

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

WRIGHT-RYAN CONSTRUCTION,)
INC., et al.,)
)
Plaintiffs)
)
v.)
)
AIG COMMERCIAL INSURANCE)
COMPANY OF CANADA,)
)
Defendant)

Civil No. 08-414-P-H

MEMORANDUM DECISION ON MOTION FOR SANCTIONS

Following a telephone conference on April 22, 2009, I entered an order in this action directing the defendant to serve then-overdue responses to interrogatories that had been propounded on February 3, 2009. At the time, the plaintiffs also sought sanctions against the defendant for the delay, including an order deeming the defendant to have admitted jurisdiction, venue, and coverage in this insurance coverage dispute, as well as the costs associated with the telephone conference. I reserved ruling on the nature of the sanctions to be awarded pending the filing of a motion for sanctions by the plaintiffs and a response thereto by the defendant. Report of Hearing and Order Re: Discovery Dispute (Docket No. 15) at 2. The motion, the response, and a reply have now been filed. Docket Nos. 21-23. For the reasons that follow, I decline to impose the sanctions sought by the plaintiffs, but do impose a lesser sanction for the defendant's admitted discovery violation.

The defendant's answers to the plaintiffs' interrogatories were served on April 22, 2009, more than a month after they were due. Defendants' Memorandum of Law in Opposition to

Plaintiff's Motion for Sanctions (Docket No. 22) at 2. Pursuant to an agreement reached during the April 22 discovery conference, the defendant on that date also amended its responses to the plaintiffs' request for admissions, withdrawing all of its affirmative defenses. *Id.*

In their motion for sanctions, Docket No. 21, the plaintiffs reiterate their request, made orally on April 22, that the court prohibit the defendant "from opposing Wright-Ryan's claim that, with respect to the Behrens lawsuit, Wright-Ryan's liability arose from the operations of Norgate Metal, Inc." Plaintiffs' Motion for Sanctions at 2. They assert that such an order would "leave for resolution the question of whether the Acadia or the AIG policy is 'primary' under the circumstances of the *Behrens* lawsuit." *Id.* They assert that the defendant's response to two of their interrogatories addressed to AIG's coverage position "was of critical importance going into the mediation" in the underlying *Behrens* case on April 13, 2009, *id.*, but do not suggest that the defendant's failure to provide that response in fact caused them any harm or damage.

On the showing made, the requested order represents a disproportionate response to the violation committed. I have previously found that the defendant's counsel used his best efforts to comply with the applicable time limits for responding to the interrogatories, although the defendant had inexplicably not responded to him until April 22.

Pursuant to Fed. R. Civ. P. 37(d)(3) and as a sanction for the defendant's untimely discovery response, I ORDER the defendant, and not its attorneys, to pay to the plaintiff forthwith the sum of \$595.00, the claimed attorney fees that the plaintiffs have incurred in connection with this dispute. From all that appears in the record, the delay was due to actions or inactions of the defendant in spite of the efforts of its counsel. That sanction is commensurate with the violation that occurred.

Dated this 21st day of July, 2009.

/s/ John H. Rich III
John H. Rich III
United States Magistrate Judge

Plaintiff

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Defendant

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