



AlaFile E-Notice

47-CV-2017-901688.00

Judge: KAREN K HALL

To: COLE KENNETH BRIDGES JR.
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NOTICE OF COURT ACTION

IN THE CIRCUIT COURT OF MADISON COUNTY, ALABAMA

DOYLE HARBIN V. IRVIN DOUGLAS STEWART III ET AL
47-CV-2017-901688.00

A court action was entered in the above case on 6/2/2020 10:02:41 AM

ORDER

[Filer:]

Disposition: OTHER
Judge: KKH
Notice Date: 6/2/2020 10:02:41 AM

DEBRA KIZER
CIRCUIT COURT CLERK
MADISON COUNTY, ALABAMA
MADISON COUNTY, ALABAMA
100 NORTHSIDE SQUARE
HUNTSVILLE, AL, 35801

256-532-3390

**IN THE CIRCUIT COURT OF MADISON COUNTY, ALABAMA****DOYLE HARBIN,****Plaintiff,**

v.

CIVIL ACTION NO.: CV2017-901688**IRVIN DOUGLAS STEWART, III,
An Individual, ALLSTATE PROPERTY
AND CASUALTY INSURANCE
COMPANY, a corporation,****Defendants.****ORDER ON PLAINTIFF'S MOTION FOR SANCTIONS**

This Court has carefully considered the Plaintiff Doyle Harbin's Motion for Sanctions against the Defendant Allstate Property and Casualty Insurance Company. The Court has reviewed evidence, provided all parties with the opportunity to fully brief the issues and present evidence, held hearings, and listened to oral arguments of counsel. The Plaintiff's Motion asked the Court to award monetary sanctions because Allstate failed to abide by this Court's Order of Referral to Mediation by not participating in the mediation in good faith. For the following factual and legal reasons, the Court concludes that sanctions are appropriate, not only because the Plaintiff is entitled to the requested relief, but because the good and efficient functioning of the Alabama Court System requires Defendant Allstate's egregious conduct to cease. To that end, the Court has determined that sanctioning Allstate is necessary to impress upon Allstate that all parties to civil litigation in this State should comply with the intended effect of the *Alabama Rules of Civil Procedure* which state that the rules shall be construed and administered to secure the just, speedy and inexpensive determination of every action. *See* Ala. R. Civ. Pro. 1(c).

Facts in This Case Related to Request for Sanctions

On March 26, 2019, Allstate agreed to continue the existing trial setting in this case and to submit the case to mediation. On April 1, 2019, this Court ordered the parties to mediation with Ben Rice, Esquire. That mediation took place on July 15, 2019. Plaintiff's counsel prepared a Mediation Position Statement for Mr. Rice. Both of Plaintiff's counsel attended the mediation. One of the counsel traveled to the mediation from his office in Scottsboro. Plaintiff and his wife attended the mediation and also had to travel from their home in Scottsboro.

Evidence before the Court establishes that several very important non-occurrences existed at the mediation. (It should be noted that this Court ordered that "All discussions,

representations, and statements made at the mediation conferences...shall be confidential and deemed...settlement negotiations....” However, this Court’s Order did not say that the parties could not explain to the Court the existence of non-occurrences at the mediation.) The Court ordered that a representative of each party, which may be counsel, having full authority to settle the entire case for the party must attend the mediation. The only representative for Allstate who attended the mediation was defense counsel. However, defense counsel did not have the authority to settle the case. No insurance adjustor from Allstate attended the mediation. The mediation lasted over three (3) hours. During that time, Allstate never made any settlement offer or counteroffer. Ben Rice terminated the mediation.

Thereafter, Plaintiff’s counsel continued to prepare the case for trial. Mr. Cole and his staff had to spend significant amounts of time to prepare and file pleadings and motions, attend hearings, and general trial preparation. In total, Mr. Cole spent at least ninety-two (92) hours on the case following the mediation. Mr. Parks spent at least sixty-five (65) hours on the case following the mediation. At reasonable hourly rates of \$375.00 and \$275.00, respectively, total legal fees alone would be quantified at a value in excess of \$50,000.00.

Allstate’s failure to meaningfully participate in mediation forced the parties to spend all of this time and effort to prepare for and try this case over a two (2) day timeframe. This conduct occurred despite the fact the case was a significant damages case. Medical bills alone totaled \$234,206.02; a figure far in excess of Allstate’s \$75,000.00 in Underinsured Motorist Coverage available to Mr. Harbin. In answer to the Complaint, Allstate entered a denial yet just prior to trial, Allstate stipulated to liability. Allstate’s request of the jury to award damages which might sound “reasonable” resulted in a verdict of \$690,000.00 in favor of Mr. Harbin and against Allstate.

Broader Justification for Sanctions

Allstate’s conduct goes beyond just the facts and conduct in this case. Allstate’s conduct affects all the courts of this State and contributes to backlogs of our civil justice system throughout Alabama. In fact, public record reveals that Allstate has been sanctioned for similar conduct by at least two (2) trial judges in Jefferson County. Circuit Judge Robert S. Vance, by way of his Order dated September 4, 2019, in Wright v. Allstate CV-2018-901944 in the Circuit Court of Jefferson County, Alabama, granted sanctions against Allstate and stated the following:

- (a) “Mediation was rendered impossible when [Allstate’s counsel] arrived without a claims representative and without any authority to negotiate a settlement in this rear-end collision case”;
- (b) “This is merely the latest example of such conduct in cases where Allstate or its insured is a party. In fact, it is the fourth such occurrence in the last ten

weeks. Given the company's lack of concern for the expense and inconvenience that it routinely causes, I respectfully request that you appoint someone other than me to mediate cases involving the company";

- (c) "What is clear is that Allstate did not intend to comply with the court's *Mediation Order* and waited until the last moment to spring this fact on the other parties. What is also clear—as Justice Woodall's email states—is that this is but the latest example of a troubling trend";
- (d) "Allstate's position of zero settlement authority violated its obligation of negotiating in good faith, so it cannot be heard to complain about Justice Woodall's publicizing of this problem... This court concludes that Allstate not only knowingly failed to comply with the *Mediation Order* but also violated this tenet of the mediation rules"; and
- (e) "Based on the above, the court concludes that Allstate knowingly and willfully violated the *Mediation Order* as well as the *Alabama Civil Court Mediation Rules*."

This Court also has considered Judge Hatcher's Order from Jefferson County in Idara v. Esurance Insurance Services dated October 31, 2019. (The Court takes judicial notice of the fact that Esurance "was purchased by Allstate in 2011 and is now a wholly owned subsidiary of Allstate.") Judge Hatcher's Order granted sanctions and stated the following:

- (a) "Esurance failed to comply with this Court's Mediation Order that 'each party must have present that natural person who wields ultimate authority over that party's authority to settle"; and
- (b) "Plaintiff's MOTION FOR SANCTIONS...is hereby **GRANTED**".

This Court cannot overlook the failure of Allstate to abide by its Mediation Orders. Allstate did not have a representative at the mediation with full authority to settle the entire case. In fact, Allstate did not provide its defense counsel, who attended the mediation, with any settlement authority whatsoever. Allstate also did not have an adjuster attend the mediation. At the time of trial, Allstate's counsel even confirmed that he had no settlement authority. As such, this Court likewise finds that Allstate knowingly and willfully violated this Court's Mediation Order and the *Alabama Civil Court Mediation Rules*. For these good and sufficient reasons, Allstate is in contempt of this Court's Order and sanctions in the form of costs, expenses, and legal fees are appropriate.

But, in the opinion of the Court, the amount of monetary sanctions requested by the Plaintiff alone will not accomplish the overarching purpose of sanctions which is not to just punish Allstate but is to alter the conduct of Allstate for the benefit of future litigants and the Alabama Court System.

Analysis and Application of Law to Facts

As was admitted in open Court, defense counsel is the only representative of Allstate who attended the mediation. Defense counsel admitted in open Court both before *voir dire* and at one of the sanctions hearings, that defense counsel did not have full authority to settle the entire case. This conduct does not comply with Paragraph 5 of the Court's Order of Referral to Mediation which clearly stated that "A representative of [Allstate] having full authority to settle the entire case must attend the mediation."

In addition to this Court's Order, Mediation Rule 6 also applies and was incorporated by reference into the Order. It states that, if ordered by the Court, someone with authority to settle the issues submitted to mediation must be present at the mediation session. Allstate's conduct therefore violated both the Court's Order and Mediation Rule 6.

In addition to this Court's Order and Mediation Rule 6, Section 6-6-20 of the *Code of Alabama* also applies and was incorporated by reference into the Order. It states that a failure to mediate as required allows the Court to award sanctions per Rule 37 the *Alabama Rules of Civil Procedure*. Rule 37 allows findings of contempt and the award of both legal fees and expenses.

The Alabama Supreme Court has stated that because of the legislative mandate for Underinsured Motorist Coverage, the policy considerations for allowing bad faith claims are enhanced and not diminished in such a context. Sanford v. Liberty Mutual, 536 So.2d 941, 942 (Ala. 1988). The Alabama Supreme Court also has affirmed a bad faith verdict of over \$800,000.00 in a Underinsured Motorist Coverage context, specifically discussing that bad faith occurs when there is no basis in law or fact to deny the claim, and no other information is needed to pay the claim. See Sockwell, 829 So.2d 111 (Ala. 2002). The Court finds that Allstate raised no basis in law or fact to deny the claim. After filing an Answer with fifteen (15) paragraphs of defenses, Allstate stipulated to everything just before trial with the exception of the Plaintiff's damages. Regarding damages, Allstate did not present the jury with any disputed facts upon which they could reach a different verdict. As submitted by Plaintiff's counsel at one of the sanctions hearings, when a jury in Madison County returns a verdict for \$690,000.00 in damages, then everyone within the sound of his voice knows there was no other information needed to pay this \$75,000.00 in Underinsured Motorist Coverage benefits.

The Alabama Supreme Court Commission on Dispute Resolution has made it clear that “Willful failure of a party to attend or participate in the mediation should be reported to the court.” (Opinion 001-2010 of the Alabama Supreme Court Commission on Dispute Resolution). Regarding limits on the confidentiality of mediations, this Commission also has stated that “The Code Standards, the Rule, and the Act address information. They do not address conduct. ... The failure to have all persons or representatives attend..., is conduct that a party, but not a mediator, may report to court as a basis for monetary sanctions.” *Id.* at page 4, quoting Campagnone v. Enjoyable Pools & Spa Serv. & Repairs, Inc., 163 Cal. App. 4th 566, 572 (Cal. Ct. App. 2008). Therefore, a party such as Plaintiff Doyle Harbin “can report that a person or representative required to attend mediation did not attend.” *Id.* at page 4. In fact, the Commission explained that “the same reasoning applies when a party appears at mediation without settlement authority. ... [T]he party is not deemed to have appeared if he or she does not have any settlement authority.” *Id.* at page 5.

The submitted Affidavits of Plaintiff and his wife make it clear that, based upon the Commission’s definition of meaningful and compliant attendance at a mediation, Allstate did not “attend” or “appear” at the mediation. Furthermore, they prove Allstate’s conduct or the “non-occurrence” of not making a settlement offer and/or failure to have settlement authority at the mediation. Clearly, Plaintiff is allowed to inform the Court of such conduct by Allstate. In fact, Plaintiff is compelled to tell the Court about this conduct because the Commission says such willful failure to attend or participate in the mediation should be reported.

Finally, Allstate cannot justify its conduct by relying upon out of context, boilerplate language contained in the mediator’s letter to the Court. The language comprising the eleven (11) word phrase from the mediator’s emailed report to this Court about “excellent cooperation” and “diligent efforts” is simply a standard phrase contained in the mediator’s form letter which he sends to Courts following failed mediations. The mediator did not intend the Court to rely upon this phrase as any comment by him on any specific conduct of the parties. (Rice Affidavit). Therefore, the Court could not rely upon this language when assessing any issue concerning the parties’ compliance with the Court’s Order of Referral to Mediation. This Court provided Allstate with multiple opportunities to submit documentary or testimonial evidence to the Court. However, Allstate failed to do so with the exception of admissions made by its counsel.

For all of these good and sufficient reasons, Allstate obviously is in contempt of this Court’s Order and never intended to participate in the mediation in good faith. Allstate’s conduct is in bad faith based upon the definitions provided by the Alabama Supreme Court. This conduct violates and is in contempt of the Court’s Order, Mediation Rule 6, Section 6-6-20 of the *Code of Alabama*, and every tenet of fair play which undergirds our system of justice. Allstate’s conduct is the antithesis of Rule 1(c)’s admonition about securing the just, speedy, and

inexpensive determination of every action. Furthermore, Allstate has not controverted any of the evidence submitted to this Court which proves that Allstate's conduct in this regard is repetitive. In that regard, this Court takes judicial notice of the findings by Judge Vance and Judge Hatcher. The Order issued by Judge Vance proves 4 such occurrences. The Order issued by Judge Hatcher proves a 5th such occurrence. This case marks at least the 6th such occurrence proven by the record in this case. This Court does not condone such repetitive, bad faith, and contemptuous conduct.

Conclusion

In conclusion, the Plaintiff Doyle Harbin asked the Court to award costs in the total amount of \$5,141.36 and attorney fees of \$52,375.00 such that total sanctions would be in the amount of \$57,516.36. However, the Court considers the requested relief inadequate to accomplish the dual purposes of addressing the burden placed on the Plaintiff and addressing the overarching effects of Allstate's conduct upon the Courts of Alabama, civil litigants, witnesses, and Alabama citizens who must serve on juries every time Allstate behaves in this fashion.

It is, therefore, **ORDERED, ADJUDGED and DECREED** that Plaintiff Doyle Harbin have and recover from Defendant Allstate Property and Casualty Insurance Company sanctions in the total amount of \$620,141.36, which amount shall bear post-judgment interest at the legal rate until paid in full.

Done this the 2nd day of June, 2020.

/s/ Karen K. Hall

CIRCUIT JUDGE