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August 21, 1984

Hon. G. Wix Unthank
Judge, United States District Court
P. O. Box 1139
Pikeville, Kentucky 41501

In Re: Vanover v. Specialty Underwriters Agency, Inc., et al
No. 83-333

Dear Judge Unthank:

I am in receipt of a letter from Scott P. Whonsetler dated August 17, 1984, copy of which is enclosed.

This letter is presumptuous, arrogant in tone, and further evidence of bad faith of the attorney representing the defendants in this case.

I am, on today, filing a motion to be relieved from further compliance with the Court's standing order with respect to disclosure of witnesses and the substance of their testimony, for the reason that the defendants' counsel has wholly failed to comply with the letter and spirit of the Court's standing order.

Prior to August 3, 1984, when this case was initially assigned for pretrial conference, and at which time the attorneys for the parties were under the manifest duty of supplying their adversary with a list of witnesses, by name, together with the substance of the testimony proposed to be given by such witnesses, I had fully complied with both the letter and spirit of that order.

Mr. Whonsetler appeared at the pretrial conference, and on that morning, filed some sort of pretrial compliance statement. He listed only three witnesses by name and contented himself with some generalities as to what two of the witnesses would say.

On that date, the Court entered an order directing him to supply me with material which he represented was in his files at that time supporting his pretrial compliance statement. The plain truth of the matter is that on the following Thursday, August 9, 1984, late in the afternoon, I received a copy of a report from the witness, Donald P. Yuellig, and the only other information was that the witness Sherman Wenrick was in the hospital. There was also included an affidavit from a Kathy Wiggins. Mr. Wenrick apparently had taken statements from an undisclosed number of witnesses, but none of this material was sent then or subsequent. All of this material was dated subsequent to August 3, 1984. That simply means that Mr.

Judge G. Wix Unthank
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Whonsetler did not have it in his files at the time he made representations to the Court, and to me, on August 3, 1984.

He now accuses me, by letter, of harassing one of his witnesses, Mr. Haskell Hall. As an officer of this Court, I aver that early on I undertook to interview Mr. Hall, and he told me that he declined to make any statement in this case but did give me a copy of a report he had filled out in connection with this fire.

Based on Mr. Whonsetler's representations as to what Mr. Hall would say, I did undertake to contact Mr. Hall to ascertain whether he had, in fact, made the statements attributed to him by Mr. Whonsetler. Mr. Hall advised me that some of the statements attributed to him were not and are not correct.

Apparently Mr. Whonsetler has somewhere in his files a report of Mr. Wenrick as to a recorded statement made by Mr. Hall at sometime in the past. I have not been favored with a copy of that statement, or the statement of any other witness taken by Mr. Wenrick in his investigation, an investigation which commenced more than 5 months after this fire I might note.

I resent Mr. Whonsetler undertaking to lecture me with respect to my preparation of this case. Unless ordered by this Court, I will continue to undertake to ascertain the truth of statements made by Mr. Whonsetler since I have absolutely no confidence in any representation made by him.

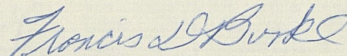
I would welcome an opportunity to appear before Your Honor with respect to the question of my good faith and Mr. Whonsetler's good faith.

While the plaintiff desperately needs an early resolution of this matter, it is now apparent that Mr. Whonsetler, by his contemptuous and arrogant failure to comply with either the letter or the spirit of the standing order with respect to pretrial conferences, has made it impossible for this matter to be handled by summary jury procedures. It would be unfair and unjust to require me to enter into a summary jury procedure when I had made a complete disclosure of every bit of evidence that I have, while Mr. Whonsetler continues to hide and obfuscate the names of witnesses, and the substance of their testimony.

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It is with regret that I have to address this communication to the Court, but I do not intend to allow Mr. Whonsetler to lecture me about my preparation of my case. The bad faith of the defendants themselves is merely being continued by the desperate efforts of Mr. Whonsetler in this matter.

Very truly yours,


FRANCIS D. BURKE

FDB/kaye

CC: Mr. Scott P. Whonsetler
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August 17, 1984

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*KY & IN
**IN

Mr. Francis D. Burke
Attorney at Law
P.O. Drawer 511
Pikeville, Kentucky 41501

Re: B.H. Vanover, et al vs.
Specialty Underwriters Agency, Inc., et al

Dear Francis:

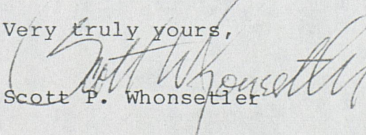
I have this day spoken with Mr. Haskel Hall, who has agreed to give a deposition in this case. However, his mother is at this time critically ill, and I have promised not to bother him until the first week in September, at which time we will arrange a convenient date to take his deposition.

I have also been told by Mr. Hall that you and your client have made repeated attempts to take his statement in this matter, which he has refused to give and considers your continued efforts harassing. While Mr. Hall is not my expert witness, but rather an independent one, I nevertheless feel obliged from a moral and ethical standpoint to request that you cease these pressures on Mr. Hall to give a statement in light of his refusal to give one and the current personal problems confronting Mr. Hall.

Certainly, should I hear of any further pressures having been applied to Mr. Hall by either you or your client concerning the giving of his statement, I will feel compelled to file the appropriate sanction before the Court.

I should hope that that would not be necessary.

Very truly yours,


Scott P. Whonsetler

jh

TO: Judge
FROM: Donald
DATE: 3-8-84
RE: 83-333
B. H. Vanover and Vanover Tire Store, Inc., v.
Specialty Underwriters Agency, Inc., et al.

PC, Friday, 3-9-84, at 9:30

Synopsis: This is a breach of contract action against the insurance companies for failure to pay the insured plff for damages resulting the the plff's business due to a fire. It seems that the plff purchased the contract of insurance on February 18, 1983, and a fire loss occurred on March 29, 1983.

It seems that the insurance company was conducting an investigation of the fire claim at the time plff filed suit for \$500,000.

Pending Motions:

1. The def., Specialty Underwriters Agency, Inc., an Ohio corp., has moved to dismiss this action on the grounds that plff sued the wrong defendant. It seems that plff should have sued Specialty Underwriters Agency, Inc., a Ky. corp. The Ohio def. alleges that it has absolutely no contact with the plff in this insurance transaction; that the Ky. corp. is the party with whom plff dealt, and that this action should be dismissed because when the correct insurance company is made a def. herein, diversity is destroyed.

The motion to dismiss is supported by the affidavits of John C. Dougherty and Kathy Wiggins.

They ^{almost} convinced me that plff sued the wrong def. ins. co.

Comments:

1. At the time the defendants submitted their answers to the complaint, they were untimely, so they were TENDERED, as opposed to being FILED. Ultimately, this action was set for the PC, and at that time, the answers should have been FILED; however, they have never been filed and are marked "Tendered" on November 14, 1983. Therefore, it seems that they should be FILED now.
2. On second thought, the Ohio Specialty Underwriters Agency may have waived its right to assert the defense.