

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CITY OF ROCKY RIVER, et al

FILED

CASE NO. 07 CV 630510

Plaintiffs

2010 FEB 19

JUDGE CAROLYN B. FRIEDLAND

-vs-

GERALD E. UERST
CLERK OF COURTS
CUYAHOGA COUNTY

CITY OF LAKEWOOD, et al

MOTION TO STRIKE PLAINTIFF'S
PRETRIAL STATEMENT

Defendants

Now come the Defendant, City of Lakewood, and moves this Court to Strike Plaintiff's unrequested pretrial statement or portions of the pretrial statement referring to settlement negotiations. Plaintiff filed a fifteen (15) page pretrial statement that is factually inaccurate and divulges alleged confidential, privileged discussions made during settlement negotiations. Plaintiff drafted this pretrial statement while the parties were supposed to be engaged in settlement negotiations. Settlement negotiations appeared to be fruitful and nearing resolution; however, after reading counsel's pretrial statement, it would appear that the agreed upon settlement proposal has been rejected. Defendant requests that the Plaintiff's Pretrial Statement be stricken; alternatively, defendant requests that the recitations of Plaintiff's Pretrial Statement regarding settlement negotiations be stricken. This motion is based upon the attached memorandum.

Respectfully submitted,

NORA HURLEY
Director of Law

By: Scott Claussen
Scott D. Claussen (0074465)
Assistant Law Director
12650 Detroit Avenue
Lakewood, Ohio 44107
(216) 529-6030
Attorney for City of Lakewood

MEMORANDUM OF LAW

Defendant requests that the Plaintiff's pretrial statement, or at least portions of, be stricken from the record pursuant to Civ.R. 12. Federal Courts have established "a privilege" in settlement negotiations. *Goodyear Tire and Rubber Co. v. Chiles Power Supply Inc.* (2003) 332 F.3d 976. "There exists a strong public interest in favor of secrecy of matters discussed by parties during settlement negotiations...Without a privilege, parties would more often forego negotiations for the relative formality of trial. Then, the entire negotiation process collapses upon itself, and the judicial efficiency it fosters is lost." *Id.* at 980. Although the rationale used in support of this position was based on Federal Rules of Evidence section 408 and 501, the Ohio Rules mirror the Federal Rules cited. Plaintiff filed a pretrial statement that incorporated alleged settlement discussions that are confidential and privileged. Settlement negotiations are privileged and it is unprofessional to set forth the details of the communications, either accurately or inaccurately, in a public document filed with the Court; especially, when trial counsel was not present during the cited settlement discussions.

Defendant mailed a settlement proposal to the City of Rocky River on January 26, 2010, which was consistent with prior settlement discussions. In response, the Plaintiff filed this pretrial statement. Due to the inaccuracies of the pretrial statement and the fact that privileged communications were divulged, the City of Lakewood is hesitant to continue settlement negotiations, which were once fruitful. The Defendant requests that this Court strike Plaintiff's pretrial motion pursuant to Civ.R. 12. Alternatively, the City of Lakewood prays that paragraphs 5, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of Plaintiff's Section X "Settlement Discussions" be stricken due to the fact that these specific discussions were privileged, confidential and inaccurately presented in the pretrial statement.

Despite the surprise of opposing counsel's allegations that the City of Lakewood has somehow thwarted settlement, when in fact we have been the party gathering proposals for the

settlement options, we remain willing and hopeful that an agreement can be reached between the parties.

Respectfully submitted,

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SERVICE

A copy of the foregoing Motion was mailed to the following on the 19 day of

February, 2009:

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