

## STATE OF MICHIGAN

## SIXTEENTH JUDICIAL CIRCUIT COURT

MICHIGAN NEUROLOGY ASSOCIATES, P.C.

Plaintiff/Counter-Defendant,

vs.

Case No. 2016-4048-CB

STEVEN S. BEALL, M.D.,

Defendant/Counter-Plaintiff.

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OPINION AND ORDER

Both sides have filed motions for case evaluation sanctions.

I. Factual and Procedural History

In this matter, both sides rejected the case evaluation award on the counterclaim of \$0.00. Further, both sides rejected the case evaluation award of \$60,000.00 entered in connection with Plaintiff's claims. On January 2, 2019, the Court entered its Opinion and Order following a bench trial finding no cause of action with respect to all of the claims in this case. Both sides then filed motions seeking case evaluation sanctions. On March 18, 2019, the Court entered its Opinion and Order setting an evidentiary hearing on the issue of case evaluation sanctions.

On April 22, 2019, the parties filed a Stipulated Order, which was entered by the Court, stipulating to the reasonableness of the opposing counsel's requested rates, the fact that each side expended 50 hours of time as a result of the opposing party rejecting the case evaluation awards in question, and stating that the only remaining dispute between the parties was how many of each side's 50 hours of billed time was spent in connection with the complaint's claims and how much was expended in connection with

the counterclaims. Both sides subsequently filed briefs on that issue.

On April 2, 2020, the Michigan Court of Appeals entered its decision affirming this Court's findings of no cause of action as to both parties' claims.

The Court will now address the amount of case evaluation sanctions, if any, each side is entitled to from the opposing party.

## II. Arguments and Analysis

Case evaluation sanctions are governed by MCR 2.403(O), which provides:

- (O) Rejecting Party's Liability for Costs.
  - (1) If a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation. However, if the opposing party has also rejected the evaluation, a party is entitled to costs only if the verdict is more favorable to that party than the case evaluation.
  - (2) For the purpose of this rule "verdict" includes,
    - (a) a jury verdict,
    - (b) a judgment by the court after a nonjury trial,
    - (c) a judgment entered as a result of a ruling on a motion after rejection of the case evaluation.

In this case, both sides concede that the opposing party is entitled to case evaluation sanctions; Plaintiff with respect to Defendant's rejection of the case evaluation award as it relates to the counterclaim, and Defendant with regards to Plaintiff's rejection as it relates to its claims against Defendant. (See Defendant's Exhibits E and F.)

The burden of proving fees rests upon the claimant of those fees. *Petterman v Haverhill Farms, Inc.*, 125 Mich App 30, 33; 335 NW2d 710 (1983). In this matter, while

each side has stipulated that the other billed 50 hours of attorney fees after the rejected of case evaluation, the Court is convinced that neither has established how many of those hours were spent in connection with defending against the other party's claims as opposed to prosecuting their own claims. Defendant's brief simply states that all of the time expended was spent defending against the complaint rather than in furtherance of its counterclaims. However, Defendant provides no proof in support of its position.

In its brief, Plaintiff maintains that its direct claims and Defendant's counterclaims are intertwined and that there is no scientific way to allocate the hours. As a result, Plaintiff suggests that half of the hours be allocated to each. However, like Defendant, there is no evidentiary proof submitted to support Plaintiff's position. Based on the fact that neither side has established how many hours were spent defending the other side's claims, the Court is convinced that both parties' requests for case evaluation sanctions must be denied.

Moreover, even if the Court were to determine that the parties claims were so intertwined as to conclude that the amount of time spent is properly split 50/50 between the two categories of claims, the Court is satisfied that neither side would be entitled to case evaluation sanctions. While the parties stipulated that a reasonable rate for Defendant's counsel was \$350.00 per hour and that a reasonable rate for plaintiff's counsel is \$250.00 per hour, the Court is satisfied that both sides' counsel performed equally and that awarding one side a higher hourly rate of case evaluation sanctions would be improper. Consequently, even if the Court were to award case evaluation sanctions, the Court would find each side's counsel is entitled to the same reasonable hourly rate. Therefore, if the claims were intertwined to an extent that the hours were to

be allocated evenly between the complaint's claims and the counterclaims, the case evaluation sanctions would cancel each other out and neither side would be entitled to recover anything.

### III. Conclusion

Based upon the reasons set forth above, the parties' requests for case evaluation sanctions are DENIED. This matter REMAINS CLOSED.

IT IS SO ORDERED.

Date: \_\_\_\_\_



*Kathryn A. Viviano*

signed by KATHRYN VIVIANO 08/11/2020 03:29:23 rsqKRods

**Hon. Kathryn A. Viviano, Circuit Court Judge**