

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

SHERRY MALONE,	}	
	}	
Plaintiff,	}	
	}	
v.	}	CIVIL ACTION NO.
	}	13-AR-0884-S
	}	
ALLSTATE INSURANCE COMPANY and	}	
MICHAEL ROCCHIO,	}	
	}	
Defendants.	}	


MEMORANDUM OPINION

On May 13, 2013, contemporaneously with its removal of the above-entitled action, Allstate Insurance Company filed a motion to dismiss the action as against the non-diverse defendant, Michael Rocchio ("Rocchio"). On June 7, 2013, Ralph Bohanan, Jr. filed a notice of appearance for plaintiff, styling the case "*Sherry Malone v. Allstate Insurance Company*", without reflecting Michael Rocchio as a defendant. On June 11, 2013, the court entered an order providing that the motion to dismiss as against Rocchio would be taken under submission at 4:30 p.m., "Monday, June 18, 2013" (which should, of course, have said "Monday, June 17, 2013"), with plaintiff having the right to respond to the motion on or before June 15, 2013. Plaintiff has not responded. Under the circumstances, the court concludes that plaintiff is conceding that Rocchio was fraudulently joined, particularly inasmuch as no motion to remand has been filed. If a cause of action had been stated

against Rocchio, this court would lack subject-matter jurisdiction and would remand *sua sponte*.

By separate order the motion to dismiss the action as against Rocchio will be granted.

DONE this 17th day of June, 2013.


WILLIAM M. ACKER, JR.
UNITED STATES DISTRICT JUDGE