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| DISTRICT COURT, ADAMS COUNTY, COLORADO1100 Judicial Center Drive, Brighton, CO 80601 | DATE FILED: February 6, 2017 4:5 FILING ID: A2840CCB49164 CASE NUMBER: 2015CV31808 |
| **PLAINTIFF: AMERICAN FAMILY MUTUAL INSURANCE COMPANY, AS SUBROGEE OF KATHRYN WINDT** |
| **V.** |  |
| **DEFENDANTS: IVONNE BECERRIL & AURELIO MEZA-CUEVAS** | * COURT USE ONLY 
 |
| **&** |  |
| **DEFENDANTS:/THIRD PARTY PLAINTIFFS: IVONNE BECERRIL & AURELIO MEZA-CUEVAS** |  |
| **V.** |  |
| **THIRD PARTY DEFENDANT/COUNTERCLAIMANT: KATHRYN WINDT** |  |
| Name: **THE LAW FIRM OF STEPHEN H. COOK, P.C.**Address: 2590 Trailridge Drive East, Suite 202 Lafayette, Colorado 80026Telephone: 303-543-1000Facsimile: 303-543-8582Atty. Reg#: Stephen H. Cook: 6692 | Case No. 2015CV31808Ctrm: |
| **KATHRYN WINDT’S RESPONSE IN OPPOSITION TO DEFENDANTS’ MOTION TO COMPEL PARTICIPATION IN MEDIATION** |

Kathryn Windt responds to Defendants’ motion to compel her to participate in mediation as follows:

1. Generally, negotiations are not to be shared with trial court. Nonetheless, Defendant has described to the Court its version of negotiations in this case. It fails to accurately or fully disclose them.
2. Mediations at Judicial Arbiter Group generally run a couple thousand dollars or more. Once the background of this case is understood, it is apparent that a mediation would serve no purpose, and only serve to deplete Mrs. Windt’s minimal recovery should she accept the non-negotiable offer from Defendants.
3. The insurance carrier for Defendants is Occidental Insurance. The insurance policy limits available for resolution of Mrs. Windt’s injuries is $25,000. Mrs. Windt has over

$45,000 in medical expenses and income loss, in addition to general damages for non- economic loss, including shoulder surgery.

1. The insurance carrier will never offer anything more than its policy limits.
2. Indeed, this case has been pending for 14 months. The insurance carrier for the Defendants did not even agree to offer the policy limits until January 23, 2017.
3. The only decision for Mrs. Windt is this: either she takes the policy limits offer which woefully undercompensates her for her injuries, or she takes her case to trial. As the insurance company knows, she has made the choice to take her case to trial.
4. Mediations take roughly a day of preparation, and then roughly a day to attend. Justice Neighbors charges $420.00/hour for preparing for and conducting a mediation. Bills for the organization where he works, Judicial Arbiter Group, generally run a couple thousand of dollars or more for a mediation.
5. Insurance defense counsel is paid by the hour, and gets to charge for preparation and attendance of the mediation. Not so for Mrs. Windt. She would have to take the day off work to attend the mediation: she is school bus driver and works for an hourly wage. Insurance defense counsel and the mediator would benefit financially from a mediation. Mrs. Windt would not.
6. Defense counsel represents to this court that Mrs. Windt “has yet to respond to Defendants’ offer” of $25,000, the only amount that will ever be offered by the insurance company. Defense counsel fails to disclose to the Court of, for example, this communication by Mrs. Windt’s counsel:

“Since Occidental has now offered the policy limits of $25,000 the only decision for her is whether to accept it or not. There is no purpose for mediation, or for her to pay the cost and time associated with it. Am I missing something?”

*See, Exhibit 1, Email January 25, 2017 at 7:06 pm.*

1. When defense counsel insisted that he nonetheless wanted to schedule a mediation, again Mrs. Windt responded:

“Certainly, mediation often serves a purpose, but there are occasions where it only results in expense (typically thousands of dollars anymore); wasted time, and sometimes thereafter, frustration. As I recall Mrs. Windt has special damages in the range of $45,000. With the cell phone use [by defendant while she was driving] the liability case is aggravated. [Mrs. Windt] has the choice of accepting the $25,000 Occidental has offered, or going to trial . . . And if you have some other proposal, we can communicate directly without the expense of a mediator. Just send it and let me know. Thanks.”

*Id, Email of Friday January 27, 2015 at 3:59 pm.*

1. Defense counsel has chosen not to communicate any other proposal then the policy limits, nor will Occidental ever do so.
2. There is no meaningful basis for requiring Mrs. Windt to pay for a mediation. She should not be compelled to spend thousands of dollars, and lose income at work, at the purposeless whim of an insurance company for the defendants.
3. Defendant cites no statutory authority or case law in support of its contention that the Court may compel Mrs. Windt to attend a mediation that the insurance company wants (and can easily afford). It causes her to incur expense for no purpose.

Wherefore, Mrs. Windt requests that this Court deny defendants’ Motion to force her to participate in a mediation which will serve no purpose, and which will not change anyone’s position in this matter, and will serve no purpose other than to generate billing for insurance defense counsel and the mediator and incur expense and lost wages for Mrs. Windt.

Dated: February 6, 2017.

**THE LAW FIRM OF STEPHEN H. COOK, P.C.**

*Original Signature on file at The Law Firm of Stephen H. Cook, P.C.*

By: */s/ Stephen H. Cook*

Stephen H. Cook

Attorney for Kathryn Windt

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served on February 6, 2017 via *CCES* to the following:

Jeffrey Ruebel Katherine Brim Casey Quillen

RUEBEL & QUILLEN, LLC

8501 Turnpike Drive, Suite 106

Westminster, CO 80031

*Signature on file at COOK & PAGANO, P.C.*

*/s/ Ashley Neumann*

Ashley Neumann