

CENTRAL

EDITOR'S NOTE The information in this report was provided by plaintiff's and defense counsel.

—James Withers

VERDICT *of the* WEEK

EMPLOYMENT

Wrongful Termination — Sabine Pilot — Defamation

Employee claimed he was told to obstruct FBI investigation

VERDICT **\$873,000**

CASE Fred Klecka v. Allstate Insurance Co. and Kathleen Abed, No. 2006-CI-08400
COURT Bexar County District Court, 150th, TX
JUDGE Janet Littlejohn
DATE 12/8/2008

PLAINTIFF
ATTORNEY(S) Matthew R. Pearson, Gravely & Pearson, L.L.P., San Antonio, TX

DEFENSE
ATTORNEY(S) Shannon B. Schmoyer (lead), Schmoyer Reinhard, L.L.P., San Antonio, TX
 Kim Keller, Keller Law Firm, San Antonio, TX
 Christine E. Reinhard, Schmoyer Reinhard, L.L.P., San Antonio, TX
 Justin Sobey, Schmoyer Reinhard, L.L.P., San Antonio, TX

FACTS & ALLEGATIONS In July 2005, plaintiff Fred Klecka, about 50, a claims adjuster for Allstate Insurance Co.'s Special Investigation Unit in San Antonio, was fired. According to Klecka, the company had asked him to perform an illegal act, and when he refused, it fired him.

In January 2003, Klecka discovered fraud by a fellow adjuster and reported it to his supervisor. The coworker had received kickbacks from a contractor while making 402 bogus claim payments totaling \$1.3 million over six years. The coworker was fired in March 2003 and the FBI began a criminal investigation of Klecka's coworker and the contractor and interviewed Klecka in January 2004. He said that after two Allstate managers learned that he was cooperating with the FBI, the managers told him that he would lose his job if the cooperation continued. Klecka continued to cooperate with the FBI. Within a couple of months, he received the worst evaluation of his eight-year career. In May 2005, Allstate gave

him an "unacceptable performance notification," and in July, he was fired.

He also claimed that Allstate manager Kathleen Abed spread false rumors about why he was fired.

Klecka sued Abed for defamation and defamation per se and sued Allstate for defamation and wrongful termination. He said he was fired for refusing to obstruct justice.

The coworker was convicted of conspiracy to commit insurance fraud.

The defendants denied the allegations and said Klecka was fired for poor performance, including failure to return calls or properly maintain and document his claims files. Defense counsel said the evidence included many complaint calls and insurance board complaints by insureds and agents. The defense also argued that Klecka's first negative performance review was before the time that, according to Klecka, he was told not to cooperate with the FBI.

The defense further said that Allstate never told Klecka not to cooperate with the FBI, but that it did tell other employees to seek approval from Allstate's corporate security department before talking to the FBI in order to ensure that private or privileged information would be secure.

The defense also introduced evidence that Klecka had worked a side job for another adjuster. This conduct was discovered after Klecka's termination, defense counsel said.

Defense counsel said Klecka claimed that Abed made a defamatory statement about him to one of Klecka's coworkers, who then recounted it to Abed, but that there was no evidence of other publication of such a statement.

INJURIES/DAMAGES Klecka claimed past and future lost wages and benefits and past and future mental anguish. According to defense counsel, Klecka's expert calculated lost wages and benefits at \$556,000, and Klecka sought \$330,000 for mental anguish and \$2 million in punitive damages. Klecka's attorney said he sought \$1 million in punitive damages.

According to defense counsel, Klecka sought \$800,000 for damage to his reputation, mental anguish and nominal damages on the defamation claim.

The defense argued failure to mitigate economic losses, and Allstate's expert opined that Klecka had no lost wages or benefits because the plaintiff had earned more income since leaving Allstate.

RESULT The jury found wrongful termination by Allstate and that Klecka's damages were \$873,000. The jury also found defamation per se by Abed and that Allstate was liable for Abed's conduct, but the jury found no damages on the defamation claim.

FRED KLECKA	\$51,000 past lost earnings
	\$100,000 future lost earnings
	\$500,000 punitive damages
	\$25,000 future mental anguish
	\$32,000 past lost benefits
	\$90,000 future lost benefits
	<u>\$75,000 past mental anguish</u>
	\$873,000

TRIAL DETAILS Trial Length: 8 days
Trial Deliberations: 1 day
Jury Vote: 12-0
Jury Composition: 6 male, 6 female

**PLAINTIFF
EXPERT(S)** Keith W. Fairchild, Ph.D., lost earnings,
San Antonio, TX

**DEFENSE
EXPERT(S)** Dwight D. Steward, Ph.D., lost earnings,
Austin, TX

-John Schneider