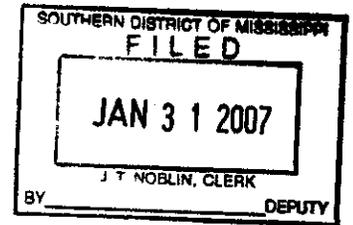


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION



ILLINOIS CENTRAL RAILROAD COMPANY

PLAINTIFF

v.

CASE NO. 5:07cv18018-JMK

WARREN R. TURNER, JR.

DEFENDANT

COMPLAINT

COMES NOW the Plaintiff, by counsel, and for its cause of action alleges the following:

PARTIES

1. Plaintiff Illinois Central Railroad Company ("Illinois Central") is an Illinois corporation with its principal place of business in Chicago, Illinois. It is qualified to do business and is doing business in the State of Mississippi as a non-resident corporation with a registered agent in Mississippi for service of process.

2. Defendant Warren R. Turner, Jr. ("Turner") is an adult citizen resident at 3919 Stampley Road, Fayette, Mississippi 39069. Turner may be served with process at this address.

JURISDICTION AND VENUE

3. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1332. The matter in controversy exceeds the sum of Seventy Five Thousand Dollars (\$75,000.00), exclusive of interest and costs, and is between citizens of different states.

4. Venue is proper in the District Court for the Southern District of Mississippi, Western Division. Turner resides within this District and the conduct and tort described below occurred in whole or in part within this District.

FACTS

5. On February 5, 1996, Turner became a plaintiff in a case against asbestos manufacturers filed in the Circuit Court of Jefferson County, Mississippi, styled David Cosey, et al. v. E.D. Bullard Co., et al., Civil Action No. 95-0069 (the "Cosey Complaint"). (A copy of the Cosey Complaint and exhibit C excerpts thereto (identifying Turner as a plaintiff) is attached as Exhibit A.) The Cosey Complaint alleged that Turner had been exposed to asbestos and suffered from asbestos-related disease.

6. The Cosey Complaint filed by Turner against asbestos manufacturers in 1996 was signed by his attorney in that case, Robert A. Pritchard. Mississippi Rule of Civil Procedure 11 was applicable to that Complaint and required that there be good grounds for the allegations contained in the Complaint.

7. On August 9, 2001, Turner became a plaintiff in a personal injury action against Plaintiff Illinois Central, a former employer, filed in the Circuit Court of Jefferson County, Mississippi, styled Elbert Eakins, et al. v. Illinois Central Railroad Co., Civil Action No. 2001-65 (the "Eakins Complaint"). (A copy of the Eakins Complaint is attached as Exhibit B.)

8. The Eakins Complaint was filed under the Federal Employers' Liability Act, 45 U.S.C. §§ 51 *et seq.*, and alleged, *inter alia*, that Turner had sustained damages as a result of exposure to asbestos during his employment with Illinois Central.

9. The Eakins Complaint filed by Turner against Illinois Central in August 2001 was signed by his attorneys, William S. Guy and Thomas W. Brock. Mississippi Rule of Civil Procedure 11 was applicable to that Complaint and required that there be good grounds for the allegations contained in the Complaint.

10. Turner subsequently provided to Illinois Central sworn Answers to Interrogatories dated January 25, 2002. (See Plaintiff, Warren Turner's Answers to Interrogatories Propounded by Defendant, Illinois Central Railroad Company ("Answers to Interrogatories"), a copy of which is attached as Exhibit C.)

11. Turner knew at the time he signed and provided his sworn Answers to Interrogatories to Illinois Central that he was required to supply truthful and complete information.

12. Turner knew or should have known at the time he signed and provided his sworn Answers to Interrogatories to Illinois Central that Illinois Central would rely upon the information provided in his Answers to Interrogatories in evaluating his case for settlement and determining whether Illinois Central would pay a settlement on his claim.

13. Illinois Central relied upon the truthfulness and completeness of the information supplied by Turner under oath in his Answers to Interrogatories, including, *inter alia*, Turner's Answer to Interrogatory No. 15:

"Have you ... ever filed a suit for damages for any personal injury and, if so, state the court, place of filing, date of filing, title, docket number, disposition, and settlement amount regarding each such suit. Have you ... ever asserted a claim for damages against anyone? If so, please provide information regarding the date and nature of the claim, as well as the entity against whom the claim was made and the amount received by you ... on the claim."

14. In his Answers to Interrogatories Turner lodged a series of objections to Interrogatory No. 15 and then proceeded to answer under oath: "Plaintiff has not filed any suit for damages for any personal injury other than this case." He made no reference to the Cosey Complaint. (See Exhibit C at 16.)

15. On information and belief, Turner read the questions posed in Interrogatory 15 before providing his answer to those questions under oath in his Answers to Interrogatories and indicated to his attorneys that he understood them.

16. On information and belief, Turner's attorneys in his action against Illinois Central read and/or explained the questions posed in Interrogatory 15 to Turner before he provided his answer to those questions under oath in his Answers to Interrogatories.

17. On information and belief, Turner's attorneys advised him that in his Answers to Interrogatories he should provide truthful and complete information to Illinois Central in response to all questions posed by the Interrogatories, including the questions: "Have you ever filed a suit for damages for any personal injury?" and "Have you ever asserted a claim for damages against anyone?"

18. On information and belief, Turner never advised the attorneys who filed his lawsuit against Illinois Central, Guy and Brock, that he had filed another lawsuit through another attorney seeking damages for alleged asbestos-related injuries at an earlier point in time.

19. On information and belief, Turner's attorneys never advised him that in response to the questions posed in Interrogatory 15 he need not identify the Cosey Complaint in his Answers to Interrogatories.

20. Interrogatory No. 10 asked Turner: "Identify specifically each and every injury, disease or condition which you claim in this action was caused by defendant, Illinois Central Railroad Company, and as to each provide", *inter alia*:

c. "the date each such condition was diagnosed and the person who first diagnosed the condition";

e. "the name and address of each treating physician or other therapist who had examined or treated plaintiff ... for the condition"; and

h. “whether any diagnostic tests (including but not limited to pulmonary function tests and chest x-rays) were performed and, if so, the nature of such tests, the results thereof and the name and address of the institution or persons who performed them ...”.

Turner’s sworn response to sub-question 10.c. in his Answers to Interrogatories identified two purported diagnoses of “asbestosis” in 2001, by “Dr. William C. Pinkston – 10/04/01” and “Dr. James W. Ballard – 02/06/2001.” Turner’s sworn response to sub-question 10.e. identified a single examination and report issued by Dr. William Pinkston of Jackson, Mississippi, dated October 4, 2001. Turner’s sworn response to sub-question 10.h. identified a single set of pulmonary function tests and a single x-ray report included in Dr. Pinkston’s October 4, 2001 report. (See Exhibit C at 10-12 (Answers to Interrogatories) and Exhibit D (Pinkston report)).

21. In reliance upon the truthfulness and completeness of the sworn information provided by Turner in his Answers to Interrogatories in response to the questions quoted in Paragraphs 13 and 20, and upon Turner’s provision of other information and documents, Illinois Central agreed to pay a settlement on Turner’s claim and sought as part of the settlement a release of Turner’s claims against Illinois Central. Page four of the Release included the following clause: “IT IS FURTHER UNDERSTOOD AND AGREED that the settlement of this claim has been negotiated by and with the advice of counsel and the undersigned acknowledges that the amount paid pursuant to the terms of this Release is paid and accepted in good faith as part of the settlement of the undersigned’s claim.” (A copy of the Release is attached as Exhibit E.) Turner and his attorneys reviewed the Release and thereafter executed the Release on December 10, 2002.

22. In reliance upon the truthfulness and completeness of the sworn information provided by Turner in his Answers to Interrogatories in response to the questions quoted in

Paragraphs 13 and 20, and upon the other information and documents supplied and executed by Turner, Illinois Central delivered to Turner's attorneys a settlement check in the amount of \$120,000.00, payable to Warren R. Turner and his attorneys, Guy & Brock. (A copy of the settlement check is attached as Exhibit F.)

23. The Release acknowledges Turner's receipt of the sum of \$120,000.00 in settlement of his asbestos claim against Illinois Central. The settlement check was deposited at First Bank, McComb, Mississippi, on or about January 3, 2003.

CLAIM FOR FRAUD

24. Illinois Central has learned that Turner's sworn response to Interrogatory No. 15 in his Answers to Interrogatories was false and misled Illinois Central as to material facts.

25. In his sworn response in his Answers to Interrogatories to the questions posed in Interrogatory 15, Turner stated: "Plaintiff has not filed any suit for damages for any personal injury other than this case," and did not disclose to Illinois Central his involvement as a plaintiff in the Cosey case.

26. In his sworn response in his Answers to Interrogatories to the questions posed in Interrogatory 10, Turner did not inform Illinois Central of any examination, diagnosis, x-ray or screening of him performed in connection with the filing of his claim in the Cosey case. On information and belief, Turner's answers to these questions were also false.

27. On information and belief, Turner knew that his responses to the questions quoted in Paragraphs 13 and 20 in his Answers to Interrogatories were false or he provided the answers to Illinois Central with reckless disregard of the truth or falsity of the information that he provided, or both.

28. On information and belief, Turner intended Illinois Central to accept and act upon the information provided in his sworn Answers to Interrogatories as a basis for determining that Turner would be paid a settlement on his claim.

29. Illinois Central reasonably relied upon the truthfulness and completeness of the information that Turner provided in his sworn Answers to Interrogatories, and did not know or have reason to believe that the information he provided in response to the questions quoted in Paragraphs 13 and 20 of this Complaint about other asbestos claims and screenings was false or materially misleading.

30. Had Turner disclosed the fact that he had previously sued asbestos manufacturers in 1996 for his alleged asbestos-related injuries, Illinois Central would not have paid Turner \$120,000.00 in settlement of his claim.

31. Turner's claim against Illinois Central, filed in August 2001, was time-barred under the three-year statute of limitations that applies to claims brought under the Federal Employers' Liability Act, as demonstrated by his involvement as a plaintiff in the Cosey Complaint filed in 1996.

32. Turner obtained \$120,000.00 from Illinois Central as a result of his intentional or recklessly indifferent conduct in not disclosing that he had previously sued asbestos manufacturers in 1996 for his alleged asbestos-related injuries.

33. On information and belief, Turner was advised by his attorneys that he should provide to Illinois Central a list of all claims in which he had sought recovery for asbestos-related injuries, but Turner disregarded this advice and chose to provide a false and materially misleading answer stating that he "has not filed any suit for damages for any personal injury other than this case" and not disclosing the Cosey Complaint.

34. Illinois Central has been damaged as a proximate result of Turner's fraudulent acts.

35. On information and belief, Turner committed an affirmative act designed to conceal and to prevent Illinois Central from discovering the false nature of his representations by falsely swearing to representations known by him to be false. On information and belief, Turner knew that Illinois Central would rely and continue to rely on those representations, even though they were false. On information and belief, Turner continued to conceal the false nature of his representations, and committed other affirmative acts designed to conceal the false nature of those representations from Illinois Central, by executing a Release in favor of Illinois Central and by receiving and depositing, through his attorneys, a settlement check in the amount of \$120,000.00, knowing that his prior sworn representations that he "ha[d] not filed any suit for damages for personal injury other than this case," which served as a basis for such payment, were false. Subsequent to Turner's receipt of these settlement funds, Illinois Central discovered that Turner's representation concerning the absence of other personal injury claims was false. This suit is filed within three years of the time that Illinois Central learned by the exercise of reasonable diligence of Turner's misrepresentation in spite of Turner's concealment of that fraud.

RELIEF

36. Illinois Central is entitled to damages in the amount of the \$120,000.00 paid in settlement of Turner's claim.

37. Illinois Central is entitled to pre-judgment interest on the \$120,000.00 paid in settlement of Turner's claim from the date of this Complaint until the date of any judgment.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Illinois Central Railroad Company requests a money judgment against Warren Turner for \$120,000.00, together with pre-

judgment interest from the date of the Complaint and post-judgment interest on all elements of damages, and requests such additional and further relief to which it may be entitled.

Respectfully submitted,

FORMAN PERRY WATKINS KRUTZ &
TARDY LLP



Daniel J. Mulholland (MSB No. 3643)

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101150

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