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1. United States ex rel. Hayes v. Allstate Ins. Co., 2016 U.S. Dist. LEXIS 15110

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United States ex rel. Hayes v. Allstate Ins. Co.

United States District Court for the Western District of New York

February 6, 2016, Decided; February 8, 2016, Filed

12-CV-1015S

Reporter

2016 U.S. Dist. LEXIS 15110

UNITED STATES OF AMERICA ex rel., J. MICHAEL HAYES, Plaintiff, v. ALLSTATE INSURANCE COMPANY, ET AL., Defendants.

For GMAC Insurance, Defendant: Jeffrey F. Baase, LEAD ATTORNEY, Rupp, Baase, Pfalzgraf, Cunningham & Coppola LLC, Buffalo, NY.

Prior History: United States ex rel. Hayes v. Allstate Ins. Co., 2014 U.S. Dist. LEXIS 185026 (W.D.N.Y., Oct. 16, 2014)

For Kemper Independence Insurance Company, Metropolitan Group Property and Casualty Insurance Company, Metropolitan Property and Casualty Insurance Company, Defendants: Alan Scott Gilbert, Kristen C. Rodriguez, Sean C. Cenawood, Steven M. Levy, LEAD ATTORNEYS, PRO HAC VICE, Dentons US LLP, Chicago, IL; Brian R. Biggie, LEAD ATTORNEY, Goldberg Segalla LLP, Buffalo, NY.

Counsel: [*1] For United States of America, ex rel. J. Michael Hayes, Plaintiff: Gretchen L. Wylegala, LEAD ATTORNEY, U.S. Attorney's Office, Buffalo, NY; Peter M. Jasen, LEAD ATTORNEY, Jasen & Jasen, P.C. Buffalo, NY.

For Allstate Insurance Company, Republic-Franklin Insurance Company, Utica Mutual Insurance Company, Graphic Arts Mutual Insurance Company, Utica National Insurance Company of Texas, Utica National Insurance Company of Ohio, Utica National Assurance Company, Utica Lloyd's of Texas, Utica Specialty Risk Insurance Company, Founders Insurance Company, Founders Insurance Company of Michigan, Utica National Insurance Group, J.B. Hunt Transport Services, Inc., Defendants: Brian R. Biggie, LEAD ATTORNEY, Goldberg Segalla LLP, Buffalo, NY.

For Liberty Mutual Insurance Company, Liberty Mutual Group, Liberty Mutual Holding Company, Inc., Defendants: Dennis R. McCoy, LEAD ATTORNEY, Barclay Damon, LLP, Buffalo, NY; Kevin J. Fee, LEAD ATTORNEY, PRO HAC VICE, Amy C. Gross, Duane Morris LLP, New York, NY.

For Erie Insurance Company of New York, Erie Insurance Exchange, Inc., Defendants: Heath J. Szymczak, LEAD ATTORNEY, Jaeckle Fleischmann & Mugel, LLP, Fleet Bank Building, Buffalo, NY.

For Nationwide General Insurance Company, Nationwide Financial Services, Inc., Nationwide Mutual Insurance Company, Defendants: Mark C. Davis, LEAD ATTORNEY, Lippes Mathias Wexler Friedman LLP, Buffalo, NY; Matthew C. Corcoran, Stephen G. Sozio, LEAD ATTORNEYS, PRO HAC VICE, Jones Day, Columbus, OH. [*3]

For Farmers Insurance Exchange, Truck Insurance Exchange, Fire Insurance Exchange, Foremost Insurance Group, Defendants: David L. Yohai, John P. Mastando, III, Lori L. Pines, LEAD ATTORNEYS, Weil, Gotschal & Manges, LLP, New York, NY; Paul F. Keneally, LEAD ATTORNEY, Underberg [*2] & Kessler LLP, Rochester, NY.

For New York Central Mutual Fire Insurance Company, Defendant: Eric Dranoff, LEAD ATTORNEY, Saretsky Katz Dranoff & Glass LLP, New York, NY.

For GEICO Insurance, Defendant: Barry I. Levy, Brian L. Bank, Sandra H. Buchanan, Rivkin, Radler LLP, Uniondale, NY.

For Preferred Mutual Insurance Company, Defendant: Suzanne O. Galbato, LEAD ATTORNEY, Edward Ryan Conan, Bond, Schoeneck & King, PLLC, One Lincoln Center, Syracuse, NY.

For Progressive Insurance Company, Defendant: Terrence M. Connors, LEAD ATTORNEY, Connors & Vilardo, LLP, Buffalo, NY; Kara E. Fay, Michael K. Loucks, PRO HAC

VICE, Skadden Arps Slate Meagher & Flom LLP, Boston, MA.

For The Progressive Corporation, Defendant: Michael K. Loucks, PRO HAC VICE, Skadden Arps Slate Meagher & Flom LLP, Boston, MA; Terrence M. Connors, LEAD ATTORNEY, Connors & Vilardo, LLP, Buffalo, NY.

For State Farm Mutual Automobile Insurance Company, Defendant: Dan D. Kohane, LEAD ATTORNEY, Hurwitz & Fine, P.C., Buffalo, NY; Douglas W. Baruch, Jessica L. Klein, John T. Boese, PRO HAC VICE, Fried Frank Harris Shriver & Jacobson LLP, Washington, DC.

For The Hartford Financial Services Group, Inc., Defendant: Brian R. Biggie, LEAD ATTORNEY, Goldberg Segalla LLP, Buffalo, NY; Jonathan Marc Freiman, Kim E. Rinehart, LEAD ATTORNEY, Wiggin and Dana LLP, New Haven, CT.

For Travelers [*4] Insurance Group Holding, Inc., Travelers Property Casualty Corporation, The Travelers Companies, Inc., Defendants: Bryce L. Friedman, Deborah Lynn Stein, Jonathan S. Zelig, LEAD ATTORNEYS, Simpson Thatcher & Bartlett LLP, New York, NY; Carol E. Heckman, LEAD ATTORNEYS, Brian Marc Feldman, Harter, Secrest & Emery LLP, Buffalo, NY.

For Zurich North America, Defendant: Michael J. Willett, LEAD ATTORNEY, Gibson, McAskill & Crosby, LLP, Buffalo, NY; Hedwig M. Auletta, Damon Morey LLP, Buffalo, NY.

For FedEx Corporation, FedEx Express, FedEx Ground, FedEx Freight, FedEx Office, Fedex Custom Critical, FedEx Trade Newtorks, FedEx Supply Chain Solutions, FedEx Services, Defendants: Susan C. Roney, LEAD ATTORNEY, Nixon Peabody LLP, Buffalo, NY; John W. Campbell, Richard C. Saxton, PRO HAC VICE, Graham Weston Askew, Federal Express Corporation, Memphis, TN.

For U-Haul International, Defendant: Kevin M. Hogan, LEAD ATTORNEY, Phillips Lytle LLP, One Canalside, Buffalo, NY; Eric E. Lynch, PRO HAC VICE, Polsinelli PC, One East Washington, Phoenix, AZ.

For Erie Insurance Company, Defendant: Heath J. Szymczak, LEAD ATTORNEY, Jaeckle Fleischmann & Mugel, LLP, Fleet Bank Building, Buffalo, NY.

Judges: WILLIAM M. [*5] SKRETNY, United States District Judge.

Opinion by: WILLIAM M. SKRETNY

Opinion

DECISION AND ORDER

Relator J. Michael Hayes, who is a practicing attorney, alleges under the False Claims Act, 31 U.S.C. §§ 3729 et seq., that the various named defendants engaged in a nationwide scheme to deprive the United States of payments to which it was entitled under the Medicare Secondary Payer Act, 42 U.S.C. §§ 1395y et seq.

Presently before this Court is the Report and Recommendation of the Honorable Jeremiah J. McCarthy, United States Magistrate Judge (Docket No. 154), recommending that Hayes's amended complaint (Docket 21) be dismissed with prejudice as to him as a sanction for Hayes's violation of Rule 11 of the Federal Rules of Civil Procedure. Hayes and the Fed Ex defendants object to the Report and Recommendation. (Docket Nos. 158, 159, 160.)

Having reviewed the Report and Recommendation *de novo* after considering the objections and the parties' submissions, see 28 U.S.C. § 636(b)(1), this Court concurs with the recommendations contained in the Report and Recommendation. Far from being a simple matter of "grammar issues" (Docket No. 160, p. 42), the record reflects that Hayes's conduct in the pleading and prosecution of this matter warrants the Rule 11 sanctions that Judge McCarthy recommends. Despite numerous safe-harbor opportunities, Hayes [*6] steadfastly adhered to his disproven allegations that he had personal knowledge that all defendants were engaged in a nationwide scheme to defraud the United States by failing to reimburse Medicare whenever they settled liability claims with a Medicare beneficiary. As Judge McCarthy noted, Hayes's own submissions and statements before the court demonstrate that he does not possess such personal knowledge. (See, e.g., Docket No. 154, p. 11.) Moreover, Hayes's objections, though long on ad hominem attacks, do not persuasively rebut the findings of fact or governing law underlying Judge McCarthy's Rule 11 findings. Hayes's objections are therefore denied and his amended complaint will be dismissed with prejudice as to him, for the reasons set forth in the Report and Recommendation.

The Fed Ex defendants' objections are also denied. The Fed Ex defendants' object to Judge McCarthy's determination that no monetary sanctions be imposed in light of the recommendation that the case be dismissed with prejudice

as to Hayes. This Court agrees with Judge McCarthy that monetary sanctions, in addition to dismissal, are not warranted. The Fed Ex defendants' objections are therefore denied.

IT HEREBY IS ORDERED, [*7] that the Report and Recommendation (Docket No. 154) is ACCEPTED.

FURTHER, that the Objections (Docket Nos. 158, 159, 160) are DENIED.

FURTHER, that the Motion for Rule 11 Sanctions (Docket No. 86) is GRANTED.

FURTHER, that the Relator's Amended Complaint is DISMISSED WITH PREJUDICE as to Relator Hayes, but without prejudice to the United States.

FURTHER, that the Clerk of Court is directed to CLOSE this case.

SO ORDERED.

Date: February 6, 2016

Buffalo, New York

/s/ William M. Skretny

WILLIAM M. SKRETNY

United States District Judge