

# Cray • Huber

*American Access Casualty Company v. Alcauter, et al.*, 2017 IL App (1<sup>st</sup>) 160775. American Access, through its coverage attorney, filed a declaratory judgment action against its named insured, Jose Alcauter, and the tort plaintiff, Kimberly Krebs, for breach of the duty to cooperate in connection with an auto accident. Alcauter failed to appear for his arbitration hearing, resulting in an award of \$10,000 to Krebs. American Access filed a motion for summary judgment against Alcauter and Krebs in the declaratory judgment action based on lack of cooperation. The trial court denied the motion.

The case proceeded to a bench trial. Six weeks before trial, Krebs' attorney provided the American Access attorney with a number of documents showing that Alcauter had been incarcerated at the time of the arbitration hearing and therefore was unable to appear. The trial court after hearing evidence found that American Access owed coverage and that there was "solid evidence" that Alcauter was in jail at the time of the arbitration.

Following the bench trial, Krebs moved for sanctions under Rule 137. Krebs argued American Access had failed to conduct a reasonable inquiry into Alcauter's whereabouts because, if it had, it would have found out he was incarcerated. The trial court granted the motion and imposed sanctions of \$12,678.75 in attorney's fees and \$865.95 in costs against American Access and its coverage attorney. The court found American Access presented "zero competent evidence" to support its claim that Alcauter had willingly refused to cooperate. American Access appealed solely on the issue of sanctions.

The First District affirmed. First, the court pointed out that since Alcauter was incarcerated, American Access "could not show that Alcauter willfully refused to cooperate in the arbitration." Second, the court rejected the claim by American Access that sanctions should not be imposed because its attorney did not know of Alcauter's incarceration at the time he signed the motion for summary judgment and had not signed any other pleadings improperly. The court held Rule 137 has broader application than simply the signing of pleadings and requires an attorney to promptly dismiss a lawsuit once it becomes evident that it is unfounded. Counsel should have known the cooperation claim was unfounded because he received documents showing Alcauter was incarcerated six weeks before trial, and because he could have checked the Department of Corrections website which showed he was incarcerated. The court therefore affirmed the sanctions. The court also found that payment of the judgment by American Access after trial did not alter this conclusion.

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