

DEPOSITION OF JOHN A. BELL

JANUARY 12, 2010

VOLUME 1

IN THE TENNESSEE COURT OF THE JUDICIARY

FILED
FEB 02 2010
Clerk of the Courts

IN RE: THE HONORABLE JOHN A. BELL	:	
JUDGE, GENERAL SESSIONS COURT	:	Docket No.
COCKE COUNTY, TENNESSEE	:	M2009-02115-
	:	CJ-CJ-CJ
	:	
	:	
	:	
	:	
	:	
COMPLAINT OF DAVID PLEAU	:	File No.
	:	08-3508

APPEARANCES:

FOR JOHN A. BELL:

William Gordon Ball, Esq.
Allen W. McDonald, Esq.
Ball & Scott
550 Main Street, Suite 601
Knoxville, Tennessee 37902

FOR THE TENNESSEE COURT OF THE JUDICIARY:

Patrick J. McHale, Esq.
J.S. "Steve" Daniel, Esq.
Disciplinary Counsel
The Tennessee Court of the Judiciary
503 North Maple Street
Murfreesboro, Tennessee 37130

ALSO PRESENT:

James T. LaRue

**REPRINTED
ORIGINAL**

I N D E X

Page No.

Examination,
by Mr. McHale -----4

E X H I B I T S

Exhibit No. 1,
Motion to Dismiss -----53

Exhibit No. 2,
Copy of civil warrant -----55

Exhibit No. 3,
Copy of order -----68

Exhibit No. 4,
Initial complaint of David Pleau -----87

Exhibit No. 5,
Copy of Judge Bell's initial response to
the complaint of David Pleau, with cover
letter attached -----89

S T I P U L A T I O N

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

The deposition of JOHN A. BELL, called as a witness, pursuant to all applicable rules, taken by agreement on the 12th day of January, 2010, beginning at approximately 2:00 p.m., at the Law Offices of Ball & Scott, 550 Main Street, Suite 601, Knoxville, Tennessee, before Andrea McBee, Court Reporter and Notary Public, pursuant to stipulation of counsel.

It being agreed that Andrea McBee, Court Reporter and Notary Public, may report the deposition in machine shorthand, afterwards reducing the same to typewriting.

All objections, except as to the form of the question, are reserved to on or before the hearing.

It being further agreed that all formalities as to notice, caption, certificate, transmission, etc., excluding the reading of the completed deposition by the witness and the signature of the witness, are waived.

1 JOHN A. BELL,
2 called as a witness, having been first duly sworn, was
3 examined and deposed as follows:

4 EXAMINATION

5 BY MR. MCHALE:

6 Q. Could you state your name for the record,
7 please?

8 A. John, and I use the middle initial A, the
9 last name, Bell.

10 Q. And are you the John Bell involved in the
11 pending Court of the Judiciary matter involving the
12 original complaint of David Pleau?

13 A. Yes.

14 Q. Are you represented by counsel here today?

15 A. Yes.

16 Q. And is Mr. Ball your counsel?

17 A. Here today, yes.

18 Q. How long has he been your counsel in this
19 matter?

20 A. I don't know.

21 Q. Do you know when the attorney/client
22 relationship was developed between you and Mr. Ball in
23 this matter?

24 A. I don't know the date, no.

25 Q. Do you have any records to that effect?

1 A. No.

2 Q. Are you testifying from some notes here
3 today?

4 A. I do have some things in front of me
5 today.

6 Q. Okay. Will you tell me when you are
7 testifying by your recollection and when you are using
8 notes?

9 A. Yes.

10 Q. Thank you.

11 MR. BALL: Excuse me, counsel. If it
12 matters or if it's somehow relevant as to when I
13 began my representation in this matter, it was after
14 you brought the charges.

15 MR. MCHALE: Then you would be willing to
16 stipulate to that?

17 MR. BALL: In this matter?

18 MR. MCHALE: Yes, sir.

19 MR. BALL: Yes, I will.

20 BY MR. MCHALE:

21 Q. Judge Bell, we're here to get some factual
22 information as you know it, so I want to make sure we
23 communicate, and if I do not ask a question that is
24 understandable to you, please ask me to repeat it or
25 restate it so that it is understandable; is that

1 agreeable?

2 A. Yes.

3 Q. I'm going to use and rely upon your
4 deposition in later matters pertaining to this case, and
5 therefore it's important that we communicate accurately
6 and that what this young lady types down is based on your
7 understanding of the question. Are you agreeable with
8 that process?

9 A. Yes.

10 Q. Are you waiving your signature to the
11 deposition here today, or do you wish to exercise your
12 right to sign this deposition for its accuracy?

13 MR. BALL: We want to sign.

14 THE WITNESS: Yes, I want to sign.

15 MR. MCHALE: All right.

16 BY MR. MCHALE:

17 Q. If you remember something during the
18 course of the deposition that you want to, that causes you
19 to want to change an earlier answer, will you please also
20 do that?

21 A. Okay.

22 Q. And you understand that you're under oath
23 and the court reporter is taking down everything you say,
24 and that you need to continue, as you have been doing,
25 verbalizing your answer; is that right?

1 A. Yes.

2 Q. Breaks are okay, if you need one for any
3 reason; please don't ask to take one, however, in the
4 middle of a question; is that all right?

5 A. Okay.

6 Q. Continue to speak verbally and say yes or
7 no as opposed to nodding of the head or grunts that do not
8 specify yes or no; is that all right?

9 A. Yes.

10 Q. Are you under any medication or substances
11 that would inhibit your ability to understand any
12 questions that I ask here today?

13 A. No.

14 Q. Are you confronting any issues that are
15 occupying you that would limit your ability to focus on
16 what we're doing here today?

17 A. No.

18 Q. If you answer a question, and one of the
19 reasons I asked if you understood it, I'm going to assume
20 that you understood and that your answer is truthful;
21 would that be a fair assumption?

22 A. Yes.

23 Q. And you will take the responsibility,
24 either now or when you sign the deposition, to make those
25 changes?

1 A. Yes.

2 Q. You understand what the meaning of the
3 oath is; is that correct?

4 A. Oh, yes.

5 Q. Do you have any question about what's
6 occurring?

7 A. No, sir.

8 Q. Have you ever given a deposition as a
9 witness before?

10 A. I don't remember whether we did in the
11 other case or not.

12 Q. Other than perhaps in the -- and by other
13 case, do you mean the Court of the Judiciary case that
14 began trial --

15 A. Yes.

16 Q. -- back in 2008?

17 A. Yes.

18 Q. Other than that, have you ever given a
19 deposition as a witness before?

20 A. Not to my recollection.

21 Q. Your full name is John Alton Bell. You
22 live at 1209 Piney Mountain Road in Newport, and your work
23 office is 111 Court Street, Suite 200, in Newport; is that
24 correct? Is all of that correct?

25 A. It's 111 Court Avenue.

1 Q. Okay. Is that the courthouse?

2 A. Yes, it's Cocke County Courthouse.

3 Q. Do you have an office outside the Cocke
4 County Courthouse?

5 A. No.

6 Q. Who do you live with at home?

7 A. My wife and two children.

8 Q. We asked you in some written
9 interrogatories about some telephone numbers. Would you
10 be willing to provide to your attorney your home phone,
11 work phone and cell phone numbers and all such home phone
12 numbers, work phone numbers and cell phone numbers, from
13 2008 to the present, subject to a confidentiality
14 agreement that our office not share that information with
15 anyone?

16 A. I have no problem with doing that. Do you
17 want me to give it to them now?

18 MR. BALL: Either way.

19 MR. MCHALE: Well, you raised the
20 objection in the interrogatories, and I want to
21 respect that --

22 THE WITNESS: I just don't want it
23 published all over the place.

24 MR. MCHALE: And we understand that.

25 MR. BALL: Why don't you just give them to

1 me, and I'll give them to --

2 MR. MCHALE: Yeah, send me a letter. Just
3 send a letter within the next seven days, and those
4 would be all numbers from 2008 to the present, all
5 right?

6 THE WITNESS: Yes.

7 BY MR. MCHALE:

8 Q. You're 51 years old, having been born on
9 December 1st, 1958; is that correct?

10 A. Yes.

11 Q. Where did you go to high school?

12 A. Cosby High School.

13 Q. What city is that?

14 A. It's in Cosby, Tennessee.

15 Q. What county is that?

16 A. Cocke County.

17 Q. Where did you go to college?

18 A. I went to Carson Newman College.

19 Q. Law school?

20 A. Also had some credits from Walters State.

21 I went to law school at Memphis, University of Memphis.

22 Q. What year did you graduate?

23 A. '82.

24 Q. When did you take the bar?

25 A. '83.

1 Q. Did you pass it the first time?

2 A. Yes.

3 Q. What's your BPR number?

4 A. I believe it's 10200.

5 Q. Were you or are you in the military
6 service in any capacity?

7 A. I was. I was out, and I'm back.

8 Q. What branch?

9 A. Both -- do you mean as between the
10 services or --

11 Q. Yes, sir.

12 A. Army Reserve, also Army active duty, also
13 Army National Guard.

14 Q. Do you have a singular service number or
15 several?

16 A. Only a Social Security number.

17 Q. You don't have a service number for the
18 military?

19 A. No.

20 Q. What rank are you currently?

21 A. Lieutenant Colonel.

22 Q. Is that the highest rank you've ever
23 been?

24 A. Yes.

25 Q. Which branch are you with now, or which

1 sub-branch are you with now, the Reserve?

2 A. I'm with the Reserve, yes.

3 Q. How long have you been with the Reserve?

4 A. I have total service over 30 years. I do
5 not know -- I cannot give you the exact dates, because
6 I -- I should say it this way, all of that period of time
7 I had about three years that was National Guard. I had
8 about five years that's been active duty, and primarily
9 the rest of that has been Reserve.

10 Q. Have you ever been discharged from any of
11 these entities?

12 A. Yes.

13 Q. Were all of those honorable?

14 A. Yes.

15 Q. What's your present classification?

16 A. I'm branch qualified armor and branch
17 qualified JAG.

18 Q. Where do you currently serve?

19 A. Nashville, Tennessee.

20 Q. How often, or what's the scope and
21 arrangement of your service right now?

22 A. One weekend a month and then normally two
23 weeks during the year.

24 Q. Have you been deployed overseas?

25 A. Yes.

1 Q. When was the last time?

2 A. September, to Germany.

3 Q. And that was September of 2009 or 2008?

4 A. Both.

5 Q. For how long and what did you do?

6 A. I did legal work, Army contractive work
7 and also Army legal assistance work.

8 Q. Have you ever seen active combat?

9 A. Yes.

10 Q. Where?

11 A. Iraq.

12 Q. When?

13 A. 2003.

14 Q. Any other time?

15 A. No.

16 Q. How long were you over there in 2003?

17 A. I retired from the Army, and I was pulled
18 from retirement and placed on active duty. I went to Fort
19 Campbell in January of 2003. I was to go with the 101st
20 Airborne when they entered country, did not go because of
21 the Akbar case, throwing the hand grenades in on the
22 101st. I stayed back to be the chief of the crim. law
23 division to get that case prosecuted for death penalty
24 through the Article 32 phase, and then I went to Iraq
25 either the last of July, July, August. I couldn't tell

1 you the dates off the top of my head.

2 Q. How long were you actually in Iraq?

3 A. General Petraeus allowed some of us to go
4 home who had, in his eyes, achieved an extreme amount of
5 success, and I was sent home, to arrive home on the night
6 of Christmas Eve, the morning of Christmas Day of 2003,
7 and I stayed on active duty until mid-February.

8 Q. At Fort Campbell?

9 A. With my leave time and at Fort Campbell,
10 yes, sir.

11 Q. Then after that ceased, what was your
12 status, after active duty, which you've just described
13 ceased?

14 A. Well, I had applied for retirement. I was
15 in retirement. They had pulled me out of it, and I have
16 not asked to go back to retirement, and they have not done
17 anything to put me back in retirement, so my status is I'm
18 just continuing as a Reserve officer.

19 Q. So other than the Reserve, you haven't
20 served since 2004, early; is that correct?

21 A. You're talking about on active duty?

22 Q. Yes, sir.

23 A. There is the weeks -- I had two weeks --

24 Q. In Germany and camp and things like that?

25 A. Yes.

1 Q. No combat?

2 A. No.

3 Q. Ever had any honors, awards or
4 commendations in the military?

5 A. Yes, sir.

6 Q. Tell me about those.

7 A. I have essentially every award that you
8 can get up through the Bronze Star. I have three MSMs. I
9 don't know the count of how many ARCOMs I have, five or
10 six. I really don't know. I couldn't tell you off the
11 top of my head.

12 Q. I'm probably the only person on this side
13 of the table who has no idea what you just said. What is
14 an MSM, or what does it stand for?

15 A. It's a Meritorious Service Medal. It is
16 as -- other than a Bronze Star, it is the highest award
17 that can be given to a soldier.

18 Q. What about ARCOM, what does that stand
19 for?

20 A. That's the Army Commendation Medal, which
21 is the one underneath the -- if you're going down in
22 pecking order, it would be the second one down from the
23 Bronze Star.

24 Q. Have you ever gotten a Purple Heart?

25 A. I was in a situation, in multiple

1 situations in Iraq where I was shot at, two mortar
2 rounds. On one occasion I received a cut to my left
3 forehead, and until there was an MRI done, I did not know
4 I had shrapnel from an AK-47 round, in which they
5 determined that to be -- and so I should say it this way,
6 I have gone through the processes of having it recognized
7 by the military as a combat wound. I have not applied for
8 the Purple Heart because I believe that is my command's
9 responsibility to do and not mine.

10 Q. Do you have any physical consequences as a
11 result of that injury?

12 A. Yes.

13 Q. What are those?

14 A. I have a, for lack of a better term, a
15 dead space -- well, you can feel the round here
16 (indicating). When I had the MRI done, it pulled it loose
17 from my forehead. You can feel it here, and so that is
18 there. I have a small scar here (indicating). There is a
19 dead space from trauma where it impacted my left frontal
20 lobe, and I have some PTSD issues.

21 Q. Are you being actively treated for PTSD?

22 A. Yes.

23 Q. For how long have you been so treated?

24 A. I don't know. It has been since -- it's
25 been several years. I've been on continuous treatment for

1 several years. In fact, I have a part procedure tonight.

2 Q. I'm sorry. A what procedure?

3 A. A part procedure, a part of the process.

4 Q. What do you mean by part procedure?

5 A. It's a sleep deprivation test that I
6 already completed one night, and then tonight I have the
7 second part.

8 Q. Is that treatment being administered
9 through the Veterans Administration?

10 A. No.

11 Q. Where is that being done?

12 A. Right here in Knoxville.

13 Q. Is it --

14 A. Well, now, you're talking about the sleep
15 treatment?

16 Q. Yeah, I'm sorry, sir. Yes. The PTSD is
17 what I intended. A poorly phrased question, I apologize.

18 A. Okay. In combination with the local
19 doctor, Dr. Conway, and a doctor here -- I'm trying to
20 think of her name -- Mullins, Dr. Mullins, from here, and
21 then I'm going to the sleep center.

22 Q. What specialties do those two doctors that
23 you've mentioned possess or practice?

24 A. The one is the sleep center; I don't know
25 what hers is, other than she diagnoses and treats sleep

1 problems. The other is neurological. I receive
2 medications that I take that she has prescribed for me,
3 and I receive injections of -- I forget the name of them
4 -- into the sides of my eye.

5 Q. What's the purpose of the injections --

6 A. It is to --

7 Q. -- as you understand it?

8 A. As I understand it, as a result of my
9 injuries, I have twitching on the opposite side of my face
10 from that, and these injections stop the twitching for a
11 period of time.

12 Q. What medications are you taking and what
13 are the purposes of those?

14 A. Nortriptyline.

15 Q. What is that supposed to do, to your
16 understanding?

17 A. It is supposed to assist with the, I
18 guess the best way to describe it, PTS dreams at night.

19 Q. Does the PTSD manifest itself in any
20 fashion other than dreams or at night?

21 A. Other than -- and I don't know if it's
22 related to the twitching.

23 Q. Are you having your current medical
24 treatment relative to the PTSD paid by your private
25 insurance or by the VA?

1 A. Private insurance.

2 Q. And all of that is, unfortunately, and I
3 apologize, a long way around getting to asking you a
4 similar question to what I asked earlier. Does any of
5 this condition or this treatment impair, in your judgment,
6 your cognitive abilities?

7 A. No.

8 Q. Your memory is not affected?

9 A. No.

10 Q. Your verbalization is not affected?

11 A. No.

12 Q. Your ability to sit and practice, being
13 the General Sessions judge is not affected?

14 A. No.

15 Q. No mental issues in the sense of
16 cognitive?

17 A. No.

18 Q. Are you receiving any benefits from the VA
19 of any sort?

20 A. No, I'm still in a troop unit.

21 Q. After you got out of law school, where did
22 you start working?

23 A. I worked as a law clerk before law school,
24 during law school, and then after law school also.

25 Q. For whom?

1 A. I first got a job with a law firm in
2 Newport of Judge Shepard and Gordon Ball.

3 Q. Was that after you passed the bar?

4 A. No, that was within my first year of
5 college.

6 Q. After you passed the bar, where did you
7 start working?

8 A. I was -- I went on active duty with the
9 United States Army.

10 Q. For how long?

11 A. Four years and a day.

12 Q. Where did you serve mostly?

13 A. Mostly out of Fort Knox.

14 Q. Were you legally related in your capacity
15 then?

16 A. Not initially, because they had different
17 schedules as to when they send someone through the JAG
18 school, and I was off schedule because I finished law
19 school early.

20 Q. After you left the Army, where did you
21 begin working?

22 A. You're talking about active duty?

23 Q. Well, actually I intended to ask you
24 after you left the four-year military, where did you begin
25 working?

1 A. I worked with a law firm in Greeneville of
2 Kidwell, King, Kyle King, and I became a partner there
3 also.

4 Q. How long were you there?

5 A. Five or six years.

6 Q. What year does that take us up to?

7 A. Around '92.

8 Q. What did you do next?

9 A. Myself and my wife, we opened a law firm
10 together.

11 Q. Where?

12 A. Newport.

13 Q. What type of practice?

14 A. I did primarily personal injury, workers'
15 comp, criminal, domestic, and she did primarily things
16 with real estate.

17 Q. How long did you do that?

18 A. I did that until I was elected judge.

19 Q. That was in 1998?

20 A. Yes.

21 Q. Was that the first time you had ever run
22 for judge?

23 A. No.

24 Q. When was the first time you ran?

25 A. Eight years prior to that.

1 Q. So 1990?

2 A. Yes.

3 Q. And that was for General Sessions judge in
4 Cocke County?

5 A. Yes.

6 Q. And then you ran again and prevailed in
7 2006; is that correct?

8 A. Yes.

9 Q. Who is your current employer actually?
10 Are you county or state?

11 A. County.

12 Q. That's Cocke County?

13 A. Uh-huh.

14 Q. And your official job title is General
15 Sessions judge?

16 A. General Sessions and Juvenile judge.

17 Q. Tell us what your practice, if you will,
18 or responsibilities in general are as General Sessions and
19 Juvenile judge.

20 A. I'm not sure what you're asking. Are you
21 asking the type of cases?

22 Q. Yes, sir.

23 A. Okay. On Mondays I do, Monday mornings I
24 have a criminal docket. Sometimes I run a double docket
25 and also do child support at the same time. Monday

1 afternoon I pick up with whatever we didn't finish in the
2 morning. Tuesday mornings I do civil matters. Tuesday
3 afternoons generally are special set matters for trial,
4 generally civil matters, sometimes juvenile matters.
5 Wednesday morning and Wednesday afternoon are both
6 criminal dockets. Thursday morning is Juvenile docket,
7 but it is primarily children who have petitions that are
8 filed against them for some act that they have done.
9 Thursday afternoons I have Juvenile docket primarily for
10 dependent and neglect, and for custody and those type
11 things. Sometimes on Wednesday afternoons and mornings I
12 also do a double court with child support, and then on
13 Friday mornings I do primarily traffic ticket matters, and
14 Friday afternoons I do primarily special set matters.

15 Q. Do you have any assistance with any of
16 these capacities such as child support referees or special
17 proctors or anything along those lines?

18 A. No.

19 Q. Do you handle any probate matters?

20 A. No.

21 Q. Would it be fair to summarize, then, your
22 practice as civil, criminal and juvenile?

23 A. Civil, criminal, juvenile, domestic and
24 mental health.

25 Q. Now, you have a mental health court, I

1 guess, that meets as needed; is that correct, or is there
2 a special day?

3 A. No, it's just as needed. That's very
4 rare, primarily with adults or juveniles who have criminal
5 matters.

6 Q. In the domestic context, do you hear
7 divorces?

8 A. No.

9 Q. It's just related to children's issues?

10 A. It's related to children's issues; it's
11 related to custody. It's related to, I guess, virtually
12 everything except for the divorce itself.

13 Q. Orders of protection?

14 A. Yes.

15 Q. How long have you had the type of docket
16 structure you've just taken us through?

17 A. I would say for about seven years,
18 somewhere around there.

19 Q. Who does your scheduling?

20 A. Are you talking about special matters?

21 Q. That's poorly phrased. Let me ask it
22 this way. Who generally schedules the main or primary
23 docket? And then I'm going to ask you who schedules
24 specially.

25 A. Okay. Generally the clerk schedules the

1 cases as far as docketwise, except for juvenile matters,
2 which is usually done by the lead youth services officer,
3 and then the child support matters are all generated by
4 the attorney for the Department of Human Services, who
5 prosecutes those cases, and then my secretary does
6 primarily special settings of civil matters.

7 Q. Is that really all your office, that is,
8 your secretary or any administrative assistant or
9 assistants you have schedule for you?

10 A. Both courts schedule for me.

11 Q. I meant special, the special settings?

12 A. Special settings are generally done by
13 either the lead YSO for juvenile matters or by my
14 secretary for civil matters.

15 Q. Before the automobile accident involving
16 Mr. Pleau and Ms. Coleman, which is involved in this
17 matter that brings us here today, did you know or had you
18 ever met Mr. Pleau, to your knowledge and recollection?

19 A. To my knowledge, I had not. However,
20 based on his testimony, I went back and looked at some
21 records with the Court and found that there was a criminal
22 matter --

23 Q. Yeah, I'll cover that in a minute. I
24 meant before the automobile accident at all.

25 A. Oh, no, I don't have any recollection of

1 that.

2 Q. Before the automobile accident involving
3 Mr. Pleau and Ms. Coleman, had you ever met or did you
4 know Ms. Coleman?

5 A. No.

6 Q. I assume you had never represented either
7 of these folks?

8 A. Not to my knowledge.

9 Q. Now, after the automobile accident in late
10 2006 and before Mr. Pleau filed his original General
11 Sessions suit, he testified, and you are telling me you
12 verified that you may have been involved in binding him
13 over to the grand jury?

14 A. There is a, in the Circuit Court clerk's
15 office, a summons for court, for General Sessions Court,
16 where he had a charge, I guess the best way to describe it
17 is failure to yield, in which he did waive it on to the
18 grand jury.

19 Q. And the document, you're satisfied, waived
20 it?

21 A. Yes.

22 Q. You didn't hold a hearing?

23 A. No. Well, we went through the rights of
24 advisal. He was sworn in. I explained to him his
25 options, and he chose that, would be my standard procedure

1 for doing that, if you call that a hearing or not.

2 Q. Are you paid a salary by the county for
3 just sitting as General Sessions judge or by the state, or
4 both?

5 A. The pay is by the county.

6 Q. Do you have benefits attached to your job
7 as General Sessions and Juvenile judge?

8 A. Yes.

9 Q. What are those, generally speaking?

10 A. There is health insurance that we got
11 within the last couple of years. I'm not sure when we
12 started receiving health benefits.

13 Q. Vacation?

14 A. There's not, as to the elected officials,
15 any policy that I'm aware of on vacation.

16 Q. Sick days?

17 A. I'm not aware of anything for elected
18 officials.

19 Q. Personal days or PTO or anything along
20 those lines?

21 A. I'm not aware of anything one way or the
22 other concerning the counties dictating what those are or
23 asking that there be.

24 Q. Does the county provide short-term
25 disability or long-term disability?

1 A. If they do I'm not aware of it.

2 Q. Do you have long-term disability or
3 short-term disability privately through your own efforts?

4 A. No.

5 Q. Did you take any short-term disability or
6 long-term disability under any plan, program or otherwise
7 in 2008 or 2009?

8 A. Not under any planned program, no.

9 Q. Do you have military leave or a military
10 leave policy from the county government?

11 A. I don't think there's anything other than
12 the state statutes.

13 Q. What is your understanding of what your
14 leave is under those statutes?

15 A. I would have to say it this way. Prior to
16 9/11, it was my understanding that you were excused from
17 your work and basically allowed to return back to your
18 work once you got off of active duty, and there is a
19 period of time involved with it, but Bredesen did an
20 executive order that changed that, and I'm not sure what
21 the executive order covers as far as days and times.

22 Q. When you take what I'm going to call
23 military leave, who do you notify with the county, if
24 anyone, and how do you notify them?

25 A. Generally I notify the clerk of the court,

1 so she can, and my secretary, so they can arrange either
2 not to have court during that time or to arrange to have
3 someone come and fill in.

4 Q. And how do they arrange to have someone
5 fill in, through their own efforts or through the
6 assistance of the administrative office of the courts or
7 through the Supreme Court or some other process?

8 A. I guess the best way of describing it is
9 this. When I was placed on active duty in 2003, the
10 Supreme Court did an order for people who would and could
11 fill in for me. It may have been more than one order, and
12 I believe they go back to that order or orders and get
13 someone to fill in, but I can tell you it's generally
14 Judge Creekmore.

15 Q. When you took military leave in 2008 and
16 2009 -- and I understood your earlier testimony to be that
17 was limited to a tour in Germany in each instance -- was
18 court held? Or correct my misunderstanding, if that's
19 what it was.

20 A. I believe in 2008 I went to Germany in the
21 first part of September. I believe in 2009 that I went to
22 Germany, and it may have been in the last part of 2009.

23 Q. Was court held during that time?

24 A. I would say generally, yes. Generally
25 Judge Creekmore would come in and fill in.

1 Q. Who's Judge Creekmore?

2 A. Judge Creekmore, the former General
3 Sessions judge for Knox County, worked for the, I guess
4 general counsel for Knox County, and I think he's into
5 private practice now in Knox County.

6 Q. Are you appearing here without being
7 formally noticed or subpoenaed for this deposition today?
8 I'll make an exception to the rule. You can enlist the
9 assistance of your attorney if you need to on that
10 question.

11 A. There's a provision that judges cannot
12 unless they are subpoenaed, and so I assume since you've
13 asked for these depositions that your office has no
14 problem with me giving these depositions.

15 Q. Are you waiving any formalities as to the
16 giving of these depositions?

17 A. I would have to say that so long as you
18 don't have a problem with me giving them, I don't have a
19 problem giving it, but there is a provision that judges
20 are to be subpoenaed to testify to give depositions, and I
21 think this would be an exception to that rule, but I do
22 not have that rule in front of me.

23 Q. But even if that rule were applicable, are
24 you waiving that rule to appear here today?

25 A. So long as you are asking me to be here.

1 Q. Okay. Are you waiving any other formal
2 notice under the Tennessee Rules of Civil Procedure or
3 otherwise?

4 A. So long as your office has no objection.

5 Q. What did you do to prepare for this
6 deposition, generally speaking?

7 A. Generally speaking, I read through the
8 letters that I had previously sent Mr. Daniel. I
9 refreshed my memory on some things concerning the law and
10 went through the pleadings in this matter.

11 Q. Did you reference any other documents
12 besides those you have just mentioned?

13 A. I believe I looked at the records from
14 General Sessions in the Pleau cases and also the records
15 from Circuit Court in the Pleau cases.

16 Q. Have you referred to any other written
17 reports of any sort in preparation for this deposition
18 that you can recall?

19 A. None, other than as deals with the legal
20 issues in the Pleau case.

21 Q. Have you reviewed any videotapes?

22 A. No.

23 Q. Have you reviewed any audio recordings of
24 any sort?

25 A. No.

1 Q. Are you aware of any audio recordings of
2 anything that has to do with this case?

3 A. Only which has come out by way of
4 deposition that has been taken thus far in this case.

5 Q. What about any audio recordings of any
6 court proceedings when you presided as a judge?

7 A. Yes.

8 Q. Can you identify those?

9 A. In my letter to, or letters to Mr. Daniel,
10 the court proceeding on December the 23rd was recorded,
11 and the court proceeding on April, I think it's the 23rd,
12 was also recorded, and I've had transcripts typed of that,
13 but I have not reviewed them in preparation for today.

14 Q. What about the 23rd of 2008, was there a
15 transcript of that recording?

16 A. I don't know what you're referring to.

17 Q. I thought you told me you had an audio of
18 the December 23rd meeting?

19 A. Yes.

20 Q. Was there a transcript made of that?

21 A. Yes.

22 Q. Where is that located?

23 A. I believe my attorney has the originals.
24 I think I just gave them to him like maybe a day or couple
25 ago. It was just recently finished being typed.

1 Q. And there's an audio recording of that; is
2 that correct?

3 A. Yes. I asked the clerk to record both the
4 December hearing, the February hearing, and then the
5 April; I believe it was April hearing.

6 Q. So the February hearing was recorded?

7 A. Yes.

8 Q. Is there a CD ROM of that also?

9 A. Yes, the clerk can make CD ROMs for that.

10 Q. I'm going to represent to you that
11 Investigator LaRue has obtained the audio CD ROM of the
12 December 23rd hearing, but no transcript. I'm going to
13 further represent to you that he has not, to my knowledge,
14 obtained the February hearing. Would it be your testimony
15 that he would be able to access that February hearing from
16 the clerk of the court?

17 A. Yes.

18 Q. Are there any other audio recordings or
19 transcripts of any other hearings or matters that pertain
20 to the Pleau and Coleman civil suits?

21 A. At the trial I believe the clerk recorded
22 it. I also believe that the attorney for the insurance
23 company had a court reporter there, and so I believe there
24 should be two recordings of that, and I understand that he
25 has now seen copies of it. He had the trial portion

1 typed.

2 Q. And I'll represent to you further that he
3 was asked by your attorney to provide that, and he
4 contacted our office and said he thought it was
5 appropriate to provide us with that also, and that has
6 happened.

7 A. Okay.

8 Q. Are you aware of any other transcripts or
9 audio recordings at all?

10 A. No.

11 Q. Have you reviewed any other material of
12 any other nature that you haven't already identified?

13 A. I have not -- well, we've talked about the
14 transcripts of these. I have not reviewed those in
15 preparation for today.

16 Q. Have you ever been charged with a crime as
17 an adult?

18 A. Neither as an adult, nor as a child.

19 Q. Have you ever been convicted of a crime?

20 A. No.

21 Q. Have you ever been in any other litigation
22 of any nature prior to anything that has to do with this
23 proceeding or the Metcalf, what I'll call the Metcalf
24 Court of the Judiciary proceeding?

25 A. Yes.

1 Q. Tell me about that or those.

2 A. I've had some speeding tickets, had a case
3 years ago where I sued for the, against my -- I had a
4 policy on my automobile for repairs. They refused to
5 pay. I sued them over that. And I was involved in a
6 friendly lawsuit with Bill Leibrock, an attorney in
7 Newport, to settle a boundary line dispute.

8 Q. Have you ever had to sue the clerk for
9 fees or expenses --

10 A. No.

11 Q. -- or salaries, or any of that?

12 A. No.

13 Q. Or has the clerk ever had to sue the
14 county or state for any of that; do you know?

15 A. Since I've been judge, I think there has
16 been one suit, and it was by multiple clerks.

17 Q. And you weren't a party to that?

18 A. I was not a party to it, not a named party
19 to it, didn't have anything to do with it, but I was aware
20 of it, and at least was involved with it as far as knowing
21 what's going on, the status of it and the offers that were
22 made as far as settlement.

23 Q. Prior to the Metcalf Court of the
24 Judiciary matter, had you ever had any Court of the
25 Judiciary claims for discipline advanced against you?

1 A. I should say I have had complaints filed,
2 but none that have not been dismissed.

3 Q. Have you ever had any dismissed with a
4 warning or private admonition or any language to that
5 effect?

6 A. I have had none with that language that I
7 can recall.

8 Q. Have you ever had any claims advanced
9 against you for delay in managing the business of the
10 General Sessions and Juvenile Court, other than the
11 current one?

12 A. Yes.

13 Q. How many?

14 A. One.

15 Q. Who, if you recall, was the claimant in
16 that?

17 A. I do not recall what it was. What it
18 dealt with was an order that I did when I went on active
19 duty, and that I sent it to the, sent it by my wife. We
20 sent correspondence of the things back and forth to be
21 signed and stuff, and an order was sent to the court. The
22 court records did not show that they were filed, and I had
23 to pull that back off the computer and reprint it and
24 resign it and file it, but that was also dismissed.

25 Q. Was there any warning or admonition

1 provided in that?

2 A. No.

3 Q. Are you sure about that?

4 A. Well, I know I received a letter back
5 dismissing it. I don't recall -- I know there's
6 no punishment, no admonition about it. Warning? I don't
7 know. I would have to look at the letter.

8 MR. MCHALE: Forgive me for the break. I
9 contrived a fashion to leave Nashville without four
10 sets of potential exhibits to your deposition, which
11 I didn't discover until last night. Mr. Ball, I will
12 represent to you that if you don't take care of your
13 cardiac problems, this is the kind of thing that will
14 happen to you.

15 MR. BALL: As my little boy would say, I'm
16 doing all I can do.

17 BY MR. MCHALE:

18 Q. I will represent to you, Judge Bell -- I'm
19 sorry, I will suggest to you that you previously testified
20 that you reviewed the civil General Sessions Court files
21 in the David Pleau matter?

22 A. Yes.

23 Q. And let me ask you if you can tell us what
24 was contained in the original file that was begun by a
25 civil warrant filed by David Pleau, David J. Pleau,

1 against Merastar, docket number 2007-CV-869, in the
2 General Sessions Court of Cocke County, issued August 9th,
3 2007, a copy of which warrant I'm showing you.

4 MR. BALL: I'm going to object to the form
5 of the question, counsel, only in that I think you
6 asked him can he testify as to everything that was in
7 the file. I would ask that you point to him
8 specifically --

9 MR. MCHALE: Well, I'm going to ask him
10 what he can recall, first of all.

11 MR. BALL: Well, that would be fine. I
12 don't have a problem with that.

13 MR. MCHALE: And that was the intent of
14 the question.

15 MR. BALL: But having him testify that
16 everything was in the file, without it being in front
17 of him, would be hard to do.

18 BY MR. MCHALE:

19 Q. Sure. First of all, have I identified the
20 correct warrant as you recall, or a copy thereof?

21 MR. BALL: And if you can't recall --

22 THE WITNESS: On this I can't recall,
23 because the ones I looked at had orders as part of
24 them and had other information that's signed off on
25 them, so I'm just not sure on this one in

1 particular.

2 MR. BALL: Do you, counsel, have a
3 certified copy of the original file?

4 MR. MCHALE: Yeah, in Nashville.

5 MR. BALL: Oh, okay.

6 JAMES LARUE: We've got one here. I
7 handed you one yesterday.

8 BY MR. MCHALE:

9 Q. Let me hand you what purports to be now a
10 complete file of the 2007 previously referenced General
11 Sessions file and see if that will help us along in
12 overcoming my mistake.

13 A. I can tell you this is not -- I can tell
14 you this is part of the file, but this is not the complete
15 file.

16 Q. Tell me what's missing from that.

17 MR. BALL: If you can.

18 THE WITNESS: I know this -- I believe
19 there should be some subpoenas. I believe there
20 should be some documents that show service of
21 process, but those that you have shown me, those are
22 in, as part of the file, but I don't think that's the
23 complete file.

24 BY MR. MCHALE:

25 Q. Have you maintained your own file, as

1 General Sessions judge, with respect to the David Pleau
2 versus Merastar Insurance Company, case number
3 2007-CV-869?

4 A. I did, but when I do a final order, I do
5 not keep a file after that.

6 Q. When was the final order done?

7 A. June -- well, the day I signed it, which
8 is, should be, I believe, that top document.

9 Q. That would be -- according to this
10 document, it was filed June 27th, 2008, signed or entered
11 by you dated June 27, 2008; is that correct?

12 A. Yes.

13 Q. What do you do with your file after that?

14 A. I used to keep all those files for
15 research purposes, and then I had a case on an occasion
16 where I, there was a motion to dismiss, and I pulled my
17 file because it was the same language, and I was relying
18 on my work, and found out that the code had been changed
19 and that what I had was not up to date, and so after that
20 I started disposing of my file afterwards, once the case
21 was over, so that I would not be tempted to use old
22 research as a crutch.

23 Q. Now, what did you do with this file after
24 you entered and provided your order to the clerk?

25 A. The same as I do with all, I shred them.

1 Q. How long has that been your practice?

2 A. I should say probably more than five
3 years, but you asked about -- you did not ask about the
4 second case. The second case, I have kept my notes and
5 things in the second case, but not on the first case, and
6 I only did it because of the complaint filed. If it
7 wasn't for that --

8 Q. Sure. All right. Go ahead. I'm sorry.
9 I didn't mean to talk over you.

10 A. I would not have kept that but for this
11 action that has been filed by Mr. Daniel.

12 Q. Do you have any computer files pertaining
13 to the first Pleau versus Merastar case?

14 A. The orders are all done on computer. The
15 order would be on the computer.

16 Q. Is that still available?

17 A. I do not know.

18 Q. Do you have a practice by which you go
19 back through when a case is closed and delete matters from
20 your computer?

21 A. No.

22 Q. Do you have any research notes from the
23 first file on a computer?

24 A. No.

25 Q. Do you routinely or not maintain research

1 notes on a computer?

2 A. No.

3 Q. Did you do any Westlaw research with
4 respect to the first Pleau case at any time?

5 A. Yes.

6 Q. Do you have a record of that research?

7 A. No.

8 Q. Why not?

9 A. I should say that I do not have a record
10 of it. I have called and talked with the people at --
11 well, you said Westlaw. No, I don't use Westlaw.

12 Q. Well, what about Lexis-Nexis?

13 A. Yes.

14 Q. Continue with your telling about talking
15 to them.

16 A. They maintain records, and their records
17 are available.

18 Q. Have you accessed those?

19 A. I have an e-mail which I received
20 yesterday. I believe I received it yesterday from them
21 that has the 2008 and 2009 information.

22 Q. Are you able to indicate, or are those
23 records, to your understanding and knowledge, able to
24 recreate how much time you spent researching the first
25 Pleau versus Merastar case?

1 A. No.

2 Q. What records do you understand Lexis-Nexis
3 has that they can make available to you?

4 A. What types of fields researched.

5 Q. And is it your understanding, just so
6 that I can grasp what I think you're telling me, and don't
7 let me assume too much or put words in your mouth, that
8 there's no way you can recreate how much time you spent on
9 a particular project and research?

10 A. There may be a way. I'm not aware of a
11 way.

12 Q. What was the purpose of your inquiring of
13 Lexis-Nexis about these records?

14 A. Because I hoped they would have it so
15 that I could have that kind of information.

16 Q. And thus far you don't believe that's
17 available?

18 A. Thus far, having had several conversations
19 with them, I do not believe that is available.

20 Q. Who provides your Lexis-Nexis service to
21 you, or do you pay for that yourself?

22 A. The State of Tennessee. I should say the
23 AOC. Well, it's the General Sessions judges conference
24 does through the AOC. AOC negotiates it. The conference
25 pays it because we're not state employees.

1 Q. Are you budgeted for how much Lexis-Nexis
2 time you are permitted to use --

3 A. No.

4 Q. -- without obtaining any special
5 dispensation?

6 A. There is no -- my understanding there's
7 no limitation of what we can use.

8 Q. Let's go back to the genesis of the first
9 Pleau suit. Prior to the first hearing date listed on the
10 initial warrant, which was I believe September 18th, 2007,
11 if I'm reading correctly from a copy of the warrant, did
12 you do any review of the file?

13 A. No.

14 Q. Did you do any preparation that you
15 recall?

16 A. No.

17 Q. Were you aware of its contents?

18 A. No.

19 Q. Do you recall if this was a specially set
20 matter or on the regular docket?

21 A. That day was on regular docket.

22 Q. Does it work where some contested matters
23 can in fact be heard on the regular docket time
24 permitting?

25 A. Oh, yes, absolutely.

1 Q. What causes something to be relegated or
2 promoted, or whatever word you choose to use, to the
3 special setting docket, more complex?

4 A. More complex, where it's going to take a
5 longer period of time, where they want to be the first
6 case up, things like that, but on Tuesdays, yes, we
7 regularly try contested matters during the regular portion
8 of the docket. And I believe that was when we did Mr.
9 Pleau's first case.

10 Q. Did you do any research on this case
11 before it occurred?

12 A. No.

13 Q. Now, do you recall who was present on
14 September 18th, 2007 or at the hearing date for the first
15 case, Pleau versus Merastar?

16 A. Well, we had a lot of people there.

17 Q. I'm sorry, for this case.

18 A. With this case? Pleau was there. The
19 attorney for the insurance company was there. There was a
20 second attorney there who I thought was there for -- I
21 didn't ask any questions, but I thought was there for the
22 other vehicle, which turned out it was not. They had two
23 attorneys for the one case, and so essentially it was
24 Pleau and those attorneys and then witnesses, but I could
25 not tell you -- I do not recall witnesses.

1 Q. Do you have any independent recollection
2 of anyone else being present?

3 A. There were a lot of people there. I mean,
4 it's my regular docket.

5 Q. With respect to this case. I'm sorry.

6 A. Other than witnesses, no.

7 Q. Do you have any independent recollection
8 of what happened that day in the Pleau case, that is,
9 September 18th, 2007, on the first hearing?

10 A. The case was called up. I had resolved
11 other matters before this one. It was contested. Mr.
12 Pleau tried his case. The attorney for the insurance
13 company had little or no questions. I don't recall if
14 witnesses testified. I do know that he did. I don't
15 remember if -- there may have been one or two; I don't
16 know. And then after he rested, then it was the insurance
17 company's time, and the attorney filed a motion. He had
18 no witnesses to call. The case was closed, and then he
19 filed a motion to dismiss.

20 Q. How is it that you are able to recall in
21 that much detail of what happened on that date, given the
22 scope of your day in and day out docket?

23 A. Because -- to be quite honest with you,
24 the attorney wasted the Court's time. It's a pretrial
25 motion. It should have been filed pretrial, and he waited

1 until after the case was over to file it, and I saw that.
2 I always ask if there's any preliminary matters to take
3 up, because if there are, we need to resolve those before
4 we start hearing proof, and he waited until the case was
5 over before he filed a motion to dismiss.

6 Q. Did he offer to file the motion before the
7 proof was taken?

8 A. No.

9 Q. Are you certain of that?

10 A. Absolutely positive.

11 Q. If he testified or stated to the contrary,
12 would you be then in disagreement with that testimony?

13 MR. BALL: I'm going to object to the form
14 of that question. That would call for speculation
15 because there's no foundation that he would testify
16 that way.

17 BY MR. MCHALE:

18 Q. If that were the testimony, would you
19 disagree with it, then?

20 A. The first notice the Court had of any
21 motion to dismiss was when he offered it after the close
22 of the case. That was the first notice I had of any
23 motion.

24 Q. I am implying from your answers that, or
25 understanding from your answers that no motion had been

1 filed prior to the case?

2 A. That's correct.

3 Q. And according to your testimony, he filed
4 it at the conclusion of Mr. Pleau's case?

5 A. I'm not sure when he filed it with the
6 clerk's office, but I did not receive it -- I was not
7 given notice of it until the case was done, the last
8 witness that testified.

9 Q. Had he filed it with the clerk's office,
10 would there not be a stamp on it of some sort?

11 A. There would be a stamp on it, but you
12 asked the question of when he filed it. I'm not sure when
13 he filed it.

14 Q. Do you have any local rules or did you at
15 that time in Cocke County with respect to filing of
16 motions in the General Sessions Court in civil matters?

17 A. No.

18 Q. When he filed his motion, did he present
19 it directly to you or to your court officer, or how did
20 that work?

21 A. I do not know. I know that -- when you
22 say filed it, I'm saying give the Court notice of it. He
23 passed the copy, he handed the copy. I don't know. I
24 would not be able to say on that.

25 Q. And then what happened next?

1 A. The case was over. He made his motion.

2 Q. I'm sorry. You say the case was over.
3 Was the whole case over or just Mr. Pleau's plaintiff's
4 case?

5 A. Mr. Pleau's plaintiff case had rested. He
6 said he had no witnesses to testify, and then he did his
7 motion.

8 Q. So the case and the proof was then over?

9 A. The proof was over.

10 Q. I'm going to also make an assumption that
11 Mr. Pleau did not go back and offer any rebuttal to the
12 lack of witnesses put on by Merastar; is that correct?

13 A. They didn't put on anything, so I would
14 not have given him any rebuttal to -- I wouldn't have
15 given any time for that.

16 Q. The attorney then filed the motion. Did
17 argument then ensue, that is, argument as to the merits of
18 the motion or the merits of the case?

19 A. I don't know. I don't recall.

20 Q. Did you ever say anything to the attorney
21 that when he first made an effort to make the motion,
22 we'll get to your motion later?

23 A. Huh-uh, no, sir. I take all those matters
24 up first, because sometimes it will clear out a docket, if
25 somebody wants to make a motion for continuance or

1 something.

2 Q. After the argument, if there was an
3 argument, after the conclusion of the proof and the
4 presentation of the motion, what happened next? That was
5 a terrible question. Let me try it again. After the
6 proof, what happened next?

7 A. The attorney made the motion to dismiss.

8 Q. Was there a discussion of that motion
9 between the Court and the parties?

10 A. Yes.

11 Q. What do you recall about that discussion?

12 A. Nothing other than there was a discussion.

13 Q. Did you chastise or criticize the attorney
14 for waiting that long?

15 A. I never do that to an attorney.

16 Q. So the answer would be no?

17 A. No, I did not.

18 Q. Do you recall about how long that argument
19 or discussion took place?

20 A. I do not know. It would not have been
21 long.

22 Q. What did you do next with respect to your
23 duties in this case?

24 A. I took the case under advisement.

25 Q. Did you tell the parties when you would

1 have a decision?

2 A. No.

3 Q. Did you mention the time period?

4 A. I generally tell people to check back
5 after a week.

6 Q. Do you suppose you may have said that in
7 this case?

8 A. Generally I will tell people to check back
9 after a week.

10 Q. Did you use any other language such as a
11 short period or anything like that?

12 A. No. If it is a matter of just typing and
13 getting an order done, I will tell them when it will be
14 ready. If it is a matter where I have to do the work, I
15 tell them generally to check back after a week.

16 Q. And is that, do you suspect, where
17 Mr. Pleau got his belief that you told him a week, that he
18 testified to earlier?

19 A. Yes.

20 Q. Now, Ms. Coleman was not at the trial?

21 A. I did not know who Ms. Coleman was, so I
22 -- there were people there. I could not say whether she
23 was there or not. I would assume she was not. She did
24 not participate.

25 Q. How did you deduce or speculate that the

1 other attorney was her attorney, as you testified to
2 earlier, and if you did that -- and this is a multiple
3 question, I apologize -- when did you learn that that
4 supposition was wrong?

5 A. I thought that it was an attorney for
6 her. The reason being was I could not imagine a large law
7 firm having two attorneys to come on a case like that, but
8 there were two attorneys there, so I assumed one was for
9 one insurance company and one was for the other insurance
10 company. And since the one did not participate, I assumed
11 wrongly that it was counsel for the other insurance, but
12 it turned out they're both counsel from the same law firm.

13 Q. Would you have learned that during the
14 course of the trial when you learned, during the
15 proceedings, that Ms. Coleman had no insurance?

16 A. No, I learned that, I think, in February.

17 Q. Before the trial began, did you have any
18 discussion with Mr. Pleau about, or to the effect of,
19 Mr. Pleau, I'm not sure you've got everybody here you need
20 here or --

21 A. No, sir.

22 Q. -- anything like that?

23 A. No, sir.

24 Q. Why or why not?

25 A. I don't know who he needs to have there.

1 Q. Once you grasped that it was a suit
2 involving an automobile accident, did you consider that
3 there was a problem in the identification of the parties
4 that were before the Court that day?

5 A. Not of the parties, no, sir.

6 Q. Did it seem at all unusual or odd to you
7 that he had a direct action against an insurance company
8 arising out of an automobile accident?

9 A. It did not.

10 Q. Do you know why that would not have struck
11 you as unusual, given the fact that, your judicial and
12 attorney experience?

13 A. I did not -- I should say it this way.
14 There was not evidence as to uninsured motorist; there was
15 not evidence as to the contract. Those things were absent
16 in the proof that Mr. Pleau put on.

17 Q. When did you become aware that there was
18 an uninsured motorist issue?

19 A. With the filing of the motion.

20 Q. And the motion is -- I'm handing you a
21 certified copy. Is that the same motion?

22 A. Yes.

23 MR. MCHALE: This would be, then, the
24 first exhibit.

25 (Whereupon, the respective document was

1 marked Exhibit Number 1.)

2 MR. MCHALE: It's been an hour and 10. Do
3 you want to take five?

4 MR. BALL: That would be great.

5 MR. MCHALE: We're off the record.

6 (Recess taken.)

7 THE WITNESS: I would like to pick back
8 up where we left off.

9 MR. MCHALE: All right.

10 THE WITNESS: The reason being -- you were
11 talking about Exhibit 1, and I guess I should mention
12 along with that that there was a pro se allegation
13 with the original complaint that he filed that had
14 some verbiage in it concerning uninsured motorist,
15 and that I would have looked at with the starting of
16 the case.

17 BY MR. MCHALE:

18 Q. Thank you. Just for the record, that
19 would be the original warrant that you just referenced,
20 correct, or a copy of it? The first page of the original
21 warrant.

22 A. I think the paragraph here dealing with
23 the pro se information that is handwritten in, I believe
24 that is true, that is correct, but I'm not sure about
25 whether the original warrants have other information on

1 it.

2 MR. MCHALE: All right. Can we make that
3 an exhibit, then, and that would be Number 2?

4 THE WITNESS: Yes.

5 (Whereupon, the respective document was
6 marked Exhibit Number 2.)

7 BY MR. MCHALE:

8 Q. What caused you to have to take this
9 matter under advisement in the first place?

10 A. Because it had a situation where one side
11 is represented by an attorney who has done research on
12 what they think the law is, and they have filed that with
13 the Court. You have another side which has no attorney
14 and would not have any idea of what the law is or how to
15 do research on providing information to the Court about
16 what the law is concerning the legal issue in the case.

17 Q. And by legal issue, do you mean the
18 matters contained in the motion, or were there other legal
19 issues that had to be determined?

20 A. I would say it would be a combination of
21 the two.

22 Q. What was it, as you sat there at the
23 conclusion of the hearing in September of 2007, that you
24 felt had to be decided specifically by you?

25 A. You're talking about once they filed their

1 motion?

2 Q. Once they were ready to leave and you told
3 them you were taking it under advisement, what was it that
4 you had to decide in your mind as the judge?

5 A. I had never seen an attorney wait until
6 the end of the case to file a motion to dismiss, and
7 having waited to the end of the case to bring it up to
8 dismiss, when it should have been filed beforehand, and
9 so -- I had not seen or heard of any case where that had
10 ever been done, with the statute that authorizes direct
11 suit against the automobile insurance under someone's
12 provisions for uninsured or under-insured motorist.

13 Q. Were you familiar with the statute that
14 governed the --

15 A. Yes.

16 Q. -- uninsured motorist statute? That would
17 be 56-7-1206.

18 A. Yes.

19 Q. Had you been familiar with that in your
20 private practice?

21 A. Yes.

22 Q. Had you been familiar with that through
23 prior occasions in your service as General Sessions judge?

24 A. No.

25 Q. So therefore, would that mean that you had

1 never decided anything about that issue as a General
2 Sessions judge?

3 A. That's correct.

4 Q. But you did have familiarity with the
5 statute?

6 A. Oh, yes, any of the cases dealing with --

7 Q. How long did it take you to resolve the
8 issue of whether or not Mr. Pleau could bring a direct
9 action against his uninsured motorist carrier?

10 A. You can bring direct actions against your
11 uninsured motorist carrier, but you must go through the
12 proper procedural steps to do it.

13 Q. What is that procedural step or steps?

14 A. Well, it depends on what type of case it
15 is.

16 Q. Well, in a case such as this one?

17 A. I guess the best way to describe it is the
18 statute provides different methods by which you can go
19 directly against an uninsured motorist carrier, depending
20 on whether you know the name of the other driver,
21 depending on whether you don't know the name and whether
22 or not you locate them later.

23 Q. Now, in this case you knew, as of the date
24 of the trial, did you not, that Mr. Pleau knew the name of
25 the other driver?

1 A. I knew the parties knew because they had
2 an automobile accident form, and I assumed that they knew
3 who it was.

4 Q. And Mr. Pleau was one of the parties,
5 correct?

6 A. Yes.

7 Q. So the process that you just described or
8 procedure that you just described would not have been
9 applicable in this case, correct?

10 A. It possibly could be, but -- I should say
11 it this way. There is a procedural method by which you
12 are required to go through by statute to get to the
13 uninsured motorist carrier, and the primary issue in this
14 case was that he had failed to comply with it. But
15 procedurally, in all the cases I have read, it was always
16 done as a pretrial motion to dismiss and had been resolved
17 from that perspective. I have never seen a case where
18 someone waits to the end of a case to make a motion that
19 is procedural, because otherwise -- you do it at the
20 beginning of the case, and I think the attorney did it as
21 a method of strategy, to wait until the end of the case,
22 because generally it does not operate as a dismissal on
23 the merits unless there's other things involved.
24 Generally it is a dismissal without prejudice where there
25 could be refiling. And so I did not know why an attorney

1 would wait until the end of the case to file a motion such
2 as this, and so my question was, has he waived it by not
3 bringing it essentially until after the last witness
4 testified.

5 Q. That would be, I assume -- well, I'm
6 sorry. Would that be a distinct issue from the underlying
7 question of whether or not in this instance a direct
8 action against Merastar was proper by Mr. Pleau, that is,
9 the attorney's delay would be a distinct legal question in
10 your mind?

11 A. Yes.

12 Q. All right. So we've identified, I guess,
13 two legal questions so far; is that correct, the
14 underlying right of the direct action and whether or not
15 that was complied with, and the attorney's delay?

16 A. Yes.

17 Q. Were there any other issues that you had
18 to address in your decision of this case?

19 A. I think those were the primary issues.
20 There's a lot of other things that were involved with that
21 and research that had to be done, but those are the
22 primary issues.

23 Q. What other research had to be done?

24 A. To see if there is a case out there that
25 deals with a waiver, some attorney waiting until the end

1 of the case to --

2 Q. Oh, I'm sorry. But that would be research
3 relating to one of the two issues?

4 A. Right, two issues.

5 Q. Did you have to do any research on any
6 other issues?

7 A. No.

8 Q. And you told me earlier there's no motion,
9 there are no rules of procedure governing General Sessions
10 Court as to motions, correct?

11 A. That's correct.

12 Q. You don't have a motion day, as I recall
13 your description of your docket?

14 A. No. When I take up a case that is
15 contested, I take up any preliminary matters first, and so
16 if you have a motion, we do that first before we do
17 anything.

18 Q. And you do not recall that Mr. Fraser or
19 any other attorney on behalf of Merastar made such a
20 request in this case?

21 A. There was not a request made.

22 Q. After the case concluded, did you have
23 other cases that day that you recall?

24 A. Yes.

25 Q. Did you proceed to finish your docket?

1 A. Yes.

2 Q. Did you pay any more attention to this
3 case that day?

4 A. Yes.

5 Q. What did you do later that day?

6 A. I looked at the TCA code section and
7 became aware that there was a case involving Judge Hooper.

8 Q. And what code section would that have
9 been? And you may refer to the exhibit if you would like,
10 or you don't have to.

11 A. Well, it's the code section dealing with
12 the uninsured motorist, would be 56-7-1206, I think. I'm
13 not sure. I can't hardly read that.

14 Q. And you did that that day?

15 A. Yes, sir.

16 Q. Did you reach a conclusion as to the
17 applicability of that statute on the day of the trial,
18 later?

19 A. I became concerned that this was a case
20 that was going to be especially looked at on appeal,
21 because there are two sitting state judges in our county,
22 both of them were involved in the Hooper case, and both of
23 them got the answer wrong.

24 Q. In whose determination?

25 A. The Court of Appeals' determination that

1 they got it wrong.

2 Q. Not yours?

3 A. Not mine.

4 Q. So what did you do next with respect to
5 this case?

6 A. I began researching the issues concerning
7 the statute and also the issue of waiver.

8 Q. How much time did you spend researching
9 those issues, in terms of hours?

10 A. It would be more in terms of days than it
11 would be hours.

12 Q. How many days?

13 A. I would have no idea. A lot.

14 Q. Did you keep paper records of your
15 research?

16 A. Yes, I did.

17 Q. Where are those?

18 A. I do not keep them after I finish an
19 order.

20 Q. So that is the same procedure that you
21 described earlier --

22 A. Yes.

23 Q. -- about shredding your records?

24 A. Yes.

25 Q. Were there computer records with respect

1 to your research, other than the Lexis-Nexis we've talked
2 about?

3 A. No.

4 Q. Did you write any memos or drafts of memos
5 or orders that were retained on a computer?

6 A. The only one would be the order that I
7 did.

8 Q. After the first day or the day of trial,
9 when do you recall, if you recall, when you next accessed
10 this file?

11 A. I accessed this file on about a weekly
12 basis.

13 Q. When did you next -- first of all, did you
14 next have any contact with Mr. Pleau after the day of the
15 trial directly?

16 A. Yes and no.

17 Q. All right. Please explain your answer.

18 A. I do not talk to litigants. He came to my
19 office. I have a half window. He talked with my
20 secretary. He asked questions of her concerning the
21 case. He wanted to set up an appointment to see me. I
22 was in -- of course she could see me, and I shook my head
23 no. She did not set up an appointment. He asked if he
24 could see me today. I shook my head no, and she told him
25 no. He asked for the status on the case. She just told

1 him I'm still working on it, and he waited in the hallway
2 until I went from my office to the courtroom when I
3 started court.

4 Q. Did you talk to him in the hallway?

5 A. He asked me about his case. I told him I
6 could not talk with him about his case.

7 Q. Why do you not have contact with
8 litigants?

9 A. I don't -- unless there is an issue about
10 setting a case, I don't generally talk with litigants at
11 all.

12 Q. Why not?

13 A. I think it's just a good policy.

14 Q. Is there any ethical prohibition against
15 that?

16 A. There are rules dealing with that, if you
17 do have contact with the individual or an attorney about a
18 case of advising the other side about it, then letting
19 them decide do you wish to stay or do you wish not to stay
20 as a judge.

21 Q. Are there rules in the canons of judicial
22 ethics pertaining to ex parte contacts with --

23 A. Yes.

24 Q. Are you familiar with those?

25 A. Yes.

1 Q. And at all times in 2008 and 2009 -- well,
2 in 2007, were you subject to those rules?

3 A. Yes.

4 Q. Other than that one contact, did you have
5 any other with Mr. Pleau or similar to that with
6 Mr. Pleau?

7 A. I did not.

8 Q. Did your clerk?

9 A. I don't know about my clerk. I can't
10 answer for her.

11 Q. I'm sorry. That's a bad question. Did
12 your secretary or administrative assistant?

13 A. I know my secretary did once. I shouldn't
14 say -- I don't know. She answered the phone. She was
15 having a conversation. It was about the case. She said
16 it was him. Whether it was him or not, I do not know.

17 Q. That would be two, total, if I'm counting
18 correctly?

19 A. Yes.

20 Q. Were there any others of which you're
21 aware where he attempted to --

22 A. No.

23 Q. -- initiate contact with your office --

24 A. No.

25 Q. -- or you?

1 A. No.

2 Q. Did you ever attempt to initiate contact
3 with him through your administrative assistant or
4 secretary?

5 A. No.

6 Q. Did the clerk of the Court, to your
7 knowledge or understanding, or have you heard, have any
8 contact with him about this case before you decided it?

9 A. I do not know. No one told me.

10 Q. Did Merastar or any representative of
11 Merastar Insurance approach you directly after this case
12 with respect to any aspect of the case?

13 A. No.

14 Q. Did Merastar or any representative of
15 Merastar approach, to your knowledge, your secretary or
16 administrative assistant?

17 A. Now, we are talking about this first case,
18 right?

19 Q. Yes, sir.

20 A. I would have no knowledge. No one told
21 me.

22 Q. Did Merastar, to your knowledge, directly
23 or through a representative, approach the clerk or the
24 Court about this case after September of 2007?

25 A. I do not know.

1 Q. At some point in this case -- I'm sorry.
2 Let's move forward. Do you recall anything other that
3 occurred in this case through the balance of 2007
4 following the September 18th, 2007 hearing?

5 A. Nothing other than working on it.

6 Q. By working on it, have you told us all the
7 work you were doing on it?

8 A. That would be impossible.

9 Q. Why?

10 A. Why? Because of the amount of time and
11 effort put into it. It would be impossible to try to walk
12 you through all the work that was done on it.

13 Q. But you don't know how many days, correct?

14 A. No, I do not. I could say it was a lot.

15 Q. And you don't know how many hours it was?

16 A. No, I do not.

17 Q. And you had never kept any records how you
18 spent on this case -- how much time? I'm sorry.

19 A. No.

20 Q. Let's move into 2008. Can you recall what
21 you did specifically in 2008 relative to this case, or
22 would your answer be the same as it just was with respect
23 to 2007?

24 A. Other than finishing typing the order and
25 signing it.

1 Q. Now, that was done in June, I believe --

2 A. Uh-huh.

3 Q. -- of 2008? Did you type that yourself?

4 A. I did.

5 Q. Is that your normal procedure?

6 A. When I have the volume of research, that
7 is normal procedure for me.

8 Q. Now, when did you type that response --
9 I'm sorry, that decision?

10 A. I do not know. I know I finished it on
11 the day I signed it and dated it.

12 Q. How much time did you spend typing it?

13 A. The time typing it was nothing in
14 relationship to the work that was done.

15 Q. I'm going to hand you -- I'm sorry, and I
16 should have been doing this all along, letting your
17 attorney look at this. Is that the judgment you were
18 referencing?

19 A. Yes.

20 MR. MCHALE: Let's make that Exhibit 3.

21 (Whereupon, the respective document was
22 marked Exhibit Number 3.)

23 MR. MCHALE: And can we agree that's a
24 copy of the order?

25 THE WITNESS: Yes.

1 BY MR. MCHALE:

2 Q. Is Exhibit 3 the first piece of paper you
3 have pertaining to this case from the period of September
4 18th, 2007 until the date you did that?

5 A. I had a file that was about that thick
6 (indicating).

7 Q. But you don't have that anymore?

8 A. No, I do not. It had to be in an
9 expandable folder.

10 Q. And that's the file that you previously
11 testified to was shredded?

12 A. Yes, I don't keep them.

13 Q. Are there any other documents or any other
14 records of any nature whatsoever pertaining to the case of
15 David J. Pleau versus Merastar in the General Sessions
16 Court of Cocke County, number 2007-CV-869, currently
17 available to anybody, other than these three exhibits --
18 I'm sorry, other than the motion to dismiss and the order
19 covering the period from --

20 A. I can tell you that's not the complete
21 file.

22 Q. That's why I tried to amend the question
23 midstream, and that's a very poor effort on my part. Let
24 me say this. Are there any other documents of any nature
25 or any other records of any nature covering the period

1 from September 18th, 2007, that being the date of the
2 original hearing, and the entry of your order on June
3 27th, 2008?

4 A. The clerk has their own records, and I had
5 my personal file which I was using. The personal file I
6 do not have. The records the clerk has, she still has all
7 of her records, or should have.

8 Q. And you don't have your records for the
9 same reason you previously identified, they were shredded
10 at the time of the entry of this order?

11 A. When I'm done with it, I'm glad to get it
12 over with.

13 Q. Now, at some point you did make a
14 decision; is that correct?

15 A. Yes, sir.

16 Q. Does Exhibit 3 accurately reflect your
17 decision?

18 A. Yes.

19 Q. Was that your decision?

20 A. Yes.

21 Q. In that case did you make findings of
22 fault? And you may look at this. I'm sorry, sir. Did
23 you make findings of fault?

24 A. Yes.

25 Q. Did you make an allocation of fault?

1 A. Yes.

2 Q. Did you make findings of fact?

3 A. Yes.

4 Q. Does that order express your opinion as to
5 how the accident occurred in your capacity as General
6 Sessions judge?

7 A. No, sir, it reflects the proof that was
8 presented, because it was just a one-sided case. It was
9 just testimony from the plaintiff's side. It was
10 uncontroverted facts as given by the plaintiff.

11 Q. Does that order express your findings as
12 to the responsibility of the accident?

13 A. Based on the uncontroverted testimony by
14 Mr. Pleau.

15 Q. Now, once this judgment was signed by
16 you -- and again, I'm possibly presuming too much. That
17 is your signature; is that right?

18 A. Yes, sir.

19 Q. Once it was signed by you, what happened
20 to the original order?

21 A. Given to my secretary to take down to the
22 clerk's office for filing and getting, making sure it gets
23 certified to be mailed out, and then I get a copy back
24 that is signed.

25 Q. Was that done in this case?

1 A. Yes.

2 Q. Did you get a copy back?

3 A. Yes.

4 Q. What became of that copy?

5 A. I don't know.

6 Q. Do you still have it?

7 A. I don't know.

8 Q. Would it have been shredded with the other
9 material?

10 A. No.

11 Q. What is your purpose in retaining a copy
12 of the filed order?

13 A. I keep, as a general rule, copies of most
14 of my filed orders.

15 Q. Do you know whether or not you kept a copy
16 of this order?

17 A. She would have brought me back one that
18 had been signed. I may have; I may not have. I don't
19 know.

20 Q. Where would that be, if you did keep it?

21 A. With other orders that I have kept that
22 have been signed.

23 Q. Where are those located?

24 A. At my office.

25 Q. Are those orders anywhere else?

1 A. No.

2 Q. What is your purpose in keeping orders
3 such as that?

4 A. I guess I keep it as opposed to keeping a
5 file. It has my final thing on what the research and what
6 the answer I gave on the issue.

7 Q. Is that your routine practice?

8 A. Generally, yes.

9 Q. How long has that been your routine
10 practice?

11 A. I don't know.

12 Q. Did you, or through your administrative
13 assistant or secretary or anybody in your office,
14 communicate this decision to anyone? By this decision, I
15 mean Exhibit 3.

16 A. My secretary took it down to the clerk's
17 office for filing and service.

18 Q. Who is supposed to do service, or who was
19 supposed to do the service in June of 2008?

20 A. Whoever the person is who signs the
21 certificate of service.

22 Q. Who is that in this instance?

23 A. Joyce Clark.

24 Q. Is she your secretary, your assistant or
25 works in the clerk's office?

1 A. Both.

2 Q. Tell me about that.

3 A. She is supposed to be working part for me,
4 but she does not. She works fully for the clerk's
5 office. I have her to pull items and research items and
6 provide files to me, but I do no direct supervision of
7 her.

8 Q. Was the practice of communicating
9 decisions on cases in 2007 and 2008 for the clerk's office
10 to do that, or did your office directly do that at all?

11 A. I'm not sure what you're talking about.

12 Q. Was the clerk's office supposed to
13 communicate decisions to litigants in 2007 and 2008, or
14 did your office do that under the policies you have?

15 A. No, my office does not do that.

16 Q. How long has that been the case under your
17 tenure?

18 A. I have only done it by exception, had my
19 secretary do anything like that.

20 Q. How many times have you made that
21 exception?

22 A. I do not know.

23 Q. What reasons have you had for making that
24 exception?

25 A. In the notice that I gave to Pleau and

1 Merastar Insurance for the hearing on the 23rd of December
2 2008, I had my secretary to do it.

3 Q. Can you think of any other exceptions you
4 made to the practice of how decisions of the Court are
5 communicated?

6 A. Well, now through sessions court, that is
7 the way it is done. Juvenile court is different.

8 Q. Now, is that the same process that you
9 currently undertake, about communicating decisions to
10 litigants?

11 A. Yes, I do not do that unless by exception.

12 Q. How many different cases did you have
13 under advisement of any nature between September 17th,
14 2007 and June of 2008?

15 A. I would have no idea.

16 Q. More than a hundred?

17 A. Not at the same time, no. But during the
18 time frame, I do not know.

19 Q. What percentage of your cases do you take
20 under advisement versus the number of --

21 A. I would say less than 1 percent.

22 Q. And if you have represented that you
23 handle some 12,000 cases on an annual basis, would the
24 math agree that you take less than, I guess that would be
25 120 cases under advisement in a year?

1 A. I don't know what figures you have as far
2 as how much our court does. I think our court does more
3 than that, and I would say that less than 1 percent would
4 be accurate.

5 Q. What is the most number of cases you have
6 ever had under advisement at one time?

7 A. I have no idea.

8 Q. What is the least amount you've ever had
9 under advisement?

10 A. None.

11 Q. Is none more often than not the case?

12 A. It just depends on the week; it depends
13 on the cases.

14 Q. Subsequently, did you learn that the
15 decision had not been communicated immediately or shortly
16 thereafter by the clerk to Mr. Pleau or to Merastar?

17 A. Only through the complaint.

18 Q. By complaint, do you mean the complaint
19 that Mr. Pleau filed in the Court of the Judiciary?

20 A. The letter from Mr. Daniel and the
21 complaint from Mr. Pleau.

22 Q. Did anything else happen with respect to
23 this case or anything pertaining to this case between your
24 directing your assistant to take the order to the clerk's
25 office and bringing you back a copy and your receipt of

1 the Court of the Judiciary complaint of Mr. Pleau through
2 correspondence from disciplinary counsel Daniel?

3 A. Nothing from me.

4 Q. Nothing that you recall?

5 A. Nothing from me.

6 Q. Is the Pleau Court of the Judiciary
7 complaint a matter that you became aware of through a
8 letter from Judge Daniel?

9 A. Yes.

10 Q. When was that?

11 A. I do not know.

12 Q. Do you have any facts that the Court of
13 the Judiciary initiated this complaint that Mr. Pleau
14 filed?

15 A. The one filed by Mr. Pleau, no.

16 Q. Do you have any evidence that the Court of
17 the Judiciary had anything to do with that complaint being
18 filed by Mr. Pleau?

19 A. Other than what's been discussed in
20 depositions.

21 Q. What is that?

22 A. That Mr. Daniel told Mr. Pleau about how
23 his case was going to be investigated in Mr. Pleau's
24 deposition.

25 Q. So that would be testimony from Mr. Pleau?

1 A. Yes.

2 Q. Is there any other evidence that you have
3 or have knowledge of as to the initiation of this
4 complaint?

5 A. Yes.

6 Q. What is that?

7 MR. MCDONALD: Except that might have come
8 through counsel.

9 THE WITNESS: Mr. Daniel's office does not
10 keep matters which are supposed to be confidential
11 confidential, and over periods of time I've received
12 different information from different individuals
13 about the case.

14 BY MR. MCHALE:

15 Q. About what case?

16 A. Pleau.

17 Q. Let me limit my question to before the
18 Pleau complaint was filed.

19 A. Nothing.

20 Q. Since the Pleau case was filed, what
21 information have you received that the case was not
22 confidential, other than through your attorney?

23 A. I received information concerning the
24 telephone issues. I received information concerning
25 investigation by the TBI. I received information from a

1 variety of different sources of things that Mr. Daniel's
2 office was doing.

3 Q. What other sources?

4 A. Sources?

5 Q. Yes, sir.

6 A. Some of which I don't know. Some would
7 be Michael McCarter, some would be Cathy Holt, some would
8 be individuals that are unknown to me, some would be
9 clerks.

10 Q. Anything else?

11 A. There may be, but that's all I can think
12 of at this time.

13 Q. Where and when did you first receive
14 information about telephone records?

15 A. Mr. McCarter was saying that my telephones
16 were being tapped.

17 Q. Any other information come your way about
18 telephone records?

19 A. No.

20 Q. Who is Mr. Michael McCarter?

21 A. I guess the best way to describe it, he's
22 a friend of Mr. Daniel.

23 Q. Did he specifically use the word tapped?

24 A. I don't know what words he specifically
25 used, but that is the information --

1 Q. When did you receive that information?

2 A. Before the complaint was filed.

3 Q. That is before the complaint of Mr. Pleau
4 in July of 2008?

5 A. No.

6 Q. Before what complaint?

7 A. The one that was filed with the Court of
8 Appeals, the one that is -- the pleadings in this case.

9 Q. That would be, if I might try to correct
10 you, the complaint filed in the Supreme Court clerk's
11 office, the formal charges of the Court of the Judiciary?

12 A. Yes.

13 Q. When did Mr. McCarter tell you that?

14 A. I do not recall.

15 Q. So sometime between June of 2008 and late
16 2009?

17 A. It would be between the time that I
18 received the complaint from Mr. Daniel and the time that
19 formal pleadings were filed.

20 Q. By complaint from Mr. Daniel, you mean the
21 formal complaint or formal charges that put you on notice
22 that the investigative panel has authorized him to go
23 forward; is that what you're talking about?

24 A. Between the letter from him and the actual
25 filing, yes.

1 Q. The original letter from him or later
2 letter? I'm trying to understand. I'm sorry.

3 A. The original letter from him and the time
4 that he actually filed.

5 Q. Who is Cathy Holt?

6 A. She has some gas stations in town, some
7 property she owns. I represented her in the past.
8 Mr. McCarter goes to her and provides her information
9 about things that the Court of the Judiciary has told him
10 that they're doing.

11 Q. Did she relate that to you?

12 A. She did.

13 Q. What did she relate?

14 A. I cannot remember everything she related.
15 She related several different things that were going on.

16 Q. Such as?

17 A. Mr. McCarter had -- and this is what she
18 tells me. Mr. McCarter told her about the TBI and when
19 they were going to arrest me, as to conversations that
20 took place primarily between her and Mr. McCarter about
21 various aspects of this case. I cannot remember them all.

22 Q. When were you -- well, this is your time
23 to testify.

24 A. This is not my time to testify. This is
25 my time to answer your questions.

1 Q. Do you not consider that testimony?

2 A. It is testimony, but it's not from my
3 perspective. It's answering the questions which you wish
4 to have from me.

5 Q. Well, I just asked you a question and you
6 told me you can't remember any others. I'm asking you, do
7 you remember any other such conversations?

8 A. I remember other conversations. Whether
9 it came through her specifically or not, I do not know.

10 Q. What were the nature and content of those
11 conversations?

12 A. That Mr. Daniel was investigating a
13 complaint concerning Connie Fowler, that the DA had
14 dismissed a warrant on a bad check, and that they were
15 investigating that complaint.

16 Q. Who provided you with that information?

17 A. I do not know whether that was Mr.
18 McCarter or whether that was Ms. Holt.

19 Q. Any other information you received about
20 the conduct or actions of the Court of the Judiciary or
21 any of its personnel?

22 A. The private investigator was in and around
23 town, had been passing out his cards, telling people that
24 he was investigating me, and that if they wanted to
25 provide information they could contact him.

1 Q. Who was that investigator?

2 A. Your investigator.

3 Q. Mr. LaRue?

4 A. Yes, sir.

5 Q. Any other investigators which you're aware?

6 A. None which I'm aware of.

7 Q. What clerks spoke to you about any
8 investigation of the Court of the Judiciary?

9 A. Primarily things where Mr. LaRue would be
10 in town and would be accessing information, getting
11 information.

12 Q. Who else told you about that, other than
13 Michael McCarter or Cathy Holt or clerks?

14 A. As to his situation with the barber shop,
15 he's done that a couple of times. It was some guys that
16 were there at the barber shop. I do not know their names.

17 Q. Are there any other sources of information
18 that provided you information or facts or claims about the
19 investigation or alleged investigation of the Court of the
20 Judiciary?

21 A. Not that I can recall at this time.

22 Q. Did you receive any other information
23 about any telephone records, other than what you have told
24 us about?

25 A. No.

1 Q. From whom did you acquire information
2 about the alleged involvement or involvement of the TBI?

3 A. I'm sorry?

4 Q. From whom did you receive information
5 about the involvement or alleged involvement of the TBI?

6 A. Mr. McCarter.

7 Q. Anybody else?

8 A. No.

9 Q. Do you recall when he told you that?

10 A. No.

11 Q. Has anyone else provided you any
12 information about the investigation of the Court of the
13 Judiciary?

14 A. Not that I can recall at this time.

15 Q. Do you have any information that James
16 LaRue, the gentleman that's seated in this room, had
17 anything to do with this complaint prior to, first of all,
18 Mr. Pleau's initial filing of this complaint?

19 A. I have no information concerning his
20 involvement prior to the filing.

21 Q. Do you have any information or evidence
22 that contradicts his involvement with this complaint,
23 other than what he testified to about being tasked by J.S.
24 Daniel to attend a court hearing in February of 2009?

25 A. I do not.

1 Q. Do you have any information that anyone
2 else affiliated with the Court of the Judiciary had
3 anything to do with initiating the complaint of David
4 Pleau?

5 A. Initiating it?

6 Q. Yes, sir.

7 A. I have no information on that.

8 Q. Do you have any information that anyone
9 else affiliated in any fashion with the Court of the
10 Judiciary had anything to do with the investigation of
11 this case other than J.S. Daniel, James LaRue, myself, I
12 guess --

13 A. Okay. Your --

14 Q. -- telephone records and TBI?

15 A. Your question is running on and on, and
16 I'm not able to keep up with you.

17 MR. MCHALE: Read it back, please.

18 (Last question read)

19 BY MR. MCHALE:

20 Q. Do you understand the question?

21 A. No, I do not.

22 Q. I'm going to try it again a different way.
23 I'm not going to try and repeat exactly what Madam Court
24 Reporter told us. Do you have any information that
25 anyone, other than J.S. Daniel, James LaRue or myself have

1 been involved with the investigation of this case at any
2 time?

3 A. None other than what has been testified to
4 in depositions.

5 Q. And that would include the TBI and anyone
6 who had to do with your telephone records? Would that be
7 two such entities or individuals or organizations?

8 A. None other than what has been testified to
9 in deposition that I've sat and listened to.

10 Q. Who else has been involved in the
11 investigation that you've listened to in depositions that
12 we haven't covered?

13 MR. BALL: I'm not trying to answer for
14 the witness, but --

15 MR. MCHALE: Well, obviously Pleau, for
16 example.

17 MR. BALL: But also the state Attorney
18 General's Office, the local DA's office, whoever has
19 been --

20 THE WITNESS: The U.S. Attorney office.

21 BY MR. MCHALE:

22 Q. Anything else that you can --

23 A. Not that I can think of at this time.

24 Q. At some point you received a complaint
25 from Judge Daniel that had been purportedly signed by

1 David Pleau; is that correct?

2 A. Yes.

3 Q. And I'm going to hand you a five-page
4 document and ask if you've ever seen that before?

5 A. Yes.

6 Q. Is that a true copy of what you recall
7 receiving from the Court of the Judiciary, with a cover
8 letter from Judge Daniel?

9 A. Yes.

10 MR. MCHALE: Let's make that the next
11 exhibit. It's a five-page document. It would be 4,
12 and we'll call it the initial complaint of David
13 Pleau. Do you want to see it?

14 MR. BALL: Is it the same thing?

15 MR. MCHALE: Well, no. It's his
16 response.

17 (Whereupon, the respective document was
18 marked Exhibit Number 4.)

19 BY MR. MCHALE:

20 Q. Judge Bell, I've handed you a three-page
21 document that I'm going to tender and have marked as
22 Exhibit 5 that does not include a two-page motion to
23 dismiss, which has previously been made an exhibit to your
24 deposition, specifically Exhibit 1, and ask you if you
25 recognize that document?

1 A. Yes.

2 Q. If you could, please, sir, take as long as
3 you need to read over it, and tell us if that in fact is
4 the response you made initially to the complaint in the
5 Court of the Judiciary by David Pleau?

6 A. (Witness examines document.)

7 MR. MCHALE: What's that?

8 MR. BALL: Letters from the Leitner law
9 firm.

10 MR. MCHALE: Yeah, he tells me -- this is
11 off the record.

12 (Off-the-record discussion)

13 THE WITNESS: I think it is, other than
14 the numbers at the bottom of each page.

15 BY MR. MCHALE:

16 Q. Go ahead and keep that for a second, sir,
17 and let me ask you this. Was that made under oath by you?

18 A. Yes.

19 Q. Why?

20 A. Because the rules used to require it to be
21 under oath. They don't now. I think it is better to put
22 it under oath so that you have my word sworn to that this
23 is what I did.

24 Q. Is everything in there true?

25 A. Yes.

1 Q. Do you adopt it today?

2 A. It does have some errors in it.

3 Q. What errors does it have in it? And this
4 will be --

5 MR. MCHALE: Well, let's go ahead and mark
6 it Exhibit 5 now, if you don't mind.

7 (Whereupon, the respective document was
8 marked Exhibit Number 5.)

9 (Off-the-record discussion)

10 MR. MCHALE: This is Patrick McHale.

11 According to the tower clock over there, it's 4:20
12 Eastern time on Tuesday, the 12th, and we've been
13 discussing various time constraints involving various
14 health of attorneys, including but not necessarily
15 limited to J.S. Daniel and Gordon Ball and ongoing
16 medical treatment or expected medical treatment
17 within the next 24 hours. Judge Bell, the witness,
18 has a medical appointment this evening that we want
19 to respect. We've gone off the record to try to
20 hammer out a solution to keep us on task, and we
21 believe that it is going to work for us to resume
22 this deposition at 2:00 p.m. Eastern time on next
23 Tuesday, which is Tuesday, January 19th, 2:00
24 Eastern. Ms. McBee, our court reporter, is going to
25 have either herself or another court reporter

1 present. We are expecting at the outside no more
2 than five hours, at most, to get done with that.
3 This will hopefully enable Judge Bell to address as
4 much of his docket on Tuesday. Mr. Daniel, have I
5 stated that accurately?

6 MR. BALL: You have, and let me say that I
7 find it a revolting development that I am in a case
8 with such people that are so old, including myself.

9 MR. MCHALE: Well, I will say in response
10 to that is you and your client who have the most
11 immediate medical treatment in front of you, not
12 anyone else.

13 MR. BALL: I said laughingly --

14 MR. MCHALE: All right. Thank you. We're
15 adjourned for today.

16 FURTHER THE DEPONENT SAITH NOT
17
18
19
20
21
22
23
24
25

I hereby certify that I have read the foregoing transcript of my deposition given at the time and place aforesaid, consisting of pages 1 to 90, inclusive, and I do again subscribe and make oath that the same is a true, correct, and complete transcript of my deposition so given as aforesaid and includes changes, if any, so made by me on the attached errata sheet(s).

JOHN A. BELL

SUBSCRIBED AND SWORN TO before me
this _____ day of _____, 2010.

NOTARY PUBLIC

My Commission Expires: _____

C E R T I F I C A T E

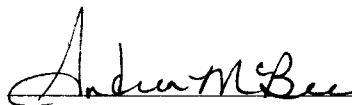
1
2
3
4 STATE OF TENNESSEE:

5 COUNTY OF KNOX :

6
7 I, Andrea McBee, Court Reporter and Notary
8 Public, do hereby certify that I administered the oath to
9 the deponent, that I reported in machine shorthand the
10 above testimony, that the foregoing pages, numbered from 1
11 to 92, inclusive, were typed under my personal supervision
12 and constitute a true and accurate record of the
13 proceedings, and that there has been a request made by the
14 deponent to review the transcript.

15 I further certify that I am not an attorney
16 or counsel for any of the parties, nor an employee or
17 relative of any attorney or counsel connected with the
18 action, nor financially interested in the action.

19 Witness my hand and official seal this 18th
20 day of January, 2010.

21 

22 Andrea McBee

23 Court Reporter and Notary Public

24 My Commission Expires 5/09/2012

25

IN THE GENERAL SESSIONS COURT FOR COCKE COUNTY, TENNESSEE

DAVID J. PLEAU,

Plaintiff,

v.

MERASTAR INSURANCE
COMPANY,

Defendant.

)
)
)
)
)
)
)
)
)
)
)

No. 2007-CV-869



MOTION TO DISMISS

Comes the Defendant, Merastar Insurance Company, by and through counsel, and moves this Honorable Court for an Order Dismissing, with prejudice, the Plaintiff's Complaint. As grounds, the Defendant would show the Court as follows:

1. Plaintiff filed a Complaint in the above-captioned matter on August 9, 2007. The Complaint alleges that Defendant failed to "pay damages resulting from accident [sic] with an uninsured motorist on 12/29/07 [sic]."
2. Plaintiff has not filed a lawsuit against the alleged uninsured motorist.
3. Under Tennessee Code Annotated § 56-7-i206, Plaintiff must file a lawsuit against the uninsured motorist before naming the uninsured motorist carrier in any subsequent or contemporaneous action.
4. Plaintiff has failed to comply with the statutory requirements for recovery under the uninsured motorist endorsement of an automobile liability insurance policy.

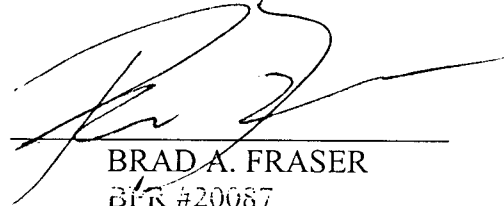
6 January 10
Bell

WHEREFORE, the Defendant requests that this Honorable Court enter an Order
Dismissing the Plaintiff's Complaint with prejudice.

Respectfully submitted,

LEITNER, WILLIAMS, DOOLEY
& NAPOLITAN, PLLC

BY:



BRAD A. FRASER

BFR #20087

Counsel for Defendant

180 Market Place Boulevard

Knoxville, TN 37922

(865) 523-0404

STATE OF TENNESSEE, COUNTY OF DOCKE

To Any Lawful Officer to Execute and Return:

Summon MERASTAR INSURANCE CO.

To appear before the General Sessions Court of

Doyle County, Tennessee, on the 18 day

of Sept, 2007, at 9:00 a.m./p.m.,

then and there to answer in a civil action brought by

David J Pleau, policy # TW11181953 For

Failure to pay damages resulting from accident with an uninsured

Motorist on 12-29-07 Under \$ 5,000.

CIVIL SUMMONS

Judgment for _____ against _____ for _____

plus interest at the rate of _____ % and cost of

suit, for which execution may issue.

Judgment entered by: Default Agreement Trial

Dismissed: Without prejudice With prejudice

Costs taxed to: Plaintiff Defendant

Defendant(s) _____

in court and admitted to jurisdiction of court.

This the _____ day of _____, 20____.

_____, Judge, Div. _____

JUDGMENT

ORDER

This the _____ day of _____, 20____.

_____, Judge

NOTICE

TO THE DEFENDANT(S):

Tennessee law provides a four thousand dollar (\$4,000.00) personal property exemption from execution or seizure to satisfy a judgment. If a judgment should be entered against you in this action and you wish to claim property as exempt, you must file a written list, under oath, of the items you wish to claim as exempt with the clerk of the court. The list may be filed at any time and may be changed by you thereafter as necessary; however, unless it is filed before the judgment becomes final, it will not be effective as to any execution or garnishment issued prior to the filing of the list. Certain items are automatically exempt by law and do not need to be listed; these include items of necessary wearing apparel (clothing) for yourself and your family and trunks or other receptacles necessary to contain such apparel, family portraits, the family Bible, and school books. Should any of these items be seized you would have the right to recover them. If you do not understand your exemption right or how to exercise it, you may wish to seek the counsel of a lawyer.

AFFIDAVIT

To the best of my information and belief, after investigation of Defendant's employment, I hereby make affidavit that the Defendant is/is not a member of a military service.

STATE OF TENNESSEE DOCKE COUNTY

CLERK OF SECTIONS COURT

David J Pleau
Attorney for Plaintiff

Docket Number 2007-1-10000

DAVID J. PLEAU Plaintiff(s)

VS.

MERASTAR INSURANCE CO. Defendant.

P.O. Box 181101 Address

CHATTANOOGA, TN Defendant.

ZIP: 37414-6101 Address

Defendant.

Address

CIVIL WARRANT

Court of General Sessions

(preprinted name), Clerk

By Beth Lopper, Deputy Clerk

Issued August 9, 2007

Set for Sept. 18, 07 at 9 am

Reset for _____

Served Upon: All Named Defendants

All Defendants Except:

SERVICE

Served _____

Sheriff/Constable/Process Server)

Attorney for Plaintiff

Telephone _____

Attorney for Defendant

Telephone _____

EXHIBIT

Bell

FILED

06-27-08
Joyce B Clark
COCKE COUNTY SESSIONS COURT

IN THE GENERAL SESSIONS COURT
FOR
COCKE COUNTY, TENNESSEE

EXHIBIT
3
Bell 1/12/2008

David J. Pleau,
Plaintiff,

VS

Merastar Insurance Company,
Defendants.

*
*
*
*
*
*
*

COURT No.: 2007-CV-869

STATE OF TENNESSEE COCKE COUNTY
I, Joyce B Clark, CLERK OF SESSIONS COURT
OF COCKE COUNTY AND STATE, DO HEREBY CERTIFY
THAT THIS IS A TRUE AND CORRECT COPY OF THE
ORIGINAL BILL FILED.

ORDER

THIS 9 DAY OF JAN 2008
Joyce B Clark
SESSIONS COURT CLERK

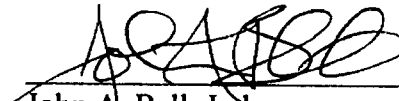
This cause came to be heard on 18 day of September, 2007 before the Honorable John A. Bell, General Sessions Court Judge, upon the appearance of the Plaintiff and Attorney for the Defendant with the swearing of witnesses and testimony in open court and after the Plaintiff ending their case in chief, the Attorney for the Defendant moved to dismiss based on TCA 56-7-1206 and the Court having given great consideration to all of this and to the record as a whole, and therefore based on the foregoing the court finds as follows:

1. Although the Plaintiff's vehicle had pulled onto the highway crossing the path of the other vehicle's lane of travel, the Court finds the Plaintiff's vehicle was solely and completely in his lane of travel when struck by the other vehicle. The driver of the other vehicle crossed the center of the highway crossing into the lane of travel of the Plaintiff. Therefore, the Court finds and assigns fault as follows: Plaintiff - 0% the Other Driver - 100%.
2. The Court finds the damages to the Plaintiff's vehicle to be in the amount of \$4,726.78.
3. The hard decision in this case is how to rule on the Defendants motion based on TCA 56-7-1206. It is not so much the motion as it is the timing of the motion. This statute is essentially a statutorily mandated indispensable party rule requiring, in this case that, the driver of the other vehicle be made a party to the action. Further, it requires as applied to this case, that failure to make the other driver a party to this case, the Court must dismiss the case. What concerns the Court in this matter is that the Defendant knew of the law well before trial (Motion had been typed before trial.) and did not reveal the error to the Plaintiff nor to the Court until after close of the Plaintiff's case. Therefore, the issue for this Court to wrestle with, is whether or not the Defendant waived their right to raise the issue by waiting until the close of the Plaintiff's case in chief before raising the issue of noncompliance with TCA 56-7-1206. It would appear unfair to do, as this Defendant has done in this matter, by ambushing the Plaintiff with this statute after the close of their case in chief. However, it is after the close of the Plaintiff's case in chief that the

Defendant presents their defense. It would seem reasonable to require the Defendant to raise this issue pretrial. However, the Legislature for the state of Tennessee in making this law has not required the issue to be raised pretrial. The law requiring this Court to dismiss this case may seem harsh to the Plaintiff, but the Plaintiff still has the right to appeal this order. However, this Court must follow the law as set out in TCA 56-7-1206 and dismiss this case.

It is therefore, Ordered, Adjudged, and Decreed that this case be dismissed for failure to comply with TCA 56-7-1206 requiring that the other driver be joined as an indispensable party defendant to this action.

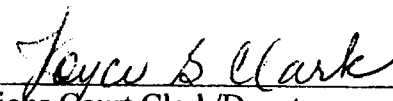
Entered this the 27th day of June 2008.



John A. Bell, Judge
General Sessions Court

CERTIFICATE OF SERVICE

I the undersigned Clerk/Deputy Clerk of the Cocke County General Sessions Court do hereby certify that I have forwarded a true and exact copy of the foregoing order to the counsel for the parties and the unrepresented parties at their address of record with postage pre-paid.



Sessions Court Clerk/Deputy

STATE OF TENNESSEE COCKE COUNTY
I, Joyce S. Clark, CLERK OF SESSIONS COURT
OF COCKE COUNTY AND STATE, DO HEREBY CERTIFY
THAT THIS IS A TRUE AND CORRECT COPY OF THE
ORIGINAL BILL FILED.
THIS 9 DAY OF JAN 20 09
Joyce S. Clark
SESSIONS COURT CLERK

08-3508

TENNESSEE COURT OF THE JUDICIARY
Steve Daniel, Disciplinary Counsel
503 North Maple Street
Murfreesboro, TN 37130
(615) 898-8004



COMPLAINT AGAINST JUDGE UNDER CODE OF JUDICIAL CONDUCT

Your Name: DAVID J. PLEAN
(please type or print)
Address: P.O. Box 204
Bybee, Tennessee
37713
Phone: Daytime (931) 721-5651 Evening (931) 721-8822

I have information of possible misconduct or disability on the part of Judge John Bell
(name of judge or acting judge) of the Sessions
Court in Newport (city). Cocke
(county), Tennessee.

STATEMENT OF FACTS
(You may attach additional pages if necessary)

1. When and where did this happen?
Date(s): September 18, 2007 Time: 9 AM Location: Cocke County Courthouse, Newport, TN
2. If your information arises out of a court case, please answer these questions:
 - a) What is the name and number of the case?
Case name: David J. Plean vs Measter Ins Co Case No. 2007-CV-869
 - b) What kind of case is it?
 criminal domestic relations general sessions probate
 civil juvenile other (specify) _____
 - c) What is your relationship to the case?
 plaintiff/petitioner defendant/respondent
 attorney for _____
 witness for _____
 other (specify): _____
 - d) If you were represented by an attorney(s) in this matter at that time, please identify the attorney(s):
 Name(s): _____
 Address(es): _____
 Phone: () _____
 - e) Identify any other attorney(s) who represented other parties involved in the case:
 Name of attorney: _____
 Address: _____

Phone: () _____ Represented: _____

3. List documents that help support your information that the judge or acting judge has engaged in misconduct or has a disability, noting which documents you have attached:

My enclosed document is a copy of the order, dated June 27, 2008.

4. Identify, if you can, any other witnesses to the conduct of the judge or acting judge:

Name(s): _____

Address(es): _____

Phone: () _____ () _____

5. Specify below the details of what the judge or acting judge did that you think constitutes misconduct or indicates disability. (Please type or print legibly; attach additional pages if necessary.)

I entered my concerns pre-hearing, and then the hearing date of my concern was September 18, 2007. The Judgment date was June 27, 2008. On September 18, 2007, Judge Bell stated that he would render a decision within one week. My complaint isn't so much that the decision rendered instead took more than NINE months, but that I was not told that I had ten days in which to file an appeal on the issue. Upon filing this claim against Merastar Insurance Company, Chattanooga, TN, I did not retain an attorney, being that the case was heard in "Small claims court." Enclosed, please find a copy of the judgment of this case, which was dismissed on a legal technicality, of which I, as small claim plaintiff, not knowledgeable of such technical issues, became the "ambushed" victim. I arrived at "Sessions Court Office" on July 10, 2008, with the intention to appeal the dismissal of this case, but was told that I had ten days to appeal by TN Law. My issue is that I received the judgment on the 10th of July, and was not informed of the time limit allowed in which to appeal, which was expired upon reception.

I UNDERSTAND THAT STATE LAW PROVIDES THAT THE COURT OF THE JUDICIARY'S PROCEEDINGS ON THIS REQUEST FOR INVESTIGATION ARE CONFIDENTIAL PRIOR TO THE FILING OF ANY FORMAL CHARGES BY DISCIPLINARY COUNSEL.

I've been told that I am unable to appeal the ruling, based on the ten day limit, but I received the order after the 10th day.

UNDER PENALTY OF PERJURY, I SWEAR OR AFFIRM THAT THESE STATEMENTS AND INFORMATION CONTAINED IN ANY ATTACHED DOCUMENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE AND CONSTITUTE ALL OF MY COMPLAINTS AS OF THIS DATE AGAINST THE ABOVE-NAMED JUDGE OR ACTING JUDGE.

SIGNATURE: David J. Bean

If this appeal to you is acceptable, then I am now 10 business days from the order.
DATE: 7-14-2008
JB

STATE OF Tennessee
COUNTY OF Cocke

SWORN TO AND SUBSCRIBED _____ day of _____, 20____.

Notary Public: _____

My Commission Expires: _____

FILED

06-27-08

Joyce B Clark

COCKE COUNTY SESSIONS COURT

IN THE GENERAL SESSIONS COURT
FOR
COCKE COUNTY, TENNESSEE

David J. Pleau,
Plaintiff,

VS

Merastar Insurance Company,
Defendants.

*
*
*
*
*
*
*

COURT No.: 2007-CV-869

STATE OF TENNESSEE COCKE COUNTY
I, Joyce B Clark, CLERK OF SESSIONS COURT,
DO HEREBY CERTIFY AND BEAR DO HEREBY CERTIFY
THAT THIS IS A TRUE AND CORRECT COPY OF THE
ORIGINAL BILL FILED.

ORDER

JAN 20 08
SESSIONS COURT CLERK

This cause came to be heard on 18 day of September, 2007 before the Honorable John A. Bell, General Sessions Court Judge, upon the appearance of the Plaintiff and Attorney for the Defendant with the swearing of witnesses and testimony in open court and after the Plaintiff ending their case in chief, the Attorney for the Defendant moved to dismiss based on TCA 56-7-1206 and the Court having given great consideration to all of this and to the record as a whole, and therefore based on the foregoing the court finds as follows:

1. Although the Plaintiff's vehicle had pulled onto the highway crossing the path of the other vehicle's lane of travel, the Court finds the Plaintiff's vehicle was solely and completely in his lane of travel when struck by the other vehicle. The driver of the other vehicle crossed the center of the highway crossing into the lane of travel of the Plaintiff. Therefore, the Court finds and assigns fault as follows: Plaintiff - 0% the Other Driver - 100%.
2. The Court finds the damages to the Plaintiff's vehicle to be in the amount of \$4,726.78.
3. The hard decision in this case is how to rule on the Defendants motion based on TCA 56-7-1206. It is not so much the motion as it is the timing of the motion. This statute is essentially a statutorily mandated indispensable party rule requiring, in this case that, the driver of the other vehicle be made a party to the action. Further, it requires as applied to this case, that failure to make the other driver a party to this case, the Court must dismiss the case. What concerns the Court in this matter is that the Defendant knew of the law well before trial (Motion had been typed before trial.) and did not reveal the error to the Plaintiff nor to the Court until after close of the Plaintiff's case. Therefore, the issue for this Court to wrestle with, is whether or not the Defendant waived their right to raise the issue by waiting until the close of the Plaintiff's case in chief before raising the issue of noncompliance with TCA 56-7-1206. It would appear unfair to do, as this Defendant has done in this matter, by ambushing the Plaintiff with this statute after the close of their case in chief. However, it is after the close of the Plaintiff's case in chief that the

Defendant presents their defense. It would seem reasonable to require the Defendant to raise this issue pretrial. However, the Legislature for the state of Tennessee in making this law has not required the issue to be raised pretrial. The law requiring this Court to dismiss this case may seem harsh to the Plaintiff, but the Plaintiff still has the right to appeal this order. However, this Court must follow the law as set out in TCA 56-7-1206 and dismiss this case.

It is therefore, Ordered, Adjudged, and Decreed that this case be dismissed for failure to comply with TCA 56-7-1206 requiring that the other driver be joined as an indispensable party defendant to this action.

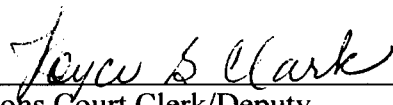
Entered this the 27th day of June 2008.




John A. Bell, Judge
General Sessions Court

CERTIFICATE OF SERVICE

I the undersigned Clerk/Deputy Clerk of the Cocke County General Sessions Court do hereby certify that I have forwarded a true and exact copy of the foregoing order to the counsel for the parties and the unrepresented parties at their address of record with postage pre-paid.



Sessions Court Clerk/Deputy

STATE OF TENNESSEE COOKE COUNTY
JOYCE S. CLARK, CLERK OF SESSIONS COURT
COUNTY AND STATE, DO HEREBY CERTIFY
THAT THIS IS A TRUE AND CORRECT COPY OF THE
ORIGINAL BILL FILED.
THIS 9th DAY OF JAN 20 09

SESSIONS COURT CLERK



**LEITNER, WILLIAMS,
DOOLEY & NAPOLITAN, PLLC**
Attorneys at Law

Brad A. Fraser, Member

180 Market Place Boulevard
Knoxville, Tennessee 37922
Main 865.523.0404 • Fax 865.673.0260
Direct 865.342.4904 • Direct Fax 865.934.4904
Toll-Free 800-421-8148
brad.fraser@leitnerfirm.com

July 9, 2008

4299-00054

VIA CERTIFIED MAIL R.R.R.

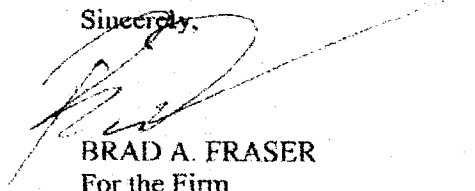
David Pleau
1618 Scotch Pine Way
Bybee, Tennessee 37713

RE: David Pleau v. Merastar Insurance Company
Coke County General Sessions Court No.: 2007-CV-869

Dear Mr. Pleau:

Enclosed please find a copy of the Order from the trial heard on September 18, 2007 regarding the above-referenced matter.

Sincerely,



BRAD A. FRASER
For the Firm

BAF/jn

Enclosure

cc: Angela Grime

July 11, 2008
please note that the
date of this document
is two days after
the allotted ten days
with which I am
allowed to appeal. DP

JOHN A. BELL, JUDGE

111 Court Avenue, Suite 200
Cocke County Courthouse
Newport, Tennessee 37821

Phone: (423)-465-3007

FAX: (423)-465-3008

J.S. Daniel
Disciplinary Council
503 North Maple Street
Murfreesboro, TN 37130

14 August 2008

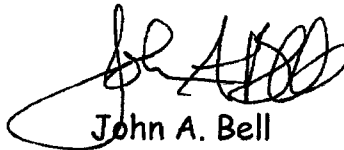
RE: Complaint of David J. Pleau
File No.: 08-3508

Honorable J.S. Daniel,

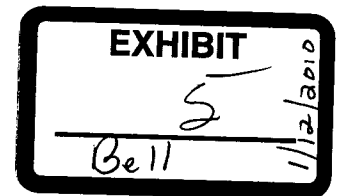
This letter is written in response to your letter dated 17 July, 2008 concerning the above styled matter. Enclosed you will find my sworn statement in response.

If you need any additional information, please contact me at your convenience.

Sincerely,



John A. Bell

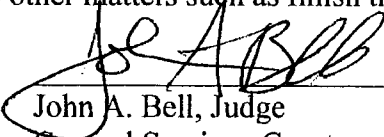


1. I am John A. Bell, General Sessions Court Judge for Cocke County Tennessee. I have done nothing wrong or improper in this matter. I make the following statements under oath concerning the Complaint filed by David J. Pleau.
2. The court case involved the filing of a civil complaint concerning an automobile accident. David J. Pleau represented himself and filed a civil complaint against his own insurance company. At trial, David J. Pleau was pro se and his insurance company was represented by their counsel. Further, at court, to observe, was additional counsel, who represented the insurance carrier for the driver of the other automobile. But, neither the other driver nor their insurance carrier was made a party to the action. At the close of the proof by the Plaintiff, the Defendant insurance carrier filed a motion to dismiss and rested. The case was over. The motion to dismiss is attached as enclosure 1 hereto. The motion to dismiss is based purely on an issue of law. The facts were easy to determine. I resolved all facts in favor of the Plaintiff, David J. Pleau. The legal issue however required research.
3. The motion to dismiss was based on T.C.A. section 56-7-1206 and was purely a question of law. I was required to do extensive legal research¹ to determine the question of law. I researched generally the following:
 - a. T.C.A. section 56-7-1206 in Tennessee and all Federal jurisdictions.
 - b. The language in TCA 56-7-1206 in all state and all federal jurisdictions.
 - c. Similar statutes in all states and all federal jurisdictions.
 - d. Ben W. Hooper, II v State Farm Mutual Automobile Insurance Company 682 S. W. 21d 505, in Tennessee, all other states and Federal jurisdictions.
 - e. The language in Ben W. Hooper, II v State Farm Mutual Automobile Insurance Company 682 S. W. 21d 505, in Tennessee, all other states and all Federal jurisdictions.
 - f. Similar cases in all states and all federal jurisdictions.
 - g. Whether the Defendant has waived the right to bring the motion by waiting until after the trial has started and after the close of the plaintiff's case in chief (i.e. did the defense waive the issue by not making the motion pretrial?) I researched this issue in Tennessee, all states and federal jurisdictions.
 - h. T.C.A. section 56-7-1206 is essentially a mandatory indispensable party statute. Therefore, I researched mandatory indispensable party in Tennessee, all states and all federal jurisdictions.
 - i. When motions for mandatory indispensable party must be raised. (I.e. Must the motions be raised pretrial or can they be raised in the Defense case in chief?) I researched this issue in Tennessee, all states and federal jurisdictions.
 - j. Which motions must be made pretrial or they are considered waived. I researched this issue in Tennessee, all states and federal jurisdiction.
4. Mr. Pleau complains that he was not told he had 10 days to appeal. I admit that I did not give him legal advice on the issue of appealing his case. When I was a

¹ It is my practice to dispose of all judicial notes and research once a final order is completed. I wish I had retained the stack of research so you could have seen the work I put into this case.

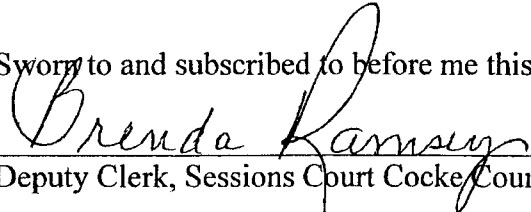
lawyer I gave advice on the time for appeals in cases. However, as judge I do not give advice to litigants.

5. The real basis for Mr. Pleau complains that his case was dismissed on a "...legal technical." and that I should have given him advice to keep his case from being dismissed. I admit that I was required by both statutory law and case law to dismiss the case on a legal technicality. I did not want to dismiss his case based on a legal technicality that is why I spent so much time researching the legal issues in the case. I was trying to find a way not to dismiss his case. But, when I could not find legal authority on behalf of the Plaintiff, I followed the law and did my duty and dismissed his case as required to by law.
6. Mr. Pleau complains he thought he "...would be informed in advance of court of any issues pertinent to my issues." I did not give him legal advice on his issues. My job, as judge, is to rule on the issues as presented. I do not give advice I give rulings based on the facts and the law.
7. Mr. Pleau complains he got the judgment on the 10th of July 2008 and went to file an appeal on the same day he received the judgment. He further complains that "...I received this judgment without being informed of the time constraints concerning appeal..." I do not mail judgments to litigants nor do I advise of time constraints concerning appeals. The clerk of the court mails judgments to litigants and so did the defense council in this case. Had he filed his appeal on the 10th of July when he went to the clerk's office his appeal would have been perfected. However, instead of doing an appeal, he chose to file a judicial complaint. The Court of the Judiciary does not hear appeals.
8. During this period of time, I disposed of approximately 12,123² other cases. This is more work than most judges do in a full year.
9. In addition, I was the victim of a DUI driver who ran into my car in April. I was temporally totally disabled for a week (I stayed at home with medical issues unable to get up and down as before.). I was temporally partially disabled for approximately three months (April - July). I had numerous medical visits. I was treated in the emergency room, treating doctor and for physical therapy. I was in severe pain and only did the cases on the docket. I had difficulties in hearing cases due to the pain. I was unable to do other matters such as finish the research in this case until my pain got better.



John A. Bell, Judge
General Sessions Court
Cocke County, Tennessee

Sworn to and subscribed to before me this the 14 day of August 2008.



Deputy Clerk, Sessions Court Cocke County, Tennessee

²During this period I disposed of 1,926 civil cases (9/18/07 – 6/27/08), 2,576 juvenile cases (9/18/07 – 6/27/08), and 7,621 criminal cases (9/18/07 – 5/13/08) for a total of cases of 12,123.