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VIA PACER

The Honorable Evelyn Padin, U.S. District Judge
U.S. District Court, District of New Jersey
50 Walnut Street
Newark, New Jersey 07102

RE: Michael Barisone v. Farm Family Casualty Ins. Co., et al.
Docket No. 2:23-cv-02571

Plaintiff's Request For a Pre-Motion Conference & Plaintiff's Response to The Defendants' Requests For Same

Your Honor:

I represent Michael Barisone ("Mr. Barisone") in the above-referenced matter. This letter is being filed for two purposes, namely: (1) To request a pre-motion conference on a motion to remand this matter back to the New Jersey Superior Court; and (2) To respond to the conference-request letters filed by the defendants.

1. Plaintiff's Request For a Pre-Motion Conference.

The matter was removed by defendant Great American Insurance Company of New York ("Great American") on the purported basis of diversity jurisdiction. We believe that removal is, at best, premature because the amount in dispute is unknown as of this time. While it is true that in conversation with one of the defense attorneys I stated that the sum Mr. Barisone incurred for attorney's fees "could be as high as \$400,000," I stated as well that the actual sum was unknown at this time and could be (emphasize "could") far less based upon the matter in which the fees were incurred, and the nature of work being performed.

Mr. Barisone has been provided (to date) attorney services by at least six different law firms, which represented Mr. Barisone in at least four matters, including: (1) Mr. Barisone's successful criminal defense (verdicts of "not guilty" and "not guilty by reason of insanity" rendered in April 2022); (2) Mr. Barisone's defense of civil claims brought against him by Sweet Grass Farm, LLC, the entity in which he was a member that held title to the farm where the shooting occurred (settled in or about 2021); (3) Mr. Barisone's defense and counterclaims against Lauren Kanarek in her civil suit for damages arising from the shooting (case abandoned by her, through dismissal "with prejudice," in or about March 2023); and (4) This declaratory judgment action.

The task of figuring out what fees might be in dispute here is a complex one that will take months to explore. I have commenced the task of requesting billing records from the lawyers involved, but do not yet have those records in my possession. Once I have the records, I must then undertake the pain-staking process of combing through them, with an eye towards the insurance policy language, to start the process of determining what might actually be the dollar amount of Mr. Barisone's claims against the carrier defendants named here.

Therefore, I cannot confirm yet whether the amount in dispute is in excess of \$75,000, the jurisdictional required sum under 28 U.S.C. Section 1332. Accordingly, I am intending to file a motion to remand this matter to the New Jersey Superior Court.

2. Defendants' "Insanity" Issue Concerning a Guardian.

Mr. Barisone was not found "insane" but, rather, was found "not guilty by reason of insanity" for the alleged shooting of Lauren Kanarek, at the time the shooting occurred, on or about August 9, 2019. Mr. Barisone received a flat-out "not guilty" verdict for the charges stemming from shooting at Robert Goodwin which allegedly occurred that day.

Throughout the post-shooting time period, Mr. Barisone has been and remains in charge of his personal affairs. He has never been adjudicated "incompetent" and no one has ever sought to have such an adjudication made against him. Mr. Barisone would oppose any effort to have himself adjudicated incompetent, and/or to have a guardian appointed to oversee his affairs.

Following the Jury Verdict, Mr. Barisone was committed involuntarily to the care of the Ann Klein Psychiatric Hospital in Trenton, New Jersey, as a Krol committee. In or about August 2022, the physicians at Ann Klein determined that Mr. Barisone did not have any form of active mental disease or defect and, in fact, recommended Mr. Barisone's release to the community under supervised care because he did not evidence a danger to himself or others. Mr. Barisone is presently a Krol patient at the Greystone Psychiatric Hospital in Morris Plains, New Jersey, where he has now reach "Level III" status and has been cleared by the New Jersey Superior Court to commence day-passes and limited overnight excursions (at the discretion of Greystone).

Accordingly, Mr. Barisone is not in need of a guardian and any application by the defense to initiate such a proceeding against Mr. Barisone will meet stiff and swift opposition.

3. Defendant Great American's Bid For Early Dismissal.

In Mr. Barisone's criminal trial, the Jury determined that Mr. Barisone was not criminally liable for allegedly shooting at Robert Goodwin. The Morris County Prosecutor's Office failed to prove that a shooting occurred with respect to Mr. Goodwin. Turning to the alleged shooting of Ms. Kanarek, the Jury determined that Mr. Barisone was incapable of forming the intent to commit any wrong against Ms. Kanarek and incapable of being held responsible for having intended or expected to cause her injury, due to Mr. Barisone's temporary insanity that existed at the time of the shooting.

Those irrefutable facts take this dispute into what will be a hotly disputed question, namely, whether the shooting does qualify as an "occurrence" and would be covered by insurance because Mr. Barisone was mentally incapable of controlling his behavior when the incident occurred. From the start of his defense of the civil case brought by Ms. Kanarek, Mr. Barisone contended, as part of his defense, that he lacked the requisite mental state to have committed any intentional tort in connection with the shooting. He contended as well, by way of counterclaim seeking significant monetary damages, that Ms. Kanarek was the root cause of the incident because she intentionally drove Mr. Barisone to the point of having a mental breakdown. Indeed, in apparent anticipation of that reality, Ms. Kanarek included negligence-based claims against Mr. Barisone, in addition to her disproven claim that Mr. Barisone shot her intentionally.

Those facts, claims, and allegations demonstrate that coverage for defense (particularly with respect to the negligence-based claims) does exist because, under New Jersey law as cited Great American, "the accidental nature of an occurrence [of teenagers shooting out someone's eye with a bb gun] is determined by analysis of whether the alleged wrongdoer intended or expected to cause injury", an issue resolved in favor of Mr. Barisone at his criminal trial. See Cumberland Mutual Fire Insurance v. Murphy, 183 N.J. 344, 349 (2005).

Accordingly, we join in the defendants' requests for a pre-motion conference.

Very Truly Yours,
DEININGER & ASSOCIATES, LLP



Christopher L. Deininger, Esq.

cc: All Counsel of Record (Via Pacer)