

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT, IN AND
FOR NASSAU COUNTY, FLORIDA

CASE NO.: 2022-CA-296
DIVISION: A

JOHN DUNMAN and COURTNEY
DUNMAN,

Plaintiff,

v.

UNIVERSAL PROPERTY & CASUALTY
INSURANCE COMPANY, a Florida profit
corporation,

Defendant.

_____ /

SECOND ORDER IMPOSING SANCTIONS

Yet again Universal Property & Casualty Insurance Company continues to show nothing short of willful contempt to opposing counsel and this Court by blatantly defying a court order that resulted from three separate instances of discovery misconduct.

What the first Order Imposing Sanctions lacked in subtlety, it made up for in unmistakable clarity. Universal was required to take certain actions including requiring it to “revise its discovery responses to **remove all objections** and disclose all non-privileged information within 10 days of the date of the hearing.” (emphasis added).

Based on Plaintiff’s filings with the Court, it appears Universal provided amended responses but did not file them with the Clerk. Looking at the amended interrogatory responses, Universal still lodged objections to 4 of the 12 interrogatories. These responses contained a qualified answer subject to the objections. Regardless of whether this is improper (it is), the Order

Imposing Sanctions found that all objections other than privilege were waived and had to be removed.

Turning to the requests for production, Universal lodged objection without any qualified answer to 2 of the 13 requests – both aimed at financial bias of Universal’s retained expert witnesses.

At the hearing on this matter, Universal’s counsel displayed a disturbing lack of candor to the Court. There was a court reporter and the Court will defer to that transcript, but the Court asked Mr. Perez about whether Universal had the information on what payments were made to expert witnesses. Mr. Perez stated that he did not have that information. Only after the Court asked again and cautioned him to be very careful with his answer did he admit that Universal did, indeed, have that information.

The Order Imposing Sanctions was also clear on what would happen if this discovery gamesmanship continued. First, “if there [was] a single piece of requested discovery not provided on this expert, the witness will be stricken as a sanction for the ongoing pattern of discovery misconduct.” Second, after employing a *Kozel* analysis, the Court cautioned that “[a]ny further discovery misconduct by Universal, however slight, will result in the full weight of *Kozel* sanctions being imposed.”

Accordingly, based on the prior *Kozel* analysis and this Order, Universal’s pleadings are hereby **STRICKEN** and a default as to liability is entered against Universal. Trial will proceed solely on the matter of damages. During that trial, Universal’s expert witnesses are stricken as a sanction for willful discovery misconduct.

But further sanctions are (again) warranted. This is now, without a doubt, the most egregious act of willfully defying court orders and professional obligations that the Court has seen in its tenure.

First, a copy of this Order (attaching and incorporating the first Order Imposing Sanctions) is being sent to the Florida Bar and will constitute a referral and formal complaint to the Florida Bar against P. Alejandro Perez (FBN 1016189) for all of the professional misconduct outlined in both orders. The Court will defer to the Bar's analysis, but it appears that at a minimum Mr. Perez has willfully violated Rule 4-3.4(a) ("unlawfully obstruct another party's access to evidence"), (c) ("knowingly disobey an obligation – the first Order Imposing Sanctions – under the rules of a tribunal) and (d) ("intentionally fail to comply with a legally proper discovery request by an opposing party").

Next, Mr. Perez along with Universal's General Counsel with ultimate decision-making authority over the company's entire legal department shall appear **in person** to provide testimony as the Court considers appropriate non-monetary sanctions. That hearing will occur on December 20, 2023 at 1:30 p.m. at the Robert M. Foster Justice Center, Courtroom A, 76347 Veterans Way, Yulee, Florida 32097.

At the hearing, the Court will take testimony as to (i) all actions performed by Mr. Perez to obtain the information required to be disclosed by the Order Imposing Sanctions; (ii) Universal's policies and procedures for responding to discovery requests; (iii) Universal's staffing of litigation matters, including supervision of attorneys; (iv) Universal's record keeping on payments made to expert witnesses in litigation and in-house counsel's ability to access that information; (v) Universal's policies and procedures on corporate representatives and their availability for deposition testimony; (vi) all actions taken by Universal on the discovery requests that led to the

Order Imposing Sanctions from receipt of the requests through the filing of the amended discovery responses; (vii) all training or continuing education provided to Universal's in-house attorneys on responding to discovery requests; and (viii) all training or continuing education provided to Universal's in-house attorneys on corporate representative depositions.

If there is not a formal policy or procedure in place for the categories requested, the witness shall be fully prepared to testify to Universal's practice in handling those topics. To the extent that Mr. Perez or Universal's General Counsel cannot provide full, complete, and candid responses to each category of testimony outlined above, Universal shall have all witnesses necessary to do that in person at the December 20, 2023 hearing.

DONE and **ORDERED** in Chambers, at Nassau County, Florida this 17th day of November, 2023.



ERIC C. ROBERSON
CIRCUIT JUDGE

Copies to:

counsel of record via electronic filing
The Florida Bar c/o Shanell Schuyler (sschuyler@floridabar.org)

Exhibit A

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ORDER IMPOSING SANCTIONS

For the third time Plaintiffs have required the Court's intervention to overcome Defendant Universal Property & Casualty Insurance Company's blatant discovery stonewalling. The two prior times apparently did not get the message through that discovery gamesmanship will not be tolerated in this Court.

First, Universal claimed that its corporate representative was not available for deposition for nearly an entire year. In addition to compelling the deposition, Universal had to pay Plaintiffs' attorney fees and costs. Second, Universal simply ignored repeated requests by the Plaintiffs seeking the deposition of certain fact witnesses. That, again, cost Universal the amount of Plaintiffs' attorney fees and costs.

Unphased by those two Orders, Universal again completely ignored discovery requests until the last minutes before it was required to answer for its conduct. Even then, the long overdue discovery responses were filled with objections that had long been waived.

Plaintiffs served their discovery requests on July 12, 2023. The time to respond, August 11, 2023, came and went. Plaintiffs diligently followed up and sought to obtain the discovery without Court intervention. Why would Universal be bothered with such trivial things as responding to discovery – with their expert’s deposition approaching – if all it expects to cost is the amount of Plaintiffs’ fees and costs? It was not until 5:49 p.m. on the evening before a 9:45 a.m. hearing that Universal decided to respond to discovery.

Defendant’s purported excuse only made things worse. Universal’s attorney blamed his office staff for the discovery not being timely filed. The Court will not entertain that excuse in the slightest. It is counsel – with his privileges granted by being a member of the Florida Bar – who is ultimately and absolutely responsible for what occurs on his client’s behalf.

Plaintiff’s Motion to Compel is **GRANTED**. Yet again, Universal will pay Plaintiffs’ reasonable fees and costs and the Court will hold an evidentiary hearing if the parties cannot agree on an amount. But additional sanctions are warranted and, frankly, necessary to take the next step in assuring that this discovery misconduct is discouraged in the strongest terms.

First, Defendant will revise its discovery responses to remove all objections and disclose all non-privileged information within 10 days of the date of the hearing. Should there be any claim of privilege, Defendant will contemporaneously provide a privilege log as well as all documents being withheld for *in camera* inspection.

Plaintiffs are also entitled to re-depose Universal’s expert within 30 days. All costs associated with the deposition, including Plaintiffs’ attorney fees and costs, shall be paid by Universal. As the Court cautioned counsel at the hearing – if there is a single piece of requested discovery not provided on this expert, the witness will be stricken as a sanction for the ongoing pattern of discovery misconduct.

The Court finds in the strongest terms that as a matter of fact, law, common-sense, and any other category in which the Court can make a finding, that Universal has engaged in an on-going course of discovery misconduct that is being done in **bad faith** and **without any justification whatsoever**. The Court will impose a sanction intended to address the misconduct.

Universal's discovery responses were due on August 11, 2023. Universal willfully ignored these discovery responses (this is a finding of the Court) until after-hours on October 25, 2023. That is 75 days of bad-faith conduct. The Court will impose a *per diem* fine in the amount of \$100 dollars per day for a total amount of \$7,500.00. The sanction shall be paid to the Nassau County Bar Association, c/o Brett Steger, President, 1869 S. 8th Street, Fernandina Beach, FL 32034 within 20 days of this Order. The funds shall be used to promote professionalism initiatives or continuing legal education events.

The Court acknowledges that this is a large amount. But this is the **third time** the Court has had to sanction Universal for bad-faith discovery conduct. Moreover, in the Court's tenure on the civil bench, this case sticks out as one of the most egregious cases of willfully ignoring discovery and waiting until the Court can make hearing time until any action occurs. This is simply unacceptable and will not be condoned in this circuit.

The Court has also considered the factors in *Kozel v. Ostendorf*, 629 So. 2d 817 (Fla. 1993). The Court easily finds that this conduct is willful and deliberate rather than mere neglect. Universal's counsel has been previously sanctioned for identical discovery misconduct. Universal's counsel is not an outside law firm. He works directly for Universal. Therefore, the client by necessity was involved in the misconduct. The delay has prejudiced Plaintiffs' counsel by having to draft multiple good-faith letters and motions to compel. Plaintiffs will also have to expend the time to re-depose Universal's expert. Plaintiffs planned properly and professionally to

prepare their case for trial. Now, Plaintiffs must scramble to re-depose the expert once given discovery that Universal wrongfully withheld. Further, there was absolutely no reasonable, justifiable, or good-faith reason offered by Universal for this pattern of misconduct. Finally, the Court must keep making time to tell Universal to comply with its professional obligations. Then the Court has to draft this Order when Universal continues its bad-faith conduct after two prior sanctions. This time could be spent helping to resolve *bona fide* disputes in other cases instead of continually sanctioning Universal.

The Court would be well within its discretion to strike Universal's pleadings and enter a default right now. But given the sanctions set forth above, the Court will withhold more extreme sanctions. Any further discovery misconduct by Universal, however slight, will result in the full weight of *Kozel* sanctions being imposed.

DONE and ORDERED in Chambers, at Nassau County, Florida this 31st day of October, 2023.



ERIC C. ROBERSON
CIRCUIT JUDGE

Copies to counsel of record via electronic filing