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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

KIRSTYN KONO and CHRISTOPHER)
KONO, husband and wife,)
)
) Plaintiffs,)
)
) v.)
)
) PACIFIC STAR INSURANCE COMPANY;)
) and ANCHOR GENERAL INSURANCE)
) AGENCY, INC.,)
)
) Defendants.)

No. 12-2-30494-7 SEA
D.A.N.
~~PROPOSED~~ FINDINGS OF FACTS,
CONCLUSIONS OF LAW AND
SUPPLEMENTAL ORDER GRANTING
PLAINTIFFS' MOTION FOR
DISCOVERY RELIEF AND SANCTIONS
AND TO COMPEL DISCOVERY

THIS MATTER having come before this Court on Plaintiffs Kirstyn Kono and Christopher Kono's motion for discovery relief and sanctions and to compel discovery; the Court having reviewed the records and files herein; and having entered an Order granting Plaintiffs' motion on August 30, 2013; the Court therefore makes the following Findings of Fact, Conclusions of Law, and Order:

I. FINDINGS OF FACT

- 1. Since the Konos were injured in an auto accident in 2010 by an underinsured motorist, they have sought coverage from their insurer, Pacific Star, without success.
- 2. The Konos requested their UIM policy limits from Pacific Star because ^{they allege} their *D.A.N.* damages exceed the \$25,000.00 per person UIM coverage.

1 3. Instead of paying the policy limits, Pacific Star engaged in numerous procedural
2 delays and discovery violations including, but not limited to, (1) unjustified removal to federal
3 court; (2) failure to obey orders regarding depositions; (3) engaging in behavior deemed
4 “inappropriate and unprofessional” during the first 30(b)(6) deposition, including improper
5 objections and terminating the deposition after alleging that a witness broke down in tears
6 during the deposition—an allegation that this Court did not find credible, Sub.#80 at 5; and (4)
7 failure to produce the complete claims file after being ordered to do so on numerous occasions.
8 As a result of Pacific Star’s conduct at the first 30(b)(6) deposition, this Court ordered Pacific
9 Star to bear the costs of the second deposition. Sub.#80.
10

11 4. At Pacific Star’s second 30(b)(6) deposition on July 30, 2013, Pacific Star
12 disclosed that it had evaluated the Konos’ claims and determined that they were entitled to
13 coverage as early as November 14, 2011. Pacific Star, in its first 30(b)(6) deposition on March
14 20, 2012, alleged that such evaluation had not been completed and that it was “incapable of
15 evaluating” in “any way” the Konos’ claims. Sub.#51, Ex. A, Tr. at 124:6-18. But this was not
16 true. At the second 30(b)(6) deposition, Pacific Star belatedly produced its Large Loss Reports
17 dated November 14, 2011 and May 1, 2012, in which it acknowledged coverage, determined
18 that the value of Kirstyn Kono’s case exceeded policy limits, recommended payment of same,
19 determined that Christopher Kono was also owed money, but did not evaluate at least seven
20 categories of damage recoverable under Washington law. Declaration of Kathryn M. Knudsen
21 in Support of Motion for Sanctions, Ex. J. Pacific Star admitted that these reports are the only
22 evaluation of the Konos’ claims ever performed by Pacific Star. Knudsen Decl. Ex. A. at
23 146:24-147:4.
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1 5. Pacific Star improperly withheld the two Large Loss Reports on the grounds of
2 “work product.” It now admits that the documents were created as part of the claims file prior
3 to any lawsuit being filed, prior to retention of defense counsel—Mr. Thenell, and that no
4 attorney had a hand in creating the documents. Knudsen Decl. Ex. A at 92:5-12; 93:23-94:1.
5 The documents should have been produced in response to the Konos’ request for production for
6 the “entire claims file” at the beginning of the case. Knudsen Decl. Ex. H.

7
8 6. Pacific Star has not offered a credible reason for failing to provide to its insureds
9 the Large Loss Reports, or the information contained therein, at the time they were created.
10 Pacific Star’s repeated discovery violations were willful, are not justifiable under any
11 interpretation of the civil rules, and have been interposed solely to cause unnecessary delay and
12 expense to plaintiff and this Court.

13
14 7. The Konos have been significantly prejudiced as a result of Pacific Star’s
15 withholding of information. Pacific Star’s refusal to provide the documents prejudiced the
16 plaintiffs’ ability to obtain the coverage to which they are now admittedly entitled under the
17 Pacific Star policy. Withholding the Large Loss Reports necessitated this lawsuit, resulted in
18 significant attorney fees and costs and use of judicial resources, and delayed the possibility for
19 a prompt resolution of this case for both the plaintiff and the Court.

20
21 8. By order of this Court dated June 7, 2013, Pacific Star was previously
22 sanctioned for its conduct in the first 30(b)(6) deposition. That sanction did not cause Pacific
23 Star to abandon its tactics of discovery abuse, obfuscation and delay.

24 9. A sanction of \$50,000 is the minimum required to educate Pacific Star regarding
25 its obligations under the discovery rules, to punish Pacific Star for its past conduct, and to deter
26 it from future misconduct. A lesser monetary sanction would not suffice, nor would merely

1 awarding attorney fees to plaintiff, given Pacific Star's pattern of avoiding discovery in this
2 litigation.

3 10. The Konos have incurred attorneys' fees and costs by being forced to bring this
4 lawsuit and to engage in the extensive discovery and motion practice brought on by Pacific
5 Star's improper procedural and discovery delays. Pacific Star has sought to disadvantage the
6 Konos by exploiting its superior resources to its benefit and the Konos' detriment.

8 II. CONCLUSIONS OF LAW

9 1. This Court entered an Order Granting Plaintiffs' Motion for Discovery Relief
10 and Sanctions and to Compel Discovery on August 30, 2013.

11 2. This Court found that Defendant Pacific Star violated CR 26(g), CR 34(b), CR
12 37(d), and Chapter 284-30 RCW by willfully and without justification withholding from its
13 insured documents establishing liability.

14 3. This Court found that Sanctions are mandatory because Pacific Star willfully
15 violated CR 26(g). *See Physicians Ins. Exch. v. Fisons Corp.*, 122 Wn.2d 299, 346, 858 P.2d
16 1054 (1993). Further, sanctions are justified because Pacific Star has violated CR 34(b) and
17 CR 37(d).

18 4. Attorney fees and costs are awarded to plaintiff under CR 37(d) because Pacific
19 Star's conduct not only violated basic duties to its insureds, it also violated discovery rules,
20 previous orders of this Court, and its behavior is not substantially justified.

23 III. SUPPLEMENTAL ORDER

24 NOW, THEREFORE, having considered:

25 1. Plaintiffs' Motion for Discovery Relief and Sanctions and to Compel Discovery;
26

- 1 2. The Declaration of Kathryn M. Knudsen in Support of Motion for Discovery
2 Relief and Sanctions and to Compel Production;
- 3 3. Defendants' Response in Opposition to Plaintiffs' Motion for Discovery Relief
4 and Sanctions;
- 5 4. The Declaration of Daniel E. Thenell in Support of Defendants' Response in
6 Opposition to Plaintiffs' Motion for Discovery Relief and Sanctions;
- 7 5. Plaintiffs' Reply in Support of Motion for Sanctions;
- 8 6. The records and files herein; and
- 9 7. This Court's Order Granting Plaintiffs' Motion for Discovery Relief and
10 Sanctions and to Compel Discovery,


11 *IT IS HEREBY ORDERED* that:

12 1. Consistent with this Court's August 30, 2013 Order Granting Plaintiffs' Motion
13 for Discovery Relief and Sanctions and to Compel Discovery, Plaintiff's request of attorney
14 fees and costs incurred since November 14, 2011, the date of the first Large Loss Report, is
15 granted. This includes all costs incurred to take, and obtain copies of, the second 30(b)(6)
16 deposition, as previously ordered by this Court. Sub.#80. Plaintiffs shall submit a declaration of
17 counsel establishing attorney fees and costs incurred since November 14, 2011, within ten (10)
18 days of entry of this Order for entry of further judgment against Pacific Star.

19 2. Sanctions of \$50,000.00 are awarded to plaintiff as reflected in a judgment
20 entered contemporaneously with these findings of facts and conclusions of law. The \$50,000.00
21 shall be paid prior to Pacific Start submitting any further pleadings or taking any further
22 discovery.

1 3. Defendants must immediately deliver to Plaintiffs counsel the complete,
2 unredacted version of the Konos' claims file including all documents identified in the privilege
3 logs.

4
5 DONE IN OPEN COURT this 18th day of October, 2013.

6
7 
8 The Honorable ~~Susan Amin~~ North
9 Washington Superior Court Judge

10
11 Presented by:

12 KELLER ROHRBACK L.L.P.

13
14 By 

15 William C. Smart, WSBA #8192

16 Isaac Ruiz, WSBA #35237

17 Kathryn M. Knudsen, WSBA #41075

18 Attorneys for Plaintiffs
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