per curiam) (affirming award of translation costs where the appellant "ha[d] failed to demonstrate that costs for the translated documents were unnecessarily incurred"); *Chore-Time Equip., Inc. v. Cumberland Corp.*, 713 F.2d 774, 782 (Fed. Cir. 1983) ("The award of costs for translation of a German patent . . . was appropriate under 28 U.S.C. § 1920(6)."); *Studiengesellschaft Kohle mbH v. Eastman Kodak Co.*, 713 F.2d 128, 133 (5th Cir. 1983) (affirming award of translation expenses as taxable costs); *In re Puerto Rico Elec. Power Auth.*, 687 F.2d 501, 510 (1st Cir. 1982) ("Whichever party ultimately prevails will at the conclusion of the case be free to apply to district court for reimbursement of its translation expenses as 'costs' . . . ."); *Quy*, 667 F.2d at 1065 (holding that under § 1920(6), "the District Court was authorized to award costs for the Vietnamese-to-English translations of plaintiffs' depositions introduced at trial").

3. In *Tilton v. Capital Cities/ABC, Inc.*, 115 F.3d 1471 (10th Cir. 1997), the Tenth Circuit indicated skepticism that section 1920(6) permits document translation costs by its citation of *Viacao Aerea Sao Paulo, S.A. v. Int'l Lease Fin. Corp.*, 119 F.R.D. 435, 440 (C.D. Cal. 1988), which held that the word "interpreter" includes only those who translate

spoken language. *See* 115 F.3d at 1479. The Tenth Circuit declined to decide the issue, however, because it had not been adequately preserved. *See id.*

4. The disuniformity in the federal courts is substantially more pronounced than might be indicated by a circuit split of 6-1, because the issue arises frequently, is rarely appealed in the great majority of routine cases where relatively small amounts are at stake, and thus is one on which the district courts are sharply at odds in the circuits which have yet to resolve the issue.

Thirty three years after enactment of this statute, there are still five circuits—the Second, Third, Fourth, Tenth and Eleventh—where no binding circuit authority has yet been developed.

In these latter circuits, "some courts . . . have followed the Seventh Circuit and disallowed translation costs, [and] others have allowed such costs," *Delaware Valley Floral Grp., Inc. v. Shaw Rose Nets, LLC*, No. 07-20199, 2009 WL 5127941, at *5 (S.D. Fla. Nov. 6, 2009), resulting in a real problem of unequal justice from the application of differential rules.[3] The "split in the authority [that]

[3] This problem is readily apparent from a review of district court decisions from the undecided circuits over just the last five years: *Compare* cases denying awards of translation costs: *Delaware Valley Floral Grp., Inc. v. Shaw Rose Nets, LLC*, 2009 WL 5127937, at *1 (S.D. Fla. Dec. 17, 2009); *Galvez v. Cuevas*, No. 08-80378, 2009 WL 1024632, at *6 (S.D. Fla. Apr. 15, 2009); *Tesler v. Costa Crociere S.p.A.*, No. 08-60323, 2009 WL 1851091, at *2 (S.D. Fla. June 29, 2009); *Ricoh Corp. v. Pitney Bowes, Inc.*, No. 02-5639, 2007 WL 1852553, at *2-3 (D.N.J. June 26, 2007) *with* cases allowing awards of translation costs: *Castillo v. Teledyne Cont'l Motors, Inc.*, No. 08-21850, 2011 WL 1343051, at *5 & n.16 (S.D. Fla. Mar. 16, 2011); *Osorio v. Dole Food Co.*, No. 07-22693, 2010 WL 3212065, at *10 (S.D. Fla.

exists among the circuits that have ruled on the matter," *Osorio v. Dole Food Co.*, No. 07-22693, 2010 WL 3212065, at *9 (S.D. Fla. July 7, 2010), is thus mirrored in the larger numbers of divergent cases where the trial court has the last word.

II. THIS CIRCUIT SPLIT INVOLVES AN ISSUE OF EXCEPTIONAL IMPORTANCE THAT WARRANTS REVIEW BY THIS COURT

The Court's guidance is urgently needed to resolve the question for several reasons.

1. Not surprisingly, given the multicultural and multi-lingual nature of our society, the need for interpretation and translation services is a rapidly expanding one. Thus, the district courts around the country are required to address it with great frequency.[4]

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July 7, 2010); *Chacon v. El Milagro Care Ctr., Inc.*, No. 07-22835, 2010 WL 3023833, at *8 (S.D. Fla. July 29, 2010); *Merck Sharp & Dohme Pharms., SRL v. Teva Pharms. USA, Inc.*, No. 07-1596, 2010 WL 1381413, at *6 (D.N.J. Mar. 31, 2010); *Ortho-McNeil Pharm., Inc. v. Mylan Labs., Inc.*, No. 1:02CV32, 2008 WL 7384877, at *9-12 (N.D.W. Va. Aug. 18, 2008), *aff'd in part, vacated in part*, 569 F.3d 1353 (Fed. Cir. 2009); *Porcelanas Florencia, S.A. v. Caribbean Resort Suppliers, Inc.*, No. 06-22139, 2009 WL 1456338, at *8 (S.D. Fla. May 22, 2009); *S.R. Galves Participacao, Importacao & Exporticau Ltda. v. Natural Source Int'l Ltd.*, No. 06 Civ. 10182, 2007 WL 1484465, at *2 (S.D.N.Y. May 21, 2007).

[4] A representative sample of the large number of district court cases since 2000 confronting the issue of document translation costs include: *Castillo*, 2011 WL 1343051, at *5 & n.16; *Osorio*, 2010 WL 3212065, at *10; *Gabriel Techs. Corp. v. Qualcomm, Inc.*, No. 08CV1992, 2010 WL 3718848, at *12 (S.D. Cal. Sept. 20, 2010); *Chacon*, 2010 WL 3023833, at *8; *Maker's Mark*

The ongoing disunity in the federal courts on this costs issue is particularly problematic because it frustrates the primary purpose of the Congress in enacting the federal costs statute, which was to eliminate variability in the treatment of costs in

(continued…)

Distillery, Inc. v. Diageo N. Am., Inc., No. 3:03-CV-93-H, 2010 WL 2651186, at *3 (W.D. Ky. June 30, 2010); *Conn v. Zakharov*, No. 1:09 CV 0760, 2010 WL 2293133, at *3 (N.D. Ohio June 4, 2010); *Dong Ah Tire & Rubber Co. v. Glasforms, Inc.*, No. C06-3359JF, 2010 WL 1691869, at *7 (N.D. Cal. Apr. 23, 2010); *Hynix Semiconductor Inc. v. Rambus Inc.*, 697 F. Supp. 2d 1139, 1150 (N.D. Cal. 2010); *Merck Sharp*, 2010 WL 1381413, at *6; *Trading Techs. Int'l, Inc. v. eSpeed, Inc.*, 750 F. Supp. 2d 962, 982-83 (N.D. Ill. 2010); *Delaware Valley Floral*, 2009 WL 5127937, at *1; *Horizon Hobby, Inc. v. Ripmax Ltd.*, No. 07-CV-2133, 2009 WL 3381163, at *6 (C.D. Ill. Oct. 15, 2009); *Porcelanas Florencia*, 2009 WL 1456338, at *8; *Galvez*, 2009 WL 1024632, at *6; *Tesler*, 2009 WL 1851091, at *2; *Gidding v. Anderson*, No. C07-04755, 2008 WL 5068524, at *1 (N.D. Cal. Nov. 24, 2008); *Ortho-McNeil*, 2008 WL 7384877, at *9-12; *Ricoh*, 2007 WL 1852553, at *2-3; *S.R. Galves*, 2007 WL 1484465, at *2; *Competitive Techs. v. Fujitsu, Ltd.*, No. C-02-1673, 2006 WL 6338914 (N.D. Cal. Aug. 23, 2006); *Zayas v. Puerto Rico*, 451 F. Supp. 2d 310, 318 (D.P.R. 2006); *Tharo Systems, Inc. v. Cab Produkttechnik*, No. 1:03CV0419, 2005 WL 1123595, at *2 (N.D. Ohio 2005); *Dattner v. Conagra Foods, Inc.*, No. 01 Civ. 11297, 2005 WL 1963937, at *2-3 (S.D.N.Y. Aug. 16, 2005); *Aerotech Res., Inc. v. Dodson Aviation, Inc.*, 237 F.R.D. 659, 665 (D. Kan. 2005); *V-Formation, Inc. v. Benetton Grp. SpA*, No. 01 Civ. 610, 2003 WL 21403326, at *3 (S.D.N.Y. June 17, 2003); *Shimek v. Michael Weinig AG,* No. Civ. 99-2015, 2003 WL 328038 (D. Minn. Feb. 10, 2003); *Arboireau v. Adidas Salomon AG*, No. CV-01-105-ST, 2002 WL 31466564, at *6 (D.Or. June 14, 2002); *Shared Medical Sys. v. Ashford Presbytarian Cmty. Hosp.*, 212 F.R.D. 50, 55 (D.P.R. 2002); *Neles-Jamesbury, Inc. v. Fisher Controls Int'l, Inc.*, 140 F. Supp. 2d 104, 107 (D. Mass. 2001); *Pan Am. Grain Mfg. Co. v. Puerto Rico Ports Authority*, 193 F.R.D. 26, 38 (D.P.R. 2000).

federal litigation, and to achieve nationwide federal uniformity on costs issues. *Alyeska Pipeline Serv. Co.*, 421 U.S. at 251 (discussing congressional purpose "to standardize the costs allowable in federal litigation"). This principle of uniformity has been the central governing principle of the congressional costs regime since the nineteenth century. *See Crawford Fitting Co.*, 482 U.S. at 440 ("The sweeping reforms of the 1853 Act have been carried forward to today, without any apparent intent to change the controlling rules." (internal quotation marks omitted)); *Alyeska Pipeline Serv. Co.*, 421 U.S. at 251-62. The ongoing, widespread divergence of the federal courts' treatment of translation costs thus thwarts the core purpose of the statute.

The deep divergence in the federal courts over the interpretation of section 1920(6) is most objectionable in those periodic cases in which translation gives rise to astronomical costs awards. In *Ortho-McNeil Pharmaceuticals, Inc. v. Mylan Laboratories, Inc.*, for example, the Federal Circuit affirmed the district court's award of more than $1 million in document translation costs. 569 F.3d 1353, 1356 (Fed. Cir. 2009).

The expense of translation in *Ortho-McNeil*, while not the rule, was not an isolated anomaly. In certain cases, "[t]ranslators may charge exorbitant amounts for their services," Charles F. Hollis, III, *Perpetual Mistrial: The Impropriety of Transnational Human Rights Litigation in United States Courts*, 1 Santa Clara J. Int'l L. 1 n.92 (2003), and the costs of translation can impose an "immense burden" on the parties in litigation. *Friends for All Children, Inc. v. Lockheed Aircraft Corp.*, 717 F.2d 602, 608 (D.C. Cir.

1983); *see also, e.g.*, *Dahl v. United Techs. Corp.*, 632 F.2d 1027, 1031 (3d Cir. 1980) (noting that "[t]he major practical problem in this case is the translation of documents"); *In re Top Tankers Inc., Secs. Litig.*, No. 06 Civ. 13761, 2008 WL 2944620, at *6 (S.D.N.Y. July 31, 2008) (noting, in approving a settlement, that "[t]he cost of litigating this case would have been exorbitant—the translation costs alone would have approximated the settlement amount" of $1,200,000); David P. Warner, *Bringing White Collar Criminals to Justice*, 11 U.S. Mex. L.J. 171, 176 & n.42 (2003) (noting that "scores of documents, particularly financial statements, can generate exorbitant translation fees").

The Seventh Circuit noted this danger in *Extra Equipamentos*, observing that "[a] suit of the magnitude of Extra's suit . . . can generate millions of pages of documents" whose translation would be extraordinarily costly. 541 F.3d at 728. And because an overriding purpose of the costs statute is to eliminate the danger of "oppressive" and "disproportionate" costs awards, Cong. Globe, 32d Cong., 2d Sess. app. 207 (remarks of Sen. Bradbury), the disparate application of section 1920(6) will, if left unreviewed, undermine the purposes animating the statute in this respect as well.

2. The question whether costs may be imposed for translating documents also implicates important issues of international relations and foreign comity that have been the subject of ongoing and vigorous concern in the international community. "No aspect of the extension of the American legal system beyond the territorial frontier of the United States has given rise to so much friction as the requests for documents

in investigation and litigation in the United States." Restatement (Third) of the Foreign Relations Law of the United States § 442 Reporter's Note 1 (1987). A number of foreign nations have expressed concern about subjecting their citizens to the expense and burden of complying with expansive U.S. document discovery, sometimes even implementing "blocking statutes" designed to restrict or prohibit compliance with such discovery obligations within their borders. *See, e.g.*, French Penal Code Law No. 80-538 (quoted in translation, *Societe Nationale Industrielle Aerospatiale v. United States Dist. Ct.*, 482 U.S. 522, 526 n.6 (1987)).

In the face of such international disagreement, this Court has emphasized that "the demands of comity" require that "American courts should . . . take care to demonstrate due respect for any special problem confronted by the foreign litigant on account of its nationality or the location of its operations, and for any sovereign interest expressed by a foreign state." *Societe Nationale*, 482 U.S. at 546. In particular, this Court counseled "special vigilance to protect foreign litigants from the danger that unnecessary, or unduly burdensome, discovery may place them in a disadvantageous position," and instructed that United States courts "should always seek to minimize [the] costs and inconvenience" associated with such discovery. *Id.*

The Ninth Circuit's allowance of document translation expenses as costs threatens further to magnify the already extensive discovery expenses of foreign nationals that trigger such "special vigilance." *Id.* Under the costs rule endorsed by the Ninth Circuit and the other circuits it joined, foreign

litigants involved in litigation in United States courts would not only be subjected to extensive U.S. discovery obligations, but could then be liable for potentially exorbitant costs associated with translating the numerous foreign-language documents that are involved—many of which are those they had been required to produce in the first place. Such large additional expenses are precisely the sort of "burdensome" obligation requiring "due respect" for the interest of foreign sovereigns who have objected to having their nationals subjected to expansive and costly U.S. discovery obligations.

III. THE DECISION BELOW IS WRONG ON THE MERITS

A. The Text and Structure of Section 1920(6) Foreclose Application to Document Translators

1. Section 1920(6) provides that a court may tax costs, including "compensation for interpreters." An "interpreter" is "one who translates orally for parties conversing in different languages." Webster's Collegiate Dictionary 11th ed. (2003). This limitation to spoken communication is no mere definitional subtlety; it goes to the heart of the word's ordinary meaning. "Robert Fagles made famous translations into English of the *Iliad*, the *Odyssey*, and the *Aeneid*, but no one would refer to him as an English-language 'interpreter' of these works." *Extra Equipamentos*, 541 F.3d at 727.

The other provisions of the Court Interpreters Act, which created section 1920(6), make clear that the textual limitation to "interpreters" comports with the congressional purpose. The Congress enacted this provision as a small part of legislation focused on

providing in-court interpretation services. *See* 28 U.S.C. §§ 1827, 1828. This cost-shifting provision addressed the same subject and thus did not encompass compensation for document translation. It would be particularly unwarranted to adopt an expansive, atextual reading of section 1920(6) as encompassing document translators when document translation plainly had no role in the substantive provisions of the statute for which subsection (6) was created as a costs analogue.

This meaning is further confirmed by the separate occurrence of another cognate of the word "interpreter" within section 1920(6). In addition to listing "compensation of interpreters," section 1920(6) enumerates "special interpretation services under section 1828 of this title." Yet there can be no question that the "special interpretation services" in question are limited to the translation of spoken proceedings. Section 1828 makes this unmistakably clear, as it expressly provides for "*simultaneous* interpretation services in multidefendant criminal actions and multidefendant civil actions." 28 U.S.C. § 1828(a) (emphasis added). Because section 1920(6) includes a second use of "interpretation" that is unambiguously limited to spoken proceedings, Congress's use of the same term in the same section presumptively carries the same meaning. *See, e.g.*, *Sorenson v. Sec'y of Treasury*, 475 U.S. 851, 860 (1986) ("The normal rule of statutory construction assumes that identical words used in different parts of the same act are intended to have the same meaning." (internal quotation marks omitted)). This presumption is particularly strong because the two related terms bear an "interrelationship and close

proximity" in the statutory text. *Comm'r of Internal Revenue v. Lundy*, 516 U.S. 235, 250 (1996)

2. The restriction of "interpreters" to those who translate spoken language is also part of a broader congressional convention applied throughout the United States Code. Throughout the Code, the Congress has drawn distinctions between "interpreters" and "translators," and has used both terms together where it chooses to include both spoken and written translation. Such consistent patterns of congressional usage are particularly strong evidence of meaning. *See, e.g.*, *Director, OWCP v. Newport News Shipbuilding & Dry Dock Co.*, 514 U.S. 122, 129-30 (1995) (where "the United States Code displays throughout" a consistent meaning of a term, that meaning is presumptively applicable); *W. Virginia Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 88-92 (1991) (consistent "statutory usage shows beyond question" the meaning of a statutory term).

For example, several provisions of the United States Code explain that "interpreters" are understood to serve the function of "mak[ing] aurally delivered materials available to individuals with hearing impairments." 26 U.S.C. § 44(c)(2)(B); 42 U.S.C. § 12103 (defining "auxiliary aids and service" to include "qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments"). This definition obviously excludes document translation, which does not involve "aurally delivered" content and has nothing to do with assisting the "hearing impair[ed]."

Further, Congress routinely includes an affirmative reference to "translators" where it legislates regarding the translation of written documents, a formulation that would be surplusage if "interpreters" alone included the translation of written materials. *See, e.g.*, 8 U.S.C. § 1555(b) (specifying that INS appropriations "shall be available for payment of . . . interpreters or translators who are not citizens of the United States"); 28 U.S.C. § 530C(b)(1)(I) (providing that funds may be used for the "[p]ayment of interpreters or translators who are not citizens of the United States"); 42 U.S.C. § 2991b-3 (specifying that grants may be used for "the establishment of a project to train Native Americans to teach a Native American language to others or to enable them to serve as interpreters or translators of such language"). The Ninth Circuit's construction of "interpreters" as encompassing "translators" collapses this consistent congressional distinction.

B. The Legislative History Confirms The Limitation to Spoken Interpretation

The text and structure of the statute leave no doubt that the term "interpreters" means only those who engage in the interpretation of spoken proceedings. Were the Court nonetheless to consider the legislative history relevant, it reinforces this conclusion.

In 1977, the legislation that would become the Court Interpreters Act was introduced "to provide more effectively for bilingual proceedings in all district courts of the United States." 123 Cong. Rec. S37213 (Nov. 4, 1977). The House and Senate both passed the Senate version of the Act in October 1978.

During the legislative process, the House Judiciary Committee compiled a detailed report on the Act. That report states that the legislation meant to authorize the appointment of an "interpreter" in some circumstances when an individual "speaks" a language other than English or "suffers from a hearing impairment." H.R. Rep. No. 95-1687. The congressional understanding that the statute would involve only the interpretation of spoken proceedings is further confirmed by the fact that the legislators expressed concern for accommodating the hearing impaired through interpretation services, but not the visually impaired, through, *e.g.*, provision for Braille rendition of documents. This disparity between the hearing impaired and the vision impaired makes perfect sense if the Congress understood the statute to apply to spoken proceedings (which the blind can hear and understand) but not to written documents.

In addition, the House Report specifies that "[i]t is the committee's intent that all interpretations are to be made in the consecutive mode," which refers to "the speaker whose communication is being translated" pausing "to allow the interpreter to convey the testimony given." *Id.* The other two modes of interpretation discussed in the report—"simultaneous" and "summary"—require the interpreter, respectively, to either "speak contemporaneously" with the translated speech or to "condense and distill the speech" of the speaker. All of these three methods exclusively involve the live translation of vocalized speech. By contrast, there is no hint in the legislative history that the use of the word "interpreters" in section 1920(6) would have a different meaning than in the substantive provisions of the statute.

Accordingly, the legislative history amply confirms what is already clear from the plain meaning of the statutory text: Section 1920(6) has no application to the translation of written documents.

C. Any Ambiguity Should Be Resolved Against Extending The Term "Interpreters" To Include One Who Translates Written Documents

Were there any ambiguity on the issue of the provision's applicability to document translation—and petitioner submits that there is none—it would necessarily be resolved against such inclusion. This is so for three reasons.

First, the Ninth Circuit's reading expansively construes a waiver of sovereign immunity. Section 2412(a)(1) of 28 U.S.C. provides that, as a general matter, "costs, as enumerated in section 1920 of this title, but not including the fees and expenses of attorneys, may be awarded to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction of such action." Thus, if document-translation costs are allowed under section 1920, they may be assessed against the government. *See, e.g.*, *Flores-Torres v. Holder*, Nos. C08-01037, C09-03569, 2010 WL 1910011, at *2-3 (N.D. Cal. May 11, 2010) (awarding document translation costs against the United States). Such cost-shifting, like fee-shifting, "amounts to a partial waiver of sovereign immunity" and "must be strictly construed in favor of the United States." *Ardestani v. I.N.S.*, 502 U.S. 129, 137 (1991).

Second, the Ninth Circuit's reading is disfavored because it expansively construes a statute in derogation of the common law. The "American Rule" requiring that each party in a civil action bear its own costs and fees finds its roots in the common law. "[C]osts were not allowed" at common law. *Alyeska Pipeline*, 421 U.S. at 247. As such, cost and fee-shifting statutes are in derogation of the common law and must be narrowly construed. *See, e.g.*, *Norfolk Redevelopment & Housing Auth. v. Chesapeake & Potomac Tel. Co. of Va.*, 464 U.S. 30, 35 (1983) ("It is a well-established principle of statutory construction that the common law ought not to be deemed repealed, unless the language of a statute be clear and explicit for this purpose." (internal quotation marks, brackets, and ellipsis omitted)); *Lockett v. Hellenic Sea Transports, Ltd.*, 60 F.R.D. 469, 473 (E.D. Pa. 1973) (construing section 1920 narrowly as a statute in derogation of the common law).

Third, as shown above, *see supra* at 15-17, the Ninth Circuit's expansive reading of section 1920(6) raises significant issues of international comity that should be avoided in the event of statutory ambiguity. "[T]his Court ordinarily construes ambiguous statutes to avoid unreasonable interference with the sovereign authority of other nations." *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 164 (2004). "This rule of construction reflects principles of customary international law — law that (we must assume) Congress ordinarily seeks to follow." *Id.* For the reasons shown above, construing section 1920(6) to authorize costs awards of document translation expenses would substantially aggravate longstanding concerns over the burden and scope of United States

discovery obligations in transnational litigation. As such, that interpretation should be avoided in the event of ambiguity.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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June 3, 2011

APPENDIX

APPENDIX A

United States Court of Appeals,
Ninth Circuit.
Kouichi TANIGUCHI, Plaintiff–Appellant,
v.
KAN PACIFIC SAIPAN, LTD., doing business as Marianas Resort and Spa, Defendant–Appellee.

No. 09–15212.
Argued and Submitted Oct. 14, 2010.
Filed March 8, 2011.

Douglas F. Cushnie, Saipan, MP, for the plaintiff-appellant.

Richard W. Pierce (argued), Law Office of Richard W. Pierce, Saipan, MP, and Thomas Lynn Roberts (briefed), Dooley, Roberts & Fowler, Tamuning, Guam, for the defendant-appellee.

Appeal from the United States District Court for the District of the Northern Mariana Islands, Alex R. Munson, Chief District Judge, Presiding. D.C. No. 1:08–cv–00008.

Before: MICHAEL DALY HAWKINS, M. MARGARET McKEOWN and JOHNNIE B. RAWLINSON, Circuit Judges.

OPINION

RAWLINSON, Circuit Judge:

Appellant Kouichi Taniguchi (Taniguchi) instituted this action against Kan Pacific Saipan, Ltd. (Kan Pacific) after he fell through a deck on Kan Pacific's premises. Following a grant of summary judgment in favor of Kan Pacific, the district court awarded costs to Kan Pacific for translation services incurred in the course of the litigation. Taniguchi appeals this award of costs.[1] We have jurisdiction under 28 U.S.C. § 1291 and affirm the district court's ruling.

I. BACKGROUND

During a tour of property owned by Kan Pacific, Taniguchi, a professional baseball player in Japan, fell through a wooden deck. Immediately after the accident, Taniguchi stated that he did not need medical attention.

Two weeks after the incident, Taniguchi informed Kan Pacific that he had sustained various cuts, bruises, and torn ligaments from the fall. As a result of these injuries, Taniguchi allegedly incurred various medical, hospital, and rehabilitative expenses and was compelled to cancel contractual obligations, resulting in a loss of income.

Taniguchi subsequently filed a negligence action against Kan Pacific. Following discovery, both parties moved for summary judgment. The district court granted Kan Pacific's motion. The district court also awarded costs to Kan Pacific, including the costs

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[1] Taniguchi's challenge to the entry of summary judgment in favor of Kan Pacific on the merits of the action, and other issues raised by Taniguchi on appeal are resolved in a separate memorandum disposition filed contemporaneously with this opinion.

of translating contracts and other documents from Japanese to English. Taniguchi filed a timely notice of appeal.

II. STANDARD OF REVIEW

We review an award of costs for an abuse of discretion. *See Sea Coast Foods, Inc. v. Lu–Mar Lobster and Shrimp, Inc.*, 260 F.3d 1054, 1058 (9th Cir. 2001), *as amended.* Whether the district court has the authority to award costs is a question of law reviewed *de novo. Rouse v. Law Offices of Rory Clark*, 603 F.3d 699, 702 (9th Cir. 2010).

III. DISCUSSION

A. Kan Pacific's Entitlement To Costs

Taniguchi contends that the district court erred by awarding costs to Kan Pacific, because Kan Pacific's insurance company assumed responsibility for all costs incurred by Kan Pacific during the litigation. Taniguchi relies on *United States v. Aetna Casualty & Surety Co.*, 338 U.S. 366, 380, 70 S.Ct. 207, 94 L.Ed. 171 (1949), for the proposition that the case must be "prosecuted in the name of the real party in interest." Fed.R.Civ.P. 17(a). However, that case is not persuasive because it addressed a situation where the insurance company satisfied the insured's claim and then sued the tortfeasor as the insured's successor-in-interest. *See id.* at 368, 70 S.Ct. 207. A question was raised regarding whether the insurance company could bring the action in its own name rather than in the name of the insured. *See id.* The United States Supreme Court ruled that an insurer who "has paid an entire loss suffered by the insured, . . . is the only real party in interest . . ." *Id.* at 380–81, 70 S.Ct. 207 (citation omitted). There is no analogous situation in this case.

Similarly, in *Hilbrands v. Far East Trading Company, Inc.*, 509 F.2d 1321, 1322–23 (9th Cir. 1975), we held that the case must be prosecuted in the name of the real party in interest. However, that case also involved a claim paid to the injured party by the insurance company and a question as to whether the case could be prosecuted by the insurance company who paid the benefits. *See id.* at 1322. The same analysis does not apply to a defendant whose defense costs are paid by its insurer. Unlike an insured whose claim has been fully satisfied, the defendant who remains liable for any money damages awarded to the plaintiff is still very much an interested party. *See, e.g., Manor Healthcare Corp. v. Lomelo*, 929 F.2d 633, 639–40 (11th Cir. 1991) (permitting the recovery of costs paid by an insurer). If we were to adopt Taniguchi's suggested analysis, a plaintiff could file lawsuits against an insured defendant "without incurring litigation costs after losing on the merits." *Id.* at 639. In essence, Taniguchi's reasoning punishes a prevailing party for being insured and violates the provisions and intent of Rule 54(d) of the Federal Rules of Civil Procedure, which directs the award of costs to a prevailing party. Thus, we hold that Kan Pacific was entitled to seek an award of costs even though the cost of litigation was paid by its insurer.

B. The Award of Translation Costs

Taniguchi contends that the district court erred in awarding costs for translation services used by Kan Pacific during the litigation. Taniguchi cites to 28 U.S.C. §§ 1827[2] and 1828[3] to support his argument.

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[2] 28 U.S.C. § 1827(a) provides: The Director of the Administrative Office of the United States Courts shall

However, Taniguchi's reliance on 28 U.S.C. §§ 1827 and 1828 is unavailing because the district court judge awarded costs for translation fees pursuant to 28 U.S.C. § 1920(6).[4] Under § 1920(6), the district court has discretion to award fees for the compensation of interpreters in addition to the costs of "special interpretation services under section 1828 . . ." *Id.*

As recognized by the parties, there is a circuit split concerning the statutory interpretation of § 1920(6). The Seventh Circuit has determined that

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establish a program to facilitate the use of certified and otherwise qualified interpreters in judicial proceedings instituted by the United States.

[3] 28 U.S.C. § 1828(a) provides: The Director of the Administrative Office of the United States Courts shall establish a program for the provision of special interpretation services in criminal actions and in civil actions initiated by the United States (including petitions for writs of habeas corpus initiated in the name of the United States by relators) in a United States district court. The program shall provide a capacity for simultaneous interpretation services in multidefendant criminal actions and multidefendant civil actions.

[4] 28 U.S.C. § 1920 provides: A judge or clerk of any court of the United States may tax as costs the following:

(1) Fees of the clerk and marshal;
(2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;
(3) Fees and disbursements for printing and witnesses;
(4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;
(5) Docket fees under *section 1923* of this title;
(6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under *section 1828* of this title.

"interpretation" and "translation" have distinct meanings and has declined to award costs for translation services. *See Extra Equipamentos E Exportação Ltda. v. Case Corp.*, 541 F.3d 719, 727–28 (7th Cir. 2008). The Seventh Circuit described "[t]he specificity of section 1920(6), and the character of section 1920 as a whole" to explain its expressed reluctance to include translators of written documents within the definition of interpreters. *Id.* at 727. The Seventh Circuit relied on what it thought to be the common understanding of an "interpreter" as one who translates the spoken word rather than the written word. *See id.*

The Seventh Circuit acknowledged that the dictionary definition of "interpreter" could conceivably encompass "interpretation . . . of a document." *Id.* at 728. However, the court was of the view that including translation of written documents within the definition would stretch the language of § 1920 too far. *See id.* Having drawn that line, the Seventh Circuit denied the award of translation fees.

In contrast, the Sixth Circuit reasoned that courts have the authority to "interpret the meaning of items listed in § 1920(6)," and thus, awarding costs for translation of documents necessary for litigation is appropriate. *BDT Products, Inc. v. Lexmark Int'l, Inc.*, 405 F.3d 415, 419 (6th Cir. 2005). The Sixth Circuit relied on a dictionary definition of interpret, which included "to translate into intelligible or familiar language." *Id.* (citation and internal quotation marks omitted). In essence, the Sixth Circuit concluded that "translation" services and "interpretation" services are interchangeable. *See also Quy v. Air America Inc.*, 667 F.2d 1059, 1065

(D.C. Cir. 1981) (holding that a cost award for translation of Vietnamese deposition testimony to English was "explicitly authorized by 28 U.S.C. § 1920(6)").

We are persuaded by the Sixth Circuit's reasoning. District courts are free to interpret the meaning of the cast of categories listed within § 1920. *See Alflex Corp. v. Underwriters Laboratories, Inc.*, 914 F.2d 175, 177–78 (9th Cir. 1990). In § 1920(6), the word "interpreter" can reasonably encompass a "translator," both according to the dictionary definition and common usage of these terms, which does not always draw precise distinctions between foreign language interpretations involving live speech versus written documents. More importantly, the Sixth Circuit's analysis is more compatible with Rule 54 of the Federal Rules of Civil Procedure, which includes a decided preference for the award of costs to the prevailing party. *See* Fed.R.Civ.P. 54(d) (providing that absent a federal statute, rule or court order to the contrary, costs "should be allowed to the prevailing party"); *see also Quy,* 667 F.2d at 1065–66 (concluding that translation of deposition testimony was necessary). We therefore agree with the Sixth and D.C. Circuits that within the meaning of § 1920(6), the prevailing party should be awarded costs for services required to interpret either live speech or written documents into a familiar language, so long as interpretation of the items is necessary to the litigation.

As Taniguchi alleged that his injuries caused him to lose compensation from his negotiated contract deals, it was necessary for Kan Pacific to have Taniguchi's documents and medical records

translated to adequately prepare its defense. Because we conclude that § 1920(6) contemplates the award of costs for translation services, we hold that the district court acted within its discretion when it determined that translation services were necessary to render pertinent documents intelligible to the litigants. *See Haagen–Dazs Co., Inc. v. Double Rainbow Gourmet Ice Creams, Inc.*, 920 F.2d 587, 588 (9th Cir. 1990) (stating that district courts have discretion to determine what costs should be awarded).

IV. CONCLUSION

The district court acted within its discretion when it awarded costs to Kan Pacific for expenses incurred to translate relevant documents.

AFFIRMED.

APPENDIX B

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KOUICHI TANIGUCHI, Plaintiff - Appellant, v. KAN PACIFIC SAIPAN, LTD., doing business as Marianas Resort and Spa, Defendant - Appellee.	No. 09-15212 D.C. No. 1:08-cv-00008 MEMORANDUM*

Appeal from the United States District Court
for the District of the Northern Mariana Islands
Alex R. Munson, Chief District Judge, Presiding

Argued and Submitted October 14, 2010
Honolulu, Hawaii

Before: HAWKINS, McKEOWN and RAWLINSON, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Appellant Kouichi Taniguchi (Taniguchi) fell through a deck on Kan Pacific Saipan, Ltd.'s (Kan Pacific) premises. Taniguchi challenges the district court's grant of summary judgment in favor of Kan Pacific. Taniguchi also challenges the Taniguchi's challenge to the district court's failure to apply *res ipsa loquitur* and to consider Ken Pacific's alleged spoilation of evidence[1].

1. Taniguchi contends that the district court erred in granting summary judgment in favor of Kan Pacific. We review *de novo* entry of summary judgment with all reasonable inferences viewed in the light most favorable to the nonmoving party. *See Villiarimo v. Ahoha Island Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002). We then decide if any genuine issue of material fact exists, and if the district court "correctly applied the relevant substantive law." *Id.* (citation omitted). To avoid summary judgment, a party must provide evidence, going beyond the pleadings and mere assertions, with specific facts to establish a genuine issue of material fact. *See Far Out Productions, Inc. v. Oskar*, 247 F.3d 986, 997 (9th Cir. 2001).

Taniguchi did not provide sufficient evidence to raise a material issue of fact in view of the declaration of Kan Pacific's agent regarding Kan Pacific's lack of negligence. Therefore, we affirm the district court's decision granting summary judgment in favor of Kan Pacific. *Id.*

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[1] Taniguchi's challenge to the district court's award of costs to Kan Pacific is resolved in a separate opinion filed contemporaneously with this disposition.

2. Taniguchi contends that the district court should have addressed the issue of whether Kan Pacific engaged in spoilation of evidence, which was raised in a motion for sanctions. However, the district court dismissed all pending motions as moot after granting summary judgment in favor of Kan Pacific. We have held that a district court has discretion to declare pending motions moot when a party cannot "provide any basis or factual support for his assertions . . ." *Margolis v. Ryan*, 140 F.3d 850, 854 (9th Cir. 1998). In this case, Taniguchi cannot "provide any basis or factual support for his assertions," *id.*, because Kan Pacific destroyed the damaged wood from the deck in the ordinary course of business. *See United States v. $40,955.00 in United States Currency*, 554 F.3d 752, 758 (9th Cir. 2009) (explaining that no spoilation occurs when the accused party destroys or disposes of evidence in the ordinary course of business).

3. Taniguchi contends that the district court did not consider the doctrine of *res ipsa loquitur* when ruling on the summary judgment motion and that he was entitled to have a *res ipsa loquitur* charge given to the jury. However, Taniguchi did not advance this theory in the district court.

We generally will not review an issue initially raised on appeal. *See United States v. Castro*, 887 F.2d 988, 996 (9th Cir. 1989). Neither will we re-frame the cause of action and essentially review a different cause of action than that decided by the district court. *See Robb v. Bethel School Dist. #403*, 308 F.3d 1047, 1052 n.4 (9th Cir. 2002).

AFFIRMED.

APPENDIX C

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

KOICHI TANIGUCHI, Plaintiff, v. KAN PACIFIC SAIPAN, LTD., dba MARIANA RESORT AND SPA, Defendant.	Civil Case No. 08-0008 **ORDER GRANTING DEFENDANT'S MOTION FOR CROSS-SUMMARY JUDGMENT**

THIS MATTER came before the Court on Thursday, December 18, 2008 at 9:00 a.m., for hearing of the following motions: (1) Plaintiff Koichi Taniguchi's Motion for Partial Summary Judgment and Defendant Kan Pacific Saipan, Ltd.'s Cross-Motion for Summary Judgment; (2) Plaintiff's Motion for Sanctions; (3) Plaintiff's Motion to Submit a Late Filed Declaration; (4) Defendant's Motion to Dismiss or in the Alternative Motion for Partial Summary Judgment or in the Alternative Motion In Limine; and (5) Defendant's Motion for Summary Judgment on Punitive Damages. Defendant appeared through its attorneys Tim Roberts and Richard W. Pierce. Plaintiff appeared through his attorney Douglas F. Cushnie. Having carefully reviewed the parties' briefs and the relevant legal authority, and having had the benefit of oral argument and good cause appearing, the Court hereby GRANTS Defendant's Cross-Motion for Summary Judgment.

BACKGROUND

This case arises out of a personal injury. On November 6, 2006, Plaintiff Koichi Taniguchi was taken on a tour of the grounds of the Mariana Resort & Spa ("Defendant"). (Taniguchi Depo. at 2.) A piece of a wooden deck broke beneath Mr. Taniguchi and his leg fell through the resulting hole. Following the accident, Mr. Taniguchi said he was fine and that he did not need to go to the doctor. (Opp. to Plaintiffs Motion for Sanctions, Watanabe Decl. ("Dec. 9, 2008 Watanabe Decl.") ¶ 2.) Mr. Taniguchi returned to Saipan on November 21, 2006 and informed Defendant that the fall had caused him to incur medical costs and miss three days of work. (Id. ¶ 3.) On February 11, 2008, Mr. Taniguchi filed suit in this Court alleging that he suffered "various cuts, bruises, and ligament tears" which caused him to incur medical costs and a loss of income. (Comp. ¶¶ 5, 8.) The complaint does not assert any causes of action. The Court will discuss additional specific facts as required in the analysis.

ANALYSIS

A. Motion for Summary Judgment Legal Standard.

Plaintiff moves for summary judgment on the issue of liability and Defendant cross moves on the same issue. Pursuant to Federal Rule of Civil Procedure 56(c), a moving party is entitled to a judgment as a matter of law "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact . . . ." *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The moving party bears the initial burden of establishing that there is no genuine

issue of material fact, "that is, pointing out to the district court []that there is an absence of evidence to support the nonmoving party's case." *Id.* at 325. Only where the moving party meets its burden of establishing that there is an absence of evidence to support the nonmoving party's case does the burden shift to the nonmoving party to present more than a scintilla of evidence in support of its position. Fed. R. Civ. P. 56(e) (once the moving party has met its burden, the opposing party "must set forth specific facts showing that there is a genuine issue for trial"); *Anderson v. Liberty Lobby*, *Inc.,* 477 U.S. 242, 252 (1986). A dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* at 248. "Credibility determinations, the weighing of evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, [when] ruling on a motion for summary judgment . . . . The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255.

B. Defendant's Are Not Liable As a Matter of Law.

The instant motions for summary judgment derive from Plaintiffs allegation that Defendant is liable for Plaintiffs injuries because Defendant failed to protect its business invitee from a dangerous condition on its land. The Restatement Second of Torts provides that: "A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and (b) should expect that they will not discover or realize the danger or will fail to protect themselves against it, and (c) fails to exercise

reasonable care to protect them against danger."[1] Restatement 2d of Torts § 343. "An invitee is either a public invitee or a business visitor. . . . A business visitor is a person who is invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of the land." *Id.* § 332.

Here, it is undisputed that Plaintiff was an invitee at Defendant's resort. The alleged dangerous condition on Defendant's land was the weakened deck. There is no evidence of what actually caused the deck to break. However, even if the Court assumed that there was a dangerous condition, there is also no evidence before the Court that Defendant reasonably should have known of the dangerous condition or that it failed to exercise reasonable care to protect Plaintiff against the danger. Plaintiff seemingly relies on the undisputed fact that the break happened as evidence of the unreasonable condition and Defendant's failure to adequately protect Plaintiff. The Court cannot rely on allegations alone to find Defendant liable for Mr. Taniguchi's injury as a matter of law. Accordingly, Plaintiff has failed to fulfill his initial burden under Rule 56 and Plaintiff's motion for partial summary judgment is DENIED.

Next, Defendant moved for cross-summary judgment on the issue of liability. Defendant

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[1] In the Commonwealth of the Northern Mariana Islands, "the rules of the common law as expressed in the Restatements of the law as approved by the American Law Institute serve as the applicable rules of decision, in the absence of written or local customary law to the contrary." *Ito v. Macro Energy, Inc.*, 1993 WL 614805, at *7 (N.M.I. Oct. 26, 1993).

concedes that the deck broke underneath Plaintiff's footing and similarly cannot produce evidence of the reason for the break. However, Defendant does present evidence that it exercised reasonable care prior to the accident and never discovered the condition. First, Defendant inspected the deck at weekly intervals and never found any unsafe conditions on the deck. (Watanabe Decl. ¶ 2.) In addition, the entire deck was painted every six months and no defects or dangerous conditions were ever discovered during the painting. *(Id.* ¶ 3.) Moreover, no complaint had ever been made about any unsafe condition on the deck. *(Id.* 4-5.) As such, Defendant argues that it cannot be liable for Plaintiff's injury because, even assuming that there was a dangerous condition, Defendant exercised reasonable care and never discovered the dangerous condition. Since Defendant did not discover the condition, it could not have realized that the condition posed a risk of harm to its invitees and could not have known that their invitees required protecting from the danger. The evidence fulfills Defendant's initial burden to demonstrate to the Court that there is an absence of evidence to support Plaintiff's case.

In response, Plaintiff offers no evidence to create a genuine issue of material fact that Defendant should have known of the condition or that it failed to adequately protect him. Rather, Plaintiff relies on its assertion that Defendant destroyed the evidence of the broken deck and Plaintiff has therefore been unable to determine the cause of the break. However, even assuming that there was a dangerous condition, Plaintiff failed to present *any* evidence to refute Defendant's assertion that it exercised

reasonable care prior to the break and therefore could not have known of the dangerous condition. Once Defendant fulfilled its initial burden under Rule 56, the burden shifted to Plaintiff to present more than a scintilla of evidence in support of its position. Fed. R. Civ. P. 56(e) (once the moving party has met its burden, the opposing party "must set forth specific facts showing that there is a genuine issue for trial"); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). Here, Plaintiff failed to set forth any facts to create a genuine issue of material fact regarding Defendant's exercise of reasonable care. Accordingly, Plaintiff failed to fulfill his burden to create a genuine issue for trial and Defendant's Cross-Motion for Summary Judgment is GRANTED.[2]

CONCLUSION

In sum, the Court finds that based on the evidence before it there is no genuine issue of material fact that Defendant was not negligent. Accordingly, Plaintiff's Motion for Partial Summary Judgment is DENIED and Defendant's Cross-Motion for Summary Judgment is GRANTED.

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[2] There are four additional motions before the Court. However, the Court's ruling on the Summary Judgment motions are dispositive and the Court will not address the remaining motions as they are now moot.

IT IS SO ORDERED.

Dated: December 22,2008

/s/ Alex R. Munson
ALEX R. MUNSON
UNITED STATES
DISTRICT JUDGE

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

KOUICHI TANIGUCHI,	)	Civil No. 08-0008
	)	
Plaintiff	)	
	)	ORDER RE-
v.	)	OPENING CASE
KAN PACIFIC SAIPAN,	)	FILE and GRANTING
LTD., doing business as	)	IN PART AND
Mariana Resort and Spa,	)	DENYING IN PART
	)	DEFENDANT'S BILL
	)	OF COSTS
	)	
Defendant	)	
	)	
	)	

IT IS ORDERED that this file be re-opened for purposes of considering defendant's bill of costs and for entry of judgment on a separate document.

Title 28, U.S.C. § 1920 delimits the costs available to a prevailing party. The rule in its entirety states:

> Taxation of costs. A judge or clerk of any court of the United States may tax as costs the following:
>
> (1) Fees of the clerk and marshal;

> (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the trial;
>
> (3) Fees and disbursements for printing and witnesses;
>
> (4) Fees for exemplification and copies of papers necessarily obtained for use in the case;
>
> (5) Docket fees under section 1923 of this title;
>
> (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828[1] of this title.
>
> A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.

This court is constrained in the awarding of costs by the decision of the United States Supreme Court in *Crawford Fitting Company v. J.T. Gibbons, Inc.*, 482 U.S. 437, 107 S.Ct. 2494 (1987). There, the Court, in refusing to accept the argument that § 1920 does not preclude taxation of costs above and beyond the items listed, stated that the discretion to award costs afforded judges by Fed.R.Civ.P. 54(d) is limited by the specific terms of 28 U.S.C. § 1920: "Section 1920 enumerates expenses that a federal court may tax as a cost under the discretionary authority found in Rule 54(d). * * * It is phrased permissively

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[1] The special interpretation services provided in 28 U.S.C. § 1828 have no application in this matter.

because Rule 54(d) generally grants a federal court discretion to refuse to tax costs in favor of a prevailing party."

Given the foregoing, the court awards or disallows defendant's claimed costs as follows:

Court Reporter Fees - 28 U.S.C. § 1920(2)

Deposition transcripts are taxable costs under § 1920(2). *Evanow v. M/V Neptune*, 163 F.3d 1108, 1118 (9th Cir. 1998). The court awards defendant $2,215.00 for the two depositions of plaintiff.

Travel and Subsistence - 28 U.S.C. § 1821

A $40 per day attendance fee is recoverable for witnesses, as are travel by the most economical means, and daily subsistence. However, and as compelling as the court finds Mr. Roberts' rationale for him traveling to Japan rather than Mr. Yamazaki traveling to Guam or Saipan, the fact remains that travel, lodging, meals, ground transportation, parking, and related expenses for the attorneys, their staff, or the client are not recoverable costs under either § 1821 or § 1920. Mr. Roberts' expenses incurred for travel to Kyoto are not recoverable and the claim for $1,467.52 must be disallowed.

Similarly, and absent an explicit agreement between the parties to the litigation or a fee-shifting statute, expert witness fees are not recoverable above the statutory rate of $40 per day for regular witnesses. Defendant's request for expert witness fees in the amount of $6,630.32 must be disallowed.

Compensation of Interpreters/Translators - 28 U.S.C. § 1920(6)

The court has reviewed the billing statements of the translators used by defendant and finds their use

necessary for the reasons stated in Mr. Roberts' amended affidavit of January 5, 2009, and their fees reasonable in all respects. Costs for such services are awarded in the amount of $5,517.20.

FOR THE FOREGOING REASONS, defendant is awarded total costs in the amount of $7,732.20.

IT IS SO ORDERED.

DATED this 8th day of January, 2009.

/s/ Alex R. Munson

ALEX R. MUNSON

Judge

APPENDIX E

THE UNITED STATES DISTRICT COURT FOR THE NORTHERN MARIANA ISLANDS

KOICHI TANIGUCHI, Plaintiff, v. KAN PACIFIC SAIPAN, LTD., dba MARIANA RESORT AND SPA, Defendant.	Civil Case No. 08-0008 **ORDER DENYING PLAINTIFF'S MOTION OBJECTING TO COSTS**

Now before the Court is Plaintiff Koichi Taniguchi's Motion Objecting to Taxation of Costs. The Court finds this motion suitable for decision without oral argument. *See* Local Rule 7.1(a). Having carefully reviewed the plaintiff's motion and the relevant legal authority, the Court hereby DENIES the motion.

Plaintiff objects to the following allegedly unreasonable costs taxed by the Court: (1) depositions that were "purely investigative" and not for use at trial; and (2) "translation services" that are not authorized under 28 U.S.C. § 1920(6). The Court will address each argument in turn.

A. The Deposition Costs Were Properly Taxed.

First, Plaintiff argues that the Court improperly granted Defendants' costs for a deposition that were "purely investigatory" in nature and not for use at trial. (Mot. at 2.) Deposition transcripts are taxable as costs under 28 U.S.C. § 1920(2) if they are "necessarily obtained for use in the case." *Evanow v. M/V Neptune*, 163 F.3d 1108, 1118 (9th Cir. 1998). The costs of obtaining depositions and deposition transcripts are "necessarily obtained" if they were reasonably necessary to the defendant's motion for summary judgment. *Alflex Corp. v. Underwriters Lab., Inc.*, 914 F.2d 175, 177 (9th Cir. 1990). Here, Plaintiff argues, without explanation, that the taking of his deposition in a personal injury action was "purely investigative" and therefore not reasonably necessary to the defendant's motion for summary judgment motion. However, the deposition was of the injured party in a personal injury case. It is unclear to the Court how such a deposition would not be reasonably necessary for the defendants to prepare for trial or a summary judgment motion. The Court is not persuaded that the deposition was "purely investigative" and finds the costs reasonable and within the limits of the law.

B. The Interpreter and/or Translation Costs Were Properly Taxed.

Next, Plaintiff argues that the Court improperly taxed costs for Mr. Colin P.A. Jones' translation and "other" professional services, rather than solely for his interpreter services. Title 28 U.S.C. § 1920(6) authorizes "compensation of interpreters." Two circuits have addressed whether general translation services should fall within the meaning of § 1920(6). The Sixth Circuit held that "compensation of

interpreters" includes general translation services because "the definition of interpret expressly includes to 'translate into intelligible or familiar language.'" *BDT Products, Inc. v. Lexmark Intern., Inc.*, 405 F.3d 415,419 (6th Cir. 2005). On the other hand, the Seventh Circuit recently held that "compensation of interpreters" does not *per se* include general translation services. *Extra Equipamentos E Exportacao Ltda. v. Case Corp.*, *541* F.3d 719, 728 (7th Cir. 2008). Here, the Court finds the Sixth Circuit's rule most persuasive. The services rendered to the defense cannot be separated into "translation" and "interpretation." In order to depose Plaintiff, the defense required documents translated. The costs for such "translations" falls within the meaning of "compensation of an interpreter." Accordingly, the Court finds that the interpreter services were properly taxed as costs.

Finally, Plaintiff requests that the Court stay the payment of the taxed costs pending his appeal of this matter and that Defendant not be compensated directly since its insurer incurred all of the costs that Defendant seeks. *(See* Amended Roberts Affidavit ¶ 1.) The Court hereby exercises its discretion not to stay the imposition of costs pending appeal. Moreover, Plaintiff may either pay the amount due directly to defense counsel who, as an officer of the Court, has a responsibility to transfer the costs to the party that paid them, or to deposit the amount directly with the Court's registry to be held pending resolution of Plaintiffs appeal. Plaintiff shall pay or deposit with the Court the amount due by January 29,2009.

IT IS SO ORDERED.

Dated: January 15, 2009

/s/ Alex R. Munson
ALEX R. MUNSON
UNITED STATES
DISTRICT JUDGE

APPENDIX F

FILED
MAY 11 2011
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KOUICHI TANIGUCHI, Plaintiff - Appellant, v. KAN PACIFIC SAIPAN, LTD., doing business as Mariana Resort and Spa, Defendant - Appellee.	No. 09-15212 D.C. No. 1:08-cv-00008 District of the Northern Mariana Islands ORDER

Before: HAWKINS, McKEOWN, and RAWLINSON, Circuit Judges.

The panel has voted to deny the Petition for Panel Rehearing.

Appellant's Petition for Panel Rehearing, filed on March 19, 2011, is DENIED.

APPENDIX G

28 U.S.C. § 1827 provides:

§ 1827. Interpreters in courts of the United States

(a) The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of certified and otherwise qualified interpreters in judicial proceedings instituted by the United States.

(b)(1) The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters, when the Director considers certification of interpreters to be merited, for the hearing impaired (whether or not also speech impaired) and persons who speak only or primarily a language other than the English language, in judicial proceedings instituted by the United States. The Director may certify interpreters for any language if the Director determines that there is a need for certified interpreters in that language. Upon the request of the Judicial Conference of the United States for certified interpreters in a language, the Director shall certify interpreters in that language. Upon such a request from the judicial council of a circuit and the approval of the Judicial Conference, the Director shall certify interpreters for that circuit in the language requested. The judicial council of a circuit shall identify and evaluate the needs of the districts within a circuit. The Director shall certify interpreters based on the results of criterion-referenced performance examinations. The Director

shall issue regulations to carry out this paragraph within 1 year after the date of the enactment of the Judicial Improvements and Access to Justice Act.

(2) Only in a case in which no certified interpreter is reasonably available as provided in subsection (d) of this section, including a case in which certification of interpreters is not provided under paragraph (1) in a particular language, may the services of otherwise qualified interpreters be used. The Director shall provide guidelines to the courts for the selection of otherwise qualified interpreters, in order to ensure that the highest standards of accuracy are maintained in all judicial proceedings subject to the provisions of this chapter.

(3) The Director shall maintain a current master list of all certified interpreters and otherwise qualified interpreters and shall report periodically on the use and performance of both certified and otherwise qualified interpreters in judicial proceedings instituted by the United States and on the languages for which interpreters have been certified. The Director shall prescribe, subject to periodic review, a schedule of reasonable fees for services rendered by interpreters, certified or otherwise, used in proceedings instituted by the United States, and in doing so shall consider the prevailing rate of compensation for comparable service in other governmental entities.

(c)(1) Each United States district court shall maintain on file in the office of the clerk, and each United States attorney shall maintain on file, a list of all persons who have been certified as interpreters by the Director in accordance with subsection (b) of this section. The clerk shall make the list of certified interpreters for judicial proceeding available upon

request.

(2) The clerk of the court, or other court employee designated by the chief judge, shall be responsible for securing the services of certified interpreters and otherwise qualified interpreters required for proceedings initiated by the United States, except that the United States attorney is responsible for securing the services of such interpreters for governmental witnesses.

(d)(1) The presiding judicial officer, with the assistance of the Director of the Administrative Office of the United States Courts, shall utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise qualified interpreter, in judicial proceedings instituted by the United States, if the presiding judicial officer determines on such officer's own motion or on the motion of a party that such party (including a defendant in a criminal case), or a witness who may present testimony in such judicial proceedings--

(A) speaks only or primarily a language other than the English language; or

(B) suffers from a hearing impairment (whether or not suffering also from a speech impairment)

so as to inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness' comprehension of questions and the presentation of such testimony.

(2) Upon the motion of a party, the presiding judicial officer shall determine whether to require the electronic sound recording of a judicial proceeding in which an interpreter is used under this section. In

making this determination, the presiding judicial officer shall consider, among other things, the qualifications of the interpreter and prior experience in interpretation of court proceedings; whether the language to be interpreted is not one of the languages for which the Director has certified interpreters, and the complexity or length of the proceeding. In a grand jury proceeding, upon the motion of the accused, the presiding judicial officer shall require the electronic sound recording of the portion of the proceeding in which an interpreter is used.

(e)(1) If any interpreter is unable to communicate effectively with the presiding judicial officer, the United States attorney, a party (including a defendant in a criminal case), or a witness, the presiding judicial officer shall dismiss such interpreter and obtain the services of another interpreter in accordance with this section.

(2) In any judicial proceedings instituted by the United States, if the presiding judicial officer does not appoint an interpreter under subsection (d) of this section, an individual requiring the services of an interpreter may seek assistance of the clerk of court or the Director of the Administrative Office of the United States Courts in obtaining the assistance of a certified interpreter.

(f)(1) Any individual other than a witness who is entitled to interpretation under subsection (d) of this section may waive such interpretation in whole or in part. Such a waiver shall be effective only if approved by the presiding judicial officer and made expressly by such individual on the record after opportunity to consult with counsel and after the presiding judicial officer has explained to such individual, utilizing the services of the most available

certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter, the nature and effect of the waiver.

(2) An individual who waives under paragraph (1) of this subsection the right to an interpreter may utilize the services of a noncertified interpreter of such individual's choice whose fees, expenses, and costs shall be paid in the manner provided for the payment of such fees, expenses, and costs of an interpreter appointed under subsection (d) of this section.

(g)(1) There are authorized to be appropriated to the Federal judiciary, and to be paid by the Director of the Administrative Office of the United States Courts, such sums as may be necessary to establish a program to facilitate the use of certified and otherwise qualified interpreters, and otherwise fulfill the provisions of this section and the Judicial Improvements and Access to Justice Act, except as provided in paragraph (3).

(2) Implementation of the provisions of this section is contingent upon the availability of appropriated funds to carry out the purposes of this section.

(3) Such salaries, fees, expenses, and costs that are incurred with respect to Government witnesses (including for grand jury proceedings) shall, unless direction is made under paragraph (4), be paid by the Attorney General from sums appropriated to the Department of Justice.

(4) Upon the request of any person in any action for which interpreting services established pursuant to subsection (d) are not otherwise provided, the clerk of the court, or other court employee designated by the chief judge, upon the request of the presiding judicial

officer, shall, where possible, make such services available to that person on a cost-reimbursable basis, but the judicial officer may also require the prepayment of the estimated expenses of providing such services.

(5) If the Director of the Administrative Office of the United States Courts finds it necessary to develop and administer criterion-referenced performance examinations for purposes of certification, or other examinations for the selection of otherwise qualified interpreters, the Director may prescribe for each examination a uniform fee for applicants to take such examination. In determining the rate of the fee for each examination, the Director shall consider the fees charged by other organizations for examinations that are similar in scope or nature. Notwithstanding section 3302(b) of title 31, the Director is authorized to provide in any contract or agreement for the development or administration of examinations and the collection of fees that the contractor may retain all or a portion of the fees in payment for the services. Notwithstanding paragraph (6) of this subsection, all fees collected after the effective date of this paragraph and not retained by a contractor shall be deposited in the fund established under section 1931 of this title and shall remain available until expended.

(6) Any moneys collected under this subsection may be used to reimburse the appropriations obligated and disbursed in payment for such services.

(h) The presiding judicial officer shall approve the compensation and expenses payable to interpreters, pursuant to the schedule of fees prescribed by the Director under subsection (b)(3).

(i) The term "presiding judicial officer" as used in this

section refers to any judge of a United States district court, including a bankruptcy judge, a United States magistrate judge, and in the case of grand jury proceedings conducted under the auspices of the United States attorney, a United States attorney.

(j) The term "judicial proceedings instituted by the United States" as used in this section refers to all proceedings, whether criminal or civil, including pretrial and grand jury proceedings (as well as proceedings upon a petition for a writ of habeas corpus initiated in the name of the United States by a relator) conducted in, or pursuant to the lawful authority and jurisdiction of a United States district court. The term "United States district court" as used in this subsection includes any court which is created by an Act of Congress in a territory and is invested with any jurisdiction of a district court established by chapter 5 of this title.

(k) The interpretation provided by certified or otherwise qualified interpreters pursuant to this section shall be in the simultaneous mode for any party to a judicial proceeding instituted by the United States and in the consecutive mode for witnesses, except that the presiding judicial officer, sua sponte or on the motion of a party, may authorize a simultaneous, or consecutive interpretation when such officer determines after a hearing on the record that such interpretation will aid in the efficient administration of justice. The presiding judicial officer, on such officer's motion or on the motion of a party, may order that special interpretation services as authorized in section 1828 of this title be provided if such officer determines that the provision of such services will aid in the efficient administration of justice.

(l) Notwithstanding any other provision of this section or section 1828, the presiding judicial officer may appoint a certified or otherwise qualified sign language interpreter to provide services to a party, witness, or other participant in a judicial proceeding, whether or not the proceeding is instituted by the United States, if the presiding judicial officer determines, on such officer's own motion or on the motion of a party or other participant in the proceeding, that such individual suffers from a hearing impairment. The presiding judicial officer shall, subject to the availability of appropriated funds, approve the compensation and expenses payable to sign language interpreters appointed under this section in accordance with the schedule of fees prescribed by the Director under subsection (b)(3) of this section.

28 U.S.C. § 1828 provides:

§ 1828. Special interpretation services

(a) The Director of the Administrative Office of the United States Courts shall establish a program for the provision of special interpretation services in criminal actions and in civil actions initiated by the United States (including petitions for writs of habeas corpus initiated in the name of the United States by relators) in a United States district court. The program shall provide a capacity for simultaneous interpretation services in multidefendant criminal actions and multidefendant civil actions.

(b) Upon the request of any person in any action for which special interpretation services established pursuant to subsection (a) are not otherwise provided, the Director, with the approval of the

presiding judicial officer, may make such services available to the person requesting the services on a reimbursable basis at rates established in conformity with section 9701 of title 31, but the Director may require the prepayment of the estimated expenses of providing the services by the person requesting them.
(c) Except as otherwise provided in this subsection, the expenses incident to providing services under subsection (a) of this section shall be paid by the Director from sums appropriated to the Federal judiciary. A presiding judicial officer, in such officer's discretion, may order that all or part of the expenses shall be apportioned between or among the parties or shall be taxed as costs in a civil action, and any moneys collected as a result of such order may be used to reimburse the appropriations obligated and disbursed in payment for such services.

(d) Appropriations available to the Director shall be available to provide services in accordance with subsection (b) of this section, and moneys collected by the Director under that subsection may be used to reimburse the appropriations charged for such services. A presiding judicial officer, in such officer's discretion, may order that all or part of the expenses shall be apportioned between or among the parties or shall be taxed as costs in the action.

28 U.S.C. § 1920 provides:

§ 1920. Taxation of costs

A judge or clerk of any court of the United States may tax as costs the following:

(1) Fees of the clerk and marshal;
(2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;

(3) Fees and disbursements for printing and witnesses;

(4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;

(5) Docket fees under section 1923 of this title;

(6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.