Judge Hayward Tells Small Claims Plaintiff to be 'Educated' about Law; Plaintiff asks 20th Judicial Circuit for Review

Plaintiff agreed with Judge in open court but argues due process of law incomplete, interrupted, and remarkably inadequate

FORT MYERS, FL, UNITED STATES OF AMERICA, August 24, 2018 /EINPresswire.com/ -- SubscriberWise, the nation's largest issuing CRA for the communications industry and the leading protector of children victimized by identity fraud, announced today the appeal by plaintiff David Howe (Case: 18-SC-001768) to the 20th Judicial Circuit to acknowledge the harms to 'Due Process of Law' that result from one-sided and harmful contracts of adhesion that profoundly limit a fact-finding and jury-based inquiry to reach a fair and accurate decision in a case that has national implications well beyond the one individual who pursued justice for all.

> "The trial is over and I couldn't be more pleased or delighted. I'm ready and eager to finally put this nightmare behind me"
>
> *David Howe*

More specifically, the request is for a review concerning 'court minutes' as it relates to Florida's 'Civil Theft' Statute.

"For the record, this public proclamation is in no way intended as a complaint against Honorable Archie B. Hayward Jr.," said David Howe, Plaintiff in 18-SC-001768. "The judge was entirely professional and ethical during the duration of the trial. He did the best he could with the non-attorney plaintiff that was in front of him. And there's little doubt that he is routinely frustrated having to deal with legal-incompetent 'pro se' individuals like myself.

"It's also not a rebuke of the trial," Howe emphasized. "The trial is over and I couldn't be more pleased or delighted. I'm ready and eager to finally put this nightmare behind me. I hope my interaction with the Defendant is concluded forever. Now it's time to focus on lawmakers and consumer protections, just as I was encouraged by the FL Attorney General's Director of Consumer Protections, including senior investigators, more than a year earlier.

"Indeed, I've accomplished the critically important objective for the trial in the most profound terms I could have ever imagined. And despite the fact that I was unable to present any of the mountains of evidence that I previously provided both the court and the defendant prior to trial, I'm ecstatic with the under-oath testimony that I obtained from the defense witnesses. There simply are no words to describe the disbelief from what these witnesses said under-oath compared to what was obtained by the Lee Port Authority police as sworn testimony (plaintiff respectfully urges 20th Judicial Circuit for review of serious challenges presenting evidence during trial).

"One might even argue that I'm in a state of shock as it relates to the testimony obtained on cross-examination. The sworn testimony provided in court is directly contradictory to the testimony obtained under-oath by the Lee Port Authority police. Unfortunately, I was unsuccessful submitting -- as an exhibit -- the official police report during trial because the attorney argued it was 'hearsay'. Nevertheless, the sworn testimony and evidence are

remarkable beyond belief when contrasted and it's now preserved forever.

"In the final analysis, it simply doesn't make an iota of difference to the facts of the incident whether or not it is an 'exhibit' for trial since it remains a public record just like the official open-docket court transcript," Howe confirmed.

"But I don't want a single skeptic to take my word for it," Howe stressed. "Rather I have one simple request, particularly for lawmakers, state attorney generals, and investigative journalists everywhere:

OBTAIN THE OFFICIAL COURT TRIAL TRANSCRIPT AND DIRECTLY COMPARE THE SWORN TESTIMONY OF DEFENSE WITNESSES WITH THE SWORN TESTIMONY OBTAINED BY LEE PORT AUTHORITY POLICE DETECTIVE. DO THE SAME WITH PHOTOGRAPHIC EVIDENCE ENTERED BY LEE PORT AUTHORITY POLICE VS. PHOTOGRAPHIC EVIDENCE EXHIBITED AND TESTIFIED UNDER-OATH AT TRIAL. PAY PARTICULAR ATTENTION TO TESTIMONY PROVIDED UNDER-OATH AS IT RELATES TO THE 'DAMAGE EVALUATOR' COMPARED TO STATEMENTS MADE UNDER-OATH IN JUDGE HAYWARD'S COURTROOM.

I URGE THE SAME OF THE 20TH JUDICIAL CIRCUIT.

Note: Plaintiff's evidence can be found on the Lee Clerk of the Court docket with a Google link to audio, video, and written evidence – including the official Lee Port Authority Police that was previously provided to defense counsel via the efile system.

"On a personal note, I also urge the Lee Port Authority police detective who investigated to compare his official police report – particularly the conclusions he was provided from witnesses and sworn under oath -- to the testimony that was provided at trial by the same witnesses," Howe said. "On another note, let the record reflect that I am sincerely grateful for his thorough investigative efforts and for this invaluable public record that is available to anyone under Florida's broad 'Sunshine' law.

"Yes, I now have uncontroverted and powerfully damning contradictory testimony – taken under oath on cross-examination and only minutes apart from company managers who provided patently opposing conclusions of damage vs. 'wear and tear'. I now have the under-oath testimony that I can take to state attorney generals around the nation as it relates to the incredible harms from Spoliage of Evidence, including the harmful practices of a manager who used video evidence to financially implicate a renter but failed to safeguard that same evidence -- even after mere days of police and victim inquiry following the initial financial demand, to name a few.

Note: Police reported at least two calls to Miami office that were not returned and manager testified no knowledge that police called; manager also testified no knowledge of plaintiff's multiple calls and personal visit to Miami just days after the video was used to implicate; video and audio proof of this activity were unsuccessfully exhibited at trial.

"Just imagine for a moment the incredible financial threats to consumers when management of the same organization disagrees in completely opposing terms about what is damage," Howe declared. "Just consider that an organization has no formal policy to preserve video evidence that it knew or should have known would be used for investigation and at trial – and which was requested on the phone and in person days after it was viewed.

"Although shocking to believe, the court testimony of a manager reveals that it is necessary to get down on one's hand and knees to properly see and identify vehicle condition for which the agency need only 'deem' is a renter's responsibility.

"Indeed, the contradictory sworn testimony is unbelievable but it's also an urgent mandate that

lawmakers and state AGs pursue it with extreme urgency – especially the photographic evidence from the police report vs. the trial – to enforce consumer protection laws so desperately lacking.

“Yes, the official court transcript with sworn testimony from the defense will forever be available to reporters, lawmakers, consumer advocates, and others and I couldn’t be more contented,” Howe emphasized. “This is the cardinal reason I asked the Lee Port Authority police to launch a criminal investigation more than a year-ago. I always anticipated the unbiased police report would deliver critical results…I just didn’t know it could be as profound and impactful to the facts of the case. Even true in a court devoid of appropriate due process of law.

“But it’s also worth stating that this entire ‘legal’ experience demonstrates that that the court must be reminded that the ‘spirit’ of the small claims process is designed exactly for legal incompetents just like me,” noted Howe. “It’s designed to be informal. The rules, I expected, are simplified (https://www.dca.ca.gov/publications/small_claims/basic_info.shtml). Regrettably, that wasn’t the case in Lee County. I suspect that the defense counsel couldn’t have been more pleased.

“The same expectation can be said for motions that were filed in advance of trial but never heard in open court until the day of trial – thereby impacting the best strategy and best decision for the plaintiff. In fact, the motion to sanction for spoliage -- which was effectively acknowledged by a manager under-oath to have happened just as the evidence demonstrated -- never had a word of testimony.

“It’s sad that we call this system 'due process' in America,” Howe sighed. “It’s nothing close to due process and there are striking long-term negative consequences for ordinary consumers everywhere.

“So, in reality, this plaintiff is ‘educated’,” affirmed Howe. “In fact, it’s the court, in my honest opinion, that should instead direct its otherwise well-founded frustrations on the predatory system that so brazenly disguises due process of law. Ironically, it’s lawmakers - including lawyers representing corporations - who have allowed the elaborate system setup by the Constitution to be altered in a way never intended by our Founders.

“But just to reiterate, I have no complaint of wrongdoing concerning Judge Hayward Jr. and his management of the case and courtroom. His comment, however, was unfortunate but I understand nevertheless and know that he meant no disrespect. I actually agreed with him that I lacked 'education' regarding court procedure. It was never my intention to have a case heard in the wrong court but overcoming an attorney's objections and an adhesion contract that I never read doomed me. It would actually doom a Judge or a lawyer, frankly.

“And for the record, I have no complaints against the attorneys for the defense. They simply did the job they were hired to do.

“Sadly, from my perspective, Judge Hayward Jr. is actually a victim of the same predatory contract of adhesion that unfairly disadvantages me and so many others across this nation. Perhaps he and I can work together to lobby lawmakers to end these harmful legal outrages. I’m certainly willing to collaborate with the Judge and put my resources to work for the greater good.

“And perhaps lawmakers will also one day understand and one-day they will end the predatory practice of forcing justice-seekers into small claims courts which are completely inappropriate and utterly inadequate for cases like this. To be sure, that’s the goal of the one-sided and unfair adhesion contracts. It translates into a denial of due process by big corporations acting in the worst interests of the public.

“It requires no specialized or extraordinary knowledge to know that when a consumer is forced

into a 'Small Claims' courtroom with extremely low limits on compensatory damages -- as well as no possibility of punitive damages and no jury of peers – attorneys will show little to no interest in pursuing the case. And that's what I found out after meeting with a number of attorneys in the Fort Myers area.

"Attorney's simply prefer not to make the investment in time and money, especially for a case involving hours of testimony and mountains of evidence," Howe concluded. "It's time to change the system and restore due process of law."

Related: http://www.lostinthefineprint.org

Plaintiff to 20th Judicial Circuit. RE: Case: 18-SC-001768. Please see official trial transcript. Plaintiff filed a motion to transfer the case to a regular docket without limits on compensatory damages and without a restriction on punitive damages. The defendant objected to the motion and wanted the case tried in small claims. Plaintiff recognized that he would not overcome the objection because of legal incompetence observed and commented by Judge Hayward Jr. Plaintiff recognized that he, in fact, signed the adhesion contract forcing the case into an inappropriate Small Claims hearing (entirely inappropriate and a disgrace of due process given the breadth and depth of evidence and testimony planned for trial)

For the record, plaintiff fully anticipated obtaining counsel had the case been transferred to an appropriate docket; plaintiff stated this to Judge Hayward Jr. prior to and during the course of the trial. Of course, that's exactly why corporations rely on these due-process-stripping clauses. Because corporations also understand that attorneys do not want to pursue cases in small claims thereby providing an incredibly unfair trial experience. Nevertheless, plaintiff moved forward with the case since there were no remaining options except case dismissal. But plaintiff also did so with the expectation that evidence (i.e. Lee Port Authority police report) would not be objected to and rules would be simplified for non-attorneys – which is the exact purpose of small claims. Please review the court transcript/docket to see how plaintiff was disadvantaged by the defendant's attorney and legal prowess. See also CA Department of Consumer Affairs: Attorneys are generally not allowed in small claims and all reasonable people would agree: https://www.dca.ca.gov/publications/small_claims/basic_info.shtml .

Please also review the court minutes from the conclusion of the hearing. Defense attorney referenced 'Civil Theft'. However, the case was not tried in small claims as 'Civil Theft' because the plaintiff did not pursue the statutory requirements and never notified the defendant in writing (i.e. Before filing an action for damages under this section, the person claiming injury must make a written demand for $200 or the treble damage amount of the person liable for damages under this section. If the person to whom a written demand is made complies with such demand within 30 days after receipt of the demand, that person shall be given a written release from further civil liability for the specific act of theft or exploitation by the person making the written demand).

Question to 20th Judicial Circuit: Does an Officer of the Court have an ethical duty to notify a non-attorney of any potential harms that s/he knew of should have known would result from agreeing to try a case in small claims at the same time defense attorney objects to an appropriate trial venue?

From the plaintiff's non-attorney perspective, this is clearly the reason attorneys are generally not allowed in small claims courtroom in CA? Perhaps this is the reason corporations shouldn't be able to stack the deck against ordinary consumers by creating such an unfair playing field.

Thank you for your consideration and review.

Media Relations
SubscriberWise

330-880-4848 x137
email us here