



LAW NOTES

from the Law Offices of

Kay & Andersen, LLC

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What Every Insurer Should Know

ABOUT COMPLIANCE WITH COURT-ORDERED MEDIATION

In Wisconsin, scheduling orders frequently compel parties to participate in mediation prior to a certain date. A common practice, particularly when the insurance company representative is located out of state, is for the representative to appear by telephone. A recent Wisconsin Court of Appeals decision called that practice into question. In Lee v. Geico Indemnity Company, Appeal No. 2008 AP 3125 (September 29, 2009) (recommended for publication), found at: <http://www.wisbar.org/res/capp/2009/2008ap003125.htm>, the circuit court issued a scheduling order which ordered the parties and their attorneys to participate “in person in the mediation”. The scheduling order noted that failure to comply with the order “shall be considered cause for imposing sanctions.” The plaintiff and her attorney attended the mediation in person. Geico’s counsel attended the mediation in person and had a Geico representative based in Macon, Georgia, with settlement authority available by phone. After the case did not settle in mediation, the plaintiff filed a motion for sanctions against Geico for violating the scheduling order by not having a Geico representative personally appear at the mediation. The circuit court awarded damages and statutory motion costs totaling \$695.70. The Court of Appeals concluded that the circuit court properly exercised its discretion in sanctioning Geico. The Court of Appeals interpreted the circuit court’s requirement of an appearance by the Geico corporate representative as requiring physical appearance. Id., ¶17. The Court of Appeals noted that Geico had been put on notice that failure to comply with the scheduling order could result in sanctions, and that Geico could have asked for permission to appear by phone from the court or sought a stipulation from Lee’s counsel and the

mediator for a telephonic appearance, but did neither. Id., ¶¶21-22. Geico argued that it is a “standard practice” for insurer representatives to appear by telephone and that the cost of travel would be counterproductive to settlement efforts. The Court of Appeals rejected this argument and concluded that the circuit court properly exercised its discretion in deciding to impose a reasonable amount of sanctions against Geico for undermining the authority of the court and placing Geico’s standard practice above the court. Id., ¶¶31-35. Insurance companies should take note of this decision because insurer representatives frequently would prefer to appear by telephone for mediation and other proceedings in the interest of cost savings. This decision does not expressly prohibit such appearances, although the clear message is that insurers intending to appear for proceedings by telephone when a court order requires personal appearance should seek relief from the court or alternatively seek a stipulation with opposing counsel. The failure to do so may subject the insurance company to sanctions, as happened here against Geico. This case serves as a reminder to insurers and their attorneys to carefully review the terms of all court orders to insure full compliance in all proceedings by the insurer.

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